REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL ORIGINAL JURISDICTION

TRANSFERRED CASE (CIVIL) NO. 229 OF 2020

RAJEEV SURI ..... PETITIONER(S)

VERSUS

DELHI DEVELOPMENT AUTHORITY ..... RESPONDENT(S)
AND OTHERS

W I T H

TRANSFERRED CASE (CIVIL) NO. 230 OF 2020

CIVIL APPEAL NO. OF 2020
(ARISING OUT OF SPECIAL LEAVE PETITION (CIVIL) NO..... OF 2020)
(ARISING OUT OF DIARY NO. 8430 OF 2020)

WRIT PETITION (CIVIL) NO. 510 OF 2020

WRIT PETITION (CIVIL) NO. 638 OF 2020

WRIT PETITION (CIVIL) NO. 681 OF 2020

WRIT PETITION (CIVIL) NO. 845 OF 2020

WRIT PETITION (CIVIL) NO. 853 OF 2020

WRIT PETITION (CIVIL) NO. 922 OF 2020

AND

WRIT PETITION (CIVIL) NO. 1041 OF 2020

J U D G M E N T

SANJIV KHANNA, J.

In the heart of the national capital, and within the "Lutyens' Bungalow Zone" (LBZ), lies the Central Vista – the centrepiece and living heritage of Delhi. The Indian National Trust for Art and Cultural Heritage (INTACH) describes Central Vista as the "ensemble with main axis Rajpath...the Rashtrapati Bhawan at Raisina Hills, flanked by the Secretariat (North and South Blocks)...the Parliament House...the hexagonal round-about that has the India Gate and the Canopy..." The Rashtrapati Bhawan, spread over about 330 acres, is the abode of the head of the Indian Republic. The Parliament House is the birth-place of our Constitution and the *sanctum sanctorum* where the elected representatives of people discuss, deliberate and enact laws. The North and the South Blocks house offices where the higher echelons of government and civil service take policy decisions and govern the largest democracy in the world. The promenade has other iconic buildings like India Gate with Amar Jawan Jyoti, the National Archives, the National Museum, the National Stadium, the National War Memorial and the adolescents' favourite 'the Children's Park'. The area embellished with green lawns, water channels and fountains attracts residents and visitors

for its distinctiveness, historical relevance and as a locale for relaxation, recreation, walks and picnics. Initially constructed possibly as a statement of imperial grandeur and power, the Central Vista, in post-independent India, inspires and connects common people to the citadels of our democracy.

2. The present dispute relating to the modification and redevelopment of the Central Vista has different facets. First, is the legal challenge to change in the land use of six plots in the Central Vista under the Delhi Development Act, 1957, and the permissions/approvals granted by the Central Vista Committee, the Delhi Urban Arts Commission under the Delhi Urban Arts Commission Act, 1973 and the clearance/no-objection for construction of a new Parliament House under the Environment Protection Act, 1986. Failure to take prior permission/approval of the Heritage Conservation Committee as per Annexure II of the Unified Building Bye-Laws is alleged. In Writ Petition (Civil) No. 853/2020, the Notice inviting Bid and award of consultancy to the nineth respondent therein has been challenged. At a deeper and conceptual level the question relates to the government's duty to consult and the scope and ambit of the citizen's right to participate in the quasi legislative exercise.

Connected with the two issues is the third question of scope and amplitude of the power of judicial review.

3. Since I have reservations with the opinion expressed by my esteemed brother A.M. Khanwilkar, J. on the aspects of public participation on interpretation of the statutory provisions, failure to take prior approval of the Heritage Conservation Committee and the order passed by the Expert Appraisal Committee, I have penned down a separate dissenting judgment. However on the aspects of Notice inviting Bid, award of consultancy and the order of the Urban Arts Commission, as a standalone and independent order, I respectfully agree with the final conclusions in the judgment authored by respected brother A.M. Khanwilkar J.

4. At the outset, an overview of the legislative and regulatory framework of the Delhi Development Act, 1957 ('Development Act') and the applicable rules would be beneficial in understanding the facts and issues that need consideration and decision.

4.1 The Development Act is enacted by the Parliament with the objective to develop Delhi in a planned manner, as without proper planning the growth of the national capital would be unorganised, inequitable, unaesthetic and hazardous. The Development Act postulates constitution of the Delhi Development Authority (the

'Authority'), which shall work to promote and secure the development of Delhi according to plan. Chapter III, titled 'Master Plan and Zonal Development Plan,' consists of Sections 7 to 11. Section 7 requires the Authority to carry out a civic survey and prepare a Master Plan for Delhi, defining various zones into which Delhi may be divided for the purposes of development, and indicate the manner in which the land in each zone is proposed to be used. Section 8 of the Development Act states that simultaneously with the preparation of Master Plan, or soon thereafter, the Authority shall prepare zonal development plans for each of the zones. The Master Plan is to serve as a basic pattern of framework within which

these zonal development plans may be prepared. These zonal development plans may contain a site-plan and use-plan for the development of the zone and show the approximate locations and extents of land-uses proposed including such things as public buildings and other public works and utilities, housing, recreation, public and private open spaces, other categories of public and private uses etc. It is also to specify the standards of population density and building density, and show every area in the zone which may, in the opinion of the Authority, be required or declared for development or redevelopment. Section 9 states that after its preparation, the Authority shall submit the plan to the Central

Government for approval as soon as possible. The Central Government may either approve the plan with or without such modifications as it may consider necessary or reject the plan with directions to the Authority to prepare a fresh plan.

4.2 Section 10 of the Development Act is of importance and reads as under:

> "**10. Procedure to be followed in the preparation and approval of plans.—** (1) Before preparing any plan finally and submitting it to the Central Government for approval, the Authority shall prepare a plan in draft and publish it by making a copy thereof available for inspection and publishing a notice in such form and manner as may be prescribed by rules made in this behalf inviting objections and suggestions from any person with respect to the draft plan before such date as may be specified in the notice.
>
> (2) The Authority shall also give reasonable opportunities to every local authority within whose local limits any land touched by the plan is situated, to make any representation with respect to the plan.
>
> (3) After considering all objections, suggestions and representations that may have been received by the Authority, the Authority shall finally prepare the plan and submit it to the Central Government for its approval.
>
> (4) Provisions may be made by rules made in this behalf with respect to the form and content of a plan and with respect to the procedure to be followed and any other matter, in connection with the preparation, submission and approval of such plan.

> (5) Subject to the foregoing provisions of this section the Central Government may direct the Authority to furnish such information as that Government may require for the purpose of approving any plan submitted to it under this section."

Section 10 mandates the Authority to first prepare a draft plan in accordance with the rules and publish it, inviting objections and suggestions from any person. Every local authority within whose local limits any land touched by the plan is situated is also to be given a reasonable opportunity to make representation. Upon consideration of the objections, suggestions and representations, the Authority shall finally prepare the plan and submit it to the Central Government for approval. We shall subsequently refer to the rules enacted, which read together with the Development Act envisage a scheme of robust and effective public participation in the entire process.

4.3 Section 11 states that after the plan has been approved by the Central Government, the Authority shall publish the plan in a manner prescribed by the regulations, and by way of a notice, inform that the plan has been approved, the place where a copy of the plan may be inspected at all reasonable hours, and the date on which it shall come into operation.

4.4 Section 11A which was inserted by Act 56 of 1963 with effect from 30th December, 1963 and reads:

"**11A. Modifications to plan. –** (1) The Authority may make any modifications to the master plan or the zonal development plan as it thinks fit, being modifications which, in its opinion, do not effect important alterations in the character of the plan and which do not relate to the extent of land-uses or the standards of population density.

(2) The Central Government may make any modifications to the master plan or the zonal development plan whether such modifications are of the nature specified in sub-section (1) or otherwise.

(3) Before making any modifications to the plan, the Authority or, as the case may be, the Central Government shall publish a notice in such form and manner as may be prescribed by rules made in this behalf inviting objections and suggestions from any person with respect to the proposed modifications before such date as may be specified in the notice and shall consider all objections and suggestions that may be received by the Authority or the Central Government.

(4) Every modification made under the provisions of this section shall be published in such manner as the Authority or the Central Government, as the case may be, may specify and the modifications shall come into operation either on the date of the publication or on such other date as the Authority or the Central Government may fix.

(5) When the Authority makes any modifications to the plan under sub-section (1), it shall report to the Central Government the full particulars of such modifications within thirty days of the date on which such modifications come into operation.

(6) If any question arises whether the modifications proposed to be made by the Authority are

> modifications which effect important alterations in the character of the plan or whether they relate to the extent of land-uses or the standards of population density, it shall be referred to the Central Government whose decision thereon shall be final.
>
> (7) Any reference in any other Chapter, except Chapter III, to the master plan or the zonal development plan shall be construed as a reference to the master plan or the zonal development plan as modified under the provisions of this section."

Sub-section (1) to Section 11A permits the Authority to make modifications to the Master Plan or Zonal Development Plan which in its opinion, does not affect any important alterations in the character of the plan and which does not relate to the extent of land-uses or the standards of population density. Sub-section (2) to Section 11A similarly empowers the Central Government to make modifications to the Master Plan or the Zonal Development Plan, but with a wider power to even affect modifications which go beyond the exclusions under sub-section (1). The power of modification is to be exercised when necessary in public interest. Sub-section (3) to Section 11A imposes and casts a duty on the Authority or Central Government, as the case may be, to consult general public by publication of a notice in the prescribed form and manner, invite objections and suggestions in respect of the proposed modification. The Authority or the Central Government, as the case may be, are

duty bound to consider the objections and suggestions. When upon consideration, the Authority makes modifications under sub-section (1), it is required to report the full particulars to the Central Government, within 30 days of the date from which such modification come into force. Similarly, the Central Government may after consideration of the objections/suggestions notify the modification(s) in terms of sub-sections (2) to (4) to Section 11A of the Development Act. Sub-section (6) states that where a question arises whether the modifications proposed by the Authority have the effect of making changes that are covered by the exclusions in sub-section (1), the Authority shall refer the matter to the Central Government, whose decision would be final.

4.5 Act 56 of 1963 also amended clause (g) to sub-section (2) of Section 56 of the Development Act which relates to the power of the Central Government to make Rules after consultation with the Authority and which have to be notified in the Official Gazette. Clause (g) to sub-section (2) of Section 56 of the Development Act, before insertion of Section 11A, stipulated thus:

> "(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:-
>
> xx xx xx
>
> (g) the periodical amendment of the master plan and a zonal development plan, the period at the expiration of which such amendment may be taken up, the

> procedure to be followed in making such amendment and the date of operation of such amendment;"

Post the amendment, clause (g) of Section 56(2) of the Development Act reads as under:

> "(g) the form and manner in which notice under sub-section (3) of section 11A shall be published;"

4.6 The Central Government in exercise of power under sub-section (1) of Section 56, read with clauses (e), (g) and (r) of sub-section (2) to Section 56, has enacted the Delhi Development (Master Plan and Zonal Development Plan) Rules, 1959, (the 'Development Rules') which came into force on 1st January, 1960.Development Rules, in terms of Rule 3, require the Authority to carry out a civic survey and analysis of the physical, economic and sociological features of Delhi with reference to the natural resources, distribution of population, industry, communication, housing requirements, and other matters relating to the development of Delhi. Thereafter, a draft Master Plan – consisting of maps, diagrams, charts, reports, and other written matter of explanatory or descriptive nature, as they pertain to development of the whole or any part of Delhi –has to be prepared and made available for public examination. Clause (b) of sub-rule (3) to Rule 4 states that the draft Master Plan may include the land use plan based upon such survey of the present use of land as may be necessary as well as analysis of estimated future needs and

consisting of comprehensive proposal for most desirable utilisation of land including government land. It may include a financial plan and an administrative plan. Rule 5 relates to public notice regarding preparation of Master Plan, and reads:

> "**5. Public Notice regarding preparation of Master Plan. -** (1) As soon as may be after the draft master plan has been prepared, the Authority shall publish a public notice stating that -
> (a) the draft Master Plan has been prepared and may be inspected by any person at such time and place may be specified in those notice;
>
> (b) suggestions and objections in writing, if any, in respect of the draft master plan may be filed by any person with the secretary of the Authority within 90 days from the date of first publication of the notice.
>
>
>
> [Provided that where the Central Government considers it expedient so to do for the purpose of maintenance of public order or in case of any exigency likely to affect the interest of the public it may require such suggestions and objection to be filed within in period of three days from the date of the notice]
>
> (2) This notice may be in Form A appended to these rules without modification with. Such modification as may be necessary."

Rule 5 states that public notice will be published stating that the draft master plan has been prepared and may be inspected at such time and place as specified and secondly, suggestions and objections in writing, if any, in respect of the Master Plan may be filed with the Secretary of the Authority within ninety (90) days of the

first publication of the notice. Under the proviso the Central Government may in case of exigency provide for a shorter notice.

4.7 Rule 6 states that the notice will be published in the manner prescribed in Section 44 of the Development Act and shall also be published in the official gazette.

4.8 Rules 8, 9, 10 and 11 which deal with consideration of objections and suggestions and preparation of the final draft Master Plan; read:

> **"8. Appointment of Board for enquiry and hearing. -** (1) The Authority shall, for hearing and considering any representation, objection and suggestion to the draft master plan, appoint a Board consisting of not less than 3 and not more than 5 members of the Authority.
> Provided that such Board shall have powers to co-opt not more than 2 members from amongst the members of the Advisory Council.
> [(2) No business of the Board shall be transacted at any meeting unless at least three members are present from the beginning to the end of the hearing.]
>
> **9. Enquiry and hearing. -** The secretary shall, after the expiry of the period allowed under these rules for making objections, representations and suggestions fix a date or dates for hearing by the Board of any person, or local authority in connection with any objection, representation or suggestion made by such person or local authority in respect of the draft master plan and shall serve on the local authority or any person who may be allowed a personal hearing in connection with such representation, objection or suggestion to the draft master plan, a notice intimating the time, date and place of the hearing.
> Provided that the Board may disallow personal hearing to any person, if it is of the opinion that the objection or

suggestion made by such person in inconsequential, trivial or irrelevant.

10. Report of Enquiry. - The Board shall after the conclusion of its enquiry, submit to the Authority a report of its recommendations.

11. Preparation of final draft Master Plan and its submission to Central Government. - The Authority shall, after considering the report of the Board and any other matter it thinks fit, finally prepare the master plan and submit it to the Central Government for its approval."

As per Rule 8, the Authority is required to appoint a Board of Enquiry and Hearing (BoEH) for hearing and considering the representations, objections and suggestions to the draft Master Plan. BoEH shall comprise of not less than three members of the Authority, which has the power to co-opt not more than two members from amongst the members of the Advisory Council of the Authority. Sub-rule (2) to Rule 8 prescribes the minimum quorum for the BoEH and states that no business of the BoEH shall be transacted unless at least three members of the BoEH are present from the beginning till the end of the hearing. Rule 9 states that the Secretary of the Authority, after the procedure prescribed under the Rules for making objections/representations and suggestions has been followed, shall serve notice on the local authority or the person who may be allowed personal hearing in connection with the

representation, objection or suggestion to the draft Master Plan, intimating the time, date and place of hearing. Rule 10 states that the BoEH after conclusion of the inquiry shall submit to the Authority a report of its recommendations. Clearly, the sub-rules demonstrate the importance given to public participation including public hearing.

4.9 As per Rule 11 the Authority after considering the report of the BoEH and any other matter it thinks fit, shall finally prepare the Master Plan and submit it to the Central Government for its approval. Rules 5 to 11 apply *mutatis mutandis* to Zonal Development Plans.

4.10 The Development Rules were amended by the Delhi Development (Master and Zonal Development Plan) Amendment Rules, 1966 by Gazette Notification GSR 930 dated 13th of May, 1966. Consequent to this amendment, Rules 12 and 13, which dealt with amendment of the Master Plan, were omitted. This was *ex facie* necessary and followed enactment of Section 11A of the Development Act. After Rule 15, Chapter V titled "Modification to the Master Plan and the Zonal Development Plan" was inserted, wherein Rule 16 states that the notice referred to in subsection (3) of Section 11A shall be in Form B, and published in accordance with Rule 6. Form B is reproduced below:

"FORM B

Public Notice

The following modification/s which the Delhi Development Authority/Central Government proposes to make to the Master Plan for Delhi/Zonal Development Plan/s, for zone/s _____ is/are hereby published for public information. Any person having any objection or suggestion with respect to the proposed modification/s may send the objection or suggestion in writing to the Secretary, Delhi Development Authority, Delhi Vikas Bhawan, Indraprastha Estate, New Delhi, within a period of thirty days from the date of this notice. The person making the objection or suggestion should also give his name and address.

Modification/s.

.....
.....
.....

2. The plan/s indicating the proposed modification/s will be available for inspection at the office of the Authority, Delhi Vikas Bhawan, Indraprastha Estate, New Delhi, on all working days except Saturday, within the period referred to above.

Secretary
Delhi Development Authority

Delhi Vikas Bhawan,
Indraprastha Estate,
New Delhi
Dated, the ____ 196 ."

[No. 19015(3)/66-UD.]
R.R. Sharma, Under Secy."

5. By virtue of powers under the Development Act and the Development Rules, a Master Plan for Delhi was promulgated in 1962, setting out a broad vision for the development of Delhi.

Subsequently, for some reasons which we cannot fathom, albeit which need not be examined for the present litigation, the Authority by taking recourse and invoking Section 11A of the Development Act has enacted the Master Plan of Delhi 2001, followed by the Master Plan of Delhi 2021, which is currently being implemented. While the second and the third Master Plans were regarded as modifications under Section 11-A of the Development Act, the procedure under Section 11 and the Development Rules was followed in preparation and publication of the draft master plan and the positive requirement of public consultation and hearing were followed on both occasions. Significance of this exercise and its' legal implications would be noticed later.

6. With this statutory framework in mind, we shall proceed to consider the facts;-

(a) On 2nd September 2019, Central Public Works Department (also referred to as 'CPWD') issued notice inviting bids for the "Development/Redevelopment of Parliament Building, Common Central Secretariat and Central Vista at New Delhi." The tender document stated: "A new Master Plan is to be drawn up for the entire Central Vista area that represents the values and aspirations of a New India – good governance,

efficiency, transparency, accountability and equity and is rooted in the Indian Culture and social milieu."

(b) On 4th December 2019, the Land and Development Office (L&DO), in the Ministry of Housing and Urban Affairs (MoHUA), forwarded a proposal for change in land use of 7 plots located in the Central Vista area and 1 plot located in the Timarpur area, to the Authority. On the very next day i.e., 5th December 2019 the Technical Committee of the Authority held its meeting. The examination was on the proposal for change of land use for the following plots :

> "A. Plot No. 1 is located on Church road near DTC Central Secretariat Bus Terminal, New Delhi. As per MPD - 2021 the Land Use of the Site is under Transportation (Bus Terminal/Parking). (Location marked on attached Annexure A). The proposed land use of the site is Government Office.
>
> B. Plot No. 2 is located opposite to the Parliament House, New Delhi. As per MPD - 2021 the land use of the site is under Recreational (District Park). (Location marked on attached Annexure A). The proposed land use of the site is Government Office.
>
> C. Plot No. 3 is located on Dr. Rajendra Prasad Road and houses National Archives. As per MPD - 2021 the land use of the site is under Public and Semi Public facilities. (Location marked on attached Annexure A). The proposed land use of the site is Government Office and Recreational (District Park).
>
> D. Plot No. 4 is located on Dr. Rajendra Prasad Road and is occupied by Indira Gandhi National Centre for

Art and Culture. As per MPD - 2021 the land use of the site is under Public and Semi Public facilities (SC). (Location marked on attached Annexure A). The proposed land use of the site is under Government Office and Recreational (District Park).

E. Plot No. 5 is located between Man Singh Road, Ashoka Road and India Gate Hexagon in a triangular formation. As MPD - 2021 the land use of the site is under Public and Semi Public facilities. (Location marked on attached Annexure A). The proposed land use of the site is Government Office.

F. Plot No. 6 is located on Maulana Azad Road and consists of VP house, Vigyan Bhavan and National Museum. As per MPD -2021 the land use of the site is under Public and Semi Public facilities (SC). (Location marked on attached Annexure A). The proposed land use of the site is under Government Office.

G. Plot No. 7 is located on Dara Shikoh Marg. As per MPD - 2021 the land use of the site is under Government office. (Location marked on attached Annexure A). The proposed land use of the site is Residential.

H. Plot No. 8 is located on Lucknow Road near Timarpur and part of Planning Zone C. As per MPD-2021 the land use of the site is under Public and Semi Public Facilities. (Location marked on attached Annexure B). The proposed land use of the site is Recreational (District Park)."

(c) On the same day, i.e. 5th December 2019, the Technical Committee of the Authority approved the proposal for further

processing under Section 11A of the Development Act. Relevant portion of the decision is as under:

<table>
<tr>
<td>43/2019</td>
<td>Proposed change of land use of various plots (8 nos.) as mentioned in the Technical Committee Agenda</td>
<td>The proposal was presented by Land & Development officer, GoI.
Officers from Planning, Zone-D, DDA informed that Land use was mentioned transportation for Plot No. 1 as in agenda Item located on church road near DTC Central Secretariat Bus Terminal, New Delhi, but as per Master Plan and Zonal Plan of Zone D - 2001 it is as under:
<table>
<tr><td>Land use as per MPD-2021/ZDP 2001</td><td>Land use changed to</td></tr>
<tr><td>MPD-2021 – Transportation (Bus Terminal/ Parking</td><td rowspan="2">Govt. Office</td></tr>
<tr><td>ZDP-Zone-D – 2001 – Part – Recreational (Neighbourhood Play Area)
Part – Transportation (Bus Terminal/ Parking</td></tr>
</table>

After detailed deliberation, the proposal as contained in Para 4.0 of the agenda with the above modification in land use for Plot No. 1 was recommended by the Technical Committee for further processing under Section 11A of DD Act, 1957. With the following conditions:
(i) The clearance from the PMO, Heritage Conservation Committee and Central Vista Committee shall be taken by L&DO.
(ii) The heritage buildings shall be dealt as per the relevant heritage provisions.</td>
</tr>
</table>

(d) Thereafter, on 21st December 2019, a public notice was issued inviting objections and suggestions from the public in terms of sub-section 3 to Section 11-A of the Development Act and Rule 16 under the Development Rules, the relevant portion of which reads as under:

"**DELHI DEVELOPMENT AUTHORITY**

(Master Plan Section)

PUBLIC NOTICE

New Delhi, the 21st December, 2019

S.O. 4587(E).—The following modification which the Delhi Development Authority / Central Government proposes to make to the Master Plan-2021 / Zonal Development Plan of Zone 'D' (for Plot No. 1 to 7) and Zone 'C' (for Plot No. 8) under Section 11-A of DD Act, 1957, is hereby published for public information. Any person having any objection/suggestion with respect to the proposed modification may send the objection/suggestion in writing to the Commissioner-cum-Secretary, Delhi Development Authority, 'B' Block, Vikas Sadan, New Delhi-110023 within a period of thirty (30) days from the date of this Public Notice. The person making the objection or suggestion should also give his/her name and address in addition to telephone No./contact number and e-mail ID which should be legible.

Proposed Modification:

S.No.	Location	Area (in acres)	Land use as per MPD 2021/ZDP 2001	Land use Changed to	Boundaries
1.	Plot No. 1 Located on Church Road near DTC Central	15	MPD-2021 – Transportation (Bus Terminal/ Parking)	Govt. Office	North: Church Road South: Rashtrapati

	Secretariat Bus Terminal, New Delhi		ZDP Zone-D, 2001 Part-Recreational (Neighbourhood Play Area) Part-Transportation (Bus Terminal/ Parking)		Bhavan and North Block East: Part of North Block West: Rashtrapati Bhavan
2.	Plot No.2 Opposite to Parliament house	9.5	Recreational (District Park)	Parliament House	North: Red Cross Road South: Raisina Road West: Parliament of India
3.	Plot No.3 Located on south of Dr. Rajendra Prasad Road and houses National Archives	7.7	Public and Semi Public Facilities	Govt. Office (5.8 acres) and Recreational (District Park) (1.88 acres)	North: Dr. Rajendra Prasad Road South: Green area and Rajpath East: Janpath West: Shastri Bhavan
4.	Plot No.4 Located on South of Dr. Rajendra Prasad Road and East of Janpath	24.7	Public and Semi Public Facilities (SC)	Govt. Office (22.82 acres) and Recreational (District Park) (1.88 acres)	North: Dr. Rajendra Prasad Road South: Green area and Rajpath East: Man Singh Road West: Janpath
5.	Plot No.5 Located on east of Man Singh Road and South of Ashoka Road	4.5	Public and Semi Public Facilities (SC)	Govt. Office	North: Ashoka Road South: Green area and Rajpath East: C-Hexagon West: Man Singh Road
6.	Plot No.6 Located on North of Maulana Azad Road and East of Janpath	24.7	Public and Semi Public Facilities (SC)	Govt. Office (22.82 acres) and Recreational (District Park) (1.88 acres)	North: Green Area and Rajpath South: Maulana Azad Road East: Man Singh Road

					West: Janpath
7.	Plot No.7 Located on North of Dalhausi Road near South Block	15	MPD-2021 – Government office ZDP Zone-D-2001 Recreational (Neighbourhood Play Area)	Residential	North: South Block South: Dara Shikoh Road East: Part of South Block West: Rashtrapati Bhavan
8.	Plot No.8 Located on Lucknow Road near Timarpur (Falls in Zone-C)	3.9	Land Use as per ZDP of Zone-C-2021 Public and Semi Public Facilities	Recreational (District Park)	North: CGHS Dispensary South: Government Land East: Lucknow Road West: Government Land

The text/Plan indicating the proposed modifications shall be available for inspection at the office of Deputy Director (MP), Delhi Development Authority, 6th Floor, Vikas Minar, I.P. Estate, New Delhi on all working days during the period referred above. The text/plan indicating the proposed modifications is also available on DDA's website i.e. www.dda.org.in.

