



2025:DHC:9399-DB



\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**  
% Judgment reserved on: 22.09.2025  
Judgment delivered on: 28.10.2025  
+ LPA 370/2024 & CM APPL No.27322/2024  
DELHI DEVELOPMENT AUTHORITY ...Appellant  
versus  
SHRI ASHISH JAIN & ANR. ...Respondents

**Advocates who appeared in this case:**

For the Appellant : Ms. Kritika Gupta, Adv.

For the Respondents : Ms. Deepika V. Marwaha, Sr. Adv. with Mr. Sanjeev Singh, Ms. Sandipa Bhattacharjee, Ms. Raunika Johar and Mr. Tanishq Sharma, Adv.

**CORAM:**  
**HON'BLE THE CHIEF JUSTICE**  
**HON'BLE MR. JUSTICE TUSHAR RAO GEDELA**

**J U D G M E N T**

**TUSHAR RAO GEDELA, J.**

1. Present Letters Patent Appeal has been filed challenging the judgement dated 08.01.2024 of this Court in W.P(C) 10621/2017 titled "*Sh. Ashish Jain & Anr. vs. Delhi Development Authority*", wherein the learned Single Judge has allowed the writ petition by directing the appellant/DDA to sanction the building plan with respect to the plot no. 'B', measuring 2212 sq. mtrs. Block CC, Road No. 44, Pitampura, Delhi i.e., two level parking with 25% commercial component alongwith quashing the speaking



order dated 09.10.2017 and show cause notice dated 16.05.2018.

2. Briefly, facts as culled out from the appeal and germane to decide the *lis* are as under:-

- a) The Screening Committee of the appellant/Delhi Development Authority (hereinafter referred to as “DDA”) in its 219<sup>th</sup> meeting *vide* the Item No. 24:2002 approved the details in respect of “Two Level Parking Plan” in Plot No.B, Block-CC, Road No. 44, Pitampura, Delhi (hereafter referred to as “*subject property*”).
- b) In December, 2013, DDA had issued a public notification inviting sealed tenders for offices, shops, two-level parking, multi-level parking, banks, banquet halls, etc. the respondents are stated to have submitted their tender for the subject property admeasuring 2212 sq. mts. quoted at Rs. 4.05 Crores against the Reserve Price of Rs. 1.49 Crores. On 04.03.2024, the respondents were declared as H1 Bidders and *vide* the Acceptance Letter issued by DDA, were called upon to deposit the balance consideration of Rs.3,03,75,045/-. On 23.07.2014, and consequent to some extensions granted by the DDA, the respondents deposited the remaining sale consideration. Possession is stated to have been handed over to the respondents alongwith the execution of the Conveyance Deed (hereafter referred to as “CD”).
- c) Following the execution of the CD, the respondents submitted



building plans for approval on 07.10.2014 with the DDA. It is stated that reminders dated 12.11.2014 and 10.12.2014 were also sent by the respondents.

- d) DDA claims to realize that inadvertently and by mistake it was wrongly mentioned in the CD that “*Parking with commercial component as per MPD-2021*” on 06.02.2015. In order to correct the error, DDA claims to have issued letters dated 29.01.2015 and 06.02.2015 asking respondents to come forward to rectify the CD and simultaneously enclosed the said draft of the Rectification Deed. It is also claimed by DDA that on 30.07.2015, it issued a letter seeking clarification as to why the respondents did not attend the office for the execution of the Rectification Deed. It was also claimed that the no construction of a two-level parking on the subject property was commenced by the respondent till that date.
- e) On 14.08.2015, respondents are stated to have written a letter to DDA claiming that as per para 12.13.7 of the MPD-2021, the respondents were entitled to use the “*two-level parking*” with 25% commercial component. Since there was no response, the respondents yet again by letter dated 24.01.2017 repeated their request and affirmed that they were ready to pay the current market value for the said plot alongwith 25% commercial component.
- f) Since there was no response on the part of DDA, the



respondents were constrained to file a petition bearing W.P.(C) No.4799/2017 challenging the rejection of the request to sanction the Building Plan by the appellant. By the order dated 29.05.2017, the aforesaid writ petition was disposed of directing DDA to decide the representations dated 14.08.2015 and 24.01.2017 by passing a speaking order. In pursuance thereto, *vide* the order dated 09.10.2017, the appellant disposed of the representations.

- g) Aggrieved by the speaking order dated 09.10.2017, the respondents assailed the same *vide* W.P.(C) No. 10621/2017, which was filed on 29.11.2017. While the writ petition was pending, the appellant appears to have issued a Show Cause Notice dated 16.05.2018 (hereafter referred to as “SCN”) to the appellants alleging that the subject property is being used for surface parking by the respondents defeating the purpose of allotment. By the order dated 05.07.2018, the learned Single Judge restrained the operation of the said SCN. By an amendment to the underlying writ petition, the respondents also assailed the said SCN which was allowed by the learned Single Judge on 22.11.2018.
- h) Consequent to hearing the detailed arguments of the parties, the learned Single Judge passed the impugned judgment on 08.01.2024. Aggrieved whereof, the present appeal has been filed by the appellant.



