

(1991) 04 KAR CK 0023
In the Karnataka High Court
Case No : Writ Petition No. 23138 of 1980

V. Lakshmipathy and Others

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 09-04-1991

Acts Referred:

Constitution of India, 1950 — Article 21, 226

Karnataka Town and Country Planning Act, 1961 — Section 13, 17, 9 (3)

Citation : AIR 1992 Kar 57

Hon'ble Judges : H.G. Balakrishna, J

Bench : Single Bench

Advocate : M.G. Sathyanarayanamurthy, for the Appellant; Sateesh M. Doddamani, Govt. Pleader, H. Thipperudrappa, Gopalakrishna, B.T. Parthasarthy, Ashok R. Kalyana Setty, R.C. Castelino, K.N. Subba Reddy, Dayananda Kumar, S.G. Sundaraswamy, K. Prabhakar, Sekar Shetty and H.S. Dwarakanath, for the Respondent

Judgement

1. The petitioners, who are the residents of Banashankari Extension I Stage, Block-I, which includes a part of N. R. Colony and Ashokanagar, have embarked on public interest litigation actuated by common cause in defence of public interest. The petitioners are aggrieved by the location and operation of industries and industrial enterprises in a residential area in alleged gross violation of the provisions of the Karnataka Town and Country Planning Act. The petitioners are questioning industrial activity in residential locality by establishing and running factories, work-shops, factory sheds, manufacture of greases and lubricating oils by distillation process and also production of inflammable products by respondents-17 to 49. According to the petitioners, these questionable activities are being carried on in the area comprising of Sy. Nos. 39/1, 39/2A and 39/2B of Yediyur Nagasandra village, Bangalore. The land situate in Sy. No. 39/1 is called "Vajapeyam Terrace Gardens" and the land in Sy. Nos. 39/2A and 39/2B are known as "Kalyani Gardens". It appears that in respect of these areas, agreements were executed between the erstwhile City Improvement. Trust Board

(C.I.T.B.) and their owners and successors for the purpose of formation of a layout in accordance with law, but the agreements were not implemented for reasons best known to the said Board. It is stated that the Health and Municipal Administration Department of the State of Karnataka issued a direction bearing No. HMA 35 MNX 72 dated 4-7-1972 to the erstwhile C.I.T.B. to handover the said areas to the Corporation of the City of Bangalore (Respondent-14 herein). However, it appears that the direction was not acted upon and these areas were not handed over to the Corporation. Nevertheless in spite of the fact that the said areas were not handed over to the Corporation, taxes as being imposed and collected by the Corporation. The petitioners have stated that there are portions which are not converted though they are reserved Kharab land granted in accordance with the Land Grant Rote falling within the jurisdiction of the revenue authorities and strangely enough the revenue authorities have failed to exercise jurisdiction and control over these portions and have not enforced the provisions of relevant law, rules and regulations in respect of these lands. In other words, the entire area falling in Sy. "Nos. 39/1, 39/2A and 39/2B because virtually "no man"s land" because of alleged inaction and abdication of power and control by the development authority including the erstwhile C.I.T.B., the Bangalore Development Authority, the Corporation of the City of Bangalore and the revenue authorities of the State Government thereby resulting in betrayal of public interest on account of imperviousness to duty, callousness, nonfeasance and utter lack of supervisory, administrative and regulatory control over the area in question. The petitioners have also complained of the serious threat to public health on account of environmental hazards posed by the industries and industrial activity. According to the petitioners, the provisions of the Karnataka Town and Country Planning Act, 1961 have been violated and the establishment and running of the industries in the area are contrary to the Outline Development Plan and zoning of land use as dictated by statute. It is specifically alleged that some of the industries have been floated under licences said to have been issued by the Village Panchayat of Kathiraguppe even though the said area falls within the village Yediyur Nagasandra beyond the limits of Kathiraguppe village and, therefore, beyond jurisdiction. However, it is pointed out that these industrial units have succeeded in securing public services and utilities such as electricity, water etc., from respondents 12 and 13 to which they are not legally entitled. It is also stated that in the light of Section 14 of the Karnataka Town and Country Planning Act, there could be no change in land use contrary to the act and no authority could grant any licence for user of the land contrary to what the said provision earmarks. In short, the allegation is that the establishment of these industrial units is ab initio illegal. In regard to Sy. No. 39/1, the petitioners have impeached that various orders and directions issued by the competent authorities for the purpose of execution of agreements with the erstwhile C.T.T.B. in order to obtain sanction of building plan"s etc., have been flagrantly flouted and transfer of lands have been effected by the jugglery of dissolution and reconstitution of partnerships from time to time for the purpose of manoeuvring in order to locate industries contrary to law, by devious methods circumventing

Outline Development Plan and Comprehensive Development. Plan. The petitioners have taken strong exception to "extensive area of lands reserved by Government being appropriated for private use and activities not consistent with law without a check. A case on hand is specifically mentioned by the petitioners wherein one Mrs. Seethamma executed an agreement in favour of the erstwhile C.I.T.B. On 22-10-1973 in respect of lands in Sy. Nos. 39/2A and 39/2B based on an alleged sanction of a lay-out for industrial purpose, the sanction being subsequent to 4-7-1972 when the Health and Municipal Administration Department of the Government of Karnataka had directed the erstwhile C.I.T.B. to handover the area vide order No. HMA 35 MNX 72 dated 4-7-1972. The petitioners have pointed out that sanction for industrial purpose is itself ab initio illegal since it was in contravention of the provisions of the Town and Country Planning Act as well as the Outline Development Plan which declared the said area as residential zone. It is also pointed out that none of the conditions incorporated in the aforesaid agreement dated 22-10-1973 were complied with, the conditions being (a) maintenance of open space as required and in accordance with the sanctioned plans; (b) prohibition on use of sites without the approval of the erstwhile C.I.T.B.; (c) prohibition on alteration of the dimensions as approved in the plan; (d) intimation of date of commencement and programme of execution of lay-out work under the supervision of the Engineers of the erstwhile C.I.T.B. and (e) due compliance with the rules, regulations, bye-laws and standing orders regarding obtaining of licences.

