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

% *Judgment reserved on :08.09.2016*

Judgment delivered on :19.09.2016

\+ W.P.(C) 4961/2015

ARVIND SINGHAL & ORS ..... Petitioners

Through Mr. Rajiv Bansal, Mr. Shivanshu Kumar, Mr. S.K. Gandhi, Ms. Nishtha Gupta, Mr. Anurag Tripathi and Ms. Tanya Jelly, Advs.

versus

THE GOVT. OF NCT OF DELHI & ORS ..... Respondents

Through Mr. Anuj Aggarwal, ASC for GNCTD/R-1, R-6 to R-9 along with Inspector Girish Kumar Singh, Inspector Dinesh Kumar, (TI) and ASI Om Prakash.

Ms. Shiva Lakshmi and Mr. Ruchir Ranjan, Advs for R-2 & R-3.

Mr. Siddharth Nagpal and Mr. Sumeet Pushkarna, Advs for R-5 along with Mr. Sushil Kumar, UDC.

Ms. Veena Ralli, Adv for R-10.

Mr. Pravir Jain, Adv for R-12.

CORAM:
HON'BLE MS. JUSTICE INDERMEET KAUR

INDERMEET KAUR, J.

1 The three petitioners are residents of Padmini Enclave, Aurobindo Marg, New Delhi. Petitioner No. 1 is the owner of property No. 3 which is

adjacent to the "Playful Minds Enrichment School" (hereinafter referred to as the school) being run from the aforenoted property. This school is being run by respondent No. 12 on a property owned by respondent No.13 which has been leased out to the school (respondent No. 12). The registered lease deed is dated 27.03.2014. The purpose is running of Pre-Primary School, Enrichment Centre and Allied Activities. Submission is that illegal and unauthorized activities are being carried out in the school which are a nuisance to the residents of the locality; not only the ground floor but the first floor of the property is also being used by the school not for its school activities but it has become a commercial activity including banqueting and birthday parties which are on a regular pattern. Besides these activities, running of a chess academy, summer camp and other allied activities are also being carried by respondent No. 12. All this is in violation of the byelaws and the building plans and controverts the Master Plan for Delhi, 2021 (MPD-2021) The statutory bodies in permitting these activities to continue under their nose and not stopping them are guilty. Further contention is that this colony (Padmini Enclave) falls in category 'B'; the conversion of user from the original residential user status into a commercial user (by running a school) amounts 'to erect a building' in terms of Section 331 of the Delhi

Municipal Corporation Act, 1957 (in short 'DMC Act') which cannot be done without the prior sanction of the Commissioner. Section 345-A has also been relied upon to advance this argument. Additional submission being that as per the requirements of MPD-2021 a minimum Right of Way (ROW) of 18 meters is required under Chapter 15 even if it is a mixed use land and ROW in front of this school is not 18 meters. Attention has been drawn to the other provisions of MPD-2021 i.e. Clauses 15.4, 15.7.1 and 15.7.2. Submission being that nursery school in a mixed use land is permitted only if there is a 18 meter ROW in front of the school; it has to restrict its use to the ground floor. These violations have not been addressed by the Statutory Body. Accordingly, this petition has been filed seeking a direction to the Statutory Bodies to prohibit respondents No.12 & 13 from running the aforenoted school which is not only in violation of MPD-2021 but also in violation of the statutory provisions of the said Act. He has also drawn attention of this Court to the photographs appended with the writ petition to substantiate a further submission that the parking in front of the school is erratic and irregular; this is an additional nuisance to the residents of the locality.

