Express Newspapers Pvt. Ltd. and Others

Vs

Union of India and Others

Writ Petitions Nos. 535-39 of 1980

(R. B. Misra, A. P. Sen, E. S. Venkataramiah JJ)

07.10.1985

JUDGMENT

A. P. SEN, J. -

1. These petitions under Article 32 of the Constitution are by petitioner 1, the Express Newspapers Pvt. Ltd., which is company incorporated under the Companies Act, 1956 engaged in the business of printing and publishing the national newspaper the Indian Express (Delhi Edition) from the Express Buildings at 9-10, Bahadurshah Zafar Marg, New Delhi, held on a perpetual lease from the Union of India under a registered indenture of lease dated March 17, 1958. It is a wholly owned subsidiary of petitioner 2, the Indian Express Newspapers (Bombay) Pvt. Ltd. of which petitioner 3 Ram Nath Goenka is the Chairman of the Board of Directors. Petitioner 4 Nihal Singh was the then Editor-in-Chief of the Indian Express and petitioner 5 Romesh Thapar was the Editor of the Seminar published from the Express Buildings.

1-A. Respondent 1 is the Union of India, 2 is Jagmohan, Lt. Governor of Delhi, 3 the Municipal Corporation of Delhi, 4 the Zonal Engineer (Buildings), 5 the Land & Development Officer, etc.

2. The petitioners challenge the constitutional validity of a notice of re-entry upon forfeiture of lease issued by the Engineer Officer, Land & Development Office, New Delhi dated March 10, 1980 purporting to be on behalf of the lessor i.e. the Government of India, Ministry of Works & Housing, New Delhi. The said notice required petitioner 1, the Express Newspapers Pvt. Ltd., New Delhi to show cause why the Union of India should not re-enter upon and take possession of the demised premises i.e. plots Nos. 9 and 10, Bahadurshah Zafar Marg together with the Express Buildings built thereon under Clause 5 of the aforesaid indenture of lease dated March 17, 1958 for the alleged breach of Clause 2(14) and 2(5) of the lease-deed. They also challenge the validity of an earlier notice dated March 1, 1980 issued by the Zonal Engineer (Buildings), Municipal Corporation, City Zone, Delhi to petitioner 1, the Express Newspapers Pvt. Ltd., New Delhi to show cause why the aforesaid buildings being unauthorized should not be demolished under Sections 343 and 344 of the Delhi Municipal Corporation Act, 1957.

3. The petitioners allege that the impugned notices of re-entry upon forfeiture of lease and of threatened demolition of the Express Buildings at Bahadurshah Zafar Marg, New Delhi which constitute the nerve-centre of the newspaper the Indian Express which has the largest combined circulation among all the daily newspapers in India and is tublished simultaneously from eleven cities in the country, are wholly mala fide and politically motivated. They further allege that the impugned notices constitute an act of personal vendetta against the Express Group of Newspapers in

general, and Ram Nath Goenka, Chairman of the Board of Directors in particular, and are violative of Articles 14, 19(1)(a) and 19(1)(g) of the Constitution. We are informed that a teleprinter is installed at the Express Buildings at Bahadurshah Zafar Marg from where the Delhi edition of the Indian Express is published and the editorials, editorial policies and leading articles are transmitted to ten cities all over India from where the other editions of the Indian Express are published simultaneously every day, namely, Ahmedabad, Bangalore, Bombay, Chandigarh, Cochin, Hyderabad, Madras, Madurai, Vijayawada and Vizianagaram.

4. The issues raised in this case are far-reaching in significance to the maintenance of our federal structure of Government. It necessarily involves a claim by the Lt. Governor of Delhi that he has the power and authority to administer properties of the Union of India within the Union Territory of Delhi which he is called upon to administer. The questions presented are whether the Lt. Governor to Delhi could usurp the functions of the Union of India, Ministry of Works and Housing and direct an investigation into the affairs of the Union of India i.e. question the legality and propriety of the action of the then Minister for Works & Housing in the previous Government at the Centre in granting permission to the Express Newspapers Pvt. Ltd. to construct the new Express Building with an increased FAR of 360 with a double basement for installation of a printing press for publication of a Hindi newspaper on the western portion of the demised premises i.e. plots Nos. 9 and 10, Bahadurshah Zafar Marg, New Delhi with the Express Buildings built thereon.

5. The Lt. Governor asserts that he has the power and authority to administer the properties of the Union of India in the Union Territory of Delhi. The further question is whether the grant of sanction by the then Minister for Works & Housing and the consequential sanction of building plans by him of the new Express Building was contrary to the Master Plan and the Zonal Development Plans framed under the Delhi Development Act, 1957 and the Municipal Bye-laws, 1959 made under the Delhi Municipal Corporation Act, 1957 and therefore the lessor i.e. the Union of India had the power to issue a notice of re-entry upon forfeiture of lease under Clause 5 of the indenture of lease dated March 17, 1938 (sic) and take possession of the demised premises together with the Express Buildings built thereon and the Municipal Corporation had the authority to direct demolition of the said buildings as unauthorized construction under Sections 343 and 344 of the Delhi Municipal Corporation Act, 1957. The ultimate question is whether the threatened action which the petitioners characterise as arbitrary, illegal and irrational was violative of Article 19(1)(a) read with Article 14 of the Constitution.

History of the matter :

FACTS OF THE CASE.

6. The facts are somewhat involved and present a feature which is rather disturbing. It would be convenient to set forth the facts relating to the impugned notices.

7. Put very briefly, the essential facts ar these. On February 17, 1980, respondent 2 Jagmohan assumed office as the Lt. Governor of Delhi. That very evening which was a Sunday, he summoned the Commissioner of the Municipal Corporation of Delhi and called for the files relating to the construction of the new Express Building at Bahadurshah Zafar Marg, New Delhi. On the next day i.e. on the 18th morning, the files relating to the grant of sanction for the construction of the same were made available to him. On February 20, 1980, some important files of the Delhi Development Authority relating to the Express Buildings were sent to respondent 2. On February 29, 1980, respondent 2 though the Commissioner, Municipal Corporation of Delhi caused the locks of the

office and cupboards of the Zonal Engineer (Buildings) to be broken open to take away the files relating to the new Express Building. Immediately thereafter i.e. on March 1, 1980 respondent 2 convened a press conference in which he handed over a press release alleging that the new Express Building put up by the petitioners was in contravention of law in several respects. The press release stated inter alia that :

> (1) The Government had been receiving complaints that additional space was sanctioned to the Indian Express Buildings in total disregard of the provisions of the Master Plan, zonal regulations and Municipal Corporation Bye-Laws.
>
> (2) The Lt. Governor has ordered an inquiry into the grant of sanction of the building plans in January 1979 by the Municipal Corporation for the construction of the new Express Building and had entrusted the inquiry to a committee of three of his subordinate officials.
>
> (3) The committee had been asked to submit its report within three days and the authorities of the DDA and the MCD had been separately directed to extend all co-operation to the committee and make available all relevant files and connected papers.
>
> (4) The Commissioner of the MCD had been separately advised to take immediate action in regard to the unauthorized deviations made from the sanctioned plan in the construction of the new Express Building.

The Lt. Governor also held out a threat at the press conference that the new Express Building might have to be demolished. The holding of the press conference was broadcast over All India Radio within an hour and within two hours the Delhi Doordarshan telecast the same and read out the contents of the press release. It also exhibited the film both of the press conference as well as of the new Express Building.

8. On the same day i.e. on March 1, 1980, although the relevant files had been removed from his office, the Zonal Engineer (Buildings), City Zone, Municipal Corporation served a notice on petitioner 1 the Express Newspapers Pvt. Ltd. to show cause why action should not be taken for demolition of the Express Buildings under Sections 343 and 344 of the Delhi Municipal Corporation Act, 1957. It read as under :

> #Number 79/B/ua/cz/80-XXIII Dated March 1, 1980.##

You are hereby informed that on your property situated at Bahadurshah Zafar Marg bearing numbers 9 and 10, you have started unauthorized construction of excess basement beyond sanction and construction of upper basement without sanction as shown red in the sketch below.

Therefore, I, L.S. Pal, Zonal Engineer (Buildings) as authorized by the Commissioner under D.M.C. Act, 1957 vide Section 49 to serve upon you notice and call upon you to appear in my office within three days of the receipt of this notice during office hours with all relevant records and documents relating to the above construction to explain as to why under sub-clause (1) of Clause 343 as to issuing for demolition of unauthorized construction should not be issued.

Please further note under sub-clause (1) of Clause 344 you are ordered to stop construction work on this land failing which under sub-clauses (2) and (3) action will be taken against you and the

construction will be demolished at your risk and cost.

> # Sd. L.S. Pal Zonal Engineer (Buildings) Office Address : City Zone, Municipal Corporation, Delhi.##

Served on :

> M/s Indian Express Newspapers (P) Ltd., 9/10, Bahadurshah Zafar Marg, Delhi.

Three days after i.e. on March 4, 1980, a second press release was issued from the Raj Nivas, the official residence of respondent 2. It was sent by a special courier to all newspaper offices to justify the action of respondent 2 in initiating an inquiry and the mode that had been prescribed for holding the inquiry. It stated :

> In regard to the unauthorized deviations from the sanctioned plan and construction of about 23,000 sq. ft. in the lower basement and upper basement, the spokesman indicated that the show-cause notice had been issued by the Corporation authorities. Further action would be taken in the light of the reply received by the party concerned.

9. Again, the issue of the show-cause notice figured in the third press release dated March 8, 1980 wherein under the heading "Additional Construction in the Indian Express Buildings" the above extract was repeated verbatim. Respondent 2 in his counter had asserted that the show-cause notice was issued by the Commissioner in accordance with his statutory functions after verification of the allegations. However, it is asserted that respondent 2 being responsible for administration of the Union Territory of Delhi was obliged to ask all the authorities concerned to prevent violation of lease by any person or institution. Whereas the files of the Corporation were summoned by respondent 2 before the press conference on March 1, 1980, the files of the Ministry of Works & Housing were summoned by him in the first week of March 1980. It is admitted by the Ministry of Works & Housing that the said files were made available to respondent 2 on March 7, 1980. On March 7, 1980, the Land & Development Officer acting as part of the overall plan of respondent 2 issued a notice of re-entry upon forfeiture of the lease signed by the Engineer Officer in the Land & Development Office under the Ministry of Works & Housing purporting to act for and on behalf of the President of India under Clause XIX of the agreement of lease alleging that there were breaches in contravention of clause (11) of the agreement for lease dated May 26, 1954. This notice was later withdrawn because it was realized that forfeiture of the lease had to be with reference to the registered indenture of lease dated March 17, 1958 and not under Clause XIX of the agreement for lease of 1954. On March 10, 1980, the Engineer Officer in the Land & Development Office issued a notice in supersession of the said notice dated March 7, 1980 in these terms :

> # Regd. A.D. No. L. II. 10(2)/76 Government of India Ministry of Works & Housing Land & Development Office, Nirman Bhawan. New Delhi, dated March 10, 1980.ToThe Manager,Express Newspapers Ltd.,Post Box No. 751,Express Building,Bahadurshah Zafar Marg,New Delhi.Sub : Premises situated at plot Nos. 9 & 10, Delhi-Mathura Road, New Delhi.##

Dear Sir,

I am to inform you that you have started the construction of additional block on the land to be kept open without taking the permission from the lessor under the terms of lease nor the plans were

submitted by you for the sanction under the terms of lease by the lessor for the construction of multi-storeyed building over open plot which is in contravention of Clause 2(14) and 2(5) of the lease-deed.

You are, therefore, hereby requested to show cause within 30 days from the date of receipt of this letter as to why the property should not be re-entered under Clause 5 of the perpetual lease.

Please take notice that if no satisfactory cause is shown within the stipulated period as referred to above, action to re-enter upon the premises will be taken against you without any further reference to you.

This is in supersession of this office letter of even No. dated March 7, 1980.

Yours faithfully,

Sd. R.S. Sibal, Engineer Officer For & on behalf of the President of India. Tele : 388727.##

10. On March 12, 1980 at a specially convened press conference, respondent 2 released the report of the Committee of his subordinates. The Committee in its report substantiated the allegations which respondent 2 had aired at his press conference on March 1, 1980 and through the press release dated March 4, 1980 and among other findings recorded that the Express Newspapers Pvt. Ltd. was liable to pay Rs 35 lacs as conversion charges. From the report it appears that the Land & Development Officer had been functioning in close coordination with respondent 2 as is evident from the following extract from the report of the three-member Committee :

The representative of Land & Development Officer who was present at the site was directed by the Committee to take measurement of the new constructions. But the measurement could not be completed before the Committee left the site. Therefore, the representative of Land & Development Officer was asked to complete the measurement by March 10, 1980.

It is clear that there had been no application of mind by the Engineer Officer in issuing the show-cause notice.

11. The recital of these events clearly shows that respondent 2 displayed great zeal in causing a probe into the manner in which sanction was granted by the then Ministry for Works & Housing for the construction of the new Express Building with an increased FAR of 360 with a double basement for installation of a printing press and the entire administration was geared into action with lighting speed so as to ensure that some action or other was taken against the Express Newspapers Pvt. Ltd. This is evident from the fact, for instance, that he gave the three-member Committee only three days to examine questions which, if they were properly scrutinized, would require inspection of the records from the year 1949 onwards of at lease six agencies viz. Ministry of Works & Housing, Land & Development Office in the Ministry of Works & Housing, New Delhi Municipal Committee, Municipal Corporation of Delhi, Delhi Water Supply and Sewage Disposal Undertaking and the Union of India. He not only constituted a Committee of subordinates to go into the affairs of the Union of India, Ministry of Works & Housing but also procured the files of the Central Government. The Ministry of Works & Housing apparently made available to the said Committee all the relevant files of the Government pertaining to the new Express Building. There was no confidentiality maintained. Without the express authorization of the Government of India, respondent 2 published the minutes of the proceedings of the Government. After the submission of the report by the three-member Committee, he on March 14, 1980 addressed a letter to the then

Minister for Works & Housing to the effect :

CONFIDENTIAL D.O. No. 60/LG/80 March 14, 1980.##

Dear Shri P.C. Sethi,

I am enclosing for you information, a copy of the Enquiry Report in respect of the Indian Express Building. Some action may be necessary at the Ministry's end.

I am seeking legal opinion to ascertain as to what action can be taken at this stage to salvage the situation created by irregularities and illegalities committed in this case. I will write to you further in the matter.

With kind regards,

Yours sincerely,

Sd. Jagmohan.##

Shri P.C. Sethi, Minister for Works & Housing, Nirman Bhawan, New Delhi.

Encl. : Enquiry Report

From the tenor of the letter it is difficult to imagine that the Lt. Governor could address such a letter to a Union Minister. On the same day, the Lt. Governor also addressed a letter on similar terms to the Vice-Chairman, Delhi Development Authority and the Commissioner, Municipal Corporation of Delhi.

Execution of agreement for lease dated May 26, 1954 : Allotment of plots Nos. 9 & 10, Bahadurshah Zafar Marg to Express Newspapers Pvt. Ltd.

12. By an indenture styled as an "agreement for lease" executed on May 26, 1954 between the late Feroze Gandhi, Managing Director, Express Newspapers Pvt. Ltd. of the one part and the Secretary (Local Self-Government) of the Chief Commissioner of Delhi "by the orders and directions of the President of India" of the other part, the Express Newspapers Pvt. Ltd. were allotted plots Nos. 9 and 10, Bahadurshah Zafar Marg in terms of the intended lease entered into between the parties on November 17, 1952, pursuant to the allotment of the said plots to the Express Newspapers Pvt. Ltd. for construction of a four-storeyed building meant to be used for a newspaper, installation of a printing press therefor on the ground floor with residential accommodation for the staff on the top. Incidentally, the Central Government had in the year 1949 demarcated the press area along the Bahadurshah Zafar Marg consisting of 10 plots - plots Nos. 1 to 10 known as the Press Enclave as a commercial complex for allotment to the press viz. to various newspapers like the Indian Express, Times of India, Patriot, National Herald etc. These other newspapers like the Times of India, Patriot, National Herald were also granted similar plots on the same conditions and were allowed to build on the entire area of their respective plots without any restrictions whatsoever. The petitioners' case is that the Express Newspapers Pvt. Ltd. was first allotted plots Nos. 1 and 2 but later at the request of Pandit Jawaharlal Nehru, the Prime Minister of India, it accepted instead plots Nos. 9 and 10 as the Government required plots Nos. 1 and 2 for construction of the Gandhi Memorial Hall, known as the Pearey Lal Bhawan.

Preliminary work of construction of the Express Buildings : Discovery of underground sewer line : Execution of fresh lease agreement dated November 19, 1957.

13. While the preliminary work of construction was started by the Express Newspapers Pvt. Ltd. on the basis of the aforesaid agreement, an underground sewer line was found to be running diagonally across plots Nos. 9 and 10. Thereupon, the parties entered into negotiations for modification of the said agreement. It was agreed between the parties that in view of the underground drain running through the plots, the Express Buildings would be constructed only to the east of the drain and in such a way as to leave the drainage system unaffected i.e. till the drain was diverted. The Express Newspapers Pvt. Ltd. was thus disabled from building on a substantial part of the land allotted to it until the underground drain was realigned outside the boundary of the two plots. In effect, an area of 2740 square yards to the west of the drain had to be left open as residual plot of the land out of a total area of 5703 square yards. The agreement was embodied in a document styled as a lease agreement executed between the parties on November 19, 1957 so as to protect the underground sewage drain and restrict the construction of the building to the east of the drain.

14. On April 11, 1956, J.N. Ambegaokar, Under-Secretary to the Government of India, Ministry of Works & Housing addressed a letter to the Express Newspapers Pvt. Ltd. to the following effect;

I am directed to state that the allotment of land to the Indian Express Newspapers on the Delhi-Mathura Road, New Delhi, has been revised on the following basis : (i) 2965 sq. yards to the east of pipeline at the rate of Rs 1,25,000 per acre plus 2 1/2% annual ground rent thereon; (ii) 2740 sq. yards to the west of the pipeline at the rate of Rs 36,000 per acre plus 2 1/2% per acre annual ground rent thereon. In addition to the premium as indicated above, the following amount should also be recovered : (a) 50% of the ground rent of Rs 2424 (at the rate of 2 1/2% of the total premium of Rs 96,955) per annum for the period from November 17, 1952 the date of original allotment to January 14, 1956 - Rs 3838, (b) an advance ground rent for 1 1/2 years at the rate of Rs 2424 per annum - Rs 3636.

15. The revised allotment was subject, among others, to the following conditions :

> The area of the west of the pipeline as mentioned in para 1(ii) of this letter should be maintained as an open space i.e. as lawns, paths or parking ground. The lessor shall have the right to construct and maintain another sewer line along this land, if necessary.

16. The letter went on to say that necessary instructions had been issued to the Chief Commissioner of Delhi in that behalf with a request that the Express Newspapers Pvt. Ltd. should get in touch with the Land & Development Office, New Delhi for taking possession of the land. It would appear from the letter that the Ministry of Works & Housing permitted the Express Newspapers Pvt. Ltd. to construct on plots Nos. 9 and 10 to the east of the sewer line with a corresponding reduction in the amount of premium and ground rent for the area west of the sewer line as compared to the amount chargeable to the area east of the sewer line.

Execution of the indenture of lease dated March 17, 1958 and the terms thereof.

17. By a registered indenture of lease dated March 17, 1958 executed between the President of India of the one part and the Express Newspapers Pvt. Ltd. of the other part, the Chief Commissioner of Delhi "under the instructions of the Government of India relating to the disposal of building sites in

the new Capital of India" demised on behalf of the Union of India in perpetuity the nazul land described therein in consideration of payment of a premium of Rs 96,955 admeasuring 1.179 acres or thereabout being plots Nos. 9 and 10, Bahadurshah Zafar Marg on payment of the yearly rent of Rs 1212 stipulated therein for the period November 17, 1952 to January 14, 1956 and thereafter at the rate of Rs 2424 per annum. The lease-deed inter alia provided as per Clause 2(4) that the lessee shall keep to the satisfaction of the Chief Commissioner the area to the west of the sewer line running diagonally on plots Nos. 9 and 10 from north-west to south-west admeasuring 2740 sq. yards as green i.e. as open space on which no building activity was permitted. The petitioners were charged premium at two different rates of the leasehold premises. The premium charged was at Rs 36,000 per acre for the area west to the sewer line and for the remaining portion, i.e. to east the of the sewer line on which construction of the building was permitted, the price of the land was fixed at Rs 1,25,000 per acre. It may be mentioned that the above perpetual lease was executed by Assistant Secretary (Local Self-Government) to the Chief Commissioner, Delhi by the order and direction of the President of India. Likewise, the earlier agreement dated November 19, 1957, so also the supplementary agreement of May 26, 1954 to which we shall presently refer, were executed by the said officer in the same manner. Both the agreements stipulated (under Clause V of both) that the rules, regulations and bye-laws of the Municipal Corporation of Delhi relating to buildings which may be in force from time to time shall be conformed by the lessee.

18. On November 17, 1964, a supplemental lease was executed between the President of India and the Express Newspapers Pvt. Ltd. allowing the permanent change of user in respect of one lac square feet of the total accommodation of one and a half lac square feet i.e. two-third of the total accommodation in the Express Buildings for general office use, commercial or otherwise, i.e. allowing the petitioners to sublet up to two-third of the floor area of the Express Buildings in lieu of payment of a sum of Rs 2,23,875 by them to the Union of India, the lessor, as an additional premium and in consideration of their covenant to pay additional ground rent of Rs 5746.88 p. per annum for the land demised over and above the rent reserved by the perpetual lease. The recital in the deed was to the effect :

> The lessor doth hereby permit the lessee to use 1,00,000 (one lac) sq. feet out of the total accommodation of 1,50,000 (one and half lac) sq. ft. in the said Express Newspapers Building for general office use commercial or otherwise, excluding commercial ventures like hotel, cinema, restaurant etc. and subject to the other provisions and conditions mentioned in Clause 7 of the said lease.

Provided further that the lessee shall all along continue to use at least 50,000 (fifty thousand) sq. feet of the accommodation in the said Express Newspaper Building for the use of press/presses, office/offices of its newspaper, publications and other ventures.

And that :

> And this indenture further witnesseth that in consideration of the premises, the lessee doth hereby covenant to the lessor that the lessee will pay an additional ground rent of Rs 5746.88 p. per annum as and from the 15th day of January, 1960 over and above the ground rent reserved under the said principal lease to be paid by equal half-yearly payments from the 15th day of July each year as provided in the said principal lease deed.

The effect was that the lessor i.e. the Union of India, Ministry of Works & Housing permitted

permanent change of user of the existing Express Building by the Express Newspapers Pvt. Ltd. in respect of 1,00,000 sq. ft. of total accommodation and it was permitted to let out 75,000 sq. ft. of the surplus accommodation with them to the State Trading Corporation for a period of 3 years from February 1, 1960 at the rate of Rs 60 per month per 100 sq. ft. with liberty to the State Trading Corporation to sublet any part of the area over and above its own needs.

19. At the time of construction of buildings in the press area, there were no restrictions as to the FAR permissible along the Bahadurshah Zafar Marg, also known as the Mathura Road Commercial Complex, and the only restriction on construction of buildings in that area was that the allottees of the plots in the press area should construct buildings up to a height of 60 feet. Under the agreement of lease dated May 26, 1954, the Express Newspapers Pvt. Ltd. was allowed to build upon the entire area of the plots in question being plots Nos. 9 and 10 with a ground coverage of 100% i.e. edge-to-edge, a structure with a minimum of five storeys including the ground floor for the purpose of installation of a printing press for publication of a Hindi newspaper. This permission was granted in response to the plans submitted by the Express Newspapers Pvt. Ltd. and approved in writing by the Chief Commissioner of Delhi acting for and on behalf of the lessor i.e. the Union of India. Such plans as approved permitted construction by the Express Newspapers Pvt. Ltd. of a building on the entire area of plots Nos. 9 and 10 with 100% ground coverage in conformity with the said agreement. Pursuant thereto, the Express Newspapers Pvt. Ltd. constructed the old Express Building to the east of the sewer line with an FAR of 260 with reference to the entire plot leased to it i.e. plots Nos. 9 and 10 although the building occupied only half of the area. After completion of the old Express Building to the east of the sewer line on March 14, 1958, the perpetual lease was executed on March 17, 1958, as already stated. The aforesaid supplemental lease was also executed on November 17, 1964 permitting change of user i.e. enabling the Express Newspapers Pvt. Ltd. to sublet two-third of the accommodation available with it.

20. At no stage did the Central Government go back upon their solemn commitment embodied in the agreement of lease dated May 26, 1954 under which the Express Newspapers Pvt. Ltd. was entitled to construct a four-storeyed Express Building on the entire area of plots Nos. 9 and 10. They continued to recognize the right of the Express Newspapers Pvt. Ltd. to revert to the terms and conditions thereof as soon as the obstacle to further construction thereto that had been discovered, unknown to the parties that there was an underground sewage drain running through plots Nos. 9 and 10 diagonally, was removed. In particular, they continued to recognize the right of the petitioners to build on the land kept as open space to the west of the sewer line, once the drain was diverted. This would be evident from the two facts :

> (1) The Union of India being the lessor left with the Express Newspapers Pvt. Ltd. the area to the west of the drain on a reduced premium because it had to be kept as an open space for protection of the drain. And
>
> (2) While nazul plots that are to be left open are valued at Rs 4840 per acre and ground rent is assessed accordingly, the area to the west of the drain was assessed at Rs 36,000 per acre implying thereby that it was not an area to be kept vacant in perpetuity.

Constitutional Instruments relating to property of the Union in the Union Territory of Delhi.

21. On November 3, 1958 the President of India in exercise of his powers conferred by clause (2) of Article 77 of the Constitution issued the Authentication (Order and Other Instruments) Rules, 1958

relating to, and dealing with, the conduct of business of the Government of India. In terms of the said Rules, all Secretaries of the Ministries concerned were authorized to authenticate documents on behalf of the Government of India. On November 6, 1959 all functions relating to administration of leases of Government lands in Delhi were transferred from the Chief Commissioner of Delhi (Local Self-Government) to the Ministry of Works & Housing. On January 18, 1961 the President in exercise of the powers under Article 77(3) of the Constitution made the Government of India (Allocation of Business) Rules, 1961. Rule 2 provided that the business of the Government of India shall be transacted in the Ministries, Departments, Secretariat and Offices specified in the First Schedule to the Rules. Rule 3 laid down that the distribution of subjects among the departments shall be as specified in the Second Schedule. Rule 4 enjoined that the President may on the advice of the Prime Minister allocate the business of the Government of India among Ministers by assigning one or more departments to the charge of a Minister. The Ministry of Works, Housing and Supply is specified in the First Schedule at Serial No. 19. Under the Second Schedule, the distribution of subjects in the Ministry of Works, Housing and Supply is allocated. Entries 1, 6 and 23(a) and (1) come under the Ministry of Works, Housing and Supply and read as under :

> 1. Property of the Union (not being Railway, Naval, Military or Air Force works or being the property of the Department of Atomic Energy) except (i) buildings, the construction of which has been financed otherwise than from the civil works budget and (ii) buildings, the control of which has at the time of construction or subsequently, been permanently made over by the Ministry of Works, Housing and Supply to another Ministry.
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> 6. Allotment of Government lands in Delhi.

23. Administration of the Ministry and attached and subordinate organisations, namely :

> (a) Central Public Works Department;
>
> #* * * *##
>
> (1) Land & Development Office.

In terms of the aforesaid Entries 1, 6 and 23(a) and (1), all matters relating to the properties of the Union including allocation of Government lands in Delhi and the administration of the Land & Development Office were exclusively vested in the Ministry of Works, Housing and Supply, later the Ministry of Works & Housing.

22. Under Article 299(1) of the Constitution, the President issued a notification No. GSR 585 dated February 1, 1966 in supersession of the earlier notification No. 1161 dated December 1, 1958. The Land & Development Officer under Entry XXI, Item 7 was authorized to execute contracts and assurance of property relating to matters falling within the jurisdiction of the Land & Development Office. The relevant Entry reads :

> 7. In the case of Land & Development Office :
>
> (i) All contracts and assurances of property relating to matters falling within the jurisdiction of Land & Development Officer;
>
> (ii) All contracts, deeds and other instruments relating to or for the purpose of

enforcement of the terms and conditions of the sale/lease-deeds of the Government-built property in Delhi/New Delhi :

(iii) Auctioneering agreements, bonds of auctioneers and security bonds for the due performance of work by the auctioneers.

However, by an overriding provision contained in Entry XLI, it was laid down that "notwithstanding the previous authorizations, any contract or assurance of property relating to any matter whatsoever may be executed by the Secretary, Special Secretary, Additional Secretary, Joint Secretary or Deputy Secretary to the Central Government in the appropriate Ministry or Department". In terms of the Allocation of Business Rules of the Government of India, the Ministry of Works & Housing was the appropriate authority for dealing with matters relating to lease of Government lands and in terms of the aforesaid notification No. GSR 585 issued under Article 299(1), the Secretary, Additional Secretary, Joint Secretary, Deputy Secretary and Under-Secretary in the Ministry of Works & Housing were authorized to execute such contracts in the name of the President of India. It cannot therefore be doubted that the Ministry of Works & Housing with the Minister at the head was and is the ultimate authority responsible for the following items of work, viz. "Property of the Union, Town & Country Planning, Delhi Development Authority, Master Plan of Delhi, Administration of Delhi Development Act, 1957, the Land & Development Office dealing with administration of nazul lands in the Union Territory of Delhi".

23. The Ministry of Works & Housing was and also is the ultimate authority in respect of the powers, functions and duties of the Delhi Development Authority as well as the Municipal Corporation of Delhi, including that of the Delhi Water Supply and Sewage Disposal Committee of the Municipal Corporation of Delhi.

Statutory changes subsequently brought about in Delhi.

24. It is common ground that the Delhi Development Act, 1957 is the paramount law on the subject viz. implementation of the Master Plan, Zonal Development Plan and Building Regulations, and overrides the Delhi Municipal Corporation Act, 1957. The Delhi Development Act came into force on December 30, 1957. The provisions of the Delhi Municipal Corporation Act were brought into force on different dates. Section 2 which is the definition clause, Chapter II relating to the constitution of the Corporation and some other provisions were brought into force w.e.f. January 2, 1958, Section 512 on February 15, 1958 and the remaining provisions including Chapter XIV relating to building regulations were brought into force on April 7, 1958. On September 10, 1962 the Central Government approved the Master Plan for Delhi, prepared by the Delhi Development Authority under Section 7 of the Delhi Development Act. The Master Plan makes specific regulations for commercial areas and especially for already built-up commercial areas i.e. walled city of Old Delhi. But the press area on the Mathura Road Commercial Complex although specified as a commercial area is not listed in the list of already built-up commercial areas which relate to the walled city of Old Delhi. On November 26, 1956 the Central Government approved the Zonal Development Plan for D-II area prepared by the Delhi Development Authority under Section 8 of the Act within which the press plots are located. It provided for an FAR of 400 for the press area in the Bahadurshah Zafar Marg.

25. The material on record discloses that the construction of the new Express Building with an increased FAR of 360 with a double basement was in conformity with Clause 2(5) and 2(14) of the perpetual lease-deed dated March 17, 1958 inasmuch as it was with the express sanction of the

lessor i.e. the Union of India. It is also quite clear that Sikander Bakht, the then Minister for Works & Housing was throughout guided by the officials of the Ministry, particularly the Secretary, Ministry of Works & Housing, who was the competent authority to act for the President with regard to any contract, grant or assurance of property of the Union relating to any manner whatsoever in relation thereto by virtue of the notification issued by the President under Article 299(1) and further that the grant of such permission was after the matter had been dealt with at all levels and was in conformity with the orders of the then Vice-Chairman, Delhi Development Authority dated October 21, 1978 as one under "special appeal".

26. After the formation of the Janata Government at the Centre on March 22, 1977 the Express Newspapers Pvt. Ltd. moved for the removal of the legal impediment for the construction of the Express Building to the west of the sewer line first by moving the Municipal Corporation of Delhi for shifting of the sewer line outside plots Nos. 9 and 10 and secondly, by moving the lessor i.e. the Union of India, Ministry of Works & Housing for grant of requisite sanction to construct the new Express Building with an FAR of 400. On October 7, 1977 it wrote a letter to the Chief Engineer, Delhi Water Supply & Sewage Disposal Undertaking, Municipal Corporation of Delhi to inquire whether it was possible to realign the underground sewer line so that it would run outside their premises and were duly informed that the sewer line could be so shifted. Accordingly on October 25, 1977 the Express Newspapers Pvt. Ltd. addressed a letter to the Secretary, Ministry of Works & Housing saying that additional construction on the western portion of plots Nos. 9 and 10 leased out was possible after the sewer line was shifted and that they were in need of a larger amount of space because they wanted to start a Hindi newspaper and were also in need of an additional basement where the printing press would be located. It was pointed out that because of the underground sewer line running across these plots, no construction could be undertaken above the sewer line as they had to leave a safety distance of 25 ft. parallel to the same and thus the built-up area available to them was almost reduced to half i.e. 2963 sq. yards while other presses in the area like the Times of India, National Herald, Patriot etc. were able to build over the entire extent of their respective plots. It accordingly requested the lessor i.e. the Union of India, Ministry of Works & Housing for permission to construct on the open space admeasuring 2740 sq. yards on the western side of plots Nos. 9 and 10 indicating the permissible built-up area as also the terms on which the additional space could be so utilized. A copy of the letter was marked to the Land & Development Office, Ministry of Works & Housing. On November 3, 1977 the Secretary instructed the Joint Secretary to call a representative of the Express Newspapers Pvt. Ltd. and the Land & Development Officer and evolve a solution. The Joint Secretary (Delhi Division) directed the Under-Secretary (Land Division) to do the needful. Incidentally, the Ministry has two separate divisions, the Delhi Division and the Land Division, both working under the control of the Joint Secretary (Delhi Division). Delhi Division deals with matters pertaining to the Delhi Development Authority and Urban Development while the Land Division deals with matters relating to allotment of Government lands and administration of lease. It follows that the Delhi Division was competent to deal with matters relating to construction of the new Express Building including the permissible FAR and the grant of permission to the lessor under the lease and the question of payment of additional premium etc. had to be dealt with by the Delhi Division.

