110

CWP-16291-2020

Jan Kalyan Samiti Vs. State of Haryana and others

Present : Mr. Deepender Singh, Advocate,
for the petitioner.

Mr. Aman Bahri, Addl. A.G., Haryana.

* * *

This case has been taken up for hearing through video-conferencing.

Notice of motion returnable on 19.11.2020.

Mr. Aman Bahri, Additional Advocate General, Haryana, accepts notice on behalf of the respondents.

The petitioner is a registered body under the provisions of the Haryana Registration and Regulation of Societies Act, 2012. According to the averments made in the petition, Faridabad Township came into existence immediately after partition of the country. A master-plan was drawn for development of the Township making provision for parks, schools and green areas. According to the master-plan, residential areas of Faridabad Industrial Township were divided into five parts. Each part was named as neighbourhood i.e. Neighbourhood – I, II, III, IV and V. As per the layout

plan of NH-2, Faridabad, approved vide Drawing No. FCA/STP/613 dated 15.06.1986, Pocket-1 (Block-C) and Pocket-2 (Block-D) were earmarked for public park in NIT Faridabad. The total area of these parks was 7.5 Acres approximately. It is further averred that in due course, jhuggis, residential houses, workshops etc. came up unauthorisedly in the open areas. There is reference of CWP No. 13508 of 2006, wherein this Court had directed the respondents to identify all encroachments as were found on any part of the road or foot paths or in parks reserved for the benefit of residents of the area and to take effective action for removal of the same. The petitioner Society had also made a representation in terms of the order dated 23.09.2009 passed by this Court in CM No. 15936 of 2009 in CWP No. 13508 of 2006. However, no action was taken on the representation. The petitioner Society filed COCP No. 2254 of 2009. According to an affidavit filed by the Financial Commissioner and Principal Secretary to Government of Haryana, Urban Local Bodies Department, Chandigarh, in COCP No. 2254 of 2009, jhuggi dwellers were to be rehabilitated in three phases. The contempt petition was disposed of on 07.09.2010. Since no action was taken by the respondents, the petitioner Society was constrained to file COCP No. 2064 of 2015. It is still pending in this Court. Reply to COCP No. 2064 of 2015 was filed stating therein that the jhuggi dwellers were still occupying the

public park land and Municipal Corporation, Faridabad was trying its best to vacate these land pockets. It was also brought to the notice of the Court in COCP No. 2064 of 2015 that the final notices had been issued to the jhuggi dwellers on 22.07.2016. However, the fact of the matter is that in the meantime, jhuggi dwellers approached this Court by way of various writ petitions. These were disposed of by this Court. Respondent No.3 had constituted three Committees for deciding the representations of the jhuggi dwellers. It was found by the Committees that the jhuggi dwellers had unauthorisedly encroached upon the public land and were liable to be evicted. Thereafter, reply/action taken report was filed. The Court was apprised by way of reply/affidavit dated 06.07.2020 that the Government of Haryana on 29.05.2020 had approved the proposal dated 20.12.2019 regarding change of land use from park to residential area. This was also conveyed to Municipal Corporation, Faridabad, on 03.06.2020. The Municipal Corporation, Faridabad, had sought public objections/suggestions on the proposed action. The objections/suggestions were filed by as many as 603 persons. It is in these circumstances that the present petition has been filed assailing letter/communication dated 03.06.2020 (Annexure P-21) issued by respondent No.2, approval dated 29.05.2020 (Annexure P-22), letter dated 08.08.2019 (Annexure P-23) and letter dated 19.06.2020

(Annexure P-28) issued by the Commissioner, Municipal Corporation, Faridabad.

According to learned counsel for the petitioner, public park cannot be permitted to be converted into residential area. The contention of learned counsel for the petitioner is that decision has been taken to convert the public park into residential area against the orders passed by this Court in CWP No. 3323 of 2003, CWP No. 13508 of 2006, COCP No. 2254 of 2009 and COCP No. 2064 of 2015. Learned counsel for the petitioner has lastly contended that action of the respondents to convert public park into residential area was unreasonable, arbitrary and also violative of Articles 21 and 48 of the Constitution of India.

