

(2004) 10 DEL CK 0068

In the Delhi High Court

Case No : IA 4776 of 2004 in CS (OS) 814/04

Bharat Sanchar Nigam Ltd.

APPELLANT

Vs

Sanchar Nigam Executives" Association (India) and Another

RESPONDENT

Date of Decision : 14-10-2004

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, Order 39 Rule 2
Delhi Development Act, 1957 — Section 10, 11, 11A, 12, 14

Citation : (2004) 115 DLT 87 : (2005) 79 DRJ 17 : (2006) 106 FLR 163 : (2005) 2 LLJ 509

Hon'ble Judges : Mukul Mudgal, J

Bench : Single Bench

Advocate : R.V. Sinha, for the Appellant; Dayan Krishnan and Gautam Narayan, for the Respondent

Final Decision : Dismissed

Judgement

Mukul Mudgal, J.—This is an application under Order XXXIX Rule 1 and 2 of the Civil Procedure Code, seeking an ad-interim order of temporary injunction, restraining the defendant No. 1, its office bearers including the defendant No. 2, members, sympathizers and associates from resorting to strike in any manner, rallies, dharnas, demonstrations, gherao in any manner pursuant to what according to the plaintiff are threats emanating from the defendants' letters dated 15th July, 2004 and 28th July, 2004 including the ingress and egress of officers, staff and public in and around 500 meters of the premises of the plaintiff at Statesman House, Barakhamba Road, New Delhi or Kidwai Bhawan, Janpath, New Delhi or any other office premises of the plaintiff at Delhi/New Delhi or in or in front of the residential premises of its officers.

2. The genesis of the dispute arising in this suit is as follows:-

A notice dated 15th July, 2004 has been issued by Sanchar Nigam Executives" Association (India), i.e., the defendant No. 1 which refers to various grievances detailed in the said notice, concerning Delhi Circle Executives. Inter alias the

grievance raised is about the goonda element in Northern Telecom Region(NTR) and the delay in taking any action to stop the intimidation of the officers by such subordinate staff. Due to inaction on the part of the management, a lunch hour demonstration was proposed on 25th July, 2004 and a day long `dharna" at the office of the Chief General Manager, Northern Telecom Region on 4th August, 2004

3. The plaint is founded on the grievance that such actions threatened in the said notice are uncalled for and illegal and would stall the functioning of the plaintiff organization and violence and other objectionable activities like obstruction of ingress and egress of officers of officers and staff including the use of abusive and filthy language against the officers/staff and their family members may be resorted to. It has also been stated that the mob action may lead to a mis-happening due to the revocation of the defendants, its office bearers, members and staff. The said impugned actions are also said to have an adverse effect on the smooth functioning of the plaintiff organization as well as the general public.

4. Parties have relied upon various judgments in support of their case. However, since I am dealing with the relevant interlocutory application for interim injunction, I am only dealing with the judgments of the Hon"ble Supreme Court. The learned counsel for the plaintiff has relied upon the judgment of the Hon"ble Supreme Court in T.K. Rangarajan Vs. Government of Tamil Nadu and Others, to contend that the employees have no fundamental or statutory right to resort to strike. He has also relied upon the Hon"ble Supreme Court's judgment in Railway Board Representing The Union of India (UOI) Vs. Niranjan Singh, .

5. The learned counsel for the plaintiff has relied upon further judgments. But since this is the interlocutory issue, I have only considered the relevant case-law of the Supreme Court. The judgment, relied upon by the defendants" counsel is the judgment of Hon"ble Supreme Court in The Punjab National Bank Ltd. Vs. Its Workmen, . The issue which arose in the said judgment related to the pen down strike and its effects. The said judgment of the Hon"ble Supreme Court held as follows:-

""(54) It has been strenuously urged before us that in the case of a Bank which is a credit institution a pendown strike, if continued for a long period, is likely to affect prejudicially the credit of the Bank. It is also pointed out that, even in regard to industrial concerns, if strikers enter the premises of the factory and sit around the plant in large numbers, in the heat of the moment unfortunate and ugly incidents are likely to happen, and so such pendown or sit down strikes should be positively discouraged. We are prepared to concede that in the surcharged atmosphere which generally accompanies strikes and when passions are aroused, a large scale and continuous pendown strike may lead to untoward consequences. But, on the other hand, even in the case of such a strike, the employer is not without a remedy. He may bar the entry of the strikers within the premises by adopting effective and legitimate methods in that behalf as in fact the Bank did in the present case from April 23. He may call upon the employees

