

(2012) 07 AHC CK 0297

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 22291 of 2010

Smt. Jagwati Gupta

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 13-07-2012

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2012) 7 ADJ 82 : (2013) 1 AWC 532

Hon'ble Judges : Sudhir Agarwal, J

Bench : Single Bench

Advocate : J.S.P. Singh, for the Appellant; C.S.C., P.C. Gupta, Prem Chandra, S.M. Shukla, V.B. Mishra, Vimlesh Kr. Rai, for the Respondent

Judgement

Hon''ble Sudhir Agarwal, J.—Petitioner Smt. Jagwati Devi is resident of House No. R-1/13, Raj Nagar, District Ghaziabad. She is aggrieved by the order dated 12.3.2010 of Commissioner, Meerut Division, Meerut deciding her appeal and observing that the petitioner is not entitled to any relief at the level of appellate authority. The facts giving rise to the present dispute though, appears to be quite simple, but would show the blatant defiance of statutory provisions by statutory authorities who are responsible to implement rule of law. This case also demonstrates plight of individual citizen in combating such defiance on the part of public bodies and authorities despite all his might and spirited endeavour.

2. The plot on which the petitioner has her residential accommodation initially belong to one Smt. Chandrawati Rathi who was allotted the said plot by the erstwhile Improvement Trust, Ghaziabad (hereinafter referred to as the "I.T.") vide lease deed dated 10.5.1966. Area of the plot was 793.33 sq. yards as per description in the lease deed (copy whereof is Annexure-2 to the writ petition). The boundaries mentioned are as under :

North

Plot No. 14

South

Green Belt

East

60 Ft. wide road

est

Plot No. 12

3. The site plan prepared and signed by the Assistant Engineer of erstwhile I.T., duly verified by the Executive Officer, is on record at page 33 of writ petition. The petitioner purchased the aforesaid plot from Smt. Chandrawati Rathi vide sale-deed dated 11.4.1979.

4. It is said that Ghaziabad Development Authority (hereinafter referred to as "G.D.A.") having come into existence with cessation of I.T. leased out the area of green belt to U.P. Jal Nigam (hereinafter referred to "U.P.J.N.") vide lease deed 16.3.1989 ignoring the fact that permission to change user of land was already rejected on 13.4.1973. U.P.J.N. encroached upon approach road towards east of the house of petitioner and constructed quarters for its Class IV employees without making any arrangement for discharge of sewage which caused serious threat to cleanliness and healthy environment. The petitioner approached G.D.A. as also the concerned Minister complaining about such encroachment and illegal construction. The authorities of G.D.A. admitted unauthorised construction, issued several letters to U.P.J.N. and its authorities requesting for removal of unauthorised construction but all efforts in vain. Even the State Government issued such direction to U.P.J.N. but that also failed. The petitioner in the circumstances, invoked jurisdiction of this Court under Article 226 of the Constitution vide writ petition No. 50237 of 1999 seeking following reliefs:

1. To Clear the entire area earmarked for Green Belt & road and for removal of blockade of the road by demolishing the unauthorized boundary & other passage structures of Jal Nigam to provide clear passage to petitioner's House and restore the same in its original condition as per the sanctioned plan referred to above.

2. To restrain Jal Nigam to throw sewage and other affluent in the open drain and make alternate arrangement for the same and further direct them to remove the said drain from the front of petitioner's house to straight direction and restore the 60" wide road in its original condition and link the same with RDC District Business Centre in adjacent to avoid inconvenience to the resident.

3. Issue such suitable writ, direction or order as this Hon'ble Court may consider just and proper in the circumstances of the case.

4. To award cost of the proceedings and compensation for the damages, inconveniences and harassments caused to the petitioner by the respondents.

5. To restore 33.29 sq. yard area of R-1/13 Raj Nagar reduced in 1974 and disposed to R-1 /14 in 1975 illegally and without intimidation and correction deed despite full payment, lease on dt. 10.5.1966 and possession thereof on dt. 7.2.1970.

5. After exchange of pleadings this Court decided the writ petition on 2.3.2009 taking the view that the petitioner must approach Commissioner, Ghaziabad by filing a suitable representation who was directed to decide the same by a speaking order.

6. The petitioner pursuant thereto made a detailed representation dated 26.3.2009 to the Commissioner, Meerut Division, Meerut who passed an order on 18.6.2009 directing U.P.J.N. and G.D.A. to remove encroachment and unauthorised construction and submit compliance report. Again a letter was issued by Commissioner on 15.7.2009 showing annoyance to the authorities about non-compliance of his earlier order and sought explanation. Ultimately, the impugned order has been passed by Commissioner holding that petitioner is not entitled to any relief.

7. On behalf of respondents counter-affidavit, supplementary counter-affidavits and several supplementary affidavits/compliance affidavits have been filed. this Court instead of referring the same separately would prefer to place the facts as borne out therefrom straight but in a chronological sequence.

8. So far as respondent No. 2 is concerned an affidavit has been filed sworn by Sri Hansraj, In Charge City Magistrate/ Sub-Divisional Magistrate, Sadar, Allahabad, adopting the counter-affidavit filed by GDA sworn on 25.7.2011 and it is stated that the same be treated as part of the affidavit of respondent No. 2.

9. Similarly, respondent No. 6 i.e., Nagar Ayukt, Nagar Nigam, Ghaziabad has filed an affidavit sworn by Sri Faruqh Ali Khan, Law Assistant, stating that the matter in question relates to the petitioner and GDA and respondent No. 6 has no concern.

10. A counter-affidavit on behalf of respondents No. 3 and 4 i.e., G.D.A. and its Vice Chairman sworn on 12.4.2011 has been filed with the affidavit of Pankaj Kumar Shukla, Junior Engineer, (Commercial Section), GDA. It is said that the petition is not maintainable since Commissioner, Meerut vide order dated 12.3.2010 has directed the District Magistrate to do the needful in the matter, hence the writ petition deserves to be dismissed. Further that due to technical difficulty area of lay out plan was amended with the consent of Smt. Chandrawati Rathi and an amended deed was executed. The petitioner who came into picture subsequently cannot raise any dispute about alteration already made on the area of plot in question. Further that U.P.J.N. was allotted land prior to purchase of plot in question by petitioner from Smt. Chandrawati Rathi and hence, construction which was existing thereat at the time of such transaction cannot be objected to by the petitioner subsequently. U.P.J.N. was allotted land after allowing change of user of land in accordance with law and GDA cannot compel

U.P.J.N. to leave it.

11. A supplementary counter-affidavit sworn on 11.5.2011 by Sri Narendra Kumar, Secretary, GDA has been filed stating that after order dated 18/19th June 2009, GDA submitted report on 24.7.2009 to the Commissioner whereupon he (Commissioner) vide order dated 12.3.2010 directed the District Magistrate, Ghaziabad to do the needful at his own level. No officer of GDA was found responsible for any misfeasance or negligence. In para 6 it is specifically stated that land user in master plan 2001 and 2021 of the area in question is residential but in the lay out plan it is shown as green belt. Further Board of Directors, GDA passed a resolution on 20.3.1982 in furtherance whereupon lease deed was executed in favour of U.P.J.N. on 16.3.1989.

12. There are some further affidavits but what transpired therefrom, I propose to refer hereinafter at an appropriate stage.

13. The matter relates to Ghaziabad, which has not only a historical importance in this State but is considered to be the most advanced and developed area. The land situated between Ganga and Yamuna is highly fertile. The industrial development due to its vicinity to the national capital is outstanding and to some extent has excelled over another most industrial district of this province i.e. Kanpur. The land in this area, by virtue of all round industrial development, has become the biggest asset and business of land owners. Simultaneously, it is also one of the biggest reasons of all kinds of illegalities and irregularities prevailing in this area. Mushroom growth of land mafias, land grabbers and indiscreet use land violating all laws is a common feature.

