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**(2004) 04 DEL CK 0063**  
**In the Delhi High Court**  
**Case No : C.W.P. No. 2435 of 2004**

Gur Partap Singh

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

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**Date of Decision :** 13-04-2004

**Acts Referred:**

**Citation :** (2004) 111 DLT 25 : (2004) 4 RCR(Civil) 701

**Hon'ble Judges :** Sanjay Kishan Kaul, J

**Bench :** Single Bench

**Advocate :** Jayant Bhushan, Bharat Bhushan and Iti Sharma, for the Appellant; Amit Bansal and Manisha for Respondent No. 1 and S.D. Kaushik, for Respondent Nos. 2, 4 and 5, for the Respondent

**Final Decision :** Allowed

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## Judgement

Sanjay Kishan Kaul, J.—The petitioner is owner of land measuring 1.5 hectares situated in Village Sultanpur, New Delhi. The petitioner is aggrieved by refusal of the respondent authorities to permit the petitioner to construct a motel on the land in question.

2. A Gazette notification was issued on 16.6.1995 in Gazette No. 350 of 17.6.1995 by Delhi Development Authority (in short, "DDA") for amendment of the Master Plan in terms whereof motels were permitted in rural zones/green belts and in commercial zones and national highways and inter-State roads as defined in the notification. The Gazette notification further prescribed in terms of para 4(xi) that "all permissions and clearances for use of land, which are usually required in connection with approval or sanction for development, shall be obtained from the prescribed authority".

3. The Ministry of Urban Affairs and Environment issued a clarification dated 13.1.1999 in respect of the aforesaid subject matter. The relevant portions of the said circular are as under:

"(i) The Master Plan amendment dated 15.6.95 issued by this Ministry

incorporating motels as a permissible facility within NCT of Delhi is defined a motel a premises designed and operated especially to cater to the boarding, lodging, rest and recreation and related activities of a traveller by road, regarding use attributed to motels, the type of motels contemplated in NCT of Delhi within the framework of notification dated 15.6.95, should essentially be considered for recreation and leisure. As such, these motels will fall within the permissible use, i.e., category 8 under green belt/green wedge vide para 13.6(v) (b) of the Regional Plan 2001 of the National Capital Region. This is especially true in the case of those motels since they can have a maximum revised coverage of 15% with low height structures not exceeding 9 metres and with about 85% of the area being developed as green space for recreation and leisure of the user. Accordingly, the setting up of these motels within the areas designated as green belt/green wedge in the NCT of Delhi would not constitute a change of land use.

(ii) Regarding levy of a fee, it was agreed that since conversion of land use is not involved, Therefore, conversion charges need not be levied. However, in order to enable the local body to mobilize necessary funds to provide for the infrastructure in the form of road widening and maintenance, extra pressure on ground water, power supply, etc. and basically to permit the owner to utilize the land for a higher value, a "Use Permission Charge" may be levied.

(iii) it was agreed that there has been a lot of confusion amongst the applicants for motels whose applications are pending with MCD. Hence DDA may issue a letter to MCD clarifying that based on the notification amending the Master Plan dated 15.6.95 issued by this Ministry and notification dated 16.6.95 issued by DDA laying down norms for a motel, no further approval of DDA is necessary. MCD may, Therefore, be advised by DDA to examine the application and take suitable action on the basis of the above mentioned notifications and the present clarifications."

Copies of the aforesaid letter were marked to all the relevant authorities including Municipal Corporation of Delhi (in short, "MCD")

4. The effect of the aforesaid clarification was that the motels were to fall within the permissible use in category 8 under green belt/green wedge and in view of the amendment to the Master Plan dated 15.6.1995 and the notification dated 16.6.1995, no further approval of DDA was necessary. This fact was duly intimated to MCD. The DDA also issued modalities for scrutiny of applications for grant of such permissions vide letter dated 8.2.2000.

5. In view of the aforesaid policy, the petitioner filed an application for sanction/ approval of the building plans and regularization of construction of a motel to the Competent Authority being the MCD and the same was sanctioned vide letter dated 30.7.2002 having a validity period till 29.7.2004. The petitioner also deposited the use permission charges of Rs. 42,74,700/-. The petitioner also informed the SDM, Hauz Khas, respondent No. 5 on 13.1.2003 under intimation

to the Deputy Commissioner, Delhi regarding construction of the motel to be started shortly. The petitioner, however, received a letter dated 22.1.2003 from the said respondent informing the petitioner that he was restrained from carrying out any construction since the land use had not been changed as per Section 23 of the Delhi Land Reforms Act, 1954 (hereinafter to be referred to as, "the Land Reforms Act").

