

B. K. Srinivasan and Others

Vs

State of Karnataka and Others

Civil Appeals Nos. 2780-81 of 1982

(O. Chinnappa Reddy, G. L. Oza JJ)

19.01.1987

JUDGMENT

CHINNAPPA REDDY, J. -

1. Bangalore was a beautiful city once. It was a city with magic and charm, with elegant avenues, gorgeous flowers, lovely gardens and plentiful spaces. Not now. That was before the invasion of concrete and steel, of soot and smoke, of high-rise and the fast buck. Gone are the flowers, gone are the trees, gone are the avenues, gone are the spaces. We are now greeted with tall puffing chimneys and monstrous high rise buildings, both designed to hurt the eye, the environment and the man. But they are thought by many as symbols of progress and modernity. They have come to stay. Perhaps they are necessary. Nostalgic sentiments, we suppose, must yield to modern societal requirements. Smoking chimneys produce much needed goods. High-rise buildings save much-scarce space. They have a place in the scheme of things. But where, how, to what extent, at what cost, are the questions raised by some aggrieved citizens of Bangalore. They want congestion to be prevented, population density to be controlled, lung spaces to be provided where people can breathe, existing recreational facilities to be preserved and improved, pollution and health hazards to be removed, civic and social amenities to be provided etc. It is with that object that the Mysore Town and Country Planning Act was enacted in 1961 and it is with the interpretation of some of the provisions of that Act that we are concerned in these appeals.

2. The problem and the pain have been well brought out by the Chairman of the Bangalore Urban Arts Commission (respondent 4 before the High Court) in the Chairman's response to an editorial in a local newspaper. It is extracted in the additional statement filed in the High Court by the writ petitioner. He says :

When we speak of saving Bangalore's skyline and its cherished character, we are apt to be misunderstood even by some well-meaning citizens. Vested interests and busybodies with an easy conscience would in any case rubber-wall any consideration of argument because the present time, with the skyrocketing property value, is a great opportunity for them to make hay". They would rather sell the city than dwell on its future.

We are not speaking only of the central areas of the city-even when we regard them, understandably enough as more precious than the rest of the city. Nor are we trying to guard the city's supposed "colonial solitude" which, we know, vanished many decades ago. We are not afflicted with irrational nostalgia and have no fetish about bungalows and court-yards. We are aware of the dynamics of a modern city. All that we want - and it was ably summed up in your editorial - is that

we must prevent any more ugliness and haphazardness, of which we have had more than what Bangalore can take if it is to stay as the City Beautiful, with its planned spaciousness (still) largely unclustered skyline. We also want, without any further delay, a vigilant, clearly spelt out and scrupulously honest system to ensure an orderly growth of the city, in keeping with the capacity of its services, like water supply, drainage and roads.

I entirely agree that for new areas we must provide for more density of population if we are to get adequate mileage from per capita expenditure, and if we are to release sufficient lung-spaces for recreational and community activities. In fact, we have long back suggested to City Planners to plan for self contained and self-sufficient clusters of multiple-story blocks, with their own plazas, shopping and recreational centers, in carefully selected locations and in keeping with the available services.

Again, there is no doubt that coverage per plot must be systematically reduced through imaginatively formulated bye-laws, if we are to continue the garden-city character of the city's new areas. It is utterly mystifying however, that such obviously valid thoughts and suggestions should end with the plea for "concentrated growth" - presumably in the central area of the city and preferably with high-rise buildings. Such growth which is bound to obliterate what we have still left of this beautiful city and put further strains on its traffic, water supply and drainage, is certainly not going to help the proletarian office-goer or house seeker. It will serve only the big-time builder, the high-spending rich and - last but not least - the fast-buck chasing wheeler dealers and busybodies mentioned above.

Now that the State Government has announced a clear policy in this behalf, there is no reason why we should not expect the best. This commission has made its own contribution to the formulation of a new set of building bye-laws which aim at the much needed regulation - on fully modern lines - of this city's future growth, and which leave minimum scope for corruption. We hope that these will be adopted soon. We look forward to a new approach and a new era-free from the stench of corruption, innuendoes and loose talk of "motives", and characterised by future-thinking. After all, we have the City Beautiful because of the future thinking and hard work of the planners and administrations.

