

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

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Date of Decision: 18.04.2013

+ W.P.(C) 2318/2012

**KINGSWAY CAMP SHOP-KEEPERS WELFARE ASSOCIATION
(REGD.)**

..... Petitioner

Through: Mr Sumit Bansal and Mr M.G. Vacher and Ms
Sumi Anand, Advs.

versus

DELHI DEVELOPMENT AUTHORITY & ANR.

..... Respondents

Through: Mr Ajay Verma, Adv. for DDA

Mr Jatan Singh, CGSC and Mr Soayib Qureshi, Adv. for
UOI, Mr Rajinder Handoo, Adv for respondent No.3

CORAM:

HON'BLE MR. JUSTICE V.K.JAIN

JUDGMENT

V.K.JAIN, J. (ORAL)

1. In CWP No. 4150/2003, this Court had directed carving out allotment of shop plots to the petitioners in that case. One of the petitioners in that case was Vikas Khatri, who is respondent No. 3 in this petition. It is an admitted position before me that a plot measuring 900 square feet was to be allotted to Vikas Khatri in compliance of the order passed in the said writ petition. The allotment was to be made in Hudson Line, Kingsway Camp, Delhi.

2. There is some vacant land between plot No. 114 and 116 of the Mall Road. That open space measures 20 ft X 60 ft. No particular use of the said open land

was indicated in the lay out plan of the locality. A perusal of the letter No. F.3(31)2002/MP/D-145 dated 27.07.2011, written by DDA to the Additional Secretary to Lieutenant Governor, would show that the Screening Committee of DDA, in its meeting held on 05.09.1998, referring to the said land as passage, had approved to keep the same vacant for connecting the residential plot of Hudson Line and also for the shopkeepers having backside entrance to their residences with Mall Road.

3. A meeting was held by Vice-Chairman of DDA on 14.11.2007 in connection with the implementation of the directions of this Court in *CWP No. 4150/2003 Vikas Khatri and Others vs. DDA*. In the said meeting, the following observations were made:

“in case of plot between plots No. 114&116, the area available is 1200 sq.ft. as against the required 900 sq. ft. (100 sq. yads). Due to this, the extra available piece of land measuring 5’ X 60’ cannot be used as service land. In view of this, it was decided that the extra land measuring 300 sq. ft cannot be used as service lane nor any other use from planning point of view. Therefore, the land measuring 300 sq. ft. is to be added with the new plot, numbering 114A, at market rate as approved by VC, DDA on 25.11.07 and will measure 1200 sq. ft.”

4. The aforesaid proposal was placed before the Screening Committee of DDA in its meeting on 16.0.2010 and the following decision was taken:-

“Proposal for consideration:

The modification in the L.O.P. of shops plots at Hudson Line/Outram Line and Kingsway Camp area was proposed to accommodate old shop plots no. 4, 5&6 under the Kingsway Camp Redevelopment scheme. The High Court of Delhi vide its decision in the case of Sh. Madan Lal Taneja v. DDA, owner of Shop No. 114, WP(C) No. 6940/2009 dt. 7.9.2009 has dismissed as withdrawn the case and vacate the stay. This has a reference to directions of Hon’ble High Court in the case of Khatri and Others v. DDA (CWP 4150/2003) for allotment of plot owners of 4,5 & 6 within one year subject to availability of land and to the reference of the Commercial Lands Branch, DDA in file No. F.15(37) 88/CL note dt. 1.12.2006 and subsequent to High Court decision WP(C) No. 6940/2009 as indicated by CL Branch in file No. F.15(37) 88/CL carving out two additional shop plots.

If plot is carved out between 114 and 116, the area is 1200 sq. ft. (approx.) against required 900 sq. ft. (100 sq. yd.) then the extra land of 5 ft. X 60 ft. is to be added with the new plot number 114A at market rate as approved by VC, DDA on 25.11.2007 and will measure 1200 sq. ft. Regarding other plot adjacent to plot No. 25 and 29, after carving out 15 ft. X 60 ft. plot, 10 ft. land is available which could be used as a passage/service land. The new number of the plot will be 29A. The circulation space will be reduced from the original approved layout plant.”

5. The petitioner before this Court is an association of shopkeepers of Kingsway Camp and it is aggrieved from the above-referred allotment on the ground that the land allotted to respondent No. 3 being a passage, meant for the

shopkeepers/residents of the locality, could not have been allotted to respondent No. 3. In support of their case, the petitioner places reliance upon the letter dated 27.07.2011, written by DDA to the Private Secretary to Lieutenant Governor stating therein that the aforesaid land was a passage kept vacant for connecting the residential plots of Hudson Line and also for shopkeepers having backside entrance to their residence to Mall Road. The contention of the learned counsel representing DDA is that Screening Committee of DDA is the Competent Authority to modify any lay out plan of a locality and in exercise of that power, the said Committee had, in its meeting held on 16.06.2010, modified the lay out plan of Hudson Line/Outram Line/Kingsway Camp area by carving out a plot of land to be numbered as 114A, comprising the aforesaid land between plot No. 114 and 116 which has been described as a passage in the letter dated 27.07.2011. This is also the submission of the learned counsel for DDA that modification of a lay out plan is altogether different from change of land use prescribed in Master Plan or a Zonal Development Plan and, therefore, the procedure, prescribed in Delhi Development Act for changing land use, prescribed in Master Plan/Zonal Development Plan was not required to be followed.

