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

Judgment reserved on: 12.10.2023

Judgment pronounced on: 08.01.2024

+ **W.P.(C) 10621/2017 & CM APPL. 47828/2018**

SH. ASHISH JAIN AND ANR.

..... Petitioners

Through: Ms Deepika V. Marwaha, Sr.
Adv. with Mr Sanjeev Singh and Ms
Raunika Johar, Advs.

Versus

DELHI DEVELOPMENT AUTHORITY

..... Respondent

Through: Mr Ashim Vachher, Standing
Counsel for DDA with Mr. Kunal Lakra,
Advs.

CORAM:

HON'BLE MR. JUSTICE JASMEET SINGH

J U D G M E N T

: **JASMEET SINGH, J**

1. The present writ petition is filed under Article 226 of the Constitution of India feeling aggrieved by the rejection of sanction of building plan by the respondent. By way of this instant writ petition, petitioners are seeking following relief:-

“(i) Issue a writ of mandamus or any other appropriate writ, order or direction directing the respondent authorities to sanction the building plan as per plan submitted vide letter dated 07.10.2014 in consonance with para 12.13.7 of Chapter 12 of the Master plan of Delhi and Conveyance Deed dated 23.07.2014 for raising of construction at commercial plot No. B, Block 'B' measuring 2212 Sq. Mtrs.



situated in Road No. 44, 2 Level parking, Block 'B', Pitampura; And/or

(ii) Pass any other or further order(s) which this Hon'ble Court may deem just and proper in the facts and circumstances of the case in favor of the petitioner."

PLEADINGS

2. Facts are succinctly summarized as the respondent issued a public notice inviting sealed tender for commercial plots at prime locations for offices, shops, multilevel parking, banks, banquet halls, nursing homes, retail/departmental stores and warehouses. All plots were offered on free hold basis.
3. In pursuance of the public notice, petitioners submitted a sealed tender for an amount of Rs. 4.05 crores against the reserve price fixed by the respondent for an amount of Rs. 1.49 crores towards purchasing a plot of land measuring 2212 sq. mtrs. being plot no. 'B', Block CC, Road No. 44, Pitampura, Delhi, (*in short "plot"*) for raising parking as per Master Plan for Delhi – 2021 (*in short "MPD 2021"*).
4. The petitioners were declared as the highest and successful bidder by the respondent in the tender held on 16.12.2013. Thereafter, the petitioners immediately deposited the 25% amount of the bid amount Rs. 1,01,25,000/- within the stipulated time period.
5. Respondent issued a letter dated 04.03.2014 confirming the acceptance of the tender of the petitioners. *Vide* said letter, the petitioners were called upon to deposit the remaining balance amount of Rs. 3,03,75,045/- within 90 days from the date of issuance of letter by demand draft in favour of the respondent. The petitioners were also



called upon to furnish an affidavit and letter of intent as per clause of 2.6.4 of the tender document.

6. Petitioners thereafter wrote a letter dated 06.05.2014 to the respondent making a request for extension of time in paying the balance amount of sale consideration. Respondent *vide* letter dated 30.05.2014 granted extension of time till 02.08.2014 for payment of 75% of the sale consideration.
7. On 11.06.2014, respondent wrote a letter to the petitioners and issued four copies of unsigned conveyance deed along with one copy of the site plan in respect of the said plot for stamping from the Collector of Stamp regarding payable stamp duty. *Vide* said letter, the petitioners were further called upon to furnish certain more documents for execution of the conveyance deed in favour of the petitioners.
8. Petitioners deposited the remaining sale consideration before 02.08.2014. Petitioners also paid the requisite stamp duty and also submitted the documents as called upon by the respondent *vide* letter dated 11.06.2014.
9. After completion of all the formalities, respondent thereafter handed over the possession of the plot to the petitioners on 23.07.2014 *vide* possession letter number F.87(3)2014/CL/1839 dated 23.07.2014. Also on the same day, a conveyance deed dated 23.07.2014 was duly executed by the respondent in favour of the petitioners.
10. On 07.10.2014, petitioners submitted the building plans (two level parking with 25% commercial component) in accordance with Rule 12.13.7 of MPD 2021 with the respondent for sanction of the plans for enabling the petitioners to raise construction on the said plot towards



which respondent issued cash receipt of Rs. 5,550/- bearing no. 1034130 dated 07.10.2014. Subsequently, on 12.11.2014, the petitioners wrote letter to the respondent for early approval of the building plans to enable the petitioners to raise construction.

