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

Reserved on: 11th January, 2020

Decided on: 27th February, 2020

+ **W.P.(C) 12944/2006 and C.M. APPL. 12209/2017 (directions)**

P.V. KAPUR

..... Petitioner

Through: Petitioner in person with Mr. Sidhant Kapur, Ms. Kaveri Gupta and Mr. Jitender Panchal, Advocates.

versus

UNION OF INDIA & ORS.

..... Respondents

Through: Ms. Anjana Gosain with Ms. Shalini Nair, Advocates for R-1.
Mr. Ravinder Sethi and Mr. Sandeep Sethi, Sr. Advocates with Mr. Ateev Mathur, Ms. Jagriti Ahuja and Mr. Amol Sharma, Advocates for SCB, HSBC and HDFC.
Ms. Kanika Agnihotri with Mr. Arjun Rekhi and Mr. Karanjot Singh Mainee, Advocates for J&K Bank.
Mr. Punit Bhalla, Mr. Ajjay Arora Standing counsel alongwith Mr. Kapil Dutta and Mr. Rajat Rajoria Singh & Mr. Anuj Bhargava, Advocates for SDMC.
Mr. Nilesh Bijlani, Advocate for ICICI Bank.
Mr. Santosh Tripathi, ASC with Mr. Shashank Tiwari, Advocate along with SI Anil, SI Lalu Singh, and SI Virender Singh for Traffic Police.
Mr. Ajay Verma, Advocate for DDA.

+ W.P.(C) 10395/2009 and C.M. APPL. 9029/2009 (stay)

M/S. STANDARD CHARTERED BANK

..... Petitioner

Through: Mr. Ravinder Sethi, Sr. Advocate
alongwith Mr. Sandeep Gupta, Mr.
Ateev Mathur, Ms. Jagriti Ahuja
and Mr. Amol Sharma, Advocates.

versus

MUNICIPAL CORPORATION OF DELHI

..... Respondent

Through: Ms. Mini Pushkarna, Standing
Counsel with Ms. Swagata Bhuyan,
Ms. Shiva Pandey and Ms. Khushboo
Nahar, Advocates, Mr. Ajjay Aroraa
with Mr. Kapil Dutta, Advocates for
SDMC.

+ W.P.(C) 10582/2009 and C.M. APPL. 9409/2009 (stay)

MOHIT DHAUN

..... Petitioner

Through: Mr. Sumit Bansal with Ms. S. Anand,
Mr. Udaibir Singh and Ms.
Vishnushree, Advocates.

versus

MUNICIPAL CORPORATION OF DELHI

..... Respondent

Through: Ms. Mini Pushkarna, Standing
Counsel with Ms. Swagata Bhuyan,
Ms. Shiva Pandey and Ms. Khushboo
Nahar, Advocates.

+ W.P.(C) 8046/2009 and CM APPL. 6027/2009

M/S. STANDARD CHARTERED BANK

..... Petitioner

Through: Mr. Ravinder Sethi, Senior Advocate
alongwith Mr. Sandeep Gupta, Mr.
Ateev Mathur, Ms. Jagriti Ahuja
and Mr. Amol Sharma, Advocates.

versus

MUNICIPAL CORPORATION OF DELHI

..... Respondent

Through: Ms. Mini Pushkarna, Standing
Counsel with Ms. Swagata Bhuyan,
Ms. Shiva Pandey and Ms. Khushboo

Nahar, Advocates; Mr. Ajjay Aroraa
with Mr. Kapil Dutta, Advocates for
SDMC.

**CORAM: JUSTICE S.MURALIDHAR
JUSTICE V.KAMESWAR RAO**

J U D G M E N T

Dr. S. Muralidhar, J.:

Introduction

1.1 These are four petitions which highlight the chaos resulting partly from the inadequate provisions, and partly the improper implementation, of the Master Plans for Delhi ('MPD'), both for 2001 and 2021. The particular focus in these petitions is on the "mixed use regulations" forming part of the MPD.

1.2 A common sight in many of Delhi's residential colonies these days is one of congestion and the ubiquitous lack of 'parking space' for vehicles of not just residents but also visitors. Increasingly, there is a gradual transformation of living spaces into commercial ones. What, to begin with, was a two-storied residential house now has a business operating on either or both floors. This inevitably increases the strain on the already stretched infrastructure and resources. Since the rapidity of these changes was not anticipated by the MPD, the assumptions that formed its basis appear in practice to have been underestimated.

1.3 The adverse effects of the above changes on the resident population of one such 'up-scale' Delhi colony, Greater Kailash-I ('GK-I') drove Mr. P.

V. Kapur, a Senior Advocate of this Court and a resident of GK-I, to file the first of these four petitions as a Public Interest Litigation ('PIL') nearly fourteen years ago, hoping that this Court would be able to help find a solution to the abovesaid problem. The immediate concern that prompted the PIL was the mushrooming presence of Banks operating branches from residential houses in the immediate neighbourhood. With the passage of time, of the twelve Banks operating in the area, six still remain: HDFC Bank, HSBC Bank, Andhra Bank, ICICI Bank, J & K Bank and the Standard Chartered Bank ('SCB').

1.4 The other three petitions, two by SCB and one by a landlord of one of the properties from where the HSBC Bank operates, although not PILs, have sprung from the relief sought in the first petition and concerns the subject matter of the first petition.

1.5 As a High Court, we can interpret the MPD, which is a legislative document that derives legal sanctity from the Delhi Development Act, 1957 ('DD Act'). We could also examine if particular provisions of the MPD, because of their legal character, pass legal muster. However, as a High Court, we cannot rewrite those provisions. The scope of judicial review of the DDA to allow mixed land use in certain areas is arguably narrow. Judges should not assume the role of urban planners.

1.6 What the Court proposes to do in the judgment that follows, in the above background, is to require the South Delhi Municipal Corporation ('South

DMC') to review the permissions granted to the landlords of the residential premises that were leased out to the aforementioned three Banks to operate branches. The data on the impact their operations have on the traffic in the area is part of the case record. The problem of random parking and the resultant congestion on the Hansraj Gupta Marg in GK-I during the working hours of these Banks persists despite the Court issuing periodic directions for strict enforcement of the MPD provisions and the monitoring of their implementation. This then by itself constitutes sufficient justification for ordering a comprehensive review of the permissions granted. It calls for a gradual phasing out of such commercial activity.

Mr. Kapur's petition

2. Mr. Kapur resides in his own house on Hansraj Gupta Marg, GK-I. He has lived there for over two decades now. In what is essentially a residential colony, Mr. Kapur has been witness to the growing presence of a large number of commercial establishments operating from houses in the area. As a result, in Mr. Kapur's words:

“The residents have to put up with traffic congestion, extra-ordinary heavy inflow of vehicular and human traffic, loud noise and complete invasion of privacy, all of which is a constant source of nuisance, harassment and mental and physical anguish to them. Residents in Greater Kailash- I, have purchased/ rented properties for their residence as it is a residential area. If any property is used for commercial activity it causes nuisance and annoyance to the residents in the area. The residents of the area had purchased/ rented the property and invested money on the assurance of the legislature/ rule- makers that the area is meant for residential purposes and they will be in a position to enjoy a good residential atmosphere.”

3. Mr. Kapur concedes that ‘mixed use’, as defined in MPD, 2001, is permitted but subject to the fulfilment of “stringent conditions”. He points out that, “not every house can be permitted to be used for its commercial purposes under the pretext of mixed use.”

4. The refrain of Mr. Kapur’s petition is that the Union of India (‘UoI’), through the Ministry of Urban Development (‘MoUD’), which is still the chief regulating body when it comes to land and land use in the National Capital Territory of Delhi (‘NCT of Delhi’), the Municipal Corporation of Delhi (‘MCD’), (Respondent No. 2) (now trifurcated into three Delhi Municipal Corporations - North, South and East), the Commissioner of Police, Delhi (Respondent No. 3) and the Joint Commissioner of Police (Traffic), Delhi (Respondent No. 4) have neglected to perform their statutory and administrative functions.

5. Mr. Kapur states that residents of GK-I, as of any other area, clamour for peace and tranquillity. Unfortunately though, as a result of the mushrooming commercial establishments, “there are fights and arguments between the residents and persons in the staff of the commercial establishments and the traffic is obstructed on a daily basis, but there is no police deployed to check and avoid the situations.”

6. There was an earlier class action litigation brought to this Court by the residents of M-Block, GK-I in the form of W.P.(C) 1089/2003 (***M Block***

Welfare Society, Greater Kailash, Part-I v. Municipal Corporation of Delhi and Ors.). The subject matter of the said petition was the permission given by the authorities to convert the Savitri Cinema Hall in GK-I into a shopping complex/mall. In the course of hearing the said petition, this Court had ordered an inspection by a Local Commissioner ('LC') of a residential property at B-54-A, GK-I. This is referred to in Mr. Kapur's petition as "the property" (hereafter, 'the property in question'). The LC found that the property in question was intended to be put to commercial use. There were no partitions as are usually found in residential properties. The builder constructing the property, however, informed this Court that the property in question was going to be a residential property only, and its construction would be in strict conformity with the sanctioned plans. Although the LC had not found any internal partition walls, the builder assured the Court that these would be erected within 6 to 8 months. Mr. Kapur was appointed by this Court as *amicus curiae* in the above petition, which was pending when he filed the present petition.

7. Mr. Kapur states that he noticed that on Hansraj Gupta Marg itself, there were already two banks functioning, i.e., SCB and the Punjab & Sind Bank ('PSB'). There were also two commercial complexes, one nursing home named Max Clinic, and a guest house named Madhuban Inn. He found the entire area "engulfed in a perpetual state of chaos and traffic snarls."

8. The trigger for the present petition was when the Petitioner in July, 2006 found that HDFC Bank (Respondent No. 5), had started using the property in question as a branch office for full-fledged commercial operations under

the garb of a “branch catering to neighbourhood banking facilities.” Respondent Nos. 6 and 7 have been impleaded as they are the owners of the property in question. Mr. Kapur pointed out that HDFC Bank itself had another branch at S-65, GK-I on the same arterial road. Additionally, there were already 12 banks operating in the vicinity.

9. The focus in this petition has been on Clause 10.0 of the MPD, 2001, which permits conversion of a residential plot for commercial use only if it is feasible, and only by “the resident of the dwelling unit.” It is the contention of Mr. Kapur that the property in question is not feasible for commercial use and that in any event HDFC Bank is not a resident of the property in question. Therefore, he argues that operating a branch of the bank on the property in question would be violative of the MPD.

10. There is another ground urged by Mr. Kapur. The size of the property in question is 836.12 sq. m. Mr. Kapur points out that the guidelines governing the use of a property for commercial purposes mandate providing commensurate parking facility within the property. This is a condition precedent for the property in question to be put to commercial use. Mr. Kapur argues that since the requisite parking needs have not been catered to, the use of the property in question for commercial purposes should be declared to be illegal.

11. Mr. Kapur adds that the property in question is near a traffic signal, and people visiting the bank often haphazardly park their vehicles on the road, the pavements, and outside the gates of the residents of the area. As a result,

there is perpetual obstruction of the traffic on the road, and residents of the area are prevented ingress and egress into their houses, which leads to fights and arguments. In order to ensure that the entrances to their houses are not blocked, the residents have to enter into perpetual confrontations, arguments and even fights. He points out that even high-security vans that bring and take money from the bank branch obstruct the road when they are parked, and the gunmen accompanying the trucks stop all traffic.

12. Mr. Kapur's central contention is that the notification by which the MPD, 2001 has been amended, and nursing homes, guest houses, and banks have been permitted to be established in residential areas, as well as the guidelines that have been issued under the said notification, are arbitrary, unreasonable and give an unrestricted right to misuse properties in residential areas. He accordingly contends that these amendments brought about by the impugned notification and the resultant guidelines are violative of Article 14 of the Constitution.

