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IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 30TH DAY OF JUNE, 2025

BEFORE

THE HON'BLE MR JUSTICE SURAJ GOVINDARAJ

WRIT PETITION NO. 27740 OF 2010 (GM-RES)

BETWEEN

1. DR VIRENDRA SHETH
   S/O LATE RATHILAL SHETH,
   AGED ABOUT 78 YEARS,
   RESIDING AT NO. 3367/G,
   13TH MAIN,HAL II STAGE,
   BANGALORE 560008

2. SHRI. GOVIND AGARWAL
   S/O KISHORILAL AGARWAL
   AGED ABOUT 49 YEARS,
   RESIDING AT NO. 3367/G,
   13TH MAIN,HAL II STAGE,
   BANGALORE 560008

3. SHRI ROGER BINNY
   S/O SHRI. TERENCE BINNY
   AGED ABOUT 55 YEARS,
   R/AT NO.3373/G, 13TH MAIN,
   HAL II STAGE,BANGALORE-560008

4. SHRI. H.NIRMAL KUMAR
   AGED ABOUT 55 YEARS,
   R/AT NO.3373/G, 13TH MAIN,
   HAL II STAGE,BANGALORE-560008

5. DR. I.DEVENDIRAN I.A.S. (RETD)
   AGED ABOUT 55 YEARS,
   R/AT NO.3373/G, 13TH MAIN,
   HAL II STAGE,BANGALORE-560008

6. SHRI S.N.S.MURTHY I.P.S. (RETD)
   AGED ABOUT 55 YEARS,
   RESIDING AT NO.3373/G, 13TH MAIN

HAL II STAGE,BANGALORE-560008

7. SHRI P.P.R. NAIR I.P.S. (RETD)
   AGED ABOUT 55 YEARS,
   RESIDING AT NO.3373/G,
   13TH MAIN HAL II STAGE,
   BANGALORE-560008

8. SHRI. MATHAI YOHANAN
   AGED ABOUT 55 YEARS,
   RESIDING AT NO.3373/G, 13TH MAIN
   HAL II STAGE,BANGALORE-560008

9. MRS.MADHAVI NAIR
   AGED ABOUT 55 YEARS,
   RESIDING AT NO.3373/G, 13TH MAIN
   HAL II STAGE,BANGALORE-560008

10. SHRI. S. JANARDHAN
    AGED ABOUT 55 YEARS,
    RESIDING AT NO.3373/G, 13TH MAIN
    HAL II STAGE,BANGALORE-560008

...PETITIONERS

(BY SRI. S.S. NAGANAND SR. ADVOCATE FOR
SMT. JAYASREE NARASIMHAN., ADVOCATE)

AND

1. NATIONAL EDUCATION TRUST
   NATIONAL PUBLIC SCHOOL,
   12TH MAIN HAL II STAGE,
   BANGALORE 560008,
   REP. BY ITS CHIEF TRUSTEE
   SHRI K. GOPALAKRISHNA
2. THE STATE OF KARNATAKA
   DEKPARTMENT OF URBAN DEVELOPMENT
   GOVERNMENT OF KARNATAKA,
   DR. AMBEDKAR VEEDHI,
   BANGALORE 560001,
   REPRESENTED BY ITS
   SECRETARY TO GOVERNMNET
3. BRUHAT BANGALORE MAHANAGARA PALIKE

J.C.ROAD, BANGALORE-560002
REPRESENTED BY ITS COMMISSIONER

4. THE BANGALORE DEVELOPMENT AUTHORITY
   BELLARY ROAD, KUMARA PARK WEST
   BANGALORE-560021
   REPRESENTED BY ITS COMMISSIONER
5. THE COMMISSIONER OF POLICE FOR BANGALORE CITY
   INFANTRY ROAD
   BANGALORE-560001

6. THE PRINCIPAL SECRETARY TO GOVT.
   PRIMARY AND SECONDARY EDUCATION
   ROOM NO. 641, M.S. BUILDINGS,
   GATE NO. 2, VIDHANA VEEDHI,
   BANGALORE-560001

…. RESPONDENTS

(BY SRI.S.M. CHANDRASHEKAR., SR. ADVOCATE FOR
SRI. H.M. VISHWANATHA., ADVOCATE FOR R1;
SRI. MAHANTESH SHETTAR., AGA FOR R2, R5 & R8
SRI. B.V.KRISHNA, ADV., FOR SRI.H.N. PRASHANTH
CHANDRA., ADVOCATE FOR R3;
SRI. SACHIN B.S., ADVOCATE FOR R4;
V/O DATED 16.03.2022 R6, R7, R9 & R8 ARE DELETED)

THIS WRIT PETITION IS FILED UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA PRAYING TO ISSUE AN APPROPRIATE WRIT, ORDER OR DIRECTION TO CANCEL THE SANCTIONED PLAN AND ALL PERMISSIONS GRANTED TO THE FIRST RESPONDENT TO CONSTRUCT AND RUN A SCHOOL AT PLOT NOS. 3376/H AND 3367/I, 13TH MAIN, HAL II STAGE, BANGALORE-560008 (ANNEXURE- A, B ,O,P & Q) AND ETC.

THIS WRIT PETITION COMING ON FOR ORDERS AND HAVING BEEN RESERVED FOR ORDERS ON 16.04.2025, THIS DAY, THE COURT PRONOUNCED THE FOLLOWING:

CORAM: HON'BLE MR JUSTICE SURAJ GOVINDARAJ

CAV ORDER

1. The Petitioners originally had approached this Court seeking for the following reliefs:

> ***a.*** *Issue a appropriate writ, order or direction to cancel the sanctioned plan and all permissions granted to the First Respondent to construct and run a School at Plot No.3367/H and 3367/I, 13th Main, HAL II stage, Bangalore-560008* ***(Annexure-A & B)***
>
> *b. Direct the First Respondent to cease and desist from anymore running any classes above primary School at its facility now existing between 12-A Main and 13th Main, HAL II Stage, Bangalore-560008;*
>
> *c. Grant such other or further relief or reliefs as this Hon'ble Court may deem fit in the circumstances of the case.*

2. Subsequently, an amendment application having been filed, a challenge to Annexures-O, P and Q was allowed, vide order dated 14-6-2019. The Petitioner, also gave up Prayer (b) above. This is, after amendment, the prayers which are required to be considered are as under:

> *a. Issue a appropriate writ, order or direction to cancel the sanctioned plan and all permissions granted to the First Respondent to construct and run a School at Plot No.3367/H and 3367/I, 13th Main, HAL II*

stage, Bangalore-560008 ***(Annexure-A, B, O, P & Q)***

b. Grant such other or further relief or reliefs as this Hon'ble Court may deem fit in the circumstances of the case.

3. The Petitioners claim to be residents in and around 13th Main, HAL 2nd Stage, Bangalore- 560 008. Petitioner No.1 claimed to be a doctor, who expired during the pendency of the above proceedings; Petitioner No.2 claimed to be a businessman who also expired during the pendency of the above proceedings; Petitioner No.3 is an accomplished sportsman; Petitioner No.4 is a retired businessman; Petitioner No.5 is a retired IAS officer. Petitioner No.6 and 7 are retired IPS officers; Petitioner No.8 is a retired Telecom Manager; Petitioner No.9 claimed to be a housewife, who also expired during the pendency of the above proceedings and Petitioner No.10 is stated to be an Assistant Director of the National Aerospace Laboratory.

4. Respondent No.1 - National Education Trust (for brevity, hereinafter referred to as '**NET'**). NET was allotted a Civic Amenity Site measuring about 16,000 square feet by Respondent No.4 - Bangalore Development Authority (hereinafter referred to as '**BDA'**), in December 1989.

5. Though there have been several allegations made in the petition as regards such allotment of a civic amenity site (for short, '**CA site'**), there is no relief which has been sought for in relation thereto, nor are any arguments advanced in relation thereto. As such, the allotment of the civic amenity site to NET is not in question before this Court. The CA site having been allotted to NET, NET put up construction of a school building and started running a School.

6. The said premises not being sufficient, NET acquired the residential site bearing No.2989/J on 12th 'A' Main Road and subsequently Site No.2990/E on 12th 'A' Main Road, which also not being sufficient, NET

acquired two more residential sites bearing No.3367/H and 3367/I which are adjacent to each other on 13th Main Road. NET demolished the residential buildings therein, and construction activity was to commence thereon to set up a nursery School to house between 800 and 1000 students and staff over four floors of the building to be constructed thereon.

7. The Petitioners contend that the plan relating to the said building was secured by the Petitioners from the contractor. A perusal of which indicated that there were no lifts, nor was there a provision for fire safety equipment to be installed thereon. The NET, having established a School in the CA site, which has been successful, has been in the process of acquiring sites in and around the said School for further development and expansion, and has been making lucrative proposals to all the owners of the sites

thereon. Many of the residents have sold their sites to NET.

8. NET, being affiliated to the Central Board of Secondary Education (hereinafter referred to as '**CBSE**'), follows a 10 + 2 education pattern and at the time of filing of the Writ Petition had three buildings. The Main building for Classes 4 to 10, computer and science labs, library, Main office, Principal and Vice-Principal's office, being a four-storeyed building. The Montessori block is a five-storeyed building which houses the Montessori and kindergarten sections from Classes 1 to 3, art room, theatre, workshop and auditorium. The Senior Secondary Block houses Classes 11 and 12, a maths lab, and an OHP room.

9. It is claimed that there are a large number of students who come to the said School for their education. Many of them are dropped by School buses, private bus operators, auto rickshaws, private

cars, etc., all of which park in the 12th and 13th Main Road for the students to disembark in the morning and to embark in the evening, thereby creating a lot of noise pollution, traffic congestion, resulting in spoiling the peace of mind of the residents of the area. There are no vehicles which are permitted into the School; there are no adequate arrangements which have been made for parking in the School, thus resulting in all the vehicles being parked in the public streets, during which time, the residents cannot get out of their house, cannot remove their vehicles, since most of the third party vehicles are parked in front of the gates of the residents.

10. The Road width of 13th Main Road, including from footpath to footpath, is less than 40 feet. The 8th Cross Road, which joins the 12th Main and 13th Main, is also a very small Road. The 12th 'A' Main Road is barely 30 feet wide, resulting in huge congestion on all these Roads.

11. There are more than 2,000 students and staff who come to the said School. The Roads around the School are not catered to or designed to, handle such a large number of students and traffic. A large number of private vehicles, auto rickshaws, etc., being parked on these Roads also causes a security risk to the residents of the area. They, being senior citizens, children and women, neither can they walk on the said Road in the morning nor in the evening. The Roads are being entirely taken up by the tempo travellers, buses, mini buses, auto rickshaws, transport vehicles, etc. The drivers who come and park the vehicles are loitering around the area, talking in loud voices, chewing paan masala, smoking, speaking in vulgar language and answering calls of nature in the open, there being no toilet facilities which have been provided by NET. NET has also now taken on large number of residential houses where daycare and nursery School is being run,

which has resulted in severe congestion all around the place.

12. It is in that background that the proposed new construction on Sites No.3367/H and 3367/I on 13th Main Road is claimed would result in more nuisance and it is challenging the said proposal that the Petitioners had approached this Court, initially challenging the plan granted in respect of Sites No.3367/H, 3367/I and the construction drawing in relation thereto at Annexures-A and B. Though the resolution of the BDA dated 6-6-2019 recommending change of land use from residential to education had been produced at Annexure-O; letter dated 30-6-2009 of the BDA to the Principal Secretary of the Urban Development Department providing a rationale for the resolution dated 6-6-2009 had been produced at Annexure-P and the order of the Urban Development Department dated 7-9-2009 allowing the change of land use was produced at Annexure-Q.

The same was not challenged when the writ petition was filed. As indicated above, it is only by way of amendment that those three orders were challenged.

13. Sri S. S. Naganand, learned Senior Counsel appearing for the Petitioners, submitted that:

13.1. The entire area being residential area, though the Petitioners have no objection as regards the School being run in the C.A.site, NET now buying out land and or plots which are residential in nature, demolishing the houses built thereon, putting up construction of buildings to run Montessori, Nursery, etc. is not permissible. Residential sites cannot be used for running commercial businesses or Schools. The authorities have not imposed sufficient conditions on NET to provide suitable parking for the vehicles, which has resulted in all the vehicles being parked on the public Road, causing severe inconvenience to the residents.

13.2. The drivers of the vehicles have not been provided with toilet facilities, resulting in the said drivers attending to calls of nature in public, which is not only a nuisance but also a health hazard for the residents.

13.3. The school starts early in the morning and ends in the evening; the said Roads are not capable of being used by the residents, both in the morning and early evening, thus depriving the residents of usage of the said Roads. There is a security risk on account of such huge number of vehicles being parked in the said Roads. At the time when the petition was filed, it had been contended that the construction of large buildings in a residential area would adversely affect the residents. However, during the pendency of the above matter, on the basis of an undertaking given by Respondent No.1, that Respondent No.1 will not claim any equities,

the construction was permitted to go on and has been subsequently completed.

13.4. His submission is that though the Civic amenity sites could be allotted for educational purposes, such purposes are for the benefit of the residents, since the C.A. site has been carved out of the layout of that particular area. NET, having obtained the allotment of the CA site, has put up construction of commercial buildings, thus turning the allotment of a C.A. site into a commercial venture, which has reduced the quality of life of the Petitioners and the persons residing in and around the said area. NET has violated all Zoning Regulations, has not put up construction in accordance with the bylaws. There is a large-scale violation of the construction which has been put up, which is not in accordance with the sanctioned plan.

13.5. In the Zoning Regulations for RMP 2015, which is applicable to the present property, which came into force in the year 2007, RMP 2015 envisages a balance in urban growth. The Regulations do not permit the usage of the property for the establishment and running of a School. The Zoning Regulations, having denoted and demarked the concerned property to be residential in nature, no change in land use could have been recommended by the BDA and granted by the State Government.

13.6. It is only a residential building which can be put up in the residential zone. A School building cannot be put up in a residential zone as the Main use. It can only be an ancillary use to a limited extent. The width of the Road being less than 30 feet, no such change of land use could have been recommended by the BDA and sanctioned by the State Government. Any

usage of the land will have to be circumscribed by the width of the Road and space standards, which have not been adhered to by NET. The setbacks which are required to be maintained as per Zoning Regulations have not been so maintained by NET. The Road width requiring the use of the land for a purpose other than residential, namely a commercial educational facility, could not be so sanctioned without the Road width being 18 metres. These aspects have not been taken into consideration by the authorities concerned.

13.7. The authorities concerned have acted at the behest of NET. The said officers have derived benefits by way of School admission for their children or their near and dear ones. The action taken by the BDA and its officers, and the action taken by the BBMP and its officers, are contrary to law. The Pollution Control Board has

not taken any action as regards the pollution which has been caused, both in terms of noise as also in terms of air pollution. There is no public interest which is served by the establishment of a private School in a residential area. Thus, the change in land use, which has been recommended, even if it were to be assumed, is to be in the public interest. There is no such public interest, let alone a compelling public interest. The amenity of a School has become a bane in the area. Even if an amenity were to be provided, it would have to be in accordance with the applicable law. In the present case, all the applicable laws have been violated by the NET, requiring this Court to take necessary action against the NET.

13.8. There is a violation of the RMP 2015, the change in land use is granted in violation of Section 14A of the Karnataka Town and

Country Planning Act, (hereinafter referred to as ***KTCP Act***). An occupancy certificate has been granted in violation of Section 310 of the then-applicable Karnataka Municipal Corporations Act to the subject property inasmuch as the construction is not in accordance with the building plan and there is a large-scale violation of the building plan. There is a violation of the fire safety requirements and guidelines laid down by the Hon'ble Apex Court in ***Avinash Mehrotra vs. Union of India***[1]. He expounds and expands the same by making the following submissions:

13.9. NET had purchased two residential sites bearing Nos.3367/H and 3367/I on 13th Main Road, demolished the residential buildings and started construction of a nursery School which is not permitted under the RMP. He refers to Chapter

[1] (2009) 6 SCC 398

4 of the RMP more particularly Chapter 4.1 dealing with Permissible Land Use in Residential Main Zone.

13.10. The land use zone categories are Residential (R), Commercial (C), Industrial (I), Public and Semi-Public (P & SP), Traffic and Transportation (T&T), Public Utilities (PU), Park and Open Space (P), Unclassified (UC), Agriculture Land (AG)._There is no land use zone classified as education. Hence, the question of change of land use being recommended from residential to educational purposes is not contemplated under the Zoning Regulations of RMP 2015.

13.11. Insofar as Residential Zone is concerned, he submits that the Permissible Land Uses in a Residential category are Plotted Residential developments; Villas, semi-detached houses; Apartments, Hostels, Dharmashala; Multi-Dwelling Housing, Service Apartments and

Group Housing. Education is not one of the permissible land uses under the residential category.

13.12. By referring to Chapter 4.1 of the RMP, he submits that the Main Use for Residential Land can only be that as enumerated under 'R' and 'T1' categories. 'R' category being as indicated supra, 'T1' standing for Transportation Zone. It is only Bus bays, Auto stand, Bus shelters, Information kiosk, Metro stations, Parking areas, multi-level car parking, Filling stations, service stations which could be established. Education is not a use coming under either 'R' or T1.

13.13. Ancillary land use category provided is C2, I2 and U3. C2, I2 and U3 are reproduced here under for easy reference:

C2	***Commercial Uses***
1	*Eateries such as darshinis, tea stalls and take aways*
2	*Gyms, Orphanages, old age homes clinics*

3	*Retail Shops and Hardware Shops*
4	*Banks, ATMS, Insurance and Consulting and business offices*
5	*Mutton and Poultry Stalls, cold storages*
6	*Job Typing/computer training institutes, cyber café, internet browsing*
7	*Uses for small repair centers-electronic, mechanical, automobile, etc.*
8	*Photo Studio*
9	*Nursing homes and poly clinics/dispensaries/labs subject to minimum 300 sq.m plot size and NOC from pollution control board and adequate parking facility is provided*
10	*Fuel stations and pumps, LPG storage (as per Table 7)*
11	*Kalyana mantaps as per Table 7*
12	*All the uses of C1 are permitted.*

I-2	***Service Industries***
1	*R & D labs, Test Centres, IT, BT, BPO activities*
2	*All uses included in the I-I category*

U3	***Urban amenities***
1	*All uses of U1 and U2 are permissible*
2	*Higher primary schools, Integrated Residential Schools*
3	*Health centers and Hospital*
4	*Research institutions, subject to the size*
5	*Government buildings, auditoriums, cultural complexes,*
6	*Educational Institutions, Colleges*

13.14. He submits that it is under 'U3' that `higher primary and integrated residential school, educational institution, colleges are permitted.

However, insofar as 'residential main' is concerned, use of 'U3' is only as an ancillary land use. Ancillary land use is allowable only up to 20% of the total built-up area or 50 square meters, whichever is higher. Thus, he submits that it is only 20% of the building in a residential area which could be put to ancillary use of 'U3' as an educational facility. It is only if the plot size is more than 240 square meters, having a frontage of 10 meters or more, and the abutting Road is more than 80 meters, then the ancillary use can be used as a main use. 18 meters wide Road would mean 60 feet width Road. What is available in front of the concerned properties is between 30 to 40 feet. It is not 18 meters, and therefore the ancillary use cannot be made use of as a main use.

13.15. He further submits that the FAR is as per Table-10. The Road width being 12 meters, the

maximum FAR permissible is 1.75, and the ground coverage is permitted up to 75%. His submission is that the FAR which has been utilized for subject property is more than 1.75. Therefore, there is a violation of Table-10 of the Zonal Regulations. His submission is also that the setbacks are not in accordance with Table-8 or Table-9 and the said Table-8 and Table-9 are reproduced hereunder for easy reference:

Table 8: Setbacks for building Height upto 11.5m & Plot size of up to 4000 sq.m.

