

WP(C) No. 4233/93 etc. Page 1 of 35
IN THE HIGH COURT OF DELHI AT NEW DELHI
WP (C) No. 4233 of 1993

Date of decision: April 24, 2009

DELHI MEDICAL ASSOCIATION & ORS. PETITIONERS

Through: Mr. S.P. Kalra, Senior Advocate with
Mr. Praveen Chauhan and Mr. Anmol Sinha, Advocate

versus

UNION OF INDIA & ORS. RESPONDENTS

Through: Mr. S.D. Salwan, Advocate for GNCTD
Mr. Vivek Kumar Tandon with Mr. Daiyan Hussain,
Advocate for Directorate of Health Services.

LPA No. 132 of 2008

SANTOM HOSPITAL APPELLANT

Through: Ms. Radhika Chandrashekhar, Advocate
versus

GOVT. OF NCT OF DELHI & ORS. RESPONDENTS

Through: Mr. S.D. Salwan Advocate for GNCTD.
Mr. Vivek Kumar Tandon with Mr. Daiyan Hussain,
Advocate for Directorate of Health Services.
Ms. Zubeda Begum, Advocate

WP (C) No. 5782 of 2007

SANTOM HOSPITAL PETITIONER

Through: Ms. Radhika Chandrashekhar, Advocate
versus

GOVT. OF NCT OF DELHI & ORS. RESPONDENTS

Through: Mr. Vivek Kumar Tandon with Mr.
Daiyan Hussain, Advocate for Directorate of
Health Services, Mr. S.D. Salwan, Advocate for
GNCTD

WP (C) No. 6788 of 2007

KISHNI DEVI CHARTIABLE CLINIC & ORS. PETITIONERS

Through: Ms. Radhika Chandrashekhar, Advocate
versus

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GOVT. OF NCT OF DELHI & ORS. RESPONDENTS

Through: Mr. Vivek Kumar Tandon with
Mr. Daiyan Hussain, Advocate for Directorate of
Health Services.

WP (C) No. 6789 of 2007

SHANTI CLINIC PETITIONER

Through: Ms. Radhika Chandrashekhar, Advocate
versus

GOVT. OF NCT OF DELHI & ORS. RESPONDENTS

Through: Mr. Vivek Kumar Tandon with Mr.
Daiyan Hussain, Advocate for Directorate of
Health Services.

Ms. Zubeda Begum, Advocate

WP (C) No. 6795 of 2007

APOTHECARIES LIMITED PETITIONER

Through: Ms. Radhika Chandrashekhar, Advocate
versus

GOVT. OF NCT OF DELHI & ORS. RESPONDENTS

Through: Mr. Vivek Kumar Tandon with Mr.
Daiyan Hussain, Advocate for Directorate of
Health Services.

Ms. Zubeda Begum, Advocate

WP (C) No. 7290 of 2007

INDIAN HOSPITAL PETITIONER

Through: Ms. Radhika Chandrashekhar, Advocate
versus

GOVT. OF NCT OF DELHI & ORS. RESPONDENTS

Through: Mr. Vivek Kumar Tandon with
Mr. Daiyan Hussain, Advocate for Directorate of
Health Services.

WP (C) No. 8258 of 2007

LIFE LINE MEDICAL CENTRE PETITIONER

Through: Ms. Radhika Chandrashekhar, Advocate
versus

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GOVT. OF NCT OF DELHI & ORS. RESPONDENTS

Through: Mr. Vivek Kumar Tandon with
Mr. Daiyan Hussain, Advocate for Directorate of
Health Services, Ms. Zubeda Begum, Advocate

WP (C) No. 8337 of 2007

DURGA HOSPITAL PVT. LTD. PETITIONER

Through: Ms. Radhika Chandrashekhar, Advocate
versus

GOVT. OF NCT OF DELHI & ORS. RESPONDENTS

Through: Mr. Vivek Kumar Tandon with Mr.
Daiyan Hussain, Advocate for Directorate of
Health Services, Ms. Purbali Bora, proxy counsel
for Ms. Aruna Tiku, Advocate

WP (C) No. 8833 of 2007

DR. BALA DEVI'S HEALTHY FAMILY
AND ANR PETITIONERS

Through: Ms. Radhika Chandrashekhar, Advocate
versus

GOVT. OF NCT OF DELHI & ORS. RESPONDENTS

Through: Mr. Vivek Kumar Tandon with
Mr. Daiyan Hussain, Advocate for Directorate of
Health Services.

Ms. Sonia Sharma, Advocate for GNCTD.

WP (C) No. 8835 of 2007

CHANDRALEELA HOSPITAL PETITIONER

Through: Ms. Radhika Chandrashekhar, Advocate
versus

GOVT. OF NCT OF DELHI & ORS. RESPONDENTS

Through: Mr. Vivek Kumar Tandon with Mr.
Daiyan Hussain, Advocate for Directorate of
Health Services.

Ms. Sonia Sharma, Advocate for GNCTD.

WP (C) No. 8908 of 2007

J.M.S.S. HOSPITAL PETITIONER

Through: Ms. Radhika Chandrashekhar, Advocate
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versus

GOVT. OF NCT OF DELHI & ORS. RESPONDENTS

Through: Mr. Vivek Kumar Tandon with Mr.
Daiyan Hussain, Advocate for Directorate of
Health Services.

Ms. Sonia Sharma, Advocate for GNCTD.

WP (C) No. 9384 of 2007

Dr. S.P. MAHESHWARI PETITIONER

Through: Mr. S. Chaturvedi, Advocate

versus

GOVT. OF NCT OF DELHI & ORS. RESPONDENTS

Through: Mr. Vivek Kumar Tandon with Mr.

