
(2010) 03 DEL CK 0406

In the Delhi High Court

Case No : Writ Petition (C) 5834 of 2001

Vice ADM S. Jain (Retd.) and Others

APPELLANT

Vs

M.C.D. and Others

RESPONDENT

Date of Decision : 12-03-2010

Acts Referred:

Citation : (2010) 03 DEL CK 0406

Hon'ble Judges : Sanjiv Khanna, J

Bench : Single Bench

Advocate : Manoj Khanna and Atul Bansal, for the Appellant; Amita Gupta and Parveen Kumar for R-1, Sangeet Chandra, for DDA, Raman Duggal, for R-6 and Rajeshwar Kr. Gupta, for R-7, for the Respondent

Final Decision : Allowed

Judgement

Sanjiv Khanna, J.—This writ petition, which was filed in 2001, pertains to narrow strip of land behind plot Nos. 5/27 and 7/19 in Sarva Priya Vihar Colony, New Delhi. The petitioners contend that as per the lay out plan, this strip of land is meant and demarcated as a road/lane. The respondent No. 7, Sarvpriya Vihar Cooperative House Building Society and owners of plot Nos. 5/27 and 7/19, respondent Nos. 5 and 6, on the other hand, contend that this strip of land is a green area as per the lay out plan.

2. It is not disputed that as per the original lay out plan sanctioned on 21st March, 1973, this strip of land has been shown as an arterial road, which connects the main street Nos. 5, 6 and 7.

3. The respondent Nos. 5 to 7 have not been able to place any letter or document on record to establish and show that any request for modification or change of lay out plan in respect of the said strip of land was made and accepted by the Delhi Development Authority (DDA). The said respondents have relied upon two lay out plans enclosed by the DDA along with the letters dated 4th March, 1983 and 16th February, 1985. In the lay out plans enclosed with the said

letters, this strip of land has been shown as a green, instead of road which connect road Nos. 6, 5 and 7. The road is shown as ending with street No. 5 and, therefore, arterial road does not go on to connect street No. 7.

4. Noticing several aspects of the matter, contentions and disputes raised by the parties, by the order dated 7th May, 2007, the original documents filed by the respondent No. 7 society were kept in a sealed cover and the matter was referred to the DDA for examination under the supervision of the Vice Chairman, DDA. DDA was asked to uncover the truth and place the correct factual position on record whether the said strip of land is a street or a green belt.

5. The Vice Chairman, DDA has filed the inquiry report dated 24th July, 2007 affirming that the said strip of land under reference is a road/lane, which is at least 15 feet wide.

6. The respondent Nos. 5 to 7 have filed objections to the said report. I have heard the counsel for the parties on the question of report and other contentions raised in the writ petitions. Learned Counsel for the respondent Nos. 5 to 7 have submitted that lay out plans were revised from time to time and the subsequent lay out plans enclosed with the letters dated 4th March, 1983 and 16th February, 1985 conclusively establish that the said strip of land is a green belt. My attention, in this regard is also drawn to the letter dated 12th July, 2000, written by the Deputy Director L.M. (S.E.Z), DDA that the strip of land as per the lay out plan is a green strip and this is a public place/space and cannot be privatized. Reliance is also placed on the affidavit filed by the respondent, MCD that the strip of land is a green area.

7. The affidavit filed by the respondent, MCD is on the basis of the lay out plans, which were submitted by the DDA to them after the colony was transferred. It is an admitted position that the original files relating to lay out plans of the respondent society were not transferred to the MCD as these vital records were lost in fire on 25th June, 1985. Layout plans were not prepared by MCD and their affidavit is inconsequential and cannot be a ground to reject the report dated 24th July, 2007 of the Vice Chairman, DDA. Similarly, with regard to the letter dated 12th July, 2000, the explanation given is that the said letter was written after looking at the lay out plan enclosed with the letters dated 4th March, 1983 and 16th February, 1985, but without verifying and going into the question whether there was any change in the lay out and the strip of land, which in the lay out plan of 1973 was a road/street, was converted into a green belt.

