

Chander Mohan and ors. Vs. Delhi Development Authority and ors.

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Court : Delhi

Decided On : Apr-03-2003

Reported in : 2003IIIAD(Delhi)232; 104(2003)DLT643; 2003(68)DRJ616

Judge : Sanjay Kishan Kaul, J.

Acts : [Delhi Development Act, 1957](#) - Sections 12, 12(2), 13, 15, 16, 22, 22(2), 22A, 22(I), 53(2), 53(3) and 53A; [Delhi Municipal Corporation Act, 1957](#) - Sections 313

Appeal No. : C.W.P. No. 2313 of 1981

Appellant : Chander Mohan and ors.

Respondent : Delhi Development Authority and ors.

Advocate for Def. : Ajay Verma, Adv.

Advocate for Pet/Ap. : Keshav Dayal, Senior Adv. and; S.S. Rana and; B.S. Rana

Disposition : Petition dismissed

Judgement :

Sanjay Kishan Kaul, J.

1. The grievance of the residents of Panch Shila Park South that respondent No. 1 - DDA was constructing an office complex on the land of the society has given rise to the present writ petition.

2. The writ petition was originally filed by five petitioners, who are all residents of Panch Shila Park South impleading the Panch Shila Cooperative House Building Society Limited as respondent No. 2, but the said society was subsequently transposed as petitioner No. 6 in terms of the Order dated 24.03.1999.

3. A Memorandum of Agreement was executed by the President of India and the petitioner No. 6 society on 19.01.1963 granted license to the society to enter upon the land for the purposes of making services and taking measures as also for preparing a lay-out plan for development of residential plots in lieu of the consideration deposited by the society of Rs.32,37,960/- as also the additional sums further deposited subsequently. It is further provided in the said Agreement that on compliance of the terms and conditions by the society, the society would accept the lease of such of the residential plots as may be determined by the Chief Commissioner in his absolute discretion and that the President of India may dispose of the remaining parts of the land in any manner to whomsoever he thinks proper and the society shall not be entitled to claim refund of any amount by reason of having developed the land. The said clauses VII and VIII are as under:-

'VII. Upon the completion of the development of the land in accordance with the provisions contained herein and to the satisfaction of the Chief Commissioner and issue by him of a certificate to that effect and provided that the other conditions of this Agreement have been duly observed, the President will, in consideration of the expenses incurred by the Society on the development of the land and the payment of the premium and of the yearly rent as herein provided and on the covenants on the part of the Society to be contained in the lease, grant to the Society and Society shall accept a lease of such of the residential plots as may be determined by the Chief Commissioner in his absolute discretion, in perpetuity in the form of Lease attached hereto and referred to in Clause X hereof.

VIII. The President may dispose of the remaining parts of the said land in any manner and to whomsoever he thinks proper, and the Society shall not be entitled

to claim the refund of any amount or any part thereof paid towards premium or expended by it on the development of the land.'

4.The petitioner No. 6 society thereafter prepared a lay-out plan, which was duly approved by Municipal Corporation of Delhi (MCD) and on completion of development, the completion plan was submitted and was sanctioned in respect of the colony known as 'Panch Shila Park South'.

5.A perpetual lease deed was executed on 08.12.1967 in respect of the same land in question. The said perpetual lease deed referred to the Agreement dated 19.01.1963. The recital of the said lease deed is as under :-

'WHEREAS BY AN AGREEMENT dated the nineteenth day of January one thousand nine hundred and sixty three made between the parties hereto the Lesser granted a license to the Lessee to enter upon the piece of land measuring 442 (four hundred and forty two) bighas and 18 (eighteen) bids was or thereabouts situate in villages Sheikh Sarai, Shahpur Jat and Saria Shahji (zones F-3 and F.10) described in the Schedule to the said Agreement for the purpose of development in accordance with the layout plans sanctioned by the proper Municipal or other authority and the Lesser had agreed to demise, after completion of the development, such residential plots carved out of the land described in the schedule referred to above as may be determined in his absolute discretion by the Lt. Governor (hereinafter called 'the Lt. Governor') to the Lessee in the manner hereinafter appearing.'

