

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

Reserved on: 27.01.2021

Date of decision: 11.02.2021

+ **W.P.(C) 3263/2014 & CM Nos. 6739/2014, 16004/2014, 28864/2018, 43902/2018, 48435/2018, 53450/2018, 5953/2020, 8608-10/2020, 12600/2020**

AMAN LEKHI & ORS.

.....Petitioners

Through: Ms.Manali Singhal, Petitioner no. 3 in person alongwith Mr.Santosh Sachin, Mr.Deepak S. Rawat, Ms.Aanchal Kapoor, Advs.

versus

UNION OF INDIA & ORS.

.....Respondents

Through: Mr.Akshay Makhija, CGSC for R-1 & R-12, ASI and NMA with Ms.Roshni Namboodiry, Adv.

Mr.Naushad Ahmed Khan, ASC for GNCTD for R-2, 17 and 18 (PWD), Delhi Police, Delhi Traffic Police) alongwith Inspector Sahdev Rana, TI Defence Colony.

Mr.Arjun Pant, Adv. for R-3 & R-9.

Mr.Pushkar Sood, Mr.Satya Prakash Singh, Advs. for R-5/DMRC.

Mr.Febin M. Varghese and Mr.Samuel David, Advs. for R-10.

Ms.Pinky Anand, Sr. Adv. with Mr.Manoj K. Das, Ms.Kirti Dua, Ms.Akshita Goyal, Mr.Sumit Teterwal, Mr.Shailesh Singh, Advs. for R-19 (NBCC).

Mr.Anil Grover, SC, Mr.Tushar Sannu, ASC for NDMC/R-20 with Ms.Ankita Bhadouriya,

Ms.Noopur Singhal, Ms.Misha Vij, Advs.

Mr.Biraja Mahapatra, Adv. for DPCC.

Mr.Arjun Mitra, Adv. for IIT, Delhi.

Mr.Brijesh Kumar Tamber, Adv. for EPFO in CM No. 5953/2020.

Mr.Ratik Sharma and Mr.Akash Tyagi, Advs. for SECI.

**CORAM:
HON'BLE MR. JUSTICE NAVIN CHAWLA**

1. The present petition has been filed by the petitioners praying for the following relief:-

“(a) Pass a writ of mandamus thereby directing all the concerned agencies to ensure that the residential character of the colony of South Ex-II and the adjoining areas that have lost their residential nature due to unprecedented unchecked commercial growth is restored,

(b) Pass a writ of mandamus thereby directing the concerned authority to ensure that the illegal parking inside the colony is stopped forthwith,

(c) Pass a writ of mandamus thereby directing the respondent no. 3 to take action on the decision of the monitoring committee thereby denotifying the commercial street D8-D15 and take appropriate action against the illegal commercialization of streets D1-D7 and M1-M10, and

(d) Pass a writ of mandamus thereby directing the Environment Pollution Control Authority (EPCA) to give a comprehensive report on the impact of commercialization and development of Kidwai Nagar

on the ring road and residents of colonies along the ring road with full details of environmental impact.

(e) Pass a writ of mandamus thereby directing the EPCA to give detailed survey and furnish report on the illegal commercial activities and also to produce the survey report and all other related facts based on which the illegal commercial activity has been permitted.

(f) Pass a writ of mandamus thereby directing TERI (The Energy and Research Institute) and DPCC (Delhi Pollution Control Committee) to submit report of sound and air pollution in the area. Also the location of testing instruments should be decided in consultation with the Petitioners in writing so that the true and correct reading of the instruments can be ensured.

(g) Pass a writ of mandamus thereby directing the Fire Department and Delhi Traffic Police to give report confirming the free access in case of emergency.

(h) Pass a writ of mandamus thereby directing EPCA/Fire Dept./Delhi Traffic Police to conduct a survey and provide their report/NOC whether NDSE-2 is suitable to access in case of emergency on account of presence of commercial activity.

(i) Pass a writ of mandamus thereby directing MCD/DDA to produce the rights/obligations under category B of House Tax classifications. Also to direct MCD to disclose on affidavit the house tax collected from South Ex residential area and its utilization in the residential area in the past 10 years.

(j) Pass a writ of mandamus thereby directing all the concerned agencies that the green belt within and surrounding the colony is protected and not used for any construction.

(k) Pass a writ of prohibition thereby restraining the re-development of Kidwai Nagar project till the present problems of traffic congestion and parking are not addressed by the respondent authorities.

(l) Pass a writ of mandamus directing ASI to disclose if and as to how it had granted permission of such huge project next to the heritage monument Tomb of Darya Khan.”

2. At the outset, the learned counsel for the petitioners submits that she wishes to confine her prayer only to the issues pertaining to re-development of Kidwai Nagar (East) and for the other prayers, the petitioners will be seeking appropriate remedy in accordance with law, if so advised. In fact, it is noticed that right from the filing of the petition, the focus of the petition has been only on the redevelopment of Kidwai Nagar (East). The petition is therefore, confined to this limited challenge, granting leave to agitate the other issues in an appropriate proceedings.

THE PROJECT:

3. Before embarking to adjudicate on the issues involved in the present petition, it is noteworthy to have an overview of the Project of re-development of Kidwai Nagar (East).

4. It is stated by the respondent no. 1 that Kidwai Nagar (East) was identified as one of the colonies in the Zonal Development Plan of Zone-D in 1993 with a mission to combat the acute shortage of Government housing, especially in the National Capital Region, and the long waiting list of government officials waiting for eligible housing. The Ministry of Urban Development (hereinafter referred to as “Ministry”) decided to

undertake the re-development of Kidwai Nagar (East) area to replace the old buildings with new ones and further to augment the housing stock by optimum utilization of the existing land resources. The said proposal for redevelopment was approved by the Cabinet on 12.10.2010.

5. A detailed project report for re-development of Kidwai Nagar (East) was conceptualized and prepared by the National Buildings Construction Corporation (hereinafter referred to as “NBCC”), respondent no. 19 herein, and a Letter of Intent dated 22.06.2012 was issued by the Ministry thereby appointing NBCC as the executing agency for implementation of the said Project. Upon grant of approvals by the Competent Authorities, NBCC commenced with the re-development work in the year 2013-2014.

6. The Project aims to construct both commercial and residential complexes. The majority of the Project consists of building of houses under General Pool Residential Accommodation (GPRA) for the government employees. For the purposes of commercial use of the land, 10% of the Floor Area (FAR) has been allotted for development of only Central/State Government offices to be used by Central/State Government autonomous bodies, Ministries and Central/ State PSU's.

7. The total Plot Area of land is 86 Acres out of which 72 acres is being used for re-development. The residential towers *inter alia* includes play area, jogging tracks, pet parks, banquet hall, dispensary, primary and senior secondary schools, gardens, local shopping Centre, ATM's.

8. It is stated that at present, 85% of the work has already been executed. Construction of commercial space consisting of 4 towers is completed and ready to be put in operation. Around 1500 families are currently residing in the complex. More than 50% of the total flats and 55 out of 78 residential towers have been handed over to the Ministry/Departments. The Social Infrastructure Buildings were handed over to the Ministry way back in October, 2016.

PETITIONERS SUBMISSIONS:

9. The petitioners are the four residents of South Extension-II, New Delhi, that is, the colony/area adjoining to Kidwai Nagar (East). As per the petitioners, the re-development of Kidwai Nagar (East) shall have a devastating impact on the lives of the residents of the colony and have challenged the same by raising following issues:

“1. Project is in gross violation of the Master Plan of Delhi (MPD) 2021 including the vision and provisions relating to the Redevelopment & Mixed Use Regulations, Permissible Commercial Use, Transportation, Augmentation of Supporting Infrastructure including Social Infrastructure etc. Provisions as contained in Clauses 3.1, 3.3., 3.3.1.1, 3.3.1.2, 3.3.2, 8.1, 8.2, 15.1, 15.3, and 15.6 of MPD 2021 have been violated.

2. Permissions granted by various Authorities like DDA/UTTIPEC, National Monuments Authority (NMA) & Delhi Urban Art Commission (DUAC) etc. are arbitrary, without application of mind and/or in abdication of their duty.

3. Traffic issues in and around the East Kidwai Nagar Project.

4. *No Provisions for Visitor's Parking in the residential and commercial complex.*
5. *Environment Impact Assessment not done.*
6. *Water requirements for the EKN users and its impact on nearby colonies.*
7. *Illegal Felling of Tress by NBCC."*

10. As far as the controversy related to issue no. '6', the same stands satisfied in view of the statement made by NBCC and as recorded in the order dated 21.01.2019 passed by this Court, which is reproduced hereinbelow:

"1. Ms. Anand, learned ASG appearing on behalf of the NBCC states on instructions that NDMC had sanctioned 2200 KLD of treated water to residential units at Kidwai Nagar, and NBCC will now restrict the consumption of treated water to the aforesaid quantum. She further submits that directions may be given for necessary metering of water supply by NDMC. She also points out that a letter to the aforesaid effect has already been sent by the NBCC to the NDMC. In view of the aforesaid statement, the petitioner's grievance with regard to the water supply does not survive. The concerned authority shall ensure that the water supplies to the surrounding areas are not affected on account of water supply to project.

2. Needless to state that NBCC shall not supplement any requirement of water by tapping other resources such as ground water, considering that the ground water is reported to be significantly low in that area."

11. The learned counsel for the petitioners submits that the Project is in gross violation of the Master Plan for Delhi-2021 (hereinafter referred to as “MPD”), which came into force w.e.f. 07.02.2007. She submits that Kidwai Nagar (East) being a government residential colony, the basic character of the same cannot be changed. Relying upon Clause 3.1 of the MPD, she submits that the Project is in complete contravention of the norm of re-densification of housing areas developed at lower densities and along selected section of metro corridor. She submits that the area around the Project is already cluttered, therefore, redevelopment shall create an unplanned load on neighboring facilities thereby denying access to the petitioners to live a good quality life.

12. The learned counsel for the petitioners places reliance on Clause 3.3 of the MPD to contend that a redevelopment strategy should be executed keeping in mind the provisions of infrastructure viz. water supply, sewerage, road network etc., however, the Project in hand disregards these factors. She further submits that in terms of Clause 3.3.1.1(c) of the MPD, redevelopment has to be as per the prescribed norms and in consultation with the residents’ society/RWA/ Traders’ Associations, however, in the present case no such prior consultations were made with the residents of the adjoining area.

13. The learned counsel for the petitioners submits that on a conjoint reading of Clause 3.3.1.2 with Clause 3.3.2 and Clause 15 of the MPD, the Project does not fall within the meaning of “Special Area” and necessarily falls under the Mixed Land Use and therefore, any

redevelopment shall be permitted only as per Mixed Used Regulations specified in Clause 15 of the MPD and the guidelines as specified under Clause 3.3.2 of the MPD. She submits that NBCC has wrongfully applied the provisions of MPD and has exceeded the permissible limits to use the land for commercial activities by building 22% extra commercial portion.

14. She submits that the Project is in gross violation of Clause 15 of the MPD as multi-storeyed commercial buildings are not permissible in residential areas. She submits that the provisions/pre-requisites as mentioned in Clause 15.1(iv) of the MPD have not been acknowledged by the NBCC, let alone fulfilled, before commencing with the Project. She has specifically mentioned Clause 15.1(v) of the MPD to contend that mixed-use of land is not permitted in government housing, institutional/ staff housing of public and private agencies and buildings/precincts etc. Placing reliance on Clause 15.6 and 15.7 of the MPD, she submits that the said clauses give an exhaustive list of the activities permitted on the mixed-use of land and the same should be adhered to.

15. The learned counsel for the petitioner further places reliance on Clause 8.1 of the MPD to submit that the intent of the MPD is decentralization of offices and indicates that as per NCR Plan, no new Central Government and Public Sector Undertaking offices should be located in NCT Delhi, however, the Project aims to relocate/ build new government offices in Delhi, thereby being in total contravention to the provision. She submits that infact, the allotment of 10% FAR for government commercial activities is in violation of Clause 8.2 of the

MPD. She submits that high-density commercial activities of running government offices in such residential colonies is in the teeth of the statutory prohibition as envisaged in MPD.

16. While challenging the decision of the NBCC allocating 10% FAR for commercial complex, she submits that Clause 3.3.2(x) of the MPD mentions “upto” 10% of the FAR which “may” be allowed for commercial use, therefore the provision not being absolute in nature, NBCC could not have proceeded to allot 10% of the FAR for commercial activities as the social and infrastructural network around the area are already saturated. She submits that under the MPD, NBCC was required to build commercial space only upto 10% of the residential area and not of the whole area.

17. The learned counsel for the petitioner places reliance on the following judgments to contend that MPD has a statutory force and should be strictly complied with:-

1. ***Rattan Lal Aggarwal Vs MCD & Ors***, 2011 (144) DRJ 610.
2. ***Kenneth Builders & Developers (P) Ltd. Vs UOI & Ors.***, 2010 SCC OnLine Del 2540.
3. Judgment dated 07.05.2004 passed in WP (C) 4677/1985 titled ***M.C. Mehta Vs Union of India***.
4. ***Harsh Gupta & Ors. Vs NDMC & Ors.***, (1995) SCC OnLine Del 483.
5. ***Rawat Mal Jain Vs DDA***, (1994) SCC OnLine Del 555.

6. *MCD Vs Kishan Dass & Anr.*, (1969) 2 SCR 166.
7. *P.S. Gill & Ors. Vs UOI & Ors.*, (1978) SCC OnLine Del 169.

18. Placing reliance on the judgment of the Supreme Court in *Anirudh Kumar vs. MCD & Ors.* (2015) 7 SCC 779 and *Dr. G.N Khajuria & Ors. vs. Delhi Development Authority & Ors.* (1995) 5 SCC 762, she submits that such unauthorized development cannot be permitted and must be demolished.

19. The learned counsel for the petitioners further submits that even the residents of the complex shall be deprived of social infrastructure as the houses/ residential accommodations are not for people who are working in the offices located in the Project and further, no adequate parking arrangements have been made for the visitors. She submits that the roads around the Project are already deeply congested and there is no separate Metro Station made for Kidwai Nagar (East) hence, the entire burden will fall on INA, AIIMS, and South Extension Metro Stations.

20. She submits that the Kidwai Nagar (East) area adjoins Sarojini Nagar, Narouji Nagar, Netaji Nagar, South Extension etc., which itself happens to be giant commercial hubs in NCT, Delhi, and the roads are overloaded with traffic. Relying on Chapter 12 of the MPD, she submits that the re-development will lead to major havoc on the roads endangering the lives of the residents as also the environment. She submits that traffic assessment has not been carried out by NBCC before

executing the Project, which shows complete lack of planning and non-application of mind.

21. She submits that pursuant to the direction of this Court to NBCC to file its reports on the traffic assessment that was carried out before commencing with the project, Unified Traffic and Transportation Infrastructure (Planning and Engineering) Centre (UTTIPEC) report was filed, which itself admitted, and as recorded by this Court in its order dated 20.05.2019, that they have not carried out any independent traffic impact assessment of the Project and relied upon the report submitted by the NBCC only. She places reliance on the independent traffic assessment report carried out by an IIT Professor, Ms. Geetam Tiwari, to contend that the assessment by NBCC was made on unrealistic assumption that 60% of the people would be using public transport mode, which is contrary to the findings of the Professor.

