

Col.V. Katju Vs. Delhi Development Authority and ors.

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Court : Delhi

Decided On : Jan-17-2013

Judge : Rajiv Sahai Endlaw

Appellant : Col.V. Katju

Respondent : Delhi Development Authority and ors.

Advocate for Def. : Ms. Shobhana Takiar, Mr. Sumit Bansal, Mr. Ateev Mathur

Advocate for Pet/Ap. : Mr. Naveen R. Nath

Judgement :

*IN THE HIGH COURT OF DELHI AT NEW DELHI Date of decision:

17. h January, 2013 % + W.P.(C) 2730/2003 & CM No.4607/2013 (for stay) COL.V. KATJU Through: Petitioner Mr. Naveen R. Nath, Adv. Versus DELHI DEVELOPMENT AUTHORITY & ORS. Respondents Through: Ms. Shobhana Takiar, Adv. for DDA. Mr. Sumit Bansal & Mr. Ateev Mathur, Advs. for R-3. CORAM :HONBLE THE CHIEF JUSTICE HONBLE MR. JUSTICE RAJIV SAHAI ENDLAW RAJIV SAHAI ENDLAW, J 1.This writ petition filed in public interest seeks the quashing of the allotment dated 18th February, 2002 by the respondent No.1 Delhi Development Authority (DDA) of land admeasuring 321.20 sq.m. in respect of the designated park situated in H-Block, Saket, New Delhi in favour of the respondent No.3 Gurudwara Prabhandak Committee and further seeks a direction to the respondent No.1 DDA and respondent No.2 Municipal Council of

Delhi (MCD) to demolish the structure existing thereon and remove the encroachment over the said land.

2. Notice of the petition was issued, though no interim relief granted. Counter affidavits have been filed by the respondent No.1 DDA and respondent No.3 Gurudwara Prabhandak Committee and to which rejoinders have been filed by the petitioner.

3. It is the case of the petitioner: (i) that he is the resident of Flat No.61-C, H-Block, Saket, New Delhi; (ii) his aforesaid flat overlooks a park, a part of which, was in the year 1979 allotted to the respondent No.3; (iii) though, the original allotment for the purpose of constructing a Gurudwara was of land ad-measuring 418 sq.m. and the remaining land measuring 427 sq.m. was to be preserved as a park but the respondent No.3 encroached over the said park also and constructed the Gurudwara not only over the land allotted to it but also on the land of the park; (iv) DDA had in the years 1981-1984 issued notices for removal of encroachment and unauthorized constructions; (v) the residents of the locality had also lodged complaints in this regard but no action was taken; (vi) that the petitioner along with four other residents had earlier filed CWP No.4863/2001 which was entertained; (vii) however, during the pendency of the said earlier writ petition, respondent DDA, vide an order dated 18 th February, 2002 regularized the encroached land; (viii) that such regularization was on the assumption that the encroached land was capable of being allotted and had not been designated for any specific purpose under the layout plan of the area; (ix) that the petitioner is directly affected by the encroachment as he has completely lost privacy of his flat due to the four storied building of the respondent No.3 having come up adjacent to the house of the petitioner; (x) that the petitioner came to know about the allotment only when the respondent No.3 filed an affidavit in the other writ petition; (xi) that the area in question is a developed area and no modification can be made in respect of a developed area affecting the character of the plan, diminishing the standards of population density etc.

4. Soon after the filing of the present petition, the earlier petition preferred by the petitioner and certain other residents being CWP 4863/2001, was allowed vide

judgment dated 20th November, 2003 with a direction to the respondent DDA to put the land to its original use i.e. of a park and with a further direction to the Vice Chairman of the DDA to hold an enquiry as to how such encroachment and construction was permitted and to submit a report. However being conscious of the filing of the present petition, it was observed in the said judgment dated 20th November, 2003 as under: We have dealt only with the use of land other than permissible use and we are not expressing any opinion with regard to allotment since the petition for allotment is pending.

5. The respondent DDA has filed a counter affidavit to this writ petition pleading: (a) that a plot of land admeasuring 418 sq.m. at H-Block, Saket, New Delhi was allotted to Delhi Sikh Gurudwara Management Committee in the year 1979 for construction of Gurudwara; (b) the Gurudwara Authorities subsequently encroached on adjacent land measuring 321 sq.m. and raised construction on 418 sq.m. of allotted land and 321 sq.m. of encroached land at the same time and the entire building exists as a single structure; (c) DDA at the request of the Gurudwara Committee regularized the land admeasuring 321 sq.m. against the payment of Rs.15,75,013/- and handed over the possession on 18 th February, 2002; (d) that after the judgment dated 20th November, 2003 (supra) in the earlier writ petition, the matter was referred to Special Branch and it was found that the demolition of a part of Gurudwara is not possible as the entire building is constructed together; (e) that the residential scheme of Saket was prepared prior to Master Plan of Delhi (MPD) 2001 and under the provisions of MPD-1962; (f) that even after the regularization of 321 sq.m. of encroached land in favour of the Gurudwara Committee, the requirement of percentage of green area in Saket Residential Scheme was met and rather the greens in existence after such regularization also were in excess by 3% over the minimum required green area under the MPD-1962; (g) that thus no prejudice has been caused to the residents of the colony; (h) that the said 321 sq.m. of land was not even marked as green under the Zonal Plan; (i) that the issue of removal of construction raised by the Gurudwara has been considered up to the Lt. Governor, Delhi, who after getting an assessment, concluded that such demolition would have a grave fall-out and law and order repercussion.

