CIVIL MISCELLANEOUS

Before Inder Dev Dua and Jindra Lal, JJ.

DAYA SWARUP NEHRA AND OTHERS,—*Petitioners.*

versus

THE STATE OF PUNJAB AND OTHERS,—*Respondents.*

Civil Writ No. 1829 of 1963.

1964

Jan., 21st.

Capital of Punjab (Development and Regulation) Act (XXXVII of 1952)—Ss. 2 and 7—Capital of Punjab (Development and Regulation) Rules (1953)—Rules 2, 3, 5 and 117—Petrol Pump-cum-service station—Whether a "public building", a "public utility service" or a "commercial building"—Chief Administrator—Whether has absolute and uncontrolled power to convert one kind of building into another—Administrative Officers—Duty of, to act fairly and in accordance with Law—Constitution of India (1905)—Article 226—Contractual obligation regulated by statutory provisions—Whether can be enforced by way of writ under—Interpretation of statutes—Precedent—How far binding.

Held, that the definition of "public building" as contained in clause xxxviii of Rule 2 of the Capital of Punjab (Development and Regulation) Rules is fairly exhaustive. The concluding words "for any similar public purpose" attract the rule of *ejusdem generis*. The definition does not include a petrol pump-cum-service station within its meaning, however, wide it may otherwise be. It is more in consonance with he statutory scheme to include it to fall within either "commercial building" or "ware-house" and "industrial building".

Held, that the expression "public utility service" as included in the definition of the word "amenity" in the Capital of Punjab (Development and Regulation) Act, 1952, construed in the background of the statutory scheme and according to the rule of *ejusdem generis* excluded from its purview a petrol pump-cum-service station.

Held, that Rule 117 of the Capital of Punjab (Development and Regulation) Rules does not confer on the Chief

Administrator an absolute, arbitrary and uncontrolled power depending solely on his personal or private opinion. He has to exercise a quasi-judicial function against which the aggrieved party might fairly claim a right to redress from higher Tribunals. He has no absolute power to convert an "open space" as laid down in the zoning plan into a plot for a "commercial building" or for "ware-house" and "industrial building" in which obnoxious trade may be carried out.

Administrative agency which is purely a creature of statute has no powers except those given by the statute which must be found in the statute itself read as a whole by discovering legislative intent. In this Republic no officer of the Government, not even Government itself, possesses arbitrary and uncontrolled power over citizen's person, property or interest, which can be exercised without being called upon to justify on basis of valid law.

Held, that Democracy is not to be divorced from the Rule of Law. The Central legal point of Democracy and Rule of Law, which is a mode of life and not mere matter of constitutional clauses or declarations, is that the State officials and State organs must, in the absence of lawful inhibition, be answerable in Courts for acts prejudicially affecting citizens. Citizens' confidence in Democratic Government is increased by liberal judicial review of administrative process, assuring correction of injustice and unfairness.

Held, that a contractual obligation is normally not to be enforced in proceedings for a writ is, as a general proposition, unexceptionable. But where the right, though initially founded on a contract of purchase of property, is protected and regulated by statutory provisions, their violation by a statutory body can be properly enforced by the aggrieved party in proceedings under Article 226 of the Constitution; particularly so when approach to the Civil Courts—assuming such approach to be permissible—cannot afford an equally efficacious and speedy remedy.

Held, that a precedent is an authority on its own facts and for the legal proposition or principle of law enunicated therein; in order, therefore, to understand and apply the true *ratio decidendi* of a decided case, it is always necessary

to see its facts and the precise point which had to be decided. The generality of expressions found in a judgment can scarcely be intended to be the exposition of the whole law and they must always be governed and qualified by the particular facts of the case in which they are found. A precedent may not safely be quoted as binding authority for what may be argued to be merely a logical extension of the *ratio decidendi.*

Petition under Article 226 of the Constitution of India, praying that a Writ of mandamus or any other appropriate Writ order or direction be issued directing the respondents not to use the site in question for any purpose other than specified in the Zoning Plan and ordering respondents No. 1 and 2 to revoke the sanction granted to respondent No. 3 to instal a petrol pump.

