

Vikas Vasudeva and Ors vs. Land & Development Officer and Ors

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Court : Delhi

Decided On : Oct-17-2019

Appellant : Vikas Vasudeva and Ors

Respondent : Land & Development Officer and Ors

Judgement :

\$~J * % IN THE HIGH COURT OF DELHI AT NEW DELHI Reserved on :

02. 09.2019 Pronounced on :

17. 10.2019 + W.P.(C) 3123/2016 and CM APPL. Nos. 13345/2016, 27123/2019, 27124/2019 VIKAS VASUDEVA AND ORS

... Petitioner

s Through Mr. Sandeep Sethi, Sr. Adv. with Mr. Neeraj Yadav and Ms. Aditi Sharma, Advs. LAND & DEVELOPMENT OFFICER AND ORS.....

... RESPONDENTS

versus Through Mr. Manish Mohan, CGSC with Ms. Manisha Saroha, Adv. for L& DO. Mr. Sudhir Nandrajog, Sr. Adv. with Ms. Puja Kalra, Adv. for North MCD. Ms. Rukhmini Bobde and Mr. Nivesh Kumar, Advs. for DDA Mr. Naveen Pushkarna, Adv. for Intervener. Mr. Ashish Mohan, Adv. Mr. Naveen Kumar Raheja, Adv. for HPCL CORAM: HON'BLE MR. JUSTICE JAYANT NATH JAYANT NATH, J.

1. This Writ Petition is filed by the petitioner seeking a Writ of Certiorari or any other appropriate order for quashing the allotment of land admeasuring 1080 sq.meter as shown in L&DO plan at No.1706, Shankar Road, Old Rajinder Nagar, New Delhi by respondent No.1, namely, L&DO in favour of respondent No.4/Hindustan Petroleum Corporation Limited for running of a CNG Fuel Pump. Other connected reliefs are also sought. W.P.(C)3123/2016 Page 1 of 12

2. The case of the petitioner is that the petitioners are the residents of the colony Rajendra Park, New Delhi. The said land is earmarked and maintained for the purpose of playground/park. It is further stated that in W.P.(C)2345/2014 titled Court on its Own Motion vs. Union of India on 16.4.2004 the court took up the PIL regarding maintenance of children park. Status Report was directed to be filed by the concerned Municipal Corporations. Pursuant to the order passed in the said Writ Petition a meeting took place with the Chief Secretary. Minutes were drawn up on 21.7.2014. The said Minutes clearly lists out the park in question in this petition, namely, Mahavir Park, Old Rajender Nagar. The case of the petitioner is that the land in question measuring 1080 sq.meters being allotted to respondent No.4 was part of a larger area of 3109.9 sq.meters meant for a park. It has been pointed out that despite the above respondent No.1 has written to respondent No.4 on 12.1.2016 pointing out that the plot measuring 1080 sq.meters at 1706 Shankar Road, Old Rajender Nagar has been temporarily allotted to respondent No.4 for putting up a Filling-cum- Service Station.

3. It is further stated that the area falls in zone B-3 Municipal Area. A perusal of Masterplan 2021 (hereinafter referred to as MPD2021) reveals that there is no provision made for additional fuel station in the said zone. Reliance is placed on sections 8,9 and 11A of The Delhi Development Act, 1957 to submit that for modification of the Masterplan and Zonal Plan it is incumbent upon the authority to place a notice in this regard and invite objections and suggestions from the public for considering the same. It is stated that in the absence of change in the zonal plan the land cannot be used W.P.(C)3123/2016 Page 2 of 12 as a fuel station. As despite several representations the respondents have not changed the plan hence the present writ petition.

4. The present Writ Petition came up for hearing on 8.4.2016 when this court stayed operation of letter dated 12.1.2016 issued by L&DO to respondent No.4 allotting the land in question. A direction was also passed that no construction activity will be done on the subject land. On 2.5.2019 this court had noted that the entire land is lying vacant as there is not a blade of grass on it. The learned senior counsel for MCD assured that 500 trees would be planted in the said park and the same shall be dutifully maintained. This was to be done without prejudice to the rights and contentions of the parties.

