

**AFR**  
**Reserved**

**Court No. - 21**

**Case :-** WRIT - C No. - 4633 of 2019

**Petitioner :-** Rajendra Prasad Arora And 2 Others

**Respondent :-** State Of U.P. And 2 Others

**Counsel for Petitioner :-** Rajendra Kumar Sharma, Ashutosh Srivastava, S.K. Garg, Shailesh Kumar Yadav

**Counsel for Respondent :-** C.S.C., Anoop Trivedi, Devi Prasad Mishra, Vibhu Rai

**Hon'ble Pradeep Kumar Singh Baghel, J.**

**Hon'ble Piyush Agrawal, J.**

**(Delivered by Hon. Pradeep Kumar Singh Baghel, J.)**

The petitioners have instituted this writ proceedings for quashing of the demand notice dated 20<sup>th</sup> September, 2018 issued by the Allahabad Development Authority, Allahabad (now Prayagraj Development Authority, Prayagraj)<sup>1</sup>, the second respondent, whereby the petitioners have been called upon to deposit a sum of Rs.50,62,774.00 for compounding of their construction, which is commercial, and other charges.

The relevant facts may briefly be stated: the petitioners are owners of a part, an area of 285.32 square meter, of Nazul Free hold Site No. 'Z', Civil Station, Allahabad, which is a part portion of Premises Nos. 14 and 18, New Lal Bahadur Shastri Marg, Allahabad. The said plot was purchased by the petitioners vide registered sale-deed dated 11<sup>th</sup> December, 2009. The petitioners made an application to the second respondent for sanctioning of map of the residential accommodation, which was sanctioned. Later, the petitioners submitted a revised map for change of use of the building from residential to commercial. Upon the said application, the second respondent has issued a fresh notice dated 20<sup>th</sup> September, 2018, whereby apart from other fees the compounding fee for a sum of Rs.21,61,086.00 and the impact fee to a tune of Rs.33,04,148.00

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1 PDA

have been demanded.

The petitioners have averred in the writ petition that the demand notice has been issued on the ground that it relates to commercial use of the building and not for sanctioning the building map afresh. It is stated that demand of impact fee of Rs.33,04,148.00 is totally illegal as it is not provided anywhere in the Uttar Pradesh Urban Planning and Development Act, 1973<sup>2</sup>. Similarly, the compounding fee is also arbitrary and illegal.

It is stated that for the area where the petitioners' plot is situated no zonal development plan has been prepared by the development authority. It is further stated that Section 9 of the Act contemplates preparation of zonal development plan in terms of the master plan and the compounding contrary to the zonal development plan cannot be permitted. Therefore, unless zonal development plan is sanctioned, compounding fee cannot be charged. The development authority has not framed any rule prescribing the rate of imposition of the compounding fee.

It is also stated that the demand of the permit fee, inspection fee and Malwa fee is illegal and against the judgment of this Court in **Smt. Malti Kaul and another v. Allahabad Development Authority and another**<sup>3</sup>. It is averred that the development fee and betterment fee have been highly excessive, arbitrary and contrary to the law laid down by the judgment in the cases of **Virendra Kumar Tyagi v. Ghaziabad Development Authority**<sup>4</sup>, **Smt. Rekha Rani v. State of U.P. and others**<sup>5</sup>, **Smt. Nisha Kumari v. State of U.P. and others**<sup>6</sup>, and **Smt. Malti Kaul (supra)**.

It is averred in the writ petition that there is a nexus between the local builders and the officials of the development authority in demanding the arbitrary and illegal demand against the provisions of the Act. The petitioners have also demanded a free and fair judicial enquiry in this

<sup>2</sup> Act

<sup>3</sup> AIR 1995 All 397

<sup>4</sup> Writ Petition No. 46706 of 1999, decided on 27.10.2005

<sup>5</sup> 2014 (1) ADJ 325 (DB) : (2014) 4 UPLBEC 2789

<sup>6</sup> 2014 (6) ADJ 20 (DB) : (2014) 3 UPLBEC 2139 : 2015 (1) AWC 339

matter, otherwise situation leads to a disastrous development and the purpose and object of the Act would be defeated.

The petitioners have also prayed that this writ petition be converted into the public interest litigation as the authorities are arbitrarily converting the residential areas, which have been earmarked as such in the master plan, into the commercial area. It is stated in a supplementary affidavit that there are only nine bungalows remained on the Elgin Road, which are used purely as residential, and rest of the buildings on the said road are involved in the commercial activities such as marriage hall, nursing home, etc. The second respondent has sanctioned the map for the commercial activities in the residential areas contrary to the master plan. The details of those commercial buildings have been mentioned in Paragraph-7 of the supplementary affidavit.

A counter affidavit has been filed on behalf of the second and third respondents, i.e. the PDA, sworn by the Zonal Officer, Prayagraj Development Authority, Prayagraj. It is stated in the counter affidavit that the development fee, stacking fees, mutation charges and water fees are defined under Sections 2 (ggg), 2 (kk), 2(hhh)(ii) and 2(ll) of the Act respectively. It is also stated that Master Plan-2021 is currently in force with effect from 12<sup>th</sup> August, 2006 and the PDA has also framed the zonal plan for some portion of its development area and it has also framed building bye-laws, which are known as 'Bhawan Nirman Evam Vikas Upvidhi 2008<sup>7</sup>' (as amended upto 2016). The Building Bye-laws have been framed for planned development of the area and so long the zonal development plans are not prepared under Section 9 of the Act, the authority with the previous approval of the State Government may make bye-laws consistent with the Act. The demand of sub-division charges and other charges have been justified in the counter affidavit. It is further stated that the compounding bye-laws have been circulated by the State Government vide order dated 14<sup>th</sup> January, 2010 in the form of model

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7 Building Bye-laws

compounding bye-laws. It was placed before the Board of the PDA for consideration of the matter in its Board Meeting dated 07<sup>th</sup> May, 2010 and it was adopted. Hence, no further approval of the State Government is required. In Paragraph-51 of the counter affidavit it has been admitted that the zonal development plans are not prepared, hence in view of the provisions of Section 57(e) of the Act the bye-laws may provide for approval for division of any site into plots. The Building Bye-laws have been approved by the Board in its meeting dated 22<sup>nd</sup> December, 2011. For the sake of convenience, Paragraphs-52, 67 and 68 of the counter affidavit are reproduced as under:

*“52. That, the Allahabad Development Authority, Allahabad has, with the previous approval of the State Government, already adopted the Building Bye-laws in its Board meeting dated 22.12.2011. The Building Bye-laws contain provisions regarding the division of any site into plots for the erection of building. Chapter 2.2 of the Building Bye-laws contains provisions for open spaces (park, etc.) which are required when the layout plan is sanctioned for sub-division of any site. Thus sub division of any land can only be carried out after obtaining permission from the Vice Chairman of the Authority, in accordance with the provisions of the Building Bye-laws. A true copy of the relevant portion of Building Bye-laws, framed by the Allahabad Development Authority, as referred to above is being filed herewith and marked as **Annexure 'CA-1'** to this Counter Affidavit.*

