

(2004) 04 AHC CK 0055
In the Allahabad High Court
Case No : Writ Petition No. 1742 (MB) of 2004

K.A. Wadhwani

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 22-04-2004

Acts Referred:

Constitution of India, 1950 — Article 21, 51A

Citation : (2004) 4 AWC 3505

Hon'ble Judges : Vishnu Sahai, J;A. Mateen, J

Bench : Division Bench

Advocate : Padam Kirti, for the Appellant; Maneesh Kumar, T. Somwanshi and R.K. Chaudhary, for the Respondent

Judgement

Vishnu Sahai, J.—Through this writ petition, which has been preferred under Article 226 of the Constitution of India under the caption "Public Interest Litigation" petitioner Mr. K.A. Wadhwani, who styles himself as a Social Worker, having interest in causes of public, has made the following prayers to this Court :

"(i) issue a writ in the nature of mandamus directing the opposite party Nos. 3, 4 and 5 to prevent the abuse of the park in future ;

(ii) issue a writ in the nature of mandamus directing the opposite party Nos. 6 and 7, S.S.P., Lucknow, S.O. Gomti Nagar, to take strict legal action against the opposite party No. 8 in accordance with the provisions of law ;

(iii) issue a writ in the nature of mandamus directing the opposite party No. 8 to give damages of rupees 2 lacs to the N.G.O. Harit Prabhat for development of the park to its earlier beauty ;

(iv) allow the writ petition with cost in favour of the petitioner and against the opposite parties."

2. The factual matrix, in brief, from which this writ petition arises is as under :

There is a public park sanctioned by the Lucknow Development Authority and

shown in its Master Plan which is located in front of House No. 3/210, Vishal Khand, Gomti Nagar, Lucknow. The Lucknow Development Authority entered into a contract with a Non Governmental Organisation (N.G.O.) called Harit Prabhat for development of said park vide contract No. 34/A.A.E.M./03 (Parks). The said N.G.O. started development of the park from 27.10.2003 and provided for lawn turf, hedges, decorative, flowering plants and seasonal plants. The petitioner also joined hands with the said N.G.O. In due course of time, the park became one of the best parks in the area where local residents used to come for morning walk and children used it to play. In the month of February, 2004, the petitioner learnt that opposite party No. 8 Mr. Naresh Chaudhary wanted to use the said park for the wedding ceremony of his daughter. Consequently, the petitioner apprised the Secretary of the N.G.O. who wrote a letter to opposite party No. 3 Vice Chairman, Lucknow Development Authority on 3.3.2004, requesting him to prevent opposite party No. 8 Mr. Naresh Chaudhary from using the park for the purpose of wedding. In due course the opposite party No. 8 sent Invitations for the marriage. The petitioner sent a legal notice to opposite party No. 3 on 9.4.2004, through an advocate of this Court mentioning therein the aforesaid facts and averring therein that the Allahabad High Court, Lucknow in P.I.L. Writ Petition No, 2435 (MB) of 2001. Nishatganj Residents Welfare Association v. State, vide its judgment dated 23.12.2003 has passed orders that all developed parks shall be maintained and protected by the Municipal Corporation/ Development Authorities who shall ensure that they are not misused. In the notice it was mentioned that in view of the aforesaid judgment of this Bench Mr. Naresh Chaudhary, opposite party No. 8 be prevented from using/damaging etc. the said park and damages be realised from him. On 9.3.2004, the Officer on Special Duty, Lucknow Development Authority, informed Station Officer, P.S. Gomti Nagar, Lucknow (opposite party No. 7) that, the park should not be used for such functions. Despite this, opposite party No. 8 Mr. Naresh Chaudhary went ahead and performed the marriage of his daughter on 14.3.2004 in the said park, resulting in the park being spoiled, the plants, flowering beds, hedges and boundary wall being damaged. Photographs showing the damage have been annexed as Annexures-8A, B, C and D to the writ petition.

3. We have heard Mr. Padam Kirti, counsel for the petitioner, Ms. Tanuja Somwanshi, counsel for opposite party Nos. 1, 2, 6 and 7, Mr. R.K. Chaudhary, counsel for opposite party Nos. 3, 4 and 5 and Mr. Maneesh Kumar, counsel for the opposite party No. 8.