5. Respondent No.1/L&DO has filed its counter-affidavit. It is stated in the Counter-Affidavit that the land in question has been allotted temporarily to respondent No.4. It is further stated that there is no park on the land in question. It is claimed that as per lay out plan the same is an open space. It is further pleaded that under the Masterplan there is a provision of allotment of green land for allotment of petrol pump on temporary basis.

6. Respondent No.3/DDA has filed its Counter-Affidavit. DDA has confirmed that as per the Zonal Development Plan of zone B i.e. the zone in question the land in question is earmarked for residential use/zone. This zonal development plan was approved on 8.3.2010. Further, as per clause 12.12 of MPD2021 petrol pump it is pleaded are permitted in all use zones except recreational use zone. Further, as per norms for fuel station given in table 12.6 of MPD2021 two fuel stations per 150 hectares of gross residential area are permitted in residential use zone. It is stated that there is no requirement for public consultation for change of use of land in question. W.P.(C)3123/2016 Page 3 of 12 7. I have heard learned senior counsel for the petitioner and learned counsel for respondents. Learned senior counsel for the petitioner has taken me through the zonal plan for zone B. It is pleaded that the land in question falls in zone B-3. It is stated relying upon clause 7.6 of the zonal plan that under zone B-3 there is no existing fuelling station nor is any fuelling station proposed. Similarly, reliance is placed on a Map showing the lay out plan for Rajender Nagar, Zone B filed by the L&DO to state that a perusal of the map would show that in zone B-3 there is no existing or proposed petrol pump/CNG station. It is stated that the existing/proposed CNG station/petrol pump are duly depicted in the said MAP by affixing a black dot or a black dot surrounded

by a circle. However, in Zone B-3 there is no such dot clearly showing that as per the lay out plan for Zone B-3 no petrol pump exists or is proposed. Reliance is also placed on a communication written by North DMC dated 11.2.2016 to plead that as per the said Municipal Corporation the land in question has been allotted to North DMC and belongs to North DMC. The said communication further states that L&DO has allotted the said land to respondent No.4 without consultation/approval of North DMC. Based on the above document, it is pleaded that it is manifest that under the zonal plan and layout plan there is no proposed petrol pump in existence in zone B-3 which is the area where the said park is situated and hence the act of respondent No.1 in allotting the land forming part of the park to respondent No.4 is illegal, non est and void.

8. Learned counsel appearing for respondent No.1 has relied upon clause 12.12 and table 12.6 of MPD2021 to plead that in residential use zone, two fuel stations per 150 hectare of gross residential area are allowed. W.P.(C)3123/2016 Page 4 of 12 Reliance is also placed on the zonal development plan for zone B which has been issued on 8.6.2010 and clause 7.6 which states that under Zonal Development Plan 2012 there are three new filling stations proposed. Based on this, it is stated that even the zonal development plan permits setting up of a new petrol pump. Reliance is also placed on a DDA counter-affidavit to plead that under the zonal plan as it exists the respondent No.1 is entitled to convert any part of the residential area for setting up of a petrol pump in terms of the norms stated in the zonal development plan. Reliance is also placed on a judgment of Division Bench of this court in the case of Grand Vasant Resident Welfare Association vs. DDA and Others dated 2014 (209) DLT110 to support the contentions.

9. Learned senior counsel appearing for the North Municipal Corporation of Delhi, however, states that the land in question now belongs to North MCD. He seeks to rely upon the communication dated 08.2.2016/27.03.1962 written by respondent No.1 L&DO to the Commissioner, MCD which states that land shall be deemed to have been transferred to the Municipal Corporation. Hence, he states that the land cannot be transferred to respondent No.4 without approval of the North MCD. He also relies upon section 42(t) of the MCD Act read with section 199 to plead title of the land in question.

