

VIKAS SINGH

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v.

GOVT. OF NCT OF DELHI & ORS.

(Civil Appeal No. 5244 of 2022)

AUGUST 11, 2022

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**[INDIRA BANERJEE AND V. RAMASUBRAMANIAN, JJ.]**

*Urban Development: Delhi Fire Service Rules 2010: rr. 27, 28, 33, 34 to 37, 39, 40 and 42 – Sanction for revised building plan – Failure and/or refusal of South Delhi Municipal Corporation (SDMC) – Appellant, owner of premises applied to SDMC for sanction of a building plan for construction of residential building as per the bye-laws – Height of the building shown as 15 meters including stilt as permissible as per bye-Laws – Plan duly sanctioned – Subsequently, the Ministry amended the Master Plan for Delhi – Appellant applied for sanction of Revised Building Plan – However, the same was not sanctioned for want of fire clearance – As per the amendment, maximum height of the building would be 15 meters, in plots without stilt parking and buildings upto 17.5 metres in height, with stilt parking, and such residential building were not to be considered as high rise building – Amendment also required that clearance of the Fire Department would be obtained by the individual plot owner – Height of the appellant's building was 16.6 with the parking stilt, which was well below 17.5 meters as provided in the Master Plan – Writ Petition by the appellant challenging refusal of SDMC to sanction a revised plan; and seeking setting aside of s. 27(2) – Dismissed by the High Court – On appeal, held: In view of the amendment to the Master Plan for Delhi 2021, a building with stilts which is 17.5 meter or less in height cannot be considered as a high rise building – If a building is not a high rise building, it will not be a multi-storied building – Under clause 8.0 of the Unified Building Bye-Laws for Delhi 2016, clearance from Delhi Fire Service is mandatory only for High Rise Building – However, the building of the appellant, under construction is not a High Rise Building – Thus, clearance from the Delhi Fire Service is not mandatory for sanction of the Revised Building Plan submitted by the appellant – No doubt the appellant must comply with safety*

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- A requirements including fire requirements necessary for buildings which are not high rise – However, rules applicable to High Rise buildings cannot be applied to buildings which are not High Rise Buildings – Thus, the High Court erred in not directing the SDMC to approve the revised plan of the appellant – Order passed by the High Court is quashed and set aside – SDMC to take decision on
- B the application for sanction of Revised Plan within the stipulated time – Delhi Development Act 1957 – Delhi Development (Master Plan and zonal Development Plan) Rules, 1959 – Delhi Municipal Corporation Act, 1957 – New Delhi Municipal Council Act, 1994 – Unified Building bye-Laws for Delhi, 2016 – Delhi Fire Service
- C Act, 2007 – ss. 2, 32 to 35 – Development Code of Master Plan and the Building Bye-laws 1983.

- Delhi Fire Service Rules, 2010: r 27 – Classes of occupancies likely to cause a risk of fire – Writ petition seeking amendment of r. 27 to bring the same in conformity with the master plan, as amended
- D whereby building taller than 15 metres (without stilt) and 17.5 metres (including stilt) in all south zone would be considered as high rise building – Held : There are no cogent grounds of challenge to r 27 – Height prescriptions differ from place to place, based upon in-depth study and consideration of all relevant factors – A meaningful purposive construction of r. 27 is required, in the light
- E of the DD Act and the applicable Building Bye-laws r/w the Master Plan, as amended – Thus, the challenge to r 27(2) was misconceived and the High Court rightly rejected the challenge.

#### Partly allowing the appeal, the Court

- F **HELD: 1.1 Rule 27 of the Fire Service Rules, enumerates the classes of occupancies which are likely to cause risk of fire. Residential buildings (other than hotels and guest houses), having height above 15 meters or having ground plus four upper storeys, including Mezzanine floors are deemed to cause risk of fire. [Para 72][888-E-F]**

- G **1.2. Under Rule 28 the minimum height of the buildings, for the purposes of sub-section (1) of Section 33 and subsection (1) of Section 35 of the Fire Service Act, would be, as specified in Rule 27, that is, height more than 15 meters or ground plus four upper storeys in case of residential buildings. Height more than**

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15 metres would necessarily have to be construed as height more than 15 metres without stilt parking or excluding the height of stilt parking within the limits as prescribed. [Para 73][888-G] A

1.3. Building bye-laws have been defined in Section 2(c) to mean bye- laws made under the Delhi Cantonment Act, 1924, the Delhi Municipal Corporation Act 1957, the New Delhi Municipal Council Act, 1994 or the regulations made under sub-section (1) of Section 57 of the Delhi Development Act, 1957 or the bye-laws made by the Central Government by publication in the Official Gazette, relating to buildings in Delhi. The prevalent bye-laws and in particular 1.3.3 of the Unified Building Bye-Laws issued by the DDA makes it amply clear that the words and expressions used in the bye-laws would have the same meaning or sense as in the DD Act. Bye-law 1.3.3 makes it absolutely clear that all Master Plan/Development Control Regulations regarding use, coverage, F.A.R., set-backs, open spaces, height, number of storeys, number of dwelling units, parking standards etc. for various categories of buildings including modifications therein made from time to time shall be applicable *mutatis-mutandis* to the Building Regulations. In view of the Master Plan read with building bye-laws, high rise building/multi-storeyed building would mean a building taller than 15 meter without stilt or 17.5 metre with stilt. [Para 82][890-C-F] B C D E

1.4. “Multi-storeyed building” is defined in Section 2(s) of the Fire Service Act to mean a building with such minimum height, as may be prescribed under the rules in this behalf, and notified to the Director by the local authority. “local authority” has been defined in Section 2(q) of the Fire Service Act to mean the Delhi Cantonment Board established under the Cantonment Act, 1924, the Delhi Development Authority, the Municipal Corporation of Delhi, the New Delhi Municipal Council Act or any other Authority under any other law which might be notified in this behalf by the Central Government or the Government, as the case may be. [Para 83][890-G-H] F G

1.5. In the absence of any specific prescription of height in terms of Section 2(s) of the Delhi Fire Service Act or notification

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A to the Director, the Master Plan read with the applicable Building Bye-laws, is to be deemed the prescribed height notified in terms of Section 2(s). The prescribed height is deemed to be height not exceeding 15 meters without parking stilt and/or excluding the height of the stilt parking, upto the maximum limit permitted. [Para 84][891-A-B]

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1.6. Rule 27(2) which reads Residential Buildings (other than hotels and guest houses) having height more than 15 meters or having ground plus four upper storeys including mezzanine floor, has to be construed as residential building having height more than 15 meters excluding stilt. It is implicit in the Fire Safety Rules that only buildings with stilt parking, exceeding 17.5 meters in height, would be considered as high rise building and/or multi-storeyed building.[Para 85][891-C]

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1.7 The prayers in the Writ Petition filed in the High Court for amendment of Rule 27 of the Fire Service Rules are misconceived. There are no cogent grounds of challenge to Rule 27 of the Fire Service Rules. Height prescriptions differ from place to place, based upon in depth study and consideration of all relevant factors. There could be no question of this Court directing the Lieutenant Governor of the National Capital Territory of Delhi to amend Rule 27. What is required is a meaningful purposive construction of Rule 27, in the light of the DD Act and the applicable Building Bye-laws read with the Master Plan, as amended. The challenge to Rule 27(2) was misconceived. It is also well settled that orders in the nature of Mandamus directing a rule making authority to amend Rules is not granted by the High Court in proceedings under Article 226 of the Constitution. The High Court rightly rejected the challenge to the said Rule, however erred in dismissing the Writ Petition without granting any relief to the appellant. [Paras 86, 96, 97][891-D-E; 898-A-B]

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1.8 There can be no doubt that any construction has to conform to regulations made in the larger interest of the inhabitants of the city, to protect environment, prevent fire, prevent accidents, provide for essential amenities etc. There can also be no doubt that regulatory provisions for construction activities are in public interest. At the same time a building which  
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is not a high rise building as per the applicable rules or regulation cannot be compelled to comply with fire prevention and fire safety regulations applicable to high rise buildings. [Paras 91, 92][897-B-C] A

1.9 The appellant had got a plan sanctioned from the MCD on 15.07.2013. At that time the height of the building permissible under Bye-laws was 15 metres which included the stilt, which had been made mandatory. Upon amendment of the Master Plan by Notification dated 23.09.2013 published on 21.10.2013 maximum height of the building was prescribed as 15 metres without stilt parking and 17.5 metres with stilt parking. After the amendment, the Master Plan provides that buildings up to 15 metres without stilt parking and 17.5 metres with stilt parking are not be to considered as high rise and for the purpose of fire and life safety requirements, clearance of Fire Department was to be obtained by the individual plot owner. The appellant was entitled in law to take advantage of the amended Master Plan for Delhi and he accordingly applied to SDMC for sanction of revised plan on 20.01.2014. The revised plan was referred to the Delhi Fire Service Authorities by SDMC on 22.01.2014. [Para 93][897-C-F] B C D

1.10. Under clause 8.0 of the Unified Building Bye-Laws for Delhi 2016, clearance from Delhi Fire Service is mandatory only for High Rise Building. The Building of the appellant, under construction is not a High Rise Building. Clearance from the Delhi Fire Service is therefore, not mandatory for sanction of the Revised Building Plan submitted by the appellant. There can be no doubt that the appellant must comply with safety requirements including fire requirements necessary for buildings which are not high rise. However, rules applicable to High Rise Buildings cannot be applied to buildings which are not High Rise Buildings. [Para 94, 95][897-F-H] E F

1.11. Admittedly the building in question does not exceed 17.5 meter with parking stilt. Height exceeding 15 meter to qualify as high rise building must be construed as height exceeding 15 meter without stilt parking and/or excluding the permissible height of stilt parking as per the building regulations G

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A read with the Master Plan of Delhi. The building in question is not a high rise building. [Para 98][898-C]

1.12. Irrespective of whether fire clearance is mandatory in respect of the buildings, which are not high rise, it is open to the SDMC to get clearance from the fire service authorities to ensure that fire safety measures are not contravened. However, fire clearance is granted subject to compliance of minimum standards for fire prevention and fire safety in respect of the kind of occupancy as provided in the building bye-laws and/or the National Building Code of India. Provisions of Building Regulations and/or Bye-laws and/or National Building Code, not applicable to high rise buildings are not attracted in the case of the building in question. [Para 99][898-D-E]

1.13. The Fire Service Authorities can only ensure that the buildings comply with fire safety requirements, if any, applicable to residential buildings, which do not fall within the ambit of high rise buildings. The submission that the Fire Service Authorities do not have ladders of adequate length to tackle outbreak of fire in buildings exceeding 15 meter is fallacious and cannot be ground to deny the owner of property, the right to carry out construction at his property, in accordance with the applicable building laws, read with the Master Plan for Delhi, and thereby deprive the owner of his right to effectively utilise his property. [Paras 100, 101][898-F-G]

1.14 There is no prohibition on construction of buildings exceeding 15 meters in height. The dispute is with regard to classification of the buildings- Whether such buildings are to be classified as high rise and subjected to specific Rules and Regulations applicable to high rise buildings. The difference in height is only about 4/5 feet. The height is well within 17.5 meter with stilt parking as provided in the Master Plan. If the Delhi Fire Service Department does not have ladders to tackle fire in buildings exceeding 15 meters even by a few feet, existing buildings exceeding 15 Meters in height and their inhabitants are doomed. It is preposterous to even think that multi-storeyed buildings would be left to their own fire fighting facilities and their

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own existing staircase in case of outbreak of fire. The argument seems preposterous. If the Fire Service authorities do not have adequate fire fighting equipment, they would necessarily have to acquire the same in the interest of the people.[Para 102][898-H; 899-A-C] A

1.15. The Court need not go into the question of whether any clearance of the Fire Service Authorities is at all necessary. However, in view of the amendment to the Master Plan for Delhi 2021, as amended in September, 2013 by S.O. No. 678(E) dated 4th March 2014, a building with stilts which is 17.5 meter or less in height cannot be considered as a high rise building. If a building is not a high rise building, it will not be a multistoried building. [Para 103][899-C-D] B C

1.16. SDMC cannot keep sanction of the Revised Building Plan submitted by the Appellant, way back in January, 2014, in abeyance indefinitely. Nor can sanction be rejected on the ground of non-compliance of fire service requirements applicable to multi-storied/high rise buildings. A decision with regard to sanction has to be taken within the time stipulated in Clause 2.3.1 of the Unified Building Bye-laws. Under Clause 2.3.3(b) of the Unified Building Bye-laws, approval/refusal of agencies, such as Delhi Fire Service must be intimated within 15 days, or the time stipulated in Chapter III of the Unified Building Bye-Laws, whichever is earlier. A decision has to be taken by the Fire Service Authorities within a maximum period of 15 days. It hardly need be mentioned that in case of refusal, reasons are mandatory, for compliance with principles of natural justice. It may however, be open to the SDMC to obtain the opinion of the Fire Service Authorities. It is made clear that objections would not be raised on the sole ground of non-compliance of rules not applicable to a residential building which is not a high rise building. A decision shall immediately be taken on the application for sanction of Revised Plan submitted on 14th January 2014 in the light of the observations made, keeping in view the timelines stipulated in Clause 2.3.1 of the Unified Building Bye-laws. [Para 104][899-E-H] D E F G

1.17. The SDMC may in its discretion seek clearance from the Fire Service Authority, but such clearance shall not be withheld H

A on the ground of noncompliance of requisites applicable to high  
rise buildings, or on the frivolous ground of unavailability of  
ladders of adequate size to carry out inspection. If no views are  
expressed within the time as stipulated in the Unified Building  
Bye-laws and in particular Clause 2.3.3 thereof, clearance will be  
B deemed to have been granted. [Para 105][900-A-B]

**1.18 The impugned order rejecting the Revised Building  
Plan is set aside and quashed. [Para 106][900-C]**

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 5244  
of 2022.