13. Mr. Kapur points out that there is no definition of "branch offices of banks catering to the neighbourhood banking facilities." If the branches were to be used not just by the residents of the neighbourhood, but by the public at large, they could not possibly be termed as branches providing 'neighbourhood banking facilities.' He argues that the basis for choosing banks, guest houses, and nursing homes as activities essential for a neighbourhood is questionable. He points out that there are other facilities like shopping stores, go-downs, warehouses etc. which are also required by the residents. Mr. Kapur highlights the statutory obligation placed on the

MCD, the MoUD, and the Delhi Police by the MPD to ensure that the character of residential areas is not altered by unauthorized use. Reference is made to the decisions of this Court in *Newtech Estate and Industries Pvt. Ltd. v. Inder Singh Oberoi* 2004 (72) DRJ 420 and *Champa Gulati v. Commissioner, Municipal Corporation of Delhi* AIR 2003 Del 268, where the importance of adherence of the MPD was underscored.

14. The principal reliefs sought in the main petition are declaring that the notification dated 7th May, 1999, issued by the MoUD is violative of Articles 14 and 21 of the Constitution of India, and thereafter quashing it. A further direction in the nature of mandamus is sought to MoUD and MCD to strictly enforce the MPD and prevent Respondent Nos. 5 to 7 from using, or permitting the use of, the ground floor of the property in question i.e. B-54-A, GK-I. Incidental reliefs such as the sealing of premises upon which commercial establishments are operating presently are also prayed for.

Orders of this Court

15. Mr. Kapur's petition was first listed for hearing on 23rd August, 2006, when notice was directed to issue. On 30th August, 2006, when despite service none appeared for HDFC Bank (Respondent No. 5), the DCP (Traffic) of the area concerned was directed to make sure that the activities of HDFC Bank do not cause any nuisance or hindrance to the residents of the locality and no congestion is caused on the road where the Respondent No. 5 was located.

16. On the following date i.e. 18th September, 2006, the Respondent No. 5 appeared and the DCP (Headquarters) also filed an affidavit. On that date,

the Court passed the following order:

“The DCP (Headquarters) has filed the affidavit, paragraph 3 of which reads as under:

“It is submitted that the entire stretch of Hans Raj Gupta Marg has commercialized buildings having banks, guest houses, big showrooms and there is severe paucity of authorised parking spaces. There is no parking area in ‘B’ Block, the only parking areas in the vicinity is in ‘N’ Block and ‘M’ Block which is around 400 mtrs. Away from the said plot. The map of said area showing the nearby parking areas is attached herewith as Annexure R-1. Consequently the vehicles of shopkeepers, customers and employees are parked on the main road which is a ‘NO PARKING’ area as per plan.

a. This often results in traffic congestion. The answering respondent, regularly challans the vehicles which obstruct the flow of the traffic on the road.

b. During the period 1st January 2006 to 31st August, 2006 the answering respondent has challaned 4373 vehicles, out of which 3127 vehicles have been towed away and challaned thereafter.

c. Number of ‘NO PARKING’ signboards have been put up at various places in Greater Kailash.

d. The answering respondent has deployed one Z.O. and one constable for this area. The cranes along with traffic staff have been deployed to tow away the vehicles which are improperly parked and are obstructing the flow of traffic. On the spot challans are also being issued to violators of the traffic rules and the notices are also being sent to the violators who park the vehicles on the road causing obstruction in the flow of traffic.”

In view of the above affidavit we would like to know how the MCD has granted permission to respondent no.5 to run the bank in the area in question. Mr. Lao, counsel for respondent no.1AJOI says that a new notification has come on 7.9.2006. However, as per clause 10.4 sub-clause (10) of the said notification parking is an essential element where such kind of activity is undertaken. Let a copy of the notification be filed. The MCD is directed to file status report in view of the affidavit of the DCP (HQ). The UOI shall also file affidavit explaining how commercial activities of the bank can be permitted.

Mr.Sanjay Jain, learned counsel for respondent no.5 prays for some time to file counter affidavit. Let the same be filed within two weeks.

Renotify on 5.10.2006.”

17. The petition was next heard on 5th October, 2006. The Delhi Development Authority (‘DDA’), SCB and the Punjab National Bank (‘PNB’), were arrayed as Respondents. The actual owners of the property in question, i.e. Mr. Vijay and Ms. Ruchika Kalra, were directed to be impleaded. A further interim direction was issued to the DCP (Traffic) to ensure that “no vehicle is parked on this road which affects the ingress and egress of the residents of the locality or the smooth flow of traffic on the road.” The Court was informed by HDFC Bank that steps were being taken “to hire some parking space at Archana Shopping Complex so as to accommodate more vehicles visiting the bank.”

18. At the hearing on 31st October, 2006, Mr. Kapur pointed out that the ‘No Parking’ sign that had been installed by the police had been uprooted. The Court then directed the traffic police to ensure that the said sign board was

again put up and a crane was deployed to ensure that no vehicle was parked at any place which was meant for the residents. When the Court was informed by Mr. Kapur that another branch of ICICI Bank had been set up in the same locality, the Court directed the MCD to ensure that no further banking branches were opened on Hansraj Gupta Marg. The Court clarified that directions passed in this writ petition pertained to all banks and financial institutions.

19. When the petition was heard on 21st February 2007, the Court observed that the police had not been able to control the traffic flow and parking on the roads of GK-I. A chart was submitted to the Court showing the properties on the main arterial road from where the banks were operating. Copies thereof were provided to the DDA and the MCD, who were asked to file status reports on whether the banks were complying with the guidelines dated 19th May, 2007 on maximum land use.

20. On 24th September 2008, the Court was informed that the directions issued on 31st October, 2006 were not being implemented. The DCP (Traffic) informed the Court that in the period between 1st February and 15th September, 2008, approximately 4959 vehicles were prosecuted for traffic violations at the GK traffic signal. The Court reiterated that the directions issued by it on 31st October, 2006, were to be fully complied with. The Petitioner was given time to present the “consolidated norms applicable today for the misuse of the land, relating to the Banks.”

21. On 24th February, 2009, the following order was passed:
“The MCD has filed a status report without even observing the

courtesy of serving a copy on the other side. A copy be supplied within three (3) days.

The Executive Engineer of the area concerned is not present in the Court to assist us.

The status report of the MCD has been filed along with an affidavit affirmed on 9.2.2009. In terms of the status report notices have been issued to various banks on account of different violations. These notices have, however, been issued only on 2.2.2009 and it is stated that responses have been received from some of them while there is no response from the others.

Learned counsel for the MCD assures that in all these matters, a speaking order shall be passed in accordance with law within a maximum period of three (3) weeks from today and a further status report, would be filed giving necessary details. We expect the status report to contain violations, if any, found in respect of different banks in a tabular form.

The status report/affidavit of MCD be filed within four (4) weeks and the status report should also spell out the proposed action plan of the MCD keeping in mind the overall situation and the overview of the area.

We may also note with concern that the affidavits have been filed by the Traffic Police about the chaos prevalent in the relevant area. Learned counsel for the Traffic Police states that a current status report would be filed within one (1) week.

List on 14.4.2009.

CM Nos.15128-15129/2006; 16552/2008

These applications have been filed by ICICI Bank for impleadment and modification.

None appears before us to press these applications for

impleadment and modification. The petitioner states that the possible reason may be that the bank, which was proposing to open a branch has given up the proposal.

Dismissed.”

22. On 24th February, 2010, a series of orders were passed, granting different banks time to vacate residential premises from where they were operating. This included ABN Amro Bank, the Oriental Bank of Commerce (‘OBC’) and the Andhra Bank.

23. On 23rd April 2010, a detailed order was passed, in relation to OBC and Andhra Bank, granting them more time to vacate, while not relieving them of their respective undertakings to the effect that they shall vacate the premises. Similar orders, allowing Bank of Baroda to continue till 1st June, 2011, were passed on 3rd December, 2010. Similar orders were also passed in respect of PNB and the State Bank of India (‘SBI’) on the same date.

24. On 25th March, 2011, the following order was passed:

“CM NO.8790/2009 (for Directions filed on behalf of the Intervener)”

Learned counsel for the MCD states that he will file an updated status report with regard to the property bearing No.B-54A, GK-1, New Delhi. The prayer made is only for the status report qua the functioning of the Bank from the ground & first floors. The status report would incorporate the position regarding the allegations made by the intervener.

Application stands disposed of.

WP (C) No.12944/2006

The petitioner, appearing in person, states that assuming the validity of the MPD-2021 it is his submission that such of the

banks which did not fulfil the norms as on 7.9.2006 cannot be permitted to continue. He further adds that he is not looking to minor deviations but cases where there are incurable defects submission, thus, is that within these parameters the case may now be examined. The petitioner further states that he will also find out, in the mean time, as to what aspects of challenge to MPD-2021 are pending before the Supreme Court before urging anything apart from what is mentioned aforesaid. List for hearing on 8.7.2011.”

25. Another extension was granted to Bank of Baroda, SBI and PNB by way of an order dated 27th May, 2011. On 18th November, 2011, a final opportunity was granted to Bank of Baroda and PNB to vacate their respective premises in terms of the undertakings given by them earlier.

26. On 30th August, 2013 the Court was informed by counsel for the Respondent Nos. 5 and 9 that certain matters in relation to the subject matter of the present petition which were pending before the Supreme Court had been remitted to this Court for hearing. A copy of an order dated 30th April, 2013 passed by the Supreme Court in I.A. No. 22 in W.P.(C) 4677/1985 (*M. C. Mehta v. Union of India*) was placed on record. It was *inter-alia* observed therein by the Supreme Court that the matters concerning “the challenge raised to Parliamentary enactments, as also, the challenge to the Master Plan and the notifications issued thereunder by the DDA” ought to be “remitted to the Delhi High Court for consideration.”

27. The matter kept getting adjourned from time to time. On 7th January, 2016, counsel appearing for the South DMC was asked to file an affidavit indicating the banks which, according to him, had requisite permissions, and

banks which did not. In respect of banks which had such permissions, copies of said permissions were to be filed along with the affidavit. The affidavit was to further indicate the banks which were complying with the conditions laid down in MPD, 2021 and other applicable laws.

28. Pursuant thereto, an affidavit was filed by the South DMC on 1st February, 2016 enclosing as Annexure 'A' a chart containing the details as were required to be furnished. It was stated that while initially there were 12 banks covered by the writ petition, which were set out in the chart, during inspection, it was revealed that of these 12 banks, 6 had already closed their activities. Of those that remained, the banks at Sl. Nos. 7 to 9 had the requisite permissions.

29. At Sl. No. 9 was HDFC Bank. It was stated that it had obtained permission on 31st January, 2006. In the remarks column it was stated as under:

“Though they are having the permissions, but some of its items are being violated. Further so far as compliant with the norms of MPD-2021 and other applicable laws is concerned it has been observed that though they are complying with most of the norms as specified therein except the norms regarding the responsibility of plot allottee/owner to make arrangement for parking so that parking does not encroached/spill over on the public land.”

30. At Sl. No. 8 was HSBC Bank, which was functioning at R-47, GK-I. It was stated that permission had been granted to the owner Mr. Mohit Dhaun by a letter dated 27th February, 2004, with another permission for additional space being granted on 29th August, 2008. In the remarks column, it was

stated as under:

“Though they are having the permissions, but some of its items are being violated. Further so far as compliant with the norms of MPD-2021 and other applicable laws is concerned, it has been observed that though they are complying with most of the norms as specified therein except the norms regarding the responsibility of plot allottee/owner to make arrangement for parking so that parking does not encroached/spill over on the public land.”

