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

+ W.P.(C) 6416/2017 & CM APPL. 26577/2017

MOHIT GOEL AND ORS

.....Petitioners

Through: Mr. Rana Ranjeet Singh, Mr. Vivek Kumar Singh, Mr. Aditya Shekhar, Ms. Akanksha Singh, Mr. Ravish Singh, Advocates
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Versus

GOVT OF NCT OF DELHI AND ORS.

.....Respondents

Through: Ms. Avni Singh, PC with Ms. Prapti, Advocate for R-1
M: 9958018998
Mr. Sunil Goel, Standing Counsel MCD alongwith Ms. Dimple Aggarwal and Mr. Himanshu Goel, Advocates for the Respondent MCD

CORAM:
HON'BLE MS. JUSTICE MINI PUSHKARNA

JUDGMENT

19.08.2025

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1. The present petition has been filed under Article 226 of the Constitution of India, 1950, seeking, *inter alia*, directions to respondent nos. 2 to 4, i.e., Municipal Corporation of Delhi (“MCD”), to comply with their undertaking dated 28th September, 2011, given before the District Court, Tis Hazari, Delhi in *Suit No. 274/1988 (New No. 1827/2009)*, titled as “*Model*



Town Owners and Residents Society (Regd.) Versus Municipal Corporation of Delhi”, whereby, the MCD had agreed to develop the land facing *House Nos. F-14/31 to F-14/36, Model Town-II, Delhi* as an ‘ornamental park’. Since the MCD sought to put the land in question to use as a playground for the adjoining government school and the old boundary wall existing therein was sought to be re-constructed, the present writ petition has been filed.

2. The facts, as canvassed in the petition, are as follows:

2.1. The petitioners, in the present case, are the owners of the properties bearing *Nos. F-14/31 to F-14/36* facing the land in question, and are members of the Model Town Owners and Residents Society (Regd.), Model Town, Delhi (“Residents Society”).

2.2. As per the said sanctioned site plan, three plots were earmarked for parks/lawns, in front of the ‘F’ block of Model Town-II, Delhi, which are more specifically in front of the houses bearing *Nos. F-14/20 to F-14/50*. One of the parks has been converted into a concrete parking by the MCD, while part of another park has been concretized by constructing stores, rooms, and offices of the MCD.

2.3. The present case pertains to area marked as park/lawn, which is situated opposite to the *House Nos. F-14/31 to F-14/40, Model Town-II, Delhi*, with a 15-feet wide road in front and a 30-feet wide road at the rear of the aforementioned houses.

2.4. In the year 1987-1988, the owners/occupants of the aforementioned houses/properties, including the petitioners, submitted a representation to the MCD, opposing the conversion of the aforesaid park/lawn into a multi-storied school building for Municipal Corporation Primary School, Model Town. In response, the MCD had assured the residents that only a temporary



shed for the school would be constructed, and that the permanent structure was being erected elsewhere.

2.5. However, despite such assurance, construction activities persisted, pursuant to which, the Residents Society of the area, including, owners/occupiers of the properties bearing *House Nos. F-14/31 to F-14/40*, filed a suit bearing *Suit No. 274/1988 (New No. 1827/2009)*, seeking perpetual injunction against the MCD to not convert the said lawn/park into a multi-storied building for the school.

2.6. On 16th September, 2011, the MCD held a meeting in the presence of Area Councilor, competent officials from the Education Department of the MCD school and members of the Residents Society. Accordingly, a unanimous decision dated 23rd September, 2011 was taken, whereby, it was mutually agreed among the parties that the aforesaid pending suit would be withdrawn, on the terms and conditions noted in the said decision. Further, as per the unanimous decision dated 23rd September, 2011, it was resolved that existing school operating from temporary sheds facing *House Nos. F-14/37 to F-14/41*, would be developed as a *pucca* school, while rest of the land facing *House Nos. F-14/31 to F-14/36*, will be developed as an ‘ornamental park’.

2.7. In view of the aforesaid decision and the compromise made amongst the parties, an application for withdrawal of the *Suit No. 274/1988 (New No. 1827/2009)* was filed by the plaintiff therein, i.e., Model Town Owners and Residents Society (Regd.).

2.8. The aforesaid application for withdrawal of the said suit was considered by the learned Civil Judge, Tis Hazari Courts, Delhi, and on the basis of the statements made on behalf of both parties, compromise



application, and MCD's decision dated 23rd September, 2011, were taken on record as *Exh. C-1* and *Exh. C-2*. Accordingly, the said suit was disposed of *vide* order dated 28th September, 2011, and the parties were held bound by the statements made before the District Court, Tis Hazari, Delhi.

2.9. Since the year 2011 till March, 2017, the petitioners repeatedly requested the MCD to develop the rest of the land into an 'ornamental park', in terms of the undertaking as recorded in order dated 28th September, 2011. However, though the MCD constructed the multi-storied school building, they did not undertake the development and construction of the rest of the land as an 'ornamental park'.

2.10. Thereafter, on 09th March, 2017, the MCD awarded a work order bearing *W.O. No. EE(M-CLZ)-III/SYS/2016-2017/339* ("work order"), to the respondent no. 5 for the construction of boundary walls and gates in the vacant land adjoining the school to be completed within a period of five months.

2.11. Upon learning that the MCD had erected a board designating the said land as "*SCHOOL LAND*", the petitioners issued a legal demand notice dated 01st June, 2017 to the MCD, *inter alia*, calling upon them to immediately stop the construction of the 6-feet high boundary walls around the land in question, and further demanding to develop the said land as an 'ornamental park'.

2.12. Thus, the present writ petition has been filed.

3. On behalf of the petitioners, it is submitted as follows:

3.1. The petitioners are aggrieved by the action of the MCD, in willfully and intentionally, disregarding the undertaking given by them before the Tis Hazari Courts, Delhi on 28th September, 2011, by awarding contract to



respondent no. 5 to construct the 6-feet boundary wall and four concrete staircases in/around the subject park/lawn.

3.2. As per the compromise recorded in the order dated 28th September, 2011, the land in question being shown as park/lawn in the sanctioned site plan, was to be developed into an 'ornamental park' facing the subject houses. The petitioners had purchased the plots facing the land in question from the DLF Limited on the assurance that the said land would be developed into a beautiful green ornamental park, among other facilities in the colony.

3.3. Though, the Layout Scrutiny Committee of the MCD, made a recommendation for amendment in the layout plan, however, it was recorded that such approval would be subject to the orders of this Court. Thus, it is clear that all amendments and proposals were forwarded to the Standing Committee and were approved by the Standing Committee, while the present writ petition is pending consideration.

3.4. The subject park/lawn has never been converted or sanctioned in favour of the Municipal Corporation Primary School in question and the land has never been converted to be used for any other purpose except as a lawn/park.

3.5. Petitioners have made various representations to the MCD to plan a comprehensive landscape plan by removing the boundary wall around the site in question, however, no action has been taken in that regard. Even otherwise, as per the MCD Rules, a lawn/park/garden cannot have a concrete wall of more than 3-feet, however, in the present case, the MCD is constructing walls measuring 6-feet around the land in question.



3.6. Moreover, despite the clear direction of the Civil Court, the MCD has violated the terms of their undertaking given before the Civil Court and have not converted the land in question into an 'ornamental park'. Furthermore, the MCD has started concretizing the said vacant land and building playground for the adjoining school, which is posing risk to the community living around the said area.

3.7. Such irregular action of MCD in floating the tender and awarding a work order is violative of the undertaking given before the Civil Court and amounts to contempt of Court. The MCD, in blatant disregard of the said undertaking and the order recording the compromise, awarded work order dated 09th March, 2017, issued by the office of the Executive Engineer of MCD to respondent no. 5, for concretization of the complete park in question and for construction of a boundary wall exceeding 6-feet in height, along with a gate and four staircases of 15 metres each on all sides of the land in question.

3.8. Such construction by the MCD will hamper the living standard of the occupants/owners of the properties in front of the land in question and they shall not be in a position to live in their own buildings due to high rise wall and concretization of the vacant portion of the land in question. Additionally, petitioners are the directly affected parties, as their fundamental rights under Articles 14 and 21 of the Constitution of India, and their legal rights *qua* the enjoyment of fresh air, sunlight, and unobstructed open surroundings, are violated due to the proposed construction of a high-rise concrete structure in the form of boundary walls and staircases, in front of their houses.

