

IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment delivered on: August 23, 2018

+ W.P.(C) 7330/2016, CM Nos. 30141/2016, 43250/2017 & 13195/2018
CONFEDERATION OF SADAR BAZAR TRADER S
ASSOCIATION (REGD.) Petitioner
Through: Mr. Sanjeev Ralli, Mr. Prabhav Ralli
and Ms. Nikita Khanna, Advs.
versus
UNION OF INDIA & ORS Respondents
Through: Mr. Om Prakash, Adv. with Mr. Shiv
Raj Singh, CLA for Northern Railway.
Mr. Ajjay Aroraa, Adv. for NDMC.
Mr. Anuj Aggarwal, ASC, GNCTD.

CORAM:
HON'BLE MR JUSTICE V. KAMESWAR RAO

J U D G M E N T

V. KAMESWAR RAO, J

1. By this order, I shall decide the writ petition and CM Nos. 30141/2016, 43250/2017 & 13195/2018 filed by the petitioner for interim directions.
2. The present petition has been filed by the petitioner with the following prayers:

“In view of the above, it is respectfully prayed that the Hon’ble Court may be pleased

- I) to issue an appropriate writ or order thereby declaring the decision / arrangement of handing over of Sadar Bazar-Qutab Road parking area of 4714 Sq. Mtrs. by Respondent No.2 to Respondent No.1 in lieu of some other land of Respondent No.1*

used by Respondent No.2 for their project, as arbitrary, illegal, anti-environmental and detrimental to the public interest, convenience and safety and consequently quash the said decision.

In the alternative

- II) to issue a writ of prohibition or any other order / direction thereby restraining Respondent No.1 from closing or discontinuing the parking facility at Sadar Bazar – Qutab Road parking site from any part of the land taken over from Respondent No.2 out of said Sadar Bazar-Qutab Road parking site pursuant to any decision or arrangement reached between Respondents No.1 and 2;*
- III) to award the cost of the present petition.*
- IV) to pass any other appropriate order / s or direction /s as to this Hon'ble Court may deem fit and proper in view of the facts of the present matter.”*

3. The grievance of the petitioner in the writ petition primarily was against the withdrawal/closure of 20 years old parking facility at Qutab Road site due to mutual decision reached between respondents 1 and 2 pursuant to which respondent No.2 was to hand over to respondent No.1, the parking site / land where about 800 to 1000 vehicles avail the parking facility every day. Suffice to state that the land measuring 4714 sq. mtrs at Sadar Bazar-Qutab Road has been handed over by the North DMC respondent No.2 to the Railways respondent No.1, which is out of total land measuring 5900 sq. mtrs which according to the petitioner was being used for public parking since 1996-97. This aspect has been noted by this Court in its order dated October 04, 2016. Accordingly, the learned counsel for the petitioner had confined

himself to the alternative prayer (II) made in the petition as reflected above. In other words, the petition shall only be considered with regard to the prayer in the nature of writ of prohibition or any other order, direction restraining the respondent No.1 from closing or discontinuing the parking facility at Sadar Bazar-Qutab Road parking site from any part of the land taken over from respondent No.2.

4. The averments in the writ petition and also in CM Nos. 30141/2016, 43250/2017 & 13195/2018 are that Sadar Bazar-Qutab Road is one of the biggest Asian markets having thousands of shopkeepers running their wholesale and retail business. In 1996 a big bomb blast incident occurred at Sadar Bazar-Qutab Road taking many lives and causing heavy damage to the properties of traders. In 1996 on the demand of the shopkeepers of Sadar Bazar-Qutab Road the parking site at Qutab Road was developed by respondent No.2 for providing parking facility for about 1000 vehicles. The impugned action of the respondents to close the parking facility is a patent example of non application of mind and total lack of concern for thousands of traders, shopkeepers and visitors who have no other space to park their vehicles in the area.

5. It is also the case of the petitioner that closure / withdrawal of the said 20 year old parking facility due to handing over of the parking site to respondent no.1 would be contrary to the mandate of MPD-2021 as per which

the minimum level of infrastructure and parking facility has to be provided in Sadar Bazar, otherwise the same is going to result in the following serious consequences:

- (i) Very serious traffic congestion problem in the area of Sadar Bazar-Qutab Road which would bring traffic movement on the road leading to the New Delhi Railway Station to a virtual standstill, leading to a chaotic situation beyond any possible solution.
- (ii) The above traffic congestion will lead to increase in air pollution level in the city which is already suffering heavily due to severe air pollution.
- (iii) There will be no space for parking of about 1000 vehicles which come to Sadar Bazar every day and have been using the above place for parking of last 20 years at the subject parking site.
- (iv) The traffic management crises will give rise to security hazard too. In 1996 a bomb blast had occurred at his very site causing deaths and loss of business properties. And it was only after that incident that this site was levelled for parking facility.

