

(R)

IN THE HIGH COURT OF KARNATAKA, BANGALORE

DATED THIS THE 21ST DAY OF SEPTEMBER 2005

PRESENT

THE HON'BLE MR.JUSTICE S.R.NAYAK

AND

THE HON'BLE MR. JUSTICE K.SREEDHAR RAO

W.A.6430/1997 & 349-350/1998

C/W

W.A.6386/1997, W.A.6387/1997 & 689/1998,
W.A.6388/1997 & 690-695/1998, W.A.6431-6437/1997,
W.A.1928/1998 & 1929-1930/1998, W.A.6148/1998,
W.P.9994/1997

W.A.6430/1997 & 349-350/1998

BETWEEN:

Miss. Ameena Moosa
D/o. Late Hajee Moosa Sait,
Major, No.14, 3rd Cross,
Ulsoor Road,
Bangalore-560 042

..Appellant.

(By Sri. K.SUBBARAO, Sr.Counsel for
Sri M.Narayana Bhat, Adv.
Sri.Subramanya Bhat, Adv.
M/s.Subba Rao & Co. Advs.)



AND:

1. **M/s. Industrial Credit
Development Syndicate Limited,
A company incorporated under the
Companies Act, 1956 having its
Registered office at "Syndicate
House" Manipal, Reptd.
Herein by its Financial
Controller & duly
Constituted Attorney
Sri A.Ramakrishnan.**
2. **State of Karnataka,
Reptd. herein by the
Secretary, Ministry of
Housing & Urban Development
Govt. of Karnataka,
Vidhana Soudha,
Bangalore-560 001.**
3. **Corporation of the City of
Bangalore, N.R.Square,
Bangalore-560 002, Reptd.
By its Commissioner.**

.. Respondents

**[By Sri Udaya Holla, Sr.Counsel for R-1
Sri Deshraj, Govt. Adv. for R-2
Sri Ashok Haranahalli, Adv. for R-3]**

**W.A. filed u/s 4 of the Karnataka High Court Act, praying to
set aside the order dated 7.11.97 in W.P.Nos.34208-210/95.**

W.A.6386/1997

BETWEEN:

**M/s INDUSTRIAL CREDIT AND
DEVELOPMENT SYNDICATE LTD.
Now known as ICDS LTd.
Syndicate House
Manipal - 576 119,
Rep. by its Managing Director.**

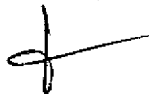
.. Appellant.



**[By Sri Udaya Holla, Sr.Counsel & Maya Holla, Adv.
Sri V.R.Hegde, Adv.]**

AND:

1. **Sri Rajesh Bhandia
S/o M.Bhandia
Major, 37/4, Yellappa
Chetty Layout, Ulsoor Road
Bangalore - 560 042.**
2. **Government of Karnataka
Reptd. by its Secretary of
Municipal Administration
Vidhana Soudha
Bangalore - 560 001.**
3. **Corporation of the city of
Bangalore, represented by
Its Commissioner, N.R.Square
Bangalore.**
4. **Karnataka State Pollution Control Board,
6, 7 & 8th Floors, Public Utility Bldg.
M.G.Road, Bangalore- 560001
Represented by its
Member Secretary.**
5. **Chief Electrical Inspector,
To the Government,
K.R.circle, Bangalore - 560 001.**
6. **Karnataka Electricity Board,
Rep. by its Secretary
K.R.Circle, Bangalore-560 001.**
7. **The Chairman,
Bangalore Urban Arts Commission,
Bangalore.**



8. The Addl. Secretary
 Depart of Ecology and Environment
 Multistoreyed building,
 Bangalore - 560 001.

9. M/s Mega Centre Supermarkets Ltd.,
 No.3795, 7th Main,
 HAL II Stage, Indiranagar,
 Bangalore - 560 038
 Rep. by its Managing Director
 Sri P.Shivanand.

10. Bimal S. Gandhi,
 14, Sind Chambers,
 First Floor, Calaha Causeway,
 Colaha, Bombay - 400 005.

.. Respondents.

[R-1 - Served
 Sri Deshraj, Govt. Adv. for R-2, R-5, R-8
 Sri Ashok Haranahalli, Adv. for R-3
 Sri Gangadhar N.Sangolli, Adv. for R-4
 Sri Rudra Gowda, Adv. for R-6
 R-7 - Served
 R-9 - Served
 R-10 - Served]

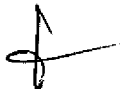
W.A. filed u/s 4 of the Karnataka High Court Act, praying to
 set aside the order dated 7.11.97 in W.P.Nos.12681/90.

W.A.6387/1997 & 689/1998

BETWEEN:

M/s INDUSTRIAL CREDIT AND
 DEVELOPMENT SYNDICATE LTD.,
 Now known as ICDS Ltd.
 Syndicate House,
 Manipal - 576 119,
 Represented by its
 Managing Director.

..Appellant.



[By Sri Udaya Holla, Sr.Counsel]

AND:

1. **Indu Bhandia**
W/o B.S.Bhandia
Adult
R/o at No.37/14,
Ulsoor Road
Yellappa Chetty Layout,
Bangalore - 560 042.
2. **Sakina M.Riaz**
W/o M.Riaz
Adult
R/o at No.46,
Ulsoor Road
Yellappa Chetty Layout,
Bangalore - 560 042.
3. **State of Karnataka,**
Reptd. by the
Secretary,
Housing & Urban Development
Vidhana Soudha,
Bangalore-560 001.
4. **Corporation of the City of**
Bangalore,
N.R.Square,
Bangalore-560 002,
Reptd.By its Commissioner.

.. Respondents

[By Sri Shiva Swamy, Adv. for R-1 & R-2
Sri Deshraj, Govt. Adv. for R-3
Sri Ashok Haranahalli, Adv. for R-4]

W.A. filed u/s 4 of the Karnataka High Court Act, praying to set aside the order dated 7.11.97 in W.P.Nos.5398-99/92.



