
(2009) 11 DEL CK 0387

In the Delhi High Court

Case No : WP (C) No. 6950 of 2009 and CMs 2309, 3588, 3925, 4894, 5329/09

Paryavaran Avam Januthan Mission (Regd. Society) and
Another

APPELLANT

Vs

Lt. Governor and Others

RESPONDENT

Date of Decision : 18-11-2009

Acts Referred:

Constitution of India, 1950 — Article 14, 19, 21, 48A, 51
Delhi Development Act, 1957 — Section 14, 7, 8

Citation : (2009) 11 DEL CK 0387

Hon'ble Judges : A.P. Shah, C.J.; Dr. S. Muralidhar, J

Bench : Division Bench

Advocate : R.P. Bansal, Rakesh Mahajan and Sheetesh Khanna and Raj Panjwani, Amicus Curiae and S.S. Jauhar, in CM 3925/0 A. Munjhal, for the Appellant;

Final Decision : Disposed Off

Judgement

S. Muralidhar, J.

Introduction

1. The Parya Varan Avam Januthan Mission, a registered Society formed with the object of protecting and promoting the cause of pollution free environment, and its President, are the two petitioners before this Court. This petition concerns the Ajmal Khan Park, located in Karol Bagh in the hub of West Delhi's thickly populated commercial and residential areas. The park has existed since 1920 and is spread over a total area of 24.83 acres. It is divided into four squares. The "ornamental" portion of the park is said to be 18.43 acres. In the remaining area of 4.8 acres community functions are held. This is the only major park in the area. The apprehension expressed by the petitioners, who are residents of the area, is that over the years the park has been used for purposes other than what is permissible in terms of the Master Plan for Delhi (MPD) 1962, 2001 and 2021. The immediate cause for concern is the proposed construction in the park of an

indoor basket ball stadium by the Municipal Corporation of Delhi (MCD), Respondent No. 2 herein, in violation of the MPD norms.

2. It is stated that since 1972 an area in the north-east square of the park measuring 2117 sq m. is being used as an open basket ball stadium. It is named as the Master Prithvi Nath Stadium and consists of a covered management block and an open rectangular shaped stadium having eight rows of concrete seating stands which can seat around 1500 to 2000 spectators. It is not in dispute that the said open basket ball stadium is the property of the MCD. It is claimed that in the past national level basket ball championship tournaments have been organized in the stadium but it does not meet the essential requirement for organizing international level tournaments. It is stated that there is no other stadium in this area.

3. The Ajmal Khan Park has been designated as a District Park in successive Master Plans of Delhi i.e. MPD 1962, 2001 and MPD 2021. The park is situated in the B-2 sub-zone. It was designated as a special area under both the MPD 2001 as well as MPD 2021. In terms of the MPD 2001, for the B-2 sub-zone, an area of 33 hectares has been designated for parks and the norm specified is 2 hectares of park per 10000 persons. However, on account of scarcity of open area in the zonal plan for 2001, 7.47 hectares was proposed in the B-2 sub-zone for neighbourhood parks and playgrounds.

Previous litigation

4. The petition states that this Court has been approached earlier for protection of the Ajmal Khan Park. W.P. (C) No. 14261 of 2004 titled Bharushtrachar Virodhi Sangathan v. LG and Ors. was filed to protest against the MCD collecting charges for the use of the parks in Delhi for community functions like marriages. The petitioners there had sought a direction to the respondents to stop the illegal use of farm houses, banquet halls, vaticas, parks and other premises for commercial activities. An application being CM No. 10024/2004 was filed seeking a direction to seal the farm houses, banquet halls, parks being used for commercial activities without licence. On 6.7.2005, a Division Bench of this Court issued the following directions in the said writ petition:

the Corporation shall not allow anyone to use a property contrary to the Master Plan, on payment of charges or otherwise. The Commissioner is directed to appoint Special Officers to look into this problem and if there is any breach of the direction, the Officer concerned shall be held responsible.

It appears that thereafter the focus in W.P. (C) No. 14261 of 2004 shifted to the use of farm houses for holding marriages. On 10.10.2007 this Court was informed that certain guidelines had been framed by the GNCTD for regulating the use of farm houses for commercial purposes. On that basis, the said petition was closed. It is contended that as far as the Ajmal Khan Park is concerned, the directions issued on 6.7.2005 still hold good.

5. In 2005, a public interest litigation (PIL) in the form of W.P. (C) No. 12902/2005 titled Swamy Bhaskar Anand and Anr. v. Lt. Governor and Anr. was filed in this Court protesting against the decision of the MCD to permit the Delhi Tourism and Transport Development Corporation (DTTDC) to use the Ajmal Khan Park for promotion of tourism. The raising of concrete structures in the park at the instance of and for the use of the DTTDC was frowned upon by this Court. In response to the notice issued by this Court an affidavit was filed by the Additional Deputy Commissioner Development Land and Estate Department MCD stating that MCD has decided that Ajmal Khan Park will be used only for park purposes with an access to the public." This Court was further informed that the arrangement with the DTTDC for running a snack bar in a portion of the park that has been cancelled and the MCD has decided to return the money received from the DTTDC and is taking steps to restore the possession of the portion which is in their possession to the MCD.

6. In an order dated 8.11.2005 passed in the above writ petition, this Court observed as under:

Now it seems that DTTDC has also gone under the sway of globalisation and has contemplated to induct some outside agency for providing the facilities of banqueting under the name of International Food Plaza. A park which is not only of historical importance but situated in a densely populated area like Karol Bagh where there is hardly any other park of this size, should not be permitted to be used for putting an International Food Plaza. Government lands and municipal parks have to be saved from onslaught of commercialization, as the citizens of this city require green areas for their lungs. Food Plazas and commercial activities can be undertaken at other places and certainly not in a park like Ajmal Khan Park. Ajmal Khan Park should be used for the residents, for morning walkers, for the children and for other social activities and it is the obligation of the state including Municipal Corporation of Delhi to allow use of this park for the said purpose. The endeavour of the MCD ought to have been to make it a model park. We are putting this on record as we have been told that the standing committee of the MCD is seized with the matter and the Committee is going to meet within ten days. We are sure that standing Committee as the representative of the people of Delhi will keep all these aspect in mind.

7. On 2.8.2006 the Court took the above statement on record and disposed of the said petition. In the applications filed thereafter in the disposed of writ petition concerning return of the money by the MCD to the DTTDC, orders were passed on 23.1.2007. The Court took note of another affidavit filed by the MCD and the statement made by the Additional Deputy Commissioner, Land and Estate Department, MCD who was present in Court that the demolition of the structure had already taken place and that every effort is being made to restore the park in its original position. The Court then further directed as under:

In view of the affidavit filed before us and the undertaking given in court which we accept, we will finally dispose of this writ petition with clear direction that

within four week's from today the park shall be restored to its original position without any exception. We make it clear that if the efforts is not made and direction of the court in terms of the affidavits of the Commissioner MCD and as well as Additional Deputy Commissioner Land & Estate Department is not complied with, they shall be liable to be proceeded against for violating the order resulting in initiating of proceeding under the Contempt of Court Act. Liberty is granted to the parties to move the court in the event of default.

The present petition

8. The present petitioners state that they learnt subsequently of a decision taken by the MCD to construct a two-storied covered air conditioned stadium and commercial complex in the Ajmal Khan Park. A 100 tone AC plant for the said stadium was also proposed to be constructed. Copies of the working drawings for the said indoor stadium have been enclosed as Annexure P-2 to the writ petition. The petitioners state that a meeting was held with the local representatives. Two MLAs of the Delhi Legislative Assembly met the LG (Respondent No. 1 herein) on 25th July, 2008 in the presence of the Commissioner MCD and protested against any construction or concretization in the Ajmal Khan Park under the pretext of extension of Master Prithvi Nath Stadium for basket ball.

9. Following the above discussion, on 1.9.2008 a communication was addressed to one of the MLAs by the officer on special duty at the office of the LG enclosing a copy of the record of the meeting held on 25th July, 2008. Para 3 of the said record of the meeting reads as under:

3. Subsequent to detailed discussions and explanation offered by the Hon''ble MLAs, Commissioner-MCD was requested by the Hon''ble Lt. Governor to examine the case and put up the file for further orders. In the interim, it was decided that no construction whatsoever would be undertaken in the Ajmal Khan Park in the name of Extension of Master Prithvi-Nath Stadium which otherwise is presently being used by the general public of the area for physical fitness, social, religious and cultural activities. Subsequently the E-in-C, MCD has confirmed this office regarding suspension of any construction activity in the Ajmal Khan Park.