4. On the other hand, on behalf of respondent nos. 2 to 4, it is submitted as follows:



4.1. The present petition is misconceived and not maintainable as the same is in the nature of a Public Interest Litigation (“PIL”), which cannot be entertained in a writ jurisdiction. Additionally, the petitioners have no *locus* to file the present petition, since the plaintiff in the Civil Suit, i.e., Model Town Owners and Residents Society, has not raised any grievance to the use of land in question, as the playground for the school in question.

4.2. As per the Prayer Clauses, the present petition pertains to alleged violation of the undertaking given by the MCD on 28th September, 2011 before the Civil Court. Therefore, the present petition is not maintainable, as the correct course of action for the petitioners was to file an appropriate application in the *Suit No. 274/1988 (New No. 1827/2009)*, for violation of the order passed in the said suit.

4.3. The compromise between the MCD and the plaintiff in the suit was recorded by the Civil Court on 28th September, 2011, whereas, the present petition has been filed in July, 2017, i.e., nearly six years later and is, thus, barred by delay and laches.

4.4. The file noting dated 23rd September, 2011 by the Assistant Engineer of the Engineering Department, MCD, as relied upon by the petitioners and termed as a unanimous decision, was only a ‘proposal’, which was never approved by the higher authorities and therefore, the same had not resulted in a ‘decision’ of the MCD. Additionally, the Assistant Engineer of the Engineering Department, MCD had made an inadvertent statement before the Civil Court on 28th September, 2011, in terms of the file noting dated 23rd September, 2011, however, the land in question belonged to the Education Department, MCD.



4.5. It is a settled law that a file noting is binding only when it reaches the final decision-making authority in the concerned Department of the MCD, and subsequently, the same is approved by the concerned Department, which in the present case is the Education Department, MCD. Therefore, the said file noting dated 23rd September, 2011 does not confer any enforceable rights to the petitioners.

4.6. The Standing Committee of MCD, by way of a Resolution No. 33 dated 19th August, 2020, had also clarified and amended the layout plan of the Model Town by earmarking the said area for the school. The said amendment in the layout Plan of the Model Town has not been challenged and has attained finality. Thus, the MCD has removed the discrepancy in the layout plan making it clear that the land in question is meant for the said school and therefore, the petitioners cannot insist upon the MCD for developing an ‘ornamental park’, as the same would be contrary to law.

4.7. As per the Register of Immovable Property maintained by the Land and Estate Department, the land/plot in question admeasuring 4458 sq. yards, is owned by the MCD and was allotted to the Education Department for Municipal Corporation School *vide* Entry dated 21st May, 1969.

4.8. Even otherwise, the said school has existed on the land in question for decades. Originally functioning from tents and single-storey sheds, the school was later rebuilt on a portion measuring 1560 sq. yards, while the remaining portion of 2898 sq. yards was retained for use as a playground. Additionally, the boundary wall, originally built around the entire plot, was in dilapidated condition and was reconstructed in the year 2017.

4.9. As per the layout plan of the area in question, the land use of the entire plot admeasuring 4458 sq. yards was earlier shown as ‘lawn’,



however, the land use was subsequently changed to ‘school’, in terms of the records maintained by the Land and Estate Department, MCD. The lay out plan has also been amended to show use of the land in question for school.

4.10. The petitioners, in the present petition, have not been able to show as to how they have been affected by use of the land in question vested in the Education Department, MCD, as a playground for the school. Therefore, there exists no genuine grievance of the petitioners, since there is no obstruction to light and air by usage of the land in question as a playground for the school.

4.11. The real intention of the petitioners behind filing the present petition is the commercial interest arising out of the shops being run by the owners/occupiers of the properties in the area in question.

5. This Court notes that *vide* order dated 20th November, 2017, the parties had been directed to maintain *status quo* with respect to the construction in the subject park/lawn. However, subsequently *vide* order dated 11th December, 2017, on the basis of the affidavit dated 25th November, 2017 filed on behalf of the respondent no. 2 - NDMC, this Court had noted that the subject park/lawn forms part of a school, i.e., Municipal Corporation Primary School, Model Town and a boundary wall with gates had come to be constructed around the open piece of land, which is the subject matter of the present petition. Thus, it was directed that the *status quo* order dated 20th November, 2017 was not required to be continued. The order dated 11th December, 2017, reads as under:

“xxx xxx xxx

As per the affidavit that has come to be filed on behalf of respondent no.2-North Delhi Municipal Corporation, the subject land is forming part of Municipal Corporation Middle School and



only a boundary wall with gates has come to be constructed around the open piece of land, which is subject matter of the petition. Ld. counsel for the petitioner concedes that the wall and the gates have already been installed. In view thereof, continuance of the order dated 20.11.2017 any further is not required at this stage. It is ordered accordingly.

xxx xxx xxx”

(Emphasis Supplied)

6. Additionally, by way of the order dated 17th October, 2023, this Court noted the suggestion regarding a possible resolution to the present dispute, for development of the park as a green space, which could be used by the students studying in the school as a playground for a few hours daily, and be open to public as well, for rest of the time.

7. However, when the matter was listed on 05th December, 2023, counsel appearing for the MCD submitted that the suggestion as noted in the previous order by the Court, was not acceptable to the MCD, as the land in question had been earmarked as a primary school in the layout plan of the locality. Additionally, it was noted that the MCD had filed an application before the Civil Court, Tis Hazari Courts, Delhi in *Suit No. 274/1988 (New No. 1827/2009)*, titled as “*Model Town Owners and Residents Society (Regd.) Versus Municipal Corporation of Delhi*”, for recall of the compromise order dated 28th September, 2011. Thus, order dated 5th December, 2023, reads as under:

*“1. Mr. Sunil Goel, learned Standing Counsel for the Municipal Corporation of Delhi [“MCD”], states that the suggestion of the Court in order dated 17.10.2023 is not acceptable to MCD because **the area which, according to the petitioner, has been earmarked as a park has, in fact, been earmarked as a primary school in the layout plan of the locality.***

2. Mr. Goel further states that MCD has filed an application before the learned Trial Court for recall of the order dated 28.09.2011, referred to in prayer ‘A’ of the present writ petition.



3. *In order to enable MCD to place the necessary documents on record, list on 10.04.2024.*

4. *MCD will also produce the physical copy of the concerned layout plan before the Court on the next date of hearing.”*

(Emphasis Supplied)

8. From the facts on record, it transpires that on a plot measuring 4458 sq. yards opposite *House Nos. F-14/31 to F-14/40, Model Town*, a Municipal Corporation Primary School, has been running since last many decades. The said land, which is vested with the MCD, was allotted to the Education Department of the MCD *vide* Entry dated 21st May, 1969, as per the records maintained by the Land and Estate Department of the MCD.

9. The school was initially run from tents and single storey sheds. Subsequently, on an area measuring 1560 sq. yards, a school building was constructed, while the remaining vacant land measuring 2898 sq. yards, was put to use as a playground for the said school. A boundary wall was already existing bounding the entire plot, but since this boundary wall had become dilapidated, a work order was issued in the year 2017 for re-construction of the boundary wall.