6. During the pendency of the writ petition, the petitioner had initially filed an application being CM No. 30141/2016 inter-alia seeking direction

against the respondents 1 and 2 not to discontinue the existing parking facility from any part of the parking site of Sadar Bazar-Qutab Road. A further CM No. 43250/2017 was filed inter-alia seeking a restraint order against the Railways from using the parking site area of 4714 sq. mtrs for any purpose except the parking facility as laid down and permitted in MPD-2021, Zonal Development plan and Redevelopment Scheme. A further prayer was made to direct the Railways to make available forthwith the vacant parking site in question of 4714 sq. mtrs for general public parking. The CM No. 13195/2018 is for a relief to restrain Railways from issuing/floating tender notice / taking any other steps for installing Water Recycling Plant at the parking site i.e. 4714 sq. mtrs at Sadar Bazar Qutab Road which was handed over to Railways by North DMC in September, 2016.

7. A counter affidavit has been filed by the North DMC wherein, it is stated that the North DMC has handed over the land in question to the Railways for facilitating the exchange of land for flyover project. It is stated that there is a surface level parking facility at Idgah Road, where about 900 vehicles are being parked presently. The North DMC has explored a proposal of constructing multilevel parking at this plot for catering more than 2000 ECS. However, the proposal is stalled presently as DDA has claimed ownership on the piece of land out of this plot. A reference is also made to a Writ Petition (Civil) No. 1285/2013 filed before this Court regarding the

project namely Rani Jhansi Grade Separator, RUB at Kishan Ganj. It is pursuant to monitoring by this Court that the Railways agreed for the exchange of land required for the project to be handed over to North DMC, in lieu of 4714 sq. mtrs of land used for surface parking by North DMC. In order to sort out the problem arising from the handing over of the said piece of land to Railways, the Railway had agreed to the proposal of clubbing together of land measuring 1535 sq. mtrs at Qutab Road with the land of the North DMC 1234 sq. mtrs to solve the problem of parking. The proposal in this regard could not work out due to the huge financial demand raised by the Railways, which was not found feasible by the North DMC.

8. It is stated as on date, the land having been already handed over to the Railways and the land in lieu thereof having already been utilized by the North DMC, it is to be considered by this Court that the decision taken was in the larger interest of the city of Delhi viz-a-vis the interest of the handful traders and the decision does not suffer from any malice or arbitrariness.

9. Rejoinder to the counter affidavit of respondent No.1 has been filed.

10. A reply affidavit has been filed by the Railways to CM No. 43250/2017, wherein the Railways has stated that the land measuring 4714 sq. mtrs where the parking is being asked for by the petitioners, was handed over to the Railways on a conscious decision in exchange of the Railway land required by North MCD for construction of Rani Jhansi grade separator. It is

stated that the Railway has accepted this land, as this land is suitable for operational use of the Railways being near to the washing line, the activity which consumes maximum amount of water. Accordingly water recycling plant was planned as per the operational necessity of the Railways. A reference is also made to an order dated July 28, 2017 passed by this Court. It is also stated in the reply that the policy guidelines / implementation of rules in respective Zones is decided by the General Manager in accordance with the Railway Act. The business dealings and other activities are controlled by Divisional Railway Managers in their respective Divisions. It is also stated that the Railway is not required to take previous permission from any other authority including for setting up of water recycling plant. Reliance is placed on the judgment of the Calcutta High Court reported as *(2001) 3 CALLT 36 HC*.

11. It is also stated that it is for the North DMC to provide the parking and other related civic amenities to the petitioners and not the Railways in view of the facts submitted.

12. I may point out here that a rejoinder to the reply affidavit of respondent No.1 to CM No. 43250/2017 has been filed by the petitioner. Broadly the petitioner has stated that; (i) the respondent No.1 does not dispute the contents of the application regarding mandate of MPD-2021 and Zonal development plan as per which the land area in question is meant for parking purpose and

has been used for the same purpose since 1996; (ii) the plea of respondent No.1 based on Section 11 of the Railway Act is untenable and is contrary to the mandate given under the Delhi Development Act (DD Act) MPD-2021, Zonal plan and Re-development Scheme; (iii) in August 2017 respondent No.1 issued tender notice inviting open tenders for allotment of parking contract at different locations as per their new parking policy of 2015 for a period of three years. One of the locations which figured in the tender notice included the parking facility at the parking site / area in question i.e. Delhi Sadarbazar. In the rejoinder some other pleas have also been raised. All the pleas on behalf of the petitioner shall be noted in the later part of the Judgment where this Court shall note the submissions as advanced by Mr. Sanjeev Ralli, the counsel for the petitioner.

13. An additional affidavit has been filed by the North DMC in the petition wherein it is stated that as per the comments / report of its Town Planning Department dated March 15, 2018 indicate that as per the Zonal development plan (Zone-A other than walled city) and the special area plan approved by DDA under MPD-2021, the site under reference falls in transportation use zone (rail circulation). However, the site under reference has been proposed for parking in the redevelopment plan for special area prepared by North DMC through the consultant. The said redevelopment plan is however pending notification by Urban Development Department, Govt. of NCT of

Delhi.

