

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

Reserved on: March 03rd, 2016
Date of decision: March 23rd, 2016

+ W.P.(C) 2548/2010

ANANT RAJ AGENCIES PVT. LTD.Petitioner
Through: Mr. Rajiv Kumar Yadav, Advocate.

versus

MUNICIPAL CORPORATION OF DELHIRespondent
Through: Mr. Balendu Shekhar with Ms. Somya
Rathore, Advocates.

CORAM:
HON'BLE MR. JUSTICE VED PRAKASH VAISH

J U D G M E N T

VED PRAKASH VAISH, J.:

1. By way of present petition, the petitioner seeks quashing of the order dated 27th May, 2009 passed by the Lt. Governor in Case/ Appeal No.08/2008-CA whereby the order dated 14th December, 2008 of the Appellate Tribunal, MCD, Delhi was set aside thereby rejecting the petitioner's application seeking sanction of their building plans for a Motel in Village Bhati, Tehsil Mehrauli, New Delhi.

2. Succinctly, the facts leading to filing of the present petition are that the petitioner own a land admeasuring 48400 sq. yards situated in Khasra Nos.157, 159, 163, 176, 180, 181 and 182 of Village Bhati, Tehsil Mehrauli, New Delhi having purchase the same vide registered sale deed dated 21st December, 2004.

3. The petitioner planned to construct a Motel on the said land and submitted its plan for sanction of construction of a Motel on the said land on 22nd February 2005 under Section 334 of the Delhi Municipal Corporation Act, 1957 (hereinafter referred to as the 'DMC Act'). Certain objections/clarifications, which were procedural in nature, were raised by the respondent vide letters dated 24th February 2005 and 25th May 2005. The petitioner duly rectified the objections/clarifications as raised by the respondent in the aforesaid letters.

4. It is stated that despite clearing all the objections/clarifications, the respondent did not sanction the plans for the Motel within 60 days from the submission of the building plans as stipulated under Section 337 of the DMC Act. It is further stated that the respondent did not take any decision within the statutory period from the date of receipt of the application for sanction of the plans.

5. The respondent, thereafter, issued a letter on 5th September, 2005 and again raised certain objections, which are as under:

“1. The T.P. Office have sent letters to the Forest Department and the Delhi Development Authority in order to know whether the land bearing Khasras under reference are part of Ridge Regional Park or not, but their reply is still awaited

2. Carry out the balance correction/ compliance already intimated to the petitioner vide letter dated 25th May, 2005.”

The petitioner termed the said objections as not justified.

6. Thereafter, the petitioner came to know that the Forest Department had already given the clearance to the Town Planner vide letter dated 4th

July, 2005 stating that the petitioner's land was not situated in the Forest area and is not covered within any of the notifications dated 15th April, 1991 and 4th February 1996.

7. The petitioner thereafter informed the respondent about the deemed sanction of the plans vide letter dated 19th September, 2005. It was further pointed out that the objections raised by the respondent were misconceived and the respondent was not justified in refusing to deliver and release the plans duly sanctioned. The petitioner alleged that despite fulfilling all the requirements, the respondent failed to release and deliver the duly sanctioned plans.

8. The petitioner was constrained to file a writ petition, bearing W.P.(C) No.20153/2005 seeking direction to the respondent to release and deliver the Motel plans and further restraining the respondent from interfering into the right of the petitioner to raise construction on the basis of the Motel plan, considering the same as duly approved and sanctioned.

9. The aforesaid writ petition was disposed of by this Court vide order dated 3rd November, 2006 with direction to determine the location of the land of the petitioner by demarcation proceedings and it was further directed that the authority should ensure that the petitioner be informed about the correct position. The MCD was further directed to process the petitioner's application and give its final approval, in light of the decision taken by the Government of NCT of Delhi within the time indicated.

10. The revenue authorities carried out the demarcation proceedings on 8th December, 2006 in the presence of the officials of the respondent, Govt. of NCT of Delhi, Forest Department. However, no representative of the

DDA was present. It is stated that the demarcation report dated 8th December, 2006 clearly recorded that the land of the petitioner does not fall within the reserved forest area and the forest department had not taken over the land. However, despite the demarcation proceedings the respondent did not approve the application of the petitioner regarding the Motel plans.