[F. No. F. 20(12)2019/MP]
D. SARKAR, Dy. Secy."

(e) Meanwhile, on 31st January 202 a revised proposal for change of land use in respect of Plot No.1 was sent by the L&DO to the Authority.

(f) As per the respondents, pursuant to the public notice, as many as 1292 objections to the proposed amendments/ modifications to the plan were received from people living across the country. Some were on behalf of multiple persons.

(For example, objection/suggestion No.1292 was on behalf of Rajiv Kataria and 16 others.)

(g) The public notice had stipulated: -

> "as per procedure all the objections/suggestions received within the stipulated time period of 30 days i.e. up to 19.01.2020, will be placed before the Board of Enquiry and Hearing (BoEH)".

There is an error in computation of the 30-day period in the public notice, as Section 9 of the General Clauses Act, 1897 requires exclusion of the date of publication. Accordingly, the period of 30 days having commenced on 22nd December 2019 would have ended on 20th January,2021. The respondents in their counter affidavit have not specifically dealt with and answered this contention. However, at the time of hearing it was stated that objections received as late as on 21stJanuary 2020 were taken into consideration. Reliance placed on the compilation giving a gist of objections/ suggestions which refers to the diary number and the date, does not indicate the date on which the objections/ suggestions were received in the inbox. Consequently, we would accept the statement made in the public notice that the objections received till 19th January 2020 only were taken on

record, though as per law the citizenry had the right to file objections/suggestions till 20th January 2020.

(h) On 3/4th February 2020 emails and SMS were issued to those who had filed objections/suggestions fixing meeting of the BoEH for oral hearing on 6th and 7th Februray,2020 from 10:30 a.m. to 5:30 p.m. at Vikas Sadan, INA, New Delhi. Public notice informing the persons, who had submitted objections and suggestions, about the meeting of the BoEH, was published in five newspapers on 5th February 2020, reads: -

> " **DELHI DEVELOPMENT AUTHORITY**
> **PUBLIC NOTICE**
>
> Delhi Development Authority issued public notice vide Gazette notification S.O. 4587 (E) dated 21.12.2019 and also published in the newspapers for inviting objections/suggestions from the public regarding proposed change of land use of Plot No. 1 to 7 (Zone-D) and Plot No. 8 (Zone-C).
>
> As per procedure all the objections/suggestions received within the stipulated time period of 30 days i.e. up to 19.01.2020, will be placed before the Board of Enquiry and Hearing (BoEH). The Board Hearing will be held on 06.02.2020 (Thursday) & 07.02.2020 (Friday) from 10:30 A.M. onwards at DDA Office, Conference Hall, 8-Block, Ground Floor, Vikas Sadan, INA.
>
> Any person who has filed objection/suggestion and wants to present his/her oral evidence in person before the Board, may come to the abovementioned venue on 06.02.2020 & 07.02.2020 to present his/her views, as per the proposed schedule, which

shall be available on the DDA website i.e. www.dda.org.in (under head 'HOTLINKS'/'PUBLIC NOTICES') on 05.02.2020 (12 pm). Concerned persons shall also be informed through E-mail/SMS as per details provided in their representations.

In case any person who has filed objection/ suggestion but does not find his/her name in the schedule or has not received any e-mail/SMS, may present his/her oral submission before the Board on the said date i.e. 07.02.2020 (Friday) from 1:00 P.M. to 1:30 P.M. All persons are requested to carry a valid Identity Proof."

The public hearings were held on 6th and 7th February 2020.

(i) A summary of the objections and suggestions was prepared and made available to the BoEH. The most common, if not almost universal, grievance raised was scanty and insufficient information and lack of details/explanation regarding the proposed changes and the redevelopment envisaged so as to enable the public to make suggestions/objections. Consequently, there was disquiet and perturbation. For the sake of convenience and for clarity, we would like to reproduce portions of some of the objections/suggestions:

"Sriram Ganapathi
Objections:

On account of the Central Vista area being the 'nation-space' of India the ever-increasing association in the minds of the general pubic of this being the space that signifies the unity and spirit of India and the manifestation of the same in the ever-increasing number of Indians who visit this area the

proposed reduction of as much as 80 acres of area available both directly and indirectly to the general public transport and parking etc. in this area may be an inappropriate planning decision for obvious reasons.

xx xx xx

Suggestions:

On account of general inability to understand the merit for such conversion without attendant details illustrating the need for the proposed modifications. It is suggested that relevant material may be put into the public domain and a thorough public consultative process completed prior to finalisation of any decision regarding the same.

Madhav Raman

Objections:

xx xx xx

...Land use is a violation of extant heritage regulation protecting Central Vista a notified Grade 1 Heritage Area and a Special Heritage Area of LBZ as notified in MPD 2021. This proposed change interferes with the original urban design of this precinct and changes the relationship between built and unbuilt of the Central Vista.

Suggestions:

On account of general inability to understand the merit for such conversion without attendant details illustrating the need for the proposed modifications. It is suggested that relevant material may be put into the public domain and a thorough public consultative process completed prior to finalisation of any decision regarding the same.

Pulkit Khanna Malik

Suggestions:

The merits of the proposed conversion are unclear whereas the demerits are glaringly obvious. It is suggested that relevant material be put into the public domain and a thorough public consultative process completed before any decisions are finalised.

Shamit Manchanda, Architect

We would also like to draw your attention to the Master Plan of Delhi 2021 Sections 8.0 item 8.1 which is not sought to be changed and thereby the proposed changes seem to be in violation of the Master Plan of Delhi 2021.

Suggestions:

In view of the points mentioned above it is requested that the details sought are made public before proceeding with the proposed land use changes that seem to be conflicting with the Master Plan of Delhi 2021. Please also share if any study has been undertaken to assess the impact of additional pedestrian and vehicular traffic this change of land use will cause.

Punit Sethi

Additional Suggestions:

(b) It is requested that the details sought are made public before proceeding with the proposed land use changes as they seem to be conflicting with the Master Plan of Delhi-2021.
(c) If any study has been undertaken prior to proposing the said land use changes to assess the impact additional pedestrian and vehicular traffic, this change of land use will cause or impact on the environment et.al. should be first said with public at large so that a participatory public process can be followed in decision making."

Objections were also made in relation to exercise of powers of the Authority to make modifications under clause (1) of Section 11A of the Development Act. Some had highlighted that the project would reduce public space/area and the requisite approvals were not in place. We would for clarity quote some responses received by the Authority to illustrate the concerns raised:

> "Anil Sood
>
> xx xx xx
>
> The master Plan can be modified subject to the satisfaction of restrictions imposed under section 11A.
>
> Thus sub-section (1) of section 11A permits modifications of the Master Plan under the following circumstances:
> not affect important alterations in the character of the plan; and
> which do not relate to the extent of land-users or the standards of population density.
> That it is a matter of record that DDA has not conducted the Civic Survey as mandated under section 7 but has also violated the mandate of sub-section 1 of section 11A that prohibits change of land use in case of change of population density and altar the basic character of the plan.
>
> Meena Gupta
>
> The proposed redevelopment reduces drastically the space available to the public for recreational public and semi-public use. This is a loss not just to the people of Delhi but to the people of India. The Central Vista is a historic as well as iconic place. The buildings are just about a hundred

> years old and attempts should be made to preserve rather than demolish them. Several thousand old and very old trees will have to be cut down to make way for the buildings. Replacing these many trees is impossible. Virtually no consultation has been held with the public at large or bodies like the Urban Arts Commission has been carried out.
>
> We request you therefore to immediately stop action on this proposal and only take it up after proper discussion with the public and expert bodies."

(j) The BoEH, apart from noting the submissions/ objections/ suggestions by those who appeared at the hearing, did not deliberate or record specific reasons dealing with the suggestions and objections. Having interacted with the public, BoEH did find merit in the objection regarding absence and lack of information in public domain and took specific note of the public anxiety and 'misgivings'. Minutes of the BoEH are an incontrovertible acknowledgement that, but for indicating the present and proposed land use, no plans, layouts, drawings etc., or written matter explanatory or of descriptive nature to illustrate or explain the proposed changes and project were put in public domain. BoEH had therefore thoughtfully recommended the need to address lack of transparency concern by all departments. The recommendations made by the BoEH are as under:

> "(i) Regarding proposal of change of land use of Plot No. 1, it is recommended that the revised proposal for change of land use must be taken afresh under Section 11-A pf DD Act, 1957.
>
> (ii) Among the respondents, majority of whom are Planners/Architects, there appears to be a feeling that authentic technical information on this iconic project of Centra Vista is not available in public domain, which is leading to avoidable misgivings. Board recommends that all concerned departments need to address this concern.
>
> (iii) Keeping in view the strong reservation of the respondents, it is suggested that impact assessment studies on traffic, environment and heritage may be commissioned at the earliest.
>
> (iv) From the responses received during public hearing, it appears that the present project has not been referred to the Central Vista Committee, although in the past any such project has always been referred to the Central Vista Committee. Authority may like to take a view on this issue and make suitable recommendations to Government of India."

(k) On 10th February 2020, the proposal for modification of the Central Vista Plan was placed before the Authority and approved in respect of Plot Nos. 2 to 8 vide agenda item no. 18/2020. The relevant portion of minutes reads as under:

> "Item No. 18/2020
> Regarding proposed change of land use of Plot Nos. 1,2,3,4,5,6,7 and 8.F.20(12)2019/MP
> a) The proposal was presented by Joint Secretary (L&E), MoHUA, In-charge of Central Vista Development/Redevelopment Project, who was present as Special Invitee. She apprised the details of the Project to the members of the Authority.

b) JS, MoHUA informed that during the planning of Capital City-New Delhi, the architects and urban designers - Edward Lutyens and Herbert Baker had prepared an urban design plan for entire New Delhi in such a way that all the important Government offices would come along the Central Vista (Rajpath). However, by the year 1931, when Delhi officially became capital of India, only five (05) buildings were constructed namely, Rashtrapati Bhawan, Sansad Bhawan, North and South Blocks and first building of the National Archives. She assured that the heritage buildings in the Central Vista shall be conserved.

c) She further informed that for this Project, the following measures are being taken up:
i. No trees shall be cut during the implementation of the project. However, some trees may be transplanted for which techniques are available.
ii. Total tree cover shall increase with new plantation.
iii. 100% C&D waste shall be re-cycled and utilized within the project.

iv. All the green building features will be followed by making most efficient use of resources and adopting modern day construction technologies.
v. Rain Water Harvesting (RWH) structures and water conservation measures will be undertaken.
vi. Proposed development has been integrated with two metro stations in the Vista namely, Udyog Bhawan and Central Secretariat for commuting public/government employees through an underground shuttle.
vii. In the proposed scheme, the Central Government Ministries/Offices will be moved to the Central Vista thereby cutting down large scale travel across 47 Central Government Ministries/Offices' Buildings spread in different parts of Delhi. The proposal, once implemented shall result in easing traffic flow in Lutyens' Bunglow Zone (LBZ) and in the city. This will result in reduction of vehicular trips thereby reducing carbon footprint, congestion, pollution and accidents.

d) The recommendations of Board of Enquiry & Hearing (BoE&H) and the issues raised by the public in the meeting held on 06.02.2020 and 07.02.2020, were deliberated in the Authority meeting. Member Engineering, DDA-cum-Chairman or BoE&H explained that as has been clarified by JS, MoHUA, the proposed project addresses all issues raised by the public in a comprehensive manner. He informed that all objections and suggestions given by the public were duly considered by the BoE&H. Various objections and suggestions which were pertaining to L&DO and Planning Department of DDA were replied to by the representatives of these respective agencies and the details are available on the record. Based on the detailed deliberations, BoE&H has recommended for issuing public notice for plot no. 1 and consideration of allowing change of land use with respect to plot no. 2to 8.

e) The following facts were further elaborated by JS, MoHUA:

i. Under the proposed Development/ Redevelopment, total public space in the Central Vista is increasing by almost 100 acres. This constitutes the following:

A National Bio-diversity Arboretum in 48.6 acres land on the western end of the President's Estates is proposed to house 1,236 endangered species in 11 different phytological zones. This facility will be open to the researchers as well as to the public.

North and South Blocks which cover nearly 27 acres is proposed to be converted into National Museums showcasing India prior to and after 1857.

Nearly 25 acres of land on the Western Bank of River Yamuna is proposed to be developed as New India Garden with an iconic structure to commemorate 75 years of India's Independence.

ii. The project also proposes to develop/re-develop the Central Vista with proper public utilities, green spaces, water bodies, landscaping etc. whose total area will be more than the existing area as 5.6 acres from the existing buildings will be added to

the greenspace. Further, plot no. 8 located at Timarpur in Planning Zone-Chaving an area of 3.9 acres is also being added to green spaces of Delhi.
iii. The area of over 90 acres currently under Hutments will be properly planned and developed into organised urban spaces.
iv. All necessary approvals for buildings and the facilities will be taken from the competent authorities as and when required.

f) Vice Chairman, DDA apprised that a notification number SO 3348 (E) has been issued by the Government of India on 17/10/2017, whereby as per Master Plan for Delhi (MPD) - 2021, 'Central Government Offices' are permitted use premise in 'Public and Semi Public facilities' (PSP) land use zones. Therefore, Authority is competent to allow Plot No.3,4,5 & 6, which are currently under PSP land use for housing 'Central Government Offices' with 1.88 acres each in the plot No. 3, 4 and 6 earmarked as Recreational (District Park).

g) Additional Secretary (D), MoHUA and Member, Delhi Development Authority, explained that the Authority is competent to make the proposed modification in the Master Plan for the land uses as these will not alter the character of the Master Plan since they are in line with the Lutyens & Bakers' plan of housing Government buildings in the Central Vista. Further, the proposal does not impact the extent of the land uses and the standards of population density as has been envisaged in the Master Plan for Delhi, (MPD) - 2021. Hence, Section 11(A) (1) or Delhi Development Act, 1957, empowers the Authority to make proposed changes under consideration. Vice-Chairman DDA further corroborated this and stated that only after being satisfied that the Authority is competent under 11(A) (1) of the Act, that the proposal has been considered and submitted for Authority's approval.

Decision: After detailed deliberations, the proposal is approved as follows:
i. A public notice shall be issued for change of land use for plot number 01 from 'Transportation' (Bus

Terminal/parking) and 'Recreational' to 'Residential' and to be processed under Section 11-A of DD Act 1957.
ii. With respect to plot Nos 02 to 07; the proposal of land use change of L&DO is approved. The proposal be submitted to MoHUA for approval/notification.
iii. Change of Land Use for plot No 8 is approved and the proposal be forwarded to MoHUA for approval/notification."

(l) On 4th March 2020, a public notice was issued with regards to plot no.1 for which L&DO had sent a revised proposal.

(m) On 9th March 2020, the Special Advisory Group of Central Vista and Central Secretariat (for short, 'Central Vista Committee') gave its approval for the proposed change of land use in respect of plots at serial nos. 2 to 8. We shall subsequently refer to the minutes of this meeting and examine the challenge to the validity of this permission/approval.

(n) On 20th March 2020, a public notice was issued by the MoHUA accepting the modifications to the Master Plan of Delhi – 2021 and the zonal development plan for Zone D & C. The notification dated 20th March, 2020 is as under:

"**MINISTRY OF HOUSING AND URBAN AFFAIRS**
(Delhi Division)
NOTIFICATION
New Delhi, the 20th March, 2020

S.O. 1192(E).—Whereas, certain modifications which the Central Government proposed to make in the Master Plan for Delhi-2021 / Zonal Development Plan of Zone-D (for Plot No. 02 to 07) and Zone-C (for Plot

No. 08) regarding the area mentioned here under were published in the Gazette of India, Extraordinary, as Public Notice vide No. S.O. 4587(E) dated 21.12.2019 by the Delhi Development Authority in accordance with the provisions of Section 44 of the Delhi Development Act, 1957 (61 of 1957) inviting objections/ suggestions as required by sub-section (3) of Section 11-A of the said Act, within thirty days from the date of the said notice;

2. Whereas, 1,292 objections/ suggestions received with regard to the proposed modifications have been considered by the Board of Enquiry and Hearing, set up by the Delhi Development Authority and the proposed modifications were recommended in the meeting of Delhi Development Authority held on 10.02.2020;

3. Whereas, the Central Government have after carefully considering all aspects of the matter, have decided to modify the Master Plan for Delhi-2021 / Zonal Development Plan of Zone-D & Zone-C;

4. Now, therefore, in exercise of the powers conferred under Sub-section (2) of Section 11-A of the said Act, the Central Government hereby makes the following modifications in the said Master Plan for Delhi-2021 / Zonal Development Plan of Zone-D & Zone-C, with effect from the date of Publication of this Notification in the Gazette of India.

Modifications:

The land use of the following area of land falling in Zone –D and Zone-C is changed as per description listed below:

S.No.	Location	Area (in acres)	Land use as per MPD 2021/ZDP Zone D 2001	Land use Changed to	Boundaries
1.	**Plot No. 2** Opposite to Parliament House	9.5	Recreational (District Park)	**Government (Parliament House)**	North: Red Cross Road South:West:Raisina Road Parliament of India
2.	**Plot No. 3** Located on South of Dr. Rajendra Prasad Road and houses National Archives	7.7	Public and Semi Public Facilities	**Govt Office(5.88 acres) and Recreational (District Park) (1.88 acres)**	North: Dr Rajendra Prasad Road South: Green Area and Rajpath East: Janpath West: Shastri Bhavan
3.	**Plot No. 4** Located on South of Dr. Rajendra Prasad Road and East of Janpath	24.7	Public and Semi Public Facilities (SC)	**Govt. Office(22.82 acres) and Recreational (District Park) (1.88 acres)**	North: Dr Rajendra Prasad Road South: Green Area and Rajpath East: Man Singh Road West: Janpath
4.	**Plot No. 5** Located on East of Man Singh Road and South of Ashoka Road	4.5	Public and Semi Public Facilities (SC)	**Govt. Office**	North: Ashoka Road South: Green Area and Rajpath East: C- Hexagon West: Man Singh Road
5.	**Plot No. 6** Located on North of Maulana Azad Road and East of Janpath	24.7	Public and Semi Public Facilities (SC)	**Govt. Office (22.82 acres) and Recreational (District Park) (1.88 acres)**	North: Green Area and Rajpath South: Maulana Azad Road East: Man Singh Road West: Janpath
6.	**Plot No. 7** Located on North of Dalhausi Road near South Block	15	MPD-2021-Government Office ZDP Zone-D-2001 Recreational (Neighborhood Play Area)	**Residential**	North: South Block South: Dara Shikoh Road East: Part of South Block West: Rashtrapati Bhavan

	Location	Area (in acres)	Land use as per MPD 2021/ZDP Zone-C 2021	Land use Changed to	Boundaries
7.	**Plot No. 8** Located on Lucknow Road near Timarpur	3.9	Public and Semi Public Facilities	**Recreational (District Park)**	North: CGHS Dispensary South: Government Land East: Lucknow Road West: Government Land

[F.No. K-13011/6/2019-DD-I]
VIRENDRA KUMAR KUSHWAHA, Under Secy."

(o) On 23rd April 2020, the Central Vista Committee granted "no objection" to the proposed new Parliament building. We shall be referring to these minutes and the challenge subsequently.

7. Conventionally, judicial review is not much concerned with the merits of an administrative decision, but rather, with the process of arriving at it, and with the question of jurisdiction. The question of procedure can be categorised under three principal heads – illegality, procedural impropriety and irrationality. Illegality occurs when the decision-maker acts in excess of his powers such as when he acts *ultra vires* or in error of law and/or fact, unauthorisedly delegates his power, acts for improper purpose or in bad faith or fails to act, considers irrelevant factors, imposes onerous conditions etc. Procedural impropriety may be due to failure to comply with the mandatory procedure of law or breach of principles of natural justice such as *audi alteram partem*, rule against bias, duty to act fairly,

duty to give reasons, respecting legitimate expectation, etc. Irrationality takes into its umbrella Wednesbury unreasonableness,[1] which considers a decision as unreasonable if it is so outrageous in its defiance of logic or accepted moral standards that no sensible person, applying his mind to the question, could have arrived at it.[2] Another ground for review is the test of proportionality, considered by many as more intensive, and distinct from Wednesbury unreasonableness. To some jurists it requires the court to make a value judgment, independent of the decision-maker, based on factors such as suitability or appropriateness, necessity and the balance or imbalance of benefits and disadvantages. We would subsequently refer to and elaborate on the test of proportionality as judicially accepted and applied in India. Presently, it would suffice to state that proportionality incorporates and effectuates reasonableness. Proportionality is based on the principle that administrative or even legislative action ought not to go beyond what is necessary to achieve its desired aims or objectives. Even while examining the question of Wednesbury unreasonableness the court can ask whether the decision was within the range of rational balances that may be struck.[3]

[1] ***Associated Provincial Picture Houses*** v. ***Wednesbury Corporation***1947 (2) All ER 680 (CA)
[2] ***All India Recruitment Board and Another*** v. ***K. Shyam Kumar and Others***, (2010) 6 SCC 614
[3] The Nature of Reasonableness Review (by Paul Craig)

8. In ***Anuradha Bhasin*** v. ***Union of India***,[4] reference was made to the earlier decision of this Court in ***Modern Dental College and Research Centre*** v. ***State of Madhya Pradesh and Others***,[5] wherein reliance was placed on Aharon Barak's work on proportionality[6], to observe:

> "60...a limitation of a constitutional right will be constitutionally permissible if:
>
> (i) it is designated for a *proper purpose*;
>
> (ii) the measures undertaken to effectuate such a limitation are *rationally connected* to the fulfilment of that purpose;
>
> (iii) the measures undertaken are *necessary* in that there are *no alternative measures that may similarly achieve that same purpose with a lesser degree of limitation*; and finally
>
> (*iv*) there needs to be a proper relation *proportionality strictosensu balancing* between the importance of achieving the proper purpose and the social importance of preventing the limitation on the constitutional right."

This court in ***Anuradha Bhasin*** held that the principle of proportionality is inherently embedded in the Indian Constitution under the doctrine of reasonable restriction, which means the

[4] (2020) 3 SCC 637
[5] (2016) 7 SCC 353
[6] Proportionality: Constitutional Rights and its Limitations, Cambridge University Press (2012)

limitation imposed on a person should not be arbitrary or of an excessive nature beyond what is required in the interest of public. Thereupon, reference was made to works of scholars/jurists and judgment of the Canadian Supreme Court in ***R. Oakes***,[7] to observe that some jurists have argued that if the necessity stage is interpreted strictly, the legislation and policies, no matter how well intended, will fail to pass the proportionality enquiry if any other slightly less drastic measure exists. Therefore, David Bilchitz has suggested a moderate interpretation of the necessity test by stating that necessity involves a process of reasoning designed to ensure that only measures with a strong relationship to the objective they seek to achieve can justify an invasion of fundamental rights. The process thus requires courts to reason through the various stages of moderate interpretation of necessity in the following manner:

> "(MN1) All feasible alternatives need to be identified, with courts being explicit as to criteria of feasibility;
>
> (MN2) The relationship between the government measure under consideration, the alternatives identified in MN1 and the objective sought to be achieved must be determined. An attempt must be made to retain only those alternatives to the measure that realise the objective in a real and substantial manner;

[7] 1986 1 SCR 103

> (MN3) The differing impact of the measure and the alternatives (identified in MN2) upon fundamental rights must be determined, with it being recognised that this requires a recognition of approximate impact; and
>
> (MN4) Given the findings in MN2 and MN3, an overall comparison (and balancing exercise) must be undertaken between the measure and the alternatives. A judgment must be made whether the government measure is the best of all feasible alternatives, considering both the degree to which it realises the government objective and the degree of impact upon fundamental rights ("the comparative component")."

This approach was also adopted and preferred by A.K. Sikri, J. in ***K.S. Puttaswamy*** (Aadhaar-5J).[8] D.Y. Chandrachud, J., in the same judgment, had referred to the threefold requirement of legality which postulates the existence of law; need defined in terms of a legitimate state action; and proportionality which ensures rational nexus between the objects and means adopted to achieve them. The third principle, it was held, is the essential role of test of proportionality. ***Anuradha Bhasin*** also refers to the four-pronged test suggested by Sanjay Kishan Kaul, J. in his concurring opinion in the Aadhar (5 Judge Bench) judgment, to elucidate that the action must be sanctioned by law; the proposed action must be necessary in a democratic society for legitimate aim; the extent of interference must be proportionate to need for such interference; and there must

[8] (2019) 1 SCC 1

be procedural guarantees against abuse of such interference. Accordingly, in ***Anuradha Bhasin*** it is observed that the current state of doctrine of proportionality, as it exists in India, is the key tool to achieve judicial balance. But scholars are not agreeable to recognise proportionality equivalent to that of balancing.

9. However the exercise of balancing involved in the proportionality or reasonableness, in the context of the statutory provisions quoted above and as noticed below, necessitates knowledge of various alternatives available to the Authority/Central Government, and this is a mandate enabled *inter alia* by the process requiring public consultation. Legislation is often an exercise to select between options. Therefore issue of choice between alternatives, when public participation in quasi legislative or statutory exercise is mandated by law, has different implications, for example under the Environment Protection Act. This aspect would be considered subsequently.

10. In ***Gwalior Rayon Silk Mfg. Co. Ltd.*** v. ***Assistant Commissioner of Sale Tax***,[9] the Constitutional Bench of this Court had referred to the precedents on constitutional limitation on delegation, including

[9](1974) 4 SCC 98

the decision in ***In Re.: The Delhi Laws Act***.[10] It observed that there are limits to delegation which flow from the rule and necessary postulate of the sovereignty of the people and, therefore, it is not permissible in the matter of legislative policy to substitute the views of individual officers or other authorities, however competent they may be, for that of the popular will as expressed by the representatives of the people in the primary legislation. Nevertheless the court accepted that growth of legislative powers of the executive is a significant development of the last century consequent to need and necessity, as delegated legislation gives flexibility, elasticity, expedition and opportunity for experimentation. However, it was emphasised that constitution-makers have entrusted the power of legislation to the representative legislature so that the legislative power may be exercised not only in the name of the people, but also by the people speaking through their representatives.

