

IN THE HIGH COURT OF DELHI AT NEW DELHI

SUBJECT : Code of Civil Procedure, 1908

C.M. NO. 2527 and 1353 OF 2008 IN W.P.(C) NO.710 OF 2008
C.M.NOS.2764 and 1375 of 2008 IN W.P.(C) NO.711 OF 2008

Date of Decision : 20th March, 2008.

C.M. NO. 2527 and 1353 OF 2008 IN WRIT PETITION
(CIVIL) NO. 710 OF 2008

KOTAK MAHINDRA BANK LTD.
Through Petitioner
Mr. Arun Jaitley, Sr. Advocate with
Mr. Sunil Tyagi, Ms. Sunita Bansal
and Mr. Bishwajeet Dubey,
Advocates.

versus

M.C.D. and ORS.
Through Respondents
Mr. Amit K. Paul, Advocate for
MCD. Mr. Sandeep Sethi,
Sr. Advocate with Mr.
Mukesh Anand, Advocate for
respondent No. 3.

A N D

C.M.NOS.2764 and 1375 of 2008 IN WRIT PETITION
(CIVIL) NO. 711 OF 2008

DINESH CHHABRA
Through Petitioner
Mr. Sandeep Sethi, Sr. Advocate
with Mr. Mukesh Anand, Advocate

versus

M.C.D and ORS
Through Respondents
Mr. Amit K. Paul, Advocate for
MCD.

SANJIV KHANNA, J:

1. By this Order I will be disposing of the applications for interim relief C.M. No. 1353/2008 and 1375/2008 in W.P.(C) No.710 of 2008 and W.P.(C) No.711 of 2008 respectively as well as the applications under Order VI, Rule 17 of the Code of Civil Procedure, 1908 seeking for amendment of the Writ Petitions being C.M. Nos. 2527/2008 in W.P.(C) NO.710 of 2008 and 2764/2008 in W.P.(C) NO.711 of 2008.

2. Two identical writ petitions have been filed by Mr. Dinesh Chhabra and Kotak Mahindra Bank Limited for issue of writ of Certiorari or any other appropriate writ, order or direction for quashing of letter/order dated 22nd January, 2008.

3. Mr. Dinesh Chhabra is the owner of premises no. C-1, Panchsheel Enclave, New Delhi (hereinafter referred to as the property, for short) along with his brothers, Mr. Vijay Chhabra and Mr. Rajinder Chhabra. It is stated that they have purchased the said property from Col. J.S. Jarg and Mrs. Narender Kaur Jarg by registered Sale Deed dated 25th May, 2005. It is also stated in the Writ Petition filed by Mr. Dinesh Chhabra that the earlier owners of the property, Col. J.S. Jarg and Mrs. Narender Kaur Jarg had made an application and vide letter dated 15th October, 2004 had obtained permission from Municipal Corporation of Delhi (hereinafter referred to as the MCD, for short) for opening of a Bank-branch in the said property. It is further stated that the permission granted by the MCD is in accordance with Section 347 of the Delhi Municipal Corporation Act, 1957 (hereinafter referred to as the Act, for short). In paragraphs 10, 12 and 14 of the Writ Petition filed by Mr. Dinesh Chhabra, it is stated as under :- 10. Thereafter the said premises were given on rent to ING Vysya Bank on 23.1.2006 to run its branch which was vacated on 9.11.2006. Respondents No. 1 and 2 subsequent to the said permission never disputed the validity of said permission dated 15.10.2004 on any pretext whatsoever and the said permission remained valid since 15.10.2004. Copy of the lease deed, rent receipts and the letter of vacation of the premises by the bank are collectively annexed herewith as Annexure P-5 (Colly). 11. x x x x 12. That on the frivolous complaints of the other residents of the property Ms. Madhavi Narang and others who are occupying first floor and the second floor, the above property was sealed by MCD. However, on the representation of the petitioner vide letter dated 21.2.2007 the property was de-sealed by the MCD on the basis of all the authenticated documents including lease deed, rent receipts and permission granted by the MCD for running the bank. As mentioned above, the previous tenant ING Vysya Bank vacated the premises in the month of November, 2006 but due to typographical error the date was mentioned as April, 2006 which was factually wrong as the lease agreement was only registered between the petitioner and the bank in August, 2006. All the relevant papers were also annexed with the said letter and thereafter the property in question was desealed by the MCD. Copy of the said letter dated 21.2.2007 with its annexures are annexed herewith as Annexure P-7 (Colly.) 13. x x x x 14. That on 07.09.2006 Master Plan for Delhi, 2021 was notified and on that date the permission dated 15.10.2004 for using the premises for mixed land use purposes (banking purpose) was valid and subsisting and ING Vysya Bank occupying the said premises. It is pertinent to mention here that the premises/building in question is located in Category B as notified under MPD 2021.