11. It is further submitted that the Layout Scrutiny Committee of the respondent in its meeting held on 15th January 2007 sanctioned the building plan of the petitioner for Motel but subject to the approval of DDA under MPD-2001, although no confirmation from DDA and Ridge Management was required by the respondent.

12. In the meanwhile new Master Plan 2021 (MPD-2021) came into effect on 7th February 2007 according to which there was no provision for allowing or sanctioning plans for Motel. The respondent taking shelter of MPD-2021 and contrary to their decision taken on 15th January 2007 rejected the building plan of the petitioner vide letter dated 26th March 2007.

13. Feeling aggrieved by the decision of the respondent, the petitioner preferred an appeal before the Appellate Tribunal, MCD. The Appellate Tribunal vide order dated 14th December, 2007 set aside the rejection letter dated 26th March, 2007 of the respondent and directed the respondent to take a decision on the application submitted by the petitioner afresh.

14. The order of the Appellate Tribunal was challenged by the respondent before the Lt. Governor, who vide order dated 27th May, 2009, allowed the appeal of the respondent and set aside the order dated 14th December, 2007 passed by the Appellate Tribunal, MCD.

15. Feeling aggrieved by the said, the petitioner has filed the present writ petition.

16. Learned counsel for the petitioner contended that the impugned order is against the well established provisions of law and the same is in contravention of the factual findings of the revenue authorities in demarcation report dated 8th December, 2006. It is further stated that the impugned order is in total disregard to the order passed by this Court on 3rd November, 2006 in the earlier writ petition.

17. Learned counsel for the petitioner also contended that from time to time the petitioner fulfilled all the requirements and removed all objections as raised by the respondent for sanction of the plans. In spite of that the respondent time and again raised frivolous objections contrary to the settled provisions of the DMC Act. The respondent failed to decide the plan plan within the statutory period of 60 days, thus the plans of the petitioner were deemed to have been sanctioned as per Section 337 of the DMC Act.

18. The revenue authorities in the joint survey carried out with the respondent in the demarcation report dated 8th December, 2006 clearly records that the land of the petitioner does not fall within the forest area and was not under the ownership of the forest department.

19. It is further contended that the respondent had already sanctioned the building plan on 15th January 2007 according to the MPD-2001. However, the condition imposed by the respondent that the sanction is subject to confirmation/ decision of DDA was illegal and is in contravention of the order dated 3rd November, 2006 passed by this Court.

20. Learned counsel for the petitioner further contended that the impugned order is violative of Articles 14 and 19 of the Constitution of India as in an identical case the respondent granted sanction to the building plans for construction of Motel in the same vicinity where the petitioner's land is located.

21. Learned counsel for the petitioner stated that the land of the petitioner does not form part of the Regional Park as the same had been verified by the Revenue Authorities in the presence of the respondent's officials.

22. Per contra, Mr. Balendu Shekhar, learned counsel for respondent contended that the land of the petitioner is within the Regional Park/ Ridge Area as per MPD-2001 where motels are not permitted. It is further contended by learned counsel for the respondent that as per the new Master Plan-MPD-2021, which came into effect on 7th February 2007, there is no provision for allowing or sanctioning plans for motels. Thus, in view of the change in law and in the provisions of MPD-2021, the plan of the petitioner could not be sanctioned.

23. I have given my thoughtful consideration to the submissions advanced by learned counsel for both the parties and carefully perused the material on record.

24. Chapter XVI of the DMC Act deals with the building regulations. The expression 'to erect a building' is defined in Section 331 of the DMC Act. Section 332 of the DMC Act prohibits erection or commence to erect any building or execute any of the works specified in Section 334 except with the previous sanction of the Commissioner. Section 333 obliges every person who intends to erect a building to apply for sanction by giving notice in

writing to the Commissioner. Section 334 further obliges every person who intends to execute the work specified therein to move an application for sanction by giving notice in writing of his intention to the Commissioner. Section 336 of the DMC Act provides that the Commissioner shall sanction the erection of a building or the execution of a work unless such building or work would contravene any of the provisions of sub-section (2) of Section 336 or the provisions of Section 340 of the DMC Act.

