
(2007) 05 SC CK 0183

In the Supreme Court Of India

Case No : Civil Appeal No. 2520 of 2007 (Arising out of S.L.P. (c) No. 4909 of 2006)

Greater Kailash Part-II Welfare Association and Others

APPELLANT

Vs

DLF Universal Ltd. and Others

RESPONDENT

Date of Decision : 15-05-2007

Acts Referred:

Citation : (2008) 2 ALT 7 : (2007) 7 JT 260 : (2007) 7 SCALE 712 : (2007) 6 SCC 448 : (2007) 6 SCR 648

Hon'ble Judges : C. K. Thakker, J;Altamas Kabir, J

Bench : Division Bench

Advocate : U.U. Lalit, P. Venugopal, Pritish Kapur and Dileep P., for K.J. John and Co, for the Appellant; Arun Jaitley Pravin Bahadur, Meghalee Barthakur, Kanika Gomb, Rajan Narain, Sanjiv Sen, Praveen Swarup, Subhash Bansal, R.G. Srivastav, Balraj Dewan, B.B. Singh, Vimla Sinha, D.S. Mahra and Anil Katiyar, for the Respondent

Final Decision : Disposed Of

Judgement

Altamas Kabir, J.—Leave granted.

2. This appeal involves the apprehension of serious traffic problems by the residents of Greater Kailash Part -II, Alaknanda Complex, Mandakini Enclave and Chittaranjan Park on account of the change of user of the plot situated at the junction of Outer Ring Road and the main entry point to the aforesaid colonies on which the Savitri Cinema is located. The said plot, (hereinafter referred to as the 'Savitri Plot'), though situated in a residential area, was earmarked as a cinema complex in the Delhi Master Plan at the initial stage when Greater Kailash Part -II was being developed.

3. The appellant No. 1 herein is a society duly registered under the Societies Registration Act and claims to have over 3400 members who are all residents of Greater Kailash Part II Colony.

4. There is no dispute that that the Savitri Cinema Hall had been operating on the Savitri Cinema Plot ever since the Greater Kailash Part II Colony had come into existence, that is, for a period of about thirty years. The cinema hall was closed in 1997 by the respondent No.1 after a fire broke out in the Uphaar Cinema complex. Subsequently, a decision was taken by the respondent No.1 to convert the Savitri Cinema Hall into a smaller capacity mini cinema hall with modern features and facilities. The respondent No.1 submitted its alteration/renovation plans to the Municipal Corporation of Delhi (hereinafter referred to as 'MCD') for requisite sanction. As required by the MCD, the respondent No.1 duly obtained the following clearances:

- (a) Approval from Delhi Urban Arts Commission on 24.9.2001;
- (b) No Objection Certificate from the office of DCP Traffic, Delhi on 1.3.2002;
- (c) No Objection Certificate from Delhi Fire Service on 9.9.2002;
- (d) No Objection Certificate 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.

5. On the basis of the above and being satisfied that the Building Plans were in consonance with the Building Bye Laws 1983, Master Plan 2001 and Delhi Cinematograph Rules, 2002, the MCD accorded sanction to the said plans on 4th December, 2002 with a direction that such renovation should be completed by 3rd December, 2004.

6. It also appears from the materials on record that as per the sanction granted by MCD, the respondent No.1 completed the renovation of Savitri Cinema within the time prescribed and applied to the MCD for Completion Certificate on 2nd December, 2004.

7. It is at this stage that the appellants herein filed four Writ Petitions, being Nos.19798-19801/2004, in the Delhi High Court in the month of December, 2004, inter-alia, complaining of the change of user of the Savitri Cinema Plot by converting it into a multiplex -cum- commercial complex.

8. The case made out in the writ petitions was that the respondent No.1 herein was converting the single screen cinema hall into a multiplex -cum-commercial complex with four cinema halls which would result in a much larger number of visitors to the complex, which, in turn, would result in a larger number of vehicles being parked in and around the complex and particularly on the road branching off from Outer Ring Road as the entry point into Greater Kailash Part II and the other colonies situated in the area. It was also the case of the writ petitioners that the said entry point from Outer Ring Road being a single entry point into the colonies it is already congested and there are continuous traffic jams causing great hardship to the inhabitants of the aforesaid colonies. According to the writ petitioners, the congregation of more vehicles on the

already congested entry point would cause a complete breakdown of the traffic system both to and from the colonies in question and also on Outer Ring Road notwithstanding the construction of a flyover at that particular point.

