ANDHRA PRADESH HIGH COURT

T. Damodhar Rao

Vs.

S.O., Municipal Corpn

Writ Petn. No. 8261 of 1984

(P.A. Choudary, J.)

20.01.1987

ORDER

P.A. Choudary, J.

1.The broad question that falls for consideration is whether the Life Insurance Corporation of India and the Income-tax Department, Hyderabad, can legally use the land owned by them in a recreational zone within the city limits of Hyderabad for residential purposes contrary to the developmental plan published in G.O.Ms. No. 414 M.A. dt. 27-9-1975.

2. Although the City of Hyderabad was founded about 400 years ago in 1951 (sic) around the present area of the historic Charminar, its growth till recently was never regulated by settled laws. During these four centuries, the city had grown in all directions without any plan or design. Particularly after the formation of the State of Andhra Pradesh and in the aftermath of the second world war, this city had started growing wildly and almost as an uncultivated jungle. For the first time, its civic problems have, therefore, become unmanageable. Although by size and population, Hyderabad is today one of the country's biggest cities, it is a city without any effective and satisfactory provision for elementary civic amenities to its inhabitants. Passers by praise it while its permanent residents curse it. Absence of a development plan coupled with the presence of an unimaginative and indifferent administration has been the cause of this malady. For too long a time rule of law is not fully enforced here. The city has been for long in the grip of several well known city landgrabbers. Being most of the time insensitive to the civil needs of the community and acting largely to the dictates of the power brokers, the Government has been often aiding and abetting this maladministration. Multi-storied buildings are allowed to be built up contrary to municipal bye-laws. Transgressings of municipal laws in general and the building bye-laws in particular are generally condoned. New areas are allowed to be developed even without any provision being made for the minimum civic needs. Today, on a rough estimate, the city has more than 100 slums spreading dirt, disease and squalor everywhere. Roaming herds of king size buffaloes and pale pathetic and hungry locking cows passing through the city thoroughfares and posing serious traffic hazards both to motorist and pedestrian are a regular sight of some of the city main roads. Probably nowhere else in India, the citizen's fundamental right to move freely is so heavily trampled upon by the beast as it is done on the roads of this

city. Regulation of city traffic is a neglected item of the traffic police. Much of traffic on the impossibly narrow roads of the city wends through when it moves at all on its own motion while the traffic police merrily watches and whistles aimlessly. The so-called local lorries occupy many a congested parts of the city roads without being charged for violation of laws and with the traffic police taking no preventive or prohibitive action. In most parts of the city drainage and sewerage systems even where they exist do not function well. Consequently, most of the city inhabitants are condemned to live in their houses without access to pure air or water and under unhygienic conditions. Spread over 120 square miles and having one hundred and above slum dwelling areas and not having enough of open spaces developed for the recuperation of the health of the city inhabitants, and going without bare minimum of civil amenities the city of Hyderabad is painfully dying a civic death. Large chunks of public land that could have been freely used and developed by the city corporation for the common purposes of the community are generally occupied and appropriated by the land grabbers, of late even Gods have joined this unwholesome game by establishing their abodes on the busy roads openly obstructing the free flow of traffic. Land grabbing makes the availability of public land for public purposes such as creation of recreational parks almost impossible. Notwithstanding the frequent claims made by the city corporation about Hyderabad city being a beautiful city, surely it is one of the ugliest cities of India.

