

Rawat Mal Jain Vs. Delhi Development Authority and Others

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SooperKanoon Citation : sooperkanoon.com/680464

Court : Delhi

Decided On : Sep-08-1994

Reported in : 1994IVAD(Delhi)749; AIR1995Delhi105; 55(1994)DLT726; 1994(31)DRJ130

Judge : M. Jagannadha Rao, C.J. and; Anil Dev Singh, J.

Acts : [Code of Civil Procedure \(CPC\), 1908](#) - Order 39, Rule 1; [Delhi Development Act, 1957](#) - Sections 7, 8, 12, 14 and 29; Water Pollution Act; [Land Acquisition Act, 1894](#) - Sections 4

Appeal No. : F.A.O. (OS) No. 190 of 1994

Appellant : Rawat Mal Jain

Respondent : Delhi Development Authority and Others

Advocate for Pet/Ap. : B. Mohan, Adv

Judgement :

ORDER

Anil Dev Singh, J.

1. This order will dispose of three appeals being FAO (OS) Nos. 190, 191 and 192 of 1994 arising out of the order dated July 19, 1994 of the learned single Judge in I.A. No. 262/93 in Suit No. 105 of 1993 with I.As. 266, 263, 264, 265, 261, 267,

284 and 690 of 1993 in Suits Nos. 100, 101, 102, 103, 104, 106, 109 and 241 of 1993 respectively. Since the same question arises in the three appeals, it will be sufficient if the facts of one case are stated for the purpose of disposal of these appeals. For this purpose we will give facts of Suit No. 100 of 1993, which are as under:

2. A suit for the grant of permanent injunction was filed by the appellants against Delhi Development Authority, respondent No. 1. Municipal Corporation of Delhi, respondent No. 2 and the Union of India, respondent No. 3. It is claimed in the plaint that the appellant No. 1 Rawat Mal Jain, purchased 1000 sq. yards of land situated in Khasra No. 241 (Min 1-00) Ladha Sarai, Mehrauli Gurgaon Road, New Delhi on March 30, 1992 by means of two separate registered sale deeds from the vendors named therein. Subsequently appellant No. 1 is said to have entered into an agreement to sell dated December 14, 1992 with Smt. Prem Grover, appellant No. 2 and Smt. Santosh Jindal, appellant No. 3 in respect of 500 sq. yards out of the aforesaid land. The possession of the land was allegedly handed over to the appellants 2 and 3 who are said to have paid full consideration under the agreement to sell to appellant No. 1. Over the land, subject-matter of the agreement to sell, M/s. Marble Arts, appellant No. 4 is carrying on marble business. Appellant No. 1 is also carrying on business of Marble as Sole Proprietor in the name and style of M/s. Jai Hind Granite Traders on the remaining land in question. According to the appellants, on December 30, 1992 the respondents, their employees and agents, accompanied by police force and demolition squad along with bull dozers demolished structures contiguous to the land in question. The respondents allegedly extended threats to the appellants for similar action against them. The appellants claim that the respondents have no right or interest in the said land nor have they any authority to interfere with the possession of the appellants over the same nor have they any right, authority or justification to demolish temporary make shift structure (khoka) erected thereon. The appellants apprehending action against them, filed a suit for perpetual injunction restraining the respondents from dispossessing them from the suit land and from interfering with their possession and enjoyment of the same and also for restraining the respondents from carrying out the acts of demolition or destruction of the property. Along with the suit the appellants filed an application for grant of

an ex parte interim order restraining the respondents from dispossessing the appellants from the land in question and from demolishing the structure with a further prayer for grant of direction not to carry out any destruction of marble slabs and other stones lying thereon. The learned single Judge on January 20, 1993 granted an ad interim order of status quo regarding the suit land. It was, however, clarified that this order would not prevent the DDA from taking proceedings under Sections 12 and 29 of the [Delhi Development Act, 1957](#) (for Short 'DD Act').

