Karnataka High Court
M/S. Happy Home Builders ... vs Corporation Of The City Of ... on 29 March, 1989
Equivalent citations: AIR 1990 Kant 56, ILR 1989 KAR 1430
Bench: P Bopanna
ORDER

1. These petitions are disposed of by a common order since the facts are common in all these petitions and certain common questions of law arise for consideration in all these petitions.

2. En W.P. Nos. 14386 to 14390 of 1987. she petitioners are the builders, owners of highrise residential apartment buildings and it is common ground that they had put up these highrise buildings in accordance with the plans sanctioned by the Corporation of City of Bangalore which is the 1st respondent herein. They are aggrieved by the notices issued by the Corporation which are produced as Annexures-A to E in these petitions. By those notices, the Commissioner for Corporation who is the 1st respondent herein (hereinafter referred to as the Commissioner) had called upon the petitioners to bring down the height of the building to 35' 55' with ground floor plus two, four upper floors respectively within 30 days from the date of receipt of these notices failing which they were warned that suitable action would be taken by the Corporation to demolish the offending portions of the buildings and that the Corporation would recover the costs of demolition as arrears of land revenue.

3. In W.P. Nos. 16887 & 16888 of 1987, the petitioners w ho are builders of the high-rise buildings have sought for the quashing of the very same notice which is challenged by the petitioners in the other petitions above-mentioned and they have also sought for a direction to the Commissioner 10 issue them an occupancy certificate.

4. Likewise, in W.P. Nos. 12486 to 12488 of 1985, the petitioners who are the builders of the highrise building in question and owners of some of the apartments in the said building have challenged the validity of identical notice issued to them and they have also sought for an occupancy certificate under the relevant provisions of the Karnataka Municipal Corporations Act, 1976 (in short the Act).

5. Likewise, in W.P. Nos. 8839 & 8840 of 1985, the petitioners who are builders as also owners of certain apartments have sought for the quashing of the notice issued by the Commissioner in terms similar to the notices in other writ petitions and they have also sought for a writ in the nature of mandamus to the Commissioner for the issue of occupancy certificate under the relevant provisions of the Act.

6. In W.P. No. 15677 of 1987, the petitioner who is the owner of an apartment in the highrise building in question has challenged the validity of a similar notice issued to him.

7. The petitioner in W.P. No. 16791 of 1987 is a Co-operative Society constituted under the Karnataka Co-operative Societies Act. This Society is formed by the flat owners of the highrise building in question and it has challenged the validity of similar notice issued by the Commissioner which is produced as Annexure-A in the writ petition.

8. In W.P. No. 20176 of 1985, the petitioners, who are builders, owners have only sought for a writ in the nature of mandamus to the Commissioner directing him to issue an occupancy certificate under the relevant provisions of the Act.

9. Likewise, W.P. No. 5132 of 1985 and Writ Petitions Nos. 13267 & 13268 of 1985, the petitioners who are the builders/owners have sought for a writ in the nature of mandamus to the Commissioner directing him to issue an occupancy certificate under the relevant provisions of the Act.

10. In W.P. No. 16581 of 1987, the petitioner who is a builder has sought for the quashing of the notice produced as Annexure-A in the writ petition which is in terms similar to the notice issued to the other petitioners.

11. In W.P. Nos. 15245 and 15246 of 1987, the petitioners who are builders have sought for the quashing of notices produced as Annexures-A and B in the writ petitions which are in terms similar to the notice issued to the other petitioners.

12. The facts in all these petitions will have to be noted individually since there is slight variation in the facts in regard to the petitions in which the validity of the notice under Section 321 of the Act is challenged and in regard to the petitions in which a direction tor the issue of occupancy certificate is sought for.

13. In the first W.P. Not 14386 of 1987. the petitioner Deepak Sood under a sanctioned plan No. LP.4741 78-79 dated 22-8-1980 had constructed the premises consisting oi" ground floor plus 7 upper floors and completed the construction in the month of Dec. 1982 and was granted occupancy certificate on 17-9-1983. He has been asked to demolish the top 5 floors by the impugned notice dated 18-8-1987. In W.P.No. 14387 of 1987, the petitioner Sunney Homes Pvt. Ltd. which is a firm of builders had under sanctioned plan No. LP. 1436 80-81 dated 14-8-1980 constructed a building consisting of ground floor plus 7 upper floors and the same was completed on 24-7-1983. Occupancy certificate was granted on 17-4-1984 and it has been asked to demolish the top 3 floors under the impugned notice. In W.P. No. 14388 of 1987, the petitioners Sukhi Traders which is also a firm of builders had obtained a sanctioned plan No. LP.4354 79-80dated 22-2-1980 permitting them to put up a ground floor plus 7 upper floors, the same was constructed in the year 1984, occupancy certificate was issued on 17-4-1984 and they have been asked to demolish the top three floors by the impugned notice. Petitioner in W.P. No. 14389 of 1987 is also a firm of builders and under a sanctioned plan No. L.P.1367/-80-81 dated 31-10-1980, she was permitted to construct a building consisting of ground floor plus 6 upper floors, the same was completed in the year 1984 and occupancy certificate was granted in the same year and she has been asked to demolish the top two floors under the impugned notice. Petitioner in W.P. No. 14390 of 1987 is also a firm of builders and under sanctioned plan No. LP.-2309 79-80 was permitted to build ground floor plus 6 upper floors, the same was completed in 1986, occupancy certificate was granted in the same year and it has been asked to demolish the top two floors under the impugned notice. In W.P. Nos. 15245 & 15246 of 1987, the 1st petitioner Atual Builders and the 2nd petitioner Sonawala Builders were granted sanctioned plans bearing Nos. L.P.4047/79-80 dated 6-7-1981 and L.P. No. 3989/79-80 dated 4-12-1979 respectively and conditional occupancy certificates were granted in the year 1983 and

they are asked to demolish the top three floors by the impugned notices.

14. All these petitioners having completed the buildings in question in accordance with the sanctioned plans and having obtained either the occupancy certificate or a conditional occupancy certificate, had parted with their rights in the premises in question by selling the same to various third parties. It is not in dispute that in all these highrise buildings covered by these petitions, the rights of third parties have intervened in that, they have parted with their valuable consideration either under agreements of sale or under registered deeds of sale, they have been put in possession of the apartments in these premises and they are in possession and enjoyment of the same. Their grievance is that the impugned notices did not give them any opportunity to show cause although such an opportunity is a mandatory requirement of S. 321 of the Act and even then, they had filed their detailed objections but without consideration of those objections, the Commissioner had issued the impugned notices. Their further case is that the Commissioner without issuing any further or final order as required under S. 321 of the Act may proceed to take action for demolition and hence they have approached this Court for appropriate reliefs.

15. In W.P. No. 16581 of 1987, the petitioner who is a builder had obtained a sanctioned plan bearing L.P. No. 4920/80-81 dated 3-8-1983. The said construction was completed in June 1985 and necessary completion report was given to the Commissioner for issuance of the occupation certificate. In spite of repeated requests, the Commissioner had not issued the occupation certificate in respect of the completed residential apartment complex namely, Cunningham Apartments. However, after pursuing the matter for along time with the Commissioner, he ultimately granted a provisional occupation certificate only in respect of the ground floor and Your upper floor and refused to give occupation certificate for the 5th. 6th and 7th floors. This occupation certificate was issued by the Commissioner by oversight in favour of M/s. Bakhtwar Constructions which is a sister concern of the petitioner. Thereafter, the petitioner got the connections like, electricity, water and sewerage to the building and the building was rendered fit for the occupation of various persons who had entered into agreements with the petitioners for acquiring their respective apartments. A copy of the occupation certificate dated 18-4-1986 is produced by the petitioner as Annexure-F in the writ petition.

16. The grievance of the petitioner is that by notice dated 10-9-1987 he is asked to bring down the height of the building by demolition of flats in the 5th, 6lh and 7th floors. Though the building was completed in the month of June, 1985 and completion report was filed on 22-6-1985, occupation certificate was issued only to the ground and 4 upper floors by the Commissioner on 18-4-1986.

17. The petitioner in W.P. No. 15677 of 1987 is the owner of the flat bearing No. 11 A, 1st Floor Cunningham Apartments, No. 5, Edward Road, Bangalore.

The facts of this petition are similar to the facts in W. P. No. 16581 of 1987 and therefore, there is no need to repeat the facts.