14. Historically it is said to have been founded by the Vizir, Ghazi-ud-din in 1740 AD who named it Ghaziuddinnagar. To start with, a spacious Sarai consisting of 120 rooms of masonry was constructed. The details are given in the District Information Booklet of the Department of Information of State of Uttar Pradesh. It says that Sarai constructed by its founder consisted of pointed arches. Presently it is in almost ruined conditions and only a gate, few portion of boundary wall and a massive pillar of fourteen feet in height remains. In fact it is in bad stage of preservation. The area got prominence when Jat Raja, Surajmal was killed here in 1763. Thereafter there was an encounter between the freedom fighters and a small British force in May, 1857. The area has three main rivers surrounding namely Ganga, Yamuna and Hindon, besides, some small rain-fed rivers. Prominent among them is Kali river. Earlier it was a Tehsil of District Meerut and became District under U.P. Land Revenue Act, 1901 in 1976. Its population, as per 1991 census was 2,703,933 which has gone up to 4,661,452 as per census of 2011. The development, sanitation and maintenance etc. in Ghaziabad Town earlier was in the hands of Ghaziabad Municipality. It was succeeded by Improvement Trust Ghaziabad created in 1960 under U.P. Town Improvement Act 1960. A development scheme was notified in 1961. It is not a matter of doubt that the land in question, subject-matter of dispute in the present case, was part of the scheme notified in 1961 for the regulated area of

Ghaziabad but the actual dispute relates to the question, whether the disputed area formed part of Green Belt, as alleged by the petitioner, and admitted by respondents No. 3, 4 and 6 or it was not a part of green belt as contended by respondent No. 5 and whether the change of land user allowed here is valid.

15. Before coming to the discussion on this aspect, some subsequent development giving birth to GDA may also be considered to keep the facts straight.

16. In 1973, U.P. Urban Planning & Development Act, 1973 (hereinafter referred to as "Act, 1973") was enacted by President of India in exercise of powers u/s 3 of U.P. State Legislature (Delegation of Powers) Act, 1973 which has been continued by virtue of the provisions of U.P. President's Act (Re-enactment with Modification) Act, 1974. However, no notification u/s 3 was immediately issued in respect to Ghaziabad and therefore in 1973 and even thereafter, for some time, it continued to be operated by Ghaziabad Improvement Trust. Ghaziabad was made a Revenue district on 14.11.1976. A notification u/s 3 of Act, 1973 was issued in 1977 declaring certain parts of Ghaziabad District as "development area" for which a Development Authority was also constituted w.e.f. 9.3.1977. The assets, liabilities, obligations etc. for the area declared as "Development Area" of Ghaziabad vested in Ghaziabad Development Authority resulting in complete cessation of control and authority of Ghaziabad Improvement Trust.

17. Besides above, the common public amenities including water supply arrangement was being looked after into the area by State Government through its department namely Local Self Government Engineering Department, Ghaziabad (hereinafter referred to as "L.S.G.E.D."). In 1975, U.P. Water Supply and Sewerage Act, 1975 came to be enacted with the establishment of U.P. Jal Nigam w.e.f. 18.6.1975 and thereafter assets, work, responsibilities, obligations etc. with respect to water supply in certain areas in State of Uttar Pradesh including that of Ghaziabad stood transferred and vested in UPJN. This arrangement has continued even after constitution of G.D.A.

18. In order to show that the area in question was not a "Green Belt" respondents No. 3 and 4 have filed Ghaziabad Master Plan 1962-1981 (Annexure CA-16 to its counter-affidavit) and it is said that as per the aforesaid plan, area in dispute was shown as "Low Density Residential Area" and not as "green belt". Para 23 of the counter-affidavit of respondents No. 3 and 4 reads as under:

That in the Ghaziabad Master Plan, 1981 the land in dispute is earmarked for residential purposes (Low density).

19. It is said that in master plan of 2001 and 2021 also the area in question is continuing to be shown as "residential" (Low Density).

20. It is worthy to notice at this stage that in so called detailed counter-affidavit filed on behalf of respondents No. 3 and 4, sworn on 25.7.2011 by Sri Anurag Chaudhary, Assistant Engineer, G.D.A., this Court finds no parawise reply to the

averments made in the writ petition.

21. Certain documents have been placed on record alongwith writ petition as also counter-affidavit of respondents No. 3 and 4 which demonstrate the facts as under:

22. There was a scheme, namely, Delhi Water Supply Scheme which was to be executed by erstwhile LSGED. For execution of the project, it planned to make temporary construction of LSGED colony for residential purpose. The I.T. in a meeting with concerned officers of LSGED decided to provide land in Sector 20, Raj Nagar which was part of "Green Belt". A decision to this effect was taken in a high level meeting held at Ghaziabad on 25.4.1973. The Executive Engineer, III Construction Division, LSGED, Ghaziabad wrote a letter to Administrator, I.T., requesting for a copy of resolution dated 25.4.1973 and also for early transfer of land to LSGED so that construction work of temporary colony may commence expeditiously. Another letter was sent by Executive Engineer, III Construction Division LSGED to Administrator, I.T. on 17.5.1973 for early action about transfer of land so that map for the proposed colony be submitted for sanction of the "Prescribed Authority, Ghaziabad" and construction of colony may thereafter commence. He also conveyed his consent for the Government approved rent and other conditions. The I.T. vide letter dated 26th June 1973 informed the Prescribed Authority, Regulated Area, Ghaziabad that 10.25 acres of land = 49590,88 Sq. Yard (open space) was being allotted to LSGED for Raj Nagar Housing Project; and I.T. has no objection to sanction of building construction map submitted by Executive Engineer III Construction Division, LSGED, Ghaziabad at the aforesaid land. It also directed for handing over possession of land to Executive Engineer LSGED. A possession letter was executed by Executive Engineer, LSGED on 5.7.1973 (Annexure CA 4 to the counter-affidavit of GDA) by which it transferred 10.25 acres of land. A perusal of Annexure CA-4 of GDA's counter-affidavit also shows that there is no plot number and plot measurement. It only mentions green belt as per site plan attached. The lease was executed for temporary constructions vide letter dated 27.8.1973 for the rent of 50 paise per sq. yard per annum. Thereafter a Central Godown was proposed to be constructed for which Prescribed Authority required no objection certificate of I.T. The Executive Engineer LSGED vide letter dated 14.5.1975 requested for no objection certificate so that sanction of plan for construction of temporary Central Godown be taken up with the controlling authority. This letter clearly mentions that this godown is to be constructed within "Green Belt". With reference to LSGED's letter dated 14.5.1975 it conveyed no objection vide letter dated 6.6.1975 i.e., for construction of temporary godown at Raj Nagar.

23. Lease granted to erstwhile LSGED stood transferred to UP Jal Nigam in respect of 10.25 acres of land i.e., 49590.88 Sq. yard at Raj Nagar on 10.9.1978. The period of five years of lease was to expire on 10.6.1979. Sri R.N. Chaturvedi, Executive Engineer, I Construction Division, UPJN Ghaziabad requested Executive Engineer, I.T. Ghaziabad (though GDA had already come into existence but in the

letter of Executive Engineer, I.T. is mentioned) for extension of period of lease upto 10.9.1983 i.e. for a further five years" period on the same terms and conditions as were existing since work on Delhi Water Supply Scheme was in progress. The Deputy Secretary, GDA vide letter dated 25.11.1978 informed Sri R.N. Chaturvedi, Executive Engineer that a sum of Rs. 36,913.77 is outstanding towards lease rent and interest which may be paid whereafter only request for extension of lease period shall be considered. A similar request was made by Deputy Secretary, GDA vide letter dated 31.10.1979 demanding Rs. 4068.53 (the amount increased due to updated interest). Thereafter, vide letter dated 12.11.1979 (Annexure CA-12 to counter-affidavit of GDA), Sri Desh Raj Singh, Vice Chairman, GDA informed Sri R.S. Singh, Superintending Engineer, Jal Nigam that the land given to the U.P.J.N. was "Green Belt" land and it cannot be used for residential purpose permanently. The plot holders in nearby area have objections and their contention is that the "Green Belt" should remain in the same condition as it was, hence, the aforesaid land cannot be given further on lease to U.P.J.N. He requested for clearance of arrears of lease rent and also to vacate the entire land allotted to Jal Nigam. Again a similar decision was taken in the meeting of GDA on 10.2.1982 and alternate land was proposed in Shastri Nagar.

