



2023:DHC:8343-DB



**IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Judgement delivered on: 21.11.2023

+ **LPA 130/2020 & CM APPL. 9216/2020, 9219/2020, 1145/2021  
& 47364/2023**

**M/S PACIFIC DEVELOPMENT CORPORATION  
LTD. (CONCESSIONAIRE OF DELHI METRO  
RAIL CORPORATION)**

..... Appellant

versus

**SOUTH DELHI MUNICIPAL CORPORATION  
& ANR**

..... Respondents

**Advocates who appeared in this case:**

For the Appellant : Mr Sudhir Nandrajog, Senior Advocate  
with Ms Meenakshi Jha and Mr Neeraj  
Kumar, Advocates with Mr Sanjay  
Chauhan, A.R.

For the Respondents : Mr Ajjay Arora, Mr Kapil Dutta and  
Mr Vansh Luthra, Advocates for R-1.  
Ms Teena Srivastava, Advocate for R-2.

**CORAM**

**HON'BLE MR JUSTICE VIBHU BAKHRU  
HON'BLE MR JUSTICE AMIT MAHAJAN**

**JUDGMENT**

**VIBHU BAKHRU, J**

1. The appellant, M/s Pacific Development Corporation Ltd. (hereafter 'PDCL') has filed the present intra court appeal impugning a judgment dated 10.02.2020 (hereafter 'the impugned judgment')



delivered by the learned Single Judge of this Court, thereby rejecting, PDCL's petition – W.P.(C) 3712/2019 captioned *M/s Pacific Development Corporation Ltd. v. South Delhi Municipal Corporation & Anr.* PDCL had filed the said petition *inter alia* impugning an order dated 14.05.2018 issued by the Executive Engineer of South Delhi Municipal Corporation (hereafter '**SDMC**') directing PDCL not to charge any parking charges in regard to the vehicles parked at the Pacific Metro Mall (hereafter '**Pacific Mall**').

2. The principal controversy in the present appeal is whether PDCL is precluded from charging parking charges in respect of vehicles parked at the space earmarked for parking the vehicles at the Pacific Mall. According to Municipal Corporation of Delhi (hereafter '**MCD**'), it is impermissible for PDCL to charge parking charges in respect of the vehicles as the parking areas are not included for calculating the permissible Floor Area Ratio (FAR) of the commercial complex – Pacific Mall. MCD claims that since, the parking space is not included in the FAR, the said area cannot be commercially exploited or brought to any commercial use. Since collecting parking charges in respect of vehicles would amount to commercial exploitation of the parking space for commercial purpose, the same is impermissible. PDCL contends to the contrary. The parking spaces are not included in the FAR by virtue of the Unified Building Byelaws for Delhi, 2016 (hereafter "**Building Byelaws**") which prescribe the extent of permissible construction, which in turn is dependent on the total area of the plot on which a building is constructed. According to PDCL, the extent of permissible



construction has no bearing on the question whether any charges can be levied for its use so long as the building conforms to the use for which it was sanctioned. PDCL claims that the exclusion of parking spaces from the FAR does not in any manner proscribe the collection of charges in respect of vehicles parked at the parking space.

### ***Factual Context***

3. Delhi Development Authority (hereafter ‘**DDA**’) had allotted land admeasuring 3.5 hectares (35000 square meters) at Khyala between Subhash Nagar and Tagore Garden Metro Stations to respondent no.2, Delhi Metro Rail Corporation, (hereafter ‘**DMRC**’) for the purposes of a construction depot. On 20.10.2006, DMRC issued a notice inviting bids for the development of a commercial building/mall on the subject land on Build-Operate-Transfer (BOT) basis. PDCL (then known as ‘Naman Buildcon Ltd.’) submitted its bid and was declared the successful bidder. DMRC entered into a Concession Agreement with PDCL on 08.03.2007.

