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

Judgment reserved on: 07.09.2017

% Judgment delivered on: 30.08.2018

\+ **LPA 487/2017 and C.M. No. 25528/2017**

NORTH DELHI MUNICIPAL CORPORATION ..... Appellant

Through: Mr. Ajjay Aroraa, Mr. Kapil Dutta & Ms. Diksha Lal, Advocates.

versus

DCM LIMITED & ANR ..... Respondents

Through: Mr. Arvind Nigam, Senior Advocate along with Mr. Pratik Malik, Mr.Vaibhav Mishra & Ms. Akriti Tyagi, Advocates for respondent No.1/ DCM Ltd.

Mr. Dhanesh Relan, Standing Counsel and Mr. Harshit Maniktala, Ms. Isha Garg & Ms.Gauri Chaturvedi, Advocates for respondent No.2/ DDA.

Mr. P.C. Sharma, Advocate along with Mr. Ramesh Nag, Coordinator, of respondent No. 2 Monitoring Committee of Supreme Court of India.

CORAM:
HON'BLE MR. JUSTICE VIPIN SANGHI
HON'BLE MS. JUSTICE REKHA PALLI

JUDGMENT

VIPIN SANGHI, J.

1. The North Delhi Municipal Corporation (NDMC) has preferred the present Letters Patent Appeal to assail the order dated 26.05.2017 passed by the learned Single Judge in WP(C) No. 4764/2017. By the impugned order, the writ petition preferred by the respondent – DCM Ltd. (DCM) has been allowed. The background in which the present appeal has been preferred by the NDMC may now be narrated.

2. The respondent-DCM was running a textile mill on its land situated at Bara Hindu Rao, Kishan Ganj area, which is a parcel of approximately 63 acres. The said textile mill was constructed in the year 1889 in an area of approximately 24.55 acres. The said property also had a residential colony covering areas of 26.90 and 11.78 acres respectively.

3. After the Delhi Development Authority (DDA) was set up under the Delhi Development Act, 1957 - with the objective of carrying out planned development of Delhi, the first Master Plan as prepared by the DDA was enforced in 1962. Under the said Master Plan of 1962, the respondents' use of its said property as a Mill became non-conforming land use. Consequently, the respondent-DCM submitted a detailed proposal for shifting of the Mill and re-development of the Mill area for group housing and Flatted Factory Complex in the year 1982, which was in conformity with the Master Plan of 1962. The DDA granted its approval to the proposal of DCM for re-development of the land into group housing complex and flatted factories vide resolution No. 26 dated 01.02.1983.

4. The respondent DCM submitted its layout plan for setting up of Flatted Factory Complex i.e. DCM Techno Plaza (in an area of approx 24.55 acres) at Bara Hindu Rao, Delhi, and a group of residential housing complex known as DCM Green Acres (in an area of approx. 26.90 and 11.78 acres) at Kishan Ganj, Delhi. However, the efforts of respondent-DCM to close the textile factory met with resistance from different quarters. Eventually, DCM was able to finally shut down the Mill. However, the DDA withdrew its 'No Objection' for re-development of the said land by DCM vide resolution dated 01.08.1986.

5. DCM assailed the said withdrawal of 'No Objection' by preferring Writ Petition (C) No. 2687/1986 before this Court. Vide judgment dated 22.05.1987, the said resolution dated 01.08.1986 of the DDA was quashed by this Court. The right of DCM to re-develop the land at Bara Hindu Rao and Kishan Ganj, in terms of the 'No Objection' granted in the year 1983 was upheld. The decision of this Court in WP(C) No. 2687/1987 was assailed by the DDA, as well as by the Union of India, before the Supreme Court by preferring SLPs. In those proceedings, the Municipal Corporation of Delhi (MCD) was impleaded as a party respondent by the Supreme Court.

6. During pendency of the said SLPs, on 24.11.1989 the MCD vide resolutions Nos. 1136 and 1137 approved the lay out plan proposed by the respondent DCM qua the Bara Hindu Rao and Kishan Ganj areas. As per the lay out plans, Bara Hindu Rao area was to be developed into a Flatted Factory Complex, and Kishan Ganj area was to be developed into a Group Housing Complex.

7. Before the Supreme Court, the DDA raised several objections to grant its approval to the development of its land by the respondent DCM. The Supreme Court, while dismissing the SLP/Civil Appeals vide judgment dated 13.03.1990 [reported as (1990) 2 SCC 371], took note of the said objections and, inter alia, observed as follows:

> *"The DDA thus requires the aforesaid objections to be first met before it could give its final approval. It is worthy of record that under interim directions of this Court, afore referred to, its approval shall proceed after the disposal of these appeals. And we feel that time for that purpose has arrived.*
>
> *Having heard learned counsel for the parties and having taken note of the objections above referred to,* ***we take the view that the appeals be dismissed conveying a direction that the DDA shall grant to the DCM conditional approval subject to removal of the above enumerated objections raised or such of them as are valid and tenable in law after DCM is heard by the Municipal Corporation of Delhi which the DDA has adopted and the matter be formalized forthwith by the DDA and other authorities connected therewith within eight weeks from today so that the settlement between the workers and the DCM and other matters connected do not stagnate and rather move further to the benefit of all concerned.*** *It appears that to the 6000 workmen the grant of such approval even though conditional, would be beneficial; so are the terms of the settlement.*
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> *Saddling the order appealed against with the above direction we dismiss these appeals. No costs." (emphasis supplied)*

8. One of the objections raised by the DDA during the course of implementation of the judgment dated 13.03.1990, was that the DCM should file an amended or modified plan so as to conform to the Master Plan of the

year 2001. The Supreme Court rejected the said objections of the DDA vide its judgment dated 01.05.1991 [reported as ***DDA Vs. DCM Ltd & Others***, (1991) 2 SCR 590] by observing as follows:

> *"At the outset, we put it beyond any doubt and re-affirm that the DDA stands directed by this Court to grant to the DCM approval, even though conditional, and the DCM stands impliedly directed and is duty bound to remove the objections as were valid and tenable in law as raised by the DDA within its domain. Having gone thus far there is no retreat of it contemplated. It is further to be understood that this Court had endorsed by means of this directive the already known views of the Delhi High Court towards restoring resolution of the DDA dated February 1, 1983, whereby the scheme as given by the Delhi Cloth Mills was approved in terms thereof.* ***And obviously the approval came from the DDA at a time when the Master Plan of the year 1962 was operative and the one of the year 2001 was not existant, and if at all existant in an embryonic stage. The law governing the object and the rules and regulations then in vogue and applicable were deemingly kept in view and applied by the DDA in the approval of the scheme. To whittle down the effect of that resolution on the emergence of the new Master Plan of the year 2001, made applicable after the orders of this Court would, at the present stage, if insisted upon be spelled out as a step to undermine the orders of this Court. Such an objection by the DDA when raised before March 13, 1990, the day when we passed judgment, was untenable in law and the DDA should have known it before putting such an objection to use. For this reason, we repel the first objection of the DDA and require of it to stick to the position as per Master Plan as existing on February 1, 1983. This objection is thus surmounted."*** *(emphasis supplied)*

9. It appears that the endeavour of the respondent DCM to raise construction ran into litigation with the builders. The construction was,

however, completed and completion certificates were obtained in respect of Complex A, B and D of Flatted Factory Complex at Bara Hindu Rao. Sale deeds and possession letters were also issued to the buyers of the units.

10. The DDA enforced the new Master Plan-2021 (MPD-2021) w.e.f. 07.02.2007. The MPD-2021 permitted the change of use of Industrial units/plots to commercial use. Note (vi) to Table 7.3 of Development Control Norms was amended on 12.08.2008. Post amendment, the same reads:

> ***"Industrial units/plots abutting road of 24m ROW and above shall be eligible for conversion to commercial use within the existing development control norms, subject to payment of conversion charges as prescribed by government from time to time.*** *The activities permissible in local shopping centres will be permitted in such plots. In addition, multilevel parking shall be permissible activity.* ***However, this shall not be permitted on non-conforming/regularized industrial cluster. The above provision shall not affect the Supreme Court orders in any way."*** *(emphasis supplied)*

11. The NDMC came out with an Office Order dated 07.06.2010 prescribing the conversion charges for conversion from industrial to commercial/banquet halls use.