24. However, the matter was re-examined and a spot inspection report was called from Chief Town Planner, GDA. The said report recommended following options:

(a) Area of 21194.20 Sq. m. is occupied by the godown and workshop which should immediately be taken back from Jal Nigam and restored as green belt.

(b) Residential houses are constructed on 2027.12 Sq. m. of land whereagainst the houses constructed with low budget be demolished and the land be re-entered by the GDA so as to restore as green belt.

(c) Rest of residential houses be considered for regularisation in the next meeting of GDA and be referred to State Government for such purpose.

25. The report requested the Board of GDA to consider the following option:

English Translation by Court:

Apart from 10-25 acres of land in question on which residential buildings have been constructed, the remaining part of land, on which construction work of go-downs, workshop etc. is going on be restored back from greenverse. The officers of Jal Nigam in collaboration with UPSIDC should manage the land in the industrial area for go-downs and workshop. Since residential buildings have been constructed incurring heavy cost, they should, therefore, be kept as they are with the condition that the character of the open areas and park at present as mentioned in the residential lay out would not be changed in any case. Exhibiting the proposed status, the maps will be presented at the meeting.

26. In its meeting dated 20.3.1982 the GDA took following decision at agenda

Item No. 9:

English Translation by Court:

9. Proposal for allotment of land to Jal Nigam in Raj Nagar :

The land on which concrete (Pakka) residential buildings and guest house (Atithi Grih), shown in yellow colour in the map presented during the meeting, have been constructed by Jal Nigam in Raj Nagar, be allotted on lease to Jal Nigam @ Rs. 80/- per square metre subject to the condition that they would not carry out any construction other than which is present on the spot. Proceedings may be initiated immediately for taking the rest of land back on which tin-shades etc. are fixed and shown with green colour in the map presented during the meeting.

27. Thereafter a lease deed was executed on 2.3.1989 only for 2816.05 Sq. metres of land for a period of ninety years w.e.f. 21.5.1986.

28. The stand taken by GDA is very clear. The land which was transferred to UPJN was Green Belt and fell in the area shown in Master Plan as residential. In the affidavit sworn on 11.8.2011 by Sri Narendra Kumar, Secretary, GDA filed on behalf of respondents No. 3 and 4, he has categorically stated in para 6 as under:

... the land use of the land in the Master Plan 2001, and 2021 is residential, but in the lay out plan it is shown as green belt.

29. However, G.D.A. has simply relied on the resolution passed by the Board on 20.3.1982 pursuant where to lease deed was executed in favour of UPJN on 16.3.1989.

30. This stand has been consistent in respect to earlier plan also inasmuch in para 23 of the counter-affidavit sworn by Sri Anurag Chaudhary, Assistant Engineer, G.D.A. on behalf of respondents 3 and 4, it is said that as per Ghaziabad Master Plan-1981 the land use in question was residential (low density). A copy of the plan has been filed as Annexure-16 which shows that it was the plan for the year 1962-1981 but reading the averments made in para 23 alongwith the copy of the plan, Annexures 16 to writ petition, to the mind of the Court, it is clear that map filed as Annexure 16 shows the altered and changed position made from 1961 to 1981. In other words the master plan of 1961 as it stood in 1981 has been filed.

31. Though UPJN has disputed this fact that land in question form part of Green Belt but in the light of the documents and pleadings discussed above, this Court has no manner of doubt that the area in which the land situate is a residential area and lay out plan shows the land in question being part of Green Belt throughout. This inference is also fortified from some more facts discussed below.

32. In para 5 of counter-affidavit filed on behalf of respondent No. 6 i.e. Nagar Nigam, Ghaziabad, sworn by Sri Faruq AH Khan, Law Assistant, he has referred to an earlier counter-affidavit filed by Nagar Nigam in Writ Petition No. 50237 of 1999 of the present petitioner and therein also it has been clearly stated that

"the land in question was earmarked for "Green Belt"; and, "60 feet wide road" was also sanctioned in the said scheme. The Green Belt has been converted in the residential Colony for the Staff of UPJN. The land of 60 feet wide road has been encroached by UPJN." These facts stated have not been denied. Nagar Nigam has also complained that besides the fact that UPJN raised illegal construction, it has also not made any provision for disposal of sewerage and throwing it in open area. In para 8 of counter-affidavit filed as Annexure 1 to the counter-affidavit of respondent No. 6, it says as under:

...it is stated that... encroachments by the Jal Nigam on the road and land of green belt are detrimental to the public interest and has no justification to remain on the spot.

33. Similarly in para 10 of the said Annexure 1 to the counter-affidavit of respondent No. 6, it says:

The liability of removing illegal colony of the Jal Nigam and also removal of the encroachment from the green belt lay upon Ghaziabad Development Authority. As soon as this encroachment will be removed substantial relief will be provided to the residents of locality. It is also necessary that Ghaziabad Development Authority who has taken the amount of plot as well as the development charges from residents should make arrangement for covered sewerage system in order to remove pollution from the area. Necessary directions in this regard is required to be issued against U.P. Jal Nigam and Ghaziabad Development Authority.

34. The inference, therefore, is inescapable that land in question fell within area marked as "residential (low density)" and in the lay out plan it is/was shown as Green Belt. I hold accordingly.

35. Now the question would be whether a land shown as Green Belt in the lay out plan of GDA could have been allowed to be used for residential or office purposes and could have been leased out by GDA validly to UPJN, passing a resolution which the respondents 3, 4 and 5 have treated as a decision permitting change of land user.

36. The Act, 1973 gives due importance to Master Plan and Zonal Development Plan. What shall contain in Master Plan is provided in Section 8 of Act, 1973 which reads as under:

8. Civil survey of, and master plan for the development area:

(1) The Authority shall, as soon as may be, prepare a master plan for the development area.

(2) The master plan shall -

(a) define the various zones into which the development area may be divided for the purposes of development and indicate the manner in which the land in each zone is proposed to be used (whether by the carrying out thereon of development or otherwise) and the stages by which any such development shall

be carried out; and

(b) serve as a basic pattern of framework within which the zonal development plans of the various zones may be prepared.

(3) The master plan may provide for any other matter which may be necessary for the proper development of the development area."

37. The procedure of preparation and approval of Master Plan is provided in Sections 10, 11 and 12 which need not be discussed at this stage since sanction of Master Plan and its enforcement on various dates with respect to different periods under the relevant statute is not disputed. Prior to Act, 1973, in Ghaziabad, the plan which was made applicable was termed as "Improvement Scheme" and the area upon which it operated was termed as "Regulated Area". Basically the two in effect are not different whether termed as "Improvement Scheme" or "Master Plan". The question is that of changes permissible in an Improvement Scheme or Master Plan as also the user of land and building in contravention thereof.

38. Section 13 talks of amendment of plan. Section 16 prohibits use of land and building in contravention of plans.

39. Section 10 (1) clarifies that the word "Plan" in Sections 11, 12, 14 and 16 would mean Master Plan as well as the Zonal Development Plan for a Zone.

