

\$~

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

%

Judgment reserved on :16.08.2016

Judgment delivered on :26.08.2016

+ W.P.(C) 4429/2015

ASHOK VIHAR, RESIDENTS WELFARE ASSOCIATION..... Petitioner

Through: Ms. Smita Maan with Mr. Vishal
Maan and Mr. Paritosh Tomar,
Advocates.

versus

DELHI DEVELOPMENT AUTHORITY (DDA) & ORS. Respondent

Through: Mr. Sanjeev Sindhvani, Sr. Advocate
with Mr. Arvind Kumar Gupta,
Advocate for R-1.
Mr. Sanjeev Sabharwal, Standing
Counsel for R-3.

+ W.P.(C) 5883/2015

MALTI JAIN

..... Petitioner

Through: Petitioner in person.

versus

LAWRENCE ROAD MODERN EDUCATIONAL
SOCIETY AND ORS.

..... Respondents

Through: Mr. Sanjeev Sabharwal, Standing
Counsel for DDA.
Mr. Rajendra Kumar, Advocate for
R-3.
Mr. Sanjeev Sindhvani, Sr. Advocate
with Mr. Arvind Kumar Gupta,
Advocate for R-4.

CORAM:

HON'BLE MS. JUSTICE INDERMEET KAUR

INDERMEET KAUR, J.

1 The petitioner in W.P. (C) No.4429/2015 is Ashok Vihar, D Block, Residents Welfare Association. The grievance of the petitioner is that an illegal and unlawful construction in property measuring 1378.47 square meters situated at Block-D, Ashok Vihar, Phase-I, New Delhi is being permitted to be raised; it is a plot allotted by the Delhi Development Authority (DDA) in the residential block and the aforementioned construction which is a huge multi storey building is in violation of the provisions of the Master Plan Delhi-2021 (MPD-2021) as also Delhi Building Laws and Delhi Building Byelaws, 2014. Respondents No. 1 & 2 (Delhi Development Authority and North Delhi Municipal Corporation respectively) are permitting this unauthorized construction to come up on this residential block. This is in active connivance of the private respondent who is the interested party i.e. Lawrence Road Modern Educational Society. The prayer in the petition seeks a cancellation of the perpetual lease deed dated 17.05.2006 executed in favour of respondent No. 4. The second prayer is to revoke the sanction plan which has been granted on 18.07.2008 followed by a revalidated sanction plan dated 17.07.2014 in favour of respondent No. 4 as they are contrary to the terms and conditions of the aforementioned lease deed

as also to the provisions of MPD-2021.

2 The petitioner in W.P.(C) No.5883/2015 is Malti Jain. She is a resident of D-157, Phase-I, Ashok Vihar. Her grievance is the same as also in the aforementioned petition. The grievance being that inspite of several complaints having been addressed to the requisite authorities which includes the concerned SHO of PS Ashok Vihar, construction work is being permitted in the aforementioned block and respondents No. 2 & 3 (Delhi Development Authority and North Delhi Municipal Corporation respectively) are in active connivance with respondent No.1 (Lawrence Road Modern Educational Society) in allowing this construction to continue. This school is facing her property. Submission being that this is against the MPD-2021 and applicable building byelaws. Her prayer is that the aforementioned structure be demolished and the lease granted in favour of respondent No.1 by respondents No.2 & 3 be cancelled forthwith.

3 Counter affidavit has been filed by the NDMC as also the DDA. The private respondent has also filed his response/counter affidavit.

4 The stand of the DDA in both the petitions is common. Their stand being that a valid allotment for running a nursery school has been made in favour of respondent No. 4 i.e. Lawrence Road Modern Educational Society.