B. R. TULI, J. N. KAUSHAL, D. D. KHANNA AND M. R. AGNIHOTRI, ADVOCATES, for the Petitioners.

L. D. KAUSHAL, SENIOR DEPUTY ADVOCATE-GENERAL, AND K. R. MAHAJAN, ADVOCATE, for the Respondents.

ORDER

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DUA, J.—The petitioners have approached this Court under Article 226 of the Constitution on the following allegations. They own houses in close proximity of the site in question measuring about 300'×300' on the entrance junction of Sectors 9-C and 9-D from Madhya Marg facing Sector 17 in Chandigarh. In the Zoning Plan of Sector 9-C this site is shown as "public Spaces" meant for landscape features, educational, public and community buildings and public amenities. The note on the zoning plan specifically mentions that "the land shown in this Zoning Plan shall be utilised in accordance with the markings explained in the table below and in no other manner whatsoever". In the table below this note, the site is shown as reserved for public spaces as mentioned above. The petitioners are stated to have purchased their plots on the faith of this representation in the Zoning Plan and have

since built their houses and are actually residing therein. On or about the 25th September, 1963 the petitioners noticed foundations of some proposed building being dug on the above site; on enquiry they learnt that a petrol pump was going to be installed thereon by the Indian Oil Company, respondent No. 3 in these proceedings. Petitioner No. 1 met the Secretary to the Govenment Punjab, Capital Project, and brought to his notice that the construction of a petrol pump at the site in question was against the specifications made in the Zoning Plan and, therefore, contrary to the provisions of the Capital of Punjab (Development and Regulation) Act 1952 (hereinafter called the Act) and the rules made thereunder (hereinafter called the Rules). A request was accordingly made to stop this construction. The secretary promised to look into the matter. As no action appeared to be taken in the matter by the authorities concerned and material for the construction of the proposed building was being collected on the site, petitioner No. 1 on the 30th of September, 1963, sent telegrams to the Minister, Capital Project, Secretary to Government, Punjab, Capital Project, and the Estate Officer reading as under:—

> "Indian Oil starting digging for petrol pump on public park in sector 9-C along Madhya Marg. Erection of petrol pump at this site contrary to Act, Rules and Zoning Plan. Stop construction immediately otherwise taking legal action."

A representation was also sent on the same day by petitioner No. 1 to the Minister in charge, Capital Project, and to the Estate Officer. As these representations bore no fruit the petitioners Nos. 1, 2, 4 and 5 made a further and more detailed representation to the Minister in charge, Capital Project, which was

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delivered to him personally by petitioners Nos. 1, 2 and 4, who also had an interview with him at that time. It appears that even this did not bear any fruit with the result that the present petition was filed on the 5th of October, praying for a writ of *mandamus* or any other writ, direction or order:—

(a) directing the respondents not to use the site in question for any purpose other than the one specified in the Zoning Plan;

(b) ordering respodents No. 1 and 2 to revoke the sanction granted to respondent No. 3 to instal a "petrol pump and|or Service Station at the site; and

(c) prohibiting the construcution of the petrol pump or service station at the site by respondent No. 3 or anybody else.

This relief has been claimed on the ground that rule 19 of the Punjab Capital (Development and Regulation) Building Rules 1952, under which the Zoning Plan had been issued, provides that the erection of every building shall comply with the restrictions of the Zoning Plan and the schedule of clauses appended thereto and the architectural Control Sheets if applicable. The Zoning Plan for Sector 9-C, according to the petition, contains the purposes for which public spaces are to be used and prohibits their use in any other manner whatsoever. The definition of the word "amenity" as contained in section 2(b) of the Act is relied upon in support of this ground. The existence of the Petrol Pump and/or Service Station attached thereto has been described to be a source of definite nuisance to the residents of the locality and particularly to the petitioners; it is averred that it would cause traffic jams and accidents and will emit foul smell which

is likely to effect the health of the residents of the locality injuriously.

The return by the State of Punjab, respondent No. 1, has been filed in the form of a written statement verified by the Secretary to Government Punab, Capital Project. In paragraph (1) it has been admitted that the site in question is shown in the zoning plan of Sector 9-C as 'public space' meant for land-scape features, education, public and community buildings and public amenities and also that the note on the zoning plan specifically mentions that the "the land shown in this Zoning Plan shall be utilised in accordance with the markings explained in the table below and in no other manner whatsoever." It is also admitted that the table mentioned there shows the site to be "public spaces". It has, however, been denied that the petitioners' houses are situated in close proximity of the site in question.