22. The learned counsel for the petitioners further submits that NBCC has failed to address the issues pertaining to parking of the visitors in the commercial and residential complex. In light of Clause 4, 5, and 6 of the Maintenance Agreement with the allottees of the Complex, which mentions that all the entry to the complex/basement parking will be through Access Control Card (RIFD Card), she submits that such controlled access will lead to further increase in the waiting period for the visitors to park the cars thereby creating traffic jams on the Ring road.

23. She submits that the Project proposed running of Courts and offices which will bring thousands of visitors everyday and these visitors will then park their vehicles on the Ring Road and the service lanes,

leading to further chaos on roads and in residential areas. In fact, even the prescribed parking facility has not been provided in the Project on the false pretext that this will motivate people to use public transport.

24. The learned counsel for the petitioners then submits that permissions/clearances granted by the various Concerned Authorities namely Delhi Development Authority, UTTIPEC, National Monuments Authority, Delhi Urban Arts Commission etc. for the Project are arbitrary and in dereliction of their duty.

25. She submits that the approval dated 14.05.2013 granted by UTTIPEC was manifestly without any application of mind and should be revoked on the ground that the Report of Chapman Taylor (a privately appointed consultant) relied upon by NBCC gives contrary data/analysis as it clearly states that Aurobindo Marg and Ring road around the Project are already saturated. She submits that the IIT Report dated 22.10.2018 pointed out several deficiencies in estimations of the Chapman Taylor Report. She submits that the traffic circulation patterns and its impact on surrounding roads are based on a 2010 traffic survey, which does not consider future traffic density. She further submits that as pointed out in the IIT Report, there is a poor connectivity to public transport system despite its close proximity. She states that infact, even the measure of utilizing CB road to reduce traffic egress over the Ring road and Aurobindo Marg has been rejected by the IIT Report as the same will further enhance the traffic congestion. She submits that UTTIPEC itself vide its Report dated 15.01.2019 raised concerns and stated that NBCC has to strictly comply with condition imposed on it with respect to

integration of the Project with surrounding settlement and accessibility to metro station; EKN Project is not based on Transit Oriented Development Policy; MPD supports 80:20 modal share favouring public transport excluding walk trips by 2021; number of Parking provided in Project is lesser than required by MPD; for traffic circulation issue IIT may conduct phase 2 study; on access to public transport, UTTIPEC has approved subway connecting Kidwai Nagar to INA; other proposals are under process with PWD; current Sample Survey required to be done on underestimation of personal motorized share. She submits that these afterthoughts will take years to implement.

26. She further relies on the Counter Affidavit dated 30.06.2014 filed by the Delhi Police which mentioned that rapid growth of vehicular population has put extra burden on the already existing infrastructure in the city and the inadequacy of parking facilities has added to the problem of obstructive parking which adversely affects the smooth flow of traffic. She submits that therefore, UTTIPEC has miserably failed to analyze these issues before granting the approval.

27. Challenging the NOC dated 03.01.2013 granted by the National Monuments Authority (NMA), she submits that the impact of the Project on Darya Khan Tomb, which is an Archeological Survey of India (ASI) "Protected Area", has not been considered in any manner. She submits that NMA in its letter dated 03.01.2013 considered the Project as a special case to grant approval. She relies on Section 20 of the Ancient Monuments and Archaeological Sites and Remains Act, 1958 (AMASR Act) read with Rules 5 to 11 of the Ancient Monuments and

Archaeological Sites and Remains (Framing of Heritage Bye-Laws and Other Functions of the Competent Authority) Rules, 2011 to contend that there is no justification as to why the impact study on the Tomb was not undertaken; provisions of AMASR Act not followed; and the Project was taken as a special case. She submits that infact, the NBCC in its calculation of the total area of the Project has illegally included the area of the Tomb thereby making the acts of the NBCC completely unlawful.

28. Challenging the approval dated 25.04.2013 granted by the Delhi Urban Arts Commission (DUAC), the learned counsel for the petitioners submits that the permission vide its letters dated 02.07.2012 and 14.08.2012, was declined twice by the DUAC. She relies upon the following extract of the letters declining the permission:

“The Commission felt that the scheme with generally repetitive blocks with a height upto 150 ft in 76 towers is a vertical slum and will have an adverse impact on New Delhi's character and environment. The scheme has not been developed keeping in view the importance of the redevelopment of other areas. The scheme presented destroys the emerging future urban design form and architectural character. It was also the view of the commission that such a development would set wrong precedents for the future.

It has been reported that there are approximately 3300 existing trees and probably 85% of them would have to be cut.

Rather than designing the layout of the blocking system respecting the existing trees typology, the high rise towers have been repeatedly arranged in a certain manner destroying the green zone.

Since no sections of the site were submitted, it was not feasible to understand the details of the scheme in

terms of the levels and surrounding development and skyline including with reference to existing monuments of Darya Khan's tomb.

The parking system proposed is inadequate particularly as there was no provision for short term open parking for visitor.

...The area viz-a-viz existing roads network, does not have capacity to hold the enhanced FAR."

29. She submits that, however, later permission was granted without examining how these shortcomings had been addressed.

30. The petitioners also challenge the permission granted by other authorities namely, South Delhi Municipal Corporation (R-4), NCR Planning Board (R-6), Monitoring Committee (R-7), Environment Pollution Control Authority (R-15), and Centre for Science & Environment (R-16).

31. The petitioners further oppose the Project for its repercussions on the Environment. The petitioners submit that apart from rise in air and noise pollution due to the rapid growth in vehicular traffic, the redevelopment will cause illegal felling of trees thereby being in complete violation of the provisions of the Delhi Preservation of Trees Act, 1994. The learned counsel for the petitioners submits that in terms of Section 7(e) and Section 9(2) of the Delhi Preservation of Trees Act, 1994, it is mandatory for the Tree Officer to undertake a critical study before granting the permission. However, in the present case, there is no mention as to whether any scrutiny was done before giving the permission.

32. The learned counsel for the petitioners submits that none of the government authorities have carried out any study or impact on the environment of the Project once it is completed. She submits that the Environment Clearance dated 13.08.2012 given by the State Level Environment Impact Assessment Authority- Delhi Pollution Control Committee (DPCC) is only for the construction of the Project, however, even the said clearance required a thick green belt to be raised along the periphery of the Project to increase green cover and act as buffer zone against noise and air pollution, but no such green belt has been provided by NBCC. She submits that the NBCC Environment Impact Assessment Report was done by a private agency without taking into account the ground realities and the pre-conditions as envisaged in the Environment Clearance dated 13.08.2012. As per Specific Condition 1(i) of the said clearance, NBCC must obtain a prior Consent to Establish from DPCC under the Air (Prevention and Control of Pollution) Act, 1981 and Water (Prevention and Control of Pollution) Act, 1974. The Consent Order by DPCC was issued on 17.04.2013, however, expired on 16.04.2014 and has been pending since 18.01.2018. She submits that, in any event, the consent was initially given under “Orange category” which is different from “Green category” under which the proposed redevelopment falls. Hence, this shows non-application of mind by DPCC in granting approval to a Project in such close proximity to three major hospitals and residential colonies. She further submits that the noise levels as highlighted in the Report are 20% higher than the permissible limits of the Ministry of Environment, Forests and Climate Change. She submits that no ambient air monitoring report of an accredited lab alongwith

compliance report have been submitted every sixth month by NBCC, the same being against the Specific Condition 1(xiv) of the Clearance letter.

33. In view of the above submissions made by the learned counsel for the petitioners, the petitioners now seek demolition of the alleged illegal construction so raised. The learned counsel for the petitioners places reliance on the following judgments in support of her prayer:

1. ***Esha Ekta Apartments Cooperative Housing Society Limited & Ors. vs. Municipal Corporation of Mumbai & Ors.***, (2013) 5 SCC 357.
2. ***Dipak Kumar Mukherjee vs. Kolkata Municipal Corporation & Ors.***, (2013) 5 SCC 336.
3. ***Priyanka Estates International (P) Ltd. vs. State of Assam***, (2010) 2 SCC 27.
4. ***Shanti Sports Club & Anr. vs. Union of India & Ors.***, (2009) 15 SCC 705.
5. ***Royal Paradise Hotel (P) Ltd vs. State of Haryana & Ors.***, (2006) 7 SCC 597.
6. ***Friends Colony Development Committee vs. State of Orissa & Ors.***, (2004) 8 SCC 733.
7. ***M.I. Builders Pvt. Ltd. vs. Radhey Shyam Sahu & Ors.***, (1999) 6 SCC 464.
8. ***Manju Bhatia vs. NDMC***, 1996 SCC OnLine Del 640.

SUBMISSIONS OF NBCC – RESPONDENT NO. 19

34. The learned senior counsel for the NBCC raises a preliminary objection with respect to the maintainability of the present petition. She submits that once statutory permissions have been granted and the Project is put to execution, the appropriate remedy available to the petitioners is to approach the National Green Tribunal (NGT) as Section 29 of the National Green Tribunal Act, 2010 (NGT Act) imposes a bar on the jurisdiction of the civil courts on deciding the issues relating to any claim for granting any relief or compensation or restitution of property damaged or environment damaged. She places reliance on the judgments of the Apex Court in *Ratnagiri Nagar Parishad vs. Gangaram Narayan Ambekar & Ors.*, 2020 SCC OnLine SC 441 and *Bhopal Gas Peedith Mahila Udyog Sangathan & Ors. vs. Union of India & Ors.*, (2012) 8 SCC 326, wherein it was held that if a case involves questions of environmental laws and/or relating to any of the seven statutes specified in Schedule I of the NGT Act, then only NGT will have the jurisdiction to deal with the case.

35. The learned senior counsel for the NBCC submits that in any case, the questions/ issues regarding the Environmental Clearance granted by the DPCC for the said Project has already been dealt and decided by the NGT in OA No. 134 of 2014 titled, *Rajeev Suri vs. Ministry of Urban Development & Ors.* The applicant therein had challenged the Environmental Clearance dated 13.08.2012. The NGT vide its order dated 13.01.2015 negated the said challenge. She submits that the

decision of the NGT is binding as no appeal was preferred before the Supreme Court.

36. The learned senior counsel for the NBCC submits that as the issues raised by the petitioners pertaining to cutting of trees, Visitor's Parking, Clearance from ASI etc. have not been pleaded in the main Writ Petition but only in form part of the additional affidavits/ documents, this Court should decline to go into the merit of the same. She submits that in the Writ Petition, the grievance of the petitioner was mainly with respect to the perceived environmental impact, traffic congestion and alleged illegal commercial activity. She submits that in the Writ Petition, the petitioners have not made any challenge to the Environmental Clearance dated 13.08.2012 as also to the various approvals granted by the concerned authorities, therefore, the relief so prayed is ex-facie not maintainable. She submits that in any case, all the clearances were granted after due scrutiny and discussions made in various meetings with the Authorities.

37. The learned senior counsel for the NBCC submits that the Project is the first redevelopment Project in Delhi and has duly complied with the provisions of MPD-2021 and aims to achieve the vision of MPD-2021, that is overall city development plan with optimum utilization of existing urban land and accommodating more population in planned manner through self generating re-development and importantly, to provide better quality of life with all modern facilities, adequate infrastructure, social infrastructure and conservation of environment.

38. She submits that the allegations made by the petitioners that the Project is illegal and in violation of the building norms as stipulated in the MPD, is misleading and unsubstantiated. She places reliance on Clause 3.3 of the MPD, which provides for redevelopment strategy, to contend that running commercial activities in the area will not lead to change in the land use and/or make it “mixed use”. Clause 3.3.2 of the MPD itself permits 10% of FAR for commercial use and 10% of FAR for community facilities. She submits that Sub-clause (v) of Clause 3.3.2 allows additional FAR of 50% over and above of existing permissible FAR subject to the limit of 400 and in the present case, the permissible FAR as approved being 300, is within the permissible limits. Infact, the actual FAR achieved in the Project is 203, which is much less than the permissible FAR of 300. She submits that the Project is not being used by any private entity and the redevelopment squarely falls within Clause 3.3 of the MPD.

39. The learned senior counsel for the NBCC submits that the Project does not fall within the ambit of Clause 15 of the MPD, which deals with “Mixed Use Regulations” as the Project is for the redevelopment of residential colony and not for any private commercial development. She submits that the said Project falls under Clause 3.3 and not under Clause 15 of the MPD.

40. She further submits that even Clauses 8.1 and 8.2 of the MPD have no application to the present case as the said provisions deal with development of Government offices only and have no relation with the redevelopment scheme. She submits that the reference made by the

NBCC to Clause 8.2 was only to justify the parking norms for Integrated Office Complexes, which also include PSU's, Government offices under Government land use.

41. On the allegations regarding the inadequacy of social infrastructure in the complex for the residents/visitors, she submits that the same is incorrect inasmuch as the Project provides measures for social infrastructure like schools, dispensaries, parks, banquet halls etc.

42. With respect to the issue of Traffic Impact on the Project and the grant of approval by the UTTIPEC, she submits that a detailed traffic study was carried out on the traffic and transportation related concerns by the NBCC and submitted before the UTTIPEC. An Environmental Impact Assessment Report of the Project was also placed and the same was examined in detail by the UTTIPEC in its several meetings wherein it made certain observations/recommendations, compliance of which was duly made by NBCC before the grant of final approval. In this regard, the learned senior counsel for the NBCC places reliance on the minutes of meeting dated 31.01.2013 held by the Secretary (UD) in respect of re-development of Kidwai Nagar (East) wherein UTTIPEC informed that the overall traffic scheme meets the norms, however, certain suggestions were directed to be incorporated by the NBCC. Thereafter, in the 11th UTTIPEC meeting dated 01.02.2013, further suggestions were made to the NBCC regarding parking and traffic issues. UTTIPEC in its 42nd Meeting dated 08.05.2013 granted approval after examining the nature of the Project and the suggestions incorporated by the NBCC. She submits that all the aspects were duly taken into consideration before grant of

such approval and cannot be assailed on the ground of non-application of mind.

43. She further submits that traffic concerns as envisaged under Chapter 12 of the MPD have been duly considered by the NBCC in the report submitted to the UTTIPEC before commencing with the Project and without prejudice to the same and after due deliberation and discussions, NBCC has proposed a remedial measure of construction of an elevated corridor to deal with the additional vehicular traffic on account of all redevelopment colonies in the periphery, that is Kidwai Nagar (East), Narouji Nagar, Netaji Nagar, Mahammadpur, Kasturba Nagar, and AIIMS. It is only after detailed examination and study by the State PWD and the recommendations of expert agencies that the said proposal of elevated corridor was submitted before UTTIPEC, which is under its consideration. She submits that this will certainly address the issue of additional vehicular traffic on account of redevelopment.

