

Nizam and ors. Vs. Jaipur Development Authority and ors.

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Court : Rajasthan

Decided On : Apr-12-1993

Reported in : AIR1994Raj87; 1993(2)WLC169

Judge : N.L. Tibrewal, J.

Acts : [Constitution of India](#) - Articles 14 and 226; Rajasthan Urban Improvement Act, 1959 - Sections 73A and 74; Urban Areas (Sub-Division, Reconstruction and Improvement of Plots) Rules, 1975 - Rule 30(2)

Appeal No. : S.B. Civil Writ Petition No. 332/90

Appellant : Nizam and ors.

Respondent : Jaipur Development Authority and ors.

Advocate for Def. : R.R.L. Gupta, Adv.

Advocate for Pet/Ap. : P.C. Jain, Amicus Curiae for residents of the locality,; C.K. Garg,;

Judgement :

N.L. Tibrewal, J.

1. Both the writ petitions relate to the same subject-matter and common questions of law and facts are involved hence, they are disposed of by a common order. An

important question of general importance involved in the petitions is : --

'Whether an open space/ spaces reserved as per approved scheme under Rajasthan Urban Areas (Sub-Division, Reconstruction and Improvement of Plots) Rules, 1975 could be allotted by Jaipur Development Authority to a private personal body for a school.'

2. Rajasthan Urban Areas (Sub-Division, Reconstruction and Improvement of Plots) Rules, 1975 (in short, 'the Rules') have been framed by the State Government in exercise of powers under Section 74 read with Section 73-A of the Urban Improvement Trust Act (for short, 'UIT Act), The Rules provides a complete procedure permission for subdivision, reconstruction and improvement of plots by a person or a private individual or a local authority or group of individuals, societies including Co-operative Societies or companies whether incorporated or not, or a coloniser, a State Government Department other than the Defence Department of the Government of India, Under Rule 28, the Trust is empowered to approve a plan for subdivision, reconstruction or improvement of plots with or without modification or reject any plan submitted by a developer for any reason enumerated in the said Rule. Proper standards and provisions for roads, open space, educational facilities and other facilities as prescribed by the Rules have to be complied with for the approval of a plan. 'Open space' means a park, garden, lawn or any other form of open space which is intended to be used by the public, as per definition given in the Rules. Rule 13 provides the standard for open space/spaces to be left/ reserved for public use in a plan. It provides as under: --

'Rule 13. - Open Space -- Open space shall be uniformly located as far as possible and be provided at the rate of 1.0 to 1.5 acre per 100 persons and shall be distribution as follows: --

S. No.	Type of open space	Minimum size	Minimum dimension on one side	LOCATION
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To serve plots numbering	To serve an area.	1. Tot lot	650 sq. meter (800 sq. yds.)	18 M (60.0)
30-40	195-240 M. (650'- 800')	radius.	2. Local Park	3000 sq. meter (3630 sq. yds.)
45 M (150'-0)	360- 450 M. (1200' - 1500')	radius.'		

For educational facilities provision is made as provided under Rule 14. For any other facility that may be deemed necessary in the plan, an area is adequately provided as per direction of the Trust. It is noteworthy that as per Rule 30(2), the ownership of road, parks and open spaces is vested in the Trust from the date of the approval of the plan by the Trust. In other words, the ownership of the area/site reserved for educational facility or any other facility remains in the developer even after the approval of the scheme.

3. Writ Petition No. 332/90 is a letter petition -- public interest litigation, while writ petition No. 1856/89 has been filed by Modern Educational Cultural Society (hereinafter, to be referred as 'Modern School'). The necessary facts of the case, as gathered from the replies of the parties and the original relevant files produced by the learned counsel for Jaipur Development Authority (in short, 'JDA' or 'Authority') may be stated in short.

New-Lite Housing Co-operative Society Ltd. (for short 'Co-operative Society') applied for sub-division of plots under the Rules in the year 1976. A lay out plan of the lands bearing khasra Nos. 106, 107, 107/119 and 114 was also submitted along with the application as required in the Rules. The scheme was approved by the Authority after some modifications. In the approved plan, an area measuring 884.72 sq. yds. was reserved for a school, and open spaces were also earmarked intended to be used by the public as provided under the Rules.

Sometime in the year 1981, the Principal of the Modern School had applied to the then Minister for Local Self Government for the allotment of a site for the school. A copy of this application was also forwarded to the Secretary, UIT, Jaipur. After JDA was constituted in place of UIT, the Land and Property Committee of JDA took a decision on the above application on 3-9-88 to allot a site of open space measuring 4877 sq. yds. to the Modern School. On a representation by the residents of the locality, the concerned Minister, who was also the Chairman of JDA, directed to allot the land to the Co-operative Society for construction of a community hall and a swimming pool etc. and to cancel the proposed allotment of the site in favour of Modern School. This order was passed sometime in the month of May, 1989. Modern School, therefore, filed Writ Petition No. 1856/89 with a

prayer to issue direction to JDA to hand over physical possession of the site and further to prohibit the Authority from allotting to, or, permitting the use of the site by any other person. This petition was admitted on June 1, 1989 and a stay order was passed in the following terms :

'Meanwhile it is directed that the land should not be allotted to any one in case if not allotted so far and if allotted the possession shall not be handed over.'