2. Non-compliance with the said conditions entail by virtue of a penal clause in the said agreement, withdrawal of the sanction and acquisition of the property and dealing with the same in accordance with rules.

3. It is alleged that in a part of the "Kalyani Garden" exists a temple dedicated to Sri Raghavendra Swamy Brindavana under a deed of trust dated 29-7-1974 to be run by a trust called "Sathyabhamamma Seethamma Kalyani Raghavendra Ashrama". For the purpose of access to the said temple, the entire area of Sy. No. 39/2B was required to be reserved; but it was encroached upon by various industries thereby preventing access to the residents and devotees. The result is that they have to wend their way through a labyrinth of industries. It is alleged that the onward course for passage running through Sy. No. 39/2B towards 6th Cross Road of Ashokanagar is via 30" road running within Sy. No. 39/1 as set out in the plan approved by the erstwhile C. I, T. R. vide its resolution No. 776 dated 12-2-1969 and resolution No. 492 dated 3-3-1971. But the said road is not properly laid out by the C. T. T. B./B.D.A. nor is it maintained properly by the said bodies and, on the other hand, the passage has been treated as a private road in disregard of the approved plan as well as the resolutions and to cap it all the road is closed on its southern side. It is alleged that constructions have been put up even in the road portion contrary to law and all this has happened with impunity at the hands of the concerned authorities who are enjoined with the responsibility of enforcement of law. This has resulted in detriment to public interest since it is the only road leading to the temple. The petitioners in

particular have complained of acute pollution affecting the environment on account of persistent, offensive and unwholesome escape of pollutants such as smoke, vapour and noxious emanations posing danger to health and hygiene of the residents. According to the petitioners, noise pollution is added to the misery of the residents of the locality day in and day out depriving them of a clean environment, quality of life, peace and tranquillity reasonably expected in a residential area.

4. Another grievance articulated is that the decadence contributed by pollution has affected the value of the properties in the entire area.

5. The petitioners assert that the residents of the area have a right to expect strict performance of statutory duties in order to protect public interest by public bodies invested with statutory powers, duties and obligations and that these authorities cannot commit breach of statutory obligations frustrating public interest and public good. It is submitted by the petitioners that in spite of repeated requests and demands, not only the Corporation but also the B.D.A. and the Health Officer of the Corporation have failed, to take necessary steps in accordance with law. It is alleged that representations were made to the Commissioner of the Corporation and the Secretary, Housing and Urban Development Department (respondent-2 herein) on 31-7-1979 and also to the Chairman, B.D.A. (respondent herein) on 20-11-1979, in vain and, therefore, the petitioners were constrained to issue a registered notice of demand dated 16-9-1980 addressed to all the 15 authorities concerned vide Annexure-B. It is stated that all the notices have been served on them. However, the petitioners complain that there was no response from any of these authorities and the demands were never met by them and hence they have resorted to public interest litigation and to arouse judicial conscience for securing legal redress.

6. The petitioners have sought for a declaration that the change in land use in Sy. Nos.39/1, 39/2A and 39/2B of Yediyur-Nagasandra Village, Bangalore, from residential to industrial is violative of the Karnataka Town and Country Planning Act, the Outline Development Plan, the Comprehensive Development Plan and Regulations thereunder and that all consequential actions relating to such violations in land use are void and illegal; that the licences, permissions and certificates of change in land use issued by the concerned authority especially respondents-9, 14 and 16 for location of industries by respondents-17 to 49 are void and illegal. The petitioners have also sought for a declaration that the recognition or orders passed by the Director of Industries and Commerce granting and conferring benefits on such industries run by respondents-17 to 49 are void and illegal and similarly the power supply sanctioned and granted by the Karnataka Electricity Board as void and illegal. A writ of mandamus is also sought by the petitioners for a direction to the Corporation of the City of Bangalore and its Health Officer to forthwith abate the nuisance in Sy. Nos.39/1, 39/2A and 39/2B of Yediyur-Nagasandra village and direct the Corporation not to levy taxes or collect the same and to re-fund the taxes already collected. The petitioners

have asked for a direction to the B.D.A. to remove the industrial units and to carry out the lay-out work in accordance with the law with due provision of all civic amenities including laying of roads, sewerage, water-supply, street lights and to remove all encroachments in public lands and roads including the road leading from 6th Cross Road, Ashokanagar to Raghavendra Swamy Brindavana in Sy. No. 39/2B and lastly the petitioners have sought for a direction to the Deputy Commissioner, Bangalore Urban District, to take steps regarding the portions of revenue lands in Sy. Nos. 39/1, 39/2A and 39/2B and the portions which are reserved as Kharab and land granted and recover non-agricultural assessment in accordance with the revenue laws.

7. On behalf of respondents 29 to 31, 34, 37 to 42 and 46 to 49, an elaborate statement" of objections is purported to have been filed. All these respondents have been running industries in the area in question. Except the Karnataka Electricity Board (respondent-13 herein), the remaining respondents have not filed any statement of objections. The petitioners have also filed a reply to the counters filed by the concerned respondents.

