SUPREME COURT OF INDIA

M. C. Mehta

Vs.

Union of India

Writ. Petn. (Civil) No. 4677 of 1985

(Y. K. Sabharwal and B. N. Agrawal, JJ.)

07.05.5004

JUDGEMENT

Y. K. SABHARWAL, J.:-

1. This case about unauthorized industrial activity in Delhi in residential area has a protracted background. The present examination is confined to the issue of industrial activity in residential/non-conforming areas to decide what directions may be issued to put an end to such illegal activity. As a result of orders passed from time to time, hazardous and noxious industries and heavy and large industries ('H' Category) have been shifted out of Delhi. Some of extensive industries ('F' category) have also been shifted out of Delhi. As per the State Government, non-polluting 'F' category industries have not been yet shifted. The question is what should be done about continued unauthorized use contrary to Master Plan and Zonal Plan by remaining 'F' category and 'B' to 'E' category (light and service industries) and household industries ('A' category industries). These industries are continuing in residential/non-conforming areas. Such activity is mostly in residential areas. It is not in dispute that most of continued industrial activity under consideration is in contravention of law except only few household industries which are continuing in residential areas. To decide the question, it is necessary to first briefly notice orders passed by this Court during last about one decade.

2. In the various orders passed in the year 1995, this Court noticed that a large number of industries were located in residential/non-conforming areas in violation of the Delhi Master Plan formulated under the Delhi Development Act, 1957 (for short, 'DD' Act), Delhi Municipal Corporation Act, 1957 (for short, 'DMC' Act) and other statutory provisions. Noticing that the Master Plan stipulates setting up of industries only in conforming areas, i.e. the industrial areas earmarked for that purpose, it was indicated that the industries in non-conforming areas have to stop functioning. The first concern of the Court was to stop the functioning of 'H' category industries, since most of it were discharging highly toxic affluent. It was noticed that as per the affidavit filed by Mr. D. S. Negi, Secretary (Environment), Government of Delhi, it was estimated that there were 93,000 industries which were operating in Delhi and majority of these were in non-conforming use zones. Public notices by the Government invited all industries operating in non-conforming use zone to give option to shift to available industrial plots in the industrial estates. The response from the industry was very poor. The industries operating in Delhi were called upon by issue of public notices in newspapers to furnish, information in respect of the product manufactured, activity carried on, area, size, number of persons employed, power load, year of commencement etc. Out of 93,000 industries, only 513 industries and 382 persons responded. It was noticed that MCD was granting licences and registering various industrial units in non-conforming areas and permitting the industries to be set up in residential areas. Naturally, a surprise was expressed by this Court that on the one hand, the Court was issuing orders to reallocate the existing industries that were operating in the residential/non-conforming areas and on the other hand MCD was permitting setting up of new industries in residential areas. According to the MCD, it was done under the directions of the State Government. The MCD was directed not to register or grant licence to any industry in the non-conforming/residential area.

3. We may also make a brief reference to the orders that were passed in the year 1996. In the order dated 19th April, 1996, noticing the contention of Solicitor General for India that certain household industries can be permitted to operate not only in residential areas but in residential premises itself, the Court observed that the provisions of the Master Plan have to be complied with and in case any non-residential activity is permitted in residential area under the Master Plan that cannot to stopped. A High Powered Committee was constituted to examine which type of industries can be permitted in the residential area. The State Government was directed to issue public notices asking the industries which are operating in different residential areas of Delhi to approach the Committee for necessary permission. It was also made clear that the industries which do not obtain permission shall have to stop functioning in residential area w.e.f. January 1, 1997. It would be useful to extract the relevant part of the order dated 19th April, 1996 which reads as under :

"We make it clear and direct that no industry in any residential area of Delhi/New Delhi shall be permitted unless it has obtained the clearance of the Committee and has obtained the necessary licence and the consent from the statutory authorities. All those industries which have not obtained necessary permission from the Committee shall stop operating in the residential area w.e.f. January 1, 1997. We direct the NCT Delhi to give wide publicity to this order so that the industries are in a position to note that they have to obtain the necessary clearance from the Committee. Needless to say that while granting permission to an industry to run in a residential area, the Committee shall

keep in view all the conditions laid down under the Master Plan including evaluation of impact on municipal services and environment needs of the area....."

4. The orders were also passed directing the Delhi Government to issue public notices in newspapers requiring the industries in residential/non-conforming areas to apply for allotment of plots in the Industrial Estate and also giving undertaking that on such allotment they will shift from the existing place. The Court thinking that the Delhi Government was now seriously processing the project of re-locating the industries operating in the residential/non-conforming areas of Delhi, left the field for the Government to act on its own and re-locate the industry in terms of orders dated 18th December, 1996. The Government was, however, directed to file progress report in this Court every three months.

5. It is a matter of anguish that subsequent events show that the trust that was reposed by this Court on the Government was belied in terms of the action to be taken for implementation of law, namely, the continuance of industrial activity in areas in question in conformity with the user prescribed by the Master Plan. On 8th September, 1999, it was noticed that the progress report filed indicated that though some steps had been taken but the same had not been taken in the right earnest as a result of which industries are continuing to operate in the residential zone. The Court directed that if industries in the residential area cannot be shifted and relocated for any reason whatsoever by 31st December, 1999, then those industries shall be closed down. The Government was directed to give due publicity in the newspapers so as to make the industry aware.

6. On 10th December, 1999, the State Government came up with an application (IA No. 1206), inter alia, seeking modification of the order dated 8th September, 1999 and for extension of time up to March, 2004 for shifting of industries which had been found eligible for allotment of alternate industrial accommodation under the 'Relocation Scheme' subject to their functioning in conformity with the pollution norms under the existing laws. As per what the Delhi Government itself says in this application, survey conducted by Delhi Pollution Control Committee in the year 1995-96 showed that about 1,26,000 industrial units were functioning in Delhi out of which approximately 1,01,000 were in residential/non-conforming areas and only about 25,000 in approved industrial areas. The application also states that in these 1,01,000 illegally operating industrial units, about 7,00,000 workers would be employed. It was stated that closure of these industries will result in hardship to approximately 7,00,000 families.

7. The question would be can the Government plead such a justification for violation of law and throw to winds the norms of environments, health and safety or is it possible to help the workers even without violating law if there is a genuine will to do so. We would answer the question after noticing few further facts.

8. In the application (IA 1206) it has been further stated that out of 32,000 applications received

under the relocation scheme in December, 1996, approximately 23,000 have been found to be eligible. The prayer in the application also is that the industrial units functioning in residential areas where concentration of industry is 70%, should be continued to operate from their existing location. The applicant thus seeks INSITU regularization. According to the Government, about 15,000 industrial units would fall in this category and another approximately 6,000 industrial units may fall in the category of household industries ('A' category).

9. At the outset it deserves to be noticed that assuming for the present, that facts stated above by the Government are correct and the plea of INSITU regularization is justified then, the immediate question would be as to what steps were taken by it in respect of remaining illegal and unauthorized industrial units, which number over 50,000. The Government has no answer, let alone a satisfactory answer even despite lapse of nearly five years.

10. Reference may also be made to the progress reports filed in this Court pursuant to the orders dated 18th December, 1996. The first report dated 31st March, 1997 sought extension of time for closure of those industries which had applied for allotment of industrial plots/flats and had submitted the requisite undertakings prescribed by this Court. For them extension was asked for till such time the industrial accommodation with power connections were ready in newly constructed/developed flatted factory complexes/industrial estates. Thus, the extension sought was for above category of industrial units and not others. That being the position, others could continue the illegal industrial activity only because of inaction by the Government. It is evidently total non-implementation of the statutory provisions. In yet another Report (for the period ending 31st March, 1998), it was stated that survey of industries in all districts has shown that in respect of 50,704 industrial units, 21,681 units have not applied under the relocation scheme. The same question would again arise why no action has been taken in respect of these industries. The scenario is same in respect of the progress reports filed up to the period of 30th September, 1998 reading the relocation of industries operating in residential/non-conforming areas of Delhi.

