

R.K. Mittal & Ors vs State Of U.P. & Ors on 5 December, 2011

Equivalent citations: AIR 2012 SUPREME COURT 389, 2012 (2) SCC 232, 2012 AIR SCW 390, 2012 (2) ALL LJ 35, 2011 (13) SCALE 369, AIR 2012 SC (CIVIL) 306, (2012) 1 MAD LJ 1142, (2011) 13 SCALE 369, (2012) 1 LANDLR 299, (2012) 1 WLC(SC)CVL 276, (2012) 94 ALL LR 84, (2012) 3 ALL WC 3109

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Bench: Swatanter Kumar, Ranjana Prakash Desai

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.6962 of 2005

R.K. Mittal & Ors.

... Appellants

Versus

State of U.P. & Ors.

...

Respondents

WITH

CIVIL APPEAL NO.6963 OF 2005

AND

(Arising out of SLP (C) No.24029 of 2005 and 9150 of 2007)

J U D G M E N T

Swatanter Kumar, J.

1. Leave granted in both the Special Leave Petitions.

2. The ambit and scope of power of New Okhla Industrial Development Authority (for short, the 'Development Authority') to permit users, other than residential, in the sectors specifically earmarked for 'residential use' in the Master Plan of the New Okhla Industrial Development Area (for short, the 'Development Area') is the basic question that falls for consideration of this Court in this bunch of appeals. These appeals demonstrate some of the instances of widespread violation of statutory provisions and somewhat arbitrary exercise of power by the Development Authority. Lack of adoption of uniform application of law has resulted in large number of cases of violation of law all over the State of Uttar Pradesh going unnoticed. The time has come for the Development Authorities to change their style of functioning and act vigilantly and uniformly, that too, strictly in accordance with law, keeping in view the larger public interest. Introductory Facts

3. This judgment shall dispose of the above referred four civil appeals and the applications for intervention therein. Out of the four appeals, in Civil Appeal No. 6962 of 2005 and Civil Appeal arising out of SLP(C) No. 24029 of 2005, the lease deed in favour of the parties had been cancelled by the Development Authority while in other two appeals, Civil Appeal No. 6963 of 2005 and Civil Appeal arising out of SLP (C) No.9150 of 2007, after giving notice, it had passed an order requiring the parties concerned to stop the misuse within the stipulated time, failing which appropriate action in accordance with law, including cancellation of the lease deed, would be taken. The facts and circumstances in all the appeals and even the intervention applications are somewhat similar. In any case, the common question of law arising in all the appeals and applications is whether the residential premises can be, wholly or partly, used by the original allottee or even its transferee, for any purpose other than residential? We do not consider it necessary to refer to the facts of each case in greater detail, except the facts of the lead case, i.e., Civil Appeal No.6962 of 2005, R.K. Mittal v. State of U.P. However, wherever reference to certain additional facts is called for, we would notice the same in the other cases as well.

4. The Development Authority executed a lease deed dated 2nd April, 1988 in favour of Shri Rajendra Kumar Srivastava in relation to Plot No.778, Block A, Sector XIV, New Okhla Industrial Development Area, District Ghaziabad, admeasuring about 274.37 square meters as per the boundaries described in the deed. Upon the plot, the lessee raised some construction which remained unfinished. The lessee thereupon actually transferred the plot in question along with unfinished superstructure vide Transfer Deed dated 20th August, 1999 in favour Shri R.K. Mittal,

Shri Ashok Garg and Shri Sanjeev Gupta, the appellants herein. The original lease deed contained specific stipulations in regard to the lessee being obliged to obey all the Rules, Regulations and Directions made by the lessor. The lessee was to raise construction as per approved plans and to use the premises only for the purpose for which it was committed in terms of the lease and as per law. These clauses of the lease deed read as under :

"(d) That the lessee will obey and submit to all Directions issued or Regulations made by the Lessor now existing or hereafter to exist so far as the same are incidental to the possession of immovable property or so far as they effect the health, safety or convenience of the other inhabitants of the place.

(e) That the Lessee will at his own cost erect on the demised premises in accordance with the plans, elevation and design and in a position to be approved by the lessor or any officer authorised by the lessor in that behalf in writing and in a substantial and workman like manner, a residential building only with all necessary, sewers, drains and other appurtenances according to the Directions issued or Regulations made in respect of buildings, drains, latrines and connection with sewer.

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(h) That the lessee shall use the demised

premises only for the purpose of constructing a building for residential purpose of customary home occupation or residential cum medical and surgical clinic or dispensary or professional office and for no other purpose without the consent of the Lessor and subject to such terms & conditions as Lessor may impose and will not do or suffer to be done on demised premises or any part thereof, any act or thing which may be or grow to be a nuisance, damage, annoyance, or inconvenience to the Lessor or the owners, occupiers of other premises in the neighbourhood."

5. The Transfer Deed executed by the original lessee in favour of the appellants also contained similar conditions and in addition thereto provided that the conditions of the lease deed shall be binding upon the appellants. The relevant clauses of the Transfer Deed read as under :

"10. That the Transferees shall complete the construction of plot and shall obtain Occupancy Certificate of Plot from Building Cell, Noida within balance construction period as per terms of lease deed of plot which is upto 23.2.2000. Extension of time for construction of plot and for obtaining occupancy certificate will be granted as per terms of lease deed of plot and as per then prevailing extension policy of NOIDA.

11. That the Transferee shall be bound by the terms and conditions of lease deed of plot executed on 2.4.88, subject to the amendments indicated in the Transfer Memorandum.

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15. That the Transferees shall put the property in the use exclusively for residential purpose and shall not use it for any purpose other than residential.

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17. That the terms and conditions amended by the NOIDA AUTHORITY from time to time shall be binding on the Transferees aforesaid."

6. After completing the construction, the appellants appear to have rented out the premises to Andhra Bank and Akariti Infotech. As such, both the bank and the company had been carrying on their business from the premises in question. The Development Authority, on 18th January, 2001 and 22nd February, 2001 issued notices to both Andhra Bank and Akariti Infotech to stop commercial use in the said premises within 30 days, failing which action would be taken as per the lease deed. In these notices, it was also stated that there was encroachment in violation of the prescribed building byelaws and the use of residential plot for commercial purpose was in violation of the provisions of the lease deed of the plot. Invoking the provisions of the U.P. Industrial Area Development Act, 1976 (for short, 'the Act'), the Development Authority gave them opportunity to file objections. To these notices, the appellants not only filed objections but also appeared before the Development Authority and contended that the Development Authority, in furtherance to the proposal to permit running of consulting clinics, banks and guest houses in the residential areas, had permitted such use on the main roads, on payment of 30 per cent of the existing residential rate on per square meter area of plot per annum and had invited suggestions from the general public. Reliance was also placed on certain press reports. Noticing these facts and obviously taking the view that there was no legal sanctity to the alleged change of user, the Development Authority rejected the objections and required the misuse to be stopped and the violation of the building byelaws to be removed within four months. A part of the said order reads as follows :

"The terms and conditions of lease deed and transfer deed of plot clearly states that allotted plot shall be used exclusively for residential purposes. The petitioner changed the land use of plot without intimating to the Authority and did not bother to seek any clarification or obtain permission from the Authority for such change. It is a well known fact that this Authority does not permit commercial activity in the residential plots. This is a classic case of violation of law by the most educated enlightened class of the Country. This class in Noida has tried to change not only the character of Noida but have for self interest destroyed the peace of the Neighbours. It is also possible that the then Bank staff also colluded in the matter and did not bother to see the conditions contained in the lease deed and did not even try to approach the Authority for clarification.