### **CONTENTIONS OF THE APPELLANT:-**

3. Ms. Kritika Gupta, learned counsel for the DDA, at the outset, contended that the impugned judgement overlooks a crucial aspect, which is whether the DDA, while issuing the public notice on December, 2013 and subsequently executing the CD, had intended to also convey the commercial component of the subject property to the respondent. She would submit that the learned Single Judge misconstrued and misinterpreted not only the public notice and the CD, but also the relevant provisions of the MPD 2021 while arriving at the impugned conclusion.

4. As her first contention learned counsel invited attention to the public notice, which according to her, apparently discloses the intention of the DDA not to convey commercial component of the subject property. She clarified the submission by pointing out that as against the subject property the auction referred only to “*Two-level Parking Plot*”. In contradistinction, thereto, the other plots of the nature of multi-level parking had clearly indicated the intention of the DDA to convey the “commercial component” in such plots. Thus, according to her, the intention not to convey/auction commercial component was absolutely clear and unambiguous.

5. Continuing her arguments on the said public notice, the next contention was to draw a distinction between the subject plot and other plots, as also to highlight the reserve price stipulated for both the types of plots. In that, while the reserve price of the subject plot was maintained at Rs.1.49 crores, the other plots for which the commercial component was intended to be conveyed, the reserve price was Rs.14.09 crores. By



highlighting the distinction and the massive difference in reserve price between the subject plot and the other multi-level parking lots, the learned counsel stoutly contended that there was no reason for the DDA to offer such a low reserve price for the subject property if the commercial component was originally intended to be conveyed.

6. Ms. Kritika Gupta next referred to the CD dated 23.07.2014 executed by the DDA to submit that the handwritten portion in the schedule stating that “*parking with Commercial Component as per MPD 2021*”, inserted by an official of the DDA would not bind the DDA since while issuing the public notice, the intention to convey the commercial component was clearly absent, and by mere insertion it could not convey to the respondents what was neither intended nor conveyed. She relied upon the covenants in the body of the CD itself to indicate that no such intention to convey the commercial component can be made out from a plain reading. According to her, neither in the description of the subject plot nor in the paragraph conveying the subject property, which too described the property, is there any mention of conveyance of the commercial component to the respondents. In support of her contention, Ms. Kritika Gupta also invited attention to para 2 of the CD wherein it was clearly mentioned notwithstanding the execution of the CD, use of the subject property in contravention of the provisions of Master plan/Zonal Development Plan /Lay out plan could not be said to have been condoned. In other words, it was clear that the subject property could not be used for any purpose other than what was conveyed.

7. Dilating on the aforesaid argument, learned counsel also urged that



merely an insertion by an official of the DDA to the extent of conveying the commercial component, would not *ipso facto* bind the DDA unless the said subject plot was intended to be conveyed with the commercial component. She refers to her aforesaid arguments, in order to buttress this submission. According to her, whatever interest in the subject plot was not attached originally, could not have been conveyed merely by some officer inserting a remark to the contrary. She contended that having regard to the differences in the reserve price it can be safely inferred that the DDA never conveyed the commercial component in the subject plot.

8. That apart, learned counsel also vehemently contended that the layout plan placed on record by the DDA also clearly indicates that the commercial component was not a part of the subject plot even at the time when the layout plan was designed. She contended that what was never intended cannot be read into or inferred merely on the ground that some official of the DDA had entered such remarks in writing.

9. In order to further strengthen and embolden the stand of the DDA that the commercial component was neither intended nor ever conveyed to the respondent, she invited attention to the letter dated 30.07.2015, which was communicated by the DDA to the respondent when the respondent sought sanctioning of the building plans. According to her, it was for the first time, when the respondent submitted its draft building plan for sanction by the Competent Authority of the DDA, that it realised the error committed. It was thus, in order to immediately rectify the error, that *vide* letter dated 30.07.2015, the DDA asked the respondent to come forward to rectify the CD and to show its clear intention, the draft



rectification deed was also enclosed. She stated that instead of coming forward to give clarifications or file objections to such rectification, the respondent approached this Court, in W.P.(C) 4799/2017 *vide* order dated 29.05.2017, learned Single Judge disposed of the writ petition with the direction to DDA to decide the representation dated 14.08.2015 and reminder dated 24.01.2017 by a speaking order. In pursuance thereto, by the order dated 09.10.2017, DDA disposed of the representation by giving detailed reasons. Subsequently, the respondent filed the underlying writ petition seeking a direction to the DDA to sanction the building plan and at the later stage to include the challenge to the speaking order dated 09.10.2017 and show cause notice dated 16.05.2018. While referring to the aforesaid narration, learned counsel forcefully contended that the intention of the DDA of not having conveyed the commercial component to the respondent in consonance with the public notice is vindicated by the letter dated 30.07.2015 directing the respondent to come forward and execute the rectification deed clarifying that no commercial component has been conveyed to the respondent *vide* the CD dated 23.07.2014. Thus, according to her, the learned Single Judge committed an error, in not appreciating the fact that the DDA clearly by issuance of the letter dated 30.07.2015 established that no commercial component was conveyed to the respondent at all. She contended that the need to issue the letter dated 30.07.2015 for execution of rectification deed was obviously taken at the highest level and therefore, the insertion of a handwritten portion in the schedule to the CD is clearly an error and cannot bind the DDA.

