Dr. G.N. Khajuria & Ors vs Delhi Development Authority & Ors on 31 August, 1995

Equivalent citations: 1996 AIR 253, 1995 SCC (5) 762, AIR 1996 SUPREME COURT 253, 1995 (5) SCC 762, 1995 AIR SCW 4024, 1995 HRR 557, (1996) 63 DLT 775, (1996) 4 JT 7 (SC)

Author: B.L Hansaria

Bench: B.L Hansaria, K. Ramaswamy

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            PETITIONER:
DR. G.N. KHAJURIA & ORS.

         Vs.

RESPONDENT:
DELHI DEVELOPMENT AUTHORITY & ORS.

DATE OF JUDGMENT31/08/1995

BENCH:
HANSARIA B.L. (J)
BENCH:
HANSARIA B.L. (J)
RAMASWAMY, K.

CITATION:
 1996 AIR  253            1995 SCC  (5) 762
 1995 SCALE  (5)172


ACT:



HEADNOTE:



JUDGMENT:
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JUDGMENT HANSARIA,J.

The appellants are some of the residents of Sarita Vihar. According to them, respondent No. 1, Delhi Development Authority (DDA), permitted a nursery school to be opened in Park No.6 of Pocket `A' of Sarita Vihar by respondent No.2 in complete violation of the provisions of Delhi Development

Act, 1957 (for short `the Act'). When they approached with this grievance, the High Court of Delhi found no merit and dismissed the writ petition.

2. The short and important point which is required to be determined is whether the school in question is in possession of the land in question in violation of the statutory provisions contained in the Act. According to Shri P.P. Rao, learned Sr. Counsel appearing for the appellants, there is no escape from the conclusion that the school was allowed to be opened in the park in violation of what has been contained in Sections 7 and 8 of the Act. The stand of DDA on the other hand, as put forward by Shri Jaitley, is that the appellants have either mis-conceived the stautory provisions or are interested, for one reason or the other, in seeing that the nursery school does not function at the place allotted to it by the DDA. The counsel for respondent No.2 butresses this submission by contending that a school having been allowed to be opened and this respondent having spent substantial amount of money in raising a permanent structure at the site, we may not do anything, at this stage, to uproot the school which would cause not only financial loss to the respondent but would hamper the educational progress of the students as well.

3. A perusal of Sections 7 and 8 of the Act, which find place in Chapter III under the heading "Master Plan and Zonal Development Plans", shows that the Development Authority is under an obligation to prepare a master plan which shall define the various zones into which Delhi may be divided for the purposes of development. Section 8 enjoins that a zonal development plan may contain a site-plan and use-land for the development of the zone and show the approximate locations and extents of land-uses proposed in the zone, inter alia, for such public works and utilities as schools, public and private spaces. This is what finds place in sub-section (2) of Section 8. Clause (d) of sub-section (2) provides that the zonal development plan to be prepared by the Authority would in particular contain provisions, inter alia, for the allotment or reservation of land for open spaces, gardens, recreation grounds and schools, as mentioned in sub-clause (ii). Our attention is further invited by Shri Rao to Rule 4 of the Delhi Development (Master Plan and Zonal Development Plan) Rules, 1959, whose sub-rule (3) (g) states that a draft master plan may include "education, recreation and community facilities plan"

> indicating proposals for parks, open spaces, recreational, educational and cultural centres.

4. Relying on the aforesaid provisions, the submission advanced for the appellants is that the Development Authority was under an obligation to specify in the zonal development plan, locations and extents of land-uses, inter alia, for parks and schools. According to Shri Rao, the land which ultimately was allotted to respondent No. 2 for opening a nursery school had originally been kept reserved for park because of which the land could not have been allowed to be used for opening the school by any executive or administrative decision of the DDA.

5. Shri Jaitley contends that the zonal development plans are really required to show in broad cutlines "Approximate locations of High Schools and Primary Schools" as has been mentioned in what has been described as "Sub-Division Regulations" a copy of which is placed at page 196 of the paper book. It is submitted by Shri Jaitley that nursery schools are not required to be indicated

either in the master plan or the zonal development plan, as they are not taken to be schools stricto sensu, but are akin to recreational places, some space for which is required to be reserved in residential colonies in the lay-out meant for them. The further limb of this submission is that in the lay-out for Pocket `A' of Sarita Vihar, some space was, in fact, reserved for nursery schools. Not only this, Shri Jaitley would contend that there was no park at all at the place where the school was allowed to be established.

