CHAPTER-3

ROLE OF THE ADMINISTRATION IN DEVELOPMENT PROCESS

The problem of worsening of the environmentally sound and hygienic living condition in and around the large metropolitan city has become one of the greatest concern to everyone in the present world. The population pressure and undesirable pattern in development has been worsening the urban India in an alarming proportion beyond natural equation. The main factor responsible for the growth of urban population is a shift from agrarian to industrial economy. Besides this, Man’s urge for urbanized culture is its inherent quality and is a continuous process. Therefore, the growing population in urban areas puts severe strains on the Government’s ability to provide public services, safe drinking water, sewers, housing, transportation and infrastructure, the cumulative effect of all these being health hazards and poor urban condition in all respect as because the burden of population ultimately becomes the prime cause of environmental deterioration and degradation by putting its undue pressure on the natural resources, be it land, water, energy or any other non-renewable resources of this earth from the sustainable users point of view.

The urbanization is a sign of development but the development should be so articulated that ecological balance and environmental purity is least disturbed. Keeping this view in mind, the Government of almost all the countries of the world is now forced to pay serious attention to not only conserve and improve the environment but also prevent it from further deterioration and degradation.

Law is the instrument to fulfill this goal and different institutions, which are the creation of the law that is having statutory birth and existence, are the instrumentalities to reflect the law into reality with pragmatism. The main object
of law must be to strike a balance between urbanization and environmental protection and this functional aspect of the law is shouldered upon the executive bodies, which are the immediate authority to have a close watch and constant vigil upon the actual workings in a given society. Not only the implementation of law but the working out the solution in an emergent situation also lies upon them by way of formulating a timely needed policy and making further rules and regulations in a delegate capacity. The rule of law has given them the power to make law provided the parent Act permits with clear guidelines set therein.

The fundamental question about increasing economic growth and decreasing environmental wholesomeness to save the future generation from disastrous consequences about its survival in times to come is an important issue. This becomes more delicate for a developing nation like ours. A balance is to be maintained between the necessity to preserve environment and the need of the society for the socio-economic development. The principle relating to the need for development and maintaining ecological balance has been evolved in India by the judiciary ¹ that socio-economic development shall have to be made in closest possible harmony with the environment. Preservation of environment and keeping the ecological balance unaffected is a task which not only government but also every citizen must undertake. It is a social and constitutional duty.²

The concern for maintaining this equation and equilibrium between socio-economic activities and ecological sustainability has cast three fold obligations/duties upon the following organs:

2. Article 48A and Article 51A(g) of the Constitution of India.
At the first stage, the state being Welfare in its nature is under heavy obligation to enact adequate laws to control the environmentally degrading activities and the executives to implement those laws properly and impartially. Secondly, the judiciary, as an umpire and guard of social justice, is obliged to maintain balance between Social justice and justice to the Nature while dealing with the problem of any developmental activity at the cost of environment; Lastly, people are under obligation to have environmental education to make practical contribution for eradicating the problem of environmental degradation because people's participation and social consciousness is the driving factor for effectual prevention of environmental pollution. Therefore, environmental literacy on the part of general masses is an imperative.

In this chapter the role of Administration (Function of the Executive) in developmental process, particularly in controlling the constructional activities to erect multistoreyed building and other allied activities of the builders/promoters are discussed categorically.

The primary duty to maintain ecological balance within the city lies with civic bodies or local self-government who manage the city government and monitor the health and sanitation programmes. In addition to municipal regulations for controlling the activities and problems, incidental thereto, the responsibility further extends to State and Central Government in regulating the relating activities.

In the federal structure of the Indian polity, the matters pertaining to the Housing and Urban Development have been assigned by the constitution of India to the State Governments. The legal Authority of the Government of India is limited only to Delhi and other Union Territories and to the subject that the state legislatures authorize the Union Parliament to legislate. In so far as the
urban issues are concerned the Union Parliament, under its power to amend the Constitution has introduced the constitution (74th Amendment) Act, 1992 which is a revolutionary piece of legislation by which constitution of India was amended to incorporate a separate chapter on urban local bodies, which seeks to redefine their role, power, function and finances. Constitution (74th Amendment) Act, 1992 has made the urban local bodies into vibrant self-governing institutions. This has ushered in a new era of urban governance and urban management in India.

3.1 **The constitution (74th Amendment) Act, and Integrated Development plans for urban areas including the role of the urban local bodies:**

Part IX-A has been added to the constitution by the constitution (74th Amendment) Act, 1992, to insert 18 new Articles and Twelfth Schedule relating to urban local bodies, providing for constitutional sanction to the urban self-governing institutions, so as to enable them to play a greater role in the development of urban areas, by way of setting up of three types of Municipal Corporation—Nagar Panchayat, Municipal Council and Municipal Corporation. The legislature of a state may by law entrust on these bodies such power and authority as may be necessary to enable them to function as institution of local self government including those listed in 12th schedule.

The constitution of India provides for the constitution of a District Planning Committee at the district level in every state with the main function assigned to it, to consolidate the plans prepared by the Panchayats and the Municipalities in the district and to prepare a draft development plan for the district as a whole.³

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³ Article 243 ZD (1) of the constitution of India.
It is provided that every District Planning Committee shall, in preparing the draft development plan—

a) have regard to—
   i) matters of common interest between the Panchayats and the Municipalities including Spatial Planning, sharing of water and other physical and natural resources, the integrated development of infrastructure and environmental conservation;
   ii) the extent and type of available resources whether financial or otherwise;

b) consult such institutions and organizations as the Governor may, by order, specify. 4

The chairperson of every District Planning Committee shall forward the development Plan, as recommended by such committee, to the State Government. 5

Committee for Metropolitan Planning:

The constitution provides for the constitution of a Metropolitan Planning Committee (MPC) in every Metropolitan area, to prepare a draft development plan for the Metropolitan Area (MA) as a whole. The legislature of a State may, by law, make provision with respect to the representation in such committee of the Government of India and the Government of the State and of such organization and institutions as may be deemed necessary for carrying out the functions assigned to such committee. 6

4. Clause (3) of Article 243 ZD of the constitution of India.
5. Clause (4) of Article 243 ZD of the constitution of India.
6. Article 243 ZE (1) of the constitution of India.
Every Metropolitan Planning Committee shall, in preparing the draft development plan -

a) have regard to -
   i) the plans prepared by the Municipalities and the Panchayats in the Metropolitan Area;
   
   ii) matters of common interest between the Municipalities and the Panchayats, including coordinated spatial planning of the area, sharing of water and other physical and natural resources, the integrated development of infrastructure and environmental conservation;

   iii) the overall objectives and priorities set by the Government of India and the Government of the State;

   iv) the extent and nature of investments likely to be made in the Metropolitan Area by agencies of the Government of India and of the Government of the State and other available resources whether financial or otherwise;

b) Consult such institutions and organizations as the Government may, by order, specify.

