

(2005) 10 DEL CK 0081

Delhi High Court

Case No: WP (C) No's. 19798-19801 of 2004 and CMS. 14653-54/04

Greater Kailash Welfare
Association and Others

APPELLANT

Vs

Municipal Corporation of Delhi
and Others

RESPONDENT

Date of Decision: Oct. 18, 2005

Acts Referred:

- Constitution of India, 1950 - Article 226
- Delhi Cinematograph (Amendment) Rules, 2002 - Rule 3(2), 3(3)
- Delhi Cinematograph Rules, 1953 - Rule 11, 16(2)
- Delhi Control of Vehicular and other traffic on Roads and Streets Regulations, 1980 - Regulation 3(1), 3(2)
- Delhi Development Act, 1957 - Section 53(2), 53A, 53A(1), 53A(2)
- Delhi Municipal Corporation Act, 1957 - Section 332, 339, 347

Citation: (2005) 124 DLT 550 : (2005) 85 DRJ 674 : (2006) 1 RCR(Civil) 219

Hon'ble Judges: S. Ravindra Bhat, J

Bench: Single Bench

Advocate: Vipin Sanghi and Sunil Magon, for the Appellant; Rajiv Nayar Pravin Bahadur, Hima Kohli, Meghalee and Rajan Narain for Respondent Nos. 3, 4 and 6 and Anoop Bagai, for the Respondent

Judgement

S. Ravindra Bhat, J.

In these proceedings under Article 226 of the Constitution, the petitioner seek a quashing order, in respect of the sanction of the building plans for alteration/conversion of the existing building into a multiplex, mini cinema-cum-commercial complex at Savitri Cinema point Greater Kailash-II. This sanction was issued in favor of the 7th respondent. A consequential direction to restrain that respondent from raising construction and orders to quash the permission granted by various authorities imp leaded as respondents have also been claimed.

2. The first petitioner is a registered Society; it claims to represent respondents of the Greater Kailash-II; the other petitioners are residents of that locality. Greater Kailash-II is spread over an area of about 3.40 acres containing 1680 residential plots of various sizes. Its estimated population is about 15,000. It is claimed that there are approximately 8500 vehicles in the entire colony. The petitioners have annexed a plan and stated that the Greater Kailash colony is surrounded by other colonies, such as Greater Kailash Enclave, Alakhnanda, a cluster of multi-storey properties, Masjid Moth (also G.K.III); Mandakini Enclave and Chitaranjan Park. There are at least five schools in the colony and its vicinity and several Institutions such as, Hospital, Gurudwaras, Temples and so on. The estimated population in the Alakhnanda Complex is about 10,000 and about 3,000 people reside in Greater Kailash Part-II Enclave and Masjid Moth localities. The petitioners claim that the access into the colony is one of the most important access into the colony and the other localities such as Alakhnanda, Greater Kailash Enclave, Mandakini Enclave etc. from the outer ring road are through a junction where the Savitri Cinema is located. That point of entry has assumed a critical importance as the common ingress into various localities from the ring road. The Savitri Cinema, which is located at the corner of the point where such entry point is located, was shut down after the Uphaar Cinema Fire tragedy in 1997.

3. It is averred that on account of immense traffic congestion at the entry point, (which is at T. Junction) a one-way fly over was constructed and an existing traffic light was removed. Nevertheless, the entry into the Greater Kailash, Part-II from ring road continues to remain severely congested due to the high volume of traffic, which is also on account of its being the entry to the other surrounding localities. It is claimed that the 7th respondent started demolishing the erstwhile Savitri Cinema building and putting up a structure some time in 2003. The petitioners became aware that a multiplex-cum-commercial complex was being developed with four cinema halls. This, it is stated, would lead to tremendous congestion at the entry point and intolerable burden on the respondents of the locality since a large number of patrons would visit the Cinema Halls and the commercial complex, leading to traffic congestion and parking chaos. It is claimed that once the proposed building complex is completed and put to use, the commuting into and living in the colony particularly, would become difficult.

4. The first petitioner represented to the MCD, the Delhi Urban Arts Commission, Chief Fire Officer and the Police authorities complaining of violation of building byelaws and various other provisions of law. The petitioners also met with officials of the Delhi Urban Arts Commission (The Commission) and gave a written representation on 12.11.2003. At that time the seventh respondent was also represented. The Commission addressed a letter on 8.12.2003 to the 7th respondent's Architect, stating its observations. The Commission had decided to refer the issue to the Standing Sub Committee on traffic transportation proposals, to consider all aspects. The Commission also indicated that it would associate the

Delhi traffic police as well as the MCD and that the architects were advised to look into the possibilities of providing more parking space looking at the need for extensive parking for such kind of complexes. The Sub-Committee of the Corporation held a Meeting in January, 2004 when the petitioners' representations were considered. The sub-committees of the Commission made certain observations which were circulated to the petitioners on 27.1.2004. These showed that the plan of the complex as well as the surrounding areas had to be prepared by architects, taking into consideration the ground realities. It was also observed, inter alia, that :-

"4. So as to improve the drop off area, a suggestion was given for taking entry of the vehicles from the area shown as parking along the road.

5. The sub-committee was informed that the construction was at site is in progress. The sub-committee expressed its unhappiness over the construction activity taken up without approval of the revised plans."

5. The representations of the Residents Welfare Association were advised to nominate their technical persons so that the revised proposal of the traffic transportation (to be prepared by Architects) to be discussed with him."

5. It is alleged that the Commission had accepted that the existing circulation plan was inadequate and that no further construction could be carried out until revised plans were approved. It is alleged that no revised plans were submitted nor were they approved. In any event the petitioners are in the dark and were not invited to attend any meeting to consider the traffic managements plans. The first petitioner nominated its technical Member one Shri O.P. Sehgal on 10.2.2004 as a without prejudice measure. It is alleged that in spite of repeated representations and communications no further information was forthcoming and in September-October, 2004 the 7th respondent started construction activity in full swing. The petitioner attempts to enquire into the matter and were unsuccessful. They have approached this Court for appropriate reliefs as mentioned earlier.

6. It is claimed that the Mini-Cinema-cum-Commercial Complex, violates several provisions of law. The petitioners allege that the 7th respondent has violated Section 332 of the Delhi Municipal Corporation Act, 1957 (hereinafter "The 1957 Act) and undertaken construction activity without due sanction. It is also alleged that the building in question violates Section 339 of the 1957 Act and that the Municipal Corporation of Delhi (MCD) is duty bound to take appropriate action for violation of these and also change of land user, for which action has to be taken u/s 347 of the 1957 Act.

7. The petitioners allege that the Complex proposed violates Bye-law 26.1, 13.0 and 13.0 to 13.8 of the Building Bylaws (hereafter "The Byelaws") which lay down standards to be followed for construction of Cinema Buildings. Those byelaws refer to, inter alia, to the Mini Parking space that is to be provided for, car space and also

the extent of open space which have to be taken into consideration for the parking calculations. It is alleged that the MCD and other respondent authorities have not applied their mind to the requirements of the parking at the proposed multi-complex commercial cinema though they were required to do so.

