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

Date of Decision: 29th August 2023

**+ W.P.(C) 6513/2021 & CM APPLs. 20451/2021, 24419/2022,
32377/2023**

YUVRAJ SINGH PUAR

..... Petitioner

Through: Mr. Gautam Narayan, Ms.
Asmita Singh, Mr. Harshit
Goel, Ms. Akriti Arya, Mr.
Siddhant Singh, Advocates.

versus

SOUTH DELHI MUNICIPAL

CORPORATION & ORS.

..... Respondents

Through: Mr. Ajjay Aroraa, SC with Mr.
Kapil Dutta, Advocate for
MCD.
Mr. Arun Birbal, Mr. Sanjay
Singh, Advocates for DDA.
Mr. Deepak Dhingra, Ms. Sneh
Somani, Advocates for R-3.

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CORAM:

HON'BLE MR. JUSTICE PRATEEK JALAN

JUDGMENT

1. By way of this writ petition under Article 226 of the Constitution, the petitioner assails a building plan sanctioned by respondent No.1- Municipal Corporation of Delhi ["MCD"] at the instance of respondent No.3- M/s Brits Estate Pvt. Ltd. The impugned sanctioned plan pertains to property No. B-87, Greater Kailash Part-I,



New Delhi-110048 [hereinafter, “the subject property”], which is the property neighboring the petitioner’s residence [*B-89, Greater Kailash Part-I, New Delhi-110048*].

A. Facts and litigation history

2. The impugned building plan, proposed by respondent No.3, was sanctioned by MCD on 11.09.2020. The petitioner contends that the plan is contrary to Clause 4.4.3 of the Development Control Regulations [hereinafter, “DCR”], which forms part of the Master Plan for Delhi-2021 [hereinafter, “MPD 2021”]. DCR 4.4.3 deals with regulations in respect of residential plots. It is averred in the petition that the petitioner was apprised of the impugned building plan by the construction supervisor of respondent No.3 in January, 2021. The petitioner made a representation dated 08.02.2021 to MCD on the ground that some of the elements of the sanctioned plan were contrary to DCR 4.4.3. As the representation did not elicit a response, the petitioner filed the aforesaid present writ petition on 12.07.2021 for the following reliefs:-

“I. Quash the building plan approval granted by R1 under file no 10075959 to R3 as being in violation of DCR 4.4.3 OR in the alternative declare DCR 4.4.3 in so far as it allows ground coverage, FAR, and setbacks of a lower category plot to be applicable to a higher category plot regardless of the size of the higher category plot as illegal, and arbitrary, and grant the consequent relief of quashing of the building plan approval granted by R1 under file no 10075959 to R3.

II. Direct R3 to bring construction carried out at the site of Plot No. B-87 in conformity with DCR 4.4.3 in letter and spirit, and to remove any and all construction which does not so conform.



III. Direct R3 to stop all construction at the site of Plot No B-87, GK-I, New Delhi - 110048 until the impugned building plan is brought in conformity with DCR 4.4.3 in letter and spirit.

IV. Pass any such further orders, directions as this Hon'ble Court may deem fit in the circumstances, and in favour of the Petitioner.”

3. Notice was issued in the writ petition on 19.07.2021. By order dated 29.07.2021, an application filed by petitioner with regard to damage caused to his property as a result of the construction [CM Appl. 22181/2021] was disposed of with certain remedial directions. The petitioner also made an application for stay of construction [CM Appl. 32377/2023], which was declined by order dated 16.06.2023. However, it was directed that, in the event the petition is decided in favor of the petitioner, the construction which had become unauthorized would be demolished, and respondent No.3 would not be entitled to claim equities. Further, respondent No.3 was directed not to create any further third party rights until the next date of hearing.

4. On 03.07.2023, Mr. Gautam Narayan, learned counsel for the petitioner, was requested to address on the question of whether the impugned sanctioned plan is subject to appeal under Section 347B(f) of the Delhi Municipal Corporation Act, 1957 or any other provision. On the next date of hearing, i.e. 10.07.2023, the following order was passed:-

“1. Further to the order dated 03.07.2023, Mr. Gautam Narayan, learned counsel for petitioner, accepts that the impugned sanction plan is subject to appeal under Section 347B of the Delhi Municipal Corporation Act, 1957 [“the Act”]. However, he cites the judgment of the Supreme Court in Godrej Sara Lee Ltd. v. Excise and Taxation Authority & Ors. 2023 SCC OnLine SC 95 to argue that the present writ petition, which has been pending for two years before this Court, ought not to be dismissed on this



ground at this stage. Mr. Narayan submits that the dispute between the parties does not involve any determination of factual matters, and is limited to an interpretation of Regulation 4.4.3 (A) of the Development Control Regulation [“DCR”] issued by the Union of India. Mr. Narayan also accepts that the challenge would have to be determined within the parameters of Article 226 of the Constitution.