25. In terms of Section 337 of the DMC Act, if the Commissioner does not refuse to sanction the building or work or upon refusal, does not communicate the refusal to the person who has given the notice, within the prescribed time, the Commissioner shall be deemed to have accorded the sanction. Section 337 of the DMC Act reads as under:-

“337. When building or work may be proceeded with

(1) Where within a period of sixty days, or in cases falling under clause (b) of section 331 within a period of thirty days, after the receipts of any notice under section 333 or section 334 or of the further information, if any, required under section 335 the Commissioner does not refuse to sanction the building or work or upon refusal, does not communicate the refusal to the person who has given the notice, the Commissioner shall be deemed to have accorded sanction to the building or work and the person by whom the notice has been given shall be free to commence and proceed with the building or work in accordance with his intention as expressed in the notice and the documents and plans accompanying the same:

Provided that if it appears to the Commissioner that the site of the proposed building or work is likely to be affected by any scheme of acquisition of land for any public purpose or by any proposed regular line of a public street or extension, improvement, widening or alteration of any street, the

Commissioner may withhold sanction of the building or work for such period not exceeding three months as he deems fit and the period of sixty days or as the case may be, the period of thirty days specified in this sub-section shall be deemed to commence from the date of the expiry of the period for which the sanction has been withheld.

(2) Where a building or work is sanctioned or is deemed to have been sanctioned by the Commissioner under sub-section (1), the person who has given the notice shall be bound to erect the building or execute the work in accordance with such sanction but not so as to contravene any of the provisions of this Act or any other law or of any bye-law made thereunder.

(3) If the person or anyone lawfully claiming under him does not commence the erection of the building or the execution of the work within one year of the date on which the building or work is sanctioned or is deemed to have been sanctioned, he shall have to give notice under section 333 or, as the case may be, under section 334 for fresh sanction of the building or the work and the provisions of this section shall apply in relation to such notice as they apply in relation to the original notice.

(4) Before commencing the erection of a building or execution of a work within the period specified in sub-section (3), the person concerned shall give notice to the Commissioner of the proposed date of the commencement of the erection of the building or the execution of the work:

Provided that if the commencement does not take place within seven days of the date so notified, the notice shall be deemed not to have been given and a fresh notice shall be necessary in this behalf.”

26. From a bare perusal of the Section 337 it is manifestly clear that if the Commissioner does not refuse to sanction the building plans and does not indicate the refusal to the person seeking sanction and has not given the

notice of refusal within the prescribed period of 60 days, the Commissioner shall be deemed to have accorded approval/ sanction under the Building-Bye Laws to the plans submitted. In terms of Section 337 of the Act, a plan has to be accepted or rejected within a period of 60 days. If a plan is neither rejected nor accepted within the statutory period of 60 days, it would be deemed to have been sanctioned. According to the petitioner, all objections were removed on 15th June, 2005 and the respondent raised more objections vide letter dated 5th September, 2005 i.e. after the expiry of 60 days and finally the rejection letter dated 26th March, 2007 shows that the decision was taken more than six months after the submission of the application for sanction and the only ground for rejection was that the land is within the Regional Park as per MPD-2021 where motels are not permitted.

27. The petitioner submitted a plan for construction of Motel on the land situated in Khasra Nos.157, 159, 163, 176, 180, 181 and 182 of Village Bhati, Tehsil Mehrauli, New Delhi along with the fee required thereon to the respondent on 22nd February 2005. The respondent accepted the said application and after scrutiny communicated certain objections, which were rectified by the petitioner vide letter dated 15th June, 2005. Admittedly, the duly sanctioned plans were not delivered to the petitioner within the period prescribed under Section 337 of the DMC Act.