W.A.6388/1997 & 690-695/1998

BETWEEN:

**M/s INDUSTRIAL CREDIT AND
DEVELOPMENT SYNDICATE LTD.,
Now known as ICDS Ltd.**

**Syndicate House,
Manipal - 576 119,
Represented by its
Managing Director.**

..Appellant.

**[By Sri Udaya Holla, Sr.Counsel
Smt Maya Holla & V.R.Hegde, Advs.]**

AND:

1. **Mrs.E.Albuquerque
W/o O.Albuquerque,
Adult
R/o at No.34,
Ulsoor Road
Yellappa Chetty Layout,
Bangalore - 560 042.**
2. **Mrs.Ameena Zahoor,
W/o Zahoor A.Shariff,
Adult
R/o at No.42,
Ulsoor Road
Yellappa Chetty Layout,
Bangalore - 560 042.**
3. **Aley T.Zacharia,
W/o Thomas Zachariah,
Adult
R/o at No.37/10,
Ulsoor Road
Yellappa Chetty Layout,
Bangalore - 560 042.**



4. Mrs.Siraj Ahmed,
W/o Siraj Ahmed,
Adult
R/o at No.37/7,
Ulsoor Road
Yellappa Chetty Layout,
Bangalore - 560 042.
5. Mrs.S.M.Riyaz
W/o Siraj Ahmed
Adult
R/o at No.37/13,
Ulsoor Road
Yellappa Chetty Layout,
Bangalore - 560 042.
6. Miss Ameena Moosa,
No.14, 3rd Cross,
Ulsoor Road,
Bangalore-560 042.
7. Pontifical Mission Organisation
10, Ulsoor Road
Bangalore-560 042
Represented herein by
Its National Director.
8. Corporation of the City of
Bangalore, N.R.Square,
Bangalore-560 002, Reptd.
By its Commissioner.
9. Bangalore Development
Authority, Sankey Road,
Kumara Krupa,
Bangalore-560 052
Represented by its Commissioner.
10. Town Planning Department
Multistoreyed Building,
Dr.Ambedkar Veedhi,
Bangalore-560 001
Rep. by its Director.



11. **The Chief Engineer (Elect)**
Bangalore Zone
Karnataka Electricity Board,
K.R.Circle, PB No.5163,
Bangalore-560 001
(wrongly mentioned as
sl.no.5 in WP)
12. **Chief Electrical Inspector**
To Govt. of Karnataka
KEB, Multistoreyed Building
K.R.Circle, PB No.5148
Bangalore-560 001.
13. **Department of Ecology and**
Environment, Government of
Karnataka, Karnataka Govt.
Secretariat, Basava Bhavan
4th Floor, Basaveshwara Road,
Bangalore-560 001,
Rep. by its Additional Secretary.
14. **Karnataka State Pollution Control**
Board, 6, 7 & 8 Floors,
Public Utility Building,
M.G.Road, Bangalore-560 001
Rep. by its Member Secretary.
15. **Department of Environment &**
Forest, Govt. of India
Paryavaran Bhavan,
CGO Complex, Lodhi Road,
New Delhi - 110 003
Rep. by its Secretary
- .. Respondents**

[By Sri K.Subba Rao, Sr.Counsel for R-1 to 7
Sri Ashok B.Patil, Adv. for R-1 to 7
Sri Ashok Haranahalli, Adv. for R-8 & R-15
Sri K.Krishna, Adv. for R9
Sri Deshraj, Govt. Adv. for R-10 & R-13
Sri Gangadhar N.Sangolli, Adv. for R-14

+

Sri A.S.Bopanna, ACGSC for R-15
Sri K.Sridhar, Adv. for R-9
R-11, 12 Sa/j

W.A. filed u/s 4 of the Karnataka High Court Act, praying to set aside the order dated 7.11.97 in W.P.Nos.25142-48/90.

W.A.6431-6437/1997

BETWEEN:

- 1. Mrs.E.Albuquerque
W/o O.Albuquerque,
Adult
R/o at No.34,
Ulsoor Road
Yellappa Chetty Layout,
Bangalore - 560 042.**
- 2. Mrs.Ameena Zahoor,
W/o Zahoor A.Shariff,
Adult
R/o at No.42,
Ulsoor Road
Yellappa Chetty Layout,
Bangalore - 560 042.**
- 3. Aley T.Zacharia,
W/o Thomas Zachariah,
Adult
R/o at No.37/10,
Ulsoor Road
Yellappa Chetty Layout,
Bangalore - 560 042.**
- 4. Mrs.Siraj Ahmed,
W/o Siraj Ahmed,
Adult
R/o at No.37/7,
Ulsoor Road
Yellappa Chetty Layout,
Bangalore - 560 042.**



5. **Mrs.S.M.Riyaz**
W/o Mohammed Riaz
Adult
R/o at No.37/13,
Ulsoor Road
Yellappa Chetty Layout,
Bangalore - 560 042.

6. **Miss Ameena Moosa,**
No.14, 3rd Cross,
Ulsoor Road,
Bangalore-560 042.

7. **Pontifical Mission Organisation**
10, Ulsoor Road
Bangalore-560 042
Represented herein by
Its National Director.

.. Appellants.

[By Sri K.Subha Rao, Sr.Counsel for
Sri M.Subramanya Bhat, Adv.]

AND:

1. **Corporation of the City of**
Bangalore, N.R.Square,
Bangalore-560 002, Reptd.
By its Commissioner.
2. **Bangalore Development**
Authority, Sankey Road,
Kumara Krupa,
Bangalore-560 052
Represented by its
Commissioner.
3. **Town Planning Department**
Multistoreyed Building,
Dr.Ambedkar Veedhi,
Bangalore-560 001
Rep. by its Director.



