



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Judgment reserved on : 26 September 2024**
Judgment pronounced on: 22 November 2024

+ **W.P.(C) 2389/2013 & CM APPL. 55895/2023**

PURNIMA SINGHPetitioner

Through: **Mr. S. Santanam Swaminadhan,**
Ms. Abhilasha Shrawat, Mr.
Darsh Bansal & Mr. Koustubh
Abhinav Desai, Advs.

versus

DELHI DEVELOPOMENT AUTHORITY & ORS.

.....Respondents

Through: **Ms. Beenashaw N. Soni, SC**
with Ms. Ann Joseph, Adv. for
MCD.

Mr. Ashim Vachher, SC with
Mr. Kunal Lakra, Ms. Saiba M.
Rajpal, Mr. Amit Krishna,
Advs. for R 1 to R3.

Mr. Gaurav Gambhir, Adv. for
R4.

CORAM:
HON'BLE MR. JUSTICE DHARMESH SHARMA

J U D G M E N T

1. The petitioner is invoking the writ jurisdiction of this Court under Article 226 of the Constitution of India, 1950, on being aggrieved by the allotment of a portion of the land earmarked for having a park to the respondent No. 4, upon which a Gurudwara has been constructed, and thereby seeking the following reliefs:-

“(a) Issue a writ of certiorari or any other Writ of similar nature, thereby calling for the records of the Respondents



in respect of Tikona Park, Sheikh Sarai Phase-I, New Delhi;

- (b) Issue a writ of mandamus or any other Writ of similar nature directing the Respondents No.1 to 3 to set aside the allotment of the park in favour of the Respondent No.4 and restore the park to its original position and condition after removing all encroachments / recent constructions in the Tikona Park, Sheikh Sarai-I, New Delhi;
- (c) Issue a writ of mandamus or any other Writ of similar nature directing the Respondent Nos. 1 to 3 to maintain the said park properly;”

2. Shorn of unnecessary details, the petitioner is a resident of Sheikh Sarai, Phase-I, New Delhi, and claims that she has been residing there for the last 33 years and in the neighbourhood, there is a public park known as ‘Tikona Park’ (*hereinafter referred to as ‘the park’*). She came to know that the substantial portion of the park had been illegally and arbitrarily allotted to the respondent No. 4 for the purposes of construction of a Gurudwara in complete violation and breach of the petitioner’s right guaranteed under Article 21 of the Constitution of India, 1950, and provisions of the Delhi Development Act, 1957¹.

3. It is submitted that the petitioner made several representations to the respondents, expressing her grievances regarding the allotment of a portion of the designated park and requesting its revocation, but to no avail. Furthermore, the petitioner was not provided with accurate information, despite filing an application under the RTI Act².

4. On taking cognizance of the present writ petition, notice was ordered to be issued to the respondents. The respondent No. 1 filed a

¹ The Act

² Right to Information Act, 2005



short affidavit to the effect that the land in question, admeasuring 3214.55 sqm, vested with the MoR³. Out of this, a religious site admeasuring 428.5 sqm was carved out, and the remaining land, admeasuring 2786 sqm, is where the playfield/park has been set up, though it is not part of the green belt. It is brought out that on 26.11.2009, a physical survey was conducted, showing the area as undeveloped, with a small boundary wall and fencing. A request for the construction of a Gurudwara was received and forwarded to the then Minister of State for Home Affairs. The proposal for changing the layout plan was placed before the Screening Committee at its meeting chaired by the Vice Chairman of DDA⁴, approved the proposal for modification of the layout plan on 25.02.2010. Therefore, the allotment of space for religious purposes, specifically for the construction of a Gurudwara, is justified. Lastly, it was highlighted that the religious site does not involve any amendment to the Master Plan⁵ or the Zonal Development Plan⁶.