11. Respondent *vide* letter dated 06.02.2015, rejected the request of the petitioners for sanctioning of the building plans. Further the above letter stated in response of the letter dated 07.10.2014 that building plan submitted have requested to approve two level parking with 25% commercial component but as per the clarification received from Deputy Director, Commercial Land, DDA and Chief Architect HUPW/DDA, there is no commercial component permitted and as such the request for sanction of building plans was rejected.
12. Respondent requested the petitioners *vide* letter dated 29.01.2015 to submit the rectification deed in respect of the above said plot. The rectification deed provided use of plot for two levels parking only.
13. Thereafter, respondent *vide* letter No. F.87(3)2014/CL/1979 dated 30.07.2015 to the petitioner sought clarification in respect of the plot regarding construction and use of plot for two level parking only within 7 days. Petitioners *vide* letter dated 14.08.2015 stated that relevant rules and bye-laws of respondent pertaining to sanction of building plan for parking / commercial building permitted raising of construction within 5 years from the date of sanction of building plan. Therefore, petitioners did not violate any condition of allotment, conveyance deed and any provision of MPD 2021 and requested to reconsider their request for sanction of the building plan.
14. Petitioner wrote various letters dated 15.01.2016 and 24.01.2017 to



the respondent requesting to grant sanction of plans. Further, petitioners proposed to pay any additional fee if required for sanction of plans.

15. Since nothing was happening, petitioners were constrained to file Writ Petition (Civil) No. 4799 of 2017 praying for mandamus to respondent to grant sanction of the building plan. *Vide* order dated 29.05.2017, this court directed the respondent to decide the petitioner's representation dated 14.08.2015 and reminder dated 24.01.2017 within six weeks and if the building plans are not sanctioned, then to pass a speaking order so that petitioners may avail of the remedies as available to them in law, if so advised.
16. On 09.10.2017, respondent rejected the request for sanction of the building plan on the said plot. Petitioners being aggrieved by the rejection have filed the present writ petition.
17. On 29.11.2017, notice was issued to the respondent and thereafter counter affidavit was filed by the respondent stating that commercial component was permitted qua multi-level parking. The plot in question was meant for two level parking and in the advertisement, there was no mention of any commercial component or the plot could be used for the community center as per MPD 2021. Thus, qua the plot in question, the plot was auctioned with the clear understanding that it could only be used for the construction of a two level parking without any commercial component.
18. It was further stated that as per the advertisement, the multi-level parking with commercial component had many fold higher reserve price than the reserved price for the plot of a two level parking. The



petitioners thus by attempting to set up a plea that they are entitled to use 25% of the plot for commercial purposes, are attempting to illegally and wrongfully take undue advantage of a bonafide mistake.

19. After realizing their mistake/typographical error in the conveyance deed, respondent issued a letter dated 29.01.2015, wherein the respondent enclosed the drafts of the rectification deed whereby respondent wanted to rectify the error (i.e. mentioning of commercial component and the MPD 2021) which had been committed.
20. Respondent issued a show cause notice dated 16.05.2018 calling the petitioners to come for rectification of the conveyance deed as also to start the construction of the two-level parking.
21. On 05.07.2018, this court was pleased to stay the operation of show cause notice dated 16.05.2018.
22. It is pertinent to note that during the pendency of the instant petition, petitioners moved an application bearing CM APPL. No. 47828 of 2018 seeking amendment of the writ petition and add a prayer challenging the notice dated 16.05.2018.
23. *Vide* order dated 22.11.2018, the above application was allowed and the amended writ petition with additional prayer was taken on record.
24. The additional prayer in the amended writ petition reads as under:-
(ia) quash the impugned order dated 09.10.2017 and show cause notice bearing No. F.87(03)2014/CL/155 dated 16.05.2018 issued by respondent DDA in view of the facts and grounds mentioned in the writ petition.



SUBMISSIONS

(On behalf of the petitioners)

25. Ms. Marwaha, learned senior counsel for the petitioners argues that the act of the respondent rejecting the sanction of the building plan is illegal and an impermissible executive action which is contrary to the MPD 2021. The reasons given by the Deputy Director while rejecting the plan cannot undermine the provisions of the MPD 2021 which is the legal sanction and is mandatory in nature, having statutory force.
26. Learned senior counsel has drawn my attention to the conveyance deed dated 23.07.2014 executed between the petitioners and the respondent which clearly shows that the description of the property categorically mentions “*two level parking with commercial component as per MPD-2021*”. The relevant extract is reproduced as under:-
- “THE SCHEDULE ABOVE REFERRED TO*
All that area 2212 Sqm. in the layout plan of and consisting
of 2212 sq. mtrs. (Courtyard Area) Two Level parking with
commercial component as per MPD 2021.”
27. She further points out that the site plan annexed with the conveyance deed also shows that the commercial usage as per the MPD 2021.
28. She further argues that MPD 2021 is applicable to all allotments including petitioners plot. Even in the public notice, the heading mentions “all uses as per MPD 2021”. Further, in the MPD 2021, there is no mention of two level, three level, four level parking etc., there is mention of only multi-level meaning thereby that anything above single is multi level parking and there is one rule for parking spaces in the MPD 2021 i.e. Rule 12.13.7. In this context, she argues



that the reference to two level parking with commercial component as per MPD 2021 has been inserted twice in the Conveyance Deed as well as in the site plan indicating that the same was done with the clear application of mind and cannot be said to have been a typographical or bonafide error.

