

\$~66

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

+ **W.P.(C) 4255/2019**

GREEN PARK ASSOCIATES (REGD)

..... Petitioner

Through: Mr. Sanjeev Anand, Adv. with
Mr. Ashok Kashyap and Mr. Suresh
Khadav, Advs.

versus

SOUTH DELHI MUNICIPAL CORPORATIN & ORS

..... Respondents

Through: Mr. Dhanesh Relan, SC with
Ms. Gauri Chaturvedi and
Ms. Mrinalini Sharma, Advs. for
SDMC

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO

ORDER

%

24.04.2019

1. The present petition has been filed by the petitioner with the following reliefs:-

“It is, therefore, most respectfully prayed that this Hon’ble Court may be pleased to issue writ of mandamus or any other appropriate writ order or direction against the respondent; and

(a) direct the respondents to close or shift the two primary schools being run as “SDMC Primary School, Green Park”

and “SDMC Primary School, Arjun Nagar” on the private lands of the Green Park Colony owned by the plot holders of the said colony and handover the entire plots of lands admeasuring 13508.55 square yards and 13066 square yards respectively, including adjoining vacant land in the occupation of the said schools alongwith construction thereon or after demolishing/removing the said construction thereon, to the petitioner to use the same for essential urgent community needs of the residents of colony permitted by MPD 2021.

(b) award costs of the present petition to the petitioner and against the respondents.

(c) pass such other order or orders as this Hon’ble Court may deem fit and proper in the facts and circumstances of the case.

2. It is the case of the petitioner and contended by Mr. Sanjeev Anand Learned counsel for the petitioner that the petitioner is an Association duly registered under the Societies Registration Act, 1860 whose members are the owners of plots and residents of Green Park (Main), New Delhi, a South Delhi residential colony. He has further submitted that the Green Park (Main) and Green Park (Extension) are two very old freehold residential colonies and the same were developed by a private colonizer ‘Urban Improvement Housing and Construction Private Limited’ in the year 1955.

A common layout plan of Green Park (Main) and Green Park (Extension) was approved by the Standing Committee of MCD in consultation with the Town Planner, prior to promulgation of the Master Plan of Delhi, 1962.

3. It is further submitted by the learned counsel that the said approved layout plan provided for, besides the residential plots, roads, berms, storm water drains and open spaces earmarked for community purposes such as parks, schools, public buildings, etc. These open spaces of the Green Park (Main) were taken over by MCD on 14th February, 1966 from the developer, only for providing/managing various civil amenities and services to the residents of the colony, and the ownership of these open spaces however continued to vest in the plot holders of the colony. Similarly, on 4th December, 1968 handing over and taking over of the roads, berms, storm water drains and open spaces earmarked for community purposes such as schools, parks, dispensary, etc. of the Green Park (Extension) took place between the developer and MCD.

4. It is further his submission that pursuant to the aforesaid handing over of the various open spaces of the colony to MCD, MCD became entitled to only manage and supervise the said open spaces and did not become the owners thereof, whose ownership was and still continues to vest in the

respective plot holders of the colony. It is also submitted that the said approved layout plan earmarked four sites for primary schools (two each) in Green Park (Main) and Green Park (Extension).

5. He has further submitted that on the two school sites earmarked for the said purpose in the approved layout plan, MCD constructed following two primary schools in Green Park (Main), which are presently running-

(i) SDMC Primary School, Green Park constructed only in a small portion of the plot comprising of 13508.55 sq. yds. Located west of U-8 to U-22.

(ii) SDMC Primary School, Arjun Nagar constructed in an area of 13066 sq. yds located opposite Arya Samaj Mandir.

6. He has further submitted that the lands earmarked for two primary schools and playgrounds by the private colonizer were/are meant for children of the colony. The cost of the land of primary school plots was recovered by the private colonizer from the plot owners and thus the lands in question belong to the plot/flat owners of the colony. The total land of the SDMC Primary School, Green Park site in the approved layout plan was/is 1.72 acres. However, MCD constructed the said primary school only in a small portion of the said plot. The remaining land MCD started to use as its