*67. That as regards change of the residential area to the commercial area and approval of the State Government to such action of the Development Authority, provision have been made in Section 13 and section 38-A of the Act.*

*68. That furthermore Master Plan 2021 and Zone Plan B-4 permits certain commercial and other activities in residential area subject to fulfillment of certain conditions laid down in the Master/Zonal Plan itself and on payment of impact fees.”*

A supplementary counter affidavit has also been filed on behalf of the PDA. It is stated therein that the Master Plan-2021, which is in force

at present, has been amended four times on 11<sup>th</sup> July, 2011, 20<sup>th</sup> June, 2013, 30<sup>th</sup> June, 2015 and 01<sup>st</sup> May, 2018 after following the procedure. By the amendment dated 11<sup>th</sup> July, 2011 the land use of the land contained in certain areas have been changed from industrial (Kuteer Udyog) to residential (R-2). Similarly, by the amendment dated 20<sup>th</sup> June, 2013 the land use pertaining to Village Abusa and Sarfuddinpur, Prayagraj has been changed from agricultural to technical/management institution. Vide amendment dated 30<sup>th</sup> June, 2015 the land use pertaining to Village Jalalpur Ghosi, Tehsil Sadar, Allahabad has been changed from agricultural to residential. By the amendment dated 01<sup>st</sup> May, 2018 the land use pertaining to Village Ravatpur and Jalalpur Ghosi, Tehsil Sadar, Prayagraj has been changed from agricultural to educational institutions/technical institutions. In the Master Plan-2021 the city has been divided into 12 zones and the zones have been further divided into sub-zones.

We have heard Sri Ravi Kant, learned Senior Advocate, assisted by Sri S.K. Garg and Sri Rajendra Kumar Sharma, learned counsel appearing for the petitioners, and Sri Anoop Trivedi, learned Senior Advocate, assisted by Sri Vibhu Rai, learned Advocate, for the second and third respondents- PDA.

Sri Ravi Kant, learned Senior Counsel appearing for the petitioners, has submitted that the PDA has failed to prepare the zonal development plan even after lapse of 13 years. Only one zonal development plan for one zone has been prepared recently, that too is contrary to the master plan. He has invited our attention to the Master Plan-2021, Table No. 9.1 at Page 30, to demonstrate that 36.11 per cent land is earmarked for residential areas and only 2.43% area is shown for commercial activities. This ratio has been drastically changed in the zonal development plan of Zone B-4, which has been prepared, wherein commercial area has been arbitrarily increased to 12%, which is unreasonable and illegal.

He has also invited our attention to the zonal development plan for Zone B-4, wherein it is mentioned that in civil lines zone there are already

several shopping and commercial establishments to cater the need of the residents of the zone, hence there is no need to allow commercial activities in the residential areas under the garb of the mixed zones.

It is next urged that the concept of mixed zone is contrary to the master plan having regard to the fact that in Zone B-4 there are several markets, hotels, big-bazar and several shopping complexes. He has drawn our attention to Page 12 of the zonal development plan, wherein this fact is recorded. He has further urged that in larger interest of the city this Court can examine the other issues relating to planned development of the city. The Court has summoned the records and sufficient opportunity has been furnished to the respondents, therefore, the Court can examine the issue regarding mixed zone and changing residential areas to mixed area, which is contrary to the master plan.

It is submitted that under Article 226 of the Constitution this Court has ample power to examine the legality of the action of the development authority if it is found that its action is against the provisions of the Act.

Sri Anoop Trivedi, learned Senior Counsel appearing for the PDA, has submitted that it is true that the zonal development plan for only one zone has been prepared in 2011 but under Section 57(e) of the Act the development authority has power that so long the zonal development plans are not prepared, the development can be made in terms of the bye-laws. He has justified the imposition of various charges such as permit fee, inspection fee, malwa fee, development fee and betterment fee. He has submitted that the issue with regard to some of the above mentioned charges is pending before the Supreme Court, hence it would be appropriate to wait the judgment of the Supreme Court in respect of those charges.

Sri Trivedi has very fairly submitted that he has no explanation to offer in respect of the inordinate delay in preparing the zonal development plans in terms of Section 9 of the Act.

Sri Anoop Trivedi with the help of the Town Planner, who is present in the Court, has placed before us the original records, master plan, one of the zonal development plans and various other records.

Before we advert to the rival submissions advanced at the Bar, we think it appropriate to examine the relevant statutory provisions at play in the instant case.

The Act i.e. the Uttar Pradesh Urban Planning and Development Act, 1973 was enacted with an object for the development according to plan of the area, which is declared as development area. Chapter II of the Act deals with declaration of the development areas, constitution of the development authority, etc.. Section 7 under Chapter II of the Act enumerates the objects of the authority, it provides that the object of the authority shall be to promote and secure the development of the development area according to the plan and to execute works in connection with supply of water and electricity, to dispose of sewage and to provide and maintain other services and amenities.

Chapter III of the Act deals with the Master Plan and Zonal Development Plan. The provisions under this chapter of the Act are material for our purposes. Section 8 of the Act provides for master plan for the development area. It lays down that the development area shall be divided in various zones indicating the manner in which the land in each zone is proposed to be used. It also provides that the master plan shall be a basic pattern of the framework within which the zonal development plans of various zones may be prepared. Section 8 of the Act reads thus:

***“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 plan 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.”*

Section 9 of the Act deals with zonal development plans. Under Section 8 the master plan provides a basic pattern within which the zonal development plans are prepared. It gives more details about the land uses proposed in the zones, such as, public buildings, industry, business, markets, schools, hospitals and open spaces, etc. The zonal development plan is to be prepared simultaneously with the master plan or soon thereafter. Section 9 of the Act reads as under:

**“9. Zonal Development Plans.—(1)** *Simultaneously with the preparation of the master plan or as soon as may be thereafter, the Authority shall proceed with the preparation of a zonal development plan for each of the zones into which the development area may be divided.*

*(2) A zonal development plan may—*

*(a) contain a site-plan and use-plan for the development of the zone and show the approximate locations and extents of land uses proposed in the zone for such things as public buildings and other public works and utilities, roads, housing, recreation, industry, business, markets, schools, hospitals and public and private open spaces and other categories of public and private uses;*

*(b) specify the standards of population density and building density;*

*(c) show every area in the zone which may, in the opinion of the Authority, be required declared for development or re-development; and*

*(d) in particular, contain provisions regarding all or any of the following matters, namely—*