18. The petitioner in W.P. No. 16791 of 1987 had obtained a sanctioned plan bearing No. LP.1560 80-81 dated 3-10-1980 which provides for a garage and 7 floors in all the Blocks. Subsequently, in B

and C Blocks, 8 floors were put up. It is the case of the petitioner that at all relevant points of time, the construction of the said building was made to the knowledge of the Corporation authorities who repeatedly had also inspected the building from time to time. Further on 3-11-1982 the construction of 8th floor in 'B' and 'C' Blocks was also regularised by the respondent after accepting the compounding fee and the matter ended at that stage. Subsequently, a completion certificate was also issued by the Commissioner and thereafter all the apartments were occupied. The property was also subjected to Corporation taxes as assessed by Commissioner and the same have been collected by him. Quite recently, the Commissioner had also attempted to revise the tax in relation to which certain proceedings are pending, that katha had been given by the Commissioner nearly 5 years ago and the entire building is occupied by the various occupants; that during the past 5 years, to the knowledge of the Corporation, some of the flats have been sold and transferred to others and applications have been made not only before the Registrar of the Co-operative Societies but also before the Corporation for making out katha in the names of the original owners and transferees. By the proceedings taken by the Corporation each individual flat has been given separate katha by it and with the consent and 'no objection' from the Commissioner water supply and electricity had been given to these flats in this building; that at all relevant points of time, including the time when construction was being put up by Mamata Enterprises who are the builders; the Commissioner knew that the building in question was a multistoreyed building consisting of 98 flats, some of which are non-residential and most of which are residential flats; that Commissioner was also aware that the said building was put up only for purpose of sale to individual owners and that individual owners would occupy and use the same for residential or office purpose in accordance with the sanctioned plan; that the Commissioner was also fully aware that one's life's savings would be invested by the occupants; that more than five years after completing the building and after obtaining the completion certificate from Commissioner, the building had been fully habited and occupied and various residents have been living there; that there have been no complaints or objections by any adjacent owners of the property; that about two Blocks away on the opposite road, Life Insurance Corporation had put up a building of 22 floors which was also sanctioned by the Corporation; that the said building was put up not by the Government but by the L.I.C. and it was subsequently transferred to the Government; that at all relevant points of time, including the time when construction was under progress and occupancy certificate was granted, the L.I.C. was the owner of the property and they have not been given special exemptions under Comprehensive Development Plan or tinder the provisions of Karnataka Town and Country Planning Act (in short the K. T. & C. P. Act).

19. On these facts, they have challenged the impugned notice produced as Annexure-A which is in terms similar to the notices served on the other petitioners in the other writ petitions. They have further stated that it is impossible to remove the top floors without damaging the ground floors and the structural strength of the entire building would be weakened tremendously, causing danger to the lives and property of the occupiers of the apartments.

20. Petitioners in W.P. Nos. 16887 and 16888 of 1987 are the bilders and one of the occupants of the apartment in the highrise building in question respectively. Their case is that on the application made by the first petitioner, the Commissioner approved the building plan for the construction of an apartment consisting of basement, ground floor for car parking and 6 floors by his order dated

29-7-1977 bearing No. LP.ENE.1630/-75-76: that the building plan was approved by the Commissioner after conducting the necessary enquiry as prescribed under law, and the building licence and the approved plan were renewed from time to time; that in pursuance of the said building licence and the approved plan. 16 flats were constructed on the site bearing No. 19, Museum Road, Bangalore; that the construction of the building was completed and the building was made ready for occupation in Dec. 1983; that immediately, thereafter, an application dated 29-12-1983 was filed before the 2nd respondent for grant of occupancy certificate as provided under S. 310 of the Act; that the said application was accompanied by the completion certificate issued by the Architects, which is produced as Annexure-C in the writ petitions; that in the meanwhile on account of the collapse of Gangaram building on 12-9-1983, the Government constituted a Sub-Committee to inspect all the highrise buildings and submit its report; that the Sub-Committee so constituted, visited the building put up by the Ist petitioner on 10-10-1983 and inspected the building and directed the 1st petitioner to conduct soil test and structural design test through any one of the 4 well known institutes which have specialised in this field; that the Ist petitioner got the said tests done by the Indian Institute of Technology, Madras, which was one of the Institutes suggested by the said Committee; that the Institute after inspecting the building and after conducting the necessary tests as required had issued a certificate to the effect that the building was safe for the number of floors constructed in the said construction; that the opinion of the experts clearly suggests that the building is structurally strong and there cannot be any objection for the occupation of the said building and that the said report given by the said Institute was submitted to the Commissioner. Though the building was complete in all respects in accordance with the sanctioned. plan and the application for occupancy certificate was made on 29-12-1983, the case of the 1st petitioner is that the Commissioner did not send any communication nor did he pass any orders for grant of occupancy certificate within 21 days from the date of making the application as required under sub-s. (2) of S. 310 of the Act and therefore the petitioners and other owners of the flats are entitled to occupy the flats in the said building. However, since there is no specific order issued by the Commissioner granting occupancy certificate, the Water Board, Electricity Board and Sewerage Board have refused to give water, electricity and drainage connections to the petitioners in spite of the specific request made by the petitioners in that behalf. In the circumstances, the petitioners approached this Court for the necessary reliefs in W.P. Nos. 8839 and 8840 of 1985. In the said Writ Petitions the petitioners had filed a memo, as under :

"The petitioners in the above writ petitions submit that if they are permitted to occupy the apartment known as 'Lumbini Apartments' upto five floors (including the 5th floor) they will not occupy the 6th floor pending disposal of the above writ petitions. Further, they submit that their occupation of the building upto 5th floor will be subject 10 the result of the writ petition."

In view of the above undertaking, this Court observed that :

"It appears to me that there could be no objection for the Corporation to grant the occupation certificate. The Division Bench judgment of this Court on which the Corporation relies is also pending in appeal before the Supreme Court."

On the submission made by the learned Counsel for the Corporation in these petitions, this Court further observed that :

"As far as these deviations are concerned, it is sufficient to state that the issue of the occupation certificate as directed in this order will be subject to the final decision in the writ petitions regarding the deviations.

In the circumstances, I make the following interim order :--

Respondents-1 to 3 are directed to issue the occupation certificate, permitting the petitioner to occupy only five floors subject to the remit of this writ petition".

21. In W.P. No. 20176 of 1985, the 1st petitioner is a builder and the 2nd petitioner is a purchaser of one of the flats in the building in question- Their case is that the Corporation sanctioned the plan bearing No. LP.6612 79-80 dated 23-1-1980 for the construction of residential blocks and one commercial block on land bearing Xo. 18. M.G. Road. Bangalore; that the sanctioned plan permitted the construction of ground floor plus 7 storyes; that just opposite to the site in question there is a big building of Vijaya Bank consisting of 14 storeys, there is also Hotel Taj Residency consisting of 9 storeys: that the height of the building is 80 ft; that the building was constructed strictly according to the plan sanctioned by the Corporation and the Architect who supervised the construction had also issued a certificate to the effect that the building was constructed in accordance with the sanctioned plan; that the second petitioner and several others after looking into the sanctioned plan issued by the Corporation, purchased flats in the building by paying valuable consideration; that most of the buyers of flats in the building are either Government Servants or retired Government Servants or Ex-Military Personnel who all belong to middle class families, and all of them have purchased flats mainly for the purpose of their bona fide use and personal occupation; trial the first petitioner had sold the flats on the assumption that it will be able to construct the building in accordance with the sanctioned plan and flats therein would be available for occupation to the owners of such flats; that the 1st petitioner has invested about Rs.75,00,000/- for the construction of the apartments and has raised huge loans and it has to pay huge interest on the loans raised by it from Banks and others; that after the collapse of the Gangaram building the 1st petitioner was asked by the Sub-Committee to produce certificates from certain Institutes like I.I.T. Madras to the effect that the building in question was quite safe for the habitation of the residents who have been put in possession of the apartments in question; that I.I.T. Madras by its report dated 13-7-1984 had certified that the requirements expressed by the Sub-Committee had been complied with and that the building constructed by the 1st petitioner was stable and sound; that report was also forwarded to the first respondent along with a covering letter and thereafter the 1st petitioner made an application on 15-5-1984 along with the certificate issued by the Architect to respondent-3 requesting him to grant the occupancy certificate. After making the said application by the 1st petitioner, the Director of the 1st petitioner and other employees of the 1st petitioner approached respondents-1 and 2 on several occasions and requested them to issue the occupancy certificate. The 1st petitioner did not get any response and therefore he was constrained to send a reminder on 19-2-1985 addressed to the 2nd respondent bringing to his notice that in spite of repeated request made by it, occupancy certificate was not granted and steps may be taken to issue the same. In

response to this reminder, the third respondent by his order produced as Annexure-A dated 29-4-2985 informed the 1st petitioner that the occupancy certificate prayed for by it could not be granted as the plan was sanctioned in violation of the Zoning Regulations and bye-laws in respect of the number of floors. The said order further slated that in view of the Government Order dated 27-6-1984 occupancy certificate could not be granted as the plan sanctioned was not in accordance with the then Zoning Regulations and bye-laws. The 1st petitioner again approached the respondents and requested them to reconsider the decision. It was brought to the notice of the respondents that great inconvenience and hardship would be caused to the petitioners and other flat owners on account of the decision of the respondents in refusing to issue occupancy certificate solely on the ground that the building plan sanctioned by the Corporation was not in accordance with the then Zoning Regulations and bye-laws. But. no decision was taken by the respondents and hence this petition for a direction to the Corporation Authorities for the issue of an occupancy certificate. An interim order was made by this Court on 6-1-1986 permitting the Has owners to occupy the first floor, second floor, third floor and fourth floor and use the ground floor exclusively for car parking subject to the result of the writ petition.