10. The Division Bench of this court in the case of Rohit Dhupar v. Lt. Governor, 2009 (159) DLT193 dealt with the relevant provisions of the DDA Act. That was a case in which the petitioner who was a resident of New Friends Colony had filed a PIL for quashing and setting aside the W.P.(C)3123/2016 Page 5 of 12 allotment of land to the Temple Society in New Friends Colony by DDA. In that context, the court held as follows: 8. Section 7 of the DD Act requires periodical preparation of Master Plan of Delhi with the following requirements: (a) Divide Delhi into Zones for purpose of development and indicate the manner in which land in each Zone should be used. (b) Stipulate basic pattern of frame work for preparation of Zonal Development Plan for various zones.

9. MPD, 2001 divided Delhi into 15 Zones. A Zonal Development Plan (hereinafter referred to as ZDP, for short) is prepared for each Zone and thereafter adopted after following the procedure as prescribed for adoption in the DD Act. Each ZDP comprises of site plan and use plan. MPD2001 divided Delhi into 9 categories of uses comprising of 37 use zones to be detailed in the ZDP. 136 use premises are prescribed in the MPD-2001.

10. Lay Out Plans are different and distinct from ZDP. Lay Out Plans demarcate specific areas which can be used for different purposes and earmark land/plots which can be used for different purposes. Under Development Code of MPD2001 Clauses 2(3) and (4), Lay Out Plan and ZDP have been defined as:

2. 3). Layout Plan- Layout Plan means a sub-division plan indicating configuration and sizes of all use premises. 2(4). Zonal Development Plan means a plan for one of the zones (divisions) of the Union Territory of Delhi containing detailed social infrastructure, parks and open spaces and circulation system. regarding provision of information xxxxxx 12. It is not possible to agree with the learned Counsel for the petitioners that Lay Out Plan can be modified or amended only after following the prescribed procedure for amendment of the MPD2001 and ZDP as prescribed under the DD Act. The Lay Out Plan can be amended and modified without following the procedure under Section 11A of the DD Act, as long as W.P.(C)3123/2016 Page 6 of 12 amended and modified lay out plans are in conformity with the ZDP and the MPD. Section 11A of the DD Act, quoted above,

deals with amendment of the ZDP and MPD, 2001 and not amendment or modification of the lay out plans. This has been the consistent view of this Court as is clear from the judgments of Division Benches of this Court in B-1, Vasant Kunj Resident Welfare Association (Regd.) v. Lt. Governor of Delhi and Ors. reported in 2003 (1) AD (Del) 727 and Shanti Devi Gupta and Ors. in MANU/DE/0045/19

AIR1994 Delhi299 . In Star Residents Society (Regd.) and Ors. v. Delhi Development Authority reported in 2004 (77) DRJ (Del) 599, it was observed that: v. Delhi Development Authority reported v. DDA MANU/DE/0045/1994 29. A Division Bench of this Court in the decision Shanti Devi Gupta, : AIR1994 Delhi299 , vide para 16 held that the Delhi Development Act, 1957 in general and Section 9 of the said Act in particular, only refer to the Master Plan and Zonal Development Plan and not the lay out plan. The lay out plan was held to be a sort of working drawings prepared by the DDA. Any departure from the lay out plan was held as not to be equated with the violation of the Master Plan or the Zonal Development Plan which are statutory.

30. The learned Single Judge of this Court in the decision, Smt. Maya Devi v. UOI MANU/DE/0891/19

65(1997)DLT405 held that a lay out plan could be administratively modified by the Delhi Development Authority without resorting to the process of modification envisaged to a Master Plan and a Zonal Development Plan as per the Delhi Development Act. In para 11 it was observed: If this is the situation, in that eventuality there is only a lay out plan of the area in question. A careful scrutiny of the provisions of the Act reveals that Chapter 3A deals with the modification of Master Plan. Section 11A(i) to (iv) deals with the modification of the said plan. There is no other the mandate of Section 11A of W.P.(C)3123/2016 Page 7 of 12 provision in the entire act which deals with the modification of the lay out plan. It implies thereby that the lay out plan can be modified by the Vice Chairman of the DDA.

