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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**+ **W.P.(C) 5194/2017 & CM APPL. 22126/2017****CAMPAIGN FOR PEOPLE PARTICIPATION IN DEVELOPMENT
PLANNING** PetitionerThrough: Mr. Anil K. Aggarwal, Adv.
versus

UNION OF INDIA & ANR Respondents

Through: Mr. Ripu Daman Bhardwaj, CGSC
with Mr. Kushagra Kumar, Advocate.
Mr. Nitin Mishra, Advocate for DDA.
Ms. Puja Kalra, Standing Counsel,
MCD with Mr. Virendra Singh, Ms.
Sharmila Ola, Advocates with Mr.
Anand Kumar Sharma, Sr. Town
Planner.
Mr. Satyakam, ASC with Mr. Ganesh
Kumar Bhatt, Advocate.

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*Date of Decision: 30th November, 2023***CORAM:****HON'BLE THE ACTING CHIEF JUSTICE****HON'BLE MS. JUSTICE MINI PUSHKARNA****J U D G M E N T****MINI PUSHKARNA, J**

1. The present writ petition has been filed as a Public Interest Litigation challenging the constitutional validity of the Notification dated 16th May, 2017 issued by the Department of Urban Development, Government of National Capital Territory of Delhi ("GNCTD"). By way of the said Notification, it was declared that certain villages which were part of the rural areas shall cease to be the rural areas and shall be deemed as urban areas.



The principal challenge in the present petition is to the said Notification on the ground that the same could not have been notified by the Lieutenant Governor, as the power and authority to do so lies with the Corporation of the Municipal Corporation of Delhi (“MCD”) in terms of Section 507 of The Delhi Municipal Corporation Act, 1957 (“DMC Act, 1957”).

2. On behalf of the petitioner, the following contentions and submissions have been raised:

2.1 The impugned Notification has been issued by the Lieutenant Governor without any jurisdiction, power and authority.

2.2 In terms of Section 507 of the DMC Act, 1957, the decision-making power vests in the Corporation of MCD, which shall exercise such power with previous approval of the Government of NCT of Delhi.

2.3 All past Notifications under Section 507 of the DMC Act, 1957 have been issued by the Commissioner on behalf of the MCD. Mere plain reading of Section 507 of the DMC Act, 1957 makes it clear that power to issue notification making any declaration or exemption under Section 507 of the DMC Act, 1957 vests in the MCD.

2.4 The respondents cannot usurp the statutory and/or constitutional power and authority of the MCD. The impugned Notification has been issued in mala fide exercise of power, when no such power exists with the respondents.

2.5 Upon incorporation of Part IX-A in the Constitution of India, the MCD is now a Constitutional body. The MCD is constituted under and draws its strength and power from Part IX-A of the Constitution of India. It has constitutional powers, duties and responsibilities to discharge and perform all functions as enumerated in Schedule XII annexed to Article



243-W of the Constitution of India, including land use regulation.

2.6 On amendment of the DMC Act, 1957 to fulfill the requirement of Article 243-ZF of the Constitution of India in order to bring the same in consonance with the provisions of Part IX-A of the Constitution of India, all the powers and functions under the DMC Act, 1957 vest in the MCD.

2.7 The Lieutenant Governor of Delhi cannot step into the shoes of the MCD, which is a constitutional body under Part IX-A of the Constitution of India. The Lieutenant Governor cannot, at the same time, function as the Administrator of NCT of Delhi, Central Government, Government of NCT of Delhi and the MCD and claim to be repository of all constitutional and statutory power.

2.8 The impugned Notification is ultra vires the Constitution of India and the DMC Act, 1957. It is illegal, unlawful and *ab initio* null and void.

3. On behalf of the North Delhi Municipal Corporation (“North DMC”) and South Delhi Municipal Corporation (“South DMC”), now unified MCD, it has been submitted as follows:

3.1 The matter for urbanization of the villages, which forms subject matter of the impugned Notification, was duly recommended by the Standing Committee and the Corporation of MCD. Thereafter, the matter was forwarded to the Secretary, Urban Development Department for further necessary action. Thus, the Notification has been published in accordance with law and there is no illegality in the same.

3.2 The actual decision for declaration of the villages in question as urbanized, was taken by the Corporation of MCD. Due procedure has been followed, after which the impugned Notification dated 16th May, 2017 was published by which certain villages were declared as urbanized villages.



4. On behalf of respondent no.2, the following submissions have been made:

4.1 The Notification dated 16th May, 2017 has been issued after receiving the proposals from the North DMC and South DMC, now MCD after unification. The proposals for urbanization of the villages, subject matter of the impugned Notification, were approved by the North DMC and the South DMC respectively and were sent to the Government of NCT of Delhi for notification in the official Gazette.

