

IN THE HIGH COURT OF DELHI AT NEW DELHI
(EXTRAORDINARY CIVIL WRIT JURISDICTION)

CIVIL WRIT PETITIONS NO. 8954 TO 8959 OF 2003

IN THE MATTER OF

Master Plan Implementation Support Group & Ors ...Petitioners

versus

Delhi Development Authority & Ors ...Respondents

COMMON REJOINDER AFFIDAVIT ON BEHALF OF PETITIONERS

I, Gita Dewan Verma d/o Shri Sudarshan Dewan, do hereby solemnly affirm and state that I am Planner to Master Plan Implementation Support Group, Petitioner in WP 8954/2003 and am well acquainted with the facts and circumstances of these writ petitions. Rejoinder therein is as follows.

1. That the Hon'ble Court was pleased to issue Notice on 17.12.2003 and direct Respondents to file counter-affidavits by next hearing on 04.02.2004 and to order on 04.02.2004 as follows:

“It is matter of great surprise that despite process being served, neither the reply is filed nor the counsel for anyone has chosen to remain present. Hence we direct Vice Chairman DDA, Secretary MoUD, Chief Secretary GNCT Delhi, Commissioner MCD and Joint Commissioner (Traffic) shall personally remain present if the reply is not filed on the next date, i.e., 25.02.04”.

2. That by 25.02.04 copies of following replies had been served:
 - (a) On 19.02.2004 Counter-affidavit on behalf of DDA, stating that it “shall separately file affidavit relating to allotments”.
 - (b) On 19.02.2004 Affidavit on behalf of MCD claiming “very limited role” and seeking liberty to file “additional affidavit as and when required and/or called upon by the Hon’ble Court”
 - (c) On 24.02.2004 “short affidavit” of MoUD with request for liberty to file “para-wise detailed affidavit at a later stage”
 - (d) On 24.02.2004 Short affidavit on behalf of Delhi Police.

3. That copy of reply of Respondent No.3 (GoNCTD) was served after 25.02.2004 -- when matter could not be taken up for paucity of time and was listed for 05.05.2004 by Court Master -- and, with replies of Respondents No.2 (MoUD) and No.4 (MCD) as well as additional affidavit referred to in reply of No.1 (DDA), was not on record when inspection was made two months later on 22.04.2004.

4. That the Petitioners crave leave to file common Rejoinder and submit at the outset that the Respondents’ replies do not answer their Petitions at all, statements made in them are not correct and/or relevant and are hereby denied. The petitioners reserve the right to file para-wise Rejoinder after Respondents have filed reply to the petitions as directed by this Hon’ble Court.

5. That reply of Respondent No.1 (DDA) does not answer the issues of rampant MPD violations (para-9 of the Petition) and of its own failure to act as per its mandate, despite representations, against them (para-10(a), 11(a), 11(d), etc) -- not even to extent of placing before the Hon’ble Court responses of schools in Vasant Kunj to its own Press Notice of 12.08.2003 at ANNEXURE-P/4 -- and:

(a) is deposed by a Senior Architect, ie, an officer in Planning department, even as letter of 26.09.2001 at ANNEXURE-P/3 (COLLY)(ii) from this Department stated that necessary action had to be taken by Lands Department and even as Press Notice of 12.08.2003 at ANNEXURE-P/4 was issued under signature of Vice Chairman.

(b) from Para-3 onward merely re-states facts about the Act, MPD and layout plan of Vasant Kunj (with unmarked print of same at Annexure) and school sites therein (for some reason omitting integrated schools and schools for the handicapped) – all of which are not in dispute.

(c) by way of reply to the Petition, apart from opining that the Petitioners have no locus standii, etc, has only promise, added by hand in para-3, of another affidavit, yet to be filed.

6. That reply of Respondent No.2 (MoUD), like that of Respondent No.1, mostly restates facts about the Act, Plan, layout plan, etc, that are not in dispute and, in Para-8, states, purportedly on basis of “report received from DDA”, some figures for school sites allotted in Vasant Kunj -- 9 middle and 8 senior secondary schools (including 3 GoNCTD schools), 2 schools for handicapped, 1 Japanese Embassy school, 1 integrated school and 1 Kendriya Vidhyalaya – without either naming these schools or indicating them on a plan, which makes these figures impossible to compare with details set out in the Petition and, therefore, irrelevant to it.

