



Report and Recommendations

Section One : Backgrounder

- 1 The 5 – member Committee on WP (C) 2743 / 2012 The High Court of Delhi, hereinafter referred to as “The Committee”, constituted vide Notification Legal / HC – 4460 / 2012 / 2271 of 28 Sept 2016 was mandated “to recommend the course of action to the University in light of the dismissal of the writ petition filed by the University of Delhi in the DMRC matter”.
- 2 The Committee perused, browsed and, examined a series of texts and related referents drawn from some case – records and from allied relevant public – domain Acts and documents thereon, including those provided by JR (Legal Cell) hereinafter called “Legal” and by the UE / EE .

2.1 These include

- i The entire 1008 pages on the said case ;
- ii Site map of the original area designated in revenue / PO records as “University Enclave Delhi 7 ” ;
- iii Judgment of The High Court of Delhi in WP (C) 2948 of , 2007 hereinafter defined as “Adil Singh” ;
- iv Brief + Chronology + documents theretofore provided by Legal and
- v CAG Report 2007 – 2008 on DMRC .

Section Two : Recommendations

- 3 Following confabulations among members over three weeks of long weekends, and an autumn break, the Committee met four times on 24.10.2016, 26.10.2016, 28.10.2016 and 04.11.2016 and unanimously made the Recommendations as hereunder .
- 4 On a close examination of the facts, events and circumstances in the instant case, the Committee unanimously recommends that the University challenge the judgment of the Single Judge Bench on grounds as hereunder .
- 5 There is patent dissonance between Adil Singh, on which the Hon’ble Judge has structured his reasons – and – conclusions, and the instant case .
 - 5.1 It is contended that the contextualls, averments and pleas thereof in Adil Singh, and the contextualls, averments and pleas thereof of the University case are definedly contradistinct .
 - 5.2 The Single Judge has quoted principle of laches / delay and has greatly miscalculated the lapse period as “7-8 years” since

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5.2.1 The private builders' "bid" was approved sometime January 2009 while the University was kept in the complete dark with possible malafide intent and in wholly arbitrary manner . The University first learnt of the multi storeyed + FAR 100 – converted - to - FAR 200 through an Executive Order by grossly violating standard ops norms + unrestricted (18 / 24 /35 storeys) through the newspapers, soon after which the University, through no less than its Vice Chancellor / First Teacher, registered strong, unequivocal objections and protests against the intended residential – to – public purpose – to – residential for purely commercial housing project, and, in fact, seriously and conscientiously pursued the University's case bw 2009-2012 .

5.2.2 That once the authorities bw 2009 – 2012 failed to provide due explanations and totally ignored the University, definedly the prime human settlement of over 50,000 students, scholars, academics, scientists, advanced research labs and intensive study – centres and so on, the University approached the Hon'ble Court for legitimate relief and due justice .

5.2.3 Hence, in the evidentiary chronology of University's objections – and appeals – and – offer – to make – a – presentation of its case to DDA + DUAC, the said Bench's categorically – stated reason – for – dismissal as based on laches / delay is contrary to facts and, to all intents and purposes, denies due justice to the (petitioner) University .

5.3 The doctrine of laches stipulates the element of unreasonable delay / sleeping – on – the – job and the petitioner through no less than its Vice-Chancellor/ First Teacher lodged serious protest at this so - called project where public purpose land has been mutated to purely commercial purposes.

5.4 It would appear unreasonable and with due respect, patently unfair on the part of the Hon'ble Judge in the impugned judgement to label the so-called delay/laches as ground for dismissal of the petition.

6 That DDA 17.02.2010 constituted a Committee in response to the University's strong objections to the would – be private housing project, of EM (DDA) Chief Town Planner MCD and CE (DMRC) which conducted a joint inspection of the site and rejected the University claims that the proposed housing project shall cause both infraction of privacy and serious undermining of the overall composite time – proven University Enclave / DU Campus environment.

6.1 It is significant to note that the composition of this Committee suffers from the vice of bias and is clearly contrary to the principles of Administrative Law. All the three Members of the Committee including the Chairman happen to be the employees of the Respondents in the Writ Petition (wpc no. 2743/2012) before the Hon'ble Court. Moreover, this Committee lacked any participation from the University of Delhi, which is the party directly and immediately affected, and which was given no opportunity to explain its grave concerns regarding privacy and integrity, thereby unalterably destroying the umbrellaic ambience, the architectural skyline and veritably unique culture of the University .

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- 6.1.1 "Property development" as stated in Adil Singh is accepted as a public purpose but the gross, deliberate and suspectedly manipulated misutilisation of property will, in effect, be illegal, unlawful, detrimental to public environment and seriously and unalterably cause irreparable damage to the University and, thus, cannot be considered "public purpose".
- 6.1.2 DMRC cannot use land for such destruction of Higher Education in the colourable garb of "public purpose".

6.2 Notwithstanding, the fact that the Vice Chancellor as the First Teacher of the University Campus and later, the Registrar asked for an appointment to make a presentation, the opportunity was never provided. Violation of the principle of *audi alteram partem* is thereby apparent and reliance on the findings of this Committee by the Hon'ble High Court is wrong and contrary to settled law.

6.3 The blatant, almost obstructionist – in – nature, imposition of a multi-storeyed housing complex of doubtless ultra – posh flats / apartments is driven by the engine of unadulterated profit and is in stark opposition to the avowed development –for –public purposes claimed by DDA – DMRC .

6.4 That despite DDA's Resolution (21.01.2011) to restrict the height of the proposed building to 8, later DDA removed the height restriction completely, citing the land as a separate entity (point 29 of the Judgment). The argument was that the land does not fall under 'North Campus' which has a height restriction on buildings vide MPD 2021 (point 58 of the Judgment). However, this definition of 'North Campus' does not take into consideration the potential effect that the land development can have on the socio-cultural fabric of this 100 year old institution which is considered the leading and premier educational institution of the Indian subcontinent where students from over 40 nations enrol themselves for studies and which University Campus covers over 90 pc of the entire area as a unique composite educational umbrellaic environment .

7 It is pertinent to note that DMRC has made underground Metro instead of elevated Metro near University of Delhi which entails very high cost of construction. Underground Metro was made only in those areas where it was found that elevated Metro will destroy the beauty and ambience of that area or it is not possible to make elevated structure due to lack of space like Chandni Chowk area.

7.1 Again, if elevated Metro was not permitted, it is not understood how such a high rise building has been permitted now by DUAC, DDA and DMRC .

7.1.1 From the facts and narrative hereinbefore. It would appear that all rules have been interpreted in different ways to sell this piece of land.

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7.1.2 Furthermore, the particular process of allotment of land to the private builder raises serious doubts of mala fide intent since the entire procedure moved from request for proposal RFP to "auction" to "single bid" while the "reserve price" appears severely underquoted since the land has been leased for a 90 – year – period @ R 6200 per sft whereas comparable, local land for a similar housing project has been sold @ R 10,000 per sft .

8 It is earnestly submitted that a cluster of 8 / 16 / 24 / 35 - storeyed buildings will be completely in contrast with the traditional architectural landscape of Victorian-style houses and low – height buildings (most of them are either single storeyed or 3-4 storeyed old buildings) that are characteristic of the University Campus.

8.1 Such a housing complex in the DMRC parking area adjacent to Metro station will directly infract the socio-economic, cultural and overall educational ethos of the campus which inhabits 90 per cent of the University Campus area designated "University Enclave Delhi 7", thereby seriously undermining the rights and privileges of the composite Campus community.

9 It is further contended that the problem of parking remains unresolved since the land was originally acquired by DMRC for parking purposes and said land has been converted to ultrahighrise housing complex .

Over 5000 4 / 3 / 2 wheelers use the adjoining parallels Probyn Road / Chhatra Marg and Cavalry Lines enclosing the proposed housing site . In addition, the Parking Area which constitutes the proposed site is currently on loan / lease with DMRC from the builder and is generally filled – to – capacity with cars, motorcycles etc .

As a consequence, traffic is veritably clogged and majorly jammed for most of the day .