12. The respondent-DCM then approached the NDMC vide letter dated 26.04.2011 to seek conversion of Flatted Factory Complex to commercial/banquet halls. The said request was rejected on 02.09.2011. Yet another representation was made by DCM to NDMC on 27.02.2013. The said request of DCM was taken up in a meeting chaired by the Vice Chairman of the DDA on 21.10.2013. In the said meeting, the Monitoring

Committee (MC) appointed by the Supreme Court raised certain issues. The DDA sought the opinion of the Solicitor General of India who, vide his opinion dated 01.05.2014, opined that the Flatted Factory Complex of DCM would be eligible for change of user to 'commercial' under MPD-2021. The Solicitor General of India also examined the judgment of the Supreme Court dated 01.05.1991, and re-affirmed his opinion as aforesaid.

13. Since the application of DCM for conversion of user from "Flatted Factory Complex" to "Commercial" was not being actioned, DCM preferred Writ Petition (C) No.10104/2016 to seek a direction to the authorities to grant them the benefit of MPD-2021, and to allow the change of user from "Flatted Factory Complex" to "Commercial". The said writ petition was disposed of on 06.01.2017, with a direction to the NDMC to decide the representation of DCM in accordance with law.

14. The NDMC, after some amount of delay, and after DCM preferred a contempt petition, passed the detailed order dated 20.04.2017 wherein it conveyed the following decision/ conclusions:

> *"CONCLUSION:-*
>
> *The Committee, after considering all the records placed before it and after detailed discussions and deliberations, has arrived at the opinion, on the basis of the advice rendered by DDA (which is competent and final authority for interpretation of Master Plan) vide its note dated 01.09.2014, read with opinion of Solicitor General dated 02.05.2014 and 06.05.2014 that* ***the provisions of MPD 2021 would have been extended to the instant case of conversion of DCM flatted factory complex into the Commercial Complex; but no orders to this effect are being passed as the above said case of DCM Flatted Factory***

Complex has been under the consideration of Monitoring Committee constituted by Hon'ble Supreme Court of India in W.P.(C) no. 4677/1985 titled M.C.Mehta Vs. UOI & Ors., and in terms of Hon'ble Supreme Court orders dated 03.01.2012 in the said case, no orders to this effect can be passed*."* (emphasis supplied)

15. Thus, while the DDA and the NDMC were both of the view that DCM was entitled to seek conversion of the user from "Flatted Factory Complex" to "Commercial" in terms of MPD-2021, but no orders to that effect were passed by them, on the premise that the case of DCM Flatted Factory Complex was under the consideration of MC constituted by Supreme Court of India, and in terms of Supreme Court orders dated 03.01.2012 (reported as ***(2012) 11 SCC 759***) in the said case, no orders to this effect could be passed.

16. Aggrieved by the rider contained in the order dated 20.04.2017, passed by the NDMC – taken note of hereinabove, the respondent DCM preferred the writ petition wherein the impugned judgment came to be passed. Along with the writ petition, the respondent placed on record a notice dated 12.05.2017 issued to the owner/ occupier by the NDMC alleging violation of the provisions of MPD-2021 Clause 15.9 for misuse. This clause, inter alia, makes it obligatory for owner/ allotee/ resident of the dwelling unit to pay the mixed use charges. The said notice was issued by the Deputy Commissioner, Sadar Paharganj Zone, NDMC, wherein it was alleged:

"that the portion of the Flatted Factory Complex at Bara Hindu Rao is used for commercial purpose against the sanctioned use of Flatted Factory (Industrial Activity). The Ground Floor &

First Floor/ Part of the said Building in Block B is being used at the instance of the owner/occupier Sh./Smt. Sumat Kumar for Commercial purposes thereby running a trade in the name & style of Pure Earth (Office).”

17. Before the learned Single Judge, the respondent DCM, firstly, questioned the jurisdiction and powers of the MC in the matter of raising objections to the conversion of the user of the respondent’s aforesaid property in conformity with MPD-2021. In this regard, respondent DCM placed reliance on the decision of the Supreme Court in ***M.C.Mehta Vs. Union of India*** 2013(16) SCC 336, whereby the powers of the M.C. were confined to making a recommendation to the authorities concerned to prefer writ petitions before the High Court to assail orders passed in respect of desealing of premises. The respondent DCM contended that the MC had no jurisdiction to object to the conversion of the “Flatted Factory Complex” to “Commercial” use. It was contended that the MC had a limited role i.e. to point out cases where there was any non-conforming user.

18. The learned Single Judge, while accepting the said submission of the writ petitioner DCM, concluded that the Supreme Court has confined the power of the said MC only to recommend to the authorities concerned to have recourse to law against desealing orders, and if any non-conforming use is found, then to recommend to the authorities concerned to take recourse to law, as available.

19. In support of the said conclusion, the learned Single Judge relied upon a co-ordinate Bench decision rendered in ***Babu Ram Singla Vs. East Delhi Municipal Corporation & Ors*** (WP(C) No. 4345/2015 decided on 13.01.2017), wherein, while dealing with the powers of the M.C. in a case of

sealing of premises, the learned Single Judge observed that the Supreme Court had granted only recommendatory powers to the M.C. i.e. to recommend to the Corporation to file a petition in the High Court against the order of de-sealing, and the M.C. did not have any power to issue any mandatory directions. The learned Single Judge also observed that the directions contained in the rider aforesaid – as contained in the order dated 20.4.2017, being in mandatory terms-to prohibit the conversion of the "Flatted Factory Complex" to "Commercial Complex", was unwarranted since the respondent's case was neither of sealing, nor of de-sealing, nor of non-conforming use of the said property.

20. Consequently, the aforesaid rider contained in the order dated 20.04.2017 passed by the NDMC was rendered inoperative. The learned Single Judge declared that the order dated 20.04.2017 was operative to grant permission for change the user of the respondent's "Flatted Factory Complex" to "Commercial complex".

21. In the present appeal preferred by the NDMC, the appellant states that it received request from the MC dated 09.06.2017, to challenge the impugned order passed by the learned Single Judge. The appellant also states that, "*being aggrieved by the order passed by the learned Single Judge and in consonance with the request of the Monitoring Committee, the present appeal is being preferred for setting aside the orders of the learned Single Judge……..*"

22. When the appeal was taken up for hearing on 21.07.2017, this Court was of the view that the MC should be put to notice and heard in the matter,

since the appeal had been preferred in pursuance of their communication dated 09.06.2017 to the NDMC. Moreover, the issue of the powers/ jurisdiction of the MC to issue directions in matters related to conversion of user – in terms of MPD-2021, also arose for consideration. Accordingly, MC was directed to be served for 26.07.2017. The matter was further adjourned to 28.07.2017 when the counsel for the MC put in appearance. On 28.07.2017, counsel representing the MC was called upon to address the Court on the scope of its authority and jurisdiction in relation to conversion of land use from "industrial" to "commercial". The matter was adjourned and, eventually, came up before this Bench on 29.08.2017. The MC filed its reply/ status report on record. Mr. Ajay Arora, representing the NDMC stated that the stand of the appellant is contained in the speaking order dated 20.04.2017 and, therefore, he did not wish to file any further response. Thereafter, the matter was heard at length on 07.09.2017 and judgment reserved.

23. While the judgment was under preparation, the premises of DCM was sealed on the instructions of the MC. Consequently, DCM moved C.M. No. 1273/2018, which was allowed vide order dated 27.02.2018, after notice to, and hearing the MC and the NDMC.

