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

+ WP(C) 3805/2013

MUKTHESHWAR MARBLES & ORS. Petitioners

Through: Mr. G. Umapathy and
Mr. Aditya Singh, Advs.

versus

LT. GOVERNOR OF DELHI & CHAIRMAN, DDA
& ANR. Respondents

Through: Ms. Shobhana Takiar, Adv.

CORAM:

HON'BLE MR. JUSTICE C.HARI SHANKAR

J U D G M E N T

06.01.2020

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1. Had the Delhi Development Authority (hereinafter referred to as “the DDA”) been a trifle more considerate, while providing reasons for rejection of the request, of the petitioners, for being permitted change of land use, this litigation, which is entirely unnecessary, might have been avoided. The order, dated 3rd April, 2013, of the DDA, by which the petitioners are aggrieved, though it purports to have been issued in compliance with the directions contained in the order dated 29th August, 2012, of this Court in WP (C) 7824/2010 (filed by the petitioners), does not, in any manner, comply with the said directions, and is, in fact, in stark derogation thereof.

2. The petitioners have, resultantly, been driven to approach this Court a second time; an effort which could have been avoided, had the DDA, as already observed hereinabove, been a trifle more considerate.

3. With the above prefatory observations, I proceed to the facts.
4. In exercise of the powers conferred, on it, by Section 7 of the Delhi Development Act, 1957 (hereinafter referred to as “the DD Act”), the DDA, *vide* Notification dated 1st August, 1990, notified the Master Plan for Delhi 2001 (hereinafter referred to as “MPD 2001”), *vide* Notification No. S.O. 606 (E).
5. The petitioners claim to have been trading in the Mehrauli area since long, and at least prior to 1996.
6. Environmental considerations, regarding, *inter alia*, mining of marble in the Aravalli Hills and trading thereof, in Delhi, were subject matter of debate, before the Supreme Court in WP (C) 4677/1985 (*M.C. Mehta v. U.O.I.*). In the said writ petition, *vide* order dated 29th/30th October, 2002, the Supreme Court prohibited and banned all mining activities in the Aravalli Hills. Subsequently, *vide* order dated 18th March, 2004¹, the Supreme Court directed eviction of marble traders from areas in Delhi including, *inter alia*, Mehrauli and shifting, of the said traders, to Sector-20, Dwarka.
7. In order to ensure implementation of the said directives, the DDA developed an area of 7.29 Hectares (Ha) in Sector-20, Dwarka, out of which 3.24 Ha were saleable.

¹ M. C. Mehta v. U.O.I., (2004) 12 SCC 118

8. As a result of the aforementioned decisions of the Supreme Court, the petitioners had also, willy nilly, to shift their trade from Mehrauli. The petitioners were allotted various plots by the DDA in Sector-20 Dwarka. Perpetual lease deeds were executed, between DDA and the petitioners, all of which contained the following clause (which was, in each of the lease deeds, numbered as clause 14):

“(14) The plot and building thereon or any part thereof shall not be used for the purpose other than as specified in the Control conditions and drawings. The lessee and all other persons claiming title a shall not use or cause to be used the said premises or part thereof for the purpose whatsoever other than that as specified in the control conditions and drawings and not use or cause to be used any portion or the unit in such a manner which may or is likely to cause nuisance or annoyance to the neighbours or occupiers of any other units in the building or to the owners and occupiers of any other adjoining and neighboring property. No part of the demised premises or any unit thereof shall be used for any illegal immoral purposes or for any residential purposes.

PROVIDED that, if the lessee desirous of using the said plot or the building thereon for a purpose other than that shop for marble trade, the Lessor may allow such change of user on such terms and conditions, including payment of additional premium and additional rent, as the Lessor may in his absolute discretion determine.”

9. During the period 2002-2006, seventeen plots, which had been earmarked for marble trade in Sector-20, Dwarka, as per the Zonal Development Plan for the said area, were put up for auction, by the Commissioner (Land), DDA.

10. No marble traders bid.

11. Accordingly, the user of the said plots was changed to general shops/showroom/offices etc., and the plots were successfully auctioned with such change of user, with increased ground coverage and Floor Area Ratio (FAR), as applicable to activities other than marble trade.