44. She submits that to combat and mitigate the additional traffic, various measures are being undertaken in and around the Ring Road and Aurobindo Marg. She submits that, as per the Map showing the Traffic Circulation system in the presentation given in the Governing Body Meeting, CB Marg and Barapullah Roads are under-utilized, therefore, the maximum egress/ingress from Kidwai Nagar (East) will be towards CB Marg/Barapullah Road. In regard to accessibility to public transport by the visitors/residents, she submits that the entry/exit no.3, approved by UTTIPEC, connecting Kidwai Nagar (East) with CB Marg through an under deck bridge below Barapullah Nallah, has pedestrian footpath

connected to INA metro station which is just 200m away and the said proposal of connectivity has been approved by the UTTIPEC Governing Body in its 54th Meeting held on 22.06.2017. Therefore, as a result of such close proximity and connectivity of the metro station, public transport will be the preferred mode of transport for maximum visitors thereby reducing the pressure of vehicular traffic.

45. She submits that in any case, as per the UTTIPEC Report dated 15.01.2019 which clearly mentions that AIIMS intersection being one of the busiest intersections in Delhi that generated traffic from various surrounding activities and the major backend traffic contribute to delay and congestion, as such Kidwai Nagar (East) redevelopment Project cannot be solely held responsible for the congestion. Therefore, by proposing maximum ingress/outgress towards CB Marg/ Barapullah, she submits that the traffic circulation towards already saturated Ring Road and Aurbindo Marg has been curtailed.

46. As a counter to the Traffic Study/report made by IIT Delhi on which the petitioners rely, the learned senior counsel for the NBCC submits that the review of the Project by IIT, Delhi was made after more than five years of traffic study made by NBCC and approval dated 08.06.2013 given by UTTIPEC. As far as the objection of the petitioners on the estimation regarding usage of mode of transport/modal split/travel mode share by the visitors, she submits that the same should fail as the approval accorded by UTTIPEC was based on modal split followed under MPD, according to which the estimation of use of 70% of public transport by the visitors is justified. She further submits that due to less

number of availability of parking as projected in the complex, there will definitely be an increase in the number of public transport users. She submits that the observation of modal split of 45% private mode and 43% public transport by IIT, Delhi is based on Census 2011 for South Delhi and not as per MPD, therefore, the said estimation cannot be considered for the Project in hand.

47. The learned senior counsel for the NBCC submits that the challenge made to the approval granted by the National Monuments Authority (NMA) is beyond the pleadings inasmuch as the same has not been raised in the petition. The said approval was granted by NMA on 03.01.2013 and by the Competent Authority under AMASR Act, 1958, on 15.03.2013. She submits that the proposal of the Project was also placed before DUAC, however, the same was initially rejected raising certain observations. The revised proposal was approved by the DUAC vide its letter dated 15.07.2013. She submits that in any case, the contention regarding the ASI Protected area has been considered by the ASI and inspection has been carried out on 27.06.2019 in terms of the interim order dated 20.05.2019 of this Court. In support of her argument, she places reliance on the Report filed pursuant to the inspection by the ASI placed alongwith the Affidavit of the ASI dated 24.07.2019, which mentions that creation of buffer area with proper fencing by NBCC has brought ample greenery which beautifies the entire surroundings, reduces pollution as well as protects the monument.

48. As far as the alleged illegal tree felling is concerned, the learned senior counsel for the NBCC submits that even though the said issue has

not been raised in the petition, the permission to remove 729 trees was granted by the Secretary, Environment and Forest, GNCTD under Delhi Preservation of Trees Act, 1994 vide Notification dated 19.12.2013, whereby NBCC was required to deposit a sum of Rs. 2,34,73,800/- with the Forest Department, GNCTD for compensatory plantation of 7290 trees. The Tree Officer and DCF (Forest) also granted permission for cutting down of 729 trees vide order dated 23.12.2013. The permission to remove 1167 trees was also obtained by NBCC from Tree Officer and DCF (Forest) vide Order dated 08.12.2014 and NBCC also deposited a sum of Rs.4,50,80,000/- towards compensatory plantation. She submits that from the permission granted to cut 1852 trees, 1796 were cut and compensatory plantation done at Kidwai Nagar (East) is 14575 in number out of 15455. As a result of such compensatory plantation at Kidwai Nagar (East), such newly planted saplings have grown up as full-fledged trees and created a green belt around the area.

49. She submits that in relation to seeking clearance on environment impact, a detailed Environmental Impact Assessment was carried out through an expert agency and submitted before various authorities. DPCC issued its Consent to Establish for a period up to 18.01.2018 and the application for renewal was submitted to DPCC on 18.01.2018. The application seeking consent to run office blocks has also been submitted on 07.01.2019. She further submits that the refusal dated 28.05.2015 was not related to the development Project but for operation of Construction and Demolition Waste Recycling Plant within the Site. She submits that since only one application can be accepted qua the Project, DPCC has

asked NBCC to submit the application for the remaining construction works on offline mode and such application has already been submitted by NBCC.

50. As far as the compliance related to parking norms in the complex, the learned senior counsel for the NBCC submits that provision of parking for the residential units is as per the GPRA norms under The Allotment of Government Residences (General Pool in Delhi), Rules 1963. Placing reliance on the Office Memorandum dated 07.08.2013 issued by the Ministry, she submits that the parking norms for all the categories of houses under GPRA shall be as per the letter dated 16.09.2009 of the Ministry and shall be applicable throughout the country. The details of ECS to be adopted have been conveyed by the Ministry vide its letter dated 16.09.2009 and the same has been adopted in the present case. Infact, NBCC has duly complied with the direction of the UTTIPEC of making provision of parking space for allottees in three level basements. The table reproducing the provisions of parking of Office Block/Social Infrastructure and residential accommodation has been extracted below:

<i>Officer Block/Social Infrastructure</i>	- <i>Based on MPD 2021</i> - (1875 nos for Office Block + 749 nos – Social Infrastructure)	2624 nos
<i>Residential Accommodation</i>	<i>Based on GPRA Norms (Project under GPRA</i>	7920 nos

	<p><i>Group Housing Scheme, Ref- Page...of Annexure 4</i></p> <p><i>Type II – 1.0</i> <i>Type III – 1.25</i> <i>Type IV – 2</i> <i>Type V – 2</i> <i>Type VI – 3</i> <i>Type VII – 3</i></p>	
Total	PARKING	10544 nos

51. She submits that the estimated clearance of 156 minutes for entering the complex is not estimated in normal scenario but “worst case scenario”, in the remote event when all 11045 parked vehicles are required to be cleared at once through one gate. The figure being cumulative has to be divided by eight as there are eight exit gates. Therefore, the said estimation cannot be read in isolation by the petitioners.

52. She submits that the letters issued by allottees of office spaces suggests that parking space shall also be required for the visitors and the visitors parking for the office complex has been considered under the parking norms under Clause 8.2 of the MPD and GPRA Norms. She submits that vehicle parking for visitors of residential complex are

temporary and can be accommodated in the space within the complex's colony.

53. She submits that despite of the compliance of all the parking norms, various measures have already been/are being undertaken to ensure hassle free parking in the complex. She submits that even though all the occupants are allotted parking space as provided in GPRA Norms, however, all may not be having the same number of cars. She further submits that all the occupants of Type V, VI and VII will be using office vehicles, which would be only for pick and drop arrangement without parking in the complex. With the spread of the concept of "Walk to Work" approx. 416 nos. of parking provided to the occupants may remain utilized. The operation of two entry/exit Gates connecting CB Marg/ Barapullah Road will ensure smooth inflow/outflow of vehicles. She submits that the third entry/ exit point connecting CB Marg is under construction and will also be operational soon. She further submits that the number of allottees are shifting from the nearby locality, therefore, the vehicular traffic will remain unchanged to a large extent with no additional traffic load on the Ring road. Further, RIFD Cards controlled parking will ensure no outside/ excess vehicles enter the complex.

54. She submits that, therefore, averment of the petitioners that the Project will have a catastrophic effect on the connecting roads, environment, nearby hospitals and livelihoods of the residents, are all baseless and without any substance. She submits that the Ministry, in light of the larger public interest and with a vision to eradicate the shortage of GPRA to various categories of Government Officials has

passed the said Project. She submits that in fact, in terms of the interim Order dated 03.07.2014 passed by this Court, the Lieutenant Governor (LG) revisited the Project and examined the impact of existing infrastructure, noise and air pollution as well as traffic congestion. After giving a personal hearing to senior officials of various authorities as well as the petitioners, the LG in a detailed report dated 05.08.2014, held that most of the concerns raised by the petitioners were already foreseen by the planners and all the requisite measures have been adopted in the Project so that the residents of the area are not put to any hardship. She submits that presently the Project is on the verge of completion and the interim restraining order of this Court dated 20.08.2018 has caused great prejudice thereby leading to losses and must be lifted.

55. The learned senior counsel for the NBCC submits that the Project has admittedly obtained all the approvals in accordance with law and since the re-development is almost complete and majority of the occupancy has already been handed over to various flat owners who are currently residing in the complex, the Project warrants no interference by this Court.

56. She submits that even the Supreme Court vide its judgment dated 02.09.2016 in CA No.8747/2016 titled, ***National Building Construction Corporation Ltd & Ors vs. Khosmendir Singh Gahunia & Ors.***, has gone into the detail of the Project and approvals given by the authorities and concluded that the Project for redevelopment having received the statutory approvals, it was thus necessary to facilitate the completion of

the Project on schedule with additional suitable safeguards to be taken by NBCC.

57. The learned senior counsel for the NBCC places heavy reliance on the judgment dated 25.02.2020 of the Division Bench of this Court passed in a PIL being W.P(C) 6680/2018 titled, *Dr. Kaushal Kant Mishra vs. Union of India & Ors.* to contend that the said case involved identical issues. She submits that the petitioners therein raised similar grievances/challenges relating to Nauroji Nagar Redevelopment Project. She submits that the issues pertaining to violation of MPD, illegal felling of trees, water supply, approvals/clearances, traffic congestion etc. were considered by the High Court in the said case and were dismissed by the Court inter alia holding that once the issues of water, traffic congestion etc. have been taken care of and NOCs having been issued by the respective departments after a careful analysis of the ground realities and the provisions of law, there was no impediment in completion of the redevelopment Project.

Submissions by Union Of India- Ministry Of Urban Development, ASI and NMA (Respondent no.1, Respondent no.21 and Respondent no.22 respectively)

58. The learned counsel for the Union of India representing the Ministry, ASI and NMA submits that the re-development of old colonies not only replaces old dilapidated buildings with modern environment friendly houses, but also provides an opportunity for optimum utilization of land. He submits that the Project has a Green Rating for Integrated

Habitat Assessment and obtained approvals from the concerned statutory authorities in accordance with prevailing rules, regulations and laws. He places reliance on the approvals/clearances/consent dated 13.08.2012 and 15.04.2014, 15.03.2013, 17.04.2013, 14.05.2013 of State Level Environment Impact Assessment Authority, NMA, DPCC and UTTIPEC respectively. He further places reliance on the approvals granted by DUAC, L&DO, Airport Authority of India, MTNL, Indraprastha Gas Ltd, and Delhi Fire Service. Reliance has also been placed on the Judgment of the Supreme Court in *Dr. Kaushal Kant* (Supra).

59. Reiterating the submissions of the learned senior counsel of the NBCC, he submits that the buildings have incorporated architectural and aesthetic features and the joint inspection by the NMA on 27.06.2019 further found that the colour scheme of the construction is neutral and does not divert attention from the monument. The design of the residential complex is contemporary which also includes architectural features such as arches incorporated in the commercial complex surrounding the monument on the Eastern side; in fact, the creation of buffer zone by NBCC has beautified the surroundings and has created a green belt of 12 mts. all around the Project. He submits that in any case, the development fulfills both social infrastructural and environmental aspects inasmuch as previously the open area was just 28% with 13% green cover, however, presently there is 76% open area including green cover of 46%; FAR achieved is 203 out of permissible limit of 300; promotion of walk to work has lead to reduction in traffic; close proximity with metro stations; parking space of 10639 cars in multi-level

basements; interconnection of basements; green initiatives to reduce pollution; retention of 33% trees and plantation of about 18000 trees.

Submissions by DUAC-Respondent no.10

60. The learned counsel for DUAC submits that Section 12 of the Delhi Urban Art Commission Act, 1973 provides that every Local Body before seeking approval of any building operation, engineering operation or development proposal, is required to refer it to DUAC for consideration at conceptual level. Accordingly, the Report for redevelopment of Kidwai Nagar (East) prepared by the Project Consultant, M/S Chapman Taylor, was submitted to the Commission for its perusal on 06.06.2012. The same was returned with observations including design of building blocks and utilization of spaces and existing natural features for visual continuity. The revised proposal was submitted and considered by the Commission in its 1312th Meeting on 25.07.2012 and was rejected with observations/suggestions. The Commission therein suggested for a layout that would respect the open green space and was informed to the Project Consultant by its letter dated 14/16.08.2012. The formal proposal was submitted by NDMC by the letter-dated 18.03.2013 and was considered by DUAC in its meeting held on 23.04.2013. NDMC was thereafter communicated vide letter dated 25.04.2013, to submit the revised plans incorporating the observations so that the approval of the Scheme could be released. The revised Proposal of NDMC was first considered by the Commission in its meeting on 02.05.2013 and again on 22.05.2013, thereby directing NDMC to properly incorporate the observations/suggestions in the revised plans. In a meeting held on

26.06.2013, the Commission again considered the revised plan submitted by the NDMC and decided to release its approval for the proposal to NDMC with certain observations, which was communicated to NDMC by the letter dated 15.07.2013. He submits that the Scheme was scrutinized in accordance with the provisions of the Delhi Urban Art Commission Act, 1973 and was approved strictly in accordance with law after ensuring the due compliance with MPD, Zonal Plans, Building Bye laws etc. He submits that the Commission being an expert in the field of visual arts, urban design, environment and architecture and the Project having been examined judiciously by the experts, the allegations made by the petitioners are baseless and liable to be rejected.

Submissions by Delhi Police and Delhi Traffic Police-Respondent nos.17 and 18

61. The learned counsel for the Delhi Police and Delhi Traffic Police submits that the duties are being effectively carried out and appropriate steps are being taken to ensure strict compliance to the traffic rules and optimum utilization of the available infrastructure. He submits that there has been regular augmentation and effective management of traffic even during weekends and festive occasions, however, he submits that the responsibility of development of adequate parking facilities in Mixed Land Use zones lies solely on the civic agencies.

62. Insofar as emergency access to AIIMS and Safdarjung Hospitals, he submits that the access to these hospitals has remained hassle-free till date by coordinated efforts of Traffic Police and PWD by minimizing the

direct exit and entry-point; use of U-turns; and reduction of number of crossing.

63. He further submits that intensive traffic patrol have been deployed to cope up with the increased traffic flow and maintain circulation of traffic in the area which also includes installation of CCTV Cameras, employment of two head constables, six constables and other additional staff.

