

N.D.M.C. & ORS.

v.

M/S TANVI TRADING & CREDIT PVT. LTD. & ORS.  
(Civil Appeal No. 5292 of 2008)

AUGUST 28, 2008

**[K.G. BALAKRISHNAN, CJI, R.V. RAVEENDRAN AND  
J.M. PANCHAL, JJ]**

*Town Planning:*

*New Delhi Municipal Council Act, 1994:*

*ss. 235 and 241 – Power of Chairperson to sanction building plans – Plans submitted in 1994 for sanction to construct 2½ storey dwelling units on a plot situate in Lutyens' Bungalow Zone in New Delhi area – Rejected by Chairperson, NDMC holding the plans contrary to LBZ guidelines dated 8.2.1988 issued by Central Government – High Court declaring the plans as deemed to have been sanctioned u/s 241(2) and directing the Municipal authorities to return the plans with the endorsement "sanctioned" – HELD: LBZ guidelines dated 8.2.1988 having been issued by the Central Government in exercise of power u/s 41 of DD Act, have the force of law and the plans which were contrary to the said guidelines could not have been sanctioned – Besides, the concept of 1988 guidelines having been incorporated in Master Plan 2001 and Master Plan 2021, the same have become binding as part of the Master Plans – Even otherwise, guidelines dated 8.2.1988 will have to be regarded as issued by Central Government in exercise of power under Article 73 of the Constitution – Directions issued by Central Government on 8.2.1988, 6.10.1975 and 17.5.1976 u/s 241 of NDMC Act and s.41 of DD Act were binding on Chairperson, NDMC and no illegality was committed by him in rejecting the plans – Contrary directions issued by High Court set aside – Delhi Development Act, 1957 – ss. 12 and 41 – Constitution of*

A *India, 1950 – Articles 73 and 226.*

*Town Planning:*

B *Sanction of building plans – HELD: The law applicable for approval of building plans would be as on the date on which the approval is granted and not on the date on which plans are submitted – Zonal Development Plan prepared u/s 8 of DD Act and approved by Central Government has legal sanction and provisions therein are mandatory in nature – Delhi Development Act, 1951 – s.8.*

C *Constitution of India, 1950:*

D *Articles 226 and 73 – Writ jurisdiction of High Court – While exercising powers under Article 226, High Court could not have ignored legislative mandate incorporated in statutory provisions and the guidelines issued by Central Government in exercise of power under Article 73 – New Delhi Municipal Council Act, 1994 – ss. 235 and 241 – Delhi Development Act, 1956 – ss. 12 and 41.*

E **Respondent nos. 1 to 9, the owners of a plot falling within Lutyens' Bungalow Zone (LBZ) in New Delhi area, approached the New Delhi Municipal Council (NDMC) on 20.4.1998 to sanction the building plans for construction of two and a half storey building with 15 dwelling units. The plans were rejected on 17.6.1998 on the ground, *inter alia*, that the plans were in breach of LBZ guidelines dated 8.2.1988 issued by the Ministry of Urban Development, Government of India. On appeal by the respondents, the Appellate Tribunal remanded the matter to NDMC holding that the 1988 guidelines were interim in nature. On further appeal by the respondents, the Lieutenant Governor of Delhi upheld the order of remand observing that as per the guidelines dated 8.2.1988 the building plans could not be sanctioned. The respondents filed a writ petition before the High Court which, by an interim order, directed the Chairman, NDMC to consider sanctioning of the plans**

H

originally submitted by the respondents. The Chairman, NDMC rejected the plans holding that the 1988 guidelines were not interim in nature but were final and mandatory and that the guidelines issued in the years 1988, 1995, 1996 and 1997 had not been complied with. However, the High Court finally disposing of the writ petition held that the order rejecting the building plans submitted by the respondents was illegal and without jurisdiction; it declared the building plans as deemed to have been sanctioned u/s 241(2) of the New Delhi Municipal Council Act, 1994. NDMC was directed to return the building plans to the respondents with an endorsement "sanctioned". Aggrieved, NDMC and the Union of India filed the instant appeals.

Allowing the appeals, the Court

HELD: 1.1 On the facts and in the circumstances of the case, the High Court was not justified in holding that the rejection of the plans submitted by respondent Nos.1 to 9 was either illegal or without jurisdiction; nor was the High Court justified in directing the NDMC to return the said plans with an endorsement of "sanctioned" thereon. The High Court while exercising powers under Article 226 of the Constitution of India, could not have ignored the mandate of s.41 of the Delhi Development Act, 1957 and s. 235 of the New Delhi Municipal Council Act, 1994 nor could it have directed the Chairman, NDMC to act contrary to those provisions. [para 15] [890 E-F]

1.2 The directions issued by the Central Government by letters dated 8.2.1988 and 6.10.1995 are in exercise of its powers u/s 41 of the DD Act and are binding on the Authority. The Central Government while approving Zonal Development Plan has approved the Ministry's guidelines dated 8.2.1988 under the DD Act and, therefore, in terms of Section 12 of the Act neither the Authority nor the local authority could have sanctioned the plans submitted by

