

(2008) 03 DEL CK 0282
In the Delhi High Court
Case No : WP (C) 1677 of 1996

Navin Bhatia and Others

APPELLANT

Vs

Lt. Governor of Delhi and Others

RESPONDENT

Date of Decision : 28-03-2008

Acts Referred:

Delhi Development Authority (Validation of Disciplinary Powers) Act, 1998 — Section 22(1)
Delhi Municipal Corporation Act, 1957 — Section 312, 313, 332, 333, 334
Land Acquisition (Amendment) Act, 1984 — Section 11, 11A
Land Acquisition Act, 1894 — Section 4, 6

Citation : (2008) 150 DLT 37 : (2008) 102 DRJ 189

Hon'ble Judges : Dr. M.K. Sharma, C.J;Reva Khetrapal, J

Bench : Division Bench

Advocate : Arun Jaitley, /amices Curiae, Rajiv K.Garg and Mr.Ashish, for the Appellant; Iram Majid, for Zubeda Begum, Advocatefor GNCTD, O.P. Saxena, for MCD, J.M. Sabharwal Rakesh Mahajan and S.K. Sabharwal for DDA, H.L. Raina, for R-7, Sandeep Sethi and Vikram Nandrajog, for R-8, Rakesh Munjal and Rakesh Kumar, Advocatefor R-9, A.S. Chandhiok Anil Grover, Ritesh Singh and Navpreet Singh for R-10, for the Respondent

Judgement

Mukundakam Sharma, C.J.—The present public interest petition was filed by the occupants of the area in the Yusuf Sarai/ Gulmohar Enclave Commercial Complex and the Community Centre Occupants Association alleging illegal construction on plot No. 16, which was named as N-161, N-161/A, M-161 and B-161/4. The writ petition was filed praying for a direction to the respondents to stop the unauthorised and illegal constructions and seal the building which, as per the petitioners, has come up on acquired public land at Gulmohar Enclave Commercial Complex.

2. The grievance of the petitioners is that at plot No. 16 of the Commercial Complex, unauthorised constructions have come up without any sanctioned plan. It was alleged that the parking area in front of the said plot has also been encroached and a building has been constructed thereupon. As per the

petitioners, on inquiry they found that the said plot is yet to be auctioned by the DDA, and the construction thereon is not only without any approval and Therefore unauthorised, but also with the connivance of the concerned authorities, including the Police. The petitioners further allege that their representations/complaints in this regard to the concerned authorities have met with no result as the authorities have paid no heed to their complaints, and that they are also hand in glove with the encroachers. It is also alleged that an iron barrier erected by the petitioner association in order to stop the unauthorised construction and encroachments has also been removed by the encroachers with the help of the Police. Under these circumstances, the petitioners have approached this Court by filing this writ petition, praying for the aforesaid reliefs.

3. By order dated 18th September, 1996 this Court noted that the main issues which arise for consideration in the present petition are:

(i) Whether the four buildings defined in the amended memo of parties (respondent 7,8,9 and 10) are on public land or private land; and

(ii) Whether the said four buildings have been constructed after sanction of plan from local authorities.

4. In reply to the contention of the petitioners that the said construction has been carried out on the public land, respondent No. 7, who is the builder, in its counter affidavit stated that the land in dispute is a private land and the said respondent had purchased the said land from one Smt. Herjinder Kaur vide agreement to sell dated 26th May, 1990. Counter affidavits have also been filed by the other private respondents taking the same ground. It was also stated that though acquisition proceedings were initiated and the award was passed, but the same was quashed by judgment dated 25th March, 1965 and by efflux of time, the entire acquisition proceedings have lapsed, in view of Section 11A of the Land Acquisition (Amendment) Act, 1984.

5. In reply, it was also stated by the DDA that the land in question was sought to be acquired by issuance of a notification u/s 4 of the Land Acquisition Act on 24th May, 1961 and, accordingly, the declaration u/s 6 of the Act was issued on 27th July, 1961. Subsequently the land was acquired by award No. 1259 dated 3rd February, 1962. The total land acquired under the said award was 49 Bighas and 9 Biswas, including an area of 42 Bighas 11 bids was of Khasra No. 116/93. It was further stated that by Notification dated 2nd November, 1963 u/s 22(1) of the DDA Act, the land was placed at the disposal of the DDA. The DDA in their affidavit dated 5th October, 1996 stated that though the acquisition proceedings and the award were quashed vide order dated 25th March, 1965, but possession of the land had been taken by the Collector, and none of the parties has approached the DDA for release of the possession of the land, which was placed at the disposal of DDA.

