

ASHOK KASHYAP  
ADVOCATE

Director (Plg) MPR,  
DDA, 6th Floor  
Vikas Minar, I.P. Estate  
New Delhi-110002

OFFICE OF THE DIR (Plg.)  
MPR/TC, D.D.A. N. DELHI-2  
Dy.No. 247  
Dated 11/10/11

BY SPEED POST  
F-4, Green Park Main  
New Delhi-110016  
8 October, 2011

OFFICE OF THE DIR (Plg.)  
MPR/TC, D.D.A. N. DELHI-2  
Dy.No. 1110/11  
Dated 11/10/11

Subject :- PUBLIC SUGGESTIONS FOR MID-TERM REVIEW OF MASTER  
PLAN FOR DELHI-2021

Sir,

1. Please refer to DDA public notice dated 04-10-2011 regarding review of MPD 2021.
2. Hon'ble lieutenant Governor of Delhi while disposing of case No.27/2008-CA- Appeal under section 347 of the Municipal Corporation Act 1957 directed as under.

"However, since the appellant has raised some basic issues relating to the provisions of the new Master Plan -2021 with regard to colonies like Green Park, etc , whose lay-out plans had been approved prior to the coming into force of the first Master Plan for Delhi in 1962, I feel that the provisions of the Master Plan, as they impinge on the future of such colonies, need to be re-visited. It needs to be mentioned that the first 5 years review of the Master Plan for Delhi-2021 is due in 2012. These issues should be taken up in this process of review. A copy of this order should accordingly be remitted to Commissioner (Planning ), DDA. Till such review results in any modification of the existing Master Plan provisions , the present provisions can continue to be applied by MCD in the matter of sanctioning building plans in these areas. In view of the above, the directions issued by this court dated 14-10-2009, directing the MCD Authorities not be sanction any building plans relating to properties in Green Park area, is hereby withdrawn"

3. A photocopy of the aforesaid order dated 15-3-2010 of Shri Tejendra Khanna, Lieutenant Governor of Delhi is forwarded herewith for consideration of the review committee.
4. The undersigned be given an opportunity to be heard in person so that the case be explained in great details and necessary amendment to the MPD 2021 issued before colony like Green Park becomes 'SLUM'.
5. SLUM is defined as any area that is unfit for human habitation by virtue of lack of proper light and ventilation , lack of basic amenities, over crowding, poor sewer systems etc.

Yours truly,

  
Ashok Kashyap  
Advocate

Copy to ; PS to Lieutenant Governor of Delhi  
Raj Nivas, Old Delhi

For info please with a copy of order dated 15-3-2010. No action has been taken by MCD on the direction issued by Hon'ble L.G. to the MCD till date.

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a file on  
the subject  
Raj Nivas

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**IN THE COURT OF THE LIEUTENANT GOVERNOR: DELHI**  
Case No. 27/2008-CA – Appeal under section 347-D of the Municipal Corporation Act 1957.

Lt. Col. Ashok Kashyap (Retd.)  
S/o late Shri S. Lal,  
F-4, Green Park (Main),  
New Delhi-16

..... Appellant

Versus

1. Municipal Corporation of Delhi,  
Through its Dy. Commissioner,  
South Zone, Green Park,  
New Delhi
2. The Godbless Developers,  
C-13, Ground Floor, Shivalik,  
New Delhi  
Through its Partners:  
Shri Rajiv Batra & Shri Yashpal Sachdeva

..... Respondents

Present : Shri S.B. Lal, Advocate for the  
appellant. Sh. Gaurav Sachdeva for  
Respondent-2. Shri Sanjay Yadav, EE  
(Building)-HQ, Shri Sunil Davour for MCD  
alongwith Sh. Rajesh Raina, Advocate for MCD.

Order dated 15.03.2010  
(Tejendra Khanna, L.G)

This is an appeal under section 347 (D) of Delhi Municipal Corporation Act 1957, (hereinafter referred to as the 'Act') against the orders of the Appellate Tribunal, MCD dated 27.3.2008, whereby it has dismissed the appeal of the appellant challenging the decision of the MCD, dated 10.3.2007, to sanction the Building Plans in respect of property No. F-3, Green Park Main, New Delhi.

I have heard the parties and also gone through the record produced before me. The appellant is aggrieved by the action of the MCD Authorities in sanctioning the building plans in respect of property No. F-3, Green Park Main, New Delhi, a property adjoining his own. According to him, this has been done in violation of the Act, the Building Bye-laws and the Master Plan of Delhi. He had preferred an appeal before Appellate Tribunal, MCD, but the same was dismissed. Aggrieved by this, he has filed an appeal before this Court. The appellant's submissions, basically, are:

1. that as per the lay-out plan for Green Park, which was approved by the MCD, and

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notified through the gazette, a minimum of 6 Ft. is to be left either on the left or right, so that all the houses get ventilation of 12 Ft. in the living rooms, which is more than 10 Ft., as per the Bye-laws. Further, the set-backs in the front and the rear are 15 ft. and 10 ft. respectively. Since no change in the above set-backs have been notified till date by the MCD, the change in the set-backs, as provided in the Master Plan - 2021, are not applicable for Green Park. Therefore, the approval of the building plans for plot No. F-3, Green Park, as conveyed by the MCD on 29.3.2007, is illegal, arbitrary and will not stand the scrutiny of law.

