
(2005) 03 RAJ CK 0036

In the Rajasthan High Court

Case No : Civil Writ Petition No. 4694 of 2003

Yashwant Sharma

APPELLANT

Vs

The State of Rajasthan and Others

RESPONDENT

Date of Decision : 17-03-2005

Acts Referred:

Jaipur Development Authority Act, 1982 — Section 25, 25(3)

Citation : (2005) 2 RLW 1080 : (2005) 2 WLC 559

Hon'ble Judges : Shiv Kumar Sharma, J;K.S. Rathore, J

Bench : Division Bench

Advocate : Jagdeep Dhanker, Praveen Balwada, R.D. Rastogi and Jai Raj Tantia, K.K. Sharma, Rajendra Prasad and K. Verma, for the Appellant; Bharat Vyas, AAG and Mahendra Goyal, (DBCWP No. 1844/01), for the Respondent

Judgement

K.S. Rathore, J.—Both the public interest litigation involve similar issue, therefore, are being decided by this common order.

2. The main challenge in the aforesaid writ petition is with regard to land use and to maintain ecology zone as per Master Development Plan-2011 and asking for direction in the nature of mandamus to restrain the respondents from allowing indiscriminate urbanisation and exploitation of the ecological zone. The aforesaid relief has been sought in respect of the area namely Jhalana Hills and area abutting thereto shown as green belt ecological zone in the Jaipur Master Development Plan-2011.

3. As per Master Development Plan-2011, the land utilization has been categorised as (1) Rural area (2) Ecological Zone and (3) Urbanisable Area. Since in the writ petitions, the main issue has been raised to maintain ecological zone. For the purposes of ecological zone, it has been mentioned in the Master Plan itself that functions and activities which are eco-friendly and occupy minimum built up area for incidental use may come in this zone.

4. It is also not disputed that the Master Development Plan came into force w.e.f.

1.1.1998. The Master Development Plan while dealing with the eco-system and environment, in unequivocal terms lays down that all development programmes are sensitive to the issues related to the fragile eco-system and are implemented while maintaining balance with nature. It is vital that development plans are so executed that as far as possible pollution free environment is available in the region.

5. The maintaining of ecological zone in conformity with the master Development Plan is the basic structure and character of the Master Development Plan, therefore, any modification of Master Development Plan thereby changing ecological zone u/s 25 of JDA Act is not permissible and cannot be allowed to sustain.

6. The Deputy Commissioner Zone A-2 vide order dated 30.10.2002 sent the file to the State with the comments that in view of the facts available on file, technical report should be obtained and the public notice is required to be issued in terms of Section 25 of the JDA Act may be processed and issued with the prior approval of the Commissioner of JDA. On 31.1.2002 and 26.8.2003, the respondent State processed the file for further necessary order by the Commissioner, JDA. Ultimately, the approval was given by the Commissioner on 1.8.2003. Thereafter, the public notice was issued on 14.8.2003 under Sub-section 3 of Section 25 of the JDA Act.

7. Since the writ petitions have been filed with regard to land use of Jhalana Hills and related ecological zone in the residential and mixed land use and the same can only take place when the modification of plan is approved by the State Government.

8. The committee headed by the Chief Secretary to the Government has considered the entire aspect and the Committee is of the opinion that under the provisions of the JDA Act, 1982, the State Government is competent to allow this area to be utilised for other activities after following the procedure prescribed u/s 25 of the JDA Act, 1982. Once the amendments are made in the Master Development Plan in accordance with Section 25, the amendments have the same force as the original Master Development Plan.

9. The Committee further observed that when the Master Development Plan of Jaipur-2011 was being prepared, the framers of the Master Plan presumed that the future growth of Jaipur City would be only towards the West side and South side. The area on which the East side adjoining the existing Jaipur City was set apart for as ecological zone. However, the presumption was appear to have not been correct. The committee also observed that the area east of the Jhalana Hills and South of the Jaipur-Agra Highway (between the railway line and the Kho Nagoriyan Road and Goner Road) is all private khatedari land. This land has not been acquired by the Jaipur Development Authority or any other Government Department. It is also not possible for the State Government to acquire such a large area for maintaining it as a green belt. Keeping in view the growing

pressure on land for housing and the fact that all this land is private khatedari land and it is in close vicinity of Jaipur City, it would be difficult to ensure that housing colonies do not develop on this land. In fact substantial portions of this land have already been utilised for housing, considering the overall position the Committee is of the view that it would be proper to all planned development of housing on this land. If Jaipur Development Authority does not allow planned housing development on this land the chances are that unplanned housing will take place on this land which would not be in the interest of the city of Jaipur.

10. In the additional affidavit, learned Addl. Advocate General submitted that the land approximately 200 bighas forming part of ecological zone was sought to be taken out from the demarcated use in the Master Plan to rehabilitate slum dwellers, Jaipur Development Authority dedicated equal amount of land elsewhere. It is further reiterated that statutory provisions regarding the entitlement of the State/JDA to effect the change in the uses shown in the Master Plan is crystal clear. The State Government being conscious of its responsibilities to strike balance in between ecological consideration and the normal urban, industrial/institutional etc. growth of city with its expansion, can always be expected to employ all measures to ensure the maintenance of eco- system including, in appropriate cases setting apart other land for ecological purposes.

11. Considering this fact that in the major portion of the land which was shown as ecological zone in the Master Development Plan, the construction has already been raised by the private colonizers, Housing Board and roads have also been constructed as well number of educational institutions have come up on the said land, admittedly the petitioner has filed the writ petition at the belated stage when the unplanned development on the ecological zone has taken place. At this stage, it is not in the interest of public at large to demolish the construction of housing colonies and educational institutions, which have already come up.

12. As per the undertaking given by the State Government and JDA to develop the ecological zone and set apart 200 Bighas of land for the said purpose, we are not inclined to interfere in the present matter on the technical ground that the amendments sought in the Master Development Plan are contrary to the provisions of law. Though, the JDA and the State Government has published the notice in terms of Section 25 of the JDA Act and approval has been sought from the Government, but still the JDA and State has not followed due process of law in letter and true spirit. Our only endeavour is to maintain the ecological zone for which the JDA and State has given undertaking, but we also warn the JDA not to amend the Master Plan casually in future unless and until, it is necessarily warranted to modify the Master Development, that too should be in the limited scope. The State as well as JDA in future will not unnecessarily invoke the provisions of Section 25 of the JDA Act and have to maintain the ecological zone, which is one of the essential category as categorised in the Master Development Plan.

13. We further direct the State and JDA that as per the undertaking they will

identify the land measuring 200 Bighas for the purpose of maintaining ecological zone within a period of six months and shall submit the compliance report before this Court.

14. Since the State and JDA has given undertaking to set apart 200 bighas of land for maintaining ecological zone, the relief claimed by the petitioner has been meted out, therefore, both the petitions stand disposed of in the terms indicated hereinabove.