

Khan Market Welfare Association - Petitioner @HASH New Delhi Municipal Council and Others

Court: DELHI HIGH COURT

Date of Decision: Oct. 27, 2016

Acts Referred: Constitution of India, 1950 - Article 226

Citation: (2016) 9 ADDelhi 161 : (2016) 235 DLT 161

Hon'ble Judges: Rajiv Sahai Endlaw, J.

Bench: Single Bench

Advocate: Mr. Amit Bhagat and Mr. Pulkit Gupta, Advocates, for the Petitioner; Mr. Anil Grover with Ms. Kanika Singh and Ms. Noopur, Advocates, for the Respondent No. 1; Mr. Varun Nischal, Advocate, for the Respondent Nos. 3 and 4 (i.e. Delhi Police and Delhi Fire

Final Decision: Dismissed

Judgement

Mr. Rajiv Sahai Endlaw, J. - The petitioner, claiming to be a registered Association comprising of various individual flat owners and traders of

Khan Market, New Delhi has filed this petition pleading (i) that in pursuance to show cause notices from the New Delhi Municipal Council

(NDMC) received by the members of the petitioner on 15th March, 2011 stating that the Monitoring Committee constituted by the Supreme

Court had directed the respondent NDMC to initiate action against the first floor lessees/occupants of Khan Market who had undertaken

unauthorised construction and calling upon the members of the petitioner to remove the said unauthorised construction and in pursuance to the

meetings held by the members of the petitioner with the Urban Development Minister, it was decided that a detailed re-development plan of Khan

Market as per latest provisions of the Master Plan for Delhi - 2021 be prepared by the NDMC in consultation with the Ministry on a time bound

basis; (ii) the NDMC appointed a consultant architect for preparation of the said re-development plan with immediate attention to public safety i.e.

the fire safety plans as well as health safety i.e. the plans for disposal of sewage in conformation with the guidelines laid down by the Delhi Pollution

Control Committee; (iii) that the said plan which was approved by the respondent NDMC was sent to other authorities like the Fire Department

for their approval and on 8th November, 2011 the Chief Fire Officer of the Delhi Fire Service (DFS) issued a letter approving the re-development

plan so prepared subject to certain conditions as specified in the said letter; (iv) a meeting was held on 6th September, 2012 to discuss the Khan

Market Community Centre Re-development Plan and in the said meeting the matter concerning the lack of fire safety of the first floors of Khan

Market as well as the matter relating to a larger capacity sewage line to be laid in the middle lane of Khan Market and which two issues are of

grave concern since they relate to the aspect of public safety and public health, were also discussed; (v) that the matter concerning the lack of fire

safety is a matter concerning public safety and accordingly has to be dealt with on a priority basis; (vi) lack of fire safety on the first floors of Khan

Market is also not in compliance with the statutory provisions laid down in the Delhi Fire Service Act, 2007 and the Rules of the year 2010 framed

thereunder; (vii) that the proposal regarding laying down of a larger capacity sewage line in the middle lane of Khan Market as well as laying down

a separate sewage line for kitchen waste, taking into account the number of restaurants that have opened in Khan Market, also requires immediate

attention since it deals with the aspect of health of the public at large; (viii) the petitioner, from time to time impressed upon the NDMC of the need

to undertake re-development of Khan Market on an urgent basis owing to the aforesaid two issues of fire safety and public health; and, (ix)

however for two years preceding the petition, in spite of the decision already taken for re-development of Khan Market and preparation of re-

development plan, no steps towards redevelopment had been initiated by the NDMC.

Accordingly, a writ of mandamus is sought directing the NDMC to expedite the implementation of Khan Market Community Centre Re-

development Plan more particularly the plans pertaining to fire safety and installation of new and augmented sewage lines in Khan Market, in terms

of the decision taken by the Ministry of Urban Development in the meeting held on 16th March, 2011.

2. Notice of the petition was issued.

3. On 15th July, 2013 the counsel for the petitioner requested for early hearing ""on the ground that the eateries in the Khan Market area are at risk

because of a fire hazard"".

4. This court in the order dated 15th July, 2013 observed ""if any such hazard exists, as claimed, the concerned authorities are free to take action as

per law"".

5. NDMC filed counter affidavit pleading (i) that the re-development plan for Khan Market Complex and the surrounding buildings could not take

off because there are differences inter se the various stakeholders involved in the matter viz., the plot for parking had not been made available; (ii)

the petitioner represents only the first floor owners/occupants; (iii) that laying down sewerage lines is a part of re-development plan which cannot

be implemented in phases; (iv) that the re-development plan for entire Khan Market Complex and nearby buildings had also been the subject

matter of Report of the Monitoring Committee which had been submitted to the Supreme Court; (v) as regards the grievance for providing fire

safety measures, the said measures are required to be taken by individual shop owners/restaurants owners of Khan Market in accordance with

Building Bye-Laws and other applicable laws; and, (vi) under the Building Bye-Laws, necessary sanctions and clearance in regard to fire safety

measures are required to be taken by the individual owners of respective shops and it is only thereafter that the requisite sanctions/licences are

accorded for carrying on commercial activities in the premises.

