

N. D. M. C.

Vs

Statesman Ltd.

Civil Appeal No. 4447 of 1989

(Ranganath Misra, M. N. Venkatachaliah JJ)

24.10.1989

ORDER

VENKATACHALIAH, J. -

1. The New Delhi Municipal Committee (NDMC) seeks special leave to appeal to this Court from the order dated April 28, 1989, of the High Court of Delhi in Civil Writ Petition No. 3090 of 1987. In the writ petition, Statesman Ltd., and its Managing Director, respondents 1 and 2 respectively herein, sought to impugn the decision of the NDMC dated February 18, 1987, declining to sanction the revised plans for the construction of "Statesman House" -a high-rise building on plot No. 148, Barakhamba Road, New Delhi, of which respondent 1 is the lessee. The High Court allowed the writ petition and directed the NDMC to convey its formal sanction of the building plans on or before May 5, 1989.

2. The NDMC assails the decision of the High Court on grounds, principally, that the plans for the multi-storyed high-rise building, as proposed by Statesman Ltd., did not, in the matter of the fire safety requirements, accord with the mandatory requirements of the Statutory Building Bye-laws promulgated under the Punjab Municipal Act, 1911, in relation to the Union territory of Delhi and that the proposed building did not also provide for a "podium/pedestrian walkway" made mandatory by the Zonal Development Plan for Zone D-1 (viz., Connaught Place area) approved by the Central Government on April 30, 1966 in No. 21023(7)/66 UD under Sec. 9(2) of the Delhi Development Act, 1957.

3. We have heard Sri Kapil Sibal learned senior advocate for the NDMC and Sri Nariman and Sri Soli J. Sorabjee, learned senior advocates for the Statesman Ltd. and its Managing Director. Special leave is granted.

4. Respondent 1, a publisher of newspapers, holds a lease in perpetuity from government of the plot No. 1148, Barakhamba Road, New Delhi. In the year 1980 respondent 1 sought for, and obtained, permission from the Land Development Officer, to erect a high-rise building of an area of 1,62,000 square feet and paid Rs. 63,40,918 as betterment levy. On May 4, 1982 it applied for, and on August 29, 1980 obtained, sanction from the NDMC of its building plans, valid for two years. The sanction was revalidated for a further period of two years.

5. In June 1985, however, there was, it would appear, prohibition on high-rise structures. But this prohibition, in relation to Connaught Place area, was lifted on July 18, 1986. On December 29, 1986 respondent 1 submitted revised plans incorporating therein substantial changes in the plans necessitated, as it was claimed, by the changing requirements of printing technology and the plans

as earlier sanctioned did not meet these altered requirements. The new building, as envisaged by the revised plans, would accommodate the printery of the respondent 1, its offices and offices and business accommodation. On January 7, 1987, the appellant forwarded the revised plans to the Delhi Urban Art Commission (DUAC) in compliance with the requirements of Section 12 of the Delhi Urban Art Commission Act, 1973 which envisages that, notwithstanding anything contained in any other law for the time being in force, every local body shall, before according approval in respect of any "building operations" or "development proposals" refer the same to the DUAC for its scrutiny. Section 12, further provides that the decision of the DUAC in that behalf shall be binding on such local body. The DUAC did not promptly scrutinise the plans but engaged itself in some correspondence with the NDMC as also with the Ministry of Urban Development, Government of India, seeking what it referred to as the "requisite clarifications", "clear cut finalised policy" and "guidelines" for it to be able to process the plans.

6. However, by communication dated February 18, 1987, the NDMC in exercise of power under Section 193(3) of the Punjab Municipal Act, 1911, rejected the plans, assigning 28 reasons for the rejection. On May 14, 1987, the architect of respondent 1 claiming to have subsequently complied with or clarified the points on which the rejection was based, resubmitted the plans. On May 26, 1987, the architects wrote to NDMC to reconsider its decision dated February 18, 1987, in the light of the rectifications effected. However, no positive response having emanated from the NDMC respondent 1 and 2, on October 27, 1987, filed the writ petition in the High Court for an appropriate order directing the DUAC and the NDMC to "forthwith deal with the application for grant of sanction".

