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PT. CHET RAM VASHIST (DEAD) BY LRS.

v.

MUNICIPAL CORPORATION OF DELHI

OCTOBER 26, 1994

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[R.M. SAHAI AND N.P. SINGH, JJ.]

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Delhi Municipal Corporation Act, 1957—Section 313—Whether Corporation has power to vest open spaces reserved for parks and schools in a private colony in itself—Lay out plan submitted for approval—Open spaces reserved for public purpose for parks and schools—Approval granted subject to the condition that open spaces should be transferred to Corporation free of cost—Held, condition is illegal and invalid—No such power conferred by the Act.

Words and Phrases—Transfer of ownership and transfer of right of management—Meaning of—Difference between.

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Constitution of India—Article 142—Substantial justice—Order of the High Court liable to be set aside—However, in the facts and circumstances of the case order altered.

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The appellant got the lay out plan of a colony being developed by him approved by the Corporation. The plan proposed installation of tube wells in two plots of the colony for supply of water as at the relevant time there was no municipal supply available. When Municipal supply reached the colony, the appellant sought to connect the colony to the water supply main and applied for removal of restrictions from building activity. The Standing Committee of the Corporation in November 1964 considered the application of the appellant for removal of restrictions and resolved that building activity may be allowed in the colony "subject to the condition that the open spaces for parks and schools be transferred to the Corporation free of cost." The Corporation laid down a further condition that the two plots reserved for installation of tube well should be reserved as green parks.

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Against the conditions imposed by the Corporation for transfer of open spaces free of cost to it and for reservation of the two plots as parks, the appellant filed a suit for declaration and mandatory injunctions in November 1965. The Trial Court held that though the condition relating to reservation of the two plots for the purpose of an open park is valid, the condition relating to transfer of sites for schools and parks to the Corporation free of cost was invalid.

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Both the appellant as well as Corporation appealed against the trial court's order. Appeal preferred by the Corporation was dismissed. In respect of the appeal preferred by the appellant, the Court held that though the appellant was entitled to the relief of injunction, the appellant had no cause of action as the standing committee, which was the final authority to accord permission for building activity, had rejected the plan of the appellant.

On appeal, the High Court held that the condition imposed on the appellant for transfer of sites for schools and parks free of cost did not amount of transfer of ownership but merely transfer of right of management.

On appeal, this court while declining to interfere with the order of the High Court in the facts and circumstances of the present case.

HELD : 1.1. There is no provision in the Delhi Municipal Corporation Act, 1957 which provides that any space reserved for any open space or park shall vest in the Corporation. In absence of any provision, therefore, in the Act the open space left for school or park in a private colony cannot vest in the Corporation. The resolution of the Standing Committee, therefore, that the area specified in the lay out plan for the park and school shall vest in the Corporation free of cost, was not in accordance with law. (188-G, 189-C)

1.2. Public purpose is, no doubt, a very important consideration and private interest has to be sacrificed for the welfare of the society. But when the appellant was willing to reserve the two plots for park and school then he was not acting against public interest. This cannot be stretched to create a right and title in favour of a local body which at the most may be entitled to manage and supervise only. (188-B)

3. Sub-section (3) of Section 313 of the Delhi Municipal Corporation Act, 1957 empowers the Standing Committee to accord sanction to the lay out plan on such conditions as it may think fit. The expression, such conditions has to be understood so as to advance the objective of the provision and the purpose for which it has been enacted. The Corporation has been given the right to examine that the lay out plan is not contrary to any provision of the Act or the rules framed by it. But the power cannot be construed to mean that the Corporation in the exercise of placing restrictions or imposing conditions before sanctioning a lay out plan can also claim that it shall be sanctioned only if the owner surrenders a portion of the land and

- A transfers it in favour of the Corporation free of cost. That would be contrary to the language used in the section and violative of Civil rights which vests in every owner to hold his land and transfer it in accordance with law. (187-C-F)

- B *M/s. D.L.F. Housing and Construction (P) Ltd. v. Delhi Municipal Corporation and Others*, ILR (1965) Delhi 1055, distinguished.