8. The affidavit in support of the statement of objections is signed by respondent-47 and it is not clear from the affidavit that respondent-47 has been authorised to file the statement of objections and to sign the affidavit not only on its behalf, but also on behalf of respondents-29 to 31, 34, 37 to 42, 46, 48 and 49. It would not be unreasonable to presume that the statement of objections is preferred by respondent-47 for itself and only on its own behalf. In other words, the presumption is that the other respondents have not filed the statement of objections. It is no doubt true that in the beginning of the statement of objections of the respondents, it is stated "The Respondents 29, 30, 31, 33, 34, 37, 38, 39, 40, 41, 42, 46, 47, 48 and 49 beg to state as follows".

Barring this statement, I do not find any averment even in the statement of objections that these respondents have authorised respondent-47 to file an affidavit in support of the counter on their behalf. Therefore, I would not be hypertechnical in presuming that the counter is filed only for and on behalf of respondent-47 and the other respondents mentioned in the statement of objections do not subscribe to the counter.

9. In the statement of objections filed by respondent-47, all the allegations made by the petitioners have been categorically denied. It is contended that the petitioners have no legal right to seek relief under Article 226 of the Constitution of India, that the writ petition is barred by laches and that the petitioners have not made out any valid ground for grant of the relief sought under Article 226 of the Constitution of India.

10. Intelligible in the statement of objections of the K.E.B. are the averments that the writ petition is liable to be dismissed for laches, unexplained delay and acquiescence and lack of *focus standi* of the petitioners while asserting that the power supply sanctioned to the concerned respondents by the K. E. B. is not

illegal.

11. The point for consideration is whether the alleged change in land use in Sy. Nos.39/1, 39/2A and 39/2B of Yediyur-Nagasandra village, Bangalore, from residential to industrial is in contravention of the Karnataka Town and Country Planning Act, the Outline Development Plan, the Comprehensive Development Plan and regulations thereunder apart from the question whether the writ petition is not maintainable on the ground of laches and want of legal right.

12. Arguments, in extenso, were advanced by Sri M. G. Sathyanarayanamurthy for the petitioners, by Sri S. G. Sundaraswamy for respondent-47, Sri R. C. Castelino for the Bangalore City Corporation and Sri H. Thipperudrappa for the B.D.A.

13. Of contextual relevance is sub-section (3) of Section 9 of the Karnataka Town & Country Planning Act, 1961 ("the Act" for short) which reads as follows :--

"(3) Notwithstanding anything contained in sub-section (2),--

(i) if any Planning Authority has prepared a plan for the development of the area within its jurisdiction before the date of the coming into force of this Act, it may send the same to the State Government for provisional approval within a period of six months from the said date and the plan so approved shall, notwithstanding anything contained in this Act, be deemed to be the outline development plan for the Planning Area concerned;

(ii) if any Planning Authority is converted into or amalgamated with any other Planning Authority or is sub-divided into two or more Planning Authorities, the outline development plan prepared for the area by the planning authority so converted, amalgamated or sub-divided shall, with such alterations and modifications as the State Government may approve, be deemed to be the outline development plan for the area of the new Planning Authority or authorities into or with which the former Planning Authority was converted, amalgamated or sub-divided."

14. In the instant case, the Planning Authority had prepared a plan for the development of the area within its jurisdiction before the date of the coming into force of the Act and had sent the same to the Government for provisional approval within the stipulated time and, therefore, the plan which was approved by the Government is to be deemed to be Outline Development Plan for the planning area concerned. In the Outline Development Plan prepared by Madhava Rao Committee applicable to the Bangalore Metropolitan area the use to which the land could be put had been formulated. The land was intended to be used for residential purpose only as is apparent from the entry in the Outline Development Plan.

15. Section 14 of the Act deals with enforcement of the Outline Development Plan and the Regulations and the same reads as follows :--

"(1) On and from the date of which a declaration Of intention to prepare an outline is published under sub-section (1) of Section 10, every land use, every change in land-use and every development in the area covered by the plan shall conform to the provisions of this Act, the Outline Development Plan and the regulations, as finally approved by the State Government under sub-section (3) of Section 13.

(2) No such change in land use or development as is referred to in sub-section (1) shall be made except with the written permission of the Planning Authority which shall be contained in a commencement certificate granted by the Planning Authority in the form prescribed".

16. From the above provisions, it is crystal clear that before the date on which a declaration of intention to prepare an outline is published in accordance with sub-section (1) of Section 10, every land use, every change in land use and every development in the area covered by the plan must conform to the provisions of the Act, the Outline Development Plan and the regulations as finally approved by the State Government under sub-section (3) of Section 13. This is mandatory in character. Further, by sub-section (2), it is to be understood that change in land use or development referred to in sub-section (1) is permissible only with the written permission of the Planning Authority embodied in a commencement certificate granted by the Planning Authority in the prescribed form.

In the explanation to Section 14, "development" is meant to be the carrying out of building or other operation in or over or under any land or the making of any material change in the use of any building or other land. Sub-clause (b) of the explanation narrates the operations or uses of land which do not amount to a development of any building or land.

17. Once an entry is made in the Outline Development Plan earmarking the area for residential purpose or use, the land is bound to be put to such an use only. There is no material on record that any written permission of the Planning Authority contained in a commencement certificate was obtained from the Planning Authority by the concerned respondents for the purpose of putting up buildings for industrial purpose.

