

Allahabad High Court

Vivek Srivastava Son Of Late Sri ... vs Union Of India (Uoi) Through Its ... on 12 April, 2005

Equivalent citations: 2005 (3) AWC 2897, 2005 (3) ESC 1790

Author: T Agarwala

Bench: A Yog, T Agarwala

JUDGMENT

Tarun Agarwala, J.

1. Does a member of the public and a resident of the city of Allahabad have a right to object to the change in the user of the land which has been in existence as an open piece of land for the last hundred years and which has acted as the lungs of the city? Does the petitioner, being a citizen of this city, have a locus standi to raise issues of ecology, and protection of the environment on account of the change in the user of the land as undertaken by the military authorities in trying to convert the open piece of land into a concrete residential duplex complex? Is the petitioner, being a citizen of this city, aggrieved by such a diversion and construction of residential buildings? Do the citizens of Allahabad have a fundamental right to free and healthy air in eco friendly surroundings for the full enjoyment of life as envisaged under Article 21 of the Constitution of India ? These are some of the questions of importance which have arisen for consideration during the course of the hearing of the petition.

Case of the Petitioner.

2. The petitioner claims to be a citizen and a resident of a locality. of this historic city of Allahabad and has filed the present writ petition in the form of a Public Interest Litigation contending that the respondents are planning to construct residential buildings in the "Polo Ground" which had remained Vacant as an open land for the last hundred years. The petitioner alleged that this ground acted as the lungs for the citizens of Allahabad and if the residential buildings were allowed to be constructed on this land, the lungs would get choked. Not only this, the constructions Would disturb the ecology and create a serious imbalance to the environment of the city. The petitioner has contended, that the only open piece of land which is located more or less in the heart of the city would vanish if the construction was allowed to come up. The constructions would not only endanger the quality of life, but would disturb the ecology and the environment which has compelled the petitioner to take recourse to Article 226 of the Constitution of India by filing this writ petition and praying that the decision with regard to the constructions of the residential buildings on "Polo Ground" be quashed and that a mandamus be issued commanding the respondents to maintain a healthy balance between the constructions and the environment conditions of the City as a whole. The petitioner further contended that he has no private gain or interest in it and has filed this petition in public interest to bring on record and apprise the Court of the immense damage which would be caused to the ecology and the environment of the city, if the constructions are allowed to be raised in the expanse of the land which act as the lungs of the city. The petitioner, in his writ petition, has therefore, prayed that the Cantonment Board be restrained from making any constructions on the Polo Ground.

Case of Respondent No. 1, 3 and 4 (Union of India and Military Authorities):

3. The Union of India has filed a counter affidavit on behalf of the Ministry of Defence, the Sub Area Commander and the Defence Estates Officer and submitted that the petitioner had no locus standi to file the present writ petition, as he had neither shown himself as a public representative nor had shown as to how he was interested in the land belonging to the army authority. The respondent have further alleged that no public interest was involved nor any issues of public importance or for the enforcement of the fundamental rights had been raised, and, therefore, no writ petition could be filed in the garb of a public interest litigation. The respondents further submitted that the High Court could entertain a writ petition under Article 226 of the Constitution of India under a public interest litigation, if the petition had been filed by a person who was interested in the welfare of the people and who were in a disadvantageous position and who was not in a

position to knock the doors of the Court. Since the petitioner had not sought any relief for the benefit of the public at large, the writ petition filed as a Public Interest Litigation was an abuse of the process of the Court and was liable to be dismissed with costs.

4. The respondents have, however, on merits stated that as per the General Land Register (GLR) of the year 1941, the land in question had been described as 'Old Polo Ground' which comprises of 22.77 acres of open land and was categorized as 'A-1' Defence Land which was exclusively managed and controlled by the Army Authorities and was not governed by any of the provisions of the Cantonment Act. The scope and use of A-1 land was limited is contemplated under Rule 5(1) of the Cantonment Land Administration Rules 1937(hereinafter referred to as the Rules of 1937). Under the said Rules. A-1 land was exclusively managed and controlled by the Army Authorities, which in the present case, is the Sub-Area Commander of the station in question. The respondents submitted that the proposed construction for the residential quarters for the married Army Personnel, being an exclusive army matter, no public interest was involved which required adjudicate, from a Court of Law. The respondents further submitted that the proposed construction had been sanctioned by the Ministry of Defence and that the construction would not disturb the ecology or the environment of the area

5. In the supplementary counter affidavit, the respondents submitted that the proposed constructions of the residential quarters, i.e., the Marriage Accommodation Project (MAP) falls under Entry-4 of the Union List. The defence works was entrusted to the Military Engineering Services who plans and executes the same through the Defence Works Procedure. The Ministry of Defence vide letter dated 10.9.2004, granted administrative approval for the construction of 1128 dwelling units, i.e. 60 dwelling units for Majors and above, 72 for JCO's and 996 dwelling units for QRs. at Allahabad Station. While considering the construction of the residential quarters, the location of the land was worked out by the Board of Officers and the sites were prepared as per the Zonal Plan of the Allahabad Station. The zonal plan was made on the basis of the Key Location Plan (KLP) of the station, which works out the requirement of the land as per the land norms, which was based on the strength of the Officers, JCOs, ORs and civilians in the station. According to the respondents, as per the KLP of Allahabad, there was a net deficiency of 1761.957 acres of land, inspite of which the old Polo Ground had been ear marked as a site for the 'MAP' Project. This zonal plan had been made by the Board of Senior Officers and specialized persons basing it on futuristic operation requirements, the considerations of which are kept confidential. The respondents, however, submitted that the zonal planning had been done keeping in view the ecological policy which the respondents have framed and the guidelines issued by the Army Head Quarters. It was alleged that based on the aforesaid guidelines, the Station Commander constituted a Board of Officers, which recommended various sites for the aforesaid constructions and recommended construction of 48 dwelling units for Majors and above at the "old Polo Ground" and that out of 22.77 acres of land, 15 acres of land would be left open to maintain the environment and the ecological balance. The respondents submitted that the norms for calculating the land in the army areas was such that it embraced the ecology and was most ecologically friendly; For instance, the population in a station for KLP was calculated four times the actual military strength and open spaces is calculated 7 acres per thousand population which means 28 acres are required to house 1000 military personel. These averments have been made on the basis of Annexure-1 to the supplementary counter affidavit, which is the land requirement sheet for Allahabad Station as per KLP, which we shall refer to it later at the appropriate stage.

6. The respondents further submitted that as per the guidelines issued vide Army Headquarters' letter dated 22.6.1993, the entire planning has to be done on A-1 defence land. The respondents further contended that the land in question known as old Polo Ground was transferred to the military authorities by the municipal authorities sometimes between the period 1916 and 1941.

Case of Respondent No. 2 (Cantonment Board):

7. The Cantonment Board, respondent No. 2 in their counter affidavit has stated that the land in question is under the exclusive Management of the military authorities and that the Cantonment Board or the Municipal Authority has no concern with it. The military authority has the exclusive right to construct the residential , accommodation for its married military officers and that the petitioner has no locus standi to file the writ petition.