- C 2. The finding of the High Court that the condition imposed by the Corporation did not amount to transfer of ownership but it was only a transfer of the right of management cannot be accepted. The two rights, namely, of ownership and of management, are distinct and different rights. Once a vacant site is transferred in favour of another free of cost then the person transferring it ceases to be owner of it. Whereas in transfer of right of management the ownership continues with the person to whom the property belongs and the local authority only gets right to manage it. But the conditions imposed by the standing committee clearly meant to transfer the ownership in favour of the Corporation. (187-G-H)

- E 3. In the facts and circumstances of the case, interfering with the order of the High Court would be setting at nought settled state of affairs. Yet in order to protect interest of the owners of the house and residents of the colony, the order of the High Court is modified to the following effect :- (190-B-C)

(i) The Corporation shall have right to manage the land which was earmarked for school, park etc. (190-D)

- F (ii) The Corporation shall not have any right to change the user of land which shall be for beneficial enjoyment of the residents of the colony. (190-D)

(iii) It is left open to the Corporation to get the land transferred in its favour after paying the market price as prevalent on the date when the sanction to the lay out plan was accorded. (190-E)

- G CIVIL APPELLATE JURISDICTION : Civil Appeal No. 319 of 1976.

From the Judgment and Order dated 7.5.75 of the Delhi High Court in B.S.A. No. 38 of 1969.

- H R.F. Nariman and S.S. Jauhar for the Appellant.

Ranjit Kumar and Ms. Binu Tamta for the Respondent.

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The Judgment of the Court was delivered by.

R.M. SAHAI, J. The question of law that arises for consideration in this appeal is whether the Municipal Corporation of Delhi (hereinafter referred to as 'the Corporation') in absence of any provision in the Delhi Municipal Corporation Act, 1957 (hereinafter referred to as 'the Act') was entitled to sanction the plan for building activities with condition that the open space for parks and schools be transferred to the Corporation free of cost.

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Facts in brief are that one Pt. Amin Chand was owner of a colony named 'Ganga Ram Vatika' situated on Najafgarh Road, Village Chaukhandi, near Tilak Nagar, New Delhi. In 1957 he submitted a lay out plan of the colony to the Delhi Development Provisional Authority. It was rejected. The Town Planning Organisation of the Corporation sent him a copy of the revised lay out plan and intimated him that if he submitted the plan as proposed by them they might consider his request. Amin Chand, therefore, submitted fresh proposal in accordance with proposed lay out plan in September 1958. In the plan it was proposed to divide the colony into 98 residential plots and 7 shops plots. Some open space was reserved for children park. The plan was approved by the Corporation. It passed a resolution in December 1958 approving the plan. In the plan the water supply to the colony was proposed to be supplied by tube-well as an interim arrangement till the municipal supply of water reached the colony. It was proposed to install tube wells in the two plots measuring 100x80 ft. These two plots nos. 1 and 2 were set apart for this purpose. Later on since municipal water supply main reached Tilak Nagar there was no necessity of installing any tube well for the supply of water to the colony. Amin Chand, therefore, decided to connect his colony with the municipal water main. After providing services to the colony he applied to the Corporation for removing restrictions from building activities in the colony. He wanted to sell the plots. Permission was also sought from the Corporation for his purchasers to build. In course of these preparations the original plan had to be changed at places. Therefore, an adjustment plan was submitted showing the latest position of the plots and the roads etc. Amin Chand died in June 1962. After his death his son wrote to the Corporation for removal of restrictions. On November 20, 1963 the Town Planner of the Corporation informed the appellant that the area of the two plots originally earmarked for tube-well will have to be used as an open park. The Standing Committee of the Corporation met in November 1964 for consideration of

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- A the appellant's application for removing restrictions on building activities. They passed the following resolution :

“Resolved that building activity in those parts of Ganga Ram Vatika be allowed where the services have already been completed subject to the condition that the open spaces for parks and schools be transferred to the Corporation free of cost.”