24. Mr. Nigam, learned senior counsel for the respondent DCM has raised a preliminary objection, that the MC has no jurisdiction to interdict, by issuing mandatory orders, in matters relating to conversion of land use in terms of MPD-2021. Mr. Nigam submits that the MC is a creature of the orders passed by the Supreme Court and its jurisdiction was confined by the Supreme Court while passing its orders dated 03.01.2012 (reported as

(2012) 11 SCC 759) and dated 30.04.2013 [reported as ***(2013) 16 SCC 336***]. He submits that the powers of the MC are recommendatory in nature and do not envisage issuance of mandatory directions to the NDMC to decline the Conversion application of this respondent. He submits that the Supreme Court has further clarified that the actions of the MC are also liable to be suitably changed/ altered/ modifiable by this Court, and the sealing actions undertaken by the Corporations consequent upon recommendations of the MC, have been remitted to the Tribunals. The MC has a right of audience before the Tribunals. Should the MC be aggrieved by the decision of the Tribunals, they can also recommend the filing of Appeal / Writ. Mr. Nigam submits that the MC is seeking to usurp the powers of both - the DDA and the NDMC by obstructing the valid and legal conversion of the user of the Flatted Factory Complex from "Industrial" to "Commercial" in terms of the MPD-2021.

25. Mr. Nigam also places reliance on the judgment of this Court in ***Babu Ram Singla*** (supra), wherein the scope of powers of the MC was ruled upon, by observing that the said powers were only recommendatory. That order has attained finality.

26. The threshold issue that arises for consideration of this Court is with regard to the jurisdiction and authority of the MC to object to, or to issue directions in relation to conversion of user of a premises under the Master Plan. We, thus, proceed to consider the issue whether the MC appointed by the Supreme Court had the authority and jurisdiction to raise an objection to conversion of land use from "Industrial" to "Commercial", when an

application for such conversion was made to the Municipal Corporation on the basis of the provisions contained in the MPD-2021.

26.1 The present MC is the creation of the Supreme Court vide its decision rendered on 24.03.2006 reported as ***M.C. Mehta v. Union of India &Ors.***, ***(2006) 3 SCC 429***. The background in which the MC was constituted was that, earlier, the Supreme Court issued directions on 07.05.2004 (***M.C. Mehta v. Union of India & Ors***., ***(2004) 6 SCC 588)*** with regard to stoppage of industrial activity in residential/ non-conforming areas in Delhi. The Supreme Court also constituted a Monitoring Committee- different from the one presently empowered, comprising of: (i) Chief Secretary of Delhi, (ii) Commissioner of Police, Delhi (iii) Commissioner MCD, and (iv) Vice Chairman, DDA. The committee was made responsible to stop illegal industrial activity in Delhi.

26.2 Despite issuance of public notices, the misuse did not stop. On 16.02.2006 (vide judgment reported as ***M.C. Mehta v. Union of India & Ors.***, (2006) 3 SCC 399), the Supreme Court addressed the issue of blatant and large scale misuse of residential premises for commercial purposes. The Supreme Court held that the MCD, under the DMC Act, has the power to seal the premises in case of its misuser - under Section 345A of the DMC Act. It further held the power to seal the premises - on account of misuse, did not vest in the DDA. The Supreme Court, inter alia, directed that the MCD shall, within ten days, give wide publicity in leading newspapers directing major violators on main roads to stop misuse of their own, within thirty days. It further directed that in case misuser is not stopped, sealing of the premises shall commence after thirty days from the date of the public

notice, first taking up the violations on roads which are 80 feet wide and more.

26.3 Since the issuance of the public notices had no impact either on the user of the premises, or on the concerned authorities, the Supreme Court vide its decision dated 24.03.2006 (reported as ***M.C. Mehta v. Union of India & Ors.***, (2006) 3 SCC 429) appointed the present MC consisting of three learned members, namely, Mr K.J. Rao, Former Advisor to the Election Commissioner, Mr Bhure Lal, Chairman, EPCA and Major General (Retd.) Som Jhingan. A careful scrutiny of this order passed by the Supreme Court provides insight about the mandate of the MC appointed by the Supreme Court. The relevant extract from the decision dated 24.03.2006 in respect of the constitution of the MC reads as follows:

> "*4.* ***In order to oversee the implementation of the law, namely, sealing of offending premises in terms of the letter and spirit of this Court's directions, it is necessary to appoint a Monitoring Committee instead of leaving any discretion with the officers of MCD****. Accordingly, we appoint a Monitoring Committee comprising of Mr K.J. Rao, Former Advisor to the Election Commissioner, Mr Bhure Lal, Chairman, EPCA and Major General (Retd.) Som Jhingan. We direct that all necessary facilities shall be supplied by MCD to the members of the Monitoring Committee, including the facility of transport, secretarial services, honorarium, etc.*". (emphasis supplied)

26.4 It was pointed out to the Supreme Court that in respect of some roads in some areas, partial commercial user is allowed under the laws. The Supreme Court directed the MCD to point out and file details of such roads- where partial commercial user was allowed before the MC, which may

permit the MCD not to seal the premises in such areas, for the present, subject to further orders that may be passed by the Court.

26.5 The Supreme Court was also informed by the learned *amicus curiae* that there would be few cases where commercial user may have commenced prior to September 1962 - when the DD Act came into force, and such user may be protected by proviso to Section 14 of the DD Act. The MCD was directed to place before the MC the affidavits filed by occupants of properties, who claim benefit of proviso to Section 14 of the DD Act. Upon the affidavit being filed as per the direction of the Supreme Court, the MC was entitled to direct the MCD not to seal such premises (in respect whereof the benefit of proviso to Section 14 of the DD Act was claimed) on the basis of the affidavit.

26.6 The Supreme Court granted time to all to stop misuser up to 30.06.2006, subject to the concerned person filing the affidavit of undertaking to stop the misuser by the said date, and undertaking that no further extension on any ground whatsoever, shall be asked for. The benefit of extension of time was only available to those who filed the affidavit on or before 28.03.2006. In respect of the premises for which affidavits were not filed, it was directed that the process of sealing shall commence from 29.03.2006 in the first phase. The sealing was to continue, notwithstanding any order passed by any Court. The affidavits filed in terms of the order of the Supreme Court were directed to be forwarded by the MCD to the MC.

26.7 What emerges from the order dated 24.03.2006 is that, firstly, the MC was formed to oversee the implementation of the law, namely, sealing of

offending premises in terms of the letter and spirit of the earlier directions issued by the Supreme Court. While the initial orders dealt with the use of non-industrial premises for industrial user, the subsequent orders emphasised the need to stop the misuser of residential premises which were used for commercial/ non-conforming purposes. The MC was appointed to act in the matter of sealing of offending premises, instead of leaving it to the discretion of the officers of the MCD. Secondly, the MC was expected to act in terms of the information provided by the MCD in relation to roads/ areas/ buildings wherein partial commercial user was permitted under the law. The Supreme Court did not bring it within the scope of the authority of the MC to undertake the exercise of examining, for itself, whether on a reading of the relevant bye laws/laws, the premises situated on certain roads, and in certain areas, were entitled to mixed land use. Thirdly, even in respect of premises - user whereof was protected by proviso to Section 14 of the DD Act, the MC was not mandated to undertake the exercise of conducting an inquiry, or adjudication, whether the claim made by the owner/ occupier of such premises was justified, or not. Fourthly, it was made obligatory for the MCD to forward to the MC the affidavits that may be filed by the owners/ occupiers in terms of the said order, so that the MC is able to identify the premises which require to be sealed immediately i.e. from 29.03.2006 onwards. The issue, whether in respect of a particular property, conversion of land-use-in terms of the Master Plan, could be sought, or not, did not even remotely arise for consideration, and thus, there was no occasion to even consider the aspect of empowering the MC to consider the said aspect.

