

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Judgment Reserved on : March 11, 2014*
Judgment Pronounced on : March 31, 2014

+ **LPA 429/2013**

M.G.RAMACHANDRAN AND ANR. Appellants
Represented by: Mr.Shanti Bhushan, Sr.Advocate
instructed by Mr.Kumar Mihir and
Mr.Kartik Seth Advocates

versus

MUNICIPAL CORPORATION OF DELHI
& ORS. Respondents
Represented by: Mr.Abhinav Mehrota, Advocate
with Mr.Anshuj Dhingra,
Advocate for R-1 with Mr.Vijender
Dahiya, A.E./SDMC
Mr.Pawan Mathur, Advocate for
R-3 with Mr.Arun Vashist, Deputy
Direction Planning, DDA
Ms.Amrita Panda, Advocate with
Mr.Nitish Gupta, Advocate for R-4

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MR.JUSTICE JAYANT NATH

PRADEEP NANDRAJOG, J.

1. As would be evident from the facts noted hereinafter since much content of the arguments advanced during hearing of the appeal was in the realm of theory, we would be constrained to note the pleadings of the appellants in the writ petition so that we can clearly bring out that much what was sought to be argued in appeal is in the realm of theory. It is trite that Courts have to decide issues which are exoteric and not esoteric.

2. The petitioner challenged the action of the then Municipal Corporation of Delhi and the Delhi Development Authority of sub-

dividing plot bearing Municipal No.C-32, Friends Colony East, New Delhi ad-measuring 800 square yards into two plots bearing No.C-32A and C-32B, each ad-measuring 400 square yards. As per the appellants this sub-division impacted the rights of the appellants because the mandatory set-backs hithertofore required to be observed by the owners of the two sub-divided plots got changed. The appellants being the owners of the adjoining building : C-31 were alleged to be thus adversely affected. The appellants pleaded that the Municipal Regulations and Bye-laws do not permit sub-division of plots as per a notification dated September 22, 2006 being No.SO1591 (E) issued by the Ministry of Urban Development which inter-alia reads as under:-

“Terms and Conditions:

..... (iii) *Sub-division of plots is not permitted. However, if there are more than one buildings in one residential plot, the sum of the built up area and ground coverage of all such buildings, shall not exceed the built up area and ground coverage permissible in that plot.”*

.....

(viii) *The minimum set-backs shall be as given in the following table unless otherwise prescribed :*

<i>S. No.</i>	<i>Plot Size (in Sqm)</i>	<i>Front</i>	<i>Rear</i>	<i>Side(1)</i>	<i>Side(2)</i>
<i>1.</i>	<i>Below 100</i>	<i>0</i>	<i>0</i>	<i>0</i>	<i>0</i>
<i>2.</i>	<i>Above 100 and upto 250</i>	<i>3</i>	<i>0</i>	<i>0</i>	<i>0</i>

3.	<i>Above 250 and upto 500</i>	3	3	3	0
4.	<i>Above 500 and upto 2000</i>	6	3	3	3
5.	<i>Above 2000 and upto 10000</i>	9	6	6	6
6.	<i>Above 10000</i>	15	9	9	9

(a) In case the permissible coverage is not achieved with the above – mentioned set-backs in a plot, the set-backs of the preceding category may be allowed.

(b) In case of construction in the future, a minimum 2m 2m open courtyard shall be provided for in the residential plots of area of 50 sqm to 100 sqm.”

3. It was pleaded that in the sanctioned lay-out plan of the colony the 800 square yard plots were thus not liable to be sub-divided. It was pleaded that the sub-division had adversely affected the mandatory set-backs. Alternatively it was pleaded that if sub-division had to be allowed, the FAR had to be retained as per the original plot size and further that the mandatory set-backs had to be as per the original plot size.