The Chairperson of every Metropolitan Planning Committee shall, forward the development plan as recommended by such committee, to the Government of the State.\(^7\),\(^*\)

The constitution provides for the periodic appointment of a Finance Commission, a non political body, by leaving to it the task of making inter

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7. Clause(4) of Article 243 ZE of the constitution of India.

* Source—Constitutional law of India, by Prof. Narendra Kumar, Page 620-621.
governmental financial adjustment from time to time, to facilitate rapid growth, promote political stability, bring about financial equalization or foster a sense of financial responsibility, to safeguard the autonomy of the unit governments, besides the basic objectives of the Welfare of the country as a whole. The intention of the framers of the constitution, behind the insertion of such provision was to ensure the transfer of funds from the centre to the States and the principles of their distribution among the States inter se in such a way that it should not be left entirely to the discretion of the central authorities, but should be determined on the recommendation of an independent and impartial agency, which would assess the changing needs of the States, and take into account the imbalances between the richer States and the poor States, in making its recommendations. The constitution assign the duties to the Finance Commission in terms of the above Stated objectives. The Constitution (74th Amendment) Act, 1992, inserted the provisions which assign duty to the finance commission to make recommendation to the President as to the measures needed to augment the consolidated Fund of a State to Supplement the resources of the Municipalities in the State on the basis of the recommendation made by the Finance Commission of the State. A similar provision has also been inserted by the constitutional (73rd Amendment) Act, 1992 assigning the duty to the Finance Commission to make a similar recommendation to the president to supplement the resources of the Panchayats in the State.

8. Article 280 of the Constitution of India
9. Article 280(3) of the constitution of India.
10. Article 280(3)(d) of the constitution of India.
11. Article 280(3)(c) of the constitution of India.

* Source—Constitutional law of India, by Prof. Narendra Kumar, Page 662-663.
Twelfth Schedule:

It provides that legislature of a State, subject to the provision of the constitution, may by law endow

a. the Municipalities with such powers and authority to enable them to function as institution of self government and may empower and put responsibilities upon them with respect to -

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

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

b. the committees with such power and authority to enable them to carry out the responsibilities conferred upon them including those in relation to the matters listed in the Twelfth Schedule.*

Twelfth Schedule includes the following entries relevant to the urban planning:

✓ Urban Planning including town planning,
✓ Regulation of land use and construction of building,
✓ Panning for economic and social development,
✓ Roads and bridges,
✓ Urban forestry, protection of the environment and promotion of ecological aspects,
✓ Slum improvement and up gradation,

12. Article 243 W of the constitution of India.

* Source—Constitutional law of India, by Prof. Narendra Kumar, Page 618.
✓ Provision for urban amenities and facilities such as parks, gardens, playgrounds,

✓ Public amenities including Street lighting, Parking lots, bus stops and Public conveniences,*

Therefore, the object behind the constitution (74th Amendment) Act, 1992 is to decentralize the planning for development to bring coordination between various developmental organs including local bodies in respect to their functions for development in tune with the federalism structure of our constitution and expedite the growth of spatial development throughout the country to deal with the situation of rapid urban growth and increasing population.

Keeping in view the provisions of the constitution (74th Amendment) Act a strong push to the preparation of integrated development plan for urban areas integrating physical and socio-economic planning and taking into account the urban, rural, spatial and functional linkages, environmental protection, and financial and non-financial resources available for implementation of plans is called for.

This plan should be prepared utilizing the latest techniques, and tools like-Remote sensing Aerial Photography, Geographical Information System (GIS), and other computer application for preparing the base maps.

The State Governments should take the expeditious steps to constitute the District Planning and Metropolitan Planning Committees with full regard to the need for involvement of adequate number of experts in the fields of physical and

* Source-The constitution of India, an Analytical Approach by H.K. Saha Ray.
socio-economic planning, with initiation of suitable policies and programmes including a package of financial reforms for the implementation of the plans to be prepared by the committees.

The District and Metropolitan Development Plans should take into account cost efficient and environmentally sound technologies and innovative implementation practices such as public private partnership and private sector initiatives, while recognizing the role of government as a facilitator.

The application of the concepts of land swaps, land pooling, town planning schemes, accommodation reservation, transfer of development rights etc. which are innovative plan implementation techniques, should be explored.

The town planning, urban development authority, municipal, revenue and other laws may be amended to accommodate innovative practices keeping in view the constitution (74th Amendment) Act, 1992.

Base maps of town/cities, which are required for a variety of purposes, need no longer be regarded as secret documents. Greater transparency will be in the interest of better public awareness.

Both the Central and State Government should initiate steps to develop appropriate management information systems and database so as to assist the planners in developing realistic plans and programmes, to organize public awareness programme on regional and urban planning aspect, and to organize periodic training of planner and municipal functionaries.

* Source—Development of India’s Urban Rural and Regional Planning in 21st Century—Policy Perspective, by Gopal Bhargava, Pg 179.
3.2 **Authorities under the West Bengal Municipal Act, 1993 and their role and functions:**

The Act relates to the Urban Municipal Affairs in West Bengal and it extends to the whole of West Bengal except Calcutta and Howrah Municipal Areas and such other area as may constitute the territorial jurisdiction of a municipal corporation established by any law for the time being in force. Every Municipalities (as has been defined in Article 243 Q of the constitution of India) has some obligatory duty as well as discretionary functions as assigned by the said Act. Which are as follows:

**Obligatory Functions of the Municipality:**

Every municipality has the obligatory duty to make reasonable and adequate provision for the following matters within the territorial limits of the municipal area and the financial means as its disposal\(^{12A}\).

