

SUPREME COURT OF INDIA

Municipal Corporation of Delhi

Vs.

Kishan Dass

C.A.No.1049 of 1968

(J. M. Shelat, V. Bhargava and C. A. Vaidialingam, JJ.)

19.09.1968

JUDGEMENT

VAIDIALINGAM, J.:-

1. This appeal, by the Municipal Corporation of Delhi by special leave, is directed against the judgment and order dated August 11, 1967 passed by the High Court of Delhi in Letters Patent Appeal No. 85 of 1967. The Letters Patent Bench had confirmed an order of the learned Chief Justice, Delhi High Court, dated May 10, 1967 whereby a writ of mandamus had been issued to the appellant to approve the plans submitted by the respondents and grant the sanction asked for.

2. The circumstances leading up to the issue of the writ of mandamus against the appellant may be briefly adverted to. The respondents are the owners and are in possession of the building bearing municipal door Nos. 3766 to 3776 situated in the main Chawri Bazar Delhi. As the building was an old construction and required urgent and extensive repairs, on October 16, 1965 the respondents submitted to the appellant plans for its sanction for execution of work consisting of repairs, additions as well as alterations to the said building. The Commissioner of the appellant

Corporation, by letter dated February 4, 1966 informed the respondents that their application for execution of construction work in respect of house Nos. 3766 to 3776 had been refused on the grounds "that the proposal was under acquisition and also effected in the "ROW" and the land was residential against proposal of commercial".

3. A controversy appears to have been raised by the appellant before the High Court that the application by the respondents, related also to certain other municipal door numbers, but as that is not material for the present purpose, we do not refer to the same. Attempts made by the respondents to satisfy the Commissioner that their application was quite legal and that there was no violation of any law or rules having failed, they filed Civil Writ Petition No. 410-D of 1966 in the Circuit Bench of the Punjab High Court at Delhi, under Article 226 of the Constitution praying for the issue of an order or direction in the nature of mandamus directing the appellant to accord sanction to the plan for execution of work in respect of the building as per their application of October 16, 1965. According to the respondents it was incumbent on the Commissioner of the appellant, under Section 336 of the Delhi Municipal Corporation Act, 1957 (Act LXVI of 1957) (hereinafter referred to as the Corporation Act), to sanction the plans of a building or execution of a work unless such a building or work contravened any of the provisions of sub-section (2) of Section 336 or Section 340 of the Corporation Act. It was further stated that the plan submitted by them did not contravene any of the provisions of sub-section (2) of Sec. 336 or Section 340 of the Corporation Act. The reasons given for rejection, by the Commissioner, were also challenged as being vague and unintelligible apart from being extraneous to the provisions of the Act. The respondents further averred that the buildings required extensive repairs as was clear from the notice, dated March 3, 1966, issued by the Commissioner of the appellant stating that the building posed a danger to the residents of the area and that the necessary repairs had to be carried out immediately after obtaining sanction from the building department, and threatening penal consequences if the respondents did not comply with the notice. On these grounds they urged that the order dated February 4, 1966 passed by the Commissioner refusing to accord sanction was illegal and ultra vires and in consequence they prayed for the issue of a writ of mandamus directing the appellant to accord sanction, as asked for by them.

4. On behalf of the appellant, the Assistant Engineer had filed a counter affidavit. The material averments, relevant for the present purpose, are that the respondents are the owners of the premises and that the construction was old and required repairs; but the plans submitted by the respondents did not conform to bye-laws and contravened Section 336 (2) (a) in respect of land use and Section 340 (2) with respect to requisitioning of land by the Delhi Development Authority for their Scheme and that the plans were also affected by road widening.

5. In their reply affidavit the respondents controverted the averments of the Assistant Engineer that the plans did not conform to bye-laws or the provisions of Section 336 (2) or any other law in respect of land use. They stated that according to the Master Plan prepared under the Delhi Development Act, 1957 certain areas, including Chawri Bazar, would be the Central Business District of Delhi and that the proposed user, mentioned by them in the Plan sent for sanction was not in contravention of the Master Plan. They also denied that the Delhi Development Authority had

any scheme for road widening. They further referred to a letter, date April 30, 1966 of the Delhi Development Authority stating that the zonal Development Plan has not been prepared for the area in question. They finally reiterated the plea that the order refusing sanction was not based on any of the grounds envisaged by Section 336 (2) or Sec. 340 or any other provision of the Corporation Act or of any other Act.