22. In Writ Petitions Nos. 13267 and 13268 of 1985, the case of the 1st petitioner is that the building in question was put up under sanctioned plan No. L.P. 4354. 80 dated 22-2-1980: that the sanctioned plan provided for car parking in the ground floor and seven upper floors with four flats in each floor from 1st to 6th floors and two flats in the 7th floor; that the entire building was completed in all respects and was ready for occupation in Feb. 1984; that most of the flats in the building so constructed have already been sold to various parties : that the second petitioner is one of the purchasers of an apartment constructed by the first petitioner and she had paid the entire consideration for the same; that she is a widow and has no issues and her late husband N. K. Iyengar had constructed a residential building in Koramangala Layout and after the death of her husband, she had to dispose of the same to pay the outstanding bills and also for the reason that she being alone, she could not stay in such a far off layout, and this flat was purchased by her from the proceeds of the sale of the aforesaid building. The petitioners' grievance is that no occupancy certificate has been issued to them despite the fact that the building was constructed in accordance with the sanctioned plan.

23. In Writ Petition No. 5132 of 1985 the 1st petitioner is a building Company, the 2nd petitioner is a Director of the 1st petitioner and the 3rd petitioner is one of the purchasers of the flats in the highrise building in question. Their case is that on the application made by the 1st petitioner as required under S. 299 of the Act, the Commissioner after making the necessary enquiry granted a building licence and approved the plan as per plan bearing No. LP.1871/79-80 in Site No. 28-A; that in pursuance of the said plan the 1st petitioner put up the building in question and the entire building was ready for occupation during the month of Sept. 1983 itself; that on behalf of the 1st petitioner, M/s. Elite Builders made an application for grant of occupancy certificate on 9-9-1983 and the 1st petitioner was informed that the issuance of occupancy certificate would be considered on receipt of the expert Committee's opinion on the highrise buildings regarding structural stability of the building constructed by the 1st petitioner. Accordingly the Technical Advisory Committee inspected the building and conducted certain technical tests and on the basis of the tests conducted by the expert Committee, the Commissioner directed the 1st petitioner to get the hammer test and

soil test conducted by any one of the following institutions;

(a) Indian Institute of Technology, Bombay;

(b) Indian Institute of Technology, Madras;

(c) Indian Institute of Science; Bangalore;

(d) University College of Engineering, Civil Engineering Department, Bangalore University, Bangalore.

(e) Institute of Engineers, Bangalore.

The 1st petitioner as directed by the Commissioner got the hammer test done by the Indian Institute of Technology, Madras and soil test by the Department of Civil Engineering, Bangalore University and submitted their reports to the 2nd respondent on 29-7-1984. However, in spite of these reports testifying to the structural stability of the building in question, the application of 1st petitioner for grant ol occupaney certificate was rejected by the authorities on the ground that the plan sanctioned was in violation of the then Zoning Regulations and bye-laws. Various representations made by the petitioners to the authorities did not evoke any favourable response and hence they have approached this Court for the necessary reliefs.

24. In Writ Petitions Nos. 12486 to 12488 of 1985 the 1st petitioner who is a builder and 2nd & 3rd petitioners who are purchasers of the flats in the building in question have challenged the validity of the demolition notices issued by the Corporation. They have also sought for a writ in the nature of mandamus to the authorities for issuing the occupancy certificate. In this case also the building in question was put up under the sanctioned plan No. 6058 79-80 and that plan was sanctioned after conducting the necessary enquiry as prescribed under the Act; that the construction of the building was completed and it w as ready for occupation in the month of July. 1982; that on 20-7-1982 the 1st petitioner wrote a letter to the Commissioner requesting him to issue a 'No Objection' Certificate in favour of the Karnataka Ele-ctricity Board and the Bangalore Water Supply and Sewerage Board for the purpose of obtaining water and sanitary connections to the said building but no reply was received to the said letter; that subsequently the 1st petitioner as required by the Sub-Committee constituted by the State Government after the collapse of the Gangaram Building submitted a certificate from its structural Engineer in proof of the fact that the building was structurally sound in all respects and fit for human habitation; that even then the occu-pancy certificate was not issued by the respondents.

25. In Writ Petitions Nos. 8839 and 8840 ol 1985 the 1st petitioner is a firm of builders and the 2nd petitioner is one of the purchasers of a flat in the building in question. Their grievance is that they were not issued with the occupancy certificate albeit the fact that the building in question was complete in all respects in accordance with the sanctioned plan bearing No. LP.ENE 1630/76-77 dated 29-7-1977; that the plan was approved by the Ist respondent after conducting the necessary enquiry as prescribed under the Act and the building licence and the approved plan were renewed

from lime to time; that the construction of the building was complete and the building was made ready for occupation in Dec. 1983 and immediately thereafter an application dated 29-12-1983 was filed before the Commissioner for grant of occupancy certificate as provided under S. 310 of the Act and that application was accompanied by the completion certificate given by the Architects. Thereafter the 1st petitioner obtained the expert report from the Indian Institute of Technology as called upon to do so by the Sub-Committee; that I.I.T., Madras after making the necessary tests had clearly certified that the building was structurally strong and there could not be any objection for occupation of the said building. The report of the I.I.T., Madras was submitted to the 2nd respondent on 20-6-1984, but the 2nd respondent had not passed am orders on the application of the 1st petitioner for occupancy certificate. The 2nd respondent having not passed any orders within 21 days from the date of the application made as required under sub-s. (2) of S. 310 of the Act, the petitioners and the other owners of the flats are entitled to occupy the fiats in the said apartment. However, since there is no specific order issued by the 2nd respondent granting occupancy certificate, the Water Board, Electricity Board and Sewerage Board have refused the petitioners to give water, electricity and drainage connections despite the specific request made by the petitioners in that behalf. The further case of the 1st petitioner is that for the first time it had received a communication dated 18-7-1984 from the authorities informing that the request made for grant of occupancy certificate is rejected on two grounds i.e., (1) that the construction of the building was not in accordance with the sanctioned plan and (2) in view of the Government Order dated 27-6-1984 issuance of the occupancy certificate could not be considered as the sanctioned plan was not in accordance with the then Zoning Regulations and bye-laws. The petitioners' case is that they have not committed any serious violation of the sanctioned plan while constructing the building; that the violation of the sanctioned plan by the 1st petitioner is of very minor nature and is of no consequence at all; that as per the sanctioned plan the 1st petitioner was expected to have a covered balcony without the walls on two sides of the balcony on the 1st to 6th floors of the building instead of keeping the two sides of the balcony open; that the 1st petitioner as a measure of safety had constructed two walls with the windows and the said construction would not affect the rights of other neighbouring owners or any other person; that the only deviation from the plan is that the 1st petitioner had put up two walls on the balcony with windows and that the Corporation could not have had any objection for approval of the plan if a revised plan had been submitted by the 1st petitioner before the construction of the building; that the Commissioner has the power to compound the irregular constructions by accepting the compounding fee; that in fact the Corporation itself had issued a circular dated 6-7-1984 in No.CE/PS/288/84-85 on the basis of the Government Order dated 27-6-1984 in No. HUD 327 MNY 82 directing the concerned authorities of the Corporations to compound the unauthorised constructions wherever the deviations are of minor nature. Accordingly, the 1st petitioner gave a letter dated 2-7-1984 requesting the Corporation to regularise the construction by accepting the compounding fee and grant the occupancy certificate. But, the Corporation has not taken any steps on the request of the 1st petitioner. Consequently, the Corporation has not issued the occupancy certificate which according to the petitioners is highly arbitrary, discriminatory and illegal since according to them in similar circumstances in respect of buildings similarly situated and constructed, the Commissioner has granted the occupancy certificate. They have referred to the cases of Sunney Homes Pvt. Ltd., M/s. Longford Court Apartments Pvt. Ltd., M/s. Maheno Apartments as also the Vijaya Bank building. According to them these buildings have been given the occupancy certificates despite the fact that the facts and

circumstances governing the construction of these buildings are similar to the facts and circumstances governing the petitioners' case.