In view of the above stated facts and after listening to the petitioner, it is ordered that representation pleadings of the petitioner Allottee of Residential Plot No.A-778, Sector-19 stand rejected and the petitioner is also directed to ensure vacation of bank branch and infotec office from the residential premises and restore the building according to prescribed building bye-law within 4 months (Four Months) from the date of service of this order.

7. As the Petitioner has evaded compliance of terms of lease deed for nearly five months on one pretext or the other, he is also informed that in case of failure to restore the land use of plot within stipulated period, the Authority shall be free to take further action under law WITHOUT FURTHER NOTICE.

Orders regarding penalty for misuse of premises will be passed separately."

7. Aggrieved from the aforesaid order, the appellants filed a writ petition before the High Court of Judicature at Allahabad. The writ petition preferred by the appellants came to be dismissed vide order dated 19th January, 2002. It was noticed by the High Court and rightly so, that the Development Authority had invited some suggestions for change of user of residential plots to commercial or mixed user on certain terms and conditions, by bringing certain changes/amendments in its byelaws and policy decisions. This remained at an interim stage and no final decision was taken by any competent authority in accordance with the provisions of the Act. The Development Authority had not undertaken any exercise for the said amendment in accordance with law and had not even sought the approval of the State Government, as required under the law, for change of user or amendment of the byelaws, Master Plan, etc. In fact, the provisions directing forfeiture of property under Section 14 of the Act and imposition of penalty for misuse in terms of Section 15 of the Act were in force. Relying upon judgment of this Court in *Munshi Ram v. Union of India*[(2000) 7 SCC 22], the High Court not only dismissed the writ petition but also directed the Development Authority to take immediate and strong action against those who have started using residential plots, wholly or partially, for other non-residential uses. The appellants, feeling dissatisfied by the judgment of the High Court, have preferred the present appeal before this Court. In order to complete the factual matrix of the case, we may notice that the appellants have placed on record Annexure P-7, a copy of the public notice dated 30th March, 2000 indicating that there was proposal to grant permission for mixed use consulting clinics, bank branch and guest houses on 18 A.M. wide roads on the conditions stated therein. These conditions also included the provision that fees payable on grant of permission for mixed use of land would be 30 per cent of existing residential rate, on per square meter area of plot, on yearly basis. To this proposal, public opinion was invited and it was stated that objections/suggestions in this regard may be filed in writing in the office of the Additional Chief Executive Officer of the Development Authority. Even hearing was to be granted. In the affidavit filed on behalf of the respondent- Development Authority on 8th October, 2002, it has been specifically averred that 21 banks were functioning in residential sector in the Development Area under private arrangements with the lessees of the concerned plots and these banks have not obtained any permission or authorization from the Development Authority. Two banks, namely, Oriental Bank of Commerce, Sector 27, Noida and Vijaya Bank, Sector 19, Noida had obtained such permission for a period of five years and three years respectively since 1995 and

1994. These banks had not obtained any permission or renewal thereafter. Show cause notices had been issued to all the banks to wind up their activities from these areas. In para 10 of the affidavit, it had been stated that the Development Authority 'has taken a firm decision to evict all the banks from the residential sectors and notices have been issued to all these 21 banks without exception'. A definite averment has also been made in this affidavit that the functioning of the banks in the residential sectors caused inconvenience and disturbance to the public at large and the Development Authority has earmarked specific areas for making land available to the banks to carry on their commercial activities. They have allotted land to several banks in commercial-cum-institutional and commercial portion of industrial and institutional sectors. Option was given to the 21 banks to function in these areas and that if they would apply for the same, the Development Authority shall consider their cases sympathetically. The Development Authority, specifically and with emphasis, reiterated that banking activities cannot be allowed in residential plots of the residential sector. Another affidavit was filed on behalf of the Development Authority in March 2011, wherein a clear stand was taken that as per the Master Plan, Sector 19 of the Development Area is a residential sector, where the land use is residential alone, neither commercial nor mixed. List of 43 properties in Sector 19, Noida was filed as Annexure-1, where non-residential activities, including banking and medical clinics, were being carried on while Annexure-2 related to other 11 properties being used for other non-residential purposes in Sector 19 itself. There are institutional plots in Sector 19, which had been allotted by the Development Authority for running of nursing homes or commercial activity. An office order was issued on or about 14th May, 2009, in relation to Guest Houses, by the Chief Executive Officer of the Development Authority. However, the same is stated to have been withdrawn immediately thereafter. In other words, according to the respondents, there is no order or sanction operative and binding as of now, which permits any user other than residential in the residential sector.

8. Having stated the facts, we may now examine the relevant provisions of law. The State of Uttar Pradesh had enacted the law to provide for creation of an Authority for development of certain areas of the State into industrial and urban townships and for matters connected therewith. 'Authority' had been defined under Section 2(b) of the Act to mean the Authority constituted under Section 3 of the Act. Section 3 required the State Government to constitute, for the purposes of the Act, an authority for any industrial Development Area in terms of that Section. Section 6 of the Act related to functions of the Authority while Section 7 mentions the powers of the Authority in respect of transfer of land. In terms of these statutory provisions, the object of the Authority was to secure the planned development of industrial Development Area and the Authority was required to perform certain functions in terms of Section 6(2), which reads as under:

"2) Without prejudice to the generality of the objects of the Authority, the Authority shall perform the following functions--

(a) to acquire land in the industrial development area, by agreement or through proceedings under the Land Acquisition Act, 1894 for the purposes, of this Act;

(b) to prepare a plan for the development of the industrial development area;

- (c) to demarcate and develop sites for industrial, commercial and residential purposes according to the plan;
- (d) to provide infra-structure for industrial, commercial and residential purposes;
- (e) to provide amenities;
- (f) to allocate and transfer either by way of sale or lease or otherwise plots of land for industrial, commercial or residential purposes;
- (g) to regulate the erection of buildings and setting up of industries; and
- (h) to lay down the purpose for which a

particular site or plot of land shall be used, namely for industrial or commercial or residential purpose or any other specified purpose in such area."