8. It is also contended that under Rule 11 of the Delhi Cinematograph Rules, 1981, (framed under the Cinematograph Act, 1952) which deal with issuance of license, permission or license to construct a Cinema house cannot be granted, in any thickly populated residential area, which is either residential or reserved for residential purposes, as distinguished for business purpose. It is claimed that the Respondent No. 6 namely, the Deputy Commissioner of Police (Licensing) has apparently issued the permission/ license without consulting the Executive Engineer (PWD) and without proper application of mind. The proposed complex is within radius of 250 meters from a place of public worship namely, the Gurdwara.

9. The petitioners also complain that under Regulation-3(1) of the Delhi Control of Vehicular and other Traffic & Road Street Regulations, 1980 no vehicle can halt at a distance of 2 ft. from the edge from the curve or where the pavement exists the edge of the street and that as per Regulation 3(2) parking of vehicles within 10 meters at a colony of street or road or such a position adjacent to a corner so as to obstruct, or be dangerous to traffic, is prohibited. It is alleged that these conditions have been flagrantly violated. It is contended that the provisions of the Indian Standards Byelaws for construction of Cinema building (which have been made applicable through the building byelaws) stand violated. It is stated that as per Appendix-L of the Code, the standard prescribed, for parking cars in streets/towns with up to one million population is one parking space for every 25 seats in a Cinema Halls. Such standard is grossly inadequate by today's standards since Delhi has the highest car density ratio in the country and a realistic standard ought to be one car parking space for every two or three seats.

10. The petitioners also allege non-application of mind to the provisions of the Delhi Master Plan 2001 (MPD 2001), particularly clause 8(4) which deals with control for building/ buildings/ used premises. They rely upon Note-1 under the tabulation to say that wherever parking standards have not been prescribed, it shall be prescribed by the authorities depending upon the merits and requirements of the individual case. It is, Therefore, contended that the respondent authorities have not applied their mind at all to the merits of this case, which are vital and require consideration. The petitioners have relied upon the number of photographs, which show the existing parking position on the plot, upon which the construction is proposed.

11. The Respondent-MCD in its affidavit had stated that the plans submitted by the 7th Respondent were sanctioned by File No. 84/4/HQ/02 and issued on 4.12.2002. The proposal comprises one Mini Cinema Hall, with 300 seats as against the previous capacity of thousand seats. It is alleged that the sanctioned building plans

proposing addition/ alteration in the existing structure were considered by the MCD in accordance with the provisions of the byelaws, Master Plan, Delhi Cinematograph Rules which after securing no objections from the Commission Chief Fire Officer, DCP (Traffic).

12. The Commission in its affidavit states that it accorded the approval to Mini Cinema with capacity of 300 seats. A copy of that letter, dated 24.9.2001 has been filed. It is stated that the letter of the 7th Respondent dated 23.2.2000, reducing the number of seats from 1000 to 300 was taken into consideration. The Commission reverted back to the 7th Respondent on 3.3.2004 requiring it to route the proposal through the MCD. Eventually after correspondence the Commission granted permission.

13. It is stated that further letters were received from the 7th respondent reverting back to its original proposal that instead of one theatre the proposal was for two theatres of 150 seats each, so that the advantages of staggering of traffic was available. That was again returned on the ground that there was a revision that the proposal should be routed through the MCD. It is claimed that after the last letter of 23.3.2004 nothing was received by the Commission, either from MCD, or the 7th Respondent.

14. The Letter dated 16.3.2004 written by the Commission had noted that the proposal freshly submitted was for 300 seats in two theaters of 150 seats capacity each which was completely a revised proposal. The subsequent letter dated 23.3.2004, inter alia, stated that the proposal had to be reviewed by its sub-committee and that:-

"The sub-committee made certain observations for improving in parking and traffic circulation which were communicated to you for compliance under Commission's letter of even No. dated January 22, 2004."

It is observed that instead of complying with the said observations of the sub-committee, a revised proposal has now been submitted by you, which comprises of two theatres of 160 seats each and indicates shopping area on the ground floor as this is completely revised proposal. We have no alternative but to request you to route the proposal through the MCD."

15. The 7th Respondent in its counter affidavit has refuted the allegation of violation of various provisions of law. It stated that salient features of the alternative proposal, are a single screen mini Cinema Hall, reduction of seats from 1000 to 300; retaining the same building; total parking space (including in the basement) to be increased from 78 cars to 98 cars; parking space for two wheelers as per statutory requirement; no change in any part of the existing commercial complex.

16. The 7th Respondent alleges that sanction was given by the MCD to the alteration/ renovation of the building plans on 4.12.2002, with a direction that the

project should be completed by 3.12.2004. The 7th Respondent completed the proposed alterations and applied for certificate on 2.12.2004. It is alleged that the apprehensions of the petitioners are completely unfounded. The earlier Savitri Cinema Complex was a 1000 seat Cinema Hall; there was no fly over in Chirag Delhi and Nehru Place on the outer ring road and three traffic lights existed on that stretch including a traffic light at Savitri point which used to result in traffic congestion. As on date the Cinema has been converted into a Mini Cinema of only 300 seats and the same stretch of interior ring road is a free moving traffic. The 7th Respondent has released an area of 411.75 square meters along the outer ring road free of cost for widening the road at the Savitri point. It is claimed that the parking in the complex has been increased to 98 cars space which is more than 78 car space, mandated by Delhi Building Byelaws, and Delhi Cinematograph Rules. The reliance placed by the petitioners on the proceedings and actions by the Commission as they relate to the approval of the revised plan for a construction of a multiplex complex are alleged to be misplaced since that plan had been proposed on 3.2.2003, and sought sanction of the earlier plan to convert the complex. It is stated that the 7th Respondent appended the revised plans by its letter, dated 8.2.2004, which amounted to abandonment, of the second plan, and was accepted by MCD on 26.5.2004. Hence, it is stated that the altered/ renovated Cinema was on the basis of plans that was sanctioned by the Commission, and sanctioned by MCD on 4.12.2002 namely, i.e. for converting the existing Cinema Hall into Mini Cinema Hall with 300 seats.

17. The 7th Respondent has also relied upon the letter of the DCP (Traffic), who initially had reservations on the issue of license but granted it later upon certain variations regarding entry and exit plan for the proposed complex. It is stated that the Chief Fire Officer as well as the BSES Rajdhani Power Limited and the DCP (Licensing), have all concurred with the proposal and issued the necessary clearances/ licenses/ no objection certificate. A copy of the sanction of the plan issued by the MCD dated 4.12.2002 has been annexed; a copy of the approved provisional certificate issued by the DCP(Licensing) dated 29.11.2002 too has been annexed along with the counter affidavit.

