

(2002) 09 DEL CK 0208
In the Delhi High Court
Case No : CW 4978 of 2002

Delhi Science Forum

APPELLANT

Vs

Delhi Development Authority and Another

RESPONDENT

Date of Decision : 16-09-2002

Acts Referred:

Constitution of India, 1950 — Article 226

Delhi Development (Master Plan and Zonal Development Plan) Rules, 1959 — Rule 12, 5

Delhi Development Act, 1957 — Section 11A, 29, 30, 31

Citation : (2004) 112 DLT 944 : (2004) 4 RCR(Civil) 705

Hon'ble Judges : S.B. Sinha, C.J.;A.K. Sikri, J

Bench : Division Bench

Advocate : S. Muralidhar and Rukhsana Choudhary, for the Appellant; Arun Jaitley and Anusuya Salwan, for Respondent No. 1 and Raman Oberoi, for the Respondent

Judgement

S.B. Sinha, C.J.—This writ petition which is in the nature of Public Interest Litigation raises a question of far reaching consequences and has wide ramifications. The Delhi Development Authority which is a creature of Delhi Development Act, 1957 acquired the land in question which was agricultural land being in J-Zone allegedly for development. It stands admitted that no approval of the Central Government for use of the land in terms of Section 11A of the said Act has been obtained.

2. Admittedly since the date of acquisition till 1999 the first respondent herein did not take any step to move the Central Government for taking any action in terms of Section 11A of the Act. For three years the Central Government also did not take any steps pursuant to or in furtherance of the application filed by the first respondent herein for change in the land user. In the meantime, purported to be on the ground of protecting the land in question from further encroachment as also for other co-lateral purposes a mass housing project in Vasant Kunj for 416 HIG for Group I had been undertaken. Pursuant to or in furtherance of the

said scheme/a notice inviting tenders had been issued and allegedly a contract has been awarded for completion of the said scheme. In this Public Interest Litigation apart from highlighting the violation of the provisions of the Delhi Development Act and the rules framed there under the petitioner herein had contended that the water level of the area has gone down to a great extent and as a matter of fact the water requirement of the area is of the order of 4 MGD and only 1.3 MGD has been supplied by way of river water and the rest is sourced from the already stressed ground water regime. Permission to dig certain bore-wells were granted by the Central Ground Water Authority in terms of Section (3) of the Environment Protection Act, 1986 but it also prohibited extraction of the ground water without its specific prior approval by a notification dated 25.4.1999. The first respondent despite the said ban has been allegedly digging ground water in violation of the said ban. The first respondent however, in its reply alleged that it has started special projects for supply of water in the area in question and whereas the constructions of the flats may be completed by 2004 such water supply scheme would be completed by December, 2003. It now stands admitted that the constructions have been started in clear violation of the provisions of Delhi Development Act and the rules framed there under. When we heard the matter in par t on 11th September, 2002 it was prayed by Mr. Arun Jaitely, learned Senior Advocate appearing on behalf of respondent No. 1 that respondent No. 2 herein be asked to inform this Court about the progress made on the request of the first respondent for change of the land rules.

3. Today Ms. Raman Oberoi has produced before us a purported fax message which is as under:

"Delhi Development Authority submitted a proposal with approval of Competent Authority on 17th November, 1999 to Ministry of Urban Development for change of land use of an area measuring about 56 hac. (138.40 acres) in the south of Mehrauli-Mahipalpur Road, New Delhi.

2. The details of "the proposed land use modifications were as under:

Land Total From To Area Pocket Area (in Hac.

1. Land around 28.0 Hac Rural Residential 11.0 Sultan Garhi Monument Public & Semi public 9.0 facilities

Recreational 8.0

2. Land adjoining

spinal injury 5.0 Hac Rural Residential 3.0 Hospital Recreational 2.0

3. Land behind	23.0 Hac.	Rural Residential	23.0 Sector D-6	Vasant Kunj
-----				Total 56.0
Hac.	56.0	Hac	(138.40	Acres)

3. On 14.7.2000 DDA again requested Ministry of Urban Development for Central

Government approval for issue of a Public Notice u/s 11-A of DD Act, 1957 for inviting objections/suggestions from the public for the proposed change of land use.

4. On 25.8.2000 Ministry sought clarification from DDA as to whether clearance for such change of land use has been obtained from National Capital Region Planning Board.

5. On 16.1.2001 DDA wrote to Chief Regional Planner of National Capital Region Planning Board for necessary clearance for proposed change of land use.

