Case Note: The petitions states that whether an open space reserved for park, garden or play-ground for general public and as such shown as green-belt in the developed sanctioned and published Plan of the City of Nagpur, could such piece of land be allotted to a private person or a Body of persons (in the instant case to the Society) for housing purposes, depriving the general public from public utility, as also causing set back to the environment?

The Court prohibited any construction on the concerned area and directed respondents to undertake the development and improvement of area for public purpose and thereby preserve and protect environment by undertaking plantation.

Equivalent Citation: (1997)99BOMLR434

IN THE HIGH COURT OF BOMBAY (NAGPUR BENCH)

Writ Petition No. 2013 of 1985

Decided On: 05.11.1996

Harijan Lay Out Sudhar Samiti and Ors.
Vs.
The State of Maharashtra and Ors.

Hon'ble Judges:
A.A. Desai and B.U. Wahane, JJ.

JUDGMENT

B.U. Wahane, J.

1. This writ petition is an apt example as to how the statutory object secure preservation of Environment and Development of the residential colonies shown in the Master Plan, sought to be achieved by the State of Maharashtra under the Nagpur Improvement Trust Act, 1936. The Maharashtra Regional and Town Planning Act, 1966, and the City of Nagpur Corporation Act, 1948, is defeated by the Authorities who lack dynamism, aestheticism and enthusiasm for development and alienate the land/ open space meant for Public utility.

2. By this petition under Article 226 of the Constitution of India, the petitioners 1 and 3 being Societies and petitioner No. 2 a Corporator, thus, the public spirited citizens, have questioned the legality, propriety and justifiability of the impugned Resolution dated 13th June, 1980, (Annex. Vat page No. 58) and the impugned order of allotment dated 21st May, 1985 (Annex, XXIII, at page 116).

3. The Petitioner specified in para 2 of the Petition that the instant petition is in the interests of the citizens of Nagpur in general and residents of Jaripatka, Mecosabagh

Sindhi Colony and Nazul Lay-Out and Harijan Colony etc., particulary and thereby it is in the nature of a Public Interest Litigation. The petitioner No. l Harijan Layout Sudhar Samiti is a registered Society under the Bombay Public Trust Act, 1860. The members of this Society are the residents of Nazul Layout, Harijan Colony, and of mouja Jaripatka. Tahsil and District Nagpur.

The Petitioner No. 2 is a Corporator elected from Ward No. 58 to the Corporation of the City of Nagpur. As such he represents the interest of the residents of Jaripatka which falls under Ward No. 58.

The Petitioner No. 3 is an unregistered association of citizens residing in the Sindhi Colony at Mecosabagh and as such they are also interested in the healthy planned growth of the North-East portion of Nagpur.

4. The erstwhile Government of Madhya Pradesh vide Survey and Settlement Memo No. 3327-3182/ 16-29 dated 23.9.1954 sanctioned a Layout known as "Nazul Lay-out" at mouja Jaripatka for providing residential land to the "Harijans" only. The sanction covered a total area of 21.47 acres including therein Khasra Nos. 37, 38/1, 38/2, 40/1 k, 40/2, 43/1, 47/1 and 57/1 of mouja Jaripatka, Tah. & Dist. Nagpur. The plots of the Khasras referred above were auctioned by the Nazul Officer under the Respondent No. 4 Collector (Nagpur)to individuals some of whom are the members of the Petitioner No. 1 Society. The Collector the respondents No. 4 granted leases of some plots to the individuals. The auctioneers who purchased the plots and those who have been leased out by the Respondent No. 4 the Collector, constructed their houses thereon ate presently residing there, the petitioners specifically averred that the Kh. No. 37 and 38/1 were never auctioned since these two pieces of land were kept for public utility and were shown as green-belt in the master plan.

5. The Harijan Layout" which included K. - Nos. 37 and 38/1 was undeveloped by the Nagpur Municipal Committee-predecessor body to the Respondent No. 5 - the Corporation of the City of Nagpur. Due to constant persuasion for taking steps for the development of the layout, finally the Respondent No. 3- Nagpur Improvement Trust passed a resolution sanctioning the expenditure for the development of the "Harijan Layout" comprising khasra numbers as stated above. Development was apprised to the petitioner No. l Society by letter dated 30th December 1984. Two khasras i.e. 37 and 38/1 which were inducted in the green belt, were also included in the financial assistance for development.

6. According to the petitioners, besides the colonies referred earlier, the surrounding colonies are Christian Colony, Clerk Town, Indora, Juna Jaripatka, Kasturba Nagar, Western Coal Fields Ltd's colony, New Income Tax College Complex, Reserve Bank Officers Quarters, Bezan Bagh, Lakshari Bagh etc., the population of which at the time of filing the instant petition was well over a lakh. It is specifically stated by the petitioners that no park, play ground etc. developed in these areas by the Respondent No. 5 - Corporation of City of Nagpur.

The Respondent No. 3 - Nagpur Improvement Trust in the development plan of the City of Nagpur, which has been sanctioned vide Resolution No. TRS/2476/ 478-UD dated 3rd June, 1976, has shown khasara Nos. 37 and 38/1 as green belt. These khasaras of approximately 2 acres form the only open area. Therefore, according to

the petitioners, these two khasaras are the lungs of the North East portion of the city of Nagpur. The petitioners further submitted that the residents of these localities have no other area where they can breath clean open air in terms of the development plan of the city of Nagpur. Rest of the areas in North Eastern portion of Nagpur are either commercial or residential.

7. A sketch plan is placed on record as Annex. A showing the green belt and the plots allotted to the Respondent No. 8. In the development plan of Nagpur sanctioned in 1976, the residential commercial, industrial, works-shops, Government godowns, public institutions educational institutions, health institutions, parks, gardens, play grounds, agricultural lands, public utility places and other aspects have been shown by different markings and inks. In this sanctioned development plan, khasaras 37 and 38/1 which have been shown in green belt and the concerned portion is encircled by the parties to point out the disputed lands/space. The concerned authorities made no improvement and developed the area. On the contrary, without following the provisions of the Act, the Respondent No. 1- The Government of Maharashtra passed a memorandum dated 13.6.1980 (Annex. V) granted survey Nos. 37 and 38/1 of Jaripatka in Harijan Colony in Nagpur to the Respondent No. 8 for accommodating it's 56 other approved members. The Respondent No. 1 further directed the Collector of Nagpur to select 14 plots to be granted to the respondent No. 8 - Society. The petitioners against the illegal, arbitrary and high handed action on the part of the Respondents 1 and 2 and that too in violation of the fundamental principles of Development and Improvement of the City, rushed to meet with the Chief Secretary to the Government of Maharashtra on 23.2.1981 and thereafter served a notice under Section 80 of the Civil Procedure Code to the Respondent No. 1. Similarly, the representations were made to the various authorities. The petitioners approached the Respondent No. 3 Nagpur Improvement Trust, Divisional Commissioner of Nagpur, Secretary of Revenue and Forest Department and sent representations to other authorities. Thus, made all endeavours for cancellation of the allotment. As the petitioners could not get relief, they approached this Court by filing the instant writ petition.

8. The Respondents half-heartedly tried to submit that the petitioners have no locus standi to challenge the impugned orders passed by the Respondents 1 and 2. However, subsequently not pressed.