2. that the layout plan of Green Park Colony had been approved by the MCD and notified in the gazette, and since the DMC Act is as Act approved by the Parliament, it cannot be superceded. Attention was also drawn to the fact that the Master Plan - 1962 had excluded colonies, like Green Park, but the right of set-backs so approved through the lay-out plans earlier has now been abridged by the new Master Plan - 2021. It was submitted that the off-sets provided by the approved lay-out plan, prior to the notification of the Master Plan - 1962 cannot, therefore, be abridged.
3. that as per the Bye-laws, the maximum height permissible for any building having ROW of 30 Ft., is 45 ft. In the present case, the MCD has allowed the height of the building on Plot No. F-3, Green Park to be 49 Ft., which is illegal. Besides, four servants quarters have been provided on the terrace of the 3<sup>rd</sup> floor, thus, increasing the height of the building further, by approximately another 7 ft., which is again illegal.
4. that the appellant had been adversely affected as his right of having 12 Ft. ventilation has been snatched illegally as the width of the side set-backs has been reduced to 6 Ft. only.
5. that the ground coverage of 183.02 Sq. Mts. could be easily achieved by having a front set-back of 3 Mts., leaving the other set-backs on the side and the rear side, as per the earlier approved set-backs for Green Park.
6. that as per the sanctioned plan, the basement has to be used for storage, but in the present case, bed rooms, toilets and a pantry have been constructed in the

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basement of the house, and this has to be counted towards FAR as these are being used for residential purposes.

7. that the extension of the height of the boundary wall beyond the permissible limit prescribed under the Building Bye-laws is another violation.
8. that the Appellate Tribunal has failed to appreciate the submissions of the appellant, and rejected the case.

On behalf of MCD, the respondent No. 1, it was submitted that it had approved the building plans submitted by respondent No. 2, after being satisfied that it was in accordance with the provisions of the Act, Building Bye-laws and the Master Plan of Delhi - 2021. The building plans have been sanctioned for the construction of a basement, ground floor, first floor, second floor and third floor. Although the Hon'ble Supreme Court has restrained MCD from granting permission for construction of third floor, vide its order dated 7.5.2007, in the present case, the plans were sanctioned on 29.3.2007 i.e. much prior to the order issued by the Hon'ble Supreme Court. As far as the norms regarding the permissibility of set-backs are concerned, it was submitted that the same are being followed as per the provisions contained in the new Master Plan for Delhi - 2021, and not as per the approved lay-out plan of the colony. In this regard, it was further submitted that clause 12.2 of the Building Bye-laws 1983, stipulates that the open space to be left around the building, including set-backs, covered area, total built-up area, limitations of FAR, etc. shall be as per the Master Plan/Zonal Plan stipulations. The relevant provisions relating to open space around a building and height limitations are given in Appendix "J", wherein it is mentioned that used coverage, FAR, set backs, open space, height, number of stories, parking, etc. for various categories of building shall be as per the provisions contained in the Master Plan/Zonal Plan and the amendments made in them from time to time. While the MPD-2001 provided that the minimum set-backs for different sizes of plots of all categories of use shall be as mentioned in the Master Plan unless otherwise prescribed, and in case the lay-out plan has been sanctioned with more than the minimum prescribed set-backs, the same shall be followed in sanctioning of building plans. Accordingly, the set-backs marked on the approved lay-out plan of residential colonies were also taken into consideration at the time of sanctioning of building plans. However, under the new Master Plan of 2021, this condition has been

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deleted in case of residential plots. Hence, the appellant's contentions in this regard are not valid.

On behalf of Respondent No. 2, it was, basically, submitted that it had purchased the property in question, vide two registered sale deeds dated 20.12.2006 and 24.1.2007 respectively, and had obtained the necessary approvals and sanctions of the building plans from the MCD, vide sanction order dated 29.3.2007. The respondent has completed the construction strictly as per the sanctioned plan and has transferred the property, floorwise, to the different buyers. It was further submitted that the building plans were sanctioned by the MCD in accordance with the provisions of the Act, the Building Bye-laws and the Master Plan - 2021 and as well as the norms prevalent at that point of time. It also conforms to the lay-out and the Zonal Development Plan of the area. With regard to the objections of the appellant relating to reduction in the set-back areas, it was submitted that this aspect has also been considered by Appellate Tribunal and that no irregularity in the procedures has been found. The MCD's action in sanctioning plans does not suffer from any illegality or arbitrariness or non-application of mind. In respect of the objections of the appellant that the new Master Plan is not applicable to the Green Park area, it was contended that the appellant's interpretations of the law is not correct, and this objection of the appellant has been rightly rejected by the Appellate Tribunal. In fact, the MPD-2021 is applicable to entire Delhi and no colony or area has been excluded there from. It was further submitted that under the new Master Plan, it is not mandatory now to leave a side set-back as is being contended by the appellant. The size of the plot, in question, is 297.29 sq. mts. for which there is a mention of 3 mts. side set-back against such category of plots in the new Master Plan, but it also provides that "in case the permissible coverage is not achieved with the above mentioned set-backs in a plot, the set-backs of the preceding category may be allowed." Since the respondent No. 2 was not getting the coverage, the coverage has been allowed as per the allowance for the lower category, whereunder no set-back is mandated to be left open. Besides, the respondent No. 2 was also entitled to 187.50 sq. mts. coverage on each floor, but he has opted to construct only 183.02 sq. mts. It was also entitled to cover the rear set-back completely, but has decided to leave it open as it is to be used as a service area. Hence, the sanctioned plans do not suffer from any kind of illegality or non-application of the mind and that the Respondent No. 2 has carried out his construction in accordance with the law.

