



2024:DHC:6098



\$~

* **IN THE HIGH COURT OF DELHI AT NEW DELHI***Reserved on: 29 May 2024**Pronounced on: 14 August 2024*

+ W.P.(C) 1396/2022 and CM APPL. 16438/2024

MUKTESHWER MARBLES AND ORS.Petitioners

Through: Mr. G. Umapathy, Sr. Adv.
with Mr. Aditya Singh, Adv.

versus

THE COMMISSIONER (LD) AND ORS.Respondents

Through: Ms. Kritika Gupta and Ms.
Latika Malhotra, Advs. for the DDA**CORAM:****HON'BLE MR. JUSTICE C. HARI SHANKAR****J U D G M E N T****14.08.2024**

%

1. This is the third occasion when the petitioners have had to knock at the doors of this Court. One hopes and trusts that, at least now, there would be an omega to the controversy, especially as the petitioners had been more than accommodative, relaxing considerably the rigour of the prayers contained in the petition.

The issue, in precis

2. The dispute has narrowed down to a very limited compass.
3. The petitioners are allottees of plots in Dwarka, where they



2024:DHC:6098



were, at the time of allotment, allowed to ply the marble trade.

4. For this purpose, the petitioners executed lease deeds with the Delhi Development Authority¹. The following common covenant is to be found in all the lease deeds:

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

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

(Emphasis supplied)

5. Basically stated, the petitioners seek permission to ply trades other than the marble trades from the plots which were allotted to them, as they state that the marble trade has become unviable. Though, in the writ petition, the petitioners also sought increase in the ground area and FAR², given the opposition that the DDA was putting up to the said request, the petitioners have filed an affidavit, stating that they were not seeking any change in the FAR or ground area but

¹ “DDA”, hereinafter

² Floor Area Ratio, which is the ratio of the gross floor area of the building to the total buildable area of the land or plot on which it is built



2024:DHC:6098



were only seeking permission to ply, from the plots allotted to them, other trades which were permissible as per the Master Plan for Delhi 2021³. This submission was also resisted by Ms. Kritika Gupta, learned Counsel for the DDA on 28 May 2024, by contending that the applicable MPD was the MPD 2001 and not the MPD 2021. The petitioners, thereupon, further relaxed their stand and undertook to restrict their activities, in the plots allotted to them, to activities permissible under the MPD 2001.

6. The DDA is, however, unrelenting, and is not willing even to allow this request of the petitioners.

7. *Ex facie*, the attitude of the DDA is not legally acceptable. The proviso to Clause 14 of the lease deeds executed by the petitioners with the DDA *specifically permitted the lessees/petitioners, who desired to use the plots allotted to them for a purpose other than marble trade, to do so*, on terms and conditions to be determined by the DDA. In fact, during the period 2002-2006, 17 plots adjoining the petitioners', in Sector 20, Dwarka, which had also been earmarked for the marble trade, but for which suitable bidders plying the marble trade were not available, *were auctioned by the DDA with change of user and increased ground coverage and FAR, as applicable to activities other than marble trade*. The petitioners are, in fact, not even pressing their claim for increase in the ground area or FAR.

8. In view of the proviso to Clause 14 of the lease deeds executed

³ "MPD 2021", hereinafter



2024:DHC:6098



between the petitioners and DDA, it cannot lie in the mouth of the DDA to contend that the petitioners cannot be permitted to change the land user of the plots allotted to them by being permitted to ply trades other than the marble trade. The only possible objection could be that the user must conform to the permitted user of plots in the said area. The petitioners have, on 28 May 2024, undertaken to restrict their activities in the area allotted to them to activities covered by the MPD 2001, following the submission of Ms. Kritika Gupta, appearing for the DDA, in that regard.

9. Article 19(1)(g)⁴ of the Constitution of India permits persons to engage in occupations and professions of their choice, subject only to reasonable restrictions which may be imposed under Article 19(2)⁵. The avowed stand of the DDA, as argued before this Court on 28 May 2024, was that the 2001 MPD applies to the present case and not the 2021 MPD. Once the petitioners have given up their plea for increase in ground area and FAR, and have undertaken only to engage in trades which are permissible as per the MPD 2001, there can be no reason for the DDA not allowing them to do so.