7. Some time in March 1988, the Chief Fire Officer, Delhi Fire Services, and the Deputy Commissioner of Police (Traffic), New Delhi, were impleaded to the proceedings. During the pendency of the proceedings in the High Court, the DUAC which had earlier considered the plans to be 'conceptually unsatisfactory' took a decision to approve the plans. So did the Chief Fire Officer who, by his communication dated March 9, 1988, gave clearance to the building plans in relation to the fire safety precautions. The High Court considered the objection raised by the Deputy Commissioner of Police (Traffic) as unrelated to the bye-laws as applicable to the situation and held that the objection from that source should not interdict the sanction of plans by the NDMC. During the pendency of the proceedings, the High Court required the parties to sort out their differences. On December 9, 1988, the High Court had occasion to say :

".... We have no doubt that the NDMC will grant the final approval without wasting any further time. In case the meeting of the Building Plans Committee of NDMC is not scheduled to be held within two weeks, the NDMC will so arrange that a special meeting is held so that the matter is not delayed any further. Case to be listed before court for final orders and disposal on February 3, 1989."

8. In the course of the order dated April 28, 1989 finally disposing of the writ petition, the High Court after referring to what is considered to be a co-operative attitude of the DUAC and other authorities, however, had had this to say of the NDMC.

"However, to our surprise on the final date of arguments, that is, on March 31, 1989 the NDMC changed its counsel and the standing counsel for NDMC appeared instead of Mr. H. P. Sharma, advocate who had been appearing throughout ...."

"..... But surprisingly NDMC was not willing to take a decision and continued to

raise frivolous objections for reasons best known to it. In spite of the fact the clearance had been granted by Urban Art Commission as also by all other authorities the sanction was not conveyed and was withheld for no reasons. This attitude of NDMC is beyond our understanding. Since I have come to the conclusions that no objection remains from any authority I am of the opinion that non-sanction of the plans on the part of the NDMC is absolutely unjustified and cannot be supported by any reason whatsoever."

9. The High Court was persuaded to the view that NDMC's disinclination to accord sanction to the plan was unjustified; that whatever reservations it had had as to the adequacy of the fire safety measures, as envisaged in the building designs, were allayed by the Chief fire Officer's clearance and held that, thereafter, there was no impediment to the sanction. The High Court, accordingly, directed the NDMC :

"... to convey its formal sanction of the building plans and release the same to the petitioner Company on or before May 5, 1989 ...."

10. Before us, appellant-NDMC has aired a serious grievance both against the validity of the reasoning of and conclusion reached by the High Court as also the manner of the conduct of proceedings which were, according to the appellant, initially more in the nature of efforts directed towards the resolution of the dispute by mutual negotiation than by adjudication, but acquired an adjudicative complexion with such suddenness that appellant was denied a reasonable opportunity of elaborating on the substantial issues of serious public importance pertaining, as they did, to a vital area of fire safety precautions in high-rise buildings as conceived in the Building Bye-laws. It is submitted that the High Court failed to consider submissions of the appellant on certain vital issues. In his affidavit dated June 6, 1989, filed in this Court, Sri H. P. Sharma, learned advocate who appeared for the NDMC before the High Court stated :

"... Again, it is clear from the order that the entire matter was being conducted in a spirit of compromise which shows that instead of adjudicating upon the issues in the writ petition, parties to the petition were required to resolve the matter amicably. On March 31, 1989, Mr. S. D. Satpate, Chief Architect, NDMC and Mr. Karam Chand, Dy. Architect, NDMC were present in court.

4. Counsel for NDMC informed to the court of the presence of the said persons who were ready to assist the court as certain objections were still outstanding. However, the court did not ascertain from any of the officers if they had any objections. Consequently, the Hon'ble Court was not informed of the details of the said objections of the NDMC. Instead, the court issued rule on the same date and proceeded with the matter. I, as counsel appearing on behalf of NDMC along with Mr. Bikramjit Nayyar, advocate requested the court that the NDMC wished to file an affidavit giving details of the outstanding objections. Time was sought to file the said affidavit. Counsel for NDMC also indicated that the normal practice of the court is to issue rule and thereafter fix the case for final disposal giving an opportunity to the parties to file additional affidavits, if any for the disposal of the petition. However, the court declined the request and directed counsel for NDMC to proceed with the hearing on that very date. The matter was proceeded with and judgment was reserved on that date. During the course of the hearing the standing counsel for the NDMC raised the issue of the applicability of bye-law 16.4.8 of the applicable building Bye-

laws of the NDMC and submitted that the clearance of the Chief Fire Officer did not prevent the NDMC from enforcing the applicable bye-laws. Standing counsel for the NDMC also submitted to the court that the approval of the DUAC was conditional. However, the court in the light of the statement of counsel for the DUAC did not deal with the issue of the applicability of Bye-law 16.4.8."

To similar purport and effect is the affidavit of Sri. Satpate the NDMC's Chief Architect.

