

IN THE HIGH COURT OF DELHI AT NEW DELHI
(EXTRA-ORDINARY CIVIL WRIT JURISDICTION)

CIVIL WRIT PETITION NO. 8954 OF 2003

IN THE MATTER OF:

Master Plan Implementation support Group,
Through its Planner, Gita Dewan Verma,
1356 D-I Vasant Kunj, New Delhi - 110070 ...PETITIONER

VERSUS

1. Delhi Development Authority,
Through its Vice Chairman,
Vikas Sadan, INA New Delhi – 110023
2. Union of India,
Through the Secretary, Ministry of Urban Development,
Nirman Bhawan, New Delhi – 110011
3. Government of NCT of Delhi,
Through its Chief Secretary,
Secretariat, IP Estate, New Delhi – 110002
4. Municipal Corporation of Delhi,
Through its Commissioner,
Town Hall, Chandni Chowk, Delhi
5. Delhi Police,
Through its Joint Commissioner (Traffic),
Police Headquarters, IP Estate,
New Delhi – 110002 ...RESPONDENTS

AND IN THE MATTER OF

WRIT PETITION UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA FOR ISSUANCE OF WRIT(S), ORDER(S) AND/OR DIRECTION(S) FOR TIME-BOUND ACTION AGAINST MASTER PLAN VIOLATIONS ON SCHOOL SITES IN VASANT KUNJ SCHEME AND ENFORCING ON THEM MASTER PLAN PROVISIONS FOR NEIGHBOURHOOD SCHOOLS FOR BENEFIT OF ALL LOCAL STUDENTS AND RESIDENTS AND ANY OTHER WRIT(S), ORDER(S) OR DIRECTION(S) AS THIS HON'BLE COURT MAY DEEM APPROPRIATE IN THE FACTS AND CIRCUMSTANCES OF THIS CASE.

To
The Hon'ble Chief Justice and His Lordship's Companion Judges of
the Hon'ble High Court of Delhi at New Delhi

The petition of the Petitioners above named:

MOST RESPECTFULLY SHOWETH:

1. That this writ petition is being filed under Article 226 of the Constitution of India as Public Interest Litigation and is directed against allotment and use of school sites spread over 40.25 hectares in 'Vasant Kunj Scheme' in contravention of the provisions of the 'Master Plan' and, hence, of Delhi Development Act, 1957 ('Act') instead of for enforcing 'Master Plan' provisions for Common School system / Neighbourhood Schools providing equal access to all local students and amenity to all local residents.
2. That the Petitioner is filing this writ petition in bonafide public interest to enforce the fundamental rights recognised in 'Master Plan' provisions for equal access neighbourhood schools. The Petitioner is a platform of citizens' groups from all sections of society engaging since 2000, with technical support from qualified Planner, on 'Master Plan' implementation issues and has brought and supported others in bringing to the attention of this Hon'ble Court cases of 'Master Plan' violations, such as in W.P.4978/2002, W.P.5007&5009/2002 and W.P.6980/2002.

FACTS OF THE CASE:

3. That the Respondent No.1 ('DDA') has was constituted under the 'Act' in 1957. Respondent No.2 ('MoUD') is nodal ministry of Respondent No.1. Respondent No.3 ('GoNCTD') and Respondent

No.4 ('MCD') have responsibilities for implementation of the 'Master Plan' by virtue of their representation on the Authority of 'DDA' under the provisions of the 'Act' and, under Clause-3 of Development Code of the 'Master Plan', on special high-level policy committee for guidelines for sanctioning of detailed schemes, etc. Respondent No.5 (Delhi Traffic Police) is on Technical Committee to assist said high-level policy committee and concerned with the matter due to parking congestion consequent to Master Plan violations on school sites.

4. That DDA was created for sole purpose of development according to 'Master Plan'. Under s.6 of the 'Act' it is empowered to "acquire, hold, manage and dispose off land" only for this purpose, for which a policy of large-scale compulsory acquisition was adopted. MPD-1962 clearly said, "All this land will remain under public ownership and developed plots or undeveloped land will be leased out ...on an equitable basis, so that the benefit of planned growth accrues to the common man". Thus leasehold tenure is an instrument not only of land disposal / transaction but also for equitable planned development. It is submitted that violations of land allotment conditions, central to this writ petition, need to be viewed in the context of this purpose of compulsory land acquisition and leasehold disposal of public land.

