

(1999) 08 KAR CK 0021

In the Karnataka High Court

Case No : Writ Petition No's. 10297, etc. of 1999

S and P Enterprises and Others

APPELLANT

Vs

Commissioner, Bangalore Mahanagara Palike and Others

RESPONDENT

Date of Decision : 06-08-1999

Acts Referred:

Constitution of India, 1950 — Article 19 (1) (g), 226, 227

Karnataka Municipal Corporations Act, 1976 — Section 300, 303, 308, 310, 321

Citation : (2000) ILR (Kar) 421 : (2001) 1 KarLJ 418

Hon'ble Judges : P. Vishwanatha Shetty, J

Bench : Single Bench

Advocate : Sri B. K. Sampath Kumar and Sri K. L. Manjunath, for the Appellant; Sri Ashok Harnahalli, Sri R. Gunashekhar, Sri B. G. Rajashekhar, Sri K. N. Puttegowda, Sri B. V. Muralidhar and Sri Prashant Chandra S. N., for the Respondent

Judgement

1. In all these petitions, the petitioners have sought for a direction to the respondent-Corporation to consider the applications for renewal of their licence to carry on business (hereinafter referred to as "the trade license") and also to quash the endorsement given to each of the petitioners.

2. It is the case of the petitioners that they have been carrying on business either in Restaurants or Pubs in the premises, which are the subject-matter of dispute in these petitions, for the last several years; and the respondents, without any justification, are refusing to renew their trade licences on the ground that the premises in question are situated in a cellar portion of the buildings.

3. Sri B.K. Sampath Kumar and Sri K.L. Manjunath, learned Counsel appearing for the petitioners, submitted that since the petitioners have been carrying on business in the premises in question for the last several years and the licences were granted to them to carry on business in the premises in question after inspection of the premises by the officers of the Corporation, it is not permissible for the respondents at this stage to refuse to renew the licences on the ground

that the petitioners are carrying on their business in the cellar portion of the building/s in question. According to them, the renewal of the trade licence sought for by each of the petitioners in the facts and circumstances of the case, is automatic. They submitted that insofar as the grant of trade licence is concerned, the rights of the parties are governed by the Bye-laws framed for the purpose of regulating the carrying of business in hotels, lodging-houses, boarding-houses, choultries, rest-houses, restaurants, eating-houses etc., (hereafter referred to as "the Boarding Houses and Restaurant Bye-laws") and, therefore, it is not permissible for the respondents to rely upon Bye-law 21 of the Building Bye-laws (hereinafter referred to as "the Building Bye-laws"), which came into force in the year 1984, governing grant of building licence for construction of a building to deny the licences sought for by the petitioners. They further submitted that at any event of the matter, the Building Bye-laws of the year 1984 cannot be made retrospectively applicable in respect of the premises in which some of the petitioners have been carrying on business prior to the date of the coming into force of the said Bye-laws. It is their further submission that the petitioners having made huge investments for the purpose of their business, they had legitimate expectation that the trade licences earlier issued to them, would be renewed every year without there being any objection. In support of this plea of legitimate expectation, Sri Sampath Kumar relied upon the decision of the Supreme Court in the case of M.P. Oil Extraction and Another Vs. State of M.P. and Others, and drew my attention to paragraphs 29 and 31 of the judgment and also another decision of the Supreme Court in the case of Navjyoti Co-Group Housing Society etc. Vs. Union of India and Others, , and drew my attention to paragraphs 15 and 16 of the judgment. It is also his further submission that even assuming that the respondents, at the stage of the renewal of the licence, would have the power to decide the question as to whether the licence should be renewed or not, such decision has to be taken only after receipt and consideration of each of the applications of the existing licensees; and the right of the existing licensees to carry on business cannot be denied by means of Circular dated 8th of March, 1999, a copy of which has been produced as Annexure-E to Writ Petition No. 10287 of 1998.