1) **In the Sphere of Public Works** -

✓ Providing by itself or by an agency means for supply of water for public and private purposes;

✓ Construction, maintenance and clearing of sewers and drains, sewerage and drainage works;

✓ Providing by itself or by any agency means of water supply for fire fighting purpose;

2) **In the Sphere of Public Health and Sanitation** -

✓ Collection, removal and disposal of Solid Wastes including filth, rubbish and other obnoxious or polluted matters;

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\(^{12A}\)Section 63 of the West Bengal Municipal Act, 1993.
Disposal of solid and liquid wastes consistent with efforts to cause recovery and re-use of all that can be salvaged;

Regulating and abating offensive and dangerous trades or practices;

Ensuring the wholesomeness of water supplied for drinking and domestic purposes;

Maintenance of all public tanks and regulating the re-excavation, repair and upkeep of all private tanks, wells and other sources of water supply on such terms and conditions as the Municipality may deem proper;

3) In the Sphere of Town Planning and Development -

Devising town planning within the limits of the municipal area in accordance with the laws relating to town planning for the time being in force;

Planned development of the borders of the municipal area in accordance with the laws applicable for the purpose;

Improvement of bustees;

Control of regular lines of street;

Control of all building operations and regulation of building uses;

Laying out and maintenance of public parks, squares, gardens or recreation areas;

Redevelopment of congested areas for providing better living conditions

Planned development of new areas for human settlement;

Preservation of monuments and places of historical, artistic and other importance;
✓ Measuring for beautification of the township by setting up fountains and statues, providing recreational areas, improving river banks, landscaping and the like;

4) In the Sphere of Administration -
✓ Survey of buildings and lands and preparation and maintenance from time to time of survey maps and plans of the town and other records relating to survey;
✓ Removal of unauthorized encroachments on, or obstruction and projection in or upon, streets, bridges and other public places;
✓ Securing or removal of dangerous buildings and places;
✓ Checking the construction of unauthorized buildings and pulling down unlawful constructions;
✓ Abatement of pollution of all kinds;
✓ Measures as may be required for fire prevention, fire safety under the West Bengal Fire Services Act, 1950 and the rules made there-under;

Discretionary Functions of the Municipality:
A municipality may, as its discretion, provide either wholly or partly, out of the Municipal property and fund, for the following matters within the limit of the Municipal area.13

In the Sphere of Development:
✓ Encouraging formation of cooperative societies and, in particular, housing cooperative societies, and assistance to such cooperative societies in construction of residential buildings;

13. Section 64 of the West Bengal Municipal Act, 1993.
Providing shelter for the homeless;
Undertaking manufacturing of building materials and their distribution at fair prices;
Reclamation of waste lands and promotion of social forestry;
Establishing and maintaining nurseries for plants, vegetables and trees and promotion of greenery through mass participation;
Integration of the development plans and schemes of the town with the district or regional development plan, if any;

Besides all those functions stated above, the state government may, subject to such conditions as it think fit, impose, transfer, by an order, published in the official Gazette, to a Municipality any such functions and duties relating to Government under any law which the state legislature is competent to enact on any of the following matters\textsuperscript{14}

town and country planning;
urban development;
water supply and sanitation;
transport system including regulation of traffic terminus;
public works including road construction and housing;
fire protection and fire fighting;
environmental safety and improvement;
social forestry and plantation programme.

\textsuperscript{14} Section 65 of the West Bengal Municipal Act Act, 1993.
Power to Delegate the Function Assigned to a Municipality by the said Act to any other organ:

The municipality may, if it is of opinion that it is necessary so to do in the public interest transfer by contract or otherwise with the prior approval of the State Government, any function or functions of the Municipality under this Act, to any individual or organization, including a Government organization, in such manner and on such terms and condition as may be determined by the Board of councilors and approved by the state Government provided that such transfer of function or functions of the Municipality to such organization shall not absolve the Municipality from the responsibility of carrying out the provision of this Act in relation to the function or functions so transferred.15

Power to regulate the future Construction of building in particular street or localities:16

The Board of councillors may give public notice of its intention to declare-

a) that in any street or portion thereof specified in such notice, the elevation and construction of the frontage of all buildings or any classes of buildings erected or re-erected after such notice shall, in respect of their architectural features, be such as the Board of Councilors may consider suitable to the locality; or

b) that in any locality specified in such notice, there shall be allowed the erection of only detached or semi-detached buildings or both or row houses and that the land appurtenant to each such buildings shall of an area not less than that specified in such notice;

15. The West Bengal Municipal Act, 1993 Section 66.
16. Ibid, Section 199.
c) that the division or subdivision of building plots in a particular locality shall be of a specified size; or

d) that in any locality specified in the notice; the construction of more than a specified number of building in each acre of land shall not be allowed; or

e) that in street, portion of street or locality specified in such notice, the construction of any one or more of the different classes of buildings like residential, commercial, business, assembly, mercantile, industrial, institutional, storage or hazardous buildings, shall not be allowed without the special permission of the Board of Councilors.

After publication of such notice the Board of councilors shall consider all the suggestions and objections received by it and thereafter, may confirm the declaration or modify it and publish such declaration and after the publication of such declaration no person shall erect or re-erect any building in contravention of such declaration.

And at the same time the Board of councilors shall ensure that such declaration is in conformity with the provisions of any Development Plan, if in force under the West Bengal Town and Country (Planning and Development) Act, 1979.

Duty of the Municipality to give approval of building site and sanction of plan for erection of building and other related functions:

No piece of land shall be used as a site for the erection of a building unless such site has been so approved within the prescribed period and no building shall be erected unless a building plan has been sanctioned for such erection in
accordance with the provisions of the Act and rules and regulations made there under.\textsuperscript{17} Within sixty days after the receipt of any application with building plan and specification or of any information or document which the applicant is required to furnish before the Board of councilors, the Board of councilor shall, by written order, either accord sanction to the building plan conditionally or unconditionally, or refuse to accord such sanction, or accord sanction but impose conditions for compliance before permission to execute the work.\textsuperscript{18} The sanction of a building plan may be refused by the Board of councilors on any of the grounds mentioned in the section 210 of the Act.

\textit{Completion Certificate}\textsuperscript{19}:

Every person submitting an application with building plan along with the Specification, after the completion of erection of such building send notice in writing of such completion accompanied by a certificate to the Municipality and shall give to the Municipality all necessary facilities for inspection of such building or work Permission for occupying such building shall be granted only after such inspection being completed by the Municipality and after granting permission as per rules and regulations made under that Act.