12. On 14th October, 2004, the Dwarka Marble Dealers Association (hereinafter referred to as “DMDA”) represented to the DDA, for permission to change the land use, of the plots allotted to them, citing the difficulties being faced in continuing with the marble trading industry, in view of the stoppage of mining of marble in the Aravalli Hills, consequent on the order dated 29th/30th October, 2002 *supra*, passed by the Supreme Court in *M.C. Mehta (supra)*. Clause 14 of the lease deeds was invoked, in support of the requests.

13. While the said requests were pending consideration, on 23rd July, 2006, the DDA issued an advertisement, inviting objections to proposed modifications in the MPD 2001. Objections were received, whereafter, *vide* Notification K-13001/7/2006-D dated 7th August, 2006, the Zonal Development Plan for Zone K-II (Dwarka) was notified, by the DDA, under the MPD 2001.

14. Consequent on the issuance of the aforesaid Notification, dated 7th August, 2006, and the changes proposed, therein, to the existing dispensation under the MPD 2001, the DMDA represented, on 14th August, 2006, to the DDA, pointing out that the implementation of the proposal in the MPD 2001, in residential areas where the width of the

road was greater than 30 meters, defeated the purpose of carrying of marble business in a planned manner as contemplated by the MPD 2001. Accordingly, the DMDA prayed for (i) being allowed increase in ground coverage, FAR and height, (ii) permission to change user from marble trade business to other trade and (iii) permission to convert the plots from leasehold to freehold without levying any charges.

15. The aforesaid representation was put up to the appropriate authority, as intimated to the DMDA *vide* communication dated 11th September, 2006, of the Ministry of Urban Development (MoUD).

16. On 7th February, 2007, *vide* Notification No. S.O. 141 (E), the Master Plan for Delhi 2021 (hereinafter referred to as “the MPD 2021”) was brought into force, in which extensive modifications, to the MPD 2001, were made. Clause 5.9 of the MPD 2021, read with Table 5.2 thereof, contemplated the conversion, of 10% of the unutilised sites of local shopping centres/community shopping centres, into service markets. In areas having population in excess of 5 lakhs, service markets were allowed to be set up over an area admeasuring 6.0 Ha, in which service and repair activities, and retail and limited wholesale, for low turnover activities, like auto workshop, fruit and vegetables, general merchandise, hardware, building materials and gas godowns, would be permissible.

17. For service markets, radical changes were made, vis-à-vis the Development Control Plan of 1994. As against the maximum ground

coverage of 25%, earlier allowed, the MPD 2021 allowed maximum ground coverage of 40%. FAR was increased from 50 to 100 and maximum allowable height was raised from 7 meters to 15 meters.

18. On 30th October, 2007, the draft Zonal Development Plan, for the area K-II (Dwarka), was prepared by the DDA. Clause 1 thereof set out the zoning system, as contemplated in the MPD 2021, and may be reproduced thus:

“Draft Zonal Development plan of Zone K-II

Preamble

In accordance with Authority's Resolution in its meeting held on 6-9-2007, genuine pre-existing institutions, i.e. before 1-1-2006. rendering cultural, religious (including spiritual) healthcare and educational services to the people, but which do not form part of the ridge or Gram Sabha or public land, shall be incorporated vis-à-vis their current Land uses in the respective Zonal Plans keeping in view Clauses 3 & 4 of the Master Plan -2021. Such institutions will, however, be subject to reasonable policy and procedural stipulations regarding factual verification. FAR, Development Charges, Land-use, etc.

1.0 Introduction:

As per Master Plan for Delhi 2021, notified on 7.2.2007 under the Delhi Development Act-1957, National Capital Territory of Delhi is divided into 15 zones out of which 8 zones (A to H) are falling within urban area and the rest of the 6 zones (zone J to P except Zone I) are in the urbanisable area of MPD, 2021.

1.1 Background, Location, Boundaries and Areas:

The planning zone K-II with an area of 5924 Ha. includes the Dwarka Sub-city and the area in between Bijwasan road and the National Capital Territory of Delhi boundary and is bounded in East by Delhi Rewari Railway Line, on the South

by National Capital Territory of Delhi boundary in the West by Najafgarh Drain and in the North by Najafgarh road and Pankha Road.

