

(1998) 04 SC CK 0062

In the Supreme Court Of India

Case No : Writ Petition (C) No. 744 of 1994

Baljit Singh Malik

APPELLANT

Vs

Delhi Golf Club and Others

RESPONDENT

Date of Decision : 27-04-1998

Acts Referred:

Constitution of India, 1950 — Article 32

Citation : (1998) 4 AD 59 : AIR 1998 SC 2321 : AIR 1998 SC 2320 : (1998) AIRSCW 2232 : (1998) 4 ALLMR 369 : (1998) 3 JT 576 : (1999) MPLJ 181 : (1999) 1 MPLJ 181 : (1998) 3 SCALE 318 : (1998) 4 SCC 524 : (1998) 4 Supreme 339

Hon'ble Judges : M. M. Punchhi, C.J.;Rajendra Babu, J;K.T. Thomas, J

Bench : Full Bench

Advocate : S. Murlidhar and Party in Person, for the Appellant; R.K.P. Shankardas Meenakshi Arora Respondent No. 1, N.N. Goswami Ashok H. Srivastava and V.K. Verma for Respondents No. 2 and Ranjit Kumar for Respondents No. 4, for the Respondent

Final Decision : Allowed

Judgement

Rajendra Babu, J.—This petition filed under Article 32 of the Constitution raises several questions purporting to espouse public interest Shri Muralidhar assisted this Court as (sic) Curiae and we are beholden to him. We have also heard the petitioner in person. However, after arguments were addressed from to time finally the points projected for our consideration are as follows :-

(1) That the respondent No. 1 has been granted lease of 179 acres of land in which exist certain ancient and protected monuments. They are being subject to defacement and misuse.

(2) The Ministry of Urban Development, i.e. respondent No. 2 ought not to have allowed the first respondent to occupy the land between 1.1.1991 and 20.7.1994 without a valid lease nor renewed the lease retrospectively from 1.1.1991 on unusual terms conferring extraordinary benefits.

(3) That N.D.M.C., respondents No. 4 has failed to take appropriate action with the necessary promptitude to recover the arrears of property tax exceeding Rs. 4.5 crores owing to it by respondent No. 1.

(4) That excessive use by respondent No. 1 of fertilizers and pesticides in the upkeep of the golf course resulting in pollution of the subsoil and ground water in the area under its possession and in the neighbourhood.

2. There are nine monuments situate within the area in possession of respondent No. 1 and they are :-

1. Lal Bangla (near the entrance) 2. Mosque near hole No. 6 in Golf Club 3. Bagichi near hole No. 4 in Golf Club 4. Sayed Abid's tomb near hole No. 10 in Golf Club 5. Unknown tomb near hole Nos. 14-16 in Golf Club 6. Unknown tomb near hole No. 18 in Golf Club 7. Barah Khamba 8. Mir Taqu's Tomb 9. Monument adjoining Swimming Pool

3. Lal Bangla which is situate near the entrance of the Club is protected under the Ancient Monuments and Archaeological Sites and Remains Act, 1958 (hereinafter referred to as "the Central Act"). The claim made in the petition is that the said monument was in shambles a which is not accessible to public nor properly taken care of by the Club or by the Government. The Affidavit filed by the Archaeological Survey of India discloses that of the nine monuments in respect of which this petition is filed, only Lal Bangla is declared to be a national monuments; that it is under the maintenance and upkeep of Archaeological Survey of India; that the said Lal Bangla is segregated from the other area of the Club; that the Archaeological Survey of India is taking due care of the monuments and in respect of which the respondent No. 1 is rendering full co-operation; that the monument Lal Bangla is well preserved, fenced and free from encroachment with round the clock watch and ward deployed for the proper security of the monument; that the monument has been fully conserved and well maintained since long; that annual maintenance is carried out every year; that the respondent No. 1 is not using the area surrounding Lal Bangla monument. Correctness of the stand of the A.S.I. cannot be seriously disputed nor is it done by the petitioner. Hence the contention raised regarding Lal Bangla stand rebutted.

