

(2016) 01 DEL CK 0346
In the Delhi High Court
Case No : W.P. (C) 1476/2014

Vikas Singh

APPELLANT

Vs

Lieutenant Governor and Others

RESPONDENT

Date of Decision : 20-01-2016

Acts Referred:

Constitution of India, 1950 — Article 226, Article 243(W), Article 246, Article 254, Article 256
Delhi Apartment Ownership Act, 1986 — Section 2(s), Section 3(s)
Delhi Development Act, 1957 — Section 11-A(2), Section 25, Section 32

Citation : (2016) 227 DLT 333

Hon'ble Judges : G. Rohini, C.J. and Rajiv Sahai Endlaw, J.

Bench : Division Bench

Advocate : A.S. Chandhiok, Sr. Adv., Deepeika Kalia and Mallika Ahluwalia, Advocates, for the Appellant;

Final Decision : Dismissed

Judgement

Rajiv Sahai Endlaw, J.—1. On 29th September, 2014, after completion of pleadings and finally hearing the counsels for the then parties, we passed the following order in this petition:

"1. This petition is filed impugning Rule 27(2) of the Delhi Fire Service Rules, 2010 on the ground of the same being not in consonance with the amendment vide Notification dated 23rd September, 2013 of the Master Plan for Delhi (MPD) -2021. The petition consequently seeks a direction to the South Delhi Municipal Corporation (SDMC) impleaded as respondent No. 5, to approve the revised plan of construction of house No.C-319, Defence Colony, New Delhi of the petitioner.

2. The petition came up first before this Court on 7th March, 2014 when the counsel for the respondents No. 1 to 3 i.e. Lieutenant Governor, Delhi, Govt. of NCT of Delhi (GNCTD) and Director, Delhi Fire Service (DFS), GNCTD appearing on advance notice was directed to file an affidavit indicating the position with regard to fire safety clearance of buildings up to 15 metres in height and beyond

15 metres in height. It was further directed that the said affidavit shall also indicate, as to whether there is need for changing the cap of 15 metres as stipulated in Rule 27(2) supra, on account of change in the Master Plan whereby the maximum height for residential buildings with stilt parking has been increased to 17.5 metres from the erstwhile limit of 15 metres.

3. In compliance therewith, an affidavit dated 4th April, 2014 of the Chief Fire Officer, DFS, New Delhi has been filed.

4. We have heard the senior counsel for the petitioner and the counsel for the respondents No. 1 to 3.

5. Having heard the writ petition finally, CM No. 3085/2014 filed therewith for interim relief has become infructuous and is disposed of.

6. The senior counsel for the petitioner:

(a) has drawn our attention to Delhi Building Bye-Laws 1983,

(i) Bye-law 2.1 whereof defines "Act" as the Delhi Development Act, 1957;

(ii) Bye-law 2.51 whereof defines "Master Plan" as the Master Plan for Delhi approved by the Central Government under the Delhi Development Act, 1957 and the amendments made from time to time;

(iii) Bye-law 2.02 whereof provides that the words and expressions not defined in the Bye-laws shall have the same meaning or sense as in the Delhi Municipal Corporation Act, 1957, Delhi Development Act and the Master Plan for Delhi;

(iv) Bye-law 2.03 whereof provides that all mandatory Master Plan / Zonal Plan regulations regarding coverage, floor area ratio, use, set-backs, open spaces, height, number of storeys, number of dwelling units, parking standards etc. for various categories of buildings including modifications thereof made from time to time shall be applicable mutatis mutandis in the building regulations and that all amendments / modifications made in the building regulations will automatically be included as part of the Bye-laws;

(v) Bye-law 2.36 whereof defines "Floor Area Ratio (FAR) " as the quotient obtained by dividing the total covered area (plinth area) on all floors multiplied by 100 by the area of the plot;

(vi) Bye-law 2.58 whereof defines "Parking Space" as an area enclosed or unenclosed, covered or open, sufficient in size to park vehicles, together with a driveway connecting the parking space with a street or alley and permitting ingress and egress of the vehicles;

(vii) Bye-law 3.1 whereof provides that in addition to the provision of the Delhi Development Act, the Building Bye-laws shall apply to the building regulation activity, in the Union Territory of Delhi under the jurisdiction of the Delhi Development Authority (DDA);

