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

+ W.P.(C) 4691/2018 & CM Nos. 18040/2018, 22096/2018,  
49792/2018 (Restoration) & 49793/2018

Dated : 17.02.2020

FRIENDS OF RAJOURI GARDEN ENVIRONMENT (REGD.)

AND ANR.

.....Petitioners

Through : Mr. Rohan Thawani, Ms. Gunjan  
Ahuja and Mr. Iqram Govind Singh,  
Advocates for petitioner No.1.  
Mr. Sachin Chopra and Ms. Astha  
Gupta, Advocates for petitioner No.2.

versus

SOUTH DELHI MUNICIPAL CORPORATION ..... Respondent

Through : Mr. Sanjay Poddar, Sr. Advocate with  
Ms. Ruchi Jain, Mr. Sharaf  
Habibullah, Mr. Pratish Goel and  
Ms. Smriti Kataria, Advocates

**CORAM:**

**HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI**

### **J U D G M E N T**

#### **ANUP JAIRAM BHAMBHANI, J.**

The petitioners seek quashing of Request for Proposal bearing NIT No. EE (PROJECT-II) WZ/TC/2017-18/14 dated 31.10.2017 ("RFP" for short) issued by the respondent by way of Public Notice dated 31.10.2017 inviting bids *inter-alia* for construction, operation and maintenance of an automated multi-level car parking facility near 'J' Block Market, Rajouri Garden, New Delhi. Directions are also sought for restraining the respondent

from constructing *any* automated multi-level car parking facility for the Market at Blocks ‘F’ & ‘C’ (opposite ‘F’ Block government school) or using the plot opposite ‘F’ Block government school at Maharishi Dayanand Marg for any purpose *other than* a school.

2. It is represented that petitioner No.1 is a society registered under the Societies Registration Act 1860, with public-spirited residents of Rajouri Garden Colony as its members. Petitioner No.1 is stated to have been working against unauthorised development in Rajouri Garden for the betterment of the colony. Petitioner No. 2, who came to be impleaded as co-petitioner subsequently by order dated 24.09.2018, is also said to have raised the issue of conversion of land-use of plots earmarked for school and other similar purposes into other uses in Delhi, including the conversion of land meant for a school into a multi-level parking in this case. The respondent is the South Delhi Municipal Corporation (“Corporation” for short), being the statutory agency established under the Delhi Municipal Corporation Act, 1957 to provide municipal services and facilities *inter-alia* in the city zone in which Rajouri Garden is situate. It is the respondent that proposes to construct the automated multi-level parking that is subject matter of the present proceedings.

3. Pursuant to issuance of the RFP, the automated multi-level car parking facility (“Parking”, for short) is to be constructed on a vacant plot admeasuring approximately 1800 sq. yds. situate in residential Blocks ‘F’ & ‘C’ opposite Sarvodaya Kendriya Vidyalaya ‘F’ Block, Rajouri Garden, (“subject land” for short) which land vests in the Corporation. The subject land abuts a 50 ft. wide road leading to what has come to be known as the ‘J’ Block Market of Rajouri Garden (“Market” for short); and it is the admitted

position that the subject land was originally earmarked for building an MCD school; and concededly, there has been no change in the designated land-use of the subject land till date. It is also the admitted position that the Market is ‘unauthorised’ inasmuch as the Market comprises shops that have sprung-up over the years along a stretch of road that is *not designated* for purposes of a shopping centre or market under the municipal plans. From the wording of the RFP, it is evident that the Parking is primarily intended to serve the requirements of the Market since the RFP describes the “Name of work” as follows:

*“Construction, Operation & Maintenance of Automated Multilevel Car Parking facility at J-Block Market, Rajouri Garden in West Zone.”*

(Emphasis supplied)

The Market is stated to have some 600 shops, that have come-up on around 190 plots, by reason of which there is high vehicular traffic in and around the area, with severe dearth of parking space and consequent traffic congestion.

4. The RFP is stated to have been issued after a feasibility survey was conducted by an expert agency in the year 2017, which found that approximately 803 Equivalent Car Parking Spaces (ECS) were required. After issuing a tender, the work for construction of the Parking was awarded to one M/s Rapid Construction *vidé* work order dated 11.04.2018; and the Corporation states that work on the subject land has already commenced.

5. To be sure, it is the undisputed position that the subject land is designated for use as ‘school’ in the Lay-Out Plan of the area. It is also not disputed that the Lay-Out Plan for the area has not been amended to reflect any change of land-use of the subject land.

6. For completeness, it may be noted that the issue of the subject land being used as a parking facility for the 'J' Block Market had also come-up previously before this Court in W.P. (C) No. 6631/2000 titled ***Federation of Residents Welfare Association Rajouri Garden & Ors. vs. Government of NCT of Delhi & Ors.***, which petition was filed seeking action against unauthorised construction and misuse of residential premises in Rajouri Garden by a different association. A proposal made by a market association in that petition for use of the subject land to create parking for the Market was in fact rejected by the respondent itself, when in affidavit dated 29.03.2007 filed in that case, the respondent stated that the subject land was earmarked for a school and could not therefore be used for parking without changing its land-use. In affidavit dated 29.03.2007 the respondent said this :

*“ ... It is therefore utmost important that a dedicated parking site/multi-storeyed parking may be developed/constructed by the Municipal Corporation of Delhi in the close vicinity of the market to provide a permanent solution to the parking problems of the market area.*

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*“ ... Whereas the site at opposite Sarvodaya School, F, Block, Rajouri Garden, as informed by the Land & Estate Deptt. is earmarked for school and as such cannot be made use of for parking unless the land use is got changed by completing the necessary formalities in this regard which a very lengthy process.*

xxxxx”

7. The challenge to the RFP is based on the premise that it is not permissible to construct a multi-level parking on the subject land at all. The essential legal question that arises for consideration of the court therefore is:

Whether it is permissible to construct a 'multi-level parking' on the subject land, which is otherwise designated for use as a

‘school’ ;and if so, are there any prerequisites and conditions that are required to be fulfilled before doing so.

**Relevant legal provisions:**

8. The relevant provisions of the Delhi Development Act, 1957 (“DD Act” for short), the Delhi Municipal Corporation Act, 1957 (“DMC Act” for short), the Master Plan for Delhi, 2021 (“MPD 2021” for short), the Environment (Protection) Act, 1986 (“Environment Protection Act” for short) and the Noise Pollution (Regulation and Control) Rules, 2000 (“Noise Pollution Rules” for short), relied upon by the parties, are extracted *seriatim* hereinbelow for ease of reference.

9. **Provisions of DD Act :**

**Section 11A :**

*"11A. Modifications to plan. - (1) The Authority may make any modifications to the master plan or the zonal development plan as it thinks fit, being modifications which, in its opinion, do not effect important alterations in the character of the plan and which do not relate to the extent of land uses or the standards of population density.*

*(2) The Central Government may make any modifications to the master plan or the zonal development plan whether such modifications are of the nature specified in sub-section (1) or otherwise.*

*(3) Before making any modifications to the plan, the Authority or, as the case may be, the Central Government shall publish a notice in such form and manner as may be prescribed by rules made in this behalf inviting objections and suggestions from any person with respect to the proposed modifications before such date as may be specified in the notice and shall consider all objections and suggestions that may be received by the Authority or the Central Government."*

**Section 14:**

*"Section 14 - User of land and buildings in contravention of plans  
After the coming into operation of any of the plans in a zone no person shall use or permit to be used any land or building in that zone otherwise than in conformity with such plan:*

*Provided that it shall be lawful to continue to use upon such terms and conditions as may be prescribed by regulations made in this behalf any land or building for the purpose and to the extent for and to which it is being used upon the date on which such plan comes into force. "*

(Emphasis supplied)

10. **Provisions of DMC Act :**

**Section 313:**

*“313.Lay-out plans—(1) Before utilising, selling or otherwise dealing with any land under section 312, the owner thereof shall send to the Commissioner a written application with a lay-out plan of the land showing the following particulars, namely:—*

*(a) the plots into which the land is proposed to be divided for the erection of buildings thereon and the purpose or purposes for which such buildings are to be used;*

*(b) the reservation or allotment of any site for any street, open space, park, recreation ground, school, Market or any other public purpose;*

*(c) the intended level, direction and width of street or streets;*

*(d) the regular line of street or streets;*

*(e) the arrangements to be made for levelling, paving, metalling, flagging, channelling, sewerage, draining, conserving and lighting street or streets;*

*(2) The provisions of this Act and the bye-laws made thereunder as to width of the public streets and the height of buildings abutting thereon, shall apply in the case of streets referred to in sub-section (1) and all the particulars referred to in that sub-section shall be subject to the sanction of the Standing Committee.*

*(3) Within sixty days after the receipt of any application under sub-section (1) the Standing Committee shall either accord sanction to the lay-out plan on such conditions as it may think fit or disallow it or ask for further information with respect to it.*

*(4) Such sanction shall be refused—*

*(a) if the particulars shown in the lay-out plan would conflict with any arrangements which have been made or which are in the opinion of the Standing Committee likely to be made for carrying out any general scheme of development of Delhi whether contained in the master plan or a Zonal Development Plan prepared for Delhi or not;*

*(b) if the said lay-out plan does not conform to the provisions of this Act and bye-laws made thereunder; or*

*(c) if any street proposed in the plan is not designed so as to connect at one end with a street which is already open.*

*(5) No person shall utilise, sell or otherwise deal with any land or lay-out or make any new street without or otherwise than in conformity with the orders of the Standing Committee and if further information is asked for, no step shall be taken to utilise, sell or otherwise deal with the land or to lay-out or make the street until orders have been passed upon receipt of such information: Provided that the passing of such orders shall not be in any case delayed for more than sixty days after the Standing Committee has received the information which it considers necessary to enable it to deal with the said application.*

*(6) The lay-out plan referred to earlier in this section shall, if so required by the Standing Committee, be prepared by a licensed town planner.”*

