
(1973) 10 DEL CK 0015

In the Delhi High Court

Case No : Letter Patent Appeal No. 238 of 1972

Municipal Corporation

APPELLANT

Vs

Chet Ram etc.

RESPONDENT

Date of Decision : 16-10-1973

Acts Referred:

Citation : (1974) RLR 132

Hon'ble Judges : S.N. Shankar, J; Narain Andley, J

Bench : Division Bench

Advocate : Rameshwar Dayal, S.N. Chopra, D.K. Kapur, Jairam Singh, D.P. Sharma and K. Dayal, for the Appellant;

Judgement

S.N. Shankar, J.

(1) In this appeal under clause 10 of the Letters Patent, Municipal Corporation of Delhi has challenged the order of the learned single Judge partly accepting the writ petition of respondent No. 1, Chet Ram Vashisht; The learned single Judge held that the revised lay-out plan submitted by Chet Ram along with his application dated April 20, 1967 should be taken to have been approved by the Standing Committee of the Delhi Municipal Corporation, as the Standing Committee neither accorded sanction with condition or without condition within a period of sixty days as envisaged in sub-section (3) of section 313 of Delhi Municipal Corporation Act, 1957 (hereafter called "the Act") nor disallowed it or asked for further information in regard to it.

(2) Respondent No. 1 is a coloniser. His father Amin Chand owned land measuring 12.77 acres in village Chowkhauui, near Tilak Nagar, Najafgarh Road New Delhi within the limits of the Corporation. Amin Chand submitted a lay-out plan in respect of the land which was sanctioned u/s 313 of the Act by the Standing Committee of the Corporation by resolution No. 17 passed on December 10, 1958. Subsequently some changes were made in the lay-out plan, amongst others, in respect of sizes of the plots and the width of certain roads. A

second plan was, Therefore, submitted to the Corporation in March, 1962. In June, 1962 Amin Chand died. The Standing Committee approved the second plan by resolution No. 871 dated November 12, 1964. Plot Nos. 33, 34 and 35 in this lay-out plan were shown and approved as separate units & sanctioned for construction of residential houses. Later, respondent No. 1 decided to amalgamate these three plots into a single unit and to use this site for the construction of a cinema. With an application dated April 20, 1967 he submitted a copy of the sanctioned lay-out plan indicating the desired changes in respect of these three plots and requested for "an early sanction in terms of the provisions of section 313" of the Act. By letter dated June 14, 1967, the Town Planner of the Corporation informed respondent No. 1 that his application did not come within the purview of section 313 as it did not involve any carving out of new plots or laying of roads etc. and further that as per the Master Plan's recommendations, cinemas could come only in District Centres, Community Centres or approved large commercial areas, Therefore, the request for the construction of a cinema on the plots in question could not be considered. Correspondence thereafter ensued between respondent No. 1 and the Corporation and by letter dated September 29, 1969 respondent No. 1 was finally told that his proposal could not be accepted. Respondent No. 1 thereupon filed the writ petition and prayed for an "appropriate writ, direction or order prohibiting the respondents, their officers, servants or agents from interfering in any manner whatsoever with the petitioner's right to deal with the land covered by the revised lay-out plan i.e., the land shown by letters A-B-C-D in the plan-Annexure "B" for commercial use and amalgamate plot Nos. 33, 34 and 35 of Jiwani Blocks into one plot for construction of a cinema in accordance with the said revised lay-out plan". The learned single Judge by the impugned order held that the new plan submitted by respondent No. 1 on April 20, 1967 was a revised lay-out plan subject to the provisions of section 313 of the Act just like the original lay-out plan and the Standing Committee in view of the Division Bench decision of this Court, in *Municipal Corporation of Delhi and Others Vs. Kamla Bhandari and Others*, was bound to deal with it within a period of sixty days in accordance with sub-section (3) of section 313 of the Act and this having not been done the restriction as to the utilisation of the land by the respondent stood removed. Subject to compliance with the other provisions of the Act as to sanction etc. of the proposed cinema building, the learned single Judge held that respondent No. 1 was entitled to amalgamate the three plots into a single unit and to use the site for the construction of a cinema.