18. Since the Outline Development Plan was prepared by Madhava Rao Committee in 1961 and was declared to be applicable to the Metropolitan area of the City of Bangalore, the erstwhile C.I.T.B. had no authority to issue any land use certificate or commencement certificate. Up to 1976, there was a separate statutory body called the Town Planning Authority for the metropolitan area of City of Bangalore. It is, therefore, justifiable for the petitioners to contend that the permission obtained from the erstwhile C.I.T.B. has no legal warrant. The contention that Annexure-A is only an Official Memorandum and not a conversion certificate stands to reason. The purported permission under Annexure-A and "B" seem to be personal to favour the applicants therein as the registered holders of record of rights. An extent of 25 guntas of Phut Kharab land out of Sy. No. 39/1

of Yediyur-Nagasandra village was ordered to reserve for Government and any encroachment on the land was prohibited. Valid permission was directed to be obtained from the concerned authorities before commencement of lay-out work. It is seen that apart from the fact that there is a violation of law relating to land use, none of the conditions stipulated in the Official Memorandum and purported conversion certificate were complied with. The plan which is said to have been approved in respect of Sy. No. 39/1 of Yediyur-Nagasandra, denotes the existence of only one building in plot No. 32 with open spaces left around it. Factually, up to 1971, all the other 41 plots of land remained vacant and the registered holder of record of rights who had applied for permission demised on 17-5-1970. Respondent-29 commenced petroleum industry in 1975. This is in violation of Section 353 of the Karnataka Municipal Corporations Act, 1976, according to which no place within the limits of the city shall be used for any of the purposes mentioned in Schedule X of the Act without a licence from the Commissioner and except in accordance with the condition specified therein. All the transfers made in Sy. No. 39/1 are not supported by due permission from the competent authority under the provisions of the Urban Land (Ceiling and Regulation) Act, 1976, nor under the ordinance which preceded the enactment by Parliament. There is no material to show that returns were filed and notifications issued as contemplated under Sections 6 to 10 of the said Act and, as already pointed out, there was no permission obtained from the competent authority for change of land use to establish numerous industries in the area.

19. Similarly, in respect of Kalyani Gardens. Annexure-3 shows that unauthorised constructions had been put up. The same annexure substantiates that Sy. No. 39/2 of Yediyur-Nagasandra is the property of the presiding deity of Sri Raghavendra Swamy Mala and Madhava Patasala attached to the temple. In fact, there is nothing to disbelieve the contention of the learned Counsel appearing for the petitioners that Smt. Seethamma and Sri Ananda Tirthachar Kalyani had built the temple, performed Pratishtha and Utsarga of Sri Raghavendra Swamygala Brindavana in Sy. No. 39/2 in 1942-43 and thereafter were functioning as Dharma Karthas of the temple. It appears the whole establishment was transferred to one A. V. Krishna Murthy in 1953 and again in 1957 the said A. V. Krishna Murthy re-transferred the temple multi and Pathasala to Smt. Seethamma Kalyani requesting her to manage the temple poojas and kattaes out of the proceeds of the lands in Sy. No. 39/2 of Yediyur-Nagasandra. In turn, it appears she created a Trust Committee under the Chairmanship of Sri Ananda Tirthachar Kalyani. The committee, it is said, consisted of 10 trustees. The construction of industries on those lands belonging to the presiding deity of the temple is described by the petitioners as not only sacrilegious but also illegal.

20. On the basis of the Government notifications, it is possible to infer that Kathariguppa village lies beyond the municipal limits of the Corporation of the City of Bangalore in 49th Division, Banashankari Extension Stage-I and Sy. No. 39 of Yediyur Nagasandra is a part of Banashankari Extension Stage-I. It is on this basis the learned Counsel appearing for the petitioners contended that the

jurisdiction of Kathariguppa Panchayat in the area is conspicuous by its absence and the alleged licences, permissions etc., said to have been given by the Village Panchayat of Kathariguppa are devoid of authority. The petitioners have also contended that these factories commenced operation only during 1975 and as such there is no delay or acquiescence in preferring the writ petition. It is further contended that it is only after the baneful effect of such location of numerous industries in the residential area that it was felt that the aggrieved petitioners should move this Court after exhausting the remedy by way of representations to the concerned authorities and, therefore, there is no laches on their part. More importantly it is submitted that there are gross violations of substantive provisions of law in Sections 14 to 17 of the Act, Section 32 of the Bangalore Development Authority Act, 1976, Section 505 of the Karnataka Municipal Corporations Act, 1976, Sections 6 to 10 of the Urban Land (Ceiling and Regulation) Act, 1976 and Sections 13 and 17 to 20 of the Karnataka Religious and Charitable Endowments Act, 1927. It is also contended that the writ petition is filed entirely in the interest of the general public for proper implementation of laws which are particularly intended and enacted for peaceful, healthy, clean and pleasant living in decent, well planned, well laid-out, beautiful extensions of the City of Bangalore which had once acquired a good name as the Garden City of India.

21. Out of 49 respondents who are parties to this writ petition, respondents-1 to 12, 14 to 46, 48 and 49 have not chosen to file any statement of objections. The only respondents who have filed the counter are respondents-13 and 47. Respondent-13 is the K.E.B. and respondent-47 is Kwalify Engineering Company. Allegations of serious nature have been made by the petitioners complaining about gross violations of Sections 14 and 17 of the Act, Section 32 of the B. D. A. Act, Section 505 of the Karnataka Municipal Corporations Act, Sections 6 to 10 of the Urban Land (Ceiling and Regulation) Act as well as Sections 13 and 17 to 20 of the Karnataka Religious and Charitable Endowments Act. The concerned authorities who are charged with the responsibility of administering and enforcing the law and who have been impleaded as necessary and proper parties in this writ petition have not chosen to file any statement of objections to meet the allegations made by the petitioners. The State of Karnataka, the Housing & Urban Development Department, the Public Health and Family Welfare Department, the Department of Commerce and Industries, the Director of Industries and Commerce, the Director of Town Planning, the Director of Health Services, the Deputy Commissioner of Bangalore District (Urban), the B. D. A., the Engineer Member of the B. D. A., the Town Planning Member of the B. D. A., the Bangalore Water Supply and Sewerage Board, the Corporation of the City of Bangalore, the Health Officer of the Corporation and the Kathariguppa Village Panchayat are the prominent respondents in this writ petition who were called upon to meet the allegations and averments made by the petitioners. None of these public authorities and public officials has rebutted the allegations and averments of the petitioners, in these circumstances, the course open to me is to

hold that the allegations and averments made against these authorities by the petitioners are not disputed, but admitted. The industrialists who have been arraigned before the Court commencing from respondent-17 and ending up with respondent-49 also have not chosen to rebut the allegations made against them with the sole exception of respondent-47 which is Kwaliti Engineering Company. I, therefore, hold that the allegations made against the said respondents have gone without question and have to be presumed to be true. Respondent-47 has filed a detailed statement of objections, apart from the technical objections raised by the K. E. B. in its counter. Hence, the pleadings of respondents-13 and 47 are left to contend with.