2 A status report has been filed by the South Delhi Municipal

Corporation (SDMC) which is on the affidavit of Mr. P.K. Jain, Executive Engineer of the concerned area. In this status report, it has been stated that the property was inspected on 04.09.2015; the record has also been examined; the play school under the name of 'Playful Minds Enrichment Limited' is being run from the aforenoted premises. It is stated that the aforenoted activity is permitted in terms of Chapter 15 of MPD-2021; this is a mixed use land; as per Clause 15.7.1 (a), the aforenoted activity is allowed even in this residential block. Further statement of the Department is that respondents No.12 & 13 have deposited the conversion charges on 08.05.2015 which was a pre-requisite for the conversion in the change of user of this land. It is further stated that on inspection, no activity violative of MPD-2021 was being carried out. Photographs have also been filed by the Corporation. An additional affidavit of the same Officer P.K. Jain, Executive Engineer of the Department is also on record. This affidavit is dated 24.01.2016. This affidavit which is to be read in continuation of the earlier affidavit states that the property was inspected on 08.01.2016. No commercial activity was noticed on the first floor; a nursery school was operating on the ground floor. The owner/occupier was running a pre-nursery school. In the year 2014, it was noted that as per Clause 15.9 (i) of

MPD-2021 before running a pre-nursery school, conversion charges were required to be paid by the owner/occupier for which purpose a show cause notice was issued to him. Reply was filed wherein payments received for registration charges, conversion charges along with penalty charges (as per Clause 15.9) have been paid. This affidavit additionally states that the Right of Way (ROW) at Aurobindo Marg including the service road is more than 18 meters and "other activities" from this plot are thus permitted under MPD-2021 on the plots abutting the said road having an area more than 200 square meters.

3 The status report of DCP, Traffic has also been perused. He has stated that one Zonal Officer and two constables have been deployed by the Delhi Traffic Police to keep a check on the traffic in the area in question; they have been stalled at Chaudhary Dilip Singh crossing; on the survey of the area in question, it was found that there is no traffic congestion; no vehicle was unauthorizedly parked with reference to the premises in question. Regular survey is being conducted and in case such a traffic congestion is noted, appropriate action shall be taken.

4 Affidavit of respondents No. 12 & 13 has also been perused. He has denied all these averments. Submission being that this activity is well

permitted for which purpose conversion charges have also been paid by respondent No. 13.

5 Counter affidavits of other respondents have also been perused.

6 A rejoinder has been filed by the petitioner to the aforenoted stand of the Department. This position is disputed. It is stated that respondents No.1 to 11 (Statutory Bodies) are in connivance with respondents No. 1 2& 13 and the picture has not been depicted correctly.

7 Learned counsel for the petitioner has relied upon a judgment of the Apex Court reported as AIR 2006 (SC 1325 *M.C. Mehta Vs. Union of India & Others*. Para 34 has been highlighted. It is pointed out that this judgment clearly states that the change of occupancy from one to another would amount to a conversion and a co-joint reading of the definition of the expression 'to erect a building' in Sections 331 and 345-A of the said Act, evidences that conversion of user would come within the purview of the expression 'to erect a building' for which necessary corollary as has been pointed out by the petitioner in his writ petition have to be adhered to. Submission being that in this scenario, where there is a conversion of user and the petitioner not having applied for revised sanctioned plan, it was incumbent upon the Commissioner of Corporation to have sealed the

building of respondent No. 12 under Section 347 of the said Act.

8 These arguments have been controverted. Learned counsel appearing for the Corporation reiterates his stand which has been adopted in the counter affidavit which is to the effect that this area is a mixed use land and Chapter 15 of MPD-2021 permits running of nursery school up to the ground floor level in a plot of more than 200 square meters which has a ROW of 18 meters in front. All these conditions having been adhered to and respondent No. 12 having been paid the conversion charges, there is no objectionable activity being carried out by respondents No. 12 & 13 as the ROW in the present case is more than 18 meters which includes the main road as also the service road. This argument has been reiterated in terms of the stand adopted by the Corporation in its two affidavits (noted supra).

9 Delhi Police (Traffic) has also stuck to his stand and has adopted the same argument which has been detailed in the counter affidavit. Submission being that two constables are on a vigil at the Chaudhary Dilip Singh crossing and if any objectionable activity is found, appropriate action will be taken. This undertaking of the Traffic Police is noted.