10. Ms. Kritika Gupta referred to clause 12.14.3.7 of MPD 2021



particularly to sub-clause (vi) and (ii). According to her, sub-clause (ii) is not applicable since those were only in respect of new plots which are being auctioned whereas, sub-clause (vi), is in respect of comprehensive schemes which are controlled by the development control code. According to her, the original layout plan was a comprehensive scheme which would fall within clause (vi) and not sub-clause (ii) of clause 12.14.3.7. Explaining further, she submitted that the scheme was designed as per MPD 2001 and the maximum permissible FAR has been utilised by 34 plots earmarked for different uses and purposes. Further that the two blocks namely, Block – A and Block – B were earmarked as “Two Level Parking Block” with no designated commercial component assigned to the same. The 219<sup>th</sup> meeting of the Screening Committee held on 02.07.2002 approved Block B only for a two level parking block, and thus, if any commercial component is allowed, it would be violative of and contrary to MPD 2001.

11. In conclusion, learned counsel submitted that the DDA never intended to convey any commercial component in the subject plot and on this ground, the impugned judgement should be set aside.

**CONTENTIONS OF THE RESPONDENT:-**

12. Opening for the respondent, Ms. Deepika Marwaha, learned senior counsel invited attention to the public notice issued by the DDA in respect of the subject plot. She would contend that the public notice itself contemplates, insofar as the subject plot is concerned, that all uses as permitted in the Community Centres under the MPD 2021 would be applicable to the said plot. She stated that once the public notice itself prescribes the MPD 2021, it cannot be contended by the DDA that Clause



12.14.3.7 (previously 12.13.7) of the MPD 2021 would not be applicable to the subject plot. According to her, the DDA cannot be permitted to, firstly, auction the subject plot making the provisions of MPD 2021 applicable and secondly, eschew the benefits available to the respondent under Clause 12.14.3.7. She vociferously contended that the benefit of commercial component to the extent of 25% of the Gross Floor Area (hereafter referred to as 'GFA') to the subject plot cannot be taken away arbitrarily or capriciously by the DDA. In other words, she would contend that by virtue of applicability of Clause 12.14.3.7 of the MPD 2021, the respondent was clearly entitled to use 25% of the GFA towards commercial components. She would contend that sub-clause (vi) of para 2 of Clause 12.14.3.7 cannot be pitched against the respondent to deprive it from taking the benefits under sub-clause (ii) of the said Clause. She stoutly contended that though the DDA is relying upon sub-clause (vi) of Clause 12.14.3.7 before this Court, however had not at all referred to the same before the learned Single Judge. She contended that this is impermissible and being an afterthought may be rejected.

13. While referring to the Minutes of the Meeting of 219<sup>th</sup> of the Screening Committee dated 02.07.2002 particularly to Entry no.20, learned senior counsel submitted that by virtue of such resolutions passed in the Meeting, the subject plot was approved for construction of a Two Level Parking Block and that the said construction would be undertaken by the DDA. She submitted that it was only under the change in the policy regime of MPD 2021 that private players were also given opportunity to participate in construction, management and maintenance of the public projects too.



Thus, according to her, it was only when the government opened its public spaces in order to promote public-private partnership that MPD 2021 envisaged auctioning of spaces like the subject plot for construction and maintenance of parking spaces. She emphasized that it was by virtue of engrafting of Clause 12.14.3.7 that private players like the respondent were permitted to participate in the auction and purchase the subject plot by execution of a Conveyance Deed between the parties. She would contend that unless there was a corresponding commercial benefit to the private players like the respondent, there was no reason why a private player would participate in the auction process at all. Premised on the aforesaid, learned senior counsel contended that the auction process would itself be unviable for private entities including the petitioner. In other words, according to her, the entitlement of the respondent as per sub-clause (ii) of Clause 12.14.3.7 granting use of 25% of the GFA of the subject plot towards commercial component was the only incentive available to the respondent for participating in the auction. It was with this objective that Clause 12.14.3.7 was engrafted in the MPD 2021 which benefit cannot be now taken away arbitrarily or capriciously by the DDA while refusing to sanction the building plan.