28. The petitioner filed the writ petition No.20153/2005 praying for direction to the respondent to release and deliver the plans. While disposing of the said writ petition, the Court held as under:-

“7. It is, therefore, apparent as per the understanding of the DDA based on its available documents, the location of the Khasra number tentatively falls within the regional park.

However, it does not take a specific position on this issue and instead has agreed with the stand of the Ridge Management Board that the location would have to be finally determined after demarcation and settlement of rights in terms of the provisions of the Indian Forest Act. It is also clear that a general exercise has been directed and is under supervision of the Chief Secretary, Government of NCT. The same is expected to be finalised by 31st December, 2006.

8. While carrying out the exercise, all endeavour shall be made to ensure that the suit lands are surveyed at the earliest and the position is made clear. The authority shall ensure that the petitioner is informed about the correct position. In case the Khasra numbers of the suit lands do not fall within the Regional Park proposed, the MCD shall be informed within six weeks from today. The MCD is hereby directed to process the petitioners' application and give its final approval, in the light of the decision taken by the Government of NCT within the time indicated. The respondents, particularly, the Revenue Authority shall ensure that such demarcation of the suit lands in which petitioners are involved is done by issuing appropriate advance notice so that its representatives can be present at site."

29. Accordingly, pursuant to the aforesaid directions the demarcation was done ultimately on 8th December, 2006. In the demarcation report, which is placed on record, it is recorded as under:-

".....In this manner, while completing the measurement with the help of Aks Shijra and Field Book, measurement for Khasra No. 157, 159, 163, 164, 176, 180, 181 and 182 was completed in the presence of all those present and according to the revenue records also, the ownership of this land except the Khasra No.164/2 (12014) is recorded in the name of M/s Anant Raj Agency (P) Ltd. and is covered with Boundary Wall. The entire related area is almost agricultural.

The representative from the Forest Department, Shri Ram Kishore, D.R.O. produced the photocopy of gazette notification

dated 4.4.1996 according to which the above mentioned Khasra Number is not mentioned therein. And according to that, they have also not taken possession thereof but inspite of demanding, he did not provide any site plan for the ridge. From the department of Delhi Development Authority, no one has appeared despite service of notice.....”

30. In the contempt petition filed by the petitioner there is an admission on the part of DDA that the land is owned by the petitioner. This is so recorded in the order dated 14th January, 2009 passed by this Court in CCP No.155/2007. The relevant para reads as under:-

“5. There is no doubt that there is an admission on the part of the DDA authorities that the land is owned by the petitioner. Affidavit of Mr. D.M. Shukla, Conservator of Forest also shows that the land was not part of Reserved Forest. Therefore, no further demarcation was needed. However, on the ground that the land tentatively falls within the area shown as Regional Park in the Master Plan, the MCD had not sanctioned the plan of motel.....”

31. A perusal of the documents and pleadings placed on record clearly reveal that there existed some confusion between the DDA and MCD with regard to the location of the land within the Regional Park.

32. Reference was also made to MPD-2021 wherein it is clearly mentioned that only the land owned by various agencies such as DDA, CPWD, NDMC, MCD, Forest Department and Ministry of Defence would form part of Regional Park. Further, a letter dated 4th July, 2005 of Shri Ashok Kumar Biswal, Deputy Conservator of Forests to the Senior Town Planner (DP) of the respondent, whereby clarification was sought regarding land use as per the Master Plan with regard to the subject land, reveal that

Khasra Nos.157, 159, 163, 164, 176, 180, 181 and 182 of Village Bhati are not included in the notification dated 4th February 1996 and also the said khasra numbers do not fall in the notification dated 15th February 1991 declaring the Wildlife Sanctuary in Village Bhati. It was also stated therein that all the khasra numbers falling in the ridge in Village Bhati had not been demarcated as they are in the process of demarcation.