Submissions by DDA and UTTIPEC- Respondent nos.3 and 9 respectively

64. The learned counsel for DDA and UTTIPEC submits that the redevelopment was approved vide resolution dated 27.07.1993 passed under Section 10 of the Delhi Development Act, 1957 (hereinafter referred to as DDA Act), and the layout plan of Kidwai Nagar (East) was approved by NDMC vide letter dated 13.03.2014. He submits that DDA has no role as neither it is the layout sanctioning authority nor the concessionaire. He submits that the proposal as submitted by NBCC was examined thoroughly and only thereafter, the approval was granted. He reiterates that the Project does not fall within the ambit of Mixed Use of Land. In this regard, he places reliance on Clause 15.1(i) of the MPD. He further submits that as per the direction of the Court issued vide Order dated 28.11.2018, UTTIPEC also examined the report of the IIT Professor and filed its response dated 15.01.2019 setting out both long-term as also short-term measures. He submits that in any case, PWD has submitted a comprehensive traffic plan to the UTTIPEC on 27.05.2019 that would address the issue of vehicular traffic impact. The same is

currently under consideration.

Submissions by NDMC-Respondent no. 20

65. The learned counsel for the NDMC submits that NDMC approved the layout plans of re-development as submitted by NBCC vide order dated 12.02.2014, which was released on 13.03.2014. He submits that the proposal was for demolition of entire existing structures, excluding the protected monuments under ASI, and reconstruction of housing and commercial buildings/complexes. The Layout Plans of reconstruction were submitted to NDMC after obtaining requisite clearances from various other departments and plans were approved as per the provisions of MPD. He submits that main object and vision of MPD is to make Delhi a global metropolis and a world class city, which inter alia necessitates planning and action to meet the challenge of population growth and to make provision of adequate housing and upgradation of old and dilapidated areas of the city.

66. Placing reliance on the Clause 3.3 of the MPD-2021, he submits that the said Clause provides for redevelopment of existing urban area. Clause 3.3.1 of MPD contemplates target areas for redevelopment on the basis of their need for upgradation and potential development. Further, the Clause 3.3.2 of MPD provides for Guidelines pertaining to redevelopment schemes.

67. He further submits that even the parking standards have been approved in accordance with MPD. Pursuant to a meeting dated 29.01.2013, NDMC approved the parking norm of 1.8ECS per 100sq.mt.

of floor area. He submits that although no specific parking standards for PSUs have been specified in MPD, the standards for parking of PSUs were decided as per Table 8.3 of MPD as the same is applicable to the integrated office complexes of Central Government, State Government and other local bodies. He submits that it was considered that PSUs form an integral part of Government and PSUs have been granted equivalence of government offices in MPD at many instances. He submits that even though some activities under Table 8.3 of the MPD can be termed as commercial in nature, the parking norms will remain the same as they form part of the integrated office complex.

ORDERS PASSED IN THE PETITION:

68. Before answering the submissions of the parties, it will be apposite to elucidate to various interim orders passed during the timeline of this case with regard to the controversies/issues raised by the petitioners.

- By the first order dated 21.05.2014, this Court clarified that any construction carried out by the respondents shall be subject to the further orders passed by the Court.
- By the order dated 03.07.2014, this Court took judicial notice of the existing infrastructure, however, it observed that any interdiction would impede a large Project, therefore, the Court requested the Hon'ble Lieutenant Governor of NCT of Delhi to examine the concerns of the residents who have filed the petition, by directing as follows:

“Today, Mr. Sanjeev Goyal, learned counsel appearing for Government of NCT of Delhi states that Hon'ble Lieutenant Governor has kindly consented to examine the concern of

the residents who have filed the present writ petition. Consequently, the Hon'ble Lieutenant Governor is requested to revisit the project and analyse its impact on existing infrastructure as well as lives of residents in the neighbourhood in particular with regard to noise, air pollution as well as traffic congestion. Remedial measures, if any, like augmentation of infrastructure should also be examined by the Hon'ble Lieutenant Governor.

A senior representative each from all respondents and all agencies would be personally present before the Lieutenant Governor as and when he convenes the meeting in the last week of July. It is made clear that Lieutenant Governor has the discretion to convene as many meetings or invite any other person or organisation as he deems fit and proper.

This Court makes it clear that it is not passing any further interim order in view of the statement made by Mr. A.S. Chandhiok. However, the first interim order shall continue till next date of hearing.”

- By the Order dated 16.01.2018, the Court observed that some verification is required on the statistics regarding the vehicular traffic that would enter the East Kidwai Nagar Complex and in this regard requested IIT, Delhi to depute a team by directing as under:

“2. During the course of arguments, it was submitted that there would be about 2,400 additional residential flats in the East Kidwai Nagar Complex and NBCC is assuming a norm of 1.8 Per Car Unit (PCU). In addition, a large commercial complex consisting of 1 lakh sq. mtr of commercial space is also under construction. Admittedly, there would be large number of vehicles entering and existing the complex on a daily basis. Undisputedly, the surrounding access roads - the

Ring Road, Aurobindo Marg and C. B. Marg - are already highly congested. It is also been necessary to examine what would be the time taken to clear the vehicles from the main road to the access points at different hours of the day and further what would be the extent of traffic hold-up during those hours.

3. This Court is of the view that it would be apposite to request the IIT, Delhi to depute a team to verify the model and parameters on the basis of which NBCC and other concerned authorities have structured the project. If necessary, IIT, Delhi may also have to conduct a study on a sample basis to verify whether the assumptions on which the model adopted by the concerned authorities is based are acceptable.

4. Mr. Mitra, the learned counsel, who appears for the IIT, Delhi is requested to take instructions whether IIT, Delhi would be able to take up the aforesaid task and complete the same in a short span of time as the project is already at an advanced stage. IIT, Delhi shall also indicate the estimated cost that would be required for conducting the aforesaid exercise.

5. Insofar as the supply of water is concerned, NDMC shall file an affidavit clearly indicating the estimated requirement of fresh water and also the source of such additional water. Let the said affidavit be filed within a period of two weeks from today.”

- By the Order dated 05.02.2018, the Court appointed Prof. Geetam Tiwari from IIT, Delhi to carry out the study on the

traffic issues and give the report to the court, observing as under:

“1. Mr Mitra, the learned counsel appearing for the IIT, Delhi states that Prof. Geetam Tiwari alongwith her team from IIT, Delhi has consented to devote the necessary time to examine the assumptions on which the project is based. In particular, the team may examine whether the traffic assessments made in the project report appears to be reasonable. The issue of concern is with regard to the number of vehicles that are expected to enter and exit the complex on a daily basis. There is also a issue whether the security clearance for the parking in the basement would be available, and if so, whether the vehicles would required to be checked while entering the complex. In the first instance, it would not be necessary for the team to take a preliminary view.

2. Prof. Geetam Tiwari would, alongwith her team, hold a preliminary meeting with the officers of the NBCC and the UTIPECC. It is clarified that focus of the study would be to ascertain whether the assessments made by the concerned authorities regarding traffic are reasonable. Prof. Geetam Tiwari may also undertake a sample survey of vehicular traffic to ascertain whether the parameters adopted are reasonable or completely unrealistic. The question whether any further studies are required would be determined only after a preliminary view is taken by Prof. Tiwari.

3. In the first instance, a meeting would be held between Prof. Geetam Tiwari and concerned officers of the NBCC and the UTTIPEC on 12.02.2018 at 2:30

PM at the premises of IIT, Delhi. Two representatives of the petitioner may also be present at the said meeting. The officers of the NBCC and the UTTIPEC shall produce all relevant reports with regard to traffic assessment to substantiate the assessments on the basis of which the project is planned including the assumptions in the report of Chapman Taylor. Prof. Geetam Tiwari is also at liberty to call for such information and assistance as required from NBCC. The concerned officers shall ensure that all necessary information that is required by Prof. Geetam, which is either available with them or with any other authority, is provided to her. Prof. Geetam Tiwari shall fix further meetings at her convenience.

4. Mr. Mitra, the learned counsel for the IIT, Delhi shall inform the Court as to the progress made.

5. Needless to mention, Prof. Geetam Tiwari shall make all endeavours to mitigate the costs and only such expenses as are utmost necessary, be incurred. The costs so incurred shall be paid by the NBCC.”

- On 20.08.2018, the Court considering the preliminary report of Prof. Geetam Tiwari, directed the NBCC to take a declaration from the occupants of the Project to comply with the parking assumption. Further, clarification was sought on the issue of water, observing as under:

“1. By an order dated 16.01.2018, the learned counsel appearing for IIT Delhi was requested to take instructions whether IIT Delhi would be able to take up the task of verifying the model and parameters on

which the NBCC and other concerned authorities has structured the project at East Kidwai Nagar. Subsequently, by an order dated 05.02.2018, Professor Geetam Tiwari of IIT Delhi was requested to hold a preliminary meeting with the officers of NBCC and UTTIPEC to formalise as to how the traffic assessments could be made. Professor Geetam Tiwari was also at liberty to call for such information and assistance as required from NBCC.

2. Professor Geetam Tiwari has since indicated the extent of work to be carried out. She has also pointed out that the assessment would have to be made in two phases. However, if the results of the Phase I indicate that the parameters and assumptions taken up by NBCC are correct then there would be no requirement to take up work of Phase II. She has also indicated that the cost of work relating to Phase I would be approximately Rs. 18 Lakhs.

3. In view of the above, NBCC is directed to ensure that the said sum is paid within a period of one week from today. NBCC shall also render full assistance to Professor Tiwari for her to complete the work as expeditiously as possible.

4. Professor Geetam Tiwari states that she would be in a position to submit the report within a period of six weeks if full cooperation is provided by NBCC. Let the said report be filed within the aforesaid period.

5. Professor Geetam Tiwari has also pointed out that the present model is based on the assumption that the persons occupying the premises would be using public transport, and therefore, the requirement of parking

space has been intentionally reduced. This is not controverted by the learned counsel appearing for NBCC. It would then stand to reason that the respondents ensure that the residential flats are not allotted to persons, who along with their family members own more than 1.8 PCU (which is the assumption on which the parking requirement is assessed). The respondents shall take a declaration from the allottees as to the vehicles owned by them and their family members.

6. The other aspect to be considered is as to the source of the water supply to the units at East Kidwai Nagar, New Delhi. NDMC has filed an affidavit which indicates that the demand for water supply to the units in the project would be 3700 KLD out of which NDMC is required to supply 2400 KLD. The said estimates are based on the water load chart provided by NBCC. It is also affirmed in the affidavit that the supply of water is dependent totally on the Delhi Jal Board. In view of the above, the Delhi Jal Board shall also file an affidavit stating the source from where the additional supply of water would be secured and the arrangements made in that regard.

7. There is no clarity as to how the requirement of water would be met and further the question whether adequate arrangement of traffic has been made, also persists. In the circumstances NBCC is directed not to hand over the possession of the commercial space (other than what has been handed over already) till the next date of hearing.”

- By its Order dated 28.11.2018, this Court issued further directions with respect to parking and water issues, as under:

“1. Professor Tiwari is present in Court and has drawn the attention of this Court to the report submitted by her. She has pointed out that the development plan was based on an assumption that 70% of the occupants would use public transport. According to her, the said assumption is incorrect and is not supported by any empirical data.

2. According to her, approximately 45% of the persons living in South Delhi are using public transport. This fact is not denied by the NBCC. It is the NBCC's case that they had followed MPD-2021, according to which, 70% persons would use public transport. MPD-2021 may have envisioned that 70% of the population would use public transport but that is not the situation on the ground.

3. Insofar as the provisions for parking are concerned, it is reported that sufficient parking is available within the commercial complex. This Court is informed that the norms applied by the NBCC are 1.8 PCU for commercial space and variable norms have been applied for GPRS (one car for Type II & III, two cars for Type IV and V and three cars for Type VI flats).

4. The respondents shall ensure that the said norms are strictly complied with on ground. All persons, to whom residential units are allotted, shall file a declaration on affidavit affirming that they shall limit their vehicles to the norms as provided. NBCC shall also ensure that the system of restricted entry is implemented to ensure that only a limited number of vehicles, in conformity with

the norms, are permitted inside the commercial complex. All allottees shall be issued a permit in conformity with the said norms.

5. UTTIPEC (respondent no.9) shall examine the report submitted by Prof. Tiwari and indicate the corrective measures that can be immediately put in place. UTTIPEC may also consider whether the occupancies are required to be scaled down. UTTIPEC shall submit its independent report in this regard within a period of two weeks from today.

6. The next question to be examined is with regard to the supply of water to the project. NDMC was directed to file an affidavit clearly indicating the source to the extent of water to be supplied to the complex in question.

7. The learned counsel appearing for NDMC states that approximately 2400 KLD of fresh water is required to be supplied to the said project. It is stated that, initially, the same was sub-divided in three categories, namely, residential requirement, commercial requirement and social infrastructure requirement. It is affirmed that the NBCC has withdrawn its demand for social infrastructure requirement and now seeks supply of filtered water only for residential and commercial requirement. He is however, unable to indicate as to the source for such supplies. He seeks further time to comply with the order dated 22.11.2018.

8. Further aspects that are required to be examined are whether the said project is in conformity with MPD-2021 and whether an Environment Impact Assessment was required to be carried out.”

- By the Order dated 20.05.2019, the Court highlighted the issues raised in the petition as follows:

“1. The controversy with regard to the East Kidwai Nagar Project was limited, essentially, to four aspects. The first concerns the contention that adequate arrangements for water supply to the project had not been arranged; the second relates to the parking arrangement made for the vehicles in the project; the third relates to the impact of the increase in the traffic on public roads; and, the fourth relates to the permission granted by the National Monument Authority for carrying out extensive construction within the Regulated Area.

2. Insofar as the concern regarding water supply requirement of the project is concerned, the same was considered and the concerns of the petitioner in this regard are addressed in view of the statement made by NDMC that no additional supply of fresh water would be made to the project. The said statement was accepted on 21.01.2019, as it was submitted before this Court that proper arrangements and feasibility have been made for recycling water.

3. Insofar as the issue regarding arrangements for parking of vehicles is concerned, this Court is informed that parking facilities have been provided as per norms provided under MPD-2021. According to NBCC, the norm of 1.8 ECS per 100 square metres has been adopted. However, according to the petitioner the said claim is applicable for Government offices.

4. Ms. Anand, learned ASG, had initially referred to Table 8.2 of MPD-2021 which provides for the said norms in relation to Development Controls- Govt. Offices. The said table is reproduced below:-

“Table 8.2: Development Controls - Govt. Offices

Use/ Use Premises	Maximum			Parking Standard ECS/100 sq.m. of floor area	Definition	Activities Permitted
	Ground Coverage %	FAR	Height (m)			
(i) Integrated Office Complex	30	200	NR, subject to approval of AAI, Fire Department and other statutory bodies.	1.8	Premises used for the office of Central Government, Local Government and Local Bodies.	Government Offices, Watch and Ward Residence /residential maintenance staff (maximum 5% of FAR), Retail shop of Chemist, Book and Stationery, Consumer Store, Canteen, Post office, Bank Extension Counter etc. Public sector Undertaking / Commercial offices (restricted to 10% of the total floor area)
(ii) District Court	30	200	NR, subject to approval of AAI, Fire Department and other statutory bodies.	1.8	Premises used for the offices of Judiciary.	Court, Residential maintenance staff (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.