to vacate, and, on their refusal to do so, take due steps to suspend them from employment, proceed to hold proper enquiries according to the standing orders, and pass proper orders against them subject to the relevant provisions of the Act. If the Bank had been properly advised to adopt such a course, many of the difficulties which it had to face in the present proceedings would not probably have arisen. Therefore, we do not think that the general hypothetical consideration that pendown strikes may in some cases lead to rowdy demonstrations or result in disturbances or violence or shake the credit of the Bank would justify the conclusion that even if the strikers are peaceful and non-violent and have done nothing more than occupying their seats during office hours, their participation in the strike would by itself disqualify them from claiming reinstatement."".

6. The judgment of the Hon"ble Supreme Court in Niranjan Singh's case (supra) relied upon by the learned counsel for the plaintiff, Shri Sinha arises in respect of the challenge to order of removal based on a circular of the Railways and the judgment reads as follows:-

""It has been brought to notice that in a number of cases railway employees have held meetings inside railway premises such as inside workshops, inside stores depots and within office compounds. It may be pointed out that this practice is extremely objectionable and has to be stopped forthwith. All staff may be warned that if any one of them is found organising or attending a meeting inside railway premises or at places of work, he will render himself liable to severe disciplinary action as such action or his part will amount to misconduct arising out of violation of administrative instructions. Meetings of workers can be held on open grounds away from places of work with the permission of the railway authorities concerned if such open grounds fallow within railway boundary.

You are to note these instructions very carefully and to ensure their strict compliance in future.

Please acknowledge receipt.""

In the context of the challenge to the aforesaid circular, the relevant portion of the judgment in Niranjan Singh's case (supra) reads as follows:-

""The fact that the citizens of this country have freedom of speech, freedom to assemble peaceably and freedom to form associations or unions does not mean that they can exercise those freedoms in whatever place they please The exercise of those freedoms will come to an end as soon as the right of someone else to hold his property intervenes.""

7. It was contended that the aforesaid judgment thus curtails the right of the defendants from taking union action in respect of the grievances raised in the premises of the plaintiff. Mr. Dayan Krishnan, the learned counsel, appearing on behalf of the defendants, has contended that the aforesaid judgment was in respect of the validity of the circular and is distinguishable for the reason that

there is no such circular in the present case. The three Hon''ble Judges judgment in Punjab National Bank's case (supra) fully holds the field. It was contended that while PNB's case (supra) held the field being an earlier judgment of 3 Hon''ble Judges of 1960, even if this Court came to the conclusion that Niranjana Singh's judgment (supra) was not distinguishable the judgment applicable was PNB's judgment (supra) as Niranjana Singh's judgment (supra) though of 3 Hon''ble Judges had not noticed the earlier judgment in PNB's case(supra). He has also submitted that the judgment in T.K. Rangarajan's case (supra) relied upon by the learned counsel for the plaintiff was a judgment of two Hon''ble Judges of the Supreme Court and had not noticed the judgment of the three Hon''ble Judges in Niranjana Singh's case (surpa) and this Court was, Therefore, bound by the pronouncement of the three Hon''ble Judges and not of the two Hon''ble Judges. He further submitted that the action was only to be held in the compound of Kidwai Bhawan which is about 2000 sq. yards and not in the building proper as wrongly alleged in the plaint, thereby ruling out all apprehensions expressed in the plaint. I am also satisfied there is merit in the plea of the learned counsel for the defendants. Thus strike per se is not forbidden as per Niranjana Singh's judgment which permits legitimate restrictions on strikers' rights such as those by way of circular introduced in Niranjana Singh's case (supra) which has admittedly not been done in the present case. I am also bound to follow the earlier 3 Judge Bench judgment of the Supreme Court in Punjab National Bank's case (supra). However, it has to be noted that the strike in any manner should not interfere with the smooth working and impede the ingress and egress of the plaintiff organization and its work should not suffer. Mr. Krishnan has further submitted that contrary to the claim preferred in the plaint, the defendants, who are an association of responsible middle level executive were only seeking to resort to action of lunch hour demonstration in Kidwai Bhawan building and nowhere else which has no public dealing. Accordingly, I am of the view that the ends of justice will be fully met and the discipline will be fully preserved if the defendant No. 1, its office bearers including the defendant No. 2, members, sympathizers and associates are restrained from resorting to the threatened action impugned in this suit except in accordance with the terms of this order. However, the demonstration and the dharna shall be entirely peaceful and shall not in any manner bar or impede the ingress and egress of officers, staff and visitors to Kidwai Bhawan, Janpath, New Delhi and such action of the defendants should not disturb the functioning of the plaintiff. However, it is also made clear that the lunch hour demonstration will not be held inside the Kidwai Bhawan building but only outside the building but in the compound comprising of 2000 sq. meters. Accordingly, the application is allowed partially with the aforesaid restrictions imposed on the defendants action of lunch hour demonstration and dharna.

