

(2010) 09 DEL CK 0008

In the Delhi High Court

Case No : Writ Petition (C) No. 5834 of 2001

Vice Admiral S. Jain (Retd.) and Others

APPELLANT

Vs

MCD and Another

RESPONDENT

Date of Decision : 20-09-2010

Acts Referred:

Citation : (2010) 09 DEL CK 0008

Hon'ble Judges : Sanjiv Khanna, J

Bench : Single Bench

Advocate : Manoj Khanna, for the Appellant; Parveen Kumar, for Amita Gupta, for MCD, Sangeeta Chandra, for DDA, Raman Duggal and Rajeshwar Kumar Gupta, for the Respondent

Judgement

Sanjiv Khanna, J.

REVIEW PETITION Nos. 313/2010 & 314/2010

1. This order will disposed of Review Application No. 313/2010 filed by Mr. S.K. Gupta, who was originally respondent No. 6 and Review Application No. 314/2010 filed by Sarvapriya Cooperative House Building Society Limited, (Cooperative Society for short)

2. The writ petition was disposed of, vide decision dated 12th March, 2010 upholding the detailed report given by the Vice-Chairman, DDA that the disputed area in the lay out plan was earmarked as a street/road and was not part of a green area/park. Against the said decision, the two applicants had preferred Letters Patent Appeals. These appeals were disposed of by two separate but identical orders dated 24th May, 2010. The relevant portion of the order reads:

It is submitted by learned Counsel for the Appellant that the order passed by the Single Judge is absolutely incorrect inasmuch as the area in question is a green belt in the Master Plan and the opinion given by the vice-Chairman, DDA is counter to the same and hence, the direction is vulnerable. Per contra, learned

Counsel for the Respondent MCD submitted that the Master Plan does not indicate that it is the green belt and, therefore, the finding given by the learned Single Judge is impeccable. It is urged by her that the road is a necessity and when there is no mention with regard to the status in the Master Plan, there is no prohibition to construct a road. At this juncture, learned Counsel for the Appellant submitted with immense emphasis that the Master Plan clearly stipulates that it is a green belt. That apart, he has also further submitted that the layout plan which has been brought on record is in accord and consonance with the Master Plan. On a query being made whether the Master Plan has been brought on record, we must say counsel for both sides fairly stated that the same was not brought on record. In the absence of the Master Plan, we are afraid, we cannot draw an inference that the layout plan is in accord with the Master Plan. In view of the aforesaid, we are not inclined to interfere with the order passed by the learned Single Judge. We grant liberty to the Counsel for the Petitioner to file an application for review for modification of the order passed by the learned Single Judge. We grant liberty to the counsel for the Petitioner to file an application for review for modification of the order passed by the learned Single Judge after filing the Master Plan as the production of the Master Plan is the sine qua non for building the edifice of such construction.

3. Along with the applications, the applicants have filed relevant extracts of Master Plan of Delhi 1961 and my attention is drawn to Table 8 which stipulates that for area having a gross density of 100, the minimum requirement towards parks and play grounds in percentage terms is 14%. Thereafter, counsels for the applicants have drawn my attention to paragraph 12 of the objections/reply filed by Mr. S.K. Gupta. The said paragraph for the sake of convenience is reproduced below:

12. That the enquiry officer Dr. S.P. Bansal has not even bothered to analyse the area shown as Green on various plans admittedly available with the DDA. A perusal of the latest approved setback-cum-demarcation plans sanctioned vide letters dated 4.3.1983 and 16.2.1985 shows that the total area required for parks and playgrounds as per Master Plan was 1.42 Acres (6904.74 Sq. Yds.) and the area provided for parks and play grounds was 1.59 Acres (7734.92 Sq. Yds.). In the Chart mentioned on these plans the Green area, which was sanctioned/ earmarked in the earlier plans sanctioned in 1973 has not been shown. It is submitted that in the plan approved vide letter dated 4.3.1983 two parks measuring about 5046.57 sq. yds. and 1600 sq. yds. have been shown, which if added together do not make the area actually provided i.e. 7734.92 Sq. yds. and there is no other new park except the Green area in dispute in the said plan which could add up to the actual Green area provided in the said Plan. Therefore, it is clear that the area in dispute was required to be shown as Green for making up the deficiency in the area required for Park and Play Grounds and this aspect has completely and conveniently overlooked by the inquiry officer.

4. Learned Counsel appearing for the cooperative society has filed some

documents along with index dated 19th August, 2010, which was filed in the Court on 25th August, 2010. At the outset, I may state that these letters do not form part of the original record and there is no explanation why these documents could not be filed earlier. Hence, these documents cannot be taken into consideration while deciding the review applications.

5. The lay out plan of the colony known as Sarvapriya Vihar was cleared in two stages. In the first stage, lay out plan for area of 20.25 acres was cleared on 21st March, 1973. About the said lay out plan there is no dispute. It is also not disputed that in the said lay out plan the disputed area is clearly shown as a part of the street/road. In the said lay out plan, the total area earmarked for parks and playgrounds is 2.65 acres, out of the total area of 20.25 acres. This is slightly less than 14% stipulated in Table 8. Counsel for the DDA has pointed out that 5% variation in area (not in percentage) is permitted as per the Master Plan. In any case, this lay out plan was approved and passed and as stated above, the disputed area is clearly shown in the said lay out plan as 15 feet wide street/lane connecting to other roads/streets.

6. Lay out plan for the second phase consisting of 10.19 acres was approved by the DDA vide sanction dated 14th April, 1982. This second lay out plan for area of 10.19 acres is for an area adjacent to the lay out plan for 20.25 acres. Thus these are separate layout plans for 20.25 acres and 10.19 acres. The disputed land is part of the first lay out plan of 20.25 acres and not the part of the second lay out plan of 10.19 acres. The contention of the applicants is that in the lay out plan for 10.19 acres the total area earmarked for parks and playgrounds was 7734.92 square yards and as per the Master Plan, the minimum 14% requirement was 6904.74 square yards or 1.42 acres. It is submitted that the total area of 7734.92 sq. yds for the parks and playgrounds in the layout plan of 10.19 acres includes the disputed land. Otherwise the area of parks and playgrounds will be less.

7. It may be again stated that there is a dispute about the said second lay out plan as the same was not available and different lay out plans have been projected by the parties. This became subject matter of a detailed report submitted by the Vice-Chairman, DDA, which has been accepted vide order dated 12th March, 2010. The said order as noticed above has not been set aside and interfered with in appeal. Learned Counsel for the DDA has pointed out that a total area which should be available for parks and playgrounds in respect of the entire colony in Phase I and II consisting of 20.25 acres and 10.19 acres is 4.26 acres. The total area, which has been allocated for parks and playgrounds for the entire colony is 4.24 acres, which is short by .02 acres. Even with regard to the second lay out plan for the area of 10.19 acres, it is stated that the minimum requirement for parks and playgrounds calculated @ 14% is 6904.74 square yards or 1.42 acres and the total area, which has been earmarked and demarcated for parks and playgrounds in the second lay out plan is 1.375 acres without tot lots and 1.46 acres with tot lots .Calculation in this regard has been

submitted and furnished to the counsel for the applicants. It is accordingly pointed out by the counsel for the DDA that this variation is within the permissible 5% limit. Accordingly, I do not find any merit in the present review applications and the same are dismissed. All other pending applications are also disposed of.

8. The original records of the society, which have been kept in a sealed cover, will be returned after the Registry prepares certified photocopy of the same. Certified photocopy will be kept on record.