- A the respondents, which were contrary to the Ministry's guidelines dated 8.2.1988. Further, after August 1, 1990 the concept of LBZ guidelines was incorporated in the Master Plan, 2001 and since then LBZ guidelines have become binding as part of the said Master Plan. [para 8]
- B [883 A, 882 F-G, 883-B]

- 1.3 After coming into force of the NDMC Act, 1994, the areas falling within the control of NDMC are governed by the said Act and since the plot in question falls within the NDMC area, the NDMC Act applies to the said area w.e.f.
- C May 25, 1994, i.e. the day on which the said Act, 1994 came into force. The direction issued by the Central Government on May 17, 1996 under Section 235 of the NDMC Act and directions issued on 8.2.1988 and 6.10.1995 under Section 41 of the DD Act were binding on the Chairperson, NDMC
- D while exercising powers under Section 241 of the NDMC Act, and no illegality was committed by him in refusing to grant sanction to the building plans submitted by the respondents. [para 8-9] [883 E, 885 C-E]

- 2.1 The directions/guidelines dated 8.2.1988 have the
- E force of law and cannot be termed as administrative instructions, more particularly in view of non-obstante clause with which Section 235 of the NDMC Act begins. Moreover, development in LBZ cannot be undertaken in violation of the provisions of the DD Act, the Master Plan
- F and the Zonal Plan. [para 9] [885 E-F, 886 B]

- 2.2 Even assuming that the LBZ guidelines dated 8.2.1988 are not relatable to DD Act or NDMC Act, the same will have to be regarded as issued by the Central Government in exercise of powers under Article 73 of the
- G Constitution of India. Evidently, the guidelines dated 8.2.1988, 17.5.1996 and 9.5.1997, issued in exercise of power conferred by Article 73, are for the planned development of Delhi as well as for achieving objects of DD Act and N.D.M.C. Act. Therefore, those guidelines cannot be ignored
- H by Court. [para 9] [886 B, 886 G-H, 887 A]

3.1 The directions issued under Section 41 of the DD Act and Section 235 of the NDMC Act by the Central Government, are binding on the Chair-person of NDMC when he exercises his powers under Section 241 of the NDMC Act. The legislative mandate incorporated in Section 41 of the DD Act and Section 235 of the NDMC Act relating to control of the Central Government as well as contents of Master Plan 2001, which makes a special reference to the LBZ and on the maintenance of its character, could not have been ignored by the High Court while deciding the petition filed by the respondents under Article 226 of the Constitution. [para 9] [887 A-C]

3.2 The LBZ guidelines became statutory after their incorporation in the Zonal Development Plan on October 1, 1999. The Zonal Development Plan prepared under Section 8 of the DD Act and approved by the Central Government has legal sanction and provisions contained therein are mandatory in nature. In view of the provisions of Section 241 of the NDMC Act, the building plans submitted by the respondents which are contrary to the provisions of the Zonal Development Plan approved by the Central Government under the DD Act could not have been sanctioned. [para 9] [887 C-E]

3.3 The finding recorded by the High Court that the plans submitted by the respondents must be deemed to have been sanctioned under the provisions of the NDMC Act is misplaced and against the weight of evidence on record. It is relevant to notice that what was challenged in the petition filed before the High Court was the order dated 1.12.1999 passed by the Lt. Governor upholding the order of remand made by the Appellate Tribunal. During the pendency of the petition, the High Court had, by interim order dated 31.7.2000, directed the Chairman, NDMC to consider the question of grant of sanction of the plans originally submitted. Accordingly, the Chairman,

- A NDMC considered the plans and refused to grant sanction holding that the plans were contrary to the guidelines dated 8.2.1988 relating to LBZ. Under the circumstances, the respondents were not entitled to a declaration that the plans submitted by them were deemed to have been approved, under the provisions of the NDMC Act. [para 10] [887 E-H, 888 A]
- B

4.1 It is well settled that the law for approval of the building plans would be as on the date on which the approval is granted and not that on the date on which the plans are submitted. [para 11] [888 B]

C

*Usman Gani J. Khatri of Bombay vs. Cantonment Board and others etc. etc.* 1992(3) SCR 1=(1992) 3 SCC 455 – relied on.

- D 4.2 On February 7, 2007, the Master Plan 2021 has been approved in which the LBZ guidelines have been incorporated and since plans submitted by the respondents were not approved up to the date of coming into force of Master Plan of 2021, the LBZ guidelines will apply with full force to the plans submitted by the respondents and the same being contrary to the LBZ guidelines, could not have been directed to be sanctioned. [para 11] [888 C-D]
- E

- F 5. Since the LBZ guidelines dated February 8, 1988 and the guidelines dated 9.5.1997 have the force of law, the respondents would be entitled to develop the plot in question in accordance with the said guidelines and submit building plans accordingly. The order rejecting the building plans submitted by the respondents indicates that as the plot was carved out of another plot, the concept of mother plot got introduced and, therefore, the respondents were not entitled to construct a bungalow more in height than the height of the bungalow which was existing on the original plot. They would not be entitled to construct 15 dwelling units which is quite contrary to the LBZ guidelines.
- G
- H