11. Before we examine the specific contentions raised in the appeal, it is necessary to refer to certain basic features of the proposed building in relation to its fire safety aspects. The eligibility of the proposed construction for sanction except on the point of adequacy of "refuge areas" in the requirement of a "pedestrian walkway" and "podium" is not otherwise disputed.

12. The proposed "Statesman House" envisaged by the plans is a fifteen storey, 55.2 metre high structure its high-rise portion being a cylindrical structure with a hollow core open to sky. On each of the floors above the fourth floor, commencing above the height 15 metres, there is a 5 foot wide circular passage on the inner side of the circle overlooking the central vacant area. These passages which are connected to the lift areas, provide access to the accommodation on the respective floors. Only an arc of the circular passage in each of the floors is visible from and overlooks the front of the building. Respondent 1 claimed that these inner circular passages answer the description, and serve the purpose, of "refuge areas" required to be provided as fire safety measures. In so designing, the architects seek to combine general utility and "refuge areas". The question is whether this architectural and design resourcefulness, which enables respondent 1 to claim these, otherwise essentially functional and utility areas, also as 'refuge areas' for fire safety, really satisfies the requirements of the bye-laws.

13. We may now turn to the requirements of the bye-laws in this behalf. Fire protection requirements, generally are dealt with by bye-laws 17.1 and 17.2 which provide :

"17.1. Buildings, shall be planned, designed and constructed to ensure fire safety and this shall be done in accordance with Part IV Fire Protection of National Building Code of India, unless otherwise specified in these bye-laws. In the case of buildings (identified in bye-law 6.2.4.1), the building schemes shall also be cleared by the Chief Fire Officer, Delhi Fire Service."

"17.2. The additional provisions related to fire protection of buildings more than 15m. in height and buildings identified in 6.2.4.1, shall be as given in Appendix K."

14. The proposed building is over 15 metres in height and attracts bye-law 16.4.8 which, inter alia, provides :

"Refuge Area - For all buildings exceeding 15m. in height, refuge area shall be provided as follows :

(a) For floors above 15m. and up to 24m. - one refuge area on the floor immediately above 18m.

(b) For floor above 24m. and up to 36m. - one refuge area on the floor immediately above 24m.

(c) For floor above 36m. - one refuge area per every five floors above 36m."

This bye-law specifies the location, at various heights, of the "refuge area". The structural nature and basis of its calculation of the extent of these "refuge areas" are dealt with by bye-law 16.4.8.1 which provides :

"Refuge area shall be provide on the external walls as cantilever projections or in any other manner (which will not be covered in FAR) with a minimum area of 15 sq. mts. and to be calculated based on the population on each floor at the rate of 1 sq. m. per person."

The expression "external wall" is a defined expression. Bye-law 2.27 says :

"An outer wall of a building not being a partition wall even though adjoining to a wall of another building and also means a wall abutting on an interior open space of any building."

15. In the plans, the disposition of the 'refuge area' is, admittedly, not in strict accord with the prescription of bye-law 16.4.8 which requires the location of 'refuge areas' for a group of floors as specified therein. The bye-law does not contemplate one for each floor as now provided in the plans. The 'refuge areas' are not provided on the outer "external" wall; but are on the wall abutting the inner circular vacant space forming the floor of the hollow-core of cylindrical structure. As the entrance is now designed and conceived, fire-fighting and rescue equipment cannot, it would appear, be carried into this inner area. But respondent 1 claims that the walls on which these refuge areas are provided about the inner vacant space and are eligible to be called 'external' walls within the meaning of bye-law 2.27.

16. The NDMC by its communication dated March 14, 1989 to the Chief Fire Officer expressed its reservations as to the correctness and propriety of the clearance to the plans accorded by him on March 9, 1989. By his reply dated March 30, 1989, the Chief Fire Officer, in justification of the approval which he gave stated :

"the consultants have proposed refuge area at each floor above 15m. level, which is considered to be more convenient and reliable because there is hardly any scope of smoke logging due to centre core open to sky."

17. The contentions urged by Sri. Sibal in support of the appeal are :

(i) Bye-law 16.4.8 prescribes that in respect of all buildings exceeding 15 metres in height there shall be provision for refuge areas at specific locations for a specific group of floors. The requirement is mandatory as it is guided by the considerations of the need to direct and concentrate rescue operations at particular, pre-fixed locations. The bye-law is binding on the Chief Fire Officer who is not competent to relax the rigour of its prescriptions.

(ii) The 'external' walls spoken of by bye-law 16.4.8.1, though so defined in Bye-law 2.27 as to include a wall "abutting on an interior open space of any building", however, having regard to the purpose of the bye-law can only refer to an outer wall accessible to the rescue team. The definition is, as always, subject to the context requiring a different meaning. For purposes of bye-law 16.4.87 an "external" wall

should be understood with reference to an open area from which rescue operations are possible.

