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IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment reserved on: 25.08.2023

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Judgment delivered on: 15.09.2023

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W.P.(C) 12260/2021 & CM APPL. 38363/2021

ASHA GUPTA & ANR.

..... Petitioners

Through: Mr. Jatin Kumar, Mr. Bikram Gupta,
Advocates

versus

SOUTH DELHI MUNICIPAL CORPORATON THROUGH
COMMISSIONER & ORS.

..... Respondents

Through: Mr. Dhanesh Relan, SC with Mr.
Arindam Dey and Mr. Aditya Pandey,
Advocates for R-1.
Ms. Monika Tripathy, SC with Mr.
Chiranj Saha and Mr. Rony John,
Advocates for R-2.
Ms. K. Iyer and Mr. C.R. Dutta
Biswas, Advocates for R-4.
Mr. Sandeep Chatterjee and Mr.
Sanyam Suri, Advocates for R-5.
Mr. Shoumendu Mukherjee, SPC
with Ms. Megha Sharma, Advocates
for UOI.

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE SANJEEV NARULA

JUDGMENT



SATISH CHANDRA SHARMA, C.J.

1. The present writ petition has been filed by Mrs. Asha Gupta and Mr. Jayanta Ghoshal (collectively referred to as the “Petitioners”) who are the owners-in-possession of the First Floor; and Second Floor forming a part of an immovable property situated at Plot No.108, Pocket 40, Chittaranjan Park, New Delhi 110019 (the “Identified Property”) and have filed this present writ petition aggrieved on account of re-development of an adjacent property i.e., an immovable property bearing No. 119 situated at Pocket 40, Chittaranjan Park, New Delhi 110019 (the “Subject Property”) wherein Respondent Nos. 4 and 5 i.e., the joint owners of the Subject Property have demolished the original superstructure on the Subject Property and have commenced construction *de novo* on the Subject Property (the “Writ Petition”).

2. The brief facts leading to the filing of this Writ Petition are that the Delhi Development Authority (the “DDA”) developed Pocket 40, Chittaranjan Park, New Delhi (the “Identified Land”) by way of plotting the Identified Land for the purpose of a planned residential colony by carving out plots admeasuring approximately 135.45 Sq. Meters, each. The Identified Property situated on the Identified Land was allotted jointly to Mr. Deepak Kumar and Ms. Purabi Ray *vide* a lease deed dated 15.10.1990 (the “Original Allotees”). Pertinently, requisite sanction was accorded on 26.12.2000 to the construction site plan by the erstwhile South Delhi Municipal Corporation (“SDMC” or “Respondent No. 1”) (now merged as the Municipal Corporation of Delhi (the “MCD”)) for the construction of Ground Floor, First Floor and Second Floor over the Identified Property



keeping in view the Master Plan for Delhi, 2001 (“MPD 2001”) and other laws applicable at the relevant point of time.

3. Thereafter, *vide* a sale deed dated 22.04.2004, Petitioner No.2 purchased the First Floor forming a part of the Identified Property from one Mr. Bibash Nag Chowdhari who had in turn purchased the same from the Original Allotees. Additionally, *vide* a sale deed dated 11.10.2010, Petitioner No.1 purchased the Second Floor forming a part of the Identified Property from one Ms. Beli Banik who had in turn purchased the same from the Original Allotees. The Petitioners are admittedly, second purchasers of their respective floors forming a part of the Identified Property.

4. It is stated that on 1.20.2021, the Petitioners’ noticed that building pillars were being erected near the rear boundary wall of the Subject Property i.e., the common wall between the Identified Property and the Subject Property without provisioning for any setback/gap/space from the setback line of the rear façade of the superstructure to the outer-boundary wall (“Rear Setback”). Thus, the Petitioners’ requested Respondent Nos. 4 and 5 to abstain from constructing over the entire Subject Property and provision for a Rear Setback that extended 3 (three) meters which according to the Petitioners’ was mandatory under *inter alia* the Master Plan for Delhi, 2001 (“MPD 2001”). However, Respondents Nos. 4 and 5 informed the Petitioners that the construction was being carried out as per a construction plan that had been accorded sanction by the SDMC / MCD under the Master Plan for Delhi, 2021 notified on 07.02.2007 (the “MPD 2021”) where under, plots admeasuring up to 250 Sq. Meters are not mandated to provision for any Rear Setback.