It has also been admitted that the petitioners have built their houses on their own sites purchased by them. It has, however, been denied that the plots were purchased by the petitioners on the faith of the representation in the zoning plan. Paragraphs Nos. 3 to 6 of the writ petition have been admitted. These paragraphs relate to the protests by the petitioners to the construction on the site in question of a petrol pump. It has been pleaded in the written statement that the location of a filling station on the site in question is a public utility service which is warranted by the zoning plan. It has also been pleaded that the petrol pumps in Sectors 10, 15, 17 and 19 are not at a short distance as pleaded by the petitioners and the location of this filling station was considered necessary for the residents of this locality. It has been claimed in the reply that the Chief Administrator/Secretary to Government, Punjab, was

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competent to issue directions as may be considered necessary and it is by virtue of this power that the letter, dated 5th April, 1963 (No. C-4091-DI-63/9875) was addressed to the Chief Architect and Town Planner and letter, dated 1st April, 1963. (No. C-2712-DI-63/9414) to the Estate Officer, whereby approval of the location and lease of the site in question to the Indian Oil Co., was given. The location of the petrol pump or a filling station in question has been described not to amount to a nuisance but is asserted to be a public utility service for which the "variance in the zoning plan can be legitimately made, if it be called a variance at all from the original zoning plan." The petitioners *locus standi* to approach this Court has been challenged and it has been averred that they have no cause of action without alleging special damage to them. In paragraph 8 it has been asserted that the objection on the ground of nuisance made by the petitioners is not valid because the site in question is situated at a distance of about 300' to 400' from the nearest houses and also because the petrol pump opens towards the Madhya Marg and not towards the residential houses. The area in between the houses and the petrol pump site, according to the written statement, "would be planted with trees and plants and would thus screen the petrol pump from the residential houses.' It has further been averred that, again to reproduce the exact words, "the fear of the petitioners that the proposed site would be used as a workshop creating traffic jams is not valid as no workshop would be permitted at this site (motor workshops and motor shops have separately been created in the industrial area) and traffic in and out of this petrol pump is designed to come on the main road and not in Sector 9". It has finally been pleaded that the petitioners have acted in haste and have approached this Court without waiting for the out-

come of their representations made to the Minister and to the Secretary Capital and it is expressly emphasised that the petitioners should have awaited the result of their representations. This written statement is dated 31st October, 1963.

The petitioners have filed a replication, dated 6th November, 1963 to the respondents' written statement which is supported by an affidavit sworn by petitioner No. 4. According to it the house of petitioner No. 1, is constructed on plot No. 67, of petitioner No. 3 on plot No. 63 and of petitioners Nos. 4 and 5 on plots Nos. 12 and 14, respectively. The house of petitioner No. 1 has been sworn to be separated from the site in question only by a street which is less than 50 ft. wide. In addition to reiterating all the allegations contained in the petition, it has also been pointed out that the respondents have not produced any order passed by the Chief Administrator changing the Zoning plan so as to convert the "public space" in question into a "commercial site" for carrying on obnoxious trade; in the absence of such an order, the construction of the petrol pump service station has been pleaded to be unauthorised. The public space in question, it is further pleaded, cannot be described to be a site within the contemplation of the Act, with the result that the Chief Administrator can claim no jurisdiction to give any direction under section 4 of the Act in respect of the space in question, contrary to what is specified in the Zoning Plan. The petrol pump and/or service station is, it is asserted, a positive nuisance and an "obnoxious trade" as defined in the Rules and is not a "public amenity" or a "public utility service". The damage to the petitioners, it is averred, is obvious from the proximity of their houses to the space in question. Emphasis has also been laid on the plea that the petrol station would be run by an agent of the

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Indian Oil Company as a commercial venture and hardly one per cent of the population of Chandigarh would use it on payment of price; and then the public would not be entitled as of right to use the petrol station, the approach to which must necessarily be restricted, and that too at the sweet will of the owner; this, according to the petitioners, detracts from the petrol station being either a "public amenity" or a "public utility service."

It has in addition been pleaded that respondent No. 3 is reported to have leased out the proposed petrol station to another private party who would be entitled to set up a service station along with a pertol pump. In this connection, it is expressly pointed out that the respondents have not in terms pleaded that no service station would be set up on the public space in question, and that it has only been averred that no workshop would be permitted on the site. The replication goes on to state that the petrol pumps in sectors 15, 19 and 28 along the Madhya Marg have service stations, and indeed the standard plan of a petrol station approved by the Secretary to Government, Punjab, Capital Project, has a provision for a service station and a small workshop, sanction for a service station including a small workshop as per the standard design is also alleged to have been granted to the proprietor of the petrol station in sector 17. It is, in this background, pleaded to be most likely that a service station with a small workshop according to the standard design would be set up on the space in question; the building sought to be constructed on it is stated to be on the pattern of the standard plan. It has again been expressly asserted that about 300 or 400 yards from the public space in question another site for setting up a petrol station in sector 17 has been provided and it is suggested that the service station in dispute "could easily be

provided on that site on the commercial strip and in the commercial sector."