In the present case the construction of the bye-law suggested by the respondent-company would be justified only if fire fighting and rescue operations could be conducted from the inner open space. In the present case, having regard to the lack of access to the inner vacant space for fire engines etc., the proposition of respondent 1 is not even a statable possibility.

(iii) The clearance from the Chief Fire Officer, Delhi Fire Service, envisaged in bye-law 17.1 is in addition to the requirements of bye-laws 16.4.8 and 16.4.8.1. The said clearance is one of the conditions for eligibility of the plan to be considered for accord of sanction by the NDMC is not in substitution of the requirement of compliance with the objective prescriptions of those bye-law. The primacy to the Chief Fire Officer implicit in the approach of the High Court is erroneous and virtually renders the clearance of the Chief Fire Officer binding on the NDMC. It is the NDMC and NDMC alone that can decide whether the plans satisfy the bye-laws in any particular case.

A reasonable construction of bye-laws 6.2.4.1, 16.4.8, 16.4.8.1, 17.1 and 17.2 would detract from the validity of respondent 1's claim and establish that the clearance from the Chief Fire Officer is one of the conditions and not the sole or conclusive test of the adequacy of fire safety measures in terms of the relevant bye-laws.

(iv) The view of the Chief Fire Officer that the design of the refuge areas in the plans is "more convenient and reliable" is factually and technically unsound as the very nature of the cylindrical structure with a hollow core would promote a "stock" or chimney effect. The Chief Fire Officer's view is not final or conclusive on the point and, at all events, not binding on the NDMC.

(v) The construction of a pedestrian walkway and podium are mandatory not under the bye-laws but from the requirements of a zonal plan or zone D-1 in which plot No. 148, Barakhamba Road is located and that no relaxation of the requirement would be permissible except on a modification of the relevant Zonal Development Control Plans.

The provision for "pedestrian walkway" and "podium" is, therefore, mandatory under the Zonal Development Plan and that on authority including the Chief Fire Officer could compel an abandonment of those statutory presumptions.

(vi) That in the manner in which the case before the High Court proceeded the NDMC was denied a reasonable and effective opportunity of presenting its case. Considerations of public safety underlying the stand of the NDMC was not properly appreciated and NDMC should have been afforded an opportunity to substantiate its valid objections to the plans.

(vii) The grant of relief in the writ petition in the form of a direction to the appellant to sanction the plan was not permissible and that, at best, the High Court could have directed the appellant to reconsider the question of according sanction to the plans in

the light of the High Court's order.

18. Sri Nariman, for the respondent-company, however, submitted that the objection to the plans raised by the appellant on the basis that the refuge areas were not in accordance with the bye-laws was a classic afterthought on the part of the appellant. Bye-laws 16.4.8 and 16.4.8.1 learned counsel urged, were merely prescriptive of certain minimal standards of fire safety precautions, it being always open to the owner to build into the designs better and more satisfactory standards of fire safety precautions and that in the present case the Chief Fire Officer, who was a technical authority, had himself accepted the designs in that behalf as better and more reliable. Learned counsel urged that out of the 28 reasons put forward by the appellant on February 18, 1987 in support of the rejection of the plans, not even one referred to its present insistence that the refuge areas should be built only at the levels suggested in the bye-law or that the refuge area did not about the "external wall". Sri Nariman further pointed out that in the communication dated February 18, 1987 all that was sought to be said, with reference to the refuge areas in each floor, was that the same had not been taken into account in the calculation of the FAR.

19. Sri Nariman said that bye-law 16.4.8 in its language and content had been bodily lifted from the corresponding prescriptions in the "National Building Code of India", (1983), from the provisions of part IV relating to "Fire Protection". The said Code itself indicated that the norms in regard to fire protections referred to therein were only broad guidelines and were not to be construed to prohibit better arrangements. Sri Nariman referred to the following excerpts from part IV of the said Code at para 0.2 and 0.7 :

"... An indefinite combination of variables is involved in the phenomenon of fire, all of which cannot be quantified. The requirements of this Code should, therefore, be taken as a guide and an engineering design approach should be adopted for ensuring a fire safe design for buildings. It would also be necessary for this purpose to associate qualified and trained fire protection engineers with the planning of buildings, so that adequate fire protection measures could be incorporated in the building design right from the beginning."

"0.7 Nothing in this part of the Code shall be construed to prohibit better types of building construction, more exits or otherwise safer conditions than the minimum requirements specified in this part."

