

(2006) 01 DEL CK 0075
In the Delhi High Court
Case No : LPA 2633 of 2005

DLF Universal Ltd.

APPELLANT

Vs

Greater Kailash II Welfare Association

RESPONDENT

Date of Decision : 17-01-2006

Acts Referred:

Constitution of India, 1950 — Article 14, 21, 226, 32
Delhi Development Act, 1957 — Section 12, 12(2), 12(3)
Delhi Municipal Corporation Act, 1957 — Section 332, 338
Land Acquisition Act, 1894 — Section 4, 6

Citation : (2006) 127 DLT 131 : (2006) 88 DRJ 44

Hon'ble Judges : Markandeya Katju, C.J.; Madan B. Lokur, J

Bench : Division Bench

Advocate : Arun Jaitely, Pravin Bahadur, Meghalee and Kanika, for the Appellant; Vipin Sanghi Pritesh Kapur, Jasmeet Singh and Hima Kohli for R-6, 7 and 9, for the Respondent

Final Decision : Allowed

Judgement

Markandeya Katju, C.J.—This writ appeal has been filed against the impugned judgment of the learned single Judge dated 18.10.2005 by which he has allowed the writ petition.

2. Heard learned counsel for the parties and perused the record.

3. The facts in detail have been set out in the judgment of the learned Single Judge and hence we are not repeating the same except where necessary.

4. The prayers in the writ petition filed by the respondent were as follows:-

i) Certiorari quashing the sanction of building plans for additions/alterations in the existing building and for conversion into a multiplex mini cinema-cum-commercial Complex at Savitri Cinema point, Greater Kailash, Part-II, New Delhi-110 048 issued in favor of Respondent No. 7;

ii) Mandamus restraining Respondent No. 7 from raising construction of multiplex

mini cinema-cum-commercial complex in place of the pre-existing Savitri Cinema in Greater Kailash, Part-II, New Delhi-110 048;

iii) Certiorari quashing the clearances and permissions granted to the building Plans for addition/alterations and construction of a mini multiplex-cum-commercial complex submitted by Respondent No. 7 to the Respondent Authorities at Savitri Point, Greater Kailash-II, New Delhi;

iv) Mandamus directing the Respondent Authorities to discharge their statutory obligations and duties in respect of the parking and traffic circulation matters raised by the Petitioners;

Any further or other order may be passed as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case

5. The petitioner No. 1 in the writ petition claimed to be a society registered under the Societies Registration Act. It is alleged in para 1 of the writ petition that its members are residents of the colony called Greater Kailash, Part-II. Petitioner No. 2 is a member of the petitioner No. 1 society.

6. It is alleged in para 4 of the writ petition that the aforesaid colony has virtually only one entry/exit point from the outer Ring Road situated at the Savitri Point. On the corner of the said entry point, there used to be a single screen cinema, namely, Savitri Cinema owned and run by Respondent No. 7 (the appellant herein). It is alleged that the said cinema was closed soon after the Uphaar Cinema fire tragedy in June, 1997 and has remained defunct ever since. Sometime in 2003 Respondent No. 7 (the appellant herein) started demolition and re-construction activity of the erstwhile Savitri Cinema Building. On enquiry the writ petitioner learnt that Respondent No. 7 was raising a multiplex i.e. a multiple mini cinema complex-cum-commercial complex on the site where Savitri Cinema was situated.

7. It is alleged in para 8 of the writ petition that the Multiplex-cum-commercial complexes attract large number of cars and, Therefore, require vast parking facilities, so that there is a free flow of traffic in a smooth and uninterrupted manner.

8. It is alleged in para 9 of the writ petition that the Multiplex-cum-commercial complex being developed by respondent No. 7 (the appellant herein) at the sole/main entry point of the colony in place of the pre-existing Savitri Cinema poses a serious and imminent threat of major traffic jams and chaos which could even lead to law and order problems. It is alleged that on completing the Multiplex-cum-commercial complex the residents of Greater Kailash, Part-II commuting from the colony would face great difficulties due to the traffic congestion, and the noise and air pollution that would be caused on account of the jams in flow of traffic. It is alleged that the road leading into the colony of the petitioner from the Outer Ring Road is highly over congested and over crowded. The problem would be further compounded if the proposed multiplex is built.

9. It is alleged in para 10 of the writ petition that the petitioner sent a detailed representation in this connection dated 10.9.2003 to the Commissioner, MCD, Chairman, Delhi Urban Arts Commission, Chief Fire Officer, Delhi, DCP (Licensing), Delhi Police and DCP (Traffic) objecting to the construction of this Multiplex-cum-commercial complex in view of the great problems which would arise to the people living in that area. True copy of this communication dated 10.9.2003 is annexure "D" to the writ petition. The representatives of the petitioner society also met the Officers of Delhi Urban Arts Commission on 12.11.2003 and also gave a detailed written representation vide Annexure "E". It is alleged that the petitioners pointed out that the parking facilities that Respondent No. 7 was developing and the circulation area for the traffic visiting the Multiplex-cum-commercial complex was wholly inadequate to cater to the demands of the Multiplex-cum-commercial complex. The petitioner society also emphasized the imminent traffic chaos that the proposed Multiplex-cum-commercial complex would cause to the residents of the Greater Kailash-II. It is alleged that the construction of this multiplex would cause traffic jams, pollution and great hardship to the public of the area and would seriously and adversely affect their fundamental right to live as provided for in Article 21 of the Constitution of India.

10. In paragraph 12 of the writ petition, the petitioner alleged that the construction of the Multiplex-cum-commercial complex by Respondent No. 7 was in violation of the Master Plan of Delhi, the Unified Building Bye-Laws, in particular clauses 13.1 & 13.2 and the Cinematograph Act, 1952. It is alleged that the Multiplex-cum-commercial complex is in close vicinity of a religious place, namely, the Gurudwara in Greater Kailash-Part-II, New Delhi and is within the radius of 250 metres from the nearest boundary of the said Gurudwara.

11. It is alleged in paragraph 22 of the writ petition that the ongoing construction activity by Respondent No. 7 at the Savitri Cinema Point is both illegal and unauthorized and the sanction of building plans, if any, granted to Respondent No. 7 is liable to be quashed.

12. In paragraph 23 of the writ petition, it is alleged that u/s 332 of the Delhi Municipal Corporation Act, no construction can be undertaken by any person except with the prior sanction of the Commissioner. It is alleged that the Respondent authorities are not willing to even disclose as to whether they have granted sanction for the construction and whether the construction activity is in accordance with any such sanctioned building plan. It is further alleged that even if a sanction plan has been granted, the same would be in violation of the Unified Building Bye-Laws and the Delhi Cinematograph Act, and IS 4878-1986 Code for construction of Cinema Building.

13. In Paragraph 24 of the writ petition, it is alleged that even if sanction of the building plan has been granted, the same is the result of a gross misrepresentation by Respondent No. 7 to the concerned authorities. Hence, it is alleged that sanction, if any, to the building plan is liable to be cancelled u/s 338

of the Delhi Municipal Corporation Act. It is submitted that it is the duty of the MCD to prevent traffic congestion and traffic jams so as to maintain peace and tranquility in the locality.

