

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

% Date of decision: 19th February, 2019

+ LPA 37/2018 & CM. Nos. 3759/2018, 3760/2018, 3761/2018 and
48781/2018
DELHI DEVELOPMENT AUTHORITY Appellant

versus

M/S INSPARATION DEALERS PVT LTD &
ORS Respondents

AND

+ LPA 38/2018 & CM. Nos. 3843/2018, 3844/2018 and 3845/2018
DELHI DEVELOPMENT AUTHORITY Appellant

versus

ASHULOK TRADERS PVT LTD & ORS Respondents

AND

+ LPA 39/2018 & CM. Nos. 3846/2018, 3847/2018 and 3848/2018

DELHI DEVELOPMENT AUTHORITY Appellant

versus

M/S JEEVAN JYOTI ENTERPRISE PVT LTD
& ORS Respondents

AND

+ LPA 40/2018 & CM. Nos. 3855/2018, 3856/2018, 3857/2018,
49752/2018 and 50126/2018

DELHI DEVELOPMENT AUTHORITY Appellant

versus

M/S SUMERMAL PATWARIY TRUST & ORS Respondents

AND

+ LPA 41/2018 & CM. No. 3858/2018, 3859/2018 and 3860/2018

DELHI DEVELOPMENT AUTHORITY Appellant

versus

HUM LOG TRADERS PVT LTD & ORS

..... Respondents

Through: Mr. Ajay Verma, Sr. Standing Counsel
with Mr. Anupam Sharma &
Mr. Sumit Mishra, Adv. for DDA
Mr. Ankur Chhibber, Adv. with
Mr. Kuljeet Rawal, Adv.
Mr. Bhanu Gupta, Adv. for GNCTD
(item No.33)
Mr. Sumit Jidani, Adv. for R-2 (item
No.35)
Mr. Vipul Pankaj Sanghi, Adv. for R-2
(item No.31)
Ms. Neha Pandey, Adv. for Ms.
Prabhsahay Kaur, Adv. for GNCTD
(item Nos. 32 & 34)
Mr. Ajjay Aroraa and Mr. Kapil Dutta,
Adv. for NDMC
Mr. Sanjeev Kumar Singh and
Mr. Raghvendra Pandey, Adv. for R2
(item No.35)

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE V. KAMESWAR RAO

V. KAMESWAR RAO, J. (ORAL)

1. These five appeals have been filed by the Delhi Development Authority (DDA), challenging the order dated October 16, 2017, passed by the learned Single Judge in applications filed by the respondents herein, seeking clarification of order dated February 6, 2017. Suffice it to state, that the writ petitions filed by the respondents herein were disposed of by the learned Single Judge on February 06, 2017 by stating as under:-

16. These petitions are accordingly disposed of with liberty granted to the petitioners to permit the co-owners of subdivided plots to collectively prepare and submit their layout plan to North Delhi Municipal Corporation for approval. This would be along with all the mandatory documents which would be to the satisfaction of the local body. A period of three months is granted for the said purpose. This is in view of the submission of the petitioners that in some cases there are several co-owners of one plot and to collate the documents it would be a cumbersome process for which sometime would be required.

17. It is made clear that all co-owners of one plot will make this collective application to the local body.

18. The applications of the petitioners will be considered in accordance with law and approval of the layout plan will be answered by the local body in accordance with law. The sanction of the building plan on the individual plots will, thereafter be governed by MPD-2021 development control norms.

19 After an order has been passed by the local body, no coercive action shall be taken against the properties of the petitioners till the next three months and this period of three months be counted from the date of communication of this order to the petitioners (which may be by registered A.D. post, courier or any mode of accepted service). Needless to state that if the petitioners are aggrieved by the action of the respondent, they may take steps in accordance with law. This order is passed without prejudice to the respective rights and contentions of the parties.”