Case of Respondent No. 5 (District Magistrate):

8. The District Magistrate, Allahabad appeared and also filed his own affidavit stating therein that the old Polo Ground was utilized in the past for various purposes and public functions as well as for parking of heavy vehicles during the general election and also during the Kumbh Mela. The affidavit stated, that from time to time, request were made by the District Magistrate, Allahabad to the Sub-Area Commander, Allahabad for using the land for official purposes for which permission was being granted by the Sub Area Commander. The affidavit further stated that the road known as Hastings Road or C.S.P. Singh Marg which is also called by the name of Nyaya Marg and which cuts across the old Polo Ground and the New Polo Ground was now being maintained by the P.W.D. The District Magistrate, Allahabad also stated that the Polo Ground which is situated near the High Court is one of the heritage of Allahabad and is one of the important ground on which government activities had been taking place since long and, that since Independence, on every Lok Sabha and Vidhan Sabha elections, this ground had been used for parking heavy vehicles, and for making arrangement for the poll and dispatching all polling parties to various places and that there was no other suitable place for this purpose in the city of Allahabad except the Polo Ground. The District Magistrate, Allahabad categorically stated that if the Polo Ground was converted for any other purpose it would cause a serious setback to the aforesaid official activities of the administration. The District Magistrate further submitted that from time to time in the past, other functions have been organized at the Polo Ground and if the residential complex was constructed, it would affect the smooth administration of the city and therefore, the old Polo Ground should not be converted into a residential complex.

Case of Respondent No. 6 (Allahabad Development Authority):

9. The Allahabad Development Authority, respondent No. 6 in their counter affidavit has stated that the land in question is outside their development area. However, under the Master Plan 2001, the permissible density of the Civil Lines area 400 persons per hectare and that. 5 persons per dwelling unit is taken into consideration for calculating the density of the area and, therefore, the proposed construction would not make a major difference in the density of the population.

Case of Respondents No. 7, 8 and 9 (Municipal Commissioner, Mukhva Nagar Adhikari and Divisional Town and Country Planner):

10. The Deputy Municipal Commissioner, Allahabad has filed an affidavit on behalf of respondent nos.7 and 8 stating therein that the old Polo Ground was beyond the territorial jurisdiction of the Nagar Nigam and that the provision? of U.P. Municipal Corporation Act 1959 was not applicable as the Polo Ground came in the Cantonment area. The affidavit further stated that if the residential quarters on Polo Ground are constructed, the ecological balance would be adversely affected and that the Cantonment area does not have any proper sewer system nor there is any adequate arrangement for the disposal of the garbage system.

11. Similar opinion was also expressed by the Divisional Town and Country' Planner, Allahabad, respondent No. 7. He, however, further stated, that in the event the construction was made on the land in question, such construction should be subject to the following conditions, namely,

(i) 20 Meters wide green belt had to be ensured all around the residential complex.

(ii) No approach road from C.S.P. Singh Road.

- (iii) The approach road must be from the opposite side of C.S.P. Singh Road.
- (iv) An alternative side for the Polo Ground had to be proposed on an appropriate side.
- (v) No further construction on Polo Ground and remaining area to be kept as an open land.

Case of interveners:

12. During the course of the hearing of the petition, the President of the Bar Association High Court, Allahabad appeared and requested that he may be heard as the petition raises important questions and affects the members of the Bar Association. Sri Anand Mohan, a social activist also appeared in person and filed an application praying that he may be permitted to intervene and be heard as the writ petition raises vital questions on the environment of the city of the Allahabad. By our order, we permitted them to be heard under Chapter XXII, Rule 5-A of the Rules of the Court.

13. Sri Anand Mohan in his application stated that the land in question was earlier under the management of the municipal authorities but pursuant to a Notification No. 2465/XI-31-C-1933 dated 8.8.1934, the land was proposed to be included in the Cantonment limits. He submitted that prior to 1934, the land was under the management of the local municipal authority and that Polo used to be played even by the civilians and that even after independence of our country, the land in question had been used by the civil administration for election purposes and that various cultural programmes have also been organized from time to time. Further, the land serves as a "public place" and prayed that the land in question should remain as an open piece of land and that the land in question should revert back to the municipal or local bodies as the case may be. The land in question, known as 'old Polo Ground' covers 22.77 acres of open land is an A-1 defence land being managed by the military authorities and which is owned by the Central Government, is located in the heart of the city of Allahabad in the Civil Lines area collocating the High Court of Judicature at Allahabad on the South-West, the Government Press, Directorate of Education. Board of High School and Intermediate Board, Board of Revenue, Police Head Quarters and the Accountant General's Office on the East, the Elgin Road and the Allahabad Bank on the South, and a portion of the residential complex for the Judges of the High Court on the North and further towards North-West by the Radio Station and Circuit House and the Bar Council of U.P. on North East and on the West of old Polo Ground, by a road known as Hastings Road, now called Justice C.S.P. Singh Marg and also called Nyaya Marg. and which is maintained by the Public Works Department. Therefore, the old Polo Ground, an open piece of land measuring 22.77 acres, is, surrounded and collocated by civil areas. In fact, the new cantonment begins from old Polo Ground itself. Consequently, the old Polo Ground is collocated with the civilian areas, being on the border of the municipal and the Cantonment limits.

Preliminary Objections:

14. The Union of India has raised a preliminary objection with regard to the maintainability of the writ petition and submitted that the petitioner had no locus standi to file the petition under the garb of a Public Interest Litigation. The learned counsel for the respondent submitted that a Public Interest Litigation could be filed only if it raised an issue of public importance, or raised an issue for the enforcement of a fundamental right of a large number of the members of the public which in the present case did not exist nor the petitioner had shown himself as a public representative nor had shown as to how he was interested in the land pertaining to the Army authorities. The learned counsel further submitted that a writ petition under Article 226 of the Constitution of India could only be entertained by a Court from an interested person who was concerned with the welfare of the people and who were in a disadvantageous position and who were not in a position to knock on the doors of the Court. In support of his submission, the respondent had relied upon a decision of the Supreme Court in Guruvayoor Devaswom Managing Committee and Anr. v. C.K. Rajan and Ors., 2003(7) SCC 546 and submitted that the petitioner had not raised any question nor sought any relief for the benefit of the public at large and, that it appeared that the writ petition had been filed at the instance of some interested organization. The learned counsel further submitted that the petitioner was not a resident of the cantonment

and had not chosen to stop the mushrooming construction being carried out in the city of Allahabad nor had challenged the illegal encroachment in and around his locality and therefore, if the veil was lifted, the vested interest would come out which would show that a frivolous writ petition had been filed under the garb of a Public Interest Litigation. The learned counsel submitted that since no public interest was involved, the writ petition should be thrown out with cost.

15. The petitioner, on the other hand contended that he is a citizen of Allahabad and had rightly brought the matter before the Court as the alleged construction was bound to affect the ecology and the environment of the city. The open expanse of land which acted as the lungs of the city would get choked and if the construction is allowed, the ecology of the city would be disturbed thereby creating a serious imbalance to the environment of the city. The petitioner contended that it was not necessary that he should be a resident of the locality where the buildings are going to be constructed. It was sufficient that he was a citizen of the city of Allahabad and had raised an issue with regard to maintaining a healthy balance between the urbanisation and the environment of the city as a whole. The petitioner contended that he had no private interest in the matter and had brought this matter to apprise the Court of the ecological damage that would be caused if the construction were allowed to be raised. The petitioner submitted that the field of Public Interest Litigation had expanded and was not confined to the welfare of the people who are weak and who were not in a position to knock on the doors of the Court. The learned counsel submitted, that where ecological and environmental issues have been raised and where the open expanse of land was acting as the lungs for the citizens of Allahabad for almost 100 years, the alleged construction on it definitely raised issues of public importance which would benefit the public at large and therefore, the writ petition was maintainable and that the petitioner had a locus standi to raise these questions of public importance.

