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✓ The Director (Plg.) MPR,
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Director (Plg.) MPR/TC,
D.D.A. Vikas Minar N. DELHI-2
Dy.No. 928
Dated 17-11-11

Dated 15.11.2011

Lead Corral Dy. No. 36-A
Dated
R&D Section, Vikas Minar
Delhi Development Authority
Meeting Asset

Dear Sir,

Subject: Mid Term Review of Master Plan for Delhi, 2021.

With reference to Public Notice dated- 4.10.2011 issued by the Commissioner-Cum-Secretary, we are submitting our suggestions and views in the form of a NOTE drawn by our Ex-President Shri S.C. Khandelwal, as per Appendix "A".

It will be appreciated if an opportunity of personal hearing is also given.

Thanking You.

Yours faithfully,

(SATENDER JAIN)
PRESIDENT

Encl: As Above. (20 Pages)

Executive Committee

ANAND KUMAR JAIN

ASHOK NARANG

BHARAT MISRA

G. S. KHANDELWAL

HARISH CHANDER

HARISH JAIN

RAJIV GUPTA

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S. C. KHANDELWAL

SULEKH CHAND JAIN

MUKESH ARNEJA

Panel of Arbitration

H. S. SETHI

HOSHIAR SINGH JAIN

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15th November, 2011

NOTE ON
MID-TERM REVIEW OF MASTER PLAN FOR DELHI-2021

Drawn by

SATISH CHANDRA KHANDELWAL (Ex. President)

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1. PRELIMINARY OBSERVATIONS:

- 1.1 At the outset for meaningful review it is necessary to take appraisal of outcome of the Master Plans which were notified during last 50 years since 1962, so that in the light of past experience appropriate policy may be chalked out.
- 1.2 Since this Note is confined to comments on the provisions related to TRADE, an attempt has been made to quote facts and figures which are open to verification from the record of the Authorities concerned.
- 1.3
 - i) First Master Plan, 1961 was notified on 01.09.1962.
 - ii) Second MPD, 2001 was notified on 01.08.1990,
 - iii) Third Master Plan, 2021 was notified on 07.02.2007.
- 1.4 Prime responsibility for implementation of Schemes envisaged in the Master Plan and Zonal Plans devolved upon Delhi Development Authority, Municipal Corporation of Delhi and the State Government of NCT of Delhi. **RELEVANT PROVISIONS OF D.D.ACT AND DMC ACT**
- 1.5 **DELHI DEVELOPMENT ACT, 1957- Supervisory and Monitoring Power.**
 - i) Section 5 - Constitution of Advisory Counsel
 - ii) Section 26 - Submission of Annual Report to Central Govt. which is liable to be placed before both the Houses of Parliament.
 - iii) Section 41 - Power of Central Government to issue directions.
 - iv) Section 42- Power of Central Government to call for any report, returns and information pertaining to implementation of Master Plan.
 - v) Section 15 - Power to acquire land.

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1.6 **DELHI MUNICIPAL CORPORATION – ACT, 1957 – Power and Authority.**

- i) Section 407 - Embargo on use of any place as market without any Licence.
- ii) Section 409-410- Prohibit in use of unlicensed markets.
- iii) Section 419 - Power of Commissioner to prevent use of premises in any particular Area for commercial activity.
- iv) Section 431 - Power of entry and inspection of any Land or Building to ascertain any contravention of the Act & Bye-laws in respect of Land and Building.
- v) Section 116A-Classification of Buildings into USE-WISE category for the purpose of levy of Property Tax.
- vi) Section 124 - Maintenance of Municipal Assessment Book which records all particulars of use on any Land or Building.
- vii) Section 172 - Power of Commissioner to conduct inspection of any Land or Building to determine Ratable Value and Tax.
- viii) Section 466A- Type of offense which falls under category of cognizable offences.
- ix) Section 467 - Prosecution against any violation.
- x) POWER OF CENTRAL GOVERNMENT
To issue directions to MCD.

1.7 In the light of above statutory provisions it is a matter of surprise that despite adequate powers enshrined in the governing Acts, from view point of implementation of Master Plan, the picture depicts dismal state of affairs as evident from the instance quoted below:-

- i) In the MPD, 1962 in relation to commercial activity, planning was made as under:-
 - a) District Centres – 75
 - b) Community Centres – 300
 - c) Local Shopping Centres – 1250
 - d) Commercial Shopping Centres – 3000

ACTUAL ACHIEVEMENT

- a) District Centres – 9
- b) Community Centres – 35
- c) Local Shopping Centres – 135
- d) Commercial Shopping Centres – 435

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- ii) SIMILAR PICTURE IS LIKELY TO EMERGE FROM STUDY OF SUBSEQUENT MASTER PLANS.