27.1 The next significant development which took place in relation to the powers and working of the MC took place with the passing of the order dated 03.01.2012 by the Supreme Court (reported as ***M.C. Mehta v. Union of India***, (2012) 11 SCC 759). By this order, while dealing with report No.85, furnished by the MC, the Supreme Court directed that:

> *"3.* ***Till the matter is heard by the Court, the Monitoring Committee shall not order further sealing of the premises which are under its scrutiny. We also direct that no construction, temporary or permanent, shall be made on the premises which have been the subject– matter of scrutiny of the Monitoring Committee and no order shall be passed by the Government or any authority regularising such construction or sanction the change of user***.
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> *4. The Delhi Development Authority, New Delhi Municipal Corporation and Municipal Corporation of Delhi are directed to ensure that no encroachment is made on any public land, whether belonging to the Government or any public authority. They shall also ensure that no illegal construction is made on any of the properties which has been the subject– matter of scrutiny by the Monitoring Committee.*
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> *5.* ***The Monitoring Committee shall be entitled to inspect the premise in which any illegal construction may have been made after this order or any encroachment on public land or regularisation and if necessary submit report to this Court***.
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> *6. Any person desirous of getting a copy of any report of the Monitoring Committee may make an application to the Monitoring Committee and the required report be furnished to the applicant within a period of ten days on payment of usual charges. It is also made clear that any party shall be free to file an*

appropriate application before the Monitoring Committee for its consideration and appropriate order."
(emphasis supplied)

27.2 Thus, the authority of the MC to order further sealing of premises which were under its scrutiny was withdrawn by the Supreme Court. In respect of premises which were subject matter of scrutiny of the MC, no order could be passed by the Government, inter alia, to sanction the change of user. The DDA, the New Delhi Municipal Committee, and the MCD were directed to ensure that no illegal construction is made in any property which has been the subject matter of scrutiny by the MC. The MC was empowered to inspect the premises in which illegal construction may have been made; in which encroachment of public land may have taken places, and; in respect of which regularisation may have been granted, after the passing of the said order dated 03.01.2012. Thus, apart from directing that the MC shall not order further sealing of premises which were under its scrutiny, the order dated 03.01.2012 centered around those properties which were the subject matter of scrutiny of the MC as on the date of the passing of the said order.

28.1 On 30.04.2013, the Supreme Court vide the order reported as ***M.C. Mehta v. Union of India & Ors.***, ***(2013) 16 SCC 336*** remitted to this Court for its consideration the challenge raised to parliamentary enactments, namely, the Delhi laws (Special Provision Act), 2006 and subsequent laws which virtually extended the provisions of the Act, and the connected interim applications - with a request, that the matter be heard on an early date, preferably within 1 year from the date of receipt of entire record and papers. The order dated 03.01.2012 (reported as ***(2012) 11 SCC 759)***, was

declared to be of continuing nature. It was directed that the same should be perceived accordingly. The Supreme Court also held that the reports filed by the MC after the order dated 03.01.2012 may also be separately considered by the High Court.

28.2 Pertinently, the Supreme Court observed in this order that it had appointed the MC for looking into the aspect of sealing of the premises which were being put to non- confirming user. Thus, the scope of mandate of the MC was reiterated by the Supreme Court once again i.e. to look into the aspect of sealing of premises which were being put to non-confirming user.

28.3 Against the sealing of premises ordered by the MC, a large number of applicants had approached the Supreme Court, praying for de-sealing of their premises. The Supreme Court directed that the orders for sealing passed by the MC, and sealing undertaken thereunder, shall be deemed to have been passed by the statutory authorities concerned, in exercise conferred under Section 345 A of the MCD Act, or under Section 250 of the NDMC Act, or in terms of Section 31A of the Delhi Development Act. The interim applications pending before the Supreme Court for de-sealing of premises were directed to be treated as appeals under the respective Acts before the respective Tribunal constituted under those Acts. The Registry was directed to transmit the pending applications to the respective Tribunals of the MCD, New Delhi Municipal Committee and DDA, and the respective Tribunals were directed to hear and decide the applications, as appeals, preferred against orders of sealing on their own merits in accordance with law.

28.4 The reports prepared by the MC as regards all such interim applications (seeking de-sealing of the premises), were directed to be placed before the concerned Appellate Tribunal and the MC was given a right of representation through a panel lawyer before the Tribunal concerned. The Supreme Court further directed that, in case the Tribunals decide in favour of the applicants, it would be open to the MC to recommend to the MCD/ NDMC/ DDA to prefer writ petitions before the High Court for assailing the orders passed in favour of the applicants.

28.5 Thus, it would be seemed that when the issue with regard to the conversion of the Flatted Factory Complex to commercial use was being considered in 2013, even the primary mandate of the MC to order sealing of any premises on account of misuser had been withdrawn. Its mandate was limited to inspect the premises in which any illegal construction may have been made, or any encroachment on public land may have been undertaken, or regularization may have been made by the concerned authority, and to submit a report in that regard to the Supreme Court. The decisions/ orders passed by the Supreme Court from time to time - right from the inception when the present MC was appointed, till the time when the MC raised its objections to DCM's proposed conversion of the user from Flatted Factory Complex to commercial, at no stage, gave the mandate to the MC to delve into the aspect of conversion of the user in terms of the Master Plan in force. Primarily, the mandate of the MC was to look into the misuse of premises- including misuse of residential premises for commercial or other non-conforming uses.

29. Thus, we find merit in the submission of Mr. Nigam that the MC had no jurisdiction to interdict the process of conversion of the land use of the Flatted Factory Complex by the respondent- DCM in terms of MPD-2021. In our view, the aspect– whether the proposed conversion of land use was in accordance with the MPD-2021, or not, involved issues of interpretation of the Master Plan relating to conversion of user, and the MC was not constituted to look into those aspects. On the basis of its own interpretation and understanding, the MC could not issue directions to the statutory authorities viz. the MCD; the New Delhi Municipal Committee, or; the DDA not to allow the conversion of user. It had no authority or mandate to take affirmative action/ executive decision in that respect. At the highest, the MC could have filed a report before the Supreme Court, or before this Court, depending upon whether the report were to be filed before or after 30.04.2013.

30.1 The aforesaid position becomes even more clear from the subsequent order dated 15.12.2017 passed by the Supreme Court in I.A. Nos. 93010 and 93007/2017, in ***M.C. Mehta v. Union of India & Ors.,*** reported as ***(2018) 2 SCC 144***. The Supreme Court, inter alia, took notice of the earlier orders issued from time to time with regard to the constitution and working of the MC. The said I.A.'s had been preferred by the applicants seeking liberty to prefer their appeals before the Appellate Tribunal against the orders of sealing passed by the MC in terms of the order dated 30.04.2013 (reported as ***(2013) 16 SCC 336***). The Supreme Court observed that the said applicants were keen to utilize their premises for residential purposes. There was no apparent intention to utilize the premises for commercial purpose, or

for any purpose not permitted by law. The Supreme Court observed that in this situation, it would hardly serve any purpose if the applicants were required to prefer appeals before the Appellate Tribunal. Consequently, the Supreme Court issued the following directions:

> *"35. In our opinion, as far as Infinity Knowledge Systems is concerned the following conditions would meet the ends of justice and also provide a safeguard against possible misuse of residential premises for commercial (non-industrial) purposes:*
>
> *(1)* ***The applicants will file an affidavit before the Monitoring Committee stating that they will use the premises in question only for residential purposes and for no other purpose whatsoever****. The applicants will identify the persons for whose residential use the premises in question are sought to be desealed.* ***Any change will be notified to the Monitoring Committee****.*
>
> *(2) The affidavit filed by the applicants will state the name, address and other particulars of the person who will be responsible for any misuse of the premises in question, that is, for use of the premises in question for any purpose other than residential.*
>
> *(3) The person identified as the person responsible in terms of condition No.2 above will also file an affidavit clearly stating therein that he or she will ensure that the premises in question are used only for residential purposes and that in the event the premises in question are used for any purpose other than residential, the deponent would be liable for contempt of this Court.*
>
> *(4)* ***The applicants will file with the Monitoring Committee proof of payment of conversion charges to the statutory authority****.*

(5) The affidavits will be filed before the Monitoring Committee who may impose such other further conditions as may be appropriate.

36. ***In the event the Monitoring Committee is satisfied that the premises in question ought to be de-sealed, it may require the concerned statutory authority to de-seal the premises in question. If the Monitoring Committee is not satisfied that the premises in question ought to be desealed, the applicants will be at liberty to approach this Court for appropriate orders****. We make it clear that in view of Report No. 46 dated 12th November, 2007 this Order will not be applicable to all other commercial activities that have been sealed in the premises in question.*

37. We make it clear that henceforth it will not be necessary for any person whose residential premises have been sealed for misuse for any commercial (other than industrial) purposes at the instance of the Monitoring Committee to file an appeal before the appropriate statutory Appellate Tribunal. Instead, that person can directly approach the Monitoring Committee for relief after depositing an amount of Rs. 1,00,000/- with the Monitoring Committee which will keep an account of the amounts received by it. Any person who has already filed an appeal before the appropriate statutory Appellate Tribunal but would prefer approaching the Monitoring Committee may withdraw the appeal and approach the Monitoring Committee for relief on the above terms and conditions and on deposit of Rs. 1,00,000/- as costs with the Monitoring Committee, provided that the premises were sealed at the instance of the Monitoring Committee. Any challenge to the decision of the Monitoring Committee will lie to this Court only. We are constrained and compelled to make this order given the history of the case and the more than serious observations of this Court of an apparent nexus between

some entities and the observations regarding corruption and nepotism.