C From the Judgment and Order dated 20.01.2016 of the High Court  
of Delhi at New Delhi in Writ Petition (C) No.1476 of 2014.

A. D. N. Rao, (Amicus Curiae)

D Nidhesh Gupta, Sr. Adv., Ms. Deepika Kalia, Kapish Seth, Ms.  
Pallavi Singh, Mrityunjay Singh, Ms. Priyanka Khosla, Ms. Kanika Chugh,  
Nimish Seth, Lakshmi Raman Singh, Advs. for the Appellant.

Ms. Aishwarya Bhati, K.M. Nataraj, ASGs, V. Balaji, Raghavendra  
S. Srivastava, Ms. Poornima Singh, Ms. Manisha Chava, Ms. Priyanka  
Das, G.S. Makker, B. V. Balaram Das, Vishnu B. Saharya, Viresh B.  
E Saharya, Akshat Agarwal for M/s. Saharya & Co., Ms. Vandana Sehgal,  
Amrish Kumar, Advs. for the Respondents.

The Judgment of the Court was delivered by

**INDIRA BANERJEE J.**

F 1. Leave granted.

G 2. This appeal is against a judgment and order dated 20<sup>th</sup> January  
2016, passed by a Division Bench of the High Court of Delhi, dismissing  
the Writ Petition being W.P.(C) No.1476 of 2014 filed by the Appellant,  
against the failure and/or refusal of South Delhi Municipal Corporation  
(SDMC) to sanction a revised plan, submitted by the Appellant, in respect  
of a residential building at C-319, Defence Colony, New Delhi-110024,  
and seeking consequential reliefs, including orders/directions setting aside  
Rule 27(2) of the Delhi Fire Service Rules 2010 and orders/directions,  
commanding the Respondents to amend the said rule.

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3. The High Court, however, directed that the Appellant would be entitled to apply to the SDMC for regularisation of his construction at the premises in question. A

4. By a registered deed of conveyance dated 15<sup>th</sup> January 2013, the Appellant purchased premises No.C-319, Defence Colony, New Delhi- 110024, with a view to construct a residential building thereat. B  
The Appellant is the owner of the said premises.

5. Soon thereafter, the Appellant applied to the SDMC for sanction of a building plan for construction of a building at the said premises, in accordance with the Development Code of Master Plan and the Building Bye-laws 1983. The height of the building was shown as 15 meters including the stilt, as permissible as per the Building Bye-laws 1983, C  
being the building regulations prevailing at the material time.

6. The building plan submitted by the Appellant was duly sanctioned on 15<sup>th</sup> July 2013. However about two months later, the Ministry of Urban Development (Delhi Division) amended the Master Plan for Delhi D  
by a notification dated 23<sup>rd</sup> September 2013, which was published in the Official Gazette on 21<sup>st</sup> October 2013. Thereafter, the Appellant applied for sanction of a Revised Building Plan. The Revised Building Plan has not been sanctioned.

7. The Delhi Development Act 1957, hereinafter referred to as the “DD Act”, was enacted by Parliament for the development of Delhi, E  
according to plan and for matters ancillary thereto.

8. ‘Building’ is defined in Section 2(b) of the DD Act to include “any structure or erection or part of a structure or erection which is intended to be used for residential, industrial, commercial or other F  
purposes, whether in actual use or not.”

9. Section 2(d) of the DD Act defines ‘development’ as follows:-

“2(d) “development” with its grammatical variations means the carrying out of building, engineering, mining or other operations in, on, over or under land or the making of any material change in G  
any building or land and includes redevelopment.”

10. Some of the relevant provisions of the DD Act are set out hereinbelow for convenience: -

A **“7. Civic survey of, and master plan for Delhi.—***(1) The Authority shall, as soon as may be, carry out a civic survey of, and prepare a master plan for, Delhi.*

*(2) The master plan shall—*

B *(a) define the various zones into which Delhi may be divided for the purposes of development and indicate the manner in which the land in each zone is proposed to be used (whether by the carrying out thereon of development or otherwise) and the stages by which any such development shall be carried out; and*

C *(b) serve as a basic pattern of frame-work within which the zonal development plans of the various zones may be prepared.*

*(3) The master plan may provide for any other matter which is necessary for the proper development of Delhi.*

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E **11-A. Modifications to plan.—***(1) The Authority may make any modifications to the master plan or the zonal development plan as it thinks fit, being modifications which, in its opinion, do not effect important alterations in the character of the plan and which do not relate to the extent of land-users or the standards of population density.*

....

F *(7) Any reference in any other Chapter, except Chapter III, to the master plan or the zonal development plan shall be construed as a reference to the master plan or the zonal development plan as modified under the provisions of this section.*

G **12. Declaration of development areas and development of land in those and other areas.—**

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H *(3) After the commencement of this Act no development of land shall be undertaken or carried out in any area by any person or body (including a department of Government) unless,—*

(i) where that area is a development area, permission for such development has been obtained in writing from the Authority in accordance with the provision of this Act; A

(ii) where that area is an area other than a development area, approval of, or sanction for, such development has been obtained in writing from the local authority concerned or any officer or authority thereof empowered or authorised in this behalf, in accordance with provisions made by or under the law governing such authority or until such provisions have been made, in accordance with the provisions of the regulations relating to the grant of permission for development made under the Delhi (Control of Building Operations) Act, 1955 (53 of 1955), and in force immediately before the commencement of this Act: B C

Provided that the local authority concerned may subject to the provisions of Section 53-A amend those regulations in their application to such area. D

**13. Application for permission.**—(1) Every person or body (including a department of Government) desiring to obtain the permission referred to in Section 12 shall make an application in writing to the Authority in such form and containing such particulars in respect of the development to which the application relates as may be prescribed by regulations. E

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(3) On the receipt of an application for permission under sub-section (1), the Authority after making such inquiry as it considers necessary in relation to any matter specified in clause (d) of sub-section (2) of Section 8 or in relation to any other matter, shall, by order in writing, either grant the permission, subject to such conditions, if any, as may be specified in the order or refuse to grant such permission: F G

Provided that before making an order refusing such permission, the applicant shall be given a reasonable opportunity to show cause why the permission should not be refused.

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A        *(4) Where permission is refused, the grounds of such refusal shall be recorded in writing and communicated to the applicant in the manner prescribed by regulations.”*

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B        **53. Effect of other laws.**—*(1) Nothing in this Act shall affect the operation of the Slum Areas (Improvement and Clearance) Act, 1956 (6 of 1956).*

C        *(2) Save as otherwise provided in sub-section (4) of section 30 or sub-section (8) of section 31 or sub-section (1) of this section, the provisions of this Act and the rules and regulations made thereunder shall have effect notwithstanding anything inconsistent therewith contained in any other law.*

D        *(3) Notwithstanding anything contained in any such other law—  
(a) when permission for development in respect of any land has been obtained under this Act such development shall not be deemed to be unlawfully undertaken or carried out by reason only of the fact that permission, approval or sanction required under such other law for such development has not been obtained;*

E        *(b) when permission for such development has not been obtained under this Act, such development shall not be deemed to be lawfully undertaken or carried out by reason only of the fact that permission, approval or sanction required under such other law for such development has been obtained.*

F        **53A. Restriction on power of a local authority to make rules, regulations or bye-laws in respect of certain matters.**—*(1) Notwithstanding anything contained in any law for the time being in force, no rule, regulation or bye-law shall be made or amended by a local authority in respect of matters specified in sub-section (2) unless the Authority, upon consideration of such rule, regulation or bye-law, certifies that it does not contravene any of the provisions of the Master Plan or the Zonal Development Plan.*

G        *(2) The matters referred to in sub-section (1) are the following, namely:—*

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- (a) *water supply, drainage and sewage disposal;* A
- (b) *erection and re-erection of buildings, including grant of building permissions, licences and imposition of restrictions on use and sub-division of buildings;*
- (c) *sub-division of land into building sites, roads and lanes, recreational sites and sites for community facilities; and* B
- (d) *development of land, improvement schemes, and housing and rehousing schemes.*

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**58. Laying of rules and regulations before Parliament.-** Every rule and every regulation made under this Act shall be laid, as soon as may be after such rule or regulation is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or regulation, or both Houses agree that the rule or regulation should not be made, the rule or regulation shall, thereafter, have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule or regulation.”

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11. The Delhi Development Authority (DDA) was constituted by the Central Government in 1957, by a notification issued in the Official Gazette under Section 3(1) of the DD Act. F

12. In exercise of powers conferred by sub-section (1) of Section 56 of the DD Act read with Clauses (e), (g) and (r) of sub-section (2) of the aforesaid Section, the Central Government made the Delhi Development (Master Plan and Zonal Development Plan) Rules, 1959 (hereinafter referred to as “MP&ZD Rules”). Some of the relevant provisions of the MP&ZD Rules are as follows:- G

**“3. Civic Survey.** - The civic survey to be carried out by the Authority may include survey and analysis of the physical, H

A economic and sociological features of Delhi, with reference to natural resources distribution of a population, industry, communications, housing requirements and such other matters as in the opinion of the Authority, relate to the development of Delhi.

**4. Form and contents of Master Plan. –**

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(3) The draft master plan may include all or any of the following:

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(b) “a land use plan” based upon such survey of the present use of land as may be necessary as well as analysis of estimated future needs and consisting of comprehensive proposals for the most desirable utilisation of land such as land agricultural, government, commercial, industrial, residential, cultural, educational, recreational, transportation and other activities;

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*(d) “a public utilities plan” consisting of proposals for provision of water, electricity, drainage and disposal of sewage and refuse;*

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*(e) “a housing plan” consisting of estimates of housing requirements and proposals relating to standards of new housing units;*

**5. Public Notice regarding preparation of Master Plan. - (1)**

*As soon as may be after the draft master plan has been prepared, the Authority shall publish a public notice stating that -*

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*(a) the draft Master Plan has been prepared and may be inspected by any person at such time and place may be specified in those notice;*

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*(b) suggestions and objections in writing, if any, in respect of the draft master plan may be filed by any person with the secretary of the Authority within 90 days from the date of first publication of the notice.*

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*Provided that where the Central Government considers it expedient so to do for the purpose of maintenance of public*

*order or in case of any exigency likely to affect the interest of the public it may require such suggestions and objection to be filed within in period of three days from the date of the notice.* A

*(2) This notice may be in Form A appended to these rules without modification with such modification as may be necessary.* B

**6. Mode of Publication of Public Notice.** - *The Authority shall cause the said notice to be published in the manner prescribed by section 44 of the Act and may also cause it to be published in the Official Gazette.* C

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**11. Preparation of final draft Master Plan and its submission to Central Government.** - *The Authority shall, after considering the report of the Board and any other matter it thinks fit, finally prepare the master plan and submit it to the Central Government for its approval.* D

**12. Amendment of Master Plan.** - *The Authority may amend the whole or any part of the master plan, if necessary, at the expiry of every five years in accordance with the procedure prescribed by the Act and these rules as if the proposed amendment were new master plan.* E

*Provided that if the Authority is of opinion that having regard to the circumstances prevailing at any particular time it is necessary so to do, it may amend the master plan or any part thereof at any time prior to the expiry of the said period, in accordance with the aforesaid procedure..."* F

13. By a notification being S.O. 141(E), New Delhi, dated 7<sup>th</sup> February 2007 published in the Gazette of India, Extraordinary, Part II Section 3 sub-section (ii), the Central Government approved the Master Plan for Delhi with the perspective for the year 2021. The Master Plan has from time to time been amended/modified. The Master Plan regulates and/or controls the construction of buildings including residential premises in the National Capital Territory of Delhi. G

14. By an S.O. 2894(E) dated 23<sup>rd</sup> September 2013, sub clause (iii) of para 4.4.3A of the Master Plan for Delhi was modified and/or amended to read:- H

A “(iii). Maximum height of the building shall be 15m in plots without stilt parking and 17.5m in plots with stilt parking. Such residential building shall not be considered as high-rise building. For the purpose of fire and life safety requirements, clearance of Fire Department will be obtained by the individual plot owner.”

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15. Before amendment/modification by S.O.2894/(E) dated 23<sup>rd</sup> September 2013, sub-clause (iii), provided that the maximum height of the building in all plots was to be 15 meters. Clause 4.4.3A (iii) as framed, read “Height: The maximum height of the building in all plots must be 15 metres”. After the amendment as aforesaid, Clause 4.4.3A(iii) provides that maximum height of a building shall be 15 meters, in plots without stilt parking and 17.5 meters in plots with stilt parking. Such residential building shall not be considered as high-rise building. For the purpose of fire and life safety requirements, clearance of Fire Department will be obtained by the individual plot owner.

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16. Sub-clause (vii) of Clause 4.4.3A of the Master Plan reads:-

“(vii) Stilts: If the building is constructed with stilt area of non-habitable height(less than 2.4 m), used for parking, such stilt area shall not be included in FAR but would be counted towards the height of the building.”

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17. Sub-clause (vii) clarifies that the stilt would be counted towards the height of the building for the purpose of measuring the total height of the building, but would not be included in the FAR (Floor Area Ratio), if of non-habitable height. An owner of a building with stilt parking, for example, cannot claim exclusion of the height of the stilt for the purpose of computing the maximum height of 17.5 Meters. The stilt of non-habitable height would not make any difference to the F.A.R. required to be maintained.

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18. Chapter 17.0 of the Master Plan provides for a Development Code to promote quality of built environment, by organising the most appropriate development of land, in accordance with the development policies and land use proposals contained in the Plan.