*(i) the division of any site into plots for the erection of buildings;*

*(ii) the allotment or reservation of land for roads, open spaces, gardens, recreation-grounds, schools, markets and other public purposes;*

*(iii) the development of any area into a township or colony and the restrictions and conditions subject to which such development may be undertaken or carried out;*

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*(vii) the number of residential buildings which may be erected on plot or site;*

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*(ix) the prohibitions or restrictions regarding erection of shops, workshops, warehouses or factories or buildings of a specified architectural feature or buildings designed for particular purposes in the locality;*

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*(xi) the restrictions regarding the use of any site for purposes other than erection of buildings;”*

Section 11 of the Act enjoins the procedure to be followed in the preparation and approval of the master plan and the zonal development plan. It says that the authority shall prepare a plan in draft and publish it inviting suggestions/ objections from the residents with respect to the draft plan. Similar opportunity is to be given to the local authorities. After considering all the objections, suggestions and representations received by the authority, a final plan is prepared and is submitted to the State Government for its approval. Once the plan is approved by the State Government, the plan comes into operation. Chapter III-A of the Act provides for the arterial roads in development area. Chapter IV of the Act deals with amendment of the master plan and the zonal development plan. Section 13 of the Act says that the authority may make any amendment in the master plan or the zonal development plan, but it shall not effect the

important alterations in the character of the plan and which do not relate to the extent of land uses or the standards of population density. The State Government also can make the amendments in the master plan or zonal development plan. Sub-section (3) of Section 13 provides that before making any amendment in the plan, the State Government or the authority, as the case may be, shall publish a notice in at least one newspaper having circulation in the development area inviting objections and suggestions in respect of the proposed amendment from the residents. Similarly, if the authority makes any amendment in the plan, it shall report to the State Government the full particulars of such amendments within the stipulated period i.e. thirty days.

Chapter V deals with development of the land. Basically this chapter is meant for sanctioning of the maps for the residential and commercial activities. Section 14 prohibits that no development of the land shall be undertaken by any person or body unless permission for such development has been obtained in writing from the Vice-Chairman. Section 15 of the Act provides the procedure for permission. Chapter VI of the Act deals with acquisition and disposal of the land. Chapter VII provides for finance, accounts and audit. Chapter VIII provides for supplemental and miscellaneous provisions. Section 26 prescribes the penalties. Section 27 provides for order for demolition of building. Section 28-A gives power to seal such buildings and Section 32 speaks for composition of offences. The other provisions under this Chapter deal with assessment of betterment charges, additional stamp duty, toll for amenities, mode of recovery. Section 41 enumerates the power of control by the State Government.

A perusal of Sections 8 and 9 of the Act shows that the master plan and the zonal development plans are inter dependent. The master plan is a basic pattern of the framework, which indicates that a development area/city shall be divided in various zones and the manner in which the land in each zone is proposed to be used. Section 9 enjoins that the zonal

development plans shall be prepared simultaneously with the master plan or as soon as may be thereafter for the reason that the master plan broadly lays down the use of the land in each zone. It also indicates the manner in which the land is to be utilized in each zone. Thus, the master plan only provides to define the various zones, into which the development area may be divided for the purpose of development. It serves as basic pattern. The other details such as industry, business, markets, schools, hospitals, open spaces, etc. are not provided in the master plan but it is provided in the zonal development plans. Thus, from the scheme of the Act it is evident that the master plan and the zonal development plans are complimentary to each other. Without zonal development plan the main object of the provisions of the Act will be frustrated as the open spaces, markets, residential areas and other public works utilities are not provided in the master plan. The zonal development plan contains a site plan which indicates the existence of the land use proposed in the zone regarding markets, business and housing, etc., but it cannot change the manner indicated in the master plan in each zone. If the master plan indicates that a portion of the area has to be utilized for residential or commercial, that cannot be altered in the zonal development plan. In any view of the matter, the zonal development plan cannot override the master plan. The development is to be done within the manner indicated in the master plan.

Learned counsel for the PDA has produced the Allahabad Master Plan-2021 and the Zonal Development Plan, Zone B-4 prepared under the Master Plan-2021, which have been taken on the record with the consent of learned counsel for the parties.

The current master plan for the Allahabad/ Prayagraj has been approved by the State Government under Section 12 of the Act on 13<sup>th</sup> July, 2006 and the notice has been published stating therein that the State Government has approved the master plan and the plan has come into operation.

The PDA in its Board meeting dated 23<sup>rd</sup> July, 2003 proposed the

Draft Master Plan-2021 and the objections were invited by public notice published in the Northern India Patrika. The Board in its meeting held on 13<sup>th</sup> October, 2005 finalized the Master Plan and it was sent for approval to the State Government. In the master plan, which is on the record, it is clearly mentioned that in the last ten years more than 50 land uses have been changed by the development authority and the matter has been referred to the State Government. The change of the land use is in respect of about 200-250 hectares, which indicates that not only the PDA but the private builders also have illegally and unauthorisedly made the development contrary to the master plan. The relevant part of the Master Plan-2021 under its Part-1, Paragraph '2.0 Mahayojna ka Mulyankan' is extracted below:

“... इस विश्लेषण से यह स्पष्ट है कि न केवल इलाहाबाद विकास प्राधिकरण द्वारा बल्कि निजी बिल्डर्स/ कोलोनाइजर्स द्वारा भी भू-उपयोगों के विपरीत अनधिकृत विकास किया गया है। इसके अतिरिक्त वर्तमान परिप्रेक्ष्य में इलाहाबाद पुनरीक्षित महायोजना-2001 से सम्बंधित तथ्यों का विस्तृत विवेचन नयी महायोजना बनाने का औचित्य सुस्पष्ट करता है, जिसका विवरण अधोलिखित प्रस्तारों में दिया गया है।”

In the master plan, Table No. 3.1 deals with comparison of land use in the earlier Master Plan-2001 and the current master plan. In the Master Plan-2001 the total proposed area was 21,689.53 hectares, out of which an area of 7622.24 hectares i.e. 35.14% of the total was earmarked for residential area; the commercial area was only 545.43 hectares i.e. 2.51%; industrial area was 1217.81 hectares i.e. 5.61%; for office the area was 1871.09 hectares i.e. 8.63%; and park/open space was 1541.40 hectares (7.11%). For the sake of convenience, Table No. 3.1 given at page-11 of the Master Plan-2021 is reproduced below:

“तालिका संख्या-3.1

पूर्व महायोजना में प्रस्तावित एवं वर्तमान भू-उपयोगों का तुलनात्मक विवरण

सम्पूर्ण नगर क्षेत्र				क्षेत्रफल (हेक्टेयर में)			
क्र० सं०	भू-उपयोग	पूर्व महायोजना में प्रस्तावित	प्रतिशत	वर्तमान भू-उपयोग वर्ष 2002	प्रतिशत	अन्तर (अविकसित क्षेत्र)	प्रतिशत

