
(2014) 04 DEL CK 0221

In the Delhi High Court

Case No : LPA 779/2010

S.K. Gupta and Others

APPELLANT

Vs

MCD and Others

RESPONDENT

Date of Decision : 04-04-2014

Acts Referred:

Citation : (2014) 04 DEL CK 0221

Hon'ble Judges : Pradeep Nandrajog, J; Jayant Nath, J

Bench : Division Bench

Advocate : Ravinder Sethi, Sr. Advocate and Mr. Rajiv Kumar Ghawana, Advocate in LPA 779/2010, Mr. Rajeshwer Kumar Gupta and Ms. Sumati Sharma, Advocates in LPA 113/2011, Advocate for the Appellant; Ramakant Tripathi, Advocate for Ms. Amita Gupta, Advocate for R-1, Mr. Manoj Khanna, Advocate for R-8 in both Appeals, Advocate for the Respondent

Final Decision : Dismissed

Judgement

Pradeep Nandrajog, J.—14% of 30.44 acres comes to 4.26 acres. 5% of 4.26 acres is 0.213 acres. $4.26 - 0.213 = 4.047$. $2.583 + 1.373 = 3.956$. $4.047 - 3.956 = 0.091$ acres. This equals to around 450 square yards land. The fight is over land. It concerns 0.91 acres or around 450 square yards land out of 3044 acres which equals to 1,47,329.60 square yards.

2. The requirement under the Master Plan for Delhi is to reserve 14% land in residential colonies as green area. The colony Sarvapriya Vihar was developed by Sarvapriya Co-operative House Building Society Ltd. to which land was allotted by DDA for purpose of development and allotment of residential plots carved out to its members. The land was allotted in two phases. In Phase-1, 20.25 acres land was allotted and in Phase-2, 10.19 acres land was allotted. The total land would thus be: $20.25 + 10.19 = 30.44$ acres. A strip of land ad-measuring 1087.43 square yards i.e. 0.22 acres is the bone of contention. Whereas the writ petitioners of W.P. (C) No. 5834/01, Vice-Admiral S. Jain (Retd.), Sh. Ramesh Gupta, Dr. M.N. Sood, Dr. Vivek Vohra and Sh. Satya Prakash Bagla, all residents

of the colony Sarvapriya Vihar assert that the said land ad-measuring 0.22 acres is a part of the road/lane, the Co-operative Society and its two Members Smt. Renu Gupta and Sh. S.K. Gupta asserts to the contrary. As per them the piece of land is a green area.

3. Whereas Renu Gupta owns plot No. 19 abutting street No. 17. S.K. Gupta owns plot No. 27 abutting street No. 5. The two streets run parallel to each other from East to West. The two plots 19 and 27 are back to back with a service lane in between. The two plots are corner plots. The site plan would reveal the location of the plots as under:-

4. The disputed site is highlighted in black abutting plot No. 19 and 27 and is marked "I" (which to the reader would appear to be "H" because the site plan on being extracted in the judgment has required the spread sheet to be placed downwards). Street No. 7 and 5 are shown as above. The service lane in between is also shown as above. The narrow strip of land marked "D" has been shown because its existence or non-existence is a bone of dispute. Whereas according to the writ petitioners it was shown in the approved layout plan as a green area, the respondents of the writ petition who are the appellants before us would dispute the same. The said strip of land ad-measures 0.20 acres.

5. From the fact that the Co-operative Society and S.K. Gupta and a few others who have joined him, but were not parties before the Writ Court, are in appeal, it is apparent that the learned Single Judge has held in favour of Vice-Admiral S. Jain (Retd.) and the other co-writ petitioners.

6. Assuming that not requiring the strip of land ad-measuring 1088 square yards marked "I" to be kept as a green area would violate the provision of the Master Plan for Delhi, on account of 14% of the area of the colony not being kept as green area, we are of the opinion that the order passed by the learned Single Judge would call for no interference on account of the maxim *de minimis non curate lex* i.e. law does not concern itself with trifles. Concededly, the Master Plan permits 5% variation with respect to the requirement that 14% of the area of a colony has to be kept as green. We clarify. This 5% variation is of the 14% area and not the total area of a colony. As noted in paragraph 1 above the area required to be kept as green in the colony would be 4.26 acres and 5% thereof would be equal to 0.213 acres. Concededly the colony has 5 existing parks; 3 in Phase-1 and 2 in Phase-2. The 3 parks in Phase-1 admeasure 2.583 acres and the 2 parks in Phase-2 ad-measure 1.373 acres. The total would thus be 3.956 acres. Of the minimum Master Plan requirement (giving benefit of 5% variation, 4.047 acres would be required to be kept as a green area and since the existing green area is 3.956 acres the difference is 0.091 acres or around 450 square yards. It is too trivial a variation or a violation for any Court to be concerned with.

7. But since the learned counsel for the parties had argued at length, we proceed to note some more facts before bringing the curtains down.

