

D.D. Vyas and Others Vs. Ghaziabad Development Authority, Ghaziabad and Another

D.D. Vyas and Others Vs. Ghaziabad Development Authority, Ghaziabad and Another

SooperKanoon Citation : sooperkanoon.com/449219

Court : Allahabad

Decided On : Apr-13-1992

Reported in : AIR1993All57; (1992)1UPLBEC746

Judge : Om Prakash and ;M. Katju, JJ.

Acts : [Uttar Pradesh Urban Planning and Development Act, 1973](#) - Sections 7, 8 (1), (2) and (3), 9 (1) and (2), 10 (2), 13, 13 (1) and (2), 17 and 19; Uttar Pradesh Parks, Play-grounds and Open Spaces (Preservation and Regulation) Act, 1975 - Sections 2; [Constitution of India](#) - Articles 12, 21, 32, 48A, 51A and 226; [Constitution of India](#) (Amendment) Act - 1976

Appeal No. : Civil Misc. Writ No. 24408 of 1991

Appellant : D.D. Vyas and Others

Respondent : Ghaziabad Development Authority, Ghaziabad and Another

Advocate for Def. : Sri Shitla Prasad, Adv.

Advocate for Pet/Ap. : Shri R.G. Padia, Adv.

Judgement :

ORDER

Om Prakash, J.

1. This writ petition is an apt example as to how the statutory object to secure preservation of environment and development of the residential colonies shown in the master plan, sought to be achieved by the State of Uttar Pradesh under the U.P. Urban Planning and Development Act, 1973 ('the Act' briefly) is defeated by the authorities, who lack dynamism, aestheticism and enthusiasm for development, though assigned the developmental duties.

2. The Act, as the preamble shows, was enacted to provide for the development of certain areas of Uttar Pradesh according to plan and for matters ancillary thereto. The growth in Uttar Pradesh before this enactment was quite haphazard and, therefore, the Government felt that in the developing areas of the State of Uttar Pradesh the problems of town planning and urban development need to be tackled resolutely. As existing local bodies and other authorities in spite of their best efforts were inadequate to cope with these problems to the desired extent, the State Government in order to bring about improvement in the hopeless situation considered it advisable that in such developing areas Development Authorities patterned on the Delhi Development Authority, which was then a model Authority, be established. This is how on the pattern of Delhi Development Authority, the Ghaziabad Development Authority (for short, 'the G.D.A.'), a statutory body, was set up under the Act, Section 7 of the Act, states that the object of the Authority shall be to promote and secure the development of the development area according to plan and for that purpose the Authority shall have the power to do all that what is necessary or expedient for the purpose of such development and for purpose incidental thereto. Section 8(1) of the Act says that the Authority shall, as soon as may be, prepare a master plan for the development area, Section 8(2) (a) mandates that the master plan shall define the various zones into which the development area may be divided for the purposes of development and indicate the manner in which the land in each zone is proposed to be used. Sub-section (3) of Section 8 states that the master plan may provide for any other matter which may be necessary for the proper development of the development area. Section 9(1) enjoins upon the authority to proceed with the preparation of a zonal development plan for each of the zones into which the development area may be

divided simultaneously with the preparation of the master plan or at the earliest thereafter. Section 9(2) describes all that which a zonal development plan may contain. Every plan immediately after its preparation shall be submitted by the authority to the State Government for approval under Section 10(2) and the concerned Government may either approve that with or without modification or reject the same directing the authorities to prepare a fresh plan.

3. In exercise of such powers, the G.D.A. prepared a plan of sector Raj Nagar, Ghaziabad, a copy of which is placed on record as Annexure '1' to the writ petition. The said plan refers to proposed public buildings, residential houses and plots of land for the citizens amenities and civic amenities, open spaces including an open space, namely, Adu Park, earmarked for public park, a small plan of which is annexed to the writ petition as Annexure '1-A'.

