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

*%* *Judgment Reserved on: 10.03.2026*
*Judgment Delivered on: 16.03.2026*

\+ **W.P.(C) 6004/2021 CM APPL. 18987/2021, CM APPL. 20912/2021, CM APPL. 27197/2021, CM APPL. 18827/2023, CM APPL. 28077/2024, CM APPL. 14292/2025 & CM APPL. 48225/2025**

MILA SEN AND ORS. .....Petitioners
Through: Mr. Fahim Khan, Advocate.

versus

DELHI DEVELOPMENT AUTHORITY
AND ORS .....Respondents
Through: Mr. Giriraj Subramanium, Ms. Avantika Singh and Mr. Ravi Pathak, Advocates for R3.
Mr. Gaurav Gupta, Ms. Ridhima Purohit, Mr. Tapas Gaur and Ms. Avisha Jain, Advocates for R4.

**CORAM:**
**HON'BLE MR. JUSTICE VIKAS MAHAJAN**

**JUDGMENT**

**VIKAS MAHAJAN, J**

1. The present petition has been filed seeking following reliefs:

*"i. Pass appropriate orders/directions thereby, directing the Respondents to stop the construction in south portion of building of the petitioners;*

*ii. Pass/issue appropriate writ/directions/orders holding the e-auction dated 25.06.2019 of Plot No. 04 held by respondent*

*no.1 as illegal since the same is carved out by including 'public land' i.e. the back lane of the said property and thereby quashing/cancelling the e-auction of Plot No. 04 in Pocket O, C.R. Park by respondent no. 1 in favour of respondent no. 3;*

*iii. Pass/issue appropriate writ/directions/orders holding the modified layout plan of Pocket O, C.R. Park dated 03.12.1990 is in contravention to the law of the land and thereby quashing/cancelling the modified layout plan of Pocket O, C.R. Park approved by the 65th Screening Committee meeting held on 03.12.1990 vide item no. 03, to the extent that it restores the backlane of the said property belonging to the petitioners"*

2. The case set out by the petitioners in the amended petition is that petitioner no.1 is a senior citizen, who owns the ground floor of property bearing no. Plot No.2, Pocket-O, Chittaranjan Park, New Delhi-110019 [hereinafter also referred to as 'said property'] and residing therein for the past 21 years with her husband. Petitioner no.2 is the son of petitioner no.1, who is a tenant on the first floor of the said property. The said property admeasures 124.85 sqr.yrds and was originally purchased in an auction by Smt. Ranjeeta Sinha from the Delhi Development Authority (DDA) on leasehold basis. The registered perpetual lease deed dated 01.06.1993 shows that the said property is bounded as under:

| | | |
|---|---|---|
| NORTH | - | Road |
| EAST | - | Plot No.O-1 |
| SOUTH | - | Lane |
| WEST | - | Plot No.O-3 |

3. The allotment of said property was made in favour of Smt. Ranjeeta Sinha after the modification of original layout plan of Chittaranjan Park (C.R. Park) approved in the 65th Screening Committee Meeting held on 03.12.1990 as item no.03, wherein, as per modified layout plan, total 10

number of plots were carved out instead of originally proposed 18 number of plots. Thereafter, the said property was allotted to the original allottee namely, Smt. Ranjeeta Sinha, *vide* allotment letter dated 30.09.1991, possession thereof was handed over on 29.03.1993 and the lease deed was executed on 01.06.1993.

4. The original allottee sold the said property to one M/s Sentinels Security Pvt. Ltd., who in turn sold to Shri Sanjay Navanay *vide* Agreement to Sell and GPA dated 23.08.1999.

5. Shri Sanjay Navanay constructed a building on the said property after getting the plan sanctioned from the concerned authorities and got the property converted from leasehold to freehold *vide* registered conveyance deed dated 05.05.2000.

6. Petitioner no.1, after considering that the said property has sufficient open space with air ventilation and sunlight from front and back along with exposure of sunlight, purchased the ground floor of the said property from Shri Sanjay Navanay *vide* registered sale deed dated 15.07.2000.

7. It is the further pleaded case of the petitioners that petitioner no.1 along with her family has resided in the ground floor of the said property ever since it was purchased i.e. for the past 21 years.

8. It is also stated in the petition that as per the original plan laid out by the DDA for the settlement of colony at C.R. Park, the said property i.e. Plot No.O-2, had a road in North (i.e. front portion of the building) and a back lane with small park in the South (i.e. back portion of the building).

9. It is alleged that all the plots earmarked in the plan laid out for C.R. Park, a lane/back alley has been left between two parallel plots for the

purpose of air ventilation, sunlight exposure and for other amenities for the residents.

10. It is stated that the lease deed dated 01.06.1993 executed in respect of the said property after the modification of original layout plan, clearly depicts that a lane has been carved out in South of the said property. However, in the year 2020, the respondent no.3 started the process of constructing building in the back alley/lane of the said property, to which the petitioners objected and approached respondent no.3 enquiring about copy of plan or DDA approved documents based on which the construction was being carried out in the back lane of the said property. However, no response was given by respondent no.3.

11. Later, the petitioners found out that respondent no.1 had e-auctioned the land on the rear side of the said property including the back lane earmarking the entire area of land as Plot No.04, Block-O, C.R. Park, New Delhi [hereinafter referred to as 'Plot No.O-4'].