14. In paragraph 26 of the writ petition, it is alleged that parking space has to be provided and the building has to be as per the recommendations contained in the Master Plan of the DDA and in accordance with Bye-Law No. 13.1 and 13.2. It is alleged that the authorities do not appear to have applied their mind to the requirements of parking at the proposed Multiplex-cum-commercial complex, though they were obliged to do so. It is further alleged that the Delhi Cinematograph Act and rules have been violated as stated in Paragraph 28 of the writ petition.

15. In a short counter affidavit filed by the MCD to the writ petition, it has been stated in paragraph 3 that the building plans for addition/alteration for conversion of the existing Savitri Cinema Building into one mini Cinema-cum-Commercial Complex was sanctioned by the MCD vide file No. 84/A/HQ/02, which was sanctioned and issued on 4.12.2002. The proposal comprises one mini Cinema hall retaining 300 seats as against the previous existing capacity of 1000 seats. It is alleged that the building plans for addition/alteration in the existing Savitri Cinema building have been sanctioned by the MCD in accordance with the provisions of the Building Bye-Laws, Master Plan-2001, Delhi Cinematograph Rules and after obtaining necessary approval/NOC from various departments such as Delhi Urban Art Commission, Chief Fire Office, DCP (Traffic), DCP (Licensing) etc. The parking provisions sanctioned at the time of sanctioning of the building plan is as per the Master Plan, 2001.

16. In paragraph 4, it is alleged that as per the report of Central Zone-Building Department, the existing construction as on date in the property in question does not violate the sanctioned building plans.

17. A counter affidavit was also filed by Respondent No. 7 (the appellant herein) in the writ petition and we have perused the same. It is alleged that the writ petition is malafide and misconceived and deserves to be dismissed. It is further alleged that the petitioner has made false and erroneous statements and there is absolutely no substance in their averments.

18. In paragraph 3 of the counter affidavit, it is stated that the present petition is based on the allegation and assumption that the answering respondent is setting up a multiple cinema complex i.e. multiplex in place of the existing single screen Savitri Cinema. The petitioner has alleged that the establishment of this multiplex supposedly having four cinema screens would lead to a quantum increase in the number of cinema seats and, Therefore, the number of people who visit the cinema would lead to traffic congestion at Savitri point, allegedly the only entry/exit point of G.K-II & III, Alaknanda, Mandakini Enclave and Chittranjan Park. The petitioner further alleged that this alteration/renovation of Savitri Cinema is being carried on by the answering respondent without obtaining

the statutory clearances and in contravention of applicable laws.

19. It is alleged in paragraph 4 of the counter affidavit that the aforesaid assumptions are wholly baseless and false. Respondent No. 7 has in fact obtained the sanction for the alteration/renovation, converting the existing 1000 seats Savitri Cinema into a single screen mini cinema hall with only 300 seats. Hence, in fact far from any increase in the number of seats there will, in fact, be a substantial reduction in the number of seats.

20. In paragraph 5 of the counter affidavit, Respondent No. 7 has stated that the Savitri Cinema was a well-known existing Cinema hall, being run by Respondent No. 7 for the past 25 years and it is situated on a plot of land duly approved for a cinema hall under the Zonal and Master Plans of Delhi. In 1997, after the 'Uphaar'(tm) fire tragedy Respondent No. 7 had suo moto decided to temporarily close down the Savitri Cinema in order to modify and renovate it. A decision was taken to convert the Savitri theatre into a smaller capacity mini-cinema hall with all the attendant modern features and facilities and complete fire safety measures. It was also decided to increase the number of parking spaces to provide for convenient parking for the people visiting the Cinema Complex.

21. The salient features of this alteration/renovation are: (i) single screen mini cinema hall; (ii) number of seats to be reduced from 1000 to 300; (iii) retaining the same building envelope and covered area; (iv) total parking space, basement and external, to be increased from 78 cars to 98 cars, apart from parking space for two wheelers as statutorily required; (v) no change in any other part of the existing commercial complex.

22. It is alleged in paragraph 7 of the counter affidavit that accordingly the said respondent submitted its alteration/renovation plans to the MCD for the requisite sanction. As required by the MCD, respondent No. 7 duly obtained the following clearances:

(a) approval from Delhi Urban Arts Commission on 24.9.2001.

(b) NOC from the office of DCP Traffic, Delhi on 1.3.2002.

(c) NOC from Delhi Fire Service on 9.9.2002.

(d) NOC from BSES Rajdhani Power Ltd. on 30.10.2002.

(e) provisional clearance certificate from the office of DCP Licensing (Cinema), Delhi on 29.11.2002.

23. All these clearances were obtained by Respondent No. 7 after providing satisfactory clarifications to the queries of the concerned authorities and making amendments to the plans, wherever directed. Based on all the above clearances, and finding the building plans to be in consonance with Building Bye-Laws 1983, Master Plan 2001 and Delhi Cinematograph Rules, 2002, the MCD accorded sanction to the alteration/renovation plans on 4.12.2002 with the direction that the said renovation project should be completed by 3.12.2004. True copy of the

sanction order dated 4.12.2002 is annexure 'G'(tm) to the writ petition.

24. It is alleged in paragraph 9 of the counter affidavit that as per the sanction granted by MCD, Respondent No. 7 completed the alteration/renovation of Savitri Cinema within time and applied to the MCD for Completion Certificate on 2.12.2004 vide annexure 'H'(tm) to the writ petition.

25. In paragraph 10 of the counter affidavit, it is stated that all the apprehensions of the petitioners are completely unfounded. It is alleged that Savitri Cinema has been converted into a mini cinema hall of only 300 seats and the same stretch of outer ring road is completely red light free with two new flyovers, at Savitri Point and at Nehru Place. Further the traffic at Savitri Point has been especially streamlined and made red light free. Respondent No. 7 has released an area of 417 sq. metres along the outer ring road, free of cost, for widening the road at Savitri Point. The parking at the Savitri Complex has also been enhanced to 98 cars spaces, which is much more than the 78 car spaces which is statutorily prescribed under the Building Bye Laws and the Delhi Cinematograph Rules, 2002. It is also denied that Savitri Point is the only entry/exit point for the colonies.

26. In paragraph 11 of the counter affidavit, it is stated that the reliance of petitioners on proceedings before Delhi Urban Arts Commission is entirely misconceived as they related to approval of a "revised plan" which was abandoned vide its letter dated 8.4.2004 which was accepted by MCD on 26.5.2004 vide annexure 'J'(tm). Thereafter the Respondent No. 7 went ahead and altered/renovated the Savitri Cinema in terms of the plans sanctioned by the DUAC on 24.9.2001 and by the MCD on 4.12.2002.

27. It is alleged in paragraph 12 that the Respondent No. 7 has already provided for more parking spaces in Savitri Complex than what is statutorily required.

