

## SUPREME COURT OF INDIA

In Re: News Item Published In Hindustan Times Titled "And Quit Flow Maily Yamuna"

(S. R. Babu and G.P. Mathur JJ.)

12.12.2003

### ORDER

**S. RAJENDRA BABU, J.**

1. On 11.12.2001, this Court made an order as follows:

"I.A. has been filed. It has been taken on board and the same be numbered.

Learned Amicus Curiae draws our attention to the notification dated 7<sup>th</sup> June, 2000, wherein it was inter alia stated that the plans would be sanctioned only after arrangements for provision of augmentation of municipal services have been made. He then contends that now a press note has been issued on 27<sup>th</sup> November, 2001 which purports to supercede the said notification and permits construction of additional floor without first augmenting the civic infrastructure. The press note indicates that it is only after money is generated by granting permission to construct additional floor that there will be augmentation of civic infrastructure. The learned Amicus Curiae submits that this is not only contrary to the notification of 7<sup>th</sup> June, 2000, but town planning also requires the civic infrastructure being in place before building is allowed to be constructed.

Issue notice to the M.C.D., N.D.M.C., Delhi Administration as well as the Union of India. Stay of implementation of the press note dated 27<sup>th</sup> November, 2001 in the meanwhile."

2. In I.A.No. 24, the Amicus Curiae sought for a direction to stay construction activities being carried on pursuant to the Press Note issued by the Ministry of Urban Development dated 27.11.2001 and direct the enforcement of the Notification dated 7.6.2000. In I.A.No. 25, the Union of India have sought for vacation or modification of the order dated 11.12.2001, I.A.No. 28 is filed by two applicants residing in Hauz Khas, New Delhi, not only for intervention but also seeking modification of the order made on 11.12.2001 to the effect that the building plans can be sanctioned in accordance with the Building Bye-laws, 1983, as amended by the Notification dated 23.7.1998 provided the number of dwelling units are not increased beyond what was permitted prior to 23.7.1998. Another applicant in Panchsheel Enclave has sought for a similar relief in I.A.No.29.

3. The learned Solicitor General, who appeared for Union of India, pointed out that by letter dated 27.11.2001 advertng to a letter from the Commissioner of Municipal Corporation of Delhi sent on 22.11.2001 regarding sanctioning and regularizing of building plans pursuant to the Notification of the Ministry of Urban Development dated 7.6.2000, it was stated as follows:

"2. The matter relating to sanction of building plans as per FAR permissible in July 23, 1998 Notification of Ministry of Urban Development has been considered. It is clarified that subject to the applicant's Undertaking that no additional dwelling unit will be created, building plan may be sanctioned taking into account the increased FAR and the number of floors permitted in the 1998 Notification without any other and further recommendation. This is consistent with the spirit of July, 23, 1998 and June 7, 2000 Notifications as these would not pose a stress on the services, as long as additional dwelling units are not permitted.

3. It is clarified that the June 7, 2000 Notification does not contain any restriction on the sanctioning of building plans/FAR permitted by the 1998 Notification though it stipulates the necessity of upgradation of infrastructure and services. Therefore, sanction of increased FAR and floors as per July 23, 1998 Notification can be considered subject to the condition that the number of dwelling units are not increased beyond what is permitted as per the 1998 Notification.

4. As already indicated in earlier communication of even number dated 25.9.1998 the Municipal Corporation of Delhi should collect the levy on increased FAR and deposit it in a separate escrow account. The amount that has already been collected on this account and further to be deposited shall be utilized exclusively for upgradation of civic infrastructure services. A report indicating the funds received and extent of augmentation work taken up should be sent to the Ministry on quarterly basis."