3. It is in the above circumstances that a need for drawing a developmental plan was felt. Accordingly, a draft developmental plan, sometimes also called Master Plan, has been first conceived and published in the State Government gazette in G.O.Ms. No. 470 Municipal Administration, dated 6th Nov. 1973. The draft plan was published under the legal authority of the Hyderabad Municipal Corporation Act and the Developmental Rules made under that Act. That Draft Plan proposed and fixed the various uses to which each bit of the land situated in the Hyderabad city owned either privately or publicly could be put by the owners. For that purpose, the various parts of the city were divided into a residential, commercial, recreational or other areas. The approval of such a draft plan makes the plan final and legally binding. It would not then matter whether the land belongs to a private individual or to the State. The draft plan once approved would have the undoubted effect of restricting and curtailing even denying the rights of enjoyment of the land which otherwise belongs to the land owners. An approved draft plan can also affect the rights of the inhabitants of those areas to live in peacefully. The law, therefore, requires the draft plan to be published inviting objections or suggestions to those proposals. The draft plan published in the above G.O.Ms. No. 470 went through all these stages. After expiry of the time stipulated for receipt of objections and suggestions, if any, the Government, acting under Section 464(1) of the Hyderabad Municipal Corporation Act, 1955, gave its final approval to the above draft developmental plan. In G.O.Ms. No. 414 Municipal Administration dated 27th Sept., 1975, the Government gave its sanction to the development plan. The Map No. 2 and the explanatory reports that accompanied the plan had identified the areas and the specific uses to which the land in those areas could be put. Thus a final developmental plan restricting the user of the lands in city of Hyderabad by force of law has come into existence. We are here concerned with the user of a small bit of a land adjoining the tank bund area. According to the above developmental plan, land admeasuring Acs.151.55 cents and situated below the Tank Bund and adjacent to Ram Gopal Mills on either side of Hussainsagar surplus nalla is reserved for laying a recreational park. Thereby the use of the above mentioned land of Acs.151.55 cents were fixed. That land of Acs.151.55 cents could be used under the above G.O.Ms, No. 414 only as a part of a recreational park. That land could not be used either as a residential area or commercial area or

industrial area. In law an approved developmental plan operates both as a prohibition against the owners putting their land for any impermissible use. It also operates as a permission to use the lands for the purpose indicated in the developmental plan. As the above extent of Acs.151.55 cents of land situated below the Tank Bund and adjacent to Ram Gopal Mills on either side of Hussainsagar nalla is shown as a part of the recreational park, the owners of those lands situated within that area, whether they be private owners or public owners cannot legally use that land except as a recreational park.

4. So much cannot seriously be disputed. Yet the Life Insurance Corporation and the Income-tax Department are claiming rights to use a part of this very area for residential purposes contrary to the above plan on the basis of their ownership. What seems to have led these parties to this untenable position is the somewhat confusing history of acquisition of some of this land. Long prior to the issuance of the above G.O.Ms. No. 414 making a developmental plan providing for the creation of a recreational park in an area of Acs.151.55 cents, Government planned for the creation of a much larger park extending over an extent of Acs.200.00. For that purpose it had proposed to acquire the necessary extent of the land. In fact a Notification under Section 4(1) proposing to acquire the necessary extent of land for that purpose was even published. But in G.O.Rt. No. 725 dated 9-1-1969 published under Section 6 of the Land Acquisition Act, the Government declared its intention to acquire only a smaller extent of Acs.99.19 guntas. Accordingly, only that extent of land was acquired. But on physical verification it was found that the land was measuring actually Acs. 101.19 guntas. What is, however, important to note is the fact that the above extent of Acs.101.19 guntas is a part of the above mentioned Acs.151.55 cents demarcated by the above developmental plan to be used as a recreational park. Subsequently, an extent of Acs.37.00 and odd out of the above extent of Acs.151.55 cents was acquired under the Land Acquisition Act for the purpose of enabling the Life Insurance Corporation of India to build houses. A small part of the above Acs. 37.00 was later sold by the Life Insurance Corporation of India to the Income-tax Department. The above are the facts which probably led the Life Insurance Corporation and the Income-tax Department to assert their right to build houses. But clearly the acquisition of the land by the Life Insurance Corporation of India or the Income-tax Department is of no relevance or significance for deciding the question that falls for consideration in this case. For the purpose of this writ petition all that is necessary and relevant to be noticed is that the entire extent of Acs.37.00 above mentioned is a part of the area demarcated for recreational park by the developmental plan. It must be stressed that the purpose of compulsory acquisition proceedings which is to transfer compulsorily the title to private property from one owner to another owner does not in any way alter the binding nature of the developmental plan and its decision to create a recreational park. Whether a particular piece of land is compulsorily acquired or is sold voluntarily or is allowed to be in the hands of the previous owners, the direction of the developmental plan dictating the uses to which that particular piece of land could be put will prevail and will have to be honoured. Accordingly, the question of acquisition of the land can be omitted as irrelevant from our consideration.