11. Before filing IA No. 1206 of 1999 or at least in that application itself, the Government did not think it advisable to state what action it will take against those who were not found eligible or those who did not even apply and were continuing industrial activity in violation of law. Further, it did not state how many would fall in the category of INSITU regularization and in 'A' category industry. In this connection, reference may also be made to the observations in the order dated 8th February, 2001 that there was an unexplained figure of more than 32,000 industries in non-conforming areas which would not be covered by (i) INSITU regularization or (ii) fall within the expected expanded definition of 'household industry' or (iii) come under the category of industries which had applied and had been found eligible, for allotment of land. It was noticed that no explanation was given with regard to these industries continuing in the non-conforming areas. The position after lapse of nearly 3 years is no better.

12. Regarding the total number of industrial units functioning in residential/non-conforming areas,

different surveys have given different figures, as per the material placed before this Court by Government. There is also no clarity as to the facts and figures regarding infrastructure etc. in respect of the industrial units being considered for INSITU regularization. Although in the affidavit filed on 5th August, 2000 by the Principal Secretary and the Commissioner of Industries of the Delhi Government, it was stated that the Government had recommended INSITU regularization, it has not been stated as to what is the position of the water, electricity and other facilities for the industries, what is the planning for remaining 30% residents as they may be deprived of electricity, water and other facilities on account of over drawl by the 70% industrial units. Whether 30% who are using the premises in accordance with the permissible use in the Master Plan must continue to suffer at the hands of those who are functioning in violation of the Master Plan. This question has remained unanswered despite elaborate arguments spread over various dates. On the aspect of INSITU regularization, the stand of the Delhi Development Authority, as contained in the affidavit of its Commissioner (Planning) dated 11th September, 2000 was that the DDA was favourably considering INSITU regularization with the following conditions :

(i) Building norms shall be the same as that for the residential premises.

(ii) Non-pollutant/non-hazardous industries would be allowed to operate.

(iii) Augmentation of infrastructure as per requirement would be undertaken to meet the growing demand as a result of conversion of these areas into manufacturing (light and service) household industries.

13. Despite lapse of about 3 years, nothing significant, either in respect of infrastructure or the other conditions has been done. The second Master Plan of Delhi was enforced w.e.f. 1st August, 1990. In respect of 'F' category industries, it provides that no new industrial unit shall be permitted except in the existing identified extensive industrial areas. In respect of such 'F' category industries which were already existing in non-conforming areas, the Master Plan provides that the said industrial units shall be shifted to the permissible industrial use zone within a maximum period of three years after the allotment of plots by various Government agencies. On one hand, the Master Plan stipulates the shifting of existing 'F' category industrial units within a specified time limit and on the other new industrial units have come up even after enforcement of the Master Plan and even in respect of such units the Government has not only failed to take action but has also failed to take a positive stand before this Court that immediate steps would be taken to stop such blatant violations. Further, when the Government is asked to give suggestions regarding stoppage of functioning of these industrial units, the suggestion that comes forth is that the industrial units in residential/non-conforming areas which were set up after 1996 may be directed to stop the industrial activity contrary to the Master Plan. Those violators who had commenced industrial activity in residential/non-conforming areas after 1st August, 1990 are also not being excluded from the proposal of INSITU regularisation.

14. It is also necessary to note as to what stand from time to time the Ministry of Urban Development has taken on the aspect of INSITU regularization. In an affidavit dated 4th December, 2000 filed by its Deputy Secretary, reliance has been placed by the Ministry upon the statement made by its Minister on the floor of the House on November 24, 2000. In that statement opposing regularization, the Minister said as to what Delhi we want to live, what type of legacy do we wish to bequeath to posterity and to our children and grand children. Do we want our city to become a junkyard of unauthorized constructions, mirroring civic and moral chaos, or an orderly and disciplined capital of a Resurgent Republic, embodying values of justice and honesty on the basis of which we have often claimed a pre-eminent position for our culture and civilization. The statement further gave facts and figures that 50 million gallons per day of industrial waste is going into the Yamuna and said that what it seen flowing in it today is nothing but sewer and industrial waste. In Okhla alone, for instance, during March-April, 2000, the bio-chemical oxygen demand (BOD) level in the river was about 70 mg. per litre as against a standard of 3 mg. per litre, i.e. 25 times more than the permissible level. An apprehension was expressed that if the present attitudes and practices persist, Delhi would run the risk of having as many as 30 million people in the next few years and becoming an ugly, unhealthy, unworkable and unliveable city. In the process, a fatal blow would also be dealt to the development of National Capital Region which comprises a substantial part of three important neighbouring States of Haryana, Rajasthan and Uttar Pradesh. The affidavit states that in case of large number of residential colonies, with so-called 70% concentration of industries of which the entire land use is sought to be changed from residential to industrial, should the Master Plan be amended to destroy its very soul and structure or subvert the basic norms of health, habitation and environment or reward the illegal establisher of industries and in the process penalize the law abiding residents and condemn them to stay for ever in industrial areas or force them to abandon their houses built with hard earned income? It also states that no one has made it clear where the residents would be taken, what would be cost of resettlement, who will bear it and how the layouts and pattern of services and infrastructure, meant for residential colonies, would be adjusted to the requirements of industries and consequent traffic and transport that would flow not only in the colonies in question but also in their neighbourhood.

(Emphasis supplied is ours)

15. In regard to the nature of survey that had been conducted resulting in the proposal of INSITU regularisation in areas having 70% concentration of industries, the affidavit states that demand to secure vital and large scale changes in the Master Plan, which would have the effect of tearing its entire fabric apart, is based upon the preliminary and perceptional survey of three officers of the Industries Department of Government of Delhi. The report itself calls the survey 'preliminary.' The survey is neither scientific, nor precise nor reliable. It does not even contain detailed particulars of industries - whether they are polluting or non-polluting, licensed or unlicensed. The survey also does not indicate as to how many industrial units belong to those industrialists who may have already obtained the benefits of relocation once, either from the Delhi Development Authority or from the Industries Department or have secured space in flatted factories and have come back again to the non-conforming areas, while keeping the alternative plots allotted to them for shifting, or have set up additional unit or units in the residential areas.

16. Now, let us see what Ministry says after about three years in its affidavit dated 28th July, 2003.

The guidelines for Master Plan for Delhi 2021 issued by the Ministry were filed along with the said affidavit as also a letter dated 28th July, 2003 sent by Secretary of the Ministry to the Chairman of DDA. The letter states that the Ministry has made broad guidelines for the Master Plan which highlight some of concerns that need resolution as well as possible policy initiatives so as to deal with the problem that affect Delhi. The letter further states that this should also address the issue of concentration of industries to the extent of 70% or more in some non-industrial areas. The guidelines noticed that a major issue confronting the planned development of Delhi is the apparent and frequent violation of the planning and development and control norms. It states that there is a growing variation between the plan for Delhi and city on the ground and, therefore, it is essential that the Master Plan policies should be implementable in an effective manner and vigorously enforced. The existing legal framework for enforcement of the Master Plan provisions including unauthorised construction and encroachment on public land also needs examination so as to initiate proposals for its strengthening where necessary. In the guidelines, there is no specific reference to regularisation as such but evidently there is a slant in that direction in the stand of the Ministry. It is, however, nobody's case that any decision about regularisation has been taken.

17. Regularization cannot be done if it results in violation of right of life enshrined in Art. 21 of the Constitution. The question will have to be considered not only from the angle of those who have set up industrial units in violation of the Master Plan but also others who are residents and are using their premises as allowed by law. Further, the regularisation affects not only the remaining 30% residents of the areas wherein regularization may be in contemplation but has affect on the entire area, particularly with respect to infrastructure available.

18. In respect of the infrastructure in housing components, what provisions should be made has been incorporated in the Master Plan 2001 which has to be kept in view. The existing availability and projected need of water supply, sewerage, power and solid waste has been indicated in the Master Plan. None has applied his mind to any of these aspects.