4. Relevant would it be to highlight that in the writ petition it was never pleaded that when the Zonal Development Plans were prepared, the lay-out plan of the colony became an integral part of the Zonal

Development Plan and thus unless the Zonal Development Plan was amended as per the procedure prescribed under the Delhi Development Act, 1957, the lay-out plan could not be amended. It was never pleaded that the Zonal Development Plan of the area had itself divided the sites into plots and had stipulated therein conditions and restrictions as regards to open spaces to be maintained while erecting building. It was not pleaded that the Zonal Development Plan had provided for alignment of buildings on the side. We are highlighting as hereinabove because much was sought to be argued in the appeal with reference to Section 8 of the Delhi Development Act, 1957.

5. A perusal of the perfunctorily drafted writ petition would reveal that the thrust thereof is only in one direction : that the lay-out plan could not be altered without amending the Zonal Development Plan. The learned Single Judge has opined to the contrary.

6. As regards the notification dated September 22, 2006 the learned Single Judge has noted that if there were more than one buildings on a residential plots the notification in question stipulated maintenance of setbacks as given in the table in the notification.

7. From a perusal of the impugned decision it is apparent, though not stated so in express words by the learned Single Judge, that the hiatus in the notification which on the one hand clearly proclaims that sub-division of plots is not permitted, proceeds on, after using the word '*however*' to proclaim that if there are more than one buildings in one residential plot, the sum of the built up area and ground coverage of all such buildings would be as prescribed, by holding implicitly that sub-division would be permissible in the form of there being two separate independent buildings on a single entity plot i.e. conceptually the plot would be a single entity but practically it would be two half plots.

8. It appears that before the learned Single Judge no issue was raised that the permissible coverage of the two buildings sanctioned on the two plots exceeds the permissible coverage had the plot being treated as one and sanction was obtained for a composite single building. Thus there is no discussion in the impugned judgment on said issue.

9. We highlight. Even in the appeal no such submissions were made.

10. The appeal was argued extensively relying upon Section 8 of the Delhi Development Act, 1957 to highlight that the Zonal Development Plan has to contain a site plan and use plan for the development of the zone and this means that the Zonal Development Plan provides for the division of any site into plots for the erection of buildings which would include restrictions and conditions in regard to the open spaces to be maintained in or around buildings as also the alignment of buildings on any site.

11. Thus we proceed to analyze the issue with reference to the Delhi Development Act, 1957.

12. Section 2(d) of the Delhi Development Act, 1957 (referred to as the Act) defines development to mean:

“2(d) “development” with the grammatical variations means the carrying out of building, engineering, mining or other operations in, on over or under land or the making of any material change in any building or land includes redevelopment;”

13. Delhi Development Authority (referred to as the authority) is created under sub-section (1) of Section 3 of the Act. It reads as under:

“3(1) As soon as may be after the commencement of this Act, the Central Government shall, by notification in the Official Gazette, constitute for the purposes of this Act an authority to

be called the Delhi Development Authority (hereinafter referred to as the Authority),”

14. Sub-section (1) of Section 5A of the Act empowers the authority to constitute committees for such purpose as the authority thinks fit. It reads as under:

“5(1) The Authority may constitute as many committees consisting wholly of members or wholly of other persons or partly of members and partly of other persons and for such purposes as it may think fit.”

15. Amongst others, preparation of Master Plan and Zonal Development Plans, are two of the statutory duties of the authority. These duties flow from Sections 7 and 8 of the Act. Section 7 and relevant part of Section 8 read as under:

“Section 7

(1) The Authority shall, as as soon as may be, carry out a civic survey of, and prepare a master plan for Delhi.

(2) The master plan shall-

(a) define the various zones into which Delhi may be divided for the purposes of development and indicate the manner in which the land in each zone is proposed to be used (whether by the carrying out thereon of development or otherwise) and the stages by which any such development shall be carried out; and

(b) serve as a basic pattern of frame-work within which the zonal development plans of the various zones may be prepared.

(3) The master plan may provide for any other matter which is necessary for the proper development of Delhi.

Section 8

(1) Simultaneously with the preparation of the master plan or as soon as may be thereafter, the Authority shall proceed

with the preparation of a zonal development plan for each of the zones into which Delhi may be divided.