10. It has come to the fore that as per the layout plan of 1965, the land in question was shown as ‘lawn’. However, subsequently, *vide* Resolution No. 1485 dated 30th November, 1988 of the Standing Committee, the land use was changed from ‘lawn’ to ‘school’. Thus, it is to be noted that in its written statement in the suit proceedings, the MCD has clearly brought forth the fact that as per Resolution passed by the Standing Committee in the year 1988, the site in question, which was earlier earmarked for park, had been approved for location of primary school building, and land use had been



changed accordingly. The relevant extract from the written statement filed by the MCD in the suit proceedings, as aforesaid, is reproduced as under:

“xxx xxx xxx

8. That the plaintiff has no right, title or interest in the present site. As per Master plan and Zonal Development plan all the existing Schools in the Model Town have been retained in their present sites. The present school is running at present site since 1959 in a pre-fabricated structure, which is now being replaced by permanent School Bldg; It is further submitted that as per resolution bearing No. 1485 passed by the Standing Committee on 30.11.88 the site in Block F.14 which was earlier earmarked for Park has been approved for location of permanent primary School Bldg. and the land use has changed accordingly. In view of the resolution now the land use of the present site is for the utilisation for permanent School Bldg. for running a existing school as such the suit is liable to be dismissed.

xxx xxx xxx”

(Emphasis Supplied)

11. Since there was discrepancy in the layout plan of the area and the actual use of the land in question for school, this fact was noted by the MCD during the pendency of the present writ petition. Thus, the Layout Scrutiny Committee of the MCD considered the said fact, and *vide Item No. 19/20* dated 29th May, 2019, it recommended the amendment of the layout plan showing the area as ‘school’, instead of ‘lawn’. The said proposal was thereafter placed before the Standing Committee, MCD, which approved the said modification in the layout plan of Model Town, by earmarking the site in question for primary school, subject to any order passed by this Court. The recommendation of the Layout Scrutiny Committee and approval by the Standing Committee, as contained in the Resolution No. 33 dated 19th August, 2020 of the Standing Committee of MCD, is reproduced as under:



From

The Commissioner,
North Delhi Municipal Corporation,
Civic Centre, New Delhi

To

The Municipal Secretary,
North Delhi Municipal Corporation,
Civic Centre, New Delhi

ANNEXURE R-8 (C-114)

(5)

Sub:- Discrepancy in the layout plan for the existing M.C Primary school at Model Town.

1. Background:

The above referred proposal/case has been received from the office of DC, Keshav Puram Zone. The extract of the note as received from DC/KPZ is reproduced as under:-

May kindly refer the observation made by Chief Town Planner at page no. 8/N. in this connection it is submitted that M.C. Primary Model School is existing and running near back lane of plot No. F-14/31 to F-14/40 for last five decades.

A court case pending before the Hon'ble High Court titled as Mohit Goel and ORS VS Govt. of NCT of Delhi bearing no. W.P.(C) 6416/2017 & CM No. 26577/2017. The petitioners wanted to develop an ornamental park at land parcel in question. It is pertinent to mention here that land parcel facing to back lane of plot no. F-14/31 to F-14/36 to be developed as ornamental park was only a proposal not a decision of the corporation and it was not binding on the corporation as this whole land was always under possession of Education Department of North DMC.

As per the order dated 15.01.2020 of Hon'ble High Court a layout plan of land parcel in question is to be filed before the Hon'ble High Court within four weeks from today.

After receiving the court orders, request has already been made to the office of Chief Town Planner to provide the copy of layout plan of said school plot. On perusal of the layout plan available on the website of North Delhi Municipal, there is contradiction of land use as the same has been shown as lawn but it is in use as an Education i.e. M.C. Pry. School from last five decades.

In view of the above facts and circumstance it is submitted that the land parcel/plot measuring 4458 sq. yards (=3728.88 sq. mtrs) is owned by the MCD and was allotted to Education Department for Municipal Corporation Middle school vide entry dated 21.05.1969, as per the register of immovable property maintained by the Land & Estate Department. Copy of Map of 1969 provided by the Land & Estate Department, which clearly shows that this land parcel/ plot measuring 4458 sq. yards near back lane of house no. F14/31 to F-14/40, Model Town was partly constructed as school building and the remaining land was being used as play ground for the school students.

More over it is pertinent to mention here that, the land parcel in question was always part of the Municipal school. model town which has been running for last several decades in the land parcel/ plot measuring 4458 sq. yards, out of which portion measuring 2898 sq yard remained vacant for use as playground. The education department is sole owner of the said land, as per record.

It is also submitted that as per the order of Hon'ble High Court, Education land should not be use for any other activity other than education. Further as per the record available in school it is clearly shows that the land parcel under question was always under possession of education department North DMC from 1958-59. So there is no question arise to give said land to other department for any reason.

In view of above facts and circumstances it is clear that the land parcel under question was always under possession of education department of North DMC. Therefore Town Planning Department is requested to get the issue clarified and made necessary amendments in layout plan so that the education department file the required layout plan before the Hon'ble High Court in time and if necessary, same may be placed before LOSC (Layout Scrutiny Committee).



2. **Area & Location:**

As per site verification done by Engg. Deptt. (copy available in the file) total area of the site is 3743.0635 sqm. whereas as per the entry of IP register (copy available in the file) total area of the site is 3728.88 sqm. The details of plot surroundings are as under:-

North : Road 30 feet wide
 South : Road 30 feet wide (Existing 40' wide)
 East : Service lane-15' ROW (Existing 22'6")
 West : 60' wide Road and open land in between school boundary and road

3. **Landuse:**

As per the layout plan of the Model Town the site in question is earmarked for lawn whereas as per IP register entry of the aforesaid site has been shown as education land w.e.f the year 1969 and school building is existing in the half of the portion.

4. **Ownership:**

As per the copy of IP register the site has been handed over by M/s DLF. The area of the site is 3728.88 sqm.

5. **LOSC Consideration:-**

The case was considered by the Layout Scrutiny Committee (LOSC) vide item no. 19/20 dated 29/05/19 and decision taken is reproduced as under:-

The case was discussed. It was informed to the committee that the proposal for modification of the Layout plan of Model Town has been referred by the Education Deptt. The Education Deptt. has stated that the LOP does not show the school whereas the land parcel w/r was under their possession since 1958-59. In the IP register of L&E Deptt., the entry has been made on 27.05.1969 along with the copy of map for an area measuring 4458 sq yds.

After discussion it was recommended to amend the LOP showing the school w/r and the proposal be forwarded to the Standing Committee for approval. However, it was clarified that this approval shall be subject to Hon'ble High Court order as and when announced. It was also discussed that at the rear side of the school some portion of the road has been used for parking purposes. This aspect shall be looked into and dealt appropriately by the Education Deptt. in consultation with the other relevant departments.

6. **Recommendations:-**

In view of the above, as required U/s 313 of DMC Act the preamble is placed before Standing Committee for modification in the layout plan of "Model Town" by earmarking the site w/r for Primary School subject to the following:-

1. The approval of the Standing Committee is subject to the Hon'ble High Court order as and when announced.

**Addl. Commissioner (Engg.)
For Commissioner**



2. **Area & Location:**

As per site verification done by Engg. Deptt. (copy available in the file) total area of the site is 3743.0635 sqm. whereas as per the entry of IP register (copy available in the file) total area of the site is 3728.88 sqm. The details of plot surroundings are as under:-

North : Road 30 feet wide
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As per the layout plan of the Model Town the site in question is earmarked for lawn whereas as per IP register entry of the aforesaid site has been shown as education land w.e.f the year 1969 and school building is existing in the half of the portion.

4. **Ownership:**

As per the copy of IP register the site has been handed over by M/s DLF. The area of the site is 3728.88 sqm.

5. **LOSC Consideration:-**

The case was considered by the Layout Scrutiny Committee (LOSC) vide item no. 19/20 dated 29/05/19 and decision taken is reproduced as under:-

The case was discussed. It was informed to the committee that the proposal for modification of the Layout plan of Model Town has been referred by the Education Deptt. The Education Deptt. has stated that the LOP does not show the school whereas the land parcel w/r was under their possession since 1958-59. In the IP register of L&E Deptt., the entry has been made on 27.05.1969 along with the copy of map for an area measuring 4458 sq yds.

After discussion it was recommended to amend the LOP showing the school w/r and the proposal be forwarded to the Standing Committee for approval. However, it was clarified that this approval shall be subject to Hon'ble High Court order as and when announced. It was also discussed that at the rear side of the school some portion of the road has been used for parking purposes. This aspect shall be looked into and dealt appropriately by the Education Deptt. in consultation with the other relevant departments.

6. **Recommendations:-**

In view of the above, as required U/s 313 of DMC Act the preamble is placed before Standing Committee for modification in the layout plan of "Model Town" by earmarking the site w/r for Primary School subject to the following:-

1. The approval of the Standing Committee is subject to the Hon'ble High Court order as and when announced.

Addl. Commissioner (Engg.)
 For Commissioner

12. Thus, it is seen that the layout plan was amended in order to bring the same in consonance with the land use, which already stood approved for use for school. As regards the authority of the MCD with regard to layout plans



of an area, reference may be made to Section 313 of the Delhi Municipal Corporation Act, 1957 (“DMC Act”), which reads 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:—

(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;

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

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

(d) the regular line of street or streets;

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

(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.