19. At first instance, a proposal for INSITU regularization in 15 areas was considered. Now 24 areas are sought to be regularized. None of the aforesaid aspect regarding infrastructure has been considered before the proposal was sent by the State Government and Delhi Development Authority for INSITU regularization to the Central Government. How can Government of India agree in principle for INSITU regularisation in isolation without anyone having examined the relevant considerations. It is evident that relevant aspects such as availability of sewerage, drainage, power and water have not been examined. Further, a perusal of the survey document shows that many industrial activities were polluting in nature. The proposal was considered by Delhi Development Authority on 20th December, 2002. The note dated 20th December, 2002 notices that a large number of industrial clusters are existing in various parts of the National Capital Territory of Delhi in contravention of land use provision of the MPD 2001 and thereby facing the problem in their continuance on their existing site and with a view to resolve this problem a policy needs to be evolved for regularization/redevelopment of the said industrial clusters so that it may eventually be considered to be part of the MPD 2021. It was decided that the redevelopment proposal could be formulated and taken up by forming co-operative industrial society by the beneficiaries. Total

redevelopment work will be undertaken by the co-operative society at their own cost. Changes in land use and enhanced FAR facilities were directed to be paid to the concerned authorities by the society. All these proposals, without examination of the relevant consideration as noticed hereinbefore, were approved and were forwarded to the Government of India. All this has happened despite the fact that the Ministry of Urban Development, in terms of its letter dated 8th September, 2000 had informed the Delhi Development Authority that the change in the Master Plan was not justified. No detailed justification for change of land use from residential to industrial and the parameters on which such change would be based had been given. The matter has also not been discussed and deliberated with the Central Pollution Control Board, Town and Country Planning Organization and the Delhi Urban Arts Commission. It was not made clear as to what would happen to those who are using their residential premises in accordance with the provisions of the Master Plan. The changes in the Master Plan or its norms to accommodate illegal activities not only amount to getting reward for illegal activities but also results in punishing the law abiding citizens. We may refer to another letter dated 15th November, 2001 sent by the Ministry of Urban Development to Delhi Development Authority on the issue of INSITU regularization stating that the issue of industrial housing, sanitation, infrastructure and adherence of polluting control norms have to be stressed and detailed in such studies. DDA was also asked to consider whether such areas where non-conforming industries are presently operating are isolated black spot in otherwise purely residential, semi-urban area or whether they represent logical extension of existing industrial neighbourhood. It reiterated that the quality of life, environment and the rights of the residents have to be highlighted in forefront.

20. The question cannot be examined only from the angle of the industry or even those who are employed there in the said industries. It is imperative for the State Government, Delhi Development Authority as also the Government to address itself to the larger question of not only legalizing blatant illegalities but as to what Delhi is intended to be left for the children and future generation by permitting industrialization in residential areas. The facts demonstrate that the State Government and Delhi Development Authority have been wholly remiss of all its functions, duties and obligations. The Central Government, for the reasons which are not far to seek, has been shifting its stand. As against a definite and positive stand taken in the years 2000 and 2001 and affidavits filed in this Court, there is a shift in the stand in the affidavits filed in the years 2002 and 2003. As against the principled stand taken in the affidavits filed in the year 2000, now the stand in nutshell is that question would be considered when Master Plan for 2021 is finalized. There is no plausible answer to the question as to why in the meanwhile the illegality should continue without any action. In any case, as at present there is no regularization. The industrial activities in residential/non-conforming zones are wholly illegal.

21. The Delhi Development Authority has to bear in mind that it has to perform its function in accord with the provisions of the Delhi Development Act, 1957 which was enacted to provide for the development of Delhi according to the plan and for matters ancillary thereto. 'Amenity,' as provided in S. 2(a), includes road, water supply, street lighting, drainage, sewerage, public works etc. 'Building,' as provided in S. 2(b), include 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. The obligation to prepare a Master Plan is contained in S. 7 of the DD Act. The Master Plan is required to define the various zones into which Delhi may be divided for

the purposes of development and indicate the manner in which the land in each zone is proposed to be used. The preparation of the zonal development plans has been provided for in S. 8. The said plans provide for the proposed land use. The Town Planners are supposed to examine various aspects before preparation of the Master Plan and Zonal Plan and providing the land use. The Act provides for a detailed procedure for modification of the Master Plan and the Zonal Development Plan (Section 11-A). Section 14 forbids use of land in contravention of the plans. It provides that no person shall use or permit to be used any land or building otherwise than in conformity with plan in a zone. Section 29(2) is a penal provision, inter alia, providing for the penalty on any person who uses any land or building in contravention of S. 14. Section 31-A is the power of the authority to seal unauthorised development.

22. The illegal industrialization in residential/non-conforming area commenced and has continued and the Authority, the Governments and its agencies have been totally negligent in discharge of its functions and obligations under the provisions of the DD Act.

23. Regarding the non-setting up of Industrial Estates in Delhi what the position was in 1990, when the second Master Plan was enforced, is apparent from the affidavit dated 2nd February, 2001 filed by the Commissioner (Planning), Delhi Development Authority. Dealing with the question of relocation of non-conforming industries and the setting up of the industrial estate in Delhi, that affidavit states :

"Master Plan for Delhi 2001 (MPD-2001), came in force on 1-8-1990, stipulates earmarking 6 to 7% of land in urban extension and thus the development of 16 new light industrial areas (1533 ha.) and another 263 ha. for extensive industrial area to be mainly utilized for shifting of existing incompatible industrial units. As per MPD-2001 in 1981 there were about 46,000 industrial units out of which 8000 were in non-conforming areas which were to be shifted. It was reassessed that about 24000 industrial units will require shifting and by 2001 the total number of industrial units will be around 93000. MPD-2001 clearly stipulates that the action for shifting of polluting industries is to be taken by Delhi Administration, as cited below :

'Action shall be taken by Delhi Administration to prepare a list of individual noxious and hazardous industrial units to be shifted and depending on the polluting/hazard, administration may force these industrial units to shift within a maximum prescribed period of 3 years.'

It further stipulates the following policy guidelines :

The hazardous and noxious industrial units are not permitted in Delhi.

No new heavy and large industrial units shall be permitted in Delhi.

No new acid, chemical and paints and varnish industrial units to be permitted.

No new extensive industrial units shall be permitted except in existing identified extensive industrial areas. Existing non-conforming extensive industrial units shall be shifted to the extensive industrial use zone within a maximum period of 3 years after the allotment of plots by various Government agencies.

Non-conforming light and service industrial units with 20 or more workers shall be shifted to the industrial use zones within a maximum period of 3 years after the allotment of plots and by providing necessary incentives by the various Government agencies in conforming use zones."

3. Delhi Administration vide Chief Secretary's letter dated 17-9-1991 addressed to Vice-Chairman, Delhi Development Authority conveyed that 'it is now the established policy of the Delhi Administration not to develop any new industrial estates in the Union Territory of Delhi. All non-conforming light and extensive industrial units would have to close down/shift on their own to areas outside Delhi, as no more industrial areas are to be developed and (b) further, that in the additional 2% area being earmarked for service sectors/establishments industrial activities contained in Annexures III-A, III-B and III-C of the revised Master Plan would be promoted'."

24. The affidavit further states that the matter was placed before the Authority in its meeting dated 7th July, 1992 and the proposal of the Delhi Administration with certain conditions was approved. The DDA resolved that planning for industrial activity may continue as envisaged under the Master Plan of Delhi 2001 at the rate of 6 to 7% of urban extension area. It further states that pending the said policy decision, no new industrial development was taken up and even the industrial area indicated in the development plan of Dwarka (181 hectare) was reverted to commercial and other land uses.

25. In the light of the aforesaid, when even industrial area is reverted to commercial and other land use, we fail to understand :

1. Why no action was taken to enforce the Master Plan and for stoppage of the functioning of the industries in the residential/non-conforming areas;

2. How the industries commenced and continued their illegal activity;

3. How can the State Government regularize the illegality even without existence and consideration of availability of infrastructure and in disregard to the rights of the residents on the ground of 70% concentration of industry in the concerned area(s).

26. Further, in the light of the letter of the Chief Secretary dated 17th September, 1991, it is not open to the State Government to argue that for want of acquisition of the land, the industrial estates could not be developed. They had themselves written to DDA not to develop any new industrial estate in the Union Territory of Delhi. Even existing industrial area, as above-noted; was diverted. The State Government has been repeatedly taking time from the Court for the shifting of the offending industrial activity. If it was not the responsibility of the State Government to shift the industry, what was the purpose of filing IA No. 1206/99 seeking extension of time up to March, 2004 and for seeking modification of the order dated 8th September, 1999 whereunder the industries were directed to be closed by 31st December, 1999. Even at the cost of repetition, we may again note that for the present we are examining the aspect of shifting of industries which have come up after 31st December, 1989 in residential/non-conforming areas. The letter dated 17th September, 1991 also states that the MCD announced its ad hoc registration policy in 1989 with the prior approval of the Lt. Governor to grant ad hoc registration to units which had unauthorisedly established themselves in non-conforming areas till 31st December, 1989. In this situation, we see no reasons why those units which have come up after 31st December, 1989 shall not be closed and sternly dealt with. We are unable to find any equity in favour of such violators of law.