4. A notification had been issued on 7.6.2000 by the Ministry of Urban Development under Section 349A of the Delhi Municipal Corporation Act, 1957 and Section 260 of the New Delhi Municipal Act, 1994, whereby the unified Building Bye-laws, 1983 stand modified to the extent as indicated in paras 1 to 3 of the Annexure to this Ministry's Notification of even number dated 23<sup>rd</sup> July, 1993, as required under Section 483 of the DMC Act and Section 388 of the NDMC Act. The building plans to be sanctioned in accordance with the amended bye-laws would be subject to the provisions of the layout plans and service plans already sanctioned, and no such layout/service plans would be amended till arrangements for provision of augmented municipal services such as water, power, sewerage, road widening, circulation, parking, parks (green areas), etc. have been made.

5. It is pursuant to this Notification, a Press Note had been issued, In effect, the order made by this Court stayed the operation of the Notification dated 7.6.2000. In this context, it is necessary to advert to a letter indicating that the sanction of building plans are to be made only in accordance with the stipulation made in the Notification dated 7.6.2000 and in case constructions and being taken up without proper sanction then immediate action should be taken against the unauthorised construction. Another letter was sent requesting the Ministry to allow them to continue sanction of building plans as per the norms notified in the Notification dated 23.7.1998 and they had taken up the matter with Delhi Jal Board for evaluating the extent upto which augmentation of services. The Union of India in response to the notice issued by this Court on I.A. No. 24, filed an affidavit of Mrs. Nisha Singh, Director, Delhi Division of the Ministry of Urban Development and Poverty Alleviation. It is set out in the said affidavit that pursuant to the direction issued by the High Court in W.P.No. 3461/89, a draft unified Building Bye-Laws 1993 was prepared and copies of the same incorporating the changes in the Building Bye-Laws 1983 were forwarded to all local bodies on 8.11.1995 for inviting objections or suggestions from the general public before finalisation of the revised Building Bye-laws. A sub-Committee was formed under the Chairmanship of Additional Commissioner to examine the various objections that have been raised. After hearing, various interests such as, representatives of Associations of Architects, Builders, Promoters, Town Planners,

Environmentalists and representatives of various Chambers of Commerce and Industry, the Committee presented a draft of the revised Unified Building Bye-laws for Delhi. In the meanwhile, the Government of National Capital Territory of Delhi constituted a Committee under the Chairmanship of Prof. V.K. Malhotra. That Committee was also of the view that the earlier Building Bye-laws provided for compounding of excess coverage beyond the sanctioned or permissible limit and also compounding of infringement set-backs which were not provided for in the unified Building Bye-laws, 1983. In addition, the Committee bearing in mind the present scenario in Delhi recommended increase in ground coverage, floor area ratio, dwelling units according to size of the plot. However it was noticed by the Committee, that it would lead to extra load on the existing civic amenities/service which will thus be required to be upgraded, Therefore, it recommended levy of betterment charges for the entire covered area at the rates to be decided by the local bodies. On consideration of the Malhotra Committee Report as well as draft Building Bye-laws, A public notice was issued by the Government in the Gazette and two leading daily newspapers on May 1, 1998 with the intent to modify the Master Plan of Delhi 2001 and the present Unified Building Bye-laws. Thereafter, another Committee under the Chairmanship of Chief Planner, TCPO with representatives of different local bodies was constituted to examine the objections or suggestions received pursuant to public notice. On consideration of the same, modification of the Master Plan of Delhi-2001 was made on July 23, 1998 which is the subject matter of the present proceedings. It is noticed that increase of FAR and increased density without corresponding increase in provision of services like water, power, circulation, park, etc. would lead to making urban areas in Delhi uninhabitable and lead to ecological degradation and urban degeneration. Hence up-gradation of services was considered essential before any relaxation in bye-laws could be considered. It was assumed that the augmentation of services would be done before sanctioning the plan in accordance with the revised bye-laws and actual provisions for augmentation of services would be made by levy of betterment charges from all the plot holders before sanctioning of the plan. This is clear from the brochure issued by the Municipal Corporation on February 15, 2000, which stipulates that the Table gives maximum number of dwelling units subject to the provisions of layout plan. Bearing in mind the necessity to promote a habitable, planned and sustainable land development in Delhi, the Ministry of Urban Development had, vide notification of June 7, 2000 stated that the building plans to be sanctioned by all local bodies/Authority passed in accordance with the amended bye-laws of July 23, 1998 shall be subject to provisions of the layout and service plans already sanctioned and no such layout/service plans would be amended till arrangements for provision for augmented various municipal services have been made. It was emphasized that the implementation of this notification is in public interest and before sanctioning the building plans requirement of services such as water, power, electricity, sewerage, drainage, parking, circulation, etc. must be ensured.