26. In regard to the issuance of the demolition notices, the stand of the Corporation is found in the return filed in W.Ps. Nos. 14386 to 14390 of 1987. Their plea is that this Court in W.Ps. Nos. 3386 and 3387 of 1981, disposed of on 11-6-1982 had declared that in the Local Planning Area of the City of Bangalore no residential high-rise apartment building could exceed one plus four floors and height of such building shall not exceed 55', as provided in the ODP for the City of Bangalore framed under the Town and Country Planning Act, 1961; that the judgment of this Court in the above petitions was affirmed by the Supreme Court in Civil Apeal No. 2780 of 1981 by its judgment dated 19-7-1987; that in view of the provisions contained in S. 505 of the Act, the Corporation is bound to exercise its powers in conformity with the provisions of the K.T. & C.P. Act and therefore the Corporation had to call upon the petitioners to bring down the height of the buildings in question to conform to the limitations prescribed in the ODP and the Zonal Regulations; that the Corporation has the po wer and jurisdiction under S. 308 of the Act to call upon the concerned party to conform to the building bye-laws and the provisions of law, by making necessary alterations; that the impugned orders were made soon after the law was declared by the Supreme Court in the aforementioned Civil Appeals; that the petitioners cannot plead estoppel against law and it is not disputed that the constructions of the buildings in question by them are contrary to the ODP and the Zonal Regulations; that the impugned notices were issued to uphold the supremacy of law as declared by the Supreme Court and this Court; and that there is no discrimination as alleged and the impugned orders were made in obedience to the law declared by this Court and the Supreme Court.

27. In the writ petitions seeking for a direction to issue occupancy certificates, the Corporation has filed its reutrn in W.P. No. 5132 of 1985, The stand of the Corporation in this petition is as follows :

"That in the course of construction of the building in accordance with the sanctioned plan certain deviations were found and therefore the order revoking the sanctioned plan was made; that the order of revocation was challenged by the petitioner in W.P. No. 20673 of 1980 and that petition was allowed by this Court on the ground that Commissioner has no power to revoke the building licence once issued. Thereafter, on an application made to the Corporation the deviations were compounded after collecting the compounding fee; that the application of the 1st petitioner for grant of occupancy certificate was rejected sicne the plan sanctioned was in violation of the Zoning Regulations and the Bye-laws; that at the time of sanction even though the Zoning Regulations of 1972 had been prepared under the K.T.& C. P. Act and published, there was no judicial pronouncement about the legal effect or the validity of those regulations. It was only for the first time that this Court in W.P.Nos. 3386, 3387 and 2283 of 1981 ruled that the Outline Development Plan including the Zoning Regulations was valid and enforceable and in view of S. 505 of the Act, the Corporation had no authority to grant the licences in contravention of the Zoning Regulations appended to the Outline Development Plan; therefore, in the light of the judgment of the Division Bench in the aforesaid petitions and in the light of the provisions of S. 310 of the Act, it is within the rights of the Commissioner of the Corporation to refuse to grant the occupancy certificate; that it is not open to the Cpporation to act in contravention of the aforesaid decisions of this Court and the Supreme Court; that the rejection of the occupancy certificate was only with a view to obey the law

now prevailing after the judicial pronouncement by this Court and therefore the petitioner could not be permitted to avail of the deemed provisions under S. 310(2) of the Act; that the petitioners were not entitled to invoke the doctrine of estoppel either equitable or promissory as there is no estoppel against law; that the 3rd respondent who is the Deputy Director of Town Planning had the authority to exercise the power under S. 310 of the Act as the Commissioner had the authority to delegate his power to R-3 under S. 66 of the Act; that the plan in question was sanctioned by the 3rd respondent alone and not by the Commissioner and further before the issue of the impugned order the approval of the Chief Engineer of the Corporation had been obtained. The Corporation has further taken the stand that the grant of occupancy certificate is based only on Government Order (Annexure-A), which in turn had directed the Corporation to consider the case of grant of occupancy certificate in the light of the guidelines mentioned therein; that under S. 310 of the Act it is open to the 3rd respondent to refuse the grant of occupancy certificate if the building constructed is not structurally suitable for occupation or that it is hazardous to human life; that however, occupancy certificate could be refused under the Scheme of the Act as well as under S. 310 of the Act if the building had been constructed in violation of the Zoning Regulations and the Bye-laws and that the impugned orders are not tainted with any illegality and that the impugned orders will not in any way affect the petitioners' right under Art. 19(1)(g) of the Constitution.

28. The sum and substance of the objections filed by the Corporation in both these groups of cases is: (1) They are giving effect to the judgment of this Court as also to the judgment of the Supeme Court in the case of M.D. Narayan v. U.K. Sreenivasan, (2) that they have the power to issue the impugned demolition notices as also to refuse the grant of occupancy certificates in terms of Ss. 308 and 505 of the Act.

29. This takes me. to the scheme of the Act relating to the powers conferred on the authorities under the Act for the issuance of the demolition notice and also for refusing to grant the occupancy certificate albeit the fact that the buildings in question were constructed in accordance with the sanctioned plans and the builders had satisfied the authorities that these buildings are structurally safe for the purpose of human habitation and despite the fact that the right of third parties have intervened between the period commencing from the completion of the buildings and the issue of the impugned notices and/or the orders refusing to grant the occupancy certificates.

30. Learned counsel for the petitioners in support of thier challenge to the impugned notices of demolition contended that the impugned notices are bad in taw since the licences, as he termed them, having spent themselves cannot be modified by recourse to the powers conferred on the Corporation under Ss. 308 and 505 of the Act; that once the buildings are completed in accordance with the sanctioned plans and occupancy certificates either total or conditional were granted, the Corporation is estopped from going back on the assurance given by it for the peaceful occupation and enjoyment of the premises in question and, therefore, the impugned notices are wholly without jurisdiction; that the impugned action could be justified only in cases of deemed approval under the provisions of S. 321(1)(c) of the Act and not in cases where the plans had been sanctioned by the Corporation after making the necessary enquiry and thereafter the buildings in question were constructed in accordance with the sanctioned plans and occupation certificates were given on the basis of the Completion Report filed by the petitioners; that the provisions of S. 505 of the Act do

not lend themselves to a construction which would confer any additional power to the Corporation to issue notices of demolition notwithstanding the fact that the buildings in question had been completed in accordance with the sanctioned plan; that the Corporation did not raise any objections as to the alleged violation of the Zonal Regulations or the Building Bye-laws either in the course of construclion or after construction; that the impugned notices are bad in law since the same do not disclose the provisions of law under which the Corporation intends to take action against the petitioners; that the Corporation cannot be permitted to take advantage of the judgments of the Supreme Court and this Court in M D. Narayan's case inasmuch as the petitioners were not parties to these decisions before this Court or the Supreme Court and the law laid down by this Court and the Supreme Court is applicable only to those parties who figured therein; that the plea of the Corporation that it is only obeying the decisions of the Supreme Court and this Court is wholly unsupportable since the petitioners' right to carry on their business and enjoy their property cannot be taken away at this distance of time especially when the rights of third parties have intervened and they have not been heard before the impugned notices were issued; that, if the Corporation were to be permitted to demolish the offending portions at this distance of time, the consequences would not only be chaotic and arbitrary but also against all canons fair play and justice; that in the absence of any express provision under the Act the Corporation is not empowered to issue the impugned notices; that the impugned notices are violative of Art. 14 of the Constitution since apart from the fact that the petitioners were not given an opportunity to show cause against the proposed action the notices do not provide for any compensation to be paid to the petitioners/occupants of the buildings in question, that the pleas of promissory estoppel and the equitable estoppel are available on the facts and circumstances of these cases and on that ground also the impugned notices are liable to be quashed; that in any event, assuming that power is conferred on the Corporation to take action under the impugned notices in the light of the judgment of the Division Bench in K.K. Govindaraju v. Commr. Corporation of City of Bangalore, ILR (1987) Kant 1570, that power should have been exercised reasonably within a reasonable time and the Corporation having not exercised such power within a reasonable time, the impugned notices are abritrary and violalive of Art. 14 of the Constitution.

31. Learned counsel for other petitioners have adopted the arguments of the learned Senior Counsel who appeared for the petitioners in W.P. Nos. 14386 to 14390 of 1987 and supplemented their arguments with special reference to the facts of their cases.

32. These contentions take me to the relevant provisions of the Act which confer powers on the Corportion to deal with buildings which offend the Zonal Regulations, the Building Bye-laws, the provisions of the K.T. & C. P. Act and the Act.

33. UnderSection 115(1) of the Act, the owner of the building shall give notice of construction or re-construction of the building within 15 days from the date of completion or occupation of the building whichever is earlier. The other provisions of S. 115 are not material for the purpose of these petitions. Chapter XV of the Act provides for Regulation of Buildings. The general powers under this Chapter are found in Ss. 295 to 321 of the Act. Under S. 295(3) (b) & (d) of the Act the Corporation with the approval of the Government may make bye-laws for the regulation or restriction of the use of sites or buildings or for regulating the height of the buildings in relation to the width of the road,

number and height of storeys composing a building and height of rooms, etc. The other provisions in this section are not relevant for the purpose of this case. Under S. 299 of the Act the builder'or promoter who intends to construct or reconstruct a building has to send to the Commissioner an application in writing for permission to execute the work together with a site plan of the land, ground-plan, elevations and sections of the build ing, a specification of the work and such other documents as may be prescribed. This is the provision under which the application for sanction of the plan has to be made by the builder or the owner as the case may be. Under S. 300 of the Act the construction or re-construction of a building shall not be begun unless and until the Commissioner has granted permission for the execution of the work. Section 303 of the Act provides for the grounds on which approval of site for, or permission to construct building may be refused.