16. We have heard Sri Yashwant Varma assisted by Ms. Rohma Hameed, the learned counsels for the petitioner, Sri S.K. Rai for the Union of India and the Military authorities, Sri S.M.A. Kazmi, Chief Standing Counsel, for the District Magistrate, Municipal Commissioner and Divisional Town and Country Planner, Sri A. Mishra for the Allahabad Development Authority and Sri Anand Mohan, in person, as the intervener.

17. Taking up the issue of maintainability of the writ petition and the locus standi of the petitioner in filing the present writ petition, it is well settled, that a person acting bonafide and who has a sufficient interest in the proceedings is competent to file a writ petition and has a locus standi to approach the Court and wipe out the violation of the fundamental rights and/or the infraction of the statutory provisions of law.

18. What is public interest ? Blacks Law Dictionary, Sixth Edition, defines "public interest" as -

"Something in which the public, the community at large, has some pecuniary interest, or some interest by which their legal rights or liabilities are affected. It does not mean anything so narrow as mere curiosity, or as the interests of the particular localities, which may be affected by the matters in question. Interest shared by citizens generally in affairs of local, state or national government."

19. In Janta Dal v. H.S. Chowdhary, 1992(4) SCC 305, the Supreme Court held-

"Therefore, lexically the expression 'PIL' means a legal action initiated in a Court of law for the enforcement of public interest or general interest in which the public or a class of the community have pecuniary interest or some interest by which their legal rights or liabilities are affected."

20. On the locus standi, the Supreme Court in Janta Dal's case (supra) held-

"Though it is imperative to lay down clear guidelines and propositions; and outline the correct parameters for entertaining a Public Interest Litigation- particularly on the issue of locus standi yet no hard and fast rules have yet been formulated and no comprehensive guidelines have been evolved. There is also one view that such adumbration is not possible and it would not be expedient to lay down any general rule which would govern all

cases under all circumstances.

Be that as it may, it is needless to emphasise that the requirement of locus standing of a party to be litigation is mandatory; because the legal capacity of the party to any litigation whether in private or public action in relation to any specific remedy sought for has to be primarily ascertained at the threshold."

and further held-

" In contrast, the strict rule of locus standi applicable to private litigation is relaxed and a broad rule is evolved which gives the right of locus standi to any member of the public acting bonafide and having sufficient interest in instituting an action for redressal of public wrong or public injury, but who is not a mere busybody or a meddlesome interloper; since the dominant object of PIL is to ensure observance of the provisions of the Constitution or the law which can be best achieved to advance the cause of community or disadvantaged groups and individuals or public interest by permitting any person, having no personal gain or private motivation or any other oblique consideration but acting bonafide and having sufficient interest in maintaining an action for judicial redress for public injury to put the judicial machinery in motion like actio popularis of Roman Law whereby any citizen could bring such an action in respect of public delict."

21. The Supreme Court in various decisions has held that a person, acting bonafide and having sufficient interest in the proceedings, would have a locus standi. The Supreme Court also cautioned to be extremely careful and ensure that a vexatious petition under the garb of a Public Interest Litigation was not brought before the Court for vindicating any personal grievance. The Supreme Court further held that the Courts should not allow a busybody or a meddlesome interloper to misuse the process of the Court for private gain.

22. The parameters of Public Interest Litigation have been indicated by the Supreme Court in a large number of cases. The guidelines so laid down by the Supreme Court has to be applied to the facts of each case. In defining the rule of locus standi, no rigid Humus test can be applied since the law relating to Public Interest Litigation is still developing. In this context, the Supreme Court in S.P. Gupta and Ors. v. President of India and Ors., AIR 1982 SC 149 held-

" The Court has to innovate new methods and device new-strategies for the purpose of providing access to justice to large masses of people who are denied their basic human rights and to whom freedom and liberty have no meaning. The only way in which this can be done is by entertaining writ petitions....."

23. Thus, keeping in mind the development of the doctrine of Public Interest Litigation and the rule governing the locus standi, as enunciated by the Supreme Court in various decisions, it would be appropriate to revert to the facts of the instant case and examine them to find as to whether the petitioner has a locus standi, to file this petition and whether this petition falls within the ambit and scope of Public Interest Litigation.

24. The sum and substance (as gathered from the averments made in the writ petition, supplementary affidavit and rejoinder affidavit) is, that the petitioner, who is a resident of the city has come forward and filed the writ petition in public interest and prayed for intervention and drawing the attention of this Court, to the detrimental effect which the construction could cause on the ecology and environment of the city as a whole. The petitioner has alleged that this open piece of land available is acting as the lungs of the city, and that these open spaces are necessary to maintain the ecological balance of the city. The petitioner has alleged that if the construction is permitted, the open expanse of land would vanish which in turn would create a serious imbalance to the environment of the city. The petitioner has further stated that he has no private gain or interest in this litigation and, as the citizen of this city, had filed this petition in public interest to restrain the respondents from the immense danger that would be caused if the construction was allowed on the land in question. The petitioner has complained that the open space of land existing for years would vanish and that the lungs of the city would be choked if the constructions were permitted on this land.

25. We have given our thoughtful consideration and, we find that every citizen has a right to breathe clean and pure air. Right to life is enshrined in Article 21 of the Constitution of India, and, as held by the Supreme Court in Subhash Kumar v. State of Bihar and Ors., A.I.R. 1991 SC 420.

"right to live is a fundamental right under Article 21 of the Constitution and it includes the right of enjoyment of the pollution free water and air for full enjoyment of life."

26. Article 48A of the Constitution of India enjoins that the State shall endeavor to protect and improve the environment. The right to breathe, thus inheres the Directive Principles of the State Policy.

27. Under Article 51A of the Constitution, it is the fundamental duty of every citizen to strive, protect and improve the natural environment. The object of Part-IV-A of the Constitution of India is that every citizen must feel that it is his duty to achieve the objects laid down under Article 51A and one such duty is to protect the natural environment.

28. In *Virender Gaur and Ors. v. State of Haryana and Ors.*, (1995) 2 SCC 577, the Supreme Court held-

"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 51A 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 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 to 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 contravention 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 both the man-made and the natural environment."

29. Thus, in our view, an issue relating to the enforcement of the fundamental rights, and the Directive Principles, which is of public importance, is clearly involved in the present petition. An issue relating to the urbanization and the expansion of the city and its effect on the ecology and the environment has been raised which concerns the residents of Allahabad. Therefore, the submission of the learned counsel for the respondents, that a Public Interest Litigation was only for the enforcement of the fundamental right of those people who were in a disadvantageous position and who were themselves not in a position to knock on the doors of justice, in our view, a hyper technical approach raised only to defeat the ends of justice and the objects enshrined in Part III and IV of the Constitution. It is now well settled by the Courts, that if there was a violation of the fundamental right or other legal right, a person or a class of person has a right to approach the Court for the enforcement of the fundamental right or to correct a legal injury. We have no material or circumstances to hold that this petition had been filed for the vindication of any personal grudge or enmity of the petitioner with the respondents. In fact, we hold, that the petitioner had bonafidely approached this Court in larger interest and to safeguard the fundamental rights of the residents of the city.

