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Court : Delhi

Decided On : May-01-2012

Judge : The Honourable Ms. Justice Hima Kohli

Appeal No. : W.P.(C) 3504 of 2011 & CM No. 7335 of 2011

Appellant : Satender Kumar Jain

Respondent : Mcd and Others

Judgement :

HIMA KOHLI, J.

Oral:

1. The present petition has been filed by the petitioner praying inter alia for calling upon the respondent No.1/MCD to reinstall the statue of Shaheed Bhagat Singh in the MCD park near Mata Mandir, Roop Nagar, Delhi, allegedly removed by the respondent No.3 in collusion with the officials of the respondents No.1 and 2.

2. Notice was issued on the present petition vide order dated 23.5.2011 and it was directed that till the next date of hearing, status quo be maintained by MCD with regard to installation of any statue in the park in question described by the petitioner as “Shaheed Bhagat Singh Park”.

3. Learned counsel for the respondent No.1/MCD has questioned the *locus standi* of the petitioner to file the present petition as it is contended that he is neither residing in, nor working in the area in question, nor has he shown how he has a particular interest in the area in question.

4. Upon a pointed query addressed to the learned counsel for the petitioner as to the particular reason for seeking the relief as sought in the present petition in respect of installation of a bust of Shaheed Bhagat Singh in a park in an area where he is neither residing nor working, no satisfactory reply is given by the learned counsel for the petitioner, except for stating that one day when the petitioner was passing by the park, he had noticed that some unknown persons were trying to remove the statue of Shaheed Bhagat Singh which made him file this petition. A perusal of the writ petition shows that no such averment has actually been made by the petitioner therein.

5. Learned counsel for the petitioner also states that the petitioner is a member of a Society by the name of "Shaheed Bhagat Singh Brigade Samaj Sudhar Samiti", which is a registered society and that presently, he is holding the post of a Joint Secretary of the said Samiti and therefore he has an interest in filing this petition. However, the present petition has not been filed by the petitioner in his capacity as Joint Secretary of the Samiti, but in his personal capacity. Further, the documents enclosed by the respondent No.4, Sh.Sneh Suman, with the reply filed by him reveals that upon an RTI query filed by him with the Registrar of Societies enquiring as to whether the petitioner herein is a member of the Samiti, the reply given was in the negative. Similarly, the office of the Registrar of Societies informed respondent No.4 that as per its records, the petitioner is not a Joint Secretary of the said Samiti.

6. Counsel for the respondent No.4 states that the list of members that was supplied by the Registrar of Societies in an earlier reply to an RTI query filed by the respondent No.4, reveals that the name of the petitioner is not mentioned therein. He hands over a set of documents stated to have been obtained in reply to RTI applications filed by respondent No.4 with the office of the Registrar of Societies, a perusal whereof confirms the fact that the name of the petitioner does

not feature in the list of the Governing Body of the Samiti, that was registered in the year 2008. The said documents are taken on record.

7. Pertinently, the petitioner has not placed on record any document authorizing him to file any such petition on behalf of Shaheed Bhagat Singh Brigade Samaj Sudhar Samiti, as a Joint Secretary thereof. Further, a perusal of the averments made in the writ petition reveals that allegations have been levelled against one Sh. Vidya Sagar, impleaded as respondent No.3 and who is stated to be a resident of Shakti Nagar. But on 17.1.2012, Mr.Shiv Charan Garg, Advocate had entered appearance for Sh.Sneh Suman and had stated that there was no such person by the name of Sh.Vidya Sagar residing at the address mentioned by the petitioner in the memo of parties and that his client, Sh.Sneh Suman is a resident of the aforesaid premises. Resultantly, the petitioner was directed to amend the memo of parties by impleading Sh.Sneh Suman as respondent No.4 in the present proceedings.

8. The allegations levelled against the respondent No.3 in the present petition are that he is a builder of the area who has won over the staff of the respondents No.1 and 2 who have joined him to use force to remove the statute of Shaheed Bhagat Singh from the park in question with the sole intention of installing of statue of his father, Dr.Indra Chandra Shastri therein. It is further claimed that a complaint of this incident was lodged with the local police station as the residents were feeling threatened due to the removal of the statue from the park in question.