18. The Government of NCT Delhi has filed its affidavit through the DCP (Licensing) Delhi Police. This affidavit states that the initial objection to the entry and exit to the Cinema Commercial Complex was redressed by taking steps such as closing the Gate No. 1 and permitting entry only from Gate No. 2 and exit from Gate Nos. 3 & 4. The seat capacity of the Cinema Hall was reduced to 300 seats and the use of basement for parking purposes, had to be made available to the extent of 10,000 sq.ft. It is stated that provisions of the Building Byelaws 1983, Delhi Master Plan - 2001 and the Delhi Cinematograph Rules, 2002 were taken into consideration while granting No objection/approval for the proposed Cinema Hall. Reliance has been placed on Clause 16 of the Second Schedule to the Delhi Cinematograph Rules, 2002. It is stated that the provisions prescribes the parking standards applicable for

different kinds of vehicles in relation to the number of seats. Thus, 10% of the vehicles for which parking space has to be provided is in respect of cars; 20% of the seats for which parking space has to be provided should be in respect of scooters and motorcycles and 40% of seats for which parking space has to be provided ought to be cycles. The equivalent spaces are 260 sq.ft. for motorcars, 30 sq.ft. for motorcycles/ scooters and 15 sq.ft. for cycles. It is also averred that if a cinema complex form a part of cinema building, an additional parking space for 1.14 car space per 92.9 sq.mtr. for commercial area has to be provided. This affidavit states that 59 car parking spaces are provided for on the ground floor and parking space for 30 cars has been provided in the basement by the 7th respondent in the plans proposed.

19. Mr. Vipin Sanghi, learned counsel for the petitioner submitted that none of the authorities have applied their minds while sanction/ approval for the construction of the cinema hall cum-commercial complex. It is submitted that Delhi has the highest ratio of motor vehicles, and the traffic congestion and lack of parking spaces was a very important consideration which ought to be kept in mind while considering the application of the 7th respondent. It was submitted that the approval/ sanction to be granted by the MCD was in the nature of a fresh approval and not for the grant of sanction. For the past nearly a decade there was no cinema hall at the location where as traffic had increased manifold. Given these factors and the peculiar location of the plot at a junction which constituted the entry point for several colonies that housed religious and educational institutions besides several other markets, the authorities who ought to have completely considered these factors failed in their duties, while granting license.

20. It was submitted that the total number of households likely to be effected would be around 5000. In Greater Kailash-II, the residents have about 8500 vehicles. If the proposed cinema were allowed to function, the parking space provided could be highly inadequate inevitable result in on-street parking of vehicles at the road which forms the main entry to Greater Kailash-II and the adjoining colonies. This would lead to unprecedeted traffic congestion and also law and order problems on account of conflict between the local residents and the cinema goers/ shoppers who visit the commercial complex.

21. Learned counsel for the petitioner submitted that the proposal ought to be construed as one for fresh license. He relied upon the judgment of Division Bench of the Mumbai High Court reported as Vithal Ramchandra Devkhar and Another Vs. State of Maharashtra and Others, to state that where there was a prohibition, or one was notified after the plot was acquired for construction of a cinema, such development activity would be controlled by the provisions including such prohibition.

22. It is submitted that the DCP (Traffic) had expressed his concern with regard to licensing in view of the location of the cinema hall at the T-Junction. Such concern

was in keeping with Section 339 of the Delhi Municipal Corporation Act which dealt with constructions at a corner site. The possible adverse impact to traffic and problems arising due to congestion, and inevitable unauthorized parking on the roads were completely glossed over by the authorities, particularly the MCD in its haste to grant the sanction to the 7th Respondent.

23. Mr. Sanghi submitted that the parking space provided for in the cinema hall-cum-commercial complex pose great threat to tranquility in the locality on account of gross inadequacy. He placed reliance upon provisions of the building byelaws which referred to the Indian standard codes for cinema buildings. It was submitted that if the authorities were to go only by these provisions, the result would be absurd since the parking standard prescribed was one car space for every 25 seats; this would mean only 12 car spaces for the entire cinema complex. In view of high traffic density in a city like Delhi, such standard was not only unrealistic but completely out moded and absurd. He, Therefore, submitted that the relevant part of the Master Plans if applied objectionably would result in cancellation/ sanction of the permission. It was submitted that the road width at the entry point to the cinema complex is only 80 ft whereas as per the Master Plan norms it ought to be of minimum 40 meters width. Mr. Sanghi placed reliance on clause 8(2) which enumerates the permitted users in various use. It was submitted that in a residential junction under clause No. 28 a cinema hall was not permitted. The sanction for putting up of a cinema even if was, Therefore, assailed as being contrary to the master plan.

24. It was next contended that clause 8(4) of the Development Code to the Delhi Master Plan (MPD-2001)prescribed the parking standard. It was submitted that at the foot of the provision a tabulation indicating the parking space for different types of building were indicated; and that no parking standard was prescribed in relation to cinema halls, with commercial spaces. It was, Therefore, submitted that as per Note-1 wherever parking standards were not prescribed, the DDA had the jurisdiction to prescribe it on the merits and requirements of the individual case. The petitioners have also placed reliance on an order dated 19.11.2004 passed by the Supreme Court in M.C. Mehta v. Union of India in WP(C) No. 13029/95 to say that a parking policy standard has been formulated and is under active consideration by the Supreme Court. These too ought to have been taken into consideration by the authorities. Since there is no indication that such relevant considerations were kept in mind, the impugned sanction is illegal.

25. Learned counsel for the petitioners also relied upon the photographs and plans produced along with the petition and to say that the existing parking and entry into the plot itself shows high traffic density and congestion; the permission to put up a commercial complex-cum-cinema hall would only aggravate the crises and result in chaos. He further relied upon the Delhi Cinematograph Rules, 2002 particularly Rules 3(2) and 3(3) to submit that the consultation with the Executive Engineer was

mandated. It was submitted that there was no material to show the application of mind to any report by such prescribed authority.

1. Learned counsel for the petitioners relied upon the judgment of the Supreme Court reported as *S. Jagannathan v. Comptroller and Auditor General of India*, AIR 1987 SC 546 to the following effect:

"High Courts in India exercising their jurisdiction under Article 226 have the power to issue a writ of mandamus or a writ in the nature of mandamus or to pass orders and give necessary directions where the government or a public authority has failed to exercise or has wrongly exercised the discretion conferred upon it by a statute or a rule or a policy decision of the government or has exercised such discretion mala fide or on irrelevant considerations or by ignoring the relevant considerations and materials or in such a manner as to frustrate the object of conferring such discretion or the policy for implementing which such discretion has been conferred. In all such cases and in any other fit and proper case a High Court can, in the exercise of its jurisdiction under Article 226, issue a writ of mandamus or a writ in the nature of mandamus or pass orders and give directions to compel the performance in a proper and lawful manner of the discretion conferred upon the government or a public authority, and in a proper case, in order to prevent injustice resulting to the concerned parties, the court may itself pass an order or give directions which the government or the public authority should have passed or given had it properly and lawfully exercised its discretion."

