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

DECIDED ON: 16.01.2012

+ LPA 857/2010

ANIRUDH KUMAR Appellant
Through: Mr. Sudhir Nandrajog. Sr.
Advocate with Mr. Barun K. Sinha,
Advocate.

versus

MUNICIPAL CORP OF DELHI & ORS Respondents
Through: Mr. Kunal Tandon with
Mr. Kush Chaturvedi, Advocate for
Resp-6&7.
Mr. Arjun Pant, Advocate for DPCC.
Ms. Perna Verma, for Ms. Mini Pushkarna,
Advocate for MCD.

CORAM:
MR. JUSTICE S. RAVINDRA BHAT
MR. JUSTICE S.P. GARG

MR. JUSTICE S.RAVINDRA BHAT (OPEN COURT)

% 1. The Appeal challenges an order of the learned Single Judge dismissing his writ petition; the impugned judgment was made on 5.10.2010. The appellant had claimed directions against the sixth and seventh respondents (for convenience hereinafter referred to as Dang's Diagnostic Medical Centre), which has its establishment in

D-1, Hauz Khas, New Delhi; complaining that it violates several provisions of the Master Plan and that the activities carried on in the said premises are contrary to Municipal Bye-Laws as well as contrary to the letter dated 11.07.2006, particularly the conditions spelt out in them. That letter was issued by the Municipal Corporation of Delhi (hereinafter referred to as MCD).

2. The appellant resides on the second floor of D-1, Hauz Khas, New Delhi. He sought various directions and premised the writ petition on several grounds. He alleged that the Dang's Diagnostic Medical Centre was initially set up in 1995 and the first and ground floor premises were purchased by the respondents/owners during different times. He claimed that the use of the property by the Centre violated the Master Plan conditions as well as bye-laws. By an order dated 11.01.2008, a learned Single Judge of this Court issued limited notice to the respondents (in the writ petition) stating that the adjudication would be confined to examining whether condition Nos.3 and 7 of the sanction letter dated 11.07.2006 had been violated and if so to what effect. The conditions spelt in the letter dated 11.07.2006 are extracted below: -

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1. *“The yearly permission fee will be Rs. 2,79,972/-*
2. *You will execute an agreement with the MCD on the prescribed from which is available in the office.*
3. *All parking arrangements will be made by you within the plot in question.*

4. *No commercial activity in the form of Canteen or Restaurant will be permitted. However, catering will be allowed only for the residents of the nursing home.*
5. *Permission fee is required to be paid by you for each financial year within six months of that financial year.*
6. *In case of violation of these conditions/default in payment the premises will be sealed and permission fee with 10 % misuse fee will be recovered.*
7. *The applicant will ensure that no nuisance or hardship is created for the local residents.*
8. *In case contents of the documents submitted by you along with the letter are found incorrect in future, the permission shall stand cancelled without notice.”*

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3. The respondents including the Centre, MCD and the Delhi Pollution Control Committee (DPCC) entered appearance and filed their returns. After hearing the parties, the learned Single Judge, by the impugned judgment, held that the grievance alleged by the petitioner had not been made out. The relevant part of the reasoning of the learned Single Judge is extracted below: -

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10. In so far as Clause 3 regarding parking arrangements is concerned, in the opinion of this Court, upon the respondents no.6 & 7 paying the requisite parking charges, they stand relieved of the said condition. The MPD-2021 has allowed mixed use of certain areas/properties on the conditions prescribed therefore. One such condition is levy of parking charges. The said parking charges are levied to develop a fund to enable the MCD to provide for parking facilities in the vicinity of the properties, mixed use whereof for

residence-cum-commercial/professional purposes is permitted. Once the respondents no.6 & 7 have paid the said parking charges, they stand relieved of the obligations for making arrangements for parking. Even otherwise, the decision whether the respondents no.6 & 7 have complied with or violated the said conditions is to be of the respondent no.1 MCD. The respondent no.1 MCD, upon payment of the parking charges aforesaid by the respondents no.6 & 7 is satisfied of the compliance of the condition. The petitioner as an affected party would certainly have a right to approach this Court to urge that the decision of the respondent no.1 MCD is not in accordance with law. However in view of the provisions of MPD-2021, I am satisfied that there is no error in the decision of the respondent no.1 MCD in not treating the respondents no.6 & 7 to be in violation of Clause 3 (supra). The respondents no.6 & 7 cannot be held responsible for parking arrangements after paying the charges levied therefore to the respondent no.1 MCD. To hold otherwise would nullify the very reason for levy of such parking charges. Attention of the counsel for the petitioner was drawn to the properties in NDSE Part-I & Part-II, New Delhi abutting the main road and commercial use whereof has been permitted and on whom parking charges have been levied. It was enquired as to whether the said properties notwithstanding the payment of parking charges would continue to remain liable to provide parking for their customers. The counsel for the petitioner could only state that their position was different without showing how.

11. Clause 7 is with respect to nuisance or hardship for the local residents. The present petition is filed by a single resident of the same property only and not by an association of residents. It thus appears that none other than the petitioner is aggrieved. The contentions aforesaid of the petitioner on the one hand that complaints have been made by other residents and of the respondent no.1 MCD on the other hand that no such

complaints have been received, raises a disputed question of fact and which cannot be adjudicated in the present petition. Moreover as aforesaid, it is inexplicable as to why if the local residents are aggrieved, they have not approached this Court. The petition as it stands lends support to the contention of the senior counsel for the respondents no.6 & 7 that the petition is motivated more by a private dispute of the petitioner with the respondents no.6 & 7 rather than owing to any nuisance or hardship to the local residents.