[para 15] [890 G-H, 891 A-B,D]

A

Case Law Reference

1992 ( 3 ) SCR 1                      relied on                      para 11

CIVILAPPELLATE JURISDICTION : Civil Appeal No. 5292  
of 2008

B

From the final Judgment and Order dated 19.5.2004 of the  
High Court of Delhi at New Delhi in W.P. (C) No. 4154 of 2000

WITH

C

C.A. No. 5293 of 2003

Vikas Singh, A.S.G., Salman Khurshid, Rakesh K. Khanna,  
T.S. Doabia, Dr. Rajeev Dhawan, Rashmi Khanna, Pranav Vyas,  
Shailja Sinha, Faizy A. Syed, Surya Kant, Ashok K. Srivastava,  
G. Prakash, Shiv Lakshmi, Udita Singh, Amita Narayan, B.K.  
Prasad, V.K. Verma, Manish Vashisht, Sameer Vashisht and  
Ashok Mathur for the appearing parties.

D

The Judgment of the Court was delivered by

**J.M. PANCHAL, J.** 1. Leave granted in both the special  
leave petitions.

E

2. These appeals are directed against common judgment  
dated May 19, 2004 rendered by the Division Bench of the  
High Court of Delhi at New Delhi in C.W.P. No.4154 of 2000,  
whereby it is held that the order rejecting building plans submitted  
by the respondents is illegal as well as without jurisdiction and  
declared that the building plans submitted by the respondents,  
are deemed to have been sanctioned under Section 241(2) of  
the New Delhi Municipal Council Act, 1994 (for short "NDNC  
Act"). Further, the New Delhi Municipal Council is directed to  
return the building plans submitted by the respondents with an  
endorsement "sanctioned" within the time specified in the order.

F

G

3. The relevant facts emerging from the record of the case  
are as under:

H

- A The disputed plot was leased to one Shri R.B.L. Teerath Ram on March 9, 1923. The plot was thereafter mutated in the name of M. Rai and Sons on September 2, 1958. A portion of the plot, which was lying vacant, admeasuring 5000 sq. yards was carved out and numbered as Plot No.47. It was mutated in the name of Sardar Harcharan Singh Duggal on March 4, 1976.
- B The opening of the carved out plot was on Amrita Shergil Marg, South Delhi. The Ministry of Urban Development, Government of India, had imposed temporary ban on construction of multi-storeyed buildings in New Delhi including areas under the Delhi Development Area and Delhi Municipal Council falling in South Delhi, with effect from 17.10.1985, till the Master Plan for Delhi – 2001 was finalized. This ban was partially lifted in respect of Connaught Place area, subject to certain conditions. Pending finalization of the Master Plan for Delhi 2001, it was decided that revised comprehensive guidelines with regard to multi-storeyed buildings in Delhi should be prepared. Accordingly, guidelines were prepared on 8.2.1988 and it was decided that high rise constructions in Delhi should continue to be regulated subject to compliance with conditions of detailed urban design clearance, fire fighting requirement and requirements under other provisions like the Master Plan, Zoning Regulations, Building Bye-Laws etc.
- C
- D
- E

4. As far as Lutyens' Bungalow Zone ("the LBZ" for short) is concerned, it was noticed that the LBZ was dominated by green areas bungalows and therefore, in order to maintain the said character, it was necessary to have separate set of norms for the said zone area. The separate set of norms prescribed for the LBZ in Guidelines dated 8.2.1988 were as under:
- F

- G *"Lutyens' Bungalow Zone:* In order to maintain the present character of Lutyens' Delhi, which is still dominated by green areas bungalow, there should be a separate set of norms for this zone area. This area has been clearly demarcated. It will consist of the entire Lutyens' Delhi excluding the area between Baba Kharag Singh Marg on the South, Punchkuin Road on the North and the ridge on
- H



the west (ii) the area between Baba Kharag Sing Marg, Ashok Road, Ferozshah Road, Barakhamba Road and the Connaught Place, (iii) Mandi House and (iv) the institutional area where the Supreme Court is situated. It will, however, include the areas presently out of Lutyens' Delhi which consist of (i) Nehru Park, (ii) Yashwant Palace (iii) the area between Yashwant Palace and the railway line on the South/and (iv) the area lying between Nehru Park – Yashwant Palace on the West and the boundary of Lutyens' Delhi on the Western edge of Safdar Jung Aerodrome and the Race Course. There were the following norms for construction in the Lutyens' Bungalow Zone.

- (i) The new construction of dwelling on a plot must have the same plinth area as the existing bungalow and must have a height not exceeding the height of the bungalow in place, or if the plot is vacant, the height of the bungalow which is the lowest of those on the adjoining plots.
- (ii) In the commercial areas, such as Khan Market, Yashwant Palace etc., and in institutional areas within the Lutyens' Bungalow Zone, the norms will be the same as those for these respective areas outside the zone.
- (iii) The existing regulations for the Central Vista will continue to be applicable.
- (iv) The demarcation line of the Lutyens' Zone should not run along prominent roads because, if it does so, there will be bungalows on the side of the road and the high rise buildings on the other side. It has, therefore been decided that the demarcation of the Lutyens Bungalow Zone should run along the first inner/outer road or land from the prominent road through which the demarcation line is shown in the map. However, the demarcation can run through the prominent road where there is park, ridge or green area on the other side of the road.