6. NCRPB wrote to DDA on 17.8.2001 that proposal is being examined by them and will be placed before the Planning Committee soon for consideration.

7. Vice-Chairman, DDA requested Ministry of Urban Development on 22.8.2001 for processing of change of land use.

8. On 25.9.2001 a team of officers from DDA, Land & Building Deptt, GNCT, Delhi Archaeological Survey of India and NCRPB visited the proposed site for change of land use.

9. The proposal for change of land use of an area measuring about 56 Hac. (138 Acres) from Rural use to Urban use in the south of Mehrauli-Mahipalpur Road, NCT Delhi was considered in the 47th Planning Committee meeting held on 23.2.2001 and after thorough deliberation and in view of the contiguity of the area with the built up areas and taking note of all the views expressed Planning Committee recommended the change of land use on 15.4.2002.

10. The proposal for considering change of land use was considered by the Ministry on 12.9.2002. The Ministry communicated to Commissioner (Planning), DDA on 13.9.2002 its approval to issue Public Notice u/s 11-A of Delhi Development Act for inviting objections/suggestions from the Public for proposed change of land use of an area measuring 56 hac. (138 acres) in the south of Mehrauli-Mahipalpur Road, New Delhi. DDA was also authorized to take further action accordingly."

4. It is strange that the first respondent herein has issued a public notice inviting objections/suggestions from the public in general within a period of 30 days from the date of publication thereon.

5. The said notice is also violative of Rule 5 read with Rule 12 of the Delhi Development (Master Plan and Zonal Development Plan) Rules, 1959. In terms of the aforementioned Rules at least 90 days notice is required to be given.

6. It is a matter of great concern that a statutory authority which is statutorily open to protect and preserve the statutory schemes itself has been violating the provisions of law. In violation of the land rules attracts the penal clause contained in Section 29 of the Act. In terms of Section 30 of the Act in the event when the development commences in contravention of the Master Plan or Zonal Development Plan or without the permission, approval or sanction referred to in

Section 12 or for other matter specified therein the first respondent is entitled to direct demolition of such constructions. Section 31 empowers the authority to direct stoppage of such development in exercise of its power conferred upon it u/s 31 of the said Act. The said provisions to say the least are also applicable to the first respondent herein. We really wonder as to how a statutory authority who has the duty of maintaining the ecology of the city of Delhi had been violating the mandatory provisions of law with impunity. The submission of Mr. Jaitely, the learned Senior Counsel appearing on behalf of the first respondent is that no public interest would be sub-served if we direct stoppage of construction of the building at this stage particularly when steps are being taken for obtaining the approval of the Central Government for change in the land rules in terms of Section 11A of the Act. From what we have noticed here before, there cannot be any doubt whatsoever that all these steps taken by the first respondent herein are not only in violation of the statutory provisions, the same was highly unjust and arbitrary. Public interest in a case of this nature also demands that activities of the statutory authority be directed to confine it within the four corners of law. The statutory authorities cannot be allowed to act de hors the Statute.

7. However, high you may be the law is higher than you is also applicable to the first respondent who is authorised under the Act to implement the provisions thereof. In fact it is a fit case where the Chairman of the first respondent should see to it that how authorities of the first respondent herein were allowed to take such decisions which admittedly are wholly illegal and without jurisdiction. Although we are not oblivious of the fact that ultimately it may be allottees of the flat who may suffer but once such illegalities are permitted, the same in our opinion would give further incentive to a statutory authority like the first respondent herein to per peculate the same and to indulge in other illegalities. So far as the submission of Mr. Jaitely to the effect that such a step had been taken with a view to prevent the land from being encroached upon. We are of the opinion that the first respondent has enough statutory power and resources not only to prevent the land from being encroached upon but also to see that such encroachments are removed.

8. We, Therefore, at this stage have no other option but to direct that no further constructions should be allowed to be raised on the land in question. This order shall not, however, prevent the respondents herein from taking steps for preventing any encroachment on the land in question and/or use the material collected at the site for any other purpose. It will also be open to the parties herein to proceed with the matter of obtaining approval from the Central Government in accordance with law. There cannot be any doubt whatsoever that, if any, approval is granted by the Central Government, permission is obtained first respondent herein would be entitled to resume the construction.

9. Keeping in view the fact that, if any subsequent event occurs, the petitioners or any other public spirited person may approach this Court again, we would not intend to keep this proceeding pending. It is disposed of.