3. Raj Mahal Vilas Extension is a sparsely developed area of the city of Bangalore which the Bangalore Improvement Trust Board desired to develop under the provisions of the City of Bangalore Improvement Act, 1945. Land was acquired and plots were allotted to several people. A lay-out was prepared and conditions were imposed for construction of houses on the sites. The present appellants as well as the petitioners before the High Court were all of them allottees from the Improvement Trust Board. One of the conditions of allotment was that the sites were not to be subdivided and not more than one dwelling house was to be constructed on each of the sites. Apparently multistoreyed, high-rise buildings were not within the contemplation of either the Improvement Trust Board or the allottees at the time of allotment. However, the petitions before the High Court were dismayed to find such high-rise buildings coming up in the Raj Mahal Vilas Extension. Apprehending that there was going to be an invasion of the privacy of the residents of the locality, a disturbance of the peace and tranquillity of the residential area, an interference with basic civil amenities consequent on haphazard rise of high-rise buildings, an exposing of the residents to all manner of health hazards and interference with their way of living, a number of residents of the locality submitted a memorandum to the Governor and the Chief Minister of the State to take appropriate action to prevent the construction of high-rise buildings in a residential area such as the Raj Mahal Vilas Extension. There was no response from the authorities. In desperation some of the persons who submitted the memorandum resorted to 'Public Interest Litigation' and filed the writ

petitions out of which the present appeals arise. Their principal complaint was that the Outline Development Plan for Bangalore which had been published in the prescribed manner had been ignored by the authorities in granting permission to the appellants to construct the high-rise buildings. The first of the grounds mentioned in the writ petitions was that permits had been granted to constructed eight-floor residential buildings going to a height of 80 feet whereas under the regulations the maximum permissible height of a building was only 55 feet. The inconveniences, discomforts and the hazards to which such a high-rise building in a residential locality would expose the other residents of the locality were explained in the writ petition and writs were sought to quash the permits granted for construction and to restrain the present appellants from constructing the eight-floor buildings and to direct them to demolish the structures already put up. There was also a prayer to require the Bangalore Urban Arts Commission to recommend to the State of Karnataka against the construction of high-rise buildings in any of the existing extensions of Bangalore. Writ Petition No. 3386 of 1981 out of which arises Civil Appeal No. 2780 of 1982 and Writ Petition No. 3387 of 1981 out of which arises Civil Appeal No. 2781 of 1982 were filed on February 25, 1981. In Writ Petition No. 3386 of 1981 an interim order was initially refused by a learned Single Judge but on appeal a Division Bench of the High Court granted an interim order restraining the appellants in Civil Appeal No. 2780 of 1982 from raising further construction. However, in the special leave petition filed by the appellants the order of the learned Single Judge was restored subject to an undertaking given by the appellants that in the event of the original writ petition being allowed and the construction being required to be pulled down, the appellants will not raise any objection and will not plead the construction during the pendency of the writ petition as a defence to the pulling down of the construction. The order of the Supreme Court was made on June 2, 1981. In W.P. No. 3387 of 1981 the High Court made an interim order on July 24, 1981 permitting the appellants in Civil Appeal No. 2781 of 1982 to proceed with the construction subject to the appellants giving an undertaking similar to the undertaking given by the appellants in the other connected appeal. We find from the judgment of the High Court that in W.P. No. 3386 of 1981 only excavation work had been done by the time of the filing of the petition and that the work was completed only after the undertaking was given to the Supreme Court. In the other case the ground floor had been constructed and pillars had been put up for the next floor when the writ petition was filed. The work completed after the undertaking was given to the Division Bench of the High Court. We may add that again in this Court when the appellants sought interim orders to enable them to complete the construction during the pendency of the present appeals they gave an undertaking that they would complete the construction work of the fourth, fifth, sixth, seventh and eighth floors at their own risk and cost and that they will raise no objection what-ever to this Court passing an order for demolition of the said floors if the the court was ultimately inclined to pass such an order and that they would claim no compensation for demolition, if ordered.