22. Since there is no denial either from the public authorities or from the public officials as well as the concerned industrialists with the exception of respondents-13 and 47, I hold that the petitioners have established their case against these authorities and establishments.

23. According to Section 505 of the Karnataka Municipal Corporations Act, 1976, a corporation or any officer or other authority required by or under the Karnataka Municipal Corporations Act to exercise any power or perform any function or discharge any duty with regard to any matter relating to land use or development as defined in the explanation to Section 14 of the Karnataka Town and Country Planning Act, 1961, shall exercise such power, or perform such function or discharge such duty with regard to such land use or development plan or where there is no development plan, with the concurrence of the Planning Authority. It is further provided u/s 505 of the said Act that the said officer or other authority shall not grant any permission, approval or sanction required by or under the said Act to any person if it relates to any matter in respect of which compliance with the provisions of the Karnataka Town and Country Planning Act, 1961 is necessary unless evidence in support of having complied with the provisions of the said Act is produced by such person to the satisfaction of the corporation or the officer or other authority, as the case may be. There is no material to hold that even the requirements of Section 505 are complied with by the respondents who set up factory buildings in the area in question.

It is necessary to point out that the Karnataka Town and Country Planning Act came into force on 15-1-1965 and the Outline Development Plan came into force on 13-7-1972 whereas the Comprehensive Development Plan came into force on 12-10-1984. Before the Comprehensive Development Plan was finally brought into force, in accordance with the procedure, the B. D. A. issued a Notification No. BDA/TPM/CDP 1/80-81 dated 1-7-1980 inviting objections to the Comprehensive Development Plan from the members of the public. No objections were preferred and no efforts were made by anyone including the industrialists for change in land use in spite of the said notification. In short, the concerned respondents settled down with smug complacency making no efforts either to prefer objections or have regularisation. The copy of the notification dated 1-7-1980 published in Indian Express dated 9-7-1980 has been filed by the

learned Counsel appearing for the petitioners under memo dated 22-8-1990.

24. According to Section 32 of the B.D. A. Act, notwithstanding anything to the contrary in any law for the time being in force, no person shall form or attempt to form any extension or layout for the purpose of constructing buildings thereon without the express sanction in writing of the Authority and except in accordance with such conditions as the Authority may specify and where any such extension or layout lies within the local limits of the Corporation, the Authority shall not sanction the formation of such extension or layout without the concurrence of the Corporation. There is no material to substantiate that there is due compliance with the requirements of this provision.

25. Even in the matter of transfer of land to the industrialists who are respondent herein, there is no proof of satisfaction of the requirements of Ss. 6 to 10 of the Urban Land (Ceiling and Regulation) Act, 1976, nor the fulfilment of the requirements of Ss. Band 17 to 20 of the Karnataka Religious and Charitable Endowments Act, 1927.

The last Act referred to above is in relation to the temple lands of which encroachment has been committed and industries set up. In these circumstances, I am of the opinion that the writ petition deserves to be allowed.

The petitioners have made out a strong case in regard to the preservation of environment which calls for consideration.

26. The movement for restoration and maintenance of a livable environment requires curbing the power of narrowly oriented administrative agencies in the appropriation of the dwindling acreage of land and water not already irrevocably appropriated. There have been several proposed and discussed means of easing of burdens and handicaps of the substantial evidence -- rational basis rule in environmental cases involving judicial review of administrative agency determinations. Some are based upon concepts found in environmental cases and other cases and also explained and analysed by the acknowledged critical authorities. Others are based not upon authorities but on the sheer importance of the interests affected, for eg. as documented in the National Environment Policy of India.

In a sense the problem is a part of a larger problem -- that of rendering big Government more responsive to the needs of the individuals whom it governs.

The remarks of Justice Felix Frankfurter addressed to the problems of the thirties are relevant to 20th century India which is still in a developing stage.

"It is idle to feel either blind resentment against "Government of Commission" or sterile longing for the golden past that never was. Profound new forces call for new social inventions or fresh adaptations of old experience. The "great society" with its permeating influence of technology, large scale industry and progressive urbanisation, presses its problems; the history of political and social liberty admonishes us of its lessons. Nothing less is our task than fashioning

instruments and processes at once adequate for social needs and the protection of individual freedom."

(see "The Task of Administrative Law" -- Frankfurter)

The explosion of grave concern for environment at any private and Government level is the great political phenomenon of recent times. The sporadic and unorganised struggle of environment stragglers, the wildlife and bird lovers, wilderness wanderers have identified the conservation movement of the environment and are focussing their attention on denuded forests, balding hills, disappearing prairie, extinct species of rare fish, thinning wild life, and vanishing birds. The movement has become the crusade of anyone almost everywhere for a "livable environment". There is an increasing awareness that in cleansing up our environment, if not in wilderness, lies the preservation of the world.

At the moment we are looking into a decade in which most of the people are living in metropolitan or urban areas choked by traffic, poisoned by water, suffocated by smog, deafened by noise and terrorised by crime.