5. A counter-affidavit has been filed on behalf of respondent No. 4, stating that respondent No. 4/Society was registered on 24.02.2006 under the Societies Registration Act, XXI of 1860, denying the petitioner's claim that the land in question was allotted for the construction of a Gurudwara Sahib without following due process of law or by destroying a green area. It is further stated that about six

³ Ministry of Rehabilitation

⁴ Delhi Development Authority

⁵ MP

⁶ ZDP



hundred Sikh/Punjabi families reside in the vicinity of Savitri Nagar, Sheikh Sarai-1, and the neighbouring colonies, and there was no Gurudwara in Sheikh Sarai, Phase-I, New Delhi. Therefore, the society filed application No. F-23 dated 21.04.2006 for the allotment of land for religious purposes, specifically for the construction of a Gurudwara, with the DDA. Eventually, the site in question, a vacant plot of land used as a garbage dumping ground and vested with the MoR under the care of the Horticulture Branch, DDA, was allotted to respondent No. 4/society by the competent authority in terms of the allotment letter dated 29.08.2012, upon payment of the requisite charges.

6. It is pertinent to mention that although the Municipal Corporation of Delhi (MCD) was not initially a party to the present proceedings, it was added as a party on 05.01.2023 to develop the designated park, Tikona Park. During the hearing on 26.09.2024, certain photographs were submitted, which clearly show that the park is now well-maintained with abundant greenery brought about by the MCD.

LEGAL SUBMISSIONS ADVANCED AT THE BAR

7. Learned counsel for the petitioner referred to the letter dated 18.06.2009, addressed to the Vice-Chairman, DDA by Mr. K. Gambhir, Secretary of respondent No. 4, requesting the allotment of land, which was apparently described as green land. Additionally, she referred to the internal noting of the DDA dated 10.07.2009 and 25.08.2009. It was argued that the entire portion of the land has consistently been described as green land, as reflected in both the



MPD⁷ and the Zonal Plan, and therefore, the construction of a Gurudwara, a concrete structure, cannot be permitted. It was also pointed out that respondent No. 1/DDA provided misleading information *vide* reply dated 02.11.2011 to her RTI application, falsely stating that no application had been received by the Branch to date and that no religious structure exists in Tikona Park. In support of her submissions, she relied on the decision in the case of **Dr. G. N. Khajuria v. Delhi Development Authority**⁸; **Union of India v. State of Gujarat**⁹; **Bangalore Medical Trust v. B.S. Muddappa**¹⁰ and **Joginder Kumar Singla v. Government of NCT of Delhi**¹¹.

8. It was urged that the direction of the Supreme Court has been very categorical that no area which is dedicated for park can be utilised for any other purposes and the Supreme Court in such cases frowned upon the action of using the open park for the purpose of running a nursery or even hospital.

9. *Per contra*, learned counsel for the respondent No. 1/DDA argued that Section 11-A of the DDA Act is not applicable in the present matter, as the layout plan was modified by the Vice-Chairman, DDA, an action within his competence and jurisdiction. It is further asserted that no modifications had been made to the MP or the ZDP and what the petitioner has suppressed is that there are several parks in the vicinity with regard to which he invited reference to the google maps placed on the record and it was urged that the petitioner has no

⁷ Master Plan for Delhi

⁸ (1995) 5 SCC 762

⁹ (2011) 14 SCC 62

¹⁰ (1991) 4 SCC 54

¹¹ AIR 2005 Delhi 258



locus standi, as she residing almost a kilometre away and apparently at odds with the office bearers of the Gurudwara.

10. Learned counsel for the respondent No.1/DDA also invited to the various regulations with regard to the maintenance and upkeep of the public park and relied in support of her submissions in the case of **EB Pocket Residents Welfare Association v. DDA**¹²; **Triveni Educational & Social Welfare Society v. DDA**¹³; **Maya Devi v. UOI**¹⁴; **Rohit Dhupar v. Lt. Governor**¹⁵; **Star Residents Society v. DDA**¹⁶; **Shanti Devi Gupta v. DDA**¹⁷; **MG Ramachandran v. MCD**¹⁸; **Ayaaubkhan Noorkhan Pathan v. State of Maharashtra**¹⁹ and **K.K. Swaminathan v. Srinivasagam**²⁰.