38. We make it clear that this order will inure to the benefit of only those who are using residential premises for commercial purposes (nonindustrial) or for any other non-residential purpose and whose premises were sealed at the instance of the Monitoring Committee. This order will not at all inure for the benefit of anybody using residential premises for any industrial activity of any sort or nature whatsoever." (emphasis supplied)

30.2 The directions contained in paragraph 35, clause (4), extracted above shows that the only aspect that the MC was required to look at– in respect of conversion cases, was that proof of payment of conversion charges to the statutory authority was submitted. The thrust of the order dated 15.12.2017 was on the aspect of desealing of the sealed premises.

30.3 The Supreme Court did not, even remotely, contemplate that the MC would become the administrator of the MCD Act, the New Delhi Municipal Council Act, or the Delhi Development Act. The MC was not appointed as the arbiter of the issue - whether the conversion sought was in accordance with the Master Plan-2021, much less was it empowered to interdict the process of conversion. The MC was not constituted as a super authority in respect of all matters with which the Municipal Corporation or the DDA are statutorily concerned. The primary authority and responsibility to operate and work the DMC Act; the DD Act; the New Delhi Municipal Council Act, and; the Master Plan (referred to collectively as: the said enactments) continued to vest in the authorities appointed under and functioning under the said enactments. The officers appointed under the said enactments were answerable for their actions taken under the purported exercise of their

statutory powers and obligations. They were also liable to be proceeded with in disciplinary proceedings in respect of their functioning, if a case were to be made out for such action. The MC was not constituted as an overarching authority – either to sit in judgment over the actions of the statutory authorities, or to scrutinize their actions taken in purported exercise of their authority, except - may be, in respect of sealing or de-sealing of premises wherein misuser was alleged, or there was encroachment on public land. The MC, as noticed above, had a focused mandate. The MC was brought into existence, since action for sealing was not being taken and implemented, even in cases where the same was clearly made out. Only to that limited extent, the power and authority vested in the statutory functionaries under the said enactments stood vested in the MC. At the same time, there is nothing to show that the statutory authorities were denuded of any of their executive functions and authority.

31. As rightly pointed out by the learned Single Judge, the MC issued a mandatory direction to the NDMC not to permit the conversion of the user of the Flatted Factory Complex for commercial use– something that it was not entitled to do. In our view, the MC, with the passage of time, somewhere down the line forgot the purpose for which it was constituted and *suo moto* expanded the mandate given to it by the Supreme Court.

32. Thus, in our view, the MC has gone well beyond its authority as vested in it by the Supreme Court. Being a creature of the orders of the Supreme Court, the MC was bound to function within its mandate vested by the Supreme Court.

33. In any event, since the MC has sought to raise certain objections to the proposed conversion of user from Flatted Factory Complex to "Commercial" in respect of the property of the respondent- DCM, we now proceed to deal with the said objections.

34. Firstly, we may observe that the objections raised by the MC were considered by a committee consisting of senior officers of the NDMC, consisting of Additional Commissioner ((Engg)/ North DMC- as Chairman, and the Chief Law Officer, Chief Town Planner, S.E.(B)/ HQ and E.E. (Bldg./ SPZ)), as its members. The said committee considered, inter alia, the representation of the respondent– DCM, as well as the observations made by the MC. The opinions of the Solicitor General of India dated 01.05.2014 and 06.05.2014 were also taken into consideration. Despite finding that the application made by the respondent- DCM for conversion was in order, and despite finding no force in the observations made by the MC, vide the order dated 20.04.2017 the NDMC refrained from passing orders for conversion of the user of the Flatted Factory Complex of the respondent DCM on the premise that the case of the said Flatted Factory Complex has been under consideration of the MC, and in terms of the order of the Supreme Court dated 03.01.2012, no orders for conversion of user could be passed.

35. The submission of Mr. Sharma, learned counsel for the MC is that the MC had, in its report No.97 dated 23.04.2013, submitted before the Supreme Court that the matter of DCM is under consideration. Mr. Sharma submits that this Report No.97 was later on submitted to this Court for consideration on its own merit, in accordance with the order dated 30.04.2013, passed by the Supreme Court [(***2013) 16 SCC 336***]. The submission of Mr. Sharma is

that the case of the DCM came under the jurisdiction of the Division Bench of this Court in view of the following observations made in the order dated 30.04.2013:

> *"The reports filed by the Monitoring Committee (after our above order dated 03.01.2012) may also be separately considered by the High Court. This would result in a holistic examination of the matters"*

36. On the other hand, Mr. Nigam submits that the said report No.97 was made after 03.01.2012. Thus, the said report could not have been, and was not the subject matter of the order dated 03.01.2012 which directed that, inter alia, no change of user be sanctioned by the Government or any authority in respect of premises "*which have been the subject matter of scrutiny of the Monitoring Committee."* Secondly, it is pointed out that Report No.97, dated 23.04.2013 made only a general statement that in areas of Delhi Cloth Mills in MCD and Kishangarh and in many areas in East Delhi on DDA land, there was unauthorized/ illegal construction and encroachments. The said report stated *"there are a large number of cases of unauthorized/ illegal constructions and encroachments* ***in Connaught Place area in NDMC, Delhi Cloth Mills (DCM) in MCD and Kishangarh and many areas in East Delhi on DDA land for which correspondence is on with these agencies.*** *The Monitoring Committee requests that it may be permitted to file a report in respect of these areas before the Hon'ble Court." (*emphasis supplied)

37. However, there was no specific instance of unauthorized construction or encroachment on public land pointed out by the MC in the premises of the respondent DCM and, even now, none has been pointed out. The MC in

its Report No.97 had sought the permission of the Supreme Court to file a report in respect of areas where a large number of unauthorized/ illegal constructions and encroachments existed. Mr. Nigam submits that no such permission was granted by the Supreme Court.

38. In our view, the submission of Mr. Sharma has no merit. As pointed out by Mr. Nigam, firstly, the Report No.97, dated 23.04.2013, was made much after passing of the order dated 03.01.2012 and, thus, the restraint imposed by the Supreme Court on the Government or any other authority, inter alia, against sanction of change of user, was not applicable to the application for conversion of user of the Flatted Factory Complex of DCM, as it was not the subject matter of scrutiny of the MC on the said date. When the Supreme Court passed the order dated 03.01.2012, inter alia, restraining the conversion of user by the Government and the concerned authorities, it was aware of the specific cases/ instances dealt with by the MC in its reports filed before the Supreme Court till that date. Being fully aware of the same, the Supreme Court passed the order of restraint on 03.01.2012. The Supreme Court did not direct that the said restraint would cover all such properties, which may be mentioned in future reports that the MC may file. No such *carte blanche* was given to the MC by the Supreme Court. Moreover, even the Report No.97 dated 23.04.2013, merely spoke-in very general and vague terms, with regard to the alleged encroachment and unauthorized construction in the area of DCM in MCD and Kishangarh, apart from many areas in East Delhi on DDA land. There were no details or particulars disclosed in the said report. In fact, the MC sought permission to file a report from the Supreme Court, which was never granted.