5. Subsequently, however, it was conceded that the aforesaid table is not applicable and the attention of this court was drawn to Table 17.8 of MPD- 2021, which provides for parking standards which are not prescribed elsewhere. The said table is set out below:-

Table 17.2 Parking Standard

S.No.	Use Premises	Permissible Equivalent Car Spaces (ECS) per 100 sqm. Of Floor Area
1.	Residential	2.0
2.	Commercial	3.0
3.	Manufacturing	2.0
4.	Government	1.8
5.	Public and Semi-Public Facilities	2.0

17.3: Space Standards for Car Parking

S.No.	Types of Parking	Area in sqm. per ECS
1.	Open	23
2.	Ground floor covered	28
3.	Basement	32
4.	Multi level with ramps	30

5.	<i>Automated multilevel with lifts</i>	16
----	--	----

6. *Admittedly, a part of the project consists of commercial development where premises are going to be used for commercial purposes. It is also admitted that the said premises would not be used by offices controlled directly by the government alone, but by Public Sector Undertakings and other autonomous bodies. Prima facie, this Court is unable to accept that the parking standards as applicable to Government Controlled offices, would also be applicable for such commercial project. This is so for the obvious reason that Table 8.2 of MPD-2021 specifically mention that only 10% of the total floor area of Govt Offices can be used for Public Sector Undertakings/Commercial offices. Thus, the reference to the standards applicable to "Government" would not include other commercial organizations including Public Sector Undertakings but would be limited only to offices of the Central Government, Local Government or local bodies.*

7. *Ms. Anand, learned ASG had further submitted that the entire project was being redeveloped and the reference to '10%', as mentioned in Table 8.2 of MPD-2021, would mean 10% of the entire area and cannot be limited only to commercial buildings. This contention is also unmerited, as the redevelopment project consists mainly of residential area and only 10% is allowed for commercial purposes and if the said commercial development is to be considered for*

Government offices, then only 10% of that area can be reserved for PSUs.

8. In the aforesaid view, this Court called upon NBCC to submit as to what possible solutions could be offered to address this issue. Ms. Anand submits that one of the possible solutions is to shift the parking on the service area to the rear side of the commercial building. She seeks time to take further instructions.

9. The third issue relates to the traffic impact assessment. Mr. Pant, learned counsel appearing for UTTIPEC, has referred to various minutes of the meeting of UTTIPEC, which indicate that no independent traffic impact assessment was carried out by UTTIPEC and there was no endeavour on the part of UTTIPEC to verify any of the reports submitted to it. On the contrary, the minutes of the 42nd meeting of UTTIPEC (wherein the permission approval for the project was granted) clearly indicates that "traffic impact assessment (TIA) as comprehensive report could not be provided to UTTIPEC as the same was in a part of the TOR of the consultant. However, entry/exit points have been considered based on the existing traffic flow on the peripheral arterial roads, modal split and assessment of the likely peak hour exit loads on these roads.". Apparently, UTTIPEC has considered only the modal spread, in other words, what proportion of the users would use public transport for approving of the project.

10. Professor Geetam Tiwari submitted that the consultant's report itself had indicated that the surrounding roads are already servicing traffic beyond

100% of their capacity. She submitted that the only rationale for establishing a high-density project was to have strong linkages by increasing public transport facilities in order to reduce vehicular traffic on roads and consequently, the attendant pollution. She submitted that this would also entail ensuring that the development is a mixed-use development and movement outside the project is avoided to the maximum extent possible. Since a part of the project is being developed for commercial purposes, it does not appear that this approval is designed to reduce density or to reduce vehicular traffic on the surrounding roads. On the contrary, including commercial offices would surely add further vehicular traffic on the surrounding roads.

11. It was also pointed out by Mr. Pant that now a comprehensive study is being undertaken with regard to the traffic impact assessment, not only in relation to the traffic that might be contributed by the East Kidwai Nagar project but also several other projects. He submits that a comprehensive study would go a long way in addressing the issue of vehicular traffic impact on several other GPRA projects.

12. Clearly, Traffic Impact Assessment (TIA) was not done. The question as to what remedial measures can be undertaken will be considered on the next date of hearing.

13. The last issue concerns to the permission granted by the National Monument Authority for carrying out extensive development within a Regulated Area. The learned counsel appearing for NBCC states, on instructions, that there are approximately 30 towers that have been constructed in the Regulated Area, that

is, between 100 metres to 300 metres of the centrally protected monument. The attention of this Court is also drawn to the said permission, which indicates that the National Monument Authority had granted the permission subject to various conditions, including the "element of art & architecture of the protected monument near the locality i.e. Tomb of Darya Khan and nearby tombs in the façade of the proposed buildings". This Court is not certain as to whether any of the buildings have incorporated any architectural or aesthetic features of the protected monument. It would also be necessary to examine the decision making process in this regard. In addition, it would also be relevant to examine whether the National Monument Authority has ensured that the conditions imposed by it have been fulfilled.

14. It is seen that the National Monument Authority has not been made a party. Accordingly, issue notice to the National Monument Authority and the Archeological Survey of India. The amended memo of parties shall be filed by the petitioner. On the petitioner taking steps, notice shall go to the newly impleaded respondents, returnable on 29.05.2019."

- By the order dated 24.07.2019, this Court directed the NBCC and NDMC to file affidavit on the issue of parking, observing as under:

"1. On 20.05.2019, the learned ASG had sought time to take instructions as to the possible solutions with

regard to the parking arrangements made for the vehicles at the project in question. The learned counsel appearing for NBCC states that, thereafter, two meetings were held and during the course of the said meetings, NBCC and NDMC agreed to apply a lower parking norm for the project. This Court is, prima facie, doubtful whether NDMC can, in fact, relax the parking requirement. NBCC and NDMC shall file an affidavit clearly indicating whether any such decision has been arrived at and if so, specify the provisions for enabling NBCC and NDMC to modify the norms as specified in MPD-2021.”

- This Court on 13.01.2020 further directed the NBCC to disclose on affidavit the details of the construction activity of buildings and flats of commercial/office block and residential block for the Project in question and also file a site plan showing such construction.

ANALYSIS AND FINDINGS:

69. This case highlights again the constant fight between development and environment. While the respondents argue for development, the petitioners argue for the environment. It is an established principle of law that Right to Life as envisaged under Article 21 of the Constitution of India includes the right to a clean environment. The right to live with

human dignity becomes illusory in the absence of a healthy environment. However, said rights are not absolute and have to co-exist with sustainable development (*M.C. Mehta vs. Union of India & Ors.*, 2018 SCC Online SC 2122). Therefore, a balance has to be achieved between urban development and ecology and requirements of development.

70. Right from the city of Lal Kot founded by Tomar rulers in 786AD to the present state, Delhi has been built and re-built. In fact, William Dalrymple, author of 'City of Djinns: A Year in Delhi' writes in the prologue – "Just as the Hindus believe that a body (sic) will be reincarnated over and over again until it becomes perfect, so it seemed Delhi was destined to appear in a new incarnation century after century".

71. In the judgment dated 25.02.2020 passed in WP (C) 6680/2018 titled *Dr. Kaushal Kant Mishra vs. Union of India and Ors.*, the Division Bench of this Court while considering the challenge to the 'Nauroji Nagar' Project, observed as under:-

"41. The few undisputed facts, which are significant are that Delhi is facing the problem of increasing population and land for housing or commercial purposes is limited and scarce. It is equally undisputed that there is an acute shortage of Government accommodation and a lot of houses in the existing Government colonies have outlived their utility, being over 50 years old and are not only in a dilapidated condition but some are even unsafe for habitation. The consequence and fall out is that there are long queues of the Government officials waiting to be allotted the Government accommodations. Faced with this ground reality of the city, Cabinet Decision was taken in the

right direction, in our view, on 05.07.2016, whereby redevelopment of seven GPRA colonies was approved. The Government houses in these colonies were over five decades old and in a dilapidated condition. It was thus decided to replace the existing structures with new dwelling units along with necessary infrastructure facilities. Implementation of the Project was approved on self-financing basis by sale of Commercial Built-Up Area of Nauroji Nagar and part of Sarojini Nagar at an estimated Project cost of Rs. 32,835 Crores which included maintenance and operations of all Government assets for 30 years. The Project is to be completed in a phased manner by 31.12.2022. Redevelopment was conceptualized based on comprehensive planning and vision and the commercial components of all 7 colonies were consolidated.”

72. Recently, the Supreme Court in ***Rajeev Suri v. Delhi Development Authority & Ors., 2021 SCC OnLine SC 7***, while considering the Central Vista project, has laid down the test to be applied while considering such petitions, as under:-

“162. Therefore, the trajectory of our jurisprudence in review of matters involving personal liberties has been one of strict approaches. It is, however, a misnomer to propagate that we have gradually transformed from chosen “procedure established by law” into once consciously rejected “due process of law”. Indisputably, we are not dealing with a matter of personal liberty per se. The petitioners, despite their best of efforts, have not been able to demonstrate a case of deprivation of life or personal liberty of any individual on account of any of the impugned executive action. Whereas, it is essential for the petitioners to

demonstrate a real and direct impact or restriction on their core fundamental rights due to the impugned executive action to invoke the due process argument. A cause-effect relationship is essential. Only then the burden would shift on the State to either show the absence of restrictions or justification of restrictions within the permissible exceptions of Part-III.

163. *Concededly, we are sitting in review of the process of an administrative or so to say quasi legislative action which falls in the latter category, namely, with no direct impact on personal liberties as such. A judicial review is an exercise in reference to some existing rights and the reliefs and remedies prayed for. The Rule of Law, as accepted and settled in India, with regard to judicial interference in administrative and executive or policy matters is no more res integra. The duty enjoined upon the judiciary is to ensure checks and balances; and to place itself between the Government and citizens when they come face to face in a Court of law. It is meant to act as an equaliser and ensure that the flow of decisions from executive to citizens is overseen through the prism of well-established principles, as and when called upon to do so. The judicial organ is not meant to impose the citizens' or even its own version of good governance upon the Government in the name of Rule of Law in exercise of its power of judicial review.*

xxxxxx

176. *A priori, the prescription of procedure to be deployed by the administration in taking their decisions in the ordinary course of their business is not for the Court to decide. More particularly, in cases where decisions are taken in tune with a duly enacted statutory scheme, it is not open to a Court of law to disregard the same on the specious reasoning that the governing statutory scheme is deficient for the nature of or significance of the project. Even if a Court finds it*

debatable, that can be no ground for the Court to quash an action taken strictly in accord with the prescribed procedure.

177. Indubitably, Rule of Law is based on the concept of “expository jurisprudence” which requires exposition of contents of actual legal system as it exists. To say that in a given case the statutory scheme laying down the procedure is not good enough and a new standard of democratic due process ought to have been deployed by the executive would be a classic way of abjuring the principle of Rule of Law which requires consistency and uniformity of approach by one and all and in particular, by a judicial forum. In matters which may appear to be wholesome for accomplishing ideals of administrative efficiency including democratisation of the decision-making process, even if a Court is of the opinion that a different procedure (in addition to the statutory scheme) would be more just and appropriate, it may not attempt to implement its ideal by way of judicial review, much less to strike it down. In a judicial review, we do not sit in a discussion on idealism in Government actions, rather, our domain is to examine its legality on the touchstone of constitutional values and the procedure prescribed by law in that regard.

xxxxxx

180. Thus, to add subjective notions of the Court in statutory processes would be antithetical to the fundamental tenet of Rule of Law which requires “all power in the State” to be exercised in accordance with the procedure established by law.

181. Another dimension to be kept in mind is the factum of subjective satisfaction of the executive. The law regarding the involvement of constitutional Courts in public interest in cases involving subjective satisfaction is well settled. The interference of Courts is neither

warranted to look into the quality of material relied upon by the Government to approach a decision nor to adjudicate upon the sufficiency of such material. These matters are of a subjective character and if legislature permits subjective powers on one organ of the State, the other (in the name of judicial review) is not expected to substitute its own subjective opinion in its place. The sole concern of the Court is to look at the relevancy of the material relied upon to take a decision in order to see that the decision is not devoid of application of mind. It is based on the basic idea that the structure of a subjective decision stands on the foundation of objective reasons. The Court may interfere when a decision is devoid of any reason or affected by malafides or when the decision is reached in the aftermath of statutory violations. In *Barium Chemicals*, the Court while dealing with an order in the exercise of statutory powers, adverted to the exposition of Privy Council and observed thus:

“(60) ...Even if it is passed in good faith and with the best of intention to further the purpose of the legislation which confers the power, since the Authority has to act in accordance with and within the limits of that legislation, its order can also be challenged if it is beyond those limits or is passed on grounds extraneous to the legislation or if there are no grounds at all for passing it or if the grounds are such that no one can reasonably arrive at the opinion or satisfaction requisite under the legislation ...”

182. This decision delineates the contours of judicial review, such as:

(i) The formation of the opinion/satisfaction by the Government was a purely subjective process and such an opinion could not be challenged on the ground of propriety, reasonableness or sufficiency;

(ii) However, the subjective opinion/satisfaction of the Government is required to be arrived at based on facts/circumstances, which the Government must be able to objectively establish to exist;

(iii) Mala fides, fraud or corruption would vitiate the formation of the opinion/satisfaction; and

(iv) If the opinion/satisfaction was reached in good faith it was immune from judicial review unless:

(a) it was shown that the objective facts/circumstances did not exist; or

(b) it was impossible for anyone to form the opinion/satisfaction based on those facts/circumstances,

for then the Government's opinion could be challenged on the ground of non-application of mind or perversity or on the ground that it was formed on grounds extraneous to the legislation and was beyond the scope of the statute.

183. *The aforesaid principles are restated in Rohtas Industries wherein this Court noted thus:*

“11. ...For the reasons stated earlier we agree with the conclusion reached by Hidayatullah and Shelat, JJ. in Barium Chemicals case that the existence of circumstances suggesting that the company's business was being conducted as laid down in sub-clause(1) or the persons mentioned in sub-clause (2) were guilty of fraud or misfeasance or other misconduct towards the company or towards any of its members is a condition precedent for the Government to form the required opinion and if the existence of those conditions is challenged, the courts are entitled to examine whether those circumstances were existing when the order was made. In other words, the existence of the circumstances in question are open to judicial

review though the opinion formed by the Government is not amenable to review by the courts. As held earlier the required circumstances did not exist in this case.”