11. ***Indian Express Newspapers*** v. ***Union of India***[11]holds that subordinate legislation does not carry the same degree of immunity as enjoyed by a statute passed by a competent legislature. In

[10]AIR 1951 SC 332
[11](1985) 1 SCC 641

addition to the grounds on which primary legislation may be contested, subordinate legislation can also be questioned on the ground that it does not conform to the statute under which it was made, it is contrary to some other statute, or that it was not formed in consonance with the legislative intent as reflected in the rule making power given under the statute. Under Article 14 of the Constitution of India, administrative decisions and subordinate legislations can be challenged and struck down when an action exhibits manifest arbitrariness. Quoting Diplock, L.J. in ***Mixnam's Properties Ltd.*** v. ***Chertsey Urban District Council***,[12]this court noted that subordinate legislation can be questioned on the ground

of unreasonableness – not in the sense in which this expression is used in common law –but manifest arbitrariness, injustice or partiality when the court finds that the legislature would have never intended and given authority to make the rules under challenge or when there is uncertainty (as distinct from unenforceability) that it can be said that the legislature had not intended to authorise the subordinate legislative authority to make changes in the existing law which are uncertain. In ***Kruse*** v. ***Johnson***,[13]Lord Russell, C.J. observed that by-laws can be held illegal on account of being

[12](1632) 2 All ER 787
[13]1898, Divisional Court

unreasonable – in the sense that if they are found to be partial and unequal in their operation as between different classes; if they were manifestly unjust; if they disclose bad faith; if they involve such oppressive or gratuitous interference with the rights of those subject to them as could find no justification in the minds of reasonable men. Referring to the said aspects, in ***Kerala Samsthana Chetu Thozhilali Union v. State of Kerala & Ors.***,[14] it was observed that subordinate legislation it is trite must be reasonable, in consonance with the legislative policy and also give effect to the purport in the main enactment and in good faith. The reason being that the subordinate law making body is bound by the terms of the delegative and the derived authority and the court, as a general rule, shall not give effect to the rules except where it is satisfied that all the conditions precedent for validity of the rules have been fulfilled. Reference was made to the 7th Edition of Craies on Statute Law at pages 297-298 wherein it is observed:

> "31...The courts therefore (1) will require due proof that the rules have been made and promulgated in accordance with the statutory authority, unless the statute directs them to be judicially noticed; (2) in the absence of express statutory provision to the contrary, may inquire whether the rule-making power has been exercised in accordance with the provisions of the statute by which it is created, either with respect to the procedure adopted, the form or substance of the regulation, or the sanction, if any, attached to the

[14](2006) 4 SCC 327

> regulation; and it follows that the court may reject as invalid and ultra vires a regulation which fails to comply with the statutory essentials."

12. Similarly, G.P. Singh in *Principles in Statutory Interpretation*(14th edition) at page 916 observes that delegated legislations are open to scrutiny of courts and may be declared as invalid particularly on two grounds – (i) violation of the constitution; and (ii) violation of the enabling act. The second ground includes not only cases of violation of substantive provisions of the enabling act but also cases of violation of the mandatory procedure prescribed. Compliance with the laying down requirement which includes approval of the Parliament through a resolution would not confer any immunity to delegated legislation though it may be a circumstance to be taken into account along with other factors to uphold validity though it has been held that laying down clause may prevent the subordinate legislation from being declared invalid for excessive delegation.

13. In ***Ispat Industries Limited*** v. ***Commissioner of Customs***,[15] reference was made to pure theory of law and that in every legal system there is hierarchy of laws, and whenever there is conflict between a norm in a higher layer in this hierarchy and the norm in

[15] (2006) 12 SCC 583

the lower layer, the norm in the higher layer will prevail. In India, the hierarchy puts the Constitution at the highest level followed by statutory law either by the Parliament or the State Legislature, delegated or subordinate legislation which are in the form of rules made under the Act, regulations made under the Act and then at the lowest level are the administrative orders or executive instructions without any statutory backing.

14. It has been argued before us that formulation or amendment/ modification of a city's Master Plan is not an administrative but a legislative exercise. Relying on the decisions in ***Union of India*** v. ***Cynamide India Ltd***.,[16] and ***Pune Municipal Corporation*** v. ***Promoters and Builders' Association***,[17] the respondents submit that the distinction is that a legislative act is the creation and promulgation of a general rule of conduct without reference to particular cases and usually operates in future; whereas administrative act applies to specific individuals or situations or making decisions by applying general rules to particular cases.

15. In ***Cynamide***, this Court observed that price fixation under the Essential Commodities Act and the Drugs (Price Control) Order,

[16] (1987) 2 SCC 720
[17] (2004) 10 SC 796

1979 is neither the function nor forte of the court but that of experts and is more or less legislative in character. Nevertheless, the court would not totally deny jurisdiction to inquire into the question whether relevant considerations have been gone into and irrelevant considerations have been kept out of the determination of the price, especially when the legislature has decreed the pricing policy and prescribed the factors which should guide the determination. Observations of Chinnappa Reddy, J., quoted with approval in ***State of U.P. and Others*** v. ***Renusagar Power Co. and Others***,[18]refers to proliferation of delegated legislation, due to which there is a tendency for the line between legislation and administration to vanish into an illusion. Administrative and quasi-judicial actions tend to merge into legislative activity and, conversely, legislative activity tends to fade into and present an appearance of an administrative or a quasi-judicial activity. Chinnappa Reddy, J. insisted that it may be necessary that a line must sometimes be drawn as different legal rights and consequences may ensue. Nevertheless, such decision must be arrived at objectively and in consonance with the principles of natural justice.

[18](1988) 4 SCC 59

16. In ***Cynamide***, this court while accepting that legislative action, preliminary or subordinate, is not subject to rules of natural justice, nevertheless held that there are several instances of the legislation requiring the subordinate legislating authority to give notice and conduct public hearing before they legislate. Occasionally, legislature directs the subordinate legislating body to make 'such enquiry as it thinks fit' before making the subordinate legislation. In such situations, the nature and extent of inquiry is in the discretion of the subordinate legislating body and is not open to question on the ground that the inquiry was not as full as it might have been. This would not confer any right on anyone.[19] The position, however, would be different where the legislature specifically directs the subordinate legislating body to invite objections and suggestions from the general public which must be considered before the subordinate legislation is made and enacted. Therefore, decision in ***Cynamide*** while observing that rules of natural justice are not applicable to legislative action, primary or subordinate, draws a clear caveat, that this dictum is not applicable when the legislation has itself provided for duty and obligation to consult. When the legislation stipulates such a right, then the ordinary rule of non-

[19]See - ***Rayalaseema Paper Mills Limited and Another*** v. ***Government of A.P. and Others,*** (2003) 1 SCC 341

application of right to consult for a legislative action is irrelevant. In such a case, obligation to consult and right to hearing may be a substantive right.

17. In ***Cellular Operators Association of India and Others*** v. ***Telecom Regulatory Authority of India and Others***,[20]the dictum in ***Cynamide India Ltd.*** was followed. Section 11(4) of the Telecom Regulatory Authority of India Act, 1997, it was held, requires that the authority (i.e. TRAI) shall ensure transparency in exercise of its power in discharging the functions. In the said case, the authority had failed to hold consultation with all stakeholders and had not allowed stakeholders to make their submissions to the authority. Further, there was no discussion or reasoning dealing with the arguments put forward by the service providers that call drops occurred for a variety of reasons, some of which were beyond the control of the service provider and were because of the consumer himself. Therefore, the conclusion that the service providers alone were to be blamed and consequently deficiency in service was not a conclusion which a reasonable person can reasonably arrive at.

[20](2016) 7 SCC 703

18. On the question of transparency, ***Cellular Operators Association of India*** observes that these are fundamental questions relating to openness of governance. Right to Information Act, 2005 has gone a long way to strengthen democracy by requiring that the government be transparent and open in its actions. Only then an informed citizenry would be able to contain corruption and hold the government and its' instrumentalities accountable to the people. Preamble of the Right to Information Act echoes this sentiment stating that informed citizenry and transparency of information are vital for functioning of the government and its' instrumentalities. On the question of open governance, observations by Mathew, J., in ***State of U.P.*** v. ***Raj Narain***,[21] was reproduced:

> "74...The people of this country have a right to know every public act, everything that is done in a public way, by their public functionaries. They are entitled to know the particulars of every public transaction in all its bearing. To cover with veil of secrecy, the common routine business, is not in the interest of the public. Such secrecy can seldom be legitimately desired."

Thereafter, it was observed that right to information is basically founded on the right to know which is an intrinsic part of the fundamental right to free speech and expression. Reference was also made to decisions in ***Secretary, Ministry of Information***

[21](1975) 4 SCC 428

& Broadcasting v. ***Cricket Association of Bengal***,[22] ***Reliance Petrochemicals Ltd.*** v. ***Proprietors of Indian Express Newspapers, Bombay Pvt. Ltd.***[23] and ***People's Union for Civil Liberties*** v. ***Union of India***.[24] The decision in ***Reliance Petrochemicals*** recognised the right to information as a fundamental right under Article 21 of the Constitution. Sabyasachi Mukharji, J., as His Lordship then was, has held:

> "34…We must remember that the people at large have a right to know in order to be able to take part in a participatory development in the industrial life and democracy. Right to know is a basic right which citizens of a free country aspire in the broader horizon of the right to live in this age in our land under Article 21 of our Constitution. That right has reached new dimensions and urgency. That right puts greater responsibility upon those who take upon themselves the responsibility to inform."

19. Earlier, in ***Central Board of Secondary Education*** v. ***Aditya Bandopadhyay,***[25] this Court had divided information into three categories, namely, (i) information, that promotes transparency and accountability in the working of every public authority, and may also help contain or discourage corruption, enumerated in clauses (b) and (c) of Section 4(1) of the Right to Information Act; (ii) other

[22](1995) 2 SCC 161
[23](1988) 4 SCC 592
[24](2004) 2 SCC 476
[25] (2011) 8 SCC 497

information, that is, information not falling within clauses (b) and (c) of Section 4(1) of the Right to Information Act; and (iii) information not held by, or under the control of the public authority, which cannot be accessed by a public authority under the law for the time being in force. The third category information is excluded and does not fall within the scope of the Right to Information Act. Significant for our purpose are observations that there is also a special responsibility upon the public authorities to *suo moto* publish and disseminate information falling in the first category so that they will be easily and readily accessible to public without any need to assess them through recourse of Section 6 of the Right to Information Act. This is a statutory obligation imposed by Section 4(1)(b) and (c) as also sub-sections (2), (3) and (4) of Section 4 relating to dissemination of information. Thereupon, reference was made to section 19(8) of the Right to Information Act which entrusts the Information Commissions with the power to require any public authority to take any steps as may be necessary to secure compliance with the provisions of the Right to Information Act. It states that every public authority shall maintain its records duly catalogued and indexed in the manner and form which facilitates the right to information so as to ensure that information enumerated in clauses (d) and (e) of Section 4(1) of the Right to Information Act are published,

disseminated and periodically updated. This, it was observed, would ensure transparency and accountability and enable the citizens to have access to relevant information and avoid unnecessary applications *qua* information under the Right to Information Act.

20. Public consultation in a legislation as a statutory mandate was examined by a Constitutional Bench in ***Raza Buland Sugar Co. Ltd.*** v. ***Municipal Board, Rampur***[26] to observe that the procedure for imposition of tax by the Municipal Board which required framing of a proposal and permitted any inhabitant of a municipality to submit an objection to all or any of the proposals within a fortnight, and the Board upon consideration could pass orders, was necessary or mandatory. The Constitutional Bench elucidated that while use of the word 'shall' in the statute, whether mandatory or directory, cannot be resolved by laying down general rule; the object of the statute in making the provision is a determining factor. The intention of the legislature in making the provision, the serious general inconvenience or injustice to persons resulting from whether the provision is read one way or the other, the relation of the particular provision to other provisions dealing with the same subject and other considerations which may arise on the facts of a particular

[26]AIR 1965 SC 895

case including the language of the provision have to be taken into account for arriving at the conclusion whether the provision is directory or mandatory. The majority judgment thereafter referred to the statutory position and the facts of the case at hand to observe that publication of proposals was obviously to further the democratic process and to provide reasonable opportunity of being heard to those who are likely to be affected by the tax proposal. The object behind the publication was to elicit the reaction of the taxpayers, and the Board could even drop the proposal altogether if reaction of tax payers in general merited disapprobation. However, another provision of the statute relating to manner of publication, it was observed, was not mandatory and therefore so long as substantial compliance of the manner as provided was observed, it would be sufficient. The contention that the publication as per the mandate of the statute needs to be in Hindi though the paper itself was published in Urdu was not a good ground to strike down the delegated legislation.

21. In ***Lachmi Narain*** v. ***Union of India***[27] in the context of legislation requiring publication of notice and public consultation three observations were made. Firstly, the requirement for publication of

[27](1976) SCC 2 953

notice of not less than three months before amending the Second Schedule of the Sales Tax Act was held to be mandatory and not directory as the intention of the law makers was expressed in the law itself – the word 'must' instead of 'shall' had been used. When the provision is couched in prohibitive or negative language it can rarely be directory; pre-emptory language in negative form is *per se* indicative of the intent that the provision is mandatory. Secondly, the period fixed in the notice, was mandatory keeping in view several factors such as the imposition of new tax burden or exemption from taxes should cause least dislocation or inconvenience to the dealer in collecting tax for the government, keeping accounts and filing proper returns, and to the Revenue in assessing and collecting the same. Thirdly, dealers and others likely to be affected by the amendment, must get sufficient time and opportunity for making representation, objection, suggestion, in respect of the intended amendment. Accordingly, period of not less than three months was absolute and the span of the notice was thus the essence of the legislative mandate.

22. In ***Bhausaheb Tavanappa Mahajan*** v. ***State of Maharashtra***,[28] Madan, J., as His Lordship's then was, observed that the mode of

[28]AIR 1982 Bom 284

publication under the Maharashtra Agricultural Produce Marketing Act was mandatory as the word 'shall' *prima facie* requires strict compliance and when read with the other provisions, and, the consequences which flow from construing the word one way or the other as it would affect the trade and business of several persons, including agriculturists, it would be proper to hold that the legislative intent was to make the requirement of publication mandatory and not leave it to individual notice of different officers of the State.

23. On general observations and need for public consultation in delegated legislation in ***Harvinder Singh and Others*** v. ***State of Punjab***,[29] reference was made to a working paper presented by Professor Upendra Baxi that executive law making gives exclusive prerogative to a small cross-section of people which necessarily effects both the quality of law making as well as its social communication, acceptance and effectiveness, resulting in a highly centralised system of power. He observed that it is time that India considered desirability and feasibility of building into public law-making process a substantial amount of public participation. Mr. Justice Krishna Iyer in rather strong words in paragraph 52 and 53 observed that subordinate legislation being bureaucratic driven,

[29](1979) 1 SCC 137

even when well-meaning and well-informed, could sometimes be para-babel to local self-government. Further, doctrine of delegation in its extreme proportions is fraught with danger which we in naivety may not be fully cognizant. The system of government needs careful, yet radical restructuring, if participative and pluralistic government by the people is to be jettisoned. Similarly, in ***Cellular Operators Association of India***, this court consciously referred to U.S. Administrative Procedure Act and *Corpus Juris Secundum* to observe that it would be a healthy function of our democracy, if all subordinate legislation, subject to some well-defined exceptions, are made by transparent process together with explanatory memorandum; after due consultation is held and the rule and regulation making power is exercised after due consideration and by giving reasons for agreeing and disagreeing with the concerns. This would be conducive to openness, improved governance, and would also take care of most grievances and thereby reduce litigation. These observations may not be binding dictums enforceable in law, but should be effectively applied when the legislation itself mandates and requires public participation, thereby making it a worthy and meaningful exercise.

24. In ***R (Moseley)*** v. ***London Borough of Haringey***,[30] the United Kingdom Supreme Court examined the question of what are the essential ingredients of requisite consultation when the Parliament requires a local authority to consult interested persons before making a decision which would potentially affect all its inhabitants. Lord Wilson approved the four gunning principles propounded in ***R*** v. ***Brent London Borough Council, ex parte Gunning***[31] and read:

> "Mr Sedley submits that these basic requirements are essential if the consultation process is to have a sensible content. First, that consultation must be at a time when proposals are still at a formative stage. Second, that the proposer must give sufficient reasons for any proposal to permit of intelligent consideration and response. Third,… that adequate time must be given for consideration and response and, finally, fourth, that the product of consultation must be conscientiously taken into account in finalising any statutory proposals."

Lord Wilson observed that it was hard to see how any of the four requirements could be rejected or indeed improved. It was also observed that the public authority's duty to consult those interested before taking a decision may arise in variety of ways – most commonly where the duty is generated by a statute. It can also arise under common law duty of procedural fairness in the form of doctrine of legitimate expectation. But, irrespective of how the duty

[30](2014) UKSC 56
[31](1985) 84 LGR 168

to consult has arisen, it is the common law duty of procedural fairness to inform the manner in which the consultation should be conducted. Fairness is a protean concept not susceptible to much generalised enlargement, but its requirements in the context must be linked to the purposes of consultation. The first objective obviously is to address the common law duty of procedural fairness in determination of a person's legal right. Three other underlying purposes are: (i) that consultation results in better decisions by ensuring that the decision maker receives all relevant information and is properly tested; (ii) it avoids the sense of injustice which the person who is the subject of the decision will otherwise feel; and (iii) it is reflective of democratic principle at the heart of our society. At the same time, it was observed that the degree of specificity with which the public authority should conduct its consultation exercise may be influenced by the identity of those it is consulting and the effect which the proposal has. In a given case, it may also include information relatable to arguable yet discarded alternative options, though consulting about a proposal may not inevitably involve inviting and considering use of possible alternatives. Therefore, it would be situation specific. Lord Reed observed that the common law imposes a general duty of procedural fairness upon public authorities exercising a wide range of functions which affect the

interest of individuals, but the content of that duty varies almost infinitely depending upon the circumstances. Duty to consult, though not a general common law duty, can exist in circumstances where there is legitimate expectation of such consultation which is founded on an expectation, or from a practice of consultation. It may also arise from statutory duty of consultation. In some cases, the statute may give discretion to the public authority to restrict such consultation to a particular consultancy or may involve general public. The consultation may take the form of taking views of the public or holding public meetings etc. A mechanistic approach to the requirement of consultation should be avoided. Depending upon circumstances, issues of fairness may be relevant to the explication of the duty to consult. The purpose of this statutory duty to consult is to ensure public participation in the local authority's decision-making process. In order for the consultation to achieve that objective it must fulfil certain minimum requirements to ensure meaningful public participation in the particular decision-making process. Thus, the public should be provided not only with information about the draft scheme but also an outline of realistic alternatives and indication of main reasons for the authority's adoption of the draft scheme. It is a general obligation to inform as to what the proposal is and exactly why it is under positive

consideration. It should tell enough to enable the public to make an intelligent response. (We have subsequently discussed the principle of procedural legitimate expectation.)

25. Gunning principles, first established in 1985, can be crystallised as under:

a. consultation must occur when the proposals are still at a formative stage;

b. the proponent must give sufficient reasons for the proposal that permit intelligent consideration and response;

c. adequate time must be given for consideration and response; and

d. the product of consultation must be conscientiously taken into account in finalising any statutory proposals.

These principles reflect the basic requirements essential if the public consultation process is to be sensible and meaningful. They would normally form the basis and foundation for proper application of the duty to consult and right to be consulted. Nevertheless, these principles should not be put in a strait-jacket and the degree of application would depend upon the factual matrix and is situation specific. In United Kingdom grant of relief is now covered by Criminal Justice and Courts Act, 2015 which defines the

circumstances in which the court must refuse relief. One of the grounds is when it appears to the court that it is highly unlikely that the outcome for the applicant would have been substantially different if the conduct complained of had not occurred. However, the court may not apply the 'no difference test' where it considers it appropriate to do so for exceptional public interest. There are similar principles relating to undue delay in making a claim for judicial review; extent of sufficient interest of the claimant; whether or not no harm is suffered or prejudice is caused by an unlawful act; the courts' discretion not to provide a remedy to make an order would serve no practical purpose; financial implications of the remedy, etc. are to be taken into consideration. Referring to the relief aspect, in ***Stephen Viera*** v. ***London Borough of Camden***,[32] it was observed as follows:

> "106. A quashing order should only be refused if it is inevitable that the outcome would have been the same had the correct procedures been followed (see R (Copeland) v. London Borough of Tower Hamlets (2011) J.P.L. 40 at para 36, 37 citing Smith v. North Derbyshire Primary Care Trust (2006) EWCA Civ 1291, per May LJ at (10):
>
> > "...Probability is not enough. The defendants would have to show that the decision would inevitably have been the same and the court must not unconsciously stray from its proper province of reviewing the

[32](2012) EWHC 287

> propriety of the decision making process into the forbidden territory of evaluating the substantial merits of the decision..."

26. In ***Cellular Operators Association***, this Court had quoted the decision of Court of Appeal in England, ***R.*** v. ***North and East Devon Health Authority, ex p Coughlan***[33] as to the meaning of the term 'consultation':

> "108. It is common ground that, whether or not consultation of interested parties and the public is a legal requirement, if it is embarked upon it must be carried out properly. To be proper, consultation must be undertaken at a time when proposals are still at a formative stage; it must include sufficient reasons for particular proposals to allow those consulted to give intelligent consideration and an intelligent response; adequate time must be given for this purpose; *and the product of consultation must be conscientiously taken into account when the ultimate decision is taken...*"
>
> (emphasis as originally supplied)

27. We have already referred to Sections 7 to 11-A of the Development Act which decree detailed procedure for preparation of a Master Plan and the Zonal Development Plan(s) including direction that the Authority shall prepare a draft and make a copy available for inspection to general public and invite objections and suggestions from any person. Every local authority within whose limit any land, as per the plan, is situated is to be given a reasonable opportunity to make representation. Only on considering all representations,

[33] 2001 QB 213 : (2000) 2 WLR 622 (CA)

suggestions and objections, the Authority, under sub-section (3) to Section 10, can prepare a final plan and submit it to the Central Government for its approval. Sub-section (4) to Section 10 makes provisions of the rules made in this behalf with respect to form and content of the plan(s) and the procedure binding. Consequently, the Development Rules, which are the subordinate legislation, are a part of the Development Act. The Authority, Central Government and common public are bound by the Development Rules, as they are bound to follow and abide by the Development Act. This Court in ***Rajasthan State Road Transport Corporation*** v. ***Bal Mukund Bairwa***[34] and ***Annamalai University*** v. ***Secretary to Government, Information and Tourism Department***,[35] has held that subordinate legislation when validly framed becomes a part of the main enactment. The consequence thereof clearly is that the Development Rules should be read as part and are equally enforceable as the Development Act. In this context, we would refer to Rule 4 of the Development Rules as it elucidates the form and contents of the draft Master Plan to be made public to invite objections, suggestions and representations. As per sub-rule (1) to Rule 4, the draft plan is to consist of such maps, diagrams, charts,

[34] (2009) 4 SCC 299 (see paragraph 39)
[35] (2009) 4 SCC 590 (see paragraph 42)

reports, and other written matter of explanatory or descriptive nature as pertained to the development of whole or any part of Delhi. Sub-rule (2) to Rule 4 states that the written matter forming part of the Master Plan shall include such summary of main proposals and such descriptive matter as the Authority may consider necessary to illustrate and/or explain the proposal indicated by maps, charts, diagrams and other documents. Clauses (a) to (j) of sub-rule (3) to Rule 4 list out other details which may be included. For the purpose of record, we must state that the expression 'Master Plan' as per sub-section (1) to Section 9, for purposes of Sections 10, 11, 12 and 14, would also mean the Zonal Development Plan for a zone.

28. Gunning principles can be substantially read as resonating in Sections 10, 11 and 11-A of the Development Act and Rules 4, 8, 9 and 10 of the Development Rules. To ignore their salutary mandate as to the manner and nature of consultation in the participatory exercise, would be defeat the benefic objective of exercise of deliberation. Public participation to be fruitful and constructive is not to be a mechanical exercise or formality, it must comply with the least and basic requirements. Thus, mere uploading of the gazette notification giving the present and the proposed land use with plot numbers was not sufficient compliance, but rather an exercise

violating the express as well as implied stipulations, that is, necessity and requirement to make adequate and intelligible disclosure. This condition also flows from the common law general duty of procedural fairness. Doctrine of procedural legitimate expectation as explained below would be attracted. Intelligible and adequate disclosure of information in the context of the Development Act and the Development Rules means and refers to the degree to which information should be available to public to enable them to have an informed voice in the deliberative decision making legislative exercise before a final decision is taken on the proposals. In the present matter this lapse and failure was acknowledged and accepted by the BoEH, which had recommended disclosure and furnishing of details. Intelligible and adequate disclosure was critical given the nature of the proposals which would affect the iconic and historical Central Vista. The citizenry clearly had the right to know intelligible details explaining the proposal to participate and express themselves, give suggestions and submit objections. The proposed changes, unlike policy decisions, would be largely irreversible. Physical construction or demolition once done, cannot be undone or corrected for future by repeal, amendment or modification as in case of most policies or even enactments. They have far more permanent consequences. It

was therefore necessary for the respondents to inform and put in public domain the redevelopment plan, layouts, etc. with justification and explanatory memorandum relating to the need and necessity, with studies and reports. Of particular importance is whether by the changes, the access of the common people to the green and other areas in the Central Vista would be curtailed/restricted and the visual and integrity impact, and proposed change in use of the iconic and heritage buildings.

29. In ***Hanuman Laxman Aroskar*** v. ***Union of India***,[36] on the question of public consultation in the case of environment clearance had observed:

> "112.8... Public consultation cannot be reduced to a mere incantation or a procedural formality which has to be completed to move on to the next stage. Underlying public consultation is the important constitutional value that decisions which affect the lives of individuals must, in a system of democratic governance, factor in their concerns which have been expressed after obtaining full knowledge of a project and its potential environmental effects.