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On coming to know of this in November 1965 the appellant filed a suit for declaration and mandatory injunction in the court of the subordinate judge. The main grievance was against the condition in respect to transfer of the open space for parks and schools. The Trial Court held that the condition relating to reservation of the two plots for the purpose of an open park was valid. But the condition relating to transfer of the sites reserved for schools and parks to the Corporation free of cost was invalid. Both parties went into appeal. The appeal of the Corporation was dismissed. The Appellate Court set aside the judgment and decree of the trial court to the extent it dismissed the suit of the appellant in respect of the declaration and injunction reliefs with respect to the condition calling upon him to leave as green park the area shown as two residential plots in the revised lay out plans but held that the appellant had no cause of action and the trial court should have rejected the plaint as the Standing Committee which was the final authority to accord permission for building activities having rejected the plan there was no cause of action for the appellant to challenge the condition. The appeal even though allowed in part resulted in rejection of plaint. Against this order passed by the Appellate Court, it was the Corporation which filed two appeals. One, against the dismissal by the Appellate Court of the appeal filed by it assailing the finding recorded by the Trial Court that the Corporation had no right to ask the plaintiff to transfer to it sites for parks and schools free of cost. The other appeal was against the observation in favour of the appellant that he was entitled to relief of declaration and injunction. This appeal was dismissed by the High Court as incompetent. As regards the other appeal the High Court held that the resolution of the Committee did not amount to transfer of ownership to it. It was only a transfer of right of management. The Court, therefore, held that after the plans were sanctioned on the basis of the voluntary restrictions placed by the appellant himself on his ownership rights a fiduciary relationship in the nature of trust came into existence by operation of law in respect of those plots and appellant's right of ownership stood modified. The Court repelled the claim of the appellant that he would himself manage the park and the school as the appellant having ceased to be full and

complete owner of the space set apart for parks and schools he held them only as a trustee. It was held that a fiduciary relationship in the nature of trust having arisen and the coloniser having ceased to have beneficial interest in the land which was earmarked by him for public purpose the beneficial enjoyment of the land after the sanction vested in third party. Therefore, the only residuary interest that the appellant held in these lands was to hold it for the benefit of other persons. Consequently the transfer of the residuary interest which was nothing more than a right to hold these lands in trust for the specific purpose specified by the coloniser in the sanctioned lay out plan, it was only a right of management of the trust in respect of these lands of which Article 31 was not attracted. Reliance was placed by the High Court on a decision in *M/s D.L.F. Housing and Construction (P) Ltd. v. Delhi Municipal Corporation and Others.*, I.L.R. (1969) Delhi 1055. A B C

But that decision is of no avail as it was on construction of clause (iv) of paragraph (3) of Section 5 of the regulations framed under Delhi (Control of Building Operations) Ordinance, 1955 which provided that the coloniser shall transfer to the authority free of cost the plots reserved for public utility services. Whether such a provision was valid or not, or it was violative of Article 31 of the Constitution is not of any consequence as it is undisputed that there is no provision in the Act which provides for either vesting of the parks or schools or any place left by a coloniser in the lay out plan for this purpose. In absence of any statutory provision vesting such land in the Corporation it cannot become the owner of it. And that is not the reasoning of the High Court as well. D E

Section 313 of the Act read as under :

“313. Lay-out plans.— (1) Before utilising, selling or otherwise dealing with any land under section 312, the owner thereof shall send to the Commissioner a written application with a lay out plan of the land showing the following particulars, namely :- F

(a) the plots into which the land is proposed to be divided for the erection of buildings thereon and the purpose or purposes for which such buildings are to be used; G

(b) the reservation or allotment of any site for any street, open space, park, recreation ground, school, market or any other public purposes; H

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(c) the intended level, direction and width of street or streets;

(d) the regular line of street or streets;

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(e) the arrangements to be made for levelling, paving metalling, flagging, channelling, sewing, draining, conserving and lighting street or streets.

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(2) The provisions of this Act and the bye-laws made thereunder as to width of the public streets and the height of buildings abutting thereon shall apply in the case of streets referred to in sub-section (1) and all the particulars referred to in that sub-section shall be subject to the sanction of the Standing Committee.

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(3) Within sixty days after the receipt of any application under sub-section (1) the Standing Committee shall either accord sanction to the lay-out plan on such conditions as it may think fit or disallow it or ask for further information with respect to it.