1.2 Statutory provisions and objectives:

As per the MPD-2001, the National Capital Territory of Delhi was divided into 15 zones from A to H and Zone J to P (except-Zone I), of which 8 zones are in the urban area, one is falling in riverbed and remaining 6 in the rural area. Now the rural area has been earmarked for Urbanization in MPD 2021.

Section-8 of Delhi Development Act provides for preparation of zonal Development Plan simultaneously with the preparation of Master Plan or as soon may be, the Authority shall proceed with the preparation of Zonal Development Plan for each of the zone into which Delhi may be divided. However, a Zonal Development Plan may contain a site plan and land use plan with approximate location and extent of land uses such as public and semi public buildings/work centres/utilities, roads, housing, recreation, industries, business markets, school, hospitals, open spaces etc. Section 10 of the Delhi Development Act provides procedure to be followed for the preparation and approval of the zonal Development Plan.

1.3 Earlier approved Zonal Development Plan:

Zonal Development Plan of zone K-II (Dwarka) was prepared under the provisions of MPD-2001, had been notified with the approval of the Government of India vide notification no. K13011/7/2006-DDIB dated 7.8.2006.

1.3.1 Framework for the preparation of Zonal Development Plan

The DDA formulated a Structure Plan for Dwarka which was approved by DDA on 7.7.92 vide item No. 81/92. The structure plan provides 29 sectors. Subsequently work of preparation of sector plans was taken up and layout plans of 1 to 26 sectors already stand approved. The preparation of the Zonal Development plan as required under DD Act-1957 and

MPD-2021 takes into consideration proposals of the approved structure plan and sector plans.

1.3.2 LAND USE PLAN (2001)

Earlier the Zonal Development plan of Zone K(Part) Dwarka sub-city was worked out within the framework of MPD-2001, taking the cognizance of the structure plan approved by the Authority vide its item no. 81/92 dated 7.7.92, the notification of MOUD Dt. 6.11.93 and Corrigendum dt. 30.8.94 regarding change of land use in respect of Phase-I and proposed modification of land use approved by the Authority vide item no. 86/96 Dated 27.8.96 in respect of Phase-II. The land use break up for Zone K(Pt.), Dwk. Phase I and Phase II is as under:

Land use break-up as per MPD 2001.

Sl. No.	LANDUSE	AREA (in Ha.)	PERCENTAGE
1.	Residential a) Built-up b) Planned area of Dwarka Sectors	2912.3 1688(29.89%)# 1224.3(21.67%)	51.56
2.	Commercial a) Commercial b) Service Center	352.13 239.13 113.00	6.24
3.	Govt. Use	91.36	1.62
4.	Public & Semi Public	369.94	6.55
5.	Utility	138.76	2.46
6.	Recreational	1006.18	17.81
7.	Transportation	777.33	13.76
	Total	5648.00	100.00

”

19. Clause 1.3.2 of the draft Zonal Development Plan stipulated that, whereas under the MPD 2001, out of 5648 Ha, 6.24 %, i.e. 352.13 Ha was commercial, out of which 113 Ha was provided for the service sector, under the MPD 2021, the holding capacity for Zone K-II was proposed for an increased population of 13 lakhs, with

corresponding increase in Zone area from 5648 Ha to 5924 Ha. This increase took place because of addition, in the K-II (Dwarka) area, of the area between the Bijwasan road and the NCTD boundary.

20. The writ petition also refers to communications whereby waiver of composition fee was allowed to traders in Poly Vinyl Cable (PVC) located in Bijwasan as well as the claim, of the petitioners, for parity therewith. However, as no such prayer is contained in this writ petition, I refrain from making any reference thereto.

21. Reverting to the situation qua the petitioners, the representation, dated 14th August, 2006, of the DMDA, having failed to elicit any satisfactory response from the DDA, the petitioners sought information under the Right to Information Act, 2005, as to whether there was any specific policy for marble trading in the NCT of Delhi.

22. The DDA (Commercial Land Branch) responded, *vide* communication, dated 19th August, 2009, stating that, though there was no specific policy for marble trade in NCTD, certain plots, in Sector-20, Part-II, Dwarka, had been allotted/auctioned to marble traders.