It was, accordingly, urged that the prescriptions in bye-law 16.4.8 and 16.4.8.1 were not inflexible and wherever more liberal and better standards of fire precautions were incorporated in the designs, the bye-laws did not prevent such better measures being adopted by the licensing authority. It was further urged that the Chief Fire Officer was the authority competent to decide questions whether the provisions incorporated in the designs were better and more liberal and that his decision in the matter ought to be conclusive and binding on the licensing authority. In regard to the adequacy and acceptability of fire safety measures in the building design, it was urged, the bye-laws, recognised and accorded a primacy of place to the decision of the Chief Fire Officer and that, indeed, para K-1 of Appendix K read with bye-law 17.2 recognised the importance of, and finality, to the decision of the Chief Fire Officer. The said para K-1 Appendix K reads :

"K-1. In addition to the provision of part IV Fire Protection of National Building Code of India, the Chief Fire Officer, Delhi Fire service may insist on suitable provisions in the building from fire safety and fire fighting point of view depending

on the occupancy and height of buildings."

20. The decision of the Chief Fire Officer to accept the distribution of refuge areas in each of the floors, it was said, was referable to the general power of the Chief Fire Officer to issue such directions. In the present case, it was urged, the designs providing for refuge area in the ratio of one square metre per person on each floor was considered by the Chief Fire Officer as a better and more reliable fire safety measure than those envisaged by the bye-laws and the Chief Fire Officer preferred to accept them.

21. Sri Nariman sought to point out that in the Annexure B-1 to the affidavit dated July 7, 1989 of respondent 2 a list of six buildings had been set out respecting which the sanctions granted by NDMC indicated that the local body had itself understood the prescriptions in the bye-laws to be flexible and had further limited the extent of the refuge-areas to 0.3 sq. metre per person as against 1 sq. metre per person set out in bye-law 16.4.8.1.

22. As to the requirement of bye-law 16.4.8.1 that the refuge area shall be provided on the "external wall" is concerned, Sri Nariman relied upon the definition in bye-law 2.27 to say that a wall abutting an inner vacant space is also an "external wall" and the acceptance of the correctness of this position was implicit in the clearance given by the Chief Fire Officer. The words "in any other manner" in bye-law 16.4.8.1, it is urged, makes room for the requisite flexibility.

23. In regard to the "pedestrian walkway" and "podium" it was pointed out that the insistence upon these was again, a glaring instance of the inexhaustible resourcefulness of the appellant to thwart respondent's project. It was pointed out that none of the 28 objections raised in the NDMC's communication dated February 18, 1987; nor the further objections raised on February 6, 1989; nor, indeed, the objections raised by NDMC on March 14, 1989, to the clearance given by the Chief Fire Officer - who, incidentally, had advised the deletion of podium in view of the obstruction it would present the fire brigade appliances, - had the NDMC raised the question of the alleged infirmity in the plans for want of provision for the walkway and podium. It was also pointed out that in none of the counter-affidavits filed in the High Court nor in the memorandum of special leave petition; nor in the written submissions filed before this Court had this question been agitated by the NDMC. It was pointed out that the committee constituted by the order No. 10(24) RN-83/731/7714-24 dated June 13, 1983 made by the Lt. Governor, Delhi, had in its report of February 5, 1986 suggested the doing away with the proposal to construct a raised pedestrian walkway on either side of Barakhamba Road as, in the view of the committee, the "head clearance under this proposed walkway will be such that cars will be able to pass under it, but fire/rescue appliances will not be able to approach anywhere near the buildings beyond the raised walkway". It was pointed out that the committee was also of the opinion that these walkways, if and when constructed, would nullify all fire safety measures in the buildings on either side of the Barakhamba Road. Sri Nariman referred to the advice of the Chief Fire Officer with regard to the present plans themselves that the walkway and the podium be disposed with.

24. It was, therefore, urged that the insistence on the construction of the pedestrian walkway while being wholly undesirable, was also a glaring instance of how by these afterthoughts appellant made manifest its determination to delay respondent's project.

25. On the contentions urged, the points that fall for consideration are :

(a) Whether bye-law 16.4.8 as to the disposition and location of the "refuge areas"

prescribes an inflexible, rigid standard and whether the location and distribution of the refuge areas in each floor is violative of the bye-law ?

(b) If point (a) is held in the negative, whether the clearance given to the plan by the Chief Fire Officer, on the view that distribution of the refuge areas in each floor is a better and more reliable fire safety measure is conclusive and binding on the NDMC. In other words, is it open to the NDMC to examine and decide to question independently of the Chief Fire Officer's clearance ?

