

IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment reserved on: April 06, 2018

Judgment delivered on: April 13, 2018

+ W.P.(C) 1524/2018, CM No. 6253/2018

MRS. VASUMATI MAHAJAN AND ANR.

..... Petitioners

Through: Mr. Ravi Gupta, Sr. Adv. with
Mr. Ankit Jain, Mr. Sachin Jain,
And Mr. Sarvesh Rai, Advs.

versus

SOUTH DELHI MUNICIPAL CORPORATION AND
ORS.

..... Respondents

Through: Mr. Ajjay Aroraa and Mr. Kapil Dutta,
Advs. for R1.
Mr. A.K. Vali and Mr. Bhaskar Vali,
Advs. for R3.

CORAM:
HON'BLE MR JUSTICE V. KAMESWAR RAO

J U D G M E N T

V. KAMESWAR RAO, J

1. The present petition has been filed by the petitioners with
the following prayers:-

*“In the aforesaid facts and circumstances of the
case, it is, therefore, respectfully prayed that this
Hon’ble Court may kindly be pleased to pass:*

A. A Writ, Order and/or Direction in the nature
of *PROHIBITION*, inter alia restraining the
Respondent Nos. 1 to 3 from granting any

permission to Respondent No.4 and/or 5 to open any school, including any Pre-Primary School/Montessori Preschool/Daycare, from ground floor and /or basement of property bearing no. E-68, Vasant Marg, Vasant Vihar, New Delhi.

B. A Writ, Order and/or Direction, in the nature of MANDAMUS, inter alia directing the Respondent Nos.1 to 3 to ensure that no school, including any Pre-Primary School/ Montessori Preschool / Daycare, is opened from ground floor and/or basement of property bearing No. E-68, Vasant Marg, Vasant Vihar, New Delhi.

AND/OR

ANY OTHER FURTHER WRIT, ORDER AND/OR DIRECTION, WHICH THIS HON'BLE COURT MAY DEEM JUST FIT AND PROPER, IN THE FACTS AND CIRCUMSTANCES OF THE CASE, IN FAVOUR OF THE PETITIONERS.

2. It is the case of the petitioners that the petitioner No.1 is one of the co-owners of the entire upper floors including first, second and third floor as well as terrace of the property No. E-68, Vasant Marg, Vasant Vihar, New Delhi with her daughter by virtue of Conveyance Deed dated February 14, 2003. The said first, second and third floor of the property has been let out by the petitioner No.1 to various tenants, who are living there. Petitioner No.2 is the tenant on the third floor of the said property. The petitioners have stated that to the best of their knowledge, ground floor and basement portion of the said

property are owned by respondent No.2. There are two driveways in the property; one on the right side of the property used by owners / occupiers of ground floor and basement while the one towards the left side of the property used by owner / occupiers of the above floors.

3. On or about December 16/17, 2017, the respondent No.2 had telephonically contacted Mr. Harish Mahajan, the son of the petitioner No.1 and informed him that respondent No.2 was interested in setting up a pre-primary school from the ground floor and the basement of the said property. According to the petitioners, during the conversation, Mr. Harish Mahajan has specifically informed respondent No.2, no portion of the property could be used for opening of any school of any nature whatsoever as the property is neither commercial in nature or it had been built for carrying out any commercial activity including opening of any school. According to the petitioners, Mr. Mahajan had emphasized that the same would be in violation of statutory Rules and Regulations and would cause a lot of harassment and nuisance to the other occupiers of the property. A reference in the writ petition is made to a whatsapp message sent by respondent No.2 on December 18, 2017 and by Mr. Harsh

Mahajan on December 20, 2017 and December 21, 2017 to respondent No.2. It is stated, pursuant to the communications referred above, respondent No.2 contacted Harish Mahajan and informed him that the respondent No.2 has not taken any decision. Thereafter, on February 13, 2018, the petitioners were dismayed to see a banner put up outside the front gate of the said property to the effect that Montessori Pre School and a Daycare is opening from property very soon by respondent No.3. According to the petitioner, apprehending collusion between respondent Nos.2 and 3 that they would take steps to establish some school from the premises, they have filed the present petition on various grounds. Suffice to state, the grounds shall be dealt with while noting the submissions advanced on behalf of the petitioners. In substance, it can be stated here that it is the case of the petitioners that setting up of a school in the property would be in violation of MPD 2021, DMC Act, Building Byelaws and the Constitution.

4. A status report has been filed by the South Delhi Municipal Corporation. As per the same, it is stated, as per record, the building plan of the property was sanctioned by the Department in the year 2004 for construction of a residential building. That the building in question was inspected in the light

of the inspection of site and referring to the record maintained by the Department, it is stated:-

(i) That the property at site comprises of Basement to Third Floor.

(ii) That during the inspection, it has also been found that certain internal alterations in basement and ground floor are being carried out by the owner/occupier for the purpose of pre-primary school in these floors. However, school activity has not yet been started.

The work in this regard at ground floor has been found in progress.

In basement, the work of partitions has been got stopped at site, being an impermissible activity in Basement, as per provision of Master Plan-2021.

(iii) That upon referring the record, it has been found that the owner / occupier has also deposited the Conversion Charges amounting to ₹1,53,700/- vide G-8 receipt No. 15544 dated 19.03.2018 under self-assessment Scheme for running the pre-primary school activity;

(iv) That regarding permissibility of the activity, the Master

Plan-2021 (Chapter-15) – Provision No. 15.7 -1(a) – Pre-Primary School (including nursery / Montessori School), envisages and permits such an activity, as under:

“Subject to the general conditions given in Para 15.4 and additional conditions given in Para 15.7.3, the following public and semi public activities shall also be permitted in the residential plots abutting roads of minimum ROW prescribed in Para 15.7., whether or not the road is notified or mixed use street

(a) -Pre-Primary School (including nursery / Montessori School,..)”

5. Respondent No.3 has also filed a counter affidavit to the writ petition. It is stated that as per petitioners themselves that a Preprimary School can be run from the ground floor. The only objection is to the running of the Preprimary School from the basement. The same is clear from ground D of the writ petition as well as letter dated December 22, 2017 written by the petitioners to the SDMC and also to the Deputy Director of the Central Board of Secondary Education. It is stated, the respondent No.3 has already given an undertaking that the respondent No.3 will use the basement only for the permissible activity and as such the grievance of the petitioner has been addressed in entirety. That

apart, it is the case of the respondent No.3 that no grant of permissions and no consent whatsoever is required from the petitioners or any other Authority for opening and running a Preprimary School at the property. The right to property is a constitutional right under Article 300A and the same is enjoyed by the respondent No.3, which is sought to be deprived by the petitioners. The said right is prescribed and permitted by the Master Plan Delhi-2021. It is also stated that MPD-2021 specifically enumerates the Mixed Use Regulation in Chapter 15 wherein Para 15.3.2 delineates the eligibility requirements of a property for mixed use in residential areas. The Paras mandates that in a Category A plot abutting a road of a minimum 18m Road width in a regular plotted development certain activities are permissible. These activities have been categorized under two heads, i.e, 'professional activity' and 'other activity'. It is stated that the subject of the present writ is 'Other Activity'. The relevant excerpt is extracted as under:

"No commercial Activities will be permissible in the Colonies of A & B categories except the following:

'Professional Activity'

'Other Activity' restricted to guest houses, nursing

homes and pre-primary schools, as defined in para 15.7.1, subject to conditions contained in para 15.7, in plots abutting roads of minimum 18 m ROW in regular plotted development, since these activities are in the nature of 'Public and Semi-Public' facilities. New banks and fitness centres, wellness centres and NGOs will not be permissible.....”