10. Though this recital is sufficient to allow the writ petition, a brief reference to the facts would be appropriate.

⁴ 19. **Protection of certain rights regarding freedom of speech, etc. –**

(1) All citizens shall have the right –

(g) to practise any profession, or to carry on any occupation, trade or business.

⁵ (2) Nothing in sub-clause (a) of clause (1) shall affect the operation of any existing law, or prevent the State from making any law, in so far as such law imposes reasonable restrictions on the exercise of the right conferred by the said sub-clause in the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality or in relation to contempt of court, defamation or incitement to an offence.



2024:DHC:6098



Facts

11. This is the third round of litigation in the present case. In the second round [WP(C) 3508/2013] this Court has already passed a detailed judgment on 6 January 2020, in which the facts are exhaustively set out. Since then, as the controversy has considerably narrowed down, I do not intend to repeat the facts set out in the said decision but only to refer to them to the extent necessary.

12. The Supreme Court, by order dated 29-30 October 2002 in WP (C) 4677/21985⁶ directed eviction of marble traders from various areas in Delhi. These included Mehrauli, from where the petitioners were plying their trade. As per the directions of the Supreme Court, the marble traders were to be relocated to Sector 20, Dwarka. To comply with the said directives, the DDA developed an area of 7.29 Ha⁷ in Sector 20 Dwarka, out of which 3.24 Ha were saleable. The petitioners were, therefore, allotted plots in Sector 20, Dwarka, from where they used to ply their marble trade. Perpetual lease deeds were executed between the DDA and the petitioners. The lease deeds, as already noted, permitted the petitioners to seek change of user of the plot, on terms and conditions, including payment of additional premium and additional rent, to be determined by the DDA.

13. Subsequent thereto, between 2002 and 2006, 17 of the plots which had been earmarked for marble trade were put up for auction by the DDA. As no successful bidders emerged, the user of the plots

⁶ M.C. Mehta v. UOI

⁷ Hectares



2024:DHC:6098



was changed to general shops/showrooms/offices and the plots were successfully auctioned with change of user, increased ground coverage and increased FAR.

14. On 14 October 2004, the Dwarka Marble Dealers Association⁸ represented to the DDA for permission to change the land use of the plots allotted to them, as, in view of discontinuance of mining of marble in the neighbouring Aravalli Hills, the marble trade had been rendered unviable.

15. While this request was pending consideration, the MPD 2021 was brought into force *vide* Notification dated 7 February 2007. However, as the stand of the DDA is now that the MPD 2021 has no application, it is not necessary to advert to the various clauses of the MPD 2021. Suffice it, however, to state that, for service markets, radical changes were undertaken by the Development Control Plan of 1994, Clause 1.3.2 of which dealt with the land use plan of 2001 and read thus:

1.3.2 LAND USE PLAN (2001)

Earlier the Zonal Development plan of Zone K (Part) Dwarka sub-city was worked out within the framework of MPD-2001, taking the cognizance of the structure plan approved by the Authority vide its item no. 81/92 dated 7.7 .92, the notification of MOUD Dt. 6.11.93 and Corrigendum dt. 30.8.94 regarding change of land use in respect of Phase-I and proposed modification of land use approved by the Authority vide item no. 86/96 Dated 27.8.96 in respect of Phase -II. The land use break up for Zone K(Pt.), Dwk. Phase 1 and Phase II is as under:

Land use break-up as per MPD 2001.

⁸ “DMDA”, hereinafter



2024:DHC:6098



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

Thus, a total area of 352.13 Ha was earmarked for commercial activities in the K-II zone of Dwarka (in which the petitioners' units are admittedly located), which included 239.13 Ha for commercial activities and 113 Ha for service centres. This is of some importance, as one of the grounds on which the DDA has sought to justify rejection of the petitioners' request is that its shops are located in a "service centre" and not in a "service market".

16. As the petitioners' request was not eliciting any favourable response, the petitioners sought information from the DDA under the Right to Information Act 2005⁹ as to whether there was any specific policy for marble trade in the National Capital Territory of Delhi¹⁰. The DDA (Commercial Land Branch), *vide* its response dated 19 August 2009, *clarified that there was no specific policy for the marble*

⁹ "the RTI Act" hereinafter

¹⁰ NCTD



2024:DHC:6098



trade in the NCTD, though certain plots in Sector 20, Part-II Dwarka had been allotted/auctioned to marble traders such as the petitioners.