27. The regularization would also result in making the concept of NCR non-functional and inoperative.

28. The National Capital Region Planning Board Act, 1985 (for short, the 'NCR Act') was enacted to provide for the constitution of a Planning Board for the preparation of a plan for the development of National Capital Region and for co-ordinating and monitoring the implementation of such plan and for evolving harmonized policies for the control of land uses and development of infrastructure in the National Capital Region so as to avoid any haphazard development of that region and for matters connected therewith or incidental thereto. The areas within the National Capital Region are specified in the Schedule to the NCR Act. National Capital Region comprises the area of entire Delhi, certain districts of Haryana, Uttar Pradesh and Rajasthan as provided in the Schedule. 'Regional Plan' as provided in S.2 (j) means the plan prepared under the NCR Act for development of the National Capital Region and for the control of land uses and the development of infrastructure in the National Capital Region. What the Regional Plan shall contain is provided in S. 10. Section 10(2) provides that the Regional Plan shall indicate the manner in which the land in the National Capital Region shall be used, whether by carrying out development thereon or by conservation or otherwise, and such other matters as are likely to have any important influence on

the development of the National Capital Region and shall include the following elements needed to promote growth and balanced development of the National Capital Region, namely :

(a) the policy in relation to land use and the allocation of land for different uses;

(b) the proposals for major urban settlement pattern;

(c) the proposals for providing suitable economic base for future growth;

(d) the proposals regarding transport and communications including railways and arterial roads serving the National Capital Region;

(e) the proposals for the supply of drinking water and for drainage;

(f) indication of the areas which require immediate development as "priority areas," and

(g) such other matters as may be included by the Board with the concurrence of the participating States and the Union territory for the proper planning of the growth and balanced development of the National Capital Region.

29. Section 27 provides that the provisions of the NCR Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law other than the NCR Act; or in any decree or order of any Court, Tribunal or other authority.

30. In exercise of power under S. 10 of the NCR Act, the Government of India has prepared a Regional Plan - 2001 for National Capital Region as approved by the National Capital Region Planning Board constituted under S. 3(1) of the NCR Act. Besides others, the Union Minister for Works and Housing as Chairman of the Board, the Chief Minister of Haryana, Rajasthan, Uttar Pradesh and Delhi are members of the said Board, Regional Plan - 2001 recognises the unprecedented growth of Delhi and notices that the planned growth of Delhi is possible only in a regional context. In fact, the need for regional approach was felt as early as 1959 when the draft Master Plan of 1962 recommended that a statutory National Capital Region Planning Board should

be set up for ensuring balanced and harmonized development of the Region.

31. The aforesaid plan took into consideration the host of serious problems by which Delhi was besieged and the causes of those problems and the genesis of Delhi's growth on account of rapid urbanization and ability to offer wide opportunities for large scale employment through specialization and increased productivity in manufacturing and supporting services. It noticed that till 1951, Delhi was essentially an administrative centre with a population of 14.5 lakhs but, the expansion of industry, trade and commerce providing opportunities for economic development, in turn, began to transform its character from an administrative city to a multifunctional city and, exhibited a significant functional shift to industrial character in 1981 when its population size became 57.3 lakhs, recording a growth of about 300% since 1951. It also notices that as Delhi grows, its problems of land, housing, transportation and management of essential infrastructure like water supply and sewerage become more acute. The city lacks reliable and adequate sources of water, and, thus, has to depend upon the adjoining States to meet its water supply requirements. The plan notices the need for the development policies, programmes and plans aiming to relieve Delhi from additional pressures and avoid adding new pressures. We may note that in the affidavit dated 29th September, 2000 filed by the Deputy Secretary of the Ministry of Urban Development, it was stated that those requiring plots of more than 250 sq. metres would be accommodated in the National Capital Region where plots of very large size are available with all necessary infrastructure facilities. Further, the documents filed along with another affidavit of the same officer dated 29th November, 2000 show the progress of certain items of work as noticed in the meeting dated 21st September, 2000 of a cell that had been constituted by the Ministry of Urban Development which had been appointed as a nodal agency pursuant to the order of this Court dated 12th September, 2000 in respect of the National Capital Region. It states :

"V. National Capital Region - Interface

An Interface amongst the industrialists of Delhi and those of the three National Capital Region States has been organized by the Ministry of Urban Development, through the National Capital Region Planning Board on September 30, 2000 at Vigyan Bhawan from 10.00 a.m. onwards. The basic objective of this interface is to facilitate exchange of information amongst the industrialists of the National Capital Region and to acquaint them with the facilities that are available, including larger size of plots, lower cost of plots and availability of auxiliary infrastructure in the shape of residential plots and commercial plots.

The Delhi industrialists would be made aware of the fact that many big industrial houses like Sony, Daewoo Motors etc. are setting up their industries in the National Capital Region States and this would give rise to demand for ancillary industries. The representatives of Haryana State Industrial Development Corporation (HSIDC), U.P. State Industrial Development Corporation (UPSIDC) and Rajasthan State Industrial Development and Investment Corporation (RIICO) would also be attending the Interface and would indicate the loan facilities that would be made available.

The National Capital Region Planning Board has facilitated development of 1,14,000 residential plots, 17,000 commercial plots/office space and 10,000 industrial plots/sheds in the National Capital Region."

32. In the affidavit dated 4th December, 2000 of the same officer, it has been stated as under :

"That at the said INTERFACE, an exhibition was also organized, where the agencies of three State Governments - Haryana, Rajasthan and Uttar Pradesh - displayed their information in respect of availability of plots as well as of industrial infrastructure. It was indicated that over 6,000 industrial plots of various sizes, ranging from 100 to 1 lakh sq. mtrs. were available for immediate allotment. Some of these plots were of very large sizes and they could be sub-divided to create a larger number of plots.

That, another meeting of senior officers of the State Governments of three National Capital Region States and their Resident Commissioners was called by the Union Urban Development Minister on November 30, 2000. In this meeting, the Government of Haryana indicated that besides vacant plots already developed in industrial estates it would, if required, develop 14,487 acres of land separately and make available as many as 80,000 plots of average size of 500 sq. mtrs. The necessary infrastructure is either available or can be made available in a short time."

33. The material on record shows that the National Capital Regional Planning Board has been taking initiative to encourage the shifting of the industries to National Capital Region. It appears that in January, 2001, number of plots were available in the States of Rajasthan, Haryana and Uttar Pradesh for industries to shift. The industry was also informed that large plots can be further sub-divided to accommodate more number of small units. It does not, however, appear that any significant interest was shown by the industry. We are not suggesting that there are no problems but the same are not insurmountable and can be sorted out. There is no obligation to provide alternative plots to those who illegally commenced industrial activity. The second Master Plan stipulates to provide alternate plots only to those who had set up industrial units up to 31st December, 1989. As already observed earlier, presently we are concerned with shifting of the industries which were set up from the year 1990 onwards contrary to the permissible use in the Master Plan. It is a matter for Government to decide if it wants to provide alternative industrial plots to those who illegally commenced that activity but that cannot further delay the closing of continuing illegal industrial activity. In our view, lack of action and initiative by the authorities is the main reason for the industry merrily continuing illegal activity. There is total lack of enforcement of law by the concerned authorities.

34. Regarding the availability of alternate industrial plots, it may be useful to notice the plots that are available in the National Capital Region. The affidavit filed on 8th May, 2003 on behalf of the

NCR Planning Board states that plots on 2433.63 acres of land in the National Capital Region were available. If there are teething problems, it is for the concerned authorities to sort out the same.