2. GLIMPSE OF PRESENT SCENARIO:

As against concept of presenting Delhi as World Class beautiful City, during a long span of 50 years since introduction of first Master Plan in 1962, the conditions in major Sectors, prevail as under:-

- i) Heavy encroachment on public land.
- ii) New problems arising out of creation of J.J. clusters.
- iii) No visible improvement in condition of Slum colonies.
- iv) Lack of infrastructure and Civic amenities.
- v) Mushroom growth of about 1700 unauthorized Colonies inhabited by about 1/3rd population of Delhi.
- vi) Unchecked unauthorized constructions on mass scale.
- vii) Massive conversion of residential properties for commercial use.
- viii) No effective mechanism to redress genuine grievances of Citizen.
- ix) Ugly look of the Capital of India, arising out of hundreds of Buildings rendered in dilapidated condition by demolition on the ground of unauthorized constructions and sealing of large number of Business Establishments.
- x) An atmosphere of nepotism and corruption with active connivance of Administrative Machinery.

3. REASONS FOR FAILURE OF MASTER PLAN:-

Broad reasons of dismal results, can be attributed to factors briefly stated below:-

- 3.1 For the purpose of formulation of sound planning, Survey Report which is prepared under Section 7 of Delhi Development Act, 1957 and the Rules made under Delhi Development (Master Plan and Zonal Development Plan) 1959, **constitutes a very important document.**
- 3.2 There is reason to believe that the Survey Report did not reflect ground reality in several matters. As a result of faulty and unrealistic survey report, the basic document relied upon to prepare Master Plan, led to erroneous planning.
- 3.3 There is yet another important factor pertaining to Civic Survey, which does not seem to have been given serious consideration. It is a matter of record that there is **gap of many years** in which survey was conducted and Master Plan was notified. The conditions which occurred and/or underwent changes during the interim period, were not taken into account at all, while giving final touch to the Master Plan.
- 3.4 Modalities of compliance of requirement of section 10 of the Delhi Development Act in the matter of inviting and disposal of objections, are also far from satisfactory Bitter practical experience gained by author of this Note who had filed objections and was also given an opportunity of personal hearing, is that **entire exercise is virtually an eye wash** and nothing short of formality.

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- 35 Reference is invited to the contents of Para 16 of INTRODUCTION of Notification dated- 7.2.2007 re: MPD, 2021 in which it is stated that in response to Notification dated- 16.3.2005, 7000 objections / suggestions were received and 611 persons / organizations were given personal hearing. 7000 number of representations shows that large number of Stake Holders had lodged protest and dissatisfaction against proposed MPD. Lack of any appreciable change in the original proposed draft and adopted Master Plan, leads to an inference that final shape to MPD was given as per pre-planned policy, more so because during course of hearing, members of Board of Enquiry did not dispute grounds of objections stated by invitees. Justifiably they left with an impression that their objections have been sustained to the satisfaction of Board of Enquiry.
- 3.6 Ultimately disregard of views and objections, coupled with non-cognizance of GROUND REALITY, practical aspects, socio economic condition, constraints and limitations of Stake Holders, resulted in impasse.
- 3.7 Planning made at the cost of **major disruption of well settled peaceful life of citizen and dislocation of means of livelihood.**
- 3.8 Planning made without taking into consideration consequences arising out of striking all Stake Holders with one and the same stick without drawing distinction between decades Old Business, Establishments and new comers.
- 3.9 Planning made without conceiving any alternate means for resettlement and rehabilitation for uprooted section of Society.
- 3.10 Under the garb of acquisition of land for PUBLIC PURPOSE misuse thereof by offering part of the land for auction, apparently to generate finances in repugnance to the aim and object for which the land was acquired as per scheme of Master Plan. In fact lethargic attitude of Administrators to utilize acquired land on priority for the purpose of implementation of the Plan, and mismanagement resulted in heavy encroachment upon Govt. Land.
- 3.11 Multiplicity of Authorities and lack of co-ordination amongst the concerned Agencies.
- 3.12 In the context of Public Bhagidari scheme non-participation of Stake Holders in formulation of policies as per actual need of people, at the primary stage of deliberations.
- 3.13 Dereliction of duties in taking timely action against violations poor monitoring and lack of accountability on the part of Executive Wing.
- 3.14 Drafting of Master Plan in an intricate couched language and frequent modifications therein from time to time.

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- 3.15 During the course of 5 yearly mid-term Review of Master Plan no concrete steps were taken to take care of genuine grievances brought to notice of Authorities, by making appropriate amendments.

4. ROLE OF JUDICIARY

- 4.1 It is pertinent to recall notable observations below which were made by the Hon'ble Chief Justice of the Supreme Court of India, in the proceedings dated- 16.2.2006 in the pending matter of M.C. Mehta versus Union of India in which D.D.A and M.C.D are also party as respondents.