9. In terms of Section 8 of the Act, for the purposes of proper planning and development of the industrial development area, the Authority had the power to issue directions, as it consider necessary, regarding the factors stated therein, including restriction of use on any site for a purpose other than for which it has been allocated. Every transferee in whose favour the land was transferred was bound to comply with the directions issued as expeditiously as possible and was obliged to erect the building or to take such necessary steps to comply with the directions in accordance with Section 8(2) of the Act. No person could raise construction, erect or occupy the building in contravention of the building regulations. The Authority has been vested with the powers to make regulations with the previous approval of the State Government in terms of Section 19 of the Act, while the State Government may, by notification, frame Rules for the purposes of the Act as contemplated under Section 18 of the Act.

10. Section 2(d) of the Act defines 'Industrial Development Area' to be an area declared as such by the State Government by notification. Section 6(2)(b) requires the Authority to prepare a plan for

the development of an industrial development area while Section 6(2)(h) enjoins the Authority to lay down the purpose for which a particular site or plot of land shall be used, namely for industrial or commercial or residential or any other specified purpose. The power to transfer lands is also given to the Authority. In terms of Section 19 read with Section 6 of the Act, the New Okhla Industrial Development Area was notified and the Authority framed the regulations for the purposes of proper planning and development of that area. These were called the New Okhla Industrial Development Area (Preparation and Finalization of Plan) Regulations, 1991 [hereafter referred to as 'the Regulations']. Regulation 2 of the Regulations defines various kinds of uses including 'Land Use'. 'Land Use' under Regulation 2(g) means the use of any land or part thereof in the industrial development area for industrial, residential, institutional, commercial, public water bodies, organized recreational open spaces, public and semi-public buildings, agriculture and other like purposes. In contradistinction to the 'Commercial Use', 'Industrial Use' 'Institutional Use' and 'Public Use', the 'Residential Use' has been defined under Regulation 2(1)(k) which reads as under:

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"(k) 'Residential Use' means the use of any land or building or part thereof for human habitation and such other uses incidental to residential uses."

11. The expression 'Sector' has also been defined in Regulation 2(l) to mean any one of the divisions in which the industrial development area or part thereof may be divided, for the purposes of development under the Act. Regulation 3 enjoins upon the Authority a duty to prepare a Draft Plan for industrial development areas in terms of Regulation 3(1) to 3(6). Under Regulation 4, the Plan has to include sector plans into which such industrial area has been divided. It should also depict the residential use by allocating the area of land for housing, for different and defined densities and plotted development for different categories of households in terms of Regulation 4(1)(b)

(ii). Similarly, it should also state the commercial use, public use, agricultural use and other purposes as the Authority may deem fit. The procedure for finalization of the Draft Plan is also contemplated under Chapter III, Regulations 5 to 11 of the Regulations. The Regulations postulate that the Authority, after preparation of the Draft Plan, shall, by public notice, invite objections and suggestions to be filed before the date notified but not earlier than 30 days from the date of publication. A proper enquiry and hearing is contemplated whereafter the Draft Plan is to be finalized in terms of Regulation 9 and the date of commencement of the Plan is to be specified in terms of Regulation 10. The Authority has the power to amend the Plans but this power to amend is restricted in its scope. Regulation 11 empowers the Authority to do so, but no such amendment can be made which would result in important alteration in the character of the Plan and which do not relate to the extent of land use or standards of population density. Even thereafter, it is required to follow the prescribed procedure. Regulation 11 reads as under: -

"11. Amendment of the Plan. - (1) The Authority may make such amendments in the Plan which do not effect important alteration in the character of the Plan and which do not relate to the extent of land use or standards of population density.

(2) Before making any amendment in the Plan under sub-section (1), the Authority shall publish a notice in at least one newspaper having circulation in the development are inviting objections and suggestions from any affected person with regard to the proposed amendment before such date as may be specified in the notice and shall consider all objections that may be received.

(3) Every amendment made under this Regulation shall be published in any of the manner specified in Regulation 5 and the amendment shall come into operation either on the date of the first publication or on such other date as the Authority may fix.

(4) The Authority shall not make during the specified period in which the Plan is to remain effective, such amendment(s) in the Plan which affects important alteration in the character of the Plan and which relates to the extent of the land sue or standards of population density."

12. It is not in dispute before us that the Development Authority had finalized the Master Plan in accordance with the provisions of the Act and the Regulations, which was titled as 'Master Plan, NOIDA, 2001'. This Plan is in force and is binding on all concerned.

13. Besides the above provisions of the Act and the Regulations framed thereunder by the Development Authority, the Development Authority has also framed building regulations and directions, which are termed as 'The New Okhla Industrial Development Area Building Regulations and Directions, 2006 (for short 'Regulations 2006)'. These have been primarily framed as byelaws in relation to the constructions, restrictions thereof and type of user. Under Regulation 3.12 (h), a residential building is explained as under: -

"(h) 'Residential building' refers to any building in which sleeping accommodation is provided for normal residential purpose with or without cooking or dining or both facilities and includes one or two or multi family dwelling, lodging or rooming houses, dormitories, apartment houses, flats and hostels."

14. In distinction to the 'residential building', an 'industrial building' is the building or part thereof, in which product or materials of all counts and properties are fabricated, assembled, manufactured etc. An 'institutional building' refers to a building or a part of a building which is used for purposes such as medical or other treatment or care of persons suffering from physical or mental illness, disease or infirmity and includes hospital, institutions and sanatoria etc. while a 'business building' refers to a building or part of a building which is used for transaction of business like Banks, Commercial office, etc. In other words, each building proposed to be used for a definite purpose has to meet different standards, FAR (Floor Area Ratio) and byelaws. These purposes are incapable of being confused with each other or even used interchangeably. Respective purposes have been defined in unambiguous terms in the byelaws, having distinct implications.

15. It does not appear to be the scheme of the provisions of the Act, the Regulations and the bye laws, including the Regulations, 2006 that each of these purposes or buildings can be understood or used interchangeably. In fact, each has distinct features and it does not lie in the jurisdiction of the Development Authority to permit such conversion in users, beyond the scope of the Master Plan, the byelaws and the statutory provisions. Regulation 3.22 of the Regulations, 2006 explain the word 'conversion' to mean the change of an occupancy or change in building structure or part thereof, resulting into change of space or use requiring additional occupancy certificate.

16. The change in user of the building is, therefore, violative not only of the Regulations, byelaws and the provisions of the Act, but is also contrary to the law governing erection of the building. The legislative purpose that emerges from the scheme of the Act and other relevant provisions is to keep a residential building separate from commercial and other buildings. This would necessarily imply that the jurisdiction of the Development Authority to permit different user in violation of this statute and the Regulations is not contemplated in law. Contentions

17. On behalf of the appellants/lessees/users, in the cases before us, it has been contended that the activity of banking or running of clinics is being carried on by them for a long period. Thus, this has been impliedly permitted by the Development Authority. It is also their contention that a public notice had been issued by the Development Authority, permitting mixed user and, thus, the appellants/lessees/users are bonafidely carrying on activities of running banks/nursing homes/other commercial activities in the residential sectors. Reliance has been placed upon Public Notice dated 30th March, 2000 and also that vide notification dated 4th December, 2010 plots allotted in the developed sector to farmers under a Rehabilitation Scheme had permitted establishment of guest houses, restaurants, banks, professional offices, day care centres etc. vide notification dated 4th December, 2010.