2. Although prayer (I) of the writ petition incorporates an alternative challenge to the vires of Regulation 4.4.3 of the DCR, Mr. Narayan does not press the aforesaid challenge, at the petitioner’s risk. He has clarified that, even if this Court declines to interfere with the MCD’s interpretation of the Regulations, the petitioner does not wish to challenge the vires thereof. The hearing has proceeded on the aforesaid submissions as there is no challenge to the statutory regulations, requiring the writ petition to be heard before the Division Bench.

3. The petition is heard in part.

4. List on 12.07.2023.”

5. In view of Mr. Narayan’s submissions, as recorded above, the parties proceeded on the basis that the petition would be determined only on the question of interpretation of DCR 4.4.3, within the parameters permitted under Article 226 of the Constitution. The challenge to Regulation 4.4.3 of the DCR was also not pressed.

B. Relevant extracts of DCR Regulation 4.4.3

6. The relevant provisions of DCR 4.4.3¹ are reproduced below:-

“Shelter (MPD 2021-Chapter 4)

4.4.3 Control for building/buildings within residential premises

A. Residential plot-plotted housing

Maximum ground coverage, FAR, number of dwelling units for different size of residential plots shall be as per the following table:

¹ Although DCR 4.4.3 has subsequently been amended, learned counsel for the parties submitted that the applicable provisions were the once annexed to the petition as Annexure-P2. The extracts below have been taken therefrom.



Sl. No.	Area of the Plot (sq. m.)	Maximum Ground Coverage %	FAR	Number of DUs
1.	Below 32	90*	350	3
2.	Above 32 to 50	90*	350	3
3.	Above 50 to 100	90*	350	4
4.	Above 100 to 250	75**	300**	4
5.	Above 250 to 750	75	225	6
6.	Above 750 to 1000	50	200	9
7.	Above 1000 to 1500	50	200	9
8.	Above 1500 to 2250	50	200	12
9.	Above 2250 to 3000	50	200	15
10.	Above 3000 to 3750	50	200	18
11.	Above 3750	50	200	21

Notes:

1. The Local Body concerned shall be competent to disregard variation up to 2% in plot size, arising from conversion of area from sq. yard to sq.m. and to grant the norms applicable to the lower category of plot size in accordance to Para (ii) below

2. *100% ground coverage shall be eligible for regularization of construction, already existing as on 22.09.06 on payment of charges as notified.



3. Minimum size of the residential plot shall be 32 sq.m. However, in case of Government sponsored economically weaker section schemes, size could be reduced further.

4. **100% ground coverage and 350 FAR shall be eligible for regularization of construction already existing as on 22.09.06 on payment of charges as per the notification, in respect plot size between 100 to 175 sq.m.

5. Permissible FAR and dwelling units shall not be less than MPD - 2001 norms.

Terms and conditions:

ii. The total coverage and FAR permissible in any plot in a category, shall not be less than that permissible and available to the largest plot in the next lower category.

x. The minimum setbacks shall be given in the following table:

S. No.	Plot Size (in sq. m.)	Minimum Setbacks (in metre)			
		Front	Rear	Side (1)	Side (2)
1	Below 100	0	0	0	0
2	Above 100 and up to 250	3	0	0	0
3	Above 250 and up to 500	3	3	3	0
4	Above 500 and up to 2000	6	3	3	3
5	Above 2000 and up to 10000	9	6	6	6
6	Above 10000	15	9	9	9

a. In case the permissible coverage is not achieved with the above mentioned setbacks in a plot, the setbacks of the preceding category may be allowed.