Writ Petition No. 332/90 was registered as a public interest litigation on various letters written by the residents of New-Lite Colony and the nearby areas, which were addressed to Mr. Justice V.S. Dave. These letters were treated as petition and notices were ordered to be issued on 19-1-90 to the Commissioner, DJA, the Principal, Modern School. While issuing notices, an ad interim stay order was passed by this Court directing JDA not to proceed further in the matter of allotment of the land in question to Modern School by way of allotment, transfer or otherwise. The respondents were also directed to maintain status quo as it existed on the day of order. Mr. P. C. Jain, Advocate was appointed as Amicus Curiae on behalf of the residents of the above locality.

4. The plea of the Modern School is that on their application, the Land & Property Committee of JDA took a decision in its meeting dated 14-9-1988 to allot the land in question to the School at the rate of Rs. 95/-per sq. meter. Thereafter, a letter of intent was issued on 28-9-88 making a demand of Rs. 3,97,000.78 to be paid by the School within a month. In pursuance to the above demand, the amount was deposited by the Modern School on 12-10-88. Thereafter, a further demand of Rs. 56,000/- was raised by the Chief Revenue Officer, JDA vide his letter dated 18-3-89 as the cost of the boundary wall, which was already constructed by the JDA. This amount was also deposited by the School on 21-3-89. It was also pleaded by it that the site in question was not earmarked for a children's play ground but it was reserved as 'facility area' in the approved plan and JDA was competent to allot it for construction of a school. The same stand was taken by DJA in its reply.

Mr. P.C. Jain, Amicus Curiae for the residents of the locality, pleaded inter alia in the rejoinder that the site in question could not be allotted by JDA to a private person for a school. It was also stated that towards the north of the site, a public

school under the name and style 'Prem Shanti Public School' was already functioning which catered the need of the children of the area. It was pleaded that the site in question was left as an open space meant for part or open ground for the purpose of general, national and religious functions by the residents of the locality. It was pleaded that the entire action of JDA was mala fide and without jurisdiction as a site of open space could not be sold by it to the Modern School to deprive the residents of the locality from its benefits. Then, it was pleaded that on 1-6-89, there was a stay order of this Court but still the JDA proceeded to allot the land to Modern School without seeking any vacation/modification of the stay order. That the site in question did not vest in JDA and it was not competent to allot the same to any private person as it was intended for the public use. The JDA was a custodian only to look after and maintain the area for the purpose for which it was intended for the public use. Several other objections were also taken.

5. On 4-3-91, this Court appointed Shri A.K. Bhandari, Advocate to make a site inspection. Mr. Bhandari submitted his report after making a site inspection, which shows that the site is bounded by stone boundary walls and a park was existing. Some photographs have also been placed on record in writ petition No. 1856/89 showing the site being used as a garden and children's park.

6. Mr. P.C. Jain, appearing for the residents of the locality, vehemently contended that the site was reserved as an open space in the approved plan and it was intended to be used by the public as a park, garden, playground or any other form of public use. Counsel argued that JDA acted illegally and without any authority in law in changing the user of the land and allotting it to a private person/body for construction of a school. According to Mr. Jain, the residents of the locality have a right to use, protect and preserve an open space/spaces meant for public park, garden, lawn or for ventilation etc., and it was improper on the part of the Authority to confer largess on a private person/body at the expense of the general public. Mr. Jain also contended that a site for a school was already reserved in the approved plan, where a public school is functioning and the action of the JDA was against the wishes and requirement of the residents of the locality and members of the Co-operative Society.

On the other hand, Mr. A.K. Sharma, learned counsel for Modern School, contended with equal vehemence that the action of JDA in making an allotment of the site to the Modern School was purely an administrative action and it was not mala fide. It was also contended that open space/spaces vest in JDA and it was within the discretion of the Authority to choose the use of the site either for a school or for a park. Mr. Sharma further contended that a school also serves public purpose and is beneficial to all the persons of the locality. According to Mr. Sharma, by allotment of a site for establishment of an educational institution, public purpose is better served than to have an unplanned open space, which is converted by lapse of time as a place for dumping rubbish. It was also urged that the residents of the locality had no locus standi to challenge the decision of JDA as the site vested in JDA and it could allot or sell to any person. It was also submitted that this Court should not have acted on letters written to an Hon'ble Judge of this Court, and this practice should be deprecated, specially, when the residents of the locality could have approached to this Court by filing a regular petition. Lastly, it was contended that in the approved plan, the space has been described as 'facility area' and a school is undoubtedly a facility and the action of the Authority cannot be subjected to a judicial scrutiny.