3. Thereafter respondents 1 and 2 filed their respective written statements. The stand of the DDA in its written statement needs to be noticed, which is to the following effect : The user of the land in the Master Plan of Delhi Perspective 2001 has been shown as 'Green' and the land in dispute cannot be used for any purpose other than the land shown in the Master Plan. Since the appellants are using the land for a purpose other than the one shown in the Master plan, they cannot be permitted to carry on their trade. The land in dispute has been declared as 'Development Area' under Section 12 of the DD Act vide notification dated August 16, 1973. The said land is a part of 2100 acres of land and the area is situated in a 'Development Area' No. 125 Zone No. F. 15. The appellants were not entitled to carry out any development of the area without obtaining prior permission in writing from the DDA. The appellants raised construction upon the land without obtaining any permission for the same and are using the said area for commercial activity. The construction is unauthorised having been raised without obtaining permission under Section 12 of the DD Act. The carrying out of the commercial activity for the suit land was not in public interest as the commercial activity has resulted in increase in traffic density.

4. On July 19, 1994 the learned single Judge after hearing the parties vacated the order of status quo granted on January 20, 1993. It is against this order that the appellants have filed the present appeals.

5. After hearing the learned counsel for the parties, we are of the considered opinion that the learned single Judge was justified in vacating the interim order.

The questions which arise for determination are:

(1) Whether the appellants are prima facie using the land for an unauthorised purpose; and

(2) If the answer to the first question is in the affirmative whether they can still claim an ad interim injunction restraining the respondents from interfering with their commercial activity on the said land.

6. In order to answer the first question regard must be had to sale deed dated March 30, 1992, which contains recital to the effect that the land is agricultural land and shall be used by appellant No. 1 for agricultural purpose only. The relevant clauses are extracted below and read as under:

'AND WHEREAS the vendors have agreed to sell their shares in the aforesaid agricultural land and the Vendee has agreed to purchase the same on the following terms and conditions:

xxxxx 8. That there is no poultry farm; warehouse, cattle live stock, raising of grass on the said land. The said land is agricultural land and shall be used for agricultural purposes.'

7. thereforee there is no doubt that ostensibly the land in question was purchased by the appellant No. 1 for agricultural purposes and not for commercial use. Besides, it is not disputed that the Master Plan 1962 shows the land in question as a part and the Master Plan for Delhi 2001 gives the land use of the area as Regional Park and District Park falling in Recreational Zone (Zone J). thereforee it is a green area and its character must be preserved. In view of the recital in the sale deed and land use shown in the Master Plan the appellants are not using the land for authorised purpose.

8. For determination of the second question, the Master Plan for Delhi Perspective 2001 needs to be examined in little more detail. Like Master Plan for Delhi 1962, it is also directed towards achieving planned and orderly development of Delhi, which is so very essential for the sustenance of large and ever increasing population of Delhi reaching almost one crore. At this stage it will be advantageous to refer to the Preamble to the Master Plan for Delhi 2001 and some of the other

parts thereof. To start with relevant portion of the Preamble needs to be noticed which is as follows:

'Delhi, the focus of the socio-economic and political life of India, a symbol of ancient values and present aspirations, the capital of the largest democracy, is assuming increasing eminence among the great cities of the world. The city of Delhi has a distinct personality, imbibed in it, is the history of centuries, in its parts ii has the grand vistas of New Delhi and the throbbing lanes of Shahjahanabad. It is a gem with many facets.....

But there are a number of stages from the enunciation of planning principles to its accomplishment. All the above postulates during the process needed adequate acceptance, detail planning and execution; in fact, during implementation, they sometimes tend to suffer some loss at every stage. The end results in some spheres have, therefore, been insubstantial. There are other issues of a central importance like rapid urban population and employment growth, land use permissibility; land use intensity, informal sector and incompatible uses which overwhelmed the Master Plan in the process of its implementation.....'

9. Master Plan for Delhi Perspective 2001 also dwells upon Regional and Sub-Regional frame. Under this heading it says:

'Planning for the development of a metropolis cannot be limited within its boundaries, it considerably influences and is influenced by happenings outside, specially the immediate surroundings. In the widest sense, Delhi's influence extends throughout India and as a Capital throughout the world. At yet another level Delhi occupies a position of central importance in the entire broad region of Northern India. Since 1947, when India attained independence, this influence has in fact been increasing in range and impact.'