4. The present appellants contested the writ petitions. The writ petitions appeared to have been argued in the first instance before a learned Single Judge who after hearing the petitions for some considerable time referred them for hearing by a Division Bench. The Division Bench commenced hearing the write petitions on March 16, 1982 and on March 22, 1982 a further contention was raised by the appellants that the Outline Development Plan and the Regulations were never published, consequently they have never become effective and, therefore, there was no need for any compliance with he requirement of the plan and the regulations. As it turns out this is the only contention which was finally argued before the High Court and before us. The High Court overruled the contention and declared the licences granted for construction illegal and directed the Commissioner, Corporation of the City of Bangalore to modify the licences so as to bring them in conformity with the Outline Development plan and the zonal Regulations appended thereto

promulgated under Section 13(4) of the Karnataka Town and Country Planning Act and take all consequential action in accordance with law.

5. Shri Cooper, learned counsel for the appellants urged that publication of the Outline Development Plan and the Regulations in the prescribed manner, that is, in the official gazette was mandatory under Section 13(4) and that failure to so publish the Outline Development Plan and the Regulations rendered them ineffective. The licences already granted to the appellants could not be cancelled or directed to be modified so as to be in accord with the Outline Development Plan and the Regulations. It was further urged that the Regulations were distinct from the Outline Development Plan and that in the case of the Regulations, there was no attempt whatever at publication. It was submitted that the High Court was in error in holding that Section 76-J cured whatever defect there was in regard to the publication to was also in error in holding that the Outline Development Plan and the Regulations became effective as soon as they were approved by the government under Section 13(3) of the Act irrespective of the date of publication under Section 13(4). On the other hand, it was submitted by Shri Jivali, learned counsel for the writ petitioners in the High Court that there was sufficient publication of the Plan and the Regulations, that the Plan and the Regulations were always kept available for inspection at the office of the concerned authorities and that it was not the case of the appellants originally that there was no publication and that they had no knowledge of the Plan and the Regulations. It was only an afterthought, put forward in the course of the arguments at the final stage of the hearing of the writ petitions. It was submitted that such defect as there was in the publication of the Plan and the Regulations was effectively cured by Section 76-J and the passage of time. It was also pointed out that the Regulations were an integral part of the Outline Development Plan.

6. In order to appreciate the rival contentions of the parties, it is necessary to refer to the relevant statutory provisions.

7. In 1961 the Bangalore Metropolitan Planning Board was formed. The Board prepared an Outline Development Plan (for short, ODP). In February 1963 the Mysore Town and Country Planning Act, 1961 came into force with effect from January 15, 1965. Section 81-A(a) of the Act provides that the Outline Development Plan for the Bangalore Metropolitan Area prepared by the Bangalore Metropolitan Planning Board shall be deemed to be the Outline Development Plan of the Planning Area comprising the City of Bangalore, prepared under the Act, by the Planning Authority of the Area. Section 81A(a) further provides that the said plan along with the particulars specified in clauses (ii), (iii), (iv) and (v) of Section 12 (2) shall be published and submitted to the State Government for provisional approval. Section 81-A(b) provides that on receipt of the plan and particulars, the State Government shall after making such modifications as it deems fit, return the plan and the particulars to the Planning Authority, which shall thereupon take further action in accordance with the provisions of Section 13.

8. Section 2(3) defines 'lands-use' to mean the major use to which a plot of land is being used on any specified date, Section 2(4) defines 'notification' to mean a notification published in the official gazette. 'Planning area' is defined by Section 2(6) to mean the area declared to be a local planning area under the Act in the case of the local planning area comprising the city of Bangalore. 'Planning Authority' is defined to mean the Planning Authority constituted under the Act. Section 2(9) defines 'prescribed' to mean prescribed by rules made under the Act. Section 2(11) defines 'regulations' to mean the Zonal Regulations governing land-use made under the Act.