12. In the backdrop of the aforesaid facts, the grievance articulated by the petitioners in the petition is that the construction carried out by respondent no.3 over Plot No.O-4 is in a manner that back lane of the petitioners' property has been illegally occupied and there is no space between the rear wall of the said property and the illegal construction in the back lane. Such wall to wall construction will leave the 'said property' devoid of sunlight and air ventilation. There is not even any space to install a window or air conditioner on the rear side of the ground floor portion of the building which is occupied by the petitioners.

13. Respondent no.1/DDA filed its counter-affidavit taking a specific

stand that the plots in Block-O of C.R. Park are in consonance with the modified layout plan of the area. It is further stated that Plot No.O-4 was auctioned by DDA on 25.06.2019 as per the modified layout plan of the area. After completion of all the codal formalities, the possession of plot was handed over on 19.02.2020, which is bounded as under:

| | | |
|---|---|---|
| North | : | Metalled Road |
| East | : | Plot No.05 |
| South | : | Service lane |
| West | : | Plot Nos.02 & 03 |

14. It is further alleged by the DDA that Plot No.O-3 and Plot No.O-4 were rightly auctioned as per modified layout plan and the auction purchaser has all the rights to construct building as per the building plan sanctioned by SDMC being H1 Bidder of e-auction, therefore, the request of the petitioners is liable to be rejected.

15. It also appears from the counter-affidavit of DDA that the said property i.e. Plot No.O-2 and Plot No.O-4 were carved out in the same layout plan which was modified in 1990. It is further clarified that the boundaries of Plot No.O-2, as mentioned in the site plan attached to the perpetual lease, are not in consonance with the modified layout plan.

16. The relevant paragraphs from the counter-affidavit of DDA are extracted below for ready reference:

> *"10.* ***It is submitted that the modified layout plan of the area under reference was placed during the meeting and the said modified layout plan was approved by the 65th Screening Committee meeting held on 03.12.1990 vide item no. 03****. Copy of the same is annexed as Annexure-II.* ***As per modified layout plan, total 10 numbers of plots have been carved out instead of 18 numbers of plots allowing a park (TOT-LOT) between plot no 05***

***and 06 of area under reference****.*

*11. As per original Lay Out plan 18 plots were carved out initially but as per feasibility plan only 10 plots could be carved out and the balance 8 plots were re-adjusted in Pocket 52. Originally, plot no 07 was allotted to Suit. Ranjeeta Sinha, original allottee of the petitioner's residence vide letter dated 28.11.1988. Copy of letter dated 28.11.1988 of plot no. 02 is annexed as Annexure-III.*

*12.* ***That thereafter, layout plan was modified in 1990 and draw of lots held on 04.09.1991 and Plot 02 was allotted vide allotment letter dated 30.09.1991 to Ranjeeta Sinha and earlier allotment letter of Plot no 07 was cancelled****. Copy of allotment letter dated 30.09.1991 is annexed as Annexure-IV. Possession was handed over on 29.03.1993, lease deed executed on 01.06.1993 and conversion allowed in favour of Sh. Sanjay Navanay (GPA/ATS holder) on 04.05.2000. Copy of lease deed and conveyance deed is annexed as Annexure-V colly."*

(emphasis supplied)

17. Respondent no.2/SDMC filed a status report by way of an affidavit dated 01.07.2021 stating that in respect of Plot No.O-4, the owner/builder has obtained sanction of building plans for the purpose of carrying out construction of residential building, having basement, stilt, ground floor, first floor, second floor and third floor. Further, the layout plan does not show any land on the back of Plot No.O-2. The relevant extract from the said status report reads thus:

*"3. That considering the role of answering respondent/SDMC, it is submitted that in order to ascertain the status of the site in question, the subject property i.e. 0-4, Chitranjan Park, has been got inspected through area field staff and the record pertaining to the said property, as available with this office, has also been referred to. On referring to the record, it has been observed that in respect of Plot No. 4, Pocket-0, Chitranjan Park, New Delhi, the owner / builder has obtained the sanction of building plans from the*

*Architect under his certifications and signatures through online mode vide ID No. 10081428 dated 25.12.2020, for the purpose of carrying out the construction of a residential building, having basement, stilt, ground floor, first floor, second floor and third floor.* ***Alongwith the said online application, the part Layout Plan, as submitted does not show any lane at the back of your residence / P.No. 0-2, Chitranjan Park, New Delhi.*** *Moreover, the Conveyance Deed dated 18th March-2020, as submitted by the owner / builder / applicant therein, shows the boundary / surroundings of P.No.O-4 as under:*

*North : Metalled Road*
*East : Plot No.05*
*South : Service lane*
*West : Plot Nos.02 & 03*

***It is pointed out that the said Conveyance-Deed has been executed by the D.D.A. and does not show any backlane, as alleged by you****.*

*Moreover, it is also pointed out that on inspection of site, it has been noticed that presently, the basement has been constructed and shuttering for stilt roof has been found laid and presently, work is lying stopped. The photographs showing the latest status of the site, copy of sanction building plan along with part layout plan and conveyance deed dated 18/03/2020 as submitted, are annexed herewith as Annexure -A ( Colly.).”*

(emphasis supplied)

18. Respondent no.2/SDMC filed yet another status report by way of affidavit dated 14.08.2021 in deference to the order dated 16.07.2021 of this Court reiterating that the inspection as well as the sanctioned building plan, as also the DDA approved layout plan of the area, do not reveal any breach of sanctioned building plan or spilling over of construction in respect of Plot No.O-4 on to public land or any garden. It was further stated that the construction in respect of Plot No.O-4 is being carried out as per the

sanctioned building plan so obtained by the owner/builder. The relevant paragraphs of the said status report read thus:

> *"5. **That on inspection and referring to the sanctioned building plan and also the DDA approved layout plan of the area, neither any breach of Sanctioned Building Plan nor the construction in respect of the said plot spilling over on to public land or any garden, have been noticed. The construction in respect of the plot No. 0-4, C.R. Park is being carried out as per the Sanctioned Building Plan so obtained by the owner / builder, presently**. The photographs of the site in question along with the site plan are annexed herewith in terms of the directions of this Hon'ble High Court as Annexure -B (Colly)."*
>
> (emphasis supplied)

19. Respondent no.3, auction purchaser of Plot No.O-4, filed its counter-affidavit. Likewise, respondent no.4, to whom respondent no.3 had sold 45% of his undivided, indivisible and impartible ownership rights in Plot No.O-4, also filed separate counter-affidavit.

***Submissions***

20. Mr. Fahim Khan, learned counsel appearing on behalf of petitioners invites attention of the Court to page 66 **(Annexure P-6)** which is a site plan forming part of the original Lease Deed dated 01.06.1993 executed by respondent no.1/DDA in favour of the original allottee, namely, Ranjita Sinha, to contend that the said site plan clearly shows that on the rear side of plot no. O-2, there is a lane, whereas respondent no.3 is raising construction encroaching upon the said lane.

21. He submits that DDA has filed counter-affidavit in the present petition taking a stand that lay out plan of Pocket-O, C.R. Park, New Delhi was modified on 03.12.1990 and both, Plot No. O-2 as well as Plot No. O-4,

were carved out by way of said modified lay out plan dated 03.12.1990. He further submits that such a stand taken by respondent no.1/DDA has caused grave prejudice to petitioners, inasmuch as the lane which was shown in the site plan attached to the original Lease Deed has now been merged with Plot No. O-4, which has been auctioned in favour of respondent no.3.

22. He submits that in view of the stand taken by the DDA, the petitioners were constrained to amend the writ petition and substitute its prayer, whereby petitioners have also challenged the modified lay out plan of Pocket-O, C.R. Park dated 03.12.1990 besides assailing e-auction dated 25.06.2019 of plot no. O-4 in favour of respondent no.3.

23. He submits that respondent no.1/DDA vide its letter dated 18.06.2019 issued for e-auction had increased the plot area of plot no.O-4 from 152.4 Sq. Mtr. to 158.1 Sq. Mtr. which shows that the lane has been subsequently included in the plot area of O-4.

24. He submits that respondent no.1/DDA had no right to auction the back lane abutting the property of petitioners as the same is a public land meant for public use, and for having access and use of air ventilation and sunlight.

25. He contends that neither the original allottee nor the subsequent buyers were ever intimated about the carving of plot no. O-4.

26. Further, the rights of petitioners have been severely affected by creation of plot no. O-4 and the same could not have been done unilaterally by respondent no.1/DDA, thereby depriving petitioners of their easementary rights to the extent of the rear lane.

27. He submits that the modification of land use by respondent no.1/DDA

without any information, intimation or consultation with petitioners is against the principles of natural justice, hence illegal.

28. In support of his contentions, Mr. Khan has placed reliance on the following decisions:- (i) ***Dr. G.N. Khajuria v. Delhi Development Authority, (1995) 5 SCC 762;*** (ii) ***Sri Devi Nagar Residences Welfare Association v. Subbathal, 2007-3 L.W.259*** of Madras High Court and (iii) ***Grand Vasant Residents Welfare v. DDA, 2014 SCC Online Del 996***.

29. Pertinently, during the pendency of present writ petition, petitioner no.1 had sold her portion i.e. ground floor of property bearing no. O-2, C.R. Park, New Delhi to Mr. Kumar Gautam *vide* sale deed dated 17.02.2025, therefore, an application being CM APPL 18684/2025 was filed by Mr. Kumar Gautam seeking impleadment as petitioner no.3. The said application was allowed *vide* order dated 10.03.2026 and Mr. Kumar Gautam was impleaded as petitioner no.3 in the present petition.

30. Incidentally, Mr. Khan also appears for petitioner no.3 and he adopted the arguments advanced by him on behalf of petitioner nos.1 and 2 for petitioner no.3 as well. The statement of Mr. Khan to that effect was recorded in the order dated 10.03.2026.

31. *Per contra,* Mr. Giriraj Subramanium, learned counsel appearing on behalf of respondent no.3 submits that the respondent no.3 had participated in the e-auction of Plot No. O-4, C.R. Park, New Delhi held on 07.10.2019 and he was the successful bidder. Accordingly, respondent no.3 paid the entire consideration amount to respondent no.1 DDA to the extent of Rs.6.64 Crore.

32. Subsequently, respondent no.3 entered into an agreement to sell with

respondent no.4 on 20.07.2020, whereunder respondent no.3 agreed to sell 45% interest in the property which was proposed to be constructed on the said plot. Subsequent thereto, respondent no.4 started construction over the plot in question on 26.12.2020.

33. He submits that after the Respondent no. 3 had raised construction to the extent of ground floor and first floor, the present writ petition came to be filed at the instance of petitioners on or about 22.06.2021.

34. He submits that petitioners obtained *ex parte status quo* order from this Court on 23.08.2021 and since then, the interim order has been continuing. He contends that on account of said interim order, respondent nos.3 and 4 have not been able to complete the construction and put the property to use. He submits that further on account of the restraint order passed by this Court, entire money of respondent no.3 as well as respondent no.4 is stuck.