Daiyan Hussain, Advocate for Directorate of Health Services.

WP (C) No. 524 of 2008

AAKASH EYE & GENERAL HOSPITAL PETITIONER

Through: Ms. Radhika Chandrashekhar, Advocate

versus

GOVT. OF NCT OF DELHI & ORS. RESPONDENTS

Through: Mr. Vivek Kumar Tandon with Mr.

Daiyan Hussain, Advocate for Directorate of Health Services.

WP (C) No. 909 of 2008

WELCOME HEALTH CARE CENTRE

AND HOSPITAL PETITIONER

Through: Ms. Radhika Chandrashekhar, Advocate

versus

GOVT. OF NCT OF DELHI & ORS. RESPONDENTS

Through: Mr. Vivek Kumar Tandon with Mr.

Daiyan Hussain, Advocate for Directorate of Health Services.

Ms. Ruchi Sindhvani, Advocate for GNCTD.

WP (C) No. 910 of 2008

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ANAND MAYA HOSPITAL PETITIONER

Through: Ms. Radhika Chandrashekhar, Advocate

versus

GOVT. OF NCT OF DELHI & ORS. RESPONDENTS

Through: Mr. Vivek Kumar Tandon with

Mr. Daiyan Hussain, Advocate for Directorate of Health Services.

Ms. Ruchi Sindhvani, Advocate for GNCTD.

WP (C) No. 911 of 2008

AGRAWAL EYE INSTITUTE PETITIONER

Through: Ms. Radhika Chandrashekhar, Advocate

versus

GOVT. OF NCT OF DELHI & ORS. RESPONDENTS

Through: Mr. Vivek Kumar Tandon with

Mr. Daiyan Hussain, Advocate for Directorate of Health Services.

Ms. Ruchi Sindhvani, Advocate for GNCTD.

WP (C) No. 912 of 2008

HANDA STONE CLINIC PETITIONER

Through: Ms. Radhika Chandrashekhar, Advocate

versus

GOVT. OF NCT OF DELHI & ORS. RESPONDENTS

Through: Mr. Vivek Kumar Tandon with

Mr. Daiyan Hussain, Advocate for Directorate of Health Services.

Ms. Ruchi Sindhvani, Advocate for GNCTD.

WP (C) No. 915 of 2008

SHARMA MEDICAL CENTRE PETITIONER

Through: Ms. Radhika Chandrashekhar, Advocate
versus
GOVT. OF NCT OF DELHI & ORS. RESPONDENTS
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Through: Mr. Vivek Kumar Tandon with Mr.
Daiyan Hussain, Advocate for Directorate of
Health Services.

Ms. Ruchi Sindhvani, Advocate for GNCTD.

WP (C) No. 1018 of 2008

K.K. SURGICAL AND MATERNITY CENTRE PETITIONER

Through: Ms. Radhika Chandrashekhar, Advocate
versus

GOVT. OF NCT OF DELHI & ORS. RESPONDENTS

Through: Mr. Vivek Kumar Tandon with
Mr. Daiyan Hussain, Advocate for Directorate
of Health Services.

Ms. Shikha Palsule, proxy counsel for Mr. Saleem
Ahmed, Advocate for R-2

WP (C) No. 3214 of 2008

ANAND ENT & SPEECH CENTRE PETITIONER

Through: Ms. Radhika Chandrashekhar, Advocate
versus

GOVT. OF NCT OF DELHI & ORS. RESPONDENTS

Through: Mr. Vivek Kumar Tandon with
Mr. Daiyan Hussain, Advocate for Directorate of
Health Services.

Mr. Virendra Singh, Advocate

WP (C) No. 3215 of 2008

C.M. PATEL HOSPITAL PETITIONER

Through: Ms. Radhika Chandrashekhar, Advocate
versus

GOVT. OF NCT OF DELHI & ORS. RESPONDENTS

Through: Mr. Vivek Kumar Tandon with Mr. Daiyan
Hussain, Advocate for Directorate of Health Services,
Mr. Virendra Singh, Advocate

AND

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WP (C) No. 3216 of 2008

GANDHI NURSING HOME PETITIONER

Through: Ms. Radhika Chandrashekhar, Advocate
versus

GOVT. OF NCT OF DELHI & ORS. RESPONDENTS

Through: Mr. Vivek Kumar Tandon with Mr. Daiyan
Hussain, Advocate for Directorate of Health Services,
Mr. Virendra Singh, Advocate

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE DR. JUSTICE S. MURALIDHAR

1. Whether Reporters of local papers may be allowed to see the judgment? Yes
2. To be referred to the Reporter or not? Yes
3. Whether the judgment should be reported Yes in Digest?

J U D G M E N T

24.04.2009

S. MURALIDHAR, J.

1.1 These petitions and appeals raise similar questions and are accordingly being disposed of by this common judgment. The lead petition, Writ Petition (C) No. 4233 of 1993 by the Delhi Medical Association seeks a declaration that Rule 3 of the Delhi Nursing Home (Amendment) Rules 1992 is ultra vires the Delhi Nursing Homes Registration Act 1953 („Act.) and is also arbitrary and discriminatory and therefore violative of Articles 14 and 19 (1) (g) of the Constitution of India. The other prayer in the writ petition is for a **WP(C) No. 4233/93 etc. Page 8 of 35**

direction to the Respondents not to give effect to the said Rule 3 and to register all nursing homes which are eligible for registration under the Act without insisting on the fulfillment of the conditions prescribed under the impugned Rule 3.