		भू-उपयोग वर्ष 2001		(विकसित क्षेत्र)			
1	2	3	4	5	6	7	8
1.	आवासीय	7622.24	35.14	5831.46	61.91	-1790.78	-14.59
2.	व्यावसायिक	545.43	2.51	393.68	4.18	-151.75	-1.24
3.	उद्योग	1217.81	5.61	482.80	5.13	-735.01	-5.99
4.	कार्यालय	1871.09	8.63	315.44	3.35	-1555.65	-12.68
क	कार्यालय	335.09	1.54	315.44	3.35	-19.65	0.16
ख	अपरिभाषित क्षेत्र	1536.00	7.08	—	—	-1536.00	-12.52
5.	पार्क / खुले स्थल	1541.40	7.11	140.14	1.49	-1401.26	-11.42
6.	कुम्भ मेला	921.08	4.25	—	—	-921.08	-7.51
7.	सांस्कृतिक एवं धार्मिक स्थल	69.00	0.32	19.00	0.20	-50.00	-0.41
8.	सार्व0 एवं अर्द्ध सार्व0 सुविधायें	571.24	2.63	607.84	6.45	36.60	0.30
क	शिक्षा	495.52	2.28	524.60	5.57	29.08	0.24
ख	स्वास्थ्य	75.72	0.35	83.24	0.88	7.52	0.06
9.	सार्व0 उपयोगिताएं एवं सेवायें	1660.53	7.66	39.37	0.42	-1621.16	-13.21
10.	यातायात एवं परिवहन	2434.80	11.23	1588.76	16.87	-846.04	-6.89
11.	अन्य उपयोग	3234.91	14.91	—	—	-3234.91	-26.36
	योग	21689.53	100.00	9418.49 (43.42%)	100.00	12271.04 (56.58%)	100.00”

Table No. 10.7 of the Master Plan-2021 has divided the residential area in the low density area, medium density area and high density area. Likewise, the commercial area has also been divided in retail business, wholesale business, district center, warehouse, etc.

In the entire counter affidavit filed on behalf of the PDA sworn by the Zonal Officer it has not been mentioned that when the Master Plan-2021 has been approved by the State Government nor the date of commencement of the zonal development plan has been mentioned. However, to the specific query of the Court, in the supplementary counter affidavit it is mentioned that the State Government has approved the Master Plan-2021 on 13<sup>th</sup> July, 2006.

On 26<sup>th</sup> August, 2019 during the course of hearing when the Court was apprised that the Master Plan-2021 was enforced in the year 2006 but the zonal development plan is yet to be prepared, the PDA was directed to file a better affidavit indicating the following facts:

*“After hearing learned counsel for the parties we deem it appropriate to direct the development authority to file an affidavit indicating the following facts:*

*(1) If the Master Plan of the Allahabad (now Prayagraj) has been amended, the order of the State Government/ development authority be brought on the record giving the detail of the procedure adopted for the said amendment.*

*(2) It is stated that the Zonal Plan has been approved only in respect of one zone i.e. Zone B-4(1). There are total 7 zones in Allahabad. Zone-B has five sub-zones. However, the Zonal Plan for one of the sub-zones B-4 has been prepared. Regard may be had to the fact that Section 9 of the Uttar Pradesh Urban Planning and Development Act, 1973 requires that zonal plan should be prepared simultaneously with the master plan or as soon as possible. The respondent-development authority shall furnish the reason for the delay of more than five years and shall also state that under which Zonal Plan the maps in respect of the residential and commercial areas have been sanctioned between 2006, when the Master Plan was notified, and 2011, when the Zonal Plan for one of the sub-zones B-4(1) has been notified. During this period how the maps have been sanctioned in absence of zonal plan?*

*(3) When the Zonal Plan in respect of the entire city shall be prepared?*

*(4) Learned counsel for the development authority has apprised us that the State Government vide various Government orders has permitted the change of the land use. All the orders of the State Government changing the land use be brought on the record.*

*The aforesaid facts be brought on the record by way of a counter affidavit sworn by the Vice-Chairman/ Secretary of the development authority.”*

In compliance with the said order, a supplementary counter affidavit has been filed on behalf of the PDA sworn by the Secretary of

the PDA. In the supplementary counter affidavit it is mentioned that the Master Plan-2021, which is in force, has been amended four times i.e. on 11<sup>th</sup> July, 2011, 20<sup>th</sup> June, 2013, 30<sup>th</sup> June, 2015 and 01<sup>st</sup> May, 2018 after following the procedures. It is mentioned in the supplementary affidavit that by the amendment dated 11<sup>th</sup> July, 2011 the land use of the land contained in Mauzas (Villages) Sulem Saray, Harwara and Jayrampur, Tehsil Sadar, District Allahabad have been changed from Industrial (Kuteer Udyog) to Residential (R-2). Similarly, by the amendment dated 20<sup>th</sup> June, 2013 also the land use has been changed from agricultural to technical/ management institution and by the amendment dated 30<sup>th</sup> June, 2015 the land use has been changed from agricultural to residential. Vide amendment dated 01<sup>st</sup> May, 2018 the land use has been changed from agricultural to educational institutions/ technical institutions. It is also mentioned that the current master plan was prepared in 2006 and it is still in operation till 2021.

It is further averred in the supplementary counter affidavit that in the Master Plan-2021 the city has been divided into 12 zones. It is also averred that the zones have been further divided into sub-zones. Sub-Zone 4 is having an area of 606.40 hectares. However, the zonal development plan could be prepared for only one sub-zone i.e. B-4, which has been approved on 07<sup>th</sup> March, 2011. For the sake of clarity, Paragraph-13 of the supplementary counter affidavit is quoted below:

*“13. That it is stated that the present Master Plan 2021 has been approved by the State Government on 13.07.2006. It is stated that though there are 12 zones in which the city has been divided however the zonal development plan could be prepared on only one sub-zone i.e. B-4 which has been approved on 7.3.2011.”*

In Paragraph-18 of the supplementary counter affidavit it is stated that the zonal development plan is highly technical process but still the authority is under process for completing two more zonal development plan of Zone- 'I' & 'J'. Paragraph-18 of the supplementary counter affidavit is also reproduced below:

*“18. That further the zonal plan which is highly technical process but still the authority is under process for completing two more zonal development plan of zone 'I' & 'J'.”*

From the aforesaid averments made in the supplementary counter affidavit it is evident that although the master plan has been sanctioned by the State Government on 13<sup>th</sup> July, 2006, the zonal development plan except for one zone has not been prepared. Even the only zonal development plan, which has been prepared, was approved on 07<sup>th</sup> March, 2011 i.e. after about five years and in respect of rest 11 zones there is no zonal development plan of the development area and all the development works are carried out or are still in progress or have been made without any development plan since 2006 onwards i.e. about 13 years.

