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Court : Delhi

Decided On : Apr-08-1994

Reported in : 1994IIAD(Delhi)369; AIR1994Delhi299; 54(1994)DLT620; ILR1995Delhi391

Judge : D.P. Wadhwa and; D.K. Jain, JJ.

Acts : Delhi Development Act, 1957 - Sections 8, 9, 10, 11, 12, 14, 15 and 22; Constitution of India - Article 236; Delhi Development Authority (Disposal of Developed Nazul Land) Rules, 1981 - Rule 26

Appeal No. : C.W.P. No. 3369 of 1992

Appellant : Shanti Devi Gupta and Others

Respondent : D.D.A. and Others

Advocate for Def. : Mr. Parag Chawla And ; Mr. Pradeep Gupta, Advs.

Advocate for Pet/Ap. : Mr. P.N. Lekhi, Senior Adv. and; Mr. Jagjit Singh, Adv

Judgement :
ORDER

D. K. Jain, J.

1. By this petition filed under Art. 226 of the Constitution the petitioners seek a writ of certiorari and mandamus or any other appropriate writ or direction or order calling for records of Plot No. 3, B-Block Local Shopping Center-11, Jhilmil, Vivek Vihar, Delhi and directing respondent No. I, the Delhi Development Authority (for short the DDA) and No. 2, the Union of India respectively not to allot public passage in front of petitioners Plot No. 4 and if already allotted quash the allotment; direct the aforesaid respondents and respondent No. 3, the Municipal Corporation of Delhi, not to permit respondent Nos. 4 and 5 to carry out any construction or raise any structure on the said public passage and in the basement beneath the public passage.

2. The issue involved would appear to be simple though arguments addressed would look rather complex. The dispute concerns a very small strip of land of the size of 8 x 20 leased to respondent No. 4 at a price, for him to construct a link verandah for the use of the public in the shopping complex so that there is a whole length of verandah in front of the shops in the complex. This disputed strip of land is of the size in length of the shop premises of respondent No. 4 though it would be in continuation of the verandah in front of the shop of the petitioners. The DDA allotted and gave the leasehold rights of this strip of land to respondent No. 4 at a price calculated on certain basis with permission to have a basement underneath it with stipulation that no construction even on the roof of the verandah would be there, and that the verandah so constructed would be used as public passage. Bone of contention is perhaps the construction of the basement underneaththis strip of land, admeasuring 8 x 20 and on that account challenge is as to how could the DDA give leasehold rights of this strip to respondent No. 4 without there being a public auction as per law. As to what is the infraction of IAW involved in the case we will presently sec. But it would at once appear to us that no one would be benefited by buying this strip of land except respondent No. 4.

3. We may now advert to the circumstances leading to the filing of the present writ petition:

4. Petitioner No. 1 husband purchased leasehold rights in Plot No. 4 'B' Block, Local Shopping Centre--II. Jhilmii, Vivek Vihar, Delhi, admeasuring 89.189 sq.

mts, 24 x 40 from the DDA in a public auction held, on 30 June 1970. Perpetual lease deed in respect thereto was executed in 1972. A two-storied building was constructed on the said plot in the year 1974. On the death of the original lessee, the perpetual lease was transferred in favor of his widow petitioner No. 1 in 1986. Petitioner No. 2, a Doctor by profession, is the son of petitioner No. 1 and is running his clinic in one of the shops constructed on the said plot.

5. In October 1991, the DDA issued a public notice for auction of adjacent Plot No. 3 in the said shopping centre. The size of plot No. 3 mentioned in the advertisement was 24 x 40 (89.23 sq. mtr.) and total floor area, excluding the basement, was given as 350.24 sq. mtr. In the auction held on 15 November 1991 respondent no. 4 gave the highest bid for a sum of Rs. 22 lakhs approximately. Lease deed in respect of the said plot was executed in favor of respondent No. 4 on 29 May, 1992 and he thereafter started digging work for making a basement. 'Noticing that not only the entire plot admeasuring 24 x 40 but also a part of the public payment in front of the said plot had been dug up to have 100 per cent basement, without leaving a two metre distance from their plot, the petitioners appear to have protested and lodged complaints with the DDA and the Police to have the construction activity stopped but without any success. Alleging that respondent Nos. 4 and 5 were constructing basement on the entire plot No. 3, without leaving two metre distance from the petitioners adjacent building on plot No. 4. In violation of the Delhi Master Plan 2001, the digging and construction in front of Plot No. 4, on the public land/passage was not in conformity with the Zonal plans, the provisions of the Delhi Development Act, 1957, by-laws and the rules made there under; that there was a move on the part of some officials of the DDA to allot a portion of the public passage to the said respondents and if they succeed in this exercise and the basement and the building are allowed to be constructed on this portion, it will block half portion of the petitioners building, no entry will be left to the clinic of petitioner No. 2, causing irreparable loss to them the petitioners filed this petition. Some photographs, reflecting the site conditions were also filed with the writ petition.