The connected petitions

31. It must be mentioned here that Mr. Mohit Dhaun has filed a separate W.P.(C) 10582/2009, which was first listed on 31st July, 2009 and in which notice was directed to issue to 7th August, 2009. The said petition, which impugns a Show Cause Notice (‘SCN’) dated 17th July, 2009 issued to HSBC Bank by the MCD requiring them to give reasons why the premises out of which it operates ought not to be sealed for “misuse”, has been heard along with Mr. P. V. Kapur’s petition.

32. It also requires to be noticed that SCB has filed two separate writ petitions. The first W.P.(C) 8046/2009 challenges an order dated 30th March, 2009 issued by the Building Department of the MCD alleging five violations of the applicable laws on the part of SCB. In its order dated 6th April, 2009, this Court noted SCB’s submission that of the five violations, remedial steps were in progress in respect of Violation Nos. 2 and 3, and the MCD was to verify upon their compliance. Further, the balance charges, failure to deposit which constituted Violation No. 4, were asked to be intimated to SCB, which, the counsel for SCB submitted, would deposit the same. It was also submitted that the excess area being occupied by SCB would be surrendered

to the landlord so that Violation No. 5 did not subsist. The Court then observed that after the removal of Violation Nos. 4 and 5, only the violation at Sl. No. 1 would remain. On this aspect pleadings were asked to be completed.

33. Subject to the SCB complying with the above stipulations, the order dated 30th March, 2009 was stayed by this Court by its order dated 6th April, 2009. The tenant of the property was impleaded on 18th September, 2009. The said petition has continued to be heard along with the remaining petitions.

34. The second W.P.(C) 10395/2009 by SCB challenges an SCN dated 17th July, 2009 issued by the MCD to SCB, similar to the one issued to HSBC Bank. By an interim order dated 24th July, 2009, this Court directed that no coercive steps be taken against SCB. This petition too has been heard along with the other matters.

Mr. Kapur's submissions

35. Mr. Kapur made the following submissions:

(i) GK-I is a category B colony in terms of Clause 15.7.2 of MPD, 2021, which is currently in force. It is clear that Banks are not allowed in colonies of categories A and B, except those that were already operating as on 7th September, 2006.

(ii) In terms of clause 15.3.2 of MPD, 2021, only those banks which have been operating since before 7th September, 2006 in accordance with the notifications issued from time to time in that regard and are on plots abutting

roads of minimum 18 m Right of Way ('ROW') will be permitted to continue.

(iii) Under sub-clause (ix) of clause 15.7.3 of MPD, 2021, it is the responsibility of the plot allottee/owner to make arrangements for parking so that parking does not encroach/spill over on public land.

(iv) The position that obtained between August, 1990, when MPD, 2001 came into force, till 7th May, 1999, when the impugned notification came into force, was that Banks could operate in residential areas only if:

(a) in terms of clause 10.0 of MPD, 2001, streets for mixed use activity were identified by conducting a traffic study in each individual case to see whether there would be no adverse effect in traffic circulation.

(b) it was found feasible to permit mixed use in a street/area.

(c) in terms of clause 10.0 (i), the commercial activity was carried out only on the ground floor to the extent of 25% or 50 sqm, whichever was less.

(d) under clause 10.0 (ii) of MPD, 2001, the establishment was run by a resident of the dwelling unit.

(e) the front setbacks for such plots were surrendered without compensation to the local bodies for use as part of the ROW, parking etc.

(f) under clause 8 (iv) of MPD, 2001 and the table thereunder, parking standards in terms of Equivalent Car Spaces ('ECS') was 1.33 ECS per 100

sq. m of floor area.

(v) Between May, 1999 to 11th March, 2003, when the DDA (Permission of Residential Land and Building for Use as Banks) Regulations, 2003 ('DDA Regulations') came into effect, banks could operate only if:

(a) under clause 10.0 of MPD, 2001, it was found feasible to permit mixed use in a street/area.

(b) in terms of Clause 10.0 of MPD, 2001, the establishment was run only by a resident of the dwelling unit.

(c) under the notification dated 7th May, 1999, the minimum size of the plot was 209 sq. m, facing a road with minimum width of 18 m. The minimum requirement regarding the width of the road was 9 m in special areas and 13.5 m in rehabilitation colonies.

(d) under clause (ii) of the guidelines issued pursuant to the notification dated 7th May, 1999, the maximum area used was $\frac{2}{3}$ rd of the floor area in the case of plots of size up to 250 sq. m. In the case of larger plots, use was permitted up to a ceiling of $\frac{2}{3}$ rd of the floor area or 600 sq. m, whichever was less.

(e) the maximum plot size on which banks were operated was, in terms of clause (iii) of the guidelines, 1000 sq. m.

(f) in terms of clause (iv) of the guidelines, all parking requirements in relation to plots with sizes over 250 sq. m were provided within the plot. In

case of smaller plots, land in the vicinity was to be identified and developed as a common parking area.

(g) in terms of clause (vii), it was a branch office of the bank catering to neighbourhood banking facilities.

(h) under clause (xii) of the guidelines, no hardship or nuisance was created for local residents.

(i) under clause (2) of the guidelines, local bodies ensured that the residential character of the area was maintained.

(vi) In case there was a violation of the above conditions, prompt action was to be taken to issue time bound notice to parties and in cases of non-compliance, the premises were to be closed and sealed and permission fees with 100% misuse fees were to be recovered, in terms of clause (xi) of the guidelines.

(vii) From March, 2003 till 7th September, 2006, when MPD, 2001 was modified by way of a notification, the bank could operate only if:

(a) in terms of clause 10.0 of MPD, 2001, it was found feasible to permit mixed use in a street/area.

(b) in terms of clause 10.0 of MPD, 2001, the establishment was run only by a resident of the dwelling unit.

(c) in terms of clause (VI) (a) (1) of the DDA Regulations, the minimum size of the plot was 209 sq. m, facing a road of minimum width of 18 m. The minimum requirement regarding the width of the road was 9 m in special areas and 13.5 m in rehabilitation colonies.

(d) in terms of clause (VI) (a) (2) of the DDA Regulations, the maximum area used was $\frac{2}{3}^{\text{rd}}$ of the floor area in the case of plots of size up to 250 sq. m. In the case of larger plots, use was permitted up to a ceiling of $\frac{2}{3}^{\text{rd}}$ of the floor area or 600 sq. m, whichever was less.

(e) under Clause (VI) (a) (3) of the DDA Regulations, the maximum plot size on which banks were operated was 1000 sq. m.

(f) under clause (VI) (a) (4) of the DDA Regulations, it was a branch office of the bank catering to neighbourhood banking facilities.

(g) under clause (VI) (a) (7) of the DDA Regulations, no hardship or nuisance was created for local residents.

(h) under clause (2) of the guidelines, local bodies ensured that the residential character of the area was maintained.

(i) under Clause (VI) (a) of the DDA Regulations, the permissions granted to operate banks were case specific, and not general.

(j) under clause (VI) (a) (5) of the DDA Regulations, the building for which

the permission was sought to be obtained was regularized/approved/sanctioned by the DDA/the appropriate local body as per Building bye-laws for the time being in force.

(k) under clause (VI) (a) (8) of the DDA Regulations, such plots also conformed to other statutory requirements.

(l) under clause (VI) (a) (6) of the DDA Regulations, all parking requirements adhere to the ECS required for this purpose.

(m) under clause IX (d) of the DDA Regulations, the permission fee collected was put in an escrow account, to be utilized by the respective local bodies for the upgradation of infrastructure and services in residential areas.

(n) under Clause IX of the DDA Regulations, penal action was to be taken for violation of the conditions.

(viii) From 7th September, 2006, no new bank was to start operations in colonies which fell in categories A & B.

(ix) The status reports filed from time to time by the police as well as the MCD showed that any number of attempts to enforce the above regulations were futile. Either the 'No Parking' sign itself was being removed or vehicles were nevertheless parked in the area with impunity. The fact that the traffic police had prosecuted vehicles for improper or obstructed parking did not appear to have any effect whatsoever. It was therefore futile to

expect that the regulations brought about by the above notifications/rules/DDA Regulations could somehow address the issue of the complete failure in recognising Hansraj Gupta Marg for mixed land use in the first place.

(x) Mr. Kapur pointed out that the expression ‘other activity’ was not intended to bring in banks even if they existed as on 7th September, 2006. Merely because the Respondent No. 5 Bank was already functioning prior to 7th September, 2006 did not excuse it from conforming to the requirements of MPD, 2001 and MPD, 2021, as pointed out hereinbefore. Importantly, the ECS requirements were never met, and were incapable of being met, given the space constraints on the Hansraj Gupta Marg itself. The haphazard and random parking of vehicles by visitors to the bank in front of residential houses was going to be inevitable.

(xi) Mr. Kapur further pointed out that while the PIL helped shift out 6 of the 12 banks that were found functioning of Hansraj Gupta Road, 6 banks were still operative in the area and this has continued to remain a nuisance. Their presence has defeated the very idea of a neighbourhood bank, by operating from residential premises even though in that very residential area, there is a commercial space available, to which other banks have in fact moved. Therefore, even from the perspective of the need for neighbourhood banking facility, there is no justification for the 6 Banks to continue to operate from the residential plot.

(xii) In the long pendency of 14 years of the present petition, there is

sufficient empirical evidence available on record of this very case to demonstrate that there is an urgent need to stop commercial activity in residential areas, at least in colonies in the A & B categories in general, and GK-I in particular, under the garb of ‘mixed use’, which has proved to be a total failure and has only added to chaos and congestion, defeating the very purpose of planned development.

Submissions on behalf of HDFC Bank

36. Mr. Sandeep Sethi, learned senior counsel appearing for HDFC Bank made the following submissions:

(i) The PIL has been filed by an individual whose perception cannot form the basis for a conclusion about the presence of nuisance to the traffic in the locality on account of the banking activity. In any event, traffic hazards and nuisance in the area has reduced considerably over the years.

(ii) Mr. Kapur cannot be selective about whom to make parties to a petition of this nature. Despite being aware that there are other forms of commercial activity such as nursing homes and guest houses operating in the area, Mr. Kapur has not only confined the PIL to the running of banks, but even there to one particular locality, i.e. Hansraj Gupta Marg on GK-I.

(iii) Subsequent to the filing of the writ petition, MPD, 2021 has been promulgated on 7th February, 2007, and there has been no challenge to the provisions of MPD, 2021. There are no pleadings in relation to the grievance concerning the applicability of MPD, 2021. This is essential so that the

opposite parties are able to respond in an appropriate manner and the Court can properly adjudicate the issues.

(iv) Mr. Kapur has sought to challenge the *vires* of the notification dated 7th May, 1999, while there is neither factual nor legal bases for such a challenge. It is important to note that a further notification dated 7th September, 2006 amended MPD, 2001, providing that all banks which already existed shall be permitted to remain, but no new banks would be permissible in colonies in categories A & B. The present petition was filed on 11th August, 2006. With the MPD, 2001 being amended on 7th September, 2006, the writ petition became infructuous. Mr. Kapur ought to have either sought permission to amend the petition or challenged the notification dated 7th September, 2006.

(v) The writ petition is also liable to be dismissed as infructuous inasmuch as the Delhi Government has notified the Delhi Maintenance and Management of Parking Places Rules, 2019 on 23rd September, 2019 ('Delhi Parking Rules'). These take care of the traffic problem. As a bank, HDFC cannot possibly regulate traffic. It can only assist people to park their cars in the allotted parking space.