store and started dumping junk, confiscated material, malba, building material, etc. on the said land when the petitioner Association filed a suit against MCD and the decree was passed against MCD on 9th August, 1986 directing it to remove the said material and to restore the entire plot of land for the purpose of the school only. As the MCD was not complying with the said decree, an execution was filed by the petitioner Association for executing the said decree. To overcome the said decree, MCD is stated to have passed a resolution dated 24th June, 1987, purportedly revising the layout plan of the Green Park colony to the effect that out of the SDMC primary school site, only an area of 1.5 acres be reserved as primary school in accordance with the provisions of the Master Plan and the additional area being 0.22 acres be earmarked for municipal offices. In view of the said resolution claimed to have been passed by MCD, the Executing Court passed an order that the decree stood satisfied, but in a Revision Petition filed by the petitioner, this Court vide judgment dated 26th November, 1999, relying upon *Pt. Chet Ram Vashisht (Dead) by LRs. Vs. Municipal Corporation of Delhi (1995) 1 SCC 47* held that MCD did not acquire ownership right over the said 0.22 acres of land which was earmarked only for the use of a primary school and that MCD had only a right of

management and supervision of the amenities to be provided in the said land and as such it was not entitled to change the land user in respect of the said land.

7. Learned counsel states, the ownership of all common spaces and common areas such as parks, sites earmarked for schools, etc. in the Green Park Colony including the aforesaid two primary schools thus continues with the plot holders of the Green Park Colony and stands reiterated by the aforesaid judgment of this Court dated 26th November, 1999. In the year 2007, the Master Plan 2021 was notified by the Central Government by a Notification dated 07.02.2007 in exercise of the powers conferred by sub-section (2) of Section 11 of the Delhi Development Act, 1957. Some of the salient features of the Master Plan 2021, which are relevant for the purposes of the present Petition and binding on the Respondents are, inter-alia, as follows:

(i) Considering the ground realities and future requirements the new policy of school education envisaged in the Master Plan 2021 appears to be for the beneficial enjoyment of the residents of the colony.

(ii) Para 13.2 of the MPD 2021, deals with Education Policy and, inter alia, provides as follows:

“As far as school education is concerned, the policy should be geared to encourage integrated schools from the pre-primary to higher secondary level, rather than allocating space separately for Nursery Schools, Primary Schools and Middle Schools. Primary Schools may specifically be set up by the Delhi Government or the Local Civic Bodies.”

(iii) Table 13.3: Planning Norms and Standards for education facilities of the Master Plan 2021 in respect of Primary School provides as under:

<u>S. No.</u>	<u>Category</u>	<u>Population/unit</u>	<u>Plot Area</u>
1.	Primary School	10,000	0.2-0.4 ha

(iv) Table 3.3: Hierarchy of Urban Development of the Master Plan 2021 provides at Sl. No. 2 that there would be only one primary school and the area earmarked is only 2000-4000 sq. mtrs. and has to be provided in the layout plan. Thus, in the colony of a population of approx. 10,000 there cannot be more than one primary school as the same would not be in consonance with the provisions of the Master Plan 2021.

(v) Table 4.2: Infrastructure Requirement for layout at Residential Neighbourhood level of the Master Plan 2021 provides only for one primary school at residential level.

8. It is further submitted on behalf of the petitioner that the Green Colony comprising of both Green Park (Main) and Green Park (Extension)

have a combined population of approx 10,000 units. Thus, as per the requirement of the MPD 2021, only one primary school is permitted in the population of 10,000 units. Moreover, keeping in focus the objectives of the Education Policy in para 13.2 to provide for integrated schools, it is stated that the said primary school should be integrated with the existing middle schools and higher secondary school in the two colonies. Against the above, as per the layout plan sanctioned by the Municipal Corporation, there are already 5 primary schools in the Green Park Colony i.e. Green Park (Main) and Green Park (Extension), whose particulars are given below:

- (i) SDMC Primary School, Green Park
- (ii) SDMC Arjun Nagar Primary School, Green Park
- (iii) Gargi Sarvodaya Kanya Vidyalaya, Green Park Extension
- (iv) Jain Girls Senior Secondary School and Jain Modern Public School (in the same building), Green Park Extension
- (v) L. R. Saraswati Vidya Niketan Pre nursery to Vth Class, Green Park Extension.

In addition to the above schools 2 more SDMC primary schools are running in close vicinity of Green Park, whose particulars are given below:

- (1) SDMC Primary Co-Ed school, Hauz Khas Village – which is about 300 meters from Green Park
- (2) SDMC Primary School – Bhim Nagari- which is also about 300

meters from Green Park.

