

PETITIONER:
POONAM

Vs.

RESPONDENT:
MUNICIPAL CORPORATION OF DELHI & ORS.

DATE OF JUDGMENT: 27/07/2000

BENCH:
V.N. Khare, J & S.N. Variava. J.

JUDGMENT:

S. N. Variava, J.

Leave granted.

This Civil Appeal is against the Judgment dated 29th January, 1999 passed by the High Court of Delhi. Briefly stated the facts are as follows: One Swatantra Co-operative House Building Society (hereinafter called 'the Society') had initially applied for sanction of a layout plan. The Standing Committee of The Municipal Corporation of Delhi had sanctioned that layout plan by a Resolution dated 1st October, 1958. That layout plan consisted of 98 plots. However, by mistake it was mentioned in the Resolution that there were 108 plots. The layout plan which had been sanctioned had irregular boundaries, as a result of which there was no proper approach road to Plots Nos. 1,2, 10-15 of Block-B and Plots Nos. 18-25 of Block-E. Therefore, the Resolution of 1958 prohibited any building activities on the above mentioned plots. Thereafter the Society, with the permission of the Municipal Corporation of Delhi, started negotiations with their neighbour i.e. the Central Road Research Institute, to straighten out the boundaries. As a result of these negotiations the boundaries of the Society could be straightened out. In straightening out the boundaries Plot Nos. E-25 and C-23 went to the shares of the Central Road Research Institute. Thus, these two plots ceased to exist. The Society then submitted a revised layout plan to the Municipal Corporation of Delhi and asked for permission to exchange lands with the Central Road Research Institute in order to straighten out the boundaries. The Municipal Corporation by its Resolution No. 158 dated 8th May, 1964 permitted exchange of land and sanctioned the revised layout plan but still prohibited building activities on Plots Nos. 1,2 and 10 to 15 of Block-B and 18 to 25 of Block-E. We have seen the revised layout plan which had been submitted for approval at this stage. It is clear from the revised layout plan that Plot No. E-25 no longer existed and that there was no plot E-25 (new). Thus, it is clear that Plot No. E-25 was mentioned in the Resolution by mistake. The reference to Plot No. E-25 in this Resolution clearly cannot be to any plot by number E-25 (New) because at this stage no new plots had been carved out by the Society. The Society then constructed roads and applied for permission to allow building activities on all the plots. The Municipal Corporation of Delhi by Resolution No. 588 dated 25th August, 1965 permitted building activities on Plots Nos. 1,2, 10 to 15 in Block-B and Plots Nos. 18 to 25 in Block-E. The layout plan which should be accompanying this Resolution has been misplaced in the records of the Municipal Corporation. However

admittedly the permission to build was restricted to 98 plots only. In the meantime, taking advantage of the fact that in the Resolution of 1958 the number of plots had been mentioned as 108, carved out additional plots. The Society issued a Circular dated 21st July, 1965. That Circular set out that the Society had exchanged irregular pieces of land on the boundary of the colony with the Central Road Research Institute as a result of which irregular pieces of land had disappeared and that as a result of this exchange some more regular plots were being carved out. This Circular made it clear that a revised layout plan for these new plots would have to be submitted to the Municipal Corporation of Delhi for sanction and allotment would only be conditional on sanction of the layout plan being received from the Municipal Corporation of Delhi. The Circular also made it clear that in case the Municipal Corporation of Delhi rejected the revised layout plan or passed it with modifications, the allottees who would be allotted these new plots, would get a refund of the deposits after deduction of expenses. The Circular made it clear that only those persons who accepted this conditions and stipulations should apply for allotment of the plots. The mother of the Appellant accepted these conditions and applied for allotment of a plot. She gave an undertaking to the Society dated 22nd September, 1965 stating that she accepted the conditions and stipulations set out in the Circular dated 21st July, 1965 for the conditional allotment of a plot in her favour. The undertaking also mentioned that she had chosen Plot No. E-25 (new) for "conditional allotment". The mother of the Appellant was allotted by the Society plot bearing E-25 (New), Kalindi Colony, by an Agreement dated 7th October, 1965. The Agreement provides as follows: " WHEREAS THE 'Vendor Society' vide its Circular dated 21.7.1965 offered for sale to its members, plots of lands, situate in the residential colony known as 'Kalindi' in the village Kilokri, Ring Road, New Delhi, on the clear understanding that the revised layout plan of these plots has not been sanctioned so far, by the Municipal Corporation of Delhi, and that the intending purchasers should be prepared to take the risk that in case the Municipal Corporation of Delhi ultimately rejects the revised layout plan or passes it with modification, the intending purchaser is agreeable to take back his money after the deduction of expenses entailed in this regard;