31. Another Division Bench of this Court, in the decision, Triveni Educational & Social Welfare Society v. DDA and Anr. MANU/DE/1219/19

76(1998)DLT329 took a view similar to the one taken by a learned single Judge of this Court in Mayadevi's judgment. Another Division Bench of this Court, in the judgment reported as 87(2000) DLT603 B.U. Block Residents Welfare Association v. DDA held:

9. ...In any case, we find no breach or violation of MPT- 2001 or the ZDP. It cannot be disputed that if there is a change in the lay out plan, no approval or sanction of the Central Government is required. 11. A perusal of the counter-affidavit of DDA shows that it claims that under clauses 12.12 of MPD2021 petrol pumps are permitted in all use zone except in recreational use Zone. Further, it is stated that under clause 12.6 of MPD2021 two fuel stations are permitted per 150 hectares of gross residential area in residential use zone. Based on the above provision it is pleaded that it would be L&DO/respondent No.1 and the Municipal Body who would be in a position to confirm permissibility of a petrol pump on the land in question. Relevant portion of the affidavit of DDA reads as follows:-

"6. That as far as the contents of para 6 are concerned, it is submitted that the ZDP of Zone B under MPD-2021 was approved by the Ministry of Urban Development, Government of India on 08.03.2010. As per clause 12.12 of the MPD-2021, Petrol Pumps are permitted in Recreational Use Zone. Further, as per the norms for fuel stations given under table 12.6 of MPD-2021, two fuel stations (one petrol pump + one CNG station) per 150 Hectares of Gross Residential Area are permitted in Residential use Zone. In view in all use zones except W.P.(C)3123/2016 Page 8 of 12 of the above provisions, the land owning agency, i.e. the respondent No.1 and the concerned Municipal Body, i.e. the respondent No.2 would be in a position to confirm the permissibility of petrol pump on the land in question. 12. Reference may be had to clause 12.12.1 of MPD2021 and 12.6 to the extent it applies to residential use zone. The said provision reads as follows:-

"12.12.1 FUEL STATIONS IN URBAN AREAS. Fuel Stations are permissible on Master Plan / Zonal Plan roads and shall not be permitted in absence of an approved Zonal Plan of the area. At the time of preparation of layout plans of various use zones namely viz residential commercial, industrial, PSP facilities and other areas the location of Fuel Stations should be provided as per the norms

given in Table 12.6. Table 12.6: Norms for Fuel Stations Sl.No.Land Use/use Norms premises Residential use Zone Two Fuel Stations (One Petrol Pump + One CNG station) per 150 ha. Of gross residential area 1.

13. Clearly, a reading of clause 12.12.1 would show that the location of the fuel station should be provided in the various lay out plans of the various zones when preparing the plan.

14. The map containing the lay out plan of zone B3 was filed by the respondent No.1 after 28.01.2019 pursuant to orders of this court dated 30.7.2018. The layout plan of zone B3 does not show any petrol pump in existence. In fact the map indicates the existing CNG station/petrol pump by W.P.(C)3123/2016 Page 9 of 12 affixing a black dot. The proposed stations are shown by affixing a black dot which are encircled in black. Zone B3 does not have any such indication of existence of a petrol pump. Clearly the layout plan of Zone B3 does not show any petrol pump proposed or otherwise.

15. In my opinion, a combined reading of the zonal lay out plan read with clause 12.12.1 of MPD2021 clearly shows that at the time of preparation of lay out plan location of fuel stations has to be provided. The lay out plan for Zone B3 does not show location of any fuel station or proposed location.

16. In the light of these facts it is clear that the attempt of respondent No.1 to locate a petrol pump in zone B3 on the land in question which is subject matter of the present Writ Petition without an amendment in the Zonal Plan/layout plan, is wholly illegal and contrary to MPD2021 and the zonal plan of Zone B3. If the respondent No.1 seeks to locate a petrol pump in the said area it would have to take steps to modify the lay out plan of Zone B3 before any such step can be taken. Clearly, the proposed impugned step taken by the respondent is illegal.