14. Learned senior counsel invited attention to Chapter 17 of the MPD 2021 particularly to Clause 2 (iv) in respect of Layout Plan in cross reference to Annexure A3 which is the Layout Plan of the subject plot. She would contend that there is no bar or prohibition in the said Layout Plan to the commercial component so far as the subject plot is concerned. On that basis, she contended that the provisions of Chapter 12 of the MPD 2021



would be applicable to the present case. Thus, on that basis too, she would contend that Clause 12.14.3.7 in respect of Multi Level Parking for private modes would entitle the respondent to utilise 25% of the GFA towards commercial components. In any case, learned senior counsel forcefully contended that the contents of paragraphs 6, 7 and 8 of the present appeal never formed part of the pleadings in the Counter Affidavit filed by the DDA in answer to the underlying writ petition. It is her contention that being alien to the original pleadings and not having been brought to the notice of the learned Single Judge, such contentions or grounds may have to be eschewed by this Court while considering the submissions. She vehemently objected to and opposed the contentions raised in paragraph 8 of the appeal whereby the DDA has referred to sub-clause (vi) of Clause 12.14.3.7 to non-suit the respondent from its rightful entitlement. She would contend that the extraneous grounds now raised regarding Comprehensive Scheme within sub-clause (vi) to predicate the contentions that the Layout Plan of the year 2001 would prevail over the other sub-clauses of Clause 12.14.3.7 or the entire MPD 2021 itself, cannot be countenanced nor considered by this Court on account of above reasons.

15. For the aforesaid reasons, learned senior counsel contended that the grounds 'N' and 'O' of the present appeal have to be eschewed from consideration. Learned senior counsel tried to distinguish the Comprehensive Scheme of 2001 (hereafter referred to as 'CS 2001') as relied upon by the DDA with that of the provisions of MPD 2021 by contending that under CS 2001, it was the obligation of the DDA to construct or get constructed the two floor parking block at the subject plot



on its own whereas under MPD 2021, the subject plot itself was put to auction under the public-private partnership concept for construction of two floor parking block, subject however, to Clause 12.14.3.7. In other words, it was only to incentivize and encourage the private partnership in construction and running of vehicular parking that the incentive of 25% of the GFA towards commercial component was offered. Thus, even if grounds 'N' and 'O' are entertained, the same are without any substance.

16. Learned senior counsel while referring to the CD categorically emphasized that the principal document itself conferred the right to use the subject plot towards commercial component which was mentioned therein atleast twice. She was at pains to demonstrate as to how the intention of the DDA to convey its interest in the subject plot even to the extent of commercial component was clearly visible and established. She contended that in the absence of such intention, the DDA would not have conveyed the right to commercial component to the respondent. She would submit that the true owner which inherently has all the rights and interest in the subject plot alone can convey all the rights which are available to the purchaser. In other words, she would contend that the commercial interest in the subject plot available with the DDA was clearly conveyed to the respondent under the CD, which admitted position cannot be altered by DDA at its whims and fancies.

17. Predicated upon the aforesaid, learned senior counsel would contend that the rejection of the building plan submitted by the respondent is not only arbitrary and capricious but also contrary to and violative of specific recitals of the CD conveying clear intention to permit respondent to use the



commercial component inherent in the subject plot.

18. It was further contended that by the letter dated 30.07.2015, the act of DDA seeking unilateral rectification of the CD, is an afterthought and not available to the DDA. According to learned senior counsel, the letter seeking rectification of CD was communicated only after the submission of the building plan for sanction was received by the DDA. She contended that the rights and interest of the subject plot which was transferred to the respondent under the CD, conveyed commercial interest therein to the respondent and by mere letter, the DDA cannot seek rectification to such an extent where the respondent is put to commercial detriment. She vociferously contended that the building plan submitted by the respondent fully complies with Clause 12.14.3.7 of MPD 2021 and the expressed terms of the registered CD dated 23.07.2014.

19. It was forcefully contended that the DDA cannot be permitted to resile or rescind the terms of the registered CD on the false, frivolous and flimsy excuse of a typographical error in inserting the words “Commercial Component as per MPD 2021” in the schedule to the CD. She would contend that once the valid contract comes into existence, neither of the parties can unilaterally alter nor rescind the terms on grounds of mere typographical or inadvertent errors. Referring to Section 22 of the Indian Contract Act, 1972 she contended that a Contract does not become voidable merely due to a unilateral mistake of fact. She also relied upon the provisions of Section 62 of the said Act to submit that any variation, recession or substitution of a contract must be with mutual consent. She relies upon the judgment of the Hon’ble Supreme Court in *Satya Pal*



*Anand vs. State of M.P.: (2016) 10 SCC 767*, wherein it was held that alteration or recession of a Contract can be only by bilateral means. She also persisted that the only instance of rectification of a document is contemplated exclusively by the provisions of Section 26 of the Specific Relief Act, which according to her, can be granted only by a competent civil court and that too, only upon furnishing proof of fraud or mutual mistake. She would contend that no such order or decree in that context has been obtained by the DDA. In the absence whereof, the rectification could not have been sought or demanded by the DDA, that too unilaterally and as such, reliance on such communication is totally misplaced.

20. Learned senior counsel has taken serious objection also to the contention that had there been any intention of DDA to convey commercial interest in the subject plot, it would have made its intention clear in the public notification by specific words. It is contended on behalf of the respondent that the reference to the subject plot being available under the provisions of MPD 2021 itself would suffice since Clause 12.14.3.7 of MPD 2021 clearly entitled or envisaged 25% of GFA towards commercial component. In that view of the matter, she would contend that the aforementioned submission on behalf of the DDA is without any merits and ought to be rejected.