AND WHEREAS subject to the conditions and stipulations contained in the aforesaid Circular dated 21.7.1965, the Vendor Society undertook to sell to the Vendee ALL THAT freehold plot No. 25(New) Category II Group B measuring 399.93 sq. yds. Situate in Kalindi Colony in the village Kilokri, within the Union Territory of Delhi belonging to and owned by the Society and more fully described in the Schedule annexed to this deed."

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"7. That the Vendee further agrees that in case the Municipal Corporation of Delhi rejects the revised layout plan or passes it with modifications, the Vendee will be entitled only to the refund of his money after deduction of expenses entailed in this regard or will accept the plot as modified by the Municipal Corporation.

It must be mentioned that the Society carved out 11 additional plots to bring the total number of plots to 108. The Society sold the additional plots to various people (including the mother of the Appellant). All agreements entered into at this stage were conditional agreements i.e. that they were subject to the revised layout plan being sanctioned by the Municipal Corporation of Delhi. We have seen the plan annexed to the Agreement entered

into with Appellant's mother. It shows that old plots E-25 and C-23 are no longer there and that over and above the 96 old plots there are 11 additional plots. The Society again applied to the Municipal Corporation of Delhi for sanctioning the revised layout plan which now included these 11 additional plots. The Municipal Corporation of Delhi by its Resolution No. 796 dated 14th November, 1968 rejected the revised layout plan and did not permit additional plots. It was clarified to the Society that what had been approved by the Resolution of 1958 were only 98 plots and not 108 plots. The Society, therefore, by a letter dated 18th July, 1969 informed the mother of the Appellant that revised layout plan had been rejected by the Municipal Corporation of Delhi and that even though the Society was making fresh efforts to get the layout sanctioned, she may apply to the Society for getting refund of the cost of the plot paid to the Society, if she so desired. The mother of the Appellant addressed a letter dated 24th July, 1969 to the Society, through her husband (who is an Advocate). The letter states that she was not interested in getting the refund of money and is only interested in getting the plot which was allotted to her. In the letter it is stated that she believes that the Society would make sincere efforts in the matter and utilize all the resources to get the layout plan sanctioned. Thus, it is to be seen that the mother of the Appellant does not claim that her Plot No. E-25 (new) is one of the plots on which building activity had already been sanctioned by Resolution 588 dt. 25th August, 1965. The mother of the Appellant does not claim that her plot is not a new plot. The mother of the Appellant does not claim that her Plot No. E-25 (New) is in substitution of the old Plot E-25. The Society thereafter pursued the matter with the Municipal Corporation of Delhi in order to try and get the additional plots sanctioned. The Municipal Corporation of Delhi again rejected the proposal by a Resolution dated 7th August, 1973. Thus, the revised layout plan containing the additional plots was never accepted or sanctioned by the Municipal Corporation of Delhi. The Society then applied to the Municipal Corporation of Delhi pointing out that the original Resolution of 1958 sanctioned 98 plots. The Society pointed out that, due to change in boundaries, two plots viz. E-25 and C-23 had ceased to exist and, therefore, in their place two new plots bearing Nos. C-35 and C-36 should be permitted. The Society claimed that plots bearing Nos. C-35 and C-36 were substitutes for Plot Nos. E-25 and C-23. The Municipal Corporation of Delhi by its Resolution dated 29th January, 1976 permitted carving out of plots C-35 and C-36 in place of old Plots Nos. E-25 and C-23. This sanction granted by the Municipal Corporation to carve out new Plots Nos. C-35 and C-36, in place of old Plots Nos. C-23 and E-25, has never been challenged by anybody, including the mother of the Appellant. This Resolution shows that in place of old plots C-23 and E-25 the new plots were C-35 and C-36. The mother of the Appellant died in 1977. The Appellant claims that her mother's plot has come to her share. The Appellant does nothing from 1977 till 1991. On 21st January, 1991 the Appellant submitted a building plan for approval in respect of a building on Plot No. E-25 (new). On 7th February, 1991 the Municipal Corporation of Delhi asked the Appellant to supply certain documents i.e. ownership documents, relevant land tax receipts, documents regarding payment of charges etc. The Appellant by letter dated 18th March, 1991 forwarded the documents and also stated that the Plot No. E-25 (new) was one of the plots on which building activity had been approved by Resolution No. 588 dated 25th August, 1965. The Appellant received no reply from the Corporation till 1st August, 1991. On 1st August 1991 the Municipal Corporation of Delhi rejected the building plan on the ground that Plot No. E-25 (new) was not a part of the sanctioned