10. Following the aforementioned meeting, the petitioner on 12.8.2008 addressed a letter to the Secretary Environment Department, GNCTD pointing out that the proposed move to construct the air conditioned indoor stadium for basket ball at the Ajmal Khan Park would be detrimental to the environment and that all cemented constructions which were going on must be demolished. The present petition was filed on 10th February, 2009 after it became clear that the respondents were going ahead with the construction of the indoor basket ball indoor stadium. The prayer in the writ petition is for a declaration that the construction of the proposed double-storied air conditioned indoor stadium in the pretext of extension of the Prithvi Nath Stadium for basket ball is in contravention of the MPD 2001 and MPD 2021. It seeks a writ of mandamus to the MCD to immediately stop the illegal construction of the indoor stadium as

being contrary to the MPD 2001 and MPD 2021 and to remove all the unauthorized construction and encroachment from the Ajmal Khan Park. Photographs of the ongoing construction activity have been placed on record. Annexed to the petition is also a copy of the report published by the Human Settlement Management Institute, HUDCO House Lodhi Road which has an entire portion devoted to the Ajmal Khan Park.

11. On 18.2.2009 while directing notice to issue to the Respondents this Court appointed Mr. Raj Panjwani, learned Senior Advocate as amicus curiae to inspect the park area and to file a status report. The report of Mr. Raj Panjwani was tendered before the Court on 24th February, 2009. The report inter alia indicated that a north east block of the park has since 1972 been an open court basket ball stadium known as the Master Prithvi Nath Basket Ball Stadium. At the time of the visit by Mr. Panjwani a section of the stadium had been demolished for the purposes of constructing the indoor stadium. As far as the new stadium was concerned, the learned amicus curiae found that 17 columns of the proposed 23 had been constructed. The area of the stadium was also increased as was shown in the photographs annexed with the report. It was observed that in the entire north east block which was barren four huge marriage pandals, which appeared to be semi-permanent, were erected. Photographs showing the marriage pandals and the cooking activity underway for the functions held therein have been annexed with the report. A tar road 600 feet in length and 100 feet in width had been constructed within the park to be used for access to the marriage pandals and for parking. In the proposed drawing of the stadium annexed to the report it is indicated that the existing area of the open stadium is 2649.44 sq.m. and the proposed area of the covered indoor stadium was 2971.73 sq.m. The amicus curiae was informed during the course of his inspection that the each of the four marriage pandals were being leased out by the MCD for a meager amount of Rs. 5000 per event. Behind the marriage pandals was a small room used as a gym, the condition of which was stated to be pitiable. There was a musical fountain located in the North West block which was deserted. The musical fountain was set up in 1996 and could accommodate about 700 people with an entry ticket of few a rupees each. It was not in operation for several years and found not to be serving any social or ecological function. The remaining two blocks namely South West and South East Blocks were the only areas which were used by around 3000 to 5000 people for their morning walks and other recreational activities. A large part of the South West Block however was found to be fenced by a grill and entry to this portion was restricted.

12. The amicus curiae in his report pointed out that the setting up of the pandals along with pantry/cooking facilities, installation of huge electric generators and construction of the road in the District Park was a prima facie violation of the MPD and the Zonal Plan.

13. On 24.2.2009 while taking on record the report of the amicus curiae an interim order was passed by this Court directing the respondents not to carry out

any construction activity in the park. The MCD was also directed to file the list of persons to whom the marriage pandals were let out in the last one year as well as the amount charged from them. On 24.3.2009 while granting the MCD two more days to file an affidavit on the above information it was directed that the MCD will not accept any further bookings for use of the park for functions till further orders.

14. An affidavit dated 16.3.2009 was filed by the MCD in which it was stated that the four slots in the north-eastern block were let out for marriage activities only for ten days in a month. Reliance was placed on para 9.6 of MPD 2021 to contend that sports activity. was permitted in the park. The list of persons to whom the marriage slots had been let out during the last one year was annexed.

The order dated 26.3.2009

15. On 26.3.2009 the following detailed order was passed by this Court:

The petitioners have filed this petition in public interest taking exception to the construction of a covered basket ball stadium in Ajmal Khan Park, which is an ornamental park names after a famous freedom fighter Hakeem Ajmal Khan and was inaugurated by a person none other than the Father of the nation. In the past, this Court had issued certain directions in respect of this park. In order dated 8th November, 2005 passed in W.P(C) No. 12902- 03/2005, the Court has observed that Ajmal Khan Park is not only of historical importance but situated in a densely populated area like Karol Bagh where there is hardly any other park of this size, which is available for the residents of the area. The Court has further observed that Government land and municipal parks have to be saved from onslaught of commercialization, as the citizens of this city require green areas. Food Plazas and commercial activities can be undertaken at other places and certainly not in a park like Ajmal Khan Park. Ajmal Khan Park should be used for the residents, for morning walk, for the children and for other social activities and it is the obligation of the State including Municipal Corporation of Delhi to allow use of this park for the said purpose. The endeavour of the MCD ought to have been to make it a model park. By a further order dated 2nd August, 2006, the Court has recorded that the MCD has filed an affidavit through its Additional Deputy Commissioner (Land & Estate), inter alia, stating that the MCD has decided that Ajmal Khan Park will be used only for park purposes with full access to the public and arrangement with Delhi Tourism & Travel Development Corporation for running a snack bar in a portion of the said park has been cancelled and the MCD has decided to return the money received from DTTDC and is taking steps to restore the possession of the portion which is in their possession to the MCD.

2. Ajmal Khan Park admeasuring about 24 acres is situated in West Delhi (Karol Bagh). It was established in 1921. A research report recently published by the Human Settlement Management Institute describes the Ajmal Khan Park as the only potentially green space within a 1 to 3 kilometers radius of cheek of jowl

cluster of residential colonies like Paharganj, Regharpura, Bedunpura, Devnagar, Naiwala, Sidipura among the many others. It is stated that such bastis and the densely built low-income areas occupy 50% of the area of Karol Bagh. The living condition of the people in these low income bastis prohibit the availability of open spaces within their residences. The narrow service lanes and the dense congestion precludes any scope of open space, let along green lands. As per the report of the learned Amicus Curiae Ajmal Khan Park is a rectangular shaped park and covers an area of 89,000 square meters or about 24 acres. A cross shaped path divides the park in four almost equal sized squares. The said four squares have been put to different uses and are referred to as North- West, North-East, South-West and South-East blocks in the report. The maps downloaded from Google on 19th February, 2009 of the area and the park are also produced on record.

3. Learned Amicus Curiae has reported that the North- East Block has an existing open court basket ball stadium known as the Master Prithvi Nath Basket Ball Stadium. It is stated that prior to 1972 an open court had been established and in the year 1972 an open rectangular shaped stadium having eight rows of concrete seating steps stand, which could seat about 1500 to 2000 spectators was constructed. The MCD has now undertaken the construction of a covered basket ball stadium by increasing the width by 9.-3 from points A. to D. and B. to C. and by increasing the length by 34.- 3 from point D. to C. as shown in the map submitted by learned Amicus Curiae. As per the sanctioned plan the new stadium will be fully air conditioned and a shopping complex is also provided in the stadium. The North-East block has no trees or vegetation. The entire remaining area is barren wherein four huge marriage pandals, which appear to be semi-permanent have been constructed. A tar road admeasuring about 600 feet in length and 100 feet in width has been constructed within the park, apparently to be used for access to the marriage pandals and for parking. Learned Amicus Curiae has opined that the setting up of the pandals along with pantry/cooking facilities, installation of huge electric generators and construction of the road in the District park (Green Area) prima facie may be in violation of the Master Plan and the Zonal Plan. Learned Amicus Curiae has reported that each of the four marriage slots is leased out by the MCD for a meager amount of Rs. 5000/- per event. It is also reported that just behind the marriage pandals lies a small room which is used as a gym which is lying in neglected condition.

4. Insofar as the North-West block is concerned learned Amicus Curiae has reported that there is a musical fountain located within this block, which is now deserted and it is not in operation for last several years. This entire area is lying unused and not serving any ecological function. It is further reported by learned Amicus Curiae that the remaining two blocks, viz., South-West and South-East are the only areas, which 3000 to 5000 people (approximately) are able to use for their morning walks by the senior citizen groups and for other recreational activities. However, a large part of the South-West block which has an exclusive well kept park, has been fenced by a grill and the access has thus become very

restrictive. According to learned Amicus Curiae the condition of the South-West and South-East blocks needs to be improved upon.

5. Our attention is also brought to the order passed by the Supreme Court in *M.C. Mehta v. Union of India and Ors.* I.A. Nos. 20-22, 34 & 35 in Writ Petition (Civil) No. 4677/85. In this case, the Supreme Court expressed concern that large number of parks in the city are being used for construction of marriage pandals and for hosting other functions also. The Court observed that the permitted use of the parks being recreation under the Master Plan, it cannot be permitted for any other use. But at the same time, keeping in view the need of the society, it is necessary to bring the parks back to their normal use in a sustained manner. The Court was of the view that the MCD, the NDMC and the DDA should in a phased manner stop granting of permission for use of the parks for commercial/marriage purpose. Consequently, the Court issued the following directions:

(1) The use of parks by the MCD, the NDMC and the DDA for the purposes mentioned above shall not be permitted more than 10 days in a month. In other words when any of the designated park is used for such purpose 10 days in a month, no function thereafter shall be permitted during the remaining 20/21 days.