10. The Master Plan also talks of balanced regional development and in this regard reads as under:

'Major migration to Delhi is from the States of Uttar Pradesh, Haryana, Punjab and Rajasthan, the present range of migration being more than 1.6 lakh persons per

annum. Delhi in the context of urbanisation and migration needs a definite restrictive policy of employment generation; main guidelines for this policy would be :

(i) Only such new Central Government offices which directly serve the Ministries of the Government of India be located in Delhi.

(ii) Existing offices of public sector undertakings within Delhi should be encouraged to shift, while new offices of the public sector undertakings to the extent these are possible within their operational areas should be set up outside Delhi.

(iii) Industrial growth in Delhi should be restricted to small scale with stress on units which require skill, less of manpower and energy and are non-nuisance and clean and largely subserve Delhi economy.

(iv) Legal and fiscal measures should be adopted to restrict employment in industries and distributive trade.'

11. It also provides for the reason for modifying the existing Land Use Plan. In this regard it states as under:

'The existing land use plan has been modified on the basis of the following: (i) Policies enunciated for different sectors, (ii) Requirements of additional physical and social infrastructure transportation and employment centres, (iii) restructuring of land uses along the ring rail, (iv) Modifications in the land uses already approved; (v) Restructuring in land use required based on the studies for the Perspective 2001 and considering inter relationship of urban activities and their effect on the environment and image of the city.'

12. The Master Plan for Delhi Perspective 2001 further speaks of modernisation of the city and its personality and natural features. It says:

A city belonging to this age should have, (i) efficient transportation and communication system, (ii) convention and exhibition centres, (iii) shopping arcades and amusement parks and places for comfortable living for the visitors. In

providing all these, the city should reflect its personality, its age old traditions and culture and its warmth to the visitors and its inhabitants.....

Delhi is increasingly becoming a focus of the developing world. A new Institute for higher learning in the development planning mainly to deal with the planning and development problems of the developing countries could be started in the city. Such an Institute along with the research and training in the development problems could have specialised departments of newly emerging fields, e.g. Energy, Ecology, Environment, Genetics, Computer Science and others.

It needs to be emphasised that the modernisation of the city is not to be in parts but as a whole, not as limited actions in certain fields but as an attitude to decision making. In the development of all the areas for urban activities i.e. housing, commercial and industrial areas and areas for public facilities, the emphasis should be on long range efficiency, futuristic view point and healthy environment for sustaining a high quality of life.

Delhi has distinct personality. In the process of modernisation the city along with providing an environment of liability, performing functions of state and economic efficacy must reflect its personality through its form and through its activity in its parts and as a whole.'

NATURAL FEATURES:

Conservations of major natural features in a settlement is of utmost importance to sustain the natural ecosystem. Two majornatural features in Delhi are the Ridge and the Yamuna Rivers. Ridge in Delhi is defined as rocky out-crop of Aravali ranges stretching from the University in the North of the Union, Territory boundary to the South and beyond. The central ridge area which is part of New Delhi, was planned as its integral part at the time of Development of New Delhi Capital. This area was left in its pristine glory by planting only with the indigenous species of trees like kikar and babul. The plan in 1962 identified a further stretch of South Central Ridge near Mehrauli. Though parts of the Ridge in Delhi have been erased out, total Ridge area now available is 7,777 ha. approx. divided as follows:

Northern Ridge 87 ha.

Central Ridge 864 ha.

South Central Ridge (Mehrauli) 626 ha.

Southern Ridge 6200 ha.

The Ridge thus identified should be conserved with utmost care and should be afforested with indigenous species with minimum of artificial landscape.

The River Yamuna now have a high level of water pollution which is mainly from the untreated sewage and waste from the industrial areas. Strict enforcement of Water Pollution Act is needed to keep the river clean. Channelisation of river as proposed shall further hold in improvement of the river front.

The Master Plan for Delhi in 1962 had indicated 9101 ha. of recreational area at the Master Plan level. Within this area the city has f8 major district parks from different periods of history i.e. Roshanara and Qudsia gardens of Mughal period, Talkatora garden of British Period and Hudha Jayanti Park in post independence era. Out of this area 6012 ha. of district park and regional park area is now available. During the implementation of the plan approximately 34 per cent of recreational area has been lost to other uses. On the basis of the land use surveys conducted in 1981 about 2710 ha. of additional recreational area at the Master Plan level has been earmarked in the land use plan in the DUA 81 and the urban extension indicated in the plan. Thus in the urban areas shown in the land use plan the total recreational area indicated is 8722 ha. for a population of about 9 million by 2001 @ 9.7 sq. m. per person. Part of this area is required to be developed for sports activities as per policy.

