

Deepak Batra Vs. Delhi Development Authority

Deepak Batra Vs. Delhi Development Authority

SooperKanoon Citation : sooperkanoon.com/701822

Court : Delhi

Decided On : Mar-31-2000

Reported in : 2000VAD(Delhi)805

Judge : Arun Kumar and; D.K. Jain, JJ.

Acts : [Constitution of India](#) - Article 226

Appeal No. : Civil Writ Petition No. 2511/91

Appellant : Deepak Batra

Respondent : Delhi Development Authority

Advocate for Def. : Mr. Geeta Mittal and ; Ms. Arti Bansal, Adv.

Advocate for Pet/Ap. : Mrs. Marina Batra, Adv

Judgement :

ORDER

D.K. Jain, J,

1. The petitioner, who claims to have deep knowledge of pyramid energy to be applied on building structure, challenges in this writ petition a letter dated 5th July, 1991, issued by the respondent Delhi Development Authority ('DDA' for short), whereby he was asked to surrender the vacant possession of the pyramid kiosk allotted to him in the year 1981, within twenty days of the date of the

letter and exercise his option out of the two alternative shops offered to him in terms of the orders passed by the Supreme Court on 27th October, 1989 and 8th November, 1990, and in default he was threatened with cancellation of his allotment/lease of the said kiosk and eviction there from.

2. According to the petitioner, on his application dated 27th March, 1980 for allotment of an unused kiosk situated at Malaviya Nagar Extension, New Delhi, in front of 104, DDA Flats, Kiosk- 'A' was initially allotted to him vide letter dated 19th March, 1981, on a monthly license fee, subject to certain terms and conditions, to be communicated later. However, immediately after the handing over of the possession of the said kiosk, the petitioner was informed that the land below the said kiosk was required for construction of some additional houses and, therefore, the kiosk had to be relocated. Ultimately, after discussions, the present site, said to be located at the edge of the neighborhood park in the south of Gyan Bharti School, being used as office complex of the DDA, was allotted to the petitioner. Petitioner's request for permission to construct a prototype structure (at his own cost) as per his own design and data was declined by the DDA and he was asked to supply necessary drawings, data and design of the Prototype pyramid structure. The drawings and design submitted by the petitioner were examined by the National Physical Laboratory and the pyramid was constructed by the DDA as per the approved design. On petitioner's furnishing the requisite undertaking in terms of DDA's letter dated 12th November, 1981, the possession of the new pyramid structure at the said site was handed over to him. It is averred that the said structure was allotted to be used for the same commercial purpose for which kiosk 'A' had earlier been allotted as it was a mere re-location of the site for the convenience of the DDA. It is claimed that the DDA had itself issued a no objection certificate to the petitioner for obtaining a license from the Delhi Administration for manufacture of Italian style ice creams and other Italian specialities at the site in question, upon which, on 23rd February, 1982, the Municipal Corporation of Delhi had issued a license to the petitioner for running a trade of food processing at the same site.

3. Petitioner's request for converting the allotment from license basis to leasehold basis was acceded to vide DDA's letter dated 3rd June, 1983. The petitioner had

earlier been informed the cost of the structure and the land allotted to him would be approximately Rs. 70,000/-, which was worked out as under:

Total Area of the plot: 63.35 Sq.Mtrs.

Covered Area of the pyramid 15.40 Sq.Mtr.

Cost of construction Rs. 43,000.00

10% Supervision charges Rs. 4,300.00

Rs. 47,300.00

Interest @ 14% for 1 year Rs. 6,622.00

Rs. 53,922.00

Administration charges 2% Rs. 1,078.00

Rs. 55,000.00

Cost of land @ Rs. 246 per

sq. Mtr for 63.35 Sq. Mtrs Rs. 15,584.00

Rs. 70,584.00

1% for EWS fund Rs. 706.00

(Economically Weaker

Section)

Rs. 71,290.00

or nearest round figure say Rs. 71,300.00

4. The cost of the plot and the structure was deposited by the petitioner in terms of DDA's letter dated 24th June, 1985. By his letter dated 24th September, 1986, the petitioner requested the DDA to grant him lease/licence of the adjoining green

patches admeasuring 380.20 Sq.M. for conducting botanical experiments, but, it seems, the request was acceded to.