5. The Petitioners' have further stated that they (i) approached the local police and made oral complaints; and (ii) made a written complaint to certain identified officers of the SDMC / MCD; and (iii) served a legal notice to the SDMC / MCD through legal counsel threatening the initiation of legal proceedings. However, the aforementioned actions taken by the Petitioners resulted in no action being taken against Respondent Nos. 4 and 5 and / or the construction carried out on the Subject Property.
6. Accordingly, the Petitioners filed this present writ petition praying for the following reliefs:

“a) issue appropriate writ and direction whereby this Hon'ble Court be pleased to pass direction to the respondents declaring Clause 10(2) of Terms and Conditions of Chapter 4.4.3.A (shelter) of Master Plan for Delhi, 2021, providing liberty to reduce rear setback upto zero in construction of a residential building in a planned, developed colony and constructed under the earlier Master Plan is not applicable in absence of any service lane, road or any other type of gap between two rows of plots adjoined by their rear part for which side setbacks had already been allowed to reduce upto zero and consequential amendment /deletion in concerned provisions of Chapters 1.1, 1.2, 1.3.3, V & 7.13.1 and Schedule VI of the United Building Bye Laws for Delhi 2016 as the same is unconstitutional, ultra vires, reasonable, unjust, unfair and offends Article 21 and 14 of the Constitution besides offending various provisions of the DDA Act, 1957, DMC, Act 1957, objectives of Building Bye Laws and natural rights of the petitioners to sunlight and fresh air in their premises; and

b). issue consequential direction to Respondent No.1, SDMC for revocation of accorded sanctioned plan in favour of private respondents under the mandate of above stated disputed provision(s) for construction of building (G plus three) on Plot



No. 40/119 Chittaranjan Park, New Delhi 110019 allowing zero rear setback and restrain the private respondents from erecting any further construction on the said plot according to such sanctioned plan with immediate effect and demolish the constructed part in the rear setback area erected on the said plot; and/or

c) pass any other order or direction which this Hon'ble Court may deem fit and proper under the facts and circumstances of the present case.”

7. The Ld. Counsel for the Petitioners has argued before this Court that the construction plan for the Identified Property was accorded sanction under the erstwhile MPD 2001 regime, where under a setback/gap/space from the setback line of the front façade and rear façade extending to 3 (three) meters in both directions was mandated. Accordingly, a Rear Setback extending to a minimum of three (3) meters was maintained by every plot on the Identified Land and resulted in a net-Rear Setback extending to 6 (six) meters between the rear façade of superstructures constructed on two adjacent plots joined by way of a common rear boundary wall (as is the case herein).

8. It is further contended by the Ld. Counsel for the Petitioners that the MPD 2021 was introduced with the objective and vision of providing housing for the maximum number of residents of Delhi without compromising on health and safety conditions. Accordingly, Development Control Regulations (“DCRs”) for plotted shelters were provided for under Sub-Paragraph (x)(2) of Paragraph 4.4.3 (A) of the MPD 2021. Pertinently it was brought to the attention of this Court that under Sub-Paragraph (x)(2) of Paragraph 4.4.3 (A) of the MPD 2021, plots admeasuring between 100 – 250



Sq. Meters were provided with the liberty to reduce the Rear Setback to zero i.e., provide for no Rear Setback and were only mandated to provision a front setback extending to 3 (three) meters.

9. The Ld. Counsel for the Petitioners has vehemently contended that Sub-Paragraph (x)(2) of Paragraph 4.4.3 (A) of the MPD 2021 has failed to appreciate and distinguish between plots wherein a service lane and / or road naturally provides for a gap between the rear boundary wall / rear façade of superstructures on two distinct and adjacent plots; and those plots wherein such a natural gap does not occur between the rear boundary wall of two distinct and adjacent plots. It is his contention that in the latter factual matrix, allowing the Rear Setback to be reduced to zero would offend Article 14 and Article 21 of the Constitution of India; and result in a contravention of *inter alia* (i) Section(s) 6, S.8(d)(iv) and 8(d)(v) of the Delhi Development Authority Act, 1957 (the “DD Act”); Section(s) 365 and 368 of the Municipal Corporation of Delhi Act, 1957 (the “DMC Act”); and (ii) the objective the Unified Building Bye-Laws, 2016 (“UBBL 2016”).