**(Emphasis supplied)**

**11. Provisions of MPD 2021 :**

**Clauses 9.1.3 of MPD 2021:**

***"9.1.3 NOISE***

*Noise is emerging as a major pollutant and irritant as well as a constant source of disturbance and health hazards. Against a permissible level of 50-60 dB (A), the sound level in Indian cities often exceeds 80 dB (A). Faulty and leaking silencers, over-use of horns and vehicles plying on roads accentuate noise level, besides the noise from commercial and industrial activities, unabated use of sound amplifiers, generator sets and fire- crackers etc.*

*The Noise Pollution (Regulation & Control) Rules 2000 specify the noise levels in the industrial area, commercial area, residential area and silence zone. It also specifies banning of all noise creating activities between 10 PM to 6 AM, which may be adhered to by the concerned agencies.*

*By proper land use planning, such as location of public, semi-public and commercial activities along major transport arteries, a buffer can be created for residential zones. Green buffer through thin leaved trees, land formations, mounds, embankments, etc. 93 along major roads could also provide effective barriers to transmission of noise. It is also necessary to improve monitoring and effective implementation of the Noise Pollution (Level) Rules 2000 and, to notify certain areas as 'No Horn Zones'. The design and surface material of roads and pavements should also ensure reduction of noise. The concerned authorities should prepare area wise*

*traffic calming schemes and a Noise Monitoring and Control Plan (NMCP).*

*Working in night shifts for household industries or non-conforming industries in the residential areas should be prohibited. Areas located within the air funnel should be planned with due consideration of noise generated from the aeroplanes.*

*Environmentally stressed zones in Delhi should be identified and local area environment management plans should be prepared for such areas, together with regular monitoring."*

#### Clauses 12.14 and 12.14.1 of MPD 2021:

##### ***"12.14. PARKING***

*With the phenomenal increase in personalized motor vehicles, one of the major problems being faced today is an acute shortage of parking space. In the absence of adequate organized parking space and facilities, valuable road space is being used for vehicular parking. The problem of parking in the city can be broadly divided into the following categories:*

- i. Along streets*
- ii. In planned commercial centres.*
- iii. In residential colonies.*
- iv. In the large institutional complexes.*

*Experience has shown that:*

- (a) The provisions relating to parking within the plot area are normally not adhered to resulting in vehicles spilling over on to the roads and adding to congestion; and*
- (b) The lack of enforcement and inadequate policy interventions has resulted in growth of parking demand along with growth of vehicles in the city.*

*In the above background, the whole subject of parking has become a matter of serious public concern and requires a carefully considered policy and planned measures to alleviate the problem to the maximum feasible extent in existing areas and for adequate provisioning with reference to future developments. As recommended by the Environment Pollution (Prevention & Control) Authority for the National Capital Region, the approach should be focused more on demand management (restricting vehicle numbers) through enforcement and pricing policy rather than only on increasing supply of parking.*

*Parameters for the National Mission on Sustainable Habitat (NMSH) of 2011 state that parking management strategies should be aimed at encouraging more efficient use of existing parking facilities, reduce parking demand and shift travel to non-private modes. Individual user of personal vehicle should pay for the use of the space for parking. Therefore, the 'user pays' principle should govern the pricing of parking. Parking is a consumer commodity, not a legal right. No subsidized parking is to be provided in public spaces. To ensure accessibility to maximum number of people, parking for paratransport / feeder modes/ NMT is to be prioritized and subsidized. In areas designated for public parking, short term parking must be prioritized over long-term parking, in order to maximize turnover and enable economic vibrancy. The parking policy for the Delhi aims to deliver the objectives of NMSH, through its vision, policies, following strategies and standards:*

- Private vehicle must be parked on 'a fully-paid rented or owned' space, based on the 'user pays' principle.*
- Parking management must be effectively used as a tool to **reduce overall demand** for parking space.*
- Pricing and enforcement will be key drivers to eliminate or reduce long term on street parking demand for private vehicles.*
- Planning and design of public parking facilities (surface, underground or multi-level) in an area need to provide for all modes and include creation of pedestrianized areas/public spaces in the area with necessary amenities.*
- Parking is permitted in all use zones except Recreational Open space, which shall not be used or converted for parking. No environmentally sensitive lands shall be used/ converted for parking of any kind. Surface Parking would only be provided to meet the parking requirement of the park premise. Creation of underground parking structures within or under green recreational open spaces is prohibited under all circumstances.*
- Parking spaces will be adequately provided on priority basis for IPT, pick and ride and feeder systems especially non-motorised transport and fully subsidized.*

*In this background, the following measures are proposed:*

#### **12.14.1. PARKING STANDARDS IN USE PREMISES**

*Parking is one of the **utilities** permitted in all use zones except in regional park/ ridge, recreational open space and parks as per the approved Zonal Plan/ lay-out plan. Parking standards have been prescribed in each use premises. However, where not prescribed, these will be followed as per standards given in Development Code section of the Master Plan. The*

*standards given are in Equivalent Car Space (ECS) which include parking for all types of vehicles i.e. cars, scooters, cycles, light and heavy commercial vehicles, buses etc. as per Chapter 17: Development Code. Parking adequacy statement/study for large projects like Stadia, Shopping Malls, Multiplexes will be desirable. Mode-wise parking spaces are to be marked on drawings to be submitted for approval.”*

Clauses 12.14.2 and 12.14.2.1 of MPD 2021:

**“12.14.2. PUBLIC PARKING**

*Major efforts will have to come through the creation of public facilities in designated commercial/ work centres and other areas and corridors where significant commercial activity has developed by way of mixed use. In the context of the latter, it would also need to be linked to pedestrianisation within the identified areas. In the above context following steps would be necessary:*

**12.14.2.1. PARKING MANAGEMENT DISTRICTS**

*Parking Management District (PMD) provide comprehensive facilities for all modes including pedestrians, NMT, cycle tracks, NMT and IPT parking, vending zones, bus stops, public amenities, etc. in addition to on-street and/or off-street parking for private vehicles. PMDs are to be planned to improve availability of on-street and off-street parking and promote greater walking, cycling and public transport use. A PMD provides more net available parking space in an area by increasing parking turnover through good design, management and pricing strategies. A portion of the revenue generated could be used for local improvement of footpaths, cycle-tracks, and maintenance of facilities with involvement of the local communities.*

*Parking facilities to be provided as part of the overall PMD plan incorporating all modes, with a clear cut community benefit strategy. Any development of multilevel parking facilities shall be strictly as per PMD plan.*

*Municipalities and/or planning bodies should develop detailed parking management plans for such districts, with physical design and demarcation of spaces on ground and strict enforcement. The following strategy should be applied:*

- (i) Total parking capacity of the PMD to be defined based on ground surveys, capacity analysis and Transport Impact Assessment if required.*
- (ii) Encroachments and impediments to be removed to provide more space for pedestrians, NMT, vending zones and public amenities.*

(iii) 'Short-Term 'and 'Long term 'parking spaces with the PMD must be identified, demarcated and priced appropriately to reduce demand, and be managed by a single agency.

(iv) Stringent provisions by way of fines and other penal actions need to be provided for violation of parking rules. Proper signage and markings must be provided to enable effective enforcement.

(v) A graded parking fee structure should be evolved as a measure of parking demand management, and encouraging use of public transport.

(vi) In congested areas, 'park and walk'/'park and ride' facilities may be planned in PMDs. Street improvements must be implemented in about 10-minute walking catchment of such facilities to make it comfortable and convenient for commuters/ shoppers.

(vii) All existing areas of concentration of business/ commercial activity, where absence of adequate parking and congestion is visible, should be identified and listed based on studies of vehicle/ modal volumes. Comprehensive area level PMD plan must be prepared by local bodies in consultation with planning bodies, multi-disciplinary experts and local stakeholders.

(viii) Major corridors along which commercial activity has grown over the years by way of mixed land use should be identified and taken up for redevelopment with a major objective being the identification and development of areas for parking, green development and pedestrianisation.

(ix) In all new Commercial/Business/Industrial centres, adequate parking on the surface as well as below and above the ground must be provided.

(x) The development of multilevel parking facilities may be taken up, wherever, feasible in a public private partnership framework, with private sector investment and involvement.

(xi) Entire stretches of road or areas other than the demarcated/ designated/ managed parking areas, should be declared as 'no parking zones' in the PMDs. Enforcement agency/ traffic police to be responsible for penalizing, removing or taking action against violators.

*(xii) Advanced public information systems regarding parking supply availability should be provided through websites, on-ground display and digital media, to guide people in making travel/ mode choices.*

*(xiii) The use of basement wherever provided for parking, must be strictly adhered to.*

*(xiv) Serious consideration should be given to evolve a policy linking registration of new vehicles to availability of owner parking facilities.*

*(xv) All encroachments on land earmarked for public parking should be removed.*

*(xvi) Wherever feasible, space on roofs, under stilts and basements should be exploited to the optimum for parking so as to reserve the maximum ground space for landscape development, pedestrian movement, etc.”*

**Clauses 12.14.3.4, 12.14.3.5 and 12.14.3.7 of MPD 2021:**

***“12.14.3.4. PARKING IN RESIDENTIAL AREAS***

*Over the years a large number of the residential areas have been experiencing severe problems of vehicular congestion and shortage of parking space. Most of the parking is, in fact, being done on the road, which significantly reduces the carriageway width. The problem has been exacerbated by the traffic congestion generated by schools in residential use areas. Some measures required to alleviate the problem are:*

*i. Parking of all vehicles of any residential building, group housing, commercial building etc to be provided within the plot area / building only. Parking outside the plot area (i.e. on the ROW of road, public spaces) will not be permissible and should be penalized. RWA with the help of local police may enforce the same.*

*ii. Road cross sections may be redesigned wherever possible to accommodate planned car parking along the residential streets, and also creating more surface movement space.*

*iii. Paid on-street and off-street parking to be developed for long term and short term parking provisions.*