17. Further representations, seeking permission for the petitioners to ply, from the plots allotted to them, trades other than the marble trade, were made by the DMDA to the DDA on 4 March 2010, 22 March 2010 and 20 May 2010. Thereafter, the petitioners addressed a representation dated 3 June 2010 to the DDA under the RTI Act, seeking to know the status of their representation. The DDA, *vide* response dated 13 July 2010 and 21 July 2010, stated that the petitioners' request for permission for change of land use could not be acceded to.

18. The petitioners moved this Court by way of WP (C) 7824/2010¹¹, seeking a mandamus to the DDA to allow the petitioners change of land use to "mixed commercial use in non-polluting eco-friendly environmental trade", relying, *inter alia*, on Clause 14 of the lease deeds executed between the petitioners and the DDA. The rejection of the petitioners' representation by the DDA, by communication dated 21 July 2010 *supra*, was also challenged. By order dated 29 August 2012, this Court disposed of WP (C) 7824/2010, setting aside the order dated 21 July 2010 of the DDA as being cryptic and unreasoned, allowing the petitioners to make a fresh representation to the DDA and directing the DDA to take a decision thereon in accordance with law.

¹¹ Mukteshwar Marbles & ors v Chairman DDA & anr

WP(C) 1396/2022



2024:DHC:6098



19. The petitioners addressed a fresh representation to the DDA on 5 March 2013, which was also rejected by the DDA on 3 April 2013.

20. This drove the petitioner to a second round of litigation by way of WP (C) 3805/2013¹², assailing the order dated 3 April 2013.

21. This Court, by judgment dated 6 January 2020, disposed of WP (C) 3805/2013. The order dated 3 April 2013 was found to be even more unreasoned than the earlier order dated 21 July 2010 of the DDA and, in fact, amounted to disobedience of the judgment dated 29 August 2012, whereby this Court, disposing of WP (C) 7824/2010, had directed the DDA to pass a reasoned order.

22. While remanding the matter to the DDA once again to pass a reasoned and speaking order, the judgment dated 6 January 2020 specifically directed the DDA to take into account Clause 14 of the lease deeds executed by the DDA with the petitioners. *This Court, further, specifically disapproved the DDA's contention that, as the marble market at Sector 20 Dwarka was developed for relocation of marble dealers on a user specific basis, the request for change of land user could not be considered. Such a stand, it was noted, was in the teeth of Clause 14 of the lease deeds executed between the petitioners and the DDA.* This Court also observed that, *prima facie*, there was no reason to reject the petitioners' requests. The DDA was further directed to keep in mind the petitioners' fundamental right under Article 19(1)(g) of the Constitution of India.

¹² Mukteshwar Marbles v Lt Governor of Delhi & anr
WP(C) 1396/2022



2024:DHC:6098



23. The presently impugned order dated 5 April 2021 has been issued by the DDA purportedly in compliance of judgment dated 6 January 2020.

24. The reasoning in the impugned order is to be found in paras 5 and 6 thereof, which may be reproduced thus:

5. The aforesaid issues and other points raised by the petitioner in the writ petition/representation were examined in consultation with the Planning Department, DDA and decided as under:-

(a). As per direction of Hon'ble Apex Court in the matter of MC Mehta Vs UOI to shift the marble traders from southern Ridge, Andheria More, an integrated scheme was prepared with development control for individual plots, as per the specific requirement of marble trade. Overall Ground Coverage and FAR has been distributed on various plots. Layout Plan of Service Centre, Sector-20, Marble Trade was approved by the Screening Committee of the Respondent/DDA on 01.03.1994. In the Layout Plan, predominantly the plots are proposed for Marble Traders. The Development Control Norms for shops/ marble traders as mentioned in the layout plan are:-

Ground Coverage :25%
FAR :50
Maximum Height :07 Mtrs.