40. Section 13 permits an "Authority" to make such amendment in the Plan which do not effect important alterations in the character of the plan and do not relate to the extent of land uses or standards of population density. Sub-section (2) of Section 13, however, confers full power upon State Government to make amendment in the plan. Sub-sections (3), (4) and (5) however provide procedure of such amendments whether proposed to be made by "Authority" or by the "State Government". It read as under:

(3) Before making any amendments in the plan, the Authority, or, as the case may be, the State Government shall publish a notice in at least one newspaper having circulation in the development area inviting objections and suggestions from any person with respect to the proposed amendments before such date as may be specified in the notice and shall consider all objections and suggestions that may be received by the Authority or the State Government.

(4) Every amendment made under this section shall be published in such manner as the Authority or the State Government, as the case may be, may specify, and the amendments shall come into operation either on the date of the first publication or on such other date as the Authority or the State Government, as the case may be, may fix.

(5) When the Authority makes any amendment in the plan under subsection (1) it shall report to the State Government the full particulars of such amendments within thirty days of the date on which such amendments come into

operation." (emphasis added)

41. Whenever a dispute would arise about the amendment sought to be made by Authority that it effects important alternations in the character of plan etc., the dispute has to be settled by State Government.

42. A perusal of above provision shows that compliance of procedure is mandatory.

43. Section 16 puts an embargo on use or permission to be used of any building or land in a plan area otherwise than in conformity with such plan. However, if on the date of enforcement of plan, the land or building was used in any other manner, the same would continue subject to terms and conditions as may be prescribed by bye-laws. Use of land or building in violation of plan and where development of land has been allowed to any person or body; in violation of the conditions of such development, such infraction is an offence punishable u/s 26 of Act, 1973.

44. Section 27 provides for demolition of a construction made in violation of the plan and procedure to be observed before passing such order of demolition.

45. The offences under Act, 1973 are compoundable u/s 32 which reads as under:

32. Composition of offences.

(1) Any offence made punishable by or under this Act may either before or after the institution of proceedings, be compounded by, the Vice-Chairman or any officer authorised by him in that behalf by general or special order, on such terms, including any term as regards payment of a composition fee, as the Vice-Chairman or such officer may think fit.

(2) Where an offence has been compounded, the offender, if in custody, shall be discharged and no further proceedings shall be taken against him in respect of the offence compounded."

46. Section 53 confers power upon State Government to exempt, by issuing a Notification in the Gazette, any land or building or classes of land or buildings from all or any of the provisions of the Act or Rules or Regulations framed thereunder. It is not the case of the respondents that any such exemption is applicable in this case.

47. Then power to make rules has been conferred upon State Government vide Section 55 for carrying out the purposes of Act. The Authorities have been given power to make Regulations u/s 56 which must be consistent with the Act and the Rules framed thereunder. Such Regulations can be made for the administration of affairs of Authority.

48. It may also be pointed out at this stage that where the development is allowed to any person or body, such development shall also be consistent with

the plan.

49. this Court finds no provision under the Act, 1973 which entitles the Authority to go for profiteering on an illegal act of encroachment or unauthorized construction in the name of compounding. The compounding contemplated in Section 32 is in respect to offences punishable under the Act. It nowhere provides that once an offence is compounded, an act, which is in violation of Plan, shall also stand regularized or become valid. The effect of compounding is provided in Subsection (2) of Section 32 that an offender, if in custody, shall be discharged and no further proceedings shall be taken against him in respect to the "offence" compounded. This is with regard to the criminal liability fastened upon the person for committing an offence under the Act, 1973. But the prohibition contained in the Act and statutory obligation upon Authorities to set right a person who has faulted/ breached such provision by taking appropriate action, e.g. demolition of building by exercising power u/s 27 has not been made un-operated when an offence is compounded. The proceeding prevented as a result of compounding an "offence" relates to offence and illegality/irregularity so prohibited/controlled under another provision. It may also be noticed that by U.P. Act No. 3 of 1997 (hereinafter referred to as "Act, 1997"), certain other offences have been provided vide Sections 26-D and 28-A. However, removal of any raised construction in contravention of Plan and removal of encroachment etc. are governed by a different procedure and steps which would remain unaffected by such compounding. In other words, the compounding under the Act, 1973 is to avoid the criminal liability and punishment on conviction but not to regularize a construction prohibited under the Act for which no relaxation is permissible except when the plan is amended in accordance with Section 13 of the Act.

50. The GDA argued that in the present case, amendment of Plan was allowed in exercise of power under Sub-section (1) of Section 13 of Act, 1973 vide resolution dated 20.3.1982.

51. The Court finds that the land which was shown as "Green Belt" in the Master Plan was allowed to be used for "residential purposes" which amounts to an important alternation in the character of plan. It also cannot be said that such alternation did not effect the extent of land use or the standards of population density. Ex facie, the Court is of the view that the kind of alternation conceded by GDA vide resolution dated 20.3.1982 in favour of UPJN was beyond its competence and authority under Sub-section (1) of Section 13 of Act, 1973. Thus it was wholly without jurisdiction hence void and a nullity in the eyes of law.

52. Even otherwise, there is no averment in the entire counter-affidavit or Supplementary Counter-affidavit filed by GDA that the procedure prescribed in Subsections (3), (4) and (5) of Section 13 was ever followed by GDA before allowing the alleged amendments. When law requires something to be done in a particular manner, the things done otherwise are prohibited. This principle was recognized in AIR 1936 253 (Privy Council) and, thereafter it has been reiterated and followed consistently by the Apex Court in a catena of judgments, which I do

not propose to refer all but would like to refer a few recent one.

53. In *Dhananjaya Reddy v. State of Karnataka*, 2001 (4) SCC 9 in para 23 of the judgment the Court held :

It is a settled principle of law that where a power is given to do a certain thing in a certain manner, the thing must be done in that way or not at all.

54. In *Commissioner of Income Tax, Mumbai Vs. Anjum M.H. Ghaswala and Others*, , it was held :

It is a normal rule of construction that when a statute vests certain power in an authority to be exercised in a particular manner then the said authority has to exercise it only in the manner provided in the statute itself.

55. The judgments in *Anjum M.H. Ghaswala (supra)* and *Dhananjaya Reddy (supra)* laying down the aforesaid principle have been followed in *Captain Sube Singh and Others Vs. Lt. Governor of Delhi and Others*, .

56. In *Competent Authority Vs. Barangore Jute Factory and Others*, , it was held :

It is settled law that where a statute requires a particular act to be done in a particular manner, the act has to be done in that manner alone. Every word of the statute has to be given its due meaning.

57. In *State of Jharkhand and Others Vs. Ambay Cements and Another*, in para 26 of the judgment, the Court held:

It is the cardinal rule of interpretation that where a statute provides that a particular thing should be done, it should be done in the manner prescribed and not in any other way.

58. The cumulative effect of various provisions of Statute shows that before finalizing a Master Plan, the competent authority shall take all such steps which would include an opportunity to the residents of area concerned and others to submit their suggestions, objections, claims etc. and thereafter it shall be finalized. Once the "Master Plan" is finalized and submitted to Government and notified, thereafter its sanctity cannot be whittled down in a routine, casual and whimsical manner. The statute imposes an embargo against any action which is not consistent with the plan. However in a changing Society, a status quo for all times to come may not be countenanced. An elbow space thus has to be provided which may authorize the competent Authority/body concerned, in a very limited manner, to make minor deviations to suit the changes. This has been done vide Section 13(1) of Act, 1973. Then the State Government has been empowered to alter the plan. However before doing so, again a well considered but a bit cumbersome procedure has been provided which entitles the residents and others also to have their say if they so desire. All these checks and measures are part of the statute to show that an approved plan has to be adhered as a rule and its deviation as a rarity. The authorities on their own, as and when they like, in a sheer administrative indiscreet manner, cannot clothe upon themselves such

power. They, on their own, cannot authoritatively say that a particular change will not substantially alter the Plan or that such alternation can be or should be made.