(3) The stand of the appellant Corporation basically was that the application of respondent No. 1 dated April 20, 1967 was not an application envisaged in section 313 of the Act to attract the provisions of sub-section (3) of this section. This application is addressed to the Chairman, Dda and the Commissioner, Mcd Delhi and read as under :-

"SUB: Cinema site in Ganga Ram Vatika. The lay-out plan of the above named colony was got approved by my father late Sh. Amin Chand vide standing"

Committee resolution dt. 10.12.58..... copy of lay out plan of plot 33, 34, 35 now proposed for a cinema is enclosed for favor of an early sanction in terms of the provisions of sec. 313 of the Delhi Municipal Corporation Act 1957.

(4) The first para of this application states that the lay-out plan in respect of the colony had already been sanctioned and that in pursuance of this sanction building activities over the land had also been allowed by the Municipal Corporation from November, 1965. The second paragraph states facts in justification of the proposed change. The third paragraph sets out the proposed change of user in respect of plot Nos. 33, 34 and 35 of the sanctioned plan and the desire to amalgamate them into one single unit to be used for the construction of a cinema. Along with this application a copy of the sanctioned lay-out plan was also enclosed showing in red the plots the user of which was sought to be changed.

(5) Section 313 occurs in Chapter 15 of the Act which deals with "streets". Sections 298 to 311 of this Chapter provide for public streets". Sections 312 to 316 make provision for private streets. Section 312 lays down that if the owner of any building utilises, sells, leases out or otherwise disposes of such land for the construction of buildings thereon, he shall lay down and make a street or streets giving access to the plots into which the land may be divided and connecting with an existing public or private stress Section 313 then provides for the sanction of the lay-out plan providing such street or streets. It is in the following terms :-(.....)

(6) It would be seen that while Section 312 places an obligation on the owner of any land not to utilise, sell, lease out or otherwise dispose of such land except after laying down and making street or streets in terms of this section, Section 313 makes it obligatory on him to obtain the sanction to the Corporation in respect of the street or streets purposes to be laid out by him. Sub-Section (3) of this section in this context prescribes the time limit within which the Corporation must act in terms of this sub-section to deal with the "application under Sub-Section (1)". The opening words of Sub-Section (1) unmistakably show that an application under this subsection has to be an application made by the owner "before utilising, selling or otherwise dealing with" the land. If the land has already been utilised, sold or otherwise dealt with by the owner, his application will not be an application for sanction of a lay-out plan falling within Sub-Section (1). Where, Therefore, an owner has already utilised, sold or otherwise dealt with the land in pursuance of a sanction granted to him provisions of Sub-Section (1) of Section 313 will not apply and the limitation as to the period of time within which such an application should be dealt with will not be attracted.

(7) The lay-out plan referred to in Sub-Section (1) of Section 313 is essentially a plan to effectuate the purpose of Section 312. If street or streets have already been duly laid out or duly made in the land in respect of which sanction is applied for there is nothing further that is to be done by the Corporation u/s 313. It is true that clauses (a) to (e) of Sub-Section (1) of this section require the

owner to set out in the lay-out plan not only the street or streets proposed to be made but also other particulars for example clause (a) requires the owner to show the plots into which the land is proposed to be divided for the erection of the buildings thereon and also the purpose or purposes for which such buildings are to be used, but a close scrutiny of these particulars will show that they are all facts or data that are required to be mentioned in the application to enable the Standing Committee of the Corporation dealing with the plan u/s 313 to determine the adequacy or otherwise of the street or streets that are laid out or made in the plan. The sanction to be Recorded u/s 313 basically remains a sanction for the lay-out of the street or streets Clause (a) of Sub- Section (1) of Section 313 does not envisage a sanction for the laying out of the plots or their user independently of the street or streets laid out in the plan. An application, Therefore, for the amalgamation of the plots shown separately in the sanctioned lay-out plan or turn a change in the user of the plots as shown in the original sanctioned plan without any change in the lay-out of the street or streets therein will not, in our view, be an application falling under Sub-Section (1) of Section 313 to attract Sub-Section (3) of this section.