8. Vice-Admiral S. Jain (Retd.) and his co-petitioners filed the writ petition

pleading that when Phase-1 of the colony Sarvapriya Vihar was developed, on the Eastern Boundary there existed a road connecting street No. 5, 6 and 7 as per site plan referred to hereinabove. They pleaded that the society was wrongly permitting owners of plot No. 19 and 27 to use a part of the road marked "I" in the site plan hereinabove to be used as their personal garden abutting their plots. The response of the society and the two owners of the two plots was that neither a wrong was done nor was one permitted to be done; the land in question was not a part of the road. It was a part of a green area. As per them any resident of the colony was free to use the green area.

9. Unfortunately, DDA could not produce the original record concerning the layout of the colony which was sanctioned in two phases. The learned Single Judge had to call for a report from the Vice Chairperson DDA with reference to whatever record was available with DDA concerning the layout plan sanctioned for Phase-1, when 20.25 acres land was placed, for purposes of development, in the hands of the society as also for Phase-2, when 10.19 acres land was placed, for purposes of development, in the hands of the society. On July 24, 2007 the Vice Chairperson DDA filed a report affirming that the strip of land in dispute was a road/lane. The antagonist of the report i.e. the Co-operative Society and the Members who wanted the land to be green filed objections. They referred to a communication dated July 12, 2000 written by the Deputy Director, Land Management DDA, that the disputed strip of land was green. Since the colony was transferred to the Municipal Corporation of Delhi for purposes of regulating building activities, an affidavit was also sought from the Municipal Corporation of Delhi, which responded by informing that the original layout plans of the colony were never sent to it; probably being lost at a fire which took place on June 25, 1985. But, as per Municipal Corporation of Delhi the disputed site was not a part of a road/lane. It was a green area.

10. The learned Single Judge has accepted the report submitted by Vice Chairperson DDA who has brought out that the layout plan of colony was revised from time to time. The report considers various letters and communications taking conflicting views from time to time. In para 5.2.2 of the report, which has been noted and reproduced by the learned Single Judge in paragraph 8 of the order dated March 12, 2010 the position would be:-

5.2.2 As per record the layout plan of SPVCHBS is stated to have perhaps undergone revision, number of times i.e. Setback and Demarcation approved on 5.11.1981 and 14.4.1982; revised setback cum demarcation plan (for 87 plots) approved on 4.3.1983; setback and demarcation (for additional six plots) approved on 4.7.1983 and further revision of the plant (to accommodate site of temple, plot of Sh. Chhaplani and community centre (club) approved on 16.2.1985 & perhaps may be more than these occasions too. A detailed examination report of these plan based on available record is place at Annexure-IV. It is noted that modified copies of plan of 4.3.83 and 16.2.1985 with photocopies of the covering letters of DDA to the Society regarding the revision,

were furnished to the Court and to the DDA, by the Society earlier, (The copies of letter & plan of 21.3.1973 were not submitted earlier by the Society). From the photocopies of both these revised plan it is difficult to correlate the authenticity of use of the strip of land indicated as "green". Firstly, because there is no original plan available to compare with, and secondly there are no supporting documents (in terms of endorsement on the plan or text as is done in case of other modifications mentioned in both the covering letter as well as on the plan) describing the proposed change of use of the strip from "lane" to "green". Thirdly the retraced available original plan with area planning wing shows the use of the strip of land as lane/road. Fourthly the plan of 16.2.85 submitted by Society in connection with the supplementary perpetual lease deed of 25.7.85 shows the area under reference as blank i.e. extension of road. Further from normal planning considerations usually no public land/road once approved in the plan could be converted into private/public green, without substantive public interest.

11. The learned Single Judge allowed the writ petition vide order dated March 12, 2010.

12. Two intra-court appeals were preferred against the order March 12, 2010. One was filed by the Co-operative Society and the other by a few aggrieved members. Both of them were disposed of vide order dated May 24, 2010 observing that the issue pertaining to the requirement of the Master Plan for Delhi of keeping, as a green area, 14% land allotted to a society for colonization with 5% variation had not been argued before the learned Single Judge. It was observed that it would be permissible for the parties to seek a review before the learned Single Judge by drawing the attention of the learned Single Judge to the provisions of the Master Plan for Delhi. Accordingly, two review petitions No. 313/2010 and 314/2010 were filed which have been dismissed by the learned Single Judge vide order dated September 20, 2010 which has been challenged in the two above captioned appeals.

13. In the review applications it was pointed out that the layout of the colony was sanctioned at two stages since land was allotted at two stages. With reference to certain facts and figures which we shall be noting soon hereinafter, it was sought to be urged that the second stage sanction, which subsumed the first stage sanction, i.e. was a composite sanction would conform to law i.e. the requirement of Master Plan for Delhi, only if the site in dispute would be treated as a green area.

14. The learned Single Judge has noted that the original plans were not available and that is why a detailed report had been called for from the Vice Chairperson DDA which was accepted by him vide order dated March 12, 2010. That apart, the learned Single Judge has held that with reference to the calculations provided to him, excluding the disputed site, the green areas in the colony would be within the 5% variation permissible as per the Master Plan for Delhi.

15. We have already held hereinabove that the de minimis principle warrants the appeal to be dismissed. But we proceed with the mathematical calculations and their analysis to see what has happened.