(viii) Appendix J whereof containing "Relevant Extracts from MPD-2021 regarding Development Control Regulations" provides the maximum height of constructions of residential plotted development, of 15 metres and further provides that if the building is constructed with stilt area of non-habitable height (less than 2.4 metres), used for parking, such stilt area shall not be included in FAR but would be counted towards the height of the building;

(b) has drawn our attention to the Notification dated 4th March, 2014 of the Ministry of Urban Development (Delhi Division) issued in exercise of powers conferred by Section 11-A(2) of the Delhi Development Act making modifications in the MPD-2021 and whereby the definition of High Rise Buildings in Clause 8(7) of Chapter 17 titled "Development Code" of the Master Plan has been changed to "Buildings taller than 15 metres (without stilt) and 17.5 metres (including stilt) in all use zones will be considered as High Rise Buildings" and further providing that in case of stack-parking in stilt floor, minimum height of 2.4 metres for stilt floor may be relaxed;

(c) has drawn our attention to Bye-law 6.2.4.1 of the Building Bye-laws aforesaid relating to "Building Plans for Multistoreyed / Special Buildings which are more than 15 metres in height and has argued that the same is by way of an exception to Bye-law 6.2.4 dealing with "Building Plan" for plots measuring up to 250 sq.m. and above 250 sq.m. and has demonstrated that the building plan for such multistoreyed / special buildings has to show inter alia the location and size of fire lift, smoke exhauster system, access to fire appliances / vehicles with details of vehicular turning circle and clear motorable access way around the building etc.;

(d) has argued:

(I) that the petitioner on 15th July, 2013 got the plan for construction on property No.C-319, Defence Colony, New Delhi sanctioned from the Municipal Corporation of Delhi (MCD);

(II) that at the time of sanction of plan, the height of the building permissible under the Bye-laws was 15 metres which included the stilt which had been made mandatory;

(III) that upon amendment of the Master Plan vide Notification dated 23rd September, 2013 published on 21st October, 2013, maximum height of the building was prescribed as 15 metres in plot without stilt parking and 17.5 metres in plot with stilt parking and further providing that such buildings were not to be considered as high rise buildings "for the purpose of fire and life safety requirements, clearance of Fire Department will be obtained by the individual plot owner";

(IV) that by the time, the petitioner came to know about the aforesaid amendment, he had already casted stilt as well as the ground and the first floors and the only second and third floor roof casting remained;

(V) that in order to take advantage of the amended Master Plan, the petitioner got a revised plan made by providing two feet extra on the second and third floors, thus taking the height of the entire building to 16.16 metres, that is, well below the 17.5 metres provided in the amended Master Plan;

(VI) that since the amended Master Plan provided for taking clearance of the Fire Department, the petitioner applied on 3rd January, 2014 and on 20th January, 2014 submitted revised building plans to the SDMC indicating therein that the petitioner shall be increasing the height of the second and third floors by two feet each to take the total height to 16.16 metres;

(VII) that on 22nd January, 2014, the MCD referred the file to the Fire Department, GNCTD;

(e) has invited attention to the Delhi Fire Service Act (DFSA), 2007 and has contended:

(i) that there is no provision therein for compliance of the provisions contained therein by residential buildings;

(ii) that though Section 25 thereof empowers the GNCTD to by notification in the official gazette declare any class of occupancy and pandal which are likely to cause a risk of fire but the GNCTD has not issued any notification;

(iii) that Section 32 thereof requires only the "multistoreyed buildings" to be governed by the provisions for the fire prevention and fire safety measures stipulated therein;

(iv) that the said measures are contained in the Delhi Fire Service Rules supra;

(f) has invited attention to Rule 27 of the Rules supra listing the classes of occupancies to be construed as likely to cause a risk of fire and serial No. 2 whereof contains residential buildings (other than hotels and guest houses) having height more than 15 metres or having ground plus four upper storeys including mezzanine floor;

(g) has contended,

(I) that once the Master Plan has changed the maximum height of residential building from 15 metres to 17.5 metres and which change as per the provisions aforesaid of the Building Bye-laws stands incorporated in the Building Bye-laws also, the rules cannot be permitted to continue classifying residential buildings of more than 15 metres but less than 17.5 metres height as posing risk of fire;