	Width of Site		*Depth of site*	
Width/Depth of site(m)	*Right Side*	*Left Side*	*Front Side*	*Rear Side*
Upto 6.0	*1.0m*	*0*	*1.0m*	*0*
Above 6.0 up to 9.0	*1.0 m on all sides*			
Above 9.0 m	*8%*	*8%*	*12%*	*8%*

Table 9: All around setbacks for buildings above 11.5 m height

Sl.No	*Height of the bldg.(m)*	*Front, rear and side set backs (Min in m)*
1	*Above 11.5m up to 15m*	*5.00*
2	*Above 15m up to 18.0m*	*6.00*
3	*Above 18.0 up to 21.0m*	*7.00*
4	*Above 21 up to 24m*	*8.00*
5	*Above 24.0m up to*	*9.00*

	27.0m	
6	*Above 27 up to 30.0 m*	*10.00*
7	*Above 30 up to 35.0 m*	*11.00*
8	*Above 35 up to 40.0 m*	*12.00*
9	*Above 40 up to 45.0 m*	*13.00*
10	*Above 45 up to 50.0 m*	*14.00*
11	*Above 50.0m*	*16.00*

13.16. He therefore submits that this violation has also not been taken into consideration by either the BDA or the BBMP. He therefore submits that there being a violation of the Zonal Regulations, necessary action ought to have been taken.

13.17. Insofar as a change in land use, he submits that there is no land use pattern recognised for educational purposes. Any change of land use could have been made as per the land use patterns, which are recognised under Clause 1.2 of the Zonal Regulations, which is reproduced hereunder for easy reference:

1.2 LAND USE ZONE CATEGORIES

A. *The entire Local Planning Area is conceptually organized into three main Rings for consideration of Zoning and regulations.*

- *Areas coming within the Core Ring Road:*

Ring I

- *Areas coming between the Core Ring road and the Outer Ring Road: Ring II*
- *Areas coming beyond the Outer Ring Road and within the LPA: Ring III*
- *The above rings are equivalent to Zone-A, Zone-B and Zone-C for TDR purposes.*

B. *Classification of Land use zones:*

RESIDENTIAL	*(R)*
COMMERCIAL	*(C)*
INDUSTRIAL	*(I)*
PUBLIC AND SEMI PUBLIC	*(P&SP)*
TRAFFIC AND TRANSPORTATION	*(T & T)*
PUBLIC UTILITIES	*(PU)*
PARK AND OPEN SPACE	*(P)*
UNCLASSIFEID	*(UC)*
AGRICULTURE LAND	*(AG)*

13.18. Any change of land use would have to be made in terms of the classification above. There being no classification provided for education purposes, no such change could be made.

13.19. 'U3' category coming under the public and semi-public category of Table-6, the change of land use from residential could have been made only to public and semi-public and thereafter, under 'U3', so as to enable the setting of an educational institution. For an educational

institution to be set up, the classification of the land has to be public and semi-public. Without doing so, the recommendation made by the BDA for a change of land use from residential main to educational purposes is not permissible. Even as regards change of land use, he submits that the change of land use could only be in terms of Clause 4.1 inasmuch as when Clause 4.1.2 requires the plot size to be more than 240 square meters with a frontage of 10 meters and abutting a Road which is more than 18 meters in width unless there was an 18 meter width road available, the question of change of land use from residential to educational purposes is not permissible. This, he submits that on account of the residential area to be maintained in a sacrosanct manner and a residential area not being permitted to be used for purposes other than residences,

change of land use, he submits, can only be made in exceptional circumstances and not as a matter of course as done in the present matter where the entire action on part of the Respondents was completed within a short period of time.

13.20. By referring to the application at Annexure-J, he submits that NET has purposely not given the width of the Road and has misled the Respondents by indicating that the said property has access from a 100-foot and 80-foot Road. When, in fact, the Road abutting the property is the 13th Main Road, which connects the 100 feet and 80 feet roads. The property being situated on 13th Main Road, which is between 30 to 40 feet, the information provided at Row No.6 of Annexure-J is a false statement.

13.21. Insofar as the information at Row No.10 is concerned, he submits that the said information

is also completely wrong, and a self-serving statement, where it is stated that the site is suitable for a School, as there is a large population in Indiranagar, and it is difficult to get admission for children in the existing Schools.

13.22. The further statement that "also the area along this Road connecting 100 feet Road to 80 feet Road has a number of non-residential uses and will not affect residential use. Also the Schools are permissible in residential zones" is a completely misconceived statement. Schools are permissible only up to 20% of the constructed area, not the entire building.

13.23. This application is based on completely false statements made by NET, which have not been properly considered by the authorities. The authorities, having come to a conclusion that both the properties are two different properties,

had also called upon NET for amalgamation, vide its letter dated 20-10-2008, as regards which the Respondent No.1 responded by stating that BBMP has issued a single katha, and therefore it is a single property and that may be considered by the BDA in order to save time vide its reply letter dated 22-10-2008 which is also surprising.

13.24. It is this reply which was taken into consideration, and the BBMP's single katha was accepted. NET was directed to make payment of betterment charges on certain conditions, which were imposed vide order dated 18-2-2009.

13.25. The BDA, in its resolution dated 6.6.2009, though took note of the fact that the site in question has a Road which is less than 18 meters as per rules and regulations, the proposal was accepted and the

recommendation was made to the Government. He submits that the reason for such acceptance, when it is not in accordance with the rules, has not been provided in the said note and order. The authorities have blindly recommended the same.

13.26. The Member, Town Planning, vide its letter dated 30-6-2009 stating that spot inspection was conducted, the road measures 40 feet, there being residential development in the surrounding, ancillary land use being C2, I2 and U3, if the site is measuring more than 240 square feet, frontage of 10 meters or more, and the road adjacent to the site is more than 18 meters, ancillary land use can be used as Main land use.

13.27. In the present case, the measurement of the site is 1003.34 square metres (10,800 square feet), frontage is 36.56 metres, and the Road

width is 12 metres. Thereafter, the proposal was submitted in the special meeting of the authority held on 6.6.2009. After discussion that the Road adjacent to the site in question is less than 18 metres, the proposal for change of land use of the total area was accepted and decided to recommend to the Government.

13.28. It is on the basis of the said resolution/order and the letter of the Member, Town Planning, BDA, that the BDA called upon NET to make payment of certain amounts as betterment charges and inspection charges and a Government Order had been passed on 7-9-2009, in furtherance of which, a commencement letter came to be issued by the Commissioner of the BDA on 28-10-2009, permitting the change of land use from residential use to educational, (nursery and

primary School) with various conditions as under:

> *1. To get approved building plan from the concerned authority for construction of the proposed school building.*
>
> *2. To provide necessary parking place as per rules, for the proposed school building, in the applicant's area only.*
>
> *3. To get no objection certificate with regard to the proposal as per the notification No. S.O.No.810 (E), dated 27.07.2004, of the Karnataka Forest and Environment Department, Indian Government.*
>
> *4. To follow the terms of the letter of Karnataka Pollution Control Board, dated 9/17.08.2004 and to make arrangements for rain water harvesting.*
>
> *5. To know that, in case any wrong information; documents are given in respect of the proposal, the applicant will be held responsible and the conversion order will be cancelled.*
>
> *6. To follow the other conditions imposed by Bangalore Development authority/concerned authority.*
>
> *(Draft has been approved*
> *By the Commissioner)*
>
> *Sd/-*
> *For the Commissioner,*
> *BDA, Bangalore.*

13.29. He submits that, firstly, there is no category of education for the change of land use. Secondly, there is no subcategory of nursery and primary

school under education for the change of land use. He further submits that all the parking was to be made available within the school building, which has not been done. The public roads are being used for parking. No objection from the Environment Department has not been obtained by NET. There is no consent which has been obtained from the Pollution Control Board. The entire action taken by the authorities, being misled, is not proper. The authorities, having identified that the abutting Road is less than 18 meters, and this having been flagged by all of them, ought to have rejected the application for change of land use. The same not having been done would require this Court's intervention by allowing the Writ Petition.

13.30. In this regard, he relies upon the decision of the Hon'ble Apex Court in the case of ***S.N.Chandrashekhar and another vs. State***

of Karnataka[2], more particularly Paras 20, 21, 27, 28, 31, 32, 34, 39 and 40 thereof, which are reproduced hereunder for easy reference:

> ***20.*** *Section 14(1), as it then stood, of the Act provided that every change in land use and every development in the area covered by the plan subject to Section 14-A shall conform to the provisions of the Act. Section 14(2), however, provides that no such change in land use or development shall be made except with the written permission of the Planning Authority which shall be contained in a commencement certificate in the form prescribed. Section 15 provides for the procedure required to be followed where the Planning Authority is required to pass an order in terms of Section 14 of the Act. So far as changes of land use or development from the Outline Development Plan is concerned, the same would be subject to the procedure laid down in Section 14-A of the Act. Outline Development Plan being a one-time plan, evidently sub-section (2) of Section 14 had no application. It is only for that purpose Section 14-A had to be introduced. Section 14-A categorically states that change in the land use or development from the Outline Development Plan must be necessitated by: (i) topographical or cartographical or other errors and omissions; (ii) due to failure to fully indicate the details in the plan or changes arising out of the implementation of the proposals in Outline Development Plan; and (iii) circumstances prevailing at any particular time by the enforcement of the plan.*
>
> ***21.*** *The proviso appended to Section 14-A enumerates that: (i) such changes should be ones in public interest; (ii) the changes proposed should not contravene any of the provisions of the Act or any other law governing planning, development or use of land within the local planning area; and (iii) the proposal for all such changes are published in one or more daily newspapers, having circulation in the*

[2] (2006) 3 SCC 208

area, inviting objections from the public. Sub-sections (2) and (3) of Section 14 of the Act are applicable mutatis mutandis to the change in land use or development from the Outline Development Plan. Sub-section (1) of Section 15 provides that on receipt of the application for permission under Section 14, the Planning Authority shall cause an enquiry to be made whereupon it may either grant or refuse a commencement certificate. Sub-section (2) of Section 15 raises a legal fiction as regards failure on the part of the Planning Authority to issue such certificate, as by reason thereof such certificate would be deemed to have been granted. The proviso appended thereto, however, provides that such change in land use or development for which such permission was sought for must be in conformity with the Outline Development Plan and the regulation finally approved under sub-section (3) of Section 13. The said proviso applies to both sub-sections (1) and (2). By reason of the said proviso, it is, therefore, explicitly clear that all such changes in the land use must conform both with the Outline Development Plan and the regulation finally approved under sub-section (3) of Section 13, which would in turn mean the changes which are permissible for which no prior permission is required and the changes which are permissible upon obtaining the requisite sanction therefor.

27. *The Planning Authority has no power to permit change in the land use from the Outline Development Plan and the Regulations. Sub-section (1) of Section 14, as it then existed, categorically stated, that every change in the land use, inter alia, must conform to the Outline Development Plan and the Regulations which would indisputably mean that it must conform to the Zoning Regulations.*

28. *The provisions of the Act are to be read with the Regulations, and so read, the construction of Sections 14 and 15 will lead to only one conclusion, namely, such changes in the land use must be within the Outline Development Plan and the Zoning Regulations. If running of a hotel or a restaurant was not permissible both under clauses (a) and (b) of the Zoning Regulations in a residential area, such change in the land use could not have been permitted under Section 14 read with Section 15*

of the Act. It is precisely for that reason, Section 14-A was introduced.

31. *Respondent 6, the Development Authority and the State of Karnataka, therefore, understood in no uncertain terms that the change in the land use from residential purpose to commercial purpose in respect of 2275 sq ft in Jayanagar must conform to the provisions of Section 14-A of the Act and not Sections 14 and 15 thereof. A bare perusal of the said order of sanction would demonstrate that the same did not disclose as to for what purpose and on what ground the same had been sanctioned. None of the ingredients contained in Section 14-A of the Act had been referred to. We have not been shown as to why BDA recommended and sought the government approval for conversion of land use of 2275 sq ft in Plot No. 585 from residential to commercial (restaurant complex). Admittedly, such a change in the land use was not occasioned owing to topographical, cartographic or other errors or omissions; or due to failure to fully indicate the details in the plan or changes arising out of the implementation of the proposal in Outline Development Plan. The only submission made before us is that action on the part of BDA and the State in granting sanction would come within the purview of the circumstances prevailing at any particular time. What was the circumstance necessitating such change of user has not been spelt out in the sanction order. Furthermore, none of the other requirements of law stated in the proviso appended thereto had been complied with. We do not know as to what was the public interest involved in directing such change of land use.*

32. *It is interesting to note that the Commissioner, BDA, while forwarding his recommendations to the Principal Secretary of Urban Development Department in terms of his letter dated 29-6-1999 mentioned that on 1-6-1999 the Commissioner and the Town Planning Member upon examination of the surrounding areas noticed that the site is located in a prominent place and opined that if the site is converted to commercial purposes, the volume of traffic may increase causing parking problem and obstructing the traffic and on the said premise stated that the application may have to be rejected. It is nowhere stated in the said letter as to how the Planning Authority intended to tackle*

the said problem. Para 4 of the said letter did not reveal as to how the mind of the Authority was applied having regard to its earlier views that conversion of the said plot to commercial use may give rise to traffic problem. It is, therefore, apparent that the objections which were raised and the basic issues which were required to be dealt with by the said Authority did not receive serious consideration.

34. *The Authority, therefore, posed unto itself a wrong question. What, therefore, was necessary to be considered by BDA was whether the ingredients contained in Section 14-A of the Act were fulfilled and whether the requirements of the proviso appended thereto are satisfied. If the same had not been satisfied, the requirements of the law must be held to have not been satisfied. If there had been no proper application of mind as regards the requirements of law, the State and the Planning Authority must be held to have misdirected themselves in law which would vitiate the impugned judgment.*

39. *It may furthermore be true that Respondent 6 was accorded permission as far back as on 10-12-1999, whereas the writ petition was filed on 15-7-2002. However, we have also noticed that in the meanwhile, Respondent 6 committed some other violations. Had the violation in the matter of change in user from residential to commercial been a minor one, probably, this Court might not have interfered but the State of Karnataka and BDA having committed serious violation of the Zoning Regulations as also Section 14-A of the Act, we are of the opinion that the same cannot be sustained.*

40. *It may further be true that Respondent 6 had invested a heavy amount but his investment in the matter of construction of a building would remain as it is. Respondent 6 can utilise the premises held by him within the purview of the permissible user as contained in the Zoning Regulations referred to hereinbefore. If he intends to use the same for such a purpose for which the permission of BDA is necessary, there is no doubt in our mind, that BDA will consider his request sympathetically.*

13.31. His submission, by relying on SN Chandrashekhar's case, is that any change in land use has to be in the public interest. The change of land use should not contravene any of the provisions of the Act or any other law governing the planning, development or use of the land. This being the basic requirements in the present case, all of them being violated, the Respondents could not have sanctioned/recommended the change of land use.

13.32. He relies on the judgment of the Hon'ble Apex Court in the case of ***Prakash Chandra vs. The Commissioner, Bruhat Bangalore Mahanagara Palike, Bangalore and others***[3] more particularly Paras 29, 36, 37, 38, 41, 42,

[3] 2014 SCC Online Karnataka 12593

43, 44, 45, 46, 47 thereof which are reproduced hereunder for easy reference:

29. *Petitioner, being a neighbour having suffered the wrath of unauthorised construction erected by his neighbour, the 4th respondent, a nuisance, justifiably informed respondents 1 to 3 over such illegal construction, although respondents 1 to 3 are statutorily invested with the jurisdiction to prevent construction of a building contrary to the building plan sanction, the building bye-laws, Karnataka Town and Country Planning Act, 1961 and the KMC Act. Thus respondents 1 to 3 permitted the 4th respondent to put up construction, hence guilty of non-performance of duties statutorily imposed upon them under the KMC Act.*

36. *In the light of the observations of the Apex Court in Dipak Kumar Mukherjee v. Kolkata Municipal Corporation [AIR 2013 SC 927 : (2013) 5 SCC 336 : 2012 AIR SCW 5463] , Petitioner being the immediate neighbour of the 4th respondent and a 'rate payer', has a legal right to demand compliance by respondents 1 to 3 of their statutory duties. The Apex Court extracting its earlier decision in K. Ramadas Shenoy v. Chief Officers, Town Municipal Council, Udipi [AIR 1974 SC 2177 : (1974) 2 SCC 506] observed thus:*

"The Court enforces the performance of statutory duty by public bodies as obligation to rate payers who have a legal right to demand compliance by a local authority with its duty to observe statutory rights alone. The Scheme here is for the benefit of the public. There is special interest in the performance of the duty. All the residents in the area have their personal interest in the performance of the duty. The special and substantial interest of the residents in the area is injured by the illegal construction".

37. *The provisions of the KMC Act invests jurisdiction in respondents 1 to 3 to perform duties to ensure planned development of the City of Bangalore, more appropriately in the construction of buildings to adhere to the laws in force. The Apex Court in The Municipal Corporation for Greater Bombay v. The Advance Builders (India) Private*

Limited [AIR 1972 SC 793 : (1971) 3 SCC 381] , at paragraph 12 observed thus:

"12. It is clear, therefore, on a consideration of the provisions of the Bombay Town Planning Act, 1954 and especially the sections of that Act referred to above, that the Corporation is exclusively entrusted with the duty of framing and implementation of the Planning Scheme arid, to that end, has been invested with almost plenary powers. Since development and planning is primarily for the benefit of the public, the, Corporation is under an obligation to perform its duty in accordance with the provisions of the Act. It has, been long held that, where a statute imposes a duty the performance or non-performance of which is not a matter of discretion, a mandamus may be granted ordering that to be done which the statute requires to be done (See Halsbury's Laws of England, Third Edition, Volume II, page 90)".

38. *A Division Bench of this Court in Smt. Shanta v. Commissioner, Corporation of the City of Bangalore [ILR 1986 KAR 1037 (DB) : AIR 1987 Kant. 48 (DB)] , observed thus:*

"7. It must be emphasised that the Development Plan prepared under the Planning Act, 1961 would be for the benefit of the public. The Corporation authorities who are the trustees of the public interest, must strictly observe the norms and conditions of the Development Plan. The authorities owe a duty to rate payers to; protect the interest of the public while administering the planning law. They cannot afford to ignore the social responsibilities underlining the planning law. They shall not favour an individual at the cost of the general public and to the detriment of their interest. They shall never issue licence to construct buildings contrary to the Zoning Regulations. If they give licence to construct a building contrary to the permitted land use or contrary to the prevailing zoning regulations, they should be held responsible for their lapses. Indeed, they are accountable to the public when they act against the interest of the public. In such cases, when the ratepayers approach the Court complaining about the misuse or abuse of powers by public authorities, the Court cannot drive them away on technical grounds. It

would be the duty of Courts to enforce the rule of law enacted for the benefit of the public. It would be the duty of Courts to protect the ratepayers interests preserved under the planning law.

…….

10. In the light of these principles it would be futile to contend that the appellants should be denied relief under Article 226 of the Constitution. Respondent 2 has no right to construct the building contrary to the planning law. Nor the Planning Authority could permit him to construct a building to the prejudice of the public and impairing their civic rights".