35. Laghu Udyog Bharati, an association of small scale industries, has taken the stand that the Government has been issuing ad hoc licences and collecting taxes from industrial units which would show that the industries were working within the knowledge and consent of the Government. The stand taken is that since the industries were working with the consent of the Government, it cannot be said that the use by industries is non-conforming. The stand is wholly misconceived. An illegality would not become a legality on inaction or connivance of the Government authorities. There cannot be any doubt that non-conforming industrial activities could not have commenced or continued at such a large scale in the capital of the country if the Government and the concerned authorities had performed their functions and obligations under various statutes. But such a situation cannot be permitted to continue forever so as to reach a point of no return, where the chaotic situation in city has already reached. The law breakers, namely, the industries cannot be absolved of the illegalities only on the ground of inaction by the authorities. It would be useful to note as to what is stated in the affidavit of the President of the aforesaid association. It reads :

"The chaotic situation existing today would not have developed had the authorities carried out their duties and taken steps to develop industrial areas as provided for in the MPD-62 as well as the MPD-2001. For the reasons best known to the authorities, the planned development of Delhi was never undertaken. On the other hand, they were busy in granting ad hoc licenses for non-conforming areas, electricity connections, water connections, collecting electricity, water, property tax at commercial rates; collection of Sales Tax and Excise from these industries, which were coming up. Had the concerned authorities discharged their duties casted upon them by the two Master Plans, the legal and statutory document for the planned development of Delhi to which they were duty bound to perhaps the situation, which Delhi is in today, would not have arisen."

(Emphasis has been supplied by us)

The affidavit further states that

"That it is repectfully submitted that till today not only MCD, but also D.V. B. Water Department, Excise and Sales Tax Department, Factory Departments, Provident Fund and ESI Department have been recognizing the existence of the industries in the non-conforming areas and in total each industry is being visited by 53 departmental inspectors of the Government."

36. From the facts noticed above, it is evident that a casual approach was adopted in recommending INSITU regularization.

37. A report of group of experts set up for determining polluting industries amongst list of 54 'F' category industries under the MPD-2001 reported that the industrial processes involving or using electroplating, dyeing, pickling, anodizing, coal fired boilers, forging and casting are polluting in nature and recommended a list of 33 activities to be polluting. The report is filed along with the affidavit dated 5th February, 2001 of Commissioner of Industries of the Delhi Government. The proposal for INSITU regularization, however, does not even exclude the industries carrying the said activities from regularization. Further the proposal does not state what manufacturing activities are being carried on in 24 areas where the regularization was contemplated. In fact, in respect of the areas where INSITU regularization is under contemplation, many manufacturing activities even going by the report of the group of experts, would be polluting. All this shows total non-application of mind.

38. In respect of a large number of unauthorised industrial activities in non-conforming areas, the Municipal Authorities have expressed helplessness in taking action on the apprehension of breakdown of law and order in areas. The Municipalities have constitutional responsibilities of town planning. Part IX-A was inserted by Constitution (74th Amendment) Act, 1992 w.e.f. 1st June, 1993. Article 243-W provides for the powers, authority and responsibilities of the Municipalities etc. Article 243-W reads as under :

"243-W. Powers, authority and responsibilities of Municipalities, etc.- Subject to the provisions of this Constitution, the Legislature of a State may, by law, endow-

(a) the Municipalities with such powers and authority as may be necessary to enable them to function as institutions of self-Government and such law may contain provisions for the devolution of powers and responsibilities upon Municipalities, subject to such conditions as may be specified therein, with respect to-

(i) the preparation of plans for economic development and social justice;

(ii) the performance of functions and the implementation of schemes as may be entrusted to them including those in relation to the matters listed in the Twelfth Schedule;

(b) the Committees with such powers and authority as may be necessary to enable them to carry out the responsibilities conferred upon them including those in relation to the matters listed in the Twelfth Schedule."

39. The Municipal Corporation has the responsibility in respect of matters enumerated in 12th Schedule of the Constitution of India, regulation of land use, public health, sanitation; conservancy, solid waste management being some of them. Section 345 of the MCD Act contains the power of the Commissioner to seal. Section 416(1) provides that no person shall, without the previous permission in writing of the Commissioner, establish in any premises, or materially alter; enlarge or extend, any factory, workshop or trade premises in which is intended to employ steam, electric, water or other mechanical power. Section 417(1) stipulates that no person shall use or permit to be used premises for any of the following purposes without or otherwise than in conformity with the terms of a licence granted by the Commissioner in this behalf, namely :

(a) any of the purposes specified in Part I of the Eleventh Schedule;

(b) any purpose which is, in the opinion of the Commissioner dangerous to life, health or property or likely to create a nuisance;

(c) keeping horses, cattle or other quardruped animals or birds for transportation, sale or hire or for sale of the produce hereof; or

(d) storing any of the article specified in Part II of the Eleventh Schedule except for domestic use of any of those articles.

40. Section 461 provides for punishment for certain offences. Part I of the 11th Schedule of the MCD Act provides the purposes for which the premises may not be used without a licence. The 12th Schedule provides for various penalties, i.e., fine and imprisonment which may be imposed on contravention of various provisions of the MCD Act. It does not lie in the mouth of the Corporation to plead helplessness to carry out responsibilities and obligations under the MCD Act. The sealing of the premises was done in two phases, i.e. on 7th January, 2001 and in second phase as on 3rd March, 2001. Out of nearly 35,522, only 5,139 units were sealed. It has not been explained whether any sealing was done in the areas now under the contemplation for regularization on the ground of 70% industrial concentration. The Delhi Government and DDA have also not explained that while arriving at figure of 70% industrial concentration, the industries which were not operating or those premises which were lying vacant or those which were sealed in phases 1 and 2, were taken into consideration or not. These questions arise since the survey conducted by the MCD in some of the areas show that large number of premises were lying vacant and/or no industrial activity was going on. Further, the survey also shows that many industries were carrying on industrial activity which was per se polluting.

41. In Virender Gaur and others v. State of Haryana and others ((1995) 2 SCC 577), referring to

principle No. 1 of Stockholm Declaration of United Nations on Human Environment, 1972, this Court observed that right to have living atmosphere congenial to human existence is a right to life. The State has a duty in that behalf and to shed its extravagant unbridled sovereign power and to force in its policy to maintain ecological balance and hygienic environment. Where in the Zonal plan, a land is marked out and reserved for park or recreational purpose, it cannot be allotted for building purpose though housing is a public purpose. Further, it was observed that though the Government has power to give directions, that power should be used only to effectuate and further goals of the approved scheme. Zonal plans etc. and the land vested under the Scheme or reserved under the plan would not be directed to be used for any other public purposes within the area envisaged thereunder. Dealing with the contention that two decades had passed, it was held that self-destructive argument to put a premium on inaction cannot be accepted. 1995 AIR SCW 306

42. In M. I. Builders Pvt. Ltd. v. Radhey Shyam Sahu and others ((1999) 6 SCC 464), this court observed that no consideration should be shown to a builder or any other person where the construction is unauthorised. Judicial discretion cannot be guided by expediency. Courts are not free from statutory fetters. Justice is to be rendered in accordance with law. Judicial discretion wherever it is required to be exercised has to be in accordance with law and set legal principles. Judicial review is permissible if the impugned action is against law or in violation of the prescribed procedure or is unreasonable, irrational or mala fide. In para 73, this Court reiterated that in numerous decisions, it has been held that no consideration should be shown to the builder or any other person where construction is unauthorised. This dicta is now almost bordering the rule of law. A discretion which encourages illegality or perpetuates an illegality cannot be exercised. In M. I. Builders Pvt. Ltd. v. Radhey Shyam Sahu and others ((1999) 6 SCC 532), this Court declined to come to the aid of a law violator. AIR 1999 SC 2468 : 1999 AIR SCW 2619 : 1999 All LJ 1802

43. In Administrator, Nagar Palika v. Bharat and others ((2001) 9 SCC 232), this Court observed that public interest has to be understood and interpreted in the light of the entire scheme, purpose and object of the enactment. The hazard to health and environment of not only the persons residing in the illegal colonization area but of the entire town as well as the provision and scheme of the Act had to be taken into consideration.

44. In Faqir Chand and another v. Shri Ram Rattan Bhanot and another ((1973) 1 SCC 572), dealing with use of premises in Delhi by a tenant contrary to the purpose for which it could be used in terms of the lease between the landlord and the paramount lessor, this Court observed, while dealing with a landlord-tenant dispute that the policy of the Legislature seems to be to put an end to unauthorised use of leased land rather than merely to enable the authorities to get back possession of the leased lands. While dealing with the provisions of DD Act and Cl. (k) of proviso to sub-section (1) of S. 14 of the Delhi Rent Control Act, 1958, it was noticed that the Legislature has clearly taken note of the fact that the enormous extents of land have been leased by the three authorities mentioned in that clause, and has expressed by means of this clause its anxiety to see that these lands are used for the purpose for which they were leased. It was also observed that the authority may not be AIR 1973 SC 921 prepared to accept compensation but might insist upon cessation of the unauthorised

use. Since the most of the land used for industrial purpose in residential/non-conforming areas is leased land, it was even open to the authorities to cancel the lease on account of the misuser.