(b). Further Marble Market at Dwarka Sector-20 was basically a scheme exclusively for re-location of Marble dealers to develop a market planned as per provisions of Master Plan 2001. The Layout Plan was prepared as an Integrated scheme on the basis of overall ground coverage and FAR for the scheme as per provisions for service centre in MPD-2001. The Marble Market area at Sector-20, Dwarka falls in Service Centre and are not Service Market. Thus it is not possible to increase the Ground Coverage & FAR for individual plots.

(c). The development control norms referred for Service



2024:DHC:6098



Market are for Commercial Centres - Service Market as part of hierarchy of Commercial Centres. These norms cannot be applied for Service Centre in Sector-20, Dwarka. The Service Centre was planned as per MPD-2001 as an Integrated scheme.

(d). The setting up of marble market at Dwarka was basically a scheme exclusively for relocation of marble dealers operating on the Southern Ridge to be developed as per provisions of Master Plan. Therefore, it is not feasible and appropriate to change the land use and trade other than marble trade.

(e). The petitioners were allotted plots at concessional rate carving out a separate market for marble trade in Sector 20 Dwarka so as to ensure their livelihood/business which were banned at their earlier location at Southern Ridge due to implementation of the Order of Hon'ble Supreme Court in M.C. Mehta's Case. Accordingly, it was specifically mentioned in the lease Deed executed in their favour that the plot will be utilized for running 'Marble Trade'. The contention of the petitioner that clause 14 of the Lease itself provides for change of land use for other business is erroneous. The clause 14 is an enabling provision/ clause which gives right to the Lessor to allow any other trade on the land/plot provided it is in conformity with the Master Plan/ Layout Plan etc. of the area. Therefore, it doesn't confer any right on lessee for seeking change of land use of the plot which is not permissible as per the Layout Plan of the area.

(f). Commercial plots (except those allotted to persons falling in category specified in Rule 6 of Nazul Rule 1981) are disposed of by DDA on auction basis. Therefore, seeking analogy with the auctioned plots in terms of nature of business, control norms etc. is not tenable as these plots for marble dealers were allotted on concessional rates so as to provide means of livelihood/business to marble traders of the city who were forced to close down their business in the course of implementation of the Judgement of Hon'ble Supreme Court in the case of M.C. Mehta V/s UOI.

(g) The petitioner applicant sought parity with plastic traders of Jwalapuri, however both are found to be on different footing and not comparable. Plastic Traders in Jawalapuri were allowed to run other business on their plots located at Jwalapuri instead of business of plastic due to the reason that plastic business at Jwalapuri market were



banned. But there is no such constraint in this case.

(h). The petitioners have quoted un-viability of marble business in the city due to supply of vitrified materials as a ground. However, they have not provided any statistics/data in support of their contention. DDA had consciously earmarked a separate market for marble trades as supply of the marble items is considered an essential requirement of the city for construction/renovation of houses. If the argument of the petitioners is accepted without any supporting data, it will defeat the very purpose of creating a separate market for Marble Traders.

(i). The petitioners have relied upon Article 19(g) of the Constitution which gives right to every citizen of the country to run business/occupation of his/her own choice. This contention is also found to be misinterpreted as Fundamental Right of livelihood as enshrined in Article 19 (g) of the constitution is subject to reasonable restriction imposed by any law. It has been clearly held by Hon'ble Supreme Court in the case of Ganda Ram & Others Vs. MCD & Others that Right to Livelihood is very much subject to reasonable restrictions, imposed by the Civil Authorities concerned. In this case, these restrictions are imposed by Layout Plan of Sector-20, Dwarka.

6. Given the aforesaid facts and circumstances, the request of applicants/petitioners for change of land use from '**Marble Trade**' to '**General Commercial**' and consequent relaxation in Control Drawings/norms in terms of height, FAR, Ground Coverage etc. of the plot is not acceded to. The request of the petitioner is accordingly dismissed.

25. This petition is directed against the aforesaid order dated 5 April 2021.

Analysis and Findings

26. Though detailed arguments were advanced by Mr. G. Umapathy, learned Senior Counsel for the petitioners and Ms. Kritika Gupta, learned Counsel for the DDA, in view of the subsequent



2024:DHC:6098



statement made by Mr. Umapathy, it is not necessary to enter into all the pleas that were advanced. Suffice it to reproduce the orders dated 1 May 2024 and 28 May 2024, passed by this Court in the present proceedings, thus:

Order dated 1 May 2024

“1. During the course of hearing, Ms. Kritika Gupta, learned Counsel for the DDA submitted that the request of the petitioners, as made to the respondents was not merely for an innocuous trade change, but also involved change in the ground area in the FAR, which would radically alter the Master Plan of the area concerned.