9. Complaining that the construction of the multiplex -cum- commercial complex was also in violation of the Master Plan of Delhi, the Building Bye-laws and the Cinematograph Act, 1952, the writ petitioners, inter-alia, prayed for the following reliefs:

(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 110048 issued in favour 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 110048;

(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.

10. The writ petitions were duly contested by the respondent No.1 herein by filing a counter affidavit in which it was contended that there was absolutely no substance in the averments and submissions made in the writ petitions.

11. It was also contended that the writ petitions were based on a mistaken impression that the respondent No.1 was converting the existing single screen Savitri Cinema into a multiplex cinema complex having four cinema screens which would lead to a considerable increase in the number of cinema seats and the number of people who could visit the cinema complex, which in turn, would lead to traffic congestion at the T junction where the cinema hall was situated. It was stated in the affidavit that the writ petitioners were also under an impression that the alteration and/or renovation of the Savitri Cinema Hall was being carried on by the respondent No.1 without obtaining statutory clearances and in contravention of the existing Building Bye laws.

12. It was stated that both the above-mentioned apprehensions were incorrect and the respondent No.1 had decided to convert the existing Savitri Cinema Hall, which had provision for 1000 seats, into a single screen mini cinema hall with only 300 seats after obtaining sanction from the Municipal authorities. In fact, there would be a substantial reduction in the number of seats in the cinema hall which would also reduce the number of visitors to the cinema complex.

13. The learned Single Judge proceeded to dispose of the writ petitions upon holding that while the existing capacity of the cinema hall was to be reduced considerably, the remaining portions of the renovated structure consisting of six storeys was to be used pre-dominantly as a shopping/commercial complex. The learned Single Judge noted the fact that the ground-floor plan disclosed a vast shopping area and the sanctioned plan indicates that the entire ground-floor was to be converted into a departmental store. The learned Judge observed that the mini cinema hall was only a small part of the proposed alterations of the building and that the rest of the areas were to be utilized as shops or as commercial spaces.

14. The learned Judge also took note of the fact that the parking norms as indicated in the Delhi Master Plan, 1990, read with the Building Bye-laws and the Delhi Cinematograph Rules, 2002, were in apparent conflict with each other and, in fact, the Master Plan while enumerating the parking standard for the different categories indicated in the Master Plan, did not indicate the parking space required to be reserved for a building which was pre-dominantly to be used for commercial/shopping purposes and only a small space was to be utilized as a cinema hall. Based on his aforesaid observations, the learned Single Judge held that the claim by the Delhi Police and the respondent No.1 about proper compliance with the parking norms was not accurate and that after reserving certain spaces for scooters and motor-cycles, the aggregate space required to be reserved for parking would be 104 Equivalent Car Space (hereinafter referred to as "ECS"), while the sanctioned plan provided for 93 ECS.

15. The learned Single Judge noted the fact that while prescribing parking standards for different establishments, the Delhi Master Plan had not laid down the standards for buildings to be used both as a cinema hall and a commercial complex. In such cases, however, Note I of the Parking Standard provided that where such parking standard had not been prescribed, the same would be prescribed by the authority depending upon the merits and requirements of each individual case. The learned Single Judge held that the role of the Delhi Development Authority as the Authority designated by the said Note in the table appended to Clause 8 (4), had escaped the notice both of the Municipal Corporation of Delhi as well as the Government of the National Capital Territory of Delhi. The learned Single Judge observed that even the Delhi Development Authority had returned the reference made to it in May 2002 stating that it had no role to play in the matter. After considering the submissions made on behalf of the respective parties, the learned Single Judge came to the conclusion that the respondent-authorities had mechanically granted sanction to the plan submitted by the respondent No.1 and had not examined the matter in regard to applicability of the relevant parking standards with the required seriousness. The learned Single Judge felt that the position of the plot, in the sense of its being at the entry point to several colonies, the number of existing vehicles in those colonies, the number of religious and educational institutions, were all relevant factors which should have been taken into consideration while granting sanction

to the plan, at least from the parking angle. On the basis of his aforesaid findings, the learned Single Judge disposed of the writ applications with the following directions:

(a) The impugned sanction granted to the seventh respondent shall not be operated upon;

(b) The respondent Municipal Corporation of Delhi shall refer the issue of parking in the mini- theater complex, along with details of the plans approved by it, to the Delhi Development Authority, which shall take its decision and indicate the appropriate parking standard having regard to all relevant factors, such as location and size of the plot; its being an entry point from the Outer Ring road, to a number of colonies, containing residential structures, educational and religious institutions, etc. if page 1744 necessary, the DDA shall indicate the additional parking requirements, and the underground coverage required for the purpose; (c) The DDA shall also consider the issue of exit from the cinema complex, and the likely inconvenience to or friction that would ensue to the local residents;

(d) The MCD shall make a reference within a period of 3 (three) weeks to the DDA, which shall decide the matter, and formulate a suitable parking norm in respect of the plot in question;

(e) The decision of the DDA shall be suitably incorporated in the plans sanctioned in favour of the respondent No.2, within a period of 4 weeks after receipt of its order by MCD;

(f) The directions at sub-para (a) above shall cease to subsist, upon steps having being taken, as per sub-paras (c) to (e) above; the respondents shall ensure that constructions/alteration to the cinema complex is in strict conformity with the changed plans; as per the decision of DDA.

16. As will be evident from the above, the respondent No.1 was restrained from acting on the basis of the sanction granted till such time as the other directions of the learned Judge were complied with.

17. Aggrieved by the judgment passed by the learned Single Judge on 18th October, 2005 and the directions made therein, the respondent No.1 herein filed a Writ Appeal against the said judgment in the Delhi High Court, being L.P.A. No. 2633/2005.

18. The Division Bench took the view that the learned Single Judge had practically sat as a court of appeal over the decisions of the executive authorities. The Division Bench observed that whether the relevant standards and requirements had been met was ordinarily for the concerned authorities to look into and not for the Court, unless there was a clear violation of law or something shockingly arbitrary. The Division Bench also noted that the writ petition had been filed challenging the renovation/modification project in December, 2004 when the project had been duly completed in terms of the sanctioned plan and

the appellant had applied for a Completion Certificate. It was observed that the writ petitions should have been dismissed on the ground of laches without going into the merits.

19. Apart from the above, the Division Bench also observed that even on merits the writ petitions were liable to be dismissed since they were based on a complete misconception that the respondent No.1 had planned to convert the single screen Savitri Cinema Hall into a four-screen multiplex and that the same was being done without requisite permissions from the concerned authorities. The Division Bench disagreed with the views expressed by the learned Single Judge regarding the role to be played by the Delhi Development Authority in the matter. It was observed that the Delhi Development Authority Act, 1957, classified land into two categories; (i) Development areas; and (ii) areas other than a developed area. It was noted that for development in a developed area, the express written permission of the Delhi Development Authority was essential, whereas Section 12(3)(ii) of the Act makes it clear that for development in an area other than the development area, only prior written approval or sanction of the local authority regulating the development of such other area was required. The Division Bench was also of the view that Clause 8 (2) of the Development Code to the Master Plan for Delhi 2001 permits commercial areas within a cinema. The parking requirements for the same had been prescribed and the parking space reserved in the sanctioned plan was well over the requirement prescribed not only under the Master Plan but also under the Delhi Cinematograph Rules, 2002 and the Delhi Building Bye-laws.

20. Observing that it did not find any illegality in the orders passed by the Municipal Corporation of Delhi or the other authorities, nor any shocking arbitrariness, the Division Bench allowed the appeal and set aside the judgment of the learned Single Judge.

21. The instant appeal has been filed against the said judgment and order passed by the Division Bench allowing the writ appeal.