4. Similarly, in the Writ Petition (Civil) No. 710/2008 filed by Kotak Mahindra Bank Limited, it is stated as under :- 8.2 Thereafter the said premises were used by ING Vysya Bank by virtue of Lease Deed registered in August 2006 to run its branch which vacated the premises in the month of November, 2006. Respondent No. 1 and 7 subsequent to the said permission, have never disputed the validity of said permission dated 15.10.2004 on any pretext whatsoever and the said permission remained valid. 8.3 x x x x 8.4 x x x x 8.5 That on 07.09.2006 Master Plan for Delhi, 2021 was notified and on that date the permission dated 15.10.2004 for using the premises for mixed land use purposes (banking purpose) was valid and subsisting and ING VYSYA Bank was occupying the said premises till the month of November 2006. It is pertinent to mention here that the premises/building in question is located in Category B as notified under MPD, 2021.

5. At the time of first hearing, learned counsel for the both the petitioners had drawn my attention to Clauses 15.7.2 and 15.3.2 of the Master Plan for Delhi, 2021. The relevant portion of the said Clauses reads as under:- 15.7.2. The minimum ROW of a street/or stretch of road on which the above-mentioned other activities are permissible is as follows:- In A and B Colonies : 18m ROW in regular plotted development. Notes Banks and fitness centres shall however, not be permissible, except those already operating as on 07.09.2006. In C and D Colonies : 18 m ROW in regular residential plotted development, 13.5m ROW in rehabilitation colonies and 9m ROW in regularized- unauthorized colonies, resettlement colonies, Walled City, special area and urban villages; and in pedestrian shopping streets (of less than 6 m ROW) In E,F and G Colonies : 13.5 m ROW in regular plotted development, 9m ROW in rehabilitation colonies and 6m ROW in Walled City, regularized-unauthorized colonies, resettlement colonies, Special areas, and urban villages and in pedestrian shopping streets (of less than 6m ROW). 15.3.2. The extent of mixed use permissible in various categories of colonies is further clarified as follows: 1. In colonies falling in categories A and B x x x x Other activity restricted to guest houses, nursing homes and pre-primary schools, as defined in para 15.7.1, subject to conditions contained in para 15.7, in plots abutting roads of minimum 18m ROW in regular plotted development, since these activities are in the nature of 'Public and Semi-Public' facilities. New Banks and Fitness Centres will not be permissible. Banks and Fitness Centres, which already exist, in accordance with notifications issued in this regard from time to time, and are on plots abutting roads of minimum 18m ROW, on the date of notification, shall, however continue. x x x x x x Note : Commercial activity on mixed use streets, within A and B category colonies, earlier notified under MPD-2001 shall cease with immediate effect (other than in plots abutting Master Plan roads).