8. Application stands disposed of accordingly.

CS(OS) No. 814/04

List the matter on 8th March, 2005.

Sd/-

14th October, 2004

Mukul Mudgal, J.

That it proposed to construct on the Lower Ground Floor of ""Plot No. 7"".

9. So far so good. In July 2002, D.D.A took out an advertisement inviting bids at an auction to be held on 7th to 9th August, 2002. Amongst others, a plot bearing No. 11 in the Local Shopping Centre at Vasant Kunj was included. It was purchased by respondent No. 3, M/s. Pacific Develcon Pvt. Ltd. Full payment being paid by respondent no.3, possession of plot No. 11 was handed over to it on 29.9.2003. Plans were sanctioned on 13.10.2003. Construction commenced thereafter on said plot.

10. As per the petitioner, prior to the sanction of plan by D.D.A for plot No. 11, it came in the knowledge of the petitioner in February 2003 that some drawings were submitted for sanction by the D.D.A. The plans were for construction of a 4 storied Building. Petitioner sent a protest letter to D.D.A on 13.3.2003. Reminder was sent on 16.4.2003. On 20.6.2003 D.D.A wrote back that as on that date it had not sanctioned any plans. On 12.7.2003, petitioner sought confirmation from D.D.A. Petitioner's first letter dated 13.3.2003 is relevant. It reads:

""Ref.No.VKCC/03

Ref Date: 13/03/03

The Vice Chairman

DDA,

Vikas Sadan

New Delhi- 110 023.

Subject: Construction on Plot No. 11.

Dear Sir,

1. Please refer to the auction of Plot No. 11, Sector-C, Pocket 6 and 7, Vasant Kunj purchased by Mr.Gurpreet Singh.

2. It is submitted that the drawing proposed construction of Plot No. 11 was shown to us by Mr.Gurpreet Singh on 13th February 2003 during the presentation to the members of LSC Society.

3. It was observed that the area being covered was far beyond the permissible limits. The building is also so designed that it is coming dangerously close to the buildings on plot nos.5 and 7. This will adversely affect us as occupants and owners of Building of Plot No. 7 with regard to safety, security and right of way

besides repair and maintenance of our building.

4. A letter has been written to Mr. Gurpreet Singh to revise his plans but no response has been received so far (copy attached). The Area permissible for ground coverage is 92.41 sq.meters and FAR is 346.65 metres on Plot No. 11 as per the auction plan advertised. A photocopy of the newspaper cutting of Auction mentioning above details is enclosed.

You are kindly requested to take suitable measures in order to ensure that the proposed plan on plot No. 11 is in accordance with the specification laid down as per the auction plan and our interests are not jeopardized.

Yours sincerely,

Sd/-

Veerabhadra S.M.

Assistant Manager (HR and Admin)""

11. Since some pre-construction activity was noticed by the petitioner in September 2003, on 15.9.2003 it wrote a letter to D.D.A, queering as under:-

""Mr. R.K. Sood,

Suptdg.Engineer,

D.D.A. Civil Circle-I,

Munirka, New Delhi.

Sub: Construction on Plot No. 11

Sir,

Please refer to your letter No. 11(12)/97/VL/2003/Vol IV/888 dated 20th June 2003 copy attached and our letter dated 16th April 2003.

It is intimated that work on the Plot No. 11 has commenced. As per you're above letter we were intimated that plan was not approved. You are kindly requested to confirm if the plan in respect of above plot has now been approved.

In case we do not hear from you we will be constrained to take up this matter with higher authorities and also proceed in accordance with law, as we apprehend that construction on Plot No. 11 without approved plan will jeopardize our rights and commercial interest.

It is also submitted that our representative has visited your office a number of times to seek clarification on this subject, but has been denied the meeting with you.

Yours truly,

Sd/-

Veerabhadra S.M.