We have also perused the counter-affidavits filed by Mr. Rakesh Verma, Officer on Special Duty, Lucknow Development Authority, Lucknow and S.I. Ram Iqbal Singh, Sub-Inspector, P.S. Gomti Nagar, Lucknow.

4. A perusal of the affidavit filed by Mr. Rakesh Verma would show that it is not disputed that a public park has been sanctioned by the Lucknow Development Authority in front of House No. 3/210, Vishal Khand, Gomti Nagar, Lucknow. Its perusal would also show that the said park is maintained by Harit Prabhat, a

N.G.O. on behalf of the Lucknow Development Authority which has provided funds to it and the High Court has issued a direction that the said park would not be used for any other purpose. A perusal of the said affidavit would further show that the Lucknow Development Authority was aware of the orders of the High Court passed in Writ Petition No. 2435 (MB) of 2001 (PIL) and on 9.3.2004, the Officer on Special Duty of Lucknow Development Authority, Lucknow, wrote a letter to Station Officer, P.S. Gomti Nagar, Lucknow and also sent its copy to the Circle Officer, Gomti Nagar stating therein that necessary action be taken for complying the orders of the High Court passed in Writ Petition No. 2435 (MB) of 2001 (PIL) and the park should only be used in the manner permitted by the High Court in Its order passed in aforesaid writ petition. A copy of said letter is annexed as Annexure-C.A. 3 to the counter-affidavit. Finally it has been averred in the affidavit that no such damage, as has been referred to in the writ petition, has been reported by the inspecting staff of the Lucknow Development Authority.

5. Mr. R.K. Chaudhary, learned counsel for the opposite party Nos. 3, 4 and 5, i.e., Vice-Chairman, Lucknow Development Authority, Lucknow, Officer on Special Duty, Parks, Lucknow Development Authority ; and Assistant Engineer, Parks, Lucknow Development Authority respectively contended that a perusal of the averments contained in the counter affidavit filed by Mr. Rakesh Verma would show that the said opposite parties cannot be faulted as requisite Information was sent by them to opposite party No. 7, i.e.. Station Officer, P.S. Gomti Nagar, Lucknow, that the park in question should be strictly used in terms of the judgment of this Court in Writ Petition No. 2435 (MB) of 2001 (PIL).

6. We now take up the averments contained in the counter-affidavit filed by S.I. Ram Iqbal Singh, Sub-Inspector, P.S. Gomti Nagar, Lucknow. Paragraph 16 of said affidavit would show that although the Lucknow Development Authority sent a letter on 9.3.2004, which was addressed to Station Officer, P.S. Gomti Nagar, Lucknow, but said letter was not dropped at the office of Station Officer, P.S. Gomti Nagar, Lucknow, but for reasons best known was sent to Police Chowki Ambedkarnagar, Vipin Khand, Gomti Nagar, Lucknow and along with the said letter, the letter (notice) of Mr. Abid Ali was not sent. It has also been averred therein that a perusal of the letter mentions about some encroachment in the park before house No. 3/210, Vishal Khand, Gomti Nagar, Lucknow, only and the details of the encroachment, which the Lucknow Development Authority always furnished, were not mentioned in the letter. In para 17 of the affidavit, it has been averred that the Department had no knowledge that a marriage ceremony was going to be held on the said date i.e., 14.3.2004.

7. Ms. Tanuja Somwanshi, learned counsel for opposite party Nos. 1, 2, 6 and 7, i.e., State of U. P. through Chief Secretary, Civil Secretariat, Lucknow ; Principal Secretary, Home, Civil Secretariat, Lucknow ; Senior Superintendent of Police, Lucknow and Station Officer, P.S. Gomti Nagar, Lucknow, respectively emphatically urged that a perusal of paragraphs 16 and 17 of the affidavit of S.I. Ram Iqbal Singh make it manifest that a copy of the notice dated 9.3.2004 sent

by Mr. Abid Ali, advocate to opposite party No. 3, i.e., Vice-Chairman, Lucknow Development Authority, was not sent to police station Gomti Nagar, Lucknow. She also contended that paragraph 17 of the counter-affidavit of S.I. Ram Iqbal Singh shows that the police personnel at P.S. Gomti Nagar, Lucknow, had no knowledge that marriage of the daughter of opposite party No. 8, i.e., Mr. Naresh Chaudhary was to be performed in the said park.

