

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

Date of decision: 24th October, 2011

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W.P.(C) 10080/2009

**SHANTI JANAK SACHDEVA EDUCATIONAL
SOCIETY**

..... Petitioner

Through: Mr. Ajay Monga, Adv. for Mr.
Sumit Bansal, Adv.

Versus

DDA & ORS.

..... Respondents

Through: Ms. Geeta Mehrotra, Adv. for DDA.
Mr. G.B. Sewak, Adv. for R-2.
Mr. Yashish Chandra, Adv. for Ms.
Maninder Acharya, Adv. for MCD.

CORAM :-

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

1. Whether reporters of Local papers may
be allowed to see the judgment? Yes.
2. To be referred to the reporter or not? Yes.
3. Whether the judgment should be reported
in the Digest? Yes.

RAJIV SAHAI ENDLAW, J.

1. The petition impugns the communication dated 3rd July, 2009 of the respondent no.1 DDA cancelling the allotment earlier made in favour of the petitioner of an additional strip of land *ad measuring* 111.65 sq. mtrs.

abutting the land *ad measuring* 997 sq. mtrs. still earlier allotted to the petitioner for the purpose of a Nursery School in Pocket-D, Dilshad Garden, Delhi.

2. Notice of the petition was issued and recovery of possession from the petitioner of the said 111.65 sq. mtrs. of land stayed vide order dated 14th July, 2009. The Residents' Welfare Association (RWA) of Pocket-D, Dilshad Garden, Delhi applied for impleadment and was impleaded as respondent no.2 vide order dated 1st June, 2010. Counter affidavits have been filed by the respondent no.1 DDA and the respondent no.2 RWA. *Rule* was issued in the petition on 4th April, 2011 and the interim order earlier granted made absolute.

3. It appears that the petitioner, after the allotment of 111.65 sq. mtrs. land in its favour, applied for and obtained sanction from MCD for raising construction on the entire land i.e. 997 sq. mtrs. plus 111.65 sq. mtrs. Upon cancellation of allotment with respect to 111.65 sq. mtrs., MCD revoked the said plans. The petitioner applied for impleadment of MCD as respondent no.3. Interim order restraining the MCD from taking any action

was also sought. MCD was on 7th July, 2011 impleaded as the respondent no.3 and on the condition that the petitioner shall not raise any construction and not do anything in pursuance to the sanction which had been revoked, respondent no.3 MCD restrained from revoking the plans for construction already sanctioned.

4. The counsel for the respondent no.1 DDA was directed to produce the layout plan of the colony as well as the original record which has been submitted for the perusal of this Court. The counsels have been heard.

5. There is a history of litigation. Upon allotment in or about the year 2003 by the respondent no.1 DDA to the petitioner of land *ad measuring* 997 sq. mtrs. in Pocket-D, Dilshad Garden for the purpose of a Nursery School, the respondent no.2 RWA filed W.P.(C) 585/2005 impugning the said allotment. It was the case of the RWA that the said land in the layout plan of the colony was meant for a park and had been wrongly allotted for the purpose of a Nursery School. *Status quo* with respect to the land was directed to be maintained vide interim orders in the said earlier writ petition. The said earlier writ petition was dismissed vide judgment dated

4th April, 2005. This Court on examination of the original file produced then also by DDA including the original layout plan, held the plot in question (obviously referring to plot measuring 997 sq. mtrs.) to be for the purpose of a Nursery School only and not as a park. The contention of the RWA of the plot being meant for a park was thus found to be erroneous. RWA preferred LPA No. 905/2005 which was dismissed on 25th April, 2005 and an SLP (Civil) No. 18578/2005 preferred to the Apex Court also did not meet with any success and was dismissed on 16th September, 2005.

6. The plot *ad measuring* 997 sq. mtrs. was situated at end of Pocket-D of Dilshad Garden, with 111.65 sq. mtrs. of land situated between the boundary of the said plot and the boundary of the colony and across which boundary of the colony is an 18 mtr. wide road.