layout. The Appellant filed an Appeal before the Appellate Tribunal. The grounds urged by her in the Appeal were, amongst others, that Plot No. E-25 (new) was a part of the sanctioned layout and that building activity had been permitted on that plot by Resolution No. 588 dated 25th August, 1965. The Appellant also contended that as no reply had been received within 60 days there was a deemed sanction by virtue of the provisions of Section 337 of the Municipal Corporation Act. By a reasoned Order dated 17th July, 1992, the Appellate Tribunal rejected the Appeal holding that Plot No. E-25 (new) was not a part of the approved layout plan. The Appellant then filed an Appeal under Section 347-D before the Administrator, i.e. the Lt. Governor. The Lt. Governor by an Order dated 6th January, 1994 allowed the Appeal. The Lt. Governor held that there was deemed approval under Section 337 of the Municipal Corporation Act. The Lt. Governor also held that Plot No. E-25 (new) was in place of plot No. E-25 (old) and it, therefore, formed part of the revised layout plan. The Municipal Corporation of Delhi then filed Writ Petition bearing No. 1460 of 1994 before the High Court of Delhi. By the impugned Judgment dated 29th January, 1999 the High Court agreed with the Lt. Governor that there was deemed sanction. However, the High Court held that Plot No. E-25 (new) did not form part of the revised layout plan which had been sanctioned by the Municipal Corporation of Delhi and therefore, no relief could have been granted by the Administrator to the Appellant (herein). The High Court held that to permit construction activity would be contrary to Section 337(2) of the Municipal Corporation Act which provided that no person could erect a building and execute work so as to convene any of the provisions of the Act or other law or any bye-law. The High Court held that this necessarily meant that in cases where a layout plan was necessary and there was no layout plan, then construction activity could not be carried out even though there may have been deemed sanction by virtue of Section 337(1) of the Municipal Corporation Act. It is this Judgement which has been assailed before us. Mr. Shanti Bhushan has taken us through the Judgment of the Administrator as well as the Judgment of the High Court. He has supported the Judgment of the Administrator. He has also taken us through the various Resolutions of the Municipal Corporation of Delhi, particularly Resolution No. 588 dt. 25th August, 1965. He has placed heavy reliance on this Resolution and submitted that by this Resolution building activity was permitted on Plot No. E-25. He submitted that the layout plan annexed to this Resolution would clearly indicate that on this date Plot No. E-25 (new) existed. He submitted that the Corporation as well as the Society are suppressing this layout plan as it would support the case of the Appellant. He pointed various letters exchanged between the Society and the Municipal Corporation of Delhi and/or the Town Planning Department. He pointed out that all these spoke about layout plans. He submitted that these plans are also being suppressed. He submitted that an adverse inference must be drawn against the Corporation and it must be held that Plot No. E-25 (new) is in place of old plot No. E-25 and that the permission to build, which had been granted by the Resolution No. 588 of 25th August, 1965, also included permission to build on Plot No. E-25 (new). We are unable to accept the submissions of Mr. Shanti Bhushan. To be seen that Resolution No 588 dt. 25th August 1965 did not sanction a revised layout plan. The revised layout plan was sanctioned by Resolution No. 158 dt. 18th May 1964. This showed all plots with numbers as they then existed. Undoubtedly a layout plan will have accompanied Resolution No. 588 dated 25th August, 1965 and that plan is missing. However, in our view, no adverse inference can be drawn against the Society or the Corporation because there is sufficient material on record to