6.The lease deed further states that in consideration of the society having undertaken to complete the development work, the residential plots are bequeathed to the society. The society thereafter subsequently executed the sub-leases. To the lease deed are annexed annexures showing size of the residential plots, khasra nos. of the land and the area where they situated as also the Aks Shajra of the village. In the Aks Shajra, which is Annexure 'H', the complete area is coloured, which is stated to be the area leased to the respondent No. 6 society.

7.It is further stated in the writ petition that some land, which form within the development area under Section 12 of the [Delhi Development Act, 1957](#)

(hereinafter to be referred as, 'the said Act') was also separately leased out to the society, which was developed in the colony, namely, Panch Sheel Park Colony, North. It is also stated in the writ petition that in respect of sites earmarked and reserved for public purposes in the colony, the concept of constructive trust called in law 'purposes trust' comes into existence as soon as the plan is sanctioned. It is stated that the petitioners noticed just prior to filing of the petition, some construction activity on site being carried on by the respondent No. 1 - DDA and on enquiry learnt that the object was to construct a two or three storey building over the said site. The writ petition was, thus, filed for restraining the respondent No. 1 from constructing on the said land on the ground that the respondent No. 1 had no right, title or interest in the land and for a further alternative Writ that the land should be utilised only for shops in terms of the lay-out plan.

8.The stand taken by the respondent No. 1 - DDA was that the area was earmarked for shopping area and a shop-cum-office complex was being constructed with shops on the ground floor and commercial offices on the two storeys constructed on the ground floor. It is further stated that the rights of the petitioners are to be governed by the terms of the license and the lease.

9.The writ petition was subsequently amended to incorporate the relief for demolition of the structure constructed and for the respondent No. 2 Corporation to carry out its statutory duties.

10.The petitioner No. 6 society (originally respondent No. 2) in its counter affidavit has stated that originally land measuring 442 bighas and 18 bids was was given for development purposes and subsequently an additional area measuring 67 bighas and 9 bids was was allotted totalling to 510 bighas and 7 biswas. It is stated that, in fact, two lease deeds were executed for different portions of the said residential areas located in the northern portion measuring 224 bighas and 3 bids was and in the southern portion measuring 248 bighas and 11 bids was vide two perpetual lease deeds dated 17.08.1966 and 08.12.1967 respectively. In respect of the area shown as a shopping area with measurement as 0.35 acres, it is stated that the MCD did not take over the services in respect thereof. The counter affidavit, in fact, supports the stand of the original petitioners and subsequently the

said society was transposed as petitioner No. 6.

11. The petitioner has made a reference to the letter dated 22/25.07.1967 particularly clauses 2 and 4 in respect of the permission for building activity of the society, which are as under :-

'3. The Society would maintain all the services in the colony in good order and to the satisfaction of the Commissioner till such time that the services of the colony are taken over by the Corporation.

4. The Society would make arrangements for handing over all the sites earmarked for open spaces, roads and such other public utility services including the land set apart for schools and similar public institutions free of cost to the Corporation.'

Subsequently, the letter dated 24.03.1975 was issued by the MCD for taking over of the services, but a reference was made only to roads, s.w. drains, water supply, sewer lines, fire hydrants, etc.

12. It is, thus, contended on behalf of the petitioners that the MCD never took over the land and that the respondent No. 1 - DDA has no locus standi or authority to construct on the said land without permission of the MCD. A reference has been made to the provisions of Section 313 of the [Delhi Municipal Corporation Act, 1957](#) (hereinafter to be referred as, 'the DMC Act') by the learned senior counsel for the petitioner to contend that the lay-out plan is approved by the Corporation and there is a prohibition to deal with any land except in conformity with the lay-out plan.

