
(2010) 04 DEL CK 0237

In the Delhi High Court

Case No : Writ Petition (C) 8015 of 2009

Residents Welfare and Recreation Association (Regd.) and
Others

APPELLANT

Vs

DDA and Others

RESPONDENT

Date of Decision : 23-04-2010

Acts Referred:

Constitution of India, 1950 — Article 226, 32

Citation : (2010) 04 DEL CK 0237

Hon'ble Judges : G.S. Sistani, J

Bench : Single Bench

Advocate : Shyam Moorjani, for the Appellant; P.K. Mittal, for Respondent DDA along with Mr. Vinod Sakle, Dire (Plg.), DDA, Mr. C. Mohan Rao and Mr. Sanjeev Sabharwal, for Respond/MCD, for the Respondent

Final Decision : Dismissed

Judgement

G.S. Sistani, J.—Learned Counsel for respondent no. 4 submits that the application filed by the petitioner for interim relief as well as the application filed by respondent no.4 being CM No.6372/2009, for vacation of stay, be taken up for hearing in view of the fact that respondent no.4 has made the entire payment of Rs.55.00 lakhs and on account of interim order passed by this Court possession has not been handed over to respondent no.4.

2. Learned Counsel for the petitioner submits that the writ petition may not be heard today as he wishes to file rejoinder to the counter affidavits, which have been filed on record. Let rejoinder be filed within six weeks from today.

3. List on 30.8.2010.

CM Nos. 4538/2009, 6372/2009, 7608/2009 and 9416/2009.

4. For disposal of these applications, it is necessary to notice the facts, which have led to the filing of the present writ petition. The petitioner is a Resident Welfare Association of Block D, Sector 15, Rohini, Delhi. By the present petition,

the petitioner has prayed for quashing the allotment made by DDA for community centre to respondent no.3 (MCD) and allotment made for temple to respondent no.4 as also a writ or direction restraining respondent no.1 from completing the said allotment formalities and handing over possession of the land to respondents no.3 and 4 as well as a direction to convert the land for park for the benefit of residents of the association.

5. Learned Counsel for the petitioners submits that adjacent to D-Block there is an open area and at the time when the allotment was made to the residents, the members of the petitioner were informed that the open area is meant for a park (green area). Counsel further submits that the residents of the area were shocked to learn that this open area has been allotted for construction of a temple and also a community centre. Counsel next submits that in case the DDA is allowed to make the allotment of a temple and the MCD is allowed to complete the construction of a community centre the residents of the area will suffer irreparable loss. Counsel also submits that the roads leading to the plot, in question, are narrow and even at present the residents have to struggle to park their vehicles. With the construction being completed, the residents of the area will not be able to enter in the Block and it is likely to cause great inconvenience due to traffic jams and other nuisance which would take place on account of the construction activities and use of the community centre and temple.

6. It is further contended by counsel for the petitioners that respondent no.4 is the society to whom the allotment has been made by the DDA for constructing a temple. Counsel further contends that DDA has not been able to place on record any material to show that the residents of the area have demanded either a community centre or a temple in this open area, as both the community centre and temple are stated to be for the benefit of the residents. Counsel also contends that the residents of the area do not support the construction activities and have expressed displeasure and opposed these allotments and the residents have filed as many as 300 affidavits, practically by all the residents of the area, opposing the allotments/construction. Counsel for the petitioner submits that there is no need or requirement of any community centre or a temple in the area, in question, on account of the fact that there are almost 15 community centers in other sectors besides, a temple, which is also in existence. Counsel for the petitioner further submits that the area in the form of open park would be better utilized by the residents of the area besides the construction activities will have an adverse effect over the light and the air of the residents whose flats are constructed adjacent to this construction.

7. Counsel also contends that the construction activities were commenced by the MCD after the interim order was modified by a Division Bench of this Court by allowing the MCD to carry out construction subject to the final outcome of the writ petition.

8. Mr. C.M. Rao, Learned Counsel for respondent no.4 while opposing this petition submits that the society has deposited a sum of Rs.55.00 lacks with the DDA as

far back as on 18.2.2009. Counsel further submits that the society is answerable to its members from whom this amount has been collected. Counsel also submits that construction of the temple will be carry out as per the sanctioned plan and in accordance with the rules, regulations and bye-laws as also they will take into regard the Master Plan 2021.

9. Learned Counsel for respondent no.4 submits that present petition is a gross abuse of the process of the court and the same is liable to be dismissed being without any merit. It is submitted that perusal of the contents of the writ petition would show that the petitioners were all along aware of the fact that the plot, in question, and the surrounding area are shown for OCF (Other Community Facilities) in the Zonal Development Plan as well as the lay out plan. Counsel further submits that the petitioners have failed to disclose the basis of information that the plot would be converted into green area.