The chairman or any person duly authorized by him in this behalf may at any time and without notice, inspect any building or work in respect of which an application with building plan has been submitted, while the work is in progress and shall cause such inspection on receipt of the notice of completion or credible information regarding such completion.\textsuperscript{20}

\begin{itemize}
\item \textsuperscript{17} The West Bengal Municipal Act, 1993, Section 203.
\item \textsuperscript{18} Ibid, Section 207.
\item \textsuperscript{19} Ibid, Section 212.
\item \textsuperscript{20} Ibid, Section 215.
\end{itemize}
If at any time, sanction or provisional sanction to erect any building has been given and the Board of councilors find that such sanction was given in consequence of any material misrepresentation or fraudulent statement contained in the plan, elevation sections or specifications or land or any material particulars submitted in respect of such building, the Board may cancel such sanction and any work done there under shall be deemed to have been done without sanction. The chairman of the Municipality has the power to stop any unauthorized construction by a written notice forthwith pending further proceedings as respects such unauthorized construction.

Order for Demolition or Alteration of Buildings in certain Cases:

If the Board of Councilors is satisfied -

a) that the erection of any building -

i) has been commenced without obtaining sanction or permission under the law or

ii) is being carried on or has been completed otherwise than in accordance with the particulars on which such sanction or permission was based, or after such sanction or permission has been lawfully withdrawn, or

iii) is being carried on or has been completed in breach of any provision contained in this Act or in the schedule or in any other rules or regulations in this behalf, or

b) that any building or projection exists in violation of any condition, direction or requisition lawfully given or made under this Act, or the rules or the regulations made there-under, or

22. Ibid, Section 220.
23. Ibid, Section 218.
c) that any material alteration of or addition to any building has been commenced or is being carried on or has been completed in breach of any provision contained in this Act or the schedule or in any rules or regulations in this behalf, it may, after giving the owner of the building a hearing opportunity, make an order of demolition or alteration as the case may be of such erection, alteration, addition or projection, or has been executed unlawfully.

If the Chairman-in-Council, is of the opinion that immediate action is necessary in respect of any building being constructed in contravention of the provisions of this Act, if may, for reasons to be recorded in writing, cause such building or work to be demolished forthwith.

**Power in Cases of Buildings at Corner of Streets:**

The Board of Councilors may in the case of any building, which is intended to be erected at the corner of two streets -

a) refuse sanction for such reasons as may be recorded in writing; or
b) impose restrictions on its use; or
c) impose special conditions concerning exit to or entry from any street; or
d) require it to be rounded off or splayed off or cut off to such height and to such extent as may be determined

**Power to Make Regulations Regarding Buildings**

The Board of Councilors may make regulations consistent with the provisions of this Act and the rules made by the State Government there-under, on the following matters, namely -

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24. The West Bengal Municipal Act, Section 213.
25. Ibid, Section 225.
✓ plans, specifications and other documents or particulars to be furnished with any application for building plan;

✓ precautions to be taken during construction of a building including scaffolding, fencing and storing of materials;

✓ materials and method of construction to be used for external party walls, roof and floors;

✓ the proportion of any building site, which shall not be built over, the amount of space to be left at the side and back of any building and the areas of courtyards in proportion to the floor area of rooms abutting thereon;

✓ height of any building or portion of a building in relation to the width of the street or streets on which it abuts;

✓ width of foundation, height of plinth, and stability of structure;

✓ minimum floor area, minimum height and ventilation of rooms used or intended to be used for human habitation and any other matter affecting the ventilation or sanitation of the building;

✓ regulation by specific rules of special classes of buildings, taking fire safety and health safety in account;

✓ special provisions for building above 13.5metres in height, taking construction safety, circulation space, and fire escape into account;

✓ Greenery, beautification and landscaping to be provided in erection of a building.
Municipality to issue a Fire Safety Certificate for a Building:

On the coming into force of the West Bengal Fire Services Act, 1950 in any municipal area, the Municipality shall in consultation with the Director of Fire Services or any officer authorized by him in this behalf by general or special order require the owner or the occupier of all or any of the premises in the municipal area to make, or to carry, such arrangement as may be necessary for fire prevention and fire safety in the municipal area, and issue a fire safety certificate on such conditions as the State Government may prescribe from time to time.26

Power and Functions of the Board of Councilors of a Municipality and The District Planning Committee in Urban and Regional Planning and Development:

The Municipalities and the District Planning Committee constituted under the West Bengal District Planning Committee Act, 1994 have the power and role in Urban Renewal and Regional Development Programme. Subject to the provisions of this Act, the Board of Councilors may acquire any land whether situated within or outside the municipal area, for the purpose, amongst others, of executing any development plan or scheme to provide for the growth of the municipal area in an orderly manner, including housing programme for different section of the community.27

Preparation of Draft Development Plan:

The Board of Councilors shall prepare a Draft Development plan for the Municipal area or notified area, as the case may be in consultation with the District Planning Committee for a period of five years and shall submit to the

26. The West Bengal Municipal Act, 1993, Section 285A.
27. Ibid, Section 296.
Urban Development Sub committee at least one year before the completion of the term of the proceeding Draft Development Plan. In doing so the Municipality shall act as per the direction of the District Planning Committee.28

The Draft Development Plan for any Municipal area or notified area shall be a written statement and shall include—

a) The schemes of the Municipality or the notified area authority for the Development and other use of land or for any description of development or other use of such land including in either case such measures as the Municipality or the notified area authority thinks fit for the improvement of the physical environment;

b) Detailed and Specified Scheme of the Municipality or the notified Area Authority for conducting Development programmes on all or any of the points Specified in clauses (1),(2)and(3) of section 63, section 64 and subsection (2) of section 65;

c) Such maps and diagrams as the Municipality or the notified Area Authority thinks appropriate;

d) Existing land use pattern in maps and documents;

e) The Scheme for the future land use control by way of—

1) identification and preservation of the open space;

2) prohibition of filling up of tanks or water courses;

3) filling up of insanitary water courses;

4) protection of land surface through which sub soil water sources are recharged;

5) provision for drainage network and outfall;
6) provision for dumping grounds for solid waste disposal;
7) reclamation of waste lands; or
f) Regulation and restriction of sites for construction of building;
g) Scheme for environmental improvement by way of restriction on felling of trees, planting of new trees and flowering of plants in public places and adding of house greenery and the like;
h) Scheme for acquisition of land for the purpose of ensuring that the benefits of development activities are reaped by public institutions for community welfare and not for speculative gains by private individuals.