- A (c) As already stated, the maximum per floor coverage of 25% should include the area required for all service except passage to the building. Thus the facility must be included in the 25% and it must be underground. In case of new buildings that come up in the Centre Business Districts (Cannaught Place) Business Districts. The remaining 75% must included only the passage to the buildings and the green area around.
- B
- C (d) The FAR for the six area listed below will be as indicated against each:-

S. No.	ZONE	Maximum permissible FAR
1.	CBD (Central Business District or Cannaught Place Area)	250
2.	District Centre	250
3.	Sub-District Centre	100
4.	Community Centre/Local Centre	100
5.	Group Housing (Residential)	250
6.	Institutional	250

There will not be a separate Governmental Category for FAR specifications. The norms for Government construction will be governed by the norms specified for the zone where the Government building is to be constructed."

On August 1, 1990, the Master Plan 2001 was approved wherein it was specifically mentioned that the bungalow character of LBZ needs to be preserved. The Master Plan even without specifically mentioning LBZ guidelines visualized similar treatment of the LBZ so as to maintain the low density area without in any manner adversely affecting the green cover in the area. On July 27, 1993 objections were invited to the Zonal

Development Plan whereas on May 25, 1994 the New Delhi Municipal Council Act, 1994 came into force. A

5. The Respondent Nos.1 to 9 purchased plot No.47, Amrita Shergil Marg, New Delhi by a registered sale deed on October 28, 1994, in execution application which was filed pursuant to a decree passed in Suit No.307 of 1993. The said plot was mutated in the name of Respondent Nos.1 to 9 on March 22, 1999. On 20.4.1998, the respondents approached the New Delhi Municipal Council ( "the NDMC" for short) to sanction the building plans for construction of two and a half storey building having 15 dwelling units. The NDMC rejected the plans by an order dated 17.6.1998 on several grounds including the ground that the plans were in breach of the LBZ guidelines. Feeling aggrieved, the respondents filed an appeal under Section 254 of the NDMC Act, 1994, before the Appellate Tribunal, MCD, New Delhi. The Appellate Tribunal by order dated 23.9.1999 remanded the case to the NDMC holding that the guidelines issued in the year 1988 were interim in nature. The respondents were of the opinion that the matter should not have been remanded to the NDMC and, therefore, challenged the order of remand by filing an appeal under Section 256 of NDMC Act, 1994 before the Lieutenant Governor of New Delhi. The Lieutenant Governor, New Delhi rejected the appeal filed by Respondent Nos.1 to 9 and by an order dated 1.12.1999 upheld the order of remand of the case to the Chairman, NDMC by observing that as per the clear guidelines of the Ministry of Urban Development dated February 8, 1988, the building plans of the respondents could not have been sanctioned. Though pursuant to remand order, the respondents appeared before the Chairperson NDMC, they did not resubmit the building plans as required by the remand order and preferred Writ Petition NO.4145 of 2000 before the High Court of Delhi from which the present appeals arise. During the pendency of the petitions, the High Court by its order dated July 31, 2000 directed the Chairman, NDMC to consider the question of grant of sanction of the plans originally submitted. The Chairman, NDMC, by his

B  
C  
D  
E  
F  
G  
H

- A order dated November 13, 2000, rejected the building plans submitted by Respondent Nos. 1 to 9 by holding that guidelines issued in the years 1988, 1995, 1996 and 1997 were not complied with. It was held by the Chairman that the guidelines issued in the year 1988 were not interim in the nature as observed by the Appellate Tribunal but were final and mandatory. The respondents filed an application in pending petition stating that the matter was also considered by the Ministry of Urban Development and, therefore, the High Court by order dated March 21, 2003 issued notice to the Ministry of Urban Development, which was not originally a party to the writ petition. The Ministry of Urban Development filed its affidavit before the High Court stating that the idea behind the maintenance of LBZ was to have a low density of development and that the 1988 guidelines were in operation. It was further pointed out that vide letter date May 1, 2003 the Ministry had referred the matter to the Prime Minister's Office for relaxation of LBZ guidelines but PMO had informed the Ministry that the relaxation of LBZ guidelines for construction of building had not been approved. The High Court after considering the materials placed before it has rendered the impugned judgment giving rise to the above numbered appeals.

6. This Court has heard the learned counsel for the parties at length and in great detail. This Court has also considered the documents forming part of the two appeals. The contention advanced on behalf of the respondents that LBZ guidelines dated February 8, 1988 have no legal basis or statutory foundation and, therefore, the High Court was justified in giving the impugned directions, cannot be accepted.