(2) The MCD, the DDA and the NDMC shall make endeavour to construct community halls for the purposes of marriages etc.

(3) The number of parks indicated by the 3 authorities used for marriage etc. shall be reduced by 30% by June 30, 1997. It shall be reduced by further 20% by December 31, 1997. In other words, by the end of December 1997, the use of the parks for marriage etc. shall be reduced by 50%. The authorities concerned shall file affidavits standing the progress in the projects for construction of community halls and also stopping the use of the parks for marriages etc. by the end of December 1997. This may be monitored further by this Court in 1998.

(4) We direct that no tree shall be cut from any of the parks for any purposes, specially to facilitate the holding of these functions etc.

6. It appears that neither the MCD, nor the NDMC and DDA have taken any effective steps to reduce the use of the parks for commercial and marriage purposes. The use of substantial park of Ajmal Khan Park for marriage purposes has been continued with impunity without any regard to the well being of the residents of the area, which is one of the most congested areas in the city and having practically no open area/park available for the residents.

7. In these circumstances, we are inclined to constitute a committee to inspect the park and report to this Court about the ecological/environmental impact of the construction of the closed door basket ball stadium and marriage pandal in the midst of a public park and to also suggest measures for restoration and improvement of the park. The committee shall be constituted of the following

members:

- 1) Professor S.P. Gautam, Chairman, Central Pollution Control Board, Parivesh Bhawan, East Arjun Nagar, Shahadara, Delhi 110 032 or his nominee.
- 2) Professor A.G.K. Menon, 84, Panchsheel Park, New Delhi.
- 3) Professor Nalini Thakur, 10, SPA Residents Complex, New Friends Colony, New Delhi.
- 4) Ms. Savita Bhandari, Director (Land Escaping), DDA.
- 5) Mr. Naresh Kumar, Additional Commissioner, MCD, who shall be the Member Secretary of this Committee.

8. The Committee shall submit its report within a period of four weeks from today. The parties are at liberty to submit their views to the Committee in writing.

9. Learned Counsel appearing for the MCD is directed to produce on record the order of the appropriate authority sanctioning the construction of the basket ball stadium in the park.

10. Interim orders to continue. The matter is adjourned to 6th May, 2009. Copy of this order be given dasti to the learned Counsel for the parties under signature of the Court Master.

16. On 22.4.2009 the court permitted the Reghar Pura Resident Welfare Association (Regd.) as well as the HIG, MIG, LIG DDA Flat Owners Welfare Association (Regd.) to intervene. The application for impleadment filed by the Avinash Society and its General Secretary Dr. Harish Bhalla was also allowed. These organizations represent diverse points of views on the issue. The former two organizations emphasise the need for spaces to organize community functions while the latter pleads for preserving the pristine character of the park as a lung space in Karol Bagh. The order dated 29.5.2009

17. The committee appointed by this Court submitted its report, after perusing which the following order was passed by this Court on 29.5.2009:

This public interest litigation pertains to the Ajmal Khan Park situated in the Karol Bagh area. By order dated 26.3.2009, this Court constituted a Committee to examine the ecological/environmental impact of the construction of the closed door basket ball stadium and marriage pandal in the midst of a public park and to also suggest measures for restoration and improvement of the park. The Committee, after elaborating the historical importance of Ajmal Khan park, has described the location of the park as follows:

The Ajmal Khan Park itself has a unique design, an ornamental park, with a curious mix of Mughal and European influences. The two main paths cutting across divides the rectangular space into four almost equal portions resembling a char bagh. The ornamental features enhance the early 20th century aesthetics. Parts of the park with mature trees still support considerable bird life and in its

heyday must have been spatially and environmentally comfortable shaping the ecology and microclimate.

Its historical values, as a early 20th century Park developed by the elite of the times and associational values with the freedom movement and personalities make it important in the National sense, for the city, and locally. Sustainability is achieved only when these values are taken to the future generations. The historic places have to be managed in such a way that the future generations will be able to read the city.

Today the Ajmal Khan Park is an important green lung for the Karol Bagh District. The complete park in shape size is critical and must be kept. The Park itself has a symmetry with the cross paths and the four parts. This is an original design intention and it has to be respected. The degradation of the basketball stadium portion of the Park has greatly diminished the values of this historic Park. It has to be restored.

Ajmal Khan Park has been designated as District Park in the Master Plan. There are many kinds of District parks in Delhi and some of them are located in archaeological area. The Medieval capitals of Delhi have been protected by this designation in the First Master Plan, which is considered as one of the achievements of the Delhi Master Plan. However from the 1980.s the consciousness of recreation and sports resulted in the development of these facilities within these designated greens causing irreparable loss by obliterating large extents of remains and archaeological evidences of the city. For example Siri, Hauz Rani etc. While recreation is allowed but a considered survey, documentation and investigation of the existing area prior to new development would have saved the underground and standing heritage. It can be concluded that District Parks in Delhi with heritage values have suffered because of an absence of a systematic and methodological intervention with both hind- sight and fore sight.

The Committee has strongly recommended to have comprehensive landscape plan by removing the boundary wall within the park and introducing more number of evergreen and deciduous trees. Horticulture Department of the MCD is directed to prepare the plan in the light of the recommendations made by the Committee and file the same in this Court before the next date. In so far as the basketball stadium is concerned, the Committee's report is as follows:

1. The existing area of the stadium is about 2117 Sqm and the proposed area of the basket ball stadium is 2876 Sqm as against 2117 Sqm resulting in an extension of 756 Sqm which is 0.75% of the total park area. The Committee inspected the existing gym of area 370 Sqm and suggested to accommodate in the proposed basket ball stadium under the seating steps and the area of the existing gym can be converted into green. This will reduce the effective extension by 386 Sqm which is only 0.38% of the total park area.

2. As far as the proposed new construction of the Basketball Stadium is

concerned, the committee felt that the MCD should follow the provisions of the Master Plan of Delhi 2021. If the Master Plan does not permit the construction of the covered stadium then the existing open air stadium may be permitted to continue with the proposed new seating. In addition to this, in case of permissibility of indoor air-conditioned basketball stadium, the necessary clearances under the Water Act, 1974 and Air Act, 1981 shall be obtained from the Delhi Pollution Control Committee, Delhi to ensure installation of the requisite pollution control systems for the proposed expansion and air-conditioning of the Basketball Stadium.

It appears that the open air basketball stadium is in existence in the park since 1972. It is an open rectangular shaped stadium having eight rows of concrete seating steps stand of about 1500 to 2000 spectators. The existing area of stadium is about 2117 Sqm. whereas the MCD has now started construction of a closed door air- conditioned basketball stadium in the area of 2876 Sqm. as against 2117 Sqm. resulting in an extension of 756 Sqm. which is 0.75% of the total park area. Master Plan of Delhi 2021 is silent as regards any construction of an closed door basketball stadium within an ornamental park. DDA is directed to consider this issue and make a report to this Court within a period of six weeks from today. In so far as the community functions are concerned, the Committee's observations are as follows:

1. The Ajmal Khan Park is surrounded by densely populated residential colonies like Pahar Ganj, WEA Regarpura, Bedampura, Darnagar, Naiwala, Sidipura among many other of middle class community. There is a community demand to hold the function in the park as there is no other nearby place/community hall is available in the vicinity. But the small community halls of 200 to 300 persons capacity is existing at Patel Nagar East, Patel Nagar West, New Rajender Nagar, Dav Nagar and Regarpura.
2. In the Fourth segment of park, which is a ground without tree cover in which the stadium exists, and area of about 4.85 acres is in use for holding four social functions at a time, covering 1 to 1.5 acre each pandal.
3. In the matter of Patanjali Shiksha Sansthan about use of parks for social functions, in the Supreme Court of India, the MCD submitted the MCD would construct 10 new Community Halls every year subject to the availability of land and finance. The Hon''ble Supreme Court had directed that the number of parks indicated by the MCD, NDMC and DDA authorities used for marriages would be reduced by 30% by June 30, 1997 and shall be further reduced by 20% by December 31, 1997. Recently, there was an another Writ Petition (Civil) No. 501 of 2006 in the matter of Patanjali Siksha Sansthan Delhi regarding Community Halls, MCD had filed an affidavit that around 30 sites were proposed by DDA for the construction of the Community Centres and it was found that 16 of such sites can be used and utilized for construction of Community Halls. The MCD has also forwarded a further list of 23 sites for its approval and allotment and MCD is hopeful in getting these sites as well. Accordingly, it is recommended in long

term MCD may identify Community Hall sites near vicinity to construct facilities for organizing social functions till that time such social functions may be allowed to continue at this location. However, number of pandals be reduced to 3 from 4 and released area may be developed in green cover.