22. Appearing for the Association, Mr. U.U. Lalit, learned Senior Counsel, submitted that the traffic congestion that was likely to occur on account of renovation of Savitri Cinema Hall was within the knowledge of the Deputy Commissioner of Police (Traffic), Delhi when such proposal was initially made. He referred to a letter dated 18th July, 2001 written by the Deputy Commissioner of Police (Traffic), Delhi to the Deputy Commissioner of Police (Licensing), pointing out the difficulties that would be caused if the Multi-Complex was allowed to be erected on the Savitri Cinema plot and it was pointed out that even with the existing parking facility available in the Savitri Complex, the situation becomes very grave especially during peak hours and there was every likelihood that fatal accidents could occur as the smooth flow of traffic would also be obstructed on account of such construction. A request was made that in the event the proposal for renovation of the Savitri Complex was to be approved, the traffic unit should also be consulted.

23. Mr. Lalit submitted that the proposal for conversion of the existing Cinema Building into a Mini Cinema-cum- Commercial Building was forwarded by the Municipal Corporation of Delhi to the Delhi Urban Art Commission (hereinafter referred to as 'DUAC'), as would be apparent from the letter dated 24th September, 2001, written on behalf of DUAC to the Executive Engineer, (Buildings) MCD, indicating that the said proposal had been considered by the Commission in its meeting held on 24th September, 2001 and the same was approved by the Commission on condition that the same was otherwise as per Master Plan, Zonal Plan, Building Bye-Laws Fire-fighting Regulations, the policy instructions of the Government of India and if 1% of the project cost was set apart for "Works of Art" in the building.

24. It was then urged that the Deputy Commissioner of Police (Licensing) had consulted the Deputy Commissioner of Police (Traffic) regarding grant of "No Objection Certificate" from the Traffic Department to the proposal for carrying out alteration/modification of Savitri Cinema. On 1 st March, 2002, the Deputy Commissioner of Police (Traffic) had written to the Deputy Commissioner of Police (Licensing) indicating that the Traffic Department had "No Objection" from the traffic point of view to such alteration/modification subject to certain terms and conditions, namely:

(1) To close gate No.1.

(2) Entry will be only from gate No.2 and exit will be from gate No. 3 and 4. The capacity of Cinema Hall may be reduced to 300 seats instead of 1000. (3) The use of basement for parking purposes, which is about 10,000 sq. ft. should also be made available.

25. Ultimately, on 25th December, 2002, the Executive Engineer, Municipal Corporation of Delhi (Building Department) (HQ), gave a Provisional Clearance Certificate and informed the office of the Deputy Commissioner of Police (Licensing) about the grant of sanction to the proposal for conversion of the Savitri Cinema Hall into a Mini Cinema-cum- Commercial Complex. In fact, the sanction u/s 336 of the Delhi Municipal Corporation Act was conveyed to the Respondent No.-I by the Delhi Municipal Corporation by its letter dated 4th December, 2002, which also contained instructions relating to the commencement of the construction of the building.

26. Once the construction was commenced, the members of the Appellant's Association claim that they came to learn of the proposal for conversion of the Single Screen Cinema Hall into a four-screen multiplex together with a commercial complex which would give rise to grave problems for the residents of G.K.-II, Alakanda, Mandakini Enclave and Chittarajan Park in entering and moving out from the colonies through the T-Junction, where the Savitri Cinema Hall is situated, on account of the traffic congestion likely to be caused by visitors to the renovated complex. Accordingly, on 10th September, 2003, the Association addressed a letter to the Commissioner, Municipal Corporation of Delhi, indicating

the difficulties that would result on account of a single entry and exit at Savitri Point, to and from the above-named colonies in the event the proposal for renovation of the Savitri Complex was allowed to stand.

27. Mr. Lalit submitted that in response to the objections raised on behalf of the association, the DUAC had invited the representatives of the Association to appear before the Commissioner on 12th November, 2003 to indicate their grievances in the event of conversion of the Savitri Cinema Hall into a Multiplex.

28. Pursuant thereto, the members of the Association appeared before the Commissioner and pointed out that the role of DDA u/s 7 of the Delhi Development Act, 1957 and the Building Bye-Laws of the MCD had been overlooked. It was alleged that the relevant provisions of Clause 13.1 and 13.2 of the Building Bye-Laws relating to Parking and Parking Space had not been properly followed and the entire matter required reconsideration. The objections taken before the Commissioner were also separately conveyed to the Chairman, DUAC, by a letter of even date requesting the Commissioner to have a re-look at the whole scheme of things, keeping in mind the fact that the venue of the multiplex complex is the entry point for all the residents living in the colonies referred to hereinbefore and in particular G.K.-II.