7. In order to resolve the controversy raised in the appeals, it would be advantageous to reproduce Article 73 of the Constitution, Section 41 of the DD Act of 1957, as well as Sections 235 and 241 of the NDMC Act, 1957.

Article 73 of the Constitution reads as under:

- H "Extent of executive power of the Union – (1) Subject to

the provisions of this Constitution, the executive power of the Union shall extend – A

- (a) to the matters with respect to which Parliament has power to make laws; and
- (b) to the exercise of such rights, authority and jurisdiction as are exercisable by the Government of India by virtue of any treaty or agreement: B

Provided that the executive power referred to in sub-clause (a) shall not, save as expressly provided in this Constitution or in any law made by Parliament, extend in any State to matters with respect to which the Legislature of the State has also power to make laws. C

(2) Until otherwise provided by Parliament, a State and any officer or authority of a State may, notwithstanding anything in this article, continue to exercise in matters with respect to which Parliament has power to make laws for that State such executive power or functions as the State or office or authority thereof could exercise immediately before the commencement of this Constitution.” D E

Section 41 of the DD Act, 1957 reads as under:

*“Control by Central Government –* (1) The Authority shall carry out such directions as may be issued to it from time to time by the Central Government for the efficient administration of this Act. F

(2) If in, or in connection with, the exercise of its powers and discharge of its functions by the Authority under this Act, any dispute arises between the Authority and the Central Government the decision of the Central Government on such dispute shall be final. G

(3) The Central Government may, at any time, either on its own motion or on application made to it in this behalf, call for the records of any case disposed of or order H

A        passed by the Authority for the purpose of satisfying itself as to the legality or propriety of any order passed or direction issued and may pass such order or issue such direction in relation thereto as it may think fit.

B        Provided that the Central Government shall not pass an order prejudicial to any person without affording such person a reasonable opportunity of being heard."

Section 235 and 241 of the NDMC Act read as under:

C        "*235. General superintendence, etc., of the Central Government* – Notwithstanding anything contained in any other provision of this Act, the Chairperson shall exercise his powers and discharge his functions under this Chapter, under the general superintendence, direction and control of the Central Government.

D        "**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.

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

F        (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        (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;

H        (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;

- (d) that in cases falling under section 216, lay-out plans have not been sanctioned in accordance with section 217; A
- (e) that the building or work would be an encroachment on Central Government or Government land vested in the Council; B
- (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; C
- (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. D E

(3) The Chairperson shall communicate the sanction to the person who has given the notice; and where he refuses 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 along with the reasons therefor 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

8. If one examines the scheme envisaged by the DD Act, 1957, it becomes, at once clear that the Delhi Development Authority is constituted under Section 3 of the said Act to achieve the objects. The objects relate to promoting and securing H

- A development of Delhi by preparing the Master Plan and Zonal Development Plans. Section 7 which falls within Chapter III of the DD Act, 1957 provides for preparation of the Master Plan. Section 8 of the DD Act inter-alia provides that simultaneously with the preparation of the Master Plan or as soon as may be
- B thereafter, the Authority shall proceed with the preparation of a Zonal Development Plan for each of the zones into which Delhi may be divided. Section 8(2) sets out what the zonal development plan may contain whereas Section 9 requires that the master plan as well as the Zonal Development Plan for a
- C zone prepared, has to be submitted by the Authority to the Central Government for approval. Section 11 of the Act provides that after a plan is approved by the Central Government, the Authority has to publish in such a manner, as may be prescribed by regulations, a notice stating that a plan has been approved and the date of the first publication of the notice is the date on
- D which the plan comes into operation. Chapter IV deals with development of lands. What is stipulated in Section 12 of the DD Act is that neither the authority nor any other local authority shall sanction any plan which shall be contrary to the development norms approved under the Act. The record of the case
- E establishes that the Master Plan of Delhi, came into force with effect from August 1, 1990. The record further shows that Zonal Development Plan, Zone (Division) D New Delhi was approved by the DDA on July 27, 1993. During the pendency of the petition before the High Court, the Zonal Development Plan was
- F approved by the Central Government on October 1, 1999 excluding LBZ area as contained in the Ministry's guidelines dated 8.2.1988. It means that the Central Government while approving Zonal Development Plan has approved the Ministry's guidelines dated 8.2.1988 under the Act and therefore, in terms
- G of Section 12 of the Act neither the Authority nor the local authority could have sanctioned the plans submitted by the respondents, which were contrary to the Ministry's guidelines dated 8.2.1988. Further, the question of revision of guidelines prescribed for construction in LBZ in New Delhi was under consideration of
- H the Central Government and the Central Government by its



communication dated 6.10.1995 directed the D.D.A. and others to enforce existing guidelines strictly. There is no manner of doubt that, the directions are issued by the Central Government vide letter dated 8.2.1988 and 6.10.1995, in exercise of its powers under Section 41 of the D.D. Act and are binding on the Authority. It is relevant to notice that after August 1, 1990 the concept of LBZ guidelines was incorporated in the Master Plan and since then LBZ guidelines have become binding as part of the Master Plan. The relevant portion of the Master Plan 2001 relating to LBZ reads as under:

“Luteyan Bungalow Zone comprises of large size of plots and has a very pleasant environment. The Zonal character of wide avenues, large plots, extensive landscapes and low rise development, as a heritage value which has to be conserved. Mixed use, high density development along MRTS Corridor and the densification of trees, reduction of green cover is not permitted. The development of this zone will be as per the plan and the LBZ guidelines, as may be issued by the Government of India from time to time. Civil Lines also have bungalow areas of which the basic character has to be maintained.”