27. Accordingly, on November 14, 1977, R.K. Mishra, General Manager and authorized representative of Express Newspapers Pvt. Ltd. waited on the Under-Secretary (Land Division), Ministry of Works & Housing and was verbally informed that the requisite permission of the lessor could be sought after the building plans were approved by the Municipal Corporation of Delhi and it was then that they should seek the approval of the lessor and at that time the Ministry would intimate what additional premium, if any, was payable. The Under-Secretary also recorded a note to

that effect. Thereafter on December 7, 1977 petitioner 3 Ram Nath Goenka addressed a letter to Sikander Bakht, the then Minister for Works & Housing drawing his attention to the aforesaid meeting where the representative of Express Newspapers Pvt. Ltd. had been intimated that they should first submit their building plans to the Municipal Corporation of Delhi and thereafter seek permission of the lessor which would advise them of the amount of premium payable for the change of user. He requested the Minister to issue necessary instructions directing that the plots in the press area should be treated as commercial complex which entitled the plot-holders to build over the entire area of the respective plots subject to the restriction of a height of 60 ft. as stipulated in 1951 without any restriction as to the area of various floors. There followed a meeting in the Ministry of Works & Housing on December 20, 1977 when the General Manager of Indian Express and an official of the Delhi Development Authority were present and the extent of FAR permissible was specifically discussed. This was followed by a letter of the General Manger dated December 23, 1977 to the Secretary, Ministry of Works & Housing in which he referred to the meeting where it was felt that although the press area was not expressly mentioned in the Master Plan, it would still fall under the general description of "other commercial areas" where only an FAR of 300 was permissible and that it would be so despite the fact that no such limitation existed when the press complex was established. He referred to the letter of Ram Nath Goenka dated December 7, 1977 to the Minister wherein permission to build on the entire area of the plots in question was sought. A copy of the letter was endorsed to the Minister. On December 30, 1977 the Chief Engineer, Delhi Water Supply & Sewage Disposal Undertaking wrote a letter to R.K. Mishra, General Manager, Indian Express stating that it would cost Rs 2.5 lacs to divert the sewer line and that the completion of work would take about five months after the deposit was made. This was in reply to the letter sent by Express Newspapers Pvt. Ltd. on October 12, 1977. Accordingly, the Express Newspapers Pvt. Ltd. on December 31, 1977 wrote to the Deputy Secretary, Ministry of Works & Housing that the Municipal Corporation of Delhi i.e. the Delhi Water Supply & Sewage Disposal Undertaking had indicated that the underground drain could be shifted so that it would run outside the leasehold premises and therefore there should be no objection to the construction of the new Express Building, and requested the Ministry for advice on the FAR permissible for the said building.

28. According to the note recorded by the Minister on the margin of the letter of petitioner 3 Ram Nath Goenka dated December 7, 1977, instructions were to be issued to the Delhi Development Authority to examine the question. On January 7, 1977 J.B. D'Souza, Secretary, Ministry of Works & Housing recorded a detailed note and put it up to the Minister. It appears that he discussed the case with the Minister on the 7th and explained to him that the Express Newspapers Pvt. Ltd. had already used up an FAR of 260 with reference to their leasehold premises i.e. plots Nos. 9 and 10 although they had occupied about half of the land with their building. It was recorded in the note that the assertion that others in the press area had an FAR of 500 was not factually correct. Maximum FAR for all the press plots was 300 and below except in the case of Times of India where it was 304 and the National Herald where it was 306.3. According to him, the effect of allowing the petitioners to erect similar building on the other half would mean a rise of FAR from 300 to 400. Perhaps an increase from 260 to 360 should be permitted if the need for starting a newspaper in Hindi was really genuine. The portion to the west of the sewer line was kept as open and was being used for parking of cars, and these would have to be parked out on the road, apart from the extra parking need that the additional construction would give rise to. The Minister asked the Secretary to discuss the matter with petitioner 3 Ram Nath Goenka and arrive at a suitable solution. As a result, the Secretary noted as below :

> I find it difficult to recommend the FAR requested by Shri Goenka, as this will inevitably lead to requests from other plot-holders, including the Times of India, to

> use up their entire land area for building up to 60 feet, which will mean in effect a rise of FAR from 300 to 400. The effect on parking and other requirements may not be acceptable.

At the same time it is undeniable that Shri Goenka is unable to retrieve from his tenants a considerable part of his existing building, and if his needs of starting a newspaper are really genuine, some considerable concession will be needed. Perhaps an increase from 260 to 360 should be permitted; with the extra basement area the firm will build this should give it nearly 50,000 extra sq. feet of area.

29. On January 18, 1978, the Minister for Works & Housing concurred with the views of the Secretary and ordered as below :

> I agree. In the circumstances stated, 'A' above is the farthest we should accommodate. May process further accordingly.

30. The Ministry of Works & Housing by letter dated February 2, 1978 conveyed to the Vice-Chairman, Delhi Development Authority the decision of the Union of India to permit the petitioners to build with an FAR of 360 as below :

It has been decided that FAR in this case may be increased up to 360 so that with the extra basement area the firm would have an additional built-up area of nearly 50,000 sq. feet. You are requested to take necessary action in the matter.

31. Copies of this letter were endorsed to the Town & Country Planning Organisation and Officer-in-charge, Master Plan in the Delhi Development Authority. The Additional Secretary (Master Plan), Delhi Development Authority however maintained that the FAR permissible for the press area was only 300 with 80% ground coverage, 70% on the first floor and 50% on the second, third and fourth floors.

32. Another letter dated March 6, 1978 was addressed by petitioner 3, Ram Nath Goenka, to the Minister in which he reiterated the earlier request made by him for allowing the petitioners to build on 100% of the plinth area, only with the height restriction of 60 feet. It stated that the Minister had informed him that an order allowing the petitioners to build up to an FAR of 360 had already been passed and further construction beyond it would be sanctioned later.

33. Immediately thereafter the Ministry of Works & Housing took a decision adverse to the Express Newspapers Pvt. Ltd. On April 15, 1978, P.B. Rai, TCP-II put up a note objecting to the Government decision to increase the FAR to 360 on the ground that it was in total contravention of the Master Plan and would have serious implications. It is a long note, relevant part of which may be extracted :

> As per Master Plan, FAR 300 in commercial areas does not exist for any area in Delhi whatsoever.

He further stated that such a decision to permit construction up to an FAR of 360 would not be implemented by the Municipal Corporation of Delhi as their existing bye-laws and rules permitted construction up to FAR 300 only and added that the rules and bye-laws should not be modified for one particular case or building or for one particular commercial area.

34. Upon the receipt of the TCP-II's note, the Joint Secretary (Delhi Division) on May 6, 1978 directed the Deputy Secretary to put up a clear note for obtaining the orders of the Secretary, Ministry of Works & Housing and the Minister because the petitioners wanted to build the 100% coverage, while the TCP-II's note showed that the permissible FAR was 300. Accordingly, the Under-Secretary put up a detailed note on May 8, 1978 explaining the various viewpoints, bye-laws etc. and recommended reduction of FAR to 300. On the same day, the Deputy Secretary marked the file to the Joint Secretary. On May 18, 1978, the Joint Secretary (Delhi Division) pointed out that the petitioners were not happy with FAR 360 against their original demand of 500 and they now wanted FAR 430.67 while the maximum FAR permissible was 300 as pointed out by the Secretary (Master Plan), Delhi Development Authority. He therefore recommended restriction of the FAR to 300 as per the bye-laws of the Municipal Corporation of Delhi and the Secretary endorsed the said recommendation. Thereafter, the Minister approved of the restriction of the FAR to 300.

35. On May 19, 1978, M.N. Buch, Vice-Chairman, Delhi Development Authority wrote to the Joint Secretary, Ministry of Works & Housing stating that the Government's decision of FAR 360 was totally unacceptable and added that "making of exceptions of this nature was precisely the stick with which the Delhi Development Authority was beaten" for its own office building i.e. Vikas Minar which far exceeded FAR 400 and was in breach of all building bye-laws. He accordingly suggested that FAR 300 might be permitted with the condition that necessary parking facilities would have to be provided. On May 24, 1978, the Deputy Secretary recorded a note directing that further action to implement the said decision of the Minister to restrict the FAR to 300 may be taken by the Land & Development Officer. On June 9, 1978, the Deputy Secretary, Delhi Development Authority informed the Vice-Chairman of the decision of the Government restricting the FAR to 300.

36. It appears that the case was revived on July 14, 1978 when Sikander Bakht, Minister for Works & Housing wanted to know after some representative of Express Newspapers Pvt. Ltd. had visited his office, if the press area and the FAR therefor were mentioned in the Master Plan and whether or not the FAR achieved for the Express Building was 500, it would not operate for fresh construction in the press area for which the FAR was not to exceed 300. A meeting was fixed to discuss the matter in the room of the Minister on August 18, 1978 and the following note was recorded by D'Souza, Secretary in the Ministry of Works & Housing regarding the discussions :

> The JS(D), the Vice-Chairman, DDA and I met the Minister today and explained the undesirability of allowing the Indian Express higher FAR than already proposed in this case, particularly the repercussions it would have on the other occupants of plots on this road. The Vice-Chairman suggested another possibility, namely, allotting to the Indian Express some other land where it could put up a building. The Vice-Chairman said he would get in touch with Shri Goenka and put this position to him.

The Minister agreed with the Vice-Chairman's suggestions.

37. On October 21, 1978, M.N. Buch, Vice-Chairman, Delhi Development Authority took the following decisions :

> (a) to amalgamate plots Nos. 9 and 10 and taking into account the existing built-up area would permit an FAR of 360 overall;
>
> (b) to allow the residual area of plots Nos. 9 and 10 to be built in line with the Times of India and Shama building;

(c) to exclude the basement from the calculations of the FAR provided the basements are not used for office purposes;

(d) to permit parking on the service road in the same manner as it was for the other buildings in this line, adequate parking facilities would also have to be provided in the set back of approximately half portion of the line which has been suggested by the Express Newspapers Pvt. Ltd. in the drawings.

38. He further directed that the aforesaid order was to be treated as one under special appeal. He accordingly gave instructions for issuing "no objection" to the Express authorities for construction on the residual area and to make a reference to the Government of India asking for confirmation of the action proposed. The Vice-Chairman in his order mentioned that the Minister for Works & Housing had ordered that the cases should be cleared immediately and his ex post facto sanction obtained by the Delhi Development Authority.

39. On November 4, 1978, R.D. Gohar, Joint Director (Buildings), Delhi Development Authority addressed a letter to the petitioners to the effect :

The plans submitted by you have been examined. I am directed to inform you that there is no objection to amalgamation of plots Nos. 9 and 10 and allowing an overall FAR of 3.6 (sic 360) taking into account the existing FAR. In that case the existing building line of the adjoining plots shall have to be maintained. The basement has been excluded from the calculation of the FAR and the installation of press machinery like any other service machinery is permitted. The parking on the service road is permitted in the same manner as it is for other buildings in this line. However, adequate parking facility shall have to be provided in the open area which may be so planned to make usable for parking purposes.

40. On the detailed examination of the lay-out plan, he observed that as per FAR of 360 construction was permitted on 1,84,886.07 sq. feet as against the existing FAR covering an area of 1,29,028 sq. feet i.e. the overall ground coverage now permitted was 13.81% i.e. 37904.92 sq. feet. The petitioners were directed to submit the plans to the concerned authorities for approval. A set of plans as submitted by the petitioners and examined "as per norms" was enclosed. On November 17, 1978, the Vice-Chairman, Delhi Development Authority addressed a letter to the Ministry of Works & Housing recommending extension of FAR from 300 to 360.

41. On November 24, 1978 the Government of India, Ministry of Works & Housing addressed the following letter to the Vice-Chairman, Delhi Development Authority :

No. K-12016/2/78-DDA Government of India Ministry of Works & Housing (Nirman Aur Awas Mantralay) New Delhi, November 24, 1978.

To

The Vice-Chairman, Delhi Development Authority, Vikas Minar, New Delhi.

Sub : Plots Nos. 9 and 10, Bahadurshah Zafar Marg, New Delhi - Request for additional coverage.

Sir,

With reference to your D.O. Letter No. PA/VC/78/874 dated November 17, 1978 and in supersession of this Ministry's letter of even number dated June 9, 1978, I am directed to say that, as proposed by you, the Express Newspapers Pvt. Ltd. may be allowed to construct on the residual plot on the basis of an FAR 360 for the whole plot.

Yours faithfully,

Sd. V.S. Katara Joint Secretary to the Government of India.##

42. Copies of the letter were endorsed to the Commissioner, Municipal Corporation of Delhi, Land & Development Office, Town & Country Planning Organisation and Express Newspapers Pvt. Ltd. This was followed by a clarificatory letter from the Ministry of Works & Housing to the Vice-Chairman dated December 1, 1978 that the FAR 360 allowed excludes the entire area of basement as per the provisions of the Master Plan.

43. The permission granted by the lessor i.e. the Union of India, Ministry of Works & Housing for the construction of the new Express Building with an increased FAR of 360 as accorded by Sikander Bakht, the then Minister for Works & Housing was acted upon by the petitioners by constructing the four-storeyed new Express Building by the end of February 1980. As already stated, this was done with the sanction of the Delhi Development Authority and the Municipal Corporation of Delhi.

PLEADINGS OF THE PARTIES

I. PETITIONERS' CASE

44. In the facts and circumstances hereinbefore adumbrated, the petitioners pleaded inter alia that :

(1) The proposed action of re-entry by the lessor i.e. the Union of India, Ministry of Works & Housing at the instance of the Lieutenant-Governor of Delhi is meant to be an act of political vendetta. The impugned notices have been issued with an evil eye and an unequal hand and with a deliberate design to compel the petitioners to close down the Express Group of Newspapers in general and the Indian Express in particular. The said notices are ex facie illegal and without jurisdiction and are contrary to the factual and legal provisions. The arbitrary and discriminatory initiation of executive action under the guise of alleged infraction of the terms of the lease and/or the Master Plan of Delhi and/or the municipal building bye-laws is violative of the petitioners' fundamental rights under Articles 14, 19(1)(a) and 19(1)(g) of the Constitution.

(2) The construction of the new Express Building with an increased FAR of 360 was in conformity with Clause 2(5) of the perpetual lease dated March 17, 1958 inasmuch as it was with the express sanction of the lessor i.e. the Union of India. The grant of permission by Sikander Bakht, the then Minister for Works & Housing to sanction the construction of the new Express Building with an increased FAR of 360 was in accordance with the Master Plan, after M.N. Buch, Vice-Chairman, Delhi

Development Authority by his order dated October 21, 1978 as "one under special appeal" under the Master Plan, Chapter II, Part A, Zoning Regulations, Item 13, Use Zone - C-2, at p. 50 directed that plots Nos. 9 and 10 at Bahadurshah Zafar Marg leased to the Express Newspapers Pvt. Ltd. should be "amalgamated together into one plot and taking into account the existing built-up area occupied by the old Express Building built on the eastern portion of the underground sewage drain with an FAR of 260, the construction of the new Express Building on the western portion thereof after removal of the sewer line with an overall FAR of 360 was permissible."

(3) The then Minister for Works & Housing was throughout guided by the officials of the Ministry, particularly the Secretary, Ministry of Works & Housing, who was the competent authority to act for the President with regard to any contract, grant or assurance of property of the Union relating to any matter whatsoever in relation thereto by virtue of the notification issued by the President under Article 299(1). In terms of the Government of India (Allotment of Business) Rules, 1961 as well as under the aforesaid notification under Article 299(1), the Ministry of Works & Housing with the Minister at the head was and is the ultimate authority responsible to deal with the property of the Union and to enter into all contractual obligations in relation thereto. The Minister had not only full authority, power and jurisdiction to grant permission to the petitioners to construct the new Express Building with an increased FAR of 360 with a double basement for the installation of the printing press, but the action taken by the then Government was in good faith after taking into consideration all the circumstances attendant at all levels.

(4) After the shifting of the underground sewer line outside the leasehold premises at the cost of the petitioners to the tune of Rs 6 lacs and on payment of the supervision charges to the Municipal Corporation amounting to Rs 25,000, there could be no objection to the construction of the new Express Building with an increased FAR of 360 as it allowed the residual area of plots Nos. 9 and 10 to be built in line with the Times of India, National Herald, Patriot and other buildings along the Bahadurshah Zafar Marg. At the time of the grant of plots Nos. 9 and 10 to the Express Newspapers Pvt. Ltd., there were no restrictions as to the FAR in the construction of buildings along the Bahadurshah Zafar Marg. Further, that the Master Plan for Delhi subsequently approved by the Central Government in the year 1962 does not mention the press area on the Bahadurshah Zafar Marg comprising the Press Enclave. Although specified as a commercial area, it is not listed in the list of "already built-up commercial areas" because it relates to the walled city of Old Delhi. The zonal development plan for D-II area within which the press plots are located permitted an FAR of 400 for the press area in the Bahadurshah Zafar Marg. In short, the submission is that all that the then Minister for Works & Housing did was to restore to the petitioners the right that they acquired under the perpetual lease dated March 17, 1958 i.e. to be treated alike all other plot-holders in that area and a denial of such equal terms would be opposed to the principles of equality besides being violative of Article 14 of the Constitution.

(5) The lessor i.e. the Union of India is estopped by the doctrine of promissory estoppel and cannot therefore go back upon all assurances given and actions taken by the previous Government, particularly when the petitioners had acted upon the decisions so reached and had constructed the new Express Building with a cost of

approximately Rs 100 crores by February 1980 which at present would cost more than Rs 3 crores. In substance, the petitioners contend that where permission of the lessor i.e. the Union of India has been granted in relation to any property of the Union under a lease by the authority competent i.e. the Ministry of Works & Housing, it is not competent for the successor Government to treat such permission as being non est and to proceed as if no such permission or sanction had been granted.

(6) The impugned notice issued by the Zonal Engineer (Buildings), City Zone, Municipal Corporation of Delhi dated March 1, 1980 upon the Express Newspapers Pvt. Ltd. to show cause why the Express Buildings should not be demolished under Sections 343 and 344 of the Delhi Municipal Corporation Act, 1957 was illegal and ineffective inasmuch as the construction of the said building was not without or contrary to the sanction referred to in Section 336 or in contravention of any of the provisions of the Act or bye-laws made thereunder. The threat to demolish the second basement especially when similar double basement/platform exists in other newspaper buildings in the press area such as the Times of India, National Herald, Patriot etc. along the Bahadurshah Zafar Marg was violative of Articles 14 and 19(1)(a) of the Constitution. The denied of the respondents to allow such a double basement to be constructed by the Express Newspapers Pvt. Ltd. in the new Express Building clearly infringes the petitioners' right to free speech and expression guaranteed under Article 19(1)(a) which includes the freedom of the press as otherwise the printing apparatus installed in the lower basement would be rendered incapable of operation and is therefore a sine qua non for the printing and publication of the Indian Express.

(7) The erection of the double basement or a working platform in a printing press like the Express Newspapers Pvt. Ltd. is a compoundable deviation from the sanctioned plan and the insistence of the Municipal Corporation of Delhi to demolish the same suffers from the vice of hostile discrimination. Even assuming that the municipal bye-laws do not permit the construction of a double basement in the press area along the Bahadurshah Zafar Marg, such bye-laws would amount to an unreasonable restriction on the right to carry on the business of printing and publishing the newspaper and thus offends Article 19(1)(g) of the Constitution.

(8) Respondent 2 Jagmohan, Lieutenant-Governor of Delhi, cannot usurp the functions of the Union of India in relation to the property of the Union in the Union Territory of Delhi, and that the Lieutenant-Governor is not a successor of the Chief Commissioner of Delhi. There was no notification issued by the President under Article 239(1) of the Constitution for the conferral of any power on the Lieutenant-Governor to administer the lease in question. No doubt, by virtue of the notification issued by the President on September 7, 1966 under Article 239(1), the Lieutenant-Governor has, subject to the like control by the President, the same powers and functions as well as exercisable by the Chief Commissioner with power to administer the property of the Union. There is, admittedly, no such notification issued by the President under Article 239(1) vesting either the Chief Commissioner of Delhi or the Lieutenant-Governor with any such power.

(9) In any event, it is inconceivable that after October 1, 1959 when the

administrative control over the Land & Development Officer was transferred from the Delhi Administration to the Ministry of Works & Housing and by virtue of a notification issued under Article 299(1), the Secretary, Ministry of Works & Housing was made the competent authority to act for the President with regard to any contract, grant or assurance of property of the Union, the Lieutenant-Governor could still arrogate to himself the powers of the Union of India, Ministry of Works & Housing in relation to the lease.

(10) It is alleged that respondent 2 Jagmohan is actuated with personal bias against the Indian Express and had filed a criminal complaint against the Chief Editor of the Indian Express and some of the officers of the Express Group of Newspapers for having published an article in the Indian Express in April 1977 with regard to his role during the period of Emergency in Turkman Gate demolitions. The Express Group of Newspapers, particularly the Indian Express, had during the period of Emergency and immediately thereafter openly criticized the high-handed actions of respondent 2 Jagmohan who was the then Vice-Chairman of the Delhi Development Authority for which he was later indicated by the Shah Commission of Inquiry.

(11) The Express Newspapers Pvt. Ltd. contend that they having approached the Central Government for exercise of its powers under Section 41 of the Delhi Development Act, 1954 for the issue of necessary directions as regards the permission to build the new Express Building with an increased FAR of 360 with a double basement for the installation of the printing press which became necessary due to want of any provision in that behalf in the Master Plan and the Zonal Development Plan in regard to the Press Enclave and the Central Government having issued directions under the relevant provisions, in items of Section 53(3-A) of the Act, the sanction of the plan by the Delhi Development Authority by its letter dated November 4, 1978 pursuant to such directions and its authentication of the building plans approving the portions objected to by the Municipal Corporation, Delhi, overrides and makes irrelevant any other sanction granted by the Municipal Corporation subject to any qualification.

(12) The impugned notice issued by the Zonal Engineer (Buildings), City Zone, Municipal Corporation of Delhi dated March 1, 1980 was illegal and void as he did not apply his mind at all to the question at issue but merely issued the same at the instance of respondent 2. Further, the impugned notice issued by the Engineer Officer, Land & Development Office dated March 10, 1980 purporting to act on behalf of the lessor i.e. the Union of India was factually and legally not a notice of re-entry upon forfeiture of the lease as contemplated by Clauses 5 and 6 of the lease-deed, based as it was on non-existent ground. Although the lease-deed permits remedy of any breach of any of the terms thereof, the opportunity to effect such a remedy has not been, and as indeed it is clear, it is not intended to be, granted to the petitioners and instead, there is a threat of re-entry upon the leasehold premises upon forfeiture of the lease.

II. RESPONDENTS' CASE

(1) Respondent 2 Jagmohan, Lt. Governor of Delhi filed a counter on behalf of all the respondents asserting that the perpetual lease-deed dated March 18, 1958 was

executed on behalf of the lessor by the Assistant Secretary to the Department of Local Self-Government "under the administrative control of the Chief Commissioner/Lt. Governor of Delhi"; that the demised land is nazul land vested in the President of India, for the management, control and disposal of which the Land & Development Officer in the Department of Local Self-Government, was created; and that as a matter of fiscal policy, the administrative control of the Land & Development Office. New Delhi was transferred from the Delhi Administrative to the Ministry of Works, Housing and Supply w.e.f. October 1, 1959. It was asserted that this transfer was "purely on fiscal grounds" and did not divest the Chief Commissioner/Lt. Governor of his contractual powers, given to him by the parties to the lease-deed, as the representative of the President of India and the Head of the Local Self-Government. It was averred that according to Clause 2(14) of the perpetual lease-deed the land to the west of the sewer line was to be kept as an "open space" i.e. as lawns, paths or parking grounds to the satisfaction of the Chief Commissioner and only the lessor or the Chief Commissioner had the right to interfere with the maintenance of this area and that too only for the purpose of laying a new sewer line along the existing one. According to Clause 2(9) thereof, no excavation in the demised premises should be made without the written consent of the Chief Commissioner/Lt. Governor of Delhi. Admittedly, no permission from the Chief Commissioner/Lt. Governor pursuant to Clauses 2(9) and 2(14) was obtained by the petitioners. It was further asserted that the sewer line, according to the terms of the lease, could not be diverted by the Municipal Corporation of Delhi at the cost of the petitioners without the consent of the Chief Commissioner/Lt. Governor. The petitioners had no right under the lease to change the character of this land which was to be maintained and by suppression of material facts obtained permission to build thereon and sanction of building plans from authorities which they knew, under the terms of the lease, was not permissible.

(2) In refuting the allegations made by the petitioners that Engineer Officer, Land & Development Office had at the instigation of the Lt. Governor issued the impugned notice for forfeiture of the lease, respondent 2 asserted that he had not ordered the issuance of the notice in question and that the Land & Development Officer was an authority independent of the administrative control and supervision of the Lt. Governor. It was asserted that the impugned show cause notices were issued by authorities which are independent of the authority of Lt. Governor or by autonomous local bodies. It was asserted : The impugned show cause notice by respondent 5, the Engineer Officer, Land & Development Office was issued only after he came to know through press reports of certain serious violations of the lease-deed by the petitioners. The show cause notice by respondent 5 was issued in exercise of powers under Clause 4 of the perpetual lease-deed dated March 17, 1958 for violation of Clauses 2(5), 2(9) etc. As regards the impugned show cause notice issued by the Zonal Engineer (Buildings), City Zone, Municipal Corporation of Delhi, it was asserted that the same had been issued by the Municipal Corporation of Delhi in exercise of its statutory powers under Sections 343 and 344 of the Delhi Municipal Corporation Act after verification of the allegations.

(3) Respondent 2 has sought to disown all responsibility for the issuance of two impugned show cause notices but asserted that being the Lt. Governor of Delhi, he was responsible for the administration of the Union Territory of Delhi and as such he

was acting within his powers to direct all the authorities concerned to prevent violation of laws by any person or institution. He further asserted that he, as the Lt. Governor of Delhi, was fully competent to appoint the Inquiry Committee under the Commission of Inquiry Act, 1952. It was denied that the Union of India or the Lt. Governor of Delhi intended to inflict a reprisal on the petitioners for the independent stand of the newspapers they publish. It was added :

"The respondents while welcoming creative and constructive criticism of Government policies and actions only except a minimum standard of decency and fairness from the Press."

(4) It was alleged that the petitioners indulged in all sorts of "Distortions and fabrications in criticising the policies and actions of the Union of India and the Lt. Governor" and despite all this, respondent 2 had taken an indulgent view of these delinquencies except when "he had to file a criminal complaint against Express Newspapers Pvt. Ltd. to uphold his self-respect and dignity", - and some of the petitioners have been summoned to stand their trial by a court of competent jurisdiction. It is not disputed that respondent 2 had filed a criminal complaint in Criminal Case No. Nil of 1979 in the Court of the learned Metropolitan Magistrate, New Delhi against petitioner 4 for having committed alleged offences punishable under Sections 500 and 501 of the Indian Penal Code, 1860 for having published a news item regarding the active role played by him in the demolition of houses near Turkman Gate in Delhi, which rendered thousands of persons destitute and homeless which became the subject of an inquiry by the Shah Commission during the Emergency. Respondent 2 makes a special pleading of the demolition of the Turkman Gate operation during the Emergency by him as Vice-Chairman of the Delhi Development Authority which he styled as a clearance operation undertaken for the resettlement of the vast multitude of poor people who were victims of exploitation at the hands of vested hands and compelled to live in substandard human living conditions of dirt and squalor stating that the clearance operation was undertaken for improving the standard of living of the poor and their resettlement. While admitting that he had filed a criminal complaint against the Editors, Printers and Publishers of the Indian Express for defamation, he denies that the respondents had any personal animosity towards the Express Group of Newspapers and asserted that the criminal complaint for defamation was instituted because the Indian Express was guilty of fabricating and publishing false, motivated scandalous stories about respondent 2 and others.

(5) Respondent 2 controverted that the contractual relations between the parties were governed by the lease agreement dated May 26, 1954 which was modified and superseded by the subsequent lease agreement dated November 19, 1957, since this had also been substituted by the registered perpetual lease dated March 17, 1958 which alone, according to him, governed the relationship effectively and legally between the Union of India and the Lt. Governor of Delhi on the one hand and the Express Newspapers Pvt. Ltd. on the other. It was denied that the Deputy Secretary, Ministry of Works & Housing, Government of India had any jurisdiction or authority to permit diversion of the sewer line as he was not authorized to represent the Central Government for the purpose of administration of the lease and, therefore, any attempt on the part of the Express Newspapers Pvt. Ltd. to rely upon the agreement of 1954

or on the subsequent agreement of 1957 to justify the action of the Municipal Corporation of Delhi in shifting the sewer line beyond the leasehold premises was an exercise in futility. It was asserted that Clause 2(5) of the perpetual lease could not be availed of by the Express Newspapers Pvt. Ltd. in the absence of a permission granted by representative of the lessor, meaning the Chief Commissioner/Lt. Governor or the Land & Development Officer and, therefore, the removal of the sewer line itself was illegal and did not create any right in the Express Newspaper Pvt. Ltd. to raise any construction on the land to the west of the old sewer line which was to be kept as 'green'. It was denied that by virtue of the transfer of functions relating to administration of leases executed on behalf of the Union of India, the Chief Commissioner/Lt. Governor was divested of all the powers conferred on him by the various clauses of the lease-deed. It was asserted that the transfer of the functions was only "an administrative measure" to achieve the desired fiscal discipline in the matter of administration of properties of the Union of India. Even after the transfer of functions to the Land & Development Officer, it was said that all lease agreements are being referred to the Lt. Governor of Delhi for exercise of powers conferred on him in the lease agreement. It is then said that :

"It is also denied that the Ministry of Works & Housing, as such, represents the lessor. It is the Land & Development Officer, respondent 5, who represents the lessor (President of India) for the execution of the leases and their administration under Article 299(1) of the Constitution. Statutory bodies like the Municipal Corporation of Delhi, the Delhi Development Authority, the Urban Arts Commission etc. had no power under the perpetual lease-deed of 1958 to vary or waive the conditions of the lease."

Upon this basis, respondent 2 asserted that the so-called permission obtained by the Express Newspapers Pvt. Ltd. from the Ministry of Works & Housing was void, illegal and without jurisdiction and, therefore, a nullity in law. In para 79, it is averred :

"With reference to para 27(b), it is denied that the Land & Development Officer is merely a functionary under the Ministry of Works & Housing. He is, in fact, the officer appointed on behalf of the lessor (President of India/The Chief Commissioner of Delhi) under the terms of the lease for the execution of management of the lease-deeds, it is submitted that the permission referred to by the petitioners was neither applied for and obtained nor granted under Clause 2(5) of the lease-deed. The so-called permission, in any case, was not addressed to the petitioners but to respondent 6."

(6) After referring to the grant of permission by the Ministry of Works & Housing and the Delhi Development Authority, respondent 2 averred in para 89 :

"With reference to para 28(4) and (c), it is denied that the breach complained of was capable of remedy. As already stated, the so-called permission obtained by the petitioners did not amount to any valid permission under the terms of the perpetual lease-deed dated March 18, 1958. It is submitted that the petitioners were bound to apply to the competent authority and obtain prior approval of the lessor before commencing construction and the petitioners knew who the competent authority was. The petitioners did not make any application under any of the terms of the lease-deed

before committing the breach of the lease-deed."

The aforesaid averments clearly bring out the stand of respondent 2 that he alone and not the Ministry of Works & Housing was competent to act on behalf of the lessor i.e. the Union of India and this is brought out in the averment which immediately follows :

"It is further submitted that for any breach of sub-clauses (5), (9) and (10) of Clause 2 of the lease-deed, it was for the Chief Commissioner of Delhi to decide if the breaches are remediable and the nature of the remedies required for the breach. If the breaches were not remediable to the satisfaction of the Chief Commissioner of Delhi, he could order removal or demolition of the construction complained of. Modification of the layout plan, conversion of the land-use and violation of the FAR prescribed under the Master Plan and the Municipal Bye-laws are not remediable breaches."

(7) Respondent 2 has specifically denied that the FAR for D-2 area which includes the Press Enclave is 400, and asserted that for built-up areas which include partly built-up areas, the FAR under the Municipal Building Bye-laws is only 300. It was then asserted that the FAR for D-2 area being 300, according to the Municipal Building Bye-laws and the Master Plan for Delhi, the question of issue of direction by the Central Government under Section 41 of the Delhi Development Act does not arise. Even then, it was said that the Vice-Chairman of the Delhi Development Authority (M.N. Buch), in view of this legal position expressed the view in his note dated October 21, 1978 that the case of the Express Newspapers Pvt. Ltd. should be treated as an isolated case to bring it at par and allow the FAR of 360 overall. According to him the reason for this as indicated in the note was the order of Shri Sikander Bakht, Minister for Works & Housing "for immediate clearance of the case and for obtaining his ex post facto sanction". Respondent 2 denied that the letters referred to in para 30(h) and (i) of the petition could be construed as directions of the Central Government to the Delhi Development Authority under Section 41 of the Delhi Development Act. Instead of being such a direction, the Annexure 21 was a clarification of letter dated November 25, 1978 stating that FAR 360 was allowed excluding the basement. Annexure 22 was said to be a sanction letter issued by respondent 1 on January 9, 1979 in respect of building plans submitted by the Express Newspapers Pvt. Ltd. before respondent 3. Even Annexure 20 which is a letter dated November 24, 1978 from the Ministry of Works & Housing, it was said, was not a permission under Section 41 of the Delhi Development Act as it gives the ex post facto sanction of the proposal of the Delhi Development Authority permitting FAR 360 for the Express Newspapers Pvt. Ltd. It was then added :

"With reference to para 30(j), it is denied that the actions taken by the Ministry of Works & Housing and the Delhi Development Authority constituted a restoration of the rights of the petitioners under the lease agreement of 1954, as the agreement of 1954 was inadmissible being non-existent and inoperative after its substitution by the agreement of 1957 as per perpetual lease-deed dated March 18, 1958; it was asserted that the petitioners could construct on the residual area of plots Nos. 9 and 10 only in accordance with the terms and conditions of the lease-deed of 1958 and subject to the provisions of the Master Plan and the Municipal Bye-laws. It was asserted that the lease-deed of 1958 envisaged compliance with the Municipal Bye-laws for any future

constructions/additions in plots Nos. 9 and 10."

(8) It will be seen that the points sought to be made out by respondent 2 in his counter-affidavit are :

(a) At present the perpetual lease-deed dated March 18, 1958 governs the relationship effectively between the Union of India and the Lt. Governor on the one hand and the petitioners on the other i.e. the contractual relations between the parties.

(b) The transfer of administrative control of the L & DO on October 1, 1959 to the Ministry of Works & Housing did not divest the Chief Commissioner of his contractual powers given under the lease and he alone represented the lessor i.e. the Union of India and not the Ministry of Works & Housing.

(c) The sewer, according to the terms of the lease-deed, could not be diverted without the consent of the Chief Commissioner (Lt. Governor) and the approval of the Ministry of Works & Housing was a nullity being without jurisdiction and legal competence.