41. *Having regard to the large number of illegal and unauthorised construction in Cuttak as observed in Friends Colony Development Committee v. State of Orissa [AIR 2005 SC 1 : 2004 AIR SCW 5923 : (2004) 8 SCC 733] , extracted the relevant portion of the opinion which reads thus:*

"5. In Friends Colony Development Committee v. State of Orissa, (2004) 8 SCC 733 : AIR 2005 SC 1, this Court noted that large number of illegal and unauthorised constructions were being raised in the city of Cu track and made the following significant observations:

"…….. Builders violate with impunity the sanctioned building plans and indulge in deviations much to the prejudice of the planned development of the city and at the peril of the occupants of the premises constructed or of the inhabitants of the city at large. Serious threat is posed to ecology and environment and, at the same time, the infrastructure consisting of water supply, sewerage and traffic movement facilities suffer unbearable burden and are often thrown out of gear. Unwary purchasers in search of roof over their heads and purchasing flats/apartments from builders, find themselves having fallen prey and become victims to the design of unscrupulous builders. The builder conveniently walks away having pocketed the money leaving behind the unfortunate occupants to face the music in the event of unauthorised constructions being detected or exposed and threatened with demolition. Though the local authorities have the staff consisting of Engineers and Inspectors whose

duty is to keep a watch on building activities and to promptly stop the illegal constructions or deviations coming up, they often fail in discharging their duty. Either they don't act or do not act promptly or do connive at such activities apparently for illegitimate considerations. If such activities are to stop, some stringent actions are required to be taken by ruthlessly demolishing the illegal constructions and non-compoundable deviations. The unwary purchasers who shall be the sufferers must be adequately compensated by the builder. The arms of the law must stretch to catch hold of such unscrupulous builders……..

In all developed and developing countries there is emphasis on planned development of cities which is sought to be achieved by zoning, planning and regulating building construction activity. Such planning, though highly complex, is a matter based on scientific research, study and experience leading to rationalisation of laws by way of legislative enactments and rides and regulations framed thereunder. Zoning and planning do result in hardship to individual property owners as their freedom to use their property in the way they like, is subjected to regulation and control. The private owners are to some extent prevented from making the most profitable use of their property. But for this reason alone the controlling regulations cannot be termed as arbitrary or unreasonable the private interest stands subordinated to the public good. It can be stated in a way that power to plan development of city and to regulate the building activity therein flows from the police power of the State. The exercise of such governmental power is justified on account of it being reasonably necessary for the public health, safety, morals or general welfare and ecological considerations; though an unnecessary or unreasonable inter-meddling with the private ownership of the property may not be justified.

The municipal laws regulating the building construction activity may provide for regulations as to floor area, the number of floors, the extent of height rise and the nature of use to which a built-up property may be subjected in any particular area. The individuals as property owners have to pay some price for securing peace, good order, dignity, protection and comfort and safety of the community. Not only filth, stench and unhealthy places have to be

eliminated, but the layout helps in achieving family values, youth Values, seclusion and clean air to make the locality a better place to Jive. Building regulations also help in reduction or elimination of fire hazards, the avoidance of traffic dangers and the lessening of prevention of traffic congestion in the streets and roads. Zoning and building regulations are also legitimised from the point of view of the control of community development, the prevention of overcrowding of land, the furnishing of recreational facilities dike parks and playgrounds and the availability of adequate water, sewerage and other governmental or utility services.

Structural and lot area regulations authorise the municipal authorities to regulate and restrict the Height, number of storeys and other structures; the percentage of a plot that may, be occupied; the size of yards, Courts and open spaces; the density of population; and the location and use of buildings and structures. All these have in our view and do achieve the larger purpose of the public health, safety or general welfare. So are front setback provisions, average alignments and structural alterations. Any violation of zoning and regulation laws takes the toll in terms of public welfare and convenience being sacrificed apart from the risk, inconvenience and hardship which is posed to the occupants of the building".

(emphasis supplied)

42. *In the very same judgment, the Apex Court further extracted its earlier opinion in Shanti Sports Club v. Union of India [AIR 2010 SC 433 : (2009) 15 SCC 705] , which reads thus:*

"6. In Shanti Sports Club v. Union of India, (2009) 15 SCC 705 : AIR 2010 SC 433, this Court approved the order of the Delhi High Court which had declared the construction of sports complex by the appellant on the land acquired for planned development of Delhi to be illegal and observed:

"In the last four decades, almost all cities, big or small, have seen unplanned growth. In the 21st century, the menace of illegal and unauthorised constructions and encroachments has acquired monstrous proportions and everyone has been paying heavy price for the same. Economically affluent people and those having support of

the political and executive apparatus of the State have constructed buildings, commercial complexes, multiplexes, malls, etc., in blatant violation of the municipal and town planning laws, master plans, zonal development plans and even the sanctioned building plans. In most of the cases of illegal or unauthorised constructions, the officers of the municipal and other regulatory bodies turn blind eye either due to the influence of higher functionaries of the State or other extraneous reasons. Those who construct buildings in violation of the relevant statutory provisions, master plan, etc. and those who directly or indirectly abet such violations are totally unmindful of the grave consequences of their actions and/or omissions on the present as well as future generations of the country which will be forced to live in unplanned cities and urban areas. The people belonging to this class do not realise that the constructions made in violation of the relevant laws, master plan or zonal development plan or sanctioned building plan or the building is used for a purpose other than the one specified in the relevant statute or the master plan, etc., such constructions put unbearable burden on the public facilities/amenities like water, electricity, sewerage, etc. apart from creating chaos on the roads. The pollution caused due to traffic congestion affects the health of the road users. The pedestrians and people belonging to weaker sections of the society, who cannot afford the luxury of air-conditioned cars, are the worst victims of pollution. They suffer from skin diseases of different types, asthma, allergies and even more dreaded diseases like cancer. It can only be a matter of imagination how much the Government has to spend on the treatment of such persons and also for controlling pollution and adverse impact on the environment due to traffic congestion on the roads and chaotic conditions created due to illegal and unauthorised constructions. This Court has, from time to time, taken cognizance of buildings constructed in violation of municipal and other laws and emphasised 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. Unfortunately, despite repeated judgments by this Court and the High Courts, the builders and other affluent

people engaged in the construction activities, who have, over the years shown scant respect for regulatory mechanism envisaged in the municipal and other similar laws, as also the master plans, zonal development plans, sanctioned plans, etc., have received

encouragement and support from the State apparatus. As and when the Courts have passed orders or the officers of local and other bodies have taken action for ensuring rigorous compliance with laws relating to planned development of the cities and urban areas and issued directions for demolition of the illegal/unauthorised constructions those in power have come forward to protect the wrongdoers either by issuing administrative orders or enacting laws for regularisation of illegal and unauthorised constructions in the name of compassion and hardship. Such actions have done irreparable harm to the concept of planned development of the cities and urban areas. It is high time that the executive and political apparatus of the State take serious view of the menace of illegal and unauthorised constructions and stop their support to the lobbies of affluent class of builders and others, else even the rural areas of the country will soon witness similar chaotic conditions".

43. *Yet again, the Apex Court extracted its earlier observations in Priyanka Estates International Private Limited v. State of Assam [AIR 2010 SC 1030 : (2010) 2 SCC 27 : 2010 AIR SCW 1374] , in the matter of refusal to order regularisation of illegal construction raised by the appellant therein, which runs thus:*

"7. In Priyanka Estates International Private Limited v. State of Assam, (2010) 2 SCC 27 : AIR 2010 SC 1030, this Court refused to order regularisation of the illegal construction raised by the appellant and observed:

"It is a matter of common knowledge that illegal and unauthorised constructions beyond the sanctioned plans are on rise, may be due to paucity of land in big cities. Such activities are required to be dealt with by firm hands otherwise builders/colonisers would continue to build or construct beyond the sanctioned and approved plans and would still go scot-free. Ultimately, it is the flat owners who

fall prey to such activities as the ultimate desire of a common man is to have a shelter of his own. Such unlawful constructions are definitely against the public interest and hazardous to the safety of occupiers and residents of multi storeyed buildings. To some extent both parties can be said to be equally responsible for this.. Still the greater loss would be of those flat owners whose flats are to be demolished as compared to the builder"..

44. *In the light of the aforesaid observations, the Apex Court in Dipak Kumar Mukhcrjee's case held thus:*

"8. What needs to be emphasised is that illegal and unauthorised constructions of buildings and other structure not only violate the municipal laws and the concept of planned development of the particular area but also affect various fundamental and constitutional rights of other persons. The common man feels cheated when he finds that those making illegal and unauthorised constructions are supported by the people entrusted with the duty of preparing and executing master plan/development plan/zonal plan. The reports of demolition of hutments and jhuggi jhopris belonging to poor and disadvantaged section of the society frequently appear in the print media but one seldom gets to read about demolition of illegally/unauthorisedly constructed multi-storeyed structure raised by economically affluent people. The failure of the State apparatus to take prompt action to demolish such illegal constructions has convinced the citizens that planning laws are enforced only against poor and all compromises are made by the State machinery when it is required to deal with those who have money power or unholy nexus with the power corridors".

45. *A Division Bench in Leena Fernandes v. Planning Authority, Mangalore [1992 (3) Kar. L.J. 355 (DB) : ILR 1992 KAR 3068 (DB)] , while dealing with protection of self-interest and treated it as protection of special right and special interest of citizens, particularly, in matters of complaints regarding unauthorised construction of buildings observed thus:*

"If eternal vigilance is the price for liberty, equally it is so, to attain orderliness and planned developments. We are of

the view that in the absence of a clear and manifestly vicious attitude on the part of the Petitioners being established, as the motivation for filing the writ petitions, Court should not non-suit them, as otherwise, the much needed public action in this field of public litigation may get discouraged. A mere suspicion that the action initiated by the Petitioners may be due to some ulterior motive is not sufficient to throw out their action. There is every need to prevent the public bodies from overstepping their limitations; there is also a need to see that the inaction on the part of the Governmental Authority and the local bodies does not contribute to the contraventions of the statutory schemes like ODP, which are evolved for the public good. The valuable right of the tax payers and the special interest of the residents should normally be accepted as sufficient to recognise their locus standi to invoke the jurisdiction, to safeguard this right or the special interest".

46. *The Apex Court in M.I. Builders Private Limited v. Radhey Shyam Sahu [AIR 1999 SC 2468 : (1999) 6 SCC 464] , observed thus:*

"73. The High Court has directed dismantling of the whole project and for restoration of the park to its original condition. This Court in numerous decisions has held that no consideration should be shown to the builder or any other person where construction is unauthorised. This dicta is now almost bordering rule of law. Stress was laid by the appellant and the prospective allottees of the shops to exercise judicial discretion in moulding the relief. Such discretion cannot be exercised which encourages illegality or perpetuates an illegality. Unauthorised construction, if it is illegal and cannot be compounded, has to be demolished. There is no way out. Judicial discretion cannot be guided by expediency. Courts are not free from statutory fetters. Justice is to be rendered in accordance with law. Judges are not entitled to exercise discretion wearing robes of judicial discretion and pass orders based solely on their personal predilections and peculiar dispositions. Judicial discretion wherever it is required to be exercised has to be in accordance with law and set legal principles. As will be seen in moulding the relief in the present case and allowing one of the blocks meant for parking to stand we have been

guided by the obligatory duties of the Mahapalika to construct and maintain parking lots".

47. *In M.C. Mehta v. Union of India [AIR 2006 SC 1325 : (2006) 3 SCC 399 : 2006 AIR SCW 979] , observed thus:*

"61. Despite passing of the laws and repeated orders of the High Court and this Court, the enforcement of the laws and the implementation of the orders are utterly lacking. If the laws are not enforced and the orders of the Courts to enforce and implement the laws are ignored, the result can only be total lawlessness. It is, therefore/necessary to also identify and take appropriate action against officers responsible for this state of affairs. Such blatant misuse of properties at large scale cannot take place without connivance of the officers concerned It is also a source of corruption. Therefore, action is also necessary to check corruption, nepotism and total apathy towards the rights of the citizens. Those who own the properties that are misused have also implied responsibility towards the hardship, inconvenience, suffering caused to the residents of the locality and injuries to third parties. It is, therefore, not only the question of stopping the misuser but also making the owners at default accountable for the injuries caused to others. Similar would also be the accountability of errant officers as well since, prima facie, such large scale misuser, in violation of laws, cannot take place without the active connivance of the officers. It would be for the officers to show what effective steps were taken to stop the misuser".

13.33. By relying on ***Prakash Chandra's*** case, he submits that the neighbours like the Petitioners have a locus to challenge any violation of the Building Bylaws and or the KTCP Act. The duty

cast upon the BDA and the State Government is to comply with the applicable laws. In the present case, they have not complied with the same, resulting in a wrong order for change of land use, which is required to be set aside by this Court.

13.34. He relies on the decision of the Hon'ble Apex Court in the case of ***Dilip James vs. Bruhat Bengaluru Mahanagara Palike***[4], more particularly Paras 1, 2 and 4 thereof, which are reproduced hereunder for easy reference:

> ***1.*** *This petition is filed by the Petitioners being aggrieved by the inaction on the Part of the 1st and 2nd respondent authorities in not taking any steps against the illegal setting up of commercial activity by the 3rd respondent at the premises bearing No. 347, Outer Circle, Whitefield, Bengaluru. The said premises is specifically within the residential Main Zone in the Comprehensive Development Plan and can be used only for residential use. The 3rd respondent is a company which is setting up a franchise of a play school/preschool that is for children up to the UKG class, which is not permitted under the residential zone activities.*
>
> ***2.*** *Despite this, in complete violation of the same, the 3rd and 4th respondents are making arrangements to open the said school where the road width is only 24 feet and the respondent Nos. 1 & 2, BBMP has not taken any steps to*

[4] 2016 SCC Online Karnataka 5981

prevent such commercial activity from being commenced. Such action would not only be in violation of the law but also a risk to the health and safety of the Petitioners who are the neighbours and they are directly affected and it is a violation of their right to life, clean air and clean environment envisaged under Article 21 of the Constitution. Hence, this petition.

4. *Further he submitted that the Petitioners are presently concerned with the proposed unauthorized and illegal use of an adjoining residential property for the purpose of a pre-school by the respondent No. 3. This property has been taken on lease by the respondent No. 3/company that has since February 2016, started renovating the same and making modifications to the building which was an old residential villa. The respondent No. 3 has been converting the same to use it as a play school and pre-primary school for children up to the age of 5 and half years. The signage on the property was displayed and announced the opening of an international school called "Safari Kid". This is a complete violation of the zoning regulations which do not permit a creche and play school in the residential main zone.*

13.35. By referring to ***Dilip James's*** case, he submits that this Court, taking into consideration that the Road width was only 24 feet and a play school/Pre-school could not be set up, the same being illegal and in violation of the Zoning Regulation, had directed the Corporation to pass appropriate orders. He submits that the

said order of the Coordinate Bench of this Court could be equally applicable to the present matter.

13.36. He submits that there is a violation of Section 310 of the KMC Act, inasmuch as there is no occupancy certificate which has been issued, and without such occupancy certificate, the said building has been occupied and in this regard, he relies upon the decision of this Court in the case of ***Bangalore Housing Development and Investments vs. Bruhat Bangalore Mahanagara Palike & others***[5], more particularly Paras 10, 11, 12 and 13 thereof, which are reproduced hereunder for easy reference:

> ***10.*** *If the building is partly constructed, then an Occupancy Certificate in terms of Bye-Law 5.6 cannot be granted. However, a POC can be granted to a part of the building, in terms of Bye-Law-5.7, which reads as follows.*
>
> *"5.7 Occupancy or letting of the new buildings.- No person shall occupy or allow any other person to occupy any new building or part of a new building for any purpose*

[5] ILR 2014 KAR 2863

whatsoever until occupancy certificate to such buildings or part thereof has been granted by an officer authorized to give such certificate, if in his opinion in every respect the building is completed according to the sanctioned plans and fit for the use for which it is erected. The Authority may in exceptional cases (after recording reasons) allow partial occupancy for different floors of a building."

11. *Bye-law-5.7 postulates various requirements. The first is that no person shall occupy or let-in any other person to the building or part thereof, until an Occupancy Certificate to such a building or part thereof has been granted. Therefore, until and unless an Occupancy Certificate is granted, no building or part of it, can be occupied. Secondly, the grant of Occupancy Certificate shall be only after the opinion of the officer is to the effect that in every respect, the building or part thereof is complete, according to the plan sanction and that it is fit for use for which it was erected.*

12. *(a) The first part of Bye-law 5.7 clearly narrates that no person can occupy the building or part thereof without an Occupancy Certificate. Admittedly persons have been inducted prior to grant of POC. It is contrary to law. The occupation of the building or part thereof is opposed to law. No person can be inducted in any manner whatsoever, without an Occupancy Certificate by the Corporation. Therefore, all such persons who have been inducted prior to the grant of POC, are in illegal occupation.*

(b) The second part of Bye-law-5.7 is to the effect that the concerned officer has to opine, that the Occupancy Certificate sought for the building or the part thereof is complete in terms of the sanction plan. Therefore, if the building or the part thereof, is not completed in terms of the plan sanction, no such Occupancy Certificate can be granted. Even otherwise, the authorized officer should opine that the building or part thereof is completed. Therefore, until the building or the part thereof is completed in terms of plan sanction and the Authorized Officer has so opined, with regard to the same, no Occupancy Certificate can be granted.

13. *(a) Therefore, firstly no person can occupy or allow any other person to occupy the building or a part thereof, for any purpose whatsoever, until an Occupancy Certificate to such a building or a part thereof, is granted by the Authorised Officer. Therefore, it narrates that no person shall occupy the building until an Occupancy Certificate is granted. It also states that no person shall occupy or that such a person shall allow any other person to occupy. Secondly, such occupation of the building cannot take place for any purpose whatsoever. It would imply, that whatever may be the reason, whatever may be the circumstance, no person shall occupy the premises. The language used is that no persons 'shall'. Therefore, it is mandatory. 'Shall' is a compulsion. Therefore, compliance is a must.*

(b) That occupation cannot take place until and unless an Occupancy Certificate to such a building is granted. Admittedly, persons have been allowed to occupy portions of the buildings. Therefore, in view of the admitted position, there has been a violation of Law. Persons have been allowed to occupy the premises without a POC.

The Learned Counsel for the builder contends that these persons have been in occupation in terms of the deeming provisions vide Section-310 of the KMC Act. However, on arguing the issue for sometime, he submits that he would not press the contention under Section-310 of the KMC Act. He submits that persons have been inducted, not on the basis of Section-310 of the KMC Act, but the induction would be governed only by the POC. The submission on this issue is noted. Consequently, in view of the admitted position of induction of persons without an Occupancy Certificate, there has been a violation of the first part of Bye-law 5.7 itself.

(c) The second part of the bye-law would narrate that a POC can be granted, if in his opinion, namely, the Authorised Officer's opinion, the building is complete in accordance with the sanctioned plan in every respect and fit for the use for which it is erected. Therefore, what it postulates is that in terms of the sanctioned plan, the building must be complete in every respect. 'In every respect' means, complete adherence to the sanctioned plan.

(d) If it is not in accordance with the sanctioned plan in every respect, no POC can be granted. It is herein that reference to the provisions of Bye-law 5.6.1 becomes necessary. It clarifies that not only the building should be complete in all respect, but that the authority after due physical inspection of the building and as to whether commencement certificate under Section-300 of the KMC Act is obtained, that there is compliance with regard to production of documents including clearance from the Fire Department, that such an order can be passed. That there should be a certificate issued by the Architect as per Schedule-VIII. It is also clarified therein that physical inspection means that, the authority shall find out that the building has been constructed in all respect to the sanctioned plan and building bye-laws and includes inspection by the Fire Service Department wherever necessary. While seeking for an Occupancy Certificate under Bye-law 5.6, the same should be accompanied by a certificate under Schedule-VIII by the registered Architect/Engineer/Supervisor, to the effect of such completion of the building. Therefore, it has to be certified by him that the building has been constructed as per the plan sanction. Thereafter, the Corporation would do the needful and may issue an Occupancy Certificate in the form given in Schedule-IX, provided the building is in accordance with the plan sanction. However, these two issues are absent in Bye-law 5.7. Under Bye-law 5.7, there is no requirement of any such certificate by an Architect, etc. There is no specified form to issue an Occupancy Certificate. Therefore under Bye-law 5.7, the burden is cast on the Authorised Officer in this regard. It is he who has to opine that the building is complete in every respect according to the plan sanction. Hence, the responsibility is only on the Corporation so far as the grant of a POC in terms of Bye-law 5.7 is concerned.