23. *Vide* representation dated 22nd December, 2009, the DMDA intimated the Joint Director (Planning), DDA, that the changes, contemplated in Table 5.4 of MPD 2021, were yet to be implemented in the service sector/market at Sector-20, Dwarka. Expeditious implementation, of the said proposals, was, therefore, sought.

24. On 18th January 2010, the Deputy Director (Coordination Division) in the DDA, approved the revised layout plan of the DDA, which had been prepared in 2005. In the said revised layout plan, according to the petitioners, out of the area of 3.24 Ha, earmarked for plots for marble trade, 1 Ha was diverted to other uses (commercial mixed trade). The petitioners, therefore, allege that the DDA was not adhering to its own layout plan.

25. On 4th March, 2010, the DMDA again represented to the Director (Commercial Land), DDA, drawing the attention of the latter to Clause 14 in the lease deed, entered into by the DDA with the petitioners, and pointing out that the marble trade had become unviable consequent to the order, dated 29th/30th October, 2002, of the Supreme Court in *M.C. Mehta (supra)*.

26. This was followed by a second representation, dated 22nd March, 2010, addressed by the DMDA, to the Director (Planning) DDA, reiterating the requests, of the DMDA, that change of land use, in the plots allotted for marble trade in Sector-20, Dwarka, be permitted, so that the plots could be put to other use, in a compensatory manner. It was pointed out, in the said representation, that such accommodation had, in fact, been extended to PVC traders located in Jwalapuri, with whom, therefore, the members of the DMDA claimed parity.

27. The aforesaid request was reiterated by the DMDA, *vide* its representation, dated 20th May, 2010, to the Minister of State, Ministry of Urban Development (MoUD).

28. In view of the fact that the aforesaid representations, of the DMDA, failed to evoke any response from the DDA, the petitioner applied, on 3rd June, 2010, under the RTI Act, seeking information regarding the status of the said representations, as well as applicability, of the MPD 2021, to the service centre in Sector-20, Dwarka.

29. This, at long last, provoked, not one, but two responses from the DDA, dated 13th July, 2010 and 21st July, 2010, which averred, identically, that the requests for permission for change of land use had been examined by the planning department in the DDA, but could not be acceded to.

30. In these circumstances, on 7th September, 2010, the DMDA applied to the DDA, under the RTI Act, seeking information regarding (i) the difference between “service market” and “service centre”, (ii) the nature of activities permitted in both, (iii) the details of building development norms as applicable to service markets and service centres and (iv) the implementation of the MPD 2021 to the said service centre.

31. The response of the DDA, as contained in communication dated 22nd September, 2010, was that all the aforesaid details were available on the internet.

32. Aggrieved, the DMDA appealed to the Appellate Authority under the Right to Information Act, whose response, dated 3rd November, 2010, read, to the extent it is relevant, thus:

“In continuation to information provided as mentioned above, the following clarifications is informed:

i) The layout plan of Sector - 20, Service Centre was prepared on the basis of overall ground coverage and FAR for the scheme as per provisions for Service Centre in MPD-2001. In view of integrated scheme, ground coverage/FAR suggested for other office/shops plots, showroom/shops and building material plots were different.

(ii) The development control suggested were keeping in mind the requirement of the heavy bulk marble which needs more open space for storage.

(iii) As per the information available in this office, the scheme was prepared for allotment of plots to the Marble Traders which are located in the alignment of flyover at Raja Garden Chowk.”

33. Aggrieved by the rejection of its request for permission to change land use, as communicated by the DDA on 21st July, 2010, the petitioner filed WP (C) 7824/2010 (*Mukhteshwar Marbles v. Lt. Governor of Delhi*) seeking a mandamus, to the DDA, to permit change of land use, by the petitioner, to “mixed commercial use in non-polluting eco-friendly environmental trade”. Needless to say, Clause 14, of the Lease Deed, dated 28th November, 1997 (*supra*),

between the petitioner and the DDA, was invoked in support of the claim.