1.2 It was submitted at the outset by counsel for the petitioners that with the changes brought about by the Master Plan for Delhi (MPD) 2021 and the introduction of the mixed land use norms, the questions arising in the present batch of petitions ought to be left unanswered and that the petitioners. case be directed to be considered by the Respondents under the new norms. This Court is not inclined to accept this plea since the principal questions concerning the Act are bound to recur notwithstanding the new MPD norms. The petitioners have been protected from adverse consequences of the law on account of the interim orders which have operated for over a decade. It is therefore important and necessary for this Court to deal with the contentions raised on merits.

The Provisions of the Act and the progressive changes to the Rules

2. The Delhi Nursing Homes Registration Act, 1953 („Act.) was enacted to provide for the registration and inspection of nursing homes in the State of Delhi. Under Section 2(iv) of the Act, a nursing home has been defined thus:

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“(iv) Nursing Home means any premises used or intended to be used for the reception of persons suffering from any sickness injury or infirmity and the providing of treatment and nursing for them and includes a maternity home, and the expression `carry on nursing home. means to receive persons in a nursing home for, any of the aforesaid purposes and to provide treatment or nursing for them.”

3. Section 3 prohibits the running of a nursing home without registration.

The said provision reads as under:

“3. *Prohibition to carry on nursing home without registration* – No person shall carry on a nursing home unless he has been duly registered in respect of such nursing home and the registration in respect has not been cancelled under section 7.

Provided that nothing in this section shall apply in the case of a nursing home which is in existence at the date of the commencement of this Act, for a period of three months from such date or if an application for registration is made within that period in accordance with the provisions of section 4 until such application is finally disposed of.”

4. Under Section 7, the supervising authority may at any time cancel the registration in respect of a nursing home on the same ground which would entitle the supervising authority to refuse an application for registration or **WP(C) No. 4233/93 etc. Page 10 of 35**

if any person is convicted under the Act or of an offence in respect of that

nursing home.

5. The Delhi Nursing Homes Registration Rules 1953 („Rules.) sets out the procedure for applying for the registration. The Rules were further amended in 1966. Therein a schedule was added with reference to Rule 14. The Schedule sets out the requirement of the nursing homes including the buildings, water supply, health, clothing, sanitary requirements of staff and other equipments. Importantly, as far as buildings are concerned, clause (1) (b)(i) stipulates that “The building used for the nursing home shall comply with the relevant municipal bye laws in force from time to time”. In the 1992 amendment Rule 3(i) further amended to read as under:

“(i) The building used for the Nursing Homes comply with the relevant Municipal bye-law as in force and such guidelines as may be framed by the Ltd. Governor from time to time **and the use of the premises shall conform to the land use prescribed under relevant law(s).**” (emphasis supplied)

6. Appended to the rules was the `standard for a nursing home, maternity home.. Thereunder it is clearly stipulated that “building must comply with the municipal bye-laws”.

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7. A reading of the Rules amended from time to time shows that the requirement of a nursing home having to conform to the municipal building bye-laws has been in existence for over forty years now. The Delhi Municipal Corporation Act has been in force since 1957. For the New Delhi area, the New Delhi Municipal Committee.s bye-laws have been in force during this period. Even earlier the Punjab Municipal Laws were applicable. These municipal bye-laws intended to regulate the uses of buildings in residential and non-residential areas for different purposes. The Schedule to the 1966 amendments to the Rules set out that detailed standards for a building that was to be used for running a nursing home.

Position under the Master Plan for Delhi 1962

8. As far as the Delhi Development Act 1957 („DD Act.) is concerned it preserved the status quo for the pre-1957 buildings in terms of Section 14 thereof. At no point in time after the enactment of the DDA Act, or the coming into effect of the MPD 1962 was any exemption granted to nursing homes from the applicability of either the DD Act or the MPD. As of 1966, therefore, there was no question of a building housing a nursing home not having to comply with the requirements of the MPD. Even otherwise the requirement of having to satisfy the municipal building bye-laws was in vogue since 1963 itself. None of the nursing homes challenged the validity of the Rules that mandated this. They also did not question the applicability of the municipal bye-laws to nursing homes.

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9. In effect therefore what happened in 1992 was only to add the requirement of the nursing homes having to satisfy the land use requirements if they had to be registered under the Act and Rules. The land use requirements were not new in the sense that the MPD already mandated such compliance. If a nursing home did not comply with the MPD requirement as regards land use, it would invite penal action under the DD Act. All that the 1992 amendment to the Rules did was to incorporate this statutorily mandatory requirement as an additional condition for grant of registration to a nursing home under the Act. It was therefore not a new requirement. It was in any event required to be complied with in terms of the DD Act. This cannot be viewed as being so dramatically different from the restrictions already in place as regards the use of buildings for non-residential purposes.

The nursing homes which already conformed to building bye laws were unlikely to be unaware of the requirements under the MPD as regards land use.

Main grounds of challenge in the 1993 writ petition

10. W.P (C) No.4233 of 1993, filed on 3rd September 1993 by the Delhi Medical Association, refers to the above amendments to the Rules. It is stated that the respondents had not been adopting a consistent pattern in regard to registration of nursing homes under the Act. There had been a number of occasions when registration has been refused on a reason wholly ***WP(C) No. 4233/93 etc. Page 13 of 35***

extraneous to the Act. It is stated that while in respect of one Amar Heart Medical Centre at Panchsheel Park, registration was refused on the ground that DDA had raised an objection to the use of the premises for a nursing home being in violation of the Master Plan for Delhi (MPD), similarly placed institutions have been granted registrations.

