

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

% Judgment Reserved on: 09.02.2017

Judgment delivered on: 14.02.2017

+ LPA 540/2016

MALTI JAIN

..... Appellant

versus

**LAWRENCE ROAD MODERN
EDUCATIONAL SOCIETY & ORS.**

..... Respondents

Advocates who appeared in this case:

For the Appellant : Appellant in person.

For the Respondent No.1 : Mr Arvind Kr.Gupta and Ms Alpana Naik.

For the Respondent No.2 : Mr Sanjeev Sabharwal.

For the Respondent No.3 : Mr Mukesh Gupta, Standing Counsel with Mr Pranay Jain.

CORAM:-

HON'BLE MR JUSTICE BADAR DURREZ AHMED

HON'BLE MR JUSTICE ASHUTOSH KUMAR

JUDGMENT

ASHUTOSH KUMAR, J

CAV 853/2016

1. The learned counsel for the respondent No.1 caveator is present.

2. The caveat stands discharged.

LPA 540/2016

1. Two writ petitions, namely, (i) W.P(C) No.4429/2015, at the instance of Ashok Vihar Residents Welfare Association and (ii) W.P(C) No.5883/2015 by the appellant herein, were filed seeking restraint of construction over an area of 1378.47 square meters situated in Block-D,

Ashok Vihar, Phase-I, New Delhi on the ground of the aforesaid plot having been allotted by DDA (respondent No.2) to Lawrence Road Modern Educational Society (respondent No.1) in a residential block for a multi storey building in violation of the provisions of Master Plan Delhi-2021 as also Delhi Building Laws and Delhi Building Byelaws, 2014. Cancellation of the perpetual lease deed in favour of respondent No.1 and revocation of the sanctioned plan which was granted on 18.07.2008 initially and which was revalidated on 17.07.2014 were also prayed for. Both the petitions were rejected by a common judgment and order dated 26.08.2016.

2. The petitioner in W.P(C) No.5883/2015 is the appellant before this Court seeking the setting aside of the aforesaid judgment and order.

3. Respondent No.1 was allotted a plot of land measuring 0.25 acres at Lawrence Road way back in the year 1989 but the physical possession of the said plot could not be given due to encroachment. Pursuant to an undertaking given by the DDA in W.P(C) No.2323/1997, preferred by respondent No.1 and in the light of the request made by respondent No.1 for being provided with an alternative site, site NS-2 (plot in question) in Ashok Vihar which was earmarked for a nursery school was sub-divided

into two parts with post facto approval of the Commissioner of DDA and was allotted to the respondent No.1. The entire plot was of 2200 square meters, out of which 800 square meters had already been allotted to one Agroha Educational Society, where one nursery school was in operation. The present plot over which respondent No.1 has constructed a school is to the extent of 1378.47 square meters. The said plot NS-2 was allotted on 3.6.2005.

4. It appears from the records that respondent No.1 applied for sanction of the building plan of the nursery school before the competent authority on 10.5.2006 which was sanctioned on 9.1.2007. It may be noted here that Master Plan of Delhi-2021 had come into operation w.e.f 7.2.2007 only, i.e. after the plan was sanctioned in favour of respondent No.1. However, a revised plan was submitted by the respondent No.1 to DDA on 27.9.2007 keeping in mind the changes which had been brought about in MPD-2021 from MPD-2001. It would also be relevant, in this context to note that the revised plan was initially rejected but, on appeal, the revised plan was sanctioned in terms of MPD-2021 on 18.7.2008.

5. The appellant contended that the allotment was not in consonance with MPD-2021 as there was no provision for nursery school in MPD-

2021 and if at all there was an allotment for opening nursery school, the building of the school could not have been raised beyond ground level. It was further pointed out that the Mixed Use Regulation of MPD-2021 especially contained in Chapters 15.1.1, 15.7.2 and 15.7.3, thereof did not permit of a school building of such dimensions as that of respondent No.1.

6. The further grievance of the appellant is that, first of all, the allotment and, secondly, permitting the respondent No.1 to raise a multi-storey building in the teeth of MPD-2021 and building regulations and byelaws was because of the connivance of the other respondents and that she being a resident of the area was put to severe difficulty in residing at a place, perhaps across the road, to a multi storey building in which a school is being run.

7. Similar grounds were raised by the writ petitioner in W.P(C) No.4429/2015.

8. The learned single Judge, after going into the issues, came to the conclusion that an area which was earmarked for nursery school was subdivided into two plots; one of which was given to the appellant and even in MPD-2021 the user of the plot in question was the same as MPD-2001.

Finding that the user of the property in question could not have been changed, the learned Single Judge did not find any fault with allotment of the aforesaid land to the respondent No.1.

9. As far as the structure of the respondent No.1 is concerned, the learned Single Judge was justified in holding that since the allotment to the respondent was made on 3.6.2005 and the building plan was sanctioned on 9.1.2007 which was before the coming into operation of MPD-2021 (w.e.f 7.2.2007), it could not be said that the sanction was illegal or contrary to the rules. The learned single Judge has taken note of the fact that keeping in mind the changes in MPD-2021 a revised plan was submitted and the same was ultimately sanctioned in terms of the provisions of MPD-2021. The objection of the appellant with regard to the building of respondent No.1 being in derogation of Chapters 15.7.1, 15.7.2 and 15.7.3 of the Mixed Use Regulation of MPD-2021 has also been rightly rejected by the learned single Judge on the ground that it was applicable to residential plot whereas NS-2 was not a residential plot and that it was actually governed by Chapter 13 of MPD-2021 which actually deals with social infrastructure including facilities pertaining to health, education, sports etc.

10. For the sake of completeness, it would be apt to reproduce two paragraphs of the impugned judgment and order.

“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 School 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.”

11. The appellant would be deemed to be aware of the fact of user of the land to be for Nursery school when she had acquired the plot of land for her residential purposes and on her insistence the user of a land cannot

be changed and the respondent No.1 cannot be asked to remove the structure.

12. The learned counsel appearing for the respondents, in unison stated that no rule, regulation or byelaws have been flouted and the concern of the appellant is absolutely illusory and non-existent. There are other residents of the locality who have never complained against the school.

13. There is no reason for cancellation of the perpetual lease deed in favour of respondent No.1 or revocation of the sanctioned plan for the school which stands over the plot in question.

14. We do not, therefore, find any reason to overturn the findings of the learned single Judge.

15. The appeal is dismissed.

16. However, in the facts and circumstances of the case, we set aside the order of imposition of cost on the appellant.

ASHUTOSH KUMAR, J

BADAR DURREZ AHMED, J

FEBRUARY 14, 2017/k