

* IN THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment Reserved on: 10th October, 2011
Judgment Pronounced on: 12th October, 2011

+ LPA 169/2011

CHANDER MEENAKSHI Appellant
Through: Mr.S.K.Rungta, Sr.Advocate with
Mr.Prashant Singh and Ms.Neha
Tanwar, Advocate

versus

DDA & ANR. Respondents
Through: Mr.Ajay Verma, Advocate for DDA

LPA 385/2011

YOGESH PALIWAL Appellant
Through: Mr.S.K.Rungta, Sr.Advocate with
Mr.Prashant Singh and Ms.Neha
Tanwar, Advocate

versus

DDA & ANR. Respondents
Through: Mr.Ajay Verma, Advocate for DDA
Mr.Parijat Sinha and Mr.Vikram
Ganguli, Advocates for R-2

LPA 830/2011

TARA CHAND Appellant
Through: Mr.S.K.Rungta, Sr.Advocate with
Mr.Prashant Singh and Ms.Neha
Tanwar, Advocate

versus

DDA Respondent
Through: Mr.Ajay Verma, Advocate for DDA

CORAM:
HON'BLE MR. JUSTICE PRADEEP NANDRAJOG
HON'BLE MR. JUSTICE SUNIL GAUR

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to Reporter or not?
3. Whether the judgment should be reported in the Digest?

PRADEEP NANDRAJOG, J.

1. The 3 appellants have a grievance pertaining to DDA deferring or rejecting their application(s) for setting up a petrol pump on the subject lands acquired by the appellants. The battle has been lost before the learned Single Judge when writ petition filed by appellants Chander Meenakshi and Yogesh Paliwal were dismissed vide order dated 17.1.2011 and the writ petition(s) filed by appellant Tara Chand was dismissed vide order dated 29.3.2011; which order has simply followed the reasoning contained in the order dated 17.1.2011.

2. The legal issue which arises for consideration in the 3 appeals was settled by the predecessor Division Bench as per order dated 26.7.2011, wherein it was recorded that the issue falling for consideration in the appeals is whether establishment of petrol pumps in Delhi is covered by paragraphs 12.12.1 and 12.12.2 of the 'Master Plan of Delhi 2021' and not by the regulations framed in the year 2005.

3. Suffice would it be to state that the appellants stake a claim for grant of permission to set up a petrol pump in terms of the 'Regulations for setting up of petrol pump on private land in National Capital Territory of Delhi' notified on 27.9.2005.

4. The appellants obtained a letter of intent from oil companies to operate petrol pumps in rural areas somewhere in the year 2004 and claim to have applied to DDA in the same year to permit them to set up petrol pumps on the subject lands, having designated land use agriculture since the lands were in rural Delhi.

5. It is not in dispute that the Master Plan for Delhi 2001 i.e. the previous Master Plan before Master Plan for Delhi 2021 came into force contained no provisions for setting up petrol pumps in Delhi and the field was occupied by the Regulations notified in the year 2005. Further, it is not in dispute that as per the Delhi Development Act 1957, the Master Plan for Delhi is a statutory plan and has the force of law. Thus, the issue of law settled vide order dated 26.7.2011 is a simple task to be performed.

6. We highlight that the notification issued in the year 2005 relating to petrol pumps pertained to MPD-2001. We further highlight that on 7th February 2007, MPD-2011 has come into force. Paragraph 3 of the notification dated 7th February 2007 clearly records that the MPD-2021 modifies MPD-2001 as also amendments carried out till date thereunder and with effect from 7.2.2007 MPD-2021 shall come into force.

7. MPD-2021 does not refer to the rural zone in Delhi and pertaining to fuel stations, vide clause 12.12, 12.12.1 and 12.12.2 stipulates as under:-

“12.12 FUEL STATIONS

The environmental concerns have been constantly advocating identification of clean and environment friendly fuels. Presently, the main fuel types being used include: Petrol, Diesel and CNG. These fuels are

being made available from Petrol Pumps and CNG stations.

With the advancement of technology some new types of clean fuels may also be used in future. CNG stations may be permitted in all use zones except in Regional park/Ridge, developed District Parks. Petrol pumps are permissible in all use zones except in Recreational use zone.

12.12.1 FUEL STATIONS IN URBAN AREAS

Fuel Stations are permissible on Master Plan/Zonal Plan roads and shall not be permitted in absence of an approved zonal Plan of the area.

At the time of preparation of layout plans of various use zones namely, residential commercial, industrial, PSP facilities and other areas the location of Fuel Stations should be provided as per the norms given in Table 12.6.