- b. In the case construction in the future, a minimum 2mx2m open courtyard shall be provided for in residential plots of area of 50 sq. m to 100 sq.m.”²*

C. Submissions

7. The challenge of the petitioner centers around two aspects of Regulation 4.4.3. It is undisputed that the total area of the plot is 836.12 sq. metres³. According to the petitioner, on a proper interpretation of the Regulation, maximum ground coverage of a plot of this size is 50% with an FAR of 200%, and minimum setbacks of 6 metres in the front of the plot, and 3 metres in the rear and on each of the sides are required. The petitioner claims that these conditions have been breached in the impugned sanctioned plan.

8. Mr. Narayan submitted that the area of the subject property being 836.12 sq. metres, the maximum ground coverage and FAR must be computed in terms of serial No. 6 of the table in Clause A of DCR 4.4.3 above, which is applicable to a plot size between 750 sq. metres and 1000 sq. metres. He submitted, on this basis, that maximum ground coverage permissible is 50 % of the plot size [418.06 sq. metres] and FAR is 200% [1672.24 sq. metres], whereas MCD has permitted covered area and FAR in excess of these limitations.

9. Mr. Narayan further submitted that, in terms of the table in Clause (x) of the terms and conditions in DCR 4.4.3, the minimum setbacks required for a plot above 500 sq. metres and upto 2000 sq.

² Emphasis supplied.

³ Although the dimensions given in the sanctioned plan, produced by MCD, are 18.29 metres x 45.72 metres, which works out to 836.21 sq. metres, the total area stated in all the documents, including the sanctioned plan, is 836.12 sq. metres.



metres are provided in serial No. 4 thereof, being 6 metres at the front of the plot and 3 metres each at the rear and on both sides of the plot. He submitted that the setbacks provided in the sanctioned plan, in contrast, are 6 metres in the front, 3.24 metres in the rear and 3.63 metres on one side, whereas no setback whatsoever has been provided on the other side, which happens to abut the petitioner's property.

10. Mr. Ajjay Aroraa, learned Standing Counsel for the MCD, and Mr. Deepak Dhingra, learned counsel for respondent No.3, on the other hand, submitted that the sanctioned plan is in accordance with DCR 4.4.3. They do not dispute that the sanctioned plan permits ground coverage of 535.38 sq. metres (which is in excess of 50%), and total floor area of 1687.43 sq. metres, but contended that respondent No.3 was entitled to the benefit of a qualification to the effect that maximum ground coverage and FAR would be at least equal to the maximum ground coverage and FAR of plot size of 750 sq. metres, being the upper limit of the previous category. Similarly, it was argued that MCD has permitted reduced setbacks in order for respondent No.3 to achieve the permissible ground coverage, as provided in the Regulation itself.

11. Having regard to Clause (ii) of the terms and conditions thereof, learned counsel for the respondents argued that the maximum ground coverage and FAR for the subject plot, computed in accordance with serial No. 6, would amount to 418.06 sq metres and 1672.24 sq metres respectively, which are less than the maximum ground coverage and FAR available for a plot of 750 sq metres, being the largest plot in serial No. 5 of the table. They contended that Clause (ii), in such



circumstances, entitles the owner to the maximum ground coverage and FAR permissible for plot of 750 sq metres, which is exactly what has been done in the present case.

12. On the question of setbacks also, learned counsel commended the attention of the Court to Clause x(a). They submitted that, applying the setbacks of 6 metres in the front and 3 metres on each of the three sides, the permissible coverage would come to only 451.29 sq metres, which is less than the permitted coverage of 562.5 sq metres. The sanctioned plan has, therefore, proceeded on the basis of permissible setbacks in the preceding category i.e. 3 metres each in the front, rear and on one side with no setback required in the other side.

13. Mr. Arora, in support of his submissions, cited two decisions being, *Gurudevdatto VKSSS Maryadit & Ors. vs State of Maharashtra & Ors.*⁴ and *Rajendra Motwani & Anr. vs MCD & Ors.*⁵ Mr. Arora relied upon paragraph 26 of *Gurudevdatto VKSS*⁶, wherein the Court has mandated statutory interpretation inconsistent with the natural, ordinary or popular sense of the words employed, regardless of the consequences. *Rajinder Motwani*⁷, on the other hand, was cited to show that this Court has recognized the provision of DCR 4.4.3, to the extent that it permits the previous qualification of setbacks to be used if the maximum permissible coverage is not achievable within the prescribed setbacks.

14. Mr. Narayan, in rejoinder, submitted as follows:-

⁴ (2001) 4 SCC 534.

⁵ 2017 SCC OnLine Del 11050.

⁶ Supra (note 4).