6. On the basis of the averments made in the Writ Petitions, it was submitted that ING Vysya Bank was operating and existing at the said property as on 7th September, 2006 and therefore the petitioner-Bank can also operate from the said property. It was stated that the Order passed by the MCD is misconceived as they had wrongly noted/taken the date on which ING Vysya Bank had vacated the property as 9th April, 2006, in view of the affidavit filed by the petitioner, Mr.Dinesh Chhabra. It was further stated that the actual date on which ING Vysya Bank had vacated the premises was 9th November, 2006, i.e. after 7th September, 2006. Thus when the Writ Petitions had come up for hearing on 28th January, 2008,the following Order was passed:- Learned counsel for the petitioner has drawn my attention to the letter of possession dated 9th November, 2006 (page 99-C). As per the said letter, possession was taken from Euronet Service India Pvt. Ltd. on 9th November, 2006 and not on 9th April, 2006. It is stated that there is a typographical error in the affidavit. Learned counsel for the respondent/MCD prays for sometime to verify the facts in this regard. List on 30th January, 2008 when the connected writ petition being WP(C) No.5669/2007 is also coming up for hearing. In the meanwhile, the respondents will not give effect to the letter dated 22.1.2008.

7. Thereafter, on 30th January, 2008 after hearing the learned counsel for the parties, the following order, as recorded in Writ Petition No.710/2008, was passed : Learned counsel for the MCD states that no bank was operating from the premises in question as on 7th September, 2006. He further states that, as per the enquiries made by them, an ATM was probably operating from the said property. Learned counsel for Ms.Madhavi Narang, petitioner in Writ Petition (Civil) No. 5669/2007 states that even ATM was not running or operating from the said premises. The respondent-MCD will file counter affidavit within a period of seven days incorporating details of verification and enquiries made by them. The petitioner will file documents and confirmation from the Bank which was operating on or after 6th September, 2006 from the premises, to establish and show that there existed a regular branch. The said documents and particulars will be filed by the petitioner within seven days along with affidavit.

Petitioner will also inform this Court the location/premises where the said branch has been shifted. Affidavits will be exchanged two days before the next date of hearing. MCD will produce original records of the property on the next date of hearing. List along with W.P.(C) Nos. 711/2008 and 5669/2007 on 18th February, 2008. Interim order to continue till the next date.

8. The context and reason why Order dated 30th January, 2008 as recorded above, was passed is apparent. It was to verify the correctness and veracity of the facts stated in the writ petitions that ING Vysya Bank was operating and carrying on banking business in the property on 7th September, 2006. It was in this context parties were asked to file affidavits along with documents.

9. No documents or affidavits were filed, either by Mr.Dinesh Chhabra or by the Kotak Mahindra Bank Ltd in terms of the Order dated 30th January, 2008. MCD, on the other hand, has filed an affidavit on 15th February, 2008, after serving copy on the learned counsel for the petitioners, enclosing therewith letter dated 21st January, 2008 written by MCD to ING Vysya Bank asking them to verify their records and clarify the following two queries :- 1. Whether ING Vysya Bank ever operated from the Premises bearing No.C-1, Panchsheel Enclave, New Delhi If yes, please specify the period and also where the branch if any, was shifted. 2. Whether ING Vysya Bank ever operated any ATM Machine from the said premises If yes, please specify the period and also where the ATM Machine, if any, was shifted.

10. ING Vysya Bank by their letter dated 5th February, 2008 replied to the two queries as under:- 1. Our Bank's Branch was not opened or operated in the subject premises. 2. Our Bank's ATM was not operative in the subject premises.

11. It is clear from the above letters that ING Vysya Bank did not have any branch in existence or in operation on 7th September, 2006 in the property. The reply given by ING Vysya Bank also makes it clear that an ATM may have been set up in the property but the same was not operational.