29. She submits that if the petitioners construct and operate the parking without having a commercial use of 25% of the gross floor area, the petitioners would be at huge loss and even the cost of construction would never be recovered.
30. She further submits that petitioners had only proposed to pay additional fee that may be required for sanction of the plan for two level parking with commercial component as per MPD 2021 and had never offered to pay additional sale consideration towards purchase of the said plot.
31. Learned senior counsel urges that the conveyance deed is the sale deed and in terms of the provisions of section 54 and 55 of Transfer of Property Act, 1882, (*in short "TP Act"*) the title, ownership and rights in the property stood transferred in the name of petitioners. She further relies upon Section 22 of the Indian Contract Act, 1872 (*in short "Contract Act"*) which clearly provides that a contract is not voidable merely because it was caused by one of the parties to it being under a mistake of a fact. Thus, even assuming, without conceding or admitting that respondent had made a mistake, that still would not render the conveyance deed voidable and shall bind the respondent as a final and concluded contract.
32. She further states that once a contract has been executed between a



party, it is not open for the respondent to unilaterally change/vary the terms thereof.

33. To buttress her submissions, she relies upon the following judgments:-

a) *RK Mittal and Ors. vs. State of U.P. and Ors., (2012) 2 SCC 232.*

b) *MG. Ramachandran and Anr. vs. Municipal Corporation of Delhi and Ors., 2014 SCC Online Del 1325: (2014) 213 DLT 14.*

c) *Rattan Lal Aggarwal vs. Municipal Corporation of Delhi and Ors., 2011 (124) DRJ 610.*

d) *Joseph John Peter Sandy vs. Veronica Thomas Rajkumar, (2013) 3 SCC 801.*

e) *TC Subramanian vs. The Sub Registrar, WP 3275/2011 and MP 2/2011.*

(On behalf of the respondent/DDA)

34. To refute her submissions, Mr. Vachher, learned Standing Counsel for DDA states that a bare perusal of the advertisement of the respondent shows that the “two level parking” plot was different from “multi level parking” plot with commercial component”. Hence, the plot in question was auctioned only for two level parking. Therefore, the instant writ petition is not maintainable as it raises disputed questions of fact. Reliance is placed on **Joshi Technology International Inc vs. Union of India, (2015) 7 SCC 728** and **Twenty First Century Media Private Limited vs. New India Assurance Co. Ltd., 2017 SCC OnLine Del 10933.**

35. He further argues that since there is an arbitration clause being clause



3.8 in the tender document, writ petition is not maintainable. Any disputes between the parties can only be referred to Arbitration under the Arbitration & Conciliation Act, 1996, as contemplated in the tender document itself. Reliance is placed on **Joshi Technology (supra)**.

36. Learned counsel for the respondent heavily relying upon **Tata Cellular vs. Union of India, (1994) 6 SCC 651**, wherein the Hon'ble Supreme Court in para 94 observed that the terms of invitation of a tender cannot be open to judicial scrutiny because invitation of tender is in the realm of a contract. In the facts of the present case, the petitioners have not challenged the terms of the tender document wherein commercial component was not permitted for a two level parking plot allotted to the petitioners. The petitioners were well aware of the terms of the tender document that plots were auctioned on 'as is where is' basis and it was with open eyes that the petitioners participated in the tender process for two level parking plot only.
37. The reserve price for a two level parking plot which did not have commercial component was only Rs.1.49 crores having area of 2212 sq. mtrs. whereas a multi level parking plot with commercial component had a reserve price of almost same area plot to the tune of Rs. 44.80 Crores which was far higher than the one which was for two level parking. The petitioners were aware of all these facts and out of their own volition they bid only for two level parking plot knowing fully well that commercial component was not permissible for a two level parking plot.
38. He further argues that a bare perusal of the said Rule 12.13.7 (ii)



clearly shows that the words used are “may be utilized as commercial/office space”. Thus, Rule 12.13.7 (ii) contemplates that to compensate the cost of multi-level parking, a maximum of 25% of gross floor area may be utilized as commercial/office space. Rule 12.13.7 only contemplates that for a multi level parking 25% of the gross area “may” be used for commercial purpose. The word ‘may’ itself contemplates that multi level parking may or may not be used for commercial purpose. Therefore, the tender document is not violative of MPD-2021 if DDA had all the powers to restrict the use of two level parking only for parking purposes and not allowing commercial use.