59. The above discussion leads to an unequivocal inference that the resolution dated 20.3.1982 being wholly without jurisdiction and also in contravention of statutory provisions contained in Section 13 of Act, 1973 is a nullity in the eyes of law and would not confer any right, benefit etc. either on GDA or any one else claiming benefit under the said resolution dated 20.3.1982.

60. Further violation of Plan not only attracts a criminal liability but there are civil consequences also. The Authority has been empowered and is also under an obligation to make the things right by removing such violation/deviation and restoring the Plan in its notified state. The basic object of Authority is development and not destruction or devastation or diminution of an otherwise development already made.

61. A deviation or violation of a Scheme or Plan cannot be made a means of profiteering by collecting huge amount from offenders/ violators and permitting them to continue to enjoy such deviation. If this stand is sustained, it would mean that the Statute is being read in a manner so as to confer an immunity upon the resourceful people to violate law and permit them to continue to enjoy such violation for all times to come by paying some amount to the authority. These violators basically come from elite class. They find it easier vis a vis their status to part away any amount of money so as to retain the information of plan. It adds to their status also. Most of the builders have made it a part of their business. Simultaneously the development authority also stand financially (officially and privately) benefited in allowing contravention of plan and violation of a statutory embargo without exercising its power of restoration by taking action of demolition etc. If such an interpretation is upheld, it would not only encourage corruption and element of extraneous consideration but would also create two classes; one those who are bound to suffer in their efforts of making any deviation from Master Plan since they lack financial resources to pay the so called compounding fees for continuing to enjoy the illegal and unlawful deviation; and, those who are rich, resourceful and capable to do so. While making certain observations in respect to corruption prevailing in the Society, this Court in Smt. Mithilesh Kumari Vs. State of U.P. and Others, , has observed that such creation and classification which encourages corruption, is discriminatory and also against human rights. The Court observes as under:

39. In the last 60 years of independence, if there is one field we can boast of a national allround development and that too multifold, it is the field of corruption. It has various shades. It is not confined to only one field of bribery, cash and kind, but has different colours and nuances.

53. Though in a civilised society, corruption has always been viewed with particular distaste to be condemned and criticised by everybody but still one loves to engage himself in it if finds opportunity, ordinarily, since it is difficult to

resist temptation. It is often, a kind, parallel to the word "bribery", meaning whereof in the context of the politicians or bureaucrats, induced to become corrupt. The Greek Philosopher Plato, in 4th Century BC said, "in the Republic that only politicians who gain no personal advantage from the policies they pursued would be fit to govern. This is recognised also in the aphorism that those who want to hold power are most likely those least fit to do so." While giving speech before the House of Lords William Pitt in the later half of 18th Century said, "Unlimited power is apt to corrupt the minds of those who possess it." Lord Acton in his letter addressed to Bishop Creighton is now one of the famous quotation, "Power tends to corrupt and absolute power corrupts absolutely."

54. Corruption is a term known to all of us. Precise meaning is illegal, immoral or unauthorized act done in due course of employment but literally it means "inducement (as of a public official) by improper means (as bribery) to violate duty (as by committing a felony)." It is an specially pernicious form of discrimination. Apparently its purpose is to seek favourable, privileged treatment from those who are in authority. No one would indulge in corruption at all if those who are in authority, discharge their service by treating all equally.

55. We can look into it from another angle. Corruption also violates human rights. It discriminates against the poor by denying them access to public services and preventing from exercising their political rights on account of their incapability of indulging in corruption, of course on account of poverty and other similar related factors. Corruption is, therefore, divisive and makes a significant contribution to social inequality and conflict. It undermines respect for authority and increases cynicism. It discourages participation of individuals in civilised society and elevates self interest as a guide to conduct. In social terms we can say that corruption develops a range bound field of behaviour, attitude and beliefs. Corruption is antithesis of good governance and democratic politics. It is said, that when corruption is pervasive, it permeates every aspect of people's lives. It can affect the air they breathe, the water they drink and the food they eat. If we go further, we can give some terminology also to different shades of corruption like, financial corruption, cultural corruption, moral corruption, ideological corruption etc. The fact remains that from whatever angle we look into it, the ultimate result borne out is that, and the real impact of corruption is, the poor suffers most, the poverty groves darker, and rich become richer.

62. this Court is of the view that a perusal of Act, 1973 shows that except those cases which are covered by proviso to Section 16, there is a complete embargo against deviation from a plan. The use of land or building which is not in conformity with such plan is totally prohibited. It is also a criminal offence u/s 26 of Act, 1973. In fact when there is a case of unlawful encroachment or obstruction, even those who are responsible for preventing such encroachment or obstruction, if failed to do so, are also liable for criminal prosecution and punishment u/s 26-D of Act, 1973. Section 32 providing composition of offences

is only in respect to criminal liability but not to retain the contravention of plan which is prohibited by Section 16. That contravention if continues will have to face the legal consequences. The only saving clause one can read is Section 13 whereby a change in plan can be approved by State Government and if that has been done the situation may be different, otherwise the embargo is complete.

63. The reason for making an approved plan sacrosanct and not to be touched easily is very evident. In the developed countries a lot of emphasis is on the planned development of cities and urban areas. In fact there the dividing line in the urban and rural areas is getting obliterated and one can say that every kind of local body is supposed to proceed with an objective of planned development. The object of planned development can be achieved by rigorous enforcement of plans prepared after careful study of intricate issues of city management, scientific research, rationalization of loss and other issues. The people of developed countries have successfully achieved the objective of planned development contributing largely by strictly adhering to plans, local laws and other directions including restrictions necessary for effective implementation of such plans. They respect the laws enacted by legislature for regulating planned development of cities. One finds seldom complaint of violation of master plan etc. in construction of building; residential, institutional or commercial.

64. Unfortunately, the developing countries are example of depicting a scenario substantially different. This includes India and in particular certain northern States like State of Uttar Pradesh. These are example of blatant and scant respect to master plans and the laws relating thereto. The competent legislature though has enacted laws with pious objective of planned development in the cities and area governed by local bodies but the enforcing machinery is extremely poor and casual. They work hand in gloves with violators. The violators, i.e., the beneficiaries of direct violation of plans and the authorities responsible for restricting such violation both work with a sense of immunity from any consequential act.

65. Reflecting similar ethos, the Apex Court in *Shanti Sports Club and Another Vs. Union of India (UOI) and Others*, , has said in paragraphs No. 74 and 75 as under:

74. In last four decades, almost all cities, big or small, have seen unplanned growth. In the 21st century, the menace of illegal and unauthorized constructions and encroachments has acquired monstrous proportions and everyone has been paying heavy price for the same. Economically affluent people and those having support of the political and executive apparatus of the State have constructed buildings, commercial complexes, multiplexes, malls etc. in blatant violation of the municipal and town planning laws, master plans, zonal development plans and even the sanctioned building plans. In most of the cases of illegal or unauthorized constructions, the officers of the municipal and other regulatory bodies turn blind eye either due to the influence of higher functionaries of the State or other extraneous reasons. Those who construct buildings in violation of

the relevant statutory provisions, master plan etc. and those who directly or indirectly abet such violations are totally unmindful of the grave consequences of their actions and/or omissions on the present as well as future generations of the country which will be forced to live in unplanned cities and urban areas. The people belonging to this class do not realize that the constructions made in violation of the relevant laws, master plan or zonal development plan or sanctioned building plan or the building is used for a purpose other than the one specified in the relevant statute or the master plan etc., such constructions put unbearable burden on the public facilities/amenities like water, electricity, sewerage etc. apart from creating chaos on the roads. The pollution caused due to traffic congestion affects the health of the road users. The pedestrians and people belonging to weaker sections of the society, who cannot afford the luxury of air-conditioned cars, are the worst victims of pollution. They suffer from skin diseases of different types, asthma, allergies and even more dreaded diseases like cancer. It can only be a matter of imagination how much the Government has to spend on the treatment of such persons and also for controlling pollution and adverse impact on the environment due to traffic congestion on the roads and chaotic conditions created due to illegal and unauthorized constructions. This Court has, from time to time, taken cognizance of buildings constructed in violation of municipal and other laws and emphasized that no compromise should be made with the town planning scheme and no relief should be given to the violator of the town planning scheme etc. on the ground that he has spent substantial amount on construction of the buildings etc.