11. Learned counsel for respondent No. 4 was notably brief in his submissions, stating that the documents submitted by the petitioner do not establish that the land in question was ever designated as a green area. The documents only suggest that the site was being maintained by the Horticulture Department of DDA, likely because it was a barren land being used as a dumping ground. It was further argued that there is a park just across from the site in question, constructed on land admeasuring 2.6 hectares, which is now being maintained by the MCD.

¹² 2003 (68) DRJ 611

¹³ 1998 (47) DRJ (DB) 249

¹⁴ 1996 SCC Online De 1782

¹⁵ (109) DRJ 586 (DB)

¹⁶ (77) DRJ 599

¹⁷ (1994) DLT 620 (Del)

¹⁸ SCC OnLine Del 1325

¹⁹ (2013) 4 SCC 465

²⁰ MANU/TN/1380/2003



12. Learned counsel for the respondent No.1/DDA also refers to the relevant regulations/clauses in MPD-2021, modified up to 30.06.2021 to buttress the point that there has been no arbitrary or illegal action on the part of the DDA in allotting a small portion of the land to the respondent No. 4 for the construction of the Gurudwara.

ANALYSIS AND DECISION:

13. I have given my thoughtful consideration to the submissions advanced by the learned counsel for the parties at the bar. I have also gone through the relevant record of the case.

14. In order to examine the merits of the present writ petition, it would be expedient to refer to Sections 7, 8 and 9 of the DD Act which provide as under:-

“7. Civic survey of, and master plan for, Delhi.—

(1) The Authority shall, as soon as may be, carry out a civic survey of, and prepare a master plan for, Delhi.

(2) 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.

[(3) The master plan may provide for any other matter which is necessary for the proper development of Delhi.]

8. Zonal development plans.—

(1) Simultaneously with the preparation of the master plan or as soon as may be thereafter, the Authority shall proceed with the preparation of a zonal development plan for each of the zones into which Delhi may be divided.

(2) A zonal development plan 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; and

(d) in particular, contain provisions regarding all or any of the following matters, namely:—

(i) the division of any site into plots for the erection of buildings;

(ii) the allotment or reservation of land for roads, open spaces, gardens, recreation grounds, schools, markets and other public purposes;

(iii) the development of any area into a township or colony and the restrictions and conditions subject to which such development may be undertaken or carried out;

(iv) the erection of buildings on any site and the restrictions and conditions in regard to the open spaces to be maintained in or around buildings and height and character of buildings;

(v) the alignment of buildings on any site;

(vi) the architectural features of the elevation or front age of any building to be erected on any site;

(vii) the number of residential buildings which may be erected on any plot or site;

(viii) the amenities to be provided in relation to any site or buildings on such site whether before or after the erection of buildings and the person or authority by whom or at whose expense such amenities are to be provided;

(ix) the prohibitions or restrictions regarding erection of shops, workshops, warehouses or factories or buildings of a specified architectural feature or buildings designed for particular purposes in the locality;

(x) the maintenance of walls, fences, hedges or any other structural or architectural construction and the height at which they shall be maintained;

(xi) the restrictions regarding the use of any site for purposes other than erection of buildings; and

(xii) any other matter which is necessary for the proper development of the zone or any area thereof according



to plan and for preventing buildings being erected haphazardly in such zone or area.

9. Submission of plans to the Central Government for approval.—

(1) In this section and in sections 10, 11, 12 and 14 the word “plan” means the master plan as well as the zonal development plan for a zone.

(2) Every plan shall, as soon as may be after its preparation, be submitted by the Authority to the Central Government for approval and that Government may either approve the plan without modifications or with such modifications as it may consider necessary or reject the plan with directions to the Authority to prepare a fresh plan according to such directions.”

15. A careful perusal of the aforesaid provisions would show that the MPD divides Delhi into different zones for the purposes of development and also provides for the land used in each zone besides stipulating basic pattern of framework for preparation of ZDP for various zones. Section 8 then provides that on preparation of the MPD soon as thereafter, the authority is enjoined upon to prepare the ZDP for each of the zones into which Delhi may be divided. Section 2(k) of the DD Act defines ‘zone’ *to mean any one of the divisions in which Delhi may divided for the purposes of development under the Act.* Now, a ZDP in terms of sub-section 2(a) to Section 8 envisages a site plan and the use plan of the development zones with respect to the public buildings, other public works, utilities, roads, housing, recreation, industry, public and private places.