10 That while the rights and power of statutory authorities to permit land use change is settled in accordance with Adil Singh, the exercise of such rights and power in extant case is in direct, immediate, infructuous conflict with the several time – honoured rights and obligations of the solely service – oriented University, more particularly since the change of purpose was effected in rapidfire manner *after acquisition*, and that, too, in willfully ignoring the protests and pleas of the demographic and purposive 90 pc landowning University Enclave as against 5 – 10 pc of overall private properties .

10.1 That, in the light of paras hereinbefore, the DDA and DMRC have willfully violated the dictum of *erga omnes* (rights and obligations owed towards all) .

Section Three : Further Recommendations


11 The Committee further recommends that

- 11.1 The University seek appropriate legal professional opinion and guidance;
- 11.2 In follow-up of AC res 56 of 20.03.2012, EC res 173 of 27.03.2012 and AC res 40 of 16.08.2013, the University now seek a fresh mandate from the VC / EC to challenge the said wpc 2743 Judgement ;
- 11.3 The EC authorise the VC to take all steps and measures he deems fit to ensure due fairplay and justice in the very best interests of the University's century – old heritage, ambience, composite CreativeCorporate environment and critical academic – sociocultural – educational ethos qua the said case .

12 The Committee records its appreciation of the efficient support and guidance provided by Legal and by UE / EE .



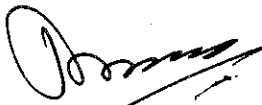
Dr Ajay Kumar Singh
Department of Commerce
Member



Prof Anupam Chattopadhyay
Department of Geology
Member



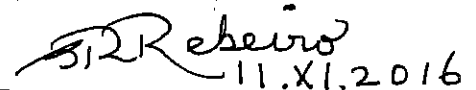
Dr Raman Mittal
Faculty of Law
Member



Mr Sudhir Sharma
JR Legal



Dr Alka Chawla
Faculty of Law
Member



11.XI.2016

Prof Sydney R Rebeiro
Adviser / Dean Alumni Affairs
Chairperson

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

% *Judgment delivered on: 27th April, 2015*

+ **W.P.(C) 2743/2012**

REGISTRAR, UNIVERSITY OF DELHI Petitioner
Represented by: Mr. V.P. Singh, Sr. Adv.
with Mr. Ankur Chibber and Mr. Prashant
Sivarajan, Advs.

versus

UNION OF INDIA AND ORS Respondents
Represented by: Mr. Sandeep Sethi, Sr. Adv.
with Mr. Prashant Mehta and Mr. Himanshu
Kapoor, Advs. for R12.
Mr. Arun Birbal and Mr. Sanjay Singh, Advs.
for DDA.
Mr. Sushil Kr. Tripathi, Adv. / Proxy Counsel
for Ms. Anita Pandey, Adv. for R7 to R9.
Mr. Tarun Joshi, Adv. for DMRC with
Mr. A.S. Rao, Law Officer from DMRC.

CORAM:
HON'BLE MR. JUSTICE SURESH KAIT

SURESH KAIT, J.

1. Vide the present petition, the petitioner University prayed, inter alia, as under:-

- a. Issue a writ of certiorari in favour of the petitioner and against the respondents thereby quashing / setting

aside the impugned decision taken by the respondent no. 3, i.e., DDA in its meeting held on 12th May, 2011, wherein the respondent no. 3 while acting contrary to the mandate of the Master Plan Delhi – 2021 and the development control norms for metro stations as stipulated under chapter 12 of the Master Plan Delhi – 2021 has so allowed the respondent no. 12, i.e., M/s. Young Builders (P) Limited to construct a high rise multi-storey group housing society in the control zone of Zone-C and has further by virtue of the impugned decision has been pleased to allow development control norms as available to any group housing under MPD-2021, including a FAR of 200 and maximum ground coverage of 33.3%, without any height restrictions and has further allowed the plot leased out of the Respondent no. 12 by the Delhi Metro Rail Corporation, i.e., Respondent 10, i.e., plot admeasuring 2 Hectares as a separate entity segregating it from the total land acquired for metro station i.e., 3 Hectares and has further been pleased to allow development controls as applicable under the clause “Group Housing” as per the provisions of MPD-2021 to the segregated 2 Hectares plot, which act of Respondent no. 3 is against the mandate of law

and more so is in totally ignorance of the MPD-2021, Zonal Plan of Zone 'C' & the provisions of the Delhi building By-Laws.

b. Issue a writ of mandamus in favour of the petitioner and against the respondents thereby directing the respondents to follow the mandate of the Master Plan of Delhi – 2021 and in more particularly the development control norms as contained in the Gazette Notification dated 20th January, 2005 (incorporated under Chapter-12 of the Master Plan of Delhi – 2021) relating to Zone-C;

2. Facts of the case, in brief, are that in March, 2000 Delhi Metro Rail Corporation Ltd.(hereinafter referred to as DMRC) wanted to acquire land for its Metro Station, i.e., Vishwavidyalaya Metro Station falling under Zone-C of MPD 2021 and for the said purpose identified various bungalows for acquisition. On 02.05.2000 Ministry of Urban Development granted it's no objection for the acquisition of the bungalows. The land use of the proposed land to be acquired was changed from 'residential' to 'public purpose'. Accordingly, notification under section 4(1) of the Land Acquisition Act, 1984 was issued on 15.12.2000. A declaration was made under section 6 of the Land Acquisition Act, 1984 on 14.02.2001. Consequently, the Land Acquisition Collector passed an award on 11.09.2001 and land

measuring 3.05 Hectares situated in Zone-C (Civil Lines Zone) at Mall Road was duly handed over and mutated in the revenue records in favour of the respondent No.10 DMRC.

3. Thereafter, on 21/23.07.2003 Ministry of Urban Development and Poverty Alleviation granted approval to permit the respondent No.10 / DMRC to generate resources through property development within the period of 6 to 20 years. Respondent No.3, Delhi Development Authority (hereinafter referred to as DDA) issued a notification No.500(E) on 16.04.2004 in accordance with the provisions of section 44 of the Delhi Development Act, 1946 (hereinafter referred to as DD Act) inviting objections/suggestions on the modification proposed by the Central Government with a view to modify MPD 2021. On 20.01.2005 land use provisions of Master Plan Zonal Development Metro Stations along with Property Development with Control Norms was notified by virtue of a Gazette notification. On 23.09.2005, Government of India notified change in land use from 'public and semi-public' to 'residential'.

4. Accordingly, on 12.02.2007 DDA informed DMRC that in view of the change of land use, the MPD and the Zonal Development Plan Zone-C providing detailed guidelines for development might be followed. On 07.02.2007 MPD 2021, inter alia, stipulating Development Controls for Metro Stations was notified. On 29.03.2007 and 14.09.2007 DDA confirmed to DMRC that all statutory provisions

relating to group housing as per MPD 2021 were to be followed. In June, 2008 DMRC issued 'Request for Proposal' for residential development at Vishwavidyalaya Metro Station indicating that norms of residential plot group housing as per MPD 2021 were to be followed., i.e., FAR of 200, ground coverage of 33.3% and its intention to transfer leasehold rights to the developer for a period of 90 years.

5. Accordingly, a bid of respondent no.12 Young Builders was approved by the competent authority, thereafter letter of acceptance was issued. A lease deed was executed and possession was handed over. Thereafter, respondent No.12 submitted its application to the Municipal Corporation of Delhi (hereinafter referred to as MCD) along with the proposed layout plan for the approval of the Group Housing Scheme. Accordingly, on 08.06.2009 MCD sought clarification from DDA about the control norms.

6. Thereafter, the petitioner submitted a detailed representation to the Delhi Urban Arts Commission (hereinafter referred to as DUAC) raising concerns about the project. On 05.08.2009 the Chairman DUAC wrote to the DDA to reconsider the project, as requested by the petitioner. Accordingly, on 19.08.2009 DDA withdrew its earlier letters dated 29.03.2007 & 14.09.2007 recording that the development control norms of the property development for the Metro Station dated 20.01.2005 would be applicable. Accordingly, on 06.05.2010 the petitioner approached this Court by WP(C) 3135/2010 challenging the

notification dated 20.01.2005 seeking quashing of the letter dated 19.08.2009 issued by DDA. The said petition was disposed of without adjudication on merit on the basis of the meeting held on 12.05.2011.