11. It is submitted that on 26th March 1982 the DDA had prepared draft regulations for establishment of nursing homes. A decision was taken on 5th December 1989 by a high powered committee which had recommended grant of registration to the nursing homes operating in residential areas for a number of years. This was followed by a further draft amendment to the rules on 4th November 1991. It is stated that in view of all these steps, the petitioners expected that the authorities would come out with a coherent and clear policy which would advance the objectives of the Act. Instead the impugned amendment to the Rules in 1992 came as a surprise to the petitioners. The immediate effect of the amendment was that a substantial majority of nursing homes stood disqualified from the beneficial provisions of the Act since they did not conform to the land use norms under the MPD and the Zonal Development Plan (ZDP) published under the DDA Act 1957. The representations made by the petitioners were to no avail. A news item had appeared on 1st April 1993 reporting the stand taken by the Union of India in Parliament that nursing home established prior to 1st August 1990 could continue till 1996 with payment of the requisite fee.

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12. It is submitted that the insistence upon the compliance with the provisions of the MPD would defeat the object of the Act and the Rules. The impugned 1992 amendment to the Rules is also challenged as being violative of Articles 14 and 19(1)(g) of the Constitution. In effect it is submitted that by insisting on compliance with the land use norms as per the MPD, a large number of nursing homes would be rendered unauthorised and be proceeded against for committing a punishable offence under the DD Act. It would also deprive nursing homes of the benefits consequential upon registration such as coverage by medical insurance since the insurance companies would cover only such hospitals and nursing homes as are registered with local authorities. It is pointed out that the ground reality was that out of thousands of nursing homes operating in Delhi only 117 were registered and even these would face deregistration in terms of the impugned amendment to the Rules.

13. The impugned Rule is challenged as being *ultra vires* Sections 5 and 16 of the Act since the latter do not specify compliance with the MPD land use norms as one of the pre-requisites for registration. It is pointed out that since the Act is a complete code, a norm not prescribed thereunder cannot be imposed particularly when such norm has no nexus with the standard stipulated in Section 5(d) of the Act. It is submitted that by not permitting nursing homes in residential areas, citizens would be deprived of timely

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access to medical facilities particularly in emergency situations. It is submitted that as long as the conditions under the Act are satisfied, the

question whether a nursing home or maternity home was violating the MPD land use norms was irrelevant for the purpose of grant of registration. The impugned provision is stated to infringe the fundamental right of the members of the petitioner DMA under Article 19(1)(g) of the Constitution.

Proceedings in the 1993 writ petition by the DMA

14. Notice was directed to issue in the said writ petition by this Court on 7th September 1993. However even after a year, i.e. till 13th September 1994, none of the Respondents had filed their replies. A prayer was made on behalf of the Petitioners that a comprehensive survey be conducted of the nursing homes in Delhi both in the conforming as well as non-conforming areas. The Court found that Respondent No.4 Delhi Development Authority (DDA) had not been appearing for the last several hearings. Notice was issued to it to appear on the next date i.e. 26th October 1994. Thereafter the Government of the National Capital Territory of Delhi (.,GNCTD.), Respondent No.2, and the Directorate of Health Services of the GNCTD, Respondent No.3 filed a common counter affidavit. The DDA however did not file any affidavit by then. In the circumstances, this Court directed on 26th October 1994 that Respondents 2 and 3 “shall make survey of all the nursing homes in the Union Territory in conforming areas and non-

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conforming areas irrespective of the amended Rule 3 which came into force on 1st May 1992.”

15. The DDA filed its affidavit in the writ petition on 8th December 1994.

The stand of the DDA was as follows:

“VI That the Master Plan further provides that in Health Centres or a Nursing Home, there can be apart from its Health Centre and Nursing Home, only a watch and ward resident up to 20 sq.m and a chemist shop up to 15 sq.m. The premises which is earmarked in lay out plan for as a use of residential house, cannot be permitted to be used for a nursing home, hospital, or a health care centre. In respect of residential premises, master plan inter alia provides that the commercial activity shall be allowed only on the ground floor to the extent of 25% or 50 sq.m whichever is less subject to the proviso that such establishment is to be run by the residents of the dwelling unit and thereafter, also provides for a restriction by excluding certain activities which are not permitted.

The Master Plan further provides that a professional activity is permitted in a residential plot on any floor subject to the condition that the resident of the premises shall be permitted to use a part of his residence to a maximum of 25% of 50 sq.m whichever is less for non-residential but no

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nuisance activity which is rendered for rendering the services raised for professional skills.

VII. That with the above background in respect of the Master Plan, I say that the Delhi Building Bye-Laws 1953 have been enacted for regulating the activities under the jurisdiction of Delhi Development Authority as well as Municipal Corporation of Delhi. The said Bye-laws are

applicable to the Building Regulation activity in the Union Territory of Delhi and the same apply to the design and construction of the building in case of building is erected.”

16. The GNCTD filed a further affidavit on 20th January 1995 in compliance with this Court's direction issued on 26th October 1994. In the said affidavit it was inter alia stated that in response to the advertisement issued asking nursing homes to submit particulars in the prescribed proforma, 433 applications had been received from unregistered nursing homes. It was stated that “majority of the nursing homes surveyed fulfil the requisite medical standards as prescribed under the Delhi Nursing Homes Registration Act 1953 and Rules framed thereunder except amended Rule 3. Exact number will be informed at the time of hearing.”

17. This Court was informed at the hearing on 23rd January 1995 by learned counsel for the GNCTD that out of 433 nursing homes which had responded **WP(C) No. 4233/93 etc. Page 18 of 35**

to the advertisement issued by it only 243 were found to have fulfilled the requisite medical standards as prescribed under the Act.