Further conversion of recreational areas to other uses should be permitted only under extraordinary circumstances. Areas in lieu of such conversion may be provided elsewhere in order to maintain the overall average for the city.

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Preferred species of the trees to be planted in parks, gardens, wood lands and roadside etc. to suit local conditions are given in Annexure II.

In the Urban Extension wherever possible water bodies (lakes) should be developed to act as major lung spaces and to attract migratory birds and for improving the micro climate. A special recreational area on the pattern of Disneyland/amusement park could be developed in the land becoming available for the channelisation of river Yamuna.'

13. It is thus apparent from the above that the master Plan for Delhi Perspective 2001 endeavors to achieve integrated growth of Delhi with emphasis on preservation of ecology and creation of physical and social environment for improved quality of life of its residents and also recognises the eminence of Delhi being the nerve centre of India. What takes place here affects the rest of the country. It serves as a model for the other parts of the country to follow. Besides, it being the capital city, Delhi acts as the show window of the country. It must reflect what India stands for and must also present a mosaic of its art, culture, heritage and development. A city is a barometer which shows how organized and disciplined the inhabitants are. It also shows their aesthetic sense. therefore, Planned development of Delhi is extremely essential and so are the land use restrictions. In case of change of land use many ill effects follow for example, if an area which is earmarked as green in the Master of Zonal Plan is used for commercial activity it results in cutting of green lung of the city. Besides traffic and population densities go up in that particular area disturbing the civic amenities and infrastructure related thereto and integrated planning.

14. Conservation, revitalisation, upgradation and improvement of environment depends upon many factors and one of the most important factors is conservation of existing 'green' areas. Since land in and around the capital has tremendous monetary value, land meant for gardens, parks, woodlands and for other green areas is under constant threat of being misused for being colonized or for commercial activities. More often than not misuse of land takes place by corrupting the system in order to ensure that planning controls are not enforced. Depletion of 'green' areas has many lethal effects, the major one being degradation of

environment. We are inclined to think that the level of pollution has a correlation or proportionality to the level of corruption and greed in the society. This tendency has to be curbed by enforcement of planning controls by the concerned authorities.

15. thereforee, in order to protect ecology and environment and for reducing levels of Carbon dioxide and other noxious gases green areas, parks and forests in and around Delhi including the Ridge area cannot be tampered with and must be preserved even though sometimes it may be detrimental to the interest of an individual who may be using the same for a purpose not authorised by law. The interest of an individual or group of individuals must give way to the larger interest of the society as otherwise this great ancient city having rich cultural heritage and links in the past will wither, being already over populated and smug stricken. To utilise an area against permitted user disturbs the whole planning of the city. thereforee, usurping of parks and green areas for commercial and building activity must be checked to prevent ecological imbalance. In the years of 1990s which have been declared by the United Nations Assembly to be years old environmental law, the ecology of Delhi must be given more attention for its preservation and protection. The enforcement of planning controls will go a long way in this direction. The officers responsible for enforcement of planning controls must view the violations of permitted land use seriously. Government must fix responsibility for any official laxity and take appropriate action for this misfeasance. Land use indicated in Master Plan can be enforced as it has a statutory backing, which is apparent from the various provisions of the DD Act, namely Sections 7, 8 and 14 thereof. Section 7 of the DD Act deals with the preparation of a Master Plan for Delhi. It says as under:

7. CIVIC SURVEY OF AND MASTER PLAN FOR, DELHI: (1) The Authority shall, as soon as may be, carry out a civic survey of, and prepare a master plan for, Delhi.

(2) The master plan shall-

(a) define the various zones into which Delhi may be divided for the purposes of development and indicate the manner in which the land in each zone is proposed

to be used (whether by the carrying out thereon of development or otherwise) and the stages by which any such development shall be carried out; and

(b) serve as a basic pattern of frame work within which the zonal development plans of the various zones may be prepared.