4. However, Sri Ashok Harnahalli, Sri K.N. Puttegowda, Sri Muralidhar, Sri Prashanth, Sri Gunashekhar, Sri E.G. Rajashekhar and Sri Muniyappa, learned Counsels appearing for the Corporation, strongly countered the submissions of the learned Counsel for petitioners. It is their submission that Bye-law 21 of the Building Bye-laws clearly lays down the circumstances under which building licence can be granted for the construction of basement floor in a building; and clause (c) of Bye-law 21 clearly prohibits the use of the basement floor of a building for residential, classroom, kitchen, bath and lavatory; and when there is express prohibition in Bye-law 21(c) of the Building Bye-laws for use of the Basement Floor for the purpose other than the one mentioned in the said Bye-law, it is not permissible for the Corporation to issue a trade licence to any person to make use of the Basement Floor for the purpose other than the one for

which the Basement Floor is allowed to be constructed and more particularly, for the purpose of using it as residential, class room, kitchen, bath and lavatory. It is their submission that the Basement Floor of a building cannot be equated to any other floor of a building as the Basement Floor is exposed to greater danger, calamity and public injury than the other floors of a building. If that being the policy behind Bye-law 21 of the Bye-laws prohibiting use of the Basement Floors for residential, class room, kitchen, bath and lavatory, the petitioners are not entitled to seek for a trade licence to carry on their business in the Basement Floor where kitchen, bath and lavatory is required to be provided as per Bye-law 35 of the Hotels, Boarding Houses and Restaurant Bye-laws. It is their further submission that though Bye-law 21 has come into force with effect from 27th of April, 1984, the said Bye-law has to be applied whenever an application for grant of trade licence or renewal of a licence comes up for consideration. According to them, from the scheme of the Bye-laws governing the grant of trade licence, it is clear that an application for renewal of licence is a new application and at that time, the Licensing Authority of the Corporation is required to apply its mind to the suitability of the building to be used for the purpose for which the renewal of the trade licence is sought; and according to them, this is necessary to be considered by the Licensing Authority of the Corporation keeping in mind the public interest. Elaborating this submission, they submitted that in Bangalore City, though the sanctioned plan permits construction of the Basement Floor for providing car parking and for other purposes, in contravention of the purpose for which the construction of Basement Floors are allowed, the Basement Floors are being used for the purposes other than those for which they are allowed to be constructed. This they pointed out results in serious public injury. According to them, if the places meant for car parking are allowed to be used for the purpose of carrying on business, in that event the people who visit the buildings, are compelled to park their vehicles on a public road which will result in traffic congestion exposing the public to serious public injury and motor accidents. They further submitted that if the licences sought for by the petitioners are renewed, it would be made as a ground by the occupants of the buildings, to prevent any steps being taken by the Corporation to demolish the unauthorised constructions put up on the Basement Floor of the buildings on the ground that the Corporation has granted the trade licence. Therefore, they submitted that the grant or refusal of licence lies with the sound discretion of the Licensing Authority of the Corporation; and when the Authorities of the Corporation keeping in mind the public interest, have refused to renew the licences sought for, this Court, in exercise of its writ jurisdiction under Articles 226 and 227 of the Constitution, cannot compel the Authorities of the Corporation to renew the licences. Sri Ashok Harnahalli relied upon resolutions of the Corporation, copies of which have been produced as Annexures-R1 and R2, in support of the above submission. They pointed out that in Annexure-E, dated 8th March, 1999, the Health Officers of the Corporation only notified about the decision of the Corporation not to grant trade licence in Basement Floor of a building. He also took me through the statement of objections filed on behalf of the Corporation in Writ Petition No. 10297 of

1999. It is useful to refer to paragraphs 4 and 5 of the said Statement of Objections, which read as hereunder:

"4. ... The Corporation Standing Committees are the ultimate decision making authority and it is these Standing Committees that have resolved not to renew licence to run the restaurant in Basement Floor. The resolution of the Standing Committee has the effect of a Bye-law made u/s 423 of the Act and is uniformly applicable to all cases. In view of this decision there is no need to pass order considering each individual case. Section 343 contemplates that a person shall not run any restaurant except in conformity with the terms of the licence granted by the Commissioner. Section 343(2) states that the Commissioner can cancel or suspend the licence where it is not in conformity with the conditions of the licence or with provisions of any Bye-law made u/s 423 relating to such provisions. It is therefore clear that if there is any contravention of any of the Bye-law including the Building Bye-law, the licence need not be issued by the Corporation. The Building Bye-law 21 of BCC clearly states that the construction of the Basement Floor is allowed only for the specified users mentioned therein. As per the said Bye-law the Basement Floor shall be used for parking space, libraries or A.C. Office, etc. Bye-law 21.1 (c) categorically states "Basement Floor shall not be used for residential or class rooms, kitchen, bathroom or lavatory . This Bye-law not only specifies the permitted use but also prohibits the use of Basement Floor for the use of kitchen, bathroom, lavatory, etc. It is therefore clear that the restaurant cannot be allowed to be run in a Basement Floor. The Bye-law specifically prohibits the running of kitchen in the restaurant having regard to the fact that is likely to cause a fire hazard. In the basement floor there will not be proper ventilation and it is for this reason the use of cellar for kitchen, bathroom, etc., is prohibited. Similarly in the Zonal Regulations, Clause 6(a) deals with Basement/Cellar Floor. Table 32 of the Zonal Regulations deals with the minimum car parking space which is to be compulsorily provided in the building. Similarly in the Building Bye-laws, Table 8 deals with the minimum of street car parking zone which is provided in respect of the buildings. Insofar as the Zonal Regulations are concerned, they are paramount and are binding on the Corporation. It is not permissible to deviate from the Building Bye-laws or the Zonal Regulations.