18. It is also the contention of the appellants that neither the byelaws, rules and regulations nor the layout plan of the Development Authority, in any manner, impede or place any kind of bar on carrying out banking activity in the residential sectors.

19. While relying upon the judgments of this Court in the case of Hari Rao Vs. N. Govindachari & Ors. [(2005) 7 SCC 643], and Dev Brat Sharma Vs. Jagjit Mehta [(1990) Supp. SCC 724], it was contended that such use does not amount to change of user as it is permissible to carry out professional or clinical activity in the residential houses and, therefore, the notice of termination issued and/or cancellation of the lease deeds, being arbitrary and without application of mind, was vitiated in law.

20. Lastly, it was contended that as there is inadequacy of space for banks, clinics and other commercial offices in the Development Area, the present user is need-based and is in the larger public interest. According to the appellants, the number of plots for the banks is not sufficient to meet the needs of the public in the residential sectors and no alternative spaces are available for relocation of the banks. The lease rent and other charges payable to the Development Authority for both these categories have a considerable difference. Thus, it has the impact of creating heavy liability and inconvenience to the appellants, particularly if they are forced to shift to commercial or

institutional sectors/pockets.

21. On the contra, the contention on behalf of the Development Authority is that banking activity is impermissible in the residential sectors. It causes inconvenience to public and disturbance to the residents. Referring to the Meeting dated 17th December, 2002 of the Committee of the Officers, the stand taken is that banking activity cannot be allowed in the residential portions of the residential sectors and to this effect, a notice was also published.

22. Further, the contention is that the power of the Development Authority to demarcate and develop sites, to lay down the purpose for which a particular site or plot of land shall be used, is controlled by the specific provisions of the Act and the Regulations framed thereunder. Sections 6(2)(b) and 7 of the Act are stated to be the source of power in this regard. It is also the contention that in the Master Plan, 2001, subsequent Plans and the Zoning Regulations, all residential sectors are marked in yellow colour. Sector 19 of the Development Area, where the subject matter of this case is located, is a residential sector. Thus, it can only be used for the residential purpose.

23. The learned counsel appearing for the lessee/transferees had relied upon the judgments of this Court in the cases of Hari Rao (supra) and Dev Brat Sharma (supra). Both these judgments have no application to the present case, on facts or in law. These were cases of eviction under the respective Rent Restriction Acts. In one case, this Court held that putting up of a clinic in a part of the house by a doctor was not change of user, while in the other, where the premises had been rented out for a commercial purpose of selling of leather goods, change of the industry to a garment and cloth business, was not considered as change of user. We are unable to understand as to how the lessees in the present case can derive any benefit from these judgments. In the present case, we have a clear law in force and that law is neither similar in purpose nor linguistically identical to the Rent Restriction Acts of the respective States. The change of user, in the case in hand, has to be seen in light of the Master Plan, the Regulations and the provisions of the Act. What may not be change of user under the Rent Restriction Act, as the rights of the parties therein are governed by the contract between the parties and the grounds of eviction taken by them, may be a change of user within the scope of development Plan and the Regulations.

24. In light of the contentions raised, first of all, it will be appropriate for this Court to examine the scheme of the Act and the Regulations in question. Under the provisions of the Act, the Development Authority is obliged to notify an industrial development area. The very object of the Development Authority is to secure the planned development of the industrial development area and the first and foremost step in this direction is to prepare a Plan for development of the industrial development area. This development Plan is to demarcate and develop sites for industrial, commercial and residential purposes. The land which falls within the jurisdiction of the Development Authority and is part of the development Plan can be transferred in terms of Section 7 of the Act by auction, allotment or otherwise, on such terms and conditions as the Development Authority may state and subject to any rules that may be made thereunder. No person can erect or occupy any building in an industrial development area in contravention to any building Regulation. Under Section 6(2) of the Act, the Development Authority is empowered to make Regulations to regulate the erection of the buildings and Section 6(2)(b) specifically authorizes the Development

Authority to make regulation providing for the layout Plan of the building, whether industrial, commercial or residential. The transfer of the land has to be as per the terms and conditions contained in the lease deed executed by the Development Authority in favour of the transferee. But this all has to be subject to the provisions of the Act and the Regulations framed thereunder. It has to be clearly understood that the lease deed has to be in consonance with law and cannot be in conflict with the provisions of the law. Section 14 of the Act empowers the Development Authority to resume the site or building so transferred and further forfeit whole or any part of the money paid in respect thereof, if the lessee commits breach of the terms and conditions of the lease. No provision of the Act has been brought to our notice which provides for the manner and method to be adopted by the Development Authority for preparation of the development Plan in accordance with the provisions of the Act. This is where the Regulations come into play. Under Regulations 3 and 4 of the Regulations, the Draft Plan has to be prepared by the Development Authority for development of an industrial area, which will include a sector plan. The meaning of 'residential use' under the Regulations is a restricted one and is incapable of being given a wide connotation. It means the use of any land or building or part thereof for human habitation and such other uses incidental to the residential use. The very language of Regulation 2(1)(k) of the Regulations clearly depicts the intent of the framers that the expression 'residential use' is not to be understood in its wider sense, in fact, it would require strict construction because all other uses have been separately defined. The different kinds of uses, therefore, have to be understood only in terms of the explanation or meaning given to them under the Regulations. If unduly wide meaning is given to the expression 'residential use', then it is bound to cause overlap between the other uses. It would cause unnecessary confusion. Thus, each use has to be understood as per its plain language and there is no need for the Development Authority or, for that matter, even for the courts, to expand the meaning given to such expressions. The expression 'such other use incidental to residential use' in Regulation 2(1)(k) has to take its colour from the use of the building for human habitation. In other words, the latter part of the Regulation has to be read ejusdem generis to the earlier part of that Regulation.

25. The development Plan has to be prepared in accordance with the provisions of the Act and the Regulations framed thereunder. As already noticed, the Development Authority has to prepare the Draft Plan, give public notice thereof, invite objections and thereupon conduct an inquiry and hearing as contemplated under the law, before preparing a final development Plan. This final development Plan is a statutory requirement which has to be prepared as ordained under the provisions of Section 6(2)(b) of the Act read with Regulations 5 to 11 of the Regulations. This Plan necessarily provides for a particular use or purpose of any area/site, namely industrial, commercial institutional or residential. The notified development Plan has a legal sanction and provisions contained therein are mandatory in nature. They are incapable of being altered or varied without following the due process prescribed in law. Reference can be made to the judgment of this Court in the case of NOIDA Entrepreneurs Association v. NOIDA & Ors. [(2011) 6 SCC 527]. Further, this Court, in the case of NDMC & Ors. v. Tanvi Trading and Credit Private Limited and Ors. [(2008) 8 SCC 765], not only took the view that even the interim guidelines issued in relation to Luytens' Building Zone till finalization of the Master Plan for Delhi would have statutory force and be treated mandatory, but also that such guidelines, so far as consistent with the Master Plan, would continue to be binding even after coming into force of the Master Plan.