4. The short grievance of the petitioners, who belong to the same locality where the open space, namely, Adu Park, as situated in Raj Nagar sector, is that though the said area was earmarked for being developed as a public park, but the G.D.A. has taken no steps so far whatsoever to develop the same as a public park. Not only that, the contention of the petitioners is that the respondents are marking time to carve out plots on such open space dedicated for public park in the plan and alienate the same with a view to earning huge profits. It is averred that the G.D.A. cannot alter the plan, duly approved by the State Government, to the detriment of public at large. Once the open space, namely, Adu Park, in Raj Nagar sector is dedicated for public park, the petitioners contend that the respondents cannot keep Adu Park undeveloped for unduly long period with the sinister motive to convert that either wholly or partially into plots of land for being sold at exorbitant rates later depriving the public of the benefit of a park, for which the open space was earmarked. It is contended that the petitioners approached the respondents several times requesting them to expedite development of the area, namely, Adu park, but their efforts failed. Apprehending that the respondents would never develop Adu Park as a park for the benefit of the public since their goal is to carve out plots and transfer them with profit earning motive, the hapless petitioners have approached this Court by means of this petition praying:

(i) that the respondents be restrained from using the open space, namely, Adu Park, earmarked for the purpose of a public park under the master plan in any other manner except the park for the benefit of the general public;

(ii) that the respondents be restrained from plotting any portion of the Adu Park or alienating the same in any manner whatsoever;

(iii) that the respondents be directed to produce the lay out/blue prints, if any prepared, for developing the Adu Park as park or any other record relating to development activities contemplated /undertaken by them for developing the Adu Park as park; and

(iv) that a writ in the nature of mandamus be issued directing the respondents to complete the entire development process of the Adu Park to make it as a park within a reasonable time.

5. By order dated 16-9-1991, Sri Shitla Prasad, Counsel for the respondents, was given one month's time, as prayed by him, to file counter-affidavit clearly stating as to what steps the respondent have taken for the development of Adu Park as per the master plan lay out. No counter-affidavit has been filed, though five months have gone. The case was listed for hearing on 18-2-1992. Sri Shitla Prasad then prayed that the case be taken up the next following day for his arguments, which he wanted to make after seeking instructions from the respondents. Sri Shitla Prasad then argued the matter on 19-2-1992, though no counter-affidavit was filed.

6. No counter-affidavit having been filed, the averments of the petitioners that the open space, namely, Adu Park, as shown in the plans (Annexures-'1' and '1-A') to the petition,) was earmarked for development of a public Park, that no steps whatsoever have been taken so far by the respondents to develop the said area as a park for the benefit of general public and that the said plan(Annexure '1' to the petition) was duly approved by the State Government under Section 10(2) of the Act, remain uncontroverted.

7. In the course of his argument Sri Shitla Prasad, learned counsel for the respondents, could not assail the fact that the open space, namely, Adu Park, as shown in the plan (Annexure ' 1' to the petition), was earmarked for a public park. Also he did not assert that any steps for development of the said area were ever contemplated or undertaken by the respondents and that any lay out/ blue print was ever prepared by the respondents in connection with the development of the Adu Park as a park. His only submission is that the G.D.A. is empowered to amend the master plan or zonal development plan under Section 13(1) of the Act, 1973, and, therefore, no mandamus, as prayed by the petitioners that the respondent be directed to complete the development process of Adu Park within a reasonable time can issue, as the respondents are at liberty to amend the plan and to use the open space, namely, the Adu Park, initially earmarked for a public park in the plan, for any other purpose. We will take up this submission later.

8. First, we deal with the submissions of the learned counsel for the petitioners. From the uncontroverted pleadings of the petitioners it is manifest that the open space, namely, Adu Park, was earmarked in the plan (Annexure '1' to the petition) for a public park, it is also uncontroverted that the G.D.A. never started development process thereon. Raj Nagar is said to be an almost developed colony, inasmuch as substantial residential houses and public buildings have been completed. That being so, there was ample time with the respondents to develop the Adu Park as a park. The sole object to the legislation constituting Development Authorities was to ensure the fast and planned development of the development areas, which being an enormous work could not have been accomplished by the local bodies or other authorities, which existed prior to the Act, 1973. A plan is said to have been executed when the entire works are done strictly in accordance with the plan. The plan (Annexure '1' to the writ petition), as already pointed out, referred to several things including the open space reserved for development of public parks. Unless an open space reserved for a public park is developed as such, the executing of the plan will remain incomplete. Buildings, as proposed in the plan, may have come up, amenities and civic amenities may have been provided and the people may have started living in the colony, yet the plan cannot be said to have been fully executed, if an open space meant for a park is not developed as such. Due to inactivity of the respondents, the dream and ambition

of the State that the areas covered by the plan would be developed strictly in accordance with the plan, remained unfulfilled. The duty of the respondents was to implement the plan in entirety making the town beautiful with attractive public parks. But the respondents, it appears, thought that their job was over when Raj Nagar sector became habitable. It, in our opinion, is a delusion. Habitability and completion of the construction work in the entire area according to the plan is one thing and the development in entirety of the area strictly in accordance with the plan is another thing. Implementation of the plan cannot be measured by the fact that the entire locality became habitable or functional. The plan remains partially executed until the open space reserved for a public park is developed.