(vi) Once the policy makers have framed the policy, the Courts would normally not interfere. They would allow the Government to regulate these aspects. Town planning is an area in which Courts will not sit in appeal over the opinion of MCD and other statutory authorities. Reference is made to the decision of this Court in ***DLF Universal Limited vs. Greater Kailash-II***

Welfare Association 127 (2006) DLT 131.

(vii) Non-residential activities in residential premises were dealt with under clause 10.0 of MPD, 2001. This was sought to be amended by the Government and objections/suggestions from the public were invited on 11th July, 1998 under Section 11-A (3) of the DD Act. Thereafter, the Central Government issued a notification dated 7th May, 1999 amending MPD, 2001 to allow banks to operate in residential plots of a minimum size of 209 sq. meters on road of 18 m, subject to the conditions laid down in the guidelines.

(viii) Considering that SCB was operating from 1991 itself, the 7th May, 1999 notification formally recognised the need for neighbourhood banking activity as it was always considered a public utility service necessary for the residents of a locality.

(ix) In any event after 7th September, 2006, no new bank was permissible in residential areas. For the safety and security of valuables comprising cash and jewellery, residents need a secure bank which does not require long travel. It is for this reason that a neighbourhood banking facility was provided for. This constitutes the spirit of the 'mixed land use', as contained in clause 10 of MPD, 2001 and clause 15 of MPD, 2021.

(x) The 1999 Notification and MPD, 2021 are independent of each other. MPD, 2001 is not under challenge, and neither is any provision pertaining to the operation of banking business, as contained in MPD, 2001, which is

under challenge before this Court. On 7th September, 2007, MPD, 2021 replaced MPD, 2001, and contained the same provisions for running of banking activities in residential activities. In other words, MPD, 2021, incorporates the amended provisions from 7th September, 2006.

(xi) The statutory authorities have also made a distinction of colonies, by categorizing them as 'A', 'B', 'C' 'D', etc. It would, therefore, not be correct for this Court to pass an order, holding that only in GK-I, banking activity is not permitted. It would then mean that within the category 'B' colonies, there are further distinctions and demarcations made. The Court lacks jurisdiction to make such demarcation.

(xii) There cannot possibly be a blanket ban on running of banking activity in residential colonies, which is otherwise, subject to conditions, permissible under MPD-2021, which is in any event, is not under challenge.

(xiii) Without prejudice to the above submissions, Mr. Sandeep Sethi defends the impugned notification dated 7th May, 1999, as deriving its statutory basis from Section 11-A of the DD Act. According to him, the said notification, which is ensued under MPD, 2001, does not alter the character of the plan, since MPD itself provides for mixed use, as provided in Clause 10.0. In other words, a non-residential activity in a residential plot, is not antithetical to the MPD. The MPD is not a document frozen in time. With the growing population, its needs are bound to change, and alterations will have to meet the expectations of the expanding population. Mr. Kapur does not challenge the original MPD, 2001, much less Clause 10.0, which

provides for mixed use. If, in principle, he does not question carrying on of a non-residential activity in a residential area, then the very basis for challenging the notification dated 7th May, 1999, is non-existent. He points out that Mr. Kapur never filed any objections to MPD, 2001 amendments, for which a public notice inviting objections was issued on 21st July, 2006.

37. In a tabular column made part of the written submissions, HDFC Bank has sought to demonstrate how it is not in violation of the statutory norms law, as under:

S.No.	Requirement in law	Availability
1.	Minimum road frontage as mentioned above will be necessary for allowing abovementioned activities. For guest houses, banks and nursing homes, which are already in existence, this requirement may be relaxed provided there is a clearance from fire department.	There is no allegation or case set up for violation of this condition. In any case, bank is in compliance with this condition.
2.	For banks, there is ceiling of FAR of 2/3 rd of 600 sq. mtrs., whichever is less.	The plot size is 836 sq. mtrs and bank is occupying 471 sq. mtrs only.
3.	The maximum plot size for the abovementioned activities will be 1000 sq. mtrs.	Plot size is 836 sq. mtrs.
4.	Parking requirements	• In terms of Master Plan, Bank is required to provide two cars per 100 sq. mtrs. Bank is providing 10 cars parking within the premises. • The HDFC Bank has also taken eight car parking in the nearby N-Block Market of Greater Kailash-I and has deputed two valet drivers for managing the parking. As and when the car parking exceeds the limit of the plot, the valet would take the cars away to the N-Market.

5.	Only branch offices of banks catering to the neighbourhood banking facilities will be permitted.	Bank is having a branch banking only catering to neighbourhood banking.
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38. As regards the general condition that no nuisance or hardship should be created for local residents, it is submitted that the Bank is complying with the norms as it has provided the minimum number of ECS in the plot and has also deposited one-time parking charges. The other commercial activities have a larger footfall than the banking activity, which is limited to a few hours in the day. Moreover, the banking today is done through internet and there is no requirement for a person to visit the bank personally. The bank has provided valet parking in the premises so as to minimize any inconvenience to the residents of the locality.

39. Mr. Sandeep Sethi refers to the correspondence with the MCD, which shows that HDFC has due permission for operating a bank branch. He also refers to the promptness with which the charges have been paid thus far to the MCD.

40. Mr. Sethi then analysed in detail Clause 15 of the MPD-2021, which deals with mixed use regulations, permitting non-residential activities in residential areas. The mixed use is permissible on (a) residential plots (b) mixed use streets and (c) commercial streets. The type of mixed use permitted in the mixed used zones is (a) commercial use, including retail, as per Clause 15.6 (b) other activities, as per Clause 15.7 (c) professional activities, as per Clause 15.8. According to Mr. Sethi, Hansraj Gupta Marg

is neither commercial nor mixed use street. The plots abutting it, are residential plots, and GK-I itself is a category- 'B' colony and, therefore, a residential area. Referring to Clause 15.3.2, Mr. Sethi submits that banks, like the HDFC Bank, in the instant case, which were operating as on 7th September, 2006, in accordance with the provisions of MPD, 2001, would continue. Therefore, when MPD, 2021 came into force, "it will only take into consideration the position as is existed, immediately preceding promulgation of MPD, 2021".

41. Mr. Sandeep Sethi insists that HDFC Bank is in compliance with Clause 15.7.2 as well. Mr. Sethi concludes by pointing out that HDFC Bank has approximately 34,000 accounts, and most of its account holders are in the vicinity. Therefore, HDFC catering to the public need, by providing banking as well as locker facilities in the premises for the entire neighbourhood and, is therefore, undertaking a permissible activity.

Submissions on behalf of SCB

42. Mr. Ravinder Sethi, learned senior counsel appearing for the SCB makes the following submissions:

- (i) The property in question, occupied by SCB for its banking branch is B-68, GK-I, which has a plot size of 980.6 square meters. SCB is occupying approximately 6460 sq.ft. area in the basement, ground floor and the first floor. He points out that although MCD on 3rd March, 2009 had issued an SCN, alleging that the area used by SCB was in excess of the permissible limit. The requirement that the maximum plot size would be 1000 square meters is, therefore, met.

- (ii) As regards the requirement that a maximum of 2/3rd floor area may be allowed for conversion of plot size, and for larger plots, there would be a ceiling of 2/3rd FAR of 600 meters, it is pointed out that SCB is operating within the permissible limit. It is pointed out that the excess area has since been surrendered to the landlord, pursuant to the statement made in this Court.
- (iii) As regards the parking requirements, it is claimed that SCB has provided 12 car parks within the premises. It is submitted that the clause should not be interpreted as requiring the man to provide parking, not with reference to ECS, but with reference to all its customers. That, according to Mr. Ravinder Sethi, is a condition that can never be fulfilled, and would be a mathematical impossibility. SCB also provides services of two valet drivers to cater to customers, so that the traffic flow on the road is not obstructed.
- (iv) SCB has also deposited one-time parking charges of Rs.18,35,508/- with the MCD under notification SO-3173 (E). It is now for MCD to develop adequate parking facility and SCB cannot be penalized for the failure of South DMC to do so.
- (v) SCB commenced its operations in 1991, and for a period of 15 years till 2006, there was no case of Mr. Kapur that the residential character of the colony was affected by operation of the SCB. In fact, SCB originally was not made a party to the petition. It was impleaded by an

order dated 5th October, 2006 of this Court.

- (vi) He supplements the submissions already made about Mr. Kapur being selective in going after banks, but not against nursing homes and guest houses. No affidavit of any resident or RWA had been placed on record to support Mr. Kapur's contentions about the nuisance being caused to the residents or that the residential character of the GK-I itself was getting altered.
- (vii) Even in a PIL, all affected parties had to be heard. Reliance is placed reliance on the decisions in *State of U.P. v. Satyanarayan Kapur (2004) 8 SCC 630*, *Iskon v. Nanigopal Ghosh (2000) 10 SCC 595* and *V.P. Singhal v. State of Tamil Nadu (2004) 13 SCC 673*. It is pointed out that in *M Block Residents Society, GK-I v. MCD* [W.P.(C) No.1089/2003], the grievance was only against the HDFC Bank and not against SCB.
- (viii) Notifications subsequent to the one dated 7th May 1999 have not been challenged by Mr. Kapur. The concept of 'neighbourhood banking' is to be understood considering the ground realities. It basically addresses the need for retail banking and is not confined to the locality where the bank branch is situated, but to the adjoining areas as well. This policy thus far, as reflected in both in MPD-2001 and MPD-2021 is to permit retail banking activities in residential areas and not non-retail banking like American Express, NABARD, Royal Bank of Scotland, etc.

(ix) The response filed by the landlord of HDFC Bank Mr. Mohit Dhaun, enclosing photographs and maps showed that mixed use and commercial activities are mushrooming in and around Mr. Kapur's residence. This belies Mr. Kapur's allegations that the residential character of GK-I is being altered only by the five banks operating in the area. The majority of the other commercial activities, like guest houses, ice-cream parlours etc. have more footfalls vis-a-vis the banks, where public dealings are restricted to few hours.

43. Turning to the DDA regulations, Mr. Ravinder Sethi submits that they are under the MPD and cannot override the express and specific permission granted under the MPD-2001, as amended by the notification dated 7th May, 1999. In any event, where the premises are already under non-residential use, permission had to be granted on payment of permission fee. SCB already tendered Rs.2 lakhs towards permission fee on 28th January, 2005, the issuance of an order by the MCD remained a formality.

44. Referring to an affidavit dated April, 2009 of the MCD, that SCB does not have a formal permission, Mr. Ravinder Sethi, makes a without prejudice argument, that no permission is required under MPD, 2001 which existed on the date of issuance of the DDA regulations. SCB claims to be in compliance with Clauses 15.4, 15.7, 15.7.2 and 15.7.3 of MPD, 2001.

45. Mr. Ravinder Sethi also refers to the PIL Rules, 2010. According to him, Mr. Kapur has a personal interest, being the resident of the area in question,

and his remedy is to file a private writ petition and not a PIL. Reference is made to the decision in *S.C. Gupta v UOI (1981) Supp SCC 81*. As regards non-joinder of parties, it is pointed out that the owner of property at B-68, GK-I, has also not been made a party, although the relief sought for by Mr. Kapur would have adverse consequences for him.

46. Mr. Ravinder Sethi submitted that notwithstanding all the above submissions, and notwithstanding that there was no challenge by Mr. Kapur to the constitutional validity of the notification or MPD-2021. SCB welcomes any direction for regulating the traffic in the area. In any event, the Supreme Court in *M.C. Mehta v. Union of India (2019) 10 SCC 614*, issued directions for notification of draft rules for parking places and enforcement of the same in principle.