(d) For the commercial user of the residual area to be kept as 'green', it is only the Chief Commissioner (Lt. Governor) who could give sanction to construct for the commercial user at the residual area; the petitioners were liable to pay commercial realization charges.

(e) The Lt. Governor was a successor of the Chief Commissioner and, therefore, all the powers exercisable by the Chief Commissioner in relation to the lease vested in him.

(f) It is for the Chief Commissioner (Lt. Governor) to decide if the breaches were remediable or as to the nature of the remedies required for the breach. According to him, the breaches are not remediable breaches and, therefore, the impugned notice dated March 10, 1980 issued by the Engineer Officer, L & DO for re-entry upon the land on forfeiture of the lease for breach of the conditions was valid and proper. (The learned Attorney-General has throughout in the course of his arguments on behalf of respondent 1, the Union of India maintained that the Lt. Governor of Delhi has nothing to do with the lease and that whatever the name of the Chief Commissioner of Delhi appears, it should be scored out from the lease-deed).

(9) One S. Rangaswami, Additional Land & Development Officer, Ministry of Works & Housing filed a separate counter-affidavit supporting the stand of the Lt. Governor. It was averred in para 3 :

"The petitioners during the year 1977 applied to the Ministry of Works & Housing for permission to construct on the residual area of 2740 square yards in plots Nos. 9 and 10. The petitioners have placed reliance on the letters dated June 9, 1978 from Shri L.N. Sukwani and dated November 24, 1978 from Shri V.S. Katara in the Ministry of Works & Housing and claimed that these two letters constituted permission to build on the residual area of plots Nos. 9 and 10. I am advised to state that under the terms of the lease-deed of 1958, previous consent of either the President of India or the Chief Commissioner (Lt. Governor) or such officer or body

as the lessor (President of India) or the Chief Commissioner of Delhi authorised was necessary for building activity on the residual area of the plots (2740 sq. yards). The Ministry of Works & Housing did not represent the lessor or the Chief Commissioner."

(10) It is somewhat strange that Land & Development Officer, who is the last functionary in the Ministry of Works & Housing should challenge the very authority and power of the Ministry of Works & Housing to administer the lease on behalf of the President of India. He has also averred in para 5 :

"The impugned show cause notice of March 10, 1980 was issued to the petitioners under Clause 6 of the perpetual lease for violation of sub-clauses (5) and (14) of Clause 2 of the lease-deed. The Land & Development Officer is not a functionary under the Ministry of Works & Housing. He is the officer appointed on behalf of the lessor to administer the lease. At no stage the petitioners approached the Office of Land & Development for permission to construct on the residual area of 2740 sq. yards to the west of the pipeline and no approval was obtained from the office of L & DO for construction of a building in contravention of Clauses 2(5), (9) and (14) of the lease. The so-called permissions and approvals obtained by the petitioners have no legal validity on the short ground of lack of legal competence or authority under the terms of the lease-deed which governed the relationship between the petitioners and respondent 1."

45. The case has been many twists and turns. The hearing commenced on April 27, 1982 and was concluded on September 22, 1983 with intermittent breaks. I regret to say that the ambivalent attitude adopted by respondent 1 the Union of India and the hostility of respondent 2 prolonged the hearing which lasted as many as 43 days. This has resulted in a colossal waste of public money and valuable time of the Court. On April 29, 1982 when Shri Nariman, learned counsel for the petitioners had concluded his arguments for the day, Shri Parasaran, the learned Solicitor-General made a statement that he wanted to obtain instructions as to whether the impugned notices issued by the Zonal Engineer (Buildings), Municipal Corporation of Delhi dated March 1, 1980 and by the Engineer Officer, Land & Development Office, dated March 10, 1980 for the forfeiture of the lease of plots Nos. 9 and 10, Bahadurshah Zafar Marg granted by the Government of India in favour of the Express Newspapers Pvt. Ltd. and the threat to re-enter upon the leasehold premises with the new Express Building built thereon and for removal of the unauthorized structures should be enforced or not. In the facts and circumstances of the case, we must say that the request for adjournment by the learned Solicitor-General was reasonable and was not opposed by the learned counsel for the petitioners. We accordingly adjourned the hearing of the writ petitions till August 3, 1982 to enable respondent 1 the Union of India to take a decision in the matter. On August 23, 1982 the matter was taken up in Chambers when the learned Solicitor-General made a statement that the writ petitions would have to be heard on merits, meaning thereby that the lessor i.e. the Union of India were not prepared to reconsider the matter. The learned Solicitor-General later withdrew from the case.

46. The strange phenomenon when the hearing was resumed on November 4, 1982 of the Union of India speaking through the voice of learned counsel for respondent 2 was more than we could permit. We sent for Shri L.N. Sinha, the learned Attorney-General and he rightly objected to anyone speaking on behalf of the Union of India. We directed the learned Attorney-General to appear and assist the Court.

47. During the pendency of the proceedings, Shri Sinha demitted his office and Shri Parasaran was appointed to be the Attorney-General. The Union of India engaged Shri Sinha as its counsel and he continued to represent respondent 1. We are grateful to learned counsel for the parties who dealt with all aspects of the various constitutional issues and other questions of great public importance with their usual industry and have supplemented their arguments by filing written submissions. Learned counsel for respondent 1 has throughout been emphatic in contending that respondent 2 was a complete stranger to the lease and he did not represent the lessor the Union of India. Strangely enough, Dr Singhvi continued to appear not only for respondent 2 the Lt. Governor but also for respondent 5 the Land & Development Officer who is a minor official in the Ministry of Works & Housing. When we repeatedly inquired from learned counsel for respondent 1 as to the right of respondent 5 to be represented by another counsel when he was appearing for the Union of India, he asserted that Dr Singhvi had no right to represent respondent 5 Land & Development Officer as he was appearing for respondent 1 and he was not bound by his submissions. Again, there was a rather disturbing feature. Submissions at the bar by learned counsel for the respondents were not in consonance with the stand taken in the original affidavit filed by respondent 2 on behalf of all the respondents. Further, the respondents have been filing different affidavits from time to time to suit their purposes as the hearing progressed and it was difficult to reconcile the conflicting averments made in these subsequent affidavits. It is somewhat unfortunate that the Government should have embarked upon this course of action.

48. At the resumed hearing on November 4, 1982, we took on record the further affidavits filed by respondent 2 dated July 29, 1982 with certain deletions. In trying to meet the allegations made against him, respondent 2 cast aspersions on Sikander Bakht, the then Minister for Works & Housing. It was averred :

> But if Ram Nath Goenka approached the then Minister of Works & Housing, Shri Sikander Bakht and the latter misusing his authority and exercising blatant favouritism pressurised the officers of the Delhi Development Authority, Delhi Municipal Corporation and of his own Ministry to do totally illegal acts, thereby giving huge financial benefits to his political associate and friend Ram Nath Goenka, there are no mala fides. If the statutory provisions unalterable through an executive action, of the Delhi Master Plan, Zoning Regulations and Municipal Bye-laws are ruthlessly violated, there are no mala fides. If expert advice of the Town & Country Planning Organisation is deliberately attacked, which, in fact, makes it quite clear that FAR 300 does not exist in any area in Delhi and that FAR and coverage are prescribed for the locality as a whole and not for individual building, there are no mala fides. And if senior officers are sent to an influential businessman to mollify him and in the event of not being mollified, the illegal and irregular concessions asked for are granted without even taking the trouble of amending the law of the statutory provisions, there are no mala fides, according to the writ petitioners.

49. On the same day i.e. on November 4, 1982, we sent for Shri L.N. Sinha, the then Attorney-General and drew his attention to the averments made by respondent 2 in the fresh affidavit alleging that the orders passed by the then Minister for Works & Housing were illegal, improper and irregular. We felt that it was highly improper for respondent 2 to have made such extreme allegations against the then Minister for Works & Housing and against the previous Government in power. Accordingly, we called upon respondent 1 Union of India to clarify its stand with regard to the following aspects :

(1) The authority of respondent 2 to make allegations of fraud, misuse of powers and misdemeanours against the functionaries of the Union of India including the Minister, Works & Housing.

(2) The stand of respondent 1, Union of India, to the case of the petitioners without adopting the counter-affidavit of respondent 2.

(3) The specific reply, if any, of the Union of India, to the allegations of mala fides made by the petitioners against the Government of India in paras 9(b), 11 and 12 of the writ petition.

(4) What is the reaction of the Union of India to the averments in the counter-affidavits of respondent 2 and the affidavit of respondent 5 that the Ministry of Works & Housing does not represent the lessor and that respondent 5, the Land & Development Officer alone represents the lessor. And

(5) Whether a successor government was not bound by the acts of the duly constituted previous government ?

50. Instead of complying with the directions, respondent 1 through the affidavit of M.K. Mukherjee, Secretary, Ministry of Works & Housing dated November 16, 1982 purported to raise certain additional issues :

(1) I am advised to say that the orders passed by Shri Sikander Bakht, the then Minister for Works & Housing were clearly illegal, improper and irregular.

(2) The powers and functions assigned to the Chief Commissioner of Delhi under the lease-deed were exercisable by the Lt. Governor by virtue of the notification issued by the President dated September 7, 1966 under Article 239(1) of the Constitution.

(3) The Land & Development Officer as well as the Chief Engineer in the office of the Land & Development Officer were both empowered to take action on the lease-deed and therefore the Engineer Officer was authorized by the lessor i.e. the Union of India to issue the impugned show cause notice as he was competent to do so under Clause 5 of the lease-deed having been empowered to act on behalf of the President under Article 299(1). The said show cause notice was issued on the basis of which a press report as per the orders recorded on the file of the Land & Development Officer and not at the instance of the Lt. Governor.

4. The order of M.N. Buch, the then Vice-Chancellor of the DDA dated October 21, 1978 was without any legal authority or sanction and the said order was passed by him in clear violation of the procedure laid down in Section 11-A(2) of the Delhi Development Act, inasmuch as no relaxation of the permission for FAR for the D-II area could be made which was tantamount to a modification of the Master Plan. The said decision cannot be implemented by the MCD because it would require modification of their existing bye-laws, which cannot be done for a particular case or building or for one particular commercial area.

It is then averred :

I say that the counter-affidavit filed by respondent 2 be read as part and parcel of this

counter-affidavit.

I am advised to categorically deny any allegation of mala fides, design or animosity on the part of respondent 1 as alleged.

51. The respondents have also placed on record two affidavits of M.N. Buch and H.R. Ailawadi, both of whom became Vice-Chairmen, Delhi Development Authority. Ailawadi in his affidavit avers that the demised land is a nazul land which vested in the President of India. For management, control and disposal of such lands, Land & Development Office in the Department of Local Self-Government was created. As a matter of fiscal policy, the administrative control of the Land & Development Office, Delhi was transferred from the Delhi Administration to the Ministry of Works & Housing & Supply w.e.f. October 1, 1959. He asserts that this transfer was on administration and fiscal grounds and did not divest the Chief Commissioner of the powers given to him by the parties under the lease as the representative of the President of India. He further avers that the sewer line, according to the terms of the lease, could not be diverted without the consent of the Chief Commissioner (Lt. Governor). As regards the sanction, he asserts that M.N. Buch in fact had no authority to sanction the building plans in the instant case and that the Additional Secretary, Master Plan, had raised certain objections to the building plans and no decision on these objections was taken and then adds :

> Shri Buch contrary to all the views expressed by himself, the Ministry of Works & Housing, Office of L & DO and TCPO passed the following orders.

This is followed by the terms of the order in question passed by M.N. Buch. He then avers :

> Under Clause 2(5) of the perpetual lease-deed only the lessor or the Chief Commissioner of Delhi could permit construction on the residual area of plots Nos. 9 and 10. The Vice-Chairman, DDA had no authority under the terms of the lease to permit an additional construction on these plots. No objection certificate, therefore, issued to the Municipal Corporation of Delhi and to M/s Express Newspapers Ltd. by the DDA on November 4, 1979 was without jurisdiction and a nullity. The Ministry of Works & Housing could not have also permitted any construction at the residual area. Only the Chief Commissioner of Delhi or the officers authorized by the President of India under Article 299 of the Constitution were competent to grant such permission. The Vice-Chairman, DDA or the Joint Secretary in the Ministry of Works & Housing were not authorized by the President in exercise of powers under Article 299 to administer the lease-deed.

The direction of Shri Buch to treat his order as one under special appeal was without jurisdiction and, therefore, a nullity. The procedure prescribed for special appeal was totally disregarded. No resolution of the DDA was adopted in this regard and as a matter of practice and rule, special appeal cases are decided only by means of resolution of the authority. The decision of Shri Buch was in violation of the provision of the Delhi Development Act, Master Plan and Municipal Bye-laws.

52. He then questioned the validity of the sanction to the building plan granted by the Municipal Corporation of Delhi and asserts :

> Sanction of the building plans by the MCD violated the following statutory provisions :

(a) FAR : According to the Municipal Bye-laws, FAR for a built area could not exceed 300. The press area being a built up area, permission to built up to FAR of 360 was violative of the Municipal Building Bye-laws.

(b) Coverage : According to the Master Plan and building bye-laws, which were in force prior to December 24, 1976, coverage for different floors of a five storey building was as under :

#Ground floor - 80%First " - 70%Second " - 50%Third " - 50%Fourth " - 50%##

53. He then refers to the amended rule dated December 24, 1976 which prescribed for all commercially developed areas, including offices, coverage of 25% and asserts that the press area is coverage by the amendment. He also asserts that even the earlier rule was violated by allowing 75.43% on the first floor and 77.5% coverage on the second and third floors.

54. Further he states that for commercial areas, parking has to be done within the plot and within the covered area. In the present case, no provision was made for parking of the vehicles within the plot and then adds.

In the Municipal Bye-laws, there is no provision for waiving, relaxing and modifying the rules referred to above. The sanction was, therefore, accorded illegally and under undue pressure from vested interests.

55. In his counter-affidavit, M.N. Buch avers in para 3 that he had not authorized respondent 2 or anyone else to swear an affidavit on his behalf and, therefore, he was not bound by the same. According to him, the area in question was not a "development area" within the meaning of sub-section (3) of section 12 of the Delhi Development Act and as such, question of according any permission/approval by the Delhi Development Authority or by any of its officers did not arise. As regards the communication dated November 4, 1978 issued under the signature of R.D. Gohar, the then Joint Director (Buildings) of the Delhi Development Authority, it could not, in his opinion, be treated to be a permission/sanction accorded under any statutory rule or regulation or bye-law. According to him, it was as a matter of fact a formal correspondence in response to a reference made in that behalf by the Ministry of Works & Housing and its gist essence was that the petitioners could submit plans to the concerned authorities for approval, if they so chose and that was why, the set of plans, as submitted by them, was returned and no plans were ever approved. On the contrary, the plans were returned for submission to the appropriate authority for approval. As regards a number of communications from the Ministry of Works & Housing to him, as the then Vice-Chairman, M.N. Buch contended that he had no access to the records of the Delhi Development Authority and due to non-availability of the records, it was difficult for him to say anything specifically about the same.

56. In substance, the contention of Buch is that the area in question was not a duly notified "development area" and as such, question of granting any permission either by the Delhi Development Authority or by him as the Vice-Chairman did not arise and that no sanction or approval of the building plans, as alleged or otherwise, was accorded by him as such. The point of FAR raised in the petition was, according to him, not at all relevant for a just and proper decision of the case. He further stated that a perusal of the records would reveal that nowhere in any of the communications had he stated that any building plan had been sanctioned or approved. On the contrary, he had made it clear that :

It is for the Municipal Corporation of Delhi to examine the building plans in the light of the Building Bye-laws already sanctioned by the Municipal Corporation of Delhi. In other words, neither the Delhi Development Authority nor he as the Vice-Chairman had anything to do with the sanction/approval of the building plans in the instant case.

57. It is rather pertinent to observe that in his counter-affidavit Buch does not explain the implications of his specific order as the Vice-Chairman dated October 21, 1978 for amalgamation of plots Nos. 9 and 10 and permitting construction of the new Express Building with an increased FAR of 360 with a double basement for installation of the printing press, directing that it was not merely a communication from the Vice-Chairman, Delhi Development Authority to the Ministry of Works & Housing but per se it was an order passed by M.N. Buch as Vice-Chairman, Delhi Development Authority and he concludes by observing :

The Minister, Works & Housing had discussed the case with me and ordered that the case should be cleared immediately and his ex post facto sanction obtained. On this basis, we may issue clearance to the Express Authorities and also make a reference to the Government of India asking for confirmation of the action taken. "This order should be treated as an order under Special Appeal."

58. A perusal of the counter-affidavit of M.N. Buch bears out that the maker of an instrument is not always its best interpreter. Nothing really turns on the aforesaid two affidavits of M.N. Buch and H.R. Ailawadi, the then Vice-Chairman of the Delhi Development Authority which was just a belated attempt of the respondents to support the action of respondent 2 in initiating the proceedings which culminated in the issue of the impugned notices. The respondents have been shifting their stand from stage to stage.

59. Upon these pleadings, the points for determination that arise may be formulated :

(1) Whether the impugned notice of re-entry upon forfeiture of lease by the Engineer Officer, Land & Development Office, Ministry of Works & Housing dated March 10, 1980 requiring Express Newspapers Pvt. Ltd. to show cause why the lessor i.e. the Union of India should not re-enter upon and take possession of plots Nos. 9 and 10, Bahadurshah Zafar Marg together with the Express Buildings built thereon and the impugned notice of the Zonal Engineer (Buildings), Municipal Corporation, City Zone, Delhi to show cause why the new Express Building, particularly the double basement, where the Express Newspapers Pvt. Ltd. have installed the printing press with the working platform which was a necessary appurtenance to the installation of the printing press expressly sanctioned by the then Minister for Works & Housing as well as by M.N. Buch, the then Vice-Chairman, DDA in conformity with Delhi Development Act, 1957, the Master Plan and under sections 343 and 344 of the Delhi Municipal Corporation Act, 1957, were violative of the petitioners' right to freedom of press guaranteed by Article 19(1)(a) read with Article 14 of the Constitution and therefore a petition under Article 32 was maintainable.

(2) Whether the construction of the new Express Building on the residual area of 2740 square yards to the west of sewer line after its removal on plots Nos. 9 and 10 without the permission of the Lt. Governor or of the Land & Development Officer by the petitioners with an increased FAR 360 constituted a breach of Clauses 2(5) and 2(14) which entitled the Engineer Officer, Land & Development Office, Ministry of

Works & Housing to issue the impugned show cause notice dated March 10, 1980 of re-entry upon forfeiture of lease and the Union of India to re-enter upon and take possession of plots Nos. 9 and 10, Bahadurshah Zafar Marg, together with the Express Buildings thereon.

(3)(a) Whether under the Master Plan, development of the Mathura Road commercial area was totally prohibited on FAR exceeding 300 i.e. whether such area does fall within the expression "already built-up commercial area" or whether the Master Plan does not refer to the Mathura Road commercial area nor does such area fall within the expression "already built-up commercial area" i.e. the area falling within the walled city of Delhi.

(b) Whether the permitted uses in the use-Zone C-II viz. the zone in which the press area falls do not exclude "newspaper and printing presses" except only if such user is allowed by a competent authority after special appeal that newspaper and printing presses are permitted to be installed.

(4) Whether the Ministry of Works & Housing with the Minister at the head was and is the ultimate authority responsible for the following items of works "Property of the Union, Town and Country Planning, Delhi Development Authority, Master Plan of Delhi, Administration of the Delhi Development Act, 1957, the Land & Development Office dealing with the administration of nazul lands in the Union Territory of Delhi. If that be so, whether the orders passed by Sikander Bakht, the then Minister for Works & Housing granting permission to the petitioners to construct the new Express Building with an increased FAR 360 on an area of 2740 square yards to the west of plots Nos. 9 and 10 was illegal, improper and irregular.

(5) Whether the decision taken by the then Minister for Works & Housing for permitting construction of the new Express Building with an increased FAR of 360 with a double basement for the installation of the printing press was in conformity with the recommendation of M.N. Buch, the then Vice-Chairman, Delhi Development Authority and had been reached after the matter had been dealt with at all levels in the Ministry of Works & Housing and was binding upon the successor Government i.e. the Union of India as also the Ministry of Works & Housing and the petitioners having acted in the faith of such assurance and constructed the new Express Building thereon at a cost of nearly Rs 2 crores, the respondents particularly respondent 1, the Union of India, was precluded by the doctrine of promissory estoppel from challenging the validity of the permission granted by the then Minister for Works & Housing. If that be so, whether the present Government is bound to honour all assurances given by or on behalf of the Union of India, Ministry of Works & Housing by the then Minister.

(6) Whether the Lt. Governor of Delhi has any function in relation to the lease being a successor of the Chief Commissioner of Delhi. If that be so, whether the Lt. Governor of Delhi could have set up a three-man committee to inquire into and report on the alleged breaches committed by the petitioners in the construction of the new Express Building with an increased FAR of 360 or the double basement for installation of the printing press, contrary to the sanction plan and the building bye-laws of the Municipal Corporation of Delhi. If that be so, whether the Engineer

Officer, Land and Development Office could have acted on the press report of the news conference held by the Lt. Governor and on its basis issue the impugned show cause notice dated March 10, 1980.

(7) Whether the respondents are right in contending that the alleged breach committed by the petitioners in not obtaining the previous permission of the Lt. Governor as required by Clauses 2(5) and 2(14) was not remedial and therefore the lessor i.e. the Union of India Ministry of Works & Housing could direct removal or demolition of the construction complained of.

(8) Whether the notice of re-entry upon forfeiture of lease issued by the Engineer Officer, Land & Development Office, New Delhi dated March 10, 1980 purporting to be on behalf of the lessor i.e. the Union of India, Ministry of Works & Housing, and that of March 1, 1980 issued by the Zonal Engineer (Buildings), Municipal Corporation, City Zone, Delhi, were wholly mala fide and politically motivated.

60. For a proper appreciation of the points involved, it is necessary to set out the material clauses of the indenture of lease-deed dated March 17, 1958. Clauses 2(5), 2(14), 4, 5 and 6, insofar as material, run as follows :

2(5). The lessee will not without the previous consent in writing of the Chief Commissioner of Delhi or of such officer or body as the lessor or the Chief Commissioner of Delhi may authorize in this behalf make any alternations in or additions to the building erected on the said demised premises so as to affect any of the architectural or structural features thereof or suffer to be erected on any part of the said demised premises or any building other than and except the building erected thereon at the date of these presents.

2(14). The lessee shall keep to the entire satisfaction of the said Chief Commissioner the area to the west of the pipeline admeasuring 2740 sq. yards (which area for clarity's sake is delineated on the plan hereto annexed and thereon shown in yellow) as an open space, that is, as lawns, paths or parking grounds.

4. If there shall at any time have been in the opinion of the lessor or the Chief Commissioner of Delhi whose decision shall be final, any breach by lessee or by any person claiming through or under him of any of the covenants or conditions contained in sub-clause (5)....of Clause 2 and if the said intended lessee shall neglect or fail to remedy any such breach to the satisfaction of the Chief Commissioner of Delhi within seven days from the receipt of a notice signed by the Chief Commissioner of Delhi requiring him to remedy such breach it shall be lawful for the officers and workmen acting under the authority and direction of the Chief Commissioner of Delhi to enter upon the premises hereby demised and (a) to remove or demolish any alterations on or additions to the buildings created on the said premises without the previous consent in writing of the Chief Commissioner of Delhi or duly authorized officer as aforesaid...and it is hereby expressly declared that the liberty hereinafter given is not to prejudice in any way the power given to the President of India by Clauses 4 & 5 hereof.

5. .... (I)f there shall have been in the opinion of the lessor or the Chief Commissioner of Delhi whose decision shall be final, any breach by the lessee or by any person claiming through or under him of any of the covenants or conditions

hereinbefore contained and on his part to be observed or performed then and in any such case it shall be lawful for the lessor or any person or persons duly authorized by him notwithstanding the waiver of any previous cause or right of re-entry upon any part of the premises hereby demised or of the buildings thereon in the name of the whole to re-enter and thereupon this demise and everything herein contained shall cease and determine and the lessee shall not be entitled to any compensation whatsoever, nor, to the return of any premium paid by him.

6. No forfeiture or re-entry shall be effected except as herein provided, without the permission of the Chief Commissioner of Delhi, and the Chief Commissioner shall not permit such forfeiture or re-entry until the lessor has served on the lessee a notice in writing :

(a) specifying the particular breach complained of

(b) if the breach is capable of remedy, requiring the lessee to remedy the breach.

and if the lessee fails within a reasonable time from the date of service of the notice to remedy the breach, if it is capable of remedy, and in the event of forfeiture or re-entry the Chief Commissioner may in his discretion relieve against forfeiture on such terms and conditions as he thinks proper.

THE ACTS

61. We may then refer to the relevant provisions of the Delhi Development Act, 1957 which is paramount law on the subject and overrides the provisions of the Delhi Municipal Corporation Act, 1957. The word 'Building' is defined in Section 2(b) as including any structure or erection or part of a structure or erection which is intended to be used for residential, industrial, commercial or other purposes, whether in actual use or not; and the term "building operations" as defined in Section 2(c) includes rebuilding operations, structural alterations of or additions to buildings and other operations normally undertaken in connection with the construction of buildings. In Section 2(d) the term "development" is defined with all its grammatical variations to mean the carrying out of building, engineering, mining or other operations in, on, over or under land or the making of any material change in any building or land and includes redevelopment. The expression "development area" is defined in Section 2(e) to mean any area declared to be the development area under sub-section (1) of Section 12.

62. Under the scheme of the Act, the predominant object and purpose for which the Delhi Development Authority is constituted under Section 3(1) is to secure the planned development of Delhi. This has to be achieved by the preparation of Master Plan under Section 7(1) and Zonal Development Plans under Section 8(1). Under Section 3(3)(a) the Administrator of the Union Territory of Delhi shall be the Chairman ex officio of the Delhi Development Authority. Under Section 6 the Authority is charged with the duty to promote and secure the development of Delhi according to plan. The Master Plan as enjoined under Section 7(2)(a) defines the various zones into which Delhi may be divided for the purpose of development and indicates the manner in which the land in each zone is proposed to be used (whether by the carrying out thereon of development or otherwise) and the stages by which any such development shall be carried out; and by clause (b) thereof serves as a basic pattern of framework within which the zonal development plans of the various zones may be prepared. Section 12(1) provides that as soon as may be after the

commencement of this Act, the Central Government may, by notification in the Official Gazette, declare any area in Delhi to be a development area for the purposes of this Act. After the commencement of the Act, Section 12(3) enjoins that no development of land shall be undertaken or carried out in any area by any person or body (including a department of Government) unless, -

> (i) where that area is a development area, permission for such development has been obtained in writing from the Authority in accordance with the provisions of this Act, i.e. according to the Master Plan and the Zonal Development Plans;
>
> (ii) where that area is an area other than a development area, approval of, or sanction for, such development has been obtained in writing from the local authority concerned or any officer or authority thereof empowered or authorized in this behalf, in accordance with the provisions made by or under the law governing such authority or until such provisions have been made in accordance with the provisions of the regulations relating to the grant of permission for development made under the Delhi (Control of Building Operations) Act, 1955, and in force immediately before the commencement of this Act :
>
> 63. It is common ground that the Press Enclave on the Mathura Road Commercial Complex has not been declared under Section 12(1) to be a development area for purposes of the Act. Section 14 provides that after the coming into operation of any of the plans in a zone no person shall use or permit to be used any land or building in that zone otherwise than in conformity with such plan. Section 29(1) makes it a penal offence to undertake or carry out development of any land in contravention of the Master Plan or Zonal Development Plans or without the permission, approval or sanction referred to in Section 12 or in contravention of any condition subject to which such permission, approval or sanction has been granted. Section 53(3) is important for our purpose and it reads :
>
> 53(3) Notwithstanding anything contained in any such other law -
>
> (a) when permission for development in respect of any land has been obtained under this Act such development shall not be deemed to be unlawfully undertaken or carried out by reason only of the fact that permission, approval or sanction required under such other law for such development has not been obtained;
>
> (b) when permission for such development has not been obtained under this Act, such development shall not be deemed to be lawfully undertaken or carried out by reason only of the fact that permission, approval or sanction required under such other law for such development has been obtained.

64. The words "such other law" in Section 53(3) obviously refer to the non obstante clause in sub-section (2) which reads :

> 53(2)...the provisions of this Act and the rules and regulations made thereunder shall have effect notwithstanding anything inconsistent therewith contained in any other law, i.e. the provisions of the Act have an overriding effect over the Delhi Municipal Corporation Act, 1957.

65. The Delhi Municipal Corporation Act, 1957 provides inter alia by Section 332 that no person

shall erect or commence to erect any building, or execute any of the works specified in Section 334 except with the previous sanction of the Commissioner, nor otherwise than in accordance with the provisions of this Chapter (Chapter XVI) and of the bye-laws made under this Act in relation to the erection of buildings or execution of works. Section 334(1) provides that every person who intends to carry on any work of the type indicated e.g. make additions to or alterations in any building or the repairs or alterations of the kind specified shall apply for sanction by giving notice in writing of his intention to the Commissioner in such form and containing such information as may be prescribed by bye-laws made in that behalf. Section 336(1) provides that the Commissioner shall sanction the erection of a building or the execution of a work unless such building or work would contravene any of the provisions of sub-section (2) of that section. Sub-section (2)(a) provides for one of the grounds on which sanction of a building or work may be refused viz. where such building or work or the use of the site for the building or work would contravene the provisions of any bye-law made in that behalf or of any other law made in such other law. Sub-section (3) provides that the Commissioner shall communicate the sanction to the person who has given the notice; and where he refuses sanction on any of the grounds specified in sub-section (2) or under Section 340 he shall record a brief statement of his reasons for such refusal and communicate the refusal along with the reasons therefor to the person who has given the notice. Section 343(1) provides inter alia that where the erection of any building or execution of any work has been commenced, or is being carried on, or has been completed without or contrary to the sanction referred to in Section 336.....the Commissioner may, in addition to any other action that may be taken under the Act, make an order directing that such erection or work shall be demolished. Proviso thereto enjoins that no such order of demolition shall be made unless a person has been afforded a reasonable opportunity of showing cause by a notice in writing as to why such order shall not be made. Sub-section (2) provides that the person aggrieved may prefer an appeal against an order of demolition passed under sub-section (1) to the District Judge. Sub-section (3) confers power on the District Judge to order stay of demolition. Sub-section (5) thereof provides that the order made by the District Judge on appeal and subject only to such order, the order of demolition made by the Commissioner shall be final and conclusive. Likewise Section 344(1) provides that where the erection of any building or execution of any work has been commenced or is being carried on but has not been completed, without or contrary to the sanction referred to in Section 336 or in contravention of any conditions subject to which sanction has been accorded or any contravention of any of the provisions of this Act or bye-law made thereunder, the Commissioner may be order require the person at whose instance the building or work has been commenced or is being carried on to stop the same forthwith. The remaining sub-sections of Section 344 are similar to those as contained in Section 343. I may now proceed to deal with the questions that have been raised.

Maintainability of the Writ Petitions under Article 32 of the Constitution.

66. The contention that these petitions are not maintainable under Article 32 of the Constitution leaves me cold. Some of the crucial questions that arise have been formulated hereinbefore. These are : (1) Whether the impugned notice of re-entry upon forfeiture of lease dated March 10, 1980 issued by the Engineer Officer, Land & Development Office under Clause 5 of the lease-deed and that of the Zonal Engineer (Buildings). City Zone, Municipal Corporation, Delhi dated March 1, 1980 to show cause why the Express Buildings should not be demolished as unauthorized construction under Sections 343 and 344 of the Delhi Municipal Corporation Act, 1957 were arbitrary and irrational without any factual basis and were therefore violative of Article 19(1)(a) read with Article 14 of the Constitution. (2) Whether the Lt. Governor was a successor of the Chief Commissioner of Delhi in terms of the lease-deed and whether by virtue of the notification issued by the President under Article 239(1) of the Constitution, he could exercise any power in relation to

lease of Government lands in the Union Territory of Delhi. (3) Whether under the paramount law i.e. the Delhi Development Act, 1957, the Master Plan for Delhi and the Zonal Development Plan for D-II area, the permissible FAR prescribed for buildings constructed in the Press Enclave on the Mathura Road Commercial Complex was 400. And (4) Whether the new Express Building constructed with an increased FAR of 360 with a double basement for installation of the printing press for publication of a Hindi newspaper, with the permission of the lessor, the Union of India, Ministry of Works & Housing, constitutes a breach of the Master Plan or the Zonal Development Plans or Clauses 2(5) and 2(14) of the lease-deed. These questions obviously arise on these petitions under Article 32 of the Constitution and any direction for quashing the impugned notices must necessarily involve determination of these questions. I regret that my learned brother Venkataramiah, J. proposes to express no opinion on the questions on which, in my view, the writ petitions turn.

67. The question at the very threshold is : Whether these petitions under Article 32 are maintainable. Learned counsel appearing for the Union of India raised a preliminary objection which he later developed as his main argument in reply. First, there was in the present case no question of infraction of the freedom of the press comprehended within the freedom of speech and expression guaranteed under Article 19(1)(a) but the enforcement of the Master Plan for Delhi and the Zonal Development Plan framed under the Delhi Development Act, 1957 and the Delhi Municipal Corporation (Buildings) Bye-laws, 1959 may at the most amount to a restriction on the fundamental rights of the petitioners to carry on their business guaranteed under Article 19(1)(g). Secondly, the right to occupy the land leased for the construction of a building for installation of a printing press is not within Article 19(1)(a) nor within Article 19(1)(g) but such a right is derived from a grant or contract. Such a right is certainly not within the content of Article 19(1)(a) or Article 19(1)(g). It is argued that the right arising out of a statute or out of a contract cannot be a fundamental right itself. Once a contract is entered into or a grant is made, the rights and obligations of the parties are not governed by Part III of the Constitution, but by the terms of the document embodying the contract or the grant, and any complaint about the breach of the same, cannot be even a matter for the application for the grant of a writ, direction or order under Article 226 of the Constitution, much less under Article 32. These contentions plausible though it may seem at first blush, are, on closer scrutiny, not well-founded. They ignore the true object and purpose for which the grant was made, namely, for the construction of a building or installation of a printing press for publication of a newspaper and the direct and immediate effect of the impugned notices for re-entry upon forfeiture of lease and the threatened demolition of the Express Buildings built on the leasehold premises under Clause 5 of the lease-deed for alleged breach of Clauses 2(5) and 2(14) thereof and under Sections 343 and 344 of the Delhi Municipal Corporation Act, 1957 when the said buildings had been constructed with the permission of the lessor i.e. the Union of India, Ministry of Works & Housing, and in conformity with the Master Plan and the Zonal Development Plan for D-II area as well as with the sanction of the Municipal Corporation of Delhi and therefore must amount to a violation of the freedom of speech and expression enshrined in Article 19(1)(a). I am not impressed at all with the submissions of learned counsel for respondent 1 that the forfeiture of lease or the threatened demolition of the Express Buildings does not touch upon the right guaranteed under Article 19(1)(a) as the petitioners can still shift the printing press to an alternative accommodation.