5. It is further averred that under the Master Plan of Delhi a land measuring 5.25 acres had been carved out as park known as neighborhood park in Saket, New Delhi, but, allegedly, the DDA, in violation of the Master Plan, started felling trees and cutting shrubs of the park for the purpose of raising constructions to accommodate its office which was objected to by the local residents and the petitioner. Having failed to stop the DDA from doing so, the petitioner filed a petition in public interest (CWP No. 1088/99) in the Supreme Court challenging the acts of the DDA. The Supreme Court entertained the petition and while disposing of the same, gave certain directions to the DDA. The relevant portion of the order dated 27th October, 1989 reads as follows :

'In these circumstances, keeping the allegations in the affidavit of the DDA in view, we direct that all the constructions raised on the park land excepting such constructions as may be found fit for use of the area as a park shall be vacated within one year from today as undertaken by learned counsel for the DDA. Written undertaking to that effect shall be filed within four weeks from today in this Court.

It is alleged by the DDA that the Petitioner No. 1 had been allowed accommodation within the park for the purpose of carrying on experiments by way of research on plants. Petitioners allege that they are in possession of a kiosk only and every park maintained by the DDA has such facility.

In case the petitioners are in possession of a kiosk only then such possession need not be disturbed; but if what they have taken on lease from the Delhi Development Authority is a regular building and the same would not go well with the park, DDA may evict the petitioners on providing an appropriate alternate site within the same area. If the petitioners are to be evicted from the park that may be done at the end of one year from now- that being the time when DDA is remove its own structures. In case the petitioners have any interest which can be legally protected, it is open to them to avail of such remedy but we express no opinion on merit'.

6. The petitioner alleges that after the said order by the Supreme Court, the officers of the DDA became inimical towards him and started harassing him. The DDA informed the petitioner that under the said orders of the Supreme Court the kiosk allotted to him had to be demolished and he was asked to accept the alternative site. The petitioner complains that when time to vacate the neighborhood park in terms of the said Order of the Supreme Court was nearing, the officers of the DDA cut off the petitioner's supply of electricity forcing the petitioner to move an application before the Supreme Court for certain directions to the DDA. In the meanwhile the petitioner received a letter from the DDA, dated 30th October, 1990, offering two alternative shops in lieu of the said site. Areas and cost of the two shops were mentioned in the said letter. On petitioner's application, on 8th November, 1990, the Supreme Court passed the following order:

'So far as the petitioner's claim is concerned, we are of the view that the petitioner should be made to pay a reasonable price for the alternate site (shop) offered. Two sites (shops) are being offered and in case the petitioner chooses to have one of them, he will have to pay the proportionate price which can be worked out on the basis of investment made for the construction of the site. Otherwise, it is open to the petitioner to work out his right in an appropriate forum. The I.As. are disposed of accordingly.

7. Since the stand of the petitioner was that the pyramid shop and the land appurtenant thereto was neither a part of the neighborhood park nor was it a 'construction' within the meaning of the afore-extracted order of the Supreme Court, unfit for use of the area as a park, he was not liable to be evicted in terms of the Supreme Court order dated 27th October, 1989 and further the two alternative sites offered were not acceptable to him, the petitioner filed the present petition, inter alias seeking the following reliefs; (a) a writ of certiorari or an appropriate writ quashing the impugned letter dated 5th July, 1991; (b) an appropriate writ commanding the DDA not to cancel the lease with respect to the pyramid kiosk and the land appurtenant thereto; (c) a writ of prohibition directing the DDA from in any manner dispossessing/evicting the petitioner in pursuance of the said letter and (d) a writ of mandamus or an appropriate writ commanding the DDA to offer

an appropriate alternative site to the petitioner.

8. The writ petition is resisted by the DDA, inter alia, on the ground that the kiosk in question in the shape of a pyramid was constructed with a specific purpose to conduct research on plants, but the petitioner has converted the same into a ready-made garments shop thereby frustrating the purpose for which it was allotted to him; the possession of the plinth area, that is to say the carpet area and not gross area, as claimed by the petitioner was handed over to him; the pyramid in question is a building in the neighborhood park, not being used in conformity with the prescribed land use and, therefore, the petitioner the prescribed land use and, therefore, the petitioner is liable to be evicted in terms of the orders of the Supreme Court dated 27th October, 1989. It is maintained that since the pyramid structure does not go well with the park, it is to be demolished and to enable convenient relocation, two alternative shops have been offered to the petitioner on reserve price. It is asserted that the petitioner cannot be allowed to carry on a commercial activity in the nature of ready-made garments shop in the park area meant for use as a park only.