30. If anything endangers or impairs the quality of life in derogation of the laws, the petitioner had an equal right, like any other citizen to come forward for the prevention of the damage that could be caused by the alleged construction to the lungs of the city and its impact on the ecology and the environment. The petitioner has rightly invoked the grievance in a public interest action with regard to the conduct and action of the military authorities in relation to the constitutional and statutory rights of the citizens of this city. We have, therefore, no hesitation in holding that the petitioner has a locus standi to file a Public Interest Litigation and that the writ petition is maintainable.

Relevant Statutory Provisions:

31. Before proceedings further, it would be relevant to place a few provisions of the Cantonment Land Administration Rules 1937 (hereinafter referred to as the Rules). These Rules were framed under Section 280 of the Cantonment Act 1934. Chapter II of the said Rules deals with the classification and transfers of land. Rules 3, 4, 5, 7 and 9 of Chapter II of the Rules of 1937 which are relevant for the purpose of this case, are quoted hereunder:

"3. General Land Register (1) The Military Estates Officer shall prepare, in the form prescribed in Schedule I, a General Land Register of all lands in the Cantonment

(a) inside bazaars; and

(b) outside bazaars.

(2) No addition or alteration shall be made in the General Land Register except with the previous sanction of the Central Government or such other authority as the Central Government may appoint for this purpose or in accordance with the provisions of rules 10 and

45.

4. Classification of land for the purposes of the General Land Register prescribed by rule 3-

(a) Land in the cantonment which is vested in the Government shall be divided by the Central Government, or such other authority as the Central Government may empower in this behalf, into two classes, namely-

(i) Class "A" land which is required or reserved for specific military purposes: and

(ii) Class "B" land which is not so required or reserved, but which is retained in the cantonment for the effective discharge of the duties of the Central Government in respect of military administration: and

(b) Land which is vested in the Board under Section 108 of the Act shall be called class "C" land.

5. Class "A" land- Class "A" land shall be divided by the Central Government, or such authority as they may empower in this behalf, into the following sub-classes namely-

(i) Class "A" (1) land which is actually used or occupied by the Military Authorities, for the purposes of fortifications, barracks stores, arsenals aerodromes, bungalows for military officers which are the property of Government, parade grounds, military recreation grounds, rifle ranges, grass farms, dairy farms, brick fields, soldiers and hospital gardens as provided for in paragraphs 419, 421 and 425 of Regulations for the Army in India and other official requirements of the Military Authorities.

(ii) Class "A"(2) land which is not actually used or occupied by the Military Authorities, but to the use or occupation of which for any other purpose, except temporarily, there exist specific military objections.

Explanation- For the purposes of this rule-

(a) Specific military objections shall be deemed to exist to the use or occupation of land the reservation of which is declared to be desirable by the Central Government in the interest of the discipline, health or welfare of the military forces, or the safety or defence of the cantonment and its inhabitants; and

(b) military recreation grounds means recreation grounds the management and control of which vest exclusively in members of the military forces.

7. Transfer of land from one class to another- No alteration in the classification of land which is vested in the Government or in the Board shall be made except by the Central Government, or by such other authority as they may empower in this behalf, and the conditions on which land may be transferred from one class to another shall be governed by the orders of the Central Government or by the provisions of any law or rule for the time being in force which may be applicable: provided that land in class "B"(4) may be transferred to class "B" (3) by the authority, and subject to the conditions, prescribed by rules 15 to 48.

9. Management of land-(1) The management of Class "A" (1) land, except for such areas or classes or areas as may from time to time be declared by the Central Government to be under the immediate management of the Military authorities themselves, shall be entrusted to the Military Estates Officer.

(2) The management of Class "A" (2) land shall vest in the Military Estates Officer.

32. Chapter III of the Rules relates to the management of the land by the Military Estates Officer. Rule 10 and 12 of Chapter 111 of the Rules of 1937 are quoted hereunder:

"10. Maintenance of General Land Register-(1) The Military Estates Officer shall maintain the General Land Register prepared under rule 3 in respect of all land, other than land in bazaars the management of which has been entrusted to, or vests in, the Board, and shall register all mutations in column 1 thereof, and shall enter therein.

.....

(ii) every grant of such right or interest made by the Central Government.

.....

(vi) every interdepartmental transfers of class "A" land and every transfer of class "A" land, from one service of the Army to another under the control of the same head of a department sanctioned by the Central Government.

(vii) every alternation in classification of land sanctioned under rule 7."

12. The Military Estates Officer's Land Revenue Register- The Military Estates Officer shall maintain a register, in the form prescribed in Schedule III, of all lands in Class "A" (2) and "B" (3) which are entrusted to his management and from which revenue is derivable. This register shall be known as the Military Estates Officer's Land Revenue Register, and shall be prepared annually with effect from 1st April, so as to show annual demand in the shape of rent from building sites, agricultural land and other land.

33. Chapter IV of the said Rules related to special Rules for Class-A land. Rules 13 and 14 of the said Rules are quoted hereunder:

13. Schedules of Class "A" Land -(1) The Military Estates Officer shall maintain plans and schedules of land in class "A(1) and A(2)" for each cantonment in which and is entrusted to his management.

(2) No alteration in the plans and schedules shall be made without the sanction of the Central Government.

14. Special Rules for Class "A" Lands - (1) The administrative control of Class "A" (1) Land including the detection and prevention of encroachments thereon, shall vest in the Military Authorities for the time being in occupation of the land. The administrative control of Class "a" (2) land shall vest in the Central Government.

(2) The Military Estates Officer shall conduct his management of Class "A" (1) Land (which shall include the development of the resources of the land, the disposal of usufruct and the planting and maintenance of trees) in consultation with and under the general supervision of the Officer commanding the Station, at whose discretion expenditure will be incurred within the allotment made to the Military Estates Officer and in accordance with the Military regulations in force regarding the planting of trees and the cultivation of land in military areas.

(3) Land in Class "A"(1) shall not be used or occupied for any purpose other than those stated in Sub-rule (1) of Rule 5 without the previous sanction of the Central Government or such authority as they may appoint in this behalf:

.....

(5) No building of any kind either permanent or temporary, shall be erected on class "A" land except with the previous sanction of and subject to such conditions as may be imposed by, the Central Government or by such other authority as the Central Government may appoint for the purpose.

34. As per Rule 9 of the Rules of 1937, a notification dated 11.4.1940 was issued by which various areas of Class-A(1) land in the Cantonment were declared to be under the immediate management of the military authorities, one of which included the military recreation grounds. The Government of India, Defence Department issued a Notification No. 975-LC/D.4 dated 23.3.1938 and Notification No. 1282-LC/D.4 dated 17.4.1940 wherein instructions with regard to the preparation and maintenance of the General Land Register were issued (See: Cantonment Laws, Vol.II by J.P. Mittal, 2nd Edition, Page 414 and 417), which stated that whenever a sanction was required for an alteration in the existing entries or for making an entry in the Register, the sanction for any addition or alteration of the entries in the register was required to be accorded by the Central Government or by such authority as the Central Government may appoint in sub rule (2) of Rule 3.