35. Mr. Subramanium invites attention of the Court to page 121 which is a modified lay out plan annexed by respondent no.1/DDA along with its counter-affidavit. Referring to the said modified plan, he contends that by virtue of said modified plan, not only the plot no. O-4 which was purchased by respondent no.3 in e-auction was carved out, but petitioners' plot no. O-2 was also carved out by the same modified lay out plan. In case modified lay out plan is quashed, then as a consequence, the allotment/lease/conveyance *qua* Plot No.O-2 will also stand quashed.

36. He submits that insofar as the Lease Deed with regard to petitioners' plot i.e. Plot No.O-2 is concerned, the same is dated 01.06.1993, which was executed subsequent to the publication of modified lay out plan dated

03.12.1990. He submits that there cannot be any *estoppel* against the modified lay out plan which is a form of delegated legislation.

37. He further submits that challenge to the modified lay out plan is also barred by delay and laches inasmuch as modified lay out plan was approved as early as on 03.12.1990 and the amendment of the writ petition, whereby prayer with regard to challenge to the said modified lay out plan was inserted, came to be filed only on 15.12.2023.

38. Mr. Subramanium has also invited attention of the Court to the status report filed by erstwhile SDMC dated 16.08.2021 to contend that SDMC has also verified the lay out plan of 03.12.1990 as well as the building sanction plan pertaining to plot no. O-4 and has concluded in the status report that there is no encroachment over the public land.

39. Mr. Gaurav Gupta, learned counsel appearing on behalf of respondent no.4 submits that petitioners have not come to this Court with clean hands inasmuch as the modified lay out plan with regard to plot nos. O-4 as well as O-2 was displayed by way of metal display board right outside Plot No.O-1 immediately next to Plot No.O-2, therefore, petitioners cannot feign ignorance with regard to the knowledge of the said lay out plan.

40. He submits that construction over the plot O-4 started on 26.12.2020, however, petitioners had waited for six months and by that time, respondent no.4 had already constructed ground floor as well as first floor on the property. He submits that, in fact, the balcony of petitioners extends to the property of respondent nos. 3 and 4, and it is the petitioners who have encroached upon some area of their plot i.e. Plot No.O-4.

41. He submits that all these questions are disputed questions of fact

which cannot be gone into under Article 226 of the Constitution of India and appropriate remedy for the same is either to file civil suit or to prefer an appeal before the MCD Tribunal.

42. He further submits that in the writ petition, petitioners are claiming easement rights. However, in terms of Section 15 of the Easement Act, 1882 petitioners ought to have been in possession for 30 continuous years to claim such easement rights against the DDA. He further submits that the remedy available to petitioners, in the event their easementary rights are obstructed, is to file a civil suit.

43. Mr. Gupta further contends that the building sanction plan pertaining to Plot No.O-4 is expiring on 24.12.2025, and in case the period of operation of the stay order if not excluded, respondent no.4 will not be able to complete construction before the expiry of the said period. He further contends that in case an application is made by respondent no.4 for extension of the building plan, he may not be able to get fresh approval. He places reliance on the decision of the Coordinate Bench of the Court in ***Anil Dhingra v. Commissioner, MCD and Ors., W.P.(C) 8720/2010.***

44. I have heard learned counsels for the parties and have considered the material placed on record.

45. The fundamental challenge in the present writ petition is to the modified layout plan of Pocket-O, C.R. Park, dated 03.12.1990 whereby Plot No.O-4 was carved out, as well as, to the construction raised thereon. The said challenge is essentially predicated on two grounds, *viz.* – (i) the back alley on the rear/South side of Plot No.O-2 could not have been altered without prior notice or information to the petitioners; as the said procedure

was not followed, the carving out of Plot No.O-4 by inclusion of back alley is arbitrary and unsustainable and (ii) the easementary rights of the petitioners have been violated as the construction of building over Plot No.O-4 which now includes the back alley of Plot No.O-2 by virtue of modified lay out plan, blocks the air ventilation and sunlight exposure; and

46. Undisputedly, Plot No.O-2, as well as, Plot No.O-4, were carved out by virtue same modified layout plan of C.R. Park, which was approved in 65th Screening Committee Meeting held on 03.12.1990.

47. Plot No.O-2 was subsequently allotted to the original allottee namely, Smt. Ranjeeta Sinha *vide* allotment letter dated 30.09.1991 and the lease deed in respect thereof came to be executed on 01.06.1993.

48. It is not the case of the petitioners that the modification in the layout plan which took place on 03.12.1990 entails amendment or change in Master Plan for Delhi, 2001 [in short, 'MPD'] or Zonal Development Plan [ZDP].