4.2 The said Notification has been issued by the Government of NCT of Delhi on the basis of the proposals recommended by the North and South DMCs, after due examination and vetting by the Law Department, GNCTD and with the approval of the Lieutenant Governor of Delhi.

5. We have heard learned counsel for the parties and perused the record.

6. The moot question to be decided by this Court is whether the Notification dated 16th May, 2017 declaring certain villages as Urbanized Villages in terms of Section 507 of the DMC Act, 1957, has been issued legally and validly.

7. At the outset, it would be useful to refer to Section 507 of the DMC Act, 1957, which reads as under:

“507. Special provisions as to rural areas.—

Notwithstanding anything contained in the foregoing provisions of this Act,—

*(a) the Corporation with the previous approval of the *** Government, may, by notification in the Official Gazette, declare that any portion of the rural areas shall cease to be included therein and upon the issue of such notification that portion shall be included in and form part of the urban areas;*

*(b) the Corporation with the previous approval of the *** Government may, by notification in the Official Gazette,—*



- (i) exempt the rural areas or any portion thereof from such of the provisions of this Act as it deems fit,
- (ii) levy taxes, rates, fees and other charges in the rural areas or any portion thereof at rates lower than those at which such taxes, rates, fees and other charges are levied in the urban areas or exempt such areas or portion from any such tax, rate, fee or other charge;
- (c) the Corporation shall pay a Gaon Sabha—
- (i) an amount equal to the proceeds of the tax on profession, trades, callings and employments, as and when that tax is levied in the Gaon Sabha area, and
- (ii) an amount equal to such portion of the proceeds of the property taxes on lands and buildings in that area as may from time to time be determined by the Corporation, after deducting the cost of collection from such proceeds.

Explanation.—In this section the expressions "Gaon Sabha" and "Gaon Sabha area" have the same meanings as in the Delhi Panchayat Raj Act, 1954 (Delhi Act 3 of 1955)."

8. Thus, upon issuance of the Notification under Section 507 of the DMC Act, 1957, the lands in question become urbanized. With the urbanization of the village, the building bye laws come into operation with respect to the said village land.

9. It would also be useful to refer Article 243-W of the Constitution of India that deals with the powers, authorities and responsibilities of the Municipalities. The same reads as under:

"243-W. Powers, authority and responsibilities of Municipalities, etc.—*Subject to the provisions of this Constitution, the Legislature of a State may, by law, endow—*

- (a) the Municipalities with such powers and authority as may be necessary to enable them to function as institutions of self-government and such law may contain provisions for the devolution of powers and responsibilities upon Municipalities, subject to such conditions as may be specified therein, with respect to—
- (i) the preparation of plans for economic development and social justice;



(ii) the performance of functions and the implementation of schemes as may be entrusted to them including those in relation to the matters listed in the Twelfth Schedule;

(b) the Committees with such powers and authority as may be necessary to enable them to carry out the responsibilities conferred upon them including those in relation to the matters listed in the Twelfth Schedule.”

10. The powers and authorities vested in the Municipalities are detailed in Twelfth Schedule of the Constitution of India. The said powers, *inter alia*, include as follows:

*“TWELFTH SCHEDULE
(Article 243W)*

- 1. Urban planning including town planning.*
- 2. Regulation of land use and construction of buildings.*

XXX XXX XXX”

11. Thus, the Municipalities have been conferred with power and authority relating to urban planning and regulation of land use. Section 507 of the DMC Act, 1957 which deals with the power of the Corporation to declare any portion of the rural area to be included and forming part of the urban areas, is in furtherance of the power which is constitutionally vested in the Municipalities.

12. By the impugned Notification dated 16th May, 2017, 89 rural villages of Delhi have been declared as urban so that the land can be utilized for urban development. With the ever growing population of Delhi and limited land resources, to meet the requirement of housing and other physical, social and institutional infrastructure in the city in a planned manner, rural areas were included in the urban areas in terms of Notification under Section 507 of the DMC Act, 1957.

13. The steps for declaration of the villages in question as Urban Villages



were undertaken by the MCD pursuant to the request of the Delhi Development Authority (DDA) in this regard. Thus, vide letter dated 28th July, 2014, the DDA requested the MCD to declare the villages, as per the list provided and identified by DDA, as urban under Section 507 of the DMC Act. Thus, the letter dated 28th July, 2014 written by the DDA with respect thereto, reads as under:

“Delhi Development Authority

D.O. No. F.15(07)/2013/608-EP

Dated the 28TH July, 2014

As per the notified Land Pooling Policy (LPP) the development in the urbanisable area shall now take place through private participation of the land. The genesis of this policy in Delhi is the outcome of the cumbersome land acquisition proceedings and lengthy process causing delay in the urban development also, after coming into force the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.