6. The petitioner filed a rejoinder inter alia pleading that the consideration of the Report of the Monitoring Committee earlier pending in the

Supreme Court had been remitted to this Court.

7. On 29th August, 2014, the counsel for the NDMC stated that IIT Roorkee and CBRI Roorkee had been engaged for submitting their technical

advice for retrofitting of Khan Market to cater to the future load requirements due to commercialisation.

8. Vide order dated 5th November, 2014, Land and Development Office (L&DO) was impleaded as respondent No. 2 to the petition.

9. NDMC filed an affidavit dated 24th December, 2014 stating (i) that the experts engaged by the NDMC, on inspection have found that the

existing sewerage lines do not need any augmentation as the problem of sewerage is not due to shortage of width but because of questionable

ways of disposal of kitchen waste by restaurants on the first floor of Khan Market; (ii) that the said restaurants, instead of installing grease traps,

were releasing grease directly into the sewerage lines including kitchen waste which is choking the sewerage lines; (iii) that in Khan Market area

there are 32 restaurants/food preparing units of which only two (having a seating capacity of more than 50 people) come within the purview of

DFS and are required to take No Objection Certificate (NOC) from the said department and which they had obtained; (iv) that the thematic

drawings for the proposed fire escape prepared by the NDMC had the in principle approval of DFS; (v) that the existing buildings in Khan Market

at ground floor were constructed in brick masonry with mud mortar and lot of addition/alteration had been carried out therein and as a result of

which retrofitting job is an engineering challenge; (vi) by conversion of first floors of Khan Market from residential to commercial, additional load

had come onto the structure for which retrofitting was required; (vii) retrofitting has to be done from inside of the buildings and for which the

commitment and cooperation from the other Associations of owners/occupants of Khan Market namely Khan Market First Floor Residents

Welfare Association and Khan Market Traders Association is required; (viii) Khan Market had been converted from leasehold to freehold;

however keeping in view that ensuring fire safety and sewerage facilities is a municipal function, NDMC was still concerned therewith; and, (ix) that

it is the duty of individual owners to conform to the fire safety norms of DFS and to ensure that they do not violate any of the guidelines issued in

this regard.

10. Though the counsel for the petitioner filed a response dated 7th April, 2015 to the aforesaid affidavit of NDMC but did not therein respond to

the plea of cooperation of other two Associations of Owners/Occupants of Khan Market being necessary for implementation of the re-

development plan.

11. NDMC filed another affidavit dated 9th July, 2015 pleading (i) that Khan Market area is having two Associations namely the petitioner and

Khan Market Traders Association; while the petitioner represents the occupiers/owners of the first floor, the Khan Market Traders Association

represents the occupiers/owners of the shops on the ground floor; (ii) that redevelopment of a market like Khan Market is an engineering challenge

and requires the consent of all the stakeholders namely members of the two Associations and other owners/occupiers who are not members of

either of the two Associations; (iii) that the works cannot be carried out by the NDMC unilaterally; (iv) without the owners/occupiers of each of

the premises in Khan Market consenting and giving access to their respective premises, re-development of Khan Market cannot be carried out; (v)

Khan Market was established in 1951 and consists of a "U" Shaped double storey building consisting of 154 shops on the ground floor and 74

flats on the first floor; (vi) preliminary estimate for construction of fire evacuation corridor and lift/staircase block at Khan Market was in the sum of

Rs. 5,62,33,000/-; preliminary estimate for installing fire fighting system consisting of fire ring main, pump house, fire hydrants and pressurised fire

ring for individual fire fighting system at Khan Market was in the sum of Rs. 6,36,30,000/-; (vii) Khan Market being a private property, the fire

safety norms are to be complied with only by the stakeholders within their premises; however outside the private properties the NDMC has taken

advance efforts for safety and security; (viii) there is no consensus amongst the members of the two Associations aforesaid on the plan prepared by

the NDMC; (ix) that the plan cannot be finalised without the data with respect to each building/structure and to all of which the NDMC did not get

access to; and, (x) NDMC can provide all the technical support for re-development but the re-development basically has to be by the individual

property owners of Khan Market themselves and about which they are unable to arrive at a consensus.

12. On 10th July, 2015, after hearing the counsels it was observed (i) that documents on record did not show existence of any plan seeking

implementation of which this petition had been filed; (ii) that documents filed contained only a decision to prepare a plan; (iii) that the contention of

the counsel for the petitioner was that the first floor of Khan Market is mostly being used for restaurants and said restaurants ""are literally a fire

trap, and in the case of fire, there are no precautionary/preventive measures in place"" (iv) that the counsel for the petitioner was unable to reply as

to how the NDMC could carry out work of any nature in the shops on the ground floor and the flats on the first floor of Khan Market which were

private properties; (v) that the counsel for the petitioner was also unable to confirm that owners/occupants of all the shops on the ground floor and

flats on the first floor were willing to hand over their properties to the NDMC for carrying out the works to make the said properties fire

proof/safe; and, (vi) that the counsel for the petitioner was unable to confirm whether the commercial establishments run on the first floors of Khan

Market have clearance from DFS and if not, how the same were operating. On request of the counsel for the petitioner to obtain instructions, the

matter was adjourned.