68. It is argued by learned counsel appearing for the petitioners that the main thrust of the impugned notice of re-entry dated March 10, 1980 by the Engineer Officer, Land & Development Office purporting to act on behalf of the lessor, the Union of India, Ministry of works & Housing under Clause 5 of the indenture of lease dated March 17, 1958 requiring the Express Newspapers Pvt. Ltd. to show cause why the Union of India should not re-enter upon and take possession of plots Nos. 9

and 10, Bahadurshah Zafar Marg together with the Express Buildings built thereon for alleged breach of Clause 2(5) and 2(14) of the lease-deed and that of the earlier notice dated March 1, 1980 issued by the Zonal Engineer (Buildings), City Zone, Municipal Corporation, Delhi requiring them to show cause why the aforesaid buildings should not be demolished under Sections 343 and 344 of the Delhi Municipal Corporation Act, 1957 was a direct threat on the freedom of the press guaranteed under Article 19(1)(a) of the Constitution. He contends that the impugned notices were intended and meant to bring about a closure of the Indian Express and not so much for the professed enforcement of laws governing building regulations the Delhi Development Act, 1957, the Master Plan for Delhi and the Zonal Development Plan for D-II area for the Mathura Road Commercial Complex framed thereunder or the Delhi Municipal Corporation Act, 1957 and the Delhi Municipal Corporation (Buildings) Bye-laws, 1959. He further contends that the respondents cannot be permitted to traverse beyond the pleadings of the parties as contained in the counter-affidavit of respondent 2 filed on behalf of the respondents and the supplementary affidavit of M.K. Mukherjee, Secretary, Ministry of Works & Housing, or the terms of the impugned notices. In an attempt to justify the illegal, arbitrary and irrational government and statutory action which was wholly mala fide and politically motivated, he particularly drew our attention to the terms of the impugned notice issued by the Engineer Officer, Land & Development Office dated March 19, 1980 which purports to forfeit the lease under clause 5 of the lease-deed on two grounds, namely : (1) The additional construction of the new Express Building by Express Newspapers Pvt. Ltd. on the western portion of plots Nos. 9 and 10 i.e. the land to be kept open as 'green', was without taking permission of the lessor under the terms of the lease-deed. And (2) The building plans were not submitted for sanction of the lessor under the terms of the lease and thus there was contravention of Clauses 2(5) and 2(14) of the lease-deed. He also pointed out that the impugned notice of the Zonal Engineer (Buildings), City Zone, Municipal Corporation, Delhi dated March 1, 1980 was on the ground that the Express Newspapers Pvt. Ltd. had started unauthorized construction of excess basement beyond sanction and construction of upper basement without sanction as shown in red in the sketch plan annexed thereto and that these were therefore unauthorized constructions liable to be demolished under Sections 343 and 344 of the Delhi Municipal Corporation Act, 1957. According to the learned counsel, the impugned notices were based on grounds which were factually incorrect.

69. Learned counsel further pointed out that the impugned notice of the Engineer Officer nowhere suggests that the construction of the said building with an increased FAR of 360 was in breach of the Master Plan or the Zonal Development Plan for D-II area framed under the Delhi Development Act or of the Building Bye-laws made under the Delhi Municipal Corporation Act, 1957. The contention is that the said building with an increased FAR of 360 together with a double basement for installation of a printing press for the publication of a Hindi newspaper was with the express sanction of the lessor i.e. the Union of India, Ministry of Works & Housing accorded to the Express Newspapers Pvt. Ltd. which had duly submitted the building plans for grant of requisite sanction. In the premises, it is submitted that each of the structures was constructed with the express sanction of the lessor, and the Delhi Development Authority granted under the Delhi Development Act, 1957 which was the paramount law on the subject. It is urged that the re-entry upon forfeiture of lease or the threatened demolition of the new Express Building with the double basement where the printing press is installed for publication of the Hindi newspaper Jansatta will result in snuffing out the Indian Express as a newspaper altogether although it has the largest combined net sales among all daily newspapers in India. The learned counsel particularly emphasized the fact that the Express Buildings at 9-10, Bahadurshah Zafar Marg form the nerve-centre of the Express Group of Newspapers in general and the Indian Express in particular as the teleprinter is installed therein. We are informed that the editorials and the leading articles of the Indian Express are sent out and the

editorial policy laid down from the Delhi office to ten centres all over India. As already stated, the Indian Express as a newspaper is simultaneously published from Ahmedabad, Bangalore, Bombay, Chandigarh, Cochin, Delhi, Hyderabad, Madras, Madurai, Vijayawada and Vizianagaram. In this factual background, the learned counsel contends that the impugned notices have a direct impact on the freedom of the press and being in excess of governmental authority and colourable exercise of statutory powers, are liable to be struck down as offending Article 19(1)(a) read with Article 14 of the Constitution. He contends that the test laid down by this Court in Bennett Coleman & Co. v. Union of India ((1973) 2 SCR 757 : (1972) 2 SCC 788 : AIR 1973 SC 106) is whether the direct and immediate impact of the impugned action is on the freedom of speech and expression guaranteed under Article 19(1)(a) which includes the freedom of the press. According to him, that test is clearly fulfilled in the facts and circumstances of the present case. In my considered view, the contention of the learned counsel for the petitioners must prevail.

70. I regret my inability to accept the contention to the contrary advanced by learned counsel appearing for respondent 1 indicated above that the petitioners are seeking to enforce a contractual right and therefore the questions raised cannot be decided on a petition under Article 32 of the Constitution. It is urged that the content of the fundamental rights guaranteed in Part III of the Constitution demarcates the area within which the jurisdiction of the Court under Article 32 can operate and that it is not permissible for the Court to enlarge upon its jurisdiction by a process of judicial interpretation. Placing reliance on certain observations of Ayyangar, J. in All India Bank Employees' Association v. National Industrial Tribunal ((1962) 3 SCR 269 : AIR 1962 SC 171) and of Chandrachud and Bhagwati, JJ. in Maneka Gandhi v. Union of India ((1978) 3 SCR 621 : (1978) 1 SCC 248 : AIR 1978 SC 597), it is urged that the content of Article 19(1)(a) of the Constitution would not include the right which is guaranteed by other clauses of Article 19. According to the learned counsel, it must therefore logically follow that what facilitated the exercise of a fundamental right did not for that reason become a part of the fundamental right itself. He read out different passages from the judgments of Bhagwati, J. in E.P. Royappa v. State of T.N. ((1974) 2 SCR 348 : (1974) 4 SCC 3 : AIR 1974 SCC 555), Maneka Gandhi v. Union of India ((1978) 2 SCR 621 : (1978) 1 SCC 248 : AIR 1978 SC 597) and Ramana Dayaram Shetty v. International Airport Authority of India Ltd. ((1979) 3 SCR 1014 : (1979) 3 SCC 489 : AIR 1979 SC 1628) and endeavoured to show, to use his own language, that "in spite of some literal flourish in the language here and there, they did not and could not depart from the ambit of Article 14 which deals with the principle of equality embodied in the Article". He was particularly critical of the dictum of Bhagwati, J. in International Airport Authority case ((1979) 3 SCR 1014 : (1979) 3 SCC 489 : AIR 1979 SC 1628) that "arbitrariness was the antithesis of Article 14" and commented that this would mean that all governmental actions which are not supportable by law were per se violative of Article 14. I am afraid, it is rather late in the day to question the correctness of the landmark decision in Maneka Gandhi case ((1978) 2 SCR 621 : (1978) 1 SCC 248 : AIR 1978 SC 597) and the innovative construction placed by Bhagwati, J. on Article 14 in the three cases of Royappa ((1974) 2 SCR 348 : (1974) 4 SCC 3 : AIR 1974 SC 555), Maneka Gandhi ((1978) 2 SCR 621 : (1978) 1 SCC 248 : AIR 1978 SC 597) and International Airport Authority ((1979) 3 SCR 1014 : (1979) 3 SCC 489 : AIR 1979 SC 1628), which have evolved new dimensions in judicial process.

71. It is also urged that the argument of learned counsel appearing on behalf of the petitioners that the building in question is necessary for running the press and any statutory or executive action to pull it down or forfeit the lease would directly impinge on the right of freedom of speech and expression under Article 19(1)(a) is wholly misconceived inasmuch as every activity that may be necessary for exercise of freedom of speech and expression or that may facilitate such exercise or make it meaningful and effective cannot be elevated to the status of a fundamental right as if it were

part of the fundamental right to free speech and expression. It is further urged that the right to the land and the right to construct buildings thereon for running a printing press are not derived from Article 19(1)(a) but spring from the terms of the grant of such lands by the Government under the provisions of the Government Grants Act, 1895 and regulated by other laws governing the subject viz. the Delhi Development Act, 1957, the Master Plan and the Zonal Development Plans framed thereunder, the Delhi Municipal Corporation Act, 1957 and the Delhi Municipal Corporation (Buildings) Bye-laws, 1959 which regulate construction of buildings in the Union Territory of Delhi irrespective of the purpose for which the building is constructed. It is also urged that even on a question of fact, the direct impact of the impugned notices will not be on the double basement wherein printing press is installed but will be wholly or in part on the two upper storeys which are not intended to be used in relation to the press or for publication of the intended Hindi newspaper but only for the purpose of letting out the same for profit; the only other possible effect may be the removal of the upper basement which the petitioners call a working platform which has been constructed in violation of the building regulations.

72. Learned counsel for respondent 1, the Union of India accepts that the right to carry on the business of printing and publication of a newspaper and installation of a printing press for that purpose is undoubtedly a fundamental right guaranteed both under Articles 19(1)(a) and 19(1)(g) but the right to occupy the land or construct suitable structures thereon for the business of a printing press on such land is not within Article 19(1)(a) nor within Article 19(1)(g). If it were, the Delhi Municipal Corporation Act or the Delhi Development Act, and the Master Plan or the Zonal Development Plan and the Building Bye-laws would be totally ineffectual. Such restrictions cannot be placed even though in the interest of the general public as they would not fall within Article 19(2). If, in respect of the building in question, the right to occupy such land is to be considered as comprehended in the right of freedom of speech and expression guaranteed by Article 19(1)(a), then inevitable consequence would be that neither the provisions of the Delhi Development Act nor the Delhi Municipal Corporation Act nor the Master Plan or the Zonal Development Plans or the Building Bye-laws would be applicable so as to control the building activities of the petitioners. It is said that the irresistible conclusion, therefore, ought to be that the fundamental right to freedom of speech and expression of a person under Article 19(1)(a) cannot extend to the continued occupation of a place where such right is derived from a grant or contract. Such a right is certainly not within the content of Article 19(1)(a) or Article 19(1)(g). It is accordingly argued that the right arising out of a statute or out of a contract cannot be a fundamental right itself. Once contract is entered into or a grant is made, the rights and obligations of the parties are not governed by Part III of the Constitution, by the terms of the document embodying the contract or the grant, and any complaint about the breach of the same, cannot be even a matter for application for grant of a writ, direction or order under Article 226 of the Constitution much less under Article 32. In substance, the submission is that the right to run a press may be a fundamental right guaranteed under Article 19(1)(a) or Article 19(1)(g) but the right to use a particular building for running a press is altogether another thing inasmuch as no particular building is equally fit for the running of the press and the person desiring to run a press or already running the press is at liberty to acquire another suitable building for that purpose. Further, even if the buildings in question were necessary for the enjoyment of the rights under Article 19(1)(a) or Article 19(1)(g), a right to use a particular building does not become an "integral part of the right to freedom of speech and expression" or the "right to carry on any trade or business in printing and publishing a newspaper" and clearly therefore the petitions under Article 32 were not maintainable. I am afraid, the contentions are wholly misconceived and cannot be accepted.

73. Here, the very threat is to the existence of a free and independent press. It is now firmly

established by a series of decisions of this Court and is a rule written into the Constitution that freedom of the press is comprehended within the right to freedom of speech and expression guaranteed under Article 19(1)(a) and I do not wish to traverse the familiar ground over again except to touch upon certain landmark decisions. In Romesh Thappar v. State of Madras (1950 SCR 594 : AIR 1950 SC 124), the Court observed that the Founding Fathers realized that freedoms of speech and of the press are at the foundation of all democratic organizations, for without free political discussion no public education, so essential for proper functioning of the processes of popular Government, is possible. In Sakal Papers (P) Ltd. v. Union of India ((1962) 3 SCR 842 : AIR 1962 SC 305) (sic), the Court reiterated :

> Our Government set-up being elected, limited and responsible, we need requisite freedom of any animadversion for our social interest which ordinarily demands free propagation of views. Freedom to think as one likes and to speak as one thinks are as a rule indispensable to the discovery and separate of truth and without free speech, discussion may be futile.

74. Romesh Thappar's case (1950 SCR 594 : AIR 1950 SC 124) was cited with approval in Express Newspapers (P) Ltd. v. Union of India (1959 SCR 12 : AIR 1958 SC 578). There is in the Express Newspapers case (1959 SCR 12 : AIR 1958 SC 578) an elaborate discussion of the freedom of the press at pp. 118-128 of the Report. The Express Newspapers case (1959 SCR 12 : AIR 1958 SC 578) and also the case of Sakal Papers ((1962) 3 SCR 842 : AIR 1962 SC 305) were cited with approval by the Court in Bennett Coleman ((1973) 2 SCR 757 : (1972) 2 SCC 788 : AIR 1973 SC 106). The principle is too well-settled to need any more elaboration.

75. I would only like to stress that the freedom of thought and expression, and the freedom of the press are not only valuable freedoms in themselves but are basic to a democratic form of Government which proceeds on the theory that problems of the Government can be solved by the free exchange of thought and by public discussion of the various issues facing the nation. It is necessary to emphasize and one must not forget that the vital importance of freedom of speech and expression involves the freedom to dissent to a free democracy like ours. Democracy relies on the freedom of the press. It is the inalienable right of everyone of comment freely upon any matter of public importance. This right is one of the pillars of individual liberty - freedom of speech, which our Court has always unfailingly guarded. I wish to add that however precious and cherished the freedom of speech is under Article 19(1)(a), this freedom is not absolute and unlimited at all times and under all circumstances but is subject to the restrictions contained in Article 19(2). That must be so because unrestricted freedom of speech and expression which includes the freedom of the press and is wholly free from restraints, amounts to uncontrolled licence which would lead to disorder and anarchy and it would be hazardous to ignore the vital importance of our social and national interest in public order and security of the State.

76. In Bennett Coleman case ((1973) 32 SCR 757 : (1972) 2 SCC 788 : AIR 1973 SC 106) the Court indicated that the extent of permissible limitations on this freedom are indicated by the fundamental law of the land itself viz. Article 19(2) of the Constitution. It was laid down that permissible restrictions on any fundamental right guaranteed under Part III of the Constitution have to be imposed by a duly enacted law and must not be excessive i.e. they must not go beyond what is necessary to achieve the object of the law under which they are sought to be imposed. "The power to impose restrictions on fundamental rights is essentially a power to 'regulate' the exercise of these rights. In fact, 'regulation' and not extinction of that which is to be regulated is, generally speaking, the extent to which permissible restrictions may go in order to satisfy the test of reasonableness".

The Court also dealt with the extent of permissible limitations on the freedom of speech and expression guaranteed under Article 19(1)(a). The test laid down by the Court in Bennett Coleman case ((1973) 2 SCR 757 : (1972) 2 SCC 788 : AIR 1973 SC 106) is whether the direct and immediate impact of the impugned action is on the freedom of speech and expression guaranteed under Article 19(1)(a) which includes the freedom of the press. It was observed that the restriction on the number of pages, a restraint on circulation and a restraint on advertisements would affect the fundamental right under Article 19(1)(a) on the aspects of propagation, publication and circulation of a newspaper. In repelling the contention of the learned Additional Solicitor-General that the newsprint policy did not violate Article 19(1)(a) as it does not directly and immediately deal with the right mentioned in Article 19(1)(a), the Court held that the tests of pith and substance of the subject-matter and of direct and incidental effect of legislation are relevant to questions of legislative competence but they are irrelevant to the question of infringement of fundamental rights. The true test, according to the Court, is whether the effect of the impugned action is to take away or abridge fundamental rights. It was stated that the word 'direct' would go to the quality or character of the effect and not the subject-matter and the restriction sought to be imposed by the impugned newsprint policy was, in substance, a newspaper control i.e. to control the number of pages or circulation of dailies or newspapers and such restrictions were clearly outside the ambit of Article 19(2) of the Constitution and therefore were in abridgement of the right of freedom of speech and expression guaranteed under Article 19(1)(a), and it added :

> The Newsprint Control Policy is found to be newspaper control order in the guise of framing an Import Control Policy for newsprint.

This Court in the Bank Nationalisation case (R.C. Cooper v. Union of India, (1970) 1 SCC 248) laid down two tests. First it is not the object of the authority making the law impairing the right of the citizen nor the form of action that determines the invasion of the right. Secondly, it is the effect of the law and the action upon the right which attracts the jurisdiction of the court to grant relief. The direct operation of the Act upon the rights forms the real test.

... No law or action would state in words that rights of freedom of speech and expression are abridged or taken away. That is why courts have to protect and guard fundamental rights by considering the scope and provisions of the Act and its effect upon the fundamental rights.

We have only to substitute the word 'executive' for the word 'law' and the result is obvious. Here, the impugned notices of re-entry upon forfeiture of lease and of the threatened demolition of the Express Buildings are intended and meant to silence the voice of the Indian Express. It must logically follow that the impugned notices constitute a direct and immediate threat to the freedom of the press and are thus violative of Article 19(1)(a) read with Article 14 of the Constitution. It must accordingly be held that these petitions under Article 32 of the Constitution are maintainable.

The Government Grants Act, 1895; Section 3 : Purport & Effect of : Whether the notice of re-entry upon forfeiture of lease was valid and enforceable due to non-compliance of Clause 6 of thereof.

77. It is common ground that the perpetual lease was a Government grant governed by the Crown Grants Act, 1895, now known as the Government Grants Act. The Act is an explanatory or declaratory Act. Doubts having arisen as to the extent and operation of the Transfer of Property Act, 1882 and as to the power of the Government to impose limitations and restrictions upon grants and other transfers of land made by it or under its authority, the Act was passed to remove such doubts as is clear from the long title and the preamble. The Act contains two sections and provides by

Section 2 for the exclusion of the Transfer of Property Act, 1882 and, by Section 3 for the exclusion of, any rule of law, statute or enactment of the Legislature to the contrary. Sections 2 and 3 read as follows :

> 2. Transfer of Property Act, 1882, not to apply to Government grants. - Nothing in the Transfer of Property Act, 1882, contained shall apply or be deemed ever to have applied to any grant or other transfer of land or of any interest therein heretofore made or hereafter to be made by or on behalf of the Government to, or in favour of, any person whomsoever; but every such grant and transfer shall be construed and take effect as if the said Act had not been passed.
>
> 3. Government grants to take effect according to their tenor. - All provisions, restrictions, conditions and limitations over contained in and such grant or transfer as aforesaid shall be valid and take effect according to their tenor, any rule of law, statute or enactment of the Legislature to the contrary notwithstanding.

78. It is plain upon the terms that Section 2 excludes the operation of the Transfer of Property Act, 1882 to Government grants. While Section 3 declares that all provisions, restrictions, conditions and limitations contained over any such grant or transfer as aforesaid shall be valid and shall take effect according to their tenor, notwithstanding any rule of law, statute or enactment of the Legislature to the contrary. A series of judicial decisions have determined the overriding effect of Section 3 making it amply clear that a grant of property by the Government partakes of the nature of law since it overrides even legal provisions which are contrary to the tenor of the document.

79. Learned counsel appearing for respondent 1, the Union of India, fairly conceded that the impugned notice of re-entry upon forfeiture of lease dated March 10, 1980 issued by the Engineer Officer, L & DO purporting to be on behalf of the lessor i.e. the Union of India under Clause 5 of the indenture of lease dated March 17, 1958 was invalid and had no legal effect since there was non-compliance of the mandatory requirements of Clause 6 thereof. But as a very astute counsel, he sought to evolve an argument contrary to the stand taken in the counter-affidavit filed by respondent 2 on behalf of all the respondents and the supplementary affidavit of M.K. Mukherjee, Secretary, Ministry of Works & Housing that the "breach was irremediable" and therefore the lessor i.e. the Union of India acting through the Land & Development Officer (L & DO) was entitled to serve a notice under Clause 5 for re-entry upon forfeiture of lease. He contended that the impugned notice was, in reality, not a notice of forfeiture under Clause 5 of the lease-deed but it was merely of an exploratory nature to afford petitioner 1 Express Newspapers Pvt. Ltd. to have its say before the L & DO as to whether the construction of the new Express Building with an increased FAR of 360 was in violation of the Master Plan or the Zonal Development Plans or the Building Bye-laws i.e. contrary to the terms of the lease, and that it was for the L & DO to be satisfied as to whether there was a breach of the terms of Clause 2(14) and 2(5) of the lease and that in the event of his reaching that conclusion, to proceed to serve the lessee with a notice of re-entry upon forfeiture of lease under Clause 5. Learned counsel appearing for respondent 5 L & DO has placed before us a detailed note explaining the prevailing practice followed by the L & DO in such cases. The meaning and significance of the note is that the show-cause notice under Clause 5 served by the L & DO is merely a preliminary step affording the lessee an opportunity to settle the terms and conditions with the concurrence of the Ministry of Works & Housing, offered by the lessor for condonation of such breach. In the event the lessee fails to comply with such terms, the L & DO withdraws the terms offered and then calls upon the lessee to remove or remedy the misuse or breach within 30 days. If there is failure on the part of the lessee to remedy such breach within the time allowed, the L & DO

processes the case for exercise by the lessor i.e. the Union of India of its right to re-enter upon forfeiture of lease under Clause 5 of the lease-deed. It is said that according to the prevailing practice in respect of such leases i.e. pre-1959 leases of the kind held by petitioner 1 Express Newspapers Pvt. Ltd., the approval of the Lt. Governor is considered a condition precedent to a final order of re-entry which is served on the lessee after such approval is accorded by the Lt. Governor. In terms of the order of re-entry the lessee is requested to hand over possession peacefully to the L & DO within a reasonable time. However, if the lessee does not hand over possession voluntarily in pursuance of L & DO's letter, the L & DO files an application under Section 5(1) of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971. Under Section 8 of the Act the Estate Officer has the same powers that are vested in the Civil Court under the Code of Civil Procedure, 1908, in trying a suit in respect of matters mentioned therein. The Estate Officer has to form an opinion that the lessee was in unauthorized occupation of any public premises and that he should be evicted whereupon the Estate Officer issues a notice under Section 4 by calling upon all persons concerned to show cause why an order of eviction should not be passed. Under Section 9 of the Act the person aggrieved has the remedy of an appeal to the District Judge and thereafter he may move the High Court under Article 226 of the Constitution.

80. I am not at all impressed by any of these submissions advanced on behalf of the respondents. There can be no doubt whatever on a true construction of the impugned notice dated March 10, 1980 that the Engineer Officer, Land & Development Office purporting to act on behalf of the lessor i.e. the Union of India, Ministry of Works & Housing served a notice of re-entry upon forfeiture of lease under Clause 5 of the lease-deed. There was no question of the said notice being construed to be of an exploratory nature. The note prepared by the L & DO is nothing but an afterthought. In the view that I take that respondent 2 is not the successor of the Chief Commissioner of Delhi nor has any function in relation to the lease, there is no warrant for the suggestion that prior approval of the Lt. Governor is a condition precedent to the right of the lessor i.e. the Union of India to exercise its right of re-entry upon forfeiture of lease under Clause 5 of the lease-deed.

81. There are two decisions of this Court which appear to be contradictory. In Bishan Das v. State of Punjab ((1962) 2 SCR 69 : AIR 1961 SC 1570) a Constitution Bench of this Court speaking through S.K. Das, J. in somewhat similar circumstances allowed the petition under Article 32 of the Constitution directing restoration of possession to the lease who had been dispossessed from land granted by the Government by display of force. What had happened was this. One Ramjidas built a dharmasala, a temple and shops appurtenant thereto with the joint family funds on Government land with the permission of the Government. After his death the other members of the family who were in management and possession of those properties were dispossessed by the State Government of Punjab at the instigation of a member of the ruling Congress Party. The petitioners applied to the Punjab High Court for issue of appropriate writs under Article 226 of the Constitution but the petition was dismissed in limine on the preliminary ground that the matter involved disputed questions of fact. An appeal under Clause 10 of the Letters Patent was also dismissed on the same ground. The petitioners then moved this Court under Article 32. The State Government sought to justify the action on the ground that the petitioners were merely trespassers as the land on which the dharmasala stood belonged to the State, and the respondents were entitled to use the minimum of force to eject the trespassers. It was also contended that there was a serious dispute on questions of fact between the parties and also whether the petitioners had any right or title to the subject-matter in dispute and therefore proceedings by way of a writ were not appropriate in the case inasmuch as the decision of the Court would amount to a decree declaring a party's title and ordering restoration of possession. The Court repelled both the contentions as unsound and held that the petitioners had

made out a clear case of violation of their fundamental rights. As to the contention that the petitioners were mere trespassers, the Court held that the admitted position was that the land belonged to the State; with the permission of the State, Ramjidas on behalf of the joint family firm of Faquir Chand Bhagwan Das built the dharmasala, temple and shops and managed the same during his lifetime. After his death the petitioners, other members of the joint family continued in possession and management. On this admitted position, it was held that the petitioners could not be held to be mere trespassers in respect of the dharmasala, temple and shops; nor could it be held that the dharmasala, temple and shops belonged to the State irrespective of the question whether the trust created was of a public or private nature, and it was observed :

> It is, therefore, impossible to hold that in respect of the dharmasala, temples and shops, the State has acquired any rights whatsoever merely by reason of their being on the land belonging to the State. If the State thought that the constructions should be removed or that the condition as to resumption of the land should be invoked, it was open to the State to take appropriate legal action for the purpose.

As to the second contention, the Court observed :

> It was enough to say that they are bona fide in possession of the constructions in question and could not be removed except under authority of law. The respondents clearly violated their fundamental rights by depriving them of possession of the dharmasala by executive orders.

The Court accordingly quashed the orders and issued a writ of mandamus directing restoration of the property. The Court felt its duty to pass strictures against the Government :

> We feel it our duty to say that the executive action taken in this case by the State and its officers is destructive of the basic principle of the rule of law. The facts and the position in law thus clearly are (1) that the buildings constructed on this piece of Government land did not belong to Government, (2) that the petitioners were in possession and occupation of the buildings and (3) that by virtue of enactments binding on the Government, the petitioners could be dispossessed, if at all, only in pursuance of a decree of a Civil Court obtained in proceedings properly initiated. In these circumstances the action of the Government in taking the law into their hands and dispossessing the petitioners by the display of force, exhibits a callous disregard of the normal requirements of the rule of law apart from what might legitimately and reasonably be expected from a Government functioning in a society governed by a Constitution which guarantees to its citizens against arbitrary invasion by the executive of peaceful possession of property.

The Court also adverted to the earlier decision in Wazir Chand v. State of H.P. ((1955) 1 SCR 408 : AIR 1954 SC 415) where it was held that the State or its executive officers cannot interference with the rights of others unless they can point to some specific rule of law which authorises their acts, and to Ram Prasad Narayan Sahi v. State of Bihar (1953 SCR 1129 : AIR 1953 SC 215) where the Court said that nothing is more likely to drain the vitality from the rule of law than legislation which singles out a particular individual from his fellow subjects and visits him with a disability which is not imposed upon the others, and concluded :

> We have here a highly discriminatory and autocratic act which deprives a person of

> the possession of property without reference to any law or legal authority. Even if the property was trust property it is difficult to see how the Municipal Committee, Barnala, can step in a trustee on an executive determination only. The reasons given for this extraordinary action are, to quote what we said in Sahi case (1953 SCR 1129 : AIR 1953 SC 215) remarkable for their disturbing implications.

82. In the later case of State of Orissa v. Ram Chandra Dev (AIR 1964 SC 685 : (1964) 1 SCWR 186), Gajendragadkar, J. delivering the judgment of the Constitution Bench observed :

Ordinarily, where property has been granted by the State on conditions which make the grant resumable, after resumption it is the grantee who moves the court for appropriate relief, and that proceeds on the basis that the grantor State which has reserved to itself the right to resume may, after exercising its right, seek to recover possession of the property without filing a suit.

83. All that the Court laid down was that the existence of a right is the foundation for a petition under Article 226 of the Constitution. In that case, certain ex-zamindars of Ganjam district were holding Government lands appurtenant to their office as Muthadars and were dispossessed therefrom upon resumption of their Muthas. The Court held that the lands were held by the ex-zamindars as service tenures which were resumable at the will of the Government. The parties were at issue on the question about the character of the grant under which the predecessors of the ex-zamindars were originally granted the lands in question. The Orissa High Court held that it was not possible for it to decide the important question of title involved in proceedings under Article 226 but that such a kind of title could only be decided in a properly constituted suit but nevertheless were inclined to the view that the right to recover possession vesting in a person who had been in possession prior to such dispossession which was implicit in Section 9 of the Specific Relief Act, 1963 would be enforced by a petition under Article 226. The view of the High Court was obviously not sustainable. At the hearing, counsel for the respondents sought an adjournment on the ground that the respondents had in the meanwhile filed a suit against the State Government and further that the parties were negotiating for a settlement. It appears that the Court rejected the prayer for adjournment saying that no useful purpose would be served by granting any further time and thereafter entered upon the merits. It held that merely because a suit under Section 9 of the Specific Relief Act would have been competent, no right can be claimed by the respondents merely on the ground of their possession under Article 226 unless their right to remain in possession was established against the State Government. There is no reference to the earlier decision of the Constitution Bench in Bishan Das case ((1962) 2 SCR 69 : AIR 1961 SC 1570) nor does the judgment lay down any contrary principle. It seems to me that the observations of Gajendragadkar, J. were merely in the nature of obiter in Ram Chandra Dev case (AIR 1964 SC 685 : (1964) 1 SCWR 186) and nothing really turns on the observations made by him. The decision in Ram Chandra Dev case (AIR 1964 SC 685 : (1964) 1 SCWR 186) appears to be in per incuriam.

84. Even in cases involving purely contractual issues, the settled law is that where statutory provisions of public law are involved, writs will issue : Mohd. Hanif v. State of Assam ((1970) 2 SCR 197 : (1969) 2 SCC 782).

85. For the sake of completeness, I wish to clear the ground of a possible misconception. Learned counsel appearing for respondent 1 the Union of India while contending that the impugned notice dated March 10, 1980 was of an exploratory nature, fairly conceded that the lessor i.e. the Union of India must enforce its right of re-entry upon forfeiture of lease under Clause 5 of the lease-deed by recourse to due process of law and wanted to assure us that there was no question of marching the

army or making use of the demolition squad of the Delhi Development Authority or the Municipal Corporation of Delhi in demolishing the Express Buildings. As we felt that there was some ambiguity in the expression "due process of law", we wanted a categorical answer whether by this he meant by a properly constituted suit. Without meaning any disrespect, the learned counsel adopted an ambivalent attitude saying that the due process may not only consist in the filing of a suit by the lessor or re-entry upon forfeiture of the lease but that in the case of lease of Government lands, the authorities may also take recourse to the Public Premises (Eviction of Unauthorized Occupants) Act, 1971. I have no doubt in my mind that the learned counsel is not right in suggesting that the lessor i.e. the Union of India, Ministry of Works & Housing can in the facts and circumstances of the case, take recourse to the summary procedure under that Act. The Express Newspapers Pvt. Ltd. having acted upon the grant of permission by the lessor i.e. the Union of India, Ministry of Works & Housing to construct the new Express Building with an increased FAR of 360 together with a double basement was clearly not an unauthorized occupant within the meaning of Section 2(g) of the Act which runs as under :

> 2(g) "unauthorized occupation", in relation to any public premises, means the occupation by any person of the public premises without authority for such occupation, and includes the continuance in occupation by any person of the public premises after the authority (whether by way of grant or any other mode of transfer), under which he was allowed to occupy the premises has expired or has been determined for any reason whatsoever.

86. The Express Buildings constructed by Express Newspapers Pvt. Ltd. with the sanction of the lessor i.e. the Union of India, Ministry of Works & Housing on plots Nos. 9 and 10, Bahadurshah Zafar Marg demised on perpetual lease by registered lease-deed dated March 17, 1958 can, by no process of reasoning, be regarded as public premises belonging to the Central Government under Section 2(e). That being so, there is no question of the lessor applying for eviction of the Express Newspapers Pvt. Ltd. under Section 5(1) of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 nor has the Estate Officer any authority or jurisdiction to direct their eviction under sub-section (2) thereof by summary process. Due process of law in a case like the present necessarily implies the filing of suit by the lessor i.e. the Union of India, Ministry of Works & Housing for the enforcement of the alleged right of re-entry, if any, upon forfeiture of lease due to breach of the terms of the lease.

87. Nothing stated here should be construed to mean that the Government has not the power to take recourse to the provisions of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 where admittedly there is unauthorized construction by a lessee or by any other person on Government land which is public premises within the meaning of Section 2(e) and such person is in unauthorized occupation thereof.

The constitutional position of the Lieutenant-Governor : Whether the Lieutenant-Governor is the successor of the Chief Commissioner of Delhi.

88. One of the most crucial issues on which long and erudite arguments were advanced by learned counsel for the parties, turned on the question as to whether the Lt. Governor was a successor of the Chief Commissioner of Delhi. Learned counsel appearing for the petitioners contended that the Lt. Governor cannot usurp the functions of the lessor i.e. the Union of India or the Chief Commissioner of Delhi in relation to the lease in question. It is urged that the Union Territory of Delhi which first became a Part 'C' State under the Constitution, was an entirely new constitutional entity and

therefore the office of the Chief Commissioner of Delhi ceased to exist. It is further urged that the Lt. Governor appointed by the President under Article 239(1) of the Constitution is an Administrator and he discharges such functions as are entrusted to him by the President of India and in the absence of a notification under Article 239(1), the Lt. Governor cannot usurp the functions of the Union of India in relation to the properties of the Union. It is pointed out that there was no notification issued by the President of India in terms of Article 239(1) of the Constitution empowering the Lt. Governor to administer the properties of the Union in the Union Territory of Delhi.