47. As far W.P.(C) Nos. 8046 and 10395 of 2009 are concerned, it is submitted that the MCD notices dated 30th March, 2009 (challenged in W.P.(C) No.8046/2009), and the further notice dated 15th July 2009, under Section 345-A of the Delhi Municipal Corporation Act, 1957 ('DMC Act') (challenged in W.P.(C) No.10395/2009) were arbitrary inasmuch as Section 345-A, MCD only had the power to seal an unauthorized construction, there was no power to seal premises, even assuming that SCB was creating any chaos. The notices were mechanically issued, without taking into consideration the factual matrix of the matter. The notice dated 17th July, 2009 was also in violation of the order passed by the Division Bench in W.P. (C) No.8046/2009. Since SCB had already complied with all the statutory requirements, these notices were wholly unjustified in law and

ought to be quashed by this Court.

Submissions on behalf of Mr. Dhaun

48. Mr. Sumit Bansal, learned counsel appearing for Mr. Mohit Dhaun, the Petitioner in W.P. (C) No.10582/2009, is the landlord of R-47, GK-I, from where HSBC Bank is running. It is pointed out that document and certificate was granted to the owner on 26th February, 2004, and permission from 27th February, 2004, was granted by the MCD for opening a branch office of HSBC Bank. On 23rd April, 2008, the owner applied for regularization of the compoundable deviation, which were covered under the new building norms. The plan was regularized on 30th September, 2008. Meanwhile, on 22nd May, 2008, the annual mixed use charges were deposited.

49. On 26th August 2008, an application was made for additional space for banking activities on the first floor. On 29th August, 2008, the said permission was granted. Subsequently, the owner deposited the additional charges, including the one-time parking charges. Thereafter, the owner has been regularly paying the annual mixed usedcharges and other charges. It is pointed out that Mr. Dhaun himself is residing on the second floor. ECS requirements in terms of MPD-2001 and MPD-2021 were being met. Valet parking has also been provided. HDFC Bank was running from the premises with permission, and is operating even prior to 7th September, 2006, and this is a neighbourhood retail bank. The other submissions are more or less similar to the one made on behalf of HDFC Bank and SCB. The notices and orders of the MCD, which are challenged by Mr. Dhaun in W.P.(C) No,10582/2009 are stated to be vague and unsubstantiated by any empirical

data. It is submitted that they ought to be, therefore, quashed.

Submissions on behalf of South DMC

50. Mr. Ajjay Aroraa, learned counsel appearing for the South DMC made the following submissions:

(i) The MCD (South DMC) had strictly gone by the fixed time notifications and regulations while processing the applications of the property owners for permission to operate banking activities from the respective premises.

(ii) Wherever MCD noticed deviations, it issued SCNs. As the orders passed by the Court would themselves show of the 12 banks, only 5 have continued their activities and only of whom are continuing till date. They are complying with the conditions which were granted to them.

(iii) However, the parking requirements are possibly not being met, as is evident from the status report filed by both the Traffic Police as well as the South DMC. It would be for consideration by the Court as to what would be the best course of action to be adopted. The South DMC would abide by any direction which the Court may issue in regard to the provisions of MPD-2021, and the notifications, which form the subject matter of the present petitions.

Issues for determination

51. On the basis of the above submissions, the following issues arise for determination:

(i) Is the present petition maintainable as a PIL?

(ii) Will a challenge to the notification dated 7th May, 1999 continue to remain valid, notwithstanding that there have been subsequent notifications as well as the MPD, 2021 itself?

(iii) Can three banks and the respective property owners be said to be carrying on non-residential activities in residential areas contrary to the requirements under the MPD, 2001 and MPD, 2021?

(iv) What is the scope of the judicial review by the Court in such matters and what directions can possibly be issued?

Issue (i): Maintainability

52. The Court would first like to address the issue of maintainability of Mr. Kapur's petition as a PIL. Mr. Kapur is a Senior Advocate of this Court. While it is true that he is also affected by the facts and circumstances outlined in the petition and would benefit from the reliefs claimed by him, as a Petitioner in person it can hardly be in doubt from what has transpired in the 14 years during which this petition has remained pending, that the reliefs sought by him are not only for his interest but that of the community at large.

53. Since the petition was filed 14 years ago, numerous orders have been passed from time to time at the instance of Mr. Kapur which have benefited the community as a whole. It can hardly be said that this is some kind of a personal interest litigation not having the character of PIL. It would be

wholly inappropriate to characterise the present petition as anything but a PIL.

54. What Mr. Kapur has highlighted is an issue that affects not just himself but all the residents on either side of Hans Raj Gupta Marg, one of the main arterial roads of GK-I. What is essentially a residential colony has been witnessing commercial activity as a result of the mixed land use regulations, which this Court will discuss elaborately hereafter in this judgment. The benefit of the orders of this Court passed from time to time, which has resulted in 6 of the 12 banks which were earlier functioning, ceasing to do so, has undoubtedly benefited the entire community and not just Mr. Kapur.

55. The problem is a real and live one. The documents placed on record in the form of status reports filed by the Traffic Police as well as South DMC bear eloquent testimony to the fact that there is a serious strain on vehicular parking space in the area and that the commercial activity in various premises, including the banks, is leading to traffic congestion in general and parking violations in particular. Through the 14 years of pendency of the present petition there have been repeated instances, and in considerably large numbers, of parking violations resulting in traffic challans being issued by the Traffic Police to the violators, the details of which have been documented in the status reports filed before this Court by the Traffic Police.

56. While the Police claims to have resolved the issue somewhat, the photographs placed on record before the Court along with documents, paint a different picture. Neither has the vehicular traffic ceased nor have the

footfalls in the various commercial establishments including the banks receded. It is in this scenario that the Court has been called upon to examine the issue concerning the failure of planning regulations and bye-laws and to find a solution that is feasible.

57. Far from being an instance of vexatious litigation, this petition has served the purpose of not only highlighting the serious issue of residential areas witnessing large scale non-residential use, affecting large parts of the national capital, but it has also served to highlight the failure to implement the law. In that sense, the petition also engages the issue of accountability of the agencies entrusted with such enforcement, to the law.

58. At this juncture, the Court would like to briefly recapitulate the legal position as regards maintainability of PILs.

59. In *Shivajirao Nilangekar Patil v. Mahesh Madhav Gosavi (1987) 1 SCC 227*, the Supreme Court observed, that in an appropriate case, where the petitioner might have moved a court in his private interest and for redressal of his personal grievance, the Court in furtherance of public interest may find it necessary to enquire into the state of affairs of the subject matter of the litigation in the interests of justice.

60. Later, in *Indian Banks' Assn. v. Devkala Consultancy Service (2004) 11 SCC 1*, this was reiterated and it was observed:

“34. Furthermore, even where a writ petition has been held to be not entertainable on the ground or otherwise of lack of locus,

the court in larger public interest has entertained a writ petition. In an appropriate case, where the petitioner might have moved a court in his private interest and for redressal of his personal grievance, the court in furtherance of public interest may treat it as a necessity to enquire into the state of affairs of the subject of litigation in the interest of justice. Thus, a private interest case can also be treated as public interest case.”

61. In *State of Uttaranchal v. Balwant Singh Chaufal (2010) 3 SCC 402*, after referring to a catena of decisions, the Supreme Court issued directions to streamline the scope of a PIL:

“181. We have carefully considered the facts of the present case. We have also examined the law declared by this Court and other courts in a number of judgments. In order to preserve the purity and sanctity of the PIL, it has become imperative to issue the following directions:

(1) The Courts must encourage genuine and bona fide PIL and effectively discourage and curb the PIL filed for extraneous considerations.

(2) Instead of every individual Judge devising his own procedure for dealing with the public interest litigation, it would be appropriate for each High Court to properly formulate rules for encouraging the genuine PIL and discouraging the PIL filed with oblique motives. Consequently, we request that the High Courts who have not yet framed the rules, should frame the rules within three months. The Registrar General of each High Court is directed to ensure that a copy of the rules prepared by the High Court is sent to the Secretary General of this Court immediately thereafter.

(3) The Courts should prima facie verify the credentials of the petitioner before entertaining a PIL.

(4) The Courts should be prima facie satisfied regarding the correctness of the contents of the petition before entertaining a PIL.

(5) The Courts should be fully satisfied that substantial public interest is involved before entertaining the petition.

(6) The Courts should ensure that the petition which involves larger public interest, gravity and urgency must be given priority over other petitions.

(7) The Courts before entertaining the PIL should ensure that the PIL is aimed at redressal of genuine public harm or public injury. The Court should also ensure that there is no personal gain, private motive or oblique motive behind filing the public interest litigation.

(8) The Courts should also ensure that the petitions filed by busybodies for extraneous and ulterior motives must be discouraged by imposing exemplary costs or by adopting similar novel methods to curb frivolous petitions and the petitions filed for extraneous considerations.”

62. Much was said by learned counsel for the Respondents about Mr. Kapur picking and choosing who he wants to proceed against. In particular it is sought to be contended that Mr. Kapur was targeting only branches of banks and not the other commercial activities. It needs to be pointed out at this stage that through these 14 years, the Court has by its orders confined the scope of the present petition to the activities of banks. If it had permitted Mr. Kapur to expand the scope of the petition then perhaps he might have included other commercial activities as well. As long as banks do constitute one prominent commercial activity in the area, the petition would not be bad

only because other commercial activities are not highlighted in it. It cannot reasonably be expected that the same PIL Petitioner would in one PIL want the Court to take action against all commercial establishments everywhere.

63. This is precisely what happened in W.P.(C) 4677/1985, a PIL filed by M.C. Mehta, which has been pending for well over three decades in the Supreme Court. Numerous orders have been passed in just one interlocutory application IA No. 22 concerning the issues of environmental protection and enforcement of planning and zoning regulations and bye-laws in the national capital. It is in 2013 that the Supreme Court remitted to this Court all these issues concerning the national capital which it was otherwise dealing with till then.

64. It is therefore not possible to expect Mr. Kapur to take the burden of highlighting violations of the planning, laws and regulations by all commercial establishments in an omnibus petition. That would be too onerous for not just Mr. Kapur but even this Court to handle. If indeed the commercial activity highlighted is contrary to the planning laws, nothing prevents the Court from examining it.

65. It was then contended that Mr. Kapur ought to have not confined the challenge, if at all, to the validity of notification dated 9th May, 1999 but to all subsequent notifications. Mr. Ravinder Sethi went to the extent of suggesting that without challenging subsequent notifications and in particular the notification dated 7th September, 2006 and provisions of the MPD, 2021, the petition itself is a futile exercise.

66. Again, the Court is unable to agree with the submission. This petition is an instance of a continuing cause of action, where the essential focus is on the use of residential premises in GK-I for non-residential purposes and the failure of mixed land use regulations and specific provisions of the MPD, 2001, as it stood at the time immediately prior to the filing of the petition and which has continued even thereafter i.e. even after the MPD, 2021 came into force, to deal with the said issue.

67. The problem that drove Mr. Kapur to the Court in 2006 persists and perhaps in a greater degree. Therefore, from the point of view of Mr. Kapur, and considering that this is essentially a PIL, it would not be just to decline to entertain the petition only because it confines the main prayer to challenging the notification dated 7th May, 1999 and does not specifically raise a challenge to the subsequent notifications that legitimise the continuation of retail banking activity from residential premises. The Court therefore rejects this submission as well.

Issue (ii)

68. Does the absence of a challenge to the constitutional validity of MPD, 2001 or 2021 preclude the Court from granting the relief as prayed for by the Petitioner?

69. As far as this issue is concerned, while it is true that no direct challenge, as such, has been raised to the constitutional validity of either Section 11A of the DD Act or even to the mixed land use regulations, Mr. Kapur is

certainly challenging the notification issued under Section 11A of the DD Act, which purportedly permits the status quo that was continuing prior to the MPD, 2021 to somehow continue. The petition is thus not rendered merely academic on account of subsequent developments that have allowed that status quo to continue.