Modification of Draft Development Plan:29

The Board of Councilor may at any time but not more than once in every three years, propose to the District Planning Committee any revision or modification of the Draft Development Plan.

Annual Development Plan:30

The Board of Councilors shall prepare an Annual Development Plan for a period of one financial year, covering only the relevant portion of the Draft Development Plan for the concerned period in consultation with the District Planning Committee and submit the same to the State Government within the last week of the month of October of the year proceeding the period for which the Annual Development Plan shall be prepared;

30. Ibid, Section 300.
All planning and Developmental activities in an Urban Development Region shall be carried out under the overall supervision and control of the Board of Councilors of the concerned municipality.31

3.3 Heritage Conservation Committee (HCC), its power and function:

In view of protecting old buildings of Historical, Cultural and Architectural significance from being demolished for commercial exploitation in the present context of urbanization, a committee known as Heritage Conservation Committee has been constituted to perform its function to preserve and conserve it, under the chairmanship of the Chairman of the Municipality.

The Committee shall comprise, in addition to the chairman and convenor, seven other members as follows -

a) one shall be a nominee of the District Magistrate of the District;

b) one shall be a nominee of the Director of the Department of Archaeology, Government of West Bengal;

c) one shall be an eminent architect;

d) one shall be an artist;

e) one shall be an environmentalist;

f) one shall be a historian, and

g) one shall be the Concerned Executive Engineer of the Municipal Engineering Directorate.

Power and Function of the Heritage Conservation Committee:

The function of the said committee is mainly recommendatory as to the preservation and conservation of a building or site by proposing to declare it so

31. Section 301 of the West Bengal Municipal Act, 1993.
after considering all relevant facts and circumstances. Where the Municipality, on the recommendation of the Heritage Conservation Committee and also of the Chairman-in-Council, is of the opinion that any building or site in the municipal area should be preserved and conserved for historical, architectural, environmental or cultural purpose, it may declare such building or site as a heritage building or site.

Upon declaring so or during the period of consideration of such proposal no owner/lessee or sub-lessee of such building or site shall transfer such building or site by way of sale, lease or mortgage without the prior approval of the Board of Councilors.

3.4 **Functions and Duties of the Technical Personnel engaged in Licensing Process of Construction of Building:**

To get the permission to construct a building and as to the building site to that purpose, the owner/developer/builder or the promoter whoever may be is required to submit an application along with a site plan, signed by the applicant and by the licensed Building Surveyor/Architect/Structural Engineer with a certificate to the effect that the site has been inspected personally and the structural design including that of foundation has been made on the basis of recommendation/ findings of the Geo-technical Engineer.

Therefore, Licensed Building Surveyor, Architect, Structural Engineer, Geo-technical Engineer comprise the technical personnel engaged in Licensing.

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process for construction of Building under the Municipal Authorities in the West Bengal including the Kolkata Municipal Corporation, whose opinion and recommendation and certificate based thereon, is vital for having inbuilt check system in the regulation and control of constructional activities of multistoreyed building in and around Kolkata and suburban West Bengal.

For erecting multistoreyed building on a building site the Soil Test is must. A Soil Investigation Report from a Geo-technical Engineer giving design parameter on the basis of the condition of soil at site and accepted by the Structural Engineer, is the initial process for building construction provided that no such Soil Investigation Report shall be necessary in the case of building not exceeding 11.00metres in height provided that the building shall have no basement and the foundation does not involve piling work and deep foundation on a plot of land not exceeding 300 sq. meters in area to be erected on a site, which is not filled up tank. Provided also that Soil Investigation whenever required shall be done under the direction of a Geo-technical Engineer.

**Duties and Responsibilities of Structural Engineer :**

1. He shall become conversant with the provisions of the Act and all relevant rules and regulations made under the Act and shall prepare structural design and structural details as per the provisions of these rules.

2. He shall prepare and submit all such structural plans together with all documents, calculations in proper forms and other details including structural design of foundations, prepared in consultation with the Geo-technical Engineer, as are required to be submitted under these rules.
(3) He shall comply with all requisition received from the Municipal Commissioner in connection with the work under his charge promptly, expeditiously and fully. When he does not agree with such requisition, he shall state his objections in writing within stipulated time, in default of which the plans and the notice shall be rejected.

(4) He shall immediately intimate the person who has engaged him of the corrections or other changes, he makes on the structural plans, documents and details as per requisition from the Municipal Commissioner.

(5) He shall not accept any request or engagement for preparation and submission of structural plans, if the same are found to be in contravention of the provisions of the Act.

(6) He shall be responsible for full quality control of materials and workmanship at site and carry out necessary tests on materials used at site.

(7) He shall give all facilities to the Municipal Commissioner to inspect the work in progress.

(8) He shall be held responsible for the structural design and execution of the same on site and for contravention of the provisions of the Act, these rules and other relevant rules and regulations relating to structural safety.

(9) He shall not deviate or allow any deviation from the submitted structural plan in the execution of the works at site.

(10) The Licensed Building Surveyor, the Architect, the Structural Engineer, and the Geo-technical Engineer shall work in association with one another and they shall be individually and/or collectively responsible for ensuring the safety of the building structure and its foundation.
(11) He shall submit a certificate that the structure has been constructed as per submitted structural plan and the building is safe for occupation, along with the application for occupancy certificate after the completion of the building.

(12) He shall be deemed to have continued his supervision unless he has given notice in writing to the Municipal Commissioner that he has ceased to serve as the Structural Engineer for the work and submits a status report of the work completed under his supervision. He shall be held responsible for the work executed up to the date of intimation.

(13) He shall inform the Municipal Commissioner as to the person who has engaged him under rule 44 forthwith.

3.5 Functions of the Calcutta Metropolitan Water and Sanitation Authority:

"Calcutta Metropolitan Water and Sanitation Authority" has been established for the maintenance, development and regulation of water supply, sewerage and drainage services and for the collection and disposal of garbage in the Calcutta Metropolitan District with a view to the promotion of public health and for matters connected therewith.34

Functions of the Authority:35 The promotion and operation of schemes for-

a) Supply of Water; b) Sewerage; c) Drainage; d) Sewage treatment and disposal and e) collection and disposal of night soil in areas yet to be sewered.