(II) that rules aforesaid cannot be contrary to and have to be subservient to the Central Government legislation;

(III) that even otherwise Section 25 of the DFSA entitles the Government to declare only a class of occupancy, as likely to cause a risk of fire and not by height;

(IV) that the rule aforesaid is arbitrary per se and the height of 15 metres contained therein, after the amendment of the Master Plan and the consequent amendment of the Building Bye- laws will have to be read as 17.5 metres;

(V) that the GNCTD, post the amendment of the Master Plan and the Building Bye-laws, ought to have amended the Rules but has failed to do so;

(VI) that even the Development Code was amended on 4th March, 2014 in consonance with the amendments to the Master Plan;

(VII) that the height of the occupancy, even after the amendment aforesaid, remains 15 metres only and only to deal with the paucity of parking in streets in front of residential houses and to provide for parking, stilt floor in each residential building has been made compulsory;

(VIII) that the rules aforesaid framed by the GNCTD cannot have priority over the Master Plan or Building Bye-laws;

(IX) that to hold that a residential building of more than 15 metres but less than 17.5 metres height becomes a multi-storeyed building or a high rise building, would be absurd inasmuch as the plot size of such building does not admit of a provision being made for two staircases, or providing for movement of a fire brigade all around the building and to hold so would also be contrary to the layout plan of the building prescribing front and rear set-backs only;

(X) that the Supreme Court in para 66 of Delhi Bar Association (Regd.) Vs. Union of India , (2008) 13 SCC 628 has held that law framed by the GNCTD if repugnant to central law, would be void.

7. The respondent Nos. 1 to 3 in their affidavit aforesaid have pleaded:

(A) that under Rule 33 of the Rules supra, the minimum standards for fire prevention and fire safety of buildings as may be applicable with reference to the height of the buildings and class of occupancy are required to be provided in the Building Bye-laws or National Building Code of India, 2005 relating to the matters specified therein;

(B) that no fire protection requirement for one or two family private dwellings have been prescribed in the Code aforesaid for buildings up to 15 metres in height and such buildings do not require clearance from the DFS;

(C) that residential buildings meant for three or more families living independently are classified as apartment houses (flats) and the minimum standards for fire fighting installations for such buildings have been specified with respect to height of building; there is no height restriction for such residential buildings;

(D) that from fire ground operation point of view, the building beyond 15 metres in height, irrespective of the type of occupancy, pose different challenges in rescue and fire fighting operations; floors above 15 metres are beyond the reach

of the non-self supported ladders (portable manual ladders) and require operation of hydraulic platforms (aerial ladders) for fire fighting and rescue purposes necessitating 6 metres motorable road around the building;

(E) that new building above 15 metres in height devoid of the fire and life safety measures is a risky proposition for the occupants of the buildings, the neighbours and also for the fire fighters in the event of an outbreak of fire.

8. The counsel for the respondents No. 1 to 3 during the hearing handed over a copy of the minutes of the meeting of the DDA held on 9th May, 2014 to demonstrate that in view of the stand of the Director, Delhi Fire Service that buildings with height of more than 15 metres pose many challenges in ensuring fire safety and that the existing basic requirements should not be relaxed till a comprehensive review exercise is undertaken on fire safety measures and the extant provisions of the Bye-laws, Code and Rules supra, the proposal for increase of height of residential building developed by DDA to 17.5 metres, was not approved. He has further handed over a copy of the plan for construction got sanctioned by the petitioner to show that the same comprises of four dwelling units, it is contended that the construction for this reason also requires fire clearance. It was further, with reference to Articles 246, 243(W) read with the XII Schedule (Item No. 7 titled Fire Service) and Articles 254 and 256 of the Constitution of India, contended that to provide for fire services is a State subject and the Parliament is not competent to enact law with respect thereto. It is yet further argued that DFSA has been notified after the assent of the President of India. The judgment supra relied upon by the senior counsel for the petitioner is distinguished by contending that the subject therein pertained to Union List and the Concurrent List and it was for this reason that the GNCTD Law repugnant to the Central Law was held to be void. Reliance is placed on Ms. Geetika Panwar Vs. Government of N.C.T. of Delhi , AIR 2003 Delhi 317.