show that Plot No. E-25 (new) is not a part of the revised layout plan which was sanctioned in 1964. It must be seen that by the Resolution No. 158 of 1958 layout plan had been sanctioned for 98 plots. By mistake in the Resolution 108 plots were mentioned. It is an admitted position that there were only 98 plots in the sanctioned layout plan. It is an admitted position that out of these 98 plots, plot Nos. E-25 and C-23 went to the share of the Central Road Research Institute at the time when the boundaries were exchanged between the Society and the Institute. After the exchange of boundaries a revised layout plan was sanctioned by the Corporation by its Resolution No. 158 of 8th May, 1964. The layout plan annexed to this Resolution is available in the record. This layout plan clearly shows that there were the 96 plots remaining with the Society. This layout plan clearly shows that at this stage there is no plot E-25 old or new. Yet this Resolution makes mention of Plot No. E-25 and states that there cannot be any construction on this, amongst other, plots. Thus, it is clear that the Resolution by mistake is merely repeating the number of plots from the earlier resolution without it being having realised that now there was no plot No. E-25. Resolution No. 588 dt. 25th August 1965 is merely repeating the numbers as were mentioned in Resolution No. 158 dt. 18th May 1964. Thus it is clear that the mistake in Resolution No. 158 is carried forward to Resolution No. 588. That plot No. E-25 has been mentioned by mistake in Resolution No. 588 is further clear from the fact that in 1971, when the Society applied for changing the location of one plot, i.e. Plot No. 16-B, it sent a copy of the revised layout plan, as sanctioned, to the Municipal Corporation of Delhi. The Corporation permitted the change of location of Plot No. 16-B. The sanctioned revised layout plan which has been submitted to the Municipal Corporation of Delhi at this time is on record. To be remembered that by now Society had already carved out the additional plots and had sold them to various parties. By now the Municipal Corporation had refused permission to carve out more plots. Thus what had been sent by the Society was the revised layout plan which had been sanctioned in 1964 and on basis of which permission to construct had been granted in 1965. If the Appellants plot E-25 (new) existed it would have been shown in this layout plan. This plan shows that in the revised layout plan there was no plot E-25 (new). It must also be remembered that on 18th July, 1969 the Society had written to the mother of the Appellant pointing out that the revised layout plan showing the additional plots had been rejected by the Municipal Corporation of Delhi. If plot E-25 (new) was part of the revised layout plan such a letter would not have been written by the Society to the mother of the Appellant. The reply sent by the mother of the Appellant also shows that the mother of the Appellant did not consider the plot allotted to her, i.e. Plot No. E-25 (new), to be in exchange for Plot No. E-25 (old). What is also important is that admittedly neither the mother nor the Appellant were owners of old Plot No. E-25. That plot had ceased to exist much prior to the Appellant's mother having allotted Plot No. E-25 (new). The Society, prior to allotting this plot to the Appellant's mother, had by the Circular dated 21st July, 1965 made it very clear that after the change of boundaries some more plots may be available and that allotment of these plots would only be conditional. The Appellant's mother had given an undertaking dated 22nd September, 1965 accepting conditional allotment of Plot No. E-25 (new). She then entered into an Agreement which is an conditional agreement as set out hereinabove. The allotment to her was conditional on a revised layout plan containing additional plots being sanctioned. The Municipal Corporation of Delhi refused sanction. This was intimated to Appellants mother in 1969. In 1969 the Appellants