2. While Ms. Gupta was on her legs, Mr. Umapathy, learned Senior Counsel for the petitioners intervened to submit that, if this was the grievance, he has instructions to state that his client does not want any change in the land norms but only wants permission to ply in the same area in which he is presently conducting the master trade, or any other permissible trade. He also submits that his client would place this stand on affidavit.

3. Let an affidavit to the said effect be placed on record on or before 6 May 2024 with an advance copy to Ms. Gupta.

4. Ms. Gupta would then take instructions on this aspect.

5. List on 8 May 2024 at 2.30 pm.”

Order dated 28 May 2024

“1. An affidavit has been filed by the petitioners on 3 May 2024 which, prima facie, is in terms of the order dated 1 May 2024. On that date, the objection of Ms. Kritika Gupta, learned Counsel for the DDA was that the petitioners were seeking not merely a change of the trade which they were plying but also a change in the ground area and the FAR, which would radically alter the Master Plan.

2. The petitioners have, therefore, placed on record an affidavit stating that the petitioners are not seeking any change in the FAR or the ground area but are seeking to ply, in the area, in which the petitioners were earlier plying the marble trade, activities



2024:DHC:6098



which are permissible as per the MPD 2021.

3. Today, Ms. Kritika Gupta advances yet another objection, to the effect, that the MPD 2021 would not apply. To a query from the Court as to the MPD, which would apply, she submits that the applicable MPD would be the MPD 2001.

4. Mr. G. Umapathy, learned Counsel for the petitioners submits on instructions that his clients are even willing to forgo their claim to ply their trade covered by the MPD 2021 and are willing to restrict their activities, in the area, which has been allotted to them, to activities, which are covered by the MPD 2001, without any change in the ground area or FAR.

5. Ms. Gupta seeks one day's time to take instructions even on this.

6. Renotify on 29 May 2024 at 2.30 pm.”

27. The petitioners have, therefore, now agreed to give up their plea for increase in FAR and ground area. They have also agreed to ply, from the plots allotted to them, only such trades as can be plied from service markets as per the MPD 2001.

28. In my opinion, the petitioners are entitled to do so.

29. The DDA has tried to draw a distinction between service markets and service centres, no such distinction, as existing in the MPD 2001, has been shown to be me by Ms Gupta. On the petitioners', through DMDA, raising a query in this regard under the RTI Act on 7 September 2010, the DDA's response on 22 September 2010, was only that the details were available on the internet.

30. Para 9.2.1 of the written submissions of the respondent DDA merely states that the DDA had, in its impugned order dated 5 April



2024:DHC:6098



2021, clarified that the service centre in Sector 20, Dwarka, where the petitioners are located, is not a service market. While it is true that the DDA has, in the impugned order dated 5 April 2021, so stated, the order does not provide any basis for distinguishing between a service centre and a service market. Nor does the order seek to stay that any such distinction was to be found in MPD 2001.

31. On Ms Gupta being queried, in that regard, by the Court, she submits that Clause 035 of the MPD 2001 defines “Service Centre” as “a premises *essentially having repair shops for automobiles, electrical appliances, building material etc.* to provide essential services to neighbouring residential areas”. Admittedly, in the Zonal Development Plan drawn up under the MPD 2001 for the K-II Zone in Dwarka (where the petitioners are situated), Clause 1.3.2 of the MPD 2021 identified 352.13 Ha. as having been allocated for commercial activities, of which 113 Ha. were allocated to “Service Centres”.

