

Dated: 31st January, 2018

To,

Shri KJ Rao;

Shri Bhure Lal;

Major General (Retd.) Som Jhingan;

Supreme Court Monitoring Committee

(as constituted vide Order dated 24.03.2006,

by the Supreme Court in M.C. Mehta v. Union of India)

Subject: MPD-2021 provisions being flouted with impunity during the in-going sealing drive.

Sir,

The Monitoring Committee may recollect that, I was the Union Minister of State for Urban Development from 2006 to 2009, and during this tenure I had the privilege of designing the Master Plan 2021 (MPD-2021) which was duly notified on 07.02.2007. Keeping in mind, the ground realities, we also carried out various amendments to the MPD 2021, from time to time, to accommodate the needs and requirements of Delhi. To implement this Master Plan, various regulations under the Law were also notified. These regulations also were subsequently amended from time to time, as per the needs and requirements of our people.

The Hallmark of the MPD 2021 was to enforce the policy and concept of Mixed Land Use and to promote-not suppress the vertical growth of our city. MPD-2021 was a legal instrument through which, like any other world class city, we wanted Delhi to grow vertically rather than having illegal horizontal sprawl. Compact and vertically high cities, with mixed-land use (work place and residence together or near to each other) are known to be energy efficient, causing minimal transmission losses (of water and power) and requiring lesser travel time for going to work, shopping and other day to day activities.

After having met many Market Associations and understanding their point of view, I feel that most of the legally allowed to function premises, were sealed. In this direction, I have dealt with four different aspects namely:-

- i) Local Shopping Centres
- ii) Commercial Establishments in 'Special Area' like Walled City, Chandni Chowk, Sadar Bazar, Patel Nagar, Paharganj etc.
- iii) Pre-1962 Commercial Areas and also those covered/ declared commercial in MPD 1962.
- iv) Village Abadi (Both Urbanised and Urbanisable Villages)

I would like to point out the following: -

1) LOCAL SHOPPING CENTRES

- a) Before dealing with different aspects of Local Shopping Centres, I would like to point out some provisions dealing with it in MPD 2021 and MPD 1962.
- b) The Delhi High Court vide its Judgement dated 11.02.2011 in the matter of **Sudama Singh & Others vs Government of Delhi** WP(C) Nos.8904/2009 has held that the MPD-2021 is a statutory document and hence in view of the same all provisions contained therein must be followed.
- c) As per clause 5.6.2 of the MPD-2021, all Local Shopping Centres (LSC) and Commercial Shopping Centres (CSC) are governed by the '**Mixed Use Regulations**'.

“5.6.2 The LSC / CSC will cater to the day-to-day needs of the local population. Some areas developed prior to 1962 like Lajpat Nagar, Rajouri Garden, Tilak Nagar, Kamla Nagar etc. having concentration of commercial activities, may continue subject to conditions prescribed under the Mixed Use Regulations.

The existing built-up commercial centres may be redeveloped if need be with enhanced FAR subject to payment of appropriate levies. To incentivize the redevelopment a maximum overall FAR of 50% over and above the existing permissible FAR shall be given.

FAR enhancement in the shops cum residence complex developed prior to 1962 in rehabilitation colonies or other residential area shall be allowed higher FAR equivalent to FAR permissible on residential plot subject to availability of the parking in the area. The plot holder of shop-cum-residence plot is also allowed to continue with the original use i.e. shop-cum-residence and in such cases, there will be no insistence for levy of any conversion charges.”

- d) Most of these Local Shopping Centres are Pre-1962.
e) For Pre-1962 Commercial Areas, the following is mentioned in MPD 2021 Clause 5.1:-

“Residential areas and streets / stretches earlier declared as commercial areas / streets or where commercial use was allowed in MPD-1962 shall continue such use at least to the extent as permissible in MPD-1962. Commercial activities existing from prior to 1962 in residential areas are also permitted subject to documentary proof thereof.”