(3) The master plan may be provided for any other matter which is necessary for the proper development of Delhi.'

16. According to the above, the authority is required to carry out a civic survey of Delhi and prepare a Master Plan for Delhi. It also lays down as to what the Master Plan shall contain. It postulates the division of Delhi into zones for the purposes of development. It also indicates the manner in which the land in each zone is to be used. Section 8 provides for preparation of Zonal Development Plan for each of the zones into which Delhi may be divided.

17. Section 14 interdicts the use of the land and building for a purpose which is not authorised by the Master Plan or Zonal Plan. It provides:

'14. User of land and building in contravention of plans. After the coming into operation of any of the plans in a zone no person shall use or permit to be used any land or building in that zone otherwise than in conformity with such plan:

Provided that it shall be lawful to continue to use upon such terms and conditions as may be prescribed by regulations made in this behalf any land or building for the purpose and to the extent for and to which it is being used upon the date on which such plan comes into force.'

18. From the aforesaid provisions it clearly follows that the Master Plan and Zonal Development Plan has a statutory force and the land cannot be used for a purpose which is not permitted or authorised by the same. The case in point is *Municipal Corporation of Delhi v. Kishan Dass*, : [1969]2SCR166 wherein it was held that when any particular and definite use of land is indicated in the Master Plan, a different use of it cannot be permitted. In *P. S. Gill v. Union of India* ILR(1979) Delhi 601 it has been held by a Division Bench of this Court that on coming into operation of the Master Plan or the Zonal Development Plan, the land cannot be

used or developed except in accordance with the plan. In this regard the Division Bench held as follows:

'..... The only effect of the preparation of the plans is that, after the coming into operation of any of the plans in any area, no development can be undertaken in that area except in accordance with the plan and no use can be made on any land or plot in any zone otherwise than in conformity with such plans'.

19. The first Master Plan for Delhi came into force on September 1, 1962. Despite the lapse of more than three decades the Master Plan has not achieved its purpose. As is well known Delhi has large number of unauthorised colonies in contravention of the planning controls. There are many number of cases of violation of the prescribed land use. The new Master Plan namely, 'Master Plan for Delhi Perspective 2001' which came into force in August 1, 1990 must achieve its purpose for which it has been brought into force. Unless strict measures are adopted and the master plan is enforced in letter and spirit, the document will merely remain a piece of literary work with high sounding words but no action.

20. It is neither quite lawful nor quite right for the appellants to use the land for a purpose other than the one assigned for it. The appellants, therefore, cannot be permitted to use the land for the purpose of commercial activity which is not a permitted user. They cannot seek the equitable jurisdiction of this Court for obtaining an ad interim order which tantamount to legitimising their illegal activities.

21. Learned counsel for the appellants also submitted that the respondents have no jurisdiction to demolish the wooden structure (khoka) which they erected on their land for business and commercial activities. The argument is that the respondents can only proceed against the appellants under Section 29 of the D.D. Act which permits prosecution in case of violation of the land use by them. We regret our inability to agree with the submission of the learned counsel.

22. It also needs to be noticed that clause 6 of the sale deed records the factum of the land being notified under Section 4 of the [Land Acquisition Act, 1894](#) at the time of the alleged purchase by appellant No. 1. Since notification under Section 4

of the [Land Acquisition Act, 1894](#) was in force, thereforee the transaction of sale violated the Delhi Lands (Restriction on Transfer) Act, 1972. The commercial activity of the appellants on the said land and the construction thereon, which has been styled by the appellants as a 'khoka' is clearly in violation of Section 12 of the DD Act. Thus prima facie we are of the opinion that the appellants acted in contravention of the provisions of the Delhi Development Act, Master Plan, Zonal Development Plan and the Delhi Lands (Restrictions on Transfer) Act, 1972. The Court whileexercising the discretion will not extend a helping hand to the person invoking its equity jurisdiction for grant of an ad interim injunction when he approaches for preserving what he has gained by violating the law.

23. Having regard to the above discussion, the learned single Judge was right in vacating the interim injunction and thereforee these appeals fail and are hereby dismissed in liming.

24. However, it is clarified that any observation made herein above will not be taken as an expression of opinion on the merits of the cases.

25. Appeal dismissed.