In MPD-2021, it is envisaged that under urbanisable area about 20,000-24,000 hac of land is yet to be developed. This proposed area for the development at present is designated as rural area which is required to be declared as urban area to take up the development process. All such area where development is to take place through the land pooling is under the jurisdiction of Municipal Corporation and is required to be declared as urban area under section 507 of Delhi Municipal Act, (DMC) 1957. In this regard, Authority in its meeting held on 10th Jan, 2014 has already approved Action Programme for operationalisation of land pooling policy including declaration of 89 villages as urban area (list of villages enclosed)

Therefore, I would request you to take immediate action for declaration of the villages under your jurisdiction out of the 89 villages as urban areas under the DMC Act, 1957.

*Yours sincerely
(Balvinder Kumar)*

*Sh. Manish Gupta
Commissioner MCD-SDMC
Civic Centre 4th Floor,
Minto Road
New Delhi-110002”*



14. As is evident from the submissions made on behalf of DDA, Land Policy based on Land Pooling was incorporated by the DDA in Master Plan of Delhi-2021 (MPD-2021). Thus, the MPD-2021 provides for alternatives for availability of land for development of Delhi and for engagement of the private sector in the assembly and development of land/infrastructure. The Land Policy has been propounded by the DDA for Planned Development of Delhi and to meet the ever increasing requirement of Housing and other needs in Delhi. Thus, the submissions of the DDA in this regard, as stated in its counter affidavit, read as follows:

“4. It is submitted that the MPD 2021 provides for alternatives for such development and for engagement of the private sector in the assembly and development of land/infrastructure. Further, the MPD 2021 also stipulates that the land policy would be based on the optimum utilization of available resources both, public and private in land assembly, development and housing. For the aforementioned purposes, the Land Policy based on land pooling was incorporated in MPD 2021 (Chapter 19)

5. With the ever growing population of Delhi, limited land, and resources, to meet the requirement of housing and other physical, social and Institutional Infrastructure in the city in a planned manner, the Land Policy based on Land Pooling has been incorporated in the aforementioned Master Plan. The Land Policy is a major initiative to provide housing and infrastructure for a large section of society in a planned manner. Under this Policy, the landowners of Land Pooling areas will pool their land and form a consortium among themselves within a sector and come to DDA as a single entity for development of land. As per the Policy, part land (60 %) will be retained by the landowners for development of residential, commercial and part Public and semi-public facilities and the remaining land (minimum 40 %) will be utilized for development of roads, recreational and other physical and social infrastructure to be used by residing population in these zones.

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7. In the current scenario, the Land Policy is essential for the planned development of Delhi and to meet with the ever increasing requirements of housing and other needs in Delhi. The Policy is applicable in the proposed urbanizable areas of the Urban Extension



for which zonal plans have been notified. For proper development of the capital and with ever increasing populations land required for urban extension has to be urbanized. For implementation of the Policy, these urbanizable areas are to be notified by the Government from time to time. Accordingly, vide the impugned Notification, 89 rural villages have been declared as urban and thereby the lands of the said villages became available for urban development.”

15. Therefore, it is clear that declaration of rural areas as urban areas is done in furtherance of the pre-eminent purpose of Planned Development of Delhi.

16. Perusal of the documents on record shows that the matter with regard to urbanization of the villages in question was placed before the Standing Committee of the then South DMC vide Resolution Item no. 244 dated 05th January, 2015. Thereafter, the matter was placed before the Corporation through Standing Committee for approval vide Item no. 355 dated 26th February, 2015. The Corporation in its full House passed the Resolution thereby approving the urbanization of villages in question that are part of the impugned Notification dated 16th May, 2017. Following that, the notification for urbanization of the villages in question was published in the Official Gazette vide Notification dated 16th May, 2017.

17. Considering the aforesaid timelines as brought forth on behalf of the MCD, it is clear that the impugned Notification dated 16th May, 2017 under Section 507 of the DMC Act, 1957 was published in accordance with law.

18. The actual act of taking a decision for urbanization of the villages in question was undertaken by the Corporation of the MCD in terms of its authority vested under Section 507 of the DMC Act, 1957, as is manifest from the documents and pleadings placed on record. Approval to the said decision of the Corporation was duly granted by the Lieutenant Governor,



after which the same was published by way of Gazette notification.