In reply to the objection that the petitioners have acted with haste in approaching this Court, it is pointed out that the Minister and the Secretary concerned did not care to send any reply to the representation made by some of the petitioners and that in the meantime the construction was going on at "a fairly high speed" at the site in question; this, according to the replication, necessitated approach to this Court for staying further construction; the respondents attitude, as disclosed in the written statement, has also been relied upon for justifying the present writ petition at this point of time.

Permission for filing the above replication was granted on 7th November, 1963 when it was directed that the relevant records should be made available at the time of hearing; the direction for records was secured by the petitioners for securing the order of the Chief Administrator leasing out the site in question to respondent No. 3.

Respondent No. 3 has not chosen to file any written statement; nor have respondents Nos. 1 and 2 considered it necessary to reply to the replication pertaining to the allegation that the petitioners had learnt about respondent No. 3 having further leased out the proposed petrol station in question to a third party, who would be entitled to set up a service station. Respondent No. 3, it may be mentioned, has been represented before us through a counsel, but no arguments were addressed by him on behalf of his client.

The objection that the petitioners have approached this Court with undue haste without waiting for the result of their representations may

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first be disposed of. The real core or substance of this objection appears to me to be that the writ petition is premature because the Minister and the Secretary, Capital Project might well have granted to the petitioners the relief claimed by them. The objection is not based on the plea of the existence of an equally adequate and effective alternative remedy and has not been argued as such. It may be recalled that paragraphs Nos. 3 to 5 of the writ petition which have been admitted in the written statement and paragraph 10 of the replication fully establish that the Minister and the Secretary, Capital Project were not attaching to the petitioners' representation the importance it deserved. The grievance was undoubtedly of an urgent nature and the telegram, dated 30th September, 1963, was further suggestive of the urgency of the matter, demanding immediate attention. To have kept the representation just pending in the usual routine without maintaining *status quo* and stopping further construction gives an impression of bureaucratic indifference, inertia or red-tapism, apparently inconsistent with the basic principles of justice and fair play on which our democratic welfare republic is founded. It may also tend to afford a plausible basis to the aggrieved party for founding an unpleasant charge of trickiness, suggestive of *mala fides*, against the high-placed responsible authorities-a charge, which must in turn tend to lessen or weaken the peoples faith in the avowed qualities of our constitutional set-up, and make them somewhat skeptic, giving rise to misgivings in their minds, towards the ethical basis of our responsible democratic welfare republic. If the Preamble of our Constitution, which is the result of several years of deep deliberation by the nation's chosen representatives, has any meaning, and is not a collection of mere empty words or an abstract declaration, and if India is to grow into a truly

robust welfare State of the republican pattern, as envisaged by the Constitution, then one would have expected a more prompt and less indifferent or casual attitude on the part of the authorities in disposing of the petitioners' representations. The instinct of justice must in this Republic infuse the work of the administrative wing just as well as it does the judicial wing. On the undisputed facts disclosed in the pleadings, the objection on ground of haste against the petitioners is wholly unjustified, in that, any more delay in approaching this Court might well have rendered the petition infructuous. The State while dealing with the citizens is not expected to rely on unethical ultra-technical pleas having no just basis. The objection was ill-advised and is repelled as unmeritorious.

The petitioner's learned counsel has taken us through the scheme of the Act and the Rules for supporting the contention that the proposed petrol station is not an "amenity" or a "public utility" service within the meaning of section 2(b) of the Act. It has been contended that according to section 3, transfer of land by the State is controlled by the Act and the Rules and that no power is given under the statute to the Chief Administrator/ Secretary to Punjab Government, Capital, to vary the Rules or the zoning plan to the prejudice of the purchasers of the plots, particularly after they have raised construction thereon by spending additional huge amounts of money. Reference has in this connection been made, *inter alia,* to sectinos 5 and 22 of the Act and Rules 2(xv), (xxv), (xxxviii), (liii), (lvi), 3, 19, 24, 26, 29-A and 117 of the Rules, and 2(c) of the Chandigarh (Sale of Sites) Rules 1952. Emphasis in justification of the writ petition has also been laid on the fact that section 19 bars the jurisdiction of the civil Courts in regard to orders made under the Act, and that

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the writ petition is thus the only effective remedy. It has been contended that the zoning plan prepared under the Rules is to be deemed to be a part of the Rules and, therefore, it cannot be changed or varied except as provided by section 22(3). It has been submitted in the alternative that, in any case, so long as the zoning plan is not actually varied in accordance with law, it is binding on everyone, including the Chief Administrator, and the latter cannot, arbitrarily at his sweet will and pleasure, pass orders in contravention thereof. Pointed stress has been laid on the fact that the existing zoning plan does not contain any variation or modification changing the public space in question into a commercial site, and indeed it is vehemently urged that on behalf of the respondents this position has not been controverted.

