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Court : Delhi

Decided On : Aug-10-2010

Judge : Mr. Rajiv Sahai EndLaw. J.

Appeal No. : W.P.(C) 5124/2010, CM No.10106/2010

Appellant : Gurmeet Singh and ors.

Respondent : Mcd and ors.

Advocate for Def. : Ms. Mini Pushkarna, Mr. Sandeep Sharma, Advs.

Advocate for Pet/Ap. : Mr. N.P. Singh, Adv.

Judgement :

1. Whether reporters of Local papers may be allowed to see the judgment? No
2. To be referred to the reporter or not? No
3. Whether the judgment should be reported No in the Digest?

ORDER

1. The fourteen petitioners, claiming to be the residents of Block-8 & 8- C, W.E.A., Karol Bagh, Delhi, have preferred this petition impugning the decision of the respondents 1 & 2 MCD to construct an automated Stack Parking on Sri Kishan Dass Marg, opposite Block-8 and 8C adjacent to the boundary wall of the MCD

school on Satbhrawan Marg, Karol Bagh, New Delhi. The contractor to whom the work of construction of the Stack Parking has been awarded has been impleaded as respondent no.3.

2. The petitioners challenge the decision aforesaid of the respondents 1&2 MCD and seek to restrain the respondents no.3 from the proposed construction on the following grounds:

(i) The provisions of Sections 298, 299, 305(3), 320 of the DMC Act are cited; it is urged that all the public streets and pavements vest in the MCD and are to be maintained, controlled and regulated by the MCD in accordance with the Bye-Laws made in this regard; that construction or re- construction of any building or construction of any nature whatsoever on the public streets is prohibited.

(ii) Attention is also invited to the Delhi Municipal Corporation Street Bye-Laws, 1958 whereunder notice in the prescribed manner is required to be given "where the whole or any part of a public street is intended to be closed permanently". It is urged that no such notice has been given and that the petitioners are likely to be affected by closure of part of the street by construction of Stack Parking having been allowed.

(iii) It is urged that utilization of the part of the street for Stack Parking will create a lot of impediment in the movement of traffic on the road which is the main connecting road from Pusa Road to Padam Singh Marg, Arya Samaj Road, Hardhyan Singh Marg & Deshbandhu Gupta Road. It is also stated that the road is also connected to as many as 14 schools and the school buses of the said schools ply on the said road.

(iv) That the respondents 1&2 MCD has not paid any heed to the representations of the petitioners and falsely assured them that the Stack Parking is in their interest.

(v) That Multi-Level Parking has been proposed under the Master Plan at Rajender Nagar & Shastri Park; that there is a plot reserved for the Multi-Level Parking barely at a distance of about 200 mtrs. from the impugned proposed Stack

Parking site and it does not make sense to provide for Stack Parking on the said road instead of on the plot earmarked therefore.

(vi) That Karol Bagh has been declared as a special area under the Master Plan and the proposed Stack Parking would interfere with the movement of traffic in the area and will be a nuisance.

3. The counsel for the petitioner besides relying on the provisions of the Bye-Laws aforesaid, at the time of hearing has also invited attention to page 47 of the paper book being the extract of the Zonal Development Plan of the area for the year 2001; from Clause 7.3 thereof, it is contended that no parking is to be allowed on streets of up to 18 mtrs. or on roads identified for mixed use. It is contended that the proposed parking is contrary to the Zonal Development Plan. It is further contended that the total width of the road in question is 18 mtrs. only and that upon 6 mtrs. out of the same being taken up for Stack Parking, the traffic on the said road will be interrupted.

4. The counsel for the respondents 1 & 2 MCD appearing on advance notice has at the outset contended that the reliance on the Zonal Development Plan of the year 2001 is misconceived. Attention is invited to Clause 15.4 of the Master Plan Delhi 2021 in Sub Clause (vi) whereof common parking areas are to be earmarked on notified mixed use street and for preference to be given to Multi-Level Parking. The counsel for the respondents 1&2 MCD during the hearing has also handed over a plan showing the proposed area and the portion where the fabricated structure to provide Multi-Level Parking is to be installed. Attention is also invited to Clause 5.2, 10.0 & 12.3 of the Zonal Development Plan notified on 8 th March, 2010 with respect to the said area of Karol Bagh to demonstrate that the said Multi Level Parking can, by no stretch of imagination, be said to be contrary to the Master Plan. It is further contended that the respondents 1&2 MCD has other plans for Multi-Level Parking and the proposed parking is in addition thereto. The counsel for the petitioner has not been able to controvert the said position. Thus the ground of the proposed Multi-Level Parking being contrary to the MPD-2021 fails.

5. The decision as to the location of parking spaces, the required width of the street, whether a part of the street should be used for parking or not are executive decisions, subject matter of policy and with which this Court would not ordinarily interfere unless any ground of mala fide, irrationality apparent on the face etc. are made out. This Court is not equipped to overrule the decision which the Municipality under the law is entitled to take and which it is expected to have taken after taking all the relevant factors into consideration and in the normal course. No case of mala fide or of such irrationality is made out. Though the counsel for the petitioner at the fag end had sought to urge that the contract has been wrongfully awarded to the respondent no.3 but the said argument is without any basis or pleading. Rather the counsel for the respondents 1&2 MCD has contended that the shops along the said road are inhabited by used car dealers who have been using the said road for the purposes of parking and exhibition of the vehicles and have filed this petition for their own gain and not in any public interest.

6. That leaves only the aspect of the Bye-Laws. The counsel for the respondents 1&2 MCD has not urged that any notice as required to be given under the Bye-Laws for "permanent closure of street" has been given. The counsel for the respondents 1&2 MCD has however contended that there is an acute problem of parking in the area; the portion of the street where the Stack Parking is intended to be installed is in any case used for parking; that instead of part of the street being blocked by such single row of vehicles, the Stack Parking is intended to be installed there for accommodating many more cars and to alleviate the parking problem in the locality to an extent. It is also contended that the said project is a part of the development for the ensuing Commonwealth Games; that the respondent no.3 Contractor has already fabricated the structure for Stack Parking and the same now only remains to be installed. It is contended that the petitioners have approached this Court belatedly when the work of Stack Parking is nearing completion.

7. In my view, utilization of a portion of public street for parking would not fall within the meaning of "permanent closure of a part of a public street". A public street besides for movement of the traffic is also to be utilized for parking. The counsel for the petitioner also has not been able to urge that allowing vehicles to be parked

on one side of the street amounts to permanent closure of the public street requiring notice to be issued. In my opinion, installing a fabricated structure to provide Stack Parking instead of parking on the street only, would not change the position. The Bye-Law aforesaid is thus not attracted and it cannot be said that the street is being permanently closed so as to invite the notice required to be given there under.

8. There is no merit in the petition. The same is dismissed in No order as to costs.

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