70. Considering that this is a PIL where the role of the Petitioner is essentially to highlight the issue that requires the intervention by the Court, it would matter little that in a purely technical sense the Petitioner challenges only one notification that preserves the status quo and not all the subsequent notifications and statutory instruments that continue it. In that sense the notification dated 9th May, 1999 is some kind of a ‘principal notification’ which has then triggered changes in MPD, 2021 as well.

Issue (iii)

71. The Court now turns to the core issue in the petition, namely the compliance by the six banks that continue to operate in the area with the requirements of the MPD, 2001, MPD, 2021 and the earlier notification.

72. The DD Act was enacted with the object of achieving the planned development of Delhi. This was in the background of the period post the partition in 1947 when a large number of colonies mushroomed and their growth was haphazard. Chapter 3 of the DD Act provided, broadly, for two levels of plans. One was the MPD, the scope of which was contained in sub-sections 2 and 3 of Section 7 of the DD Act. The contents of the Zonal Development Plans (‘ZDPs’) were specified in Section 8 of the DD Act.

73. Section 11A of the DD Act sets out the procedure for modifications to the MPD which equally apply to ZDPs as well. Section 11A (3) of the DD Act makes it apparent that every modification to the plan is a consultative process in that “objections and suggestions” are invited from persons and considered by the Delhi Development Authority (‘DDA’) and also by the Central Government which continues, through the Ministry of Urban Development (‘MoUD’), to have the final say in respect of all such modifications.

74. In the context of the present case, since the MPDs and ZDPs provide *inter alia* for land use and the earmarking of spaces for residential industrial and non-residential uses, any change with regard to land use patterns in different zones and areas would have to abide by the procedure outlined in Section 11A of the DD Act.

75. The DD Act has to be read with the Delhi Development (Master Plan and Zonal Development Plan) Rules, 1959 (‘MPD Rules’) which detail the procedure not only for the preparation of the MPDs but also for the ZDPs, which also involve a consultative process of enquiry and hearing on objections and suggestions to their draft versions. In terms of Rule 4 (3) (b) the MPD is supposed to include “a land use plan”, which is based on the survey of the “present use of land” as well as analysis of the “estimated future needs”. It is expected to consist of comprehensive proposals “for the most desirable utilization of land”. As per Rule 4 (3) (c) of the said Rules, the MPD must also include “a transit and transportation plan” based on

reports of survey and inventory of volume of traffic and capacity of existing roads, parking, loading, unloading and terminal facilities.

76. What is relevant in the context at hand is the need, therefore, to periodically review the provisions of the MPD and the ZDPs, wherever applicable, keeping in view the present and estimated future needs, and in particular, the volume of traffic on roads and the capacity for dealing with the pressure for use of space.

77. Another set of regulations that are relevant in this context are the DDA (Permission of Residential Land and Building for Use As Banks) Regulations, 2003 ('DDA Regulations, 2003'). Regulation VI of the said DDA Regulations titled "The Manner to Allow Permission" stipulates in relation to permitting banks to operate in residential areas that the "permission shall not be general to the residential lands and buildings but shall be case specific". It then proceeds to lay out 8 "terms and conditions" subject to which banks can be granted permission to operate in residential areas.

78. At this stage, it is necessary to understand the background to the law on permission to change the use of a building meant for residential purposes and for non-residential purposes including banks. One criticism of the MPD 1962 is that it introduced a system of "zoning", whereby, broadly, three different zones of residential use, commercial use and industrial use were designated. In this regard one scholar of urban planning has observed as under:

“The master plan policies concentrated on dividing the metropolis into eight divisions in a polynodal setup each self-contained in terms of work and living. District and sub-district centres were proposed, in addition to the existing Central Business District, to meet the commercial requirements of the public and residential recreation, etc. Functions were envisaged to grow within their respective zones- governed by various zonal regulations that specified the uses permissible in a particular zone.”

79. It was also acknowledged that mixed land use was “a characteristic feature of all urban settlements before the advent of industry and the automobile.” It was noted that in “pedestrian oriented” communities “the small shop around the corner and the manufacturing unit in the house were the part of a natural and necessary phenomenon.”

80. One other scholar G.B.K. Rao in an article titled “Issues in Controlling Urban Building Activities” in “Control of Urban Building Activities” (edited by D.D.Malhotra) JITPA noted, in the context of Indian cities in general as under:

“...there is horizontal and vertical mixing of uses primarily between residential, commercial and industrial use, e.g. commerce on ground floor and residence in the rear and on upper floors; and industry, at times in the rear. Often, traditional industry of the household type flourishes in the older parts of the city and invariably specific industry type is found to be associated with specific caste, ethnic or religious group. In a sense, the mixed pattern or landuses in the older parts of the cities is very much a gradual evolution of the pattern established in the past when the urban settlement was still nourishing its rural moorings. The mixing of landuses grows with the organic growth of settlements over a period of time, In fact, the central areas of older cities bustle with life and

vitality, during the day and major part of the night due to such conglomeration of uses which is sadly lacking in more recent developments.”

81. Therefore, in the Indian context the mixed land use phenomenon is not something new and planners and developers had to acknowledge this even while drawing up rules and regulations for preparation of master plans.

82. In preparation of the Perspective Development Plan for Delhi (1981-2001), the DDA conducted a study, which revealed certain facts about the extent of mixed use in residential areas as under

“(1) Instances of mixed land uses were correlated with the age of development, i.e. higher percentage of dwelling units used for more than one activities in areas developed before 1962 as compared to those after that year.

(2) In case of low-income communities, the instances of mixing of uses was in respect of retail commercial activities within residential premises. But in Case of higher income group communities, non-residential uses that were penetrating into residential areas were mostly professional consultancy offices and other office uses, banks and guest houses.

(3) More than 90% of instances of mixed uses were confined to ground floors of buildings and upper floor generally used extensively for residential purposes. In case of commercial and residential mix use areas, commercial development spreads linearly along the roads occupying front portions or whole of the ground floors.”

83. As a result of the above study residential areas were divided into three groups:

“The Group 1 residential areas comprise plotted developments

after 1962 and other plotted areas where the mixing is negligible.

Group 2 cover plotted residential developments for refugees, resettlement colonies, urban villages and other plotted residential developments where commercial activities have come up in considerable amount. One of the areas identified is NDSE-2, portion facing Ring Road (Appendix).

Group 3 mainly consists of unauthorised regularised residential areas.”

84. In an article titled “Shopping in Housing Areas in Delhi” in the Journal *Architecture+Design*, Volume. 8, No.1 (Jan-Feb, 1991) at pages 85-89, Gita Dewan Verma, an Urban Planner, referring to the aforesaid report of the DDA, observed as under:

“Though the masterplan for Delhi adopted a permissive rather than prohibitive system of zoning, its policies were never oriented towards mixed landuse. However, in the last twenty years of the implementation of the master plan, large scale mixing- unauthorised and often incompatible- has occurred, particularly in residential areas. The reasons attributed to this state of affairs in the mixed landuse report of the Perspective Development Plan-2001, include.

1. Requirement of Shopping at the rate of 1 shop for 150 persons was a gross underestimation. The reality is close to 3 times this figure.
2. The implementation of commercial areas originally planned was slack. Only two of the 15 district centres proposed were built and none of the sub-district centres. This left a wide gap in meeting the genuine demands for commercial space.
3. Also, where shopping, etc. were provided their location and placement usually failed to adequately fulfil the felt needs and behavioural tendencies of the people.

4. Furthermore, in the absence of new commercial space, prices in the established commercial centres rose forcing the small traders out.

5. All this coupled with slack enforcement of zonal regulations resulted in the present state of rampant unauthorised mixing of landuses in residential areas of Delhi.

It may be mentioned here that the success of the New Master Plan's Strategy of generally 'permitting' mixed landuses in certain specified areas is doubtful. This strategy is no more than a reactive mechanism seeking to remove the stigma of 'unauthorised' from an unintended phenomenon. It may well be presumed that in another 20 years, yet another set of areas would have to be similarly 'permitted' mixed landuses."

85. The above observations were prescient and the experience since then have revealed that indeed there has been an extensive growth in the phenomenon of mixed land use, with a greater number of residential areas succumbing to the pressure of need for commercial space. In this regard, Gita Dewan Verma has further noted as under:

"Regulations can be used to guide tendencies and not to impose extraneous behavioural patterns. When such largescale flouting of a regulation takes place, it is pertinent to question not the enforcing mechanism but the regulation itself."

86. Specific to the issue of parking we have the Delhi Maintenance and Management of Parking Places Rules, 2019 ('Parking Place Rules'), the implementation of which has been prioritised in a recent judgment of the Supreme Court in *M.C.Mehta v. Union of India (2019) 10 SCC 614*. In light of the report submitted by the Environment Pollution (Prevention and Control) Authority ('EPCA'), specific directions were issued by the Supreme Court. Taking note of the separate aspect of the said policy as far

as residential areas is concerned, the Supreme Court observed as under:

“20. The policy relating to residential areas also provides that a lane must be earmarked for unhindered movement of vehicles like ambulances, fire tenders, police vehicles; etc. This is very essential not only to take care of medical emergencies, fire hazards, etc. but also to ensure that the law and order enforcement agencies can move without any hinderance. This lane will also obviously be used by the residents. This lane should be clearly earmarked on both sides by yellow fluorescent paint or strips and not even an inch of space within the two yellow lines should be permitted to be used for parking. This will prevent perpendicular parking and encourage parallel parking.”

87. After a detailed discussion of the EPCA report in relation to Lajpat Nagar, Delhi, the Supreme Court proceeded to issue general directions as under:

“32. In view of the above discussion we issue the following directions:

32.1. We direct the New Delhi Municipal Corporation, North Delhi Municipal Corporation, South Delhi Municipal Corporation; East Delhi Municipal Corporation and Delhi Cantonment Board to ensure that all the pavements, in the residential areas are cleared from all encroachments and ensure that the pavements are made usable by pedestrians. The persons who have encroached upon the pavements shall be given notice of 15 days to remove the encroachment and in case they fail to do so the encroachment shall be removed by the municipal authority/authority concerned at the cost of the encroacher which shall be recovered as arrears of land revenue. The authorities may also consider framing rules to discontinue municipal services to repeat encroachers.

32.2. We direct that the draft rules of the Delhi Maintenance and Management of Parking Places Rules, 2019 be notified at the

earliest and not later than 30-9-2019. List for compliance: on 4-10-2019*,

32.3. Once the Rules are notified it shall be the duty of all concerned to ensure that the said rules are enforced in letter and spirit.

32.4. The Government of NCT is directed to ensure that while granting permission to build any structures, there is proper assessment of the parking needs for the next 25 years and requisite parking facilities are available.

32.5. We direct EPCA and the municipal authorities to take into consideration what has been stated in the judgment while evaluating the feasibility and effectiveness of the pilot project.

32.6. The Government of NCT of Delhi, the municipal authorities and EPCA are directed to consider the viability and effectiveness of introducing RFID tags, parking guidance and information systems and last mile connectivity from parking spaces to commercial areas, institutions, etc. and submit a report in this behalf by 30-9-2019 and for this purpose let the matter be listed in Court 4-10-2019.