Our attention has also been drawn by Shri Tuli to the letter, dated 16th February, 1963 from the Indian Oil Company Ltd. (a Government of India undertaking) respondent No. 3, to the Secretary to Government, Punjab, the letter No. C-2712-DI-63/9414, dated 1st April, 1963 from the Secretary, Capital Project, to the Estate Officer, with copies to the sales officer of respondent No. 3 and to the Senior Town Planner, and to the letter No. C-4091-DI-63/9875, dated 5th April, 1963 from the Secretary, Capital Project, to the Chief Architect and Town Planning Adviser, Capital Project, and it has been emphasised that the space in question has been sought to be used for a commercial venture to construct a commercial building with the object of accommodating respondent No. 3, and not with the intention of providing to the people "amenities" within the statutory purpose. According to Shri Tuli's contention a Government-sponsored commercial venture cannot be given a higher status than a private commercial venture and,

therefore, cannot be considered to fall within the definition of "amenity" or "public utility", and it is stressed that amenity or public utility is in this context to be considered in contradistinction with the "commercial buildings" which are treated by the statute as a separate class of buildings. Support for this argument has been sought from two American decisions, namely, *New State Ice Company* v. *Ernest A. Liebmann* (1), from which assistance is sought for the proposition that production or sale of an article of necessity cannot be subjected to legislative regulation on the basis of a public use, and *Springfield Gas and Electric Company v. City of Springfield* (2), where it is stated that the term "public utility" implies a public use, carrying with it the duty to serve the public and treat all persons alike, and it precludes the idea of service which is private in its nature and is not to be obtained by the public; and to a Supreme Court decision in *R. L. Arora* v. *The State of Uttar Pradesh*, etc. (3), a case dealing with the Land Acquisition Act, where the expression "public purpose" as defined in the said Act has been construed.

Shri L. D. Kaushal, the learned counsel, for respondents Nos. 1 and 2, has in reply submitted that the land in question belongs to the Government and the owner is entitled to put it to any use it likes; the use of the site as a petrol pump has also been contended to be in accordance with the Act, the Rules and the zoning plan. Providing a petrol pump for the use of the inhabitants of the locality and for catering to the needs of the persons passing by the site in question is, according to the respondents, tantamount to providing a public amenity and, therefore, in accord with the zoning

(1) 76 Lawyers' Edition (U.S.S. C.R.) 747.
(2) 18 A.L.R. 929 at p. 941.
(3) A.I.R. 1962 S.C. 764.

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plan. Reference in this connection has been made to the definition of "public building" in section 2(xxxviii) and also to an English decision reported as *The Queen* v. *Wallard* (4), where Grover J. observed that a public place is one where the public go, no matter whether they have a right to go or not. The classification contained in the Rules, according to Shri Kaushal, is not exhaustive and a building may be both a commercial building and a public utility building. By way of illustration, restaurants or public hostels have been pointed out to constitute such instances. It is stressed that there may be overlapping of some of the items defined by the statute and according to the learned counsel, the Court would not be justified in treating the classifications to be absolutely distinct and separate from one another. It is further claimed that the Chief Administrator is fully empowered to issue directions locating a petrol pump at the space in question. It is asserted that he has ample power to vary the zoning plan whenever and in whatever manner he may like without any external or statutory check or control. In any case, so contends Shri Kaushal, it is open to the Chief Administrator to grant exemption from the rigour of the zoning plan in individual cases by permitting construction of buildings in any manner he likes. Section 4 and Rules 19 and 117 have been particularly relied upon in support of this submission. As a last resort, the petitioners' *locus standi* to seek relief by way of writ, orders or directions under Articles 226 of the Constitution has also been questioned. This argument is based on the contention that the petitioners have no personal right which is infringed, for, their right, it is stressed, is only to the ownership of the plots purchased by them and this right has not been infringed. The only party who can feel aggrieved by the construction