12. The petitioners, therefore, have made false and incorrect averments in the Writ Petitions that ING Vysya Bank was in fact operating and functioning from the property in September, 2006 and said the Bank vacated the premises in the month of November, 2006. This also explains the reason why no affidavit/documents in terms of Order dated 30th January, 2008 were filed that there existed a regular Bank-branch which was operating from the said property on or after 6th September, 2006. Learned counsel for the petitioner, Mr. Dinesh Chhabra in the hearing held on 18th February, 2008 tried to contend and submit that the Order dated 30th January, 2008; requiring filing of documents and affidavit confirming that a regular Bank-branch existed in the property on or after 6th September 2006 was to be complied with by Kotak Mahindra Bank Ltd. It is apparent that Mr.Dinesh Chhabra is trying to wriggle out of the averments made by him in the Writ Petition No. 711/2008 and is trying to take benefit of the fact that the Writ Petition filed by him and Kotak Mahindra Bank Ltd. were taken up for hearing together. Mr.Dinesh Chhabra was fully aware and conscious of the fact that affidavit along with documents and confirmation that a bank was operating from the property on or after 6th September, 2006 was to be filed by him. After all he is the land lord and has full knowledge of the actual factual position. It is also difficult to believe that Kotak Mahindra Bank Ltd was not aware that ING Vysya Bank never operated from the property. ING Vysya Bank and Kotak Mahindra Bank Ltd being are in same business, preponderance predicates that Kotak Mahindra Bank Ltd. was aware of the actual factual position. In any case, if they had been diligent and made inquiries from ING Vysya Bank,

they would not have made wrong and false averments in the writ petition. Kotak Mahindra Bank Ltd. should have taken due care and caution before making factual statements on oath in the writ petition.

13. Relief under Article 226 of the Constitution of India is discretionary. A party filing a writ petition under Article 226 must disclose correct and true material facts. In view of the Master Plan of Delhi, 2021, the question whether a Bank-branch was operating from the property on 7th September, 2006 was most fundamental and central. Both the petitioners were aware of this fact and therefore have made the statements quoted above that ING Vysya Bank was operating from the property as on 7th September, 2006. The petitioners are, therefore, guilty of deliberately making wrong and false averments in the Writ Petitions. They are not entitled to discretionary relief. Injunction Order dated 28th January, 2008 was passed on the basis of the statements made in the Writ Petitions that ING Vysya Bank was operating from the property on 7th September, 2006 and therefore, Clauses 15.3.2. and 15.7.3 of Master Plan of Delhi, 2021 are applicable. I therefore, vacate the injunction order granted in favour of the petitioners and dismiss the applications for injunction, subject to the directions given below, on the ground of false and wrong statements in the writ petitions.

14. The petitioners have also filed amendment applications on 15th and 16th February, 2008. By the said applications, both petitioners want to challenge the constitutional validity of Clauses 15.3.2 and 15.7.3 of the Master Plan of Delhi, 2021 on the ground of discrimination and that the said Clauses, could not have been incorporated in the final Master Plan of Delhi, 2021. It is stated that there are differences between the draft plan and the final notified Master Plan of Delhi 2021 and the modifications incorporated in the final Master Plan are not made as per law. It is evident/apparent that the amendment applications were filed only after the Order dated 30th January, 2008 was passed directing both MCD as well as the petitioners to file affidavits with documents and other proofs to confirm that ING Vysya Bank was operating from the property on 7th September, 2006. The amendment applications are malafide and have been filed only with the object and purpose to delay proceedings after having obtained stay from this Court on 28th January, 2008 on the ground that the petitioners are protected by the aforesaid Clauses. After the Order dated 30th January, 2008 was passed, the petitioners were aware that steps were taken by the MCD to get confirmation from ING Vysya Bank and the said bank by their letter dated 5th February, 2000 has confirmed that they were not operating and had not opened any branch in the said property and the ATM was also not operational. The entire focus and corner stone of the writ petitions was that the action of the respondent-MCD is contrary to Master Plan of Delhi, 2021 as a Bank-branch was in operation and in existence from the said property on 7th September, 2006. The petitioners now want to change the basis and subject matter of the petitions and challenge by the amendment applications is to the same Clauses, which they have heavily relied upon. The Master plan has been finalized after inviting objections. Draft master plan is always subject to amendments depending upon objections and the suggestions given by the town planners, welfare associations and others. Submissions made by the petitioners will result in a never ending process, with every amendment or modification requiring a fresh draft plan being circulated.