6. It is further stated, it is not in dispute that the said property is abutted by a road wider than 18m and is in fact 24 meters (80 feet road). Thus, it is clear from a bare perusal of the above Para that the respondent No.3 is and permitted to open and operate a pre-primary school in the said property as the same is eligible for Mixed Use in Residential areas. The conditions/requirements to be met while opening and conducting ‘other activity’ are specified in Para 15.7 of the MPD 2021. The relevant contents of the same are reproduced as under:

“15.7.1 “Subject to the general conditions given in para 15.4 and additional conditions given in Para 15.7.3, the following public and semi public activities shall also be permitted in the residential plots abutting roads of minimum ROW prescribed in 15.7.2, whether or not the road is notified or mixed use street:

- (a) Pre-Primary School (including nursery / Montessori School, crèche.)*
- (b)”*

7. It is stated, the requirement of the abutted road having been notified by the municipal corporation as ‘mixed use street’

is a condition specifically done away with by the mandate of the legislature, thereby streamlining the process and cutting short the red-tapism for opening and operating such essential public and semi-public facilities. The Mixed Use policy MPD 2021 is a policy intended to optimally utilize the resources available to the people of Delhi and has been formulated only after due consultation with all the stakeholders. The intent of the legislature behind such a policy is clear. Delhi being the Country's capital and an important center of economic activity, has a large diversity in the typology of residential areas. The extent of non-residential activity seen as being necessary or desirable by the residents themselves varies from area to area based on the socio economic status of residents as well as the past pattern of development in that area. It is only in this light a differentiated approach in the application of the mixed use policy has been allowed in Delhi. If the eligibility conditions are met by the said property, mixed use in residential areas for opening and operating these essential public and semi public facilities is allowed. There is no ambiguity whatsoever. It is stated, if this Court is asked to intervene, it would be in direct contravention of the well established *Wednesbury Principle*. The Apex Court has

time and again stated that the job of the Courts is not to act as law makers but to interpret and enforce the will of the legislature, i.e, the people.

8. It is further stated, the minimum ROW of a street which does not even require notification as ‘mixed use street’ on which ‘other activities’ are permissible is laid down in Para 15.7.2, the contents whereof are as under:

“In A & B Colonies: 18m ROW in Regular plotted development.”

It is therefore clear as daylight that for a property abutted by a 24m wide ROW in Type A Colonies (this plot is in Type A colony), no permission whatsoever is needed or required to be obtained from any Authority whatsoever to open and operate any of the essential ‘public and semi-public facilities’ as enumerated in the MPD 2021. This includes the opening and operating of a pre-primary school sought to be run by respondent No.3. The only stipulation that is required to be fulfilled is the payment of a registration charges and mixed use charges, which stand paid.

9. It is further stated, the status report filed by respondent

No.1 corroborates the factum of deposit of conversion charges amounting to ₹1,53,700/- having been paid and the permissibility of running a primary school stands reiterated by the respondent No.1. It is further stated, as all the conditions/criterion have been fulfilled and the respondent No.1 has confirmed the contents vide their own status report filed pursuant to a direction of this Court, this Court will not hold any other conclusion than the fact that it is legally permissible activity for the respondent No.3 to run and operate a pre-primary school from the said property at ground floor.

10. It is further stated, the pre-primary school is for children from the age of 12 months to 3 ½ years. These toddlers have to be sent to a school which is in very close vicinity. It is only when a pre-primary school which can only be operated in a residential area where they live and it is precisely because of this reason that this activity has been permitted in MPD 2021. Such toddlers cannot be expected to be sent to far off areas at such a tender age. It is further stated, all the mandatory requirements of law have been duly complied with as per the MPD 2021, specifically Para 15.9 of MPD 2021. An application was filed and declaration as

required under Para 15.9(i) was filed in the form of an affidavit.

Pursuant to calculations, the conversion charges were duly paid.

11. Mr. Ravi Gupta, learned Senior Counsel for the petitioners state, petitioner no.1 is the co-owner of First, Second and Third Floor of the property, while Petitioner No.2 is the tenant under the Petitioner No.1, on the Third Floor of the property. The issue pertains to the attempt of Respondent no.3 to open a pre primary school from the Ground Floor and Basement of the property. According to him, no School, including any Pre-primary School can be opened from the Basement, in view of the specific prohibition contained in Para 15.7.3 (vi) of MPD-2021. The said aspect has been conceded before this court, even by the respondents, at the time of preliminary hearing. According to him, even as regards the Ground floor, the Respondent No.3 cannot be permitted to open any Pre-primary School. For the reasons given below.

12. It is the submission of Mr. Ravi Gupta, (i) the plans in respect of the property have been sanctioned for residential use only (para 2 of the Status Report filed by Respondent No.1), with front boundary wall forming part of the building; (ii) The provisions of MPD-2021 are only enabling provisions, which

permit such non-residential user. However, for seeking benefit of the said enabling provisions, it is necessary to get permission from SDMC for changing the user from residential to non-residential use. Reference is craved upon Section 347 of DMC Act. If the change of user is in conformity and compliance of conditions of mixed use Policy, the necessary permission would be required to be obtained u/s 347 DMC Act; (iii) Para 15.9 (iii) of MPD-2021 specifically provides that no non-residential activity can be permitted under the mixed use policy, unless prior sanction of revised building plans has been obtained and necessary fee or charges have been paid. Hence removal of front boundary wall would require prior sanction from MCD. Reference is craved upon Para 7.2.6.1 of Delhi Building Bye Laws, 2016; (iv) Even Para 15.11.1 of MPD-2021 indicated that permission is required for undertaking mixed use activity; (v) The provisions of Mixed Use Policy in Paras 15.2.2, 15.7.1 and 15.11.1 envisages a permission from MCD, when the same states that the activity “*shall be permitted / is permissible*”; (vi) A conjoint reading of Section 12(3) read with Section 2 (d) and 2(j) of the Delhi Development Act and Bye Laws 6.2, 6.2.4 and 6.2.5 would also bring the impugned action of change of user from

residential to non-residential / pre-primary school, into the jurisdiction of the Commissioner, SDMC for seeking permission / sanction for such change. Change of user amounts to a material change, calling for prior permission from the SDMC, since it amounts to change of feature of the building, contrary to its sanction; (vii) In the present case, no such permission has ever been alleged to have been applied, much less obtained. In absence of such permission, no school can be permitted be opened from the Ground Floor of the property.

13. It is the submission of Mr. Ravi Gupta, Para 15.7.1 of MPD – 2021 clearly provides that mixed use activities are permitted, subject to conditions provided in Para 15.4. Para 15.4 of MPD-2021 (under the heading of ‘Other terms and conditions’) (v) provides that the parking of 2 ECS (equivalent Car Space), per 100 Sq. mtrs. has to be provided within the premises. The property has a total area of 1216 Sq. yds. (1016 Sq. mtrs.) (400 Sq. metres. built up). Thus, the minimum requirement for undertaking any non-residential activity is of at least 8 ECS. He would state, respondent No.2 only has one driveway as the parking area, which can accommodate only about 4 cars at a time. Thus, the premises with respondent in question

does not fulfill the minimum parking requirement. The aforesaid requirement is mandatory in nature, which is evident from the use of the word 'shall' and there is no scope of relaxation in regard to the said condition. He would state, till July 13, 2015, the para provided that in case such parking is not available, cost of development of parking could be paid to the local body concerned. However, vide Notification dated July 14, 2015 the same stands deleted. Thus, it clear that the said benefit has been taken away consciously. The same also fortifies the fact that the said condition is mandatory. He would state, Para 15.4 of MPD-2021 (under the heading of 'Other terms and conditions') (iv) provides that front set back should not have any boundary wall. The plot is having a boundary wall in front. The boundary wall in the front set back of the said property cannot even be broken since the front setback there exists a garden, which is at a much higher level than the ground level. The said area cannot be even used for parking. Even otherwise no such boundary can be broken without the express consent of all the other occupants of the building. Thus, the plot in question does not fulfill the said requirement as provided under MPD-2021. The aforesaid requirement is mandatory in nature, which is evident from the use