45. In Dr. K. Madan v. Krishnawati (Smt.) and another ((1996) 6 SCC 707), it was held that observations made in Punjab National Bank v. Arjun Dev Arora and others ((1986) 4 SCC 660) : to the effect that as long as the penalty for wrongful user is continued to be paid, the deviation of user could be permitted, do not appear to be in consonance with the decision of the large Bench in Faqir Chand's case (supra). On one hand, we have the decisions observing that merely by payment of penalty, continued misuser cannot be permitted and on the other the misuser commenced and continued contrary to the land use under the nose of the authorities without any action being taken. AIR 1997 SC 579 : 1997 AIR SCW 129, AIR 1987 SC 148, AIR 1973 SC 921

46. In V. M. Kurian v. State of Kerala and others ((2001) 4 SCC 215), while quashing the order passed by the State Government exempting the provisions of Kerala Building Rules, 1984 for constructing an eight storeyed building contrary to the mandatory provisions of the Rules, it was observed that the Rules were mandatory in nature and are required to be complied with. The construction of high-rise building and observance and compliance thereof is for public safety and convenience. There cannot be relaxation of the Rules which are mandatory in nature and cannot be dispensed with especially in the use of a high-rise building. AIR 2001 SC 1409 : 2001 AIR SCW 1363

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

48. In this very matter, dealing with the industries of 'H' category which now stand shifted pursuant to the order of this Court, it is pertinent to note what a three Judge Bench of which one of us (B. N. Agrawal, J.) was a member said in relation to entrepreneurial failure and total apathy non-concern for social good and benefit by the authorities as under :

"The issues are long pending - the issues are urgent since the entire society is impaired - no exception can be taken to the legal battles involved in an adversarial litigation - this is not one such instance; it is a true public interest litigation for the protection of the society and to avoid a deliberate peril arising out of entrepreneurial failure and total apathy and non-concern for social good and benefit. The Delhi Development Act of 1957 envisaged preparation of a Master Plan for Delhi with a definite statutory direction to define various zones into which Delhi may be divided for the purposes of development and the manner in which the land in each zone is proposed to be used and the stages by which such development shall be carried out. As a matter of fact the Master Plan came into existence in 1962 and 'H' category industries ought to have shifted out of the area specified therein by 1962 itself. Then came the Master Plan of 1990 to combat the existing situation with a specified period of shifting within three years i.e. there was an obligation on the 'H' category

industries to shift and relocate in terms of the Master Plan by the year 1993 and the social activist by reason of the failure of the entrepreneurs, moved this Court in 1995 whereupon, after allowing all possible opportunities to all entrepreneurs and upon assessment of the situation through the appointments of commissions and obtaining various reports on these aspects, passed the order on 10-5-1996 (M. C. Mehta v. Union of India ((1996) 4 SCC 351) which has till date not been complied with indeed a sorry state of affairs and a total neglect and apathy towards the society, new and novel submissions are advanced as in any adversarial litigation but unfortunately as noticed above it is too late in the day to contend otherwise, apart from what the order contains as of 10-5-1996 AIR 1996 SC 3311 : 1996 AIR SCW 2621, AIR 1996 SC 3311 : 1996 AIR SCW 2621 (M. C. Mehta v. Union of India ((1996) 4 SCC 351)."

49. In Indian Council for Enviro-Legal Action and others v. Union of India and others ((1996) 3 SCC 212), this court was concerned with a public interest writ petition filed by an environmentalist association alleging environmental pollution caused by private industrial units. It was held that the writ petition is not really for issuance of appropriate writ, order or directions against the units/factories which were running polluting industries and had not even installed any equipment for treatment of highly toxic effluents by them, but is directed against Union of India, Government of Rajasthan and Rajasthan Pollution Control Board to compel them to perform their statutory duties which they had failed to carry out and thereby seriously undermined the right of life of the residents of Bichhri and the affected area guaranteed by Art. 21 of the Constitution. If this Court finds that the authorities had not take action required of them by law and that their inaction is jeopardising the right to life of the citizens of this country or any section thereof, it is the duty of this Court to intervene. If it is found that the respondents are flouting the provisions of law and the directions and orders issued by the lawful authorities, this Court can certainly make appropriate directions to ensure compliance with law and lawful directions made thereunder. If an industry is established without obtaining the requisite permission and clearances and if the industry is continued to be run in blatant disregard of law to the detriment of life and liberty of the citizens living in the vicinity, can it be suggested with any modicum of reasonableness that this Court has no power to intervene and protect the fundamental right to life and liberty of the citizens of this country. AIR 1996 SC 1446 : 1996 AIR SCW 1069

50. We may also recall what the Constitution Bench said in Oleum Gas Leak case (M. C. Mehta v. Union of India ((1987) 1 SCC 395) in relation to hazardous or inherently dangerous industry, and we quote : AIR 1987 SC 1086 at pp. 1099-1100

"We are of the view that an enterprise which is engaged in a hazardous or inherently dangerous industry which poses a potential threat to the health and safety of the persons working in the factory and residing in the surrounding areas owes an absolute and non-delegable duty to the community to ensure that no harm results to anyone on account of hazardous or inherently dangerous nature of the activity which it has undertaken. The enterprise must be held to be under an obligation to provide that the hazardous or inherently dangerous activity in which it is engaged must be conducted with the highest standards of safety and if any harm results on account of such activity, the enterprise must be absolutely liable to compensate for such harm and it should be no answer to the enterprise

to say that it had taken all reasonable care and that the harm occurred without any negligence on its part. Since the persons harmed on account of the hazardous or inherently dangerous activity carried on by the enterprise would not be in a position to isolate the process of operation from the hazardous preparation of substance or any other related element that caused the harm the enterprise must be held strictly liable for causing such harm as a part of the social cost of carrying on the hazardous or inherently dangerous activity. If the enterprise is permitted to carry on an hazardous or inherently dangerous activity for its profit, the law must presume that such permission is conditional on the enterprise absorbing the cost of any accident arising on account of such hazardous or inherently dangerous activity as an appropriate item of its overheads. Such hazardous or inherently dangerous activity for private profit can be tolerated only on condition that the enterprise engaged in such hazardous or inherently dangerous activity indemnifies all those who suffer on account of the carrying on of such hazardous or inherently dangerous activity regardless of whether it is carried on carefully or not.

. . . . .We would therefore hold that where an enterprise is engaged in a hazardous or inherently dangerous activity and harm results to anyone on account of an resident in the operation of such hazardous or inherently dangerous activity resulting, for example, in escape of toxic gas the enterprise is strictly and absolutely liable to compensate all those who are affected by the accident and such liability is not subject to any of the exceptions which operate vis-a-vis the tortious principle of strict liability under the rule in Rylands v. Fletcher ((1868) LR 3 HL 330).

We would also like to point out that the measure of compensation in the kind of cases referred to in the preceding paragraph must be correlated to the magnitude and capacity of the enterprise because such compensation must have a deterrent effect. The larger and more prosperous the enterprise, the greater must be the amount of compensation payable by it for the harm caused on account of an accident in the carrying on of the hazardous or inherently dangerous activity by the enterprise."

51. We may note that some of the industrial activities like the plastic industry are inherently dangerous and is being carried on in residential/non-conforming areas. Such industrial activity is also carried on in areas in respect whereof regularization is under contemplation allegedly on account of 70% concentration of industrial activity in the residential area. These facts are evident from the material placed by the respondents themselves before this Court.

52. The growth of illegal manufacturing activity in residential areas has been without any check and hindrance from the authorities. The manner in which such large scale violations have commenced and continued leaves no manner of doubt that it was not possible without the connivance of those who are required to ensure compliance of law and reasons are obvious. Such activities result in putting on extra load on infrastructures. The entire planning has gone totally haywire. The law bidders are sufferers. All this has happened at the cost of health and decent living of the residents of the city violating their constitutional rights enshrined under Art. 21 of the Constitution of India. Further, it is necessary to bear in mind that the lawmakers repose confidence in the authorities that

they will ensure implementation of the laws made by them. If the authorities breach that confidence and act in dereliction of their duties, then the plea that the observance of law will now have an adverse effect on the industry or the workers cannot be allowed. Within the framework of law, keeping in view the norms of environment, health and safety, the Government and its agencies, if there was genuine will, could help the industry and workers by relocating industries by taking appropriate steps in last about 15 years. On the other hand, it encouraged illegal activities.