6. The learned Chief justice of the Delhi High Court, who heard the writ petition in the first instance, by his judgment and order dated May 10, 1967 accepted the writ petition filed by the respondents and issued a mandamus to the appellant to approve the plans and grant the sanction asked for. The learned Chief Justice has expressed the view that the Commissioner could decline the sanction only if there was a contravention of sub-section (2) of Section 336 or Section 340 of the Corporation Act. In this case, according to the learned Chief Justice, there was no such contravention established by the appellant and if that were so the Commissioner had no power to refuse to accord the sanction asked for by the respondents. He was of the further view that the grounds on which the Commissioner refused sanction were wholly irrelevant and not germane to the sanction asked for. Taking the further view that the Commissioner had a statutory duty to grant the sanction asked for, the learned Chief Justice directed the issue of a writ of mandamus. This judgment of the learned Chief justice as mentioned earlier, was affirmed by the judgment of the Letters Patent Bench of the Delhi High Court dated August 11, 1967.

7. The learned Solicitor General, on, behalf of the Corporation, has urged that the order of the Commissioner refusing sanction is legal and is justified by the provisions of Clause (a) of sub-sec. (2) of Section 336 of the Corporation Act. Even at the outset he has made it clear that he is relying upon only one of the grounds given in the order dated February 4, 1966 of the Commissioner, viz., that the plan submitted was affected by the proposals contained in the Master Plan in respect of widening of the road in the area in question. The expression 'ROW' used in the order refers to 'right of way' which is with reference to the road proposed under the Master Plan. The Master Plan has been prepared under Section 7 of the Delhi Development Act, 1957 (Act LXI of 1957) (hereinafter referred to as the Development Act) and it has come into operation, under Section 11, in the area concerned. The building operation proposed by the respondents as per the plans submitted by them will be contrary to the Master Plan and, as such, will be hit by Section 14 of the Development Act. In short, the contention of the learned Solicitor General is that the Master Plan prepared by the Authority for Delhi, which has statutory force, as come into effect under the Development Act. Under Section 336 (2) (a) of the Corporation Act, the Commissioner is entitle to refuse sanction of a building or work if the building or work or use of the site for building or work would contravene 'any other law'. As the proposed construction would not be in conformity with the Master Plan, Section 14 of the Development Act will be violated, in which case there will be a contravention of 'any other law'. Hence the order of rejection passed by the Commissioner is legal and valid.

8. In this connection the learned Solicitor General referred us to the Master Plan wherein it is stated that the proposed road (in Chawri Bazar, which is the area with which we are concerned) from Hauz Kazi to Jama Masjid is recommended to have a width of 60 feet. The width of the existing road is only 48 feet. The object of the Development Act is to freeze new building constructions

which will be inconsistent with the Master Plan; and, if the Master Plan mentions the width of a proposed road and the width of an existing road is less, no new construction will be permissible on either side of the road till the excess area required for the road is found. The Solicitor General has further urged that though a Zonal Development Plan for each of the Zones in which Delhi will have to be divided will have also to be prepared and has not come into operation for the zone concerned, nevertheless till such a Zonal Development Plan comes into operation, the Master Plan will hold the field. If a Zonal Development Plan comes into force and has made any alteration, the Zonal Development Plan will then have effect and the Master Plan will stand abridged or modified. At present, it is the Master Plan that holds the field and, as according to it an excess area of 12 feet for the proposed road will have to be found, all building operations on either side of the proposed road will have to come to a standstill. That is, the learned Solicitor General was prepared to take the stand that, so to say, there is a freezing of all building operations, on either side of the existing road which according to him, is warranted by Section 14 of the Development Act. In support of his contentions, the learned Solicitor General drew our attention to certain provisions contained in the Corporation Act and the Development Act.