(c) Whether the refuge areas located on the walls abutting the inner vacant area be held to satisfy the requirements of bye-law 16.4.8.1 ?

(d) Whether the extent of 'refuge area' requires to be reduced from 1.0 sq. metre per person to 0.3 sq. metre per person ?

(e) Whether the NDMC is justified in insisting upon the erection of "pedestrian walkway" an a "podium" in front of the proposed building ?

Re points (a) and (b)

26. A number of affidavit and counter-affidavits are placed before us on the scope of the bye-laws. It is not necessary to examine all of them as the matter is essentially one of construction of the provision itself. The contents of bye-laws 16.4.8 and 16.4.8.1 are borrowed from Part IV dealing with "Fire Precaution" in the National Building Code of India, 1983. The Code conceives of these prescriptions as only broad guidelines. But the Building Bye-laws in the present case which have drawn on these provisions from the Code have, however, assimilated them as part of the statutory prescriptions under the bye-laws. The NDMC says that once this is done the norms are no longer directory but assume statutory import and become mandatory.

27. In the infinite variety of ways in which the problem of adequate fire safety measures to be incorporated in buildings present themselves, and having regard to the wide and complex range of situational variations in the location, character and design of buildings and their dispositions in relation to the other factors influencing the evaluation of such safety measures, a view favouring flexibility of approach ought to commend itself. The National Building Code of India, from which the substance of the bye-laws are drawn, indicates that these are concerned with indicating certain broad minimal assurances for fire safety and that better and more reliable measures ought not to be excluded.

28. We are not, however, impressed by the submission that the six instances cited in Annexure B-1 to affidavit dated July 7, 1989 of respondent 2 are really instances demonstrating departure from the present stand of the appellant. Indeed, appellant points out that out of the six buildings referred to in Annexure B-1, only two i.e. No. 23, Barakhamba Road and DLF Plaza, 21-22, Narendra Place, were dealt with by the NDMC and that the rest were dealt with by the DDA. The affidavit of Sri Karamchand, architect, NDMC avers that no sanction was given in respect of No. 23, Barakhamba Road and that no departure from bye-law 16.4.8, as understood by the NDMC, was involved in the case of the DLF Plaza building. The explanation offered is, in our opinion, acceptable and, nothing much turns upon the cases referred to in Annexure B-1.

29. But that is not to say that the rigid interpretation sought to be placed by the appellant on the bye-laws 16.4.8 and 16.4.8.1 is justified. It is, of course, wise in the interests of uniformity of

administration of these bye-laws and of elimination of possible complains of partisanship, that the NDMC should insist upon adherence to the requirements of the bye-law 16.4.8 on its own strict terms. That should not, however, denude the power of the appellant to accept designs which, in the judgment of the appellant, offer and incorporate fire safety precautions of higher measure. When fast and speeding changes are overtaking the fundamental ideas of building design and construction and new concepts of building material are emerging, it would be unrealistic to impute rigidity to provisions essentially intended to promote safety in building designs. As suggested in the National Building Code Bye-laws, provisions such as bye-law 16.4.8 envisage certain minimal safety standards compliance with which should, generally, be insisted in order that there be uniformity and equal treatment and an elimination of imputations of favouritism and arbitrariness. If a building design incorporates fire safety measures in a measure promoting fire safety precautions far better than those suggested by the bye-laws, they should not fetter the hands of the licensing authority to accept them. Under the relevant statute and the bye-laws, the authority to grant or refuse the licence is the NDMC. It has the power to decide whether any proposals are an improvement on the prescriptions contained in the bye-laws - which, indeed, is a matter of some complexity and, in conceivable cases, one calling for expertise - is the NDMC itself. From the way the National Building Code, from which the provision is borrowed, has treated such provisions, it is not unreasonable to presume that the requirements were incorporated in the bye-laws with a similar approach as to their import. The clearance from the Chief Fire Officer envisaged by bye-law 17.1 is an additional condition and not a limitation on the power of the NDMC to satisfy itself that the building plans provide for adequate fire safety precaution in accordance with its bye-laws or in a better measure. The clearance by the Chief Fire Officer, which is expected to involve and follow a technical assessment and evaluation, obliges the NDMC to give due weight to it but, having regard to the scheme and language of the bye-laws the decision of the Chief Fire Officer is not binding on the NDMC. We accept the submissions of Sri Sibal that clearance of the plans by the Chief Fire Officer would not render it obligatory on the part of the NDMC ipso facto to treat the plans as necessarily complying with the requirements of relevant bye-laws. While the clearance by the Chief Fire Officer is an indispensable condition for eligibility for sanction, however, such clearance, by itself, is not conclusive of the matter nor binding on the NDMC.