13. The claim of the petitioners is, thus, four-fold -

(i) the land belongs to the society and, thus, DDA cannot construct on the same;

(ii) DDA do not have any right, title or interest on the land in question;

(iii) the site in question is earmarked only for shops, thus, offices cannot be constructed on the site;

(iv) no permission had been obtained from MCD for the said construction.

14. Insofar as the first aspect is concerned, great emphasis has been laid by the learned senior counsel for the petitioners on the Schedules to the perpetual lease deed. The site in question is located on khasra Nos. 87/2 and 88/2 in Sheikh Sarai village, which is mentioned in Schedule 'D'. The lease deed refers to the said Schedules 'A', 'B', 'C' and 'D', which give details of the land, which was granted on license to the society to enter upon and develop the same. The boundaries of these Schedules 'A', 'B', 'C' and 'D' are stated to be delineated on the plans marked 'E', 'F', 'G' and 'H' respectively in the lease deed. The recital is made as under :-

'AND WHEREAS by mutual consent between the parties the Lesser agreed to the grant of a license to the Lessee to enter upon the piece of land measuring 510 (five hundred and ten) bighas and 7 (seven) biswas, or thereabouts situate at Villages Sheikh Sarai, Shahpur Jat, Sarai Shahji and Chiragh Delhi (Zones F.3 and F.10) which land is more particularly described in the Schedules marked 'A', 'B', 'C' and 'D' hereunder written and with the boundary thereof have for greater clearness been delineated on the plans marked 'E', 'F', 'G' and 'H' respectively annexed to these presents and thereon coloured red for the purpose hereinabove written and under the terms and conditions contained in the said agreement, and whereas the land described in the Schedules marked 'A' and 'B' and delineated on the plans wide Ring Road (hereinafter called 'the Northern Part') and the land described in the Schedules marked 'C' and 'D' and delineated on the plans marked 'G' and 'H' respectively is situated in the South of 150' wide Ring Road (hereinafter called the Southern Part).'

In Schedule 'H', the khasra Nos. 87/2 and 88/2 are shown apart from the other land and it is stated that the area is the one leased out to Panch Shila Park.

15. It is, thus, contended by the learned senior counsel for the petitioners that, in fact, the said common area has been leased out to the society and does not revert back to the President of India.

16. I am unable to accept the aforesaid contention of the learned senior counsel for the petitioners.

17.A bare reading of the license agreement and the perpetual lease deed makes it clear that the land was made available to the society for development purposes on license basis with the stipulated condition mentioned here-in-above that the lease deed would be executed only in respect of the residential plots. The lease deed itself refers to this fact and also bequeathed the title only in respect of the residential plots. Schedules `A', `B', `C' and `D' are the khasra Nos. of the land, which is the total land given on license and as is apparent from the recital above wherein it is stated that the land situated in these Schedules was given under the license agreement. Schedules `E', `F', `G' and `H' only give boundaries for the same and have to be understood in that context. The mere words `leased out' referred to in Schedule `H' cannot mean that the common areas have also been granted to the society.

18.The aforesaid is not peculiar to the society and is a normal practice in all such development schemes at least in Delhi. The land is made available on license basis to the society for development purposes and the common areas then revert back to the perpetual Lesser. The consideration paid under the license agreement is for these residential plots which will develop and is not really a consideration for the whole land, which is given for development purposes. The society has to pay certain amounts under the license as costs for the residential plots to be developed and also develop the whole land. Thus, price of the plots is the amounts paid by the society as also the cost of development of the whole land.

19.I have, thus, no hesitation in coming to the conclusion that the land in question in respect of the disputed site located in khasra Nos. 87/2 and 88/2 never vested with the society in terms of the lease deed and is with the perpetual Lesser.