13. On the next date i.e. 16th July, 2015 the following order was passed.

1. This order is in continuation of the order dated 10th July, 2015.

2. The counsel for the petitioner Khan Market Welfare Association has today in Court referred to a Khan Market Community Centre

Redevelopment Plan stated to have been prepared by the respondent No. 1 New Delhi Municipal Council (NDMC) on 15th February, 2013. A

copy of the same is handed over in the Court and be kept separately by the Court Master.

3. Though the said Plan is voluminous, but the counsel for the petitioner states that the petitioner is immediately concerned only with the issue of fire

and sewerage.

4. On the issue of fire, with reference to Page 003 of the said Plan, it is stated that as per the Plan, in the Service Lanes of the Market, 14

platforms with staircases have to be constructed, linking the two properties abutting the Service Lanes, so as to allow occupants of the first and

second floors of the said properties to, in the event of fire, access the street from the said platforms and staircases.

5. On enquiry, whether not the said work will entail opening of the doors of the properties to the said platforms, the counsel states that there are 74

first floor properties in the Market and the owners of all the 74 properties are members of the petitioner Association and are willing to open the

doors towards the platforms.

6. On enquiry, whether not implementation of the said plan would entail placement of staircases in front of the openings of the properties on ground

floor, no answer is forthcoming.

7. Attention is next invited to the letter dated 22nd March, 2005 of the Additional Secretary (Home) of the Govt. of NCT of Delhi (GNCTD) to

the Chief Fire Officer requiring all cases of new applications for trade licenses for eating places to be referred to the Chief Fire Officer and the

letter dated 16th March, 2007 of the Chief Fire Officer to the respondent No. 1 NDMC to the effect that where the seating capacity of a

restaurant is less than 50, the same does not require ""No Objection Certificate"" (NOC) from the Chief Fire Officer. It is thus contended that none

of the restaurants on the first floor require NOC from the Chief Fire Officer.

8. Upon further enquiry, if that be the position, why it was contended on the last date that the restaurants on the first and second floors of Khan

Market are fire hazardous, the counsel states that though as of now there is no danger of fire but the restaurants are limited to the seating capacity

of 48 and are desirous of expanding their seating capacity to more than 48.

9. On further enquiry, as to which law/rule exempts restaurants with seating capacity of less than 50 to not have clearance from Fire Officer and

what are the norms for increasing the seating capacity in the restaurants and what is the minimum requirement of space therefor, the counsel states

that as far as he has checked, there are no such rules/norms.

10. The Delhi Fire Service and the Deputy Commissioner of Police (DCP) (Licensing) are not parties to this petition.

11. The counsel for the respondent No. 1 NDMC to, on the next date of hearing, inform what is the criteria for so increasing the seating capacity

of restaurants to more than 50 and notice of this petition be issued to the DCP (Licensing), Delhi Police and to the Chief Fire Officer, Delhi Fire

Service.

12. The petitioner to file amended memorandum of parties within three days from today and to have the notice served on the newly impleaded

respondents.

13. On further enquiry, it is stated that none of the restaurants are entertaining more than 48 guests at present.

14. All the aforesaid is recorded without prejudice to the fact that the case as made out in the petition, does not appear to be as is argued today.

15. List on 11th August, 2015.

14. On the next date of hearing i.e. 11th August, 2015, the following order was passed.

1. The petitioner has not served the Delhi Fire Service and the Deputy Commissioner of Police (DCP) (Licensing) ordered to be impleaded vide

order dated 16th July, 2015.

2. The counsel for the petitioner states that he will definitely effect service for the next date. He is directed to also inform the nominated counsels

for Delhi Fire Service and the DCP (Licensing) and to serve them also with the notice.

3. It has been enquired from the counsel for the petitioner whether the Khan Market Community Centre Redevelopment Plan handed over on the

last date of hearing was approved by the Delhi Fire Service.

4. The counsel for the petitioner has drawn attention to the letter dated 8th November, 2011 of the Chief Fire Officer, Delhi Fire Service at page

32 of the paper book to contend that the same was approved.

5. The counsel for the respondent New Delhi Municipal Council (NDMC) controverts and states that the plan handed over on the last date is

dated 15th February, 2013 and could not have been approved vide the letter of a date prior thereto.

6. The counsel for the respondent NDMC, with reference to the query raised on the last date of hearing and recorded in para 11 of the order

dated 16th July, 2015, states that the respondent NDMC has issued only the Health Licence from the hygiene point of view and in the said licence

had not imposed any restrictions qua the seating capacity or the number of patrons to be entertained in the premises and which is in the domain of

DCP (Licensing).