The society is duly registered under the Societies Registration Act, 1860. The society had applied for a plot of land in the year 1978. This was sponsored by the Directorate of Education, Delhi Admin. Respondent No.1 had allotted a nursery school plot measuring 0.25 acres to respondent No.4 on 22.08.1989 at NS-11, Lawrence Road vide allotment of the same date. Since the physical possession of the plot could not be handed over in time, proceedings were initiated by respondent No. 4 by filing W.P. (C) No.2323/1997 wherein the DDA had undertaken to handover the physical possession of the site to respondent No. 4. Since there was an illegal encroachment, the physical possession still could not be handed over to respondent No. 4. On 23.07.2003, the Society informed the DDA that although possession of the land had been handed over on paper but since actual physical possession had not been handed over, they requested for an alternate allotment of a plot of the same size preferably at Ashok Vihar, Pitampura/Shalimar Bagh. Accordingly plot No.NS-2 which was originally a single plot marked for a nursery school as approved in the layout plan Wazirpur Residential Scheme Phase 1 (Ashok Vihar Phase-1) was subdivided into two parts on 22.12.2001. This sub-division was approved by the Commissioner (Planning)/DDA on 22.11.2001 i.e. on same day. After the

sub-division, one plot measuring 800 square meters already stood allotted to Agroha Educational Society and the remaining 1432.82 square meters was reserved for future planning. Since the whole of this plot was earmarked for nursery school in the approved layout plan, this could not be allowed to put to any other land use except for a nursery school. Accordingly, 1378.47 square meters of the aforementioned land (NS-2) was offered to respondent No. 4 as an alternate plot against his original allotment of NS-11, Lawrence Road. This was after the approval of the competent authority. This alternate plot (NS-2) was allotted to respondent No. 4 on 03.06.2005. Physical possession of the same was handed over on 27.07.2005. Perpetual lease deed was executed by the DDA on 17.05.2006. Further stand of respondent No.1 is on the application of respondent No. 4 seeking construction of the building at the site, time for extension of construction of the school building was granted up to 31.03.2015.

5 The stand of respondent No. 2 (NDMC) in its counter affidavit is to the effect that building plan of the aforementioned property was sanctioned by the Corporation for construction of nursery school on 09.01.2007 after following a due process of law and considering the comments of the Town Planning Department regarding land use and development control norms.

The comments of Town Planning Department confirms that the plot under reference is part of the approved layout plan received from the DDA as earmarked for a nursery school and the development control norms applicable to this plot is of nursery school as per Master Plan. The lease deed executed by the DDA in favour of respondent No. 4 had also confirmed the land use of the plot under reference was for a nursery school. Further stand of the respondent No. 2 is that mixed use regulation as provided in Chapter 15.0 of MPD-2021 allows a nursery school at the ground floor level on the road having right of way of 18 meters in C & D colonies which is applicable to residential plots; the plot in question is not a residential plot. The land use of this plot is a nursery school and as such development control norms of nursery schools as per table 13.4 of Chapter 13.2 MPD-2021 are applicable. The policy of mixed land use in Chapter 15 of MPD-2021 is not applicable. Further contention of respondent No. 2 is that the respondent No. 4 after coming into force of MPD-2021 had applied for sanction of a building plan based under new MPD-2021 which was vide his letter dated 27.09.2007. This was rejected on 12.12.2007. Respondent No. 4 had filed an appeal against the rejection of his building plan. This appeal was upheld and building plan of this plot for construction of a basement, stilt for parking

(free from FAR), ground floor, first floor and second floor taking FAR-100 with maximum ground coverage 33.33% (as per MPD-2021) and the development control norms for nursery school had been sanctioned and the sanctioned plan was released on 18.07.2008. Vide communication dated 21.05.2013, respondent No. 4 applied for a revalidation of sanctioned plan which was revalidated for a period of one year vide communication of respondent No. 2 dated 17.07.2014. Site inspection has also been carried out of the site which revealed that there is a basement, stilt, ground floor, first floor and second floor. Deviations were noted and accordingly action under Sections 343/344/345-A DMC Act was initiated. Demolition and sealing orders were passed on 30.03.2015 and 17.04.2015 qua the illegal portions in the building. Respondent No. 4 had applied for regularization on 30.03.2015. Against the order of sealing and demolition, respondent No. 4 had preferred an appeal before the ATMCD which also directed that AE (B) to visit the property and ensure that illegal deviations be removed and report was to be submitted before the ATMCD. This order is dated 28.04.2015. Further stand of respondent No. 2 is that the plot was again inspected on 13.05.2015 and approximately 80% of the rectification had been carried out by the owner/builder/respondent No. 4 of the property in question.