4. In terms of the Concession Agreement, PDCL was required to develop, finance, construct, commission, operate, manage and maintain the commercial complex for a period of thirty years. Additionally, PDCL was liable to pay an upfront amount of ₹60 crores to DMRC and a further amount of ₹2.16 crores quarterly basis. It was also agreed that the quarterly payment would be increased by 20% successively on a compounding basis, on expiry of three years. The first increase being effective on expiry of three years from the date of the first payment.



Under the Concession Agreement, PDCL was entitled to receive all receivables from the use of the commercial complex. Undisputedly, PDCL has discharged its liability.

5. On 30.03.2009, the Ministry of Urban Development (MoUD) issued an order, removing the condition of allotment, which restricted DMRC to use of the subject land only for the purposes for which it was allotted. DMRC was, thus, authorised to lease/sub-lease/license/grant concession in respect of the lands allotted to it *inter alia* for raising revenue. There is no cavil that DMRC had entered into the Concession Agreement authorisedly.

6. DMRC applied for the sanction of the building plans on the subject property through PDCL, under Section 336 of the Delhi Municipal Corporation Act, 1957 (hereafter '**the DMC Act**'). The same was approved on 18.05.2009.

7. The construction of the commercial property (Pacific Mall) was completed on 21.01.2011 and MCD granted an Occupancy Certificate in favour of DMRC.

8. It is stated on behalf of MCD that on 04.03.2016, PDCL applied for regularization of construction in excess of the permissible FAR to the extent of 7639 square meters and paid an additional amount of ₹53,13,68,640/- as the additional FAR charges. Subsequently, the regularized building plans were sanctioned by SDMC (since merged with MCD) on 21.03.2016.



9. It is stated that the building constructed on the subject plot comprised of two basement floors including multi-level parking and parking spaces earmarked for the use of parking vehicles. The said areas were not included in the calculation of the permissible FAR.

10. On 21.12.2015, SDMC issued a Public Notice, *inter alia*, stating that the area reserved for parking in commercial/office/malls/hospital complexes are meant for parking by public without any fee. The Public Notice stated that the places, “*provided for parking cannot be put to commercial use in any manner being free from FAR*”. It was also observed that vehicles were being parked in the road margin as complex owners were collecting fee and this was resulting in traffic problems and accidents. All concerned persons were cautioned not to collect parking fee in parking areas in commercial/office/malls/hospital complexes as the same would amount to violation of the sanctioned plan.

11. On 19.01.2016, SDMC issued a notice to PDCL to “*immediately stop misuse of the parking area*” and to not collect any amount on account of the parking of vehicles. This was followed by a Show Cause Notice dated 30.03.2016 purportedly issued under Section 345A of the DMC Act read with Section 491 of the DMC Act directing PDCL to stop misuse of the parking area by charging parking fee from visitors.

12. PDCL responded to the said notice by letters dated 25.01.2016 and 01.04.2016, respectively. PDCL contended that it was the concessionaire in respect of the said complex and was not the owner. It



further contended that the property was not within the purview of control by MCD. PDCL also referred to the Master Plan for Delhi - 2021 (MPD -2021) and relied on paragraph 12.14.3 and 12.14.3.7. On the strength of the said provisions, PDCL contended that MPD - 2021 provided for the imposition of parking charges. It also emphasized that incentives were given to multi-level car parking.

13. PDCL claims that on 27.04.2016, a meeting was held in the Chamber of Deputy Commissioner (West Zone), SDMC and it was compelled to agree to stop collecting parking charges till the final decision was taken in this regard. On the next day, that is, on 28.04.2016, PDCL issued a communication confirming that it had stopped collecting parking charges pursuant to the meeting held on 27.04.2016.

14. DMRC also responded to SDMC's Show Cause Notice dated 30.03.2016 and asserted that there was no misuse of the parking, as the parking space was used solely for the purposes of parking and no other purpose.