(2) A zonal development plan may-

(a) Contain a site-plan and use-plan for the development of the zone and show the approximate locations and extent of land-uses proposed in the zone for such things as public buildings and other public works and utilities, roads, housing, recreation, industry, business, markets, schools, hospitals and public and private open spaces and other categories of public and private uses;

(b)

(c)

(d) in particular, contain provisions regarding all or any of the following matters, namely:

(i) the division of any site into plots for the erection of buildings;

(ii)

(iii)

(iv) the erection of buildings on any site and the restrictions and conditions in regard to the open spaces to be maintained in or around buildings and hide and character of buildings;

(v) the alignment of buildings on any site;

(vi) to (x)

(xi) the restrictions regarding the use of any site for purposes other than erection of buildings; and

(xii) any other matter which is necessary for the proper development of the zone or any area thereof according to plan and for preventing buildings being erected haphazardly in such zone or area.”

16. Section 9 of the Act reads:

“9.(1) In this Section and in Sections 10, 11, 12 and 14 the word “plan” means the master plan as well as the zonal development plan for a zone.

(2) Every plan shall, as soon as may be after its preparation, be submitted by the Authority to the Central Government for approval and that Government may either approve the plan without modifications or with such modifications as it may consider necessary or reject the plan with directions to the Authority to prepare a fresh plan according to such directions.”

17. Section 10 of the Act specifies the procedure to be followed while preparing the plans. It reads:

“10(1) Before preparing any plan finally and submitting it to the Central Government for approval, the Authority shall prepare a plan in draft and publish it by making a copy thereof available for inspection and publishing a notice in such form and manner as may be prescribed by rules made in this behalf inviting objections and suggestions from any person with respect to the draft plan before such date as may be specified in the notice.

(2) The Authority shall also give reasonable opportunities to every local authority within whose local limits any land touched by the plan is situated, to make any representation with respect to the plan.

(3) After considering all objections, suggestions and representations that may have been received by the Authority, the Authority shall finally prepare the plan and submit it to the Central Government for its approval.

(4) Provisions may be made by rules made in this behalf with respect to the form and content of a plan and with respect to the procedure to be followed and any other matter, in connection with preparation, submission and approval of such plan.

(5) Subject to the foregoing provisions of this section the Central Government may direct the Authority to furnish such information as that Government may require for the purpose of approving any plan submitted to it under this section.”

18. Date of operation of the plans is as under Section 11. It reads:

“11. Immediately after a plan has been approved by the Central Government, the Authority shall publish in such manner as may be prescribed by regulations a notice stating that a plan has been approved and naming a place where a copy of the plan may be inspected at all reasonable hours and upon the date of the first publication of the aforesaid notice the plan shall come into operation.”

19. Procedure for modification of the plans if provided under Section 11A. It reads:

“11A.(1) The Authority may make any modifications to the master plan or the zonal development plan as it thinks fit, being modifications which, in its opinion, do no effect important alterations in the character of the plan and which do not relate to the extent of land-users or the standards of population density.

(2) The Central Government may make any modifications to the master plan or the zonal development plan whether such modifications are of the nature specified in sub-section (1) or otherwise.

(3) Before making any modifications to the plan, the Authority or, as the case may be, the Central Government shall publish a notice in such form and manner as may be prescribed by rules made in this behalf inviting objections and suggestions from any person with respect to the proposed modifications before such date as may be specified in the notice and shall consider all objections and suggestions that may be received by the Authority or the Central Government.

(4) Every modification made under the provisions of this section shall be published in such manner as the Authority or the Central Govt., as the case may be, may specify and the modifications shall come into operation either on the date of the publication or on such other date as the Authority or the Central Govt. may fix.

(5) When the Authority makes any modifications to the plan under sub-section (1) it shall report to the Central Government the full particulars of such modifications within thirty days of the date on which such modifications come into operation.

(6) If any question arises whether the modifications which effect important alterations in the character of the plan or whether they relate to the extent of land-users or standards of population density, it shall be referred to the Central Govt. whose decision thereon shall be final.

(7) Any reference in any other Chapter, except Chapter III, to the master plan or the zonal development plan shall be construed as a reference to the master plan or the zonal development plan as modified under the provisions of this section.”