19. Reading of the DMC Act, 1957 discloses that the Lieutenant Governor of the NCT of Delhi is the Administrator of the MCD. Thus, Section 2(1) of the DMC Act, 1957 states that ““Administrator” means the Lieutenant Governor of the National Capital Territory of Delhi”. Section 73 of the DMC Act, 1957 stipulates that the first meeting of the Corporation after the general election shall be convened by the Administrator. Section 73 of the DMC Act, 1957 reads as under:

“73. First meeting of the Corporation after general election

*The first meeting of the Corporation after a general election shall be held as early as possible after the publication of the results of the election *** under section 14 and shall be convened by the Administrator.”*

20. Further, Section 87 of the DMC Act, 1957 provides for forwarding minutes and reports of proceedings of each meeting of the Corporation to the Administrator. Thus, Section 87 of the DMC Act, 1957 reads as under:

“87. Forwarding minutes and reports of proceedings, to the Administrator

- (1) *The Municipal Secretary shall forward to the Administrator a copy of the minutes of the proceedings of each meeting of the Corporation, within ten days from the date on which the minutes of the proceedings of such meeting were signed under section 85.*
- (2) *The Administrator may also in any case ask for a copy of any paper or all the papers which were laid before the Corporation or any committee thereof and the Municipal Secretary shall forward to the Administrator a copy of such paper or papers.*
- (3) *The Municipal Secretary shall also forward to the Administrator as soon as may be after the date referred to in sub-section (1), a full report of the proceedings of each meeting of the Corporation, if any such report be prepared.”*

21. Therefore, when undoubtedly the decision has been taken by the Corporation in exercise of its authority in terms of Section 507 of the DMC



Act, 1957, the publication of the notification in the name of Lieutenant Governor does not make the notification bad in law, since the Lieutenant Governor is the Administrator of the MCD.

22. Besides, Section 44 of The Government of National Capital Territory of Delhi Act, 1991 (“GNCTD Act”) provides that all executive actions of the GNCTD are to be taken in the name of the Lieutenant Governor. Thus, Section 44(2) of GNCTD Act reads as under:

“44. Conduct of business.—

(2) Save as otherwise provided in this Act, all executive action of Lieutenant Governor whether taken on the advise of his Ministers or otherwise shall be expressed to be taken in the name of the Lieutenant Governor:

[Provided that before taking any executive action in pursuance of the decision of the Council of Ministers or a Minister, to exercise powers of Government, State Government, Appropriate Government, Lieutenant Governor, Administrator or Chief Commissioner, as the case may be, under any law in force in the Capital, the opinion of Lieutenant Governor in term of proviso to clause (4) of Article 239-AA of the Constitution shall be obtained on all such matters as may be specified, by a general or special order, by Lieutenant Governor.]”

23. The authority of the Corporation under Section 507 of the DMC Act, 1957 is in no manner compromised or diminished by publication of the impugned Notification in the name of the Lieutenant Governor.

24. In terms of Section 507 of the DMC Act, 1957 the decision-making power vests in the Municipal Corporation which shall exercise such power with the previous approval of the Government i.e. Government of NCT of Delhi. Section 2(21A) of the DMC Act, 1957 defines Government to mean the Government of NCT of Delhi. Plain reading of Section 507 of the DMC Act, 1957 makes it clear that the power to declare any rural areas to be



forming part of urban areas, vests in the Municipal Corporation. Therefore, the decision to declare any area as forming part of urban area is conferred on the Corporation. Indubitably, in the present case, the decision to declare the rural areas as part of the urban areas has been taken by the Corporation. Merely because the notification has been published in the name of the Lieutenant Governor, the same does not, in any manner, undermine or erode the authority of the Corporation under Section 507 of the DMC Act, 1957. The authority of the Corporation under Section 507 of the DMC Act, 1957 cannot be interpreted in a manner to reduce the same to the ministerial act of publication in the name of the Corporation in the Gazette Notification. Therefore, this Court rejects the contention raised on behalf of the petitioner that the impugned Notification dated 16th May, 2017 issued by the Lieutenant Governor is without any jurisdiction, power and authority or that the same amounts to usurping the authority of the Corporation.

25. In view of the aforesaid, this Court is of the considered view that no procedural impropriety has been committed while publishing the impugned Notification dated 16th May, 2017. Consequently, no merit is found in the present petition. The same is accordingly dismissed along with the pending application.

MINI PUSHKARNA, J

ACTING CHIEF JUSTICE

NOVEMBER 30, 2023/ak/au