15. Thereafter, on 30.10.2017, MCD (then SDMC) issued another Show Cause Notice under Section 345A of the DMC Act read with Section 491 of the DMC Act calling upon PDCL to stop the misuse of the parking area by charging parking fees and submit a response within a period of three days, failing which the premises would be liable to punitive action. The appellant responded to the said Show Cause Notice



dated 30.10.2017 reiterating its stand as articulated in the responses to the earlier show cause notices issued by MCD.

16. On 07.11.2017, the Deputy Commissioner, MCD passed an order under Section 345A of the DMC Act sealing part of the premises in question in exercise of powers under Section 345A of the DMC Act read with Section 491 of the DMC Act.

17. Aggrieved by the same, PDCL filed a writ petition in this Court being W.P.(C) 9907/2017, *inter alia*, praying that SDMC be permitted to de-seal the parking lots of Pacific Mall. This Court is informed that an interim order was passed in the said writ petition directing the de-sealing of the said premises.

18. Thereafter, a meeting of the Standing Committee was held on 06.03.2018. PDCL points out that during the course of the meeting, the Deputy Commissioner observed that the subject land belonged to DMRC and was provided for commercial use and therefore, parking charges could be levied. It was also suggested at the said meeting that the Pacific Mall should be segregated from the free parking notification.

19. After the said meeting, PDCL sent letters dated 21.03.2018 and 23.03.2018 seeking permission to levy parking charges. By letter dated 09.04.2018, the Assistant Engineer, DDA communicated the permission to charge parking fee at Pacific Mall by referring to the decision taken by the Standing Committee at its meeting held on 06.03.2018. Thereafter, PDCL withdrew the writ petition [W.P.(C)



9907/2017]. By a letter dated 01.05.2018, PDCL also informed MCD that in view of permission granted on 09.04.2018, it had commenced collecting parking charges. However, thereafter, PDCL received a letter dated 14.05.2018 once again directing it to stop charging parking fee.

20. PDCL once again responded to the said letters reiterating its stand and also referred to the Delhi Maintenance and Management of Parking Places Rules, 2017. On 11.02.2019, PDCL applied under the Right to Information Act, 2005 seeking copies of the relevant files. The file noting indicated that the Assistant Legal Officer, SDMC had opined that the sanctioned building plans were free from the FAR but that, there was no specific bar for collecting parking charges. Apparently, the said noting was based on the observations of the Chief Legal Officer. However, it appears that the Chief Legal Officer had, subsequently, opined that SDMC should pursue the view as espoused before this Court.

21. In the circumstances, PDCL filed a petition [being W.P.(C) 3712/2019], which was dismissed by the impugned judgement.

### ***The Impugned Judgement***

22. The learned Single Judge noted the factual context and the rival contentions and concluded that permitting PDCL to levy charges would be “*against the spirit/intention of the Byelaws*”. The learned Single Judge reasoned that the areas, which were not counted in the FAR were for the common enjoyment of all occupiers and it is expected that the





occupiers would in unison maintain the common areas. It was not expected that a visitor to the building would pay charges for utilizing the common areas. The learned Single Judge also rejected the contention that the jurisdiction of SDMC was limited to sanctioning of the building plans and ensuring that construction was in accordance with such plans. It did not extend to controlling the collection of parking charges at PDCL's premises. The learned Single Judge held that restricting the usage of parking areas to those who pay the parking charges would violate the Building Byelaws. The learned Single Judge also referred to the decision of the Andhra Pradesh High Court in *Ch. Madan Mohan & Ors. v. Municipal Corporation of Hyderabad & Anr.*<sup>1</sup> as well as the decision of the Gujarat High Court in *Ruchi Malls Pvt. Ltd. v. State of Gujarat Through the Secretary*<sup>2</sup>. The relevant extract of the impugned judgement, which sets out the essence of the reasoning and the conclusion of the learned Single Judge, is reproduced below:

“40. The FAR means Floor Area Ratio, which is the ratio of the total floor area of the building to the size of the piece of land. The FAR is an important rule in the construction of a building which has to be strictly complied. The land can be constructed upon to the extent of permissible FAR. There are areas in a building, which are not counted in FAR, viz., basement, machine room, lift, escalator, plant and machinery, water pool, swimming pool at any level (if not commercial), platform around the trees, fountain, munties over stair case, DG room, control room, toilets served by a public corridor etc. The areas counted in FAR can be used / commercially

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<sup>1</sup> 2003 SCC OnLine AP 503

<sup>2</sup> 2019 SCC OnLine Guj 1334



exploited as per the permissible usage. The areas, which are free from FAR are called the common areas. These areas, as the name suggest, are common to all the occupiers in the mall / building and not to the owner / concessioner (in this case). These areas cannot be leased / sold by the owner / lessee / concessionaire. It can be used by the occupiers without any hindrance. The occupants have indivisible right in the common areas.

41. Further, building plans have been sanctioned as per building bye laws. In the case in hand, the parking spaces have been provided in the basement and at second and third floor. That apart, other facilities like, lifts, toilets etc., presumed to have been provided by the petitioner. It can also be said that building plans have been sanctioned subject to condition of providing parking area, toilets, lifts etc. It follows that these areas are for the enjoyment of the occupiers and it is expected that it is the occupiers, who shall in unison maintain these common areas. It is not expected that a visitor to the building shall maintain it by paying charges for utilizing the common area. If such charges are permitted to be accepted then it shall be against the spirit / intention of the Byelaws, which stipulate granting of such facilities in a building i.e. mall in the case in hand.....

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xxx

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45. The next plea of Mr. Sethi that the jurisdiction of respondent No.1/ SDMC is limited to sanction of building plan and ensuring construction as per such plan and not with regard to collection of parking charges at the petitioner's premises when such collection is permitted by the respondent No.2 / DMRC, is concerned, the same, on a first blush looks appealing, but on a deeper consideration, it is seen that when the area being common to all, to be used without any hindrance, the petitioner by restricting the usage to those who pay the parking charges, shall be in violation of the building bye laws. In other words, the collection of parking charges, if not permitted in view of the provisions of the building bye laws then they cannot be collected.....”



23. The learned Single Judge rejected the contention that in terms of paragraph 12.14, 12.14.3 and 12.14.3.7 of MPD-2021, the levy of parking charges was permissible. In this regard, it held as under:

“44. In substance, the paragraphs on which reliance has been placed by Mr. Sethi, primarily stipulate the steps to be taken to make parking, a more organized phenomena by increasing the parking space and by evolving an appropriate pricing policy. The same does not stipulate that the charges can be claimed for parking facilities required to be provided in terms of the building bye laws. The same has no bearing on the issue, which falls for consideration.”

### ***Reasons and Conclusion***

24. As noted above, the principal question to be addressed is whether the owner/lessor of a commercial complex is proscribed from collecting parking charges for the reason that parking space is not included in the FAR. As noted above, it is MCD's case that since, the parking space required to be constructed under the relevant Building Byelaws, is not included for computing the FAR, the same cannot be exploited commercially. Therefore, parking charges cannot be collected.

25. In our view the said reasoning is flawed. MPD-2021 contains the planning norms for the development of property in Delhi. The planning norms expressly provide for the permissible FAR, which is related to the area of the plot. MPD-2021 also specifies the 'use zones' and the 'use premises'. The planning norms also include the parking standards required for the 'use premises'. In case of community centers, commercial centers and non-hierarchical commercial centers, the



parking standards require 3 ECS (equivalent car spaces) to be factored for every 100 square meters of floor area. The standards for ECS have been fixed in the context of the space where it (ECS) is provided. It is dependent on whether the parking space is situated in a covered area, an open area or in a basement. There are also other factors, which determine the ECS.