39. He further points out that it is apparent and evident from documents filed by petitioner himself vide letters requesting for conveyance deed to be executed which do not mention “commercial component” and/or “parking with commercial components as per MPD 2021”. All these documents including the letters of the petitioners which are prior to the execution of the conveyance deed, show that there was neither any “commercial component” mentioned in any of them nor was there any mention of the use of plot auctioned for two level parking to be put to use as “parking with commercial components permitted under the MPD 2021”. It is only after the execution of conveyance deed with the accidental error/typographical mistake where two level parking plot inadvertently got mentioned as “Parking with commercial component as per MPD 2021”.
40. Mr. Vachher places reliance on **Monnet Power Company Ltd vs. Union of India & Others, 2017 SCC OnLine Del 7399** and states



that the rules of the game cannot be changed midway once the bidding process is over and the contract is completed. The Hon'ble High Court upheld the sanctity of the tender process and observed that the bidders were fully aware of the terms and conditions of the tender / auction at the time of bidding for the same and were aware of the restrictions imposed thereof. The Hon'ble Court also held that the bidders obviously calculated their costs and benefits whilst bidding for the same.

41. He further states that any change subsequent to execution of a concluded contract after the bidding process is complete and successful would be morally, ethically wrong and would tantamount to playing fraud with the public at large by denying them a level playing field and an opportunity to participate in the bidding process, whereby many other bidders could have been interested to participate in the same and the bid process would have fetched a much higher price to the tenderer.
42. He further states that immediately after the conveyance deed, the respondent realized its mistake that there was a typographical error in the conveyance deed and addressed the letter dated 29.01.2015 to the petitioners seeking execution of the rectification deed. He further states that the mistake if not permitted to be rectified will cause huge loss to the public exchequer.

(Rejoinder on behalf of the petitioners)

43. Ms. Marwaha, learned senior counsel for the petitioners in rejoinder has drawn my attention to para 24C of the amended writ petition and states that the huge premium charged for other plot is because the



respondent has permitted more than 200% of commercial usage of the FAR whereas in the petitioners' plot, it is only 25% of FAR for commercial use.

ANALYSIS AND FINDINGS

44. I have heard the rival contentions raised by the learned counsels for the parties and perused the pleadings available on record.
45. Admittedly, petitioners were the successful and highest bidder in the tender process conducted by the respondent on 16.12.2013 with respect to the "two level parking". After completion of all the formalities, possession of the plot was handed over to the petitioners and conveyance deed 23.07.2014 was signed between the petitioners and the respondent. On bare perusal of the conveyance deed, it is clearly mentioned that "two level parking with commercial component as per MPD 2021". This fact is admitted by the respondent who urges that this was a typographical error. In furtherance of the conveyance deed, petitioners submitted the building plan to the respondent for grant of sanction. Respondent rejected the building plan on the ground that there is a typographical error in the conveyance deed and the tender notice did not allow any commercial usage.

(Maintainability of Writ Petition)

46. At the outset, learned counsel for the respondent has raised the issue of maintainability of the writ petition on the ground that questions of fact are raised and since there is an arbitration clause, the present writ petition is not maintainable. He strongly relied upon the judgment of *Joshi Technology (supra)*.
47. The Hon'ble Supreme Court in *Joshi Technology (supra)* has laid



down certain parameters to entertain the writ petition which reads under:-

“69. The position thus summarised in the aforesaid principles has to be understood in the context of discussion that preceded which we have pointed out above. As per this, no doubt, there is no absolute bar to the maintainability of the writ petition even in contractual matters or where there are disputed questions of fact or even when monetary claim is raised. At the same time, discretion lies with the High Court which under certain circumstances, it can refuse to exercise. It also follows that under the following circumstances, “normally”, the Court would not exercise such a discretion:

69.1. The Court may not examine the issue unless the action has some public law character attached to it.

69.2. Whenever a particular mode of settlement of dispute is provided in the contract, the High Court would refuse to exercise its discretion under Article 226 of the Constitution and relegate the party to the said mode of settlement, particularly when settlement of disputes is to be resorted to through the means of arbitration.

.....