OBSERVATIONS

- i) **"With a view to secure the implementation of laws and protect fundamental rights of the citizen, various orders were passed from time to time".**
 - ii) **"The Court has a constitutional duty to protect the fundamental rights of Indian Citizens".**
 - iii) **"The problem is not of the absence of law, but of the implementation".**
 - iv) **"Dealing with Municipal laws, a strict constitutional approach must be adopted".**
 - v) **"Rule of law is the essence of Democracy".**
- 4.2 Above observations have important bearing in the instant case as emphasis is laid down with regard to implementation as per governing Act and Rules.
- 4.3 However, an interim order passed in the above matter to the effect that for the purpose of permissible commercial activity, Pre- 1962 Business Establishment, are to be given, recognition, is playing havoc with peaceful life of old established Traders and strikes at the very root of their means of livelihood as well as that of the employees dependent upon them.
- 4.4 Above unfortunate situations seems to have cropped up in as much as the Traders were not made a Party to the Suit proceedings and the Hon'ble Chief Justice passed order on the basis of material placed on record. It is apprehended that under direction of Respondents the learned Advocates engaged by them, did not bring to the notice of the Hon'ble Court the provisions of relevant governing Act and Rules etc., presumably under fear complexion of exposure of additions acts of omission and commission perpetuated by personnel of the Plan Implementation Agencies.

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- 4.5 It will be appreciated that a Trader of average means is handicapped in knocking at the door of Hon'ble Supreme Court by engaging an eminent lawyer as the litigation is very expensive.
- 4.6 Consequently, hope rests upon the role of representatives of Public in Parliament and Government to provide genuine relief by means of legislative measures.
- 4.7 At this juncture as the good luck would have it, statement dated- 10.11.2011 of Hon'ble Union Minister of Ministry of Urban Development, has created a sense of optimism as the views expressed by the Hon'ble Minister, reflect appraisal of ground reality, hardship of Stake Holders and sincere desire to take care of legitimate grievances of affected section of Society.

5. ADDITIONAL SIGNIFICANT FACTORS.

- 5.1 The Hon'ble Supreme Court in the above matter vide order dated- 16.2.2006 has held that-
- (i) **"After handing over of the area to the Local Authority under Section 36 of the Delhi Development Act, the power of demolition and/or sealing is conferred upon Local Authority".**
 - (ii) **"After the responsibility of area has been assumed by the Local Authority under section 36 of the DDA Act, power to deal with properties in that area for any contravention, would be exercisable by such Authority, depending upon statutory provisions governing the said Local Authority referred to in Section 31A of the Delhi Development Act, as Competent Authority".**
 - (iii) **"Hon'ble Court also constituted a MONITORING COMMITTEE".**
- 5.2 (i) From the aforesaid finding of the Hon'ble Court, it is crystal clear that Municipal Corporation of Delhi is vested with power to deal with unauthorized construction and / or sealing and any action is to be taken in accordance with statutory provisions of DMC Act, 1957.
- (ii) At this stage it is pertinent to point out that in the proceedings of the above mentioned case, hitherto the Hon'ble Court has not held any part of DMC Act, 1957 as redundant, unconstitutional or inoperative. As such the DMC Act, 1957 and all the provisions contained therein, attain legal sanctity.
- 5.3 In the above context, it is necessary to examine additional relevant provisions of the DMC Act, 1957 which are as under:-

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- (i) Incidence of unauthorized construction is covered by Section 343.
- (ii) Offence of Misuser of land is covered by Section 347.
- (iii) Under Section 466 A, violations committed under Section 313-332-333-334-343-344-345 and 347 are construed as cognizable offence.
- (iv) Section 467 delegates power of prosecution against aforesaid offences but subject to condition that complaint is lodged by designated officials of MCD.
- (v) Section 471 of the DMC Act lays down limitation period for prosecution. The provisions read as under:-

“No person shall be liable to punishment of any offence against the Act or any Rule, Regulation or Bye-law made there under, unless complaint of such offence is made before a Municipal Magistrate within 6 months next after:-

(a) The date of Commission of such offence

OR

(b) The date on which the Commission or existence of such offence was first brought to the notice of the complainant.”

- (vi) Section 347 E puts bar on jurisdiction of Courts i.e any aggrieved person is debarred from approaching Civil Court.
- (vii) Section 347 B of the DMC Act, provides remedy to any aggrieved person to file an Appeal with the Appellate Tribunal.
- (viii) Section 347 D of the DMC Act, contains provision to file an Appeal with the Administrator (Lieut. Governor) against Order of Appellate Tribunal.
- (ix) It may also be recalled that during the proceeding of the aforesaid case pending before Hon’ble Supreme Court, on behalf of MCD an Affidavit dated- 16.11.2005 was filed by Addl. Commission, by declaration, inter-alia as under:-
 - i) Show cause Notice shall be issued.
 - ii) Opportunity of hearing shall be given.
 - iii) Sealing action shall be taken by following the due process of law.