of the words '*should not*' and there is no scope of relaxation in regard to the said condition. He further states, Para 15.4 of MPD-2021 (under the heading of 'Other terms and conditions') (1) provides that the Development Control Norms, as applicable shall also be applicable. The SDMC is also under an obligation to consider the fulfillment of the said norms. Para 15.1 (ii) of MPD-2021 provides that the mixed use policy is aimed at balancing socio-economic needs and the environmental impact. Thus, it is clear that the aspect of environmental impact is one of the factors, which has to be considered when any sanction / permission is sought for. Reference is also craved upon Article 243W read with 12th Schedule, Constitution of India, MCD cannot shirk its responsibility from the same. Para 15.1(iii) of MPD-2021 provides that mixed use allows access to commercial activities in the proximity of residences, so as to reduce the need for commuting across zones. Thus, the said provision makes it very clear that the aspect relating to requirement of the mixed use activity in the area is one of the factors to be considered. It has to be considered as to whether in the absence of such mixed use activity, the residents of the area are required to commute into separate zones. He would state, the submissions of respondent

that the pre-primary school is for toddlers and they would make necessary arrangements to avoid the nuisance, cannot be a factor which can be considered at the stage of interpreting statutory provisions. The statutory provisions are applicable universally, where statute itself create exception. Para 15.1 (iii) of MPD-2021 further provides that the said activity needs to be regulated in order to mitigate the adverse impacts relating to congestion, increased traffic as well as increased pressure civil amenities. Thus, it is the duty of the SDMC to consider all such issues relating to traffic congestion, increase in traffic as well as pressure on civic amenities, at the time of considering any application seeking sanction. Para 15.1 (iv) of MPD-2021 provides that mixed use activity is aimed at creating provision for meeting community needs, mitigating environment impact and providing for safe and convenient circulation and parking. Thus, the SDMC has to come to a conclusion that the mixed use activity sought for, is actually required to meet the needs of the community, from where the said mixed use activity is sought to be undertaken, before the said activity starts. According to him, the questions relating to environment impact, parking etc. are to be considered seriously at the time of considering any sanction

and granting any such permission. Para 15.2.1(ii) of MPD-2021 provides that the extent of non-residential activity required, varies from area to area, depending on the socio-economic status of the residents as well as part pattern of development. Any decision on any application seeking to undertake mixed use activity has to consider the same, keeping in view the aforesaid. He would state, SDMC is also bound to consider as to whether the electricity wiring in the premises can withstand the huge increase in the load; sewage requirements and related issues. The Building norms, including as provided under Para 7.23.2 read with Table 9.1 to 9.6 of Delhi Building Bye Laws, 2006 also have to be complied before grant of such sanction / permission by the MCD. He would further state, just because certain mixed use activity is permitted would not mean that SDMC is bound to give sanction. Any such sanction has to be upon due application of mind of the above factors. SDMC is not performing any ministerial act. There is no provision of deemed permission under the Mixed Land Use policy. Otherwise also it can't be in view of Section 347 of the Act. Deposit of charges under self assessment scheme is only for calculations of charges and not for compliance of other conditions envisaged in Law. The legal provisions cannot be

interpreted in a manner which permit a person to breach legal provisions and commit illegal actions and only upon such breach preventive steps can be taken by the civic authority.

14. Without prejudice to the above submissions, it is the submission of Mr. Gupta that, no Pre-Primary School can be opened from the property, which is situated on the road which has not been notified for mixed use activities. He qualifies his submission by submitting that Para 15.2.2 provides “other activity” as described in Para 15.7.1 as a Mixed Use Activity, subject to the conditions as specified in Para 15.7. Para 15.7.1 describes the activities from ‘a’ to ‘I’ as permitted “other activities” in the residential plot. A reading of Para 15.7.1 shows that the said activity is permitted even if the street is notified or not. However, it nowhere exempts the said street from being ‘identified’ as a Mixed Use Street in colony ‘A’. A specific request from RWA is compulsory before identifying the said road as a Mixed use Street (15.3.3) read with Para 15.10. In the present case the road in question is not even identified. He submitted MPD-2021 itself creates a distinction between identification and notification of the road. Para 15.3.3 prescribes the procedure for identification and notification of a street in

urban areas. Para 15.3.2 which permitted mixed use in various categories of colonies, further clarified and provided that under the head “other activities”, only guest house, nursing home and pre primary school, as defined in Para 15.1.1 would be permitted in colony of Category A and B. All other type of “other activities” as mentioned in Para 15.1.1 are not permissible. Para 15.3.1 (iv) further clarify and provide that the said activity of guest house, nursing home and pre primary school in Category A would only be permitted if the road/street is identified and notified. He would state, the bar to run a commercial activity in Category A and B as prescribed in Para 15.3.2 has not been permitted for any other category under the said Para. Thus Para 15.7.1 is a general clause which provides and defines various “other activities” which are permitted in various type of categories, whereas Para 15.3.2 is an exception to it inter alia categorizing only a guest house, nursing home and pre primary school being run in category A provided the property is situated on a notified road and also fulfill the other conditions of the mixed use land policy. He stated, it is the settled proposition of Law that every clause of a statute is to be given a definite meaning and if the two clauses appears to be inconsistent, then a

harmonious construction is to be done so as to give a meaningful interpretation of the same. He relied upon *Sultana Begum v. Prem Chand Jain*” 1997 (1) SCC 373.

15. He also answers on the judgment relied upon by Mr. Vali in WP(C) No. 4961/2015 in case titled “*Arvind Singhal & Ors v. Govt. of NCT of Delhi*”, passed by this Court, by stating it is of no help to them for the reasons; (i) The Court was considering an already running Institute and was interpreting the provisions of the Act for the purposes of sealing of the property; (ii) Though having noted the provisions of Section 347 of the DMC Act, but its impact in the context has not been dealt with by the Court.

16. He states, even otherwise, in view of the decision of the Court in *A.R. Banerjee’s* case (supra), the order of the Co-ordinate Bench is per incuriam. According to him, it is an admitted fact that there is no modification done or required to be done in the said premises. Whereas, in the present case the modification has been carried out by the respondent in the suit premises, which is also evident from the status report filed by the SDMC. He stated, a declaration submitted by the respondent with the corporation is not only false to the knowledge of the respondent school, but, also does not entitle them to run the pre-

primary school from the said premises. It is not a sanction / permission. Otherwise also the respondent cannot be permitted to start a pre primary school and commit illegality by violating the provisions of law on the pretext that at a later stage, SDMC would take action against them. The attempt to open a pre primary school itself is illegal and against the provisions of law and cannot be permitted to begin on the pretext that later, SDMC would take action. Mr. Ravi Gupta would rely upon the following judgments in support of his contention:-

- (i) ***A.R. Banerjee v. R.S. Verma & Others LPA 904/2010 decided on April 10, 2012;***
- (ii) ***Asha Rani and Ors v. NDMC & Ors 221 (2015) DLT 730.***

17. On the other hand, Mr. Ajjay Aroraa, learned counsel for SDMC would submit that the submission of Mr. Ravi Gupta, learned Senior Counsel for the petitioners that no primary school can be run from the property since the road on which the property is situated has not been notified for mixed use activity on a reading of Para 15.3.2 is concerned, the same is not tenable, inasmuch as a reading of the said provision does reveal that the same is subject to the provisions of Para 15.7.1 and not vice versa. The Para 15.7.1 clearly states, the same is subject to the

general conditions in terms of Paras 15.4 and 15.7.3 only. Para 15.7.1 also makes it clear that whether or not the road is notified as mixed use street, it can be used for the purpose of pre-primary school. He stated, the respondent No.3 got itself registered and paid the conversion charges under self declaration Scheme. That apart, the respondent No.3 has not applied for a sanction. He also stated, if the respondent No.3 starts the school and found that they violate the conditions, the SDMC is within its right to take action. He also stated, no express permission is required.