However, we feel it necessary to observe the ratio laid down by Their Lordships as regards locus standi in a case of S.P. Gupta v. V. M. Tarkunde and others MANU/SC/0080/1981 : [1982]2SCR365 , It is observed that

It is a matter of prudence and not as a rule of law, the court may confine this strategic exercise of jurisdiction to cases where legal wrong or legal injury is caused to a determination class or group of persons or the constitutional or legal right of such determinate class or group of persons is violated and as far as possible, not entertain cases of judicial redress.

Similarly, a member of the public having sufficient interest can certainly maintain an action challenging the legality of such act or omission, wherein public injury by the Act or omission of the State or Public Authorities causes a specific legal injury to individual or to a specific class or group of individuals.

More or less an identical case which was before Their Lordships of the Supreme Court i.e Bangalore Medical Trust v. B.S.Muddappa and Ors. MANU/SC/0426/1991 : [1991]3SCR102 . Their Lordships observed that:

The restricted meaning of aggrieved person and narrow outlook of specific injury has yielded in favour of broad and wide construction in wake of public interest litigation. Even in private challenge to executive or administrative action having extensive fall out the dividing line between personal injury or loss and injury of a public nature is fast vanishing. Law has veered round from genuine grievance against order affecting prejudicially to sufficient interest in the matter. The rise in exercise of power by the executive and comparative decline in proper and effective administrative guidance is forcing citizens to espouse challenges with public interest flavour. It is too late in the day therefore, to claim that petition filed by inhabitants of a locality whose park was converted into a nursing home had no cause to invoke equity jurisdiction of the High Court. In fact public spirited citizens having faith in rule of law are rendering great social and legal service by espousing case of public nature. They cannot be ignored or overlooked on technical or conservative yardstick of the rule of locus standi or absence of personal loss or injury. Present day development or this branch of jurisprudence is towards freer movement both in nature of litigation and approach of the courts. Residents of locality seeking and maintenance of environment of their locality cannot be said to be busy bodies or inter lowers. Even otherwise physical or personal or economic injury may give rise to civil or criminal action but violation of rule of law either by ignoring or of affronting individual or action of the executive in disregard of the provisions of law raised substantial issue of accountability of those entrusted with responsibility of the administration. It furnishes enough cause of action either for individual or community in general to approach by way of writ petition and the authorities cannot be permitted to seek shelter under cover of technicalities of locus standi nor they can be heard to plead for restraint in exercise of discussion as grave issues of public concern outweigh such considerations.

9. In the instant petition the question involved is whether an open space reserved for park, garden or play-ground for general public and as such shown as green-belt in the developed sanctioned and published Plan of the City of Nagpur, could such piece of land be allotted to a private person or a Body of persons (in the instant case to the Society) for housing purposes, depriving the general public from public utility, as also causing set back to the environment?

In order to ensure the land development and improvement of the cities, including the city of Nagpur, the respondents 1 to 7 have been made responsible by various legislations and enactments passed from time to time. The Respondent No. 3 the Nagpur Improvement Trust has been created as far back as in the year 1936 by the Improvement Trust Act. The main object is to make provisions for the improvement and expansion of the town of Nagpur in the manner provided under the Act. In its preamble, it states that:

The Trust is sought to be created to the provisions for the improvements and expansion of the town of Nagpur in the manner provided under the Act.

Chapter IV of the said Act deals with the Improvement Scheme. Section 26 provides that:

Matters to be provided for improvement schemes.

Sub-Section (k) of Section 26 of the said Act, deals with the following features:

The provision of parks, playing fields and open spaces for the benefit of any area comprised in the scheme or any adjoining area, and the enlargement of existing parks, playing-fields, open spaces and approaches,

Sub-section(p) of Section 26 of the said Act provides:

for the reclamation or reservation of land for market, gardens, affore-station, and other needs of population.

Section 36 of the Nagpur Improvement Trust Act, 1936 provides the procedure to be followed in framing an improvement scheme. It also provides for official representations, objections or complaints that may be made while the scheme is being formed. Section 37 provides for consideration of the official representation, both at the level of the Nagpur Improvement Trust as well as at the level of State Government, in the event, reference is made to it either due to failure of the Improvement Trust to consider such representations or due to the fact that the Improvement Trust thought it necessary to refer the matter to the State Government.

Sub-section 2 of Section 39 of the Nagpur Improvement Trust Act, 1936 requires to cause the notice to be published for three consecutive weeks in the official gazette and in the local newspapers informing the general public of the preparation of the scheme and the place and time where such scheme has been kept for inspection so that interested persons may raise objections.

Section 43 of the said Act provides that after the expiry of a stipulated time, the respondent-Trust shall consider objections, representations or statements made by any person and shall hear all the persons concerned. Thereafter taking into account the objections, the respondent-Trust may either abandon the scheme or apply to the State Government for sanction of a modified scheme.

Section 44 provides that the State Government may sanction either with or without modification or may refuse to sanction or may return the scheme for reconsideration submitted to it under Section 43. If the scheme is returned, the Respondent Trust is again required to comply with the process laid down in Section 39.

Section 45 provides that after the State Government's sanction the scheme shall be announced by notification and the Trust shall forthwith proceed to execute the same. Sub-section 2 of Section 45 specifically speaks:

The publication of a notification under Sub-section (1) in respect of any scheme shall be conclusive evidence that the scheme has been duly framed & sanctioned.

10. As per the provisions of Section 2(15)(c)(iii) of the Maharashtra Regional and Town Planning Act, 1966, the Nagpur Improvement Trust has been included as "Local Authority " by the amendment made to the Town Planning Act by the

amending Act No. XXVIII of 1977. The meaning of "Local Authority" under Section 2(15)(c)(iii) reads as under:

The Nagpur Improvement Trust constituted under the Nagpur Improvement Trust Act, 1936, which is permitted by the State Government for any area under its jurisdiction to exercise the powers of a Planning Authority under this Act.

As per Section 2(19) of the Maharashtra Regional and Town Planning Act, 1966, "Planning Authority" means:

a local authority; and includes Special Planning Authority constituted or appointed or deemed to have been appointed under Section 40.

The objects and reasons of the Maharashtra Regional and Town Planning Act, 1966 are as follows:

The Bombay Town Planning Act, 1954 which extended to the whole of the State of Maharashtra excluding the City of Nagpur, required every local authority to prepare a development plan for the area within its jurisdiction. Under a development plan, a local authority could allocate land for different uses, e.g. for residential, industrial, commercial and agricultural and reserve sites required for public purposes, e.g. for school, play-grounds, markets, hospitals, parks, roads and highways. The development plan proposals were executed by a local authority either by compulsory land acquisition or by preparing and executing town planning schemes for different parts of the town, so that then all the proposals were carried out, there would emerge a harmonious, well planned and properly developed Town. Town planning schemes could be made in respect of any land, whether open or built up and incremental contribution, i.e. betterments in land value, could be recovered from owners of plots benefiting from the proposals made in the scheme. In practice, however, some defects and deficiencies in the aforesaid Act were noticed and it was therefore, thought necessary to remove them, and provide for certain new provisions which were considered essential to tackle the problems of planning and development of land as comprehensively and effectively as possible.