14. A reply affidavit has been filed by the petitioner to the additional affidavit filed by the North MCD. In this, the petitioner has denied that as per the zonal development plan, copy of which has been filed by North DMC, the land use of the land area in question is Rail circulation. They have contested the plan filed by the North MCD on the ground that the same does not appear to be the original land use plan for special area. Further, it is also stated that it is not established that the land use of the land in question is Rail circulation. In the absence of demarcation / identification of the site in question on the land use plan, it cannot be contended or concluded that the land use of the site in question is Rail circulation, whereas the said land area has been undisputedly and continuously used for public parking since 1996-1997 for more than 1000 vehicles. Without prejudice, it is also stated that the land use plan contains the term '*transportation*' with different sub-heads including Rail circulation and parking. Nothing emerges from the site plan to demonstrate or establish that land use of the land area in question is Rail circulation. It is stated that North DMC has not placed on record special area plan, which is claimed to have been approved by DDA under MPD-2021.

15. It is stated that in the absence of clear position emerging from the documents of North DMC, it cannot be claimed that the land use of the

parking site in question is Rail circulation. Reference is made to different provisions of MPD-2021 / Zonal development plan to contend that there is a clear mandate to retain as per existing location of public and semi public uses including parking, which existed on February 07, 2007 being the date of enforcement of MPD-2021. It is not in dispute that since 1996-1997 the land area in question was continuously used for public parking purpose by Railways and North DMC by awarding parking contracts to different contractors and such public parking facility continued for more than 20 years before it was cancelled / discontinued / stalled by the Railways after North DMC handed over the said land area to Railways in September, 2016. It is stated that in the light of the abovesaid factual position, land use of the said area being public parking, it is very much existed at the time of enforcement of MPD-2021 i.e February 07, 2007, the said land use, i.e. parking facility has to be retained in view of the mandate given in MPD-2021 and Zonal development plan of the concerned area. Thus, the Railway cannot put the said land area to any other use, which would be in clear violation of the provisions of MPD-2021 and Zonal development plan and redevelopment scheme prepared by the North DMC. It is stated, keeping in view the provisions of MPD-2021 and Zonal development plan and the redevelopment scheme prepared by the North DMC, the land area in question has been earmarked for developing public parking. It also stated that the said

redevelopment scheme has been prepared in conformity with and keeping in view the provisions of MPD-2021 and Zonal development plan and has been approved by the Standing Committee of North DMC in the month of March/April, 2017 and thereafter the said approved redevelopment scheme of the special area was sent to the Urban Development Department of the Govt. of NCT of Delhi in September/October, 2017 for notifying the same for its implementation.

16. Alternatively, it is stated that the Railways while doing any kind of development work on any land has to follow and comply with the MPD-2021. This becomes absolutely clear from Regulation 15 of the Rail Land Development Authority (Development of Land and Other Works) Regulations, 2012. The ownership of land is not relevant, so far as the land use as provided under MPD-2021 is concerned.

17. A further status report has been filed by North DMC wherein it is stated that on a reading of the Zonal development plan of the Corporation, the designated land use of the land exchanged with the Railways, is Rail circulation. It is also stated, as per redevelopment plan of this area, the said site has been proposed as parking. The said redevelopment plan though approved by the Standing Committee of North DMC, has yet to be notified and after its notification, the same would be sent to DDA for change of land

use, if required, which is a normal procedure in all such cases. It is also stated that the said redevelopment plan has been sent to Govt. of NCT of Delhi for notification as the North DMC does not have any power in law to notify and all other notifications too are being done by Govt. of NCT of Delhi and till such time, the notification of change of land use takes place, designated use of the land in question continues to be Rail circulation.

18. The Govt. of NCT of Delhi through its Additional Standing Counsel has filed an affidavit of the Deputy Directorate (Local Bodies) with the Directorate of Local Bodies, as an issue has arisen whether any notification has been issued of the redevelopment plan for the special area. In this regard, it is stated that the issuance of notification of the redevelopment plan for the special area does not pertain to the said Directorate.

19. Mr. Sanjeev Ralli, learned counsel for the petitioner in his oral submissions has submitted that the land use prescribed in MPD-2021 and zonal development plan and redevelopment scheme for special area would govern the use of land by the occupier irrespective of as to who is the owner of such land. Therefore, the fact that ownership of land has been transferred by North DMC to Railways in September 2016 would not make any change in so far as the permissible land use of the area in question is concerned. According to him, the relevant Chapters / Clauses of MPD 2021

unambiguously contain clear statutory mandate to the effect that in special areas, public and semi public uses and services like hospitals, police stations, dispensaries and parking etc shall be retained in their present locations, as they existed at the time of enforcement of MPD-2021 i.e February 07, 2007 and more additional sites could be indicated in the redevelopment scheme and Zonal development plan. According to him, the land site in question falls in special area i.e Zone A (other than walled city). He stated that redevelopment scheme has been approved in March, 2017 by the Standing Committee of North DMC. As per clause 16.2 of MPD 2021 task to frame and notify the redevelopment scheme has been assigned to Municipal Corporation without any further requirement of sending such approved redevelopment scheme to any other authority for notifying the same. He also stated that till date, nothing has been heard on the redevelopment scheme submitted to the Urban Development Department of Govt. of NCT of Delhi.