34. *Vide* order dated 29th August, 2012, the aforesaid WP (C) 7824/2010 was allowed by a learned Single Judge of this Court, on the ground that the order dated 21st July, 2010 was completely unreasoned and did not reveal application of mind. The order dated 3rd November, 2010 was, therefore, set aside and the DDA was directed to reconsider the petitioners' request in accordance with the proviso to Clause 14 of the Lease Deed dated 28th November, 1997. The operative portion of the said order, dated 29th August, 2012, of this Court, in WP (C) 7824/2010, reads thus:

“ 10. Reading of the rejection order filed at page 105 shows that the order is completely without any reasons, the same is cryptic in nature and does not show application of mind. Accordingly, present writ petition is allowed. Letter dated 21.7.2010 is quashed. Let the petitioners make a representation to the DDA in view of change of circumstances. DDA will consider the request of the petitioners in accordance with law and pass a reasoned order within ten weeks from the date of the receipt of the representation.”

35. Consequent on the aforesaid judgment, the petitioner addressed a representation, dated 5th March, 2013, to the DDA, in which the entire facts of the case, as noted hereinabove, were reiterated. Additionally, the petitioner pointed out that, in the MPD 2021, the DDA had itself deviated from the development control plan for Sector-20, Dwarka, by permitting change, not only in the area earmarked for the marble trade, but also for the area earmarked for greenery, to commercial use. It was pointed out that, in the development control plan, an area of 3.24 Ha had been earmarked for

the marble trade, out of which 1 Ha was diverted to other uses. Having thus, consciously, departed, from its own development control plan, the petitioner submitted that, the DDA could not, very well, seek to piggyback on the earlier user of the shops allotted to the petitioners, as per the said development control plan, as a ground to deny its request for being permitted change of land use. The petitioner also invoked Article 19(1)(g) of the Constitution of India. Parity, with the treatment accorded to PVC traders in Jawalapuri, whose request for change of land use was acceded to, was also sought.

36. The aforesaid representations, of the petitioner, stand rejected by the impugned order, dated 3rd April, 2013, which was communicated to the petitioner on 4th April, 2013. The said order merits reproduction, *in extenso*, thus:

**“DELHI DEVELOPMENT AUTHORITY
(COMMERCIAL LAND BRANCH)**

**IN THE MATTER OF:
W.P.(C) 7824/2010**

MUKTESHWAR MARBLES & ORS

Versus

**CHAIRMAN DELHI DEVELOPMENT AUTHORITY
and ANR.**

Order in terms of judgment dated 29.08.2012 of the Hon'ble High Court of Delhi in WP (C) No.7824 / 2010 titled M/s. Mukteshwar Marbles & Ors. Vs. Delhi Development Authority.

Dated: March 25, 2013

ORDER

The Hon'ble High Court of Delhi vide its orders dated 29th August, 2012 in WP (C) No. 7824/2010 titled M/s.

Mukteshwar Marbles & Ors. Vs. Chairman, DDA and Anr.
has ordered as under:

"1. The Present writ petition has been filed by five petitioners under Article 226 of the Constitution of India seeking a direction to the respondents to permit change of land use of the area allotted to the petitioners in the marble market, Sector 20, Stage-I, Dwarka, in accordance with the Master Plan of Delhi, 2021, and also in accordance with Lease Deed executed by the respondents. The petitioners also seek a direction to quash the letter dated 21.7.2010 issued by respondent no.2, by which, respondent no.2 has rejected the request of the petitioners for change of land use of the marble market in Sector 20.

Paras 2 to 5 of the Order are not reproduced in this Order. However, the same may be read as part of this order.

6. Learned counsel for the petitioners submits that the petitioners had requested that they be allowed to carry out allied trade in the building activities although at this stage they even wish to change the land use into commercial activities.

7. I have heard learned counsel for the parties, considered their rival contentions and also perused the material placed on record. *It would be useful to refer to Clause 14 of the Lease Deed dated 28.11.1997 executed by the PDA in favour of the petitioner.* Clause 14 reads as under:

"14. The plot and building thereon or any part thereof shall not be used for the purpose other than as specified in the Control conditions and drawings. The lessee and all other persons claiming title shall not use or cause to be used the said premises or part thereof for the purpose whatsoever other than that as specified in the control conditions and drawings and not use or cause to be used any portion or the unit in such a manner which may or is likely to cause nuisance or annoyance to the neighbours or

occupiers of any other units in the building or to the owners and occupiers of any other adjoining and neighbouring property. No part of the demised premises or any unit thereof shall be used for any illegal immoral purposes or for any residential purposes.