6. The SDM thereafter started proceedings under the Land Reforms Act on the ground that the land had been used for non-agricultural purpose. A show-cause notice was also issued u/s 81 of the Land Reforms Act to the petitioner and thereafter a conditional order was passed u/s 82 of the Land Reforms Act on 31.7.2003 restraining the petitioner from carrying out any such activity.

7. The petitioner aggrieved by the said order preferred an appeal before the Deputy Commissioner, but the said appeal was dismissed by an order dated 18.11.2003.

8. The petitioner apparently took up the matter with the Ministry of Urban Development, respondent No. 1 simultaneously vide representation dated 25.9.2003 and a letter dated 17.11.2003 was issued by the said Ministry to the Divisional Commissioner, Government of National Capital Territory of Delhi with a copy marked to the petitioner in the following terms:

"No. K-11011/11/78-DDIA/VA/IB

Government of India

Ministry of Urban Development and Poverty Alleviation

Nirman Bhawan, New Delhi

To

The Divisional Commissioner,

Government of National Capital Territory of Delhi,

Delhi.

Madam,

We are in receipt of representation from entrepreneurs holding valid building plans from Municipal Corporation of Delhi for the construction of Motels under rural zones of Delhi in accordance with Master Plan provisions as issued vide its letter No. K-11011/11/78-DDIA/VA/IB dated March 4, 2002 (copy enclosed). The representationists have stated that they are still being restrained from construction by GNCTD authorities under Delhi Land Reforms Act, 1954.

It is clarified that in the light of guidelines of Master Plan of Delhi. Land use conversion is not involved in the instant matter and these can be located in rural zone/green belt as permissible use of recreational and leisure. Hence applicability

of Sections 22 and 23 of Delhi Land Reforms Act, 1954 is not required. It is requested that instructions of respective zonal Deputy Commissioners to implement these guidelines may be given."

Yours faithfully,

Sd/-

(Nisha Singh)

Director (DD)

Copy to Shri Gur Partap Singh, Guru Hari Farms, Village Sultanpur, Mehrauli, New Delhi with reference to his letter No. Nil dated 25.9.2003 addressed to Hon. Ministry, Minister of Urban Affairs and Employment, New Delhi.

Sd/-

(S. Mukherjee)

Under Secretary to the Government of India

9. Thereafter, letter dated 24.12.2003 was also issued by the Divisional Commissioner to all the Deputy Commissioners circulating the same letter dated 17.11.2003 for compliance. The letter dated 24.12.2003 is in the following terms:

"Sub : Revised guidelines for permissibility of Motels in the NCT of Delhi

Sir/Madam,

Kindly find enclosed herewith letter No. K-11011/11/78-DDIA/IB (Copy enclosed) received from Director (DD), Government of India, Ministry of Urban Development and Poverty Alleviation, Nirman Bhawan, New Delhi on the subject cited above for compliance and further action in the matter."

10. The petitioner has, in fact, stated in the writ petition that the letter in question was filed by the petitioner on 18.11.2003 by way of an application/ additional affidavit before the Collector, but the order was pronounced subsequently on 6.1.2004 back dating it as 18.11.2003.

11. The petitioner filed a revision petition before the Financial Commissioner, but the same was also dismissed by a cryptic order dated 6.2.2004. The petitioner has thereafter filed the present writ petition challenging all the impugned orders of the Revenue Assistant, Collector and the Financial Commissioner.

12. The petitioner has referred in the writ petition to a similar case of a motel where proceedings were initiated by the Revenue Assistant. In the said case also, sanction had been granted by the MCD and the similar issue was raised. The matter was decided by an order dated 12.4.2001. The plea raised by the private respondent therein was with reference to the notification issued by the Government of India and the fact that these were passed keeping in view the provisions of the Land Reforms Act as also the fact that in case of any conflict,

the provisions of the Delhi Development Act, 1957 (hereinafter to be referred to as, "the DDA Act") have to prevail. This contention found force with the Revenue Assistant and the proceedings u/s 81 of the Land Reforms Act were dropped. It is further stated that on 15.11.2001, a noting was made departmentally by the Deputy Commissioner that the said order need not be challenged and became final.