15. I may note here that the petitioners' have claimed said Clauses have been also challenged before the Supreme Court by ICICI Bank in I.A. No. 2162- 63/2007. It has been stated by Mr.Dinesh Chhabra, in the amendment application, as under:- That recently the Petitioner has come to know of an application filed by the ICICI Bank in the facts and circumstances similar to the present case in a Petition before the Hon'ble Supreme Court being WP(C) No.4677-/1985

titled as M.C. Mehta versus Union of India and others. In the said application being I.A. No. 2162-2163/2007, the ICICI Bank has challenged the vires of clause 15.7.2 of the Master Plan Delhi-2021 on certain grounds. A copy of the said IA filed by ICICI Bank and the Additional Affidavit filed along with the same is annexed hereto and marked as Annexure-A-1. While hearing this application on 31.08.2007 the Hon'ble Supreme Court has ordered the Respondent/MCD to de-seal the premises from where the ICICI Bank was operating its branch. A copy of the said Order dated 31.08.2007 is annexed herewith and marked as Annexure-A-2.

16. The contention/statement of Mr. Dinesh Chhabra in respect of the Order dated 31st August, 2007 passed by the Supreme Court is also incorrect. On 31st August, 2007, Supreme Court had passed the following Order:- I.A. NOS. 2162-2163 Heard Mr. K.K. Venugopal, learned senior counsel appearing for the applicant- ICICI Bank and learned Amicus Curiae and learned counsel for the M.C.D. It is the definite stand of the applicant-Bank that it became functional prior to 07.09.2006. Learned counsel for the MCD states that it shall file its response. For the present, let the Bank function as was being done earlier. This shall be subject to filing of an undertaking that it became functional prior to 07.09.2006 and its functioning is in accordance with law. The undertaking shall be to the effect that in case, it is ultimately found that the its really not so, the Bank shall forthwith stop its functioning. The matter shall be listed on 09th October, 2007.

17. Interim stay is not normally granted when vires of a provision is challenged. Statutory provision or even a delegated legislation is presumed to be valid till it is struck down. Supreme court has not granted stay of the Master Plan, 2021 as prayed for by the applicant ICICI Bank before them.

18. Courts are liberal in allowing amendments but when application for amendment is filed with a malafide intention and to delay the proceedings, the same is liable to be rejected. In these circumstances, the amendment applications should be rejected, yet with a view give full opportunity and to have complete and effective adjudication, I allow the petitioners to raise additional grounds mentioned in the amendment applications, subject to payment of costs of Rs. 20,000/- each by the two petitioners.

19. Though applications for injunction are liable to be dismissed on the ground of false and incorrect statements, I have also examined contentions raised by the petitioners on merits. Learned counsel for Mr.Dinesh Chhabra submitted that the respondent-MCD is misreading the Master Plan of Delhi, 2021. Under Clauses 15.7.3 and 15.3.2, existence of the Bank in the property as on 7th September, 2006 is required. It is not necessary that the Bank should be operational. Requirement is that the Bank should have taken the property on lease and should have been in possession of the same. In this connection, my attention was drawn to the lease agreement between Mr.Dinesh Chhabra and some others and M/s.Euronet Services India Pvt. Ltd. (hereinafter referred to as ENSIL, for short). The said lease Agreement stated to be dated 4th August, 2006 (the date on which the agreement was registered is not stated and the relevant portions in the photocopy have been blanked out). Therefore, it appears that the said lease Deed was executed on or about the time when the draft of Master Plan of Delhi, 2021 was already circulated and was pending consideration.

20. In the petition it is claimed that ING Vysya Bank was given the premises on rent w.e.f. 23rd January, 2006. Lease Deed dated 4th August, 2006 mentions that the period of lease would be from 24th January, 2006 till 23rd January, 2009. The petitioner, Mr. Dinesh Chhabra submitted that the TDS Certificate issued by ENSIL conclusively proves that the premises was

taken on rent w.e.f. 23rd January, 2006. The TDS Certificate is for the period 29th April, 2006 onwards. Even if it is presumed that the petitioner had entered into an oral agreement with ENSIL in January, 2006, there is no evidence and document to suggest that in January, 2006 it was agreed that the property would be rented out to a bank. TDS certificate is issued by ENSIL and not by ING Vysya Bank and it does not prove or establish the case of the petitioner. It is difficult to believe that ENSIL and the petitioner would have entered into an oral lease in January, 2006, in respect of a property having substantial market value. If any document was executed in January 2006, the same is not forthcoming.