26. It has to be noticed at this stage that the development Plan prepared in accordance with the Regulations take the statutory colour in terms of Section 6(2)(b) of the Act and, therefore, its alteration by an executive order would be impermissible. Even when a Master Plan is to be amended, the entire prescribed procedure must be followed. The power to amend should be exercised only in consonance with the settled norms without going beyond the original power of the Development Authority to make such Plan in accordance with the provisions of the Act. The power to amend cannot be used to frustrate the provisions of the statute. Regulations, being subordinate legislation must fall in line with the principal provisions of the Act and in no way should be detrimental to the provisions and the legislative scheme of the Act.

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

28. The authorities while reconsidering such matters are expected to act reasonably and cautiously. They deal with larger public interest and, therefore, have a responsibility to act with greater degree of sensitivity and proper application of mind. If the Development Authority aids the violation of the statutory provisions, it will be a perversity in the discharge of statutory obligations on the part of the Development Authority. The public interest, as codified in the statutory regulations and the provisions of the Act, should control the conduct of the Development Authority and its decision making process, rather than popular public demand guiding the exercise of its discretion, that too, in a somewhat arbitrary manner. To illustrate the dimensions of exercise of such powers, we may refer to the judgment of this Court in the case of *Bangalore Medical Trust v. B.S. Mudappa & Ors.* [(1991) 4 SCC 54], wherein this Court was concerned with the provisions of the Bangalore Development Authority Act, 1976 with particular reference to Sections 33, 38 and 38(A) of that Act. A site intended for a public park was sought to be converted into a hospital/nursing home, under the garb of the latter being a 'civic amenity'. This Court formed the view that such conversion of an open space reserved under the scheme for a public park into a civic amenity site by constructing hospital and allotment of the site to persons or body of persons, was opposed to the objects of the Act and would be ultra vires the same. This Court held as under:-

"46.No one howsoever high can arrogate to himself or assume without any authorisation express or implied in law a discretion to ignore the rules and deviate from rationality by adopting a strained or distorted interpretation as it renders the action ultra vires and bad in law. Where the law requires an authority to act or decide, 'if it appears to it necessary' or if he is 'of opinion that a particular act should be done' then it is implicit that it should be done objectively, fairly and reasonably. Decisions affecting public interest or the necessity of doing it in the light of guidance provided by the Act and rules may not require intimation to person affected yet the exercise of discretion is vitiated if the action is bereft of rationality, lacks objective

and purposive approach. The action or decision must not only be reached reasonably and intelligibly but it must be related to the purpose for which power is exercised. The purpose for which the Act was enacted is spelt out from the Preamble itself which provides for establishment of the Authority for development of the city of Bangalore and areas adjacent thereto. To carry out this purpose the development scheme framed by the Improvement Trust was adopted by the Development Authority. Any alteration in this scheme could have been made as provided in sub-section (4) of Section 19 only if it resulted in improvement in any part of the scheme. As stated earlier a private nursing home could neither be considered to be an amenity nor it could be considered improvement over necessity like a public park. The exercise of power, therefore, was contrary to the purpose for which it is conferred under the statute."

29. The above decision of the Court was given in light of the provisions of Section 19(4) of that Act which empowered the Authority to alter the scheme, where it appeared to the Authority that an improvement could be made in the scheme. In other words, the power given to the Authority has to be construed in strict terms and it cannot be exercised in a manner which will run contrary to the scheme of the Act and which would defeat the very object of the Act and the Regulations.

30. The jurisdiction of the Development Authority has to be seen on the touchstone of proper exercise of power within its legal limitations while giving full effect to the statutory provisions. This Court in the case of *S.N. Chandrashekar & Anr. v. State of Karnataka & Ors.* [(2006) 3 SCC 208], referred with approval to judgments of the High Courts, applying the rule of strict construction to the terminology used and while interpreting the words 'commerce' and 'commercial' held that intra category changes could be permitted only in accordance with law and Section 14-A of that Act. Even if the change of user is consented to by the residents of the area, it would be no ground to permit such a change in violation of the Regulations. This Court stated the law as follows:-

"27. The Planning Authority has no power to permit change in the land use from the Outline Development Plan and the Regulations. Sub-section (1) of Section 14, as it then existed, categorically stated, that every change in the land use, inter alia, must conform to the Outline Development Plan and the Regulations which would indisputably mean that it must conform to the Zoning Regulations.

28. The provisions of the Act are to be read with the Regulations, and so read, the construction of Sections 14 and 15 will lead to only one conclusion, namely, such changes in the land use must be within the Outline Development Plan and the Zoning Regulations. If running of a hotel or a restaurant was not permissible both under clauses

(a) and (b) of the Zoning Regulations in a residential area, such change in the land use could not have been permitted under Section 14 read with Section 15 of the Act. It is precisely for that reason, Section 14-A was introduced."

31. Even in the case of ITC Ltd. v. State of Uttar Pradesh & Ors. [(2011) 7 SCC 493], this Court declined to accept the contention that where the State Government had treated the hotels as an 'industry' even in such cases, the same could not be treated as 'industry' under the Act because the byelaws continued to treat the hotels to be a commercial activity and that had alone covered such industry. This Court held as under:-

"38. The learned counsel for the respondents submitted that the lease was terminated by the State Government, in exercise of revisional jurisdiction under Section 41 of the U.P. Urban Planning and Development Act, 1973 read with Section 12 of the Act on the ground that there were irregularities and violations of regulations and policies of Noida Authority in allotting the hotel plots to the appellants. It is submitted that the State Government has such power to cancel the allotment and as a consequence the lease."

32. Reference can also be made to the judgment of this Court in Dr. G.N. Khajuria & Ors. v. Delhi Development Authority & Ors. [(1995) 5 SCC 762]. In that case, the Plan had provided for a public park and the Delhi Development Authority had taken the decision to establish a nursery school for the benefit of the children of the colony. Rejecting the contention, this Court observed that within the framework of law and the provisions made in the Master Plan, the authorities could only establish a public park and nothing else, as such conversion would amount to misuse of power.