7. Before advertng to the various contentions raised and debated before me about the validity of the action of JDA in allotting the site of an open space to the Modern School, I may take up the preliminary objection raised by Mr. A.K. Sharma, appearing for the Modern School. The objection is based on two grounds. The first one is that the petition has been wrongly entertained as a public interest litigation, as it has not been filed for enforcement of fundamental right on behalf of a person or class of persons, who on account of their poverty or social and economic disadvantageous position could not approach to this Court for seeking relief. The second objection is that in no case, this Court should have responded on some letters written to an Hon'ble Judge of this Court and treated them as a letter-petition.

It cannot be disputed that the persons who made complaint by writing letters to a learned judge of this Court are the residents of the locality, who are immensely interested in preservation of open space/ spaces meant for public park, garden, or

children's play ground in a duly sanctioned scheme having statutory character. Reservation of open spaces for park and play ground etc. is now recognised as a legitimate exercise of statutory power, rationally related to the protection of the residents of the locality from the ill effect of urbanisation. The residents of the locality are the persons intimately, vitally and develop-mentally effected by the action of the Authority which is destructive to the environment and which deprives the facilities reserved for the enjoyment and protection of health of public at large. They are naturally aggrieved by the action of JDA in the present case, and, they have therefore, necessary locus standi (See : Bangalore Medical Trust v. B. Section Mudappa (1991) 4 SCC 54 : (AIR 1991 SC 1902). While dealing with the question of locus standi, Justice R M Sahai observed as under : --

'Law on the former has marched much ahead. Many milestones have been covered. The restricted meaning of aggrieved person and narrow outlook of specific injury has yielded in favour of broad and wide construction in wake of public interest litigation. Even in private challenge to executive or administrative action having extensive fall out the dividing line between personal injury or loss and injury of a public nature is fast vanishing. Law has veered round from genuine grievance against order affecting prejudicially to sufficient interest in the matter. The rise in exercise of power by the executive and comparative decline in proper and effective administrative guidance is forcing citizens to espouse challenge with public interest flavour. It is too late in the day, therefore, to claim that petition filed by inhabitants of a locality whose park was converted into a nursing home had no cause to invoke equity jurisdiction of the High Court. In fact public spirited citizens having faith in rule of law are rendering great social and legal service by espousing cause of public nature. They cannot be ignored or overlooked on technical or conservative yardstick of the rule of locus standi or absence of personal loss or injury. Present day development of this branch of jurisprudence is towards freer movement both in nature of litigation and approach of the courts. Residents of locality seeking protection and maintenance of environment of their locality cannot be said to be busybodies or itnerlopers. Even otherwise physical or personal or economic injury may give rise to civil or criminal action but violation of rule of law either by ignoring or affronting individual or action of the executive in disregard to the provisions of law raises substantial issue of accountability of those entrusted

with responsibility of the administration. It furnishes enough cause of action either for individual or community in general to approach by way of writ petition and the authorities cannot be permitted to seek shelter under cover of technicalities of locus standi nor they can be heard to plead for restraint in exercise of discretion as grave issues of public concern outweigh such considerations.'

8. A postcard litigation/letter petition is somewhat different from public interest litigation in substance, as postcard litigation is encouraged as a part of legal aid programme. The acceptance of postcard litigation has resulted in rapid growth of public interest litigation since many issues of public importance could be presented to the courts without incurring heavy legal expenditure.

The philosophy of public interest litigation lies in that, where a legal wrong or legal injury is caused to a person or to a determinate class of persons by reason of violation of any constitutional or legal rights or such person or determinate class is burdened with by imposition of any such rules and regulations in contravention of any constitutional or legal provision or without the authority of law and such person or class of determinate persons are unable to approach the court for relief due to poverty and other disabilities, any member of the public can maintain an application for an appropriate direction, order or writ in the High Court under Article 226 of the Constitution and in case of breach of fundamental right of person or determinate class of persons, in the Supreme Court under Article 32 seeking redressal.

9. The Council for Public Interest Law set up by the Ford Foundation in U.S.A. defined the Public Interest Litigation in its report of Public Interest Law, U.S.A. 1976, as follows : --

'Public interest Law is the name that has recently been given to efforts to provide legal representation to previously unrepresented groups and interests. Such efforts have been undertaken in the recognition that that ordinary market place for legal services fails to provide such services to significant segments of the population and to significant interests. Such groups and interests include the poor, environmentalists, consumers, racial and ethnic minorities, and others.'

In India, the concept was initiated by Krishna Iyer, J. in the year 1976 in Mumbai Kamgar Sabha v. Abduliabhai, AIR 1976 SC 1455 : (1976 Lab 1C 1012). In this case, Krishna Iyer, J. observed as follows : --

'Test litigation, representative actions, Pro bono publico and like broadened forms of legal proceedings are in keeping with the current accent on justice to common man and a necessary disincentive to those who wish to by pass the real issues on merris by suspectreliance on peripheral, procedural shortcomings..... Public interest is promoted by aspacious consturction of locus standi in our socio-economic circumstances and conceptual latitudinarianism permits taking liberties with individualisation of the right to invoke the higher Courts where the remedy is shared by a considerable number, particularly when they are weaker. Less litigation, consistent with fair process, is the aim of adjuective law.'