10. It is further contended by counsel for respondent no.4 that even otherwise the statement made by any individual cannot change the land use of the area which has been shown for OCF, nor can the statement/ assurance of an individual bind the DDA. It is further contended that the petitioners are in fact asking for conversion of the land use from OCF to green whereas admittedly the petitioners did not file any objection to the plans before they were notified by the Delhi Development Authority and at this belated stage it is not open for the petitioners to ask for the relief prayed. It is also contended that it is a settled law that planning is to be left to the town planners and courts have refused to entertain matters pertaining to town planning.

11. Learned Counsel for respondent no.4 also submits that present writ petition is covered against the petitioners by a decision rendered by the Supreme Court in the case of Mayank Rastogi Vs. V.K. Bansal and Others, in which case initially the land was shown open space and subsequently notified as residential, which was challenged by filing a writ petition. The Supreme Court in the case of Mayank Rastogi (supra) has held that "merely because at an earlier point of time when the respondent had constructed this house this plot had been shown as an open space cannot give a right to the respondent to ask the High Court of prevent the construction on that area when the respondent has chosen not to challenge the change in the land use from the open space to residential as per the approved plan. On this ground alone, in our opinion, the writ petition filed by the respondent should have been dismissed". Counsel further submits that a similar plea was also rejected by the Supreme Court in the case of Greater Kailash Part-II Welfare Association and Others Vs. DLF Universal Ltd. and Others, . Counsel also submits that the balance of convenience is in favour of respondent no.4 and thus the interim orders passed by this Court are liable to be vacated.

12. While supporting the case of respondent no.4, Mr. Sanjeev Sabharwal, Learned Counsel for the MCD submits that the open area, in question, has been earmarked for Other Community Facilities as per the lay out plan and the land

was handed over to the MCD by the DDA as far back as on 27.9.2007 for construction of a community hall. Copy of the allotment letter dated 5.7.2007 and copy of the possession letter have been placed on record. Counsel for the MCD further submits that after possession of the land was received by the Community Service Department of the MCD on 27.9.2007 it was handed over to the Engineering Department for construction of the community centre. Counsel also submits that the Engineering Department has floated the NIT on 18.12.2008 in various leading national Dailies and after finalization of the tender process the work order for construction of the community centre has been issued and in this regard a function was organised on 30.5.2009 by the MCD to commence the construction of the community centre.

13. Mr. Sanjiv Sabharwal, counsel for the respondent MCD further submits that the area, subject matter of this writ petition, has been earmarked for other community facilities and the community centre is very much required as the same is for the benefit of all the residents of the area and not for one particular Block. Counsel also submits that the community centre is to be used for the purpose of library and other social functions as well.

14. Learned Counsel for the respondent MCD submits that there are as many as 23 parks in and around Sector 15, Rohini, which fact is disputed by counsel for the petitioner. Counsel for the DDA supports the arguments of counsel for the MCD.

15. Mr. Vinod Sakle, Director (Planning), DDA, is present in Court, and he has drawn the attention of the Court to the Sub-Division Plan of D-Block, Sector 15, Rohini, a copy of which has been placed on record. Mr. Vinod Sakle submits that the area in question comprises of 2283 sq. mts., out of which 580 sq. mts. has been allotted for community hall; area of 350 sq. mts. has been allotted for religious purposes besides the area of 1100 sq. mts. has been allotted for convenience shopping centre. A space has already been allotted to the mother dairy, which is in existence with an existing Electric Sub-Station of 253 sq. mts. Mr. Vinod Sakle further submits that this area is surrounded by 16.20 sq. mts. road on the North Side, 9 mts. road on the South Side, 13.50 sq. mts road on the West side and 3 mts. wide path on the Eastern side. He also submits that although as per the MPD 2001, 600 sq. mts. is allotted for community room and 400 sq. mts. is allotted for religious purposes. However, keeping in view the overall conditions of the area, proportionate area has been earmarked for the above said purposes. He next submits that the Town Planning Division has considered all aspects of the matter. As per Master Plan 2021 both - the community centre and religious area - will have to make a parking facility within the plot itself and thus the issue of parking would be suitably addressed. He assures the Court that taking into consideration the three mts. wide path way on the Eastern side the DDA and MCD will ensure that there is no entry or exit from the Eastern side of the plot so that there is no inconvenience to the residents whose flats are constructed adjacent to this area.