6. While issuing notice to the respondents to show cause why the petition be not admitted, it was directed that any construction which may take place will be

subject to the outcome of the writ petition.

7. On directions the DDA produced plans purporting to be lay out plans of 1967 and 1974 of the market in question along with the relevant record. On 1 October, 1992 the Bench perused the plans produced by the DDA and noted the DDA's stand that respondent No. 4 raising construction was not authorised as an additional land had been allotted to the said respondent to construct a link verandah to connect verandah in front of Plots Nos. 3 and 4 and that respondent No. 4 had been permitted to construct a basement underneath this verandah, for which the DDA had charged Rs. 1 lakh extra. After hearing the parties, the Court concluded that there was no infirmity in the action of the DDA and accordingly dismissed the writ petition and vacated the interim orders.

8. Thereafter, the petitioners filed a Review Application (RA 7096/92) for recalling the order dismissing the writ petition, averring that the DDA had not filed the genuine 1967 lay out plan but a fake and forged one and it could not be assumed that the lay out provided for construction of the'link verandah.' By a speaking order dated 8 January, 1993 the review application was allowed and Rule D.B. issued. While doing so the Bench also restrained respondent No. 4 from parting with possession, selling transferring, hypothecating' or in any way dealing with any construction made on the additional plot of land admeasuring 8 x 20 or in the basement constructed underneath that land. The said interim order still continues. That is how the matter is now before us for final hearing and disposed.

9. None of the respondents have cared to file answer to the writ petition. Respondent No. 4 had on 30 Sept. 1992, only filed a reply to the application seeking interim relief.

10. It appears that in the lay out plan, the DDA provided for setting up of a commercial-cum-residential complex in Block B, Jhilmil Residential Scheme, Vivek Vihar, Delhi and plots were carved out. Piot Nos. 4 to 8 of this Centre are in the same alignment while Plot Nos. 1 to 3 are extended beyond these. A covered corridor exists in front of Plot Nos. 4 to 8, over which the said plot holders have made structures. A corridor in front of plot Nos. I to 3 was also provided but the link corridor by the side of plot No. 3, connecting the two front corridors aforesaid,

seemingly did not exist, when plot No. 3 was allotted by auction to respondent No. 4 in the lease deed thereforee, which was executed on 29 May 1992, there was no mention of the said corridor measuring 8 x 20. Respondent No. 4 claims that the site of the said link corridor was allotted to him by the DDA with the right to extend the basement covering the site underneath the link corridor for a consideration of Rs. 1 lakh approximately. The legality of this transfer has been assailed in the writ petition.

11. Mr. P.N. Lekhi, Sr. Advocate, appearing for the petitioners has strenuously urged that (i) allotment of the aforesaid additional land to respondent No. 4 is in violation of Chapter III of the Delhi Development Authority (Disposal of Developed Nazul Land) Rules 1981. For short the Nazul Land Rules) inasmuch as transfer/allotment of Nazul land could only be by auction and not otherwise and no auction in terms of Rule 26 took place lor its allotment; (ii) the construction of the basement beneath the said additional piece of land is in contravention of Section 14 of the Delhi Development Act, 1957 inasmuch as it amounts to changing the key plan for the year concerned, and if there was to be any variation in the size of the plot. In term of clause (vii) of the terms and conditions of allotment of commercial plots by auction, it could be made only before or at the lime of execution of the perpetual lease deed and not later. He asserts that in view of clauses XI and XII of the perpetual lease deed executed in favor of respondent No. 4, for any variation in the size of the plot thereafter, the DDA had to auction the additional plot in compliance with the provisions of the Nazul Land Rules which having not been done the proposal for alleged allotment was illegal and could not be put through. On the other hand. Mr. Pradeep Gupta, learned counsel for the respondent No. 4 contends that there being no violation of the Master and Zonal Plan, there is no violation of Section 14 of the Delhi Development Act; the said additional piece of land was allotted to respondent No. 4 because the DDA wanted the said respondent allottee of plot No. 3, to construct the link verandah between Plot Nos. 3 and 4 and in terms of clause (vii) of the terms and conditions of auction of commercial lands, which respondent No. 4 was bound to accept and pay extra price which he did. He maintains that no construction having been permitted, by the DDA above the verandah, the said respondent No. 4 was only compensated for extra expense on construction of link verandah by allowing him to have

basement underneath the said verandah; and that no prejudice having been caused to the petitioners on account of construction of basement by the respondent No. 4 beneath the additional area of 8 x 20, they could make no grouse of it.