*iv. Resident Welfare Associations will have to be called upon to participate in this process by raising contributions from the residents on the basis of objective criteria such as number of cars owned, etc.*

*v. Problem of congestion arising on account of the traffic generated by schools have to be specifically addressed, and the main*

*responsibility for putting up the required additional facilities has to be borne by the schools themselves.*

#### **12.14.3.5. PARKING STANDARDS FOR PUBLIC PARKING**

*Public parking for all modes may also be provided at designated / demarcated locations at off-street parking locations in form of surface, underground or multi-level parking. Short term and long term parking should be differentiated and provided based on local demand and provided as per comprehensively planned Parking Management Districts (Section 12.4.2.1).*

*On-street parking may be planned as per Street Design Regulations [Annexure-12.0 (I)]. Majority of on-street parking spaces should be for hired / shared IPT and NMT modes. Only short-term parking for private modes may be provided on street.*

*Off-street parking may be provided as per the following:*

#### **12.14.3.6. xxxxx**

#### **“12.14.3.7. MULTI-LEVEL PARKING FOR PRIVATE MODES**

*Several multilevel parking projects have been implemented by local bodies / agencies in the recent past. It has been seen that none of the parking lots are being used even to half their capacity due to availability of unlimited subsidized parking on streets/ public spaces in the vicinity of these projects. In other words, low-pricing of on-street parking is leading to failure of off-street multilevel parking facilities.*

*Therefore, multi-level parking projects should be integrated as part of comprehensive PMD schemes at designated locations.* In order to ensure viability of the projects and optimum use, strict enforcement and appropriate pricing of on-street parking, is required. Preferably, on-street and off-street parking (including multi-level) should be managed and enforced by a single agency. All multi-level or exclusive parking facilities for private parking shall also provide at least 10% of total space provision for IPT modes, NMV and feeder buses, as per local requirement.

*Detailed regulations and comprehensive parking policy may be worked out subsequently, in consultation with all stakeholders.*

*For plots for multi-level car parking already earmarked / designated by local bodies, the existing development control norms will continue, as follows:*

*(i) Minimum Plot Size – 1000 sqm.*

*(ii) In order to compensate the cost of Multi-level parking and also to fulfill the growing need of parking spaces within urban area, a*

*maximum of 25 % of gross floor area may be utilized as commercial / office space.*

*(iii) In addition to the permissible parking spaces on max. FAR, 3 times additional space for parking component shall be provided.*

*(iv) Maximum FAR permissible shall be 100 (excluding parking area) or as per the comprehensive scheme. However, no FAR shall be permissible in plots / existing buildings where 5% addl. ground coverage is permissible (Refer para 8 (4) i) Parking Standards, Chapter 17.0 Development Code).*

*(v) Maximum ground coverage shall be 66.6%. The maximum height shall be restricted to permissible height of the land use in which the plot falls. There will be restriction on the number of levels of basement subject to structural safety.*

*(vi) In case of comprehensive schemes, development controls including height shall be as per approved scheme.*

*(vii) Number of basements - No Limit, subject to adequate safety measures.*

*(viii) For development of Multilevel Parking, models should be worked out to encourage the private sector initiative with restricted commercial component, not exceeding 10% limited to FAR 40 on the plot.*

*(ix) Specific proposals requiring relaxation in above-mentioned norms for already designated sites would be referred to the Authority.”*

**Clause 15.10 of MPD 2021:**

**“15.0 MIXED USE REGULATIONS**

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**“15.10 CONSULTATION WITH RWAs**

*(i) The Residents Welfare Association (RWA) shall be a body registered before 21.07.06, or registered for at least three years under any statute, such as Societies Registration Act.*

*(ii) Consultation with the RWA concerned for the purposes of declaring mixed use streets shall be done by the local bodies concerned.*

*(iii) Genuine efforts for meaningful consultation with RWAs shall be made by the local bodies. Such efforts may include wide publicity to the proposed consultations, maintenance of record of consultation and providing access to those records to RWA concerned and public.*

*(iv) Consultation with the RWA concerned shall be limited to identification of mixed use streets, and not for grant of permission in individual cases. However, RWAs shall have a right to be heard in cases of complaint of public nuisance and non-permissible uses."*

## Development Code - Chapter 17 of MPD 2021

### Clause 2.0 Definitions :

*"2(2) Zonal Development Plan means a plan for one of the zones (divisions) of the National Capital Territory of Delhi containing detailed information regarding provision of social infrastructure, parks and open spaces, circulation system, etc.*

*x x x x x*

*2(4) Layout Plan means a Plan indicating configuration and sizes of all Use premises. Each Use zone may have one or more than one Layout Plan depending upon the extensiveness of the area under the specific Use zones and vice-versa. A layout plan shall have at least two use premises (apart from Recreational, utilities and transportation) and a minimum area of 1 Ha. below which it shall be termed as site plan or sub division plan.*

*Layout Plan will indicate the location of all proposed and existing roads with their widths, dimensions of plots along with building lines and setbacks, location of drains, public facilities and services and electric lines etc, statement indicating the total area of the site, area under roads, open spaces for parks, playground, recreational spaces and other public places, as required by specific sections of the development code.*

*x x x x x*

*"2(6) Use zone means an area for any one of the Specified Use Category of the urban functions as provided for in Clause 4.0.*

*2(7) Use premises means one of the many sub divisions of a Use zone, designated in an approved layout plan, for a specific Use. Land use of a premise has to be determined on the basis of an approved layout plan."*

### Clause 7.0 Location and Boundaries of Use premises

*"7(1) The location and boundaries of each use premises shall conform to as specified in the layout plan with reference to important bench mark like road, drain or other physical features.*

*7(2) Any change in the location, boundaries and predominant use of use premises due to any reason whatsoever and duly approved shall be incorporated in layout plan."*

(Emphasis supplied)

## 12. Provisions of Environment Protection Act & Noise Pollution

### Rules:

#### Rule 3 of the Noise Pollution Rules:

*“3. Ambient air quality standards in respect of noise for different areas/zones.*

*(1) The ambient air (sic, noise ?) quality standards in respect of noise for different areas/zones shall be such as specified in the Schedule annexed to these rules.*

*(2) The State Government may categorize the areas into industrial, commercial, residential or silence areas/zones for the purpose of implementation of noise standards for different areas.*

*(3) The State Government shall take measures for abatement of noise including noise emanating from vehicular movements and ensure that the existing noise levels do not exceed the ambient air quality standards specified under these rules.*

*(4) All development authorities, local bodies and other concerned authorities while planning developmental activity or carrying out functions relating to town and country planning shall take into consideration all aspects of noise pollution as a parameter of quality of life to avoid noise menace and to achieve the objective of maintaining the ambient air quality standards in respect of noise.*

*(5) An area comprising not less than 100 metres around hospitals, educational institutions and courts may be declared as silence area/zone for the purpose of these rules.”*

(Emphasis supplied)

### Petitioners’ submissions :

13. The main contentions raised by the petitioners are :

- (i) that in consonance with clause 12.14.2.1 of MPD 2021 any development of multi-level parking facilities is required to be strictly as per a Parking Management District plan (“PMD plan” for short), which is a concept intended to improve availability of on-street and off-street parking as also to promote walking, cycling and public

transport use ; the purpose being to provide more net available parking space, including by increasing the parking turnover, good design, management and pricing strategies. The petitioners contend that in clause 12.14.3.7 the insistence on an overall PMD plan is reiterated to state that multi-level parking projects should be integrated as part of a comprehensive PMD plan at designated locations. It is the petitioners' contention that contrary *inter-alia* to clause 12.14.3.7 the Parking has been conceived of as a *stand-alone* project, which is not in accordance with the mandate of MPD 2021 and will not serve its intended purpose. It is contended that, as detailed in MPD 2021, parking problems cannot be solved only by creating more parking facilities but by rolling-out a comprehensive PMD plan and address the issue holistically;

(ii) that the Parking has been proposed to cater to the J-Block Market, which is an unapproved and unauthorised set of shops that have come-up in a residential area. This unauthorised market is itself subject matter of action *inter-alia* by the Monitoring Committee appointed by the Supreme Court in ***MC Mehta vs. Union of India*** W.P.(C) No. 4677 of 1985 ; and the very proposal of providing parking facilities to an unauthorised market, which market is liable to be removed, is impermissible as a matter of public policy, if not as a matter of law;

(iii) that no provision for parking has been made on the plots being misused for commercial purposes as shops in the illegal Market. This has led to on-road parking by shoppers and resultant congestion in the Market and in the adjoining residential area; and in fact the respondent

has issued sealing notices for misuse of the properties in the Market. The petitioners accordingly contend, that instead of tackling violations and enforcing the law by removing the unauthorised and illegal shops, the respondent is ‘catering to the problem’ by creating a multi-level parking, to facilitate vehicles that visit the Market. The petitioners point-out that this action is in direct conflict with clause 12.14 of MPD 2021 which states that the approach should be focused more on ‘demand management’ that is to say *restricting vehicle numbers through enforcement and pricing policy rather than only on increasing the supply of parking*. The petitioners also point-out that the subject land, which is proposed to be used to create the Parking, is the *last school plot* left in the colony, meaning that no other plot of land is available for the inevitable future requirement of a school in the area;

(iv) that the Parking is proposed in the middle of a thickly populated residential area and right opposite a running, two-shift government school which has more than 1000 students on its rolls. The petitioners contend that the 24-hour use of the Parking will lead to increase in the levels of noise pollution and traffic chaos in front of the school, which would be contrary to Rule 3(5) of the Noise Pollution Rules which mandates that an area of not less than 100 metres around hospitals, educational institutions and courts may be declared as ‘silence zones’; which aspect, namely regulation of noise levels, has also found statutory recognition in clause 9.1.3 of MPD 2021. According to the petitioner, by notification dated 03.04.2008 the Delhi Government has notified a 100-metre area around schools having 1000 or more

students as ‘silence zones’. The petitioners also point-out the obvious risk and safety hazard that a public parking right in front of a school would entail for the children;