2. Counsel for the 7th respondent submitted that the initial challenge to the sanction granted by the MCD was only in respect of multiplexes. In reality the proposal to construct a multiplex was given up by the 7th respondent when it realized that it would result in certain problems. It was submitted that having regard to the nature of pleadings, no relief could be granted since all the allegations were premised on construction of a multiplex.

3. It was contended that originally the Savitri Cinema Hall had a thousand seats. Has the cinema hall not been shut down and made non-operational for these 7-8 years, neither the petitioners nor other local residents could have raised any grievance. The proposal now approved by MCD was for a vastly scaled down cinema hall, of 300 seats. It was also contended that the Savitri Cinema Hall at the relevant time was located in front of a busy road which had traffic signals. At that point of time, there was no fly over leading to the Nehru Place. Now with the construction of a fly over the flow of traffic was smooth and well-regulated. Hence the grievances raised about heavy traffic congestion was imaginary. Learned counsel also submitted that the entry point into the complex was changed, due to which the Delhi Police granted its no objection certificate/ clearance. Instead of the original entry at Gate No 1, the sanctioned plan indicated the entry at Gate No. 2 and exit from Gate No. 3 and 4. Gate No. 1 was to be permanently shut. These measures, it was submitted, would alleviate the traffic problem.

4. Learned counsel for the 7th respondent submitted that the scope of judicial review under Article 226 of the Constitution is well-settled. The Court does not sit as an administrative body reviewing an executive decision on merits nor does it exercise appellate powers. It is concerned with the legality, procedural regularity and bonafides of decision making. The Court is also concerned and within its right to see that discretion is exercised within the bounds of law and is not abused; relevant factors are taken into consideration and that irrelevant factors are kept out of the decision making process. Reliance was placed upon the judgment reported as [Tata Cellular Vs. Union of India, M.P. Oil Extraction and Another Vs. State of M.P. and Others](#); and [G.B. Mahajan and others Vs. The Jalgaon Municipal Council and others](#).

5. Learned counsel for the 7th respondent submitted that as per the stand of the authorities such as the Delhi Police the parking standards prescribed space for 78 cars whereas the space provided both in the basement and ground floor was to the extent 98 cars. It was also submitted that the 7th respondent has given up more than 411.75 sq.mtrs. for road widening. All these show that the authorities were aware and alive to the parking requirements as per various norms. The sanctions were duly granted after a lengthy consultative process. Under these circumstances, the complaint of the petitioners about violation of norms and heavy traffic congestion have to be viewed as not bonafide but attempts to stall a project which had the legitimate sanction as per law. As far as traffic woes were concerned, it was submitted that the adequacy or otherwise of norms were not a matter that could be gone into. The plot in question had been earmarked as a cinema complex, and the residents could not object to its use for the purpose, on the ground that inadequate traffic or parking norms would lead to inconvenience and traffic congestion.

6. Ms. Hima Kohli appearing on behalf of the Government of NCT stated that the norms applicable for parking were Delhi Cinematograph Rules, 2002 which had replaced the Delhi Cinematograph Rules, 1981. It was submitted that the relevant parking standards were indicated in Rule 16(2) read with the Second Schedule. In relying with these provisions, the 7th respondent has made provision for 59 cars on the ground floor and 30 cars in the basement. It was submitted that various documents and the plan ultimately sanctioned in relation to the plot indicated that the net area of the plot was 49960 sq.ft. The open area was 30478.96 sq.ft. The covered area on the ground floor was 19481.24 sq.ft. On a proper application of all the standards, the parking spaces provided for in the plans ultimately sanctioned were found to be in order.

7. The original records of the MCD and the Delhi Police contain the nothings, the plans originally submitted as well as the one which was submitted on 30.5.2002 and finalized sanctioned on 6.11.2002. The records of MCD indicate that the proposed building plans was for addition/ alteration in the existing cinema building for conversion to Mini-cinema-cum-commercial building. The files of the MCD indicate

that the initial building plan application of the 7th respondent for construction of shopping complex-cum-mini cinema hall was rejected on 5.5.2000 due to non-compliance with certain requirements. The appeal was preferred which was considered on 21.7.2000. The area of existing mezzanine was directed to be counter towards FAR as per provisions of the MPD-2001. The MCD also considered conversion of existing cinema-cum-commercial building into mini-cinema cum commercial building, as per Notification dated 23.2.1993. The plans were again rejected on 14.12.2000. The 7th respondent again appealed on 30.5.2002 and sought to rectify/ meet with deficiencies notified and comply with the conditions. The plan was recommended for approval some time in October- November, 2002. Finally, the building plans were sanctioned on 6.11.2002. The Plans finally sanctioned contain an order which has been pasted at the back namely, Drawing No. L-100 which indicates various spaces in the respective floors and the areas sanctioned as per proposal. The total existing-cum-proposed areas as per the sanction plan dated 6.11.2002 are as follows :-

S.No.	Floor	Existing and proposed area
1.	Ground Floor	16132.287 sq.ft.
2.	First Floor	13801.10 sq.ft.
3.	Second Floor	5219.565 sq.ft.
4.	Third floor	4794.50 sq.ft.
5.	Fourth floor	4794.40 sq.ft.
6.	Fifth floor	4794.50 sq.ft.
7.	Mezzanine floor	4868.75 sq.ft.

8. Drawing No. A-101 outlines the ground floor plan. The total covered area is 1613.28 sq.ft. or 1498.17 sq. meters. The entire ground floor contains a large number of shops and show cases. The ticket booth for the proposed cinema hall is also located at the ground floor. The order of the Govt. of NCT dated 19.9.2000, which approves the additions/ alterations in question and has been attached at the back of the sanctioned plan indicates that the proposal is one for mini cinema-cum-commercial complex. The entire ground floor, which had existed at a mini cinema hall would be used as a departmental store.

9. The internal correspondence of the Delhi Police reveals that initially there was some concern about the location of the cinema hall-cum-commercial complex at the T-Junction which would lead to traffic problems. The DCP (Traffic) requested the DCP (Licensing) not to proceed and grant approval without involving him. Eventually on 1st March, 2003, the no objection was granted on the following terms :-

"Kindly refer to your D.O. Letter No. 34027/DCPLic./Cinema dated 28.12.2001, on the subject cited above, this is to inform you that we have no objection from traffic point of view for carrying out alteration/modification of Savitri Cinema with the following terms and conditions :-

1. To close gate No. 1.
2. Entry will be only from gate No. 2 and exit will be from gate No. 3 & 4.
3. The capacity of Cinema Hall may be reduced to 300 seated instead of 1000.

1. The use of basement for parking purposes which is about 10000 sq.ft. Should also be made available.

..."

On 3-5-2002, the DCP (licensing) wrote a letter to the Vice-Chairman, DDA, requesting it to examine the plans submitted for approval, and indicate any shortcomings. The nothings of the DDA appear on the letter itself; the letter is on the file of MCD. The DDA appears to have endorsed a view expressed that the matter did not pertain to it.