⁷ Supra (note 5).



- A. The benefit of Clause (ii) of the terms and conditions is subject to fulfillment of Note 1 below the table in Clause (x), which arises when variations of up to 2% in plot size arise from conversion of area from square yards to square metres.
- B. He argued, without prejudice, that Clause (ii) of the terms and conditions would only apply when the total ground coverage and FAR for the largest plot in the preceding category [here 750 sq metres], as “*permissible and available*”, exceeds the total coverage and FAR permissible to the subject plot. He argued that the maximum ground coverage and FAR permissible to a plot of 750 sq metres is also qualified by the requirement of setbacks of 6 metres in the front and 3 metres on each of the three other sides which would result in an available coverage of far less than 562.5 sq metres, as computed by the MCD. He argued that the MCD has ignored the twin qualifications of “*permissible*” and “*available*” which are conditions precedent to Clause (ii).
- C. Mr. Narayan emphasized the benefit of setbacks, as provided in Clause (x). He cited the National Building Code of India, 2016[hereinafter, “NBC”], which provides for the requirement of detached buildings in plots of over 250 sq metres i.e. buildings with open spaces on all sides. He cited the judgment of the Supreme Court in *Supertech Ltd. vs. Emerald Court*



Owner Resident Welfare Association and Ors.⁸ in this connection, which held as follows:

“73. The expression “building block” has not been defined either in NBR 2006 or in NBR 2010. The construction which is placed upon the content of the expression must advance the object and purpose of the said Regulations. The purpose of stipulating a minimum distance is a matter of public interest in planned development. The residents who occupy constructed areas in a housing project are entitled to ventilation, light and air and adherence to fire safety norms. The purpose of stipulating a minimum distance comprehends several concerns. These include safeguarding the privacy of occupants and their enjoyment of basic civic amenities including access to well-ventilated areas where air and light are not blocked by the presence of close towering constructions. Access to these amenities is becoming a luxury instead of a necessity. The prescription of a minimum distance also has a bearing on fire safety. In the event of a fire, there is a danger that the flames would rapidly spread from one structure to adjoining ones. Moreover, the presence of structures in close proximity poses serious hurdles to fire-fighting machinery which has to be deployed by the civic body.”

15. Mr. Narayan submitted that the FAR available in the subject plot after setbacks as provided in serial No. 4 of Clause (x) would be 1805.16 sq metres, which is more than the FAR of 1687.50 sq metres available to a plot of 750 sq metres, thus negating the necessity of applying Clause (ii) and x(a) of DCR 4.4.3.

16. Mr. Narayan also submitted that the affidavit dated 22.02.2023 filed by the DDA, which is the author of MPD-2021, supports the case of the petitioner. He relied upon the following paragraph of the said affidavit:

“VII. That in view of above, the following is submitted with respect to the provisions of MPD-2021:

⁸ (2021) 10 SCC 1.



(i). Development control norms as applicable for the subject matter plot i.e. plot of 836.12 square meters are 50% Ground Coverage, 200 FAR and 7 dwelling units.

(ii). In case the permissible coverage is not achieved with the prescribed setbacks for a plot, the setbacks of the preceding category may be allowed.

(iii). There is no provision regarding permissibility of FAR and Ground Coverage of the preceding category.

(iv). The prescribed Ground Coverage in the Master Plan is the maximum limit and not the minimum.”

D. Analysis

17. The aforesaid contentions of learned counsel for the parties are summarized in the following table:-

	Maximum available, according to the petitioner	Actual position in the sanctioned plan (admitted)	Maximum available, according to respondents
Maximum Ground Coverage	418.06 sq. metres (being 50% of 836.12 sq. metres)	535.38 sq. metres	562.5 sq. metres (being 75% of 750 sq. metres)
FAR	200 % of 836.12 sq. metres (i.e. 1672.24 sq. metres)	224.99 % of 750 sq. metres (i.e. 1687.43 sq. metres)	225% of 750 sq. metres (i.e. 1687.50 sq. metres)
Setbacks:			
Front	6 metres	6 metres	3 metres
Rear	3 metres	3.24 metres	3 metres
Side – 1	3 metres	3.63 metres	3 metres
Side -2	3 metres	0 metres	0 metres

18. The arguments of the parties must be considered in light of the relatively narrow jurisdiction which this Court exercises under Article