5.4 **LEGAL REMEDY**

As approach to Civil Court is Prohibited, two tier judicial system has been provided in the DMC Act viz.

- i) First Appeal against order of Commissioner to Appellate Tribunal.
- ii) Second Appeal to Hon’ble Lieut. Governor against order of Appellate Tribunal.

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6. ADDITIONAL RELEVANT LEGAL PROVISIONS

6.1 EXTRACT FROM DELHI DEVELOPMENT ACT, 1957

Section 14 reads as under:-

"After the coming into operation of any of the Plans in a Zone, no person shall use or permit to be used any Land or Building in that Zone otherwise than in conformity with such Plan.

1st PROVISIO

Provided that it shall be lawful to continue to use upon such terms and conditions as may be prescribed by Regulations made in this behalf any Land or Building for the purpose and to the extent for and to which it is being used upon the Date on which such plan came into force.

6.2 EXTRACT FROM BUILDING BYE-LAWS, 1983,

BYE-LAW 2.25 Definition of EXISTING BUILDING ON USE AS UNDER:-

"A Building structure or use as sanctioned/ approved/ regularized by the Competent Authority, **existing before the Commencement of Bye-Laws**".

6.3 EXTRACT FROM MODIFIED DELHI BUILDING BYE-LAWS, 1983 (W.E.F. 1.1.2003)

BYE-LAW 3.7 Definition of EXISTING APPROVED BUILDING, as under:-

"Nothing in the Bye-law shall require the removal, alteration or abandonment, nor prevent continuance of the use or occupancy of an existing approved Building, unless in the opinion of the Authority, such building constitutes a hazard to the safety of the adjacent property or the occupants of the Building itself.

6.4 DECLARATION OF LOCAL COMMERCIAL AREAS BY D.D.A

Vide Circular bearing no. 0.0. No. L17/CLC/68 dated- 10.1.1969 of MCD, a list of Local Commercial Areas in which Trades have been permitted in Local Commercial Sub District under special Appeal by DDA, was released as under:-

<u>Resolution No.</u>	<u>Date</u>	<u>Number of notified Local Commercial Areas</u>
321	27.07.1963	16
378	07.08.1963	44
490	28.10.1963	58
555	13.11.1963	22
17 th meeting	08.01.1964	08
18 th meeting		18
Total:-		166

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NOTE:

Subsequent declaration of Local Commercial Areas, are ascertainable from D.D.A.

6.5 RELAXED POLICY OF REGULARIZATION.

- i) Vide Notification No. K- 12016/5/79-DD-11A/VA/9B dated- 15.05.1995, policy was relaxed by D.D.A to allow enhanced FAR and exempt Basement from calculation of FAR.
- ii) Further modifications were made vide Notification bearing No. K- 12016/6/79-DD9A/VA/9B dated- 25.09.1998 by DDA regarding rates chargeable for levy on additional FAR.
- iii) Gazette Notification dated- 07.06.2000 was issued by the Govt. of India regarding sanction of enhanced FAR.
- iv) Order No. 8/EE(B) HQ/92 dated- 8.12.1992 was issued by MCD regarding regularization of excess coverage and infringement of Set-Backs.
- v) MCD issued Notification No. PSC/CD/26/98 dated- 17.8.1998 regarding levy of additional FAR charges.
- vi) MCD issued Public Notice-Cum-Press Release dated- 27.11.1998, carrying salient features as under:-
 - a) Relaxed Building Bye-Laws – enforced with immediate effect.
 - b) Major relaxation allowed for the first time.
 - c) Increased permissible floor area for all sizes of residential plots.
 - d) Exemption of Basement area from calculation of FAR.
 - e) Citizen would now be able to construct (i) an additional 3rd storey on plot upto 50 Sqr. meter (ii) complete 3 storeys on Plot above 50 Sqr. meter (iii) 4 storeys on plots above 250 Sqr. meter facing 24 meter and above withroad.
 - f) MCD would charge Rs.450=00 per Sqr. meter as levy on additional FAR as finally approved by the Govt. of India.
 - g) Citizen who have already carried out additional construction in violation of pre 23.7.98 norms, can also avail the opportunity of getting their unauthorized construction regularized on payment of levy plus surcharge of 10% in addition to the existing compounding fee.
 - h) Period of 30 days given to apply for regularization.