28. We have also perused the affidavit filed on behalf of the Delhi Urban Arts Commission, Delhi in which the allegations of the writ petitioners have been denied. It is denied that Respondent No. 2 has failed to discharge his duties. The petitioners were given opportunity of hearing by the Respondent No. 2 and Respondent No. 2 has given the approval and sanction of one mini cinema hall with capacity of 300 seats.

29. We have also perused the rejoinder affidavit filed by the petitioners.

30. The Govt. of NCT Delhi has filed its affidavit through the DCP (Licensing), Delhi Police. It states that the initial objection to the entry and exit to the Cinema Commercial Complex was redressed by taking such steps as closing Gate No.1 and permitting entry only from Gate No. 2 and exit from Gate Nos. 3 & 4.

31. It is alleged that the provisions of the Building Bye-Laws 1983, Delhi Master Plan, 2001 and Delhi Cinematograph were taken into consideration while granting 'no objection'(tm) for the approval of the proposed cinema hall.

32. Learned counsel for the respondent submitted that the Savitri Cinema hall was earlier located in front of a busy road which had traffic signals. At that point of time, there was no fly over leading to the Nehru Place. Because of the construction of the fly over the flow of traffic is now smooth and well regulated. Hence, the grievances raised about the heavy traffic congestion are imaginary. He also submitted that the entry point was changed due to which the Delhi Police granted its no objection certificate. Instead of the original entry at Gate No. 1 the sanctioned plan indicated the entry at Gate No. 2 and exit from Gate No. 3 and 4. Gate No. 1 was permanently shut. These measures would alleviate the traffic problem. Learned counsel also submitted that as per the stand of the authorities the parking standards prescribed space for 78 cars whereas the space provided both in the basement and ground floor by Respondent No. 7 is to the extent of 98 cars. He also submitted that Respondent No. 7 has given more than 411.75 sq. metres for road widening. All these show that the authorities were aware and alive to the parking requirements as per various norms. The sanction was duly granted after a lengthy consultative process. Hence, there is no substance in the complaint of the petitioner.

33. The learned Single Judge, however, by the impugned judgment has allowed the writ petition. The relevant reasoning in his judgment is from paragraphs 44 to 49 of the said judgment.

34. We have carefully perused the judgment of the learned Single Judge and we are of the opinion that learned Single Judge has practically sat as a court of appeal over the decisions of the executive authorities. It may be mentioned that granting permission, regulating traffic etc. are all executive functions and it is ordinarily wholly inappropriate for the judiciary to encroach into the executive function vide VISA Steel Ltd & Ors. vs. Union of India & Others in W.P (C) No. 20185-87/2005 decided on 8.12.2005, Rama Muthuramalingam, State Propaganda Committee Member Vs. The Deputy Superintendent of Police and Others, , etc. These decisions have referred to the relevant case law on the point, which may be seen.

35. Whether the relevant standards and requirements have been met is ordinarily for the concerned authorities to look into, and not for this Court.

36. From the facts of the case as disclosed in the affidavits on record it is evident that Savitri Cinema was an existing 1000 seat cinema hall which was operational for the past 25 to 30 years at a site earmarked in the Master Plan 2001, Delhi. After the cinema hall 'Uphaar'(tm) fire tragedy the appellant suo moto closed down the cinema hall and subsequently decided to go in for renovation and repairs. The salient features of the renovation/modification planned by the appellant in the Savitri Cinema were :-

“(i) complete fire safety measures (ii) single screen to be retained (iii) number of seats to be reduced from 1000 to 300 (iv) the external building envelope and covered area of Cinema hall to remain the same (v) using the balance area

arising from reduction of cinema capacity for commercial use, as permitted under MPD-2001 (vi) total parking space, basement and external, to be increased from 78 to 98 cars, apart from parking space for two wheelers as statutorily required (vii) no change in any other part of the existing commercial complex.

37. For implementing the aforesaid renovation/modification the appellant approached the various relevant authorities for necessary sanction/approvals including inter alia, the Delhi Urban Arts Commission (DUAC), DCP (Traffic), DCP (Licensing), Fire Department and the MCD. All these sanctions/approvals were obtained including the final sanction from the MCD on 4.12.2002 wherein the MCD directed the renovation/modification project to be completed as per the sanctioned plan by 3.12.2004.

38. In our opinion, it was for the aforesaid authorities to consider whether the appellant's proposal met the requisite requirements under the law, and it is not for this Court to ordinarily go into these considerations. The Court has to maintain judicial restraint and has to ordinarily defer to the opinion of the administrators, unless there is clear violation of law or something shockingly arbitrary.

39. Under the sanction plan of the MCD, the appellant was required to provide the parking of 78 Equivalent Car Spaces (ECS), whereas the appellant has actually provided the parking of 98 ECS which is well above the sanctioned requirement. The DCP (Traffic) had prescribed the entry and exit gates to the cinema, and the appellant has undertaken to comply with these directives. The appellant duly completed the renovation/modification project in terms of the sanctioned plan and applied to the MCD on 2.12.2004 for completion which is within the time prescribed by the MCD in the sanction letter dated 4.12.2002.

40. It may be noted that the respondent (writ petitioner) filed the writ petition against the renovation/modification project in December, 2004 which was after the said project had been duly completed in terms of the sanctioned plan and the application for Completion Certificate had been applied for by the appellant. Hence, in our opinion, the writ petition should have been dismissed on the ground of laches without even going into the merits. It is well-settled that where a writ petition is filed after unreasonable delay, it is liable to be dismissed on the ground of laches.

41. However, even on the merits, in our opinion the writ petition was liable to be dismissed. A bare reading of the writ petition shows that it was based on a complete misconception that the appellant divided the erstwhile Savitri Cinema into four screen cinemas and that the same was being done without requisite permission and in contravention of law. The appellant had filed its counter affidavit to the writ petition clarifying that under the renovation/modification project the capacity of the Savitri Cinema theatre was in fact reduced from 1000 to 300 seats while retaining the single screen cinema. The appellant had annexed copies of the sanctioned plans from all the relevant authorities including the MCD

and these permissions/sanctions were obtained in terms of the existing laws. All the respondents MCD, DUAC, DCP (Traffic), DCP (Licensing) have also filed their affidavits stating that sanctions were granted as per the existing laws. The MCD in its affidavit specifically stated that after the completion of the project they had found that the same had been completed as per the sanctioned plan.

42. This Court cannot sit in appeal over the opinion of the MCD and other authorities. With respect to the learned Single Judge, we are of the opinion that he has wrongly stayed the sanction granted by the MCD even though he found no irregularity or mala fides in the sanction order, and despite the fact that the sanction had already been acted upon fully by the appellant and the renovation/modification project had been completed in terms of the same even prior to the filing of the writ petition. In our opinion, the learned Single Judge should have dismissed the writ petition on the ground of laches because clearly the petitioner came after unreasonable delay.