10 The private respondent has also placed on record receipts of payment of conversion charges of Rs.70,058/- which has been paid for the year 2014-

2015 and thereafter again the same for the year 2015-2016; the penalty charges of Rs.6,30,526/- were also paid vide receipt dated 28.05.2014 which was the penalty amount on the conversion charges as the same had not been paid within time. Conversion charges of Rs.70,058/- along with a receipt dated 28.05.2015 are also a part of record meaning thereby that conversion charges for every year are being paid up to date; the initial penalty of 10 times of the conversion charges was also paid on 28.05.2014. This was in response to the show cause notice issued by the Corporation as till that point of time, the conversion charges had not been paid by the respondent for which a penalty of 10 times of amount (in terms of MPD-2021) had been imposed upon him.

11 Arguments have been heard. Record has been perused.

12 Record shows that there are three petitioners before this Court all of whom are residents of Padmini Enclave. Admittedly Padmini Enclave is a mixed use land. Although a half-hearted submission was made by the learned counsel for the petitioner that Padmini Enclave does not fall in mixed use land but thereafter all arguments which ensued relate to mixed use land in terms of Chapter 15 of MPD-2021.

13 The stand of the Department is clear. They have stated that Padmini Enclave premises is a mixed use land. Chapter 15 of MPD-2021 deals with the Mixed Use Regulations. This Chapter acknowledges the need for permitting use of land for a purpose other than for which it was originally envisaged and lays down the conditions under which this may be applied in different situations. The general procedure to be followed for implementation of the said Policy and mitigating circumstances to be taken to counter the effect of such non-intended use in such areas has been detailed in the rest of the Chapter. Chapter 15.3.2 states that no commercial activities will be permissible in the colonies of A & B categories; the conditions for running a pre-primary school are defined in Clause 15.7.1 itself which is that subject to the conditions of clause 15.7, the plot must abut a road of 18 meters ROW. Clause 15.7 details the "other activities" which are permitted 15.7.1 includes a nursery school in residential plots abutting roads having a minimum ROW of 18 meters. This is reiterated in Clause 15.7.2. Clause 15.7.3 states that the minimum size of the plot on which these activities are permissible should be 200 square meters. Clause 15.7.3 (vi) permits a pre-primary school up to ground floor level. Clause 15.7.3 (ix) states that it is the responsibility of the plot owner to make arrangements for parking so that

the parking does not encroach/spill over on public land. Reliance by the learned counsel for the petitioner on Clause 15.9 (iii) of the MPD-2021 is misplaced. Clause 15.9 deals with the registration of mixed use premises and payment of charges. Sub-clause (i) presupposes the filling up of a form by the owner/allottee for residential premises intended to be put to mixed use. A onetime registration charge has to be paid. Under sub-clause (ii), these premises under mixed use shall be liable for payment for annual mixed use charges; this payment has to be made to the local body. Sub-clause (iii) states that modification in the building for using residential premises for non-residential activity under the Mixed Use Policy shall be permitted unless the owner/allottee has obtained a sanction of the revised building plan and has paid the necessary fee or charge. In the instant case, it is not the case of the petitioner that there has been any modification of the building. In fact, clause 15.9 of the Mixed Use Regulation although argued before this Court has not been averred in the writ petition. It is not the case of the petitioner that there has been any modification on the ground floor of the building where the aforenoted school is being run. A revised building plan would thus not be necessary. The petitioner has admittedly paid the annual charges and is continue to pay them year by year in terms of sub-clause (ii). Clause 15.9 (iii) does not come to the aid of the petitioner.