30. On the material placed before us we are inclined to hold on points (a) and (b) that the requirements of bye-law 16.4.8 are not inflexible and that in appropriate cases, where the plans and designs incorporate fire safety measures which, in judgment of the NDMC, are considered to provide for the safety in a measure better than those envisaged by the bye-law 16.4.8, the NDMC would not be precluded from accepting them. Whether the plans submitted by respondent 1 distributing 'refuge areas' in each floor provide such a better and more reliable fire safety measure is a matter for the decision of the NDMC. We also hold that the clearance from the Chief Fire Officer in this behalf though entitled to weight, would not be binding on the NDMC which can and is entitled to examine the question independently of such clearance from the Chief Fire Officer.

Re point (c)

31. Bye-law 16.4.8.1 requires that refuge areas shall be provided on the "external wall" by means of cantilever projections or "in any other manner". In the present case the refuge areas are provided on the walls that open into an inner vacant space. They are provided on walls which respondents say are "external walls" having regard to the definition of that expression in bye-law 2.27. The definition is not conclusive; but is subject to the context indicating a contrary import. The purposes of refuge areas include that in the event of an outbreak of fire in the building, persons exposed to the hazard should be able to have immediate access to a place of safety which by its access to fresh air

insulates them from heat and smoke and further that those persons could conveniently be extricated and rescued to safety by rescue operations. The word "external wall" in bye-law 16.4.8.1 which is a provision intended to promote public safety, health and well-being must receive a purposive construction which promotes those objects and purposes. Refuge area located on a wall though abutting an inner vacant space would not, by itself, promote the object if the vacant space is such that no rescue operations are possible to be conducted therefrom. If the fire fighting and rescue equipment cannot have access to such inner vacant space, then, in the context of the specific objectives of bye-law 16.4.8.1, the wall abutting such inner vacant space would not be an "external" wall for purposes of the said bye-law. Having regard to the very purpose of providing for "refuge areas" intended, as it is, to secure protection to persons in the event of an outbreak of fire in a high-rise building, the expression "external" wall must be held to be one which abuts a vacant space to which fighting and rescue equipment can have access and from which rescue operations are feasible. We find it difficult to accept the submissions of Sri Nariman based purely on the definition in bye-law 2.27. The definition is subject to the context suggesting or requiring a different meaning. The context here does suggest such a different import. Having regard to purpose bye-law 16.4.8.1 is intended to serve "refuge areas" must be located on walls which open into vacant space from which rescue operations are possible. NDMC should decide this question and examine whether such rescue operations are feasible from the inner circular vacant space. This is an exercise individual to each case and to be judged on case to case basis. The words 'in any other manner' in bye-law 16.4.8.1 are not intended to envisage a totally different idea of the location of 'refuge areas' but, prima facie, intended to suggested some feasible alternative to the technical design of the construction of the refuge area - whether it should be a cantilever projection or designed in some other way. Point (c) is held and answered accordingly.

Re point (d)

32. One of the contentions raised by Sri Nariman was that the insistence of 1.0 sq. metre per person for calculating the extent of the refuge areas is discriminatory as the NDMC had reduced the requirement only to 0.3 sq. metre per person in many other similar high-rise buildings.

33. In the course of the counter-affidavit filed by Sri Karam Chand, architect of NDMC, this claim that the extent of refuge area could be calculated at 0.3 sq. metre per person instead of 1.0 sq. metre per person is not disputed. Indeed, it is stated in the said affidavit :

"... The NDMC does not have any objection to the provision of 1.0 sq. metre per persons as required by bye-law 16.4.8.1. In the event the Statesman Limited wish to provide only 0.3 sq. metre per person in accordance with the resolution of August 4, 1988, the NDMC would have no objection to the same and the Statesman Limited in this regard be directed to amend their building plans in accordance with their desires ...."

34. Respondents are therefore at liberty to limit the refuge areas to 0.3 sq. metre per person as against 1.0 sq. metre per person.