Similar views were expressed by the Apex Court of the country in a number of cases, notable among them being Sunil Batra v. Delhi Administration, AIR 1980 SC 1579 : (1980 Cri LJ 1099); Municipal Council, Ratlam v. Vardhichand, AIR 1980 SC 1622 : (1980 Cri LJ 1075); Akil Bharatiya Soshit Karamchari Sangh (Railway) v. Union of India, AIR 1981 SC 298 : (1980 Lab 1C 1325); Azad Rickshaw Pullers Union, Amritsar v. State of Punjab, AIR 1981 SC 14. This concept was further developed and extended in Fertilizer Corporation Kamgar Union v. Union of India, AIR 1981 SC 344: (1980 Lab IC 1367). However, the full scope of Public Interest Litigation was analysed by Bhagwati, C.J. in S.P. Gupta v. Union of India, AIR 1982 SC 149).

The fundamental problem under the Public Interest Litigation was the status of the members of general public to bring to the court any issue of public importance, any case of atrocities, suffering of any person or determinate class, even though the rights of such petitioners were not affected. Under the concept of Public Interest Litigation, the traditional rule of standing have been liberaised. The court in such cases of public importance keep aside all technical rules of procedure and entertain even a letter addressed by an individual acting Pro Bono Publico.

10. In S.P. Gupta's case (supra), it was observed that the first preposition about the nature and purpose of judicial function is essential to the maintenance of the

Rule of Law that every organ of the State must act within the limits of its powers and carry out the duties imposed upon it by the Constitution or the Law. Chief Justice Bhagwati, held in this judgment that: --

'We would, therefore, hold that any member of public having sufficient interest can maintain an action for judgment, redress for public injury arising from breach of public duty or from violation of some provision of the Constitution or the law and seek enforcement of such public duty and observance of such constitutional or legal provision. This is also absolutely essential for maintaining the rule of law furthering the cause of justice and accelerating the pace of realization of the constitutional objective law (p. 194).'

It was then observed : --

'The new social and economic rights which are sought to be created in pursuance of the Directive Principles of State Policy essentially require active intervention of the State and other public authorities. Amongst these social and economic rights are freedom from indigency, ignorance and discrimination as well as the right to a healthy environment, to social security and to protection from financial, commercial, corporate or even governmental oppression. More and more frequently the conferment of these socio-economic rights and imposition of public duties on the State and other authorities for taking positive action generates situations in which a single human action can be beneficial or prejudicial to a large number of people, thus making entirely inadequate the traditional scheme of litigation as merely a two party affair. For example, the discharge of effluent in a lake or river may harm all who want to enjoy its clean water; emission of noxious gas may cause injury to large numbers of people who inhale it along with the air; defective or unhealthy packaging may cause damage to all consumers of goods and so also illegal raising of railway or bus fares may affect the entire public which wants to use the railway or bus as a means of transport. In cases of this kind it would not be possible to say that any specific legal injury is caused to an individual or to a determinate class as group of individuals. What results in such case is public injury and it is one of the characteristics of public injury that the act or acts complained of cannot necessarily be shown to affect the rights of determinate or

identifiable class or group of persons; public injury is an injury to an indeterminate class of persons. In these cases the duty which is breached giving rise to the injury is owed by the State or a public authority nor to any specific or determinate class or group of persons, but to the general public. In other words, the duty is one which is not correlative to any individual rights. Now if breach of such public duty were allowed to go unredressed because there is no one who has received a specific legal injury or who was entitled to participate in the proceedings pertaining to the decision relating to such public duty the failure to perform such public duty would go, unchecked and it would promote disrespect for the rule of law. It would also open the door for corruption and inefficiency because there would be no check on exercise of public power except what maybe provided by the political machinery, which at best would be able to exercise only a limited control and at worst might become a participant in misuse or abuse of power. It would also make the social collective rights and interests created for the benefit of the deprived sections of the community meaning less and ineffectual.

In *Municipal Council, Ratlam v. Varidichand* (supra), the Supreme Court affirmed the order of the Magistrate directing the Municipality of Ratlam to do its duty towards the members of the public and draft a plan within six months for removing nuisance.

In the last decade innumerable decisions have come on Public Interest Litigation. Important among them are *Khatu (I) v. State of Bihar* (Bhagalpur Blinding case) (1981) 2 SCC 623; *Hussainara Khatun v. State of Bihar*, AIR 1979 SC 1360 : (1979 Cri LJ 1036) 1369, 1377 and 1819; *M.C. Mehta v. Union of India*, AIR 1987 SC 965 relating to danger due to poisonous gases released by factories; *Shivajirao Patil v. Mahesh Madhay Gosavi*, AIR 1987 SC 294 (Tampering with marksheet of the Chief Minister's daughter); *Municipal Corporation of Greater Bombay v. Prabhat Mandal, the hut dwellers' case* AIR 1986 SC 391; and, *Bangalore Medical Trust v. B.S. Muddappa*, AIR 1991 SC 1902 : (1991 AIR SCW 2082), (allotment of a park to a private hospital).