Pertinently, in a public interest litigation, being **Public Interest Litigation (PIL) No. 67235 of 2014 (Ashok Kumar and others v. Nagar Nigam Allahabad and others)**, the issue with regard to increased commercialization in the residential areas cropped up. A Division Bench of this Court, after furnishing opportunity to the respondents therein, vide order dated 01<sup>st</sup> September, 2016 has observed that approval of maps for construction of non-residential buildings is given only on the basis of width of the road and no impact assessment has been made before sanctioning of the map. It was mentioned that while sanctioning a new project the development authority has to consider the viability and compatibility in the area in question and whether the existing municipal facility and infrastructure were sufficient to warrant the creation of additional commercial or mixed use establishment. In this regard certain directions were issued to the development authority. The relevant part of the order is extracted below:

*“...ADA had been required to disclose the nature of the impact assessment study, which it undertook, if at all, before the sanctioning of maps. The impact assessment which was envisaged by this Court was with respect to an empirical exercise being undertaken by the Authority while sanctioning a new project*

*bearing in mind its viability and compatibility in the area in question and whether the existing municipal facilities and infrastructure were sufficient to warrant the creation of an additional commercial or mixed use establishment. An impact assessment of a new structure cannot be said to have been achieved on the back of mere NOC's being obtained from other departments. When the Authority proceeds to accord permission to a particular plan, it is presumed to have assessed the viability of the project coming up in the area concerned. This would necessarily entail a study with regard to the number of additional units or persons who would occupy the area, the additional burden on existing infrastructure in the area, whether the existing facilities would sustain the creation of new buildings and structures and other allied aspects. Unfortunately we note that no such exercise is presently undertaken by the ADA nor does such a study appear to precede its decision to sanction a new project. It was in the above backdrop that we had called upon the ADA to disclose on affidavit the reasons and justifications for the proposed change of user of residential pockets in the city to either commercial or mixed use purposes. We find that the disclosure made fails to address these issues and we would perhaps be justified in recording our conclusion that no impact assessment is actually undertaken by it.... The sanction of a map in our opinion would necessarily involve an examination of the project both from a micro as well as macro angle. Merely because a particular area is earmarked as commercial or for mixed use does not empower the Authority to permit the creation of any number of new structures without an empirical impact assessment being undertaken. We therefore, direct the Chief Town Planner as well as the Vice Chairperson of the ADA to forthwith formulate appropriate guidelines for impact assessment which must be undertaken before the sanction of a map. The draft guidelines shall be placed upon the affidavit of the Vice Chairperson before this Court on the next date fixed. We further put the Authority to notice to comply with the earlier directions issued by the Court on 27 May 2016 and 14 July 2016 and file a complete and full disclosure in respect of the issues which have remained unanswered. The Vice Chairperson, shall while filing his affidavit also bring on record the interpretation which the Authority seeks to accord to*

*Bye-law 1.2.26 in respect of sanction of maps for residential, commercial and mixed use constructions.”*

The Chief Town Planner, who was present in the Court with the record to assist us along with Sri Anoop Trivedi, learned Senior Counsel appearing for the PDA, has failed to satisfy us regarding compliance of the directions issued by the Division Bench in the above mentioned case of **Ashok Kumar (supra)**. Moreover, from the material on the record and the original record, which was produced before us, we find that there is no material to demonstrate that the said direction has been complied with by the development authority. A large number of multi-storied buildings, hospitals, showrooms, banks and other commercial activities have been sanctioned by the development authority in the last few years indiscriminately in the residential areas without any impact assessment.

Recently, a Division Bench of this Court, presided over by Hon'ble the Chief Justice, in a writ petition, being **Misc. Bench No. 22182 of 2019, Smt. Radha Rani Singh v. State of U.P. and others**, vide order dated 16<sup>th</sup> September, 2019 has found that the Lucknow Development Authority has also failed to prepare the zonal development plans as provided under Section 9 of the Act. The Division Bench in the said case has observed as under:

*“The non-preparation of the zonal plan for more than 50 years is clearly a case of frustrating the mandate cast by the 1973 Act. This Court cannot overlook the fact that the 1973 Act casts a duty on the development authorities which have to be discharged in terms of the mandate and not doing so for a period of 46 years, cannot be accepted.”*

The Division Bench has issued directions to all the development authorities in the State of Uttar Pradesh, which are governed under the provisions of the Act, in the following terms:

*“...In view of the statutory provisions, the facts brought before us as well as the judgment of the Apex Court in the case of **Chairman, Indore Vikas***

***Pradhikaran***<sup>8</sup> (*supra*), we issue the following directions at this stage:

(i) *The development authorities in the entire State of Uttar Pradesh shall take steps for preparation, its finalization and approval of the Master Plan of all the development areas notified till date, if not already done.*

(ii) *All the development authorities in the State of Uttar Pradesh shall initiate the steps for preparation of the zonal plan for all the development areas in accordance with the procedures specified in the Act and in consonance with Section 9 of Uttar Pradesh Urban Planning and Development Act, 1973 within a period of one year from today. The Urban Planning Department of the State of Uttar Pradesh shall ensure the compliance of the directions given above and it shall be the duty of the Secretary, Urban Planning Development to ensure that the directions given by us are complied with within the specified time frame.*

(iii) *The Secretary, Urban Development, State of Uttar Pradesh, is directed to file a report with regard to steps taken in pursuance to the directions given above by the next date.”*

**Mixed Area:**

As can be seen from the master plan of the city of Prayagraj, there is no provision in the master plan for the mixed use of the land. In other States in some of the master plans there are provisions for the concept of mixed use but that is also based on subject to socio-economic status of the neighbourhood and in case the mixed area is allowed in the residential areas, the environmental impact and providing of safe and convenient circulation and parking are also taken into consideration. One of the main objects to allow such mixed use is to allow access to commercial activity in the proximity of the residential area and to reduce the need for the travelling across the zone in the city. While allowing mixed area, the associated adverse impacts relating to traffic congestion, increased parking and increased pressure on civic amenities have also to be taken

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<sup>8</sup> Chairman, Indore Vikas Pradhikaran vs. Pure Industrial Coke & Chemicals Limited and others, (2007) 8 SCC 705

into consideration.

The affidavits filed on behalf of the PDA and the original records produced before the Court do not show that any such impact has been considered by the PDA, with the result that in most of the residential areas the residents are made to suffer due to traffic congestion and pollution in their area on account of the commercial activities.