5. Subsequent to the acquisition of Acs.101.19 guntas the Hyderabad Municipality has developed an area of about Acs.50.00 as a park called 'Indira Park'. There can be no objection to this because that action of the Hyderabad Municipal Corporation is in conformity with the requirements of the developmental plan published in G.O.Ms. No. 414. It is also in conformity with the requirements of Section 112 of the Hyderabad Municipal Corporation Act. The developmental plan has thus been put into force in part. But thereafter the Hyderabad

Municipality had not only failed and faltered in carrying out its statutory duties of developing the rest of the area into a recreational park but it has also started acting contrary to the dictates of the above mentioned Section 112 of the Hyderabad Municipal Corporation Act and also to the developmental plan. It has already allowed the Life Insurance Corporation of India to build a few residential houses in the above extent of Acs.37.00 of land acquired by the Life Insurance Corporation of India. Now the Income-tax Department also wants to build houses in an extent of 10 acres and odd which it has recently acquired from the Life Insurance Corporation of India. Judicial notice may also be taken of the fact that there are several other structures built in this area. These clearly constitute contravention of the law laid down by developmental plan regarding the land uses in the area. Those contraventions gave rise to the filing of this writ petition.

6. The present writ petition has been filed by some of the residents and rate-payers of the Hyderabad Municipal Corporation who live around the abovementioned area demarcated by the developmental plan as a recreational park. Their complaint is that the balance of about Acs.50.00 of land out of the aforementioned Acs.151.55 cents which is shown by the developmental plan as a part of the recreational park ought not to be allowed to be used by the Life Insurance Corporation or Income-tax Department as a residential area: This writ petition is, therefore, filed to direct the Municipal Corporation of Hyderabad and the Bhagyanagar Urban Development Authority, Hyderabad, to develop the entire area comprising of the land bounded in the West by Tank Bund, in the East by Ashoknagar Colony, in the North by D. B. R. Mills and in the South Domalguda locality as a public park in accordance with the approved developmental plan.

7. The petitioners say that many residents of the twin cities are economically backward and poor people and are having insufficient accommodation to live in. According to the affidavit allegations, the majority of inhabitants of Hyderabad have no open spaces left in front of their houses to relax and recreate themselves and maintain their health. The petitioners additionally argue, though it is strictly not necessary for obtaining the relief in the writ petition, that as the above extent of Acs.101.19 guntas of land has been acquired with the express object of developing that area into a park and for the purpose of promoting the well-being and welfare of the residents of the twin cities in general and of those belonging to the weaker Sections of the society in particular, the Hyderabad Municipal Corporation is bound in law not to allow any part of that land to be used for any purpose other than the one the developmental plan had allocated to it. The petitioners. referred to Section 112 of the Hyderabad Municipal Corporation Act, 1955, whereunder a mandatory duty is imposed on the Hyderabad Municipal Corporation to make adequate provision for public parks, gardens, playgrounds and recreational grounds. The petitioners say that the reservation of the above area under the developmental plan for recreational park renders the omission on the part of the Municipal Corporation to develop that area fully as a failure to carry out its duty both under Section 112 of the Hyderabad Municipal Corporation Act and under the developmental plan. Accordingly, they argue that it is the statutory obligation of the Hyderabad Municipal Corporation to develop the abovementioned area into a recreational zone.

8. To this writ petition as originally filed only the Hyderabad Municipal Corporation and the Bhagyanagar Urban Developmental Authority and the Life Insurance Corporation of India were added as party-respondents. By 14th of Oct. 1985, the Hyderabad Municipal Corporation had been asserting that the State Government had granted exemption from the above developmental

plan to a portion of the above mentioned land of 101 and odd acres which was acquired from private owners for the specific purpose of developing it as a park. It was in these circumstances the State Government was impleaded as a party- respondent so as to find out the correctness of the assertion of the Municipal Corporation. The State Government, after taking several adjournments, had filed its counter into this Court on 22nd of April, 1986. Earlier the Hyderabad Municipal Corporation filed its counter on 21st of Feb., 1986. In the month of March, 1986, the Life Insurance Corporation of India had filed its counter. The Income-tax Commissioner had impleaded himself as a party- respondent on 8th July, 1986. While this writ petition is pending in this Court, he has purchased a small extent of land which is part of the area shown by the Developmental plan as a recreational park. He has filed his counter on 21st of July, 1986. The Bhagyanagar Urban Development Authority was the last to file its counter affidavit on 17-9-1986.