In short, the submission of Ms. Somwanshi is that in the circumstances, neither opposite party No. 7, i.e., Station Officer, P.S. Gomti Nagar, Lucknow, nor opposite party No. 6, the Senior Superintendent of Police, Lucknow, can be faulted.

8. Mr. Maneesh Kumar, learned counsel for the opposite party No. 8, i.e., Mr. Naresh Chaudhary did not file affidavit of the said opposite party and true to his customary fairness, did not dispute that in view of the judgment of this Court in Writ Petition No. 2435 (MB) of 2001 (PIL), the park in question could not have been used by opposite party No. 8 for the wedding of his daughter. He also did not dispute that on account of the wedding, the park had been damaged. He candidly admitted that opposite party No. 8 was prepared to compensate the Lucknow Development Authority, which was maintaining the said park through the N.G.O. Harit Prabhat. Mr. Maneesh Kumar urged that a perusal of the photographs annexed to the writ petition, which have been filed as Annexures-8-A, B, C and D show that the damage caused to the park was not substantial. He contended that a compensation of rupees ten to fifteen thousand would satisfy the ends of justice.

9. We have bestowed our anxious consideration to the submissions of Mr. Maneesh Kumar. In our judgment, for determining the quantum of compensation, it would be erroneous merely to go by the extent of damage to the park. We feel that the compensation should be such that it would act as a deterrent for others not to use the park in the manner or its like, as it has been used by opposite party No. 8, Mr. Naresh Chaudhary.

10. It should be borne in mind that one of the two fundamental rights guaranteed by Article 21 of the Constitution of India is "right to life" and implicit in said right is right to lead a healthy life in our judgment for guaranteeing the right of a healthy life, sanctity of parks is to be maintained because in them, young and old, men and women, healthy and sick, walk, exercise and breathe fresh air. And who can dispute the importance of good health today because in view of the prohibitive cost of medical treatment, illness is a luxury which only the rich can afford. We make no bones in observing that this has also weighed with us in determining the quantum of compensation.

11. Before proceeding to the operative part of the judgment, we would like to refer to the fundamental duty (g) enshrined in Article 51A of the Constitution of India. Article 51A(g) reads thus :

"51 A. Fundamental duties. It shall be the duty of every citizen of India :

(g) to protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures,"

It would become manifest from a perusal of Article 51A(g) of the Constitution that it is the duty of every citizen of India to protect and improve the natural environment. In our judgment, parks would fall in the expression "natural environment" as used in the said provision. Consequently, it follows as a logical imperative that it is the bounden duty of every citizen of India to protect and improve parks rather than desecrate them, as has been done by opposite party No. 8 Mr. Naresh Chaudhary.

Considering the overall circumstances, we are of the judgment that Rs. 25,000 (Rupees twenty five thousand) as compensation would meet the ends of justice.

12. In the result, this writ petition is allowed. Opposite party No. 8 Mr. Naresh Chaudhary is directed to deposit a sum of Rs. 25,000 (Rupees twenty five thousand) as compensation in the office of opposite party No. 3, i.e., Vice-Chairman, Lucknow Development Authority, Lucknow, who shall ensure that the said amount is used for the purposes of restoration/improvement of the public park sanctioned by the Lucknow Development Authority and shown in the Master Plan located in front of house No. 3/210, Vishal Khand, Gomti Nagar, Lucknow.

We also direct opposite party Nos. 3, 4 and 5, i.e., Vice-Chairman, Lucknow Development Authority, Officer on Special Duty, Parks, Lucknow Development Authority and Assistant Engineer, Parks, Lucknow Development Authority, Lucknow, respectively to prevent misuse of the park in question in future.

Since we have directed opposite party No. 8, i.e., Mr. Naresh Chaudhary to pay compensation of Rs. 25,000, we do not think it conducive to the cause of justice to issue a mandamus directing opposite party Nos. 6 and 7, i.e., Senior Superintendent of Police, Lucknow and Station Officer, P.S. Gomti Nagar, Lucknow, respectively to take strict action against opposite party No. 8 in accordance with law, as prayed by the petitioner.

There shall be no orders as to costs.

We would like to close this judgment with a hope that in future, officials of the Lucknow Development Authority and the police shall ensure that parks are only used for the purposes for which they are meant.

A certified copy of this judgment shall be issued to learned counsel for the parties by tomorrow.