9. The stand taken by the learned Solicitor General has been very strenuously controverted by Mr. M. C. Chagla, learned counsel for the respondents. Mr Chagla, apart from criticising the order dated August 11, 1967 as laconic and unintelligible and not containing any valid reasons has urged that the Master Plan, so strongly relied on by the learned Solicitor General, does not, as such, refer to the survey numbers in respect of which the respondents had asked for sanction. Before the High Court the appellant has not relied upon the Master Plan nor did it place any material to show that any part of the proposed road shown in the Master Plan will pass through any of the properties of the respondents. The Master Plan prepared under the Development Act is nothing but a broad outline of what Delhi would look like, in future. The plan, which may probably give more accurately the lands in the area which are reserved for road is the Zonal Development Plan, the preparation of which is mandatory under Section 8 of the Development Act. Admittedly no such plan has been prepared much less has come into operation in the concerned zone. So long as the Master Plan does not state that any part of the property belonging to the respondents will be covered by the proposed road, it cannot be stated that when the respondents are attempting to renovate the building they are using the land in the zone otherwise than in conformity with the Master Plan. Mr. Chagla further points out that if the contentions advanced on behalf of the appellant are accepted, the entire building operations in Delhi will have to come to a standstill for an indefinite number of years and according to him, that position is not envisaged either by the Master Plan or the provisions of the Development Act. He finally urged that Section 14 of the Development Act has no application at all.

10. From the contentions of both the parties set out above, it will be noticed that according to the appellant if building operations are allowed to be carried on, there will be a violation of the Master Plan, and in consequence of the provisions of Section 14 of the Development Act; whereas, according to the respondent, there is no violation of either the Master Plan or any provisions of the Development Act or of any other law.

11. A reference to the material provisions of the Corporation Act and the Development Act, which will be made by us presently, will clearly establish that the contentions of the learned Solicitor General cannot be accepted.

12. We shall first take up the provisions of the Corporation Act. Section 332 prohibits the erection or commencement of the erection of any building, or execution of any of the works specified in Section 334, except with the previous sanction of the Commissioner. Section 333 makes it mandatory on a person intending to erect a building to apply to the Commissioner in that behalf. Section 334 makes it obligatory on a person, who intends to execute any of the works mentioned therein, to apply for sanction to the Commissioner. Section 336 deals with sanction or refusal of building or work. It is only necessary to refer to sub-section (1) and Clause (a) of sub-section (2) of this section, because, as we have already stated, the order of rejection by the Commissioner is sought to be justified under this provision.

These provisions are:

"336. (1) The Commissioner shall sanction the erection of a building or the execution of a work unless such building or work would contravene any of the provisions of sub-section (2) of this section or the provisions of Section 340.

(2) The grounds on which the sanction of a building or work may be refused shall be the following, namely:-

(a) that the building or work or the use of the site for the building or work or any of the particulars comprised in the site plan, ground plan, elevation, section or specification would contravene the provisions of any bye-law made in this behalf or of any other law or rule, bye-law or order made under such other law;

* * * *"

Sub-section (3) of Section 336 provides for the Commissioner communicating the sanction to the person who has given the notice; and in cases where he refuses sanction on any of the grounds specified in sub-section (2) of Section 336 or under Section 340, to record a brief statement of his reasons for such refusal and communication of the refusal along with the reasons to the party concerned.

13. It will be clear from a perusal of Section 336, that the Commissioner has to give sanction for the erection of a building or the execution of a work, unless such building or work would contravene any of the provisions of subsection (2) of Section 336 or the provisions of Section 340. Therefore, in order to sustain the validity of the order of rejection passed by the Commissioner, the appellant has to establish, as it seeks to, that the proposed building or the use of the site for the building, by the respondents, would contravene the provisions of 'any other law'. If the proposed building or use of the site for the building would contravene the provisions of 'any other law', the Commissioner has ample powers under Clause (a) of Section 336 (2) to refuse sanction. Section 340 gives power to the Commissioner to refuse sanction for erection of any building on either side of a new street, under the circumstances mentioned therein.