Re point (d)

35. This relates to the insistence on construction of a "pedestrian walkway" and a "podium" parallel to Barakhamba Road in front of the proposed building. Though the zonal development plans envisaging a raised pedestrian walkway on either side of Barakhamba Road and the provision for

podia connecting the building with the walkway were accepted and an appropriate notification issued way back in 1966, no steps appear to have been taken to give effect to them in a uniform manner. In the very nature of the concept of a pedestrian walkway on either side of the road, the insistence for provision of such a walkway in an individual case without the integration and continuation of the walkway along the whole of the road, would indeed, be purposeless. Several authorities, including a committee constituted by the Lt. Governor of Delhi in 1983 and the Chief Fire Officer, have advised against the implementation of the proposal. In the instant case the Chief Fire Officer has, it is not disputed, expressly opined against the desirability of such a 'walkway'. The NDMC has to bestow serious reconsideration on its insistence to have such a pedestrian walkway for the building, if such walkways do not already obtain in other buildings on the road.

36. The only way in which, perhaps, the zonal developmental requirements in this behalf and the difficulties and problems inherent in the insistence upon construction of such pedestrian walkway in an isolated particular case, could be reconciled is to direct the NDMC, in the event of its approving the plans otherwise, to keep the requirement of the pedestrian walkway and the podium in abeyance for the present, subject to a written undertaking to be lodged with it by the respondent 1 and 2 to the effect that whenever the policy to implement the zonal developmental requirements in this behalf is finally decided upon, the respondents 1 and 2 would undertake to put up such a pedestrian walkway and podium. The NDMC also, if it so chooses, could secure the requisite financial guarantees for the construction of such a pedestrian walkway by the NDMC itself at the expense of the respondent if respondents 1 and 2 fail to do so whenever so required. This course would, while ensuring the prospect of compliance with the zonal development prescriptions, if they are decided to be put into effect, also allay the apprehension of respondents 1 and 2 that governmental authorities are dealing with the Statesman's project with 'an evil eye and an uneven hand'. Point (d) is answered accordingly.

37. We might advert here to the grievance of respondents 1 and 2 that the NDMC did not raise, at the appropriate stage, any specific objections to the plans on the ground that either they were not in conformity with bye-law 16.4.8 or 16.4.8.1 or that the plans were defective for want of pedestrian walkway. Objections based on bye-law 16.4.8.1, it was urged, was never in mind of the NDMC. These objections, it was urged, were developed from stage to stage leaving the inference inescapable that the NDMC was pre-determined to decline the sanction for the 'Statesman House' on one ground or another.

38. We are afraid, the way NDMC has developed its stance from time to time incurs and perhaps justifies this grievance. Indeed, at no stage of the proceedings before the High Court, or even in important communications bearing on the question of the sanction, did the NDMC refer to the specific objection based on the lacuna that refuge areas were not located on the "external" walls, as interpreted by the NDMC and the lack of a provision for the pedestrian walkway. Sri Nariman urged that we should not permit the NDMC to raise these belated and laboured objections.

39. We have considered these submissions. We have proceeded to consider the contentions of the NDMC even on these points on the merits in view of the fact that they are matters of some general public importance, though we are not unmindful that the NDMC has not been businesslike in the way it has dealt with the question from time to time.

40. It is for this reason that though in view of the findings recorded on the various contentions, the order dated April 24, 1989 of the High Court requires to be and is hereby set aside, however, we keep this appeal pending for such final orders and directions as may become necessary to be issued.

In the meanwhile, we permit respondents 1 and 2 to effect such rectifications to the plans in regard to the refuge area as may be necessary in the light of the observations in this order. The refuge areas could be located in each of the floors separately, provided that it could be shown to the satisfaction of the NDMC that such a measure would better promote fire, safety in the building and, provided further, that they are located on external walls "by cantilever projection or in any other manner" abutting a vacant space from which rescue operations are rendered possible. If such rectifications to the plans are made and submitted within three weeks from today, the NDMC will consider and decide the question of according sanction to the plans in the light of the observations in this order and - without insisting upon any fresh clearance form DUAC or the Chief Fire Officer - within three weeks thereafter and report to this Court the decision taken upon such reconstruction.

41. This appeal shall be kept pending and be taken up for final disposal after the submission of the report from the NDMC in this behalf. If respondents 1 and 2 are aggrieved by such fresh decision of the NDMC, those grievances shall be considered in the further proceedings in the appeal.

42. It was also submitted to us that pending final decision, respondents 1 and 2 should be permitted to commence the construction as delays had entailed serious cost and time overruns. We permit respondents, at their option, to commence the construction work according to the plans submitted by them, on the condition that they file a written undertaking before the NDMC that the construction would be at the risk of the respondents 1 and 2 and it would not progress beyond a height of 15 metres and in the event of an ultimate rejection of the plans, they would have no claim against the NDMC for any loss occasioned to respondents 1 and 2.

43. The appeal is directed to be called after six weeks to await the further report of the NDMC referred to in paras 40 and 41 supra.

Ordered accordingly.

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