(emphasis supplied)

184. *Be it noted that the Constitution provides an effective mechanism to review the law itself under which administrative power is being exercised. For, the “law” in the expression “Rule of Law” must be good law within the realm of the Constitution. Arguendo, if the law itself is challenged and consequently struck down, there would be no occasion for the Court to enforce such law and in the absence of law, the Court might be in a position to venture into areas of arbitrariness, justness and equity, so as to do complete justice in the cause before it. Such power is well ingrained in Article 142. However, in the absence of any challenge to an existing law enacted by the legislature prescribing the procedure, all actions taken thereunder and in substantial compliance thereof must continue to be valid and the Court would be duty bound to give true effect to it. In the present case, none of the enacted (statutory) procedures is subject matter of assail.*

xxxxxx

195. *To sum up the above discussion, it may be noted that judicial review primarily involves a review of State action - legislative, executive, administrative and policy. The primary examination in a review of a legislative action is the existence of power with the legislature to legislate on a particular subject matter. For this purpose, we often resort to doctrines of pith and substance, harmonious construction, territorial nexus etc. Once the existence of power is not in dispute, it is essentially an enquiry under Article 13 of the Constitution which enjoins the State to not violate any of the provisions of Part-III in a law-making function.*

The review of executive action would depend upon the precise nature of the action. For, the domain of executive is wide and is generally understood to take within its sweep all residuary functions of the State. Thus, the precise scope of review would depend on the decision and the subject matter. For instance, an action taken under a statute must be in accordance with the statute and would be checked on the anvil of ultra vires the statutory or constitutional parameters. The enquiry must also ensure that the executive action is within the scope of executive powers earmarked for State Governments and Union Government respectively in the constitutional scheme. The scope of review of a pure administrative action is well settled. Since generally individuals are directly involved in such action, the Court concerns itself with the sacred principles of natural justice - audi altrem partem, speaking orders, absence of bias etc. The enquiry is also informed by the Wednesbury principles of unreasonableness. The review of a policy decision entails a limited enquiry. As noted above, second guessing by the Court or substitution of judicial opinion on what would constitute a better policy is strictly excluded from the purview of this enquiry. Under the constitutional scheme, the government/executive is vested with the resources to undertake necessary research, studies, dialogue and expert consultation and accordingly, a pure policy decision is not interfered with in an ordinary manner. The burden is heavy to demonstrate a manifest illegality or arbitrariness or procedural lapses in the culmination of the policy decision. However, the underlying feature of protection of fundamental rights guaranteed by the Constitution must inform all enquiries of State action by the constitutional Court.”

73. On the redevelopment of government land, the Supreme Court observed as under:-

“293. What emerges from the aforesaid extract of Master Plan is that the master plan itself envisages intensive utilization of existing Government land and utilization of surplus land by the Government as essential components of optimum utilization of Government land resource. The public trust doctrine obligates the Government to use the available resources prudently and to subserve the common good. The proposed use is not to bestow largesse on private persons but for assets creation and for public use. Naturally, if such optimum utilization requires changing the land use of Government lands, that must follow in public interest. Further, the afore-quoted extract of the master plan is in line with the objectives stated by the L&DO while proposing change in land use and more so there is no basis to label the proposed changes as contravening the master plan. On a comprehensive understanding of the plan, we are of the view that the proposed changes fully gel with the vision of the master plan including the zonal plan. Modernity, technological advancements and protection of historicity are subjects of parallel concern today. They can neither overstep or dispense each other nor prohibit each other's advance. This is the shared spirit of the master plan and the subject project.”

74. On the issue of Environment Clearance for the said project, the Supreme Court highlighted the issue of development vs. environment and observed as under:-

“506. Indubitably, environment and development are not sworn enemies of each other. It would be an anomalous approach to consider environment as a hurdle in development and vice-versa. The entities like EAC and NGT are created to strike a just balance between two competing interests and a time-tested

principle of striking this balance is timely invocation of mitigating environmental measures amidst a development activity. True that mere application of certain mitigating measures may not alleviate environmental concerns in all matters and in some circumstances, the project is simply incomprehensible with the environment. But as long as a legitimate development activity can be carried on in harmony with the idea of environmental protection and preservation including sustainable development, the Courts as well as expert bodies should make their best endeavour to ensure that harmony is upheld and hurdles are minimized by resorting to active mitigating measures.

507. The principle of sustainable development and precautionary principle need to be understood in a proper context. The expression “sustainable development” incorporates a wide meaning within its fold. It contemplates that development ought to be sustainable with the idea of preservation of natural environment for present and future generations. It would not be without significance to note that sustainable development is indeed a principle of development - it posits controlled development. The primary requirement underlying this principle is to ensure that every development work is sustainable; and this requirement of sustainability demands that the first attempt of every agency enforcing environmental rule of law in the country ought to be to alleviate environmental concerns by proper mitigating measures. The future generations have an equal stake in the environment and development. They are as much entitled to a developed society as they are to an environmentally secure society. By Declaration on the Right to Development, 1986, the United Nations has given express recognition to a right to development. Article 1 of the Declaration defines this right as:

“1. The right to development is an inalienable human right by virtue of which every human person and all peoples are entitled to participate in, contribute to, and enjoy economic, social, cultural and political development, in which all human rights and fundamental freedoms can be fully realized.”

508. *The right to development, thus, is intrinsically connected to the preservice of a dignified life. It is not limited to the idea of infrastructural development, rather, it entails human development as the basis of all development. The jurisprudence in environmental matters must acknowledge that there is immense interdependence between right to development and right to natural environment. In International Law and Sustainable Development, Arjun Sengupta in the chapter “**Implementing the Right to Development**” notes thus:*

“... Two rights are interdependent if the level of enjoyment of one is dependent on the level of enjoyment of the other...”

509. *The concern of the regulatory agencies is to weed out the unsustainable from the development plan and to parallelly ensure that right to development is not trumping upon any other right. Sengupta further notes:*

“... There is an improvement in the right to development only if at least one of the constituent rights improves and no other right deteriorates or is violated, which means the right to development conforms to the principle of the indivisibility of human rights....”

510. *The precautionary principle duly mandates that all agencies of the State, including Courts, must make their best endeavour to ensure that precaution is instilled in the process of development. The very requirement of prior EC is born out of this need for*

precaution. It is a manifestation of the precautionary principle in India and if development work is carried out in furtherance of prior EC and such EC is not vitiated by illegality, it would be a case of proper adherence with the precautionary principle.

511. *In matters of balancing between competing environmental and development concerns, the Court has to be project-specific. In environmental matters, even one fact here or there may have the effect of attributing a totally distinct character to the project and accordingly, the scope of judicial review may vary. This sentiment is best reflected in the following words of Professor Schotland who proposed ranking of standards of judicial review according to strictness:*

“3. I have always thought of scope of review as a spectrum, with de novo at one end, with unconstitutionality at the other end, and in between a number of what I will call “mood-points” or degrees of judicial aggressiveness or restraint, such as preponderance of the evidence, clearly erroneous, substantial evidence on the whole record, scintilla of evidence, abuse of discretion and last, right next to or even into unconstitutionality, arbitrary and capricious. And since these are only “mood-points”, there is considerable room within each for difference.”

512. *The proper balance of judicial review in environmental matters in a constantly developing society is a matter of great debate across all jurisdictions. In Ethyl Corporation v. EPA, the observations of Judge Wright present a just balance. He observed thus:*

“There is no inconsistency between the deferential standard of review and the requirement that the reviewing court involve itself in even the most complex evidentiary matters; rather, the two indicia of arbitrary and capricious review stand in careful

balance. The close scrutiny of the evidence is intended to educate the court. It must understand enough about the problem confronting the agency to comprehend the meaning of the evidence relied upon and the evidence discarded; the questions addressed by the agency and those bypassed; the choices open to the agency and those made. The more technical the case, the more intensive the court's effort to understand the evidence, for without an appropriate understanding of the case before it the court cannot properly perform its appellate function. ...”

513. He then notes the need for realising the limits of judicial function thus:

“But the function must be performed with conscientious awareness of its limited nature. The enforced education into the intricacies of the problem before the agency is not designed to enable the court to become a superagency that can supplant the agency's expert decision-maker. To the contrary, the court must give due deference to the agency's ability to rely on its own developed expertise. The immersion in the evidence is designed solely to enable the court to determine whether the agency decision was rational and based on consideration of the relevant factors. It is settled that we must affirm decisions with which we disagree so long as this test is met...”

(emphasis supplied)

514. They must always look for a careful balance when two equally relevant interests compete with each other. The task may not be easy, but is the only reasonable recourse. For the proper application of these principles, the first and foremost thing to be kept in mind is the nature of the project....”

75. In the above background, let us first look at the challenge based on the alleged violation of the Master Plan. The Master Plan for Delhi, 2021 has been framed under Section 7 of the Delhi Development Act, 1957 which prescribes as under:-

“7. Civic survey of, and master plan for, Delhi.—(1) The Authority shall, as soon as may be, carry out a civic survey of, and prepare a master plan for, Delhi.

(2) The master plan shall—

(a) define the various zones into which Delhi may be divided for the purposes of development and indicate the manner in which the land in each zone is proposed to be used (whether by the carrying out thereon of development or otherwise) and the stages by which any such development shall be carried out; and

(b) serve as a basic pattern of frame-work within which the zonal development plans of the various zones may be prepared.

(3) The master plan may provide for any other matter which is necessary for the proper development of Delhi.”

76. Section 8 of the DDA Act provides for the preparation of the Zonal Development Plans. Sub-section (2) of Section 8 states that the Zonal Development Plan may provide for various facets like the site-plan, use-plan, location and extent of land-uses proposed, allotment or reservation of land for roads, open spaces, gardens, etc. The procedure to be followed in the preparation and approval of the plans is provided in Section 10 of the DDA Act. Section 11A of the DDA Act lays down the procedure for

modifications to the Master and Zonal Development Plans. Section 14 of the DDA Act prescribes that after the coming into operation of any of the plans, no person shall use or permit to be used any land or building otherwise than in conformity with such plans.

77. It is no longer *res-integra* that the Master Plan is statutory in nature and the provisions thereof have statutory force. They are applicable and binding on all authorities, including the respondents herein.

78. Paragraph 3 of the MPD spells out its 'Vision' as under:-

“VISION

3. Vision-2021 is to make Delhi a global metropolis and a world-class city, where all the people would be engaged in productive work with a better quality of life, living in a sustainable environment. This will, amongst other things, necessitate planning and action to meet the challenge of population growth and in-migration into Delhi; provision of adequate housing, particularly for the weaker sections of the society; addressing the problems of small enterprises, particularly in the unorganized informal sector; dealing with the issue of slums, up-gradation of old and dilapidated areas of the city; provision of adequate infrastructure services; conservation of the environment; preservation of Delhi's heritage and blending it with the new and complex modern patterns of development; and doing all this within a framework of sustainable development, public private and community participation and a spirit of ownership and a sense of belonging among its citizens.”

79. Paragraph 9 of the MPD emphasizes the need for redevelopment and densification of the existing urban areas and city improvement. It is quoted herein below:-

“9. The exercises done for the MPD-2021 show that there is a need for redevelopment and densification of the existing urban areas and city improvement. This aspect is a major component of the new Master Plan. It calls for a comprehensive redevelopment strategy for accommodating a larger population, strengthening of infrastructure facilities accompanied by creation of more open spaces at the local level by undertaking measures for redevelopment of congested areas.”

80. As an issue arises whether the area in question is governed by provisions of ‘Redevelopment’ or ‘Mixed Use’, reference may also be made to paragraph 20(c) and 20(h) of the MPD, which are quoted herein below:

“20. The following critical areas have been the focal points of the Plan:

xxxxxx

(c) Redevelopment:

Incentivised redevelopment with additional FAR has been envisaged as a major element of city development covering all the areas;

- (i) Planned Areas: Influence Zone along MRTS and Major Transport Corridor; underutilised / low-density areas; Special Area; shopping / commercial centres; Industrial areas / clusters and resettlement colonies.*

(ii) *Unplanned Areas: Villages; unauthorised colonies and JJ Clusters.*

xxxxxx

(h) Mixed Use:

- *To meet the growing demand of commercial activities and overcome the shortfall of available commercial space, a liberalized provision of Mixed Use in residential areas has been adopted adhering to the requisites of the environment, while achieving better synergy between workplace, residence and transportation.*
- *2183 streets have been notified by the GNCTD vide notification dated 15.09.06 for local commercial and mixed-use activities.*
- *Small shops of daily needs have been permitted on ground floor, in residential areas.”*

81. Chapter 3 of the MPD speaks about the three-pronged strategy to be adopted to accommodate the projected population estimated as 230 lakh by the year 2021 (which is around 302 lakh in 2020). One of the strategy is to increase the population holding capacity of the area within existing urban limits through redevelopment.

82. Clause 3.1(ii), (iii) and (v) of the MPD gives the means to be adopted for enhancement of population holding capacity, and are reproduced herein under:-

“3.1 POPULATION HOLDING CAPACITY OF DELHI

xxxxxx

ii. Redensification of housing areas developed at lower densities and along selected sections of the Metro corridor.

iii. Redevelopment areas should be identified by the concerned agencies and Special Redevelopment Schemes should be prepared with regard thereto for implementation within a stipulated time framework.

xxxxx

v. Augmentation and rationalisation of infrastructure - physical and social.”

83. Clause 3.3 of the MPD contains provisions for ‘Redevelopment of Existing Urban Area’. Some of the relevant provisions thereof are reproduced herein below:-

“3.3 REDEVELOPMENT OF EXISTING URBAN AREA

The scope for development of urban extensions on a large scale is restricted due to limitations of buildable / urbanizable land in Delhi. Therefore, the option of redevelopment through a process of reorganisation and utilisation of the land already developed will be a major element of the overall city development plan.

A redevelopment strategy for accommodating more population in a planned manner is to be taken up on priority in all use zones for efficient and optimum utilization of the existing urban land, both in planned and unplanned areas. This would have to be based on provision of infrastructure viz. water supply, sewerage, road network, open spaces and the essential social infrastructure.

To encourage the growth impulse for regeneration in the target redevelopment areas, the possible incentives and modalities recommended include grant of planning permission at the scheme level with permission to reorganize / pool properties for planning purposes, provision of social infrastructure through Transferable Development Rights or Accommodation Reservation and reduced space standards for unplanned areas, enhanced FAR for specified redevelopment areas and application of flexible concept of mix-use zones in Special Area & Villages on scheme basis.

3.3.1 RE-DEVELOPMENT STRATEGY

The target areas for redevelopment will have to be identified on the basis of their need for up-gradation and potential for development. Redevelopment Schemes will be prepared by the respective local body / land owners / residents. The concerned local body should promote private land owners to take up assembly and redevelopment of ³[land as per the criteria below]. Some of the areas identified are:

3.3.1.1 PLANNED AREAS

xxxxxx

B. RE-DENSIFICATION OF LOW-DENSITY AREAS

There is a large proportion of underused land with a number of vacant sites as well as dilapidated built-up areas lying vacant in the city. Many of such areas are owned by Government of India. Such areas are recommended to be planned for redevelopment with higher density in order to make optimum use of land resource as per the prescribed norms.

C. RE-DEVELOPMENT OF OTHER DEVELOPED AREAS

In Delhi, including New Delhi (NDMC area), a large number of housing, commercial and industrial areas are old and characterized by poor structural condition, sub-optimal utilisation of land, congestion, poor urban form, inadequate infrastructure services, lack of community facilities, etc. These are to be redeveloped as per the prescribed norms and development controls and with the initiative / consultation with the Residents' society / RWA / Traders' Associations.”