18. It is the submission of Mr. A.K. Vali, respondent No.3 intends to run Pre-Primary / Nursery from ground floor of Plot No.E-68, Vasant Vihar which is situated on a 24 m wide road (ROW 18m is the minimum permissible limit). There are no other Pre-Primary/Nursery facility in the vicinity as none of the three schools in the locality cater to the needs of children aged from one year to 3 ½ years/. That for the aforesaid purpose respondent No.3 applied before the respondent No.1 Corporation and as required in law got this ground floor premises registered as per Regulation 15.9 (i) and paid registration charges and further paid the conversion charges as per Regulation 15.9 (ii); while doing so the respondent No.3 complied with the necessary

requirement of furnishing a declaration in the prescribed form and same was taken on record by the answering respondent No.1 Corporation in the form of an Affidavit. Usual conditions for carrying on this permissible “Other Activity” have been undertaken on Affidavit to be followed strictly in accordance with Rules, Regulation and the Apex Court guidelines in the ***M.C. Mehta Case.***

19. It is his submission, the MPD 2021 required repeated amendments owing to the pressure of sealings being undertaken in Delhi pursuant to the directions of the Apex Court. Lot of representations were made and the Parliament stepped in and necessary amendments were made. In continuation, statutory force was given to the Amended Master Plan of Delhi 2021 and repeated amendments were incorporated till as late as 2017. According to Mr. Vali, it was humanly impossible to deal with every individual case by the Municipal authorities for granting / according permissions, hence, an in-built mechanism was provided wherein the masses were given a benefit of self assessment for their Mixed Land Use activities. Nowhere in the entire MPD 2021 the intention is expressed that despite filing of Self-Assessment further a requirement of formal permission is

necessary to be obtained from the Municipal Authorities. This would have entailed in defeating the very purpose i.e. cutting the red tape for these Regulations and this self-assessment scheme was brought into force. It is presumed that vast majority of citizens are honest and shall strictly follow law and adhere to it. Non-compliance would result in penal provisions / contempt of the Supreme Court. Hence, the requirement of any formal permission has specifically been dispensed with by the Legislature while drafting, approving and enforcing Amended MPD 2021. By way of a judicial order something which is not provided in the statute/regulation cannot be incorporated / foisted upon the citizenry. The respondent No.3 further submits with utmost respect that any judgment relied upon by the petitioners do not hold any water in the peculiar facts and circumstances of the case more particularly because the statute as well as the MPD 2021 are unambiguous on the dispensability of the grant of formal permission. He would state, the case of ***Arvind Singhal & Ors (supra)*** is applicable in the facts and circumstances on all fours. The facts therein are identical as that of the present petition and respondent No.3 relies on the same for seeking a dismissal of the present petition.

20. He would state, the property in question falls in the colony which is Category A and as per Para 15.7.1 no notification is required to be issued by the Govt. for running a Pre-Primary school, including Nursery/Montessori/Creche. Although Para 15.7 stipulates that it is subject to general conditions as given in Para 15.4 but a careful perusal of Para 15.4 very clearly and categorically observes that these are ONLY “*General Terms and Conditions*”. Under Para 15.4 further general conditions are there under the head ‘*other terms and conditions*’. The aforesaid being the General Terms and Conditions are not applicable in respect of Para 15.7.1 (a) Pre-Primary School (including Nursery / Montessori /Creche). The other terms and conditions are in fact applicable for Para 15.7.1 (b), (c), (d), (e), (f), (g), (h) and (i) and not Para 15.7.1.(a). This is particularly because for a Pre-Primary school a definition has been categorically provided for in Table 13.21 where it prescribes at S. No. 1 that “Pre-Primary / Nursery / Crèche / Montessori/ Day Care Centre” “a premises having nursery facilities for infants during the day time”. The activities permitted in this centre are ‘*Crèche and Day Care Centre*’ and therefore Pre-Primary School as mentioned in Para 15.7.1 is a misnomer particularly because the definition clause categorically

states it to be 'Pre-Primary / Nursery / Nursery / Creche / Montessori / Day Care Centre'. He would state, a Pre-Primary / Nursery has not been classified as a 'school' under Table 13.21. According to him, it is an admitted position that the plot of respondent No.3 abutt's on the Row of 24m. The activity intended to be carried on by the respondent No.3 is a permissible activity under the Mixed Land Use Policy by virtue of Chapter 15 of the Master Plan Delhi 2021, more specifically, Paras 15.7, 15.3, 15.4, 15.9 and 15.10, which stipulate the conditions for permissible activity which stand complied with as on date. As no modification is to be done by the respondent No.3 in the premises, therefore, there is no requirement of any fresh sanction under 15.9(iii) from respondent No.1 more particularly in view of the submissions made. He would state, it has been urged against the respondent No.3 that it has to comply with Para 15.4 bearing the caption 'General Terms and Conditions'. It has been urged that under the said caption there is a sub-heading 'other terms and conditions'. The submission against respondent No.3 is that clause (iv) of this sub heading reads as follows:

"In plotted development, front setback wall should not have boundary wall, so that it can be used for additional parking."

21. According to the petitioners the pre-primary / nursery intended to be started from the respondent No.3's premises has a boundary wall and this is in direct conflict with the aforesaid clause (iv) which prescribes that the premises 'should not have boundary wall'. According to petitioners there cannot be any additional parking because of the presence of the boundary wall. It has also been urged that under clause (v) of the said sub-heading the required parking is @ 2.0 ECS per 100 square meters in built up area, which according to the petitioners has not been provided by respondent No.3.

22. It is his submission at the outset, in the Table 13.21 bearing the caption 'Educational Facilities' at S. No. 1 is 'Pre-Primary / Nursery / Montessori/ Crèche & Day Care Centre'. The activity / run / to be run by respondent No.3 squarely falls within S.No. 1 as it is pre-primary / Nursery catering to toddlers from the age of 1 year to 3 ½ years. It needs to be appreciated that the word 'school' has not been used, which defines the premises under S. No. 1. In other words, what is being planned to be carried out is only pre-primary / Nursery / Montessori and certainly not a 'school'. This conclusion gets strengthened on perusal of the premises categorized under S. No. 2, 'primary

school', S.No. 3 'Middle School', S.N.4 'Senior Secondary School. In the latter category the word 'school' has been used, while the nomenclature 'School' is singularly missing in S. No. 1, i.e., the activity being intended to be carried out by respondent No.3.

23. He would state, respondent No.3 intends to run a Pre-Primary / Nursery and is required to comply with the 'Development Controls for Educational Facilities' under Table 13.4 of the MPD 2021 and not with the 'General Terms and Conditions' as delineated under Para 15.4. It is well settled that if the status (in this case MPD 2021) prescribes a specific and special controls for a specific / particular category (in this case educational facilities) then it is these specific conditions which have to be complied with and met and these shall prevail and override the general terms and conditions prescribed elsewhere. In the event there is a variance/ conflict between the conditions prescribed under the special category (educational facilities in this case) under S. No. (1) of Table 13.4 and the general terms and conditions as under Para 15.4, the conditions prescribed under Table 13.4 shall prevail. The control prescribed under S.No. (1) of Table 13.4 is 'parking standard @ 1.33 ECS per sq.