(v) that the subject land is designated for use as ‘school’ as per the Lay-Out Plan prepared by the respondent in accordance with section 313 of the DMC Act ; and that therefore the subject land cannot be put to use as a multi-level parking without first amending the Zonal Development Plan which would be required to amend the Lay-Out Plan, by following the procedure prescribed by law. The petitioners contend that the land-use for ‘school’ would fall within ‘Education’ under a ‘Public-Semi-Public’ use-zone under clause 4.0 of the ‘Use-zones Designated’ under MPD 2021; whereas a multi-level parking would fall under the ‘Transportation’ use-zone. A change from ‘school’ to ‘multi-level parking’ would therefore require a change of use-zone under the Zonal Development Plan in accordance with the procedure and norms provided under section 11A of the DD Act 1957 and section 313 of the DMC Act. However such procedure has not been followed;

(vi) that the petitioners have also pointed-out that in an earlier case, being WP(C) No. 6631 of 2000 titled ***Federation of Residents’ Welfare Associations Rajouri Garden & Ors. vs. GNCTD & Ors.***, the Municipal Corporation of Delhi which was the predecessor of the respondent, had filed an affidavit dated 29.03.2007 *opposing* the use of the subject land for purposes of parking for the J-Block Market as had then been proposed by the market association, on the basis that the subject land is earmarked for use as a school and cannot therefore be

used for parking, unless the land-use is changed by completing necessary formalities. It is the petitioners' contention that even now the respondent cannot simply seek to put the plot to use as a parking, without at least first changing the designated land-use of the subject land in the Zonal Development Plan and the Lay-Out Plan, *a fortiori* as per their own admission in the aforesaid earlier writ petition;

(vii) that it is the settled position of law that the use to which a plot can be put is decided by the Zonal Development Plan and the Lay-Out Plan of an area; and till such time as the land-use is changed by following the procedure prescribed by law, no land can be put to any use other than that prescribed in the Zonal Development Plan and the Lay-Out Plan. In support of this proposition the petitioners cite judgment dated 10.12.2012 of a Division Bench of this court in ***Harish Batra & Ors. vs. DDA & Ors.*** W.P. (C) No. 757 of 2012, in which this court has held that so long as the Lay-Out Plan of a colony continues to show a prescribed user of the land (in that case for a “nursery school”) *even the court cannot direct* the user to be changed to anything else;

(viii) that before putting the subject land to use as Parking, the respondent did not consult the local residents nor the residents' welfare association, which was necessary, especially since the parking is being proposed in a residential area comprised in Blocks-F&C of the colony and not in Block-J, which is where the illegal Market to which the parking is intended to cater, is situate;

(ix) that there are a number of alternative surface-level parking sites available in the area, which could very well be used for the proposed project instead of the subject land;

(x) that apart from the alternative surface-level parking sites available for use, there are also two existing parking sites which the respondent has not taken into account. In this context, the petitioners point-out that there is a two-acre approved surface-level parking site available behind J-Block Community Centre, which the petitioners contend, is only about 100-115 meters from the Market and can serve its parking requirements;

(xi) that there are parking lots, both open and covered, also at the Raja Garden District Centre which is only about 100 meters from the Market ; and the Market itself has approved road-side parking which the respondent licenses-out, which also address the parking requirements of the Market;

(xii) that by order/directions dated 12.05.2018 issued by the Monitoring Committee constituted by the Supreme Court in ***M.C. Mehta*** (supra), the Monitoring Committee has directed as under :

*"The Monitoring Committee inspected the area of Rajouri Garden falling under the jurisdiction of West Zone, SDMC on 08.05.2018 and found almost 100% commercial activities in all the properties abutting the road of Rajouri Garden Market. This road does not bear the tag of any notified road as per MPD-2021. The Monitoring Committee has already directed the Deputy Commissioner, West Zone, SDMC to take sealing action against these properties.*

*You are directed to seal all the commercial shops / establishments on this road immediately and forward the compliance report to the Monitoring Committee."*

(Emphasis Supplied)

which clearly establishes that the very existence of the Market is a matter of rank illegality, which cannot be supported and encouraged by constructing the Parking. The petitioners further contend that there have been earlier occasions when, the then MCD, had attempted to utilise *inter alia* the subject land for other purposes, which attempts were vigorously opposed by the residents' welfare association and were successfully thwarted. This fact is confirmed by Minutes of Meeting dated 19.03.2008, as recorded in communication dated 01.04.2008 issued by the Executive Engineer (Project)-MCP, in which the MCD had recorded as under :

*"A meeting in respect to development of automated multilevel car parking between block F & C Rajouri Garden was convened on 19.03.2008 under the Chairmanship of Addl. Commissioner (Engg.), Wherein following officers attended the meeting:-*

xxxxx

*"In the meeting proposed the for (sic) development of automated multilevel car parking between block F & C Rajouri Garden was discussed, wherein Education Department informed that at present 550 students are studying in the school under reference. If this school is merged/shifted with school at Rajouri Garden South, which is at a distance of approximately 1.5 km from this school (across the main road i.e. Major Sudesh Chander Marg), which will result into lot of inconvenience to the school going children. The Health Department also shown their reservations in shifting of the Allopathic Dispensary as well as Diabetic Center from the existing site.*

*Keeping in view the interest of the school going children and the patients availing the facility from Allopathic Dispensary and Diabetic Center, it was decided that the various facilities under operation from this site may not be shifted and feasibility to develop the car parking **at some other suitable site** be explored if possible. The Hon'ble High Court be also appraised accordingly on the next date of hearing."*

(Emphasis supplied)

Based on the above, the petitioners contend that in view of the opposition faced earlier-on, the respondent is now trying to adopt a

shortcut by simply commencing construction on-site without following the law and the procedure envisaged in the DD Act, the DMC Act and the MPD 2021 for changing the land-use of the subject land;

(xiii) that the respondent's contention that under clause 12.14.1 parking is one of the '*utilities*' *permitted in all use-zones and therefore in all use-premises* and that therefore, regardless of the fact that the subject land is designated for use as a school, it is permissible to construct the Parking there without requirement of changing the land-use, is flawed. The petitioners argue that when clause 12.14.1 says that *parking* of vehicles is permissible as one of the utilities in any use-zone and therefore in any use-premises, that is not the same as saying that the *whole of the use-premises* can be converted into a parking. It is the petitioners' contention that obviously and quite logically, it is permissible to use a *part* of even a residential plot for purposes of parking vehicles but that is not to say that a residential plot may be converted into a parking lot *in its entirety*, without requirement of change of land-use. The petitioners further point-out that clause 12.4.1 also prescribes standards for parking, which indicate the extent to which parking *as a utility* may be permitted in any use-premises;

(xiv) that Table 13.21 of MPD 2021 which defines the permissible 'use-premises' in various 'use-zones', sets-out the activities permitted in use-premises designated as 'primary school' and 'middle school' and other types of educational facilities ; none of which includes the creation of a multi-level parking on such use-premises;

(xv) that a park in a school also falls within the definition of 'Recreational Open Spaces' being a playground ; and as per clause 12.14.1, parking is not permitted in a use-zone falling within the definition of 'Recreational Open Spaces and Parks'. In support of this contention, the petitioners rely upon Table 9.4 (item 4) and clause 8(2) of Chapter 17 of MPD 2021;

(xvi) that 'parking' and 'multi-level parking' are two different things; and a multi-level parking has been dealt with in a separate provision namely clause 12.14.3.7, as distinct from a simple parking which is covered by clause 12.14.1. Clause 12.14.3.7 requires that a multi-level parking must be part of a comprehensive PMD plan at designated locations; whereas clause 12.14.1 referring to 'parking' as a 'utility' does not so require;

(xvii) that while clause 12.14.3.7 refers to multi-level parking and also clarifies that multi-level parking should be integrated as part of a comprehensive PMD plan at designated locations, seven such designated locations have also been specified in MPD 2021;

(xviii) that parking in residential areas is covered by clause 12.14.3.4, which contemplates the permissible measures to address this problem ; but the creation of a multi-level parking in a residential area is not one of those measures;

(xix) that under clauses 12.14.3.5, 12.14.3.6 and 12.14.3.7 multi-level parking is contemplated only as public parking, parking for public buses and parking for private modes, as part of a PMD plan and *not as a stand-alone project*;

(xx) that in the case of another school site at Shalimar Bagh, the concerned municipal corporation namely the North DMC, has passed a resolution that in effect confirms the requirement of change of land-use for converting a school site to a multi-level parking. In support, the petitioners rely upon a resolution passed by the Permanent Committee of the North DMC in its meeting held on 28.02.2018 in relation to the proposed construction of a multi-level car parking in a primary school premises in Shalimar Bagh, which says :

*"Since parking is one of the utilities permitted in all use zones except in regional park/ridge, recreational open space and park as given in clause 12.14.1 of MPD-2021, it was decided to recommend to the Standing Committee for approval, the modification in the "Layout Plan of Shalimar Bagh Dekshini, Block-A" for change of use of part Primary School to Multi-level car parking."*

(Emphasis supplied)

and, the petitioners therefore contend that *while the North DMC admits that it is necessary to change the land-use for utilising a school-site as a multi-level parking, the South DMC takes a different stand.* Petitioners further point-out that despite the aforesaid resolution, by order dated 28.05.2018 made in W.P.(C) No. 5883/2018 titled ***A. K. Thareja & Ors. vs. The State & Ors.***, a Division Bench of this court has restrained construction of a multi-level parking on the land which was designated for use as a school in the North DMC area;

(xxi) that five sites/plots of lands in the Rajouri Garden area were designated for purposes of schools more than 30 years ago; that as per 'Planning Norms' contained in Table 13.3 of MPD 2021, one unit or school is required for every 10,000 persons. It is argued that in 2011

the total population of Rajouri Garden was about 55000; and by the year 2018 the population would easily have doubled to about 100000, meaning thereby that 10 schools would be required to cater to the needs of the population as per the aforesaid Planning Norms. However, only five plots have so far been designated for purposes of schools ; and of the five plots, municipal schools are being run only from three, while one plot has been converted into a children's park in D-Block. The subject land is therefore only the fifth plot available for use as a school, well short of the ten plots required as per the Planning Norms. The subject land cannot therefore be permitted to be used as a multi-level parking;