9. Chapter III of the Act deals with Outline Development Plan (ODP). Section 9(1) empowers the

Planning Authority to prepare and publish in the prescribed manner an outline development plan for the area within its jurisdiction and submit it to the State Government for provisional approval. Section 9(4) prescribes that a copy of the ODP sent to the State Government under sub section (1) shall be kept open for inspection by the public at the head office of the Planning Authority before carrying out a survey for the purpose of preparing an ODP for such an area. A Planning Authority is required by Section 10 to make a declaration of its intention to prepare such plan and to dispatch a copy of the same to the State Government for publication in the official gazette and is also required to publish in the prescribed manner an invitation to the public to make suggestions. All suggestions made in response to the invitation within the prescribed period are required to be considered by the Planning Authority before submitting the plan to the State Government. Section 12 deals with the contents of Outline Development Plan and we think it necessary to extract here the while of the section. Section 13 deals with approval of the Outline Development Plan and we think that it is necessary to extract Section 13 also. Sections 12 and 13 are as follows :

12. Contents of Outline Development Plan. - (a) An Outline Development Plan shall generally indicate the manner in which the development and improvement of the entire planning area within the jurisdiction of the Planning Authority are to be carried out and regulated. In particular it shall include, -

(a) A general land-use plan and zoning of land-use for residential, commercial, industrial, agricultural, recreational, educational and other public purposes;

(b) proposals for roads and highways;

(c) proposals for the reservation of land for the purposes of the Union, any State, any local authority or any other authority established by law in India;

(d) proposals for declaring certain areas as areas of special control, development in such areas being subject to such regulations as may be made in regard to building line, height to buildings, floor area ratio, architectural features and such other particulars as may be prescribed;

(e) such other proposals for public or other purposes as may from time to time be approved by the Planning Authority or directed by the State Government in this behalf.

Explanation. - 'Building line' means the line up to which the plinth of a building adjoining a street may lawfully extend and includes the lines prescribed, if any, in any scheme.

2. The following particulars shall be published and sent to the State Government through the Director along with the Outline Development plan, namely :

(i) a report of the surveys carried out by the Planning Authority before the preparation of such plan;

(ii) a report explaining the provisions of such Plan;

(iii) regulations in respect of each land-use zone to enforce the provisions of such plan and explaining the manner in which necessary permission for developing any

land can be obtained from the planning Authority;

(iv) a report of the stages by which it is proposed to meet the obligations imposed on the Planning Authority by such plan;

(v) an approximate estimate of the cost involved in the acquisition of lands reserved for public purposes.

13. Approval of the Outline Development plan. - (1) On receipt of the Outline Development Plan with the particulars referred to in Section 12 from the Planning Authority under subsection (1) of Section 9, or after such plan and particulars are prepared and published under sub section (2) of Section 9, the State Government after making such modifications as it deems fit or as may be advised by the Director, shall return through the Director, the plan and the particulars to the Planning Authority, which shall thereupon publish, by notification, the plan and the particulars inviting public comments within one month of such publications.

(2) If within one month of the publication under sub section (1) any member of the public communicates in writing to the Planning Authority any comments on the plan and the regulations, the Planning Authority shall consider such comments and resubmit the plan and the regulations to the State Government through the Director with recommendations for such modifications in the plan and regulations as it considers necessary in the light of the public comments made on the plan and regulations.

(3) The State Government, after receiving the plan and the regulations and the recommendation for modifications from the Planning Authority, shall in consultation with the Director, give its final approval to the plan and the regulations with such modifications as the Director may advise in the light of the comments and the recommendations of the Planning Authority or otherwise.

(4) The Planning Authority, shall then publish in the prescribed manner the Outline Development Plan and the Regulations as approved by the Government. The plan and the particulars shall be permanently displayed in the offices of the Director and the Planning Authority and a copy shall be kept available for inspection of the public at the office of the Planning Authority.

10. Section 14 speaks of 'Enforcement of the Outline Development Plan and the Regulations'. Section 14(1) prescribes that on and from the date on which a declaration of intention to prepare an outline is published under sub-section (1) of Section 10, every land use, every change in land-use and every development in the area shall conform to the provisions of the Act, the Outline Development Plan and the Regulations as finally approved by the State Government under sub section (3) of Section 13.