20. Section 9 of the Act is clear. Reference to the word '*plan*' in Section 9, 10 and 11 is to the Master Plan and Zonal Development Plan. Section 7 refers to the Master Plan and Section 8 refers to the Zonal Development Plan. Thus, Sections 7 to 11 relate to the Master Plan and Zonal Development Plans.

21. That Master Plan and Zonal Development Plans are statutory in character was not in dispute. That, once formulated and notified, development has to conform to these plans was not in dispute. That, these plans once notified could be modified, only in the manner provided by Section 11A was not disputed. Issue which was hotly debated at the bar was to the statutory character of the lay-out plans.

22. Mr.Shanti Bhushan, learned senior counsel, arguing for the appellants referred to the Master Plan for Delhi-2021 and urged that statutory character to the lay-out plans flows from said Master Plan. Learned counsel argued that as per clause (a) of sub-Section 2 of Section 8 the Zonal Development Plan had to contain a site plan and use plan

showing the approximate location and extents of land using. With reference to sub-para (i) of clause (d) of sub-Section 2 of Section 8 learned counsel urged that the Zonal Development Plan had to provide for the division of any site into plots on which buildings could be erected and vide sub-para (iv) and (v) provided that the Zonal Development Plan had to provide for open spaces to be maintained in or around buildings and the alignment of buildings on the site.

23. The Development Code, statutorily prescribed under the Master Plan for Delhi – 2021, as per Chapter 17, has the stated object, to develop land in accordance with the development policies and land use proposals contained in the Master Plan. The Development Code contains provisions to determine the land use at 2 levels: (a) lay-out, and (b) permissible activity on the land.

24. Some of the important clauses of the Development Code may be noted:

“2(1) Land use plan means the plan indicating Use Zones as defined in clause 4.0.

2(2) Zonal Development Plan means a plan for one of the zones (divisions) of the National Capital Territory of Delhi containing detailed information regarding provision of social infrastructure, parks and open spaces, circulation system, etc.

2(3)

2(4) Lay-out plan means a plan indicating configuration and sizes of all Used Premises. Each use zone may have one or more than one lay-out plan depending upon the extensiveness of the area under the specified use zones and vice-versa.

Lay-out plan will indicate the location of all proposed and existing roads with their widths, dimensions of plots along with building lines and set-backs, location of drains, public facilities

and services and electric lines etc., statement indicating the total area of the site, area under roads, open spaces for parks, playground, recreational spaces and other public places, as required by specific sections of the Development Code.

3(1) The National Capital Territory of Delhi is divided into nine land use categories as mentioned in clause 4.0.

3(2) Each land use category is assigned numbers of use zone, which shall be further sub-divided into required number of used premises, with or without conditions in lay-out plan.

3(11) Lay-out plans/site plans and building plans shall be approved by the local bodies and authority in their areas of jurisdiction.”

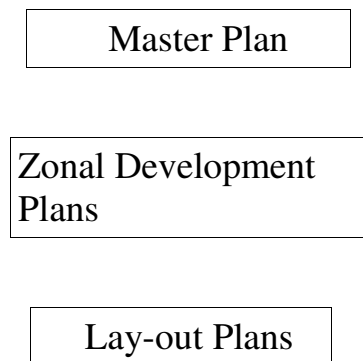
25. Clause 8 of the Code states that the object of said clause is to guide the preparation of lay-out plans for residential and industrial use zones. Sub-clause (2) of clause 8 specifies the land use activity to be followed while preparing a lay-out. It specifies which of the one or more out of one hundred and thirty six activities can be allowed while preparing the lay-out.

26. The scheme of the Act and the Master Plan shows that planning at the micro level has been left to the Local Bodies and the Authority for areas under their jurisdiction. This micro level planning, reflected in the lay-out plan, in areas under jurisdiction of DDA, is the baby of the authority. The only curb on the power, is to follow the development norms and planning norms frozen by the Master Plan and Zonal Development Plan. Of course the Development Code as it is, is a part of the Master Plan.

