
(2009) 03 DEL CK 0112

In the Delhi High Court

Case No : Writ Petition (C) 8140 of 2007 and CM No. 15380 of 2007

Beadonpura Durga Puja Samiti (Regd.)

APPELLANT

Vs

MCD and Others

RESPONDENT

Date of Decision : 31-03-2009

Acts Referred:

Citation : (2009) 03 DEL CK 0112

Hon'ble Judges : Hima Kohli, J

Bench : Single Bench

Advocate : Anjan Chakraborty and Rahul Malhotra, for the Appellant; Ajay Arora and Kapil Dutta, for the Respondent

Final Decision : Dismissed

Judgement

Hima Kohli, J.—The present writ petition is filed by the petitioner praying inter alia for directions to the respondent/MCD not to demolish the structure made over the Bedi at the Durga Puja Park.

2. The contention of the petitioner/Samiti is that the Samiti has been celebrating Durga Puja, Kali Puja and Lakshmi Puja in a park situated at Desh Bandhu Gupta Road between the Christian Colony and the Regharpura Colony from lanes No. 1 to 4. It is stated that on 22.09.2000, the MCD passed a resolution resolving to name the aforesaid park as the "Durga Puja Park". It is averred that a Bedi with super structure was constructed in the area and provided to the Samiti and a statue of Goddess Kali was installed there. It is urged that the super structure has been constructed around the Bedi as a safety measure so that the statue of the Goddess is not accessible to thieves and to maintain cleanliness.

3. Counsel for the petitioner submits that the Samiti celebrates Durga Puja annually after taking appropriate permission in that regard from the office of the Dy. Commissioner of Police of the area. However, on 30.10.2007, certain employees of the respondent No. 3 came to the park to demolish the structure, thus, compelling the petitioner to approach the Court by way of the present writ

petition.

4. Counsel for the respondent/MCD submits that the area in question is a park and the designated and the lawful use of the site has been that of a park. However, the petitioner, under the garb of holding an annual Durga Puja, has raised unauthorized construction by covering the Chhatri, which was constructed from the funds of a Member of Parliament and giving the same the shape of a temple. It is further stated that a complaint was lodged by the MCD with the police authorities on 3.11.2007 wherein it was categorically stated that a shelter/ Chhatri with all four sides open and a Chabutra under it was constructed by the MCD long back and that certain unscrupulous persons belonging to the petitioner/ Samiti covered all the four sides of the shelter by constructing non-concrete iron glazing and fiber sheets to convert it into an enclosure and that they have installed a board in the name of "Beadonpura Durga Puja Samiti" there. The respondent complained to the local police that the aforesaid act of occupying a public property was illegal and amounted to trespassing, being an encroachment on the government land. Hence, an FIR was sought to be got registered.

5. Counsel for the respondent submits that the park in question has been constructed by covering a part of a drain/nullah and the same has been developed by laying of a lintel, which may not be in a position to bear the load of the unauthorized construction in the form of a temple, illegally occupied by the petitioner.

6. Counsel for the petitioner states at the outset that the Board of Beadonpura Durga Puja Samiti, as indicated in the photograph enclosed as Annexure-P2 to the writ petition, shall be removed by the petitioner. However, he urges that as the Chhatris were enclosed by the petitioner/Samiti to protect the Deity installed therein, the respondent is liable to be restrained from demolishing the same.

7. There are no documents placed on record by the petitioner to establish that any prior permission was sought by the petitioner/Samiti to either install the Deity at the aforesaid site, or to enclose the aforesaid Chabutra constructed by the MCD, in the manner in which it has been done by the petitioner. It is not denied by the petitioner that the Chabutra was in existence prior thereto. This is borne out by the photographs filed as Annexure P2 (colly) to the writ petition. It is stated on behalf of the petitioner that it be permitted to approach the respondent/MCD with a representation for regularization of the non-concrete structure which request, counsel for the respondent states, cannot be acceded to as the park in question is a public park and any such act on the part of the petitioner amounts to seeking regularization of encroachment, which is not permissible in law.

8. The contention of the petitioner that a Deity has been installed in the aforesaid Chabutra by the petitioner/Samiti much earlier, in the year 1970 is demolished by the averments made in para 9 of the writ petition. In para 9, the petitioner has categorically stated that in the year 2001, the respondent/MCD

provided some area in the park to the petitioner/Samiti, whereafter a Bedi with super structure was constructed. The petitioner has miserably failed to bring to the notice of the Court any orders issued by the MCD allocating any area in the public park exclusively to the petitioner for building a temple.

9. Reliance is placed by the petitioner on a Resolution of the MCD dated 22.9.2000. The said Resolution was limited to the agenda placed before the Committee constituted by the Corporation for naming of the park in question as Durga Puja Park. The Committee resolved to christen the said park as Durga Puja Park. However, the said Resolution did not provide any exclusive area in the park to the petitioner/Samiti for building a temple. The Resolution dated 3.12.2001 does not create any vested right in the petitioner/Samiti to occupy the park by enclosing the existing chatris under the garb of protecting the deities installed therein. A perusal of Annexure-B to the counter affidavit shows that even in the records of the MCD pertaining to Karol Bagh ward, the aforesaid area is shown at S. No. 34, as an ordinary park.

10. That the petitioner celebrates Puja in the said park every year after taking permission from the DCP, cannot fortify the claim of the petitioner to enclose the chatris on all four sides and convert the Chabutra into an enclosure and that too with the board of the petitioner/Samiti displayed outside, as if the same is owned by it.

11. In these circumstances, the relief sought by the petitioner for directing the respondent not to demolish the structure made over the Bedi cannot be granted.

12. The writ petition is dismissed alongwith the pending application being devoid of merits. Needless to state that the aforesaid dismissal shall not preclude the petitioner/Samiti from approaching the Delhi Police for grant of permission to celebrate Durga Puja, Kali Puja and Lakshmi Puja in the Durga Puja Park, on an annual basis, subject to the terms and conditions that may be imposed by the police authorities.