It is evident from the averments made in the petition, as discussed hereinabove, that in the master-plan, parks were carved out. However, with the passage of time, these were encroached upon. The respondents had undertaken before this Court from time to time that illegal encroachers would be removed. However, by taking a U turn, the authorities have decided to convert parks into residential areas.

Their Lordships of the Hon'ble Supreme Court in ***Bangalore Medical Trust Vs. B.S. Muddappa and others, (1991) 4 Supreme Court Cases 54*** have held as under :-

*"7. The respondents, on the other hand, contend that it was improper to confer a largesse on a private party at the expense of the general public. The special consideration extended to the appellant, they say, was not permissible under the Act. To have allotted in favour of the appellant an area reserved for a public park, even if it be for the purpose of constructing a hospital, was to sacrifice the public interest in preserving open spaces for `ventilation', recreation and protection of the environment.*

*x x x x x x x x x*

*13. The question really is whether an open space reserved for a park or play ground for the general public, in accordance with a formally approved and published development scheme in terms of the Act, can be allotted to a private person or a body of persons for the purpose of constructing a hospital? Do the members of the public, being residents of the locality, have a right to object to such diversion of the user of the space and deprivation of a park meant for the general public and for the protection of the environment? Are they in law aggrieved by such diversion and allotment? To ascertain these points, we must first took at the relevant provisions of the Act.*

*x x x x x x x x x*

*23. The scheme is meant for the reasonable accomplishment of the statutory object which is to promote the orderly development of the City of Bangalore and adjoining areas and to preserve open spaces by reserving public parks and play grounds with a view to protecting the residents from the ill-effects of urbanisation. It is meant for the development of the city in a way that maximum space is provided for the benefit of the public at large for recreation, enjoyment, 'ventilation' and fresh air. This is clear from the Act itself as it originally stood. The amendments inserting sections 16(1)(d), 38A and other provisions are clarificatory of this object. The very purpose of the BDA, as a statutory authority, is to promote the healthy growth and development of the City of Bangalore and the area adjacent thereto. The legislative intent has always been the promotion and enhancement of the quality of life by preservation of the character and desirable aesthetic features of the city. The subsequent amendments are not a deviation from or alteration of the original legislative intent, but only an elucidation or affirmation of the same.*

*24. Protection of the environment, open spaces for recreation and fresh air, play grounds for*

*children, promenade for the residents, and other conveniences or amenities are matters of great public concern and of vital interest to be taken care of in a development scheme. It is that public interest which is sought to be promoted by the Act by establishing the BDA. The public interest in the reservation and preservation of open spaces for parks and play grounds cannot be sacrificed by leasing or selling such sites to private persons for conversion to some other user. Any such act would be contrary to the legislative intent and inconsistent with the statutory requirements. Furthermore, it would be in direct conflict with the constitutional mandate to ensure that any State action is inspired by the basic values of individual freedom and dignity and addressed to the attainment of a quality of life which makes the guaranteed rights a reality for all the citizens.*

*25. Reservation of open spaces for parks and play grounds is universally recognised as a legitimate exercise of statutory power rationally related to the protection of the residents of the locality from the ill effects of urbanisation.*

*26. In Agins v. City of Tiburon, 447 US 255 (1980), the Supreme Court of the United States upheld a zoning ordinance which provided `... it*

*is in the public interest to avoid unnecessary conversion of open space land to strictly urban uses, thereby protecting against the resultant impacts, such as ..... pollution, .... destruction of scenic beauty. disturbance of the ecology and the environment, hazards related geology, fire and flood, and other demonstrated consequences of urban sprawl'. Upholding the ordinance, the Court said :*

> *".... The State of California has determined that the development of local open-space plans will discourage the "premature and unnecessary conversion of open-space land to urban uses". The specific zoning regulations at issue are exercises of the city's police power to protect the residents of Tiburon from the ill-effects of urbanization. Such governmental purposes long have been recognized as legitimate....*
>
> *... The zoning ordinances benefit the appellants as well public by serving the city's interest in assuring careful and orderly development of residential property with provision for open-space areas."*

*27. The statutes in force in India and abroad reserving open spaces for parks and play grounds*

*are the legislative at- tempt to eliminate the misery of disreputable housing condition caused by urbanisation. Crowded urban areas tend to spread disease, crime and immorality. As stated by the U.S. Supreme Court in Samuel Berman v. Andrew Parker,*