9. The senior counsel for the petitioner in rejoinder has argued that the National Building Code relied upon by the respondents is merely recommendatory in nature and to demonstrate so, a copy of the counter affidavit verified in April, 2006 filed by the Civil Engineering Department of the Bureau of Indian Standards in Civil Writ Petition No. 1042/2006 titled Council of Architecture Vs. Union of India of this Court stating that the said Code acts only as a guide and does not have a binding effect as that of a Statute, was handed over in the Court.

10. The counsel for the respondents No. 1 to 3 has responded by handing over the Notification dated 27th February, 2009 of Ministry of Urban Development (Delhi Division) making modifications to the Building Bye-laws inter alia providing in Clause 17.1 therein that the building shall be planned, designed and constructed to ensure fire safety in accordance with Part IV Fire Protection of National Building Code of India and that in case of buildings identified by Bye-laws 6.2.4.1, the building scheme will also be cleared by the Chief Fire Officer, Delhi Fire Service and has contended that the Code thus had statutory force. Attention in this regard is also invited to Rule 33 of the Rules supra providing

that the minimum standards for fire prevention and fire safety shall be as are provided in the Building Bye-laws or the National Building Code of India, 2005.

11. The counsel for the respondent No. 4 DDA merely stated that the Notification dated 4th March, 2014 supra was to take care of the stilt parking having been made compulsory of residential buildings.

12. The senior counsel for the petitioner further contended that Delhi is not a State. Attention in this regard was invited to Section 239-AA(3) (a) as well as to Entry 18 "land, that is to say, right in or over land, land tenures including the relation of landlord and tenant, and the collection of rents; transfer and alienation of agricultural land; land improvement and agricultural loans; colonization" of List II of the VII Schedule to the Constitution and it was argued that Delhi Fire Service is not a municipality. Attention was also invited to Paras 118 to 120, 123, 127, 130, 132, 135 and 141 of Delhi High Court Bar Association v. GNCTD , 203 (2013) DLT 129 (DB).

13. We had during the hearing enquired from the counsel for the respondents No. 1, as to how an increase in height of residential building from 15 metres to 17.5 metres changed the position viz.-a-viz. fire safety and fire prevention.

14. The Chief Fire Officer present in Court explained that floors above 15 metres could not be reached by a manual ladder, keeping in mind the incline at which the ladder is required to be placed alongside the building. He also explained that in the event of an incident of fire in buildings more than 15 metres of height, induction of air from outside makes the fire spread very fast.

15. The senior counsel for the petitioner intervenes to state that the floor of the top storey, even in the case of height of the residential building being more than 15 metres would be much less than 15 metres and thus can be reached with a manual ladder and the reason given by the Chief Fire Officer is not correct.

16. The Chief Fire Officer explained that the fire operations cannot be carried out from the top step of the manual ladder and for the fireman to reach the top floor with a manual ladder, the same has to rise much above the floor to be reached.

17. We have considered the rival contentions.

18. Though undoubtedly, there is a repugnancy between the Master Plan and the Building Bye-laws as amended in 2013, on the one hand and in the Fire Service Rules on the other hand but considering the fact that the question raised entails protection of life, we are of the view that the matter be not resolved on the basis of legalese. Even if we were to allow the writ petition, the fact of the matter remains that the effect thereof would be on the lives and safety of the inhabitants of such buildings, in the event of an incident of fire therein. It prima facie appears that while making stilt parking mandatory and amending the MPD-2021 and consequently the Building Bye-laws and thereby permitting the maximum height of residential buildings to be raised from 15 metres to 17.5 metres, this aspect has escaped attention.

19. We find that the Union of India has not been impleaded as a party to the petition. We, in the circumstances aforesaid, are of the view that Union of India is a necessary party and we would in any case like the assistance of the learned Additional Solicitor General (ASG) in the matter.

20. We accordingly implead Union of India as respondent No. 6 to the writ petition. Amended memo of parties be filed within three weeks.

21. Mr. Sanjeev Narula, Advocate on behalf of Union of India has accepted notice. A copy of the entire paper book including a copy of this order be handed over to him. Counter affidavit be positively filed within three weeks.