8. The Letter dated 4th March, 1983 was written in response to the letter of the respondent cooperative society dated 27th February, 1983. Along with the said letter a revised setback and demarcation plan for 87 plots (for addition of six plots) was approved subject to the conditions as conveyed in the earlier letter dated 13th April, 1982. The said letter further states that this letter supersedes the earlier setback and demarcation plan already revised on 14th April, 1982. The letter dated 16th February, 1985 refers to the letter dated 3rd January, 1985

written by the cooperative society respondent No. 7 and the request made by them for making available a site for temple and also for a community centre (club). These two letters do not specifically deal with the conversion of the strip of land into a green belt, which was earlier shown as a road/lane in the plan of 1973. This aspect has been specifically examined by the Vice Chairman, DDA in his report and he has observed as under:

5.2.2 As per record the lay out 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 plan (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 placed 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 plans 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 the 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 lane/road once approved in the plan could be converted into private/public green, without substantive public interest.

9. As recorded by the Vice Chairman in the fourth reason stated above, the society had submitted a plan along with the supplementary perpetual lease deed dated 25th July, 1985, in which the said strip of land was shown as a blank or extension of road and not as a green belt. Thus, the respondent No. 7 society had been filing plans with the DDA in which the said strip of land had been demarcated both as a road as well as a green belt. The third reason recorded by the Vice Chairman is that the original retraced plans with area planning wing show that the strip of land was demarcated and shown as a road/lane. It is from the original retraced plan that the blue prints are printed.

10. Normally, if a strip of land is shown as a public road or street, the same is not converted into a green area or private green area as is alleged by the respondent Nos. 5 to 7. It may be noted that if the strip of land is converted into

a green area, the same will enure to the benefit and advantage of the two plots 5/27 and 7/19 as the strip of land in question is behind the said plots. The owners of the said two plots happen to be the erstwhile president and his daughter. Recording this fact in paragraph 5.2.8, the Vice Chairman has observed as under:

5.2.8 It is also noted from the records of Building and Planning files that the owner of plot No. 5.27 was the President of the Society and the plot No. 7.19 was owned by his daughter. By getting the strip of land converted from lane into green, both these plots are the direct beneficiaries. The intention of the owner to use part of the land earmarked as lane, for private lawn is clear from his request made to the DDA on 21.12.1984, which was agreed to by DDA on 20.5.1986 for five years temporary lease. Although it was for five years and withdrawn on 10.6.1998, the owner made advance payment of lease rent up to 2006.

11. The Vice Chairman has also referred to some other plans in which even after 1983, the said strip of land has been shown as road/lane.

12. I have also seen the original plans, which were filed by the respondent No. 7 cooperative society. It is clear from the plans that the said strip of land is adjacent and behind the plots Nos. 5.27 and 7/19. This strip of land is a connecting strip, which connects street Nos. 7 and 5 behind the plots in question. In fact by blocking and converting the said strip of land into green belt, the road which connects street Nos. 6, 5 and 7 is being blocked and access from this side is denied from the street No. 7. It is not possible to believe and accept the contention of the respondent Nos. 5 to 7 that the lay out plan of 1973 was amended without any specific order or direction in respect of the said strip of land for being converted into a green belt. The respondent No. 7 cooperative society has kept all records and papers with regard to the lay out plans, which were sanctioned from time to time but has not produced or filed on record any letter of sanction for conversion of this strip of land from road/street to green. Any letter or proposal in which the said change from street/lane into green belt was requested or asked for has not been placed on record. These aspects have been dealt with by the Vice Chairman in his report, who has specifically dealt with and examined all the documents relied upon and produced by the pm, arties.

13. In these circumstances, I accept the report given by the Vice Chairman, DDA in respect of the lay out plan. The parties will be bound by the said report and act accordingly.

14. The writ petition is allowed to the extent indicated above. The respondent, MCD will ensure that the lay out plan is properly implemented.