- f) Page 61 of the MPD 1962 deals with the FAR and the way various commercial centres need to be dealt with. In MPD 1962, it is provided that:-

“..The provision below shall apply to the retail, commercial and service industrial area which should be worked out as a composite scheme. The coverage is for the whole commercial area and not for the plot.

....(e) Neighbourhood Shopping Centres

F.A.R.. 100

Maximum coverage on Ground Floor.. 40%”

As it can be seen even in MPD1962 and as of now in MPD2021, the coverage and the FAR is for the ***'whole commercial area and not for the plot'***. Moreover, it should be calculated as a ***'composite scheme'***.

- g) Thus, the Minimum FAR of each shop in the existing LSC or the Neighbourhood Shopping Centre should be 250 as permissible in MPD1962. And since this is as permissible in MPD1962, it should be free of cost.
- h) Using this provision in MPD1962 and similar provisions in MPD2021, it was decided in a meeting in my chamber dated 18th February 2008 that a fresh plan of the Market would be prepared for Mehar Chand Market to realise the full potential of the FAR. Senior Architect (HQ) of the CPWD prepared the plan as per law, as ***a composite scheme for the whole commercial area and not for the plot*** with 100 FAR and 40% ground coverage of the entire market. It gave each individual shop owner an FAR of 250. Relevant documents attached as **ANNEXURE-I**
- i) Thus, this minimum 250 FAR is permissible for individual shops for commercial use without any conversion charges in Local Shopping Centre.
- j) ***We will deal with the usage and charges of basement in subsequent paragraphs.***

2) FAR AND CONVERSION CHARGES OF Local Shopping Centres-

- a) As stated above, 250 FAR for individual shops is permissible in MPD1962. Thus, there cant be any conversion charge in MPD2021 for the FAR in a property which was already permitted commercial use ***'to the extent in MPD1962'***.
- b) Moreover, as mentioned above, Para 5.6.2 of the MPD2021 says:-

"....FAR enhancement in the shops cum residence complex developed prior to 1962 in rehabilitation colonies or other residential area shall be allowed higher FAR equivalent to FAR

permissible on residential plot subject to availability of the parking in the area.”

Thus, higher FAR equivalent to residential FAR is already allowed in MPD-2021.

- c) Over and above this FAR of 250, we may charge conversion charges only through the **‘Mixed Use Regulations’** as mentioned in para 1(c) above in this petition.
- d) Charges for **‘Mixed Use’** were fixed Vide Notification dated 20.11.2006. The DDA notified the “Delhi Development Authority (Fixation of charges for Mixed Use and Commercial Use of Premises) Regulations, 2006.

(A copy of the said 2006 Mixed Use Regulations notified by the DDA is attached hereto as **ANNEXURE-II**)

- e) The said 2006 Notification was amended vide Notification dated 22.06.2007 wherein the conversion rates were revised and fixed as follows:

(a) For MCD areas:---				
(Rates in Rs. Per Sqm. built up area)				
S.No.	Type of mixed use	A & B Category of colony	C & D Category of colony	E, F & G Category of colony
1.	Retail Shops	767	511	192
2.	Other Activities	383	256	96
3.	Professional Activities	192	128	48

(a) For NDMC areas:---		
(Rates in Rs. Per Sqm. built up area)		
S.No.	Type of mixed use	
1.	Retail Shops	1534
2.	Other Activities	766
3.	Professional Activities	384

Further, users were also given the option of one time charges (for 10 years) which were fixed as follows:

(a) For MCD areas:—

S.No.	Type of mixed use	(Rates in Rs. Per Sqm. built up area)		
		A & B Category of colony	C & D Category of colony	E, F & G Category of colony
1.	Retail Shops	6136	4088	1536
2.	Other Activities	3064	2048	768
3.	Professional Activities	1536	1024	384

(a) For NDMC areas:—

S.No.	Type of mixed use	(Rates in Rs. Per Sqm. built up area)	
		A & B Category of colony	C & D Category of colony
1.	Retail Shops		12272
2.	Other Activities		6128
3.	Professional Activities		3072

At this juncture, I must state that, the last procedurally notified conversion charges, are the ones notified through the Notification dated 22.06.2007, as thereafter no notification has been issued to amend the principal Notification of 20.11.2006.