5. **The Chief Engineer (Electricity)**
Bangalore Zone
Karnataka Electricity Board,
K.R.Circle, PB No.5163,
Bangalore-560 001

6. **Chief Electrical Inspector**
To Govt. of Karnataka
4th Floor, KEB, Multistoreyed Building
K.R.Circle, PB No.5148
Bangalore-560 001.

7. **Department of Ecology and**
Environment, Government of
Karnataka, Karnataka Govt.
Secretariat, Basava Bhavan
4th Floor, Basaveshwara Road,
Bangalore-560 001,
Rep. by its Additional Secretary.

8. **Karnataka State Pollution**
Control Board, 6, 7 & 8 Floors,
Public Utility Building,
M.G.Road, Bangalore-560 001
Rep. by its Member Secretary.

9. **Department of Environment &**
Forest, Govt. of India
Paryavaran Bhavan,
CGO Complex, Lodhi Road,
New Delhi - 110 003
Rep. by its Secretary

10. **M/s. Industrial Credit**
Development Syndicate Limited,
A company incorporated under the
Companies Act, 1956 having its
Registered office at "Syndicate
House" Manipal-576 119, and
Branch office at G-3, Ground Floor,
Infantry Road, Bangalore - 560 001
Reptd. herein by its
Managing Director.

.. Respondents.



**[By Sri Ashok Haranahalli, Adv. for R-1
Sri K.Krishna, Adv. for R-2
Sri Deshraj, Govt. Adv. for R-3, R-6 & R-7
Sri Gangadhar N.Sangolli, Adv. for R-8
Sri Mahabaleshwar Bhat, CGSC for R-9
Sri S.S.Naganand, Adv. for
M/s.Sundaraswamy Ramdas & Anand for R-10
R-5 Deleted]**

W.A. filed u/s 4 of the Karnataka High Court Act, praying to set aside the order dated 7.11.97 in W.P.Nos. 25142-25148/90.

W.A.1928/1998 & 1929-1930/1998

BETWEEN:

**Manipal Centre Apartments Owner's Association
S-723, South Block,
47, Dickenson Road,
Bangalore-560 42
Represented by its Secretary.**

..Appellant

**[By Sri K.Shashi Kiran Shetty, Adv.
M/s Shetty & Hegde Associates]**

AND:

- 1. Mrs.E.Albuquerque
W/o O.Albuquerque,
Adult
R/o at No.34,
Ulsoor Road
Yellappa Chetty Layout,
Bangalore - 560 042.**
- 2. Mrs.Ameena Zahoor,
W/o Zahoor A.Shariff,
Adult
R/o at No.42,**



Ulsoor Road
Yellappa Chetty Layout,
Bangalore - 560 042.

3. Aley T.Zacharia,
W/o Thomas Zachariah,
Adult
R/o at No.37/10,
Ulsoor Road
Yellappa Chetty Layout,
Bangalore - 560 042.
4. Mrs.Siraj Ahmed,
W/o Siraj Ahmed,
Adult
R/o at No.37/7,
Ulsoor Road
Yellappa Chetty Layout,
Bangalore - 560 042.
5. Mrs.S.M.Riyaz
W/o Siraj Ahmed
Adult
R/o at No.37/13,
Ulsoor Road
Yellappa Chetty Layout,
Bangalore - 560 042.
6. Miss Ameena Moosa,
No.14, 3rd Cross,
Ulsoor Road,
Bangalore-560 042.
7. Pontifical Mission Organisation
10, Ulsoor Road
Bangalore-560 042
Represented herein by
Its National Director.
8. Sri Rajesh Bhandia
S/o M.Bhandia
Major, No.37/4
Yellappa Chetty Layout



**Ulsoor Road
Bangalore-560 042**

- 9. Indu Bhandia
W/o B.S.Bhandia
No.37/14
Yellappa Chetty Layout
Ulsoor Road
Bangalore-560 042**
- 10. Sakina M.Riaz
W/o M.Riaz
No.46,
Yellappa Chetty Layout
Ulsoor Road
Bangalore-560 042**
- 11. Corporation of the City of
Bangalore,
N.R.Square,
Bangalore-560 002,
Reptd.By its Commissioner.**
- 12.Bangalore Development
Authority,
Sankey Road,
Kumara Krupa,
Bangalore-560 052
Represented by its
Commissioner.**
- 13. Town Planning Department
Multistoreyed Building,
Dr.Ambedkar Veedhi,
Bangalore-560 001
Rep. by its Director.**
- 14.The Chief Engineer (Elect)
Bangalore Zone
Karnataka Electricity Board,
K.R.Circle, PB No.5163,
Bangalore-560 001**



- 15. Chief Electrical Inspector**
To Government, Govt. of Karnataka
KEB, Multistoreyed Building
K.R.Circle, PB No.5148
Bangalore-560 001.
- 16. Department of Ecology and Environment, Government of Karnataka, Karnataka Govt. Secretariat, Basava Bhavan 4th Floor, Basaveshwara Road, Bangalore-560 001, Rep. by its Additional Secretary.**
- 17. Karnataka State Pollution Control Board, 6, 7 & 8 Floors, Public Utility Building, M.G.Road, Bangalore-560 001 Rep. by its Member Secretary.**
- 18. Department of Environment & Forest, Govt. of India Paryavaran Bhavan, CGO Complex, Lodhi Road, New Delhi - 110 003**
- 19. M/s. Industrial Credit Development Syndicate Limited, A company incorporated under the Companies Act, 1956 having its Registered office at "Syndicate House" Manipal-576 119, and Branch office at G_3, Ground Floor, Infantry Road, Bangalore - 560 001 Reptd. herein by its Managing Director.**
- .. Respondents**

[By Sri K.Subba Rao, Sr.Counsel for
Sri M.Narayana Bhat, Adv. for R-1 to 7
R-8, R-9, R-10 Served/-
Sri Ashok Haranahalli, Adv. for R-11 & R-18
Sri K.Krishna, Adv. for R-12



**R-13, R-14, R-15, R-16 Served/-
Sri Gangadhar N.Sangolli, Adv. for R-17
Sri J.S.Shetty, Adv. for R-1 & R-18
M/s. Sundara Swamy Ramdas & Anand
for R-19]**

**W.A. filed u/s 4 of the Karnataka High Court Act, praying to
set aside the order dated 7.11.97 in W.P.Nos.34208, 34209
& 34210/95, .**

W.A.6148/1998

BETWEEN:

**Karnataka State Pollution Control Board,
8th Floor, P.U.Building
M.G.Road, Bangalore - 560 001.**

.. Appellant.

