

(1996) 05 SC CK 0088

In the Supreme Court Of India

Case No : Interlocutory Application No. 22 in Writ Petition (Civil) No. 4677 of 1985

M.C. Mehta

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 10-05-1996

Acts Referred:

Delhi Development Act, 1957 — Section 11A(2)

Citation : AIR 1996 SC 3311

Hon'ble Judges : Kuldeep Singh, J; Faizan Uddin, J

Bench : Division Bench

Judgement

1. The Master Plan for Delhi - perspective 2001 (the Master Plan) as approved by the Central Government u/s 11A(2) of the Delhi Development Act, 1957. (the Act) was published in the Gazette of India on August 1, 1990. The Master Plan specifically provides that the hazardous/noxious/heavy/large industries are not permitted to operate in the city of Delhi and the existing industrial units falling in these categories are to be shifted/relocated. One of the questions for consideration in this interlocutory application is how and in what manner the land made available as a result of the shifting/relocating of these industries is permitted to be used by the owners/occupiers of the said land.

2. This Court on November 24, 1995, passed the following order:

The industries to be relocated are to be assisted in every possible manner. The question of utilisation of the land available as a result of shifting of these industries has also to be examined. It is, therefore, necessary to have interaction with various Departments/Governments. We are informed that primary assistance has to come from the National Capital Region Planning Board. We direct the Member Secretary of the Board to be present in this Court on 30th November, 1995 at 2pm to assist us in this matter. We further direct the Urban Affairs Ministry, DDA, NCT-Delhi and MCD to depute a responsible officer each to be present in this Court on 30th November, 1995 at 2 pm.

Pursuant to the order quoted above, Mr. Omesh Saigal, Member Secretary, National Capital Region Planning Board (the Board) and Mr. K.J. Alphons, Commissioner. Land Management, Delhi Development Authority (DDA) personally assisted this Court on November 30, 1995. The assistance rendered by these officers was noticed in the following words:

Mr. Sehgal states that the planning Committee of the Board has already framed a scheme (the scheme) regarding the re-use of the land which is likely to be made available as a result of the shifting of the industries from Delhi. The scheme is at present with the DDA for consideration. We have requested Mr. Sehgal to prepare a short note of what he has stated before us and place the same on the record for our assistance. He may do so within 2 days from today. On behalf of the DDA, Mr. K.J. Alphonse, Commissioner Land Management is present. He states that the Scheme sent by the Board is at present under consideration of the DDA. He further states that after the Scheme is finalised it would be sent to Urban Development Ministry. Government of India for finalisation. We have requested Mr. Alphonse to place the Scheme before this Court along with a note. He may do so within 2 days.

On December 13, 1995, this Court passed the following order:

Pursuant to this Court order dated November 30, 1995, Mr. K.J. Alphons has placed on record the proposed scheme regarding utilisation of land which would be available in the event of re-location of the hazardous/noxious/large scale industries from Delhi. The Scheme has been discussed with Learned Counsel appearing for various industries. We are of the view that it would be useful for the representatives of the industries to have discussion with the Committee which is to finally examine the proposed scheme. Mr. P.C. Jain, Additional Commissioner. DDA who is present in the Court has explained to us various aspects of the scheme. He is agreeable to the proposal that 5/10 representatives of the industries may place the suggestions/objections of the industries to the proposed scheme before the Committee. The representatives of the industries may file their written suggestions before Mr. Jain within one week from today. Thereafter, Mr. Jain will inform them about the date when the Committee is likely to meet. It would be desirable that the Committee meets before the end of this year. In any case the meeting must take place before 10th January, 1996, because all these matters have been listed for final hearing on that date. In any case, Mr. Jain will inform the representatives about the date of the meeting before 25th December, 1995.

Mr. K.J. Alphons was the chairman of the committee in the DDA which examined the question regarding utilisation of land made available as a result of relocation/shifting of the industries. The proposal of Alphons-Committee was approved by the technical committee of the DDA on November 21, 1995. The operative part of the said proposal is as under:

(See Table on next page) The Alphons-Committee almost agreed with the reuse

of vacated land as suggested by the Board.