33. As noted above, demarcation was done pursuant to the orders passed by this Court. Thereafter, the Layout Scrutiny Committee in its meeting held on 15th January 2007 approved the building plans for construction of motel. The said decision is reproduced as under:-

Item No.4/07

“....The case was discussed in detail in the presence of DDA officials keeping in view the court orders and the time frame given by Hon’ble Court. The report of the SDM dated 22.10.06 was read out. The fact as contained in the report of SDM that Forest Deptt. has not taken over the land was also taken note of. The objections of DDA that the site is within the regional park were also deliberated. The DDA officials also stated that they were not invited to participate in the demarcation of the site on 08.12.06 to ensure whether the site falls in the ridge/regional park or outside. The records on file, showed that official reference was made to DDA in this regard.

As per the Master Plan the use zone of Regional Park is almost coterminous with ridge area. However, keeping in view the objections of DDA regarding the land use and proper demarcation of the site, it was found difficult to arrive at a decision. As far as sanction by MCD is concerned, decision was taken that the case be approved subject to the decision/confirmation of the site by DDA/Ridge Management Board falling outside ridge/regional park. In case the site is established falling in side the ridge/ retional park, the sanction

so granted shall be deemed to be invalid. The decision be conveyed to Chief Secy. GNCTD as well as to DDA for information and necessary action on their part as required under court orders.”

(emphasis supplied)

34. Before the MCD Appellate Tribunal, the DDA and MCD were represented. On the role of DDA regarding confirmation of the site, the Tribunal held as under:-

“.....The respondent MCD has placed on record the minutes of the meeting held under the Chairman of Vice Chairman, DDA on 2.2.2007 for showing that rejection has been done on the basis that the stand of DDA was that it was within the Regional Park as per MPD2021 where Motels are not permitted. Despite repeated asking DDA has failed to show as to on what basis, it is taking the stand that the site under reference is within Regional Park as per MPD-2021 where Motels are not permitted. Rather as stated above, counsel for the DDA stated that why MCD is relying upon the stand taken by the DDA or the minutes of the meeting because if that was to be the sole basis where was the question of demarcation and therefore MCD had to decide the application irrespective of the stand of DDA on the basis of demarcation report.....”

35. The learned Tribunal further held that the contention of the DDA has force because this stand was taken by the DDA from very beginning and in the order of this Court also it has been observed that DDA was not taking a specific position on this issue, therefore, the necessity of demarcation had arisen.

36. As is clear from the demarcation report the ownership of the land except the Khasra No.164/2 (12014) was recorded in the name of the petitioner and is covered with Boundary Wall. The entire related area is

stated to be almost agricultural. Further as per the gazette notification dated 4th April, 1996 the Khasra Numbers in question are not mentioned therein.

37. The Tribunal after hearing the parties came to the following conclusion:-

“15. Under the circumstances, the impugned order dated 26.3.2007 passed by the Commissioner, MCD is set aside. Appeal is allowed. Respondent is directed to decide the building plan application submitted by the appellant not only on the basis of stand of DDA unless any cogent proof is given by it to show that land form part of regional park but also after taking into consideration representation made by the appellant vide letter dated 11.4.2007, letter dated 4.7.2000 written by Deputy Conservator of Forest to MCD; demarcation report; impact of MPD-2021 and the basis on which building plan for motel of adjacent land was passed. In case, the appellant is required to comply with any other condition, then the same be communicated to him within a period of 15 days by registered post and thereafter a decision on the application of the appellant be taken by the respondent by a speaking order within six weeks and the same be communicated to him by registered post.....”

38. I concur with the views of the learned Tribunal which appears to be reasoned. I do not find any illegality, infirmity or perversity in the order of the learned Tribunal.

39. Reference is also made to the Notification issued by the Ministry of Urban Development (Delhi Division) published in The Gazette of India, Extraordinary, Part-II dated 16th September, 2013 whereby the following modification was made to the MPD-2021. The same reads as under: -

“S.O.2190(E). – In supersession of Notification S.O. 2759(E) dated 13.09.2013, the following is substituted under

“Modifications” mentioned in para 4 of the above said notification: -

Modifications:

S.No.	Para/Clause/ Table	Modifications to the MPD-2021 notified vide Notification S.O.2555(E) dated 26.10.2012 and amended vide S.O.2190(E) dated 18.07.2013.
1	2	3
1.	Para 3.2 Urban Extensions	Following text is substituted: “Motels with sanctioned plans as on 07-02-2007 or whose proposal of Motel has been acceded to <i>(including all such proposal of motels which were in process of examination or matter challenged in the court of law or having approval in files from DDA or MCD or not acceded to due to enforcement of MPD-2021 on 07.02.2007 are also eligible for sanction)</i> and located in Commercial Areas or proposed Facility Corridor in Zonal Development Plans and Other Use Zones, shall be permissible subject to Development Control conditions mentioned in ‘Table 5.4’ and Clause in Chapter 17.0.”
2.	Table 5.4 Development Controls Commercial Centers	
3.	Notes under Sub-Clause 8(2)	

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40. As is clear from the aforesaid modification that Motels with

sanctioned plans as on 07.02.2007 or whose proposal has not been acceded to including all such proposal of motels which were in process of examination or matter challenged in the court of law or having approval in files from DDA or MCD or not acceded to due to enforcement of MPD-2021 on 07.02.2007 are also eligible for sanction. Thus, the argument of the respondent for rejecting the plans of the petitioner on the ground that MPD-2021 had come into force on 7th February 2007 and there being no provision for sanction of motels, is without merit as the case of the petitioner is fully covered by the aforesaid modification.

41. Instances have also been brought to the notice of the Court wherein approval was accorded for revalidation of the building plans in respect of properties at Village Samalkha, Delhi. The revalidation of sanction of building plans with regard to the land situated in Village Samalkha were given after the MPD-2021 came into force on 7th February 2007. Thus, the intention of MPD-2021 was for not granting the new sanctions of motels and not with regard to the sanctions already granted and/ or under consideration. The sanction of petitioner's motel has already been approved by the respondent (though with certain conditions) in its meeting held on 15th January 2001 which is much prior to the coming into force of MPD-2021.

42. The principle underlying the guarantee of Article 14 means that all persons similarly circumstanced shall be treated alike both in privileges conferred and liabilities imposed. Equal laws would have to be applied to all in the same situation, and there should be no discrimination between one person and another if as regards the subject matter of the legislation their position is substantially the same. Article 14 strikes at arbitrariness in State

action and ensures fairness and equality of treatment. It is attracted where equals are treated differently without any reasonable basis. The principle underlying the guarantee is that all persons similarly situated shall be treated alike both in privileges conferred and liabilities imposed. Equal laws would have to be applied to all in the same situation and there should be no discrimination between one person and another if as regards the subject-matter of the legislation their position is substantially the same.

43. A discriminatory action is liable to be struck down unless it can be shown that the departure was not arbitrary but was based on some valid principle which in itself was not irrational, unreasonable or discriminatory. It is high time that the respondent implements its policy and procedures uniformly in relation to sanction of plans. Departures from the policy and incidents of 'pick and choose' cause avoidable jealousies and frustration in those who are denied the benefit.

44. The petitioner has also placed on record a report of Special Task Force (STF) as per the duties assigned vide CCF's order No.F.8(118)PA/CF/RUC/Pt.IV/7709-7723 dated 28th February, 2012 on identification, Total Station Method (TSM) survey and demarcation of forest land in southern ridge in respect of Village Bhati, total area of the village: 18406 bigha 10 biswa (as per field book) of the South Revenue District, which shows that the land owned by the petitioner is neither under the reserved forest land or protected forest land nor is indicated as Regional park.

45. In light of the aforesaid discussion and in the facts and circumstances of the present case, the impugned order dated 27.05.2009 cannot be sustained and the same is hereby quashed.

46. The respondent is directed to release the building plans of the petitioner within four weeks from today in accordance with law. In case, there is any other condition to be complied with by the petitioner, the same should be communicated to the petitioner within two weeks from today and the petitioner shall comply with the same within two weeks thereafter.

47. With the aforesaid observations, the petition stands disposed of.

C.M. Appl. No.5100/2010

The application is dismissed as infructuous.

**(VED PRAKASH VAISH)
JUDGE**

MARCH 23rd, 2016
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