32.7. After the reports on the pilot project are received further directions shall be issued.”

88. In *Joginder Kumar Singla v. GNCTD (2005) II AD (Delhi) 554*, this Court too emphasized the importance of the MPD and in particular, the importance of zoning. While considering whether restrictions on commercial activities in residential zones, the Court foresaw the possibility of uncontrolled conversion of residential areas for commercial purposes. It was observed in para 13 as under:

“13. It is required to be understood that if in a colony when permission is granted to erect several buildings for the purpose of

residence and facilities are provided accordingly by the builder as well as by the Development Authority and subsequently the buildings are put to commercial use, the same cannot be permitted unless the bye laws are amended/modified after following the provisions of law and that too after making adequate provisions for traffic, parking, water, sewerage and electricity. The Apex Court in *Friends Colony Development Committee v. State of Orissa and Ors.*, 2004(9) SCALE 166 examined the case of unauthorized construction made by a builder and held as under:

"In all developed and developing countries there is emphasis on planned development of cities which is sought to be achieved by zoning, planning and regulating building construction activity. Such planning, though highly complex, is a matter based on scientific research, study and experience leading to rationalization of laws by way of legislative enactments and rules and regulations framed there under. Zoning and planning do result in hardship to individual property owners as their freedom to use their property in the way they like, is subjected to regulation and control. The private owners are to some extent prevented from making the most profitable use of their property. But for this reason alone the controlling regulations cannot be termed as arbitrary or unreasonable. The private interest stands subordinated to the public good. It can be stated in a way that power to plan development of city and to regulate the building activity therein flows from the police power of the state. The exercise of such governmental power is justified on account of its being reasonably necessary for the public health, safety, morals or general welfare and ecological considerations; though an unnecessary or unreasonable intermeddling with the private ownership of the property may not be justified.

XXX XXX XXX

Structural and lot-area regulations authorize the municipal authorities to regulate and restrict the height, number of

stories and other structures; the percentage of a plot that may be occupied; the size of yards, courts, and open spaces; the density of population; and the location and use of buildings and structures. All these have in view and do achieve the larger purpose of the public health, safety or general welfare. So are front setback provisions, average alignments and structural alterations. Any violation of zoning and regulation laws takes the toll in terms of public welfare and convenience being sacrificed apart from the risk. Inconvenience and hardship which is posed to the occupants of the building. [For a detailed discussion reference may be had to the chapter on Zoning and Planning in American Jurisprudence, 2d. Vol.82.]"

89. The legal position in relation to the permissibility of commercial activities in a residential zone was summarised thus:

"i) there cannot be a commercial activity in residential zone and thus chemists shops are not permitted.

ii) the area in question does not fall in the mixed-use.

iii) the DDA & MCD are required to take action under the respective laws against these violators running chemists shops in the residential zone, viz in a building allowed to be used for the purpose of residence only by the competent authority."

90. In *M.C.Mehta v. Union of India (2006) 3 SCC 399* certain general observations were made in the context of misuse of premises which had been so rampant over the years in Delhi that it had made the task of enforcement cumbersome. It was observed as under:

"53. Now, we revert to the task of implementation. Despite its difficulty, this Court cannot remain a mute spectator when the violations also affect the environment and healthy living of law-abiders. The enormity of the problem which, to a great extent, is

the doing of the authorities themselves, does not mean that a beginning should not be made to set things right. If the entire misuser cannot be stopped at one point of time because of its extensive nature, then it has to be stopped in a phased manner, beginning with major violators. There has to be a will to do it. We have hereinbefore noted in brief the orders made in the last so many years but it seems the same has had no effect on the authorities. The things cannot be permitted to go on in this manner forever. On one hand, various laws are enacted master plans are prepared by expert planners, provision is made in the plans also to tackle the problem of existing unauthorised constructions and misusers and, on the other hand, such illegal activities go on unabated openly under the gaze of everyone, without having any respect and regard for law and other citizens. We have noticed above the complaints of some of the residents in respect of such illegalities. For the last number of years even the High Court has been expressing similar anguish in the orders made in large number of cases. We may briefly notice some of those orders.”

91. Following its judgment in *M.C. Mehta (supra)*, in *Delhi Pradesh Citizen Council v. Union of India (2006) 6 SCC 305*, the Supreme Court noticed the shortfall in the targets, as indicated in the affidavit filed on behalf of the Government of India, as under:

“Our attention has been drawn by learned counsel to para 24 of the affidavit filed on behalf of the Government of India to demonstrate how the Government authorities, in particular Delhi Development Authority, were responsible for the mess that has been created. Para 24 shows that as per the norms under the Master Plan 1962, 75 District centers should have come up against which only 9 were established, as against 300 Community centers, only 35 came up. Likewise, as against 1250 local shopping centers under the norms of Master Plan 1962, 135 such centers were established and 435 convenient shopping centers were established as against 3000 which should have been set up.”

92. The Supreme Court then, on the basis of a note submitted by the Solicitor General, proceeded to enumerate a list of activities that could not be carried on in residential areas. Among the 8 kinds of activities listed, the following is apropos to the case at hand:

“6. Banks and Nursing Homes operating on plots of less than 200 sqm in the case of residential plotted development (160 sqm in villages, special areas and rehabilitation colonies) and more than 1000 sqm, except those operating on master Plan and Zonal Plan roads.”

Scope of judicial review

93. Generally the approach of the Courts has been to examine if the requirements of the law have been strictly met and to interfere only when such requirements have not been met. For example, in ***Greater Kailash, Part-II Welfare Association v. DLF Universal Limited (2007) 6 SCC 448*** when there was a challenge to the sanction given by the authorities for permitting the Savitri Cinema Complex to be converted into a “multiplex-cum-commercial complex”, the Court, as regards the extent to which it could interfere, observed as under:

“From the materials on record there is no ambiguity that sanction was granted to Respondent 1 to make the abovementioned conversion strictly in accordance with the Rules, and Building Bye-Laws, even to the point of consultation by the Deputy Commissioner of Police (Licensing) with the Deputy Commissioner of Police (Traffic) on the specific problem apprehended by the appellants. It is only after clearance was obtained from the Deputy Commissioner of Police (Traffic) that a no-objection certificate was issued by the Deputy Commissioner of Police (Licensing) and sanction was granted by Municipal Corporation of Delhi. Although has been argued on behalf of the appellants that the Deputy Commissioner of Police (Traffic) had mechanically given his consent to the plan,

we have to respect his decision and the decision of the Municipal Corporation who are the experts in such matters.”

94. This can be contrasted with a subsequent decision of the Supreme Court in *R.K.Mittal v. State of Uttar Pradesh (2012) 2 SCC 232*, where in the context of permitting use of residential areas for commercial purposes in Noida, the Supreme Court noted that in terms of the Master Plan applicable to that area residential plots could be used only for that purpose and commercial activity of any kind in residential sector was impermissible. It was then observed as under:

“59. All the cases where banks, nursing homes or any commercial activity is being carried on, particularly like the appellants' case, where a bank and company are running their offices in the residential sectors would amount to change of user and thus be impermissible. The officers of the Development Authority should refrain from carving out exceptions to the implementation of the Master Plan and the Regulations in force, that too without the authority of law. For taking up any exercise for change of user or such similar conditions, amendment to the relevant Regulations, Master Plan and if needed, the provisions of the Act, is a condition precedent. It should be ensured that such exercise would further the cause and object of the Act and would not be destructive to the scheme of the development. We have no hesitation in our minds in holding that no such jurisdiction or authority vests in the officers of the Development Authority to permit change of user in its discretion and in violation of the law in force.

60. Another important aspect is that the Development Authority had taken a policy decision and had earmarked specific areas where land was made available to the banks to carry on their commercial activities in the commercial pockets of the industrial or institutional sectors. This land was being provided at a concessional rate and a number of banks had taken advantage of

this scheme to get the lands allotted to them in the appropriate sectors. They have been given lands in the commercial and even in the commercial pockets of the industrial or institutional sector. However, the 21 banks functioning in the residential sectors have not even opted to apply under the said scheme. If they would apply, the Development Authority has taken onto itself to consider the same sympathetically. This Scheme was opened on 20th June, 2011 and closed on 11th July, 2011. 26 commercial plots were offered for allotment under this Scheme in different sectors and plots were even reserved to be used as banks. In other words, the Development Authority has provided due opportunity to these banks to shift their activities to the appropriate sectors, however, to no effect. Despite issuance of show cause notices and offer to allot alternative plots, the unauthorized use by the appellant - banks and nursing homes have persisted in the residential sectors.”

95. It is therefore seen that the Court has strictly gone by the provisions of the relevant MPD itself since that is the document that is sacrosanct. In fact the Master Plan, as explained in *Bangalore Medical Trust v. B.S.Muddappa (1991) 4 SCC 54* is itself a legislative document with a legislative character. Changes to it were always required to be made strictly in accordance with the procedure outlined either in the governing statute or the rules and regulations framed thereunder. This was reiterated in *S.N.Chandrashekar v. State of Karnataka (2006) 3 SCC 208*, where while explaining the legal position, the Supreme Court observed as under:

“47. All the above judgments clearly show that it is not merely at the discretion of the Development Authority concerned to designate user of a site and then alter the same without following due process of law. Even where such an exercise is required to be undertaken by the Development Authority, there also it is expected of the Development Authority to act for the betterment of the public and strictly in accordance with the Plans and the

statutory provisions. It cannot take recourse to its powers and use its discretion contrary to such provisions and that too, to frustrate the very object of the Act. Exercise of power ought not to be destructive of the provisions of the Act and the Plans, having the force of law. We would hasten to add that even where the requisite prescribed procedure is followed, still the discretion should be exercised sparingly for achieving the object of the statute and not to completely vary or destruct the purpose for which the sector has been earmarked.

48. A decision which is sought to be taken by the Development Authority in the garb of a policy decision matter, if not in conformity to the Master Plan, the Regulations and provisions of the Act in force, would be an action extra jus. The Development Authority is to act in adherence to the provisions of the law regulating such user or construction. The laconic result of a collective reading of the afore-referred statutory provisions is that the Development Authority or its officers, have no power to vary the user and spaces prescribed in the Master Plan, except by amending the relevant laws and that too, for a proper object and purpose. Any decision, as a policy matter or otherwise, for any extent of public convenience, shall be vitiated, if it is not supported by the authority. The Courts would examine what is the sensible way to deal with this situation, so as to give effect to the presumed purpose of the legislation. The provisions in question should be construed on their plain reading, supporting the structure of the legislative intent and its purpose. The rule of schematic interpretation would come into play in such situations and the concerned Development Authority cannot be permitted to overreach the procedure prescribed by law, with designs not acceptable in law.”

96. It was further emphasized that a development authority “should always be reluctant to mould the statutory provisions for individual, or even public convenience as this would bring an inbuilt element of arbitrariness into the action of the authorities. Permitting mixed user, where the Master Plan does

not so provide, would be glaring example of this kind.”

97. While on the scope of interference by the Court this Court in ***DLF Universal Ltd. v. Greater Kailash-II Welfare Association* 127 (2006) DLT 131 (DB)** disapproved of the Single Judge directing DDA to consider afresh parking requirements for Savitri Cinema on criteria which would be applicable only to a new cinema hall, the DB was of the view that:

“the criteria such as location and size of plot, proximity to residential structures, educational and religious institutions etc cannot be made applicable to the renovation/modification of a cinema hall which has been in existence for 30 years in a commercial area and in a site earmarked for a cinema under Master Plan for Delhi, 2001.”

98. A general note of caution was administered in the following terms:

“93. The judiciary must therefore exercise self-restraint and eschew the temptation to act as a super legislature or a Court of Appeal sitting over the decisions of the administrative authorities. By exercising self-restraint it will enhance its own respect and prestige. Of course, if a decision clearly violates some provision of the law or Constitution or is shockingly arbitrary in the *Wednesbury* sense, it can be struck down, but otherwise it is not for this Court to sit in appeal over the wisdom of the legislature or the executive.”