21. Learned senior counsel urges that the conveyance deed is the sale deed and in terms of the provisions of section 54 and 55 of Transfer of Property Act, 1882, the title, ownership and rights in the property stood transferred in the name of petitioners.



22. She relies upon the following judgments in support of her case:

- i) *R.K. Mittal & Ors. vs. State of U.P and Ors.: (2012) 2 SCC 232*
- ii) *Joshi Technology International Inc. vs. Union of India: (2015) 7 SCC 728.*

**ANALYSIS & CONCLUSION:**

23. We have heard the arguments of Ms. Kritika Gupta learned counsel for the DDA and Ms. Marwaha, learned senior counsel for the respondent, examined the record and traversed the impugned judgement.

24. The case revolves around a primary question as to whether the DDA while auctioning the subject property and executing the CD, had conveyed any “commercial component” to the respondent.

25. In order to underscore the importance of the issue and to appreciate the controversy, we would have to consider the public notice issued in December, 2013, whereby the subject property was put to auction. The typed version reads thus:

*“Page 76*  
**1. DETAILS OF PLOTS**  
**THIS FESTIVE SEASON,**  
**START YOUR JOURNEY TO A PROSPEROUS FUTURE!**  
**DDA INVITES SEALED TENDERS FOR**  
**COMMERCIAL PLOTS AT PRIME LOCATION FOR**  
**OFFICES, SHOPS,**  
**MULTI LEVEL PARKING, BANKS, BANQUET HALLS,**  
**NURSING HOMES, RETAIL / DEPARTMENTAL STORE**  
**& WAREHOUSES**  
**ALL PLOTS OFFERED ON FREEHOLD BASIS**



<b>COMMERCIAL PLOTS</b>	<b>COMMERCIAL PLOTS</b>	<b>ALL USES AS PERMITTED IN COMMUNITY CENTRE AS PER MPD 2021</b>	"parking with commercial component"
		<i>S. Plot Area FAR Reserve Price No.No. sq mtrs. In sq mt. Rs. 52...</i>	
		<b>TWO LEVEL PARKING PLOT</b>	
		<i>Community Centre, Road 44, Pitampura 53. BLOCK B. 2212 ----- 1.49 cr</i>	
		<b>SHOPS, NURSING HOME</b>	
	<b>RETAIL DEPARTMENT STORE</b>	<b>MULTI LEVEL PARKING LOTS (WITH COMMERCIAL COMPONENT)</b>	<b>DELHI DEVELOPMENT AUTHORITY</b>
	<i>S. Plot Area FAR Reseve Price No.No. sq.Mtrs . In sq mt. Rs. Community Centre... .. 1. 5 26.33.00..... .....14.09 cr</i>		
<b>OFFICES</b>			
<b>BANK/BANK OFFICE</b>			

*AREA DETAIL*

*TOTAL PLOT AREA = 56880 SQ MTS*

*PERM.GROUND COVERAGE = 14220 SQ MTS*

*PERM. TOTAL FLOOR AREA = 56880 SQ MTS*

*PROPOSED GORUND COVERAGE = 1419.39 SQ MTS*

*PROPOSED TOTAL FLOOR AREA = ..... 39.28 SQ MT*



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*SPACE FOR TWO LVL PARKING TO PRESENTLY ESTABLISHED  
AT GROUND LVL AS SPEK*

***BLOCK B REF. DETAIL FRG AREAS OF BLOCK = 2212.28 SQ M***

*TO BE CONSTRUCTED BY DDA*

*AREA OF BLOCK = 194.0.00 SQ MT*

*SPACE FOR TWO LVL PARKING TO PRESENTLY*

*ESTABLISHED AT GROUND LVL AS SPEK*

*BLOCK A REF. DETAIL FRG AREAS OF BLOCK = 2212.28*

*SQ M*

...

*NOTE:*

*APPROVED BY 213TH SCREENING COMMITTEE MEETING HELD  
ON 22-01-2001 VIDE ITEM NO 67: 2001 AS A POLICY WITH THE  
OBSERVATION THAT WHEREVER POSSIBLE THE PLOT OF 111.5  
M X 6.6 M FOR COMBINED MILK AND FRUIT AND VEGETABLE  
BOOTH MAY BE ALLOTTED TO MOTHER DIARY AND THE  
FINANCIAL ASPECT CAN BE SEEN BY LAND DISPOSAL BRANCH*

*SD/-”*

A perusal of the public notice does indeed indicate that as against the subject plot, there were no markers to point out that any commercial component was being conveyed to the successful party to the auction. This is clear from the pointers for other plots where the DDA had clearly



mentioned that “commercial component” was also part of the plots. However, that said, it is pertinent to note that as against the subject property, it was clearly mentioned that “all uses permitted in community centre as per MPD 2021”. Thus, the provisions of the MPD 2021 were infact made applicable to the subject property also. How and in what manner and to what extent the provisions of MPD 2021 would be applicable or impact the subject property, would be examined in the paragraphs to follow.