9. We have heard petitioner's wife and Ms. Geeta Mittal, learned counsel for the DDA.

10. In the light of the directions contained in the order of the Supreme Court, dated 27th October, 1989, extracted above, the question whether the kiosk was allotted to the petitioner for commercial use, as claimed by the petitioner, or for only conducting experiments on plants. as asserted by the DDA, is immaterial inasmuch as irrespective of the user, if the kiosk does not go well with the park, the same has to be removed in compliance with the said directions. Prima facie, material available on record, briefly referred to above, does show that the DDA had never objected to the petitioner carrying on a commercial activity at the site in question till the year 1989, when the afforenoted directions came to be made by the Supreme Court. The questions which emerge for our determination are : (1) whether the kiosk allotted is to be demolished and the petitioner is liable to be evicted in terms of the Supreme Court's orders and (ii) if so, what should be the size and price of the alternative site to be allotted to the petitioner in terms of the

two afore-extracted orders of the Supreme Court.

11. Dealing with the case of the petitioner, in the first order, their lordships of the Supreme Court have observed that if what has been given to the petitioner on lease is a regular building and that does not go well with the park, only then the petitioner has to be evicted but if he is in possession of a kiosk only, his possession is not to be disturbed. It is evident from the said observations that the ambience of the neighborhood park has to be maintained and all kinds of commercial activities cannot be permitted in the kiosk.

12. From the documents on record it appears that though the structure built at the site by the DDA is in the shape of a pyramid, as per the design supplied by the petitioner, nonetheless, the DDA continues to show and treat the same in its records as a kiosk. Even now the stand of the DDA in its affidavit in opposition, dated 16th December, 1991, is that the 'kiosk in the shape of pyramid was constructed to enable the petitioner for doing research on plants', but 'after the allotment of the kiosk to the petitioner it was converted into a ready-made garments shop'. It is, thus, clear that the DDA wants to evict the petitioner from the kiosk under the orders of the Supreme Court not on the ground that it is not a kiosk but primarily on the plea that the petitioner has changed its user to a garments shop, which is not in conformity with the prescribed land use. Though, in the affidavit, the DDA has said that the pyramid structure does not go well with the neighborhood park, ostensibly to bring the case of the petitioner within the ambit of the afore-extracted order of the Apex Court but having itself constructed the kiosk sometime in year 1981 after due deliberations, now after a lapse of over eight years it cannot be permitted to have a somersault and take the stand that 'pyramid kiosk' is a building and is situated in a 'neighbourhood park'. It is not the stand of the DDA that it took eight long years of the DDA to realise that what it had constructed in the year 1981 was not in conformity with the Master Plan. As noted above their grievance is that the kiosk allotted to the petitioner is not being used in conformity with the prescribed land use. Moreover, there is no denial by the DDA to a specific averment by the petitioner that the DDA has been constructing and allotting kiosks in the neighborhood parks as part of its rehabilitation schemes. Our attention has also been drawn to the Master Plan for Delhi, notified on 1st August,

1990 (See Part-II, Section 3, sub-section -ii of the Gazette of India (Extraordinary)), permitting running of stalls on a part of a park above 1.0 hectare in area.

13. Having regard to these facts and bearing in mind the fact that the kiosk was constructed and possession thereof was delivered to the petitioner eighteen years ago, we are of the view that the possession of the petitioner from the present site need not be disturbed and he be permitted to use the same either for conducting research on plants or for any other commercial use, which is permitted another kiosks constructed and allotted by the DDA in or on the periphery of the neighborhood parks. We feel that this would be in consonance with the spirit of the Supreme Court's order dated 27th October, 1989. It is, however, made clear that the petitioner will not be entitled to use the same for any other commercial activity.

14. However, in case the petitioner is not willing to restrict his commercial activity, in terms of the orders of the upreme Court dated 8th November, 1990, he will be entitled to an appropriate alternate site within the same area admeasuring 63.35 Sq. Mts., because we find from the costing details, noted above, that the cost of land recovered from him has been worked out for the said area, subject to the condition that the total covered area on the new piece of land shall not exceed 15.40 Sq. Mts.

15. The writ petition stands disposed of in the above terms with no order as to costs.