35. Under Rule 3 of the 1937 Rules, the Military Estate Officer is required to prepare a General Land Register entering all kind of land belonging to the Cantonment Board or military authorities. Rule 4 classifies the land of the Cantonment into three types, namely, Class-A, Class-B and Class-C land. Class-A land has been specified as a land which is required or reserved for specific military purposes. Rule 5 sub divides Class-A land into Class-A(1) and Class-A(2) land. Class-A(1) land are such land which are actually used or occupied by the military authorities for various purposes as specified therein and includes military recreation grounds and bungalows for military officers. Rule 7 provides that no alteration in the classification of the land shall be made except by the Central Government. Rule 9 provides that Class A(1) land shall be managed by the military authorities except such area or classes of areas as may be declared by the Central Government from time to time. Rule 10 of the Rules provides for maintenance of the General Land Register and under Rule-13, the Military Estates Officer is required to maintain the plans and schedules of land in Class-A(1) and Class-A(2) land in each cantonment and that no alteration in the plans and the schedule could be made except with the sanction of the Central Government. Sub clause (3) of rule 14 provides that the land in Class-A(1) land shall not be used or occupied for any other purpose other than those stated in sub Rule (1) of Rule 5 without the previous sanction of the Central Government. Sub clause (5) of Rule 14 provides that no

building shall be erected on Class-A land except with the previous sanction of the Central Government.

36. From a perusal of the aforesaid Rules, especially Rules 3, 5, 7, 10, sub clause (vi) and (vii) of Rule 10 read with Rule 13(2) and sub clause (3) and (5) of Rule 14, makes it abundantly clear beyond a reasonable doubt, that no addition or alteration in the General Land Register could be made except with the previous sanction of the Central Government and that no building of any kind, either permanent or temporary, can be erected on Class-A and, except with the previous sanction and subject to such conditions as may be imposed by the Central Government.

37. Admittedly, the old Polo Ground has been classified as Class-All) land in the General Land Register maintained by the Military Estates Officer under the Cantonment Act. No addition or alteration in the register can be made except with the previous sanction of the Central Government. Further no building can be erected on Class A(1) land except with the previous sanction of the Central Government. No evidence has been filed by the respondents to show that the Polo Ground is being actually used or occupied for any of the purposes mentioned in Rule 5. In fact, it has come on record, that Polo Ground was being used by civilians for various functions over a period of time. Since, the land is being used for various purposes apart from military purposes, it is doubtful that the Government had correctly classified this Polo Ground as Class-A land.

First Question:

38. The question which now arises for consideration is, whether previous permission had been taken or not by the military authorities from the Central Government to construct the residential complex known as Marriage Accommodation Plan (MAP) on the Polo Ground which is A(1) defence land ? According to the respondents, no previous sanction was required to be obtained from the military authorities. According to the respondents previous sanction was only required from the Central Government when the user of the land was being changed from Class-A land to Class-B land, but where the land was classified as Class A(1) land and was being used for another purpose which also came under the category of Class A(1) land, in that case, no previous sanction was required from the Central Government. In the present case, the land in question is described as 'old Polo Ground', which according to the respondents, comes under the category of "Military Recreation Ground". The said land is proposed to be used for the construction of a residential complex, which is also covered under Class A(1) as a 'bungalow' and therefore, according to the respondents, previous sanction was not required for converting the military recreation ground into a residential complex. The contention of the respondent is that, "bungalows" and 'military recreation grounds' are both classified as Class-A(1) land and since the use of the land was being converted from a military recreation ground to a residential purpose, under the same category, no previous sanction was required to be taken from the Central Government.

39. On the other hand, the petitioner contended that in view of the aforesaid provisions of the Cantonment Land Administration Rules, previous sanction was required to be obtained from the Central Government.

40. In our view, from the a reading of the various provisions of the Cantonment Rules, 1937 and the notifications issued from time to time, it is clear, beyond a reasonable doubt, that previous sanction is required to be obtained before any building either permanent or temporary is erected on a Class-A land or any addition or alteration is made in the General Land Register, even though the usage of the land remained as Class-A(1) land. Previous sanction is required from the Central Government even if there is a change in the usage of the land.

41. There is another aspect which needs to be considered. Whether the constructions of 48 dwelling units on the land in question, namely, Duplex Units can be said to be covered by the expression "bungalow" as used in Rule 5(1) of the Rules. The word 'Bungalow', normally and apparently cannot be extended to cover multistoried complex. The word 'Bungalow' is defined as a "one storey house, lightly built" and cannot partake a shape of a duplex unit. Therefore, if the military authorities intended to or proposed to construct a

multistoreyed complex with Duplex flats for residential purposes for its military officers on Class-A(1) land, they are required to obtain previous sanction from the Central Government.

42. The submission of the learned counsel for the respondents that the Central Government had granted permission for the construction of the residential complex on the land in question is baseless. From a perusal of the letters dated 13.11.2003, 10.9.2004 and 19.10.2004 sanction had been given for the project in question but the Central Government has not given any sanction for changing the use of the land.

43. During the course of the hearing of the petition the learned counsel for the respondents submitted that if it was imperative for the During the course of the hearing of the petition the learned counsel for the respondents submitted that if it was imperative for the military authorities to take previous sanction from the Central Government, in that event, the respondents may be permitted to obtain the sanction from the Central Government and further submitted that, in this regard they had already moved the Central Government to grant the requisite sanction. Be that as it may, it is clear that at the present moment, no prior sanction as required under the statutory rules was ever sought nor it had been given by the Central Government till date. Before starting the construction on the land in question, it was imperative and mandatory for the respondents to take previous sanction from the Central Government.

44. Rules 3, 14(3) and 14(5) of the Rules mentions the words "previous sanction of the Central Government". Rule 13 states that no alterations in the plans and schedules shall be made without the previous sanction of the Central Government. In our view, it is mandatory for the respondents to seek previous sanction from the Central Government before making any addition or alteration in Class-A land. Since, previous sanction was not obtained by the military authorities from the Central Government, the action of the respondents in proposing to raise the construction on the Polo Ground is wholly illegal.

45. In Nandkishore Ganesh Joshi v. Commissioner, Municipal Corporation of Kalyan and Dombivali and Ors., (2005) 1 UPLBEC 144, the Supreme Court while construing the provision of clause (c) of Section 73 of the Mumbai Provincial Municipal Corporation Act, 1949, held that although the Commissioner was entitled to execute the contract on behalf of the Corporation but a statutory embargo was placed upon him by Clause (c) of Section 73 of the Act which required that before executing a contract, the Commissioner was required to seek previous approval of the Standing Committee. The Supreme Court further held-

"It is, thus, not a case where an action taken by a statutory authority requires approval which may be granted at a later stage. The approval of the Standing Committee, a bare perusal of clause (c) would show, is required to be granted before any contract is entered into. The approval of a contract and that too with previous approval by the Standing Committee cannot, thus, said to be an empty formality. The Standing Committee is required to perform its functions in terms of the provisions of the said Act. A statutory authority has also a duty to act in public interest as also fairly and in a reasonable manner."

46. In Kaiser v. National Textile Corporation and Ors., 2002(8) SCC 182, the Supreme Court held-

"14. In view of the aforesaid requirements, before obtaining the assent of the President, the State Government has to point out that the law made by the State Legislature is in respect of one of the matters enumerated in the Concurrent List by mentioning entry/entries of the Concurrent List and that it contains provision or provisions repugnant to the law made by Parliament or existing law. Further, the words "reserved for consideration" would definitely indicate that there should be active application of mind by the President to the repugnancy pointed out between the proposed State law and the earlier law made by Parliament and the necessity of having such a law, in the facts and circumstances the matter, which is repugnant to a law enacted by parliament prevailing in a State. The word "consideration" would manifest that after careful thinking over and due application of mind regarding the necessity of having State law which is repugnant to the law made by Parliament, the President may grant assent. This aspect is further reaffirmed by use of the word "assent" in clause (2), which implies knowledge of the President to the repugnancy between the State law and the earlier

law made by Parliament on the same subject-matter and the reasons for grant of such assent. The word "assent" would mean in the context as an expressed agreement of mind to what is proposed by the State.