7. The counsel for the petitioner has however handed over in Court a copy of the licence issued by the respondent which specifies the seating

capacity.

8. The counsel for the respondent NDMC states that the seats are mentioned as per the application and otherwise the respondent NDMC is not

concerned with the same.

9. On further enquiry, whether the respondent NDMC checks whether the restaurants run in the premises have confined themselves to the said

number of seats or are running with additional seats, the counsel for respondent NDMC states that the respondent NDMC never carries out any

inspection.

10. The counsel for the respondent NDMC seeks time to obtain instructions.

11. List on 26th August, 2015.

15. Thereafter on 26th August, 2015 following order was passed.

1. Adjournment is sought on behalf of Mr. Raman Duggal, Standing Counsel, Government of NCT of Delhi who appears for Delhi Fire Service

(DFS) and DCP (Licensing).

2. Allowed.

3. The DFS to however before the next date of hearing, file an affidavit in this Court disclosing a) whether the Khan Market Community Centre

Re-development Plan dated 15th February, 2013 has the approval of the DFS and b) the basis on which it has taken a decision that restaurants

with seating capacity of less than 50 do not require clearance from Fire Officer as well as the norms for increasing the seating capacity in the

restaurants.

4. The DCP (Licensing) to also before the next date of hearing file an affidavit on the aforesaid aspects as well as disclosing the steps taken for

enforcement of the licence conditions.

5. The counsel for respondent No. 1 New Delhi Municipal Council (NDMC), in response to the queries recorded in the order dated 11th August,

2015, states that it is proposed to hold parleys with the DFS as well as the GNCTD for resolving the aspect of need if any for fire clearance for

restaurants with seating capacity of less than 50. He further states that the respondent No. 1 NDMC carries out inspections from time to time to

ensure that the restaurants granted licence with seating capacity of less than 50 are not exceeding their capacity.

6. List on 7th October, 2015.

16. Delhi Police, in response to the notice of the petition issued to them, filed a counter affidavit dated 6th October, 2015 pleading (i) that the

Licensing Branch of Delhi Police registers the Eating House under the provisions of Delhi Eating Houses Registration Regulations, 1980 as well as

Standing Order No. 379 of Delhi Police; (ii) the Eating House is registered on submission of Health Trade License from NDMC/MCD/DCB along

with application and other required documents for registration as a Eating House; (iii) that the Chief Fire Officer, Delhi Fire Service, vide his letter

No. F.6/DFS/MS/2015/EH/191 dated 23rd January, 2015 in the matter of grant of Fire Safety Certificate to M/s MGM Club Society, Darya

Ganj, Delhi and which was proposed for 49 seats, and in the matter of commercial area in Hauz Khas Village, the Assistant Division Office, Delhi

Fire Officer vide letter No. F.6/DFS/MS/2014/MISC/1616 dated 11th July, 2014, have clarified that eating houses that have less than 50 seats are

not covered under the purview of Delhi Fire Services Act, 2007 and Delhi Fire Service Rules, 2010; (iv) hence NOC from fire department is not

required; (v) thus, Eating Houses which have less than 50 seats do not require fire NOCs and fire NOC is given to the Eating Houses where seats

are 50 or above; (vi) that the Licensing Branch, Delhi Police had registered the Eating Houses in Khan Market Area, New Delhi only after the

receipt of Health Trade Licence and other required documents from the NDMC and report from local police; (vii) the NDMC, after due

inspection, also mentions number of seats of the Eating House in their Health Trade License; (viii) on the basis of all the said reports, the Licensing

Branch of Delhi Police issues/grants Eating House license; (ix) that as many as 43 Eating House Licenses have been granted in the Khan Market

area; (x) that the Commissioner of Delhi Police has already vide letter dated 22nd July, 2015 to the Chief Secretary of Government of Delhi

expressed concerns about non insistence of fire NOC by restaurants/eating houses having seating capacity of less than 50 and which pose major

fire hazard with no possibility of the Delhi Fire Service being able to render any assistance in the event of any fire accident/incident in the said

restaurants; (xi) mention in the said letter was also made of such restaurants in Khan Market, Hauz Khas Village, Greater Kailash-I and Greater

Kailash-II Markets; (xii) that the District Local Police enforces the license conditions by checking such eating houses from time to time and if any

shortcoming/violation of license conditions is found, it entails prosecution; (xiii) complaints against defaulting eating houses are also entertained and

acted upon.