20. According to Mr. Ralli, the land area in question has been demarcated for parking. This has been confirmed by the North DMC in their additional affidavit, which is in consonance with the provisions of MPD-2021 and Zonal development plan. In view of the clear statutory mandate given in different clauses of MPD-2021 and Zonal development plan and in view of the fact that the land area in question since 1996-1997 has been continuously

used for parking till it was illegally closed by Railways in September, 2016 and the fact that the land use of the land in question at the time of enforcement of MPD-2021 i.e February 07, 2007 as well as on the date of authentication and enforcement of Zonal development plan in June, 2010 by the Ministry of Urban Development, Govt. of India was parking which user falls under Clause 16.2 of MPD-2021 and Clauses 5.1.2 and 5.3 of Special Area Regulations contained in Zonal development plan, therefore such user has to be retained at this very location without any exception. He further submitted that even otherwise, Sadar Bazar Qutab Road site has been shown as recommended parking area by the Delhi Traffic Police on their website. He contested the depiction of land use by the North DMC as Rail circulation. He stated that no such indication is given or emerges from copy of the plan filed by the North DMC (page 368 of the paper book). According to him, even in the authenticated copy of land use plan, which has been filed by the petitioner, no such marking exist nor any such land use like Rail circulation is mentioned at that point where marking has been done by Official of North DMC in the copy of land use plan filed by it. The official note of Town Planning Cell of North DMC (page 367) is not based on any material, which prescribes the use of land area in question as Rail circulation. He also stated that the land use plan under the heading Transportation, there are eleven heads including parking, rail circulation, railway station, rail terminal,

flyover, etc. There is no indication given in the said land use plan showing the land use for the land in question as Rail circulation or railway station whereas in redevelopment scheme, the land in question has been earmarked for parking, which is in conformity with clause 16.2 of Special Area Regulations contained in MPD-2021, which says that the locations where parking and other public facilities were going on at the time of MPD-2021 coming into operation, the same use shall be retained on such locations.

21. He stated that the approved redevelopment scheme of North DMC does not involve any issue relating to change of land use. There is a separate procedure laid down for change of land use in Section 11A of the Delhi Development Act, which is done by the Ministry of Urban Development by following the procedure, which would involve an amendment of MPD-2021 and zonal development plan. He also stated that there is no provision in law or rule cited or referred by North DMC to substantiate its stand that redevelopment scheme approved by its own Standing Committee in March, 2017 is required to be notified by the Govt. of NCT of Delhi.

22. According to him, the stand of North DMC is contrary to clear mandate given in MPD-2021. He also submitted that the Govt. of NCT of Delhi has no role in the matter relating to the preparation, approval and notifying the redevelopment scheme for special area mandated under MPD-

2021. He stated that there is no reason or occasion for sending the approved redevelopment scheme to DDA for change of land use. Redevelopment scheme has been prepared keeping in view the provisions of land use provided under Chapter 16 and other provisions of MPD-2021. He also stated the redevelopment scheme has been prepared for all the three special areas. The stand of the North DMC is based on totally incorrect reading of land use plan filed by them with the additional affidavit.

23. He submitted that the affidavit filed by the Govt. of NCT of Delhi on May 18, 2018 falsifies the stand of North DMC that they had sent the approved redevelopment scheme for three special areas to Govt. of NCT of Delhi in April, 2017 followed by a reminder dated September 12, 2017. According to him, the reply received from the Deputy Director (Local Bodies) dated May 11, 2018 makes it clear that Govt. of NCT of Delhi has nothing to do with the issue of notifying the approved redevelopment scheme as the said scheme does not pertain to Directorate of Local Bodies. According to Mr. Ralli, even the stand of North DMC that they do not have the power to notify the redevelopment scheme is apparently contrary to Clause 16.2 of MPD-2021, which clearly gives them power / authority to prepare and notify the redevelopment scheme. Further, no Rule or Regulation has been placed by North DMC on record to show that despite the