In a recent case, *M.C. Mehta v. Union of India*, AIR 1992 SC 382 : (1991 AIR SCW 2989), in the public interest on environmental protection, the Supreme Court

directed the Union of India to spread information relating to environment in national and regional languages through the audio -- visual media and also to introduce environment as a compulsory subject in schools and colleges.

The present case involves a public injury to the residents of the locality by the action of JDA and the residents of the locality are seeking protection and maintenance of environment of their locality, hence, they cannot be said to be busy bodies or interlopers. They can maintain the public interest litigation as held in Bangalore Medical Trust's case (surpa).

11. As already stated earlier, letter petition has resulted in the rapid growth of public interest litigation since many issues of public importance are presented to the courts without incurring having legal expenditure. Letter-petitions have been accepted by this Court and Hon'ble Supreme Court from time to time. (See: S.P. Gupta's case (supra). The Schedule Caste and Weaker Sections Welfare Association (Regd.) v. state of Karnataka, 1991 (2) JT SC 184 : (AIR 1991 SC 1117); State of Himachal Pradesh v. Umed Ram Sharma, (1986) 2 SCC 68 : (AIR 1968 SC 847) and Vikram Deo Singh Tomar v. State of Bihar, (1988) Supp SCC 734 : AIR 1988 SC 1782.

In America, the famous Gideon's case of U.S.A. Gideon v. Wain Wright, (372 NS 335 has formed the basis for the concept of Public Interest Litigation. In this case, one Clarence Earl Gideon sent to the Supreme Court of United States one hand-written scrawl informing the Apex Court that he was a pauper and prayed the Court to listen and act upon his plea. This letter was treated as a petition and allowed by the Supreme Court of United States. This case has become a judicialprecedent.

12. It is true that the affected parties addressed letters directly in the name of the Judges of this Court and Supreme Court, and the Judges used to place these letters on their own board after converting the letters into writ petitions, for disposal, this was subject to criticism by some jurists and popular writers on the ground that there would be a danger of 'litigants choosing a judge and in turn judges choosing their litigants. R.S. Pathak, J. has observed on this practice in Bandhu Mukti Morchacase, AIR 1984 SC 802 : 1984 Lab IC 560:-

'No such communication or petition can properly be addressed to a particular Judge. Which judge or judges will hear the case is exclusively a matter concerning the internal regulation of the business of the court, interference with which by a litigant or member of the public constitutes the grossest impropriety. They also embarrass the judge to whom they are personally addressed,'

In this connection now the practice adopted is that the Judge passes on the letter to the Registry for being dealt with according to the normal practice of the Court. This is what has been done in the present case also. The Supreme Court has also framed certain guidelines in this regard. With these guidelines, the flooding of cases under Public Interest Litigation is properly regulated.

13. After having disposed of the preliminary objections, the most vital questions involved in the matter may be taken up for consideration. The questions are : --

(i) Whether JDA could change or convert the user of the land of an open space intended to be used by the public for park, garden, lawn or children's play ground etc. for a school; and

(ii) Whether such open space could be allotted to a private person or body.

An analysis of Rajasthan Urban Areas (Sub-Division, Reconstruction and Improvement of Plots) Rules, 1975 would make it clear that an approved and sanctioned plan under the Rules has a statutory character. No deviation from the approved plan is permissible unless the plan is revised under Rule 32 on the ground as provided therein. Such scheme/ plans make a provision for open space/ spaces for park, garden etc. intended to be used by the public, an area for providing educational facility or any other facility which is deemed necessary. Roads and public streets are also provided as per the standards. From the Rules, it is also clear that the site/sites of open space are intended to be used by the public and [they form a different category from the area reserved for educational facilities or any other facility. There is a basic distinction in two categories. In case of open space falling in the first category, ownership shall vest in UIT and now in JDA after the approval of sub-division of plots as provided in Sub-Rule (2) of Rule 30, while the area reserved for educational facilities or any other facility falling in

the second category remains in the ownership of the developer. In the latter case, the developer can transfer the site/area to any private person or body for the same purpose for which the area was reserved. To illustrate, if an area is reserved for a school in the approved plan, the same can be transferred by the developer to any private person or body for the purposes of establishing a school. But, an open space or spaces intended to be used by the public in general stand dedicated to the public for common use and must, therefore, remain with the State or its instrumentalities, such as JDA, Municipal Board/Council/Corporation or any other public authority. Therefore, the areas of open space reserved in the approved plan, though are vested in UIT or JDA, but the same cannot be allotted to any private person or body. Their user cannot be changed or converted by UIT or JDA. Such open space/spaces are meant for the use of a park, garden, lawn or any other form of open space intended to be used by the public. The vesting of such area in JDA or UIT is for a specific purpose i.e. to develop and maintain such areas for the purpose they are earmarked or reserved in the approved scheme. This vesting does not give an absolute right to UIT or JDA to allot/transfer such area to a private person or body for establishment of a school. Such deviation is not contemplated or permissible as per the Rules, as an open space is dedicated to the public and is intended to be used by the public. Hence, the site of open space could not be allotted by the JDA to the Modern School.