89. Learned counsel appearing for the Union of India substantially advanced the same argument. According to him, the Lt. Governor had no powers in relation to the properties of the Union and therefore the Union of India is not bound by the acts of the Lt. Governor. The Lt. Governor had no power in relation to the lease and therefore he could not usurp to himself the powers and functions of the Union of India in relation to the lease-deed. The learned counsel went to the extent of saying that wherever the expression "Chief Commissioner of Delhi" appears in the lease-deed, it had to be struck out altogether as no such office exists in view of the constitutional changes since brought about. That is to say, the question involved must be determined on the footing as if the parties never contemplated the Chief Commissioner of Delhi to exercise any of the functions of the lessor under the lease-deed.

90. In reply, learned counsel appearing for respondent 2, the Lt. Governor, advanced a two-fold submission; firstly, the Lt. Governor is the alter ego of the President of India and not a mere formal or titular head of the Union Territory of Delhi, and in that connection he referred to the constitutional history of the Union Territory of Delhi. In support of his contention that the designation of the Administrator as the Chief Commissioner of Delhi under both the Government of India Acts of 1919 and 1935 or as the Lt. Governor under the Constitution was a mere matter of nomenclature, the learned counsel referred to the provisions relating to the powers, functions and duties of the Chief Commissioner or the Lt. Governor, as the case may be, which remained the same. In his words, the Lt. Governor is the "eyes and ears" of the President in relation to such territory which he is called upon to administer on behalf of the President. One of the primary functions of the Lt. Governor, as the Administrator, is to be aware of facts brought to his notice and therefore respondent 2 could not have turned a blind eye to the action of Sikander Bakht, the then Minister for Works & Housing in making a highly fraudulent, illegal and improper grant of permission to the Express Newspapers Pvt. Ltd. to build the new Express Building with an increased FAR of 360 with a direction to the Municipal Corporation of Delhi to accord sanction to the building plan submitted to them, as it had become the talk of the town. As already stated, learned counsel for respondent 1, while contending that the Lt. Governor, as an Administrator, had no function as the lessor or its delegate, supported him only to the extent that as an Administrator he had to keep himself informed of any violations of law in the Union Territory of Delhi with the administration of which he was concerned. It was, therefore, legitimate for the Lt. Governor to have kept the authorities informed, and though he had no independent power of his own, he could place the material gathered by him with the lessor i.e. Union of India, Ministry of Works & Housing, with a view to initiate necessary action.

91. Secondly, the contention of learned counsel for respondent 2 was that the express exclusion of certain specific powers under the proviso to Section 21 of the Government of Part 'C' States Act, 1951 relates to the legislative powers of the Legislative Assembly or the Delhi Metropolitan Council and not to the executive functions of the Chief Commissioner or the Lt. Governor. It was submitted that this constitutional pattern was designed on the basis of the "transferred powers" in respect of

which the Legislative Assembly of Delhi or the Delhi Metropolitan Council were given certain defined role but the "reserved powers" were exercisable by the Administrator as the Chief Commissioner or the Lt. Governor i.e. the executive functions of the President of India under Article 53 of the Constitution. It was accordingly urged that the Legislative Assembly of Delhi did not have the powers to make any law with respect to "land and building vested or in possession of the Union of India" relatable to Entry 32 of List I of the Seventh Schedule, and the powers and functions of the Council of Ministers in the Union Territory of Delhi as a part 'C' State extended only to the legislative powers conferred under Section 21 of the Act. The "reserved powers" which were excluded from the purview of the Legislative Assembly or the Delhi Metropolitan Council were, however, exercisable by the Chief Commissioner and necessarily by the Lt. Governor as the appointed agent or the nominee of the President. It was submitted that the Lt. Governor continues to have certain defined functions, apart from his function as the executive head of the Delhi Administration. As an incumbent of an important public office of the Lt. Governor, he is intended to discharge diverse functions on behalf of the President of India as his agent in relation to the Union Territory of Delhi. In support of his contention, reliance was placed on the interpretation of Section 2(3) and Section 36 of the Act. It was urged that the office of the Land & Development Officer was under the direct administrative control of the Chief Commissioner as the Administrator until 1959. The Land & Development Officer administered nazul lands at that time as he does now. Although this was a subject excluded from the competence of the Legislative Assembly of Delhi under the proviso to Section 21 of the Act, the authority of the Chief Commissioner as the Administrator over the Land & Development Officer and over the administration of nazul lands as a "reserved subject" was kept under the administrative control of the Chief Commissioner. It was accordingly asserted that under several leases, including the one in the instant case, the Lt. Governor as the appointed agent or the nominee of the President is entitled to act on behalf of the lessor i.e. the Union of India, Ministry of Works & Housing and necessarily must have administrative control over the Land & Development Office and the administration of nazul lands.

92. To appreciate the rival contentions, it is necessary to view the question from a historical perspective since the Union Territory of Delhi, as it now exists, has undergone many constitutional changes. Prior to September 17, 1912, the Territory of Delhi was known as the "Imperial Delhi Estate" and was included within the then Province of Punjab. After the decision to form the capital at Delhi was reached, proceedings for acquisition of land therefor were taken by the Collector of Delhi District pursuant to the Notification No. 775 dated December 21, 1911 issued by the Lt. Governor of Punjab. When the capital was shifted from Calcutta to Delhi, the Governor-General-in-Council by his proclamation dated September 17, 1912 took under his immediate authority and management the territory of Delhi with the sanction and approbation of the Secretary of State for India. The Delhi Laws Act, 1912 came into force w.e.f. September 18, 1912 and provided for the administration of the territory of Delhi by a Chief Commissioner as a separate Province to be known as the Province of Delhi. The Preamble to the Act reads as follows :

> Whereas by Proclamation published in Notification No. 911, dated the seventeenth day of September, 1912, the Governor-General-in-Council, with the sanction and approbation of the Secretary of State for India, has been pleased to take under his immediate authority and management the territory mentioned in Schedule A, which was formerly included within the Province of the Punjab, and to provide for the administration thereof by a Chief Commissioner as a separate Province to be known as the Province of Delhi;

And whereas it is expedient to provide for the application of the law in force in the said territory,

and for the extension of other enactments thereto; It is hereby enacted as follows :

> Under Section 58 of the Government of India Act, 1919, Delhi remained and was administered as a Chief Commissioner's Province. The office of Land & Development Officer came into being as a separate organisation under the administrative control of the Chief Commissioner of Delhi. Under Section 94 of the Government of India Act, 1935, it was provided that Delhi would continue to be a Chief Commissioner's Province. A Chief Commissioner's Province was to be administered by the Governor-General acting to such extent as he thought fit through a Chief Commissioner to be appointed by him in his discretion. Section 94 of the Government of India Act, 1935 provided as follows :

94. Chief Commissioners' Provinces. - (1) The following shall be the Chief Commissioners' Provinces, that is to say, the heretofore existing Chief Commissioners' Provinces of British Baluchistan, Delhi, Ajmer-Merwara, Coorg and the Andaman and Nicobar Islands, the area known as Panth Piploda, and such other Chief Commissioners' Provinces as may be created under this Act.

> (2) Aden shall cease to be part of India.
>
> (3) A Chief Commissioner's Province shall be administered by the Governor-General acting, to such extent as he thinks fit, through a Chief Commissioner to be appointed by him in his discretion.

Under Section 100(4) of the Government of India Act, 1935, the Federal Legislature was empowered to legislate in relation to Chief Commissioners' Provinces and without limitation as to subjects.

93. With the attainment of Dominion status on August 15, 1947 under the Indian Independence Act, 1947, the powers of the Legislature of the Dominion were exercisable by the Constituent Assembly under sub-section (1) of Section 8. The Constituent Assembly was not to be subject to any limitations whatsoever in exercising its constituent powers. Thus, the Indian Independence Act, 1947 established the sovereign character of the Constituent Assembly which became free from all limitations. Sub-section (2) of Section 8 of the Act provided that except insofar as other provision was made by or in accordance with a law made by a Constituent Assembly under sub-section (1), the governance of the Dominion was to be carried out in accordance with the Government of India Act, 1935 and the provisions of that Act, and all the orders in Council, rules and other instruments made thereunder. On January 5, 1950, the Constituent Assembly enacted the Government of India (Amendment) Act, 1949 by which Section 290-A was inserted in the Government of India Act, 1935 providing that the Governor-General may by order direct that an acceding State or a group of such States shall be administered as a Chief Commissioner's Province or as part of Governor's or Chief Commissioner's Province. These acceding States were thus converted into centrally administered area and included in Part 'C' of the First Schedule of the Government of India Act, 1935. The remaining States in Part 'C' were Ajmer, Coorg and Delhi. Under the Constitution, Delhi became a Part 'C' State. As already stated the States specified in Part 'C' of the First Schedule were to be administered by the President under Article 239(1) acting, to such extent as he thought fit, through a Chief Commissioner or a Lt. Governor to be appointed by him.

94. Section 290-A of the Government of India Act, 1935, reads as follows :

> 290-A. Administration of certain Acceding States as a Chief Commissioner's Province or as part of a Governor's or Chief Commissioner's Province. - (1) Where full and exclusive authority, jurisdiction and powers for and in relation to the governance of any Indian State or of any group of such States are for the time being exercisable by the Dominion Government, the Governor-General may by Order direct, -
>
> (a) that the State or the group of States shall be administered in all respects as if the State or the group of States were a Chief Commissioner's Province : or
>
> (b) that the State or the group of States shall be administered in all respects as if the State or the group of States formed part of a Governor's or a Chief Commissioner's Province specified in the Order :
>
> Provided that if any Order made under clause (b) of this sub-section affects a Governor's Province, the Governor-General shall before making such Order, ascertain the views of the Government of that Province both with respect to the proposal to make the Order and with respect to the provisions to be inserted therein.
>
> (2) Upon the issue of an Order under clause (a) of sub-section (1) of this section, all the provisions of this Act applicable to the Chief Commissioner's Province of Delhi shall apply to the State or the group of States in respect of which the Order is made.
>
> (3) The Governor-General may in making an Order under sub-section (1) of this section give supplemental, incidental, and consequential directions (including directions as to representation in the Legislature) as he may deem necessary.
>
> (4) In this section, reference to a State shall include reference to a part of a State.

As a result of this, the then Province of Delhi became a Part 'C' State.

95. Under the Constitution of India, Delhi became a Part 'C' State w.e.f. January 26, 1950 and it was provided by Article 239(1) that a State specified in Part 'C' of the First Schedule shall be administered by the President acting to such extent as he thinks fit through a Chief Commissioner or Lt. Governor to be appointed by him. Article 239(1) of the Constitution as it then stood, insofar as material provided :

> 239 (1). Subject to the other provisions of this Part, a State specified in Part C of the First Schedule shall be administered by the President acting, to such extent as he thinks fit, through a Chief Commissioner or a Lieutenant-Governor to be appointed by him or through the Government of a neighbouring State :

It would appear that Article 239(1) of the Constitution differed from the provision contained in Section 94(3) of the Government of India Act, 1935 to the extent that the appointment of a Chief Commissioner or Lt. Governor as an Administrator irrespective of the designation and entrustment of powers, functions and duties to him by the President, were not to be in his discretion but had to be exercised on the advice of the Council of Ministers. Except for this, Section 94(3) of the Government of India Act, 1935 and Article 239(1) of the Constitution as enacted were identical in respect of the provisions for the administration of Delhi as a Chief Commissioner's Province under the 1935 Act and as a Part C State under the Constitution, by the Governor-General under Section

94(3) and under Article 239(1) by the President acting to such extent as he though fit, through the Chief Commissioner or the Lt. Governor as an Administrator irrespective of the designation.

96. On April 16, 1950 the Part C State Laws Act, 1950 was brought into force. By Section 2, the Central Government was empowered by notification in the Official Gazette to extend to the State of Delhi or to any part of such territory with such restrictions and modifications as it thought fit any enactment which was in force in any State at the date of the notification. Section 4 of the Act repealed Section 7 of the Delhi Laws Act, 1912. The Government of Part C States Act, 1951 enacted by Parliament was brought into force on September 6, 1951. Section 21 of the Act, insofar as material, read as follows.

21. Extent of legislative power. - (1) Subject to the provisions of this Act, the Legislative Assembly of a State may make laws for the whole in any part of the State with respect to any of the matters enumerated in the State List or in the Concurrent List :

> Provided that the Legislative Assembly of the State of Delhi shall not have power to make laws with respect to any of the following matters, namely :
>
> #(a) * * *(b) * * *(c) * * *##
>
> (d) lands and buildings vested in or in the possession of the Union which are situated in Delhi or in New Delhi including all rights in or over such lands and buildings, the collection of rents therefrom and the transfer and alienation thereof;
>
> (2) Nothing in sub-section (1) shall derogate from the power conferred on Parliament by the Constitution to make laws with respect to any matter for a State or any part thereof.

97-98. Article 239(1) of the Constitution was amended by the Constitution (7th Amendment) Act, 1956 w.e.f. November 1, 1956 and it now reads :

> 239. Administration of Union Territories. - (1) Save as otherwise provided by Parliament by law, every Union Territory shall be administered by the President acting, to such extent as he thinks fit, through an Administrator to be appointed by him with such designation as he may specify.

It would be seen that for the words "through a Chief Commissioner or a Lt. Governor to be appointed by him" in Article 239(1) as originally enacted, the words substituted are "through an Administrator appointed by him with such designation as he may specify". One thing is clear that the Administrator appointed by the President under Article 239(1) whether with the designation of the Chief Commissioner or of the Lt. Governor could exercise only such powers, functions and duties as were entrusted to him by the President i.e. there have to be specific entrustment of powers by the President under Article 239(1). Under Article 246(4) of the Constitution which corresponds to Section 100(4) of the Government of India Act, 1935, Parliament was given power to make laws with respect to any part of the territory of India not including in Part A or Part B of the First Schedule, notwithstanding that such matter was a matter enumerated in the State List.

99. As from the appointed day i.e. from November 1, 1956 Part C States ceased to exist by virtue of the Seventh Amendment and in their place Union Territories were substituted in the First Schedule to the Constitution, including the Union Territory of Delhi i.e. the territories which immediately

before the commencement of the Constitution were comprised in the Chief Commissioner's Province of Delhi. By the Seventh Amendment, Article 246(4) was also amended. Article 246(4), as amended, now reads :

> 246(4). Parliament has power to make laws with respect to any matter for any part of the territory of India not included in a State notwithstanding that such matter is a matter enumerated in the State List.

In pursuance of Article 239 as amended by the Seventh Amendment, the President of India issued the following notification on November 1, 1956 :

> # Registered No. D. 221 The Gazette of India Extraordinary PART II - Section 3 Published by Authority----------No. 332 New Delhi, Thursday, November 1, 1956---------- ---------- Ministry of Home Affairs Notification New Delhi-2 the 1st November, 1956.##

S.R.O. 2536 - In pursuance of clause (1) of Article 239 of the Constitution as amended by the Constitution (Seventh Amendment) Act, 1956 and all other powers enabling him in this behalf, the President hereby directs as follows :

Where, by virtue of any order made in pursuance of Article 239 or as the case may be, Article 243 of the Constitution as in force immediately before the 1st day of November, 1956 or any other power under the Constitution, any powers and functions were, immediately before that day, the powers and functions of -

> (a) the Lieutenant-Governor of the State of Himachal Pradesh,
>
> (b) the Chief Commissioner of the State of Delhi, Manipur or Tripura and
>
> (c) the Chief Commissioner of the Andaman and Nicobar Islands,
>
> such powers and functions shall, on and after the said day, be exercised and discharged respectively by -
>
> (i) the Lieutenant-Governor of the Union Territory of Himachal Pradesh,
>
> (ii) the Chief Commissioner of the Union Territory of Delhi, Manipur or Tripura, and
>
> (iii) the Chief Commissioner of the Andaman and Nicobar Islands,
>
> subject to the like control by the President, as were exercisable by him before the said day over the Lieutenant-Governor or as the case may be, the Chief Commissioner referred to in clause (a), (b) or (c).
>
> # (No. F. 19/22/56 - SRI) Hari Sharma, Jt. Secy.##
>
> 100. On the same day, by Section 130 of the States Reorganization Act, 1956, the Government of Part C States Act, 1951 stood repealed. On October 1, 1959 decision was taken by the Government of India to transfer the administrative control of the

> office of Land & Development Officer, New Delhi from the Delhi Administration to Ministry of Works, Housing & Supply w.e.f. October 1, 1959. This decision was duly communicated to the Chief Commissioner of Delhi and to the Land & Development Officer, New Delhi. In the further affidavit of M.K. Mukherjee, Secretary, Ministry of Works & Housing, it is averred in paragraph 6 that the "office of the Land & Development Officer was transferred to the control of the Ministry of Works, Housing & Supply w.e.f. October 1, 1959 and since then it has been functioning as a subordinate office of the Ministry of Works & Housing". It would therefore, be manifest that after October 1, 1959 neither the Chief Commissioner not the Lt. Governor had anything to do with the office of the Land & Development Officer or the administration of nazul lands in the Union Territory of Delhi.

101. The President of India on February 1, 1966 issued an Order under Article 299(1) of the Constitution which inter alia directed that in the case of Land & Development Office (1) all contracts and assurances of property relating to matters falling within the jurisdiction of Land & Development Officer, (2) all contracts, deeds and other instruments relating to and for the purpose of enforcement of the terms and conditions of the sale/lease-deed of the Government property in Delhi/New Delhi, etc. made in exercise of the executive power of the Union may be executed on his behalf by the Land & Development Officer. Under Clause XLI it was specifically provided :

> Notwithstanding anything hereinbefore contained any contract assurance of property relating to any matter whatsoever may be executed by the Secretary or the Special Secretary or the Additional Secretary or the Joint Secretary or the Director, or when there is no Additional Secretary, Joint Secretary to the Government in the appropriate Ministry or Department.

It is pertinent to observe that neither the Chief Commissioner of Delhi nor the Lt. Governor has been conferred any authority by the President under Article 299(1) to enter into any contract made in the exercise of the executive power of the Union or to act "on behalf of" the President in relation to such contract or assurance of property i.e. to act on behalf of the President for the enforcement of the terms and conditions thereof.

102. On September 7, 1966 the Administrator appointed by the President in relation to the Union Territory of Delhi who hithertofore had been designated as the Chief Commissioner was re-designated as the Lt. Governor of Delhi. Accordingly, the President on September 7, 1966 issued another order in terms of Article 239(1) of the Constitution which provides as follows :

> # Ministry of Home Affairs Notification New Delhi, the 7th Sept., 1966.##

S.O. 2709 - In pursuance of clause (1) of Article 239 of the Constitution and all other powers enabling him in this behalf, the President hereby directs as follows :

> Where by virtue of any order made in pursuance of Article 239 any powers and functions were, immediately before the 7th September, 1966 the powers and functions of the Chief Commissioner of the Union Territory of Delhi, such powers and functions shall, on and after the said day, be exercised and discharged by the Lt. Governor of the Union Territory of Delhi, subject to the like control by the President, as was exercisable by him before the said day over the Chief Commissioner.

(No. 41/2/66-Delhi) Hari Sharma, Secretary##

103. The crux of the matter is whether the Lt. Governor was by virtue of the aforesaid notification dated September 7, 1966 issued by the president, conferred any power, function and duty in relation to the property of the Union in the Union Territory of Delhi. Much stress is laid by learned counsel appearing for respondent 2 on the said notification insofar as it provides that the Lt. Governor shall have the same powers and functions as were exercisable by the Chief Commissioner. That would be so provided there was a notification by the President of India under Article 239(1) of the Constitution vesting the Chief Commissioner with power to administer the property of the Union of India. There is admittedly no such notification under Article 239(1) by the President vesting Chief Commissioner or the Lt. Governor with any such power.

104. It is sought to be impressed upon us that the designation of the Administrator of a Union Territory was per se of no particular legal or functional significance. It is argued by learned counsel appearing for respondent 2 that the Administrator appointed by the President under Article 239(1), as amended by the Seventh Amendment, could be called by any designation, that the Chief Commissioner of Delhi continued to be the Administrator of the Union Territory of Delhi under Article 239(1) after November 1, 1956 when the Government of Part C States Act, 1951 was repeated by Section 130 of the States Reorganization Act, 1956 and that he functioned as such till September 6, 1966 since the Delhi Administration Act, 1966 continued to use the nomenclature of Administrator appointed by the President under Article 239(1). It was for the first time on September 7, 1966 that the Administrator of the Union Territory of Delhi who used to be designated as the Chief Commissioner was re-designated as the Lt. Governor. The learned counsel relied upon Section 18 of the General Clauses Act, 1897 which runs as under :

> 18. Successors. - (1) In any Central Act or Regulation made after the commencement of this Act, it shall be sufficient, for the purpose of indicating the relation of a law to the successors of any functionaries or of corporations having perpetual succession, to express its relation to the functionaries or corporations.
>
> (2) This section applies also to all Central Acts made after the third day of January, 1868, and to all Regulations made on or after the fourteenth day of January, 1887.

105. Our attention was drawn by the learned counsel to the decision of Mohd. Maqbool Damnoo v. State of J. & K. ((1972) 2 SCR 1014 : (1972) 1 SCC 536 : 1972 SCC (Cri) 304) where a Constitutional Bench held that under Section 26(2) of the Jammu & Kashmir Constitution, as amended, even though the Governor of Jammu & Kashmir was not elected as the Sadar-i-Riyasat but the mode of appointment would not make a Governor anytheless a successor to the Sadar-i-Riyasat because both were the head of the State and therefore the executive power of the State vested in them both. In that connection, the Court referred to Section 18 of the General Clauses Act and held that the Governor being a successor of the office of the Sadar-i-Riyasat was entitled to exercise all the powers and functions of the Sadar-i-Riyasat. We do not see the relevance of the decision in Mohd. Maqbool case ((1972) 2 SCR 1014 : (1972) 1 SCC 536 : 1972 SCC (Cri) 304) to the question before us since the Lt. Governor of Delhi is neither the successor of the Chief Commissioner nor can Section 18 of the General Clauses Act override the constitutional requirements of Article 239(1) laying down that the Lt. Governor shall exercise only such powers as are entrusted to him by the President.

106. To discern whether the Lt. Governor was the successor of the Chief Commissioner of Delhi an

if so, had by reason of the notification dated September 7, 1966 the same powers and functions that were exercisable by the Chief Commissioner in relation to the lease. That would be so provided there was a notification issued by the President under Article 239(1) vesting the Chief Commissioner with powers to administer the property of the Union or lease of nazul properties in the Union Territory of Delhi. It is also necessary to consider whether under the proviso to Section 21 of the Part C States Act, 1951, the so-called "reserved powers" were exercisable by the Lt. Governor in relation to the executive functions of the President under Article 53 of the Constitution as an agent or the nominee of the President and therefore he was entitled to act on behalf of the lessor i.e. the Union of India, Ministry of Works & Housing.

107. Learned counsel appearing for respondent 2 argues that the Lt. Governor had ample powers and functions under the aforesaid notification dated September 7, 1966 and therefore it was incumbent upon him to take necessary steps in due discharge of his official duties. The Lt. Governor was not a 'stranger', 'interloper', 'intruder' or 'usurper' acting without any warrant or semblance of power or any authority as alleged and argued strenuously by the petitioners. He says that there is a vast variety of notifications which vest the office of the Lt. governor with powers and functions of various descriptions under various statutes, many of which are to be exercised by him in his discretion. He contends that such powers are of a wide-ranging nature which inhere in the office of the Lt. Governor. He refer to several notifications in which the Administrator of Union Territory had been variously described viz. as Chief Commissioner, Administrator or Lt. Governor and contends that even while delegating the powers under Article 239(1) of the Constitution, a continuum between the office of the Chief Commissioner and that of the Lt. Governor was preserved and the terms used interchangeably. All these powers and functions were essentially functional. Moreover, powers and functions which vested in that office and which had a clear continuity of its own also implied powers which were incidental and ancillary thereto. Such powers also necessarily included powers and functions which were a necessary concomitant of the office.

108. Learned counsel contends that the office of the Administrator under Article 239(1) is the office of an agent and representative of the President. It is the office of the Head of the Administration in relation to the Union Territory. He is not merely a formal or titular head but an effective and executive head. The office is both formal and functional, and the Union Territory is administered by the Union Executive through the Lt. Governor. In the ultimate analysis, the Lt. Governor has to be the "eyes and ears" as well as the 'limbs' of the President in the Union Territory which he is called upon to administer on behalf of the President. He is also to keep in touch with every situation and to take into account the representations and complaints in exercising the powers and discharging the functions of his office. In these circumstances, the Lt. Governor was entitled to see whether there was any definite matter of public importance which might eventually call for a detailed administrative or statutory inquiry, either in respect of the conduct of the officers of the Delhi Development Authority or those of the Municipal Corporation, and to satisfy himself with regard to various matters and particularly whether there were any violations of town planning norms or sanction granted, whether the lease conditions were breached, whether similar concessions should be granted to others similarly situate and whether any remedial measures were called for. He urges that the complaints and representations with regard to Express Buildings were quite specific and the pace of construction was particularly accelerated. The Lt. Governor had the powers and the duty to inform himself of the fact and to be properly advised with regard to these matters. Instead of acting in a surreptitious, clandestine or hurried manner, he appointed a committee of three senior officials to ascertain the facts. In appointing such a committee he acted well within his powers and in a wholly bona fide manner; indeed, he could also, if so satisfied, set up a commission of inquiry under the Commissions of Inquiry Act, 1952.

109. The argument of learned counsel appearing for respondent 2 based on the proviso to Section 21 of the Government of Part C States Act, 1951 that the "reserved powers" were still with the Administrator as the Chief Commissioner or the Lt. Governor and therefore the Lt. Governor as the appointed agent or nominee of the President was entitled to exercise the executive functions of the President under Article 53 of the Constitution and consequently was authorized to act on behalf of the lessor i.e. the Union of India, Ministry of Works & Housing, is totally unwarranted. The contention overlooks the constitutional changes brought about, as a result of which the territory of Delhi ceased to be administered as a Chief Commissioner's Province by the Governor-General acting to such extent as he thought fit through the Chief Commissioner appointed by him in his discretion under Section 94(3) of the Government of India Act, 1935 and became a Part C State on the inauguration of the Constitution and had to be administered by the President under Article 239(1), acting to such extent as he though fit through a Chief Commissioner or a Lt. Governor to be appointed by him or through the Governor of a neighbouring State. After the Seventh Amendment which reorganised the States, Part C State of Delhi was transformed into a Union Territory and has to be administered by the President under the amended Article 239(1), acting to such extent as he thinks fit, through an Administrator to be appointed by him with such designation as he may specify. In September 1951 an Act known as the Government of Part C States Act, 1951 was passed by Parliament. It was a law enacted by Parliament under Article 240(1) to provide for the creation of Legislative Assemblies, Council of Ministers and Councils of Advisors for Part C States. Sub-section (3) of Section 2 provided that any reference in the Act to the Chief Commissioner shall, in relation to a State for the time being administered by the President through a Lt. Governor be construed as a reference to the Lt. Governor. Clause (2) of Article 240 provided that such law shall not be deemed to be an amendment of the Constitution for the purpose of Article 368 notwithstanding that it contained any provision which amended or had the effect of amending the Constitution. Section 21 of the Act invested the Legislative Assemblies of such Part C States, with powers of legislation with respect to any of the matters enumerated in the State List or in the Concurrent List with the reservation contained in the proviso thereto that the Legislative Assembly of the State of Delhi shall not have power to make laws with respect to the matters enumerated therein, with the overriding provision contained in sub-section (2) that nothing in sub-section (1) shall be in derogation of the power conferred on Parliament by the Constitution to make laws with respect to any matter for a Part C State or any part thereof.

110. It would therefore appear that the territory of Delhi as a Part C State under the First Schedule to the Constitution was a separate and distinct constitutional entity as from that of a Chief Commissioner's Province under the Government of India Act, 1935, and this is equally true of the Union Territory of Delhi. It must logically follow that with the transformation of the territory of Delhi from a Chief Commissioner's Province under Section 94(3) of the Government of India Act, 1935 into that of a Part C State under the Constitution and after the Seventh Amendment into the Union Territory of Delhi, the office of the Chief Commissioner of Delhi disappeared and that of an Administrator appointed by the President under Article 239(1) with such designation as he may specify, came into existence. The necessary concomitant is that the Administrator of the Union Territory of Delhi derived only such powers, functions and duties as were entrusted to him by the President under Article 239(1).

111. I would also refer to the case of Edward Mills Co. Ltd. v. State of Ajmer ((1955) 1 SCR 735 : AIR 1955 SC 25) which was rightly not relied upon by learned counsel for the respondents as the decision turned on its own facts. In that case it was held by the Constitution Bench that an order made by the Governor-General under Section 94(3) of the Government of India Act, 1935 investing the Chief Commissioner with the authority to administer a Chief Commissioner's Province as then

existing, must be regarded as a legislative act and as such treated as a "law in force" falling within the purview of Article 372 of the Constitution and therefore such an order made under Section 94(3) of the Government of India Act, 1935 must be construed as an order made under Article 239(1). The Constitution Bench speaking through Mukherjee, J. after adverting to Section 94(3) of the Government of India Act, 1935, observed :

> An order made by the Governor-General under Section 94(3) investing the Chief Commissioner with the authority to administer a province is really in the nature of a legislative provision which defines the rights and powers of the Chief Commissioner in respect of that province. In our opinion such order comes within the purview of Article 372 of the Constitution and being "a law in force" immediately before the commencement of the Constitution would continue to be in force under clause (1) of the article. Agreeably to this view it must also be held that such order is capable of adaptation to bring it in accord with the constitutional provisions under clause (2) of Article 372 and this is precisely what has been done by the Adaptation of Laws Order, 1950. Paragraph 26 of the Order runs as follows :

Where any rule, order or other instrument was in force under any provision of the Government of India Act, 1935, or under any Act amending or supplementing that Act, immediately before the appointed day, and such provision is re-enacted with or without modifications in the Constitution, the said rule, order or instrument shall, so far as applicable, remain in force with the necessary modifications as from the appointed day as if it were a rule, order or instrument of the appropriate kind duly made by the appropriate authority under the said provision of the Constitution, and may be varied or revoked accordingly.

Thus the order made under Section 94(3) of the Government of India Act should be reckoned now as an order made under Article 239 of the Constitution.....

112. There was no Order in Council issued by the Governor-General under Section 94(3) of the Government of India Act, 1935 nor any order issued by the President under Article 239(1) of the Constitution investing the Chief Commissioner of Delhi to deal with the property of the Union. On October 1, 1959, decision was taken by the Government of India to transfer the administrative control of the Land & Development Office from the Chief Commissioner of Delhi to the Ministry of Works & Housing. This decision was duly communicated to the Chief Commissioner of Delhi and to the Land & Development Officer. It is admitted in the further affidavit of M.K. Mukherjee, Secretary, Ministry of Works & Housing dated November 16, 1982 that the office of the Land & Development Officer was transferred to the control of the Ministry of Works & Housing w.e.f. October 1, 1959 and since then it has been functioning as a subordinate office of the Ministry of Works & Housing. Undoubtedly, the matters relating to the property of the Union of India are included in the executive power of the Union under Article 53 of the Constitution read with Article 298 which expressly provides that the executive power of the Union shall extend to the acquisition, holding and disposal of property and the making of contracts for any purpose. Such executive power of the Union is vested in the President under Article 53(1) and shall be exercised by him either directly or through officers subordinate to him in accordance with the Constitution. All executive actions of the Government of India shall be expressly taken in the name of the President under Article 77(1). Under clause (2) thereof, orders and other instruments made and executed in the name of the President shall be authenticated as may be specified in rules to be made by the President i.e. in the manner specified under the Authentication (Orders and other Instruments) Rules, 1958 framed under the Article 72(2). On January 18, 1961, the President made the Government of India

(Allocation of Business) Rules, 1961 under Article 77(3) for the more convenient transaction of business of the Government of India, and for the allocation among Minister of the said business.

113. In terms of the Government of India (Allocation of Business) Rules, 1961, all matters relating to the property of the Union, allotment of Government lands in Delhi, administration of Government estates under the control of the Ministry of Works & Housing and the administration of the Land & Development Office, are matters exclusively vested in the Ministry of Works & Housing vide Entries 1, 6, and 23(1) in the Second Schedule under the head "Ministry of Works & Housing". In the light of the said directive, as further confirmed by the constitutionally enacted regulations, the power over the allotment of nazul lands, administration of leases in Delhi and the control and administration of Land & Development Office in particular and the property of the Union in general are subjects vested solely under the control of the Ministry of Works & Housing. In the premises, by such transfer of authority, the Chief Commissioner of Delhi and necessarily his successor, the Lt. Governor, became bereft of his powers to control and administer the lease and any attempt by respondent 2 to set up a claim that the Lt. Governor is the authority empowered to administer the lease is wholly frivolous and untenable and must be rejected.

Whether the impugned Executive action was mala fide and politically motivated.

114. The principal point in controversy between the parties is whether the notice of re-entry upon forfeiture of lease issued by the Engineer Officer, Land & Development Office dated March 10, 1980 purporting to be on behalf of the lessor i.e. the Union of India, Ministry of Works & Housing, and that of March 1, 1980 issued by the Zonal Engineer (Buildings), City Zone, Municipal Corporation, Delhi were wholly mala fide and politically motivated. It is a sad reflection on the state of affairs brought about during the period of Emergency which brought into existence a totalitarian trend in administration and I do not wish to aggravate any of its features by unnecessary allusions. In the process, the country witnessed misuse of mass media totally inconceivable and unheard of in a democratic form of Government by ruthless suppression of the press by exercise of pre-censorship powers, enactment of a set of draconian laws which reduced freedom of the press to a tonight.

115. The petitioners have pleaded the facts with sufficient degree of particularity tending to show that the impugned notices were wholly mala fide and politically motivated; mala fide, because the impugned notice of re-entry upon forfeiture of lease dated March 10, 1980 issued by the Engineer Officer, Land & Development Office under Clause 5 of the indenture of lease dated March 17, 1958 for alleged breach of Clauses 2(14) and 2(5) - which in fact were never committed - and the notice dated March 1, 1980 by the Zonal Engineer (Buildings), City Zone, Municipal Corporation for demolition of new Express Building where the printing press is installed under Sections 343 and 344 of the Delhi Municipal Corporation Act were really intended and meant to bring about the stoppage of the publication of the Indian Express which has throughout been critical of the Government in power whenever it went wrong on a matter of policy or in principle. Also, mala fide because they constitute misuse of powers in bad faith. Use of power for a purpose other than the one for which the power is conferred is mala fide use of power. Same is the position when an order is made for a purpose other than that which finds place in the order.