7. Mr. V.P Singh, Learned Senior Counsel appearing on behalf of the petitioner submitted that the act of the DDA would be in direct conflict with the purpose of acquisition and would severely affect the norms and aesthetic beauty of North Campus of Delhi University which houses historical buildings, colleges, viceroy lodge etc. The plot was acquired for the purpose of Mass Rapid Transit System (MRTS) after converting the original land use of the land from 'residential' to 'public and semi-public facilities'. As per the Regulation 8(3) of MPD 2021 specifying the Regulations of Building Controls within Use Premises, it is specified as under:-

“ The objective of these regulations is to provide controls for building (s) within use premises excluding the internal arrangement, which are covered in Building Bye-laws.

1. Where development controls are not stipulated for any use premise, the same can be formulated by the Authority.

2. The mezzanine floor and service floor wherever provided shall be considered as a part of the total FAR.

3. If the building is constructed with.....

4. Wherever the building regulations are given for different categories of plots, the area covered and the floor area shall in no case be less than the permissible covered area ad floor area respectively for the largest size of plot in the lower category.”

8. In view of the above, the respondent could have altered the conditions in respect of use of the premise only when no development controls were stipulated for the same. However, the same is not applicable in the instant case as the control norms have been formulated in respect of Metro Stations. Moreover, as per clause 2 (7) of the Development Code contained in MPD 2021, the definition of ‘use premises’ is given as *“Use premises means one of the many subdivisions of a Use Zone, designated in an approved layout plan, for a specific use. Land use of a premise has to be determined on the basis of an approved layout plan.”*

9. Learned Senior Counsel further submitted that the MPD 2021 itself stipulates certain development controls for Metro Stations, and the same is given as under:

“Development Controls for Metro Stations:

1. Metro stations along with property development (composite development) up to a maximum area of 3.0 ha shall be permitted in all Use Zones, except in Recreational and Regional Park / Ridge Use Zone. Lutyens’ Bungalow Zone and Heritage Zones.

2. This enabling provision of property development would have the following broad development controls:

i. 25% ground coverage and 100 FAR, including area under Metro Station with no height restrictions and subject to approval of the statutory bodies such as ASI, Airport Authority, DUAC etc.

ii. *In addition to the requirement of parking for Metro stations, parking for the commercial component will be @ 2 ECS per 100 Sq.m.*

iii. *The development shall be undertaken in a composite manner and DMRC shall obtain approval of all the concerned local bodies / agencies.*

3. *The following structures shall be treated as operational structures:*

i. *All Metro Stations and tracks supporting at grade, elevated and underground including entry structures, ancillary buildings to house DG sets, chilling plants and electric substation, supply exhaust and tunnel ventilation shafts etc.*

ii. *Depots and maintenance workshops.*

iii. *Traction substations.*

iv. *Operational control centres.*

v. *Police Station.*

vi. *Recruitment and training centres for operational and maintenance staff.*

vii. *Housing for operational staff and Metro security personnel only.*

viii. *Rehabilitation work to be undertaken for the construction of Metro project.*

ix. *Shops in Metro stations to cater to the public amenities.*

x. *Structure above platform over the footprint for the Metro Stations."*

10. Learned Senior Counsel submitted that it was incumbent upon the DDA to follow the development control norms as stipulated above and by taking the impugned decision; the same could not have been negated / circumvented. The site for proposed construction being in a Metro Station premises, the Respondents were bound to follow the norms specified in clause 2 (i) above i.e., 25% ground coverage and

100 FAR. Moreover, clause 11.3 of MPD 2021 imposes a restriction on the height of tall buildings as under:-

“The height of buildings (above and below ground) needs to be seen in the light of modern technology with due consideration for natural disasters like earthquakes, floods etc.

Restrictions on tall buildings would be necessary in important areas like Lutyen’s Bungalow Zone, Civil Lines and North Delhi Campus. In case of urban extension, areas for specific Urban Design projects and tall buildings should be identified.”

11. Mr. V.P. Singh further submitted that Para 1.4.4 of the Zonal Development Plan for Zone-C (Civil Lines) under MPD 2021 provides as under:

“The Delhi University was established in 1924 and it has a number of old historical buildings, colleges, Viceroy’s lodge etc. of the Colonial period and therefore efforts shall be done to preserve this character. Also, efforts shall be done to make it an Integrated Campus (without thoroughfare) and self sufficient in terms of modern infrastructure and residential requirements like hostels, staff quarters, security arrangements etc. by optimum utilization of the land. Attempt shall be made to accommodate all institutional requirements within the Campus. Therefore an Urban Design study shall be taken up for this Sub-Zone. MPD-2021 has restricted this area for tall buildings.

Delhi University has a large chunk of land allotted in Sub-Zone C-15, (opposite Dushehra Ground) and it is being utilized as Hostel and staff quarters. Optimum utilization of this land shall be done to meet the requirements in future.

Listed Heritage buildings, some residences and Colleges of historical importance prepared by DDA, INTACH, ASI and GNCTD are given.”

12. It was submitted that the respondents ought to have kept even this aspect in mind before issuing the impugned decision, especially considering the height restrictions imposed but the same has been ignored in the instant case. As essayed above, the MPD 2021 itself imposes a restriction for construction of tall buildings in the controlled zone of Delhi University. The impugned decision is in direct conflict with the MPD 2021 which is statutory in nature. Gazette notification dated 20.01.2005 is statutory in nature and provides for development control norms in respect of Metro station along with property development upto a maximum of 3 Hectares clearly stipulates 25% ground coverage and 100 FAR.

13. Further submitted that as per the RPF issued by DDA, the plot cannot be segregated and the area under the Metro Station cannot be excluded from the FAR available for the whole plot admeasuring 3 Hectare, as has been done in the instant case by the respondents. The actions of DMRC are in direct contravention with the permission sanctioned by the Ministry of Urban Development and Poverty Alleviation vide letters dated 22.07.2003 and 23.07.2003. By virtue of the impugned decision, the DDA has sought to virtually amend the provisions of MPD 2021.

14. Learned Senior Counsel submitted that the impugned decision is

a non-speaking order. Moreover, the decision taken was confined to the plot in question and that too with specific reference to Respondent No. 12 M/s. Young Builders. The relevant portion states: “..... the 2 hectares of the plot leased out to M/s. Young Builders Pvt. Ltd. may be considered as a separate entity and the Development Controls as applicable under the clause Group Housing as per the provision of MPD 2021 be allowed.....” The decision is applicable to this particular site only.” It is further submitted that it is perplexing as to why DDA has found it fit to relax the norms applicable specifically to Respondent No. 12 and with reference to a particular site. Therefore, even if DDA wanted to relax the applicability of MPD 2021, it would amount to land use pertaining to a Zonal Development Plan and not lay out plan and the same could only be done after following the procedure prescribed in Section 11A of the Delhi Development Act, 1957.

15. To strengthen the above arguments, learned Senior Counsel has relied upon the case of ***Subramaniam Swamy & Ors. vs. Raju through Member, Juvenile Justice Board & Anr. 2014 (8) SCC 390*** in which the Apex Court in Para 61 has held as under:-

“61. Reading down the provisions of a statute cannot be resorted to when the meaning thereof is plain and unambiguous and the legislative intent is clear. The fundamental principle of the "reading down" doctrine can be summarized as follows. Courts must read the legislation literally in the first instance. If on such reading and understanding the vice of unconstitutionality is attracted, the courts must explore

whether there has been an unintended legislative omission. If such an intendment can be reasonably implied without undertaking what, unmistakably, would be a legislative exercise, the Act may be read down to save it from unconstitutionality. The above is a fairly well established and well accepted principle of interpretation which having been reiterated by the Supreme Court time and again would obviate the necessity of any recall of the huge number of precedents available except, perhaps, the view of Sawant, J. (majority view) in Delhi Transport Corporation v. D.T.C. Mazdoor Congress and others, 1991 Supp. (1) SCC 600.”