(xxii) that although a purported Feasibility Report of 2017 has been relied upon by the respondent, such report has however never been brought on record to justify the feasibility of the proposed Parking;

(xxiii) that the right to education has now been elevated to the status of a fundamental right under Articles 21 and 21A of the Constitution ; and this right is now also a statutory right under the Right of Children to Free and Compulsory Education Act 2009, which must be made effective in compliance of Article 39(f) of the Constitution. Petitioners contend that it is open to the court to take judicial notice of the fact that a significant proportion of children in our country cannot afford private schools and therefore rely only on municipal and other government schools for their fundamental right to education;

(xxiv) that most importantly, the respondent is also in clear violation of section 11A of the DD Act, in particular section 11A(3). The

petitioners point-out that the respondent has no power or authority under section 11A to effect any changes in the Master Plan or the Zonal Development Plan; and even the DDA or the Central Government, which are empowered to do so, are required to follow the procedure of inviting objections by way of public notice as specified in section 11A(3) of the DD Act;

(xxv) that the so-called ‘Survey’ dated November 2017 of the parking in houses in Rajouri Garden filed by the respondent, to show that there is a problem of parking even with the residents of the colony, is an incorrect and self-serving assessment; which suppresses the available parking in residential houses and proceeds on a mis-representation of several plots, which have been illegally converted into shops as part of the Market. This so-called survey therefore does not deserve any credence;

(xxvi) that undated and unverified letters purported to have been written by some residents’ associations filed by the respondent supporting construction of the multi-level parking project, are bogus ; do not represent the registered welfare associations of the colony ; and therefore deserve no weightage.

14. In support of their contentions, the petitioners have also relied upon the following judicial precedents which may be summarised as under :

a. Proper procedure is required to be followed for modification of the Zonal Development Plan for change in land-use:

(i) ***R.K. Mittal & Ors vs. State of Uttar Pradesh & Ors.***:(2012) 2 SCC 232 (paras 40, 42, 47, 48, 55, 68 & 72)

(ii) ***Machavarapu Srinivasa Rao & Ors. vs. The Vijayawada, Guntur, Tenali, Mangalagiri Urban Development Authority & Ors.***: (2011) 12 SCC 154 (paras 14, 18, 19 & 22)

(iii) ***Indore Development Authority vs. Madan Lal & Ors.***: (1990) 2 SCC 334 (para 10)

- b. Reservation of spaces is done for public purpose and a municipal corporation is not the owner of, but is only to safeguard and manage, such spaces :

(iv) ***Pt. Chet Ram Vashist vs. Municipal Corporation of Delhi***: (1995) 1 SCC 47 (paras 5, 6 & 8)

- c. Land allotted for school or park for children is not to be used for any other purpose :

(v) ***G. N. Khajuria & Ors. Vs. Delhi Development Authority & Ors.***: (1995) 5 SCC 762 (paras 6 & 8)

(vi) ***Banglore Medical Trust vs. B.S. Muddappa & Ors.*** : (1991) 4 SCC 54 (paras 22 to 26 & 36)

(vii) ***Harish Batra & Ors. vs. DDA & Ors.***: W.P. (C) No. 757 of 2012

(viii) ***L. K. Khurana vs. State of U.P. & Ors.***: (2015) 5 ALLJ 214 (paras 9 & 10)

(ix) ***Nagrik Sanghtan Seva Samiti vs. State of U.P.***: (MANU/UP/0384/2015) (para 5)

- d. On the scope of judicial review of a decision taken by a municipal corporation and on maintainability of the writ petition :

(x) ***S.N. Chandrashekhar & Anr. vs. State of Karnataka & Ors.***: (2006) 3 SCC 208 (paras 33, 34 & 36)

(xi) *Delhi Tamil Education Society vs. Directorate of Education & Ors.* :(2012) SCC Online Del 1767 (paras 13 to 15).

**Respondent's submissions :**

15. Opposing the prayers made in the writ petition, the respondent has contended as under :

(i) that apart from issuance of the RFP on 31.10.2017, the respondent had got a survey conducted through an expert agency, which in its report dated November 2017 suggested that there was an immediate requirement of 802 Equivalent Car Spaces ('ECS') parking; whereupon, administrative and functional approvals and expenditure sanction for construction of a multi-level parking on the subject land was obtained for an estimated cost of Rs.28.76 crores. The contract was awarded to M/s Rapid Construction *vide* work order dated 11.04.2018 and the entire project was to be completed within a period of 12 months. According to the respondent, construction stands completed till the foundation level and the contractor has submitted bills in the sum of Rs.1.78 crores;

(ii) that although no interim order restraining construction of the project was granted in the present proceedings, *vidé* order dated 01.06.2018 made in a public interest litigation titled ***Dr. Pramod Pal Sehgal vs. SDMC*** : W.P.(C) No.6402 of 2018 a Division Bench of this court had restrained the respondent from converting *any* land meant for use as a school or park into a multi-level parking ; which order was however subsequently modified by order dated 13.08.2018 whereby the Division Bench excluded the project in question from restraint

order dated 01.06.2018. The Division Bench had also granted liberty to the petitioner in the said public interest litigation, namely Dr. Pramod Pal Sehgal, to seek impleadment/intervention in the present case. The said order of the Division Bench was challenged by way of SLP No. 3790/2018, which SLP was disposed of by the Supreme Court *vide* order dated 10.09.2018, whereby, while declining to interfere in the matter, the Supreme Court had granted a *status quo* order to Dr. Pramod Pal Sehgal for 15 days without expressing any opinion on the merits of the case and had permitted him to move for impleadment in the present matter; which application was allowed by order dated 24.09.2018 and that is how petitioner No. 2 has come to be impleaded in the present proceedings;

(iii) that *vide* order dated 24.09.2018 this court had also ordered *status quo* as regards construction of the Parking. Although order dated 24.09.2018 was challenged by way of LPA No. 615/2018, *vide* order dated 29.10.2018 the Division Bench disposed of the Letters Patent Appeal permitting the respondent to seek early hearing of the present petition;

(iv) that to address the acute shortage of public parking in the locality, the respondent had made three unsuccessful attempts to construct a multi-level parking in the area; which projects had to be given-up since schools were being run from the sites in question; and it is in this background that the subject land was identified as being appropriate for construction of the Parking, since the land was essentially vacant;

(v) that the proposed parking is *not meant only* for the Market to the exclusion of the residents of the colony ; and numerous other welfare associations have appreciated and supported the project;

(vi) that a Joint Meeting was convened of all stakeholders including the Federation of Welfare Associations of Rajouri Garden, New Delhi at which the construction of the multi-level parking on the subject land was recommended;

(vii) that the respondent in fact admits that *at that stage*, change of land-use was required under the provisions of the *Master Plan for Delhi 2001*, however it is the respondent's contention that the requirement has since been relaxed in MPD 2021;

(viii) that the petitioners have no *locus standi* to maintain the present proceedings, which are not in the nature of public interest litigation in terms of the liberty granted by a Division Bench of this court *vide* order dated 13.08.2018 in W.P.(C) No. 6402/2018;

(ix) that the petitioners have approached this court after much delay in May 2018, when the project was already at an advanced stage of construction, although the petitioners were aware of the RFP having been issued in October 2017 and were also aware that the work had commenced in April 2018 with a 12-month completion deadline;

(x) that there is no violation of any provision of MPD 2021 inasmuch as under clause 12.14, *parking is permitted in all use-zones except in Recreational Open Spaces*. This, according to the respondent, would permit creation of parking sites even in a residential area;

(xi) that it is a misconception that a multi-level parking facility can only be constructed as part of a PMD plan since clause 12.14.2 deals with 'public parking' in "designated commercial/work centers and other areas and corridors where significant commercial activity has developed by way of mixed use" ; the contention being that a *PMD plan is contemplated only for public parking in designated commercial/work centers* and not in other areas such as a residential area;

(xii) that construction of a multi-level parking in a residential use-zone would not require creation of a PMD plan and a stand-alone project, like the one under consideration, is therefore permissible;

(xiii) that the very concept of a PMD plan under clause 12.14.2.1 is only for a 'public parking' under clause 12.14.2; and no PMD plan is contemplated if it is not a public parking;

(xiv) that wherever permission from the DDA is envisaged for creation of parking, it is specifically so mentioned ; which is not the case for making a multi-level parking on the subject land;

(xv) that Lay-Out Plans govern use-premises; and therefore, so long as creation of multi-level parking facilities is permissible in all use-zones irrespective of the use-premises, there is no requirement for changing the land-use of the subject land in the Lay-Out Plan;

(xvi) that the issue of inadequacy of schools in the colony is a bogey, since as per the respondent's data, more than 1000 vacant seats are available in the schools in the area;

(xvii) that the allegation that construction of a multi-level parking on the subject land *would* violate Rule 3 (5) of the Noise Pollution Rules is also misconceived ; and that a *probable cause of action* cannot be the basis to impugn the actions of a governmental authority. The respondent in fact contends that with the multi-level parking, some 200 cars would be taken off the road-side parking, which will reduce the congestion and ultimately, both air and noise pollution;

(xviii) that the respondent also points-out that Rule 3(5) of the Noise Pollution Rules only stipulates that an area comprising not less than 100 meters around an educational institution *may be declared* a silence area/zone; and that the said rule is only an enabling provision. Since the area around the subject land has not been declared a silence zone, the other restrictions that flow from such declaration are not applicable;

(xix) that insofar as the availability of alternative parking sites is concerned, the identification of a parking site is a policy decision; that the other sites suggested by the petitioners are not feasible for reasons as detailed in the counter affidavit filed in W.P.(C) No. 6402/2018; and that the choice of the site cannot be dictated by the petitioners. It is urged that unless some legal flaw is found in the respondent's action, this court should refuse to interfere in the matter, since such interference would not be conducive to public interest.