"The only grounds on which approval of a site for the construction or reconstruction of a building or permission to construct or reconstruct a building may be refused, are the following, namely:--

(a) that the work or the use of the site for the work or any of the particulars comprised in the site plan, ground plan, elevations, sections, or specification would contravene some specified provision of any law or some specified order, rule, declaration or bye-law made under any law;

(b) that the application for such permission does not contain the particulars or is not prepared in the manner required under rules or bye-laws;

(c) that any of the documents referred to in S. 299 have not been signed as required under rules or bye-laws;

(d) that any information or documents required by the Commissioner under the rules or bye-laws has or have not been duly furnished;

(e) that streets or roads have not been made as required by S. 280;

(f) that the proposed building would be an encroachment upon Government or Corporation land;

(g) that the site of such building does not abut on a street or a projected street and there is no access to such building from any such street by a passage or pathway appertaining to such site and not less than five meters wide at any part."

So under the provisions of S. 303, the grounds on which permission for construction of a building could be refused are statutorily formulated. In these cases, the Commissioner having issued the necessary sanction for the plans on the applications made by the builders or the owners or the promoters under S. 299, this Court should proceed on the basis that the Commissioner was satisfied that all the conditions mentioned under S. 303(1)(a) to (g) had been complied with by the petitioners when they proceed to construct the buildings in question on the basis of the sanctioned plans. Under S. 307 of the Act which is an important section for the purpose of deciding the validity of the notices impugned herein, the Commissioner may inspect any building during the construction or reconstruction thereof, or within one month from the date of receipt of the notice given under S.

115. That is to say, under this provision, even though the plan is sanctioned by the Commissioner, it is open to him to keep a vigil on the progress of the work from time to time so as to ensure that the builder proceeds with the construction strictly in accordance with the sanctioned plan and does not make any deviation from the said plan. On the facts of this case, no material is placed before this Court to show that the Commissioner had at any time exercised his power under S. 307 of the Act. If that be so, the point for consideration is that can the Commissioner now lake advantage of the ruling of this Court and the Supreme Court in M.D. Narayan's case and say that though he had not discharged his statutory obligations under S. 307 of the Act, it is still open to him to contend, on the basis of the aforesaid judgments, that he has got the power to issue the demolition notices to bring these buildings within the scope of the rulings of the Supreme Court and this Court? Under S. 308, the Commissioner has got the power, if he finds that the work is otherwise than in accordance with the specifications and plans which have been approved and contravenes any of the provisions of the Act or any rules, bye-law, order or declaration made under this Act, to call upon the owner of the building to show cause why alterations should not be made or to make such alterations as may be specified in the said notice to bring it in confirmity with sanctioned plan, specification or provision. If the owner does not show cause, as aforesaid, he shall be bound to make the alterations specified in such notice. Under this section, the Commissioner has the power to make alterations even in cases of work in progress, that is to say, even before the buidlings are completed, if it is found that the work in progress is being carried on in violation of the sanctioned plan or bye-laws or order or declaration made under the Act. The meaning to be given to the word 'work' is 'work in progress' or work involved in the construction of the building'. The Commissioner has got the power to inferferc and take preventive or corrective action by issuing timely notices. That is also not done in these cases. Section 309 of the Act is not applicable to the facts of these cases. Section 310 is a relevant section as it confers a power on the Commissioner to issue occupation certificate after he receives the completion certificate from the builder, architect or the onwer as the case may be. In a few of these cases, unconditional occupation certificates have been issued by the Commissioner and in a few other cases, conditional certificates have been issued by him. Under S. 310(2) of the Act no person shall occupy or permit to be occupied any such building or part of any building or use or permit to be used the building or part thereof affected by any work, until permission has been received from the Commissioner in this behalf or the Commissioner has failed for 30 days after receipt of the notice of completion to intimate his refusal of the said permission. The petitioners except the petitioners in Writ Petition Nos. 8839 and 8840 of 1985 are not relying on the deemed permission, but they are relying on the actual permission granted by the Commissioner. The next section which requires consideration and which has a bearing on these cases is S. 321. The marginal note to this section reads as :

"Demolition or alteration of buildings or well-work unlawfully commenced, carried on or completed."

The section reads as :

"(1) If the Commissioner is satisfied -

(i) that the construction or re-construction of any building or hut or well -

(a) has been commenced without obtaining his permission or where an appeal or reference has been made to the standing committee, in contravention of any order passed by the standing committee; or

(b) is being carried on, or has been completed otherwise than in accordance with the plans or particulars on which such permission or order was based; or

(c) is being carried on, or has been completed in breach of any of the provisions of this Act or of any rule or bye-law made under this Act or of any direct on or requisition lawfully given or made under this Act or such rules or bye-laws; or

(ii) that any alteration required by any notice issued under S. 308, has not been duly made; or

(iii) that any alteration of or addition to any building or hut or any other work made or done for any purpose into, or upon any building or hut, has been commenced or is being carried on or has been completed in breach of S. 320, he may make a provisional order requiring the owner of the building to demolish the work done, or so much of it as, in the opinion of the Commissioner, has been unlawfully executed, or make such alterations as may, in the opinion of the Commissioner, be necessary to bring the work into conformity with the Act, rules, bye-laws, directions or requisitions as aforesaid, or with the plans or particulars on which such permission or order was based and may also direct that until the said order is complied with the owner or builder shall refrain from proceeding with the building or well or hut.

(2) The Commissioner shall serve a copy of the provisional order made under subsection (1) on the owner or builder of the building or hut or well together with a notice requiring him to the show cause within a reasonable time to be named in such notice why fhe order should not be confirmed.

(3) If the owner or builder fails to show cause to the satisfaction of the Commissioner, the Commissioner may confirm the order, with any modification he may think fit and such order shall then be binding on the owner."

This is the substantive provision which confers a power on the Commissioner to order demolition of the building, as has been done in these cases. It should be noted at this stage that the impugned notices do not say that the Commissioner has exercised his power under S. 321 of the Act. What all they say is that the Commissioner has given effect to the judgments of this Court as also of the Supreme Court in M.D. Narayan's case. However, in the return filed by the Corporation the Commissioner has relied on S. 308 of the Act. In my view, the provisions of S. 308 of the Act are not applicable to the facts of these cases since, as noticed earlier, that applies to the work in progress or work put in in the construction which calls for alteration and not demolition, and not to the buildings completed in accordance with the sanctioned plan. As rightly contended by the learned Counsel for the petitioners, the relevant provision is S. 321 of the Act, since that section confers a power on the Corporation for demolition or alteration of the buildings, unlawfully commenced, carried on or completed. Here we are dealing with the case of completed buildings and not a case of work in progress or a work which calls for mere alterations. That is clear from the provisions of S.

321(b) and (c) of the Act which I have already excerpted above. It should be noticed at this stage that there is a deeming provision for sanctioning a plan and that is S. 302 of the Act. That deeming provision comes into operation, if the Commissioner had rejected the application for sanction made under S. 299 of the Act and, thereafter, the builder or the owner as the case may be makes an appeal to the Standing Committee and if the Standing Committee does not refuse the approval of permission within 60 days from the date of receipt of the written request from the owner or the builder, then a deemed licence is granted; but, under the deemed licence the owner or the builder should not contravene any of the provisions of the Act or rules or bye-laws made under the Act. The effect of the deeming provision is that the owner gels permission to build as if he had a sanctioned plan. But, he should ensure at his risk that he does not contravene any of the provisions of the Act or any rules or bye-laws made under the Act. If the provisions relating to 'deemed sanction' under S. 302(2) arc kept in view, the meaning of S. 321(1)(a), and (b) of the Act would become clear in contradistinction to S. 321(1)(c) of the Act. Under S. 321(1)(b) of the Act, the power of demolition is conferred on the Commissioner, if he is satisfied that the work is being carried on, or has been completed otherwise than in accordance with the plans or particulars on which such permission or order was based. Under Section 321(1)(i)(c), if the Commissioner is satisfied that the construction or reconstruction of any building is being carried on, or has been completed in breach of any of the provisions of the Act or of any rule or bye-law made under the Act or of any direction or requisition lawfully given or made under the Act or such rules or bye-laws, he may make a provisional order requiring the owner of the building to demolish the same. This distinction must be kept in view to test the validity of the impugned notices. In these cases, it is not disputed that all the plans were sanctioned plans and the buildings in question were put up on the basis of the sanctioned plans. That means, the Commissioner was satisfied that the builder had complied with the requirements of S. 303 of the Act, when he made an application under S. 299 of the Act. If the work in question is found to be satisfactory the builder is given an occupancy certificate under S. 310 of the Act. Therefore, the provisions of S. 321(1)(i)(c) would not be applicable to the facts of this case, as the alleged violation of any rule or bye-law made under the Act or any breach of any provisions of the Act would be applicable to a construction put up under a deemed licence. In the case of 'deemed licence' the builder takes the risk of consiructing the building without a valid sanction provided he takes care to comply scrupulously with the provisions of the rules, bye-laws or orders made under the Act or any direction, requisition lawfully given or made under the Act or such rules or bye-laws.