26. A few dates would indeed be crucial to consider the controversy. The Layout Plan was drawn up under the MPD 2001 and the subject property was defined as Block B – “Two Level Parking Block”. By virtue of minutes of the 219<sup>th</sup> meeting dated 02.07.2002, the Screening Committee of the DDA approved a Two Level Parking Block to be constructed by DDA. Though there is nothing on record to indicate to the contrary, it appears that for some reason DDA did not get any parking block constructed thereon. In the interregnum, MPD 2021 was rolled out with effect from 07.02.2007. The advertisement notifying the auction of subject property was issued in the month of December, 2013, making MPD 2021 applicable. Though, no doubt that the conveyance of commercial component was not indicated in the public notice as against the subject property, yet, it cannot be overlooked that the provisions of MPD 2021 were made applicable. To put it differently, provisions of clause 12.14.3.7 of MPD 2021 may impact the subject property. To cut through the maze of controversial facts and disputes, it would be apposite to extract the provisions of Clause 12.14.3.7 of MPD 2021 which reads thus:



### **“12.14.3.7. MULTI-LEVEL PARKING FOR PRIVATE MODES**

*Several multilevel parking projects have been implemented by local bodies / agencies in the recent past. It has been seen that none of the parking lots are being used even to half their capacity due to availability of unlimited subsidized parking on streets/ public spaces in the vicinity of these projects. In other words, low-pricing of on-street parking is leading to failure of off-street multilevel parking facilities.*

*Therefore, multi-level parking projects should be integrated as part of comprehensive PMD schemes at designated locations. In order to ensure viability of the projects and optimum use, strict enforcement and appropriate pricing of on-street parking, is required. Preferably, on-street and offstreet parking (including multi-level) should be managed and enforced by a single agency. All multi-level or exclusive parking facilities for private parking shall also provide at least 10% of total space provision for IPT modes, NMV and feeder buses, as per local requirement.*

*Detailed regulations and comprehensive parking policy may be worked out subsequently, in consultation with all stakeholders.*

*For plots for multi-level car parking already earmarked / designated by local bodies, the existing development control norms will continue, as follows:*

*i. Minimum Plot Size – 1000 sqm.*

*ii. **In order to compensate the cost of Multi-level parking and also to fulfill the growing need of parking spaces within urban area, a maximum of 25 % of gross floor area may be utilized as commercial / office space.***

*iii. In addition to the permissible parking spaces on max. FAR, 3 times additional space for parking component shall be provided.*

*iv. Maximum FAR permissible shall be 100 (excluding parking area) or as per the comprehensive scheme. However, no FAR shall be permissible in plots / existing buildings where 5% addl. ground coverage is permissible (Refer para 8 (4) i) Parking Standards, Chapter 17.0 Development Code).*

*v. Maximum ground coverage shall be 66.6%. The maximum height shall be restricted to permissible height of the land use in which the plot falls. There will be restriction on the number of levels of basement subject to structural safety.*

*vi. **In case of comprehensive schemes, development controls including height shall be as per approved scheme.***

*vii. Number of basements - No Limit, subject to adequate safety measures.*



*viii. For development of Multilevel Parking, models should be worked out to encourage the private sector initiative with restricted commercial component, not exceeding 10% limited to FAR 40 on the plot.*

*ix. Specific proposals requiring relaxation in abovementioned norms for already designated sites would be referred to the Authority.”*

(emphasis supplied)

The precursor paragraph to the said clause clearly indicates that the DDA found it extremely difficult and unsuccessful to promote multi level parking in the past as commuters were happy and satisfied with the surface parking for a number of reasons. It appears that it was this unfavourable and compelling reason which led to insertion of clause 12.14.3.7 in the MPD 2021. Thus, the paradigm shift of regime to one of public private partnership was sought to be developed. It was under these peculiar circumstances that the said clause, with liberal and reformative provisions to enable not only participation of private players, but also to incentivise their investments in such projects, was engrafted.

27. Sub-clause (ii) of clause 12.14.3.7 envisages compensation of the cost of Multi level parking and also to fulfil the growing need of parking spaces, a maximum of 25% of GFA may be utilised as commercial/office space. Plainly, sub clause (ii) permits commercial component to the extent of 25% of GFA without any other restriction or prohibition. It is clear that the DDA sought to incentivise development of such plots by private entities. It is manifest that this is a departure from what was possibly envisaged under MPD 2001. It can also be safely inferred that auctioning of the subject property on freehold basis was also in consonance and conformity with the ultimate aim sought by clause 12.14.3.7, i.e., encourage private investments by incentivising public spaces. To our mind, there does



not appear to be any plausible reason other than this, as to why any private entity would purchase in an auction, a freehold property only for running a parking facility. It may very well be possible that in the year 2001 or 2002 the Screening Committee did approve a two level parking block without any commercial component, but the precursor paragraph to clause 12.14.3.7 of MPD 2021 provides a reasonable insight into the change in regime by opening up public spaces to private players. The paragraph clearly points the reasons which lead DDA to engraft such a clause. Curiously, there is no prohibition in the said clause against use of 25% as commercial component. That apart, we could not find any explicit prohibition or bar even in the Layout Plan nor were we shown any.

