
(1996) 12 DEL CK 0001

In the Delhi High Court

Case No : Civil Writ Petition No. 31 of 1994

Maya Devi

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 06-12-1996

Acts Referred:

Delhi Development Act, 1957 — Section 11A(3)

Citation : (1997) 65 DLT 405

Hon'ble Judges : Mohd. Shamim, J

Bench : Single Bench

Advocate : O.P. Saxena, Jayant Bhushan and Sangeeta Chandra, for the Appellant;

Judgement

Mohd. Sharnim, J.

(1) The petitioner has brought forward the present petition for issue of a direction against the respondent No. 3, their servants and agents restraining them from carrying out illegal construction of flats in the area marked A in between Pocket A-11 and A-14 at Kalkaji Extension, New Delhi which is a site reserved for a primary school in the lay out plan and for restoration of the said area for the purposes of a primary school and to construct a school thereon.

(2) Brief facts which gave rise to the present petition are as under : that the petitioner is a mother of four daughters. Out of them, namely, Priyanka and Garima are 11 and 9 years of age respectively and are students of a primary school. The petitioner is also a member of the Park Committee of Kalkaji Extension. The petitioner is a resident of Kalkaji Extension area. The population of the area is approximately 1.6 lacs, yet with no Government primary school. Consequently the children of the said area have to travel long distances for their primary education.

(3) Respondent No. 3 i.e. the Delhi Development Authority was constituted by an Act of Parliament. Section 7 of the Delhi Development Act (hereinafter referred

to as "the Act" for the sake of convenience) requires the Authority to prepare a Master Plan whereas Section 8 of the Act talks of a Zonal Plan. The Master Plan prepared and submitted by respondent No. 3 and approved by the Central Government and which is in operation contains a provision for construction of primary schools. According to the site plan the prescribed area for the said school for 500 students is 0.40 hectares. The Zonal Plan made subsequent to the Master Plan contains a space in between Pocket A-11 and A-14 marked for a primary school in accordance with the Master Plan (vide Annexure P-1). Respondent No. 3 in violation of the said plan are constructing flats over the above said place and are thereby violating the Master Plan and the Zonal Plan and the Fundamental Rights of the children of the petitioner and of other residents of the area to primary education which is a part of life and liberty.

(4) The petitioner submitted a representation dated November 13, 1990 to respondent No. 3 in regard to the non construction of a primary school at the above said place and miss user of the said land by construction of Lig flats (vide Annexure P-2). All of a sudden the respondent No. 3 started the construction of the flats at the above said place in the month of January 1993. The petitioner again wrote to the Lieutenant Governor, Delhi on January 25, 1993 with a copy to the Vice Chairman of respondent No. 3, Commissioner, Municipal Corporation of Delhi, and other authorities bringing to their notice the miss user of the land marked in the plan for the purposes of a school. Subsequently the petitioner also issued a reminder and again brought to the notice of the authorities the misuse of the said land meant for a school. The respondent No. 3 have very recently stepped up the construction of the flats in the area at a place marked for construction of a primary school in the plan. Despite repeated requests orally and in writing from the petitioner the respondent No. 3 continue to construct the flats in the said area marked in plan by letter A (Annexure P-I) in violation of the Master Plan and the Zonal Plan. The petitioner has thus got no other option but to prefer this petition for the protection of her rights.

(5) Respondent No. 3 put in contest, inter alia, on the following grounds: that it is absolutely wrong and false that there has been any unauthorised construction or any miss user of the land earmarked for the primary school. In fact, the area in question has been shown as residential area in the Master Plan. It implies thereby that the said area can be utilised for the construction of flats as well as for a school. There is no approved Zonal Plan of the area. The area in question was earmarked for the construction of a primary school in the lay out plan of the Okhla Industrial Tenements which includes the Kalkaji Extension Pocket from A-I to A-14. However, since the area of the primary school was much more than what was required, consequently it was decided to revise and modify the lay out plan to accommodate some Mig and Lic houses in the extra land of primary school which had to be constructed within a specified time schedule in lieu of certain defective flats which had developed cracks. The said revised lay out plan was approved by the Vice Chairman, Dda who is the Competent Authority to approve the changes in the lay out plan vide the minutes of the Screening

Committee held on July 10,1990 and April 1,1991 (vide Annexures R-1 and R-2 respectively). Thus it is false and preposterous to allege that there was any violation of the provisions of the Act. The change in the lay out plan did not involve any change in the user of the land. The change, if any, in the lay out plan was effected and modification made as per the proper procedure. By revising the lay out plan the site meant for the primary school has not been done away with and the same still exists in the lay out plan. The construction of most of the flats in question is nearly complete. The writ petition is false and frivolous. It is liable to be dismissed.

(6) It is manifest from the facts canvassed above that the only question which arises for adjudication in the present writ petition is as to whether the respondent No. 3 have carried out any modification in the Zonal Plan by doing away with the site which was meant for the primary school and by raising the construction of the flats thereon.