5. That the 'Master Plan' contemplates schools as neighbourhood facilities, in line with its principle of hierarchy of city structure, for which MPD-1962 says, "The housing cluster is built around the nursery school and the tot lot. The primary school, the high school, the Community centre and the District centre are the order of the functional tiers around which the community structure is built up".

Advantages of hierarchy are spelled out in MPD-1962 Work Studies in terms of obviating transportation need and restricting traffic. MPD-2001 defines 'housing cluster' as 2500 population, 'neighbourhood' as 15,000, 'community' as 100,000, etc, and envisages nursery, primary and secondary schools within, respectively, 5, 10 and 20-minute walking distance. MPD-2001 hierarchy-related standards (1 nursery school for housing cluster, 1 primary school for neighborhood, etc) are based on the Neighbourhood School concept, operationalized through lease conditions requiring schools to not refuse admission to local students. Excerpts from the 'Master Plan' (MPD-2001) relating to provisions and standards for schools are annexed herewith and marked as **ANNEXURE-P/1**.

6. That the 'Master Plan' contemplates on planned schools sites equitable access for all classes, as per overall aim of planned development set out in MPD-1962 as 'balanced and integrated development to take care of present and future growth'. In pursuit of this aim, MPD-2001 requires 25% low-income housing provision in each residential area of 1 lakh population, making urban villages integral part of new schemes, etc. Within such integrated development, equal access to schools is operationalized through lease conditions requiring schools to provide free education to poor students of the locality. The 25% figure for this is consistent with the provision for 25% EWS housing in a community.
7. That since allotment conditions flow from the 'Act', their violations must be assessed in terms of purpose of their source, that is, in terms of 'Master Plan' objectives and entitlements. It is from this perspective that ground realities of schools in Vasant Kunj are

outlined next and set out in detail in the report that was sent in June 2001 to Respondents No.1, 3 and 4 and in summary to Respondent No.2. It is pertinent to mention that this report was commissioned to the Petitioner's Planner by the registered association of Rangpuri Pahari on behalf of its forum of students and parents, Rangpuri Pahari Vidyarthi Evam Abhibhavak Manch (hereinafter 'RPVEAM'), and is the basis of subsequent representations, etc, in the instant matter by 'RPVEAM' as well as other citizens' groups in the area, including from villages, flats and service providers' settlements. A true copy of the report of June 2001 on 'Vasant Kunj's Schools: Master Plan Provisions and Ground Realities' is annexed herewith and marked as **ANNEXURE-P/2**.

8. That in 1980s DDA developed 'Vasant Kunj Scheme' for flats for 1 lakh population (called 'community' in the 'Master Plan'). As per the approved layout plan, sites have been provided in it as per MPD-2001 standards for 40 Nursery, 20 Primary, 13 Secondary and 2 city-level Integrated schools and 2 schools for the handicapped – spread over 40.25 hectares out of total residential area of 271.5 hectares. As illustrated in the report at ANNEXURE-P/2, use of nearly all these sites is in gross violation of the 'Master Plan'. No primary school and only one secondary school functions on a planned site and instead of just 2 there are a dozen city-level schools, obviously on sites meant for other local schools. In reply to a letter listing out approved layout plan violations on school sites, 'DDA' replied to say the same had been forwarded for 'necessary action'. Typed copies of letter of 04.08.2001 from the Petitioner's Planner and reply of 26.09.2001 from 'DDA' thereto are annexed herewith and marked as **ANNEXURE-P/3 (COLLY)**.

9. That layout plan violations in terms of sites earmarked for one type of school being used for another (bigger) type have snowballed into a series of consequent 'Master Plan' violations as follows:

(a) Layout plan violations have led to violations of Plan standards for space for buildings, playgrounds and parking. Nearly all up-market schools in Vasant Kunj, on sites meant for smaller schools, are sub-standard in terms of these. An obvious problem, illustrated in section-2.1.1 of ANNEXURE-P/2, is that, since schools have not made adequate parking provision within their premises, roads outside are clogged with vehicles, making for traffic problems that Respondent No.5 has not sought to solve as land use issue despite its 'Master Plan responsibilities.