28. This would now lead us to consider the argument of DDA based on sub-clause (vi) of clause 12.14.3.7 of MPD 2021. Premised on the said sub clause, it was contended that since the subject property was auctioned under a comprehensive scheme, sub-clause (ii) would not be applicable and development controls including height would be as per approved scheme. Firstly, no such Comprehensive Scheme was placed either before the learned single Judge or before this Court. Secondly, it was sought to be impressed that the Layout Plan itself is a comprehensive Scheme or its representation. We are not at all impressed with this. If that were the strong point of the DDA then the actual Comprehensive Scheme ought to have been placed on record to establish the alignment with the Layout Plan. We have to understand that unlike the Master Plan or the Zonal Development Plan, the Layout Plan is not a statutory document under the DDA Act, 1957. Thus, it was imperative for the DDA to have placed on record the



Comprehensive Plan, if any, for us to appreciate the submission based on sub clause (vi) of clause 12.14.3.7 of MPD 2021. Moreover, this argument does not take into account the fact that at one point in time, the subject property was sought to be constructed by DDA itself or through invitation of tenders as “two level parking block” which was altered to conveying the subject property on auction basis, that too on freehold terms to a private entity. It is clear that the situation and status of the subject property changed drastically over the period of time.

29. Though it was vehemently argued on behalf of the respondents that none of the above documents or grounds was raised before the learned single Judge, we however, have taken the same into consideration only to find them not only unpersuasive but also unmerited. Suffice it to say that those grounds and facts not taken before the learned single Judge cannot ordinarily be placed in an appeal unless leave is sought. Clearly, no leave was sought. Yet, to satisfy our conscience, we have considered those too. Thus, the submission predicated on sub clause (vi) of clause 12.14.3.7 of MPD 2021 does not persuade us.

30. The next document to be examined is the CD executed on 23.07.2014. Though the body of the CD does not refer to whether any commercial component was conveyed to the respondent, yet, the Schedule appended thereto, clearly conveyed commercial component. Even the Site Plan appended thereto also indicated the conveyance of commercial component. Of course, the extent was not specified. We have to understand that the auction was held in the year 2013 and CD was executed in the year 2014 and MPD 2021 was made applicable with effect from 07.02.2007.



Even the public notice explicitly mentioned applicability of MPD 2021. This position has fairly not been denied or opposed by the learned counsel for the DDA. It is plausible and readily inferable that rather than a “*typographical mistake/error*” as emphasised by DDA, the CD actually conveyed the commercial interest in the subject property to the respondent. The excuse or ground seems to us as lame. While considering this point we have to take a holistic view of the entire conspectus and give a meaningful and purposive thought to insertion of clause 12.14.3.7 of MPD 2021. Possibly, provisions of clause 12.14.3.7; auctioning of the subject property that too on freehold basis; shift in the regime to promote and incentivise private partnership in public spaces, as is clear from the precursor paragraph of the said clause, impelled the DDA to convey even the commercial component under the CD. Thus this argument predicated on some imagined “*typographical error*” is unpersuasive and does not at all appeal to us. Thus, the same also is rejected. On account of the above analysis, we are not interfering with the reasons rendered by the learned single Judge on CD and its construction.

31. Though the issuance of letter seeking rectification of CD *vide* letter dated 23.07.2014 appears to be a plausible support to the contention of non conveyance of commercial component, yet, viewed from the prism of the aforesaid analysis, the same is rendered insignificant.

32. In view of the above we are not considering the grounds raised in respect of section 62 of the Contract Act, 1872 or sections 54 and 55 of the Transfer of Property Act, 1882 raised by the respondent. Suffice it to state that we do not find any reason or ground to interfere with the judgement of



the learned Single Judge. Our above analysis is in addition to those contained in the impugned judgement.

33. The learned Single Judge in the impugned judgement dated 08.01.2014, particularly in paragraph nos.56, 69, 70 & 71 has extracted the judgements relied upon by the respondents and provided his analysis. We do not propose to elaborate further on that. The same is extracted hereunder:-

*"It is pertinent to note down the relevancy of MPD 202L This court in numerous judgements including Rattan Lal Aggarwal vs. Municipal Corporation of Delhi, 2011 SCC Online Del 2649 has held that MPD 2021 is statutory in character and the provisions of MPD 2021 have statutory force. Therefore the provisions mentioned in the MPD 2021 are to be complied in its full letter, spirit and intent. Respondent has a bounden duty to uphold the provision of MPD 2021 and cannot act in contrary to what is laid in MPD 2021. In RIC Mittal vs. State of U.P.,(2012) 2 SCC 232, the Hon'ble Supreme Court has observed as under:-*

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

*42. The authorities while reconsidering such matters are expected to act reasonably and cautiously. They deal with larger public interest and, therefore, have a responsibility to act with greater degree of sensitivity and proper application of mind. If the Development Authority aids the violation of the statutory provisions, it will be a perversity in the discharge of statutory obligations on the part of the Development Authority. The public interest, as codified in the statutory regulations and the provisions of the Act, should control the conduct of the Development Authority and its decision-making process, rather than popular public demand guiding the exercise of its discretion, that*



too, in a somewhat arbitrary manner.