10. In relation to the Petitioner’s violation of its fundamental rights, it was submitted that the right to fresh air, natural light and fit habitation has been read into Article 21 of the Constitution of India. Accordingly, the construction on the Subject Property in the absence of any Rear Setback would result in (i) the degradation of the Petitioners’ living conditions; and (ii) a fire and safety hazard as emergency services would be unable to access the rear façade of the Identified Property and / or the Subject Property in the event of any emergency or natural calamity. Reliance in this regard was placed on decisions of the Hon’ble Supreme Court in *Chameli Singh & Ors.*,



v. State of U.P. &Anr., (1995) SUPP. 6 S.C.R and *Shantistar Builders v. Narayan Khimal Totame*, (1990) 1 SCC 520.

11. Furthermore, it was submitted that the sanction of construction plans according to MPD 2021 on the Identified Land would be contrary to Article 14 of the Constitution of India as it would result in an inequitable scenario wherein older properties (such as the Identified Property) would have been constructed according to MPD 2001 i.e., provisioning for a Rear Setback extending to 3 (three) meters whereas newer properties constructed in accordance with the MPD 2021 (such as the Subject Property) would provision for zero-Rear Setback and thereby (i) enjoy a larger Floor Area Ratio (“FAR”); and (ii) considerably degrade the living conditions of residents of older properties by *inter alia* rendering their verandas unusable, restricting natural light and blocking cross-ventilation.

12. It was submitted that Sub-Paragraph (x)(2) of Paragraph 4.4.3 (A) of the MPD 2021 is contrary to Section(s) 6, S.8(d)(iv) and 8(d)(v) of the DD Act where under the Delhi Development Authority (the “DDA” or “Respondent No. 2”) has been conferred with a statutory responsibility to *inter alia* develop land fit for human habitation whilst maintaining open spaces and alignment of building on site. In this context, the Ld. Counsel for the Petitioners contends that Sub-Paragraph (x)(2) of Paragraph 4.4.3 (A) of the MPD 2021 blatantly disregards the aforementioned objectives and responsibilities vested in the DDA and promotes misaligned construction on the Identified Land. Furthermore, the Ld. Counsel of the Petitioners has submitted that Sub-Paragraph (x)(2) of Paragraph 4.4.3 (A) of the MPD 2021 is contrary to Section(s) 365 and 368 of the DMC Act where under



Respondent No. 1 / MCD has been tasked with the removal of congested buildings and the power to demolish building unfit for human habitation.

13. Lastly, it was submitted by the Ld. Counsel for the Petitioners that Sub-Paragraph (x)(2) of Paragraph 4.4.3 (A) of the MPD 2021 is in violation of, and contrary to Paragraph 7.13.2 (Provision of Exterior Open Spaces and Height Limitation Around the Building); and Paragraph 7.20 (Lighting and Ventilation of Habitable Rooms) the Unified Building Byelaws, 2016 (“UBBL 2016”).

14. The Respondent No.1 / MCD has filed an affidavit and stated that the SDMC regulates building activities in respect of its jurisdiction in terms of the provisions of (i) DMC Act; (ii) MPD 2021; and (iii) UBBL 2016. The Respondent No.1 / MCD has further stated that as per its record, Respondent Nos. 4 and 5 have obtained sanction of its new construction plan bearing ID No. 100084669 dated 03.03.2021 in relation to the construction of a residential building comprising of basement to third floor (with stilt) on the Subject Property.