43. It is well settled that writ is a discretionary remedy and may not be issued if a party comes to the Court after unreasonable delay. As to what is reasonable and what is not reasonable will of course depend upon the facts of each case, and no absolute rule can be stated in this connection. In one case, even a delay of one month may be unreasonable, while in another case a delay of even 1 or 2 years may not be regarded unreasonable. However, in the present case we are clearly of the opinion that the petitioner approached this Court after unreasonable delay. Hence, the writ petition should have been dismissed on the ground of laches. As stated by the petitioner, the final sanction had been granted by the MCD on 4.12.2002 and the applicant had duly completed the renovation/modification project in terms of the sanctioned plan and applied to MCD on 2.12.2004 for the completion certificate but the writ petition was filed only thereafter. If the petitioner was aggrieved he should have filed the writ petition soon after the construction had begun but not after more than two years after its beginning. The appellant had obviously spent a lot of money for this construction, and it would be inequitable if a direction is now given to stop the functioning of the Multiplex at such a late stage.

44. It is well settled that writ jurisdiction is discretionary jurisdiction. Hence if a party approaches the court under Article 226 of the Constitution of India after an unreasonable delay, this court can dismiss the writ petition without going into the merits of the matter. Thus, in *Raja Jagdambika Pratap Narain Singh Vs. Central Board of Direct Taxes and Others*, (vide para 13) the Supreme Court observed:-

Article 226 is not a blanket power, regardless of temporal and discretionary restraints. If a party is inexplicably insouciant and unduly belated due to laches, the court may ordinarily deny redress.

45. In this case we are of the opinion that in the facts and circumstances of the case the petitioner has approached this court after unreasonable delay without any proper Explanation for the delay.

46. In *Durga Prashad Vs. Chief Controller of Imports and Exports*, (vide para 3) the Supreme Court observed:-

It is well settled that the relief under Article 226 is discretionary, and one ground for refusing relief under Article 226 is that the petitioner has filed the petition after delay for which there is no satisfactory Explanation.

47. In *State of M.P. and Others Vs. Nandlal Jaiswal and Others*, the Supreme Court observed:-

The power of the High Court to issue an appropriate Writ under Article 226 of the Constitution is discretionary and the High Court in exercise of its discretion does not ordinarily assist the tardy and the indolent or the acquiescent and the lethargic. If there is inordinate delay on the part of the Petitioner in filing a Writ Petition and such delay is not satisfactorily explained, the High Court may decline to intervene and grant relief in the exercise of its writ jurisdiction. The evolution of this rule of laches or delay is premised upon a number of factors. The High Court does not ordinarily permit a belated resort to the extraordinary remedy under the writ jurisdiction because it is likely to cause confusion and public inconvenience and bring in its train new injustices. The rights of third parties may intervene and if the writ jurisdiction is exercised on a writ petition filed after unreasonable delay, it may have the effect of inflicting not only hardship and inconvenience but also injustice on third parties. When the writ jurisdiction of the High Court is invoked, unexplained delay coupled with the creation of third party rights in the meanwhile is an important factor which always weighs with the High Court in deciding whether or not to exercise such jurisdiction. We do not think it necessary to burden this judgment with reference to various decisions of this Court where it has been emphasised time and again that where there is inordinate and unexplained delay and third party rights are created in the intervening period, the High Court would decline to interfere, even if the State action complained of is unconstitutional or illegal.

48. We cannot understand why the petitioner waited till the completion of the Multiplex to file this writ petition. No Explanation has been given for the delay. Hence this is not a fit case for exercise of our discretion under Article 226 of the Constitution.

49. In *Maharashtra State Road Transport Corporation Vs. Balwant Regular Motor Service, Amravati and Others*, (vide para 11) the Supreme Court observed:-

It is well settled that the writ of certiorari will not be granted in a case where there is such negligence or omission on the part of the applicant to assert his right as taken in conjunction with the lapse of time and other circumstances, causes prejudice to the adverse party. The principle is to a great extent, similar to though not identical with, the exercise of discretion in the Court of Chancery. The principle has been clearly stated by Sir Barnes Peacock in *Lindsay Petroleum Co. v. Prosper Armstrong Hurd, Abram Farewall, and John Kemp*, (1874) 5 PC 221 as follows:

Now the doctrine of laches in Courts of Equity is not an arbitrary or a technical doctrine. Where it would be practically unjust to give a remedy, either because the party has, by his conduct, done that which might fairly be regarded as equivalent to a waiver of it, or where by his conduct and neglect he has, though perhaps not waiving that remedy, yet put the other party in a situation in which it would not be reasonable to place him if the remedy were afterwards to be asserted in either of these cases, lapses of time and delay are most material. But in every case, if an argument against relief, which otherwise would be just, is founded upon mere delay, that delay of course not amounting to a bar by any statute of limitations, the validity of that defense must be tried upon principles substantially equitable. Two circumstances, always important in such cases, are, the length of the delay and the nature of the acts done during the interval, which might affect either party and cause a balance of justice or injustice in taking the one course or the other, so far as relates to the remedy.

50. In the present case the decision of the Privy Council in *Lindsay Petroleum Co. v. Prosper Armstrong Hurd, Abram Farewall, and John Kemp* (supra) squarely applies. In the present case by his delay in filing the writ petition the petitioner has put respondent No.3 in a situation in which it would be unreasonable, inequitable and unjust to put him back in his original position prior to the construction of the Multiplex. Hence, it will be wholly unjust and inequitable now to interfere in the matter. Even assuming that the petitioner had a good case on merits, it would now be inequitable and unjust to interfere at this late stage, and for this delay the petitioner itself is entirely to blame.

51. In *Babu Singh and Others Vs. Union of India (UOI) and Others*, the Supreme Court observed:-

The length of delay is an important circumstance because of the nature of the acts done within the interval on the basis of the notification and declaration and, Therefore, a challenge to a notification u/s 4 and a declaration u/s 6 (of the Land Acquisition Act) should be made within a reasonable time thereafter. If it is not so done the petition is liable to be dismissed.

52. As already stated above, the principle of laches applies to writ petitions. Laches is different from limitation. In limitation the time limit is hard and fast, whereas that is not so in laches. Laches simply means unreasonable delay. As to what is reasonable or unreasonable will depend on the facts and circumstances of each case. In one case even one month's delay can be regarded as unreasonable, whereas in another case even one year's delay may not be regarded as unreasonable. Hence we have to see the facts and circumstances of each case in order to determine whether there was unreasonable delay.

53. It is well settled that if there is undue delay on the part of the petitioner in filing a writ petition, he would not be entitled to the discretionary relief under Article 226 of the Constitution of India.

54. In *State of Maharashtra Vs. Digambar*, the Supreme Court observed (vide

para 12) that it is well settled by the decisions of the Court that no person is entitled to obtain equitable relief under Art 226 of the Constitution of India if his conduct is blame-worthy because of laches, undue delay, acquiescence, waiver and the like.

55. Similarly in *The Municipal Council, Ahmednagar and Another Vs. Shah Hyder Beig and Others*, (vide paras 17 and 18) it was held that when there is inordinate delay in filing a writ petition, the High Court in its discretionary powers under Art 226 of the Constitution of India can dismiss it on this ground without going into the merits.

56. In *Jagdish Narain Maltiar Vs. The State of Bihar and Others*, , it was held that where the petitioner, a dismissed Government servant, after being informed that his services were terminated for misconduct, spent about three years in sending memorials to the Government, a remedy not provided by law, the High Court was justified in rejecting the petition on the ground of delay.