16. There is no gainsaying that the layout plans are different and distinct from ZDP whereas layout plans demarcate specific areas which can be used for different purposes and earmark land/plot which can be used for different purposes. Under the development code of MPD-2021, which is relevant for consideration before us, Clauses



2(3) and 4 defined ‘Layout Plan’ and ‘ZDP’:-

“2(3) Layout Plan means a subdivision plan indicating configuration and sizes of all uses premises.

2(4) Zonal Development Plan means one of the zones (divisions) of the Union Territory of Delhi containing detailed information regarding provision of social infrastructure, parks and open spaces and circulation system.”

17. Section 8 of the DD²¹ Act has to be read in contradistinction to Section 11A of Chapter IIIA which provides for modification of the MP or the ZDP. To cut the long story short, it is well ordained in law that the layout plan can be modified or amended without following the procedure under Section 11A of the DD Act as long as the amended and modified layout plans are in conformity with the ZDP and the MPD. This has been a consistent view of this Court and for which reference can be invited to the decision in the cases of **Vasant Kunj Resident Welfare Association (Regd.) v. Lt. Governor of Delhi**²²; **Shanti Devi Gupta v. Delhi Development Authority**²³; **M.G. Ramachandran v. Municipal Corporation of Delhi**²⁴ and **Naharpur Yuva Shakti Rwa v. Union of India**²⁵.

18. In view of the aforesaid position in law, at the outset, the instant writ petition is bereft of any merits. The main plank of the plea canvassed by the learned counsel for the petitioner is that the area of 428.5 sq. mtrs., which has been allotted to the respondent No.4 for construction of Gurudwara, was part of a green area. There is no *iota* of evidence on the record to show that the designated spot that

²¹ Delhi Development Act, 1957

²² 2003 (1) AD (Delhi) 727

²³ (1994) 54 DLT 620

²⁴ 2014 SCC OnLine Del 1325

²⁵ 2021 SCC OnLine Del 1223



belonged to the MoR, admeasuring total of 3214.55 sq. mtr. was ever designated, classified or categorised or for that matter ever used as a green area. The respondent no. 1/DDA on affidavit brings out that the site was physically inspected on 26.11.2009 and the area admeasuring 3214.55 sq. mtr. was lying unused with a small boundary wall and fencing and rather being used as a dumping ground.

19. It is also a matter of record that on the application moved by the respondent no.4 dated 21.04.2006 and subsequent representation dated 27.08.2009, a proposal to build a religious site and playfield on the said vacant land on the south of Dayal Bagh Colony (Soami Nagar) was placed for approval of the Screening Committee of the DDA on 25.02.2010. wherein it was resolved that 428.5 sq mtr. of area be allotted to the respondent no.4 for the construction of Gurudwara whereas a playfield may be developed admeasuring out of the balance plot of land i.e. 2786 sq. mtr. (approx.).

20. Evidently, the position of the land was with the Horticulture wing of the respondent No.1/DDA but there is nothing to show that while making the allotment, any old or new tree was cut down. Moreover, it is clearly brought to the fore that the change in the layout plan was not in contravention of the MPD-2021 and ZDP of Zone F which allowed the religious site in a residential use zone.

21. In view of the decision taken by the Vice Chairman, DDA in the meeting on 25.02.2010, it is brought out in the affidavit of the respondent no.4 that after submission of the relevant documents, a public hearing took place on 06.05.2011, and an allotment letter dated 29.08.2012 was issued in respect of the land admeasuring 428.5 sq.



mtr. (approx.) for construction of Gurudwara at the rate of ₹1056.05 lacs per acre (provisional) and ground rent at the rate of 2.5% per annum of the total premium, and accordingly, a sum of ₹1,14,61,533/- was paid to the respondent no.1/DDA by the respondent no.4. Resultantly, the possession of the site was handed over to the representative of the respondent No.4 by the DDA official on 01.03.2013 for construction of Gurudwara Sahib.