116. It is somewhat strange that although definite allegations of mala fides on the part of the respondents particularly the Government for the day at the Centre were made with sufficient particulars and though the respondents had ample time to file their affidavits in reply, none of the respondents except respondent 2, the Lt. Governor of Delhi and respondent 5, Land & Development Officer has chosen to deny the allegations. The counter-affidavit of respondent 2 purporting to be on

behalf of all the respondents is that the allegations made by the petitioners in paragraphs 11, 12 and 13 are not 'relevant' to the matter in issue. In C.S. Rowjee v. A.P. State Road Transport Corporation ((1964) 6 SCR 330 : AIR 1964 SC 962), the Court in a matter arising out of the Motor Vehicles Act, 1939 where certain allegations against the Minister went uncontroverted, had occasion to administer a word of caution. Where mala fides are alleged, it is necessary that the person against whom such allegations are made should come forward with an answer refuting or denying such allegations. For otherwise such allegations remain unrebutted and the Court would in such a case be constrained to accept the allegations so remaining unrebutted and unanswered on the test of probability. That precisely is the position in the present case, in the absence of any counter-affidavit by any of the respondents. One should have thought that the Minister for Works & Housing should have sworn an affidavit accepting or denying the allegations made by the petitioners. At our instance, M.M. Mukherjee, Secretary, Ministry of Works & Housing has filed a supplementary affidavit. He avers that the impugned notice dated March 10, 1980 of re-entry upon forfeiture of lease issued by the Engineer Officer, Land & Development Office was on the basis of press reports i.e. reports of the press conference held by the Lt. Governor. Again, there is no attempt on the part of the Union of India, Ministry of Works & Housing to deny the allegations of mala fides on the part of the Government and its functionaries in issuing the impugned orders. On the contrary, he avers that respondent 1 "adopts the counter-affidavit filed by respondent 2". It is not for the parties to say what is relevant or not. The matter is one for the Court to decide. There is nothing before us from which we can say that the allegations in paragraphs 11, 12 and 13 of the petition made by the petitioners are not well-founded. Mala fides on the part of the Government in power or its functionaries would be sufficient to invalidate the impugned notices. Fraud on power vitiates the impugned orders if they were not exercised bona fide for the purpose for which the power was conferred.

117. Professor de Smith in his monumental work the Judicial Review of Administrative Action, fourth edition at pp. 335-36 says in his own terse language :

> The concept of bad faith eludes precise definition, but in relation to the exercise of statutory powers it may be said to comprise dishonesty (or fraud) and malice. A power is exercised fraudulently if its repository intends to achieve an object other than that for which he believes the power to have been conferred.....power is exercised maliciously if its repository is motivated by personal animosity towards those who are directly affected by its exercise.

He then goes on to observe :

> If the court concludes that the discretionary power has been used for an unauthorized purpose it is generally immaterial whether its repository was acting in good or bad faith. But there will undoubtedly remain areas of administration where the subject-matter of the power and the evidence width of the discretion reposed in the decision-maker render its exercise almost wholly beyond the reach of judicial review. In these cases the courts have still asserted jurisdiction to determine whether the authority has endeavoured to act in good faith in accordance with the prescribed purposes. In most instances the reservation for the case of bad faith is hardly more than a formality. But when it can be established, the courts will be prepared to set aside a judgment or order procured or made fraudulently despite the existence of a generally worded formula purporting to exclude judicial review.

Bad faith is here understood by the learned author to mean intentional usurpation of power

motivated by considerations that are incompatible with the discharge of public responsibility. In requiring statutory powers to be exercised reasonably, in good faith, and on correct grounds, the courts are still working within the bounds of the familiar principle of ultra vires. The court assumes that Parliament cannot have intended to authorize unreasonable action which is therefore ultra vires and void. This is the express basis of the reasoning in many well-known cases, on the subject. A necessary corollary is that, as usual throughout administrative law, we are concerned only with acts of legal power i.e. acts which, if valid, themselves produce legal consequence.

118. In general, however, the courts adhere firmly to the wide meaning of 'jurisdiction' since this is the sheet-anchor of their power to correct abuses. They appear to be willing to stretch the doctrine of ultra vires to cover virtually all situations where statutory power is exercised contrary to some legal principles. There are many cases in which a public authority is held to have acted for improper motives or irrelevant considerations, or have failed to take account of relevant considerations, so that its action is ultra vires and void : H.W.R. Wade's Administrative Law, fifth edition, at pp. 42, 348 and 369. The learned author aptly sums up situations in which error of jurisdiction may arise, at 42.

Lack of jurisdiction may arise in many ways. There may be an absence of those formalities or things which are conditions precedent to the tribunal having any jurisdiction to embark on an inquiry. Or the tribunal may at the end make an order that it has no jurisdiction to make. On in the intervening stage, while engaged on a proper inquiry, the tribunal may depart from the rules of natural justice; or it may ask itself the wrong questions; or it may take into account matters which it was not directed to take into account. Thereby it would step outside its jurisdiction. It would turn its inquiry into something not directed by Parliament and fail to make the inquiry which Parliament did direct. Any of these things would cause its purported decision to be a nullity.

119. Fraud on power voids the order if it is not exercised bona fide for the end design. There is a distinction between exercise of power in good faith and misuse in bad faith. The former arises when an authority misuses its power in breach of law, say, by taking into account bona fide, and with best of intentions, some extraneous matters or by ignoring relevant matters. That would render the impugned act or order ultra vires. It would be a case of fraud on powers. The misuse in bad faith arises when the power is exercised for an improper motive, say, to satisfy a private or personal grudge or for wreaking vengeance of a Minister as in S. Pratap Singh v. State of Punjab ((1964) 4 SCR 733 : AIR 1964 SC 72). A power is exercised maliciously if its repository is motivated by personal animosity towards those who are directly affected by its exercise. Use of a power for an 'alien' purpose other than the one for which the power is conferred is mala fide use of that power. Same is the position when an order is made for a purpose other than that which finds place in the order. The ulterior or alien purpose clearly speaks of the misuse of the power and it was observed as early as in 1904 by Lord Lindley in General Assembly of Free Church of Scotland v. Overtown (LR 1904 AC 515), "that there is a condition implied in this as well as in other instruments which create powers, namely, that the powers shall be used bona fide for the purpose for which they are conferred". It was said by Warrington, C.J. in Short v. Poole Corpn. (LR 1926 ChD 66) that :

No public body can be regarded as having statutory authority to act in bad faith or from corrupt motives, and any action purporting to be of that body, but proved to be committed in bad faith or from corrupt motives, would certainly be held to be inoperative.

In Lazarus Estates Ltd. v. Beasley ((1956) 1 QB 702, 712-13), Lord Denning, L.J. said :

> No judgment of a court, no order of a Minister, can be allowed to stand if it has been obtained by fraud. Fraud unravels everything.

See also, in Lazarus case ((1956) 1 QB 702, 712-13) at p. 722 per Lord Parker, C.J. :

'Fraud' vitiates all transactions known to the law of however high a degree of solemnity.

All these three English decisions have been cited with approved by this Court in Pratap Singh case ((1964) 4 SCR 733 : AIR 1964 SC 72).

120. In Ram Manohar Lohia v. State of Bihar ((1966) 1 SCR 708 : AIR 1966 SC 740), it was laid down that the courts had always acted to restrain a misuse of statutory power and more readily when improper motives underlie it. Exercise of power for collateral purpose has similarly been held to be a sufficient reason to strike down the action. In State of Punjab v. Ramjilal ((1971) 2 SCR 550 : (1970) 3 SCC 602 : AIR 1971 SC 1228) it was held that it was not necessary that any named officer was responsible for the act where the validity of action taken by a Government was challenged as mala fide as it may not be known to a private person as to what matters were considered and placed before the final authority and who had acted on behalf of the Government in passing the order. This does not mean that vague allegations of mala fide are enough to dislodge the burden resting on the person who makes the same though what is required in this connection is not a proof to the hilt, as held in Barium Chemicals Ltd. v. Company Law Board (1966 Supp SCR 311 : AIR 1967 SC 295), the abuse of authority must appear to be reasonably probable.

121. In the present case, the petitioners have alleged several facts imputing improper motives which have not been specifically denied and there is only a bare denial with the assertion that the facts are not relevant. Mere denial of allegations does not debar the courts from inquiring into the allegations. In answer to the rule nisi, the respondents here and in particular respondent 1, the Union of India, Ministry of Works & Housing disdained from filing a counter-affidavit and left it to respondent 2, Lt. Governor of Delhi to controvert as best as he could the specific allegations made by the petitioners that the impugned action was wholly mala fide and politically motivated i.e. that there was malice in fact as well as malice in law which actuated the authorities in issuing the impugned notices. Respondent 2 did not controvert these allegations but asserted that the allegations were "wholly irrelevant" to the matter in issue. He disclaimed all responsibility for the issue of the impugned notices and instead tried to justify all his actions throughout the affair as the Lt. Governor. As the hearing progressed, on being put wise on the legal issues, respondent 2 filed an additional affidavit trying to refute the allegations of personal bias and animosity on his part. As already stated, respondent 1 put in a supplementary affidavit of M.K. Mukherjee, Secretary, Ministry of Works & Housing which instead of meeting the specific allegations made by the petitioners, avers that they were "wholly irrelevant" and that the Union of India adopts the counter-affidavit filed by respondent 2. The submissions advanced at the Bar by learned counsel appearing for the Union of India were wholly inconsistent with the stand taken by the respondents in their counter-affidavits. The learned counsel made no attempt to refute the charge that the impugned notices were wholly mala fide and politically motivated.

122. Learned counsel for the petitioners contended that during the period of Emergency, the Indian Express had displayed exemplary courage in exposing the authoritarian trend of the Government of the day. He further contended that the impugned notices constitute an act of personal vendetta against the Express Group of Newspapers in general, and Ram Nath Goenka, Chairman of the Board of Directors in particular. He also contended that respondent 2 was actuated with personal bias

against the Indian Express and had filed a criminal complaint against the Editor-in-Chief of the Indian Express and some of the officers of the Express Group of Newspapers for having published an article in the Indian Express in April 1977 with regard to his role during the period of Emergency in the Turkman Gate demolitions. The Express Group of Newspapers, particularly the Indian Express, and during the period of Emergency and immediately thereafter openly criticised the high-handed action of respondent 2 who was the then Vice-Chairman of the Delhi Development Authority and close to the powers that be. The submission is that the proposed act of re-entry by the lessor i.e. the Union of India, Ministry of Works & Housing at the instance of respondent 2 was meant to be an act of political vendetta. The learned counsel particularly highlighted the following sequence of events on assumption of office by respondent 2 as the Lt. Governor of Delhi on February 17, 1980. It was pointed out that immediately upon assumption of office on the forenoon of February 17, 1980 which was a Sunday, the first act of his was to summon the Municipal Commissioner and to call for the files of the Indian Express Buildings. On the 18th morning the files relating to the grant of sanction for the construction of the new Express Building were made available to him. On February 20, 1980 admittedly the important files of the Delhi Development Authority i.e. relating to the Express Buildings were sent to respondent 2. On February 29, 1980 he, through the Commissioner, Municipal Corporation of Delhi caused the locks of the office and cupboards of the Zonal Engineer (Buildings) broken open to take away the files relating to the new Express Building. Immediately thereafter on March 1, 1980, respondent 2 convened a press conference in which he handed over a press release (set out in the earlier part of the judgment) alleging that the new Express Building put up by the petitioners was in contravention of law in several respects.

123. On March 1, 1980 he purported to appoint what he termed in the counter-affidavit as a commission of inquiry under Section 3 of the Commissions of Inquiry Act, 1952 consisting of three members, the Chief Secretary and two other officers of the Delhi Administration to make an investigation into the circumstances under which the sanction was granted by the then Minister for Works & Housing and the alleged breaches committed by the petitioners in the construction of the Express Buildings. The learned counsel contends that the so-called inquiry directed by respondent 2 into the affairs of the Union of India, Ministry of Works & Housing was nothing short of 'inquisition' into the functioning of the previous Government at the centre and particularly that of Ministry for Works & Housing. On the same day, the Zonal Engineer (Buildings), City Zone, Municipal Corporation, presumably at the behest of respondent 2 served a notice on petitioner 1 Express Newspapers Pvt. Ltd. to show cause why action should not be taken for demolition of the Express Buildings under Sections 343 and 344 of the Delhi Municipal Corporation Act, 1957.

124. Three days after i.e. on March 4, 1980 a second press release was issued from the Raj Nivas, the official residence of respondent 2 and sent by a special courier to all newspaper offices to justify his action in initiating an inquiry and the mode that had been prescribed for holding such inquiry stating that a show-cause notice had been issued by the Municipal Corporation for unauthorized deviations from the sanctioned plan in the construction of a double basement with a floor area of 23,000 square feet in the upper and lower basements. Whereas the files of the Municipal Corporation were summoned by respondent 2 before the press conference on March 1, 1980, the files of the Ministry of Works & Housing were summoned by him in the first week of March 1980. It is admitted by the Ministry that the said files were made available to respondent 2 on March 7, 1980. On March 7, 1980 the Land & Development Officer acting as part of the overall plan of respondent 2 and presumably at his instigation issued a show cause notice in terms set out above. Admittedly, on that day the files of the Ministry of Works & Housing had been handed over by the Ministry to the Three-Member Committee constituted by respondent 2.

125. On March 10, 1980 the Engineer Officer in the Land & Development Office under the Ministry of Works & Housing issued a notice of re-entry upon forfeiture of lease in supersession of his earlier notice dated March 7, 1980 under Clause 5 of the perpetual lease-deed dated March 17, 1958 while alleging several breaches of clauses 2(14) and 2(5) thereof and proposing re-entry by the lessor i.e. the Union of India. On March 12, 1980 at a specially convened press conference, respondent 2 released the report of the Three-Member Committee which substantiated the allegations he had aired at his press conference on March 1, 1980 and through the press release of March 4, 1980. The learned counsel particularly relied upon the averment of respondent 2 in para 89 of the counter-affidavit, set out at the beginning of this judgment, that the breach was 'irremediable' and therefore "the lease was liable to be forfeited" and "the Express Buildings built thereon demolished". Learned counsel contends that these facts clearly show that the impugned notices were issued in bad faith and actuated by improper motives. He accordingly contends that the impugned action was wholly mala fide and politically motivated.

126. The expression 'Government' in the context is the functionary of the Central Government i.e. the Minister for Works & Housing who is vested with executive power in the relevant field. The executive power of the Union vested in the President under Article 53(1) connotes the residual or governmental functions that remain after the legislative and judicial functions are taken away. The executive power with respect to the great departments of the Government are exercisable by the Ministers of the concerned departments by virtue of Rules of Business issued by the President under Article 77(3). For purposes of the present controversy, the functionary who took action and presumably on whose instructions the impugned notices were issued was no one other than the Lt. Governor of Delhi who, according to learned counsel for respondent 1, could not usurp the powers and functions of the Union of India in relation to the property of the Union and therefore had no functions in relation to the lease in question. It seems that the Minister for Works & Housing was taking his orders from respondent 2. The dominant purpose which actuated respondent 2 in initiating governmental action was not so much for implementation of the provisions of the Master Plan or the Zonal Development Plans framed under the Delhi Development Act or the observance of the relevant Municipal Bye-laws under the Delhi Municipal Corporation Act, but to use these provisions for an 'alien' purpose and in bad faith i.e. for demolition of the Express Buildings with a mark of retribution or political vendetta for the role of the Indian Express during the period of Emergency and thereafter and thereby to bring about closure of the Indian Express. If the act was in excess of the power granted to the Lt. Governor or was an abuse or misuse of power, the matter is capable of interference by the Court.

127. The Court in Pratap Singh case ((1964) 4 SCR 733 : AIR 1964 SC 72) observed that the Constitution enshrines and guarantees the rule of law and the power of the High Courts under Article 226 (which is equally true of Article 32) is designed to ensure that each and every authority in the State, including the Government, acts bona fide and within the limits of its powers and that when a court is satisfied that there is an abuse or misuse of power and its jurisdiction is invoked, it is incumbent on the court to afford justice to the individual. The Court further observed that in such an event the fact that the authority concerned denies the charge of mala fide, or asserts the absence of oblique motives, or of its having taken into consideration improper or irrelevant matter, does not preclude the Court from inquiring into the truth of the allegations made against the authority and affording appropriate relief to the party aggrieved by such illegality or abuse of power in the event of the allegations being made out.

128. As against the Government at the Centre, the allegations in the writ petitions can conveniently be classified into three groups. The first set of circumstances relates to the period prior to the

parliamentary elections in 1971, and the second to the period subsequent thereto till the declaration of Internal Emergency by the President on June 25, 1975 and the third relates to the period during the Emergency and thereafter. The petitioners' allegations may be thus summarized. The Express Group of Newspapers in general and the Indian Express in particular have always taken an independent stand and have been critical of the Government and the authorities and of any authoritarian trend and had therefore been considerably harassed in various ways. For over a decade, Congress Government have had an animosity against the petitioners and have tried in many ways to finish them off. After the Congress split of 1969 the Indian Express severely criticised those who had backed out from supporting the official Congress candidate. As a result, various administrative agencies began roving and fishing inquiries into the affairs of the Express Group of Companies. On more occasions than one, matters relating to petitioner 3 Ram Nath Goenka and the Express Group of Companies were discussed in Parliament. After the Congress (R) secured overwhelming majority in the 1971 parliamentary elections, the Express Group of Companies and petitioner 3 had to wage a constant battle for survival on various fronts and against various onslaughts. The animosity of the Congress (R) Government towards the petitioners intensified after the Gujarat and Bihar Movements gathered strength. Because of the close association of petitioner 3 Ram Nath Goenka with the late Shri Jayaprakash Narayan, efforts were made to secure his cooperation to persuade the late Shri Jayaprakash Narayan to withdraw from the Bihar Movement. His refusal to intercede on behalf of the Government let to further inquiries by which both he and the Express Group of Companies were sought to be pressurized and persecuted.

129. The White Paper on the Misuse of Mass Media during the Internal Emergency issued by the Government of India in August 1977 brings out certain facts. After the Proclamation of Emergency by the President on June 25, 1975, various acts of repression were perpetrated against the Express Group of Companies subverting lawful processes, well-established conventions and administrative procedures and practices and by abuse of authority and misuse of power. It was evident therefrom that in a "high level meeting" where the Ministers of Law & Justice and Information & Broadcasting were present, it was decided that "inquiries into the Express Group of Newspapers and Shri Ram Nath Goenka's industrial empire were to be given immediate attention". All that the Express Group of Newspapers, particularly the Indian Express, had to face during the Emergency is now a matter of history.

130. There is a considerable body of literature dealing with the role of the media during the period of Emergency. Perhaps the two best known papers which attempted to stand up to the Government's repressive tactics were the Indian Express and the Statesman. The Indian Express had been cool to Government pressure to publicize the benefits of Emergency. The Government then arrested Kuldip Nayar, the Editor-in-Chief, dissolved the Board of Directors and appointed a new Board under the Chairmanship of K.K. Birla consisting of persons approved by the Government; printed in other newspapers allegations of financial offences committed by petitioner 3 Ram Nath Goenka, the proprietor of the paper; withdrew Government advertisements and reduced the credit limits provided by the banks; cut off the supply of electricity and finally issued an abrupt notice of the auctioning of the Indian Express Buildings at New Delhi for failure to pay outstanding taxes - which Goenka was disputing in Court. The Express Building was sealed off for who days but by that time the harassment of the newspaper had attracted attention throughout the world. This became an embarrassment to the Government which stopped some of the harassment but continued the financial persecution. The newspaper was about to collapse when the new elections of 1977 gave it a new life. (White Paper on Misuse of Mass Media at paragraphs 38 to 44; Shah Commission's Report : Indian Politics and the Role of the Press by Sharad Karkhanis at pp. 139-140).

131. As against respondent 2, it was suggested during the course of hearing by learned counsel for the petitioners that obviously one of the tasks entrusted to respondent 2 as the Lt. Governor of Delhi was to "discipline the press" by demolition of the Express Buildings. I refrain from expressing any opinion on that aspect but it is quite evident that no action was contemplated against the Express Newspapers Pvt. Ltd. by any of the respondents prior to February 17, 1980. Respondent 2 upon assumption of his office as the Lt. Governor of Delhi on that day immediately set on a course of action against the Indian Express which culminated in the issue of the impugned notices. It cannot be doubted that his initiative to call for the files from the Municipal Corporation relating to the construction of the new Express Building was an action of his own not provoked by anyone, much less at the instance of respondent 1, the Union of India, Ministry of Works & Housing. The sequence of events set in motion immediately after his assumption of office as the Lt. Governor have already been set out in detail which demonstrate the extent to which and the keenness with which he pursued the matter. It would appear that the entire administrative machinery was geared into action by respondent 2 and he 'activated' the taking of steps culminating in the issue of the impugned notices.

132. In their effort to salvage the situation, learned counsel appearing for respondents 1 and 2 during the course of their respective submissions tried to impress upon us that it cannot be said from the circumstances appearing that the authorities have not acted bona fide with the object of using their powers for the purposes authorised by the Legislature but had acted with an ulterior object to achieve any sinister or collateral purpose. The submissions of learned counsel for respondent 1 may be summarized thus : (1) There was no imminent danger of demolition of the Express Building nor was the impugned notice dated March 10, 1980 issued by the Engineer Officer, Land & Development Office, a notice of re-entry upon forfeiture of lease. It was merely a notice of an exploratory nature requiring the Express Newspapers Pvt. Ltd. to show cause why the lease should not be forfeited under Clause 5 of the lease-deed for alleged breaches of Clauses 2(5) and 2(14) thereof. The Express Newspapers Pvt. Ltd. should have therefore entered appearance before the Land & Development Officer and showed cause against the action proposed. It was only if the Land & Development Officer was not satisfied with their explanation, that he would put up the papers before the Lt. Governor for necessary action. It would then be for the lessor i.e. the Union of India, Ministry of Works & Housing to decide whether or not the lease should be forfeited under Clause 5 of the lease-deed. (2) He drew our attention to the supplementary affidavit of M.K. Mukherjee, Secretary, Ministry of Works & Housing where it was denied that the impugned notice of re-entry dated March 10, 1980 was issued by the Engineer Officer at the behest or at the instigation of the Lt. Governor. Mukherjee had averred therein that S. Rangaswami, Additional Land & Development Officer called for a report and the file of the case on March 5, 1980 when a press clipping was put up to him in the usual course from the office of the Public Relations Officer. The Engineer Officer asked for putting up the case with a detailed note immediately. The decision to send the notice was taken without the reference to the Lt. Governor. A note on the file pointed out that the rate at which the plot was initially given to the Express Newspapers Pvt. Ltd. was concessional at the rate of Rs 36,000 per acre as against the prevailing rate of Rs 1,25,000 per acre for construction of building. The note was put up by Rangaswami to the Land & Development Officer and was also seen by the Joint Secretary (Delhi Division) and the Secretary, Ministry of Works & Housing. In this note, Rangaswami further pointed out that additional premium and additional ground rent would at all events be recovered from the lessee together with interest. The learned counsel accordingly contended that it was on the basis of this that the impugned notice was issued by the Engineer Officer on March 10, 1980 and said that it was worthwhile mentioning that till then the report of the Three-Member Committee was not before the Central Government, nor was there any

communication in that behalf from the Lt. Governor. The report of the Committee was itself dated March 12, 1980 and a copy thereof was forwarded by the Lt. Governor on March 14, 1980. It was therefore urged that the impugned notice by the Engineer Officer purporting to act on behalf of the lessor i.e. the Union of India, Ministry of Works & Housing was not based either on the report of the Three-Member Committee obtained by the Lt. Governor or on the basis of any communication from him. (3) Further, he urged that the Lt. Governor as the Administrator had to keep himself informed and cannot be said to have acted mala fide merely because of any possible personal malus animus on his part, "if the quality of the action was itself in complete accord with the law". (4) It was said that the Government itself was in possession of relevant records and applied its mind to them and the impugned notice issued by the Engineer Officer who was empowered to act on behalf of the President under Article 299(1) of the Constitution having been authenticated in the manner required by Article 77(3), it must be deemed to be the decision of the President on the advice of the Council of Ministers as enjoyed by Article 74(2) and the Court was precluded from making any investigation into the circumstances attendant. (5) Finally, he submitted that it was for respondent 2 to meet the charges of mala fides levelled against him. Whatever be the merit of the charge against the Lt. Governor, his action led only to the collection of material on the basis of which the impugned notice was issued, and the action of respondent 1 was unassailable. I find it rather difficult to accept this line of argument which is nothing but an afterthought.

133. While adhering to his stand that the Lt. Governor was a successor to the Chief Commissioner of Delhi and was therefore competent to exercise the powers of the lessor i.e. the Union of India, Ministry of Works & Housing, in relation to the lease-deed and that the Land & Development Officer was under his administrative control, learned counsel for respondent refuted the charge of personal bias. He reiterated that the Lt. Governor was the alter ego of the President in relation to such territory which he is called upon to administer on behalf of the President. One of the primary functions of the Lt. Governor, as the Administrator, was to be aware of fact brought to his knowledge and therefore respondent 2 could not have turned a blind eye to the action of Sikander Bakht, the then Minister for Works & Housing in making a highly fraudulent, illegal and improper grant of sanction to the Express Newspapers Pvt. Ltd. to build the new Express Building with an increased FAR of 360. He also maintained that the Lt. Governor as the appointed agent or nominee of the President was entitled to act on behalf of the lessor i.e. the Union of India, Ministry of Works & Housing in relation to the lease. Further, the contention was that respondent 2 as the Lt. Governor was well within his rights (1) in calling for and making perusal of the respective files from the Ministry of Works & Housing, Delhi Development Authority and the Municipal Corporation of Delhi pertaining to the construction of the new Express Building with an increased FAR of 360, (2) in constituting a Three-Member Committee to inquire into the circumstances relating to the grant of sanction by the then Minister for Works & Housing and to take necessary steps as regards the unauthorised construction of the new Express Building, and (3) in forwarding the report of the Three-Member Committee to the concerned authority, meaning the Minister for Works & Housing for taking necessary steps. It was contended that the petitioners have made wild, reckless and baseless allegations against respondent 2 merely because he directed an investigation into the affairs. In any event, he contended that this was a case of "transferred malice" and the question of mala fides could not be decided without impleading the late Prime Minister. I am afraid, the contention cannot prevail. The petitioners have impleaded respondent 1, the Union of India and pleaded the necessary facts with sufficient particulars. The lightning speed with which respondent 2 acted on assumption of his office as the Lt. Governor of Delhi on February 17, 1980 creates an impression that he started an 'inquisition' into the affairs of the previous Government at the Centre. One should have thought that respondent 2 holding the high position as the Lt. Governor should

have acted with greatest circumspection, than arrogate to himself the powers of the Union of India, Ministry of Works & Housing in relation to the property of the Union, including the lease in question. It was somewhat strange that the Land & Development Officer who was a minor functionary of the Ministry of Works & Housing should have filed a counter supporting the action of respondent 2. I regret to say that the Land & Development Officer deliberately made an inaccurate statement that he is not under the administrative control of the Ministry.

134. I may now deal with the submissions advanced by learned counsel for respondent 1. The contention that there was no imminent danger of demolition of the Express Building nor was the impugned notice by the Engineer Officer a notice of re-entry upon forfeiture of lease, is against the very terms of the impugned notice. The submissions of the learned counsel run counter to the counter-affidavit filed by respondent 2 on behalf of the respondents. There is a categoric averment that the grant of sanction by the then Minister for Works & Housing was illegal, improper and irregular. It is therefore futile to contend that the impugned notice dated March 10, 1980 was not a notice of re-entry upon forfeiture of lease but merely a notice of an exploratory nature requiring Express Newspapers Pvt. Ltd. to show cause why the lease should not be forfeited under Clause 5 of the lease-deed. Further, the contention that the decision to send the notice was taken without reference to the Lt. Governor does not appear to be substantiated by the facts on record. The so-called note of Rangaswami, Additional Land & Development Officer put up before the Joint Secretary (Delhi Division) or the Secretary, Ministry of Works & Housing was for making a demand for payment of additional premium and ground rent and it never authorized the issue of the impugned notice dated March 10, 1980 by the Engineer Officer directing a forfeiture of the lease.

135. The facts speak for themselves. M.K. Mukherjee, Secretary, Ministry of Works & Housing in the supplementary affidavit avers that the impugned notice dated March 10, 1980 was issued by the Engineer Officer, Land & Development Office on the basis of press reports i.e. reports of the press conference called by respondent 2 on March 4, 1980. The sudden spurt of activity on the part of Rangaswami, Additional Land & Development Officer calling for a report and the file and the Engineer Officer directing that the case be put up with a detailed note immediately on March 5, 1980 is a circumstance which speaks for itself. It followed upon the press conference called by respondent 2 on March 4, 1980 after the Zonal Engineer (Buildings), City Zone, Municipal Corporation, Delhi had already issued a notice on March 1, 1980 requiring Express Newspapers Pvt. Ltd. to show cause why the double basement of the new Express Building where the printing press was installed should not be demolished under Sections 343 and 344 of the Delhi Municipal Corporation Act, 1957. These circumstances clearly show that the respondents were building up a case against the Express Newspapers Pvt. Ltd.

136. In the facts and circumstances, I am constrained to hold that the impugned notices dated March 1, 1980 and March 10, 1980 were not issued bona fide in the ordinary course of official business for implementation of the law or for securing justice but were actuated with an ulterior and extraneous purpose and thus were wholly mala fide and politically motivated.

Whether construction of the new Express Building with an increased FAR of 360 constitutes a breach of the Master Plan or the Zonal Development Plan or Clauses 2(5) and 2(14) of the lease-deed.

I. The Delhi Development Act, 1957 : Master Plan for Delhi : Zonal Development Plan for D-II area viz. the Press Enclave in the Mathura Road Commercial Complex.

137. Question is as to whether the construction of the new Express Building on the residual area of 2740 sq. yards on the western portion of plots Nos. 9 and 10, Bahadurshah Zafar Marg with an increased FAR of 360 constitutes a breach of Clauses 2(5) and 2(14) which entitled the Engineer Officer, Land & Development Office, Ministry of Works & Housing to issue the impugned notice of re-entry dated March 10, 1980 purporting to act on behalf of the Government of India, Ministry of Works & Housing to show cause why the Union of India should not re-enter upon and take possession of plots Nos. 9 and 10, Bahadurshah Zafar Marg together with the Express Buildings built thereon under Clause 5 of the indenture of lease dated March 17, 1958. It is not disputed that the Ministry of Works & Housing with the Minister at the head was responsible for the following items of work viz. the "Property of the Union, Town and Country Planning, Delhi Development Authority, Master Plan for Delhi and Administration of the Delhi Development Act, 1957 and Allotment of Government lands in Delhi", and was also responsible for "all attached and subordinate offices or organizations concerned with any of the subjects specified aforesaid including the subordinate office of the Land & Development Officer, New Delhi, dealing with the administration of leases of nazul lands". The functions of the Ministry of Works & Housing are described in Chapter XXV of the publication entitled "Organizational set up and Functions of the Ministries/Departments of the Government of India", issued by the Department of Personnel & Administrative Reforms, Cabinet Secretariat, Government of India. Hence, the Minister for Works & Housing was and is the ultimate authority responsible for the following items of work viz. the Property of the Union, Town and Country Planning, Delhi Development Authority, Master Plan of Delhi, administration of Delhi Development Act, 1957, Land & Development Office dealing with the administration of nazul lands in the Union Territory of Delhi.

138. It is common ground that the Press Enclave on Bahadurshah Zafar Marg otherwise known as the Mathura Road Commercial Complex is not a "development area" within the meaning of Section 2(3) of the Delhi Development Act, 1957. Admittedly, the Master Plan does not prescribe any FAR for the Mathura Road Commercial Area. In the Master Plan at p. 50 the permitted uses in the Use Zone C-2, namely, the zone in which the press area falls are specifically mentioned and it is clear therefrom that the generally permitted uses do not include "newspaper and printing presses". The business of printing and publishing of newspapers and installation of printing press is permissible only if such user "is allowed by competent authority after special appeal". Section 14 of the Act prohibits any person from using or permitting to be used any land or building in any area otherwise than in conformity with the plans. The Delhi Development Authority by its letter dated November 4, 1978 conveyed to the petitioners that the set of building plans submitted by the petitioners had been examined "as per norms" and the Authority had no objection to the amalgamation of plots Nos. 9 and 10 and in allowing an overall FAR of 360 taking into account the existing FAR. It was further stated that the basement had been excluded from the calculations of the FAR. The installation of the press machinery like any other service machinery was expressly permitted. The petitioners were directed to submit the plans to the concerned authorities as per norms. It would therefore appear that the construction of the new Express Building with an increased FAR of 360 for starting a Hindi newspaper and the installation of the printing press in the double basement was allowed by the Delhi Development Authority, in accordance with the provisions of the Master Plan.

139. It is clear from the provisions of Section 12(4) read with Section 14 that permission for development of the residual area i.e. the construction of the new Express Building with an increased FAR of 360 by the petitioners for use as a printing press had to be sought for, and was given, by the competent authority i.e. the Delhi Development Authority after "special appeal" in accordance with the provisions of the Master Plan. Where permission for development in respect of such land had been applied for and obtained under the Act, the construction of the Express Building undertaken

and carried out in terms thereof could not be treated to have been unlawfully undertaken or carried out under Section 53(3)(a) of the Act. As already stated, the Central Government through the Ministry of Works & Housing is given an overriding authority in the matter of administration of the Delhi Development Act including the Master Plan, and the Zonal Development Plans, and the provisions of the Delhi Development Act take effect notwithstanding anything inconsistent therewith contained in any other law. That is to say, merely because the Municipal Corporation of Delhi while granting sanction to the building plan on January 9, 1979 got deleted the basement beyond plinth line as well as the second basement, that was of no legal consequence. By virtue of the permission granted by the DDA to the sanction plan of the new Express Building with an increased FAR of 360 with a double basement beyond the plinth area for installation of the printing press, the same must prevail. Under Section 41(3) of the Act, the Central Government through the Ministry of Works & Housing had certainly the authority to issue a direction to the Delhi Development Authority to examine the question as to whether the petitioners could be granted permission to construct the Express Building with an increased FAR of 360 with a double basement for installation of the printing press, and to grant permission therefor.

140. The Floor Area Ratio, commonly known as 'FAR' is the restriction on the number of floors in a building with reference to the plot area.