[By Sri Gangadhar N.Sangolli, Adv.]

AND:

**1. M/s. Industrial Credit &
Development Syndicate Limited
G-3, Ground Floor,
Infantry Road,
Bangalore - 560 001.**

**2. The State of Karnataka
Rep. by its Secretary,
Department of Ecology &
Environment,
Vidhana Soudha,
Bangalore - 560 001.**

**3. The Chief Engineer,
Karnataka Electricity Board,
K.R.Circle,
Bangalore.**



4. The Chief Engineer
Bangalore Water Supply
& Sewerage Board
Cauvery Bhavan
Bangalore.

5. The Union of India
Rep. by its Secretary
Ministry of Environment
South Block, New Delhi.

..Respondents

[By Sri T.N.Raghupathy, Adv. for R-1
Sri Deshraj, Govt. Adv. for R-2, R-3 & R-5
Sri Keshava Murthy, Adv. for R4]

W.A. filed u/s 4 of the Karnataka High Court Act, praying to
set aside the order dated 7.11.97 in W.P.No.3162/92.

W.P.9994/1997

BETWEEN:

1. Miss. Amina Moosa
D/o late Hajee Moosa Sait
Major, R/a No.43/2 (old)
New No.14, III Cross,
Ulsoor Road, Bangalore-560 042
2. Mrs. Amina Zahoor
Adult, W/o Zahoor A.Shariff
R/a No.42, Ulsoor Road
Yellappa Chetty Layout,
Bangalore - 560 042.
3. Aley T.Zachariah,
Adult, W/o Thomas Zachariah
R/a No.37/10, Ulsoor Road
Yellappa Chetty Layout,
Bangalore - 560 042.

.. Petitioners.



**[By Sri K.Subba Rao, Sr. Counsel
Sri Subramanya Bhat, Adv.
Sri B.V.Gangi Reddy, Adv.
M/s. Subba Rao & Company]**

AND:

- 1. The State of Karnataka
Rep. by its Secretary
Department of Ecology and
Environment,
M.S.Building,
Bangalore-560 001,**
- 2. The Karnataka State Pollution Control
Board, 8th Floor,
Public Utility Building,
M.G.Road, Bangalore-560 001**
- 3. The Bangalore Mahanagara Palike
N.R.Square,
Bangalore-560 002,
Reptd. by its Commissioner.**
- 4. The Director,
Karnataka State Fire Services,
No.1 & 2, Annaswamy Mudaliar Road
Bangalore-560 042.**
- 5. The Chief Electrical Inspector
Govt. of Karnataka
K.R.Circle,
Bangalore-560 001.**
- 6. The Chief Inspector of Factories
& Boilers in Karnataka, No.3,
B.B.Naidu Road,
Gandhi Nagar
Bangalore-560 009.**



7. The Deputy Commissioner of Police
(Traffic), East division,
Ulsoor Police Station
Bangalore-560 008.
8. M/s. Industrial Credit
Development Syndicate Limited,
A company incorporated under the
Companies Act, 1956 having its
Registered office at "Syndicate
House" Manipal-576 119, and
Branch office at G_3, Ground Floor,
Infantry Road, Bangalore - 560 001
Reptd. herein by its
Managing Director.
9. M/s. Manipal Centre Owners Association,
Registered office at Manipal Centre,
No.47, Dickenson Road,
Bangalore-560 042,
Rep. by its Secretary.
10. Central Park Hotel,
Manipal Towers,
No.47 Dickenson Road,
Bangalore-560 042.

.. Respondents.

[By Sri Deshraj, Govt. Adv. for R-1, R-4, R-6, R-7
Sri Gangadhar N.Sangolli, Adv. for R-2
Sri Ashok Haranahalli, Adv. for R-3
Sri K.N.Puttegowda, Adv. for R-3
R-5 Served
Sri T.N.Raghupathy, Adv. for R-8 & R-10
Smt Jayashree, Adv. for R-8 & R-10
Sri K.Shashi Kiran Shetty, Adv. for R-9
M/s Shetty & Hegde Associates for R-9]

W.P.9994/1997 filed under Article 226 of the Constitution
of India praying to quash Annexure - M4 dated 6.3.1997,
direct R1 & 2 to close down the operation of D.G.Sets at
No.47, Dickenson Road, Bangalore and etc.

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These Writ Appeals and Writ Petition No.9994/1997 having been heard and reserved for Judgment and Orders, this day K.SREEDHAR RAO, J pronounced the following:

JUDGMENT/ORDER

The appellant-M/s. Industrial Credit & Development Syndicate Ltd.(ICDS) took up construction of high-rise building popularly called "Manipal Centre" in the year 1986. One of the writ petitioners Mrs.Amina Moosa objected to the construction by filing a suit in OS No. 10481/87 on the file of City Civil Court, Bangalore seeking injunction against the appellant from construction of the building on the ground that the construction is damaging her compound wall. The civil court granted ad interim exparte injunction. After hearing the ICDS, the interim order was not extended. Mrs.Amina Moosa discontinued her pursuit before the civil court and filed the writ petition along with six others in WPs 25142/90 to 25148/90.