10. The no objection given to the MCD, by the Delhi Police, on 29.11.2002 was expressed in the following terms :-

"The provisional clearance certificate is hereby granted to the Vice President-Business Development, DLF universal Limited, DLF centre, Sansad Marg, New Delhi to carry out the construction in respect of proposed Cinema Complex at Greater Kailash-II, New Delhi on having been sanctioned the building plans by the Municipal Corporation of Delhi as per Building Bye Laws-1983, Master Plan-2001, Delhi Cinematograph Rules 2002 and approval of Delhi Urban Art Commission and other policies of the department under the provisions of Rule 3(3) of Delhi Cinematograph Rules, 2002 subject to the condition that the width of side longitudinal gangways/parallel gangways must have the width of 4 feet as required under Delhi Cinematograph Rules, 2002 instead of the width shown in the plans as 3" 11". However, this certificate shall not ipso facto entitle the applicant for grant of a regular cinematograph license on completion of the building or given any immunity from the application of new provisions of Delhi Cinematograph Rules, which might be incorporated after the issue of such certificates and before final clearance from different technical agencies and by this office and the grant of a license under Delhi Cinematograph Act, 1952.

..."

36. Legal provisions

Provisions of the Building Bye-laws

"Parking Space

13.1 The parking spaces to be provided in building shall be as per the recommendations contained in Master Plan/Zonal Plans and the regulations of Delhi Development Authority. In areas not covered specifically by the above and for occupancies where specific provisions are not made, the parking spaces shall be in accordance with Bye-law No. 13.2

13.2 One car space per 92.93 sq.m. Of the covered area. This parking can be provided in any manner, i.e. covered or open. In providing the parking, care has to be taken that 50% of the open space is left for landscaping and is not accounted for into parking calculations.

Note : Area for each care space :-

- (i) Basement 35 sq.m
- (ii) Stilts 30 sq.m
- (iii) Open 25 Sqm.

13.3 Parking space shall be provided with adequate vehicular access to a street and the area of drive, aisles and such other provisions required for adequate manoeuvring of vehicles shall be inclusive of the parking space stipulated in these rules.

13.4 If the total parking space required by these rules is provided by a group of property owners for their mutual benefits, such parking shall meet the requirements under these rules subject to the approval of the Authority.

13.5 In addition to the parking spaces provided, for buildings of Mercantile (Commercial), Industrial and Storage, at the rate of one such space for loading and unloading activities for each 100 sqm. Of floor area or fraction thereto exceeding the first 200 sqm. Of floor area, shall be provided.

13.6 Parking lock-up garages shall be included in the calculation of floor space for FAR calculations unless they are provided in the basement of a building or under a building constructed on stilts with no external wall.

13.7 Parking spaces shall be paved and clearly marked for different types of vehicles.

13.8 In the case of parking spaces provided in basements, at least two pumps of adequate width and slope (see Bye-law No. 16) shall be provided, located preferably at opposite ends.

...

26. Assembly Buildings (Cinema, Theatres, etc.)

26.1 The relevant provisions of the Cinematographic Rules under Delhi Cinematographic Act, 1952 and IS:4878-1968 Code for Construction of Cinema

Buildings shall apply for planning, design and construction of Cinema Buildings.

26.2 Parking spaces wherever not specifically given shall conform to bye-law No. 13.0."

...

Relevant provisions of the ISI Code for Construction of Cinema Buildings

"8. OFF-STREET PARKING SPACES

8.1 The off-street parking (on-site parking) spaces in a plot to be provided shall be in accordance with Appendix L. The spaces given in Appendix L shall be considered by the Authority in conjunction with the Development Control Rules, in force, if any.

...

APPENDIX L

(Clause 8.1)

OFF STREET PARKING SPACES

L-1. Each off-street parking space provided for motor vehicles (cars) shall not be less than 13.75 m in area, and for scooters and cycles, the parking spaces provided shall not be less than 1.25 m and 1.00 m respectively.

L-2. The parking space in cinema buildings shall be provided as stipulated below :-

a) Motor Vehicles -- Space shall be provided as given below for parking motor vehicles (cars) :

Sl.No.	Cities/Towns	One car parking space for every
i)	With population between 25 seats 200 000 to 1000 000	
ii)	With population 50 000 to 200 000	80 seats
iii)	With population less than 50 000	120 seats

NOTE- The requirements for off-street parking for metropolitan cities with population 400 000 shall be broadly based on the above scale and these requirements shall be appropriately adapted to suit the increased traffic generated, the traffic pattern as well as the nature of vehicles in the city.

b) Other Types of Vehicles - In addition to the parking areas provided in (a) above, 25 to 50 percent additional parking space shall be provided for parking other types of vehicles and the additional spaces required for other vehicles shall be as decided by the Authority, keeping in view the nature of traffic generated in the city.

L-3. One row of car parking may be provided in the front open space of 12 m without reducing the clear vehicular access way to less than 6 m."

...

Relevant Extracts Of Delhi Master Plan 2001 On Parking Space

"Parking Space

(a) In respect of individual plot, the calculation for parking space shall be based on the total permissible FAR of plot size above 200 sq.m. after giving allowance of the parking space requirements for permissible FAR of a plot of 150 sq.m. in size as per norms given in the table for parking space.

(b) New plotted development scheme : The parking area is to be calculated @ 1.33 car space per 100 sq.m of total built up area permissible in the scheme and parking provision is to be made, in the layout plan partly by way of pool parking and partly in the individual plot.

(c) Parking requirement shall not be insisted upon in case of addition alteration in the existing building forming part of approved layout plan.

Parking Standard

Parking space shall be provided for different types of development as per norms given in the following table. The standards given are in equivalent car space (ecs) and it includes parking for all types of vehicles i.e. cars, scooters, cycles and also light and heavy commercial vehicles. In case of wholesale markets and industrial area etc.

Sl. No.	User/User Premises	Equivalent Car Spaces per 100 sqm. Of floor a
A.	(i) Commercial plotted development (ii) Metropolitan City Centre i.e. Connaught Place & its extension (iii) Asaf Ali Road (iv) Press Area (v) Non-Hierarchical Commercial Centres	2.00 ECS
B.	(i) District Centres	1.67 ECS

- (ii) Hotel
- (iii) Cinema

C.

- (i) Residential Group Housing
 - 1. [Cluster Court housing]
- (ii) Plotted Housing
 - (Plots above 200 sqm.)
- (iii) Community Centre
- (iv) Local Shopping Centre
- (v) Convenience Shopping Centre
- (vi) Nursing Home, Hospitals
 - (Other than Government)
- (vii) Govt. Office
- (viii) Social & Cultural Institutions
- (ix) Mixed Use
 - 1. [1.80 ECS per 100 sqm.
Of floor area up to 165 sqm]
 - 2. [1.33 ECS per 100 sqm.
For area beyond 165 sqm]

D.