clear mandate given in Clause 16.2 of MPD-2021, North DMC cannot notify the redevelopment scheme. It is his submission, on the plea taken by the Railways that in terms of Section 11 of the Railway Act, 1989 railway land can be used for any purpose is misreading of Section 11 of the Railway Act as it does not give power and authority to Railway administration to use the land area in question for any purpose by ignoring the provisions of MPD-2021 / Zonal development plan / redevelopment scheme. He referred to Regulation 15 of the Rail Development Authority (Development of Land and other Works) Regulations, 2012, which makes it obligatory for the Railways to comply with the local master plan and building byelaws of the areas while doing any development work on the railway land. The legal / permissible land use would not change due to change of ownership. In view of this, the right as claimed by the Railways to use the land in question for making water recycling plant cannot be asserted as the same is contrary to Regulation 15 of the aforesaid Regulations. Therefore, Section 11 of the Railway Act cannot be interpreted in a manner, contrary to and defeat what is laid down in Regulation 15 of the said Regulations. According to him, the language of Regulation 15 is mandatory and cannot be bypassed by Railways. Thus Railways have no right to make use of the land in question for making water recycling plant or for any other purpose except using the same for public parking for which they themselves issued a tender notice in July, 2017, which

tender was discharged by them to avoid an adverse order from this Court. Even otherwise, it is his submission that power under Section 11 of Railway Act cannot be exercised by violating non-obstante and mandatory provisions of Delhi Development Act and MPD-2021 and Zonal plan made thereunder, which specifically lay down and provide for planned development of entire Delhi. The sole purpose and objective of DDA Act is to ensure planned development of Delhi. The DDA Act is the paramount and supreme law on the subject of planning and development in Delhi and therefore the provisions of the same have to be mandatorily complied with. Section 29(1) of the DDA Act makes it a penal offence to undertake or carry out development of any land in contravention of the master plan or the Zonal plan. Therefore, according to him all the parties are duty bound to follow MPD-2021 and Zonal development plan. In this regard, he would refer to the judgment of the Supreme Court in the case reported as **1986(1) SCC 133 Express Newspapers Pvt. Ltd v. Union of India**. He answers the submission made by Mr. Om Prakash that Regulation 15 of the Rail Land Development Authority (Development of Land and Other Works) Regulations, 2012 would not apply to development of land in question because the land is not being developed by Railway Land Development Authority as erroneous and misconceived. From the scheme of Rail Land Development Authority (Development of Land and Other Works) Regulations, 2012, it appears that the development of

railway land would be governed by the Rail Land Development Regulations. Even otherwise, if the railway land was to be developed by any other Department / Authority of Railway Administration, it does not stand to reason that where a railway land in a city on which construction or development work is done by Rail Development Authority then local master plan and building byelaws would be applicable and is required to be followed but if on the same railway land or any other land of railways in the same City, the construction or development is done / managed by any railway administration then said development / construction of land would not require compliance of local master plan and building byelaws. Such discriminatory approach is not sustainable in law because the same would simply defeat the very purpose of local master plan and building byelaws i.e plan development of the City. There cannot be any logic or rationale behind such distinction since compliance of local master plan and building byelaws have to be seen in the context of permissible land use and the same would not depend upon the answer as to which Department or Authority is doing the construction or development work on the said land. He stated, if Section 11 of the Railway Act is interpreted so as to override the DDA Act and MPD-2021 etc as contended by the counsel for the Railways then Regulation 15 would become inconsistent and in conflict with and contrary to Section 11 of the Railway Act. So, section 11 of the Railway Act cannot be interpreted to override the

provisions of DDA Act and MPD-2021 and Zonal development plan made for Delhi city. Even otherwise, it is his submission in view of the provisions of Section 53 and 53A of the DDA Act, which also contains non-obstante provision in case of any conflict, DDA Act will have an overriding effect on the non-obstante provision of Section 11 of the Railway Act as the DDA Act is the paramount and supreme law on the concept of planning and development in Delhi. A non-obstante provision in any other Act shall have to pave way for DDA Act, 1957 more so under MPD-2021 and Zonal development plan, which are law in themselves and were framed in 2007 and 2010 respectively i.e subsequent to the Railway Act, 1989. According to him, even Section 481 of the DMC Act relied by the North DMC has no application as the same applies only to Regulations and the redevelopment scheme does not come within the ambit of Regulations as envisaged in the said provision. Even otherwise, it is his submission Section 481 applies only to those Regulations, which are made under the DMC Act or byelaws, that too on the subject given in Section 481 of the DMC Act. Redevelopment scheme made and approved by North DMC is not made under the provisions of DMC Act but in terms of the mandate given under Clause 16.2 of the MPD-2021, which finds the place under Chapter 16 titled as “*land use plan*”, which makes it mandatory for North DMC to prepare and notify the said scheme without any reference to any other Authority unlike special area

building Regulations, which are to be prepared and notified with the approval of the Central Government. This makes it absolutely clear that the redevelopment scheme is to be notified by the North DMC only. He relied on the following judgments in support of his submissions:-