29. Referring to the Urban Art Commission Act, 1973, Mr. Lalit submitted that Section 11 of the Act enumerated the functions of the Commission which included advising the Central Government in the matter of preserving, developing and maintaining the aesthetic quality of urban and environmental design within Delhi and to provide advice and guidance to any local body in respect of any project or building operations or engineering operations or any development proposal which affects or is likely to affect the sky-line or the quality of the surroundings or any public amenity provided therein.

30. On 6th December, 2003, the DUAC informed the respondent No.I that the proposed conversion of the Savitri Cinema Hall into a Mini Cinema-cum-Commercial Complex had been considered by the Commission in its meeting held on 12th November, 2003, and after hearing all concerned, the Commission had decided to refer the matter to the Standing Sub-Committee on Traffic Transportation Proposals for considering all aspects of the proposal. It was also decided that the Sub-Committee would consider the matter along with the Delhi Traffic Police as well as the Municipal Corporation of Delhi. In addition, the architects were also advised to look into the possibility of providing more parking space looking at the need of extensive parking for this kind of complex.

31. Mr. Lalit contended that while the aforesaid proposal was being considered by the different authorities, the Respondent No.-I changed its original plan and decided to convert the single-screen cinema into a multiplex having four-screens and commercial show-rooms. The said proposal was also subsequently replaced by a plan to have two cinema screens, with each single cinema having 150 seats, which would operate at staggered timings. However, on 9th March, 2004, all the

different proposals were withdrawn by the Respondent No.-I and the DUAC was informed that the first proposal of having one Cinema Hall of 300 seats and some show rooms on the ground floor which was cleared on 13th August, 2002, and on the basis whereof the Building Plan had been sanctioned on 4th December 2002, would be proceeded with. The Commission wrote back to Respondent No.I on 16th March, 2004, indicating that since the proposal had been revised the same was required to be routed through the Municipal Corporation of Delhi.

32. Subsequently, in December 2004, four writ petitions were filed on behalf of the Association and its office bearers, inter alia, for a writ in the nature of Certiorari for quashing the sanction of the Building Plans for conversion of the single screen cinema hall into a multiplex mini cinema-cum- commercial complex at Savitri Cinema Point, G.K. and for other reliefs.

33. Mr.Lalit submitted that the learned Single Judge had taken into consideration the parking standards prescribed by the Delhi Master Plan, 1990 requiring developers to set apart Equivalent Car Space in respect of the establishments indicated under such parking standard. Mr. Lalit submitted that the learned Single Judge also noted the fact that a cinema hall-cum-commercial complex had not been mentioned in the list of establishments mentioned under the parking standard, although premises used for "commercial plotted development" and as a "cinema" have been separately mentioned in the said list. Mr. Lalit urged that since the type of construction to be erected in the Savitri plot was not mentioned in the said list, the learned Single Judge directed that recourse should be taken to Note I appended to the Parking Standards, which provided that parking standards in respect thereof would be prescribed by the Authority depending on the merits and requirements of each individual case. Mr. Lalit submitted that besides the aforesaid provisions relating to parking standards, the learned Single Judge also had occasion to consider the provisions of the Building Bye Laws with regard to the same subject. The learned Single Judge took note of Clause 13 of the Building Bye Laws which also deal with parking space and provides the specification for the areas to be set apart for parking in the basement, on the ground floor when the building is on stilts and in the open spaces. In particular, the learned Judge took note of Clause 26 which deals with assembly buildings such as cinemas, theatres, etc. Clause 26.2 provides that where parking spaces are not specifically indicated, the same is to conform to Bye Law 13 mentioned hereinabove.