It is also significant to mention that initially in the residential areas there was no permission to carry out the commercial activities. The people have built their houses in the residential areas for peaceful living in proper environment. If indiscriminate permission is granted under the fresh decision taken by the development authority on the ground of mixed area and in the residential areas the commercial activities are allowed, it would not be safe for the children of the residential areas to come out from their houses as in their neighborhood, where the commercial activities are allowed, a large number of vehicles will ply with the result that the children will have to be indoor for the entire day for their safety. This will adversely affect their proper development and health.

In addition to safety of the children, the senior citizens of the residential areas would also suffer. There would be an environmental impact on the quality of air in the area due to movement of the cars, two wheelers and other vehicles. The mixed zone can be allowed in those cities where the residents have to cover a long distance for the purposes of shopping of essential commodities and as such, even in the master plan where mixed area is allowed, only a limited shops of the public utility such as petty general merchant shops, stationary, milk booth, STD/ fax/ internet centres/ATMs, hair-dressers and beauty parlours, bakery and sweetmeat, mutton stalls, small repairing centres of electrical and mechanical items, etc. are allowed.

Regard may be had to the fact that in Civil Lines (B-4 Zone) it is mentioned that a large number of commercial facilities like malls,

shopping centers, etc. are existing. The relevant part of Chapter-2 of the Zonal Development Plan, Zone B-4, at its page-12 under Paragraph-2.1.4 is extracted below:

**“2.1.4 व्यवसायिक**

महायोजना में सामान्य व्यवसाय एवं नगर/जिला केन्द्र के अन्तर्गत 64.53 हेक्टेयर भूमि आरक्षित की गई है, जिसके सापेक्ष वर्तमान में 29.80 हेक्टेयर भूमि विकसित की जा चुकी है। वर्तमान में सिविल लाइन्स जोन में प्रमुख रूप से बिग बाजार, सिटी स्काइल तथा विशाल मेगा मार्ट सालासर एवं पी0वी0आर0 माल आदि अत्याधुनिक सुविधाओं से युक्त प्रतिष्ठान विद्यमान है। उपरोक्त के अतिरिक्त इस क्षेत्र में कई बड़े होटल, रेस्टोरेन्ट एवं अनेक व्यावसायिक प्रतिष्ठान भी स्थित है।”

As discussed above, the master plan of Allahabad/ Prayagraj does not envisage the mixed area in the residential areas. The zonal development plan has not been prepared for the entire city. The zonal development plan has been prepared for only one zone i.e. Zone B-4, wherein the commercial area is shown to be 12%, whereas the total commercial area in the master plan of the city is 2.4%.

It is significant to mention that Table No. 10.1 of the master plan indicates, amongst other, total zonal area, residential area in the zone, population in the zone and the average population density which are also relevant for the issue at hand. The total area of the main city has been shown to be 13249.02 hectares, its residential area is 5270.48 hectares, population is shown to be 950000 and the density of the population is 72. In Zone-A total area is shown to be 639.00 hectares, residential area is 343.00 hectares, its total population is 69900 and population density is 109; in Zone-B total area is 2531 hectares, residential area is 1051.78 hectares, population is 180400, density is 71; in Zone-C total area is given as 822.00 hectares, residential area is 426.00 hectares, its population is 82300 and density is 100; in Zone-D total area is 1005.00 hectares, residential area is 269.00 hectares, its population is 44800 and density is 45. The population density in these zones clearly indicate that these are the high density areas. In such situation if the commercial activities are allowed in high density and medium density areas, there

would be serious impact on the environment and the residents of these areas shall suffer due to environmental problems. The most adversely affected persons will be the senior citizens and the children, who would not be able to move freely even in front of their houses due to haphazard traffic and movement of the vehicles in their neighborhood due to commercial activities.

Our attention has been drawn to the provisions of Section 26-D of the Act, which provides penalty for not preventing encroachment. This Section has been inserted by Section 7 of the U.P. Act No. 3 of 1997. Section 26-D of the Act reads as under:

***“26-D. Penalty for not preventing encroachment.—Whoever specially entrusted with the duty to stop or prevent the encroachment or obstruction under this Act or any other Act, rules or bye-laws wilfully or knowingly neglects or deliberately omits to stop or prevent such encroachment or obstruction shall be punishable with simple imprisonment for a term which may extend to one month or with fine which may extend to ten thousand rupees or with both.”***

From a perusal of the said section it is evident that if the official, who is entrusted with the duty to prevent the encroachment or obstruction, fails to stop or prevent encroachment, he/she shall be punishable with the simple imprisonment or fine.

We have asked the learned Standing Counsel and the learned counsel for the PDA that after insertion of the said section whether final action in terms of Section 26-D of the Act has been taken, we are informed that not even in a single case action against the officials, who neglects to prevent or stop encroachment or obstruction, has been taken.

The intention of the Legislature in inserting Section 26-D in the Act in the year 1997 appears to be to fix the responsibility on the official(s), who fails to perform his duty. One of the objects of this section is for the deterrence that if the encroachments or the illegal constructions are

checked at the very initial stage, in that event no further consequential action such as sealing of the building or demolition will be necessary. As observed by the Supreme Court in the above mentioned cases, the encroachment and illegal constructions in haphazard way cannot be possible without the connivance of the State officials. We are surprised to note that although the State has carried out a demolition drive in this city and the other parts of the State rigorously and a spate of writ petitions have been filed in this Court against the order of demolition, yet the provisions of Section 26-D have not been resorted to. This fact itself indicates that a large number of illegal constructions have been allowed to take place, which has necessitated for the demolition but no action in terms of Section 26-D of the Act has been taken by the State. If the Legislature has amended the Act and has provided the penalty, it cannot be frustrated by the inaction on the part of the State and its functionaries. The inaction on the part of the State functionaries to take recourse to Section 26-D of the Act against the erring officials has made the said provision redundant and meaningless. The object of the Legislature cannot be frustrated by the casual approach of the State functionaries by ignoring the negligence on the part of its officials, who have failed to perform their statutory duties cast upon them under Section 14 of the Act.

In our opinion, if an illegal construction is raised without sanction of the map, the State and the development authorities should take note of Section 26-D of the Act and the corresponding responsibility should be fixed against the erring official in whose period the illegal construction was allowed to be raised and appropriate action in term of Section 26-D of the Act be taken against the official concerned.

In addition to Civil Lines, there are other big markets in this city such as Katra, Chowk, Jonhstonganj, Khuldabad, Govindpur, Teliyarganj, Sulem Sarai, Mundera, Rajapur, Mutthiganj, etc. These commercial areas are situated within a short distance from each other and it hardly takes 5-10 minutes to reach these markets. For instance, one of the oldest

shopping places i.e. Civil Lines and Katra market are situated hardly at a distance of 1 Km.; distance from Katra to Teliyarganj is less than 2 Kms.; Civil Lines to Jonhstonganj is barely 1 Km.; distance between Civil Lines and Chowk is less than 1 Km.. The entire area of Rajapur is commercial. In such background, the decision of the PDA to further allow the mixed area in the residential areas is unreasonable and unjustified. It shall have a serious environmental impact on the residents of the residential areas especially on the health of the senior citizens and the children, who will be affected by the pollution. Hence, in our opinion, having regard to the harsh ground level reality in the city of Prayagraj no further commercial activities should be allowed in the residential areas.