70. Further, the legal position which emerges from various judgments of this Court dealing with different situations/aspects relating to contracts entered into by the State/public authority with private parties, can be



summarised as under:

70.1. *At the stage of entering into a contract, the State acts purely in its executive capacity and is bound by the obligations of fairness.*

70.2. *State in its executive capacity, even in the contractual field, is under obligation to act fairly and cannot practise some discriminations.*

70.3. *Even in cases where question is of choice or consideration of competing claims before entering into the field of contract, facts have to be investigated and found before the question of a violation of Article 14 of the Constitution could arise. If those facts are disputed and require assessment of evidence the correctness of which can only be tested satisfactorily by taking detailed evidence, involving examination and cross-examination of witnesses, the case could not be conveniently or satisfactorily decided in proceedings under Article 226 of the Constitution. In such cases the Court can direct the aggrieved party to resort to alternate remedy of civil suit, etc.*

70.4. *Writ jurisdiction of the High Court under Article 226 of the Constitution was not intended to facilitate avoidance of obligation voluntarily incurred.*

70.5. *Writ petition was not maintainable to avoid contractual obligation. Occurrence of commercial difficulty, inconvenience or hardship in performance of the conditions agreed to in the contract can provide no justification in not*



complying with the terms of contract which the parties had accepted with open eyes. It cannot ever be that a licensee can work out the licence if he finds it profitable to do so: and he can challenge the conditions under which he agreed to take the licence, if he finds it commercially inexpedient to conduct his business.

.....

70.7. Writ can be issued where there is executive action unsupported by law or even in respect of a corporation there is denial of equality before law or equal protection of law or if it can be shown that action of the public authorities was without giving any hearing and violation of principles of natural justice after holding that action could not have been taken without observing principles of natural justice.”

48. Further the distinction between the public law and private law has also been explained in subsequent paragraphs in ***Joshi Technology (supra)***. Relevant extract reads as under:-

“70.9. The distinction between public law and private law element in the contract with the State is getting blurred. However, it has not been totally obliterated and where the matter falls purely in private field of contract, this Court has maintained the position that writ petition is not maintainable. The dichotomy between public law and private law rights and remedies would depend on the factual matrix of each case and the distinction between the public law remedies and private law field, cannot be



demarcated with precision. In fact, each case has to be examined, on its facts whether the contractual relations between the parties bear insignia of public element. Once on the facts of a particular case it is found that nature of the activity or controversy involves public law element, then the matter can be examined by the High Court in writ petitions under Article 226 of the Constitution of India to see whether action of the State and/or instrumentality or agency of the State is fair, just and equitable or that relevant factors are taken into consideration and irrelevant factors have not gone into the decision-making process or that the decision is not arbitrary.

70.10. Mere reasonable or legitimate expectation of a citizen, in such a situation, may not by itself be a distinct enforceable right, but failure to consider and give due weight to it may render the decision arbitrary, and this is how the requirements of due consideration of a legitimate expectation forms part of the principle of non-arbitrariness.”

49. From the aforesaid, it is clear that there is no embargo on entertaining the writ petition in contractual matters. Even on the factual conspectus of the case, there are no disputes between the parties. The respondent only alleges that there was typographical error in the conveyance deed and that is the only question which is to be adjudicated in the present writ petition. Hence to my mind, the present writ petition does not involve any disputed question of facts. In addition, as per **Joshi**



Technologies (supra), this court can entertain the writ petition as in the present case, the executive action of the respondent is unsupported by law and is arbitrary and whimsical.

50. As regards to the arbitration clause i.e. para 3.8 in the tender is concerned, the same reads as under:-

“3.8 Provision for Settlement of Disputes

In case of any dispute between the parties in respect of interpretation of this agreement, such disputes shall be referred to the Vice-Chairman of the Authority. The Vice-Chairman, DDA shall be empowered to adjudicate and decide the disputes, if any, between the parties and his decision shall be final, conclusive and binding on both the parties. The venue of the arbitration shall be in Delhi.”

51. The arbitration clause is to be invoked in the cases where there are disputes with regard to the interpretation of the agreement. In the present case, the petitioners and the respondent are not disputing either the agreement between the parties or its execution or any of the terms contained therein. The case of the respondent is that the “Two level parking with commercial component as per MPD 2021” appearing in the conveyance deed is a typographical error.
52. The admitted facts between the parties are as follows:-
- A. The respondent floated a tender for auction of plot in question.
 - B. The petitioners participated and were declared as highest bidder.
 - C. The petitioners paid the bid amount.
 - D. The petitioners and the respondent executed a conveyance deed in furtherance of the tender.