18. The petitioner, Delhi Medical Association, filed an additional affidavit on 3rd May 1995. Thereafter by an order dated 24th May 1995 while issuing Rule, this Court took on record the statement made in the affidavit of the Director, Health Services and passed a detailed interim order, the operative portions of which read as under:

“In view of the statements made in the affidavit filed by the Director, Health Services that majority of Nursing Homes surveyed fulfil the requisite medical standards as prescribed under Delhi Nursing Homes Registration Act, 1953 and Rules framed thereunder except satisfying the requirements under the amended Rule 3 we consider it appropriate and just to issue such an interim direction pending disposal of the Rule to the respondents not to take any action under the provisions of Delhi Nursing Homes Registration Act, 1953 for non compliance with the provisions of Rule 3 of Delhi Nursing Homes Registration (Amendment) Rules 1992, provided they fulfil all the requisite medical standards as prescribed under Delhi Nursing Homes Registration Act, 1954 and Rules framed thereunder except amended Rule 3 of the Rules.”

19. This Court further explained in the said order that it had issued the above direction “taking into consideration the fact that the majority of such nursing homes were established and have been functioning from before 1.5.1992 when the provisions of amended Rule 3 have been brought in and

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consequently the issue of public health is involved and also in view of the fact that unless we issue such an interim direction it would cause hardship and agony to the general public undergoing treatment in those nursing homes.”

20. At the hearing on 18th December 1996 it was clarified that the stay order passed by this Court would not come in the way of the National Human Rights Commission (,NHRC.) examining the complaint pertaining to the death of a 14 year old Class X student at the private hospital.

21. In the meanwhile the Chairman of the DDA (the Lt.Governor of GNCTD) notified the Delhi Development Authority (Permission of Residential Land and Building for Use as Nursing Homes) Regulation 2003. As per the clause VI of the DDA Regulations 2003 certain norms were stipulated for permitting the use of residential premises for running nursing homes. The permission was to be granted by DDA subject to the fulfillment

of these norms and further subject to the payment of a „permission fee.. This Court has been informed that till date the Municipal Corporation of Delhi („MCD.) has not framed any bye-laws specifically for nursing homes.

22. The MPD 2021 has stipulated new mixed land use norms. These will be referred to shortly. The DDA also notified the rates for „permission fee. and that is stated to be under challenge in this Court in W.P. (C) No. 17379 of **WP(C) No. 4233/93 etc. Page 20 of 35**

2004 (*National Medical Forum v. DDA*). It is stated that this Court has granted an interim stay subject to the petitioners depositing 2.5% of the permission fee. It is pointed out that in 2007 DDA/MCD began demanding „conversion charges. instead of permission fee. This was challenged in this Court by way of W.P. (C) No. 468 of 2008 (*Delhi Medical Association v. MCD*) and a batch of similar petitions which are stated to be also pending.

23. The contention of the petitioners in W.P. (C) No. 6795 of 2007 (*Apothecaries Ltd. v. GNCTD*) and the batch of connected petitions is that Rule 3 has become redundant in view of the DDA Regulations 2003 and the MPD 2021. One other contention is that a nursing home undertaking medical termination of pregnancy (MTP) cannot be asked to comply with the requirements of the Nursing Homes Act as they are governed by the Medical Termination of Pregnancy Act („MTP Act.). It is stated that the Government Departments were not intending to accept any application from the nursing homes for issuing No Objection Certificate („NOC.).

24. In one of the connected petitions, W.P. (C) No. 5782 of 2007, a learned Single Judge of this Court by an order dated 4th February 2008 rejected the prayer for interim relief holding that as per the DD Act, the Municipal Corporation of Delhi Act, 1957 and the Building bye-laws made hereunder, a building constructed for residential purpose cannot be put to any other use. Aggrieved by the refusal of interim stay one of the nursing homes, Santom Hospital, has filed LPA No. 132 of 2008 in this Court, The principal contention in the appeal that the DDA has permitted the use of a residential **WP(C) No. 4233/93 etc. Page 21 of 35**

remises for running a nursing home and therefore the MCD which has admittedly not framed any bye-laws for nursing homes in particular cannot raise any objection.

Importance of the Master Plan norms

25. One of the principal issues arising for determination in the present cases is whether the Rules in question can be amended to insist that in order to obtain a valid registration under the Act the building in question has to conform to the land use norms specified under the MPD 2021(earlier MPD 1962 as amended in 1990). The law as regards the importance of a Master Plan prepared under a statute for the planned development of an urban conglomeration is fairly well settled. The Master Plan so prepared is a statutory instrument with all attendant consequences.

26. In *Bangalore Medical Trust v. B.S. Muddappa, (1991) 4 SCC 54*, the Supreme Court was dealing with an instance where in the scheme prepared under the Bangalore Development Authority Act 1976 (BDA Act) an open space in a residential colony was earmarked for a public park. The Chief Minister wrote to the Bangalore Development Authority (BDA) for the grant of a suitable site to the appellants Bangalore Medical Trust for setting up a private hospital. The Chairman, BDA thereafter wrote to the Chief Minister stating that the appellants were keen to construct a nursing home in the area reserved for the public park. On this letter the Chief Minister made an endorsement that area could be converted into a civic amenity site. This led **WP(C) No. 4233/93 etc. Page 22 of 35**

to the site being allotted to the Trust for constructing a nursing home. This decision was challenged by certain public spirited citizens in the Karnataka

High Court. Although a learned Single judge of that High Court rejected the writ petition, the Division Bench reversed the decision holding that the area earmarked in the Scheme for a public park could not be used for a nursing home or hospital. The decision of the Chief Minister and the consequential orders of the BDA were set aside. The further appeal by the Trust was dismissed by the Supreme Court. It explained the legal position thus (SCC, p.69):

“The scheme is a statutory instrument which is administrative legislation involving a great deal of general law making of universal application, and it is not, therefore, addressed to individual cases of persons and places. Alteration of the scheme must be for the purpose of improvement and better development of the city of Bangalore and adjoining areas and for general application for the benefit of the public at large. Any alteration of the scheme with a view to conferring a benefit on a particular person, and without regard to the general good of the public at large, is not an improvement contemplated by the section.”