Assistant Manager- HR and Admin."

12. Focal point of the grievance of the petitioner as pleaded in para 15 and 17 of the petition is:-

"15. That it is also pertinent to mention herein that "Plot No. 11" never existed in the original plan of the Local Shopping Centre as detailed hereinbefore and now after it has been created by the Respondent No. 1 it also includes within its boundary a part of the green area. It is respectfully submitted that there is no amendment to the layout plan of the Local Shopping Complex, the Zonal Plan and the master plan and the creation of "Plot No. 11" is against the Layout Plan/Zonal Master Plan and the same has been created only with a view to cause undue enrichment to the Respondents No. 3 and 4.

17. That sometime in September, 2003 the respondent No. 3 and the respondent no.4 started construction on "Plot No. 11". When confronted, the respondent no.4 showed a drawing plan (Copy of which is enclosed herewith as Annexure P-10) which clearly showed that the height of the building would be almost 4 stories and would also cover an area much more than the permissible ground coverage of 92.41 square meters (i.e. 22.9% of the Plot size as specified in the Advertisement by which this plot was put to auction). That the proposed construction would also take within its coverage the already developed green area which existed and were developed by the respondent no.1 before the plot was created and auctioned. It also showed that by the constructed area, would be covered with a glass dome so as to take 100% control over the plot area and the actual ground coverage would be 100% and further it would have no connectivity with the other buildings and the same would further totally destroy the inter-connectivity of the whole Shopping Complex as originally proposed. Further the proposed construction would completely block the air, light and view of the building of the petitioner, at "Plot No. 7", from the West side. Further the proposed construction is being developed in a manner that the shops in the lower ground floor of "Plot No. 7", would be in absolute darkness and the visibility will become zero from the lower ground and the ground floor and which is contrary to the original plan."

13. At the hearing two points were urged by Sh.P.N.Lekhi, learned senior counsel who argued for the petitioner. These were:-

(i) Legitimate expectation of the petitioner arising out of the lay-out plan shown when it purchased plot No. 7;

(ii) Creation of plot No. 11 was without amending the Master Plan/Zonal Development Plan. Creation of plot No. 11 was by amending the lay out plan which was impermissible.

14. defense of D.D.A is to be found in paras 2 to 5 of the preliminary submissions in its counter affidavit and I propose to note the same:

""2. That the petitioner cannot invoke the extra-ordinary jurisdiction of this Hon"ble Court to settle his personal grievances against respondent no.3 and 4. The present petition is devoid on merits it deserves to be outrightly rejected.

3. That as per the layout plan of Pocket 6 and 7, Sector-C, Vasant Kunj 11 number of plots existed for being developed. Plot No. 11 originally had single storey shops.

4. Plot No. 10 was also one of the plots for construction of a local shopping center. A writ petition was filed before the Hon"ble High Court of Delhi and the respondent DDA agree to give up the said plot for construction of an electric sub-station. The FAR which was available to the DDA towards plot No. 10 got surplus and it was decided that the said FAR could be adjusted in plot No. 11. Accordingly the matter was placed before the Screening Committee for the utilization of the surplus FAR in plot No. 11. That the Screening Committee consists of the senior-most officers of the DDA including Vice Chairman, Principal Commissioner and Chief Architect who after great deliberations decided that the FAR made available towards plot No. 10 be adjusted in plot No. 11. Copy of the Agenda and approval of the Screening Committee is marked as ANNEXURE R-1 to the counter affidavit.

5. That thereafter the matter was taken up with the Senior Architect of DDA and it was proposed that plot No. 11 should be auctioned and given to the developer with the development control norms and drawings so that it becomes a landmark building. A proposal was made showing the building as a Pyramid covered with glass under which the facilities like shops and offices could be provided. It was also decided that the control for the plot be proposed in such a way that the ground floor coverage and FAR remains within the prescribed norms. Copies of the drawings showing the proposal and area statement was sent for approval by the Senior Architect, which was approved by the DDA.""

15. Private respondents, apart from taking shelter behind the defense of D.D.A raised a plea of delay and laches. Mr. Amarjeet Singh Chandhiok, learned senior counsel argued for respondents No. 3 and 4 that auction for plot No. 11 was held in August 2002. Pleadings of the petitioner shows that it was aware of the auction. Petition was filed in February, 2004 Mr. Chandhiok contended that his clients had spent money not only in purchase of the land but in getting plans prepared and sanctioned. Money was spent on construction activity already commenced at site.