5. The builders after obtaining the sanction plan and occupancy certificate have converted the Basement Floor for other purposes. The sanction plan is issued by Engineering Section of the Corporation and the licence to run the restaurant is issued by the Health Department of the Corporation. Obviously when the Engineering Section was issuing notice regarding demolition, the Health Department was issuing licence to run the restaurant. To avoid this anomaly a policy decision is taken by the Standing Committees -one on behalf of Engineering Department another on behalf of Health Department resolving not to renew the licence for all such restaurants".

5. However, Sri Sampath Kumar, in reply to the submission of the learned

Counsel appearing for the Corporation, submitted that the order produced by the petitioner in Writ Petition No. 10285 of 1998 shows that it is not a speaking order and there is no application of mind by the Licensing Authority of the Corporation insofar as the claim of the petitioners for renewal of licence. He further submitted that the sanctioned plan in respect of the Basement Floor of the buildings in question, does not show that the Plan was sanctioned for car parking and, therefore, there cannot be any objection for the grant of licence.

6. In the light of the rival contentions advanced by learned Counsel appearing for the parties, the three questions that would arise for my consideration, are--

(1) Whether it is permissible for the respondents to rely upon clause (c) of Bye-law 21 of the Building Bye-laws of the Corporation to refuse renewal of trade licence sought for by the petitioners?

(2) Whether Resolution Annexure-R1, dated 23rd of February, 1999 passed by the Standing Committee and Resolution Annexure-R2, dated 27th of March, 1999 passed by the Standing Committee of the Town Planning and Development, are valid in law?

(3) In view of Resolutions Annexures-R1 and R2, referred to above, whether the respondents could have refused to receive the applications from the petitioners for renewal of trade license?

7. The questions that arise for consideration in these petitions, are of great public importance apart from the fact that they would have serious consequences on the rights guaranteed to the petitioners to carry on their profession or business, under Article 19(1)(g) of the Constitution of India. In a fast developing metropolitan cities, the importance of Regulations, Bye-laws regulating the construction of buildings, needs no emphasis. The Bye-laws and regulations are framed for the purpose of orderly growth of the city which alone ensures quality of life, comforts and free movement of traffic and to a large extent, ensures protection to life and property of residents who reside in the municipal area. In this background, the Court will have to examine the contentions very seriously urged by the learned Counsel appearing for the parties.

8. Now, let me examine the questions that would arise for consideration.

Re: Question (1):

9. To decide the first question, referred to above, which would arise for consideration, I will have to consider the arguments advanced in respect of three matters, namely, (a) whether in respect of the premises, in respect of which the plan has been specifically sanctioned for the purpose of car parking, if such premises has been converted into a hotel, boarding-house, rest-house, restaurant, eating-house, cafe, refreshment room, coffee-house, where some of the petitioners or others are carrying on business on the basis of the licence issued, the Corporation can refuse to renew the licences granted to the petitioners on the ground that the premises in question have been converted,

modified or altered in disregard of the sanctioned plan and conditions of building licence and is being used for the purposes other than for which the building plans are sanctioned? (b) whether the Corporation is entitled to refuse to renew the trade licence which has already been given to the petitioners, on the ground that such a licence would violate clause (c) of Bye-law 21.1 of the Building Bye-laws? and (c) whether the provisions of clause (c) of Bye-law 21.1 of the Building Bye-laws are required to be considered and made applicable while considering the applications filed for renewal of trade licences issued to such of those petitioners who had obtained trade licences prior to the coming into force of clause (c) of Clause 21 of the Building Bye-laws i.e., 27th of April, 1984?