(b) These violations, in turn, have led to up-market schools in excess of what local demand can sustain and schools tap citywide market, as illustrated in section-2.1.4 of ANNEXURE-P/2. Since schools with 'city level' enrolment can charge 'city level' fee, commercialization is inevitable. In a vicious cycle, high fees are justified with facilities, even luxuries, illustrated in section-2.2.1 of ANNEXURE-P/2, not matching local demand.

(c) Violation of lease conditions for local enrolment results from the above, impairing balanced development by stressing area infrastructure and city traffic (with up-market schools bringing traffic into the area and also forcing local students to commute elsewhere), with consequent energy / environmental costs.

(d) Violation of lease condition for free seats is the tail end of the foregoing violations, as the poor among local students are worst affected by exclusion due to commercialization. None of the schools in Vasant Kunj provide 25% free seats. Nor did they respond to requests for use of space after school hours or

for summer school (which children ran in the basti), as described in Preface and section-3.2.2 of ANNEXURE-P/2.

(e) Exclusion of the poor by commercialization on planned school sites makes for consequent 'Master Plan' violations in MCD schools. The three old MCD primary schools in the area have enrolment in excess of MPD-2001 standard of 500 students and space short of standards. In 2001 the school in Rangpuri Pahari, for example, had built area of 300 square metres (a sixth of MPD-2001 standard) on site of about 0.20 Ha (half of the standard). It is respectfully submitted that enrolment in excess and space short of standards, and resultant environment (illustrated in sections 2.2.3 and 3.1.2 of ANNEXURE-P/2), hardly conducive to quality learning or teaching, is the root cause of most problems in MCD schools.

10. That Respondents have not acted against misuse of land meant for equitable education, despite representations since 2001:

(a) 'DDA' has not taken 'necessary action' as per its letter of 26.09.2001 (in ANNEXURE-P/3), though it reportedly told this Hon'ble Court in 2002 that it acts against violations brought to its notice although monitoring is responsibility of 'GoNCTD'. Subsequent to CBI expose of 'DDA scam', including in a case of violations by a school, the Petitioner's Planner wrote to 'DDA', with copy to CBI, to point out inconsistency between its claim in court and the school scam and reiterate that monitoring is its responsibility till specifically delegated to 'GoNCTD'. Subsequently 'DDA' reportedly wrote to 'GoNCTD' about violations and also brought out on 12.08.2003 a notice asking schools to submit affidavits about compliance with allotment conditions within a month. It has not replied to letter of

15.09.2003 asking about affidavits received from schools in Vasant Kunj. DDA's press notice of 12.08.2003 is annexed herewith and marked as **ANNEXURE-P/4**.

(b) 'MoUD' did not respond to representations in 2001. Vide notice of 22.06.03 Parliamentary Standing Committee on Urban and Rural Development invited views on functioning of DDA and 'RPVEAM' made a representation. With the Committee yet to hold hearings, MoUD has announced Master Plan 'Guidelines' that bear no relation to s.41 of the Act or due process of Plan revision and do not even mention school education or implementation failure on Plan provisions for it. Typed copy of Standing Parliamentary Committee announcement published in Hindustan Times dated 22.06.2003 and translated copy of representation of 'RPVEAM' in response thereto are annexed herewith and marked as **ANNEXURE-P/5(COLLY)**.

(c) In 2001 'GoNCTD' did not respond to the report sent to Education Director, though CMO called to say CM appreciated the summary, whereupon a request for discussion was made that CMO forwarded to office of Education Minister, which did not respond. In May 2002 CM spoke of discussions with private schools. On 09.05.2002 'RPVEAM' wrote to request care to ensure entitlements are not downsized. In November 'GoNCTD' and private schools agreed on 5% free seats. 'RPVEAM' and the Petitioner's Planner wrote for priority to suggestions of the aggrieved over those of the accused. On 19.06.2003 'GoNCTD' plans to pay Delhi Public School (DPS) to run free schools and on 09.08.2003 DPS plans to start 100 such schools were reported. Meanwhile, 'DDA' had written to 'GoNCTD' about violations. A report of 09.09.2003 said 'GoNCTD' planned action in just 7 cases. Typed copies of said

news reports of 19.06.2003 published in Asian Age, 09.08.2003 published in Hindustan Times and 09.09.2003 published in Asian Age are annexed herewith and marked as **ANNEXURE-P/6 (COLLY)**.