75. Unfortunately, despite repeated judgments by this Court and High Courts, the builders and other affluent people engaged in the construction activities, who have, over the years shown scant respect for regulatory mechanism envisaged in the municipal and other similar laws, as also the master plans, zonal development plans, sanctioned plans etc., have received encouragement and support from the State apparatus. As and when the Courts have passed orders or the officers of local and other bodies have taken action for ensuring rigorous compliance of laws relating to planned development of the cities and urban areas and issued directions for demolition of the illegal/unauthorized constructions, those in power have come forward to protect the wrong doers either by issuing administrative orders or enacting laws for regularization of illegal and unauthorized constructions in the name of compassion and hardship. Such actions have done irreparable harm to the concept of planned development of the cities and urban areas. It is high time that the executive and political apparatus of the State take serious view of the menace of illegal and unauthorized constructions and stop their support to the lobbies of affluent class of builders and others, else even the rural areas of the country will soon witness similar chaotic conditions.

66. These very observations have been reiterated and approved in a subsequent decision in *Sanjay Adlakha Vs. State of Haryana and Others*, .

67. Time and again the Courts have observed that contravention of statute, violation of statutory plans and schemes, illegal and unauthorised encroachment, obstruction and illegal construction would never pay and this is also against the interest of Society at large but unfortunately the violators and the officials of local bodies and development authorities responsible for implementation of statute and statutory plans have enjoyed pleasure in more violation than its observance. This has filled rather the coffer of individual officials substantially instead of benefiting the State exchequer. A source of parallel economy commonly known as "black money" has developed which is running unabatedly under the shield provided by the beneficiaries of both the sides, i.e., the public as well as the State. Today it is an open secret that Reality Sector is thriving basically on underhand economy. The apparent finances are like an iceberg comparing the real quantum of money involved. Moreover, the concerted unholy nexus between Reality Sector and Officials cause real loss and detriment to innocent individual homeseeker.

68. In *Priyanka Estates International Pvt. Ltd. and Others Vs. State of Assam and Others*, , the Court observed:

It is a matter of common knowledge that illegal and unauthorised constructions beyond the sanctioned plans are on rise, may be due to paucity of land in big cities. Such activities are required to be dealt with by firm hands otherwise builders/ colonisers would continue to build or construct beyond the sanctioned and approved plans and would still go scot-free. Ultimately, it is the flat owners who fall prey to such activities as the ultimate desire of a common man is to have a shelter of his own. Such unlawful constructions are definitely against the public interest and hazardous to the safety of occupiers and residents of multi-storeyed buildings. To some extent both parties can be said to be equally responsible for this. Still the greater loss would be of those flat owners whose flats are to be demolished as compared to the Builder.

69. In *M.C. Mehta Vs. Union of India (UOI) and Others*, , the Court expressed its anguish against the mass violation of master plans and total inaction on the part of authorities responsible to execute it and said:

...this Court cannot remain a mute spectator when the violations also affect the environment and healthy living of law-abiders. The enormity of the problem which, to a great extent, is the doing of the authorities themselves, does not mean that a beginning should not be made to set things right. If the entire mis-user cannot be stopped at one point of time because of its extensive nature, then it has to be stopped in a phased manner, beginning with major violators. There has to be a will to do it....

....The things cannot be permitted to go on in this manner forever. On one hand, various laws are enacted, master plans are prepared by expert planners, provision is made in the plans also to tackle the problem of existing unauthorised constructions and misuses and, on the other hand, such illegal activities go on

unabated openly under the gaze of everyone, without having any respect and regard for law and other citizens.

70. The Courts have appreciated that a lot of technical, scientific and other concepts put forth in preparing a master plan for a coordinated systematic development of an area considering multifold aspects including the past, present and future requirement/objective/ purpose etc. They also take care of environment including flora and fauna. The maintenance of greenery is an integral necessity of a planned development for the purpose of maintaining healthy environment. Its importance cannot be undermined. It is for this reason, in every plan, special attention is paid for open land, greenery, that is called green belt, parks, gardens etc. But, then, after approval of plan, when actual execution comes, the first casualty is the area contemplated as open space, green belt, parks etc. Everybody want to curtail such area by encroaching it, obstructing it, making unauthorised construction etc. It appears that a competition is going on and there is struggle of victory to the more resourceful one. It goes without saying that this competition is equally participated by officials for reasons other than bona fide. In other words, this Court has no hesitation in observing that an over all continuous increasing corruption one can see in development authorities where the development authorities have changed the meaning of "development authority" and read the words as if it amounts to development of officials of authorities. That being so, here come the authority of Courts to check, stop and put the things right.

71. Here it would be useful to refer an earlier occasion out of several when GDA has been found indulged in violating plans and disturbing areas reserved for the purpose of healthy environment etc.

72. In D.D. Vyas and others Vs. Ghaziabad Development Authority, Ghaziabad and another, , a grievance was raised before this Court about utilization of open space reserved for a park in Ghaziabad either to construct building or otherwise it would defeat the purpose of preservation of environment and development of residential colonies shown in Master Plan. The Court observed that the writ petition is an apt example as to how the statutory object to secure preservation of environment and development can be defeated by authorities who lack dynamism, aestheticism and enthusiasm for development though assigned for development duties. Speaking on the objective of Act, 1973 the Court said that earlier growth in the State was haphazard and feeling necessity of developing areas tackling the problems of town planning and urban development in a rational manner and also to have the suitable expert bodies instead of the existing local bodies, found inadequate to cope with problem with passage of time, the Act was brought and development authorities on the pattern of Delhi Development Authority were established including the GDA at Ghaziabad. In the Master Plan an open space was earmarked for public park called "Adu Park" situated in Raj Nagar. However, no steps were taken for its development and on the contrary GDA started carving out plots on such open space dedicated for

public park in the plan and alienate the same, with a view to earn huge profits. This was challenged on the ground that GDA cannot alter the plan duly approved by Government to the detriment of public at large. Disapproving such action of GDA and upholding the challenge the Division Bench observed that object of legislation constituting development authorities was to ensure fast and planned development of the areas which was an enormous work and could not be accomplished by the local bodies or authorities existed prior to the Act, 1973. A plan can be said to have executed when entire works are done strictly in accordance with the plan. Unless an open space reserved for development of public park is developed as such, the execution of plan will remain incomplete. Buildings, as proposed in the plan, may have come up, amenities, civic and others may have been provided and the people may have started living in the colony, yet the plan cannot be said to have been executed fully, if an open space meant for a park is not developed as such. Such failure on the part of development authority would mean that ambition and objective of State that the areas reserved and approved to be developed in a particular manner has not been so developed. The duty of development authority is to implement the plan in its entirety and not to distort it. The Court said that the impression gathered by GDA that their job is over when residential area became habitable is a delusion. Habitability and completion of construction work in the entire area according to plan is one thing and development in entirety of the area, strictly in conformity with plan is another. In paras 9, 10 and 16, the Court further said:

9. It is a matter of great regret that the fond object for which the G.D.A. was constituted remained unaccomplished. The Raj Nagar scheme is meant for the reasonable accomplishment of the statutory object, which is to promote the orderly development of the town Ghaziabad and to preserve open spaces by reserving public parks with a view to protecting the residents from the ill effect of urbanisation. The legislative intent has always been the promotion and enhancement of the quality of life by preservation of the character and desirable aesthetic features of the town. No town is known for sky-scrapers, for myriad industries, for big commercial centres, for big monumental building, but for the attractive lay out of the town, for good landscapes, for beautiful parks and lawns, for expansive verdant cover, and for perfect social ecology. Good parks expansively laid out are not only for aesthetic appreciation, but in the fast developing towns having conglomeration of buildings, they are a necessity. In crowded towns where a resident does not get anything but atmosphere polluted by smoke and fumes emitted by endless vehicular traffic and the factories, the efficacy of beautifully laid out parks is no less than that of lungs to human beings. It is the verdant cover provided by public parks and greenbelts in a town, which renders considerable relief to the restless public. Hence the importance of public parks cannot be under estimated. Private lawns or public parks are not a luxury, as they were considered in the past. A Public Park is a gift of modern civilisation, and is a significant factor for the improvement of the quality of life. Earlier it was a prerogative of the aristocracy and the affluent either as a result

of royal grant or as a place reserved for private pleasure. Free and healthy air in beautiful surrounding was a privilege of few, but now in a democratic set up, it is gift from the people to themselves. Open space for a public park is an essential feature of modern planning and development, as it greatly contributes to the improvement of social ecology.

10. A benefit which one can get from the developed, well maintained and well manicured lawns in a big park, cannot be secured from undeveloped, morbid and shabby, open space. Whereas the former attract and invite the people to come, suit and rest, the latter is always stinky, dirty and abhorrent.

16....Unless an open space is developed into a full-fledged park having gardens, trees, flower beds, plants, lawn, promenade etc., the environment will not improve and therefore the functionaries of the G.D.A. have remained grossly negligent in discharging their fundamental duty enjoined upon them by clause (g) to Article 5A of the Constitution. Equally they failed to discharge their duty enshrined by Article 5-A(j). If the functionaries of the State instrumentalities show their averseness to the developmental activities, which are assigned to them, then the nation can never grow to the cherished heights. An ornamental park with well manicured lawns is not only a source of comfort to the public, but adds to the beauty of a town, as jewellery studded with pearls or diamonds add to the beauty of the person who wears it.

(Emphasis added)

73. The Court also considered Section 13 and power of authority to make changes in plan and in paras 19, 22 and 23 said as under:

19.....From Section 13(1), it is manifest that the authority may make only those amendments which do not affect material alterations in the character of the plan. It means the respondents do not have an absolute right of amending the master plan or the zonal development plan. The basic characteristic of such a plan cannot be altered by the authority. Only that amendment is permissible u/s 13(1) which does not affect the basic character of the plan. An open space lying for park in the plan forms a basic feature of the plan and that cannot be amended. A plan cannot be amended so as to denude the plan of such a basic feature. Section 13(1) can in no circumstances be interpreted so as to clothe the G.D.A. to utilise the open space reserved for a park either to construct building or use it in any other manner, which is foreign to the concept of a park.

22. Applying the dictum of the Supreme Court in Bangalore Medical Trust (supra), it must be held that the Authority cannot amend the plan u/s 13(1) so as to deprive the public of a public park. Not only the G.D.A. even the State Government cannot alter the plan u/s 13(1) carries several limitations, Section 13(2) gives the State Government unlimited powers to make amendments in the plan of the nature specified in sub-section () or otherwise. The words "or otherwise" occurring in Section 13(2) cannot be interpreted to mean that the State Government has a right to alter the plan so as to enable the G.D.A. to use

the open space, reserved for a park, for the purposes having no semblance of a park. In *Bangalore Medical Trust (supra)*, the Supreme Court reiterated that once an open space is dedicated for a park that cannot be converted into any other purpose.

23. We, therefore, hold that u/s 13, neither the Authority nor can the State Government amend the plan in such a way so as to destroy its basic feature allowing the conversion of open spaces meant for public parks.

(Emphasis added)

74. Striking heavily against unauthorised construction, in *M.I. Builders Pvt. Ltd. Vs. Radhey Shyam Sahu and Others*, , it was said that the Courts while implementing rule of law show no consideration to the builders or any other person responsible for unauthorised construction etc. Being illegal it cannot be compounded and has to be demolished. The judicial discretion which includes equitable extraordinary exercise of power would not include a discretion to be exercised to encourage illegality or something which would perpetuate illegality. Justice must be rendered in accordance with law. Judges are not entitled to exercise discretion wearing the robes of judicial discretion and pass orders based solely on their personal predilections and peculiar discretion. The Court clearly said:

Judicial discretion whenever it is requires to be exercised has to be in accordance with law and set legal principle.

75. Where the authorities are not performing their statutory functions indulging more in violation than maintenance of rule of law, overlooking, ignoring or omitting illegal activities of individuals, private or Governmental, as the case may be by doing acts in violation of statutory plans, the Court finds its duty, constitutional and legal both, to cause such authorities to come to task and execute rule of law strictly by issuing a writ of mandamus.

76. In *Mansukhlal Vithaldas Chauhan Vs. State of Gujarat*, , the Court said:

Mandamus which is a discretionary remedy under Article 226 of the Constitution is requested to be issued, inter alia, to compel performance of public duties which may be administrative, ministerial or statutory in nature.

77. In the present case how and in what manner GDA allowed changes in construction etc. is never made known to public at large. The manner in which the change of user was allowed to UPJN in respect to land in question itself demonstrated that the procedure prescribed in Section 13, sub-sections (3) and (4) was never followed. It is only when the level of unauthorised "activities on the part of UPJN reached to the extent of open encroachment and obstruction on public road, the petitioner could dare to raise her voice. She ran from one authority to another. It is on papers she was heard and directions were issued to remove encroachment by UPJN but nothing, in effect, proceeded beyond that. It is a matter of common knowledge and judicial cognizance can be taken that the

highest official in UPJN, a statutory body, is a senior bureaucrat from Indian Administrative Service. The Vice-Chairman, GDA or in that way the District Magistrate or even the Commissioner find their own colleague in UPJN. A mutual back scratching and coordinated effort to save each other followed. The ultimate result was a total inaction on the spot.

78. It is only when this Court required the authorities to find out who is the person guilty, the respondents moved but not substantially. It is informed that none has been found guilty though encroachment to some extent was admitted. These affidavits were also filed that encroachment has now been demolished. Even the photographs are placed on record. All this demonstrate a patent illegal act on the part of a statutory body and its officials but except issuing some warnings, no action at all, moreso nothing serious has been done though violators have also committed an offence under Act, 1973. No attempt has been made to lodge any report for initiating criminal proceeding(s) against anybody. A system of mutual protection developed amongst the bureaucracy has shown its reflection in its true colour in this case. This has unfortunately caused a reason of sufferance to an individual citizen who lacked might and resources to combat with the strength of State and its instrumentalities. Yet the courage and spirit of petitioner has taken the matter to this Court and that is how these things have been exposed.

79. The Development Authorities were constituted with an objective of coordinated development but the experience is that largely it has failed to achieve its objectives. The open areas in cities have been converted into jungles of concrete. The roads have turned into parking. One finds it very difficult to move conveniently even in the main commercial areas of cities. This kind of destruction and defacement is going on rampant even in the areas shown as residential. Commercial activities like coaching centres, nursing homes, banks, banquet halls etc. are being run in those areas without any hindrance causing a different kind of harassment to local residents. It is a common feature in all cities in State of U.P. wherever a development authority has been created including Ghaziabad. In different media reports these bottlenecks have been reported time and again but the authorities do not find time or occasion to wake up and come in action to rescue the citizens by restoring conditions inconformity with master plans. Violations are causing an impact on the officials of Development Authorities and is confining to their individual development and contributing to under development of area concerned. One of the reason this Court would conceive of this situation is lack of transparency of actual individual development plan(s) submitted by individual contractors/builders etc. Those who want to raise construction, when their plans/maps etc. are approved by Development Authority if disclose such approved plan/map to the people at large, the construction if made in violation of approved plan, then the people at large would not find it difficult to raise their voice for want of appropriate information. Though under the Right to Information Act the people may go to seek information but here also all possible obstructions are created by authorities in providing these informations.