6. It is the legal position that after amendment of the Land Acquisition Act in 1984, u/s 11 the award has to be passed within a period two years from the date

of publication of the declaration, and if no award is made within the said period the entire proceeding for acquisition of the land shall lapse and where the declaration was published before the commencement of the Land Acquisition (Amendment) Act, 1984, the award shall be passed within a period of two years from such commencement. It is an admitted position that no award has been made after 1984. As a result of the amendment, the proceedings with respect to this land have automatically lapsed, resulting in the ownership of the land vesting in the owners from whom the land was sought to be acquired. The DDA has, nowhere throughout the pendency of the present case, claimed the ownership of the said land and no records have been produced to show that any proceedings are pending before any Court for claiming possession of the said land. What has been stated by the DDA is only that during the period when the land was development land, permission for any construction on the said land was required to be taken from the DDA. Thus, the question which remains to be considered by us in the present petition is whether the construction of the building was in accordance with the building bye-laws prevalent at the time of such construction.

7. As per Section 313 of the Delhi Municipal Act, 1957 (hereinafter referred to as the "Act"), permission is required before utilising, selling or otherwise dealing in any land. The said provision envisages as under:

313. Lay-out Plans:

(1) Before utilising, selling or otherwise dealing with any land u/s 312, the owner thereof shall send to the Commissioner a written application with a lay-out plan of the land showing the following particulars, namely:

(a) the plots into which the land is proposed to be divided for the erection of buildings thereon and the purpose or purposes for which such buildings are to be used;

(b) the reservation or allotment of any site for any street, open space, park, recreation ground, school, market or any other public purpose;

(c) the intended level, direction and width of street or streets;

(d) the regular line of street or streets;

(e) the arrangements to be made for levelling, paving, metalling, flagging, channeling, sewerage, draining, conserving and lighting street or streets;

(2) The provisions of this Act and the bye-laws made there under as to width of the public streets and the height of buildings abutting thereon, shall apply in the case of streets referred to in Sub-section(1) and all the particulars referred to in that sub-section shall be subject to the sanction of the Standing Committee;

(3) Within sixty days after the receipt of any application under Sub-section (1) the Standing Committee shall either accord sanction to the lay out plan on such conditions as it may think fit or disallow it or ask for further information with

respect to it.

(4) Such sanction shall be refused-

(a) if the particulars shown in the lay-out plan would conflict with any arrangements which have been made or which are in the opinion of the Standing Committee likely to be made for carrying out any general scheme of development of Delhi whether contained in the master plan or a zonal development plan prepared for Delhi or not; or

(b) if the said lay-out plan does not conform to the provisions of this Act and bye-laws made there under; or

(c) if any street proposed in the plan is not designed so as to connect at one end with a street which is already open.

(5) No person shall utilise, sell or otherwise deal with any land or lay-out or make any new street without or otherwise than in conformity with the orders of the Standing Committee and if further information is asked for, no steps shall be taken to utilise, sell or otherwise deal with the land or to lay-out or make the street until orders have been passed upon receipt of such information; Provided that the passing of such orders shall not be in any case delayed for more than sixty days after the Standing Committee has received the information which it considers necessary to enable it to deal with the said application.

(6) The lay-out plan referred to earlier in this section shall, if so required by the Standing Committee, be prepared by a licensed town planner.

8. Further Section 332 and Section 333 of the Act provide for prohibition of erection of building without the previous sanction of the Commissioner, Municipal Corporation of Delhi. The said Sections are reproduced below for reference:

332. Prohibition of building without sanction:- No person shall erect or commence to erect any building or execute any of the works specified in Section 334 except with the previous sanction of the Commissioner, not otherwise than in accordance with the provisions of this Chapter and of the bye-laws made under this Act in relation to the erection of building or execution of works.

333. Erection of building:

(1) Every person who intends to erect a building shall apply for sanction by giving notice in writing of his intention to the Commissioner in such form and containing such information as may be prescribed by bye-laws made in this behalf.

(2) Every such notice shall be accompanied by such documents and plans as may be so prescribed.