17. The Chief Fire Officer of DFS also in response to the notice of the petition issued to it filed a counter affidavit dated 7th October, 2015 stating

(i) that on 8th November, 2011 the proposal of the Khan Market Redevelopment Plan was accepted by DFS for residential occupancy at first

floor plus barsati floor and on 21st October, 2013 revised scheme for fire escape plan for Khan Market, New Delhi was referred to DFS and the

above revised plan was approved vide letter dated 13th December, 2013; (ii) that the buildings identified in Clause 6.2.4.1 of Delhi Building Bye-

Laws, 1983 i.e. multi storied buildings which are more than 15 meter in height and for special buildings like Assembly, institutional, industrial

storage and hazardous occupancies have to be designed and constructed to ensure fire safety as prescribed in Part 4 of National Building Code of

India; (iii) however as per definition of "assembly building", specified in the National Building Code of India, 2005 vide clause 3.1.5, they "include

any building or part of a building, where number of persons not less than 50 congregate or gather for amusement, recreation, social, religious,

patriotic, civil, travel and similar purpose, for example, theatres, motion picture houses, assembly halls, auditoria, exhibition halls, museum, skating

rinks, gymnasiums, restaurants, places of worship, dance halls, club rooms, passenger stations and terminals of air, surface and marine public

transportation services, recreation piers and stadia etc." (iv) therefore in accordance with the said criteria, if the seating capacity in an assembly

building/restaurant is less than 50, the same does not qualify to be called "assembly building" (v) as such the fire safety clearance is not required to

be obtained from DFS for such assembly buildings; (vi) however as per Clause 17.1 of Building Bye-Laws, 1983, fire safety arrangements are

required to be provided in the building in accordance with National Building Code of India, 2005, Part-4; (vii) that the National Building Code of

India, 2005 has prescribed fire and life safety requirements for assembly buildings based on the height of building and the number of persons; (viii)

the number of occupants on a floor is determined based on occupant load factor as prescribed under clause 4.3 of National Building Code of

India, 2005, Part 4; (ix) the occupant load factor for assembly buildings having loose seats such as restaurants is 1.5 sq. mtr. per person; (x) the

number of seats can thus be determined and limited to based on load factor.

18. The Chief Fire Officer in his affidavit aforesaid having stated that the approval by DFS of the redevelopment plan of Khan Market was for

residential occupancy" of the first floors, it was during the hearing on 18th April, 2016 enquired from the counsel for the DFS, whether not the

redevelopment plan which was submitted was for use of the first and barsati floors for commercial/restaurant purpose.

19. The counsel for DFS replied that the approval was for use of the first floor and barsati floor for commercial/restaurant purpose and further

stated that an additional affidavit on this aspect shall be filed.

20. It was similarly enquired from the counsels during the hearing on 18th April, 2016, as to who determines whether the criteria of 1.5 sq. mtrs.

per person is fulfilled or not.

21. The counsel for DFS stated that the Licensing Authority i.e. the NDMC has to keep a check thereon.

22. The counsel for NDMC stated that NDMC has granted the licences without satisfying itself of the said criteria and only on the application of

the applicants.

23. As such, vide order dated 18th April, 2016, NDMC was also directed to inspect each of the premises with respect to which licences had

been granted, prepare site plans with dimensions thereof and to file an affidavit, whether each of the premises satisfy the criteria of 1.5 sq. mtrs. per

person and the other requirements if any of the National Building Code.

24. In pursuance thereto, DFS filed an affidavit dated 27th April, 2016 stating (a) that NDMC vide its letter dated 23rd September, 2011 had

submitted a scheme for clearance of fire safety measures with respect to standard plan of Khan Market Flats, showing shop on the ground floor

and flat on first and barsati floors; (b) that NDMC nowhere mentioned in the letter dated 23rd September, 2011 of use of the first and barsati

floors; (c) accordingly, the scheme for first and barsati floors (shown as residential occupancy) was examined and accepted by DFS vide letter

dated 8th November, 2011; (d) that due to some technical and structural constraints in the earlier proposal, NDMC submitted a revised

redevelopment plan of Khan Market shops and flats to the DFS vide letter dated 21st October, 2013, for which NDMC provided drawings,

showing shops on ground floor and rooms on first floors, without specifically assigning nature of occupancy i.e. residential or commercial; (e)

accordingly, the revised scheme for first and barsati floors (residential occupancy) was examined and accepted by DFS vide letter dated 13th

December, 2013.

25. The aforesaid discloses a shocking state of affairs. While it was being contended before this Court that the redevelopment plan of Khan

Market with shops on the ground floor and restaurants/commercial use on the first and barsati floors had the approval of the DFS, from the

affidavit dated 27th April, 2016 of DFS it emerges that the approval of DFS for redevelopment plan was in the context of residential occupancy of

the first and the second floors.

26. With the aforesaid, the entire edifice of the claim in the petition falls. The petition as aforesaid is filed on the premise that the functioning of the

eating houses/restaurants in the first floor and barsati floor of Khan Market is lawful and that for fire safety a redevelopment plan had been

prepared and approved by the DFS and seeking mandamus in the nature of implementation of the said plan which was ready for implementation

and implementation whereof was held up for administrative lethargy. However, what emerges is that the approval by the DFS of the

redevelopment plan, as far as first and barsati floors are concerned, was for residential occupancy and the DFS has not even applied itself,

whether the redevelopment plan prepared by the NDMC is as per the norms of the DFS, if the use of the first and barsati floors of Khan Market

were to be for the commercial purposes of eating houses/restaurants. The other concern highlighted in the petition of deficient sewage lines has also

been reported by NDMC to be fallacious. It is the stand of NDMC that the experts have found the existing sewage lines to be sufficient and

satisfactory and have put the blame for the inefficient sewage disposal posing a health hazards, on the members of the petitioner. The petitioner has

not rebutted the same.