49. Section 11A[1] of the Delhi Development Act, 1957 **(**hereinafter

[1] *11A. Modifications to plan.—(1) The Authority may make any modifications to the master plan or the zonal development plan as it thinks fit, being modifications which, in its opinion, do not effect important alterations in the character of the plan and which do not relate to the extent of land-uses or the standards of population density.*
*(2) The Central Government may make any modifications to the master plan or the zonal development plan whether such modifications are of the nature specified in sub-section (1) or otherwise.*
*(3) Before making any modifications to the plan, the Authority or, as the case may be, the Central Government shall publish a notice in such form and manner as may be prescribed by rules made in this behalf inviting objections and suggestions from any person with respect to the proposed modifications before such date as may be specified in the notice and shall consider all objections and suggestions that may be received by the Authority or the Central Government.*
*(4) Every modification made under the provisions of this section shall be published in such manner as the Authority or the Central Government, as the case may be, may specify and the modifications shall come into operation either on the date of the publication or on such other date as the Authority or the Central Government may fix.*
*(5) When the Authority makes any modifications to the plan under sub-section (1), it shall report to the Central Government the full particulars of such modifications within thirty days of the date on which such modifications come into operation.*
*(6) If any question arises whether the modifications proposed to be made by the Authority are*

referred to as the *"DD Act"*) prescribes the procedure to be followed where any modification is proposed to be undertaken in the Master Plan (MPD) or the Zonal Development Plan (ZDP), either by the Delhi Development Authority (DDA) or by the Central Government. However, the DD Act does not prescribe any specific procedure governing the modification or amendment of a layout plan. Consequently, a layout plan may be modified or amended without invoking the procedure contemplated under Section 11A of the DD Act, provided that the revised layout plan remains consistent with and in conformity with the applicable MPD and ZDP.

50. The law is well settled that the layout plan is a sort of working drawings prepared by the DDA, and the same could be administratively modified by the DDA[2]. No provision in the DDA has been brought to the notice of the Court, and in my opinion there exists none, which deals with the modification of layout plan. It implies thereby that the layout plan can be modified by an administrative decision[3] without resorting to the procedure envisaged under Section 11A of the DD Act to modify the MPD and ZDP, which essentially means that there is no need to publish a notice to invite objections or suggestions from any person with respect to proposed modification in the layout plan. Reference in this regard may also be had to the decision of the Division Bench of this Court in ***Rohit Dhupar & Ors. v.***

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*modifications which effect important alterations in the character of the plan or whether they relate to the extent of land-uses or the standards of population density, it shall be referred to the Central Government whose decision thereon shall be final.*
*(7) Any reference in any other Chapter, except Chapter III, to the master plan or the zonal development plan shall be construed as a reference to the master plan or the zonal development plan as modified under the provisions of this section.]*

[2] ***Shanti Devi Gupta & Ors. v. DDA & Ors., AIR 1994 Delhi 299*** (para 16)
[3] ***Smt. Maya Devi v. UOI, 65 (1997) DLT 405***

***LT. Governor & Ors., 2009 (109) DRJ 586 (DB),*** wherein the Court in the context of modification of layout plan made the following pertinent observations:

> *"**9.** MPD, 2001 divided Delhi into 15 Zones. A Zonal Development Plan (hereinafter referred to as ZDP, for short) is prepared for each Zone and thereafter adopted after following the procedure as prescribed for adoption in the DD Act. Each ZDP comprises of site plan and use plan. MPD 2001 divided Delhi into 9 categories of uses comprising of 37 use zones to be detailed in the ZDP. 136 use premises are prescribed in the MPD-2001.*
>
> ***10. Lay Out Plans are different and distinct from ZDP. Lay Out Plans demarcate specific areas which can be used for different purposes and earmark land/plots which can be used for different purposes. Under Development Code of MPD 2001, Clauses 2(3) and (4), Lay Out Plan and ZDP have been defined as:***
>
> > ***"2(3). Layout Plan-Layout Plan means a sub-division plan indicating configuration and sizes of all use premises.***
> >
> > *2(4). Zonal Development Plan means a plan for one of the zones (divisions) of the Union Territory of Delhi containing detailed information regarding provision of social infrastructure, parks and open spaces and circulation system."*
>
> ***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****.*
>
> *xxx xxx xxx"*

51. Earlier, the Division Bench of this Court in ***B.U. Block Residents Welfare Association v. DDA, 87 (2000) DLT 603***, had occasion to consider the issue concerning the requirement of approval from the Central Government in the context of modification of a layout plan. The Court, while examining the scheme of the Delhi Development Act and the planning framework under the Master Plan and Zonal Development Plan, observed as under:

> *"9. … In any case, we find no breach or violation of MPD-2001 or the ZDP. It cannot be disputed that if there is a change in the layout plan, no approval or sanction of the Central Government is required."*

52. Similar view has been taken in the case of ***B-1, Vasant Kunj Resident Welfare Association (Regd.) v. Lt. Governor of Delhi & Ors., 2003 (1) AD (Delhi) 727,*** wherein it was laid down that layout plans can be amended and changed without following the procedure laid down in Section 11A of the

DD Act. The relevant portion of the judgment reads thus:

> *"7. Having heard learned counsel for the parties we are of the opinion that although layout plan can be changed wherefor 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."*

53. The law exposited in the aforesaid decisions clearly underscores the distinction between statutory development plans, such as the Master Plan and Zonal Development Plan, and a layout plan prepared for a particular locality or pocket of land. While any modification to the Master Plan or the Zonal Development Plan is required to follow the procedure prescribed under Section 11A of the DDA, the same requirement does not extend to alterations made to a layout plan, so long as the modification does not result in any violation of the Master Plan or the applicable Zonal Development Plan. Thus, the modification to the lay out plan would be legally sustainable provided that it remains within the framework of statutory plans, namely the MPD and ZDP. In other words, merely because a layout plan has been modified cannot, by itself, be a ground to assail it's modification, unless it is shown that such alteration is inconsistent with or contrary to the Master Plan or the Zonal Development Plan.

54. As the petitioners have neither alleged nor shown that the modified layout plan is in breach or violation of MPD or ZDP or any other provisions of the DD Act or the rules framed thereunder, the modified layout plan cannot be interfered with by this Court.