mother considered the allotment of plot E-25 (new) to be conditional and subject to the revised layout plan being sanctioned by the Municipal Corporation of Delhi. Thus, at all stages the Appellant's mother knew and accepted the fact that her plot was one of the new plots for which sanction would have to be obtained from the Municipal Corporation of Delhi and that if such sanction was not obtained she would have no right except to receive back the moneys paid to the Society. When it was pointed to Mr. Shanti Bhushan that the Appellant's mother had entered into a conditional agreement and that the Appellant, who merely steps into the shoes of her mother, could claim no higher or better rights. He submitted that all Sale Deeds executed by the Society were conditional sale deeds. Mr. Shanti Bhushan showed to Court a number of Sale Deeds and showed that all Sale Deeds executed by the Society were conditional. However, it must be remembered that the Society had carved out 11 new plots and had entered into conditional agreements with all persons who wanted allotment of those new plots. Those were the agreements which Mr. Shanti Bhushan was showing to Court. Mr. Rohtagi pointed out to Court that in respect of plots which were not new plots the Society had entered into Agreements which were not conditional agreements. He pointed out that the father and sister of the Appellant (i.e. the husband and daughter of Appellant's mother) had also been allotted plots which were part of the revised layout plan as sanctioned in 1964. Mr. Rohtagi pointed out that those agreements were not conditional agreements. Mr. Rohtagi submitted that the statement made by Mr. Shanti Bhushan across the bar, that all agreements were conditional agreements was not a correct statement. Mr. Rohtagi is correct. Court has seen that members of the Appellant's family had themselves entered into agreements which were not conditional agreements. On a query from Court Appellant, who was present in Court, confirmed that her father and sister had entered into agreements which were not conditional. This made it very clear that the Appellant's mother and even the Appellant were well aware that Plot No. E-25 (new) was not in substitution of the old Plot No. E-25 and that Plot No. E-25 (new) was a new plot which could only be allotted provided sanction was accorded by the Municipal Corporation of Delhi. In our view, Mr. Rohtagi was also right when he submitted that the layout plan of the Society could only have 98 plots. He correctly pointed out that in exchange for old plots Nos. E-25 and C-23 (which had gone away to the Central Road Research Institute) the Municipal Corporation of Delhi had by its Resolution dated 29th January, 1976 permitted the Society to carve out Plot Nos. C-35 and C-36. He submitted, and in our view correctly, that if anybody had any grievance to the effect that Plot No. E-25 (new) should have been the plot in exchange of the old E-25, then a complaint should have been made at that stage and the request of the Society and the decision of the Municipal Corporation to permit plot Nos. C-35 and C-36 should have been challenged at that stage. He points out that the Resolution dated 29th January, 1976 and the carving out of plots Nos. C-35 and C-36 in place of Plots Nos. E-25 and C-23 has never been challenged by anybody. He submits that admittedly there can be only 98 and the Appellant cannot ask for building activity to be permitted on an additional plot, which would make it 99 plots. He also points out, and in our view correctly, that the allottees or owners of Plots Nos. C-35 and C-36 have not been made parties to any appeal or litigation undertaken by the Appellant and that the sanction of those plots by the Municipal Corporation has not been in challenge at any stage. In our view, from the above it is clear that in 1958 a layout containing 98 plots was sanctioned. There is no sanction for more than 98 plots. Including plots C-35 and C-36 there are already existing 98 plots in the Society. The

Municipal Corporation of Delhi cannot be directed to create one more plot. What the Appellant, in effect, is claiming is directions to the Municipal Corporation of Delhi to sanction an additional plot as Plot No. E-25 (new). The right of the mother of the Appellant and/or the Appellant, if one existed, was to challenge, sanction of plots C-35 and/or C-36. This has never been done. Clarified that this Court is not saying that the Appellant or her mother have a right to challenge sanction of plots C-35 and/or C-36. Under these circumstances, we are of the view that the High court was absolutely right in coming to the conclusion that Plot No. E-25 (new) is not part of the sanctioned layout plan and that there can be no building activity in the absence of a sanctioned layout plan. To permit such building activity would clearly be in violation of Section 337(1) of the Municipal Corporation Act. Under these circumstances, we see no reason to interfere. The Appeal stands dismissed. There will be no order as to costs.

