

(2014) 07 DEL CK 0213

Delhi High Court

Case No: W.P. (C) 4521/2014 and CM Appl. 9001/2014

Dyal Singh College

APPELLANT

Vs

South Delhi Municipal
Corporation

RESPONDENT

Date of Decision: July 23, 2014

Hon'ble Judges: Manmohan, J

Bench: Single Bench

Advocate: A.P.S. Ahluwalia, Senior Advocate with S.S. Ahluwalia, Advocate for the Appellant; Gaurang Kanth, Malaya Kumar Chand, Mohinder J.S. Rupal and Ankur Chibber, Advocate for the Respondent

Final Decision: Disposed Off

Judgement

Manmohan, J.

By way of the present writ petition, petitioner wants respondents No. 1 and 2 to sanction and approve its Building Plans without linking the same with the issue of ownership of Sunheri Nallah which is now covered.

2. Petitioner also challenges Town Planners Letter dated 28th May, 2014 wherein it is stated that "the storm water drain (the whole portion of which is covered now) pertains to South Delhi Municipal Corporation. The South Delhi Municipal Corporation desires to pass it on to DTC for parking of buses which is essential in the public interest. Accordingly, the portion, which is covered drain, be immediately allotted to DTC by South Delhi Municipal Corporation. This decision will also de-link the whole contentious issue and therefore after that, the building plans of Dayal Singh College can be processed quickly as per building bye-law".

3. Mr. A.P.S. Ahluwalia, learned senior counsel for petitioner states that the Land and Development Office, Nirman Bhawan, New Delhi, vide its letters dated 14th January, 1986 and 04th June, 2014 has confirmed that "the area occupied by the water drain passing through the College is part of the land allotted to the College

for playground".

4. Mr. Ahluwalia further states that the Commissioner, MCD vide its letter dated 17th March, 2010 had also assured the petitioner-college that "the covered portion of Sunheri Nalla passing through the campus of Dayal Singh College would be handed over to the College authorities except 20 mtr. Strip [out of total 40 mtr., ROW of the nallah] for the usage of students as playground subject to the condition that the ownership rights of the same would continue to vest with MCD".

5. Mr. Ahluwalia also draws this Court's attention to the communication issued by the Private Secretary to the Lieutenant Governor dated 26th February, 2014 wherein it is recorded that the Lieutenant Governor has desired that "the Building Plans of the College may be passed as per BBLs expeditiously as the same are pending since 2009 and de-link the issue of College building plans with that of storm water drain".

6. Mr. Gaurang Kanth, learned counsel for respondents No. 1 and 2/SDMC states that in the event the petitioner's Building Plan and Layout Plan are sanctioned it would severally prejudice the respondents as in that eventuality the respondents would be estopped from contending that they are the owners of covered portion of Sunheri Nallah.

7. In rejoinder, Mr. A.P.S. Ahluwalia, learned senior counsel for petitioner states that in the event petitioner gives up its claim of Sunheri Nallah, it would run the risk of L&DO cancelling its lease. He states that petitioner is in possession of the covered portion of the Sunheri Nallah as a lessee of L&DO.

8. Mr. Ahluwalia further contends that as the petitioner-college wants to carry out construction on an undisputed area, the respondent should process the Building Plans.

9. In the opinion of this Court, it is of paramount importance that in a city like Delhi infrastructural facilities like Schools and Colleges should be expanded and improved upon forthwith.

10. This Court is further of the view that the issue of ownership and possession of Sunheri Nallah should be de-linked from the issue of sanctioning of Building Plans as the petitioner admittedly wants to carry out construction on undisputed portion of land.

11. Accordingly, without prejudice to the rights and contentions of the parties, with regard to ownership and possession of covered portion of Sunheri Nallah, respondents No. 1 and 2/SDMC is directed to process the petitioner's Building and Layout Plans within a period of eight weeks.

12. This Court may mention that its conclusion is in consonance with the decision of the Lieutenant Governor of Delhi dated 26th April, 2014.

13. The issue of ownership and possession of Sunheri Nallah is left open to be adjudicated upon in appropriate legal proceedings to be initiated by either of the parties.

14. It is reiterated that sanction of the Building Plan and Layout Plan by the respondent-Corporation would not create any special equity or right in favour of the petitioner in respect of Sunheri Nallah.

15. With the aforesaid directions, present writ petition and application are disposed of.