9. It is a matter of great regret that the fond object for which the G.D.A. was constituted remained unaccomplished. The Raj Nagar scheme is meant for the reasonable accomplishment of the statutory object, which is to promote the orderly development of the town Ghaziabad and to preserve open spaces by reserving public parks with a view to protecting the residents from the ill effect of urbanisation. 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 town. No town is known for sky-scrapers, for myriad industries, for big commercial centres, for big monumental building, but for the attractive lay out of the town, for good land-scapes, for beautiful parks and lawns, for expansive verdant cover, and for perfect social ecology. Good parks expansively laid out are not only for aesthetic appreciation, but in the fast developing towns having conglomeration of buildings, they are a necessity. In crowded towns where a resident does not get anything but atmosphere polluted by smoke and fumes emitted by endless vehicular traffic and the factories, the efficacy of beautifully laid out parks is no less than that of lungs to human beings. It is the verdant cover provided by public parks and green belts in a town, which renders considerable relief to the restless public. Hence the importance of public parks cannot be under estimated. Private lawns or public parks are not a luxury, as they were considered in the past. A Public Park is a gift of modern civilization, and is a significant factor for the improvement of the quality of life. Earlier it was a prerogative of the aristocracy and the affluent either as a result of royal grant or as a place reserved for private pleasure. Free and healthy air in beautiful surrounding

was a privilege of few, but now in a democratic set up, it is a gift from the people to themselves. Open space for a public park is an essential feature of modern planning and development, as it greatly contributes to the improvement of social ecology.

10. A benefit which one can get from the developed, well maintained and well manicured lawns in a big park, cannot be secured from undeveloped, morbid and shabby open space. Whereas the former attract and invite the people to come, sit and rest, the latter is always stinky, dirty and abhorrent.

11. It was the duty of the respondents to develop Adu Park as an attractive public park in the beginning itself to improve the environment and to enable to general public to benefit therefrom. Not only did they fail on their own, but, as contended by the petitioners, they did not pay any heed to their request also, which they made repeatedly to the respondents to develop Adu Park as a beautiful park.

12. What is a park? It has not been defined in the Act. In the Uttar Pradesh Parks, Play-grounds and Open Spaces (Preservation and Regulation) Act, 1975 (for short, 'the 1975 Act') the word 'Park' is defined meaning a piece of land on which there are no buildings or of which not more than 1 / 20th part is covered with buildings and the whole or the remainder of which is laid out as gardens with trees, plant or flower beds or as a lawn or as meadows and maintained as a place for the resort of the public for recreation, air or light. Though this definition in view of Section 2 of the 1975 Act, shall apply only to the areas included in every Nagar Mahapalika, every Municipality or Notified Area and every Town Area and to such other areas to which it is extended by the State Government by notification in the Gazette, there will be no violation of law if we resort to this definition to the case in hand. No doubt, a definition given in a particular enactment cannot be read down into another enactment. But this rule is not invariable, since the word 'park' is used conceptually and contextually in the 1973 Act, the same way as it is used in the 1975 Act, defining the 'park, the same may be extended to 1973 Act, also. Parks owned and maintained by Nagar Mahapalika, Notified Area or Town Area are no more different from the parks belonging to the Development Authority which is nothing but a local authority constituted under the Act, 1973. A park must have

considerable area covered by garden with trees, plants or flower beds or lawn, and should have been maintained as a place for the resort of the public for recreation, air or light. Wholly undeveloped open space can never be said to have the characteristic of a park. A park must have a beautiful garden with a lot of trees on its periphery to preserve and protect the environment and from aesthetic point of view, it must have beautiful plants or flower beds and well maintained lawns.

13. Article 48A Part IV of the Constitution enjoins upon the State to endeavour, protect and improve the environment of the country. To effectuate the directive principles there has been a spate of legislation aiming at preservation and protection of the environment. The respondents having failed to develop the Adu Park as Park for several years have belied all the cherished hopes of the State and citizens. The underlying idea behind the constitution of the G.D.A. was to accelerate the pace of development and make the town of Ghaziabad as attractive as possible. It is unfortunate that the respondents sat tight over the development of Adu Park as a park and remained absolutely inactive for years. But for the vigilant eye of the public spirited persons, who filed this petition, the State of Adu Park would have remained unnoticed. The petitioners rendering yeoman's services have to be appreciated, and their locus standi to file a petition cannot be doubted.