(4) Such sanction shall be refused -

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(a) if the particulars shown in the lay-out plan would conflict with any arrangements which have been made or which are in the opinion of the Standing Committee likely to be made for carrying out any general scheme of development of Delhi whether contained in the master plan or a zonal development plan prepared for Delhi or not; or

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(b) if the said lay-out plan does not conform to the provisions of this Act and bye-laws made thereunder; or

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(c) if any street proposed in the plan is not designed so as to connect at one end with a street which is already open.

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(5) No person shall utilise, sell or otherwise deal with any land or lay-out or make any new street without or otherwise than in conformity with the orders of the Standing Committee and if further information is asked for, no step shall be taken to utilise sell or otherwise deal with the land

or to lay-out or make the street until orders have been A
passed upon receipt of such information :

Provided that the passing of such orders shall not be in any
case delayed for more than sixty days after the Standing
Committee has received the information which it considers
necessary to enable it to deal with the said application. B

(6) The lay-out plan referred to earlier in this section shall if
so required by the Standing Committee, be prepared by a
licensed town planner."

None of its provisions entitled the Corporation to claim any right or C
interest in the property of the owner. Sub-section (3) empowers the
Standing Committee to accord sanction to the lay out plan on such
conditions as it may think fit. The expression, 'such conditions' has to be
understood so as to advance the objective of the provision and the purpose
for which it has been enacted. The Corporation has been given the right to
examine that the lay out plan is not contrary to any provision of the Act or D
the rules framed by it. For instance a person submitting a lay out plan may
be required to leave certain open space or he may be required that the
length and width of the rooms shall not be less than a particular
measurement or that a coloniser shall have to provide amenities and
facilities to those who shall purchase land or building in its colony. But the
power cannot be construed to mean that the Corporation in the exercise of E
placing restrictions or imposing conditions before sanctioning a lay out plan
can also claim that it shall be sanctioned only if the owner surrenders a
portion of the land and transfers it in favour of the Corporation free of cost.
That would be contrary to the language used in the Section and violative of
civil rights which vests in every owner to hold his land and transfer it in F
accordance with law. The resolution passed by the Corporation directing
the appellant to transfer the space reserved for tube-wells, school and park
in its favour free of cost was depriving the owner of its property and vesting
it in the Corporation against law. The finding of the High Court that such
condition did not amount to transfer of ownership but it was only a transfer
of the right of management cannot be accepted. The two rights, namely, of G
ownership and of management, are distinct and different rights. Once a
vacant site is transferred in favour of another free of cost then the person
transferring it ceases to be owner of it. Whereas in transfer of right of
management the ownership continues with the person to whom the property
belongs and the local authority only gets rights to manage it. But the
conditions imposed by the Standing Committee clearly meant to transfer the H

- A ownership in favour of the Corporation. The Corporation as custodian of civil amenities and services may claim and that would be proper as well, to permit the Corporation to regulate, manage, supervise and look after such amenities but whether such a provision can entitle a Corporation to claim that such property should be transferred to it free of cost appears to be fraught with insurmountable difficulties. The law does not appear to be in
- B favour of the Corporation. Public purpose is, no doubt, a very important consideration and private interest has to be sacrificed for the welfare of the society. But when the appellant was willing to reserve the two plots for park and school then he was not acting against public interest. This cannot be stretched to create a right and title in favour of a local body which utmost may be entitled to manage and supervise only.