30. Similarly, in ***M.C. Mehta*** v. ***Union of India***,[37] on the question of amendment of Master Plan and the need for proper public participation, this Court had held:

[36] (2019) 15 SCC 401
[37] (2019) 12 SCC 720

"15. We may mention that it has been recorded that Delhi is being ravaged by unauthorised encroachments and illegal constructions with impunity and none of the civic authorities including the Delhi Development Authority was sincerely carrying out its statutory duties. It is painful to require the issuance of directions to statutory authorities to carry out their mandatory functions in accordance with the law enacted by Parliament. Unfortunately, the situation in Delhi warranted such a direction due to the apathy of the civic authorities.

16. Again unfortunately, instead of taking the people of Delhi into confidence with regard to amendments to the Master Plan, a bogey of public order and rioting has been sought to be communicated to us as if the law and order situation in Delhi was getting out of control. We are at a loss to understand the hyper reaction and how changes in the Master Plan are sought to be brought about without any meaningful public participation with perhaps an intent to satisfy some lobbies and curtailing a period of 90 days to just 3 days on some unfounded basis. It must be appreciated that the people of Delhi come first.

17. It is for the purpose of taking the public in Delhi into confidence and working for their benefit that an opportunity was granted to make suggestions and raise objections to the proposed amendments to the Master Plan and which were not objected to by the learned Attorney General on 15-5-2018 keeping in view the spirit behind the invitation to object and make suggestions and curtailment of the normal statutory period.

18. In view of the above, the oral request of the learned Attorney General to modify the order dated 15-5-2018 is rejected. The Central Government should expeditiously implement the order dated 15-5-2018 in letter and spirit keeping the interest of the public of Delhi in mind."

31. In ***R.K. Mittal*** v. ***State of Uttar Pradesh***,[38] this Court dealing with the action taken by the development authority and the allegation that it was not in conformity with the Master Plan, the regulations and the statutory enactment, this Court observed:

> "49. The Development Authority is inter alia performing regulatory functions. There has been imposition of statutory duties on the power of this regulatory authority exercising specified regulatory functions. Such duties and activities should be carried out in a way which is transparent, accountable, proportionate and consistent. It should target those cases in which action is called for and the same be exercised free of arbitrariness. The Development Authority is vested with drastic regulatory powers to investigate, make regulations, impute fault and even to impose penalties of a grave nature to an extent of cancelling the lease. The principles of administrative justice squarely apply to such functioning and are subject to judicial review. The Development Authority, therefore, cannot transgress its powers as stipulated in law and act in a discriminatory manner. The Development Authority should always be reluctant to mould the statutory provisions for individual, or even for public convenience as this would bring an inbuilt element of arbitrariness into the action of the authorities. Permitting mixed user, where the Master Plan does not so provide, would be glaring example of this kind."

32. Similar are the observations in ***Rajendra Shankar Shukla*** v. ***State of Chhattisgarh***[39], wherein with regard to town planning and development reference was made to the 'principles of natural justice', when the town planning and development authority wanted

[38] (2012) 2 SCC 232
[39] (2015) 10 SCC 400

to reconstitute the plots and change the land use. Referring to the functioning of the committee which had to hear the objections of the parties, it was observed:

> "103. The functioning of the Committee under Section 50(5) of the 1973 Act is dissatisfactory and required the process to be followed afresh. The Committee constituted under the aforesaid Act to hear objections of the desirous parties, was a mere eyewash. The Committee rejected the objections submitted by the appellants without providing any reasons for the same and not even providing any hearing opportunities to put forth their objections before the said Committee. Therefore, the recommendations of the Committee did not carry any weight. This action of the State Government is vitiated in law and therefore liable to be set aside."

33. Reference can also be made to ***Indore Development Authority*** v. ***Madan Lal***,[40] wherein it has been held as follows:

> "10. We do not think that the Development Authority was justified in following a short cut in this case. The procedure followed under the Trust Act could not be sufficient to dispense with all the requirements of Section 50 of the Adhiniyam. As earlier noticed that Section 50 of the Adhiniyam provides procedure for preparation and approval of scheme for development. After preparing a draft scheme, the Development Authority must invite objections and suggestions from the public. There must be due consideration of the objections and suggestions received in the light of the Master Plan of Indore. Indeed, the public must also have an opportunity to examine the scheme and file objections in the light of the Master Plan if the Development Authority wants to adopt the scheme. Since the scheme in question was not an approved

[40] (1990) 2 SCC 334

> scheme under the Trust Act, the Development Authority could not have dispensed with the procedure prescribed under Section 50 of the Adhiniyam."

34. More direct and relevant is the decision in ***Syed Hasan Rasul Numa*** v. ***Union of India***[41] in which this Court had interpreted Section 44 of the Development Act requiring issue of public notice inviting objections to the proposed modifications in the Master Plan. On the aspect of consideration of objections, reliance was placed on the affidavit filed by the Secretary of the Authority stating that the objections were transmitted to the Central government for consideration as in the case it was the Central Government alone that was competent to consider the objections received from the interested persons. However, it was held that in the absence of any discussion in the minutes of the meeting it was difficult to accept that objections of the appellant before this Court like other objections were considered by the Central Government. Accordingly, the High Court was in error in assuming that no prejudice has been caused to the persons who had filed objections and suggestions. On the question of consideration of the objections, this Court has observed:

> "It is evident from these averments that the appellants' statement of objections was not listed in the agenda of the meeting convened for consideration of all the objections received. It is, however, claimed that the

[41](1991) 1 SCC 401

> appellants' objection was read and ruled out in the meeting. But there is no record to indicate that it was considered and rejected. At any rate, it is not borne out from the proceedings of the meeting. In fact, it is admitted that there is no record with regard to disposal of the objection in question. It is not as if the proceedings of the meeting are not recorded and maintained. It is very much there, but it is confined only to the listed items in the agenda of the meeting. When the proceedings of the meeting are recorded, one would naturally expect that all that transpired in the meeting should find a place in the minutes of the meeting. In the absence of any such record, we find it difficult to accept the mere allegation of the respondents that the appellants' objection like any other objection was considered by the authorities. The High Court therefore, seems to be in error in assuming that there was no prejudice to the appellants. We do not however, mean to say that the appellants have a right to have their belated objection considered by the authorities. If there was valid publication of the notice as prescribed under the law, they ought to have filed the objection within the period specified in the notice. They could not file their objection after the prescribed period and complain that they have been prejudiced by the non-consideration of the objection. The prejudice could be presumed only when the objection filed within the prescribed period is not considered by the competent authorities."

Secondly, with reference to Section 44 which requires issuance of a public notice, it was observed that the provision though not happily worded, the case for violation has been made out as the authorities had to follow two out of the three alternative methods prescribed. This is mandatory. Thereafter, it was held:

> "Section 11-A of the Act provides procedure for modification to the Master Plan and the zonal

> development plan. Sub-section (3) thereof provides that before making any modifications to any plan, the Authority or, as the case may be, the Central Government shall publish a notice inviting objections and suggestions from persons with respect to the proposed modification before the date specified in the notice. This is to give an opportunity to persons who are likely to be affected by the modification of the Plan to file objections and suggestions. Indeed, the interested persons or the persons who are likely to be affected have a right to file their objections and representations within the time specified. They have further right to have the objections considered by the competent authorities. In order to effectuate these rights, the prescribed means of publication must be faithfully followed giving the persons clear notice as specified in the statute. The provision providing such notice to persons whose rights or interests are likely to be impaired must always be considered as mandatory. As otherwise, it would defeat the very purpose of giving public notice inviting objections and suggestions against the proposed action."

In the said case, only one out of three means for publication provided in Section 44 was adopted, which it was observed falls short of the mandatory requirement. The public notice was therefore quashed with costs. This decision would be also relevant when we examine the question of failure of the Central Government to pass an order under sub-section (6) to Section 11-A and apply its mind to the objections and suggestions received from the public in respect of the proposed modifications. Instead, as noticed below the exercise was undertaken by the Authority.

35. We have already quoted observations in ***Raza Buland Sugar*** (approving the dictum recorded in ***State of U.P.*** v. ***Manbodhan Lal Srivastava***[42], which cites ***Montral Street Railway Company*** v. ***Normandin***[43]) that any determination whether a statutory provision is mandatory or directory must be made not only in the light of the language of the provision but also based on whether the provisions of the statute relate to performance of public duty and the case is such that to hold null and void acts done in neglect of this duty would work against serious general inconvenience, or injustice to persons who have no control over those entrusted with the duty and at the same time would not promote the main objective of the legislation. This is not so in the present case. Further, it is the duty of the courts to get at the real intention of the legislature by carefully attending to the scope of the statute considered and not merely upon the language in which the intent is clothed. This can be done by considering the phraseology of the provision, its nature, its design and consequences that would follow from construing it one way or the other. The court can also take into account that if the necessity of complying with the provision in question is avoided, whether the

[42] AIR 1957 SC 912
[43] AIR 1917 PC 142

statute provides for contingency for non-compliance and whether or not the same is visited with some penalty, the serious or trivial consequences that flow therefrom and above all whether the object of the legislation would be defeated or furthered (See ***State of U.P.*** v. ***Babu Ram Upadhyay***[44]). If the provision is mandatory the breach whereof will make the action invalid. If it is directory, the act will be valid although non-compliance may give rise to other penalty provided by the statute. The correct proposition appears to be that substantial compliance of the enactment is insisted, where mandatory and directory requirements are clubbed together for in such case if the mandatory requirements are complied with, it will be proper to say that enactment has been substantially complied with notwithstanding the non-compliance of the directory requirements.[45]

36. Principles to determine the effect of failure to comply with statutory requirements has been noted in De Smith's *Judicial Review*[46] as follows:

> "5-062 In order to decide whether a presumption that a provision is "mandatory" is in fact rebutted, the whole scope and purpose of the enactment must be considered and one must assess "the importance of the provision

[44] AIR 1961 SC 751 (at page 765)
[45] Mandatory & Directory Provisions, Principles of Statutory Interpretation, Justice G.P. Singh, 14th Edition, page 430.
[46] De Smith's Judicial Review, 8th Edition, page 274

> that has been disregarded, and the relation of that provision to the general object intended to be secured by the Act". In Assessing the importance of the provision, particular regard should be given to its significance as a protection of individual rights; the relative value that is normally attached to the rights that may be adversely affected by the decision, and the importance of the procedural requirement in the overall administrative scheme established by the statute. Breach of procedural or formal rules is likely to be treated as a mere irregularity if the departure from the terms of the Act is of a trivial nature, or if no substantial prejudice has been suffered by those for whose benefit the requirements were introduced. But the requirement will be treated as "fundamental" and "of central importance" if members of the public might suffer from its breach. Another factor influencing the categorisation is whether there may be another opportunity to rectify the situation; of putting right the failure to observe the requirement."

De Smith however records that the courts in appropriate cases and on accepted grounds may, in their discretion, refuse to strike down a decision or action or award any other remedy. This principle does not so much relate to determination of whether a particular provision or statutory obligation is itself mandatory or directory; rather, they are relevant for the question that if the statutory provision is mandatory and is not fulfilled, what should be the nature of relief to be granted by the court [See – ***Regina*** v. ***Secretary of State for Social Services***[47]]. The general approach is that a complainant who succeeds in establishing unlawfulness of an action is entitled to a remedial order, but the court has discretion in the

[47] 1986 WLR Vol. 1 pg. 1 (at pg.6)

sense of determining what is fair and just to do in the particular case, and therefore could restrict or withhold the relief or grant a declaration rather than more coercive quashing, prohibiting, or mandatory order or injunction.

37. In the context of the present case, given the nature and importance the statutory provisions which emphasise on fair participation of the public in the deliberations, and the importance and significance of Central Vista, we do not think it would be appropriate and correct to ignore failure on the part of the respondents to ascribe to the principle of intelligible and adequate disclosure to fulfil the requirement of public participation. Right to make objections and suggestions in the true sense, would include right to intelligible and adequate information regarding the proposal. Formative and constructive participation forms the very fulcrum of the legislative scheme prescribed by the Development Act and the Development Rules. Every effort must be made to effectuate and actualise the participatory rights to the maximum extent, rather than read them down as mere irregularity or dilute them as unnecessary or not mandated.

38. Deliberative democracy accentuates the right of participation in deliberation, in decision-making, and in contestation of public

decision-making. Contestation before the courts post the decision or legislation is one form of participation. Adjudication by courts, structured by the legal principles of procedural fairness and deferential power of judicial review, is not a substitute for public participation before and at the decision-making stage. In a republican or representative democracy, citizens delegate the responsibility to make and execute laws to the elected government, which takes decisions on their behalf. This is unavoidable and necessary as deliberation and decision-making is more efficient in smaller groups. The process requires gathering, processing and drawing inferences from information especially in contentious matters. Vested interests can be checked. Difficult, yet beneficial decisions can be implemented. Government officers, skilled, informed and conversant with the issues, and political executive backed by the election mandate and connected with electorate, are better equipped and positioned to take decisions. This enables the elected political executive to carry out their policies and promises into actual practice. Further, citizens approach elected representatives and through them express their views both in favour and against proposed legislations and policy measures. Nevertheless, when required draft legislations are referred to Parliamentary Committees for holding elaborate consultation with

experts and stakeholders. The process of making primary legislation by elected representatives is structured by scrutiny, consultation and deliberation on different views and choices infused with an element of garnering consensus.

39. Indirect participation of the citizens is critical to democracy and this thought has been appropriately expressed by Justice Sachs in ***Doctors for Life International v. Speaker of the National Assembly***[48] in the following words:

> ""The Constitution predicates and incorporates within its vision the existence of a permanently engaged citizenry alerted to and involved with all legislative programmes. The people have more than the right to vote in periodical elections, fundamental though that is. And more is guaranteed to them than the opportunity to object to legislation before and after it is passed, and to criticise it from the sidelines while it is being adopted. They are accorded the right on an ongoing basis and in a very direct manner, to be (and to feel themselves to be)involved in the actual processes of law-making. Elections are of necessity periodical. Accountability, responsiveness and openness, on the other hand, are by their very nature ubiquitous and timeless. They are constants of our democracy, to be ceaselessly asserted in relation to ongoing legislative and other activities of government ... thus it would be a travesty of our Constitution to treat democracy as going into a deep sleep after elections, only to be kissed back to short spells of life every five years (**paragraph 230**)."

[48] 2006 (12) BCLR 1399

It is no doubt true that the South African Constitution obligates the duty to inform and consult; albeit it would be wrong to state that this obligation and the right is a utopian and an impractical proposition in electoral democracies. India itself is a shining exemplar of how the citizens have been indirect participants in primary legislations.

By contrast, indirect public participation in delegated legislation gets restricted, an aspect highlighted with reservations in earlier judgments of this court[49]. Traditionally this has passed judicial acceptance for several reasons, including exercise of keen legislative oversight over the executive agencies thereby ensuring integrity of the collective rule. This concern can be however addressed by adopting good governance principles, or by way of legislative mandate in the enacted statutes, rules and regulations. In fact, we have several legislations which mandate pubic participation in the form of consultation and even hearing, with an objective that the decisions and policies take into account people's concerns and opinions. Public participation in this manner is more direct and of a higher order, than primary legislations enacted by elected representatives.

[49] See paragraphs 10 and 23 of this judgment.

40. However, delegation of the power to legislate and govern to elected representatives is not meant to deny the citizenry's right to know and be informed. Democracy, by the people, is not a right to periodical referendum; or exercise of the right to vote, and thereby choose elected representatives, express satisfaction, disappointment, approve or disapprove projected policies. Citizens' right to know and the government's duty to inform are embedded in democratic form of governance as well as the fundamental right to freedom of speech and expression. Transparency and receptiveness are two key propellants as even the most competent and honest decision-makers require information regarding the needs of the constituency as well as feedback on how the extant policies and decisions are operating in practice. This requires free flow of information in both directions. When information is withheld/denied suspicion and doubt gain ground and the fringe and vested interest groups take advantage. This may result in social volatility.[50]

41. This is not to say that consultation should be open ended and indefinite, or the government must release all information, as disclosure of certain information may violate the right to privacy of

[50] With reference to Olson 7th implication, distribution collision ... reduce the rate of growth. 'The Rise and Decline of Nations' and subsequent studies.

individuals, cause breach of national security, impinge on confidentiality etc. Information may be abridged or even denied for larger public interest. This implies that there should be good grounds and justification to withhold information. Boundaries of what constitutes legitimate with holding can at times be debatable; but in the present case, there is no contestation between transparency and the right to know on the one hand, and the concerns of privacy, confidentiality and national security on the other. Further, the Development Act and Development Rules demand and require openness and transparency, and embody without exception the right to know which is implicit in the right to participate and duty to consult.

42. The historic and iconic nature of the Central Vista is too apparent to even consider any counter argument. This is evident from the formation of the Central Vista Committee, 1962, declaration of the entire Central Vista as a heritage zone in the Master Plan of Delhi as well as Annexure-II of the Unified Building Bye-Laws, which we would be referring to subsequently. Paragraph 10.2 of the Master Plan as per the heading 'Conservation Strategy' reads:

> "10.2 Built heritage of Delhi needs to be protected, nourished and nurtured by all citizens and passed on to the coming generations. It is suggested that with the aim of framing policies and strategies for conservation,

> appropriate action plans may be prepared by all the agencies. These should include promotion of conservation of the civic and urban heritage, architecturally significant historical landmarks, living monuments, memorials and historical gardens, riverfront, city wall, gates, bridges, vistas, public places, edicts and the ridge."

Paragraph 10.3 of the Master Plan, which relates to heritage zones, reads:

> Heritage Zone is an area, which has significant concentration, linkage or continuity of buildings, structures, groups or complexes united historically or aesthetically by plan or physical development. The following areas have been identified as Heritage Zones as indicated in the Zonal Plan:
>
> (ii) Specific heritage complex within Lutyens Bungalow Zone.

xx xx xx"

Paragraph 10.5 of the Master Plan reads:

> "Each local body/land owning agency should formulate "Special Development Plans" for the conservation and improvement of listed heritage complexes and their appurtenant areas. Alternation or demolition of any listed heritage building is prohibited without the prior approval of the Competent Authority.
>
> The development plans/schemes for such areas shall conform to the provisions, in respect of Conservation of Heritage Sites including Heritage Buildings, Heritage Precincts and Natural Feature Areas."

43. Questions would, therefore, arise whether mere change in the land use would be sufficient or the respondents were required to draw out a special conservation plan under paragraph 10.5 of the Master

Plan. These aspects have not been examined by the sanctioning and approving authorities. Suffice would be to notice and record merit in the contention raised by the petitioners that mere change in land use of the six plots in the Central Vista would not be sufficient without specific amendments and modifications of the Master Plan of Delhi, including the following stipulation:

> **"8.1 DECENTRALIZATION OF OFFICES**
> As per NCR Plan, no new Central Government and Public Sector Undertaking offices should be located in NCTD. However, the issue of shifting existing Government / PSU offices from Delhi as well as restricting the setting up of new offices would only be possible after a time bound action plan is prepared together with suitable incentives and disincentives.
>
> **8.2 OPTIMUM UTILIZATION OF GOVERNMENT LAND**
> Government of India, Govt. of NCTD and local bodies are occupying prime land in Delhi for their offices. Most of the offices have been setup immediately after Independence. Large areas are underutilized and have completed their economic life. Due to downsizing of government employment and need for generation of resources by ministries, optimum utilization of existing government offices/ land could be achieved by the following measures:
> (i) Intensive utilization of existing government offices/land.
> (ii) Utilization of surplus land by the government for residential development.
> (iii) Utilization of 10% of total FAR for commercial uses to make the restructuring process financially feasible. This shall be subject to approval of land owning agency and concerned local body.
>
> XX XX XX"

44. The Government of India, Ministry of Housing and Urban Affairs, Central Public Works Department in September 2019 had published a handbook called “Conservation and Audit of Heritage Buildings”. The handbook emphasises on the need to protect and conserve heritage which was described as tangible and intangible values passed on to us from the past. Conservation of built heritage is generally perceived to be in long term interest of the society. On the question of identifying heritage properties, specific reference is made to the Parliament House at New Delhi being a building associated with historical events, activities or patterns. Reference is also made to the model building by-laws of 2016 which have specific provisions relating to heritage buildings, heritage precincts and natural feature areas identical to the unified building by-laws as applicable to Delhi. The process of identification of heritage buildings is determined by three concepts, namely, significance, integrity and context and observes as under:

"

Historic significance is the importance of a property to the history, architecture, archaeology, engineering or culture of a community, region or nation.

In selecting a building, particular attention should be paid to the following:

- Association with events, activities or patterns
- Association with important persons
- Distinctive physical characteristics of design, construction or form, representing work of a master
- Potential to yield important information such as illustrating social, economic history such as railway stations, town halls, clubs, markets, water works, etc.
- Technological innovations such as dams, bridges, etc.
- Distinct town planning features like squares, streets, avenues, e.g Rajpath in Lutyens, New Delhi

Historic integrity is the authenticity of a property's historic identity, evidenced by the survival of physical characteristics that existed during the property's historic period.

Historic integrity enables a property to illustrate significant aspects of its past. Not only must a property resemble the historic appearance but it must also retain physical materials, design features and aspects of construction dating from the period when it attained significance.

Historic context is information about historic trends and properties grouped by an important theme in the history of a community, region or nation during a particular period of time. A knowledge of historic context enables listeners to understand a historic property as a product of its time

Significantly, the handbook on the basis of criteria identifies Rajpath in Lyutens' New Delhi as a heritage building/precinct because of its distinct town planning features like squares, streets and avenues.

45. While the Respondents have claimed that modifications to the Master Plan of Delhi would not result in change in character of the plan, a reading of the notice inviting tenders published by the Central Public Works Department inviting design and planning firms

for the “Development / Redevelopment of Parliament Building, Common Central Secretariat and Central Vista at New Delhi” indicates that the proposed project does envisage extensive change to the landscape. The scope of the project has been described as – “The objective of this bid document is to replan the entire Central Vista area…” The Terms of Reference of the bid similarly states:

> “There is a need for a visionary Master Plan to be drawn up for the entire Central Vista area. The new Master Plan shall be a blue-print for the redevelopment of the entire area – locating modern government office building blocks complete with building design, engineering services design, site development infrastructure, landscape, water bodies, lighting amongst other components. The Master Plan shall also provide intelligent and sustainable solutions for present issues pertaining to inefficient land-use, traffic congestion, pollution etc. The new Master Plan shall identify and detail out all works including building design, engineering services and infrastructure design, site development, landscape design, engineering services and infrastructure design, site development, landscape design, mobility plan, lighting design, water bodies etc.”

The impact of the changes envisaged are not minor and what is envisaged is complete redevelopment of the entire Central Vista, with site development infrastructure, landscape design, engineering design and services, mobility plan etc. The expenditure to be incurred and demolition and constructions as proposed indicate the expansive and sweeping modifications/changes purposed.

46. We have noticed the marked difference between the scope and amplitude of power conferred on the Authority under sub-section (1) and the power conferred on the Central Government under sub-section (2). Sub-section (1) grants restricted and limited power to the Authority to make modifications to the Master Plan and the Zonal Development Plan as it thinks fit, which in the Authority's opinion do not: (i) effect important alterations in the character of the plan, i.e. the Master Plan or the Zonal Development Plan; and (ii) relate to the extent of the land-uses or the standards of population density. Sub-section (2) confers a separate and wider power on the Central Government to make any modification to the Master Plan or the Zonal Development Plan, whether such modifications are of the nature which the Authority (i.e. the DDA) is authorised to do or otherwise. Sub-section (3) to Section 11A mandates that the Authority or the Central Government, as the case may be, shall publish a notice as per prescribed rules inviting objections/suggestions from any person with regard to the proposed modification before a specified date and that the Authority or the Central Government shall consider all the objections/suggestions that may be received. Thus, sub-section (3) to Section 11-A proceeds on the distinction between the power conferred on the Authority and the Central Government under sub-sections (1) and

(2) of Section 11-A of the Development Act. It states that the objections and suggestions can be received by the Authority or the Central Government. Sub-section (4) to Section 11-A states that every modification shall be published in the manner as the Authority or the Central Government, as the case may be, shall specify and the modification shall come into operation on the date of publication or such other date as the Authority or Central Government may fix. Sub-section (5) to Section 11-A states that where an Authority makes modifications to the plan under sub-section (1), it shall report to the Central Government full particulars of such modifications within thirty days of the date on which such modifications come into operation. In other words, in modifications covered by sub-section (1), the requirement is that the Authority post the approval shall report to the Central Government within thirty days from the date on which modifications have come into operation. In case of modifications covered by sub-section (2) to Section 11-A, it is the Central Government which considers the objections and suggestions and thereafter may notify the proposed modification in entirety or in part. Central Government on consideration may even drop and not notify the proposed modifications. It is in this context that the judgment of this Court in ***Syed Hasan Rasul Numa*** quoted above, had quashed the modifications as there was no record of the

objections/suggestions to the modifications being considered and decided by the Central Government.

47. The respondents have placed on record the notification dated 27th September 2012, SO No. 2318(E) published in the Gazette of India on 27th September 2012 whereby, in exercise of powers conferred by sub-section (2) of Section 52 of the Act, the Central Government has directed that the power exercisable by it "under Section 11-A for the purpose of review/modification of the Master Plan of Delhi 2021 shall be exercisable by the Vice Chairman of DDA insofar as it relates to issue of public notice for inviting objections and suggestions from any person". Clearly, the Central Government recognises and accepts the difference between the power under sub-section (1) and (2) to Section 11-A and that the Central Government alone has the power to consider the objections/suggestions and make modifications which are excluded from the ambit of sub-section (1).

48. Two other aspects need to be noticed before we elucidate and refer to other lapses in the decision-making process. Given the nature of changes in the proposal, sub-section (2) to Section 11-A applies. Indeed, the notification dated 20th of March, 2020 approving the proposal states that the Ministry of Housing and Urban Affairs, in

exercise of powers conferred under sub-section (2) to Section 11-A, had made the modifications in the Master Plan of Delhi and Zonal Development Plan of Zone B and C (see paragraph 17). However, it is clear that the procedure followed is the one applicable to modifications under sub-section (1) to Section 11-A. Secondly, the Central Government in the present case has not passed an order under sub-section (6) to Section 11-A of the Development Act.