141. Part A of Chapter II of the Master Plan contains the Zoning Regulations which form an integral part of the Master Plan which indicate the land use permissible in various zones and the density, coverage, floor area ratio and set-backs for various types of development. Paragraph 2 has divided the Union Territory of Delhi for purposes of the zoning regulations into twenty-four use zones. Each use zone has its special regulations because a single set of regulations cannot be applied to the entire city, as different use zones vary in their character and functions. The area in question falls in Use Zone C-2 : General Business and Commercial, District Centre, Sub-District Centre etc. Paragraph 4 contains provisions regarding uses in the various use zones, such as residential, commercial, industrial, recreational etc. At p. 50, there are provisions relating to Use Zone C-1 : Retail Shopping. The permitted uses in Use Zone C-2, namely, the zone in which the press area is located, do not include "newspapers and printing presses" except where allowed by competent authority after special appeal. Paragraph 5 contains provisions regarding density, coverage, floor area ratio requirements. At p. 60, these requirements for commercial and retail areas are set out under Item IV. It would appear that the commercial areas of Connaught Place Extension, Minto Road and Ranjit Singh Road were to have an FAR of 400. Minto Road and Ranjit Singh Road are in zone D-II. The FAR for Connaught place Extension in zone D-I was reduced on April 27, 1974 to 250 but the FAR of the other commercial areas, namely, of Minto Road and Ranjit Singh Road remained at 400. The relevant extract is as below :

IV. Commercial and Retail :

> (a) Connaught Place Extension, Minto Road and Ranjit Singh Road. - The size of plot will naturally depend on the layout of the commercial area but any further sub-division of plots in the Connaught Place and its proposed extension area is not desirable.
>
> #FAR 400Maximum ground floor coverage 50%Covered garages for cars and cycles 5%First floor coverage 50%Coverage for second floor and above 35%##

There is limit to the number of floors but this is subject to light and air planes.

Semi-basement is allowed with a coverage not exceeding the ground floor for parking, servicing and storage and the same is not taken into FAR calculations.

The Master Plan then provides for FAR coverage for already built-up commercial areas and a list of 19 localities is set out and they all relate to the walled city of Delhi like Chandni Chowk etc. To this was added as the twentieth item Jhandewalan Scheme on December 24, 1976.

142. The entire case of the Union of India as well as the other respondents as presented before us is that under the Master Plan an FAR exceeding 300 was totally prohibited for any commercial area including the Mathura Road Commercial Complex. This is factually wrong. The Master Plan admittedly does not refer to the Press Enclave situate on the Mathura Road Commercial Area, nor does such area fall within the "already built-up commercial areas" i.e. the walled city of old Delhi, as set out in the Master Plan at pp. 60-61. Since the attempt of the respondents is to bring the press area within the FAR coverage prescribed for the already built-up commercial areas in the walled city of Old Delhi, it is of utmost importance for a proper understanding of the case to set out the relevant portion :

> (b) FAR coverages etc. for already built-up commercial areas in the walled city like Chandni Chowk, etc. (List given below) :

In such cases, coverages permissible would be as applicable in the existing building bye-laws of the Municipal Corporation of Delhi, e.g., 80 per cent on the ground floor and 70 per cent on the first floor and so on, with 150 FAR for a two-storey construction, 200 FAR for a three-storey construction, 250 FAR for a four-storey construction and so on, provided that the FAR will not exceed 300.

List of already built-up commercial areas :

1. Jama Masjid
2. Chitli Qabar
3. Bazar Sita Ram
4. Ajmere Gate
5. Chandni Chowk
6. Fetehpuri
7. Lajpat Rai Market
8. Kashmere Gate and Mori Gate
9. Malka Ganj
10. Sabzimandi
11. Bara Hindu Rao
12. Sadar Bazar

13. Nabi Karim

14. Qadam Shariff

15. Ram Nagar

16. Paharganj

17. Model Busti

18. Manakpura

19. Shahdara Town

20. Jhandewalan Scheme - Block E.

Eventually, learned counsel appearing for respondent 1 had to accept that the already built-up commercial areas set out in the Master Plan at p. 61 death with areas other than Mathura Road Commercial Area where the press area in question is situate.

143. It is quite obvious that the Master Plan does not prescribe any FAR for the Press Enclave situate on Mathura Road Commercial Area nor does such area fall within the "already build-up commercial areas" as defined in the Master Plan i.e. commercial area falling within the walled city of Old Delhi. Apparently, the contention that the FAR of no commercial area in Delhi can exceed 400 is wholly misconceived inasmuch as the Master Plan in express terms permits FAR of the commercial areas in Minto Road and Ranjit Singh Road at 400. The Zonal Development Plan for the D-II area approved by the Central Government in November 1966 mentions four commercial areas, namely, (1) Asaf Ali Road Commercial Area, (2) Minto Road Commercial Area, (3) Mathura Road Commercial Area and (4) Circular Road Commercial Area (opposite Ramlila Ground). It is provided that the general regulations for development should be an FAR of 400 in respect of these areas, the total area of which is stated to be 30.50 acres. It is therefore entirely incorrect to say that nowhere in Delhi is there an FAR of more than 300 for any commercial area as stated in the Report of the Town & Country Planning Organisation dated April 14, 1978 relied upon by the respondents. In the Zonal Development Plan for a D-II area, it is mentioned that Asaf Ali Road Commercial Area is "fully developed and there is no room for its expansion", but the same is not said about Mathura Road Commercial Area which is described as "fully commercialized with press and other allied/trading buildings". The statement relating to Mathura Road Commercial Area is set out below :

> Similarly Mathura Road Commercial Area is also fully commercialized with press and other allied trade buildings according to building bye-laws to built-up areas.

It would be seen that the statement is prefaced by the word 'similarly' and thereafter the word 'also' appears.

144. Learned counsel appearing for respondent 1 the Union of India contends that the use of the word 'similarly' can only mean that Mathura Road Commercial Area is also fully developed like Asaf Ali Road Commercial Area, and further that the statement that buildings on Mathura Road have been constructed according to the building bye-laws applying to build-up areas means that it was fully commercialized and had been built-up according to the relevant bye-laws which regulate

and control the construction of commercially built-up areas and therefore the relevant bye-law applicable would be bye-law 25(2)(IV)(B) of the Municipal Bye-laws which puts a ceiling on FAR at 300. He tries to draw support for this contention from what next follows in the Zonal Development Plan where it is stated : "Only two areas, namely, Circular Road and Minto Road Commercial Areas are to be developed". It is said that the significance of the word 'only' can mean nothing than that like the other similar areas, namely, Asaf Ali Road Commercial Area and Minto Road Commercial Area, Mathura Road Commercial Area had no room for expansion because it was also fully developed. According to him, what follows immediately thereafter in the Master Plan is to provide for general regulations for development and not to areas which are fully developed and such regulations for development cannot therefore apply to such areas. I am afraid, on a plain construction, the contention cannot be accepted.

145. The word 'similarly', in the context in which it appears, can only imply that Mathura Road Commercial Area as having close resemblance even though obviously distinct in nature i.e. although Asaf Ali Road commercial area is fully developed, in comparison Mathura Road Commercial Area bears a marked likeness or resemblance as it is fully commercialized. But by no rule of construction it is susceptible of the meaning that it is fully developed. I cannot but take judicial notice of the fact that at the time when the Zonal Development Plans were approved by the Central Government in November 1966, the development in the press area was still going on since the Gandhi Memorial Hall, otherwise known as Pearey Lal Bhawan on Bahadurshah Zafar Marg was then under construction. Besides, even the so-called fully developed areas, viz., the Asaf Ali Road Commercial Area which was not fully developed, they would not be subject to the restriction FAR of 300 and a fortiori the Mathura Road Commercial Area so long as they were not brought within the purview of paragraph 4(b) of the Master Plan by a notification issued by the Central Government for their inclusion in the list of "already built-up commercial area" as specified at p. 61. A building in these areas can always be pulled down and reconstructed with an FAR of 400. The Express Newspapers Pvt. Ltd. have placed on record a recent advertisement dated March 8, 1982 issued by the Delhi Development Authority as published in the Indian Express announcing public auction of certain plots of land in the Asaf Ali Road Commercial Area. It is mentioned in the advertisement that the auction purchaser would be entitled to construct a building with the following specifications :

> Apart from basement of 86.11% of ground floor coverage of 100%, a mezzanine floor of 25% of the ground floor, four floors each of 75% coverage, to the benefit of a higher FAR being permitted in future, subject only to proportionate payment of premium.

It is therefore evident that although in the Zonal Development Plan for D-II area, Asaf Ali Road Commercial Area is described as fully developed with no room for expansion, the FAR of which is admittedly 400, there could be still a further increase in FAR subject to payment of premium. This could only be under the provisions of the Zonal Development Plan for D-II area and therefore it must logically follow that the FAR prescribed in the Zonal Development Plan for Mathura Road Commercial Area where the Press Enclave is situate is 400. It is of some significance that the aforesaid advertisement had been issued by none else than P. Chakravarty, one of the members of the Three-member Committee. It is regrettable that the Three-Member Committee should have purposely misled the authorities by describing the press area on Bahadurshah Zafar Marg as an "already built-up area" which relates to the walled city of Old Delhi for which the FAR beyond 300 was not permissible. The press area is in Mathura Road Commercial Area which is not far from Asaf Ali Road commercial area. It not only falls in the same D-II area but is treated as part of a complex of four commercial areas in the Zonal Development Plan for D-II area. This press area is

not even described as fully developed as is the Asaf Ali Road Commercial Area; it is only described as fully commercialized. If FAR 400 is prescribed and allowed for Asaf Ali Road Commercial Area which is fully developed, it could not possibly be impermissible for the press area which although fully commercialized was still not fully developed.

146. There is no factual basis for the assertion of the respondents that nowhere in Delhi the FAR for any commercial area can exceed 300. This is directly contrary to plots in Asaf Ali Road Commercial Area which have FAR of 400 and a ground coverage of more than 90%. As already stated, the Delhi Department Authority has sold by public auction plots which permit construction of commercial buildings with FAR of 400, basement of 86.11% and 100% ground coverage. In Bhikaji Cama Place, the Delhi Development Authority has auctioned plots for construction of a five-star hotel Hyatt Regency with an FAR of more than 500. Even "Vikas Minar", the main building which houses the offices of the Delhi Development Authority situate on I.P. Estate, is close proximity to the Mathura Road Commercial Area, in the D-II area is Use Zone G-II for which permissible FAR is 150 has been built with an FAR exceeding 400.

II. The Delhi Municipal Corporation Act, 1957 : The Delhi Municipal (Buildings) Bye-laws, 1959 : Applicability of Bye-law 25(2)(IV-B).

147. It is significant that the allegation of the alleged breach of FAR regulation is made for the first time in the affidavits and which forms the main plank of the arguments asserting the right of the lessor i.e. the Union of India, the re-entry upon forfeiture of lease is not foreshadowed in either of the impugned notices dated March 1, 1980 or March 10, 1980 issued by the Engineer Officer, Land & Development Office. But, since the point has been argued at great length and since the argument is that the permission accorded by Sikander Bakht, the then Minister for Works & Housing was non-est if the FAR exceeded the legal limit of FAR 300, this question has to be dealt with on merits. According to the Union of India, both in the arguments as well as in the affidavits, it is asserted that in processing the application for additional construction i.e. of the new Express Building proceeded on the basis that the FAR in the press area was 300. The assertion that every officer referred to only an FAR 300 for the press area is based upon the TCPO's note dated April 14, 1978 mentioned in Three-Member Committee's report in which it is specifically stated :

> As per Master Plan, FAR 300 in Commercial Area does not exist for any area in Delhi whatsoever.

As stated above, this was factually wrong being contrary to the Master Plan and the Zonal Development Plan for the D-II area. It is also contrary to the fact that : (1) In the Asaf Ali Road Commercial Area, plots of FAR 400 and ground coverage of more than 90%; (2) In Bhikaji Cama Place plots have been auctioned for the construction of five star hotel with an FAR of more than 500; (3) Vikas Minar, the Delhi Development Authority's building is constructed with an FAR exceeding 400 situate in "Use Zone G : Government and semi-Government Offices", for which the permissible FAR is only 150. There is no material on record to substantiate that there is no specific rule or bye-law laying down FAR ceiling for the press area was 300. In fact, the Union of India in the very first affidavit unequivocally admits this position and avers :

> .... It is submitted that under the Master Plan, Commercial and Retail Zone is divided into the following parts :
>
> (i) Connaught Place Extension, Minto Road and Ranjit Singh Road.

(ii) Already built up commercial area in the walled city, like Chandni Chowk, etc.

(iii) District Centres and proposed central business districts in Shahdara and Karol Bagh.

(iv) Community Centres and retail centres shown in the Plan.

(v) Neighbouring shopping centre.

It is no doubt true that none of these areas makes any specific reference to press Enclave situated on Bahadurshah Zafar Marg.

It is therefore admitted that the Master Plan does not prescribe any FAR for the press area in the Mathura Road commercial area.

148. Learned counsel appearing for the Union of India seeks to spell out a new argument that none of the officials who were conversant with the matter ever referred to an FAR of 400 then mentioned in the Zonal Development Plan for D-II area (which comprises of the press area) and contends that since in the Zonal Development Plan the Mathura Road Commercial Area is described as similar to the Asaf Ali Road Commercial Area which "is fully developed with no room for expansion" and again as "fully commercialized with press and other allied trade buildings built according to bye-laws applying to the press area", the FAR of 400 (with ground coverage of 50%) as specified in the Zonal Development Plan for D-II area cannot obviously apply to the press area. During his address he put the question : How can the Mathura Road Commercial Area be fully commercialized even if it is not fully developed ?

149. The floor area ratio or FAR is the restriction on the number of floors in a building with reference to the plot area. The expression 'FAR' is defined in Bye-law 2(33) of the Delhi Municipal Corporation (Buildings) Bye-laws, 1959 in the following terms :

2. Definitions. - In these bye-laws, unless the context otherwise requires :

(33) Floor Area Ratio or FAR means the quotient obtained by dividing the multiple of the total of the covered area on all floors and 100 by the area of the plot i.e.

Total covered area of all floors X 100 FAR FAR = ---------- Plot area##

Where FAR is not specified in the Master Plan which admittedly is the case in regard to press area on Bahadurshah Zafar Marg, the only bye-law applicable would be Bye-laws 21 and 22. Bye-law 21(2) reads;

21. Maximum height of buildings. - (1) Except with the permission in writing of the Commissioner, and subject to the provisions contained in Bye-law 19, no building shall be erected or raised to a greater height than seventy feet as measured from the level of the centre of the adjacent portion of the nearest street.

Note : This bye-law shall be applicable only to those buildings which are not otherwise governed by FAR wherever specified in the Master Plan.

This bye-law restricts the height of a building to 70 feet. Now, this height is to be measured from the centre of the adjacent portion of the "nearest street". Admittedly, as is clear from the sanction plan, the height of the new Express Building is about 47 feet (see section plan of the sanction plan : 1" = 8 ft.), the adjacent portion which is the service road is on level with the plinth of the additional construction. Taking Mathura Road as the "nearest street", the level of Mathura Road stretches from 2 ft. to 5 ft. higher than the plinth level of the additional construction. In any view of the matter, the additional construction could therefore be permissible if it did not exceed a height of 63 feet. This is because of Bye-law 21(1) and also because of FAR with which is linked the ground floor coverage is not specified in the Master Plan. Bye-law 22 further restricts the maximum height of a building permissible under Bye-law 21 and it, insofar as material, provides :

> 22. Maximum height of buildings with reference to width of streets. - Subject to the provisions of Bye-laws 19 and 31, the maximum height of any building abutting on to any street shall be regulated by the width of such street as follows :
>
> (iv) when the width of the street is 40 ft. or more, the maximum height shall be the width of the street;

Note. - This bye-law shall be applicable only to those buildings which are not otherwise governed by floor area ratios wherever specified.

150. Even though the maximum height of 70 feet is specified in Bye-law 21, in order to avoid congestion the maximum height is further restricted under Bye-law 22 in proportion to the width of the abutting street. In the instant case, Mathura Road which is the abutting street measures in width 150 feet (see the sketch plan of Zonal Development Plan for D-II area). This is apart from the immediately abutting service road which, even if reckoned as an abutting street, is 63 feet in width. Therefore, applying Bye-law 22(iv) read with Bye-law 21(1), it is the service road of the street that governs the height of the buildings in the press area as well as the number of floors, the minimum floor height being already specified in Bye-law 19. The restriction on the height of buildings is therefore governed by the width of the street subject to the maximum height of 70 feet and this is the measure adopted where FAR for a particular area is not specified in the Master Plan.

151. The learned counsel then adverts to the further description with regard to the Mathura Road Commercial Area, namely, that the press and other allied trade buildings have been constructed according to building bye-law applying to "built-up areas". According to him, these bye-laws according to which the buildings have been erected were to apply to "built-up areas" so that the net result is that the Mathura Road Commercial Area was fully commercialized and has been built up according to the relevant bye-laws which controlled the construction of commercially built-up areas. He contends that the description contains a declaration that the whole area was a commercial area and that it was fully commercialized and the relevant bye-law applicable to the Mathura Road Commercial Area was and is Bye-law 25(2)(IV-B) which puts a ceiling on FAR at 300. It is next contended that since the Mathura Road Commercial Area was a fully developed and commercial area built up according to the relevant bye-laws, it has not been declared to be a "development area" under Section 12(1) of the Act. Sub-section (2) thereof forbids the Delhi Development Authority to undertake or carry out development of any land in an area which is not a development area and therefore the matter falls to be governed by sub-section (3) which forbids development of land except with the approval or sanction of the local authority i.e. the Municipal Building Bye-laws applicable to "built-up areas" which evidently refers to Bye-law 25(2)(IV-B). The relevant provisions of Bye-law 25 provide as follows :

25. Permissible covered area -

(1) Notwithstanding anything contained in these bye-laws no building shall be erected or allowed to be erected in contravention of the Master Plan or any Zonal Development Plan.

(2) the following provisions shall apply to buildings in different use zones :

IV. Commercial and Retail Zones :

A. Minto Road and Ranjit Singh Road Area.

B. Already built-up commercial areas as indicated in the Master Plan or such other areas as may be declared commercial areas by the appropriate authority from time to time.

(a) Coverage :

The maximum permissible coverage shall be subject to the provisions of Bye-laws 26 and 27 and the requirement of the FAR as provided in sub-clause (b) below.

(b) F.A.R. :

The FAR shall not exceed in the case of building having the storeys mentioned in column 1 below by the figure mentioned in column 2 below :

#---------- 1 2----------Two storeys 150Three storeys 200Four storeys 250More than four storeys 300----------##

(c) Storeys :

The number of storeys shall be subject to the provisions of By-law 22 relating to the maximum height, of Bye-law 31(1) and (2) relating to air and light planes and the provisions that the FAR does not exceed 300.

152. The contention put forward by learned counsel for respondent 1 is that there are two important factors governing construction of buildings viz. the ground floor coverage and the FAR. Normally, for all commercial buildings, the ground floor coverage is 25%. However, under Bye-law 26 read with the note appended thereto, as amended in 1964, for certain commercial buildings ground floor coverage of 80% is permitted. He relies upon the relevant portion of Bye-law 26 which reads :

26. Open spaces in Commercial and Public Buildings :-

No commercial or public building or ground of such buildings in any bazar, market or commercial area shall have a ground floor covered area of more than 80% of the area of the plot...

Note : This bye-law shall be applicable only to buildings covered by Bye-law 25(2)(IV-B).

He accordingly contends that all buildings in the press area including the new Express Building

have a ground coverage of 80% under Bye-law 26 and to such buildings Bye-law 25(2)(IV-B) which limits the FAR to 300 is applicable.

153. The fallacy of the argument of the learned counsel lies in the assumption that all buildings in the press area including the Express Buildings are constructed with a ground coverage of not more than 80% under Bye-law 26 and therefore only Bye-law 25(2)(IV-B) which limits the FAR to 300 is applicable in this case. The contention overlooks the note appended to Bye-law 26 which reads :

This bye-law shall be applicable only to buildings covered by Bye-law 25(2)(IV-B).

Bye-law 25(2)(IV-B) only applies to : "already built-up commercial areas as indicated in the Master Plan or such other areas as may be declared as commercial areas by the appropriate authority from time to time". As already stated, the expression "already built-up commercial area" as defined in the Master Plan at pp. 60-61 refers to the walled city of Delhi like Chandni Chowk, etc. The list of already built-up commercial areas admittedly does not include the press area on the Mathura Road.

154. The matter can also be viewed from another angle. At the time of construction of buildings in the press area, there were no restrictions as to the FAR along the Mathura Road and the only restriction on construction of such buildings was that the allottees of the plots in the press area should construct buildings upto a height of 60 ft. The petitioners constructed the old Express Building to the east of the sewer line with an FAR of 260 with reference to the entire plot leased to them i.e. plots Nos. 9 and 10 although the building occupied only half of the area. After construction of the old Express Building to the east of the sewer line in March 1958, the perpetual lease was executed on March 17, 1958. The supplemental lease was also executed in November 1964. These documents were in conformity with the agreement for lease entered into on May 26, 1954. The said building was to be constructed in accordance with the plans and specifications as had been previously proposed and submitted by the Express Newspapers Pvt. Ltd. and approved of in writing by the Chief Commissioner of Delhi which permitted construction by the petitioners of a building on the entire area of plots Nos. 9 and 10 with 100 % ground coverage as stated above.

155. After the discovery of the underground sewer pipeline by the petitioners which was a fact only within the knowledge of the Central Government and had not been disclosed to the Express Newspapers Pvt. Ltd. at any time, the parties entered into negotiations for modification of the agreement. It was agreed between the parties that in view of the drain running through the plots and till the drain was not diverted, the petitioners would construct their building only to the east of the drain and in such a way as to leave the drainage system unaffected. The petitioners were thus disabled from building on a substantial part of the land allotted to them until the underground drain was realigned outside the boundary of the leasehold premises. In effect, an area of 2740 sq. yards to the west of the drain had to be left as a residual piece of land out of the total area of 5703 sq. yards. It is pertinent to observe that all other newspapers like the Times of India, Patriot, National Herald etc. who had been granted similar plots on the Mathura Road on same conditions were allowed to build on the entire area of their respective plots without any restrictions whatever. After further negotiations, the lease agreement was entered into between the parties on November 27, 1957 so as to protect the underground sewer drain and restrict the construction of the building to the east of the drain. J.N. Ambegaokar, Under-Secretary to the Ministry of Works & Housing by his letter dated April 11, 1956 confirmed that the allotment of land to the Indian Express Newspapers on the Mathura Road had been revised on the terms set out therein. The revised allotment was subject, among others, to the following conditions :

1. An area of 2740 sq. yards to the west of the pipeline was allotted on a premium at the rate of Rs 36,000 per acre plus 2.5% annual ground rent thereon. The said area was to be maintained as an open space i.e. lying vacant for parking space.

2. The remaining area of 2965 sq. yards to the east of the pipeline was settled on a premium at the rate of Rs 1,25,000 per acre plus 2.5% annual ground rent thereon.

The Central Government reserved to themselves the right to divert the sewer line passing through the leasehold premises.

156. The effect of the revised terms as per Ambegaokar's letter was that the area to the east of the sewer-line measuring 2965 sq. yards was treated as buildable plot and the remaining area of 2740 sq. yards treated as non-buildable plot. In respect of the buildable plot there was admittedly 100% coverage with five floors i.e. an assumed FAR of 500 as in those days there were no building bye-laws or restrictions providing for an FAR. But actually the old Express Building was built with a FAR of 260. Significantly, a separate ground rent and separate premium was chargeable for the buildable plot on which the old Express Building stood at the rate of Rs 1,25,000 per acre and a ground rent of 2.5%. The lessor i.e. the Union of India left with the Express Newspapers Pvt. Ltd. the area to the west of the drain measuring 2740 sq. yards on a reduced premium at the rate of Rs 36,000 per acre and a ground rent at the rate of 2.5% thereof. It was evidently not within the contemplation of the parties that the area so kept was to be kept green in perpetuity i.e. an area which could not be built upon under any circumstances because the premium chargeable therefor was at the rate of Rs 4840 per acre.

157. It must therefore be held that the permission granted by Sikander Bakht, the then Minister for Works & Housing for the construction of the new Express Building with an increased FAR of 360 with a double basement for installation of the printing press was not in violation of the Master Plan for Delhi or the Zonal Development Plan for D-II area or the Delhi Municipal Corporation (Buildings) Bye-laws, 1959 inasmuch as ex facie Bye-law 26 read with Bye-law 25(2)(IV-B) was not applicable to the press area on the Mathura Road. Admittedly, the Master Plan does not prescribe any FAR for the Press Enclave. The Zonal Development Plan for the first time prescribed FAR for the four commercial areas for general business and commercial areas, namely : (1) Asaf Ali Road Commercial Area, (2) Minto Road Commercial Area, (3) Mathura Road Commercial Area, and (4) Circular Road Commercial Area (opposite the Ramlila Ground). All these commercial areas fall within D-II area for which the Zonal Development Plan prescribes an FAR of 400.

Validity of the show cause notice dated March 1, 1980 issued by the Zonal Engineer (Buildings), City Zone, Municipal Corporation, Delhi under Sections 343 and 344 of the Delhi Municipal Corporation Act, 1957

158. At the press conference convened by respondent 2 on March 1, 1980, he handed over a press release alleging that the additional building put up be petitioner 1, Express Newspapers Pvt. Ltd., was in contravention of law and inter alia it was stated that the Municipal Corporation had been advised to take immediate action in regard to the unauthorized deviations from the sanctioned plan. On the same day, the Zonal Engineer (Buildings), City Zone, Municipal Corporation, Delhi served a notice to petitioner 1 to show cause why action should not be taken for demolition of the structures set out therein under Sections 343 and 344 of the Delhi Municipal Corporation Act, 1957. The objected portions of construction in terms of the impugned show cause notice are as under :

(1) Construction of an upper basement without sanction or, in other words, a working platform or installations of the machinery; and

(2) Unauthorized construction of an excess basement beyond sanction. The three alleged unauthorized constructions are :

(a) A triangular pit dug in front of the building;

(b) A loft working platform in the basement; and

(c) The basement beyond the plinth area of the new building.

Each of these structures was specifically approved by the Delhi Development Authority as per "usual norms".

159. Section 53(3)(a) of the Delhi Development Act provides, inter alia that :

53(3). Notwithstanding anything contained in any such other law -

(a) when permission for development in respect of any land has been obtained under this Act such development shall not be deemed to be unlawfully undertaken or carried out by reason only of the fact that permission, approval or sanction required under such other law for such development has not been obtained.

The words "such other law" within their amplitude include a law like the Delhi Municipal Corporation Act and the Delhi Municipal Corporation (Buildings) Bye-laws, 1959 framed thereunder. The non obstante clause in Section 53(A)(i) clearly gives an overriding effect to the sanction granted by the Delhi Development Authority for the construction of the new Express Building with an increased FAR of 360 and a double basement for installation of printing press or the working platform. The effect of grant of such permission by the Authority was to modify the sanctioned plans of the Municipal Corporation to that extent. That apart, the term 'development' as defined in Section 2(d) of the Act includes the carrying out of building.....in, on, over or under land....in any building etc. and is wide enough to include the structures in question. As the Authority approved each of these structures for which the impugned show cause notice had been issued by the Zonal Engineer (Buildings), City Zone, Municipal Corporation, it is clear that he had acted beyond his authority and power.

160. The impugned notices alleges that a basement was under construction in the triangular portion of the plot. In fact, the alleged construction was not a basement at all. The circumstances under which the triangular pit came into existence have been explained by the petitioners. It appears that while the underground sewage drain was being diverted, it burst and water from the drain flooded the entire pit that had been dug for the foundation of the building and they allege that water had reached 14 ft. in height and it endangered the foundation of the original Express Building. The service road parallel to Bahadurshah Zafar Marg was also in imminent danger of caving in. Petitioner 1 had therefore to build supporting walls which became a storage tank. The construction of walls in the triangular area was meant to strengthen and reinforce the foundation of the original building as well as to prevent the road from caving in. What is alleged in the show cause notice as a proposed basement under construction was merely for fortuitous construction necessitated by the drain flooding the pit and now it is merely meant to house a water static tank needed for fire fighting purposes. Such fire fighting arrangement is necessary to prevent fire hazard which inflicted

huge losses in various multi-storeyed buildings like Kanchunjunga and the Hindustan Times buildings. The Express Newspapers Pvt. Ltd. further allege that they were advised by the fire-brigade authorities to construct a static tank.

161. It would, therefore, appear that "excess basement" is in two parts :

> (1) So much of the excess basement as was the result of subsidence of 8000 sq. ft. of land caused by bursting of a part of the sewer line while it was being shifted. The petitioner 1 built supporting walls which became a storage tank and it covers an area of 4500 sq. ft.
>
> (2) Underground tunnel, meant for use as a passage for labour and movement of newsprint from the old to the new Express Building and it measures 450 sq. ft.

162. The Municipal Corporation is treating this storage tank as an unauthorized construction. It was got deleted from the sanctioned plan because in the original plan there was a provision for a smaller water tank. Ultimately, the objection is to a bigger storage tank.

163. There is no dispute that all the structures are below the ground. The main purpose of the upper basement i.e. a working platform measuring 6000 sq. ft. was meant to work the printing press. Without the water storage tank the Express Newspapers Pvt. Ltd. would not get the completion certificate and it is difficult to understand how the underground tunnel passage, to connect the old and new Express Building would cause traffic hazard. At any rate, such minor deviation would not result in a demolition of the Express Buildings. The manner in which the impugned notice was got issued by the Municipal Corporation at the direction of respondent 2 shows that it was done with an ulterior purpose. The illegality of the action is writ large and the manner in which it was done creates a ground for belief that the action was motivated.

164. The Express Newspapers Pvt. Ltd. were asked to show cause within three days from the date of issue of the notice as to why an order of demolition should not be passed under sub-section (1) of Section 343 failing which action was to be taken for demolition under sub-sections (2) and (3) of Section 344. It is evident from the list of dates furnished by the learned counsel for the Municipal Corporation that during the period from February 18, 1980 to the date of issue of the impugned notice, the officials of the Municipal Corporation had been waiting upon respondent 2, holding inspection of the premises and directly reporting to him in respect of the alleged deviations. It is alleged that the second basement was not in the sanctioned plan which measured 8914 sq. ft. (according to petitioners it measured only about 6000 sq. ft.) and the excess basement over the sanctioned basement works out to 5450 sq. ft. out of which the water storage tank measures 4095 sq. ft. and the underground tunnel measures about 500 sq. ft. and, therefore, Sections 343 and 344 of the Act were attracted.

165. The contention of learned counsel appearing for the Municipal Corporation is that the Express Newspapers Pvt. Ltd. have been guilty of suppressio veri as they have not mentioned the fact that on the objection of the Municipal Authorities, they deleted all the aforementioned three portions set out in the notice. It was urged that the construction of these structures was admittedly carried on in violation of the sanctioned plan. It was pointed out that the tank as recommended by the Chief Fire Officer by his letter dated January 5, 1979 was for the construction of an underground water storage tank over the area of 550 sq. ft. for the requirement of fire fighting and fire protection measures. It was, however, asserted that the recommendation of the Chief Fire Officer was not according to

Building Bye-laws and, therefore, not binding on the Municipal Corporation. The proposal for the construction of a water storage tank in a corner of the building covering 550 sq. ft. was accordingly got deleted. It was also pointed out that the water storage tank as constructed measuring 4095 sq. ft. was eight times bigger than the one recommended by the Chief Fire Officer. I am afraid, I am unable to appreciate this line of reasoning. If a water tank of this magnitude was permitted to be constructed, the water stored in it would be sufficient for the entire Press Enclave at Bahadurshah Zafar Marg. I fail to see any rational basis for the objection raised. The Express Newspapers Pvt. Ltd. have at a considerable cost, constructed a large enough water storage tank to serve the entire Press Enclave and if it is sufficient to serve all the buildings on Bahadurshah Zafar Marg, the Municipal Corporation should, indeed, thank the Express Newspapers Pvt. Ltd. for making provision for the protection of all the buildings. In the recent past, the devastating fire which engulfed many multi-storeyed buildings like Hindustan Times, Kanchunjunga, Gopala Tower etc. showed that the authorities could not bring under control such fires for want of sufficient water facilities.

166. Section 14 of the Delhi Development Act which applies to all areas in Delhi irrespective of whether such area is a development or non-development area or a slum area, lays down that the use of the land shall be in accordance with the plan, i.e., in conformity with the Master Plan and Zonal Development Plan. The press area falls within the "Use Zone" C-II which is dealt with at page 50 of the Printed Master Plan. It is evident from the uses as specified for the said zone that installation of printing machinery for production of newspaper has to be specially permitted by the Delhi Development Authority "under Special Appeal" provision laid down in the Master Plan read with Section 14 of the Act. It is in pursuance of these statutory provisions that the letter dated November 4, 1978 of the Joint Director (Buildings), Delhi Development Authority was addressed to the Express Newspapers Pvt. Ltd., inter alia, permitting the Express Newspapers Pvt. Ltd. to instal in the basement printing press machinery like any other service machinery. It is apparent from the building plan that the Delhi Development Authority approved of the same with the second basement "as per norms of ground coverage and FAR" and the permitted second basement of 14,440 sq. ft. However, it appears that the Municipal Corporation while granting sanction to the building plan on January 9, 1979, got deleted the basement beyond plinth line as well as the second basement with the observations that "it in no manner overpowers the authority of the Delhi Development Authority or any other person or body". In view of the difficulty created, the Express Newspapers Pvt. Ltd. did not construct the second basement of 14,440 sq. ft. but limited the construction to a working platform of about 6000 sq. ft.

167. The Express Newspapers Pvt. Ltd. have specifically averred in sub-paras (a) to (k) of para 33 that the machines they have planned to instal and which have been specifically permitted to instal in the basement by the Delhi Development Authority, are of 24 ft. in height from the foundation. This is the reason why on account of which, the height of the basement has been sanctioned at 26 ft. The newsreels are fed at the bottom of these machines and the printed matter is collected at the top i.e. on the second basement for delivery to vans and trucks at the street level. The Express Newspapers Pvt. Ltd. have produced photographs which show the two levels of the machines that are to be installed in the basement. One has, therefore, to approach the machines at the bottom to feed the newsprint in and at shoulder level to receive the printed papers as well as to service the machines. All modern printing presses require a slab or a working platform where the printing paper is received and from which the machine can be served. The working platform is a necessary, appurtenance which is incidental to and necessary for, the machines to be installed by them. They further allege that in the Indraprastha Estate itself, buildings of the National Herald, the Institute of Chartered Accountants, the Times of India and Milap, amongst others, have more than one floor

beneath the ground floor. The construction of these structures has been specifically sanctioned by the Municipal Corporation. They have placed on record, the sanctioned plans of the Times of India and the National Herald allowing them to construct such a working platform. The photographs relating to the Times of India building which is only 300 yards away from the Express Buildings show that such a platform had been constructed and is in regular use in the Times of India building. The working platform in the Times of India building is a concrete platform measuring about 6000 sq. ft. The petitioners contend that allowing their competitors to construct such a working platform and disallowing construction of the platform in the case of the Express Newspapers Pvt. Ltd. is clearly violative of the petitioners' fundamental right to equality before the law guaranteed by Article 14 of the Constitution. Further, in case the Express Newspapers Pvt. Ltd. are denied the facility of such a platform, the machinery would be rendered ineffective and this would be a serious infringement of their fundamental right to freedom of speech and expression and the right to carry on any trade or business guaranteed under Articles 19(1)(a) and (g) of the Constitution.