In the light of the Committee's report, we are inclined to permit the Community functions in three out of four places and the remaining area may be developed as a green cover. MCD is directed to submit a list of the sites adjoining the areas of Karol Bagh where the MCD proposes to construct the community centres in the light of the judgment of the Supreme Court in *M.C. Mehta v. Union of India*.

Interim orders regarding basket ball stadium to continue. Adjourned to 29th July, 2009.

Order dasti under the signatures of the Court Master.

18. Pursuant to the above order the MCD has on 22.8.2009 filed an affidavit enclosing a proposed plan for restoration improvement of Ajmal Khan Park. In the light of the observations and recommendations of the Committee, the internal walls within the park have been proposed to be removed. New trees are proposed to be planted. It is stated that three community halls have been constructed in the Karol Bagh zone after 1998. It is further stated that another community hall is being constructed at Inder Puri Naraina. The MCD had also sent to the DDA a list of sites either for allotment of construction for community halls and the DDAs response thereto is awaited.

19. On 13.10.2009 the DDA filed an affidavit in these proceedings categorically stating that an indoor basket ball stadium is not permissible in terms of the MPD-2021 in an ornamental park like the Ajmal Khan Park. It was pointed out that on 8.7.2009 the Commissioner MCD had sought a clarification in this regard from the Vice Chairman DDA and that by a letter dated 26.8.2009 the DDA had clarified the legal position to the MCD. According to the DDA, an indoor sports stadium and related facilities are part of Public-Semi Public land use and therefore not permissible in a District Park. The aforementioned letter dated 26.8.2009 written by DDA to the MCD reads as follows:

To,

Commissioner

Municipal Corporation of Delhi,

Town Hall,

Delhi-110006.

Sub : Construction of Indoor Stadium in Ajmal Khan

Park: Clarification on permissibility

Ref : PSC/607/2009 dated 08.07.2009

Sir,

This refers to your above letter addressed to Vice Chairman, DDA, with request to examine whether construction of Indoor Stadium is permitted in the Ajmal Khan Park under the provisions of MPD 2021.

In this regard, it is to convey that as per Master Plan, the Ajmal Khan Park is a District Park under Recreational land use .As such, Indoor Basket Ball Stadium is not permitted in the District Park.

As per MPD provisions, Indoor Sports Stadium and related facilities are part of Public Semi public land use.

Sd/-

(Partho Dhar)

Director, AP-II

MCDs record

20. The learned amicus curiae and the learned Counsel for the parties have been heard. The court has also perused the records of the MCD which consists of two files. These records show that on 31.3.2003 a letter was written to the Chief Architect, MCD by Mr. Ram Babu Sharma, a local MLA as follows:

Dear Shri Hadke,

On the request of Shri Harsh Vardhan Sharma, Hon"ble Area Councillor, Ward No. 29/Beadonpura, the undersigned convened a meeting in my chamber today at 1.00 p.m. regarding covering of Master Prithvi Nath Basket Ball Stadium. This meeting was also attended by Chief Architect. Since this has already been decided during the Budget Meeting of the House to cover the said stadium, Chief Architect is accordingly requested to please prepare the drawing for the same within a weeks time and submit the same to the E-in-C for further necessary action.

With regards.

Yours sincerely,

Sd/-

(Ram Babu Sharma)

21. Following the above letter, on 7.4.2003 the Chief Architect prepared a preliminary drawing and submitted it to the Engineer in Chief MCD with the copy to the Chairman of the standing Committee. In terms of the preliminary drawing it was proposed to increase the area of the Master Prithvi Nath Basket Ball Stadium. It is significant the above preliminary drawing was never got approved formally. In the records of the MCD is a letter dated 29.12.2005 by the Community Service Department MCD approving the work for covering of the

stadium along with other allied works. It was mentioned that the funds for the construction had been provided under the head of account XL-VIII M. A sum of Rs. 5 lacs was to be spent during the year 2005-06 and Rs. 227.32 lacs during 2006-07. On 29.3.2006 the works committee approved the proposal vide Resolution No. 92 dated 29.3.2006. On 30.3.2006 the MCD approved the proposal recommended by the Works Committee. A copy of the Resolution however shows that the approved outlay was for the year 2006-07 was increased to 326.36 lacs. It appears that on 3.6.2008 works order was awarded to M/s Mango Construction Co. in the sum of Rs. 3,56,43,343/- by the Project Division. On the file of the MCD is a note dated 18.7.2008 prepared by the Chief Architect giving the specifications of the Project and enclosing certain further drawings requesting that they should be forwarded to the competent authority for approval and further necessary action. On 21.7.2008 the Assistant Engineer prepared a further note in which it was stated as under:

Sub: C/o proposed Master Prithvi Nath Basket Ball Stadium at Ajmal Khan Park in KBZ.

The Architect deptt. has submitted the revised drawings along with the specification of the said work. The proposed dimension of the stadium are 234. 3 x 136. 5. The existing dimension of the stadium is 185. 0 x 118. 0. Accordingly, the dimension of the stadium has been increased by 49. 3 in length as well as 18. 5 in width. The length of the stadium has been increased by 34. 3 towards front side and 5. on the back side of existing rooms. However, the increase in the width has been restricted to 18. 5 by increasing the width equally on both sides.

Earlier, on the basis of previous proposed drawings and specifications, a work order vide No. 04/EE(Pr.)/TC/KBZ/08-09 dated 03.06.2008 for Covering of Master Prithvi Nath Basket Ball Stadium at Ajmal Khan Park in KBZ has been awarded to M/s Mago Construction Co. with the contractual amount of Rs. 3,56,43,343/-. However, as per the latest proposed drawings and specifications the items of the work will be revised and additional items are required to execute. The detail of the revised & additional items is being prepared by the consultants to whom the consultancy work was awarded.

Sh. Vijay Kumar Malhotra, MP alongwith Hon"ble Mayor of Delhi has laid the foundation stone of the proposed work on 03.07.08.

The proposal is put up for approval of revised drawings & specifications by the competent authority as desired by the Chief Architect at page 2/N of the file. The copy of drawings & the specifications are placed in the file please.

Sd/-

AE-I/(CWG)-III

There is no noting thereafter where any approval of any of the proposed drawings has been formally accorded. On the contrary, there was a note prepared by the AE on 25.8.2008 stating inter alia as under:

4. During the demarcation at site the proposed plan for the construction of the stadium, the resident's, users and the representatives of various originations have representatives of various organizations have representative against the increased in the size of the Stadium which may curtail the space for organizing the essential public activities due to limited space of the ground. They have desired to keep the size of the Stadium restricted to its existing size, keeping in view the other usages of the ground, which is in the largest interest of the public, while the Basket Ball game is not so much popular. As such the increase in the size of the Stadium will not be advisable in the largest interest of the public.

5. The proposal has been sent to the competent authority for approval to restrict the size of the Stadium to its existing size for renovation and to accord the permission for preparation of the fresh drawings within the existing size of the Stadium by the Arch depts. At present the work is held up at site and will be started after the approval, as above.

22. A noting of 25.9.2008 indicates that a discussion had been held with the Mayor, Leader of the House, Leader of Standing Committee at which the Commissioner MCD was also present. A meeting held with the LG in which the Commissioner MCD was also present. The LG desired a complete photograph of the area including all the important land marks and the area proposed to be used for the construction of the Indoor Basket Ball Stadium. The photographs then placed before the LG it was indicated on 8.10.2008 that the proposed extended area had no green cover and that Hon"ble LG may be requested to consider extension of the basket ball stadium. The Commissioner MCD on 2.12.2008 made a noting that the construction of the stadium at the Ajmal Khan Park had been halted following representations from various quarters. He stated in the note that he had visited the site on 2.12.2008 at 2.30 pm. He opined that the proposed extension as per the site plan available at page 24/c would not restrict/come in the way of organizing other activity in the park. The LG was asked to kindly approve continuation of the proposed extension. On 8.12.2008 the LG simply appended: as recommended.

23. It is significant that the plan at page 24/c is titled proposed drawing of stadium. The noting on the said proposed drawings indicates for approval only. The second part of the file of the MCD shows that till 8.7.2009 no letter was written by the MCD to the DDA to enquire whether the proposed construction of the indoor basket ball stadium at all permissible in terms of the Master Plan.

24. We must at the outset express surprise that the MCD should unilaterally proceed with the construction of an indoor basketball stadium unmindful of the MPD provisions that govern the National Capital Territory of Delhi. Further, given the previous round of litigation concerning the use of the Ajmal Khan Park for the DTTDC in which the MCD participated and filed an affidavit assuring that the said Park would not be used for any activity other than that permitted on law, MCD cannot be heard to say that it was unaware of the legal position concerning the MPD. The MCD is as much bound by the MPD as any other person wanting to

raise construction anywhere in the NCTD.