2. Preceding the above writ petitions one Rajesh Bhandia filed WP 12681/90 alleging construction of the building 'Manipal Centre" in violation of the building bye-laws and sanctioned plan and sought demolition of the building interalia sought mandamus against the Corporation

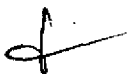
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and other statutory authorities to take appropriate action in accordance with law.

3. Mrs.Indu Bhandia and Mrs.Sakina filed WPS 5398/92 5399/92 seeking mandamus against the Corporation to furnish certified copy of the sanctioned plan of "Manipal Centre".

4. Mrs.Amina Moosa apart from pursuing the remedy before city civil court and before this Court also moved Pollution Control Board alleging that the Diesel Generation Set (D.G.Set) located immediately by the side of her building is creating pollution and nuisance. In that regard the Pollution Control Authorities passed some orders. The ICDS filed WP 3162/92 challenging the constitutional validity of Sec.31(A) of the Air (Prevention and Control of Pollution)Act 1981. Further sought direction against the authorities for reconsideration of its applications.

5. Mrs.Amina Moosa had submitted representations to the Lokayukta alleging encroachment of the conservancy lane by the I.C.D.S. in the process of construction, the Lokayukta made an enquiry submitted report to the



Government. In that behalf the Government issued certain directions. The I.C.D.S aggrieved by the directions, filed W.P.34208 to 34210/1995 for quashing the directions on the ground that the enquiry conducted by the Lokayukta and the directions issued by the Government are without reference and opportunity to the ICDS, hence seek quashing of the directions.

6. The writ petitioners who commonly opposed the construction of the "Manipal Centre" in the course of this order would be adverted to as petitioners.

7. The salient objections of the petitioners in the writ petitions opposing construction of "Manipal Centre" are listed hereunder-

- (1) The area is a residential zone - the construction of a high rise commercial complex is contrary to the zonal regulations and without necessary permission for the change in land use - grant of licence for construction is bad in law.
- (2) The area ear-marked for children's park is encroached by the "Manipal Centre".



- (3) The location of D.G.Set causes noise pollution - the ICDS despite the directions issued by the Pollution Control Board has not shifted the location of D.G.Set. as per its undertaking.
- (4) The construction of Manipal Centre is contrary to building bye-laws. There is gross violation of breach of set back regulations. The constructions are made in violation of the sanctioned plan. The requisite parking space is not provided as per the building bye laws. The fire safety measures have not been complied. The construction of basement floor is in violation of building bye laws and affects the privacy of the petitioners.

8. Per contra, the I. C. D. S. submitted that the petitioner in W. P. No. 12681/1990 is set up by Mrs.Amina Moosa. The documentary material filed along with the writ petition pertains to the correspondence of Mrs.Amina Moosa with several statutory authorities. The said correspondence nowhere makes reference to Rajesh Bhandia. It is stated that permission and license is granted to construct two basement +ground floor + three mezzanine



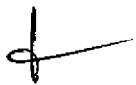
floors + nine upper floors. The construction is in accordance with the bye laws and the sanctioned plan. After completion of construction, at the time of grant of occupancy certificate, the deviations in constructions have been compounded by the Corporation. The necessary composition fee is remitted. The allegation that the car parking space provided is inadequate and not in accordance with the bye laws is stoutly denied. The allegation that the construction and use of basements is in contravention of building bye laws are stoutly denied. The Fire Force department inspected the building on 26-11-1990 and has certified that the construction meets all the requirements of Fire Safety Measures and in view of such certification, the Corporation has granted the occupancy certificate.

9. The I.C.D.S. contends that wide publicity of the project was given in the news papers offering sale of flats and tenements to the public. The construction activity was spread over from 1987 to 1990. Rajesh Bhandia, his wife Mrs.Indu Bhandia wife of the petitioner entered into an agreement to purchase the flat - entrusted the construction of his tenement to I.C.D.S. Thus submit that the petitioners



Rajesh Bhandia and his wife at no point of time during the construction and prior to the writ petition had any opposition for the construction of the "Manipal Centre". Mrs.Amina Moosa also did not espouse the public cause in her suit and in her representations to the several authorities before filing the writ petition. The objections raised by Mrs.Amina Moosa reflected only the violation of her individual private rights.

10. It is said that the Government and the BDA granted permission for change of land use under the Town and Country Planning Act in the year 1983. At the time of permitting the change of land use a stipulation was made that some of the area should be compulsorily leased in favour of the Government and statutory authorities. Later on, the said condition has been relaxed. The Corporation after being fully satisfied with the orders of the Government and BDA granted licence in the year 1986. The construction is immediately commenced and completed in the year 1990 which is just before filing of the writ petitions.



11. The ICDS submits that it has no exclusive and absolute rights over the "Manipal Centre", the substantial portion of the tenements have been alienated in favour of third parties. The persons who have secured proprietary interest are not made parties to the proceedings, hence submits that the reliefs sought for in the writ petitions cannot be granted and that writ petitions suffer from delay and latches.

12. The Bangalore City Corporation (now called Bangalore Mahanagar Palike in short B.M.P.) has denied the allegation that there is contravention of bye-laws in granting licence. The allegation that constructions put up are in violation of licence is denied. The allegations relating to encroachment of the park and the road for the purpose of construction is denied. The allegation that the set backs and the parking space is not provided is stoutly denied, the allegation that the fire safety measure have not been taken is stoutly denied. It is said that there were some deviations noticed after the construction. The deviations have been compounded in accordance with law. Thus submits that the



building "Manipal Centre" is in accordance with the bye laws and the sanctioned plan.

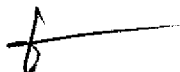
13. The Karnataka State Pollution Control Board has contended that pursuant to the complaint regarding the diesel generator set, the enquiry is conducted, directions are issued to ICDS for shifting the location far away from the residential premises accordingly the directions have been complied. The allegation against the constitutional validity of Section 31(A) of Air (Prevention and Control of Pollution), Act of 1981 are said to be untenable.