12. The senior counsel for the respondents no.6 & 7 has also stated that the chimneys of the air conditioners were broken by the petitioner at the level of his balcony to take photographs filed before this Court; it is contended that else the said chimney are above the height of the terrace of the property. The senior counsel for the respondents no.6 & 7 further assures that the respondents no.6 & 7 are ready and willing to do anything else which may be required in accordance with law with respect thereto. However the counsel for the respondent no.5 DPCC states that nothing further is required to be done.

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4. Mr. Sudhir Nandrajog, learned Senior counsel appearing on behalf of the appellant urges that the impugned judgment is unsustainable because the Court overlooked the fact that the mere payment of one time parking charges do not absolve the Centre from its obligation to ensure that the relevant bye-laws regarding parking were complied with on a day to day basis. It was urged that the deposit of such charges only amounted to waiver of further action but did not mean that the petitioner was not in violation of the Condition

No.3, particularly since no separate permission had been given in that regard nor had the sanction letter of 11.07.06 been amended or altered at any time later. Learned counsel, for this purpose, relied upon the judgment of the Supreme Court in *Union of India & Ors. v. Dev Raj Gupta & Ors.* (1991) 1 SCC 63, specifically, paragraph-17 which is to the following effect: -

“XXXXXX XXXXXX XXXXXX

17. The High Court is further not right in holding that there was an automatic or a statutory conversion of the user of the land because in the Master Plan the land in question fell in the area reserved for commercial use. The High Court failed to appreciate that the change of user of the land permitted by the Plan was only enabling in nature. It lifted the restriction which was otherwise there for using the land for commercial purpose. The land has to be used as per the agreement between the contracting parties, and no change of the user can be made contrary to the agreement even if the Plan permits such user. The Plan helps the parties to change the user, if the parties mutually agree to do so. It does not permit the occupant to change the user unilaterally. It is not, therefore, correct to say that no permission of the landlord was needed to change the user of the land.

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5. It was urged next that the impugned judgment also is not sustainable because learned Single Judge erroneously concluded that the question of nuisance is to be dealt with in the realm of private law as an inter se dispute between the appellant/petitioner and the Centre. It was urged that as a resident whose premises

were in the same building, the Appellant was entitled to agitate violation of bye-laws through public law remedies. In this regard, it is urged that the municipal bye-laws, so far as it mandates the maintenance of setbacks and their use as such have been flagrantly violated. Counsel here urged that placement of generators, oil tanks and electric panels are not only in violation of the rules but are also hazards. Learned counsel relied upon the return filed by the DPCC and urged that several violations exist which indicate that some sort of relief in that regard vis-à-vis condition no.7 was called for.

6. Learned counsel for the Centre and the DPCC and MCD are present. It is pointed out on behalf of the respondents that payment of parking charges and regularization is not one time as is made out and that the Centre has to pay registration charges annually on the basis of the calculation made by the MCD in this regard. Counsel for the Centre urged that these charges are recovered on the basis of the area covered by the user and works out to about ₹ 11 Lakhs a year. Parking fees were a onetime payment and regularization fee has to be deposited annually. As far as the violation of condition no.7 is concerned, counsel submitted that the Centre is in fact situated on an 80 feet wide road and for this reason, the plot was declared in a “mix-land” use category in terms of MPD-2021 which came into force in 2007. It was urged that the so called violation of the said condition is inconsequential because no action is called for by the MCD, as use

of the kind is permitted. As regards allegations concerning safety, it was urged that the deficiencies notified by the DPCC have been remedied and that if further action by the Centre is warranted, the same would be taken care of.

7. We have considered the submissions of the parties. The main question is whether the impugned judgment vis-à-vis condition No.3 has overlooked any relevant aspect. We are conscious of the limitations of an appeal of the present nature. So far as Condition No.3 is concerned, the learned Single Judge, in our opinion, correctly inferred that the necessity of paying annual charges for parking and regularization would in fact address the concern expressed in the sanction letter of 11.07.2006. We are also conscious of the fact that the sanction letter was issued when MPD-2021 was not in existence; it was merely proposed. There is no dispute about the fact that the plot can be used for mixed-land use purposes and that diagnostic or medical centre of the kind being run by the Centre is permissible in that specific category. If that is the position, in our opinion, there is no substance in the argument that further amendment to the sanction letter is necessary. MPD-2021 itself has the force of law; that it permitted fresh users of a certain category, would mean that the conditions imposed by the local or municipal authorities with regard to the certain kind or pattern of usage would be subsumed and the

conditions brought up by MPD-2021 and its subsequent bye-laws or regulations formulated later acquire primacy.

8. So far as the allegations concerning Condition No.7 is concerned, we have gone through the counter affidavit filed by the DPCC. It lists certain deficiencies. This violation is in two parts. The first concerns the Centre not maintaining any set back and utilizing it in its entirety. This Court is of the opinion that whether the placement of the equipment because it allegedly blocks the set back permanently, or it causes nuisance, are not aspects which should be gone into in writ jurisdiction, and therefore, find no reason to differ from the reasoning of the learned Single Judge.

9. In view of the above discussion, we are of the opinion that the appeal is devoid of merits; LPA-857/2010 is accordingly dismissed.

**S. RAVINDRA BHAT
(JUDGE)**

**S.P. GARG
(JUDGE)**

JANUARY 16, 2012
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