

(2006) 08 DEL CK 0025

In the Delhi High Court

Case No : WPs (C) 10546-51 of 2006

Ec Pocket Maya Enclave Residents Welfare Association and
Others

APPELLANT

Vs

Delhi Development Authority and Others

RESPONDENT

Date of Decision : 22-08-2006

Acts Referred:

Delhi Development (Master Plan and Zonal Development Plan) Rules, 1959 — Rule 5
Delhi Development Act, 1957 — Section 10, 38A

Citation : (2006) 92 DRJ 562

Hon'ble Judges : S. Ravindra Bhat, J

Bench : Single Bench

Advocate : Raman Kapoor, for the Appellant; Vivek Goyal, for R-1 and R-2 and Siddarth Yadav, for R-3, for the Respondent

Final Decision : Allowed

Judgement

S. Ravindra Bhat, J.—The city of Delhi prides itself in a large green cover; the eighth report of the Standing Committee on Urban Development (2004-05) of the Fourteenth Lok Sabha, states that 19% of the city is "green area", more than the garden city of Bangalore (at 13.57%). The report also states that 5050 hectares of the total green area is under the jurisdiction and control of Delhi Development Authority (DDA), which has developed 1600 acres of such spaces into parks of different kinds and sizes, woodlands, greenbelts, etc. In this case the petitioner, an association of residents of three blocks of the DDA Maya Enclave, seek a writ or direction enjoining the respondents, including DDA from changing the use and character of a green area, admeasuring 3000 square meters.

2. The EA, EB and EC Blocks of Maya Enclave (hereafter collectively referred to as "the colony") comprises of several flats constructed, and transferred to its allottees, by the DDA. In keeping with its policies, the DDA developed open spaces near, and adjoining the colony into Parks and woodlands. It is averred

that these spaces have been indicated as " Green " in the Master as well as the Zonal Development Plan, prepared and published by the DDA. The petitioners have also relied upon a layout plan of the area, which too, earmarks certain spaces as parks. It is claimed that the DDA spent considerable sums of money for the development of such green areas; the petitioners also allege that the local MLA sanctioned a sum of Rs. 2.5 lakhs for development of the park. The petitioners allege that the DDA has an office of its horticultural department in the area, for upkeep of the plantations trees etc in the park.

2. The petitioners also allege that the DDA has developed a walking/jogging track in the woodland for the convenience of residents of the area and the surrounding vicinity, for the purpose of morning walks. It is claimed that this is in keeping with the norms prescribed for development of green and open spaces having regard to the density of population. The petitioners have also enclosed copies of photographs showing the woodland at the stage of development undertaken by the DDA.

3. It is claimed that green areas are of utmost importance to residents of the city since they provide much-needed breathing space to the people of Delhi, who are surrounded by a concrete jungle. The residents of the area, it is averred, noticed some activities upon the land and on inquiry they were informed that a part of the Park (which is over 5 acres) measuring 75 m x 40 m (3000 square metres) was allotted to the third respondent (hereafter referred to as " IGL") for the purpose of constructing a " CNG mega bus filling station". The petitioners represented to the Vice-Chairman, DDA on 5th of June 2006 requesting that no part of the woodland ought to be changed to any other use. On the 16th of June 2006, the petitioners again noticed considerable activity on the plot where the proposed CNG station was to be constructed. It is also alleged that the petitioners and other residents of the area protested to the conversion of the green into a mega CNG filling station but the same was to no avail. They were handed over a copy of the letter dated 30th of November 2005 indicating that the 3000 square metres plot had been allotted to the IGL. They were furnished with the copy of a letter dated 18th of April 2006, handing over possession of the plot to be IGL.