11. The only other provision of the Act to which reference is necessary is, what we may call, the "Ganga" clause (According to Hindu tradition the waters of the Ganga purify, cleanse the sins and remedy all insufficiencies) Section 76-J which provides for 'Validation of acts and proceedings'. It is as follows :

76-J. Validation of acts and proceedings. - No act done or proceeding taken under

this Act shall be questioned on the ground merely of,

(a) the existence of any vacancy in, or any defect in the constitution of the Board or any Planning Authority;

(b) any person having ceased to be a member;

(c) any person associated with the Board or any Planning Authority under Section 4-F having voted in contravention of the said section; or

(d) the failure to serve a notice on any person, where no substantial injustice has resulted from such failure; or

(e) any omission, defect or irregularity not affecting the merits of the case.

12. We may also refer here to the rules relating to publication. Rule 32 provides for "Publication of Outline Development Plan under sub section (1) and sub-section (2) of Section 9". It prescribes that the publication shall be made by making a copy of the Plan available for inspection and displaying a notice in Form II, (a) at the office of the Planning Authority and (b) at such other places as may be specified by the Planing Authority. The Planning Authority is also required to publish a notice in From II in the official gazette and in one or more newspapers. The publication under Section 9(2) is also required to be made in the same manner except that reference to Planning Authority is to be construed as a reference to the Director. Rule 33 provides for 'Publication of Outline Development Plan and Regulations under Section 13(4)' and stipulates that the Outline Development Plan and the Regulations as approved by the State Government under sub section (3) of Section 13 shall be published in the official gazette.

13. From II referred to in Rule 32 is as follows :

FORM NO. II (Rule - 32) Notice of Publication of Outline Development Plan.##

Notice is hereby given that an Outline Development Plan of..... area has been prepared under the Mysore Town and Country Planning Act, 1961 (Mysore Act 11 of 1963) and a copy thereof is available for inspector at the office of the Planning Authority during office hours.

If there be any objective or suggestion in respect of the outline Development Plan, it should be lodged on or before the.....

Every such objection or suggestion should either be presented in the office of the Planning Authority or sent by registered post to the Planning Authority.

14. We said earlier that the Outline Development Plan for the Bangalore Metropolitan Area was prepared by the Bangalore Metropolitan Planning Board and that under Section 81-J of the Mysore Town and Country Planning Act, it was deemed to be the Outline Development Plan of the planning area comprising the city of Bangalore, prepared under the Act, by the Planning Authority of such area. A 'Notice of publication of Outline Development Plan' was published in the Mysore Gazette on December 21, 1967 in From II. It was as follows :

Office of the Planning Authority Bangalore City, Planning Area, Bangalore-9
Notice of publication of Outline Development plan##

Notice is hereby given that an Outline Development Plan of Bangalore City Planning Area has been prepared under the Mysore Town and Country Planning Act, 1961 (Mysore Act 11 of 1963) and a copy thereof is available for inspection at the office of the Planning Authority in Seshadri Road, Bangalore City during office hours.

If there be any objection or suggestion in respect of the outline Development Plan, it should be lodged on or before the 15th day of February, 1968.

Every such objection or suggestion should either be presented in the office of the Planning Authority or sent by registered post to the Planning Authority

K. Balasubramanyam Chairman##

After the State Government provisionally approved the plan 'Notice of publication of Outline Development Plan was published in the Mysore Gazette dated October 10, 1968 again in Form II. The notification was in the following terms :

Office of the Chairman, Planning Authority Bangalore City Planning Area,
Bangalore - 9 Notice of Publication of Outline Development Plan##

Notice is hereby given that an Outline Development Plan of Bangalore City Planning Area has been prepared under the Mysore Town and Country Planning Act, 1961 (Mysore Act 11 to 1963). The said Plan has been provisionally approved by the Government of Mysore as per Section 13(1) of the above act. A copy of the above approved plan and the report are available for inspection at the office of the Planning Authority in Seshadri Road, Bangalore City during office hours.

If there be any objection or suggestion in respect of the outline Development Plan it should be lodged within 30 days from the date of publication of this notice in the gazette.

