

REPORTABLE

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

+ WRIT PETITION (CIVIL) NO.6968 OF 2000

% Date of Decision : March 3, 2009.

ROHIT DHUPAR & ORS. Petitioners.
Through Mr. D.D.Singh, advocate.

VERSUS

LT. GOVERNOR & ORS. Respondents.
Through Mr.M.N. Krishnamani, Sr.
Advocate with Mr.Mohinder Singh,
advocate for respondent no.5.
Ms.Sangeeta Chandra, advocate for
respondent-DDA.
Mr.Ajay Arora & Mr.Kapil Dutta,
advocates for respondent-MCD.
Mr.Gaurav Duggal, advocate for UOI.
Mr.Anand Yadav, advocate for
respondent no.6.

CORAM:

HON'BLE MR. JUSTICE AJIT PRAKASH SHAH, CHIEF JUSTICE
HON'BLE MR. JUSTICE SANJIV KHANNA

1. Whether 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 ?

SANJIV KHANNA, J:

1. The five petitioners are residents of New Friends Colony and have filed the present Public Interest Litigation for quashing and setting aside allotment of 500 sq. mts. of land to the New Friends

Colony Temple Society (hereinafter referred to as respondent no.5, for short) by the Delhi Development Authority (hereinafter referred to as DDA, for short). It is alleged in the Petition that this 500 sq.mts. is part of a land earmarked for a park and the allotment, therefore, is contrary to the Master Plan of Delhi, 2001 (hereinafter referred to as MPD 2001, for short). It was submitted that land use from park to any other use cannot be changed without complying with the provisions of Section 11A of the Delhi Development Act, 1957 (hereinafter referred to as DD Act, for short).

2. DDA has filed two reply affidavits. In the first affidavit filed on 12th March, 2001, it is stated that the respondent no.5-Society had made a request for allotment of 500 sq.mts. of land for residential quarters for Service personnel. After due consideration, 500 sq. mts. of land earmarked for "Multi Purpose Community Usage" in the Lay Out Plan was allotted to the respondent no. 5 society. In conjunction with the said allotment, DDA also decided that the balance land earmarked in the Lay Out Plan for "Multi Purpose Community Usage" in the vicinity would be converted to green use and developed as a park. The matter was referred to Ministry of Urban Development for changes in the Lay Out Plan.

3. In the additional affidavit dated 22nd May, 2001 filed by the DDA, it is pointed out that the initial Lay Out Plan was approved/sanctioned by the MCD. At that time, the entire area was under the control of Delhi Administration and subsequently was

transferred to DDA. DDA has power to sanction and modify the Lay Out Plan. MCD can also modify the Lay Out Plan of the New Friends Colony with their consent, as DDA is a superior lessor who has executed the lease deed in favour of the Cooperative Society, which in turn has executed sub-leases in favour of their members. In this affidavit it is stated that the Lay Out Plan for New Friends Colony has been checked and a big chunk of land was earmarked for community centre, nursery school and community services. It is further stated that except for 500 sq.mts. of land which has been allotted to respondent no.5, the entire balance area of land has been converted into 'green' because of lack of demand for allotment of land for these activities.

4. MCD in their affidavit filed on 9th March, 2001 has stated that DDA vide their letter dated 19th July, 2000 had issued No Objection Certificate for sanction of building plans. DDA had sent a modified copy of the Lay Out Plan for carrying out necessary modification by the town planner, MCD. It is stated that the Lay Out Plan was modified and accorded under Section 313 of the Delhi Municipal Corporation Act, 1954 (hereinafter referred to as DMC Act, for short). It is stated that sanction of the building plans was according to law and the applicable building bye laws. The building plans were sanctioned as per the provisions of MPD-2001 as applicable for

residential buildings. In their second affidavit filed on 18th May, 2001, MCD has reiterated their earlier stand and stated that the Lay Out Plan was modified and the right to modify the Lay Out Plan vests with MCD under Section 313 of DMC Act. It is further stated that use of the land for residence of service personnel is compatible with the use as specified in the Lay Out Plan. 2000 sq.mts. of land as per the earlier Lay Out Plan had been carved out for community facilities including nursery school, and as per MPD, 2001, a nursery school requires an area of 800 sq. mtrs. It is stated that only 500 sq.mts. of land out of the said 2000 sq.mts. was allotted to respondent no.5 and, therefore, there was still sufficient land for a nursery school. It is stated that MCD was fully aware of the aforesaid facts including the fact that a part of the land was earmarked for a nursery school, when the change in the Lay Out Plan was made.