15 The learned counsel Mr. Ravichandran has rightly pointed out the different meanings given to the word "assent" in various dictionaries, which are as under:-

Corpus Juris Secundum

Assent(as a noun)- A passive act of concurrence; the act of the mind in admitting or agreeing to anything; the act of agreeing or consenting to accept some proposition; and, by context, "acceptance". It also has been defined as agreement or approval;.... "Assent" implies knowledge of some kind in the party assenting to that to which he assents; also permission on the part of the party assenting'.....As used in some statutes, however, the term has been held to require affirmative, positive action on the part of the party assenting. It has been said that the term indicates the meeting of the minds of the contracting parties, and that the word is applicable only to conduct before or at the time of the doing of an act and hence does not include an approval after the commission of an act.....

Assent (as a verb)- The verb implies affirmative action of some sort as distinguished from mere silence and inaction; and has been defined as meaning to accept, agree to, or consent, to accord, agree, concede, or yield; to express an agreement of the mind to what is alleged or proposed; to express one's agreement, acquiescence, or concurrence, also to admit a thing as true; to approve, ratify, or conform; and sometimes to authorise or empower.

Shorter Oxford Dictionary

Assent- The concurrence of the will, compliance with a desire. 2. Official, judicial, or formal sanction; the action or instrument that signifies such sanction ME. 3.Accori. 4.Opinion. 5. Agreement with a statement, or matter of opinion; mental acceptance.

Bouvier's Law Dictionary

Assent- Approval of something done. An undertaking to do something in compliance with a request.....

Law Lexicon of British India by P. Ramanatha Aiyar

Assent- The act of the mind in admitting or agreeing to the truth of a proposition proposed for acceptance; consent, agreeing to; to admit, yield, or concede; to express an agreement of the mind to what is alleged or proposed, (as) royal assent or Viceroy's assent to an enactment passed in the Legislative Assembly; Executor's assent to a legacy; assent of a corporation to bye-laws.

Royal assent, in England, the approbation given by the Sovereign in Parliament to a Bill which has passed both Houses, after which it becomes law. This assent may be given in two ways; (a) In person, when the Sovereign comes to the House of Peers, the Commons are sent for, and the titles of all the Bills which have passed are read. The royal assent is declared in Norman-French by the Clerk of Parliament, (b) By Letters Patent, under the great seal signed by the Sovereign, and notified in his or her absence.

Webster's Third New International Dictionary (VoL.1)

"Assent- 1 ...common accord: general approval c: concurrence with approval:...2. the accepting as true or certain of something (as a doctrine or conclusion) proposed for belief...."

Random House Dictionary

Assent- To agree or concur; subscribe 10 (often foll. by to); to assent to a statement. 2. To give in; yield; concede; assenting to his demands, she did as she was told--n. 3. Agreement, as to a proposal; concurrence. 4. Acquiescence; compliance

Words & Phrases Judicial Dictionary-Mitra

"Assent- Assent means agreeing to or recognizing a matter.. .etc. Wharton's Law Lexicon."

"73. The assent of the President envisaged under Article 254(2) is neither an idle or empty formality, nor an automatic event, necessitated or to be given for the mere asking, in whatever form or manner and whether specific, vague, general or indefinite- in the terms sought for to claim that once sought and obtained as well as published, a curtain or veil is drawn, to preclude any probe or contention for consideration that what was sought and obtained was not really what should and ought to have been, to claim the protection envisaged under clause (2) in respect of a particular State law vis-a-vis or with reference to any particular or specified law on the same subject made by Parliament or an existing law, in force. The repugnancy envisaged under clause (1) or enabled under clause (2) to get excepted from under the protective coverage of the assent obtained from the President, is such that there is a legislation or legislative provision(s), covering and operating on the same field or identical subject matter made by both the Union and the State, both of them being competent to enact in respect of the same subject matter or legislative field, but the legislation by Parliament has come to occupy the entire field. Necessarily, in the quasi-federal structure adopted for the nation, predominance is given to the law made by Parliament and in such circumstances only the State Law which secured the assent of the President under clause (2) of Article 254 comes to be protected, subject of course to the powers of Parliament under the proviso to the said clause. Therefore, the President has to be apprised of the reasons at least as to why his assent is being sought, the need or necessity and the justification of otherwise for claiming predominance for the State Law concerned. This itself would postulate an obligation, inherent in the scheme underlying as well as the very purpose and object of seeking the assent under clause (2) of Article 254, to enumerate or specify and illustrate the particular Central law or provision with reference to which the predominance is desired. The absence of any standardized or stipulated form in which it, is to be sought for, should not detract the State concerned, to disown its obligation to be precise and specific in the extent of protection sought having regard to the serious consequences which thereby inevitably follow i.e., the substitution of the Union law in force by the State law, in the territorial limits of the State concerned, with drastic alteration or change in the rights of citizen, which it may, thereby bring about."

47. In Shiv Gorakh Nath Charitable Society, Kanpur and Ors. v. Cantonment Board, Kanpur and Ors., 1997(3) AIR 616, a Division Bench of this Court held that where constructions were made without prior permission, post facto permission cannot be granted and that the constructions has to be dismantled.

48. From the aforesaid it is clear that seeking previous approval from the Central Government is not an empty formality or an automatic event to be given on the mere asking. The Central Government is required to perform its duties in terms of the provisions contained in the aforesaid Rules of 1937 and the Central Government is also required to act in public interest. The Central Government has to consider the relevant materials and circumstances, such as the factors pointed out by the District Magistrate, Deputy Municipal Commissioner, etc. and, in a given case, the views of the general public. Thus, the statement of the learned counsel for the respondents that the military authorities have now moved the Central Government for the grant of requisite sanction would, in our view, be an empty formality and would not remove the duty that was cast upon the Central Government under the aforesaid Rules. The statute must be construed in such a manner whereby the intent and object of the Act could be given effect to. A discretion to grant sanction conferred on the Central Government must be exercised in public interest and judiciously. Therefore, seeking previous sanction from the Central Government at this stage would serve no useful purpose. In our view-by seeking sanction from the Central Government at this stage cannot cure the initial defect.

49. In *Ms. Shailija Shah v. Executive Committee, Bharat Varshya National Association and Anr.*, 1995 ALR 88, this Court held-

"We may point out that expression prior approval and approval connotes different situation, where a statute uses the term prior approval anything done without the prior approval, is nullity. However, where a statutes employs expression approval, in such cases subsequent rectification can make the act valid."

50. Similar view was expressed by this Court in *A.S.H.P. Association and Ors. v. Deputy Director of Education and Ors.*, 1977 ALJ 341.