12. Thus the question which falls for consideration is whether there has been any illegality of actionable impropriety in the DDA allotting additional land measuring 8 x 20 to respondent No. 4 and permitting him to have basement underneath it and if sowhether the DDA should be directed to rescind the said decision.

13. The transfer of the said additional plot is assailed mainly on the pleas that it violates the provisions of Rule 26 of the Nazul Land Rules and the provisions of Section 14 of the Delhi Development Act. To understand the controversy involved, it would be convenient to notice the statutory provisions relevant thereto.

14. Chapter III of the Delhi Development Act deals with the Master Plan and the Zonal Development Plans: Section 7 of the Chapter deals with civic services of, and Master plan for Delhi; Section 8 deals with Zonal Development Plan and Secion 9 which also defines the word plan for the purpose of this Section and Sections 10, 11, 12 and 14, to mean as Master Plan as well as the development plan for a zone, deals with submission of plans to the Central Government for approval. Section 11 falling in Chapter IIIA provides for modification of the said plans. Chapter IV refers to development of lands and Chapter V with acquisition and disposal of land. Section 15 falling in Chapter V refers to compulsory acquisition of land. It provides that after acquisition, the land may be transferred to the DDA or any other local authority which may dispose of the same after undertaking or carrying out development thereon. The land, other than the above, vests in the Union and is called Nazul land and may be placed under Section 22 of the Delhi Development Act at the disposal of DDA, to be dealt with under Nazual Land Rules. Section 14 of the Delhi Development Act lays down;

14. User of land and buildings 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 touse upon such terms and conditions as may beascribed by regulations made in this behalfany land or building for the purpose and tothe extent for and to which it is being used upon the date on which such plan comes into force.

The plans referred to in Chapter III of which Section 14 forms a part, refer only to the Master Plans and the Zonal Development Plans. The Master Plan serves as the basic pattern of the framework and it is within this framework that the Zonal Development Plans are to function. It is general and basic plan which indicates the trend and tendencies but does not enter into details. On the contrary the Zonal Development Plan is a detailed exercise, specifying the purpose for, which a particular area in a zone can be put to use. The Commercial, residential, recreational etc. Section 14 deals with user of land and buildings in contravention of aforesaid plans. No violation of the Master Plan of the Zonal Development Plan has been alleged or is shown to exist.

15. The DDA has produced a corrected traced copy of the lay out plan of 1967 and a copy of 1974 lay out plan, which do delineate the existence of the link corridor measuring 8 x 20 now in question. The petitioners have challenged the authenticity of the traced copy of 1967 lay out plan and it is urged on their behalf that delineation of the link corridor therein, measuring 8 x 20 is a fabrication, which was not there in the original plan and that as a corollary its delineation in any subsequent plan would be without basis. It is maintained that the story of the link corridor now set up, is a made up affair.

16. As noted, the thrust of the argument of learned counsel for the petitioners is the alleged violation of the lay out plan, which he terms as key plan. His contention is that there was no provision in any lay out plan, for the alleged link corridor, measuring 8 x 20 and the said additional space could not be allotted for the purpose and that the provision thereof now indicated in the latter plans being not in conformity with the earlier lay out plans and in any case these not being approved by the Central Government, tantamounts to violation of Section 14 of the Delhi Development Act, we do not agree. As noticed above, the Delhi Development Act

in general andSection 9 of the said Act in particular, only refer to the'Master Plan and Zonal Development Plan and not the lay out plan, which is sort of working drawings prepared by the DDA. Any departure from the lay out plan, strictly speaking, cannot be equated with the violation of the Master Plan or the Zonal Development Plan, which are statutory and termed as a violation falling within the ambit of Section 14 of the Delhi Development Act.

17. The issue of genuineness of the traced copy of lay out plan of 1967, produced before us, is a complex question of fact, which, we feel, may require evidence for its determination and on that account the dispute cannot be appropriately resolved in these proceedings. At any rate, in view of our finding that any departure from the lay out plan does not tantamount to violation of Section 14 of the Delhi Development Act, it is unnecessary to further go into the question.