15. The Respondent No.1 / MCD has underscored that the planned plot size of the Subject Property is 135.45 Sq. Meter. Thus, the Subject Property must conform to the rigours under Paragraph 4.4.3(A) of the MPD 2021 where under the Subject Property must provide for a setback extending to 3 (three) meters from the front façade however does not mandatorily need to prescribe any Rear Setback. Accordingly, it has been submitted by Respondent No. 1 that no infirmity of any kind has taken place qua the construction on the Subject Property. In this regard the Respondent SDMC has also enclosed the photographs in respect of the Subject Property and has stated on affidavit that (i) there is no illegality in respect of the sanctioned



plan; and (ii) the building has been constructed according to the sanction plan.

16. The Respondent No.2/ DDA has also filed a detailed affidavit and has stated that Identified Property and Subject Property form a part of a row-housing development, joined at rear. Pertinently a Rear Setback extending to 6 (six) meters was maintained between the rear façade of the Identified Property and the rear façade of the Subject Property. However, it has been submitted that the said Rear Setback was not on account of any mandatory provision of law and could have been altered after requisite approval of new layout plans by the concerned local authority.

17. The DDA has referred to the provisions as contained under the MPD 2001 and MPD 2021. The details furnished by the DDA in respect of MPD 2001 and MPD 2021 are detailed as under:

“A. MPD 2001

i. The provisions with respect to minimum setback for the said plot is as follows:

<i>Sl. No.</i>	<i>Plot Size (in sqm)</i>	<i>Min Setbacks</i>			
		<i>Front</i>	<i>Rear</i>	<i>Side</i>	<i>Side</i>
<i>1</i>	<i>Up to 60</i>	<i>0</i>	<i>0</i>	<i>0</i>	<i>0</i>
<i>2</i>	<i>Above 60 & upto 150</i>	<i>3</i>	<i>0</i>	<i>0</i>	<i>0</i>

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



(b) In case of residential plots upto 150 sqm. Rear setbacks shall be 2m X 2m at corner, the open courts of the plots may be allowed.

(c) These provisions of setbacks are subject to requirements of height and ventilation as per building bye-laws.

(d) In case a layout is sanctioned with more than the minimum prescribed setbacks, the same shall be followed in the sanction of the building plans.

iii. For Residential Plotted Housing, Maximum ground coverage, FAR number of dwelling and maximum height for different size of residential plot shall be as per the following table.

Sl. No.	Area of the Plot (Sq. Mt.)	Max. Ground Coverage Percentage.	FAR	No. of dwelling Units	Max height in meter.
4	Above 100 to 250	60	160	3	12.5

iv. For the said plot i.e 135 sqm, MPD-2001 provision for only front setback i.e. 3m and 60% Ground coverage. However, for residential plots up to 150 sqm, rear setbacks shall be 2m X 2m at corner, the open courts of the plots in rear and side to be adjacent.

B. MPD 2021

i. That with respect to the Residential plotted housing, Development Control Norms for plot size 100-250 sqm, as provided in Para 4.4.3 A, is as follows:

Maximum Ground Coverage: 75**

FAR: 300**

Number of dwelling units: 4

**100% ground coverage and 350 FAR shall be eligible for regularization of construction already existing as on



22.09.2006 on payment of charges as per the notification, in respect to plot size between 100 to 175sqm.

ii. Provisions with respect to setbacks for plotted housing as provided in Terms and Conditions of Para 4.4.3 A of Chapter 4: Shelter in MPD-2021 are as follows:

Sl. No.	Plot Size (in sqm)	Min Setbacks (in meter)			
		Front	Rear	Side (1)	Side (2)
1	Below 100	0	0	0	0
2	Above 100 & upto 250	3	0	0	0

iii. That as per the MPD-2021, there is stipulation only for front setback of 3m and no mandatory rear setback with 75% ground coverage for the said plot i.e., 135 sqm.”

18. In light of the provisions outlined above, the DDA submitted that the only stipulation vis-à-vis the requirement of provisioning / maintaining a setback in relation to properties admeasuring approximately 135 Sq. Meters is limited to the front façade extending 3 (three) meters and there is no stipulation qua maintenance of a Rear Setback either under the MPD 2001 and / or the MPD 2021.