(4) L.R. (1884—5) 14 Q.B.D. 63.

of the petrol pump in question in violation of the Rules submits Shri Kaushal, is the Chief Administrator and no one else; and if he does not choose to take any action, then this Court cannot interfere with the construction in question at the instance of the petitioners. The concluding argument addressed on behalf of the respondents is not based on any plea taken in the return; it is urged that at best the petitioners have only a contractual right for enforcing which Article 226 cannot be invoked. In support of this submission, reliance has been placed on *Ananda Behera* v. *State of Orissa* (5), *C. K. Achutan* v. *The State of Kerala* and others (6), and *Union Construction Co.* v. *Chief Engineer* (7).

The last contention may conveniently be first disposed of. This objection is not contained in the return and may on this short ground be disallowed. But even otherwise, there seems to be little substance in it. In *Ananda Behera's case*, an application under Article 32 of the Constitution was presented to the Supreme Court challenging the refusal of the State of Orissa to recognise the licence, based on a contract to catch fish from specific portions of a lake, obtained by the petitioners in that case from the proprietors of an estate, in which the lake was situated, prior to the vesting of the estate in the State of Orissa. The Supreme Court held that no fundamental right was involved in that case. *C. K. Achutan's case* also relates to an application to the Supreme Court under Article 32 challenging cancellation of a contract to supply milk to the Government Hospital at Cannanore and it was held not to be violative of any fundamental right. In the case of *Union Construction Co.* v. *Chief Engineer* (7), the learned

(5) A.I.R. 1956 S.C. 17.
(6) A.I.R. 1959 S.C. 490.
(7) A.I.R. 1960 All. 72.

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Judge observed that a mandamus could not be issued to enforce a right founded on contract and that a mandamus would be refused if there is an alternative remedy and no complaint of the breach of a fundamental right.

In the case in hand, it is not the respondents plea in the return that there is an equally adequate and efficacious alternative remedy available to the petitioners in the form of a regular suit in the ordinary civil Courts and indeed no stress was at any stage laid in the arguments on this aspect; a suggestion was of course thrown that if the respondents are acting wholly outside the statute, then their action would be without jurisdiction and unauthorized which can be restrained in the civil Courts, the statutory bar to civil suits notwithstanding. In my opinion, the suggestion which is clearly an after-thought, is misconceived, for, keeping in view the attitude of the respondents in proceeding with the construction in question with speed without dealing with the petitioners' representation with due despatch and promptitude, it is difficult to consider a civil suit, even if one were competent (on which I entertain most serious doubts, to dispel which no attempt has been made on behalf of the respondents) to be an equally adequate, efficacious and speedy alternative remedy. By the time that the petitioners could, after a proper notice, ask the ordinary civil Courts for an order of injunction, the construction would perhaps be an accomplished fact.

That a contractual obligation is normally not to be enforced in proceedings for a writ is, as a general proposition, unexceptionable. But where the right, though initially founded on a contract of purchase of property, is protected and regulated by statutory provisions, their violation by a statutory body can, in my view, be properly

enforced by the aggrieved party in proceedings under Article 226 of the Constitution; particularly so when approach to the Civil Courts—assuming such approach to be permissible, of which in the case in hand I must again repeat my serious doubts—cannot afford an equally efficacious and speedy remedy. Proceedings for suitable writ, order or direction under Article 226, against the departments of the State are, in my opinion, competent for enforcing statutory obligations and for restraining breaches thereof, and this Court would, as I understand the constitutional position, be failing in its duty in declining to go into the citizens' complaints, against the State departments, based on allegations of invasion of their rights based on statutory provisions, on tenuous and unsubstantial grounds. The decisions cited by the respondents, as already shown, deal with facts and problems materially different from those which face us. As at present advised, therefore, I am unable to find any merit in this contention.

Regarding the plea of absence of *locus standi* of the petitioners to approach this Court, it is sufficient to point out that if on the merits they can establish that the impugned construction of the petrol station is violative of the statutory provisions, then their residence being in very close proximity of the site in question they would apparently have a cause of action and *locus standi* to invoke this Court's writ jurisdiction. I must, however, confess my inability to appreciate the argument that the only aggrieved party in the present case can be the Chief Administrator and that the petitioners can have absolutely no grievance. It may be pointed out that the petitioners are complaining against the very action of the Chief Administrator himself which has been described by them to be in excess of his statutory

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powers and in violation of the Rules and the zoning plan. Besides, they have also urged the petrol pump-cum-service station to be an obnoxious trade and a nuisance. It is in the circumstances not easy to understand the argument of absence of *locus standi* in the petitioners which is hereby negatived. The decision of the Supreme Court of Massachusetts in *Circle Lounge* v. *Board of Appeal of Boston* (8), cited by the respondents is of no guidance as variation in zoning regulation there only increased competition in business of the party appealing and this was held not to infringe his legal rights. Besides, the decision cited dealt with a different problem under the zoning law of Boston bearing little analogy to the case before us.