Restoring nature to the natural state is a cause beyond party and beyond factions. It has become a common cause of all the people. It is a cause of particular concern to young Indians because, they, more than us, will reap the grim consequences of our failure to act on the programmes which are needed now if we are to prevent disaster later. An onerous obligation which we owe to posterity is clean air, clean water, greenery and open spaces. These ought to be elevated to the status of birth rights of every citizen.

Commenting on Business Corporations and environment protection, Robert Rainbow a Professor of Political Science at the State University of Newyork, Albany observed :--

"But worse than Corporation funding is the subversion of Government agencies to the role of environmental exploiter. The public interest which should be championed by the agencies with their regulations is ignored or perverted, as the "iron triangle" of special interests, bureaucrats and committee chairperson form their unholy alliance. This means that the public conscience is entrusted to volunteers in public interest groups, a sacrificial burden of weighty dimensions.....

The outstanding feature of modern political life is the shifting of the burden of defence of public interest to civic volunteers. Organised , they must dig into their pockets to hold their groups together; they must respond to calls for protests, launch petition drives, simulate letter writing compaigns, conduct rallies, attend hearings and in general, mortgage the time of their personal lives to an unprecedented extent. Keepers of the social conscience, they express themselves openly and aggressively. When the record of the environmental movement is finally registered, the emphasis will be on the new breed of citizenship it fostered. And it will contrast mightily with the sordid strategy of the Corporate Board rooms where they scoff at do-gooders and belittle nobility of purpose."

He added :

"What is becoming clear is that the restructuring of the democratic process has altered the pattern of citizenship. Where once the public official as in the days of Washington or Jefferson had a deep and honest sense of public sacrifice, we are today witnessing the close collaboration of special interests with governmental agencies and elected officials. In the environmental field, Government too often emerges as the advocate of exploitation. This is in large part due to the subtle private and usually corporate pressures. Pressure has become a science that destroys the Governmental shield the citizens have erected to protect themselves. It is necessary for the Government to guard against such pit-falls. The choice is between technological progress which proceeds without adequate regard of its consequences and technological change that is influenced by a deeper concern for the interaction between man's tools and the human environment in which they do their work."

Inserted by the Constitution 42nd Amendment Act 1976, Art. 48-A lays down that the State shall endeavour to protect and improve the environment and to safeguard the forests and wild life of the country.

Article 51-A(g) exhorts the citizen to protect and improve the natural environment including forests, lakes, rivers and wild life and to have compassion for living creatures.

Part IV-A on Fundamental duties has been added by the Constitution (42nd Amendment) Act, 1976 in accordance with the recommendations of the Swaran Singh Committee bringing the Constitution in line with Art. 29(1) of the Universal Declaration of Human Rights and the Constitutions of China, Japan and U.S.S.R.

The mandate of our Constitution is to build a welfare society and legislations made in that behalf to give effect to Directive Principles of State Policy have to be respected. If the constitutional obligations are not discharged by due enforcement by the administrative agencies, the Court cannot turn a Nelson's eye. The fundamental duties are intended to promote peoples participation in restructuring and building a welfare society and the Directive principles under Part IV are intended to build the edifice of welfare state. Environment and its preservation is a subject-matter of both, thus emphasising the importance given to it by our Constitution. Protection of environment is a matter of constitutional priority. Neglect of it is an invitation to disaster. The problem is the concern of every citizen and action brought cannot be dismissed on the ground of locus standi. The right to sue in this regard is inherent in the petitioners. When administrators do not mend their ways, the Courts become the battle ground of social upheaval. The paradigm of bureaucracy conducive to public welfare features standard operating procedures, humane outlook, hierarchical authority, prompt law enforcement besides job specialisation and personnel rules among others. If the administrators show indifference to the principle of accountability, law will become a dead-letter on the statute book, and public interest will be the

casualty. Entitlement to a clean environment is one of the recognised basic human rights and human rights jurisprudence cannot be permitted to be thwarted by status quoism on the basis of unfounded apprehensions.

Article 226 of the Constitution enables the citizens to move the High Court to enforce the performance of statutory obligations of any authority coming within the sweep of Art. 21 of the Constitution in particular, or for eg., under the anti-pollution laws of the land like the Pollution Control Act etc. Hence, it has to be regarded as a constitutional right of the petitioners responded by constitutional remedies of a wide repertoire under Art. 226.

In *M.C. Mehta Vs. Union of India (UOI) and Others*, the Supreme Court posited (at p. 1126, para 16 of AIR) :--

"He (petitioner) is a person interested in protecting the lives of the people who make use of the water flowing in the river Ganga and his right to maintain the petition cannot be disputed."

In another decision in *M.C. Mehta Vs. Union of India (UOI) and Others*, delivered subsequent to the earlier ruling referred to above, the Court observed :--

"Life, public health and ecology have priority over unemployment and loss of revenue problem."

In another landmark judgment, a Bench of five Judges of the Supreme Court held in *M.C. Mehta and another Vs. Union of India and others*, familiarly known as *Sriram Mills case* of oleum gas leakage from the Fertiliser and Chemical factory run by a private enterprise, that a creative and innovative interpretation in consonance with our constitutional jurisprudence is commended. The Court observed (at p. 1097, para 29 of AIR) :--

"However, the principle behind the doctrine of state aid, control, and regulation so impregnating a private activity as to give it the colour of state action can be applied to the limited extent to which it can be Indian and harmoniously blended with our constitutional jurisprudence."

Even assuming that one of the petitioners is actuated by an oblique motive, the grievance of other petitioners cannot be discarded.

The facts of the case bring to focus the need for a change of administrative culture to put an end to the tendency towards regression in social order and institutionalisation of administrative deviance.