34. Mr. Lalit submitted that apart from the above, the learned Single Judge also noticed the provisions relating to parking under the Delhi Cinematograph Rules 2002 framed under the Delhi Cinematograph Act. The learned Judge noted that the norms prescribed by the different Rules and Bye-laws appeared to be in conflict with each other and on a consideration of the entire situation, the learned Judge was of the view that the Authority contemplated in Note I to the Parking Standards under the Master Plan, namely, the Delhi Development Authority, should decide the area to be set apart for parking in the new complex

which was to replace the Savitri Cinema Hall in the Savitri Plot. The learned Single Judge accordingly disposed of the writ petitions with the directions set out hereinbefore. Mr. Lalit pointed out that the main purport of the directions given by the learned Single Judge was that in terms of Note I the Delhi Development Authority should not only indicate the additional parking requirements and the underground coverage for the purpose, but should also consider the question involving the exit of vehicles from the cinema complex and the inconvenience likely to be caused to the local residents as a result thereof.

35. Mr. Lalit suggested that the question of constructing an underpass to avoid the T. Junction could be considered by the Delhi Development Authority while considering the questions relating to traffic congestion referred to above.

36. Mr. Lalit lastly contended that although the High Court had held that the writ petitioners were guilty of laches on account of the fact that the sanction to the renovation plan had been granted in the year 2002, whereas the writ petitions had been filed in the year 2004, in actual effect, the writ petitioners were initially unaware of the nature of the building which was to replace the existing Savitri Cinema Hall and once they came to learn of the actual plan, they raised objections to the concerned authorities from September, 2003, but in the absence of any positive response, they were compelled to file writ petitions in order to prevent a disaster in the making while it could still be prevented. Mr. Lalit urged that the DUCA, which was required to consider the effect of building operations on any public amenity provided therein could be directed to give the writ petitioners a fresh hearing so that the problem which was looming large could be addressed.

37. Appearing for the respondent No.1, Mr. Arun Jaitley, learned senior counsel, submitted that the apprehension of the writ petitioners on the question of traffic congestion on account of the conversion of the Savitri Cinema Hall into a Mini-Cinema Hall-cum-Commercial Complex was completely unfounded as the parking space that had been set apart for vehicles visiting the complex was in excess of the parking standard contemplated under the Delhi Master Plan, 1990. He indicated that while the parking standards under the Master Plan required 93 ECS to be kept apart for the complex, in effect 98 ECS had been set apart for the said purpose, which included 10,000 Sq.Ft. in the basement. Mr. Jaitley urged that even under the parking norms under the Delhi Cinematograph Act and the Rules and the Building Bye Laws, a similar amount of space was required to be kept apart for parking. The plan prepared by the respondent No.1 for sanction was in complete conformity with the Building Bye Laws and the other Rules and Regulations and the writ petitioners could have no cause for complaint in respect thereof. Mr. Jaitley urged that the Delhi Development Authority, which had been directed by the learned Single Judge to consider the question of calculating and specifying the space to be kept apart for parking in the renovated complex was not empowered to do so and it was only vested with authority u/s 12 of the Delhi Development Act, 1957 to oversee the development of lands. He also pointed out

that where the area to be developed was an area other than a developed area, such development would have to be effected upon obtaining sanction from the local authority concerned or any officer or authority thereof empowered or authorized in that behalf.

38. Mr. Jaitley also submitted that since the respondent No.1 had obtained sanction for renovation and/or conversion of the existing Savitri Cinema Hall into a Single Cine Complex cum Commercial Complex, which was in conformity with the Building Bye Laws and the Parking Standards prescribed under the Delhi Master Plan, it was not open to the writ petitioners to raise any objection to the proposed renovation merely on the apprehension of likelihood of traffic congestion.

39. Mr. Jaitley submitted that the Delhi Urban Art Commission had been constituted under the Delhi Urban Art Commission Act, 1973, not for the purpose of considering matters as are in issue in the writ petitions filed by the appellants herein.

40. Mr. Jaitley submitted that the Licensing Authority, namely the Deputy Commissioner of Police (Licensing) had consulted the Deputy Commissioner of Police (Traffic) before granting "No Objection Certificate" to the plan of renovation of the Savitri Cinema Complex.

41. Mr. Jaitley submitted that although an attempt had been made by the Writ Petitioners to involve the DUAC in the process of grant of sanction, neither the Delhi Urban Art Commission Act, 1973 nor the Building Rules and Regulations under the various enactments contemplated such involvement of the DUAC in such matters except to the extent of maintaining and preserving the aesthetic quality of such building plans.