26. The Building Byelaws are applicable for building activities. Paragraph 1.2 of the Building Byelaws expressly provides that the Building Byelaws would be applicable to building activities. Chapter I of the said Building Byelaws contains definition and other general provisions. Paragraph 1.4.48 of the Building Byelaws defines the FAR as under:

“1.4.48 **Floor Area Ratio (FAR):** The quotient obtained by dividing the total covered area (plinth area) on all floors multiplied by 100 by the area of the plot.

$$\text{FAR} = \frac{\text{Total covered area of all floors} \times 100}{\text{Plot Area}}”$$

27. Chapter II of the Building Byelaws contains the procedure and documentations for sanction/occupancy completion of building plans. Chapter III provides for a risk based classification in environmental conditions for streamlining building plan approvals. Those buildings which are categorized as low risk, such as residential buildings below the height of fifteen meters on a plot size of 105 square meters are required to be processed under the fast-track procedure. Chapter IV of the Building Byelaws contains the procedure for documentation of



small residential plots. Chapter V of the Building Byelaws pertains to MPD-2021 in respect of development control regulations and is appended as Annexure VI to the Building Byelaws. Similarly, Chapter VI pertains to other regulations notified by DDA, including building regulations for special areas, regularization and guidelines for re-development, regularization of farm houses, permission of banquet halls etc. Chapter VII of the Building Byelaws contains provisions relating to the General Building Requirements. This includes the standards for space requirement of habitable rooms, basements, staircases, passageways, doorways etc. Chapter VIII of the Building Byelaws contains provisions for high rise development. Paragraph 8.3 of the Building Byelaws expressly provides the standards for parking space. Clause 8.3 of the Building Byelaws is set out below:

### **“8.3 Parking Spaces**

- a. The parking spaces shall be provided as per the provisions of MPD or Zonal Plan as prevalent. The location of parking spaces shall be well ventilated.
- b. In case of high-rise buildings parking would be permitted at any or all of the following:
  - i. Open Area : 23 sq.m per E.C.S
  - ii. Basements : 32 sq.m per E.C.S
  - iii. Stilts: 28 sq.m per E.C.S
  - iv. Podium: 28 sq.m per E.C.S
  - v. Roof top:28 sq.m per E.C.S
- c. Stacked Parking: 16 sq.m / Multi-level (with ramp): 30 sq.m/ Multi level- Automated parking: 16 sq.m per E.C.S is also permitted.”



28. Paragraph 7.4 of the Building Byelaws contains general building requirements in respect of basements. Paragraph 7.4.9 of the Building Byelaws expressly provides that “*basement is not to be counted in FAR if used for parking, household storage and services*”.

29. Paragraph 7.4.10 provides that parking in basement can also be permitted by means of a car lift. In case of residential buildings (except group housing), ramps are not mandatory but for other than residential buildings, ramps are mandatory for a plot size above 3000 sq. m.

30. Chapter IX contains provisions regarding structural safety, natural disaster, fire and building services. Chapter X of the Building Byelaws contains provisions regarding green buildings. Chapter XI of the Building Byelaws contains provisions for differently abled, elderly children. Chapter XII and XIII of the Building Byelaws contain provisions for public washroom complexes and public art respectively.

31. It is clear from a plain reading of the Building Byelaws that the same relate only to the norms and standards for the construction of buildings. Although the usage of a building would also determine the applicable Building Byelaws, the same has no relation to whether the permissible use yields any monetary benefit or not. To illustrate the point further, a residential building can only be used for the purposes of residence. However, the Building Byelaws have no bearing on whether the building is used for self-occupation by the owner or is let-out for residential purposes. So long as the building is used for the residential



purposes, the Building Byelaws would stand satisfied. A house owner who has a spare parking space on the stilt of the residential building is clearly not precluded from permitting a neighbour to park his vehicle in the said space on payment of consideration as agreed. So long as the stilt area is used for parking of vehicles (which is a permissible use), the Building Byelaws would have no further application. The Building Byelaws are not relevant to the monetary arrangement between the house owner and his neighbour, and do not control their arrangement.