6 Respondent No. 4 who is the private respondent has filed a separate response. His stand is that the layout plan of Wazirpur Residential Scheme, Phase-I has been admittedly earmarked for the purpose of a nursery school. The DDA has allotted this portion of this plot for the purpose of a nursery school to respondent No. 4. The lease deed executed by the DDA and the sanction granted are all a matter of record. They cannot be challenged by the petitioner as it is not the case of the petitioner that this nursery school at the aforementioned plot of land is against the layout plan of residential block. Further submission is that against the order of the MCD for sealing and demolition of the aforementioned plot, an appeal had been preferred before the ATMCD and all compliances as required by the ATMCD have been made by respondent No. 4. The additional affidavit of respondent No. 4 was also filed wherein this position has been reiterated. This additional affidavit is dated 22.01.2016. A compounding fee amounting to Rs.3,46,020/- has since been paid by respondent No. 4. The regularization plan has also been released by respondent No. 2 on 19.01.2016 in favour of respondent No. 4. Contention is that this writ petition is only in the form of a guise by the welfare association to trouble and harass the respondents. The same is the response qua the stand of petitioner in W.P. (C) No.5883/2015. The

submission on this count is that the petitioner Malti Jain in that petition was the Ex-Secretary of the Ashok Vihar Residents Welfare Association; she having been ousted from the aforementioned body, in order to vent her vendetta against respondent No. 4 has filed this petition, neither of these two writ petitions are maintainable.

7 Rejoinder affidavits have been filed by the petitioners in both the aforementioned petitions. The stand as contained in the petition is reiterated. It is reiterated that respondents No. 1 & 2 have connived with respondent No. 4 to allot this plot of land to respondent No. 4 when admittedly this was a single plot of land and only one nursery school could have been permitted as per the layout plan; the allotment of land to a second nursery school is against the provisions of MPD-2021 and the building byelaws. Even otherwise such a huge structure for the purpose of nursery school cannot be permitted.

8 Learned counsel for the parties have addressed their arguments in detail.

9 On behalf of the petitioner in W.P.(C) No.4429/2015, the submission is three folds. First submission is bordered on the provisions of MPD-2021. Submission being reiterated that the sanction had been granted to respondent

No. 4 under the provisions of MPD-2021 and Chapter 15 of MPD-2021 (which deals with the mixed use regulations and clearly stipulates under clause 15.7.1 and 15.7.2 that in “D” colonies (admittedly Ashok Vihar is ‘D’ rated colony), a minimum right of way (ROW) of a street area and stretch of road on which a nursery school can be permitted has to be 18 meters wide). Attention has also been drawn to 15.7.3 sub-clause (vi) wherein it has been noted that a pre-primary school shall be restricted only to the ground floor upto the permissible ground coverage. Submission again being reiterated that a multi storey structure cannot be permitted for the purpose of nursery school and at best it is only upto the ground floor level that the nursery school can be constructed. The second submission of the learned counsel for the petitioner is that even as per the case of the respondents, the Master Plan and the Zonal Plan has envisaged the aforementioned plot to be a single nursery school (NS-2). The single nursery school which is Orange Nursery School is already running from the aforementioned site. The allotment of 1387 square meters of land in favour of respondent No. 4 on the same plot of land for the purpose of running a second nursery school is against the Master Plan and Zonal Plan as also the layout plan; the government department cannot shy away from this admitted position. Attention has been drawn to a