14. In Bangalore Medical Trust's case (supra), open space reserved for a park under the development scheme was converted into a hospital site in favour of a private body by the Authority at the instance of the State Government and this action was challenged in the High Court. The Hon'ble Judge, in the first instance, held that the hospital being a civil amenity, allotment of the site by the Development Authority in favour of Bangalore Medical Trust for the purpose of constructing a hospital was valid in law. On appeal by the residents of the locality, the Division Bench set aside the judgment of the learned single Judge and held that the area was reserved in the sanctioned scheme for a public park and it was a diversion from the object and allotment in favour of a private body was not permissible under the Law, even the object of the allotment was the construction of a hospital. Thomas, J., in his judgment of concurrence observed: --

'Protection of the environment, open spaces for recreation and fresh air, playgrounds for children, promenade for the residents, and other conveniences or amenities are matter of great public concern and of vital interest to be taken care of in a development scheme. It is that public interest which is sought to be promoted by the Act by establishing the BDA. The public interest in the recreation and preservation of open spaces for parks and playgrounds cannot be sacrificed by leasing or selling such sites to private persons for conversion to some user. Any such act would be contrary to the legislative intent and inconsistent with the statutory requirements. Furthermore, it would be in direct conflict with the constitutional mandate to endure that any State action is inspired by the basic values of individual freedom and dignity and addressed to the attainment of a quality of life which makes the guaranteed rights a reality for all the citizens.'

It was then observed: --

'The Statutes in force in India and abroad reserving open spaces for parks, and playgrounds are the legislative attempt to eliminate the misery of disreputable housing condition caused by urbanisation. Crowded urban areas tend to spread disease, crime and immorality. As stated by the U.S. Supreme Court in Samuel Berman v. Andrew Parker (L. Ed. pp. 37-38: US pp. 32-33).

They may also suffocate the spirit by reducing the people who live there to the status of cattle. They may indeed make living an almost insufferable burden. They may also be an ugly sore, a blight on the community which robs it of charm, which makes it a place from which men turn. The misery of housing may despoil a community as an open sewer may ruin a river.

The concept of the public welfare is broad and inclusive. The values it represents are spiritual as well as physical, aesthetic as well as onetary. It is within the power of the legitimate to determine that the community should be beautiful as well as healthy, spacious as well as clean, well-balanced as well as carefully patrolled. In the the present case the Congress and its authorised agencies have made determinations that take into account a wide variety of values..... (perDouglas, J.)'

In the same judgment, R.M. Sahai, J. stated:

'Public park as a place reserved for beauty and recreation was developed in 19th and 20th Century and is associated with growth of the concept of equity and recognition of importance of common man. Earlier it was prerogative of the aristocracy and the affluent either as a result of royal grant or as a place reserved for private pleasure. Free and healthy air in beautiful surroundings was privilege of few. But now it is a 'gift from people to themselves'. Its importance has multiplied with emphasis on environment and pollution. In modern planning and development it occupies an important place in socialecology. A private nursing home on the other hand is essentially a commercial venture, a profit oriented industry. Service may be its motto but earning is the objectives. Its utility may be undermined but a park is a necessity not a mere amenity. A private nursing home cannot be a substitute for a public park. No town planner would prepare a blue print without reserving space for it. Emphasis on open air and greenary has multiplied and the city or town planning or development Acts of different States require even private house owners to leave open space in front and back for lawn and fresh air. In 1984 the B.D. Act itself provided for reservation of not less than 15 per cent of the total area of the layout in a development scheme for public parks and playgrounds the sale and disposition of which was prohibited under Section 38 A of the Act. Absence of open space and public park, in present day when urbanisation is on increase, rural exodus is on large scale and congested areas are coming up rapidly, may give rise to health hazard. May be that it may be taken care of by a nursing home. To say, therefore, that by conversion of a site reserved for lawn lying park into a private nursing home social welfare was being promoted was being oblivious of true character of the two and their utility.'

While considering the powers of the Authority to alter such scheme, Justice R.M. Sahai observed: --

'Therefore, any action or exercise of discretion to alter the scheme must have been backed by substantive rationality flowing from the section. Public interest or general good or social betterment have no doubt priority over private or individual interest but it must not be a pretext to justify the arbitrary or illegal exercise of power. It must withstand scrutiny of the legislative standard provided by the statute itself. The authority exercising discretion must not appear to be impervious to

legislative directions.'

15. As a result of the above discussions, it can be held that JDA had no authority to allot, sale, lease or otherwise transfer a site of open space reserved in the approved plan under the Rules of 1975, to a private person or body. It is also held that the use of an open space cannot be changed or diverted for any other use by the Authority even for the establishment of a school or any other facility. Therefore, the action of the respondent-JDA in making allotment of a site reserved for open space in favour of Modern School for establishment of a school is held illegal and void.