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- vii) Civic Guide published by commissioner of MCD Shri Subhash Sharma, in 1995-1996 contained information as under:-
 - a) Conversion of Barsati into dwelling Unit.
 - b) Betterment charges @ Rs.150=00 Sqr. meter.
 - c) Total coverage of Barsati floor.
 - d) Change of land use from residential to commercial charges @ Rs. 4000=00 per Sqr. meter in addition to Parking Charges Rs. 1500=00 Sqr. meter.
- viii) It is pertinent to point out that in pursuance of aforesaid Public Notice dated-27.11.1998 issued by MCD irregularities were regularized against prescribed compounding fee irrespective of use of the Building. Impliedly land use was also regularized.

7. ROLE OF MONITORING COMMITTEE

Modalities of style of functioning of the Monitoring Committee appointed by the Hon'ble Supreme Court, is reported to be as under:-

- 7.1 If the Hon'ble members of the Committee to conduct physical inspection, pay visit to any Area and feel that any particular Business premises is required to be sealed, an immediate order is passed on to MCD to seal the property.
- 7.2 On receipt of such order, MCD complies with directions with utmost expediency.
- 7.3 While executing said orders, RULE OF LAW is completely dispensed with by MCD in the light of following observations:-
 - i) In accordance with statutory provisions enshrined in the DMC Act, 1957, coupled with requirement of principle of natural justice, to contemplate any punitive action against any defaulter, following action is mandatory:-
 - (a) Issuance of Show Cause Notice.
 - (b) Opportunity to make representation in defence.
 - (c) Opportunity of hearing.
 - (d) In case of rejection of representation, to pass an "SPEAKING ORDER" to enable aggrieved person to file an Appeal with the Appellate Tribunal by stating grounds emanating from the "SPEAKING ORDER" which lays down necessity of dealing with each and every contention raised in the representation and to assign reasons for rejection..
 - ii) Above duty was also supposed to be discharged by MCD in view of averments contained in the Affidavit dated- 16.11.2005 which was filed by MCD referred to in Para 5.3 (ix) supra.

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- iii) Another important angle for consideration in the interest of justice is that in any matter, any initial order which is appealable, cannot be deemed to be final until ratification by the Appellate Authority.
- iv) In the above context it is pertinent to state that under the DMC Act a period of 30 days from the date of Notice or order has been prescribed to file an Appeal. Thus before taking any final action, outcome of an Appeal, is to be awaited.

8. PLIGHT OF TRADERS

- 8.1 In as much as above facts were not brought to the notice of the Hon'ble Supreme Court, as a result of aforesaid order dated- 16.2.2006, many properties whose owners and occupants were unable to prove that Commercial activity was being conducted since Pre-1962 period, were sealed and/or are under process of sealing.
- 8.2 Action of sealing by the Local Authority is being taken without following the Rule of law and by throwing laid down procedure to winds.
- 8.3 Statutory right provided in the relevant Statute to file an Appeal has been snatched away.
- 8.4 As direct approach to Civil Court is prohibited and the only judicial Forum available under the DMC Act, is by way of filing an Appeal with the Appellate Tribunal, the Traders are being deprived of enjoying even such a statutory right because of non-compliance of prescribed lawful procedure.
- 8.5 It is irony of fate that although the Traders who conducted business activity after 1962, have a strong case on the strength of provisions of governing law, Bye-laws and policies of the Govt. to prove that under the given circumstances, they enjoy an immunity from prosecution on the ground of violation of Section 347 of DMC Act, no FORUM is available to redress grievances.

9. REMEDIAL STEPS

- 9.1 In the wake of grave hardship being faced by decades old Business Establishment, the Government is expected to conceive measures to grant protection.
- 9.2 To achieve above noble object two remedies seem to be available as under:-
 - 1. Petition to the Hon'ble Supreme Court Under Article 137 of the Constitution of India by the Government and/or DDA/MCD, to seek review of the aforesaid order in question, on the grounds, inter-alia, as follows:-

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- a) Omission to bring to the notice of the Hon'ble Court, all the relevant provisions of Law, Bye-laws and policy pursued by Government.
- b) Error apparent on the face of the record, arising out of important factum that in passing the order dated- 16.2.2006, provisions of MPD, 1962 were taken into consideration whereas at that time MPD, 1962 was superseded by MPD, 2001 notified on 1.8.1990 and an order ought to have been passed on the basis of MPD, 2001 which was then in force.

ALTERNATIVELY

2. By resorting to Legislative measures on the pattern of Delhi special Laws Provision Act which was enacted by Parliament in recognition of genuine need to grant protection.