M. Of floor area', This has been specifically provided under the column '*Other Controls*' in Table 13.4. The same very column under Table 13.4 further prescribes that the practice of providing dedicated Pre-Primary / Nursery plots in the layout plan has been discontinued. In the 'Notes' at the bottom of the said Table 13.4, it has again been reiterated that Pre-Primary / Nursery's are permissible in residential use premises as per the Mixed Use Policy. As per this norm of 1.33 ECS per 100 sq. m. of floor area, the respondent No.3 is required to provide an ECS (Equivalent Care Space) of 1.33 ECS per 100 Sq m x 4, i.e., the total built up area / floor area of 400 sq m built up area, i.e., 5.32 ECS. The petitioner is appending photographs of 11 cars being parked in the separate independent driveway of the respondent No.3's Pre-Primary / Nursery, which is 5.68 ECS in excess of the prescribed norm/control as prescribed under table 13.4. As the parking spaces available within the plot/said property of the respondent No.3 is in surplus of the minimum requirement, the controversy in its entirety is rendered otiose. This norm/control under table 13.4 which alone is applicable to the respondent No.3's case is at variance with the norm/control provided under clause (v) under the heading '*Other Terms and Conditions*' of

Para 15.4.

24. He would state, the norm under Table 13.4 being special and dealing specifically with the heading 'Development Controls for Education Facilities' under Table 13.4 will override the 'General Terms and Conditions' as provided under Para 15.4 in respect of 'Other Activity' 15.7.1(a), i.e., Pre-Primary. At the same time, under Table 13.4 there is no requirement of front set back not having boundary wall for additional parking, which is required only under clause (iv) of 'Other Terms and Conditions' of Regulation 15.4. The controls prescribed under clause (iv) being part of 'General Terms and Conditions' cannot be imported and foisted upon the specific 'Development Controls for Educational Facilities' under Table 13.4. He would state, the requirement of boundary wall being recessed by 6 meters to accommodate visitors. In para 1 under the heading 'Other Controls' does not classify the activity of Pre-Primary / Nursery facilities for infants during day time as a 'school' but only as a crèche /pre-primary/Nursery. Definition has to be strictly adhered to and cannot be expanded by any wishful and purposeful interpretation. Further, it is not disputed that the size of the said property is more than 200 sq m, which is minimum size of the

property required to commence the activity of pre-primary/nursery in a residential premises intended to be used for 'Other Activity' under the Mixed Use Policy as delineated by the MPD 2021. The above stand of the respondent No.3 gets corroborated by the status report / counter affidavit of the SDMC / respondent No.1, the activity intended to be carried out is to be undertaken only on the ground floor. The undertaking of respondent No.3 that it will carry out activity of pre-primary / Nursery will only be carried out on the ground floor. He stated, admitted stand of the SDMC that the respondent No.2 can run a pre-primary on the ground floor, affirmed in the respondent No.3's Counter affidavit. It has also come on record that respondent No.3 has paid all conversion charges.

25. He stated, one of the provisions of DMC Act or DDA Act have been violated as everything has been complied with in accordance with those statutes in conjunction with MPD 2021. There is no deviation at all as whatever overriding powers/provisions have been incorporated in MPD 2021 that have been brought on the statute book by the legislature after fully appreciating and considering all the provisions of DMC Act, 1957 and DDA Act, 1957.

26. It is his submission, besides the above the right to property is a constitutional right vested in every citizen. This vested birth right cannot be snatched away from a citizen by any other citizen. The deprivation of this right can only be upheld by due process of law. In the present case, the respondent No.3 has complied with all the legal requirements delineated in the law of the land. The respondent No.3 has the constitutional right under Article 300A to use her property in any manner as she deems fit. The respondent No.3 has deemed it fit to open a pre-primary / Nursery centre to care for toddlers from the age of 1 year to 3 ½ years. However, the petitioners by their malafide and motivated proxy litigation are trying their utmost to deprive the respondent No.3 from enjoying the fruits of her property. The right to enjoy the fruits of one's property flows naturally from Article 300A. He seeks the dismissal of the writ petition. He would rely upon the judgment in the case reported as **2016 SCC OnLine Del 5345 Arvind Singhal & Ors v. The Govt. of NCT of Delhi & Ors.** in support of his contention.

27. Having heard the learned counsel for the parties, two questions arise for consideration in this petition; (i) whether a preprimary school can be opened from the property situated on a

road, which has not been notified for mixed use activities; (ii) whether prior sanction of the SDMC is required to be obtained by the respondent No.3 for starting a preprimary school.

28. To answer the first question, it is necessary to reproduce some of the provisions of the MPD 2021, the same being Paras 15.2.2, which defines “*other activity*”, 15.3.1 (iv), 15.3.2 and 15.7.1.

15.2.2 TYPES OF MIXED USE

Subject to the provisions of this chapter, the following three broad types of mixed use shall be permissible, in residential premises:

i) Commercial activity in the form of retail shops as per conditions given in para 15.6 in plots abutting notified mixed use streets.

ii) "Other activity" broadly in the nature of 'Public and Semi-Public' facilities listed in para 15.7.1 and as per conditions specified in para 15.7, in plots abutting roads of minimum ROW prescribed in para 15.3.2.

iii) Professional activity as per conditions specified in para 15.8.

The above mentioned types of mixed use shall be subject to the general terms and conditions specified in the succeeding

paragraphs.

15.3.1(iv) Identification and notification of mixed use streets in future shall be based on the criteria given in para 15.3.2 and as per procedure prescribed in para 15.3.3, and given wide publicity by the local bodies concerned.

15.3.2 The extent of mixed use permissible in various categories of colonies is further clarified as follows:

1. In colonies falling in categories A and B

No commercial activities will be permissible in the colonies of A & B categories except the following:

Professional activity, subject to conditions given in para 15.8, mixed use and commercial activity up to one plot depth, in plots abutting Master Plan roads that are notified as mixed use streets, and commercial streets respectively, since such roads are not internal to the colonies (provided that the request of the RWA concerned shall not be necessary for notifying the Master Plan roads abutting the colonies, as mixed use streets on commercial streets).

["Other activity" restricted to guest houses, nursing homes and pre-primary schools, as defined in para 15.7.1, subject to conditions contained in para 15.7, in plots abutting roads of

minimum 18m ROW in regular plotted development, since these activities are in the nature of 'Public and Semi-Public' facilities. New banks and fitness centres, wellness centres and NGOs will not be permissible. Banks which existed as on 7.9.2006, fitness centres, wellness centres and NGOs which existed as on 7.2.2007, (as defined in para 15.7.1), in accordance with notifications issued in this regard from time to time, and are on plots abutting roads of minimum 18m ROW, on the date of notification, shall however, continue.]

Retail shops in terms of para 15.6 on such mixed use streets with a minimum 18m ROW, within the colony, in regular residential plotted development, as are notified in terms of para 15.3.3, if there is a specific request of the RWA concerned, in terms of para 15.10.

Note: Commercial activity on mixed use streets, within A & B category colonies, earlier notified under MPD-2001 shall cease with immediate effect (other than in plots abutting Master Plan roads).

2. In colonies falling in categories C & D

Mixed use in the form of Retail shops shall continue to be permissible as per conditions in para 15.6, in plots abutting

notified mixed use streets.

"Other activity" in terms of para 15.7 shall be permissible in plots abutting roads of minimum 18m ROW in regular plotted development, 13.5m ROW in rehabilitation colonies and 9m ROW in Walled City, regularized –unauthorized colonies, resettlement colonies, Special Areas, and urban villages, subject to conditions in para 15.7.

Notification of mixed use streets in future, of minimum 18 m ROW in regular residential plotted development, 9 m ROW in rehabilitation colonies and any road in regularized- unauthorized colonies, resettlement colonies, Walled City, Special Area and urban villages in terms of para 15.3.3 shall be subject to consultation with RWAs concerned in terms of para 15.10.

Mixed use shall be permissible in pedestrianized shopping streets as per para 15.3.3.

Professional activities shall be permissible as per conditions laid down in para 15.8.

3. In colonies falling in categories E, F and G

Retail shops shall continue to be permissible as per conditions in para 15.6., in plots abutting notified mixed use streets.