A copy of the amendment Notification dated 22.06.2007 is attached hereto as **ANNEXURE-III**.

- f) **Since this regulation has not been amended and thus is in vogue- the charges for conversion, over and above 250 FAR should be Rs 6136, Rs 4088, Rs 1536 for A&B, C&D and E,F&G colonies respectively.**

IMP: In Order to clarify this aspect further, I would like to rely on a Judgement of a Division Bench of the Hon'ble Delhi High Court, which clearly stipulates that where Regulations govern a particular field, then scope of the said regulations can only be expanded by an amendment in the Regulations and not through any other instrument. In this regard kindly see para 21 of the Judgement dated 31.05.2013 passed in NK Ghai Vs. MCD [W.P.(C) 2215/2015]:

“21. ... where the Regulations exist holding the field, the Regulations are required to be followed scrupulously. If the scope of the Regulations have to be expanded, the same has to be by way of an amendment as per procedure...”

- g) ***Suffice would it be to state that the executive instructions or decisions taken, which does not have the effect of regulations cannot over ride validly made regulations.***”
- h) That the DDA vide Notification dated 10.07.2017 and thereafter by Notification dated 29.12.2017 has sought to hike the Conversion Charges to Rs. 89,094 and 22,274, respectively. However, the said hike of conversion charge cannot be levied as in order to levy the hiked conversion charge, the DDA has not amended the principal regulations of 2006 (Annexure-III). Hence, till the principal regulation is not amended, the hike proposed by the DDA is *non-est* and therefore the MCD shall collect conversion charges only as per the 2007 Notification (Annexure-III) i.e. at Rs. 6136 per sq. mtr. for a period of 10 years – as these charges were fixed through amendment to the principle notification.
- i) That as per clause 5.6.2 of the MPD-2021, all Local Shopping Centres (LSC) and Commercial Shopping Centres (CSC) are governed by the Mixed Use Regulations. Hence Conversion Charges in LSC/CSC areas are ought to be collected as per the 2006 Regulations (Annexure-II) and as modified in 2007 (Annexure-III).

3) COMMERCIAL ACTIVITES IN BASEMENT IN Local Shopping Centres-

- a) **Vide amendment dated 12.08.2008 in the MPD-2021, commercial activities in basement of was permitted under ‘Mixed Use Regulations’. Clause 15.12.3 (vii) as introduced vide amendment dated 12.08.2008 is reproduced hereinbelow:**

*“Commercial activity in basement on such streets shall be permitted, subject to relevant provisions of building bye laws, structural safety and fire safety clearance. **However, if such use of basement leads to exceeding the permissible FAR on the plot, such FAR in excess shall be used subject to payment of appropriate charges prescribed with the approval of Government.**”*

b) Vide 'Delhi Development Authority (Levy/Charges for Residential Plotted Development) Regulations, 2006' (ANNEXURE-IV), Dated 20th November 2006, the Govt notified rates for additional FAR charges as

S. No.	Purpose	A&B colonies	C&D colonies	E,F&G colonies: in plots of more than 50 sq m	E,F&G colonies: in plots of upto 50 sq m
1.	New construction	3500	1400	700	490
2.	Regularisation of unauthorised construction				
	(a) Additional Coverage within sanctioned height	4020	1610	805	564
	(b) Additional Coverage above sanctioned but within permissible height (as per 23-7-1998)	4375	1750	875	613
	(c) Additional Coverage beyond permissible height as per 23-7-1998 but within 15 metres	4900	1960	980	686

Thus, the additional FAR charges for basement should be Rs 4020, Rs 1610, Rs 564 /sq m for A&B, C&D, E,F&G category colonies respectively.