20.The second aspect is relating to the right, title and interest of the respondent No. 1 to enter upon and construct on the land in question. There is no doubt that the original license deed and the lease deed was in the name of the society. In terms of Section 12 of the said Act, a declaration has to be issued by the Central Government by notification declaring the area to be development area and whereupon the land vest with DDA. In terms of Section 12(2) of the said Act, the DDA is not to undertake or carry out any development of land in any area, which is

not a development area. Thus, the respondent No. 1 has to establish that a notification is issued declaring the area as a development area as a consequence of which the land vest in the respondent No. 1 - DDA.

21. Interim injunction orders were initially granted in favor of the petitioner and an application was filed by the respondent No. 1 - DDA for vacation of the said stay orders granted on 30.11.1982 vide CM No. 2638/1984. It is stated in para 7 of the said application as under :-

'7. That the applicant besides relying upon the facts and contentions stated in the counter to the writ petition, as well as in reply to the amendment application made by the petitioners, it has been now discovered that the land where the shopping centre has been constructed by the D.D.A. forms part of Khasra No:87/2 and 88/2 measuring 2 bighas and 7 bids was and 1 bigha 6 biswas, total 3 bighas and 13 biswas, situate in the revenue estate of village Sheikh Sarai. The said land stands acquired vide Award No:1405. The physical vacant possession of the awarded land was taken over by the Land Acquisition Collector U/s. 16 of the Act on 23.11.62. Subsequent to this, the land was placed at the disposal of the D.D.A. vide Notification No:F.8(49)/63-L&H; dated 3.1.68. Apart from that, the land allotted to the Society 299 bighas was placed at the disposal of the D.D.A. vide Notification No:F.10(7)/80-L&B; dated 9.2.81, and whereas the land on which the shopping centre has been constructed by the D.D.A. Does not form part of the alleged Society's land.'

The aforesaid averments show that the land in question was acquired in 1962 and was placed at the disposal of the DDA vide notification dated 03.01.1968. In fact, it is stated that the land allotted to the society measuring 299 bighas was also placed at the disposal of the DDA vide a subsequent notification dated 09.02.1981. It is, thus, stated that the land, in any case, does not belong to the society as also by reason of the fact that any parks and land vested with the President of India in terms of the license deed and the lease deed. In reply to the said application, the petitioners have stated that they have no knowledge about the notification dated 03.01.1968 and have further stated that no notification had been filed on record along with the application, though reference was made to the

same. It has been stated that even if there is any such notification, the same would be illegal in view of the fact that two khasras are already leased out to the society.

22.The said application was, in fact, never disposed of and in terms of the orders dated 17.09.1984, it was directed that it would be appropriate to hear the whole matter instead of hearing the application and, thus, directions had been issued to list the writ petition in January, 1985.

23.The plea of the petitioners cannot be accepted since it has been held that the land does not vest with the society. However insofar the notifications in favor of the petitioners are concerned, the same were shown to the Court during the course of hearing with copy to the opposite site and were directed to be filed on record. The notification dated 03.01.1968, which gives details of khasra Nos., is as under :-

'DELHI ADMINISTRATION : DELHI

NOTIFICATION

Dated the 3.1.68

No.F.8(49)/63-L&H;(ii):- In pursuance of the provisions of sub-section (I) of Section 22 of the [Delhi Development Act, 1957](#), and by virtue of the power of the Central Government delegated to him by the President vide Government of India, Ministry of Health letter No.F.8-6/61-LSG, dated the 6th May, 1961, the Lt. Governor Delhi pleased to place at the disposal of the Delhi Development Authority, for the purpose of development in accordance with provisions of the said Act, the nazul lands described in the schedule below on the terms and conditions agreed by the said Authority in its Revolution No. 114, dated the 10th May, 1961.

S C H E D U L E

Locality	or	Total Area	Khasra No.	Area	Village	-----	-----	-----
-----	...	...	...	...	Sheikh Sarai	87/2	2 - 0788/2	1 - 06... .. By Order

sd/-

(M.L. GROVER)

DEPUTY SECRETARY (LAND & BUILDING),

DELHI ADMINISTRATION, DELHI.'