39. We may also note that while passing our detailed order dated 27.02.2018, dealing with the application moved by DCM ltd. vide C.M. No. 1273/2018 to seek stay of the sealing of the Flatted Factory Complex of DCM at Bara Hindu Rao, Delhi-110006, we took notice of the fact that the completion certificate in respect of blocks A & B of the Flatted Factory Complex had been revoked by the orders of the Deputy Commissioner, SP Zone on 08.09.2011 and the said premises had been sealed on an earlier occasion on 30.10.2011. The DCM had then preferred an appeal before the Appellate Tribunal, MCD and vide letters dated 21.10.2011 and 20.12.2011, they had requested that their premises be de-sealed so that they can carry out the necessary rectification as per the observations made by the technical committee– on the basis of whose report the premises had been sealed, in the first place. Consequently, under the orders of the Additional Commissioner, Headquarters, the premises were de-sealed for a period of 15 days to carry out the necessary rectification. The DCM had then carried out the rectification in terms of the sanctioned building plans. Consequently, Blocks A & D were permanently de-sealed and the completion certificate earlier issued was restored. The appeal preferred by DCM in respect of sealing of Block A of the Flatted Factory Complex was disposed of on 30.05.2012. Similarly, since the completion certificate in respect of Block D was also restored, vide order dated 04.04.2012, the Appellate Tribunal MCD disposed of the appeal preferred by the DCM.

40. Thus, it is clear to us that the stand taken by the MC in Report No.97, dated 23.04.2013, with regard to the alleged unauthorized construction and encroachment in the Flatted Factory Complex of DCM had no legs to stand

on. It appears that the said report qua the Flatted Factory Complex of the DCM was made without full and complete knowledge of the aforesaid history. The said report, in any event, did not come in the way of consideration of the application of DCM for conversion of user of the Flatted Factory Complex to 'Commercial'.

41. The next submission of Mr. Sharma is that the MC was not issued any notice by the learned Single Judge while deciding the writ petition preferred by the respondent– being W.P.(C.) No. 10104/2013.

42. Mr. Nigam submits that there was no question of the learned Single Judge issuing notice to the MC and hearing the MC before passing the impugned order, since the respondent DCM had assailed the rider put by the NDMC in its order dated 20.04.2017. Moreover, the challenge was to an order refusing conversion of user in terms of MPD-2021, and it did not concern sealing/ de-sealing of premises of the respondent DCM.

43. This submission of Mr. Sharma is also meritless. There was no obligation cast on this Court to issue notice to the MC, since the case did not pertain to the aspect of sealing or de-sealing of sealed premises. As noticed hereinabove, the mandate of the MC was primarily to look into the aspect of sealing/ de-sealing of premises. It certainly did not extend to aspects concerning change of user in accordance with the Master Plan. Thus, there was no obligation on the part of the DCM/ petitioner to implead the MC as a party respondent, or on the Court to issue notice to the MC.

44. Mr. Sharma has contended that the writ petition preferred by the respondent DCM – could only have been decided by the Division Bench of

this Court and not by the learned Single Judge. This submission is premised on the order dated 30.04.2013, whereby the matters pending before the Supreme Court were transferred to the Division Bench of this Court.

45. In our view, reliance placed by Mr. Sharma on the order dated 30.04.2013 passed by the Supreme Court– whereby the proceedings before the Supreme Court stood transferred to the Division Bench, is misplaced for the reason, that the subject matter of the present writ petition did not touch upon the aspects of sealing/ de-sealing of premises. The matters considered by the Supreme Court, and which were transferred to the Division Bench of this Court were concerning sealing/ de-sealing of premises put to misuse/ non-conforming commercial/ industrial use. They were concerned with the legality of the laws enacted in the wake of the orders passed by the Supreme Court. The aspect of conversion of user in accordance with the Master Plan was not the subject matter of the transferred cases. The rejection of the application made by the respondent– DCM, to seek conversion of user of the Flatted Factory Complex to "commercial" under MPD-2021, gave a separate/ new cause of action to DCM and they were entitled to prefer their writ petition, which came to be listed as per the roster fixed by Hon'ble the Chief Justice. Thus, we do not agree with the submission of Mr. Sharma that there has been any misreading or misrepresentation of the order of the Supreme Court dated 03.01.2012 and 30.04.2013 by the learned Single Judge while passing the impugned order.

46. We may now turn to the primary objection raised by the Monitoring Committee to the conversion of the Flatted Factory Complex for commercial use. The submission of Mr. Sharma, learned counsel for the MC, is that the

conclusion drawn in the speaking order dated 20.04.2017, passed by the Committee of the North DMC, is not in consonance with the directions issued by the Supreme Court in the decisions dated 13.03.1990 (reported as ***Union of India v. DCM Ltd. and Ors.* 1990 2 SCC 371**) and 01.05.1991 (reported as ***DDA v. DCM Ltd and Ors.* 1991 2 SCR 590**). He submits that the speaking order dated 20.04.2017 shows a favourable inclination of the officers of the NDMC towards the DCM. Mr. Sharma places reliance on the Footnote (vi) below Table 7.3 of MPD-2021, which has been reproduced hereinabove. The submission of Mr. Sharma is that the said footnote prescribes that the orders passed by the Supreme Court should not be affected in any way. He submits that while issuing the speaking order dated 20.04.2017 - for conversion of the Flatted Factory Complex into commercial use, the Committee ignored the stipulation that such conversion shall not be permitted on non-confirming/ regularized industrial cluster and the same shall not affect the Supreme Court orders in any way. The submission is that the orders dated 13.03.1990 [reported as ***(1990) 2 SCC 371***] and 01.05.1991 [reported as ***(1991) 2 SCR 590***] have been affected/ breached by the speaking order dated 20.04.2017. The MC states in its report/ reply that:

> *"The DCM has very cleverly taken advantage of both MPD-1962 and MPD-2021 to cherry pick provisions from these plans, which are favourable to them. They have opted for the MPD-1962 for flatted factories since the development control norms in case of flatted factories complex are more beneficial than the Master Plan Delhi-2021. However, they have revised the layout plan of Group Housing Residential Complex on the basis of MPD-2021, as the same is more attuned to their interests, with respect to the Residential Complex. It is unfortunate that the North DMC has failed in its duties to bring out these points before the Hon'ble Single Judge of the Hon'ble*

High Court in which there were two advocates representing it in this case."

The Monitoring Committee in its report/ reply further states as follows:

"Further the last para of foot note highlighted above, it is clear that the Hon'ble Supreme Court orders shall not effect in any way whereas the said committee has ignored the Hon'ble Supreme Court orders dated 13.03.1990 & 01.05.1991 before passing speaking orders dated 20.04.2017 and also failed to place complete facts of the case before the Hon'ble High Court. It goes to prove that the North DMC wanted to grant undue favour to DCM. Apart from above, the North DMC should have ensured that the ROW of 24 mtr abutting the premises as specified in above foot note before passing the speaking orders; whether the same have been taken care or not."

47. The submission of Mr. Sharma is that while passing the judgment dated 01.05.1991, the Supreme Court rejected the objection of the DDA that the plans of DCM should be in accordance with the Master Plan of the year 2001. The Supreme Court held that the plans/ scheme of DCM had been granted approval, keeping in view the law, rules and regulations governing the subject under the Master Plan of 1962. He submits that the DCM was not required to comply with the new Master Plan of the year 2001. Thus, according to Mr. Sharma, DCM is now bound by the stipulations contained in the Master Plan of 1962, and cannot take advantage of the new MPD-2021, which came into force on 07.02.2007, and the amendment to Note (vi)– to Table 7.3, which was enforced on 12.08.2008. By permitting change of user from industrial to commercial in respect of the Flatted Factory Complex, the Supreme Court orders - particularly the order dated 01.05.1991 (1991 2 SCR 590), shall be affected, since the said order permitted the DCM to use the Flatted Factory Complex for industrial use.

48. In response, Mr. Nigam submits that reliance placed by the MC on the judgment dated 13.03.1990 [reported as ***(1990) 2 SCC 371***] and 01.05.1991 [reported as ***(1991) 2 SCR 590***] is completely misplaced, inasmuch, as the right of the DCM to use its property in terms of the prevalent Master Plan, i.e. MPD-2021 cannot be denied, merely because at the time when the sanction was initially obtained, the earlier Master Plan of 1962 was in operation. Mr. Nigam submits that if the submission of the MC were to be accepted, it would mean that the DCM, for all times to come, would be bound to use its property as per the norms prescribed in MPD-1962, even though the subsequent Master Plans have come into operation from time to time. He submits that there is no restriction placed by the Supreme Court in any judgment or order, that the respondent DCM would not be entitled to avail of any future changes in the law that may be notified, such as by the amended/new Master Plan.