14. The learned Single Judge recorded the following findings on the points formulated for consideration in the writ petitions.

(a) In regard to point No.1-the contention that the building of Ms Ameena Moosa an other petitioners are damaged in the course of construction is held to be a disputed question of fact which cannot be gone into and decided in a writ petition. Hence advised the petitioners to work out the remedy in civil court.



- (b) In regard to point No.2 that the high electrical installations are dangerously located affecting the safety of the residential buildings is negated. It is held that the installations are situated far away from the residential buildings on the southern corner.
- (c) In respect of point NO.3 and 6 that the ICDS has encroached the children park and conservancy lane is negated holding that petitioners have failed to prove the fact of their existence and their encroachment.
- (d) With regard to point No.7 that the ICDS has illegally raised the ground level of the site to have more number of floors is held to be a serious allegation for dearth of material, finding is not given. However the B.M.P. is advised to look into the matter.
- (e) With regard to point No.9 regarding diesel generation set it is held that the D.G. sets are relocated as per the directions. The pollution and nuisance alleged is abated.
- (f) The point No.10 regarding constitutional validity of sec. 31(A) of the Act - it is upheld.



(g) With regard to point No.13, the allegation that the change of land use has been done without compliance of law is rejected.

(h) With regard to point No.15, the objections relating to delay and latches and non-joinder of purchasers raised by ICDS is rejected and it is held that the petitions are maintainable.

(i) The learned Single Judge records positive finding in respect of Point Nos. 4, 8 and 14 that the constructions is not in accordance with the bye-laws and sanctioned plan. The parking space provided is not in conformity with the bye-laws.

15. The learned Single Judge directed the B.M.P. to get the building "Manipal Centre" inspected to note the deviations observed above and to initiate necessary action in accordance with law.


16. All the parties to the writ petition have filed the above writ appeals besides the "Manipal Center" Apartments Owners' Association who is not a party to writ petition has also filed the Writ Appeals.



17. The ICDS has produced a list of names of purchasers and dates of purchase in respect of 235 tenements to show that the sales are effected much earlier to the writ petitions.

18. The B.M.P. pursuant to the directions in the final order of the writ petitions got the building "Manipal Centre" inspected by the Chief Engineer and a report is submitted dated 27-06-98.

19. In the course of hearing of the writ appeals none of the Counsel brought to the notice of the Court about the inspection report dt. 26-7-1998. This Court made an order dated 26.2.2002 directing the Commissioner of the B.M.P. to inspect the building and to give report about the status of the construction of the buildings vis-à-vis, the building bye-laws and the sanctioned plan. The Commissioner held inspection and submitted a report dated 20.3.2002 and after hearing the appellants and the respondents, this Court by way of interim order dated 3.4.2002 directed the Commissioner to initiate necessary action in respect of the infractions and violations noted in the report. The appellants aggrieved by the order preferred a petition for



special leave to appeal in (Civil) No. 8672-8696/2002. The Supreme Court is pleased to issue the following directions:

"The matters are adjourned by eight weeks.

Learned counsel on either side submits that they will make a request to the High Court to have the writ appeal itself heard and disposed of, in the meantime. As and when such a request is made, we would request the High Court also to consider the same to have it disposed of, to give a quietus to the matter pending in this S.L.P."

20. The Supreme Court further directed as per order dated 3-1-2005 which is as follows:

".....The Learned Chief Justice of the High Court would consider whether it would be proper to constitute the bench which was hearing the matter for disposal."

21. The learned Senior Presiding Judge Sri.G.C.Bharuka J., had in the meanwhile retired. Hence, this Bench is constituted by the Hon'ble Chief Justice in deference to the orders of the Supreme Court dated 3-1-05.

22. The learned Senior Counsel Sri.K.Subbarao appearing for the petitioners who oppose the construction of "Manipal Centre" strenuously argued that the order of this Court dated 3-4-2002 is a final order in itself and does not admit any further scrutiny or arguments. The direction



issued to the B.M.P. to take appropriate action against the contraventions and deviations found in the report dated 20-3-2002 is in accordance with law. In the said order, the objections with regard to delay and latches is considered and rejected. The order has attained finality.

23. After careful consideration of the order of the Supreme Court dated 4-8-03, we are of the opinion that the scope and powers of the Bench to hear the appeals on merits for final disposal is not curtailed to exclude the reconsideration of the order dated 3-4-2002. Hence the said impugned order is to be considered only as an Interlocutory Order subject to the final result of the writ appeals.

24. The first Commissioner's report records that there is no set back area of 16 Meters all round the building . At about 7 of the corners of the building, the set back area is less than 16 meters. The user of basement floor in A and B block is shown as under:

- a) 2 Nos of Electrical Equipments Room
- b) 3 nos. of Offices.
- (c) 4 Nos. of vacant Room.
- (d) 1 Electrical room facing towards north.
- (e) 6 lift room.
- (f) 2 Stair case Room.
- (g) 3 Nos. of shops.
- (h) 5 Nos. of vacant room with Air Conditioned.

In B Block the basement is used for the following uses:



- a) Facing towards South - 6 lift room. (b) 2 Nos. of stair case room.(c) 11 vacant rooms north. (d) 11 Nos. of vacant Room facing south. (e) 1 No. of Office Room.(f) 2 Nos. of Shops with Air Conditioned.

25. The basement floor of the hotel block is used for A.C.plant machinaries, laundry, kitchen block, computer room, security offices. The basement floor is extended upto the edge of the eastern side and height of the basement floor is said to be varying because of the fact that the natural ground level of the building is uneven, steeply sloping towards eastern side. It is for that reason, the roof level of the basement floor accords with the first floor of the adjacent buildings on the north and eastern side of "Manipal Centre".