10. Insofar as the first point, referred to above, is concerned, the Act and the Building Bye-laws framed under the provisions of the Act, regulate the construction of the building within the limits of Bangalore City Corporation. The several regulations provided under the provisions of the Act and the bye-laws, as observed by me earlier, are intended to provide for orderly growth of the City and to make the life and living of all the residents of the City more comfortable, happy and satisfactory keeping in mind the growth of the City on account of pressure of population, traffic, environmental pollution, infrastructure available for under- ground drainage, water supply etc. When the law recognises the right of a person to make use of his property for the best use which he may deem fit under the circumstances, it also recognises the rights of the neighbours and other residents in the locality or for that matter, in the City, not to be put to any inconvenience, hardship or injury on account of one's right to enjoy his property or the right to carry on his profession or business. Section 300 of the Act prohibits construction or reconstruction of building without the permission granted by the Commissioner for execution of the work. Section 303 of the Act provides for the circumstances under which permission for construction of the building may be refused. Section 308 of the Act confers power on the Commissioner of the Corporation to require alteration of the work, if the construction of the building is being made otherwise than in accordance with the plans or specifications which have been approved, or construction is made in contravention of the provisions of the Act or any rule, bye-law, order or declaration made under the Act. It is useful to extract the said section, which reads as hereunder:

"308. Power of Commissioner to require alteration of work.--

(1) If the Commissioner finds that the work,--

(a) is otherwise than in accordance with the plans or specifications which have been approved, or

(b) contravenes any of the provisions of this Act or any rule, Bye-law, order or declaration made under this Act, he may by notice require the owner of the building within a period stated, earlier,--

(i) to show cause why such alterations should not be made, or

(ii) to make such alterations as may be specified in the said notice with the object of bringing the work into conformity with the said plans, specifications or provisions.

(2) If the owner does not show cause as aforesaid he shall be bound to make the alterations specified in such notice.

(3) If the owner shows cause as aforesaid the Commissioner shall by an order cancel the notice issued under sub-section (1) or confirm the same subject to such modifications as he may think fit".

Section 310 of the Act provides for grant of completion certificate. Sub-section (2) of Section 310 prohibits any person from occupying a building, until permission has been received from the Commissioner granting permission to occupy the building. The Building Bye-laws of the Corporation which has come into force in the year 1984, provides for the procedure to be followed while approving the building plan and issuing the building licence. Section 321 confers power on the Commissioner to direct demolition or alteration of the building constructed without there being a valid licence or sanctioned plan granted in that behalf or construction made in contravention of the sanctioned plan or the building licence. Section 322 of the Act confers power on the Commissioner to direct demolition of a structure which the Commissioner finds is in a ruinous state or dangerous to passers by or to the occupiers of neighbouring structures, etc. The several provisions contained in Chapters XV and XVI of the Act make it clear that the construction and use of the building within the municipal area is required to be made in accordance with the sanctioned plan and the conditions of the licence granted, and the owner of the site or a building, while constructing a building on a site or effecting alterations in the building, has no free hand or absolute discretion in the matter and he has to compromise or adjust his rights and subject himself to the provisions of the Act, Bye-laws and Regulations of the Corporation in the larger public interest Chapter XVII of the Act provides for grant of licence. Section 343 of the Act provides that no person shall, without or otherwise than in conformity with the terms of a licence granted by the Commissioner, keep any lodging-house, eating-house, tea-shop, coffee-house, cafe, restaurant, etc. The said section reads as follows:

"343. Prohibition in respect of lodging-houses.--(1) No person shall, without or otherwise than in conformity with the terms of a licence granted by the Commissioner in this behalf, keep any lodging-house, eating-house, tea-shop, coffee-house, cafe, restaurant, refreshment room, or any place, where the public are admitted for repose or for the consumption of any food or drink or any place where food is sold or prepared for sale.

Explanation.--In this sub-section "lodging-house"" means a hotel, boarding-house, choultry or rest-house other than a choultry or rest-house maintained by the Government or a local authority, or any place where casual visitors are received and provided with sleeping accommodation, with or without food, on

payment but does not include a students' hostel under public or recognised control.

(2) The Commissioner may at any time cancel or suspend any licence granted under sub-section (1) if he is of opinion that the premises covered thereby are not kept in conformity with the conditions of such licence or with the provisions of any Bye-law made u/s 423 relating to such premises whether or not the licence is prosecuted under this Act".