Provided that, if the lessee desirous of using the said plot or the building thereon for a purpose other than that shop for marble trade, the Lessor may allow such change of user on such terms and conditions. Including payment of additional premium and additional rent, as the Lessor may in his absolute discretion determine."

8. Reading of the aforesaid clause 14 would show that an allottee is not entitled to use the plot and building for any other purpose other than the specified in the condition of the lease, however, incase the allottee is desirous to use the plot and building for a purpose other than the purpose notified, he has to approach the lessee of seeking permission for such a change.

9. The request of the petitioner for change of land use is to be considered by the PDA in the light of Clause 14 of the Lease Deed.

10. Reading of the rejection order filed at page 105 shows that the order is completely without any reasons, the same is cryptic in nature and does not show application of mind. Accordingly, present writ petition is allowed. Letter dated 21.7.2010 is quashed. Let the petitioners made a representation to the PDA in view of change of circumstances. PDA will consider the request of the petitioners in accordance with law and pass a reasoned order within ten weeks from the date of the receipt of the representation.

11. Accordingly, present writ petition stands disposed of in view of above."

2. Accordingly, the Petitioners made a representations dated 4.12.2012 and 15.02.2013 addressed to Commissioner

(LD) and Director (Planning), Delhi Development Authority respectively requesting to change the land use as per provisions of Clause 14 of the Lease Deed. The representations of the Petitioners have been examined at length.

3. Briefly, it is stated that under the directions of the Hon'ble Supreme Court in the matter of *M.C.Mehta Vs. Union of India*, the Hon'ble Court directed DDA to remove the marble dealers operating primarily near Andheria Mod, on the road going from Qutab to Andheria Mod and further from Andheria Mod to Vasant Kunj. Accordingly, the DDA issued notice to all affected marble dealers. It was planned to set up a marble/building stone market in Dwarka, with the approval of Hon'ble Lt. Governor, Delhi. Initially, it was decided to allot plots to the Marble Dealers through the process of auction, as per provisions of DDA (Disposal of Developed Nazul Land) Rules, 1981. A number of representations from Marble Dealers were received saying that if auction is conducted, their chances of obtaining a plot through bid would be largely reduced since other marble dealers would bid for such plots. However, considering the representations of the Marble Dealers, it was decided to make allotments through computerized draw of lots on predetermined rates and also on Perpetual Lease Deed after seeking relaxation from the Govt. of India.

4. Further, it is also added here that setting up a marble market at Dwarka was basically a scheme exclusively for re-location of marble dealers operating on the Southern Ridge Area, to a developed market, planned as per provisions of Master Plan.

5. In addition, DDA has also developed certain other schemes for re-location of other trades like (i) IFC, Gazipur for Paper Merchants; (ii) IFC, Holambi Kalan, Narela - for Chemical Merchants (iii) PVC Market at Tikri Kalaan for PVC Trade, etc.

6. Since, the Marble Market at Sector-20, Dwarka was planned and developed exclusively for the re-location of Marble Dealers who were operating on the Ridge area the use of the plots was specific i.e. 'Marble Shop' considering the request for change of land use from 'Marble Trade' to

‘Commercial’ with Increased FAR, may not be feasible. Further, the possibility of opening a Pandora Box for the allottees of other re-location schemes planned and developed for other specific trades, cannot be ruled out. Hence, the requests of the Petitioners cannot be considered and rejected.

7. This issues with the approval of the Competent Authority.

Sd/-
(D.K.Gupta)
Director (CL)”

(Emphasis supplied)

37. Aggrieved thereby, the petitioners are before this Court.

Rival submissions

38. I have heard Mr. G. Umapathy, learned counsel for the petitioners, and Ms. Shobhana Takiar, learned counsel for Respondents. Detailed arguments have been advanced, before me, by learned counsel appearing for the parties, who have also filed written submissions in support of their respective stands

39. Arguing for the petitioners, Mr. G. Umapathy submitted that the stand, of the DDA, was contrary to the reply, dated 19th August, 2009, tendered, under the RTI Act by the Deputy Director (CL), DDA, to the effect that there was no specific policy in relation to marble trade in the NCT of Delhi, and also negated, effectively, Clause 14 of the perpetual lease deeds as well as the Master Plan of Delhi-2021. Discrimination, with the petitioners, vis-à-vis PVC traders in Jwalapuri, was also pleaded.