13. The plea of the contesting respondents, as set out in the impugned orders, is that mere alteration of the Master Plan would not absolve an authority of obtaining the appropriate permission under the Land Reforms Act. In this behalf, reference was made to the notification altering the Master Plan itself where it was provided in para 4(xi) that the usual approvals/sanctions have to be obtained. It is this portion which is relied upon to contend that permission would, thus, be required u/s 23 of the Land Reforms Act. The said section is as under:

"23. Use of holding for industrial purposes.--(1) A Bhumidar or Asami shall not be entitled to use his holding or part thereof for industrial purposes, other than those immediately connected with any of the purposes referred to in Section 22, unless the land lies within the belt declared for the purpose by the Chief Commissioner by a notification in the Official Gazette:

Provided that the Chief Commissioner may, on application presented to the Deputy Commissioner in the prescribed manner, sanction the use of any holding or part thereof by a Bhumidar for industrial purpose even though it does not lie within such a belt.

(2) Where permission for industrial purposes is accorded, the provisions of this Chapter relating to devolution shall cease to apply to the Bhumidar with respect to such land and he shall thereupon be governed in the matter of devolution of the land by personal law to which he is subject."

14. The short controversy, which arises for consideration is whether there would still remain a requirement of permission to be obtained u/s 23 of the Land Reforms Act after the Gazette notification of 1995 and the circular of the Government of India dated 13.1.1999.

15. The expression "land" has been defined in Section 3(13) of the Land Reforms Act, which reads as under:

"3. Definitions.--

(13) "land" except in Sections 23 and 24, means land held or occupied for purpose connected with agriculture, horticulture or animal husbandry including pisciculture and poultry farming and includes--

(a) buildings appurtenant thereto,

(b) village abadis,

(c) grovelands,

(d) lands for village pasture or land covered by water and used for growing singharas and other produce or land in the bed of a river and used for casual or occasional cultivation,

but does not include

land occupied by building in belts or areas adjacent to Delhi town, which the Chief Commissioner may by a notification in the Official Gazette declare as an acquisition thereto;"

16. Section 22 of the Land Reforms Act prescribes the right of a Bhumidar or Asami and is as under:

"22. Right of Bhumidhar or Asami to the exclusive possession of land in his holding.--A Bhumidar or Asami shall, subject to the provisions of this Act, have the right to the exclusive possession of all land comprised in his respective holding and to use land for any purpose connected with agriculture, horticulture or animal husbandry which includes pisciculture and poultry farming and to make any improvement."

17. A reading of the aforesaid provisions, thus, shows that the land can be used only for the purpose connected with agriculture, horticulture or animal husbandry. Section 23 of the Land Reforms Act talks about use of the land for industrial purposes for which an application has to be made.

18. In the present case, the land has been used for the purpose of a motel, which, really speaking, cannot be called an industrial use. Thus, in my considered view, there is really no occasion to make any application u/s 23 of the Land Reforms Act.

19. This matter can be looked into from another aspect. The notification amending the Master Plan clearly provides that the land in question can be used for the purpose of a motel. Once this option is available and is exercised by owner of the land, the land is no more being used for agricultural purposes. Thus, once the land is elected to be used by the owner for a motel, permission for which has been granted under the amendment to the Master Plan, it no more remains agricultural land under the meaning of Section 3(13) of the Land Reforms Act. For this reason also, there would be no occasion for obtaining any permission. The Land Reforms Act is an enactment for protecting the agricultural use of the land. Once this land itself ceased to be agricultural, there is, really speaking, no question of application of the Land Reforms Act. Needless to say, this is on account of the fact that there is permissible non-agricultural use of a motel in pursuance to the notification of 1995.

20. It appears that in order to facilitate implementation of the amendment and to remove any doubts, the clarification dated 13.1.1999 was issued clearly stating that the motel fell within the permissible use. Since certain relevant facilities would have to be provided in case of such change of use and the owner is entitled to use the land for higher value use, the use permission charges were to

be levied. The petitioner has paid more than Rs. 47 lakhs as the use permissible charges to the MCD. At the stage of issuing this clarification, it was specifically provided therein in para 1(iii) that the MCD need not even obtain any further approval from the DDA.