16. In the absence of the sanctioned layout plans we have an undisputed document dated March 20, 1973, being the layout plan sent for approval. All parties concede that the layout sanction was as per the plan in question. The extract of the layout reproduced by us hereinabove is from the said layout plan.

17. 20.25 acres land was allotted to the Society at the first instance. 14% thereof comes to 2.835 acres. Concededly 3 parks, ad-measuring 1.24 acres, 0.453 acres and 0.89 acres were sanctioned. Their living proof is the existence of the 3 parks in the part of the colony which was initially developed as Phase-1. The total area reserved as parks would be thus 2.583 acres. The proposed plan shows the area marked "D", admeasuring 0.2 acres, was a green area. Thus, the green area shown would be 2.783 acres. The variation of 5% of the 14% (2.835 acres) would be 0.141 acres. Thus, the sanction of the green areas being 2.783 acres would be within the 5% variation permissible.

18. But the bone of contention is whether or not the land marked "D" was reserved as a green area or not. With reference to an approval sought in the year 1982 when Phase-2 was developed on 10.19 acres, the case of the appellants is that 14% of 10.19 acres would be 1.42 acres. 5% variation would be 0.071 acres. With reference to a composite layout plan which shows two more parks, total area ad-measuring 6646.57 square yards which comes to 1.373 acres, it was sought to be urged that in the said site plan the area marked "D" in the proposed site plan sent for approval for Phase-1 and on presumption that the said plan was sanctioned as it is has not been shown as a green area, and if this be so, in the composite layout plan there would be a deficiency of 0.2 acres, which means that unless the area marked "I" was not to be included in the green area there would be a deficiency. It was urged that in the composite layout plan, the reference, as per the legend to the areas provided vide serial No. 2 (concerning parks) would show that as against Master Plan requirement of 1.42 acres for 10.19 acres land to be reserved as green, 1.59 acres was shown as green. Now, 1.59 acres would convert itself to 7734.32 square yards. It was urged that this was possible only if one were to treat the land marked "I" in the first Phase as a green area for purposes of the composite sanction, because apart from the three parks sanctioned in Phase-1; ad-measuring 2.583 acres, the two more parks sanctioned in Phase-2, ad-measured 6646.57 square yards. But, as per the plan the total green area was 7734.32 square yards which was possible only if the 1088 square yards land marked "I" was included in the green area.

19. In the absence of the original record it is not possible for anybody to answer a simple mathematical question, because the empirical science of mathematics is premised on factual data, purity whereof is not in doubt before the one who has to analyze the same.

20. Our job in appeal is to see whether the learned Single Judge has exercised the discretion on sound and recognized principles of law.

21. From a perusal of the decision of the learned Single Judge we find good reasons given to accept the view taken by the Vice Chairperson DDA in the report submitted by him.

22. Concededly there are 5 parks in the colony. 3 in the first phase and 2 in the second phase. The total area of the parks in the first phase is 2.583 acres. The total area of the parks in the second phase is 1.373 acres. The total comes to 3.956 acres. The total area of the colony is 20.25 acres + 10.19 acres = 30.44 acres. 14% thereof would come to 4.26 acres. Thus, of the total area of the colony 4.26 acres would be required to be maintained as a green area as per the Master Plan norms; with 5% variation. 5% of 4.26 acres is 0.213 acres. Thus, as per the strict requirement of the Master Plan norms 4.047 acres would be required to be kept at a green area. Concededly 3.956 acres exists physically at site as parks i.e. green area. Thus the difference would be $4.047 - 3.956 = 0.091$ acres. This translates to 450 square yards land. This would be if we were to exclude the 0.2 acres land shown as green and marked "D" in the site plan which was sent for approval.

23. Thus, in any case one would not need 1088 square yards of land to make up the deficiency i.e. the land marked "I" in the site plan.

24. What appears to have happened is this. When the first phase plan was approved, area marked "D" ad-measuring 0.2 acres was shown as green area, apart from the 3 parks, total area whereof is 2.583 acres. The total green area shown was 2.783 acres. The land at phase-1 was 20.25 acres, and 14% thereof would be 2.835 acres. 5% permissible variation thereof would be 0.14175 acres. It appears that at the first phase the sanction was as above. But so narrow was the strip of land marked "D" that when the composite plan was sanctioned it was given a go by, and probably to comply with the Master Plan norms, while sanctioning the composite plan the area marked "I" was shown as a green area. This explains the fourth reason given in his report by the Vice Chairperson DDA that no public land/road once approved in plan could be converted into a private/public green, without substantive public interest.

25. It would thus be better to resolve the dispute in the absence of the original record, by looking at the physical site i.e. deciding the dispute de-facto rather than de-jure. We highlight once again that in the absence of the original record it is not possible to answer the question with 100% accuracy. For the reason that assuming the stand of the appellants is correct the infraction of law would be de minimis i.e. only 450 square yards land out of 30.44 acres i.e. 0.094 acres, we are of the opinion that curtains must be dropped by dismissing the appeals, but without any order as to costs.