(d) 'MCD' did not respond in 2001 to the report containing suggestions for alternatives to 25% free seats to secure access to quality infrastructure in private schools for children in MCD schools. At a seminar on 25.07.03 by 'MCD' and an NGO (Non-Governmental Organisation), plans were announced for 'MCD' collaborations with private schools, including those in Vasant Kunj, for NGO-run night shelters.

11. That Respondents have failed to ensure equitable benefit for local students, especially in villages and among the poor, on planned school sites or by upgrading / integrating old schools:

(a) 'DDA' did not respond to requests for expanding MCD school site to Master Plan standards and for reserving remaining school / facility sites near old settlements for them.

(b) While 'GoNCTD' 'bhagidari' with private schools is seeking to relax free seats' conditions for their benefit, for benefit of out-of-school children CM ('bhagidari' chairperson) spoke of "association with MCD" in a news report of 09.09.2003 published in Asian Age, typed copy of which is annexed herewith and marked as **ANNEXURE-P/7**.

(c) 'MCD' is reportedly increasing association with NGOs, with plans for handing over MCD schools to NGOs for care as well as for NGO-run night shelters. Typed copies of news reports of 17.07.2003 published in Asian Age and 09.10.2003 published in Express Newslines are annexed herewith and marked as **ANNEXURE-P/8 (COLLY)**.

(d) All are also unmindful of implications for Rangpuri Pahari MCD school of DDA's illegal mega-housing scheme started next to it in 2002 and was stopped by this Hon'ble Court on 16.09.2002 in WP 4978/2002. While residents were making efforts in 2000-2002 to stop the scheme from starting, 'MCD' was adding rooms on its sub-standard site and National Institute of Urban Affairs (an agency of 'MoUD') was doing a project (with NGOs) to 'empower' the community – that commissioned the report at ANNEXURE-P/2 – for greater enrollment in the overcrowded school. Later, 'GoNCTD', 'MCD' and 'MoUD' did not respond to requests for support on objections to the scheme filed by over 1700 families, including on grounds of infringement of Master Plan entitlements for school education, in response to Public Notice under s.11A of the 'Act', precipitated by this Hon'ble court's intervention. Issues raised in these objections remain unanswered even after Hearing on 27.01.2003, as do questions about eagerness to re-start the illegal scheme. Typed copy of news report about Rangpuri Pahari school published in Express Newline on 02.07.2001 and translated copy of objection filed by 'RPVEAM' in response to Public Notice of 15.09.2002 are annexed herewith and marked as **ANNEXURE-P/9 (COLLY)**.

12. That a few schools in Vasant Kunj offer facilities for poor students, but only to extent and in manner they choose, as outlined in section-2.2.2 and described for one experience in section-3.2.1 of ANNEXURE-P/2. Currently DPS runs an afternoon pre-school – only for girls. It is submitted that such activity to earn goodwill through charity short of legal obligations also amounts, like other non-permissible profitable uses, to misuse of school sites.

13. That 'helping the poor' in ways short of their entitlements jeopardizes the entitlements themselves when violaters are involved in policy-making, as in case of 'GoNCTD' negotiating the law with violater schools. Through such processes citizens' entitlements 'slip' from public discourse, as seen in 'MoUD' Master Plan guidelines' silence on the robust provisions of the 'Master Plan' for equal access Neighbourhood schools – at a time when draft Education Bill is being criticized by civil society precisely on grounds of it not being based on Common School system. It is most respectfully submitted that enforcement of 'Master Plan' provisions for school education is relevant also from perspective of the current policy discourse on education.

14. That the above illegalities and failures have been brought to the attention of authorities through numerous representations as well as through a detailed illustrated report (2001), response to Public Notice under s.11A of the 'Act' (2002) and representation before Standing Parliamentary Committee (2003) – all to no avail. The Petitioner is now approaching this Hon'ble Court in the interest of justice for all local students and residents entitled under the 'Act' to benefits of equal access Neighbourhood schools and aggrieved by misuse of planned school sites in violation of the 'Master Plan'.