21. In the present case, the plans have been duly sanctioned by the MCD after following the norms and the use permission charges have been paid. Even at the stage where some doubts arose and were sought to be clarified from the Ministry, the letter dated 17.11.2003 was issued in clear terms that there is no question of land use application involved in such cases where the land is used for a motel and, thus, there is no question of the applicability of Sections 22 and 23 of the Land Reforms Act. The letter enclosed the circular of 4.3.2002 in respect of construction of motels. The matter did not rest at this as the same very letter was circulated by the Office of the Divisional Commissioner to all the Deputy Commissioners for due compliance vide letter dated 24.12.2003.

22. I fail to appreciate how the impugned orders could have been passed in view of the aforesaid clarifications and the directions issued by concerned Departments of the respondent.

23. The matter in question is also not one of more circulars, but has legislative force under the DDA Act. The Master Plan was amended in exercise of the powers under the said Act. Section 53(2) of the said Act makes provisions of the DDA Act override provisions of any other law and is in the following terms:

"53. Effect of other laws

(2) Save as otherwise provided in Sub-section (4) of Section 30 or Sub-section (8) of Section 31 or Sub-section (1) of this section, the provisions of this Act and the rules and regulations made there under shall have effect notwithstanding anything inconsistent therewith contained in any other law.

(3) Notwithstanding anything contained in any such other law--

(a) when permission for development in respect of any land has been obtained under this Act such development shall not be deemed to be unlawfully undertaken or carried out by reason only of the fact that permission, approval or sanction required under such other law for such development has not been obtained;

(b) when permission for such development has not been obtained under this Act, such development shall not be deemed to be lawfully undertaken or carried out by reason only of the fact that permission, approval or sanction required under such other law for such development has been obtained."

24. Section 53(3) of the DDA Act makes it clear that once a permission for development under this Act has been obtained, the same shall not be deemed to be unlawful by reason of the fact that such permission, approval or sanction is required under any other law for which permission has not been obtained. Thus,

in view of the mandate by the DDA and accepted by the MCD, there would be overriding effect of this mandate, even if the Land Reforms Act was to apply.

25. It is the aforesaid which has rightly weighed with the Revenue Assistant when an order was passed in similar other case referred to above in the case of Gaon Sabha Samalkha v. Uppal Properties Pvt. Ltd., decided on 12.4.2001. It is not understood as to how two parallel departments of the contesting respondents are taking divergently opposite views.

26. It appears that the impugned orders have been passed only with the object of the contesting respondents attempting to retain the power of the pen to append a signature for one more permission, which in law is not required to be taken. The clarification and circulars of the Department have been given a go-bye and it has been misconstrued as if the notification dated 16.6.1995 gave a license to the respondent authorities to also have the power to grant an additional sanction. The order of the Collector has noted the various judgments cited at the Bar before it, but has failed to take note of the provisions of the DDA Act, which were the most material. This is apart from the clarifications and circulars issued, which left no manner of doubt in this behalf.

27. The order of the Financial Commissioner is one more example of merely reiterating that the orders passed by the Collector are in accordance with law without disclosing the mind as to what weighed in dismissing the revision petition when these pleas have been raised. A speaking order reflecting the mind of the Officer performing judicial functions under the Act is a sine qua non of the performance of such functions. The same are absent in the present case.

28. I am, thus, of the considered view that in view of all the aforesaid facts, no further permission is required by the petitioner from any authority under the Land Reforms Act and consequently the impugned orders cannot be sustained.

29. A writ of mandamus is, thus, issued quashing the impugned order dated 31.7.2003 of the Revenue Assistant, order dated 18.11.2003 of the Collector and the order dated 6.2.2004 of the Financial Commissioner and it is held that the petitioner is not required to take any such further permission under the Land Reforms Act.

30. It has been brought to notice of this Court that the permission granted by the MCD for construction is to lapse on 29.7.2004. The petitioner cannot, however, be made to suffer the consequences of illegality of the action of the contesting respondents. The matter has been delayed from January, 2003 till date, i.e., for a period of 15 months. The MCD is, thus, directed to re-validate the sanction plan by extension of fifteen months without recovery of any further charges for the delay, which has been occasioned on account of the action of the respondent authorities. Needless to say, any extension beyond this time-period of 15 months would be subject to the usual terms and conditions imposed by the MCD for such extension, if sought.

31. The writ petition is allowed in the aforesaid terms with costs of Rs. 7,500/- to be borne by the Government of NCT of Delhi.