49. The Respondents in the consolidated affidavit dated 24th July 2020 have pleaded that there is no change in the character of the plan, i.e. the Master Plan, and the Zonal Development Plan for Zone D and C. Accordingly, contrary to the Notification dated 20th March,2020 which specifically refers to the Central Government exercising power under sub-section (2) to Section11A, they have relied upon sub-section (1) to Section 11A. Relevant portion of the consolidated affidavit of the Respondents reads:-

> "**No Change in the Character of Plan**
>
> 39. it is submitted that change in land use is in the direction of aligning the existing land use with the proposed Central Vista Development / Redevelopment Plan and it is not going to alter any fundamental character or historicity of this area. It is only a readjustment / reorganization of the Central Government Ministry offices. The present District Park area of 9.5 acre has been compensated by providing 5.64 acre in D Zone (Central Vista) and 3.9 acre in C Zone, thereby keeping the green spaces intact. It is pertinent to mention that as per modified Plan the green area along the Rajpath will

increase by 5.64 acre. It is submitted that after the land use modification of six plots, the character of the plan is not changing as they shall be utilised for Government offices as already functional in the area. Therefore, there is no change in the character of usage, rather it will be more organised and planned. The Government funds which are being utilised for maintenance shall now be utilised to construct state of the art buildings, with provisions of modern infrastructure, architecture and structurally safe buildings. The buildings currently are more than 60 years old and as per civil engineering design norms have completed their life."

The Authority in its affidavit has pleaded somewhat similarly, stating:

"No Change in the Character of Plan / Extent of Land Use

The Change in land use is in the direction of aligning the existing land use with the proposed Central Vista Development / Redevelopment Plan and it is not going to alter any fundamental character or historicity of this area. It is only a readjustment / reorganisation of the Central Government Ministry offices. The present District Park area of 9.5 acre has been compensated by providing 5.64 acre in D Zone (Central Vista) and 3.9 acre in C Zone, thereby keeping the green spaces intact. It is pertinent to mention that as per modified Plan the green area along the Rajpath will increase by 5.64 acres."

At another place in the consolidated affidavit filed by the Respondents with reference to the power of the Authority under Section 11-A, it is pleaded :

"...Section 11A, Chapter IIIA of the Delhi Development Act, 1957 empowers the Delhi Development Authority (DDA) to modify the Master Plan or the Zonal Development Plan as it things fit; and as such answering Respondent DDA was empowered and fully competent to issue the said Public Notice and the subsequent modification.

It is further submitted that in the context of the subject Notification dated 21.12.2019, it is submitted that the

proposal did not make any important alteration in the character of the plan, extent of land use or standards of population density."

50. In the written submissions filed by the respondents on issues of change of land use, with reference to sub-section (1) and (2) of Section 11-A, it is stated as under:

> "23. In light of the above, it is unequivocally submitted that the present process culminating in to the notification dated 20.03.2020, is issued under sub-section 2 of Section 11-A the DDA Act. It is submitted that as stated above, the power of the Central Government under sub section 2 are untrammelled and uninhibited by the conditionalities of sub-section 1. It is submitted that following language in the present impugned notification represents a clear application of mind by the Central Government to the material presented by the specialised body and therefore, is clearly a decision taken after due consideration and after due analysis of the material. The said part of the notification dated 20.03.2020 is as under:

> "S.O. 1192(E).—Whereas, certain modifications which the Central Government proposed to make in the Master Plan for Delhi-2021 / Zonal Development Plan of Zone-D (for Plot No. 02 to 07) and Zone-C (for Plot No. 08) regarding the area mentioned here under were published in the Gazette of India, Extraordinary, as Public Notice vide No. S.O. 4587(E) dated 21.12.2019 by the Delhi Development Authority in accordance with the provisions of Section 44 of the Delhi Development Act, 1957 (61 of 1957) inviting objections/ suggestions as required by sub-section (3) of Section 11-A of the said Act, within thirty days from the date of the said notice;
>
> 2. Whereas, 1,292 objections/ suggestions received with regard to the proposed modifications have been considered by the Board of Enquiry and Hearing, set up by the Delhi Development Authority and the proposed modifications were recommended in the meeting of Delhi Development Authority held on 10.02.2020;

> 3. Whereas, the Central Government have after carefully considering all aspects of the matter, have decided to modify the Master Plan for Delhi-2021 / Zonal Development Plan of Zone-D & Zone-C;
>
> 4. Now, therefore, in exercise of the powers conferred under Sub-section (2) of Section 11-A of the said Act, the Central Government hereby makes the following modifications in the said Master Plan for Delhi-2021 / Zonal Development Plan of Zone-D & Zone-C, with effect from the date of Publication of this Notification in the Gazette of India.
>
> 24. Therefore it is submitted that the challenge to the process and the notification, as presented by the Petitioners, is meritless. It is submitted that without prejudice to the above, it is submitted that even if the present notification is considered to be one issued under sub-section 1 of Section 11-A, the present change of land use does not after the conditionalities of the said sub-section which will be dealt with separately."

Paragraph 23 makes an interesting reading as it accepts that the modifications were covered by Section 11-A(2) and not Section 11-A(1) of the Development Act. However, in paragraph 24, it is pleaded that the notification may also be considered to have been issued under sub-section (1) to Section 11-A as the present land use does not impinge upon the conditionalities of the sub-section which have been dealt with independently. This ambiguous and oscillating stand, which is also contradictory, goes to the root of the issue and question of the authority empowered and competent to legislate. First there is failure of the Central Government to pass any order under sub-section(6) to Section 11A. Secondly, this

oscillation is for a reason; fatal failure to follow the procedure prescribed under sub-section (2) to section 11A of the Development Act as explained and elucidated in paragraph 51 below. Faced with this situation in the written submissions filed by the respondents, a different version has been given in the list of dates and events, wherein it has been stated as under:

> "06.02.2020 – A background note was placed by the L&DO in response to the objections raised.
>
> Note 1: It is clear that the L&DO being the Central Government, at this stage, applied its mind to the objections and suggestions made before the DDA."

This assertion in the list of dates is not supported by an affidavit on record. It would be hypothetical and incongruous to accept that L&DO had applied its mind to the objections and suggestions even before the public hearing, and therefore, the court should assume that the Central Government had considered the objections and suggestions. The stands would fall foul of duty to follow procedural fairness and legitimate expectation expected from a public authority required to comply with the statutory duty of consultation in the decision making process. Final decision must be conscientiously and objectively taken by the competent authority post the hearing. This plea must be reject, as the public hearing was slated on 6th and 7th of February 2020. ***Cellular Operators***

Association of India and others holds that public consultations must be undertaken when the proposals are at a formative stage. Further, the assertion is contrary to the minutes of the meeting of the Authority, i.e. the DDA, on 10th February 2020 in which the Additional Secretary (G), MoHUA and Member of the Delhi Development Authority had participated. A perusal of the note dated 6th February 2020 also affirms the position that particulars and details of the proposal were not uploaded and made available for the public. The letter written by the L&DO dated 6th February 2020 with reference to the background note does not reflect consideration of the objections and suggestions but *inter alia* states that by an earlier letter dated 4th December 2019, agenda for change of land use of eight blocks has been forwarded for placing before the technical committee of the Authority and a background note was being enclosed. Authority was requested to take necessary action accordingly. This is not a letter or communication showing consideration of the suggestions and objections.

51. The Central Government has not placed on record even a single document or minutes to show that the objections and suggestions were considered by the Central Government, albeit they place reliance on the gazette notification 20th March, 2020 which does not

specifically talk about considerations of objections and suggestions but states 'whereas the Central Government have after carefully considering all aspects of the matter, have decided to modify the Master Plan for Delhi 2021/Zonal Development Plan for Zone D and Zone C'.

52. Relevant also on the said aspect are the minutes of the meeting of the Authority held on 10th February 2020 at Raj Niwas, Delhi wherein it is observed as under:

> "(g) Additional Secretary (D), MoHUA and Member, Delhi Development Authority, explained that the Authority is competent to make the proposed modification in the Master Plan for the land uses as these will not alter the character of the Master Plan sine they are in line with the Lutyens & Bakers' plan of housing Government buildings in the Central Vista. Further, the proposal does not impact the extent of the land uses and the standards of population density as has been envisaged in the Master Plan for Delhi, (MPD) – 2021. Hence, Section 11(A)(1) of Delhi Development Act, 1957, empowers the Authority to make proposed changes under consideration. Vice-Chairman DDA further corroborated this and stated that only after being satisfied that the Authority is competent under section 11(A)(1) of the Act, that the proposal has been considered and submitted for Authority's approval."

Clearly, therefore, the Authority and the Central Government were of the view that sub-section (1) to Section 11-A would apply and the procedure as applicable should be followed, but notwithstanding objections and challenge no order under sub-section (6) to Section 11-A of the Development Act was passed.

Indeed, if there had been an order under sub-section (6) to Section 11-A, it would have been filed as part of the pleadings with liberty to the petitioners to challenge the same in accordance with law which would include unreasonableness as covered by Wednesbury principles. Sub-section (6) to Section 11-A of the Development Act in our opinion are mandatory. Sub-sections (1) to (6) to Section 11-A envision the Authority and the Central Government as two separate and distinct authorities with limited and broader powers for 'legislating' proposals for modifications of the Plans.

53. Faced with the aforesaid position, the respondents had argued that Development Rules 4, 8, 9 and 10, would not be applicable as they relate to preparation of Master Plan or the Zonal Development Plan and not to the amendment or modifications envisaged by sub-section (2) or even (1) to Section 11-A of the Development Act. Our attention was drawn to Rule 12, which stands deleted. Rule 12 had stipulated that amendments to whole or any part of the Master Plan, if necessary, after expiry of five years can be undertaken by the Authority in accordance with the procedure prescribed by the Development Act and Development Rules as if the proposed amendment were a new Master Plan. Therefore on deletion of Rule 12 in 1966, Rules 4,8,9 and 10 of the Development Rules do not

apply to modification of the Master Plan or Zonal Development Plans. This contention, through attractive, must be rejected for several reasons. In any case, it cannot be denied that Section 11A and Rule 16 mandate issue of public notice for inviting objections and suggestions from the public and due consideration by the Authority or the Central Government, as the case may be. As elucidated above this requires intelligible and adequate disclosure to enable public to make suggestions/objections. We would now elucidate reasons why the procedure as per Rules 4, 7, 8 to 10 of the Development Rules is necessary: -

a. Sub-section (4) to Section 10 states that provisions can be made by the rules in respect of form and content of the plan and with regard to the procedure to be followed and any other matter in connection with the preparation, submission and approval of the plan. This sub-section could equally apply to modification of a plan. Sub-section (3) to Section 11-A is similarly worded as it states that the Authority or the Central Government, as the case may be, shall publish a notice in such form and manner as may be prescribed in this behalf and thereby invite objections and suggestions from any person in respect of the proposed modifications before such date as may be specified in the notice. It mandates that the Authority

or the Central Government, as the case may be, shall consider the objections and suggestions. The sub-section (3) to Section 11-A makes reference to the rules which are applicable, i.e. the Delhi Development (Master Plan and Zonal Development Plan) Rules, 1959. Therefore, the modification of the Plan as per Section 11-A of the Development Act has to be done as per the procedure prescribed by the Development Rules and not *de hors* these rules. As per Rule 15, Rules 5 to 11 relating to the Master Plan apply *mutatis mutandis* to the Zonal Development Plan. There are several good reasons why this interpretation is more acceptable and should be adopted.

b. In ***Superintendent and Legal Remembrancer, State of West Bengal*** v. ***Corporation of Calcutta***[51] , a nine judges bench of this Court had held that the interpretative tool of necessary implication can be drawn when it would hamper the working of the statute or would lead to the anomalous position that the statute may lose its efficacy. It is also well settled that provisions have to be read harmoniously to effectuate them and give effect to the legislative intention. In the present case,

[51] AIR 1967 SC 997

the said interpretative tool of necessary implication would apply as modifications, which can be major or substantive in nature as in the present case, should follow and comply with Rules 4, 8,9 and 10 of the Development Rules. Otherwise, an anomalous position would arise permitting modifications that have a far reaching impact being made post the enactment of the plan without following the rigours prescribed for the original enactment of the plan.

c. Section 21 of the General Clauses Act reads:

> "Power to issue, to include power to add to, amend, vary or rescind notifications, orders, rules or bye-laws — Where, by any Central Act or Regulations a power to issue notifications, orders, rules or bye-laws is conferred, then that power includes a power, exercisable in the like manner and subject to the like sanction and conditions (if any), to add to, amend, vary or rescind any notifications, orders, rules or bye-laws so issued."

Mandate of this section would apply as there is nothing expressly or impliedly in Section 11-A that seeks to obliterate or even limit the need for public hearing. Silence does impede applicability of Rules 4,8,9 and10 of the Development Rules. Rather in terms of Section 21, silence enforces applicability of these rules. Inconsistency is the test. In other words, the power to add to, amend, verify or rescind the Master Plan under Section 11A are subject to the condition of public

hearing as required by the Development Act, and Development Rules, as they prescribe to enactment of the Master Plan or Zonal Development Plan. The procedure to modify the plan has to follow procedure as it would apply to approve and modify the initial plan. Therefore for modification of a plan, the BoEH has to be constituted and hearing has to be afforded to those who have submitted representations, suggestions and objections to the proposal under consideration. Any amendment or modification of a plan under Section 11-A of the Development Act contrary to or de hors the procedure prescribed in Rules 4, 8 and 9 will be contrary to law. Referring to Section 21 of the General Clauses Act, in ***Kamla Prasad Khetan v. Union of India***,[52] this Court had observed that the power to issue an order under the Central Act includes the power to amend an order, but this power is subject to an important qualification contained in the words 'exercisable in the like manner and subject to the like sanction and conditions (if any)'. Therefore, the amending or modifying order has to be made in the same manner as the original order and is subject to the same conditions that

[52]AIR 1957 SC 676

govern the making of the original order. In ***Scheduled Caste and Weaker Sections Welfare Association*** v. ***State of Karnataka***,[53] this Court struck down a notification issued under the Karnataka Slum Areas (Improvement and Clearance) Act, 1973 which had rescinded the original notification and had thereby reduced the slum area. After referring to earlier decisions, it was observed that Section 21 of the General Clauses Act would apply as there was nothing in the subject matter, context or effect of the concerned provision so as to be inconsistent with the application of Section 21 as the procedure for issue of notification had required and could be exercised only after hearing the affected parties. It was held that the amendment and redeclaration would also require the same procedure to be followed. The rule of personal hearing, it was observed, was incorporated to protect every citizen against arbitrary power of the State or its officers and is mandated by law as it is the duty of the State to act judicially.

d. Doctrine of *contemporanea expositio* is applicable as the respondents have in the past followed and applied

[53] (1991) 2 SCC 604

Development Rules 4, 8, 9 and 10 while considering proposals for modification of plan (s) under Section 11-A of the Development Act. Authorities on interpretation of Section 11A have held that Rules 4, 8, 9 and 10 would be applicable to modifications undertaken in terms of Section 11-A of the Act. The maxim *'Contemporanea exposition est optima et fortissimo in lege'* means that the best way to construe a provision or document is to read it as it would have been read when it was made. Explaining this principle of interpretation, it has been held that contemporaneous construction placed by the authorities charged with executing the statute should be accepted by giving weight unless it is clearly wrong, in which case it should be overturned. The construction given by the authorities whose duty is to construe, execute and apply an enactment is highly persuasive though when the court feels that this is a case of an error, it may refuse to follow such construction. G.P. Singh, in *The Principles of Statutory Interpretation* (14th edition) has explained that usage and practice developed under the statute is indicative of the meaning ascribed to its words by contemporary opinion as an external interpretive aid to construction. However, it is subject to the condition that the court is not prevented from giving the

true construction as interpretation received from contemporary authority is not binding on the court, which may even disregard such interpretation if it is clearly wrong. Suffice to say, in the present case, reject the interpretation that Rules 4, 8 ,9 and 10 do not apply to the process of modification of the Master Plan, as inimical to the language as well as the spirit of the Development Act. On the contrary, application of Rules 4, 8, 9 and 10 has been accepted by *contemporanea expositio* by the Authority and the Central Government. We agree there are limitations to the principle of *contemporanea expositio* when the statutes are old as this principle has not been applied to the Evidence Act, 1872 and the Telegraph Act, 1885. Nevertheless, in the present case, the interpretation given above is in consonance with the interpretation given by the Respondents, i.e. the authorities who had made the Development Rules.

e. Any change or modification in the practice adopted by the respondents viz. Rules 4, 8, 9 and 10 and their application to modifications under Section 11-A of the Act would also be governed by the principle of procedural legitimate expectation which has special application in planning law. Recently, this Court in ***State of Jharkhand*** v. ***Brahmputra Metallics***

Limited Civil ,[54] has elaborately referred to the doctrine of legitimate expectation by referring to the English Law, some of which has been quoted below, to observe that in Indian jurisprudence there appears certain doctrinal confusion which needs to be corrected. The doctrine means that the public authorities should be held bound by the representations since citizens continue to live their lives based on the trust they repose in the State. When public authorities fail to adhere to their representations without providing adequate reasons, it violates the trust reposed by the citizens in the State. The basis of the doctrine of legitimate expectation is reasonableness and fairness, the denial of which may amount to abuse of power. The remedies against public authority must also take into account the interest of general public which the authority seeks to promote. There is denial of legitimate expectation when in a given case it amounts to denial of a right that is guaranteed, or is arbitrary, discriminatory, unfair or biased or gross abuse of power or in violation of principles of natural justice so as to attract Article 14 of the Constitution. However, mere legitimate expectation without anything more

[54]Appeal No. 3860 of 2020 decided on 1st December 2020

cannot *ipso facto* give a right to invoke these principles. This means that public authorities cannot play fast and loose with the powers vested in them which have to be exercised in the larger public and social interests. Every authority is under a legal obligation to exercise the power reasonably and in good faith to effectuate the purpose for which powers were conferred. In this context, good faith for legitimate reasons, that is, *bona fide* for the purpose and none other. In this way, legitimate expectation is a way in which the constitutional law guarantees non-arbitrariness enshrined under Article 14. Procedural legitimate expectation is distinct from substantive legitimate expectation as explained in ***R (Bhatt Murphy) and Others*** v. ***Independent Assessor***[55], as procedural expectation arises where a public authority has provided an unequivocal assurance, whether by means of express promise or established practice that it will give notice and a chance of hearing to the affected party before it changes an existing substantive policy. In such cases, the court will not allow the decision maker to effect proposed change without notice or consultation, as the case may be, unless there is

[55](2008) EWCA Civ 755

overriding legal duty to the contrary or countervailing public interest which requires departure from the express promise or established practice. In the latter case, i.e. in case of departure, the onus would be on the authority to justify such departure. The reason for applying the principle of procedural legitimate expectation is not only to check the decisions which may have harsh impact, or to prevent unfairness or abuse of power, but to enforce the principle of good governance, i.e. the public bodies ought to deal straight forwardly and consistently with the public. This is an objective standard of public decision making on which the courts would insist.

Procedural legitimate expectation does not suffer and have the same constraints in application which the courts are faced when parties invoke substantive legitimate expectation against the Government or public authority challenging the change or abolition of the earlier policy. It is generally agreed that ordinarily every government or authority, has the right to change the existing policy unless such change is hit by Wednesbury principle of unreasonableness, etc.. Therefore, normally substantive legitimate expectation rarely results in a relief unless there is a specific undertaking directed to a particular individual or a group by which the relevant policy's

continuance is assured. Even in such cases, substantive promise cannot be binding if it is *ultra vires* or inconsistent with the statutory duties imposed on the authority. The third category of legitimate expectation is related to the second and was described in ***Bhatt Murphy's*** case as 'secondary case of procedural expectation' which applies in situations where, without any express promise, the public authority has established a policy substantially affecting a person or persons who have reasonably relied on its continuance, can well claim a right to present their views and contest the proposed change before it is withdrawn. In the present case,

we are not concerned with the second and third category but with the first category, i.e. procedural legitimate expectation. This principle has often been applied when there is lack of consultation which results in failure to follow procedural promises or established practice in municipal law as has been held in ***R (Majid)*** v. ***London Borough of Camden***[56]***,*** and ***R (Kelly)*** **v.** ***London Borough of Hounston***[57], where the claimant was not informed of the date of the committee meeting in time to address it and in ***R (on the application of***

[56]2009 EWC Civ 1029
[57]2010 EWHC Civ 1256

Vieira) v. ***London Borough of Camden***[58], which was a case relating to grant of retrospective planning permission for a conservatory and for a building by a local authority, which was struck down. The grounds included failure to make documents and reports available on the website for comment before the panel meetings as stated in the published procedure for members briefings and the statement and the requirement that the 'members briefing panel' would be consulted on whether the application should be referred to the committee as indicated in the planning protocol, the procedure for members briefing and its website. Importantly, in this case, the local authority's submission that even if it had acted unlawfully, relief should be refused on the basis of the claimant's low prospects of success in objecting to the planning permission was rejected, on the following reasons:

> "116. A quashing order should only be refused if it is inevitable that the outcome would have been the same had the correct procedures been followed see R (Copeland) v. London Borough of Tower Hamlets, (2011) J.P.L. 40 at para 36, 37 citing Smith v. North Derbyshire Primary Care Trust (2006) EWCA Civ 1291, per May LJ at (10):
>
> "…Probability is not enough. The defendants would have to show that the decision would inevitably have been the same and the court must not unconsciously stray from its proper province of reviewing the

[58]2012 EWHC 287

> propriety of the decision making process into the forbidden territory of evaluating the substantial merits of the decision…"
>
> 117. In the present case the Interested Party built the new conservatory enforcement action. The planning concerns are recognised in the Members' initial request for amendments to the scheme. There remains the question whether those amendments make the scheme acceptable, or whether there is an alternative solution.
>
> 118. In my judgment, this is not a case in which it would be proper to refuse relief. I order that the grant of planning permission should be quashed, and re-considered according to law."

54. We have referred to the principle of procedural legitimate expectation only to reinforce our interpretation of Rules 4, 8, 9 and 10 on their applicability to modification of the Plan under Section 11-A of the Act as legitimate expectation comes into play when there is no statutory requirement. If there is a breach of statutory requirement then the breach itself can be made subject matter of the proceedings. Legitimate expectation comes into play when there is a promise or a practice to do more than that which is required by the statute. This is also the view expressed in 11th Edition of Administrative Law (H.W.R. Wade and C.H. Forsyth) at page 458 that doctrine of legitimate expectation thus extends the procedural protection that would otherwise be applicable; it enhances but does not replace the duty to act fairly.

55. The core issue in the present case is whether or not the respondents have performed their duty to consult the public, followed the prescribed procedure and the authority competent had acted to modify/amend, in terms of the Development Act and the Development Rules. We are not concerned with the merits of the proposal. The respondents in the first sentence of the written submissions in paragraph 1 have stated as under:

> "1. At the outset, it is submitted that the present broad segmented development of the Central Vista is part of a sovereign policy designed to meet the present and future needs of space, to alleviate the issues surrounding the particular area in terms of the ecology impact and to keep the architectural heart of Indian democracy at pace with the changing needs to time whilst preserving the glory of the past."

The latter portion of the sentence beginning from 'designed' till 'glory of the past' represents the stand of the respondents. However, the contention that the broad segmented development of Central Vista is a part of sovereign policy requires emendation and elucidation. The sovereignty rests with the People of India who have enacted and given to themselves the Constitution, which incorporates the principle of separation of powers between the Legislature, the Executive and the Judiciary. Each of them function within the four corners of the Constitution, including compliance with the statutes and statutory rules while enacting delegated legislation.

Elected executive certainly has constitutional and people's mandate to choose, formulate and execute policies, albeit in accordance with law. We have already delineated the parameters on which delegated legislation can be challenged before the court which includes failure to follow the mandatory procedure as well as the delegatee exceeding its power as conferred by the legislature. Merits of the public policy is not *perse* a dispute being decided by the Court. The matter and dispute before us relates to the validity of delegated legislation on the ground that the procedure prescribed by law, namely the Development Act and Development Rules has not been followed.

56. At this stage, it would also be appropriate to refer to Section 45 of the Delhi Development Act which mandates that where any notice, order or document issued or made under the Act or any rule, regulation made thereunder requires anything to be done for which no time is fixed under the Act, the notice, order or document shall specify reasonable time for doing so. The petitioner has placed on record written communications raising objections to the public notice dated 3rd February. 2020 fixing the hearing for 6th / 7th February, 2020, as it did not give reasonable time for preparing and appear in person for the hearing. It may be noted here that the respondents

have also stated that the emails were also sent on 3rd and 4th February, 2020 to 1292 objectors on the e-mail addresses provided by them. Only forty-two (42) persons had appeared before the Board of Enquiry and Hearing on the two dates.

57. As per the writ petitioners, the public notice dated 3rd February, 2020 was published in the newspapers on 5th February, 2020. It is also stated that the emails with regard to public hearing on 6th and 7th February, 2020 were received in the evening on 4th February, 2020 and afternoon of 5th February, 2020 which hardly gave them any time to make it convenient to appear and present their views after due preparation. The contention of the writ petitioners is that this denied and prevented them from making full and proper representation at the time of oral hearing. Notice , therefore, gave no option to those who had submitted their objections/suggestions except to cancel and forego their prior arrangements and also make their travel arrangements, which in several cases was not possible. The Petitioners also state that in the course of the hearing, many a times when clarification or information was sought in order to make constructive and creative suggestions, the members of BoEH expressly told them that they would not respond at all and the petitioners were only supposed to make their submissions.