The other contentions raised involve a scrutiny into the scope and effect of the relevant provisions of the Act and the Rules; but before doing so, it would not be inappropriate to notice the circumstances in which they were enacted and enforced. When the construction of the new capital of the Punjab at Chandigarh was in progress, in March, 1952, it was considered necessary to vest the State Government with local authority to regulate sales of building sites and to ensure that the purchasers constructed buildings in accordance with bye-laws and generally to observe the conditions of sale, as also to provide for the maintenance of the amenities provided in the capital before a properly constituted local body could take over the administration of the State's Capital. The Capital of Punjab (Development and Regulation) Act V of 1952 was accordingly enacted by the President of India in exercise of the powers conferred on him by section 3 of the Punjab State Legislature (Delegation of Powers) Act XLVI of 1951. This Act was enforced in March, 1952, and was later replaced by Punjab

(8) 86 N.E. 2d. 920.

Act XXVII of 1952 enforced on 19th December, 1952. Its objects and reasons in addition to regulating the sale of building sites are stated to be to promulgate building rules on the lines of municipal bye-laws pending the creation of a local body. Section 22(3) of the Act which is a new provision provides for laying before each House of the State Legislature for a period of 14 days all rules made under it which clearly suggests the importance and solemnity attached to them by the law-maker. Such rules have in law the same effect as if contained in the Act and are so treated for all purposes of construction or obligation or otherwise. In case of conflict between one of such rules and a section of the Act it is to be dealt with in the same spirit as a conflict between two sections of the Act would be dealt with.

It is desirable at this stage to notice some of the statutory provisions. Section 2 of the Act contains definitions, the following of which had better be reproduced here:—

"2. * * * * * * *

(a) * * * * * * *

(b) 'amenity' includes roads, water-supply, street lighting, drainage, sewerage, public building, horticulture, landscaping and any other public utility service provided at Chandigarh;

(c) 'building' means any construction or part of a construction which is transferred by the State Government under section 3 and which is intended to be used for residential, commercial, industrial or other purposes, whether in

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actual use or not, and includes any out-house, stable, cattle-shed and garage and also includes any building erected on any land transferred by the State Government under section 3.

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(j) 'site' means any land which is transferred by the State Government under section 3;

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(l) 'workshop' means any building or place in which or within the compound of which any manual labour is employed or utilised in aid of, or incidental to any process, for the following purposes:—

(i) the making of any article or part thereof;

(ii) the altering, repairing, ornamenting or finishing of any article; or

(iii) the adapting for sale of any article."

Section 3 empowers the State Government to sell, lease or otherwise transfer any land or building subject to the rules. Section 4 empowers the State Government or the Chief Administrator to issue necessary directions in respect of erection of buildings on certain specified matters. Section 5(2) authorizes the State Government to make rules to regulate the erection of buildings and section 5(1) debars the erection of buildings in contravention of such rules. The rules are required to be notified in the official gazette. Section 7 empowers the State Government for providing, maintaining or

continuing amenities at Chandigarh and to levy necessary fees or taxes in respect of sites or buildings on their transferees or occupiers, such fee or tax being in addition to levies under other laws; religious and charitable institutions may be exempted from such levy. Sections 19 and 20 respectively, bar jurisdiction of Courts in respect of orders made under the Act and afford protection for action taken in good faith; and section 22 empowers the State Government to make rules for carrying out the purposes of the Act. By virtue of sub-section (3) all rules so made must be laid before each House of the State Legislature for a period of fourteen days as soon as possible. Section 23 repeals the President's Act V of 1952, at the same time preserving acts done under the repealed statute so far as consistent with the amending Act.

Coming to the Rules enforced on 2nd January, 1953, Rule 2 contains definitions. The word "building" is defined in clause (x) in identical terms with the definition contained in section 2(c) of the Act. Clause (xv) defines the expression "class of building" to mean a building in one of the following four categories:—

(a) Residential building.

(b) Commercial building.

(c) Ware-house and Industrial building.

(d) Public building.