9. There is no serious dispute that in the above developmental plan published under G.O.Ms. No.414 an extent of Acs.151.55 cents and situated within the abovementioned boundaries is shown as a recreational park. In para 2 of the counter-affidavit of the Hyderabad Urban Development Authority it was admitted that

> "The development plan was approved by the Municipal Corporation in its resolution No. 307 dt. 1-8-1970 and it was notified by the Government in G.O.Ms. No. 470 dated 6-11-1973 for public objection and suggestion, and after examining all suggestions and objections, the Government approved the plan under G.O.Ms. No.414 dated 27-9-1975. It was notified and came into force from 1-10-1975."

In the same para, the Hyderabad Urban Development Authority said.

> "In the Master Plan of 1975 under planning division No. 3 the vacant land below Tank Bund adjacent to Ramgopal Mills on either side of Hussain Sagar surplus nalla to an extent of Acs.151-55 is reserved for recreation purposes as park and open spaces. A major part of the land was acquired and Indira Park was developed therein."

10. The State Government in its counter affidavit also admits the above material facts. In para 2 of the counter affidavit of the State Government, it is said that,

> "In G.O.Rt. No. 877 M.A., dated 17-10-1986, the Government approved the draft notification under Section 4(1) of the Land Acquisition Act.1894 submitted by the Joint Collector, Hyderabad, for acquisition of Acs.231.00 of land in Daira, Gangan mahal, Bakaram and Lingampally villages of Hyderabad District, below tank bund for National Park. The draft notification was published at pages 19-24 in the Andhra Pradesh Gazatte No. 44-A, dated 10-11-1966."

11. The State Government in para 3 of the same counter-affidavit said,

> "The Standing Committee of the Corporation recommended to the General Body of the Corporation to acquire only Acs.100-00 out of those Acs.231-00 by deleting certain areas

> in respect of which lay out plans were submitted. Thereupon the General Body in its Resolution No. 3 dated 6-11-1968 resolved to delete land covered by 16 survey numbers and sent proposals with plans for confining the acquisition to an extent of Acs.100.00 only out of the already notified area.......... The Government considered those objections and overruled them and issued G.O. Rt. No. 25, M.A. dated 9-1-1969 approving the draft declaration under Section 6 of the Land Acquisition Act which was sent by the Board of Revenue which was in existence at that time for an extent of Acs.99.19 guntas and the same was published in the extraordinary issue of the Andhra Pradesh Gazette dated 10-1-1969. But on actual verification of the above land, it was found to be Acs.101.19 guntas instead of Acs.99.19 guntas."

12. The Hyderabad Municipal Corporation in its counter-affidavit had admitted the above facts. In para 6 of the counter-affidavit of the Hyderabad Municipal Corporation there is a significant admission. There it is said,

> "I admit the averments in paras 5 to 10 of the affidavit to the extent that originally the Government in Master Plan has shown 231 acres of land as recreational zone."

13. From the above extracted statements it is clear that the above extent of Acs.101.19 guntas which was acquired by the Government is a part of Acs.151.55 cents which the developmental plan allocated to be developed as a recreational park. The specifications and details of the developmental plan published in G.O.Ms. No.414 Municipal Administration dated 27th September, 1975 clearly attest to this fact. It is, however, true that the Life Insurance Corporation of India had acquired an extent of nearly Acs.37.00 in the villages of Gaganmahal, Daira and Bagh Lingampally for promoting housing schemes and took possession of it on 12th of March, 1974 and subsequently an extent of Acs.10.95 out of the above extent of Acs.37.00 acquired by the Life Insurance Corporation of India has been sold and conveyed to the Income-tax Department while this writ petition was pending. Possession of that land was also taken by the Income-tax Commissioner from the Life Insurance Corporation on 16-9- 1986 and the Life Insurance Corporation had also constructed a few residential houses. But in my opinion these facts are of no legal significance for our purpose.