42. Mr. Jaitley submitted that there was no provision in the 1973 Act which enabled the DUAC to entertain objections from citizens in respect of Building Plans submitted by individuals for construction on a particular plot. So long as the said Building Plans were in conformity with the Building Bye-Laws and the norms laid down in the Master Plan and so long as the plan did not offend the aesthetic quality of urban and environment design, the DUAC had no role to play in the grant of sanction to the building plan.

43. Mr. Jaitley submitted that, in fact, about 1 acre of parking space had been provided for in the sanctioned plan, both in the open area and also in the basement, which was required to be set apart under the parking standards laid down by the Delhi Master Plan, 1990. It was also urged that it would be against all equitable considerations to disturb or alter the sanction as granted since the construction has already been completed as per the sanctioned plan and a 'Completion Certificate' had been issued by the Municipal Corporation of Delhi to the Respondent No.-I on 6th March, 2006.

44. Mr. Jaitley urged that the directions given by the learned Single Judge

purportedly in keeping with Note-I of the Parking Standards as indicated in the Delhi Master Plan, 1990, amounted to legislation by the Court since provisions had already been made under the said Parking Standards for the ECS to be set apart for a Cinema Complex or even for commercial plotted development. According to Mr. Jaitley, since the Savitri Complex had been earmarked as a Cinema Hall, the entry relating to "Cinema" under the Parking Standards was sufficient to meet the parking space required to be set apart in the renovated Single Screen Cineplex-cum- Commercial center. He added that although it had been suggested that under the 2021 Delhi Master Plan, the ECS required to be set apart was 3, the same could have no application to the complex which has been erected by the Respondent No.I in keeping with the plan sanctioned by the concerned authorities.

45. Mr. Jaitley urged that the writ petitions filed by the appellants should not have been entertained on account of the delay and laches of the writ petitioners. Although, sanction had been granted to Respondent No.-I as far as back as on 4th December, 2002, and construction had been commenced soon thereafter, the first time an objection was taken by the appellants was on 10th September, 2003 and the writ petition was, thereafter, filed in December, 2004, when the construction had already been completed. Mr. Jaitley submitted that it would be inequitable at this stage to consider the contentions now being raised by the appellants.

46. Mr. Jaitley ended his submissions by referring to the affidavit affirmed on behalf of the DUAC by its Secretary which supported the case of the Respondent No.-I and wherein it had been stated that as far as the DUAC was concerned, the grounds indicated by the writ petitioners in the SLP were misconceived and the SLP deserved to be dismissed.

47. Very little was added on behalf of the State and the DUAC to the submissions made on behalf of the appellant and the respondent No.1. On behalf of the State, the provisions of Rule 3 of the Delhi Cinematography Rules, 1981, were referred to for the purpose of reiterating that any person desirous of erecting a cinema house or converting an existing building into a cinema house has to apply to the Licensing Authority for a Provisional Clearance Certificate in respect of the building and the site plans. If the plans were found to be in conformity with the Rules, the Licensing Authority was under an obligation in consultation with the Executive Engineer, P.W.D. to grant a Provisional Clearance Certificate. It has also been stipulated that the grant of such Provisional Clearance Certificate would not ipso facto entitle the applicant for grant of a regular cinema licence on completion of the building or give any immunity from the application of any new provisions to the Rules which may be incorporated after the issue of such Certificate and before the grant of a licence under the Act.

48. What transpires from the submissions made on behalf of the appellant-Association is its apprehension of serious traffic problems if the respondent No.1 is permitted to use the Savitri Cinema Complex for the purposes mentioned in