19. Respondent Nos. 4 and 5 have also filed a detailed and exhaustive reply. The Ld. Counsel appearing on behalf of Respondent Nos. 4 and 5 has submitted that the Subject Property had been allotted to Respondent Nos. 4 and 5 by the Ministry of Rehabilitation, Government of India in the year 1990 and they have peacefully been residing at the Subject Property ever



since. Pertinently, the Subject Property had been originally developed as per the building plans in vogue during the relevant period. Thereafter on account of (i) a space constraint due to a growing family which now includes school-going grandchildren; and (ii) the advancing age of Respondent Nos. 4 and 5, it was decided that the original superstructure be demolished, and a new-superstructure be constructed on the Subject Property in terms of construction plans duly sanctioned by the SDMC in accordance with the MPD 2021. It was also brought to the attention of the Court that neither Petitioner No. 1 nor Petitioner No. 2 reside at the Identified Property and therefore the allegations vis-à-vis the violation of the Petitioners' fundamental rights is wholly unjustified and unwarranted.

20. The Ld. Counsel appearing on behalf of Respondent Nos. 4 and 5 has laboured before this Court that the MPD 2021 was brought into effect after strictly adhering to due process which included invitation of public participation through a series of seminars and interactions with resident welfare associations, deliberation of recommendations of sub-groups, public notice in the newspaper inviting suggestions and objections as and finally deliberations upon such suggestions and objections prior to the notification of the MPD 2021.

21. It is submitted on behalf of Respondent Nos. 4 & 5 that the MPD 2021 which derives its sanctity from the DD Act is essentially a legislative document. Further, it has been argued that the Petitioners have, without any application of mind, raised a challenge to certain provisions of MPD 2021, UBBL 2016, DD Act and DMC Act. Lastly, it has been submitted that the Petitioners' have failed to establish any contravention of its rights enshrined under Article 21 and / or Article 14 of the Constitution of India.



22. The Petitioners have filed rejoinder(s) to the counter affidavit(s) filed by (i) Respondent No. 1; (ii) Respondent No. 2; and (iii) Respondent Nos. 4 and 5. The rejoinder(s) are nothing, but a repetition of the averments made in the Writ Petition. However, the Petitioners in their rejoined to Respondent Nos. 4 & 5's counter affidavit have clarified that although they do not stay permanently at the Identified Property, they keep visiting the said premises and are deeply inconvenienced by the construction being carried out at the Subject Property.

23. This Court has heard the parties at length and has perused the record. The matter is being disposed of at the motion hearing stage itself with the consent of the parties.

24. The facts of the case reveal that the Petitioners are the owners of the First Floor and Second Floor forming a part of the Identified Property. Respondent Nos. 4 & 5 are the joint owners of the Subject Property. The original superstructure on the Subject Property has been demolished and construction has been commenced *de novo* for the construction of basement to third floor (with stilt) on the Subject Property. In this regard, the construction plan vis-à-vis the new construction was sanctioned by the Respondent No. 1 / MCD vide ID No. 100084669 on 03.03.2021. Thereafter, a completion certificate has been issued to Respondent Nos. 4 and 5 by the Respondent No. 1 / MCD vis-à-vis the new superstructure on the Subject Property.

25. The dispute in the present case pertains to the absence of a Rear Setback extending to 3 (three) meters on the Subject Property; and consequently, a challenge has been made to the constitutionality of Sub-Paragraph (x)(2) of Paragraph 4.4.3 (A) of the MPD 2021 to the extent that



plots admeasuring up to 250 Sq. Meters have been permitted to construct without provisioning for any Rear Setback.

26. The MPD, 2021 has been drafted and subsequently notified after extensive consultations with local bodies, public sector agencies, professional groups, Residential Welfare Associations (“RWAs”), the public at large as well as the Government of NCT of Delhi (“GNCTD”) (hereinafter collectively referred to as the “Stakeholders”). The Stakeholders were also given an opportunity to submit their objections prior to the notification of the draft MPD 2021. It is in this context, wherein due process of law had been scrupulously followed that the MPD 2021 came to be notified.

27. Pertinently, Sub-Paragraph (x)(2) of Paragraph 4.4.3 (A) of the MPD 2021 explicitly delineates that a plot admeasuring up to 250 Sq. Meters must only provision for a setback extending 3 (three) meters from the front façade and does not need to mandatorily provide for any Rear Setback or any setback on its right façade and / or left façade. Further we note that the position vis-à-vis provisioning of setback was similar under the MPD 2001 where under no mandatory Rear Setback was contemplated qua immovable properties having a plot size admeasuring up to 150 Sq. Meters.