53. Hence there is no dispute as to the factual matrix or the terms of the agreement.
54. The notice inviting tender is only an invitation to offer, the bid is the offer and once the bid is accepted, a concluded contract comes into existence. The concluded contract may be in the form of conveyance deed, letter of intent or such similar nature. In the present case, the terms relied upon by the respondent namely two level and multi level parking are all contained in the notice inviting tender. The invitation to offer was acted upon by the petitioners by participating in the tender process. Thereafter, the offer of the petitioner was accepted by the respondent and a concluded contract came into being by virtue of conveyance deed. It is the conveyance deed that is now the concluded contract between the petitioners and the respondent which is to be looked into by this court.
55. Respondent placed reliance on *Tata Cellular (supra)* to contest that the terms of the tender are not open to judicial scrutiny and petitioners participated in the tender process for two level parking only. I am in full agreement with the above cited judgement and in the present case, none of the parties are disputing the terms of the tender, it is the conveyance deed which mentions the phrase “two level parking with commercial component as per MPD 2021” which is sought to be rescinded by the respondent.

(Relevancy of MPD 2021)

56. It is pertinent to note down the relevancy of MPD 2021. This court in numerous judgements including **Rattan Lal Aggarwal vs. Municipal Corporation of Delhi, 2011 SCC OnLine Del 2649** has held that



MPD 2021 is statutory in character and the provisions of MPD 2021 have statutory force. Therefore the provisions mentioned in the MPD 2021 are to be complied in its full letter, spirit and intent. Respondent has a bounden duty to uphold the provision of MPD 2021 and cannot act in contrary to what is laid in MPD 2021. In **R.K. Mittal vs. State of U.P., (2012) 2 SCC 232**, the Hon'ble Supreme Court has observed as under:-

“41. In M.C. Mehta v. Union of India [(2004) 6 SCC 588] dealing with the question of unauthorised industrial activity in residential area in Delhi, the plea raised for in situ regularisation of areas with 70% industrial use was not accepted by this Court, holding that regularisation would have adverse impact on the law-abiders. This Court also held that the land cannot be permitted to be used contrary to the stipulated user except by amendment of Master Plan, after due consideration of the provisions of the Act and the Rules. Inaction by the government authorities means permitting the unauthorised use, contrary to law.

42. The authorities while reconsidering such matters are expected to act reasonably and cautiously. They deal with larger public interest and, therefore, have a responsibility to act with greater degree of sensitivity and proper application of mind. If the Development Authority aids the violation of the statutory provisions, it will be a perversity in the discharge of statutory obligations on the part of the Development Authority. The public interest, as codified in



the statutory regulations and the provisions of the Act, should control the conduct of the Development Authority and its decision-making process, rather than popular public demand guiding the exercise of its discretion, that too, in a somewhat arbitrary manner.

.....

47. All the above judgments clearly show that it is not merely at the discretion of the Development Authority concerned to designate user of a site and then alter the same without following due process of law. Even where such an exercise is required to be undertaken by the Development Authority, there also it is expected of the Development Authority to act for the betterment of the public and strictly in accordance with the plans and the statutory provisions. It cannot take recourse to its powers and use its discretion contrary to such provisions and that too, to frustrate the very object of the Act. Exercise of power ought not to be destructive of the provisions of the Act and the plans having the force of law. We would hasten to add that even where the requisite prescribed procedure is followed, still the discretion should be exercised sparingly for achieving the object of the statute and not to completely vary or destruct the purpose for which the sector has been earmarked.

48. A decision which is sought to be taken by the Development Authority in the garb of a policy decision



matter, if not in conformity to the Master Plan, the Regulations and the provisions of the Act in force, would be an action extra jus. The Development Authority is to act in adherence to the provisions of the law regulating such user or construction. The laconic result of a collective reading of the aforereferred 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 Development Authority concerned cannot be permitted to overreach the procedure prescribed by law with designs not acceptable in law.”

- 57.** The respondent acting as a development authority is obliged to follow the mandate of law. Their role is to ensure that the schemes and policies of the State are implemented in its true spirit. The respondent is bound to follow the provision of MPD 2021. Relevant clause of the MPD 2021 reads as under:-



“12.13.7 MULTI LEVEL PARKING

Multi level parking should preferably be developed in the designated parking spaces or in the residential, public-semi-public facilities, commercial, transport node, DTC depot, etc. with the following Development Controls:

- 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”*

- 58.** On perusing the above rules, there is no mention of the word “Two level parking”, the only word used is “Multi level parking”. In the absence of the word “two level”, it can only be assumed that two level parking falls into the category of “Multi Level Parking”. Even assuming that the phrase “two level parking with commercial component as per MPD 2021” is a typographical error, the said typographical error is the mandate of law and deletion of the same



would be an error and contrary to MPD 2021.