21. Lease Agreement dated 4th August, 2006 permits sub-letting by ENSIL to ING Vysya Bank. Whether sub-letting had in fact actually taken place or not and ING Vysya Bank had occupied and started its banking operations is not proved and established by the said Lease Deed. The lease deed dated 4th August, 2006 was between Mr.Dinesh Chhabra and some other members of his family and ENSIL and not between Mr. Dinesh Chhabra and ING Vysya Bank. ING Vysya Bank has now clarified that it had never started its operation or even opened its Branch in the said property. Lease deed dated 4th August, 2006 does not establish and prove existence of a bank branch in the property. ATM and bank branch are separate and different. Pre-conditions and stipulations for opening a bank branch or ATM counter in the Master Plan of Delhi, 2021 are distinct.

22. Learned counsel for the petitioner, Mr.Dinesh Chhabra had further submitted that the permission granted on 15th October, 2004 continues to be applicable even after enforcement of Master Plan of Delhi, 2021. This is not correct. The said permission had been granted when the Master Plan of Delhi 2021 was not in operation. Master plan of Delhi 2021 is statutory and the provisions of the said master plan have statutory force. The petitioners are bound by the Master Plan of Delhi, 2021. Clauses 15.7.2 and 15.3.2 of the Master Plan have to be enforced. Letter dated 15th October, 2004 does not come to the rescue of the petitioners and is not protected under the said clauses. Reference in this regard can be placed upon the decision of the Supreme Court in the case of State of West Bengal versus Terra Firma Investment and Trading (P) Ltd reported in (1995) 1 SCC 125. Reliance can also be placed on the decision of a Division Bench of this Court in the case of Dev Raj Gupta versus New Delhi Municipal Committee reported in (1997) IV AD (Delhi) 608. Secondly, the letter dated 15th October, 2004 had prescribed various conditions including requirement to pay yearly fee of Rs.1,90,260/-, execution of an agreement etc. It is admitted case that no agreement has been executed and Mr. J.S. Jarg did not pay Rs.1,90,260/- per year. Even if it is presumed that rights under the letter dated 15th October, 2004 stood assigned to the petitioner, Mr.Dinesh Chhabra could have taken advantage of the same only if an agreement had been executed and he had paid the amount stipulated in the letter dated 15th October, 2004 It is admitted that no such payment was made. On the other hand, it is claimed that payment of Rs.31,790/- was made on 23rd January, 2006 by Mrs. Narender Kaur Jarg for misuse charges for the period 1st February, 2006 to 31st March, 2006. The said payment by itself will not confer any right on Mr.Dinesh Chhabra as it is not in accord with the letter dated 15th October, 2004 There is conclusive evidence on record that no Bank-branch was operating or was in existence in the said property as on 7th September, 2006. Once Master Plan of Delhi 2021 has come into operation, the provisions and clauses therein, will apply. Letter dated 15th October, 2004 does not over-ride the provisions of the Master Plan of Delhi, 2021.

23. In Clauses 15.7.3 and 15.3.2. words which already exist and operating have been used. Both have and convey the same meaning. Which already exist would mean Bank-branch which was already in existence and operating means a bank Branch which is conducting business from the property. I do not agree with the contention of the petitioner that Agreement with ENSIL

establishes and proves that Bank-branch of ING Vysya Bank was existing or operating from the premises. A written lease between the petitioner and ENSIL with right to sublet to ING Vysya Bank as on 7th September, 2006 is not sufficient. A bank should be in existence or operating from the property as on the said date. I may clarify here that I am not examining the question whether Clauses 15.7.3 and 15.3.2 give protection to the property or the concerned Bank i.e. whether protection will be available when one bank vacates a property and another or a new Bank wants to operate from the property. This issue need not be decided in this case as there was no Bank-branch in operation or in existence in the said property as on 7th September, 2006.