> *".... They may also suffocate the spirit by reducing the people who live there to the status of cattle. They may indeed make living an almost insufferable burden. They may also be an ugly sore, a blight on the community which robs it of charm, which makes it a place from which men turn. The misery of housing may despoil a community as an open sewer may ruin a river.*
>
> *..... The concept of the public welfare is broad and inclusive. ...The values it represents are spiritual as well as physical, aesthetic as well as monetary. It is within the power of the legislature to deter- mine that the community should be beautiful as well as healthy, spacious as well as clean, well-balanced as well as carefully patrolled. In the present case, the Congress and its authorized agencies have made determinations that take into account a*

*wide variety of values..... ". (Per Douglas, J.)*

*28. Any reasonable legislative attempt bearing a rational relationship to a permissible state objective in economic and social planning will be respected by the courts. A duly approved scheme prepared in accordance with the provisions of the Act is a legitimate attempt on the part of the Government and the statutory authorities to ensure a quiet place free of dust and din where children can run about and the aged and the infirm can rest, breath fresh air and enjoy the beauty of nature. These provisions are meant to guarantee a quiet and healthy atmosphere to suit family needs of persons of all stations. Any action which tends to defeat that object is invalid. As stated by the U.S. Supreme Court in Village of Belle Terre v. Bruce Boraas, :*

> *".... The police power is not confined to elimination of filth, stench, and unhealthy places. It is ample to lay out zones where family values, youth values, and the blessings of quiet seclusion and clean air make the area a sanctuary for people".*

*See also Village of Euclid v. Ambler Realty*

*Company, 272 U.S. 365 1926. See the decision of the Andhra Pradesh High Court in T. Damodhar Rao & Ors. v. The Special Officer, Municipal Corporation of Hyderabad & Ors., AIR 1987 AP 171."*

Their Lordships of the Hon'ble Supreme Court in ***Virender Gaur and others Vs. State of Haryana and others, (1995) 2 Supreme Court Cases 577*** have held that the Government could not sanction the lease in favour of private party since the municipal land was earmarked for open space for public use i.e. to maintain ecology and hygienic environment. Their Lordships have held as under :-

*"3. It is contended by Shri Jitendra Sharma, the learned senior counsel for the appellants, that the purpose of the Scheme was to reserve the land in question for open spaces for the better sanitation, environment and the recreational purposes of the residents in the locality. The government had no power to lease out the land to PSS. Though the construction of Dharamshala may be a public purpose, the government cannot give any direction to the Municipality to permit the use of land, defeating the Scheme which provided for keeping open land, namely, to deprive the residents in the locality of the public amenity of using the land as an open land for environmental and recreational*

*purposes. Hence the government have acted in excess of its power under section 250 of the Act. It was contended by Shri D.V. Sehgal, learned senior counsel for the Municipality that the government have formulated general guidelines as to the manner in which the land belonging to the Municipality could be put to public purpose and one of the public purposes is grant of the lease for the charitable purposes. The PSS intends to construct Dharamshala for charitable purpose, the assignment of the land by tease of 99 years is in accordance with me provisions of the Act. The High Court, therefore, was right in dismissing the writ petition. Shri V.C. Mahajan, learned senior counsel for the PSS contended that the government's power to assign the land for any public purposes envisaged in their policy, to keep open land in the Scheme is not a permanent one. Since more than two decades had elapsed, after the Scheme had come into force, and the open land was not put to any public use and it being an open land vested in the Municipality, and the government had power under section 250 to give directions to use the land for a charitable purpose. Therefore, the action of the government and sequel sanction was perfectly in accordance with law. Even otherwise, it is not a fit case for our*

*interference since the PSS has already expended more than seven lakhs in constructing the building. Therefore, any order passed by this Court may be made prospective.*

*4. Having given our anxious consideration to the respective contentions, we are of the view that the action taken by the government is wholly without authority of law and jurisdiction and the sanction of land by Municipality for different use defeats the purpose and is in violation of law and the constitution.*