55. The only stand taken by the petitioners is that the site plan attached to

the original lease deed dated 01.06.1993 executed by respondent no.1/DDA in favour of the original allottee, namely Ranjita Sinha, shows that on the rear side of plot no. O-2, there is a lane. Suffice it to say that the Lease Deed dated 01.06.1993 was executed by the DDA after the modification of lay out plan on 03.12.1990 and the said lay out plan does not provide for any lane on the rear side of plot no. O-2. Therefore, the site plan attached to the lease deed dated 01.06.1993 is not in consonance with the modified lay out plan, and the petitioners cannot take advantage of the said lease deed.

56. Incidentally, the petitioners and their predecessor-in-interest are also beneficiaries of the same modified lay out plan dated 03.12.1990, inasmuch as their Plot No. O-2 was also carved out along with Plot No. O-4, by virtue of impugned modified layout plan, therefore, the petitioners are also estopped from questioning the same.

57. Mr. Khan has placed reliance on ***Dr. G.N. Khajuria*** *(supra)* to contend that the DDA could not have unilaterally auctioned and allotted the land comprised in Plot O-4, as according to him, the said parcel was intended to serve as a rear lane providing access and ease to the petitioner's property. The reliance, however, is misplaced. In ***Dr. G.N. Khajuria*** *(supra),* the land in question had been specifically earmarked for a particular public purpose in the layout plan, and the Authority (DDA) sought to alter such earmarked use at the stage of allotment. It was in that context that the Hon'ble Supreme Court disapproved the change in land use. The factual matrix of the present case, stands on an entirely different footing. Here, the purpose of land use of plot O-4 has not undergone any such alteration and no breach of MPD and ZDP has been committed while modifying the layout

plan. Consequently, the principle laid down in ***Dr. G.N. Khajuria*** *(supra)* has no application to the facts of the present case.

58. Mr. Khan has further placed reliance on ***Sri Devi Nagar Residences Welfare Association (supra)*** to contend that open parcel of land within residential colonies serve as the lungs of the area and therefore ought not to be put to development. This reliance is equally misconceived. In the said decision, the land in question had been specifically earmarked as a park in the layout plan and was consequently held to be incapable of being diverted for development or construction. In the present case, plot no. O-4 was never designated as a park, open space or any other amenity area intended for the benefit of the petitioners or other residents. The factual premise underlying the said judgment is therefore absent in the present matter.

59. Similarly, reliance has been placed on ***Grand Vasant Residents Welfare Association (supra)*** wherein the allotment made by the DDA was found to be contrary to the land use specifically earmarked in the layout plan, which is not the position in the present case. Therefore, the said decision does not advance the case of the petitioner.

60. In each of the aforesaid decisions relied on by Mr. Khan, the land concerned had been expressly earmarked for a defined public purpose which the Authority sought to alter without following the requisite procedure. In contrast, in the present case, there has been no change in the designated purpose in the land of plot O-4. The reliance placed by Mr. Khan on aforesaid judgments is therefore misplaced and the same are clearly distinguishable.

61. Now coming to the petitioners' submission that their right to easement

has been violated by the blocking of air ventilation and sunlight exposure on account of construction of building by respondent nos.3 & 4 on Plot No.O-4, it is important to note that for creation of an easement, two distinct heritages are essential – a dominant heritage and servient heritage – and they must not belong to the same individual. The easement has been defined in Section 4[4] of the Indian Easements Act, 1882 [in short, 'Easements Act'] which provides that following conditions are required to be met to claim an easementary right – (i) the right is in the dominant owner or occupier of land as such; (ii) it is for the beneficial enjoyment of that land; (iii) it is to do and continue to do something or to prevent or continue to prevent something being done; (iv) that something is in or upon, or in respect of, certain other land of servient owner; and (v) the other land is not his own.

62. The easements by prescription can be acquired only under Section 15 of the Easements Act, which reads as under::

> *"**15. Acquisition by prescription.—Where the access and use of light or air to and for any building have been peaceably enjoyed therewith, as an easement, without interruption, and for twenty years,***
>
> *and where support from one person's land or things affixed thereto has been peaceably received by another person's land subjected to*

[4] *4. "**Easement" defined**- An easement is a right which the owner or occupier of certain land possesses, as such, for the beneficial enjoyment of that land, to do and continue to do something, or to prevent and continue to prevent something being done, in or upon, or in respect of, certain other land not his own.*
***Dominant and servient heritages and owners**.- The land for the beneficial enjoyment of which the right exists is called the dominant heritage, and the owner or occupier thereof the dominant owner; the land on which the liability is imposed is called the servient heritage, and the owner or occupier thereof the servient owner.*
*Explanation.- In the first and second clauses of this section, the expression land includes also things permanently attached to the earth; the expression beneficial enjoyment includes also possible convenience, remote advantage and even a mere amenity; and the expression to do something includes removal and appropriation by the dominant owner, for the beneficial enjoyment of the dominant heritage, of any part of the soil of the servient heritage or anything growing or subsisting thereon.*

*artificial pressure or by things affixed thereto as an easement, without interruption, and for twenty years,*

*and where a right of way or any other easement has been peaceably and openly enjoyed by any person claiming title thereto, as an easement, and as of right, without interruption, and for twenty years,* ***the right to such access and use of light or air, support or other easement shall be absolute.***

***Each of the said periods of twenty years shall be taken to be a period ending within two years next before the institution of the suit wherein the claim to which such period relates is contested.***