10. COMMENTS ON SPECIFIC ASPECTS OF THE MPD, 2021

PRELIMINARY OBSERVATIONS

- 10.1 It is a matter of record that since 1962 three Master Plans for Delhi were Notified as under:-
 - i) MPD, 1962 notified on 01.09.1962
 - ii) MPD, 2001 notified on 01.08.1990
 - iii) MPD, 2021 notified on 07.02.2007
- 10.2 Each of the above Master Plan bearing different features, attained an independent entity and was enforced from the date of Notification.
- 10.3 In view of above factum, distinction is required to be made with regard to past and future Development.
- 10.4 Thus it requires clarification that the events which occurred prior to the date of notification of new Master Plan, shall be governed by the provisions of relevant Master Plan WHEREAS the provisions of MPD, 2021 shall be applicable in respect of events which take place on or after 07.02.2007 synchronizing with the date of notification of MPD, 2021. In other words the provision of MPD, 2021 cannot and should not be made applicable retrospectively.
- 10.5 If at all any violation of any nature has come to notice of the Authorities in the context of past relevant Master Plan which occurred during the period of its enforcement, appropriate punitive action is called for in the light of provisions thereof.

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11. REF: CHAPTER 5 – TRADE & COMMERCE**(A) PROVISION OF MASTER PLAN**

- i) By 2021 additional 2.12 Lakh Retail Enterprises is anticipated.
- ii) By 2021 additional employment to the extent of 4.59 Lakh employees is anticipated **(with scope of further growth in other Establishments).**
- iii) In residential Areas/Streets and/ Stretches where commercial activity was allowed in MPD, 1962 OR in the Areas Declared EARLIER as Commercial use, such use shall be permissible.

(B) COMMENTS

- i). Planning to accommodate anticipated additional Retail Enterprises and employees, depends on availability of land. In the wake of scarcity of land perhaps it may be advisable to create additional space in the existing buildings and vacant land, if any, by making suitable amendments in the Building Bye-Laws.
- ii). With reference to contents of clause 5.1 by insertion of word “OR” and “EARLIER” meaning is derived that besides Residential Areas in which commercial activity was allowed in MPD, 1962, the Areas EARLIER (i.e during the period 1.9.1962 and 07.02.2007 on which date MPD, 2021 came into force) DECLARED as Commercial Areas, shall also qualify for commercial use. This position should be clarified by insertion of EXPLANATION or otherwise, to remove any ambiguity in interpretation to the above effect, as also to extend genuine protection to Traders whose interest was jeopardized by aforesaid order of the Hon,ble Supreme Court vide which only Pre-1962 Establishments were declared legal.

12. REF: CHAPTER – 6 WHOLESALE TRADE**(A) PROVISION**

- i). Hazardous Trade to be shifted to assigned Areas.
- ii). Further extensions is to be totally stopped.
- iii). under the scheme to provide incentive:-
 - a) Liaison offices shall continue in present location.
 - b) Development of new Markets and Warehousing.
 - c) Reduction in taxes.
- iv). Under the scheme of disincentive:-
 - a) Restriction on entry of heavy vehicles.
 - b) Discontinuation of hazardous Trade.

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- v). Restriction on storage of Food grain, Iron & Steel etc.
- vi). Non-renewal of Trade Licences for Wholesale Trade in Non-conforming Areas.
- vii). Sadar Bazar to be redeveloped at the same location.
- viii) Trade Associations to share responsibility to re-development, subject to payment of Betterment charges.
- ix) For creation of Sub-City level markets.
 - a) Table 6.1 contains 8 locations to accommodate trading in 4 commodities and Additional 4 locations without specifying nature of trade.

B. COMMENTS

Primarily, in the face of changing conditions, wholesale Trade is required to be defined and identified as at present this role is confined to Branch offices, Commission Agents and Distributors.

- i) If we look into past Master Plans, it will be observed that similar provision of shifting of hazardous trade, was made but the scheme has not registered any progress. Paper & Chemical merchants extended cooperation to shift their markets but without any result, Reasons attributed to failure of the scheme should be analyzed and appropriate steps should be contemplated to implement the Plan.
- ii) Shortage of space does not permit further expansion. Scope lies in exploring feasibility of additional space in the existing land and building.
- iii) Under the scheme of incentive:
 - a) Maintenance of merely liaison office in present location, does not offer solution of the problem in perpetuity.
 - b) In respect of Development of new markets and warehousing, planning may be successful if the acquired land is earmarked in the location to be decided in consultation with Stake Holders. Further as a matter of policy, land should be made available free of cost as an alternative site and the Trade Association be given responsibility to develop as per approved Plan of Authorities.
 - c) Reduction of taxes does not bear any indication with regard to type of taxes referred to and the quantum thereof.
- iv) Under the scheme of disincentive:-
 - a) Necessary steps have already been taken by Traffic Police.
 - b) See comments in Para (i) Supra.