*5. Environment is poly-centric and multi-facet problem affecting the human existence. Environmental pollution causes bodily disabilities, leading to non-functioning of the vital organs of the body. Noise and pollution are two of the greatest offenders, the latter affects air, water, natural growth and health of the people. Environmental pollution affects, thereby, the health of general public. The Stockhoim Declaration of United Nations on Human Environment, 1972, reads its Principle No. 1, inter alia, thus:*

> *"Man has the fundamental right to freedom, equality and adequate conditions of life. In an environment of equality that permits a*

*life of dignity and well-being and he bears a solemn responsibility to protect and improve the environment for present and future generations."*

*x x x x x x x x x*

*7. Article 48-A in Part IV (Directive Principles) brought by the Constitution 42nd Amendment Act, 1976, enjoins that "the State shall endeavour to protect and improve the environment and to safeguard the forests and wild life of the country." Article 47 further imposes the duty on the State to improve public health as its primary duty. Article 51-A(g) imposes "a fundamental duty" on every citizen of India to protect and improve the natural "environment" including forests lakes, rivers and wild life and to have compassion for living creatures." The word 'environment' is of broad spectrum which brings within its ambit "hygienic atmosphere and ecological balance." It is, therefore, not only the duty of the State but also the duty of every citizen to maintain hygienic environment The State, in particular has duty in that behalf and to shed its extravagant unbridled sovereign power and to forge in its policy to maintain ecological balance and hygienic environment. Article 21 protects*

*right to life as a fundamental right. Enjoyment of life and its attainment including their right to life with human dignity encompasses within its ambit, the protection and preservation of environment, ecological balance free from pollution of air and water, sanitation without which life cannot be enjoyed. Any contra acts or actions would cause environmental pollution. Environmental ecological, air, water, pollution, etc. should be regarded as amounting to violation of Article 21. Therefore, hygienic environment is an integral facet of right to healthy life and it would be impossible to live with human dignity without a humane and healthy environment. Environmental protection, therefore, has now become a matter of grave concern for human existence, Promoting environmental protection implies maintenance of the environment as a whole comprising the man-made and the natural environment Therefore, there is a constitutional imperative on me State Government and the municipalities, not injure to ensure and safe-guard proper environment but also an imperative duty to take adequate measures to promote, protect and improve both the man-made and the natural environment.*

*8. Section 203 of the Act enjoins the Municipality to frame the Scheme providing*

*environmental and sanitary amenities and obtain sanction from the competent authority to provide, preserve and protect parks, open lands, sanitation, roads, sewage, etc. to maintain ecological balance with hygienic atmosphere not only to the present residents in the locality but also to the future generation. The lands vested in section 61 (c) of the Act should be used for the purposes envisaged therein. We do not agree with the appellants for non-user of open land by the Municipality for more than two decades, the land stood divested from the Municipality and vested in them. Yet the Municipality has to use the land for the purposes envisaged in the Scheme read with those found in section 61 unless unavoidable compelling public purpose require change of user. Take a case where in the zonal plan certain land is marked out and reserved for park or recreational purpose. It cannot be acquired or allotted for building purpose though housing is public purpose.*

*x x x x x x x x x*

*11. It is seen that the open lands, vested in the municipality, were meant for the public amenity to the residents of the locality to maintain ecology, sanitation, recreational, play ground and*

*ventilation purposes. The buildings directed to be constructed necessarily affect the health and the environment, adversely, sanitation and other effects on the residents in the locality. Therefore, the order passed by the government and the action taken pursuant thereto by the municipality would clearly defeat the purpose of the scheme, Shri D.V. Sehgal, learned senior counsel, again contended that two decades have passed by and that, therefore, the municipality is entitled to use the land for any purpose. We are unable to accept the self destructive argument to put a premium on inaction. The land having been taken from the citizens for a public purpose, the municipality is required to use the land for the protection or preservation of hygienic conditions of the local residents in particular and the people in general and not for any other purpose. Equally acceptance of the argument of Shri V.C. Mahajan encourages pre-emption action and conduct, deliberately chartered out to frustrate the proceedings and to make the result fiat accompli. We are unable to accept the argument of flat accompli on the touch stone of prospective operation of our order."*