(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:—

(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

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

(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.

(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 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.

*(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.
xxx xxx xxx”*

13. As per Clause 3(11) under the head ‘Sanction of Plans’ in Chapter 17.0 of the Master Plan of Delhi, 2021 (“MPD 2021”), layout plans shall be approved by the local bodies and authority in their areas of jurisdiction. The said Clause 3(11) in Chapter 17.0 of MPD 2021, reads as under:

“SANCTION OF PLANS

3(11) Layout Plans/Site Plans and Building plans shall be approved by the Local Bodies and Authority in their areas of jurisdiction.”

14. As per Chapter 17.0 of the MPD 2021, Clause 2(4), layout plan is defined as under:

“2(4) Layout Plan means a Plan indicating configuration and sizes of all Use Premises. Each Use Zone may have one or more than one Layout Plan depending upon the extensiveness of the area under the specific Use Zones and vice-versa. A layout plan shall have at least two use premises (apart from Recreational, utilities and transportation) and a minimum area of 1 Ha. below which it shall be termed as site plan or sub division plan.

Layout Plan will indicate the location of all proposed and existing roads with their widths, dimensions of plots along with building lines and setbacks, location of drains, public facilities and services and electric lines etc, statement indicating the total area of the site, area under roads, open spaces for parks, playground, recreational spaces and other public places, as required by specific sections of the development code.”

15. Perusal of the aforesaid definition of layout plan as given in the MPD 2021, shows that layout plan connotes a plan which indicates the details of the ‘Use Premises’. ‘Use Premises’ has been defined in Clause 2(7) of Chapter 17.0 of MPD 2021, in the following manner:

“2(7) Use Premises means one of the many sub divisions of a Use Zone, designated in an approved layout plan, for a specific Use. Land use of a premise has to be determined on the basis of an approved layout plan.”



16. Thus, as per the aforesaid definition, ‘Use Premises’ is one of the many sub divisions of a ‘Use Zone’, which are designated in an approved layout plan for a specific use. ‘Use Zone’ has been defined in Clause 2(6) of Chapter 17.0 of MPD 2021, as follows:

“2(6) Use Zone means an area for any one of the Specified Use Category of the urban functions as provided for in Clause 4.0.”

17. Accordingly, a layout plan would indicate the ‘Use Premises’ showcasing the ‘Use Zone’ of an area, which specifies its land use for a specific purpose, as marked in a layout plan. The various ‘Use Zone’ which are allowed/designated for any specified area, are given in Clause 4 of Chapter 17.0 of MPD 2021. The Model Town area, where the land in question exists, is a residential area. As per the said Clause 4 of Chapter 17.0 of MPD 2021, ‘Use Premises’ for areas earmarked for residential purposes, permits ‘Use Zone’, which include primary school/middle school. Thus, as long as the layout plan is in conformity with the ‘Use Zone’ as indicated for any ‘Use Premises’, as specified in the MPD 2021, the same would be valid. Further, it is to be noted that as per MPD 2021, public utilities are permitted in all ‘Use Zone’.

18. Thus, in the present case, the area in question being a residential area, where primary/middle school is permissible, amendment in the layout plan to show the use of the land in question, in conformity with its actual land use, is in accordance with law. It is clear that as per the scheme of the DMC Act and the MPD 2021, layout plan is within the domain of the MCD. Amendment in the layout plan of the area, in terms of the ‘Use Zone’ as prescribed in the Master Plan for a specified area, would not entail any violation of the Master Plan.



19. Thus, this Court in the case of ***Resident Welfare Association Guru Nanak Pura Versus MCD & Ors., 2011 SCC OnLine Del 399***, has held as under:

“xxx xxx xxx

8. The only challenge by the petitioner to the Resolution dated 13th November, 2002 is on the ground that the same changes the land use from park to plotted residential development. However from the affidavits of the respondent no. 2 DDA and the respondent no. 1 MCD, what emerges is that the land use prescribed of the entire area is residential. However the respondent no. 1 MCD in the Layout Plan earlier sanctioned carved out a park where vide subsequent Resolution the residential plots were carved out. The counsel for the petitioner has not been able to show any material that the prescribed land use of the area is as of a park only. Once the prescribed land use as per the Zonal Development Plan and the Master Plan is residential, no error capable of interference is found in the Resolution dated 13th November, 2002 sanctioning residential plots where earlier a park existed.

9. Layout Plans are sanctioned by the respondent no. 1 MCD in exercise of powers under Section 313 of the Delhi Municipal Corporation Act, 1957. Any person aggrieved from order according sanction, under Section 347 B (1) (a) has the remedy of appeal to the Appellate Tribunal. The writ petition is not maintainable for this reason also.

There is no merit in the petition, the same is dismissed. No order as to costs.”

(Emphasis Supplied)

20. A layout plan can be amended and modified, as long as the said amended and modified layout plan is in conformity with the Master Plan. Holding that so long as the layout plan conforms to Master Plan Norms, Court cannot substitute its own opinion as to what principle or policy would best serve the object of the Master Plan, the Division Bench of this Court in the case of ***Rohit Dhupar and Ors. Versus Lt. Governor and Ors., 2009 SCC OnLine Del 487***, has held as follows:

“1. The five petitioners are residents of New Friends Colony and have filed the present Public Interest Litigation for quashing and setting aside



allotment of 500 sq. mts. of land to the New Friends Colony Temple Society (hereinafter referred to as respondent No. 5, for short) by the Delhi Development Authority (hereinafter referred to as DDA, for short). It is alleged in the Petition that this 500 sq.mts. is part of a land earmarked for a park and the allotment, therefore, is contrary to the Master Plan of Delhi, 2001 (hereinafter referred to as MPD 2001, for short). It was submitted that land use from park to any other use cannot be changed without complying with the provisions of Section 11A of the Delhi Development Act, 1957 (hereinafter referred to as DD Act, for short).

xxx xxx xxx

11. As per the counter affidavit filed by DDA, it is clear that the area out of which 500 sq.mts. of land has been allotted to respondent No. 5 in the earlier Lay Out Plan was identified for land use as "Multi Purpose Community Usage". The land, therefore, could be used for different usages under the MPD-2001, permitted under the heading "Multi Purpose Community Usage". The affidavits of DDA and MCD state that 500 sq.mts. of land allotted to respondent No. 5 formed part of land that had been earmarked in the Lay Out Plan for use as community centre, nursery school, common services etc. in the Lay Out Plan. The Lay Out Plan was subsequently amended and 500 sq.mts. was earmarked for residence of service personnel and balance 1500 sq. mtrs. was to be developed as a green area. Therefore, we accept the contention of DDA and MCD that allotment of land to respondent No. 5 did not entail amendment or change in MPD, 2001 or ZDP. It only entailed amendment in the Lay Out Plan and change in use from nursery school/community centre/other activities falling under the broad category 'Multi Purpose Community Usage'. This modification in the Lay Out Plan for use of land for purpose of residence of service personnel resulted in only amendment of the Lay Out Plan and not an amendment or modification of the ZDP.