"Other activity" in terms of para 15.7 shall continue to be

permissible in plots abutting roads of minimum 13.5m ROW in regular plotted development, 9m ROW in rehabilitation colonies and any road in Walled City, regularized-unauthorized colonies, resettlement colonies, Special areas, and urban villages subject to conditions in para 15.7.

Professional activities shall be permissible subject to conditions in para 15.8.

Notification of mixed use streets in future, of minimum 13.5m ROW in regular residential plotted development, 9m ROW in rehabilitation colonies and any road in regularized-unauthorized colonies, resettlement colonies, Walled City, Special Area and urban villages shall be in terms of para 15.3.3

Mixed use shall be permissible in pedestrianised shopping streets as per para 15.3.3.

4. Group housing in all categories of colonies

[Only professional activity, small shops in terms of para 15.6.3 and tuition centres for school children only shall be permissible. Retail shops specifically provided for in the lay out plan of group housing under para 15.4(ii) would be permissible.]

5. In respect of colonies falling in NDMC area

Excluding Lutyens' Bungalow Zone, government housing,

institutional and staff housing of public and private agencies and buildings / precincts listed by the Heritage Conservation Committee, existing mixed use streets / stretches will be notified by NDMC. Future notification of mixed use streets / stretches will be done on a field level survey to assess the community needs, environmental impact and traffic circulation/ adequate parking and in consultation with Residents Welfare Associations concerned.

15.7.1 Subject to the general conditions given in para 15.4 and additional conditions given in para 15.7.3, the following public and semi-public activities shall also be permitted in the residential plots abutting roads of minimum ROW prescribed in 15.7.2, whether or not the road is notified as mixed use street:

(a) Pre-primary school (including nursery / Montessori school, creche.)

(b) i. Nursing home

ii. Clinic, Dispensary, Pathology lab and Diagnostic center.

[iii. Wellness Centers including Day Spas / Weight Loss Centres / Ayurvedic Centres offering Ayurvedic treatment / Salons offering fitness & aesthetic medical services and operating as on 7.2.2007.]

(c) Guest house (including lodging houses) irrespective of number of rooms.

(d) Bank

(e) Fitness Centre (including gymnasium, yoga / meditation centre) 2 [as existed on 7.2.2007]

(f) Coaching centres / tuition centres other than those imparting structured courses leading directly to the award of a degree or diploma or conducting classes such as a regular school.

[(g) Non-profit making Non-Governmental Organizations (NGOs) existing as on 7.2.2007 and registered as such under Section 12A read with Section 12AA(1)(b) of the Income Tax Act, 1961.]

[(h) Vocational Training Centre (ITI/Polytechnic/Vocational Training Institute/Management Institute/Teacher Training Institute for the AICTE/NCTE approved courses (diploma level) as per AICTE/NCTE Norms.]

[(i) Hostel/paying-guest accommodation.]

29. According to Mr. Ravi Gupta, Para 15.2.2 (ii) prescribes “other activity” as listed in Para 15.7.1 as a mixed use activity, subject to the conditions as specified in Para 15.7. According to him, Para 15.7.1 describes the activities from (a) to (i) as

permitted “*other activities*” in the residential plots. He stated, a reading of Para 15.7.1 shows that the said activity is permitted even if the street is notified or not. However, it nowhere exempts the said street from being identified as a mixed use street in colony A. A specific request from RWA is compulsory before identifying the said road as a mixed use street (15.3.3) read with Para 15.10. According to him, in the present case, the road in question is not even identified. It is his endeavor to submit that MPD 2021 itself creates a distinction between identification and notification of the road. He also relied upon Para 15.3.2, which permitted mixed use in various categories of colonies, which further clarify and provide that under the head “*other activities*” only guest house, nursing home and preprimary school as defined in Para 15.1.1 would be permitted in colony of Category A and B. In other words, all type of “*other activities*” mentioned in Para 15.1.1 are not permissible. He also relied upon Para 15.3.1(iv), which according to him further clarify and provide that the said activity of guest house, nursing home and preprimary school in Category A only be permitted if the road/street is identified and notified. In other words, it is his sub mission that Para 15.7.1 is a general clause, which provides and defines various other

activities, which are permitted in various types of categories whereas Para 15.3.2 is an exception to it categorizing only a guest house, nursing home and preprimary school being run in Category A colony.

30. I am unable to accept this submission of Mr. Gupta for the simple reason that Para 15.3.2 relates to the extent of mixed use permissible in Category A and B colonies. No doubt it restricts the same to guest houses, nursing homes and preprimary schools as defined in Para 15.7.1, but the same is subject to the conditions contained in Para 15.7 in plots abutting roads of minimum 18m ROW, which includes conditions in Para 15.7.1 (subject to general conditions given in Para 15.4 and additional conditions given in Para 15.7.3), which permits pre-primary school in residential plots abutting roads of minimum ROW whether or not the road is notified as mixed use street.

31. In fact Para 15.7.1 does not state that the “*other activity*” i.e pre-primary school in the present case is permissible subject to Para 15.3.2. So it follows Para 15.3.2 would give way to Para 15.7.1. If the interpretation as advanced by Mr. Gupta has to be accepted then the words “*whether or not the road is notified as mixed use street*” in Para 15.7.1 shall loose its significance. I

agree with the submission of Mr. Aroraa that a reading of Para 15.3.2 does reveal that the same is subject to the provisions of Para 15.7 and not vice versa. So, the other activity i.e the preprimary school shall be permissible whether or not road is notified as mixed use street. Further the preprimary school having found its place in Para 15.3.2 would still be a permissible activity. The reliance placed by Mr. Ravi Gupta on the judgment of the Supreme Court in the case of *Sultana Begum (supra)*, in support of his contention that when two clauses appears to be inconsistent then harmonious construction is to be done so as to give a purposeful meaning to the clause, has no applicability in the facts of this case and in view of my conclusion above. This submission of Mr. Ravi Gupta, which was the basis to frame question No.1 is liable to be rejected. But the plea of Mr. Gupta, that consultation with the RWA's is compulsory before identifying the said road on a mixed use street is appealing. Para 15.7.1 relates to notification which is different from identification. Para 15.10 refers to consultations with RWA's provided it is a body registered before July 21, 2006 or registered for at least three years under any statute. Para 15.10 (iv) makes it clear that for identification of mixed use streets consultation with

RWA shall be made. It is not known, whether any RWA exist in the colony, in the case in hand or is a registered one for more than three years. If “yes” then consultation is required with the RWA for identification of a street/road, before it is put to mixed use. This I say so, the MPD 2021 being statutory in character, is required to be followed. This Court in the case reported as ***Manu/DE/2559/2012 K.L. Rajgarhia v. Canara Bank*** in para 27 held so.

32. Insofar as the second question is concerned, to answer this question, it is necessary to reproduce some of the provisions of the MPD 2021. These include Paras 15.2.2, 15.3.3, 15.4, 15.7.1 15.9(iii), 15.11.1.

15.2.2 TYPES OF MIXED USE

Subject to the provisions of this chapter, the following three broad types of mixed use shall be permissible, in residential premises:

i) Commercial activity in the form of retail shops as per conditions given in para 15.6 in plots abutting notified mixed use streets.

ii) "Other activity" broadly in the nature of 'Public and Semi-Public' facilities listed in para 15.7.1 and as per conditions

specified in para 15.7, in plots abutting roads of minimum ROW prescribed in para 15.3.2.

iii) Professional activity as per conditions specified in para 15.8.

The above mentioned types of mixed use shall be subject to the general terms and conditions specified in the succeeding paragraphs.

15.3.3 NOTIFICATION OF MIXED USE STREETS IN URBAN AREAS

[i) Where more than 50% of the plots in a stretch / street, are having shops / offices and other activities permitted in Local Shopping Centres on ground floor, such streets / stretches shall be eligible for notification as mixed use street.]

ii) The minimum ROW for identification of a street or stretch of road as mixed use street would be follows:*

In A & B Colonies: 18m ROW in regular plotted development on the specific request of RWAs.