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In the course of hearing, it was felt appropriate to seek an independent opinion from DDA as to whether the building plans have been sanctioned in violation of the law or not. Accordingly, Director (Buildings), DDA has submitted his report dated 17.11.2008, stating that:-

"the contents of the appeal has been examined with respect to the provisions of MPD - 2021 and Building Bye-Laws. It is observed that the building plans were sanctioned by the MCD on 29.3.07 for the Plot No. F-3, Green Park Main, measuring 297.28 sqm., with the set-backs as per MPD-2021 applicable for the preceding category of plot i.e. upto 250 sqm. (front set back 3 mtr.) as the permissible coverage could not be achieved with the set-backs as per the Layout Plan. The ground coverage achieved is 183.02 sqm. as against the permissible ground coverage in the preceding category of plot measuring 250 sqm. which is 187.5 sqm.

The MPD-2021 under Chapter 4 sub clause 4.4.3, under notes 5 (ii), provides that "the total coverage and FAR permissible in any plot in a category, shall not be less than that permissible and available to the largest plot in the next lower category". Under these provisions, the permissible coverage of the lower category i.e. plot measuring upto 250 sqm. have been considered. As regards, the permissibility of set back under sub clause 4.4.3 (a), Master Plan of Delhi provides that "in case the permissible coverage is not achieved with the mentioned set backs in the plot, the set backs of the preceding category may be allowed". Therefore, to achieve the permissible ground coverage for the plot measuring 250 sqm. i.e. 75% ground coverage (187.5 sqm.), the set back of 3 mtr. in front only was need to be considered by the MCD. However, as per the building plan, the front set back have been indicated as 15 feet (4.5 mtr.) and a set back of 3 mtr. in rear is proposed, which is reasonable.

Considering the MPD-2021 provisions and the Building Bye-Laws, the building plan as sanctioned by the MCD is in order. The AT, MCD, vide their judgment dated 27.3.2008, while endorsing the decision of MCD, has elaborated the facts and the Master Plan - 2021 provisions also."

I find that the MCD Authorities have considered the Building Plans relating to the

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property in question in accordance with the provisions of the Law. Their position has been explained in their submissions above. The changes in the set-back requirements have been effected by the new Master Plan for Delhi - 2021, which has now been notified for entire Delhi, and that the sanction of building plans have to be strictly governed by the provisions of the new Master Plan. Hence, the contention of the appellant that the new Master Plan cannot be made applicable to colonies like Green Park and that its provisions cannot override the lay-out approvals done by MCD for such colonies, cannot be accepted. Further, the independent opinion submitted by the DDA also confirms that the MCD's action is in order as can be seen from the note dated 17.11.2008 submitted by Director (Buildings), DDA. In my view, there seems to be no infirmity in the MCD's action in sanctioning the building plans in respect of the property in question. I find that the Appellate Tribunal, MCD has gone into all the issues raised by the appellant in detail, and has passed a fair and reasoned order. I, therefore, find no reason to interfere with it. However, since the appellant has raised some basic issues relating to the provisions of the new Master Plan - 2021 with regard to colonies like Green Park, etc., whose lay-out plans had been approved prior to the coming into force of the first Master Plan for Delhi in 1962, I feel that the provisions of the Master Plan, as they impinge on the future of such colonies, need to be re-visited. It needs to be mentioned that the first 5 year review of the Master Plan for Delhi - 2021 is due in 2012. These issues should be taken up in this process of review. A copy of this order should accordingly be remitted to Commissioner (Planning), DDA. Till such review results in any modification of the existing Master Plan provisions, the present provisions can continue to be applied by MCD in the matter of sanctioning building plans in these areas. In view of the above, the directions issued by this Court dated 14.10.2009, directing the MCD Authorities not to sanction any building plans relating to properties in Green Park area, is hereby withdrawn.

With regard to the allegations that the Respondent No. 2 has raised certain constructions or carried out certain developments in the property, which are beyond the sanction and allegedly contrary to the provisions of the law, the MCD Authorities shall look into these allegations and take appropriate action, as deemed fit, under the law.

This appeal is disposed off in terms of the above directions.

Announced.

  
(Tejendra Khanna)  
Lieutenant Governor : Delhi  
15.03.2010

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