4. Mr. V.K. Bugga, Town Planner Municipal Corporation Delhi (MCD). by way of a note placed on record, suggested that "considering the increasing level of pollution in the city, the most vibrant need of the community today is a breath of fresh air which is only possible if more and more green spaces within the city could be created besides preserving existing ones." According to Mr. Bugga "green open areas up to an extent of 50 to 60 per cent or a less intensive land use are the probable answer to the question of the utilisation of the land made

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Percentage to be earmarked for Recreation Ground playground or any other open uses as specified by the Authority

Percentage of land to be used for providing Housing facilities by the owner at norms to be determined by DDA/GNCT Delhi

Percentages be earmarked and to be developed for residential or commercial user to be developed by the owner.

1

2

3

4

5

1.

Upto 2000 Sq. mtr. (including the first 2000 Sq. mts. of the larger plot)

-

-

100% to be developed by the owner in accordance with the zoning Regulations of the Master Plan.

2.

0.2 to 5 ha.

33

27

40

3.

5 ha. to 10 ha

33

34

33

4.

Over 10 ha.

33

37

30

available on account of shifting of industries under reference."

Pursuant to this Court's order dated December 13, 1995 (quoted above) several industrial units/organisations submitted their objections/suggestions before Mr. P.C. Jain, Additional Commissioner (Planning) DDA. The units/organisations were also heard by a sub-group under the chairmanship of Mr. Jain. The operative part of the affidavit dated January 10, 1996, filed by Mr. P.C. Jain in this respect, is as under:

Based on the observations/suggestions made by all the industrial units/organisation, Special Technical Committee in its meeting held on 8-1-1996 modified/clarified its earlier decision of 21-11-1995, as under: (Item No. 95/95 TC. File No. F. 20(16)/93/ MP under the subject regarding utilisation of land of existing hazardous and noxious units/large scale industry on their closure/shifting).

(a) The policy would be applicable only to the hazardous/noxious (as classified in Annexure H (a) and heavy and large industry (as classified in Annexure H (b) in the MPD 2001.

(b) The percentage breakup of the area is to remain unchanged between the open area, housing facility i.e. facilities required for housing, commercial/residential. The term 'Housing Facility' in the decision of the Technical Committee refers to Community Facility required for the population and as detailed out on page 150 of the Gazette (MPD 2001).

(c) The shifting industry shall also be permitted to redevelop the land for light and service industry as per the provisions of MPD 2001.

(d) The ownership of the pockets under open space and community facility would also remain with the shifting industry who will develop/maintain these two.

(e) The shifting industry would be given the benefit of FAR on the entire plot of land, thus, vacated for utilisation as per the specified land uses in MPD 2001.

This is generally with the understanding that the permissible FAR would be 60 as in case of extensive industrial use zone. No construction of any nature shall be permitted on the area identified as open spaces to be left as mandatory green area. A minimum of 10% of the total floor space shall have to be used for community facility.

(f) For necessary modifications in the text of MPD 2001, these pockets would be designated as Special Areas with the controls as specified in the scheme.

This Court on January 24, 1996 passed the following order:

While we are hearing, Mr. D.N. Goburdhan, Learned Counsel appearing for the NCT, Government (Department of Land and Building) states that the Lt. Governor Delhi has constituted a committee headed by Mr. D.R. Khanna, Judge, Delhi High Court (retired) to consider as to how and in what manner the land eventually made available by relocation of the industries is to be utilised. Needless to say that we are hearing the matter for the last about 6 months and we are almost at the final stages. We, however, welcome any assistance from any quarters. We direct the Registry to send the draft scheme placed by Mr. Alphonse and the suggestions made by Mr. P.C. Jain to Justice D.R. Rhanna through Mr. D.N. Goburdhan, Adv. within two days from today. Justice Rhanna may have deliberations with his committee and place his suggestions/recommendations before this Court within 10 days thereafter.

Justice D.R. Rhanna (retired) Chairperson, Land Use Advisory Committee appointed by (he National Capital Territory, Delhi Administration submitted a note pursuant to the above quoted order of this Court. It is stated in the note that the time available with the Committee was short and as such the deliberations of the Committee could not be finalised. Keeping in view the urgency of the matter, Justice Rhanna states the note contains an ex-facie view which he gathered from various deliberations of the Committee. Regarding heavy and large industries Justice Rhanna stated that these industries have to be shifted under the Master Plan. Their number is not large but the lands occupied by them are substantial. One such occupies about 184 acres, another 112 acres, still another 37 acres and soon. 'Paras 15, 16, 18 to 21 and 29 of Justice Rhanna's report are as under:

15. The land prices in Delhi have phenomenally sky-rocketed. In fact, their values may be many times more than the yields which are presently being enjoyed by the operation of these industries and even what they might have totally enjoyed from the time of the start of these industries. The protestations of the industries that they are going to suffer because of the shifting may appear misplaced and may be more to draw as much of compensatory relief from the government as may be possible. Left to their choice, most of these industries would themselves shift and then develop/dispose of their sites and structures, as there is least doubt that they see gold mines in them.