19. Clauses 3(11), 3(12) and 3(13) of Chapter 17.0 of the Master Plan in relation to sanction of plans are set out hereinbelow for convenience:-

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*“3(11) Layout Plans / Site Plans and Building plans shall be approved by the Local Bodies and Authority in their areas of jurisdiction.*

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*3(12) Authority / Local Body(s) shall be empowered after levying penalty to compound deviations from limits of coverage/ FAR to the extent of 5% of the permissible coverage and FAR, subject to maximum of 13.5 sqm. in building(s) / premises at the time of considering the completion / occupancy certificate. In Group Housing schemes and Public & semi-public facilities, 5% FAR beyond permissible FAR can be compounded by the authority / Local Body at the time of considering the completion/occupancy certificate.*

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*3(13) Wherever required, the Technical Committee of the DDA shall formulate policy guidelines for the sanctioning of local area plans, layout plans, comprehensive schemes, re-development schemes, urban renewal schemes and multi-storeyed buildings in all land use categories. The Technical Committee shall be empowered to call for the plans from the development organisations / Local Bodies and would give directions / recommendations wherever necessary.”*

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20. Clause 8(7)(a) of Chapter 17.0 of the Master Plan defines High Rise Buildings as follows:-

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*“8(7)(a) Buildings taller than 15m. (without stilt) and 17.5 m. (including stilt) in all use zones will be considered as a High Rise Buildings.”*

21. Chapter XVI of the Delhi Municipal Corporation Act, 1957 (hereinafter referred to as the “DMC Act”) contains regulatory provisions for erection/ re-erection of buildings. The provisions of the DMC Act regulating the erection of buildings does not specify any specific height for buildings.

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22. Section 330-A of the DMC Act incorporated with effect from 01.10.1993 provides that the Commissioner is to exercise his powers and discharge his functions under the chapter, under the general superintendence, direction and control of the Central Government. Some of the relevant sections of the said chapter are set out herein below for convenience.

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A     **331. Definition.**—*In this Chapter, unless the context otherwise requires, the expression “to erect a building” means—*

*(a) to erect a new building on any site whether previously built upon or not;*

B     *(b) to re-erect.—*

*(i) any building of which more than one-half of the cubical contents above the level of the plinth have been pulled down, burnt or destroyed, or*

C     *(ii) any building of which more than one-half of the superficial area of the external walls above the level of the plinth has been pulled down, or*

*(iii) any frame building of which more than half of the number of the posts or beams in the external walls have been pulled down;*

D     ...

E     **332. Prohibition of building without sanction.**—*No person shall erect or commence to erect any building, or execute any of the works specified in section 334 except with the previous sanction of the Commissioner, not otherwise than in accordance with the provisions of this Chapter and of the bye-laws made under this Act in relation to the erection of buildings or execution of works.*

F     **333. Erection of building.**—*(1) Every person who intends to erect a building shall apply for sanction by giving notice in writing of his intention to the Commissioner in such form and containing such information as may be prescribed by bye-laws made in this behalf.*

*(2) Every such notice shall be accompanied by such documents and plans as may be so prescribed*

G     **334. Applications for additions to, or repairs of, buildings.**—

*(1) Every person who intends to execute any of the following works, that is to say,—*

*(a) to make any addition to a building;*

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*(b) to make any alteration or repairs to a building involving the removal or re-erection of any external or partly wall thereof or of any wall which supports the roof thereof to an extent exceeding one-half of such wall above the plinth level, such half to be measured in superficial feet;* A

*(c) to make any alteration or repairs to a frame building involving the removal or re-erection of more than one-half of the posts in any such wall thereof as aforesaid; or involving the removal or re-erection of any such wall thereof as aforesaid to an extent exceeding one-half of such wall above plinth level, such half to be measured in superficial feet;* B

*(d) to make any alteration in a building involving—* C

*(i) the sub-division of any room in such building so as to convert the same into two or more separate rooms, or*

*(ii) the conversion of any passage or space in such building into a room or rooms;* D

*(e) to repair, remove, construct, reconstruct or make any addition to or structural alteration in any portion of a building abutting on a street which stands within the regular line of such street;*

*(f) to close permanently any door or window in an external wall;* E

*(g) to remove or reconstruct the principal staircase or to alter its position; shall apply for sanction by giving notice in writing of his intention to the Commissioner in such form and containing such information as may be prescribed by bye-laws made in this behalf.* F

*(2) Every such notice shall be accompanied by such documents and plans as may be so prescribed.*

**335. Conditions of valid notice.**—*(1) A person giving the notice required by section 333 shall specify the purpose for which it is intended to use the building to which such notice relates; and a person giving the notice required by section 334 shall specify whether the purpose for which the building is being used is proposed or likely to be changed by the execution of the proposed work.* G

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- A (2) *No notice shall be valid until the information required under sub-section*
- (1) *and any further information and plans which may be required by bye- laws made in this behalf have been furnished to the satisfaction of the Commissioner along with the notice.*
- B **336. Sanction or refusal of building or work.**—(1) *The Commissioner shall sanction the erection of a building or the execution of a work unless such building or work would contravene any of the provisions of sub-section*
- (2) *of this section or the provisions of section 340.*
- C (2) *The grounds on which the sanction of a building or work may be refused shall be the following, namely:—*
- (a) *that the building or work or the use of the site for the building or work or any of the particulars comprised in the site plan, ground plan, elevation, section or specification would contravene the provisions of any bye-law made in this behalf or of any other law or rule, bye-law or order made under such other law;*
- D (b) *that the notice for sanction does not contain the particulars or is not prepared in the manner required under the bye-laws made in this behalf;*
- E (c) *that any information or documents required by the Commissioner under this Act or any byelaws made thereunder has or have not been duly furnished;*
- F (d) *that in cases falling under section 312, lay-out plans have not been sanctioned in accordance with section 313;*
- (e) *that the building or work would be an encroachment on Government land or land vested in the Corporation;*
- G (f) *that the site of the building or work does not abut on a street or projected street and that there is no access to such building or work from any such street by a passage or pathway appertaining to such site.*
- (3) *The Commissioner shall communicate the sanction to the person who has given the notice; and where he refuses*
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*sanction on any of the grounds specified in sub-section (2) or under section 340 he shall record a brief statement of his reasons for such refusal and communicate the refusal along with the reasons therefor to the person who has given the notice.* A

*(4) The sanction or refusal as aforesaid shall be communicated in such manner as may be specified in the bye-laws made in this behalf.”* B

23. Some of the relevant sections of the New Delhi Municipal Council Act, 1994 are set out hereinbelow for convenience:-

**“237. Prohibition of building without sanction.—***(1) No person shall erect or commence to erect any building or execute any of the works specified in section 239 except with the previous sanction of the Chairperson not otherwise than in accordance with the provisions of this Chapter and of the bye-laws made under this Act in relation to the erection of buildings or execution of works....* C D

**238. Erection of building.—***(1) Every person who intends to erect a building shall apply for sanction by giving notice in writing of his intention to the Chairperson in such form and containing such information as may be prescribed by bye-laws made in this behalf.”* E

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**241. Sanction or refusal of building or work.—***(1) The Chairperson shall sanction the erection of a building or the execution of a work unless such building or work would contravene any of the provisions of sub-section (2) of this section or the provisions of section 245.* F

*(2) The grounds on which the sanction of a building or work may be refused shall be the following, namely:—*

*(a) that the building or work or the use of the site for the building or work or any of the particulars comprised in the site plan, ground plan, elevation, section or specification would contravene the provisions of any bye-law made in this behalf or of any other law or rule, bye-law or order made under such other law;* G H

- A        *(b) that the notice for sanction does not contain the particulars or is not prepared in the manner required under the bye-laws made in this behalf;*
- (c) that any information or documents required by the Chairperson under this Act or any bye-laws made thereunder has or have not been duly furnished;*
- B        *(d) that in cases falling under section 216, lay-out plans have not been sanctioned in accordance with section 217;*
- (e) that the building or work would be an encroachment on Central Government or Government land or land vested in the Council;*
- C        *(f) that the site of the building or work does not abut on a street or projected street and that there is no access to such building or work from any such street by a passage or pathway appertaining to such site;*
- D        *(g) that the land on which it is proposed to erect or re-erect such building is vested in the Central Government or Government or in the Council, and the consent of the Government concerned or, as the case may be, of the Council has not been obtained, or if the title of the land is in dispute between such person and the Council or any Government, or for any other reason, to be communicated in writing to the person, which is deemed to be just and sufficient as effecting such building.*
- E        *(3) The Chairperson shall communicate the sanction to the person who has given the notice; and where he refuses sanction on any of the grounds specified in sub-section (2) or under section 245 he shall record a brief statement of his reasons for such refusal and the Chairperson shall communicate the refusal alongwith the reasons therefore to the person who has given the notice.*
- F        *(4) The sanction or refusal as aforesaid shall be communicated in such manner as may be specified in the bye-laws made in this behalf.*
- G        **242. When building or work may be proceeded with.—(1)**
- H        *Where within a period of sixty days or in cases falling under*

*clause (b) of section 236 within a period of thirty days, after the receipt of any notice under section 238 or section 239 or of the further information, if any, required under section 240, the Chairperson does not refuse to sanction the building or work or upon refusal, does not communicate the refusal to the person who has given the notice, the Chairperson shall be deemed to have accorded sanction to the building or work and the person by whom the notice has been given shall be free to commence and proceed with the building or work in accordance with his intention as expressed in the notice and the documents and plans accompanying the same:*

*Provided that if it appears to the Chairperson that the site of the proposed building or work is likely to be affected by any scheme of acquisition of land for any public purpose or by any proposed regular line of a public street or extension, improvement, widening or alteration of any street, the Chairperson may withhold sanction of the building or work for such period not exceeding three months as he deems fit and the period of sixty days or as the case may be, the period of thirty days specified in this sub-section shall be deemed to commence from the date of the expiry of the period for which the sanction has been withheld.*

*(2) Where a building or work is sanctioned or is deemed to have been sanctioned by the Chairperson under sub-section (1), the person who has given the notice shall be bound to erect the building or execute the work in accordance with such sanction but not so as to contravene any of the provisions of this Act or any other law or of bye-law made thereunder.*

*(3) If the person or anyone lawfully claiming under him does not commence the erection of the building or the execution of the work within one year of the date on which the building or work is sanctioned or is deemed to have been sanctioned, he shall have to give notice under section 238 or, as the case may be, under section 239 for fresh sanction of the building or the work and the provisions of this section shall apply in relation to such notice as they apply in relation to the original notice.*

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A *(4) Before commencing the erection of a building or execution of a work within the period specified in sub-section (3), the person concerned shall give notice to the Chairperson of the proposed date of the commencement of the erection of the building or the execution of the work:*

B *Provided that if the commencement does not take place within seven days of the date so notified, the notice shall be deemed not to have been given and a fresh notice shall be necessary in this behalf.*

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C **251. Completion certificates.**—*(1) Every person who employs an architect registered with the Council or an architects or an engineer or a person approved by the Chairperson to design or erect a building or execute any work shall, within one month after the completion of the erection of the building or execution of the work, deliver or send or cause to be delivered or sent to the Chairperson a notice in writing of such completion accompanied by a certificate in the form prescribed by bye-laws made in this behalf and shall give to the Chairperson all necessary facilities for the inspection of such building or work.*

E *(2) No person shall occupy or permit to be occupied any such building or use or permit to be used any building or a part thereof effected by any such work until permission has been granted by the Chairperson in this behalf in accordance with bye-laws made under this Act:*

F *Provided that if the Chairperson fails within a period of thirty days after the receipt of the notice of completion to communicate its refusal to grant such permission, such permission shall be deemed to have been granted.”*

G 24. In exercise of the powers conferred under sub-section (1) of Section 57 of the DD Act, the DDA has from time to time, with previous approval of the Central Government, made Rules and/or Regulations and/or Building Bye-laws.

H 25. By a Notification No. S.O. 513 dated 26<sup>th</sup> February 1959 published in the Gazette of India Part II Section 3(ii) dated 7<sup>th</sup> March



1959, the DDA adopted the Building Regulations. The Regulations were amended by a Resolution No. 229 dated 1<sup>st</sup> May 1965. By S.O. No.104, dated 23<sup>rd</sup> June 1983, DDA published the Buildings Bye-laws 1983, being the Building Bye- laws in force when the Appellant applies for sanction of the Building Plan. A

26. Section 53 of the DD Act gives an overriding effect to the DD Act over other laws except the Slum Areas (Improvement and Clearances) Act 1956. The provisions of the DD Act and the Rules and Regulations framed thereunder which would include the Master Plan and Building Bye-laws would have effect, notwithstanding anything to the contrary in any other law. B

27. In exercise of the powers conferred under sub-section (1) of Section 57 of the DD Act, the DDA made the Unified Building Bye-laws for Delhi, 2016, which became applicable to National Capital of Territory of Delhi. The Bye-laws of 1983 stood superseded by the Unified Building Bye-laws for Delhi, 2016. C

28. Some of the relevant provisions of the Unified Building Bye-laws for Delhi are set out below:- D

***“1.1 Jurisdiction***

*These Unified Building Bye-Laws shall be applicable to the area under jurisdiction of the Delhi Development Authority and concerned local bodies.* E

***1.2 Applicability***

*These building byelaws shall be applicable to all building activities and read in conjunction with specific notifications in respect of urban villages/rural villages, unauthorized regularized colonies and for special areas with regard to regularized resettlement colonies (as mentioned in Chapter 6- Regulations Notified by Delhi Development Authorities). These Bye-laws 6 shall be reviewed at the end of every five years. The system of implementation of these building byelaws shall be uniform in the Delhi Development Authority and all the concerned local bodies.* F G