9. In a detailed affidavit filed by respondent No.1/MCD, it has been submitted that there was no statue of Shaheed Bhagat Singh installed in the park in question and the contents of the police complaint reveal that they are contrary to the correct facts mentioned by the petitioner. Learned counsel for MCD draws the attention of this Court to a report of the local police dated 23.4.2011(Annexure R-9), wherein, it was stated that some parties were trying to install a statue of Shaheed Bhagat Singh in the park in question instead of the statue of Dr.Indra Chandra Shastri. She states that proper procedure was followed by the respondent No.1/MCD for installing the statue of late Dr.Indra Chandra Shastri in the park in question. Dr.Shastri is stated to be a renowned Indologist, Philosopher, Scholar, Author and

Social Reformer and a former Head of the Department of Sanskrit, Institute of Post Graduate Studies, Delhi University. The earlier site located for installation of the statue was proposed at a round about near Roshnara Police Station, Roop Nagar, but the said location had to be changed in terms of the guidelines laid down by the Ministry of Urban Development and the new location proposed was at the MCD Park in question situated in Roop Nagar.

10. Learned counsel for the respondent No.1/MCD draws the attention of this Court to the minutes of the meeting of the Naming Committee of the Corporation regarding the installation of the statue/bust of Dr. Indra Chandra Shastri in the MCD park in question, enclosed as Annexure R-2 to the counter affidavit. It is further averred in the affidavit that the petitioner has not placed on record any documents to show that the park in question was ever named as Shaheed Bhagat Singh park. Instead, it is asserted that the park in question was always identified as a MCD park.

11. As regards the respondent No.4, learned counsel for respondent No.4 points out the photographs enclosed with the affidavit dated 30.4.2012 to support the submissions made by counsel for the respondent No.1/MCD that there is already a statue of Shaheed Bhagat Singh installed in Roop Nagar which is at a distance of about 200 meters from the MCD park in question and therefore there is no good reason to install another statue of Shaheed Bhagat Singh in the same locality. The photographs placed on record confirm that a bust of Shaheed Bhagat Singh has already been installed in a park situated in Roop Nagar.

12. In view of the aforesaid facts and circumstances that have emerged and in the absence of any cogent explanation offered by learned counsel for the petitioner to establish the *locus standi* of the petitioner to file the present petition, the Court is inclined to accept the submission of the counsels for the MCD and respondent No.4 that the present petition appears to be a case of proxy litigation. Learned counsel for the petitioner has not been able to rebut any of the submissions made by the respondent No.1/MCD in its affidavit dated 18.8.2011. Nor has he been able to explain as to why another statue of Shaheed Bhagat Singh must be installed at a distance of 200 meters from a park in the same locality where such a

statue has already been installed. On the other hand, MCD has been able to offer a satisfactory explanation for installing the statue of Dr. Indra Chandra Shastri in the MCD park in question.

13. Learned counsel for the respondent No.1/MCD states that due to the present misconceived petition filed by the petitioner and the status quo orders that came to be passed in this petition, the ongoing work of construction and installation of the bust had to be stalled and resultantly, MCD has had to suffer financial losses. She urges that if the court proposes to dismiss the writ petition, then exemplary costs ought to be imposed upon the petitioner to ensure that the same acts as a deterrent to the public from filing frivolous litigations in future.

14. This Court has taken into consideration the averments made in the petition as also the responses filed by the respondent No.1/MCD and respondent No.4. It is quite apparent that the petitioner has not been able to substantiate his claim that any statue of Shaheed Bhagat Singh was ever installed at the MCD park in question at Roop Nagar. Nor has he been able to establish his *locus standi* to file the present petition. This petition appears to be a motivated one and more in the nature of a proxy litigation where the petitioner is acting as a front for some interested parties as most of the allegations levelled in the writ petition are directed against one Sh. Vidya Sagar, who was impleaded as respondent No.3, but the petitioner has not been able to establish the identity of any such person. Nor has such a person been found to be residing at the address given in the memo of parties. Instead, Sh. Sneh Suman, son of Dr. Indra Chandra Shastri is residing at the given address and has come forward to seek impleadment in the present proceedings and explain his case.

15. It is therefore deemed appropriate to dismiss the present petition, along with the pending application with costs of ₹30,000/- imposed on the petitioner for indulging in frivolous litigation and not only wasting the court's time but also causing financial loss to the respondent No.1/MCD. The costs shall be deposited by the petitioner with the respondent/MCD within four weeks from today. Proof of deposit shall be filed on record immediately thereafter. In case, the costs are not deposited within the stipulated period, respondent No.1/MCD shall be entitled to

treat the same as arrears of revenue take steps for recovering the same from the petitioner, as per law.

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