(e) Therefore, this means that the building should be completed in every respect according to the sanctioned plan. Therefore, the Authorised Officer should opine that such a building is complete according to the sanctioned plan in every respect. Firstly, is the fact that the very imposition of conditions is alien to the provisions of Bye-law 5.7. A POC can be granted under Bye-law 5.7, only if in the

opinion of the Authorised Officer, the building is complete in every respect as per the sanctioned plan. Therefore, if it is not complete, no POC can be granted. The question of grant of POC by imposing conditions is alien to Bye-law 5.7. The grant of POC with conditions is therefore illegal and unsustainable in Law.

(f) The imposition of conditions while granting the POC being alien to Bye-law 5.7, vitiates the POC. The absence of an opinion of the Authorised Officer would also vitiate the POC. It is mandatory that the Authorized Officer opines that the building is complete in all respect. Firstly, there is no opinion of the Authorised Officer and secondly, the very fact of imposition of the conditions is beyond law.

(g) The Learned Counsel for the Corporation has procured the records. Even on a specific question being asked, he is unable to show the opinion of the Authorized Officer before issuing the POC. There is no such opinion. There are only file notings with regard to the deviations, communications, etc. Since the opinion of the Authorized Officer is mandatory in terms of Bye-law 5.7 and even the Corporation has failed to show that such an opinion has been formed, the POC is vitiated.

13.37. Further, relying on ***Bangalore Housing Development and Investments'*** judgment, he submits that in terms of Building Bylaw No.5 and 7, it is required that no person shall occupy any building without an occupancy certificate. He further submits that insofar as the Petitioners are aware, no occupancy certificate has been issued till date.

13.38. By relying on the decision of the Hon'ble Apex Court in the case of ***Avinash Mehrotra vs. Union of India***[6], more particularly Paras 20, 21, 22, 40, 41, 47, which are reproduced hereunder for easy reference:

> ***20.*** *While we applaud the States' efforts to improve schools, we find that States have done too little, too late. With the guidance of the National Building Code and affidavits in this case, we view Mr Gonsalves' brief as crystallising a minimum set of safety standards for schools. By their own admission, States have not met these standards and they have welcomed this Court's guidance in achieving improvement. We will consider in more detail the exact standards required and relief sought later in this view.*
>
> ***21.*** *It is clearly borne out from the affidavits filed by the respondents that even the basic fire extinguishing equipments have not been installed in most of the schools. Majority of the schools do not have emergency exits. The schools must realise and properly comprehend the importance of the fire safety equipments, but unfortunately most of the schools do not have fire extinguishing equipments and consequently, the schools are not following the minimum safety standards prescribed by the Building Code of the Bureau of Indian Standards.*
>
> ***22.*** *Despite best intentions and frequent agreements, these building codes and safety standards rarely bind builders in law or practice. The State or local Governments must enact building codes before any may have the force of law. Some building codes exist in law, but few States or municipalities have enacted a standard as rigorous as the National Building Code. Weak enforcement often then moots the enacted code's effectiveness, no matter the code's intent,*

[6] (2009) 6 SCC 398

whether fire safety officials routinely speak to the need for meaningful standards with real enforcement.

40. *In view of what has happened in Lord Krishna Middle School in District Kumbakonam and other incidents which have been enumerated in the preceding paragraphs, it has become imperative that each school must follow the bare minimum safety standards, in addition to the compliance with the National Building Code of India, 2005, in particular Part IV — Fire & Life Safety, and the Code of Practice of Fire Safety in Educational Institutions (IS 14435:1997) of the Bureau of Indian Standards.*

41. *The said safety standards are enumerated hereinbelow:*

3.1. Fire safety measures in schools:

(i) Provision of adequate capacity and numbers of fire extinguishers of ISI mark to be provided in eye-catching spots in each block of the school.

(ii) First aid kits and necessary medicines should be readily available in the school.

(iii) Provision of water tank and separate piping from the tank with hose reel to the ground floor and first floor.

(iv) Fire-fighting training to all teachers and students from Xth to XIIth standards.

(v) Fire task force in every school comprising of head of the institution, two teachers/staff members and one member from the Fire and Rescue Department should be constituted. The Fire and Rescue Department member shall monitor and make fire safety plan and conduct inspections once in every three months.

(vi) Display of emergency telephone numbers and list of persons to be contacted on the notice board and other prominent places.

(vii) Mock drills to be conducted regularly. Fire alarm to be provided on each floor and for rural schools separate long bell arrangement in case of emergency.

(viii) All old electrical wiring and equipment shall be replaced with ISI mark equipments and routine maintenance conducted by the school management in consultation with the Fire and Rescue Department.

(ix) No high tension lines should run inside or in close proximity to the school. Steps must be taken to shift them if they are already there.

(x) The Fire and Rescue Department shall frame guidelines with dos and donts for schools and issue a fitness certificate, which shall be renewed periodically.

3.2. Training of school teachers and other staff:

(i) The teachers along with other staff shall be trained to handle safety equipment, initiate emergency evacuations and protect their students in the event of fire and other emergencies by the Fire and Rescue Department.

(ii) They shall also be trained in providing emergency first-aid treatment.

(iii) There shall be a School Safety Advisory Committee and an emergency response plan drafted by the Committee in approval and consultation with the Fire and Rescue Department concerned.

(iv) Emergency response drills conducted at regular intervals to train the students as well as the school staff.

(v) All schools to observe fire safety day on 14th of April every year with awareness programs and fire safety drills in collaboration with the Fire and Rescue Department.

3.3. School building specifications:

(i) The school buildings shall preferably be a A Class construction with brick/stone masonry walls with RCC roofing. Where it is not possible to provide RCC roofing only non-combustible fireproof heat resistant materials should be used.

(ii) The nursery and elementary schools should be housed in single-storeyed buildings and the maximum number of

floors in school buildings shall be restricted to three including the ground floor.

(iii) The school building shall be free from inflammable and toxic materials, which if necessary, should be stored away from the school building.

(iv) The staircases, which act as exits or escape routes, shall adhere to provisions specified in the National Building Code of India, 2005 to ensure quick evacuation of children.

(v) The orientation of the buildings shall be in such a way that proper air circulation and lighting is available with open space all round the building as far as possible.

(vi) Existing school buildings shall be provided with additional doors in the main entrances as well as the classrooms if required. The size of the main exit and classroom doors shall be enlarged if found inadequate.

(vii) School buildings have to be insured against fire and natural calamities with group insurance of school pupils.

(viii) Kitchen and other activities involving use of fire shall be carried out in a secure and safe location away from the main school building.

(ix) All schools shall have water storage tanks.

3.4. Clearances and certificates:

(i) Every school shall have a mandatory fire safety inspection by the Fire and Rescue Services Department followed by issuance of a 'no-objection certificate' to the school as a mandatory requirement for granting permission for establishing or continuation of a school.

(ii) An inspection team consisting of experts like a civil engineer, a health officer, a Revenue Officer, a psychologist, a fire officer, a local body officer and a development officer besides the educational authorities shall carry inspection and assessment of infrastructural facilities before the commencement of each academic year. The team shall submit its inspection report to the District Chief Educational Officer concerned.

(iii) The building plans for schools shall be prepared only by a Government-certified engineer and the PWD Executive Engineer concerned should inspect the building and award a structural stability certificate. Stability certificates shall be issued by the State or Central Government engineers only and shall be mandatory for granting permission for establishing or continuation of a school.

(iv) In every district, one Recognition Committee headed by a retired Judge shall be constituted. Officials from the Revenue Department, Public Works Department, Fire Service, Electricity Board, Health and Education Department and a reputed NGO shall be members. They shall visit the schools periodically or at least the erring institutions as listed by the Chief Education Officer.

(v) Conditional recognition/approval shall never be resorted to for any school.

***47.** In view of what happened in Lord Krishna Middle School in District Kumbakonam where 93 children were burnt alive and several similar incidences had happened in the past, therefore, it has become imperative to direct that safety measures as prescribed by the National Building Code of India, 2005 be implemented by all government and private schools functioning in our country. We direct that:*

(i) Before granting recognition or affiliation, the State Governments and Union Territories concerned are directed to ensure that the buildings are safe and secure from every angle and they are constructed according to the safety norms incorporated in the National Building Code of India.

(ii) All existing government and private schools shall install fire extinguishing equipments within a period of six months.

(iii) The school buildings be kept free from inflammable and toxic material. If storage is inevitable, they should be stored safely.

(iv) Evaluation of structural aspect of the school may be carried out periodically. We direct that the engineers and officials concerned must strictly follow the National Building Code. The safety certificate be issued only after proper

inspection. Dereliction in duty must attract immediate disciplinary action against the officials concerned.

(v) Necessary training be imparted to the staff and other officials of the school to use the fire extinguishing equipments.

13.39. By relying on ***Avinash Mehrotra's*** case, he submits that the minimum safety standards required for a School have not been complied with. The School, having been established after the decision in Avinash Mehrotra's case, it was only required for NET to have complied with all the requirements. The requirements of the National Building Code, more so when there are children who would be making use of the said building. In this regard, he relies upon Annexure-U being the reply to an RTI application where it is stated that the proper setbacks have not been provided so as to provide fire preventive, fire fighting and evacuation measures to the School building.

13.40. He also relies on Annexure-B being another reply to the RTI application dated 1-6-2011, wherein it has been categorically stated that no objection certificate from the Fire Department has not been obtained. He submits that the writ petition is not a public interest litigation, though it espouses the cause of the public also, the same has been filed to cater to the interest of the Petitioners, who are the neighbours of the building. The authorities have given a go-by to all the applicable laws to favour the NET, and it is for that reason that this Court ought to come to the rescue of the Petitioners and take necessary action against such violations by the NET, by allowing the petition.

14. Sri.S.M.Chandrasekhar, learned Senior Counsel appearing for Respondent No.1, would submit as under:

14.1. The petition as filed is more in the nature of a public interest litigation, and as such is not maintainable. The petition has been filed due to certain enmity which has developed between Petitioners Nos . 5 and 6, on the one hand and the Chairman of NET on the other. They specifically allege that Petitioners No.5 and 6, after retirement, are using the government machinery to harass NET and its administration. They having failed to secure admission for their friends and relatives, NET not having accepted their requests, they have sought to destroy the infrastructure and goodwill of NET. A serious allegation has been made by the NET that the sites allotted in favour of many of the Petitioners were C.A. sites. Those C.A. sites have been allotted as plots. It is for that reason that the site numbers are not sequential and have alphabets after the site number. There are

various other commercial establishments, convention centres, which have been established on the 13th Main Road, as regards which no complaint has been raised. It is NET alone that has been targeted by the Petitioners.

14.2. Personal allegations are made against Petitioner No.6, who is a former Director General of Police, it is alleged that Petitioner No.6 has lodged 500 complaints against Chairman of NET and used his position as Police Officer to prevent the School staff, students and their parents to enter the School premises and he continues to harass the Chairman of NET, with the help of his subordinate police officers who are still in service.

14.3. The C.A.site having been allotted to NET, NET had put up the construction of a School, and it's only thereafter that the Petitioners had put up construction of their respective houses. The

construction of the Petitioners being subsequent to that of NET, the Petitioners cannot claim any equity on that account, and now allege that the establishment of the School by NET is causing inconvenience to the Petitioners.

14.4. The School is not concerned with the vehicles which are parked on the Road by third parties. These are not vehicles which are parked by the School or the staff of the School. The School, therefore, cannot be held responsible for such parking of vehicles. Apart from that, he submits that there is a Kalyanamantapam, an Ayurvedic hospital, as well as a telephone exchange, the visitors of which park on the said Roads and therefore, the School is not responsible for those vehicles which are parked.

14.5. Only 10 persons have filed the above petition. The said area has thousands of residents who

have no complaint against NET. On the basis of complaint of 10 Petitioners, the establishment of School by NET cannot be found fault with. The children of many of the Petitioners have also studied at the School of NET. Therefore, they could not maintain the present petitions, having availed the benefit of the School.

14.6. The KTCP Act came into force on 28-3-1963, as regards which various amendments were carried out, and provides for favourable conditions for planning and re-planning of the urban areas. The BDA was initially required to prepare a development plan, i.e. an Outline Development Plan, or a Comprehensive Development Plan, (ODP/CDP). The Act being supreme, the Zoning Regulations cannot override the Act and the Rules. The Zoning Regulations being approved by the Government based on the recommendation of the Planning

Authority cannot be given more precedence than the Act and the Rules. Therefore, the reliance on the Zoning Regulations by the Petitioners is completely misplaced.

14.7. The change of land use which is granted under Section 14A of the Act is an action taken by the Government under the Statute, which is protected by the Statute. The Zoning Regulation cannot override the powers of the Government to pass orders of change of land use under Section 14A. Indiranagar being a large area, there is a shortage of schools in the area. This has been taken into consideration by the BDA while coming up with the Zonal Regulations. While dealing with urban amenities in Indira Nagar, the BDA has categorically indicated that the education infrastructure is lacking. The average being 1 for 2500 in respect of Primary Schools is 0.61, for Higher

Primary Schools being 1 for 5,000 is 1.12, the average being 1 for 15,000 for High Schools is 2.67. Though the average ratio of all three kinds of Schools is 1.47, the ratio with respect to Primary Schools is 0.61, which is less than what is required. What is established by the NET is the primary School which caters to the requirements of the Indiranagar area, and as such, cannot be found at fault. The change of land use, which has been granted, is in the public interest for the establishment of more primary Schools.

14.8. His submission is that the plots which have been allotted to the Petitioners are out of the civic amenity plots as reserved. If those civic amenity sites had been allotted for the purpose of civic amenities, the Petitioners would not have got the sites allotted in their favour, and therefore could not have made the allegations

and taken up the contentions as done in the present petition.

14.9. He submits that ancillary uses are permitted as per the Zoning Regulation. The ancillary use permitted in respect of the present property, being for educational purposes, the change of land use that has been granted for educational purposes is proper and correct. It is not that the property cannot be used for educational purposes at all. A portion of the property could have been used for educational purposes before the change of land use. After the change of land use, the entire property is being used for educational purposes. It is in that view of the matter that NET purchased the sites bearing No.3367/H and 3367/I, which are adjacent to each other and within 40 feet of the existing School compound, for locating the pre-primary classes by amalgamating the said two sites.

Thereafter, the necessary procedure has been followed.

14.10. The BDA has levied a betterment fee, which has been paid, and following the due procedure, the BDA has recommended the change of land use, which has been approved by the State Government, and as such, no fault can be found therewith. Even without the change of land use, the plot area being 1003.3 square meters, the Road width being 41 feet, and the FAR of 2.25 meters is available, which would entitle NET to construct 2256.75 square metres, out of which 20% could be used for educational purposes, amounting to 451.35 square metres. Thus, the usage of the said constructed building for education is not prohibited; it is a permitted activity.

14.11. He submits that in the C.A. site, a building of 14,400 square metres has been constructed.

What is now constructed in the present site is only 2,106 square metres, which is situated opposite the C.A. site. Thus, the contention of the Petitioners is that on the very same Road, for the civic amenity site to be used for the purpose of construction of the school is permissible, whereas on the plots it is not permissible, is not tenable. The requirement of the construction of additional pre-primary and primary classes was necessitated on account of the new educational policy of the Government of India. It is for that reason that in the existing School, laboratories are to be provided, requiring the pre-primary and primary School to be shifted, which has been shifted to the current plots and the labs provided in the school constructed on the civic amenity site.

14.12. The Board of Governors of NET has considered all these aspects and has taken the best

possible decision in the interest of the students in the area concerned. He submits that NET is one of the well-recognised Schools in the State of Karnataka, running nearly nine institutions, is placed at the fifth place in the national level, has a high reputation, which is sought to be damaged by the Petitioners. NET has validly purchased the two plots by paying due consideration to the concerned owners. Such a purchase cannot be faulted with. Both properties have been assessed under a single katha issued by the BBMP, as regards which necessary taxes are being paid by NET. In 2018, a change of land use application having been filed, a Paper publication was taken out by the BDA inviting objections. However, no objection was received. Thereafter, the BDA proceeded with recommending a change in land use. It is after the State Government approved

the change of land use that the present petition has been filed, challenging the said construction.

14.13. The change of land use by itself was challenged much subsequently by way of amendment, and not when the petition was filed. Thus, he submits that the challenge made to the change of land use is completely belated, suffers from delay and laches, and on this ground, the petition is also required to be dismissed. NET has applied for and obtained a change of land use by making the payment of the due amounts. The plan sanction has been applied for and obtained by making payment of the due amounts. The construction is in accordance with the change of land use and the sanction plan, as regards which no fault can be found.

14.14. The change of land use, which has been granted from a change of residential plot to an

educational purpose, cannot be faulted with. Educational institution is permitted to be constructed in the subject premises. He submits that the construction is in accordance with the plan sanction. There is no violation of the plan sanction which has been committed by NET as alleged or otherwise. All the facilities which are required to be provided have been provided, including fire safety requirements. There are nearly 800 to 1000 students who are now studying in the pre-primary and primary School established by NET. If any order were to be passed by this Court holding the change of land use to be illegal or otherwise, the said 800 to 1000 students will be left with nowhere to go, and their lives and interests would be adversely affected.

14.15. The construction of the new building for pre-primary and primary does not in any manner

affect the Petitioners personally, nor is their privacy affected. He denies that the Petitioners' right to life is affected. Therefore, he submits that the allegations made against NET are completely false.

14.16. His submission is also that the Writ Petition having been filed in the year 2010, now in the year 2025, the same cannot be disturbed. The school having been running for the last 15 years, this Court ought not to grant the reliefs which are sought for by the Petitioners. This without prejudice to his contention that the petition itself was belated and subsequent challenge to the change of land use made by way of amendment, suffers from acquiescence delay and latches. In that regard, he relies upon the decision of the Hon'ble Apex Court in the case of ***Union of India & anr., vs.***

N.Murugesan & ors.,[7] more particularly Paras 20 to 25 thereof, which are reproduced hereunder for easy reference:

> ***20.*** *The principles governing delay, laches, and acquiescence are overlapping and interconnected on many occasions. However, they have their distinct characters and distinct elements. One can say that delay is the genus to which laches and acquiescence are species. Similarly, laches might be called a genus to a species by name acquiescence. However, there may be a case where acquiescence is involved, but not laches. These principles are common law principles, and perhaps one could identify that these principles find place in various statutes which restrict the period of limitation and create non-consideration of condonation in certain circumstances. They are bound to be applied by way of practice requiring prudence of the court than of a strict application of law. The underlying principle governing these concepts would be one of estoppel. The question of prejudice is also an important issue to be taken note of by the court.*
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> ***21.*** *The word "laches" is derived from the French language meaning "remissness and slackness". It thus involves unreasonable delay or negligence in pursuing a claim involving an equitable relief while causing prejudice to the other party. It is neglect on the part of a party to do an act which law requires while asserting a right, and therefore, must stand in the way of the party getting relief or remedy.*
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> ***22.*** *Two essential factors to be seen are the length of the delay and the nature of acts done during the interval. As stated, it would also involve acquiescence on the part of the party approaching the court apart from the change in position in the interregnum. Therefore, it would be unjustifiable for a Court of Equity to confer a remedy on a party who knocks its doors when his acts would indicate a waiver of such a right. By his conduct, he has put the other party in a particular position, and therefore, it would be*

[7] (2022) 2 SCC 25

unreasonable to facilitate a challenge before the court. Thus, a man responsible for his conduct on equity is not expected to be allowed to avail a remedy.