49. We find this submission of the MC to be patently wrong, to say the least. The decision dated 01.05.1991 (***1991 2 SCR 590***) - the relevant portion whereof stands extracted hereinabove, shows that the plans/ scheme of the DCM had been approved during currency of the 1962 Master Plan, and DDA was insisting on plans/ scheme being in conformity with the Master Plan of 2001, even though "***one of the year 2001 was not existant, and if at all existant, in any embryonic stage***. *The law governing the object and the rules and regulations then in vogue and applicable were deemingly kept in view and applied by the DDA in the approval of the schemes"* (emphasis supplied). The reason why the Supreme Court did not allow the objection of the DDA with regard to the applicability of MPD 2001 was that

" *To whittle down the effect of that resolution on the emergence of the new Master Plan of the year 2001,* ***made applicable after the orders of this Court****, would, at the present stage, if insisted upon be spelled out as a step to undermine the orders of this Court. Such an objection by the D.D.A when raised before March 13, 1990, the day when we passed judgment, was untenable in law and the D.D.A. should have known it before putting such an objection to use. For this reason, we repel the first objection of the D.D.A. and require of it to stick to the position as per Master Plan as existing on February 1, 1983. This objection is thus surmounted."* (emphasis supplied)

50. The aforesaid decision of the Supreme Court dated 01.05.1991 (***1991 2 SCR 590***), cannot be read against the respondent- DCM to mean that the Supreme Court held that, for all times to come, the DCM is bound by the provisions/ scheme of MPD– 1962, even though with the passage of time, new Master Plans for Delhi may be brought into force. The Supreme Court did not rule that DCM cannot seek the benefit of the subsequent Master Plans that may be enforced from time to time. The situation dealt with by the Supreme Court in its decision dated 01.05.1991(***1991 2 SCR 590***) was not one, where DCM desired to amend their plans/ schemes under the MPD 2001, and it was not permitted to do so by the Supreme Court on the premise that it is bound, for all times to come, by MPD-1962.

51. The proposition advanced by Mr. Sharma is that the owner of a premises– which may have pre-existed the enactment of a new Master Plan, is bound by the plans/ schemes as they existed earlier, and he cannot seek to amend his plans/ schemes in accordance with the new Master Plan.

Acceptance of this submission of Mr. Sharma would lead to frustration of the object with which a new or amended Master Plan may be enforced, to a great extent. Pertinently, the mills of DCM had to be shut down on account of the land use being changed. If the submission of Mr. Sharma were to be accepted, the mills of DCM would never have been permitted to be shut down.

52. In ***Howrah Municipal Corporation & Ors. v. Ganges Rope Co. Ltd. & Ors.***, ***(2004) 1 SCC 663***, the issue arose before the Supreme Court, whether sanction to building plans had to be granted on the basis of the building rules prevailing at the time of submission of the application for sanction, or whether the grant of sanction had to be considered on the basis of the building rules prevailing at the time of grant of sanction. The Supreme Court referred to its earlier decision in ***Usman Gani J. Khatri v. Cantonment Board,*** (1992) 3 SCC 455, wherein it had been observed:

> "*In any case, the High Court is right in taking the view that* ***the building plans can only be sanctioned according to the building regulations prevailing at the time of sanctioning of such building plans****. At present the statutory bye-laws published on 30-4-1988 are in force and the fresh building plans to be submitted by the petitioners, if any, shall now be governed by these bye-laws and not by any other bye-laws or schemes which are no longer in force now.* ***If we consider a reverse case where building regulations are amended more favourably to the builders before sanctioning of building plans already submitted, the builders would certainly claim and get the advantage of the regulations amended to their benefit***."(emphasis supplied)

The Supreme Court observed in ***Howrah Municipal Corporation*** (supra):

"*30.* ***This Court, thus, has taken a view that the Building Rules or Regulations prevailing at the time of sanction would govern the subject of sanction and not the Rules and Regulations existing on the date of application for sanction. This Court has envisaged a reverse situation that if subsequent to the making of the application for sanction, the Building Rules, on the date of sanction, have been amended more favourably in favour of the person or party seeking sanction, would it then be possible for the Corporation to say that because the more favourable Rules containing conditions came into force subsequent to the submission of application for sanction, it would not be available to the person or party applying***.

31. The decision in Gani J. Khatri [(1992) 3 SCC 455] was followed by this Court in the case of State of W.B. v. Terra Firma Investment and Trading (P) Ltd. [(1995) 1 SCC 125] That case arose as a result of amendment introduced in the Act in the year 1990 restricting building heights within the limits of Calcutta Municipal Corporation to 13.5 metres. Applications for sanction pending for construction with height above 13.5 metres were rejected because of the above restriction. In that case also the applicants claimed a vested right to get their plans passed and sanctioned as they were submitted prior to the amendment made to the Calcutta Municipal Corporation Act in 1990. ***This Court on examining the object in restricting height of buildings in the city of Calcutta due to limited resources for civic amenities upheld the Amendment Act and negatived the claim of vested right set up by the applicants on the basis of unamended provisions and building regulations****. Relying on the decision of Usman Gani J. Khatri [(1992) 3 SCC 455] , this Court observed: (SCC pp. 131-32, para 14)*

> *"How can the respondent claim an absolute or vested right to get his plan passed by writ of a court, merely on the ground that such plan had been submitted by him prior to 18-12-1989? By mere submission of a plan for construction of a*

building which has not been passed by the competent authority, no right accrues. The learned Single Judge of the High Court should have examined this aspect of the matter as to what right the respondent had acquired by submission of the plan for construction of the high-rise building before its application was rejected by a statutory provision."

This Court further observed: (SCC p. 132, para 15)

"15. It is well settled that no malice can be imputed to the legislature. Any legislative provision can be held to be invalid only on grounds like legislative incompetence or being violative of any of the constitutional provisions."

32. Relying on Usman Gani case [(1992) 3 SCC 455] this Court reiterated that "builders do not acquire any legal right in respect of the plans until sanctioned in their favour". (emphasis supplied)

53. In ***State of Kerala & Anr. V. B. Six Holiday Resorts Pvt. Ltd. & Ors.***, (2010) 5 SCC 186, while the application for grant of liquor license was pending consideration, the policy for grant of such licenses underwent amendment. By the amendment, grant of new licenses was prohibited. Consequently, the application for issuance of liquor license was rejected. The applicant challenged the said rejection. One of the two issues considered by the Supreme Court was whether the application for grant of license should be considered with reference to the rules as they existed when the application was made, or in accordance with the rules in force on the date of consideration. The Supreme Court ruled that the application could be considered only in terms of the amended Rules. It observed:

"*17. This question is directly covered by the decision of this Court in Kuldeep Singh v. Govt. of NCT of Delhi [(2006) 5 SCC 702] relating to the grant of licences for sale of Indian-made foreign liquor. This Court held: (SCC pp. 713 & 715, paras 29-31 & 36)*

> *"29. It is not in dispute that the State received a large number of applications. It was required to process all the applications. While processing such applications, inspections of the proposed sites were to be carried out and the contents thereof were required to be verified. For the said purpose, the applications were required to be strictly scrutinised.*
>
> *30. Unless, therefore, an accrued or vested right had been derived by the appellants, the policy decision could have been changed.*
>
> *31. What would be an acquired or accrued right in the present situation is the question.*
>
> ***
>
> *36. In a case of this nature where the State has the exclusive privilege and the citizen has no fundamental right to carry on business in liquor, in our opinion,* ***the policy which would be applicable is the one which is prevalent on the date of grant and not the one, on which the application had been filed****. If a policy decision had been taken on 16-9-2005 not to grant L-52 licence, no licence could have been granted after the said date."*

18. We may in this context refer to some earlier decisions laying down the principle that applications for licences have to be considered with reference to the law prevailing on the date of consideration.