27. Clause 4 read with clause 2(1) of the Development Code designates 9 categories to which an area can be put to a dominant use. These 9 categories can well be said to be the apex of the pyramid. Further, clause

4 enumerates 37 land uses within these 9 categories. These 37 uses can well be said to be mid segment of the pyramid. Clause 2(2), 2(3), 3(2), 3(3), 3(6), 5 and 6 of the Development Code, read together enumerate 136 further division. These 136 can well be said to form the base of the pyramid.

28. How this translates to a site can be graphically put as under:



29. Clause 3(11) of the Development Code leaves it to the authority to approve lay-out plans in areas within its jurisdiction and similarly in the local bodies. Section 5A of the Act empowers the authority to constitute committees for such purposes as the authority thinks fit. One of the purpose is to prepare the lay-out plans and even amend them. It is an in house procedure. Similar is the position pertaining to such lands which are under the jurisdiction of the local bodies.

30. In the decision reported as AIR 1994 Delhi 299 Shanti Devi Gupta vs. DDA, a Division Bench held:

“As noticed above, the Delhi Development Act in general and Section 9 of the said Act in particular, only refer to the Master Plan and Zonal Plan and not the lay-out plan, which is sort of working drawings prepared by the DDA. Any departure from the lay-out plan, strictly speaking, cannot be equated with the violation of the Master Plan or the Zonal Development Plan,

which are statutory and termed as a violation falling with the ambit of Section 14 of the Delhi Development Act.”

31. In the decision reported as 76 (1998)DLT 329, Triveni Educational & Social Welfare Society vs. D.D.A & Anr., another Division Bench held:

“11. Chapter 3-A of the Delhi Development Act deals with the modification of the Master Plan. Circumstances under which modification can be made are enumerated in Section 11-A of the Act. There is no other provision of the Act, which deals with the modification of the lay-out plans. Lay-out plan can be modified by the Vice-Chairman.”

32. In the decision reported as 87 (2000) DLT 603, BU Block Residents Welfare Association & Ors vs. DDA & Ors, another Division Bench held:

“9. There is no dispute that there cannot be any change in the DMP-2001 or the ZDP without complying with the procedure laid down in Section 11-A of the Act. Such a modification can be made only by the Central Government. Therefore, if the action of the DDA amounts to change in ZDP or DMP-2001, the same having been not approved by Central Government, it cannot be permitted. However, it is this big if which is the hurdle to be crossed by the petitioners before they can succeed in this writ petition..... In any case, we find no breach or violation of DMP-2001 or the ZDP. It cannot be disputed that if there is a change in the lay-out Plan only, no approval or sanction of the Central Government is required. Still, if any authority for this proposition is required, one may usefully refer to Division bench judgment of this Court in the case of Shanti Devi Gupta V. DDA and Others, reported in AIR 194 Del.299.”

33. With the advent of industrialization in the 19th century and resultant urbanization, compulsory acquisition powers and concomitant development powers were needed by local government authorities. Housing and Town Planning legislations followed. Planning laws had 3 compartments. Acquisition, preparation of overall plans and control of development. Plans were subject to quinquennial review. Circumstances

change with time and therefore, planning authorities were given liberty to not only depart but even to finalize plans at the micro level. Delhi Development Act, 1957 is clearly modelled on this pattern.

34. Legitimate expectation means that a representation is made that benefit of substantive nature will be granted and based on it a person acts. It results in the creation of a legitimate expectation which binds the person who makes the representation. The principle is not absolute, in that, it admits of no exception. Lord Diplock in Hughes vs. Department of Health & Social Security, 1985 AC 776 observed:

“Administrative policies may change with changing circumstances. The liberty to make such changes is something that is inherent in our constitutional form of government.”