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- v) Restrictions as proposed, should be made applicable for new Establishment without causing dislocation to the existing trade.
- vi) Policy of Trade Licences does not make any distinction between Wholesale or Retail Trade as the licence is issued by MCD for a commodity, Definition of Non-conforming Area is required to be clarified in the wake of classification of the Areas in three categories namely (a) Commercial (b) Mixed Use and (c) Pedestrian.
- vii) Condition of **Sadar Bazar** from the view point of infrastructure and other aspects, is identical in other Areas falling under purview of Special Area. Concept of re-development at the same location is laudable. If similar exercise is made to re-develop other markets in the Special Area in same location, chances of dislocation of existing trade shall be obviated to a great extent and DDA shall be exonerated of responsibility to find Land and Area for the Trade proposed to be shifted at the same time scheme shall bring much relief to existing Trade.
- viii) Trade Associations have always extended a hand of succour to the Administration. Condition of payment of Betterment Charges require full details and justification.
- ix) Table 6.1 refers to planning of only limited number of markets for limited type of commodities which falls short of actual requirement. Thus attention should be focussed on re-development of existing markets in same location in consultation with Stake Holders and by involving their participation.

13. **CHAPTER – II – URBAN DESIGN**

The Policy for the Walled City and it's extension, declares an intention to preserve and retain the overall traditional character.

COMMENTS

- i) To achieve above object it is necessary to take appraisal of the factors which fall under the ambit of traditional character.
- ii) In above context, apart from specified existing historical monuments, Delhi, enjoyed status of a major, trading Centre in Northern India since over two Centuries to cater to requirement of many States.
- iii) Substantial revenue is earned by the Govt. of NCT of Delhi, from trading activity.
- iv) Prudence demands that planning of re-development should be made in such a manner that existing peaceful life of well settled Citizen is not disturbed. Disregard of this aspect shall create new problems which will add to further difficulties of the Government.
- v) Metro Rail management has set an example to prove that by shrewd planning much can be done within available space. Study of their planning may be useful.

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14. CHAPTER 15 – MIXED USE REGULATIONS**PRELIMINARY OBSERVATIONS**

- 14.1 Perusal of MPD, 1962 reveals that at that time also situation of different (now called as Mixed Use) use of a property prevailed but for the first time concept of “MIXED USE” was introduced in MPD, 2001.
- 14.2 To appreciate the problem in proper perspective, it is necessary to look into the factors attributed to above situation.
- 14.3 Article 21 of the Constitution of India confers right to livelihood to Citizen. Study of Traditional style of life of citizen of Delhi shall bear an ample testimony to the factum that property owners, in residential localities, to create resources means of livelihood either conducted self managed business in whole or part of the property or let it out on rent for commercial purpose. Thus different use of the property should not be looked forward as an innovative planning or as an act of sin or crime having been committed.
- 14.4 In the wake of growing population and expansion of business activity, DDA failed to provide needy land to cater to requirement of trade. Under the circumstances substantial residential areas designated as Special Area, was converted into Commercial Area.
- 14.5 In fact none but the Authorities concerned are responsible for the above situation. It is a matter of surprise that instead of appreciating role of Property owners in providing supplementary assistance to the Government to cope with requirement for commercial space, their gesture is being treated as punishable criminal act.
- 14.6 The Master Plan seeks distinction between (i) COMMERCIAL STREETS AND AREAS AND (ii) MIXED USE STREETS AND AREAS which does not seem to be logical and sustainable on the brief grounds as under:-
- i) Criteria to identify MIXED USE Streets and Area. Is laid down in clause 15.3.3
WHEREAS
 - ii) Yardstick to identify Commercial Streets and Areas is provided in clause 15.12.1.
- 14.7 In fact so called Mixed Land Users have been rendering yeomen service to the society by meeting requirement of the citizen at the nearest place of their residence, as also recorded in clause 15.1 (iii) of the Master Plan, 2021.
- 14.8 Notwithstanding the above factual position, even if any restrictions regarding mixed use, are proposed to be imposed and/or any conditions are sought to be stipulated, crystal clear policy is required to be enunciated in respect of (a) past mixed use and (b) future mixed use.