40. Mr. Umapathy further submitted that, as the trade of the petitioners had been rendered unviable owing to circumstances beyond their control, viz., the proscription imposed by the Supreme Court on mining activities in the Aravallis, the petitioners' request for being permitted change of land use was required, in law and equity, to be allowed.

41. Ms. Shobhana Takiar, arguing for the respondent-DDA, submitted, *per contra*, that the layout plan for the Service Centre in Sector-20, DDA, and the ground coverage, FAR and maximum height allowed, therein, bound the petitioners, who could not seek to deviate therefrom. The relief granted to the PVC traders in Jwalapuri, it is submitted, was with respect to composition fee. This last submission, however, does not appear to be correct, as "observations" of the "competent authority", which have been provided to the petitioners under cover of letter dated 2nd July, 2010, under the RTI Act (annexed as Annexure N to the writ petition) indicates that change of land use was, apparently, allowed to PVC traders in Jwala Puri.

42. The reliance, by the petitioners, on Table 5.4 in the MPD 2021, Ms. Takiar would further submit, was *ex facie* misconceived, as Table 5.4 dealt with "service markets", and not "service centers".

43. Ms. Takiar has also sought to advance certain submissions, on facts, seeking to justify the refusal, by the DDA, of the request of the petitioners to convert the user of the plots allotted to them. However, no such reasons find place in the impugned order dated 3rd April,

2013, and, keeping in mind the principle, well-entrenched in law and expressed, most memorably, in *Mohinder Singh Gill v. Chief Election Commissioner*², that an order has to speak for itself, and cannot be sought to be justified on the basis of averments in pleadings which find no place in the order itself, I refrain from alluding to the said submissions.

44. The counter affidavit filed by the DDA, has categorically denied that it had permitted any user to change land use from ‘marble trade’ to ‘general shops’, or that it had deviated from the approved plan. The DDA states that it is made amply clear from the layout plan of the service centre, Sector 20, read with the legend to the map that, no area earmarked for the marble trader plots or any other plot has been converted to any other use.

Analysis

45. As has been noted, at the commencement of this judgment, this is a litigation which could have been avoided, had the DDA been more conscientious about complying with the directions, contained in the order dated 29th August, 2012, passed by this Court in WP (C) 7824/2010 (*supra*).

46. A reading of the impugned order, dated 3rd April, 2013, reveals that paras 1 to 3 thereof, merely set out the facts of the case. In para 4, it is averred that, “the setting up of a marble market at Dwarka was basically a scheme exclusively for relocation of marble dealers,

² (1978) 1 SCC 405

operating on the southern ridge area, to a developed market”, which, again, is a mere reiteration of the known facts. Para 5, which dealt with relocation of other traders, is completely irrelevant. The only reasoning – if it may at all be called that – is to be found in para 6 of the impugned communication. All that the said paragraph states is that the marble market at Sector-20, Dwarka was planned and developed exclusively for relocation of marble dealers who were operating on the ridge and that, therefore, the request for change of land use from “marble trade” to “commercial” was not possible. Acceding to the prayer of the petitioner, it is sought to be stated, may open a “Pandora’s box”.

47. The manner in which the impugned order has been passed deserves to be deprecated. It reflects utter callousness, on the part of the DDA, and conscious disregard of the directions contained in the order dated 29th August, 2012, of this Court in WP (C) 7824/2010.

48. The learned Single Judge, while passing the aforesaid order, took care to reproduce the facts of the case, and drew especial attention to clause 14 of the lease deed between the DDA and the petitioner, which was reproduced, *in extenso*, in the order. It was made clear, beyond any shadow of doubt, that the DDA, while considering the petitioner’s case, had to advert to all the facts, the merits of the case, Clause 14 of the lease deed and all other relevant considerations.

49. The presently impugned communication is, if anything, even mere perfunctory than the communication dated 3rd November, 2010, which forms subject matter of challenge in WP (C) 7824/2010 .