(8) In the instant case reference to Annexure "C" tiled by respondent No. 1 along with the writ petition, shows that in pursuance of the sanction already granted to him by the Stand- Committee on December 10, 1958 respondent No. 1 had, before filing the application dated April 20, 1967, carried on development of the land and had laid out streets etc. and had also applied to the Corporation for permission to start building activity in the sanctioned colony. The officials of the Corporation in this connection inspected the colony and submitted a report to the Standing Committee as to the work already completed on the site. A part of this report in Annexure "C" is in the following words :-

" IT was also observed that there was an increase in the area of the colony. developed by the coloniser i e. area covered by the colony was 12.77 acres as against 12.65 acres as per originally approved plan. A reference was Therefore made to the Deputy Housing Commissioner in reply 10 which it was informed vide Administration's letter No. F. 15 (III) 59-LSG dated 18-4-63 that the measurements have been made on the spot by the Revenue Staff and that they have no objection to the acceptance by the Corporation of the area of the colony as 1277 acres as against 1265 acres shown by the coloniser previously."

(9) The Standing Committee after a consideration of this report passed resolution No. 871 dated November 12, 1964 (Annexure "C") as under: -

" RESOLVED that building activity in those parts of Ganga Ram Vatika be allowed where the services have already been completed subject to the condition that the open spaces for parks and schools be transferred to the Corporation free of cost."

(10) It is thus obvious that the land in respect of which respondent No. 1 submitted the plan with his application dated April 20, 1967 had already been utilised or otherwise dealt with by him within a the meaning of section 313(1).

Provisions of sub-section (3) of this section providing a period of 60 days for the sanction of such a plan were, Therefore, not attracted. We are, in these circumstances, unable to sustain the view taken by the learned single Judge that the request of respondent No. 1 for permission to amalgamate the three sanctioned plots and to change their user as shown in the plan annexed to the application was just like the original lay-out plan and the failure of the Standing Committee to deal with it within the period prescribed by sub-section (3) resulted in removing the fetters on the right of respondent No. 1 to use the same in any manner he liked.

(11) The position, we may make it clear, would have been different if respondent No. 1 instead of utilising the land in pursuance of the sanction granted to him on December 10, 1958 had abandoned the sanction or had decided to lay out new street or streets with specifications different from those sanctioned. In that event his application for the sanction of the new street or streets would have been covered by sub-section (1) of section 313 and sub-section (3) of this section would have applied with full force.

(12) The learned single Judge in support of his view placed reliance on *Municipal Corporation of Delhi and Others Vs. Kamla Bhandari and Others*, where it was held that if the Standing Committee did not act within the time specified under sub-section (3) or under proviso to sub-section (5) the restriction imposed by subsection (1) and sub-section (5) of section 313 upon the utilisation of the land by the owner disappeared and upon the expiry of this time the owner was free to utilise the land in accordance with the lay-out plan submitted by him. The application in that case was an application under sub-section (1) of section 313. Relevant facts of the case were that the respondents in that case in the year 1958 submitted a lay-out plan in respect of their land which after examination was put up before the Standing Committee. The respondents were directed to submit the services so that the lay-out plan could be further processed and re-submitted for scrutiny by the Standing Committee. In the meantime, on November 6, 1959 a fresh revised lay-out plan covering a larger area, which included the area in respect of which the previous lay-out plan had been filed, was submitted. The Standing-Committee found that this lay-out was not in conformity with the Sector Plan, but referred the case back to the Commissioner for further report in the light of discussions held in its meeting. The respondents were asked to submit a revised lay-out plan which was done on June 5, 1960. The case was discussed by the Standing Committee in its meeting held on June 16, 1961 but was again referred back to the Commissioner for his report. The Commissioner took time for his report and the matter was ultimately placed before the Standing Committee on February 9, 1962 when the lay-out plan was rejected. Contention raised before the bench was that this rejection dated February 9, 1962 having been made after sixty days of the submission of the revised lay-out plan was invalid, inoperative and without jurisdiction and that the respondents were free of the restrictions imposed by sections 312 and 313 of the Act. The Bench upheld this contention. This was not a case where the owner had

already utilised or dealt with the land in pursuance of a sanction already granted to him. The facts of that case were thus wholly different and the rule laid down, Therefore, did not apply to the present case.

(13) Shri Rameshwar Dayal also argued that the so-called revised plan seeking change of user of the plots could not in any case be sanctioned or deemed to be sanctioned because it was in contravention of the Master Plan He also urged that the relief claimed by the respondent was barred by time on Oct. 18. 1959, when the writ petition was filed, as the letter of the Town Planner refusing the proposed changes was dated June 14, 1967 and for this reason also the respondent was not entitled to any writ. In view of our decision that respondent No. 1 is not otherwise entitled to the relief claimed by him, for reasons aforesaid, it is unnecessary to go into these contentions. Appeal accepted