5. We have deliberately avoided reference to the counter affidavit filed by respondent no.5 and referred only to the counter affidavits filed by MCD and DDA.

6. Learned counsel for the petitioners submitted that the Lay Out Plan could not have been altered or modified except with the amendment of MPD, 2001 as provided under the DD Act. Specific reference was made to Sections 11A and 14 of the Act, which read as under:-

“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 affect 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 affect 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.]

Section 14. User of land and buildings in contravention of plans -

After the coming into operation of any of the plans in a zone, no person shall use or permit to be used any land or building in that zone otherwise than in conformity with such plan:

PROVIDED that it shall be lawful to continue to use upon such terms and conditions as may be prescribed by regulations made in this behalf any land or building for the purpose and to the extent for and to which it is being used upon the date on which such plan comes into force. "

7. City of Delhi is spread over 1480 sq.kms. As per the provisions of the DD Act, Master Plan for Delhi is prepared to meet demands and requirements of the City and to ensure planned urbanization. MPD, 2001 contained broad parameters and set out rules and regulation for construction and urbanization, balancing out needs and

requirements of the residents and concrete construction on one side and environment, greens and open spaces on the other side.

8. Section 7 of the DD Act requires periodical preparation of Master Plan of Delhi with the following requirements:-

(a) Divide Delhi into Zones for purpose of development and indicate the manner in which land in each Zone should be used.

(b) Stipulate basic pattern of frame work for preparation of Zonal Development Plan for various zones.

9. MPD, 2001 divided Delhi into 15 Zones. A Zonal Development Plan (hereinafter referred to as ZDP, for short) is prepared for each Zone and thereafter adopted after following the procedure as prescribed for adoption in the DD Act. Each ZDP comprises of site plan and use plan. MPD 2001 divided Delhi into 9 categories of uses comprising of 37 use zones to be detailed in the ZDP. 136 use premises are prescribed in the MPD-2001.

10. Lay Out Plans are different and distinct from ZDP. Lay Out Plans demarcate specific areas which can be used for different purposes and earmark land/plots which can be used for different

purposes. Under Development Code of MPD 2001, Clauses 2(3) and (4), Lay Out Plan and ZDP have been defined as :

"2(3). Layout Plan- Layout Plan means a sub-division plan indicating configuration and sizes of all use premises.

2(4). Zonal Development Plan means a plan for one of the zones (divisions) of the Union Territory of Delhi containing detailed information regarding provision of social infrastructure, parks and open spaces and circulation system."

11. As per the counter affidavit filed by DDA, it is clear that the area out of which 500 sq.mts. of land has been allotted to respondent no.5 in the earlier Lay Out Plan was identified for land use as "Multi Purpose Community Usage". The land, therefore, could be used for different usages under the MPD-2001, permitted under the heading "Multi Purpose Community Usage". The affidavits of DDA and MCD state that 500 sq.mts. of land allotted to respondent no.5 formed part of land that had been earmarked in the Lay Out Plan for use as community centre, nursery school, common services etc. in the Lay Out Plan. The Lay Out Plan was subsequently amended and 500 sq.mts. was earmarked for residence of service personnel and balance 1500 sq. mtrs. was to be developed as a green area. Therefore, we accept the contention of DDA and MCD that allotment of land to respondent no.5 did not entail amendment or change in MPD, 2001 or ZDP. It only entailed amendment in the

Lay Out Plan and change in use from nursery school/community centre/other activities falling under the broad category 'Multi Purpose Community Usage'. This modification in the Lay Out Plan for use of land for purpose of residence of service personnel resulted in only amendment of the Lay Out Plan and not an amendment or modification of the ZDP.