(7) Learned Counsel for the petitioner, Mr. O.P. Saxena, has vehemently contended that the site which was meant for a primary school as per the Zonal Plan and the lay out plan in between Pockets A-I1 and A-14 is being used for construction of Lig and Mig flats. Thus according to him it is the violation of the Master Plan and the Zonal Plan and the respondent could not have done so except in accordance with the procedure as prescribed in Section 11-A of the Act. The learned Counsel has in this connection led me through the provisions of Section 11-A (3) of the Act which is in the following words :

"11-A.(3) Before making any modifications to the plan, the Authority or, as the case may be, the Central Government shall publish a notice in such form and manner as may be prescribed by rules made in this behalf inviting objections and suggestions from any person with respect to the proposed modifications before such date as may be specified in the notice and shall consider all objections and suggestions that may be received by the Authority or the Central Government.

(4)Every modification made under the provisions of this section shall be published in such manner as the Authority or the Central Government, as the case may be, may specify and the modifications shall come into operation either on the date of the publication or on such other date as the Authority or the Central Government may fix."

(8) The learned Counsel has vehemently contended on the basis of the relevant provision of law alluded to above, that no notice which is a condition precedent was ever issued to any member of the public inviting objections and suggestions in regard to the proposed modification. Thus according to him the modification in the Zonal Plan has been effected without following the procedure prescribed by law. Hence the same is illegal and in valid and without jurisdiction and thus liable to be set aside.

(9) Learned Counsel for the Dda, Mr. Jayant Bhushan, on the other hand, has contended that the respondent have not effected any modification in the Zonal

Plan. In fact, according to the learned Counsel no approved Zonal Plan is in existence. What in fact has been done by respondent No. 3 is to utilise a part of the area meant for the primary school for the purposes of construction of Lig flats. The learned Counsel has in this connection led me through the additional affidavit which shows that several Lig and Mig flats were constructed in Kalkaji Extension in the year 1980. The said flats were allotted. However, later on cracks developed in 61 houses (55 Lig and 6 Mig flats). Subsequently on the recommendation of the Gangadharan Committee the decision was taken out to shift out the residents of those flats. Hence arose the necessity for providing them alternative accommodations. Consequently the respondent undertook to construct the impugned flats i.e. 48 Lig and 6 Mig flats. The said flats are almost complete.

(10) The petitioner has placed on record of the present case a copy which is alleged to be the Zonal Plan (vide Annexure P-I). The said copy is smudged and almost illegible. However, since the main contention of the respondent is that there is no approved Zonal Plan nothing will turn on Annexure PI. The only question which arises for determination in the circumstances of the present case is as to whether in fact there is any approved Zonal Plan? According to the learned Counsel for the petitioner, a copy of the Zonal Plan was supplied to the petitioner and the same is Annexure P-I. The respondent No. 3, on the other hand, have filed an affidavit sworn by Mr. S.C. Karanwal, Senior. Architect, Dda, who has stated in para 4 of the said affidavit that there is no approved Zonal Plan of the area in question. The petitioner for the best reasons known to her did not file any rejoinder to the said affidavit. Thus the averment of Mr. Karanwal goes un-challenged and remains uncontroverted Hence it can be safely concluded there from that there is no approved Zonal Plan.

(11) If this is the situation in that eventuality there is only a lay out plan of the area in question. A careful scrutiny of the provisions of the Act reveals that Chapter 3-A deals with the modification of Master Plan. Sections 11A(1) to (6) deals with the modification of the said plan. There is no other provision in the entire Act which deals with the modification of the lay out plan. It implies thereby that the lay out plan can be modified by the Vice Chairman of the DDA. Mr. Karanwal, Senior Architect, Dda has stated in the additional affidavit with regard to the modification carried, out in the lay out plan. According to him, the modification in the lay out plan was got approved by the Vice Chairman, Dda who is the Competent Authority, in the 56th Screening Committee Meeting held on July 10,1990 (vide para 6 of the Additional Affidavit). According to him, the lay out plan was further got amended and the said modification was also got approved by the Vice Chairman, Dda in the 75th Screening Committee Meeting held on April 1, 1991 (vide para 8 of the Additional Affidavit). Thus it is manifest from above that the lay out plan was got modified twice.

(12) There is another aspect of the matter. A perusal of the Master Plan at page 33 deals with the planning standard for educational facilities. It provides that the

school area meant to cater to the needs of 500 students is 0.40 hectare. The said plan shows that the said area is an approximate area. It does not lay down the exact area from which nothing can be subtracted or added thereto. It is thus in the form of a proposal only.

(13) In view of the above, it cannot be said by any stretch of imagination that there was any modification of the Master Plan.

(14) There is another side of the picture. As per the Master Plan the area meant for primary school is 0.40 hectare. The minimum possible area out of the same has been taken for the construction of the flats as averred in the additional counter affidavit of the respondent. According to the affidavit placed on record by respondent No. 3, vide para 5 of the additional affidavit the original area of 0.64 hectare is indicated in the Drawing No. 187-L/IA in the column of area statement which was much more than that was required for primary school, which had yet not been allotted to anyone. Mr. Karanwal further goes on to state (vide paras 6 and 11 of the additional affidavit) that the original area of the primary school as indicated in the amended Drawing No. 187-L/IA was 0.34 hectare. However, the area available at the site for primary school is 3816 sq .mtrs. which is equivalent to 0.3816 hectare. Thus even after the modification the area of the school is reduced by 184 sq.mtrs only. Thus there is not much reduction in the area even after the modification.

(15) In the above circumstances I do not see any force in the present petition. It is hereby dismissed.