14 A reading of the aforenoted provisions coupled with the stand of the South Delhi Municipal Corporation as also the Mixed Land Use Regulations clearly show that a nursery school run by respondent No. 12 which is being carried out in property No. 3 is as per the norms of the MPD-2021. It is admittedly a plot of land which is more than 200 square meters. ROW in front of the school is more than 18 meters. This has been so stated in the additional affidavit of the Executive Engineer dated 18.01.2016. This ROW of 18 meters includes the Aurobindo Marg and the service road which together make it more than 18 meters. There is no embargo in including the Aurobindo Marg road along with service road to arrive at a ROW measurement of 18 meters. The argument of the learned counsel for the petitioner on this score that the ROW does not permit the main road to be clubbed along with service road is meritless as this is nowhere envisaged in any part of MPD-2021. The affidavit of the respondent-Corporation as also the Traffic Police who had inspected the property clearly states that the school is being run only up to the ground floor. The photographs appended along with the petition as also the photographs filed by the respondent also

show that the activities appear to be on the ground floor. It has been informed to the Court that the first floor is lying closed and is used only for storage purpose. The submission of respondent Nos. 12 & 13 that the first floor shall be continued to be used only for storage purpose is also noted. The stand of the Traffic Police that there is no congestion at the Chaudhary Dilip Singh crossing and even in front of the school, the parking does not appear to be encroaching on any public/private land is noted. Further stand of the Traffic Police is that they had deployed two constables in the area who will keep a constant vigil not only in the present but also in future; this commitment of the Traffic Police shall be honoured in true letter and spirit. Clause 15.7.3 (ix) does stipulate that it will be the responsibility of the plot owner to make arrangements for parking so that traffic does not encroach and spill over the public land. This is binding upon respondents No. 12 & 13 and their undertaking that they will continue to ensure that the parking does not spill over or encroach on any public land is also noted; it will be also implemented by them in true letter and spirit.

15 The submission of the petitioner that the use of the land which was originally residential and now attained different character amounts to 'erect a building' within the meaning of Sections 331 and 345-A of the said Act is

negatived. Section 331 and Section 345-A would apply to those situations where an activity has been changed from one to other and the residential has become commercial without prior sanction of the Statutory Body which may then amount to 'erect a building' in terms of Section 331. Not so in the instant case. In the instant case, the school has been permitted in mixed use land area and in terms of Chapter 15 of the Mixed Land Regulation of MPD-2021. Respondents No. 12 & 13 having adhered to those conditions (discussed supra); conversion charges along with a onetime penalty also having been paid and all this having been brought on record, this Court is of the view that the running of a pre-primary school in the aforenoted property would not attract the provisions of either Sections 331 or 345(A) of the said Act. The submission of the learned counsel for the petitioner that the respondent should apply for a revised sanctioned plan in terms of his conversion is also an argument which necessarily has to fall in view of this Court returning a finding that running of the pre-primary school in property No. 3 by respondent No. 13 does not amount to 'erect a building' within the meaning of Section 331 and as such the other consequences which would flow from it which as per the petitioner includes the incumbency on the part of respondents No. 12 & 13 to apply for a fresh sanction would not follow.

The question of the Commissioner sealing this building would also not arise. At the cost of repetition, all this is taking place in a property where land user is admittedly a mixed use land.

16 This Court notes and reiterates the undertaking of the DCP, Traffic which is to the effect that he will ensure that there is no illegal and unauthorized parking in front of property No. 3 and there is also no congestion at the Chaudhary Dilip Singh crossing. This Court also notes the undertaking of respondents No. 12 & 13 which is to the effect that the nursery school is being run only on the ground floor and no other commercial activity for running a pre-nursery school is being carried out. These commitments shall be honoured in true letter and spirit.

17 Record also shows that the petitioner had filed a suit i.e. CS. (OS) No.1710/2014. This suit was seeking the same reliefs which have been predicated in the present petition. The suit was of the 2014 and it had progressed up to 2015 when an application had been filed by the petitioner seeking permission of the Court to withdraw the suit which had been permitted to be withdrawn in 2015. On this count, the submission of the learned counsel for the respondent that the petitioner in his rejoinder has raised disputed questions of facts; if the petitioner pleads otherwise, he had

ample opportunity to have taken recourse to the suit which had been filed by him but for reasons best know to the petitioner, he had withdrawn it. This submission of the learned counsel cannot be brushed aside easily.

18 No further orders are called for in this petition which is disposed of in the above terms.

INDERMEET KAUR, J

SEPTEMBER 19, 2016
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