communication of the Additional Commissioner qua the aforementioned site wherein it had been noted that 'allocation of two nursery schools' out of same nursery school site is not desirable from the planning point of view. Submission being that the stand of the Department itself is that two nursery schools at the same site are not desirable. Learned counsel for the petitioner has also drawn attention to an information obtained to an RTI query raised by her which was answered on 15.05.2015 as per which the approved layout plan of Wazirpur Residential Scheme, Phase-1 (NS-2 'D' Block) was a single plot and the modified sub division of NS Site No.2, Ashok Vihar, Phase-I, the area under nursery school is 800 square meters and area reserved for future planning is 1432.82 square meters; submission being that this information under the RTI by the petitioner (dated 15.05.2015) which even on that date envisaged that 1432.82 square meters of land would be reserved for future planning. The allotment of the aforementioned land to respondent No. 4 is thus wholly contrary. This is an active connivance of respondent No. 4 with respondents No. 1 & 2. The last submission of the learned counsel for the petitioner is that the lease deed executed by respondent No.1 in favour of respondent No. 4 is liable to be cancelled as this lease deed is against the statutory document which is MPD-2021.

10 To support her submissions, learned counsel for the petitioner has placed reliance upon a Division Bench judgment of this Court in Chander Meenakshi decided in LPA No.169/2011 which was a case dealing with the petrol pumps in Delhi. Contention being that after coming into force of the MPD-2021, the setting up of petrol pumps was to be regulated by norms of MPD-2021 and not of the earlier Master Plan; submission being reiterated that under the new MPD-2021 Chapter 15.7.1 (mixed land use regularization) clearly stipulates that a nursery school in a 'D' block commercial colony (as is Ashok Vihar) can only be up to the ground level and right of way must be 18 meters wide which is not so in the instant case. Reliance has also been placed upon another judgment of a Bench of this Court reported as Justice for All Vs. Government of NCT of Delhi delivered in W.PC (C)No. 4601/2013 on 24.11.2014 wherein the stand of the DDA as noted by the Court was that the allotment of land for educational purpose was either for a primary school or for a senior secondary school and in the Master Plan, the concept of a nursery school has been done away with. Submission being that this stand of the DDA in the aforementioned matter cannot be contrary to the stand now adopted in the present case which is to the effect that nursery school under MPD-2021 is permissible.

11 Per contra, the stand of the statutory departments i.e. of respondents No. 1, 2 & 4 is already noted supra and it is the same stand which has been argued before this Court. Their arguments have been bordered on their averments made in their respective counter affidavits.

12 Learned senior counsel for respondent No. 4 has placed reliance upon a judgment of a Bench of this Court reported as 2013 (133) DRJ 348 Harish Batra Vs. Delhi Development Authority. His submission is that the layout plan prescribes the user of land and as long as it continues to show the prescribed user of land (as in the instant case) for a nursery school, the Court cannot interfere in its user. This judgment has also been relied upon to support a second argument which is that even if (although not admitting) the MPD-2021 done away with the concept of nursery school; the allotment in his case being prior in force to MPD-2021 cannot be disturbed. Additional submission being that the judgment of Harish Batra (supra) related to a residential area wherein in the instant case, it is the layout plan itself which has prescribed the user of land for the purpose of a nursery school. Reliance has also been placed upon 2014 (213) DLT 14 M.G. Ramachandran and Another Vs. Municipal Corporation of Delhi & Others to support a submission that the scheme of the DDA Act and the Master Plan shows that