34. Under the Calcutta Metropolitan Water and Sanitation Authority Act, 1966
35. Section 8 of the Calcutta Metropolitan Water and Sanitation Authority Act, 1966.
3.6 Metropolitan Planning Committee and its Functions:36

The law provides for the constitution of Metropolitan Planning Committee in every Metropolitan area in West Bengal for preparation of draft development plan for the Metropolitan area as a whole whereas a Metropolitan Planning Committee consisting of such number of members including a chairperson and a Vice chairperson as the State Government may determine to prepare a draft development plan for the Metropolitan as a whole shall perform such functions relating to planning and co-ordination for the Metropolitan area as the State Government may by notification assign to it. A committee may also constitute as many sub committees for such purpose as it may think fit.

3.7 Kolkata Metropolitan Development Authority and its s function:

The West Bengal Town and Country (Planning and Development Act, 1979 has repealed the earlier the Calcutta Metropolitan Development Authority Act, 1972 and thereby the Calcutta Metropolitan Development Authority constituted under the then Act, 1972 was continued to function and is known as The Kolkata Metropolitan Development Authority (KMDA) under the present Act and regarded as the Development Authority for the purpose of the Act.

Powers and Functions of the Calcutta Metropolitan Planning and Development Authority: Following are the functions and power of the Planning Authority:

a) To prepare land use map;

b) To prepare and enforce a land use and Development Control Plan;

c) To prescribe use of land within its area;

d) To perform any other function incidental or as prescribed;

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Besides K.M.D.A. some other Developmental Authorities like S.J.D.A. HDA, ADDA and SSDA have been constituted under the Act, 1979, with the power and function, in order to assign these bodies to take up new area development projects by which new chunks of land are acquired, as the State Government places adequate emphasis on integrated development of small and medium towns across the State on the basis of the formulation of National Urbanization Policy (NUP), which is need of the hour, to reduce the alarming pressure of population in Urban India by developing small and medium size town settlements so as to evolve a spatial pattern of economic development and hierarchical location of human settlements and to secure the optimum distribution of population between rural and urban settlements within each region.

3.8 Municipal Building Committee under the Calcutta Municipal Corporation Act, 1980:

The Calcutta Municipal Corporation Act, 1980, and the rules made there under i.e., the Calcutta Municipal Corporation Building rules 1990 are applicable to all building activities in Calcutta.

Calcutta Municipal Building Committee is a statutory body.37 The Municipal Building Committee performs its function under the chairmanship of the Municipal Commissioner. When the Building Committee under the chairmanship of the Commissioner makes a recommendation and the recommendation is made to the Mayor-in-Council and when the Mayor-in-Council accepts after considering it, the matter reaches in its finality in view of the provisions of the said Act.38 On proper construction of the provisions of

SS.391 and 396 of the said Act, it is clear that the Municipal Commissioner is not the authority to sanction or refuse to sanction the plan. Thereafter, no discretion is left for the Municipal Corporation to be exercised under the Act either to grant or to refuse sanction. Under SS.391 and 396 of the said Act, the Municipal Commissioner has not been conferred with any power, after the decision of the Municipal Building Committee, to take a decision contrary to and/or inconsistent with that decision.

Therefore, the Mayor-in-Council is the final authority who may give the finality of the recommendation made by a Municipal Building Committee, either to grant or to refuse sanction of a building plan.

When any building permit in respect of any building exceeding 14.5 metres in height has been issued the name of the applicant, the number and the area of the plot, essential features of the sanctioned building plan and such other particulars relating to the proposed construction as may be decided by the Mayor-in-Council, shall be published in the Municipal Gazette.

3.9 Role of the District Collector and Land & Land Reforms Department of the State Government:

The agricultural land situated within the urban agglomeration as defined in the Urban land (Ceiling and Regulation) Act, 1976 does not come within the purview of the said Act. As the Act does not apply to agricultural land it provides no mechanism to prevent conversion of such land into any purpose other than agriculture. Therefore, the agricultural land within the urban agglomeration may easily be converted to any other non-agricultural use. It is a noticeable phenomenon that such agricultural land, for which the petition for conversion has been put up has already been converted to some use other than
that appearing from the record of rights, without seeking any permission from the concerned authority i.e., the collector. Due to increase in construction activities within urban agglomerates, especially in the urban fringe areas, the agricultural land is gradually converted into another form. Therefore, the West Bengal Land Reforms Act upto its latest Amendment has a bearing to have a control over such conversion by or through the active intervention of the concerned authority of the State Government that is The District Collector and the Officers of the land and Land Reforms Act. Their role is mentioned below.

**Role of Collector in Developmental Process:**

The changing dimension in land use pattern has attracted wider connotation of the term 'land' under W.B.L.R. Act, The Concept of Land has undergone a revolutionary change by the W.B.L.R. (Amendment) Act, 1981 and thereby the legislative intent is to give all inclusive definition of land i.e., land of every description. Even though the new definition of land means land of every description it does not permit raiyat to convert the character of land, which is otherwise prohibited under the Act unless proper permission is obtained.

The Act requires a raiyat to seek prior permission from the collector by a written order from him, for conversion of the original land use pattern. The collector is entitled to entertain application from a raiyat desiring to make any change in his land use pattern. The collector may, after due enquiry and giving a chance of hearing to the applicant and other interested persons pass an appropriate order. The collector is empowered to restrain the raiyat from changing the use of land. The collector may consider the following points before giving such permission.

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39. The West Bengal Land Reforms Act, 1955, Section 4C.
40. Ibid, Section 4B.
41. Ibid, Section 4C.
42. Rule 5A of The West Bengal Land Reforms Act, 1955.
1) Whether the proposed change is likely to have deleterious effect on the environment or may adversely affect agriculture in surrounding areas.

2) Whether such permission would effects other laws on the proposed change, in particular referring to section-46 of the West Bengal Town and Country (planning and Development) Act.

Duty of the officer of the concerned Department of the State Government:

When a change is permitted by the collector under section 4C of the W.B.L.R Act 1955 for conversion of a land to homestead from agriculture, a change in the Record of Right is necessary. A register for conversion of land shall be maintained in each Block Land and Land Reforms office as well as in each District Land and Land Reforms Office.