53. It may be noticed that the proposal of INSITU regularization has also been opposed by the National Regional Board which has pointed out that the very purpose of the Act would be defeated by such regularization. It would lead to further congestion of Delhi instead of decongestion which was the very purpose for which the Act was enacted. Mr. Mukul Rohtagi, learned Additional Solicitor General appearing for Municipal Corporation of Delhi, Mrs. Sheela Sethi, learned counsel appearing for National Regional Board and Shri Panjwani, learned counsel appearing for Central Pollution Control Board have opposed the continued unauthorised use for industrial activity of residential/non-conforming areas as also the proposal of INSITU regularisation. It has been contended that such industries should be immediately closed down/shifted. Mrs. Sethi contended that INSITU regularization would defeat the very purpose of the Act under which NCR was established. The contemplated action of regularization would run counter to the object of the Act which is to decongest the city of Delhi from the industrial activity. The Act of regularization would result in further congesting already highly congested city. Mr. Panjwani contended that the regularization would further result in air and water pollution and would also affect the underground water. Learned counsel further submitted that from material on record, it does not appear that anyone examined as to what effect the regularization will have on the aspect of pollution. It has been pointed out on behalf of CPCB that such regularization would result in further pollution of air ambient, water pollution besides causing other environmental hazardous. For reasons already stated, we find substance in these contentions.

54. Residents of Poorvi Viswas Nagar Samaj Kalyan Samiti have filed Writ Petition No. 98 of 2000 opposing INSITU regularization and pointing out that the Viswas Nagar is an approved residential area where residential buildings have been constructed by the residents and no industrial activity is allowed as per law. Many of the plots in which the people are residing were purchased by them from the custodian of Evacuees property. It is further pointed out that recently industrial units were established in contravention of rules and by adopting unfair means. They have, thus, objected to the INSITU regularization.

55. From the aforesaid, it is evident that the industry belonging to 'F' category in residential/non-conforming areas could not come up after 1st August, 1990 since even the existing 'F' category industry in non-conforming areas was required to be shifted to the permissible zone within a maximum period of three years after allotment of plot. The same is the position in respect of light and service industry belonging to 'B' to 'E' category except that depending upon number of workers employed, the Master Plan stipulates different time schedule for these industries to shift.

56. Despite the time span mentioned in 1990 Master Plan having expired and various opportunities having been given during 1995, 1996 and 1997 and notices issued, and 13 years having passed, the non-conforming use by the industry has continued. A time has come that such non-conforming use must stop at least by those who commenced it from and after 1st August, 1990.

57. The position in respect of household industries which are permissible, the question of the same not being carried on in residential/non-conforming area would not arise. The difficulty arises in carrying on of such activity of household industry which is not permissible. The State Government sought expansion of 'A' category industries. The Government of India has approved only 6 out of list of 41 industries. In case, the remaining are not approved, impermissible 'A' category industrial units shall also have to stop functioning. It is imperative for the Central Government to expeditiously decide this issue one way or the other. In short, permissible household industry activity can go on and impermissible activity has to stop.

58. The plea of INSITU regularization and mild resistance to shifting has been propounded only by Mr. Govardhan, learned counsel appearing for Delhi Government. In same fashion it was substantially supported by Mr. Kailash Vasdev, senior Advocate appearing for Union of India and Mr. Saharya, learned counsel appearing for Delhi Development Authority though without taking a definite stand. DDA merely adopted the stand of Union of India. Insofar as Union of India is concerned having already taken a contrary stand as above noticed, it adopted a middle path without clearly supporting or opposing the Delhi Government on the issue of INSITU regularization by taking a stand that it has issued guidelines and would consider the question of INSITU regularization at the time of finalization of Master Plan 2021. The said Master Plan is not likely to be finalized for another 2 years. In this view, the suggestion of Delhi Government is that pending approval of proposal of INSITU regularization, the industrial units falling in that category may not be ordered to be closed/shifted from residential/non-conforming area. In other words, it means that the illegality should be further permitted to be continued till the new Master Plan is finalised whether it takes two years or more. In regard to other illegal industrial units, the suggestion put forth on behalf of the Delhi Government is that immediate directions for closure/shifting of only those industrial units shall be made which were set up after 31st December, 1996 as under the order dated 19th April, 1996, the industrial activity in residential/non-conforming areas was directed to be closed after 31st December, 1996. We, however, see no justification for continuance of the illegal and unauthorised industrial activity in residential/non-conforming areas which commenced after 1st August, 1990. It would also apply to industries in categories 'B' to 'F.'

59. In respect of household industry belonging to 'A' category, it was contended on behalf of the Delhi Government that the number of industries falling in that category is being expanded and proposal for additional 41 items for being placed in category 'A' has been approved by DDA and the matter is pending with the Government of India and, therefore, the industrial units carrying any activity falling in the proposed expanded category should also not be shifted for the present. It appears that out of 41 items, the Government of India has granted approval in respect of 6 items and, no decision has been taken, one way or the other, in respect of remaining 35 items. We again reiterate that the question is only of stopping unauthorised and illegal activity and not that activity

which is permissible.

60. We may note another argument put forth on behalf of Delhi Government that it is not the function and responsibility of the Delhi Government to enforce the Master Plan, it has no powers to enforce it. We are not only surprised but shocked at such a frivolous stand being taken, despite what is stated in the order passed by this Court on 18th December, 1996. That order noticed the reason as to why the Court thought it appropriate to step aside. It was noticed that seemingly the State Government was seriously enforcing the law. At that stage, no argument about absence of power was put forth. If it was not the function and responsibility of State Government and the Government had no power, we wonder the reason why the Government filed I.A. No. 1206 seeking extension of time up to March, 2004 to relocate the industries. We summarily reject this wholly frivolously submission.

61. Neither on behalf of the Government of India nor on behalf of the Delhi Government nor on behalf of any statutory authority, it could be disputed that the unauthorised and illegal industrial activity has commenced and continued in Delhi in blatant breach of the provisions of Master Plan and no action has been taken by any authority. The responsibility to take action was sought to be shifted. Each blaming the other. While on behalf of Delhi Government, as above noticed, it sought to avoid its obligation on the ground that it is not the function of the State Government to implement the Master Plan. The Government of India avoided its responsibility on the ground that the Central Government is not the implementing agency though the manner in which the Central Government has taken a somersault in its stand already stands noticed. Similarly, the other statutory authorities have also avoided to shoulder the responsibility for inaction for the blatant breach of the legal provisions. Respondents have been taking a convenient stand from time to time without any regard for statutory provisions and have at least turned their face on the other side knowing that blatant breach is being committed, even if we assume that there was no connivance with the industry for extraneous considerations. The Master Plan, 2001 stipulates the shifting of extensive industries ('F' category) to conforming zone within a period of three years after allotment of plots by authorised Government agencies. In respect of light and service industries ('B' to 'E' category), it provides shifting to the industrial use zone within a maximum period of three years after allotment of plots and by providing necessary incentive by various Government Agencies in conforming use zone. This is in respect of all the industrial units with 20 or more workers. In respect of industrial units with 10 to 19 workers, it stipulates review after five years giving them chance during this period for reallocation in conforming zones. Similarly, industrial units with worker strength up to nine, it provides for review after 10 years after giving them chance during the said period for reallocation in the conforming zones. The suggestion of Delhi Government is that such all industrial units which have come up after 1st January, 1997 shall be directed to be closed in the first instance by giving them some time. In respect of industrial units which have come up between 1st August, 1990 to 31st December, 1996, it was suggested that the bigger units having more than 20 workers may first be directed to be closed, later the units having workers between 10 to 19 and last of all those units which have less than 10 workers be directed to be closed. The suggestion is that the shifting may be directed in a phased manner.

62. Mr. Govardhan also points out that after the advertisement for reallocation was issued in terms of the orders of this Court, about 51,000 applications were received out of which approximately 24,000 applicants were held to be eligible. In Bawana Industrial Estate, 18,347 industrial plots are ready and allotment and possession has been given to 10,059 industrial units and remaining have still to take possession. It was further pointed out that nearly 6,000 who are found eligible for allotment of industrial plot for relocation are on the waiting list awaiting the allotment of the industrial plot. In respect of these units, it was pointed out that development of industrial plot will take about two and a half years.