9. With reference to the aforesaid provisions, it was stated by some of the private respondents that the land in question falls under the "Lal Dora" and thus the provisions of neither the MCD Act nor the Delhi Development Act, 1957 are

applicable and no permission has to be taken from the said authorities. It was further stated that the Gujjar Dairy area, where the disputed property is situate, is unapproved and does not fall within the jurisdiction of either the MCD or the DDA and, accordingly, not only the present construction, but all constructions in the said area are without any sanctioned plan. Thus, the contention appears to be that as neither the DDA nor the MCD has jurisdiction over the said land, the concerned building bye-laws also do not apply

10. To the aforesaid, the MCD, by filing an affidavit dated 26th September, 1997, has stated that the land in question does not fall under the "Lal Dora" of the Village Yusuf Sarai as, by virtue of the Notification dated 28th May, 1966, the entire revenue estate of Village Yusuf Sarai was urbanised. Thus, the contention of the private respondents that the land falls under the "Lal Dora" area and the requisite permission from the respective authorities would not be required for construction on the land in question has no merit. We accordingly hold that the land in question comes within the purview of the building bye-laws and any construction raised on such land has to be in accordance with such building bye-laws.

11. In order to determine the nature of the land use of the plot in question and the regulatory authority under which the said land vests, notices were issued to the DDA as well as to the MCD. Both the said authorities by filing affidavits stated that the land is not under the area governed by them. It was stated by the DDA by filling an affidavit that the said area comes within the purview of the MCD after 1987 and the MCD, on the other hand, by filing an affidavit stated that the said property does not fall under the MCD and is still under the DDA, as the same has not been denotified. Interestingly, both the authorities have in one voice stated that the said construction is without any sanction from either of them. Having regard to the issues involved, by order dated 19th March, 1997 the Court appointed Mr.Arun Jaitley, Senior Advocate, as amicus curiae in this matter.

12. As the case was taken up and orders were passed by this Court, the DDA finally by way of an affidavit in September, 1998 submitted that the area in question had been denotified from the purview of development area vide notification No. F.12(138)/88-LAB/PLG./II/18887-93 dated 26th November, 1997, the result of which is that in the said denotified area, the building activities that are to take place are no longer under the monitoring and control of the DDA. Thus, no requisite permission would be required from the DDA before undertaking any development in the said area.

13. Accordingly, after consideration of the aforesaid affidavit filed by the DDA and recording the statement of the counsel for the DDA, and also considering the fact that no approved plan has been produced before the court by the private respondents, by order dated 14th July, 2005 this Court directed the private respondents to supply drawings of the buildings to the MCD, who was required to verify the same and submit a report, specifically demarcating the area constructed in accordance with building by-laws. The MCD was also required to

indicate compoundable and non-compoundable portions, if any. The said order is reproduced below for reference:

It is brought to the notice of the Court that private respondents have constructed the properties without obtaining permission from the authorities. We direct the private respondents to supply drawings of the buildings to the Municipal Corporation of Delhi within a period of two days. The Municipal Corporation of Delhi to verify the same and to make report within a period of 10 days thereafter specifically demarcating the area constructed in accordance with building bye-laws and shall also indicate the compoundable and non-compoundable portions. Renotify on 18th August, 2005.

14. In compliance with the said directions, the Deputy Commissioner (South Zone) MCD passed the order dated 12th September, 2005. Relevant portion of the same is reproduced below for reference:

Before taking a decision on the plans submitted by applicants for regularisation of building in Gulmohar Enclave (Community Centre developed by DDA), the matter was referred to Chief Town Planner, MCD, for their comments in the said matter. The Chief Town Planner, MCD vide letter dated 7-9-2005 commented as under:

In the instant case, approval of the layout plan for the area under reference u/s 312/313 is the pre-requisite for the approval of building plan. As such, the applicants may be advised to submit the layout plan with necessary documents to the Town Planning Department, for processing the case of layout plan to be approved by the competent authority i.e. Standing Committee. Sanction of building plan/regularisation/compounding, etc. shall be subsequent to the approval of the layout plan.

In view of the above comments of Chief Town Planner, MCD your applications submitted for regularisation/sanction of building plans in respect of the existing constructions in the above-mentioned premises has been rejected with the advise to submit the layout plan with necessary documents to the Town Planning Department, MCD for processing the case of layout plan for approval by the competent authority i.e. Standing Committee.

15. The said order was filed before this Court along with an affidavit dated 15th September, 2005, stating that the plot on which these buildings are raised does not form part of any approved lay out plan and the surroundings of this plot are of Community Centre land use. In the said affidavit, it was also stated that these private respondents are first required to get the lay out plan of this plot approved by the Standing Committee, MCD and then to seek sanction of the building plan in accordance with the lay out plan.

16. After perusal of the aforesaid order and affidavit filed by the MCD, this Court observed that no formal order had been passed by Deputy Commissioner, MCD sanctioning or refusing to sanction the building plans/drawings submitted by

these private respondents. The order passed by the MCD was neither here nor there, but was self-contradictory. On 29th September, 2005, the learned amicus curiae submitted to the Court that no layout plans were submitted before the Commissioner, and that the private respondents have wrongly raised multi-storey buildings without any proper sanction and without there being any layout plan for the plot on which these buildings were raised.