27. In fact, the re-development plan which was, as aforesaid, handed over by the counsel for the petitioner is dated 15th February, 2013.

However, what the DFS in its affidavit dated 27th April, 2016 has stated is that the said plan was modified in October/December, 2013. The said

plan is not even before the Court, though petition seeking mandamus for implementation of the redevelopment plan is filed.

28. NDMC, in its affidavit dated 9th July, 2015, as aforesaid, has also pointed out the other impediments to execution of the redevelopment plan. I

had during the hearing on 28th April, 2016, when judgment in this petition was reserved, enquired from the counsel for the petitioner whether not

execution of the redevelopment plan would necessarily also entail execution of works within the shops on the ground floors of Khan Market; at

least on a perusal of the redevelopment plan which was handed over as aforesaid in the Court, it appears that it would be so required. The counsel

for the petitioner also had argued that the redevelopment plan entails construction of a balcony/platform at the level of the first floor from which, in

the event of fire, the patrons of the eating houses/restaurants on the first floors can exit and construction of staircases leading from the said

balcony/platform to the streets below. I had enquired, whether not the same would affect the ground floor shops/properties. It is clear that the

petitioner is a representative only of owners/occupiers of the first floor flats of Khan Market. There is a clear rift between the owners/occupiers of

the first floor flats and the owners/occupiers of the shops on the ground floor. The proposal which the owners/occupiers of the first floor flats want

implemented would pre-judicially affect the owners/occupiers of the ground floor shops and who are not members of the petitioner and who have

not even been impleaded as respondent in the petition. The petitioner wants to take a walkover.

29. I had during the hearing on 28th April, 2016 also enquired from the counsel for the petitioner as to what is the right of NDMC or for that

matter of any other authority to compel the owners/occupiers of the ground floor shops in Khan Market to agree to making their shops

available/accessible for the purposes of implementation of the re-development plan prepared at the behest of owners/occupiers the first floor flats.

30. Neither of the aforesaid queries were answered and the counsel for the petitioner kept on harping on how dangerous it is for the

customers/patrons of the eating houses/restaurants running in the first floor flats of Khan Market and that it is in public interest that proper

arrangements should be made for their safety in the event of a fire incident.

31. I am unable to understand the said stand of the petitioner. The use prescribed of the first floor flats of Khan Market, even if has been changed

from residential to commercial, does not entitle the owners/occupiers thereof to demand that for the sake of letting them carry on an activity

therein, which according to them also is dangerous, NDMC should spend crores of rupees or that the owners/occupiers of shops on the ground

floor should be made to suffer. It is not as if the members of the petitioner are the tenants of NDMC or of any other governmental authority or that

the entire Khan Market is in the ownership of NDMC/Government for the NDMC/Government to in exercise of their ownership rights re-develop

the market by carrying out major works of construction/renovation therein. The shops as well as the residential flats above are in the private

ownership and the works if any required to be carried out therein and which cannot be carried out without the joint effort of all the

owners/occupiers, can be carried out only jointly of all of them, at their own expense. This Court cannot, to enable the owners/occupiers of the

said 70 odd flats earn more from their flats, direct public monies to be spent for their exclusive benefit.

32. Though undoubtedly it is the public which uses the market and patronizes the eating houses/restaurants therein, but I am compelled to say,

without realising that the owners/occupiers of the said eating houses/restaurants themselves are openly declaring the same to be a fire hazard and a

fire trap, of escape wherefrom in the event of fire, there are no measures in place. Members of the public when visiting an eating house/restaurant

which has been allowed by the governmental/municipal authorities to function, believe that the same is safe and compliant with all the laws. I

wonder how many citizens of Delhi would be willing to risk their lives for the sake of dining in such restaurants if were to know the claims of the

petitioner as made before this court, of the said restaurants being a fire hazard, a fire trap. The present has resulted in a situation where the

owners/occupiers of the said flats and the eating houses/restaurants, in the event of any loss of life or property caused by fire would take a stand

that they have been openly declaring their eating houses/restaurants to be unsafe and are thus not liable and it is the government/municipal

authorities which are at fault and should bear the damages for loss of life or property. The wounds of the Uphar Cinema Tragedy on 13th June,

1997, in which 59 persons lost their lives and more than 100 persons suffered injury, though not yet healed for the victims and their families,

appear to have been forgotten by the administrative and municipal authorities by allowing functioning of establishments, which the owners of the

establishments themselves are calling a fire trap and a fire hazard.