59. With regard to the other properties mentioned in the tender which are auctioned, the explanation offered by the petitioners seems to be plausible that in other properties, the commercial component permitted by the respondent is more than 25%. The details of the properties with their commercial component reads as under:-

“COMMUNITY CENTRE, MOTIA KHAN:

Serial No.1: Parking area 9936 square meter and the commercial component is 3726 square meters which is approximately 37% (more than maximum of 25% permissible in terms of Rule 12.13.7 of MPD 2021)

DISTRICT CENTRE MAYUR PLACE

Serial No. 3: Parking area 13985 square meter and the commercial component is 31824 square meters which is approximately 227% (more than maximum of 25% permissible in terms of Rule 12.13.7 of MPD 2021).

Serial No. 4: Parking area 15800 square meter and the commercial component is 31824 square meters which is approximately 201% (more than maximum of 25% permissible in terms of Rule 12.13.7 of MPD 2021).”

(Conveyance Deed and its nature)

60. The word “conveyance” is defined under The Indian Stamp Act, 1899 which reads as under: -

“2(10) “Conveyance”. — “conveyance” includes a conveyance on sale every instrument by which property,



whether moveable or immovable, is transferred inter vivos and which is not otherwise specifically provided for by schedule I”

61. Further, The Black Law Dictionary has defined the term conveyance as “the transfer of an interest in real property from one living person to another, by means of an instrument such as a deed”.
62. The Hon’ble Supreme Court in **Suraj Lamp & Industries (P) Ltd. (2) vs. State of Haryana, (2012) 1 SCC 656** has held as under:-

“18. It is thus clear that a transfer of immovable property by way of sale can only be by a deed of conveyance (sale deed). In the absence of a deed of conveyance (duly stamped and registered as required by law), no right, title or interest in an immovable property can be transferred.

19. Any contract of sale (agreement to sell) which is not a registered deed of conveyance (deed of sale) would fall short of the requirements of Sections 54 and 55 of the TP Act and will not confer any title nor transfer any interest in an immovable property (except to the limited right granted under Section 53-A of the TP Act). According to the TP Act, an agreement of sale, whether with possession or without possession, is not a conveyance. Section 54 of the TP Act enacts that sale of immovable property can be made only by a registered instrument and an agreement of sale does not create any interest or charge on its subject-matter.”

63. Perusal of the conveyance deed dated 23.07.2014 shows that it is registered before the Sub Registrar VII and the stamp duty of Rs.



24,30,000/- has been paid. Hence, the conveyance deed is a registered instrument as required in law and the parties thereto have to abide by the terms which are stated in the deed until and unless it is cancelled by a judicial decision. The execution of the conveyance deed is the conclusion of the acceptance of the offer by the respondent and the same being a registered instrument is a binding contract between the petitioners and the respondent.

64. As per the conveyance deed where the description of the plot is mentioned, it is written as “two level parking with commercial component as MPD 2021”. Also, on the site plan annexed with the conveyance deed, it is mentioned “commercial MPD 2021”. Further the above said rule i.e. 12.13.7 permits to use maximum 25% of area as commercial component and is applicable on minimum plot size 1000 sq. mtrs.
65. The respondent rejected the sanctioning of the building plan *vide* order dated 09.10.2017 on the following grounds:-

“4. As per the norms, the allottee is to utilize the land only for the purpose of public parking and it is not entitled for utilizing the plot for any other purpose, therefore, no commercial component is permitted.

5. However, in the conveyance deed executed on 27.7.2014, the concerned Lease Administration Officer has mentioned the use of the plot as parking with commercial component as per MPD-2021 which seems to be a bona fide mistake and needs to be rectified.

6. The matter has also been examined by the Architect Wing



and Planning Wing of DDA and it has been stated by them also that no commercial component is permitted as per development control norms of this plot.

7. In view of above facts and circumstances, the representation of the Petitioner is hereby disposed with the intimation to Sh. Ashish Jain that his request for sanctioning of Building Plan cannot be acceded to because there is no commercial component involved in the plot under reference and the allottee is requested to get the rectification deed executed at the earliest as requested vide letter dated 29.1.2015.”

66. The said rejection order is devoid of any reasons as to why the commercial component is not permitted when the MPD 2021 categorically permits the same, as in the present case, the plot size is 2212 sq. mtrs. The merely stating that the Architect Wing and Planning Wing of the respondent do not permit commercial component is not sufficient reason according to me.

(Unilateral mistake of fact not permissible)

67. It is apposite to refer to the relevant sections of the Contract Act which reads as under:-

“22. Contract caused by mistake of one party as to matter of fact - A contract is not voidable merely because it was caused by one of the parties to it being under a mistake as to a matter of fact.

62. Effect of novation, rescission, and alteration of contract - If the parties to a contract agree to substitute a new



contract for it, or to rescind or alter it, the original contract, need not be performed.”