28. The facts of case reveal that, prior to the commencement of the construction of the new superstructure on the Subject Property a setback / gap / distance of 6 (six) meters was prevalent between the Identified Property and the Subject Property on account of a net-Rear Setback extending 3 (three) meters each from the outer boundary wall to the rear façade of the superstructure on both the Identified Property as well as the Subject Property. Subsequently, Respondent Nos. 4 and 5 commenced the



construction of a new superstructure as per the construction plan sanctioned by the Respondent No. 1 / SMC. Pertinently, the new superstructure on the Subject Property provisioned for no Rear Setback i.e., zero rear setback and accordingly, the setback / gap / distance between the Identified Property and the Subject Property stood reduced to 3 (three) meters i.e., on account the Rear Setback provisioned for by the Petitioners on the Identified Property.

29. The DDA on affidavit has stated that the provision of a Rear Setback extending to 3 (three) meters is neither mandatory under the MPD 2021 nor was mandatory under the MPD 2001. It has stated on oath that the Rear Setback could have been altered after approval of a new layout plan by the concerned authority. Further, Respondent No. 1 / SDMC has also stated on affidavit that sanction has been obtained for the construction plan in relation to the new superstructure on the Subject Property as per the terms of the provisions and / or regulations in vogue including *inter alia* the MPD 2021; the UBBL 2016; and the Layout Plan for Chittaranjan Park. The Petitioners' have been unable to point out (i) any violations of the MPD 2021 in relation to the construction carried out by Respondents Nos. 4 and 5; or (ii) any perversity in the accord of sanction by Respondent No. 1 / SDMC to the construction plan of the Subject Property.

30. Moreover, this Court *vide* an order dated 13.10.2022 categorically directed the DDA to file an exhaustive reply stating whether the sanction plan in relation to Subject Property i.e., a sanction plan that permits the provision of a zero-Rear Setback, was in consonance with the MPD 2021 / National Building Code, 2016 (the "Code"). The DDA has stated on oath that DCRs including those in relation to the recommendation of setbacks are governed under the provisions of the Master Plan for Delhi issued under



Section 8 of the DD Act. Further, it has been stated that the Code is merely a model for adoption by local bodies, the Public Works Department (“PWD”), other government construction departments and other construction agencies. In this regard, the attention of this Court has been brought to the definition of ‘Setback Line’ under the Code. The same is reproduced as under:

"2.74 Setback Line - A line usually parallel to the plot boundaries and laid down in each case by the Authority, beyond which nothing may be constructed towards the plot boundaries. "

31. Thus, the setback prescribed by the DDA under Sub-Paragraph (x)(2) of Paragraph 4.4.3 (A) of the MPD 2021 shall prevail over the Code. Accordingly, this Court in light of the affidavit(s) filed by Respondent No. 1 and Respondent No. 2, finds no infirmity with (i) the sanction accorded to the construction plan qua the Subject Property under the relevant building laws or (ii) the construction being carried on by Respondent Nos. 4 & 5 on the Subject Property.

32. The Petitioners’ contended that Sub-Paragraph (x)(2) of Paragraph 4.4.3 (A) of the MPD 2021 is contrary to certain provisions of the DD Act; and the DMC Act (as more particularly identified above). This contention raised by the Petitioners’ is wholly misplaced. This Court has perused the relied upon provisions of the DD Act, the DMC Act and concludes that the said provisions do not support the Petitioners’ claim.

33. Further, the Petitioners’ alleged that Sub-Paragraph (x)(2) of Paragraph 4.4.3 (A) of the MPD 2021 is in contravention to Paragraph 7.13.2 (Provision of Exterior Open Spaces and Height Limitation Around the Building); and Paragraph 7.20 (Lighting and Ventilation of Habitable



Rooms) of the UBBL 2016. The relevant provisions under the UBBL 2016 *inter alia* stipulate certain criteria vis-à-vis light and ventilation. The same are reproduced as under:

“7.13 Provision of Exterior Open Spaces and Height Limitation Around the Building.