57. In *Rajalakshmiah v. State of Mysore* AIR 1967 SC 993: (1967) 2 SCJ 464 the Supreme Court held that the appellants were guilty of laches because after the impugned order was passed in 1950, they should have filed a writ petition within a reasonable time thereafter. Merely because the Chief Engineer had espoused their cause and was writing letters from time to time to the State Government to do something for them did not mean that they could rest upon their oars if they really had a grievance.

58. Thus, it is well settled that writ jurisdiction being discretionary jurisdiction cannot be invoked by a party who approaches the High Court after unreasonable delay (Vide: *S.A. Rasheed Vs. Director of Mines and Geology and another*, .

59. No doubt there is no specific limitation period provided for under Article 226 for filing a writ petition. However, the principle of laches i.e. undue delay certainly applies to writ jurisdiction. The High Court has to exercise its writ jurisdiction on settled legal principles, and one of these legal principles is that a writ petition is liable to be dismissed if the petitioner has come to the High Court after undue delay, as has happened in this case.

60. We may also clarify that the pursuit of a departmental representation or correspondence is no ground for condoning the delay in approaching the High Court. (vide : *Rajalakshmiah v. State of Mysore* (supra), *J.N. Maltiar v. State of Bihar* (supra), *Gian Singh Mann v. P & H* High Court (supra) etc). It is only when the representation is a statutory representation that the time spent in pursuing it can be taken into consideration in deciding whether the petitioner has approached the High Court after undue delay.

61. It is well settled that writ jurisdiction is discretionary jurisdiction. Hence, even if there is violation of law, the High Court is not bound to interfere. The Supreme Court in *Chandra Singh v. State of Rajasthan and Anr.* (2003) (6) SCC 20 held as under:-

Issuance of a writ of Certiorari is a discretionary remedy (see *Champalal Binani Vs. The Commissioner of Income Tax, West Bengal and Others*, The High Court and consequently this Court while exercising its extraordinary jurisdiction under Articles 226 or 32 of the Constitution of India may not strike down an illegal order although it would be lawful to do so. In a given case, the High Court or this Court may refuse to extend the benefit of a discretionary relief to the applicant.

62. In our opinion, this is not a fit case for exercise of discretion under Article 226 of the Constitution. However, apart from that, even on merits, we are of the opinion that the petition was liable to be dismissed.

63. In the impugned judgment the learned Single Judge has directed the MCD to refer the issue of parking in the Multiplex along with details of the plan approved by it to the DDA to specify the parking norms afresh for the Multiplex. In our opinion, this direction was wholly misconceived as the D.D.A. had no jurisdiction over Greater Kailash II (for the reasons given hereafter in paragraphs 72 and 73 of this judgment). Moreover, in our opinion, this direction of the learned Single Judge is based on a misconception that the existing laws including the Master Plan of Delhi, 2001 does not provide specific parking requirements of a cinema-cum-commercial complex. In fact clause 8 (2) of the Development Code to the Master Plan 2001 clearly permits commercial areas within a cinema. The parking requirements even for this Cinema having commercial areas has been consistently prescribed by the MCD as 1.67 ECS as prescribed in clause 8 (2) of the Development Code to the Master Plan, 2001. It may be noted that the parking of 98 ECS provided by the appellant is well over the requirement prescribed not only under the Master Plan, 2001 but also well over the requirements under the Delhi Cinematograph Rules, 2002 as well as the Delhi Building Bye-Laws. Under the Master Plan April, 2001 the highest parking requirement of 2 ECS per 100 sq. metres of constructed floor space is prescribed for commercial plotted development. If parking for Savitri Cinema is to be prescribed under even this assumed basis the existing parking of 98 ECS provided by the appellant would be well above the parking of 93 ECS, calculated under 2 ECS.

64. As regards the direction in paragraph 59 (c) of the impugned judgment to the DDA to consider the issue of exit from the Multiplex, in our opinion no such power vests with the DDA under any law, and moreover the DCP (Traffic) has already considered and prescribed the entry and exits to the cinema. Thus, the aforesaid direction of the learned Single Judge was clearly incorrect.

65. It was submitted by learned counsel for the respondent that the appellant had to take a specific approval from the DDA for the renovation/modification in question. It was stated that unless such approval was taken from the DDA the renovation/modification would be violative of Section 12(2) & 12(3) of the Delhi Development Act, 1957 which states:-

(2) Save as otherwise provided in this Act, the Authority shall not undertake or

carry out any development of land in any area which is not a development area.

(3) After the commencement of this Act no development of land shall be undertaken or carried out in any area by any person or body (including a department of government) unless,-

(i) where that area is a development area, permission for such development has been obtained in writing from the Authority in accordance with the provisions of this Act,

(ii) where that area is an area other than a development area, approval of, or sanction for, such development has been obtained in writing from the local authority concerned or any officer or authority thereof empowered or authorised in this behalf, in accordance with provisions made by or under the law governing such authority or until such provisions have been made, in accordance with the provisions of the regulations relating to the grant of permission for development made under the Delhi (Control of Building Operations) Act, 1955 (53 of 1955), and in force immediately before the commencement of this Act:

Provided that the local authority concerned may (subject to the provisions of section 53A) amend those regulations in their application to such area.

66. In our opinion, this argument is not tenable. It may be noted that the DDA Act, 1957 classifies land into two categories:

(i) Development Areas

(ii) Area other than a Development Area.

For any development in a Development Area the express written permission of the DDA is essential. Section 12(3)(ii) of the Act makes it clear that for development in an area other than a Development Area, only the prior written approval or sanction of the local authority regulating the development of such other area is required. In our opinion, there is no requirement to take the approval of the DDA in such cases.

67. The Savitri Cinema is admittedly in Greater Kailash-II which is not a development area. It may be mentioned in this connection that the task of the DDA is to develop some area, and after its development to hand it over to the appropriate local authority, and thereafter that land no longer remains under the jurisdiction of the DDA. Admittedly Greater Kailash-II was developed and then handed over to the MCD, and it is now no longer a development area within the jurisdiction of the DDA. Hence for carrying out any renovation/modification project in Greater Kailash-II permission of the DDA is not required but only the permission of MCD is required. Admittedly the permission of MCD has been obtained by the appellant.

68. In *Aflatoon and Others Vs. Lt. Governor of Delhi and Others*, the Supreme Court while considering the Section 12 of the DD Act, 1957 clearly stated:-

For planned development in an area other than a development area, it is only necessary to obtain the sanction or approval of the local authority as provided u/s 12(3).

69. Hence, in our opinion no permission or approval from DDA was required in the present case. The decision of the MCD and other authorities concerned granting permission/approval/sanction to the appellant is an administrative decision and it is not proper for this Court to sit in appeal over such decision. Vide *Visa Steel Ltd. & Ors. vs. Union of India & Ors.* in W.P (C) No. 20185-87/2005 decided on 8.12.2005.