The construction in deviation to approved plan is considered to be a matter of right. Those making illegal construction/encroachment are confident of no complaint since common man has neither appropriate information nor resources in general to fight with such kind of persons and when detected, the violators find it their right to continue with it by asking for compounding. What kind of violation has been made and what is the stage of compounding is also not made known to public at large. This lack of information has also contributed a mushroom growth of illegal, unauthorised obstruction, construction, encroachment etc. all through changing ultimately the entire plan to such an extent that one find it very difficult as to what was the actual plan approved and what one has actually got executed, after passage of time.

80. The information regarding development to be undertaken by individuals, whether Government or private, does not lead to opening a window permitting a peep into the privacy of anyone. In a civilised society everybody is entitled to make development on the land or accommodation possessed by him in accordance with law exercising rights available to him but such development cannot be made so as to disturb the general plan conceived by a statutory authority in accordance with statute as that would cause and bound to cause prejudice/detriment, in various ways to other residents in that area. It is bound to affect the amenities, benefits, facilities, natural and otherwise of the residents. A deviation for the benefit of an individual or a section cannot be allowed as that is essentially bound to cause some detrimental effect on the society at large even if the degree of detriment may be very small and sometimes microscopic. The reason being that even microscopic detriment, if caused by a substantial number of individuals/group of individuals, collectively may become a bigger one.

81. In order to find out whether a person in the neighbourhood has violated law, one should not be made to depend on the vagaries and indiscreet whims of development authorities and other local bodies. There should be a system where this information must be available maintaining a total transparency so that whenever there is a deviation causing detriment to residents and/or the society in general, appropriate steps be taken to check it, without first getting harassed in collecting information and exhausting entire energy disheartening the person(s) concerned in pursuing the matter further and before the appropriate Forum. A time has come when concerted effort must be shown by authorities as well as the individuals and society in general to ensure execution and implementation of a plan in strictest manner deterring the violators from such deviation, if any, with a fear of serious consequences.

82. this Court is bound to make all these observations in the facts and circumstances of this case. At times the GDA herein found encroachment and violation on the part of UPJN. It directed the UPJN to remove it but all these directions proved to be ineffective. The officials of UPJN being the officials of a statutory body, also bearing huge might, resources and power, failed such directions and discarded the same. The Commissioner also found that a

contradictory stand has been taken by two authorities creating an opposite situation, the truth must be find out now by the District Magistrate who would take necessary steps. Instead of taking appropriate action by himself, since he was competent enough, the Commissioner, however, felt it better to relieve himself from incurring any occasion of displeasure on the part of two statutory authorities manned by senior bureaucrats and let the matter be examined by District Magistrate though he (the Commissioner) did not find the complaint of petitioner frivolous, false or incorrect. The subsequent affidavits filed by respondents annexing photographs to show that unauthorised construction has now been demolished by them during pendency of this writ petition, further demonstrate the patent and daring illegalities committed by UPJN and its officials and helplessness on the pan of GDA and other Government authorities in tackling with such menace. This kind of surrender on the part of authorities also raise several questions about efficacy of remedial measures provided in the statute and shows the unwillingness of authorities in actual remedial action to be taken whenever such grievances are raised before them. The Government must relook the entire scheme in the light of the experience of the people of this State in preceding almost 39 years after enforcement of Act, 1973.

83. In these peculiar facts and circumstances of the case, this Court finds it appropriate to issue certain directions to the respondents in general and the State Government and GDA in particular. This writ petition is allowed in the following manner:

(i) The impugned order dated 12.3.2010 is hereby quashed and the Commissioner as well as GDA are directed to ensure position and status of land in question, same as it was in the plan of 1961, unless and until any change in the plan is made strictly in accordance with Section 13 of Act, 1973. Appropriate action, as directed above, shall be taken by concerned respondents within three months from today. A report to this effect shall be submitted to this Court.

(ii) The GDA shall put on its website every sanctioned plan(s)/ map(s) etc. of any development/construction in the area under its operation, submitted by any individual, Corporate body, Government or its instrumentalities etc., approved on and after 1.1.2000 till date and henceforth. In respect to sanctioned plan of city etc., the same shall also be placed on website. In respect to individual plan(s)/ map(s), as above, which shall include colonies, townships etc., the sanctioned plan(s)/map(s) etc. shall be placed on website wherever the area of land is 300 square meters and above; or the building constructed and owned by an individual for his own use, but is not three storied and above. In case there is any data problem in a single website, the GDA may open more sites locality-wise etc., as advised technically.

(iii) If any developer, builder, contractor, individual or corporate or Government etc., as the case may be, has violated the sanctioned plan/map and has applied for compounding the kind of violation and the order passed by GDA compounding the said violation, if any, the reasons for the same and the procedure followed

therein shall also be known to the public at large by giving details on the website, as directed above.

(iv) The GDA shall also give the details of officers responsible for sanction, inspection, enforcement and approval of plan/map, the actual execution thereof and implementation of plan in respect to respective areas and the officers who remained posted since 1.1.2000 and onwards in respect to above work and their period of function shall also be let known to public at large.

(v) A High Powered Committee shall also be constituted by GDA headed by a retired judicial officer, not below the rank of District Judge, to find out yearwise deviation in the implementation of plan who shall submit its periodical report every fortnight to GDA and it shall then be the responsibility of GDA through its Vice Chairman and Secretary to seek remedial steps in the light of report received and remove illegal encroachment, obstruction, construction etc. without any further delay.

(vi) The GDA will also specify and shall make it known to public at large by placing relevant information on website as to which particular area is reserved and for what purpose and the activities which are not permissible to be carried out therein.

(vii) In addition to what has been said above, in the next six months from today, the GDA in general shall find out the activities which are/were not permissible in a particular area but are/have being carried out; and shall immediately take steps for stopping/ removing those activities. All subsequent requisite steps necessary to check unauthorised use or enjoyment etc. by anyone shall also be taken forthwith.

(viii) The Principal Secretary, Urban Development, U.P. is directed to look into this matter and appropriate instructions, if necessary, by issuing a Government Order, be given to all other Development Authorities in the State of U.P. to follow similar steps as directed above. The Principal Secretary shall issue necessary instructions within two months from today and shall also lay down a time table for all Development Authorities to take appropriate steps, as directed above herein.

(ix) A High Powered Committee at the level of the Government shall also be constituted to find out as to how many violations in different development authorities which constitute an offence u/s 26 and 26-D have been committed and whether any criminal prosecution has been initiated against the guilty in the past decade, i.e., from 1.1.2000 and onwards. If not, who are the persons responsible for such lapses. The Committee, as directed above, shall be constituted within 15 days from today and it shall submit its first report in six months after its constitution to the Court.

84. The petitioner shall be entitled to costs which I quantify to Rs. 51,000/-, equally to be borne by respondents No. 2, 3 and 5. The amount of cost shall be

paid to petitioner by the aforesaid respondents within two months from today, failing which, on an application made by petitioner before Registrar General, a certificate shall be issued by him, whereupon the aforesaid amount shall be recovered as arrears of land revenue and shall be paid to the petitioner.

85. This writ petition stands decided for all purposes but only for perusal of reports, as directed above, it shall be listed before this Court on 18th February, 2013 under the heading "For perusal of Compliance Report. The Registrar General is directed to forward a copy of this judgment to Chief Secretary, U.P. Lucknow; Principal Secretary, Urban Development; and, Vice Chair-man, Ghaziabad Development Authority forthwith for information and compliance.