34. The next section which requires to be considered is S. 505 of the Act on which the learned Counsel for the Corporation in both sets of cases have relied. Section 505 comes under Ch. XXI dealing with procedure and Miscellaneous provisions. Under this section a general power is conferred on the authorities concerned to exercise any power, or perform any function or discharge any duty with regard to any matter relating to land use or development of land as defined in the Explanation to S. 14 of the K.T. & C.P. Act. This section was the subject-matter of consideration by the Division Bench of this Court in Govlndaraju's case and, therefore, it is unnecessary for me to discuss the scope of this provision in relation to other provisions of the Act. Rama Jois, J., speaking for the Division Bench of this Court in Govindaraju's case (ILR (1985) Kant 1570) observed thus :

"The combined effect of these provisions is that any licence or permission accorded in contravention of the ODP or the CDP, the Zoning Regulations would be void and no permission in the eye of law,

and from this it follows that if a licence had been issued in contravention of the ODP or the CDP, it confers no right on the person who had secured the licence and consequently the authorities have not only the power but are under a duty to rectify it or issue a fresh licence so as to bring it in confirmity with the ODP and the Zoning Regulation."

The learned Judge further observed after referring to Ss. 307 and 308 of the Act which I have already considered in the earlier part of this order thus :

"These provisions expressly confer power on the Commissioner not only to ensure that constructions are made in conformity with the sanctioned plan, but also to make modifications in the sanctioned plans already granted so as to bring the sanctioned plan in conformity with the provisions of the Act or any rule or bye-law. Therefore, if in a case it comes to the notice of the Commissioner any sanctioned plan, was for any reason, in plain contravention of the provision of the ODP or the CDP, even without cancelling it, the Commissioner has the power to make alterations in the plan so as to bring it in conformity with law and communicate to the party concerned and thereafter he is bound to conform to the alterations so made by the Commissioner. Therefore, there is no substance in the contention of respondent No. 3 that once the licence is sanctioned, however, illegal it may be, there is no power vested in the authorities of the Corporation to cancel or modify the licence so granted."

I understand that this judgment of the Division Bench is pending consideration before the Supreme Court and the order of demolition made by the Division Bench is stayed by the Supreme Court. However, in the absence of an interim order staying the operation of the judgment of the Division Bench of this Court, it is not proper for me to take a view which is different from the view taken by the Division Bench on the scope of S. 505 of the Act. The Division Bench has also observed, as a word of caution, on the exercise of the power under S. 505 of the Act thus :

"It is needless to say that the exercise of powers under all these provisions must be reasonable and within a reasonable time. On the facts of this case, the action initiated was reasonable and was within a reasonable time as admittedly, by the time the show cause notice was issued on 12-3-1986, Respondent-3 had not constructed beyond the first floor and that was the position even by the time these writ petitions were filed as stated by respon-dent-3 itself in the siatement of objection."

So, both on facts and on law the decision in Govindaraju's case would not advance the case of the Corporation. In these cases, admittedly, all the buildings were completed as per the sanctioned plans and occupation certificates had been (in a few cases) granted and conditional occupation certificates (in a few other cases) were given and in most of these cases third parties' rights have intervened. In most of the cases flat owners have moved into their respective flats, electricity, water and sewerage connections have been obtained. They are also paying taxes to the Commissioner. That means, the Corporation has dealt with them as owners of the flats both de facto and de jure. But these impugned notices are issued nearly after 3 to 4 years after the completion of the building/occupation of the building.

35. Whether the delay in issuing the impugned notices operates in favour of the petitioners requires consideration since the case of the Corporation is that the plea of estoppel either promissory or equitable would not be available to the petitioners since the Corporation being a statutory authority, it cannot be bound by the illegal acts committed by the officials, viz., the officials who sanctioned the plan in violation of the Zonal Regulations and the provisions of S. 14 of the K.T.&C.P. Act.

36. Mr. Venugopal, learned counsel for the petitioners, contended that the plea of promissory or equitable estoppel would be available to the petitioners in view of the laches on the part of the Corporation, when the construction was in progress, in not determining the alleged violations on the part of the builders and before issuing the occupation certificates. I do not think that the plea of promissory estoppel would be applicable to the facts of these cases, since by the sanctions accorded by the Corporation it had not held out that the builders or the owners of the apartments would peacefully enjoy their apartments without any let or hindrance. The facts on the other hand would attract the plea of equitable estoppel becuase equity steps in as the Corporation despite the powers conferred on it under S. 307 and 308 did not take any remedial measure in time, allowed the builders to complete the buildings in question and to put the occupants in the apartments, collected taxes from them and permitted them to own and use the premises without any let or hindrance. Therefore, the plea of equitable estoppel would be available to the petitioners and on that ground also the impugned notices are liable to be quashed.

37. Whether that plea would operate against a statutory authority on the ground that the statutory authority is not bound by the ultra vires acts of the agents or officials requires a little consideration. Mr. Shiva-prakash appearing for the Corporation has relied on certain observations made by the learned author H.W.R. Wade in Administrative Law to drive home this point.

38. The doctrine of ultra vires could be pressed into service to diswon the acts of the agents of the Corporation only if it is shown that the action of the agent or authority in question was wholly without jurisdiction, i.e., absence of total jurisdiction under the provisions of the Act. It is not the case of the Corporation that the Commissioner or the Standing Committee did not have the power at all to issue the sanction under S. 301 of the Act. All the plans in question are not governed by deemed sanctions, but by actual sanctions granted by the authorities to the petitioners under the provisions of S. 301 of the Act. It is not a case of total absence of jurisdiction and to put it differently, it may be an erroneous exercise of jurisdiction and that would not attract the doctrine of ultra vires. Mr. Shivaprakash relied on the following observations of H.W.R. Wade in his book on Administrative Law (5th edition):

"Estoppel and ultra vires :

In public law the most obvious limitation on the doctrine of estoppel is that it cannot be invoked so as to give an authority powers which it does not in law possess. In other words, no estoppel can legitimate action which is ultra vires. Thus where an electricity authority, by misreading a meter, undercharged its customer for two years, it was held that the accounts it delivered did not estop it from demanding payment in full; for the authority had a statutory duty to collect the full amount, and had no power to release the customer, expressly or otherwise. Where a local planning authority

served an invalid discontinuance notice, the landowner's acquiescence could not estop him from later denying its validity. Nor could a parish council, which had no power to undertake to allow a neighbouring district to make use of its sewers, be estopped by its long acquiescence from terminating such an arrangement. Where a minister took possession of land under statutory powers of occupation which did not extend to the grant of leases, he was not estopped from denying that he had granted a lease, even though he had expressly purported to 'let' the land to a 'tenant'. The result was the same where the supposed landlord was a local authority which had failed to obtain the requisite consent from the minister, so that the lease was void. Accordingly the local authorities were at liberty to deny the validity of their own 'lease', contrary to the rules which govern private lettings. No arrangement between the parties could prevent either of them from asserting the fact that the lease was ultra vires and void. Nor can any kind of estoppel give a tribunal wider jurisdiction than it possesses.

Another limitation is that the principle of estoppel does not operate at the level of Government policy. A Government department which encourages an airline to invest in aircraft on the understanding that the licence will be continued is not estopped, if there is a change of Government and a reversal of policy, from withdrawing the licence. Many people may be victims of such reversals, and 'estoppel cannot be allowed to hinder the formation of Government policy.'"

This elucidation would not be available to the counsel since it is not disputed that the Commissioner had the power under S. 301 of the Act to grant the necessary sanction if he was satisfied that the owners of the buildings or the builders as the case may be had complied with the requirements of S. 299 and of S. 303 of the Act. Even assuming for a moment that the sanction issued by the Commissioner attracts the doctrine of ultra vires, the delay in exercising the legal duties enjoined on the Corporation would also amount to abuse of power. In the very same book on Administrative Law, the learned author has observed thus :

"Delay in performing a legal duty may also amount to an abuse which the law will remedy. Where a British 'patrial' was entitled by statute to enter the country 'without let or hindrance', but the Home Office refused her the necessary certificate of patriality except by an administrative procedure which would have made her wait for over a year, the Court of Appeal held that the certificate could not be arbitrarily refused or delayed and ordered its issue, citing Magna Carta 1215: 'to no one will we delay right or justice'. Where the Advisory, Conciliation and Arbitration Service deferred proceeding with inquiries into a recognition issue at the instance of a trade union, the House of Lords held that excessive deferment, amounting to abdication of the Service's functions, would be unlawful; but the majority also held that the deferment was not excessive in the circumstances."