- (i) College & University 1.00 ECS
 - 1. [& Public Schools]
- (ii) Light & Service Industry
- (iii) Flatted Group Industry
- (iv) Extensive Industry

E. (i) Government Hospital 0.67 ECS

F. (i) Wholesale Trade 2.50 ECS

- (ii) Freight Complex

(including parking for loading and unloading)

Notes :

1. For the use/premises for which the parking standards have not been prescribed , the same shall be prescribed by the Authority depending on the merits and requirements of the individual case :
2. For the provision of car parking spaces, the space standards shall be as under :
 - (i) For upon parking 23.0 sqm. Per equivalent car space.
 - (ii) For ground floor covered parking 28.0 sqm. Per equivalent car space.

(iii) For basement 32.0 sqm. Per equivalent car space.

3. In the use premises, parking on the above standards shall be provided on the Ground Floor, or in the Basement (where the provision exists). In case of organized centres like District Centre and Community Centre to meet with the above demand of parking, additional underground space (besides the basement) may be provided below the pizzas or pedestrian or open spaces but within the setback lines:

[(i) Plots forming part of any commercial development such as Central Business District, District Centre, Community Centres, etc. basement(s) up to the envelope line maximum equivalent to the plot area, could be permitted for parking and services such as electric-sub-station with specifications and approval of DESU, installation of electrification for the fighting equipment with the approval of Delhi Fire Services and any other service/required for the building with appropriate approval. However, any other use in the basement including storage, if provided, shall be counted in permissible FAR.

(ii) The basement beyond the ground coverage shall be kept flushed with the ground and shall be ventilated with mechanical means of ventilation; and

(iii) Basement shall be designed to take full load of the fire tender, wherever required.]"

1. Inserted vide Ministry of Urban Affairs & Employment Notifn. No. K-12016/5/79-DDIIA/VA/IB, dated 15th May, 1995.

2. Substituted vide Ministry of Urban Development and Poverty Alleviation Notification. No. S.O. 287 dated. 6.3.2002.

...

37. The following facts emerge from the above narrative:

a) The seventh respondent owns the plot in question, where a cinema, known as Savitri Cinema, existed till 1997; it was closed down in the aftermath of the "Upahar Cinema" tragedy;

b) The plot is located at a junction on a main arterial road, the Outer Ring Road;

c) The respondents (except the seventh respondent) do not dispute that the plot is at a principal entry point to the Greater Kailash II colony and some other localities, for which access is through the road next to the plot;

d) The original plan of the seventh respondent was to construct a multiplex; however, it was converted into a proposal to construct a mini cinema theatre cum commercial complex;

e) There is an existing commercial building on the plot;

f) The sanction accorded to the proposal by MCD, is to effect additions and alterations to the existing structure, and also construct a shopping-cum-commercial complex. Shops have been sanctioned on the ground floor; the basement is proposed to cater to parking, besides housing the electrical substation;

g) The Delhi Police initially objected to the proposal, but later cleared and granted sanction/ approval when the seventh respondent changed the entry point, by blocking entry from Gate No 1 and instead proposing entry from Gate Nos 2 , and exit from Gate Nos. 3 & 4. These exist points had into the colony, before joining the outer ring road;

h) The Government of NCT, through affidavit of DCP licensing has taken the position that the sanction for the cinema hall is in accordance with provisions of the Building Bye laws, MPD 2001, and the Delhi Cinematograph Rules, 2002;

i) The total parking proposed is for 98 ECS (Equivalent Car space). It is averred that the norm is 78 ECS, whereas the seventh respondent has provided for 20 more ECS;

j) The total area of the plot is 54450 square feet; of this the net area available for construction is 49,960.20 sq.feet. The FAR admissible is 100. The total sanctioned built up area is 54,405.202 Square feet.

38. Delhi has registered an explosive growth of vehicular traffic, over the last decade. The statistics made available by the Transport department of the Government of NCT (source:<http://transport.delhigovt.nic.in/transport/tra.htm>): shows the relative position of the number of vehicles in Delhi, as on 31.3.2004 as follows:

Statistics about number of vehicles as on 31.03.2004

S.No.	Category	No. of Vehicles
1	Cars, Jeeps/St. Wagen	12,67,852
2	Scooter, Motor Cycle	26,50,241
3	Auto-Rickshaw	74906
4	Taxis	14941
5	Buses	24774
6	Goods Vehicle	1,35,671
Total		41,68,385

Another table in the same web page, indicates that on an average, as on 31-03-04, 1351 licenses were issued daily for private vehicles; for the entire year 405,392 licenses were issued.

39. This growth of traffic in the city is unprecedented; it constantly challenges policy makers and local authorities to come up with solutions that will keep pace with the problem. The Building Bye-laws, MPD-2001 and the Delhi Cinematograph Rules, 2002, have attempted to tackle the issues.

40. Alongside this growth has been the phenomenon of construction of shopping malls, containing varied shops and commercial areas, as well as recreational areas. Similarly, the city has witnessed construction of several multiplexes/cineplexes, with vast commercial and shopping areas. The burgeoning traffic and growth of these structures has put tremendous pressure on the city's resources, particularly in respect of parking spaces.

41. The relevant provisions of the Building Bye-laws, dealing with parking, viz Byelaw 13.1 and 13.2 make a reference to the provisions of the MPD 2001. Byelaw 13.2 prescribes the parking standard for cases, which are not specifically provided for. Bye-law 26.1, which deals with parking for cinemas, refers to the ISI Building standards, and makes their provisions applicable. Schedule L to clause 8 of the ISI standards provides that one parking space has to be provided for each 25 seats, in cinemas located in cities with population ranging between 200,000 and 10,00,000. The note to the provision prescribes that where the population is 400,000 or more, the standard to be insisted upon would be adapted to suit the increased traffic generated, the traffic pattern as well as the nature of vehicles in the city.

42. The MPD 2001, prescribes parking standards for various classes of institutions/buildings. The relevant provision, namely tabulation at the foot of clause 8.4 of the Development Code, defines the parking standard for a cinema to be 1.67 ECS per 100 square meters. The parking standard for a commercial building, in the same table, is 2.00 ECS per 100 square meters. Note 1 to the table states that for the use/premises for which the parking standards are not prescribed, they shall be prescribed by the Authority depending on the merits and requirements of the individual case. Note 3 empowers the DDA to insist upon additional underground parking provisions apart from the basement area.

43. The Delhi Cinematograph Rules 2002, framed under the Cinematograph Act, deals with various aspects relating to licensing of premises for cinemas, and lays down standards in that regard. It also prescribes certain parking standards. Shortly, the standard prescribed, under clause 16 of the Second Schedule is that 10% of the seats has to be kept as ECS for cars, 20% for scooters/ motorcycles, and 40% for cycles. The area of each ECS for cars is 250 square feet. The rules also mandate that where the cinema is part of a commercial complex, in addition to the ECS prescribed, 1.14 ECS has to be provided for each 92.93 square metre of commercial area.