16. In the pleadings of respondent No. 3 and 4, it is alleged that they were being blackmailed as those in charge of the petitioner were wanting money. However, during arguments this issue was not pressed, in that, not argued.

17. Section 2(d) of the Delhi Development Act, 1957 (referred to as the Act) defines development to mean:

""2(d) ""development"" with the grammatical variations means the carrying out

of building, engineering, mining or other operations in, on over or under land or the making of any material change in any building or land includes redevelopment;""

18. Delhi Development Authority (referred to as the authority) is created under sub-section (1) of Section 3 of the Act. It reads as under:

""3(1) As soon as may be after the commencement of this Act, the Central Government shall, by notification in the Official Gazette, constitute for the purposes of this Act an authority to be called the Delhi Development Authority (hereinafter referred to as the Authority),""

19. Sub-section (1) of Section 5A of the Act empowers the authority to constitute committees for such purpose as the authority thinks fit. It reads as under:

""5(1) The Authority may constitute as many committees consisting wholly of members or wholly of other persons or partly of members and partly of other persons and for such purposes as it may think fit.""

20. Amongst others, preparation of Master Plan and Zonal Development Plans, are two of the statutory duties of the authority. These duties flow from Sections 7 and 8 of the Act. Section 7 and relevant part of Section 8 read as under:

Section 7

(1) The Authority shall, as as soon as may be, carry out a civic survey of, and prepare a master plan for Delhi.

(2) The master plan shall-

(a) define the various zones into which Delhi may be divided for the purposes of development and indicate the manner in which the land in each zone is proposed to be used (whether by the carrying out thereon of development or otherwise) and the stages by which any such development shall be carried out; and

(b) serve as a basic pattern of frame-work within which the zonal development plans of the various zones may be prepared.

(3) The master plan may provide for any other matter which is necessary for the proper development of Delhi.

Section 8

(1) Simultaneously with the preparation of the master plan or as soon as may be thereafter, the Authority shall proceed with the preparation of a zonal development plan for each of the zones into which Delhi may be divided.

(2) A zonal development plan may-

(a).

(b).

(c).

(d) in particular, contain provisions regarding all or any of the following matters, namely:

(i) the division of any site into plots for the erection of buildings;

(ii) to (x).

(xi) the restrictions regarding the use of any site for purposes other than erection of buildings; and

(xii) any other matter which is necessary for the proper development of the zone or any area thereof according to plan and for preventing buildings being erected haphazardly in such zone or area.

21. Section 9 of the Act reads:

9.(1) In this Section and in Sections 10, 11, 12 and 14 the word ""plan"" means the master plan as well as the zonal development plan for a zone.

(2) Every plan shall, as soon as may be after its preparation, be submitted by the Authority to the Central Government for approval and that Government may either approve the plan without modifications or with such modifications as it may consider necessary or reject the plan with directions to the Authority to prepare a fresh plan according to such directions.

22. Section 10 of the Act specifies the procedure to be followed while preparing the plans. It reads:

10(1) Before preparing any plan finally and submitting it to the Central Government for approval, the Authority shall prepare a plan in draft and publish it by making a copy thereof available for inspection and publishing a notice in such form and manner as may be prescribed by rules made in this behalf inviting objections and suggestions from any person with respect to the draft plan before such date as may be specified in the notice.

(2) The Authority shall also give reasonable opportunities to every local authority within whose local limits any land touched by the plan is situated, to make any representation with respect to the plan.

(3) After considering all objections, suggestions and representations that may have been received by the Authority, the Authority shall finally prepare the plan and submit it to the Central Government for its approval.

(4) Provisions may be made by rules made in this behalf with respect to the form and content of a plan and with respect to the procedure to be followed and any other matter, in connection with preparation, submission and approval of such plan.

(5) Subject to the foregoing provisions of this section the Central Government

may direct the Authority to furnish such information as that Government may require for the purpose of approving any plan submitted to it under this section.

23. Date of operation of the plans is as u/s 11. It reads:

"" 11. Immediately after a plan has been approved by the Central Government, the Authority shall publish in such manner as may be prescribed by regulations a notice stating that a plan has been approved and naming a place where a copy of the plan may be inspected at all reasonable hours and upon the date of the first publication of the aforesaid notice the plan shall come into operation.""