Every such objection or suggestion should either be presented in the office of the Planning Authority or sent by registered post to the Planning Authority,

Chairman Planning Authority.##

It appears that in response to the invitation of file objections, as many as 600 representations and objections were received from individuals, institutions, associations, chambers of commerce etc. The Outline Development Plan was finally approved by the government and a notification to that effect was published in the Mysore Gazette dated July 13, 1972 in the following terms :

Office of the Chairman, Planning Authority Bangalore City Planning Area,
Bangalore-9 Date June 27, 1972. Notice of Publication of Outline Development
plan.##

In pursuance of Rule 33 of the Mysore Planning Authority Rules 1965 notice is hereby given that an Outline Development Plan of Bangalore City Planning Area has been prepared under the Mysore Town and Country Planning Act, 1961 (Mysore Act 11 of 1963). The said plan has been finally approved by the Government of Mysore as per Section 13(3) of the above act. A copy of the above approved plan and the report are available for inspection at the office of the Planning Authority in Seshadri Road Bangalore City, during office hours.

It is seen that at every stage the public were informed by notices published in the official gazette that the Outline Development Plan was available for inspection at the office of the Planning Authority, though it is not disputed that the plan and the Regulations themselves were never published as such in the gazette. The question for consideration is whether the intimation to the public through the official gazette that the Outline Development Plan was available for inspection at the office of the Planning Authority is a sufficient compliance with the requirement of Section 13(4) regulating the publication of the approved Plan and Regulations ?

15. There can be no doubt about the proposition that where a law, whether Parliamentary or subordinate, demands compliance, those that are governed must be notified directly and reliably of the law and all changes and additions made to it by various processes. Whether law is viewed from the standpoint of the conscientious good man' seeking to abide by the law or from the standpoint of Justice Holmes's 'Unconscientious bad man' seeking to avoid the law, law must be known, that is to say, it must be so made that it can be known.

We know that delegated or subordinate legislation is all pervasive and that there is hardly any field of activity where governance by delegated or subordinate legislative powers is not as important if not more important, than governance by Parliamentary legislation. But unlike Parliamentary legislation which is publicly made, delegated or subordinate legislation is often made unobtrusively in the chambers of a Minister, a Secretary to the Government or other official dignitary. It is, therefore, necessary that subordinate legislation, in order to take effect, must be published or promulgated in some suitable manner. Whether such publication or promulgation is prescribed by the parent statute or not. It will then take effect from the date of such publication or promulgation. Where the parent statute prescribes the mode of publication or promulgation that mode must be followed. Where the parent statute is silent, but the subordinate legislation itself prescribes the manner of publication, such a mode of publication may be sufficient, if reasonable. If the subordinate legislation does not prescribe the mode of publication if the subordinate legislation prescribed a plainly unreasonable mode of publication, it will take effect only when it is published through the customarily recognised official channel, namely, the official gazette or some other reasonable mode of publication. There may be subordinate legislation which is concerned with a few individuals or is confined to small local areas. In such cases publication or promulgation by other means may be sufficient (Narayana Reddy v. State of A.P., (1969) 1 Andh WR 77).

16. In the present case section 13(4) has prescribed the mode of publication of the Outline Development Plan and the Regulations. It requires the Outline Development Plan and the Regulations to be published in the prescribed manner and the Plan and particulars to be permanently displayed in the offices of the Director and the Planning Authority and a copy to be kept available for the inspection of the public at the office of the Planning Authority. The particulars referred to, we presume, are the particulars mentioned in Section 12(2) of the Act consisting of various reports, including the Regulations. The prescribed manner' is what is prescribed by Rule 33, that is, publication in the official gazette. If we now turn to Section 9(1) and 9(2), we find that there too the Outline Development Plan is required to be published in 'the prescribed manner'. The prescribed manner for the purposes of sub-sections (1) and (2) of Section 9 is that prescribed by Rule 32. Rule 32 we have seen prescribes making a copy of the Plan available for inspection, publishing a notice in Form No. II in the official gazette and in one or more newspapers and displaying a notice in Form No. II at the office of Planning Authority and at other specified places. It is true that Rule 33 speaks of publication of approved Outline Development Plan and Regulations in the official gazette,