16. Further submitted that when the Statute and MPD have clearly specified Development control norms to be followed in the construction of Metro Station as well as construction in Zone-C as per Zonal Plan, it is not open to the respondents to circumvent the same through administrative action and other means. The respondents have failed to appreciate that once a land has been acquired for a particular purpose, the same cannot be converted to some other purpose as has been held by the Apex Court in the case of **Bangalore Medical Trust vs. B.S. Muddappa &Ors. , 1991 (4) SCC 54** wherein it was held as under:-

“..... This means that once an area has been stamped with the character of a particular civic amenity by reservation of that area for such purpose, it cannot be diverted to any other use even when it is transferred to another party. The rationale of this restriction is that the scheme once sanctioned by the Government must operate universally and the areas allocated for

particular objects must not be diverted to other objects. This means that a site for a school or hospital or any other civic amenity must remain reserved for that purpose, although the site itself may change hands.”

17. Learned Senior Counsel submitted that because the respondents have miserably failed to appreciate, as has been held in a catena of decisions, that the land use cannot be changed, except in accordance with law. Assuming that the same could indeed be done, it would amount to land use pertaining to a Zonal Development Plan and not lay-out plan and the same could only be done after following the procedure prescribed in Section 11A of the Delhi Development Act, 1957. The illegal action of the respondents has led to the deforestation of the controlled and preserved zone of Delhi University.

18. Learned Senior Counsel submitted that if the proposed construction of a multistoried group housing society is allowed, it would lead to infringement of privacy of Meghadoot Girls' Hostel and Miranda House Girls' Hostel which are located mere 250 meters from the proposed site of construction. The proposed structure sought to be constructed right at the entrance of the University, which would impede the access of thousands of students, teachers and employees who would use that road and only choke the entrance of the University.

19. On the other hand, Mr. Tarun Johri, learned counsel for respondent No.10 submitted that the Metro project was sanctioned with a provision of generating revenue partly through property

development. In the present case, DMRC had constructed Vishwavidyalaya Metro Station, where 2 Hectares of land remained surplus and was used for development in order to generate revenue. Accordingly, the respondent No.10 applied to DDA for change of land use from 'Public and Semi Public' to 'Residential', which was approved by the Ministry of Urban Development as per its notification no. 1383 (E) dated 23.09.2005. The auction of the land in favour of the Respondent No.12 was done only after receipt of letters dated 29.03.2007 & 14.09.2007 issued by the DDA, wherein it was specifically informed that the FAR for the Plot in question would be as per the norms of the MPD -2021 for Group Housing and FAR of 200 would be permissible. Accordingly, the auction of the plot confirming FAR 200 and 33% Grounds Coverage in favour of Respondent No. 12 was completely bonafide.

20. Mr. Johri further submitted that the Ministry of Urban Development in its letter dated 30.03.2009 once again confirmed that the property development by Metro projects is in line with the global examples as Metros are highly capital intensive projects and the only way they can remain financially healthy, without government subsidies, is to increase the non-operational revenues i.e. revenues from advertisements, retailing, real estate at metro stations and parking lots revenue to the extent of 40%-50% of the total revenues as in the case of Hongkong Metro. It was further envisaged in condition No. (v) that, 'Property development on acquired land shall also be considered

as part of the 'Project'.

21. Learned counsel further submitted that the aforesaid Ministry vide its Notification dated 18.04.2011 had amended Clause 3.3.1.1 (vii) of the MPD 2021, wherein the words, 'Property Development by DMRC' was deleted. Thus, the restriction on enhancement of FAR for property development by DMRC as provided under the MPD-2021 stood modified to the effect that the FAR for projects of property development by the DMRC can be enhanced in accordance with the provisions of the MPD-2021. Moreover, in the Minutes of Meeting dated 21.05.2011, in respect of the Plot in question, DDA allowed the development control norms as available to any Group Housing Society under MPD -2021, including 200 FAR without restriction of height. Thus, this was done only after the amendment of the MPD -2021, when the restriction on enhancement of FAR as given in MPD-2021 was already deleted through amendment dated 18.04.2011. The said Minutes of Meeting was duly accepted by this Court in its order dated 18.05.2011 passed in WP(C) 3135/2010. Therefore, the permission given by the DDA in the minutes of meeting dated 21.05.2011 was completely in line with the amended provisions of the MPD-2021 and the same cannot be faulted within the eyes of law.

22. Learned counsel further submitted that the approval by the competent authority of the DDA with FAR 200 and ground coverage as 33% as applicable norms for residential development (Group

Housing) is not the first such plot of land acquired for the construction and development of the Metro Projects in the National Capital Territory of Delhi. The respondent No.10 has also leased out (5) five parcels of land for residential development and all such five Projects have been approved by the competent authority with FAR-200 and ground coverage as 33% as applicable vide applicable norms for residential development (Group Housing). The details of the land is given herein below:-

Sl. no.	Location	Plot	Ground	FAR
1.	Kyber Pass	68158.4 sqm	33.30	200
2.	Rithala	12026 sqm	33.30	200
3.	Subash Nagar	6445 sqm	33.30	200
4.	Dwarka Mod	21955 sqm	33.30	200
5.	Vishva Vidhyala	20000	33.30	200

23. Mr. Sandeep Sethi, Senior Advocate appearing on behalf of respondent No.12, has supported the submissions made by respondent No.10 and submitted that the President of India has provided a mandate to DMRC to undertake value capture through property development by selling surplus land on completion of a metro station project so as to raise additional resources for its highly intensive capital requirements as well as sustainable operations. Accordingly, DMRC desired to sell a part of 3.05 Hectare land at Vishwavidyalaya Metro Station, as it became surplus, to generate resources. Earlier under Phase-I, the

Vishwavidyalaya Metro Station used to be terminal station. In 2006, when Phase-II was envisioned, the aforesaid Metro Station was no longer the terminal station and the line from Central Secretariat to Vishwavidyalaya was extended to Jahangirpuri, resultantly, the requirement for parking space was reduced, and consequently there was a surplus land available with the DMRC. Accordingly, DMRC invited bids for residential development on 2.0 Hectare plot representing that the norms of Residential Plot-Group Housing as per MPD 2021 are to be followed which permit 200 FAR with 33% ground coverage. Accordingly, public auction was conducted on 28.07.2008, after intimating the MCD by DMRC vide letter dated 14.07.2008 of its intention of developing 2.0 Hectare of plot with 200 FAR so that development of this plot on the basis of the agreed compromise do not face any difficulty. Accordingly, respondent No.12 participated and turned out to be the highest bidder at Rs.218.20 crores. Consequently, respondent No.10, DMRC issued Letter of Acceptance dated 13.08.2008. Thereafter, DMRC and respondent No.12 executed Lease Agreement dated 15.12.2008, consequently vacant physical possession was handed over to respondent No.12 on 23.01.2009 and DMRC executed Lease Deed of 2.0 Hectare plot in favour of respondent No.12, registered in the office of Sub Registrar 1, Delhi on 19.02.2013.

24. Mr. Sethi further submitted that respondent No.12 submitted a lay out plan to MCD on 30 March 2009 on the basis of norms applicable to Residential Plot-Group Housing. In response thereto,

MCD vide letter dated 8.06.2009 sought clarification from DDA whether the 2.0 Hectare plot leased by DMRC to respondent No.12 can be considered as a separate entity for the purpose of approval of Group Housing with 200 FAR. On 25.06.2009, DMRC informed DDA that they have entered into Lease Agreement with respondent No.12 on 15.12.2008 for Residential Plot-Group Housing development on 2.0 Hectare and requested DDA to confirm 200 FAR to MCD. However, DDA in complete u-turn and in contravention to MPD-2021 norms, replied to MCD vide letter dated 19.08.2009 that Development Control Norms shall be as per Notification dated 20.01.2005, prescribing Development Control Norms for Metro Stations viz 25% ground coverage and 100 FAR with no height restrictions. Further, DDA in a complete volte face and in derogation purported to withdraw its earlier decision. The said action of DDA was on the erroneous and illegal plea that Notification dated 20.01.2005 will prevail as it was notified much before the Notification dated 23.09.2005 for change of land use of 3.05 Hectare. MCD issued letter dated 22.09.2009 informing DMRC and respondent No.12 about DDA's decision dated 19.08.2009. Thereafter, DMRC and respondent No.12 made various representations to DDA. The matter was considered in DDA's meeting held on 17.02.2010 in which the following decision was taken:-

“4. The Lt Governor also constituted a Committee under the Chairmanship of Engineer Member, DDA with Chief Town Planner, MCD and Chief Engineer, DMRC as members to survey the entire area and examine the implications on the

proposed high-rise buildings on the privacy and integrity of the Delhi University environment. He directed that the Committed should give its report within a week."