Chapter III of the Maharashtra Regional and Town Planning Act, 1966, deals with the Development plan. Section 21 lays down that:

every Planning Authority shall carry out a survey, prepare an existing land use map and prepare and publish a draft Development plan within the frame-work of the Regional Plan, if any, within three years after commencement of the Act or within the further time allowed by the State Government. The Planning Authority shall submit the draft plan to the State Government for sanction.

Section 22 enumerates the matters to be included in a Development Plan. Sub-section (c) of Section 22 of the said Act states that:

The Development Plan shall provide for proposals for designation of areas for open spaces, playgrounds, stadiums, zoological gardens, green belts, nature reserves, sanctuaries, and dairies.

The provisions of Section 23 of the said Act inter alia provides for declaration of intention to prepare Development Plan and publish the same in the official gazette and local newspapers inviting suggestions or objections from the public within the stipulated period of not less than 60 days. It also provides that the Plan shall be open for inspection to the public at all reasonable hours at the head office of the Planning Authority and Local Authority.

Section 26 of the Act provides "for preparation and publication of notice of draft development plan". Further it provides that the same may be available for inspection to the public in order to enable them to lodge suggestions and objections within the period of 60 days from such publication."

Section 28 provides a "procedure for dealing with the communications, objections or suggestions to the draft development plan and for disposal thereof. Further it provides that after considering the objections or suggestions, to modify or change the plan. It also provide that the Planning Authority is required to forward all the objections and suggestions to the Planning Committee for consideration of the objections and suggestions.

Section 29 of the said Act provides that:

Where the modifications proposed are of a substantial nature, a notice to that effect must again be published in the official gazette inviting objections and suggestions to the modifications and in the local newspapers inviting objections and suggestions from any person with respect to the proposed modification not later than 60 days from the date of such notice and thereupon the provisions of Section 28 shall apply in relations to the suggestions and objections, as they apply to suggestions and objections dealt with under that Section.

Section 30 of the Act provides for submission of the draft development plan to the State Government for sanction.

Section 31 of the said Act inter alia empowers the State Government to sanction the draft development plan within one year from the receipt of the plan or within such period not exceeding 12 months as it may either whole or partly, with or without modifications or return the draft development plan for preparing a fresh development plan according to the directions. It also requires the State Govt. to publish a notice in official gazette when modifications proposed by the Government are of substantial nature and to invite objections or suggestions in support of such modifications.

11. After following the required rituals as discussed in the preceding paras, the respondent No. 3 - The Planning Authority submitted the Development Plan of the City of Nagpur to the State Government and the Respondent No. l - The State Government sanctioned the same vide Resolution No. TPS/2476/478-UD dated 3rd June 1976. The approval of such a draft plan makes the plan final and legally binding. The draft plan once approved would have undoubted effect of restricting and curtailing even denying the rights of enjoyment of the land which otherwise belonged to the land owners. The approved draft plan can also effect the rights of the inhabitants of those areas to live peacefully. The law, therefore, requires the draft plan to be published inviting objections or suggestions to these proposals. The sanctioned

plan of the respondent No. 3 - Nagpur Improvement Trust is also the final development plan under the Town Planning Act.

12. Undoubtedly, the City of Nagpur is a over crowded city. It is the prime duty of the Respondent No. 1 - the State of Maharashtra to ensure that the citizens live in healthy surroundings. Under Chapter IV of the Constitution of Directive Principles to State Policy under Article 47, the State has to ensure to raise the level of nutrition and the standard of living and to improve public health. This concept to protect and improvement of environment is included by the Parliament under Article 48-A by the 42nd Amendment and it was brought into effect from 3rd January 1977. This aspect has also made a fundamental duty under Chapter IV-A of the Constitution and Clause (g) of Article 15-A which envisages that:

Every citizen of India to protect and improve the natural environment including forest, lakes, rivers, wild animals and to have compassion for living rituals and to safeguard the public property.

13. In the instant case, the entire procedure was followed and vide Resolution No. TPA/2475/478-UD, dated 3rd June, 1976, the scheme came to be sanctioned by the State Government which included in it a green belt over the areas that included Khasara Nos. 37 and 38/1.

Despite the facts that Kh. Nos. 37 and 38/1 earmarked as "Green Belt" in the sanctioned Improvement Scheme, the attempts were made to convert it into a residential cum business area. The land was encroached on the night of 14th November 1977. The petitioners 1 to3 as well as the citizens of the surrounding areas lodged complaints with the Naib Tahsildar under the Respondent No. 4, Since these Khasaras were Nazul Land. The respondent No. 4 ordered eviction of the unauthorised encroachment. The encroachers obtained the stay of eviction from the Sub-Divisional Officer. The petitioners contested the proceedings and the finally the encroachment was removed on 21st March, 1978.

The petitioners all the while were attempting to save the green belt from encroachments and thereby preventing it from being converted for any other purpose. At the same time the respondent No. 8 was trying to secure the land for the housing purpose for it's members. The petitioners were unaware of the movements of the respondent No. 8. The petitioners proceeded to make plans for planting trees and shrubs in the green belt so as to convert it into public park. To secure the object, the petitioners approached the Respondent No. 4 - the Collector with the proposal. In the office of the Collector, the petitioners learnt that the khasara Nos. 37 and 38/1 have already been allotted to the respondent No. 8 - Society for housing in purposes. Thereafter, the petitioners secured the copy of the memorandum dated 13th June 1980 and went up in arms against this action on the part of the respondents 1 and 2. The representatives of the petitioners met the Chief Secretary to the Government of Maharashtra and other concerned authorities as also sent various representations challenging the conversion and praying for setting aside the order of allotment of green belt in favour of the respondent No. 8; for housing purpose. In the representations, the petitioners have demonstrated various circumstances that the conversion of green belt into residential area is not only illegal but contrary to the

provisions of Law. It would cause inconvenience and would be injurious to the residents of the neighbouring colonies including the students and ladies.

14. According to the petitioners, they brought to the notice of the respondents and the authorities under them that there is no park in the North Nagpur which would check pollution causing by the Railway, Koradi Thermal Power House as also acid rain falling in the City. The specific request was made by the petitioners that the tree plantation should be undertaken on the lands Khasaras 37 and 38/1. Such park would be beneficial to the citizens of the surrounding localities. In response to the constant efforts made by the petitioners, the Chairman of the Planning Committee of the Respondent No. 5 - The Corporation of City of Nagpur, issued a letter to the petitioner No. 1 dated 3rd September 1985; stating that it had proposed for creation the Park over the green belt. The said letter is at Annexure XIX; at page 109. It speaks as under:

To whom it may concern.

The land close to Nazul Layout Harijan Colony on the West is a Green Belt as per Development Plan of Nagpur City. As requested by Harijan Layout Sudhar Samiti vide their application dated 17.5.1985 I had proposed for creation of a Park over this Green Belt.

Also a request application to connect the last road to the West in Nazul Layout Harijan Colony, was made by Harijan layout Sudhar Samiti dated 27.5.1985 which being a need of that Colony and colonies on either side has been marked by me for necessary action.

I strongly support the demands of the Harijan Layout Sudhar Samiti on both the subjects and, therefore, I am of the view that no plots should be allotted on the above mentioned and that this land be reserved only for Park and for construction, broadening and extension of the road.