23. *A defence of laches can only be allowed when there is no statutory bar. The question as to whether there exists a clear case of laches on the part of a person seeking a remedy is one of fact and so also that of prejudice. The said principle may not have any application when the existence of fraud is pleaded and proved by the other side. To determine the difference between the concept of laches and acquiescence is that, in a case involving mere laches, the principle of estoppel would apply to all the defences that are available to a party. Therefore, a defendant can succeed on the various grounds raised by the plaintiff, while an issue concerned alone would be amenable to acquiescence.*

24. *We have already discussed the relationship between acquiescence on the one hand and delay and laches on the other.*

25. *Acquiescence would mean a tacit or passive acceptance. It is implied and reluctant consent to an act. In other words, such an action would qualify a passive assent. Thus, when acquiescence takes place, it presupposes knowledge against a particular act. From the knowledge comes passive acceptance, therefore instead of taking any action against any alleged refusal to perform the original contract, despite adequate knowledge of its terms, and instead being allowed to continue by consciously ignoring it and thereafter proceeding further, acquiescence does take place. As a consequence, it reintroduces a new implied agreement between the parties. Once such a situation arises, it is not open to the party that acquiesced itself to insist upon the compliance of the original terms. Hence, what is essential, is the conduct of the parties. We only dealt with the distinction involving a mere acquiescence. When acquiescence is followed by delay, it may become laches. Here again, we are inclined to hold that the concept of acquiescence is to be seen on a case-to-case basis.*

14.17. By relying on ***Murugesan's*** case, he submits that, although the principles governing delay, laches, and acquiescence overlap, they have distinct characteristics. Laches would involve unreasonable delay or negligence in pursuing a claim involving an equitable relief while causing prejudice to the other party. Such neglect on the part of the party to act lawfully within time would stand in the way of the party getting relief or remedy. The length of delay and nature of acts which have been performed in the meanwhile, namely, the construction of the school, the admission of the students, the education facility being provided to the students, would come to the rescue of NET, disentitling the Petitioners from any equitable relief.

14.18. Insofar as acquiescence is concerned, he submits that there is a tacit or a passive

acceptance on the part of the Petitioners insofar as the change of land use is concerned. The Petitioners had not objected to the paper publication, which had been taken out by the BDA. The said publication is to the knowledge of one and all. Even after the change of land use was granted, the same was not challenged until the amendment application was filed. Therefore, until the amendment application was filed, it is deemed that the Petitioners acquiesced to the change of land use. The amendment application, being belated, suffering from laches and delay, would amount to acquiescence. Thereafter, the Petitioners cannot claim the reliefs which had been sought for.

14.19. He submits that the Petitioners also have an alternative efficacious remedy in terms of challenging the plan sanction before the

appropriate authority of the BBMP. A writ petition is not the remedy which is available to the Petitioners. The Petitioners, not having exhausted the alternative efficacious remedy as provided under the Statute or the Municipal Corporation Act, cannot maintain the present Writ Petition. In this regard, he relies upon the decision of the Hon'ble Apex Court in the case of ***Titaghur Paper Mills Co. Ltd., vs. State of Orissa & anr.,***[8] more particularly Paras 6 and 11 thereof, which are reproduced hereunder for easy reference:

> ***6.*** *We are constrained to dismiss these petitions on the short ground that the Petitioners have an equally efficacious alternative remedy by way of an appeal to the Prescribed Authority under sub-section (1) of Section 23 of the Act, then a second appeal to the Tribunal under sub-section (3)(a) thereof, and thereafter in the event the Petitioners get no relief, to have the case stated to the High Court under Section 24 of the Act. In Raleigh Investment Company Limited v. Governor-General in Council [AIR 1947 PC 78 : (1947) 74 IA 50 : 231 IC 1] Lord Uthwatt, J. in delivering the judgment of the Board observed that in the provenance of tax where the Act provided for a complete machinery which enabled an assessee to effectively raise in the courts the question of*

[8] (1983) 2 SCC 433

the validity of an assessment denied an alternative jurisdiction to the High Court to interfere. It is true that the decision of the Privy Council in Raleigh Investment Company case [AIR 1947 PC 78 : (1947) 74 IA 50 : 231 IC 1] was in relation to a suit brought for a declaration that an assessment made by the Income Tax Officer was a nullity, and it was held by the Privy Council that an assessment made under the machinery provided by the Act, even if based on a provision subsequently held to be ultra vires, was not a nullity like an order of a court lacking jurisdiction and that Section 67 of the Income Tax Act, 1922 operated as a bar to the maintainability of such a suit. In dealing with the question whether Section 67 operated as a bar to a suit to set aside or modify an assessment made under a provision of the Act which is ultra vires, the Privy Council observed:

"In construing the section it is pertinent, in their Lordships' opinion, to ascertain whether the Act contains machinery which enables an assessee effectively to raise in the courts the question whether a particular provision of the Income Tax Act bearing on the assessment made is or is not ultra vires. The presence of such machinery, though by no means conclusive, marches with a construction of the section which denies an alternative jurisdiction to inquire into the same subject-matter."

11. *Under the scheme of the Act, there is a hierarchy of authorities before which the Petitioners can get adequate redress against the wrongful acts complained of. The Petitioners have the right to prefer an appeal before the Prescribed Authority under sub-section (1) of Section 23 of the Act. If the Petitioners are dissatisfied with the decision in the appeal, they can prefer a further appeal to the Tribunal under sub-section (3) of Section 23 of the Act, and then ask for a case to be stated upon a question of law for the opinion of the High Court under Section 24 of the Act. The Act provides for a complete machinery to challenge an order of assessment, and the impugned orders of assessment can only be challenged by the mode prescribed by the Act and not by a petition under Article 226 of the Constitution. It is now well recognised that where a right or liability is created by a statute which gives a special remedy for enforcing it, the remedy*

provided by that statute only must be availed of. This rule was stated with great clarity by Willes, J. in Wolverhampton New Waterworks Co. v. Hawkesford [(1859) 6 CBNS 336, 356 : 28 LJCP 242 : 141 ER 486 : 7 WR 464] in the following passage:

"There are three classes of cases in which a liability may be established founded upon statute. . . . But there is a third class, viz. where a liability not existing at common law is created by a statute which at the same time gives a special and particular remedy for enforcing it. . .the remedy provided by the statute must be followed, and it is not competent to the party to pursue the course applicable to cases of the second class. The form given by the statute must be adopted and adhered to."

The rule laid down in this passage was approved by the House of Lords in Neville v. London Express Newspapers Ltd. [1919 AC 368 : 1919 All ER Rep 61 : 88 LJKB 282 : 120 LT 299] and has been reaffirmed by the Privy Council in Attorney-General of Trinidad and Tobago v. Gordon Grant & Co. Ltd. [1935 AC 532 : 104 LJ PC 82 : 153 LT 441 (PC)] and Secretary of State v. Mask & Co. [AIR 1940 PC 105 : 67 IA 222 : 188 IC 231] It has also been held to be equally applicable to enforcement of rights, and has been followed by this Court throughout. The High Court was therefore justified in dismissing the writ petitions in limine.

14.20. By relying on the ***Titaghur Paper Mills case,*** he submits that when an alternative efficacious remedy is available, the Petitioners cannot approach this Court. The alternative and efficacious remedy would have to be exhausted

before the Petitioners were to approach this Court.

14.21. He also relies on the judgment of this Court in the case of ***Parameswaran vs. Bangalore Mahanagar Palike***[9] more particularly Paras 9, 20, 21 and 22 thereof, which are reproduced hereunder for easy reference:

> ***9.*** *I have applied my mind to the contentions of the learned Counsel for the parties. As regards the maintainability of the Writ Petition, the Petitioner's grievance is primarily against the dwellers in those hutments or constructions, which the Petitioner alleges to be unauthorised and which are alleged to have been made on the pavement. The Petitioner has not shown how he has come to know and in what manner they are unauthorised constructions. The persons who have raised those constructions have also not been impleaded in the case. Whether those persons have been raised unauthorised constructions or not, that is the question which requires to be tried and investigated in the light of the evidence and it is only after giving opportunity to those persons. The Petitioner, in the Writ Petition, has stated that, he is suffering special injury because of those hutments.*
>
> ***20.*** *The observation of Their Lordships of the Supreme Court interpreting Section 314 of the Bombay Municipal Corporation Act are applicable to the interpretation of Section 288D of the Karnataka Municipal Corporations Act, 1976. In that light, it can well be held that Section 288D is an enabling provision. It is not compulsive in character. It is a discretionary power of the Commissioner to cause an encroachment removed either with or without notice or in a case where circumstances do not require its removal, he*

[9] ILR 1994 KAR 2972

may not order removal even. So, this Section does not impose a compulsive duty to remove. Where it appears firstly that the construction is an unauthorised one and the Commissioner considered that the circumstances warrant its removal, he may direct removal. But, when the circumstances are such that removal may cause greater injury, the Commissioner may not exercise that power and he cannot be compelled therein. When the person has got discretionary powers and in case where discretion is rational one, one way or the other, there is no question of exercise of jurisdiction. Here, in the present case, it has been alleged that he had made a complaint to the police as well as the complaint to the Corporation authorities, but neither the police have taken any action on the complaint nor the Municipal Corporation. No copy of the complaint has been annexed at all and when the complaints are not annexed, I am not going to take notice of such a thing and particularly when it is in discretionary matter. In this view of the matter, unless it is proved by their having filed the copy of the complaint, it cannot be assumed that the complaints have been made as even the date of making the complaints has not been stated or indicated in the Petition. I may observe, at this stage, while filing the Writ Petition, the Petitioner has not indicated as to when the complaint has been made or the application has been moved.

21. *Having thus considered, in my opinion, this Writ Petition is entitled to be dismissed as it has got no force for the following reasons:—*

(a) that the Petitioner has got alternative remedy,

(b) that there is the power conferred is discretionary and not mandatory or compulsive under Section 288-D of the Act on the Commissioner,

(c) that the Petitioner does not show as to when and on what date the complaint has been produced so it cannot be assumed that Petitioner did approach at any time the Corporation Authorities asking them to exercise their powers under Section 288-D of the Act and unless the Petitioner establishes that he did approach opposite party to exercise its powers under Section 288-D of the Act

against specified person alleged to be unauthorised occupants no Writ of Mandamus can be issued in his favour.

22. *Thus, the Writ petition is hereby dismissed on the above grounds. Interim relief application, as mentioned earlier is also devoid of force in view of the observations made in the case of Assistant Collector of Central Excise, Chandan Nagar, West Bengal v. Dunlop India Ltd. [(1985) 1 SCC 260 : AIR 1985 SC 330.] . So, the same is also rejected.*

14.22. By relying on ***Parameswaran's*** case, he submits that even if unauthorised constructions were to be made, it is for the statutory authorities to take necessary action. It was for the Petitioners to have approached the concerned authorities under Section 288D of the KMC Act. Not having done so, the present petition is not maintainable.

14.23. Section 288D is reproduced hereunder for easy reference:-

288D. Commissioner may without notice remove encroachment.-

Notwithstanding anything contained in this Act, the Commissioner may, without notice, cause to be removed,-

(a) any wall, fence, rail, step, booth or other structure or fixture which is erected or set up in contravention of the provisions of section 288A;

(b) any stall, chair, bench, box, ladder, bale, or any other thing whatsoever, placed or deposited in contravention of section 288B;

(c) any article, whatsoever, hawked or exposed for sale in any public place or in any public street in contravention of section 288C and any vehicle, package, box, board, shelf or any other thing in or on which such

article is placed, or kept for the purpose of sale.]

14.24. He relies on the judgment of this Court in the case of ***Alliance Business Academy vs. Dr.Jayaram Reddy***[10], more particularly Paras 12 to 20 thereof, which are reproduced hereunder for easy reference:

12. *Although these writ appeals were heard quite extensively, in our considered opinion, the main question that arises for decision falls within a short compass. The question is whether Clause (b) of 'Residential Zone' which deals with the uses that are permissible under 'special circumstances' empowers the Planning Authority to allow establishment of any of the amenities specified therein while planning only or that Clause (b) also empowers the Planning Authority to allow conversion of a site meant for a particular amenity into another amenity if both the amenities are specified amenities therein?*

13. *In order to appreciate the point raised before us, it will be beneficial for us to briefly refer to the provisions of the Planning Act. The Planning Act was enacted by the Karnataka State Legislature for regulating planned growth of land use and its development and for making and*

[10] ILR 2005 Karnataka 450

execution of town planning schemes in the State of Karnataka with a view to provide civic and social amenities for the people in the State, to preserve and improve the existing recreational facilities and other amenities thereby contributing towards balanced use of the land and to provide for healthy environment, hygiene and general standard of living. In order to achieve the aforementioned laudable objectives, the Planning Act has created the "Planning Authority" which is given the power first to conduct a survey, locate the area for development by declaring it as a planning area. Under Section 9 of the Planning Act, the Planning Authority is required to prepare an ODP for such planning area. Section 12 of the Planning Act deals with what an ODP should contain. The ODP prepared under Section 9 of the Act is required to be forwarded to the State Government under Section 13 by the Planning Authority. The same is required to be published for general information by inviting objections or comments. The State Government, after applying its mind to the contents of the ODP and objections submitted if any is required to accord its approval. If the Government accords approval, it is required to be published on the Notice Board for information of the general public and then only it becomes final and enforceable under Section 14 of the Act. Section 14 of the Planning Act deals with enforcement of the ODP and the Regulations. A careful reading of Section 14 makes it clear that on and from the date on which ODP has been published, every owner of land shall use/should develop his land strictly in accordance with the permitted use. However, if he wants to use the land for a different purpose than what is mentioned in the ODP, he has to apply and obtain permission from the Planning Authority under Section 14-A of the Planning Act. Section 14-A of the Act reads:

*"**14. A Change of land use from the outline Development Plan (1)** At any time after the date on which the Outline Development Plan for an area comes into operation, the Planning Authority may, with the previous approval of the State Government, allow such changes in the land use or development from the outline Development plan as may be necessitated by topographical or cartographical or other errors and omissions, or due to*

failure to fully indicate the details in the plan or changes arising out of the implementation of the proposals in Outline Development Plan or the circumstances prevailing at any particular time, by the enforcement of the plan;

Provided that-

(a) all changes are in public interest;

(b) the changes proposed do not contravene any of the provisions of this Act or any other law governing planning, development or use of land within the local planning area; and

(c)the proposal for all such changes are published in one or more daily newspapers, having circulation in the area, inviting objections from the public within a period of not less than fifteen days from the date of publication as may be specified by the Planning Authority.

(2) The provisions of sub-sections (2) and (3) of Section 14 shall apply mutatis mutandis to the change in use or development from the Outline Development Plan.

14. *The Government of Karnataka has framed the rules called the Karnataka Planning Authority Rules, 1965 ("Planning Rules" for short) in exercise of the powers conferred under Section 74 of the Planning Act. Rule 30 deals with as to what a map prepared by the Planning Authority should contain. It has divided the areas and the uses in the map under the headings, residential, commercial, industrial, transport and communication, public utilities, public and semi-public uses, open spaces and agricultural land. In the instant case, the CDP has been published under Government Order No. HUD 139 MNJ 94 dated 5th January, 1995. The object of the CDP as stated in the Notification is to promote among other things, general social welfare of the community and to put reasonable limitation on the use of the land for the said purpose. The Notification has divided the entire Bangalore city into residential, commercial, industrial, public and semi-public zones. Annexure I to the above Government order establishes zones, land zoning maps, whereas Annexure-II classifies the land use of the zones into 8 categories under the heads; residential commercial (retail and wholesale*

business), industrial (light and service industries, medium and heavy industries), pubic and semi-public utilities and services, parks and open spaces and playgrounds (including recreational area) transportation and communication, agricultural land and watersheds. The Notification also provides for the uses that may be permitted by the BDA under different zones. As regards residential zone, the permissible uses are classified under two categories (a) uses that are permissible and (b) uses that are permissible under 'special permission' of the authority. Categories (a) and (b) are extracted herebelow for ready reference.

"Residential zone

(a) Uses that are permissible dwellings, hostels including working women and gents hostels, Dharmashalas, places of public worship, schools offering general education course upto secondary education, public libraries, post and telegraph offices, KEB counters, BWSSB counters, Clubs, Semi-public recreational uses, milk booths and neighbourhood or convenience shops, occupying a floor area not exceeding 2000 sq. mets. doctor's consulting rooms, offices of Advocates, other professions in public interest not exceeding 2000 sq. mts. of floor area in a building.

(b) Uses that are permissible under "special circumstances" by the Authority.

Municipal, Statutory Authorities, State and Central Government Offices, Banks, Public Utility Buildings, Colleges. Cemeteries, golf clubs, tailoring, laundry, hospitals for human care except those meant for mental treatment, nursing homes, philanthropic uses, fuel storage depots, filling stations, huller and floor mills, coffee grindings machines including service industries, with a maximum power up to 5 HP for all the industries as per the list given in Schedule 1 and 10 HP in case of huller and floor mills. The power required for air conditioners, lifts and computers shall be excluded while calculating the horse power specified above.

***15.** Zoning Regulations are statutory instruments, and, therefore, in interpreting those regulations, it is well settled, the Courts should give content and meaning to*

every word of the regulations. The Courts cannot by interpretative processes reduce a term or word in the regulations as surplusage or otiose or redundant. Admittedly, the sites in which the building is constructed to run the college fall within the residential zone. It is trite, the use of the building for running a college comes within the uses which can be permitted under 'special circumstances'. Therefore, it cannot be held that the use of the land under such 'special circumstances' should have been specified in the CDP itself even before it was sanctioned by the State Government. Regarding each zone, the Zonal Regulations prescribe the normal use as also the uses under 'special circumstances'. In the CDP, the area where the land has to be used in the normal circumstance and the area where the land has to be used under 'special circumstances' are never indicated nor is it practicable nor expedient to indicate the same. In effect, both category of uses are permitted by the Zonal Regulations. However, in the case of use coming under 'special circumstances', a separate permission from the Planning Authority is needed. In the instant case, a separate permission envisaged in clause (b) has been obtained by respondents 3 and 4 to use site Nos. 2 and 3 for construction of a building to house a college to impart computer training. We do not find any merit in the contention that Section 14-A of the Planning Act is attracted, because, question of 'change of land use' or change of zoning would not arise since the property in question continues to be in residential zone and under the zonal Regulations, two categories of uses, viz., (i) ordinary use, and (ii) use under 'special circumstances' are permitted and since 'special permission' is obtained from the BDA, the impugned resolution of the BDA cannot be faulted. The opinion of this Court in Sri Krishnapur Mutt, Udupi v. N. Vijayendra Shetty [1992 (3) Kar LJ 326.] supports our view. In that judgment, this Court has held:

"7. When the first respondent had obtained permission or commencement certificate for the construction of a commercial building the nature of the building remained the same, namely, "commercial" as contemplated under Section 12 of the Act and it continued to be so even when the 1st respondent wanted to run a restaurant or a boarding and lodging house. The concept of commercial use of a

building includes not only activities where a shop premises is located, it also covers a restaurant or a lodging house and the classification of the important or main purposes of land-use under Section 12 is commercial, residential, industrial and so on and not each sub-purposes have been entered in the definition. Each one of the purposes mentioned while defining the expression commercial cannot be stated to be a different purpose. It falls within the same genus and each purpose will only indicate the specie of the same genus. When a building is utilized for different purposes within the same genus of purpose it cannot be said that there has been a material change in the use of building or the land. Therefore, in the present case just because the Planning Authority had given a commencement certificate for construction of a commercial building on the land in question, the further requirement of another commencement certificate being granted to the first respondent to put up a boarding and lodging house in the upper floors does not result in any material change and the resolution passed by the Town Planning Authority in this regard, called in question in this proceeding becomes superfluous or irrelevant.