7. The petitioner after succeeding in the writ petition aforesaid, instead of raising construction on the said 997 sq. mtrs. of land, approached DDA for allotment of the said 111.65 sq. mtrs. of land also to it. Approval thereof on payment of additional premium of ₹9,75,304/- was communicated by the respondent no.1 DDA vide letter dated 28th

February, 2007 to the petitioner. Upon deposit of the said amount, a perpetual lease deed dated 16th July, 2007 of the entire 1108.65 sq. mtrs. of land i.e. 997 sq. mtrs. allotted originally plus 111.65 sq. mtrs. allotted subsequently was executed in favour of the petitioner. The petitioner, as aforesaid, thereafter approached the respondent no.3 MCD for sanction of construction plans on the entire land.

8. The petitioner upon so acquiring lease of the entire 1108.65 sq. mtrs. of land sought to include the additional 111.65 sq. mtrs. within its boundary and to open access to the school plot from the 18 mtr. wide road by breaking the boundary wall of the colony. A suit before the District Court was filed by the respondent no.2 RWA in this regard but which was subsequently withdrawn.

9. However the respondent no.2 RWA thereafter approached the respondent no.1 DDA and other authorities for cancellation of the allotment of additional 111.65 sq. mtrs. of land to the petitioner. It was the contention of the respondent no.2 RWA that the said 111.65 sq. mtrs. of land in fact was a part of a continuous running passage around the entire

block and by allotment and inclusion thereof in the school plot, the passage had been blocked.

10. On such representations of the respondent no.2 RWA, the respondent no.1 DDA vide communication dated 21st October, 2008 to the petitioner, cancelled the allotment of 111.65 sq. mtrs. of land to the petitioner and restored the same as passage to the public.

11. Aggrieved therefrom W.P.(C) No. 7546/2008 was preferred by the petitioner. It was *inter alia* the contention of the petitioner that no opportunity of hearing was given to it. The said writ petition was disposed of with a direction to the respondent no.1 DDA to consider the matter afresh after hearing the petitioner.

12. A show cause notice was issued by the respondent no.1 DDA in pursuance thereto and to which a reply was submitted by the petitioner. It was the case of the petitioner in the said reply that in the layout plan of the colony, land *ad measuring* 1108.65 sq. mtrs. had been shown as a Nursery School site; however the respondent no.1 DDA allotted only 997 sq. mtrs.

of land; the petitioner had subsequently applied for allotment of the remaining 111.65 sq. mtrs. of land also; that the Planning Wing of the respondent no.1 DDA had on the said application opined that the land which had been handed over to the petitioner was not in accordance with the possession plan as the possession plan clearly showed the school site as abutting the main 18 mtrs. wide road; that if the school had access from the 18 mtrs. wide road, the residents of the colony would also not be disturbed; that accordingly a decision had been taken to allot the said 111.65 sq. mtrs. also to the petitioner for inclusion thereof in the land already allotted for the Nursery School. It was also the plea of the petitioner that the perpetual lease of the entire land having already been executed, the respondent no.1 DDA was not left with any right of cancellation of allotment.

13. The respondent no.1 DDA vide letter dated 3rd July, 2009 impugned in this petition, in the light of the difficulties being faced by the public and the residents owing to closure of the said passage between two blocks of DDA flats through the said 111.65 sq. mtrs. of land and further in the light of the land usually allotted to nursery schools being 800 sq. mtrs. only and

the petitioner already being in possession of excess land, reiterated its earlier decision of cancellation of allotment and restoration of the said land as a public passage.

14. The petitioner in the writ petition relies upon the reply dated 6th September, 2006 of the Housing & Urban Projects Wing of the respondent no.1 DDA to an RTI query of the petitioner, to the effect that the subject plot is abutting the main 18 mtr. wide road as per the possession/layout plan No. 183-L and it was envisaged at the planning stage that the entry to the school will be from the 18 mtr. wide road and that it was not understandable as to how the strip of land *ad measuring* 111.65 sq. mtrs. remained from allotment to the school. The petitioner also relies upon the written statement filed by the respondent no.1 DDA in the suit aforesaid filed by the respondent no.2 RWA where also the respondent no.1 DDA justified the allotment of 111.65 sq. mtr. by pleading that the possession plan i.e. the plan as per which possession of 997 sq. mtrs. had been delivered to the petitioner in 2003 showed the school site as abutting the 18 mtr. wide road, that by doing so the access to the school could be provided

from the 18 mtr. wide road without disturbing the residents; that the said 111.65 sq. mtrs. belonged to the respondent no.1 DDA and the respondent no.1 DDA could so allot it to the petitioner.