226 of the Constitution. The writ Court does not sit in appeal over a decision of the competent statutory authority, nor does it re-examine the wisdom of the decision. The purpose of judicial review is to examine that a valid decision has been made after following the procedure laid down by statute, and that it is not manifestly unreasonable or arbitrary. If any authority at all is required for such well settled principles, suffice it to cite the judgment of the Supreme Court in *W.B. Central School Service Commission v. Abdul Halim*,⁹ which held:

“31. The sweep of power under Article 226 may be wide enough to quash unreasonable orders. If a decision is so arbitrary and capricious that no reasonable person could have ever arrived at it, the same is liable to be struck down by a writ court. If the decision cannot rationally be supported by the materials on record, the same may be regarded as perverse.

32. However, the power of the Court to examine the reasonableness of an order of the authorities does not enable the Court to look into the sufficiency of the grounds in support of a decision to examine the merits of the decision, sitting as if in appeal over the decision. The test is not what the Court considers reasonable or unreasonable but a decision which the Court thinks that no reasonable person could have taken, which has led to manifest injustice. The writ court does not interfere, because a decision is not perfect.”

19. Looked at from this perspective, and particularly in the absence of any challenge to the DCR itself, I am of the view that MCD’s interpretation of DCR 4.4.3 deserves to be accepted. The principle which informs this interpretation of both Clauses (ii) and x(a) of the terms and conditions of DCR 4.4.3 is that a large plot can have at least as much ground coverage – in absolute terms – as the largest plot of

⁹ (2019) 18 SCC 39.



the lower category. To achieve this, the Regulation permits the property owner to achieve the ground coverage and FAR of the largest plot in the lower category, and similarly, to reduce the required setbacks so as to attain the permissible coverage and FAR.

20. Mr. Narayan, in the course of his submissions, emphasised that the owners of larger plots do not necessarily have to be granted the same coverage as available to smaller plots. The amenities of light, air and open space may be available, to a greater extent, to a holder of a larger plot than existing coverage. I am of the view that this argument fails to distinguish the concept of covered area and FAR, *in absolute terms*, from covered area and FAR, *as a proportion of the total plot size*. The available amenities, to which Mr. Narayan refers, remain preserved to the larger plot holder, as the percentage of coverage in the larger plot would remain less than that available in a smaller plot, even if the maximum coverage of the smaller category is made available to him/her. Conversely, it would be incongruous to say that the holder of a smaller plot may have a larger covered area (in absolute terms) than the holder of a larger plot, merely because the two fall in different categories of DCR 4.4.3. I am unable to discern any unreasonableness in MCD's construction of the DCR.

21. Similarly, I am unable to accept the petitioner's submission that the application of Clause (ii) of the terms and conditions is confined to situations which fall within Note 1 of the table below Clause (x). Several terms and conditions are enumerated therein, which include a wide range of provisions required to determine the permissibility of a building plan presented for sanction. Note 1, in contrast, is limited to a



peculiar circumstance, where the measurement of area has been converted from square yards to square metres. It makes Clause (ii) of the terms and conditions applicable to a category of cases where a marginal difference arises upon such conversion, but I do not find anything to suggest that it *confines* Clause (ii) only to such a situation.

22. The argument based upon DDA's affidavit extracted above also does not take the petitioner's case further. To the extent that DDA states that it is not permissible to move setbacks back by two categories in the table in Clause (x), this is not relevant for the purposes of the present case, as the setbacks have been moved back only by one category. To the extent that DDA states that there is no provision regarding permissibility of FAR and ground coverage of the preceding category, the same, in my view, is contrary to the express terms of Clause (ii).

23. The petitioner's reliance upon *Supertech*¹⁰ and the NBC is also of no avail as the petitioner has specifically given up a challenge to the *vires* of DCR 4.4.3. The effect of relying upon the NBC, in the manner suggested by Mr. Narayan, would be to hold that the provisions of the DCR are illegal, which is beyond the scope of challenge in this petition, as recorded in order dated 10.07.2023.

E. Conclusion

24. For the aforesaid reasons, I am of the view that the petitioner has failed to make out a case for interference under Article 226 of the Constitution.

¹⁰ Supra (note 8).



25. The writ petition is, therefore, dismissed with no order as to costs.

PRATEEK JALAN, J

29th August, 2023

Bhupi/ananya/

Signature Not Verified

Digitally Signed
By: SHITU NAGPAL
Signing Date: 29.08.2023
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