22. Considering the fact that the outcome of this petition may have an impact on the construction already underway by the petitioner as well as on a large number of other residential buildings in the city, we also implore upon the Secretary, Ministry of Urban Development (Delhi Division) to in the interregnum, if considers necessary to resolve the controversy aforesaid, immediately call for a joint meeting of all the concerned persons particularly from the Delhi Fire Services, so that a consensual decision in the interest of the residents of the city can be evolved.

23. An additional affidavit filed by the petitioner is taken on record. It is brought to our notice by Mr. A.S. Chandhiok, learned senior counsel appearing for the petitioner that the revised Building Plan submitted by the petitioner has been rejected by a letter dated 17th September, 2014 issued by SDMC, on the ground that the petitioner has not complied with the shortcomings as observed by the DFS.

24. Since the question as to whether the compliance with the provisions of the Delhi Fire Service Rules, 2010 shall be made applicable to the buildings which are constructed in conformity with the Building Bye-Laws as amended in 2013 is the issue which is still required to be considered by this Court in the main petition itself, the respondent is directed not to take any coercive steps on the basis of the letter dated 17th September, 2014 of SDMC until further orders.

25. We also draw the attention of counsels to Section 2(s) of the Delhi Apartment Ownership Act, 1986, defining a multi- storeyed building as a building containing "four" or more apartments and call upon them to examine in the context thereof also.

26. List on 3rd November, 2014."

2. Thereafter, from time to time the matter was adjourned on the ground that steps were being taken by Secretary, Ministry of Urban Development (Delhi Division) to resolve the controversy. It was else the stand of the Ministry of Urban Development, Govt. of India in the affidavit dated 15th November, 2014 filed immediately after being impleaded as a party that in the meeting held on 30th October, 2014 it had been decided that modification should be carried out in National Building Code (NBC) to align it with the Master Plan for Delhi 2021

(MPD-2021) regarding provisions for building height and it was also directed that Delhi Development Authority (DDA), in consultation with Delhi Fire Department, should formulate a proposal containing the changes that would be required in NBC and submit the same to the Bureau of Indian Standards (BIS) so that NBC can be revised to be consistent with MPD-2021.

3. However, in the subsequent affidavit dated 22nd April, 2015, it has been stated:

(i) that the Vice Chairman, DDA informed that in the meeting with the Delhi Fire Department it emerged that once we increase the height of building from 15.0 to 17.5 (m) with stilt, then such buildings would have to be excluded from the purview of "high rise buildings" and in that case no permission would be required from the Delhi Fire Service (DFS), meaning thereby that no "No Objection Certificate" (NOC) from the Fire Department is needed in such cases and the whole onus of fire safety will be on the Building Plan Sanctioning Authority and that the Fire Department does not have adequate number of fire fighting equipment/vehicles for building above 15 meters height, if no setbacks are available in those plots;

(ii) that from MPD-2021 provision 4.4.3(A) (iii), it is clear that buildings taller than 15 meters are not exempt from seeking clearance from Fire Department; further, as the buildings have to comply with Part IV Fire Protection of NBC, as stipulated in Building Bye-law 17.1, it is clear that MPD-2021 provisions read with Building Bye-law provisions do not exempt the buildings from the mandatory requirements of setbacks, access etc.;

(iii) that if all the storeys are constructed as per the requirements of Para 12.2.1 of Part III of NBC regarding the height of habitable rooms i.e. with a height of rooms as 2.75 meters, then the entire available FAR in each category of residential plot size can be achieved within the height of 15 meters, even after including stilt of 2.4 meters height for parking and adequate slab heights between all the floors and on the roof;

(iv) thus the maximum FAR for all plot sizes can be achieved within 15 meters without sacrificing either the stilt or any floor;

(v) thus as per the various provisions of MPD-2021, Building Bye- laws and NBC, by not considering residential buildings upto 17.5 meters with stilt "as high rise buildings", such buildings are nowhere exempted from the mandatory fire protection requirements related to the setbacks, access, alternate stairs etc.;

(vi) that the safety of human life is paramount and all the provisions regarding development control norms and other requirements for buildings should be followed invariably;

(vii) that as regards fire safety requirements, DFS is the competent body to attend exigencies in case of fire;

(viii) that as per Rule 27(2) of Delhi Fire Service Rules, 2010, residential buildings having height more than 15 meters or having ground plus four upper storeys, including mezzanine floor are likely to cause a risk of fire;

(ix) that as the proposed building of the petitioner is 16 meters tall as per the plan, therefore DFS has considered it as multi-storeyed building for the purpose of fire and life safety;

(x) that under Section 3(s) of the Delhi Apartment Ownership Act, 1986, a building containing four or more apartments in a multi-storey building; that from the Building Plan of the property of the petitioner, it is clear that there are four dwelling units in the proposed building of the petitioner and therefore this building would be construed as a multi-storeyed building as per the above provisions;

(xi) that there is no repugnancy between various provisions of MPD-2021, Building Bye-laws and NBC.