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- D The power directing transfer of the land has been exercised under Section 313 of the Act. This Section falls in Chapter XV which deals with streets. The public streets are dealt from Section 298 to Section 311 whereas private streets are dealt from Section 312 to Section 330. Section 312 obliges an owner of any land utilising, selling, leasing out or otherwise disposing of the land for the construction of building to lay out and make a street or streets giving access to the plots into which the land may be divided and connect it with an existing or public street. Section 313 requires such owner to submit a lay out plan before utilising the land for any of the purposes mentioned in Section 312 and send it to the Commissioner with a lay out plan showing the particulars mentioned in clauses (a) to (e). The
- E reservation or allotment of any site in the lay out plan for any open space, park or school is to be provided by clause (b) of Section 313. Section 316 entitles the Commissioner to declare a private street to be a public street on the request of owners. Section 317 prohibits a person from constructing or projecting any structure which will encroach overhang project in a private street. In fact the entire cluster of Sections from 312 to 330 of which
- F Section 313 is a part, deals with private streets only. There is no provision in this chapter or any other provision in the Act which provides that any space reserved for any open space or park shall vest in the Corporation. Even a private street can be declared to be a public on the request of owners of the building and then only it vests in the Corporation. In absence of any
- G provision, therefore, in the Act the open space left for school or park in a private colony cannot vest in the Corporation. That is why in England whenever a private colony is developed or a private person leaves an open space for park to be used for public purpose he is required to issue what is termed as 'Blight Notice' to the local body to get the land transferred in its favour on payment of compensation. Section 313 which empowers the
- H Commissioner to sanction a lay out plan, does not contemplate vesting of

the land earmarked for a public purpose to vest in the Corporation or to be transferred to it. The requirement in law of requiring an owner to reserve any site for any street, open space, park, recreation ground, school, market or any other public purpose is not the same as to claim that the open space or park so earmarked shall vest in the Corporation or stand transferred to it. Even a plain reading of sub-section (5) indicates that the land which is subject matter of a lay out plan cannot be dealt with by the owner except in conformity with the order of the Standing Committee. In other words the Section imposes a bar on exercise of power by the owner in respect of land covered by the lay out plan. But it does not create any right or interest in the Corporation in the land so specified. The resolution of the Standing Committee, therefore, that the area specified in the lay out plan for the park and school shall vest in the Corporation free of cost, was not in accordance with law.

Reserving any site for any street, open space, park, school etc. in a lay out plan is normally a public purpose as it is inherent in such reservation that it shall be used by the public in general. The effect of such reservation is that the owner ceases to be a legal owner of the land in dispute and he holds the land for the benefit of the society or the public in general. It may result in creating an obligation in nature of trust and may preclude the owner from transferring or selling his interest in it. It may be true as held by the High Court that the interest which is left in the owner is a residuary interest which may be nothing more than a right to hold this land in trust for the specific purpose specified by the coloniser in the sanctioned lay out plan. But the question is, does it entitle the Corporation to claim that the land so specified should be transferred to the authority free of cost. That is not made out from any provision in the Act or on any principle of law. The Corporation by virtue of the land specified as open space may get a right as a custodian of public interest to manage it in the interest of the society in general. But the right to manage as a local body is not the same thing as to claim transfer of the property to itself. The effect of transfer of the property is that the transferor ceases to be owner of it and the ownership stands transferred in the person in whose favour it is transferred. The resolution of the Committee to transfer land in the colony for parks and school was an order for transfer without there being any sanction for the same in law.

Even then the question is, should we set aside the order of the High Court and the appellate court and restore that of the trial court or we may alter the order passed by the courts below so as to do substantial justice. We have opted for the latter course for the reasons to be mentioned hereinafter. The appellant's plan was sanctioned subject to the conditions imposed by

- A the Corporation. He did not raise any objection immediately and appears to have proceeded to sell and transfer the land. The suit was filed after nearly one year from the date of sanction. The Corporation has been exercising right over the land in dispute as transferor, since then, for nearly a quarter of Century. In these circumstances interfering with the order of the High Court would be setting at nought settled state of affairs. It was also stated
- B by the learned counsel for respondent that the appellant has no land or house in the locality.

For these reasons even though the judgment and decree of the High Court are liable to be set aside but we refrain from doing so. Yet in order to protect interest of the owners of house and residents of the colony it is

C directed that the order of the High Court shall stand modified to the following effect :

(1) The Corporation shall have right to manage the land which was earmarked for school, park etc.

- D (2) The Corporation shall not have any right to change the user of land which shall be for beneficial enjoyment of the residents of the colony.

(3) It is left open to the Corporation to get the land transferred in its favour after paying the market price as prevalent on the date when the sanction to the lay-out plan was accorded.

- E The appellant shall be entitled to his costs throughout.

B.K.M.