Therefore, as already observed by me earlier, the question is whether, after the building is constructed as per the conditions of the sanctioned plan and the licence issued thereunder and also after the issue of the occupancy certificate, is it permissible for owner or occupier of a building to make substantial change in the building constructed by him, which would alter the nature of the plan sanctioned? In my view, such an action is not permissible either on the part of the occupier or owner of the building. When the Building Bye-laws framed by the Corporation and also the sanctioned plan provides that the building is required to be constructed in a particular manner and in the course of the construction of the building, if the Commissioner or the authorities of the Corporation, to whom the Commissioner delegates his power, are entitled to either order for alteration of the construction of the building or demolition of the offending portion of the construction when the constructions are made in disregard of the sanctioned plan or the provisions contained in the Act, Rules or the Bye-laws of the Corporation, the said power continues to vest with the Commissioner or other officers of the Corporation; and the Commissioner and other Officers of the Corporation are entitled either to ask for modification of the constructions made or direct demolition of the offending portion of the construction to bring the building in conformity with the sanctioned plan or the conditions of licence or the provisions of the Act, Rules and Bye-laws framed thereunder. The offending portion of the construction would be a continuing wrong or injury to the public. However, here again, as noticed by me earlier, the alteration or modification made must be of substantial nature and any minor alterations, which do not affect public interest, cannot be considered as alteration made in disregard of the sanctioned plan or licence. If a building plan is sanctioned keeping in view the width of the road, the nature of the construction, the use for which the building is intended to be put, in my view, the space reserved for car parking or a portion of the building reserved for car parking cannot be permitted to be utilised or converted for purposes other than car parking. In a growing City and more particularly, like the City of Bangalore where number of vehicles owned by the members of the public are increasing day by day and on account of that, the traffic on the road is also being increased considerably, it would not be in the interest of public to allow the cars which are required to be parked in the space meant for parking in a building, to be parked outside the building on the road. The provisions in the Building Bye-laws providing for car parking is made keeping in view the public safety and their interest. In such cases, it is not a matter between the owner or occupier of the building and the Corporation. The Corporation in these cases has no power or

authority to permit the use of the place meant for car parking for some other use. Therefore, if the entire matter is viewed from this point of view, I am of the view that it would be in furtherance of justice and public interest to hold that the Authorities of the Corporation are under a statutory obligation to take effective steps to demolish the unauthorised constructions made insofar as it relates to conversion of the place meant for car parking. It is also necessary to point out that if the Authorities of the Corporation fail to take action and perform their obligations and duties under the Act, it would be open to any member of the public to seek compliance of a statutory duty by the Corporation by demolishing unauthorised constructions made at the places meant and reserved for car parking while sanctioning the building plans. When I am making this observation, I am fully conscious of the fact that any steps taken to demolish such constructions would result in injury and hardship to some of the occupants of such buildings. But, when the several provisions in the Act and the Bye-laws made thereunder, which are meant to ensure the safety and convenience of the public; and on account of that, if there is any likelihood of conflict between the private interest and the public interest, it is the duty of the authorities of the Corporation and also of this Court to uphold the rights of the public and protect their interest.

11. Now, the question is, merely because the trade licences were being granted and were being renewed from time to time, can it be a ground to prevent the Corporation from proceeding to demolish the unauthorised constructions made insofar as car parking spaces are concerned as contended by the learned Counsel for the petitioners either on the ground that the Corporation is estopped by its conduct, from going back on the licences issued by it or on the ground that such licensees had reasonable expectation that their licences would be renewed from time to time? In my considered opinion, it is not possible to take a view to prevent the Corporation from exercising its statutory functions. It is pointed out by the learned Counsel for the Corporation that the licences for restaurants, eating-houses, cafes, refreshment rooms, coffee-houses are issued by the Health Department, whereas the building licences are issued by the Engineering Department. In a matter like this, what the Court is required to bear in mind is the public interest. Merely because one wing of the Corporation, like the Health Department, either without reference to the building plan sanctioned by the Corporation or for any other reason has either granted the trade licence or has renewed such licences from time to time, in my view, cannot be a ground to compel the Corporation to renew the trade licences year after year and also to prevent the Corporation from proceeding to demolish the constructions made in disregard of the sanctioned plan. If such a thing is allowed to take place, a place meant for car parking in a building will be lost forever resulting in serious public injury. Clause 1 of Bye-law 35 of the Bye-laws provides that the licence granted is valid only till 31st of March of the following year, but it is subject to renewal every year. It is useful to extract Clause 1 of Bye-law 35, which reads as hereunder:

"1. No place within the municipal limits of the City of Bangalore shall be used as hotel, boarding-house, rest-house, restaurant, eating-house, cafe, refreshment room, coffee-house or premises to which the public are admitted for the consumption of any food or drink without a licence from the Commissioner or other officer appointed by him in this behalf and such licence shall remain in force from the date on which it is granted until the 31st March following and may be renewed every year. Provided that a temporary licence for a period not exceeding one month may be granted for any special occasion, and such licence shall expire with the period for which it is granted".

