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

CM Nos. 26355/2018, 8343/2019, 10219/2019, 15851/2019 in

+ W.P.(C) 6952/2018

RESIDENT WELFARE ASSOCIATION Petitioner

Through: Mr. Sanjeev Sahay and
Ms. Himangi Kapoor, Advs.

versus

DELHI DEVELOPMENT AUTHORITY AND ORS.

..... Respondents

Through: Mr. Dhanesh Relan, SC-DDA
Mr. Satyakam, Adv. for R-2
Mr. L.R. Khatana, Adv. for the
applicant in CM No. 8343/2019

CORAM:

HON'BLE MR. JUSTICE C.HARI SHANKAR

ORDER

% **09.04.2019**

CM No. 15851/2019

1. This application, at the instance of the petitioner, contains the following prayers :

“A. Stay operation of impugned Notice dated 18.09.2017 and Resolution No. 118 passed by SDMC and the letter; and/or;

B. Restrain all the Respondents their assignees, agents, relatives, their representatives, etc. or anyone acting on their behalf to create third party rights, title, interest, lein, mortgage, encumbrances, etc. of any nature whatsoever including parting of the possession in any manner in respect to the said vacant Plot of Land which will affect the Petitioner's rights over the Plot; and/or;



C. Restrain the Respondents their assignees, agents, relatives, their representatives, etc. or anyone acting on their behalf from taking any further steps on the basis of the Resolution; and/ or;

D. Restrain the Respondents their assignees, agents, relatives, their representatives, etc. or anyone acting on their behalf from taking any further steps that will change the physical and legal character or/and attribute of the said Plot in any manner;

E. Pass any other or further order(s) or direction(s) which this Hon'ble Court may deem fit and proper in the facts and circumstances of the case and in the interest of justice.”

2. Quashing of the letter dated 18th September, 2017, issued by Respondent No.1, permitting swapping of the land of the petitioner with the land of Respondent No.2, constitutes the subject matter of the challenge in the writ petition as well. For the sake of clarity, the order dated 18th September, 2017 may be reproduced thus :

“ DELHI DEVELOPMENT AUTHORITY
INSTITUTIONAL LAND BRANCH
Room No.216, A-Block, 2nd Floor, Vikas Sadan, New
Delhi

No. F.11(3)97/1L/4218

Dated : 18.9.17

To

Wg. Cdr. B. Jena,
Director- Operation,
National Heart Institute,
49-50, Community Centre,



East of. Kailash,
New Delhi-110065.

Sub:- Request for swapping of Institutional Vacant Plot at B-Block, East of Kailash (plot facing MCD school and Plot N0.B-78 by the side of the Public road and internal B-Block, Colony road respectively).

Sir,

This is with reference to your letter dated 03.8.2016 on the subject cited above. In this connection, I am directed to inform you that your request has been considered and approved in 351st Screening Committee Meeting vide Item No. 68/2017 dated 25.5.17 regarding "part modification" in the layout plan of 1500 Sqm. at 'B' Block East of Kailash for swapping of vacant Institutional plot allotted to National Heart Institute and Community Hall, The copy of the proposed site plan after swapping of plots is enclosed for ready reference.

You are, therefore, requested to hand over the possession of the allotted land, to DDA so that same can be further hand over the same to MCD. It is also, pertinent to mention that the boundary wall, construction by MCD around the plot of Community Hall and in lieu of that you are requested to construct the boundary wall at your own cost, so that the earlier allotted plot for Community Hall may be handed over to you as per approved layout enclosed.

Yours faithfully,

Dy. Director (IL)"

3. It is not in dispute that the impugned actions, taken by the respondent, which may result in the creation of third party interest, are in furtherance of the order dated 18th September, 2017 (*supra*). Alongwith the writ petition, CM 26355/2018 had also been filed,



seeking stay of operation of the order dated 18th September, 2017. The arguments of Mr. Sahay, learned counsel for the petitioner were premised on the presumption that notice stood issued on the said stay application. However, on a reading of the order issuing notice on the writ petition, dated 6th July, 2018, Mr. Sahay himself, submits, with commendable fairness, that the issuance of notice was restricted to the writ petition.

4. In the circumstances, I am of the opinion that, in the interests of justice, notice deserves to be issued in CM 26355/2018, the stay application filed alongwith the writ petition, as well as the present stay application CM 15851/2019. Inasmuch as no interlocutory orders have been passed on CM 26355/2018 till date, it is not possible to pass any ad interim order interdicting the actions of the respondents, as sought in CM 15851/2019. The respondents are, however, directed to file replies to the CM 26355/2018 as well as CM 15851/2019 within two weeks with advance copies to the petitioner who may file rejoinders thereto, if any, within one week thereof.

5. CM 8343/2019 has also been filed by certain parties who seek to be impleaded in the writ petition, and the said application is listed on 24th April, 2019. The applicants in the said application are also permitted to file response to the aforementioned two Miscellaneous Applications i.e. CM 26355/2018 and CM 15851/2019 within ten days, with advance copy to the petitioner who may file rejoinder thereto, if any, within three days thereof. However, the submissions of the applicants in CM 8343/2019, as contained in the reply, if any,



filed by them, would be taken into account only if their impleadment is allowed on the next date of hearing.

6. These applications would be taken up for hearing and disposal on the next date of hearing, i.e. 24th April, 2019.

7. While I am not passing any *ad interim* orders till the next date, it is made clear that any action taken by the respondents, would abide by the outcome of the writ petition.

CM No. 10219/2019

8. For the reasons stated therein, the delay of 33 days in filing the counter affidavit by the National Heart Institute, i.e. Respondent No.2 is condoned.

9. The counter affidavit is taken on record.

10. Learned counsel for the petitioner is directed to file rejoinders thereto, if any, before the next date of hearing.

W.P.(C) 6952/2018

11. Mr. Dhanesh Relan appearing for Respondent No.1 submits that he would be filing his counter affidavit within three days. He is permitted to do so with advance copy to the petitioner who may file rejoinder thereto, if any, before the next date of hearing.

12. Learned counsel for the petitioner requests that the next date of



hearing fixed in this matter, i.e. 24th April, 2019, be changed, as he is inconvenienced on the said date. The other learned counsel appearing in this matter have no objections.

13. With the consent of all parties, therefore, renotify this matter on 2nd May, 2019.

14. The next date, of 24th April, 2019, already fixed stand cancelled.

C.HARI SHANKAR, J

APRIL 09, 2019/kr