2. On an application filed by the respondents herein, the learned

Single Judge has, in para 6 held as under:-

“6. Sub para 4 clearly states that the applicant shall submit the legal documents in support of single/common/joint ownership for the above referred plot at the time of sanction of the building plans. The word

“applicant” being in the singular form followed by submission of the legal documents by a single person clearly envisages that after the amendment in the master plan not only is a sub-division permitted but an application for sanction of the building plan can be made by a single applicant as well. This Resolution No.410 of the Corporation dated 03.3.2017 is an undisputed document. The decision (noted supra) was taken at Item No.104/2016 (dated 22.9.2016) and this is reflected in the LOSC Considerations of the aforementioned Resolution. The order for which clarification has been sought is dated 06.02.2017. The Resolution of the Corporation was on record at that time. Accordingly, this Court is of the view that the clarification sought for in paras 14,16 and 17 of the order is called for and the owners of the sub-divided plots may prepare and submit a layout plan to the local body even singly.”

3. It is the submission of Mr. Ajay Verma, learned Senior Standing Counsel appearing for the DDA that DDA has no grievance by the initial order passed by the learned Single Judge dated February 6, 2017. According to him, on an application seeking clarification, the learned Single Judge has modified the order to the extent that the Court has permitted the respondents herein/ co-owners of the sub-divided plots to prepare and submit a lay out plan, to the local body even singly. According to him, this direction is at variance with the earlier directions given by the learned Single Judge in her order dated February 6, 2017. According to him, the order dated October 16, 2017 supersedes the gravamen of the order dated February 6, 2017. He states that, there

is no material available before the learned Single Judge to modify the order in the manner she has done. According to him, the Regulation dated April 01, 2011, which inter-alia stipulates that the owners of sub divided plots shall collectively prepare and submit a layout plan to local body for approval along with required mandatory documents as per BBL to the satisfaction of the local body is still in vogue. According to Mr. Verma, the DDA had issued letter dated August 26, 2016 clarifying the aspect that MPD-2021 is a policy document, which only lays down the planning parameter and does not address the ownership related issues. The ownership of any plot i.e single, joint or through any inter-alia agreement shall be up to the satisfaction of the local body / MCD. According to Mr. Verma, the reliance placed by the respondents / owners on the notification dated May 13, 2013 is totally misconceived. It only added certain notes below table 7.3 of MPD-2021 after Sl. No. VII and in particular the said notification merely recognize that sub division or amalgamation of similar industrial plots will be allowed without dispensing with the requirement of submission of a collective lay out plan.

4. It is his submission that the Standing Committee vide Resolution dated March 03, 2017 could not have amended or varied requirement of Regulation dated April 01, 2011. He states that when a large plot of land is sub-divided into the numerous parts, it would have to be developed holistically by submission of a collective layout plan by all sub-divided plot owners failing which the purpose of redevelopment of industrial plot would be defeated.

5. Mr. Kuljeet Rawal, learned counsel appearing for the respondents has heavily relied upon notification dated May 13, 2013 to contend that the application for clarification was filed only because of the fact that the notification dated May 13, 2013 could not be brought to the notice of the learned Single Judge at the time of hearing of the petition. He states, in terms of the said notification, a note has been added below table 7.3, after Sl. No.VII, which permitted sub-division of larger industrial plot or amalgamation of smaller industrial plot in existing areas as well as approved schemes / layouts / building plans on the said industrial plots. He states that even as per the letter of the DDA dated January 27, 2015, it is clear that in view of the above provision, sub-division and amalgamation of individual industrial plot, without insisting on

collective participation in the redevelopment of the sub-divided industrial plot, irrespective of size, is allowed. He also relied upon the Resolution of the Standing Committee, dated February 08, 2017 / February 21, 2017, which dealt with the issue of amalgamation of industrial plot 69/4A and 69/5A, out of plot no. 69 whereby permission was granted and recommendation given, after considering appellant's letter dated August 26, 2016 on the basis of which the appellant had opposed the respondent's application for clarification before the learned Single Judge. According to him, the said resolution in para 13, allowed the amalgamation on individual / single basis.