26. The second Commissioner report records the following observations:

- (1) The set back of the surface area is in accordance with the bye-law but the basement floor extends beyond the building plinth of the surface and extends well beyond. Hence opines that there is violation of the set back regulations.
- (2) The total extent of the site is 1998.84 sq.mets. The percentage of the plot coverage area is 25.698% as against 25% permissible area as per bye-law 5.6.1. The violation is said to be below 5%

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and compoundable. So also the violation of the floor area ratio is less than 5% and compoundable.

(3) The height of the basement floor is not uniform and is in excess of the maximum height prescribed under the bye-law.

(4) The number of floors permitted is 1+9. The 3 Mezzanine floors in the building do not accord with the floor area ratio and the total coverage area of the mezzanine floor is more than one third of the floor area. The mezzanine floor of the hotel block has independent access from the corridors. As such they cannot be termed as mezzanine floors as per the building bye-laws 2.28. Thus records that the bye laws are violated in respect of the mezzanine floor.

(5) The "Manipal Centre" is a multi-purpose complex consisting shops, restaurant, office buildings, educational buildings and lodging establishment. The varying standards are prescribed for car parking for different types of user. The Commissioner aggregating the minimum prescribed space in respect of each trade and activity has calculated the parking space area to be provided and comes to the conclusion that the building required parking space for 286 cars whereas the parking space available is only for 134 cars.

The Commissioner has recorded the nature of the use of the basement floors in the following manner:

20. Usage of Basement floors:

The current uses of the basement floors are as follows:

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- (a) **North Block:** Commercial offices, shops, godowns, stores and other uses for utilities and services of the building.
- (b) **South Block:** Commercial Offices, shops, restaurant, godowns, stores and other uses for utilities and services of the building.
- (c) **Hotel Block:** Stores and other uses for utilities and services of the building such as laundry.

27. The Commissioner finds that as per bye-law 21.1(a) the basement cannot be used for shops, restaurant, godown, office for commercial purposes if not air conditioned.

28. The petitioners opposing the construction have filed objections to the Commissioner's report stating that the measurements recorded in respect of set backs is incorrect. The minimum frontage of the building shall be 24 meters and not 8 meters as stated by the petitioner as per the building bye-laws. The set backs to be provided in accordance with the National Building Code. It is alleged that the Commissioner did not give any particulars regarding the surrender of land on the front side by the ICDS to increase the road width of the Dickenson Road. There is no mention about the conservancy lane between the property of the respondent and the ICDS in the report.

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The height of the building should be in conformity with the bye-law 15.

29. The ICDS has filed objections to the second Commissioner's report submitting that the Commissioner has measured the building in haste and on Sunday when most of the shops were closed. The total extent of the floor area was not measured. The ICDS after construction has sold the substantial portion of the building to several persons. The purchasers have on their own put up wooden structures on the mezzanine floor. The Commissioner has committed error in interpreting the bye-laws relating to the plinth, use of the basement floor, the parking area and the total number of floors of the building. The Commissioner has not submitted the report in accordance with law and has buckled under the threats of Ms. Ameena Moosa.

30. The ICDS further filed an application for summoning the Commissioner for the purpose of cross-examination. The relief of summoning the Commissioner for cross-examination is ill conceived in the writ proceedings.

31. The petitioners who oppose the construction confined their arguments with reference to infractions noted in both the Commissioner's reports to prove their point.

32. There are glaring inconsistencies in the first and the second report. The inspecting authority in the first report essentially kept in view the observations of the



learned Single Judge that the minimum set back space shall be 16 meters all round the building in view of the National Building Code (N.B.C.). The view taken by the learned Single Judge that the standards set in N.B.C. will apply is incorrect. The N.B.C. is only a technical guideline and cannot prevail over bye-laws. Unless the standards prescribed in the N.B.C. is assimilated and adopted in the bye laws, they do not get statutory sanction.

33. The observation of both the Commissioners that the basement extends beyond the surface plinth, therefore the set backs regulations are deemed to be violated appears to be an incorrect interpretation. The building bye-laws 1983 do not regulate the limit of the basement area. The amended bye law 18.4 of 2003 now prescribes that "no part of the basement shall extend beyond the minimum set backs prescribed to the building within the plot." The corresponding bye law 21 of 1983 bye-laws do not prescribe any such limitation. The sanctioned plan is granted in accordance with bye laws 1983 and the building is constructed before coming into effect the Building Bye-laws 2003.



34. The purpose for which the basement could be used is dealt in bye-law 21 which permits storage of the household and other goods except inflammables, dark room, strong room, bank cellar, air condition equipment, parking place, garages, stock rooms of libraries and office of commercial purpose provided if it is air conditioned. The bye-law positively prohibits the use of basement for residence or classrooms, kitchen, bath room and lavatory. In contrast the Bye-laws 2003 permit use of basement only for parking of vehicles, locating machineries for the utility of the building, strong room in case of bank except the one permitted the basement cannot be used for any other purpose. The Bye law 21 makes express prohibition of use of basement for residence, class rooms, kitchen, bath and lavatory. The bye-law conditionally permits use for office of commercial purpose. The use of basement for shop is not positively prohibited. The nature of activity for a shop is by and large analogous to the office of a commercial purpose. Therefore in stricto-sense the bye-law 21 does not prohibit use of basement for commercial purpose.



35. The first Commissioner's report does not point out infractions with regard to parking space and the mezzanine floors. The B.M.P. has taken categorical stand in its pleading that there is no infraction of bye-law and sanctioned plan with regard to parking space. The sanctioned plan insists parking space for 230 vehicles. In the second report, the Commissioner has excluded 4.5 meters of the ground floor insisted for the Fire Tender all round the building (as per bye-law 83 table-4(b) note-6) while calculating parking space. The ICDS has stoutly objected to the correctness of the measurement of the Commissioner's report. The "Manipal Centre" is a multi utility building with trade, commercial and educational activities. With reference to the area occupied by each activity vis-à-vis the minimum parking space insisted in the bye-law is to be worked out. The facts relating to these aspects are contentious. That apart, the matter involves the interpretation of bye-law 1983 relating to the minimum parking space. When the facts are in serious dispute, it is not possible to adjudicate the same in writ proceedings.