44. At the first flush, the contention of the respondents that the parking standards have been taken into consideration, while granting sanction, appears to be borne

out on a *prima facie* reading of the above provisions. However, a deeper analysis indicates this assertion to be flawed. Building bye laws, which apply for grant of sanction, refer to the conditions set out in MPD-2001. The MPD indicates 1.67 ECS for cinemas, in respect of each 100 square metre. However, the entire building of the seventh respondent is not a cinema; it is predominantly a shopping/commercial complex. The ground floor plan discloses a vast shopping area; the note/ sanction pasted at the back of the sanctioned plan shows that the entire ground floor is to be converted/ used as a departmental store. The mini cinema hall is only a small part of the proposed alteration of the building. The rest of the areas are either shops or commercial spaces. The use of the cinema site, as per clause 8.2, of the Development Code of MPD 2001, in the relevant entry, permits all other categories of commercial uses, except residential use.

45. The seventh respondent has heavily relied upon the stand of the government of NCT, which has indicated that the ECS permitted for cars is 30, being 10% of the total seating capacity (300); if that figure is multiplied by 32, which is the standard ECS for basement, the area made available there is perfectly in accordance with the norms. It has also been submitted that if the ground floor parking is also taken into account, the total ECS works out to 98, which is in excess of the requirement of 78 ECS, as per the Delhi Cinematograph Rules, 2002. The rules, apart from prescribing parking norms and ECS standards for various vehicles, in respect of cinema buildings, also mandates that there should be additional 1.14 ECS in respect of every 92.93 square meters of commercial area.

46. The above provisions, namely MPD-2001 norms read with the Building Bye-laws, on the one hand, and the Delhi Cinematograph Rules, 2002, on the other, are seemingly in conflict with each other. This conflict is because the parking norm indicated by MPKD-2001 works out to 78 ECS for the proposed cinema; in addition, the DDA is empowered to deal with and prescribe the relevant standard, since mixed use of the building, which is predominantly used for commercial/ shopping purposes has not been indicated. This intention is also manifested in the ISI standards, which envision prescription of appropriate standards, having regard to traffic and vehicular patterns, which would include traffic and population density, nature of vehicles used in the class of building, etc.

47. The claim made by the Delhi Police and the seventh respondent about compliance with parking norms as per the 2002 Rules is not accurate. If those rules are applied, apart from an ECS for 30 , 600 sq. feet are to be earmarked for scooters/motorcycles and 1800 sq. feet are to be earmarked for cycles (aggregating to about 40 car ECS). In addition, the requirement of 1.14 ECS for every 92.93 sq. metre of commercial space would translate into 63.44 ECS (i.e. 5170.03 sq. metre total built of space x 1.14). This would result in an aggregate of about 104 ECS.

48. Section 53(2) of the Delhi Development Act gives overriding effect to provisions of the Act, rules and regulations made under it, over all other laws. Section 53-A(1),

which begins with a non-obstante clause, places an embargo upon local authorities to make rules, regulations, or bye-laws in respect of matters prescribed in sub-section (2) without due certification by the DDA that such regulations, rules, etc do not contravene provisions of the Master Plan. Clause (b) of Section 53-A(2) lists the erection, re-erection of buildings, including grant of building permission, licenses and imposition of restrictions on use and sub-division of buildings, as matters on which the embargo u/s 53-A applies.

49. In the present case, all the authorities appear to have proceeded on the footing that the relevant norms applicable are the Delhi Cinematograph Rules, and that the cinema complex has to be evaluated for parking on the basis of its use as a cinema hall. The role of the DDA, as the authority designated by Note 1 to the table appended to clause 8.4, to lay down the appropriate norm, in view of the predominant use of the building as commercial/ shopping, escaped the notice of the MCD as well as the government of NCT. Indeed, even the DDA seems to have blinked on this issue; when a reference was made to it, in May, 2002, it returned the correspondence. I am of the considered view that the mandate of Section 53-A is sufficiently broad to encompass rules framed under the Cinematograph Act. This is for the reason that those rules are primarily for licensing of cinema halls, and exhibition of films, etc. They have been formulated by the Ministry of Home. The Master Plan and Building Bye-laws, which assimilates and adopts provisions of the Master Plan, on the other hand are specific codes. The master plan has the force of law, and has to be obeyed on the pain of offences prescribed by the Delhi Development Act. The prescription of additional ECS of 1.14 for commercial space under the 2002 Rules does not in any manner detract from this interpretation, because Note 1 to the table (to clause 8.4 of the Development Code, MPD 2001) confers a power. That power is vested in valid exercise of rule-making powers by the Central Government, which approves the Master Plan. The formulation of additional 1.14 ECS in respect of buildings which are partly cinema, partly commercial, Therefore can only be construed as a guideline, but cannot act as a fetter on the discretion of DDA to insist upon a higher overall ECS in respect of a building which is predominantly commercial, and includes shopping, possible eating places, and cinema hall. This discretion has also been recognized in the relevant ISI building standard.

50. One of the rules of construction is to strive for harmonious construction of conflicting statutory provisions, or attempt at resolving a conflict which would otherwise result in absurdity. (Ref [Sultana Begum Vs. Prem Chand Jain, ; British Airways Plc. Vs. Union of India and ors, .](#) In the present case, the seeming conflict between the 2002 rules and the MPD 2001, in my view can be resolved by holding that the Rules of 2002 are mainly for the purposes of policies of licensing, and not in respect of building activities, and norms relating to traffic, parking etc. Those are matters of concern to the authorities entrusted with such powers. The prescription of standards under the 2002 Rules have to be read along with the provisions of MPD

2001, and wherever power is preserved under the master plan, the DDA would have discretion to exercise that power having regard to the circumstances. While doing so, in respect of matters expressly prescribed under the 2002 Rules, the DDA would have to bear in mind those requirements and provisions. To that extent, those provisions are guidelines; they are however not conclusive of the issue, and DDA can take its independent decision in the matter. This finding is based upon the operation of Section (2) and 53-A(1) of the Delhi Development Act.

51. It has often been held that courts must lean towards a "purposive construction" of statutes, and avoid an interpretation that would lead to hardship, anomaly or absurd situations. In [Iqbal Singh Marwah and Another Vs. Meenakshi Marwah and Another](#), the Supreme Court explained the rule as follows:

"Judging from such an angle will be in consonance with the principle that an unworkable or impracticable result should be avoided. In *Statutory Interpretation* by Francis Bennion (3rd Edn.), para 313, the principle has been stated in the following manner:

"The court seeks to avoid a construction of an enactment that produces an unworkable or impracticable result, since this is unlikely to have been intended by Parliament. Sometimes, however, there are overriding reasons for applying such a construction, for example, where it appears that Parliament really intended it or the literal meaning is too strong."

27. The learned author has referred to *Sheffield City Council v. Yorkshire Water Services Ltd.* 12 WLR 71, where it was held as under:

"Parliament is taken not to intend the carrying out of its enactments to be unworkable or impracticable, so the court will be slow to find in favor of a construction that leads to these consequences. This follows the path taken by judges in developing the common law...the common law of England has not always developed on strictly logical lines, and where the logic leads down a path that is beset with practical difficulties the courts have not been frightened to turn aside and seek the pragmatic solution that will best serve the needs of society."

