

* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ **WP(C) 8205-09/2006**

Dr. Aditi Mukherjee & Others Petitioners

versus

\$ Union of India & Ors. Respondents
^ Through Ms. Smita Bankoti, Adv. for
Intervenor.
Ms. Monika Garg with Mr.
S.Minocha, Adv. for UOI.
Mr. Yatinder Chaudhary Adv. for Mr.
Gaurav Sarin Adv. for DDA.
Mr. Ajay Arora, Adv. for MCD.

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CORAM:

HON'BLE MR. JUSTICE T.S. THAKUR

HON'BLE MS. JUSTICE ARUNA SURESH

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

JUDGMENT

ARUNA SURESH, J.

1. Petitioners are residents of Block C, Yojna Vihar, Delhi.

They have filed the present writ petition as Public Interest Litigation against the respondent for restraining them from constructing dispensary on plot of land measuring 8775 square feet identified as nursery school site and which is being used by the children of the locality as park.

2. The case of the petitioners is that a piece of plot measuring 8775 square feet is situated in Pocket 7 of C Block of Yojna Vihar. This plot is being used by the children as a playground for the last more than 26 years. The construction of CGHS dispensary on the said plot is detrimental to the interest of the petitioners and other living neighbours especially when other plots are available in the locality of Yojna Vihar especially in Block A. There are some plot of lands left as tot lots and in Block A two sites are earmarked for nursery schools having an area of 10800 sq. ft. and 10818 sq. ft. respectively and also that

there are two tot lots measuring 6570 sq. ft. and 8970 sq. ft. Similary in Block B, there is a park measuring about 33021 sq. ft. and a shopping complex in the area measuring 14100 sq. ft. Besides two plots earmarked for nursery school having an area of 67375 sq. ft. and 12187 sq. ft. respectively and also a plot measuring 16200 sq. ft. has been earmarked for community centre. There is a park over an area of 3.77 acres between blocks A and B. Block C is divided into two parts. Southern part is known as sector 6 and northern part is known as sector 7. A shopping complex exists over an area of 20452 sq. ft. adjacent to the plot in question which was identified as a site for nursery school but no school came up on the said land. The action of the respondents in raising of CGHS dispensary is also challenged on the ground that no public notice to the affected persons as required under Section 11(A) read with Section 44 of the Delhi Development Act was given and the representations made by the petitioners to the concerned authorities were never replied or heeded

to by the respondents. Hence the present writ petition in the interest of the residents of Yojna Vihar.

3. The respondents have contested the writ petition on various grounds contending inter alia that there are children's park and ornamental park available in Yojna Vihar in Block A & B as well as in Block C. Besides open land of service personnel can be utilized by the children for playing purpose and it was by way of a notification issued on 1.8.1990 that the user of the land from nursery school was changed into user for CGHS dispensary and also that this dispensary has been raised on representations made by the residents and senior citizens of Yojna Vihar as they have to go Chander Nagar for their treatment and also that the dispensary in Chander Nagar is situated in a rented house which is at distance of one and half km from Yojna Vihar. It is averred that the CGHS dispensary coming up on the plot in question is in the interest of the public; not only the senior citizens but also all the residents and children of the locality.

4. Mr. Randhir Jain Advocate for the petitioner assailed action of the respondents on the following grounds:-

- a. The action of the respondents is contrary to and in violation of the provisions of law.
- b. This action has effect of depriving the children of the locality of the children's parks and playground which they have been using for the last more than 26 years.
- c. The impugned action is not only unlawful but it violates the fundamental rights of the petitioners and others as it puts into jeopardy the safety of the residents of the area as this plot is situated in thickly populated area and is surrounded by lanes 30 feet and 15 feet wide.

5. It is further submitted by the learned counsel for the petitioners that an alternative plot is available in A Block which faces 150 feet wide road and does not cause any disturbance to anyone.

6. To controvert the claim of the petitioners, the respondents have urged that they had taken decision to change the use of the park from that of children's park to that for construction of CGHS dispensary in a meeting of technical committee held on 17.6.1991 and vide notification dated 20.9.1995, the dispensary was raised for the benefit of the residents of Yojna Vihar upon the representation of various residents of the locality. According to the counsel for the respondents, construction of CGHS is not jeopardizing the safety of the residents in any manner and in no manner violates the fundamental rights of the petitioners and other residents of the locality. It is further submitted by the learned counsel for the respondents that a notice was published in Gazette dated 12.2.1994 in compliance of the legal provisions in Section 11-A and 44 of the Delhi Development Act.