15. The petitioners submitted that their constant attempts proved futile and the Respondent No. 2 issued strict orders to the Respondent No. 4 - The Collector, Nagpur, to hand over 14 plots carved out on the green belt to the respondent No. 8 immediately. However, the petitioners not being aware of the action of the Respondent No. 2, in the middle of August 1985, they arranged to Tree Plantation Programme over the green belt. They invited the Corporation for the ceremony. However, the petitioners were apprised that the Mayor of the Respondent No.5 - Nagpur Municipal Corporation had received a letter to the effect that the green belt has been sanctioned to the Respondent No. 8, for housing purpose and as such the tree plantation function should not be carried out. Consequently the tree plantation programme was cancelled.

16. The Nagpur Improvement Trust Act, 1936, The Maharashtra Regional and Town Planning Act, 1966 and Nagpur City of Corporation Act, made provisions in the interest of the General Welfare of the Community in the preparation and enforcement of the Development Plans. These laws required conducting elaborate survey of the civil needs of the inhabitants, feasibility and practicability of the various land uses and the prospective growth of the City, before demarcating the land for different purposes.

Keeping the specific view of the General Welfare of the citizens, the sanctioned development plans of the City of Nagpur, defined the various zones undergoing the manner in which the land in each zone is proposed to be used. The dominant intention of the statutory provisions is to plan for the present and future development of the whole area even by restricting and regulating the ownership rights of the landlords under the common law. The reservation of open space for public parks and play-grounds is a different and separate amenity or convenience from civil amenities. Civil amenities are amongst the Dispensaries, Hospitals, Pathological Laborataries, Maternity Homes and such other amenities as the Government may by notification specify. Amenity is defined under Sub-section (2) of Section 2 of the Maharashtra Regional and Town Planning (Amendment) Act, 1993, as under:

Amenity means roads, streets open spaces, parks, recreational grounds, play grounds, sports complex, parade grounds, gardens, markets, parking lots, primary and secondary schools and colleges and polytechnics, clinics, dispensaries and hospitals, water supply, electricity supply, street lighting, severage, drainage, public works and included other utilities, services and convences.

The "open space" is not defined in any of the three Acts referred above but according to us, 'the open space' is left in the Government Schemes for the better ventilation of the area comprises in the scheme or and adjoining area. The earmarking of open space indicates that such open spaces shall be used for the parks and play-grounds. One of the main objects of the public parks or play-grounds is to promote the health of the community by means of "ventilation" and "recreation." It is the preservation of the quality of life of the community. The 'park', 'playgrounds' and 'open spaces' have not been defined in any of the three Acts; viz. The Nagpur Improvement Trust Act, 1936, The Maharashtra Regional and Town Planning Act, 1966, and the City of Nagpur Corporation Act, 1948. To see what is mean by Parks, Playgrounds and open space, we feel it necessary to consider "The Uttar Pradesh Parks, Playgrounds and Open Spaces (Preservation and Regulation) Act, 1975. The Act applies to the area included in every Nagar Mahapalika under the U.P. Municipalities Act, 1916 and U.P. Town Areas Act, 1914. The open space, park and playground are defined under Section 2 of the said Act as under:

"Open space" means any land (whether enclosed or not) belonging to the State Government or any local authority, on which there are no buildings or of which not more than one-twentieth part is covered with buildings, and whole or the remainder of which is used for purposes of recreation, air or light;

"park" means a piece of land on which there are no buildings or of which not more than one-twentieth part is covered with buildings and the whole or the remainder of which is laid out as a garden with trees, plants or flower-beds or as a lawn or as a meadow and maintained as a place for the resort of the public for recreation, air or light;

"playground" means a piece of land adapted for the purpose of play, game or sport and used by any educational institution or club or other association;

The Act provides variation or revocation of list showing park, playground and open space by the State Government. But before making any such addition, variation or

revocation, the State Government have to publish, in the prescribed manner, a draft of such addition, variation or revocation together with a notice specifying a date on or after which such draft will be taken into consideration and shall consider such objections and suggestions as may be received in respect of such draft; before the date so specified.

Section 6 of the said Act provides prohibition of the use of parks, playgrounds and open spaces for any other purpose other than the purpose for which it meant except with the previous sanction of the prescribed authority.

17. The object of developing the Parks, Playgrounds and Open spaces is to preserve and protect the nature's gift to man and woman such as air, earth and atmosphere from pollution. Demarking such places and developing parks, playgrounds and open spaces; has a legal and constitutional obligation to preserve and protect our ecology and environment. The objective of the environmental law has been discussed in a case of Damodhar Rao and Ors. v. The Special Officer, Municipal Corporation of Hyderabad and others MANU/AP/0222/1987 : AIR1987AP171 as under.

The objective of the environmental law is to preserve and protect the nature's gifts to man and woman such as air, earth and atmosphere from pollution. Environmental law is based on the realisation of mankind of the dire physical necessity to preserve these invaluable and none too easily replenish able gifts of mother nature to man and his progeny from the reckless wastage and rapacious appropriation that common law permits. It is accepted that pollution "is a show agent of death and if it is continued the next 30 years as it has been for the last 30, it could become lethal" (See Krishna Iyer's Pollution and Law) Stockholm declaration of United Nations on Human Environment evidences this human anxiety :

The natural resources of the earth, including the air, water, land, flora and fauna and especially representative samples of natural ecosystem, must be safeguarded for the benefit of present and future generations through careful planning or management, as appropriate. …Nature conservation including wildlife must therefore receive importance in planning for economic development.

18. Our Parliament has also enacted Environment (Protection) Act, 1986, for the purpose of protecting and improving our environment. The Act is clearly in harmony with our constitutional provisions which not only the amenities of the State to protect and improve environment and to safeguard the forests and wild life of the country but also held it to be the duty of everyone of our citizens to protect and improve the natural environment including forests, lakes, rivers, and wild life and to have compassion for living creatures (Article 51-A(g).

19. The Respondent No. 3 - Nagpur Improvement Trust, Nagpur - The Planning Authority filed Return on 14.1.1986; in which it is specifically admitted that the land in question is shown as "Green Belt" in the Development Sanctioned Plan by the Government for the City of Nagpur. This reflects in para No. 1 of the Return as under:

It is true that the land in question is shown as Green Belt in the Development Plan sanctioned by Government in 1976 for City of Nagpur. It is not known if there is any allotment of land by respondent No. 2 - the State of Maharashtra, through Secretary to

Department of Revenue & Forest in favour of respondent No. 8. - The Manav Samaj Kalyankari Co-operative Housing Society.

Again in para No. 4 of the Return the Respondent No. 3 admitted that the khasara Nos. 37/38-A are shown in the green belt in the Development Plan.

While replying to the averments made in para 8 of the Petition, in para 6 of the Return, the Respondent No. 3 admitted approach of the petitioners to the Nagpur Improvement Trust as also sanction of Rs. 10 lacs and subsequent grant of Rs. 70 lacs for the development of the area including khasara Nos. 37 and 38/1.

The Respondent No. 3 - Nagpur Improvement Trust has specifically admitted in para 7 of its Return that there is no park in this area and Kh. Nos. 37 and 38/1 is the only open area in the Layout which has been shown in the green belt in the Development Plan. The admission is as follows:

It is admitted that there is no park in this area and further that Kh. Nos. 37 and 38/1 are coming under the Green Belt in Development Plan and this is the only open area in this layout. It is submitted that development plan is in force.