25. Accordingly, a joint inspection of the site was conducted by the committee members on 19.02.2010 whereby observed and concluded that the proposed high rise property development on 2.0 Hectare plot will not affect the privacy of the girls' hostel nearby, will not add to any parking problem and will also not affect the serenity / tranquillity of University area. Moreover, Shri Sreedharan, Managing Director of DMRC submitted a Joint Inspection Report of the Committee to Lt. Governor vide letter dated 10.03.2010 and informed that the apprehensions raised were incorrect. In addition, a legal opinion was sought by DMRC from Justice R.C. Lahoti, Ex-Chief Justice of India, whereby he opined that the planned Group Housing development on 2.0 Hectare plot with 200 FAR and no height restrictions is in accordance with the provisions of MPD 2021.

26. Mr. Sethi further submitted that respondents No.10 and 12 made efforts to persuade DDA to correct its action and restore Group Housing norms with 200 FAR but have failed to yield any result. Being left with no alternative, respondent No.12 filed Writ Petition No.3135/2010 impugning letter dated 19.08.2009 issued by DDA whereby stated that MPD 2001 was amended by the Government of India vide notification dated 20.01.2005 in which Metro Stations along

with property development up to a maximum area of 3 Hectare was permitted in all zones, except Recreation Use Zone and the development norms of such development was 25% ground coverage and 100 FAR, including area under Metro Station with no height restrictions subject to approval of the statutory bodies. The above stated norms were subsequently incorporated in MPD 2021. Since the Development Control Norms for Property Development at the Metro Stations was notified much before the notification of Change of Land Use of an area measuring 3.05 Hectare from 'public, semi-public' to 'residential', therefore, Development Control Norms are applicable as per Gazette Notification dated 20.01.2005.

27. Mr. Sethi further submitted that since the said decision mitigated the grievance of respondent No. 12, this Court ordered on 18.05.2011 that nothing remains to be adjudicated and with these observations, the aforesaid writ petition was disposed of.

28. Learned Senior Counsel further submitted that the petitioner has filed the present writ petition impugning DDA's decision dated 12.05.2011 resolving to allow development control norms as applicable under the clause 'Group Housing' viz 200 FAR without height restriction on 2.0 Hectare plot leased by DMRC to respondent No.12, and praying inter alia for quashing the decision taken by DDA and direct the respondents to follow 'Development Control Norms for

Metro Stations' viz 25% ground coverage and 100 FAR with no height restrictions.

29. Learned Senior Counsel further submitted that the controversy raised in the petition has already been fully adjudicated upon by the Division Bench of this Court in three Writ Petitions, viz., WP(C) No.3135/ 2010, WP(C) No.8675/2011 and WP(C) No.6624/2012 pertaining to the plot in question. Vide order dated 10.05.2010, passed in WP(C) No.3135/2010, the Division Bench of this Court observed that the pendency of this matter will not come in the way of the respondents making an endeavour to resolve the controversy which has been created *inter se* the respondents. Moreover, on 18.08.2010 counsel for the DDA submitted that the *lis* raised in the aforesaid petition being discussed at the highest level of the DDA and there is a possibility that the controversy may be put to rest. Accordingly, on 07.03.2011 DDA filed an affidavit placing on record a resolution dated 21.01.2011, passed by DDA permitting construction of group housing but with height restriction upto 8 storeys. Accordingly, this Court directed the DDA to invite the highest officer of the DMRC and consider the height restriction with liberty to respondent No.12 to submit representation in this regard. Accordingly, DDA in its meeting dated 12.05.2011 considered the height issue and resolved that 2.0 Hectare plot leased out to respondent No.12 shall be considered as a separate entity and the Development Controls as applicable under the clause 'Group Housing' with no height restriction shall apply. On

18.05.2011 DDA's counsel placed on record the Authority's decision to allow 200 FAR with "no height restriction". Since the said decision mitigated the grievance of the respondent No.12, this Court observed that nothing remains to be adjudicated and with these observations the writ petition was disposed of.

30. Mr. Sethi further submitted that it is pertinent to mention here that a separate Writ Petition (C) No.8675 of 2011 was filed by one "Association of Metro Commuters" inter alia challenging the allocation of the said land for residential development, which came to be dismissed by the Division Bench of this Court vide order dated 14.12. 2011 wherein the Court after detailed perusal of the records held that there is no illegality in the actions of DMRC / DDA and dismissed the petition.

31. Moreover, vide W.P. (C) 6624-6625/2012 titled as *Sanjay Khanna (HUF) v. UOI and Ors.*, the acquisition was challenged by the erstwhile lessees of the plot in question. The Petitions were dismissed by this Court stating that there is no question of colourable exercise of power and the plot used by DMRC for commercial purpose is being done as per the settled principles of law. The said order was challenged by SLP which was also dismissed.

32. Mr. Sethi submitted that despite the fact that the said issue has been adjudicated upon thrice by this Court, the present Writ Petition again without any *locus* and proper authority raises the same issues in

the present petition again by suppressing the adjudication of the said issues in the aforementioned three Writ Petitions. The present Writ Petition has been filed with oblique motives and with malafide intentions for causing losses to the respondents No.10 & 12.

33. Mr. Sethi, learned Senior Counsel further submitted that land use of the 3.05 Hectare land was changed to 'Residential' vide Notification dated 23.09.2005, Development Control Norms for Residential Plot-Group Housing only will apply and no other norms are applicable to this plot. This controversy whether the 'Development Control Norms for Residential Plot-Group Housing' or the 'Development Control Norms For Metro Stations' apply to the said plot in question, was the subject matter before this Court in WP(C) 3135/2010. The issue was finally set to rest after DDA in a meeting held under the directions of this Court and chaired by Lt. Governor decided on 21.01.2011 and 12.05.2011, that Group Housing Norms with no height restriction will apply in respect of subject 2.0 Hectare plot. Therefore, petitioner cannot be allowed to re-open and re-agitate an issue already adjudicated / settled by a Division Bench of this Court.

34. Moreover, DDA / MCD have allowed Group Housing norms, viz., 200 FAR, 33.3% Ground Coverage and no height restriction in respect of 5 properties including the plot in question auctioned by DMRC for property development as Group Housing. The aforesaid 5

properties have been mentioned in the submission of the DMRC by the counsel for the respondent No.10 which is reproduced as under:-

“The relevant Development Control norms in MPD 2021 are as follows:

(Pg25) Ch-4 Shelter

Table 4.3: Uses / Use Activities Permitted in Use Premises

Use	Definition	Use/Use Activities Permitted
Residential Plot – Group Housing	A premise of size not less than 3000 sqm (2000 sqm. For Slum/JJ rehabilitation) comprising of residential flats with basic amenities like parking, park, convenience shops, public utility etc.	Residential flat, mixed use Plot activity as per the Master Group Plan provisions, retail shops of confectionery, grocery & general merchandise, books and stationery. Chemist, Barber, Laundry, Tailor, Vegetable Shop (On ground floor with an area up to 20 sqm. each). Community Room, Society Office, Creche / Day Care Centre, Religious, Senior Citizen recreation room. Swimming Pool.

Pg 28 -4.4.3 Control for Building/Buildings within Residential premises

B. Residential Plot -Group Housing

Minimum size of plot: 3000 sq. m.