James B. White in "*When words lose their meaning*" observed :--

"Behind all the theoretical talk of Government and legitimacy, behind the systems and projects, behind even the forms of Government itself there is a culture, a living organisation of mankind upon which all the talk of system and mechanism depends, both for its intelligibility and for its effects..... In all its complexity and interconnectedness, it is our substantive and actual constitution."

(see "Constitutional cultures" -- The Mentality and Consequences of Judicial Review" -- Robert F. Nagel)

Even otherwise, the Court would not be unjustified in exercising its power of equity in the realm of epistolary jurisdiction under three critical principles of equity which are :--

1. Where there is a right, there is a remedy;
2. Equity Court is a Court of conscience;
3. Judges in equity rule act according to conscience.

Professor Abraham Chaycs of Harvard Law School has this to say :--

"The characteristic features of the public law model are very different from those of the traditional models. The party structure is sprawling and amorphous and subject to change over the course of litigation. The traditional adversary relationship is suffused and intermixed with negotiating and mediating process at every point. The Judge is the dominant figure in organising and guiding the case and he draws for support not only on the parties and their counsel but on a wide range of outsiders -- masters, experts and oversight personnel. Most important, the trial Judge has increasingly become the creator and manager of complex forms of ongoing relief which have wide spread effects on persons not before the Court and require the Judge's continuing involvement in administration and implementation."

(sec "The Role of the Judge in Public Law Litigation" 87 Har Law Rev 1281 (1284) 1976. Chaycs)

Equity jurisprudence is based on hardship, accident, trust and fraud.

27. The onus is on the authorities concerned to establish by demonstrable evidence and not by undisclosed measures that action has been taken to control and hold pollution within reasonable limits. The pollution alleged by the petitioners consists of both air pollution and noise pollution. Desecration of the quality of environment is impermissible as is evident from a series of legislations enacted by the Parliament from time to time in the interest of clean air and clean environment in general. As already pointed out, none of the authorities concerned who have been impleaded as respondents in this writ petition have either denied the existence of pollution or ha\le come forward with any explanation as to what measures have been taken in older to curtail the pollution. In these circumstances, there is sufficient basis to hold that the grievance of the petitioners as to the existence of air pollution and noise pollution affecting the environment to the detriment of the members of the public is substantiated. I am, therefore, of the opinion that, on that score also, the writ petition is to be allowed.

28. Often cited decisions of the British Courts which are of persuasive value call for consideration.

In R. v. Thomes Magistrate's Court ex. p. Greenbaum (1957) 55 LGR 129

"Any body can apply for it -- a member of the public who has been inconvenienced or a particular party to person who has a particular grievance of his own. If the application is made by what for convenience one may call a stranger, the remedy is purely discretionary. Where, however, it is made by a person who has a particular grievance of his own, whether as a party or otherwise, then the remedy lies ex debito justitiae." -- Parker L.J.

In R. v. Paddington Valuation Officer Ex. p. Peachey Property Corporation Limited (1966) 1 QB 380

"Every citizen has standing to invite the Court to prevent some abuse of power and in doing so, he may claim to be regarded not as a meddlesome busy body but as a public benefactor.

A rate-payer, likewise, has a particular grievance if the rating list is invalidly made, even though the defects will make no difference to him financially."

Lord Denning M.R. observed :--

"if he has not sufficient interest, no other citizen has.

Unless any citizen has standing, therefore, there is often no means of keeping public authorities within the law unless the Attorney-General will act -- which frequently he will not. That private persons should be able to obtain some remedy was therefore "a matter of high constitutional principle."

The Court will not listen, of course, to a mere busy body who was interfering in things which did not concern him. But it will listen to any one whose interests are affected by what has been done."

Lord Diplock affirmed the principle when he said :--

"It would, in my view, be a grave lacuna in our system of public law if a pressure group, like the federation, or even a single public- spirited tax-payer were prevented by outdated technical rules of locus standi from bringing the matter to the attention of the Court to vindicate the rule of law and get the unlawful conduct stopped."

As enunciated by Lord Diplock :--

"The Court has not only the power but also the duty to weigh the public interest of justice to litigants against the public interest asserted by the public authority contrary to its actual conduct. Considering the duty which such bodies owe to the members of the public, it would not be unjust to observe that no public interest immunity could be attached to such bodies."

Lord Denning M. R. reiterated :--

"I regard to it as a matter of high constitutional principle that if there is a good

ground for supposing that a Government department or public authority is transgressing the law, or is about to transgress it, in a way which offends or injures thousands of Her Majesty's subjects, then anyone of those offended or injured can draw it to the attention of the Court of law and seek to have the law enforced, and the Courts in their discretion can grant whatever remedy is appropriate."

By judicial inactivism, the dice will be loaded heavily against the citizen who challenges state action or inaction of the public authorities and there is a fear that Courts may in the process become cheer-leaders for the Government in the dock, rather than guardians of public interest and individual's rights. The real thrust stems from a jurisprudence of public duties and the faith that the rule of law is used as a formula for expressing the fact that the laws of the Constitution are not the source but the consequences of the rights of the individuals as defined and expressed by Courts.

According to Dr. Vern O. Khudsen, a Physicist and former founder of the Acoustical Society of America and also a former Chancellor of the University of California :

"Noise is a slow agent of death."

Another expert in the field Dr. Fabian Rouke of U.S. reporting to the Newyork Committee for a Quiet City said :

"One of the insidious aspects of excessive noise is the fact that an individual may be unconsciously building up nervous tension due to noise exposures. This may cause a person thus exposed to noise suddenly to be catapulted into an act of violence or mental collapse by some seemingly minor sounds which drive him beyond the point of endurance. Many persons who are using tranquilizers may be treating the symptoms rather than the disease."

