

* **HIGH COURT OF DELHI : NEW DELHI**
+ **Judgment reserved on : 12.12.2008**
Judgment delivered on: 15.12.2008
% **W.P. (C) 8710/2008 & C.M.16735/08**

YOGRAJ & ANR. Petitioner
Through: Mr. Dinesh Agnani, Advocate.

versus

D.D.A. & ORS. Respondent
Through: Mr. Gaurav Sarin, Advocate for
DDA.
Mohd. Mannan, Advocate for
respondent no. 2.
Mr. Sanjeev Sabharwal, Standing
Counsel for MCD/respondent no.3.

CORAM:
HON'BLE MR. JUSTICE VIPIN SANGHI

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| 1. | Whether the Reporters of local papers may be allowed to see the judgment? | No |
| 2. | To be referred to Reporter or not? | No |
| 3. | Whether the judgment should be reported in the Digest? | No |

VIPIN SANGHI, J.

1. This petition has been filed by the petitioners to seek the quashing of the auction notice dated 15.11.2008 issued by the DDA in respect of Site no.14, Near C-9, Jangpura Extension, New Delhi admeasuring 90 sq.mt.

2. The petitioners state that they are the owners of property bearing No.C-9, Jangpura Extension, New Delhi, acquired by them by

virtue of a sale deed dated 22.1.1981. The petitioners thereafter got the building plans sanctioned from the MCD and raised construction on the plot. It is stated that adjoining the petitioners property there is an open strip of land. The petitioners applied to the authorities for allotment of the additional strip of land which is now proposed to be auctioned as Site No. 14. However the said application was not responded to by the L&D.O to whom the application was made. Eventually the land in question, namely, the additional strip of land which now bears Site No.14 and admeasures 90 sq.mt was transferred to the DDA. The DDA declined the request made by the petitioners on 22.8.1996.

3. The petitioners are now aggrieved by the proposed auction of the aforesaid site by the respondent on the ground that the petitioners building, which is stated to have been constructed according to the sanctioned plan, has an entry from the side which abuts the site in question. The said side entry leads to the staircase to approach the first and the second floor of the property. The petitioners have placed on record the photographs which show the existing state of affairs at the site. From the photographs, it appears that the petitioners have erected a hedge and a boundary wall to enclose the site in question and have also installed a gate on the boundary of the said site. A part of the area has been paved with a cement floor to be used as a drive way. The petitioners have also planted grass and a tree on the said

site. From the photographs it is clear that the petitioners are more or less exclusively putting to use the site in question.

4. The petitioners have filed on record the building plan as sanctioned by the MCD. The said building plan shows the existence of a side entry which leads to the staircase to approach the upper floors.

5. When the matter came up before the Court on 8.12.2008, the Court appointed a Local Commissioner to verify the state of affairs at the site. It had then been claimed by the petitioners that the building has been constructed as per the sanctioned plan and that there is no encroachment made, and there is no violation in terms of the set backs not being provided. The Local Commissioner has inspected the premises and filed his report in Court and the same has been taken on record.

6. From the report of the Local Commissioner, it appears that the plan as sanctioned by the MCD shows a side entry leading to the staircase to approach the upper floors. The side entry is right on the boundary of the petitioner's property and there is no set back provided within the plot area of the petitioners. This means that as one exits out of the side entry, one steps on to the site in question. There are two windows also provided in the petitioners sanction plan which open into the site in question.

7. The submission of learned counsel for the petitioners is that the petitioners do not stake any claim in respect of the site in question and have no grievance with the proposed action of the respondent in going ahead with the auction of the same. However, the petitioners submit that since the petitioners have built their building according to the sanctioned plan which provides for a side entry, the petitioners are entitled to a right of way to access the side entry. It is stated that on the first floor of the petitioners' property, there is a tenant who is in occupation under a registered lease deed. A copy of this lease deed has been filed along with the report of the Local Commissioner which was provided by the petitioners at the time of inspection.

8. Learned counsel for the petitioners relies on Bye-law 11.1 of the Building Byelaws, 1983 which states that no building shall be erected so as to deprive any other building of the means of access. He submits that if the site in question is auctioned and boundary wall/construction raised on the periphery abutting the petitioners property, the side entry which is a means of access would stand closed.

9. On the other hand, the submission of learned counsel for the DDA is that merely because the MCD has sanctioned the building plans by providing for side entry/windows into DDA's land, the petitioners are not entitled to stake any right or claim in respect of the site in question. They cannot demand a right of way from the site in

question. Such a right can be claimed only as a necessity, and not when another approach is available to the petitioners from the front entry of their property. By referring to the report of the Local Commissioner he points out that the petitioners have access to the staircase from the front side of the property.

10. Having considered the rival submissions, I am not inclined to grant any relief to the petitioners in the present petition. Admittedly the site in question belongs to the DDA and the petitioners have no right, title or interest therein. The petitioners plot faces the road in the front. It is not even the petitioners' case that the site in question was liable to be developed as a passage/road. In these circumstances, there was no reason for the petitioners to have even approached the MCD with building plans which had openings/doors/windows on the side of the site in question. It is clear that the entry gate installed on the side, which is accessible through the site in question was provided with the object of encroaching upon, or at least passing over public land. The petitioners ought to have been aware, when they applied for sanction of their building plans that the site in question could, at a later point of time, be utilized, cordoned off or built upon by the DDA or its allottee, and that the petitioners may not be in a position to enjoy the right to access the side entry from, or open the window into, the site in question. Merely because the MCD may have sanctioned the building plans permitting the opening of the side entry/windows

which open into the site in question, it does not take away the rights of the DDA to deal with the site in question by auctioning the same as a residential plot. Pertinently the DDA had no role to play in the grant of the said sanction. If the petitioners are aggrieved by the grant of the said sanction, it is open to them to take appropriate action against the MCD. But the rights of the DDA cannot be adversely affected only on account of the sanction being granted by the MCD.

11. It is also clear from the report of the Local Commissioner that the staircase to approach the first and second floors can be accessed from the front entry. The Local commissioner has observed that the staircase can be accessed through the front bed room and drawing room of the property, meaning thereby that the staircase is either accessible through the side entry/door or from the front side by passing through the bed room door on the ground floor of the property. The respondent DDA, in my view, is not obliged to grant any right of way to the petitioners as claimed to them from over the site in question. I see no merit in this petition. Dismissed.

(VIPIN SANGHI)
JUDGE

DECEMBER 15, 2008
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