24. Procedure for modification of the plans if provided u/s 11A. It reads:

""11A.(1) The Authority may make any modifications to the master plan or the zonal development plan as it thinks fit, being modifications which, in its opinion, do no effect important alterations in the character of the plan and which do not relate to the extent of land-users or the standards of population density.

(2) The Central Government may make any modifications to the master plan or the zonal development plan whether such modifications are of the nature specified in sub-section (1) or otherwise.

(3) Before making any modifications to the plan, the Authority or, as the case may be, the Central Government shall publish a notice in such form and manner as may be prescribed by rules made in this behalf inviting objections and suggestions from any person with respect to the proposed modifications before such date as may be specified in the notice and shall consider all objections and suggestions that may be received by the Authority or the Central Government.

(4) Every modification made under the provisions of this section shall be published in such manner as the Authority or the Central Govt., as the case may be, may specify and the modifications shall come into operation either on the date of the publication or on such other date as the Authority or the Central Govt. may fix.

(5) When the Authority makes any modifications to the plan under sub-section (1) it shall report to the Central Government the full particulars of such modifications within thirty days of the date on which such modifications come into operation.

(6) If any question arises whether the modifications which effect important alterations in the character of the plan or whether they relate to the extent of land-users or standards of population density, it shall be referred to the Central Govt. whose decision thereon shall be final.

(7) Any reference in any other Chapter, except Chapter III, to the master plan or the zonal development plan shall be construed as a reference to the master plan or the zonal development plan as modified under the provisions of this section.""

25. Section 9 of the Act is clear. Reference to the word "plan" in Section 9, 10

and 11 is to the Master Plan and Zonal Development Plan. Section 7 refers to the Master Plan and Section 8 refers to the Zonal Development Plan. Thus, Sections 7 to 11 relate to the Master Plan and Zonal Development Plans.

26. That Master Plan and Zonal Development Plans are statutory in character was not in dispute. That, once formulated and notified, development has to conform to these plans was not in dispute. That, these plans once notified could be modified, only in the manner provided by Section 11A was not disputed. Issue which was hotly debated at the bar was to the statutory character of the lay-out plans.

27. Mr.P.N.Lekhi, learned senior counsel, arguing for the petitioner referred to the Master Plan for Delhi-2001 which continues to be in force since 1990 and urged that statutory character to the lay out plans flows from said Master Plan. He urged that previous Master Plans did not contain said provision. Counsel urged that law on the subject as declared by earlier judicial pronouncements was either "per incuriam" or not applicable if decision related to the previous Master Plan.

28. Provision of the MPD-2001 referred to reads as under:

ZONAL (DIVISIONAL) PLAN

""The Union Territory of Delhi is divided into 15 zones (divisions). The approximate area in each zone (division) is given as under:

of	the	Zone	Approximate	area	in	Name
						ha
						A. Old
city	1159	B. City Extension(Karol Bagh)	2304	C. Civil Line	3959	D. New Delhi
6855	E. Transe-Yamuna	8797	F. South Delhi-I	11958	G. West Delhi-I	11865
	North West Delhi-I	5677	J. South Delhi-II	15178	K. West Delhi-II	12056
Delhi-III	22979	M. North West Delhi-II	8213	N. North West Delhi-III	15851	O.
River	Yamuna	6081	P.	North	Delhi	15707

A zone could be divided into sub zones by the Authority.

The Zonal (Divisional) Plans shall detail out the policies of the Master Plan, and act as link between the Layout Plan and the Master Plan. The development schemes, layout plans indicating use premises shall conform to the master plan/zonal (divisional) plans.

These plans for zones (divisions) A to H shall be published as soon as may be, after the Master Plan for Delhi (Perspective-2001) is notified within a maximum period of 3 years, and would have the same status as the Master Plan for Delhi. The zonal (divisional) plans for zone J to P shall be prepared as per the development needs. The zonal (divisional) plans of the area shall be prepared u/s 8 and processed u/s 10 and simultaneously the modifications of land use shall be processed u/s 11(A) of the Delhi Development Act. Already approved sub-zonal

(earlier named zonal) plans in conformity with the master plan shall continue to be operative. In the absence of zonal plan of any areas the development shall be in accordance with the master plan.'"