14. Right to live is a fundamental right under Article 21 of the Constitution and it includes the right of enjoyment of pollution free water and air for full enjoyment of life. If anything endangers or impairs that quality of life in derogation of laws, a citizen has a right to have recourse to Article 32 of the Constitution for removing the pollution of water or air, which may be detrimental to the quality of life. A petition under Article 32 of the Constitution for the prevention of pollution is maintainable at the instance of affected persons or even by a group of social workers or journalists. See *Subhash Kumar v. State of Bihar*, AIR 1991 SC 420 : (1991 AIR SCW 121).

15. When a petition can be brought under Article 32 for the prevention of pollution by a group of social workers or journalists, a writ petition under Article 226 of the Constitution for the preservation of free air and for the protection of environment can always be filed by the environmental activists either living in the same locality

or outside.

16. Article 51A clause (g) in Part IV-A introduced by the Constitution (42nd Amendment) Act, 1976, with effect from 3rd January, 1977, enshrines a fundamental duty and mandates that it shall be the duty of 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 last clause (j) of Article 51A of the Constitution further mandates that it shall be the duty of every citizen of India to strive towards excellence in all spheres of individual and collective activity, so that the nation constantly rises to higher levels of endeavour and achievement. It is lamentable that the respondents being the State instrumentality have failed to discharge both the fundamental duties. Unless an open space is developed into a full-fledged park having gardens trees, flower beds, plants, lawn, promenade etc., the environment will not improve and therefore the functionaries of the G.D.A. have remained grossly negligent in discharging their fundamental duty enjoined upon them by clause (g) to Article 51A of the Constitution. Equally they failed to discharge their duty enshrined by Article 51A(j). If the functionaries of the State instrumentalities show their averseness to the developmental activities, which are assigned to them, then the nation can never grow to the cherished heights. An ornamental park with well manicured lawns is not only a source of comfort to the public, but adds to the beauty of a town, as jewellery studded with pearls or diamonds add to the beauty of the person who wears it.

17. The respondents will do better if they concentrate on the development of Adu Park.

18. Undeveloped space is often occupied unauthorisedly by the people who have little regard to law. Adu Park once developed by the G.D.A. will make it free from the encroachers.

19. Then we deal with the submission of the Standing Counsel that the G.D.A. is entitled to alter the master plan under Section 13 of the Act, 1973. Section 13(1) and (2), which are relevant in this connection, are reproduced below:

'13(1). The Authority may make any amendments in the master plan or the zonal development plan as it thinks fit, being amendments 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 or population density.

(2) The State Government may make amendments in the master plan or the zonal development plan whether such amendments are of the nature specified in subsection (1) or otherwise.'

From Section 13(1), it is manifest that the authority may make only those amendments which do not affect material alterations in the character of the plan. It means the respondents do not have an absolute right of amending the master plan or the zonal development plan. The basic characteristic of such a plan cannot be altered by the authority. Only that amendment is permissible under Section 13(1) which does not affect the basic character of the plan. An open space lying for park in the plan forms a basic feature of the plan and that cannot be amended. A plan cannot be amended so as to denude the plan of such a basic feature. Section 13(1) can in no circumstances be interpreted so as to clothe the G.D.A. to utilise the open space reserved for a park either to construct buildings or use it in any other manner, which is foreign to the concept of a park. In *Bangalore Medical Trust v. B.S. Mudappa*, 1991 (3) JT 172 : (AIR 1991 SC 1902) the Supreme Court struck down the order of the Bangalore Development Authority (for short, 'B.D.A.'), allotting areas reserved for public park and play grounds, to private persons and permitting construction of buildings for hospital thereon by them. In this case, an open space was reserved for a public park under a duly sanctioned Scheme. However, pursuant to the orders of the State Government, the B.D.A. by its resolution allotted the open space in favour of a medical trust for the purpose of constructing a hospital. The contention of the trust was that the public would be benefited more from the hospital than from a park, for which the open space was reserved, and that the open space having been diverted for a better purpose, the order of the State Government be not interfered with. Such a plea was negated by the Supreme Court, which emphasized that it is the preservation of the quality of life of the community that is sought to be protected by the Scheme reserving open space for a public park. The Supreme Court said that alteration of the

Scheme must be for the purpose Of improving and better development of the city of Bangalore and adjoining areas and for general application for the benefit of the public at large. Any alteration of the Scheme with a view to conferring a benefit on a particular person and without regard to the general good of the public at large, is not an improvement contemplated by the Section. Stressing on the legislative intent behind reserving open space for a park, the Supreme Court observed:

'All these provisions unmistakably point to the legislative intent to preserve a public park or public play ground in the hands of the general public, as represented by the B.D.A. or any other public authority, and, thus, prevent private hands from grabbing them for private ends.'