In C & D colonies: 18 m ROW in regular residential plotted development, 9 m ROW in rehabilitation colonies and any road in regularized unauthorized colonies, resettlement colonies, Walled City, Special

*area and urban villages; in consultation with
RWA concerned.*

*In E,F & G Colonies: 13.5m ROW in regular plotted
development, 9m ROW in rehabilitation
colonies and any road in Walled City,
regularized unauthorized colonies,
resettlement colonies, Special Areas, and
urban villages.*

** Provided that consistency shall be maintained by the local body
in determining the ROW whether the street is bordered by service
road, green verge, park or not.*

*iii) Streets of less than 6 m ROW notified as mixed use streets or
as commercial streets, in regularised-unauthorised colonies,
resettlement colonies, Special Area, urban villages, will be
declared as pedestrian shopping streets (PSS) and will not be
open to motorized transport.*

*Note: (a) Request of the RWA concerned or consultation with
RWAs concerned, shall not be necessary for notifying the Master
Plan roads abutting the colonies as mixed use streets, since such
roads are not internal to the colonies.*

(b) Specific request of or consultation with RWA concerned shall

be governed by Para 15.10.

iv) For the notification of mixed use streets, in areas that have not been surveyed or have been surveyed but streets have not been notified pursuant to notification dated 7.9.2006, local bodies shall be required to carry out within a reasonable time of the notification coming into force, and with due expedition, and not later than 90 days, a survey of all streets of the above-mentioned width, if not already done, with a view to identifying stretches of such streets as mixed use streets.

[Note-1 The local body shall carry out a survey in those streets / roads in urban villages and regularized-unauthorized colonies not surveyed pursuant to the provisions of MPD-2021 notified on 7.2.2007, within a period of three months of this Notification.]

v) The field survey shall assess the extent of existing non-residential use on the streets, the stretch of the street to be notified, the additional requirement of civic amenities and the provision for traffic circulation and parking.

vi) The notification shall be issued by the Urban Development Department, GNCTD immediately after the field survey is completed.

15.4 GENERAL TERMS AND CONDITIONS GOVERNING MIXED USE

In terms of the conditions prescribed for different categories of colonies, in para 15.3.2, and provided that the plot abuts a notified mixed use street (in the case of retail shops) or a road of prescribed minimum ROW (in the case of other mixed use activities), mixed use shall be permitted, subject to the following general terms and conditions:

In residential plotted development

(i) Where there is only one dwelling unit in a residential plot, only one type of mixed use (i.e. retail shop as per para 15.6 or professional activity or one of the other activities listed in para 15.7) shall be permissible in that unit.

(ii) Where there are more than one dwelling units in a residential plot, each of the dwelling units will be permitted to have only type of mixed use activity (either retail shop as per para 15.6. or professional activity or any one of the other activities listed in para 15.7).

In group housing

Only professional activity and small shops in terms of para 15.6.3 shall be permissible. Retail shops specifically provided for

*in the lay out plan of group housing would be permissible.
[However, the entire ground floor of DDA flats on mixed use / commercial use area / stretches / roads is allowed for mixed use / commercial use. No amalgamation of two or more DDA flats shall be allowed.]*

Other terms and conditions

(i) No encroachment shall be permitted on the streets or public land.

(ii) Development control norms as applicable for the particular residential use will continue to be applicable, even if the plot / dwelling unit is put to mixed use.

(iii) If the notified street is a Master Plan road, and if a service road is available or provided for by local bodies, then, the mixed use premises should be approached from such service road and not directly from the main carriageway.

(iv) In plotted development, front setback should not have boundary wall, so that it can be used for additional parking.

(v) Parking @ 2.0 ECS per 100 sqm built up area shall be provided within the premises. Where this is not available, cost of development of parking, shall be payable by the plot allottee / owner to the local body concerned. This condition shall apply

even if residential premises are used only for professional activity.

(vi) Common parking areas would be earmarked on notified mixed use streets taking into account the additional load on traffic and parking consequent upon notification of the street under Mixed Use Policy. If no parking space is available, land/plot on the said street may be made available by Traders association, wherever possible, or acquired for construction of parking facilities, preferably, multi level parking. Development of such parking facilities shall be done by either the traders Association or by local bodies and may include public-private partnership as model for implementation.

15.7.1 Subject to the general conditions given in para 15.4 and additional conditions given in para 15.7.3, the following public and semi-public activities shall also be permitted in the residential plots abutting roads of minimum ROW prescribed in 15.7.2, whether or not the road is notified as mixed use street:

(a) Pre-primary school (including nursery / Montessori school, creche.)

(b) i. Nursing home

ii. Clinic, Dispensary, Pathology lab and Diagnostic center.

[iii. Wellness Centers including Day Spas / Weight Loss Centres / Ayurvedic Centres offering Ayurvedic treatment / Salons offering fitness & aesthetic medical services and operating as on 7.2.2007.]

(c) Guest house (including lodging houses) irrespective of number of rooms.

(d) Bank

(e) Fitness Centre (including gymnasium, yoga / meditation centre) 2 [as existed on 7.2.2007]

(f) Coaching centres / tuition centres other than those imparting structured courses leading directly to the award of a degree or diploma or conducting classes such as a regular school.

[(g) Non-profit making Non-Governmental Organizations (NGOs) existing as on 7.2.2007 and registered as such under Section 12A read with Section 12AA(1)(b) of the Income Tax Act, 1961.]

[(h) Vocational Training Centre (ITI/Polytechnic/Vocational Training Institute/Management Institute/Teacher Training Institute for the AICTE/NCTE approved courses (diploma level) as per AICTE/NCTE Norms.]

[(i) Hostel/paying-guest accommodation.]

15.9(iii) No modification to the building for using residential premises for non-residential activities, under the mixed use policy, shall be permitted unless the allottee / owner has obtained sanction of revised building plans and has paid necessary fees or charges.

15.11.1. Permission or registration for mixed use can be cancelled or suspended by the concerned local body in case of violation of any of the conditions under which such mixed use is permissible / permitted.

33. I may state here that this issue is no more res-integra, in view of the judgment of the Division Bench of this Court in the case of **A.R. Banerjee (supra)**, wherein the Division Bench even though dealing with an issue whether a commercial Bank can run on the basis of the provisions of the MPD 2021, has clearly held in para 22 as under:-

“22. That apart, the mixed land use policy does not entitle a person to put a residential building to a non-residential use as a matter of right, with reference to the permissible non- residential activities. An application has to be filed in a proper manner and sanction obtained from the authority concerned. Further, merely because an activity is permissible would not mean that the Competent Authority is bound to accord sanction. Issues pertaining to civic amenities enjoyed by the inhabitants of the colony have to be kept in mind. Say for example, the

application pertains to commence banking business from a residential unit. The commercial banking activity permissible is a neighbourhood bank. In the colony in question four banks are already operating. The application in question is the fifth in number. It happens that one of the four banks is in the immediate neighbourhood building. An issue of the customers parking their cars on the road on which the two buildings abut requires a consideration and if the Competent Authority feels that two banks operating from two adjoining buildings would seriously impede the flow of traffic, to and fro, through the public street in question, to and from the colony, permission can be denied.”

34. In the case in hand, there is no dispute that the property is a residential as per plans sanctioned for the same. The usage of property is getting changed from residential to non residential. Para 15.9(iii) of the MPD 2021 specifically state that no non residential activity can be permitted under mixed use policy unless prior sanction of revised building plans has been obtained and necessary fee or charges have been paid. The property in question being residential, has a front boundary wall forming part of the building. Para 15.4 (iv) stipulates in plotted development, front setback should not have boundary wall, as the same can be used for additional parking, and this would require revision of plans, which requires approval. Further, Paras 15.2.2, 15.7.1 and 15.11.1 envisages permission from MCD before conversion

because of the presence of the words “*is permissible / shall be permitted / permission or registration*”.

