

(2015) 04 AHC CK 0067

In the Allahabad High Court

Case No : Public Interest Litigation (PIL) No. 15255 of 2015

L.K. Khurana

APPELLANT

Vs

State of Uttar Pradesh and Others

RESPONDENT

Date of Decision : 22-04-2015

Acts Referred:

Constitution of India, 1950 — Article 21

Citation : (2015) 5 ALJ 214 : (2015) 111 ALR 647 : (2015) 3 AWC 3026 :
(2015) 3 UPLBEC 2075

Hon'ble Judges : D.Y. Chandrachud, C.J.;Manoj Kumar Gupta, J

Bench : Division Bench

Advocate : Shams Uz Zaman, for the Appellant; B. Dayal and Tabish Sheikh,
Advocates for the Respondent

Final Decision : Disposed off

Judgement

Dr. Dhananjaya Yashwant Chandrachud, C.J. and Manoj Kumar Gupta, J.—In the city of Meerut, there is an area called the Town Hall and Gandhi Park; the area is used by morning walkers and it is not in dispute that it is the only open area available in the vicinity. A Committee consisting of the Chief Engineer of the Meerut Development Authority, Meerut, the Chief Engineer of the Nagar Nigam, Meerut and a member of the Development Authority resolved on 23 January, 2015 to construct a multi level parking facility in the area of the park and to develop a park on the roof top of the parking facility. The existing park is also known as Gandhi Park as a statue of the Father of the Nation, Mahatma Gandhi, is installed in it. The statue of Mahatma Gandhi is sought to be relocated towards the park near the main gate of the Town Hall, in the process of redeveloping the area into a multi level car parking facility. The petition, which has been filed in public interest, calls into question the legality of the proposed re-development.

2. Two counter affidavits have been filed in response to the petition. The Vice Chairperson of the Meerut Development Authority has stated in his counter that there was an acute shortage of parking space for vehicles and hence, a decision

was taken to select the present location for the construction of a multi level car parking facility. The counter states that on the top floor of the multi level car parking facility, a park and play ground would be developed and two heavy lifts would be provided for transporting people to the top floor of the multi level car parking facility. However, the affidavit fairly states that in the event, this Court holds that it would not be proper to construct a multi level car parking facility, having due regard to the environmental needs of the area, the Committee would find out some other place for the construction of a multi level car parking facility.

3. A counter affidavit has been filed by the Commissioner of the Nagar Nigam. According to the counter, the area of the Town Hall, which ad-measures 7200 square meters, is not recorded as a park in the revenue records, but the land is being used as open area for the Town Hall. The counter admits that the land adjacent to the Town Hall is being used in the interest of the general public. The submission of the Nagar Nigam is that a decision has been taken to construct a multi level car parking facility at the Town Hall, since it is situated in the centre of the city and is of "great interest to the public at large".

4. From the affidavits filed in the present proceedings, it is clear that the area is recorded as a Town Hall in the revenue record. What is also not in dispute is the existence of the park adjoining the statue of Mahatma Gandhi. Again, what is not in dispute before the Court, is that the area is an open space and is being used as such by the general public as a recreation space including by morning walkers. There is no dispute about the factual position that there is no other open area in the vicinity, which would subserve the purpose.

5. The Supreme Court has in a line of authority, beginning with the decision in Bangalore Medical Trust Vs. B.S. Muddappa and others, AIR 1991 SC 1902 : (1991) 3 JT 172 : (1991) 2 SCALE 131 : (1991) 4 SCC 54 : (1991) 3 SCR 102 : (1991) 2 UJ 415 taken a serious view of the violation of urban planning norms resulting in a diversion of public parks and open spaces for alien purposes. In Bangalore Medical Trust, a nursing home was sought to be situated on a public park. Holding that this was impermissible, the Supreme Court observed as follows:

"(23). The scheme is meant for the reasonable accomplishment of the statutory object which is to promote the orderly development of the city of Bangalore and adjoining areas and to preserve open spaces by reserving public parks and playgrounds with a view to protecting the residents from the ill- effects of urbanisation. It was meant for the development of the city in a way that maximum space is provided for the benefit of the public at large for recreation, enjoyment, "ventilation" and fresh air. This is clear from the Act itself as it originally stood. The amendments inserting Sections 16(1)(d), 38A and other provisions are clarificatory of this object. The very purpose of the BDA, as a statutory authority, is to promote the healthy growth and development of the city of Bangalore and the area adjacent thereto. The legislative intent has always been the promotion and enhancement of the quality of life by preservation of the

character and desirable aesthetic features of the city. The subsequent amendments are not a deviation from or alteration of the original legislative intent, but only an elucidation or affirmation of the same.

(24). Protection of the environment, open spaces for recreation and fresh air, playgrounds for children, promenade for the residents, and other conveniences or amenities are matters of great public concern and of vital interest to be taken care of in a development scheme. It is that public interest which is sought to be promoted by the Act by establishing the BDA. The public interest in the reservation and preservation of open spaces for parks and playgrounds cannot be sacrificed by leasing or selling such sites to private persons for conversion to some other user. Any such act would be contrary to the legislative intent and inconsistent with the statutory requirements. Furthermore, it would be in direct conflict with the constitutional mandate to ensure that any State action is inspired by the basic values of individual freedom and dignity and addressed to the attainment of a quality of life which makes the guaranteed rights a reality for all the citizens".

Again, the Supreme Court observed as follows:

"(37).....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 moto 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 blue print 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 BD Act itself provided for reservation of not less than fifteen per cent of the total area of the lay out in a development scheme for public parks and playgrounds the sale and disposition of which is prohibited under Section 38A 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 into a private nursing home social welfare was being promoted was being oblivious of true character of the two and their utility."

A similar view was taken in another decision of the Supreme Court in Dr. G.N. Khajuria and others Vs. Delhi Development Authority and others, AIR 1996 SC 253 : AIR 1995 SC 253 : (1996) 4 JT 7 : (1996) 3 SCALE 123 : (1995) 5 SCALE 172 : (1996) 8 SCC 95 : (1995) 5 SCC 762 : (1995) 3 SCR 212 Supp : (1995) 2

UJ 656 . While holding that the diversion of a space meant for a park into a nursery school is impermissible, the Supreme Court observed as follows:

"(8). We, therefore, hold that the land which was allotted to respondent No. 2 was part of a park. We further hold that it was not open to the DDA to carve out any space meant for park for a nursery school. We are of the considered view that the allotment in favour of respondent No. 2 was misuse of power, for reasons which need not be adverted. It is, therefore, a fit case, according to us, where the allotment in favour of respondent No. 2 should be cancelled and we order accordingly. The fact that respondent No. 2. has put up up some structure stated to be permanent by his counsel is not relevant, as the same has been done on a plot of land allotted to it in contravention of law. As to the submission that dislocation from the present site would cause difficulty to the tiny tots, we would observe that the same has been advanced only to get sympathy from the Court inasmuch as children, for whom the nursery school is meant, would travel to any other nearby place where such a school would be set up either by respondent No. 2 or by any other body."

In *M.I. Builders Pvt. Ltd. Vs. Radhey Shyam Sahu and Others*, AIR 1999 SC 2468 : (1999) 5 JT 42 : (1999) 5 SCALE 155(1) : (1999) 4 SCALE 209 : (1999) 6 SCC 464 : (1999) 3 SCR 1066 a decision had been taken by the Lucknow Nagar Mahapalika, permitting a builder to construct an underground shopping complex in the Jhandewala Park situated in Aminabad market, Lucknow. A learned Single Judge of this Court held the decision to be unlawful and a mandamus was issued to the Lucknow Nagar Mahapalika to restore back the park to its original position. While considering the matter, the Supreme Court observed as follows:

"51. Jhandewala Park, the park in question, has been in existence for a great number of years. It is situated in the heart of Aminabad, a bustling commercial-cum-residential locality in the city of Lucknow. The park is of historical importance. Because of the construction of underground shopping complex and parking it may still have the appearance of a park with grass grown and path laid but it has lost the ingredients of a park inasmuch as no plantation now can be grown. Trees cannot be planted and rather while making underground construction many trees have been cut. Now it is more like a terrace park. Qualitatively it may still be a park but it is certainly a park of different nature. By construction of underground shopping complex irreversible changes have been made. It was submitted that the park was acquired by the State Government in the year 1913 and was given to the Mahapalika for its management. This has not been controverted. Under Section 114 of the Act it is the obligatory duty of the Mahapalika to maintain public places, parks and plant trees. By allowing underground construction Mahapalika has deprived itself of its obligatory duties to maintain the park which cannot be permitted. But then one of the obligatory functions of the Mahapalika under Section 114 is also to construct and maintain parking lots. To that extent some area of the park could be used for the purpose

of constructing underground parking lot. But that can only be done after proper study has been made of the locality, including density of the population living in the area, the floating population and other certain relevant considerations. This study was never done. Mahapalika is the trustee for the proper management of the park. When true nature of the park, as it existed, is destroyed it would be violative of the doctrine of public trust as expounded by this Court in *M.C. Mehta Vs. Kamal Nath and Others*, (1999) 4 CompLJ 44 : (1996) 11 JT 467 : (1997) 2 SCALE 7 : (1997) 1 SCALE 9 : (1996) 9 SCALE 141 : (1997) 1 SCC 388 : (1996) 10 SCR 12 Supp . Public Trust doctrine is part of Indian law. In that case the respondent who had constructed a motel located at the bank of river Beas interfered with the natural flow of the river. This Court said that the issue presented in that case illustrated "the classic struggle between those members of the public who would preserve our rivers, forests, parks and open lands in their pristine purity and those charged with administrative responsibilities who, under the pressures of the changing needs of an increasingly complex society, find it necessary to encroach to some extent upon open lands heretofore considered inviolate to change".

6. In our view, the efforts on part the part of the Meerut Development Authority as well as the Nagar Nigam to convert an open space which is used for recreation including by morning walkers into a multi level car parking facility, cannot be countenanced. These areas are the lungs of the urban areas. The counter affidavit filed by the Nagar Nigam seems to take a casual view of the urbanisation of the city of Meerut. What the Commissioner of the Nagar Nigam has clearly ignored, is the duty of the Nagar Nigam to ensure that the right to life of the citizens of the city, which is protected by Article 21 of the Constitution, is not violated by depriving the citizens of the use of open spaces. Constructing a multi level car parking facility and expecting citizens to use the terrace of a concrete structure as a play ground and as a park would be travesty of urban planning. A citizen has every right to utilise a park in its conventional form. As regards open spaces, the right of a citizen to use them, cannot be abrogated by expecting all citizens, irrespective of age or disabilities to utilise the top floor or terrace of a constructed building, as recreation. This simply cannot be acceptable. Walking on the terrace of a multi storeyed building is no substitute for being rooted to the earth. We express the deep concern of the Court about the manner in which public authorities are eying the few remaining open spaces in urban areas for commercial development. The need of citizens to a holistic pattern of life in the urban areas cannot be sacrificed at the altar of human avarice and greed. Rapacious urban sprawls will destroy the remaining green areas, if unchecked.

7. In the circumstances, we hold and declare that the proposal for the re-development of the area of Town Hall and its appurtenant park into a multi level car parking facility is against the intent of the statutory provisions and cannot be approved. The Meerut Development Authority shall in terms of the statement made in the affidavit, be at liberty to pursue any alternative proposal for

constructing a multi level car parking facility. The authorities are directed to maintain the area of the park as a park.

8. The writ petition is accordingly disposed of.