After coming into force of the NDMC Act, 1994, the areas falling within the control of NDMC are governed by the said Act and since Amrita Shergil Marg falls within the NDMC area, the Act applies to the said area w.e.f. May 25, 1994, i.e. the day on which the NDMC Act, 1994 came into force. Chapter XIV of the said Act relates to building regulations. Section 235 of the Act which begins with non-obstante clause, inter-alia provides that the Chairperson shall exercise his powers and discharge his functions under the said chapter under the general superintendence, direction and control of the Central Government. It is relevant to notice that grant or refusal to grant sanction to the building plans is contemplated under the same chapter. Section 241 of the NDMC Act, inter alia, provides that sanction may be granted if the plan does not contravene the provisions of any bye-laws made in this behalf or of any other

A law or rule, bye-law or order made under other such law. The record further shows that the NDMC addressed two letters dated 28.11.1995 and 4.3.1996 to the Central Government, seeking clarification regarding demarcation of boundary of the LBZ. While offering clarification, the Central Government, by letter dated 17.5.1996, deirected the NDMC to strictly enforce the existing guidelines laid down by Ministry of Urban Development, Government of India, vide letter dated 8.2.1988. The record of the case further indicates that the Central Government issued further clarifications on 9.5.1997 and stipulated that the existing height of the main bungalow on a plot is to be taken as maximum permissible height for a reconstructed bungalow whereas in case of vacant plot, the height of the main bungalow which is lowest of those in the adjoining plots is to be taken as maximum permissible height. The relevant portion of the guidelines/clarifications dated 9.5.1997 are as under:

"9.5.1997 Guidelines :

*Sub: LBZ guidelines – Clarifications isused*

*Ref: Letter No.K-13011/17/86-DDIB dated 8.2.1988*

I am directed to refer to the letter of this Ministry quoted above on the above mentioned subject and to say that certain clarifications have been sought regarding the LBZ guidelines on the following points:

- (i) In cases where a plot has 2 or 3 buildings with one main bungalow of single storey and annexes out-houses of more than one storey which height would be taken as the existing height?
- (ii) Whether basements may be permitted in proposed additions/alterations in LBZ area?
- (iii) What would be the set-back norms in the LBZ area for reconstructed bungalows?"

9. The matter has been examined in this Ministry in consultation with the TCPO and the following clarifications are now issued:

- ✧ (i) The existing height of the main bungalow on a plot to be taken as the maximum permissible height for a reconstructed bungalow. If the plot is vacant, the height of the main bungalow which is the lowest of these on the adjoining plots is to be taken as the maximum permissible height. A B
- ✧ (ii) Pending finalization of detailed development norms in respect of LBZ areas, construction of basement in residential plots shall not be permitted."

The LBZ guidelines dated 8.2.1988 were reiterated and directed to be strictly enforced on May 17, 1996, i.e. after coming into force of the NDMC Act, 1994, and therefore became directions issued by the Central Government in exercise of powers conferred by Section 235 of the NDMC Act. The direction issued by the Central Government on May 17, 1996 under Section 235 of the NDMC Act and directions issued on 8.2.1988 and 6.10.1995 under Section 41 of the DD Act were binding on the Chairperson while exercising powers under Section 241 of the NDMC Act and no illegality was committed by him in refusing to grant sanction to the building plans submitted by the respondents. The plea that the directions dated 8.2.1988 etc. should be treated as administrative instructions not binding on the authorities acting either under DD Act or NDMC Act cannot be upheld as those guidelines have the force of law and cannot be termed as administrative instructions, more particularly in view of non-obstante clause with which Section 235 of the NDMC Act begins. Section 235 of NDMC Act cannot be construed to mean that it confers only powers to issue administrative instructions. Section 235 is a salutary provision of the Act and has overriding effect over other provisions of the Act including Section 241 of the Act. The scheme envisaged by Section 235 and 241 of the Act is such that under Section 241 of the Act the Chairperson has power to sanction the erection of a building or the execution of a work unless such building or work contravenes the provisions of any bye-law made in that behalf or of any other law or rule, bye-law or order made under C D E F G H