*Explanation I.—Nothing is an enjoyment within the meaning of this section when it has been had in pursuance of an agreement with the owner or occupier of the property over which the right is claimed, and it is apparent from the agreement that such right has not been granted as an easement, or, if granted as an easement, that it has been granted for a limited period, or subject to a condition on the fulfilment of which it is to cease.*

*Explanation II.—Nothing is an interruption within the meaning of this section unless where there is an actual cessation of the enjoyment by reason of an obstruction by the act of some person other than the claimant, and unless such obstruction is submitted to or acquiesced in for one year after the claimant has notice thereof and of the person making or authorising the same to be made.*

*Explanation III.—Suspension of enjoyment in pursuance of a contract between the dominant and servient owners is not an interruption within the meaning of this section.*

*Explanation IV.—In the case of an easement to pollute water, the said period of twenty years begins when the pollution first prejudices perceptibly the servient heritage.*

***When the property over which a right is claimed under this section belongs to [Government] this section shall be read as if, for the words "twenty years", the words "[thirty years]" were substituted.***

(emphasis supplied)

63. The other relevant provisions of the Easements Act which relate to – the extent of easements; right to enjoyment without disturbance; suit for disturbance of easement; and injunction to restrain disturbance, are contained in Sections 28, 32, 33 and 35 of the said Act, respectively. The relevant text of the said provisions is reproduced hereinbelow for ready reference:

> *"**28. Extent of easements**.—With respect to the extent of easements and the mode of their enjoyment, the following provisions shall take effect:—*
>
> ***Easement of necessity**.—An easement of necessity is co-extensive with the necessity as it existed when the easement was imposed.*
>
> ***Other easements**.—The extent of any other easement and the mode of its enjoyment must be fixed with reference to the probable intention of the parties and the purpose for which the right was imposed or acquired.*
>
> *In the absence of evidence as to such intention and purpose—*
>
> *xxx xxx xxx*
>
> *(c) **Prescriptive right to light or air**.—The extent of a prescriptive right to the passage of light or air to a certain window, door or other opening is that quantity of light or air which has been accustomed to enter that opening during the whole of the prescriptive period irrespectively of the purposes for which it has been used;*
>
> *xxx xxx xxx*
>
> ***32. Right to enjoyment without disturbance**.—The owner or occupier of the dominant heritage is entitled to enjoy the easement without disturbance by any other person.*
>
> ***33. Suit for disturbance of easement**.—The owner of any interest in*

*the dominant heritage, or the occupier of such heritage,* ***may institute a suit for compensation for the disturbance of the easement or of any right accessory thereto; provided that the disturbance has actually caused substantial damage to the plaintiff****.*

***Explanation I.—The doing of any act likely to injure the plaintiff by affecting the evidence of the easement, or by materially diminishing the value of the dominant heritage, is substantial damage within the meaning of this section and section 34.***

*Explanation II.—Where the easement disturbed is a right to the free passage of light passing to the openings in a house,* ***no damage is substantial within the meaning of this section unless it falls within the first Explanation, or interferes materially with the physical comfort of the plaintiff****, or prevents him from carrying on his accustomed business in the dominant heritage as beneficially as he had done previous to* ***instituting the suit****.*

*Explanation III.—Where the easement disturbed is a right to the free passage of air to the openings in a house,* ***damage is substantial within the meaning of this section if it interferes materially with the physical comfort of the plaintiff, though it is not injurious to his health****.*

*xxx xxx xxx*

***35. Injunction to restrain disturbance****.—Subject to the provisions of the Specific Relief Act, 1877 (1 of 1877), sections 52 to 57 (both inclusive), an injunction may be granted to restrain the disturbance of an easement—*

*(a) if the easement is actually disturbed—when compensation for such disturbance might be recovered under this Chapter;*

*(b) if the disturbance is only threatened or intended—when the act threatened or intended must necessarily, if performed, disturb the easement."*

(emphasis supplied)

64. A reading of Section 15 of Easements Act makes it clear that to prove

the right of easement acquired by prescription in respect of use of light and air for any building, it should be shown that the person claiming the right was in peaceful, open and uninterrupted enjoyment of the right for a period of 20 years *[30 years where the property over which right is claimed belongs to the government]* lasting within two years of the suit. Indubitably, all these aspects are questions of fact.

65. Further, a conjoint reading of the provisions of Sections 15, 28, 33 and 35 makes it clear that in the matter of prescriptive right with regard to flow of light and air, mere diminution of air and light would not give a cause of action, but it should materially diminishes the value of the dominant heritage and should be a substantial interference with the normal enjoyment of light and air so as to disturb the usual mode of light or air of the inhabitants of the building or render the occupation of the building uncomfortable, which again are purely questions of fact that needs to be specifically pleaded and proved, all the more when easement by its very definition is a restriction on the rights of another person i.e. the servient owner.

66. In the present case, the petitioners have set up a plea of easement to air and light, the burden is, therefore, on the petitioners to adduce clear and cogent evidence that they had acquired easementary right in enjoyment of air and light, and that the obstruction to the same by way of construction raised by respondent nos.3 and 4 has materially diminished the value of the dominant heritage and rendered the occupation of their property/premises uncomfortable. However, all these questions of fact cannot be gone into in a summary proceedings under Article 226 of the Constitution of India, as the

same would require leading of evidence.