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36. With regard to height of basement, the first Commissioner's report records that on account of natural sloping on the eastern side, there is a variation in the height of the basement at different levels. This fact however is not noted in the second report.

37. With regard to number of floors, height of the building and the status of mezzanine floor, the first Commissioner's report does not refer to any of the infractions. In the second report, the Commissioner holds that the floor area of the mezzanine is more than one third and that mezzanine floors have independent access through corridors, therefore they cannot be treated as mezzanine floors. Bye-law 2.28 defines "mezzanine floor": a mezzanine floor is an intermediate floor between two floors above ground level accessible only from the lower floor. The area of the mezzanine is restricted to one third of the floor area of that floor. The Fire Force Department for according no No Objection Certificate for sanction to the building plan stipulated certain conditions with regard to the staircase of all the floors as a safety measure to prevent decongestion in times of emergency. The BMP has consciously accorded

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sanction with regard to the mezzanine floors and its access. After construction, the Fire Force Department has inspected and certified the correctness of the constructions. The B.M.P. while according occupancy certificate has compounded the deviations in respect of the hotel block and basement extensions including the mezzanine floors. Had the Commissioner taken the signatures of the parties or their representatives to acknowledge the correctness of the measurements noted in the worksheet prepared at the spot, the second Commissioner's report could have gained greater acceptability. In the absence of such procedure, the measurements noted by the Commissioner in the second report remains to be a contentious fact.


38. The decisions of the Supreme Court in *M/S.DEHRI ROHTAS LIGHT RAILWAY COMPANY LTD. VS. DISTRICT BOARD,BHOJPUR AND OTHERS -AIR 1993 SC 802* and *DR.KASHINATH G. JALMI AND ANOTHER VS. THE SPEAKER AND OTHERS AIR 1993 SC 1873*, *BONBEHARI V. NIMBKAR AND OTHERS VS. STATE OF MAHARASTRA AND OTHERS - AIR 1996 BOMBAY 261*, *PURSHOTTAM LAL AND OTHERS VS. UNION OF INDIA AND ANOTHER -AIR 1973 SC 1088* are referred to while dilating the arguments against the grounds



of delay and latches urged by the ICDS and its companions. It is argued that the petitioners have all through campaigning against the construction, submitted several complaints to the concerned authorities and initiated the legal action. The occupancy certificate is issued after filing of the writ petition; therefore the ground of delay and latches alleged is untenable.

39. With reference to non-joinder of purchasers, it is argued that the purchasers have an opportunity to represent their case in the contemplated enquiry to be conducted by B.M.P. Even otherwise, the purchasers have filed the appeals now, the irregularity if any is fully cured and they have been properly heard in the matter.


40. The learned Counsel placing reliance upon the Commissioner's report dated 27-6-1998 and latest report argued that prima facie there are blatant and glaring violations relating to set back, mezzanine floor, height of building, parking place and mis-use of basement floor. The violations evidently affect the public safety. The decision of the Supreme Court in *V.M.KURIAN VS. STATE OF KERALA AND OTHERS (2001)4 SCC 215* is relied on wherein it is held that in the case of grant of permission for construction for



high-rise building without compliance of technical clearance is a serious lapse. Where the public safety is involved, the lapses cannot be condoned. In this case, it is argued that the infractions are similar to one found in K.M.Kurian's case, therefore argued that the stern action should be taken for getting the constrictions in-place in accordance with law.


41. Sri.Udaya Holla on the proposition of law relating to delay in filing the PIL relied on the decision in *R & M TRUST Vs. KORAMANGALA RESIDENTS VIGILANCE GROUP Civil Appeal 1415/99* wherein it is held that if substantial portion of the building was complete and where third party's interests are created, the delay in such cases is held to be fatal. The learned Counsel referred to host of other decisions of Supreme Court and this Court to bring home the point that delay in filing the petition is fatal. The fact situations in the said decisions do not pertain to the building constructions, however by analogy it is argued that delay in any kind of situation formidably affects the interests of the petitioners adversely to seek the relief.

42.The facts evidently disclose that even before the construction was complete, the substantial portion of the



tenements have been sold out to hundreds of persons obviously creating third party's interest even before filing of the writ petitions. The initial blitz of the petitioners opposing the construction was confined to violation of set back regulations, damage to their property as a result of the construction activity and the pollution effects. In respect of the said aspects, it was not necessary for the petitioners to have waited for over a period of three years till the construction is complete to initiate legal action. The decision of the Supreme Court in R.M. TRUST's case squarely applies to the facts on hand. We are of the opinion that the writ petitions of the petitioners opposing the constructions seriously suffer from laches delay and non joinder of necessary parties.

43. Accordingly the appeals in WA 6430/97 & WA 349-350/98, WA 6431-6437/97, the WP 9994/97 filed by Ms.Ameena Moosa and her companions are dismissed. The WA 6386/97, WA 6387/1997 & WA 689/1998, WA 6388/97 & 690-695/98 filed by the ICDS are allowed. WA 1928/98 and WA 1929-1930/98 filed by Manipal Centre Apartments Owners' Association are allowed.



44. The Karnataka State Pollution Board has filed WA 6148/98 for setting aside the finding of the learned Single Judge regarding point No.3. It is contended that the order of the appellant dated 11.8.1997 noticed by the learned Single Judge pertains only to Central Park Hotel. The said order does not permit D.G.sets with a capacity of 180 kv and no consent is given in respect of the said installations. The factual contention if true, would not take away the jurisdiction of the appellant to initiate action in accordance with law. Accordingly WA 6148/98 is disposed of. In all the cases, the parties are directed to bear their respective costs.

Sd/-
Judge

Sd/-
Judge

Pv