16. The respondent has not relied on any judicial precedents in response to the precedents cited by the petitioners, except the decision of this court in

***Prime Minister's National Relief Fund vs. Asim Takiar*** : W.P. (C) No. 3897/2012 decided on 19.11.2015.

**Judicial precedents cited :**

17. Insofar as the precedents cited by the petitioners are concerned, a brief overview of the legal submissions is as follows :

(i) In support of their submission that in the present case it is necessary to change the land-use of the subject land by following the proper procedure, the petitioners rely upon ***Indore Development Authority*** (supra) which case arose from a development scheme formulated under the M.P. Town Improvement Trust Act 1960 that was sought to be notified under a new statute, viz. The M.P. Nagar Tatha Gram Nivesh Adhiniyam 1973. In that case the Supreme Court held that the development authority ought not to have approved the development scheme under the new statute without following the procedure thereunder, namely inviting objections to the proposed scheme.

(ii) Next the petitioners rely upon ***Machavarapu Srinivasa Rao*** (supra) in which challenge was brought to the permission granted by the development authority for construction of a temple on land earmarked as 'recreational' in the zonal development plan, without changing the land-use of the site in question. Upon consideration of the provisions of the Andhra Pradesh Urban Areas (Development) Act 1975 including section 12 of that statute, which provision is in *pari materia* with section 11A of the DD Act, the Supreme Court held that the land could not be used for any purpose other than the one specified in the master plan/zonal development plan; and that modification to

the development plan can be made only after following the procedure provided under the statute.

(iii) The petitioners further rely on ***R. K. Mittal*** (supra) which case dealt with misuse of premises earmarked as ‘residential’ in the master plan and the zonal development plan for commercial activity. The Supreme Court held that a *supposed policy decision* by the development authority must be in accordance with the master plan, the regulations and the statute in force, in that case the U.P. Industrial Area Development Act 1976; and that the development authority has no power to vary the user prescribed in the master plan except by amending the relevant laws and that too for a proper object and purpose.

(iv) The petitioners also rely upon ***Pt. Chet Ram Vashist*** (supra) to contend that the respondent is not the ‘owner’ of spaces reserved for public purposes, but is only authorised to safeguard and manage such spaces. In that case, the Supreme Court considered the issue of whether, in exercise of its powers of sanctioning a Lay-Out Plan under section 313 of the DMC Act, the Municipal Corporation of Delhi could require compulsory transfer of sites reserved for parks/open spaces in its favour. The Supreme Court held that such condition would amount to transfer of ownership to the municipal corporation; and that when a site is reserved for public purpose, the corporation only has a right as ‘custodian’ to manage the site but does not get any right, title or interest in it.

(v) In support of their submission that land allocated for a school or a children's park ought not to be used for any other purpose, the petitioners rely upon ***Bangalore Medical Trust*** (supra), which case related to conversion of use and allotment of land earmarked for a public park in the development scheme for construction of a hospital. The Supreme Court held that the alteration of the scheme could have been done *only* in terms of the provisions of the Bangalore Development Authority Act, which permitted such alteration for improvement of the scheme; and that conversion of open spaces for a privately owned and managed hospital could not be said to be for improvement of the scheme.

(vi) The petitioners further rely upon ***Dr. G. N. Khajuria*** (supra) which case related to allotment by the DDA of land reserved for a park in a residential colony for construction of a nursery school. The Supreme Court held that any lay-out plan for a residential colony has to indicate the space reserved not only for a nursery school but also for a park; and that allotment of space for running of a nursery school which was otherwise reserved for a park, was misuse of power.

(vii) The petitioners also rely upon the judgment of a Division Bench of this court in ***Harish Batra*** (supra), in which case the dispute between parties was about allotment of a plot earmarked for a nursery school in the lay-out plan by the DDA, for purposes of a co-operative house building society and this court held that so long as the prescribed user of the land continued to be for a nursery school in the lay-out plan, this court could not direct the user to be anything else.

(viii) The petitioners also rely upon two judgments of a Division Bench of the Allahabad High Court. The first, *Nagrik Sangathan Seva Samiti* (supra) was a public interest litigation challenging allotment of shops on land reserved for a public park in a residential lay-out scheme ; in which the High Court held that any use of the land designated for a public park, other than as recreational open space, would be illegal; and that statutory authorities cannot be permitted to convert the few remaining open spaces in the city to commercial use. The second case, *L. K. Khurana* (supra) was about the proposed conversion of a public park into a multi-level parking facility. Viewing the need for open recreational spaces as the right of citizens under Article 21 of the Constitution, the High Court directed the authorities to maintain the area of the park as a park; and granted to the development authority liberty to pursue any alternative proposal for constructing parking facility.

(ix) The petitioners then rely upon *S. N. Chandrashekhhar* (supra), which was a challenge to an order sanctioning change of land-use from residential to commercial. The Supreme Court held that the order passed by the development authority under section 14A of the Karnataka Town & Country Planning Act 1961 was made without disclosing the purpose of, and grounds for, allowing such change in land-use as required by section 14A; and without referring to any of the ingredients contained therein; and the change of land-use was therefore unsustainable.

(x) The petitioners further rely upon a judgment of this court in *Delhi Tamil Education Society* (supra) which was a challenge brought

to the cancellation of allotment of a plot for purposes of running a school, on the ground that there was no sponsorship from the Department of Education in favour of the petitioner in that case. On grounds *inter alia* of scarcity of schools, the court set-aside the show cause notice for cancellation of allotment.

18. The respondent has relied on ***Prime Minister's National Relief Fund*** (supra) decided by a single Judge of this court on 19.11.2015, to contend that in exercise of its powers under Article 226 of the Constitution, this court may decline relief if it finds that grant of relief is not conducive to public interest. In that case, an order passed by the Central Information Commission (CIC) directing a party to disclose certain information was challenged ; and the single Judge refused to interfere with the order of the CIC on grounds of public interest, leaving open the question of whether the concerned party was a public authority or not.

19. To be sure, during the pendency of the present petition the respondent had moved CM APPL. No. 40215/2019 seeking dismissal of this petition on the ground that *vide* order dated 28.08.2019 a Division Bench of this court in W.P.(C) No. 6402/2018 titled ***Dr. Pramod Pal Sehgal vs. South Delhi Municipal Corporation & Ors.*** had decided and foreclosed further proceedings in this case. That application was dismissed by order dated 20.09.2019, holding that in view of the prayers made in the Public Interest Litigation before the Division Bench and the issues involved, by its judgment dated 28.08.2019 the Division Bench had, in essence and substance, held that the municipal corporations have the jurisdiction and authority to use their land for a school and for other alternate purposes, including for providing multi-level parking facility. The Division Bench had

further held that the priorities for land-use may be adjusted by municipal corporations ; and further that if a municipal corporation is of the view that a public parking is required, *it may change the land-use*. The Division Bench had however categorically held that the *change of land-use must be in accordance with the law and in accordance with the policies* of the municipal corporation and of the DDA. In particular, the Division Bench had referred to the provisions of sections 312 and 313 of the DMC Act and to clause 12.13.17 (sic, clause 12.14.3.7) of MPD 2021, to say that if the municipal corporation has a policy to convert the land-use of plots meant for schools to multi-level parkings, that may be done in accordance with the afore-mentioned provisions. It may be useful to extract the relevant part of order dated 28.08.2018, which reads as under :

*“8. ... The change of use of the plot is always permissible at the jurisdiction of the respondents, but it should be in accordance with law and the policies of the respondents. We see no reason to interfere with the policies of the respondents. If there is any policy to convert the plots meant for schools into plots for multi level parking, the same shall be done by the respondents, as per the provisions of the lay out plans under Sections 312/313 of the Delhi Municipal Corporation Act, 1957. Action for conversion of plots will be taken by the respondents as per Clause 12.13.7 of the Master Plan, 2021 and also looking to the provisions under the Delhi Municipal Corporation Act, 1957.”*

However, nowhere did the Division Bench dealt with the specific prayers made in the present petition or in relation to the Rajouri Garden project ; nor had the Division Bench given its approval or disapproval in relation to the said project. In fact the challenge made in the present petition, namely the challenge to RFP dated 31.10.2017 was never placed before nor considered nor decided by the Division Bench. Thus, the issues that are now

being decided by way of the present judgment have not previously been considered or decided by the Division Bench that matter.

**Discussion and Conclusions :**

20. After the dust has settled on the extensive submissions made by both sides, the answer to the principal question upon which the decision of this case turns, as set-out at the beginning of this judgment, are as under.

21. While it is correct that clause 12.4 of MPD 2021 says that parking is permissible in any use-zone since parking is a 'utility', in my opinion parking as a 'utility' is a different and distinct concept from parking as a 'use-premises'. *While parking as a utility may be permitted in any use-zone ; parking as a use-premises is permitted only in a 'transportation' use-zone under MPD-2021.*

22. Parking as a 'utility' is an amenity and an absolute necessity which must be permitted in any use-zone and in any use-premises. The reason is that it is necessary to park vehicles even in a residence, or a hospital, or a school or, for that matter, even in and around a public park or a playground. Such parking is an ancillary requirement that must be allowed to enable use of the premises *for the designated purpose*. That however does not mean that such parking, as an ancillary amenity for using the residence or hospital or school or playground or park, would imply that the *entire residence or school or hospital or park or playground can be converted into a dedicated public parking space*.

23. After all, it is nobody's case that *routine parking* of vehicles is not permissible in all use-premises in all use-zones as a facility that is necessary to enable the use of such premises for the purpose for which they are

designated. But *merely because law permits that you can park your car in the drive-way of your house, that does not mean you can convert your entire house into a public parking lot, muchless build a multi-level parking.* Parking of vehicles is permitted even in and around parks, playgrounds and other recreational open spaces without which it would be impossible to use *such spaces as parks, playgrounds and recreational spaces*; but that does not imply that one can simply convert the park into a full-fledged public parking/multi-level parking on the pretext that parking is a utility which is permissible in any use-zone and in any use-premises.