4. The counsel for the respondent Union of India (UOI) has argued on the same lines.

5. The senior counsel for the petitioner has contended (and has also filed written submissions) :

(a) that this Court has already in order dated 29th September, 2014 found repugnancy between MPD-2021 and the NBC and between the MPD-2021 and DFS Rules;

(b) that Clause 2.03 of the Building Bye-laws inter alia provides that all mandatory Master Plan / Zonal Plan regulations regarding coverage, FAR, use, setbacks, open spaces, height, number of storeys, number of dwelling units, parking standards etc. for various categories of buildings including modifications therein made from time to time shall be applicable mutatis mutandis in the building regulations; thus the Building Bye-laws automatically stood amended along with the MPD-2021;

(c) that Clause 17 of the Building Bye-laws relied upon by the respondent UOI requires only a building identified in Bye-law 6.2.4.1 to be cleared by the Chief Fire Officer;

(d) that Building Bye-law 6.2.4.1 refers to multi-storeyed buildings which are more than 15 meters of height; however as per MPD-2021, buildings upto 17.5 meters height are not multi-storeyed buildings;

(e) that four floors can be constructed after providing for stilt in a building with a total height of 15 meters can be no ground to justify the invocation of the Fire Department to buildings beyond 15 meters height as because the effective height available in each floor in a building having four floors with a total height of 15 meters is hardly eight feet and is not the proper height recommended for a regular floor;

(f) that the 2010 amendment of MPD-2021 clearly means to exclude residential buildings from the regulatory purview of Fire Department;

(g) that if the Master Plan has decided to increase the height from 15 meters to 17.5 meters qua houses having stilt, then a consequential amendment had to be made to Rule 27 of the Delhi Fire Service Rules;

(h) lastly, without prejudice to the other contentions, it is argued that since the petitioner could not have withheld the construction of his property pending the resolution *supra*, even in the event of the petition being dismissed, the construction already carried out by the petitioner be regularised.

6. The counsel for the respondent UOI responded that any finding / observation in the earlier order dated 29th September, 2014 till when UOI was not even a party to the petition, cannot bind the UOI and there is thus no merit in the contention of the senior counsel for the petitioner that the plea of UOI, of there being no repugnancy between MPD-2021 and the Building Bye-laws, being contrary to the findings of this Court in the order dated 29th September, 2014.

7. We have considered the rival contentions but do not feel the need to deal therewith being of the view that this is a fit case for invoking the principle that a writ Court, even if finds the petitioner entitled to relief in law, may refuse, if in the totality of circumstances finds interference to be not required in public interest or to do substantial justice. Reference if any required can be made to *Chandra Singh Vs. State of Rajasthan*, (2003) 6 SCC 545 and *Taherakhatoon Vs. Salambin Mohammad*, (1999) 2 SCC 635.

8. We are here faced with a situation where there indeed are two versions as to the maximum height of residential houses on the plot size with which this petition is concerned. One provides for maximum height of 17.5 meters and the other for maximum height of 15 meters. The version / view of the authority i.e. the South Delhi Municipal Corporation (SDMC), without the sanction whereof construction cannot be commenced / raised, is that the maximum height permissible is 15 meters and the plans sanctioned of the property of the petitioner are also for the said height. The petitioner desires to avail of the height provided for in the other version i.e. in the MPD-2021. However, even if we were to find that the maximum height under the Building Bye-laws and in accordance wherewith construction plans are sanctioned by SDMC should be in consonance with the provisions of MPD- 2021 i.e. provide for maximum height of 17.5 meters, the unequivocal stand of Delhi Fire Service (DFS) is that in the event of occurrence of fire in a house with a maximum height of 17.5 meters, DFS would be unable to fight fire. Thus, permitting construction of houses with such increased height would result in a situation, where such houses would be without protective umbrella of DFS. Though the senior counsel for the petitioner contended that DFS should get wherewithal for fighting fire in houses of such height but we cannot shut our eyes to the reality, of the DFS presently being not equipped to fight incidents of fire in houses of such height. We are also satisfied