15. Two questions arise for consideration. Firstly, whether the respondent no.1 DDA after the execution of the perpetual lease could cancel the allotment and secondly what is the scope of the judicial review over such decision of the respondent no.1 DDA.

16. Unfortunately, the emphasis during the hearing remained on the position as existing in the layout plan. Thus, though the first of the aforesaid questions has been taken in the writ petition, no arguments were addressed thereon. However it is the case of the petitioner in the writ petition that the title of the said land after execution of the perpetual lease is governed by the terms of the perpetual lease only and the petitioner cannot be deprived of the said title in a manner contrary thereto.

17. I have perused the perpetual lease deed. The same permits re-entry in several situations but not in the situation as the present one. Though one

of the grounds of re-entry is, if the petitioner in the matter of obtaining the lease had misrepresented or mis-stated and/or suppressed any fact or acted fraudulently but that is also not the case. The perpetual lease therefore does not permit the respondent no.1 DDA to so effect the cancellation.

18. However, the same in my opinion would be irrelevant. The respondent no.1 DDA as a Public Body, even though the custodian of the said land (the land being Nazul land belongs to the Government of India) could not deal with it as per its *ipse dixit*. The respondent no.1 DDA itself is equally bound by the layout plans sanctioned by it and cannot act in contravention thereof. Thus the respondent no.1 DDA could allot the subject 111.65 sq. mtrs. of land to the petitioner only if the same as per the layout plan were to be for a Nursery School. If the same were not to be for a Nursery School, even though vesting in the respondent no.1 DDA, the respondent no.1 DDA could not have allotted the same for the purpose of Nursery School. The principle that a person cannot convey a title better than he himself has, would equally apply here; if the title of the respondent no.1 DDA with respect to the said 111.65 sq. mtrs. of land were for

Nursery School then the allotment thereof would be justified; else if it is not for a Nursery School, the cancellation of the allotment would be in order.

19. Ordinarily, such cancellation would be effected by the Court, as done by the Apex Court in *Dr. G.N. Khajuria v. DDA* (1995) 5 SCC 762. In the present case, the respondent no.1 DDA has done it itself. Even if the respondent no.1 DDA were to be held to be not entitled to itself do it, the fact remains that the respondent no.2 RWA is challenging the decision of the respondent no.1 DDA of allotment of the said 111.65 sq. mtrs. of land to the petitioner. Thus even if the present petition were to be allowed, the challenge of the respondent no.2 RWA would remain. Now that this matter has been allowed to brew for the last two years and the controversy is at large before this Court, it is not deemed expedient to for the sake of technicalities allow this petition with liberty to the respondent no.2 RWA to challenge the allotment in favour of the petitioner.

20. Thus the only question which really falls for consideration is as to the position qua the said land in the layout plan.

21. Reliance by the petitioner and earlier by the respondent no.1 DDA while making the allotment in favour of the petitioner on the possession plan to contend that the land of the school has to be abutting the 18 mtr. wide road without the said 111.65 sq. mtrs. strip of land in between is also misconceived. The possession plan cannot determine the use of the land and cannot change the nature of the land than as shown in the sanctioned layout plan. For the same reason, the argument of the respondent no.2 RWA of the said 111.65 sq. mtrs. of land being a passage and the allotment thereof causing inconvenience to the residents is of no avail. If the land were to be not a passage in the layout plan, howsoever inconvenient it may be to the residents, so be it. We are a society governed by law, in this case the layout plan and not by the changing perceptions of the officials of the respondent no.1 DDA.

22. No plan with the area of the Nursery School plot shown as 1108.65 sq. mtrs. has been produced by any of the parties. In fact no dimensions qua plots marked for parks or other plots for schools are also found on the plans before this Court. Doubt is cast with respect to the possession plan

showing the school land as abutting the 18 mtr. wide road in as much as notwithstanding the matter having been thrashed out before this Court in the earlier round of litigation and the layout plans having been produced before this Court, it was the case of neither party that the land was abutting the 18 mtr. wide road or was originally shown as *ad measuring* 1108.65 sq. mtrs. Rather the parties proceeded on the premise that as per the layout plan, the land meant for school had no other access except through the colony. Once the judgment of this Court has recorded that the files had been summoned and the layout plans had been examined, it is presumed that in the layout plans then before this Court, no access to the land from the 18 mtr. wide road was shown.