Conversion of Land used mainly for Agriculture or as an Orchard within Urban Agglomeration and Role of the Collector:

Any Land as stated above within Urban Agglomeration if intended to be converted for other use by a raiyat a permission from the collector by an order in writing is required. Any such transfer and the document purporting to such transfer of land within an Urban Agglomeration, without the order of the collector in writing, is barred. In disposing of such a petition under section 4E of the said Act, the collector shall consider the effect of the proposed transfer on the person interested or affected and also on the environment. The collector may refuse the petitioner if the proposed change tends to violate a land use plan prepared under the West Bengal Town and Country (planning and Development) Act, 1979.

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43. Section 4E of the West Bengal Land Reforms Act, 1955.
Restriction on Filling up the Pond or Water Bodies and Role of the Collector:

When a land is recorded as tank fishery which is a water body even if the land is gradually filled up and the same has been turned into a high land, the character of the land cannot be changed without obtaining prior permission of the collector under Section 4C(2) of the said Act. The raiyat cannot claim advantage of his illegal activity to contend that the land is now an agricultural land and not a water body. The Division Bench of the Calcutta High Court held in a case\(^4^4\) that conversion of tank into land for the purpose of construction thereon amounts to conversion as per Section 4C of the said Act and permission of Collector to that effect is mandatory. In the given case as no permission was granted by the Collector, the owners of the pond were restrained from making any construction over the disputed pond without obtaining prior permission as required under Section 4C of the Act, 1955.

Changes Introduced in the Collector's Power by the West Bengal Land Reform (Amendment) Act of 2005:

Prior to the Amendment Act of 2005, the collector was the sole authority to grant or refuse the permission for filling up the pond or any water body for the purpose of construction. Moreover, in case of any such conversion without the knowledge or prior permission of the Collector, he could only issue injunction in such cases. But it was silent what would happen to cases where the changes, conversion, or alteration of the character of land has already been done by the raiyat.

Therefore, in view of the above stated two shortcoming of the existing law, the West Bengal land Reforms (Amendment) Act, 2005 has introduced two

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fundamental changes so as to bring a strong check on this illegal activities and strengthened the power of the Collector to that effect.

Present Position After the Amendment Act 2005 are as follows:

(i) In case of a permission of change or conversion or alteration of any plot of land having water body of any description and of any size, the collector is prohibited from making any change, conversion or alteration, unless he has made a prior consultation in writing with such departments of the State Government as may be prescribed and such order of the Collector may, depending on the circumstances of the case, include an order for compensatory water body of equal or larger size which is required to be changed, converted or altered.\textsuperscript{45}

(ii) The appropriate Department of the State Government or the local authority, while giving approval of any such alteration, conversion, change of user, must take into consideration the circumstances under which the approval may be given and that must be dependent on the permission of the Collector. The appropriate Department of the State Government or local authority may not give the approval unless the collector's permission to that effect is obtained.\textsuperscript{46}

(iii) Another change introduced by the Amendment Act, of 2005 states that the Collector has been authorized to direct the raiyat or a lessee for restoration of the original character of the land under the circumstances stated therein, that is when any such land has been changed, converted or altered in violation of Section 4C and if the Collector on his own motion or on receiving

\textsuperscript{45} Proviso to Section 4C(2) as incorporated by the West Bengal Land Reforms (Amendment) Act, 2005, w.e.f., 1.12.2005.

\textsuperscript{46} Subsection 4A of the Section 4C, as inserted by the Amendment Act, 2005.
information is of the opinion that it is necessary to do so in public interest within a specified time.47

**Comment on the Power of the Collector and the object behind such change introduced by the West Bengal Land Reforms (Amendment) Act, 2005:**

From the above stated discussion it may be concluded that the power of the Collector has become radically changed by the new Amendment Act 2005 along with the widening of the scope as well as the restriction upon the exercising of the power of the collector. Prior to the Amendment Act, 2005 the Collector was not required to consult with the appropriate Department of the State Government or the local authority for giving permission to a raiyat for conversion of a land or change of the user of land. Now the Collector has no planenary power to do so. He is prohibited to act on his own whims as he is required to take the approval from the concerned department of the State Government. At the same time, the concerned Department of the State Government can not move on its own motion unless a green signal is obtained from the Collector. This two way check and balance system is introduced by the Amendment Act 2005 with a view to make an inbuilt stringent system within law to curb the ongoing practice of filling up the pond or water bodies by way of gradually filling them and thereafter, anyhow procuring the permission to construct a building or any project upon that land pretending that such land was just agricultural land prior to the construction and as it was a more easier process to obtain the permission rather than getting that on a pond which is legally prohibited.

Therefore, in case of conversion of land character prior permission of collector is mandatory. The new Amendment provision has also introduced the

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47. Subsection 5 of Section 4C as inserted by the West Bengal Land Reforms (Amendment) Act, 2005.
manner how the permission to be dealt with. The Act stipulates that any such order of the collector subject to prior approval from the appropriate department of the Government or local authority as may be prescribed depending upon the circumstances of the case, include an order for creation of compensatory water body of equal or larger size of such water body which is required to be changed, converted or altered. So the emphasis is for preserving water bodies in the area by creation of compensatory water bodies of equal or larger size for area of the plot having water body changed, converted or altered. Such compensatory water body is to be created by the raiyat who has sought for such change of any existing water body. Hence this is a very laudable provision to preserve the ecological balance of the area in which a plot of land having existing water body has been ordered by the Collector to be changed with the appropriate department of the State Government or any local body as the case may be. Lastly it may be evident from the latest position of the W.B.L.R. Act up to its Amendment 2005 that the Authorities like the Collector, local body or the appropriate department of the West Bengal Government are jointly or severally liable for any such departure of the rules and provisions and they should act as vigilant with weapons of stringent law to curb this meance which has far reaching social and environmental consequences.

3.10 **Authorities Under the West Bengal Building (Regulation of Promotion of Construction and Transfer by Promoters) Act, 1993 to Control the Constructional Activities by the Promoters/Developers:**

With a purpose to bring regulatory measure to the constructional activities by the Promoters/Developers and to secure the safety of such activities and to protect the interest of the occupiers or owners of the flat constructed or to be constructed by the promoters, the West Bengal Building (Regulation of Promotion of Construction and Transfer by Promoters) Act, 1993 provides for the
compulsory registration and permission to construct a building after such registration from an authorized officer as appointed by the State Government who is vested with powers and responsibilities necessary to carry out the aforesaid regulatory measures. The Act provides for investigation of any complaint from any purchaser with regard to unlawful or defective construction or use of any substandard materials by the authorized officer who shall have access to the site of such building at any time of the day without prior intimation to the promoter. In case of finding any defect such officer shall require the promoter to rectify such defects and failing to rectify such defects such building may be declared as unsafe or dangerous for human habitation.