micro level and macro level plannings have been envisaged under the Master Plan and the Zonal Plan which are statutory documents and their character cannot be changed. Micro level planning as reflected in the Layout Plan is the baby of the authority. Submission on this count again being reiterated that the Master Plan, the Zonal Plan as also the layout plan all prescribe the user of this plot for the purpose of a nursery school and as such its user cannot be disturbed; the Court cannot interfere in the user as prescribed by Master Plan and Zonal Plan. Reliance has been placed upon a judgment of the Apex Court reported as (2007) 6 SCC 448 Greater Kailash Part-II Welfare Association and Others Vs. DLF Universal Ltd and Others to support a submission that it is for the competent authorities to give a decision as to whether a particular user for a prescribed plot of land is permissible or not and it is not for the writ Court to interfere with such decisions. Learned counsel for respondent No. 4 has lastly relied upon 2000 AIR (Del) 432 Municipal Corporation of Delhi Vs. Damyanti Sahni to support his stand that the present lease has been executed by the DDA in his favour on 17.05.2006; it is an act of the President of India and it can only be governed by the provision of the Government Grants Act.

13 Arguments have been heard. Record has been perused.

14 There are certain facts which are admitted. It is an admitted fact that respondent No. 4 had applied for allotment of a plot for construction of a nursery school in the year 1978. On 22.08.1989, respondent No. 2 (DDA) had allotted a nursery school site No.11, Lawrence Road to the petitioner. This measured 0.25 acres. However since the physical possession of the plot could not be handed over by respondent No. 2 to respondent No. 4 and inspite of Court proceedings having ensued (which had culminated into W.P. (C) No.2323/1997) the undertaking of the DDA to handover the physical possession of the site to respondent No. 4 still could not be honoured. This was for the reason that there was an illegal encroachment over the site. Accordingly, respondent No. 4 had made an application to respondent No. 2 to give him an alternate site which was vide his application dated 09.09.2003. It is also not in dispute that the plot in question i.e. (NS-2) was always earmarked for a nursery school. The user of the plot even till date has not been changed. This user has been recorded in the earlier MPD-2001 as also in the subsequent MPD-2021 as also in the zonal development plan and the layout plan. It is also not the case of the petitioner before this Court that the user of this land has changed. It still remains the same; meaning thereby that this plot can be used for no other purpose but for the purpose of

a nursery school. It is also an admitted fact that out of this 2200 square meters (total area of NS-2), 800 square meters of land has been allotted to Agroha Educational Society where the “Orange School” is running. It is also an admitted fact (as is evident from the counter affidavit of respondent No. 2) that this plot was sub-divided into two parts on 22.12.2001 and this sub-division had been approved by the Commissioner of the DDA, Planning on the same day i.e. on 22.12.2001. The subsequent allotment of 1378.47 square meters of the aforementioned land to respondent No. 4 on 03.06.2005 is another admitted fact. It is also admitted that respondent No. 4 had applied for sanction of the building plan of his nursery school to the Competent Authority (respondent No.1) vide his application dated 10.05.2006 and this date becomes relevant in view of the fact that MPD-2021 had come into operation w.e.f. 07.02.2007. This plan was sanctioned in favour of respondent No.1 on 09.01.2007. This is also an admitted position. The revised plan was thereafter submitted by respondent No. 4 to respondent No. 2 on 27.09.2007. This revised plan was in view of the increased FAR which was permitted under MPD-2021. This revised plan had been rejected on 05.02.2008 but on an appeal filed by respondent No. 4 to the Appellate Body, the revised plan of the nursery school was sanctioned in terms of

MPD-2021 on 18.07.2008. These facts are not disputed.

15 Thus what has come on record is that the allotment of the aforementioned plot (measuring 1378.47 square meters) in favour of respondent No. 4 by respondent No.1 was as per the permitted user as recorded of this plot (NS-2) not only in the earlier MPD but also in MPD-2021, the zonal development plan as also the layout plan. The user of this land has not been changed and at the cost of repetition, this land can be used for no other purpose but for the purpose of a nursery school. The fact that this plot which was originally envisaged for one nursery school was sub-divided on 22.12.2001 (which sub-division was approved by the Commissioner of DDA, Planning) is also a matter of record. The fact that an area measuring 1378.47 square meters was allotted to respondent No. 4 in lieu of his earlier allotment of 0.25 acres of land at D-11, Lawrence Road, Delhi is also undisputed.