In para 10 of-the Return in specific words the Respondent No. 3 - Nagpur Improvement Trust stated that:

The Resolution dated 3rd June, 1976 has been issued after following the provisions of the Maharashtra Regional Town Planning Act, 1966. It is admitted that Kh. Nos. 37 and 38/1 are within the Green Belt and construction of building is not permissible.

20. The conversion of the open land/green belt not being permissible, on the complaints lodged by the petitioner No. l, the Circle Engineer (Planning) of Respondent No. 3, sent a communication dated 1st of April 1981, to the Nazul Officer, Nagpur, apprising that the open space which has been shown in the Development Plan of Nagpur, not to be allotted to the Respondent No.8. This communication if placed on record as Annexure XVI, page 104. The copies of the same were endorsed to various authorities.

Besides this letter, the Respondent No. 3 — Nagpur Improvement Trust, specifically warned the citizens not to violate the green zones by encroaching thereon and by constructing the houses thereon. This has been specifically stated in para 24 of the Return.

21. After about 10 years, an affidavit came to be filed on 15th July 1996 of Smt. Sunita w/o Prashant Aloni-Assistant Engineer (Development Plan), Nagpur Improvement Trust, Nagpur whereby it is stated that:

a strip along the Railway Line in Kh. Nos. 37, 38, 40/1, 41/2, 42/2, 43, 44 and 51/1 Mouza Jaripatka as shown in Harijan Layout is shown as open space in green colour in Development Plan of Nagpur, 1976 sanctioned by the State Government on 3.6.1976.

On the contrary, in the sanctioned plan of Nagpur City which is on record, the manner in which the land in each zone proposed to be used, is indicated. The purposes of lands demarcated and defined by various colours, are indicated in Index or Reference of the sectioned plan. The green colour indicates parks, gardens and playgrounds. In reference, no land is shown as open space, at any where, in the entire map of Nagpur City. We find it difficult to give any credence to the recent affidavit filed on behalf of the Respondent No. 3, without placing any material or data to detract from the original stand. Similarly, the respondent No. 3, has not stated or explained what connotes by the word "open space" and "green belt or green zone". By the ward "green belt/green Zone", one can understand that the particular area or zone has an appearance of greenery thereby having green plants or boughs, gardens, public parks or forestry which is precious to the citizens in the interest of protecting environment. Even if it is considered that the strip has been shown as 'open space', definitely the strip could be used for playground or recreation with plantation in that land. The residential, commercial and industrial areas being specifically demarcated in the sanctioned plan of the City of Nagpur, all the open spaces could be only for gardens, parks, playgrounds, recreation etc. Besides this, the public utility spaces have also been separately demarcated.

22. The Respondents 1, 2 and 4 filed their written statements and supported the action of the Government regarding the allotment of Kh. Nos. 37 and 38/1 to the respondent No. 8 vide order dated 13.6.1980. According to these respondents; the possession was handed over on 3.9.1985 i e. during the pendency of this petition.

However, the learned Counsel for the Respondent No. 8 made a statement that the possession is on paper only. There is neither fencing nor any other construction in whatsoever manner to suggest the public at large that the land is in possession of the respondent No. 8 According to these respondents, the respondent no.- The State Government reserves the right to dispose of the landed property of the Government under Section 40 of the Maharashtra Land Revenue Act, 1966; read with Rule 50 of the Maharashtra Land Revenue (Disposal of Government Land) Rules, 1971.

However, in Return para No. 17, while replying to the averments made in para 52 by the petitioners, it is not disputed that no pescribed procedure was followed before converting arid transferring the land which was specifically reserved for the specific purpose. In para 17 it is stated as under:

it is not disputed that no prescribed procedure was followed by the local planning authorities.

23. Section 37 of the Maharashtra Regional and Town Planning Act, 1966 provides the procedures to be followed for modification of final development plan. The provisions of Section 37 reads as follows:

(1) Where a modification of any part of, or any proposal made in, a final Development plan is of such a nature that it will not change the character of such Development plan, the Planning Authority may, or when so directed by the State Government (shall within sixty days from the date of such direction, publish a notice (in the Official Gazette and in such other manner as may be determined by it) inviting objections and suggestions from any person with respect to the proposed modification

not later than one month from the date of such notice; and shall also serve notice on all persons affected by the proposed modification and after giving a hearing to any such persons, submit the proposed modification (with amendments, if any) to the State Government for sanction. (A) If the Planning Authority fails to issue the notice as directed by the State Government, the State Govt. shall issue the notice, and thereupon, the provisions of Sub-section (1) shall apply as they apply in relation to a notice to be published by a Planning Authority)(2) The State Government after making such inquiry as it may consider necessary after hearing the persons served with the notice and after consulting the Director of Town Planning by notification in the official Gazette, sanction the modification with or without such changes and subject to such conditions, as it may deem fit or refuse to accord sanction. If a modification is sanctioned the final development plan shall be deemed to have been modified accordingly.

Section 46 of the Nagpur Improvement Trust Act, 1936, laid down the procedure for alteration of Improvement Scheme after sanction by the State Government. Similarly, in exercise of the powers conferred under Section 76 read with Section 89, the Trust is empowered to let on hire, lease, sell, exchange or otherwise dispose of any land vested in or acquired by it under this Act. The Government framed the Rules for disposal of the land known as Nagpur Improvement Trust Land Disposal Rules, 1955, as empowered under Section 89. All such lands belonging to the Trust and transferred to the different allottees or lessees only in the manner laid down under these rules. The khasras 37 and 38/1 are shown open as green belt. Rule 7(3) states as follows:

7(3) Any transfer of Trust and in pursuance of Sub-rule 2 shall be on such terms and conditions as may be fixed by the Trust.

The provisions referred to above, thus, aptly indicate that the State Government has no power to alienate/transfer by any mode or convert the purpose of the land under any provisions of law. The powers of modification or alteration in the use and that too for improvement in use of the reserved land, such powers are only vested in the Planning Authority. Admittedly the Planning Authority has not moved in the instant case for abandoning or alteration in the use of the land in question and suggested any alteration.

24. In view of the facts and circumstances submitted as also the legal provisions considered in the preceding paras, we find considerable force in the submissions of the learned Counsel for the petitioners that the conversion of 'open space' shown as 'green belt' for any other purpose vis-a-vis residential purpose is in violation of the Act and Rules and thereby apparently arbitrary.

In a case of Holy Saint Education Society v. Venkataramana and Ors. AIR 1982.32KER 1, it is observed that;

Site reserved for children's playground vesting with Corporation- It is under an obligation to retain it as such- cannot divert or grant it to private person or organization—Lease granted by Corporation and sanction accorded by Government is without authority of law.

Their Lordships further held that:

Under the improvement scheme drawn up by the Board and approved by the Government, the said site had been reserved for children's playground. Unless the scheme was modified in accordance with law, the site could not be utilised for any purpose. Even after the site came within the jurisdiction of Corporation by virtue of the notification issued by the Government under Clause (9) of Section 3 of the Bangalore Corporation Act, and the site vested in the Corporation under Section 71-A of the Act, the Corporation was under an obligation to retain that site as children's playground and could not divert it for any other purpose and much less grant it to a private person or organisation, whether by way of sale, gift or lease unless the aforesaid scheme was modified according to law. The mere fact that the Bangalore Corporation could incur expenditure on education would not be a justification for diverting a site which had been set apart for playground for children, for leasing it (the site) for construction of a school by a private organisation.