with the explanation rendered by the Chief Fire Officer who had appeared before us, of the near impossibility of fighting fires in houses of such height, situated in residential colonies internal roads whereof do not even permit a fire brigade to reach the houses and the resultant need to fight accidents of fire therein with manual ladders. We cannot, for the sake of letter of law, expose the citizenry of Delhi who will occupy the said houses with increased height, to the hazards of fire. Nothing can be more fundamental than the issue of public safety and the right to life. No amount of errors, even if any in law, can justify a correction therein by constitution court where such correction will lead to a situation where a large number of people are permitted to reside in houses which are unsafe. It cannot be lost sight of that a house violative of fire safety norms and incident of fire wherein cannot be controlled, poses a danger, not only to the occupants thereof but also to the occupants of neighbouring/adjoining properties. Public safety is certainly a factor owing where to this Court would be entitled to not grant the relief claimed in this petition, even if a case of inconsistency as aforesaid between the Master Plan and the Building Bye-laws were to be found in favour of the petitioner.

9. Supreme Court in *Usman Gani J. Khatri of Bombay Vs. Cantonment Board* , (1992) 3 SCC 455 held that the slogan of the builders and land owners of utilising the maximum area for construction should always be subservient to the building restrictions and regulations made in the larger interest of the whole inhabitants of the city, environment hazards, sanitation, provision for supply of water, electricity and other amenities. In *State of West Bengal Vs. Terra Firma Investment and Trading Pvt. Ltd.* , (1995) 1 SCC 125, on finding that the reason for restricting the height of buildings to be limited resources for civic amenities, the Supreme Court negated even the claim based on a vested right. Similarly in *Howrah Municipal Corpn. Vs. Ganges Rope Co. Ltd.* , (2004) 1 SCC 663, it was held that the considerations of regulatory provisions for construction activities are public interest and convenience and on the subject of seeking sanction for construction, no vested right can be claimed by any citizen divorced from public interest or public convenience. It was held that a right for sanction is not a right in relation to "ownership or possession of any property" for which the expression "vest" is generally used. It was similarly held that there can be no legitimate or settled expectation in this regard and that the legitimate and settled expectation or the vested right is countenanced by public interest and public convenience. It was yet further held that in the matter of sanction of buildings for construction and restricting their height, the paramount consideration is public interest and convenience and not the interest of a particular person. Again in *Friends Colony Development Committee Vs. State of Orissa* , (2004) 8 SCC 733, it was observed that for the reason that private owners are to some extent prevented from making the most profitable use of their property, the regulations made in public interest cannot be challenged as the power to plan development of city and to regulate the building activity therein flows from the police power of the state and the exercise of such governmental power is justified on account of it being

reasonably necessary for the public health, safety, morals or general welfare and ecological considerations. Similarly, in *In Re: News Item Published in Hindustan Times titled "And Quit Flow Maily Yamuna"* , 2004 (9) SCC 569 it was held that the increase of FAR and increased density without corresponding increase in provision of services like water, power, circulation, parks etc. would lead to making urban areas in Delhi uninhabitable and lead to ecological degradation and urban degeneration. Hence, upgradation of services was considered essential before any relaxation in bye-laws could be considered.

10. Following the above, in *Commissioner of Municipal Corporation, Shimla Vs. Prem Lata Sood* , (2007) 11 SCC 40, the challenge to the special regulations framed to protect the core area of the town of Shimla was dismissed observing that the construction would violate the ecology and the regulation having been framed in public interest must override private interest.

11. A Division Bench of this Court in *Dr. B.L. Wadhera Vs. Govt. of NCT of Delhi* , (2003) 105 DLT 1 in the context of fire safety to be provided in high rise buildings held that fundamental rights are placed beyond the reach of ordinary legislations and directed the authorities not to supply essential services unless and until the building is compliant with fire safety requirements. Full Bench of this Court in *Joginder Kumar Singla Vs. Government of N.C.T. of Delhi* , AIR 2005 Delhi 258, dealing with a petition seeking directions to the authorities not to issue any drug licence for sale and manufacture of drugs in a residential premises, held that building regulations are with a view to achieve larger purpose of public health, safety and general welfare and for the benefit of the public at large and for providing a civilized society. It was further held that exercise of power under Article 226 of the Constitution is extraordinary remedy and it is open to the Court, in exercise of such power, to make such order as public dictates and equity projects.

