

(2013) 05 DEL CK 0479

Delhi High Court

Case No: Writ Petition (C) 1518 of 2013

M.G. Ramachandran and
Another

APPELLANT

Vs

The Municipal Corporation of
Delhi and Others

RESPONDENT

Date of Decision: May 30, 2013

Acts Referred:

- Delhi Development Act, 1957 - Section 11A, 7(2), 8

Hon'ble Judges: V.K. Jain, J

Bench: Single Bench

Advocate: Jayant Bhushan, Adv and Mr. Kumar Mihir and Mr. Pallav Mongia, for the Appellant; Pawan Mathur, for DDA, Mr. Ajay Arora and Mr. Kapil Dutta, for SDMC Ms. Amrita Panda and Mr. Nitish Gupta, Advs, for the Respondent

Final Decision: Dismissed

Judgement

V.K. Jain, J.

Plot No. C-32, Friends Colony (East) initially measured 800 square yards. Subsequently, considering that since residential plots being developed by DDA were sold partly by draw of lots to persons belonging to low and middle income groups and the size of said plots did not exceed 200 square yards whereas plots of bigger sizes were being sold by auction, the Government of India, with a view to see that big size plots were not sold by auction, decided that no plot of land for residential purposes, which was more than 400 yards, should be sold by auction by DDA. It was also decided that even if such plots which were disposed of by auction in the past, revert to DDA it should be possible to divide such plots into smaller ones and then sold, so that the size of a plot does not exceed 400 square yards. Pursuant to the aforesaid policy decision of the Government which was communicated to the Lieutenant Governor vide letter dated 06.06.1973, Commissioner (Land & Disposal) of DDA wrote to Commissioner, Planning that since plot No. C-32, measuring 800

square yards in Friends Colony had become available for disposal and had been earmarked for being sold by way of auction, considering the above-referred policy of the Government, it was proposed to divide the said plot into two or three plots and modify the lay out plan approved earlier by the Competent Authority so that the plot could be disposed of. Pursuant thereto, DDA modified the layout plant of Friends Colony and divided plot No C-32, Friends Colony into two plots, measuring 400 square yards each. The sub-division of the plot was done vertically, as a result of which two plots having dimensions 30 ft. X 120 ft. each stood carved out and became available for being sold by auction. The plots, so sub-divided, were given plot numbers as C-32A and C-32B. Plot No. C-32A adjoins House No. C-31 in which one flat each is owned by the petitioners before this Court. Vide notification dated 22.09.2006, Government of India made certain modifications in the Master Plan for Delhi with effect from the date of publication of the said notification in the Gazette of India. In terms of the said notification, the following Development Control Norms became applicable for construction on residential plots in Delhi:-

Clause VII (a) of the said notification reads as under:-

In case the permissible coverage is not achieved with the abovementioned setbacks in a plot, the setbacks of the preceding category may be allowed.

2. It would thus be seen, while constructing a plot, measuring 800 square yards, 4 setbacks one in the front, one in the rear and one each in the side are required to be left. For construction on plot measuring 400 square yards, three setbacks are required, one in the front, one in the rear and one on either side. In case, it is not possible to achieve the permissible coverage which, to my mind, means permissible FAR, the norms in respect of plots measuring between 100 and up to 250 square meters were to apply, while constructing a plot measuring 400 square years, meaning thereby that there would be no need to leave any side setback or rear setback and only a front setback is required.

3. The petitioners are aggrieved on account of no side back having been left while approving the building plan for construction of plot No. C-32A which is adjoining the building in which one flat each is occupied by them. The contention of the learned senior counsel for the petitioner is that Master Plan provisions, which were applicable at the relevant time, did not permit sub-division of the plots and, therefore, the action of DDA in sub-dividing plot No. C-32 was contrary to the Master Plan provisions. The learned counsel appearing for DDA, on the other hand, submits that there was no prohibition in Master Plan against division of the plot by amending the layout plan of the locality/colony in which the plot is situated. This is also his contention that the aforesaid sub-division having been done pursuant to a policy decision taken by Government of India, no exception can be taken to the amendment of the lay out plan and consequent division of the aforesaid plot. He also submits that as far as the allottees are concerned, they are prohibited from sub-dividing the plot in view of the provisions contained in the lease deed/sub-lease

deed which does not permit them to sub-divide the plot, without prior permission of the lessor.

4. In support of his contention that Master Plan does not permit sub-division of the plots, the learned counsel for the petitioner relies upon the decision in [Vimla Devi and Others Vs. Chander Krishan Gupta and Others](#), . A perusal of the aforesaid judgment would show that in the said case, a preliminary decree for partition was passed between the parties, and a Local Commissioner was appointed to suggest the mode of partition. Since the Land & Development Office did not give any permission for sub division of the aforesaid plot, the learned Single Judge passed an order for sale of the property by auction. Being aggrieved from the order of the learned Single Judge, one of the co-owners of the property filed an appeal before a Division Bench of this Court. In the meanwhile, L&DO informed the Local Commissioner that sub division of the plot was not permissible. The Division Bench noted the plea of the appellant that division of some other property had been permitted by L&DO and DDA, but considering that he had not been able to obtain permission for physical sub division of the property, the appeal filed by him, was dismissed, thereby upholding the order for sale of the property by auction. During the course of judgment, the Division Bench, inter alia, observed as under:

5. In view of the communication of the Land and Development Office, absence of any communication or order of authorities since 1980 permitting sub-division of the property being contrary to Master and Zonal plans, the learned Single Judge was pleased to order sale of the said property by auction vide order dated 8.4.2002...