16 A Bench of this Court in Harish Batra (supra) (relied upon by respondent No. 4) while dealing with the similar contention of residents of Chirag Enclave who had also sought the relief of quashing of an allotment of 800 square meters of land to a nursery school and to restrain them from running the nursery school, had noted that where admittedly even in the layout plan, the plot had been earmarked for nursery school and continued to

be so shown and as such it was not for the Writ Court to direct the user of that plot for any other purpose. The observations of this Court in this context are relevant and read herein as under:-

“13. The plot aforesaid, in the Layout Plan, was admittedly earmarked for a nursery school and continues to be so shown. On enquiry as to whether the appellants in LPA No. 757/2012, prior to filing the writ petition, had made any representation or taken any steps for modification of the Layout Plan, the counsel replies that such steps could not have been taken since the writ petition filed by CCHBS was already pending. We are unable to agree. While the issue in the writ petition of CCHBS was as to who should run the nursery school, the issue raised by the seven residents aforesaid is of whether the nursery school should at all come up or not. So long as the Layout Plan continues to show the prescribed user of the land as that for a nursery school, this Court cannot direct the user to be anything else.”

17 The submission of the learned counsel for the petitioner that there is a contravention of MPD-2021 and the concept of nursery school has been done away under the new MPD-2021; her additional submission that at best the nursery school can only go up to the ground level coverage; it cannot be a multi storey building (as is so in the present case) and her reliance on the Mixed Use Regulation of MPD-2021 as contained in Chapter 15.7.1, 15.7.2 and 15.7.3 as also sub-clause (vi) of 15.7.3 are all misplaced. Her subsequent submission that Ashok Vihar (where the present school is housed) is a ‘D’

rated colony and as per the Mixed Use Regulation of MPD-2021 [Chapter 15.07.1 (a), 15.7.2 read with 15.7.3 (vi)] in a 'D' rated colony, a 18 meters ROW is required in front of a nursery school and which has to be restricted to the ground floor level.

18 This Court is of the view that Chapter 15 would not be applicable to the case in hand as the plot in question is not a residential plot. Chapter 15 relates to residential areas as is evident from a reading of 15.2 and 15.3 lays down the principle of identification of mixed use areas in existing urban areas and urbanizable areas. This Chapter is not applicable to the instant case. The stand of respondent No. 2 (NDMC) is correct on this score; their stand being that it is Chapter 13 of MPD-2021 which would be applicable to the present case. Chapter 13 deals with the social infrastructure which includes facilities pertaining to health, education, sports, etc. This Court is concerned with the aspect of education which is contained in Chapter 13.2. Chapter 13.2 sub-clause (vi) prescribes herein as under:-

“Nursery school may function as part of Primary School/Secondary School/Senior Secondary Scholl whichever needed. Separate/exclusive Nursery Schools are permitted in residential premises as per the Mixed use policy”

19 Table 13.4 lays down the Development Control for Educational

Facilities. At serial No.2, the height of a nursery school can go up to 15 meters. It is not disputed that height of the present school does not exceed that limit. The submission of the learned counsel for the petitioner that there is contravention of Chapter 15.3 is thus an argument without any merit.

20 It is also not disputed that respondent No. 4 had applied for a sanction for the building of his nursery school under the old MPD-2001 which was vide his letter dated 10.05.2006 and which was granted on 09.01.2007. All this was before the coming into force of the new MPD-2021. Petitioner again applied for a revised sanctioned plan on 29.07.2007 under MPD-2021. This plan after a rejection was finally sanctioned on 18.07.2008. Respondent No.1 had also vide his communication dated 27.06.2013 granted time to the Society to complete the construction of their nursery school. This letter is also a part of the record and is not a disputed document. The fact that the ATMCD had initiated certain proceedings against respondent No. 4 and had asked him to demolish all the unauthorized and illegal construction contained upon it and compliance of the same has been effected and respondent No. 4 has thereafter deposited the compounding fee on 18.01.2016 is also a matter of record.

