

Sudesh Solanki Vs. Delhi Development Authority

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Court : Delhi

Decided On : Dec-04-2012

Judge : D.Murugesan,Chief Justice

Appellant : Sudesh Solanki

Respondent : Delhi Development Authority

Advocate for Pet/Ap. : Mr. Devesh Pratap Singh

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI Reserved on:

19. h November, 2012. Pronounced on:04 December, 2012 % + LPA No. 705/2012 SUDESH SOLANKI Through: Appellant Mr.N.S.Dalal, Adv. with Mr. Devesh Pratap Singh, Adv. Versus DELHI DEVELOPMENT AUTHORITY Respondents Through: Mr.Pawan Mathur, Adv. CORAM: HONBLE THE CHIEF JUSTICE HONBLE MR. JUSTICE RAJIV SAHAI ENDLAW D. MURUGESAN, CHIEF JUSTICE C.M.No.18030/2012 (delay of 22 days in filing) For the reasons stated in the application, the same is allowed and the delay of 22 days in filing the appeal is condoned. The application is disposed of. LPA No. 705/2012 1. This intra Court appeal is directed against the order dated 18.07.2012 passed by the learned Single Judge dismissing the writ petition filed by the appellant. The appellant is the owner of the land measuring 8 bighas and 19 biswas in Khasra No.59/13 and 14 situated in the revenue estate of Village Jaunti, Delhi. On coming to know of an advertisement dated 02.11.2004 that IBP Company Limited wanted

to allot retail outlet for sale of petrol/diesel, the appellant made an application with the IBP Company Limited for allotment of retail outlet in the land in question. As the land was classified as agricultural land an application was made by IBP Company Ltd requesting from Delhi Development Authority (DDA) for conversion of that land to commercial purpose and also requested NOC. The request was rejected by the DDA vide their communication dated 16.07.2007 on the ground that the site in question proposed for locating petrol pump falls in green belt as per the MPD-2021 and the petrol pump cannot be permitted to be located in green belt. The request for NOC was also rejected on the ground that the land falls in the Zonal Developmental Plan of Zone-N in which zone, location of fuel station was not permissible.

2. The said order was questioned by the appellant herein unsuccessfully in the writ petition. The core contention of the appellant was that on the basis of a recommendation of the technical committee for grant of NOC in respect of three cases which were similarly placed, this Court by order dated 21.05.2008 made in W.P.(C) No.2703/2007 etc. directed the DDA to consider the cases of the petitioners in paramateria with the cases of other three parties who were accorded approval. The learned Judge having noticed that the said judgment was a judgment in personam and not a judgment in rem, rejected the contention particularly by following a later decision of the Division Bench of this Court made in LPA No.169/2011 titled Chander Meenakshi Vs. DDA & Anr. decided on 12th October, 2011.

3. Being aggrieved by the above order, the present appeal has been filed. We have considered the submissions made on behalf of the appellant as well as the respondent and we find no merit to interfere with the order of the learned Judge in dismissing the petition.

4. It is not in dispute that the land in question is classified as agricultural land and location of petrol pump is a commercial activity. In the event an agricultural land is to be utilized for commercial purpose, no objection certificate from DDA is required. The request for no objection certificate was rejected mainly on the ground that the land falls under green belt as per MPD-2021, particularly under

Zonal Development Plan of Zone-N. The Master Plan is not an issue before us as it has not been questioned. In that event, DDA is bound by the Master Plan. It is not in dispute that, as per the Master Plan, location of a petrol pump is not allowed on a land falling under green belt. Equally, such location of a petrol pump is also not permissible in the event the land in question falls under Zonal Development Plan of Zone-N. Hence, there is no right either in the appellant or the IBP Company Limited to seek for NOC as a matter of right.

5. The order of rejection of NOC was also questioned by placing reliance on an earlier order of this Court dated 21.05.2008 (*supra*). Of course, in that order the learned Single Judge having noticed that similar request for grant of NOC were considered and approval was accorded by the technical committee, allowed the writ petition with a similar direction. However, the said judgment cannot be pressed into service for similar relief, for two reasons.

6. Firstly, the said judgment, as rightly contended by the learned counsel for the respondent, is a judgment in personam and not a judgment in rem as it is not a decision on the basis of law but on the facts of the case. Secondly, after the above judgment, the issue as to whether an NOC could be granted for conversion of agricultural land to commercial purpose came up for consideration before a Division Bench of this Court in the case of *Chander Meenakshi Vs. DDA & Anr.* (*supra*). In that judgment, it has been observed as follows: 11. A holistic reading of the MPD-2021 with reference to para 3 and para 12 would highlight that setting up of petrol pumps in Delhi stands regulated by the norms as per MPD2021 and the legislative field stands covered by the Master Plan for Delhi 2021 and thus the Regulations framed in the year 2005 are of no consequence and are deemed to have been repealed or for that matter have to be treated as a dead letter. The reason is obvious. Master Plan for Delhi, as conceded by learned counsel for the appellant, has the force of a statute. The reasoning of the learned Single Judge in the order impugned, being the order dated 17.1.2011, is accordingly affirmed by us.

12. xxx xxx xxx 13. Now, if somebodys application is processed and finalized by a date before which law gets amended, it would not mean that in law there is a

discrimination for the reason it is settled law that by applying for a permission no vested right is acquired. As held in the decision reported as 2001 (5) SCC. 14 to 16. xxx xxx xxx 17. The learned Single Judge has granted permission to the appellants to re-apply to DDA for a sanction to set up a petrol pump as per MPD-2021 and this we find is the only benefit which could be granted to the appellants. We would only supplement that DDA should immediately finalize the urban extension in the erstwhile rural zones i.e. zones J, K, L, N & P i.e. the zones envisaged vide para 3.2 of the Master Plan as required for urban extension on lands which hithertofore were rural lands.

7. The learned Judge has rightly relied upon the above judgment for rejecting the case of the appellant. That apart, merely because some of the request for grant of an NOC was considered contrary to the MPD-2021, similar relief cannot be claimed by another applicant in the event earlier direction runs contra to the Master Plan. In fact, the learned Judge has ultimately given a liberty to the appellant to re-apply to the respondent in terms of the decision in the case of Chander Meenakshi Vs. DDA & Anr. (supra) for sanction to set up a petrol pump as per MPD-2021. The appellant can very well do so and pursue the remedy as per MPD-2021.

8. In view of the above reasons, we find no grounds to interfere with the order of the learned Single Judge in the writ petition. The appeal is accordingly dismissed. CHIEF JUSTICE RAJIV SAHAI ENDLAW (JUDGE) DECEMBER 04 2012 anb'

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