58. In the present case, there is violation of the Section 45 as public notice of hearing fixed on 6th and 7th of February 2020 was issued by way of public notice dated 3rd February, 2020 published on 5th February, 2020. SMS and email were issued at the last moment. Lack of reasonable time, therefore, prevented the persons who had filed objections and given suggestions to present and appear orally state their point of view.

59. We would now turn to the permission granted by the Central Vista Committee (the 'Committee) on 9th March 2020. The Petitioners have contended that the said permission was reduced to a mere formality as the Committee did not apply its mind to the proposal. The Respondents have submitted that Committee is not a statutory body and therefore the principles of administrative decision making are not applicable to it. The Petitioner's refutes this contention stating that though the Committee is not a statutory body, it has trappings of a statutory body. The Petitioner's, to buttress this stance, have relied, *inter-alia* on the Tender/Notice inviting bids for 'consultancy services for comprehensive architectural and engineering planning for the development/redevelopment of Parliament Building, Common Central Secretariat and Central Vista' at New Delhi, vide NIT No. 04/CPM/RPZ/NIT/2019. Clause 4 of the

Tender condition provides that" The *consultant should adhere to the Central Vista committee Guidelines and Lutyens Bungalow Zones guidelines while carrying out the consultancy work for the Redevelopment of Central Vista*". The petitioners have also pointed that similar binding status was bestowed to the Committee in the Notice inviting bids for National War Museum. The Petitioners have relied on the Zonal Development Plan for Zone D, a piece of delegated legislation. The clause 6.4.3 (vii) of this Zonal Development Plan provides that "*a detailed form of study should be taken up for this prestigious area* (President Estate/ North and South Blocks/Parliament House, etc) *in consultation with DUAC and Central Vista Committee.*" The petitioners press that these provisions in the Tender Notices and Development Plans demonstrate that the Committee performs public functions akin to those performed by statutory bodies, and hence principles of administrative decision making are applicable. Zonal Development Plans are statutory and binding. They are formulated by a quasi-legislative exercise.

60. As per the minutes of the meeting on 9th March,2020, the following observations were made by the Committee:

> "The representatives of L&DO and HCP presented the proposal of change of land use to the Central Vista

> Committee. The list of members attending the meeting is at Annexure.
> Mr, Divya Khush, Member, CVC and President I.I.A. vide his message requested to read his views communicated by him to the committee. The same were read out by Member Secretary to all the members of the Committee in the meeting.
> The Committee was of the view that the proposal placed for discussion was for change of land use only. After detailed deliberation the Committee decided to accord approval in principle as the process of change of land use had been taken up by the competent authorities. Accordingly, the final approval of change of land use may be communicated to the Committee.
> However, one member representing the Indian Institute of Architects wanted detailed facts on the matter before he gave his consent."

Reading of the aforesaid minutes does not show fair and independent application of mind. The committee had decided to accord approval in principle "as the process for change of land use had been taken up by the competent authorities" and then records "accordingly, the final approval for change of land use may be communicated". Member representing Indian Institute of Architects had wanted detailed facts on the matter. His request was ignored. Conspicuously there is no discussion on the aspect of lack of information. Use of the word 'in principle' is indicative, if not reflects tentativeness, as if, it was not an expression of a firm opinion. Opinion and advise of the Committee is certainly of great value and importance. Their advice has been uniformly taken and followed for any redevelopment/changes in the Central Vista.

61. The writ petitioners have pointed out that on 24th March 2020 nation-wide lockdown was imposed due to COVID-19 pandemic imposing severe restrictions on movement. Nevertheless, a meeting of the Committee on 23rd April 2020 through video conferencing, with the agenda "Proposed New Parliament Building at Plot No.118, New Delhi", was held, and 'No Objection' was granted. The minutes of the meeting published on 30th April 2020 provide no reason whatsoever nor do they mention any details of the material considered and the discussion held. Pertinently, the mandate of the Committee is to engage architects and town planners to advise the government on development of the Central Vista and the Secretarial Complex. However, four independent representatives, namely, (i) President of Indian Institute of Architects; (ii) representative of Indian Institute of Architects (Northern Chapter); (iii) President of Institute of Town Planners, India; and (iv) representative of Institute of Town Planners, India, were absent and did not participate. Even the Chief Architect of the NDMC was not present. Therefore, only the representatives of the Government, the Director Delhi Division, MoHUA and Joint Secretary (Admn.) of Ministry of Environment and Forests were present. Thus, the contention that the meeting was a premeditated

effort to ensure approval without the presence and participation of representatives of professional bodies is apparent and hardly needs any argument. This was notwithstanding that the project in question is extremely significant and of great importance for the Central Vista Committee. The project is the most extensive re-development process ever undertaken in the Central Vista. Further, the approval granted to the proposed new Parliament building does not record the deliberations that took place or any reasons, even as the mandate of the Central Vista Committee is pivoted and required to study and advise. The writ petitioners along with the written submissions have filed copies of several minutes of the Committee relating to other projects like National War Museum and the Delhi High Court Underground Car Parking which demonstrate that detailed assessment is usually undertaken by the Committee, which is clearly lacking in the present case.

62. The Unified Building Bye-laws of Delhi, 2016, issued by the Authority under Section 57 of the Development Act, vide paragraph 2.3.3 refers to need for prior approval/no objections from external agencies including Heritage Conservation Committee and 7.26 states that provision for conservation of heritage sites, including heritage buildings, heritage precincts and featured areas shall be as

per Annexure-II. In other words Annexure II is binding and mandatory.

63. Annexure-II to the Unified By-Laws of Delhi, effectuates the object and propose, by specifying clear and strict norms that would apply to heritage sites, including heritage buildings, heritage precincts and natural feature areas. Relevant portions of Annexure II read:-

> "1. **Conservation of Heritage Sites including Heritage Building, Heritage/ Precincts and Natural Feature Areas** *(Please refer clause 2.18.2 and 7.26 of this document)*
>
> Conservation of Heritage sites shall include buildings, artifacts, structures, areas and precincts of historic, aesthetic, architectural, cultural or environmentally significant (heritage buildings and heritage precincts), natural feature areas of environmental significance or sites of scenic beauty.
>
>
>
> 1.1. ***Applicability:*** This regulation shall apply to heritage sites which shall include those buildings, artifacts, structures, streets, areas and precincts of historic, architectural, aesthetic, cultural or environmental value (hereinafter referred to as Listed Heritage Buildings/Listed Heritage Precincts) and those natural feature areas of environmental significance or of scenic beauty including but not restricted to, sacred groves, hills, hillocks, water bodies (and the areas adjoining the same), open areas, wooded areas, points, walks, rides, bridle paths (hereinafter referred to as 'listed natural feature areas') which shall be listed in notification(s) to be issued by Government/identified in MPD.
>
> 1.1.1 *Definitions:*

(a) “Heritage building” means and includes any building of one or more premises or any part thereof and/or structure and/or artifact which requires conservation and/or preservation for historical and/or environmental and/or architectural and/or artisanary and/or aesthetic and/or cultural and /or environmental and /or ecological purpose and includes such portion of land adjoining such building or part thereof as may be required for fencing or covering or in any manner preserving the historical and/or architectural and/or aesthetic and/or cultural value of such building.

(b) “Heritage precincts” means and includes any space that requires conservation and/or preservation for historical and/or architectural and/or aesthetic and/or cultural and/or environmental and/or ecological purpose. Such space may be enclosed by walls or other boundaries of a particular area or place or building or by an imaginary line drawn around it.

Xx xx xx

1.2 ***Responsibility of the Owners of Heritage Buildings:*** It shall be the duty of the owners of heritage buildings and buildings in heritage precincts or in heritage streets to carry out regular repairs and maintenance of the buildings. The Government, the Municipal Corporation of Delhi or the Local Bodies and Authorities concerned shall not be responsible for such repair and maintenance except for the buildings owned by the Government, the Municipal Corporation of Delhi or the other local bodies.

1.3 ***Restrictions on Development /Re-development / Repairs etc.***

(i) No development or redevelopment or engineering operation or additions/ alterations, repairs, renovations including painting of the building, replacement of special features or plastering or demolition of any part thereof of the said listed buildings or listed precincts or listed natural feature areas shall be allowed except with the prior permission of Commissioner, MCD, Vice

Chairman DDA/Chairman NDMC. Before granting such permission, the agency concerned shall consult the Heritage Conservation Committee to be appointed by the Government and shall act in accordance with the advice of the Heritage Conservation Committee.

(ii) Provided that, before granting any permission for demolition or major alterations / additions to listed buildings (or buildings within listed streets or precincts, or construction at any listed natural features, or alternation of boundaries of any listed natural feature areas, objections and suggestions from the public shall be invited and shall be considered by the Heritage Conservation Committee.

(iii) Provided that, only in exceptional cases, for reasons to be recorded in writing, the Commissioner, MCD/Vice Chairman DDA /Chairman NDMC may refer the matter back to the Heritage Conservation Committee for reconsideration.

However, the decision of the Heritage Conservation Committee after such reconsideration shall be final and binding.

1.4 ***Penalties:*** Violation of the regulations shall be punishable under the provisions regarding unauthorized development. In case of proved deliberate neglect of and/ or damage to Heritage Buildings and Heritage precincts, or if the building is allowed to be damaged or destroyed due to neglect or any other reason, in addition to penal action provided under the concerned Act, no permission to construct any new building shall be granted on the site if a Heritage Building or Building in a Heritage Precinct is damaged or pulled down without appropriate permission from Commissioner, MCD/Vice Chairman DDA/Chairman NDMC.

It shall be open to the Heritage Conservation Committee to consider a request for rebuilding/reconstruction of a Heritage Building that was unauthorized demolished or damaged, provided

that the total built-up area in all floors put together in such new construction is not in excess of the total built up area in all floors put together in the original Heritage Building in the same form and style in addition to other controls that may be specified.

1.5 ***Preparation of List of Heritage Sites including Heritage Buildings, Heritage Precincts and Listed Natural Features Areas:*** Preparation of List of Heritage Sites including Heritage Buildings, Heritage Precincts and Listed Natural Features Areas is to be prepared and supplemented by the Commissioner MCD/ Vice-Chairman DDA/Chairman NDMC on the advice of the Heritage Conservation Committee. Before being finalized, objections and suggestions of the public are to be invited and considered. The said list to which the regulation applies shall not form part of this regulation for the purpose of Building Bye-laws. The list may be supplemented from time to time by Government on receipt of proposal from the agency concerned or by Government suo moto provided that before the list is supplemented, objections and suggestions from the public be invited and duly considered by the Commissioner, MCD/ Vice-Chairman DDA/Chairman NDMC and/or Government and/or Heritage Conservation Committee.

When a building or group of building or natural feature areas are listed it would automatically mean (unless otherwise indicated) that the entire property including its entire compound/plot boundary along with all the subsidiary structures and artifacts, etc. within the compound/plot boundary, etc. shall form part of list.

1.6 ***Alteration/Modification/Relaxation in Development Norms:*** On the advice of the said Heritage Conservation Committee to be appointed by the Government and for reasons to be recorded in writing, the Commissioner, MCD/ Vice-Chairman DDA/Chairman NDMC shall follow the procedure as per DDA Act, 1957 to alter, modify or relax the Development Control Norms prescribed in the MPD, or Building Bye-laws of Delhi if required, for the conservation or preservation or retention of historic or

aesthetic or cultural or architectural or environmental quality of any heritage site.

1.7 ***Heritage Precincts/ Natural Feature Areas:*** In case of streets, precincts, areas and, (where deemed necessary by the Heritage Conservation Committee) natural feature areas notified as per the provisions of this Building Bye-Laws No. 1.5 above, development permissions shall be granted in accordance with the special separate regulation prescribed for respective streets, precincts/natural feature areas which shall be framed by the Commissioner, MCD/ Vice-Chairman DDA/Chairman NDMC on the advice of the Heritage Conservation Committee.

Before finalizing the special separate regulations for precincts, streets, natural features, areas, the draft of the same shall be published in the official gazette and in leading l newspapers for the purpose of inviting objections and suggestions from the public. All objection and suggestions received within a period of 30 days from the date of publication in the official gazette shall be considered by the Commissioner, MCD/ Vice-Chairman DDA/Chairman NDMC/Heritage Conservation Committee.

After consideration of the above suggestions and objections, the agency concerned acting on the advice of the Heritage Conservation Committee shall modify (if necessary) the aforesaid draft separate regulations for streets, precincts, areas and natural features and forward the same to Government for notification.

1.10 ***Maintaining Skyline and Architectural Harmony:*** After guidelines are framed, building within heritage precincts or in the vicinity of heritage sites shall maintain the skyline in the precinct and follow the architectural style (without any high-rise or multistoried development) as may be existing in the surrounding area, so as not to diminish or destroy the value and beauty of or the view from the said heritage sites. The development within the precinct or in the vicinity of heritage sites shall be in accordance with the

guidelines framed by the Commissioner, MCD/ Vice-Chairman DDA/Chairman NDMC on the advice of the Heritage Conservation Committee or separate regulations/ guidelines: if any, prescribed for respective zones by DDA/NDMC/MCD.

1.11 ***Restrictive Covenants:*** Restrictions existing as on date of this Notification imposed under covenants, terms and conditions on the leasehold plots either by Government or by Municipal Corporation of Delhi or by Delhi Development Authority or by New Delhi Municipal Council shall continue to be imposed in addition to Development Control Regulations. However, in case of any conflict with the heritage preservation interest/environmental conservation, this Heritage Regulation shall prevail.

1.12: ***Grading of the Listed Buildings/Listed Precincts:*** Listed Heritage Buildings/ Listed Heritage Precincts may be graded into three categories. The definition of these and basic guidelines for development, permissions are as follows:-

Listing does not prevent change of ownership or usage. However, change of use of such Listed Heritage Building/Listed Precincts is not permitted without the prior approval of the Heritage Conservation Committee. Use should be in harmony with the said listed heritage site.

Grade-I	**Grade-II**	**Grade-III**
(A) Definition Heritage Grade-I comprises buildings and precincts of national or historic importance, embodying excellence in architectural style, design, technology and material usage and/ or aesthetics; they may be associated with a great historic event, personality, movement or institution. They have been and are the prime landmarks of the region.	Heritage Grade-II (A&B) comprises of buildings and precincts of regional or local importance possessing special architectural or aesthetic merit, or cultural or historical significance though of a lower scale in Heritage Grade-I. They are local landmarks, which contribute to the image and identify of the region. They may be the work of master craftsmen or may be models of	Heritage Grade-III comprises building and precincts of importance for townscape; that evoke architectural, aesthetic or sociological interest though not as much as in Heritage Grade-II. These contribute to determine the character of the locality and can be representative of lifestyle of la particular community or region and may also be distinguished by setting, or special

All natural sites shall fall within Grade-I. (B) Objective: Heritage Grade-I richly deserves careful preservation. (C) **Scope for Changes:** No interventions be permitted either on exterior or interior of the heritage building or natural features unless it is necessary in the interest of strengthening and prolonging, the life of the buildings/or precincts or any part or features thereof. For this purpose, absolutely essential and minimum changes would be allowed and they must be in conformity with the original. (D) **Procedure:** Development permission for the changes would be given on the advice of the Heritage Conservation Committee. (E) **Vistas/Surrounding Development:** All development in areas surrounding Heritage Grade-I shall be regulated and controlled, ensuring l that it does not mar the grandeur of, or view from Heritage Grade-I	proportion and ornamentation or designed to suit a particular climate. Heritage Grade-II deserves intelligent conservation. (Grade-II (A) Internal changes and adaptive re-use may by and large be allowed but subject to strict scrutiny. Care would be taken to ensure the conservation of all special aspects for which it is included in Heritage Grade-II Grade-II (B) In addition to the above, extension or additional building in the same plot or compound could in certain circumstances, be allowed provided that the extension/ additional building is in harmony with (and does not detract from) the existing heritage building(s) or precincts especially in terms of height and façade. Development permission for the changes would be given on the advice of the Heritage Conservation Committee. All development in areas surrounding Heritage Grade-II shall be regulated and controlled, ensuring l that it does not mar the grandeur of, or view from Heritage Grade-II	character of the façade and uniformity of height, width and scale. Heritage Grade-III deserves intelligent conservation (though on a lesser scale than Grade-II and special protection to unique features and attributes) Heritage Grade-III deserves intelligent conservation (though on a lesser scale than Grade-II and special protection to unique features and attributes). Internal changes and adaptive re-use may by and large be allowed. Changes an include extensions and additional buildings in the same plot or compound. However, any changes should be such that they are in harmony with and should be such that they do not detract from the existing heritage building/precinct. Development permission for the changes would be given on the advice of the Heritage Conservation Committee. All development in areas surrounding Heritage Grade-III shall be regulated and controlled, ensuring l that it does not mar the grandeur of, or view from Heritage Grade-III

Nothing mentioned above should be deemed to confer a right on the owner /occupier of the plot to demolish or reconstruct or make alterations top his heritage building/buildings in a heritage precinct or on a natural heritage site if in the opinion of the Heritage

Conservation Committee, such demolition/ reconstruction/alteration is undesirable.

The Heritage Conservation Committee shall have the power to direct, especially in areas designated by them, that the exterior design and height of buildings should have their approval to preserve the beauty of the area.

64. To maintain independence and objectivity, the composition of the Heritage conservation Committee vide paragraph 1.14 is broad based to comprise of outside experts like historian, natural historian, environmentalist etc. Paragraph 1.14 of the Unified Building Byelaws reads:-

"**1.14 COMPOSITION OF HERITAGE CONSERVATION COMMITTEE**

The Heritage Conservation Committee shall be appointed by the Government comprising of:

(i) Special Secretary/Additional Secretary, (Ministry of Urban Development) Chairman

(ii) Additional Director General (Architecture), CPWD Member

(iii) Structural Engineer having experience of ten years in the field and membership of the Institution of Engineers, India
Architect having 10 years experience Member
(a) Urban Designer
(b) Conservation Architect

(iv) Environmentalist having in-depth knowledge and Experience of 10 years of the subject. Member

(v) Historian having knowledge of the region & having 10 years experience in the field. Member

(vi) Natural historian having 10 years experience in the field. Member

(vii) Chief Planner, Town & Country Planning Organization — Member

(viii) Chief Town Planner, MCD — Member

(ix) Commissioner (Plg.), DDA — Member

(x) Chief Architect, NDMC — Member

(xi) Representative of DG, Archeological Survey of India — Member

(xii) Secretary, Delhi Urban Art Commission — Member Secretary

(xiii) The Committee shall have the power to co-opt up to three additional members who may have related experience.

(xiv) The tenure of the Chairman and Members of other than Government Department/ Local Bodies shall be three years."

65. By notification dated 1st October 2009, a list of 147 heritage sites, including heritage buildings, heritage precincts and listed natural feature areas prepared by the Chairperson, New Delhi Municipal Council (NDMC) on the advice of the Heritage Conservation Committee, was published. This publication was preceded by public notice inviting objections and suggestions from all persons likely to be effected thereby. The publication was in exercise of powers conferred by bye-laws 23.1 and 23.5 of the Delhi Building Bye-Laws, 1983 read with sub-section (17) of Section 2 of the New Delhi Municipal Council Act, 1994. For the present litigation, we would

record that following buildings/precincts, along with their location, have been notified as Grade-I:

S.No.	Name of Building/Precincts	Location
3	India Gate	LBZ, Central Vista
4	India Gate Canopy	LBZ, Central Vista
7	North Block and South Block	LBZ, Central Vista
8	Parliament House and Campus	LBZ, Central Vista
9	Central Vista Precincts	LBZ, Central Vista at Rajpath
13	National Archives and Campus	Janpath

66. At this stage it would be also relevant to refer to the Lutyens' Bungalow Zone Guidelines, 1988, which prescribe as under:

> ".....(b) Lutyens' Bungalow Zone: In order to maintain the present character of Lutyens' Delhi, which is still dominated by green areas bungalow, there should be a separate set of norms for this zone area. …. There were the following norms for construction in the Lutyens' Bungalow Zone.
>
> (i) The new construction of dwelling on a plot must have the same plinth area as the existing bungalow and must have a height not exceeding the height of the bungalow in place, or if the plot is vacant, the height of the bungalow which is the lowest of those on the adjoining plots.
> (ii) In the commercial areas, such as Khan Market, Yashwant Palace etc., and in institutional areas within the Lutyens' Bungalow Zone, the norms will be the same as those for these respective areas outside the zone.
> (iii) The existing regulations for the Central Vista will continue to be applicable.
> (iv) ....."

67. Annexure-II of the Unified Building Bye-Laws for Delhi and paragraph 10 of the Master Plan of Delhi relating to the conservation

of built heritage have to be read together and harmoniously. Clause (5) of paragraph 10 of the Master Plan of Delhi, as noticed above, the local authority or land owing agency has been entrusted with the task to prepare special conservation plans in respect of specific heritage complex within the Lyutens' Bungalow Zone and other heritage zones as indicated in the Zonal Plan. This is a statutory mandate of the Master Plan. This task cannot be delegated to a third person or an architect, though it is possible to take opinions and advice for preparation of the special conservation plans. Unfortunately, neither the local body nor the land owing agency has formulated conservation plans/schemes for the specific heritage complex and appurtenant areas. The petitioners are right in their contention that when the statute requires each local authority or land-owning agency to formulate a special conservation plan for conservation and improvement of listed heritage complexes and appurtenant areas, the requirement is mandatory.

68. Paragraph 1 of Annexure-II states that conservation of heritage sites includes buildings, structures, areas and precincts of historic, aesthetic, architectural and significant buildings and precincts. Paragraph 1.1 states that listed heritage buildings and listed heritage precincts will not be restricted to hills, hillocks, water bodies

or areas adjoining the same, but also open areas, wooded areas, points, walks, etc. Further, the terms, Heritage Buildings and Heritage Precincts have been given broad and encompassing definitions. Historical building as defined, mean and includes any building of one or more premises or even part thereof which requires conservation or preservation for historical, environmental, architectural, artisanry, aesthetic, cultural or ecological purpose. Such buildings would by fiction include such portion of land adjoining the building or part thereof as may be required for fencing, covering, preserving the historical, architectural, aesthetic or cultural value of the such building. Second part of Paragraph 1.5 states that

the building or group of buildings listed would mean, unless otherwise indicated, the entire property including its entire compound/plot boundary along with all subsidiary structures and artifacts. Heritage precincts, by way of term of art definition, mean and includes any space that requires conservation or preservation of historical, architectural, aesthetic, environmental, ecological or cultural purposes. Such place may be enclosed by walls or other boundaries of a particular area or place or building or by an imaginary line drawn around it.

69. Paragraph 1.2 casts an obligation on the owner, including the government, municipal authorities, etc. to carry out regular repair and maintenance of the listed buildings. It also stipulates need for 'prior approval' for change of land use of the listed heritage building/precincts. Paragraph 1.3 is significant as it states that no development, re-development, engineering operations, additions/alterations, repairs or renovation, including painting of the building, replacement of special features or blasting or demolition of any part thereof, of the listed heritage buildings/listed precincts shall be carried out except with the permission of the authorities specified, which includes Vice Chairman, Authority and Chairman, NDMC. Further, before granting such permission, the agency shall consult the Heritage Conservation Committee and act in accordance with the advice of the Heritage Conservation Committee. In exceptional cases, for reasons to be recorded in writing, the authority, including Vice Chairman, Authority, and Chairman, NDMC may remit the matter to the Heritage Conservation Committee for its re-consideration. Decision of the Heritage Conservation Committee after such re-consideration is final and binding. The Heritage Conservation Committee before granting any permission for demolition, or major alterations/additions to the listed buildings or even buildings within

the listed streets/precincts etc. is required to invite suggestions/objections from the public and consider them. Therefore, public participation is mandated and required to be undertaken by the Heritage Conservation Committee for demolition or major alteration/addition. Paragraph 1.6 states that on advice of the Heritage Conservation Committee and for reasons to be recorded in writing the Commissioner/Vice Chairman/Chairman of Municipal Committee/Authority/NDMC shall follow the procedure as per the Development Act to alter, modify, relax the development control norms in the Master Plan or building Bye Laws for conservation, preservation retention of historic, aesthetic, cultural or environmental quality of any heritage site. Question would therefore arise whether the proposed modifications would attract provisions of paragraph 1.6. We would leave the question open to be raised and decided by the Heritage Conservation Committee. First part of Bye-law 1.7 states that any development permission in respect of street/precinct areas as notified under bye-law 1.5, shall be in accordance with the separate regulation prescribed for the restrictive streets, precincts, natural feature areas by the authority concerned, including Chairman, NDMC, on the advice of the Heritage Conservation Committee. Second and third parts of Paragraph 1.7, which relate to special separate regulations for

precincts, streets, natural feature areas, require that before finalising any draft the same shall be published in the Official Gazette and in one leading newspaper inviting objections and suggestions from the public. The public have right to file objections and give suggestions within thirty days of the publication in the Official Gazette which would be considered by the authorities, including Chairman, NDMC and the Heritage Conservation Committee. It is only after consideration of the suggestions and objections that the agency concerned, acting on the advice of the Heritage Conservation Committee, that the draft of the separate regulations for the street, precinct, natural feature area shall be forwarded to the government for notification. In Paragraph 1.10 emphasise on the need to maintain skyline and architectural harmony and need to follow the architectural style, without high-rise and multi-storied development. This mandate applies to building within the heritage precinct or in the vicinity of heritage sites. Development within the historical sites or in vicinity have to be in accordance with the guidelines framed by the local bodies on advice of the Heritage Conservation Committee. As per paragraph 1.11 existing restrictions under the lease deed, government including local bodies would in addition and continue to apply but in case of conflict with the heritage preservation interest, or environmental

conservation, the heritage regulations would prevail. The 1988 guidelines regarding construction would therefore continue to apply to the Central Vista area, which falls within the LBZ. In addition the restrictions under Annexure II of the Unified Building Bye-Laws apply. Paragraph 1.12 states that the heritage buildings/listed heritage precincts would be divided into three categories, namely Grade I, Grade II and Grade III. The stipulations regarding Grade-I are the strictest and the most stringent. Paragraph (c) relating to Grade I states that no interventions will be permitted either on exterior or interior of the heritage building or natural features unless it is necessary for strengthening and prolonging the life of the building or precincts. Only when absolutely essential minimal changes would be allowed in conformity with the original. Further, all changes require development permission which can be granted only on the advice of the Heritage Conservation Committee. As per Clause (e), development in the area surrounding the heritage Grade-I is regulated and controlled ensuring that it does not mar the grandeur or view from heritage Grade-I.