6. We would agree with Shri Jaitley that in the zonal development plan visualised by Section 8 of the Act, land used for nursery school may not be indicated, as a distinction is permissible to be made between a high school and a primary school on one hand and nursery school on the other. Even so, we are of the firm view that any lay-out for residential colony, like that of Sarita Vihar, has to indicate space reserved, not only for nursery school, but for park. This follows from what has been stated in Sections 8(2) (a) and 8(d) (ii) of the Act and Rule 4(3) (g) of the aforesaid Rules. We have thought it fit to mention about this aspect because in the lay-out plan of Sarita Vihar, as put on record, we find no mention about reservation of space for park. This is simply inconceivable to us.

7. We also do not entertain any doubt that at the site at which the school was allowed to be opened, there was a park. This is apparent from the report submitted by Director (Monitoring) to the Vice-Chairman of the Development Authority pursuant to his order dated 26.10.1992 which he came to pass on a reference being made to him by the Chief Secretary on 23.10.1992. The Chief Secretary had passed the order on a representation made by some residents of Sarita Vihar, Pocket `A', complaining about unauthorised construction in Park No.6. The Director (Monitoring) visited the site on 2.11.1992 and found that a part of the park located in Pocket `A' had actually been enclosed with a boundary wall by an institution named Rattanatrya Educational Research Institute, which body is none else than respondent No.2. The report further says that the Institute was running a nursery school in a few temporary barracks constructed along with one of the boundary walls. On discussion with some office bearers of the Institute it was informed that the land in question measuring 800 sq. metres had been allotted to the Institute by the DDA in July 1988 for the purpose of running a nursery school. The Director (Monitoring) reported that the residents of surrounding areas started making objections when this Institute took up the construction of a regular school building after getting the plan duly sanctioned from the Building Department of the DDA. The report has categorically mentioned that in the original lay-out (which we understood to be of 1984) there was no provision for a nursery school in the park in question. Subsequently, however, some portion of the park was carved out for the nursery school. That such a park exists was sought to be proved by Shri Rao by producing certain photographs as well, one of which contains a sign board mentioning about "D.D.A. Park".

8. We, therefore, hold that the land which was allotted to respondent No.2 was part of a park. We further hold that it was not open to the DDA to carve out any space meant for park for a nursery school. We are of the considered view that the allotment in favour of respondent No.2 was misuse of power, for reasons which need not be adverted. It is, therefore, a fit case, according to us, where the allotment in favour of respondent No.2 should be cancelled and we order accordingly. The fact that respondent No.2. has put up up some structure stated to be permanent by his counsel is not relevant, as the same has been one on a plot of land allotted to it in contravention of law. As to the

submission that dislocation from the present site would cause difficulty to the tiny tots, we would observe that the same has been advanced only to get sympathy from the Court inasmuch as children, for whom the nursery school is meant, would travel to any other nearby place where such a school would be set up aither by respondent No.2 or by any other body.

9. The appeal is, therefore, allowed by ordering the cancellation of allotment made in favour of respondent No.2. It would be open to this respondent to continue to run the school at this site for a period of six months to enable it to make such alternative arrangments as it thinks fit to shift the school, so that the children are not put to any disadvantageous position suddenly.

10. Before parting, we have an observation to make. The same is that a feeling is gathering ground that where unauthorised constructions are demolished on the force of the order of courts, the illegality is not taken care of fully inasmuch as the officers of the statutory body who had allowed the unauthorised construction to be made or make illegal allotments go scot free. This should not, however, have happen for two reasons. First, it is the illegal action/order of the officer which lies At the root of the unlawful act of the concerned citizen, because of which the officer is more to be blamed than the recepient of the illegal benefit. It is thus imperative, according to us, that while undoing the mischief which would require the demolition of the unauthorised construction, the delinquent officer has also to be punished in accordance with law. This, however, seldom happens. Secondly, to take care of the injustice completely, the officer who had misused his power has also to be properly punished. Otherwise, what happens is that the officer, who made the hay when the sun shined, retains the hay, which tempts other to do the same. This really gives fillip to the commission of tainted acts, whereas the aim should be opposite.

11. We, therefore, call upon respondent No.1 to make an enquiry and inform the Court within three months as to who are the officers who had made the unauthorised allotment and permitted unauthorised construction. On knowing about this, such further orders would be passed as deemed fit and proper.

12. Put up after three months.