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

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

xxx

xxx

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69. In context with section 62 of the Contract Act, the Hon'ble Supreme Court in *Satya Pal Anand vs. State of M.P.*, (2016) 10 SCC 767 has observed as under:-

"15. His Lordship *V. Gopala Gowda, J.* proceeded to examine the issue



*in the list of Section 62 of the Contract Act, 1872. It provides that if the parties to a contract agree to substitute a new contract for it, or to rescind or alter it the original contract need not be performed. Thus, for any novation, rescission and alteration of the contract, it can be made only bilaterally and with amicable consent of both the parties.....”*

*70. Perusal of the above clearly mandates that a registered contract cannot be trilaterally rescinded or altered, it can only be done bilaterally or with consent of both the parties thereto. The purpose of a registered document is to bind the parties to the terms and conditions contained therein. Once a concluded contract has been duly signed by the parties, the only option available is to have it set aside in accordance with law.*

*71. The arguments of the respondent are bereft of any merits as the conveyance deed is registered document and if the respondent is allowed to resile from the same by stating that there was a typographical error, then there will be no sanctity to the documents executed by any party to the contract. This plea of the respondent cannot be permitted or act as a defense while enforcing a duly concluded contract. The terms of the concluded contract are final and a party cannot unilaterally resile from the same by stating some of the terms to be typographical error.”*

34. We have also noted that the respondent was willing to make good the deficiency, if any, of the cost of commercial component of the subject property. To make the intent of respondents in this context absolutely clear, letters dated 15.01.2016 and 24.01.2017, which are contemporaneous with the discussions between the parties, are extracted below:-

*“Dated: 15/01/2016*

*To,*

*The Deputy Director (CL)  
Delhi Development Authority  
2<sup>nd</sup> Floor, A Block, Vikas Sadan, New Delhi*

*Subject: sanction of Building plan in respect of commercial Plot No. 5,  
Block-B, Road No. 44, Two Level Parking Pitampura, Delhi.*

*Ref: File No. F-87(3)2014/CL*



Sir,

*This is with reference to the subject cited above. In this connection hereby submit a set of building plan along with ail supporting documents. This plot is purchased by us in open auction in 2014 held in your office for parking space. As per lease deed 25% of the total area as a commercial component can be used in this plot as per M.P.D.-2021.*

**In view of the above, I hereby submit an undertaking to assure to your good-self to pay all the necessary charges for the commercial component, as and when required by the DDA.**

“Dated: 24/01/2017

To,  
Hon'ble Vice Chairman  
DDA, Vikas Sadan,  
New Delhi-110023

*Sub: With regard to the providing 25% commercial component in respect of Plot No. B, Block-B, Road No. 44, Two Level Parking at Pitampura, Delhi.*

*First Reference File No.: F-87(3)2014(CL)  
Second Reference File No. F-13(20)2016 (Building Section)*

Sir,

*I am bonafide purchaser of the plot mentioned above which was purchased in open auction in 2014 for the parking purpose. As the development norms, there is a provision of 25% commercial component in measuring plot of 2200 Sq. Mtr, which is clearly mentioned in MPD 2021. So the purchaser can met the cost which has been paid in open auction with the provision only two level parking. Therefore, it is requested that provision under master plan 2021, the development control norms may kindly be allowed 25% commercial component, I am ready to pay current market value as and when required.*

*I have applied for the same, first time in 2014 and it was reviewed again on 15.01.2016, Accordingly again it has been reviewed on 28-09-2016 with deposit of Rs. 50,000/- as building permitting fee, but since then the building department have not taken any steps to proceed to case and the file has been kept with Junior Engineer without any reason.*

**In view of the above, I pray to your good self to took into the matter seriously. All the necessary charges for the sanction building plan as per norms of DDA, I am ready to pay as per current market value.**



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*Your faithfully  
sd/-  
Ashish Jain  
Address: C7111, Yamuna Vihar  
Delhi-110053”*

(emphasis supplied)

35. Ergo, in view of the willingness conveyed by the respondent to make good the commercial component rates to the DDA, we deem it appropriate to modify the impugned judgement dated 08.01.2024 and direct the DDA to issue a demand note on such charges as available to it in the year of execution of the CD alongwith applicable interest, if any, within three weeks from date. Payment thereto by the respondent shall be made within three weeks thereafter. Subsequent thereto, the building plans which might have been submitted by the respondent would be considered by the Competent Authority of the DDA for sanctioning the same, in accordance with law.

36. In view of the above, the appeal is disposed of in accordance with the directions in paragraph 35 above, alongwith pending applications.

**TUSHAR RAO GEDELA, J**

**DEVENDRA KUMAR UPADHYAYA, CJ**

**OCTOBER 28, 2025/rl**