22. It has been rightly canvassed by the learned counsel for the respondents that the carving out of a religious site did not involve any amendment to the MPD-2021 and/or ZDP and there is nothing to suggest that the respondent no.1/DDA sacrificed the larger public interest in any manner by making such allotment in favour of the respondent No.4. It goes without saying that this Court cannot go into the policy decision taken by the respondent No.1/DDA in making allotment of the site in question to the respondent No.4 in the larger public interest of the devotees in order to fulfil the mandate of Article 25²⁶ of the Constitution of India.

23. Before parting with this case, the case laws which have been relied upon by the learned counsel for the petitioner are inapplicable

²⁶**Article 25 (Freedom of conscience and free profession, practice and propagation of religion)**

Article 25 guarantees the freedom of conscience, the freedom to profess, practice and propagate religion to all citizens.

- The above-mentioned freedoms are subject to public order, health and morality.
- This article also gives a provision that the State can make laws:
- That regulates and restricts any financial, economic, political or other secular activity associated with any religious practice.
- That provides for the social welfare and reform or opening up of Hindu religious institutions of a public character to all sections and classes of Hindus. Under this provision, Hindus are construed as including the people professing the Sikh, Jaina or Buddhist religions and Hindu institutions shall also be construed accordingly.
- People of the Sikh faith wearing & carrying the kirpan shall be considered as included in the profession of the Sikh religion.



to the factual matrix of the present case inasmuch as there is nothing to suggest that the area in question was ever put to use as a notified green area or there was any deviation from the MPD- 2021 and ZDP. Much mileage is sought to be taken by the learned counsel for the petitioner from the point that despite filing several applications under the RTI Act, the petitioner had been misled and never provided the available information, which aspect cannot afford any legal right to the petitioner as such.

24. The bottom line is that the land in question was never reserved for any park or green area. The cited case *Dr. G.N. Khajuria & Others v. Delhi Development Authority & Ors (supra)* was a case where the land reserved for a park in the residential colony was allotted by the respondent no.1/DDA to respondent no.2 for running a nursery school, which allotment was held to be a gross misuse of power and illegal, and hence, was cancelled.

25. The decision in the case of *Union of India v. State of Gujarat (supra)* was one where there were general directions to all District Collectors and Magistrates/Deputy Commissioners in charge of the district to submit a report with regard to construction/encroachment on public streets, lands and places, *inter alia*, for religious purposes. The decision in the case of **EB Pocket Maya Enclave Residents Welfare Association v. Delhi Development Authority**²⁷ was again one where the land was earmarked for the purpose of park and the change was made in the Zonal Plan permitting the park to be used for the purpose of gas filling station, which belied public interest, and thus, leading to

²⁷ 2006 (92) DRJ562



cancellation of the allotment of the site for a gas filling station.

26. The decision in the case of **Grand Vasant Residents Welfare Association v. Delhi Development Authority**²⁸ was one where the reasons for change in the ZDP so as to do away with the minimum green area was successfully assailed since it was held that such green area was essential for the residents of the Vasant Kunj particularly, those living in Pocket A, B, C and D. In fact, there is no averment that the site in question was an integral part of the ZDP and earmarked as green area. There is no challenge that the modification layout plan so as to allot a land admeasuring 428.5 sq. mtr.(approx.) to the respondent no.4 was in any way not conforming to the ZDP.

27. At the cost of the petition, in the cited case of **MG Ramachandran v. MCD (supra)**, this Court held that the DDA has the power to revise the layout plan due to non-availability or scarcity of land, which cannot be said to be arbitrary, perverse or irrational. It was pointed out that the reason is that the Legislature, evidenced by the use of the words '**Zonal Development Plan may**' in Section 8(2) left it to the discretion of the authority while preparing the ZDP to embody therein the site plan and the land use plan or simply prepare the Zonal Development Plan at the macro level and then leave it at the micro level, the layout plan to be prepared either by the authority or the local authority, as the case may be.

28. In taking the aforesaid view, a reference can also be invited to the decision in the case of **Naharpur Yuva Shakti RWA v. Union of India (supra)** wherein this Court observed that the layout

²⁸ 2014 SCC OnLine Del 1996