32. The field covered by the Building Byelaws relates to building norms and standards for specified buildings in permissible zones. The said byelaws do not control or monitor any aspect of the use of building. Thus, if the buildings are constructed in accordance with the Building Byelaws and are used in accordance with the permissible use, the same are duly satisfied.

33. Table 5.4 of Chapter V of MPD-2021 contains provisions regarding development control of commercial centers. The said norms specify the FAR as well as the ECS of such commercial development. Similar control norms are also set up for other development such as residential plotted housing, residential plot of group housing, night shelter, hotel/guest house/lodging and boarding house etc.

34. It is clear from a plain reading of MPD-2021 as well as the Building Byelaws, that MPD-2021 sets out the development norms, which includes the control norms for development on various plots. The Building Byelaws stipulate the standards for construction of



buildings. The FAR, the ground coverage ratio and the height of the building, along with the required setbacks, effectively control the extent to which buildings can be built up. As stated above, certain built up areas are expressly provided as free from the FAR. These include staircases, shafts, basements etc. MPD-2021 also expressly provides for different development controls in respect of the use and use premises.

35. Illustratively, Serial no.2 of Table 8.3 of MPD-2021 provides for permissible 'use premises' in buildings for District Court/Family Courts. In such sub-use zone, the activities as set out, which include a retail shop, are permitted in the said category. Table 8.3 of MPD-2021 is set out below:

**“Table 8. 3: Definitions and Permissible Use Premises in Sub Use Zones**

Sl. No.	Category	Definitions	Activities Permitted
1	Integrated Office Complex / Government Offices (Central / State Government / Local Bodies)	Premises used for the office of Central Government, Local Government and Local Bodies.	Government Offices, Residential (maximum 5% of FAR), Retail shop of Chemist, Book and stationery, Consumer Store, Canteen, Post office, Bank Extension Counter etc.
2	District Court/ Family Courts	Premises used for the offices of Judiciary.	Court, Residential (maximum 5% of FAR), Canteen, Restaurant, Ancillary services and Retail shop, Library, Dispensary, Administrative offices,





			Banks, Post offices, Police post, Fire post, Lawyer's chamber."
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36. It is clear that the control norms are restricted to the activities that are permitted for the purposes of controlled development. The control norms under MPD-2021 and the Building Byelaws are not concerned with the terms on which such activities are carried out. MCD certainly would not be concerned with the lease or license conditions of a retail shop in a District Court Complex or whether operation of a library in the said complex is remunerative. So long as the activities carried out in a District Court Complex fall within the scope of the permitted activities, the development control norms and the Building Byelaws would be duly complied with.

37. Undisputedly, parking is one of the permitted activities in the basement and the areas earmarked for the said purpose in Pacific Mall. So long as the said areas are used for parking of vehicles, it would not be open for MCD to claim that the area has been misused for the reason that the owner is charging fee for permitting parking in the said premises. There is no provision in the Building Byelaws which proscribe charging of fee or controls the terms on which buildings are used.

38. Mr. Arora, learned counsel appearing for MCD also points out that the sanctioned building plans included a condition that if the basement is not used in conformity with the 'use premises', it shall be



counted in the FAR. He submitted that the use of a parking space for commercial purposes would not amount to use of the basement in conformity with the 'use premises'. It is suggested (although not expressly submitted) that if the parking fees is charged, the same would amount to use of the basement for commercial purposes and in terms of the aforementioned condition, the area of basement would be required to be included in the FAR.

39. The aforesaid contention is wholly unmerited. The reference to the 'use premises' refers to the use premises in the planning norms. Thus, a commercial center would include use premises such as commercial offices, shops, cinema etc. If the basement is used for any of the purposes for which the 'use premises' is permitted, that is, if it is used as a commercial center for shops, commercial offices etc., the basement would be required to be included in the FAR. However, MPD-2021 as well as the Building Byelaws expressly provides that if the basement is used for parking, storage and services, it would not be included in the FAR.