33. Though the aforesaid is sufficient for dismissal of the petition but during the hearing, as aforesaid, the aspect of permissions/licences with which

the eating houses/restaurants on the first floor of Khan Market are functioning was also raised. Since the petitioner itself calls it a "public issue" and

since I am dealing with the subject in jurisdiction under Article 226 of the Constitution of India and which permits me to, taking cognizance of the

entire facts and circumstances of the case, pass appropriate orders to do complete justice and especially in the light of the Police Commissioner

himself having written to the Chief Secretary of Government of Delhi expressing concern about safety of the members of public patronising such

eating houses/restaurants in the first floor flats, I proceed to delve into the said aspect also.

34. The said flats were constructed for residence of a few members of family and have narrow staircases as the only access thereto. The said

staircases open in narrow service lanes which perhaps the Fire Brigades cannot even enter. It is the said flats which have been allowed to be used

as a public space, where upto 50 persons gather at a time. Neither the Delhi Police nor the NDMC which have issued licences/permissions

therefor have concerned themselves with the aspect whether allowing use of the said flats as a restaurant where upto 50 persons dine, poses a

hazard from fire to the lives of such persons and if so, the preventive steps required to be taken therefor. Thus, in spite of the fact that the

petitioner, whose members are operating the said restaurants or allowing such restaurant to operate, is itself stating that there is a fire hazard and

NDMC, satisfied therewith has prepared a re-development plan but which is unworkable, the restaurants are allowed to continue functioning,

jeopardising the lives of their patrons. This court cannot shut its eyes to such a situation.

35. The stand in this regard which has emerged is that an eating house/restaurant, with a seating capacity of less than 50 persons, does not classify

as a public place and no permission of DFS is required for establishment thereof. It has further emerged that though the norms laid down for such

an eating house/restaurant inter alia is, availability of at least 1.5 sq. mtrs. of space for each of the upto 50 patrons, but no exercise in respect

thereof also had been done.

36. Taking up of the first of the aforesaid two aspects first, Rule 27 of the Delhi Fire Service Rules under the head "Classes Of Occupancies Likely

To Cause A Risk Of Fire" lists "all Assembly buildings" thereunder. The word "Assembly" or "Assembly building" is neither defined in the Act nor

in the Rules. However, the Black's Law Dictionary 8th Edition defines "Assembly" as a group of persons organised and unified for some common

purpose. The Shorter Oxford English Dictionary also defines the word ""Assembly"" as a gathering of people. Thus, the word ""Assembly"" by itself,

as commonly understood, does not require any minimum number. However, the DFS has adopted the definition of an ""Assembly Building"" as in

the National Building Code to contend that only a building where more than 50 people gather qualifies as an assembly building and a building

where less than 50 people gather would not classify as an assembly building. I wonder, whether a citizen of Delhi, when choosing a restaurant,

knows the difference. For her, a restaurant is a restaurant, whether the seating capacity thereof is for 49 or 51 persons and she expects the same

standard of safety in both.

37. I had during the hearing enquired from the counsel for DFS the reason for treating the occupancy as restaurant with a seating capacity of 50 or

more as likely to cause a risk of fire and to satisfy the requirements prescribed and not treating a occupancy, also as a restaurant but with a seating

capacity of less than 50 as not likely to cause risk of fire, when there does not appear to be any reason for such differentiation. Both remain places

established, run and operated for profit motive, where members of public collect for eating/drinking. Both are public places and a restaurant with

seating of less than 50 cannot be treated as a private premises, where the owner and the occupier is the same, save for occasional guests and

which owner/occupier takes due care of her own safety and is in full control thereof. In comparison, in a public place, the owner may be absent

herself and the entire place may be occupied by unsuspecting members of public having no control there over. Further, while the owner of a private

premises would ensure that the guests invited by her are not more than can be safely accommodated, an owner of a public place as a restaurant,

for the sake of maximum profiteering therefrom would be interested in letting in as many as can be squeezed in and/or are willing to be squeezed in

the premises, as long as they are paying therefor.

38. Not only so, what is all the more shocking is that there appears to have been no check on whether the eating houses/restaurants which have

been permitted to function do not allow more than 50 persons to assemble therein or whether the size thereof, applying the measure of 1.5 sq.

mtrs. per person, even permits occupancy of upto 50 persons. No inspections were said to have been carried out in this respect. However, as

aforesaid, upon the responsibility thereof being fixed on NDMC, NDMC was directed to carry out an inspection and file an affidavit. Though no

affidavit had been filed till the conclusion of hearing on 28th April, 2016 and the counsel for NDMC on that date stated that the inspections were

underway and an affidavit will be filed before the judgment is pronounced but CM No. 20780/2016 along with the affidavit was filed and was

listed on 27th May, 2016. None appeared for the petitioner on that date, in spite of advance copy stated to have been given. Considering that the

filing of the affidavit was in accordance with the earlier order, need to issue notice of the said application was not felt and the said affidavit was

taken on record.

39. The Chief Architect of NDMC in the said affidavit dated 19th May, 2016 has stated that the occupant load of most of the restaurants

functioning in the first floor flats of Khan Market is more than 50 persons and the said restaurants fall under the category of ""Assembly Building"" as

defined under Clause 3.1.5 (Part-4) of the National Building Code, 2005.