4. Insofar as the remaining monuments are concerned, it is made clear that the stand of the first respondent is that they are not covered by the Central Act since they have not been declared to be protected monuments but are under the control of the State Government. If they are of historical importance and their care would be the responsibility of the Department of Archaeology of the Government of the National Capital Territory of Delhi. It is contended on behalf of the respondent that they have taken the necessary initiative and several steps in conjunction with Indian National Trust for Art and Cultural Heritage (INTACH), D.D.A. and the Conservation Society of Delhi and they are also touch with the Department of Archaeology for taking necessary and practical steps for

preservation of the said monuments. We specifically asked the petitioner and also Shri Murlidhar as to which of the monuments in this category is put to jeopardy by the respondents. It was pointed out that the monument adjoining the Swimming Pool is likely to be affected by the activities of the respondents but they are not clear as to the manner in which the same was put to any kind of hazard. All that was stated was that the monument was likely to be affected by reason of Constitution of the Swimming Pool adjoining the monument but it is not made clear that the monument is very close to the Swimming Pool. Thus the contentions urged on behalf of the petitioner are vague, unclear and this Court need not investigate that aspect any further.

5. The extraordinary features of the lease pointed out are that the lease is renewed retrospectively, the rent fixed is not the usual rent and that such lease has been granted only in view of the fact that the members of the Club are apparently high ranking Government servants who are serving the Government of India and that property tax due to N.D.M.C. has not been cleared. On the extent of land held by the first respondent, it was submitted that it was sufficient to have about 42 to 45 acres of land to make a good Golf Course and (sic) acres of land are not required at all.

6. The respondent contended that the first respondent is a premier Club in the country and provides facilities of international standards. There are two courses available on the filed and in addition they would have even three courses by making appropriate provisions and a 18 hole course would not be sufficient. Therefore, provision has to be made for a course of 27 holes.

7. This Court need not decide as to how many courses should a club not the extent thereof. If we bear this aspect in mind, it would not be proper at all to state that the extent of land leased in favour of the first respondent is large.

8. Material has been placed before the Court to show the rates at which the ground rent is collected when land is leased for sports purposes on long term basis. Considering the fact that it is one of the avowed purposes of the Government to encourage sports and if the Government so desires, may grant leases of land not necessarily at market rate and at appropriate concessional rates and the same cannot be stated not to sub-serve the public purpose.

9. It was next contended that the Club is not accessible to general public and only to a class of people and all cannot become members of the Club. It is made clear on behalf of the respondents that to any person desirous of playing golf, admission is granted on payment of day fee. Only membership to the Club is restricted and not the entry into the Golf Course. In the circumstances, we find this contention also to be untenable.

10. So far as the renewal of the lease is concerned, it has been explained that the circumstances in which the same was not renewed for a period of four years and how it was retrospectively renewed and provisions made for the collection of the arrears of lease rent and municipal taxes, nothing can be made out of the

same which would involve public interest in any manner. As regards payment of property tax is concerned, a Writ Petition filed is by the first respondent in the Delhi High Court challenging the demands raised. It appears the said Petition has now been disposed of and is under appeal by way of special leave in this Court and is subject to interim orders as regards payment of municipal taxes due. Therefore, it would not be proper at all to consider the contention or express any opinion on the said aspect of the matter which would be decided in that proceeding.

11. It is pointed out to us that the land in possession of the Golf Club which is the subject matter of this petition comes in the green belt area, any construction activity is subject to several controls. The first respondent has denied the contention that they have used fertilizers which are not eco-friendly and they are using only organic fertilizers and treated waste water for maintaining the grounds and the use of fertilizers is totally restricted and minimal. There is no material to show anything to the contrary.

12. Therefore, we find no merit in this petition. The same small stand dismissed with no order as to costs.