16. A related argument was also raised by the learned counsel, appearing for the Modern School and JDA, that as per Rule 30(2) of the Rules of 1975, from the date of the approval of sub-division, the ownership of an open space is vested in the Trust/JDA, as such, the JDA is/ was competent to allot such open space or any other site reserved for any other facility to a private person or body for establishing a school. It was also contended that educational facility serves better public purpose than an open space which is ultimately converted into a dumping space for rubbish. This argument is wholly misconceived. It is no doubt true that by a legal fiction created by the operation of the Rules, a site reserved for an open space is vested in the Trust and now in JDA, on the approval of a plan for sub-division of plots under the Rules of 1975, but this vesting in the Trust or JDA is intended by the reason that the use of such site is meant for the public in general and it cannot be put in private hands by reason of its dedication to the general public. As discussed earlier, the Trust or JDA cannot change its use and its user is limited for the purpose for which it was reserved under the approved scheme. The scheme of sub-division of plots has a statutory object to promote the ordinary development in the city in a planned manner and to preserve open space/spaces for public park, garden, lawn, playground, for children etc. with a view to protect the residents from the ill effects of urbanisation. The Authority is under an obligation to act according to the approved scheme/ plan. The Development and Planning are primarily for the benefit of the public and a statutory authority is under an obligation to perform its duty in accordance with the provisions of the Act and the Rules. Therefore, the contention of the learned counsel has no merit that by

vesting of an open space in the Trust by operation of law, the open space meant for park, garden or lawn etc. can be transferred by the Authority to private hands for different use which may be for a school even. It is no doubt true that educational facility also serves an important purpose of society but the provisions of the Rules of 1975 make a marked distinction in relation to open space/ spaces and the sites left for educational facility. In the former case, it has a statutory dedication to the general public but it is not so in the latter case. The site reserved for educational institution is transferable to a private person or body for the specific purpose for which the area was reserved and its ownership also vests in the developer, but the same is not applicable in the case of open spaces which are intended to be used by the public. Sites reserved for open space in the sanctioned scheme/plan cannot be leased or sold away unless the scheme is duly altered. In Bangalore Medical Trust's case (supra), it was expressly held: --

'Any unauthorised deviation from the duly sanctioned scheme by sacrificing the public interest in the preservation and protection of the environment by means of open space for parks and playgrounds and 'ventilation' will be contrary to the legislative intent and an abuse of the statutory power vested in the authorities.'

17. JDA is a statutory body and its primary object is to promote the healthy growth and development of the city of Jaipur and the areas adjacent thereto. It is now well settled that where statute imposes a duty, performance and non-performance is not a matter of discretion. Hence, the ancillary argument raised by the learned counsel for Modern School and JDA has also no leg to stand and it can be conveniently rejected.

18. Another submission made by the learned counsel for the Modern School that the action of JDA in allotting the land to Modern School was purely an administrative action and it was not liable to be interfered in the writ jurisdiction in the absence of any evidence of mala fides, is also not acceptable. It can no longer be doubted at this point of time that Article 14 of the [Constitution of India](#) applies also to matters of Governmental policy and if the policy or any action of the Government, even in contractual matters, fails to satisfy the test of reasonableness, it would be unconstitutional. (See Ramana Dayaram Shetty v.

The International Airport Authority of India, AIR 1979 SC 1628 and Kasturi Lal Lakshmi Reddy v. State of Jammu and Kashmir, AIR 1980 SC 1992. The wide sweep of Article 14 and the requirement of every State action qualifying for its validity on this touch-stone, irrespective of the field of activity of the State, has long been settled. In Workaday Maratha and Sons v. Board of Trustees of the Port of Bombay, AIR 1989 SC 1642, the matter was re-examined in relation to an instrumentality of the State for applicability of Article 14 to all its action. It was held 'every action of the State or an instrumentality of the State must be informed by reason actions uniformed by reason may be questioned as arbitrary in proceedings under Article 226 or Article of the Constitution.' It was stated that every State action must be reasonable and in public interest and an infraction of that duty is amenable to judicial review. In this connation, the following

extract of the judgment may be quoted: --

'..... Where there is arbitrariness in State action, Article 14 springs in an judicial review strikes such an action down. Every action of the executive authority must be subject to rule of law and must be informed by reason. So, whatever be the activity of the public authority, it should meet the test of Article 14.....'

(Emphasis provided)

In Kumari Sheilekha Vidyarthi etc. v. State of U.P., AIR 1991 SC 537, it was held: --

'It is now too well settled that every State action, in order to survive, must not be susceptible to the vice of arbitrariness which is the crux of Article 14 of the Constitution and basic to the rule of law, the system which governs us. Arbitrariness is the very negation of the rule of law. Satisfaction of this basic test in every State action is sine qua non to its validity and in this respect, the State cannot claim comparison with a private individual even in the field of contract. This distinction between the State and a private individual in the field of contract has to be borne in the mind.'

19. Another important contention raised by Mr. P.C. Jain, learned counsel appearing for the residents of the locality, is that the developer of the land and the

residents of the locality are directly interested persons in the proper maintenance, use and development of an open space and they will be effected by any change in the user of the land. Therefore, no change in the user of the land should be permitted without hearing them. According to Mr. Jain, the action of the respondent-JDA is also vitiated as it violated the principle of natural justice.