25. The committee appointed by this Court has pointed out that the Ajmal Khan Park was designated as a District Park even in the first MPD of 1962. The committee has pointed out that the park has a unique design. It is an ornamental park with a curious mix of Mughal and European influences. The two main paths cutting across divides the rectangular space into four almost equal portions resembling a char bagh. The ornamental features enhance the early 20th century aesthetics. The park along with the Tibbia College is a 20th century development. According to the committee, the park has historical value and associational values with the freedom movement and personalities make it important in the National sense, for the city, and locally. The report of the Human Development Institute focuses on the ecological significance of the Ajmal Khan Park. It is pointed out that the Karol Bagh division suffers from acute shortage of green areas and that of a total 790 acres under the Karol Bagh planning division there was only one big established park viz., the Ajmal Khan Park covering area of about 24 acres. This was mentioned in the draft zonal development plan for the Karol Bagh area in the P-2 sub-zone. The said report points out to the manner in which the commercial use of the Ajmal Khan Park has progressed over the years. It notes that:

A sea of structures was erected in this small park with surprising speed:

Unique Health Club in the N.E. block 1989

Two gates on the N.E. block 1994-95

Master Prithvi Nath Stadium in the N.E. block 1995

Musical Fountain in the N.W. block 1996

Two gates on the NW block 1996

Swings in the S.E. block 1996

Coffee House in the NW block 1999

Toilets at the entrance of the N.E. and S.E. gate 1999

Car Park in the N.W. block 1999

Tarred road through the N.E. block 1999

Master Plan for Delhi (MPD) Norms

26. We now turn to the provisions of the MPD. The first MPD was prepared in 1962 in terms of the Delhi Development Act 1957 (DD Act). The DD Act envisages three levels of plans the Master Plan (under Section 7 of the DD Act), the Zonal Development Plan (under Section 8 of the DD Act) and the Building/Lay Out Plan in terms of Section 14 of the DD Act. Under the MPD 2021 the entire Chapter 9 deals with environment. Clause 9.3 of the MPD 2021 which talks

of green/recreational areas reads as under:

Delhi has a much larger green cover than any of the other metropolitan city in the country, and could well be called a Green City. The green / recreational use constitutes 8,722 ha of land as per MPD 2001, which is around 19% of the total urban land area of 44,777 ha. This includes 1577 ha. Under the Northern, Central and South Central Ridge (the remaining area of the Ridge is in the rural area). The balance area under recreational / green use i.e. 7145 ha. Is in the form of District Parks, City Parks, Community Parks etc. comprising around 15% of the total urban land area. In addition to this, a large chunk of green area is provided in the form of Neighborhood Parks / Tot lots in the gross residential use zones, plantations / greens in large campuses like President's Estate, JNU, IARI, Delhi University, plantations along drains and roadside plantations. In addition to above, two Bio- diversity parks are under development by the DDA.

In the Urban Extension the green cover is to be provided at the rate of 15% of the total land, excluding the Ridge / Regional Park. Out of this, some area shall be developed in the form of formal parks for the community and the rest shall be developed as woodlands and incidental greens for balancing the environment. This will be in addition to the development of specialized parks like Bio-Diversity Parks, plantation along the roads, drains, riverbank, etc.

Further, Sports Complexes, which were included in the green/recreational use category under the MPD- 2001 will be seen under a separate category of sports. One of the main reasons for this modification is that, Delhi is emerging as an important centre for National and International sports events. Sports facilities are being developed by various agencies besides DDA in Delhi, mostly as a part of recreational activity / facility. As a result there is still a need for planned and structured sports infrastructure which can take care of training needs of sportsmen and also act as integrated sports complexes for national and international events. This will not disturb the green areas, which are meant for recreational purposes. Keeping this in mind, sports facilities have been included as a part of social infrastructure, which in turn may help to develop better sports infrastructure for training needs, related logistics and sports medicine etc. This will also facilitate private participation. Integrated sports complexes are envisaged under one roof to accommodate variety of sports and related functions, by way of facilitating wide-range of permissibility, ground coverage and FAR.

There is a clear policy shift spelt out in the above clause. While under MPD 2001 sports complexes were included as part of green/recreational activity, under MPD 2021, they are to be a separate category which will not disturb green areas meant for recreational purposes. Accordingly, sports facilities were included as part of social infrastructure.

27. The tables in Chapter 9 of MPD 2021 specify the norms of parks of three broad categories as under: Table 9.1: Planning Norms, Standards for

Recreational Areas / Parks at Sub-City Level

S. No. Category Planning Norms & Standards

Population /Unit Plot Area (Approx.) (Ha) 1. City Park 10 lakh 100 2. District Park 5 lakh 25 3. Community Park 1 lakh 5

Note: 5 to 10% of the area will be under use for rainwater harvesting/ water body.

Table 9.2: Planning Norms, Standards for Recreational Areas / Parks at Neighbourhood Level

S.No.	Category	Planning Norms & Standards	Population	Plot Area /Unit (Ha) (Approx.)
1.	Neighbourhood Park	1000	1.0	
2.	Housing Area Park	5000	0.5	
3.	Tot lot at Housing	250	0.0125	Cluster Level

In terms of Table 9.1, a District Park is expected to be having a plot area of 25 hectares for a population of approximately 5 lacs and a city park, a plot of 100 hectares for population of 10 lacs. By this norm, Ajmal Khan Park is a District Park. We have other kinds of parks namely the Neighbourhood Park, Housing Area Park (0.5 hectares). Table 9.4 is titled Permission of Use Premises in Sub Use Zones. The activities permitted in a District Park are specified in Clause 4 of the said table as under:

4. District Park, Theme Park, Recreational Club, National Memorial, Open-air food court, Children Park, Orchard, Plant Nursery, Area for water harvesting, Archaeological Park, Specialized Park, Amusement Park, Children Traffic Park, Sports activity, Playground, Amenity structures. Restaurant in a District Park having an area above 25 Ha. Subject to following:

- Area of the restaurant plot shall not be more than 0.8 Ha or 1% of the District Park, whichever is less.
- Restaurant plot shall have no physical segregation from the rest of the District Park area.
- The building shall be a single storey structure with max. FAR of 5 and height not more than 4m. without any residential facility and to harmonize with the surroundings.
- In case there is no parking lot in the vicinity, parking should be provided at a reasonable distance from the restaurants. Parking area should not form part of the restaurant complex/greens.

MCD relies heavily on the above clause to contend that since sports activity and recreation club are permitted in a District Park, an indoor basket ball stadium is in line with such permissible activity. On the other hand, it is contended by the

DDA that an indoor stadium is really a public or a semi public facility as envisaged under Clause 13.11 MPD 2021.

28. The learned amicus curiae has drawn our attention to certain other clauses which indicate that the stand of the MCD is untenable. Chapter 13 pertains to social infrastructure. The opening paragraph of this Chapter reads as under:

The quality of life in any urban centre depends upon the availability of and accessibility to quality social infrastructure. Social infrastructure can be looked at in terms of the facilities indicated in the City Level Master Plan, and Community Facilities, which are indicated at the layout plan level in various use zones. Together, these include social infrastructure facilities pertaining to health, education, sports facilities, socio-cultural activities, communications, security and safety, and other community facilities pertaining to recreation, religious activities, social congregations and community events, cremation / burial grounds etc. These are generally planned in terms of population norms with stipulated permissibility conditions and development controls.

29. Sports facilities, which would obviously include an indoor stadium have been separately specified under Clause 13.3. It will be recalled that they have been deliberately kept out of green/recreational areas due to the shift in the policy in the MPD 2021 when compared with MPD 2001. Under Clause 13.3 sports facilities are recognized as having to be established in commercial premises. The said clause reads as under:

13.3 Sports Facilities Delhi is emerging as an important centre for National and International Sports events.

Sizeable sports facilities have been developed in the City by various agencies like the Sports Authority of India (SAI), Delhi Development Authority (DDA), GNCTD, etc. However, sports activities, so far, been dealt with as a part of Recreational use. It is also felt that many of the facilities, which have been developed, could actually be seen as recreation and / or club type of facilities. As a result, even though the DDA has developed a large network of excellent sports facilities, over and above the facilities developed by the SAI, etc. there is an evident need for a properly planned and structured sports infrastructure in the city which, inter alia, should also be able to take care of mega / international sporting events, such as the forthcoming Commonwealth Games in 2010.

Even the various facilities, which have been developed as pure sports facilities, suffer from lack of full and proper utilization, and there are issues related to maintenance and resources for the same. With reference to the latter, for example, the Jawahar Lal Nehru Stadium premises are, on the one hand, presently under use for a variety of non-sports related activities and on the other hand, the Stadium itself cannot be used for anything but sports activities. The latter aspect, in turn, is characterized by gross under utilization. This also brings out the need for developing and prescribing planning and development control norms geared to planned, practical and proper development of sports facilities as

an important component of social development and optimum utilization of the facilities to be developed.