63. In respect of those not found eligible by the Government for reallocation and also those who did not apply pursuant to the advertisement, it was suggested that they be also given a chance to find out alternate industrial plot. In respect of the industrial units ('A' Category) which may fall in extended category of 41 items if the extension is not ultimately approved by the Government of India, they may also have to be phased out. According to the Delhi Government, about 20,000 units fall in this category and as the matter is pending with the Government of India, Directions may be issued for early decision by Government and in the meanwhile, these activities may not be directed to be closed.

64. In short, it was not seriously questioned that for the present except those industrial units falling in Category 'A,' 15,000 industrial units which fall in the category of INSITU regularization and 6,000 who are in the waiting list, the rest of the industrial units have to close down.

64A. In respect of industrial activity in rural area/Lal Dora, learned counsel appearing for the Governments and various authorities did not dispute the submission of learned Amicus Curiae that except industry falling in Group 'A' and 'A-1' of Category 'A,' no other industrial activity was permissible. None made contra submission or brought to our notice any provision permitting other industrial activity in the rural area/Lal Dora.

65. At this juncture, we may also deal with, in brief, the submission urged on behalf of Government of India that it is not the implementing agency. One has only to refer to S. 41 of the DD Act which empowers the Central Government to issue directions to DDA for the efficient administration of the DD Act. When no such direction was issued, there could be no answer. There is also no answer as to what steps were taken to consider the extension of Category 'A' list after adding to that category six more household industries in terms of Notification dated 10th April, 2001, despite lapse of three years. No answer came forth that when the matter of shifting of remaining 'F' category units was deferred by the Delhi Government in January, 2001 on the purported ground of the Police Force being preoccupied in making Republic Day arrangements and was dealing with the security angle, what made the Central Government not to take up the issue again with the Lt. Governor of Delhi after the Republic Day functions were over. In this regard, we may refer to a letter dated 8th January, 2001 sent by Lt. Governor of Delhi to the Minister of Urban Development, Government of India, stating that the operation for the closure of more polluting 'F' category industrial units in non-

conforming areas has been completed and for launching of fresh operation to close down the remaining 'F' category units, the Police Force being preoccupied with making security arrangements for Republic Day function, the fresh operation for closure of industrial units would be reviewed later. The later review has not seen the light of the day despite expiry of more than three years. It is evident that, in the meanwhile, the Government of India, as already noticed above, has changed its stance and under the garb of issuing guidelines for the Master Plan for Delhi 2021, action against violators of law has come to a standstill for an indefinite period.

66. Insofar as the Municipal Corporation of Delhi is concerned, we have already noticed its stand that non-conforming industrial units falling in category 'B' to 'F' whether polluting or not polluting which have come up in contravention of the Master Plan should not be permitted to operate and should be closed down. In this connection, reference can be made to a public notice issued by MCD informing the general public and owners/occupiers/operators of industrial units situated in non-conforming/residential areas that in compliance with the directions of this Court, the industrial activity in violation of the Master Plan of Delhi 2001 be closed down immediately failing which the Municipal Corporation of Delhi shall forcibly close such units. All ad hoc licences granted, if any, shall stand revoked/cancelled. In respect of the industrial activity in Lal Dora, in the affidavit filed in October, 2002 by Chief Town Planner of Municipal Corporation of Delhi it has been stated that the proposal for the withdrawal of exemption notification would be placed before the Corporation. Nothing seems to have been done in that direction. It is not disputed that under the garb of exemption Notification dated 24th August, 1963, all kinds of buildings have come up in the Lal Dora.

67. Insofar as I.A.No. 1527 is concerned, it seems evident that the applicant, National Cable Industry, had undertaken to shift to the conforming area and on that ground obtained an order for removal of the seal from its premises so as to remove the machinery. The industrial unit was carrying on the activity which falls in Category 'F.' The premises are in rural area. The question whether the activity that was being carried on was polluting or not need not be examined since the application deserves to be dismissed firstly on the ground of suppression of material facts inasmuch as it has not been mentioned therein that the applicant had given an undertaking that he would be shifting his unit to the NOIDA area and secondly on the ground that the applicant cannot be permitted to resile from the undertaking. The applicant has already taken advantage of the undertaking and has removed the machinery. In this view, we need not go into the larger question as to which provisions of Municipal Laws will be applicable and which not to the rural areas or areas in the Lal Dora. The aspect of industrial activity in these areas has already been dealt with. Under no circumstances, the applicant can be permitted to commence manufacturing activity from the premises in question.

68. The result of the aforesaid discussion is that except household industry, all other industrial units which have come up in residential/non-conforming areas in Delhi after 1st August, 1990 have to stop functioning. Unfortunately, the Governmental authorities have not lived up to the confidence that was reposed in them when the Court had stepped aside and left the matter to Government in the year 1996, as noticed hereinbefore. On the other hand, in the year 2002 while these matters were

pending, commercial use of industrial area was sought to be regularised by DDA on payment of some amounts. On an application filed by learned Amicus Curiae public notice to the above effect was stayed. Later it was withdrawn by the authority. The action not only was utterly illegal but also shows total non-application of mind. Thus, going by the past experience, it would also be necessary to not only monitor but also to fix responsibility so that illegal activity does not continue any further and stops within the time schedule for its cessation fixed in this order. We also wish to make it clear that those who have set up industrial units after 1st August, 1990 have no right for allotment of a plot in an industrial area. This would, however, not debar the Government/authorities to allot to such oustees plots in industrial area but that under no circumstances should delay the closure process. Before we part, a word deserves to be said about Mr. Ranjit Kumar, learned senior counsel who has assisted this Court as Amicus Curiae. Learned senior counsel has very effectively and ably assisted this Court both on facts and law. We place on record our deep appreciation for the able assistance rendered by Mr. Ranjit Kumar.

69. In conclusion, having regard to the aforesaid, we issue the following directions :

1. All Industrial Units that have come up in residential/non-conforming areas in Delhi on or after 1st August, 1990 shall close down and stop operating as per the following schedule :

(a) Industrial Units pertaining to extensive industries ('F' Category) within a period of four months.

(b) Industrial Units pertaining to light and service industries (Category 'B' to 'F') within five months.

(c) Impermissible household industries (Category 'A') within six months.

(d) 6,000 industrial units on waiting list for allotment of industrial plots within 18 months.

2. The Central Government is directed to finalise the list of permissible household industries falling in Category 'A' within a period of three months.

3. 6,000 industrial units on waiting list shall be allotted industrial plots within one year.

4. The Delhi Government may announce a policy within six weeks giving such incentives as it may deem fit and proper to those industrial units which came to be established after 1st August, 1990 and may close down on their own before the expiry of the time fixed in this order. The non-

announcement of incentives by the Government shall not, however, delay the closure process.

5. The waiver and electricity connection of the industrial units found operating after the due date of closure shall be disconnected forthwith and in any case not later than a month of the date fixed for closure in Direction No. 1 above. If the industrial activity still continues, the premises shall be sealed within a period of not later than another one month.

The seal shall be removed and water and electricity connection restored only after filing of an undertaking by the industrial unit not to recommence any sort of industrial activity before an officer nominated for the purpose by the Delhi State.

6. The Central Government is directed to finalise within six months appropriate steps to be taken for making NCR region a success for industrial activity by removing the hurdles pointed out by the industry. The Governments of the adjoining States of U.P., Rajasthan and Haryana are directed to extend full co-operation.

7. The Municipal Corporation of Delhi shall consider within three months the aspect of withdrawal of exemption notification as suggested in the affidavit of its Town Planner filed on 28th October, 2002.

8. We appoint a Monitoring Committee comprising (i) Chief Secretary of Delhi (ii) Commissioner of Police, Delhi (iii) Commissioner, Municipal Corporation of Delhi and, (iv) Vice-Chairman of Delhi Development Authority. This Committee would be responsible for stoppage of illegal industrial activity. It would, however, be open to the aforesaid members of the Monitoring Committee to appoint responsible officers subordinate to them to oversee and ensure compliance of the directions contained in the judgment.

9. The first Progress Report by the Committee shall be filed by 31st August, 2004 and thereafter it shall be filed at least once in a period of every two months.

Order accordingly.