16. Learned Counsel for the respondent, DDA submit that the area, in question, has already been earmarked for other community facilities in the lay out plan and by making the allotment the DDA has not violated the lay out plan. Counsel further submits that there is no notification for change of the user besides no objection has been raised at any point of time against the lay out plan by the respondents of the area.

17. Counsel for the respondents have relied upon Greater Kailash Part II Welfare Association (Supra), and more particularly paras 53 and 58, which are reproduced below:

53. What transpires from the submissions made on behalf of the appellant Association is its apprehension of serious traffic problems if Respondent 1 is permitted to use the Savitri Cinema Complex for the purposes mentioned in the sanctioned plan without suitable modifications. On the one hand, the owners of the Savitri Plot have obtained requisite sanction under the relevant Rules and Regulations and Building Bye-Laws to convert the existing single-screen cinema hall into a mini cinema hall-cum-commercial complex. There is no denying the fact that Respondent 1 has complied with all the requirements of the law for the aforesaid purpose. On the other hand, there is a real apprehension on the part of the appellants that the approach to the abovementioned colonies will be completely choked on account of the traffic congestion that is likely to be caused as a result of the number of visitors who are likely to visit the renovated complex which will consist of not only a cinema hall, but a six storeyed building dedicated to commercial activities.

58. The owner of a plot of land is entitled to use and utilize the same for any lawful purpose and to erect any construction thereupon in accordance with the existing rules. So long as such owner does not contravene any of the provisions which restrict his use of the plot in any manner, he cannot be prevented from utilizing the same in accordance with law. In this case, Respondent 1 which is the owner of the plot in question cannot be denied the use of the plot on account of the apprehension of the appellants, particularly when he has already raised the structure in accordance with the sanctioned plan. It is not the case of the appellants that Respondent 1 has in any manner deviated from the building plan as sanctioned. The grievance of the appellants is confined to the possible problem that may arise from the use of the building as a cinema hall-cum-commercial complex. Once the authorities who are competent to do so have indicated that the apprehension was unfounded, it is not for the writ court to interfere with such decision.

18. Counsel for the respondents have further relied upon National Centre for Human Settlements & Environment Vs. Union of India And Others, reported at (2005) 12 SCC 369, and more particularly, on the observations made, which are reproduced below:

In our opinion, the Government is the best person to decide whether a particular

plot and which plot could be used for what purpose. When a challenge is made to any notification issued by any authority in exercise of its statutory powers, the court can merely examine whether in issuance of such notification there has been any illegality or any infraction of any provision for which the court could interfere with the matter.

19. Counsel for the respondents have also relied upon Mayank Rastogi (*Supra*), and more particularly para 6, which reads as under:

1. The respondent in the writ petition, filed in the High Court, had not challenged this Notification of 15.12.1991. The High Court, in turn, also did not quash this Notification. There being no challenge to this Notification, the development plan which was so approved became final. The land use which was shown in the development plan not having been challenged, we fail to appreciate as to how the High Court could have ignored this fact and come to a contrary conclusion. The appellant had purchased this plot of land in April 1991 and had admittedly started construction in January 1995. The writ petition was filed nearly four years after the approval of the development plan vide Notification dated 15.2.1991 and apart from the question of latches, even on merits, there was no reason for the High Court to have interfered when the residential plot shown in the duly approved development plan had been allotted as a residential plot to the appellant and was used for constructing a residential unit therein. Merely because at an earlier point of time when the respondent had constructed his house this plot had been shown as an open space cannot give a right to the respondent to ask the High Court to prevent the construction on that area when the respondent has chosen not to challenge the change in the land use from open space to residential as per the approved plan. On this ground alone, in our opinion, the writ petition filed by the respondent should have been dismissed.

20. Learned Counsel for the petitioner submits that the judgments relied upon by the respondents are not applicable to the facts of the present case. Counsel further submits that in the case of Greater Kailash Part II Welfare Association (*supra*) the plot already stood allotted to Cinema Hall, which was in existence from the very beginning. Counsel also submits that the residents of the area had objected to the Single Cinema Hall to be converted into a multiplex. Counsel next submits that in the present case the community centre as well as a temple are not in existence and thus the facts are completely at variance. Counsel lastly submits that DDA is duty bound to consider the needs of the residents of the area and not to impose their decision on them without any application of mind. Counsel, while reiterating that the area should be earmarked for a park, submits that the residents of the area would be happy if a dispensary is constructed rather than a temple or a community room, which would only come in the way of peaceful existence if at all construction is to be carried out.