Maximum Ground coverage: 33.3%

Maximum FAR: 200

Height NR (Subject to clearance from AAI / Fire Department and other statutory bodies.

Parking: 2.0 ECS/100 sqm built up area"

Ch-12 Transportation

Pg 82 -Development Controls for Metro Stations

1. Metro Stations along with property development (composite Development) up to a maximum area of 3.0 ha shall be permitted in all Use Zones, except in Recreational and Regional Park / Ridge Use Zone, Lutyens' Bungalow Zone and Heritage Zones, subject to approval of Technical Committee of DDA.

2. This enabling provisions of property development would have the following broad development controls:

(i) 25% ground coverage and 100 FAR, including area under Metro Station with no height restrictions (emphasis supplied) and subject to approval of the statutory bodies such as ASI, Airport Authority, and DUAC etc.

(ii) In addition to the requirement of parking for Metro Stations, parking for the commercial component will be @ 2 ECS per 100 sq. m.

(iii) The development shall be undertaken in a composite manner and DMRC shall obtain approval of all the concerned local bodies / agencies."

Chapter 17 Development Code

"Pg 123 -Clause 2.0 Definitions

In this code unless the context otherwise require:

2(7) *Use Premises means one of the many sub divisions of a Use Zone, designated in an approved layout plan, for a specific Use. Land use of a premise has to be determined on the basis of an approved layout plan.*

3(3) *Each use premises shall be permitted to have specific uses/use activities out of the prescribed uses/use activities with or without conditions.*

5.0 *The use premises and use/use activities with similar nomenclature are given with the controls of specific premises in the respective chapters."*

35. Moreover, DDA had examined the applicable Development Control Norms for this plot as a Residential Plot-Group Housing vis-a-vis the Development Control norms for Metro stations notified on 20.01.2005. After detailed examination, DDA came to a conclusion that since the land use has been notified as residential on 23.09.2005, Residential Plot-Group Housing norms (200 FAR, 33.3% Ground Coverage and no height restriction) are applicable to 3.05 Hectare Land.

36. Mr. Sethi further submitted that two independent committees have submitted the report that the development is within the control

norms applicable to this area and that it will not affect the aesthetic beauty of the North Campus of Delhi University. He further submitted that as contended by the petitioner, the Group Housing Norms were made applicable without amending MPD 2021. Learned counsel further submitted that in the present case the relevant amendment in the Master Plan was required to be made in respect of change of land use from PSP to residential. This was done by DDA following due process of law as contemplated in Section 11-A of Delhi Development Act, 1957. Accordingly, the DDA had issued a Public Notice dated 19.12.2004 inviting objections before changing the land use of the plot from PSP to residential. No objections were received and a Notification dated 23.09.2005 was issued changing the land use of the plot. There was, thus, complete compliance of the requirements of Section 11A of the Delhi Development Act.

37. Mr. Sethi submitted that DDA is the sole decision maker in respect of provisions of Master Plan and has full powers to grant site specific approvals. To strengthen his arguments, learned Counsel relied upon the judgment of this Court in the case of ***Kenneth Builders and Developer Ltd. v. Union of India and Ors., W.P.(C) No. 10647 of 2010*** in which the Court observed as under:-

“28: In deciding this writ petition, an important question which arises for consideration is -who decides the land use of a particular piece of land in Delhi? If the land use is to be determined by the DDA through the publication of the Master Plan, then the question arises as to whether the DPCC or the

Department of Forest can object to a particular land use?

.....

30. From these provisions, it is clear that the making of the master plan and the zonal plans goes through an elaborate procedure. Even the modification carried out to any of these plans has to go through a series of steps which include the inviting of objections and the consideration thereof. From these provisions it is clear that the stand taken by the DDA that once the master plan shows the land in question as earmarked for a particular use then no other authority can challenge the same. The master plan and the zonal plans are prepared by the DDA and they have a statutory flavour. Once the DDA has gone through the formalities required under law in preparing the master plan and/or the zonal plans and/or in carrying out any modifications therein, the land use of a particular area would stand determined as per the said plans.

31. When the land owning agency as also the authority which prepares the Master Plan clearly and categorically states that the land in question does not fall within the ridge area and the land use is residential, we fail to see as to how the DPCC or the Department of Forests, NCT of Delhi can raise any objection on this account"

32. Therefore, we are of the view that the stand taken by the DBA that the land use of the project site is residential stands established...."

38. Moreover, the stand of DDA in the present case is that the land use of the plot in question was changed from PSP to Residential and,

therefore, Development Control Norms for Residential Plot-Group Housing apply to this plot. Further, MCD's Standing Committee has approved the layout plan for development of Group Housing on 2.0 Hectare plot as a separate entity u/s 313 of the DMC Act in its meeting held on 22.03.2013 vide resolution No. 315. Regarding petitioner's contention that the land acquired for MRTS Project was acquired after converting the land use from 'Residential' to 'Public and semi public' and now DDA cannot re-convert it to 'Residential' defeating the purpose of acquisition. Whereas the land use of 3.05 Hectare land has been changed only once from PSP to 'Residential' vide Notification dated 23.09.2005. The same is evident from the information obtained by respondent No.12 under RTI. Once the land is acquired in a lawful manner and is vested in the acquiring authority, and if a portion of the acquired land is left unused after achieving the public purpose, the unused portion can be used for a purpose other than it was acquired for. To strengthen his arguments, learned Senior Counsel for the respondent No.12 relied on the judgment of this Court in the case of *Adil Singh v. UOI and Ors, W.P. (C) No. 2948 of 2007* in which the Court observed as under:-

"45. From all these decision, a clear line of thought is discernible, and that is, that where land is acquired for one public purpose and part of it is left unused, the same can be used for another public purpose. In case this is done, merely because the unused land is used for another public purpose would not be a ground for challenging the original acquisition itself. It is further

clear that once the land has vested in the State either by virtue of section 16 of the said Act or by virtue of Section 17(1), in urgent cases, there is no question of the land being re-vested in the erstwhile owners. The Government can withdraw from the acquisition only up to the point it does not take possession of the land sought to be acquired. Once possession has been taken, the acquisition cannot be given up. It is also clear that though part of the land acquired for one public purpose could not be used for another public purpose, without invalidating the acquisition itself, land acquired for a public purpose cannot be used for a private objective. But, even if part of the land is sought to be used for a commercial purpose, the same would not revert to the original owner though the appropriate Government would be subject to an action in case the allotment for commercial use is arbitrary or unreasonable. Where a portion of the land acquired for a public purpose is left unused, it would be open to the state government to utilize the same for a commercial purpose provided it is done in a transparent manner either through an open tender or through an auction.”

39. Mr. Sethi further submitted that the auction has been conducted by DMRC in a transparent manner, i.e., through a public auction and there is no allegation that the auction was not done in accordance with law. Moreover, there was no *malafide* on part of DDA. Thus it is clear that DDA took a conscious decision in its meeting dated 21.01.2011 with respect to the applicability of FAR for Group Housing and further again took an informed decision at the highest level vide its resolution dated 12.05.2011 that no height restrictions can be imposed on the

proposed project under the provisions of MPD 2021.

40. It is further submitted that as per the settled law the Court would not interfere in a policy decision taken by a Government body unless some illegality, impropriety, *malafide* or unreasonableness can be proved on part of such decision making body as held in the cases of ***Sethi Auto Service Station and Anr. Vs. Delhi Development Authority and Ors. (2009) 1 SCC 180; and Residents Welfare and Recreation Association (Regd.) & Ors. Vs. DDA & Ors. W.P. (C) 1815/2009.***

41. Mr. Sethi further submitted that the principle of *res judicata* bars re-opening of the decision of this Court in WP(C) 3135/2010. DDA has the final authority to rule on questions of land use/norms as held in the case of ***Kenneth Builders (Supra)***. The fact that DDA has to decide all issues pertaining to MPD2021 has been provided within the powers of DDA as per clause 17 of the Introduction of the MPD 2021.