19. In State of T.N. v. Hind Stone [(1981) 2 SCC 205] this Court considered the validity of government action in keeping applications pending for long and then rejecting them by applying a rule subsequently made. This Court

while holding that such action is not open to challenge observed: (SCC pp. 219-20, para 13)

> *"13. ... The submission was that it was not open to the Government to keep applications for the grant of leases and applications for renewal pending for a long time and then to reject them on the basis of Rule 8-C notwithstanding the fact that the applications had been made long prior to the date on which Rule 8-C came into force. While it is true that such applications should be dealt with within a reasonable time, it cannot on that account be said that the right to have an application disposed of in a reasonable time clothes an applicant for a lease with a right to have the application disposed of on the basis of the rules in force at the time of the making of the application. No one has a vested right to the grant or renewal of a lease and none can claim a vested right to have an application for the grant or renewal of a lease dealt with in a particular way, by applying particular provisions. In the absence of any vested rights in anyone,* ***an application for a lease has necessarily to be dealt with according to the rules in force on the date of the disposal of the application despite the fact that there is a long delay since the making of the application****."*

20. We may next refer to the decision in Union of India v. Indian Charge Chrome[(1999) 7 SCC 314] wherein this Court held: (SCC p. 327, para 17)

> *"17. ... Mere making of an application for registration does not confer any vested right on the applicant.* ***The application has to be decided in accordance with the law applicable on the date on which the authority granting the registration is***

> ***called upon to apply its mind to the prayer for registration***." (emphasis supplied)

The Supreme Court relied on ***Howrah Municipal Corporation*** (supra) and thereafter observed:

> "*22. Where the rules require grant of a licence subject to the fulfilment of certain eligibility criteria either to safeguard public interest or to maintain efficiency in administration, it follows that the application for licence would require consideration and examination as to whether the eligibility conditions have been fulfilled or whether grant of further licences is in public interest.* ***Where the applicant for licence does not have a vested interest for grant of licence and where grant of licence depends on various factors or eligibility criteria and public interest, the consideration should be with reference to the law applicable on the date when the authority considers applications for grant of licences and not with reference to the date of application***". (emphasis supplied)

54. The Master Plan for Delhi, framed under Section 7 of the DD Act, is revised/modified from time to time in accordance with Section 11A of the DD Act keeping in view the growth of the mega polis. Over decades, Delhi has seen enormous growth in its population, which has put pressure on the infrastructure such as roads, housing, and facilities like railway stations, airports, bus stands, market areas, educational and recreational areas, and public utilities such as water, electricity, drainage and sewage facilities. The air pollution levels in Delhi have also shot up due to exponential increase in the number of vehicles, traffic congestions and industrial and construction related pollution. It is such like developments which necessitate amendment/ modification or complete overhaul of the Master Plan, so that the city is able to provide acceptable living standards and conditions for its citizens and

residents. When amendments are brought about in the Master Plan, including by bringing into force a new Master Plan altogether, the amended/ new Master Plan may permit, or prohibit, certain kinds of activities in certain defined areas depending on the evolution of the city. It may provide that certain kinds of activity/ users would no longer be permitted in certain defined areas, and it may also give an option to the property owners/ users to avail of the change of user upon compliance of the laid down conditions. If the amended/ new Master Plan entitles the owners/ users to apply for and obtain permission to use their premises for a different purpose than the one earlier prevailing, no one can grudge the same. Unfortunately, the MC does just that. We have extracted herein above the stand taken by the MC in their status report. The MC is aggrieved by the fact that the respondent DCM has taken advantage of both - MPD-1962 and MPD-2021 to cherry pick provisions from these plans which are favourable to them. If the law permits the respondent DCM to do so, we fail to understand how anyone, including the MC, can have a grouse with the same.

55. The submission of Mr. Sharma that the language of Note (vi) as amended to Table 7.3 containing the Development Control Norms does not entitle the respondent DCM to seek change of user also has no merit. The premises of the respondent DCM, namely, the Flatted Factory Complex does not fall in the non-conforming/ regularized industrial cluster. When the amended Note (vi) was enforced and, for that matter even now, the Flatted Factory Complex of DCM is situated in a conforming area. There has been no occasion for the DCM to seek "regularization" of its user of the Flatted Factory Complex. The prescription that "***the above provision shall not***

affect the Supreme Court orders in any way" has to be understood meaningfully in the context in which the amendment in Note (vi) to Table 7.3 was brought about. Since the Supreme Court was seized of the matters relating to misuser, the legislature while amending Note (vi) to Table 7.3 only intended to ensure that in cases where the Supreme Court has rejected change of user, the same should not be so permitted by resort to the amended Note (vi) to Table 7.3. The said prescription does not come in the way of the respondent DCM, since, in our view, there was no prescription against the DCM that they would continue to remain bound by MPD-1962 for all times to come, and they would not be able to avail of the provisions of the subsequently enforced Master Plans for Delhi including MPD-2021.

56. The further submission of Mr. Sharma is that the NDMC should have ensured that the Right of Way (ROW) of 24 metres abuts the premises, and it is not clear whether, while passing the order dated 20.04.2017, the same has been taken care of, or not.

57. Mr. Nigam submits that its Flatted Factory Complex abuts a road of 24 metres ROW. In this regard, he places reliance on the lay-out plan produced during the hearing before this Court.

58. The status report filed by the MC does not contain any definite statement that the ROW of 24 meter does not abut the premises of the respondent DCM. The respondent DCM has categorically stated in its reply to the status reports that its Flatted Factory Complex abuts road of 24 meter ROW. Moreover, the NDMC has placed on record the layout plan, which shows the existence of 24 meter ROW.

59. Thus, we find no merit in the objections raised by the MC to the application for conversion of user of the Flatted Factory Complex move by the respondent DCM. From the status reports filed by the MC, we observe that the MC has sought to impute favoritism in favour of DCM by the officers of the North MCD. There is no basis for making such serious allegations. The MC is expected to function with objectivity, which, unfortunately, is lacking in the present case.

60. The next submission of Mr. Sharma is that upon inspection of the premises of the Flatted Factory Complex of DCM ltd. on 08.05.2017, it was found that the complex was being misused for commercial purpose.

61. The amendment in Note (vi) of table 7.3 of the Development Control Norms of the Master Plan, permitting conversion of user from industrial to commercial was made vide S.O. 2034 (E) dated 12.08.2008. It came into effect on the same day. The Delhi Municipal Corporation then came out with the order dated 07.06.2010, prescribing the conversion charges for conversion of industrial user to commercial/ banquet halls. The respondent DCM sought conversion of the use of the Flatted Factory Complex to commercial/ banquet halls, as early as 26.04.2011. The same was initially rejected on 02.09.2011. Another representation was made by the DCM on 27.02.2013. In the meeting chaired by the Vice Chairman, DDA, MC sought to interdict the conversion of the user of the Flatted Factory Complex. The matter kept hanging fire and the respondent- DCM had to approach this Court by filing W.P.(C.) No. 10104/2013. The writ petition was disposed of on 06.01.2017 with a direction to the NDMC to decide the

representation in accordance with law. Since that direction was not complied with, a contempt petition was preferred by the respondent-DCM. Only thereafter, belatedly, the order dated 20.04.2017, was passed which rejected the application for conversion, though found meritorious, only on account of the objection raised by the MC. We have found the objections raised by the MC to be completely meritless. In this background, for the Monitoring Committee to claim that there was misuser of the Flatted Factory Complex, in as much, as, the same was found to be put to commercial use, has no merit. Since the respondent- DCM was entitled to seek conversion of user of the Flatted Factory Complex to "commercial" under the amended MP– 2021, and it had made its application for conversion which was kept pending, unreasonable and unauthorized obstruction of the said process by MC could not be used as an excuse to claim misuser of the Flatted Factory Complex for commercial purpose, since such user was permitted in law. The MC cannot be heard to complain that the Flatted Factory Complex was being misused for commercial purpose– though the same was permitted in law, because the MC had unjustifiably and unauthorisedly obstructed the conversion of user to commercial. Thus, in our view the learned Single Judge was completely justified in quashing the notice dated 12.05.2017, issued to the respondent-DCM on the premise that there was misuser of the Flatted Factory Complex for commercial purpose.

62. For all the aforesaid reasons, we find no merit in the present appeal, and dismiss the same. Looking to the frivolous nature of objections raised to deny conversion of user – to which the respondent DCM is entitled in

law, we would have imposed costs. But these objections have been raised by the MC and not the NDMC. Thus, we are refraining from doing so.

(VIPIN SANGHI)
JUDGE

(REKHA PALLI)
JUDGE

AUGUST 30, 2018