21. I have heard counsel for the parties and given my thoughtful consideration to the matter. It may be noticed that on 6.4.2009 while issuing notice in the matter, respondents were directed to maintain status quo with regard to possession of

the land, in question. By an order dated 31.7.2009 in CM No.9416/2009 this Court had directed the parties to maintain status quo with respect to proposed construction over the land, in question. Aggrieved by the interim order, the MCD had filed an LPA No.416/2009 assailing the order dated 31.7.2009. Relevant portion of the order dated 22.9.2009 passed by the Division Bench, reads as under:

ORDER

22.09.2009

Learned Counsel for respondent-Association i.e., the original writ petitioner, submitted that community facilities are created for the benefit of residents and as the residents of the locality in question wanted a park on the said land and the original lay out plan of Section 15, Rohini, Delhi also showed this land as a park, the impugned order of status quo calls for no interference. At our request, Mr. Ajay Verma, learned Standing Counsel for DDA placed on record a lay out plan of the land in question which clearly shows that the land in question has been specifically earmarked for construction of community rooms. The said lay out plan clearly shows that the said draft was authenticated by the Chief Architect and Commissioner (Planning) on 14th January, 2004 in accordance with the Scheme approved in the 227th Screening Committee Meeting held on 21st November, 2003.

Keeping in view the lay out plan filed by the DDA, we are prima facie of the view that the order passed by this Court on 28th August, 2009 staying the learned Single Judge's impugned order dated 31st July, 2009 shall continue to operate during the pendency of the writ petition. However, it is made clear that any construction carried out by appellant shall abide by the final judgment and order to be passed by learned Single Judge in the present writ petition.

22. The challenges in this writ petition to the allotment made are primarily on the ground that in case DDA allows the structures to come up the same shall cause great inconvenience to the residents of the area.

23. The principles underlying the scope and extent of judicial review in administrative decisions and policy matters are scattered across a plethora of judicial pronouncements. The trite position of law on this aspect, however, appears to have been most accurately delineated by the Apex Court in Maharashtra State Board of Secondary and Higher Secondary Education and Another Vs. Paritosh Bhupeshkumar Sheth and Others, , relevant observations whereof are recalled thus:

18...The Court cannot sit in judgment over the wisdom of the policy evolved by the legislature and the subordinate regulation-making body. It may be a wise policy which will fully effectuate the purpose of the enactment or it may be lacking in effectiveness and hence calling for revision and improvement. But any drawbacks in the policy incorporated in a rule or regulation will not render it ultra

vires and the Court cannot strike it down on the ground that, in its opinion, it is not a wise or prudent policy, but is even a foolish one, and that it will not really serve to effectuate the purposes of the Act. The legislature and its delegate are the sole repositories of the power to decide what policy should be pursued in relation to matters covered by the Act and there is no scope for interference by the Court unless the particular provision impugned before it can be said to suffer from any legal infirmity, in the sense of its being wholly beyond the scope of the regulation-making power or its being inconsistent with any of the provisions of the parent enactment or in violation of any of the limitations imposed by the Constitution...

(emphasis supplied)

24. In view thereof, it can be safely said that the practise of judicial review of administrative action, ordinarily, constitutes the exception and not the rule. Unless a policy decision is coloured in mala fide exercise of discretionary power or is demonstrably capricious or arbitrary and not informed by any reason otherwise purports to create an unreasonable classification, it cannot be a subject of judicial interference under Articles 32 or 226 of the Constitution of India. If a policy decision cannot be touched on any of these grounds, the mere fact that it may affect the interests of either party does not justify the Courts invalidating the said policy.

25. The exceptional circumstances warranting the application of judicial review in administrative matters were for the first time postulated by Lord Greene in *Associated Provincial Picture Houses Ltd. Vs. Wednesbury Corporation*, 1948 (1) KB 223, famously remembered as "the Wednesbury Case". In the said case, the plaintiffs, who were the proprietors of a cinematograph theatre, had been granted license by the defendants, the Wednesbury Corporation, to operate their theatre on the condition that children under the age of fifteen would not be allowed entry into the theatre on Sundays. Counsel for the plaintiffs argued that the Wednesbury Corporation was not entitled to impose any such condition. It was further argued that if at all the Wednesbury Corporation was entitled to a condition prohibiting the admission of children, it should have limited it to cases where the children were not accompanied by their parents or a guardian or some adult. The thrust of the plaintiff's argument thus was that the condition put by the defendants restricting the access of children below fifteen to the theatre on Sundays was unreasonable, and that, in consequence, it was ultra vires the power of the Wednesbury Corporation. Dismissing the claim of the plaintiffs, Lord Greene unequivocally opined that the Court could not intervene to overturn the decision of a local authority (the Wednesbury Corporation) simply because the Court disagreed with it. It was observed that to have the right to intervene, the Court would have to form the conclusion that:

(i) the corporation, in making that decision, took into account factors that ought not to have been taken into account, or

(ii) the corporation failed to take into account factors that ought to have been taken into account, or

(iii) the decision was so unreasonable that no reasonable would ever consider imposing it.