6. Pursuant to the aforesaid decision taken in the meeting of the Screening Committee, DDA issued an allotment-cum-demand letter dated 30.03.2012 to Shri Vikas Khatri, respondent No. 3 in this petition, conveying approval of the

Competent Authority to allot shop plot No. 114A, measuring 1200 square feet to him on the terms and conditions indicated in the said letter. The possession of the aforesaid plot, however, is yet to be handed over to respondent No. 3.

7. There is no reason to reject the case of the DDA that the Screening Committee is the Competent Authority to modify the lay out plan of a locality coming under the jurisdiction of DDA. Master plan is a document which applies to whole of Delhi, whereas the Zonal Development Plan applies to a particular zone. Neither the Master Plan, nor the Zonal Development Plan indicates the land use of a particular plot in a colony. This is specified only in the Layout Plan of that colony. It is, therefore, difficult to dispute that modification of a lay out plan being altogether different from change of land use prescribed in Master Plan/Zonal Development Plan, the procedure prescribed in Section 11A of Delhi Development Act was not required to be followed before converting the land in question into a plot for allotment to respondent No. 3. To this extent, no fault can be found with the decision taken by DDA.

8. The learned counsel for the petitioner places reliance upon the decision of Supreme Court in **Dr G.N. Khajuria and Ors. vs. Delhi Development Authority and Ors.** (1995) 5 SCC 762, where DDA had allotted the land reserved for park in the lay out plan to respondent No. 2 before Supreme Court for running a nursery school. I have carefully gone through the said judgment. There is nothing in the

judgment to indicate that in the case before the Supreme Court any modification of the layout plan of the locality was carried out by the Screening Committee of DDA before allotting the park area as a plot for running a nursery school. Moreover, the land reserved for park in a residential colony cannot be treated at par with land such as the area between plot Nos. 114 and 116 which has been described as a passage in the letter dated 27.07.2011. No resident or shopkeeper of the locality has a vested right to use the said land as a passage. The occupants of plots No. 114 and 116 have their entrance from the front as well as from the backside of the said plots. The persons coming out of the rear entrance also can come to the front portion though not through the land in question and they would have to travel a little bit for coming to the main road from the rear lane. Therefore, it cannot be said that use of the aforesaid land as a passage is a matter of necessity for the occupants of plots No. 114 and 116.

9. As noted earlier, DDA was required to allot only 900 square feet land to respondent No. 3 in compliance of the order passed by this Court in CWP No. 4150/2003. DDA, however, chose to allot the whole of the land measuring 1200 square feet to respondent No. 3 on the ground that in case only 900 square feet of land is allotted to him, the remaining 300 square feet of land cannot be used as a service lane or for any other use from planning point of view. The learned counsel for the petitioner submits that even if area measuring 300 square feet is left out for

being used as a passage, that would be better than not leaving any area at all for this purpose since persons coming on foot would still be able to use this as a passage for coming to the main road.

10. The learned counsel for the respondent No. 3, on instructions from respondent No. 3, who is present in the Court, states that respondent No. 3 has no objection to surrender 300 square feet of the land to DDA after retaining 900 square feet encroachment free portion of the land with him, provided DDA refunds to him the premium which he has paid for this 300 square feet of land along with interest which he paid in respect of 300 square feet of land.

11. The learned counsel for the petitioner states that similar issue arises in this petition with respect to piece of land now known as plot No. 29A, which is yet to be allotted by DDA to any person. Since I have rejected the challenge of the petitioner to the power of DDA to modify the layout plan, in the context of land between plot No. 114 and 116, the challenge to carve out plot No. 29A out of the above-referred land also fails. No direction, therefore, is required to be given in respect of the land/space now known as plot No. 29A.

12. For the reasons stated hereinabove, DDA is directed to issue a revised demand-cum-allotment letter to respondent No. 3 allotting only 900 square feet of land to him. DDA is also directed to refund to respondent No. 3, the premium paid by him for 300 square feet of land which he would be surrendering back to the

DDA along with amount which has been paid to DDA as interest in respect of this 300 square feet of land. It is, however, made it clear that no interest would be paid to respondent No. 3 on the amount which he had deposited with DDA as premium and interest in respect of 300 square feet of land. DDA shall also handover possession of land measuring 900 square feet to respondent No. 3, within a period of four weeks. DDA, while giving possession of land measuring 900 square feet to respondent No. 3, will ensure that possession of only that portion is given to him which is free from encroachment either on the side of plot No. 114 or on the side of plot No. 116.

The writ petition stands disposed of.

Dasti.

V.K. JAIN, J

APRIL 18, 2013
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