27. In the same decision it was further emphasized that a space earmarked for a particular purpose under the Master Plan cannot be used for any other. It was observed (SCC, p.70, 75):

“...once appropriated or applied or earmarked by formation of „open spaces. or for building purposes or other development in accordance with a duly sanctioned scheme should not be used for any other purpose unless the scheme itself, which is statutory in character, is **WP(C) No. 4233/93 etc. Page 23 of 35**

formally altered in the manner that the BDA as a body corporate is competent to alter. This section, of course, empowers the BDA to lease or sell or otherwise transfer any property. But that power has to be exercised consistently with the appropriation or application of land for formation of „open spaces. or for building purposes or any other development scheme sanctioned by the government. Property reserved for open space in a duly sanctioned scheme cannot be leased or sold away unless the scheme itself is duly altered. Any unauthorised deviation from the duly sanctioned scheme by sacrificing the public interest in the preservation and protection of the environment by means of open space for parks and playgrounds and „ventilation. will be contrary to the legislative intent, and an abuse of the statutory power vested in the authorities.....

“Protection of the environment, open spaces for recreation and fresh air, playgrounds for children, promenade for the residents, and other conveniences or amenities are matters of great public concern and of vital interest to be taken care of in a development scheme. It is that public interest which is sought to be promoted by the Act by establishing the BDA. The public interest in the reservation and preservation of open spaces for parks and playgrounds cannot be sacrificed by leasing or selling such sites to private persons for conversion to some other user. Any such act would be contrary to the legislative intent and inconsistent with the statutory requirements. Furthermore, it would be in direct conflict with the constitutional mandate to ensure that any State action is inspired by the basic values of individual freedom and dignity and addressed to the attainment of a quality of life which makes the guaranteed rights a reality for all the citizens.”

28. The decision of the Chief Minister was held to be illegal for the **WP(C) No. 4233/93 etc. Page 24 of 35** following reasons (SCC, p.74):

“Public interest does not appear to have guided the minds of the persons responsible for diverting the user of the open space for allotment to the appellant. Conversion of the open space reserved for a park for the general good of the public into a site for the construction of a privately owned and managed hospital for private gains is not an alteration for improvement of the scheme as contemplated by Section 19, and the impugned orders in that behalf are a flagrant violation of the legislative intent and a colourable exercise of power.”

29. In *G.N. Khajuria (Dr) v. Delhi Development Authority, (1995) 5 SCC 762*, the Supreme Court was dealing with a case where the land earmarked for a park under the MPD 1962 was sought to be used for a primary school. Holding the decision to be illegal, it was observed (SCC, p.766):

“We, therefore, hold that the land which was allotted to Respondent 2 was part of a park. We further hold that it was not open to the DDA to carve out any space meant for a park for a nursery school. We are of the considered view that the allotment in favour of Respondent 2 was misuse of power, for reasons which need not be adverted. It is, therefore, a fit case, according to us, where the allotment in favour of Respondent 2 should be cancelled and we order accordingly. The fact that Respondent 2 has put up some structure stated to be permanent by his counsel is not relevant, as the same has been done on a plot of land allotted to it in contravention of law. As to the submission that dislocation from the present site would cause difficulty to the tiny tots, we would observe that the same has been advanced only to get sympathy from the court inasmuch as children, for whom the nursery school is meant, would travel to any other nearby place where such a school would be set up either by Respondent 2 or by any other body.”

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Provisions of the MPD 2021

30. In the MPD 2021 Chapter XV deals with mixed use regulations. Three broad types of mixed use are stated to be permissible. Among this is the `other activity. broadly in the nature of `public and semi public facilities. listed in para 15.7.1. The said paragraph reads as under:

“Subject to the general conditions given in para 15.4 and additional conditions given in para 15.7.3, the following public and semi-public activities shall also be permitted in the residential plots abutting roads of minimum ROW prescribed in 15.7.2, whether or not the road is notified as mixed use street:

- (a) Pre-primary school (including nursery/Montessori school, crèche.
- (b) i. Nursing home.
ii. Clinic, Dispensary, Pathology lab and Diagnostic center.
- (c) Guest house (including lodging houses) irrespective of number of rooms.
- (d) Bank
- (e) Fitness Centre (including gymnasium, yoga/ meditation centre).
- (f) Coaching centres/tuition centres other than those imparting structured courses leading directly to the award of a degree or diploma or conducting classes such as regular school.”

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31. It is plain therefore that a nursing home would be permitted in a residential plot abutting roads of minimum right of way (ROW). Para 15.3.2

specifies the further conditions for permitting such activity in colonies falling under the different categories. Para 15.7.3 further stipulates in subparas (iii) and (iv) as under:

“iii. Nursing Homes, dispensaries, clinics and pathology labs shall be permissible: on minimum plot size of 100 sqm in regular plotted development on 13.5 m ROW in C&D colonies and 9 m ROW in E, F&G colonies.

However, the minimum plot size shall be 50 sqm for clinics, dispensaries and pathology labs running in these colonies and also in E, F and G category colonies. In Walled City, Walled city extension, villages and unauthorised-regularized colonies, conditions of plot size and minimum ROW shall not be applicable.

iv. Nursing homes operating in plots abutting Master Plan roads and Zonal Plan roads shall be permissible up to 100% of built up area and the limit on the size of the plot would not apply.”