42. Mr. Sethi further submitted that the present petition has been filed by Mrs. Alka Sharma in her capacity as the Officiating Registrar of Delhi University. There is no authority given by the Executive Council of Delhi University authorizing her to file the present petition. In fact, there cannot be any such authority as Executive Council of Delhi University never passed a resolution to file the present writ petition.

43. However, vide Order dated 10.09.2013 this Court directed the petitioner to file an affidavit disclosing as to how the decision to file the present writ petition was taken. Accordingly, the petitioner has filed an affidavit referring to Resolution No. 56 passed by The Academic Council on 20.03.2012 and Resolution No. 173 passed by the Executive Council on 21.03.2012 and stated that pursuant to above resolutions, the present writ petition was filed. Thus, the Registrar has filed the present petition.

44. While concluding his arguments, Mr. Sethi submitted that respondent No.12 received all approvals from all statutory bodies, viz., AAI, AST, Fire (CFO), DDA, DUAC, Forest, MCD, NMA, SEAC, etc.. Therefore, all approvals have been obtained but construction has not yet started. Six years have been spent on same issues causing huge loss to respondents No.10 & 12 both in money and reputation.

45. Mr. Arun Birbal, Ld. Counsel appearing on behalf of DDA has fully supported the case of respondent No.10 and 12. Further added that for determining the land use, DDA is the proper and final authority. Vide decision dated 12.05.2011, DDA has resolved and allowed development control norms as applicable under the clause 'Group Housing' viz., 200 FAR with 33% ground coverage without height restriction on the plot in question. The said plot is not part of North Campus of Delhi University, therefore, the petitioner has no

locus to file the present petition. Moreover, land use has been changed by due process of law.

46. I have heard learned counsels for the parties.

47. Respondent No.10 DMRC had constructed Vishwavidyalaya Metro Station, where 2 Hectares of land remained surplus and was to be used for development in order to generate revenue. Accordingly, the respondent No.10 applied to DDA for change of land use from 'Public and Semi Public' to 'Residential', which was approved by the Ministry of Urban Development as per its notification no. 1383 (E) dated 23.09.2005. The auction of the land in favour of the Respondent No.12 was granted only after receipt of letters dated 29.03.2007 & 14.09.2007 issued by the DDA, wherein it was specifically informed that the FAR for the Plot in question would be as per the norms of the MPD -2021 for Group Housing and FAR of 200 with 33% ground coverage would be permissible. Moreover, the Ministry of Urban Development vide its Notification dated 18.04.2011 had amended Clause 3.3.1.1 (vii) of the MPD 2021, wherein the words, 'Property Development by DMRC' was deleted. Thus, the restriction on enhancement of FAR for property development by DMRC as provided under the MPD-2021 stood modified to the effect that the FAR for projects of property development by the DMRC can be enhanced in accordance with the provisions of the MPD-2021. Moreover, in the Minutes of Meeting dated 21.05.2011, in respect of the Plot in question, DDA allowed the development control norms as available to

any Group Housing Society under MPD -2021, including 200 FAR without restriction of height, on the residential plot leased out to respondent no. 12 by DMRC near Vishwavidyalaya Metro Station. Therefore, the permission given by the DDA in the minutes of meeting dated 21.05.2011 was completely in line with the amended provisions of the MPD-2021.

48. It is pertinent to mention here that the respondent No.10 has also leased out (5) five parcels of land for residential development and all such five Projects have been approved by the competent authority with FAR-200 and ground coverage as 33%. In addition to the land in question, the other 4 (four) parcels of land are Kyber Pass, Rithala, Subash Nagar and Dwarka Mod.

49. It is also pertinent to mention here that the situation in question arose for the reason that earlier under Phase-I, the Vishwavidyalaya Metro Station used to be a terminal station. In 2006, when Phase-II was envisioned, the aforesaid Metro Station remained no longer a terminal station and the line from Central Secretariat to Vishwavidyalaya was extended to Jahangirpuri, resultantly, the requirement for parking space was reduced, and consequently there was a surplus land available with the DMRC. Accordingly, DMRC invited bids for residential development on 2.0 Hectare plot representing that the norms of Residential Plot-Group Housing as per MPD 2021 would be applicable which permit 200 FAR with 33% ground coverage. Accordingly, respondent No.12 participated and

turned out to be the highest bidder at Rs.218.20 crores.

50. Thereafter, respondent No.12 submitted a lay out plan to MCD on 30.03.2009 on the basis of norms applicable to Residential Plot-Group Housing. In response thereto, MCD vide letter dated 8.06.2009 sought clarification from DDA whether the 2.0 Hectare plot leased by DMRC to respondent No.12 can be considered as a separate entity for the purpose of approval of Group Housing with 200 FAR. On 25.06.2009, DMRC informed DDA that they have entered into Lease Agreement with respondent No.12 on 15.12.2008 for Residential Plot-Group Housing development on 2.0 Hectare and requested DDA to confirm 200 FAR to MCD. However, DDA replied to MCD vide letter dated 19.08.2009 that Development Control Norms shall be as per Notification dated 20.01.2005 prescribing Development Control Norms for Metro Stations viz 25% ground coverage and 100 FAR with no height restrictions.

51. Thereafter, the matter was considered in DDA's meeting held on 17.02.2010, whereby the Lt. Governor constituted a Committee under the Chairmanship of Engineer Member, DDA with Chief Town Planner, MCD and Chief Engineer, DMRC as members to survey the entire area and examine the implications on the proposed high-rise buildings on the privacy and integrity of the Delhi University environment. Accordingly, the Lt. Governor directed that the Committed would give its report within a week. Pursuant to the said

direction, a joint inspection of the site was conducted by the committee members on 19.02.2010 whereby observed and concluded that the proposed high rise property development on 2.0 Hectare plot will not affect the privacy of the girls' hostel nearby, will not add to any parking problem and will also not affect the serenity / tranquillity of University area.

52. Thereafter, respondents No.10 and 12 made efforts to persuade DDA to correct its action and restore Group Housing norms with 200 FAR but failed to yield any result. Being aggrieved, respondent No.12 filed Writ Petition No.3135/2010 impugning the letter dated 19.08.2009 issued by DDA. During the pendency of the aforementioned writ petition, DDA informed the Court that the impugned decision was being reconsidered at the highest level in DDA. Accordingly, DDA reconsidered the issue and resolved that 2.0 Hectare plot leased out to respondent No.12 shall be considered as a 'separate entity' and the Development Control Norms for Group Housing with no height restriction shall apply. Moreover, DDA's counsel placed on record the Authority's decision applicable on Group Housing Norms with 200 FAR and 'No height restriction'.

53. It is pertinent to mention here that a separate Writ Petition (C) No.8675 of 2011 was filed by one "Association of Metro Commuters" inter alia challenging the allocation of the said land for residential

development, which was dismissed by the Division Bench of this Court vide order dated 14.12.2011 and held as under:

“6. We are unable to agree. A person, who brings a Us before the Court, even in public interest, is required to, unless the facts speak for themselves, satisfy the Court as to the illegality in the actions of the State /public body affecting the public interest. A petitioner, even in a Public Interest Litigation cannot seek commencement of a roving and fishing inquiry. It was so held in Narmada Bachao Andolan Vs. State of Madhya Pradesh 2011 (5) SCALE 624. A litigant who is unwilling to collect / gather facts, which in today's transparent regime are available on the asking, cannot be allowed to waste the time of the Court

7. Even otherwise, we find that the said residential development to which objection is taken, having commenced at least in the year 2007 if not earlier i..e four years prior hereto and the agreement of the respondent No. 1 DMRC with the respondent No. 4 Young Builders Pvt. Ltd. is also of 15.12.2008. From the documents filed by the petitioner itself we also find the Government of India to have accorded permission to the respondent No. 1 DMRC to generate resources through development on the land transferred to it by the Government and sanction having been accorded as far back as in 2007 by DDA for the said residential development at Vishwa Vidyalaya MRTS metro station. There is thus nothing before us as to show that there is any irregularity in the actions with respect whereto the petition is filed.”