An Amended provision has been inserted in the original Act, 1993 by the latest amended Act which States that, the authorized officer, if satisfied that a building is being constructed in violation of the provision of this Act may direct the concerned local body, or the District Magistrate or the Commissioner of Police (In Case of Kolkata), or the Chief Engineer of the Housing Directorate of West Bengal Govt. or any other authority as may be prescribed to stop construction of such building or to demolish such building after giving the promoter a notice and an opportunity of being heard and the cost of demolition of such building shall be realized from the concerned promoter under the West Bengal Public Demand Recovery Act 1913.

An aggrieved promoter may file an appeal to the Appellate Authority against the order of the authorized officer within thirty (30)days from the date of the

49. Ibid, Section-3A.
50. Section 4 of the W.B. Building (Regulation of Promotion of Construction and Transfer by Promoters) Amendment Act 2002.
order was passed against him without giving him an opportunity of being heard. An Appellate Authority means an authority that is an officer superior in rank to order passed by the authorized officer refusing to registrar the name of the applicant promoter, and to grant him permission to construct the building or the authorized officer, appointed by State Government.

3.11 East Kolkata Wetland Management Authority (EKWMA) and its functions:

Wetlands are among the least protected ecosystems in developing countries, and India is particularly vulnerable to their degradation and loss. There are thousands of lakes, ponds, marshes, lagoons, estuaries, backwaters and mangrove, swamps that are vital to the country’s water needs, food productions and biodiversity but environmental policy has largely failed to acknowledge their contribution. Despite their niche status and vital economic role, State Government classify them in land records only as wastelands. Wetlands in the developing world are being filled (often wrongly termed “reclamation”) to build houses, industries or other facilities, ignoring their function in a wider economic sense. Many are turned into cesspools and dumping sites of solid waste including hazardous materials. Their role as flood plains, natural defences that deflect the impact of heavy rain flows, is ignored leading to avoidable economic losses.

Keeping the above Stated situation in view the State of West Bengal has recently enacted the East Kolkata Wetlands (Conservation and Management) Act, 2006 replacing the East Kolkata Wetlands (Conservation and management) ordinance. The Act is deemed to have come into effect from 16th November 2005.
As provided in the Act, the East Kolkata Management Authority (EKWMA) has been constituted under the chairmanship of the Chief Secretary. The whole East Kolkata Wetlands comprise of approx. 12741 hectares. The land schedule of the whole area depicting the land use of each plot has been included in the Act. The preparation of land schedule was done as a joint exercise between the Environment, the Institute of Environment Studies and Wetland Management (IESWM) the DLRS and the districts of 24Pargans North and South based on the satellite imageries and ground verifications.

The Rule of the East Kolkata Wetlands Management Act has been prepared.

Function of the Authority (EKWMA):

The State Government has constituted the 17members East Kolkata Wetlands Management Authority headed by chief secretary to provide for conservation and management of the East Kolkata Wetlands, an ecologically and sociologically important wetlands. The measure is imperative in view of an increasing pressure on land for human settlement leading to filling up of the Wetlands and its ecological significance. Secretary, Environment Department will act as the Member Secretary of the Committee.

Following are the Functions of the Authority:

i. The authority will demarcate the boundaries of the East Kolkata Wetlands on the field;

ii. Take measures to stop, undo and prevent any unauthorized development project in, or unauthorized use of or unauthorized act on the East Kolkata Wetlands;
iii. Take measures to abate pollution in the East Kolkata Wetlands and conserve the flora, fauna, and biological diversity in general;

iv. Prepare action plans conforming to the resolutions taken and recommendations made, from time to time, under the Ramsar convention;

v. Implement and monitor the activities specified in the action plans;

vi. Promote research and disseminate findings of such research among the stakeholders;

vii. Raise awareness about the utility of the Wetlands in general and the East Kolkata Wetlands in particular,

viii. Promote basic conservation principles like sewage fed pisciculture and ecotourism in East Kolkata Wetlands;

ix. Enforce land use control in the substantially water body oriented areas and other areas in the East Kolkata Wetlands;

x. Detect changes of ecological character and in land use in the East Kolkata Wetlands;

xi. Conduct inquiry or scientific study for any purpose of this Act;

xii. Constitute expert committees for any purpose of this Act;

xiii. Enter any land or premises, to collect samples of air, water, soil and biological resources for any purpose of this Act;

xiv. Call for relevant records and documents and information from any Department, organization or local body for any purpose of the Act.

The Authority will also ensure that every person holding any land in East Kolkata Wetlands shall maintain and preserve such land in a manner that its area is not diminished or its character is not changed, or it is not converted for any
purpose other than the purpose for which it was settled or previously held, except with the previous sanction of the authority.

Going through all such provisions relevant to the developmental aspect of the concerned Act and Rules, it may be commented that the State Government as well as the various authorities of the state, officials and urban local bodies are sufficiently empowered to look after the matters of urban development as a whole so as to give effect to the implementation of the policies of the Government towards a spatial urban planning and growth of small and medium urban size and thereby reduce the excessive pressure on the congested metropolitan city. The local bodies under the municipal Act are sufficiently empowered to regulate the constructional activities in the urban areas. Notwithstanding that the activities of illegal construction are being carried on in a massive scale resulting in haphazard and unplanned growth of the town and building top line at the cost of health hazards of the users due to having an adverse effect on the easementary right to receive sufficient amount of light and air and at the cost of ecological balance. The construction of building activities is even gradually engulfing the agricultural land of the urban fringe areas and thereby causing a change in the land use pattern. The promoters and builders are reclaiming the ponds and water bodies in different areas, as promoting a building site is more profitable business to them. Land is a limited resource on the earth and this land resource is being gradually decreased in areas, which is a threat to the future generation. But all these are happening before the administration that are responsible to manage and regulate all such activities and should remain dutiful for effecting a planned development of urban areas. Therefore, they may be held responsible for non-implementation of the Acts and Regulations.