The Supreme Court continued to observe in paras 23 and 24 at pages 184 and 185:

'Conversion of the open space reserved for a park for the general good of the public into a site for the construction of a privately owned and managed hospital for private gains is not an alteration for improvement of the scheme as contemplated by Section 19, and the impugned orders in that behalf are a flagrant violation of the legislative intent and a colourable exercise of power..... The very purpose of the B.D.A., as a statutory authority, is to promote the healthy growth and development of the City of Bangalore and the areas adjacent thereto. The legislative intent has always been the promotion and enhancement of the quality of the by pre-servation of the character and desirable aesthetic features of the city.'

20. In paragraph 25 on page 85, the Supreme Court emphasized the utility of public parks thus:

'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 B.D.A. 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.'

21. While concluding the Supreme Court said in paragraph 31 that 'we are of the view that apart from the fact that the scheme has not been validly altered by the B.D.A. it was not open to the Government to give a direction to B.D.A. to defy the very object of the Act.'

22. Applying the dictum of the Supreme Court in *Bangalore Medical Trust* (supra), it must be held that the Authority cannot amend the plan under Section 13(1) so as to deprive the public of a public park. Not only the G.D.A. even the State Government cannot alter the plan under Section 13(2) so as to enable the Authority to use open space, earmarked for a public park, for a different purpose. Whereas Section 13(1) carries several limitations, Section 13(2) gives the State Government unlimited powers to make amendments in the plan of the nature specified in sub-section (1) or otherwise. The words 'or otherwise' occurring in Section 13(2) cannot be interpreted to mean that the State Government has a right to alter the plan so as to enable the G.D.A. to use the open space, reserved for a park, for the purposes having no semblance of a park. In *Bangalore Medical Trust* (supra), the Supreme Court reiterated that once an open space is dedicated for a park that cannot be converted into any other purpose.

23. We, therefore, hold that under Section 13, neither the Authority nor can the State Government amend the plan in such a way so as to destroy its basic feature allowing the conversion of open spaces meant for public parks.

24. It is a fit case to issue a writ of mandamus, as prayed by the petitioners. Since the development of Adu Park is inordinately delayed, directions have to be issued elaborately so as to expedite its development.

25. The petition is, therefore, allowed with the following directions:

(i) the respondents shall cause a blue print / lay out plan of the proposed park in the open space, namely, Adu Park, as shown in Annexures '1' and '1-A' to the petition to be prepared till the end of June, 1992;

(ii) the said blue print/lay out plan shall depict trees on the periphery of the park to preserve and to protect environment, lawn having flower beds, beds for seasonal and permanent plants, promenades facilitating the movement of the people;

(iii) the blue print/lay out plan shall indicate the source of irrigation; it is not only initial lay out of the park, but also regular maintenance which is necessary, and that is possible only when adequate means of irrigation are available, and to meet this requirement, the respondents will make a provision for getting a tube well bored in the Adu Park, which should be complete within such a time so as to become functional after the rainy season is over when watering will be constantly required;

(iv) the respondents shall make a provision for adequate staff required for developing the park and for maintenance thereof later on;

(v) the respondents shall take up this project with priority and shall start the development process during the ensuing monsoon season and shall do all that is required for development of the park within a reasonable period, so that the park may be fully developed within a period not exceeding one year in any case;

(vi) the respondents shall not lease out or transfer in any other manner any portion of the area, namely, Adu Park, as shown in the plans (Annexures '1' and '1-A' to the petition) for any other purpose and shall not permit any construction in Adu Park, except that which is incidental to the development and maintenance of the park. Though it is a fit case to award costs, but we think that the petitioners will feel more satisfied if Adu Park is developed into a park by the respondents earnestly within the aforesaid time limit and hence we make no order as to costs,

26. Petition allowed.