70. The notice inviting bids for appointment of a consultant had stated:

> "**3. Objectives of Bid Documents**
>
> The objective of this bid documents is to re-plan the entire Central Vista area from the gates of Rashtrapati

> Bhavan up to India Gate, an area of approximately 4 square kilometres. A new Master
> Plan is to be drawn up for the entire Central Vista area that represents the values and aspirations of a New India – Good Governance, Efficiency, Transparency, Accountability and Equity and is rooted in the Indian Culture and social milieu. The Master Plan shall entail concept, plan, detailed design and strategies development/redevelopment works, refurbishment works, demolition of existing buildings as well as related infrastructure and site development works. These new iconic structures shall be a legacy for 150 to 200 years at the very least."

Given the nature and magnitude of the entire re-development project and having given due notice to the language, as well as object and purpose behind the re-development project, undoubtedly prior approvals and permissions from the Heritage Conservation Committee were/are required and necessary. Paragraph 1.12 specifically and clearly states that " change of use of such Listed Heritage Building/Listed Precincts is not permitted without prior approval of the Heritage Conservation Committee. Use should be in harmony with the said listed heritage site." Thus prior approval/no objection certificate from the Heritage Conservation Committee was mandatory and necessary before notifying the 'land use' changes of the six plots within the Central Vista, provided the plots/area were falling with the 'Listed Buildings'. Further, prior permission/no objection is also required in terms of paragraph 1.3 from the Heritage Conservation Committee before any development,

redevelopment, engineering operations, renovations, demolition etc. Prior permission is also required from Heritage Conservation Committee before a local body issues building permit for any construction on any plot, which in addition have to abide by the 1988 guidelines .

71. It is a well-settled proposition that where power is given to do a certain thing in a certain way, then the thing must be done in that way or not at all. Other methods of performance are necessarily forbidden. When the statute prescribes a particular act must be done by following a particular procedure, the act must be done in that manner or not at all (See – ***Nazeer Ahmed*** v. ***King Emperor***[59], ***Parinder Singh*** v. ***Union of India***[60], ***Public Interest Foundation*** v. ***Union of India***[61] and ***Dhani Sugar and Chemicals Ltd.*** v. ***Union of India***[62]). There is no provision for deemed or in principle permission/approval/no objection certificate of the Heritage Conservation Committee. In fact no such plea of deemed approval/permission is raised by the respondents.

[59] AIR 1936 PC 253
[60] (2016) 9 SCC 20
[61] (2019) 3 SCC 224
[62] (2019) 5 SCC 480

72. As noticed previously, the Technical Committee of the Authority in its meeting held on 5th December,2019 while examining the proposal had, inter alia, stated that steps would be taken to seek approval of the Heritage Conservation Committee. However Heritage Conservation Committee was never moved to secure approval/permission. No approval/permission has been taken. The respondents in the written submissions have stated that the permission or approval from the Heritage Conservation Committee "would be sought as and when the stage reaches for the same as the same may not be pre-requisite for the purposes of change in land use". The use of the word 'may' itself reflects the doubt in the mind of the respondents, whereas the Technical Committee had not expressed any doubts and was firm that approval or clearance from the Heritage Conservation Committee is mandatory and required. We would again reproduce the minutes of the decision of the Technical Committee which reads as under:

> "After detailed deliberation, the proposal as contained in Para 4.0 of the agenda with the above modification in land use for Plot No.1 was recommended by the Technical committee for further processing under Section 11A of DD Act, 1957. With the following conditions:
>
> The clearances from the PMO, Heritage Conservation Committee and Central Vista Committee shall be taken by L&DO.
>
> The heritage buildings shall be dealt as per the relevant heritage provisions."

73. For reasons stated above, on interpretation of Annexure II to the Unified Building Bye Laws it has to be held that prior approval/permission was necessary for land use change of the plots/area with the Listed Heritage Buildings and precincts. As observed above, Paragraph 1.3 states that redevelopment, engineering operations, or even additions/alterations etc. require prior permission of Heritage Conservation Committee. However for demolition, major repairs and alterations/additions to listed buildings or building precincts procedure of inviting objections and suggestions from the public shall be followed. Heritage Conservation Committee would consider the suggestions and objections. Decision of the Heritage Conservation Committee is final and binding.

74. Respondents have raised two other defences. First, the construction of the new Parliament being on a vacant plot adjacent to the existing Parliament building does not require approval/no objection from the Heritage Conservation Committee. This contention according to the petitioners is fallacious as it is contrary to the statutory Master Plan of Delhi and the Unified Building Bye-Laws. They rely on the definition assigned to the term 'heritage building', which 'includes

such portion of land adjoining such building and part thereof as may be required for fencing or covering or in any manner preserving the historical and/or architectural and/or aesthetic and/or cultural value of such building'. We would observe and hold that the respondents should have moved and asked for clarification from the Heritage Conservation Committee. (The question whether plot no.118 is a part of the Central Vista Precinct at Rajpath classified as Grade I for Annexure II is being examined separately). Further, if the interpretation as put forward by the respondents, including the NDMC, is to be accepted, then as a sequitur it follows that construction or development can take place in a vacant plot adjacent to or adjoining the Grade-I building. This interpretation appears unacceptable as it is contrary to the express stipulations in the Master Plan and the Unified Building Bye-Laws. It would also lead to unintended consequences and would be incompatible with the purpose and objective of these two legislations, a relevant principle when we interpret provisions in case of doubt or ambiguity. This is our tentative view, as it is for the Heritage Conservation Committee to opine on 'includes such portion of land adjoining such building and part thereof as may be required for fencing or covering or in any manner preserving the historical and/or architectural and/or aesthetic and/or cultural value of such building'.

75. The Parliament House, National Archives, North Block, South Block, as well as the Central Vista precincts have been specifically graded as Grade-I buildings and, therefore, under different clauses of Annexure II several restrictions and bars apply. Whether or not the bars and restrictions apply again would be questions to be examined and decided by the Heritage Conservation Committee. Neither this Court nor government including local bodies can answer these questions. Compliance with Annexure II is mandatory and necessary, which essentially means that the proponent must approach the Heritage Conservation Committee. Central Government could not have notified the modified the land use changes, without following the procedure and without prior approval/permission from the Heritage Conservation Committee. Further, the local body is expressly interdicted from issuing building permits in respect of the listed heritage buildings/precincts. The local body i.e. NDMC should have approached the Heritage Conservation Committee for clarification/confirmation and proceed on their advice.

76. In support of the second defence, the respondents have filed an additional affidavit of the Union of India along with short clarificatory affidavit of Mr. Vijay Kaushal and Ms. Ruby Kaushal. The affidavit

filed by Mr. Vijay Kaushal, Deputy Chief Architect of the NDMC states that Central Vista precincts have been specifically included as a Grade-I building as per Unified Building Bye-Law, 1983, read with sub-section (17) of Section 2 of the New Delhi Municipal Council Act, 1994. Reference is made to the list of 141 heritage sites published, including heritage buildings, heritage precincts, and limited national feature areas, which list includes Parliament House and Campus, India Gate, India Gate Canopy, North and south Block, National Archives and Campus and Central Vista Precincts. It is stated that the list of heritage buildings in the NDMC area was finalised on the basis of an INTACH Report in consultation with the Heritage Conservation Committee. Reference is made to INTACH Report to assert that the Central Vista, LBZ Area, Rajpath have been demarcated by them as:

> "Physical Description – The Vista was designed to link the Viceroy's House (now the President's House) to the norther gateway of the Purana Qila. At the eastern end was erected the War Memorial Arch (India Gate), around which were built the Princes houses. On both sies on the road, there are wide lawns. The architectural character of the Central Vista is enhanced by the landscaping, the street furniture, the water bodies, etc. and it is important that any new addition/intervention is sensitive to and respects the character of the area."

Accordingly, it is submitted that the buildings with the President Estate, North Block and South Block, Parliament House and campus and National Archives and campus are Grade-I buildings. Other buildings like Nirman Bhawan, Udyog Bhawan, Rail Bhawan, Krishi Bhawan and Vayu Bhawan etc. are not expressly included in the heritage list. The petitioners would submit that the affidavit is ambiguous as it does not identify the area falling within the Central Vista precincts, which in addition to other heritage buildings, has been classified as Grade I. Moreover, the INTACH report has not been filed and no details have been furnished. Petitioners have referred to several INTACH reports, which reflect that the Central Vista Precincts would include plot no.118.

77. Ms. Ruby Kaushal, Member Secretary of the Heritage Conservation Committee, has referred to clause 2.3.3 (c) of the Unified Building Laws which states that all external agencies shall prepare colour-coded maps with information on specific areas where approval/NOC is required and these maps shall be placed on the website and also the websites of sanctioning authorities directly or through a link. Thereafter reference is made to the colour-coded map of Delhi (Annexure A-1) on the website of the Heritage Conservation Committee to state that the jurisdiction of the Committee is

"hyperlinked to another detailed map which depicts the location of the gazetted notified Listed Heritage building, precincts, natural features of the area,… attached as Annexure A-2." Unfortunately, the colour-coding in the first map (Annexure A-1) is not clear. The map also records that the profile shown therein are indicative and that the size, profile or location of the monuments/precincts/heritage structures are available with ASI, MCD or NDMC. Map enclosed as Annexure A-2 is again not clear and legible as to decipher and figure out the area falling within the Central Vista precincts. This map locates/demarcates other historical buildings graded as Grade-I, Grade-II and Grade-III by the NDMC, MCD and ASI and again states

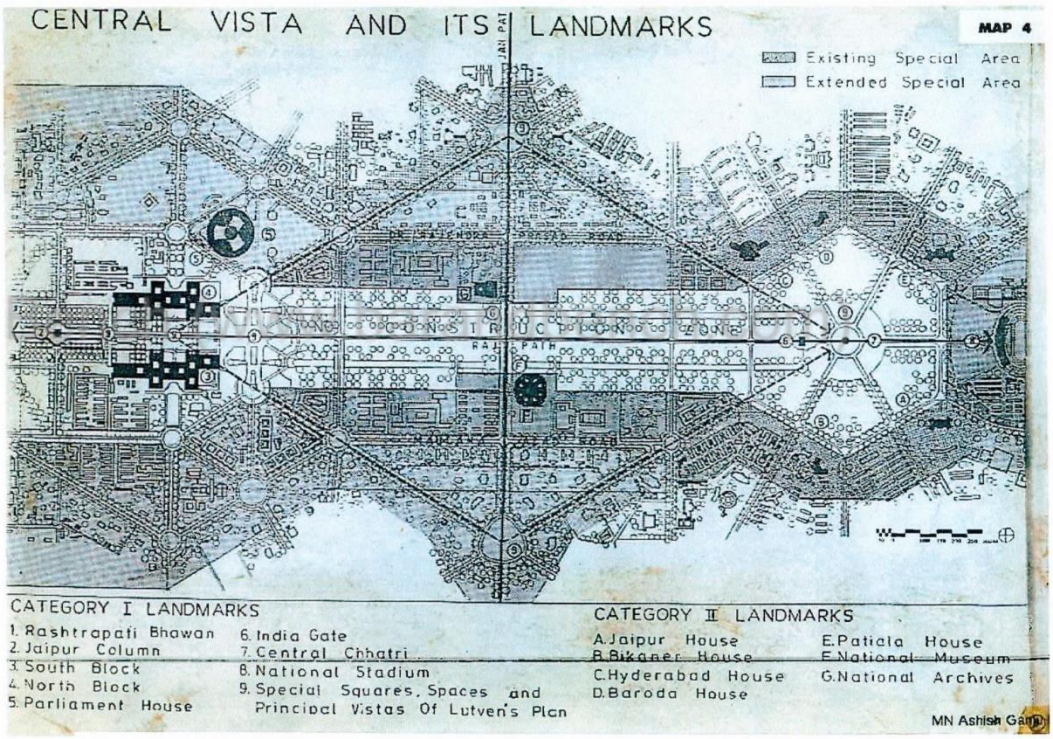
that the size, profile or location of monuments/precincts/heritage structures are available with NDMC,MCD and ASI. The map refers to NDMC Notification F.No. 4/2/2009/UD/I-6565 dated 1st October 2009. As in case of the plan(Annexure A-1) it states that size, profile and location shown are indicative. This affidavit by Ms. Ruby Kaushal does not describe the boundaries or the imaginary line, to use the language of clause(b) to paragraph 1.1.1 of the Unified Building Bye Laws, to demarcate the area that falls within the Central Vista Precincts.

78. On the contrary the petitioners rely on at-least three maps that demarcate the Central Vista Precincts with the imaginary line. They

are drawn below with details of the authority that has published/printed them.

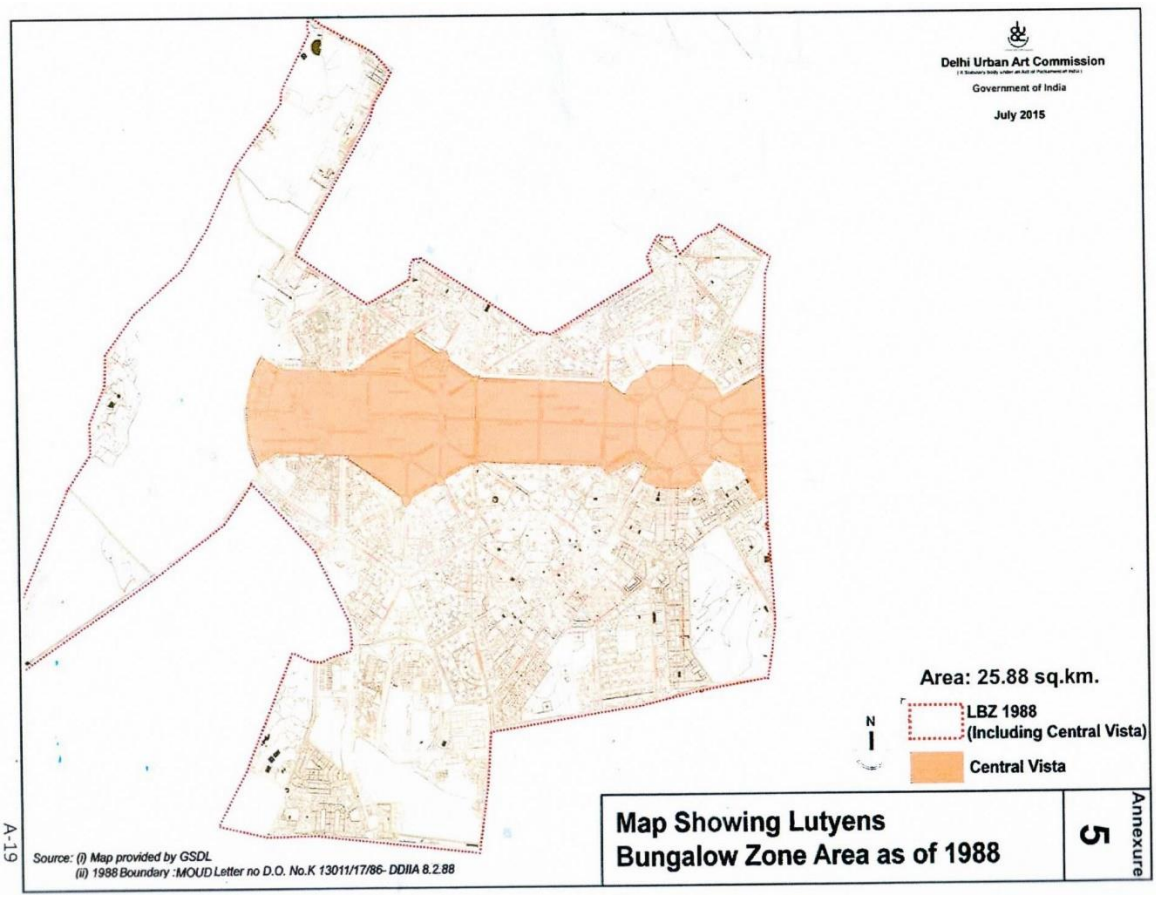
a. Central Vista and its landmarks – Ganju, MN Ashish. Re-development Plan for the Lutyens Bungalow Zone for the Ministry of Urban Development, Government of India, GREHA, New Delhi,1998.

Map 4 – Central Vista and its landmarks

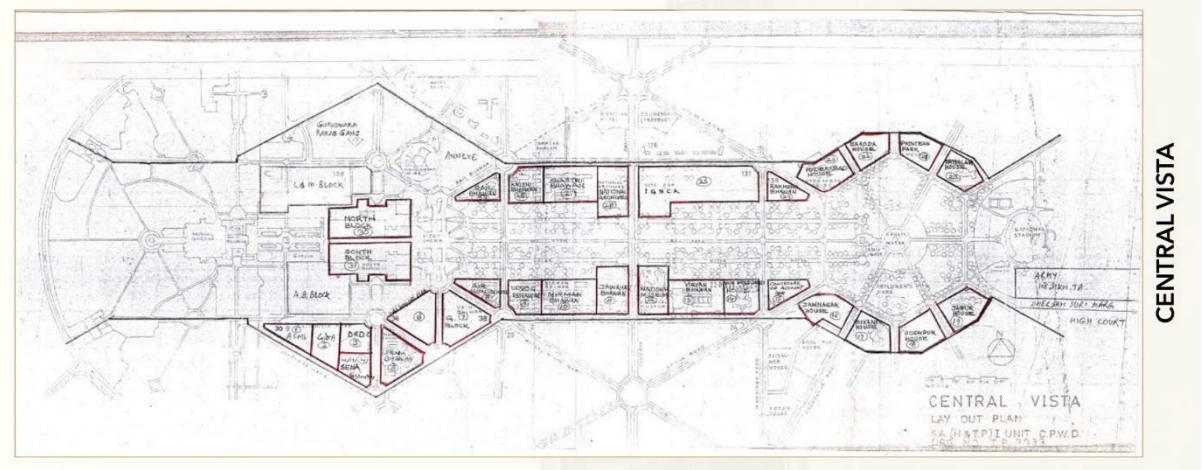


- Ganju, MN Ashish. Re-development Plan for the Lutyens Bungalow Zone, for the Ministry Of Urban Development, Government Of India. *GREHA. New Delhi, 1998.*

b. Map by the Delhi Urban Arts Commission-source Map produced by GSDL with the 1988 boundary: MOUD Letter no. D.O. No.K 13011/17/86- DDIIA 8.2.88



c. Lay out plan published in the Government of India, Ministry of Housing and Urban Affairs and CPWD handbook- 'Conservation and Audit of Heritage Buildings", September, 2019



These maps of the Central Vista Precincts by the project proponent itself namely CPWD and the Delhi Urban Arts Commission, which is a statutory body, clearly indicate the extent and boundaries of the Central Vista precincts/area, which does include the Parliament House and plot no.118. In the aforesaid background, the contention of the respondents as to demarcation of the area of the precincts in the Central Vista precincts at Rajpath prima facie appears to be erroneous and wrong. Parliament House and plot no.118 are apparently a part of the Central Area Precincts. Definitions of 'heritage building' and 'heritage precincts' in clauses

(a) and (b) of paragraph 1.1.1. also support this view and interpretation. However, we need not finally pronounce on this aspect as the Heritage Conservation Committee has the jurisdiction and authority to examine and decide this aspect after ascertaining facts and details. As per paragraph 1.5, the list of Heritage Sites is to be prepared by the Chairman NDMC on the advice of the Heritage Conservation Committee. In terms of Annexure II, the Heritage Conservation Committee should examine and decide any dispute relating to boundaries of the Heritage Precincts.

79. The Central Vista Precincts, i.e. at the Rajpath, per se does not have any building. This does not mean that the precincts of other heritage buildings, namely, the Parliament, North and South Blocks, National Archives are not to be treated as areas adjoining the listed buildings in terms of clause (a) to paragraph 1.1.1. A contrary interpretation would virtually negate the meaning of precincts to the building. The idea behind declaring the area as historical precincts is to give protection even if no constructed structure exists. It is an additional protection, when several buildings have already been included in the heritage list. In the present case, as per the petitioners, it is to clarify and clear any doubt that the green areas/parks in the Central Vista Precinct within the demarcated line/boundaries are entitled to protection as Grade I under the Unified Building Bye Laws. In this regard reference can made to paragraphs 1.2,1.5 and 1.7 of the Annexure -II of Unified Building Bye-Laws for Delhi, 2016, quoted above, and which appear to be apposite. Needless to say that these issues have to be examined by the Heritage Conservation Committee before they record their opinion.

80. Central Public Works Department, as the project proponent, had filed an application for environment clearance on 12th February 2020. Thereafter, revised application was filed on 12th March 2020.

Both applications were for expansion and renovation of the existing Parliament building at Parliament Street, New Delhi. The second/revised application had *inter alia* projected the project cost at Rs.922 crores.

81. As per original and revised Form Nos. 1 and 1A, the project is a Building and Construction project covered by item 8(a) of the Schedule of the 2006 Environmental Impact Notification. Suffice for our consideration is to record that item 8(b) or Townships and Area Development projects are put to a greater level of scrutiny. The categorization is based on the spatial extent of potential impacts on human health and natural and man-made resources. Four stages scrutiny process as envisaged by the 2006 Notification are (i) screening, (ii) scooping, (iii) public consultation and (iv) appraisal. Category B1 require an Environment Assessment Report and consequently the stage (ii) procedure of scooping is mandated. Stage (iii) public consultation is not required for the Building and Construction projects/ Area Development projects.

82. The distinction between 8(a)-Building and Construction projects and 8(b)-Townships and Area Development projects lies in the expanse of the built-up area of the proposed project. Projects with the built up area falling between 20,000 sq.m. to 1,50,000 sq. m. would be

categorised as 8(a)-Building and Construction projects. Projects with built up area above 1,50,000 sq. m. are categorised as 8(b) - Townships and Area Development projects. The term 'built up area' has been defined to mean "the built up or covered area on all the floors put together including its basement and all other service area, which are proposed in the building or construction projects."

83. Central Public Works Department as the project proponent in the original Form No.1 had declared:

"**1.1.1 Basic Information**

S.No.	Item	Details
3	Proposed capacity/area/ length/ tonnage to be handled/command area/ lease area/ no. of wells to be drilled	**Existing Plot: Plot 116** • Plot area: 10.75 acres (43,505 m^2) • Built-up area: 44,940 m^2 **Proposed Plot: Plot 118** • Plot area: 10.5 acres (42,031 m^2) • Built-up area – current – 5200 m^2 • Area proposed to be demolished: 5200 m^2 • Proposed construction area: 65,000 m^2 • Hence, the proposed Built-up Area will be - 65,000 m^2 **Total Proposed Project Area, for both the Plots after Expansion and Renovation**

		• Area: 21.25 Acres (85,536 m^2) • Built-up Area: 1,09,940 m^2 *Source:* • For Plot Area: Data based on Land Development Office, Government of India • For Built-up Area: Project Proponent
16	Details of alternative sites examined, if any. Location of these sites should be shown on the Toposheet	This is the most appropriate and suitable site.
17	Interlinked Projects	No
18	Whether separate application of interlinked project has been submitted?	No
22	Whether there is any Government order/policy, relevant/relating to the site	• Land use of 116 is 'Parliament'. • Current land use of Plot No. 118 is recreational and land use change to 'Parliament' is in process.
		•

1.1.2 Activity

S.No.	Item	Details
1.2	Clearance of existing land, vegetation and buildings?	**Plot 116** There are 250 trees present at plot No. 116 **Plot 118** Ther are 333 trees at Plot 118. Out of these, 100 trees to be retained and 233 trees to be transplanted. In addition, other vegetation, growing in Plot 118 will also require to be cleared to develop the new

		Parliament Building. 290 trees are proposed to be planted on Plot 118.
1.9	Underground works including mining or tunnelling?	Excavation work for basement

In column relating to factors which should be considered such as consequential development and would lead to environmental effect or potential for accumulative impact with other existing or planned activities in the locality, it was stated as under:

S. No.	**Information/Checklist Confirmation**	**Yes/No ?**	**Details thereof (with approximate quantities/rates, wherever possible) with source of information data**
9.1	Lead to development of supporting facilities, ancillary development or development stimulated by the project which could have impact on the environment e.g.: supporting infrastructure (roads, power supply, waste or wastewater treatment, etc.) housing development extractive industries supply industries, (other)	No	
9.2	Lead to after-use of the site, which could have an impact on the environment	No	This is the most appropriate and suitable site.

9.3	Set a precedent for later developments	No	
9.4	Have cumulative effects due to proximity to other existing or planned projects with similar effects	No	

84. On the aspect of parking needs, it was stated that parking requirement shall be taken care of on an adjoining plot due to security reasons.

85. Along with the revised application, the project proponent had also submitted a report prepared by a private consultant with a heading 'New Parliament Building – Traffic Circulation and Management Plan', paragraph 4.1 of which reads as under:

> "**4.1 GENERAL**
>
> Construction vehicle circulation and management plan addresses effective use of site for collection and disposing of material through different vehicles. It makes entry/exit points for vehicles, required barricading, traffic diversion and site layout. A good management plan minimizes impact of vehicle movement at site and on public roads. Redevelopment of Central Vista consists of temporary relocation, demolition & construction of new central secretariat buildings, new Parliament House & other associated buildings in Central Vista area. The redevelopment of Central Vista will be carried out in three phases, with different buildings being simultaneously operationally shifted and constructed in each phase. Details of construction phasing is described below:

1. Relocation of IGNCA, Parliament House & complete construction of new Parliament House & 3 central secretariat buildings.
2. Relocation of V.P. House, existing central secretariat building & complete construction of 7 central secretariat buildings.
3. Relocation of North, South block & complete construction of remaining buildings.