26. The aforesaid exceptional circumstances, as envisaged by Lord Greene in the *Wednesbury Case*, were crystallised by Lord Diplock in *Council of Civil Service Unions and Others Vs. Minister for the Civil Service* ("the *GCHQ case*) [1985] 1 AC 375, under the following heads:

(i) Illegality;

(ii) Irrationality; and

(iii) Procedural Impropriety

27. The aforementioned principles, famously reckoned as the *Wednesbury Principles*, have stood the test of time by their consistent and extensive application by courts in reviewing administrative policies and decisions.

28. Applying the aforesaid principles laid down, to the facts of this case, it may be noticed that the basic facts are not in dispute that petitioner is the resident welfare association of members of Block-D, Sector 15, Rohini. The petitioner is aggrieved by the construction activity being carried out by the MCD for building a Community Centre and are also aggrieved by the allotment made in favour of respondent no.4 for construction of a temple. The main thrust of the argument of counsel for the petitioners is that petitioners were informed that the open area is meant for a park/ green area, and thus the allotment made for constructing a community centre and a temple, is liable to be quashed. It has further been strongly urged that in case the construction is allowed to be completed, the residents shall suffer irreparable loss as the roads leading to the plots in question are narrow and the residents shall be put to great inconvenience on account of traffic jam and other nuisances which would arise on account of construction close to the area of their residence. Mr.Moorjani, has also submitted that both the community centre and the temple are stated to be constructed for the benefit of the residents, whereas the residents themselves are neither interested in the temple nor in the community centre and on this ground itself the allotment should be cancelled. The Division Bench while disposing of the appeal filed by the MCD has noticed in the order dated 22.09.2009 that the Standing counsel for DDA had placed on record a lay out plan of the land in question which clearly shows that the land has been specifically earmarked for construction of community rooms. The Division Bench has also noticed in its order that the lay out plan clearly shows that the draft was authenticated by the Chief Architect and Commissioner (Planning) on 14.01.2004 in accordance with the scheme approved in the 227 Screening Committee Meeting held on 21.11.2003. Keeping in view the lay out plan filed by the DDA, the Division Bench confirmed their order dated 28.08.2009, by virtue of which the decision of the Single Judge

(impugned order dated 31.04.2009) was stayed.

29. I have considered the submissions made by counsel for the parties on the touchstone of the Wednesbury's principle and find that the order of allotment is neither illegal, irrational, and nor there is procedural impropriety in making the allotment to the MCD as also to respondent no.4 for constructing a temple, as the allotment has been made on the basis of the layout plan of the area and no objections were filed by the petitioner. Not only does the lay out plan of the area in question show that the area is being used for the purpose, the petitioners have been unable to satisfy the court as to on what basis and who had assured the petitioners that the area in question is to be left open. I have also considered the statement made by Mr. Vinod Sakle, Dire (Plg.), DDA, who is present in Court and who has also drawn the attention of the court to the sub Division plan of D-Block, Sector 15, Rohini. The submissions made by him have been mentioned in para 15 a foregoing .

30. The judgments referred by counsel for the respondent (i) Greater Kailash Part II Welfare Association (Supra) (ii) National Centre for Human Settlements (Supra), and (iii) Mayank Rastogi (Supra), are fully applicable to the facts of the present case and the respondent is the best suited to decide whether the particular plot is to be used for what purpose. Even otherwise, as per the Master Plan, 2021 both community centre and the temple will have to provide parking within the plot itself. In the case of Greater Kailash Part II Welfare Association (Supra), it has been held that the decision of the Executive Authority is based on opinion of the Expert, which deserves to be respected and the Court cannot sit as a court of appeal over the decision of the Executive Authorities. I find that the petitioners do not have a prima facie case nor the balance of convenience is in their favour and in case the interim order is not modified irreparable loss shall be caused to the respondents particularly respondent no.4, who has already deposited Rs.55.0 lacs with the respondent as far back as on 18.02.2009 and it is the common knowledge that the cost of construction is increasing day by day. Accordingly, the application for vacation of the stay being CM.No.6372/2009, is allowed. Applications (4538/2009, 7608/2009 and 9416/2009) filed by the petitioner for interim relief are dismissed and the interim order dated 06.04.2009 is modified to the extent that any allotment made and construction carried out over the land in question shall be subject to final outcome of the writ petition.