***1.3 Information***

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- A *1.3.1 In these bye-laws, unless the context otherwise requires the definition given below, under clause 1.4 shall have the meaning indicated against each term.*
- B *1.3.2 The words and expressions not defined in these bye-laws shall have the same meaning or sense as in Delhi Development Act, 1957 **and Master Plan for Delhi.***
- C *1.3.3 All mandatory Master Plan/ Development Control Regulations regarding use, coverage, FAR, set-backs, open spaces, **height**, number of stories, number of dwelling units, parking standards etc., for various categories of buildings, including modifications therein, made from time to time, shall be applicable mutatis-mutandis in the building Regulations under this clause. **All amendments/ modifications made in these Regulations will automatically be included as part of these Unified Building Bye-Laws.***
- D *Note: - Extract relating to Development Control Regulations/ provisions are reproduced from Master Plan for Delhi.(Chapter 5 and Annexure VI of this document).*
- E *1.3.4 All documents such as Acts, Notifications, Rules & Regulations including BIS Codes, National Building Codes, Delhi Fire Service Rules, Indian Electricity Rules, etc. referred in these Building Bye-Laws shall be applicable as amended from time to time. Thus for the current status for any legal, official purpose, the amended provisions issued by the concerned Ministry/departments(s) shall be followed.*
- F *\*\*\**
- G ***1.4.15 Building:***
- H *Any structure for whatsoever purpose and whatsoever material constructed and every part thereof whether used as human habitation or not and includes foundation, plinth walls, floors, roofs, chimneys, and building services, fixed platforms, verandahs, balcony, or projection part of a building anything affixed thereto or any wall enclosing or intended to enclose any land or space and signs and outdoor display structures, monuments, memorials or any contrivance of permanent nature/stability built under or over ground.*

**1.4.16 Building Height:**

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*a. The vertical distance in the case of flat roofs is measured from the highest surrounding road level/ ground level up to the top of structural slab, excluding machine room, irrespective of location of entry level.*

*b. In the case of pitched roofs, up to the point where the external surface of the outer wall intersect the finished surface of the sloping roof, and in case of gable facing the road, the mid-point between the eaves level and the ridge.*

B

*c. Architectural features serving no other function except that of decoration and other building components mentioned in clause no 7.19 shall be excluded for the purpose of taking height.*

C

*d. If the building does not abut on a street, the height shall be measured from the highest level of the ground immediately adjacent to the building.*

D

**1.4.17 Building Line:**

*The line up to which the plinth of a building adjoining a street or an extension of a street or on a future street may lawfully extend. It includes the lines prescribed in the MPD or specifically indicated in any Scheme or Layout Plan, or in these Bye-Laws.*

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**1.4.18 Built up Area:**

*The area covered by a building on all floors within the premise, used for activities or use, including cantilevered portion, basement, stilt/podium, utility, services, mezzanine floors (if any), other similar areas.*

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**1.4.60 High Rise:**

*Any buildings of 15m and above height shall be considered as high rise building*

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**1.4.72 Master Plan:**

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A        *The Master Plan for Delhi approved by the Central Government under the Delhi Development Act. 1957 and the amendments made from time to time.*

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B        **1.4.75 Occupancy Or Use Group:**

C        *The principal occupancy for which a building or a part of a building is used or intended to be used, for the purposes of classification of a building according to the occupancy, an occupancy shall be deemed to include subsidiary occupancies which are contingent upon it. The occupancy classification shall have the meaning given below unless otherwise spelt out in MPD.*

D        **a. Residential Buildings:** *These shall include any building in which sleeping accommodation is provided for normal residential purposes with or without cooking or dining or both facilities. It includes one or two or multi-family dwellings, lodging or rooming houses, dormitories/hostels, apartment houses and flats and hotels.*

\*\*\*

E        **1.4.111 Stilt:**

F        *Stilt or stilt floor means non habitable portion of a building above ground level consisting of structural columns supporting the super structure with at least two sides open for the purpose of parking cars, scooters, cycles and landscaping. See 7.15.1.*

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**1.4.118 To Erect:**

G        **To erect a building means:** *To erect a new building on any site whether previously built upon or not; To re-erect any building of which portions above the plinth level have been pulled down, burnt or destroyed; and conversion from one occupancy to another.*

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**1.6 Pre-Code Building Permit**

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*Where any building permit which has been issued by the concerned local body before the commencement of these Building Bye-Laws and where construction is in progress and has not been completed within the specified period from the date of such permit, the said permission shall be deemed to be sanctioned under these Bye-Laws and shall only be eligible for revalidation thereunder. Accordingly, where the validity of sanction has expired and construction has not commenced, construction shall be governed by the provisions of these Building Bye-Laws.*

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**1.7 Development and Construction**

*1.7.0 Except hereinafter or otherwise provided, these Bye-Laws shall apply to all development, redevelopment, erection and/or re-erection of a building etc. as well as to the design, construction of, or reconstruction and additions and alterations to a building.*

D

*1.7.1 Development permission: No person shall carry out any development or redevelopment including sub-division on any plot or land (not forming part of any approved layout plan or scheme) or cause to be done without obtaining approval from the Sanctioning Authority for the Layout Plan.*

E

*1.7.2 Building Permit: No person shall erect, re-erect or make addition/ alterations in any building or cause the same to be done without, first obtaining a separate building permit for each such building from the Sanctioning Authority*

F

**1.8 Grievance Redressal Committee for Building Bye-laws**

*In DDA and all the concerned local bodies who implement these building bye- laws, there shall be a Grievance Redressal Committee for building bye laws which shall be headed by a senior officer of the concerned local body who shall receive complaints/ difficulties/ appeals and provide appropriate redressal in a time bound manner. The above committee shall comprise of:*

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- A *a. An officer of the concerned local body not below the level of Director/Sr. Architect/Superintendent Engineer or equivalent.*
- b. A senior officer of DDA not below the level of Director/Sr. Architect or equivalent.*
- B *c. Three representatives from the profession, one each from architecture, engineering and town planning, to be nominated by Lieutenant Governor of Delhi.*
- d. Any other official/ professional may be co-opted if required.*
- C *This committee shall be constituted by the chief executive/ head of the Sanctioning Authority and shall have a term of 3 years after which, it shall be reconstituted with a change of members. If the authority/ local body so desires, some or all the members may continue.*
- D *This committee shall meet regularly, at least once a month and consider the grievances/ appeals/ queries regarding sanction, completion, interpretation etc. of these bye laws and codes, etc. The decision of this committee shall be final and binding in all matters related to interpretation of these building bye- laws. All decisions taken by this committee shall be recorded in minutes of the meeting and place on the website of the concerned authority/local body. All grievances/ appeals shall be in the form of an application. Fees if any shall be decided by the authority/concerned local body.*
- E

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F **2.3 Grant of Sanction of Building Plan or Refusal**

- 2.3.1 Application for sanction of building plan shall be submitted to the sanctioning authority. The sanctioning authority may either grant or refuse the sanction or may sanction them with modifications or directions as it may deem necessary and thereupon shall communicate its decision to the owner/ applicant within the time limit stipulated in Chapter 3 for various categories of buildings specified therein or within 30 days of receipt of application, whichever is less, digitally signed as per proforma given in Form B-1.*
- G
- H

2.3.2 Sanction of building plan includes new case of sanction, revised sanction, sanction of addition/ alteration and shall be governed by prevailing norms at the time of application. A

**2.3.3 Approval/ NOC from external agencies**

(a) In cases, where the building plan requires approval/ NOC from agencies outside the sanctioning authority such as **Delhi Fire Services, Delhi Urban Art Commission, Airports Authority of India, Delhi Pollution Control Committee, Heritage Conservation Committee, Department of Forest, Department of Labour, National Monuments Authority, Chief Inspector of Factories, Director General of Explosives, etc.,** the sanctioning authority shall issue the building permit only after getting such approval/ NOC from the concerned agency. B C

(b) The approval/NOC/refusal shall be issued by the outside agency within 15 days or within the time stipulated in Chapter 3, whichever is less; failing which the approval/NOC of the outside agency on the building plan shall be deemed to be issued. The sanctioning authority shall process the application for building permit accordingly. D

(c) All such external agencies shall prepare Colour Coded Zonal Maps (CCZM) with information on the specific area where their approval/ NOC is required. These agencies shall place these maps on their website and also on the websites of the sanctioning authority directly or through a link. E

**Example:** DMRC grants NOC only to such buildings which fall within 11 m from the boundary of their operational area. DMRC shall make a colour-coded zonal map of their regulated area available on their website directly and through a link on the websites of all sanctioning authority. F

(d) These external bodies shall prepare a Standard Operating Procedure (SOP) explaining all the details regarding the areas for which their approval/ NOC is required, the requirements to be met for such approval/ NOC, the procedure to be followed by the person(s) applying for the sanction of the building plan and how such person(s) can find whether a building lies within the agency's area of regulations or not. These G

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A        *agencies shall place the SOP on their website and also on the website of sanctioning authority directly or through a link. The SOP shall be simple and clear with illustration(s).*

*Note: For applicability of Environmental Conditions, See 3.2.*

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#### **2.3.4 Deemed Sanction:**

C        *(a) If the sanctioning authority fails to intimate the owner/ applicant, of its refusal or sanction or any intimation, within the time limit stipulated in bye- law 2.3.1, the building plan shall be deemed to have been sanctioned. However, the deemed sanctioned building plan shall be released only after the owner/ applicant informs the sanctioning authority about the deposit of requisite fees and charges, as applicable.*

D        *(b) Deemed Sanction shall not be construed to authorize any person to do anything in contravention or against the terms of lease or titles of the land or against MPD, any regulations, bye-laws, ordinance, etc.*

E        *2.3.5 In case the owner/ applicant fails to remove all the shortcomings communicated by the sanctioning authority, within 15 days from the date of receipt of such communication, the application shall be rejected and the building permit fees shall be forfeited. The same shall be conveyed to the owner/ applicant accordingly.*

F        *2.3.6 In case of any intimation of shortcomings made by the sanctioning authority/ statutory body to the owner for compliance; the time period for sanction of building plan for various categories of buildings, as specified in byelaw 2.3.1, shall be counted from the date of the receipt of the last communication/ submission made by the owner/ applicant.*

G        *2.3.7 In case the sanctioning authority rejects the application, the applicant can resubmit the application for sanction of building plan along with the building permit fees again.*

#### **2.4 Validity of Building Permit**

H        *2.4.1 The building permit shall remain valid for five years from the date of its issue subject to the condition that construction*



*work at site shall start within one year from the date of sanction of building plan.* A

*2.4.2 No building activity can be carried out after the expiry of validity of building permit.*

...

**2.4.4 Procedure for Revalidation of Building Permit** B

*(a) The building permit can be revalidated for a period in multiples of year not exceeding 5 years at a time, from the date of expiry of the validity of the original permit on payment of building permit fees for revalidation (as per Annexure III). Application for such revalidation shall be submitted along with the following documents; In case of change of ownership or expiry of time for construction in case of leasehold properties, ownership documents for updated ownership as prescribed in bye-law.* C

*(b) The application for revalidation shall be processed and revalidation or objection, if any, shall be communicated within period stipulated in Chapter 3 or 30 days from the date of the application, whichever is less.* D

**2.7.4 Approval/ NOC from external agencies** E

*(a) In cases, where the issue of OCC requires approval/ NOC from agencies outside the sanctioning authority such as Delhi Fire Services, Delhi Urban Art Commission, Delhi Jal Board, Heritage Conservation Committee, etc., the sanctioning authority shall issue the OCC only after getting such approval/ NOC from the concerned agency.* F

*(b) The approval/ NOC/ refusal shall be issued by the outside agency within 15 days of receipt of the application or within the time stipulated in Chapter 3, whichever is less; failing which the approval/ NOC of the outside agency on the building plan shall be deemed to be issued. The sanctioning authority shall process the application for OCC accordingly* G

...

**2.8 Regularisation**

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A     *Any building or part thereof constructed unauthorisedly with or without obtaining the sanction of building plan and/or OCC, can be regularised, if the same is within the ambit of BBL and MPD provisions by paying requisite fees and charges as per Annexure III & Annexure IV, as per Form D-3.*

B     ...

***2.11 Construction to be in conformity with building bye-laws.***

C     ***Owners' liability:*** *Neither granting of permission nor approval of the buildings and specifications, nor the inspection by the sanctioning authority during erection of the building, shall in any way relieve the owner of such building from full responsibility for carrying out the work in accordance with the building bye-laws and in case of any violation, the owner shall be liable for action under the extant law.*

D     ***3.1 RISK BASED CLASSIFICATION FOR APPROVAL OF BUILDING PLANS***

***3.1.0 FAST TRACK APPROVAL PROCEDURE***

E     *(i) For the buildings classified as Very Low Risk and Low Risk, the fast track procedure for approval of building plans has been specified, wherever applicable, under the bye-laws 3.1.1 onwards.*

*(ii) For buildings classified as Moderate Risk, the time limit for grant/ refusal of sanction of building plan, OCC or revalidation of building permit shall be 20 days.*

F     *(iii) For buildings classified as High Risk, the time limit for grant/ refusal of sanction of building plan, OCC or revalidation of building permit shall be 30 days.*

***3.1.1 RESIDENTIAL BUILDINGS***

G     ***3.1.1.1*** *For approval of the residential plotted and group housing buildings, risk based classification shall be as per Table 3.1.*

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**Table 3.1: Risk Matrix for Residential buildings  
(Residential Plotted\* and Group Housing)**

Parameter	Risk Category			
	Very Low	Low	Moderate	High
Size of the Plot	Up to 105 m <sup>2</sup>	Above 105 m <sup>2</sup> and up to 500 m <sup>2</sup>	Above 500 m <sup>2</sup>	Different sizes**
Height (if any)	Below 15 m	Below 15 m	Below 15 m	15m and above
Use of the premise	Residential Plotted	Residential Plotted (vacant plot)	Residential Plotted	Group Housing

\*Residential plotted includes all residential plots forming a part of approved layout/ special areas/ unauthorized regularized colony/ village abadis/ lal dora & extended lal dora resettlement colonies and slum & JJ cluster/ Rehabilitation colonies; excluding those within LBZ.

\*\*Different sizes for Group Housing prescribed in MPD-2021.

**3.1.1.2 Fast Track Procedure:** The fast track procedure for approval of the residential plotted and group housing buildings, based on their risk based classification as per bye-law 3.1.1.1, shall be as follows:

(i) For the buildings categorized as **Very Low Risk**, the process prescribed in Chapter 4 shall be followed.