21 In this background, this Court is not able to decipher the argument of

the learned counsel for the petitioner which is largely to the extent that all this activity is in connivance of respondent No. 4 with respondents No. 1 & 2. This connivance cannot be seen anywhere from the record.

22 NS-2 is admittedly earmarked for nursery school. Its user till date remains the same. The fact that respondent No. 4 had got this plot allotted after its due sub-division is also a matter of record. This was way back in the year 2001. The fact that respondent No.1 had allotted it (in view of the earlier allotment) is also an admitted position. The fact that respondent No. 4 had applied sanction of his building plan under the old MPD-2001 and which was allowed under the older master plan and thereafter the renewed sanction plan under MPD-2021 was also sanctioned are also admitted facts. Chapter 13.4 of MPD-2021 clearly prescribes that a nursery school can go up to a height of 15 meters. The submission of the learned counsel for the petitioner that the practice of doing away with nursery schools in the layout plan is dis-continued (in terms of Table 13.4 and serial No.1 as the same is permissible in mixed use) is an argument without any merit as admittedly this plot has been allotted to respondent No. 4 (after its due sub-division in the year 2001) on 03.06.2005 which is much prior in time to the coming into force of MPD-2021 (which was on 07.02.2007) and therefore it cannot be

disturbed.

23 In this context, the observations of the Division Bench in Harish Batra (supra) wherein a similar argument had been put up was answered herein as follows:-

“As far as the MPD-2021 having done away with the earmarked plots for nursery school is concerned, the allotment in favour of TES is of prior to the coming into force of MPD-2021 and cannot be disturbed on account thereof. The said allotment will be governed by the policies framed by the DDA/Government from time to time with respect to allotments already made.”

24 The submission of the petitioner Malti Jain (in W.P. (C) No. 5883/2015) that this school faces her house and it is not only awkward but also extremely annoying to have a multi-storey school in front of her residential house which has disturbed her ingress and egress into the house is also an argument (even presuming it to be correct) which has little merit. At the cost of repetition this plot (NS-2) has always been earmarked in the Master Plan, Zonal Development Plan and Layout Plan for a nursery school. Petitioner Malti Jain had bought her plot with her eyes open. She was fully aware at the time when she purchased this plot (in front of her house) that it has been earmarked for a nursery school. She cannot have any grievance now. It cannot be at asking of a particular resident that the user of the plot of land can be changed. In fact this is also not her case. Her grievance is that

this allotment of land is against the byelaws of MPD-2021. This discussion has already taken place and has been answered in the negative. In this context the observation of Division Bench in Harish Batra (supra) would again becomes relevant and reads herein as under:-

“There is another aspect of the matter. The said seven residents claim to be the subsequent purchasers of the residential plots of land in the colony. They acquired their plots with open eyes, of the said plot being earmarked for a nursery school and of the likelihood of a nursery school coming into existence. Infact the said nursery school would have come into existence but for the interim order obtained by CCHBS in its own writ petition. It is not this Court to enter into an inquiry as to the requirement of a nursery school. The Newspapers are full of the difficulties in nursery school admissions and certainly convey a dearth of schools vis-a-vis admission seekers thereto. We therefore find it unpalatable that there is no need for a nursery school. There is no basis whatsoever for the said claim made by the said handful of residents of the colony.”

25 The submission of the respondents that the petitioner Malti Jain is venting out a private vendetta for the reason that she has been as Secretary ousted of the Residents Welfare Association (RWA) which she was holding is also a submission which cannot be ignored. The respondents have been harassed continuously for no fault of theirs. These petitions are pending since 2015.

26 The case of both the petitioners is clearly without any merit. Each of these petition are accordingly dismissed with costs quantified at Rs.10,000/- each.

INDERMEET KAUR, J

AUGUST 26, 2016

A