40. NDMC has still not filed any report of surprise inspection if any carried out to determine whether in pursuance to the licences obtained by the

said restaurants, they are confining the seating capacity thereof to less than 50 persons or not.

41. The position which emerges is that it is not as if the first floor flats of Khan Market, permitted to function as restaurants, in accordance with

their size cannot seat more than 50 persons. They have been found to be capable of seating more than 50 persons. However, the said restaurants

fully knowing that they do not satisfy the norms prescribed for NOC under the Delhi Fire Service Act and taking advantage of the policy followed

by DFS, of buildings though used for assembly but if of less than 50 persons, not requiring fire clearance, have established restaurants therein

which they themselves claim and have repeatedly urged before this Court, are a fire trap and fire hazard and if there is an incident of fire therein,

there are no safety/evacuation measures. This is yet another instance of the public-private partnership of municipal and police authorities - flat and

restaurant owners showing scant regard for human life.

42. To say the least, the said first floor flats of Khan Market being used as restaurants are a disaster waiting to happen.

43. I had, as aforesaid, during the hearing asked the reason for exempting restaurants with a seating capacity of less than 50 persons from

obtaining clearance under the Delhi Fire Service Act. Though in the Court, the reason given was that if such restaurants/eateries were to be

included in the scope of Rule 27 of the Delhi Fire Service Rules, the DFS will have a much larger number of premises to inspect and regulate and

which they are not equipped to do but in the affidavit filed of course, reliance was placed on the National Building Code. Supreme Court, in

Consumer Action Group v. State of Tamil Nadu (2000) 7 SCC 425 drew the attention of administrative authorities to the fact that waiver of

requirements regarding fire prevention and fire fighting measures seriously endanger the occupants, resulting in the building becoming a veritable

death trap.

44. I entertain serious doubts as to the interpretation by DFS of the Delhi Fire Act and the Delhi fire Service Rules. However since the aspect

involves interpretation of statutory rule and which has not been raised by either of the parties I refrain from proceeding further on the aspect.

Suffice it would be to in this petition, to issue a direction for re-consideration thereof.

45. I however draw the attention of the NDMC to NDMC v. Statesmen Ltd. 1989 Suppl. 2 SCC 547 where Supreme Court held that since

under the relevant statute and bye-laws the authority to grant or refuse the licence is NDMC, it has the power to decide and that the clearance

from the Chief Fire Officer wherever required is merely an additional condition and not a limitation on the power of NDMC to satisfy itself that the

building provides for adequate fire safety precaution. NDMC cannot on the one hand assume the power to grant licence for using the premises as

a restaurant/eatery and on the other hand absolve itself of responsibility to satisfy itself that restaurant does not pose a fire hazard to the safety of

those patronising the same and that in the event of fire, proper measures for evacuation of the patrons therein and to prevent the fire from spreading

to the entire market, exist. In the matter of Uphar Cinema, the liability for the loss caused by a fire incident has been held to be, besides of the

owner/occupier of the premises, also of the licence giver if in conscious abuse of powers. The conduct of the NDMC and the other authorities of,

in spite of the owners/occupiers of the said restaurants themselves saying that they are a fire trap and a fire hazard, not taking any action, will be

nothing but a conscious abuse of the powers vested in them.

46. I therefore, though do not find any merit in the petition and dismiss the same but direct.

(i) NDMC and the DFS to, within two months hereof, take a decision whether the said first floor flats which have been found by the NDMC to be

having a occupant load for more than 50 persons, (and which the petitioner also admitted as aforesaid, on 16th July, 2016 as capable of seating

more than 50 persons) qualify as a Assembly Building and if so whether the restaurants/eateries or other commercial activities being carried on or

permitted therein satisfy the requirements of law and if not to prohibit use of the same therefor.

(ii) The NDMC and DFS to, within the said time also take a decision that even if the said first floor flats qualify as Assembly Building within the

meaning of the Delhi Fire Service Rules but do not satisfy the requirements thereof, whether the restaurants/eateries with a seating capacity of less

than 50 persons can be permitted to function therefrom without posing a fire hazard to the patrons visiting the same.

(iii) The DFS to, within three months, re-visit its policy of classifying Assembly Buildings by the seating capacity thereof.

(iv) NDMC to, if in spite of the said first floor flats having seating capacity of more than 50 persons being permitted to run a restaurant with a

seating capacity of less than 50 persons, devise ways and means to ensure that the said restaurants do not seat more than 50 persons. NDMC

may consider issuing immediate directions to such restaurants/eateries to prominently display the seating capacity of each floor within the

restaurant, visible to all patrons thereof along with phone number of officer of NDMC to receive complaints of over-seating.

47. It is further made clear that notwithstanding the petitioner and its members having in this petition declared the restaurants/eateries run/operated

by them or allowed to be operated by them in their first floor flats of Khan Market as a fire hazard, they will continue to remain liable in law for the

loss/damages to life or property of anyone from any incident of fire in their premises.