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

34. A decision which is sought to be taken by the Development Authority in the garb of a policy decision matter, if not in conformity to the Master Plan, the Regulations and provisions of the Act in force, would be an action extra jus. The Development Authority is to act in adherence to the provisions of the law regulating such user or construction. The laconic result of a collective reading of the afore-referred statutory provisions is that the Development Authority or its officers, have no power to vary the user and spaces prescribed in the Master Plan, except by amending the relevant laws and that too, for a proper object and purpose. Any decision, as a policy matter or otherwise, for any extent of public convenience, shall be vitiated, if it is not supported by the authority. The Courts would examine what is the sensible way to deal with this situation, so as to give effect to the presumed purpose of the legislation. The provisions in question should be construed on their plain reading, supporting the structure of the legislative intent and its purpose. The rule of schematic

interpretation would come into play in such situations and the concerned Development Authority cannot be permitted to overreach the procedure prescribed by law, with designs not acceptable in law.

35. The Development Authority is inter alia performing regulatory functions. There has been imposition of statutory duties on the power of this regulatory authority exercising specified regulatory functions. Such duties and activities should be carried out in a way which is transparent, accountable, proportionate and consistent. It should target those cases in which action is called for and the same be exercised free of arbitrariness. The Development Authority is vested with drastic regulatory powers to investigate, make regulations, impute fault and even to impose penalties of a grave nature, to an extent of cancelling the lease. The principles of administrative justice squarely apply to such functioning and are subject to judicial review. The Development Authority, therefore, cannot transgress its powers as stipulated in law and act in a discriminatory manner. The Development Authority should always be reluctant to mould the statutory provisions for individual, or even public convenience as this would bring an inbuilt element of arbitrariness into the action of the authorities. Permitting mixed user, where the Master Plan does not so provide, would be glaring example of this kind.

36. In the case of Shabi Construction Company v. City & Industrial Development Corporation & Anr. [(1995) 4 SCC 301], this Court held that, prior sanction of the State Government being the sine qua non for a final development Plan, as also for minor modifications thereof, under Sections 31 and 37 of the Maharashtra Regional and Town Planning Act, 1966, the agreement entered into with the Planning Authority so far as it relates to increased Floor Space Index (FSI) did not and could not bestow any legal right upon the appellant. To put it conversely, only on sanction by the State Government, could the inchoate right under the agreement crystallize into a legally enforceable right in favour of the appellant.

37. Still, in another case of K.K. Bhalla v. State of M.P. & Ors. [(2006) 3 SCC 581], this Court did not approve and attach any validity to the action of the Chief Minister directing and calling for a proposal from the said Development Authority to make allotment for development of an industrial area on concessional terms and held that the purpose for which the allotments were made might be well-meaning, but the allotments, being contrary to the mandatory provisions of the Act and the Rules were void and of no effect, being illegal.

38. Similarly, in the present case, the action of the Development Authority in permitting mixed user was in apparent violation of the statutory provisions in the Master Plan.

39. Establishment of banks and nursing homes in the residential sectors meant for residential use alone is unequivocal violation of the statutory provisions in the Master Plan.

40. Reverting to the case in hand, we may notice that the lease deed executed in favour of the predecessor-in-interest of R.K. Mittal and the other appellants had contained specific stipulations that the lessee will obey and submit to all directions issued, existing or thereafter to exist, as obeyed by the lessor. The erection of the structure was also to be in accordance with the approved plans.

Clause (h) of the lease deed specifically provides that the constructed building shall be used only for the purpose of residential, residential-cum- medical or surgical clinic and for no other purpose, that too subject to such terms as are imposed by the lessor.

41. The transfer deed which was executed in favour of the present appellants, with the approval of the Development Authority, also contained similar clauses and also provided that the terms and conditions imposed by Development Authority from time to time shall be binding on the transferee. Clause 15 of the transfer deed stipulated that the transferee shall put the property to use exclusively for residential purpose and shall not use it for any purpose other than residential. After raising the construction on the plot in question, admittedly, the appellants have put the property to a different use other than residential. The property was rented out to two different commercial undertakings, i.e., Andhra Bank and a company by the name 'Akariti Infotech'. It is not even the case of the appellants before us that the Development Authority had granted any specific permission to them to use the property for any purpose other than residential.

42. The appellants, in fact, have relied upon an agenda note where there was a proposal put forward by the Development Authority to grant permission for nursing home, guest house, lodging house, banks etc. on a 100 metres wide road on such terms and conditions as may be imposed by the Development Authority. This also provided for levying certain additional charges for granting such permission. Based on this proposal, it is stated that a public notice was issued and objections were invited.

43. The matter rested at that. This was not finalized. In other words, no final decision was taken by the Development Authority in consonance with the provisions of the Act to permit such user in the residential sector. We, in fact, are unable to understand why such action was initiated by the authorities concerned, in face of the statutory provisions of the Act, Regulations and the Master Plan in force. It is a settled position of law that no authority can exercise the power vested in it, contrary to law. In the present case, there appears to be no proper data collected or study carried out by the Development Authority even for mooted such a proposal, much less amending the Plan or the Regulations. It is a matter of regret that the Development Authority is dealing with such serious matters in such a casual manner. Either way, this certainly affected the rights of the parties adversely. It is not only the rights of individuals which are to be examined by the authorities concerned, but also the effect of such amendment on the residential sector as a whole which is one of the relevant factors to be considered.

44. The running of a bank or a commercial business by a company in the residential sector is certainly not permissible. In fact, it is in patent violation of the Master Plan, Regulations and the provisions of the Act. We see no power vested in the Development Authority to permit such user and ignore the misuse for such a long period.

45. We may notice that only in two cases i.e. Oriental Bank of Commerce (Sector 27, Noida) and Vijaya Bank (Sector-19, Noida), the permission for running a bank in the residential sector was granted for a period of five years and three years, respectively. This permission came to end few years back and was admittedly never renewed or extended. Even this initial grant of permission is a

case of lack of legal authority and is contrary to the provisions of law. It is not the case of anyone before us that the Development Authority had granted permission for running a bank/commercial activity or nursing home in the residential sector. A survey had been conducted under the orders of the Court dated 3rd March, 2011. As per this survey, a number of banks and nursing homes were being run in the residential sector, which was not permissible.

46. The conduct of the authorities, prior to institution of the writ petitions in the High Court, showed uncertainty and wavering of mind in its decision-making processes. In fact, it was expected of the Development Authority to take a firm and final decision and put at rest the unnecessary controversy raised by its proposal. However, once the writ petitions were filed, thereafter, the stand of the Development Authority has been consistent and unambiguous. In the counter affidavit filed in this Court, it has been stated that even in case of grant of permission to the above stated two banks, no extension was granted and in fact show cause notices have been issued to all the banks in the residential sector to wind up their activities and move out of the residential sector. It is the definite case of the Development Authority that banking activity is a commercial activity and therefore, cannot be carried on in the residential sector, more particularly on the plots in question. In regard to Sector 19, a specific averment has been made in the affidavit of the Development Authority that the land use is residential alone and is neither commercial nor mixed. As per the Master Plan, its primary use is 'residential' where plots are planned for residential purpose alone. It is, therefore, abundantly clear from the pleadings on record that commercial activity of any kind in the residential sector is impermissible. These pleadings are in conformity with the statutory provisions and the Master Plan.