6. The petitioner in rejoinder of the aforesaid counter affidavit of the respondent DDA has contended that DDA inspite of repeated directions in the earlier writ petition had not filed the reply or produced the documents / records which it was directed to produce; that it was the stand of the respondent DDA in the earlier writ petition that the use by the Gurudwara of the encroached land was not in accordance with the layout plan and that the use prescribed of the said land was as a lawn; that the respondent DDA had made all efforts to keep this Court in the earlier writ petition in dark about its intention to regularize the illegal encroachment; that the regularization is thus mala fide. The other averments of the respondent DDA, in rejoinder, are also controverted.

7. The respondent No.3 in its counter affidavit has pleaded that the writ petition though filed as public interest litigation had been filed by the petitioner alone to sub serve his personal interest; that the petitioner also had converted a strip of land adjacent to his house into his private park and has also installed a gate to prevent others from use thereof and being himself an encroacher, is not entitled to any discretionary relief; that the petitioner had come into possession of his flat after allotment in favour of the respondent No.3; that the alleged park is in fact a tot-lot and was never used as a park; that the petitioner has no locus to challenge the allotment in favour of the respondent No.3; that the entire construction on the land was in the process of being regularized; that no other resident has any grievance.

8. Needless to state that the petitioner in his rejoinder has denied all the averments made in the counter affidavit of the respondent No.3.

9. It may also be mentioned at this stage that the respondent No.3 in the year 2004 itself had applied for review of the directions contained in the judgment dated 20th November, 2003 in the earlier writ petition on the ground that the land having been regularized in its favour, the direction to the DDA to restore it to the original use as a park could not have been issued. The said review petition was disposed of vide order dated 2nd May, 2011 observing that while pronouncing the judgment dated 20 th November, 2003, the Court was aware of the pendency of this petition and that the submissions in the review petition could be suitably taken note of and considered in this writ petition and that the question whether the land was to be

maintained as a park or could be legitimately used by the respondent No.3, would depend upon the decision as to whether the allotment of the land in favour of the respondent No.3 is valid or not.

10. We have considered the controversy. We find that the petitioner has been unable to show any document prescribing the use of the subject land which has been regularized in favour of the respondent No.3, as a park. The whole case of the petitioner of the regularization of the land in favour of the respondent No.3 being illegal, is predicated on the proceedings in and the judgment in the earlier writ petition. However as aforesaid, on review being applied by the respondent No.3 of the earlier judgment, vide order dated 2nd May, 2011, the matter has been left at large for decision in this petition. It is thus for the petitioner to show that the prescribed use of the land was as a park and which could not have been regularized in favour of the respondent No.3.

11. The entire emphasis of the petitioner as aforesaid is on the record of the earlier writ petition. However a perusal of the documents filed by the petitioner as annexures to this petition, shows that the averments of the respondent DDA and the MCD while issuing notices to the respondent No.3 of encroachment, were of the respondent No.3 having encroached upon all setbacks and having encroached by covering an open nallah adjacent to the plot earlier allotted to it or of encroachment of public land. All public lands, setbacks and nallahs do not fall in the category of park, for it to be said that the regularization thereof is bad for the reason of having converted use of the land from the prescribed use of a park, to that of a religious structure. As far as reliance by the petitioner on certain orders during the pendency of the earlier petition is concerned, undoubtedly the counsel for the respondent DDA has therein referred to the said land as lawn and / or the specific use thereof being as a lawn. However, such statements are followed by direction to the respondent DDA to produce the records. Neither is there any affidavit of the respondent DDA in the earlier writ petition admitting the prescribed use of the land as a park nor was any document in that regard produced. It thus appears that the stand of the counsel for the DDA in certain orders referring to the land as lawn and / or that the specified use thereof was as a lawn, is without any basis.

12. On the contrary, the respondent DDA in the counter affidavit in this petition, has expressly stated that the use of the land was never prescribed as park or lawn and that the requirements in the Master/Zonal Plan of green area in the colony are sufficiently met and rather that the green area is in excess by 3%. The respondent DDA along with its counter affidavit has also filed the Zonal Development Plan of the area to support its said stand. Counsel for the petitioner during the hearing, has been unable to show that the said Zonal Development Plan produced before us, shows the user of the said land as park/lawn/green; the correctness of the Zonal Development Plan is also not controverted.

13. In the aforesaid state of affairs, we have no reason to disbelieve the stand of the respondent DDA. It is also worth mentioning that this Court cannot lightly interfere with administrative decisions of the authorities empowered to take such decisions, as of regularization, especially when pertaining to religious structures or of repercussions of demolition of such structures. In this regard it is also worth mentioning that the Supreme Court vide orders in SLP(C) 8519/2006 & WP(C) No.314/2010 has directed constitution of Religious Committees under the chairmanship of the Lt. Governor (as far as Delhi is concerned) to deal with the encroachment by religious structures of public lands.

14. We are, therefore, unable to find any error in the decision of the respondent DDA of regularization of the land earlier encroached upon by the respondent No.3 in favour of respondent No.3.

15. The petition therefore fails and is dismissed. Resultantly, respondent DDA shall also stand discharged from the direction contained in the judgment dated 20th November, 2003 in CWP No.4863/2002 to restore the use of the said land as of a park. RAJIV SAHAI ENDLAW, J CHIEF JUSTICE JANUARY 17 2013 bs

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