8. The restrictions imposed in the planning law though in public interest should be strictly interpreted because they make an inroad into the rights of a private person to carry on his business by construction of a suitable building for the purpose and incidentally may affect his fundamental right if too widely interpreted. The building bye-laws while sanctioning a plan will take care of what parking space should be provided in the area and whether the building itself would have such facility. But under the planning laws what we are required to see is whether there is any change in the use of land or building from the one which was originally granted and whether such change is a material change or not for the purposes of the Act. As stated by me earlier, a material change occurs only when there is alteration of building from one major head to another major head not in other circumstances. The purpose of the enactment is only the orderly growth of a city and it regulates each area of the city with regard to the nature of buildings that could be put up, namely, commercial, industrial or residential. When that aspect is taken care of,

rest of the matters should be left to the municipal authorities and other licensing authorities who regulate the trade or other activities.

16. *The above observations were made by this Court speaking through S. Rajendra Babu J. (as His lordship then was) while rejecting the contention of the Petitioner therein that Section 14 of the planning Act contemplates that every land-use, every change in the land-use and every development in the area should conform to the provisions of the planning Act and should be in compliance with the ODP and that any change in the land-use or development thereof should be with the permission of the planning Authority; therefore, each time where there is a change in the user of land or where there is any development altering the nature of the building or use thereof requires a fresh commencement certificate.*

17. *We also do not find any merit in the contention of Sri. L. Govindaraj that the Petitioners and the similarly circumstanced residents of the locality ought to have been heard in the matter before the impugned resolution was passed by the BDA. None of the legal rights of the Petitioners or similarly circumstanced other residents of the locality have been violated or impaired by the permission granted by the BDA. Therefore, the Petitioners could not insist that they have a right to be heard as a matter of law. If the BDA has accorded permission in terms of the Zoning Regulations and exercising power conferred upon it under those Regulations and if the impugned resolution has no effect of affecting any of the legal rights of the Petitioners, the resolution cannot be faulted simply because no notices were issued to the Petitioners and they were not heard in the matter before the resolution was passed.*

18. *The other contention of Sri L. Govindaraj directed against the amalgamation of two sites into one for the purpose of construction of a building to house a college is also not acceptable to us. The rationale of our opinion is that if a site could be permitted to be used for an amenity other than the amenities for which it was originally allotted by the Planning Authority, in terms of law, simply because two sites were permitted to be used for establishing a permissible amenity in accordance with the Zonal*

Regulations, that fact itself would not vitiate the action of the Planning Authority. The question to be addressed is whether the sites in question individually or together could be allowed to be used for establishing amenity or amenities which is/are different from the amenity/amenities for which the site/sites was /were originally allotted in terms of the Zoning Regulations. Clause(b) of Zoning Regulations undeniably empowers the Planning Authority to permit an allottee of a site in a residential zone to use that site for establishing a college. Even in such case, if the allottee were to resort to the procedure envisaged under Section 14-A Planning Act, Clause (b), which is a statutory provision, would be rendered otiose in other words a deadletter. The judgments of this Court in Jayanagar 4th T. Block Residents Association [ILR 1995 Kar 461.] (supra) and Pee Kay Construction [ILR 1989 Kar 241.] (supra) cited by Sri L. Govindaraj in support of his contention that amalgamation of two residential sites into one is impermissible, are of no help to sustain his argument inasmuch as they could be distinguished on facts. In the above judgments, the Court was not called upon to interpret clause(b) of residential Zone in Annexure-II appended to the Zonal Regulations.

19. *It is true that the 3rd respondent, initially, under an erroneous impression of law, applied to the BDA for grant of permission for 'change of land use' under Section 14-A of the Planning Act without realising that he should have applied for permission of the BDA to use the building for running a college under 'special circumstances' as provided in the Zonal Regulations. When the said application filed under Section 14-A of the Planning Act was being processed, the 3rd respondent having realised that in his case, question of obtaining permission for 'change of land use' contemplated by Section 14-A of the Planning Act would not arise, but, that he has to obtain permission from the BDA for use of the building for running a college which use falls under the 'uses under special circumstances; abandoned his application filed under Section 14-A of the Act and, instead, sought permission of the BDA to run a college in the building already put up in the property under the 'special circumstances'. The BDA, on consideration of the relevant materials placed before it, passed a resolution*

on 19.10.2002 granting permission to the 3rd respondent to run a college in the building under 'special circumstances'. The 3rd respondent remitted the entire development fee on the order of the 4 BDA on 25.10.2002. Admittedly, the college began to function from 26.10.2002. When the matter stood thus. Writ Petitions were filed only on 29.10.2002. The fact that the BDA had permitted the use of the premises for running a college as per its resolution dated 19.10.2002 was not disclosed in the Writ Petitions. The above resolution of the BDA was also not challenged in the Writ Petitions as initially presented. However, during the pendency of the Writ Petitions, the Writ Petitions were amended so as to include the prayer seeking quashing of the resolution of the BDA dated 19.10.2002. There is no satisfactory explanation from the Petitioners as to why they kept silent while the 3rd respondent was constructing the building. The Petitioners being neighbours of the property in which the building was constructed, could not possibly plead and in fact did not plead that they were not aware of the construction of the building. Looking from that angle also, the equities of the case are not in favour of the Writ Petitioners, but, in favour of respondents 3 and 4.

20. *In conclusion, with respect, we cannot sustain the order of the learned single judge. We, therefore, allow Writ Appeal Nos. 5211-5212 of 2003 and Writ Appeal Nos. 4980 and 5596 of 2003 and set aside the order of the learned Single Judge dated 28th May, 2003 and dismiss Writ Petition Nos. 39079 and 39344 of 2002. Consequently, Writ Appeal Nos. 5488-5489 of 2003 are liable to be dismissed and, we, accordingly dismiss those Writ Appeals. In the facts and circumstances of the case, we direct the parties to bear their respective costs in the Writ Petitions as well as in the Writ appeals.*

14.25. By relying on ***Alliance Business Academy's*** case, he submits that the Planning Authority is empowered to permit the establishment of

amenities even in residential areas under special circumstances. While interpreting the Zoning Regulations, the Court should give context and meaning to every word of the Regulations. The usage of the land in special circumstances is important. Special circumstances like the present for educational purposes need not be enumerated in the zonal regulations. Special circumstances would enable the authorities to permit the usage of the land for purposes other than those that have been enumerated in the Zonal Regulations. Thus, even if education is not a zone specified in the Zonal Regulation, the State can permit the usage of any particular land for educational purposes, even though situated in the residential zone.

14.26. He relies on the judgment of the Hon'ble Apex Court in the case of ***Jayanagar 4th T Block***

Residents Association vs. Gnana Mandir Trust[11] more particularly Paras 12 to 18 thereof, which are reproduced hereunder for easy reference:

> ***12.*** *There is another Sanskrit Shloka from Uttar Geetha and Lord Krishna says:—*
>
> *Aahar Nidra Bhaya Maithhunancha*
>
> *Samaanamethat Pashubhinaraanamm*
>
> *Jnaanam Naraanamadhike Visheshh*
>
> *Jnaanaviheenah Pashoobhissamaanaha;*
>
> ***13.*** *Means - food, sleep, fear and sex are common to animals, birds and to man. There is no difference in the enjoyment of pleasures. What is special to man is Jnanam i.e., learning and knowledge that directed towards attaining the supreme being. One who is devoid of learning and knowledge (Jnanam) is at par or is equivalent to an animal.*
>
> ***14.*** *Such is the role of education in the building and dignity of human character. Therefore the need of the time is no doubt to expand the sphere of education and learning in the proper sense, which may inculcate in one the traits of humanity, the character and a sense of honour, apart from training the one for worldly life. It has the great effect in the building up of the character. So it is beyond doubt the need of educational institutions and establishments thereof in the areas which are inhabited by human beings or near the areas of human habitation where children, including those belonging to the down trodden classes or the poor men also may be able to attend schooling.*
>
> ***15.*** *Thus considering this aspect of the matter, in my opinion, ordinarily at least educational institutions*

[11] 1994 SCC Online Karnataka 227

imparting general education cannot be required to be established at places far off distances and beyond the place of human habitation. A look to the provisions of Section 12 of the Karnataka Town and Country Planning Act, indicates the manner in which the development and improvement work of entire Planning Area is to be carried out and regulated, is to be indicated by the Outline Development Plan and that the illustrations are given. Clause (a) provides for a general land-use plan and zoning of the land-use for residential, commercial, industrial, agricultural, recreational, educational and other public purposes. It further provides that along with the Outline Development Plan, certain other particulars have also got to be published and clause (iii) of Section 12(2) provides that Regulations in respect of each land use zone to enforce the provisions of such Plan and explains the manner in which necessary permission for developing any land can be obtained from the Planning Authority. Appendix-I to B.D.A., Zonal Regulations and in particular Annexure-I to regulations dealing with zonal boundaries provides under head "Residential Zones", under head - 1.2.1. - which reads as under:—

"1.2.1. Residential Zones.— Uses that may be permitted:— Dwellings, hostels including working women and gents hostels, dharmashala, places of public worship, schools offering general educational courses, Libraries, post and telegraph offices, KEB counters, BWSSB counters, non-profit clubs and semi-public recreational uses, milk booths and doctors' consulting rooms, offices of advocates and other professionals".

16. *A reading of this Regulation per se shows that in the Residential Zone user can be permitted for the purpose of establishing places of public worship or schools of general education. A reading of this Regulation per se shows that as regards the schools or running of the schools, where general education is imparted can be established. It means schools running educational classes commencing from Nursery to High School classes may be permissible in every case. In the present case the Institution that is being run consists of a School with Nursery, Primary and thereafter up to High School are being run. In this case I also find that the requisite permission of the Planning Authority under*

Section 14(2) read with Section 15 of the Karnataka Town and Country Planning Act, has also been granted. Annexure R3 dated April 13, 1993 is a photostat copy of that Commencement Certificate, which says permission is hereby granted under sub-section (1) of Section 15 of the Karnataka Town & Country Planning Act, 1961 read with Rule 35 of the Karnataka Planning Authority Rules, 1965 to Smt. Hema Narayan, Managing Trustee and Principal, Gnyana Mandir Trust (Regd)., No. 163/D 6th Main Road, 2nd Cross, J.P. Nagar, III Phase, Bangalore-78, for construction of school building at premises No. 1163, 26th 'A' Main, 4th 'T' Block, Jayanagar, Bangalore measuring 4,050 sq. ft., subject to the conditions mentioned in the Annexure. That being the position, the user of the building or the land for the purpose of running the school by the respondents cannot be said to be a change in user, under the provisions of law. Instead, it stands in conformity with the provisions of law, when such changes have been made after obtaining the permission of the concerned authority. When I so hold, I find support for my above view from the Decision of this Court in the case of S. Vijaya Shankar v. Corporation of the City of Bangalore [W.P. No. 12285 of 1985, DD: 7-8-1986.] . Learned Single Judge, after having quoted Section 14(2) of the Act, has been pleased to observe as under:—

"From the very expression used and the reference made to sub-section (1) of Section 14 of the Act, the meaning of sub-section (2) of Section 14 of the Act becomes clear. The Planning Authority may permit change in land use or development provided such permission is in writing and in a Commencement Certificate that shall be in the prescribed form, the prescription necessarily being by the Rules framed under the Act".

***17.** After making reference to sub-section (1) of Section 15 of the Act, His Lordship further observed as under:—*

"Strangely enough, sub-section (2) of Section 15 of the Act, which has been extracted above, is in conformity with the normal practice of the draftsman that if such permission prayed for in an application is not granted nor refused within three months from the date of such application, it shall be deemed to have been granted. That

itself points to the extent of relaxation that is possible in the scheme of the Act to reduce the rigour of the prohibition imposed under sub-section (1) of Section 14 of the Act."

18. *Thus, once the permission has been granted, the rigour of the bar to Section 14(1) has been reduced and as such it can be said that allottee or transferee from him i.e., the present respondents when they did construct the School or when they are constructing the School building, by the act of constructing the building for running the School to impart general education, they have not committed any illegality or breach of Municipal Law and as such the present Petition, the reliefs claimed therein cannot be granted nor can respondents 3 to 5 be directed to demolish the building standing on B.D.A., sites 1163 to 1166, 26th 'A' Main, 4th 'T' Block, Jayanagar, Bangalore which is in possession and enjoyment of respondents 1 and 2. Children are the future of the Nation. None should have any grudge with the education and with educational institutions and establishments, which really impart education to them to make them perfect citizens, full of character and knowledge. If the Petitioners have any other grievance of the personal nature, it is open to them to have recourse to the remedies in the civil Court, for suitable directions to minimise rigour of their trouble or of interference if any, with their peaceful living, in the form of some injunction order.*

14.27. By relying on ***Gnana Mandir's*** case, he submits that educational institutions imparting general education cannot be required to be established at distant places. Schools offering general educational courses, libraries, post and telegraph offices, KEB counters, BWSSB

counters, etc. are required to be as close to the residential area as possible. Once a change of land use is permitted, the usage of the land as per the changed land use would be in conformity with the Zoning Regulation. It cannot be said to be contrary to the Zoning Regulations. The rigour or bar under Section 14 would not apply to the said property once change of land use has been granted. He theretofore submits that the change of land use has been granted in a proper manner by following the regulations due procedure cannot be found fault with.

15. Learned AGA appearing for Respondents No.2, 5 and 8 would submit that:

15.1. The procedure under Section 14A of the KTCP Act has been followed by the Government. At any time after the date on which the master plan comes into operation, the Planning

Authority may, with the previous approval of the State Government, allow a change of land use. The Planning Authority, in this case, had recommended the change of land use, which was approved by the State Government, and thereafter, the Planning Authority allowed the change of land use. In the present case, the change of land use has been granted in the public interest, there being a requirement to establish an educational institution. The proposal for change of land use had been published in Samyuktha Karnataka and the Indian Express, having circulation in the area. No objection was received in relation thereto. Thereafter, the Government, considering the recommendation of the BDA, has approved the same.

15.2. Newspaper publication having been taken out on 22-04-2009, no objections had been

received. On 6-06-2009, a recommendation was made for a change of land use, and a Government Order was passed on 7-09-2009, after considering all the relevant factors. Therefore, neither the recommendation made nor the sanction permitted is in violation of any particular law.

15.3. He submits that despite several attempts being made to regulate the traffic, since there are buses and transport vehicles which have been used by the students to be dropped at the School, it has become difficult for the traffic police to control the same.

16. Sri.B.S.Sachin, learned counsel for the BDA would submit that:

16.1. The BDA has acted in conformity with the Zonal Regulation and the KTCP Act. It is submitted that the traffic problem is not the obligation of the BDA. The same is required to be taken care

of by the BBMP and the traffic police. The sanction granted to the new building, insofar as the BDA is concerned, is proper and correct.

16.2. As regards the fire clearance, etc., the same would come under the purview of the BBMP. The BDA is only concerned with the sanctioning of change of land use, which has been properly done by the BDA.

16.3. The application filed by NET has been considered and a resolution passed by the BDA on 6-6-2009, which came to be approved by the Government on 7-9-2009. Accordingly, the order has been passed by the BDA on 28-10-2009, allowing the change of land use. All the aspects being considered by the BDA and the State Government, the Petitioners cannot find fault with the orders passed.

16.4. He also reiterates that no objection having been received to the publication in Samyukta

Karnataka and Indian Express from the Petitioners or anybody else, the matter was proceeded with. The restrictions and or limitations imposed on Zoning Regulation, 2007, and Revised Master Plan 2015 have no application to the present facts.

16.5. The ancillary usage in terms of Chapter 4.1.2 (i) permits the running of the School in a residential area. Thus, he also reiterates that the establishment of a School in a residential area is permitted and no one can claim to the contrary, more so the Petitioners.

16.6. Section 14A of the KTCP Act is an independent provision and the same is not controlled by any provision of the Zoning Regulations. The change of land use, therefore, granted by the BDA is proper and correct. If there is any violation of the sanctioned plan, it is the BBMP's responsibility to take the necessary action.

16.7. He relies upon the decision of this Court in the case of ***Sri.Nagendra Rao R Teradal vs. State of Karnataka & others***[12] more particularly Para 4 thereof, which is reproduced hereunder for easy reference:

> ***4.*** *In the considered opinion of this Court, there was no need for the Petitioner to have approached the Deputy Commissioner, seeking change of land use. As noticed hereinabove, such powers are vested with the Urban Development Authority which is the Planning Authority under the provisions of the Karnataka Town and Country Planning Act, 1961, to permit any change in the user of the land contrary to what has been reserved in the Master Plan.*

16.8. He submits that the change of land use comes exclusively under the purview of the authorities under the KTCP Act. The Deputy Commissioner would not have any role to play therewith. Hence, there is no conversion which is required to be obtained as contended by the Petitioners.

16.9. He also relies upon the decision in ***Alliance Business Academy's*** case which has been

[12] WP No.596/2024 dated 23.1.2024

relied upon by Shri S. M. Chandrasekhar for the very same purposes.

16.10. He relies upon the decision of the Hon'ble Apex Court in the case of ***State of Rajasthan & Ors., vs. D.R.Laxmi & ors.,***[13] more particularly Para 10 thereof, which is reproduced hereunder for easy reference:

> ***10.*** *The order or action, if ultra vires the power, it becomes void and it does not confer any right. But the action need not necessarily set at naught in all events. Though the order may be void, if the party does not approach the Court within reasonable time, which is always a question of fact and have the order invalidated or acquiesced or waived, the discretion of the Court has to be exercised in a reasonable manner. When the discretion has been conferred on the Court, the Court may in appropriate case decline to grant the relief, even if it holds that the order was void. The net result is that extraordinary jurisdiction of the Court may not be exercised in such circumstances. It is seen that the acquisition has become final and not only possession had already been taken but reference was also sought for ; the award of the Court under* Section 26 *enhancing the compensation was accepted. The order of the appellate court had also become final. The order of the appellate court had also become final. Under those circumstances, the acquisition proceedings having become final and the compensation determined also having become final, the High Court was highly unjustified in interfering with and in quashing the notification under* Section 4 *[1] and declaration under* Section 6*.*

[13] (1996) 7 Supreme 753

16.11. By relying on ***D.R.Laxmi's*** case, he submits that even if an order is void, the aspect of delay and latches would have to be taken into consideration. The party does not approach the Court within a reasonable time, which is always a question of fact to have the order invalidated; it is the discretion of the Court whether to invalidate it or not. The Court can, when there is a delay, decline to grant the relief, even if the order was void.

16.12. The change of land use, having been granted way back in the year 2009, was challenged only by way of amendment in the year 2019. This delay of nearly 10 years in challenging the same, even though the present petition was pending, it would enure to the benefit of the BDA and the private Respondent. On account of the delay, the petition is required to be dismissed.

17. Sri. Krishna B.V., learned counsel for the BBMP would submit that:

17.1. The plan sanctioned by the BBMP is in accordance with the change of land use permitted by the BDA, taking into consideration the requirements of building bylaws. The BBMP is not concerned with the operation of the building plan and or the sanction of change of land use.