The Supreme Court in a long line of decisions has considered the impact of violation of the master plan and the commercial activities in the residential areas.

In **R.K. Mittal and others v. State of Uttar Pradesh and others**<sup>9</sup> the Supreme Court in Paragraphs-56, 58, 68 and 72 has observed as under:

*“56. The running of a bank or a commercial business by a company in the residential sector is certainly not permissible. In fact, it is in patent violation of the Master Plan, Regulations and the provisions of the Act. We see no power vested in the Development Authority to permit such user and ignore the misuse for such a long period.*

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*58. The conduct of the authorities, prior to institution of the writ petitions in the High Court, showed uncertainty and wavering of mind in its decision-making processes. In fact, it was expected of the Development Authority to take a firm and final decision and put at rest the unnecessary controversy raised by its proposal. However, once the writ petitions were filed, thereafter, the stand of the Development Authority has been consistent and unambiguous. In the counter affidavit filed in this*

*Court, it has been stated that even in case of grant of permission to the above stated two banks, no extension was granted and in fact show cause notices have been issued to all the banks in the residential sector to wind up their activities and move out of the residential sector. It is the definite case of the Development Authority that banking activity is a commercial activity and therefore, cannot be carried on in the residential sector, more particularly on the plots in question. In regard to Sector 19, a specific averment has been made in the affidavit of the Development Authority that the land use is residential alone and is neither commercial nor mixed. As per the Master Plan, its primary use is “residential” where plots are planned for residential purpose alone. It is, therefore, abundantly clear from the pleadings on record that commercial activity of any kind in the residential sector is impermissible. These pleadings are in conformity with the statutory provisions and the Master Plan.*

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*68. The Master Plan and the zonal plan specify the user as residential and therefore these plots cannot be used for any other purpose. The plans have a binding effect in law. If the scheme/Master Plan is being nullified by arbitrary acts and in excess and derogation of the power of the Development Authority under law, the Court will intervene and would direct such authorities to take appropriate action and wherever necessary even quash the orders of the public authorities.*

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*72. From the above dictum of this Court, it is clear that environmental impact, convenience of the residents and ecological impact are relevant considerations for the Courts while deciding such an issue. The law imposes an obligation upon the Development Authority to strictly adhere to the plan, regulations and the provisions of the Act. Thus, it cannot ignore its fundamental duty by doing acts impermissible in law. There is not even an iota of reason stated in the affidavits filed on behalf of the Development Authority as to why the public notice had been issued without amending the relevant provisions that too without following the procedure prescribed under law.”*

In **Machavarapu Srinivasa Rao and another v. Vijayawada, Guntur, Tenali, Mangalagiri Urban Development Authority and others**<sup>10</sup> the Supreme Court has held thus:

*“20. An analysis of the above noted provisions shows that once the master plan or the zonal development plan is approved by the State Government, no one including the State Government/ Development Authority can use land for any purpose other than the one specified therein. There is no provision in the Act under which the Development Authority can sanction construction of a building, etc. or use of land for a purpose other than the one specified in the master plan/zonal development plan. The power vested in the Development Authority to make modification in the development plan is also not unlimited. It cannot make important alterations in the character of the plan. Such modification can be made only by the State Government and that too after following the procedure prescribed under Section 12(3).”*

The Supreme Court in the case of **Dipak Kumar Mukherjee v. Kolkata Municipal Corporation and others**<sup>11</sup> has held in Paragraphs- 2 of the judgment in the following terms:

*“2. In the last four decades, the menace of illegal and unauthorised constructions of buildings and other structures in different parts of the country has acquired monstrous proportion. This Court has repeatedly emphasized the importance of planned development of the cities and either approved the orders passed by the High Court or itself gave directions for demolition of illegal constructions as in *K. Ramadas Shenoy v. Town Municipal Council, Udipi*<sup>12</sup>, *Virender Gaur v. State of Haryana*<sup>13</sup>, *Pleasant Stay Hotel v. Palani Hills Conservation Council*<sup>14</sup>, *Cantonment Board, Jabalpur v. S.N. Awasthi*<sup>15</sup>, *Pratibha Coop. Housing Society Ltd. v. State of**

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10 (2011) 12 SCC 154

11 (2013) 5 SCC 336

12 (1974) 2 SCC 506

13 (1995) 2 SCC 577

14 (1995) 6 SCC 127

15 1995 Supp (4) SCC 595

*Maharashtra*<sup>16</sup>, *G.N. Khajuria v. DDA*<sup>17</sup>, *Manju Bhatia v. NDMC*<sup>18</sup>, *M.I. Builders (P) Ltd. v. Radhey Shyam Sahu*<sup>19</sup>, *Friends Colony Development Committee v. State of Orissa*<sup>20</sup>, *Shanti Sports Club v. Union of India*<sup>21</sup> and *Priyanka Estates International (P) Ltd. v. State of Assam*<sup>22</sup>.”

In **M.C. Mehta v. Union of India and others**<sup>23</sup> the Supreme Court in Paragraphs- 46 and 51 of the judgment has held as under:

*“46. In the present case, the land cannot be permitted to be used contrary to the stipulated user except by amendment of the master plan after due observance of the provisions of the Act and the Rules. Non taking of action by the Government amounts to indirectly permitting the unauthorized use which amounts to the amendment of the master plan without following due procedure.*

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*51. The growth of illegal manufacturing activity in residential areas has been without any check and hindrance from the authorities. The manner in which such large scale violations have commenced and continued leaves no manner of doubt that it was not possible without the connivance of those who are required to ensure compliance with law and reasons are obvious. Such activities result in putting on extra load on the infrastructures. The entire planning has gone totally haywire. The law abiders are sufferers. All this has happened at the cost of health and decent living of the residents of the city violating their constitutional rights enshrined under Article 21 of the Constitution of India. Further, it is necessary to bear in mind that the lawmakers repose confidence in the authorities that they will ensure implementation of the laws made by them. If the authorities breach that confidence and act in dereliction of their duties, then the plea that the observance of law will now have an adverse effect on the industry or the workers cannot be allowed. Within the framework of law, keeping in*

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16 (1991) 3 SCC 341

17 (1995) 5 SCC 762

18 (1997) 6 SCC 370

19 (1999) 6 SCC 464

20 (2004) 8 SCC 733

21 (2009) 15 SCC 705 : (2009) 5 SCC (Civ) 707

22 (2010) 2 SCC 27 : (2010) 1 SCC (Civ) 283

23 (2004) 6 SCC 588

*view the norms of environment, health and safety, the Government and its agencies, if there was genuine will, could have helped the industry and workers by relocating industries by taking appropriate steps in last about 15 years. On the other hand, it encouraged illegal activities.”*

The Supreme Court in **Shanti Sports Club and another v. Union of India and others**<sup>24</sup> has observed that if a building is used for the purpose other than one specified in the master plan, such construction is not only burden on the infrastructure like water, sewerage, etc., but they also create 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. The relevant part of the judgment reads as under:-

*“74. ...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...”*

In the said judgment the Supreme Court has noticed that despite

repeated judgments of the Supreme Court and the High Courts the authorities have shown scant respect for the master plan, zonal development plans and they have received the encouragement and support from the State apparatus.