(ii) For the buildings categorized as **Low Risk**, an architect/ engineer (qualification and competence as per Annexure-I) shall be empowered to issue the building permit, but only after submitting the plan along with requisite documents and fees to the authority/local body. If the owner/ architect/ engineer desires to get the building plan sanctioned by the local body, building plans prepared by a qualified architect/ engineer will have to be submitted to the authority/ local body along with the fees and other requisite documents and the local body shall grant the building permit within 10 days.

...

A      **7.1 Space Requirement for Different Parts of Residential Building of Different Size of Dwelling Units**

B      **7.1.1 Main Building:** *The plinth or any part of a building or outhouse shall be so located with respect to highest surrounding road level from site / ground level irrespective of location of the entry level so that adequate drainage of the site is assured.*

C      **7.1.2 Interior Courtyards, Covered Parking Spaces and Garages:** *These shall be satisfactorily drained either by gravity or by mechanical means.*

C      **7.1.3 Minimum Size, Width and height of different components of residential premises, low/high rise as given below in Table 7.1.**

D      **7.15 Provision of parking in Stilts, Podium and Landscaping**

E      **7.15.1** *In case a building is to be constructed on individual plot with stilt floor, a minimum 2.4m height at soffit level of beam and maximum 2.7m height at soffit level of slab for providing parking space is permitted. In podium(s), minimum 2.4m height at soffit level of beam and maximum 2.7m height at soffit level of slab for providing parking space can be constructed in continuation of the stilt floor having access for the parking without conflicting with the access requirement as per clause 2.0.4.j.iv and 8.2 from the plot line. The terrace of podium may be used for plantation, swimming pool, landscaping, other related structures and parking/entrance and exits as required.*

F      **7.15.2** *In case of provision of stack-parking in stilt floor, the heights prescribed in 7.15.1 for stilt floor may be relaxed. However, in case of stack parking the height shall be as per design and structural safety requirement.*

G      ...  
*Notes: 1. Shear wall/ bracing/ any other structural provision as per IS 1893 (Part 1), IS 13920, IS 4326 may be provided to reduce impact of soft storey in the stilt area.*

H

### **8.0 High Rise**

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*Any buildings of 15m and above height shall be considered as high rise building. For the buildings categorized as High Rise, clearance from Delhi Fire Service shall be mandatory. These provisions shall be in addition to the general building requirements (low/ high) given in Chapter 7 of this document and structural safety given in Chapter 9.*

B

### **9.3 Fire Safety**

*The building plans for buildings covered under Rule 27 of Delhi Fire Service Rules shall be marked fire and life safety measures as per the National Building Code of India concerning minimum standards for fire prevention and fire protection as covered under Rule 33 of the Delhi Fire Service Rules as amended from time to time; unless otherwise specified in these bye –laws.*

C

#### **9.3.1. Fire Escape Staircase**

D

*(a). Fire Escape will be an additional external stair case and shall not to be taken in to account for calculating the evacuation of the occupants of a specific floor. It shall not be inclined at an angle greater than 45° from the horizontal.*

*(b). All fire escapes shall be continuous from ground to terrace.*

E

*(c). Entrance to fire escape shall be separate and remote from the internal staircase. 86 (d). The route and enclosure to fire escape shall be free of obstructions at all times, except a doorway leading to the fire escape which shall have the required fire resistance. (refer NBC Part 4). €.*

F

*Fire escape shall be constructed of non-combustible materials of required fire resistance (refer NBC Part 4). Unprotected steel frame staircase will not be accepted as fire escape .(f). Handrails shall be as per Chapter 11. (g). Scissors staircase can also be used as fire escape subject to the condition that the two*

*entrances to the scissors staircase are not less than 9.0 m apart. (h). In case the provision is for a single staircase, the same shall be separated at the ground floor level to have an*

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*access to the basement (if provided).(i). The staircase enclosure if on external wall of the building shall be ventilated to atmosphere at each landing or in case it is in the core of*

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A *the building it shall be maintained at a positive pressure as mentioned in NBC part IV, Fire and Life Safety, with both automatic and manual operation facilities and fire alarm systems. (j). Fire escape staircases shall have straight flight not less than 1.5 m wide with 30 cm treads and risers not more than 15 cm. The number of risers shall be limited to 12*  
B *per flight. (k). Spiral stairs can be used subject to, the use of spiral staircase shall be limited to low occupant load and to a building of height 9.0 m. further a spiral fire escape shall not be less than 1.5 m in diameter and shall be designed to adequate head room.”*

C 29. The Delhi Fire Service Act 2007 (hereinafter referred to as “Delhi Fire Service Act”) was enacted by the Legislative Assembly of the National Capital Territory of Delhi, to provide for maintenance of a fire service and to make more effective provisions for fire prevention and fire safety measures in certain buildings and premises in the National  
D Capital Territory of Delhi and matters connected therewith.

30. Section 2(b) of the Delhi Fire Service Act defines ‘building’ to mean “*any structure whether of masonry bricks, woods, mud, metal or other materials and includes a house, out-house, basement, underground parking, stable, latrine, urinal, shed, hut or wall (other*  
E *than a boundary wall)”*

31. Sub-section (c) of Section 2 of the Delhi Fire Service Act defines ‘building bye-laws’ to mean “*the bye-laws made under Section 186 of the Cantonments Act, 1924 (2 of 1924) or the bye-laws made under Section 349-A of the Delhi Municipal Corporation Act, 1957*  
F *(66 of 1957) or the bye-laws made under sub-section (2) of Section 260 of the New Delhi Municipal Council Act, 1994 (44 of 1994) or the regulations made under sub-section (1) of Section 57 of the Delhi Development Act, 1957 (61 of 1957), or the bye-laws made by the Central Government by publication in the official Gazette, relating to buildings in Delhi”.*

G 32. Section 2(i) of the Fire Services Act defines “fire prevention and fire safety measures” to mean “such measures as are necessary in accordance with the building bye-laws/National Building Code of India for the containment, control and extinguishing of fire and for ensuring the safety of life and property in case of fire and as may be prescribed  
H in the rules made in this behalf”.

33. Sub-section (s) of Section 2 defines “multi-storeyed building” to mean “a building with such minimum height as may be prescribed under the rules in this behalf, and notified to the Director by the local authority”. It does not appear that any height has been prescribed by any local authority and notified to the Director of the Delhi Fire Service in terms of Section 2(s) of the Delhi Fire Service Act.

A

B

34. Chapter VI of the Delhi Fire Services Act makes special provisions for Fire Protection and Fire Safety Measures in certain buildings and premises in Delhi.

35. Sections 32 to 35 contained in chapter VI are set out hereinbelow for convenience:

C

**“32. Special provision for multistoreyed building.—**  
Notwithstanding anything to the contrary contained in this Act, the multistoreyed buildings shall be governed by the provisions for the fire prevention and fire safety measures hereinafter stipulated.

**33. Inspection of buildings, premises, etc.—***(1) The nominated authority may, after giving three hours notice to the occupier, or if there be no occupier, to the owner of any building having such height as may be specified by rules framed under this Act or premises, enter and inspect the said building or premises at any time between sunrise and sunset where such inspection appears necessary for ascertaining the adequacy or contravention of fire protection and fire safety measures:*

D

E

*Provided that the nominated authority may enter into and inspect any building or premises at any time if it appears to it to be expedient and necessary to do so in order to ensure safety of life and property.*

F

*(2) The nominated authority shall be provided with all possible assistance by the owner or occupier, as the case may be, of the building or premises for carrying out the inspection under sub-section (1).*

G

*(3) When any building or premises used as a human dwelling is entered under sub-section (1) due regard shall be paid to the social and religious sentiments of the occupiers; and, before any apartment in the actual occupancy of any women who, according to the custom does not appear in public, is*

H

A        *entered under sub-section (1), notice shall be given to her that she is at liberty to withdraw, and every reasonable facility shall be afforded to her for withdrawing.*

B        **34. Measures for fire prevention and fire safety.**—(1) *The nominated authority shall, after the completion of the inspection of the building or premises under Section 33 record its views or the deviations from or the contravention of the building bye-laws with regard to the fire prevention and fire safety measures and the inadequacy of such measures provided therein with reference to the height of the building or the nature of activities carried on in such building or*  
C        *premises and issue a notice to the owner or occupier of such building or premises directing him to undertake such measures as may be specified in the notice.*

D        (2) *The nominated authority shall also give a report of any inspection made by it under Section 33 to the Director.*

E        **35. Provision regarding certain building and premises.**—(1) *Notwithstanding anything contained in any other law for time being in force the Director or the nominated authority may enter and inspect any building, the construction of which was completed on or before the commencement of this Act or any building which was under construction on such date in such inspection appears necessary for ascertaining the adequacy of fire prevention and fire safety measures in such buildings.*

F        (2) *The entry and inspection under sub-section (1) shall be done by the Director or the nominated authority in the manner laid down in Section 33.*

G        (3) *The Director or the nominated authority, as the case may be, shall, after inspection of the building or premises under sub-section (1), and after taking into consideration.—*

H        (i) *the provisions of the building bye-laws in accordance with which the plan of this said building or premises was sanctioned;*

(ii) *the conditions imposed, if any, by the local authority at the time of the sanction of the plan of the said building or premises; and*



*(iii) the minimum standards for fire prevention and fire safety measures specified for such building or premises as may be specified by rules framed under this Act, issue a notice to the owner or occupier of such building or premises stating therein the inadequacy in regard to the fire prevention and fire safety measures in it and direct the owner or occupier to undertake measures for rectifying the said inadequacy within the period as he may consider just and reasonable.*

A

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*(4) The nominated authority shall also give a report of any inspection made by it under sub-section (1) to the Director.*

36. In exercise of power conferred by Section 66 of the Delhi Fire Service Act, the Lieutenant Governor of National Capital Territory of Delhi has made the Delhi Fire Service Rules 2010, hereinafter referred to as the Fire Service Rules.

C

37. Some of the relevant provisions of the Fire Service Rules are as follows:

D

*“27. Classes of occupancies likely to cause a risk of fire.*

*The following classes of occupancies for the purposes of sub-section (1) of section 25 of the Act shall be construed to likely cause a risk of fire, namely:-*

E

....

*(2) Residential buildings (other than hotels and guest houses) having height more than 15 meters or having ground plus four upper stories including mezzanine floor.*

*(3) Hotels and guest houses having height more than 12 meters having ground plus three upper stories including mezzanine floor.*

F

*28. Height of building.*

*The minimum height of the buildings for the purposes of sub-section (1) of section 33 and sub-section (1) of section 35 of the Act shall be as specified in rule 27.*

G

....

*33. Minimum standards for fire prevention and fire safety for buildings. (1) The minimum standards for fire prevention and*

H

- A *fire safety for buildings as may be applicable with reference to the height of the building and class of occupancy for the purposes of section 32 and section 35 of the Act shall be as are provided in the building bye-laws or National Building Code of India 2005 relating to the following matters:-*
- B (1) *Access to building*  
(2) *Number, Width, Type and Arrangement of exits.*  
(3) *Protection of Exits by means of fire check door (s) and or pressurization.*
- C (4) *Compartmentation.*  
(5) *Smoke Management System.*  
(6) *Fire Extinguishers.*  
(7) *First-Aid Hose Reels.*
- D (8) *Automatic fire detection and alarming system.*  
(9) *MOEFA.*  
(10) *Public Address System.*  
(11) *Automatic Sprinkler System.*
- E (12) *Internal Hydrants and Yard Hydrants.*  
(13) *Pumping Arrangements.*  
(14) *Captive Water Storage for fire fighting.*  
(15) *Exit Signage.*
- F (16) *Provision of Lifts.*  
(17) *Standby power supply*  
(18) *Refuge Area.*  
(19) *Fire Control Room*
- G (20) *Special Fire Protection Systems for Protection of special Risks,:*  
*Provided that classes of occupancies or buildings or premises for which fire prevention and fire safety measures are not provided in the building bye- laws or National Building Code*
- H

*of India 2005, the Director may require owner or occupier of such occupancies or buildings or premises to provide fire prevention and fire safety measures in accordance with international standards as may be provided by the Fire Prevention Wing,:*

*Provided further that where the Government is of the opinion that it is necessary or expedient so to do, it may, by order, for reasons to be recorded in writing, relax or modify or annul any requirement concerning fire prevention and fire safety measures under these rules with respect to any class of occupancy in any building or premises in special areas or in respect of any building or premises in any area that was constructed or which was under construction prior to the date of enforcement of these rules.*

*(2) Where the Director is of the opinion that it is necessary or expedient so to do, it may, for reasons to be recorded in writing, require the owner or occupier of the buildings or premises to provide additional fire prevention and fire safety measures.*

*34. Issue of fire prevention and fire safety measures.*

*(1) On receipt of a reference from the local authority or any other statutory authority under clause (s) of section 2 of the Act the Fire Prevention Wing shall issue fire prevention and fire safety measures under these rules to be incorporated in the design of the building for the safety of the occupants.*

*(2) The Fire Prevention Wing may require the owner or occupier to make presentation through Architect (s) on a specified date.*

*(3) The Fire Prevention Wing shall direct the Architect to modify the building plans received under sub-rule (1) above to ensure the compliance of these rules and the architect shall abide by such instructions failing which building plans are liable for rejection.*

*(4) The fire prevention and fire safety measures shall be issued within three weeks from the date of presentation under sub-rule (2) or modification of building plans as may be required under sub-rule (3) if any.*