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9. On consideration of the detailed submissions by the parties, it transpires that the Local Commissioner had given report as far back as 1980 when L&DO and DDA had intimated him that sub division of the plot was not permissible and that the property cannot be divided by metes and bounds as contemplated under the provisions of Partition Act, 1893.

During the course of arguments, I specifically asked the learned senior counsel for the petitioner to show to me any provision of Master Plan or Zonal Development Plan which applies to the area, prohibiting sub division/ partition of a plot by the land owning agency. No such provision, however, could be shown to me. The issue involved in the case of Vimla Devi and others (supra), being as to whether the learned Single Judge was justified in directing sale of the property by auction or not, and considering that there is no reference to any provisions of the Master Plan in the said judgment, it would be difficult to accept the contention that this judgment is an authority for the proposition that Master Plan, prohibits even the land owning agency from sub-dividing a plot for the purpose of carving out more than one plots by way of such sub division.

5. It was lastly contended by the learned senior counsel for the petitioner that the procedure prescribed in Section 11A of Delhi Development Act was required to be followed before amending the layout plan and since no such procedure was admittedly followed, the amendment of the layout plan, so as to sub-divide the plot number C-32 would be illegal. I, however, find no merit in this contention. The layout plan of a colony is neither a Master Plan nor a Zonal Development Plan and Section 11A of the Delhi Development Act applies only to modification of the Master Plan and Zonal Development Plan. The Master Plan applies to the whole of Delhi, whereas the Zonal Development plan applies to a particular zone. Section 7(2) of Delhi Development Act provides that the Master Plan shall (a) define the various zones into which Delhi may be divided for the purposes of development and indicate the manner in which the land in each zone is proposed to be used (whether by the carrying out thereon of development or otherwise) and the stages by which any such development shall be carried out; and (b) serve as a basic pattern of frame-work within, which the zonal development plans of the various zones may be prepared, though it may also provide for any other matter, which is necessary for the proper development of Delhi. The Zonal Development Plan on the other hand may (a) contain a site plan and use-plan for the development of the zone and show the approximate locations and extents of land-uses proposed in the zone for such things as public buildings and other public works and utilities, roads, housing, recreation, industry, business, markets, schools, hospitals and public and private open spaces and other categories of public and private uses; (b) specify the standards of population density and building density; (c) show every area in the zone which may, in the opinion of the Authority be required or declared for development or redevelopment. Zonal Development Plan may also contain provision regarding all or any other matters specified in Clause (d) of sub Section (2) of Section 8 of Delhi Development Act. A layout plan on the other hand is the plan confine to a particular colony and gives details such as size of plots, width of road and plot earmarked for various community facilities and public utilities. Of course, a layout plan must necessarily confirm to the provisions of the Zonal Development Plan applicable to the locality to which the layout plan pertains as well as to the provisions of the Master Plan but, since it is neither Zonal Development Plan nor a Master Plan of Delhi, the procedure prescribed in Section 11A of Delhi Development Act is not required to be followed for amendment of a layout plan. Such plan, in my view, can be modified by the authority which is competent to approve a layout plan. So long as the modification of layout plan has the approval of the authority competent to sanction such a plan, no exception can be taken to the validity of such a plan unless it is found to be contrary to the provision of the Master Plan or the Zonal Development Plan.

6. For the reasons stated hereinabove, I am of the view that sub-division of Plot no. C-32 cannot be said to be illegal or unlawful. Though the policy of the government not to auction the plots bigger in size than 400 square yards is not under challenge

in this petition, in my view, no exception can be taken to such a policy, since it ought to be the endeavour of the government and a land owning agency of the government to make residential plots to as many persons as possible and division of plots certainly results in more people getting residential plots from such an agency.

7. During the course of arguments, it was not disputed that if the setbacks stipulated for plots measuring 400 square yards are left while raising construction on Plot no. C-32A, it would not be possible to achieve the maximum permissible FAR. Therefore, Clause VII(a) of the Notification dated 22.9.2006 becomes applicable and the minimum setbacks prescribed for plots measuring more than 100 square meter but upto 250 square meter become applicable and no minimum setback in the sides or in the rear is required in respect of such plots. Therefore, respondent-MCD was fully justified in sanctioning a plan which leaves no setback towards side of House No. C-31. For the reasons stated hereinabove, the writ petition is dismissed. There shall be no orders as to costs.