15. GROUNDS

A. Because the 'Master Plan' is a statutory document drawn up in accordance with s.7 of the 'Act' and s.14 of the 'Act' clearly stipulates that provisions of the 'Master Plan' are mandatory and use of land and buildings in contravention thereof is prohibited. This legal position has been reiterated by the Hon'ble Supreme Court as well as this Hon'ble Court in a number of decisions.

B. Because the 'Master Plan' sets out the overall aim of planned development, which is the purpose of the 'Act', as 'balanced and integrated development' and for land compulsorily acquired for this under s.15 of the 'Act' it says it is to be leased out "on an equitable basis, so that the benefit of planned growth accrues to the common man" and, therefore, quite irrespective of allotment rate, allotment conditions guaranteeing equitable access and benefit to the common man cannot be compromised since they are central to planned development.

C. Because allowing misuse to come about and continue represents on the part of all authorities having responsibilities under the 'Act' or 'Master Plan' not only gross failure in terms of penal clauses contained in s.29 and s.30 of the 'Act' and the Plan implementation framework set out in Monitoring and review provisions of the 'Master Plan', but also abuse of powers of compulsory land acquisition u/s.15 and disposal of public land u/s.21(1) of the 'Act', powers that are contemplated only for planned development u/s s.6 of the 'Act'.

D. Because land allotment conditions for schools operationalize 'Master Plan' provisions for Common School system / Neighborhood schools for equal access to all local students from all sections and residential amenity free of extraneous traffic, parking congestion, etc, and provisions of the 'Act' and the 'Master Plan' from which these conditions flow translate the recognition of the fundamental right to a planned and healthy environment for all and, therefore, their violations must be viewed in terms not of just allotment violations but violation of the fundamental right

guaranteed by a collective reading of Articles 14, 19 and 21 of the Constitution of India.

- E. Because Master Plan standards provide for school sites for all – and only – local students in a residential area, enforcement of allotment conditions would preclude commercialization, as schools would not be able to tap citywide ‘market’, commercialization of education, while it might only be value-failure under education law, is gross illegality under the ‘Act’, involving a series of Master Plan violations which are not condonable under the land policy by which land was compulsorily acquired with a view to securing benefit of planned development for the common man.

- F. Because misuse of school sites makes equal access to education impossible by hogging land resources needed for investments in education to be able to progress beyond increasing enrolment and retention to create quality learning environment and as long as planned school sites meant for creating quality learning environment for all children continue to, instead, be misused for commercialization of education duality in place of equity in school education will remain inevitable.

- G. Because ‘helping the poor’ in ways short of their entitlements is unacceptable and that, after unconsidered allotments, rampant violations and abject monitoring failures, government should feel free to not feel obliged to take action against violating schools and that violating schools should feel free to lobby to negotiate their legal obligations towards the poor and others and, instead, offer to ‘help’ the poor to extent and in manner they chose, etc, is unacceptable in law and violation of Article 14 of the Constitution.

P R A Y E R

It is therefore most respectfully prayed that this Hon'ble Court may graciously be pleased to:

- a. issue a Writ, Order or Direction in the nature of Mandamus to Respondents to furnish details of action taken / proposed (along with time-schedule) for implementation of Master Plan provisions for Neighbourhood / Common School system in the area; and
- b. issue a Writ, Order or Direction in the nature of Mandamus to the Respondents to furnish details of action taken / proposed (along with time-schedule) against Master Plan violations on school sites in Vasant Kunj; and
- c. issue appropriate Writ, Order or Direction against allotment of / development on still available sites in layout plan for schools / other community facilities, pending prayers (a) and (b); and
- d. pass such other order(s) as deemed fit by this Hon'ble Court in the facts and circumstances of the case.

AND FOR THIS ACT OF KINDNESS, THE PETITIONER SHALL, AS IN DUTY BOUND, EVER PRAY.

PETITIONERS

Through

(RAVI SHANKAR KUMAR)

Advocate

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NEW DELHI

DATED: .12.2003