12. It is not possible to agree with the learned counsel for the petitioners that Lay Out Plan can be modified or amended only after following the prescribed procedure for amendment of the MPD 2001 and ZDP as prescribed under the DD Act. The Lay Out Plan can be amended and modified without following the procedure u/s 11A of the DD Act, as long as amended and modified lay out plans are in conformity with the ZDP and the MPD. Section 11A of the DD Act, quoted above, deals with amendment of the ZDP and MPD, 2001 and not amendment or modification of the lay out plans. This has been the consistent view of this Court as is clear from the judgments of Division Benches of this court in B-1, Vasant Kunj Resident Welfare Association (Regd.) v. Lt. Governor of Delhi and others, 2003 (1) AD (Delhi) 727 and Shanti Devi



Gupta and others v. Delhi Development Authority, 54 (1994) DLT 620 Delhi. In *Star Residents Society (Regd.) and Ors. v. Delhi Development Authority*, 2004 (77) DRJ (Delhi) 599, it was observed that:

29. A Division Bench of this Court in the decision *Shanti Devi Gupta, v. DDA*, AIR 1994 Delhi 299, vide para 16 held that the Delhi Development Act, 1957 in general and Section 9 of the said Act in particular, only refer to the Master Plan and Zonal Development Plan and not the lay out plan. The lay out plan was held to be a sort of working drawings prepared by the DDA. **Any departure from the lay out plan was held as not to be equated with the violation of the Master Plan or the Zonal Development Plan which are statutory.**

30. The learned Single Judge of this Court in the decision, *Smt. Maya Devi v. UOI*, 65 (1997) DLT 405 held that a lay out plan could be administratively modified by the Delhi Development Authority without resorting to the process of modification envisaged to a Master Plan and a Zonal Development Plan as per the mandate of Section 11A of the Delhi Development Act. In para 11 it was observed:—

“If this is the situation, in that eventuality there is only a lay out plan of the area in question. A careful scrutiny of the provisions of the Act reveals that Chapter 3A deals with the modification of Master Plan. Section HA(i) to (iv) deals with the modification of the said plan. There is no other provision in the entire act which deals with the modification of the lay out plan. It implies thereby that the lay out plan can be modified by the Vice Chairman of the DDA.”

31. Another Division Bench of this Court, in the decision, *Triveni Educational & Social Welfare Society v. DDA & Another*, 76 (1998) DLT 329 : 1998 (47) DRJ 249 (DB) took a view similar to the one taken by a learned single Judge of this Court in *Mayadevi's* judgment. Another Division Bench of this Court, in the judgment reported as 87 (2000) DLT 603, *B.U Block Residents Welfare Association v. DDA* held:—

*“9.....In any case, we find no breach or violation of MPT-2001 or the 2DP. **It cannot be disputed that if there is a change in the lay out plan, no approval or sanction of the Central Government is required.**”*



13. Similar view has been taken in the case of Vasant Kunj RWA (*supra*). It has been held that Lay Out Plans can be amended and changed without reference to Section 11A of the Act. It was observed:

“7. Having heard learned counsel for the parties we are of the opinion that although layout plan can be changed where for no permission in terms of section 11A of the Delhi Development Authority Act is required but there cannot be further any doubt whatsoever that the sufficient area should be left out as green area.”

14. In *U.P. Samaj Cooperative House Building Society Ltd v. Delhi Development Authority and Ors.*, 116 (2005) DLT 247 : 2005 (79) DRJ 77, the court observed:

*“23. Town planning is a legislative activity. Under Delhi Development Act, 1957, Master Plan has the force of law. **Lay out plan is prepared keeping in view the development control norms stipulated under the Master Plan. So long as the lay out conforms to Master Plan norms, Court cannot substitute its own opinion as to what principle or policy would best serve the object of the Master Plan.**”*

15. Learned counsel for the petitioners had relied upon the decision in *G.N. Khajuria v. Delhi Development Authority and another*, AIR 1996 SC 253. In the said case, the land use prescribed in the Lay Out Plan for the area in question was ‘park’. The park was sought to be converted into a nursery school. The contention of the private party and DDA was that nursery schools are not required to be indicated either in the MPD or ZDP, unlike locations of high school and primary schools as they are not taken to be schools *stricto sensu* but are akin to recreational places. It was accordingly submitted that establishment of a nursery school in a park does not require amendment of ZDP and it is only modification of the Lay Out Plan. This contention was not accepted by the Supreme Court as after amendment of the Lay Out Plan no area was earmarked for park and thus the Lay Out Plan was not in conformity with the MPD, under which parks are required. Thus, the amended Lay Out Plan was not in conformity with the MPD. The Supreme Court, however, agreed with the learned counsel for the private respondents that ZDP need not visualize and specify land use for a nursery school as there is a distinction between a high school and a primary school on the one hand and a nursery school on the other hand. The decision went against the respondents therein for no land was earmarked for a park in the revised/amended Lay Out Plan and the area earmarked for park was converted to a different use. It was observed as under:—



“We would agree with Shri Jaitley that in the zonal development plan visualized by Section 8 of the Act, land used for nursery school may not be indicated, as a distinction is permissible to be made between a high school and a primary school on one hand and nursery school on the other. Even so, we are of the firm view that any lay-out for residential colony, like that of Sarita Vihar, has to indicate space reserved, not only for nursery school, but for park. This follows from what has been stated in Sections 8(2)(a) and 8(d)(ii) of the Act and Rule 4(3)(g) of the aforesaid Rules. We have thought it fit to mention about this aspect because in the lay-out plan of Sarita Vihar, as put on record, we find no mention about reservation of space for park. This is simply inconceivable to us.”

16. *There is a park earmarked in the Lay Out Plan of the New Friends Colony. It is not alleged that the area earmarked as a park in the Lay Out Plan is contrary to the ZDP or MPD 2001. 1500 sq.mts. of land out of 2000 sq.mts. earlier earmarked for “Multi Purpose Community Usage” in the Lay Out Plan has now been converted into a park instead of a nursery school, dobhi ghat, etc. In view of the above, we do not find any merit in the arguments raised by the learned counsel for the petitioners.*

xxx xxx xxx”

(Emphasis Supplied)

21. Considering the law as discussed aforesaid, it is clear that the amendment in the layout plan by the MCD, is within the domain of its authority, and the same is in conformity with the Master Plan. The MCD has merely undertaken steps to bring the layout plan at par with the actual user of the land to which it has been put for a long time, i.e., MCD School.

22. It is undisputed that the land in question vests with the MCD, and as per the facts on record, the said land was allotted to the Education Department, MCD in the year 1969 for running a school. It is also undisputed that a school on the land in question was being run in temporary structures viz. tents and sheds. Subsequently, a school building has been constructed which got completed in the year 2015. Thus, it is apparent that a school has been in existence and running from the land in question since



many decades. The submissions of the MCD, in this regard, in affidavit dated 25th November, 2017 filed by Assistant Director (Education), Education Department, are reproduced as under:

“xxx xxx xxx

3. I say that as per the information which could be gathered from the offices of Land and Estate Deptt and the CTP and from the Municipal school which is being run from the plot in question is that:

(i) the land parcel / plot measuring 4458 sq. yards (= 3728.88 sq. mtrs) is owned by the MCD and was allotted to Education Deptt. for Municipal Corporation Middle School vide Entry dated 21.5.1969, as per the Register of Immovable Property maintained by the Land & Estate Deptt. (copy annexed as Annexure R-2). Copy of Map of 1969 provided by the Land & Estate Deptt is annexed as Annexure R-3, which clearly shows that this land parcel / plot measuring 4458 sq. yards opposite House No.F- 14/31 to F-14/40, Model Town was partly constructed as school building and the remaining land was being used as a play ground for the school students.

(ii) A municipal school by the name of Municipal Corporation Middle School has been running on this land parcel since last many decades; subsequently the status of the school was changed to Primary School due to change in policy in 1972 and its name was changed to Municipal Corporation Primary Co-Ed School at present; the school was initially being run from tents as well as several single storey classrooms/sheds spread along the perimeter of the plot with play ground in the middle; later on classrooms were razed and school building was constructed on some portion while remaining portion remained vacant for use as playground; subsequently the school building was reconstructed on portion measuring 1560 sq yard as the earlier building had become dilapidated with passage of time and was completed in 2015 while portion measuring 2898 sq yard remained vacant for use as playground; there was always a boundary wall of the entire plot but this boundary wall had also become dilapidated, fallen and demolished with passage of time and anti-social miscreants started loitering in the open area meant for the playground and bushes came up and residents of the area starting throwing garbage there and as a result this vacant portion measuring 2898 sq yards ceased to be used by the school students and hence in 2017 the Work Order has been issued by the Works Division of North DMC to reconstruct the Boundary wall so that school students can use it for physical activities; that earlier as well as now the height of the brick boundary wall is 5 foot and above it grills of about 3 ft high have been affixed; a small gate has been constructed in the wall of the school building dividing the school building and the playground. Copy



of letter dated 22.1.2016 written by Dy. Director, Education, Civil Lines Zone to the Executive Engineer requesting for constructing boundary wall is annexed as Annexure R-4, copy of letter dated 9.2.2016 written by Executive Engineer to Dy. Director, Education, Civil Lines zone is annexed as Annexure R-5.