70. This Court cannot ordinarily interfere in administrative matters, since the administrative authorities are specialists in matters relating to the administration. The court does not have the expertise in such matters, and ordinarily should leave such matters to the discretion of the administrative authorities. It is only in rare and exceptional cases, where the *Wednesbury* principle applies, that the Court should interfere, vide *Tata Cellular Vs. Union of India*, *Om Kumar vs. Union of India*, 2001 (2) SCC 386 . In *U.P. Financial Corporation and Others Vs. Naini Oxygen and Acetylene Gas Ltd. and Another*, (vide paragraph 21) the Supreme Court observed:

However, we cannot lose sight of the fact that the Corporation is an independent autonomous statutory body having its own constitution and rules to abide by, and functions and obligations to discharge. As such, in the discharge of its function it is free to act according to its own light. The views it forms and the decisions it takes are on the basis of the information in its possession and the advice it receives and according to its own perspective and calculations. Unless its action is *mala fide*, even a wrong decision taken by it is not open to challenge. It is not for the Courts or a third party to substitute its decision, however more prudent, commercial or business like it may be, for the decision of the Corporation. Hence, whatever the wisdom (or the lack of it) of the conduct of the Corporation, the same cannot be assailed by making the Corporation liable.

71. In *Tata Cellular Vs. Union of India*, the Supreme Court observed:

(1)The modern trend points to judicial restraint in administrative action.

(2)The Court does not sit as a court of appeal over administrative decisions but merely reviews the manner in which the decision was made.

Court does not have the expertise to correct an administrative decision. If a review of the administrative decision is permitted it will be substituting its own decision, without the necessary expertise, which itself may be fallible.

72. As Lord Denning observed:

This power to overturn executive decisions must be exercised very carefully, because you have got to remember that the executive and the local authorities have their very own responsibilities and they have the right to make decisions.

The courts should be very wary about interfering and only interfere in extreme cases, that is, cases where the Court is sure they have gone wrong in law or they have been utterly unreasonable. Otherwise you would get a conflict between the courts and the government and the authorities, which would be most undesirable. The courts must act very warily in this matter. (See Judging the World by Garry Sturgess Philip Chubb).

73. In our opinion judges must maintain judicial self restraint while exercising the powers of judicial review of administrative or legislative decisions.

In view of the complexities of modern society, wrote Justice Frankfurter, while Professor of Law at Harvard University, and the restricted scope of any man's experience, tolerance and humility in passing judgment on the worth of the experience and beliefs of others become crucial faculties in the disposition of cases. The successful exercise of such judicial power calls for rare intellectual disinterestedness and penetration, lest limitation in personal experience and imagination operate as limitations of the Constitution. These insights Mr. Justice Holmes applied in hundreds of cases and expressed in memorable language:

It is misfortune if a judge reads his conscious or unconscious sympathy with one side or the other prematurely into the law, and forgets that what seem to him to be first principles are believed by half his fellow men to be wrong.

74. In writing a biographical essay on the celebrated Justice Holmes of the U.S. Supreme Court in the dictionary of American Biography, Justice Frankfurter wrote:

It was not for him (Holmes) to prescribe for society or to deny it the right of experimentation within very wide limits. That was to be left for contest by the political forces in the state. The duty of the Court was to keep the ring free. He reached the democratic result by the philosophic route of skepticism by his disbelief in ultimate answers to social questions. Thereby he exhibited the judicial function at its purest.

(see Essays on Legal History in Honour of Felix Frankfurter (tm) Edited by Morris D. Forkosch).

75. In our opinion adjudication must be done within the system of historically validated restraints and conscious minimization of the judges' (tm) preferences. The Court must not embarrass the administrative authorities and must realize that administrative authorities have expertise in the field of administration while the Court does not. In the words of Chief Justice Neely:

I have very few illusions about my own limitations as a Judge. I am not an accountant, electrical engineer, financier, banker, stockbroker or system management analyst. It is the height of folly to expect Judges intelligently to review a 5000 page record addressing the intricacies of a public utility operation. It is not the function of a Judge to act as a super board, or with the zeal of a pedantic school master substituting its judgment for that of the administrator.

76. In administrative matters the Court should Therefore ordinarily defer to the judgment of the administrators unless the decision is clearly illegal or shockingly arbitrary. In this connection Justice Frankfurter while Professor of Law at Harvard University wrote in *The Public and its Government*

With the great men of the Supreme Court constitutional adjudication has always been statecraft. As a mere Judge, Marshall had his superiors among his colleagues. His supremacy lay in his recognition of the practical needs of government. The great judges are those to whom the Constitution is not primarily a text for interpretation but the means of ordering the life of a progressive people.

77. In the same book Justice Frankfurter also wrote

In simple truth, the difficulties that government encounters from law do not inhere in the Constitution. They are due to the judges who interpret it. That document has ample resources for imaginative statesmanship, if judges have imagination for statesmanship.

78. In *His Holiness Kesavananda Bharati Sripadagalvaru Vs. State of Kerala*, Khanna J. observed:

In exercising the power of judicial review, the Courts cannot be oblivious of the practical needs of the government. The door has to be left open for trial and error.

79. In *Indian Railway Construction Co. Ltd. Vs. Ajay Kumar*, (vide paragraph 14) the Supreme Court observed that there are three grounds on which administrative action is subject to control by judicial review. The first ground is illegality, the second is irrationality and the third is procedural impropriety. These principles were highlighted by Lord Diplock in *Council of Civil Service Unions v. Minister of the Civil Service* 1984 (3) All ER 935. The Supreme Court observed that the Court will be slow to interfere in such matters relating to administrative functions unless the decision is tainted by any vulnerability enumerated above, like illegality, irrationality and procedural impropriety. The famous case, commonly known as the '*Wednesbury*' case is treated as the landmark in laying down various principles relating to judicial review of administrative or statutory discretion.

80. Lord Diplock explained irrationality as follows:

By irrationality I mean what can be now be succinctly referred to as *Wednesbury* unreasonableness. It applies to a decision which is so outrageous in its defiance of logic or of accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at it.

81. No doubt parking has become a big problem in Delhi, in most of the cities in India and even in foreign countries. However, it is not for this Court to regulate the traffic or lay down rules and regulations in this connection. That is for the appropriate executive authority to do. The administrative authorities are experts

in the matter. They have long experience in dealing with such matters like traffic controls, traffic jams, pollution etc. Hence, this Court must exercise judicial restraint and ordinarily defer to the opinion of the experts including the respondents in the writ petition.

82. In the order of the Executive Engineer (Building) of the MCD dated 25.11.2002, a copy of which is annexure 'F'(tm) to the writ petition it is stated:-

MUNICIPAL CORPORATION OF DELHI

BUILDING DEPARTMENT (HQ)

TOWN HALL: DELHI

Date: 25.11.2002

No. D/675/AEII/BHQ/2002

Shri S.K.Pant

Assistant Commissioner of Police (Licensing)

Office of the Deputy Commissioner

of Police (Licensing)

Police Department (HQ)

I.P.Estate

NEW DELHI 110 002

Subject: Provisional Clearance Certificate in respect of Mini- Cinema at Greater Kailash-II, New Delhi.