- A such other law whereas the Chairperson has no option but to exercise his powers and discharge his functions under Chapter XIV which includes Section 241 of the Act also, under the general superintendence, direction and control of the Central Government in view of mandatory provisions of Section 235 of
- B the Act. Moreover, development in LBZ cannot be undertaken in violation of the provisions of the DD Act, the Master Plan and the Zonal Plan. Even assuming that the LBZ guidelines are not
- C relatable to DD Act or NDMC Act, the Central Government undoubtedly could, in exercise of executive power introduce those guidelines. At this stage, it would be instructive to refer to the extent of executive power of the Union as provided in Article 73 of the Constitution. Article 73 inter-alia provides that, subject to the provisions of the Constitution, the executive power of the
- D Union extends to the matters with respect to which Parliament has power to make laws. The Parliament has enacted The Delhi Development Act, 1957 and the New Delhi Municipal Council Act, 1994. Article 73 does not define what an executive function is, neither does it mention the matters over which the executive power is exercised. The extent defined in Article 73
- E is not exhaustive. The Union Government has power to issue executive directions relating to the matters dealt with under The DD Act, 1957 and The NDMC Act, 1994, though the directions contrary to the provisions of those Acts cannot be issued. The executive power of the Union, under Article 73 extends to the matters with respect to which Parliament has power to make
- F laws and hence, the field in which law could have been made, executive instructions may be issued in the absence of legislation in the field or if there is existing legislation, then to supplement it. Viewed in the light of above principles, there is no manner of doubt that LBZ guidelines dated 8.2.1988 will
- G have to be regarded as issued by the Central Government in exercise of powers under Article 73 of the Constitution. Evidently, the guidelines dated 8.2.1988, 17.5.1996 and 9.5.1997, issued in exercise of power conferred by Article 73, are for the planned development of Delhi as well as for achieving objects of DD Act
- H and N.D.M.C. Act. Therefore, those guidelines cannot be

ignored by Court. However, as observed earlier, the directions issued under Section 41 of the DD Act, 1957 and Section 235 of the NDMC Act by the Central Government, are binding on the Chairperson when he exercises his powers under Section 241 of the NDMC Act, 1994. The legislative mandate incorporated in Section 41 of the DD Act, 1957 and Section 235 of the NDMC Act relating to control of the Central Government as well as contents of Master Plan 2001, which makes a special reference to the LBZ and on the maintenance of its character, could not have been ignored by the High Court while deciding the petition filed by the respondents under Article 226 of the Constitution. It deserves to be mentioned that the LBZ guidelines became statutory after their incorporation in the Zonal Development Plan on October 01, 1999. The Zonal Development Plan prepared under Section 8 of the DD Act and approved by the Central Government has legal sanction and provisions contained therein are mandatory in nature. In view of the provisions of Section 241 of the NDMC Act, the building plan submitted by the respondents which are contrary to the provisions of the Zonal Development Plan approved by the Central Government under the DD Act could not have been sanctioned.

10. The finding recorded by the High Court that the plans submitted by the respondents must be deemed to have been sanctioned under the provisions of the NDMC Act is misplaced and against the weight of evidence on record. It is relevant to notice that what was challenged in the petition filed before the High Court of Delhi was order dated 1.12.1999 passed by the Lt. Governor upholding order of remand made by the Appellate Tribunal. During the pendency of the petition, the High Court had, by interim order dated 31.7.2000, directed the Chairman, NDMC to consider the question of grant of sanction of the plan originally submitted. The Chairman, NDMC, in compliance of said direction considered the plan originally submitted and refused to grant sanction by order dated November 13, 2000 holding that the plan was contrary to the guidelines dated

A 8.2.1988 relating to LBZ. Under the circumstances, the respondents were not entitled to a declaration that the plan submitted by them was deemed to have been approved, under the provisions of the NDMC Act.

B 11. It is well settled that the law for approval of the building plan would be the date on which the approval is granted and not the date on which the plans are submitted. This is so in view of paragraph 24 of the decision of this Court in *Usman Gani J. Khatri of Bombay vs. Cantonment Board and others* etc. etc. (1992) 3 SCC 455. It would not be out of place to mention that C on February 7, 2007, the Master Plan 2021 has been approved in which the LBZ guidelines have been incorporated and since plan submitted by the respondents were not approved up to the date of coming into force of Master Plan of 2021, the LBZ guidelines will apply with full force to the plan submitted by the D respondents and the plan which is contrary to the LBZ guidelines could not have been directed to be sanctioned.

12. It may be noticed that in answer to the query of the Court the Union of India had placed before the Court the (Transaction of Business) Rules, 1961, which clearly E demonstrate that in such matters normally the concerned minister is the appropriate authority to issue directions like the directions issued relating to LBZ. However, in the instant case the Prime Minister's Office had taken the initiative for issuance of the guidelines which is quite apparent if one glances at F guidelines dated 8.2.88. Rule 12 of the (Transaction of Business) Rules, 1961 provides that the Prime Minister may, in any case or classes of cases permit departure from the Rules to the extent he deems necessary. The record of the case does not indicate that the Prime Minister has permitted Ministry of G Development to relax the guidelines dated 8.2.1988. On the contrary, as pointed out in the affidavit filed by the Ministry of Urban Development, relaxations proposed were not approved by P.M.O. Since the guidelines have been issued by the Ministry of Urban Development at the instance and initiative of the Prime H Minister's Office, any relaxation in the guidelines under the