6. As a result of the notification dated June 7, 2000 operation of the notification issued on 23<sup>rd</sup> July 1998 stood nullified and the applications were not filed for regularisation thereafter. The modifications made by notification dated 23<sup>rd</sup> July, 1998 basically relate to a FAR and treating basement as not being part of the calculation of FAR in plotted development with no increase in the number of dwelling units in plots up to the size of 500 sq.mt. In those circumstances, modifications of the Master Plan was suggested by the Expert Committee after intensive deliberations and the charge of Rs. 450 per sq. mt. was to be made for additional FAR, which charges would be kept in a separate account for purposes of augmentation of the city infrastructure. It is in those circumstances that the Press Note dated November 27, 2001 was issued seeking to clarify that there will be no objection to augmenting the living space of the already existing family that there was no intention to add dwelling units. There would be increase in FAR but no increase in density. They would give much needed respite to existing bona fide resident owners and also facilitate the raising of additional

resources for upgradation of services.

7. The learned Amicus Curiae vehemently opposed these applications to contend that there should be no modification of the order already made. It cannot be seriously disputed that the order made on 11.12.2001 is an ex parte order only after hearing the learned Amicus Curiae. It is thereafter the affidavits to which we have adverted to have been filed setting out the circumstances in which the orders have been issued by the Government which ultimately resulted in the Press Note.

8. The practical effect of the working of the Press Note can be demonstrated by reference to the following comparative statement:

## SCHEDULE

### LIST OF ENACTMENTS REPEALED

(See Section 9)

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Number and year

(1) Short title

(2) Extent of Repeal

(3)

1. XXX xxx

2. Orissa Act IV of 1950 Orissa Merged States' Laws Act 1950 The words "subject to the restrictions that no transfer of a holding from a member of an aboriginal tribe to a member of a non-aboriginal tribe shall be valid unless such transfer is made with the previous permission of the Sub-divisional Magistrate concerned" in item 1 of Clause (d) of the section shall be omitted.

3. xxx xxx Xxx

9. The Press Note, which was the subject matter of the proceedings before this Court, is issued pursuant to the letter sent by the Ministry of Urban Development and Poverty Alleviation to the Commissioner, Municipal Corporation. In this context, an affidavit was filed of Dr. E.V. Muley, Additional Director, Government of India, Ministry of Environment & Forests, setting out steps taken by the Government in regard to the guidelines pursuant to the order made by this Court on 4<sup>th</sup> December 2001 and steps taken by them. All that has been done is to publish a draft amendment to a notification issued earlier and that remains to be finalised as yet.

10. The present modification that is sought for on behalf of the Municipal Corporation and the Union of India is only for allowing increased FAR and the number of floors permitted in 1998 with an undertaking that no additional dwelling unit will be created and the various committees have

suggested that it would not pose a stress on the services as long as additional dwelling units are not permitted. It would only ease the accommodation already available and will not cause further problems or help those who are already residing in those units to have little more accommodation. Bearing that aspect in view and after having studied the comparative chart set out earlier which clearly indicates that all that will happen is to give a little more accommodation without adding to the burden of the infrastructure facilities.

11. Hence we modify the order made on 11.12.2001 so as to enable the authorities to sanction plans in the manner indicated in the letter dated 27<sup>th</sup> November 2001.

12. I.As. shall stand disposed of accordingly.