Sub-clause (a) of Clause 2 of Bye-law 35 provides for making of an application for grant of a licence. Sub-clause (b) thereof provides for making of an application for renewal of a licence granted. Sub-clause (a) of Clause 3 of Bye-law 35 confers power on the Commissioner either to grant or refuse to regrant a licence. The licence granted is made non-transferable. Further, Clause 42 of Bye-law 35 confers power on the Commissioner to suspend or completely revoke any licence granted under Bye-law 35 in respect of any place on grounds of public health or safety or any of the conditions specified in the Bye-laws are not strictly observed. If a place meant for car parking is utilised for the purpose of running a restaurant, eating-house, cafe, refreshment room, coffee-house, there cannot be any doubt that the user of the said premises would be totally against the safety of the public, as the vehicles which are expected to be parked in the car parking, will have to be necessarily parked outside the building on the roads causing obstruction to the movement of the vehicle on the roads. When Clause 42 of Bye-law 35 confers power on the Commissioner to revoke the licence granted on the ground of public safety, in my view, the Authorities of the Corporation should necessarily have the power to refuse to renew the licences granted if they come to the conclusion that the renewal of the licences would go against the public safety or interest. When the question of public safety and interest is involved or the right to life or liberty guaranteed to the members of the public is put to jeopardy, on account of the action of the Authorities of the Corporation either because they have colluded with the licensees at the time of grant or renewal of the licences from time to time or there was dereliction of duty on their part or for any other reason, the contention that the licensees had a reasonable expectation that their licences would be renewed, in my view, cannot be accepted. The private or individual interest must yield for a larger public good and public interest. There cannot be any compromise on these issues and the Authorities, no doubt, with the power of regulating the construction of the buildings and the proper use of the building for which the building plans have been sanctioned and licences have been issued, cannot abdicate their power to the detriment of the members of the public for whose benefit the building regulations have been framed. Further, there cannot be any estoppel against a statute. The contention of the petitioners based on the principle of reasonable expectation must be viewed not from the point of view of what has been done by the officers or authorities of the Corporation, but from the point of view of the

public for whose benefit the Building Bye-laws/Regulations and other Bye-laws/Regulations governing grant of licence are framed by the Corporation. Therefore, I am of the opinion that insofar as the places earmarked for parking in a building is concerned, the existing licensees are not entitled to seek for renewal of such licences and the authorities of the Corporation have the right, obligation and to demolish such unauthorised constructions and make available such place for the purpose of car parking.

12. Now, the next question is, whether it is permissible for the Corporation to refuse to renew the trade licences granted to the petitioners to run hotel, boarding-house, rest-house, restaurant, eating-house, cafe, refreshment room, coffee-house in the Basement Floor of the building in view of clause (c) of Bye-law 21.1 of the Building Bye-laws? It is useful to extract Bye-law 21.1 of the Building Bye-laws, which reads as follows:

"21. Basement Floor.--21.1(a) The construction of the Basement Floors shall be allowed for any of the use specified below;

(b) The Basement Floor may be put to any of the following uses:

(i) Storage of household or other goods except inflammable materials;

(ii) Darkrooms;

(iii) Strong rooms, bank cellars etc.;

(iv) Air-conditioning equipment and other machines used for service and utilities of the building;

(v) Parking spaces and garages;

(vi) Stock rooms of libraries; and

(vii) Office of commercial purpose, provided if it is air-conditioned and the basement coverage is reckoned for purposes of F.A.R.;

(c) The Basement Floor shall not be used for residential or class rooms, kitchen, bath and lavatory".