4) MIXED USE CONVERSION CHARGES CANNOT BE COLLECTED BEYOND 10 YEARS-

That the principal notification of 2006 i.e. the Mixed-Use Regulations provided for two modes of payment of conversion charges i.e. yearly payment and one-time payment. The one-time payment method was introduced on the basis of a 10 year plan which was calculated keeping in mind -the yearly charge x 10 year – 2 years rebate. Hence, the intention at the time of MPD-2021 was to not take conversion charge beyond 10 years. In light of this, no user/ occupier shall be compelled to pay conversion charges beyond 10 years or if they have already paid the one-time conversion charge.

5) PRE-1962 / MPD-1962 COMMERCIAL AREAS (KAROL BAGH, SHAHJAHANABAD, PATEL NAGAR, SADAR, CHANDNI CHOWK ETC.)-

- a) As per the MPD 1962, following are the pre-1962 commercial areas in Delhi. Most of them have been commercial hubs even during the British and pre-British era. Page 61 of the MPD1962 enlists them as follows: -

List of already built-up commercial areas.

1. Jama Masjid.
2. Chidi Qabar.
3. Bazar Sita Ram.
4. Ajmere Gate.
5. Chandni Chowk.
6. Fatehpuri.
7. Lajpat Rai Market.
8. Kashmere Gate and Mori Gate.
9. Malka Ganj.
10. Subzimandi.
11. Bara Hindu Rao.
12. Sadar Bazar.
13. Nabi Karim.
14. Qadam Sharif.
15. Ram Nagar.
16. Paharganj.
17. Model Busti.
18. Manakpura.
19. Shahdara Town.
20. Jhandewala Scheme - Block E.

Clause 5.1 of the MPD 2021 provides as under:

“Residential areas and streets / stretches earlier declared as commercial areas / streets or where commercial use was allowed in MPD-1962 shall continue such use at least to the extent as permissible in MPD-1962. Commercial activities existing from prior to 1962 in residential areas are also permitted subject to documentary proof thereof.”

Hence, the intention under the MPD 2021 was two-fold:

- 1) To ensure that in all areas which were declared commercial areas under the MPD-1962, commercial activity shall be allowed, without any documentary proof. Hence there is no requirement of any documentary proof in pre-existing commercial areas.
- 2) Areas other than the declared commercial areas, but where commercial activity was going on before 1962, shall be allowed to have commercial activities, subject to documentary proof of such commercial activity.

- b) That it is very unfortunate, that despite there being a clear provision permitting commercial activities in pre-1962 commercial areas, without any documentary proof, various premises are being sealed for want of documentary proof. We demand that no sealing action shall take place in pre-1962 commercial areas, as the law does not permit the same.

6) PROTECTION TO SPECIAL AREAS:

- a) That the MPD-2021, in Sub-clause 5 of Clause 16.2 provided that ***the Local Bodies shall prepare a re-development plan of the Special Areas within 3 years of the approval of the MPD-2021. The same clause further provided that till such time the re-development plan is prepared by the local bodies, the Status-Quo shall be maintained in the Special Areas.***
- b) Further, the Delhi High Court vide its Judgement dated 11.02.2011 in the matter of **Sudama Singh & Others vs Government of Delhi** WP(C) Nos.8904/2009 has held that the MPD-2021 is a statutory document and hence in view of the same all provisions contained therein must be followed.
- c) Sub-clause 5 of Clause 16.2 of the MPD-2021 is reproduced hereinbelow:

“Re-development Plan and Schemes for the Special Area should be prepared by the local body within three years of approval of the MPD 2021. In this Plan, the Metropolitan City Centres as referred in 5.3, Chapter 5.0 Trade and Commerce, shall be delineated based on survey. Till such time, status quo shall be maintained.”

- d) Special Area consists of areas like Paharganj, Karol Bagh, Patel Nagar, Ranjit Nagar, Baljeet Nagar, Chandni Chowk, Sadar Bazar, Walled City Area, Rohtak Road, Dev Nagar, Joshi Road, Naiwala etc..

e) Map of ‘Special Area’ is at ANNEXURE-V.

f) Further the NCT of Delhi Laws (Special Provisions) Second Act 2011 also provides for immunity to these special areas.