In addition to the above, there is a trend for development of gyms, spas, bowling alleys etc. at neighbourhood level. Since these are mostly being established as commercial ventures, provisions of land /space for these should be made in commercial premises.

30. Table 13.7 specifies the Planning Norms and Standards for Sports Facilities. Note (ii) thereunder states that the existence sport infrastructure shall be upgraded and efficiently re-planned to provide better facilities.

31. Socio-cultural facilities are separately indicated in Clause 13.8. It may be mentioned here that this is under Table 13.16 sets out the planning norms and standards for socio-cultural facilities. Clause 2 (b) of this Table envisages Recreational Club which can be set up in a plot area of 5000 square meters for a population of 5 lacs. Under Table 13.27 the use premises for recreational Club indicates the activities permitted in a Recreation Club. This is defined a Recreational Club as a premises having the facility for recreation with indoor sports, swimming pool, outdoor sports, socializing and gathering space for small functions with restaurant. The third column of this Table specifies the activities permitted in a recreation club.

Analysis of MPD provisions

32. The above provisions when read collectively show that A conspectus of the above provisions of the MPD 2021 indicates that a conscious distinction has been drawn between a sports activity. and a sports facility.. A basketball stadium, whether an open one or an indoor one would certainly answer the description of a sports facility and not a sports activity.. The scheme of the MPD 2021 in specifying norms for parks and sports facilities in two separate clauses viz., 9.3 and 13.3 respectively is consistent with the changed policy of separately dealing with sports facilities and not bring them within the ambit of green/recreational areas. Sports facilities and recreation clubs are in a separate chapter relating to social infrastructure and are specifically kept outside the chapter concerning the environment i.e. Chapter 9. This is clear from para 9.3 which states that sports complexes which were included in the green/recreational use category under the MPD-2021 will be seen under a separate category of sports. Further, "while green areas...are meant for recreational purposes", "sports facilities have been included as a part of social infrastructure, which in turn may help to develop better sports infrastructure for training needs, related logistics and sports medicine etc." An outdoor or indoor stadium is certainly not a recreational club. of the kind envisaged in Clause 4 of Table 9.4 or Table 13.16 or Table 13.27 referred to hereinbefore. Also, in terms of Clause 13.3. even for gyms, spas, bowling alleys etc. space is expected to be provided in commercial premises since they are mostly being established as commercial ventures. The only type of construction permitted in a District Park is for a restaurant the dimensions of which are

specified in Table 9.4. There can be therefore no manner of doubt that a sports facility like a basketball stadium whether outdoor or indoor cannot form part of a green area including a District Park.

33. Significantly the use of parks for setting up marriage pandals is not also an activity which is permissible in terms of MPD 2021. In this context, the reference is also been made the orders of the Supreme Court in the PIL in that court requiring the agencies to phase out the use of parks for marriage purposes way back in 1996 itself.

34. The MPD provisions have also to be viewed in the background of two provisions of the Constitution of India: Article 48A which states that The State shall endeavour to protect and improve the environment and to safeguard the forests and wildlife of the country and Article 51A(g) which mandates that It shall be the duty of every citizen of India- to protect and improve the natural environment including forests, lakes, rivers and wildlife, and to have compassion for living creatures. The judgments of our Supreme Court, in their expostulation of environmental jurisprudence foreground the constitutional scheme in which the right to health and in turn the right to a clean environment is seen as an inalienable part of the right to life under Article 21 of the Constitution. In *Intellectuals Forum, Tirupathi Vs. State of A.P. and Others*, the Supreme Court in para 73, explained these provisions thus:

Article 48A of the Constitution of India mandates that the State shall endeavour to protect and improve the environment to safeguard the forests and wild life of the country. Article 51A of the Constitution of India, enjoins that it shall be the duty of every citizen of India, inter alia, to protect and improve national environment including forests, lakes, rivers, wild life and to have compassion for living creatures. These two Articles are not only fundamental in the governance of the country but also it shall be the duty of the State to apply these principles in making laws and further these two articles are to be kept in mind in understanding the scope and purport of the fundamental rights guaranteed by the Constitution including Articles 14, 19 and 21 of the Constitution of India and also the various laws enacted by the Parliament and the State Legislature.

35. The MPD provisions are themselves a product of an intensive consultation process involving experts drawn from different disciplines. The provisions of the MPD reflect the key concerns of environmental law including the doctrines of sustainable development and inter-generational equity. Not only do the provisions enjoin us to preserve our precious natural resources for ourselves, but for the future generations as well. Our short-term developmental. needs should not dictate our present decisions that might make these very resources extinct for our future generations. The MPD provisions mandate strict compliance. Any deviation from those provisions would have to be viewed seriously. Likewise, any change to the provisions of the MPD will have to abide strictly by the procedure mandated in the Delhi Development Act.

36. The result of the above discussion is that the MPD 2021 provisions do not permit a sports facility in a district park like the Ajmal Khan Park. It appears therefore that without any change of user as specified in the MPD 2021, which change also has to take place in accordance with the due process of law, the MCD cannot justify the legal basis for the construction of the indoor basketball stadium in the Ajmal Khan Park.

Case Law

37. The settled law as regards the sanctity of master plan norms as explained in several decisions of the Supreme Court and the High Courts may be noticed. In *Dr. G.N. Khajuria and others Vs. Delhi Development Authority and others*, the Supreme Court disapproved of the conversion of an area meant for a park for the use of a school. The Court on that occasion observed as under:

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 of 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 some structure stated to be permanent by his counsel is not relevant, as the same has been done of 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.

38. The inviolability of the provisions of a statutory Master Plan was explained by the Supreme Court in *Bangalore Medical Trust Vs. B.S. Muddappa and others*, It explained the legal position thus (SCC, p. 69):

The scheme is a statutory instrument which is administrative legislation involving a great deal of general law-making of universal application, and it is not, therefore, addressed to individual cases of persons and places. Alteration of the scheme must be for the purpose of improvement and better development of the City of Bangalore and adjoining areas and for general application for the benefit of the public at large. Any alteration of the scheme with a view to conferring a benefit on a particular person, and without regard to the general good of the public at large, is not an improvement contemplated by the section.

In the same decision it was further emphasized that a space earmarked for a particular purpose under the Master Plan cannot be used for any other. It was observed (SCC, p. 70, 75):

once appropriated or applied or earmarked by formation of "open spaces" or for building purposes or other development in accordance with a duly sanctioned

scheme should not be used for any other purpose unless the scheme itself, which is statutory in character, is formally altered in the manner that the BDA as a body corporate is competent to alter. This section, of course, empowers the BDA to lease or sell or otherwise transfer any property. But that power has to be exercised consistently with the appropriation or application of land for formation of "open spaces" or for building purposes or any other development scheme sanctioned by the Government. Property reserved for open space in a duly sanctioned scheme cannot be leased or sold away unless the scheme itself is duly altered. Any unauthorised deviation from the duly sanctioned scheme by sacrificing the public interest in the preservation and protection of the environment by means of open space for parks and play grounds and "ventilation" will be contrary to the legislative intent, and an abuse of the statutory power vested in the authorities..

Protection of the environment, open spaces for recreation and fresh air, play grounds 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 play grounds 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.

39. In *Panchsheel Enclave Residents v. UOI* 2002 (vi) AD (Delhi) 641 (DB) the court prohibited the carrying on of construction in the vicinity of ancient monuments Blocks A and A1 of Panchsheel Enclave which fell in an area declared as a green belt. In *EC Pocket Maya Enclave Residents Welfare Association v. Delhi Development Authority* (decision dated 28.8.2006 in WP (C) Nos. 10546-51/2006) the residents of EA, EB and EC Blocks of Maya Enclave complained that part of an area meant for a park had been allotted to the third respondent, IGL, for the purpose of constructing a "CNG mega bus filling station". This Court held:

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.

The decision to allot the land for use by IGL as petrol pump, cannot be sustained.

40. In *Vivek Srivastava Vs. Union of India (UOI) and Others*, the petitioners contended that the respondents were planning to construct residential buildings in the "Polo Ground" which had remained an open land for the last hundred years. The petitioner alleged that the polo ground acted as the lungs for the citizens of Allahabad and if the residential buildings were allowed to be constructed thereon, the lungs would get choked. Further, the constructions would disturb the ecology and create a serious imbalance in the environment of the city. Accepting these contentions, the Allahabad High Court held: the land in question known as "Old Polo Ground" measuring approximately 22.77 acres of land, should not be used for the residential construction for the married accommodation project for the married officers of the Army. Consequently, a writ of mandamus was issued to the respondents, restraining them from making any construction on the Polo ground and maintain it as an open piece of land. In *D.D. Vyas and others Vs. Ghaziabad Development Authority, Ghaziabad and another*, the grievance of the petitioners, who belonged to a locality where the Adu Park was situated, was that though the said area was earmarked for being developed as a public park, the G.D.A. had taken no steps to develop it as a public park. Further the respondents were seeking to carve out plots in such open space in the plan and sell them for huge profits. The attempt by the G.D.A. to alter the plan for that purpose was challenged. Accepting the petition, the High Court held: Neither the Authority nor can the State Government amend the plan in such a way so as to destroy its basic feature allowing the conversion of open spaces meant for public parks.