"Commercial building" is defined in clause (xvi) as a building used or constructed or adapted to be used wholly or principally for shops, offices, banks or other simliar purposes or for industries other than factories (and shall include motor garage where general repairs are done). The word 'factory' has been given in clause (xxi) the same

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meaning as contained in the Factories Act LXIII of 1948. The word "garage" is defined in clause (xxv) to mean a building or portion thereof used or intended to be used for shelter, storage or repair of a wheeled vehicle. Clause (xxxviii) defines "public building" to mean a building used or constructed or adapted to be used either ordinarily or occasionally as a place of public worship, or as a hospital, college, school, hotel, restaurant, threatre, public hall, public concert room, public lecture room, public exhibition, or as a public place or of assembly or entertainment for persons admitted thereto by tickets or otherwise, or used or constructed or adapted to be used either ordinarily or occasionally for any similar public purpose. "Residential building" is defined in clause (xiii) to mean a building used or constructed or adapted to be used wholly or principally for human habitation, and includes all garages, stables, or other out-buildings appurtenant thereto. "Warehouse" and "industrial building" are defined in clause (liii) to include a factory, a workshop or a motor garage. 'Zoning Plan as defined in clause (lvi) means the numbered plan signed by the Chief Administrator and kept in his office defining the layout of any numbered sector of the Master Plan of Chandigarh showing the streets, boundaries of building plots, open spaces, position of protected trees or other features and showing in colour or by other means the specified land-use, building lines, permissible heights of buildings, site coverages and other restrictions on the development of land or buildings as may be prescribed.

Rule 3 enjoins every person erecting or re-erecting a building to comply with the rules and the restrictions shown on the zoning plan. According to Rule 5 no one can commence to erect or re-erect a building without the previous sanction of

the Chief Administrator. Rule 117 in Part V headed "Administrative Control" enjoins the Chief Administrator to refuse to sanction the erection or re-erection of buildings contravening the rules; the Chief Administrator is, however, empowered to modify or waive upon terms and conditions, as thought fit, any requirements of any of the rules provided an application for such waiver is made in writing along with the application to erect or re-erect made under Rule 7.

Dealing with the contention that the land in question belongs to the Government and, therefore, the capital authorities can do whatever they like without any control or limitation need not detain us because the Chief Administrator is a creation of statute and he must act within the statutory limitations imposed; indeed, this contention was not persisted in by the learned counsel for the respondents and was soon dropped by him, and, in my opinion, rightly. It may in this connection be pointed out that an administrative agency, which is purely a creature of statute, has no powers except those given by the statute which must be found in the statute itself read as a whole by discovering the legislative intent. In this Republic, as indeed, in any decent society governed by the rule of law of our responsible democratic pattern, it is unthinkable that any officer of the Government or even the Government itself can be contended to possess arbitrary and uncontrolled power over the person, property or interests of the individual citizen, which can be claimed to be exercised to the citizen's prejudice without the author being called upon to justify his action on the basis of a valid law.

This brings me to the next contention, that the location of the petrol pump in question is in

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accordance with the Act, the Rules and the existing zoning plan. The argument in essence is, that the petrol pump in question is an "amenity" being a "public utility service" or in any event a "public building", and, therefore, well within the purpose of the "open spaces" as mentioned in the zoning plan. It has further been argued that the definition of the word "amenity" is not exhaustive and, therefore, we should look at the overall purpose of the petrol pump in question in determining whether or not it is an amenity within the statutory meaning. Reference has been made to the judgment in *Wellard's case* for assistance in construing the expressions "public utility service" and "public building'. This decision deals with a criminal matter and is concerned with what is a "public place" as used in an English statute, and would thus be hardly of any valuable guidance in the case in hand. A precedent, as is well-settled, is an authority on its own facts and for the legal proposition or principle of law enunciated therein; in order, therefore, to understand and apply the true *ratio decideni* of a decided case it is always necessary to see its facts and the precise point which had to be decided. The generality of expressions found in a judgment can scarcely be intended to be the exposition of the whole law and they must always be governed and qualified by the particular facts of the case in which they are found. A precedent may not safely be quoted as binding authority for what may be argued to be merely a logical extension of the ratio *decidendi*. Thus considered, the English decision would seem to lend little, if any, assistance in the instant case.

Now, it is quite true that the statutory definition of the word "amenity" is not exhaustive and, therefore, it may be legitimate to travel outside the specific items or purposes mentioned in section 2(b). But, at the same time, I am unable to hold,