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- 14.9 So far as past use is concerned, in case any violations occurred, the then Governing Law, Rules, Regulations etc. can be availed of for the purpose of prosecution and any punitive action.
- 14.10 As regards future use, strict vigilance should be exercised to ensure that all the prescribed conditions are being fully and strictly complied with.
- 14.11 In the above manner interest of the Traders and the Government stands fully safeguarded.
- 14.12 Clarification referred to above, is all the more necessary because MPD, 2021 was made effective from 07.02.2007 and the provisions thereof cannot be given retrospective effect.
- 14.13 In the light of foregoing observations, clarification by way of insertion of EXPLANATION or otherwise, in relevant clauses, is necessary particularly in respect of clauses of the MPD, 2021 quoted below:-

<u>CLAUSE</u>	<u>SUBJECT</u>
15.3.2	Restriction for A + B Colonies.
15.3.3	Specified conditions to conduct business in shops.
15.4	General Terms and Conditions.
15.5	Permissible and non-permissible use.
15.6+15.6.1	Regulations for Retail Shop and Offices.
15.6.2	Non-permissible activities.
15.6.3	Permissible activities subject to specified conditions.
15.8	Professional activities.
15.9	Registration and Charges.
15.12.3	Payment of Conversion and Parking Charges.

- 14.14 Reverting back to the provision of payment of conversion and Parking Charges, as contained in clause 15.12.3, even if they will be applicable for future development, the policy deserves thoughtful consideration in the light of following observations:-
- Vide clause 15.9 payment of CONVERSION CHARGES has been made surprisingly an Annual feature.
 - Any penalty in any form amounts to composition of an offence.
 - After realization of penalty, to treat a person as continuous defaulter is highly illogical, unjustified and objectionable.
 - In Section 34 (2) of Development Act, 1957 and in Section 468 (2) of DMC Act, 1957 it has been clarified that the so called defaulter once punished for specified offence cannot be prosecuted again and again on the same ground.

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- v) Prescribed condition of payment of Parking Charges also poses question mark that as the space for the purpose is not available what is the justification to lay down such condition. Furthermore, parking constitutes one of the amenities to be provided to the citizen out of taxes collected from them. On this score too above levy is not justified.

14.15 While formulating policy abundant precaution should be taken to ensure that fundamental rights of citizen provided in Article 19 of the Constitution of India which confers freedom to pursue any profession, are not curved and hit.

15 CHAPTER – 16 – LAND USE PLAN

15.1 Vide clause 16.2 Responsibility to prepare Re-development Scheme was entrusted upon MCD, with time bound period of 3 years.

15.2 Progress in this regard is unknown to public. Meanwhile a Public Notice dated- 7.11.2011 has created a situation of confusion.

15.3 In the aforesaid Public Notice it is stated that:-

- i) Provision No. 16.2.3 read with amendment dated- 12.8.2008 provided moratorium to the properties situated in Special Area.
- ii) Special Area Building Regulations.
- iii) The Special Area Building Regulations have been notified on 7.1.2011 by D.D.A.

15.4 Re-development-Scheme and Building Regulations are two different aspects. Furthermore, Building Regulations are supposed to be made in accordance with Re-development-Scheme which is still in pending.

15.5 In the light of above observations, position is required to be clarified.

15.6 Vide clause 16.2.5 it is clarified that till Re-development Plan and Scheme for the Special Area is notified STATUS QUO shall be maintained. This remark is leading to different interpretations. As such it should be clarified that under STATUS QUO what type of relief is sought to be given to Stake Holders of the Special Area.

CONCLUSION

1. Defective, unrealistic and inaccurate Civic Survey coupled with delay of many years in the period of Civic Survey and notification of Master Plan, is the root cause of failures of the Plan.

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2. Policy of D.D.A to put part of acquired land to auction is responsible for scarcity of land which was on priority required for the purposes indicated in the Master Plan.
3. An inordinate delay in preparing Regulations is one of the reasons for dismal result.
4. Even if Master Plan was violated in any form, belated action by the concerned Authorities coupled with relaxed policies and statutory provisions of governing laws and, Bye-laws etc., extended protection to defaulters against any punitive action.
5. Theoretical exercise was made in finalization of Master Plans in utter disregard of ground reality and need to provide better life to citizens.

REMEDIAL STEPS

6. Punishment to so called defaulters in any form is not solution of the problem.
7. In matters in which interest of large number of population is involved, AMNESTY SCHEME for past events, is best solution on the pattern of policy pursued by the Govt. in handling the case of about 1700 unauthorized colonies and schemes framed by MCD and Govt. of NCT of Delhi in several matters
8. For future events, appropriate reforms should be brought in administration to exercise strict, effective and efficient vigilance.
9. Any plan is likely to face difficulties unless and until a sense of voluntary compliance is inculcated in the people for whose betterment planning is made. To achieve this object, participation of NGO and RWA is necessary at the primary stage of initial deliberation.
10. **Significant change in vision is required. Normal concept of the Govt. is to prepare a Plan and then call upon the people to act upon it. As against this, new vision requires to adopt reverse policy i.e to finalize Plan after ascertaining opinion and wish of the people, which may be thought to be proper practical and reasonable.**

(S.C. KHANDELWAL)