54. Moreover, vide W.P. (C) 6624-6625/2012 titled as *Sanjay Khanna (supra)*, the acquisition was challenged by the erstwhile lessees of the plot in question. The Petitions were also dismissed. The order passed in aforementioned petition was challenged by filing SLP which was also dismissed. Thus, the issue was finally set to rest, after DDA in a meeting held under the directions of this Court and chaired by Lt. Governor decided on 21.01.2011 and 12.05.2011, that Group Housing Norms with no height restriction will apply in respect of subject 2.0 Hectare plot. Moreover, clause-B of 4.4.3 of MPD 2021 provides that on the minimum size of 3000 sq.m. plot, maximum ground coverage applicable would be 33.3% with maximum FAR of 200. In addition, as per Chapter-12 titled Transportation of MPD 2021, Metro Stations along with property development (composite Development) up to a maximum area of 3.0 ha shall be permitted in all Use Zones, except in Recreational and Regional Park / Ridge Use Zone, Lutyens' Bungalow Zone and Heritage Zones, subject to approval of Technical Committee of DDA.

55. It is worth noting that the process of change of land use for 3.05 Hectare plot had been initiated since 19.12.2004, which preceded Notification dated 20.01.2005. In any case, Notification dated 20.01.2005 apply only in cases where DMRC desires property development without change of land use and that too on plots upto 3.0 Hectare. Thus, Notification dated 20.01.2005 makes it clear that it (Incorporated in MPD-2021, Chapter-12 as 'Development Control

Norms for Metro Station') will not apply in the present case as the size of the plot in question is more than 3.0 Hectare.

56. Respondent No.10, DMRC was desirous of using its properties for commercial/residential development to generate resources which was proving to be extremely time consuming exercise because of the cumbersome procedures involved in change of land use. Accordingly, DMRC requested DDA to dispense with the change of land use and allow property development under automatic use. The request of DMRC was deliberated and considered by DDA whereby it was decided that blanket permission cannot be given and property development by DMRC without change of land use will be restricted on plots up to a maximum area of 3 Hectare and will have maximum 100 FAR, 25% Ground Coverage with no height restriction. Accordingly, Notification dated 20.01.2005 was issued which starts with "Notwithstanding the land use provisions of Master Plan property development shall be permitted..... " Thus, this Notification was an 'enabling' provision to facilitate DMRC to take up property development and generate resources in an expeditious manner without undergoing the cumbersome procedure of change of land use on plots upto 3.0 Hectare. No doubt, while developing property on land above 3.0 Hectare, DMRC has to necessarily follow the procedure of change of land use which would then be subject to norms applicable under respective chapters in MPD 2021.

57. In the present case, Notification dated 20.01.2005 could not have applied because the size of the plot in question is 3.05 Hectare which is more than the prescribed limit of 3.0 Hectare. Therefore, Respondent no.10 DMRC, had no choice but to necessarily follow the process of change of land use. The same was done by following due process of law and land use was changed from PSP to Residential vide Notification dated 23.09.2005, after which Development Control Norms of Residential Plot -Group Housing only can apply.

58. The claim of the petitioner is that the 3.05 Hectare land falls in the 'controlled zone' of Delhi University and that a height restriction ought to have been imposed on the Project otherwise it will be in direct conflict with MPD 2021. However, as submitted by Id. Counsel for respondents that there is nothing called "controlled zone" of Delhi University under MPD 2021 or Zonal Development Plan for Zone-"C". However, MPD 2021, Chapter 11-Urban Design, Para 11.3 provides that restriction on tall buildings would be necessary in important areas like Lutyen's Bungalow Zone, Civil Lines Bungalow Zone and North Delhi Campus. The plot in question does not fall within any of these restricted areas. In any case, the same was also established by respondent No.12 during arguments by showing the Zonal Development Plan for Zone-'C' (Civil Lines Zone) that the land in question does not fall within any restricted area in Zone-"C" i.e. the Civil Lines Bungalow Zone or the North Delhi Campus. In fact that land does not fall within Delhi University North Campus which is

established from the information obtained by respondent No.12 under RTI wherein it is stated that the 3.05 Hectare plot is not a part of Delhi University.

59. It is pertinent to mention here that two independent committees have submitted the report that the development is within the control norms applicable to this area and that it will not affect the aesthetic beauty of the North Campus of Delhi University. In the present case the relevant amendment in the Master Plan was required to be made in respect of change of land use from PSP to residential. This was done by DDA following due process of law as contemplated in Section 11-A of DD Act,1957. Accordingly, the DDA had issued a Public Notice dated 19.12.2004 inviting objections before changing the land use of the plot from PSP to residential. The respondents did not receive any objection from any corner, thereafter, issued Notification dated 23.09.2005 changing the land use of the plot.

60. The contention made by the petitioner that the present plot cannot be treated as a separate entity, the DDA in its meetings held on 21.01.2011 and 12.05.2011 deliberated the said issue in detail and only thereafter decided to treat 2.0 Hectare plot as a separate entity and allowed Group Housing norms without height restriction in view of the fact that the said site had already been notified as residential. The said meeting was held under the directions of this Court as issued in WP (C) No. 3135/2010. The meeting was chaired by Lt. Governor of Delhi

and attended, amongst others, by Vice Chairaian of DDA, Members of Authority and special invitees such as Chief Secretary, Principal Secretary and Secretary to Govt. of NCT of Delhi, Principal Secretary to LG and Managing Director, DMRC.

61. The land in issue does not come under a development area as defined under Section 12 of the DD Act, 1957. The 'Authority' of DDA is constituted under Section 3 of the DD Act, 1957. By virtue of Section 6 of DD Act, the executive power of DDA vests in this Authority. Once the DDA and its Authority have gone through the formalities required under law in preparing the master plan and/or the zonal plans and/or in carrying out any modifications therein, the land use of a particular area would stand determined as per the said plans. Moreover, FAR of 200 with no height restriction for residential complexes has been specifically made available to the University also under MPD-2021. This would enable the University to provide shelter to its employees and teachers.

62. The stand of DDA in the present case is that the land use of the plot in question was changed from PSP to Residential and, therefore, Development Control Norms for Residential Plot -Group Housing apply to this plot. Further, MCD's Standing Committee has approved the layout plan for development of Group Housing on 2.0 Hectare plot as a separate entity u/s 313 of the DMC Act in its meeting held on 22.03.2013 vide resolution No. 315.

63. Regarding petitioner's contention that the land acquired for MRTS Project was acquired after converting the land use from Residential to Public and semi public, and now DDA cannot re-convert it to Residential defeating the purpose of acquisition. Whereas, the land use of 3.05 Hectare land has been changed only once from PSP to Residential vide Notification dated 23.09.2005 as is evident from the information obtained by respondent No.12 under RTI. Once the land is acquired in a lawful manner and is vested in the acquiring authority, and if a portion of the acquired land is left unused after achieving the public purpose, the unused portion can be used for a purpose other than it was acquired for as held in the case of *Adil Singh (supra)*.

64. As per the settled law, the Court should not interfere with any policy decision taken by a Government body unless there appears to be some illegality, impropriety, *malafide* or unreasonableness on part of such decision making body. However, the petitioner has failed to establish the same.

65. Moreover, the petition suffers from laches, which has been filed almost with delay of 7-8 years. The existence of the factum of land in question has been within petitioner's knowledge since beginning. In view of such delay on part of the petitioner to challenge the project, the present writ petition deserves to be dismissed on ground of delay and laches, as held in the case of *State of M.P. and Ors. vs. Nandlal Jaiswal and Ors. (1986) 4 SCC 566* in which the Apex Court observed

that the delay of only 10 months in challenging the policy also cannot be condoned.

66. The respondent No.12 has received all approvals from all statutory bodies, viz., AAI, AST, Fire (CFO), DDA, DUAC, Forest, MCD, NMA, SEAC etc., but construction has not yet started.

67. In view of the above discussion, I find no merit in the instant petition and the same is also hit by delay and laches.

68. Accordingly, instant petition is dismissed with no order as to costs.

CM Nos. 5899/2012, 7676/2012, 11637/2012, 1045/2013 and 6676/2014

The instant applications are dismissed as infructuous.

SURESH KAIT, J

APRIL 27, 2015
RS