14. We shall now refer to some of the provisions of the Development Act in order to appreciate the scheme of that statute. The Development Act is an Act to provide for the development of Delhi according to plan and for matters ancillary thereto. Section 2, Clauses (d) and (e), define the expressions 'development' and 'development area' respectively. Chapter II deals with the Delhi Development Authority and its objects. Section 3, therein, provides for the Central Government constituting for the purposes of the Act an authority to be called the Delhi Development Authority. It is referred to in the Act as the Authority. Section 5 provides for the Authority constituting an Advisory Council for the purpose of advising the Authority on the preparation of the Master Plan and the Zonal Development Plans and on such other matters in connection with the administration of the Act. Such Advisory Council also has been duly constituted. Section 6 provides that the object of the Authority shall be to promote and secure the development of Delhi according to plan and clothes the Authority with the various powers mentioned therein.

15. Chapter III deals with Master Plan and Zonal Development Plans. Section 7, therein, provides for the Authority carrying out a civic survey of and preparing a Master plan for Delhi. Under subsection (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 framework within which the zonal development plans of the various zones may be prepared.

Section 8 provides for the preparation by the Authority of a zonal development plan for each of the zones into which Delhi may be divided and also refers to the various matters which are to be indicated in the same. The material provisions of Section 8 which, according to us, will have a vital bearing in considering the soundness of the stand taken by the appellant are as follows:

"8. (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.

* * * *

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

* * * *

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

* * * *

Section 9 (1) states that the expression 'plan' in that section and in Sections 10, 11, 12 and 14 means the Master Plan as well as the zonal Development Plan for a zone. Sub-section (2) provides for the plan-which means the Master Plan as well as the zonal Development Plan-being submitted after preparation by the Authority to the Central Government for approval and it also gives power to the Government to approve the plan, without modification or with such modifications as it may consider necessary, or reject the plan with directions to the Authority to prepare a fresh plan. Section 10 provides for the procedure to be followed in the preparation and approval of plans. A perusal of that section shows that ample opportunity has to be provided for persons and every local authority to submit objections at the stage of the draft, and it also requires the authority to consider any objections, suggestions and representations that may have been made, before the final plan is prepared and submitted to the Central Government for its approval. It also empowers the Central Government to call for any information that it thinks necessary from the Authority for the purpose

of approving any plan submitted to it. Section 11 provides for the date of operation of the Plan.

16. There is no controversy, in this case, that the Master Plan has been prepared under Section 7 by the Authority on September 1, 1962 and it has also come into force, as contemplated by Section 11. Though Section 8 contemplates the preparation of a Zonal Development Plan simultaneously with the preparation of the Master Plan, or as soon as may be thereafter, no Zonal Development Plan for the zone concerned has been prepared up to now. It may also be pointed out that if and when such a Plan is prepared, containing the various matters referred to in sub-section (2) of Section 8, before it is finalized and sent to the Central Government for approval, parties and local authorities will have to be given an opportunity of sending their objections and suggestions and representations, which have all to be duly and properly considered by the Authority concerned.

17. Chapter III-A deals with modifications to the Master Plan and the Zonal Development Plan. Section 11-A, therein, provides for the Authority and the Central Government making modifications in the Master Plan or the Zonal Development Plan under the circumstances and after following the procedure, mentioned therein.

18. Chapter IV deals with development of lands. Sub-section (1) of Section 12 gives power to the Central Government, by notification in the Official Gazette, to declare any area in Delhi to be a development area for the purposes of the Act. Sub-section (2) prohibits the Authority, except as otherwise provided for in the Act, to undertake or carry out any development of land in any area which is not a development area. Sub-section (3) provides that after the commencement of the Act no development of land shall be undertaken or carried out in any area by any person or body (including a department of Government) except in the manner provided therein.

19. Section 14, on which considerable reliance has been placed, on behalf of the appellant, is as follows:

"14. After the coming into operation of any of the plans in a zone no person shall use or permit to be used any land or building in that zone otherwise than in conformity with such plan:

Provided that it shall be lawful to continue to use upon such terms and conditions as may be prescribed by regulations made in this behalf any and or building for the purpose and to the extent for and to which it is being used upon, the date on which such plan comes into force."