47. All the cases where banks, nursing homes or any commercial activity is being carried on, particularly like the appellants' case, where a bank and company are running their offices in the residential sectors would amount to change of user and thus be impermissible. The officers of the Development Authority should refrain from carving out exceptions to the implementation of the Master Plan and the Regulations in force, that too without the authority of law. For taking up any exercise for change of user or such similar conditions, amendment to the relevant Regulations, Master Plan and if needed, the provisions of the Act, is a condition precedent. It should be ensured that such exercise would further the cause and object of the Act and would not be destructive to the scheme of the development. We have no hesitation in our minds in holding that no such jurisdiction or authority vests in the officers of the Development Authority to permit change of user in its discretion and in violation of the law in force.

48. Another important aspect is that the Development Authority had taken a policy decision and had earmarked specific areas where land was made available to the banks to carry on their commercial activities in the commercial pockets of the industrial or institutional sectors. This land was being provided at a concessional rate and a number of banks had taken advantage of this scheme to get the lands allotted to them in the appropriate sectors. They have been given lands in the commercial and even in the commercial pockets of the industrial or institutional sector. However, the 21 banks functioning in the residential sectors have not even opted to apply under the said scheme. If they would apply, the Development Authority has taken onto itself to consider the same sympathetically. This Scheme was opened on 20th June, 2011 and closed on 11th July, 2011. 26 commercial plots

were offered for allotment under this Scheme in different sectors and plots were even reserved to be used as banks. In other words, the Development Authority has provided due opportunity to these banks to shift their activities to the appropriate sectors, however, to no effect. Despite issuance of show cause notices and offer to allot alternative plots, the unauthorized use by the appellant - banks and nursing homes have persisted in the residential sectors.

49. Another case which is required to be noticed by us from amongst the number of cases listed, is the case of Chairman and Chief Executive Officer, New Okhla Industrial Development Authority & Anr. v. Mange Ram Sharma & Anr., SLP (C) No. 24029/2005. In this case, according to the Development Authority, the lessee is running a 20 bedded hospital with all modern and diagnostic facilities, admitted by the lessee and his family members in a letter Annexure P-7 to the authorities. In this letter they had claimed that the hospital is being run from the premises in question and had all the modern facilities. However, these facts are not admitted by the lessee who have tried to explain that letter by stating that in a three-storeyed building of 400 square metres, they are carrying on professional activity of medical consultancy only in an area of 28.42 square metres on the ground floor and rest of the premises is being used entirely for residential purposes. It is also denied that any hospital is being run from the premises. According to them, the order dated 15th October, 1994 terminating the lease is contrary to law and they have also submitted an undertaking that the premises will not be used for any purpose other than residential. According to the applicant/respondent in terms of the lease deed, such a user is permissible. The respondents being doctors, are carrying out their professional activity in a limited portion and as such, they have also placed on record a list of hospitals being operated from residential blocks which have even been empanelled by the appellant Development Authority. The Development Authority is acting arbitrarily and not taking any action against those persons, though they have executed the lease deed with the same terms and conditions as the appellant's. In this case, this Court had appointed a local Commissioner to visit the premises. As per report of the Commissioner dated 20th September, 2003, the premises in question is a corner plot in front of 30 metres wide road and had two gates. There is a sign board displaying 'Sharma Clinic and Medical Surgical Centre'. Names of the doctors have also been displayed on the sign boards on the boundary wall. There is a reception counter which is attended to by a nurse. On ground floor, the basement was still under construction. Major part of the ground floor was being used as medical clinic. There were four cabins used by different doctors of different specialties. The first floor is being used for residential purposes. The second floor is being partly used for residential purposes while there is also an office on that floor. None of the parties had filed objections to this report of the Local Commissioner and, therefore, there is no reason for us not to accept the same. Even as per the report of the Local Commissioner, the house is being used for medical-cum-surgical clinic and is not merely a consultant's clinic. Use of a major part of the ground floor for running the medical centre obviously is not permissible in accordance with the provisions of the Act and the Regulations. The Development Authority is expected to take proper action at the earliest. Even if we reject the case of the appellant Development Authority that a 20 bedded hospital is being run from the premise, still the fact stands established on record that practically the entire ground floor and part of the second floor is being used for activities other than residential.

50. According to the respondents, they had not been served with the show cause notice, though according to the appellant, show cause notice dated 29th August, 1992 was issued and thereafter, the order of termination/cancellation of lease had been passed against the respondents. This order had been set aside by the High Court and the Development Authority has come up in appeal before this Court.

51. In the light of what we have discussed above, even on facts of this case, running of a hospital or even a medical clinic of this dimension cannot be permitted in a residential area. It would be different if a doctor uses permissible part of the premises for clinical purposes i.e. to meet or examine his patients in any portion. For surgery or specific treatments, such patients would have been addressed to proper nursing homes or regular hospitals. Therefore, doctors cannot carry on, in the garb of a medical clinic, a regular medical and surgical activity on a commercial scale. Thus, we find that action of the Development Authority was justifiable.

52. One of the allegations against the Development Authority is that they have acted arbitrarily and discriminatorily in issuance of notices, in passing of orders of cancellation of the lease deed and/or even in imposing other restrictions in relation to the properties in question. It is their contention that commercial activity, nursing homes and banks are operating in a large number of residential houses but the Development Authority has adopted a policy of pick and choose and has not acted uniformly even in that regard. Certain instances have been mentioned. Instances of banks have been mentioned in the case of R.K. Mittal (supra), while nursing homes have been mentioned in the case of Mange Ram (supra). We are unable to grant approval to this discriminatory policy of the Development Authority. They are expected to act fairly and judiciously in such matters. The action of the Development Authority should be free of arbitrariness and must be applied uniformly. The ground of legitimate expectation taken by the lessees on the premise that public notice had been issued by the Development Authority proposing to permit mixed user in the residential sector binds the Authority. Firstly, the action of the Development Authority in issuing the notices is not in accordance with law. Secondly, this argument is without any substance and is misconceived. The doctrine of reasonable expectation has no applicability to the present case and there cannot be any waiver of statutory provisions as well. The user of a sector is provided under the Master Plan and in furtherance to Regulations and the provisions of the Act. It is incapable of being administratively or executively altered. The lessees, who have changed the user contrary to law, are liable to be proceeded against as per the terms of the lease deed and the provisions of the Act.