24. On the other hand, parking as a 'use-premises' is a different matter. When we speak of building a multi-level parking we talk of an entire use-premises being converted *exclusively* into a public parking area ; and not parking vehicles *as ancillary* to some other use such as a residence, school, hospital, park or playground. The entire edifice of the submissions made by the respondent that there is no distinction between parking as a 'utility' and parking as a 'use-premises' is therefore facetious and untenable ; and therefore must fall. This view finds support in a plain reading of clauses 12.14.1 and 12.14.2 of MPD 2021.

25. It is also necessary to appreciate that *if parking as a 'utility' and parking as a 'use-premises' were one-and-the-same-thing, then MPD 2021 would not have segregated and dealt with these two kinds of parking separately in clause 12.14.1 and clause 12.14.2 respectively, as it has done.* While the caption or title of a provision is never decisive of its interpretation, it bears noticing that clause 12.14.1 is captioned 'Parking Standards in Use-premises' whereas clause 12.14.2 is captioned 'Public Parking'. Clause 12.14.3.4 has the caption 'Parking in Residential Areas' and clause 12.14.3.5

has the caption 'Parking Standards for Public Parking', all of which reflect the true intent and meaning of the said provisions. By way of the foregoing provisions, MPD 2021 clearly distinguishes between 'parking' that is permissible in any use-zone and in any use-premises and 'public parking', which is permissible only in certain use-zones.

26. Since the RFP in question was for constructing a multi-level parking on the subject land, the proposal was clearly to change the use-premises of the subject land from 'school' in a residential area into a 'public parking' on a stand-alone basis. In my view, this is not permissible since clause 12.14.3.7 mandates that a multi-level parking should be integrated as part of a comprehensive PMD plan, for reasons as detailed in the said clause. Putting aside any nuances and semantics, if this were to be permitted for the asking, it would be possible for municipal corporations to convert *any plot of land* in a residential area into a multi-level parking, which would vitiate the very concept of a residential area.

27. On a substantive legal level, the scheme of section 11A is the following:-

- (a) modifications to the Master Plan or the Zonal Development Plan may be done by the DDA as it thinks fit, provided these do not make important alternations in the character of the plan and do not relate to the extent of land-use or the standards of population density, subject to the DDA reporting the same to the Central Government;
- (b) modifications to the Master Plan or the Zonal Development Plan that make important alterations in the character of the plan or relate to the extent of land-use or the standards of population density may only be made by the Central Government;

(c) in either of the aforesaid cases, before making any modification to a plan, the DDA or Central Government as the case may be, is required to publish a *notice inviting objections and suggestions* with respect to the proposed modification and to *consider* all such objections and suggestions that may be received in accordance with the prescribed rules;

(d) every modification made is then *required to be published* alongwith the date on which such modification shall come into operation.

28. Most importantly, section 11A of the DD Act says that only two entities have the power to modify the Master Plan or the Zonal Development Plan, namely the DDA and the Central Government; and the municipal corporations simply do not have the power to do so. It will be noticed that section 11A of the DD Act not only confers power for modification of the Master Plan or the Zonal Development Plan upon the DDA and the Central Government, it also mandates that before any modification is so made, even the DDA or the Central Government shall publish a notice as prescribed by the rules, inviting objections and suggestions from 'any person' with respect to the proposed modifications. The phrase 'any person' in section 11A, in my view, would mean and include all affected persons such as the residents of a colony in which modification to the Master Plan or Zonal Development Plan is proposed. This salutary provision would be given a go-by if change of land-use is permitted at the hands of the respondent, especially without compliance with the requirement of notice to affected parties. In this view of the matter, the question of putting land meant for a school to use as a multi-level parking, without changing its designated land-use does not arise.

29. At the risk of repetition therefore, it is important to note that under the statutory scheme, while the respondent may have the power to amend a Lay-Out Plan, it does not have the power to amend a Zonal Development Plan or the Master Plan.

30. It may also bear repetition that section 14 of the DD Act provides that no person shall use or permit the use of any land or building in a manner that is not in conformity with any of the plans in a zone.

31. While on a simplistic reading of the foregoing provisions, it may appear that the designated purpose of a use-premises can be changed by a simple modification of the Lay-Out Plan by a municipal corporation without reference to DDA or the Central Government, a closer analysis reveals otherwise. Under the scheme and purpose of MPD 2021 a 'use-zone' defines the broad use to which land in a given area may be put; a use-zone is further divided into various 'use-premises', which define the use to which a given plot of land may be put in the use-zone. There are nine land-use categories defined in clause 4.0 of Chapter 17 of MPD 2021. These 9 land-use categories are sub-divided as use-zones. A use-zone may therefore be residential, commercial, industrial, transportation, recreational etc, thereby defining the type of use for which the zone is meant. One of the use-zones listed under clause 4.0 is 'Public and Semi Public Facilities', which among others, includes the use of land for the purpose of '...Education and Research University/University centre ... .' A 'school' therefore falls within the Public and Semi Public Facilities use-zone under the Zonal Development Plan. On the other hand there is a separate use-zone titled 'Transportation'. Although not specifically so mentioned, public parking would fall within the 'Transportation' use-zone under clause 4.0 since *'parking' is a permissible*

*use listed under 'Transportation' use-premises under clause 8(2).* The entire subject of parking in fact appears under Chapter 12.0 'Transportation' in MPD 2021.

32. A decision of a Division Bench of this court in ***Rohit Dhupar & Ors. vs. Lt. Governor & Ors.*** reported as 2009 (109) DRJ 586 (DB), though not cited by either of the parties, is also required to be considered. In this case, 500 sq.m. out of a 2000 sq.m. plot earlier earmarked for "Multi Purpose Community Usage" in the Lay-Out Plan was sought to be converted from 'nursery school/community service/other activities' to a 'park'. Dealing with the applicability of section 11A and section 14 of the DD Act, the Division Bench held as under:-

*"10. Lay Out Plans are different and distinct from ZDP. Lay Out Plans demarcate specific areas which can be used for different purposes and earmark land/plots which can be used for different purposes. Under Development Code of MPD 2001, Clauses 2(3) and (4), Lay Out Plan and ZDP have been defined as :*

*"2(3). Layout Plan- Layout Plan means a sub-division plan indicating configuration and sizes of all use premises.*

*2(4). Zonal Development Plan means a plan for one of the zones (divisions) of the Union Territory of Delhi containing detailed information regarding provision of social infrastructure, parks and open spaces and circulation system."*

xxxxx

*"12. It is not possible to agree with the learned counsel for the petitioners that Lay Out Plan can be modified or amended only after following the prescribed procedure for amendment of the MPD 2001 and ZDP as prescribed under the DD Act. The Lay Out Plan can be amended and modified without following the procedure U/s 11A of the DD Act, as long as amended and modified lay out plans are in conformity with the ZDP and the*

*MPD. Section 11A of the DD Act, quoted above, deals with amendment of the ZDP and MPD, 2001 and not amendment or modification of the lay out plans. This has been the consistent view of this Court as is clear from the judgments of Division Benches of this court in..."*

(Emphasis supplied)

33. In **Rohit Dhupar** (supra) the Division Bench also relied upon an earlier decision of this court in **U.P. Samaj Cooperative House Building Society Ltd vs. Delhi Development Authority & Ors.** 116 (2005) DLT 247 quoting the following:-

*"23. Town planning is a legislative activity. Under Delhi Development Act, 1957, Master Plan has the force of law. Lay out plan is prepared keeping in view the development control norms stipulated under the Master Plan. So long as the lay out conforms to Master Plan norms, Court cannot substitute its own opinion as to what principle or policy would best serve the object of the Master Plan."*

(Emphasis supplied)

Although there are some changes as between the definitions that were contained in Master Plan for Delhi 2001 and MPD 2021, the essence of the definitions of 'Lay-Out Plan' and 'Zonal Development Plan' remains the same; and therefore the principles laid down in the aforesaid decision applies squarely to the present case. Applying such principles, it is clear that a Lay-Out Plan can be modified and amended by the municipal corporation *provided the amendment or modification in the Lay-Out Plan is in conformity with the Master Plan and Zonal Development Plan.* As explained above, in the present case the use of the subject land designated for 'school' for constructing a 'multi-level parking' *would entail modification of the use-zone from 'Public and Semi Public Facilities' to 'Transportation', which*

would be a modification of the Zonal Development Plan. Furthermore, such change would not be in conformity with the requirement under MPD 2021 that a multi-level parking is required to be part of a PMD plan and cannot be a stand-alone project. Accordingly, the change of use of the subject land can only be done in accordance with the procedure provided under section 11A of the DD Act and must be in conformity with MPD 2021.