Sir,

Please refer to your letter No. 25903/DCP/Lic (Cinema) dated 15.11.2002 in response to this office letter No. D/648/AEII/B/HQ/2002 dated 7.11.2002 on the above mentioned subject.

It is clarified that while sanctioning the building plans of the above property, MCD has duly taken care of the provisions of Building Bye-Laws-1983, Master Plan, 2001, Delhi Cinematograph Rules 2002 and approval of Delhi Urban Art Commission and other policies of the department. The plans have been sanctioned only after ensuring that the same conforms to all provisions of aforesaid laws, subject to producing NOC from Licensing Department.

You are, Therefore, once again requested to please issue provisional clearance certificate so that the sanctioned building plans could be released. A copy of the sanctioned plan will be sent to your office at the time of release of sanction. Five sets of plans are enclosed herewith for your kind information and record.

Thanking you,

Yours faithfully,

Executive Engineer (Building)

Encl: As above

Copy to: Senior Vice-President, D.L.F.Universal
Ltd.,D.L.F Centre, Sansad Marg, New Delhi.

83. Pursuant to the aforesaid order dated 25.11.2002, the MCD granted the approval by order dated 4.12.2002. A copy of which is annexure to the writ petition.

84. The order of the Executive Engineer (Building) of MCD dated 25.11.2002 states that the plans have been sanctioned only after ensuring that the same conform to all the provisions of the aforesaid laws. The licensing department has also granted provisional clearance vide annexure 'E'(tm) to the writ petition. The sanction of the other authorities are annexures 'A'(tm) to 'D'(tm) to the writ petition.

85. Thus, it is evident that the matter has been looked into by all the concerned authorities and it is not for this Court to sit in appeal over the opinions of the said authorities.

86. In paragraphs 44 to 49 of the impugned judgment, the learned Single Judge has observed that the authorities concerned granted their sanctions/approvals on the footing that a multiplex has to be evaluated for parking area on the basis of its use as a cinema hall, whereas its predominant use is not as a cinema hall, but as a shopping-cum-commercial complex. In our opinion, even assuming that a multiplex has to be treated as a commercial/shopping place, that would make no difference because even if it is treated as a shopping/commercial complex, the appellant has provided for the requisite parking area.

87, The learned Single Judge has, in our opinion, erroneously observed that the extant laws including the Master Plan for Delhi,2001 does not provide for a specific parking requirement for a cinema hall-cum-commercial complex. In our opinion, this conclusion of the learned Single Judge is based on a complete misreading of the applicable rules and bye-laws as well as the misapplication of the same. Clause 8(2) of the Development Code to the Master Plan for Delhi,2001 clearly permits commercial areas within a cinema. The parking requirements for a cinema have been prescribed as 1.67 ECS vide Clause 8(2) of the Development Code to the Master Plan for Delhi, 2001. The parking of 98 ECS provided by the appellant is, in our opinion, well over the requirement prescribed not only under the Master Plan for Delhi,2001, but well over the requirements under the Delhi Cinematographic Rules,2002 as well as the Delhi Building Byelaws, as already noted above.

88. Moreover, in our opinion, the learned Single Judge erred in directing the DDA to consider afresh the parking requirements for Savitri Cinema on criteria which

would be applicable only to a new cinema to be constructed for the very first time. In our opinion, the criteria such as location and size of plot, proximity to residential structures, educational and religious institutions etc cannot be made applicable to the renovation/modification of a cinema hall which has been in existence for 30 years in a commercial area and in a site earmarked for a cinema under Master Plan for Delhi, 2001.

89. Apart from that, the direction to make a reference to the DDA for prescribing the entry and exit points to a cinema is, in our opinion, wholly untenable as no such power vests with the DDA (as explained in paragraphs 66 and 67 of this judgment). Moreover, the DCP (Traffic) has already considered and prescribed the entry and exits to the cinema. Also the commercial complex has been in existence for over 30 years and all the entry and exit points to the complex are pre-existing. In our opinion, the learned Single Judge has thus clearly erred in giving the aforesaid direction in the impugned judgment.

90. This Court must maintain judicial restraint and should not ordinarily encroach into the executive or legislative domain vide *VISA Steel Ltd & Ors. vs. Union of India & Others* in W.P (C) No.20185-87/2005 decided on 8.12.2005, *Rama Muthuramalingam, State Propaganda Committee Member Vs. The Deputy Superintendent of Police and Others*, etc.

91. Before parting with this case we would like to briefly comment on the subject of judicial restraint while reviewing statutes or administrative decisions. We feel justified in making these comments because the times which this country is passing through requires clarification of the role of the judiciary vis-à-vis the executive and the legislature.

92. Under our Constitution the Judiciary, the Legislature and the Executive have their own broad spheres of operation. It is important that these organs do not encroach on each other's proper spheres and confine themselves to their own, otherwise there will always be danger of a reaction. Of the three organs of the State, it is only the judiciary which has the right to determine the limits of jurisdiction of all these three organs. This great power must therefore be exercised by the judiciary with the utmost humility and self-restraint.

93. The judiciary must therefore exercise self-restraint and eschew the temptation to act as a super legislature or a Court of Appeal sitting over the decisions of the administrative authorities. By exercising self-restraint it will enhance its own respect and prestige. Of course, if a decision clearly violates some provision of the law or Constitution or is shockingly arbitrary in the *Wednesbury* sense, it can be struck down, but otherwise it is not for this Court to sit in appeal over the wisdom of the legislature or the executive.

94. The Court may feel that a better decision could have been taken or some other course of action could have been adopted by the legislature or executive, but on this ground it cannot strike down the law or the administrative decision. The legislature and the executive authorities in their wisdom are free to choose

different methods of solving a problem and the Court cannot say that this or that method should have been adopted. As Mr. Justice Cardozo of the U.S. Supreme Court observed in *Anderson v. Wilson* (1932) 289 US 20:

We do not pause to consider whether a statute differently conceived and framed would yield results more consonant with fairness and reason. We take this statute as we find it.

95. In our opinion the same principle will apply to administrative decisions also.

96. It must never be forgotten that the administrative authorities have wide experience in administrative matters. No Court should therefore strike down an administrative decision solely because it is perceived by it to be unwise. A Judge cannot act on the belief that he knows better than the executive on administrative matters, because he can never be justifiably certain that he is right. Judicial humility should therefore prevail over judicial activism in this respect.

97. Judicial restraint is consistent with and complementary to the balance of power among the three independent branches of the State. It accomplishes this in two ways. First, judicial restraint not only recognizes the equality of the other two branches with the judiciary, it also fosters that equality by minimizing inter-branch interference by the judiciary. In this analysis, judicial restraint may also be called judicial respect, that is, respect by the judiciary for the other co-equal branches. In contrast, judicial activism's unpredictable results make the judiciary a moving target and thus decrease the ability to maintain equality with the co-branches. Restraint stabilizes the judiciary so that it may better function in a system of inter-branch equality.