14. From the facts stated above, it is clear that Acs.151.55 cents has been reserved, according to the developmental plan for purposes of recreational park and that a part of that land has been later acquired by the Life Insurance Corporation of India and the Income-tax Commissioner for building residential houses. Neither in the counter-affidavit of the Life Insurance Corporation nor in the counter-affidavit of the Income-tax Commissioner the fact of publication of a draft and final developmental plan with respect to Acs.151.55 is specifically denied. In fact, the various public documents including the maps make the taking of such a plea by any party almost impossible. What is, therefore, ascertained by these two respondents is their title to this land. The Life Insurance Corporation of India in its counter affidavit has boldly asserted, "This Hon'ble Court has no jurisdiction or authority in law to issue any direction to the 1st respondent to encroach upon the land purchased by this respondent". There is no doubt that the Life Insurance Corporation is greatly mistaken in making the above assertion. The question in this writ petition is not, who owns the Land that is shown as a part of the recreational zone by the developmental

plan but whether that land owned either by the Life Insurance Corporation of India or by the Income-tax Department or by any other person or body is covered by a developmental plan and is allocated to be used as a recreational park. As I have noticed above, the setting up of such a case is almost impossible in this case. As a fact neither of these respondents have set up such a case specifically in their counter-affidavits although there is a vague and unspecified assertion in the counter-affidavit of the Life Insurance Corporation of India. On the other hand, there is positive affidavit evidence in the respondents' counter- affidavits admitting the preparation and publication of the developmental plan covering this very area of Acs.151.55. In this connection a letter dated 3rd of July, 1981 written by the Special Officer, Municipal Corporation of Hyderabad and filed into the Court as a material exhibit by the Income-tax Commissioner himself should be noticed Material part of that letter reads as follows:

> "Moreover in the year 1975, the developmental plan for twin cities of Hyderabad and Secunderabad has come into force. In the developmental plan, the entire stretch of Land from lower Tank Bund Road to Hussain Sagar surplus nall has been earmarked for recreational zone wherein residential houses are not permitted in normal course."

The above letter written in 1981 shows that the land of Acs.37.00 acquired by the Life Insurance Corporation of India is a part of the Acs.151.55 cents covered by the developmental plan published in G.O.Ms. No. 414.

15. From the above the conclusion that the land of Acs.151.55 cents situated below the Tank Bund and adjacent to Ram Gopal Mills on either side of Hussain Sagar surplus nall is declared by the developmental plan published in G.O.Ms. No. 414 as a recreational park and that 3, 7 and odd acres which was acquired by the Life Insurance Corporation of India is a part of the above extent of Acs. 151.55 cents covered by the development plan becomes unavoidable and inevitable. There is overwhelming uncontradicted documentary evidence in support of that conclusion. Many parties admit the fact in their counter- affidavits.

16. On the basis of the above conclusion it cannot be seriously contended that the Life Insurance Corporation or the Income-tax Department can use the land which they have acquired and which is presently under their occupation for the purpose of constructing residential quarters or for any other purpose except for the purpose of a recreational park.

17. It is undoubted that under the common law ownership which is a bundle or rights carries with it the right to put the property to any use the owner chooses. Under the common law, therefore, the Life Insurance Corporation as well as the Income-tax Department could not have been restrained from constructing residential quarters on the above 37 acres plot. Those bodies, would have been well within their legal powers as owners of their properties to build residential houses. But that ownership right is now curtailed by a statutory provision contained in the developmental plan. Putting the above 37 acres to residential use would be clearly contrary to the restrictions which the developmental plan had imposed on the above land. Developmental plan had forbidden any user of that land except as recreational zone. The common law rights of the owners must give in to the statutory restrictions. The common law use and enjoyment of these ownership rights should, therefore, be subject to the requirements of the statutory law of the developmental plan. Municipal laws are the earliest examples of statutory laws restricting the use