4. It is alleged that the site is near the Block EC, at a location of 60 metres away from the proposed filling station. This, it is claimed, poses a hazard to the residents of the locality, living in that block of flats. In addition, the petitioners allege that the respondents obtained permission to cut 77 trees, from the Deputy Conservator of forests, Government of NCT of Delhi despite their protests. A copy of the letter dated 12-6-2006 issued by the Dy. Conservator of forests indicating his permission to fell trees has also been enclosed in support of this submission. The petitioners allege that the change of user from green area of the parks into a mega-filling station would be destructive of the environment besides shrinking the available green areas; it also poses hazards relating to fire etc. The allotment and change of use has Therefore been questioned as arbitrary and illegal.

5. After notice was issued in these proceedings, the IGL file an application for vacation of the status quo order, issued on 3rd July 2006. When the application was taken up for hearing on 12 July 2006, its counsel requested that averments in the application itself ought to be treated as a response to the writ petition; this was so recorded and the petitioners were directed to file their reply, which was to be treated as a rejoinder in the main proceedings. The DDA too was permitted to file its return; the petitioners were permitted to file their response by way of rejoinder. Thereafter the matter was heard for final disposal. During the course of hearing the DDA filed an additional affidavit and also sought leave to produce copies of the resolutions relied upon by it.

6. The IGL has relied upon its correspondence with the DDA commencing in 2003 where it pointed out to the availability of three plots for the purpose of developing and putting up of a mega filling station. The the DDA, on 22 March 2005, wrote to the IGL that the site in question had grown up trees and that as per its policies, the IGL was to obtain necessary clearances from the Forest Department of the Government of NCT, for cutting of trees and their replantation/transplantation. The IGL has produced the copy of the letter dated 23 March 2005 addressed to the Secretary, Environment Government of NCT of Delhi seeking permission for felling the trees and for their plantation/transplantation as per prevailing norms, prior to allotment of land.

7. The plot was allotted for the purpose of putting up a CNG Mega bus filling station, in accordance with the zonal plan and the rest of the land it is contended, can be continued for use as mentioned by the petitioners viz. as park/woodland. The IGL states that before making provision for CNG site in the area necessary clearance was obtained from the Forest Department Government of NCT. Necessary compliances were to be made by it in accordance with the allotment conditions

8. It is averred that approximately 2250 square metres of the park, out the the total allotted area of 3000 square metres, is undeveloped. The total area of the DDA park is approximately 57,500 square metres. IGL claims that it was formed to implement the directions of the Supreme Court to expand CNG infrastructure to ensure sufficient availability of the product, for the transportation sector in Delhi. With this intention, the IGL approached the DDA for allotment of a large piece of land in order to put up the Mega CNG filling station. IGL stated that the site at which CNG station is being set up is proposed to cater to buses in West Delhi which has no other mega filling station; approximately 1800 buses would be so catered daily. It is stated that the intended Mega station at the site, opposite Jail Road will also cater to light goods vehicles and CNG vehicles.

9. The IGL wrote to the Government of NCT on 23rd March seeking permission for plantation/transplantation of the trees located in the plot, the underdeveloped part of the park; permission was granted on 12th of April 2005. The IGL approached the DDA for allotment of land; the DDA on the 20-11-2005 allotted the designated land measuring 3000 square metres at Jail Road for setting up of

the CNG MEGA bus filling station. IGL also alleges that it was directed to deposit the sum of Rs. 20,01,204/- which was done and all the conditions stipulated by the DDA were fulfilled to enable it to take possession of the land which was actually secured on April 18, 2006. The IGL states that the Master and Zonal Plans, as amended, show that the plot can be used for petrol pump purposes. The Dy. Conservator of Forests considered all these factors, and approved felling of trees by letter on 5 May 2006. The IGL, in order to fulfill the requirement of transplantation/re-plantation of trees approached the Assistant Director of Forests seeking permission to transplant 58 trees and plant 790 other trees in view of 79 trees felled by, it in the same DDA park, where, in one corner, the said plot was allotted to it. The DDA granted permission for plantation of the additional trees in the park; the applicant IGL completed plantation of 1373 trees, approximately 20 times the number of the trees felled. Permission was granted on 12th June 2006. The IGL also states that it has complied with each of the permissions required by it before proceeding to setup the CNG station at the allotted site. It claims to be conscious about importance of the human factor and that health along with the environment are foremost for the preservation of life in Delhi.