32. There is no challenge to the MPD norms in these petitions. In fact it is urged that since the DDA Regulations permit the use of residential premises for nursing homes and under the MPD 2021 mixed land use provisions have been incorporated the requirement under the Act and the Rules as brought about by the 1992 amendment should not be insisted upon. Given the context in which the land use norms for all types of buildings has been specified in the MPD 2021, and it is conducive to the object of the DD Act **WP(C) No. 4233/93 etc. Page 27 of 35**

which is the planned development of Delhi, incorporating in the Act and the Rules a requirement of having to conform to the MPD land use norms cannot be said to be unreasonable or arbitrary.

33. The argument that such a requirement is not germane to the objects of the Act and the Rules and was therefore *ultra vires* the Act is entirely without merit. The Act which deals with the registration of nursing homes can and should insist that the building in which the nursing home is sought to be run conforms to the land use requirement. The latter can possibly be specified only under the MPD. There was no question therefore of the Act permitting the registration of a nursing home even if it violated the MPD norm on land use. Such a stipulation cannot be said to violate the fundamental rights under Articles 14 or 19 (1) (g). In fact far from being arbitrary or unreasonable, such a stipulation respects and protects the right to environment and health of all residents of Delhi.

34. To explain further, the problems that would arise in permitting nursing homes in residential areas far outweigh the benefits that would ensue by providing easy access to health care. The right to health contemplates not only access to health services but the right to a healthy environment as well. The running of a nursing home involves the use of and therefore disposal of highly toxic chemicals and substances. The waste generated by a hospital or nursing home is certainly of a hazardous nature. The Environment **WP(C) No. 4233/93 etc. Page 28 of 35**

(Protection) Act 1986 sets out the applicable statutory provisions concerning the disposal of such hazardous waste by a nursing home or a hospital. Merely because an Act and the Rules thereunder do not specifically advert to the disposal of hazardous waste by such nursing home, it would not mean that such nursing home does not have to conform to the standards set down under the EPA and the Rules made thereunder. The Biomedical Waste (Management and Handling) Rules 1998 have been made under the EPA. Rule 3(5) defines “biomedical waste” to mean any waste generated during the diagnosis and treatment of humans or animals. This applies to hospitals

and nursing homes as is evident from Schedule 6 to the said Rules. In effect, it would not be open to the nursing home to contend that unless the EPA norms are specified in the Act, registration of a nursing home cannot be refused. If the Act and Rules were to be amended to stipulate that registration could be cancelled on account of non-compliance with the EPA and Rules made thereunder, such an amendment would be unconstitutional or ultra vires the Act. The position would be no different as regards the nursing homes providing MTP. They would have to comply with both Act and the MTP Act. They would have to comply with any other applicable statutory norm including the MPD.

35. In other words, it would be anomalous if the authority under the Act grants registration to a nursing home that violates the MPD or the EPA or any other statute. In an urban agglomeration, there are bound to be a plethora ***WP(C) No. 4233/93 etc. Page 29 of 35***

of statutory compliances to be fulfilled by an enterprise. The running of a nursing home is not merely concerned with having qualified medical professionals and staff, and appropriate medical equipment. It requires to be housed in a building which conforms to the building bye-laws, the MPD and the depending on the extent of its activities and other statutes like the EPA, the MTP Act (where applicable) and the Rules made thereunder. To avoid the delay in obtaining the different approvals/NOCs from the different authorities, the Respondents could devise a single window clearance. For instance, the authority granting registration could prepare a check-list of all statutory requirements not limited to Act and Rules. That is a matter for the authorities to consider.

36. For all of the above reasons, the plea of the petitioners that the 1992 amendment to the Rules is ultra vires the Act and is otherwise unconstitutional is rejected. Consequently, the order dated 4th February 2008 passed by the learned Single Judge in W.P. (C) No. 5782 of 2007 is affirmed. The LPA No. 132 of 2008 challenging the said order is without merit.

The plea of equities

37. The plea of the petitioners is that they are among the large number of nursing homes that have been operating without a valid registration. In the cases of those nursing homes who are petitioners before this Court, they ***WP(C) No. 4233/93 etc. Page 30 of 35***

have not been proceeded against only because the interim order of this Court. In view of what has been held in this judgment, the said interim order dated 24th May 1995 is to no avail any longer. It is possible that many of the petitioners were hoping that their applications for registration will ultimately not be refused. They might still be able to if they fulfil all the statutory norms. Although they did not wait to get the registration before commencing the nursing home, it is pleaded that they should not be permitted to continue as they have been doing for the last fourteen years. It is pleaded that in some of the cases, they should be permitted to continue till such time their applications for regularisation in terms of the newly notified mixed land use norms in terms of the MPD 2021 is processed and disposed of.

38. This Court finds that there are broadly three categories of nursing homes. The first category is of nursing homes that have not made any application for registration till date and have no interim protection from this Court. These nursing homes have operated with impunity and have managed to escape the net thus far. Hopefully there are a very few in this category. The exact number can only be ascertained by the authorities by conducting a further comprehensive survey. Such nursing homes or private hospitals that have been operating without any registration and have not applied for it till date do not deserve any protection or equitable consideration. They should be

shut down forthwith. This Court is not prepared to grant any further time to this category to now make an application for registration. This is because **WP(C) No. 4233/93 etc. Page 31 of 35**

this Court believes that the practice of first violating the norm and thereafter seeking retrospective approval must be firmly discouraged.