17.2. Insofar as the traffic problems are concerned, the same is for the Traffic Department to consider and address, and not for the BBMP. The BBMP, taking into consideration the applicable Building Bylaws, taking into consideration the setbacks required, the FAR are applicable, and the car parks required, has approved the plan. The construction carried out by NET is in accordance with law, there being

no infirmity in the same, the above Writ Petition is required to be dismissed.

18. Faced with the above situation, learned counsel for NET has filed an affidavit of the Principal of the School – NET stating that she has advised her staff, students and the respective parents to refrain from parking their vehicles on 12th 'A' Main and 13th Main Road. She has also undertaken to notify her staff, students and parents of the students through the NPS App and telephonic messages, apart from fixing a notification on the notice board. The children will be dropped off from 7.45 am to 8.30 am and picked up between 2.15 pm to 2.45 pm. Between 8.30 am to 2.15 pm, there will be no vehicle which will be parked on the said Roads.

19. Respondent No.6 - Chairman of the Karnataka State Pollution Control Board, Respondent No.7 - Deputy Secretary, Central Board of Secondary Education,

Respondent No.9 - Bangalore Water Supply Board, and Respondent No.10, Bangalore Electricity Supply Company Limited have been deleted vide Order dated 16-3-2022 of this Court.

20. Heard Sri.S.S.Naganand, learned Senior Counsel for Petitioners, Sri.S.M.Chandrashekar, learned Senior Counsel for Respondent No.1, Sri.Mahantesh Shettar, learned AGA for Respondents No.2, 5 and 8, Sri.Krishna B.V., for Sri.H.N.Prashanth Chandra., learned counsel for Respondent No.3, Sri.B.S.Sachin, learned counsel for Respondent No.4 and perused papers.

21. The points that would arise for the consideration of this Court are:

1) Whether a residential plot situated in a residential area can be made use of for running of a School? If so, to what extent?

2) Whether on account of the fact that a plot in a residential area can be used for running an educational institution, can a change of land use be permitted changing the user of land from residential to educational purposes?

3) Whether the procedure followed by the BDA and the State Government in approving the change of land use in the present matter is proper and correct?

4) Whether there is any delay, laches and acquiescence on part of the Petitioners, disentitling the Petitioners from grant of reliefs as contended by the Respondents?

5) Whether the Petitioner has an alternative efficacious remedy and non-availment of the said alternative efficacious remedy disentitles the consideration of the reliefs sought for in the present petition?

6) What order?

22. **<u>Answer to Point No.1</u>: Whether a residential plot situated in a residential area can be made use of for running of a School? If so, to what extent?**

22.1. Submission of Sri.S.S.Naganand, learned Senior counsel appearing for the Petitioners, is that the entire area where NET has established its school is a residential area. Initially, NET had been allotted a CA site for the purpose of construction of a school, the same being a civic Amenity Site. Subsequently for the purpose of expansion of the school, NET started buying out plot after plot around the CA Site to establish its offices, ancillary activities and insofar as the present petition is concerned, NET bought Sites No.3367/H and 3367/I in 13th Main Road for the purpose of construction and running of a Montessori, Nursery and Primary School.

Residential houses which were situated on the opposite plot were demolished, and a plan sanction was applied for in respect of the above. His submission is that, since there were residential houses situated on those plots and the said plots were classified in the residential zone, no school could be constructed and run on the said sites.

22.2. Insofar as the Civic Amenity site is concerned, the Petitioners have no objection since the school is a Civic Amenity. An allotment could be made by the BDA of a Civic Amenity site for the purpose of construction of a school. His submission and objection are to that of construction of a school building in a residential plot, which is contrary to the Zoning Regulations.

22.3. By referring to Chapter 4.1, the submission is that education is not one of the permissible

land uses under the residential category. The main use of the property being residential, it is only the activities which are classified under 'T1' category and 'R' category for which the plot could be made use of as a main purpose and ancillary uses could only be in respect of 'C2', 'I2', 'U3'. The ancillary use is restricted to 20% of the total built up area or 50 square meters, whichever is higher. Thus, the submission is that insofar as the present plots are concerned, the size being 1003.34 square meters that is 10,800 square feet, the frontage being 36.50 square meters and the road width being 12 meters, it is only 20% of 1,003.34 square meters of land which could be used for the ancillary purposes amounting to 200.668 square meters or 2160 square feet.

22.4. It is only on account of change of land use which has been obtained that a contention has

been taken up that the entire land could be used for the purpose of education by construction of a school.

22.5. Per contra, the submission of Sri.S.M.Chandrasekhar, learned senior counsel appearing for NET is that there is no blanket prohibition for usage of the land for educational purposes. Education being permissible as ancillary use, change of land use is permissible and as such, what has to be considered is the usage of the land post the change of land use.

22.6. What I propose to address in answer to the present point is as regards usage of the property dehors a change of land use. The aspect of change of land use will be considered subsequently.

22.7. Insofar as usage of the aforesaid property situated in a Residential Main Zone is concerned, the same is as indicated and

covered by Regulation 4.1, which is reproduced hereunder for reference:

4.1 RESIDENTIAL (MAIN)

4.1.1) Description

The areas of the city which have predominantly residential land use pattern is considered for the Residential (Main) zone. This includes many old areas of the city such as Parts of Malleswaram, Richmond Town, Vasant Nagar, Jayanagar, Vijayanagar, Visveswarapura, Rajajinagar, RT Nagar etc.

4.1.2) Regulations

i) Permissible land uses:

Main Land use: R & T1

Ancillary Land use category: C2, I-2 & U3

Ancillary use is allowable to 20% of the total built up area or 50 sq.m. which ever is higher.

If the Plot size is more than 240 sq.m, having a frontage of 10.0 m or more, and the abutting road is more than 18.0 m width, then ancillary uses can be used as main use.

Table 10: FAR and Ground Coverage in Residential (Main)

Sl. No.	*Plot size (sq.m)*	*Ground Coverage (Max)*	*FAR*	*Road width (m)*
1	*Up to 360*	*Up to 75 %*	*1.75*	*Up to 12.0*
2	*Above 360 up*	*Up to 65 %*	*2.25*	*Above 12.0*

	to 1000			*up to 18.0*
3	*Above 1000 up to 2000*	*Up to 60 %*	*2.50*	*Above 18.0 up to 24.0*
4	*Above 2000 up to 4000*	*Up to 55 %*	*3.00*	*Above 24.0 up to 30.0*
5	*Above 4000 up to 20000*	*Up to 50 %*	*3.25*	*Above 30.m*

ii) Notes:

a) Setbacks shall be in accordance with Table.8 or Table.9 depending on the height of proposed building and the plot size.

b) If the road width is less than 9.0 m, then the maximum height is restricted to 11.5 meters or stilt +GF+2 floors (whichever is less) irrespective of the FAR permissible.

c) Multi dwelling units (Apartments) shall be allowed only on plot sizes of above 360 sq.m in the I and II Ring and on plots above 750 sq.m in the III Ring. In both cases, the road width shall be more than 9.0m.

d) TDR is applicable as per rules."

22.8. A perusal of Regulation 4.1 would indicate that any property situated in a Residential Zone

could be put to use for purposes as detailed in the Zonal Regulation for residential main use, which would include plotted residential developments, villas, semi-detached houses, apartments, hostels, dharmashala, multi-dwelling houses, service apartment and group housing. These being the permissible uses in 'R' category of land, the said land cannot be used for any other purposes as a main use.

22.9. However, in terms of Regulation 4.1, ancillary usage of the said land situated in residential zone is permitted for the purposes described in categories 'C2', 'I2' and 'U3', which have been reproduced hereinabove. Insofar as the present lis is concerned, 'C2' and 'I2' would not be attracted. What would have to be considered is the category 'U3' which permits the land to be used as ancillary purpose for 'U1', 'U2' and 'U3'.

The said categories 'U1', 'U2' and 'U3' are reproduced hereunder for easy reference:

Table 6: Permissible land uses in Public and Semi Public category:

U1	**Urban amenities**
1	Sub offices of utilities up to 50 sq.m
2	Police stations, post offices
3	Primary schools subject to space standards
5	Parks, Play grounds and Maidans
6	Telecommunication /microwave under special case
7	Nursery crèches
8	Spastic Rehabilitation centers, Orphanages, Govt dispensaries
9	Public distribution system shops
10	Fire stations
11	Bill collection centers
12	Traffic and Transport related facilities
13	Places of worship, Dharmashala, hostels
14	Dhobi Ghat
15	Broadcasting and Transmission stations
16	Public library

U2	Urban amenities
1	All uses of U 1 are permissible.
2	Burial grounds, crematorium under special circumstances.
3	Nursery school subject to a plot size of min 300 sq.
4	Places of congregation

U3	Urban amenities
1	All uses of U1 and U2 are permissible
2	Higher primary schools, Integrated Residential Schools
3	Health centers and Hospital
4	Research institutions subject to the size
5	Government buildings, auditoriums, cultural complexes,
6	Educational Institutions, Colleges

22.10. A perusal of above Regulation would indicate that the land which comes under the Residential Main Zone, the Permissible Main

Land uses are 'R' and 'T1' and the Ancillary Land use is as per category 'C2', 'I2' and 'U3' with the ancillary use allowable to 20% of total built up area or 50 square meters whichever is higher. If the plot size were to be more than 240 square meters, having a frontage of 10 meters or more, and the abutting road is more than 18 meters wide, then the ancillary use can be used as a main use.

22.11. As per the Notes indicated above, if the road width is less than 9 meters, then the maximum height would be restricted to 11.5 meters. If the road width were to be up to 12 meters, the FAR available would be 1.75 with a ground coverage of up to 75%. Though the current property is 1,003.34 square meters, the road width being 12 meters, the FAR, which would be available, would be 1.75. The plot area being 1,003.34 square meters, FAR being

1.75., construction which could have been put up would be 1,755.845 square meters. Out of which 20% could be used for an ancillary purpose, that is a school amounting to 351.169 sq mtrs or 3,779.95 sq feet.

22.12. This Regulation 4.1 was amended in the year 2014, which, after the amendment, reads as under:

4.1 RESIDENTIAL (MAIN)

4.1.1) Description

The areas of the city which have predominantly residential land use pattern is considered for the Residential (Main) zone. This includes many old areas of the city such as Parts of Malleswaram, Richmond Town, Vasant Nagar, Jayanagar, Vijayanagar, Visveswarapura, Rajajinagar, RT Nagar etc.

22.13. After amendment, Clause 4.1.2 reads as under:

4.1.2) Regulations

i) Permissible land uses:

- *Main land use category: R & T1*
- *Ancillary land use category: C2, I-2 & U3*

- *Ancillary use is allowable upto 20% of the total built up area or 50 sq.m. whichever is lower, only in plots abutting to roads having width 12m or more.*

- *In Ring II, if the plot size is more than 1000 sq.m. having a frontage of 10m or more and the abutting road is more than 18m width, then ancillary uses can be used as main. use.*

(b) in Ring III:

- *Main land use category: R & T1*
- *Ancillary land use category: C2, I-2 & U3*
- *Ancillary land use is allowable upto 20% of total built up area or 50 sq.m. whichever is lower, only in plots abutting roads having width 12m or more.*

- *If the plot size is more than 1000 sq.m, having a frontage of 10m or more and abutting road is more than 18m width, then ancillary uses can be used as main use.*

Note: Space Standards as at Table 7 are applicable.

Table 10: FAR and Ground Coverage in Residential (Main)

Sl. No.	*Plot size (sq.m)*	*Ground Coverage (Max)*	*FAR*	*Road width (m)*
1	*Up to 360*	*Up to 75 %*	*1.75*	*Up to 12.0*
2	*Above 360 up*	*Up to 65 %*	*2.25*	*Above 12.0*

	to 1000			*up to 18.0*
3	*Above 1000 up to 2000*	*Up to 60 %*	*2.50*	*Above 18.0 up to 24.0*
4	*Above 2000 up to 4000*	*Up to 55 %*	*3.00*	*Above 24.0 up to 30.0*
5	*Above 4000 up to 20000*	*Up to 50 %*	*3.25*	*Above 30.m*

ii) Notes:

a) Setbacks shall be in accordance with Table.8 or Table.9 depending on the height of proposed building and the plot size.

b) If the road width is less than 9.0 m, then the maximum height is restricted to 11.5 meters or Stilt+GF+2 floors (whichever is less) irrespective of the FAR permissible.

c) Multi dwelling units (Apartments) shall be allowed only on plot sizes of above 360 sq.m in the I and II Ring and on plots above 750 sq.m in the III Ring. In both cases, the road width shall be more than 9.0m.

d) TDR is applicable as per rules."

22.14. There is a further classification of the land as Ring I, Ring II and Ring III under Clause 4.1.2. Ancillary use is not permissible under Ring I. It

is permitted insofar as Ring II and Ring III are concerned.

22.15. In Ring II, if the plot size is more than 1000 square meters, with a frontage of 10 meters or more, and the abutting road is more than 18 meters, then the ancillary use can be used as the main use. The ancillary use as indicated above is in respect of 'C2', 'I2', and 'U3', and such use is allowable up to 20% of the total built-up area or 50 square meters, whichever is lower, in plots abutting roads having a width of 12 meters or more. That is to say, unless the plot has a road width of 12 meters or more, even the ancillary use is not permissible and if land is situated in Ring II, if the plot is more than 1000 square meters, having a frontage of 10 meters, abutting a road having a width of 18 meters, then the ancillary use can be permitted as a main use.

22.16. In Ring III, again the ancillary use is allowable upto 20% total built up area or 50 square meters, whichever is lower. Only in plots, abutting roads having 12 meters or more, which is similar to Ring II above and if the plot size is more than 1000 square meters, having a frontage of 10 meters or more and the abutting road is more than 18 meters wide, then the ancillary uses can be used as a main use.

22.17. Thus, in respect of both Ring II and Ring III, there is no difference as such. Without change of land use, a plot falling under residential main can only be used for the usages indicated under a 'residential category' and, 'T1' category which are reproduced hereunder for easy reference:

Table 1: Permissible Land uses in Residential category

R	***Residential land uses***
1	*Plotted residential developments*
2	*Villas, semi detached houses*
3	*Apartments, Hostels, Dharmashala*

4	*Multi Dwelling Housing, Service Apartments*
65	*Group Housing (Development Plans)*

Table 5: Permissible Land uses in Transportation Category

T1	***Transportation zone***
1	*Bus bays, Auto stand, Bus shelters, information kiosk*
2	*Metro stations, parking areas*
3	*Multi level car parking*
4	*Filling stations, service stations*

22.18. The ancillary use as indicated above is for 'C2', 'I2' and 'U3' and such ancillary use is restricted to 20% of the total built-up area or 50 square meters, whichever is lower, provided the plots are abutting roads having a width of 12 meters or more. As indicated supra, if the plots are abutting a road with less than 12 meters in width, then no ancillary use is permissible.

22.19. The Zonal Regulations were amended in 2014. Since the subject matter of the present

proceedings is with regard to the change of land use in the year 2009-10, it is the Regulation as on that date which should be required to be applied to the present case.

22.20. Hence, I answer Point No.1 by holding that a plot situated in residential area can be used for running of a school only as an ancillary purpose:

22.20.1. Prior to the amendment in the year 2014, to an extent of 20% of the total built-up area or 50 square meters, whichever is higher, and nothing more than that. There being no restriction on size of the plot or the width of road abutting the property. If the Plot size is more than 240 sq.m, having a frontage of 10.0 m or more, and the abutting road is more than 18.0 m width, then ancillary uses can be used as

main use, without a change of user of land being obtained.

22.20.2. Post the amendment in the year 2014 to an extent of 20% of the total built-up area or 50 square meters, whichever is lower, so long as the plot abuts a road having a width of 12 meters or more, there being no restriction as regards the size of the Plot. If the plot were to be more than 1000 square meters, having a frontage of 10 meters or more, and the abutting road is more than 18 meters wide, then the ancillary use can be used as a main use, without a change in user of land being obtained.

23. **Answer to Point No.2**: **Whether on account of the fact that a plot in a residential area can be used for running an educational institution, can**

a change of land use be permitted changing the user of land from residential to educational purposes?

23.1. The submission of Sri.S.M.Chandrashekhar, learned senior counsel appearing for NET is that the ancillary use being permitted to be 'U3', 'U3' providing for usage of the property for higher primary schools, integrated residential schools, educational institutions, colleges, it also providing for usage as permitted on 'U1' and 'U2'. 'U2' enabling the use of the property for the establishment of a nursery school, subject to a plot size of a minimum of 300 square meters, and 'U1' permitting the usage of the land for primary schools, subject to space standards. Under 'U1', 'U2' and 'U3', a property in a residential area being capable of being used for educational purposes as an ancillary use, NET has applied for a change of land use, which has been granted, and such a change of

land use cannot be questioned by the Petitioners.

23.2. The submission of Sri.S.S.Naganand, learned senior counsel for the Petitioners to the Contra, is that the officers of the respondents have acted in great haste and permitted the change of land use within a short period of time to facilitate NET. The land being situated in the residential main zone, the user of the said land could not be permitted to be changed to educational purposes. The submission is also that education purpose not being a category of zone, a change of land use cannot be made as regards a particular use but could only be made as a particular zone. It is these contentions which are required to be considered by me to answer the above point.

23.3. It is not in dispute that the concerned plots are situated in residential areas. It is also not in

dispute that the said plots have been used for the purpose of the construction of a Montessori Nursery and Primary School, which is used for educational purposes. Such usage has been made after obtaining a change of land use from the BDA, from residential to educational purposes.

23.4. Though the submission of Sri.S.S.Naganand, learned senior counsel, is that change of land use can only be made as regards a change of zone, it is Section 14 and Section 14A of the KTCP Act, 1961, which would have to be required to be considered in this regard.

23.5. Section 14 and Section 14A of the KTCP Act, 1961 is reproduced hereunder for easy reference:

> ***14. Enforcement of the Master Plan and the Regulations—****1[(1) On and from the date on which a declaration of intention to prepare a Master Plan is published under sub-section (1) of section 10, every land use, every change in land use and every development in the area*

covered by the plan subject to Section 14-A shall conform to the provisions of this Act, the Master Plan and the report, as finally approved by the State Government under sub-section (3) of section 13.

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

[Provided that where the use or change of land use under this section needs the diversion of agricultural land to non-agricultural purposes, such use or change of use shall not be permitted, unless permission is obtained in accordance with the provisions of the Karnataka Land Revenue Act, 1964 for such diversion.

Explanation.— For the purpose of this section,—

(a) the expression "development" means the carrying out of building or other operation in or over or under any land or the making of any material change in the use of any building or other land;

(b) the following operations or uses of land shall not be deemed to involve a development of any building or land, namely:—

(i) the carrying out of works for maintenance, improvement or other alteration of any building, being works which affect only the interior of the

building or which do not materially affect the external appearance of the building;

(ii) x x x x x

(iii) x x x x x

(iv) the use of any building or other land within the curtilage of a dwelling house for any purpose incidental to the enjoyment of the dwelling house as such;

(v) when the normal use of land which was being temporarily used for any other purpose on the day on which the declaration of intention to prepare the [Master Plan] is published under sub-section (1) of section 10 is resumed;

(vi) when land was normally used for one purpose and also on occasions for any other purpose, the use of the land for that other purpose on similar occasions.

(3) Every application for permission under sub-section (2) shall be accompanied by a plan, drawn to scale showing the actual dimensions of the plot of land in respect of which permission is asked, the size of the building to be erected and the position of the building upon the plot and such other information as may be required in this behalf by the Planning Authority.