- (i) 2004 (78) DRJ 621 Gur Pratap Singh v. Union of India;***
- (ii) (2005) 85 DRJ 674 Greater Kailash Welfare Association and Ors v. Municipal Corporation of Delhi and Ors.;***
- (iii) (1986) 1 SCC 133 Express Newspapers Pvt. Ltd and Ors. V. Union of India and Ors;***
- (iv) AIR 1956 SC 614 Shri Ram Narain v. Simla Banking and Industrial Co. Limited;***
- (v) Civil Appeal No. 9630/2011 Employees Provident Fund Commissioner v. O.L. of Esskay Pharmaceuticals Limited;***
- (vi) (1995) 5 SCC 762 Dr. G.N. Khajuria and Ors v. Delhi Development Authority and Orsl;***
- (vii) 2004 SCC Online Del 1125 M Block Welfare Society Greater Kailash-I v. Municipal Corporation of Delhi and Ors;***
- (viii) (2010) SCC Online Del 2540 Kenneth Builders and Developers Ltd. V. Union of India and Ors.***

24. On the other hand, Mr. Ajjay Aroraa, learned counsel for North DMC has in his submissions reiterated the stand of the North DMC in its counter-affidavit / affidavit / status report.

25. Mr. Om Prakash, learned Senior Panel Counsel for Railways stated that the Railways being vested with the ownership and possession of Railway, the land under reference became the part and parcel of 'Railway' as defined in Definition under section 2(32A) which reads as under:-

“ ‘Railway land’ means any land in which a Government Railway has any right, title or interest] thus Railway became entitled to have its own use of land required for the purpose of maintenance and operation of Railways. ”

26. Consequently, Railways planned for the water recycling plant over this piece of land as the same was required keeping in view of the optimum use of water in the operation of Railways and the plan was put in place by the Senior Divisional Railway Manager, Delhi division duly approved by the competent authority.

27. He submitted that the bare perusal of the order dated July 28, 2017 shows that there is an alternate parking area already arranged for developing a multilevel parking to redress the grievance of the petitioner. It is also stated that nowhere in the meeting held on July 3, 2017, petitioner raised any

grievance for using the land other than the parking. It is further stated the Railway under the provisions of Section 11 of Railway Act is empowered “*to execute all necessary works notwithstanding anything contained in any other law for the time being in force a Railway administration may, for the purpose of constructing or maintaining a Railway” (d) erect and construct such houses, warehouses, offices and other buildings, and such yards, stations, wharves, engines machinery apparatus and other works and conveniences as the Railway administration thinks proper.*

28. It is further the submission of learned counsel for the Railways that the land belongs to Railways as the same has been handed over to it in equitable exchange and Railway is free to use this land to its requisite plan for the proper maintenance and operation of Railway. Thus the plan for water recycling approved by the competent authority is very much in place and the tender was floated but was discharged as it did not include the most modern technological features as per the study report of TERRI. There after it was processed but meanwhile, kept in abeyance in view of the CM filed by the petitioner, which was being heard by this Court. It is submitted, the respondent North DMC also has filed its reply regarding the land use and the relevant part of the additional affidavit filed by the North DMC is reproduced

as below. In other words, Mr. Om Prakash relied on the following part of the additional affidavit filed by North DMC.

“It is submitted that the comments/report of the Town Planning Department dated 15.03.2018 indicate that as per the Zonal Development Plan (Zone A-other than walled city) and the special area plan approved by DDA under MPD-2021 , the site under reference falls in Transportation Use Zone (Rail Circulation). However the site under reference has been proposed for parking in the Redevelopment plan for Special Area prepared by North DMC through the consultant. The said redevelopment plan is however pending notification from UD Department, GNCTD.”

29. At the time of arguments, it was submitted by North DMC that the proposed use of land as parking has to be notified by the GNCTD in accordance with the provisions of the DDA Act and then DDA will consider the change of land use which at present exist as 'Rail Circulation'. It is stated that as per the MPD-2021 modified upto March 31, 2017 it is clear that the 'Rail circulation' does not come under any development control as shown in Table 12.7 at serial no 3 wherein against Rail circulation the activities permitted relates to Railway tracks, operational areas including watch and ward wherein development controls are not applicable similar to the premises in Airport. It is further his submission that the RLDA provisions are

applicable only to the land which specifically given to the RLDA for development which is not the case with regard to the land under reference. It is submitted that undisputedly the land in reference is owned by Railway as transferred under the supervision and under specific orders of this Court whereby the police protection was provided by this Court to construct the boundary wall. He stated under the provisions of the Railway Act this land is part and parcel of Railways, which is free to use this land as per its requirement. In fact, the M.P. Government in Madhya Pradesh Nagar tatha gram Nivesh Adiniyam 1973, excluded lands under the control of Railways, because the requirement of all facilities for operation of Railways is decided by Railway Authorities. As far as the facility of parking, for the petitioner is concerned this Court has already passed direction vide Order dated October 04, 2016 the same is reproduced as under which shall meet the petitioner's requirement:

“In the meantime, in accordance with the order dated September, 2016, learned counsel for the parties including Mr. Anuj Aggarwal, learned counsel for Delhi Administration shall visit the area in question along with the Police and North DMC officials to identify some alternative vacant land which can be used for parking purpose, even if the said land is situated at some distance.”