35. In decision reported as (1999) 4 SCC 727, Punjab Communications vs. U.O.I & Ors., it was held:

“The result is that a change in policy can defeat a substantive legitimate expectation if it can be justified on Wednesbury reasonableness. We have noticed that in Hindustan Development Corp. case also it was laid down that the decision-maker has the choice in the balancing of the pros and cons relevant to the change in policy. It is, therefore, clear that the choice of the policy is for the decision-maker and not for the court. The legitimate substantive expectation merely permits the court to find out if the change in policy which is the cause for defeating the legitimate expectation is irrational or perverse or one which no reasonable person could have made.”

36. D.D.A had the power to revise the lay-out plan. Reason for revision gives a justification (non availability of land) which cannot be said to be arbitrary, perverse or irrational. Such revised lay-out cannot be said to be a violation of any substantive legitimate expectation of any person.

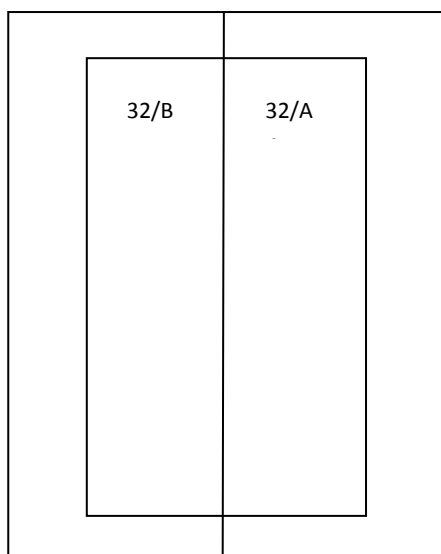
37. As regards the contentions advanced which were premised on clause (a) of sub-Section 2 of Section 8 read with clause (d)(i)(iv)&(v) thereof, for the reasons given hereinabove, the argument has no force unless there are positive averments to the effect that the Zonal Development Plan prepared contains the site plan as also the use plan. The reason is that the legislature, evidenced by the use of the words '*a Zonal Development Plan may*' in Section 8(2), left it to the discretion of the authority while preparing the Zonal Development Plan to embody therein the site plan and the land use plan or simply prepare the Zonal Development Plan at the macro level and then leave, at the micro level, the lay-out plan to be prepared either by the authority or the local authority as the case may be. Of course, the lay-out plan had to conform to the Development Code.

38. This is the reason why we have highlighted at the first instance that in the writ petition filed there are no averments that for the colony in question the lay-out plan was an integral part of the Zonal Development Plan when the Zonal Development Plan was prepared.

39. Thus, the inevitable conclusion has to be that the lay-out plan can be altered without following any prescribed procedure by either the authority or the local authority.

40. Before bringing the curtains down we must note that another argument was addressed based upon the decision taken by the authority when the lay-out plan was amended, but not pleaded in the writ petition. The argument was premised on the plan when the sub-division was effected. The same would evidence that plot No.32 ad-measuring 800 square yards was sub-divided into two plots No.32A and 32B, with each

plot having size 400 square meters. As per the legend of the plan the set-backs were shown. The resultant drawing would be as under:-



41. The larger rectangle would be the original plot. The vertical line in the middle, dividing the rectangle into two rectangles, would be indicative of how the plot has been sub-divided. The smaller rectangle within the larger rectangle would indicate the permissible envisaged construction and the remainder would be the set-backs. This would be because, as noted above, while sanctioning the sub-division, the plan drawn up, as per the legend, records that the set-backs as would be as shown.

42. Sh.Shanti Bhushan learned senior counsel for the appellants sought to urge that while sanctioning the lay-out for the sub-divided plots, the authority was bound by the manner in which, while effecting sub-division of the plot, the set-backs were maintained.

43. Since the argument was not based on any pleadings, we are noting the same for purposes of record but are not deciding the issue because what was argued was not a pure question of law. It was based on a fact.

In our opinion it would have been unfair to the respondents to have decided the issue without proper pleadings. Thus, we leave the question open, for which the appellants may file a petition to question the building plan sanctioned with reference to the decision taken pertaining to set-backs when sub-division was effected.

44. The appeal is dismissed but without any orders as to costs.

(PRADEEP NANDRAJOG)
JUDGE

(JAYANT NATH)
JUDGE

MARCH 31, 2014
mamta