7. That reply of Respondent No.3 (GoNCTD) skirts the issue of misuse of school sites, failing to clarify even action taken on letter of 2003 in this regard from DDA to it (referred in ANNEXURE-P/6 (COLLY) (iii)), etc, and what the reply does set out suggests:

- (a) GNCTD is not monitoring use of school sites – as evident from the list on pages-8-9 of “some” rather than all cases of sponsored land allotment and from figures, on page-10, of 2 government and 13 unaided schools in Vasant Kunj, which are at variance from figures mentioned in MoUD’s reply (22 schools, including 3 GoNCTD schools)
- (b) GNCTD is abetting MPD violations by using for recognition / upgradation permission ‘land requirement norms’, set out in its para-6, short of statutory MPD standards -- 1000 sqm, ie, 0.1 Ha for middle school (short even of 0.4 Ha for primary school under MPD) and 8000 sqm, ie, 0.8 Ha for secondary / senior secondary school (against 1.6 Ha for secondary (VI-XII) and 3.5 Ha for integrated (I–XII) school under MPD)
- (c) GNCTD is distributing Essentiality Certificates on basis of vague criteria for ‘essentiality’ (spelled out in its para-3 and on page-9) rather than explicit statutory MPD standards for different types of schools, etc.
- (d) GNCTD is following procedures for sponsorship by Land Allotment Committee, set out on its page-5 onwards, that seem wholly discretionary and unrelated to MPD provisions.

8. That reply also skirts completely the denial of MPD entitlements of local, especially poor, students, and the Respondent’s failure (set out briefly in para-10(a) and at some length in representation at ANNEXURE-P/5 (COLLY)(ii)) to respond to representations in this regard while negotiating with erring schools, and the Petitioners’ crave leave to bring to the attention of this Hon’ble Court that instead of taking action against schools for misuse of sites and lapse on local enrollment conditions, GNCTD continued to negotiate to their advantage even on conditions for free seats, and

that a letter dated 17.02.2004 from planner to Petitioner in WP 8954/2003 to object to news reports suggesting this Hon'ble Court had left scope for government to negotiate the law with schools was merely forwarded as Public Grievance to OSD to Minister and thence to Director Education, with copy dated 01.04.2004. Typed true copies of letter of 17.02.2004, news report in Hindustan Times of same date and letter of 01.04.2002 received are annexed herewith as **ANNEXURE-P/14 (COLLY)** for ready reference.

9. That reply of Respondent No.4 (MCD) has simply claimed that it has limited / no role to play in the writ petition without bothering to answer issues raised about MPD violations -- even in its own schools -- although s.34-A of the Act, which makes offences u/s.29(1), i.e., development in contravention of the Master Plan (including at instance of Government departments) cognizable, vests responsibilities for action against such offences in MCD -- although MCD is otherwise seeking greater role in MPD under the 74th Constitutional Amendment, and although it has subsequently mooted a proposal to, in effect, take action apropos 'commercial' schools -- albeit not to stop misuse but to allow it at a 'price' in form of higher property tax. True typed copies of news report about the last and letter of 03.03.2004 from Planner to Petitioner in WP 8954/2003, to which no reply has been received, are annexed herewith as **ANNEXURE-P/15 (COLLY)** for ready reference.

10. That the reply of Respondent No.5 (Delhi Police (Traffic)) states, in its para-8, that its role under MPD Technical Committee is "to suggest ways for ensuring smooth flow of traffic" and notes, in its para-5, that the Petitioners have stated that failure of schools to make adequate parking provision within their premises has made

for traffic problems, but without countering this allegation with any evidence of mandatory parking space within school premises or clarifying how “ways for ensuring smooth flow of traffic” are possible without mandatory off-road parking provision, in its para-9 it “reaffirms its commitment to ensure smooth and congestion free traffic flow” -- on basis of what can only be called bland denials, unsubstantiated assurances and admittances of public expense to facilitate continuation of violations, viz:

(a) in para-7 it states that “at present no traffic problem is existing due to schools in the area” and that “no complaint in this regard has been received during the year 2004”, even as latter alone is insufficient basis to infer the former, belied by ground realities, such as illustrated in photographs in the report at ANNEXURE-P/2.

(b) in para-7 it claims “traffic police is deployed at strategic points”, “traffic patrolling is carried out for discouraging improper parking”, obstructively parked vehicles are “towed away and prosecuted” and “spot prosecution, pasting of obstructive parking notice etc are carried out” – all without any statistics to prove adequacy of these measures.

(c) Not mentioned, apropos measures mentioned in para-7 as well as apropos “constant liasoning with the school authorities [to] brief & sensitize the security personnel as well as transport incharge of schools on regular interval basis” mentioned in para-6, is how much public expense is incurred on measures to make up for failure of schools to provide mandatory parking within their premises and how this expense is justifiable.

11. That the Petitioners respectfully submit that these replies, that seem to have been filed only to spare officers embarrassment of personal appearance pursuant to the Hon'ble Court's order of 04.02.2004, smack of utter indifference on the part of the Respondents towards the constitutional commitment to equal education for all children as well as towards illegalities in pursuit of profit at cost of citizens entitlements, and the contents of the Petitions, not answered in these replies, are reiterated.

12. That the statements made in the above Rejoinder affidavit are true and correct to the best of my knowledge and belief and the accompanying Annexures are true copies of their respective originals.

DEPONENT

New Delhi, dated: __.05.2004