H

- A        35. *Fire Safety Certificate to be issued.*
- (1) *the Director or any other officer authorized by him in this behalf by a general or special order shall issue a Fire Safety Certificate in Form 'H' in First Schedule to the owner or occupier of the building or premises with such conditions as*
- B        *may be specified in the Fire Safety Certificate for compliance of fire prevention and fire safety measures as specified under these rules.*
- (2) *The application for grant of Fire Safety Certificate shall be made to the Director in Form 'I' in First Schedule and shall be accompanied with a certificate from the architect and*
- C        *owner or occupier that all the fire prevention and fire safety measures as required under rule 33 have been incorporated in the building or premises.*
- (3) *On receipt of application under sub-rule (2), the building or premises shall be inspected by a team of fire officers to ascertain the availability and operability of the fire prevention and fire safety measures who shall recommend to the Director for grant or refusal of fire safety certificate.*
- D
- (4) *On receipt of the recommendations under sub-rule (3) the Director shall grant the fire safety certificate or reject the same for reasons to be recorded in writing and communicated to owner or occupier as the case may be.*
- E
- (5) *In case of rejection of application for grant of fire safety certificate under subrule (4), a fresh application shall be made by the owner or occupier under sub-rule (2) duly complying with the requirements as communicated under sub-rule (4).*
- F
- (6) *The buildings or premises that have already been issued No Objection Certificate for the occupancy of the building or premises shall deemed to have been issued Fire Safety Certificate under rule 35 subject to verification of compliance of fire prevention and fire safety measures on which the No Objection Certificate was issued on the last occasion.*
- G
36. *Duration of Fire Safety Certificate.*
- The Fire Safety Certificate issued under rule 35 unless sooner cancelled shall be valid for a period 5 years for residential*
- H

*buildings (other than hotels) and 3 years for non-residential buildings including hotels from the date of issue.* A

*37. Renewal of Fire Safety Certificate.*

*(1) Application for renewal of Fire Safety Certificate granted under rule 35 as valid under rule 36 shall be made to the Director in Form 'I' in First Schedule along with a copy of the Fire Safety Certificate six months before the expiry of the Fire Safety Certificate.* B

*(2) On receipt of application under sub-rule (1) the Nominated Authority shall inspect the building or premises to verify the compliance of rules and forward the report of the compliance or otherwise to the Director.* C

*(3) On receipt of report under sub-rule (2) the Director or any other officer authorized by him in this behalf by a special or general order renew the Fire Safety Certificate for a period specified under rule 36 or reject the application duly recording the reasons therefor.* D

*39. Time for Completion of measures.*

*(1) Nominated Authority shall indicate the time not exceeding 90 days within which fire prevention and fire safety measures should be provided as per the requirements of sub-section (1) of section 34 of the Act.* E

*(2) The Director may review the time allowed by the Nominated Authority under sub-rule (1) above and grant extension of time once or several times if he is satisfied with the progress of the work subject to maximum of 180 days.* F

*(3) The Fire Safety Certificate issued under rule 35 shall remain suspended from the date of notice of the Nominated Authority issued under sub-rule*

*(1) till the compliance is made to the satisfaction of the Director or the Nominated Authority and this shall be duly recorded on the Fire Safety Certificate.* G

*(4) The occupancy of the building or premises during the time allowed for completion of work under sub-rule (1) and sub-*

H

A        *rule (2) above shall be at the risk and liability of the owner or occupier.*

*40. Cancellation of Fire Safety Certificate.*

B        *(1) If the owner or occupier fails to comply with the direction given under rule 39 within the specified time, the Director or any other officer authorized by him in this behalf may, without prejudice to any other action under the Act or rules, after giving owner or occupier an opportunity to show cause, why such an order should not be passed by an order in writing stating the reasons therefor, cancel the Fire Safety Certificate issued under rule 35.*

C        *(2) The owner or occupier of the building or premises whose fire safety certificate has been cancelled by the Director or any other officer authorized by him in this behalf under subrule (1), may within 90 days of the receipt of a copy of the order by him prefer an appeal in the manner laid down under rule 42 to the Appellate Authority who may after giving the owner or occupier an opportunity of being heard, confirm, reverse or modify such order.*

*42. Appeal.*

E        *(1) An appeal to the Appellate Authority under sub-section (7) of section 27 or under sub-section*

F        *(2) of section 36 of the Act shall be preferred in Form 'R' in First Schedule and shall be accompanied by a copy of order or notice appealed against and by a fee of Rs. 5,000/- (Rupees five thousand only) through a bank draft drawn in favour of DDO (Headquarters), Delhi Fire Service payable at Delhi.*  
*(2) The appellate authority shall consider all the circumstances of the case and make such orders as it may deem just and equitable and his order shall be final.*

G        *(3) The authority which made the order appealed against shall give effect to the order passed by the appellate authority.*

38. As noted above, the Appellant had applied to the SDMC for sanction of a building plan, for the construction of a building on the said premises.

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The height of the building was shown as 15 metres, as per the building Regulations prevailing then. A

39. However, about two months after the building plan submitted by the Appellant was sanctioned on 15<sup>th</sup> July 2013, the Ministry of Urban Development (Delhi Division) amended the Master Plan for Delhi by a Notification dated 23rd September 2013, which was published in the Official Gazette on 21st October 2013. B

40. As per the amendment, buildings upto 17.5 metres in height, with stilt parking, were not to be considered as high rise buildings. The amendment also required that clearance of the Fire Department would have to be obtained by the owner of the plot. C

41. According to the Appellant, by the time the Appellant came to know of the amendment of the Master Plan, the Appellant had commenced construction in accordance with the building plan as sanctioned, which depicted the height of the building as 15 metres with the stilt parking. The stilt as well as the roof of the ground and first floors had been casted. Only the second and the third floor roof casting remained to be done. D

42. In terms of the amended Master Plan, the Appellant got a revised Building Plan prepared, which provided for increase of the height of the building to 16.6 meters with stilt parking, which was well below 17.5 meters provided in the amended Master Plan. Admittedly, the building partly constructed by the Appellant is ground plus three floors. The Height of the building is 16.6 meters with the parking stilt. If the parking stilt is excluded the height of the building is well within 15 meters. E

43. It is stated that as owner the Appellant was required to obtain fire clearance from the Delhi Fire Service Authorities for sanction of the Revised Building Plan. After preparation of the revised building plan in accordance with the amended Master Plan, the Appellant had a talk with the Chief Fire Officer, Delhi over telephone. According to the Appellant, he had informed the Chief Fire Officer that construction had been commenced as per the original sanction plan. According to the Appellant, the Appellant had been assured that there would be no difficulty in obtaining fire clearance by reason of increase in the height of the building by 4 feet. F G

44. On 20<sup>th</sup> January 2014, the Appellant submitted the Revised Building Plan to the SDMC for increase of the height to 16.6 meters by H

A increasing the height of the second and third floors by 2 feet each. The Appellant was, however, informed that the revised building plan could not be sanctioned until clearance and/or 'No Objection' was obtained by the Appellant from the Fire Service Authorities.

45. The Unified Building Bye-laws apply to all erection and reconstruction of buildings by virtue of Clause 1.7.0 thereof. Since the Revised Building Plan is yet to be sanctioned it will be governed by the Unified Building Bye-laws. Clause 1.7.2 of the Unified Building Bye-laws prohibits the erection, addition or alteration of a building, without obtaining a separate building permit from the Sanctioning Authority. As per Clause 8.0 of the Unified Building Bye-laws, any building of 15m and above is to be considered as a high rise building. When read harmoniously with Clause 7.15.1 stilt parking upto a maximum height of 2.7 meters has to be excluded in measuring the height of 15 meters, for the purpose of Clause 8.0.

D 46. By virtue of Clause 1.3.3 of the Unified Building Laws, extracted hereinbefore, the provisions of the Master Plan of Delhi, *inter alia*, regarding height or use of buildings are applicable to the Building Regulations mutatis mutandis. All amendments to the Master Plan would automatically be included as part of the Unified Building Regulations.

E 47. The provisions of the Unified Building Regulations are statutorily required to be construed harmoniously with the Master Plan of Delhi. Section 53A of the DD Act expressly provides that no Rule, Regulation or Bye-law is to be made by any local authority, unless the authority, upon consideration of the Rule, Regulation or Bye-law certifies that it does not contravene the Master Plan. The phrase 'buildings of 15m and above, are to be considered as high rise buildings', is to be construed to mean that buildings of 15m and above excluding the height of stilt parking, or without stilt parking are to be considered as high rise buildings. We are informed that Stilt parking is mandatory now.

G 48. The Appellant had also entered into correspondence with the Government suggesting amendment of Rule 27 of the Fire Services Rules to bring the same in conformity with the Master Plan, as amended by the Notification dated 23<sup>rd</sup> September 2013.

H 49. The Appellant states that the Appellant had to take loan of Rs.20 Crores from the bank for construction of the building and had to pay instalments of Rs.20 lakhs per month for repayment of the loan,



inclusive of interest. However, the Appellant had to stop the ongoing construction and follow up with the department of fire service, seeking approval/clearance. The revised building plan was not being sanctioned for want of fire clearance. A

50. On or about 28<sup>th</sup> February 2014, the Appellant filed the abovementioned Writ Petition being W.P. (C) No.1476/2014 in the High Court of Delhi, *inter alia*, challenging Rule 27 of the Fire Services Rules and seeking amendment of the Rules to bring the same in conformity with the Master Plan. B

51. In the Writ Petition, the Appellant prayed for the following reliefs:- C

“a. Issue appropriate writ, order or direction setting aside Rule 27(2) of the Delhi Fire Service Rules as the same does not incorporate the amendment as provided in the Delhi Master Plan vide notification dated 23.09.2013 and is isolative of Article 14 of the Constitution of India. D

b. Issue appropriate writ order or direction commanding the Respondents to amend the Rule 27 of the Delhi Fire Service Rules so as to align the same in accordance with the amended master plan, that is, by providing for measurement of the height of the building from the ground level in the case of building without stilt and the case of building with stilt from the stilt level. E

c. Direct the South Delhi Municipal Corporation to approve the revised plan of the Petitioner as submitted by the Petitioner on 20<sup>th</sup> January, 2014. F

d. Make the said order absolute after hearing the parties.

e. Pass such other order/orders, which may deem fit and proper in the facts and circumstances of the case and in the interest of justice.”

52. Soon after the Appellant filed the Writ Petition, the Master Plan was amended further as under:- G

“building taller than 15 meters (without stilt) and 17.5 meters (including stilt) in all south zone will be considered as high rise building” H

A            53. Mr. Nidhesh Gupta, learned Senior Counsel appearing on behalf of the Appellant submitted that the purpose of the amendment was to clarify that individual owners of residential buildings up to 17.5 meters including stilt would not fall within the regulatory regime of the Delhi Fire Service.

B            54. A counter affidavit has been filed on behalf of the Delhi Fire Service, contents whereof are briefly summarised hereinafter:-

- (i) National Capital Territory of Delhi is governed by the Master Plan of Delhi under the DD Act.
- C            (ii) The Master Plan may be modified or amended by the Central Government in accordance with Section 11A of the DD Act to meet the requirements of urban development.
- (iii) DDA is the nodal statutory agency to prepare and finalize the Master Plan.
- D            (iv) Direction and implementation of the Master Plan of the building bye- laws rests with local bodies such as DDA, Municipal Corporation of Delhi, New Delhi Municipal Council.
- (v) Amendment of the Fire Service Rules is within the exclusive domain of Legislature of the National Capital of Delhi.
- E

55. In the counter affidavit, it is stated that fire safety clearance of buildings is issued by the Fire Service Department under Rule 35 of the Fire Service Rules in respect of buildings identified under Rule 27. Fire clearance is required in respect of :-

- F            (1) *Pandal having seating capacity more than 50 persons or covered area more than 50 square meters.*
- (2) ***Residential buildings (other than hotels and guest houses) having height more than 15 meters or having ground plus four upper stories including mezzanine floor.***
- G            (3) *Hotels and guest houses having height more than 12 meters having ground plus three upper stories including mezzanine floor.*

H

- (4) *Educational buildings having height more than 9 meters or having ground plus two upper stories including mezzanine floor.* A
- (5) *Institutional buildings having height more than 9 meters or having ground plus two upper stories including mezzanine floor.* B
- (6) *All Assembly buildings.*
- (7) *Business buildings having height more than 15 meters or having ground plus four upper stories including mezzanine floor.* C
- (8) *Mercantile buildings having height more than 9 meters or having ground plus two upper stories including mezzanine floor.*
- (9) *Industrial buildings having covered area on all floors more than 250 square meters.* D
- (10) *Storage buildings having covered area on all floors more than 250 square meters. 13*
- (11) *All Hazardous buildings having covered area on all floors more than 100 square meters.*
- (12) *Underground Structures.* E

56. Rule 27 of the Fire Service Rules lists the classes of occupancies which are to be construed as likely to cause risk of fire. They include residential buildings (other than hotels and guest houses) having height of more than 15 meters or having ground plus four storeys including mezzanine floor. F

57. Mr. Gupta submitted that it is nobody's case that the building of the Appellant has Ground plus four upper storeys. It is submitted that the building has ground plus three storeys. The entire controversy in this case revolves around the height of the building, which is well within 17.5 meters but above 15 meters, with stilt parking. G

58. Mr. Vishnu B. Saharya, learned counsel appearing on behalf of Respondent No. 3, submitted that the buildings which are within 15 meters in height do not require any fire service clearance. The question is whether buildings within 15 meters excluding the maximum permissible H

- A height of stilt parking can be denied sanction, on the ground of want of fire clearance from the Fire Service Authority.

59. Ms. Aishwarya Bhati, learned Additional Solicitor General, appearing for the Delhi Government and the Fire Service Authorities submitted a compilation of documents to indicate the grounds on which the Fire Service Authorities had objected to the building plan. The Fire Service Authorities contended that the matter had been examined in the light of Gazette Notification dated 23<sup>rd</sup> September 2013, issued by the Government of India which stated that the maximum height of the building shall be 15 meters in plots without stilt parking and 17.5 meter in plots with stilt parking and that such residential buildings shall not be construed as high rise buildings for the purpose of fire and life safety requirements and clearance of Fire Department would be obtained by the original owner.