suggestive of a requirement that the Outline Development Plan and Regulations should bodily be incorporated in the official gazette. But if the entire scheme of the Act and the rules is considered as an integral whole it becomes obvious that what Section 13(4) contemplates besides permanently displaying the Plan and the particulars in the offices of Director and Planning Authority and keeping available a copy for the inspection of the public at the office of Planning Authority is a public notice to the general public that the Plan and Regulations are permanently displayed and are available for inspection by the public. Such public notice is required to be given by a publication in the office gazette. This is how it was understood by the authorities and everyone else concerned and this is how it was done in the present case. This appears to be a reasonable and a rational interpretation on Section 13(4) and Rule 33 in the setting and the scheme. We are of the view that there was compliance with the requirements of Section 13(1) requires the provisional Outline Development Plan and particulars to be published by notification in the official gazette, with a view to invite comments from the public. What was published in the present case under Section 13(1) was also a notice in Form No. II and not the whole of the Plan and particulars. Such publication evoked considerable public response. As many as 600 representations from individuals and institutions were received. That is way we said that every one concerned, that is, the government, the Director, the Planning Authority and the public, individual and institution alike, though that publication of a notice in the gazette inviting the attention of the public to the display and the availability for inspection of the Plan and particulars was all that was contemplated by the provisions providing for publication. We do not think that there is any reason or justification for us to adopt an interpretation which departs from common understanding of the Act and the rules.

17. Shri Cooper invited our attention to *Shalagram Jhajharia v. National Co. Ltd.* ((1965) 35 Com Cas 706 (Cal)) and *Firestone Type and Rubber Co. v. Synthetics and Chemicals Ltd.* ((1971) 41 Com Cas 377 (Bom)), to urge that offer of inspection cannot be a substitute for publication. We do not think that these two cases are of assistance to Shri Cooper. What was laid down in those cases was the mandatory requirement of a full and frank disclosure of the relevant facts, in the explanatory note attached to the notice convening a general meeting of the company cannot be circumvented by an offer of inspection. Another case to which Shri Cooper drew out attention was *Municipal Board, Pushkar v. State Transport Authority, Rajasthan* (1963 Supp 2 SCR 373 : AIR 1965 SC 458). In that case the question arose as to what was to be treated as the date of the order of the Regional Transport Authority. Was it the date of the resolution of the Regional Transport Authority or was it the date on which the resolution was brought into effect by publication of the notification ? The answer was that it was the date of the publication of the notification. In *Joint Chief Controller of Imports and Exports, Madras v. Aminchand Murha* ((1966) 1 SCR 262 : AIR 1966 SC 478) another case on which Shri Cooper relied, the court held that there was no order prohibiting the import of fountain pens, since in fact no such order had been published and no such order was brought to the notice of the court. All that was available was an entry 'nil' against fountain pens in the declaration of policy as to import. We are unable to see how these two cases can be of any help to Cooper. Shri Cooper also invited our attention to cases drawing a distinction between mandatory and directory statutory requirements but those cases again are of no avail to him in the view what we have taken. We also desire to state that the effect of the non-performance of a duty imposed by a statute in the manner prescribed by the statute is not discovered by a simple answer to the question whether the statute is mandatory or directory. These are not simple chemical reactions. The question whether a statutory requirement is mandatory or directory cannot itself be answered easily as was pointed out more than a century ago in *Liverpool Borough v. Turner* ((1861) 30 LJ Ch 379). Many considerations must prevail and the object and the context are the most important.