51. The aforesaid principles of law squarely applied to the facts and circumstances of the present case. It is, therefore, clear that if previous sanction is not obtained in the first place, the said defect cannot be removed afterwards by seeking post facto sanction from the Central Government

Second Question:

52. The time has come when the public has a right to retain certain lands in their natural state. There is a need to protect the environment and its ecology. The environment is finite. Human needs and activity are infinite. Because of limitations, the environment imposes certain constraints on the activities of human beings and therefore, imposes certain restrictions on human freedom. Urbanisation leads to the growth of the city. The growth of the city stretches the demand on the ecology and the environment to its limit, that is to say, the capacity of the environment to service the growth of the city both in providing the raw materials and disposal of the waste products is stretched to its limit. Human beings, over the centuries, have changed the environment to suit their needs and comfort. The environment has proved to be malleable and still is. But there is a limit to it all. The environment cannot be taken for granted any longer. Certain types of ecological resources can no longer be destroyed which otherwise. would cause long term ill effects on the environment. Therefore, a time has come to honour, conserve and preserve the laws of nature.

53. The doctrine of Public Trust has been founded on ideas that certain properties like air, forests, rivers, etc. are held by the Government in trust for the free and unimpeded use of the general public.

54. In *M.C. Mehta v. Kamal Nath and Ors.*, (1997) 1 SCC 388 at 407, the Supreme Court held:-

"The Public Trust Doctrine primarily rest on the principle that certain resources like air, sea, waters and the forests have such a great importance to the people as a whole that it would be wholly unjustified to make them a subject or private ownership. The said resources being a gift of nature, they should be made freely available to everyone irrespective of the status in life. The doctrine enjoins upon the Government to protect the resources for the enjoyment of the general public rather than to permit their use for private ownership or commercial purposes."

and further went on say-

"Our legal system- based on English common law-includes the public trust doctrine as part of its jurisprudence. The State is the trustee of all natural resources which are by nature meant for public use and enjoyment. Public at large is beneficiary of the sea-shore, running waters, airs, forests and ecologically fragile lands. The State as a trustee is under a legal duty to protect the natural resources. These resources meant for public use cannot be converted into private ownership."

55. In *M.I. Builders (P) Ltd. v. Shyam Sahu and Ors.*, 1999 (6) SCC 464, at page 518, the Supreme Court held

"This Public Trust doctrine in our country, it would appear, has grown from Article 21 of the Constitution."

56. In M.C. Mehta v. Union of India and Ors., 2004(6) SCC 588 at 615, the Supreme Court held-

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

57. In Virendra Gaur and Ors. v. State of Haryana and Ors., (1995) 2 SCC, 577 at 580, the Supreme Court held-

"Environment is a polycentric and multifaceted 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"

and further held that the Municipality is enjoined 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 be future generation."

and that land which is marked out and reserved for a park or for a ' recreational purpose could not be acquired or allotted for a building purpose, even though, housing was a public purpose.

58. In Municipal Corporation, Ludhiana and Anr. v. Balinder Bachan Singh (Dead) by LRS. and Ors., (2004)5 SCC 182 at 187, the Supreme Court held-

For every locality green spaces and green belts have to be provided to provide lung space to the residents of the locality."

59. In Bangalore Medical Trust v. B.S. Muddappa and Ors., A.I.R. 1991 SC 1902, the Supreme Court held-

"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 play grounds cannot be sacrificed 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 constitutional 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 guaranteed rights a reality for all the citizens."

and further held-

"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 urbanization. Crowded urban areas, tend to spread disease, crime and immorality."

and in para 37, held

"Public parks as a place reserved for beauty and recreation was developed in 19th and 20th century and is associated with growth of the concept of equality and recognition of importance of common man. Earlier it was a prerogative of the aristocracy and the affluent ether as a result of royal grant or as a place reserved for private pleasure. Free and healthy air in beautiful surroundings was privilege of few. But now it is a, 'gift from people to themselves'. Its importance has multiplied with emphasis on environment and pollution. In modern planning and development it occupies an important place in social ecology...."

'.....Emphasis on open air and greenery has multiplied and the city or town planning or development acts of different States require even private house-owners to leave open space in front and back for lawn and fresh air... "

.... Absence of open space and public park, in present day when urbanization is on increase, rural exodus is on large scale and congested areas are coming up rapidly may given rise to health hazard."

60. The maintenance of the open piece of land because of its historical importance and environmental necessity is oy itself a public buildings would not only congest the area but would be prejudicial to the public purpose. By allowing the construction, the residents of the area as well as other citizens of the city would be deprived of the quality of life which they are entitled to under the Constitution. The decision to construct residential buildings on the Polo Ground, in our opinion, is unfair and arbitrary and not in public interest. The military authorities have not considered this aspect of the matter.

61. In the present case, admittedly 'Polo Ground' has been in existence for almost 100 years. In Volume XXII of the District Gazetteers of the United Province of Agra and Oudh written by H.R. Nevil (1909 Edition), at page 208, while describing a place, Polo Ground has been mentioned. The passage reads as under:-

"South of the Government Press, stand a large premises of the Allahabad Bank, opposite the Polo Ground."

62. The aforesaid clearly implies, that in 1909 this piece of the land was called the Polo Ground The word 'polo' implies that the game polo was played on this ground at some stage. No doubt, since, independence, no polo has been played and this Polo Ground remained as an open piece of land. But it did not remain unused. This open land was used for multifarious functions. Since independence, this land has been used in every Lok Sabha and Vidhan Sabha election and also during the Kumbha Mela for the parking of the heavy vehicles. Over the years, this ground has been used by the civilian population for a variety of functions, such as, organizing a vintage car rally. Permission was granted by the military authorities to organize a Maruti Carnival. A religious fair is held annually by a particular section of the Society during 'Raksha Bandhan' and person from other religions offer prayer every Thursday in the 'Mazaar' located inside the Polo Ground. Therefore, it cannot be said that the land was always used for military purposes. No doubt, the land was in the Cantonment limits for the last 60 years, but before that, it was with the municipal authorities and used as a Polo Ground.

63. 'Polo Ground' borders the Municipal and the Cantonment limits. Over the years, the town has grown. Instead of expanding, the town has grown from within consuming me open spaces of land wherever found. The Civil Lines area which boasted of bungalows enclosed by acres of lawns and gardens, are now covered by residential flats and commercial buildings. Small localities within the Civil Lines area have cropped up in the last two decades on account of the Government policy in converting the lease land into free hold land. Two decades of land exploitation by colonizers have resulted in the erosion of open spaces occupied previously by lawns and gardens which have now been converted into a congested area consisting of a concrete jungle. People are living like guinea pigs in congested areas with no sewer system, inadequate drainage system resulting in water logging during the mansoon. No arrangement of safe water supply has been taken into consideration. The authorities have turned a blind eye on air and noise pollution, caused by the vehicular traffic. All these has definitely resulted in a change in the environment and consequently in the ecology.

64. Polo Ground is one of the few open spaces left in the city and in our opinion, the petitioner was right in suggesting that if the constructions are allowed, the open space which was available for the last 100 years would-be lost forever. In our view, Polo Ground was available to the citizens of Allahabad for the last 100 years initially to play Polo and, later on, for a variety of functions. Polo Ground has earned out its name in history. Why should the use of this land be changed today ? There is no reason why the said land should not remain as an open piece of land for the next 100 years. If this land has serviced the citizens by providing for an open space, clean and pure air and beautiful surroundings for the last 10 decades, there is no reason why the status quo should not continue for the next 10 decades.

65. After all, it must not be lost sight of, that today, the land in question is in the heart of the city surrounded and hedged all around by buildings. It has become all the more essential to preserve this land as an open space to provide clean and healthy air and to ensure that the area is free from pollution and other health hazards that may crop up if the constructions are raised.