23. A layout plan bearing scheme no. 183-L of 960 LIG at Dilshad Garden Pocket D certified on 30th September, 2010 by Archana Maini, Asstt. Director (Architect) HUPW, DDA has been produced. The same shows the Nursery School plot as extending till the boundary wall of Pocket-D. i.e. till the 18 mtr. wide road. However I find on the files of the respondent no.1 DDA another drawing of the entire DDA Housing at

Dilshad Garden, which in Pocket-D shows the nursery school site as not extending till the boundary wall of the pocket –D and shows a strip of land (which must be corresponding to the strip of land *ad measuring* 111.65 sq. mtrs.) between the Nursery School site and the boundary wall of the colony. The layout plan certified by Ms. Archana Maini though shows a passage running all around the Pocket, shows the Nursery School plot as abutting the 18 mtr. wide road. There is thus no clarity. The counter affidavit of the respondent no.1 DDA also though states that land measuring 997 sq. mtrs. only has been shown in the layout plan for Nursery School site, neither supports the same with the layout plan nor answers whether as per the layout plan the said 997 sq. mtrs. is to be abutting the boundary wall of the Pocket or to be at a distance from the said boundary wall. This Court therefore feels handicapped to decide. Unfortunately the respondent no.1 DDA has not passed a detailed order.

24. There is thus no option but to remand the matter to the respondent no.1 DDA to, after hearing the petitioner as well as the respondent no.2 RWA and in accordance with the layout plan and in terms of the

observations made herein above decide the matter.

25. This Court is also of the opinion that even if the layout plan shows the area of the said plot to be 997 sq. mtrs. only, as is contended by the respondent no.1 DDA, and even if the said 997 sq. mtrs. is located as originally allotted to the petitioner, since the respondent no.2 RWA had earlier objected to the Nursery School plot *inter alia* on the ground of causing disturbance to the residents, the respondent no.1 DDA to in such eventuality explore the possibility of amendment of the layout plan to allot the said 997 sq. mtrs. of land abutting the 18 mtr. road and with no access to the Nursery School plot from within Pocket-D. It appears that the aforesaid would provide a via-media to all parties concerned.

26. However since the utilization of the land for the purpose of Nursery School for which it is meant is held up for the last nearly seven years, the respondent no.1 DDA is now directed to do the needful on or before 31st January, 2012.

27. The petition is accordingly disposed of with the following directions:-

- A. The matter is remanded to the respondent no.1 DDA for decision afresh after hearing the petitioner, the respondent no.2 RWA and in terms of observations herein.
- B. If as per the layout plan the petitioner is entitled to 1108.65 sq. mtrs., with opening from the 18 mtr. wide road, the respondent no.2 RWA shall have no right to object thereto save that in such case the said Nursery School plot shall have no opening from within the Pocket-D of the colony.
- C. If as per the layout plan the size of the Nursery School plot is 997 sq. mtrs. only and at a location as originally delivered, the allotment of additional 111.65 sq. mtrs. in favour of the petitioner shall stand cancelled and the passage earlier in existence shall stand restored. However, in such eventuality the respondent no.1 DDA to consider whether the layout plan can be amended so that the 997 sq. mtrs. of land abuts the 18 mtr. wide road and the Nursery School thereon has

egress and ingress from the said road only and not from within Pocket-D of the colony.

- D. The aforesaid exercise be completed on or before 31st January, 2012.
- E. Till the decision aforesaid, respondent no.3 MCD to not take any further action. In the event of the petitioner being held entitled to 1108.65 sq. mtrs. of land, the notices issued by the respondent no.3 MCD to the petitioner shall stand quashed. However, if the petitioner is not found entitled to 111.65 sq. mtrs., the petitioner would be required to have the plans for construction re-sanctioned from the respondent no.3 MCD. Similarly, in the event of the petitioner being found to be entitled to only 997 sq. mtrs. abutting the 18 mtr. wide road also, the plans for construction will need to be altered/re-submitted.

No order as to costs.

**RAJIV SAHAI ENDLAW
(JUDGE)**

OCTOBER 24, 2011/pp..