32. Perhaps more importantly, *the distinction between a service centre and a service market, both in the counter affidavit filed by way of response to the writ petition as well as in para 9.2.1 of the written submission, is sought to be emphasised only with respect to the petitioners’ claim for increase in ground coverage and FAR.* For ready reference, para 9.2.1 of the DDA’s written submissions dated 8 April 2024 may be noted, thus:

“9.2.1. The Speaking Order dated 05-04-2021 clarified that Service Centre in Sector 20 Dwarka is not a Service Market, *hence it not possible to increase the Ground Coverage and FAR on individual plots.*”



2024:DHC:6098



(Emphasis supplied)

33. Inasmuch as the petitioners have given up their claim for increase in ground area and FAR on individual plots, the plea that the petitioners' plots are in a service centre and not in a service market, does not really survive for further consideration. *Besides, Mr Umapathy, on instructions, has further undertaken to restrict the activities which his clients would ply from the plots allotted to them to activities permissible in service centres, as identified by Clause 035 of the MPD 2001 – which, I may note, covers “repair shops for automobiles, electrical appliances, building material etc.” to provide essential services to neighbouring residential areas.*

34. It is undisputed that the lease deeds executed between the DDA and the petitioners permitted change of land use, subject to conditions which the DDA could impose.

35. It is also undisputed that 17 plots, which had been earmarked for the marble trade in Sector 20 Dwarka, had been put up for auction by the DDA itself and, on no person plying the marble trade bidding for the said plots, the land use of the plot was converted and the plots were auctioned for use as general shops/showrooms/offices with increased ground coverage *vide* letter dated 25 June 2021. Regarding this fact, the impugned order dated 5 April 2021 is, notably, completely silent. The written submissions dated 8 April 2024, on the other hand, contend, with respect to the letter dated 25 June 2021, thus, in para 8.3:



2024:DHC:6098



“8.3. Moreover, the letter dated 25-06-2021 appears to be relating to cases of auction of commercial plots in commercial area which are using the plot for a purpose other than the use permitted in their respective lease but compatible with the MPD-2021, which is also not the case here. The change is land use sought by the Petitioners is not compatible with the Layout Plan of Sector 20 Dwarka, prepared in accordance with the provisions of MPD-2001.”

The stand taken by the DDA in para 8.3 of the written submissions is completely untenable. The 17 plots, of which the land use was converted and the plots successfully auctioned, were also plots earmarked for plying the marble trade in Sector 20 Dwarka and covered by the very same lay out plan that applies to the petitioners. It cannot lie in the mouth of DDA, therefore, to contend that the auction of the said plots, after conversion of land use, was in order, but that the petitioners cannot be permitted to ply any other trade from the plots allotted to them, even if the trade that they seek to ply is in conformity with the MPD 2001.

36. This fact, seen in conjunction with proviso to Clause 14 of the lease deeds, completely belies DDA’s contention that the plea that change of land use, as raised by the petitioners, was impermissible and could not be granted.

37. It has further been sought to be asserted, in para 5(b) of the impugned order dated 5 April 2021, that “marble market at Dwarka Sector 20 was basically a scheme exclusively for re-location of marble dealers to develop a market planned as per provisions of Master Plan 2001”. This is directly contrary to the information provided by the DDA to the petitioner under the RTI Act on 19 August 2009, in which



2024:DHC:6098



it was admitted that there was “no specific policy regarding doing marble trade” in the NCTD.

38. The allocation of the plots to the petitioners was, therefore, not in pursuance of any specific policy which restricted them to plying the marble trade and the marble trade alone from the said plots, but was merely a consequence of the judgment dated 29-30 October 2002 of the Supreme Court in *M.C Mehta*.

39. The manner in which the DDA has sought to distinguish between the case of the petitioners from those of plastic traders situated in Jwalapuri also does not commend to acceptance. There is really no difference between the situation faced by the petitioners *vis-a-vis* those faced by plastic traders in Jwalapuri. The plastic traders in Jwalapuri were permitted to ply other trades from the plots allotted to them, as trade in plastic was banned. Though the marble trade is not banned, the petitioners have clearly stated that, consequent to discontinuation of mining in the Aravali Hills, plying the marble trade has become unviable. The contention of the DDA, in the impugned order as well as in the written submissions filed before this Court, that no evidence had been led by the petitioners to support their case that the marble trade has become unviable, does not stand to reason. The petitioners have clearly stated why the marble trade has become unviable. It was always open to DDA to verify this fact. They have not chosen to do so and have sought to content themselves with a bald denial of the petitioners’ assertion.