the sanctioned plan without suitable modifications. On the one hand, the owners of the Savitri Plot have obtained requisite sanction under the relevant Rules and Regulations and Building Bye Laws to convert the existing single-screen cinema hall into a mini cinema hall cum commercial complex. There is no denying the fact that the respondent No.1 has complied with all the requirements of the law for the aforesaid purpose. On the other hand, there is a real apprehension on the part of the appellants that the approach to the above-mentioned colonies will be completely choked on account of the traffic congestion that is likely to be caused as a result of the number of visitors who are likely to visit the renovated complex which will consist of not only a cinema hall, but a six-storeyed building dedicated to commercial activities. The respondent No.1 has complied with the parking standards prescribed under the Building Bye-Laws, the Delhi Master Plan and the Cinematograph Rules and as pointed out by Mr. Arun Jaitley, even more space than what was required under the Rules have been set apart for the purpose of parking so that congestion at the T. junction is avoided, notwithstanding the number of visitors to the renovated complex. However, the problem that is envisaged by the residents of the aforesaid colonies is not only the parking-related problems, but the problems resulting on account of the increased flow of vehicles at the T. junction. It is such apprehension that has led to the filing of the writ petitions by the residents of the aforesaid colonies.

49. It has been submitted that the writ petitioners/appellants herein, would be satisfied if they are given an opportunity of hearing by DUAC so that they could explain the ground realities of the fall-out of the sanction granted for conversion of the Savitri Cinema Hall into a Mini Cinema Hall cum - Commercial Complex.

50. From the materials on record there is no ambiguity that sanction was granted to the respondent No.1 to make the above-mentioned conversion strictly in accordance with the Rules and Building Bye Laws, even to the point of consultation by the Deputy Commissioner of Police (Licensing) with the Deputy Commissioner of Police (Traffic) on the specific problem apprehended by the appellants. It is only after clearance was obtained from the Deputy Commissioner of Police (Traffic) that a No-Objection Certificate was issued by the Deputy Commissioner of Police (Licensing) and sanction was granted by the Municipal Corporation of Delhi. Although, it has been argued on behalf of the appellants that the Deputy Commissioner of Police (Traffic) had mechanically given his consent to the plan, we have to respect his decision and the decision of the Municipal Corporation who are the experts in such matters.

51. Apart from the above, the DUAC appears to have considered the objection made on behalf of the appellants in its meeting held on 12th November, 2003 and after hearing all concerned, the Commission had decided to refer the matter to the Standing Sub-Committee on Traffic, Transportation Proposals for the purpose of considering all aspects of the proposal with the broad object of providing more parking space in view of the need of extensive parking for this kind of a complex. Moreover, the DUAC had in its affidavit filed in the

proceedings stated that as far as DUAC is concerned, the grounds indicated by the writ petitioners in the SLP are misconceived and the SLP deserved to be dismissed.

52. The owner of a plot of land is entitled to use and utilize the same for any lawful purpose and to erect any construction thereupon in accordance with the existing rules. So long as such owner does not contravene any of the provisions which restrict his use of the plot in any manner, he cannot be prevented from utilizing the same in accordance with law. In this case, the respondent No.1 which is the owner of the plot in question cannot be denied the use of the plot on account of the apprehension of the appellants, particularly when he has already raised the structure in accordance with the sanctioned plan. It is not the case of the appellants that the respondent No.1 has in any manner deviated from the building plan as sanctioned. The grievance of the appellants is confined to the possible problem that may arise from the use of the building as a Cinema Hall cum- Commercial Complex. Once the authorities who are competent to do so have indicated that the apprehension was unfounded, it is not for the Writ Court to interfere with such decision.

53. Although, the parking standards under the Delhi Master Plan, 1990, do not specify the parking space to be set apart for a Cinema Hall cum- Commercial Complex, the Municipal authorities, who are the sanctioning authorities of any building plan, have considered the parking space set apart for the renovated complex to be sufficient to meet the requirements so as not to cause any traffic congestion as apprehended. In fact, the Delhi Development Authority to whom a direction has been given by the learned Single Judge in terms of Note I of the Parking Standards prescribed under the Delhi Master Plan has little or no role to play in the sanctioning of the building plan. Such a direction, in our view, is misconceived and cannot be sustained.

54. In our view, the Division Bench was justified in observing that the learned Single Judge had in effect sat in appeal over the decision of the Executive authorities which he was not entitled to do in law.

55. We, therefore, see no reason to interfere with the orders passed by the Division Bench of the Delhi High Court allowing the Writ Appeal and setting aside the judgment of the learned Single Judge. If, however, in future the necessity so arises, the concerned authorities will be at liberty to take appropriate steps to contain any problem that may arise, in accordance with law. The instant appeal fails and is dismissed.

56. There will be no order as to costs.