The continuing deterioration of man's habitual demands a revaluation of the present approach to eco-management. Dr. Wagner who is an authority on the subject of Air Pollution while referring to the adverse effects of air pollution said :

"We are experiencing diseases today from hazards we didn't control yesterday. What we don't take care of today will be there for our children to handle tomorrow."

It would not be inappropriate in the context of Human Rights to reproduce an illustration given by Shue 1979 : 72-5 in regard to the consequences of inaction :

"A man is stranded on an out-of-the-way desert island with neither food nor water. A sailor from a passing ship comes ashore, but leaves the man to die (an act of omission). This is as serious a violation of his rights as strangling him (an act of commission). It is killing him, plain and simple -- indirectly, through "inaction", but just as surely; perhaps even more cruelly."

We are on a larger issue of community interest which concerns the preservation

of environment against pollution hazards posed by deleterious sources of nuisance. The broad question of containment of pollution cannot be oversimplified and dismissed as routine nuisance of which no person of ordinary sense and temper would complain or because rightly or wrongly industries have been permitted to be set up. In the case on hand, the public authorities most closely associated with the issue have chosen to maintain silence and mysterious aloofness failing to meet the allegations made by the petitioners, for reasons best known to them. The State of these authorities who are the concerned respondents in this case, presents a baffling enigma. They do not respond to the grievances of the petitioners and do not lay bare before the Court information either denying or admitting the existence of pollution and the extent of pollution such as emission of noxious gases, toxic wastes, assault on the senses by noise pollution and the like which are imputed by the petitioners in the way they could express. Terminological inexactitude cannot bar legal redress.

What is alleged in substance is persistent pollution which is offensive and detrimental to public health. These allegations have gone without repudiation by the public authorities.

Environment protection is not a preoccupation of the educated and the affluent. It has socio-political dimensions. The disposal and control of toxic waste and governmental regulation of polluting industries is public interest oriented. The effective implementation of environmental legislation is a social learning process which could fundamentally change the character of public administration in the country. From a Global perspective, the struggle to preserve a "livable environment" is a part of a broader struggle to create a more just Global society both within and between nations. The impact of the human dimensions on the economically and educationally disadvantaged who inhabit the developing areas cannot be underscored.

Examples are not wanting of valiant efforts made by public spirited individuals and groups around the world, to repair and restore the damaged natural resources that are crucial to the present and future well being of the nationals relating to essentials such as water, land, wild-life and environment in general, as well as quality of life in particular in cities and towns. In the United States of America, mentioned by Berger, John. J in his book "Restoring the Earth" are illuminating instances :--

- a) A house-wife who led a crusade to clean up a river in Massachusetts;
- b) A California Pharmacist who saved a Red-Wood forest;
- c) A Pennsylvania Mine-Inspector who repaired a strip-mined land;
- d) A Wisconsin architect who saved a town affected by floods and redesigned it as a flood-proof solar village;
- e) A plumber from Cape Cod who transformed a brush-choked ditch into a Trout stream.

He observes that their yeoman services have made human settlements more iconological sound as well as more enjoyable places to live in and that environmentalism is a truly popular movement. I am of the view that it would be incongruous to stifle the present public interest action by applying truncated standards.

The right to life inherent in Art. 21 of the Constitution of India does not fall short of the requirements of qualitative life which is possible only in an environment of quality. Where, on account of human agencies, the quality of air and the quality of environment are threatened or affected, the Court would not hesitate to use its innovative power within its epistolary jurisdiction to enforce and safeguard the right to life to promote public interest. Specific guarantees in Art. 21 unfold penumbras shaped by emanations from those constitutional assurances which help give them life and substance. In the circumstantial context and factual back-drop, judicial intervention is warranted especially since the Supreme Court of India has already laid the foundation of juristic activism in unmistakable language of certainty and deep concern.

By allowing the writ petition, if calamitous consequences visit the concerned respondents as a result of nonfeasance or malfeasance or misfeasance on the part of public authorities or public officials, the doors of justice are open to them to sue the public authorities for pecuniary relief by enforcing the principle of accountability.

29. In the light of the above discussion, I hold that the change in land use in Sy. Nos. 39/1, 39/2A and 39/2B of Ydeiyur-Nagasandra village, Bangalore, from residential to industrial is in contravention of (he Karnataka Town and Country Planning Act, the Outline Development Plan, the Comprehensive Development Plan and Regulations thereunder and that the writ petition is maintainable.

30. For the reasons stated above, the writ petition succeeds and is, therefore, allowed. It is hereby declared that the change in land use in Sy. Nos.39/1, 39/2A and 39/2B of Yediyur-Nagasandra Village, Bangalore, from residential to industrial is violative of the Karnataka Town and Country Planning Act, the Outline Development Plan, the Comprehensive Development Plan and the Regulations thereunder and that all consequential actions relating to such violation in land use are void and illegal. It is further declared that the licences, permissions and certificates of change in land use issued by respondents 9, 14 and 16 for location of industries by respondents 17 to 49 are also void and illegal. A mandamus is issued hereby with a direction to the Corporation of the City of Bangalore and its Health Officer to abate the pollution in Sy. Nos.39/1, 39/2A and 39/2B of Yediyur-Nagasandra village and also a direction to the Bangalore Development Authority to stop operation of the industrial units and to carry out the lay-out work in accordance with law and remove all encroachments in public lands and roads in the area in question and in particular the road leading from 6th Cross Road, Ashokanagar to Raghavendra Swamy Brindavana in Sy. No. 39/2B.

31. Action should be taken by the concerned authorities to implement the order of this Court within sixty days from the date of receipt of a copy of this order.

32. The petitioners are entitled to costs of Rs. 3,000/- (Rupees three thousand only) " from the respondents.

33. Petition allowed.