35. That apart, Para 15.4 (i) contemplates only one type of mixed use where there is one dwelling unit. Similarly, in case of more than one dwelling unit in a residential area, each of the dwelling units will be permitted only one type of mixed use activity. These provisions suggest that the Authority has to ensure the mixed use is permitted only to the extent stipulated in the said provisions and for which purpose there has to be a consideration / a decision by the local authority, which require inspection of the building before activity is started. Not only the aforesaid provisions, even the other terms and conditions under Para 15.4 does indicate that the local authority has to ensure the compliance of the same. In fact, it is the case of the petitioners that the property in question would not meet the parking criteria as laid down under the heading “*other terms and conditions*”. Even though the same was disputed by Mr. Vali, in any case the authority concerned must ensure that the said stipulation is adhered to in letter and spirit, which may require inspection/approval of revised plans. The reliance placed by Mr. Gupta on the provisions of Para 15.1 to contend that the

development control norms need to be fulfilled and the MPD 2021 provides for balancing socio economic need and environmental impact, efforts must be made to mitigate the adverse impact relating to congestion, increased traffic as well as increased pressure on civil amenities, is also appealing, more so, in view of the reasoning given by the Division Bench in the case of **A.R. Banerjee (supra)**, justifying sanction by the local authority before conversion, by giving example of traffic congestion.

36. Insofar as the submission of Mr. Vali that the general terms and conditions under Para 15.4 are not applicable in respect of Para 15.7.1 (a) preprimary school because for a preprimary school a definition has been categorically provided for in table 13.21, which prescribes at serial No.1 that “*preprimary / nursery / crèche / Montessori / daycare centre/ a premises having nursery facilities for infants during day time*”. The activities permitted in this centre are crèche and daycare centre and therefore preprimary school as mentioned in Para 15.7.1 is a misnomer particularly because the definition clause categorically states it to be preprimary / nursery / crèche / Montessori / daycare centre. According to him, a preprimary / nursery has not been classified

as a school under table 13.21 and to run preprimary / nursery, the respondent No.3 is required to comply with “*development controls for education facilities*” under table 13.4 of the MPD 2021 and not the general terms and conditions as delineated under Para 15.4 and in case of conflict the condition prescribed under the special category under table 13.4 as against general terms and conditions under Para 15.4 shall prevail. According to him, in the “*NOTES*” at the bottom of the table 13.4, it has been reiterated that preprimary / nursery are permissible in residential use premises as per the mixed use policy. He also stated, as per the table 13.4, there is no requirement of front setback not having boundary wall for additional parking, which is the requirement only under other terms and conditions of Para 15.4. Suffice to state, insofar as these submissions of Mr. Vali are concerned, the same are as an afterthought, as no such case has been set up by the respondent No.3 in its counter affidavit. That apart, a perusal of table 13.4 and the notes thereunder clearly stipulate “*preprimary schools/ nursery schools/ Montessori schools/ crèche / play schools*” are permissible in residential use premises as per mixed use policy. The non mentioning of the word “*school*” of which advantage is sought to be taken by the

respondent No.3 is untenable. The intent of the framer, in this table was to deal with institutions dealing with toddlers, which include pre primary schools/ Montessori schools/ play schools apart from Crèche. Wherever reference has been made to preprimary / nursery/Montessori the same is a reference to “schools”. In fact, it is the case of respondent No.3 in the counter affidavit that it intends to run a pre primary school. The “mixed use policy” are the Regulations as has been laid down under Para 15 with heading “Mixed Use Regulations”. So, it would be the Regulations under Para 15, which regulate the mixed use of a residential premises as a “preprimary school”. So, the submission of Mr. Vali is liable to be rejected.

37. I may state that registration, declaration, payment of conversion charges must be followed by sanction order before the activity can be started.

38. One more submission made by Mr. Ravi Gupta that the respondent No.3 is required to take NOC from the occupants of the other dwelling units in the building is concerned, the same is also appealing as an occupant of other dwelling unit(s), in a residential building, has a stake insofar as the common areas/amenities/security etc are concerned. To that extent,

his/their rights would be effected. To obviate an objection at a later stage, NOC need to be taken from the occupants of the other dwelling units in the building, before starting any activity.

39. Insofar the reliance placed by Mr. Vali on the judgment of the Coordinate Bench of this Court in the case of *Arvind Singhal and Ors (supra)* is concerned, the same is not applicable for more than one reasons. Firstly, the judgment does not take into consideration the judgment of the Division Bench in *A.R. Banerjee (supra)*. To that extent, it is per incuriam. Secondly, the case has been decided in the facts of that case, inasmuch as in that case, it was concluded by the Court that no modification of the ground floor of the building where school is being run, is required, whereas in the case in hand, it is concluded that the front boundary wall of the property need to be removed. To that extent, revised plans need to be approved by the local authority.

40. Insofar as the submission of Mr. Gupta that Section 347 of the DMC Act, 1957 requires no person shall without the written permission of the Commissioner or otherwise than in conformity with the conditions change or allow the change of the use of any land or building is also appealing. The said issue is no more res-integra in view of the judgment of the Coordinate

Bench of this Court in the case of *Asha Rani v. NDMC & Ors* 221 (2015) DLT 730, wherein this Court dealing with similar facts, has in Paras 15 and 17 held as under:-

“15. Insofar as the contention that commercial use of the Flat was permissible by virtue of the Office Order no. 7/83 is concerned, I do not find any merit in the same. Undeniably, by virtue of the said office order, the commercial use of the Flat could not be denied. This view has also been accepted by a Coordinate bench of this Court in Satinder Sabharwal v. N.D.M.C (supra). In that case, the commercial use of the first floor of the premises in Khan Market had been denied. This Court had referred to various communications which indicated that NDMC had been taking conflicting stands and allowed the writ petitions by noticing that NDMC had in certain cases acted on the said Office Order and condoned the non residential use of Flats in certain cases and had allowed the conversion of the first floor of the properties from residential use to commercial use. However, the same does not imply that the conversion has to be unconditional because the misuse of the first floor is condonable. It would be open for NDMC to condone the same by imposing certain conditions. This is also clearly borne out by the opening sentence of section 252 of the new delhi municipal council act, 1994 which expressly proscribes any person from changing or allowing change of use of any land or building except by a permission of the chairperson of NDMC and in conformity with the conditions, if any, imposed with such permission. (emphasis supplied)

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XXXXX

XXXXX

17. I am unable to accept the petitioners' contention that since the property in question is classified as non hierarchical commercial centre, the entire

building can be used as commercial purpose as per development control norms without seeking any conversion. The development control norms only indicate the use that the property can be brought to; the same does not mean that the necessary statutory permission under the New Delhi Municipal Council Act, 1994 or that of a lessor, is not required. Admittedly, the Flats in question were permitted to be used only for residential purposes. Undeniably, in terms of the MPD 2021, the Flats in question can be used for commercial purposes. However, the same does not necessarily mean that no permission for conversion is required. (emphasis supplied) At this stage, it is also relevant to bear in mind that as per the standard plan for the buildings, the first floor had been sanctioned only for residential purpose, thus, irrespective of the title of the property, the plan for the first floor of the properties in question had been sanctioned only for residential purposes.”

41. Accordingly, the present petition is allowed. It is held that the respondent No.3 cannot run a preprimary school without the road on which the property is situated is identified for mixed use/NOC from the occupants of the other dwelling units in the building and sanction of the SDMC for running a preprimary school from the ground floor of the property bearing No. E-68, Vasant Marg, Vasant Vihar, New Delhi are taken/obtained. No costs.

CM No. 6253/2018

Dismissed as infructuous.

V. KAMESWAR RAO, J

APRIL 13, 2018/ak