18. Much stress has been laid by learned counsel for the petitioners, taking exception to the proposal for transfer of the additional land measuring 8 x 20 by the DDA on the plea that this being a Nazul land, transfer thereof is governed by the provisions of Nazul Land Rules, Rule 26 whereof stipulates those allotments and by public auction, which method having not been adopted for the impugned transfer, its allotment to respondent No. 4 is illegal.

19. Rule 26 falling in Chapter III of the Nazul Land Rules reads thus:

'26. Allotment by auction.

Subject to the plans, such Nazul land as the Authority may decide, with the previous approval of the Central Government, may be allotted by auction in the manner provided in this Chapter.'

20. It is clear from the above Rule that Nazul land has to be allotted by auction in the manner provided in the said chapter. It is common ground that the said transfer is sought to be made without putting the additional plot measuring 8 x 20 to auction. This is in violation of Rule 26 of the Nazul Land Rules.

21. Learned counsel for respondent No. 4 however, submitted that the proposed allotment of additional land is not being made independently requiring auction but

as a part of auctioned plot No. 3 by way of variation of size of the plot put to auction, which variation is permissible under and is covered by Clause (vii) of the terms and conditions of allotment by auction, published for auction of plot No. 3 and allotted to the said respondent on auction, In this context, learned counsel referred to supporting nothings in the record produced by the DDA and in particular he invited our attention to an office memo dated 20 February, 1992 marked to the Dy. Director (Cl) by Mr. v. P. Nandia, Sr. Architect (EZ), a copy whereof was also placed on record by him.

22. Clause (vii) of the terms and conditions of auction of plot No. 3 is reproduced as under:

'(vii) The size of the plot announced by the DDA being only approximate, bidder whose bid is accepted shall have to accept variation up to 15% either way in the areas of the plot for which the bid has been offered subject to payment or refund, as the case may be, of the amount of premium of such varied area at the auction rate. The auction rate per sq. mtrs. for this purpose shall be calculated by dividing the amount of the premium offered as the highest bid by the area of the plot announced.'

23. Having regard to the clear language of the aforesaid clause, we are of the opinion that the argument of learned counsel for respondent No. 4 is misconceived. Clause (vii) aforesaid refers to the variation up to 15% either way in the area of the plot for which the bid has been offered and not the F.A.R. The area of the additional plot sought to be allotted and transferred, as contended, is more than 15% of the size of the plot put to auction on 15 Nov. 1991. The proposed transfer, thereforee, does not fall within the ambit of Clause (vii) of the terms and conditions of the said auction and cannot be justified on that score. In any case variation of the size of the plot, if any could have been shown in the lease deed for plot No. 3executed on 29 May 1992, particularly when the so-called discrepancy was allegedly detected and allotment recommended by way of variation of size of plot No. 3 much prior to the execution of the lease deed in respect of plot No. 3.

24. Having come to the conclusion that the allotment of the said additional plot measuring 8 x 20 is not in accord with Rule 26 of the Nazul Land Rules, the next

question which falls for consideration is whether the DDA should be directed to rescind its decision to transfer the said piece of land to respondent No. 4.

25. It is true that there has been technical breach of Rule 26 of the Nazul Land Rules and in the normal course we would have quashed the DDA's action in allotting the said additional piece of land to respondent No. 4. The breach was rectifiable by the Union of India -- Respondent No. 2, under Section 41(3) of the Delhi Development Act but no action in that behalf has been taken or objected to by them. Having seen the latest photographs of the site in question, we are of the view that it is not a fit case where we should exercise our extra-ordinary jurisdiction under Art. 226 of the Constitution. From the said photographs it is clear that neither any obstruction is likely to be caused to the free flow of pedestrians in front of the petitioner No. 2's shop on account of construction of basement underneath the verandah covering the link corridor nor the said verandah is blocking half portion of the petitioners building as alleged. Learned counsel for respondent No. 4 has also given an understanding to the court on behalf of the said respondent that no obstruction, temporary or otherwise, shall be caused in the verandah in front of petitioners building on plot No. 4, which undertaking we hereby accept. It may be that there might be slight diminution of the day light to the clinic of petitioner No. 2 on the ground floor on account of construction of verandah on the corridor but incovenience, if any in this behalf, when compared with the convenience of the public at large, we feel, will also be immaterial.

26. In view of the aforesaid discussion we are of the view that no relief can be granted to the petitioners. The writ petition is accordingly dismissed. The Rule is discharged and the interim orders stand vacated, in the facts and circumstances of the case. We, however, make no order as to costs.

27. Petition dismissed.

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