2024:DHC:6098



40. In any event, the proviso to Clause 14 of the lease deed does not require the lessees/petitioners to provide any specific reason for seeking change of land use. It enables them to seek change of land use, provided the change is in accordance with the norms applicable to the area in question, and empowers the DDA only to place conditions governing such change. The DDA cannot, therefore, seek to justify the rejection of the petitioners' request on the ground that petitioners have not provided evidence to show that plying the marble trade had become unviable.

The sequitur

41. The sequitur is obvious. At the cost of repetition, the lease deeds executed by the petitioners with the DDA permitted the petitioners to use the plots allotted to them for purposes other than the marble trade and empowers the DDA to allow change of user, subject to terms and conditions. The stand of the DDA that change of user was not permissible as the allocation of plots to persons plying the marble trade constituted a specific scheme, for covering such persons alone, cannot stand for two reasons. Firstly, in the response dated 19 August 2009 provided to the petitioner under the RTI Act, the DDA itself acknowledged that there was no specific policy in the NCTD for marble traders but that, even in the absence of any such policy, plots in Sector 20 Dwarka had been allotted to persons plying the marble trades – obviously to comply with the directives contained in the order dated 29-30 October 2002 passed by the Supreme Court in *M C Mehta*. Secondly, the respondents themselves, on finding no bidders



2024:DHC:6098



for 17 of the plots which had been earmarked for plying marble trade, converted the land use of the plots and, after conversion, sold the plots to successful bidders, thereby earning a windfall in the process.

42. The distinction that the DDA seeks to draw between service centres and service markets is not clearly drawn out in the MPD 2001, though Clause 035 of the MPD 2001 does define a service centre as “a premises *essentially having repair shops for automobiles, electrical appliances, building material etc.* to provide essential services to neighbouring residential areas”. In any event, this distinction, if any, pales into insignificance, in view of Mr Umapathy’s undertaking that his clients would ply, from the shops allotted to them, only activities which, as per this definition, can be plied from “service centres”.

43. The petitioners, who have been driven to approach this Court three times, owing to the apathetic attitude of the DDA, cannot be driven to do so a fourth time. Repeated exhortations to the DDA to consider the case of the petitioners sympathetically, keeping in mind their fundamental right under Article 19(1)(g) of the Constitution of India read with the proviso to Clause 14 of the lease deeds executed between the petitioners and the DDA, have proved futile. The petitioners have been more than accommodative. They have sacrificed their claim to increase in ground area and FAR. On Ms. Kritika Gupta stating that the MPD 2021 would not apply and the MPD 2001 would apply, the petitioners have also agreed to ply, from plots allocated to them, only such trades as are permissible under the MPD 2001.



2024:DHC:6098



44. I do not see why they should not be allowed to do so.

45. Article 19(1)(g) cannot be consigned to oblivion. Any restriction on the fundamental right conferred by Article 19(1)(g) has to be *reasonable*. It is the sanctified duty of the DDA, as a wing of the Government, to ensure that persons who seek to lawfully ply trades and professions of their choice, are permitted to do so. They cannot, in dealing with such requests, adopt a myopic approach. If persons, who have been allotted land for plying a particular trade, find it impossible to continue doing so, and seek to ply another trade from the premises, the attitude of the DDA should be to ensure that the persons are able to engage in the vocations of their choice and maintain a livelihood, and not to find out one way or another to reject their request. Absent any prejudice that grant of such persons' requests would entail, the approach of the DDA has to be expansive and citizen-centric, rather than adversarial. I may note that there is not a whisper of an averment, in the pleadings, oral arguments or written submissions, that allowing the petitioners' request would be prejudicial to anyone in any manner, or would disrupt, in any unacceptable manner, the Grand Scheme Of Things.

Conclusion

46. For the aforesaid reasons, the impugned order dated 5 April 2021 is quashed and set aside. The petitioners are permitted to ply, from the plots allotted to them, all such trades which may permissibly be plied from service centres as per the MPD 2001. Should this



2024:DHC:6098



require any formalities to be completed by the petitioners, they would do so, and the DDA would offer every assistance to the petitioners in that regard. The petitioners shall not, however, be entitled to any increase in FAR or ground area.

47. The petition stands allowed to the aforesaid extent with, no order as to costs.

C. HARI SHANKAR, J.

AUGUST 14, 2024

dsn