Nor can the grant of lease of the site to the Society be regarded as utilisation of the site for any public purpose.

More or less similar facts were in a case of T. Damodhar Rao and Ors. v. The Special Officer, Municipal Corporation of Hyderabad and others MANU/AP/0222/1987 : AIR1987AP171 , (Single Bench), in which His Lordship has discussed the provisions of Article 21 - Enjoyment of life in para 24. We feel it necessary to reproduce the same which is as under:

From the above it is clear that protection of the environment is not only the duty of the citizen but it is also the obligation of the State and all other State organs including Courts. In that extent, environmental law has succeeded in unshackling man's right to life and personal liberty from the clutches of common law theory of individual ownership. Examining the matter from the above constitutional point of view, it would be reasonable to hold that the enjoyment of life and its attainment and fulfilment guaranteed by Article 21 of the Constitution embraces the protection and preservation of nature's gifts without life cannot be enjoyed. There can be no reason why practice of violent extinguishment of life alone should be regarded as violative of Article 21 of the Constitution. The slow poisoning by the polluted atmosphere caused by environmental pollution and spoliation should also be regarded as amounting to violation of Article 21 of the Constitution. In R.L. & E Kendra, Dehradun v. State of U.P. MANU/SC/0043/1985 : [1985]3SCR169 , the Supreme Court has entertained environmental complaints alleging that the operations of lime-stone quarries in the Himalayan range of Mussoorie resulted in depredation of the environment affecting ecological balance. In R.L. & E Kendra, Dehradun v. State of U.P. MANU/SC/0043/1985 : [1985]3SCR169 the Supreme Court in an application under Article 32 has ordered the closure of some of these quarries on the ground that their operations were upsetting ecological balance. Although Article 21 is not referred to in these judgments of the Supreme Court, those judgments can only be understood on the basis that the Supreme Court entertained those environmental complaints under Article 32 of the Constitution as involving violation of Article 21 's right to life.

In para 17, His Lordship considered the various provisions of the Hyderabad Municipal Corporation Act, 1955, and The Andhra Pradesh Urban Areas (Development) Act, 1975 which provides in the interests of the general welfare of the community for the preparation and enforcement of development plans, as under:

Those laws require conducting of elaborate survey of the civil needs of the inhabitant and feasibility and practicability of the various land uses and the prospective growth of the city before demarcating the land for different purpose. According to that law the developmental plans should define the various zones into which the area sought to be developed may be divided and should also indicate the manner in which the land in each zone is proposed to be used. The dominant intention of these statutory provision is to plan for the present and future development of the whole area by restricting; and regulating the ownership rights of the landlords under the common law. Those owners can no longer enjoy their unrestricted right available to them under common law to use their lands as they desire. Once developmental plan has been legally and finally published, no one in the area can use the land contrary to the provisions of the developmental plan.

Further it is observed that:

It is as well that I make it clear that the declarations regarding demarcations of Land user contained in a developmental plan published under statutory authority are neither pious aspirations nor empty promises. Such declarations are legally enforceable. Those declarations imposed legal obligations on the land owners and the public authorities. The public authorities should enforce those obligations. If they do not, it becomes the solemn duty of this Court to compel those authorities to perform their mandatory obligations. Law should not be allowed to be mocked by the haughty and the mighty. I, therefore, declare that the use of the above area for the construction of residential houses by the Life Insurance Corporation of India or the Income-tax Department, is quite clearly illegal and contrary to law.

25. In a case of K. Ramadas Shenoy v. The Chief Officers, Town Municipal Council, Udipi and Ors. MANU/SC/0082/1974 : [1975]1SCR680 , the resolution of Municipality giving sanction to construct cinema building in contravention of Town Planning Scheme was quashed. Their Lordships observed:

Where the Municipality acts in excess of the powers conferred by the Act or abuses those powers then in those cases it is not exercising its jurisdiction irregularly or wrongly but it is usurping powers which it does not possess. The right to build on his own land is a right incidental to the ownership of that land. Within the Municipality the exercise of that right has been regulated in the interest of the community residing within the limits of the Municipal Committee. If sanction is given to build by contravening a bye-law the jurisdiction of the Court will be invoked on the ground that the approval by an authority of building plans which contravene the bye-laws made by that authority illegal and inoperative.

Their Lordships further observed in para 28 that;

An illegal construction of a cinema building materially affects the right to or enjoyment of the property by persons residing in the residential area. The Municipal Authorities owe a duty and obligation under the statute to see that the residential area is not spoilt by unauthorised construction. The Scheme is for the benefit of the residents of the locality. The Municipality acts in aid of the scheme. The rights of the residents in the area are invaded by an illegal construction of a cinema building. It has to be remembered that a scheme in a residental area means planned orderliness in

accordance with the requirements of the residents. If the scheme is nullified by arbitrary acts in excess land derogation of the powers of the Municipality the courts will quash orders passed by Municipalities in such cases.

26. In a case of Bangalore Medical Trust v. S.Muddappa and Ors. MANU/SC/0426/1991 : [1991]3SCR102 , the conversion of Public Park into private nursing home by the State Government is held illegal. While considering the scope of Bangalore Development Act, it is observed that:

The Authority under Section 3 functions as a body. The Act does not contemplate individual action. That is participatory exercise of power by different persons representing different interest. And rightly as it is the local persons who can properly assess the need and necessity for altering a scheme and if any proposal to cover from one use to another was an improvement for residents of locality such exercise could not be undertaken by the Government. Absence of power apart, such exercise is fraught with danger of activated by extraneous considerations.

Their Lordships further considering the scope of Section 65 of the Act observed in para 1 as under:

Section 65 empowers the Government to give such directions to the Bangalore Development Authority as are, in its opinion, necessary or expedient for carrying out the purposes of the Act. It is the duty of the BDA Bangalore Development Authority, to comply with such directions. The BDA is bound by all directions of the Government. The power of the Government under Section 65 is restricted. The object of the directions must be to carry out the object of the Act and not contrary to it. Only such directions as are reasonably necessary or expedient for carrying out the object of the enactment are contemplated by Section 65. If a direction were to be issued by the Government to lease out to private parties areas reserved in the scheme for public parks and playgrounds, such a direction would not have the sanctity of Section 65. Any such diversion of the user of the land would be opposed to the statute as well as the object in constituting the BDA to promote the healthy development of the city and improve the quality of life. Any repository of power be it the Government or the BDA must act reasonably and rationally and in accordance with law and with due regard to the legislative intent.

Further Their Lordships in para 16 observed as follows :

This means that the BDA may, subject to certain restrictions contained in Sub-section (5) and (6), after the scheme, out such alteration has to be carried out pursuant to a formal decision duly recorded in teh manner generally followed by a body corporate. The scheme is a statutory instrument which in administrative legislation involving a great deal of general law-making of universal application, and it is not, therefore, addressed to individual cases of person and places. Alteration of the scheme must be for the purpose of improvement and better development of the City of Bangalore and adjoining areas and for general application for the benefit of the public at large. Any alteration of the scheme with a view to conferring a benefit on a particular person, and without regard to the general good of the public at large is not an improvement contemplated by the section. See the principle state in Shri Sitaram Sugar Company Ltd. v. Union of India MANU/SC/0249/1990 : [1990]1SCR909 .

