

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

Date of decision: 5th October, 2010.

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W.P.(C) No.7940/2007

M/S RAVI INVESTMENTS PVT. LTD.

... PETITIONER

Through: Ms. Vandana Sharma, Mr. Abhay
Kushwaha & Ms. Abhigya,
Advocates.

Versus

THE LAND & DEVELOPMENT OFFICE & ORS. .. RESPONDENTS

Through: Mr. B.V. Niren & Mr. Abhishek Goyal,
Advocates for R-1.
Ms. Ruby Nahar for Ms. Aruna Tiku,
Advocate for R-2.
Ms. Saroj Bidawat, Advocate for R-3.

CORAM :-

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

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

RAJIV SAHAI ENDLAW, J.

1. The petition seeks a mandamus to the respondents Land & Development Office (L&DO), Govt. of NCT of Delhi & MCD to consider the portion of 100 sq. yds. (purchased by the petitioner) of plot No.B-1/1 *ad measuring* total 200 sq. yds. situated in Lajpat Nagar-I, New Delhi as an independent plot of 100 sq. yds. and not part of the integrated plot *ad measuring* 200 sq. yds. Direction is also sought against the respondent No.3

MCD to allow the petitioner construction on the said 100 sq. yds. as per norms applicable to plots of 100 sq. yds. in the area. It is the case of the petitioner that Sh. Harbans Lal being the allottee (in the year 1962) of the plot *ad measuring* 200 sq. yds. had in 1974 agreed to sell a portion *ad measuring* 100 sq. yds. to one Sh. Raj Prakash; that in a suit filed by the said Sh. Harbans Lal against Sh. Raj Prakash a compromise decree was passed in the year 1980 whereunder Sh. Harbans Lal agreed to divide the plot by constructing a wall and to give the rear 100 sq. yds. portion thereof to the said Sh. Raj Prakash; the petitioner claims to be an assignee (in the year 1981) from Sh. Raj Prakash. The petitioner admits that in the year 1994 the respondent no.1 L&DO executed Conveyance Deed of freehold rights of the entire plot in favour of Sh. Harbans Lal; that Sh. Harbans Lal thereafter in 1996 executed the Sale Deed of the portion *ad measuring* 100 sq. yds. in favour of the petitioner; the petitioner thereafter applied to the respondent no.3 MCD for construction on its 100 sq. yds. of the plot but which application was rejected being for construction by a part owner of the plot only; the petitioner thereafter applied to the respondent no.1 L&DO for executing separate Conveyance Deeds of 100 sq. yds. each and on which application also no action was taken. Ultimately this petition was filed.

2. Notice of the petition was issued. Though the owner of the other 100 sq. yds. namely Sh. Harbans Lal was also impleaded as the respondent no.4, but he chose not to appear and has been proceeded against *ex parte*.

3. The respondent no.1 L&DO has in its affidavit stated that after the conversion of the property from leasehold to freehold it has no role to play. However the respondent no.1 L&DO has drawn attention to the clauses of the Perpetual Lease of the land prohibiting assignment without permission and also prohibiting sub-division of the plot without permission. It is pleaded that no permission was taken before assignment by Sh. Harbans Lal in favour of the predecessor of the petitioner or for division. It is further stated that the property cannot be sub-divided into small plots.

4. The respondent no.3 MCD in its counter affidavit has also pleaded that under MPD-2021 also, the sub-division of residential plot is not permitted.

5. The counsels for the parties have been heard.

6. The counsel for the petitioner has reiterated the contentions aforesaid in the petition. It is argued that once the Civil Court in the decree aforesaid has partitioned the property, the respondents cannot object to the same. It was enquired from the counsel for the petitioner as to whether the respondents L&DO, Govt. of NCT of Delhi & MCD were a party to the decree aforesaid. The answer is in negative. Thus it cannot be said that the said respondents are bound by the decree.

7. Else it was enquired from the counsel for the petitioner as to what is the right to the petitioner to claim such sub-division. The counsel contended that the plots in the vicinity are of 100 sq. yds. and no harm will be caused by dividing the plot in question *ad measuring* 200 sq. yds. also into two plots of 100 sq. yds. each. However on enquiry it is admitted that the corner plots in the colony are of 200 sq. yds.

8. The size of a plot is determined in a layout plan prepared and sanctioned of a colony. The size is dependent upon several factors and of which an important one is density. The number of plots to be carved out in a colony and the sizes thereof are dependent upon the total size of the colony, the amenities available or layout therefor and the desired number of residences therein. If such sub-division at the asking were to be permitted, it would be violative of the layout plan and would convert well laid out planned colonies also into a slum. It is thus not found to be in public interest to allow such sub-divisions as is claimed.

9. The counsel for the petitioner has been unable to show any provision under the Master Plan or under the DMC Act permitting such sub-division. In the absence thereof, the petitioner cannot claim any mandamus as is sought. Mandamus can be issued only when a public authority is failing to perform its duty which it is obliged or bound to perform.

No case is made out. The petition is therefore dismissed. No order as to costs.

**RAJIV SAHAI ENDLAW
(JUDGE)**

5th October, 2010
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