29. Counsel for the respondents rebutted by arguing that there are no pleadings in the writ petition predicated a case on the Zonal (Divisional) Plans. In any case, counsel urged that no Zonal (Divisional) Plan has been referred to. They urged that at best, if Zonal (Divisional) Plans dealt specifically with plot No. 11 and this was shown, then alone a submission based on said plan could be urged. None was shown by the petitioner. Counsel referred to the Development Code to urge that under clause 3 of the Development Code, lay out plans had to be sanctioned by the Local Bodies and Authorities in their areas of jurisdiction. It was urged that sanction of lay out plans was not statutorily regulated, much less its modification. Argument was that if it was the function of the Local Body or the Authority to sanction a lay out, it could well amend it.

30. Stated object of the Development Code which is a part of the Master Plan is to develop land in accordance with the development policies and land use proposals contained in the Master Plan. The Development Code contains provisions to determine the land use at 2 levels: (a) lay-out, and (b) permissible activity on the land.

31. Some of the important clauses of the Development Code may be noted:

2(1) Use Zone means an area for any one of the specific dominant uses of the urban functions as provided for in clause 4.0.

2(2) Use Premises means one of the many sub-divisions, of a use zone, designated at the time of preparation of the layout plan, for a specific main use or activity and includes the use premises described in Schedule I.

2(3) Layout Plan means a sub-division plan indicating configuration and sizes of all use premises.

2(4) Zonal Development Plan means a plan for one of the zones (divisions) of the Union Territory of Delhi containing detailed information regarding provision of social infrastructure, parks and open spaces and circulation system.

3(1) The Union Territory of Delhi is divided into 37 use zones as mentioned in Clause 4.0.

3(2) Each use zone shall be further sub-divided into required number of use Premises out of 136 use premises described in Schedule-I with or without conditions.

3(6) Layout plans and building plans shall be approved by the Local Bodies and Authority in their areas of jurisdiction.

4.0 USE ZONES DESIGNATED

There shall be 37 use zones classified in 9 categories namely; Residential,

Commercial, Manufacturing, Recreational, Transportation, Utility, Government, Public and Semi-Public and Agriculture and Water Body. 37 use zones are as under:

5.0 USE PREMISES DESIGNATED

There shall be 136 use premises as designated in Schedule I.

There shall be 136 Uses/Use Activities with similar nomenclature as that of Use Premises.

6.0 LOCATION AND BOUNDARIES FOR USE ZONES

6(1) Any one of the 37 use zones may be located at one or more than one places as shown on the Land Use Plan.

6(2) The boundaries of various pockets of use zones are defined in land Use Plan by features like roads, railway tracks, drains etc. the area of each pocket of different use zones is as indicated in the Land Use Plan.

32. Clause 8 of the Code states that the object of said clause is to guide the preparation of lay out plans for residential and industrial use zones. Sub-clause (ii) of clause 8 specifies the land use activity to be followed while preparing a lay out. It specifies which of the 1 or more out of 136 activities can be allowed while preparing the lay out.

33. It was not disputed that while sanctioning a lay out in a residential use zone, site of a plot for a LSC could be determined.

34. Scheme of the Act and the Master Plan shows that planning at the micro level has been left to the Local Bodies and the Authority for areas under their jurisdiction. This micro level planning, reflected in the lay out plan, in areas under jurisdiction of DDA, is the baby of the authority. The only curb on the power, is to follow the development norms and planning norms frozen by the Master Plan and Zonal Development Plan. Of course the Development Code as it is, is a part of the Master Plan.

35. Zonal Divisional Plan, introduced by MPD-2001 for the first time, would no doubt vest said plan with a statutory character. If a particular site is identified in the Zonal Divisional Plan as to be put to a particular use, any change would have to be by following the amendment procedure to be followed if Master Plan has to be amended. Relevant extract of the Master Plan (para 28 above) clearly states that Zonal divisional plans "would have the same status as the Master Plan for Delhi".

36. The only change brought about in MPD-2001 is that a lay out would have to additionally conform to the zonal divisional plan apart from the Master Plan and Zonal Development Plans. Character of the lay out-plan as being non-statutory plan remains the same.

37. Clause 4 read with clause 2(1) of the Development Code designates 9

categories to which an area can be put to a dominant use. These 9 categories can well be said to be the apex of the pyramid. Further, clause 4 enumerates 37 land uses within these 9 categories. These 37 uses can well be said to be mid segment of the pyramid. Clause 2(2), 2(3), 3(2), 3(3), 3(6), 5 and 6 of the Development Code, read together enumerate 136 further division. These 136 can well be said to form the base of the pyrami?