of property rights. Chapter XIII of the Hyderabad Municipal Corporation Act, 1955 and more particularly Section 464 of that Act which is now repealed and replaced by the provisions of the Andhra Pradesh Urban Areas (Development) Act, 1975 are of that nature. They provide in the interests of the general welfare of the community for the preparation and enforcement of development plans. Those laws require conducting of elaborate survey of the civil needs of the inhabitants and feasibility and practicability of the various land uses and the prospective growth of the city before demarcating the land for different purpose. According to that law the developmental plans should define the various zones into which the area sought to be developed may be divided and should also indicate the manner in which the land in each zone is proposed to be used. The dominant intention of these statutory provisions is to plan for the present and future development of the whole area by restricting and regulating the ownership rights of the landlords under the common law. Those owners can no longer enjoy their unrestricted right available to them under common law to use their lands as they desire. Once a developmental plan has been prepared and published in accordance with law, the owners of the area concerned can only use their property in accordance with and in conformity with the provisions of the developmental plan. Once the developmental plan has been legally and finally published, no one in the area can use the land contrary to the provisions of the developmental plan. In this case, it has already been shown that the developmental plan has been published in accordance with law in the abovementioned G.O.Ms. No. 414. We have also seen that the entire extent of Acs.151.55 cents of land abutting the Tank Bund and situated adjacent to Ram Gopal Mills on either side of Hussain Sagar surplus nalla was reserved in the above G.O.Ms. No.414 by the developmental plan for the purpose of recreational park. In view of the above, the assertion of the Life Insurance Corporation of India or that of the Income-tax Department that they have a legal right to build residential houses on the land they own because they own that land should be rejected as being contrary to all accepted principles of law. In using or attempting to use the land which they have acquired within the recreational zone as residential area, these bodies or authorities are clearly violating the provisions of the developmental plan and are acting contrary to law. Because the developmental plan is law, it should also be held that the State Government and the Municipal Corporation of Hyderabad and the Hyderabad Urban Development Authority are equally bound to implement and enforce the developmental plan. Rule of law requires these authorities to implement the developmental plan. These legal authorities cannot, therefore, permit either the Life Insurance Corporation of India or the Income-tax Department to use any part of the abovementioned Acs.151.55 cents of land for any purpose other than the one indicated in the developmental plan. It may be noted that the Special Officer of the Hyderabad Municipal Corporation in his letter of 1981 written to the p> State Government had shown long time back complete awareness of this plain legal position. His objection to use of the above land by the Income-tax Department for residential purposes is based solely on the ground that the use of this land in the developmental plan is shown as recreational park and that would not be permissible to use such a land as a residential area. It is as well that I make it clear that the declarations regarding demarcations of Land user contained in a developmental plan published under statutory authority are neither pious aspirations nor empty promises. Such declarations are legally enforceable. Those declarations impose legal obligations on the land owners and the public authorities. The public authorities should enforce those obligations. If they do not, it becomes the solemn duty of this Court to compel those authorities to perform their mandatory obligations. Law should not be allowed to be mocked by the haughty and the mighty. I, therefore, declare that the use of the above area for the construction of residential houses by the Life Insurance Corporation of India or the Income-tax Department, is quite clearly illegal and contrary to law.

18. The argument that the above land of 37 acres and odd had been acquired for a public purpose of building houses by the Life Insurance Corporation of India and that, therefore, the Life Insurance Corporation or its transferee can build houses on that land even acting contrary to the developmental plan has no merit or meaning. An element of public purpose is a necessary condition for the exercise of that inherently unjust powers of eminent domain, but is otherwise irrelevant for deciding the question whether the Life Insurance Corporation can disregard or ignore a developmental plan. It is relevant only for validating a compulsory transfer of title. It has the least relevance in the context of the restrictions to be imposed on the land user in accordance with the terms of the developmental plan. That a transferee cannot have greater rights than the original owner is too plain a proposition to require elaboration.