16. At the same time, it must be acknowledged here that none should grudge in the high profits that the owners are likely to get by development/sale of sites of

factories. They have been their owners and did play needed roles during relevant times in the industrialisation of NCT. Any spurt in the prices of real estate enures for their benefits. The same can only be circumscribed as the need may dictate of social or environmental good and uplifting the face of capital city.

18. I am informed that some hearings were provided to the representatives of the industries before formulation of these schemes, and then the percentages in columns 3 to 5 on the user of land were arrived at I have no occasion to fully grasp the justification of these percentages but treating them as they are. I proceed to make my comments.

19. Firstly, so far as percentages mentioned in column 5 of categories 2, 3 and 4 industries, some grievance is made in the written representations received by me that they are too low. Be that as it may, still the percentages of column 5 would leave very big areas of lands with these industries which would still be gold mines with them. A three bed rooms residential flat in Delhi would fetch anything between 20 to 50 lacs, and in commercial area, much smaller would fetch much more.

20. It must be essentially taken note of that those industries which are located in residential areas, the development may have to be residential in nature. Similarly lands located in commercial areas should receive development of commercial nature. Lands located in industrial areas should retain their user. This would ensure development in accordance with the zoning Regulations of the Master Plan.

21. The first category of the draft scheme concerns land up to 2000 sq. mts. Their 100% development is left to the owners in accordance with the Master Plan. More than 95% of the industries in Delhi would fall in this category and would thus be substantially benefited. There is almost a unanimity on this.

29. Adverting to the FAR, normally it has to be confined to the areas that are being built up on land developed. There should therefore be no reason why it should not be confined to FAR of the land in col. 5 only. To extend that for the benefit of col. 5 so as to include areas of cols. 3 and 4 would deprive areas of cols. 3 and 4 of the FAR for all time to come and would thus be greatly determinantal to them (especially when col. 4 has to be independently built upon), while giving overwhelming benefit to col. 5 lands. It has to be kept in view here that 2000 sq. mts. of larger plots have still been reserved for col. 5 while dealing with category 1 industries.

6. Justice Khanna submitted a supplementary note dated February 26, 1996. On March 27, 1996, we heard Learned Counsel for the parties. We also examined and discussed Alphons Committee report, Jain Committee report and the two notes placed on record by Justice Khanna. We were informed that Khanna Committee was to submit its final report by April 10, 1996. We, therefore, adjourned the hearing of the case to April 12, 1996. The matter was, however, taken up for consideration on April 30, 1996. We finally heard the matter on that

day and passed the following order:

Mr. P.V. Jai Krishnan, Chief Secretary, NCT Delhi has filed an affidavit dated April 29, 1996. We have heard Learned Counsel on the question of land use, which may be made available as a result of relocation/shifting of the industries from Delhi. We have before us Alphone's Committee Report. We have also before us the Report submitted by Jain Committee in this respect. The Khanna Committee appointed by NCT Government Delhi has not as yet completed its work. We have been adjourning hearing of these matters from time to time to await the Khanna Committee Report. In the affidavit it is stated by the Chief Secretary that the tenure of Khanna Committee has expired. It is stated that the NCT Delhi Administration is taking steps to renew the tenure of the Committee for further period.

We are of the view that no useful purpose will be served to look for any assistance in this respect from the NCT Delhi Administration.

We have finally heard the matter today. Needless to say that the Master Plan is the Charter for this purpose and we have to lay down the land-use keeping in view the provisions of the Master Plan. In this view of the matter, we direct the NCT Delhi Administration not to proceed with this matter any further. It shall not constitute or extend the tenure of any committee. We shall finally decide the issue and the said decision shall be binding on all concerned.

