

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Date of Decision : November 03, 2009*

+ **LPA NO.397/2003 & CM No.5957/2006**

EB. POCKET RESIDENTS WELFARE ASSOCIATION & ORS.

.....Appellants

Through: Mr.Raman Kapur, Advocate

Versus

DELHI DEVELOPMENT AUTHORITY & ORS.

.....Respondent

Through: Ms.Sangeeta Chandra, Advocate for
Respondent No.1.

Mr.R.K. Watel, Advocate for Respondent
No.3.

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MR. JUSTICE SURESH KAIT

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

PRADEEP NANDRAJOG, J

1. Vide impugned judgment and order dated 3.4.2003, the writ petition filed by the appellant has been dismissed.

2. The grievance of the appellant in the writ petition was that DDA had constructed SFS Flats in Rajouri Garden and as per a brochure, had held out that amongst other facilities, a

neighbourhood park would be maintained in the area in question. This, as per the appellant is a promise held out to the allottees of the SFS Flats at Rajouri Garden and thus, alleges the appellant, that DDA could not use any portion of the park, much less transfer right therein, in favour of any third party permitting use thereof for a religious purpose.

3. We may note that two plots have been carved out, on what the appellant alleges as the land earmarked for a neighbourhood park, one of which has been allotted by DDA for community services and the other for erecting a church.

4. The plea of the appellant has been negated by the learned Trial Judge inter alia on the ground that the SFS scheme in question, vide clause-17(i), clearly held out that DDA reserved the right to change the facilities and specifications shown in the layout plan. The second reasoning of the learned Single Judge is that the Master Plan did not specifically provide for any land use of specific lands. Under the Master Plan the area as a whole was earmarked for residential use. As per the learned Single Judge, in conformity with the land use prescribed in the Master Plan, for the area in question, specific use of different parcels of land was permissible with reference to the prescribed land use in residential areas. The learned Single Judge, in para 11 of the

impugned order, has specifically referred to the use zones which are permissible under the Master Plan and has held that there is no prohibition from earmarking sites in residential areas, to be used for community purposes and religious purposes. The learned Single Judge has held that within the Master Plan, specific land use of different sites is as per the layout plan which can be amended at any time by the Vice Chairman, DDA.

5. Learned counsel for the appellant concedes that in matters pertaining to layout plans, the Vice Chairman, DDA or any other officer to whom said power is delegated, can take decisions pertaining to layout plans.

6. We may note that this Court has taken a consistent view in various judicial pronouncements that the procedure prescribed to amend a Master Plan and a Zonal Development Plan has not to be followed with reference to a Layout Plan for the reason only the Master Plan and the Zonal Plan have a statutory flavour.

7. The view taken by the learned Single Judge is perfectly legal. We may only expand by penning down further that the Master Plan has a development code, which is an integral part of the Master Plan and vide sub-clause 8(iii)(A) of the Development Code, use premises in use zones have been

stipulated. The same show as to what categories of activities are permissible in areas designated as residential areas, industrial and manufacturing areas, commercial areas etc. Pertaining to residential use zones the category assigned is RD and permissible uses specified are 31 in number. Use as a religious premises, qua land in a residential use zone as also erection of social welfare centres are two of the thirty one permissible uses. The reason is obvious. A residential colony would require some site earmarked for religious purposes, some site earmarked for community purposes, some site earmarked for nursing home, schools, bus terminals etc. In other words services both material and which satisfy human wants which are an integral part of a residential colony need to be provided to the residents of the area and hence some land has to be earmarked for said purpose. Thus, we are in complete agreement with the view taken by the learned Single Judge.

8. We may note that the learned Single Judge has noted that as per the Master Plan, for a population of 15,000 one neighbourhood park covering 1.5 hectares is the stipulated norm. Though not noted by the learned Single Judge, we note that in the instant case, excluding the two small parcels of land in dispute, the remaining green area for

the neighbourhood park is 3.342 hectares for 1070 dwelling units. Assuming that there are eight inhabitants in every dwelling unit, the available area of the neighbourhood park is much more than the prescribed norm.

9. We note that the area of the two disputed plots is 600 sq.yards and 500 sq.yards and applying the 'de Minimis Principle', with reference to the total area of the neighbourhood park, so negligible an interference is liable to be ignored.

10. We may note that the learned Single Judge has additionally noted that the plot allotted for a church, even otherwise falls outside the area of the neighbourhood park.

11. The appeal is dismissed.

12. No costs.

(PRADEEP NANDRAJOG)
JUDGE

(SURESH KAIT)
JUDGE

NOVEMBER 03, 2009
Dharmender