7. Yojna Vihar is situated in eastern part of Delhi and has three blocks i.e. A, B and C. The petitioners are residing

in pocket 7 of C Block. The land in question was initially earmarked for nursery school and adjacent to this land is the shopping complex which already exists at the place. It seems that since the land was lying vacant the children of the nearby houses must have been using this land as playground. A policy decision was taken by the Government by virtue of which nursery school site in view of F-16/Land/L/Policy/89/Ch/7964-54 dated 16.10.1989 was decided to be utilized for certain specified alternative facilities and one such alternative facility was a dispensary. This policy decision finds mention in para 7.5 of the Guidelines on Land Management Volume-I issued by the Delhi Development Authority/respondent No. 2 on 27.1.1992. Since the DDA had handed over the development of Yojna Vihar to MCD, the MCD carried out necessary modification in the lay out plan of the colony in accordance with the policy decision of the Government for constructing a dispensary on the impugned land.

8. From the record it is evident that a notification dated 20.9.1995 was issued covering the modification aspect in respect of nursery schools and kindergarten schools in accordance with the requirements of Section 11-A read with Section 44 of the DDA. Government had invited objections on the notification dated 4.2.1994 and only two objections were made which were considered. It was only after consideration to the objections that final notification was issued on 20.9.1995. Therefore, to say that there was non compliance of provisions of Section 11-A read with Section 44 of the DDA Act is not correct and cannot be accepted. Some government officials founded a society named as Planning Commissioner Co operative House Building Society Ltd. The society was allotted the land on which Yojna Vihar was constructed. There are 540 members in the society, and most of them are the government servants either retired or in service or beneficiaries of CGHS health scheme.

9. There is no conflict on that there is no CGHS dispensary in Yojna Vihar. The residents of Yojna Vihar had been going to CGHS dispensary in Chander Nagar which is being run in a rented residential house in Chander Nagar. Requests were received from the pensioners and government employees who are residents of Yojna Vihar for construction of CGHS dispensary in Yojna Vihar and it was on these representations that respondents modified the plans, issued notification as required and changed the user of the land earmarked for nursery school to that of CGHS dispensary i.e. the health scheme. The plans of Yojna Vihar as annexed to the writ petition clearly indicate that there are parks tot lots and nursery schools in all the three blocks of Yojna Vihar except that there is no nursery school in Block C. There are two parks in block C and the plot in question is adjacent to the shopping complex. Children of the locality have sufficient facilities and amenities to play in the parks provided in Yojna Vihar and especially the park and tot lot provided in Block C. There is a service personnel park which is nearby the plot in

question and can also be conveniently used by the children of the area as their playground.

10. The construction of CGHS on the impugned land in no manner can be said to be in violation of the fundamental rights of the petitioners and other residents of pocket 7 of the C Block of Yojna Vihar. This plot has an access from a road 30 feet wide on two sides and 15 feet lane on one side. The change in the user of the land has been made by the respondents by taking a policy decision not only in respect of the plot in question but also in respect of various other plots earmarked for nursery schools in different colonies. The construction of CGHS dispensary after a policy decision and modification of the Master Plan is fully in consonance with provisions of law and cannot be treated as violative of fundamental rights of the petitioners or their children who have alternative place in the vicinity to use as playground. Besides, this plot was never earmarked for playground but was earmarked for nursery school. Since no nursery school was constructed, children

of the locality finding it vacant piece of land must have been using it as a playground but then the user of the land earmarked for nursery school could not be construed as converted into a playground or a park. Construction of CGHS dispensary is rather in the benefit and for convenience of the residents of Yojna Vihar which still houses about 300 initial members of the society who are all either retired, pensioners or working as government officers. Petitioners are not the founder members of the society and have acquired the houses by way of purchase much later on and they probably started residing in Yojna Vihar since 2000. One of the petitioners, Mr. Rajnish Kumar Jain is an earlier purchaser and is in occupation of the house in Yojna Vihar since 1992, therefore, the petitioners cannot have any personal knowledge about the user of this plot as children's playground for the last 26 years as alleged. Therefore, there are no merits in the writ petition.

11. It is pertinent to mention here that one of the residents of Block C had filed a writ petition bearing No. 3649/2006 claiming the same relief and the said writ was ordered to be attached with this writ as per order dated 12.5.2006 on the day when the present writ came up before this Court for the first hearing. The said writ was withdrawn by the petitioners and was dismissed as withdrawn. The petitioners in the said petition also filed a civil suit on the similar cause action which was also dismissed as withdrawn by the trial court on 29.9.1999. It is also pointed out by the learned counsel for the respondents that present petitioners were also signatories to the joint representation which was filed in writ petition No. 3649/2006.

12. As per the status report and photographs filed by the DDA/respondent, as of now the CGHS dispensary coming up on the land in question is nearing completion.

13. Hence, we do not find any merits in the writ petition and the same is accordingly dismissed. There are no orders as to costs.

(ARUNA SURESH)
JUDGE

April 11, 2008
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(T.S. THAKUR)
JUDGE