39. In *M.I. Builders (P) Ltd. v. Radhey Shyam Sahu, (1999) 6 SCC 464*, the Supreme Court declined equitable relief to the appellants whose illegal construction had been protected from demolition on the strength of interim orders of the court. It observed (SCC, p. 529):

“The High Court has directed dismantling of the whole project and for restoration of the park to its original condition. This Court in numerous decisions has held that no consideration should be shown to the builder or any other person where construction is unauthorised.

This dicta is now almost bordering the rule of law. **Stress was laid by the appellant and the prospective allottees of the shops to exercise judicial discretion in moulding the relief. Such a discretion cannot be exercised which encourages illegality or perpetuates an illegality. Unauthorised construction, if it is illegal and cannot be compounded, has to be demolished. There is no way out. Judicial discretion cannot be guided by expediency.** Courts are not free from statutory fetters. Justice is to be rendered in accordance with law.

Judges are not entitled to exercise discretion wearing the robes of judicial discretion and pass orders based solely on their personal predilections and peculiar dispositions. Judicial discretion wherever it is required to be exercised has to be in accordance with law and set legal principles. As will be seen in moulding the relief in the present case and allowing one of the blocks meant for parking to stand we have been guided by the obligatory duties of the Mahapalika to construct and maintain parking lots.” (emphasis supplied)

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40. Recently in *M.C. Mehta v. Union of India, (2004) 6 SCC 588*, in the context of large-scale unauthorised constructions carried on in Delhi contrary to the MPD, the Supreme Court observed (SCC, p. 614, 617):

“..the land cannot be permitted to be used contrary to the stipulated user except by amendment of the master plan after due observance of the provisions of the Act and the Rules. Non-taking of action by the Government amounts to indirectly permitting the unauthorised use which amounts to the amendment of the master plan without following due procedure.

51. The growth of illegal manufacturing activity in residential areas has been without any check and hindrance from the authorities. The manner in which such large-scale violations have commenced and continue leaves no manner of doubt that it was not possible without the connivance of those who are required to ensure compliance with law and reasons are obvious. Such activities result in putting on extra load on the infrastructure. The entire planning has gone totally haywire. The law-abiders are sufferers. All this has happened at the cost of health and decent living of the residents of the city violating their constitutional rights enshrined under Article 21 of the Constitution of India. Further, it is necessary to bear in mind that the law-makers repose confidence in the authorities that they will ensure implementation of the laws made by them. If the authorities breach that confidence and act in dereliction of their duties, then the plea that the observance of law will now have an adverse effect on the industry or the workers cannot be allowed. Within the framework of law, keeping in view the norms of environment, health and safety, the

Government and its agencies, if there was genuine will, could have helped the industry and workers by relocating industries by taking appropriate steps in the last about 15 years. On the other hand, it encouraged illegal activities.”

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In the same vein are the observations in *M.C. Mehta v. Union of India* (2006) 3 SCC 399.

41. In respect of those nursing homes operating without any registration and who have not made any application for that purpose till date, an unambiguous message must issue that unless and until a nursing home satisfies the authorities concerned that it has complied with all the requirements not only under the MPD but under the other statutes as well, it ought not to be permitted to continue operating as a nursing home.

42. The second category is of nursing homes that have applied for but have not yet been granted permission and have not filed any petition in this Court. The cases of those nursing homes that have not approached this Court and therefore have no interim order in their favour need not be examined by the Court. With the declaration of the law by this judgment, the authorities will proceed to take consequent steps in respect of such nursing homes.

Directions concerning the petitioners

43. That leaves us to deal with the third category of nursing homes that have applied whether for grant of or renewal of registration and have approached this court and whose registration has not been cancelled or operation not shut down on account of an interim order of this court. For such nursing

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homes this Court thinks it appropriate to direct that some time should be given to enable them to shut down their operation till they are granted registration in terms of the Act and the Rules and in terms of the law as explained in this judgment. This Court is inclined to grant them six months from today to completely shut down their operations. This is subject to the condition that the petitioners will, if they have not already done so, apply within eight weeks from today seeking approval in terms of the mixed land use norms. This of course would be in addition to their application for renewal of their registration under the Act and the Rules. Such applications shall be decided by the authorities within a period of not less than twelve weeks thereafter. It would be for the nursing home concerned to ensure that they satisfy the authority under the Act, the DDA and any other statutory authority that all the statutory requirements have been complied with. The court directs that the authorities should allocate resources to ensure that these time limits are strictly adhered to. The petitioners are however reminded that this is only a grace period and the delay if any in the authorities taking a decision on their applications will not permit the petitioners to seek extension of the period granted to them by this judgment to shut down their operations. It is only after grant of registration that such nursing homes can be permitted to resume their operations.

44. The extended time period for closing down is being given so that any indoor patient already receiving treatment is not unduly inconvenienced.

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Further every new patient admitted to such hospital or nursing home will be forewarned that it has been asked to shut down by a certain date pending grant of registration. For this purpose, each such nursing home will put up a notice board prominently at least three places including the gate, announcing to the public that if not granted registration it would cease to operate after the grace period granted by this Court. Simultaneously such nursing home will also inform its staff and medical personnel of the same position to enable them to arrange their affairs in the meanwhile. The failure by the

nursing home to do so will not create any equities in favour of such staff, medical personnel or a member of the public intending to utilise the services of such nursing home or hospital.

45. The writ petitions and LPA No. 132 of 2008 are hereby dismissed.

Subject to the aforementioned directions, the interim orders in each petition and the LPA are hereby vacated and all pending applications are dismissed.

S. MURALIDHAR, J.

CHIEF JUSTICE

APRIL 24, 2009

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