7) IMMUNITY TO UNAUTHORIZED COLONIES AND VILLAGE ABADI AREAS:

- a) In 2006, my Ministry (Ministry of Urban development, GoI) had prepared the Delhi Laws (Special Provisions) Bill, 2006 (hereafter referred to as “***the Special Laws***”). On 12th May, 2006, the Special Laws Bill was passed by the Lok Sabha-passed and on 15th May, 2006 by the Rajya Sabha. Thereafter, the assent of the President was received on 19th May, 2006 and the Act was notified on the same day. The entire exercise was completed in record 7days! It is important to note that the said law has been extended from time to time and now extended till 31.12.2020 vide the National Capital Territory of Delhi Laws (Special Provisions) Second Act, 2011 and its amendment Act of 2017.
- b) A copy of the Principal Act of 2011 and its subsequent amendments are attached hereto as **ANNEXURE-VI & VII**
- c) Section 2(g) of the said Law defines “Punitive Action” as:

(g) “punitive action” means action taken by a local authority under the relevant law against **unauthorised development** and shall include demolition, **sealing of premises and displacement of persons or their business establishment from their existing location, whether in pursuance of court orders or otherwise;**

- d) Section 2(j) of the said Law defines “unauthorised development” as:

“unauthorised development” means use of land or use of building or construction of building or development of colonies carried out in contravention of the sanctioned plans or without obtaining the sanction of plans, or in contravention of the land use as permitted under the Master Plan or Zonal Plan or layout plan, as the case may be, and includes any encroachment;

e) **Section 3 mandates that certain types enforcement to be kept in abeyance: -**

“3. Enforcement to be kept in abeyance.— (1) Notwithstanding anything contained in any relevant law or any rules, regulations or bye-laws made thereunder, the Central Government shall before the expiry of this Act, take all possible measures to finalise norms, policy guidelines, feasible strategies and make orderly arrangements to deal with the problem of encroachment or unauthorised development in the form of encroachment by slum dwellers and Jhuggi-Jhompri clusters, hawkers and urban street vendors, unauthorised colonies, village abadi area (including urban villages), and their extensions, existing farm houses involving construction beyond permissible building limits and schools, dispensaries, religious institutions, cultural institutions, storages, warehouses and godowns used for agricultural inputs or produce (including dairy and poultry) in rural areas built on agricultural land, as mentioned below:—

(3) All notices issued by any local authority for initiating action against encroachment or unauthorised development in respect of areas referred to in sub-section (1), shall be deemed to have been suspended and no punitive action shall be taken [till the 31st day of December, 2020].”

f) Therefore, in view of the above-mentioned provisions of law, it is amply clear that no action of sealing can be initiated in areas of Village Abadi, Lal-Dora and Unauthorized Colonies.

8) ESCROW Account-

That Clause 8 of the principal notification of 2006 i.e. the Mixed-Use Regulations (ANNEXURE-II) provided that the Local Bodies shall operate an 'Escrow Account' wherein the amount so collected from the conversion charges shall be deposited and be used for incurring expenditure on developing parking sites, augmentation of amenities, infrastructure in mixed use and commercial use streets.

It further provides that '***A separate account of the income and expenditure of the Escrow Account shall be maintained by the local authority and a quarterly statement of the same shall be rendered by the local authority to the Government.***'

However, the local bodies have miserably failed to utilize the collected amount as mandated by the regulations. Further, since the conversion amount so collected was never used by the corporation in augmenting the infrastructure in the concerned areas, this further discouraged the users/ owners from paying the conversion charges.

Conclusion:

We request the Monitoring Committee to kindly consider the above aspects and the provisions of MPD-2021 highlighted herein. We humbly demand that the ongoing sealing actions must not be carried out in contravention of the clear provisions of the MPD and relevant laws referred hereinabove.

Sincerely,

Ajay Maken