10. The the DDA in its counter-affidavit states that the plot use was changed in the year 1999 by resolution No. 51 of 1999 for purposes of petrol pump; a copy of the resolution approving the change, indicated by the draft zonal plan for the concerned Zone G i.e. for West Delhi has been placed on record. It is also stated that the change was notified by a draft published and made available to members of the public on 20th of December 1996 in accordance with Section 10 of the Delhi Development Act, 1957 read with Rule 5 of the Delhi Development (Master Plan and Zonal Development Plan) Rules 1959. It is Therefore alleged that the use having been changed in 1999 from park, into one of petrol pump in a part of the park, there is nothing objectionable or unlawful in utilisation of the plot for the purpose of setting up of a CNG Mega filling station.

11. Mr. Raman Kapoor learned Counsel submitted that the materials on record show that considerable public monies were spent or expended by the DDA to develop the entire area in excess of five acres as a park. That area was being used as such, for a long period. It formed a valuable lung space for the entire community forming residing in the EA, EB and EC blocks of flats, at Maya Enclave constructed by DDA. The use as park was continuous and the community had a valuable and legitimate right in its continued use as such. The DDA could not have altered the character of the lands in question as a park and converted it for the purpose of a CNG filling station.

12. Learned Counsel also contended that putting up of the mega filling station at the cost of the green area would be irreparably injurious to the health and well-being of the residents of the locality generally and also pose hazards. It was contended that the area is thickly populated and one of the blocks is barely 60 m away from the Mega filling station. Besides the nature of the activity namely

Mega filling station (as the title itself implies), would mean that large buses and heavy vehicles would be plying and parked on the road; stopping all at all times of the day even during night hours. Indeed the nature of the business activity that is filling compressed natural gas into the tanks of large vehicles is premised on use of the plot primarily during night hours. This is detrimental to the general environment and also causes considerable nuisance and disturbance to members of the public, particularly residents of the three blocks whose association is before the court.

13. Counsel further submitted that there are a number of other CNG stations located in the vicinity indeed on the same road. In the circumstances the positioning of the Mega filling station after clearing the trees would not only be injurious to the health of the general public but would be contrary to the intention of greening Delhi and undermining the effort of DDA in expending considerable amounts of money for development of the park. Reliance was placed upon the answers given to certain queries under the Right to Information Act, disclosing that an amount in excess of Rs. six lakhs was spent during the last year for the purpose of planting trees on the plot and in five acres of the park generally. Mr. Kapoor relied upon various decisions of the Supreme Court to say that once an area or land is earmarked and used as a park and the local residents as well as the public at large is permitted to use it, the use cannot be altered as the park/green area vests or inheres in the community.

14. Learned Counsel submitted that as per policy of the Central Government, by virtue of directives of the Urban Development Ministry, being Notification No. K-20013/32/96-DDIB (which finds mention in the letter of IGL to the Government of NCT of Delhi dated 23-3-2005) dated 1-9-998 a DDA district, or regional or other developed park cannot be used for any other purposes. It was submitted that as per letter of DDA dated 11-4-2005 (No. PA/JDI/API/03/D-173/D-27) the land in question was shown as the part of district park and the number of trees, on the said area/part of the park, were 139. Counsel relied upon the decision of the Supreme Court reported as Dr. G.N. Khajuria and others Vs. Delhi Development Authority and others, in support of the submission that the park being developed, could not be used for any other purpose. He also stated that these relevant and vital considerations were completely overlooked by all the respondents, who mechanically allotted the area, and handed over possession of the plot to IGL.