19. Acting in utter contempt of rule of law, the State Government under G.O.Rt. No. 449, Municipal Administration, dated 18-3-1986 relaxed the provisions of Rule 10(1) of the layout Rules with respect to the maintenance of the width of the roads. Acting similarly the State Government also relaxed the provisions of bye-laws 34(2) and 70 of the Building bye-laws, 1972 with respect to the maintenance of the height of the kitchen and bed-rooms etc. But those relaxations would be wholly ineffective and inoperative in an area reserved to be used by the developmental plan solely for recreational purposes. Such relaxations made by the State Government would have been fruitful if made with respect to lands outside the recreational zone where it is permissible to build residential buildings. The above relaxation orders could not be construed as an amendment to the developmental plan either. Once approved, the developmental plan can only be altered by the well settled statutory method mentioned in Section 12 of the A.P. Urban Areas (Development) Act, 1975. Under that Section, the A.P. Urban Areas Development Authority can make modification without affecting important alterations in the character of the developmental plan. Similarly, the Government's power to make modifications to the developmental plan is hedged by several limitations. In either case, a prior notice should be published inviting objections and suggestions from all with respect to any amendments proposed to be made to a developmental plan. The objections so received should be considered by the proposer of the draft amendments. This statutory obligation to hear and dispose of the objections shows that the law treats the alteration of a developmental plan as affecting the rights and valuable interests of the city inhabitants. There is thus a lis present which can be dispose of only by applying judicial norms. Modifications to the approved developmental plan cannot, therefore, be made except for substantial reasons. In such a scheme of things policy considerations and personal predilections and intention to favour powerful bodies like Life Insurance Corporation or Income-tax Department can have no place. Further every modification to the developmental plan validly approved should be published in a reasonable manner. It is nobody's case here that the Government has ever published any draft modification or invited any objections or otherwise followed the procedure dictated by Section 11 of the A.P. Urban Areas (Development) Act, 1975 or it published a finally modified developmental plan. Thus it must be held that the developmental plan published in G.O.Ms. No. 414 still holds the field even to this day. Inasmuch as the abovementioned G.O.Rt. No. 449 dated 18th March, 1976 was not even remotely connected with the scheme of Section 11 of the A.P. Urban Areas (Development) Act, that G.O. cannot be considered to be valid or efficacious to alter the land uses fixed by the developmental plan. Relaxing the Layout rules and the Building bye-laws has no relevance to the enforcement of developmental plans. Such a relaxation as the one made by the Government in G.O.Rt. No. 449 can only apply to the lands which are permitted to be used by the developmental plan as

residential areas. Where there is a legal prohibition regarding the use of certain areas except as a recreational park, the relaxations granted under the Layout Rules and the Building byelaws cannot lift those prohibitions. They do not apply at all because the layout rules and the building bye-laws would not apply to areas where there is no (sic) legal prohibition to build residential houses.

Law of Ecology and Environment :

20. The matter may be examined from the view point of our legal and constitutional obligation to preserve and protect our ecology and environment.

21. Under the common law, ownership denotes the right of the owner to possess the thing which he owns and his right to use and enjoy the thing he owns. That right extends even to consuming, destroying or alienating the thing. Under the doctrine of right to choose the uses to which a owner can put his land belongs exclusively to his choice. The right of use thus becomes inseparable from the right of ownership. The thrust of this concept of individual ownership is to deny communal enjoyment of individual property. This private law doctrine of ownership is comparable in its width and extent to the public law doctrine of sovereignty.

22. Into the domain of this doctrine of ownership, it is the collectivist jurisprudence of municipal administration that has made its first in roads. But in the recent past the law of ecology and environment has even more seriously shaken its roots. Under the powerful impact of the nascent but the vigorously growing law of environment the unbridled right of the owner to enjoy his piece of land granted under the common law doctrine of ownership is substantially curtailed.

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

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

Similarly, the African Charter on Human and People's rights declares that "all peoples shall have the right to a general satisfactory environment favorable to their development". Judicially responding to this situation Justice Douglas has suggested that environmental issues might be litigated in the name of "the inanimate object about to be. . . deposited" with those who have an "intimate relation" with it recognized as its legitimate spokemen. Common law being basically blind to the future and working primarily for the alienated good of the individual and operating on the cynical theory that because posterity has proved its utter inadequacy to achieve the urgent

task of preservation and protection of our ecology and environment. Roscoc Pound blamed the common law for its serious social shortfalls. He wrote :-

