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

+ **W.P.(C) 8032/2013 & C.M.No.16988/2013**

MANIK JUNEJA AND ORS

..... Petitioners

Through **Mr.T.S.Ahuja, Advocate.**

versus

DELHI DEVELOPMENT AUTHORITY AND ORS Respondents

Through **Mr.Ajay Tejpal, Advocate for R-1/DDA.**

**Mr.Ajay Digpaul, CGSC with
Mr.Amit Khurana, Advocate for R-2.
Ms.Shobha Gupta with Mr.Ankit
Malhotra, Advocates for R-3/MCD.**

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

ORDER

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22.07.2016

The present writ petition has been filed with the following prayers:-

(a) Writ in nature of mandamus directing the respondent Nos. 1, 2, 3 and 4 not to alter land use which is full of green trees and quash the letter dated 24th October, 2013 bearing no. F 5(40)/EE-WD-5/DDA/20132-14/2334 and to direct the concern authority to not to construct any boundary wall over the alleged vacant land adjoining to the properties of the petitioners;

(b) An order or instructing on the respondent Nos. 1, 2, 3 and 4 and every of them with their subordinates agents restraining them from giving any sanction or permission or to do any act or omission which would enable the respondent nos. 1, 2, 3 and 4 to disturb/diminish the said greenery of the vacant land

and restraining them from any kind of alteration or change of user of the said land;

(c) An order or instruction on the respondent Nos. 1, 2, 3 and 4 instructing them to produce into this Hon'ble Court all records concerning any decision which might have been taken for construction of the boundary wall over the said land and the purpose for which the said land is to be used adjoining to property bearing no.21/40, 21/36, 21/35 and 21/31 and so that justice may be done by quashing the same;

(d) An order or instructing on the respondent nos. 1, 2, 3 and 4 and every of them with their subordinates agents restraining them from auctioning the said land adjoining to property bearing no.21/40, 21/36, 21/35 and 21/31.

And pass such other or order or orders as to Your Lordships may deem proper and fit. And your petitioner, as in duty bound, shall ever pray.

The primary submission of learned counsel for the petitioners was that as the petitioners' building plans were sanctioned as "three sides open", the respondent/DDA could not construct the boundary wall. However, this Court by way of detailed order dated 22nd September, 2015 rejected the contention of the petitioners primarily on the ground that the master plan and the layout plan did not specify the usage of the area as green. It was also held that as DDA is the owner of the land, it is entitled to protect the same by constructing a boundary wall.

The order dated 22nd September, 2015 is reproduced hereinbelow:-

"On the last date of hearing, this Court had passed a detailed order. The same is reproduced hereinbelow:-

“Present writ petition has been filed seeking a direction to restrain the respondent nos. 1 to 4 from altering the land use as well as to restrain the respondent-DDA from raising a boundary wall around the alleged vacant land.

Admittedly, petitioners are not the owners of the land in question. It has also not been shown to this Court that the area in question is marked as green in the Master Plan or that it is being used in contravention of the Master Plan or Layout Plan. Consequently, prima facie this Court is of the view that the petitioners have no right, title or interest in the land in question.

Just because the petitioners’ building sanction plan shows that their houses are three sides open, does not mean that the petitioners have a right, title or interest in the neighbouring land or that the adjoining land should remain vacant forever.

The allegation of change of land use is also not borne out from the facts of the present case.

Since learned counsel for the petitioners prays for an adjournment, matter is adjourned to 22nd September, 2015.

It is, however, clarified that if any encroachment is found in the area in question after the interim order had been passed by this Court, the petitioners shall be liable to reimburse the cost of the encroached land to respondent-DDA.

List on 22nd September, 2015.”

Today, Mr. Ahuja, learned counsel for the petitioners refers to the layout plan on record to state that no further construction is visualized in the land adjoining plot Nos. 31, 35, 36 and 40. He also refers to the handing over of land letter dated 25th June, 1984 issued by the Department of Rehabilitation, Settlement Wing to the DDA which states that the land adjoining plot Nos. 31, 35, 36 and 40 is vacant/encroached upon by a brick pavement and fencing by the MCD.

On the other hand, learned counsel for the DDA refers to the site plan which was enclosed along with the handing over of

physical possession of land letter to state that construction of houses is contemplated on the land adjoining plot Nos. 31, 35, 36 and 40.

This Court is of the view that as the petitioners are not the owners of the land and as the area in question is not marked as green in the master plan or in the layout plan, the petitioners have no right, title or interest in the land in question.

DDA, as the owner of the land, is entitled to protect its possession by constructing a boundary wall. Consequently, DDA is permitted to construct the boundary wall in the meantime. The order dated 18th December, 2013 is varied to this extent.

However as the letter dated 25th June, 1984 handing over physical possession of the land in West Patel Nagar states that the vacant land adjoining plot Nos. 31, 35, 36 and 40 shall only be used in consultation with the town planner of MCD, this Court directs the town planner of the MCD to meet Director, Land Management (HQ), DDA within the next two weeks to decide the future use of the aforesaid plots. In reaching their decision, they shall keep in mind the master plan, zonal plan, layout plan and the sanctioned plan issued to the petitioners.

The minutes of the meeting shall be placed on record within a period of eight weeks.

List on 19th January, 2016.”

Even an appeal against the said order being LPA No.858/2015 was dismissed by the Division Bench vide judgment and order dated 30th November, 2015.

Now the minutes of the meeting dated 26th February, 2016 have been placed on record. In the said meeting, it has been decided that the matter be placed before the Screening Committee of DDA for amendment of layout plan and for further action in accordance with the amended layout plan.

Today, Mr. T.S.Ahuja, learned counsel for the petitioners states that liberty be granted to the petitioners to challenge the decision whatever is eventually taken by the Screening Committee of DDA. Since no one knows at this stage what decision will be taken by the Screening Committee of DDA, the petitioners are granted liberty to file an appropriate proceeding in accordance with law to challenge the eventual decision taken by the Screening Committee of DDA with regard to layout plan.

However, this Court clarifies that the observations and findings given by this Court in its order dated 22nd September, 2015 shall bind the parties.

With the aforesaid directions and liberty, the present writ petition and the application stand disposed of.

MANMOHAN, J

JULY 22, 2016
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