41. The Andhra Pradesh High Court has consistently held that attempts at changing the use of green areas to commercial and other purposes in the layout plans would be impermissible in law. In *Sri Ramakrishna Educational Society Vs. Chairman, Nandyal Municipality and Another*, it was held by the High Court of Andhra Pradesh that an area earmarked as playground in the layout plan could be used by the residents of Nandyal Town for the purpose of children's games and sports, for a walking track, growing tree clusters or as a common meeting place. It was held that once the layout was approved considering the playground is part of the common area, the same cannot be converted into a business/commercial area by allowing a Rythu Bazar. Such conversion is impermissible in law. In *Bhagya Nagar Colony Welfare Association Vs. Government of A.P. and Others*, multi-storeyed residential complexes/group housing were constructed and houses were allotted in a portion of the land admeasuring 2,897 sq. yards which had been earmarked as a park/open space. It was held by the High Court of Andhra Pradesh that the Municipality shall immediately take action for demolishing and dismantling all structures, which have come up in the open area

admeasuring 2897 sq. yards in the layout approved by the Hyderabad Urban Development Authority, whatever be the amount spent on such structures, forthwith. The court however made an exception for a temple. It said: The actual area occupied by Shirdi Sai Baba Temple shall be excluded and other structures, be it, temporary or permanent, shall also be dismantled and removed forthwith. The area of about 2,597 sq. yards after excluding 300 sq. yards occupied by the temple shall be developed as a park. In Co-operative Housing Society, Saleemnagar Limited and another Vs. Municipal Corporation of Hyderabad and others, the first respondent had, instead of developing the area as a park, leased out about 1800 square yards of the park site to the second respondent for construction of school. Some other encroachments were also made in the said area. The first respondent was directed to take appropriate steps for removal of the encroachments in accordance with law and restore the park to its original position.

42. In Mittakola Venkata Rama Rao Vs. Sarpanch, Grampanchayath, Mahaboobabad Post, Warangal Dist and others, it was held: The Gram Panchayat cannot convert a part of the public park into a commercial complex and such construction would definitely have the effect of polluting the environment and ecology of the park and the town. The park had been in existence for more than 70 years and also had a historical importance, which had to be preserved not only by the Gram Panchayat, but by every citizen of Mahaboobabad and in fact they should be proud of such a park and if necessary it is their duty to develop the park into a beautiful park, so that the people of the area, including the children may go and relax during their off time. In P. Venkateswarlu Vs. Govt. of Andhra Pradesh and Others, the action of respondents 1 to 4 in permitting respondents 5 to 8 to construct a multi-storeyed commercial complex in an open space reserved for park, according to sanctioned layout, was held to be illegal. It was observed:

The Court while considering such a matter is not concerned with the consequences particularly where it concerns ecology. A park provides for some lung space. It is well settled that the community requires certain lung space and may also use open space for sports and other recreational activities. Parks or wetlands are also necessary for the purpose of maintaining ecological balance. The doctrine of public trust applies in relation to park where for the open space is earmarked for the purpose of park, and it becomes the statutory duty of the local authorities and other statutory bodies to maintain the same. The authorities of the Board have no right to do away therewith unless the Master Plan is modified in terms of the provisions of Section 12 of the 1975 Act read with Rules 13 and 13-A of the 1977 Rules. The Development Act, as noticed hereinbefore, envisages preparation of a Master Plan, which consists of various zones-the user of such zone is specified therein. Stages of development are also specified. A planned development is contemplated under the Master Plan and Zonal Development Plans. While doing so, larger public interest must be kept in view. A creature of a statute therefore cannot be permitted to violate the provisions of

the Act whereunder it was created.

43. In *Harijan Lay Out Sudhar Samiti and Others Vs. The State of Maharashtra and Others*, the Bombay High Court held that the action of the respondents in Nagpur converting areas earmarked for green belt/open space for housing purposes and allotting it to the respondent No. 8 was not permissible. It was observed that: neither the Development Authority nor the State Government can amend the plan, in such a way, so as to destroy its basic feature, allowing the conversion of open space meant for public parks. It was further observed:

Undisputedly, the City of Nagpur is one of the crowded city where the resident do not get anything but atmosphere polluted by smoke and fumes emitted by endless vehicle traffics. Besides this, the pollution is being caused by "Koradi Thermal Powers house". Hence, the importance of public parks, plantations and creation places cannot be under estimated. The Public Park is a gift of modern civilisation and is a significant factor, in the improvement of quality of life. It is, thus, clear that the action of the respondents.1 to 7, being inconsistent with and contrary to the legislative intent to safeguard the health, safety and general welfare of the people of the locality, the orders smack colourable exercise of powers and are opposed to the statutory scheme. Thus, it is a fit case, to issue writ of mandamus as prayed by the petitioners.

44. In *Modern Educational and Cultural Society Vs. Nizam and Others*, the allotment of an open space reserved as per approved scheme under Rajasthan Urban Areas (Sub-Division, Reconstruction and Improvement of Plots) Rules, 1975 by the Jaipur Development Authority to a private person/body for a school was held by the Single Judge to be illegal. The Division Bench in *Nizam and Others Vs. Jaipur Development Authority and Others*, affirmed this and held: The action of JDA in making allotment of the site in question in favour of Modern School to establish a school is invalid and without jurisdiction, being contrary to the legislative intent to safeguard healthy, safety and general welfare the people of the locality. It was also opposed to the statutory Scheme/ Plan. In *Rajasthan Housing Board Shopping Centre Vikas Samiti Vs. State of Rajasthan and Others*, the grievance was that the respondents were permitting vegetable vendors to construct shops in Park-A in Shastri Nagar, Jaipur. The Court held: There is no dispute the park-A was a facility area and further the Housing Board has not revised the scheme under Sections 29, 30 and 32 of the Housing Board provisions which was published in Gazette. The alleged allotment/permission is also contrary to the scheme as well as the provisions of the Housing Board and later on transfer of maintenance to the Municipal Corporation will also not give any right to the Municipal Corporation to issue the allotment order or grant permission to construct the platform. The action of the respondents was held to be illegal.

45. In *President, Kanan Vihar Development Society Vs. State of Orissa and Others*, the Orissa High Court observed: In case a particular area has been earmarked to be left as open space for public park in order to achieve the

environmental equilibrium, it should not be altered by any means by any authority unless there were compelling circumstances and the procedure prescribed by law has to be followed for the same.

46. For an instance of courts not permitting an underground water treatment plant in a park, reference may be made to the decision of the Court of Appeals of New York in *Friends of Van Cortland Park v. City of New York* 95 N.Y.2D 623, 630. The court was informed that the public would be deprived of the use of the park for five years during which the water treatment plant would be constructed and thereafter the park would be restored. That court held that prior legislative approval of the change in user was mandatory even if the proposal was that the park would ultimately be restored. Referring to the decision in *Williams v. Gallatin* 229 NY 248 the Court of appeals invoked the public trust and said: Though the water treatment plant plainly serves an important public purpose indeed eve the State Attorney General believes it should be built at the site selected our law is well settled: dedicated parks in New York are impressed with a public trust for the benefit of the people of the State. Their use for other than park purposes, either for a period of years or permanently, requires the direct and specific approval of the State legislature, plainly conferred.. Our Supreme Court too has reiterated the public trust doctrine as forming part of the environmental jurisprudence in this country (See generally *M.C. Mehta Vs. Kamal Nath and Others*, Position as regards the present case

47. In the background of the law as explained in the above decisions, we may now examine the position in the present case. The manner in which the MCD has gone about initiating and then executing the construction of an indoor basketball stadium in Ajmal Khan Park, without at any time making any reference whatsoever to the provisions of the MPD 2021 is, to say the least, wholly impermissible. The MCD has a statutory duty of ensuring that buildings or constructions in the areas in its control strictly conform to the planning norms. MCD is bound by the MPD 2021 and its predecessor the MPD 2001. The MCD could not have possibly been ignorant of the fact that construction of any sports stadium in a District Park was clearly impermissible in law either in terms of the MPD 2001 or the MPD 2021. The stand now taken on affidavit by the MCD that the Table 9.4 of the MPD 2021 which talks of a sports activity in a District Park in turn permits the construction of a stadium is really an argument of desperation. No such stand appears to have been taken at any time when the proposal of the MCD for construction of the stadium was being considered up to the level of the LG. The MCD is not above the law. It is bound by the MPD norms as much as any other entity or person desirous of raising any construction.