168. The petitioners' case is that the working platform which the respondents wrongly described as a double basement is incidental to and absolutely essential for the machines. The choice before them was to construct it with wood, tin or R.C.C. slab. They preferred to build it in R.C.C. A working platform made of wood would have been a serious fire hazard. Beneath it, at given time almost the entire basement would be stacked with newsprint reels which are highly combustible. The ink a large stock of which has also to be stored in the basement is also highly combustible. Moreover, the number of electric wires and connections is so large that it could not run the risk of a wooden platform. Finally, it wooden platform was constructed, considering the heavy loads it would have to bear, it would have required frequent and extensive maintenance. A working platform of steel would have presented similar problem; it is a conductor of electricity and hence a hazard to the workmen and it would have been extremely noisy which would have required frequent and extensive maintenance. Thus, from all points of view, those of safety, economy and efficiency, the petitioners cast an R.C.C. slab as being more appropriate for the needs of the Press. From the photograph on record, it is quite apparent that the printing press is a heavy machinery which is installed on the lower basement with a height of 24 ft.

169. The petitioners have alleged that in the Indraprastha Estate itself, buildings of the National Herald, Institute of Chartered Accountants, the Times of India and Milap, amongst others, have more than one floor beneath the ground floor. The construction of these structures has been specifically sanctioned by the Municipal Corporation.

170. The petitioners contend that the slab of the working platform constructed by them does not fall within the meaning of the expression "covered area" in sub-clause (22) of Clause 2 of the Building Bye-laws, since it is below the plinth level. There is, therefore, no addition to the covered area at all. The Delhi Development Authority while granting sanction clearly stated that the area of the basement would not be included in the calculation of FAR. The petitioners also contend that the erection of such a platform does not fall within the meaning of the expression "to erect a building" which is defined in Section 331 of the Delhi Municipal Corporation Act to mean to erect or re-erect a building and hence no sanction is required for the same. The Delhi Development Authority specifically approved construction of double basement as per the plan approved by it and in terms of Section 53(3) of the Delhi Development Act, such approval has an overriding effect, and, therefore, the Zonal Engineering (Buildings) acted beyond his authority in issuing the impugned notice under Sections 343 and 344 of the Act.

171. As already stated, the petitioners have clearly averred that such a working platform exists not

only in the old Indian Express building but also in the Times of India and the National Herald buildings, amongst others, in the Press Enclave and this has not been denied by the Municipal Corporation. In fact, the answer is building plan of the Times of India was sanctioned before the Corporation itself had come into existence i.e. in 1957, when in fact, the building plan of the Times of India was sanctioned in the year 1962. Similarly, the building plan of the National Herald was sanctioned in the year 1964. It is difficult to believe that the Municipal Corporation is not aware that such a working platform is absolutely essential and is necessary for the printing press. If the upper basement of the working platform constructed by the Express Newspapers Pvt. Ltd. is demolished, the installation of the printing press itself in the lower basement with the sanction of Delhi Development Authority under the appropriate statutory provision would be nullified and the Express Newspapers Pvt. Ltd. would not be in a position to operate the printing press at all.

172. The contention of the learned counsel appearing for the Municipal Corporation is that under the Master Plan and the Building Bye-laws, not more than one basement is permissible and that any basement more than one will have to be reckoned for the purposes of FAR appears to be only misconceived. It is evident from page 16 of the Printed Master Plan and the Zonal Development Plan for D-II area at pages 935 and 936 that semi-basement, meaning a second basement is permissible under the Master Plan as well as the Zonal Development Plan. The bye-laws of the Delhi Municipal Corporation do not prohibit second basement and on the contrary Bye-law 54 uses the term 'basements'. In respect of commercial zone in Minto Road in Ranjit Singh Road, Bye-law 25(2)(IV) specifically provides for a semi-basement. Our attention was drawn to the statement of the Minister for Works & Housing made in the Parliament on November 5, 1982, showing that in the Meridian Hotel a 5-star hotel, sponsored by M/s Pure Drinks not only two basements have been permitted but also a semi-basement and a service floor without reckoning any one of them for computation of FAR. Further, the advertisements issued by the Delhi Development Authority for auctioning hotel site at Bhikaji Cama Place and New Friends Colony show that the double basements are permissible and have, in fact, been permitted in the case of these hotels.

173. It is urged that the Express Newspapers Pvt. Ltd. have no right to construct the upper basement particularly when the Corporation refused to accord sanction to it and that, in any event, it was not such an unavoidable necessity as to break the law. It is said that the second basement, conveniently called, the working platform for the operation of flouncing of the printed newspaper is just an afterthought. He argued that even if some receiving floor may perhaps be necessary to receive the printed newspaper from the machine, it could be achieved by locating the machines on a suitable pedestal or by laying the floor of the basement in such a manner as to discharge the newspapers on the ground floor. It is difficult to conceive how the huge printing press with a height of 24 ft. could be placed on a pedestal or be laid on the floor of the basement in such a manner as to discharge the newspapers on the ground floor. It is common ground that there is a working platform in all the other printing presses in the same line of buildings like that of the Times of India, the National Herald, Patriot and the old Indian Express Building. In all these buildings, the printing presses are installed in the lower basement and there is an overhanging platform in the printing press in each of the buildings to receive the printed material. I do not see any jurisdiction for the Municipal Corporation to object to the construction of the working platform. If the Municipal Bye-laws do not permit the construction of a double basement then they would be clearly violative of Articles 14, 19(1)(a) and 19(1)(g) of the Constitution.

174. Shri M.C. Bhandare, learned counsel appearing for respondent 3 and 4, Municipal Corporation of Delhi and Zonal Engineer (Buildings), City Zone, Municipal Corporation, Delhi is fair enough to state that if the Express Newspapers Pvt. Ltd. were to make an application for modification of the

sanctioned plan pertaining to the new building with respect to the basement and the working platform which according to the Municipal Corporation constitute double basements and the interconnecting underground passage connecting the existing Indian Express Building, the same shall be considered having regard to consideration of justice and the needs of the petitioners and also taking into consideration that the new building has been constructed for installing a printing press and that the press so installed cannot function without the working platform which the Express Newspapers Pvt. Ltd. have already constructed, as well as the fact that the underground passage has been constructed by them for interconnecting the new building with the existing Indian Express Building. He further states that the Municipal Corporation will compound the deviation which is minimum on payment of such composition fee as is payable under the bye-laws.

175. learned counsel states that this shall not be treated as a precedent for others.

Applicability of the doctrine of promissory estoppel :

176. In my considered opinion the Express Newspapers Pvt. Ltd. having acted upon the grant of permission by Sikander Bakht, the then Minister for Works & Housing and constructed the new Express Building with an increased FAR of 360 and a double basement in conformity with the permission granted by the lessor i.e. the Union of India, Ministry of Works & Housing with the concurrence of the Vice-Chairman, Delhi Development Authority on the amalgamation of plots Nos. 9 and 10, as ordered by Vice-chairman by his order dated October 21, 1978 as on "special appeal" as envisaged in the Master Plan having been directed, the lessor is clearly precluded from contending that the order of the Minister was illegal, improper or invalid by application of the doctrine of promissory estoppel.

177. In 1948, Denning, J. in Robertson v. Minister of Pensions (LR (1949) 1 KB 227) laid the foundation to the applicability of promissory estoppel in law. As Prof. de Smith in his Judicial Review of Administrative Action, fourth edition at p. 103 observes :

There is a growing body of authority, attributable in large part to the efforts of Lord Denning, to the effect that in some circumstances when public bodies and officers, in their dealings with a citizen, take it upon themselves to assume authority on a matter concerning him, the citizen is entitled to rely on their having the authority that they have asserted if he cannot reasonably be expected to know the limits of that authority; and he should not be required to suffer for his reliance if they lack the necessary authority.

The learned author then states :

> But it is extremely difficult to define with any degree of precision the circumstances in which the courts will be prepared, in the interest of 'fairness' to the individual, to derogate from orthodox notions of ultra vires.

178. Professor H.W.R. Wade in Administrative Law, fifth edition, at page 232 observes that the basic principle of estoppel is that a person who by some statement or representation of fact causes another to act to his detriment in reliance on the truth of it is not allowed to deny it later, even though it is wrong. Justice here prevails over truth. Estoppel is often described as a rule of evidence, but more correctly it is a principle of law. As a principle of common law it applies only to representations about past or present facts. But there is also an equitable principle of "promissory estoppel" which can apply to public authorities. The facts in Robertson case (LR (1949) 1 KB 227)

were these. The War office wrote to Robertson, an Army Officer, who had claimed a disablement pension on account of the war injury, that his disability had been accepted as attributable to military service. But for this injury the responsible department was the Ministry of Pensions which the War Officer had not consulted. The Ministry later decided that the disability was not attributable and the Pension Appeal Tribunal upheld that decision. In relying on the War Office letter the claimant had refrained from getting a medical opinion and adducing the other evidence which might have strengthened his case for such disability pension against the Ministry. On appeal to the Court, Denning, J. reversed the decision of the Ministry and the Tribunal holding that the Crown was bound by the War Office letter and observed :

> The Crown cannot escape by saying that estoppels do not bind the Crown, for that doctrine has long been exploded. Nor can the Crown escape by praying in aid the doctrine of executive necessity, that is, the doctrine that the Crown cannot bind itself so as to fetter its future executive action.

179. It would appear that Denning, J. evoked two doctrines : (1) that assurances intended to be acted upon and in fact acted upon were binding; and (2) that were a Government department wrongfully assumes authority to perform some legal act, the citizen is entitled to assume that it has that authority, and he dismissed the contention that estoppels do not bind the Crown by saying that "that doctrine has long been exploded" and that the Crown cannot fetter its future executive action. Professor Wade points out that the proposition about wrongful assumption of authority evoked by Denning, J. was immediately repudiated by the House of Lords in a later case in which Denning, LJ. had again put it forward in Howell v. Falmouth Boat Construction Company Ltd. (LR 1951 Ac 837). It is beyond the scope of this judgment how far Denning, J.'s dictum can still be regarded as part of the common law in England. But there appears to be a school of thought in India laying down that the doctrine of promissory estoppel applies to the Government except under certain circumstances.

180. In Union of India v. Indo-Afghan Agencies Ltd. ((1968) 2 SCR 366 : AIR 1968 SC 718) Shah, J. speaking for the Court stated with approval the following observations of Denning, J. in Robertson case (LR (1949) 1 KB 227) :

The Crown cannot escape by saying that estoppels do not bind the Crown for that doctrine has long been exploded. Nor can the Crown escape by praying in aid the doctrine of executive necessity, that is, the doctrine that the Crown cannot bind itself so as to fetter its future executive action.

and the learned Judge held that this doctrine applies in India.

181. In Century Spinning & Manufacturing Co. Ltd. v. Ulhasnagar Municipal Council ((1970) 3 SCR 854 : (1970) 1 SCC 582 : AIR 1971 SC 1021) Shah, J. in remanding the petition to the High Court which it had dismissed in limine again observed : (SCC p. 586, para 11)

In Indo-Afghan case ((1968) 2 SCR 366 : AIR 1968 SC 718) this Court held that the Government is not exempt from the equity arising out of the acts done by citizens to their prejudice, relying upon the representations as to its future conduct made by the Government. This Court held that the observations made by Denning, J. in Robertson case (LR (1949) 1 KB 227) applied in India.

The learned Judge observed that the Court was not concerned that the principle was disapproved by Lord Simonds in Falmouth case (Falmouth Boat Construction Co. Ltd. v. Howell, 1950 All ER 538)

and he added : (SCC p. 587, para 12)

If our nascent democracy is to thrive different standards of conduct for the people and the public bodies cannot ordinarily be permitted. A public body is, in our judgment, not exempt from liability to carry out its obligation arising out of representations made by it relying upon which a citizen has altered his position to his prejudice.

In Motilal Padampat Sugar Mills Co. (P.) Ltd. v. State of U.P. ((1979) 2 SCR 641 : (1979) 2 SCC 409 : 1979 SCC (Tax) 144) Bhagwati, J. speaking for himself and Tulzapurkar, J. laid great stress on the facts that the principles laid down by Denning, J. in Robertson case (LR (1949) 1 KB 227) were accepted by the Court in the Indo-Afghan case ((1968) 2 SCR 366 : AIR 1968 SC 718) but accepted the rejection of Lord Simonds and Lord Normands in Falmouth case (Falmouth Boat Construction Co. Ltd. v. Howell, 1950 All ER 538) of the extended principles enunciated by Denning, J. in Robertson case (LR (1949) 1 KB 227) as laying down the correct law. But the learned Judge went down to say that this rejection did not mean that there could be no estoppel against the Crown or the public authority.

182. I am not oblivious that there was a discordant note struck by Kailasam, J. speaking for himself and Fazal Ali, J. in Jit Ram Shiv Kumar v. State of Haryana ((1980) 3 SCR 689 : (1981) 1 SCC 11 : AIR 1980 SC 1285) holding that the doctrine of promissory estoppel cannot be invoked for preventing the Government from discharging its functions under law. It is also not applicable when the officer and the Government act outside the scope of their authority. The doctrine of ultra vires will in that event come into operation and the Government cannot be held bound by the unauthorized acts of its officers.

183. It is not necessary for purposes of this judgment to resolve the apparent conflict between the decision of Bhagwati, J. in Motilal Padampat Sugar Mills case ((1979) 2 SCR 641 : (1979) 2 SCC 409 : 1979 SCC (Tax) 144) as to the applicability of the doctrine of estoppel for preventing the Government from discharging its functions under the law. In public law, the most obvious limitation and doctrine of estoppel is that it cannot be evoked so as to give an overriding power which it does not in law possess. In other words, no estoppel can legitimate action which is ultra vires. Another limitation is that the principle of estoppel does not operate at the level of Government policy. Estoppels have however been allowed to operate against public authority in minor matters of formality where no question of ultra vires arises : Wade : Administrative Law, fifth edition, pp. 233-34.

184. The principles laid down in Maritime Elec. Co, v. General Dairies Ltd. (1937 AC 610 (PC)) and by Lord Parker, C.J. in Southend-on-Sea-Corporation v. Hodgson (Wickford) Ltd. ((1962) 1 QB 416) relied upon by learned counsel appearing for respondent 1 the Union of India are clearly not attracted in the facts and circumstances of the present case. In the present case, admittedly, the then Minister for Works & Housing acted within the scope of his authority in granting permission of the lessor i.e. the Union of India, Ministry of Works & Housing to the Express Newspapers Pvt. Ltd. to construct new Express Building with an increased FAR of 360 with a double basement for installation of printing press for publication of a Hindi newspaper under the Rules of Business framed by the President under Article 77(3). Therefore, the doctrine of ultra vires does not come into operation. In view of this respondent 1 the Union of India is precluded by the doctrine of promissory estoppel from questioning the authority of the Minister in granting such permissio__n. In that view, the successor Government was clearly bound by the decision taken by the Minister particularly when it had been acted upon. Quantum of conversion charges : Extent of Liability :

Forum for determination 185. During the course of hearing, we wanted the parties to clarify the exact legal position. Shri Arun Jetley appearing for the Express Newspapers Pvt. Ltd. made a statement that the Express Newspapers Pvt. Ltd. sought permission to constru the new Express Building with an FAR of 360 for the purpose of their press only as they intended to start a Hindi daily newspaper from Delhi. He clarified that the subletting of portions thereof in the year 1982 to the Reserve Bank of India and the Steel Authority of India with the permission of the Court was subject to the giving of an undertaking by the sub-lessees that they would vacate the premises under the orders of the Court, and this was purely an ad interim arrangement. He further stated that the Express Newspapers Pvt. Ltd. in these petitions do not claim to enforce any right to sublet any part of the new building; and, if and when they seek to sublet any part thereof, they would apply to the lessor i.e. the Ministry of Works and Housing for permission for change of user and pay the necessary additional ground rent and conversion charges as applicable to others in the Press Enclave situate at Bahadurshah Zafar Marg.

186. Dr L.M. Singhvi appearing for respondent 5, the Land & Development Officer made a statement that the notice issued by the Engineer Officer dated March 10, 1980 in supersession of his earlier notice dated March 7, 1980 was issued on behalf of the Land & Development Officer not because there was any breach of the terms of the lease by the Express Newspapers Pvt. Ltd. by the construction of a new building with an FAR of 360 together with the existing Indian Express Building, but because of non-submission of the sanctioned plan to the Land & Development Officer and construction of the new building without the sanction of the lessor i.e. the Union of India. He clarified that the the Land & Development is not an authority competent to question the decision of the Ministry of Works & Housing to permit construction of the Indian Express Building covering an FAR of 360. The whole purpose of the aforesaid notice of the Engineer Officer dated March 10, 1980 sent on behalf of the Land & Development Officer was to realize the amount of Rs 54,000 which had been refunded on account of the portion kept green being built up and for the purpose of checking the deviations, if any, from the sanctioned plan.

187. Undoubtedly, the Express Newspapers Pvt. Ltd. are liable to pay conversion charges in terms of Clause 2(7) of the lease-deed but the question is : how much is the amount and what should be the basis. On this vexed question, the submissions advanced furnish no easy solution for us to adjudicate because it involves technical expertise. According to Shri Nariman, learned counsel for the petitioners no conversion charges are payable in respect of the new Express Building with an increased FAR of 360 built on the residual area of 2740 sq. yards as per the circular of the Government of India, Ministry of Works & Housing dated February 19, 1970 apart from Rs 54,000 towards additional premium for change of use of the leased land, which was non-buildable becoming buildable with the removal of the underground sewer line, and additional ground rent at 2 1/2% of the additional premium. According to him, the distinction now sought to be drawn by respondent 5, Land & Development Officer between conversion of green area to 'newspaper' and thereafter to commercial is nowhere borne out from any notification, order or even practice of the Land & Development Office. The only two sets of rates prescribed are for 'residential' and for 'commercial' use for newspapers. Newspaper press is, in fact, not a commercial use under the Master Plan. Even taking the commercialization rate of Rs 750 per sq. yard for the residual area of 2740 sq. yards at the date of permission for the residual area, the amount works out to 2740 x 1/2 = 11.02 lacs. Upon that basis, out of this, a sum of Rs 6.9 lacs was admittedly spent by the Express Newspapers Pvt. Ltd. for diverting the sewer to make the land buildable. The rate of commercialization charges was admittedly Rs 750 per sq. yard in the press area in the Mathura Road Commercial Complex for the period from April 14, 1976 to March 31, 1979 when there was an upward revision of the said rates. Our attention was drawn to the notification of the Government of

India dated May 15, 1974 laying down rates for the period from April 14, 1976 (Item 67 relates to the press area) and the notification dated June 25, 1979 revising the above rates w.e.f. April 9, 1979 (Group 3, Item 5 relates to the press area).

188. It is further submitted that the formula furnished by Dr Singhvi, learned counsel appearing for respondent 2, the Lt. Governor and respondent 5 the Land & Development Officer for computation of conversion charges for change of user is wholly inaccurate. It overlooks the fact that the commercial charges would be only 50% of the difference between the market value on the date of conversion and the premium already paid. That this is the correct formula is disclosed by the Government to Parliament. According to the formula, only 50% of the difference between the current market value on the date of conversion and the premium paid previously is payable as additional premium to the Government and not 100% of the said difference, as asserted. The learned counsel submits that in view of the stand taken by the Land & Development Officer who evidently has misstated vital facts and tried to mislead the Court the petitioners cannot hope any kind of justice at his hands.

189. Shri Nariman further contends that although by reason of the circular of the Government of India dated February 19, 1970 whereunder the Express Newspapers Pvt. Ltd. were not bound to pay any premium for additional construction in respect of the lease granted (even where the actual lease-deeds are not executed), nevertheless, they are prepared to pay whatever amount that this Court may deem fit as and by way of commercial charges in order to avoid another round of litigation. Alternatively, they were prepared as they have always been and what was stated at the very opening day of the hearing of this case, to have this question of quantum of conversion charges determined by an impartial and independent person like a retired Judge of the Supreme Court named by this Court, to which the respondents were not agreeable. Since there is no administrative or statutory remedy provided, he prayed that the Court may direct payment of such amount, if any, as may be deemed just and proper particularly having regard to the fact that even if the open land of 2740 sq. yards were allotted for the first time in 1978 to a particular person for commercial purpose, the only charge that can be levied would be market rate of Rs 750 per sq. yard i.e. aggregate of Rs 22.05 lacs. Of this only 50 %, namely, Rs 11.02 lacs is recoverable by the lessor i.e. the Union of India, Ministry of Works & Housing as per norms.

190. The Land & Development Officer had filed a note that the Express Newspapers Pvt. Ltd. did not and have not come to him with sanctioned plan of the Municipal Corporation of Delhi and were now seeking to avoid a monetary liability arising from their real intention of turning the new Express Building into a real estate venture by grossing nearly a crore of rupees of rental per month by means of this writ petition. It is stated that the liability of the Express Newspapers Pvt. Ltd. now is enormous because of commercial subletting instead of newspaper use. They have not yet applied to the lessor and as and when they do, they would be liable to pay conversion charges at the prevailing rates. That would obviously come to an amount much larger than Rs 50,425 tendered by the Express Newspapers Pvt. Ltd. by cheque dated September 21, 1982 because of admitted commercial subletting. He stated that the Express Newspapers Pvt. Ltd. would have to pay a large amount of money as subletting charges as permission for FAR of 360 though illegally given, was accorded only for newspaper use. The Express Newspapers Pvt. Ltd. therefore stand to gain crores of rupees in rental income at the rate of Rs 16 per sq. ft. per month from the huge additional construction. If and when permission is granted under the lease they would have to make at least one lump sum payment to the lessor who owns the land in addition to further additional ground rent. It is accordingly stated that the Court should extend no assistance to the Express Newspapers Pvt. Ltd. for avoiding the norms and procedure from obtaining the sanction of the lessor i.e. by applying

to Land & Development Officer and from evading payment of charges uniformly levied. Further if the original declared "real and genuine intention" of using the space for its newspaper was adhered to by the Express Newspapers Pvt. Ltd. their monetary liability would be very small.

191. The Land & Development Officer further asserts that the petitioners apprehended that if their real intention of commercial subletting were to be disclosed, they would have had to make payment and comply with the terms which they wanted to evade and avoid. That is why instead of complying with the notice of the Engineer Officer dated March 10, 1980, the petitioners moved this Court through the present writ petitions on April 1, 1980 alleging breach of their fundamental rights under Article 19(1)(a), Article 14 and Article 19(1)(g) of the Constitution and obtained ad interim ex parte stay on April 7, 1980. It was clear from the writ petitions that by the end of February 1980 the entire structure of the new Express Building except the small portion were completed at a cost of approximately Rs 1.30 crores.

192. While accepting that the conversion charges for the new Express Building built on the residual area of 2740 sq. yards utilized for newspaper use would amount to Rs 54,000 the Land & Development Officer has also "without prejudice" to the rights and contentions of the respondents tentatively worked out the conversion charges as indicated in the following chart :

> #1. Conversion charges for changinguse of 2740 sq. yards of open areafrom green to buildable area fornewspaper press, the purpose forwhich plots Nos. 9 and 10 wereallotted as per original allotmentand perpetual lease.Total area to be kept vacant as 2740 sq. yards,per perpetual lease Clause 2(14) = 0.566 acresConversion charges now to berecovered for construction ofadditional building on the openarea for starting a newspaper =Area of vacant land nowpermitted to be built up (concessional rate for newspaper press - Rate for land to be kept open already charged)##

The concessional rate applicable for newspaper use for all press plots on Mathura Road i.e. Rs 1.25 lacs per acre and the vacant land in plots Nos. 9 and 10 was charged at Rs 36,000 per acre.

> #2. Additional ground rent (AGR)payable per annum on this account = Conversion charges for green space } x 2 1/2%##

Arrears of AGR from 1978 to 1983 (five years) plus interest.

193. Dr Singhvi appearing for respondent 5, Land & Development Officer submits that unless the Express Newspapers Pvt. Ltd. furnished the Municipal Corporation of Delhi the sanctioned plans asked for in the impugned notice, it is not possible to work out the conversion charges and other charges and submit the same for approval to the Ministry of Works & Housing and after receipt of their approval to intimate the same to the lessee i.e. the Express Newspapers Pvt. Ltd. According to the learned counsel a rough estimate of the charges payable by the Express Newspapers Pvt. Ltd. on the basis of the data available with the Municipal Corporation of Delhi was arrived at as given in the chart given above, if commercial subletting were to be permitted. On the basis of the calculations therein the estimated conversion charges come to approximately Rs 3.30 crores. The learned counsel also stated that on the additional position the only rental at the rate of Rs 16.50 per sq. ft. per month collected by the Express Newspapers Pvt. Ltd. would be Rs one crore per year approximately.

194. We cannot possibly in these proceedings under Article 32 undertake an adjudication of this kind but I am quite clear that respondent 5 the Land & Development Officer having already

indicated his mind that the amount of conversion charges would be more than Rs 3.30 crores, it would not subserve the interests of justice to leave the adjudication of a question of such magnitude to the arbitrary decision of the Land & Development Officer who is a minor functionary of the Ministry of Works & Housing. We were informed by Shri Sinha, learned counsel for respondent 1, the Union of India that the Central Government were contemplating to undertake a legislation and to provide for a forum for adjudication of such disputes. As stated earlier, we had suggested that the dispute as to the quantum of conversion charges payable be referred to the arbitration of an impartial person like a retired Judge of the Supreme Court of India, but this was not acceptable to the respondents. The Union of India may in the contemplated legislation provide for the setting up of a tribunal with a right of appeal, may be to the District Judge or the High Court, to the aggrieved party. If such a course is not feasible, the only other alternative for the lessor i.e. the Union of India, Ministry of Works & Housing would be to realize the conversion charges and additional ground rent, whatever be recoverable, by a duly constituted suit. Till then I would restrain the Union of India, Ministry of Works & Housing and the Land & Development Officer or any other officer of the Ministry from taking any steps for termination of the lease held by petitioner 1, Express Newspapers Pvt. Ltd. for non-payment of conversion charges or otherwise for the construction of the Express Building till the final determination of such amount to be realized by a statutory tribunal or by a civil court.

195. For these reasons, I would, therefore, for my part, quash the impugned notices.

196. The result therefore is that these petitions under Article 32 of the Constitution must succeed and are allowed with costs. The notice issued by the Engineer Officer, Land & Development Office dated March 10, 1980 purporting to act on behalf of the Government of India, Ministry of Works & Housing requiring the Express Newspapers Pvt. Ltd. to show cause why the lessor i.e. the Union of India, Ministry of Works & Housing should not re-enter upon and take possession of plots Nos. 9 and 10, Bahadurshah Zafar Marg, New Delhi together with the Express Buildings built thereon, under Clause 5 of the indenture of lease dated March 17, 1958 for alleged breaches of Clauses 2(5) and 2(14) thereof, and the earlier notice dated March 1, 1980 issued by the Zonal Engineer (Buildings), City Zone, Municipal Corporation, Delhi requiring them to show cause why the aforesaid buildings should not be demolished under Sections 343 and 344 of the Delhi Municipal Corporation Act, 1957, are quashed. It is declared that the construction of the new Express Building on the residual portion of 2740 square yards on the western side of plots Nos. 9 and 10, Bahadurshah Zafar Marg with an increased FAR of 360 with a double basement for installation of a printing press for publication of a Hindi daily newspaper was with the permission of the lessor i.e. the Union of India, Ministry of Works & Housing and did not constitute a breach of Clauses 2(5) and 2(14) of the lease-deed.

197. It is directed that the respondents, particularly the Union of India, Ministry of Works & Housing, the Delhi Development Authority, and the Municipal Corporation of Delhi, shall forbear from giving effect to the impugned notices in the manner threatened or in any other manner whatsoever. It is further directed that the Union of India, Ministry of Works & Housing shall enforce its claim for recovery of conversion charges by a duly constituted suit or by making a law prescribing a forum for adjudication of its claim. It is also directed that the Municipal Corporation of Delhi shall compound the construction of the double basement of the new Express Building, the excess basement beyond the plinth limit and the underground passage on payment of the usual composition fee.

198. The petitioners shall be entitled to recover their costs from respondents 1 and 2.

VENKATARAMIAH, J. ◆

I have gone through the judgment which my learned brother Justice A.P. Sen has just now delivered. I agree that Shri Jagmohan, Lt. Governor of Delhi, the second respondent herein, has taken undue interest in getting the impugned notices issued to the first petitioner and his action which has come up for consideration in this case is not consistent with the normal standards of administration. I am satisfied that the said notices were issued by the authorities concerned under the pressure of the second respondent. The question whether the notices should be issued or not does not appear to have been considered independently by the concerned administrative authorities before issuing them. Shri Lal Narain Sinha, the learned counsel for the Union Government has submitted that the Lt. Governor was a total stranger to the lease and had no sort of right or power under the lease-deed to set in motion any action against the lessees. He has further submitted that the land leased under the lease-deed being nazul land is exclusively owned by the Union Government and the powers delegated to the former Chief Commissioner of Delhi under the lease-deed were no longer exercisable by the present Lt. Governor of Delhi. Shri Lal Narain Sinha, learned counsel for the Union of India, specifically stated that on the date on which action was initiated in this case by the Lt. Governor against the petitioners, the Lt. Governor had acted without authority or power. The claim of the Lt. Governor that he was the agent of the Union Government in regard to the lease in question and that he could take the steps he had taken under the lease thus stands repudiated. It is unfortunate that the Lt. Governor persisted in justifying his action even after the learned counsel for the Union of India had disowned all the actions of the Lt. Governor. The Lt. Governor failed to make a distinction in this case between the power with respect to the subject "Property of the Union and the revenue therefrom" which is in Entry 32 of List I of the Seventh Schedule to the Constitution and the general powers of administration entrusted to him under Article 239 of the Constitution as the Administrator of the Union Territory of Delhi. The property in question is a part of the estate of the Central Government. Mere nearness to the seat of the Central Government does not clothe the Lt. Governor of Delhi with any power in respect of the property of the Central Government. He can discharge only those powers which are entrusted to him by the Constitution and the laws.

200. It is also not correct to claim that all the powers of the former Chief Commissioner of Delhi have developed on the Lt. Governor and continue to vest in him. It is surprising that the Land and Development Office which is under the Central Government, functioned in this case as an office under the Lt. Governor of the Union Territory of Delhi and even in the conduct of this case it allowed itself to be controlled and guided by the Lt. Governor till a very late stage when Shri Lal Narain Sinha, learned counsel for the Union of India took a definite stand and submitted that the Lt. Governor had no voice in the matter.

201. The material available in this case is sufficient to hold that the impugned notices suffer from arbitrariness and non-application of mind. They are violative of Article 14 of the Constitution. Hence they are liable to be quashed. It is not necessary therefore to express any opinion on the contentions based on Article 19(1)(a) of the Constitution.

202. The rest of the questions relate truly to the civil rights of the parties flowing from the lease-deed. Those questions cannot be effectively disposed of in this petition under Article 32 of the Constitution. The questions arising out of the lease, such as, whether there has been breach of the covenants under the lease, whether the lease can be forfeited, whether relief against forfeiture can be granted etc. are foreign to the scope of Article 32 of the Constitution. They cannot be decided just on affidavits. These are matters which should be tried in a regular civil proceeding. One should

remember that the property belongs to the Union of India and the rights in it cannot be bartered away in accordance with the sweet will of an officer or a Minister or a Lt. Governor but they should be dealt with in accordance with law. At the same time a person who has acquired rights in such property cannot also be deprived of them except in accordance with law. The stakes in this case are very high for both the parties and neither of them can take law into his own hands.

203. I, therefore, quash the impugned notices and direct the respondents not to take any further action against the petitioners pursuant to them. I express no opinion on the rights of the parties under the lease and all other questions argued in this case. They are left open to be decided in an appropriate proceeding. It is, however, open to both the parties if they are so advised to take such fresh action as may be open to them in law on the basis of all the relevant facts including those which existed before the impugned notice dated March 10, 1980 was issued by the Engineer Officer of the Land and Development Office to vindicate their respective rights in accordance with law. This order is made without prejudice to the right of the Union Government to compound the breaches, if any, committed by the lessee and to regularise the lease by receiving adequate premium therefor from the lessee, if it is permissible to do so.

204. It is open to the Delhi Municipal Corporation to examine the matter afresh independently and to take such action that may be open to it in accordance with law. The Delhi Municipal Corporation may, if so advised, instead of taking any further action against the petitioners permit the petitioners to compound the breaches, if any, committed by them in accordance with law.

205. I allow the petitions accordingly. The costs of petitioner 1 shall be paid by the Union Government and the Lt. Governor of Delhi. There shall be no order as to costs against the other respondents. The other petitioners shall bear their costs.

R.B. MISRA, J. [illegible]

I have perused the judgment prepared by brother Justice A.P. Sen as also the judgment of brother Justice E.S. Venkataramiah. While I agree that the impugned notices threatening re-entry and demolition of the construction are invalid and have no legal value and must be quashed for reasons detailed in the two judgments, which I do not propose to repeat over again. I am of the view that the other questions involved in the case are based upon contractual obligations between the parties. These questions can be satisfactorily and effectively dealt with in a properly instituted proceeding or suit and not by a writ petition on the basis of affidavits which are so discrepant and contradictory in this case.

207. The right to the land and to construct buildings thereon for running a business is not derived from Article 19(1)(a) or 19(1)(g) of the Constitution but springs from the terms of contract between the parties regulated by other laws governing the subject, viz., the Delhi Development Act, 1957, the Master Plan, the Zonal Development Plan framed under the Delhi Municipal Corporation Act and the Delhi Municipal Bye-laws, 1959 irrespective of the purpose for which the buildings are constructed. Whether there has been a breach of the contract of lease or whether there has been a breach of the other statutes regulating the construction of buildings are the questions which can be properly decided by taking detailed evidence involving examination and cross-examination of witnesses.

208. I accordingly allow the writ petitions with costs against the Union Government and the Lt. Governor of Delhi and quash the impugned notices.

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