Based on current traffic volume, regulations & restriction on existing roads; delivery & collection of material shall be permitted during 10:00 PM to 6:00 AM. Changes in the route & timing due to special events & security reasons shall be informed by Delhi Traffic Police to associated contractors, vendors & supply agencies for planning delivery & collection schedule."

86. Original application was taken up in the 49th meeting of the Expert Appraisal Committee (EAC) held on 25-26th February 2020. The meeting records that a large number of representations had been received by the Ministry as well as Chairman/Members expressing concerns mainly on the following points:

"

- The Indian Parliament is structurally a part of the composite notified heritage precinct, the Central Vista. The application completely disregards the historical, cultural and social importance of the existing Parliament by treating its "expansion and renovation" any other regular construction project.

- The application treats the expansion of the Parliament as a stand-alone project when it is only one part of the proposed redevelopment of the Central Vista heritage precinct.

- The treatment of the Parliament expansion as a separate project violates the MoEFCC's OM dated

(No. J-11013/41/2006-IA.II (I)) for 'consideration of integrated and inter related projects for grant of environmental clearance'. The current application is in complete disregard of the requirements of this OM.

- The application contains false and misleading information stating that the project will have no "cumulative effects due to proximity to other existing or planned projects with similar effects", that there will be no significant impacts on ecology and public space, and on areas protected under conventions or legislations for their ecological, landscape, cultural or other values.

- The application is full of subjective responses to questions of scale and duration of various impacts that are likely to be caused by the proposed construction. These can only be treated as opinions because there are no studies or detailed assessments to support the application.

- The application for environment clearance must be set aside due to pending litigation on the land use change for the project. The land use change notification for Central Vista, which includes plot 118 is under litigation before the High Court of Delhi i.e. W.P.C. 1575/2020 and W.P.(C) 1568/2020."

Noticing that there was a mistake in calculation as to the total built up area proposed to be constructed, the project proponent was asked to revise the information of the built-up area. The project proponent was to file a revised application. Further, the project proponent was directed by the EAC to file para-wise reply to the representations received, traffic management plan and scope of 'renovation of the existing Parliament building'. EAC also felt

appropriate to record that the proposal was in respect of construction of a larger parliament building for the nation and that the project would have positive contribution to social infrastructure and overall development of the region. Adverse environmental impact could be mitigated by taking preventive measures during operation.

87. Thereupon, the project proponent had filed revised application and had furnished point-wise reply to the representations received. Revised proposal was taken up for consideration in the 50th meeting of the EAC held on 22nd April 2020. The minutes of the meeting would reflect that it reproduces in detail the objections and point wise reply furnished by the project proponent and information regarding change of land use of Plot No. 118 that was subject matter of court litigation. Referring to the representations received objecting to the environment clearance specific objections noted above were recorded. It was also stated that the environment clearance should take into consideration impact of the physical environment footprint of the building covering *inter alia* water, air, soil, noise and other biotic and abiotic factors, including social and architectural heritage.

88. The point-wise reply submitted by the project proponent states that integrated and interrelated projects are those without which the necessary functional outcome of the proposed project cannot be achieved. Parliament building essentially carries out the functions which are disparate from the executive functions, carried out in other office buildings, and therefore, expansion of Parliament cannot be considered as an integrated and interrelated project as the end users of the Parliament building and the other buildings proposed in the Central Vista are distinct. Pointwise reply by the Central Public Works Department, reads:

> "a. Parliament and Central Vista EC segregation:
>
> i. Integrated and inter-related projects are those projects without which the necessary functional outcome of the proposed project cannot be achieved. For example, such projects would include a captive power plant attached to a coal mine, or a jetty attached to a Liquid Natural Gas (LNG) terminal.
>
> ii. The proposed Parliament Building essentially carries out Legislative functions, which is separate from Executive Functions to be carried out in other office buildings and therefore, cannot be considered as an integrated and inter-related project vis-à-vis the other proposed central vista buildings for the simple reason that it can definitely operate independently of the other structures.
>
> iii. The Parliament is headed by the Honorable Vice-President of India for the Rajya Sabha and the Honorable Speaker of the Lok Sabha, not the executive. It has its own secretariat. The end users are therefore very different.

iv. The redevelopment of the other Central Vita buildings is a distinct activity as opposed to the expansion and renovation of the parliament.

xxx xxx

e. Rationale for integrating the existing and Proposed Parliament Building ECs.

i. The existing Parliament Building and the proposed Parliament expansion are definitely inter-related, both in terms of function- since certain functions of the Parliament will be conducted in in the Existing Building and simultaneously certain functions will be conducted in the Proposed Building-*but also in terms of physical utilities.* In fact, Plots 116 and 118 are inter-related even today (and since about four decades) because the existing Parliament Building houses its utilities at the same plot (118) where the Parliament expansion is proposed. Moving forward, it has been proposed to have a common utility block for both, the existing and the Proposed Parliament Buildings. Therefore, it also follows the proposed Parliament Building is indeed an expansion of the existing Parliament Building/Structure.

ii. The existing Parliament Building needs to be temporarily vacated to allow for its renewal and renovation. This can only be done if the new Parliament Building is constructed on an urgent basis.

f. Site Alternatives:

i. As already mentioned

- The buildings are not stand-alone. They are inter-related. Facilities will be shared. Officials will need to move from one building to another, quite frequently.
- Several utilities will be common or housed at one place.
- This is an expansion and not a Greenfield project. Environmental impacts of comparable fresh project will always be higher than that of retrofit, renovation and expansion as is being proposed.

- Parliament needs to be close to the other seats of governance.

It follows that the alternative selected is indeed the best for a building like the Parliament of India.

g. Cumulative Impacts vis-à-vis Central Vista Development along with Proposed Parliament Expansion:

i. We re-state with emphasis that the proposed project is an expansion of an existing building on the neighboring plot. Majority of the impacts of the combined structure are already occurring at the site. The expansion of the new Parliament Building will lead to environmental impacts, that are, if at all, minor and incremental. Please see Annexure 1 highlighting the reason for this conclusion.

ii. There will be no significant impacts on ecology since trees that require to be transplanted will be sent to holding nurseries for the time being. Thereafter, these will be moved to Plot 118 as part of the external site development. Trees that cannot be accommodated within Plot 118 will be transplanted within the Central Vista area. The above details have been represented with the MoEF&CC. Requisite permissions for transplanting of trees will be secured from the Competent Agencies.

iii. There will be n significant impacts on public spaces whatsoever due to the proposed Parliament expansion. This is so because Plot 118, which is adjacent to Plot 116 on which the existing Parliament stands, currently houses parking, ancillary services and a reception to the Parliament House since about four decades. The reception was built in 1976 and utilities such as the AC chiller plant were built in 1981-82 whilst the sub-station was built in 1974, since it was not possible to accommodate these facilities within Plot 116. As the entire area is a high security zone, it could never be utilized as a District Park for recreational use."

89. Thereupon, the EAC had proceeded to record its conclusion and findings, which read:

> "**50.3.7.5.** Based on the information and clarifications provided by the proponent vis-à-vis mitigation measures for likely environmental impacts proposed by the proponent, the EAC appraised environmental aspects of the project and recommended for grant of Environmental Clearance with following specific conditions along with other Standard EC Conditions as specified by the Ministry vide Om dated 4th January, 2019 for the said project/activity (specified at **Annexure-8** of the minutes), while considering for accord of environmental clearance."

Recording the above, the EAC proceeded to impose as many as fifteen conditions including those relating to other clearances which would be required, like clearance from Delhi Pollution Control Committee under the Air and Water Pollution Act, provision for adequate fire safety measures, etc.

90. What is of concern is lack of discussion, reasons or even the conclusion or finding on the aspect of slicing or inclusion. On the matter of "appraisal" in ***Bengaluru Development Authority v. Sudhakar Hegde***[63]**,** this court has elucidated:

> "Appraisal by the SEAC is structured and defined by the 2006 Notification. At this stage, the SEAC is required to conduct "a detailed scrutiny" of the application and other documents including the EIA report submitted by the applicant for the grant of an EC. Upon the completion of the appraisal process, the SEAC makes "categorical recommendations" to the SEIAA either for: (i) the grant of a prior EC on

[63] (2019) 15 SCC 401.

> stipulated terms and conditions; or (ii) the rejection of the application. Significantly, the recommendations made by the SEAC for the grant of EC, are normally accepted by the SEIAA and must be based on "reasons".

Proceedings before the EAC are not adversarial in nature. EAC acts both as a fair investigator and an independent objective adjudicator when deciding whether or not to grant environmental clearance. There must be application of mind which is reflected when reasons justifying the conclusion are recorded. Mere reproduction of the contesting stands is not sufficient. On the contrary it would reflect mechanical grant without application of mind. Further, it is not for the court/appellate forum to assume what weighed, whether the conclusion relies on material which is relevant, irrelevant or partly relevant, or whether the decision is partly based on surmises and conjectures and partly on evidence. (See, the Constitutional Bench decision of this Court in ***Dheeraj Lal and Girdhari Lal*** v. ***Commissioner of Income Tax***,[64]). Some reasons at least in brief to understand what had weighed and persuaded the authority is mandated and required. One issue certainly raised that required an answer was the question of slicing or inclusion. We are unable to fathom and ascertain reasons or the findings recorded on this aspect.

[64] AIR 1955 SC 271

91. In ***S.N. Mukharji*** v. ***Union of India***[65] , observations in ***Siemens Engineering & Manufacturing Co. of India Ltd.*** v. ***Union of India and Another***[66] were quoted to hold that administrative authorities and tribunals exercising quasi-judicial function can justify their existence and carry credibility with the people by inspiring confidence in the adjudicatory process. Unless reasons are disclosed, it is not possible to know whether the authority had applied its mind or not. Also giving of reasons minimises chances of arbitrariness. It is an essential requirement of rule of law that some reasons at least in brief must be disclosed in a judicial or quasi-judicial order even if it is an order of affirmation. Similar observations have been made in ***Chairman, Disciplinary Authority, Rani Lakshmi Bai Kshetriya Gramin Bank*** **v**. ***Jagdish Chand Varshney***.[67] ***Commissioner of Income Tax*** **v.** ***Walchand and Co. Pvt. Ltd.***,[68] observes that certain quasi-judicial tribunals must approach and decide the case in a judicial spirit and for that purpose it must indicate the disputed questions before it with evidence pro and con and record its reasons in support of the decision. The practice of recording a decision without reason in support cannot

[65] AIR 1990 SC 1984
[66] (1976) 2 SCC 981
[67] (2009) 4 SCC 240
[68] AIR 1967 SC 1435

but be severely deprecated. When giving and recording of reasons by a quasi-judicial authority is mandated in law, it serves several purposes. First, exercise of discretion by a quasi-judicial process is best vindicated by clarity in its exercise.[69] Secondly, it promotes thought by the authority and compels it to consider and decide relevant points and eschew irrelevancies ensuring careful consideration.[70] Thirdly, the appellate authority or courts exercising power of judicial review are unable to exercise their appellate or judicial review power unless they are advised and made aware of the consideration underlying the order under review.[71] Fourthly, requirement for recording reasons is one of the fundamentals of good administration and governance. Lastly, recording of reasons, specially by administrative authorities performing quasi-judicial functions, ensures lack of bias and prejudice. This is specially so when government and the citizens are pitted against each other, as then there could be allegations that the executive officer or the quasi-judicial authority look at things from the stand point of the policy maker and expediency, rather than the rights of people. Thus, failure to record reasons can amount to denial of justice, as the reasons are a live link between the mind of the decision maker to

[69] Phillips Dodge Corporation
[70] John P. Dunlop
[71] Securities and Exchange Commission

the controversy in question and decision or conclusion arrived at. Therefore, requirement of a speaking order is judicially recognised as an imperative. In ***State of Punjab*** v. ***Bhag Singh*** [72], it was observed:

> 6. Even in respect of administrative orders, Lord Denning, M.R. in Breen v. Amalgamated Engg. Union [(1971) 1 All ER 1148 : (1971) 2 QB 175 : (1971) 2 WLR 742 (CA)] observed: "The giving of reasons is one of the fundamentals of good administration." In Alexander Machinery (Dudley) Ltd. v. Crabtree [1974 ICR 120 (NIRC)] it was observed: "Failure to give reasons amounts to denial of justice. Reasons are live links between the mind of the decision-taker to the controversy in question and the decision or conclusion arrived at." Reasons substitute subjectivity by objectivity. The emphasis on recording reasons is that if the decision reveals the "inscrutable face of the sphinx", it can, by its silence, render it virtually impossible for the courts to perform their appellate function or exercise the power of judicial review in adjudging the validity of the decision. Right to reasons is an indispensable part of a sound judicial system, reasons at least sufficient to indicate an application of mind to the matter before court. Another rationale is that the affected party can know why the decision has gone against him. One of the salutary requirements of natural justice is spelling out reasons for the order made, in other words, a speaking-out. The "inscrutable face of a sphinx" is ordinarily incongruous with a judicial or quasi-judicial performance."

92. Faced with the aforesaid position, it was faintly argued before us that the relevant clause of the EIA Notification of 2006 does not require giving of reasons when environment clearance is granted.

[72] (2004) 1 SCC 547

Further, observations of this Court to the contrary in recent decision in ***Hanuman Laxman Aroskar*** v. ***Union of India*** [73] are *per incuriam*. The relevant clause of the EIA notification reads as under:

> "(i) Appraisal means the detailed scrutiny by the Expert Appraisal Committee or State Level Expert Appraisal Committee of the application and other documents like the Final EIA report, outcome of the public consultations including public hearing proceedings, submitted by the applicant to the regulatory authority concerned for grant of environmental clearance. This appraisal shall be made by Expert Appraisal Committee or State Level Expert Appraisal Committee concerned in a transparent manner in a proceeding to which the applicant shall be invited for furnishing necessary clarifications in person or through an authorized representative. On conclusion of this proceeding, the Expert Appraisal Committee or State Level Expert Appraisal Committee concerned shall make categorical recommendations to the regulatory authority concerned either for grant of prior environmental clearance on stipulated terms and conditions, or rejection of the application for prior environmental clearance, together with reasons for the same."

The National Green Tribunal in ***Gau Raxa Hitraxak Manch*** v. ***Union of India***[74] has rightly observed that the use of the *comma* at the end of the first part of the sentence, prefixing the words 'terms and conditions' and also suffixing the words 'terms and conditions' with the words 'together with reasons for the same' need to be read in conjunction. In this case it was held, and we respectfully agree, that the apprising body, which includes EAC as well as the Ministry,

[73] (2019) 15 SCC 401
[74] (2013) SCC Online NGT 85

has to make categorical recommendations to the regulatory authority either for grant of clearance or rejection, together with reasons for the same. Further, the orders passed by the EAC are appealable before the National Green Tribunal. Appellate forum would not be able to decipher and adjudicate unless reasons are set out and stated in the order under challenge. The whole purpose of outsourcing the task to EAC, comprised of experts and specialists, is to have a proper evaluation on the basis of some objective criteria. EAC is a body that has to apply its collective mind and not to record conclusions. It must justify and give basis for its conclusions. ***Hanuman Laxman Aroskar***, observes:

> "**160.** EAC, as an expert body abdicated its role and function by taking into account circumstances which were extraneous to the exercise of its power and failed to notice facets of the environment that were crucial to its decision making. The 2006 Notification postulates that normally, MoEFCC would accept the recommendation of EAC. This makes the role of EAC even more significant. NGT is an adjudicatory body which is vested with appellate jurisdiction over the grant of an EC. NGT dealt with the submissions which were urged before it in essentially one paragraph. It failed to comprehend the true nature of its role and power under Section 16(h) and Section 20 of the NGT Act, 2010. In failing to carry out a merits review, NGT has not discharged an adjudicatory function which properly belongs to it."

93. The respondent had argued that this Court can examine the question whether or not there is slicing and inclusions. We are to ascertain the legal correctness of the impugned order and not

undertake an in-depth and fresh merit exercise. We are not experts. Statutory provisions should be respected. Some the writ petitioners state that the built area of the parliament library and the annexe have been deliberately excluded. If the constructed area of the library and annexe are added to the built-up area, the total built-up area would come be 1,99,435 sq. mtrs., and hence the application has to be processed in terms of item 8(b) and not item 8(a), even if the principle of slicing/division of the Central Vista is rejected. We would not like to answer or go into these aspects in the absence of any consideration by the EAC. However, on remand these aspects should be considered.

94. The respondents have, in their pleadings and in the course of hearings, submitted the reasons why Central Vista requires redevelopment. Keeping in view the scope and ambit of judicial review, we have deliberately not considered merits of the grounds given by the respondents for modification of the Master Plan with regard to redevelopment of the Central Vista. However we would record the same and would take notice of the counter by the petitioners. The respondents have stated that hutments or temporary barracks or stables, built during World War II, occupy an area of over 90 acres of land including open area adjacent to the North Block, A&B Block adjacent to South Block, plots at Thyagraj

Marg, Jamnagar House and Jodhpur House. Further, buildings like Shastri Bhawan, Nirman Bhawan, Udyog Bhawan, Rail Bhawan, Krishi Bhawan and Vayu Bhawan etc. were constructed post-Independence. The hutments and these buildings have outlived their structural life of around fifty areas and are not earthquake–safe, suffer from poor service integration, inefficient use of land, inadequate facilities and lack of coherent architectural identity. These hutments and buildings cannot function as modern offices, and require retrofitting and refurbishing which would cost about Rs.50 crores a year. Further, usage and architecture of these buildings and others is incoherent; for instance, the Vice President's residence, Vigyan Bhawan and National Museum are located adjoining each other. As per non-availability certificate issued by the Directorate of Estates there is shortage of about 3.8 lakh meters of office space for which rentals up to Rs.1000 crores would be required. Central Vista Development and Re-development Plan would ensure that formal central secretariat with all ministries are located at a single location for efficiency and synergy of function. In all about 51 Ministries are to be located in 10 buildings to be constructed in the Central Vista with office spaces having modern technological features and amenities. There would be an underground shuttle approximately 3 km in length that would

connect and integrate all buildings. The existing Parliament House and Annexe are not being demolished; a new Parliament building is being constructed which, along with the existing buildings will form the Parliament Complex. It is stated that the Parliament House was commissioned in 1927 and over the years parliamentary activities and number of people working or visiting there have increased manifold. Parliament building was designed to house the Imperial Legislative Council and is not planned for a national legislature. Two floors were added to the structure in 1956 due to demand of more space. Library building and Annexe were added later on. The building is not designed according to the present fire safety norms and there are other safety issues. Electrical air-conditioning and plumbing systems are inadequate, inefficient and costly to operate and maintain. Audio video system in the Parliament is old and hall acoustics are not effective. Lastly, it is stated that the last delimitation for number of seats in Lok Sabha was carried out on the basis of 1971 census. Since then 545 seats have not undergone a change. This number of seats is likely to increase substantially after 2026. Both Lok Sabha and Rajya Sabha are packed to capacity and have no space for additional seats. Seating arrangements are cramped and cumbersome and there are no desks beyond second row. This makes the movement extremely constrained. Central Hall

has seating capacity of only 440 persons. Further all heritage buildings are being preserved and many of the them would be used as museums.

95. The petitioners, on the other hand, have submitted:

(a) Existing Parliament House and Central Vista are continuing and living heritage which must be preserved and protected for future generations. Re-development of nearly 80 acres of land, demolition of National Museum and construction of new Parliament will permanently affect the iconic character, skyline, layout, and the architectural harmony of the Central Vista. It would cause irreplaceable and non-revocable harm and damage Garde 1 heritage buildings and precincts.

(b) Re-development if permitted would violate Articles 49 and 51(c) of the Directive Principles of State Policy. Further, Doctrine of Public Trust applies to historically significant buildings/precincts and properties of special consequence (***Lok Prahari*** v. ***State of U.P.***[75]).

(c) Re-development, if required, should be undertaken as per well-established norms applicable to places of historical interest. Reference is made to Vienna Memorandum on World Heritage

[75] (2018) 6 SCC 1

and Contemporary Architecture – Managing the Historic Urban Landscape (2005), ICOMOS's Delhi Declaration on Heritage and Democracy (2017) and others. The exercise being undertaken fails to follow best practices of heritage conservation.

(d) No expert or specialised study and assessments has been undertaken and in absence, allegations of structural integrity, fire safety and seismic concerns etc. are mere reservations and misgivings. There is no empirical data in support of the assertions made by the respondents that the Parliament House etc. has outlived its life. No such doubt is raised in respect of other building constructed at the same time like the North and South Blocks and the President's House. On the contrary, Annexure F to the written submissions filed by the Respondent records the state of preservation of the Parliament House as 'fair'. Heritage assessment study should be undertaken and made public. Existing Parliament building can be upgraded.

(e) In alternative, expansion or additional construction rather than construction of a new Parliament can be explored. Office spaces, can be created near the official residence of the bureaucracy.

(f) Cost-benefit analysis has not been undertaken though significant capital expenditure in excess of Rs. 20,000 crores apparently would be incurred. The capital cost would be higher as logistics, temporary housing cost and the cost of removal or transplantation of mature trees etc. have not been included. Assertion that expenditure of Rs. 1,000 crores per annum on account of rent etc., is unsupported by any document and is assumptive.

(g) Over a period of time, there has been reduction of green area in the Central Vista, which is open and accessible to general public. The public area would get further reduced with the re-development plan.

(h) Zone 'C' where New India Gardens are proposed, is at a different location and not within Zone 'D', in which the Central Vista and LBZ are located. Reduction in green/ recreational area in Central Vista, a prime and iconic place, cannot be compensated by a garden at different location.

(i) By the Constitution (84th Amendment Act),2002 has extended the freeze on undertaking fresh delimitation as a part of national population strategy. Delimitation for the same reason may or may not take place. In any case it would be after the next census post 2026, that is in 2031.

96. We have referred to the contentions of the petitioners and respondents in some detail but would not comment on merits. These are complex and esoteric issues which have to be at first stage considered and decided by the specialised authorities like the Heritage Conservation Committee. If we consider and examine the merits of the pleas, we would be directly encroaching their jurisdiction and exceeding the power of judicial review. It is the reasoning and discussion in the orders by the statutory/quasi-judicial that are subjected to judicial scrutiny and review. Further, matters pertaining to heritage, architectural, functionality etc are for the experts and specialists in the field like Architects, town planers, historians, urbanists, engineers etc. to examine and guide. Suffice it would be to observe that the stands on merits reflect different perceptions and beliefs. The respondents without doubt do verily believe that redevelopment of Central Vista and new Parliament building is an imperative necessity. Central Vista requires a makeover. The hutments and some of the non-heritage buildings like Shashtri Bhawan, Nirman Bhawan, Udyog Bhawan etc. which it is stated occupy more than 90 acres of land require re-development. Similarly, if new parliament building is required and being a must, it should be constructed. Several former and the present Speaker

have expressed the need for construction of a new Parliament. Some of the petitioners do not oppose partial and regulated redevelopment for functionality, while maintaining and preserving the heritage, ethos and visual look. Central Vista and Parliament House is an heritage and belongs to the Nation and the people. Their primary grievance is lack of information and details. They submit that experts and specialists can provide acceptable solutions to conserve and make historical buildings functional, as it has happened elsewhere. The issues raised by the petitioners along with the stand of the respondents have to be taken into consideration by the statutory authorities in terms of and as per the statutory mandate. Ultimately, the issue has to be decided as per law after ascertain details by professional experts. Our interference does not reflect on merits of the stands, but is on account of procedural illegalities and failure to abide the statutory provisions and mandate.

97. In view of the aforesaid discussion, while setting aside and quashing the final notification of modification/change of the land use dated 28th March 2020 in respect of the 6 plots in the Central Vista, we would direct as under:

A) The Central Government/Authority would put on public domain on the web, intelligible and adequate information

along with drawings, layout plans, with explanatory memorandum etc. within a period of 7 days.

B) Public Advertisement on the website of the Authority and the Central Government along with appropriate publication in the print media would be made within 7 days.

C) Anyone desirous of filing suggestions/objections may do so within 4 weeks from the date of publication. Objections/ suggestions can be sent by email or to the postal address which would be indicated/mentioned in the public notice.

D) The public notice would also notify the date, time and place when public hearing, which would be given by the Heritage Conservation Committee to the persons desirous of appearing before the said Committee. No adjournment or request for postponement would be entertained. However, the Heritage Conservation Committee may if required fix additional date for hearing.

E) Objections/suggestions received by the Authority along with the records of BoEH and other records would be sent to the Heritage Conservation Committee. These objections etc. would also be taken into consideration while deciding the question of approval/permission.

F) Heritage Conservation Committee would decide all contentions in accordance with the Unified Building Bye Laws and the Master Plan of Delhi.

G) Heritage Conservation Committee would be at liberty to also undertaken the public participation exercise if it feels appropriate and necessary in terms of paragraph 1.3 or other paragraphs of the Unified Building Bye Laws for consultation, hearing etc. It would also examine the dispute regarding the boundaries of the Central Vista Precincts at Rajpath.

H) The report of the Heritage Conservation Committee would be then along with the records sent to the Central Government, which would then pass an order in accordance with law and in terms of Section 11A of the Development Act and applicable Development Rules, read with the Unified Building Bye-laws.

I) Heritage Conservation Committee would also simultaneously examine the issue of grant of prior permission/approval in respect of building/permit of new parliament on Plot No. 118. However, its final decision or outcome will be communicated to the local body viz., NDMC, after and only if, the modifications in the master plan were notified.

J) Heritage Conservation Committee would pass a speaking order setting out reasons for the conclusions.

98. We set aside the order of the EAC dated 22nd April,2020 and the environment clearance by the Ministry of Environment and Forest dated 17th June,2020, and would pass an order of remit to the EAC with a request that they may decide the question on environment clearance within a period of 30 days from the date copy of this order received, without awaiting the decision on the question of change/modification of land use. Speaking and reasoned order would be passed.

99. Parties, if aggrieved by any order/approval/non-approval would be entitled to challenge the same in accordance with law.

In the facts of the case there would be no order as to costs.

.....J.
(SANJIV KHANNA)

NEW DELHI;
JANUARY 05, 2021.