60. According to the fire service authorities, on compliance of the minimum standards for fire prevention and fire safety in respect of the various kinds of occupancy specified above, fire clearance is granted. The minimum standards for fire prevention and fire safety of buildings are as provided in the Building Bye-Laws and/or the National Building Code of India relating to :-

- E (1) *Access to building*  
 (2) *Number, Width, Type and Arrangement of exits.*  
 (3) *Protection of Exits by means of fire check door (s) and or pressurization.*
- F (4) *Compartmentation.*  
 (5) *Smoke Management System.*  
 (6) *Fire Extinguishers.*  
 (7) *First-Aid Hose Reels.*
- G (8) *Automatic fire detection and alarming system.*  
 (9) *MOEFA.*  
 (10) *Public Address System.*
- H (11) *Automatic Sprinkler System.*

(12) *Internal Hydrants and Yard Hydrants.* A

(13) *Pumping Arrangements.*

(14) *Captive Water Storage for fire fighting.*

(15) *Exit Signage.*

(16) *Provision of Lifts.* B

(17) *Standby power supply*

(18) *Refuge Area.*

(19) *Fire Control Room* C

(20) *Special Fire Protection Systems for Protection of special Risks,:*

61. In this case, it is a matter of record that the application of the Appellant for revised building plan has been rejected on the sole ground that the Appellant had not removed the lacunae pointed out by the Fire Service Authorities. D

62. The provisions of Part 4 of the National Building Code of India relating to fire and life safety requirements applies to all high rise buildings and special buildings specified in clause 1.2(b) of Part 4 of the National Building Code of India. The requirements have no application to residential buildings which are not high rise buildings. E

63. The Fire Service Authorities also observed that the provisions of fire safety clearance and provisions for arrangements such as open spaces, alternate staircase, internal road, 6 meters wide surrounding the building etc. were vital from the point of view of life safety considerations. These arrangements are applicable to multi-storeyed and/or High Rise Buildings. F

64. The Fire Service Authorities contend that buildings beyond 15 meters in height irrespective of the type occupancy, pose different challenges in rescue and firefighting operations. The fire protection requirement in respect of residential buildings is set forth in a Table being annexure R-1 to the counter affidavit which is reproduced hereinbelow”:- G

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“Annexure-RI

**COMPARISON OF FIRE PROTECTION REQUIREMENTS:  
RESIDENTIAL BUILDINGS-APARTMENT HOUSES**

B	S. No.	Fire & Life Safety Requirement under Rule 33 of Delhi Fire Service Rules, 2010	Residential Buildings Up to 15 m in height as per National Building Code of India 2016	Residential Buildings above 15 m and up to 35 m in height as per National Building Code of India 2016
	1	Access to building 1. Gate Width 2. Internal road within plot	N.A. N.A	6.0M 6 m all around the building, 9 m turning radius at corners, Load bearing capacity of 45 tons for internal roads.
C	2	Number, Width, Type of arrangement of exits	One staircase	Minimum two staircase irrespective of floor area
	3	Protection of exits by Fire Check doors and or pressurization	Not required	Entry to staircase shall be through Fire Check door
D	4	Compartmentation	Not required	All vertical shafts to be sealed at every floor level and shaft door to have 2 hours fire resistance rating
	5	Some management system	Not required	12 air changes per hour for windowless buildings for all upper floors
E	6	Fire Extinguishers	Required	Required
	7	First-aid Hose Reel	Required	Required for every floor
F	8	Automatic Fire Detection & Alarming System	Not Required	Not Required
	9	MOEFA	Not Required	Not Required
G	10	Public Address System	Not Required	Required
	11	Automatic Sprinkler System	Not Required	Not Required
H	12	Internal & External Hydrants	Not Required	Required
	13	Pumping Arrangements	Terrance Pump of 450 lpm required (additional 450 if basement area exceeds 200 Sq.m.)	Terrace Pump of 900 lpm required
	14	Captive Water Storage	5000 liters (additional 5000 lpm if basement area exceeds 200 sq.m)	25000 liters
	15	Exit Signage	Not Required	Required
	16	Provision of Lift	Not Required	Required
	17	Standby Power Supply	Not Required	Required
	18	Refuge Area	Not required	Required (in case of flats without balcony)
	19	Fire Control Room	Not Required	Required (above 30 m)
	20	Special Risk Protection	N.A.	Required

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A        69. As noted above, there does not appear to be any prescription of minimum height or intimation to the Director of the Delhi Fire Service, as required under Section 2(s) of the Delhi Fire Service Act. The Building Bye-laws 1983 and the Unified Building Bye-laws read with the Master Plan would have to be deemed as Prescription and Notification under Section 2(s). In any case, in view of Section 53 and 53A of the DD Act, the Master Plan and the Building Rules, Regulations and Building Bye-laws under the DD Act would prevail in case of inconsistency with any other Rules or Regulations.

B        70. Section 32 of the Delhi Fire Service Act provides that notwithstanding anything to the contrary contained in the said Act, multi-storeyed buildings are to be governed by the provisions of the fire provision and fire safety measures thereafter stipulated.

C        71. Chapter V of the Fire Service Rules requires the Fire Prevention Wing under the charge of a Chief Fire Officer to examine building plans referred to the Fire Service Wing by any local authority or any statutory authority from the fire prevention and fire safety point of view and issue directives relating to fire prevention and fire safety measures for compliance by the builder, owner or occupier. The fire prevention wing is also empowered to study the fire accidents in the National Capital Territory of Delhi and assist in the framing of policies relating to fire prevention and fire safety and matters similar and/or incidental thereto.

D        72. Rule 27 of the Fire Service Rules, enumerates the classes of occupancies which are likely to cause risk of fire. Residential buildings (other than hotels and guest houses), having height above 15 meters or having ground plus four upper storeys, including Mezzanine floors are deemed to cause risk of fire.

E        73. Under Rule 28 of the Fire Service Rules, the minimum height of the buildings, for the purposes of sub-section (1) of Section 33 and sub-section (1) of Section 35 of the Fire Service Act, would be, as specified in Rule 27, that is, height more than 15 meters or ground plus four upper storeys in case of residential buildings. Height more than 15 metres would necessarily have to be construed as height more than 15 metres without stilt parking or excluding the height of stilt parking within the limits as prescribed.

F        74. Section 33 relating to inspection of buildings and/or premises for ascertaining the adequacy or contravention of fire protection and

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fire safety measures, applies only to buildings, as specified, of minimum height as specified in Rule 33 of the Fire Services Rules. The minimum standards for fire prevention and fire safety for buildings, as stipulated in Rule 33, for the purposes of Sections 33 and 35 of the Fire Service Act, are applicable as per the height of the building and class of occupancy as provided in Building Bye-laws or National Building Code of India, 2005.

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75. As per the proviso to Rule 33 in case of classes of occupancies or buildings or premises for which fire prevention and fire safety measures are not provided in the Building bye-laws or National Building Code of India 2005, the Director may require the owner or occupier of such occupancies or buildings or premises to provide fire prevention and safety measures in accordance with international standards as may be provided by the Fire Prevention wing.

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76. As per the Second proviso, where the Government is of the opinion that it is necessary or expedient so to do, it may, by order, for reasons to be recorded in writing, relax or modify or annul any requirement concerning the fire prevention and fire safety measures under these Rules, with respect to any class of occupancy, in any building or premises in special areas or in respect of any building or premises in any area that was constructed or which was under construction prior to the date of enforcement of these Rules.

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77. Similarly, where the Director is of the opinion that it is necessary, or expedient so to do, it may for reasons to be recorded in writing, require the owner or occupier of the buildings or premise to provide additional fire prevention and fire safety measures.

78. Rule 34 of the Delhi Fire Service Rules provides that, on receipt of a reference from the local authority or any other statutory authority, the Fire Prevention Wing may require the owner or occupier to modify the building plans to ensure the compliance of the Delhi Fire Service Rules, fire prevention and fire safety measures are to be issued within three weeks from the date of presentation under sub-rule (2) or modification of building plans as may be required under sub-rule (3) if any.

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79. Rule 35 casts an obligation on the Director, or any other officer(s) authorized by the Rules, to issue a Fire Safety Certificate in the requisite form, if the application is accompanied with a certificate

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A from the Architect and owner or occupier stating that all the fire prevention and fire safety measures as required under Rule 33 have been incorporated in the building or premises. Rule 35 only applies to high rise buildings.

80. On receipt of application, the building might be inspected by a team of fire officers to ascertain the availability or operability of the fire prevention and fire safety measures.

81. As observed above, multi-storeyed buildings are governed by the provisions for fire prevention and fire safety measures stipulated in Chapter VI of the Delhi Fire Service Rules.

C 82. Building bye-laws have been defined in Section 2(c) to mean bye- laws made under the Delhi Cantonment Act, 1924, the Delhi Municipal Corporation Act 1957, the New Delhi Municipal Council Act, 1994 or the regulations made under sub-section (1) of Section 57 of the Delhi Development Act, 1957 or the bye-laws made by the Central Government by publication in the Official Gazette, relating to buildings in D Delhi. The prevalent bye-laws and in particular 1.3.3 of the Unified Building Bye-Laws issued by the DDA makes it amply clear that the words and expressions used in the bye-laws would have the same meaning or sense as in the DD Act. Bye-law 1.3.3 makes it absolutely clear that all Master Plan/Development Control Regulations regarding use, coverage, F.A.R., set-backs, open spaces, height, number of storeys, E number of dwelling units, parking standards etc. for various categories of buildings including modifications therein made from time to time shall be applicable *mutatis- mutandis* to the Building Regulations. In view of the Master Plan read with building bye-laws, high rise building/multi-storeyed building would mean a building taller than 15 meter without stilt F or 17.5 metre with stilt.

83. “Multi-storeyed building” is defined in Section 2(s) of the Fire Service Act to mean a building with such minimum height, as may be prescribed under the rules in this behalf, and notified to the Director by the local authority. “local authority” has been defined in Section 2(q) of G the Fire Service Act to mean the Delhi Cantonment Board established under the Cantonment Act, 1924 (2 of 1924), the Delhi Development Authority, the Municipal Corporation of Delhi, the New Delhi Municipal Council Act or any other Authority under any other law which might be notified in this behalf by the Central Government or the Government, as the case may be.

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84. In the absence of any specific prescription of height in terms of Section 2(s) of the Delhi Fire Service Act or notification to the Director, the Master Plan read with the applicable Building Bye-laws, is to be deemed the prescribed height notified in terms of Section 2(s). The prescribed height is deemed to be height not exceeding 15 meters without parking stilt and/or excluding the height of the stilt parking, upto the maximum limit permitted.

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85. Rule 27(2) of the Delhi Fire Service Rules which reads Residential Buildings (other than hotels and guest houses) having height more than 15 meters or having ground plus four upper storeys including mezzanine floor, has to be construed as residential building having height more than 15 meters excluding stilt. It is implicit in the Fire Safety Rules that only buildings with stilt parking, exceeding 17.5 meters in height, would be considered as high rise building and/or multi-storeyed building.

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86. The prayers in the Writ Petition filed in the High Court for amendment of Rule 27 of the Fire Service Rules are misconceived. There are no cogent grounds of challenge to Rule 27 of the Fire Service Rules. Height prescriptions, as stated above, differ from place to place, based upon in depth study and consideration of all relevant factors. There could be no question of this Court directing the Lieutenant Governor of the National Capital Territory of Delhi to amend Rule 27. What is required is a meaningful purposive construction of Rule 27, in the light of the DD Act and the applicable Building Bye-laws read with the Master Plan, as amended.

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87. The Appellants have referred to the Calcutta Municipal Corporation Building Rules 2009 and Building Regulations applicable to several other cities to demonstrate that Rule 27 of the Fire Service Rules is discriminatory. The Rules and Regulations referred to have been made by the States under their own Statutes. There cannot be any uniform prescribed height for buildings all over the country. It is for the relevant rule making authority to take a decision with regard to height of a building for the requisite level of safety including fire safety, taking into account all relevant factors; such as topography, propensity to seismic turbulence of the region, population density, traffic, etc.

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88. The arguments advanced on behalf of the Appellant, in the High Court have duly been recorded in paragraph 6 of the impugned judgment and order. The said paragraph is extracted hereinbelow for convenience:-

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- A        *“6. The senior counsel for the petitioner:*  
*(a) has drawn our attention to Delhi Building Bye-Laws 1983;*  
*(i) Bye-law 2.1 whereof defines “Act” as the Delhi*  
*Development Act, 1957;*
- B        *(ii) Bye-law 2.51 whereof defines “Master Plan” as the Master*  
*Plan for Delhi approved by the Central Government under*  
*the Delhi Development Act, 1957 and the amendments made*  
*from time to time;*
- C        *(iii) Bye-law 2.02 whereof provides that the words and*  
*expressions not defined in the Bye-laws shall have the same*  
*meaning or sense as in the Delhi Municipal Corporation Act,*  
*1957, Delhi Development Act and the Master Plan for Delhi;*
- D        *(iv) Bye-law 2.03 whereof provides that all mandatory Master*  
*Plan/Zonal Plan regulations regarding coverage, floor area*  
*ratio, use, set-backs, open spaces, height, number of storeys,*  
*number of dwelling units, parking standards etc. for various*  
*categories of buildings including modifications thereof made*  
*from time to time shall be applicable mutatis mutandis in the*  
*building regulations and that all amendments/modifications*  
*made in the building regulations will automatically be*  
*included as part of the Bye-laws;*
- E        *(v) Bye-law 2.36 whereof defines “Floor Area Ratio (FAR)”*  
*as the quotient obtained by dividing the total covered area*  
*(plinth area) on all floors multiplied by 100 by the area of the*  
*plot;*
- F        *(vi) Bye-law 2.58 whereof defines “Parking Space” as an*  
*area enclosed or unenclosed, covered or open, sufficient in*  
*size to park vehicles, together with a driveway connecting*  
*the parking space with a street or alley and permitting ingress*  
*and egress of the vehicles;*
- G        *(vii) Bye-law 3.1 whereof provides that in addition to the*  
*provision of the Delhi Development Act, the Building Bye-*  
*laws shall apply to the building regulation activity, in the Union*  
*Territory of Delhi under the jurisdiction of the Delhi*  
*Development Authority (DDA);*
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(viii) *Appendix J* whereof containing ‘Relevant Extracts from MPD- 2021 regarding Development Control Regulations’ provides the maximum height of constructions of residential plotted development, of 15 metres and further provides that if the building is constructed with stilt area of non-habitable height (less than 2.4 metres), used for parking, such stilt area shall not be included in FAR but would be counted towards the height of the building;