15. Learned Counsel for IGL and DDA placed strong reliance upon the Resolution of DDA, viz No. 51/1999 and submitted that whatever be the use as per the unamended Zonal Plan G, the situation altered considerably after the amendment; the part of the park was carved out was earmarked for the purpose of petrol pump. It was submitted that neither the petitioners nor their individual members objected to the change, after it was duly notified in the public domain, and the affected, and interested parties were granted opportunity to object to the proposal. Not having availed of the opportunity granted in 1996, the

petitioners cannot be heard to complain, at this stage.

16. Counsel submitted that the conditions imposed upon the IGL, to facilitate and undertake social and compensatory forestation were sufficient to safeguard any environmental concerns. More than 20 times the number of trees felled had to be, and substantially were replanted/transplanted. In these circumstances, the members of the petitioners had no cause to complain.

17. It was lastly contended that the IGL acquired the plot, and has placed orders for the import of expensive equipment to commission the mega filling station. Land being scarce, and largely unavailable, the petitioners could not question the wisdom or choice in the location of a plot deemed suitable for allotment to it. Equally, the petitioners could not dictate as to where the Mega Filling station ought to be located. All these fell within the exclusive domain of executive decision or policy making, and under no circumstances fall for judicial determination.

18. The above factual narrative shows that the DDA had developed and maintained an area of 57,500 sq. metres as park/green area. It was being used by residents of Maya Enclave, i.e. the three blocks in question. Apparently, DDA had expended considerable monies for the annual maintenance of the park. In 2003, IGL approached it for allotment of a portion of the park, i.e. the plot in question, measuring 3000 sq. metres. This required felling of trees; DDA asked IGL to obtain the necessary permissions for doing so, from the forest authorities of the Government of NCT. The IGL approached the authorities for felling 115 trees, the description of the trees has been provided in a tabular form. Many trees have large girths, and are perhaps old. The forest authorities granted permission. The proposed mega filling station is slated to cater to 1800 heavy vehicles and buses, daily, besides a large number of light vehicles. The plot is near EC block, faces the District Jail, and is also near an educational institution, i.e. the ITI.

19. The IGL and DDA contend that use of the park, as far as the plot is concerned, was changed into petrol pump, by resolution 51/1999 of the DDA. The draft amendment was notified, and none of the residents objected to the change. Therefore, there is nothing wrong or arbitrary in the proposal to use the plot for a mega filling station; the IGL has taken sufficient steps, to replant a large number of trees, and earmarked over Rs. 3.50 lakhs for the purpose.

20. The above discussion shows that the court has to resolve two competing interests. One, the right of residents of Maya Enclave to preserve the existing green/park areas, particularly when the DDA itself developed them and expended monies, and maintained it as such. The second interest is the one in a public authority, viz the DDA's obligation to provide adequate facilities for the burgeoning vehicular population, as far as availability of fuel sources and filling stations, at convenient distances are concerned. It is common knowledge that CNG is regarded as the most environment-friendly fossil fuel in the country, for

use by motor vehicles.

The legal position

21. As per provisions of the Master Plan 2001, which is in force, permissible uses of various zones and categories of land have been indicated. Those provisions dealing with Regional, District and neighborhood parks do not permit use of such green areas for petrol pumps. The relevant provisions are extracted below:

P1 Regional Park

Regional Park, Residential Flat (For watch & ward), Picnic Hut, Park, Shooting Range, Zoological Garden, Bird Sanctuary, Botanical Garden, Local Government Office (Maintenance), Open Air Theatre, Police Post, First Post, Orchard, Plant Nursery and Forest.

Any structure in this use zone shall be of temporary nature.

P2 District Park

District Park, Residential Flat (For watch & ward and maintenance staff), Play Ground, Swimming Pool, Recreational Club, Children Traffic Park, Specialised Park/Ground, National Memorial, Bird Sanctuary, National Garden and Zoological Garden."

This is a significant aspect, because the IGL and DDA have placed reliance solely on the amendment to the Zonal Development Plan, in 1999, to say that a part of the park could be used for a petrol pump.