99. In the same vein in ***MIG Cricket Club v. Abhinav Sahakar Education Society* (2011) 9 SCC 97** the Supreme Court observed as under:

“It is well settled that the user of the land is to be decided by the authority empowered to take such a decision and this Court in exercise of its power of judicial review would not interfere with the same unless the change in the user is found to be arbitrary. The process involves consideration of competing claims and

requirements of the inhabitants in present and future so as to make their lives happy, healthy and comfortable. We are of the opinion that town planning requires high degree of expertise and that is best left to the decision of the State Government to which the advice of the expert body is available. In the facts of the present case, we find that the power has been exercised in accordance with law and there is no arbitrariness in the same.”

100. In the context of permissions for conversion of residential premises for non-residential use having to be considered on a case to case basis, reference may be had to a Division Bench decision of this Court dated 10th April, 2012 in LPA No. 904/2010 (*A.R.Banerjee v. R.S.Verma*), where one of questions involved concerned the applicability of the mixed land use regulations under MPD, 2021 and whether the permission to use premises for a bank and coaching centre was valid. The Court observed as under:

“21. The appellant is the owner of the basement and the ground floor and suffice would it be to highlight that the basement has not been taken into account for purposes of FAR being utilized i.e. the basement has been sanctioned for a domestic storage use and not as a dwelling unit. Thus, the appellant can only permit one non-residential activity or can himself engage in only one non-residential activity and not two. Thus, in any case, the appellant has to elect and choose one and leave the other.

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.”

Issue (iv)

101. In light of the above legal position, the Court now proceeds to examine whether the 3 banks in the present case were functioning in a manner consistent with the requirements of MPD-2001. As pointed out by Mr. Kapur, prior to 7th May, 1999 specific provisions for mixed land use were given for the Walled City, Karol Bagh and other parts of the special area under the relevant sections of the master plan. In such areas there was a requirement to identify streets of mixed use activities by conducting a traffic study in each individual case to see “whether after permission of activity, there will be no adverse effect in traffic circulation in that area/street”. There was also to be an evaluation of the impact such mixed use would have on “the municipal services and environmental needs of the area”. At this stage the activity of banking was not one of those listed under sub clause (iii).

102. The 7th May, 1999 notification permitted banks to operate on residential plots of a minimum size of 209 sq. m. facing a minimum road width of 18 m, subject to the conditions laid down in the guidelines. Since banking

activities were already permitted at the time when SCB commenced its banking operations in B-68, GK Part-I, it did not require to seek any permission from the authorities at that stage. Likewise, HSBC Bank commenced its operations on 27th February, 2004 in R47 GK-I and again at that stage this was a permitted activity. In case of HDFC Bank as well when it commenced operations from B-54, GK-I and conformed to the requirements that existed as of that date in terms of MPD, 2001. Even on 7th September, 2006 when MPD, 2001 was notified it provided that all banks which already exist should remain permissible. What was prohibited were new banks in colonies A and B.

103. The Respondents are right that there is no challenge as such to the subsequent notification dated 7th September, 2006 amending MPD, 2001 and the provisions in MPD, 2021 which replaced MPD, 2001 on 7th September, 2007 which also contains provisions permitting banking activities in residential localities. In fact, MPD, 2021 virtually incorporates the amended MPD, 2001 provisions, as amended by the notification of 7th September, 2006.

104. There is no challenge to the validity of Section 11A which permits changes to the master plan or even to the DDA Regulations concerning banks which permits consideration of such applications for permission to use residential premises as banks. In other words, the source of the power to permit the change is itself not questioned.

105. At the same time, the Court views the very purpose of Mr.Kapur

bringing forth this PIL not so much as questioning the existence of the power to change but that given the experience of such permissions contributing to the existing chaos on the ground aggravated by increased traffic, shortage of parking space and overall congestion on strained resources, these particular instances of grant of permissions are vulnerable to being invalidated.

106. The Court is unable to find any particular reason to question the grant of permission at the time such permissions were granted. For instance, the argument that there should have first been an identification of Hansraj Gupta Marg as a mixed land use street before permitting banking activity thereon does not appeal to this Court. Prior to the guidelines announced by the notification dated 7th May 1999, the question of seeking permission to run a bank in residential premises would not arise. Even under those guidelines banking activity that was already being carried on was not meant to be curtailed. The precautions that were to be ensured and that too by the authorities was that no nuisance or hardship is created for local residents and that the guidelines are implemented 'in the proper spirit so that residential character of such areas is maintained.'

107. The expression 'residential character' does not admit of a precise definition. Given the size of the colony itself and the extent of conversion of residential to non-residential use as pointed out in the petition, the question whether the permissions granted to these 3 banks have by themselves altered the 'residential character' of the colony is difficult to determine. In any event there were 12 such banks in the area and there are only 6 left and it is

only against three of them that the present petition is sought to be actively pursued. To that extent of the commercial activity at the instance of the banks has certainly reduced.

108. It is another matter of course that the 'nuisance' does not appear to have abated. In one sense MPD, 2021 takes care of the anxieties for the future inasmuch as it is categorical that banks shall not be permitted in A and B colonies at all while carving out an exception for 'those already operating as on 7th September, 2006.' There need not, therefore, be an apprehension that there will be an unrestrained growth of banking activity from residential premises.

109. As regards the specific requirement that parking arrangements should be made by those using the premises for non-residential uses, the status reports filed from time to time do depict that any amount of challaning of those violating the law has not yielded the desired result of deterring those visiting the banks; parking their vehicles in a haphazard manner. The picture that emerges is one of failure to correctly anticipate the extent of shortage of parking space and the growth in traffic which makes it impractical to continue these activities indefinitely. Added to this is the failure to build separate multilevel or other parking complexes.

110. While the Court is not persuaded that the permissions, at the time when they were granted, were contrary to the applicable guidelines and regulations, a case certainly is made out for questioning the time period for which such permissions would be valid. In other words, the very nature of

the activity viz., the use of residential premises for non-residential purposes, requires periodic review in light of the impact such permission has on the strained infrastructure and resources, including the impact on the environment in general.

111. This in fact is the running theme of MPD, 2001 as well as MPD, 2021. To the extent that these permissions, therefore, are not time bound and do not compel the Respondents to review their extensions after a period keeping in view the changed circumstances, such permissions are vulnerable to be invalidated.

112. Without a periodic review of these permissions, allowing them to continue only because they have existed for more than 2 or 3 decades would be no answer to the requirement spelt out so clearly in MPD, 2021 that there should be minimum inconvenience caused to the residents. A general condition spelt out in para 15.7.3 that “it shall be the responsibility of the plot allottee/owner to make arrangements for parking so that parking does not encroach/spell over on public land” can be enforced only upon a day to day monitoring of the extent of inconvenience caused to the residents by the indiscriminate parking of vehicles by visitors to the banks. The mere failure to collect such sample data should not result in an automatic renewal of permission.

113. A regulation or a clause in the MPD that relaxes the applicability of the rigour of zonal planning to particular activities, cannot remain frozen in time. They, by their very nature, require to be periodically reviewed, on the

basis of empirical data about the actual working of such permissions granted for e.g., specific to the case on hand, conversion of residential premises for commercial use i.e. banking. The mere fact that those who have been granted such permissions have fulfilled all the conditions for grant and/or renewal of such permissions, will not preclude the authorities from reviewing the permissions and asking if there is a continued justification for further renewal of such permissions. It may even be necessary to ask if such a clause in the MPD permitting past commercial activity to continue should itself still find place in the MPD. In other words, the authorities concerned have to learn not just from past experience but from the narrative emerging from a scientific analysis of the data gathered about the strain on infrastructure and resources of the community at large.

114. At another level, the very process of granting such permissions or renewals requires to be democratised. This is for the simple reason that such decisions taken behind closed doors have a not inconsiderable impact on the neighbourhood. The local community is unable to do anything about what is presented to it as a *fait accompli*. On one fine morning, a resident might find that a bank is operating in the neighbouring residential house. That the conditions for grant of such permission stand fulfilled and all the 'charges' that are required to be paid have indeed been paid is of little consolation to the resident who finds cars of visitors to the bank parked indiscriminately before her house. The deposit of money with the South DMC for parking charges does not ensure either disciplined use of the available parking space or strict enforcement of the parking regulations. If anything, the fourteen year pendency of this PIL should have alerted the authorities to the gross

inadequacy of not just the MPD provisions but its poor implementation. It is then but inevitable that the authorities go back, as it were, to the drawing board when it comes to the 'mixed use' regulations that has thus far been a continuing feature of every MPD. While stopping short of dictating to the authorities what provisions they should retain, and what to jettison, the Court would urge them to review carefully all such provisions in light of the lived experience of the communities where such mixed use regulations have been operational. Every proposed change, and every decision to renew a permission already granted will have to involve wide consultation with the affected community as a whole, not merely by publishing notices and inviting objections, but by holding public hearings with sufficient advance notice at more than one location in the area in question.

Directions

115. Consequently, for each of the 3 cases i.e. HDFC Bank, SCB and HSBC Bank, the Court directs the SDMC to undertake a day to day collection of data, during the bank working hours of the adequacy of the parking space available to cater to the needs of visitors to the bank, the strain on the infrastructure and community resources and the environment in general. This data will be collected over a period of 3 months beginning within 2 weeks of this judgment. Such data will be taken into account to review the permission granted to each of the 3 banks. While reviewing the permissions, the steps outlined in paras 112 and 113 above will be scrupulously followed. The principles of natural justice will be followed by providing each of the landlords and respective tenant Banks the data gathered and giving them an opportunity of being heard.

116. Although no reliefs in particular have been sought in the petition by Mr. Kapur against the J&K Bank, the Andhra Bank and the ICICI Bank, who are also operating in GK-I from residential premises, the South DMC will review those cases as well and adopt the same approach as it would for the other three Banks, strictly in accordance with law. The Court clarifies that it is not foreclosing any submissions that the J&K Bank, Andhra Bank or the ICICI Bank may have if the South DMC proposes to apply to them the same considerations that weigh with it while proceeding in the cases of HDFC Bank, SCB and HSBC Bank. The South DMC will consider such submissions on their merits before taking a decision.

117. It will be open to the authorities to restrict the time period for which the permissions will continue in order to enable such banks to make alternative arrangements to relocate the other commercial spaces as are permissible in accordance with law. This is irrespective of whether on Hansraj Gupta Marg itself there are other commercial activities being carried out. Merely because there is such activity, it would be no excuse for these banks to avoid the consequences of the strict implementation of MPD 2021.

118. The upshot of the above discussion is that while there does not appear to exist a sufficient base to strike down the changes brought about to the MPD, 2001 and thereafter MPD, 2021 permitting, in GK-I the banks that have already existed as on 7th September, 2006 to continue, nothing prevents the Respondents from reviewing the mixed use clauses that permit the continuation of the past commercial activities in these restricted areas but strictly in accordance with law.

119. The order dated 30th March 2009, the SCN dated 17th July 2009 that have been challenged in the two petitions by SCB and the SCN dated 17th July 2009 issued to HSBC Bank and challenged in the petition by Mr. Dhaun appears to have outlived their purpose. With the passage of time and the changed circumstances they have lost their significance and are therefore directed not to be pursued by the South DMC hereafter. It is clarified however, that this will not prevent South DMC from proceeding to take action afresh against the above Banks in accordance with law if it finds there are violations that warrant action.

120. The Court acknowledges the effort of Mr. Kapur in bringing this cause before the Court and espousing it consistently and persistently with the spirit that it deserved. The Court also appreciates the co-operation extended by all parties in not treating the issue as adversarial, but offering to find a solution.

121. The petition is disposed of in the above terms. The pending applications are also disposed of. It will be open to the parties to apply for directions if there is any difficulty in implementing any of the directions issued hereinabove.

S. MURALIDHAR, J.

V.KAMESWAR RAO, J.

FEBRUARY 27, 2020

mw/rd