12. It is not possible to agree with the learned counsel for the petitioners that Lay Out Plan can be modified or amended only after following the prescribed procedure for amendment of the MPD 2001 and ZDP as prescribed under the DD Act. The Lay Out Plan can be amended and modified without following the procedure U/s 11A of the DD Act, as long as amended and modified lay out plans are in conformity with the ZDP and the MPD. Section 11A of the DD Act, quoted above, deals with amendment of the ZDP and MPD, 2001 and not amendment or modification of the lay out plans. This has been the consistent view of this Court as is clear from the judgments of Division Benches of this court in ***B-1, Vasant Kunj Resident Welfare Association (Regd.) Vs. Lt. Governor of Delhi and others*** reported in 2003 (1) AD (Delhi) 727 and ***Shanti Devi Gupta and others Vs. Delhi Development Authority*** reported in 54 (1994) DLT 620 Delhi. In ***Star Residents Society (Regd.) and Ors.***

Vs. Delhi Development Authority reported in 2004 (77) DRJ (Delhi)

599, it was observed that :

29. A Division Bench of this Court in the decision *Shanti Devi Gupta, vs. DDA*, AIR 1994 Delhi 299, vide para 16 held that the Delhi Development Act, 1957 in general and Section 9 of the said Act in particular, only refer to the Master Plan and Zonal Development Plan and not the lay out plan. The lay out plan was held to be a sort of working drawings prepared by the DDA. Any departure from the lay out plan was held as not to be equated with the violation of the Master Plan or the Zonal Development Plan which are statutory.

30. The learned Single Judge of this Court in the decision, *Smt. Maya Devi vs. UOI* 65 (1997) DLT 405 held that a lay out plan could be administratively modified by the Delhi Development Authority without resorting to the process of modification envisaged to a Master Plan and a Zonal Development Plan as per the mandate of Section 11A of the Delhi Development Act. In para 11 it was observed:-

"If this is the situation, in that eventuality there is only a lay out plan of the area in question. A careful scrutiny of the provisions of the Act reveals that Chapter 3A deals with the modification of Master Plan. Section 11A(i) to (iv) deals with the modification of the said plan. There is no other provision in the entire act which deals with the modification of the lay out plan. It implies thereby that the lay out plan can be modified by the Vice Chairman of the DDA."

31. Another Division Bench of this Court, in the decision, *Triveni Educational & Social Welfare Society vs. DDA & Another*, 76 (1998) DLT 329 took a view similar to the one taken by a learned single Judge of this Court in *Mayadevi's* judgment. Another Division Bench of this Court, in the judgment reported as

87(2000) DLT 603, B.U Block Residents Welfare Association vs. DDA held:-

"9.....In any case, we find no breach or violation of MPT-2001 or the 2DP. It cannot be disputed that if there is a change in the lay out plan, no approval or sanction of the Central Government is required."

13. Similar view has been taken in the case of ***Vasant Kunj RWA*** (supra). It has been held that Lay Out Plans can be amended and changed without reference to Section 11A of the Act. It was observed:

"7. Having heard learned counsel for the parties we are of the opinion that although layout plan can be changed wherefor no permission in terms of section 11A of the Delhi Development Authority Act is required but there cannot be further any doubt whatsoever that the sufficient area should be left out as green area."

14. In ***U.P. Samaj Cooperative House Building Society Ltd Vs. Delhi Development Authority and Ors.*** reported in 116(2005)DLT247, the court observed:

"23. Town planning is a legislative activity. Under Delhi Development Act, 1957, Master Plan has the force of law. Lay out plan is prepared keeping in view the development control norms stipulated under the Master Plan. So long as the lay out conforms to Master Plan norms, Court cannot substitute its own opinion as to what principle or policy would best serve the object of the Master Plan."