66. No doubt, this piece of land has a historical value for the city of the Allahabad. It is comparable to the "maidan" of Kolkata. Imagine, permitting authorities to make construction in the 'maidan' at Kolkata or in an around the India Gate' in New Delhi.

67. We are aware that construction of residential buildings for the army is for a noble cause and is also for a public purpose and it has its own objective, but it cannot substitute a green belt. When urbanization is on the increase, the emphasis on open spaces, parks, green belts is much more and no Town Planner would prepare a residential scheme without reserving space for parks, green belts, etc.

68. In our opinion, if the residential complex is allowed to be constructed, the open space which was also acting as a green belt will vanish. Absence of green belts, open spaces, parks, etc, would create a health hazard and would have an adverse impact on the environment.

69. The learned counsel for the respondents submitted that more than 50% of the Polo Ground would be left open which will be developed as a park, therefore, the construction on a portion of the land would not have an adverse impact on the environment. The argument of the respondents, in our view, does not appeal to us. Today, if a duplex building is allowed to come up, it will have some kind of an impact on the density of the area. Tomorrow by the same reasoning, a high rise building would come up which will have a further impact on the density of the area. Therefore, it is not a question of using only a small portion of the land 1:1 question. The question is one of maintenance of the open piece of land because of its environment necessity, which in our opinion is supreme. Permitting any construction would deprive further, the quality of life to the citizens of this city.

70. Chanakya in his "Neeti Shastra" said-

R;ktsnsd dqyL;kFkZ dqya R;ktsr A

xzkae tuinL;kFksZ vkR;kFksZ i`Fkoh R;str AA

i.e., an individual be sacrificed to save a 'family', a family be sacrificed to save a village/city and a city be sacrificed to save a State.

71. Therefore, we are of the view, that the respondents, i.e., the military authorities could go ahead with their 'MAP' project on an alternative site which exist in the cantonment area.

72. In any case, the respondents have a lot of open land in the Cantonment. The petitioner in the supplementary affidavit has categorically stated that the respondents have huge expanse of open land near the Sadar Bazar, land at Teliarganj on Stanley Road between Mumfordganj and Rasoolabad (Old Cantt.) and in

and around the Mela area. Judicial notice can also be taken of the fact that large tracts of open land exist in the old and new Cantonment of Allahabad. In reply to the aforesaid, the respondents in their counter affidavit have not pleaded nor proved that Polo Ground was the only land available to them for the implementation of the project in question. In fact, according to the respondents, as per the Key Location Plan, the project had to be planned on A-1 land, and since this land in question was adjacent to the existing married accommodation, therefore, it was administratively convenient to the military authorities to propose the construction of the residential complex, since the exiting water and electricity connection would cater for the proposed construction. In our view, the approach adopted by the military authorities makes it clear, that they are only thinking about themselves and are not thinking about the futuristic environmental imbalance that may prevail on account of the proposed construction. It seems that a narrow approach has been adopted by the military authorities. They have not visualized the matter in a broader prospect keeping the whole city in mind. It is, therefore clear that the respondents have a lot of open spaces of land in the Cantonment itself which can easily be utilized in the construction of the residential accommodation for the married officers of the army. It may be stated here that the stand of the respondents that the project can only be made on A-1 land is incorrect. It is always open for the respondents to change the usage of Class-B or C land for residential purposes.

73. The Union of India may be the absolute owners of the land in question. But it cannot ignore the constitutional and statutory mandate, particularly, when it has not appraised of the relevant facts, namely, the views of the State Government, the Town Planner, Allahabad Development Authority, Nagar Nigam, the District Magistrate. Allahabad etc. and moreover when the land in question is collocated with the Civil Area and is in close vicinity of the High Court, Circuit House, etc.

74. Stoppage of construction would undoubtedly cause hardship to the military authorities, but it is a price that has to be paid for protecting and safeguarding the rights of the people to live in a "healthy environment with minimal disturbance of the ecological , balance. The Supreme Court has clearly held in Bangalore Medical Trust case [supra] that open spaces which has become the gift for the people cannot be sacrificed by converting it to some other use. Therefore, allowing the construction merely because it was administratively convenient for the military authorities, as an existing married accommodation already existed across the road, in our opinion, would be inviting congestion and consequently a health hazard. It has come on record that there is no sewer system in the Cantonment. If this is allowed, then, every development authority, municipalities and local bodies would be constructing buildings next to the existing buildings because of administrative convenience. In our view, this is not a correct approach for modern planning and expansion of the city. If the city has to grow, it should grow from outside, its municipal limits should be increased. Similar is with the cantonment. If there is shortage of space, the military authority should acquire land outside the town limits, but should not consume the existing spaces inside the city. The respondents have themselves admitted that as per the key location plan (KLP), there is a shortage of land by 1761.957 acres. If this is correct, there is no reason why the respondent should be permitted to increase the shortage of land by increasing the density of the area.

75. Before parting, we would like to add that in order to maintain an ecological balance and protecting human rights, the time has come when every city should be equipped with a disaster management plan. The Supreme Court in N.D. Jayal and Anr. v. Union of India and Ors., (2004) 9 SCC 362 at 393 held-

"Disaster management means all aspects of planning, coordinating and implementing all measures which are necessary or desirable to prevent, minimize, overcome or to stop the spread or a disaster upon the people or any property and includes all stages of rescue and immediate relief. It is a proven fact that a lot of human suffering and misery from a larger number of disasters can be mitigated by taking timely action, planning and preventive measures. It is possible onl\ through well-functioning disaster-management framework. This will enable us to minimize, control and limit the effects of disasters and will streamline the disaster-management exercises. Our present relief-centred reactive approach after the striking of disaster needs to be changed into preparedness-oriented proactive attitude. This is the aim of pre-disaster preparations. Disaster-management plans have to play an integral role in this exercise. They are blueprints for the management of disasters. The

disaster management plans should contain the aspects of disaster prevention and of ways for its management in the untoward occurrence of a disaster. A proper plan will place the disaster-management exercise on a more firm foundation."

76. In order to implement a disaster management plan it is necessary that open spaces exist in the city. These open pieces of land could be used for various purposes during an emergency. In times of floods, fire, earthquakes etc., open spaces in the city could be used to minimize and curb the human suffering caused by the natural calamities. Disaster management is an integral part of the development activities and cannot be separated from a sustainable development of the city. For a sustainable development of the city, and for a healthy growth of a city, existence of open spaces, green belt is essential. For the aforesaid reasons, it is necessary to maintain open spaces for disaster management plan.

77. Thus, in view of the aforesaid, we are of the view that the land in question known as 'Old Polo Ground' measuring approximately 22.77 acres of land, should not be used for the residential construction for the married accommodation project for the married officers of the Army. The respondents have other large tracts of open land in the Cantonment which could be easily utilized for the construction of 48 dwelling units proposed under MAP on the Old Polo Ground in the Civil Lines area of the city of Allahabad. The existing piece of land which is the lungs of the city should be preserved as such. Consequently, a writ of mandamus is issued to the respondents, restraining them from making any construction on the Polo ground in question and to maintain it as an open piece of land.

78. The respondents had dug up the land at a few places, in the Polo Ground and the same was stopped on account of an interim order passed by this Court. Since we have restrained the respondents from making any constructions, we further direct the respondents to restore the land to its original shape within three months from today.

79. The writ petition stands allowed with the directions as given above. In the circumstances of the case, there shall be no order as to cost.