I have held earlier that the residents of the locality are the persons adversely affected by the action of the Authority which is destructive of the environment and which deprives them of the facilities reserved for the enjoyment and protection of the health in general. The residents of the locality, as well as, the developer have an interest to see that the approved plan or scheme is executed properly. The State or JDA acts for public good and in public interest. Their public character is not changed merely because in a given case even they may have an authority to change the user of land or the right to transfer the site. They are expected to act fairly and reasonably and even in that situation they cannot ignore the directive principles enshrined in the [Constitution of India](#), as well as, the legislative intent contained in the Act or the Rules. Hence, they should have an opportunity of hearing in all such matters.

In *Government of Mysore v. J.V. Bhatt etc.* (1975) 2 SCR 407 : (AIR 1975 SC 596), it was held by the Supreme Court: --

'There can be no two opinions about the need to hear the affected persons before declaring an area to be a slum area under Section 3 or an area as clearance area under Section 9 or before taking action under Section 10. All these difficulties will be removed if the affected persons are given an opportunity to be heard in respect of the action proposed.'

In the *Scheduled Caste and 'Weaker Section Welfare Association (Regd.) v. State of Karnataka* (supra), it was observed :

'When any alteration is sought to be made in the original scheme, it becomes incumbent upon the authorities to give an opportunity to the persons who had been affected by the earlier order and required to adopt a certain course of action.'

I, therefore, agree with the contention of Mr. Jain that the action of JDA is also viliated as it violated the principles of natural justice.

20. I am, therefore, of the view that the developer of the land and the residents of the locality are the effected persons by the action of JDA in allotting the site of open space in favour of Modern School after changing the user of land. The Authority should have given them an opportunity of being heard, that could be even by a general notice. On this ground also the impugned action of JDA is not sustainable as being violative of the principles of natural justice.

21. The result of the above discussions is that the action of JDA in making allotment of the site in question in favour of Modern School to establish a school is invalid and without jurisdiction, being contrary to the legislative intent to safeguard healthy, safety and general welfare the people of the locality. it was also opposed to the statutory Scheme/ Plan. The impugned action is, therefore, held to be null and void and of no effect. The JDA is further restrained from allotting the site to any private person or body in future. The amount of Rs. 3,97,100.78/- and Rs. 56,000/-or so, deposited by Modern School with JDA as price of the site and cost of boundary walls, in the facts and circumstances of the case, shall be refunded to the depositor with simple interest @ 12% per annum from the date of deposit within three months from the date of receipt of a copy of the judgment. The JDA shall also pay Rs. 3,000/- to Mr. P.J. Jain, Advocate for rendering assistance in the case as an Amicus Curiae.

22. Before parting with the judgment, I would like to express my anxiety and seriousconcern to the proper use of similar open space/spaces which are reserved for the development of public parks/children parks, gardens, or any other public place of recreation. To our knowledge and as submitted by Mr. Jain, such sites are not being used or developed by JDA, Municipal Council/Corporation for the public use, nor they are being properly maintained and looked after by the Authority or their officers. Not only this, some of such sites have been converted as dumping places for rubbish and have become source of nuisance to the public, instead of providing healthy atmosphere with pollution free air on account of lack of care and action by the authorities concerned. Some sites of open space have been

unauthorisedly sold by the developer or JDA, while on some sites encroachments have been made by the public persons, warranting immediate action towards this direction by the concerned public authorities. It should not be forgotten that the existence of public institutions like JDA or Municipal Council/Corporation, and their officers, are for public good and they have a statutory duty to develop, maintain, and lookafter properly such public places/sites which are meant for park/children's park, garden, lawn etc. The authority concerned should also be in possession of a list of such sites of public use with their full particular and details after a proper survey. The concerned authority should also chalk out a proper scheme for the proper development, maintenance and lookafter of such public places and sites as per the approved schemes. The public spirited persons may be associated in the development and maintenance of such sites. For the City of Jaipur, a proper survey of all such sites of public use and a proper scheme/guidelines for their development and maintenance as per approved scheme is very much essential to protect the environment for the health of the citizens. Since I am hearing a public interest litigation, I feel my duty to issue proper directions in this connection also, I, therefore, direct JDA and its officers to prepare a list of such sites/open spaces, which are reserved to be used by the public as per various approved schemes, after conducting a proper survey by responsible officers and frame a scheme/guidelines for their development, maintenance and look-after. This exercise should be completed within six months from the date of receipt of a copy of the judgment. On survey if it is found that any site of open space reserved for public use is unauthorisedly occupied by any person or body or illegally sold by the developer or JDA, immediately steps shall be taken by JDA to get possession of such sites by removing unauthorised encroachment. A list of such sites of public use should also be made known to the public, especially to the residents of the locality concerned, along with the scheme framed by JDA to develop, maintain and lookafter the same.

A copy of this order be sent to the Commissioner, J.D.A. to carry out the above directions.