84. Clause 3.3.2 gives the ‘Guidelines for Redevelopment Schemes’. The arguments of the parties have revolved around sub-clause (v), (x) and (xiv) thereof, which are reproduced herein below:-

“3.3.2 GUIDELINES FOR REDEVELOPMENT SCHEMES

The basic objective of redevelopment is to upgrade the area by implementing specific schemes on the basis of existing physical and socio-economic conditions in the following way:

xxxxx

(v) To incentivize the redevelopment a maximum overall FAR of 50% over and above the existing permissible FAR on individual plots subject to a maximum of 400 shall be permissible. Higher FAR shall however not be permissible in redevelopment of Lutyens Bungalow Zone, Civil Lines Bungalows Area and Monument regulated Zone.

xxxxxxx

(x) Subject to preparation and approval of integrated/comprehensive Redevelopment schemes and

provision of parking and services up to 10% of the FAR may be allowed for commercial use and 10% of the FAR for community facilities with a view to trigger a process of self-generating redevelopment.

xxxxxx

(xiv) The land use shall be governed as per the Master Plan/Zonal Development Plan. The non-residential use will be permitted as per the provisions of the Mixed Use Regulations & Special Area Regulations.”

85. A reading of the above provisions of the MPD would show that emphasis has been laid on the redevelopment of the existing Urban Areas with objective of re-densification of housing areas and dilapidated built-up areas, many of which are owned by the Government of India. East Kidwai Nagar is one of such areas identified by the Government of India. It was with this objective that the redevelopment of this area was approved by the Cabinet Committee on Economic Affairs in its meeting held on 23.03.2012, inter-alia approving construction of approximately 4747 dwelling units in various categories, that is from Type-II to Type-VII by the NBCC. NBCC was also allowed to recover the cost of the Project from lease of commercial space for office use to the extent of 10% of the total FAR permissible and 10% of the built-up residential area to the Government Departments/Ministries/PSUs.

86. The Respondent No. 19-NBCC has explained that land admeasuring 86 acres had been handed over to it by the Land and Development Office, Ministry of Urban Development vide its letter dated 18.10.2012 for the purpose of redevelopment. Relying upon Clause

3.3.2(v) of the MPD quoted hereinabove, NBCC contends that it was allowed a total FAR of 300 that is 10,43,812.63 sq. m. They contend that the actual construction is of 6,71,000 sq. m, which translates to 230 FAR. The commercial construction is claimed as 1,03,635.50 sq. m., while for residential is 5,62,217 sq. m. For social infrastructure, the construction claimed is 32,111 sq. m. Based on the above, the Respondent no. 19 claims that the construction is in accordance with Clause 3.3.2 of the MPD.

87. Clause 3.3 of the MPD emphasizes on the redevelopment of existing urban areas. Clause 3.3.1.1(B) makes specific recommendation on redevelopment of government land having dilapidated built-up area with an intent to make optimum use of land resource. Clause 3.3.2 gives the Guidelines for redevelopment schemes. In the present case also, the respondent no. 1 has launched and executed the Project by replacing the then existing dilapidated government pool flats with more modern structures, making better use of available land base.

88. The respondent no. 1 has also highlighted the various features of this redevelopment scheme as under:-

“The highlights of such re-development with respect to the Project are as under:

a) Previously, there was only 24% ground coverage; however, presently there is 70% coverage

b) FAR achieved of 203 against permissible of 300

c) Previously, the open area was just 28% with 13% green cover; however, presently there is 76% open area including Green Cover of 46%

d) To promote Walk to Work – 10% of residential units will be allocated to office block users. This will further reduce traffic.

- e) Kidwai Nagar is located in the proximity of INA Metro Station and upcoming South Ex Metro. This should also reduce vehicular traffic.*
- f) It is a Vehicle Free Residential Zone – there is parking space for 10639 cars in multi-level basements*
- g) Basements are interconnected – majority of traffic shall exit on CB Marg*
- h) Only 4 entries and 2 exits on Ring Road – this has been reduced from 18 existing entry and exit points*
- i) There are various Green initiatives to reduce pollution, including Solar based LED lighting, Intelligent Building Management Systems and Gas based Gensets, 2-1500 Kilo Liters per day Sewage Treatment Plants and rain water harvesting*
- j) The Project is a GRIHA (Green Rating for Integrated Habitat Assessment)*
- k) Approximately 33% trees are being retained. 18000 trees are proposed to be planted, of which the planting of 7300 trees has already been initiated*
- l) A green belt of 12 Mts is being provided all around the Project”*

89. Keeping in view the above, the Project cannot be faulted.

90. As far as applicability of Clause 15 (Mixed Use Regulations) of the MPD to the Project in question is concerned, the learned counsel for the petitioners has placed reliance on Clause 3.3.2(xiv) MPD to contend that the non-residential use was to be permitted as per the provisions of the Mixed Use Regulations. I do not find any merit in the same. In the present case, a large chunk of land has been earmarked for redevelopment and sanctioned as such. It would therefore, be governed by the Scheme of such redevelopment, with maximum of 10% of the FAR being allowed for commercial use with a view to trigger a process of self-generating redevelopment as permitted under Clause 3.3.2(x) of the MPD.

91. This now brings me to the issue of 14 acres of land admittedly falling as Darya Khan Tomb, which is a Protected Area, on the total construction in the Project as also the commercial construction in the Project.

92. As noted hereinabove, the learned senior counsel for the respondent no. 19 has submitted that a total of 86 acres, including 14 acres of Darya Khan Tomb, was handed over to the respondent no. 19 for its redevelopment on 18.10.2012; FAR of 300 was permitted to be achieved on the plot in terms of Clause 3.3.2(v); the total construction permissible on the land, therefore, was 10,43,812.63 sq.m., while the actual construction is 6,71,000 sq.m., which translates to an FAR of 203. She submits that even after excluding the land under Darya Khan Tomb, the permissible construction with FAR of 300 would be 8,73,936 sq.m., and with the present construction, the FAR achieved is only 230.

93. As the above figures could not be disputed by the petitioners, the overall construction at the Project cannot be faulted.

94. However, as far as the issue as to whether the respondents have exceeded the 10% limit with respect to commercial usage as provided in Clause 3.3.2(x) of the MPD, the petitioners assert that the area of the land for redevelopment has been wrongly taken as 86 acres. The learned counsel submits that the area available for redevelopment was only 72 acres, with admittedly 14 acres falling under Darya Khan Tomb, which is an ASI Protected Monument. The learned counsel for the petitioners submits that in this area, no construction is allowed and therefore, it

could not have been taken into consideration for purposes of determining the FAR.

95. On the other hand, the learned counsel for the respondent no. 19 submitted that the respondent no. 1 had handed over the complete 86 acres to it for purposes of redevelopment. He submits that even the layout had been sanctioned by the NDMC taking the full area, including the Darya Khan area, into account and there being no challenge to the same, no fault can be found in the construction made by the respondent no. 19.

96. I am in agreement with the submission made by the learned counsel for the petitioners. It is not denied by the respondents that out of the total land of approximately 86 acres, 14 acres is classified as 'Protected Monument' and therefore, no construction/development is permissible in such area. Clause 3.3.2(v) of the MPD also states that the higher FAR shall not be permissible in redevelopment of Monument Regulated Zone. By adding the said area to the total area of land handed over to the respondent no. 19, what could not have been achieved directly was sought to be achieved indirectly. The same is not permissible. Mere sanction of the plan by NDMC would also not come to the aid of the respondent no. 19 in this regard. There is a statutory ban on any construction over the protected area, the same, therefore, could not have been taken into account while sanctioning the plan and this court cannot shut its eyes to the said violation merely because there is no specific challenge to the same laid in the petition. Section 20A of the Ancient Monuments and Archaeological Sites and Remains Act, 1958 states that every area, beginning at the limit of the protected area or the protected

monument, as the case may be, and extending to a distance of one hundred meters in all directions shall be the prohibited area in respect of such protected area or protected monument and no person, other than an archaeological officer, shall carry out any construction in such prohibited area.

97. In *Dr. G.N. Khajuria (supra)*, the Supreme Court held that the decision of the Delhi Development Authority to allot the land, which was park, for a nursery school, was a misuse of power, and cancelled such allotment.

98. In *Anirudh Kumar (supra)*, the Supreme Court quashed a regularization certificate issued by the Municipal Corporation of Delhi contrary to the provision of the MPD.

99. Therefore, once it is found that the land of Darya Khan Tomb could not have been taken into account for determination of FAR applicable to the Project, mere sanction of the plans by the NDMC cannot come to the protection of the respondent no. 19.

100. In the present case, excluding the 14 acres covered by the Darya Khan Tomb, the respondent no. 19 has submitted that with FAR of 300, 8,73,936 sq.m construction was permissible. 10% of this is permissible for commercial use, therefore, it could have been around 87,393.6 sq. m. What is constructed is 1,03,635.5 sq.m. Therefore, there is an excess of 16,241.9 sq.m. earmarked for commercial usage in the Project.

101. As the overall construction would be within the limit, this would be a case of misuser rather than unauthorized construction. For such

misuser, it would be for the authorities to consider whether the same can be compounded and if so, on what terms. If the same cannot be compounded, the respondent no. 1 and 19 must bring such construction in conformity with the usage requirement; the mode and manner of which is again left to the relevant Authorities to consider. In such consideration, the authorities shall take into account the traffic and parking issues also which have been raised by the petitioner and dealt in the subsequent part of this judgment. However, till such consideration and terms thereof are complied with, the respondent no. 19 shall stand restrained from handing over of the possession of such construction, i.e. 16,241.9 sq.m. to the third parties/allottees. It is directed accordingly.

102. The petitioners have further alleged violation of Clause 8.1 of the MPD, which is reproduced herein below:-

“8.1. DECENTRALIZATION OF OFFICES

As per NCR Plan, no new Central Government and Public Sector Undertaking offices should be located in NCTD. However, the issue of shifting existing Government / PSU offices from Delhi as well as restricting the setting up of new offices would only be possible after a time bound action plan is prepared together with suitable incentives and disincentives.”

103. A reading of the above Clause would indicate that for enforcing the same, an action plan is to be prepared together with suitable incentives and disincentives. While there is no doubt that the intent of this provision is the need of the hour, it cannot be said that there is total prohibition on relocation of Central PSU offices within Delhi at present,

making the present Project illegal. One can only say that the Government must work towards the fulfilment of this goal that has been set in the MPD.

104. The primary grievance of the petitioners is that the Project does not provide for adequate infrastructure in form of roads, open spaces, water supply, green belt etc. They further allege violation of various conditions imposed by the Authorities while granting permissions for the Project.

105. While there is no doubt that the Project of the proportions as involved in the present case does put tremendous pressure on the existing infrastructure, the same has to be considered from the point of view of the Master and the Zonal Development Plans. The impact of the Project on the infrastructure is also to be considered by the Authorities charged with the function of granting sanction to such a Project and to keep a check on compliance with the various conditions imposed by them in such sanction. In the present case, the various respondents have given details of the permissions granted by them to the Project. They have also taken a stand that there is no violation of the conditions imposed by them. In the petition there was no specific challenge to any of the permissions/sanctions so granted. In such a scenario, vague pleas of violation of any conditions imposed cannot hold any water.

106. At this stage, notice shall also be taken of the **order dated 13.01.2015 passed by the NGT in Original Application No. 134/2014**, wherein, while considering the challenge to the Project laid by a resident of Defence Colony almost on similar grounds, the learned NGT in its judgment held as under:-

“10. The Applicant has extensively relied- upon the Doctrine, of Public Trust, Precautionary Principles and Principle of Sustainable Development in support of his Application. The Doctrine of Public Trust which has been held as a law of the land by the Hon’ble Supreme Court of India in M.C. Mehta V/s Kamalnath and Ors., (1997) 1 SSC 388 rests on the principle that certain resources like air, sea, water and forests are of such a great importance to people as a whole that it would be wholly unjustified to make them a subject of private ownership. The doctrine also enjoins upon the Government to protect the resources for enjoyment of general public rather than permit their use for private ownership. The question that needs to be answered in the present application is whether the Doctrine of Public Trust has been violated. The test to be applied is whether any private interest is sought to be created in an otherwise publically owned land or whether the benefits available to the public at present are in any way likely to be compromised in future as a result of this project. It is not in dispute, that as against 2331-dwelling units in the area at present, the number of dwelling units available to Central Government employees will increase to 4840 numbers once the project is completed. In addition, the additional space to the extent of 104413 sq. meters will be provided to the Government Departments/Ministries as well as to the Public Sector Companies which are largely Government owned. Also, Project is being implemented by Respondent No. 2 on behalf of the Respondent No. 1- i.e. the Union Ministry of Urban Development. Therefore, by no stretch of imagination, can it be construed that the benefits available to Central Government employees at present in terms of residential accommodation will in any way be reduced. On the contrary, the residential accommodation available to the Central Government employees will increase. Besides, the commercial space is sought to be

allotted to Central Public Sector Companies and Ministries/Department. In our considered view, therefore, the Doctrine of Public Trust does not in any way get compromised or violated by implementation of the project in question. The applicant has also made general and vague assertions about non-compliance to the precautionary principles and principle of Sustainable Development as mandated under Section 20 of the NGT, Act 2010. The conditions stipulated in the EC dated 13.08.2012 have covered various environmental measures for ensuring- that air and water quality, municipal solid waste disposal, sewage treatment, traffic management, creation of green spaces, use of solar energy etc., have been optimally built into the project design and implementation. Therefore, merely on the basis of vague assertions that precautionary principle is being violated, is not appearing to be correct. We, therefore, hold that there is no reason for the Tribunal to believe that the precautionary principle and principle of Sustainable Development would, be violated or compromised, if the said project is implemented.

11. Regarding the adverse impact on the environment including air pollution, water pollution, traffic congestion, reduction of greenery, removal of soil and debris, we are of the opinion that SEIAA in its 4 meetings has discussed the related environmental issues about the project and has issued the detailed EC subject to the number of environmental conditions and safeguards. The allegation made by petitioner about the arbitrariness is also unfounded as the required process of law has been followed in obtaining all the statutory clearances and approvals for the said project. The apprehensions of applicant about adverse impact on environment are unfounded in view of the mitigative measures proposed and environmental conditions stipulated while according EC to the project. However, during the time of audio-visual presentation made

before the bench in the court, it came to our knowledge that the sewage after treatment will be discharged into Barapullah Drain which ultimately meets Yamuna River. In view of this, we direct that no sewage after treatment from the proposed STP in Kidwai Nagar East Complex will be discharged in Barapullah Drain and rather the treated sewage must be discharged into the city sewerage system after taking consent of DPCC. As the balance of convenience is in favour of the project proponent and the project has been approved by the authority competent in accordance with law, we do not see any reason to interfere with the Environment Clearance. Looking into any angle the applicant is not entitled for any relief claimed. Accordingly the Application fails and the same is dismissed except with the direction contained herein, without any order as to cost.”