15. Learned counsel for the petitioners had relied upon the decision in ***G.N. Khajuria Vs. Delhi Development Authority and another*** reported in AIR 1996 SC 253. In the said case, the land use prescribed in the Lay Out Plan for the area in question was 'park'. The park was sought to be converted into a nursery school. The contention of the private party and DDA was that nursery schools are not required to be indicated either in the MPD or ZDP, unlike locations of high school and primary schools as they are not taken to be schools *stricto sensu* but are akin to recreational places. It was accordingly submitted that establishment of a nursery school in a park does not require amendment of ZDP and it is only modification of the Lay Out Plan. This contention was not accepted by the Supreme Court as after amendment of the Lay Out Plan no area was earmarked for park and thus the Lay Out Plan was not in conformity with the MPD, under which parks are required. Thus, the amended Lay Out Plan was not in conformity with the MPD. The Supreme Court, however, agreed with the learned counsel for the private respondents that ZDP need not visualize and specify land use for a nursery school as there is a distinction between a high school and a primary school on the one hand and a nursery school on the other hand. The decision went against the respondents therein for no land was earmarked for a park in the revised/amended Lay Out Plan and

the area earmarked for park was converted to a different use. It was observed as under:-

“We would agree with Shri Jaitley that in the zonal development plan visualized by Section 8 of the Act, land used for nursery school may not be indicated, as a distinction is permissible to be made between a high school and a primary school on one hand and nursery school on the other. Even so, we are of the firm view that any lay-out for residential colony, like that of Sarita Vihar, has to indicate space reserved, not only for nursery school, but for park. This follows from what has been stated in Sections 8(2)(a) and 8(d)(ii) of the Act and Rule 4(3)(g) of the aforesaid Rules. We have thought it fit to mention about this aspect because in the lay-out plan of Sarita Vihar, as put on record, we find no mention about reservation of space for park. This is simply inconceivable to us.”

(emphasis supplied)

16. There is a park earmarked in the Lay Out Plan of the New Friends Colony. It is not alleged that the area earmarked as a park in the Lay Out Plan is contrary to the ZDP or MPD 2001. 1500 sq.mts. of land out of 2000 sq.mts. earlier earmarked for “Multi Purpose Community Usage” in the Lay Out Plan has now been converted into a park instead of a nursery school, dobhi ghat, etc. In view of the above, we do not find any merit in the arguments raised by the learned counsel for the petitioners.

17. One, Dr. R.K.Tuli has filed an application for intervention in the matter. He is also represented by the learned counsel for the petitioners. Dr. R.K.Tuli has raised several contentions including challenge to the initial allotment of land to respondent no.5 and has alleged construction beyond permissible FAR, etc. Counter allegations have been made against Dr. R.K.Tuli by the respondent no.5. DDA in their affidavits has stated that initially, 400 sq. mts. of land was allotted to respondent no.5 vide allotment-cum-demand letter dated 6th October, 1987. The temple authorities however raised massive constructions on additional land measuring 2036 sq.mts. This aspect was examined by the Lt. Governor who was pleased to regularize and allotted additional area to respondent no.5 in terms of the letter dated 23rd February, 2000 on payment of premium as mentioned in the said letter. The present Writ Petition, as filed, does not pertain to and does not question allotment of the area vide demand-cum-allotment letter dated 23rd February, 2000. We are, therefore, not inclined to go into these questions on the basis of the intervention application filed by Dr. R.K.Tuli.

18. On the question of unauthorized construction, respondent no.5 has filed an affidavit dated 22nd January, 2008 stating, inter alia, that the Society shall construct the building on the plot strictly in accordance with the sanction granted by MCD and also provisions of

MPD and the respondent no.5-Society will carry out modification in the existing structure on their own cost. It is further stated that the respondent no.5-Society has filed a modified plan compatible with MPD 2021. The respondent-authorities are directed to examine the construction and ensure that the construction is in accordance with MPD 2021 and any illegal or unauthorized construction contrary to MPD 2021 will be demolished in accordance with law.

With the aforesaid observations, Writ Petition is disposed of. No costs.

(SANJIV KHANNA)
JUDGE

(AJIT PRAKASH SHAH)
CHIEF JUSTICE

MARCH 3, 2009.
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