30. It is his submission that the above order shows that this Court was conscious of the fact that the parking may be kept even at some distance in order to avoid congestion in a already congested area. It is further submitted that undisputedly the land under reference got vested under an equitable exchange keeping in view the larger public interest of building the grade separator under the supervision of this Court. In accordance with the Indian Railway Manual the General Manger is vested with the powers of making all plans and execute the same for the purpose of operation and maintenance of Railway. The case titled as ***Subhash Dutta vs Union of India and Ors. (2001) 3 CALLT 36 HC*** also supports the supremacy of Railway Act and the use of the land for the purpose of Railway is in the larger national interest than that of the local area, which aspect also finds support in the view expressed by Bombay High Court in case of ***The Goa Foundation And Another vs The Konkan Railway Corporation*** wherein declining the relief sought against the Railway project the Court gave the concluding remark as under:-

"We decline to exercise our writ jurisdiction in such cases because the writ jurisdiction is meant to advance the cause of justice and not to defeat exercises undertaken by the Government for the public benefit. The machinery of the Court should not be used for subserving the private interest or the interest of a local

area to the detriment of the public at large. For these reasons we refuse to grant any relief to the petitioners."

31. In the end, he seeks the dismissal of the writ petition.

32. Having heard the learned counsel for the parties and considered the record, the question which arises for consideration is whether in terms of the redevelopment scheme as approved by the Standing Committee of the North DMC, the land in question measuring 4714 sq. mtrs need to be used for parking only and not for water recycling plant as decided by the Railways.

33. The present petition has been primarily filed by the petitioner challenging the decision/arrangement of handing over the Sadar Bazar Qutab Road parking area of 4714 sq. mtrs of land by North DMC to Railways in lieu of some other land of respondent No.1 as illegal. Alternatively, the petitioner sought the relief restraining the respondent No.1 from closing or discontinuing the parking facility. There is no dispute that the land measuring 4714 sq. mtrs has since been transferred to Railways in September, 2016. The Railways are in possession of the same. So, the plea urged is that the Railways must continue to use the land for the purpose of parking only. It is a matter of record that the Railways have decided to use the land for water recycling plant to reuse the already used water. There is no dispute that the Master Plan of Delhi MPD-2021 has been prepared by DDA

and with the approval of the Central Government, has been notified on February 07, 2007, which is much before the land, which was originally of the Corporation, was transferred to the Railways in the month of September, 2016. Even the redevelopment scheme prepared by North DMC wherein the land area has been earmarked for developing public parking was approved by the Standing Committee of the North DMC in March / April 2017, which is also before the land was transferred to Railways. Mr. Ralli has relied upon the provisions of MPD-2021 to contend that it is a clear statutory mandate that in special areas, public and semi public uses, services like hospitals, police stations, dispensaries and parking etc shall be retained in their present locations as existed at the time of enforcement of MDP-2021 i.e February 07, 2007. That apart, he disputed the plan as filed by the North DMC. He contested the depiction of the land by the North DMC as Rail Circulation. He stated that no such indication was given or emerges from the copy of the plan filed by the North DMC. According to him in the authenticated copy of land use plan filed by the petitioner, no such marking exist nor any such land use like Rail Circulation is mentioned at that point where marking has been done by the official of North DMC in the copy of the land use filed by it. His plea was, the land use plan is under the heading '*Transportation*' and Rail Circulation is one of the heads, where parking and six more heads are also mentioned. He also stated that the land area cannot be used for Rail

Circulation. He laid stress on the note given at the bottom of the plan filed by the petitioners wherein it is stated “*land uses to be seen as per 16.2 special area regulations, zonal plans and redevelopment plans/schemes*”. It is his case that the answer to find out the permissible use of the land in question, is on the basis of the note and different Clauses of MPD-2021 and Zonal development plan of Zone-A (other than walled city). According to him, the North DMC has in its additional affidavit stated that the North DMC has approved the redevelopment scheme for special area, even though the approved redevelopment scheme of North DMC does not involve any issue relating to change of land use as the land was being used for parking as on February 07, 2007, still the redevelopment scheme having depicted the land use as parking, the North DMC is only required to issue a notification in that regard. He contested the plea of the North DMC that the change of land use has to be notified with the approval of the DDA. He also relied upon Regulation 15 of the Rail Development Authority (Development of Land and other Works) Regulations, 2012 to contend that it is obligatory for the Railways to comply with local master plan and building byelaws of the areas while doing any development work on the railway land. He contested the interpretation sought to be given by the Railways by relying upon Section 11 to state that the said provision cannot be interpreted in a manner contrary and defeat what is laid down in Regulation 15 of the Regulations or MPD-2021.

In substance, it is his submission that the legal permissible use would not change due to change in ownership.