18. The High Court was of the view that such defect as there was in regard to publication of the

Plan was cured by Section 76-J, the Omnibus Curative clause to which we earlier made a reference as the 'Ganga' clause. Provisions similar to Section 76-J are found in several modern Acts and their object is to put beyond challenge defects of constitution of statutory bodies and defects of procedure which have not led to any substantial prejudice. We are inclined to agree with the High Court that a defective publication which has otherwise served its purpose is not sufficient to render illegal what is published and that such defect is cured by Section 76-J. The High Court relied on the two decisions of this Court Bangalore Woollen, Cotton and Silk Mills Co. Ltd. v. Corporation of the City of Bangalore ((1969) 3 SCR 387 : (1969) 1 SCC 399) and Municipal Board, Sitapur v. Prayag Narain Saigal and Firm Moosaram Bhagwandas ((1969) 3 SCR 387 : (1969) 1 SCC 399). In the first case objection was raised to the imposition of octroi duty on the ground that there was failure to notify the final resolution of the imposition of the tax in the government gazette as required by Section 98(2) of the City of Bangalore Municipal Corporation Act. A Constitution Bench of the court held that the failure to publish the final resolution in the official gazette, was cured by Section 38(1)(b) of the Act which provided that no act done or proceeding taken under the act shall be questioned merely on the ground of any defect or irregularity in such act or proceeding, not affecting the merits of the case. The court said that the resolution had been published in the newspapers and was communicated to those affected and failure to publish the resolution did not affect the merits of its imposition and failure to notify the resolution in the gazette was not fatal to the legality of the imposition. In the second case it was held that the non-publication of a special resolution imposing a tax was a mere irregularity, since the inhabitants had no right to object to special resolutions and had otherwise clear notice of the imposition of the tax. It is true that both these cases relate to non-publication of a resolution regarding imposition of a tax where the imposition of a tax was otherwise well known to the public. In the present case the situation may not be the same but there certainly was an effort to bring the Plan and Regulations to the notice of the public by giving notice of the Plan in the official gazette. Non-publication of the Plan in the official gazette was therefore a curable defect capable of being cured by Section 76-J. It is here that the failure of the appellants to plead want of publication or want of knowledge in the first instance assumes importance. In the answer to the writ petitions, the appellants took up the substantial plea that they had complied with the requirements of the Outline Development Plan and the Regulations but not that they had no knowledge of any such requirement, it can safely be said that the defect or irregularity did not affect the merits of the case.

19. Finally, one last submission of Shri Cooper requires to be examined. Shri Cooper submitted that Section 13(1) used the words "the Plan and particulars", Section 13(2) used the words "the Plan and the Regulations", Section 13(3) used the words "the Plan and the Regulations" and Section 13(4) used the words "the Outline Development Plan and the Regulations" as well as the words, "the Plan and the Regulations". This, according to Shri Cooper, signified that the particulars and the Regulations are not to be treated as part of the Plan but as creations distinct from the Plan. We do not think that we are entitled to split the unity and identity of the plan as suggested by the learned counsel. The Outline Development Plan and the Regulations are not distant from each other. The Regulations are born out of the Plan and the Plan thrives on the Regulations. The Plan is the basis for the Regulations and the Regulations are what make the plan effective. Without the Regulations, the plan virtually becomes a dead letter. The reference in the four clauses of Section 13, whenever the word 'Plan' or the Outline Development Plan is used, is to the core plan, without the particulars and the Regulations and not the whole of the Outline Development Plan which must include the Regulations. What the different phraseology is meant to convey is to emphasise the different parts of the Plan which have to be forwarded to the government, considered by the government, made available for inspection by the public, as the case may be and to the extent necessary. Merely

because the words "and Regulations" are added to the word 'Plan', the Regulations are not to be treated as not constituting part of the Plan even as when a building is sold along with the fixtures, it does not mean that the fixtures are not treated as part of the building. Shri Cooper draw the distinction between the Plan and the Regulations to suggest that in the notice published on June 27, 1972, the Planning Authority mentioned that the Plan was available for inspection at the office of the Planning Authority but made no reference to the Regulations and, therefore, it must be considered that the Regulations were not made available for inspection and so never published. We do not think that it is possible to reach the conclusion suggested by Shri Cooper from the absence of the reference to the Regulations in the notice. The authorities justifiably always treated the Plan as including the Regulations and we are satisfied that what was kept for inspection was the Plan along with the Regulations.

20. Shri Cooper argued that neither the Municipal Corporation nor any other civic authority appeared to be aware of the Outline Development Plan and the Regulations as was evident from the circumstances that in the years that passed since the approval of the Plan by the government and before the writ petitions were filed, as many as 57 building licences had admittedly been issued in contravention of the Regulations. It may be that notwithstanding the Regulations some building licences were granted in contravention of the Regulations but that only exposes the deplorable laxity of the concerned authorities and emphasises the need for greater public vigilance. The present writ petitions, we hope are forerunners of such vigilance.

21. In the result we find no merit in the appeals which are accordingly dismissed with costs. The judgment of the High Court will now be given effect by the authorities, taking note of the several undertakings given to the High Court and this Court at various stages.

</html