68. In a contract between the parties, parties thereto are expected to enter into the contract after reading and understanding the terms and conditions. Once a contract has come into existence, it is not open to either of the contracting parties to rescind from its obligation merely on the fact that there was a typographical error. If such a situation is permitted then there will be no sanctity to any of the terms and conditions of the contract and the business dealings will collapse. Section 22 of the Contract Act envisages such a situation which clearly holds that a contract is not voidable merely because the either party (*i.e. the respondent herein*) was under a mistaken impression. Bilateral mistake renders a contract void but the unilateral mistake of fact would not.
69. In context with section 62 of the Contract Act, the Hon’ble Supreme Court in **Satya Pal Anand vs. State of M.P., (2016) 10 SCC 767** has observed as under:-

“15. His Lordship V. Gopala Gowda, J. proceeded to examine the issue in the light of Section 62 of the Contract Act, 1872. It provides that if the parties to a contract agree to substitute a new contract for it, or to rescind or alter it, the original contract need not be performed. Thus, for any novation, rescission and alteration of the contract, it can be made only bilaterally and with amicable consent of both the parties.”

(emphasis added)



70. Perusal of the above clearly mandates that a registered contract cannot be unilaterally rescinded or altered, it can only be done bilaterally or with consent of both the parties thereto. The purpose of a registered document is to bind the parties to the terms and conditions contained therein. Once a concluded contract has been duly signed by the parties, the only option available is to have it set aside in accordance with law.
71. The arguments of the respondent are bereft of any merits as the conveyance deed is registered document and if the respondent is allowed to resile from the same by stating that there was a typographical error, then there will be no sanctity to the documents executed by any party to the contract. This plea of the respondent cannot be permitted or act as a defense while enforcing a duly concluded contract. The terms of the concluded contract are final and a party cannot unilaterally resile from the same by stating some of the terms to be typographical error.
72. Further, the respondent has not challenged the conveyance deed dated 23.07.2014 in a court of law. It is not the case of the respondent that petitioners have contributed to the mistake or the contract was executed by any misrepresentation by the petitioners. Even if the respondent realized their mistake that it was a typographical error, there is nothing on record to show what action has been initiated against officers responsible for the mistake. Furthermore, after a lapse of more than 5 months, the rectification deed was sent to the petitioner on 29.01.2015 and no explanation has been furnished by the respondent for the inordinate delay of more than 5 months. The



respondent cannot unilaterally come to a finding that there was a typographical error in a concluded contract, thereafter rescind the contract and force the petitioners to sign a rectification deed.

73. As a result, I am of the view that the reasons assigned by the respondent while rejecting the sanctioning of the building plan are wholly erroneous as it lacks statutory backing and in the absence of any challenge to the conveyance deed, the respondent cannot unilaterally rescind the contract. It is also pertinent to mention here that the phrase “two level parking with commercial component as per MPD 2021” and “commercial MPD 2021” used in the conveyance deed and in the site plan respectively is not typed but is written by hand.

74. The Hon’ble Supreme Court in **Vice Chairman, City and Industrial Development Corporation of Maharashtra Ltd. vs. Shishir Realty (P) Ltd., 2021 SCC OnLine SC 1141** has observed as under:-

“58. When a contract is being evaluated, the mere possibility of more money in the public coffers, does not in itself serve public interest. A blanket claim by the State claiming loss of public money cannot be used to forgo contractual obligations, especially when it is not based on any evidence or examination. The larger public interest of upholding contracts and the fairness of public authorities is also in play. Courts need to have a broader understanding of public interest, while reviewing such contracts.”

75. In the present case, the respondent has acted as a commercial party, floated tender and thereafter on the petitioners being declared as the successful bidder, entered into a concluded contract. To permit the



respondent to rescind from its obligations mentioned in the conveyance deed merely on the averment that there was a typographical error, it was under a mistaken belief and due to oversight, the same would fall under the category of arbitrariness and unfairness. If a party has made a mistake with regard to a fact, then the party should bear the consequences. The argument of loss being caused to public exchequer cannot be a ground to set aside a concluded contract.

76. The rejection order dated 09.10.2017 does not render any persuasive reasons and in view of the discussion above, the same is liable to be set aside.

CONCLUSION

77. For the foregoing reasons noted above, the instant writ petition is allowed and impugned order dated 09.10.2017 and show cause notice bearing No. F.87(03)2014/CL/155 dated 16.05.2018 is quashed. Further, a writ of mandamus is issued in favour of the petitioners and against the respondent directing the respondent/DDA to sanction the building plan with respect to the plot no. 'B', measuring 2212 sq. mtrs. Block CC, Road No. 44, Pitampura, Delhi, i.e. two level parking with 25% commercial component within four weeks from today.
78. Pending application(s), if any, are disposed of accordingly.

JANUARY 08th, 2024/(MSQ)

JASMEET SINGH, J