

Mayank Rastogi etc.

Vs

Sh.V.K.Bansal & Ors.

(B. N. Kirpal, D. P. Wadhwa JJ)

05.01.1998

## JUDGEMENT

Kirpal, J.

1.Special leave granted.

2.We have heard learned counsel for the parties.

3.The short question which arises for consideration is whether the High Court was right in coming to the conclusion that a plot of land which had been allotted to the appellant could not have been converted to a residential plot on which construction could be made inasmuch as it was meant to be an open space.

4.The proceedings before the High Court were initiated on a writ petition being filed by the respondent as a Public Interest Litigation, inter alia, contending that the respondent had purchased a plot of land on the understanding that the plot in question in the present appeal was really an open space adjoining a kinder garten school.The respondent found in 1995 that the appellant was constructing a house and thereupon a writ petition was filed in the High Court which issued notice and on 8th of March, 1995 granted stay of further construction.The High Court ultimately allowed the writ petition and came to the conclusion that inasmuch as the plot in question was earmarked as an open area adjoining a school it could not have been converted into a residential plot without following an appropriate procedure.

5.On behalf of the appellant, our attention has been drawn to a Notification No.16(6)-87-XXXII-I dated 15th February, 1991 issued under Section 19(1) of Madhya Pradesh Nagar Tatha Gram Nivesh Adhinayam, 1973 whereby Development Plan of the area in question was approved. It is not in dispute that as per this Notification in the Development Plan the plot in question, purchased by the appellant, was shown as a residential plot. Of course, this area had earlier been earmarked as an open space but by virtue of the Development Plan, now approved on 15th February, 1991, the change of user had occurred.

6.The respondent in the writ petition, filed in the High Court, had not challenged this Notification of 15th February, 1991.The High Court, in turn, also did not quash this Notification. There being no challenge to this Notification, the Development Plan which was so approved became final. The land use which was shown in the Development Plan no having been challenged, we fail to appreciate as to how the High Court could have ignored this fact and come to a contrary conclusion. The appellant had purchased this plot of land in April, 1991 and had admittedly started construction in January, 1995.The writ petition was filed nearly four years after the approval of the Development Plan vide Notification dated 15th February, 1991 and apart from the question of laches, even on

merits, there was no reason for the High Court to have interfered when the residential plot shown in the duly approved Development Plan had been allotted as a residential plot to the appellant and was used for constructing a residential unit therein. Merely because at an earlier point of time when the respondent had constructed his house this plot had been shown as an open space cannot give a right to the respondent to ask the High Court to prevent the construction on that area when the respondent has chosen not to challenge the change in the land use from open space to residential as per the approved plan. On this ground alone, in our opinion, the writ petition filed by the respondent should have been dismissed.

7. For the aforesaid reasons, the appeal is allowed. The Judgment of the High Court is set aside and the writ petition filed by the respondent is dismissed. There will, however, be no order as to costs. SLP(C) 17234 of 1997.

8. Leave granted.

9. For the reasons stated in our judgment in civil appeal arising out of SLP(C) 13908 of 1997, this appeal is also allowed. There will, however, be no order as to costs.