38. How this translates to a site can be graphically put as under:

Master Plan

Zonal Development Plans

Zonal Divisional Plans

Lay Out Plans

39. Clause 3(6) of the Development Code leaves it to the authority to approve lay out plans in areas within its jurisdiction. Section 5A of the Act empowers the authority to constitute committees for such purposes as the authority thinks fit. One of the purpose is to prepare the lay out plans and even amend them. It is an in house procedure.

40. Shanti Devi Gupta and others Vs. D.D.A. and others, , a Division Bench held:

""As noticed above, the Delhi Development Act in general and Section 9 of the said Act in particular, only refer to the Master Plan and Zonal Plan and not the lay out plan, which is sort of working drawings prepared by the DDA. Any departure from the lay out plan, strictly speaking, cannot be equated with the violation of the Master Plan or the Zonal Development Plan, which are statutory and termed as a violation falling with the ambit of Section 14 of the Delhi Development Act.""

41. Triveni Educational and Social Welfare Society Vs. Delhi Development Authority and Another, ., another Division Bench held:

""11. Chapter 3-A of the Delhi Development Act deals with the modification of the Master Plan. Circumstances under which modification can be made are enumerated in Section 11-A of the Act. There is no other provision of the Act, which deals with the modification of the lay-out plans. Lay-out plan can be modified by the Vice-Chairman.""

87(2000) DLT 603, BU Block Residents Welfare Association and Ors vs. DDA and Ors, another Division Bench held:

""9. There is no dispute that there cannot be any change in the DMP-2001 or the ZDP without complying with the procedure laid down in Section 11-A of the Act. Such a modification can be made only by the Central Government. Therefore, if the action of the DDA amounts to change in ZDP or DMP-2001, the same having been not approved by Central Government, it cannot be be permitted. However, it is this big if which is the hurdle to be crossed by the petitioners before they can succeed in this writ petitio.... In any case, we find no breach or violation of

DMP-2001 or the ZDP. It cannot be disputed that if there is a change in the layout Plan only, no approval or sanction of the Central Government is required. Still, if any authority for this proposition is required, one may usefully refer to Division bench judgment of this Court in the case of Shanti Devi Gupta and others Vs. D.D.A. and others, .""

43. View taken in Shanti Devi's case by the Division Bench has been consistently been followed. I am bound.

44. With the advent of industrialization in the 19th century and resultant urbanization, compulsory acquisition powers and concomitant development powers were needed by local government authorities. Housing and Town Planning legislations followed. Planning laws had 3 compartments. Acquisition, preparation of overall plans and control of development. Plans were subject to quinquennial review. Circumstances change with time and Therefore, planning authorities were given liberty to not only depart but even to finalise plans at the micro level. Delhi Development Act, 1957 is clearly modelled on this pattern.

45. Legitimate expectation means that a representation is made that benefit of substantive nature will be granted and based on it a person acts. It results in the creation of a legitimate expectation which binds the person who makes the representation.

The principle is not absolute, in that, it admits of no exception. Lord Diplock in Hughes vs. Department of Health and Social Security 1985 AC 776 observed:

""Administrative policies may change with changing circumstances. The liberty to make such changes is something that is inherent in our constitutional form of government.""

46. In decision Punjab Communications Ltd. Vs. Union of India and Others, ., it was held:

""The result is that a change in policy can defeat a substantive legitimate expectation if it can be justified on Wednesbury reasonableness. We have noticed that in Hindustan Development Corp. case also it was laid down that the decision-maker has the choice in the balancing of the pros and cons relevant to the change in policy. It is, Therefore, clear that the choice of the policy is for the decision-maker and not for the court. The legitimate substantive expectation merely permits the court to find out if the change in policy which is the cause for defeating the legitimate expectation is irrational or perverse or one which no reasonable person could have made.""

47. D.D.A had the power to revise the lay-out. Reason for revision gives a justification which cannot be said to be arbitrary, perverse or irrational. Revised lay out cannot be said to be a violation of any substantive legitimate expectation of the petitioner.

48. Letter dated 13.3.2003 (noted in para 10) which was the first on the subject

shows that petitioner had no problem save and except it wanted confirmation that the building would be constructed as per plans and since auction specified permissible ground coverage of 92.41 sq.mts. it would be adhered to. First reaction of the petitioner indicates its legitimate expectation. It never was that plot could not be auctioned. It never was that a building could not be constructed. Petitioner wanted the requisite open space on the plinth level.

49. Rule is discharged. Petition dismissed.

50. No costs.