40. Mr. Arora was unable to point out any provision of the DMC Act, which empowered MCD to determine whether any parking fee could be charged by PDCL. As noticed above, the Show Cause Notice dated 30.10.2017, and the order dated 07.11.2017 sealing the parking space of the commercial complex were issued under Section 345A of the DMC Act. Section 345A empowers the Commissioner to seal unauthorized construction. In the present case, there is no allegation that



the construction is unauthorized. Even if it is accepted that powers under Section 345A of the DMC Act can be extended to address misuser of premises, there is no ground whatsoever to hold that the premises in question are being misused on account of collection of charges for parking vehicles. Concededly, the parking space is being used only for parking vehicles and there is no dispute that the same is permitted under the Building Byelaws as well as MPD-2021. As stated above, whether PDCL charges any fee for permitting the vehicles is wholly outside the scope of the Building Byelaws.

41. It was also contended by Mr. Arora that if PDCL is permitted to charge parking fees from the persons visiting the Pacific Mall, they would tend to park their vehicles on the margin of the road, which would lead to traffic congestion. We are not impressed by this contention. It is clearly for the concerned authorities to ensure that vehicles are not parked in no parking zones. Merely because the concerned authorities are finding it difficult to enforce traffic laws is clearly no ground for MCD to intrude into the functioning of a commercial enterprise and insist that parking be provided free of cost. As noted above, Mr. Arora is unable to point out any provision of the Building Byelaws (other than stating that parking the spaces are not included in FAR), which would entitle MCD to direct PDCL to provide parking space free of charge. This would clearly amount to expropriating the appellant's property without the authority of law.



42. We are unable to concur with the view of the learned Single Judge that charging of parking fee runs contrary to the spirit of the Building Byelaws. As stated above, the scope of the Building Byelaws is limited to enforcing the norms for buildings and its use in accordance with the MPD-2021.

43. As noted above, the question as to use of building on a plot of land is controlled by the Zonal Plans. If a plot can be used for commercial purposes as specified under the control norms, the Building Byelaws shall determine the norms and standards for construction of the commercial building on such premises.

44. The reference to the decision in the case of *Ch. Madan Mohan & Ors. v. Municipal Corporation of Hyderabad & Anr.*<sup>1</sup> is misplaced. In *Ch. Madan Mohan and Others v. Municipal Corporation of Hyderabad & Anr.*<sup>1</sup>, the Andhra Pradesh High Court had accepted the plea that parking fee could not be charged *inter alia* for the reason that the Hyderabad Municipal Corporation Act, 1955 expressly included parking space as a public place.

45. In *Ruchi Malls Pvt. Ltd. v. State of Gujarat Through the Secretary*<sup>2</sup>, the Gujarat High Court held that since the General Development Control Regulations, 2017 expressly provides that “*parking spaces for vehicles shall be provided within the building unit*”, the same would necessarily mean that parking space was required to be provided free of charge. We are unable to agree that the Building Byelaws, which require that the building be used only for given



activities would also extend to the other terms on which such permitted activities are carried out. We are unable to accept that the Building Byelaws require PDCL to permit the use of its parking space free of charge.

46. Before concluding it is also relevant to note that Mr. Nandrajog, learned senior counsel appearing for PDCL had also contended that there are twenty-two other similarly placed malls, which are charging parking fees, and no action in respect of those malls has been taken. The said contention was not rebutted. Clearly, MCD cannot be selective in implementing the rules and regulations. However, it is not necessary to examine this issue as in our view, the charging of parking fee does not violate the Building Byelaws or MPD-2021.

47. The appeal is, accordingly, allowed. The impugned judgment is set aside. The order dated 14.05.2018 issued by the Executive Engineer, SDMC directing PDCL not to charge parking fee is also set aside.

**VIBHU BAKHRU, J**

**AMIT MAHAJAN, J**

**NOVEMBER 21, 2023**  
**RK**