12. A Division Bench of this Court in *Municipal Corporation of Delhi through its Commissioner Vs. Holistic Farms Pvt. Ltd.* , 169 (2010) DLT 637 (DB) concerned with the amendment to the Master Plan of Delhi increasing the maximum coverage and height of dwelling units without any corresponding change in the Building Bye-laws, held that till the Building Bye-laws are amended, construction could not be commenced on the basis of conditional sanction of Building Plans and even if it was deemed that the Building Bye-laws were suitably amended on the amendment of the Master Plan for Delhi, the legal position would not change to the advantage of the land owner who could not have commenced construction without unconditional sanction of the Building Plans. Reliance was placed on *Commissioner of Municipal Corporation, Shimla Vs. Prem Lata Sood* supra laying down that where a statute provides for a right, but enforcement thereof is in several stages, unless and until the conditions precedent laid down are satisfied, no right can be said to have been vested in the person concerned. Similarly, another Division Bench in *Dev Raj Gupta Vs. New Delhi Municipal Committee* , 68 (1997) DLT 62 held that since the laws relating to planned development of any

township and the municipal laws are meant for the public good, they apply on the dates on which they are brought into force and even the pending applications must be decided in accordance with law as applicable on the date on which the decision is to be taken. Accordingly, the contention that mere making of an application seeking sanction of the Building Plans gives any vested right to the petitioner was rejected.

13. A Division Bench of the High Court of Bombay in Joseph Bain D'Souza Vs. State of Maharashtra dealing with a challenge to the provisions of the Development Control Regulations of the city of Mumbai allowing incentives in the form of additional floor space observed that urban environment of Mumbai is perched upon a precipice, one where the dividing line between existence and destruction is so tenuous as to leave an observer to question whether it exists. It was held that every urban disaster is a grim reminder of the many more waiting to happen unless lessons are learnt and corrective measures taken. Finding that the urban infrastructure was not enough for the incentive in the form of additional floor granted, the Court interfered therewith.

14. In this view of the matter alone, we opt to, without rendering any finding in law, dismiss this petition.

15. The petitioner in his affidavit dated 29th September, 2014 has stated (i) that though he had submitted revised plans with increased height but the same were rejected; (ii) that since his construction was held up, the petitioner proceeded to raise construction and the total height of his building is now 16 meters. The petitioner seeks regularisation thereof.

16. We have considered the said plea also. All that we can observe is that there was / is an inconsistency and petitioner cannot be said to be unjustified in preferring this petition. In fact, we also in our order dated 29th September, 2014 had found repugnancy but notwithstanding the same, since UOI was not a party, desired to hear UOI. UOI itself being of the view that there is inconsistency attempted to have the same removed but only when the reality has unveiled itself, has taken a stand as in the affidavit filed subsequently.

17. In these circumstances, though we have dismissed the petition, we state that the petitioner will be entitled to apply for regularisation of his construction and such regularisation vis-a-vis height shall be considered sympathetically. We say so because the Supreme Court in N.D.M.C. Vs. Statesman Ltd. , AIR 1990 SC 383 has held while clearance by Chief Fire Officer is an indispensable condition for eligibility of sanction, such clearance by itself is neither conclusive nor binding on the Municipal Authority and is not a limitation on the Municipal Authority to satisfy itself that the building plans provide for adequate fire safety precaution in accordance with bye- laws or in a better measure. Applying such ratio, we are of the view that if the petitioner satisfies the SDMC that the construction of his house/building is otherwise in consonance with the sanctioned plans and the petitioner has taken sufficient measures for fire safety and/or takes such further

measures to notwithstanding the increased height make his house/building fire safe, the construction does not remain unauthorized. This however would be subject to the condition that the petitioner, in the unlikely event of fire in his house, shall not make any complaint vis-a-vis the remedial/curative measure taken by the DFS.

No costs.