> "Men have changed their views as to the relative importance of the individual and of society; but the common law has not. Indeed, the common law knows individuals only. . . . . It tries questions of the highest social import as mere private controversies between John Deo and Richard Deo. And this compels a narrow and one sided view." Rejecting these individualistic legal theories of common law that are found to be incompatible with the basic needs and requirements of the modern collective life environmental laws all over the world lay down rules for the preservation of environment and prevention of pollution of our atmosphere, air, earth and water. Our Parliament has recently enacted the Environment (Protection) Act (Act No. 29 of 1986) for the purpose of protecting and improving our environment. It widely distributed powers on all those who are traditionally classified as not aggrieved persons to take environmental disputes to Courts. This is clearly in harmony with our Constitutional goals which not only mandate the State to protect and improve the environment and to safeguard the forests and wildlife of the Country (Article 48A); but which also hold it to be the duty of every one of our citizens to protect and improve the natural environment including forests, lakes, rivers and wildlife and to have compassion for living creatures (Article 51-A(g)).

24. From the above it is clear that protection of the environment is not only the duty of the citizen but it is also the obligation of the State and all other State organs including Courts. In that extent, environmental law has succeeded in unshackling man's right to life and personal liberty from the clutches of common law theory of individual ownership. Examining the matter from the above constitutional point of view, it would be reasonable to hold that the enjoyment of life and its attainment and fulfilment guaranteed by Article 21 of the Constitution embraces the protection and preservation of nature's gifts without life cannot be enjoyed. There can be no reason why practice of violent extinguishment of life alone should be regarded as violative of Article 21 of the Constitution. The slow poisoning by the polluted atmosphere caused by environmental pollution and spoilation should also be regarded as amounting to violation of Article 21 of the Constitution. In *R. L. and E. Kendra, Dehradun v. State of U. P*[1]*.,* the Supreme Court has entertained environmental complaints alleging that the operations of lime- stone quarries in the Himalayan range of Mussoorie resulted in depredation of the environment affecting ecological balance. In *R. L. and E. Kendra, Dehradun v. State of U. P*[2]*.,* the Supreme Court in an application under Article 32 has ordered the closure of some of these quarries on the ground that their operations were upsetting ecological balance. Although Article 21 is not referred to in these judgements of the Supreme Court, those judgements can only be understood on the basis that the Supreme Court entertained those environmental complaints under Article 32 of the Constitution as involving violation of Article 21's right to life.

25. It, therefore, becomes the legitimate duty of the Courts as the enforcing organs of Constitutional objectives to forbid all action of the State and the citizen from upsetting the environmental balance. In this case the very purpose of preparing and publishing the developmental plan is to maintain such an environmental balance. The object of reserving certain

area as a recreational zone would be utterly defeated if private owners of the land in that area are permitted to build residential houses. It must, therefore, be held that the attempt of the Life Insurance Corporation of India and the Income-tax Department to build houses in this area is contrary to law and also contrary to Article 21 of the Constitution.

26. Accordingly, I allow this writ petition and direct a mandamus to issue forbidding the Life Insurance Corporation of India and the Income-tax Department, Hyderabad, from raising any structures or making any constructions or otherwise using the land referred to above for residential purposes. I also direct the State Government of Andhra Pradesh, the Hyderabad Municipal Corporation and the Bhagyanagar Urban Development Authority, Hyderabad, to enforce the law as contained in the developmental plan in G. O.Ms. No. 414 and to prevent and forbid the Life Insurance Corporation of India and the Income- tax Department, Hyderabad, from using the above land for residential purposes. I also direct the State Government of A. F., the Hyderabad Municipal Corporation and the Bhagyanagar Urban Development Authority, Hyderabad, to remove within sixty days any structures that might have been raised by the Life Insurance Corporation of India or the Income-tax Department, Hyderabad, during the pendency of this writ petition in this Court. I, however, make it clear that any residential houses or structures which have been built prior to the filing of this writ petition will not be covered by the judgement.

27. The writ petition is accordingly allowed with costs. Advocate's fee Rs. 500/-.
Petition allowed.

[1] AIR 1985 SC 652

[2] AIR 1985 SC 652