We have given our thoughtful consideration to the point at issue before us. We have had elaborate discussion with the Learned Counsel representing various industries which are to be relocated/shifted. The basic charter for the land-use in the city of Delhi is the Master Plan. The provisions of the Master Plan are statutory and binding. The relevant provisions regarding hazardous/noxious/heavy/large industries under the Master Plan are as under:

HAZARDOUS and NOXIOUS INDUSTRIES

Refer Annexure III H(a).

- a) The hazardous and noxious industrial units are not permitted in Delhi.
- b) The existing industrial units of this type shall be shifted on priority within a maximum time period of three years. Project report to effectuate shifting shall be prepared by the concerned units and submitted to the Authority within a maximum period of one year.
- c) The land which would become available on account of shifting as administered in (b) above would be used for making up the deficiency, as per the needs of the community: based on norms given in Master Plan; if any land or part of land, so vacated is not needed for the deficiency of the community services, it will be used as per prescribed land use; however the land shall be used for light and service industries, even if the land use according to the Master Plan/Zonal Development Plan is extensive industry.

d)

HEAVY and LARGE INDUSTRIES Refer Annexure III H(b)

- a) No new heavy and large industrial units shall be permitted in Delhi.
- b) The existing heavy and large scale industrial units shall shift to Delhi Metropolitan Area and the National Capital Region keeping in view the National Capital Region plan and National Industrial Policy of the Govt. of India.
- c) The land which would become available on account of shifting as administered in (b) above would be used for making up the deficiency, as per the needs of the community; based on norms given in the Master Plan; if any land or part of land so vacated is not needed for the deficiency of the community services, it will be used as per prescribed land use; however the land shall be used for light and service industries, even if the land use according to the Master Plan/Zonal Development Plan is extensive industry.

d)

i).....

ii)

It is thus obvious that the land which would become available on account of shifting/relocation of the industries can only be used for making up the deficiency, as per the needs of the community, based on the norms given in the Master Plan. If any land or part of the land, so vacated is not needed for community services it can be used as per the prescribed land use. To appreciate the concept "need of the community" under the Master Plan it would be useful to have a look at the following provisions of the Master Plan:

In general it would be desirable to take up all the existing developed residential areas one by one for environmental improvements through (i) plantation and landscaping (ii) provision of infrastructure-physical and social and proper access where lacking (iii) possibility of infrastructure management of the last tier through the local residents.

Conservation and revitalisation is required in case of traditional areas and environmental up gradation and improvement is needed in other old build-up areas.

LUNG SPACES

The Master Plan for Delhi in 1962, had indicated 9101 ha. of recreational area at the Master Plan level. Within this area the city has 18 major district parks from different periods of history i.e. Roshanara and Qudisa gardens of Mughal period. Talkatora garden of British period and Budha Jayanti park of post independence era. Out of this area 6012 ha. of district park and regional park area is now available. During the implementation of the plan approximately 34 percent of recreational area has been lost to other uses. On the basis of the land use

surveys conducted in 1981, about 2710 ha. of additional recreational area at the Master Plan level has been earmarked in the land use plan in the DUA-81 and the Urban extension indicated in the plan. Thus, in the urban areas shown in the land use plan the total recreational area indicated is 8722 ha. for a population of about 9 million by 2001 @ 9.7 sqm. per person. Part of this area is required to be developed for sports activities as per policy.

Further conversion of recreational areas to other uses should be permitted only under extraordinary circumstances. Areas in lieu of such conversion may be provided elsewhere in order to maintain the over all average for the city.

Within DUA-81, the following special activity area for recreation are proposed for development.

Additional special children parks of 4 ha. each (of the type of India Gate children park) 7 Nos.

Location of Special Children Park in DUA-81 to be in the district parks of Dhola Kuan, Pitam Pura, Keshopur, Sanjay Van Trilok Puri, Gulabi Bagh, Feroz Shah Kotla and Coronation Memorial.

Children traffic training parks of 5 ha. Each 6 Nos.

Location of children Traffic Training Park in DUA-81 to be in the district parks at Punjabi Bagh, Baba Kharak Singh Marg, Pragati Maidan, Dilshad Garden, Wazirpur and Loni Road.

(c) Picnic huts 5 Nos.

About 30% of the district park areas should be developed as wood lands, where picnic hut could also be located.

Location of Picnic Huts in DUA-81 to be in the district parks at Paschimpuri, Pitam Pura, Bidiwala Bagh, Kalkaji and Mehrauli.