17. The Supreme Court in the case of R.K.Mittal & Ors. v. State of U.P. & Ors., (2012) 12 SCC720 was dealing with ambit and scope of powers of Noida Authority to permit user other than residential in sectors specifically earmarked for residential use in the Master Plan of New Okhla Development Area. The court held as follows: 43. To illustrate the dimensions of exercise of such powers, we may

refer to the judgment of this Court in the case of Bangalore Medical Trust v. B.S. Mudappa and Ors.: (1991) 4 SCC54 wherein this Court was concerned with the provisions of the Bangalore Development Authority Act, 1976 with particular reference to Sections 33, 38 and 38(A) of that Act. A site intended for a public park was sought to be converted into a W.P.(C)3123/2016 Page 10 of 12 hospital/nursing home, under the garb of the latter being a 'civic amenity'. This Court formed the view that such conversion of an open space reserved under the scheme for a public park into a civic amenity site by constructing hospital and allotment of the site to persons or body of persons, was opposed to the objects of the Act and would be ultra vires the same. This Court held as under:

46. .. No one howsoever high can arrogate to himself or assume without any authorisation express or implied in law a discretion to ignore the rules and deviate from rationality by adopting a strained or distorted interpretation as it renders the action ultra vires and bad in law. Where the law requires an authority to act or decide, 'if it appears to it necessary' or if he is 'of opinion that a particular act should be done' then it is implicit that it should be done objectively, fairly and reasonably. Decisions affecting public interest or the necessity of doing it in the light of guidance provided by the Act and rules may not require intimation to person affected yet the exercise of discretion is vitiated if the action is bereft of rationality, lacks objective and purposive approach. The action or decision must not only be reached reasonably and intelligibly but it must be related to the purpose for which power is exercised. The purpose for which the Act was enacted is spelt out from the Preamble itself which provides for establishment of the Authority for development of the city of Bangalore and areas adjacent thereto. To carry out this purpose the development scheme framed by the Improvement Trust was adopted by the Development Authority. Any alteration in this scheme could have been made as provided in Sub-section (4) of Section 19 only if it resulted in improvement in any part of the scheme. As stated earlier a private nursing home could neither be considered to be an amenity nor it could be considered improvement over necessity like a public park. The exercise of power, therefore, was contrary to the purpose for which it is conferred under the statute. xxxxx W.P.(C)3123/2016 Page 11 of 12 48. A decision which is sought to be taken by the Development Authority in the garb of a policy decision matter, if not in

conformity to the Master Plan, the Regulations and provisions of the Act in force, would be an action extra jus. The Development Authority is to act in adherence to the provisions of the law regulating such user or construction. The laconic result of a collective reading of the afore-referred statutory provisions is that the Development Authority or its officers, have no power to vary the user and spaces prescribed in the Master Plan, except by amending the relevant laws and that too, for a proper object and purpose. Any decision, as a policy matter or otherwise, for any extent of public convenience, shall be vitiated, if it is not supported by the authority. The Courts would examine what is the sensible way to deal with this situation, so as to give effect to the presumed purpose of the legislation. The provisions in question should be construed on their plain reading, supporting the structure of the legislative intent and its purpose. The rule of schematic interpretation would come into play in such situations and the concerned Development Authority cannot be permitted to overreach the procedure prescribed by law, with designs not acceptable in law. 18. Clearly, the location of the petrol pump is a public park/open land contrary to the zonal plan/layout plan and is erroneous. Accordingly, I allow the Writ Petition. The communication dated 12.1.2016 issued by L&DO/ respondent No.1 to respondent No.4 allotting the land for a petrol pump is quashed. The petition stands disposed of accordingly. OCTOBER17 2019/n (JAYANT NATH) JUDGE W.P.(C)3123/2016 Page 12 of 12