Their Lordships while considering protection of the environment, observed in paras 24, 25, 27 and 28 as follows:

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

25. Reservation of open spaces for parks and play grounds is universally recognised as a legitimate exercise of statutory power rationally related to the protection of the residents of the locality from the ill-effects of urbanisation.

26. The statutes in force in India and abroad reserving open spaces for parks and play grounds are the legislative attempt to eliminate the misery of disreputable housing condition caused by urbanisation. Crowded urban areas tend to spread disease, crime and immorality. As stated by the U.S. Supreme Court in Samuel Berman v. Andrew Parker (1954) Law Ed 27 : 348 US 26.

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

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

28. Any reasonable legislative attempt bearing a rational relationship to a permissible state objective in economic and social planning will be respected by the Courts. A duly approved scheme prepared in accordance with the provisions of the Act is a legitimate attempt on the part of the Government and the statutory authorities to ensure a quiet place free of dust and din where children can run about and the aged and the infirm can rest, breath fresh air and enjoy the beauty of nature. These provisions arc meant to guarantee a quiet and healthy atmosphere to suit family needs of persons of all stations. Any action which tends to defeat that object is invalid. As stated by the U.S. Supreme Court in Village of Belle Terre v. Bruce Boraads (1974) 39 L Ed. 797 : 416 US 1.

These police power is not confined to elimination of filth, stench, and unhealthy places. It is ample to lay out zones were family values, youth values, and the blessings of quiet seclusion and clean air make the area a sanctuary for people.

27. Again in a case of D.D. Vyas and Ors. v. Ghaziabad Development Authority, Ghaziabad and Anr. 1993 All. L.J. 86, (Division Bench) it is observed that:

once space earmarked/reserved in plan, the conversion is not permissible.

Considering the provisions of Section 13 of the U.P. Urban Planning and Development Act, Their Lordships observed that:

Under Section 13, neither the Development Authority nor can the State Government amend the plan in such a way so as to destroy its basic feature allowing the conversion of open spaces meant for public parks.

The legislative intent by reserving/preserving spaces for public parks, gardens and playgrounds considered in para 9, as under:

The legislative intent has always been the promotion and enhancement of the quality of life by preservation of the character and desirable aesthetic features of the town. No town is known for sky-scrapers, for myriad industries, for big commercial centres, for big monumental building but for the attractive lay out of the town, for good land-scapes, for beautiful parks and lawns, for expenses verdant cover, and for perfect social ecology. Good parks expansive laid out are not only for aesthetic appreciation, but in the fast developing towns having conglomeration of building, they are a necessity. In crowded towns where a resident does not get anything but atmosphere polluted by smoke and fumes emitted by endless vehicular traffic and the factories the efficacy of beautifully laid out parks is no less than that of lungs to human beings. It is the verdant cover provided by public parks and greenbelts in a town, which renders considerable relief to the restless public. Hence the importance of public parks cannot be under estimated. Private lawns or public parks arc not a luxury as they were considered in the past. A public park is a gift of modern civilization, and is a significant factor for the improvement of the quality of life. Earlier it was a prerogative of the aristocracy and the affluent cither as a result of royal grant or as a place reserved for private pleasure. Free and healthy air in beautiful surrounding was a privilege of few, but now in a democratic set up, it is a gift from the people to themselves. Open space for a public park is an essential feature of modern planning and development as it greatly contributes to the improvement of social ecology.

28. Their Lordships of the Supreme Court in a case of Virender Gaur and Ors. v. State of Haryana and Ors. 1995(1) UJ SC 529 wherein identical facts were in issue held that:

Once under the provisions of Haryana Municipalities Act, 1973, the allotment of open land is made for environmental purpose such land vested in Municipalities can not be allowed for any other purpose by the Government on the pretext that the land was not used by Municipality for two, decades.

Their Lordships held that:

The action taken by the Government is wholly without authority of law and jurisdiction and the sanction of land by Municipality for different use defeats the purpose and is in violation of law and the constitution.

The undisputed facts of that case are that the Municipal Committee, Thanesar, District Kurukshetra in Haryana State, framed Town Planning Scheme No. 5. The Government of Haryana had sanctioned that scheme on October 30,1975. Some land was earmarked for 'open space'. The Government cm April 3,1991, sanctioned allotment of this land to Punjab Samaj Sabha (for short the PSS) on payment of price. The P.S.S paid price and constructed Dharmashala.

In para 8, Their Lordships discussed the purport of Section 203 of Haryana Municipal Act, 1973. Section 203 of the Act enjoins the Municipality to frame the Scheme providing environmental and sanitary amenities and obtain, sanction from the competent authority to provide, preserve and protect parks, open lands sanitation, roads, sewage etc. to maintain ecological balance with hygienic atmosphere not only to the present residents in the locality but also to the future generation.

Section 250 of the Act reserves general power in the Government and it provides that the State Government may issue directions to any Committee for carrying out the purposes of the Act and in particular with regard to various uses to which any land within municipal area may be put...(e) adoption of development measures and measures for promotion of public safety, health, convenience and welfare; and (f) sanitation and cleanliness etc. Therefore, the Government though power to give directions, that power should be used only to effectuate and further goals of the approved Scheme, zonal plan etc. and the land vested under the Scheme or reserved under the plan would not be directed to be used for any other public purposes within the area envisaged there under unless grave compelling purpose of general public demands required issuance of such directions.

In para 11, Their Lordships discussed the amplitude of open "lands". It is observed that:

It is seen that the open lands vested in the municipality were meant for the public amenity to the residents of the locality to maintaining ecology, sanitation, recreational, playground and ventilation purpose. The buildings directed to be constructed necessarily adversly affect the health and the environment, sanitary and other affects on the residents in the locality. Therefore, the order passed by the Government and the action taken pursuant thereto by the municipality would clearly defeat the purpose of the scheme.

In this case, Their Lordships also considered the provisions of Article 21 of the Constitution of India which protects right to life us a fundamental right and further considered Article 48-A in Part IV, Article 51-A(g) of the Constitution and also deprivation of the original plan which was for better sanitation, environmental and recreational purpose of the residents of the locality, it will have the effect of environment and, therefore, the protection of environment is a fundamental duty. The observations of Their Lordships made in paras 5,6 and 7 are as follows:

5. Environment is poly-centric and multi-facet problem affecting the human existence. Environmental pollution causes bodily disabilities leading to non-functioning of the vital organs of the body. Noise and pollution are two of the greatest offenders, the latter affects air, water, natural growth and health of the people. Environmental pollution affects, thereby, the health of general public. The Stockholme Declaration of United Nations on Human Environment, 1972 reads its Principle No. l inter alia thus:

Man has the fundamental right to freedom, equality and adequate conditions of life. In an environment of equality that permits a life of dignity and well-being and he bears a solemn responsibility to protect and improve the environment for present and future generations.