12.2.2 DEVELOPMENT CONTROL NORMS AND PERMISSIBILITY

The regulations for locating the fuel stations-cum-service stations, the development control and permissibility shall be governed by the policy/decision by competent Authority/Government Notifications issued from time to time. New fuel stations shall be regulated by the following controls:

- i. Fuel stations shall be located on roads of minimum 30m ROW.
- ii. The plot size for fuel stations shall be minimum of 30m x 36m and maximum of 33m x 45m (75m x 40m for CNG mother station as per requirement).
- iii. The minimum distance of plot from the road intersections shall be as follows:

- a. For minor roads having less than 30m ROW-50m
- b. For roads of ROW 30m or more – 100m
- c. Frontage of plots should not be less than 30m.
- iv. Maximum Ground Coverage: 20% Maximum FAR: 40
- v. Maximum Height: 6m
- vi. Canopy: equivalent to ground coverage within set back.
- vii. [Maximum 10 FAR permissible for non-inflammable, non-hazardous commercial activities subject to payment of conversion charges/levies, as prescribed by the Government from time to time]”

8. Table 12.6 stipulates 'Norms for fuel stations as under':-

S. No.	Land Use/Use Premises	Norms
1.	Residential Use Zone	Two Fuel Stations (One Petrol Pump + One CNG station) per 150 ha. of gross residential area
2.	Industrial Use Zone	Two Fuel Stations (One Petrol Pump + One CNG station) per 40 ha. of gross residential area
3.	Freight Complexes	Four Fuel Stations (Two Petrol Pumps + Two CNG stations) in each
4.	District Centres	Four Fuel Stations (Two Petrol Pumps + Two CNG stations) in each district centre
5.	Community Centre	Two Fuel Stations (One Petrol Pump + One CNG

		station) in each
6.	Public & Semi Public use zone	Two Fuel Stations (One Petrol Pump + One CNG station) in each
7.	Security Forces Campus/Police/Hospitals/Govt.	For captive use/as per requirement.

9. Vide para 3, the Master Plan for Delhi, discussing **DELHI URBAN AREA-2021**, highlights the objective of the plan and pertaining to urban extension, vide para 3.2, stipulates as under:-

“3.2 URBAN EXTENSION

Out of the remaining 77 lakh (230-153 lakh) population, 29 lakh already exists in villages, census towns, unauthorized colonies and JJ clusters in the present rural areas. Therefore about 48 lakh additional population is to be accommodated in the future urban extensions.

Due to land constraint in the NCTD, the areas earmarked as rural/agricultural in the previous Master Plans have always been under pressure for utilization for various urban activities and have virtually lost their original character. In future, urbanization has to be in the areas that have development pressure/potential like the areas along the major transport corridors and fringes of already urbanized areas. It is envisaged that major rural areas would be absorbed as urban extension from time to time with due regard to balanced city development.

At the first instance, to accommodate the projected additional population @ 250-300 pph average city level density, the requirement for urban extension would be 20,000 – 22,000 ha. of land within development time frame of 15-16 years. The immediate urban extension could be in the zones of L, N & P (I & II). The land required for urban extension, will have to be assembled for planned development. Considering the constant pressure on the rural land,

new farmhouses and motels shall not be permitted in the proposed Urban Extension as per MPD-2021.”

10. Suffice would it be to state that vide para 3.2, the Master Plan for Delhi has done away with the previous Master Plan concept of rural areas and envisages land required for urban extension i.e. rural areas required to be urbanized.

11. A holistic reading of the MPD-2021 with reference to para 3 and para 12 would highlight that setting up of petrol pumps in Delhi stands regulated by the norms as per MPD-2021 and the legislative field stands covered by the Master Plan for Delhi 2021 and thus the Regulations framed in the year 2005 are of no consequence and are deemed to have been repealed or for that matter have to be treated as a dead letter. The reason is obvious. Master Plan for Delhi, as conceded by learned counsel for the appellant, has the force of a statute. The reasoning of the learned Single Judge in the order impugned, being the order dated 17.1.2011, is accordingly affirmed by us.

12. An alternative submission was advanced that appellants have been discriminated against inasmuch as a few other persons who had applied prior to February 2007 for grant of permission to set up petrol pumps in rural areas have been granted permission applying the Regulations of 2005 and denial of said benefit to the appellants would be discriminatory.

13. Now, if somebody's application is processed and finalized by a date before which law gets amended, it would not mean that in law there is a discrimination for the reason it is settled law that by applying for a permission no vested right is acquired. As held in the decision reported as 2001 (5) SCC

101 H.H.Maharani Shanti Devi Vs. Savjibhai Haribhai Patel & Ors. development and town planning are ongoing processes and changes occur from time to time depending upon local needs and therefore a Master Plan cannot be regarded as static. In the decision reported as 2004 (1) SCC 663 Howrah Municipal Corporation Vs. Ganges Rope Company it was held that no vested right accrues when building plans are submitted for sanction and that building norms existing on date of sanction would govern the matter.

14. The alternative submission urged is accordingly rejected.

15. It was lastly urged that the appellants cannot be left in a state of flux for the reason para 3.2 of MPD-2021 requires zonal development plans to be finalized and thereafter land use determined keeping in view the development norms in the expanding urbanized areas of Delhi.

16. The argument takes the appellants nowhere for the reason a Master Plan by its very nature is a document having futuristic applications and needless to state development by way of expansion in a city is a phase wise phenomenon and thus one would have to await a zonal development plan being finalized.

17. The learned Single Judge has granted permission to the appellants to re-apply to DDA for a sanction to set up a petrol pump as per MPD-2021 and this we find is the only benefit which could be granted to the appellants. We would only supplement that DDA should immediately finalize the urban extension in the erstwhile rural zones i.e. zones J, K, L, N & P i.e. the zones envisaged vide para 3.2 of the Master Plan

as required for urban extension on lands which hitherto were rural lands.

18. The appeals are dismissed but without any orders as to costs.

(PRADEEP NANDRAJOG)
JUDGE

(SUNIL GAUR)
JUDGE

OCTOBER 12, 2011
mm