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(b) has drawn our attention to the Notification dated 4<sup>th</sup> March, 2014 of the Ministry of Urban Development (Delhi Division) issued in exercise of powers conferred by Section 11-A(2) of the Delhi Development Act making modifications in the MPD- 2021 and whereby the definition of High Rise Buildings in Clause 8(7) of Chapter 17 titled ‘Development Code’ of the Master Plan has been changed to “Buildings taller than 15 metres (without stilt) and 17.5 metres (including stilt) in all use zones will be considered as High Rise Buildings” and further providing that in case of stack-parking in stilt floor, minimum height of 2.4 metres for stilt floor may be relaxed;

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(c) has drawn our attention to Bye-law 6.2.4.1 of the Building Bye- laws aforesaid relating to ‘Building Plans for Multistoreyed/Special Buildings which are more than 15 metres in height and has argued that the same is by way of an exception to Bye-law 6.2.4 dealing with ‘Building Plan’ for plots measuring up to 250 sq.m. and above 250 sq.m. and has demonstrated that the building plan for such multistoreyed/special buildings has to show inter alia the location and size of fire lift, smoke exhauster system, access to fire appliances/vehicles with details of vehicular turning circle and clear motorable access way around the building etc.;

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(d) has argued:

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(I) that the petitioner on 15<sup>th</sup> July, 2013 got the plan for construction on property No. C-319, Defence Colony, New Delhi sanctioned from the Municipal Corporation of Delhi (MCD);

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- A *(II) that at the time of sanction of plan, the height of the building permissible under the Bye-laws was 15 metres which included the stilt which had been made mandatory;*
- B *(III) that upon amendment of the Master Plan vide Notification dated 23<sup>rd</sup> September, 2013 published on 21<sup>st</sup> October, 2013, maximum height of the building was prescribed as 15 metres in plot without stilt parking and 17.5 metres in plot with stilt parking and further providing that such buildings were not to be considered as high rise buildings “for the purpose of fire and life safety requirements, clearance of Fire Department will be obtained by the individual plot owner”;*
- C *(IV) that by the time, the petitioner came to know about the aforesaid amendment, he had already casted stilt as well as the ground and the first floors and the only second and third floor roof casting remained;*
- D *(V) that in order to take advantage of the amended Master Plan, the petitioner got a revised plan made by providing two feet extra on the second and third floors, thus taking the height of the entire building to 16.16 metres, that is, well below the 17.5 metres provided in the amended Master Plan;*
- E *(VI) that since the amended Master Plan provided for taking clearance of the Fire Department, the petitioner applied on 3<sup>rd</sup> January, 2014 and on 20<sup>th</sup> January, 2014 submitted revised building plans to the SDMC indicating therein that the petitioner shall be increasing the height of the second and third floors by two feet each to take the total height to 16.16 metres;*
- F *(VII) that on 22<sup>nd</sup> January, 2014, the MCD referred the file to the Fire Department, GNCTD;*
- G *(e) has invited attention to the Delhi Fire Service Act (DFSA), 2007 and has contended:*
- H *(i) that there is no provision therein for compliance of the provisions contained therein by residential buildings;*
- (ii) that though Section 25 thereof empowers the GNCTD to by notification in the official gazette declare any class of*

*occupancy and pandal which are likely to cause a risk of fire but the GNCTD has not issued any notification;* A

*(iii) that Section 32 thereof requires only the 'multistoreyed buildings' to be governed by the provisions for the fire prevention and fire safety measures stipulated therein;*

*(iv) that the said measures are contained in the Delhi Fire Service Rules supra;* B

*(f) has invited attention to Rule 27 of the Rules supra listing the classes of occupancies to be construed as likely to cause a risk of fire and serial No. 2 whereof contains residential buildings (other than hotels and guest houses) having height more than 15 metres or having ground plus four upper storeys including mezzanine floor;* C

*(g) has contended,*

*(I) that once the Master Plan has changed the maximum height of residential building from 15 metres to 17.5 metres and which change as per the provisions aforesaid of the Building Bye-laws stands incorporated in the Building Bye-laws also, the rules cannot be permitted to continue classifying residential buildings of more than 15 metres but less than 17.5 metres height as posing risk of fire;* D  
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*(II) that rules aforesaid cannot be contrary to and have to be subservient to the Central Government legislation;*

*(III) that even otherwise Section 25 of the DFSA entitles the Government to declare only a class of occupancy, as likely to cause a risk of fire and not by height;* F

*(IV) that the rule aforesaid is arbitrary per se and the height of 15 metres contained therein, after the amendment of the Master Plan and the consequent amendment of the Building Bye-laws will have to be read as 17.5 metres;* G

*(V) that the GNCTD, post the amendment of the Master Plan and the Building Bye-laws, ought to have amended the Rules, but has failed to do so;*

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- A *(VI) that even the Development Code was amended on 4<sup>th</sup> March, 2014 in consonance with the amendments to the Master Plan;*
- (VII) that the height of the occupancy, even after the amendment aforesaid, remains 15 metres only and only to deal with the paucity of parking in streets in front of residential houses and to provide for parking, stilt floor in each residential building has been made compulsory;*
- B *(VIII) that the rules aforesaid framed by the GNCTD cannot have priority over the Master Plan or Building Bye-laws;*
- C *(IX) that to hold that a residential building of more than 15 metres but less than 17.5 metres height becomes a multi-storeyed building or a high rise building, would be absurd inasmuch as the plot size of such building does not admit of a provision being made for two staircases, or providing for movement of a fire brigade all around the building and to hold so would also be contrary to the layout plan of the building prescribing front and rear set-backs only;*
- D *(X) that the Supreme Court in para 66 of Delhi Bar Association (Regd.) v. Union of India (2008) 13 SCC 628 has held that law framed by the GNCTD if repugnant to central law, would be void.”*
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89. The Respondent Nos. 1 to 3 had filed their counter affidavit stating that under Rule 33 of the Fire Service Rules sets minimum standards for fire prevention and fire safety of buildings. The standards for fire prevention and fire safety depend on the height of the buildings and class of occupancy, as provided in the applicable Building Bye-laws or National Building Code of India. In Court it was admitted that there was no fire protection requirement for one or two family private dwellings and for residential building up to 15 metres in height.

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90. From the impugned judgment and order, it appears that, in course of arguments, the High Court inquired how increase in the height of the residential building over 16.5 metres changed the position viz-a-viz safety and fire prevention. The Chief Fire Officer explained that the floors above 15 metres could not be reached by manual ladder, having regard to the incline at which the ladder is required to be placed alongside the building. It was also argued that in case of fire in buildings above 15

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metres in height, induction of air from outside would make fire spread very fast. A

91. There can be no doubt that any construction has to conform to regulations made in the larger interest of the inhabitants of the city, to protect environment, prevent fire, prevent accidents, provide for essential amenities etc. There can also be no doubt that regulatory provisions for construction activities are in public interest. B

92. At the same time a building which is not a high rise building as per the applicable rules or regulation cannot be compelled to comply with fire prevention and fire safety regulations applicable to high rise buildings. C

93. It is not in dispute that the Appellant had got a plan sanctioned from the Municipal Corporation of Delhi on 15<sup>th</sup> July 2013. At that time the height of the building permissible under Bye-laws was 15 metres which included the stilt, which had been made mandatory. It is also not in dispute that upon amendment of the Master Plan by Notification dated 23<sup>rd</sup> September 2013 published on 21<sup>st</sup> October 2013 maximum height of the building was prescribed as 15 metres without stilt parking and 17.5 metres with stilt parking. After the amendment, the Master Plan provides that buildings up to 15 metres without stilt parking and 17.5 metres with stilt parking are not be to considered as high rise and for the purpose of fire and life safety requirements, clearance of Fire Department was to be obtained by the individual plot owner. The Appellant was entitled in law to take advantage of the amended Master Plan for Delhi and he accordingly applied to SDMC for sanction of revised plan on 20<sup>th</sup> January 2014. The revised plan was referred to the Delhi Fire Service Authorities by SDMC on 22<sup>nd</sup> January 2014. D E F

94. Under clause 8.0 of the Unified Building Bye-Laws for Delhi 2016, clearance from Delhi Fire Service is mandatory only for High Rise Building. The Building of the Appellant, under construction is not a High Rise Building, for the reasons discussed. Clearance from the Delhi Fire Service is therefore, not mandatory for sanction of the Revised Building Plan submitted by the Appellant. G

95. There can be no doubt that the Appellant must comply with safety requirements including fire requirements necessary for buildings which are not high rise. However, rules applicable to High Rise Buildings cannot be applied to buildings which are not High Rise Buildings. H

A 96. The challenge to Rule 27(2) of the Fire Service Rules was misconceived and the High Court rightly rejected the challenge to the said Rule. It is also well settled that orders in the nature of Mandamus directing a rule making authority to amend Rules is not granted by the High Court in proceedings under Article 226 of the Constitution of India.  
B The High Court rightly refused to pass any such order.

97. The High Court, however erred in dismissing the Writ Petition without granting any relief to the Appellant. The High Court might have moulded the relief sought in terms of Prayer C.

C 98. Admittedly the building in question does not exceed 17.5 meter with parking stilt. As stated above, height exceeding 15 meter to qualify as high rise building must be construed as height exceeding 15 meter without stilt parking and/or excluding the permissible height of stilt parking as per the building regulations read with the Master Plan of Delhi. The building in question is not a high rise building.

D 99. Irrespective of whether fire clearance is mandatory in respect of the buildings, which are not high rise, it is open to the SDMC to get clearance from the fire service authorities to ensure that fire safety measures are not contravened. However, as admitted on behalf of the fire service authorities, fire clearance is granted subject to compliance of minimum standards for fire prevention and fire safety in respect of  
E the kind of occupancy as provided in the building bye-laws and/or the National Building Code of India. Provisions of Building Regulations and/or Bye-laws and/or National Building Code, not applicable to high rise buildings are not attracted in the case of the building in question.

F 100. The Fire Service Authorities can only ensure that the buildings comply with fire safety requirements, if any, applicable to residential buildings, which do not fall within the ambit of high rise buildings.

G 101. The argument that the Fire Service Authorities do not have ladders of adequate length to tackle outbreak of fire in buildings exceeding 15 meter is fallacious and cannot be ground to deny the owner of property, the right to carry out construction at his property, in accordance with the applicable building laws, read with the Master Plan for Delhi, and thereby deprive the owner of his right to effectively utilise his property.

H 102. There is no prohibition on construction of buildings exceeding 15 meters in height. The dispute is with regard to classification of the buildings- Whether such buildings are to be classified as high rise and

subjected to specific Rules and Regulations applicable to high rise buildings. The difference in height is only about 4/5 feet. The height is well within 17.5 meter with stilt parking as provided in the Master Plan. If the Delhi Fire Service Department does not have ladders to tackle fire in buildings exceeding 15 meters even by a few feet, existing buildings exceeding 15 Meters in height and their inhabitants are doomed. It is preposterous to even think that multi-storeyed buildings would be left to their own fire fighting facilities and their own existing staircase in case of outbreak of fire. The argument seems preposterous. If the Fire Service authorities do not have adequate fire fighting equipment, they would necessarily have to acquire the same in the interest of the people.

103. We need not go into the question of whether any clearance of the Fire Service Authorities is at all necessary. However, in view of the amendment to the Master Plan for Delhi 2021, as amended in September, 2013 by S.O. No. 678(E) dated 4th March 2014, a building with stilts which is 17.5 meter or less in height cannot be considered as a high rise building. If a building is not a high rise building, it will not be a multi- storied building.

104. SDMC cannot keep sanction of the Revised Building Plan submitted by the Appellant, way back in January, 2014, in abeyance indefinitely. Nor can sanction be rejected on the ground of non-compliance of fire service requirements applicable to multi-storied/high rise buildings. A decision with regard to sanction has to be taken within the time stipulated in Clause 2.3.1 of the Unified Building Bye-laws. Under Clause 2.3.3(b) of the Unified Building Bye-laws, approval/refusal of agencies, such as Delhi Fire Service must be intimated within 15 days, or the time stipulated in Chapter III of the Unified Building Bye-Laws, whichever is earlier. In other words, a decision has to be taken by the Fire Service Authorities within a maximum period of 15 days. It hardly need be mentioned that in case of refusal, reasons are mandatory, for compliance with principles of natural justice. It may however, be open to the SDMC to obtain the opinion of the Fire Service Authorities. It is made clear that objections will not be raised on the sole ground of non-compliance of rules not applicable to a residential building which is not a high rise building. A decision shall immediately be taken on the application for sanction of Revised Plan submitted on 14th January 2014 in the light of the observations made above, keeping in view the timelines stipulated in Clause 2.3.1 of the Unified Building Bye-laws.

- A 105. The SDMC may in its discretion seek clearance from the Fire Service Authority, but such clearance shall not be withheld on the ground of non-compliance of requisites applicable to high rise buildings, or on the frivolous ground of unavailability of ladders of adequate size to carry out inspection. If no views are expressed within the time as stipulated in the Unified Building Bye-laws and in particular Clause 2.3.3 thereof, computed from the date of communication of this judgment and order, clearance will be deemed to have been granted.
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106. The appeal is, accordingly, allowed to the extent indicated above. The impugned order rejecting the Revised Building Plan is set aside and quashed.

- C 107. The SDMC shall consider the application afresh in the light of the observations/findings given hereinabove.

Nidhi Jain  
(Assisted by : Tamana, LCRA)

Appeal partly allowed.