24. Considerable emphasis was laid by the learned counsel appearing for Kotak Mahindra Bank Ltd. on the letters dated 24th April, 2007 and 3rd May, 2007 written by them to MCD to clarify whether they were entitled to open a new Bank-branch from the said property. In the letter dated 3rd May, 2007 it has been stated by Kotak Mahindra Bank Ltd. as under:- Please note that we never had a Branch at the said premises and this is for the first time that we are intending to open our Branch thereat. Earlier, ING Vysya Bank was running its Branch at the said premises, which it closed/surrendered on or about September, 2006

25. The Officer In-Charge (Building), South Zone, MCD by letter dated 8th May, 2007 informed Kotak Mahindra Bank Ltd.; that permission granted by letter dated 15th October, 2004 was valid but the guidelines would have to be adhered to. It was further opined that new Bank-branch could be opened in view of the letter dated 15th October, 2004 My attention was also drawn to the reply dated 11th January, 2008 given on a query under RTI Act. The said RTI query was made by one Mr.Rajinder Chhabra as owner of the property to the effect whether a new Bank can open its Branch after the earlier Bank had ceased to operate from the property and whether there was any need for fresh approval for the new Branch. In response to the said query, it was stated by MCD that fresh approval was not required and a new Bank can operate after the earlier Bank had closed its operations. MCD in its reply has stated that the letter dated 8th May, 2007 was written by a person who was not authorised and action is being taken against the said person. It was submitted by the learned counsel for the petitioners that MCD is responsible and principle of estoppel applies. MCD cannot now wriggle out of statements and their reply. There is no estoppel against law or statute. The Supreme Court in *Hira Tikoo and others versus Union Territory of Chandigarh* reported in (2004) 6 SCC 765 has held:- 20. The learned Senior Counsel then made some attempts to rely on the doctrines of promissory estoppel and legitimate expectation. The doctrine of legitimate expectation has developed as a principle of reasonableness and fairness and is used against statutory bodies and government authorities on whose representations or promises, parties or citizens act and some detrimental consequences ensue because of refusal of authorities to fulfill their promises or honour their commitments. The argument under the label of estoppel and legitimate expectation are substantially the same. The Administration herein no doubt is guilty of gross mistake in including in its development scheme, a portion of land covered by the forest and land with restrictions under the Aircraft Act. A vital mistake has been committed by the Chandigarh Administration in overlooking the notification reserving land under the Forest Act and the restrictions imposed under the Aircraft Act, but overriding public interest outweighs the obligation of a promise or representation made on behalf of the Administration. Where public interest is likely to be harmed, neither the doctrine of legitimate expectation nor estoppel can be allowed to be pressed into service by any citizen against the State authorities. In *Jit Ram Shiv Kumar v. State of Haryana* a two-Judge Bench of this Court by explaining and distinguishing *Union of India v. Anglo Afghan Agencies and Motilal Padampat Sugar Mills Co. Ltd. v. State of U.P.* observed thus: (SCC p. 23, para 16) 16. It is only in public interest that it is recognised that an authority acting on behalf of the Government or by virtue of statutory powers cannot exceed his authority. Rule of ultra vires will

become applicable when he exceeds his authority and the Government would not be bound by such action. Any person who enters into an arrangement with the Government has to ascertain and satisfy himself that the authority who purports to act for the Government, acts within the scope of his authority and cannot urge that the Government is in the position of any other litigant liable to be charged with liability.