Preferred species of the trees to be planted in parks, gardens, wood lands and roads etc. to suit local conditions are given in Annexure II.

In the Urban Extension wherever possible water bodies (lakes) should be developed to act as major lung spaces and to attract migratory birds and for improving the micro-climate. A special recreational area on the pattern of Disney land/amusement park could be developed in the land becoming available for the channelisation of river Yamuna.

The district parks in the Urban Extension would be @ 9 sqm per person which would also include special parks given as under:

Special Children Park

4 Nos. (4ha. each)

Children Traffic Training Parks

4 Nos. (3ha. each)

Picnic Huts

4 Nos.

In new developments the neighbourhood park of at least 1.5 ha. for 15.000 population should be planned with flowering trees and shrubs so as to achieve colourful pleasant environment throughout the year.

9. Delhi is one of the most polluted cities in the world. The quality of ambient air is so hazardous that lung and respiratory diseases are on the increase. The city has become a vast and unmanageable conglomeration of commercial, industrial, unauthorised colonies, resettlement colonies and unplanned housing. There is total lack of open spaces and green areas. Once a beautiful city Delhi now presents a chaotic picture. The most vital "community need" as at present is the conservation of the environment and reversal of the environmental degradation. There are virtually no "lung spaces" in the city. The Master Plan indicates that "approximately 34 percent of recreational areas have been lost to other uses". We are aware that the housing, the sports activity and the recreational areas are also part of the "community need" but the most important community-need which is wholly deficient and needed urgently is to provide for the "lung spaces" in the city of Delhi in the shape of green belts and open spaces. We are, therefore, of the view that totality of the land which is surrendered and dedicated to the community by the owners/occupiers of

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Percentage to be surrendered and dedicated to the DDA for development of greenbelts and other spaces

Percentage to be developed by the owner for his own benefit in accordance with the user permitted under the Master Plan

1

2

3

4

1.

Up to 2000 Sq. mtr.(including the First 2000 Sq. mts. of the larger plot)

-

100% to be developed by the owner in accordance with the zoning Regulations of the Master Plan.

2.

0.2 to 5 ha.

57

43

3.

5 ha. to 10 ha.

65

35

4.

Over 10 ha.

68

32

the relocated/shifted industries should be used for the development of greenbelts and open spaces.

10. The core question for consideration, however, is how much of the total land which would become available from each of the industrialists is to be taken away by the community for its use and how much is to be left in the hands of the industrialists for the community use. The suggestions given by Alphons Committee in this respect have been noted by us in the earlier part of the order. Mr. Omesh Sehgal, Mr. P.C. Jain and Justice Khanna by and large agree with the suggestions of the Alphons Committee. We are of the view that no useful purpose would be served by maintaining two categories as suggested by Alphons Committee in Cols. 3 and 4. After leaving the part of the land with the owner for developing the same in accordance with the permissible land-use under the Master Plan the remaining land should be surrendered to the Delhi Development Authority (DDA) for developing the same to meet the community needs. When the Master Plan permits the use of the land only to meet the community-needs, it obviously means that the land has to be surrendered and dedicated to the community. While meeting the community needs it is necessary to make suitable provision for the owner to enable him to meet the expenses of relocating/shifting the industry. It would, therefore, be in conformity with the broader concept of "community need" under the Master Plan, to permit the owner to develop part of the land for his own benefit and surrender the remaining land to the use of the community at large.

11. We, therefore, order and direct that the land which would become available on account of shifting/relocation of hazardous/noxious/heavy and large industries from the city of Delhi shall be used in the following manner:

(See table above)

12. We do not agree with the Learned Counsel for the industrialists that Floor Area Ratio (FAR) be permitted to them on the total area of the plot. We, however, direct that on the percentage of land as shown in Col. 4 the owners at serial Nos. 2, 3 and 4 shall be entitled to one and half time of the permissible FAR under the Master Plan.

13. The DDA has suggested that it may be necessary to amend the Master Plan for regularizing the land use as directed by us. We do not agree with the suggestion. The totality of the land made available as a result of the relocation/shifting of the industries is to be used for the community needs. The land surrendered by the owner has to be used for the development of greenbelt and open spaces. The land left with the owner is to be developed in accordance with the user permitted under the Master Plan. In either way the development is to meet the community needs which is in conformity with the provisions of the Master Plan.

14. We are, therefore, of the view that it is not necessary to amend the Master Plan.