53. The Master Plan and the Zonal plan specify the user as residential and therefore these plots cannot be used for any other purpose. The Plans have a binding effect in law. If the scheme/Master Plan is being nullified by arbitrary acts and in excess and derogation of the power of the Development Authority under law, the Court will intervene and would direct such authorities to take appropriate action and wherever necessary even quash the orders of the public authorities. This Court in the case of K. Ramadas Shenoy v. Chief Officer, Town Municipal Council, Udipi and Others [(1976) 1 SCC 24] was concerned with the resolution of the Municipal Committee to construct a cinema theatre at place where earlier the permission was granted for construction of Kalyan Mandap- cum-Lecture Hall and the contention before the Court was that town planning scheme forbade any cinema building at the place asked for and therefore, the resolution of the committee

was invalid. This Court accepted the contention and while setting aside the resolution observed that an illegal construction of a cinema building materially affected the right to enjoyment of the property of the persons residing in the residential area and there being unauthorized construction, the Court would intervene and quash the resolution of the Municipality. This view was followed in the case of *M.I. Builders v. Radhey Shyam Sahu* [(1999) 6 SCC 464], wherein this Court even directed demolition of unauthorized constructions. At this stage, we may also refer to the judgment of this Court in the case of *Virender Gaur & Ors. v. State of Haryana & Ors.* [(1995) 2 SCC 577], wherein this Court was concerned with the issue whether Dharmshala should be permitted to be constructed upon the land which was reserved as open space under the plan. This Court, while noticing the impact on environment, right to hygienic environment and protection of the residents, observed as under:-

"11. It is seen that the open lands, vested in the Municipality, were meant for the public amenity to the residents of the locality to maintain ecology, sanitation, recreation, playground and ventilation purposes. The buildings directed to be constructed necessarily affect the health and the environment adversely, sanitation and other effects on the residents in the locality. Therefore, the order passed by the Government and the action taken pursuant thereto by the Municipality would clearly defeat the purpose of the scheme. Shri D.V. Sehgal, learned Senior Counsel, again contended that two decades have passed by and that, therefore, the Municipality is entitled to use the land for any purpose. We are unable to accept the self- destructive argument to put a premium on inaction. The land having been taken from the citizens for a public purpose, the Municipality is required to use the land for the protection or preservation of hygienic conditions of the local residents in particular and the people in general and not for any other purpose. Equally acceptance of the argument of Shri V.C. Mahajan encourages pre-emptive action and conduct, deliberately chartered out to frustrate the proceedings and to make the result *fait accompli*. We are unable to accept the argument of *fait accompli* on the touchstone of prospective operation of our order."

54. An ancillary question that comes up for consideration is as to how much area can be permitted to be used by a doctor to run his clinic or by a lawyer or architect to run their offices in the residential sector. If other conditions are satisfied, then as the law stands today, according to the Development Authority, they can be permitted to use 30 per cent of the Floor Area Ratio (FAR) of the ground floor for their clinics/offices. Reference can also be made to the judgment of this Court in the case of *Delhi Pradesh Citizen Council Vs. Union of India & Anr.* [(2006) 6 SCC 305] wherein similar directions were issued. We are not only relying upon the precedents of this Court, but such an approach would also be permissible in face of the Regulations, terms and conditions of the lease deed executed by the parties and the Master Plan. It would, therefore, be suffice if 30 per cent of the ground floor area is permitted to be used for office of an architect/lawyer and for clinic simplicitor by a doctor.

55. From the above dictum of this Court, it is clear that environmental impact, convenience of the residents and ecological impact are relevant considerations for the Courts while deciding such an

issue. The law imposes an obligation upon the Development Authority to strictly adhere to the plan, regulations and the provisions of the Act. Thus, it cannot ignore its fundamental duty by doing acts impermissible in law. There is not even an iota of reason stated in the affidavits filed on behalf of the Development Authority as to why the public notice had been issued without amending the relevant provisions that too without following the procedure prescribed under law. The concept of public accountability and performance of public duties in accordance with law and for the larger public good are applicable to statutory bodies as well as to the authorities functioning therein. We find no justification, whatsoever, for the respondents to act arbitrarily in treating equals who are similarly placed as unequals. There is also no justification for the Development Authority to issue a public notice in the fashion in which it has done. A few officers of the Development Authority cannot collectively act in violation of the law and frustrate the very object and purpose of the Master Plan in force, Regulations and provisions of the Act.

56. For the reasons afore-recorded, we would dispose of the appeals of the Development Authority, the appellants/occupiers/ lessees, interveners and occupants in the following terms:-

1. That banking or nursing homes or any other commercial activity is not permitted in Sector 19 and for that matter, in any sector, in the Development Area earmarked for 'residential use'.
2. That the 21 banks and the nursing homes, which are operating in Sector 19 or any other residential sector, shall close their activity forthwith, stop misuse and put the premises to residential use alone, within two months from the date of pronouncement of this judgment.
3. That lessees of the plots shall ensure that the occupant banks, nursing homes, companies or persons carrying on any commercial activity in the residential sector should stop such activity and shift the same to the appropriate sectors i.e. commercial, commercial pockets in industrial/institutional area and specified pockets for commercial use within the residential sector, strictly earmarked for that activity in the development Plan, Regulations and provisions of the Act.
4. That the Development Authority shall consider the request for allotment of alternative spaces to the banks and the persons carrying on other commercial activities, with priority and expeditiousness.
5. That the Doctors, Lawyers and Architects can use 30 per cent of the area on the ground floor in their premises in residential sector for running their clinics/offices.
6. That for such use, the lawyers, architects and doctors shall be liable to pay such charges as may be determined by the Development Authority in accordance with law and after granting an opportunity of being heard. The affected parties would be at liberty to raise objections before the Development Authority that no charges are payable for such users as per the law in force.

7. In the event the lessee or the occupant fails to stop the offending activity and/or shift to alternate premises within the time granted in this judgment. The Development Authority shall seal the premises and proceed to cancel the lease deed without any further delay, where it has not already cancelled the lease deed.

8. Wherever the Development Authority has already passed the orders cancelling the lease deeds, such orders shall be kept in abeyance for a period of two months from today. In the event the misuse is not stopped within a period of two months in terms of this judgment, then besides sealing of the premises, these orders of cancellation shall stand automatically revived and would come into force without further reference to any Court. In the event the misuse is completely stopped in all respects, the orders passed by the authorities shall stand quashed and the property would stand restored to the lessees.

9. These orders shall apply to all cases, where the order of termination of lease has been passed by the Development Authority irrespective of whether the same has been quashed and/or writs of the lessees dismissed by any Court of competent jurisdiction and even if such judgment is in appeal before this Court.

10. The orders in terms of this judgment shall be passed by an officer not below the rank of Commissioner. This order shall be passed after giving an opportunity to the parties of being heard by such officer. This direction shall relate only to the determination of charges, if any, payable by the lessee or occupant for the period when the commercial activity was being carried on in the premises in question.

57. The appeals are disposed of in the above terms, with no order as to costs.

.....J.

(Swatanter Kumar)

.....J.

(Ranjana Prakash

Desai)

New Delhi;

December 05, 2011