In ***Dr. G.N. Khajuria and others Vs. Delhi Development Authority and others, (1995) 5 Supreme Court Cases 762***, their Lordships

of the Hon'ble Supreme Court have held as under :-

> *"2. The short and important point which is required to be determined is whether the school in question is in possession of the land in question in violation of the statutory provisions contained in the Act. According to Shri P.P. Rao, learned Sr. Counsel appearing for the appellants, there is no escape from the conclusion that the school was allowed to be opened in the park in violation of what has been contained in Sections 7 and 8 of the Act. The stand of DDA on the other hand, as put forward by Shri Jaitley, is that the appellants have either misconceived the statutory provisions or are interested, for one reason or the other, in seeing that the nursery school does not function at the place allotted to it by the DDA. The counsel for respondent No.2 butresses this submission by contending that a school having been allowed to be opened and this respondent having spent substantial amount of money in raising a permanent structure at the site, we may not do anything, at this stage, to uproot the school which would cause not only financial loss to the respondent but would hamper the educational progress of the students as well.*
>
> *x x x x x x x x x*

*7. We also do not entertain any doubt that at the site at which the school was allowed to be opened, there was a park. This is apparent from the report submitted by Director (Monitoring) to the Vice-Chairman of the Development Authority pursuant to his order dated 26.10.1992 which he came to pass on a reference being made to him by the Chief Secretary on 23.10.1992. The Chief Secretary had passed the order on a representation made by some residents of Sarita Vihar, Pocket 'A', complaining about unauthorised construction in Park No.6. The Director (Monitoring) visited the site on 2.11.1992 and found that a part of the park located in Pocket 'A' had actually been enclosed with a boundary wall by an institution named Rattanatrya Educational Research Institute, which body is none else than respondent No.2. The report further says that the Institute was running a nursery school in a few temporary barracks constructed along with one of the boundary walls. On discussion with some office bearers of the Institute it was informed that the land in question measuring 800 sq. metres had been allotted to the Institute by the DDA in July 1988 for the purpose of running a nursery school. The Director (Monitoring) reported that the*

*residents of surrounding areas started making objections when this Institute took up the construction of a regular school building after getting the plan duly sanctioned from the Building Department of the DDA. The report has categorically mentioned that in the original lay-out (which we understood to be of 1984) there was no provision for a nursery school in the park in question. Subsequently, however, some portion of the park was carved out for the nursery school. That such a park exists was sought to be proved by Shri Rao by producing certain photographs as well, one of which contains a sign board mentioning about "D.D.A. Park".*

*8. We, therefore, hold that the land which was allotted to respondent No.2 was part of a park. We further hold that it was not open to the DDA to carve out any space meant for park for a nursery school. We are of the considered view that the allotment in favour of respondent No.2 was misuse of power, for reasons which need not be adverted. It is, therefore, a fit case, according to us, where the allotment in favour of respondent No.2 should be cancelled and we order accordingly. The fact that respondent No.2. has put up up some structure stated to be permanent by his counsel is not relevant, as the same has*

*been one on a plot of land allotted to it in contravention of law. As to the submission that dislocation from the present site would cause difficulty to the tiny tots, we would observe that the same has been advanced only to get sympathy from the Court inasmuch as children, for whom the nursery school is meant, would travel to any other nearby place where such a school would be set up either by respondent No.2 or by any other body."*

We are of the prima facie view that action of the respondents in converting public park into residential area is unconstitutional and contrary to law. The residents of the Society have a fundamental right to free air and to enjoy the public amenities. It was expected from the respondents to evict the illegal encroachers from the public land instead of nullifying the orders passed by this Court from time to time by converting the park into residential areas. The respondents are bound to preserve and save the open spaces. Every citizen has a fundamental right to fresh air. The ecology and environment of the area would be affected drastically if the parks are converted into residential area. The aesthetic characterstics of the city must be promoted and preserved.

Accordingly, there shall be stay of letter/communication dated 03.06.2020 (Annexure P-21) issued by respondent No.2, approval dated

29.05.2020 (Annexure P-22), letter dated 08.08.2019 (Annexure P-23) and letter dated 19.06.2020 (Annexure P-28) issued by the Commissioner, Municipal Corporation, Faridabad, till further orders.

**( RAJIV SHARMA )**
**JUDGE**

**( HARINDER SINGH SIDHU )**
**JUDGE**

October 06, 2020
ndj