67. Further, upon reading of provisions of Sections 15, 33 and 35, it is plain that easement can be established and protected only in a suit, and a title of easement is not complete merely upon completion of statutory period of 20 years or 30 years, as the case may be. Reference in this regard may be had to the decision of Hon'ble Supreme Court in ***Ramkanya Bai & Anr. v. Jagdish & Ors., (2011) 7 SCC 452,*** wherein the Court was confronted with the question as to whether the customary easementary right could be decided by the Tehsildar under the Madhya Pradesh Land Revenue Code, 1959 in a summary proceedings or right relating to easement can be established in a civil suit. The Court observed as under:

> *"**20. When a person (dominant owner) has an easementary right, and the servient owner disturbs, obstructs or interferes with his easementary right, or denies his easementary right, the remedy of the dominant owner is to approach the civil court for the relief of declaration and/or injunction**. Similarly, when a person who does not have an easementary right, tries to assert or exercise any easementary right over another's land, the owner of such land can resist such assertion or obstruct the exercise of the easementary right and also approach the civil court to declare that the defendant has no easementary right of the nature claimed, over his land and/or that the defendant should be prevented from asserting such right or interfering with his possession and enjoyment.*
>
> (emphasis supplied)

68. The law is also well settled that pure question of fact could be adjudicated only by the Civil Court and writ petition filed under Article 226 of the Constitution is not an appropriate remedy. The remedy under Article 226 of the Constitution is available where violation of some statutory duty on the part of statutory authorities is alleged, which is not the position in the

present case. Reference in this regard may be had to the following observations of the Hon'ble Supreme Court in ***Roshina T. V. Abdul Azeez K.T. & Ors., (2019) 2 SCC 329***:

> ***"12.*** *The question as to who is the owner of the flat in question, whether Respondent 1 was/is in possession of the flat and, if so, from which date, how and in what circumstances, he claimed to be in its possession, whether his possession could be regarded as legal or not qua its real owner, etc. were some of the material questions which arose for consideration in the writ petition.*
>
> ***13. These questions, in our view, were pure questions of fact and could be answered one way or the other only by the civil court in a properly constituted civil suit and on the basis of the evidence adduced by the parties but not in a writ petition filed under Article 226 of the Constitution by the High Court.***
>
> ***14.*** *It has been consistently held by this Court that a regular suit is the appropriate remedy for settlement of the disputes relating to property rights between the private persons.* ***The remedy under Article 226 of the Constitution shall not be available except where violation of some statutory duty on the part of statutory authority is alleged. In such cases, the Court has jurisdiction to issue appropriate directions to the authority concerned. It is held that the High Court cannot allow its constitutional jurisdiction to be used for deciding disputes, for which remedies under the general law, civil or criminal are available. This Court has held that it is not intended to replace the ordinary remedies by way of a civil suit or application available to an aggrieved person. The jurisdiction under Article 226 of the Constitution being special and extraordinary, it should not be exercised casually or lightly on mere asking by the litigant.*** *(See Mohan Pandey v. Usha Rani Rajgaria [Mohan Pandey v. Usha Rani Rajgaria, (1992) 4 SCC 61] and Dwarka Prasad Agarwal v. B.D. Agarwal [Dwarka Prasad Agarwal v. B.D. Agarwal, (2003) 6 SCC 230] .)*

> ***15. In our view, the writ petition to claim such relief was not, therefore, legally permissible. It, therefore, deserved dismissal in limine on the ground of availability of an alternative remedy of filing a civil suit by Respondent 1 (writ petitioner) in the civil court."***
>
> (emphasis supplied)

69. The upshot of above discussion is that the petitioners' remedy for enforcing easementary right is not by way of present petition, but by way of Civil Suit. The petition is, therefore, dismissed. Consequently, the interim relief granted *vide* order dated 23.08.2021 is vacated. Liberty is, however, granted to the petitioners to file civil proceedings in the civil court for claiming appropriate reliefs. All the contentions available to the parties with regard to the claim of petitioners in respect of acquisition of easementary rights of air and light, are left open.

70. Before parting, the prayer of respondent no.4 with regard to the extension of validity of building sanction plan also needs to be addressed.

71. The building plan for construction on Plot No.O-4 was sanctioned by respondent no.2/SDMC on 25.12.2020 and respondent nos.3 and 4 had undertaken construction pursuant thereto. However, *vide* order dated 23.08.2021, the construction was stayed by this Court and the stay order has continued since then.

72. The building sanction plan has expired on 24.12.2025 during the pendency of the present petition. It is not in dispute that respondent no.4 has paid all relevant charges for getting the plan sanctioned. Respondent no.2/SDMC (now 'MCD') *vide* its status report has also affirmed that the construction carried out on Plot No.O-4 is legal and in accordance with the

sanctioned plan.

73. The act of the Court shall prejudice no one, is a principle firmly embedded in jurisprudence. Where a party has been disadvantaged by reason of an act of the Court, it is incumbent upon Court to undo such prejudice and restore party to the position he would have occupied but for such act.

74. In that view of the matter, this Court is of the view that the period for which the stay order was in operation needs to be excluded from the validity period of the building sanction plan. Accordingly, the MCD (erstwhile SDMC) is directed to issue appropriate administrative order in that behalf thereby extending the validity of building sanction plan so as to enable respondent nos.3 and 4 to undertake further construction on their plot i.e. Plot No.O-4.

75. Respondent no.2/MCD is also directed to ensure that the construction is carried out by respondent nos.3 and 4 strictly in accordance with the building sanction plan and no damage is caused to the petitioners' property.

76. The writ petition along with pending applications stands disposed of.

**VIKAS MAHAJAN, J**

**MARCH 16, 2026**/aj