

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

+ L.P.A. No. 535-43/2006

Date of Decision :19th January, 2009

Aravali Resident Welfare Association & Ors Appellants
Through : Mr. J.C.Seth, Advocate
Mr. A.K.Nigam, Mediator

Versus

Delhi Development Authority & Ors Respondents
Through : Mr. Rajiv Bansal & Mr. Rajan Tyagi,
Advocates for DDA.
Mr. O.P.Saxena, Advocate for MCD.
Ms. Noorun Nahar Firdausi, Advocate
for respondents No.4 and 5.
Mr. N.Waziri, Advocate & Mr. Shoaib Haider,
Advocate for Delhi Wakf Board.

CORAM :

HON'BLE MR. JUSTICE SANJAY KISHAN KAUL
HON'BLE MR. JUSTICE SUDERSHAN KUMAR MISRA

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 ?

SANJAY KISHAN KAUL, J. (ORAL)

1. The DDA developed the Aravali Apartments Complex, Alaknanda, New Delhi comprising of a large number of SFS Flats. The possession to the successful allottees is stated to have been given some time in the year 1983. The appellants before us are the Residents Welfare Association and various allottees.

2. There appears to have been some problem from the inception itself about the presence of a mosque within the boundary of the Apartment complex. Endeavors to find a solution to the same did not succeed. It is the case of the appellants that their right of enjoyment of the flats is disturbed and affected by the congregation that assembles not only in the mosque but spills over into the adjacent area including lanes and by-lanes.

3. The appellants claim that the structure of the mosque itself is an unauthorized construction and encroachment on public land. On the other hand, the Delhi Wakf Board has taken the stand that the Masjid has been in existence for over 100 years and forms part of a notification dated 10.4.1980 where this Masjid is enlisted at serial No.11. It is further pleaded that since this place of worship existed prior to 15.8.1947, the Places of Worship (Special Provisions) Act, 1991 itself protects the structure as there is a bar of conversion of any such place of worship in view of the provisions of Section 3 and 4 of that Act. The Masjid is thus claimed to exist on Khasra No. 281/1-M measuring 3 biswas of Mauza Tughlaqabad, New Delhi.

4. One entity Muslim Janta Anjuman, claims to be running the mosque, though the status of that entity is disputed by the Wakf Board. In 1986, towards an endeavour for amicable solution, a suggestion had emanated that the mosque be preserved as a structure without the Namazis offering prayers and separate land be made available by the DDA, which was then the controlling authority of that land, measuring 500 Sq. yards elsewhere for purposes of offering the Namaz. This arrangement however was not concluded nor was there a formal acceptance to the offer of the DDA. The land where this alternate area was to be made available now vests with the Slum Wing of MCD being

part of JJ Department and learned counsel for the MCD states that much water has flown since the offer was originally made by the DDA and there are already alternate plans in existence for utilization of the area inclusive of the 500 sq. yards. The land is thus stated to be not available.

5. The previous orders passed by this court shows that at some stage, it was thought that a settlement may be possible and thus Mr. Arvind Nigam, Advocate was appointed as Mediator. The Mediator has submitted reports. The Anjuman apparently wanted the original arrangement to be implemented of alternate space but the Wakf Board which has stepped into the picture was of the view that the Anjuman has no legal standing and that the Wakf Board is not willing to shift the place for offering Namaz, though it would obviously welcome any additional land. Learned counsel submit that the Wakf Board is constrained by the provisions of Section 51 of the Wakf Act, 1995.

6. The result of the aforesaid is that there is no amicable solution possible inspite of the best efforts of the Mediator.

7. We find a number of factual disputes arising in the present writ petition which certainly cannot be determined in these proceedings as evidence would be required to be led to come to any conclusion. These facts include whether the Masjid existed at the site prior to 15.8.1947 or at what stage such a Masjid came up. This is so as apparently when the land was notified, the notification does not mention presence of such Masjid by including it in the award. As noticed above, counsel for the Wakf Board relies upon the notification of 10.4.1980 and submits that he has other records to establish the claim of the Wakf Board.

8. In view of the appellants asserting that as per Revenue records there is no such mosque and the Wakf Board taking the contrary position both sides have to be given an opportunity to lead evidence in that behalf which can only be done in a Civil Suit. Not only that there is a controversy about the status of Anjuman and its capacity to have proposed any settlement. Once again, this is a matter which would require evidence to be led. Parties are at liberty to approach Civil Court or any other authority for redressal of their grievances in that behalf.

9. We have to keep in mind as to what are the directions which the appellants prayed for in the writ petition, the impugned order passed in that behalf and as to what directions are now required to be passed keeping in mind the aforesaid constraints.

10. The appellants had prayed for removal/reallocation of the unauthorized building being used as a mosque situated within Aravali Apartments Complex, Alaknanda, New Delhi. This in turn entails the determination of the aforesaid controversy and such a direction thus cannot be issued in these writ proceedings.

11. In the impugned order, the learned Single Judge has non-suited the appellants on the ground that the mosque has been functioning in the area for some time and that options were granted to the petitioners to get alternate accommodation which was declined by them. Firstly, we are of the view that there cannot be any compulsion on the appellants and other allottees to shift to an alternate accommodation. Secondly, it is pleaded by learned counsel for the appellants that such an offer was made only to five allottees and they

too were not made available any alternate flats and the offer was in fact withdrawn.

12. We however cannot ignore the fact that mosque exists on a particular area. The Namazis have a right to offer their Namaz at the mosque subject to the determination of the ultimate question in Civil proceedings. Learned counsel for the Wakf Board submits that they will approach the concerned authorities for making arrangements for a large number of Namazis to be accommodated within the precincts of the Masjid by carrying out suitable constructions in accordance with law. This is of course for the Wakf Board to do.

13. The rights of the Namazis to offer prayers at the mosque however cannot imply a right to spill over into lanes and by-lanes and to occupy the area beyond the precincts of the mosque. The prayers must thus be offered within the boundary of the mosque. This would of course entail possibly restricting the number of Namazis into the mosque because the area itself is limited. It is for the Wakf Board or the concerned authorities to work out as to how best the area can be utilized for purpose of permitting a larger number of Namazis to offer prayers but the same should be restricted to the area of the mosque.

14. Learned counsel for the appellants submits that periodically police authorities have to be called. The Commissioner of police is impleaded as respondent No.3 and is represented by a counsel. It is the bounden duty of the police authority to ensure that the law of land is obeyed and law and order be maintained. It thus must be ensured that the areas beyond the boundary of the Masjid are kept clear for the allottees and residents of the area and are not used for any other purpose than easementary rights of passage.

15. The impugned order is set aside and stands substituted with the directions passed by us today.

16. The appeal is accordingly allowed leaving the parties to bear their own costs.

CM No.4850/2006 (Stay) & CM No. 4851/2006 (Order 41 Rule 27)

17. In view of the disposal of the appeal, no further directions are called for on these applications.

18. Applications stand disposed of.

19. Dasti to learned counsel for the parties.

SANJAY KISHAN KAUL, J.

SUDERSHAN KUMAR MISRA, J.

January 19, 2009
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