(iii) Thus the parcel of land measuring 2898 sq yards in front of House no. F-14/31 to F-14/36, Model Town-II, New Delhi is to be used as playground for the students of the aforesaid Municipal school.

(iv) as per the layout plan of 1965 of this area as procured from the office of CTP, the land use of the entire plot measuring 4458 sq. yards is shown as 'lawn'; however the land use was subsequently changed to 'school' as per the record maintained by the Land and Estate Deptt., as pointed out above

xxx xxx xxx”

(Emphasis Supplied)

23. Once the existence and running of a government school, i.e., MCD School, is established and the land vests with the MCD, the MCD is within its authority to put the land to use in accordance with the user of the land. This Court finds justification in the use of the land appurtenant to the school, being part of one big plot, as playground for the school children. The necessity of a playground for use of the school children cannot be underscored, as the same is an essential and fundamental requirement for overall growth of the children. Taking part in sports activities is an integral part of education, which cannot be overlooked.

24. It is apparent that a decision has been taken by the MCD to use the land in question as a school, which has been used for such purpose for a long time. As noted above, land use of the land in question has already been changed from ‘lawn’ to ‘school’ by the Standing Committee *vide* its Resolution No. 1485 dated 30th November, 1988. Further, *vide* its Resolution No. 33 dated 19th August, 2020, the Standing Committee has already approved the modification of the lay out plan of Model Town, by



earmarking the site in question for primary school. In this regard, it is to be noted that the Courts ordinarily do not interfere in policy decisions, unless said policy can be faulted on the grounds of *malafide*, unreasonableness, arbitrariness or unfairness. Thus, in the case of ***State of Uttar Pradesh and Others Versus Chaudhari Ran Beer Singh and Another, 2008 SCC OnLine SC 479***, it has been held as follows:

“xxx xxx xxx

13. Cabinet's decision was taken nearly eight years back and appears to be operative. That being so there is no scope for directing reconsideration as was done in Ram Milan case, though learned counsel for the respondents prayed that such a direction should be given. As rightly contended by learned counsel for the State, in matters of policy decisions, the scope of interference is extremely limited. The policy decision must be left to the Government as it alone can decide which policy should be adopted after considering all relevant aspects from different angles. In matter of policy decisions or exercise of discretion by the Government so long as the infringement of fundamental right is not shown, courts will have no occasion to interfere and the court will not and should not substitute its own judgment for the judgment of the executive in such matters. In assessing the propriety of a decision of the Government the court cannot interfere even if a second view is possible from that of the Government.

xxx xxx xxx”

(Emphasis Supplied)

25. Likewise, holding that public authorities must have liberty and freedom in framing the policies and it is not possible for the Courts to consider competing claims and to conclude which way the balance tilts, the Supreme Court in the case of ***Federation Haj PTOs of India Versus Union of India, (2020) 18 SCC 527***, has held as under:

“xxx xxx xxx

18. Going by the aforesaid considerations, the respondent has carved out the categories of HGOs on the parameters of experience as well as financial strength of HGOs. Such a decision is based on policy considerations. It cannot be said that this decision is manifestly arbitrary or unreasonable. It is settled law that policy decisions of the executive are best left to it and a court cannot be propelled into the uncharted



ocean of government policy (see Bennett Coleman & Co. v. Union of India [Bennett Coleman & Co. v. Union of India, (1972) 2 SCC 788]). Public authorities must have liberty and freedom in framing the policies. It is well-accepted principle that in complex social, economic and commercial matters, decisions have to be taken by governmental authorities keeping in view several factors and it is not possible for the courts to consider competing claims and to conclude which way the balance tilts. Courts are ill-equipped to substitute their decisions. It is not within the realm of the courts to go into the issue as to whether there could have been a better policy and on that parameters direct the executive to formulate, change, vary and/or modify the policy which appears better to the court. Such an exercise is impermissible in policy matters. In Bennett Coleman case [Bennett Coleman & Co. v. Union of India, (1972) 2 SCC 788] , the Court explained this principle in the following manner : (SCC p. 834, para 125)

“125. ... The argument of the petitioners that Government should have accorded greater priority to the import of newsprint to supply the need of all newspaper proprietor to the maximum extent is a matter relating to the policy of import and this Court cannot be propelled into the uncharted ocean of governmental policy.”

19. The scope of judicial review is very limited in such matters. It is only when a particular policy decision is found to be against a statute or it offends any of the provisions of the Constitution or it is manifestly arbitrary, capricious or mala fide, the Court would interfere with such policy decisions. No such case is made out. On the contrary, views of the petitioners have not only been considered but accommodated to the extent possible and permissible. We may, at this junction, recall the following observations from the judgment in Maharashtra State Board of Secondary & Higher Secondary Education v. Paritosh Bhupeshkumar Sheth [Maharashtra State Board of Secondary & Higher Secondary Education v. Paritosh Bhupeshkumar Sheth, (1984) 4 SCC 27] : (SCC p. 42, para 16)

“16. ... The Court cannot sit in judgment over the wisdom of the policy evolved by the legislature and the subordinate regulation-making body. It may be a wise policy which will fully effectuate the purpose of the enactment or it may be lacking in effectiveness and hence calling for revision and improvement. But any drawbacks in the policy incorporated in a rule or regulation will not render it ultra vires and the Court cannot strike it down on the ground that, in its opinion, it is not a wise or prudent policy, but is even a foolish one, and that it will not really serve to effectuate the purposes of the Act. The legislature and its delegate are the sole repositories of the power to decide what policy should be pursued in relation to matters covered by the Act and there is



no scope for interference by the Court unless the particular provision impugned before it can be said to suffer from any legal infirmity, in the sense of its being wholly beyond the scope of the regulation-making power or its being inconsistent with any of the provisions of the parent enactment or in violation of any of the limitation imposed by the Constitution.”

xxx xxx xxx”

(Emphasis Supplied)

26. The petitioners have been unable to show any legal or vested right with them for use of the land in question as an ‘ornamental park’, by disregarding the need for a playground for school children. This is especially so, when a huge park measuring 100 acres by the name “Shalimar Garden” exists within 30 meters from the school site in question. Besides, use of the land in question as a ‘playground’, would not affect the fresh air and sunlight to the houses of the petitioners. The submissions in this regard made on behalf of MCD in its affidavit dated 25th November, 2017 filed by Assistant Director (Education), Education Department, are reproduced as under:

“xxx xxx xxx

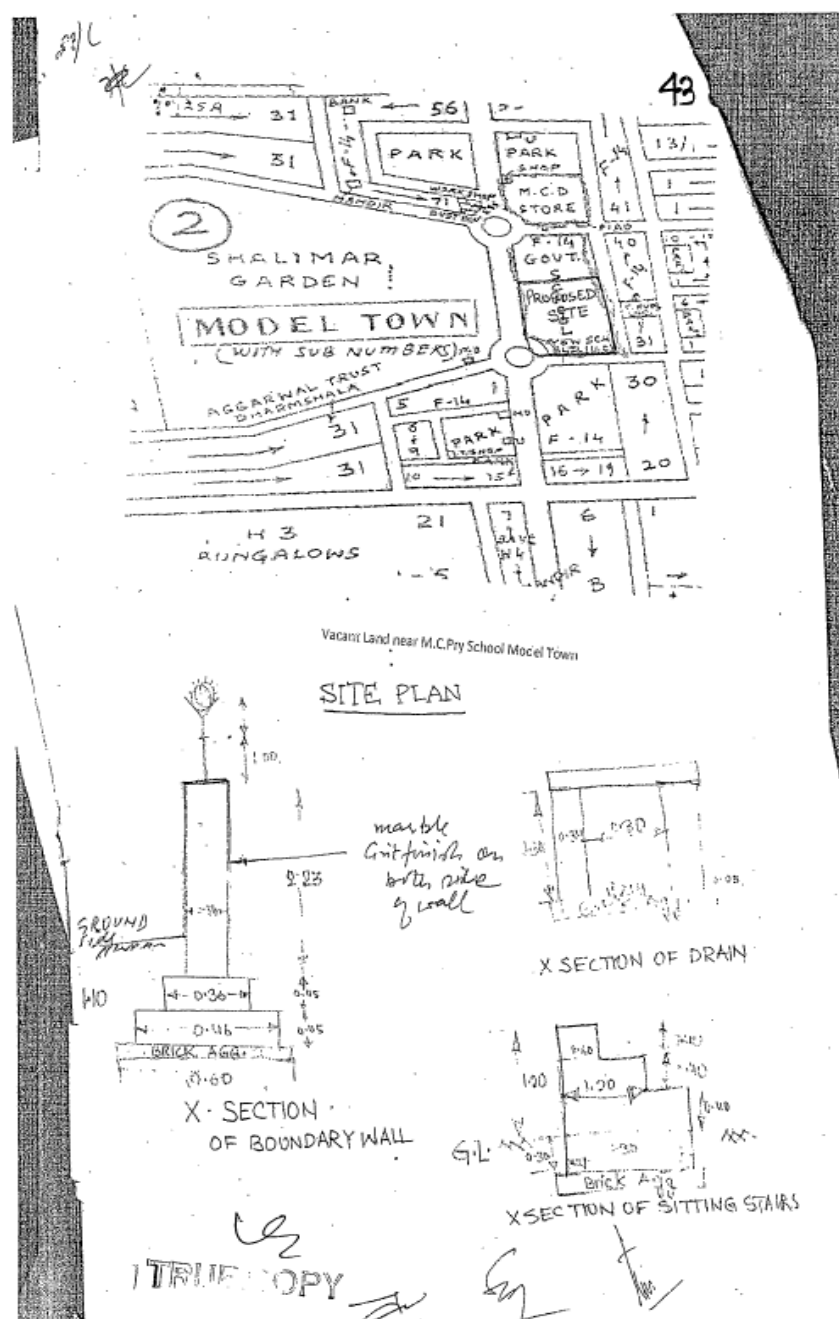
4. I say and submit that there is a big park known as ‘Shalimar Garden’ spread over many acres of land which is hardly about 30 meters from the school site in question, with just a road dividing the school site and the said ‘Shalimar Garden’, as can be seen from the plan filed at page 43 of the Petition. Thus, fresh air is amply available to the residents of this area. Moreover, the height of the boundary wall now constructed is only about 5 ft (and not 6 ft as alleged by petitioner) and the same is of brick (and not of concrete as alleged by petitioner) and grill of about 3 ft high have been affixed on top of the boundary wall. The work of plastering of the boundary wall has been stopped due to the pendency of present case. The latest photographs of the site / boundary wall clicked on 24.11.2017 are annexed as Annexure R-6 (colly).

xxx xxx xxx”

(Emphasis Supplied)



27. Further, the site plan of the area in question shows existence of various parks, for use and enjoyment of the residents. Therefore, the petitioners have not been able to establish that their necessity for green areas in their residential locality is being neglected or disregarded in any manner. The site plan on record before this Court, is reproduced as under:





28. This Court notes that the basis for filing the present writ petition is the claim of the petitioners for use of the open land in front of their houses as an 'ornamental park', on the basis of a compromise order dated 28th September, 2011, while the MCD intends to use the same, as playground for school children of the adjoining government school.

29. It is to be noted that the Residents Society of the area, had earlier filed a suit in the District Court praying for development of the land in question as an 'ornamental park' in the year 1988, since on part of the land where previously the school was being run from temporary tents, a building was sought to be constructed by the MCD for running the school. During the pendency of the said suit, the construction of the school building was stayed. Subsequently, the Residents Society approached the MCD with the proposal that they would withdraw the suit so that MCD could carry out construction of the school building, provided rest of the land will be developed as an 'ornamental park'. Thus, a purported decision dated 23rd September, 2011 was taken, in the following manner:

NORTH DELHI MUNICIPAL CORPORATION

Subject:- Construction of 15 Classrooms, 2 store Rooms, 1 Computer Rooms, 2 office, 1 Library, 12 Seater Toilet Blocks, 1 Hall and 2 Science Room, in M.C. Primary School, Model Town-II in C-72/CLZ.

In the matter of:-

MODEL TOWN OWNERS & RESIDENTS SOCIETY (REGD.)

Plaintiff

Versus

MUNICIPAL CORPORATION OF DELHI

Defendant

Suit No. 231/08 Next date of Hearing: 28.09.2011



In the above noted matter, construction of school building facing properties no. F-14/31 to F-14/40 has been stayed vide operation of court order. The matter is being contested by MCD and it is fixed for defendant evidence on next date of hearing i.e. on 28th September 2011. However during pendency of proceeding RWA approached MCD i.e. with a proposal that they would withdraw the suit, so that MCD can carry out the construction of school building at the site of in question in public interest as follow:-

1. Existing school in sheds facing F-14/37 to F-14/41 will be developed as a pucca school.
2. Rest of the park facing F-14/31 to F-14/36 will be developed as an ornamental park.
3. Taking all the conditions in consideration specially students future and welfare, the society withdraw the suit.

In this context, a meeting was also held in the office of D.C. (CLZ) which was attended by Area Councilor Sh. Surender Gupta alongwith EE (Pr)-I/CLZ with their staff and Principal & School Inspector from Education Department of above concerned school on date 16.09.2011. During this meeting the plaintiff Dr. M.L. Khatri Secretary Model Town Owners & Residents Society proposed to withdraw suit with certain proposal in public interest and welfare of the students which are indicate in his letter placed opposite in file. These proposals are mutually agreed upon with the present officials and Area Councilor.

In view of above, it is submitted that we may convey our consent to plaintiff so that he make appropriate statement before the court of law to withdraw the above suit.

Submitted for approval please.

Sd/-

Assistant Engineer (Pr)-IV

23.09.2011

30. On account of the meeting dated 16th September, 2011, as aforesaid, which took place in the office of the Deputy Commissioner, Civil Line Zone, a joint application was filed in the said suit for withdrawal of the suit



on the basis of compromise between the parties. Thus, statements on behalf of MCD and the Residents Society, were recorded in the following manner:

Suit no.1827/2009

28.09.2011.

Statement of Sh.Anil Kumar, Assistant Engg. (Project), Civil Line Zone, MCD.

On SA

The defendant have compromised the suit with the plaintiff vide Ex.C-1 and have issued the letter annexure A which is signed by me at point B and the letter annexure A is now Ex.C-2. The defendants undertake to act according to letter Ex.C-2. The Ex.C-1 contained my signatures at point C3. The suit of the plaintiff may accordingly be disposed of as compromised.

RO&AC

[Signature]
28/09/2011

LALIT KUMAR

CCJ-cum-ARC (Central)
THC/Delhi: 28.09.2011

Suit no.1827/2009

28.09.2011

Statement of Dr.M.L. Khatri, s/o. Sh.Hari Kishan, r/o. F-14/35, Model Town, Delhi-9.

On SA

I am the Secretary of the plaintiff society and suit has been filed through me. The plaintiff has compromised with the defendant which is Ex.C-1 and it bears my signatures at point A. The suit may kindly be disposed of as compromised.

RO&AC

[Signature]

LALIT KUMAR

CCJ-cum-ARC (Central)
THC/Delhi: 28.09.2011



31. Accordingly, on the basis of the aforesaid, the suit filed on behalf of the Residents Society was disposed of *vide* order dated 28th September, 2011, in the following manner:

Suit no.1827/2009

28.09.2011

Present: Counsel for plaintiff.
Sh.S.K. Pruthi, counsel for MCD

Joint application moved by the parties for recording the compromise.

Both counsels submit that both parties have settled the present suit as per Ex.C-1 and defendants undertake to act according to letter Ex.C-2.

Let statements of parties be recorded on a separate sheet. Statements recorded.

In view of statement made by the parties, the present suit is disposed off as compromised in terms of Ex.C-1 and Ex.C-2. Parties shall remain bound by their statements made today in the Court. File be consigned to record room.