20. A copy of the Master Plan for Delhi has been placed before us by the learned Solicitor General.

Chapter I deals with the Land Use Plan under various sub-heads. Chapter II deals with Zoning and Sub-division Regulations. There are certain maps annexed to this Plan. Under the heading 'Proposed rights of way in Old City', in paragraph 11 of Chapter I, item 7 refers to the area concerned, viz., Chawri Bazar. Against that it is stated that the road from Hauz Kazi to Jama Masjid which is approximately 1800 feet long is recommended to have a road width of 60 feet. There is no controversy that the existing road is only 48 feet wide. Our attention has also been invited to two of the maps annexed to this Master Plan, viz., the Zonal Map and the Proposed Circulation Pattern of Walled City and it was stated that the area marked 'A' in the Zonal Map refers to the Walled City which is divided into 27 zones. The second map viz., the Proposed Circulation Pattern of Walled City, is an enlargement of the area 'A' shown in the Zonal Map and the Chowri Bazar is shown them.

21. As stated earlier, considerable reliance has been placed by the learned Solicitor General on the statement in the Master Plan that the road in Chawri Bazar is to have a width of 60 feet and on the two maps annexed to the Master Plan which, according to him, will show the lay out of the proposed road. The Master Plan and the two maps relied on by the appellant do not give any indication that any part of the land belonging to the respondents will be covered by any portion of the proposed road. The provisions of Section 7 of the Development Act clearly indicate-and that is borne out by the various matters mentioned in the Master Plan - that the Master Plan will only give a very broad outline of Delhi as it will look like in future., Though there is an obligation on the Authority to prepare the Zonal Development Plan simultaneously with the preparation of the Master Plan or as soon as there may be thereafter, no such Zonal Development Plan has been prepared. That assumes considerable importance in this case because it is the Zonal Development Plan, under Section 8 (2) (a) which will show the approximate locations and extents of land-uses proposed in a zone for roads; further, under sub-clause (ii) of Clause (d) of sub-section (2) of Section 8, the said Zonal Development Plan will also contain provision regarding the allotment or reservation of land for roads. It is only when such allotment or reservation of land for roads is made that it will be possible to know clearly as to which part of a person's land and what portion thereof is allotted or reserved for a road. If such an indication is made available by the Zonal Development Plan, then Section 14 will quite naturally stand attracted, because any user of a land or building otherwise than in conformity with the Zonal Development Plan will be hit by that section. In the absence of any indication in the Master Plan, in this case, that any part of the land of the respondents will be covered by a road or portion of a road, it is not possible to accept the contention of the learned Solicitor General that there will be any violation of Section 14 of the Development Act if the respondents be permitted to use the land, as asked for by them. To attract Section 14, the appellant will have to establish that any land or part of a land or a building in a Zone has been dealt with in a particular manner by the Master Plan and that it is proposed to be used in a different manner. If a Zonal Development Plan is prepared for the area, before it comes into operation in the Zone, the procedure indicated in Section 10 will have to be followed and parties will have to be given an opportunity of placing any objections or making any representations or offering any suggestions. So far as we can see, it is certainly not the scheme of the Development Act that the moment a Master Plan has come into operation and if it contains a proposal regarding the width that a road should have, all use of land adjoining that road is prohibited for an indefinite period. The reasonable interpretation to be placed on Section 14 will be that if any particular and definite use of land is indicated in a Master Plan, a different use of that land cannot be permitted. Similarly, if a Zonal Development Plan provides for a particular use of any land or any building in that Zone, it cannot be put to a different use. If neither of the plans provide for the particular use of any land or building

in the area or Zone, Section 14 will have no application whatsoever.

22. We have already stated that the respondents' lands are not in any manner indicated as being taken up by any part of the proposed road, mentioned in the Master Plan and, if that is so, there is no violation of Section 14 of the Development Act. It also follows that there is no violation of 'any law' under Cl.(a) of sub-section (2) of Section 336 of the Corporation Act.

23. The High Court was perfectly justified, in the circumstances, in issuing the writ of mandamus. The result is that the appeal fails, and is dismissed. The appellant will pay the costs of the respondents.

Appeal dismissed.