98. Second, judicial restraint tends to protect the independence of the judiciary. When Courts encroach into the legislative or administrative fields almost inevitably voters, legislators, and other elected officials will conclude that the activities of judges should be closely monitored. If Judges act like legislators or administrators it follows that judges should be elected like legislators or selected and trained like administrators. This could be counter-productive. The touchstone of an independent judiciary has been its removal from the political or administrative process. Even if this removal has sometimes been less than complete, it is an ideal worthy of support and one that has had valuable effects.

99. The constitutional trade-off for independence is that Judges must restrain themselves from the areas reserved to the other separate branches. Thus, judicial restraint complements the twin, overarching values of the independence of the judiciary and the separation of powers.

100. The Court should always hesitate to declare statutes or administrative decisions as unconstitutional, unless it finds it clearly so. As observed by the Supreme Court in *Mohd. Hanif Quareshi and Others Vs. The State of Bihar*, the Court must presume that the legislature understands and correctly appreciates

the need of its own people. The legislature is free to recognize degrees of harm and may confine its restrictions to those where the need is deemed to be the clearest. In the same decision it was also observed that the legislature is the best Judge of what is good for the community on whose suffrage it came into existence. In our opinion the same principle will also apply to administrative decisions.

101. In *Lochner v. New York*, (1904) 198 US 45, Mr. Justice Holmes of the U.S. Supreme Court in his dissenting judgment criticized the majority of the Court for becoming a super legislature by inventing a "liberty of contract" theory, thereby enforcing its particular laissez-faire economic philosophy. Similarly, in his dissenting judgment in *Griswold v. Connecticut*, 381 US 479, Mr. Justice Hugo Black warned that unbounded judicial creativity would make this Court a day-to-day Constitutional Convention. In *The Nature of the Judicial Process*(tm) Justice Cardozo remarked : The Judge is not a Knight errant, roaming at will in pursuit of his own ideal of beauty and goodness. Justice Frankfurter has pointed out that great Judges have constantly admonished their brethren of the need for discipline in observing their limitations (see Frankfurter *Some Reflections on the Reading of Statutes*(tm)).

102. In this connection we may usefully refer to the well-known episode in the history of the U.S. Supreme Court when it dealt with the New Deal Legislation of President Franklin Roosevelt. When President Roosevelt took office in January 1933 the country was passing through a terrible economic crisis the Great Depression. To overcome this, President Roosevelt initiated a series of legislation called the New Deal, which were mainly economic regulatory measures. When these were challenged in the U.S. Supreme Court the Court began striking them down on the ground that they violated the due process clause in the U.S. Constitution. As a reaction, President Roosevelt proposed to reconstitute the Court with six more Judges to be nominated by him. This threat was enough, and it was not necessary to carry it out. The Court in 1937 suddenly changed its approach and began upholding the laws. Economic due process met with a sudden demise.

103. The moral of this story is that if the judiciary does not exercise restraint and over stretches its limits there is bound to be a reaction from politicians and others. The politicians will then step in and curtail the powers, or even the independence, of the judiciary (in fact the mere threat may do, as the above example demonstrates). The judiciary should Therefore confine itself to its proper sphere, realizing that in a democracy many matters and controversies are best resolved in a non-judicial setting.

104. We hasten to add that it is not our opinion that Judges should never be activist. Sometimes judicial activism is a useful adjunct to democracy such as in the School Segregation and Human Rights decisions of the U.S. Supreme Court, vide *Brown v. Board of Education* (1954) 347 US 483, *Miranda v. Arizona* (1966) 384 US 436, *Roe v. Wade*, 410 US 113, etc. or the decisions of our own Supreme

Court which expanded the scope of Articles 14 and 21 of the Constitution. This, however, should be resorted to in exceptional circumstances when the situation forcefully demands it in the interest of the nation, but always keeping in mind that ordinarily the task of legislation or administrative decisions is for the legislature and the executive and not the judiciary.

105. We are fully aware of the fact that Delhi is the capital of the country and is having enormous civic problems including the problem of traffic congestion and traffic jams. However, it is for the executive authorities to deal with this problem and it is not for this Court to interfere with the functioning of the executive in this connection, unless there is clear illegality or something shockingly arbitrary. We do not find any illegality in the orders of the MCD or other authorities nor any shocking arbitrariness.

106. Learned counsel for the respondent relied on the *Wednesbury* principle but in our opinion there is often a misconception about this principle. In our opinion, the *Wednesbury* principle does not mean that the Court can interfere with an executive decision simply because the Court feels that the decision is unreasonable. Two honest and intelligent persons may differ as to what is reasonable or what is unreasonable. The executive authority may think its decision to be reasonable, while the Court may think it is unreasonable. However, in our opinion that by itself would not entitle the Court to invalidate the executive decision, otherwise the working of the Government may become well nigh impossible. Every second decision of the Government may be declared as unreasonable by the Court merely because the Judge thinks it is unreasonable. In our opinion, the correct meaning of the *Wednesbury* principle is that the Court can only interfere if the unreason ability goes to the extent of verging on absurdity or the decision is shockingly outrageous. As Lord Diplock explains:

By irrationality I mean what can be now be succinctly referred to as *Wednesbury* unreasonableness. It applies to a decision which is so outrageous in its defiance of logic or of accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at it.

107. The above view was followed by this Court in *Central Board of Secondary Education vs. Tushar Welfare Society & Anr.* in LPA No. 2477/2005 decided on 9.12.2005.

108. As Professor Wade points out (in *Administrative Law* by HWR Wade, 6th Edition), there is ample room within the legal boundaries for radical differences of opinion in which neither side is unreasonable. The reasonableness in administrative law must Therefore distinguish between proper course and improper abuse of power. Nor is the test the Court's own standard of reasonableness as it might conceive it in a given situation. The point to note is that the thing is not unreasonable in the legal sense merely because the Court thinks it to be unwise.

109. Often, there is a misunderstanding that Judges can intervene in an

administrative decision whenever they think it to be unreasonable. That is not so. It is only when there is extreme unreasonableness that the Court can intervene, and not otherwise.

110. Thus, in *Re W*, (1971) AC 682 Lord Hailsham observed:-

Two reasonable persons can perfectly and reasonably come to opposite conclusions on the same set of facts without forfeiting their title to be regarded as reasonable. Not every reasonable exercise of judgment is right and not every mistaken exercise of judgment is unreasonable.

111. Hence, the *Wednesbury* unreasonableness means unreasonableness verging on absurdity as observed by the House of Lords in *Puhlhofer v. Hillingdon L.B.C.* (1986) 1 AII ER 467.

112. In *Nottinghamshire C.C.v. Secretary of State for the Environment*, (1986) 1 AII ER 199 Lord Scarman observed that to challenge a decision of the Minister as unreasonable the applicant must establish by evidence that the decision was so absurd that he must have taken leave of his senses.

113. Keeping in mind the above position of law, we are of the opinion that the learned Single Judge has practically sat as a Court of appeal over the decisions of the Executive Authorities including the MCD, which he was clearly not entitled to do. Hence, we set aside the impugned judgment of the learned Single Judge and allow this appeal, and uphold the sanction order of the M.C.D. dated 4.12.2002.