14A. Change of land use from the [Master Plan]: (1) At any time after the date on which the [Master Plan] for an area comes into operation, the Planning Authority may, with the previous approval of the State Government, allow such changes in the land use or development from the [Master Plan] as may be necessitated by topographical cartographical or other errors and omissions, or due to failure to fully indicate the details in the plan or changes arising out of the

implementation of the proposals in [Master Plan] or the circumstances prevailing at any particular time, by the enforcement of the plan:

Provided that,—

(a) all changes are in public interest;

(b) the changes proposed do not contravene any of the provisions of this Act or any other law governing planning, development or use of land within the local planning area; and

(c) the proposal for all such changes are published in one or more daily newspapers, having circulation in the area, inviting objections from the public within a period of not less than fifteen days from the date of publication as may be specified by the Planning Authority.

(2) The provisions of sub-section (2) and (3) of section 14 shall apply mutatis mutandis to the change in land use or development from the [Master Plan].

(3) x x x x x"

23.6. A perusal of Sub-Section (2) of Section 14 would indicate that no change of land use or development shall be made except with the written permission of the planning authority, which shall be contained in a commencement certificate granted by the planning authority.

23.7. A perusal of sub-Section (1) of Section 14A would indicate that any time after the date on which the Master Plan for an area comes into operation, the Planning Authority may with previous approval of the State Government allow such changes in the land use or development from the Master Plan as may be necessitated by topographical or cartological or other errors and omissions or due to failure to fully indicate the details in the plan or changes arising out of the implementation of the proposals in the Master Plan or circumstance prevailing at any particular time by the enforcement of the plan provided that all such changes are in public interest do not come or do not contribute any of the problems of the act or any other law governing planning development or use of land and the proposal. Such changes are published in one or more

daily newspapers that are in circulation in the area, inviting objections from the general public.

23.8. The change of land use which is contemplated under sub-Section (1) of Section 14A, is to allow such changes in land use or development from the Master Plan. Therefore, what is contemplated is a change of land use or the development to which the land could be put to. The same has no relevance to Zoning. It has only relevance to the user.

23.9. The Zoning of land, as indicated supra, is in terms of Clause (b) of Regulation 1.2, which classifies the land use zones as Residential (R), Commercial (C), Industrial (I), Public and semi-public (P and SP), Traffic and Transportation, (T and T), Public Utilities (PU), Park and Open Spaces (P), Unclassified (UC), Agricultural Land

(AG). The land use permitted is further categorised by various codes for Residential as 'R', for Commercial as C1 to C6 and I1 to I4, for Transportation as T1 to T4, and Public and semi-Public as U1 to U4.

23.10. What we are concerned with, in the present matter, is a land which is zoned as residential and the uses to which it may be permitted. A land zoned as residential is denoted with the letter 'R'. It is Regulation 4.1 which would be applicable. Regulation 4.1, as it stood from 2007 to 2014, provided for the main land use to be 'R' and 'T1' and the ancillary land use category to be 'C2', 'I2' and 'U3'.

23.11. In the present matter, we are not concerned with the main land use since the property has not been used for residential or transportation. We are also not concerned with 'C2' and 'I2' being the ancillary land use. What we are

concerned is the ancillary land use of 'U3'. The usage of the land under 'U3' also permits the same usage as under 'U1' and 'U2', which have been reproduced hereinabove.

23.12. A perusal of such usage would indicate that such usage has been expanded under the categories 'U1', 'U2' and 'U3'. It is not restricted to a mere zoning of public and semi-public, but provides for urban amenities. As described in detail in the aforesaid table at 'U1', 'U2' and 'U3'. While segregating the same, in the Zonal Regulation, what has been mentioned is permissible land use in the public and semi-public categories. It does not refer to zones in the public and semi-public categories, but refers to permissible land use.

23.13. Juxtaposing the permissible land use with the change of land use contemplated under Section 14A, it can be seen that what Section 14A

permits is changes in the land use or development that is to say changes from land use from residential or land use or development from residential to any other purpose and not zoning.

23.14. In the present case, we are concerned with a change of the user of land from residential to educational purposes. 'U1' as indicated supra provides for the land to be used as primary schools subject to space standards, 'U2' provides for usage as a nursery school subject to a plot size of minimum 300 square meters, 'U3' provides for usage of land as higher primary school, integrated residential schools, educational institutions and colleges.

23.15. Thus, the ancillary use under 'U3' would include all the above uses under 'U1' and 'U2' and in terms of Regulation 4.1.2, the ancillary use is allowable to 20% of total built-up area or 50

square meters, whichever is higher. In that view of the matter, as rightly contended by Sri.S.M.Chandrasekhar, learned senior counsel for NET, the land in a residential area is permitted to be used for educational purposes as detailed hereinabove, subject to a maximum of 20% for the total built-up area or 50 square metres, whichever is higher and if the plot size is more than 240 square metres having a frontage of 10 metres or more and the abutting road is more than 18 metres width, then the ancillary use can be used as a main use. Though in the present case, the plot size is 1003.34 square metres and has a frontage of 36.56 metres, it does not have a road abutting more than 18 metres, since admittedly the said road width is 12 metres. Therefore, this provision, permitting a plot measuring more than 240 square meters, having frontage of 10

meters or more, abutting a road which is more than 18 meters in width, permitting the ancillary use as main use, would not be applicable.

23.16. In that view of the matter, unless there is a change of land use under Section 14A, the said land could not be used for educational purposes in its entirety. Of course, without change of land use, the said property could be used to an extent of 20% for the aforesaid educational purposes under 'U1', 'U2' and 'U3'. The usage for educational purposes being permitted, the reference made to change of land use or development from the Master Plan is not zoning change of land zone but is a change of land use from residential purposes to the purposes mentioned in 'U1', 'U2' and 'U3', which could be broadly classified insofar as the present case is concerned for educational purpose.

23.17. The decision relied upon by Sri. S.M. Chandrashekhar, learned Senior Counsel on ***Alliance Business Academy's case,*** was one relating to change of land use under the CDP 1995 and not RMP 2015, which came into force on 25th June 2007. That insofar as the present matter is concerned, where the change of land use has occurred in the year 2009-10, the decision in ***Alliance Business Academy's*** case would not be applicable. The same did not deal with CDP 2015. Similar is the situation as regards ***Gnana Mandir Trust's*** case relied upon by him. In both those cases, the Courts had considered special circumstances, present for educational purposes and or the like, and being of the considered opinion that the circumstances warranted a change of land use for educational purposes, such change of land use was upheld. Be that as it may, I have dealt

with the applicability of Section 14 and the Zoning Regulations as contained in RMP 2015 up to the year 2014, as also the applicability of Section 14A relating to change of land use, meaning change of usage as contemplated in various categories indicated supra. As such, though the decisions in ***Alliance Academy*** and ***Gnana Mandir's*** cases are not applicable to the present case, I am of the considered opinion that change of land use is permissible for the uses enumerated as ancillary uses for residential purposes, subject to the applicable rules being followed.

23.18. Hence, I answer Point No.2 by holding that since the plots in question, though situated in a residential area, can be used for educational purposes under 'U1', 'U2' and 'U3' as ancillary use and even as a main use, subject to the road width being 18 meters. There would be no

bar for such a landowner to seek a change of land use from residential to any of the other uses permitted as ancillary use, and, in this case, there is no bar for NET to seek a change of land use from residential to educational purposes.

24. **<u>Answer to Point No.3</u>**: **Whether the procedure followed by the BDA and the State Government in approving the change of land use in the present matter is proper and correct?**

24.1. The contention of Sri.S.S.Naganand, learned Senior counsel for the Petitioner is that the BDA and the concerned authorities have thrown all the procedure to the wind and have tried to help out NET in expeditiously obtaining change of land use, where the contention of Sri.S.M.Chandrashekar, learned Senior Counsel is that all the procedure as required have been followed. Apart from the aspect of the procedure being followed, the submission of

Sri.S.S.Naganand, learned Senior counsel, is that the impact of such a change of land use has not been considered.

24.2. It was but required for the Planning Authority to consider the total number of students who would be educated in the said building, the total number of persons who will be using the said building, the vehicles that would be required to transport such persons, the impact on water and sanitary resources, parking, etc., have not been considered. In this regard, Sri.S.S.Naganand, learned senior counsel, has contended that the various tempo travellers, auto rickshaws and the like are parked on the road providing access to the school, which is causing severe harm and injury to the residents, affecting their privacy, etc. Insofar as this aspect is concerned, the affidavit of the Principal of the school has been filed, where she

has categorically stated that she has advised her staff and the respective parents to refrain from parking their vehicle on 12th 'A' Main and 13th Main Road. She has further stated that the children will be dropped off from 7.45 a.m. to 8.30 a.m. and picked up between 2.15 p.m. to 2.45 p.m. Between 8.30 a.m. and 2:15 p.m., there will be no vehicles which will be parked on the said roads. In my considered opinion, the said instruction issued by the Principal is required to be believed, and it is further required to be believed that the Principal would implement the said instructions. In the event of the said instructions not being implemented, it will always be available for the jurisdictional police to seize any vehicle which is found parked in the said roads/area prior to 7.45 a.m. between 8.30 a.m. to 2.15 p.m. or after 2.45 p.m. The jurisdictional traffic police can be

directed to put up boards in and around the area indicating the above and indicating that the same would be a tow-away zone between the times indicated. The jurisdictional traffic police would be entitled to tow away the said vehicles, impose such fines as may be permissible when vehicles are found parked contrary to the affidavit of the Principal of NET, which has been filed.

24.3. As regards the procedure which has been followed in grant of change of land use, the contention of Sri.S.S.Naganand, learned senior counsel is that, in Annexure-J application, NET has purposely not given the width of the road and has misled the respondents by indicating that the said property has an access from 100 feet as also 80 feet road. When in fact it only has a 12-meter road or a road between 30 and 40 feet in access. In my considered opinion the

fact that NET made an application for change of land use would itself categorically indicate that there is no suppression of the width of the road inasmuch as if the width of the road was either 100 feet or 80 feet then the same would have been in excess of 18 meters and in terms of Regulation 4.1.2 as indicated supra, if the plot size were to be more than 240 square meters, having a frontage of 10 meters or more, and abutting a road more than 18 meters in width, the ancillary use could be the main use. It is only due to the plot size in the present matter being 1003.34, the frontage being 36.56 meters, the abutting road width being less than 18 meters, that the application for change of land use was made. If it was more than 18 meters, there was no requirement to make an application for change of land use, since the ancillary use under 'U1', 'U2' and 'U3' as

indicated supra would have enabled NET to use the entire property for the ancillary use under 'U1', 'U2' and 'U3'.

24.4. As regards the contention of Sri.S.S.Naganand, learned Senior Counsel that there is a false information given by NET that the property is suitable for running a school also cannot be accepted since the said property is situated opposite an existing school. What better property would be available for usage for a school if not this property? This aspect has been expounded upon by Sri.S.M.Chandrashekhar, learned Senior Counsel for NET, who has by referring to the data analysis made, has indicated that number of schools available in Indira Nagar for primary students is less than a ratio of 1. Thus, the need for such a primary school is also categorically established by such data analysis.

24.5. Insofar as establishment of Montessori, Nursery and Primary schools are concerned, this Court can also take judicial notice of the fact that the children who were to use such facilities are very young at age, and it would be advisable that schools for such children are not established at a far distance but as close to their residence as possible. The aspect in the present matter is only in relation to the establishment of Montessori, Nursery and Primary and not relating to higher classes, which have been established in the Civic Amenity property, as regards which there is no dispute. As such, that is not adverted to or considered in the present matter.

24.6. The further contention of Sri.S.S.Naganand, learned senior Counsel for the Petitioner is that there is no single katha which is available for the property, despite which change of land use

has been granted. While making an application, NET has mentioned both the plot numbers and has provided details of the assessment made by the BBMP of the entire plot as one PID number. The aspect of amalgamation of both plots is not one of the preconditions for the grant of change of land use. The BBMP having issued a single katha for both the plots and a clarification having been issued by the BBMP to the BDA that both the plots can be considered to be a single plot, the BDA has considered it to be so and as such no fault could be found in relation thereto.

24.7. The further argument of Sri.S.S.Naganand, learned senior counsel that the authorities took note of the fact that the road width is less than 18 meters but inspite of which the approval was granted also cannot be countenanced inasmuch as, as held above if the road width was 18

meters or more, then there was no question of requirement of change of land use to be obtained. The spot inspection report indicating that the road width was 40 feet and as such, a change of land use could not be granted also cannot be countenanced inasmuch as if the road width was 18 meters that is 60 feet or above, then there would have been no requirement for obtaining of change of land use. The decision in ***Sri.S.M.Chandrasekhar***'s case was one which dealt with CDP 1995 and not RMP 2015.

24.8. In that case, running of a hotel or restaurant was not permissible in the concerned property. In the present case, educational institutions are permitted to be established and run in the subject property. Hence, in my considered opinion ***S.M.Chandrashekhar****'s* case would not be applicable to the present matter.

24.9. The decision in ***Prakash Chandra's*** case relied upon by the learned senior counsel for the Petitioner was one relating to illegal and unauthorized construction and not relating to change of land use *per se*. In the present case, NET has obtained due permissions from the concerned authorities. Therefore, the said construction cannot be said to be illegal or unauthorised.

24.10. The decision in ***Dilip James***' case was a situation where a school was being run in a property having a 24-foot-wide road without obtaining a change of land use. The dicta in ***Dilip James***' case would not be applicable to the present case when NET has obtained change of land use.

24.11. The decision in ***Bangalore Housing Development and Investments'*** case was one relating to the occupation of premises

without an occupancy certificate having been granted. Sri.B.V.Krishna, learned counsel appearing for the BBMP has categorically stated that, an Occupancy Certificate has been granted. Therefore, the said decision would not be applicable.

24.12. Insofar as the decision in ***Avinash Mehrotra***'s case, it is for the Education Department to apply and implement the same. The same does not have a bearing as regards change of land use, as such, if a representation were to be made by the Petitioners to the concerned education department for verification if the guidelines issued under ***Avinash Mehrotra's*** case have been complied with or not, it would be required for the concerned officers of the education department to cause an inquiry and take necessary action, it not being in dispute that the guidelines laid down in ***Avinash***

Mehrotra's case would be applicable to NET, since the decision in ***Avinash Mehrotra's*** case was rendered in the year 2009, whereas the school by NET was established post-2010.

24.13. In that regard, I answer Point No.3 by holding that there can be no default found with the procedure followed by BDA and the State Government in approving the change of land use in the present matter. The same is proper and correct.

24.14. Insofar as the applicability of the guidelines laid down in ***Avinash Mehrotra's*** case, liberty is reserved to the Petitioners to approach the appropriate authorities and the education department for implementation thereof. The concerned officers of the Education department can also take suo motto action in relation to the same, cause an inspection of the schools and ascertain if the guidelines have been followed

by NET, it being the bounden duty of NET to implement the directions and guidelines laid down by the Hon'ble Apex Court in ***Avinash Mehrotra's*** case.

25. **<u>Answer to Point No.4</u>**: **Whether there is any delay, laches and acquiescence on part of the Petitioners, disentitling the Petitioners from grant of reliefs as contended by the Respondents?**

25.1. The Writ Petition was filed in 2010, initially challenging only the sanctioned plan and the permission granted ***(Annexure-A, B).***

25.2. It is only in the year 2019 that an application for amendment was filed seeking to challenge the recommendation for and grant of change of land use granted to NET ***(Annexure- O, P & Q).***

25.3. From the year 2010 to 2019, the grant of change of land use was not challenged by the Petitioners. Though the Writ Petition was

pending, averments have been made as regards change of land use, documents have been filed in relation thereto, and the Petitioners have chosen not to challenge the change of land use. It is only in the year 2019 that they woke up to challenge the change of land use and it is for the first time that a relief in respect to the change of land use was sought for in the present petition.

25.4. Though the submission of Sri.S.S.Naganand, learned Senior Counsel is that since the petition had been filed in the year 2010 and amendments had been made in relation thereto, there is no delay, I am unable to accept the said submission. What is required to be considered is delay, laches and acquiescence. Irrespective of the petition having been filed, if the necessary reliefs are not sought for within time, such reliefs cannot

be granted. There are vested rights which are created on account of the delay by such a party approaching the Court. NET having put up the construction, the property being used for educational purposes, there being more than 800 students who are using the said facility, who are stated to be residents of areas in and around Indranagar, on the basis of a belated claim, by the Petitioners, the change of land use, if were to be cancelled, would result in the said school being shut down, putting to inconvenience the said students and their parents, which is not permissible after such a long period of time.

25.5. As held by the Hon'ble Apex Court, in ***N.Murugesan's*** case, the principles governing delay, laches and acquiescence are overlapping. If there is an unreasonable delay or negligence in pursuing a claim, the relief would not be

granted if prejudice would be caused to the other party. The neglect of the Petitioners in not seeking the reliefs within a reasonable period of time has resulted in NET putting up construction, admitting students, hiring teachers, and establishing facilities, closure of which would cause prejudice to NET and the students and their parents. The delay caused by the Petitioners defeats the reliefs which have been sought for. It was for the Petitioners to have approached the Court challenging the same as early as possible, which they have not done. Though the construction was permitted to be carried on without NET being eligible to claim any equities, what would have to be considered is that when such an order was passed and permission granted, there was no challenge made to Change of Land use and the order passed would have to be considered with

reference to the reliefs sought for as on that date. The restrictions on not claiming any equities cannot be considered with reference to the amendment carried out and the reliefs sought for by way of such amendment.

25.6. In that view of the matter, I answer Point No.4 by holding that the delay, laches and acquiescence are on part of the Petitioners disentitles the Petitioners from grant of reliefs, which have been sought for by way of an amendment in the year 2019 though the Writ Petitions were filed in the year 2010.

26. **<u>Answer to Point No.5</u>: Whether the Petitioner has an alternative efficacious remedy and non-availment of the said alternative efficacious remedy disentitles the consideration of the reliefs sought for in the present petition?**

26.1. Though several contentions have been urged by Sri.S.M.Chandrashekhar, learned Senior Counsel as regards alternative efficacious remedy, which has also been reiterated by

learned AGA and Sri.B.S.Sachin, learned Counsel appearing for BDA, the same has been rendered academic inasmuch as, having considered the merits of the matter, I have categorically come to a conclusion that there is no default on part of the respondents-officers/officials and the actions taken by them are proper and correct. Hence, there will be no requirement for this Court to consider whether there is an alternative efficacious remedy available for the Petitioners or not. This question is left open to be considered in an appropriate proceeding.

27. **Answer to Point No.6: What order?**

27.1. In view of my answers to Points No.1 to 5 above, having come to a conclusion that the change of land use granted by the respondents-officials is proper and correct, there is delay, laches and acquisitions on part of the

Petitioners in approaching the Court, the change of land use being proper and correct, no grounds are made out for any interference. The Writ Petition stands ***dismissed***.

27.2. This Court has dealt with compliances required to be made by the Education Department and schools as regard various enactments, circulars, notifications etc. in its order dated 2.12.2024 in W.P. No.23653/2024 **[Organisations for Unaided Recognised Schools (R) and others -v- State of Karnataka and another.]** This Court has directed the establishment of a web portal for details of all such compliances to be uploaded by the concerned schools, inspections reports of the concerned authorities, the circular/s/notifications issued by the authorities, etc. The said direction would also apply to the schools run by NET and these compliances and

inspections report would have to be uploaded from time to time on the said web portal.

27.3. Though the above matter is disposed, to report compliance with the uploading of all compliances and inspection reports, relist on 29.07.2025 at 2.30 p.m.

SD/-
(SURAJ GOVINDARAJ)
JUDGE

PRS
List No.: 1 Sl No.: 60