LALIT KUMAR
CCJ-cum-ARC (Central)
THC/Delhi: 28.09.2011

32. As regards the contention of the petitioners *qua* the aforesaid consent order dated 28th September, 2011, it is to be noted that the purported decision forming the basis of the consent order, was made on the basis of a discussion at the zonal level with the Residents Society. However, the said decision which was taken at the zonal level, was not approved by the



competent authority viz. the Commissioner, MCD or the Standing Committee or the Corporation. Any decision regarding use of land or change in the layout plan is considered by the Layout Scrutiny Committee of the MCD, after which approval of the Standing Committee/Corporation is required, before the same attains the character of a final determination in that regard. Therefore, any official of the MCD on his own accord cannot take decisions pertaining to any land use. Any statement by any officer made without any authority cannot be considered to be the stance or decision of the MCD, so as to bind the MCD. In this regard, this Court notes the affidavit dated 08th January, 2020 filed by Deputy Commissioner of the MCD, wherein, it has been stated as under:

“xxx xxx xxx

5. That it is seen from the file noting dated 23.9.2011 made by the Asst. Engineer (filed as Annexure P-3 with the writ petition) that a meeting took place on 16.9.2011 in MCD' office wherein a proposal was mooted that the land portion (referred to as park therein) facing F-14/31 to F-14/36 Model Town-II, Delhi may be developed as an ornamental park. It is to be emphasized that this noting by the Asst. Engineer was only a 'proposal', which was never approved by the higher authorities, and the same does not amount to a 'decision' of the Corporation and is thus not binding on the Corporation. Since developing municipal school's land as an ornamental park amount to change of land use, the same required approval of the Competent Authority, which never happened in this case. A further perusal of the said noting shows that the DC(CMZ) had made a note "Plaintiff discuss" and the note/proposal of the Asst. Engineer was not approved by the DC. Thereafter, there is no further progress on this subject. Hence, the proposal to develop the school land in question as an ornamental park remained a proposal and the same was never approved by competent authority. It appears that based on said proposal/Noting, the Asst Engineer inadvertently, as well as the plaintiff made a statement in the Suit No.1827/2009 (Page 40 of writ petition) before the court of Civil Judge, Tis Hazari on 28.9.2011 (i.e. immediately after 5 days of Asst. Engineer's Noting dt. 23.9.2011) and the said suit was accordingly disposed off as compromised on 28.9.2011 (page 39). The fact remains that the said land is owned by Education Deptt for the purpose of school and is



meant for playground of the school for the welfare of the children and the same cannot be developed / converted into an ornamental park for the general public.

xxx xxx xxx”

(Emphasis Supplied)

33. This Court also notes that the office noting pertaining to the proposal for using the area in question as an ‘ornamental park’, was in complete contradiction to the Resolution No. 1485 of the Standing Committee of the year 1988 for approving the use of the land in question as a ‘school’ and changing the land use accordingly.

34. As noted above, the said proposal was never approved by the competent authority. Besides, the file noting in question does not confer any enforceable right upon the petitioners. It is a settled law that noting in file culminate into executable or binding rights, only when due approvals are taken in order to reach at a final decision, which is communicated to the person concerned. In the present case, neither any final decision in the form of approval by the competent authority was taken, nor, any official communication in that regard after due approval from the competent authority, was made. Thus, in the case of ***Union of India and Another Versus Ashok Kumar Aggarwal, 2013 SCC OnLine SC 1031***, it has been held as follows:

“xxx xxx xxx

34. In *Shanti Sports Club v. Union of India* [(2009) 15 SCC 705 : (2009) 5 SCC (Civ) 707], this Court considered the provisions of Articles 77(2), 77(3) and 166(2) of the Constitution and held that : (SCC p. 726, para 42)

“42. ... unless an order is expressed in the name of the President or the Governor and is authenticated in the manner prescribed by the Rules, the same cannot be treated as an order on behalf of the Government.”

35. The Court further held : (*Shanti Sports Club case* [(2009) 15 SCC 705 : (2009) 5 SCC (Civ) 707] , SCC pp. 726-27, para 43)



“43. A noting recorded in the file is merely a noting simpliciter and nothing more. It merely represents expression of opinion by the particular individual. By no stretch of imagination, such noting can be treated as a decision of the Government. Even if the competent authority records its opinion in the file on the merits of the matter under consideration, the same cannot be termed as a decision of the Government unless it is sanctified and acted upon by issuing an order in accordance with Articles 77(1) and (2) or Articles 166(1) and (2). The noting in the file or even a decision gets culminated into an order affecting right of the parties only when it is expressed in the name of the President or the Governor, as the case may be, and authenticated in the manner provided in Article 77(2) or Article 166(2). A noting or even a decision recorded in the file can always be reviewed/reversed/overruled or overturned and the court cannot take cognizance of the earlier noting or decision for exercise of the power of judicial review.”

36. Similarly, while dealing with the issue, this Court in *Sethi Auto Service Station v. DDA* [(2009) 1 SCC 180] held : (SCC pp. 185-86, para 14)

“14. It is trite to state that notings in a departmental file do not have the sanction of law to be an effective order. A noting by an officer is an expression of his viewpoint on the subject. It is no more than an opinion by an officer for internal use and consideration of the other officials of the department and for the benefit of the final decision-making authority. Needless to add that internal notings are not meant for outside exposure. Notings in the file culminate into an executable order, affecting the rights of the parties, only when it reaches the final decision-making authority in the department, gets his approval and the final order is communicated to the person concerned.”

(emphasis in original)

37. In *Jasbir Singh Chhabra v. State of Punjab* [(2010) 4 SCC 192] , this Court held : (SCC p. 209, para 35)

“35. ... However, the final decision is required to be taken by the designated authority keeping in view the larger public interest. The notings recorded in the files cannot be made basis for recording a finding that the ultimate decision taken by the Government is tainted by mala fides or is influenced by extraneous considerations.”

xxx xxx xxx”

(Emphasis Supplied)



35. Similarly, holding that a noting recorded in the file is merely a noting and cannot be treated as a decision of the government/authority, the Supreme Court in the case of *State of Uttaranchal and Another Versus Sunil Kumar Vaish and Others*, 2011 SCC OnLine SC 1094, has held as follows:

“xxx xxx xxx

24. A noting recorded in the file is merely a noting simpliciter and nothing more. It merely represents expression of opinion by the particular individual. By no stretch of imagination, can such noting be treated as a decision of the Government. Even if the competent authority records its opinion in the file on the merits of the matter under consideration, the same cannot be termed as a decision of the Government unless it is sanctified and acted upon by issuing an order in accordance with Articles 77(1) and (2) or Articles 166(1) and (2). The noting in the file or even a decision gets culminated into an order affecting right of the parties only when it is expressed in the name of the President or the Governor, as the case may be, and authenticated in the manner provided in Article 77(2) or Article 166(2). A noting or even a decision recorded in the file can always be reviewed/reversed/overruled or overturned and the court cannot take cognizance of the earlier noting or decision for exercise of the power of judicial review. (See *State of Punjab v. Sodhi Sukhdev Singh* [AIR 1961 SC 493], *Bachhittar Singh v. State of Punjab* [AIR 1963 SC 395], *State of Bihar v. Kripalu Shankar* [(1987) 3 SCC 34 : 1987 SCC (Cri) 442], *Rajasthan Housing Board v. Shri Kishan* [(1993) 2 SCC 84], *Sethi Auto Service Station v. DDA* [(2009) 1 SCC 180] and *Shanti Sports Club v. Union of India* [(2009) 15 SCC 705 : (2009) 5 SCC (Civ) 707].)

xxx xxx xxx”

(Emphasis Supplied)

36. Therefore, any purported consent order on the basis of some purported decision taken without any dominion, or without approval of the competent authority, cannot be taken as a refuge by the petitioners. This Court finds no justification in the prayer of the petitioners to use the parcel of land meant for ‘playground’ for school students of MCD school, as an ‘ornamental park’ for the public. There are already many parks nearby



within the vicinity, including, a 100 acres park, for the petitioners to use and enjoy. This Court is of the view that the requirement of the said parcel of land for the school students as a playground is indispensable for their physical development and growth. No error is found in the decision of the MCD.

37. Considering the detailed discussion hereinabove, no merit is found in the present writ petition. Accordingly, the present writ petition, along with the pending application, is dismissed.

MINI PUSHKARNA, J

AUGUST 19, 2025

AK/KR