48. At this juncture a reference may be made to the decision of the Division Bench of this Court in *Delhi Science Forum Vs. Delhi Development Authority and Another*, where this Court prevented the DDA from going on with the construction of a mass housing project on a land in respect of which the change in the land use from rural to urban in accordance with the procedure outlined

under the DD Act had not taken place. Reminding the DDA that however high you may be, the law is higher than you, this Court disapproved of the DDA going ahead with the construction of the housing project without first getting the change of land use effected. The said decision would apply in the instant case to prevent the MCD from going ahead with the construction of the indoor stadium which is impermissible under the provisions of the MPD 2021 as they presently stand.

49. There is another aspect of the matter. The MCD does not appear to have at any point of time got the plan for the construction of the indoor stadium formally approved. There is no such endorsement on any sanctioned building plan concerning the stadium. The notes on file only talk of the approval of the LG for extending the area of construction. The manner of preparing a plan and getting it approved is not unknown to the MCD. Unless there is a properly prepared plan bearing the endorsement of a competent architect who has examined it and affixed an approval, it cannot be said to be a duly sanctioned/approved building plan. In the file of the MCD there is no such document concerning the indoor basket ball stadium. This is a matter for concern. The MCD itself is an authority which sanctions building plans of private individuals and a rigorous process is followed before such approval is accorded. The MCD hardly needed be reminded of its statutory obligations under the MPD 2021. While the DDA is entrusted with the overall responsibility of ensuring the plan development of Delhi, the provisions to DD Act and the binding nature of the Master Plan can be no different for the MCD. In fact this Court would hold the MCD, which is an authority of the State, to the strictest standard when it comes to building norms. The MCD simply cannot itself be seen to be violating either the planning norms or the building norms. The MCD would have to lead by example.

50. The other peculiar feature of the case is that the LG, who approved the decision of the MCD to extend the area of the existing open basketball stadium is also the Chairman of the DDA. The LG wears two hats. One is that of the ultimate executive authority representing the GNCTD whose approval for such proposal is sought by the MCD. The other is as the head of the premier planning organization, the DDA, a statutory body entrusted with the statutory responsibility of ensuring the planned development of Delhi in accordance with the MPD. It is apparent that when his approval was sought by the MCD for the extension of the indoor basketball stadium at the Ajmal Khan Park, the LG's attention was not drawn to the MPD 2021 norms. 51. If the MCD was in any doubt as to what was permissible in the Ajmal Khan Park then the previous litigation concerning its permission to the DTTDC to have a facility inside the park should have served as a reminder. The orders passed by the Court in *Swamy Bhaskar Anand* were a clear warning that the MCD could ill afford to breach statutory norms. It appears now that those orders were not a sufficient deterrent.

Conclusions and Directions

52. In light of the law, as consistently explained by the Supreme Court and

several High Courts including this Court, we hold that the construction of an indoor basketball stadium in the Ajmal Khan Park is impermissible in law. The decision of the MCD in this regard is hereby declared to be illegal and quashed.

53. The consequential order as a result of the above declaration is that the entire construction activity in connection with the indoor basketball stadium, which has already been stopped, should be reversed and the park restored to its original position within the time frame indicated hereafter. The MCD will forthwith ensure the removal of all structures and any concretization of the north eastern block for the purposes of the indoor basket ball stadium. This area will be restored as a park for use by the public.

54. It was strenuously pleaded by the learned Counsel for the MCD that since an open basket ball stadium was operational since 1972 inside the park that should be permitted to continue. It is also pointed out that there is no other sports facility in the Karol Bagh area and the young population who would otherwise have to travel long distances for availing all similar facilities would be benefited by such a facility. We are not persuaded to accept the plea for more than one reason. In the first place, the mere fact that an activity not permissible inside a district park has been carried on since 1972 will not lend it legality. Secondly, with the commencement of the illegal construction of the indoor stadium, the open stadium has already been demolished. The photographs in fact show that right now the open stadium does not exist. This Court is not inclined to direct restoration of a structure which to begin was not permissible to be erected in a district park. Finally, we find that for the Commonwealth Games 2010 there are sports facilities coming up in Delhi. It is likely that after the event many of these facilities will be made available for use by the public. The transportation facilities are also likely to improve making some of these facilities accessible to the youth of Karol Bagh.

55. We wish to clarify that as long as sports activities are permitted in the district park, the local population can continue to use the Ajmal Khan Park for that purpose without in any manner impairing the essential features and character of the park. This does not mean that a sports facility like a stadium can be erected in the park. Norms will have to be laid down for the use of the park for sports activities including regulating the hours and the area within the park where such activity can be permitted.

56. As regards use of the park for marriages and other community functions, this Court has by the order dated 26th August, 2009 reduced the number of places for use of such functions to three. This however is not meant to continue definitely. The affidavit filed by the MCD indicates that three community halls have been constructed in 1998 in the Karol Bagh zone. One more hall in the zone is under construction. We are, therefore, inclined to continue the order permitting the holding of community activities in three places in one corner of the park for a further period of one year, subject to certain conditions which we direct must be scrupulously enforced. Such activity in those three areas in the

north-eastern block of the park will be completely stopped after one year. The conditions are that such functions can be held only during the day time and that too without any cooking activity being carried on. Precooked and pre-packed eatables can be served but every effort will be made to ensure that the place is not littered. The littering of the park as a result of such functions must be penalized with very heavy fines being levied on those booking the park for such functions. The use of mikes and loudspeakers will be strictly monitored to ensure that the norms under the Environment (Protection) Act 1986 (as further laid down in the judgments of the Supreme Court in this context) are strictly followed. No generators will also be permitted. There cannot be any road/tar road laid for the purpose of facilitating transportation into the park of pandals and other tent material. In other words, the holding of such functions will not be allowed to cause any destruction whatsoever of the environment. The idea is to discourage the use of the three spaces in the park for functions marriages as far as possible. If not already done, the tar road in the park has to be immediately removed. The charges presently being collected for the use of the park in these functions is too meager.

57. This Court directs that the LG will immediately set up a High Level Committee comprising senior level officials of the MCD, the DDA and the GNCTD as well as experts in the areas of urban planning and horticulture to reexamine the letting out of parks generally (and the Ajmal Khan Park in particular) for community functions and ensure that there is no environmental damage in any manner caused by the letting out of such parks for community functions. The High Level Committee will also formulate the norms and guidelines for permitting the parks to be used for sports activities and any other activity as permissible under the MPD 2021. The High Level Committee will evolve norms on the lines suggested by this Court and incorporate further norms as considered appropriate to preserve the area as a park, in consultation with the DDA. The High Level Committee will keep in view the law as explained in several of the above decisions as well as the report of the committee appointed by this Court and the report of the Housing Development Institute of HUDCO referred to earlier in this judgment, which forms part of the record of this case.

58. The norms that will be evolved by the High Level Committee will be given wide publicity in the print and electronic media and in each of the parks and shall be strictly adhered to. We direct that the High Level Committee be set up within a period of three weeks and the new norms be evolved by the said Committee within a further period of eight weeks. Till such time the present norms may be followed. Thereafter as recommended by the committee set up by this Court, the Ajmal Khan Park has to be restored completely by having a comprehensive landscape plan by removing the boundary wall within the park and replanting a large number of trees. The MCD's proposed plan is not strictly in accordance with the proposal of the Committee. It still shows a basket ball ground and a gym. These structures cannot be permitted in a district park. They have to be removed forthwith.

59. As regards the north-west block of the Ajmal Khan Park, it has already been pointed out that the fountain is not serving any purpose as it is dysfunctional. The HUDCO report indicates that how the fountain did not serve any purpose even while it was functional. The photographs of the said musical fountain show that it has entailed concretization of the north-west block. We direct the MCD and the DDA to jointly take a decision within a period of four weeks from today on whether the fountain should be continued and is permissible in terms of the MPD 2021. If not, steps should be taken immediately thereafter to remove the fountain. If it is permissible within the ambit of the MPD 2021 then it should be ensured that the fountain when made functional does not pose a threat to the environment and result in the littering of the park.

60. Before concluding, the court would like to record its appreciation of the efforts of the learned amicus curiae in preparing a comprehensive report and in assisting the court about the legal position resulting from the MPD 2021. The court also appreciates the efforts made by the members of the committee in submitting the report which has facilitated the court in rendering this decision.

61. A compliance report with regard to the implementation of the directions in paras 53 to 59 will be filed in this Court jointly by the Commissioner MCD and Vice-Chairman DDA within a period of eight weeks from today. It will be open to the petitioner or the amicus curiae to apply to this Court in the event of non-implementation of the said directions within the stipulated time frame. With these directions the writ petition and all pending applications are disposed of. Certified copies of this judgment be delivered to the Lieutenant Governor GNCTD, the Vice-Chairman DDA and the Commissioner MCD by a special messenger within four days.