This statement shows that delay in performing a legal duty/statutory duty in this case would also be fatal to the doctrine of ultra vires. The case of Lever (Finance) Ltd. v. Westminster Corporation, (1970) 3 AH ER 496 which arose under the provisions of the Town and Country Planning Act, 1968 in U.K. has some relevance to the cases on hand. The facts in this case should be noticed to consider the doclrine of ultra vires. As in these cases, "permission was granted by the Planning Authority for the development of a site in accordance with the detailed plan. A month later Ihe developers' architect made some variations to the detailed plan submitted to the authority. The variations

included altering the site of house G so that it was sited only 23 feet away from the existing houses; a further site plan showing this variation was sent to the planning authority. The authority's planning officer who was dealing with the development had lost the file containing the original plan approved by the planning authority and because of this made a mistake and told the architect, in a conversation over the telephone, that the variation was not material and that no further planning consent was required. The telephone conversation took place in May 1969, shortly after S. 64 of the Town and Country Planning Act, 1968 had come into force. The developers acted on this representation and went ahead with the development, in particular, with the erection of house G, which was started in Sept., 1969. The residents of the existing houses made representations to the planning authority about the variation of the site of house G. The planning authority suggested to the developers that they should apply for planning permission for the variation. On I7th March 1970, the developers did so apply, the application being supported by the authority's planning officer, but the planning authority refused the application; they also refused a further application, made in April 1970, to sanction a variation in the structure of house G, and resolved that an enforcement notice (demolition notice in our Act) should be issued to take down the house. By this time house G, had been erected but not glazed. The developers brought an action against the planning authority claiming a declaration that they were entitled to complete the house on the site where it was, and an injunction restraining the authority from serving an enforcement notice. It was the practice of many planning authorities, after detailed planning permission had been given, to allow their planning officers to decide whether any proposed minor modifications to the detailed plan were material or not, and where the planning officer said that a variation was not material, for the developer to proceed with the work as varied without applying for any further permission. The trial Judge who tried the motion taken by the developers found that the planning authority had wrongly refused the permission sought for and in that view he gave a declaration as prayed for. The matter was taken up in appeal by the Planning Department and the Court of Appeal unanimously upheld the view of the trial Judge. The facts are found in the judgment of Lord Denning. To quote the same :

"So the position was very awkward. The house was still going up in a position that was not sanctioned. Mr. Rottenberg then made another attempt to get over the difficulty. He suggested an alteration in the structure of house G. He proposed to remove the top storey over part of it. By so doing, the occupiers of house G would not overlook the houses in Melina Place. So on 29th April 1970, he made an application for this variation in house G. This application was again supported by the planning officer and by the director of architecture and planning himself. But the committee rejected this variation also. It must have felt that the neighbours had a legitimate grievance at the way things had been done. On 18th May 1970, the committee refused permission. It went further and resolved that an enforcement notice should be issued so as to prevent Mr. Rottenberg and the developers going further with the house.

This put the developers in a quandary. The house was up. The roof was on. But the windows were not in. It had not been glazed. They did not know whether to take it down or not. So they moved the Court urgently. Within two days, on 21st May 1970, they issued a writ against the planning authority claiming a declaration that they were entitled to complete the house on the site where it was. They asked for an injunction to restrain the planning authority from serving an enforcement notice. An

interim injunction was obtained. The action was expedited It was tried before Bridge, J. on 18th and 19th June, 1970. He decided in favour of the developers. The planning authority appeals to this Court. The appeal comes on within two months of the issue of the writ. It shows that the Courts can act quickly when occasion so requires."

On these facts, the learned Law Lord observed :

"So here it has been the practice of the planning Authority and of many others to allow their planning officers to tell applicants whether a variation is material or not. Are they now to be allowed to say that practice was all wrong? I do not think so. It was mailer within the ostensible authority of the planning officer; and, being acted on, it is binding on the planning authority.

I would only add this : the conversation with Mr. Carpenter look place early in May, 1969. At that date there had been in force for one month at least, since 1st April 1969, the provisions of the Town and Country Planning Act, 1968. Section 64 enables a local authority as from 1st April, 1969, to delegate to their officers many of their functions under the Town and Country Planning Act. An applicant cannot himself know, of course, whether such a delegation has taken place. That is a matter for the 'indoor management' of the planning authority. It depends on the internal resolutions which they have made. Any person dealing with them is entitled to assume that all necessary resolutions have been passed. Just as he can in the case of a company: see Royal British Bank v. Tur-quand. It is true that S. 64(5) speaks of a notice in writing. But this does not alter the fact that such authority can now be delegated to planning officers.

I do not think that this case can or should be decided on the 1968 Act; for there was no notice in writing here. I think that it should be decided on the practice proved in evidence. It was within the obstensible authority of Mr. Carpenter to tell Mr. Rottenberg that the variation was not material. Seeing that the developers acted on it by building the house, I do not think that the planning authority can throw over what has been done by their officer, Mr. Carpenter.

I can see how the trouble has arisen. Mr. Carpenter had lost the file. He made a mistake. He told Mr. Rotternberg that a variation was not material, when he ought to have told him that it was material and required planning permission. He made a mistake. That is unfortunate for the neighbours. They may feel justly aggrieved. But it is not a mistake for which the developers should suffer. The developers put up this house on the faith of this representation made to them. I do not think that an enforcement notice should be launched against them. I think that the Judge was right and I would dismiss the appeal."

The other learned Law Lord Sachs, J. who supported the view of Lord Denning in his separate judgment observed as follows :

"On matters such as those raised in this appeal the Court must, of course, hold a careful balance between two potentially conflicting principles. Both of these are illustrated in the judgments delivered in Wells v. Minister of Housing and Local Government (1967 (2) All ER 1041). On the one hand, the Court must be careful to remember :

The local planning authority is not a free agent to waive statutory requirements in favour of (so to speak) an adversary: it is the guardian of the planning system.' (See the dissenting judgment of Russell, L.I). The planning authority's ability to act in the public interest must not be impaired. Hence the attitude of the Courts on the matter of estoppel. On the other hand, the Courts. must likewise take care that those who deal reasonably with the planning authority's officers cannot afterwards be trapped by the planning authority saying : 'You ought to have completed a series of procedural technicali-ties, and, although we by our officers normally do not insist on them we can always turn round and say that what has happened as between us and yourselves is of no effect.' That is the basis on which Lord Denning MR said in the Wells case :

"I take the law to be that a defect in procedure can be cured, and an irregularity can be waived, even by a public authority, so as to render valid that which would otherwise be invalid.'"

Though this decision was cited by the learned counsel for the petitioners in support of their plea of estoppel against the Corporation, the facts of the case in that decision may not be apposite for deciding the plea of equitable estoppel in these cases. In these cases, I will not be far from wrong, if I were to hold that the facts are more favourable to the petitioners in these petitions than the facts in the English case. Here the buildings were completed long before the issue of the demolition notices and the authorities who had the power to inspect the buildings to ensure that the buildings are being built in accordance with the sanctioned plans did not exercise their statutory power but woke up after the judgment in M.D. Narayan's case. The decision of the Court of Appeal was the subject-matter of critical review by Wade at page 344 of his book. At page 344 Wade has said about Lever (Finance) thus :

"The unfortunate features of the Court of Appeal's decision were first that it sacrificed the interests of the neighbouring house-owners, who were forced to accept houses overlooking them much more closely than the planning authority would have permitted. Secondly, it sacrificed the public interest, since the Court deprived the responsible public authority of the powers of control which the Act assigned to them and to them only. As has been amply illustrated, the Court is normally careful to prevent any legal doctrines from impeding the free exercise of statutory discretion in the public interest by the proper body."

But in my view that ruling is applicable to the facts in these petitions.

39. Mr. Venugopal also contended that the authorities having not made any provision for compensation to be payable by them for the demolition of the offending portions of the buildings, the impugned notices suffer from the vice of arbitrariness and are violative of Art. 14 of the Constitution. On this point Mr. Venugopal submitted that there is no authority to support the proposition. Perhaps, there may not be any precedent for this proposition in India. But I find in the very same book on Administrative Law by Wade, that the Courts in England and France are veering round the view that the local authorities or the Government agencies as the case may be should be made liable for compensation if they want to give effect to the full force of law. At page 345 of Wade's Administrative Law the learned author says :

"The Parliamentary Commissioner for Administration has given a lead in the right direction by obtaining compensation in a number of such cases, for example for an importer who had to pay purchase tax on a car imported on the faith of a prior official assurance that it would be duty free. The giving of wrong rulings by officials is maladministration and this is the correct basis for redress. French law has found no difficulty in reaching this solution and English law should equally well be able to reach it. It is on all accounts better than manipulating the law so as to uphold acts which are ultra vires or contrary to the public interest, in an attempt to make two wrongs into a right. It is true that many people have to rely on legal or other advice which may prove to be wrong, but there is a special claim to redress where loss is caused by a wrong ruling from a governmental authority on whose guidance the citizen is entitled to rely.