7.13.1

7.13.2 Every room that is intended for human habitation shall abut on an interior or exterior open space or on to a verandah open to such interior or exterior open space unless mechanically ventilated.

X X X X X X X X X X

7.14 Interior Open Space for Light and Ventilation

7.14.1 The whole or part of one side of one or more rooms intended for human habitation and not abutting on either the front, rear or side open spaces shall abut on an interior open space whose minimum width in all directions shall be 3.0 m in case of buildings not more than 15 m in height unless mechanically ventilated.

X X X X X X X X X X

7.20 Lighting and Ventilation of Habitable Rooms

7.20.1 All habitable rooms shall have for the admission of sun/natural light and air, one or more apertures, such as window, glazed door and fan lights, opening directly to the external air or into an open verandah not more than 2.40 m in width. In case light and ventilation to habitable space area are through an internal courtyard, the minimum dimensions of such courtyard shall not be less than 3.0 m x 3.0 m for buildings below 15m in height unless mechanically ventilated.

7.20.2 Where the lighting and ventilation requirements are not fully met through day lighting and natural ventilation, the same shall be further ensured through artificial lighting and mechanical ventilation as given in part-VII building services (Section-1 lighting and Ventilation of National Building Code of India). The latest version of the National Building Code of India shall be taken into account at the time of enforcement of these Building Bye-Laws. Notwithstanding the above, the minimum aggregate area of openings of habitable rooms and kitchens excluding doors shall



not be less than 1/10 of the floor area. No portion of a room shall be assumed to be lighted if it is more than 7.50 m from the opening assumed for lighting that portion.”

34. This Court has perused the relevant provisions of the UBBL 2016. In the considered opinion of this Court, Sub-Paragraph (x)(2) of Paragraph 4.4.3 (A) of the MPD 2021 cannot be said to be in contravention of the UBBL 2016 merely on account of permitting the construction of plots admeasuring up-to 250 Sq. Meters without a Rear Setback There are no fetters under the UBBL 2016 where under the reduction of Rear Setback and / or the introduction of a zero-Rear Setback is prohibited.

35. Further, the Petitioners before this Court raised a challenge to the constitutionality of Sub-Paragraph (x)(2) of Paragraph 4.4.3 (A) of the MPD 2021 on the ground that it offends Article 14 and Article 21 of the Constitution of India as the Petitioners are being deprived of natural light, cross-ventilation and fresh air. The Petitioners placed reliance on the decision of the Supreme Court in *M/s. Shantistar Builders (Supra)* and *Chameli Singh (Supra)*. This Court has perused the aforesaid judgements and is of the considered opinion that the Petitioners’ right to a decent environment and a reasonable accommodation to live including *inter alia* adequate living space, safe and decent structure, clean and decent surrounding, sufficient light, pure air and water, electricity, sanitation and other civic amenities like roads etc is not absolute and must also be extended to Respondent Nos. 4 and 5. Undisputedly, Respondent Nos. 4 and 5 have, on account of a growing family redeveloped the Subject Property in accordance with law.

36. It would be outrageous to suggest that the absence of a Rear Setback extending to 3 (three) meters, which in any event is not mandated under



applicable law would result in the Identified Property being rendered uninhabitable or result in a contravention of the Petitioners' rights under Article 14 and Article 21 of the Constitution of India.

37. Therefore, considering the affidavit(s) filed by the Respondent No. 1 / MCD and the DDA; the unrebutted fact that the superstructure on the Subject Property has been constructed on the basis of a construction plan duly sanctioned by the Respondent No. 1, this Court is of the unequivocal opinion that the relief prayed for by the Petitioners cannot be granted as the prayer is simply based on unsubstantiated assertions and bald averments which have been categorically denied by Respondent Nos 1 & 2.

38. As no case for interference has been made out, this Writ Petition is, accordingly, dismissed.

(SATISH CHANDRA SHARMA)
CHIEF JUSTICE

(SANJEEV NARULA)
JUDGE

SEPTEMBER 15, 2023