(Transaction of Business) Rules, 1961 would require the approval of the Prime Minister's Office. Thus, although the subject matter of the guidelines per se falls within the scope of the concerned minister, i.e. the Minister of Urban Development, no relaxation, without the approval of Hon'ble Prime Minister could be granted by any other authority, since the same have been issued at the initiative of Prime Minister's Office. At this stage it would be instructive to refer to the provisions of Section 14 and 21 of the General Clauses Act, 1897. Section 14 of the General Clauses Act provides that where, by any Central Act or Regulation made after the commencement of the Act, any power is conferred, then unless a different intention appears that power may be exercised from time to time as occasion requires. Section 21 stipulates that where, by any Central Act or Regulation, a power to issue notifications, orders, rules, or bye-laws is conferred, then that power includes a power, exercisable in the like manner and subject to the like sanction and conditions (if any), to add to, amend, vary or rescind any notifications, orders, rules or bye-laws so issued.

13. Therefore, this Court is of the firm opinion that it was wrong for the High Court to make any adverse comments regarding the power of the Prime Minister's Office to relax the guidelines on the ground that no such power of relaxation was vested in the guidelines themselves. In the instant case the question of relaxation would arise only if power to relax the same had been vested in some authority subordinate to the office of the Prime Minister but since the guidelines did not confer power to any other authority it was only the Prime Minister's Office itself which could have relaxed the guidelines on a case to case basis, exercising powers under the General Clauses Act read with (Transaction of Business) Rules, 1961. The reasons given by the High Court for ignoring the mandate contained in LBZ guidelines that it is a case of excessive delegation, is difficult to uphold because the general power to issue directions either under Section 41 of the DD Act or under Section 241 of the NDMC Act are/were to be exercised for the

- A planned development of the Delhi and it is not even respondents' case that LBZ guidelines are not in conformity with the object of either DD Act or the NDMC Act, 1994.

14. The submissions of Dr. Rajiv Dhawan, learned senior counsel for the respondents that the LBZ guidelines violate the provisions of NDMC Act has no factual foundation at all because the guidelines are for the planned development of Delhi and those guidelines are in conformity with the Master Plan of 2001 as approved on August 1, 1990. Thus, the contention urged on behalf of the respondents that the guidelines being without authority of law, should be ignored, cannot be accepted. It is well to remember that while construing the LBZ guidelines the Court will have to take notice of public interest sought to be protected by the guidelines because if the guidelines had not been scrupulously followed as has been admittedly done since 1988, the LBZ area of Delhi would never have remained the bungalow area as visualized in the Master Plan and within no time sky scrappers would have come up in the LBZ seriously affecting the low density character of the area.

15. On the facts and in the circumstances of the case, this Court is of the opinion that the High Court was not justified in coming to the conclusion that the rejection of the plans submitted by the respondent Nos.1 to 9 was either illegal or without jurisdiction, nor the High Court was justified in directing the NDMC to return the plans submitted by respondents with an endorsement of "sanctioned" thereon within the time stipulated in the order. The High Court while exercising powers under Article 226, could not have ignored the mandate of Section 41 of the DD Act and Section 235 of the NDMC Act, nor could have directed the Chairman, NDMC to act contrary to those provisions. Therefore, those directions are liable to be set aside. As this Court comes to the conclusion that the LBZ guidelines dated February 8, 1988 have the force of law, the Court will have to consider the impact of those guidelines while considering the question as to what extent the respondents would be entitled to develop the land belonging to them. The



order rejecting the building plans submitted by the respondents indicates that as the plot was carved out of another plot the concept of mother plot got introduced and, therefore, the respondents were not entitled to construct a bungalow more in height than the height of the bungalow which was existing on the original plot. The plea that the words "adjoining plots" appearing in guidelines dated 9.5.97 should not be ascribed a meaning inconsistent with the findings of survey, cannot be accepted because even if the concept of mother plot is not made applicable to the facts of the case, the respondents would be entitled to construct a building of the height of the bungalow which is the lowest on the adjoining plots. This is quite evident from the contents of guidelines dated 9.5.97. The order further indicates that even the adjoining bungalows do not have more than two storeys and, therefore, the plans submitted by the respondents for two and a half storeys building for constructing 15 dwelling units were rejected. On the facts and in the circumstances of the case, this Court is of the opinion that the respondents would be entitled to construct bungalow on their plot of land, in terms of guidelines dated 8.2.1988 and that they would not be entitled to construct 15 dwelling units which is quite contrary to those guidelines. The record does not indicate that the building plans of the respondents are fully compliant with the requirements of the Delhi Master Plan 2001 and Delhi Bye-Laws 1983 and, therefore, impugned judgment deserves to be set aside.

16. For the foregoing reasons the appeals succeed. The impugned judgment is set aside. It is clarified that the respondents would be entitled to submit their plans for development of the plot in accordance with LBZ guidelines dated 8.2.1988 and 9.5.1997. In the event of respondents submitting such building plans in accordance with guidelines as indicated above, the appropriate authority shall pass orders within two months with notice to the respondents.

17. There shall no order as to costs.

R.P.

Appeals allowed.