50. The stand of the DDA, as reflected in para 6 of the impugned communication, viz., that as the marble market at Sector-20, Dwarka was developed for relocation of market dealers, on a user specific basis, the request for change of user *could not be considered*, is *ex-facie* contemptuous of the order dated 29th August, 2012, which specifically *directed such consideration* and conscious application of mind thereto. Besides, in view of the proviso to Clause 14 of the lease deed between the DDA and the petitioners, the DDA cannot be heard to say that the request for change of land use could not be considered. Such a stand amounts to evisceration, from the Lease Deed, of the proviso to clause 14, which, needless to say, the DDA was incompetent to do, the Lease Deed constituting a binding contract between the DDA and the lessees, including the petitioners, which has remained unchanged till date.

51. This Court is inclined to believe, in the circumstances, that the DDA has no real justification for refusing the petitioners' claim.

52. However, before returning a final finding on facts, and keeping in view the directions contained in the order dated 29th August, 2012, in WP (C) 7824/2010, I deem it appropriate to afford the DDA one last and final opportunity to re-examine the case of the petitioners, as

reflected in all the representations addressed by the petitioners and DMDA, to which reference has already been made hereinabove.

53. It is only to ensure that all relevant facts are borne in mind, while taking a decision on representations, that I have taken pains to set out all the facts hereinabove. While considering the representations of the petitioners, the DDA must necessarily bear in mind the fact that a fundamental right, to engage in trade and profession of one's choice, is guaranteed by Article 19(1)(g) of the Constitution of India, which the scale and sweep of which is constricted only by reasons which can sustain the scrutiny of Article 19(2). If, for reasons beyond their control, the petitioners are being driven out of business and the original purpose for which the plots of land have been allotted to them has, for no fault of theirs, become unviable, the petitioners are entitled to a sympathetic consideration, of their difficulty, by the DDA. Kindness – within, of course, the constraints of the law and the facts – costs nothing. Significantly, the DDA has, at no point, chosen to question the legitimacy of the petitioners' grievance, or the petitioners' *bona fides*. On facts, therefore, the submission, of the petitioners, regarding the hardship that they are facing, has not been sought to be traversed by the DDA.

54. This court hastens to clarify, however, that this judgement is not to be interpreted as issuing a mandamus, to the DDA, to necessarily accede to the petitioners' requests. Town planning is an intricate and involved exercise, and the DDA is entitled, *for genuine and germane reasons*, to express its inability to provide succour to the petitioners.

These reasons have, however, have to be clearly reflected in the order of rejection, which cannot be as whimsical as the impugned order dated 3rd April, 2013. This Court expects the DDA, as a nodal authority entrusted with the development of Delhi, which, at the end of the day, is required to act in the interests of every denizen of this city, to be compassionate and considerate to the plight of the petitioners, with a proactive approach, reflecting an effort to assuage their grievances – the genuineness of which have never been questioned by the DDA – if possible.

55. Needless to say, however, allowing of the requests of the petitioners would have to be in accordance with law and if, for valid reasons, it is not possible to accede to the said requests, the DDA is entirely within its authority to decide accordingly, and inform the petitioners of the reasons therefor.

56. In taking the said decision, all submissions, advanced by the petitioners, as well as by the DMDA, in the aforesaid representations, are required to be dealt with, including the claim, of the petitioners, for parity with the PVC traders in Jawalapuri. In case it is not possible, for any genuine reason, to extend, to the petitioners, the same latitude, that reason is required to be clearly reflected in the order to be passed in compliance with this judgement.

57. Should the petitioners seek an audience with the DDA, to explain the situation, they would be entitled to do so, at a date and time convenient to the DDA.

58. The DDA is directed to pass a reasoned and speaking order, in accordance with the above directions, within four weeks of receipt, by it, of a certified copy of this judgment.

59. Needless to say, should the petitioners continue to be aggrieved by the decision of the DDA, they would be at liberty to seek appropriate remedies, in accordance with law.

Conclusion

60. Resultantly, the impugned order dated 3rd April, 2013 is quashed and set aside. The writ petition is allowed to the extent set out in paras 51 to 59 *supra*.

61. This Court closes this judgment with the hope and trust that the DDA would, hereafter, be more considerate, while responding to requests of citizens, and while purportedly complying with directions issued by the Court in that regard.

C.HARI SHANKAR, J.

JANUARY 06, 2020

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