17. Subsequently, however, by Resolution No. 729 dated 29th March, 2006 the layout plan of the land in question was approved by the Standing Committee, MCD. The said approval was filed in this Court along with the status report dated 17th May, 2006 wherein it was stated that in pursuance of the order dated 14th July, 2005 passed by this Court to give approval, the matter was considered and the approval was given by the Standing Committee subject to certain conditions. These conditions are reproduced below for reference:

1. Applicant shall get the building plan approved/regularised as per prevailing regulations of Master/Zonal Plans and Building Bye-laws and policy being followed for regularisation.

2. The ownership, shape, size/extent and site shall be verified at the time of approval of building plan/regularisation of existing structures by the Building Deptt. of South Zone.

3. The applicant shall indemnify the MCD in case of any dispute if arises at any stage with respect of shape, size, extent, ownership of the site, MCD shall not be the party to it and an Indemnity Bond to this effect shall be submitted by the applicants.

4. Conversion charges or any other charges which are applicable shall be paid by the applicant. Rate of conversion charges shall be either as per orders of the Court/as per advice of DDA.

18. At this point, an issue was raised as to whether the layout plan approved by the MCD can be given retrospective effect. During the course of arguments, it was stated by the MCD that the said question will not arise as this approval was given in accordance with the order dated 14th July, 2005 passed by this Court. We have perused the said order and find that the MCD was only directed to consider the layout plans in the light of the existing building bye-laws and submit a report thereon, stating whether the layout plans can be approved or not, and no direction was given by this Court to the MCD to give approval, to the said layout plans. There was no order of this Court to give approval but the direction was to proceed in the matter in accordance with law. The Corporation has to independently take a decision in accordance with the statutory provisions and the law. It cannot take up a stand that it has given approval in terms of and following the orders of the High Court. The Corporation has misread and misinterpreted the order of the High Court and also the intent thereof. As per Section 313 of the MCD Act, which is reproduced herein-above, layout plan has to be approved before any construction is raised. Also, it is the general proposition of law that

the layout plan cannot be given retrospective effect as the same will destroy the very purpose of getting the layout plan approved before starting any construction.

19. The picture is also made clear by Item No. 41 of the agenda of the Standing Committee meeting, in which a reference was made to the letter of the Commissioner, MCD dated 17th March, 2006, wherein it is stated by the Commissioner that the said four plots fall in the part of the approved lay out plan of the Community Centre of Yusuf Sarai and the plan for the Community Centre has been prepared by the DDA. The relevant part is reproduced below for ready reference:

The site on which the four plots fall is a part of the approved layout plan of Community Centre of Yusuf Sarai with a total area of 8601.24 sq.ft (955.70 sq.yds). The plan for the Community Centre has been prepared by DDA. However, the present site of four plots including the other adjoining area is un-acquired by DDA and is not developed as per the approved lay out plan. The designated use of the present four sites as per the approved layout plan of Community Centre as received from DDA is partly for shop-cum-office, partly for parking and partly for open (paving). Land use as per the Zonal Development Plan of Zone "F", is commercial i.e. for Community Centre.

20. It has been repeatedly stated by the DDA, by filing affidavits, that no sanction of plan has ever been given by the DDA. The MCD during the course of arguments has also never rebutted the statements of the DDA that they have never approved any layout plan. The incongruity lies in the fact that the MCD now states that it has given the approval as the land falls within the Community Center of which lay out plan has been approved by the DDA.

21. Thus, as the approval to the layout plan has been given by the MCD after giving consideration to irrelevant and non-existent factors, we think it appropriate to remit the matter back to the MCD for re-consideration of the said plans, which were filed by the private respondents, in the light of the present building bye laws. While considering the same, the MCD will also consider the land use and ascertain and decide whether any part of the land on which the structure has been built up was meant for public road and, if so, necessary action in accordance with law shall be taken by the MCD with immediate effect.

22. Before parting with the case, we wish to comment that the emergence of the current incongruous and irreconcilable situation in this case clearly shows the lethargic and lackadaisical attitude on the part of the civic authorities in performing their obligations and in passing on the buck to each other instead of working in tandem.

23. We also place on record our appreciation of the valuable assistance rendered by Mr.Arun Jaitley, Senior Advocate, who had been appointed as amicus curiae in this matter and who has rendered considerable assistance to us.