28. In *S.J. Grange Ltd. v. Customs and Excise Commrs.* while interpreting a provision in the Finance Act, 1972, Lord Denning observed that if the literal construction leads to impracticable results, it would be necessary to do little adjustment so as to make the section workable. Therefore, in order that a victim of a crime of forgery, namely, the person aggrieved is able to exercise his right conferred by law to initiate prosecution of the offender, it is necessary to place a restrictive interpretation on clause (b)(ii)."

52. There is no quarrel with the proposition that judicial review under Article 226 is not an appellate exercise, where the court imposes its choice over the exercise of the administrative body. Its scope extends to examination of the decision, to

determine whether relevant factors are considered, and irrelevant factors eschewed; whether the decision is fair, and reasonable, and lastly whether it is in bona fide exercise of power. The court, however, can examine the reasonableness, and legality of the decision. The question as to whether the court entered the arena of decision making has often arisen. Bernard Schwartz in *Administrative Law*, 2nd Edn., p. 584 has this to say :

"If the scope of review is too broad, agencies are turned into little more than media for the transmission of cases to the courts. That would destroy the values of agencies created to secure the benefit of special knowledge acquired through continuous administration in complicated fields. At the same time, the scope of judicial inquiry must not be so restricted that it prevents full inquiry into the question of legality. If that question cannot be properly explored by the judge, the right to review becomes meaningless. "It makes judicial review of administrative orders a hopeless formality for the litigant. ... It reduces the judicial process in such cases to a mere feint.""

53. The explosive growth of vehicular traffic these last few years, with myriad attendant problems, including inadequate parking provisions, are relevant and material factors which ought to engage the attention of the municipal authorities, whenever a project of the size and kind proposed by the seventh respondent is mooted. In evaluating the various factors, the location of the complex, the nature of the surroundings, the existing vehicular traffic, the potential use of the building, and the likely number of visitors, having regard to the uses proposed, have to be necessarily kept in mind. What seems to have happened in this case is that the MCD and DCP merely examined the proposal, in relation to the requirements under the 2002 Rules. In my considered view such a uni-dimensional approach is irrational, and amounts to non-application of mind.

54. In the conspectus of facts of this case, I am of the view that the respondent authorities have mechanically proceeded to grant sanction, to the seventh respondent and have not examined the matter in regard to applicability of relevant parking standards with the seriousness required. The admitted position of the plot, in the sense of its being at the entry point to several colonies, the number of existing vehicles in those colonies, the number of religious and educational institutions, etc, are all relevant factors which were to be considered while granting sanction to the cinema hall, from the parking angle. The petitioners' lament that if the sanction is given without adequate provision for parking, is not ill-founded. Experience in the city, in relation to other cinema halls with or without commercial complexes/ shopping spaces has shown that the parking infrastructure all but breaks down. The sanction given to the seventh respondent is not only to a cinema hall, it is also for re-construction/ alteration of spaces and creation of shopping/ commercial complex and/or building of a departmental store. Inherent in these activities is population intensity. Besides, the building also proposes considerable

commercial space. If all these, and a singular feature, viz the circulation of vehicles from the angle of those within the cinema hall, and those waiting to get in, is considered, the complexity of the parking problem gets magnified. All these constituted relevant considerations, which were completely glossed over, or overlooked by the respondents, in their anxiety to grant approval to the seventh respondent.

55. An authority vested with powers is holder of a public trust; it is under a duty to use it for relevant considerations. In Delhi Administration (Now N.C.T. of Delhi) Vs. Manohar Lal, it was held as follows:

"The exercise of any power vested by the statute in a public authority is to be always viewed as in trust, coupled with a duty to exercise the same in the larger public and societal interest, too."

The action of the official respondents in clearing/ approving the impugned sanctioned plan amounts to breach of the public trust doctrine. They did not take into account all the relevant considerations, mentioned in the previous part of the judgment. Besides, the respondents did not also refer the matter to the DDA in respect of evolving of a parking norm for the building site in question.

56. The petitioners have also made a grievance about the manner whereby exit from the cinema plot has been regulated, and approved by the official respondents. It was submitted that with the revised plan, sanctioned by MCD, no doubt Gate No. 1 has been shut; yet, the residents of the colony have to suffer grave inconvenience, since the exit has now been permitted through a part of the colony, directly in front of residential buildings. This would result in the road becoming a busy thoroughfare.

57. The records of the Delhi Police show that the initial objection about location and entry into the plot was redressed by closure of Gate No. 1, and the opening of Gate No. 2 for entry; Gate No. 3 and 4 for exit. However, the complaint as to whether the opening of fresh exit points, which would necessarily inconvenience residents, does not appear to have been considered at all. The plans relied upon in these proceedings by the seventh respondent appears to bear out the petitioner's grievance.

58. I am of the opinion that the structure and framework of existing norms, even while conferring discretion with the DDA, has left the matter regarding parking norms in an unsatisfactory manner. It would therefore be appropriate that whenever proposals are mooted for construction of cinema-cum-shopping/commercial complex, shopping malls and/or multiplexes, the proposal is considered jointly by all authorities, including the DDA, which shall take into account the location of the construction, the traffic inflow, the likely demand for parking, including projected growth of vehicular traffic in the area, as well as increased traffic due to the construction, etc, while indicating the appropriate parking standard. In

such cases, the DDA may also indicate the necessary additional measures, over and above basement parking, as per Note 3 to the table appended to clause 8(4) of the Development Code, MPD-2001.

59. In view of the above findings, the petitioners are entitled to relief. The following directions are accordingly issued:

- a) The impugned sanction granted to the seventh respondent shall not be operated upon;
- b) The respondent Municipal Corporation of Delhi shall refer the issue of parking in the mini-theatre complex, along with details of the plans approved by it, to the Delhi Development Authority, which shall take its decision and indicate the appropriate parking standard having regard to all relevant factors, such as location and size of the plot; its being an entry point from the Outer Ring road, to a number of colonies, containing residential structures, educational and religious institutions, etc. If necessary, the DDA shall indicate the additional parking requirements, and the underground coverage required for the purpose;
- c) The DDA shall also consider the issue of exit from the cinema complex, and the likely inconvenience to or friction that would ensue to the local residents.
- d) The MCD shall make a reference within a period of 3 (three) weeks to the DDA, which shall decide the matter, and formulate a suitable parking norm in respect of the plot in question;
- e) The decision of the DDA shall be suitably incorporated in the plans sanctioned in favor of the respondent No. 2, within a period of 4 weeks after receipt of its order by MCD;
- f) The directions at sub-para (a) above shall cease to subsist, upon steps having been taken, as per sub-paras (c) to (e) above; the respondents shall ensure that construction/ alteration to the cinema complex is in strict conformity with the changed plans, as per the decision of DDA.

The petition is allowed to the extent indicated above. No costs.