22. Copies of the public notice, issued u/s 10 of the Delhi Development Act, for change of the Zonal Plan in Zone G, and the resolution approving the change, i.e. Resolution No. 51/1999 have been produced. However, they do not clearly show any thinking that the a part of the admitted public park, measuring over 57,000 square metres, or about twelve acres, was to be diverted for use as a petrol pump, or that the petrol pump could be located in the park. The uses to which green areas such as District, Regional and neighborhood parks can be put to is clearly defined in the Master Plan; they do not permit construction and use of petrol or gas station.

23. In Bangalore Medical Trust Vs. B.S. Muddappa and others, , the Supreme Court, speaking about the need to factor in preservation of parks, in the planning process, stated as follows:

Public park as a place reserved for beauty and recreation was developed in 19th and 20th century and is associated with growth of the concept of equality and recognition of importance of common man. Earlier it was a prerogative of the aristocracy and the affluent either as a result of royal grant or as a place reserved for private pleasure. Free and healthy air in beautiful surroundings was privilege of few. But now it is a, "gift from people to themselves". Its importance has multiplied with emphasis on environment and pollution. In modern planning

and development it occupies an important place in social ecology. A private nursing home on the other hand is essentially a commercial venture, a profit oriented industry. Service may be its motto but earning is the objective. Its utility may not be undermined but a park is a necessity not a mere amenity. A private nursing home cannot be a substitute for a public park. No town planner would prepare a blueprint without reserving space for it. Emphasis on open air and greenery has multiplied and the city or town planning or development Acts of different States require even private house owners to leave open space in front and back for lawn and fresh air. In 1984 the B.D. Act itself provided for reservation of not less than 15 per cent of the total area of the layout in a development scheme for public parks and playgrounds the sale and disposition of which is prohibited u/s 38-A of the Act. Absence of open space and public park, in present day when urbanisation is on increase, rural exodus is on large scale and congested areas are coming up rapidly, may give rise to health hazard. May be that it may be taken care of by a nursing home. But it is axiomatic that prevention is better than cure. What is lost by removal of a park cannot be gained by establishment of a nursing home. To say, Therefore, that by conversion of a site reserved for low lying park into a private nursing home social welfare was being promoted was being oblivious of true character of the two and their utility.

In the recent decision reported as Friends Colony Development Committee Vs. State of Orissa and Others, ,the Court stated the law in the following terms:

22. In all developed and developing countries there is emphasis on planned development of cities which is sought to be achieved by zoning, planning and regulating building construction activity. Such planning, though highly complex, is a matter based on scientific research, study and experience leading to rationalisation of laws by way of legislative enactments and rules and regulations framed there under. Zoning and planning do result in hardship to individual property owners as their freedom to use their property in the way they like, is subjected to regulation and control. The private owners are to some extent prevented from making the most profitable use of their property. But for this reason alone the controlling regulations cannot be termed as arbitrary or unreasonable. The private interest stands subordinated to the public good. It can be stated in a way that power to plan development of city and to regulate the building activity therein flows from the police power of the State. The exercise of such governmental power is justified on account of it being reasonably necessary for the public health, safety, morals or general welfare and ecological considerations; though an unnecessary or unreasonable intermeddling with the private ownership of the property may not be justified.

The above decision was followed later in Bombay Dyeing and Mfg. Co. Ltd. Vs. Bombay Environmental Action Group and Others, . In Intellectuals Forum, Tirupathi Vs. State of A.P. and Others, the Supreme Court held as follows:

The world has reached a level of growth in the 21st century as never before

envisaged. While the crisis of economic growth is still on, the key question which often arises and the courts are asked to adjudicate upon is whether economic growth can supersede the concern for environmental protection and whether sustainable development which can be achieved only by way of protecting the environment and conserving the natural resources for the benefit of humanity and future generations could be ignored in the garb of economic growth or compelling human necessity. The growth and development process are terms without any content, without an inkling as to the substance of their end results. This inevitably leads us to the conception of growth and development which sustains from one generation to the next in order to secure "our common future". In pursuit of development, focus has to be on sustainability of development and policies towards that end have to be earnestly formulated and sincerely observed. As Prof. Weiss puts it, "conservation, however, always takes a back seat in times of economic stress". It is now an accepted social principle that all human beings have a fundamental right to a healthy environment, commensurate with their well-being, coupled with a corresponding duty of ensuring that resources are conserved and preserved in such a way that present as well as the future generations are aware of them equally.