The aforesaid notification shows that khasra Nos. 87/2 and 88/2 had been placed at the disposal of DDA in terms of the said notification.

24.The notification dated 09.02.1981 relates to a number of villages, where land has been placed at the disposal of the DDA and Sheikh Sarai is mentioned at Seriall No. 60, land measuring 299 bighas. A reading of the aforesaid notification, thus, makes it clear that the site in question located in khasra Nos. 87/2 and 88/2 was in fact placed at the disposal of the DDA in terms of the notification dated 03.01.1968 and in view thereof it is the DDA, which had the jurisdiction to develop and construct on the land in question.

25.Section 22 of the said Act provides that the Central Government may by notification place at the disposal of the DDA all or any developed and undeveloped lands in Delhi to develop in accordance with the provisions of law. In terms of Section 22A of the said Act, the DDA can carry on development of any land, which has been transferred to it or placed at its disposal under Section 15 or Section 22 even if such land is situated in any area which is not a development area. Section 15 refers to the compulsory acquisition of land. The land in dispute in the present case has, thus, been placed at the disposal of the DDA in terms of the said Act as per the notification dated 03.01.1968.

26.In view of the aforesaid finding, so far as the fourth issue of construction by DDA is concerned, no doubt remains in respect thereof. Once the land is placed at the disposal of the DDA, it is the DDA which has the full authority to construct and carry out development on the land in question. In fact, Section 22(2) of the said Act provides that no development of any nazul land shall be undertaken or carried out except by or under the control and supervision of the Authority once it has been placed at the disposal of the Authority, which is apparent from the reading of Sections 12, 15, 22 and 22A of the said Act. Section 13 of the said Act provides for an application for permission from the DDA for any person to carry out any construction on an area declared as a development area. Section 53(2) of the said

Act provides that the provisions of the said Act and the rules and regulations made there under shall have the effect notwithstanding anything inconsistent therewith contained in any other law and in terms of Section 53(3), the permission for development obtained under the said Act, once obtained, shall not be deemed to be unlawful by reason of the fact that the approval or sanction require under any other law for development has not been obtained. Thus, once the land is placed at the disposal of the DDA and the DDA is, thus, carrying on construction, there is no question of obtaining any permission from the MCD under the DMC Act. Section 53A of the said Act, in fact, restricts the power of the local authority to make rules and regulations in respect of matters including erection and re-erection of buildings.

27.The last and the third issue in question relates to the fact whether it was open to the DDA to construct shops on the ground floor and offices on two storeys above that, when the area had been earmarked for local shopping complex. Local shopping complex under the Master Plan includes 'commercial offices'. This is apparent from the activities permitted in the uses/use activities permitted in use premises as defined in the Master Plan. Once the Master Plan itself provides for such permission to use as commercial offices, the DDA cannot be faulted with for construction of a complex in question. In fact, ground floor is to be used for shops and further two storeys thereupon are to be utilised for office complex.

28.It is relevant to note that once the petitioner society has no right in the land and no other authority including MCD has objected to the construction, it is not really open to the petitioner to make a grievance about the construction by DDA. The whole writ petition proceeds on the premise that the land vest with the petitioner society, which is not correct. In para 24 of the counter of the MCD, it is sated that 'Construction start after getting the necessary approval under the Building Bye-laws, and Zonal Regulations of Master Plan'.

29.In view of the aforesaid, I do not find any force in any of the contentions made on behalf of the petitioners. Unfortunately due to pendency of the writ petition, the complex partly constructed has remained in the same position unoccupied, which is really a loss of national resources. The shopping and office complex, in fact,

would facilitate the residents of the locality in a number of ways.

30. The writ petition is dismissed leaving the parties to bear their own costs.

31. Interim orders stand vacated.

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