6. It is his submission that DDA has been part of all the meetings of the Standing Committee as well as that of Layout Committee and the representative of the DDA, having endorsed the minutes and taken a specific stand in the meeting, now cannot be allowed to allege to the contrary and oppose the decision taken in the meetings of the Standing Committee.

7. We have heard the learned counsel for the parties. The only issue for consideration is whether the learned Single Judge could have, in an application seeking clarification, modified her order in

the writ petition. The answer has to be in the negative. Mr. Verma is justified in relying upon Clause 2.3 of the said Regulation, which reads as under:-

“2.3 Redevelopment of Existing Planned Industrial Areas through sub-division of plots

Master Plan-2021 also realizes that the existence of smaller plots by subdividing the larger plots and has recommended to prepare guidelines for regularization of such sub-divisions. Accordingly, the owners of sub-divided plots shall collectively prepare and submit the Layout plan to Local Body for approval along with the required mandatory documents as per BBL/to the satisfaction of the Local Body.

After approval of the layout plan by the local body, the sanction of the building plan on individual plot shall be governed by MPD-2011 development control norms given in the Table 7.3.”

8. The said Clause of the Regulation is very clear that the owners of the sub-divided plots shall collectively prepare and submit the layout plan to local body for its approval. It is after the approval of the layout plan by the local body, that the sanction of the building plan on individual plot shall be governed by MPD-2021.

9. Reliance placed by Mr. Rawal on the notification dated May 13, 2013 more specifically Note (xii) at serial No. 15 thereof, at page 87 of the paper book, also does not help the case of the

respondents inasmuch as the same inter-alia stipulates “*sub-division of larger industrial plot or amalgamation of smaller industrial plots will be allowed in existing areas as well as approved schemes / layouts / building plans on these industrial plots*”. The said stipulation does not say that such layout plan shall be submitted singly.

10. Even the reliance placed by Mr. Rawal on the decision taken by the Standing Committee, which reads as under is misconceived, inasmuch as, the decision at Sl. No. (2) stipulates that all the conditions given in the regulation dated April 01, 2011 shall be adhered to. That apart, decision at Sl. No.(4) also stipulates that the applicant shall submit the legal documents in support of single / common / joint ownership for the above referred plot at the time of sanctioning of the building plans. Suffice it to state, there is no reference to a layout plan. In fact, Mr. Verma is justified in placing reliance on the letter dated August 26, 2016 (which is a letter subsequent to letter dated January 27, 2015) of the DDA.

“After discussion, the following decisions were taken:-

“1. *The plot qualifies for amalgamation as per the notification dated 13-05-2013 and the clarification given by DDA vide letter dt. 19-2-2015 & 26-08-2016. The norms of*

the plot shall be as per the provisions contained in Table 7.3 of MPD-2021.

2. All the conditions given in the regulation dt. 1-4-2011 shall be adhered to.

3. The proposal requires approval of the Standing Committee for amalgamation of Plot Nos. 69/4A and 69/5A situated at Najafgarh Road, Industrial Area, New Delhi.

4. The applicant shall submit the legal documents in support of single / common / joint ownership for the above referred plot at the time of sanctioning of the bldg. plans.”

11. Moreover, the issue can be seen from another angle, inasmuch as Section 313 of the Delhi Municipal Corporation Act, 1957 on which reliance was placed by Mr. Verma, inter-alia casts a duty on the owner to apply for sanction of the layout plan. In this case, when the owners are more than one, surely a layout plan need to be submitted by the co-owners collectively to the local body. The direction of the learned Single Judge in her order dated October 16, 2017 was clearly untenable. The same is liable to be set aside. Ordered accordingly. The appeals are allowed to the aforesaid extent.

V. KAMESWAR RAO, J

CHIEF JUSTICE

FEBRURAY 19, 2018/ak