34. The plea of North DMC has been reflected in its various affidavits. In substance, the plea of Mr. Arora is that as per zonal development plan and the special area plan approved by DDA under MPD-2021, the site falls in Rail Circulation. He stated that the land use under reference has been proposed for parking in the redevelopment scheme for special area prepared by North DMC through the consultant and the same is pending notification from the Urban Development Department, Govt. of NCT of Delhi.

35. Insofar as the submission of Mr. Om Prakash for the Railways is concerned, he stated the land under reference is a railway land within the meaning of Section 2(32A) and the Railways have planned a water recycling plant over this piece of land as the same was required keeping in view the optimum use of water in the operation of Railways. There is an alternative land arranged for developing as multilevel parking to redress the grievance of the petitioners. Section 11 of Railway Act empowers Railway administration to execute all necessary works notwithstanding anything contained in any other law for the time being in force. The land having been handed over to the Railways, it belonged to it and the Railway is free to use the land to its requisite plan for the proper maintenance and operation of Railway. The

RLDA provisions are applicable only to the land specifically given to the RLDA for development, which is not the case with regard to the land under reference.

36. From the above, it is seen that the petitioner had relied upon the provisions of the DD Act / MPD-2021 / Zonal plan / redevelopment scheme in support his case. There is no dispute that the MPD-2021 is framed by the DDA with the approval of the Central Government i.e. the Ministry of Urban Development. Whereas the Railways have relied upon the provisions of the Railway Act to contend its supremacy over the DD Act / MPD-2021. It must be stated here, that the determination of the issue arisen in this case requires the interpretation of the Provisions of MPD-2021 / Zonal plan / DDA Act, so also the Railway Act. Unfortunately, both the DDA / the Ministry of Urban Development have not been made parties.

37. The arguments advanced by Mr. Ralli on behalf of the petitioner are at variance with the case setup in the writ petition. I am also conscious of the fact that this Court in its order dated May 19, 2017, by referring to its earlier order dated April 13, 2017 wherein it recorded the submission made by the learned counsel for the petitioner that the only way to resolve the parking problem in Sadarbazar area is by constructing a multi level parking after clubbing two parking areas, has directed the petitioner to make representation

to the Chairman Railway Board, who shall convene a meeting to consider such representation. A meeting was held on July 03, 2017 wherein issue of usage of land admeasuring 4714 Sq. Mtr. for the purpose of parking was also discussed. But it was concluded that the said land of 4714 Sq. Mtr. cannot be spared for parking purpose. Further deliberation was with regard to clubbing of land of 1535 Sq. Mtr. with land of 1233 Sq. Mtr. for solving the problem of parking on which Chairman Railway Board informed the clubbing of land and construction of Multi-Level Parking practically are not feasible as there may be issue relating to sharing of cost of construction, sharing of revenue etc. Moreover, providing parking for public vehicles does not come in the domain of Railways. The Chairman Railway Board had suggested two alternatives viz. (i) handing over of piece of land for construction of multi-level parking by North DMC which may also be used by railway passengers and rail users either by equitable land exchange with North DMC land which is suitable for Railway use or (ii) if such land is not available, Railway can lease this land to North DMC for construction of public utility, by North DMC that is multi-level parking, as leasing of Railway land to Government Bodies for public utility is only permitted on payment of lease charges as per extant policy of the Ministry of Railway.

38. Suffice to state, the case of the petitioner in the meeting of July 3, 2017 had never been in the manner put forward in the writ petition / applications /

arguments. Be that as it may, as an important issue with regard to interpretation of DD Act / MPD-2021 and the Railway Act, in respect of land use of 4714 sq. mtrs of land has arisen, which issue had never been considered by the author of the MPD-2021, i.e. the DDA this Court directs that a meeting of all the stakeholders / necessary parties, i.e. Chairman Railway Board, Vice Chairman DDA, Commissioner of North Delhi Municipal Corporation and the representatives of the petitioner, be convened by the Secretary, Ministry of Housing and Urban Affairs, Government of India (who approved the MPD-2021) within a period of six weeks from the date of receipt of the copy of this order and deliberate the issue by taking into consideration the respective stand of the parties to the litigation as noted above and also the views of the DDA and the Ministry of Housing and Urban Affairs, Government of India (if any) and decide the usage of 4714 sq. mtrs of land as transferred to the Railway in the Month of September 2016. Till such time the issue is decided status quo as of today shall be maintained by the parties concerned. A copy of the order be sent to the Secretary, Ministry of Housing and Urban Affairs, Government of India, Vice Chairman DDA and the counsel for the parties in the writ petition immediately within one week for ensuring compliance.

39. The writ petition and CM Nos. 30141/2016, 43250/2017 & 13195/2018 are disposed of.

40. I only state in view of my above conclusion, the judgments as relied upon by the counsel for the parties have not been considered / dealt with.

V. KAMESWAR RAO, J

AUGUST 23, 2018/ak