It is apt to mention that clean air is one of the facets of the fundamental rights of a citizen under Article 21 of the Constitution of India. In this regard, the observations of the Supreme Court in the case of **Bombay Dyeing & Mfg. Co. Ltd. (3) v. Bombay Environmental Action Group and others**<sup>25</sup> are apposite, which are quoted below:

*“100. Both open space as also the other factors relevant for making the regulation would be in public interest. The question would, however, be as to which is of greater public interest. Public interest, thus, would be a relevant factor also for interpretation of the statute. Public interest so far as maintenance of ecology is concerned pertains to a constitutional scheme comprising Articles 14, 21, 48-A and 51-A(g) of the Constitution, the other factors are no less significant...*

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*115. Furthermore, interpretation of a town planning statute which has an environmental aspect leading to application of Article 14 and 21 of the Constitution cannot be held to be within the exclusive domain of the executive.”*

Applying the principles enumerated above, we are of the view that the PDA has failed to comply with the statutory provisions as the zonal development plans of all the zones have not been prepared as yet. The current zonal development plan only in respect of Zone B-4 is also against the provisions of the master plan. The decision of the PDA regarding mixed area needs a revisit of its policy in the light of discussions made above and the judgments of the Supreme Court referred above. The city is amongst 20 worst polluted cities in the world. Allowing the commercial activities in the residential areas shall make the situation worst and shall

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25 (2006) 3 SCC 434

be irreversible. It will violate the fundamental rights of the citizens to have clean air and clean atmosphere to live a healthy and dignified life.

We are also concerned that several open spaces and parks, which are nazul land, are being allowed to be utilized for other purposes and buildings after obtaining the freehold converting the land for the other purposes, which is contrary to the law laid down by the Supreme Court in **M.I. Builders (Pvt.) Ltd. v. Radhey Shyam Sahu**<sup>26</sup>, which has been consistently followed by the Courts.

Before we part, we must express our deep concern over the manner in which the authorities have turned blind eyes to traffic congestion in the city. Despite several directions issued by this Court in suo motu public interest litigation, being **Public Interest Litigation (PIL) No. 1289 of 2019, In re: Parking Problem in Civil Lines Prayagraj and other places**, the situation appears to be irreversible for amongst one of the reasons that commercial buildings are not using their parking space shown in their sanctioned building plan, with the result the cars/ vehicles of their customers are parked on the roads. The parking space shown in their sanctioned maps are being used for other purposes such as godown and has been converted into shops.

During the course of arguments our attention was drawn to the facts that in recent years a large number of nursing homes and hospitals' building maps have been sanctioned, which do not have parking space in accordance with the building bye-laws of the PDA. The vehicles of their customers/ users are parked on roads causing serious inconvenience to pedestrians.

In view of the above, we issue following directions:

- (1) The PDA shall prepare the zonal development plans strictly in accordance with the provisions of Sections 8 and 9 of the Act as well as the directions issued by the Division Bench of this Court in **Smt. Radha**

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26 (1999) 6 SCC 464

**Rani Singh (supra).**

- (2) Till the zonal development plans are prepared in terms of the master plan, no further commercial activity shall be allowed in the residential areas without assessment of the impact as directed in the public interest litigation in **Ashok Kumar (supra)** and in the light of observations made in this judgment.
- (3) While preparing the zonal development plans, the PDA shall pay regard to the law laid down by the Supreme Court in the judgments noted above regarding commercial use in the residential areas.
- (4) The PDA shall ensure that all the commercial buildings, which have been sanctioned and made in the residential areas, shall strictly comply with the sanctioned building plan, wherein the parking area has been shown in their building plan. In case the parking area is used for the other purpose, they shall be given the notice to provide the parking space directly in accordance with their sanctioned map, failing which the establishment shall be sealed after expiry of the time.
- (5) Till the fresh zonal development plan is prepared, no further map shall be sanctioned for commercial purpose in residential areas.
- (6) The State Government/ District Magistrate shall not allow freehold applications in respect of parks and open spaces shown in earlier zonal development plan of Master Plan-2001 (which was enforced on 19.11.1995). The State shall cancel the freehold order of parks after furnishing opportunity to affected persons and restore the parks in the light of the law laid down by the Supreme Court in **M.I. Builders (supra)** within six months.

Coming back to the facts of this case, we find that the petitioners have challenged the impact fee for a sum of Rs.33,04,148.00 on the ground that the impact fee is not provided anywhere in the Act and the word itself is foreign to the legislation and as such, the fee having burden of more than Rs.33 lakhs is wholly illegal and without any authority of

law. Similar argument has been raised in respect of the compounding fee. The petitioners have relied on the judgments of **Smt. Rekha Rani (supra)**, **Smt. Nisha Kumari (supra)** and **Smt. Malti Kaul (supra)**.

Learned counsel for the respondents has submitted that insofar as the judgments passed by this Court in the cases of **Smt. Rekha Rani (supra)** as well as **Smt. Nisha Kumari (supra)** are concerned, the PDA has filed special leave petitions in the Supreme Court, wherein interim orders have been passed. Hence, the PDA is entitled to realize the said fees.

We are of the view that the demand raised by the PDA shall be subject to the decision in the special leave petitions pending before the Supreme Court. Any deposit made by the petitioners shall abide by the result of the special leave petitions.

Learned counsel for the petitioners submits that the petitioners may be granted liberty to file a representation before the authority concerned in respect of the impact fee and compounding fee.

Having due regard to the facts of this case, we permit the petitioners to make a representation before the authority concerned of the PDA in respect of the impact fee, compounding fee, development charges and other fee. The representation of the petitioners shall be considered by the authority concerned in accordance with law expeditiously.

With the aforesaid observations and directions, this writ petition is disposed of.

No order as to costs.

**Order Date :- 16<sup>th</sup> November, 2019**

SKT/-