A partial solution may be found in the Court of negligent misstatement, now being developed by the Courts. Although negligence is not always easy to prove, it is sometimes self-evident in cases of wrong official rulings. A local authority has been held liable for the failure by one of its clerks to search the local register of land charges with due care, thus causing pecuniary loss. A Government department has been held liable similarly for negligently advising an exporter that he would be insured against loss when in fact he was not. Wrong advice or assurances given by officials of planning authorities might make them liable similarly, so as to compensate the misguided developer and avoid the legitimation of wrongful assumption of authority. This head of liability, is further discussed below in the wider context of negligent governmental acts and decisions.

Misleading official advice may, in addition, be a contributory factor to action by a public authority which is so unfair and inconsistent that it amounts to an abuse of power. It may also sometimes be a good defence to a criminal charge, but only where there would be no offence if the advice given were correct."

This theory of compensation, I am sure, will be developed by our Courts in due course.

40. The Commissioner has sanctioned the plans which he was empowered to accord under the provisions of S. 301 of the Act and therefore the plea of equitable estoppel is fully applicable to the facts of the case since the power of the Corporation under S. 505 of the Act was not exercised reasonably and within a reasonable time.

41. A couple of observations made by the Supreme Court in regard to the plea of estoppel against Government or statutory authority should be noticed. In Century Spinning and Manufacturing Co. Ltd. v. Ulhasnagar Municipal Council, AIR 1971 SC 1021 the Supreme Court observed thus: (Para 12) "If our nascent democracy is to thrive different standards of conduct for the people and the public bodies cannot ordinarily be permitted. A public body is in our judgment, not exempt from liability to carry out its obligation arising out of representations made by it relying upon which a citizen has altered his position to his prejudice."

In Motilal Padampat Sugar Mills Co. Ltd. v. State of Uttar Pradesh, AIR 1979 SC 621, the Supreme Court observed thus: (at P. 643, Para 24) "It is elementary that in a republic governed by the rule of law, no one, howsoever high or low, is above the law. Every one is subject to the law as fully and

completely as any other and the Government is no exception. It is indeed the pride of constitutional democracy and rule of law that the Government stands on the same footing as a private individual so far as the obligation of the law is concerned: the former is equally bound as the latter."

These observations, though made in the context of promissory estoppel would equally apply to the plea of equitable estoppel. The Corporation is only pleading violation of law which could have been taken care of when the building was in progress. The substantial ground for the Corporation is the judgment of the Supreme Court in M. D. Narayan's case. The petitioners were not parties to that case and, therefore, the delay on the part of the Corporation in taking action against the petitioners would attract the rule of equitable estoppel. The above observations of the Supreme Court coupled with the decision in S. K. Sharma's case to which I will advert to presently would persuade this Court to take the view that the plea of equitable estoppel fully supports the case of the petitioners and they are entitled to the reliefs sought for.

42. Now I come to the cases of the petitioners who were denied occupation certificates notwithstanding the fact that the buildings in question were constructed and completed in accordance with the sanctioned plans. The provisions for granting occupation certificate are found in S. 310 of the Act. It should be noticed in these cases, that the Corporation is not relying on any complaints from the public or any structural defects or any complaint from the neighbours. It is not the case of the Corporation that the sanctioned plans were obtained by playing fraud on the officials of the Corporation or dishonesty on the part of the officials of the Corporation. In the recent case of the Supreme Court in Civil Appeal No..634 of 1989 (reported in AIR 1989 SC 860), the Supreme Court in reversal of the decision of this Court observed as follows: (Para 20) "We have perused the records and considered the arguments on both sides. We are not satisfied that, on the facts and in the circumstances of this case, the learned Judges of the Division Bench of the High Court were justified in permitting and much less directing the demolition of the 6th floor. On the facts found, there is neither justice nor equity in authorising the demolition. The total site area being 15517 sq. ft. as found by the High Court, and the permissible FAR in relation to the site area being 38792 sq. ft., as against the determined area of 45974 sq. ft., the excess FAR is only 7182 sq. ft. When an area of 4500 sq.ft. occupied by the school is excluded from the excess area of 7182 sq. ft. by reason of the school having vested in the Government upon the completion of the building, the actual excess area in the possession and enjoyment of the appellant is only 2682 sq. ft. The permissible limit of compounding being 5 per cent of the permissible FAR, which works out to 1940 sq. ft., the actual area, of deviation outside the permissible compounding limit seems to be not larger than 742 sq. ft. In the circumstances, in the light of what the Commissioner says about the practice of the Corporation in regard to the commencement certificate and in the absence of any evidence of public safety being in any manner endangered or the public or a section of the public being in any manner inconvenienced by reason of the construction of the building, whatever may be the personal grievance of the 1st respondent, the High Court was not justified, at the instance of the 1st respondent claiming himself to be a champion of the public cause, in ordering the demolition of any part of the building, particularly when there is no evidence whatsoever of dishonesty or fraud or negligence on the part of the builder."

In these eases, in the issue of occupation certificates no public interest is involved; no structural defects are brought to the notice of this Court; the builders have satisfied the Corporation on this aspect by producing the necessary technical reports from the approved examiners, viz., Indian Institute of Technology, Madras, in some cases, and from other approved examiners in other cases. There are no complaints from the neighbours about their right to privacy. But the right to enjoyment of the petitioners' property is curtailed only on the ground that the plans in question are violative of the Zonal Regulations and Building Bye-laws. Such a stand of the Corporation does not satisfy the requirements of S. 505 of the Act and also S. 310 of the Act. Unless the Corporation specifically points out the illegality to the, builders or the promoters as the case may be within a reasonable time and invite them to set right those illegalities or violations committed by them, it is not open to the Corporation to bestir itself now and say that the buildings are violative of the Zonal Regulations and Building Bye-laws. In my view, such a stand is arbitrary and opposed to fairplay in action.

43. It is also contended by the learned counsel that similar buildings that have come up elsewhere have been given occupation certificates and therefore the petitioners have been invidiously discriminated by the Corporation by its refusal to grant the occupation certificates. The fact that occupation certificates have been granted to other builders who had allegedly violated the provisions of the Act would not attract the Constitutional guarantee under Art. 14 of the Constitution as observed by the Division Bench in Govin-daraju's case. The stand of the Corporation is that the buildings offend the Building Bye-laws and Zonal Regulations in that they do not conform to the permitted height and the number of floors permitted. The maximum permitted height is 55' and the number of floors including the ground floor is 5. Admittedly the buildings in question had exceeded the maximum height and the maximum number of floors permitted under the Zonal Regulations. The petitioners were permitted to build these buildings under the sanctioned plans and therefore the delay in enforcing the regulations against the petitioners would enure to the petitioners' benefit. Accordingly, all the pleas which are available to the petitioners in the first batch of petitions would be available to the petitioners in these cases also.

44. In Writ Petitions Nos. 8839 and 8840 of 1985 the petitioners themselves have conceded that there are minor violations which could be compounded by levying compounding fee. In those cases, it is open to the petitioners to approach the Corporation authorities with a representation to compound the violations and the Corporation is directed to issue the occupation certificates after it is satisfied that the violations are amenable to compounding and after receiving the compounding fee for the said violations.

45. For these reasons, Writ Petitions Nos. 14386 to 14390 of 1987, 15245 and 15246 of 1987, 15677 of 1987, 16581 of 1987, 16791 of 1987 and 16887 and 16888 of 1987 are allowed and impugned notices of abolition are quashed.

Writ Petitions Nos. 5132 of 1985, 12486 to 12488 of 1985, 13267 and 13268 of 1985 and 20176 of 1985 are also allowed and there shall be a direction to the Corporation to issue occupation certificates to these petitioners in terms of the provisions of S. 310 of the Act unless the Corporation finds that, after the filing of these petitions, these petitioners have committed any illegality under the Act and/or they have not satisfied the Corporation Authorities regarding the structural stability

or safety of the buildings in question. The said certificates shall be issued within 3 months from the date of receipt of this order.

Writ Petitions Nos. 8839 and 8840 of 1985 are partly allowed and the petitioners are permitted to compound the violations and after such compounding, the Corporation is directed to issue the Occupation Certificate within 3 months from the date of compounding.

Parties to bear their own costs.

46. Order accordingly.