From the reading of Bye-law 21.1(c), extracted above, on which strong reliance is placed by the learned Counsel for the Corporation, it is seen that there is a total prohibition for use of the Basement Floor for residential or class rooms, kitchen, bath and lavatory. Bye-law 21 of the Building Bye-laws permits construction of the Basement Floor for the purpose of utilising it as set out in sub-clauses (i) to (vii) of Bye-law 21.1(b) of the Building Bye-laws. Therefore, Clauses 2 to 8 of Clause 21 of the Building Bye-laws also provide for the nature of the construction of the basement and the safety precautions to be provided in the Basement Floor of the building. When clause (b) of Bye-law 21.1 of the Building Bye-laws specifically provides for the purpose for which the Basement Floor can be used and clause (c) of Bye-law 21.1 specifically states the purposes for which the Basement Floor cannot be utilised, I am of the view that it is not

permissible for the Corporation to allow the Basement Floor of the building to be utilised for purposes other than it is permitted under Bye-law 21 of the Building Bye-laws. There cannot be any doubt that the risk or hazards to which the occupants of the Basement Floor of the building are exposed, is much more than the occupants of other portions of a building. Under these circumstances, if the Corporation refuses to renew the trade licence issued for the purpose of running hotel, boarding-house, rest-house, restaurants, eating-house, cafe, refreshment room, coffee-house, on the ground that grant of such licence would run counter to the mandate of clause (c) of Bye-law 21.1 of the Building Bye-laws, in my view, it is not permissible for this Court to direct the Corporation to violate the provisions of clause (c) of Bye-law 21.1 of the Building Bye-laws and renew the trade licence merely on the ground that earlier licences were issued or being renewed from time to time. As noticed by me earlier, the licence once granted is valid only till 31st of March of the following year and it is required to be renewed every year. Therefore, at the stage of renewal of the licence, though normally it is automatic, however, if the Licensing Authority at the stage of renewal of the licence, comes to the conclusion that the licence earlier granted was in violation of clause (c) of Bye-law 21.1 of the Building Bye-laws and renewal of it would run counter to the said Bye-law, in my view, certainly it is open to the Licensing Authority of the Corporation to refuse to renew the licence. But, here, I must point out that the Building Bye-laws including Bye-law 21 came into force with effect from 27th of April, 1984. Therefore, in the absence of provision similar to clause (c) of Bye-law 21.1 of the Bye-laws, which governed the rights of the parties, if the trade licences were issued to carry on business in a Basement Floor, and it was being renewed from time to time, in my view, it is not permissible to the Licensing Authority of the Corporation to refuse to renew the licence relying upon clause (c) of Bye-law 21.1 of the Building Bye-laws, which had come into force on 27th of April, 1984. The Building Bye-laws provide for the regulations regarding construction of a building. Bye-law 21 of the Bye-laws provides for the construction of the Basement Floor of the building and the purpose for which it can be used. Therefore, the prohibition contained in Bye-law 21 of the Building Bye-laws can be made applicable only in respect of the buildings which were constructed subsequent to the coming into force of the Building Bye-laws i.e., with effect from 27th of April, 1984, but in respect of the buildings constructed earlier, as noticed by me earlier, in the absence of any similar restrictions imposed either in the plan approved by the Corporation or any other Bye-law of the Corporation, the Corporation relying upon clause (c) of Bye-law 21.1 of the Building Bye-laws cannot refuse to renew the licences. The persons who have made huge investments for the purpose of their business or avocation, cannot be deprived of their right to carry on their profession or business, on the basis of the provisions contained in the Building Bye-laws which came into force subsequent to issue of the trade licence. From this, I should not be understood as expressing a view that it is not permissible for the Authorities of the Corporation to provide for any provision in a Bye-law of the Corporation relating to renewal of a trade licence or modifying Bye-law 35 of the Building Bye-

laws prohibiting renewal of trade licence in the Basement Floor of the building. While the Corporation may have the right to make necessary provision in Bye-law 35 or make some other provision in Bye-law which governs grant of trade licence prohibiting renewal or grant of trade licence in the Basement Floor of the building, the provisions contained in the Building Bye-laws cannot be made as a ground to refuse to renew the licence in respect of the buildings which were constructed prior to the coming into force of the Building Bye-laws.

Re: Question (2):

13. Resolution Annexure-R1 is passed by the Standing Committee. Public Health, resolving that in respect of the places meant for car parking, licences to carry on business in hotel, boarding-house, rest-house, restaurant, eating-house, cafe, refreshment room, coffee-house, licences should not be renewed from the year 1999 to 2000. The said resolution reads as follows:

Resolution Annexure-R2 was passed by the Standing Committee for Town Planning, resolving that the licence to carry on business in hotel and other commercial activities, should not be renewed in places meant for car parking. The said resolution reads as follows:

14. It is the case of the Corporation that since the trade licences were being renewed by the Health Department of the Corporation without reference to the Engineering Department of the Corporation and it has resulted in indiscriminate grant or renewal of the trade licences permitting the licensees to carry on business in places meant for car parking, the said resolutions came to be passed by the Standing Committees of Health and Town Planning Departments of the Corporation. In my view, the said resolutions are not liable to be quashed on any ground. The resolutions only reiterate that in places meant for car parking, licence to carry on the business in hotels, boarding-house, rest-house, restaurant, eating-house, cafe, refreshment room, coffee-house, cannot be granted. The discussion made by me above clearly shows that in places earmarked for car parking, it is not permissible to carry on business in hotel, boarding-house, rest-house, restaurant, eating-house, cafe, refreshment room, coffee-house, or other commercial activities as the said places are required to be exclusively used for car parking. As rightly pointed out by the learned Counsel for the Corporation, resolution Annexures-R1 and R2 extracted above, have been passed in public interest. The said resolutions are in conformity with the provisions of the Act and the Bye-laws and I do not find any infirmity in the said resolutions. Therefore, they are valid in law and not liable to be quashed.

Re: Question (3):

15. Now, the last question that is required to be considered is that in view of resolutions Annexures-R1 and R2, which, as observed by me earlier, are valid in law, whether it is permissible for the Corporation to refuse to entertain the applications filed by the petitioners for renewal of their trade licenses. It is now in serious dispute that all the petitioners are the existing licence holders. May be,

some of them or all of them are not entitled for renewal of their trade licences in the light of the discussion made by me above and also in view of resolutions Annexures-R1 and R2 passed by the Standing Committees of the Corporation. But, in my view, the claim of each of the petitioners for renewal of the licences is required to be examined on its merits and with reference to the question whether the licence can be refused to be renewed for the reason that the place in which each of the petitioners is carrying on business, is a Basement Floor or a place meant for car parking or for any other valid reasons? In view of Resolutions Annexures-R1 and R2, which only state under what circumstances the trade licences cannot be renewed or granted, the Authorities of the Corporation cannot refuse to entertain the applications filed by the petitioners seeking renewal of trade licence. As observed by me earlier, their applications are required to be examined on merits after giving them an opportunity. Therefore, in my view, the decision taken not to entertain the applications filed by the petitioners for renewal of their existing trade licences, is arbitrary and unreasonable and, therefore, it is required to be so declared by this Court.

16. In the light of the above conclusion, I make the following:

ORDER

(i) It is declared that the places earmarked for car parking in the plan sanctioned for the construction of a building cannot be permitted to be deviated for purposes other than car parking and no one is entitled to seek for grant or renewal of a trade licence to carry on any commercial activity in such place and the Authorities of the Corporation are entitled to demolish the constructions, if any, made in contravention of the sanctioned plan, in accordance with law and after giving an opportunity to the parties who are likely to be affected on account of such demolition.

(ii) In respect of the building constructed subsequent to 27th of April, 1984, no one is entitled to seek for a trade licence to run hotel, boarding-house, rest-house, restaurant, eating-house, cafe, refreshment room, coffee-house, if the establishment of such a business venture would result in contravention of clause (c) of Bye-law 21.1 of the Building Bye-laws.

(iii) In respect of the buildings constructed prior to 27th of April, 1984, in the absence of any provision in the Bye-laws framed by the Corporation similar to clause (c) of Bye-law 21, which was in existence prior to 27th of April, 1984 prohibiting utilisation of the Basement Floor of a building for the purpose of running a hotel, boarding-house, rest-house, restaurant, eating-house, cafe, refreshment room, coffee-house, the Licensing Authorities of the Corporation cannot refuse to renew the trade licences relying upon clause (c) of Bye-law 21.1 of the Building Bye-laws.

(iv) The action of the Corporation refusing to entertain or receive the applications filed by the petitioners for renewal of the trade licences, is illegal and arbitrary. The respondents are directed to consider the applications either filed or to be

filed by each of the petitioners for renewal of the licences earlier granted to them on merits and in the light of the observations made by me above.

(v) Till the applications filed or to be filed by the petitioners for renewal of the existing trade licences are considered, the respondents are directed to permit the petitioners to carry on their business as per the terms and conditions of the existing licences.

(vi) Such of those petitioners who have not yet filed applications for renewal of licence, are given ten days time from today to file their applications seeking for renewal of licence. If applications are not filed within ten days from today, as stated above, they will not be entitled for the benefit of the direction given to the Corporation to permit them to carry on business, as ordered in direction (v) above.

(vii) The respondents are directed to take a decision in respect of each of the applications filed or to be filed, within four months from today.

17. In terms stated above, these petitions are disposed of.