6. The Declaration, therefore, affirms both aspects of environment, the natural and the man-made and the protection is essential to his well being and to the enjoyment of basic human rights i ,e the right to life itself. The right to have living atmosphere congenial to human existence is a right to life. The Declaration, therefore, says that in the developing countries, most of the environmental problems are caused by underdevelopments. The Declaration suggests to safe actions with prudent care for ecological balance. It is necessary to avoid massive and irreversible harm to the earthly environment and strife for achieving present generation and the posterity a better life in an environment more in keeping with the needs and hopes. The affirmative declaration in Principal No. l(supra) enjoins the municipal States to solve environmental problems in the broadest human context and not as mere problems to conserve the nature for its own sake.

7. Article 48-A in Part IV(Directive Principles) brought by the Constitution 42nd Amendment Act, 1976, enjoins that, the State shall endeavour to protect and improve the environment and to safeguard the forests and wild life of the country. Article 47 further imposes the duty on the State to improve public health as its primary duty. Article 51-A(g) imposes "a fundamental duty" on every citizen of India to protect and improve the natural "environment" including forests, lakes, rivers and wild life and to have compassion for living creatures. The word 'environment' is of broad spectrum which brings brings within its ambit hygienic atmosphere and ecological balance. It is, therefore, not only the duty of the State but also the duty of every citizen to maintain hygienic environment. The State in particular has duty in that behalf and so shed its extravagant unbridled sovereign power and to forge in its policy to maintain ecological balance and hygienic environment. Article 21 protects right to life as a fundamental right. Enjoyment of life and its attainment including their right to life with human dignity encompasses within its ambit, the protection and preservation of environment, ecological balance free from pollution of air and water, sanitation without which life cannot be enjoyed. Any contracts or actions would cause environmental pollution. Environmental, ecological, air, water pollution etc. should be regarded as amounting to violation of Article 21. Therefore, hygienic environment is an integral facet of right to healthy life and it would be impossible to live with human dignity without a humane and healthy environment. Environmental protection, therefore, has now become a matter of grave concern for human existence. Promoting environmental protection implies maintenance of the environment as a whole comprising the man-made and the natural environment. Therefore, there is a constitutional imperative on the State Government and the municipalities, not only to ensure and safeguard proper environment but also an imperative duty to take adequate

measures to promote, protect and improve the environment man made and the natural environment.

Their Lordships directed to pull down any construction made by P.S.S. and the "open Land" must be brought back to the condition in which it existed prior to allotment. The direction was issued to the Municipality to pull down the construction within four weeks from the date of the pronouncement of the Judgment and further directed to place report on the file of the Registry of the action taken in the matter. Their Lordships confirmed the ratio laid down by Their Lordships of the Supreme Court in a case of Bangalore Medical Trust v. B.S. Muddappa MANU/SC/0426/1991 : [1991]3SCR102 ,

The action of the Government and the BDA was held to be inconsistent with and contrary to the legislative intent to safeguard the health, safety and general welfare of the people of the locality. These orders evidence a colourable exercise of power and are opposed to the statutory scheme.

29. The petitioners though claimed that the action of the Respondents 1 to 7 is mala fide, the mala fides are not only the grounds for interference with the action of the authorities. If such action is without authority of law and is in violation of any provisions of law, then the court would be justified in striking down such action.

30. In view of the facts and circumstances of the case, considering the submissions made by the learned Counsel on behalf of the parties and the various provisions of the Acts viz. The Nagpur Improvement Trust Act, 1936; The Maharashtra Regional and Town Planning Act, 1966; and Nagpur City of Corporation Act, the intent of the legislation enacting the above said three Acts, keeping in view the interest of the General Welfare of the residents of the City of Nagpur and the ratio laid down by Their Lordships of the Supreme Court and the Lordship of the other High Courts we hold that the action of converting the green belt, subsequently said to be open space, for the housing purpose, is wholly without authority of Law and Jurisdiction and, thereby the impugned orders are quashed and set aside.

31. A duly approved scheme prepared in accordance with the provisions of the Act, is a legitimate attempt on the part of the Government and the Statutory Authorities to ensure a quiet place free of dust and din where children can run about and the aged and the infirm can rest, breath fresh air and enjoy the beauty of nature. The open space for a public park and recreation place is an essential feature of modern planning and development as it greatly contributes to the improvements of social ecology. The Competent Authorities require to provides, preserve and protect the parks, open lands, sanitation, roads, etc. to maintain the ecological balance with hygienic atmosphere not only to the present residents in the localities but also to the future generation. As observed by Their Lordships of the Supreme Court in para 25, in a case of Bangalore Medical Trust v. S. Muddappa and others MANU/SC/0426/1991 : [1991]3SCR102 , Reservation of open spaces for parks and play grounds is universally recognised as a legitimate exercise of statutory power rationally related to the protection of the residents of the locality from the ill-effects of urbanisation.

32. Admittedly, the respondents 1 to 7, without following the pocedures, converted Kh. Nos. 37 and 38(1) earmarked for green belt/open space for housing purposes and

allotted the same to the respondent No. 8. It is a settled law as enumerated by the verdicts of the Apex Court and other High Courts, discussed in preceeding paras. That once the space is earmarked/reserved in the plan, the conversion is not permissible. Similarly, in other words, neither the Development Authority nor the State Government can amend the plan, in such a way, so as to destroy its basic feature, allowing the conversion of open space meant for public parks. Undisputedly, the City of Nagpur is one of the crowded city where the resident do not get anything but atmosphere polluted by smoke and fumes emitted by endless vehicle traffics. In the instant case, even the pollution is being caused by the Railway as the Rly. Track Bombay-Nagpur-Delhi is just adjacent to the Kh. No. 37 and 38(1). Besides this, the pollution is being caused by 'Koradi Thermal Powers house'. Hence, the importance of public parks, plantations and creation places can not be under estimated. The Public Park is a gift of modern civilisation and is a significant factor, in the improvement of quality of life. In view of the provisions of the enactments referred to above also, the respondents 1 to 3 can not direct to convert the area which is earmarked as open space, public park, playground or recreation place, for any other public purpose, within the area envisaged therein, unless grave compelling purpose of general public demands. In the instant case, admittedly, the allotment of Kh. Nos. 37 : and 38(1) shown as green belt/open space, to the respondent No. 8 for housing purposes, by no stretch of imagination, can be said, as grave compelling purpose. It is, thus, clear that the action of the respondents.1 to 7, being inconsistent with and contrary to the legislative intent to safeguard the health, safety and general welfare of the people of the locality, the orders smack colourable exercise of powers and are opposed to the statutory scheme. Thus, it is a fit case, to issue writ of mandamus as prayed by the petitioners.

Accordingly, we allow this writ petition and direct a mandamus to issue forbidding the respondent No. 8 from raising or making any construction or otherwise using the land/space referred to above for residential purposes. The impugned actions of allotment of Kh. Nos. 37 and 38(1) to the respondent No. 8 by the respondents 1 to 7 regarding the allotment and possession, are quashed and set aside. Further, we direct the respondent Nos. 1 to 7 to undertake the development and improvement of area Kh. No. 37 and 38(1) for public purpose and thereby preserve and protect environment by undertaking plantation.

The Respondents 1 to 7 shall not lease out or transfer any portion of Kh. No. 37 and 38(1) shown as green belt in the sanctioned development plan in any other manner.

34. In the result, the petition is allowed with costs. Rule made absolute accordingly.