24. The overarching public interest principle, then is that society has to preserve and protect the environment, as we live upon resources, borrowed, as it were from the future generations. In the judgment of the Full Bench, reported as *Joginder Kumar Singla and Others Vs. Government of N.C.T. of Delhi and Others*, the concept of public trust, applicable to all State institutions and agencies, in such matters, was explained in the following manner:

15. Under the public trust doctrine it is the obligatory duty of the Development Authority as well as the Corporation to maintain public places as public places, to maintain residential areas as residential areas and it is for these authorities not to allow anyone to deface the area. Public trust doctrine is part of Indian law. Those who are charged with the administrative responsibilities, under the pressures of the changing needs of an increasingly complex society, cannot be allowed to encroach upon the rights of the residents.

25. The park in question comprised of about 12 acres. As per provisions of the Master Plan areas in a park cannot be used for setting up a petrol pump; it is not a permitted "use". The DDA developed and maintained the park. The area which is sought to be used by IGL, itself contained 115 trees which were sought to be felled. The petitioners were using a jogging/walking track, which was part of the plot. The reply to a query raised by the petitioners was that in the previous year, alone over Rs. 6 lakhs were spent by DDA for maintenance of the park. A notification/order of the Union Urban Development ministry exists, to the effect that developed parks cannot be used for petrol pumps; this was brought to the notice of the IGL, by the horticultural department of DDA. As against this, the proposal of IGL would imply use of the mega filling station by 1800 heavy vehicles, daily besides a large number of other vehicles. The very nature of the

activity is such that it would probably be carried on round the clock. Residences in Block EC are located 60 metres away from the plot; a jail complex is located opposite the plot, and nearby, a technical institution (ITI) exists, which is visited every day by students. These facts not only show that environmental concerns are involved, but also safety and security of the locality is at stake.

26. In view of the above factors, I am of the opinion that the respondents, particularly DDA and Government of NCT, did not apply their minds properly to all the relevant facts. The DDA seems to have proceeded on the assumption that the Zonal Plans having been changed, there was no need to inquire further, and the area could be allotted for use of a mega gas filling station. While the need to have such a station cannot be doubted, the balancing of relevant considerations, such as the developed nature of the park, the substantial amounts expended to maintain it, every year, its use by residents all these years, security and safety concerns on account of the populace and structures, including residences and educational institution in its vicinity, and the likely impact of such a gas station on the persons living or using the area, had to be necessarily balanced, particularly in the light of the Central Government's directive not to use any developed park for setting up a petrol pump.

27. Every administrative or statutory authority is duty bound to take into consideration all relevant facts, and eschew from consideration factors that are irrelevant and not germane. However, here the DDA seems to have taken only one factor into consideration, i.e. change of Zonal Plan, while ignoring all other relevant factors mentioned above. In view of the decisions of the Supreme Court, and the imperative of preservation of parks and green spaces, environmental concerns too were relevant, but were ignored. As a result, the decision to allot the land for use by IGL as petrol pump, cannot be sustained.

28. In the light of the above discussion, the writ petition deserves to be allowed. The DDA is directed to re-consider the matter afresh, after appropriately considering the Notification of the Central Government, dated 1-9-1998, No. K-20013/32/96-DDIB and in the light of provisions of the Master Plan, the amounts spent by it for developing the park in question, the likely impact of shrinking of the green area, and putting up of the mega filling station, on the people and institutions (ITI, jail) in the vicinity, while deciding the matter afresh. The respondents are restrained from disturbing the status quo regarding use of the plot, till the decision is taken, pursuant to the above directions.

29. The writ petition is Therefore, allowed in the above terms; no costs.