34. As a matter of fact, in a very recent decision dated 17.10.2019 rendered by a single Judge of this court in **Vikas Vasudeva & Ors vs. Land & Development Officer & Ors.** : W.P.(C) No. 3123/2016, where the Land & Development Office had allotted a parcel of land situate in a residential colony to the Hindustan Petroleum Corporation Limited for running a CNG fuel pump, it was argued by the L&DO that as per clause 12.12 of the MPD a petrol pump is permitted in all use-zones except in a recreational use-zone. It was argued that as per Table 12.16 of MPD 2021, two fuel stations are permitted for every 150 hectares in a residential use-zone ; and that no public consultation for change of land-use was required. Upon considering the submissions made and the provisions involved, the single Judge concluded as follows :

*"16. In the light of these facts it is clear that the attempt of respondent No. 1 to locate a petrol pump in zone B3 on the land in question which is subject matter of the present Writ Petition without an amendment in the Zonal Plan/lay-out plan, is wholly illegal and contrary to MPD 2021 and the zonal plan of Zone B3. If the respondent No. 1 seeks to locate a petrol pump in the said area it would have to take steps to modify the lay out plan of Zone B3 before any such step can be taken. Clearly, the proposed impugned step taken by the respondent is illegal."*

In arriving at the above conclusion, the single Judge also relied upon **R.K. Mittal** (supra) cited by the petitioner in this case ; and quoted para 43 of the Supreme Court decision which reads as follows :

*"43. To illustrate the dimensions of exercise of such powers, we may refer to the judgment of this Court in case of Bangalore Medical Trust v. B.S.Mudappa and Ors.: (1991) 4 SCC 54, wherein this Court was concerned with the provisions of the Bangalore Development Authority Act, 1976 with particular reference to Sections 33, 38 and 38(A) of that Act. A site intended for a public park was sought to be converted into a hospital/nursing home, under the garb of the latter being a 'civic amenity'. This Court formed the view that such conversion of an open space reserved under the scheme for a public park into a civic amenity site by constructing hospital and allotment of the site to persons or body of persons, was opposed to the objects of the Act and would be ultra vires the same. This Court held as under :*

*46...No one howsoever high can arrogate to himself or assume without any authorization express or implied in law a discretion to ignore the rules and deviate from rationality by adopting a strained or distorted interpretation as it renders the action ultra vires and bad in law. Where the law requires an authority to act or decide, 'if it appears to it necessary 'or if he is 'of opinion that a particular act should be done 'then it is implicit that it should be done objectively, fairly and reasonably. Decisions affecting public interest or the necessity of doing it in the light of guidance provided by the Act and rules may not require intimation to person affected yet the exercise of discretion is vitiated if the action is bereft of rationality, lacks objective and purposive approach. The action or decision must not only be reached reasonably and intelligibly but it must be related to the purpose for which power is exercised. The purpose for which the Act was enacted is spelt out from the Preamble itself which provides for establishment of the Authority for development of the city of Bangalore and areas of adjacent*

thereto. To carry out this purpose the development scheme framed by the Improvement Trust was adopted by the Development Authority. Any alteration in this scheme could have been made as provided in Sub-section (4) of Section 19 only if it resulted in improvement in any part of the scheme. As stated earlier a private nursing home could neither be considered to be an amenity nor it could be considered improvement over necessity like a public park. The exercise of power, therefore, was contrary to the purpose for which it is conferred under the statute.

xxxxx

48. A decision which is sought to be taken by the Development Authority in the grab 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 provision 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."

(Emphasis supplied)

35. It is also necessary to address the issue as to whether, the purported public necessity for providing parking space, would permit the respondent to by-pass the statutory scheme. In this behalf, reference may be made to the decision of a Division Bench of this court in '**B' Block Residents Welfare Association, New Delhi vs. Delhi Development Authority & Ors.** reported as 2002 SCC OnLine Del 1022, where the court expressed the following opinion :

*"18. Only because there exists a so-called public interest, the same by itself would not be enough to avoid compliance of the statutory provision. Once it is held that in the ZDP, the area in question has been shown to be meant to be used for residential purpose, the same by itself would not mean that user thereof can be changed. An area with 400 shops would be more than a market complex and the same, for the reasons stated hereinbefore, in our opinion, cannot be allowed. The respondents, however, would not be debarred from allotting the vacant shops to some of the holding of the shops. It would also be open to them to take over possession of the land in accordance with law. For the views we have taken, it is not necessary to examine the other contentions raised in the writ petition."*

(Emphasis supplied)

36. Before concluding, it may also be pointed-out that under the provisions of the Motor Vehicles Act 1988 the Government of NCT of Delhi has framed the "Delhi Maintenance and Management of Parking Places Rules 2019" ("DMMPP Rules" for short), which apply to all public parking spaces within the NCT of Delhi owned or managed by any public authority. Rule 3 of the DMMPP Rules envisages the preparation and implementation by civic agencies, including the respondent, of local area specific integrated parking plans called 'Area Parking Plans' to provide parking arrangements in residential and non-residential/commercial areas. It provides that Area

Parking Plans are to be drawn-up as envisaged in MPD 2021 and in accordance with the rules and the schedule to the rules. The relevant portion of Rule 11 of the DMMPP Rules reads as under :

***"Rule 11. Parking in residential streets and lanes. (1) The Area Parking Plan made by civic agencies shall include, in their scope, parking arrangements within residential areas. The plan within such areas shall be made in consultation with the residents/ Resident Welfare Associations.***

xxxxx

***(3) Further, the owners of vacant plots in the residential colonies and commercial areas should be authorised for use of these plots as parking places against parking fees. Upon permission to use such vacant plot also as multi-level parking under building bye laws, such plots can be used as such for that purpose. Appropriate tax measures may be adopted by civic agencies to incentivize this process.***

xxxxx "

(Emphasis supplied)

37. Schedule-I to the DMMPP Rules, which sets-out the guidelines for urban local bodies and other concerned agencies for implementation of the Area Parking Plan, alternatively called the Parking Management Area Plan (PMAP), states that a parking plan has to be in line with the requirements of MPD 2021. Para 2 of Schedule-I reads as under:-

***"2. What is Parking Management Area Plan (PMAP)?***

***The Parking Management Area Plan (PMAP) is an area level plan prepared by any local body which includes the demarcation of all types of parking spaces for all modes as well as essential street amenities as per MPD-2021 provisions. This includes on-street, off-street and multi-level parking facilities, vending zones, multi-modal integration facilities, green open spaces along with the allied traffic and pedestrian/NMT circulation plans, signage plans and pricing strategy. PMAPs must be prepared in consultation with local stakeholders, planning bodies/departments and with a team of transport planners and urban designers, and should include the following:***

xxxxx"

(Emphasis supplied)

38. Para 2.2.3, which is specific to Parking Area Plans for residential areas, recites as under:-

**"2.2.3 Residential areas**

*Steps to follow for preparing PMAP for Residential Areas:*

xxxxx

**(iv) Demarcate Off-Street Uses including Parking Facilities, as required:**

xxxxx

*d. New standalone multi-level parking projects are to be avoided since land is too valuable and required for more important uses like housing, parks, facilities, etc. Instead, any new / redevelopment project in the area should provide at least 50% of its equivalent car space (ECS) requirement as per MPD as an unbundled, shared parking facility (refer Section 2.2.5);*

xxxxx"

Para (c) of Annexure-I to Schedule-I reads as under:

*"c. Multi-level parking / stack parking facilities for private vehicles should be located so as to:*

xxxxx

*(ii) should be provided within existing open parking lots; within under-utilized buildings premises/ govt. office premises/ community plots/ new development projects/ etc. and not as standalone plots, since land is too valuable and required for more important uses like housing, parks, facilities etc."*

(Emphasis supplied)

39. Although there is a notation in Table-7 in Annexure-V to Schedule-I to the following effect:

*"In case of planned old neighbourhoods or commercial centres >25 years old; MLCP/stack parking may be provided in under-utilized plots as multi-use projects with shared unbundled public parking. **No change of land use is required.** For example, a new housing or commercial project could provide its ECS as a shared parking facility which can be shared during off-peak hours."*

(Emphasis supplied)

but this notation does not refer to a *standalone* multi-level parking, as planned by the respondent in the present case, but to multi-purpose use of a residential or commercial project as shared parking facility during off-peak hours.

40. Suffice it to say therefore, that even in the most recently notified DMMPP Rules, the scheme and policy is the same, namely that a standalone multi-level parking can only be part of a PMD plan and in consonance and accord with MPD 2021.

41. While it is not for this court to exercise its powers of judicial review under Article 226 to second guess a policy decision taken by a State authority, it is certainly the remit of the court in these proceedings to *review the process* followed by the authority to make and put into effect a policy decision ; as also to ensure compliance by State authorities with statutory provisions and statutory instruments, in this case the DD Act, the DMC Act and MPD 2021.

42. The critical aspect here is that for changing and use-premises of the subject land from 'school' to 'multi-level parking' would require change in the use-zone specified under the Zonal Development Plan from 'Public and Semi-Public Facilities' to 'Transportation' use-zone, which can only be done by amendment of the Zonal Development Plan, which (latter) can be done by the DDA under section 11A of the DD Act and not by the respondent.

43. Besides, it also weighs with the court that the final result of the proposed multi-level parking would be that the respondent would construct a parking on land which is *not approved* for such use, to cater to the need of a

*market which itself is not authorised* under municipal laws. If two wrongs do not make a right, permitting the construction of the Parking without following the procedure for conversion of land-use, would be anathema to the rule of law.

44. Upon a conspectus of the foregoing, this court is of opinion that the policy aspect apart, there is evident misinterpretation and violation by the respondent of the provisions of the DD Act, the DMC Act and MPD 2021 as detailed above, which vitiates the RFP and all related policy decisions taken for construction of the proposed multi-level parking.

45. As a sequitur to the above discussion, I hold that :

- (a) it is *not permissible* for the respondent to simply put the subject land, which is designated for use as 'school' under the Lay-Out Plan, to use for constructing a stand-alone multi-level parking ;
- (b) if the respondent intends to construct a stand-alone multi-level parking, it is necessary for the respondent to first *get the land-use of the subject land changed in the Zonal Development Plan and in the applicable Lay-Out Plan* ; and to that end, comply with *all* applicable laws, rules and regulations, including the provisions of the Delhi Development Act 1957, the Delhi Municipal Corporation Act, 1957 and the Master Plan for Delhi 2021 as discussed above.

46. In the above view of the matter, the petition succeeds. RFP dated 31.10.2017 for construction of a multi-level car parking facility is accordingly quashed. As a consequence, it is directed that any construction relating to the multi-level parking made upon the subject land be removed

within a period of 12 weeks and the land be restored for purposes of use as 'school'.

47. The writ petition is disposed of in the above terms; without however, any order as to costs. Pending applications, if any, also stand disposed of.

**ANUP JAIRAM BHAMBHANI, J.**

**February 17, 2020/Ne/uj**