26. In the said case, the petitioners had been allotted plots by a development authority but later on it was found that the plots were developed by the said authority contrary to law in contravention of the provisions of the Indian Forests Act, 1878 (amended in 1918) and The Aircraft Act, 1934. It was held that the development-Authority could not have violated the statutory provisions and doctrine of estoppel was not applicable against them. For similar reasons doctrine of legitimate expectation was also held to be not applicable. It was observed that the Court cannot direct administration to violate the law and statute or take steps that would be to the detriment of general public interest. De. Smith on Judicial Reviews of Administrative Action was quoted to the effect that public body with limited power cannot bind itself to act outside its authorised powers and if it purports to do so it can repudiate its undertaking for it cannot extend its power by creating estoppel. It was accordingly observed as under :- 21. In the aforesaid case of Jit Ram Shiv Kumar the Municipal Committee of Bahadurgarh town to develop a mandi promised that the traders who purchase plots in the mandi would be exempted from paying octroi duty on goods imported for trade to the mandi. The State Government in exercise of powers under the Punjab Municipal Act directed the Municipal Committee to withdraw the exemption from payment of octroi duty. When the traders, who had set up their business in the mandi on promise of getting exemption from octroi duty, challenged the action of the Municipality and the Punjab Government and raised on plea of estoppel it was rejected by this Court by relying on the decision of a Constitution Bench of this Court in the case of M. Ramanatha Pillai v. State of Kerala and State of Kerala v. Gwalior Rayon Silk Mfg. (Wvg.) Co. Ltd. This Court in Jit Ram Shiv Kumar recorded the following conclusion which supports the view we propose to take in the circumstances of the present case: 51. On a consideration of the decisions of this Court, it is clear that there can be no promissory estoppel against the exercise of legislative power of the State. So also the doctrine cannot be invoked for preventing the Government from acting in discharge of its duty under the law. The Government would not be bound by the act of its officers and agents who act beyond the scope of their authority and a person dealing with the agent of the Government must be held to have notice of the limitations of his authority. The court can enforce compliance by a public authority of the obligation laid on him if he arbitrarily or on his mere whim ignores the promises made by him on behalf of the Government. It would be open to the authority to plead and prove that there were special considerations which necessitated his not being able to comply with his obligations in public interest. 27. Reliance placed upon the Order dated 29th May, 2007 passed in Writ Petition (Civil) 4241/2007 titled Arun Jain versus MCD and Others is equally misconceived. Mr. Arun Jain had challenged opening of a branch of the ING Vysya Bank in the said property. In the aforesaid Order, reference was made to Order dated 10th March, 2006 passed in W.P.(C) No. 2763/2006 wherein the petitioners/residents of the area, were given liberty to challenge the permission granted by MCD to run a Bank-branch from the said property but the said petition was withdrawn. It was observed as under :- As far as the present case is concerned, learned counsel appearing for the respondent No.4 on advance notice, produces a letter issued by the MCD to respondent No.4 that it has no objection to the continuing of a bank branch in the premises for which permission was been granted on 15.10.2004 itself. The MCD has further confirmed on 8.5.2007 that the grant of permission conforms to the relevant provisions of the New Master Plan for Delhi 2021.

28. It may be noted here that the Court had observed that there was no objection to continuing of a Bank-branch. The Court was never informed that there was no Bank-branch in operation on 7th September, 2006. I may also mention here that the situation has undergone a change with the MCD itself realising its folly and on coming to know that there was no Bank-branch in existence or in operation from the said property as on 7th September, 2006.

29. In view of the above, it is held as under :- A. The amendment applications are allowed, but subject to payment of costs of Rs.20,000/- by each petitioner to the respondent- MCD. Observations made on merits of grounds raised in the amendment applications are tentative and will not be binding. B. The interim applications for stay are dismissed on merits as well as on the ground that the petitioners have stated wrong and false facts in the Writ Petitions and have not come to the Court with clean hands. However, as the Bank- branch is in operation and to avoid inconvenience to customers, it is directed that the Bank-branch in the property will be closed within a period of two months from today. There will be no extension of time. C. The petitioner- Kotak Mahindra Bank Ltd. if so advised, can seek and apply for permission to open ATM counter in the property. If any such application is filed, MCD will examine the same expeditiously and in accordance with the provisions of the Act and Master Plan of Delhi 2021. The court has not expressed any opinion or examined the question whether an ATM counter is permitted.

30. Accordingly, the applications are disposed of with the above directions. Interim stay granted by Order dated 28th January, 2008 is vacated in above terms.

Sd./-
SANJIV KHANNA,J

MARCH 20, 2008.