9. It is further submitted on behalf of the petitioner that notwithstanding the aforesaid mandate of the Master Plan 2021 which has a statutory force, sometime in 2009 MCD demolished the existing structure of the SDMC Primary School, Green Park and started to construct a new building for the same, having shifted the children studying in the said school to the MCD school at Bhimnagari. It took 22 months for SDMC to construct the schools. The petitioner Association immediately objected to the said construction activity and wrote various letters requesting MCD to stop the said construction work. MCD was informed that the land on which the construction was being undertaken belonged to the plot holders of the colony and MCD was only managing the same and the said land was required by the residents of the colony for their growing needs and requirements such as old age home, library for children, children playground, and moreover according to the provisions of the MPD 2021, the two colonies i.e. Green Park (Main) and Green Park (Extension) having a population of approximately 10,000 units, had the requirement of only one primary school. It was also brought to the notice of the MCD that keeping in focus the objectives of the policy of education in MPD 2021, to provide for integrated schools, the said primary school should be integrated with the

existing middle and Higher Secondary Schools in the said two colonies. It was consequently informed that there was no requirement for the primary schools to be constructed at the site of the SDMC Primary School, Green Park, opposite the rear of U Block of the colony. The petitioner also through its letters revoked and cancelled the rights of the MCD to act as Manager or Supervisor in respect of the subject lands on which the schools were being run and requested that the said lands be handed over to the petitioner Association.

10. It is further submitted by learned counsel that as the MCD was not heeding to the request of the petitioner Association and did not stop running of the two primary schools and also did not hand over the sites to the petitioner, the petitioner vide its letter dated 28th September, 2012 addressed to the Lt. Governor of Delhi requested him to intervene in the matter so that the sites could be handed over to the petitioner to be used by the respondents as per the layout plan and provisions of the Master Plan 2021.

11. He states, however, no action was taken on the said representation and the petitioner has been continuing to make representations till date, being dated 31.08.2013, 08.05.2014, 11.02.2015, 17.05.2016 and 31.07.2017 and lastly dated 12.12.2018, all without any success. It is submitted that none of

the aforesaid representations except the representation dated 12th December, 2018 was even replied to by the respondents, let alone having complied with the same.

12. Learned counsel has further submitted that the representation dated 12th December, 2018 of the petitioner has been replied by respondent no. 2 vide letter dated 7th January, 2019 stating that the SDMC Primary School was running at the present location approximately for the last 55 years to cater to the needs of the lower strata of the society and the said school in collaboration with an NGO was going to start a campaign namely Project SQEP very soon to increase the strength of the students, while admitting that approximately 150 students study in the said school every year.

13. It is his submission that the petitioner had applied under the RTI, requesting information regarding the number of students studying in the two primary schools and the number of teachers employed in the said schools and the total capacity of the schools. Information received in response thereto by the petitioner clearly indicate that the children studying in the said schools constituted even less than half of their capacity and the said number was decreasing every year. It is stated that the respondents refusing to act in accordance with law and refusing to close the two schools in question and

handover the subject lands to the petitioner, led to the present petition being filed seeking appropriate reliefs from this Court.

14. Having heard Mr. Anand, Adv. for the petitioner, this Court is of the view that the petitioner is not entitled to the reliefs as prayed, for the reasons; firstly, as per the respondent, the two schools have been in existence for the last 55 years, catering to the needs of the marginalized strata of the society, where approximately 150 students study in each school every year; secondly, the petitioner had earlier filed a suit, and successfully sought a direction against the MCD to remove the junk material dumped in the vacant area of the concerned plot and to restore the said plot of land for the purpose of running a school only. The petitioner did not challenge the continuance of the schools on the land nor had challenged the locus of the MCD to run the schools on the said land; thirdly, the reliefs as prayed, cannot be granted as the Parliament has enacted the Right of Children to Free and Compulsory Education Act, 2009 making it compulsory to the Government to provide education, free of cost upto a particular class and any direction as sought for by the petitioner Association shall be in violation of the said Act/Fundamental rights of the students studying in the said schools; fourthly, the plea of Mr. Anand, justifying the usage of the

lands/plots in question by the members of the Association for their own needs like recreation for the senior citizens; providing play ground for the own children etc, does not impress the Court, as such facilities cannot be at the cost of more pressing requirements/paramount public interest of providing free education to the children, who cannot afford the expenses and further, it is for the Corporation to decide, which amenities are required to be provided. The Court cannot supplement the view of the Corporation. Further, there are only two schools run by the Corporation; other being one run by Govt. of NCT of Delhi and by private societies. The reliance placed by Mr. Anand, on the judgment of the Supreme Court in the case of ***Pt. Chet Ram Vashisht (Dead) by LRs. Vs. Municipal Corporation of Delhi (supra)*** is untenable as in the said judgment, the Supreme Court was concerned with the plea whether the Corporation can transfer to its name the land, belonging to a third person. The same is not applicable in the facts of this case.

15. I do not see any merit in the writ petition. The same is dismissed. No costs.

V. KAMESWAR RAO, J

APRIL 24, 2019/akb