107. Notice also needs to be taken of judgment dated 02.09.2016 in CA No.8747/2016 titled, ***National Building Construction Corporation Ltd & Ors vs. Khosmendir Singh Gahunia & Ors.***, wherein the Supreme Court in relation to this very Project, observed as under:

“18. We have adverted to the affidavit which has been filed on behalf of the Appellants during the course of the hearing and to the undertaking that the Appellants would by December 2018 restore the road in accordance with the terms of the approved layout plan. In other words, the closure of the road is not of a permanent nature but is of a temporary character to facilitate the completion of the work. Presently, it has been stated that Veer Chandra Singh Garhwali Marg has been excavated to a depth of 35 to 40 feet for facilitating the construction of basements which will be interconnected at points which would fall under the

road. A temporary closure of ingress and egress has been necessitated to avoid any mishaps. That being the position, we see merit in the grievance of the Appellants that at this stage, the balance of convenience would lie in allowing the completion of the project. We accept the assurance furnished by the Appellants on affidavit and through the learned Attorney General in Court. The project for re-development having received the statutory approvals, it is necessary to facilitate the completion of the project on schedule. The statements which have been made on behalf of the Appellants in the further affidavit as well as the undertaking would adequately protect the concerns of the petitioners who had moved to the Delhi High Court. At the same time, we deem it appropriate and proper in the interests of justice to remit the proceedings to the High Court to consider whether any additional safeguards should be introduced so as to allay the genuine apprehensions of the petitioners before it. For that purpose, the proceedings shall stand remitted back to the High Court for the limited purpose of considering whether any such additional safeguards are required and if deemed necessary to provide for them. In the meantime, we clarify that in view of the statements made before this Court on affidavit by the Appellants and the undertaking before this Court as noted earlier the project for re- development shall proceed unhindered. However, we leave it to open to the High Court to impose suitable safeguards in pursuance of the present judgment, to allay the apprehensions of the original petitioners.”

108. This Court also in its order dated 03.07.2014 requested the Hon’ble Lt. Governor of NCT of Delhi to revisit the Project and analyse its impact on existing infrastructure as also the lives of the residents in the neighborhood, particularly with regard to the noise, air pollution as also

traffic congestion. The Hon'ble Lt. Governor was also requested to consider remedial measures, if any, like augmentation of the infrastructure that may be required for the Project. In compliance thereto, a Report was submitted after considering the presentations and submissions made by the petitioners as also by various authorities. The Hon'ble Lt. Governor opined as under:-

“After hearing the contentions of the petitioners and above views of concerned departments, Hon'ble Lt. Governor is of the opinion that the most of the concerns raised by the petitioners were already foreseen by the planners of the project. After due deliberations with all regulatory and professional agencies, all requisite measures have been incorporated in the project, so that the residents of the area are not put into any kind of inconvenience in any manner.

The petitioner's concern regarding re-location of metro station at South Extension-II was not found feasible and the present location is the most suitable place.

The present commercial activities in the area are due to 'Mixed land use' category existing in South Extension. The South DMC has been asked to re-look this aspect.

Further, all concerned agencies have been advised by Hon'ble Lt. Governor to be sensitive to any further concerns of the residents of the surrounding area and take all necessary steps, if required, to alleviate / mitigate the concerns, or explain the steps already taken, so as to assuage their concerns.”

109. In the present case, the Project is in tune with Clause 3.3 of the MPD. It is aimed at redeveloping the already developed area used for accommodating government employees. The Project has been considered by various Authorities like the State Level Environment Impact Assessment Authority, National Monuments Authority, Delhi Pollution Control Committee, Unified Traffic & Transportation Infrastructure (Planning and Engineering) Centre, New Delhi Municipal Council, Delhi Urban Arts Commission, etc. In absence of any specific challenge to any of such permissions, this Court cannot sit as an appellate body over such Authorities to reassess the permissions so granted.

110. As noted herein above, the primary challenge to the Project has been on account of traffic issues. The learned counsel for the petitioners has vehemently submitted that the Project was granted approval without a proper traffic assessment. She submits that the Project being in the proximity of AIIMS, Safdarjung Hospital and situated on the portion of the Ring road, which is already saturated, efforts should have been made to answer the traffic issues before sanctioning the Project and not *post-facto*.

111. The learned counsel for the petitioners submits that UTTIPEC in its approval dated 14.05.2013 had stated that the Traffic Impact Assessment was not provided to it and that the approval was based only on the existing traffic flow. She submits that no independent Traffic Impact Assessment was also done by UTTIPEC prior to grant of its approval. As far as NBCC is concerned, she submits that NBCC placed reliance on the report of Chapman Taylor, a privately appointed

consultant, which gave contradictory data/analysis, which were totally unrealistic. Placing reliance on the order dated 10.04.2018 of this Court, appointing IIT, Delhi to carry out a study of traffic assessment, and the IIT report, she submits that the Chapman Taylor report was completely flawed and could not have been utilized for granting approval to the Project.

112. While there is no doubt that in sanction of such mega project, traffic assessment is one of the most vital criteria for according sanction, in the present case, the learned senior counsel for the respondent no. 19 has submitted that such traffic impact was duly considered by the UTTIPEC. She has further outlined the measures that are being undertaken to mitigate/decongest the additional traffic in and around the Ring Road and Aurobindo Marg, which are as under:-

(i) Maximum egress/ingress from/to the project shall be from CB Marg/Barapullah Road;

(ii) construction of a pedestrian underpass connecting the Project with the INA Metro Station (Delhi Haat side);

(iii) construction of Foot Over Bridge (FOB) integrating South Extension Metro Station with the Project.

113. The exponential increase in the traffic within the city being almost at an alarming rate, is a matter of general knowledge. The concerned Authorities have to be proactive in answering the same. This would require a constant vigil by the Authorities. There cannot be a one-

time measure that can answer this ever growing problem; there cannot also be only one solution to the same; it would require a consolidated integrated solution in form of increase and betterment of public transport facilities and disincentivizing of private mode of transportation. The success of Metro in this is again for all to see. More of such projects are required. At the same time, it cannot be said that while all this is being studied and measures are being taken, the Project, which is nearing completion must be laid to waste. The answer would be to find a solution.

114. The position of traffic in Delhi is not hidden from any person. With the mounting population pressure, ever rising number of private vehicles, constraint of space and unplanned development, the city is slowly losing its charm. But then is this enough to stop all development/redevelopment in the city....the answer has to be a 'no'. At the same time, such projects of development and redevelopment must be planned in a manner that the further stress on the infrastructure is minimized. In fact, they should add to quality of life rather than destroying it.

115. In the present case, the Project has been granted approval by the concerned Authorities, including UTTIPEC and the DDA. Though deficiencies in the Chapman Taylor report have been argued by the learned counsel for the petitioner, the learned senior counsel for the respondent no. 19 has submitted that the Chapman Taylor report is based on the MPD 2021 and cannot be faulted must after the project has been passed on basis thereof, only because the assumptions made in MPD 2021 itself were found to be incorrect with the passage to time. I am in

agreement with the learned senior counsel for the respondent no. 19. The Project having been accorded the sanction by the concerned Authorities, it would not be for this court to find deficiencies in such sanction applying different yardstick.

116. The respondent no. 19 in its submissions has further asserted as under:-

“Three options including construction of Elevated Corridor is proposed before UTTIPEC, to deal with the additional vehicular traffic on account of all redevelopment colonies in the periphery i.e. EKN, Nauroji Nagar, Netaji Nagar, Sarojini Nagar, Mahammadpur, Thyagraj Nagar, Kasthurba Nagar, Srinivas Puri and AIIMS Trauma Centre. After detail examination and study by State PWD and its recommendations has been got verified by two other expert agencies, PWD had already submitted proposal to UTTIPEC which is under consideration. This will certainly address the issue of additional vehicular traffic on account of Redevelopment.”

117. In view of the above, while the Project cannot be faulted at the sanction stage, the respondents are directed to ensure a time-bound and expeditious completion of the projects that have been highlighted by it and mentioned herein above. There must also be strict implementation of the measures that are suggested by UTTIPEC in this regard.

118. Another important aspect of traffic management is the provision for parking of vehicles in the Project. It is admitted by the respondents that the parking provision in the Project is 27% less than the one

contemplated under the MPD. The respondent no. 19 claims to have adopted the norms as laid down in 'Table 8.2- Development Controls- Govt. Offices' so far as the Commercial Blocks are concerned, and O.M. dated 07.08.2013 issued by the MoUD in so far as the residential accommodation is concerned. They submit that with the availability of Metro near the Project; "walk to work" concept being adopted, this would encourage lesser use of private vehicles by the residents of the colony.

119. While as a concept, the above may sound very attractive, it would require strict implementation. It has to be ensured that for lack of parking space in the colony, vehicles are not parked outside on the main or the arterial roads. Delhi Police in its affidavit and submissions has assured of such measures being taken. Strict policing and zero tolerance to violation should therefore, be a norm to be followed in the vicinity of this Project.

120. The respondent no. 19 has explained that 256 flats in the colony have been allotted to the organizations who have taken the space in the office complex. This will ensure that these officers at least would not have to use private vehicles to commute to their offices. These organisations have also been allotted 416 number of parking slots. Effort should be made to encourage these organisations to also reduce footfall of general public; incentivizing their work force to use pooled modes of transport; use of public transport facilities and other means of ensuring lesser number of private vehicles visiting the Project.

121. This Court in its order dated 28.11.2018 had directed as under:-

“3. Insofar as the provisions for parking are concerned, it is reported that sufficient parking is available within the commercial complex. This Court is informed that the norms applied by the NBCC are 1.8 PCU for commercial space and variable norms have been applied for GPRS (one car for Type II & III, two cars for Type IV and V and three cars for Type VI flats).

4. The respondents shall ensure that the said norms are strictly complied with on ground. All persons, to whom residential units are allotted, shall file a declaration on affidavit affirming that they shall limit their vehicles to the norms as provided. NBCC shall also ensure that the system of restricted entry is implemented to ensure that only a limited number of vehicles, in conformity with the norms, are permitted inside the commercial complex. All allottees shall be issued a permit in conformity with the said norms.”

122. The respondent no. 19 shall remain bound by the above direction.

123. In the present judgment, it has been found that there is an excess space earmarked for commercial purpose. Direction has been issued for the Authorities to consider if the same can be regularized. The Authorities are directed to also consider the issue of parking of vehicles and effect thereof, while considering the issue of regularization.

124. The petitioners have further challenged the Project on the ground of lack of Social Infrastructure. It has been further alleged that even the area earmarked for Social Infrastructure is being used for commercial purposes. This has been refuted by the respondent no. 19 by pointing out

that out of the total permissible area of 56221.70 sq. m., actual constructed area for social infrastructure is 32,111 sq. m. with additional construction of 2,000 sq. m. The respondent no.19 has further contended that there is no shopping mall being constructed in the complex. It has asserted that it is only a local shopping centre which shall be used only for purposes of shops that are required for the colony. In view of this stand and binding the respondent no. 19 with the same, I find no merit in the challenge laid by the petitioners.

125. As far as challenge to the construction being within the prohibited zone of the Ancient Monument, this has been refuted by the respondents. It has further been pointed out that the National Monuments Authority has granted its approval to the Project on 03.01.2013. The Competent Authority under the AMASR Act had also granted its approval vide letter dated 15.03.2013. DUAC granted its approval on 15.07.2013. This Court also in its order dated 20.05.2019 observed as under:-

“13. The last issue concerns to the permission granted by the National Monument Authority for carrying out extensive development within a Regulated Area. The learned counsel appearing for NBCC states, on instructions, that there are approximately 30 towers that have been constructed in the Regulated Area, that is, between 100 metres to 300 metres of the centrally protected monument. The attention of this Court is also drawn to the said permission, which indicates that the National Monument Authority had granted the permission subject to various conditions, including the "element of art & architecture of the protected monument near the locality i.e. Tomb of Darya Khan and nearby tombs in the façade of the proposed buildings". This Court is not certain as to whether any

of the buildings have incorporated any architectural or aesthetic features of the protected monument. It would also be necessary to examine the decision-making process in this regard. In addition, it would also be relevant to examine whether the National Monument Authority has ensured that the conditions imposed by it have been fulfilled.”

126. Pursuant to the above order, a joint inspection was carried out by the concerned Authority on 27.06.2019 and an affidavit was filed by the ASI before this Court stating as under:-

“4. That the part of building complex located in the Regulated Area was constructed in pursuance of a NOC granted by the Competent Authority, Delhi vide order dated 15.03.2013. A copy of the NOC is annexed and marked as ANNEXURE R-4.

5. That the standard directions (Form-IV) aimed at making the surrounding areas of Protected Monuments harmonious were issued by the Competent Authority. A copy of Form-IV is annexed and marked as ANNEXURE R-5.

6. That following the best practices around the world, various architectural features were incorporated in the construction of building complex located in the Regulated Area of the Centrally Protected Monument. Photographs showing the neutral colour scheme and contemporary designs of the residential buildings and the past and present state/surroundings of the monument are annexed and marked as ANNEXURE R-6 (Colly).”

127. In view of the above assertion, no merit is found in the challenge laid by the petitioners.

128. The learned counsel for the petitioners in course of her arguments also contended that there has been illegal felling of trees and lack of replantation/compensatory plantation. This has been controverted by the respondent no. 19 by contending as under:-

“The permission to remove 729 trees was granted by Secretary, Environment and Forest, GNCTD under the DTPA, 1994 vide notification dated 19.12.2013 (Annexure-8 to the NBCC WS dated 5.11.2019)) and NBCC was required to deposit sum of Rs. 2,34,73,800/- for compensatory plantation.. In compliance thereof NBCC deposited sum of Rs 2,34,73,800/- with Forest department GNCTD, for compensatory plantation of 7290 trees. The tree officer and DCF (Forest) vide order dated 23.12.2013 (Annexure-9 to the NBCC WS dated 5.11.2019)) granted permission for cutting down 729 trees.

The permission to remove 1167 (1123 cutting + 44 Transplantation) trees was obtained by NBCC from tree officer and DCF (Forest) vide order dated 08.12.2014 (Annexure-10 to the NBCC WS dated 5.11.2019)) and NBCC had deposited Rs. 4,50,80,000/- towards compensatory plantation.

The details of tree cutting and compensatory plantation at Kidwai Nagar (East) are as under:

1. *Permission Granted for Trees Cutting :* 1852
Nos.
2. *Tree Cut At East Kidwai Nagar :* 1796
Nos.
3. *Compensatory Plantation to be done at East Kidwai Nagar as per approval :* 15455
Nos.
4. *Compensatory Plantation done at*

*East Kidwai Nagar till 31.10.2019 : 14575
Nos.*

The most of the newly planted saplings towards compensatory plantation at EKN has now grown up as full fledged tree upto 10-25 ft height and created a green belt in the surrounding area.”

129. The above clearly shows that there is indeed a shortfall in the compensatory tree plantation by the respondent no. 19. It is therefore, directed that before handing over of the possession of the commercial/office block to the allottees, the respondent no. 19 shall ensure that the compensatory tree plantation is completely carried out.

130. Accordingly, the present petition is disposed of binding the respondent no. 19 with the directions given hereinabove with respect to various aspects.

131. There shall be no order as to costs.

NAVIN CHAWLA, J

FEBRUARY 11, 2021/rv