

(2011) 04 DEL CK 0128

In the Delhi High Court

Case No : Writ Petition (C) No. 13516 of 2009

Rajinder Nagar Welfare Association and Another

APPELLANT

Vs

MCD and Others

RESPONDENT

Date of Decision : 26-04-2011

Acts Referred:

Citation : (2011) 179 DLT 496

Hon'ble Judges : Rajiv Sahai Endlaw, J

Bench : Single Bench

Advocate : Gaurav Sarin, Parinay Shah and Sumi Anand, for the Appellant;
Mansi Gupta, for MCD and Rajiv Bansal, for DDA, for the Respondent

Judgement

Rajiv Sahai Endlaw, J.—The Residents Association of the neighbouring colonies of Rajinder Nagar and Northern Extension Area have filed this writ petition aggrieved from the action of the Respondents No. 1 and 2 MCD/DDA of commencing the work of fencing around a section of Vivekanand Park (Sindhi Park) in the locality, "so as to convert the said section of the park into a playground / stadium". It is the contention of the Petitioners that the said park is a neighborhood park but the Director of Horticulture of the MCD inspite of protests of the Petitioners had permitted the aforesaid section of the park to be used for sport activities, namely, playing of Volleyball and which is impermissible in the said park. The cause of action for preferring the petition as aforesaid was the work commenced of installation of a fence around the said section of the park.

2. The Petitioners place strong reliance on the judgment dated 18th November, 2009 of the Division Bench of this Court in WP(C) 6950/2009 titled Paryavaran Avam Januthan Mission (Regd Society)v. Lt. Governor concerning Ajmal Khan Park in the locality of Karol Bagh and which had been designated as a District Park and in a section of which the MCD had proposed to construct a two storied covered air conditioned stadium and commercial complex and which proposal of the MCD was quashed by the Division Bench; while doing so this Court held that

a sports facility like a basketball stadium whether outdoor or indoor could not form part of a green area including a District Park.

3. Notice of the petition was issued and vide order dated 2nd December, 2009 stay of construction or fencing of any portion of the Vivekanand Park was granted and the Respondents were also directed to ensure that no part of the park is misused for any impermissible activities. The said order has continued in force.

4. DDA has filed an affidavit stating that the subject park is under the control of MCD and DDA exercises no control thereover. MCD in its counter affidavit has stated that the area of Vivekanand Park popularly known as Sindhi Park is 13,231 sq mtr (app. 3.3 acres); that it is divided into 16 parts; that one part is being used for the last several years as a play ground for volleyball and other sports by the local residents and another portion is used by children to play and in yet another section swings etc. have been installed for children; that the said three sections of the park are not maintained as ornamental; that owing to complaints from residents and public using the park, of damage to trees and plants in the park and fear of injury to those walking near the section of the park where Volleyball is played, the area MLA had agreed to get an iron fence erected around the section being used as playground; that the work of installation of iron mesh fencing around the section of the park used as a playground and which constitutes 4.28% of the total area of the park had been awarded and 60% of the work had been completed when it was halted owing to the interim order aforesaid in this petition. With respect to the judgment of the Division Bench in Paryavaran Avam Janathan Mission (supra) it is pleaded that the same has been stayed by the Supreme Court vide order dated 15th March, 2010 in SLP (Civil) 312/2010.

5. The Petitioners as well as MCD have filed photographs and which show that an iron mesh railing of above human height has been installed around one section of the park segregating the same from the walkways in the park. The question which thus arises for consideration is whether the installation of the fencing aforesaid is permissible in the park or not and whether the remaining work of fencing is to be permitted to be completed or not or whether the fencing already installed is to be ordered to be dismantled / removed.

6. The counsel for the Petitioners contends that the board installed by the MCD itself in the park proclaims that the same is to be not used for playing. It is urged that the Director (Horticulture) of the MCD has allowed certain persons close to him to play Volleyball in the aforesaid section of the park and which persons were even earlier causing nuisance to the residents particularly ladies visiting the park and of which complaints were made. 7. It is further contended that instead of taking any action on the said complaints, the illegality earlier being perpetuated is being legalized by allowing the said section to be fenced so as to earmark the same as a playground.

8. The Division Bench in Paryavaran Avam Janathan Mission (supra) was

concerned with construction of a pucca open Basketball Court with a covered management block and 8 rows of concrete seating stands for 1500 to 2000 spectators in a District Park and which was proposed by the MCD to be converted into a covered air conditioned Basketball Court. Here it is neither the case of the Petitioners nor of the Respondent MCD that any Volleyball Court or appendices thereto are proposed to be constructed or were under construction. Rather the photographs show the said section of the park to be like any other section, perhaps less grassy and without flowerbed; else neither any hard Volleyball Court has been constructed or proposed to be constructed nor anything else sought to be done to give it the shape of a Basketball Court. The photographs show the net even being hung on two temporary poles. Once the net is removed, one cannot even say that the said portion is intended as a Volleyball Court or a play ground. The facts of the present case are thus not comparable to those before the Division Bench in the judgment aforesaid. No such activity as was prohibited by the Division Bench was underway or proposed in the present case.

9. The only question which therefore arises is, whether any section of a park can be used for playing whether by children or by adults.

10. During the hearing I had repeatedly asked from the counsel for the Petitioner as to where else can the children or the adults indulge in such activity. The city has not made many provisions for such activities. Traditionally the parks only have been used for play purposes also. The complaints of nuisance if any caused from certain players in the park cannot be a ground for prohibiting the said purpose in the park if otherwise permitted. Such nuisance can exist even without permitting play. The question here is of use of section of the park as a playground without creating any sports infrastructure therein.

11. The Master Plan of Delhi, 2021 in Clause 9.6 thereof permits the use of a district park inter alia as a children park, for sports activities and as a playground. Similar uses are provided for a community park also. In my view the use aforesaid of the park would fall within the permitted use and would not fall within the mischief with which the Division Bench was concerned in the judgment aforesaid.

12. In this context I am reminded of Oscar Wilde's story "The Selfish Giant" taught in Kindergarten. I find that the Petitioners by intending to prevent the children and adults from playing in the park are acting as the Selfish Giant of the said story. They forget that a park without having children (and adults) to play therein cannot bloom. What the little child in the said story said to the Giant "You let me play once in your garden, today you shall come with me to my garden, which is Paradise" holds good for the Petitioners herein also. The nuisance, if any, to the sensibility of certain residents from the activity of play in the garden would be nothing but what was described by Oscar Wilde as "Wounds of Love".

13. The need for play/sport cannot be undermined in adults also. If certain cross section of the society/residents want to play Volleyball in the park, I do not see

any harm therein. The notice stated to have been put up by the MCD prohibiting use of the park as a playground is found to be contrary to the use of the park prescribed in the Master Plan.

14. The Supreme Court i Bangalore Medical Trust Vs. B.S. Muddappa and others, emphasized the need and importance of open spaces, playgrounds etc. stating inter alia that they are required to protect the residents of the locality from the ill effects of urbanization and to ensure a place where children can run about and the aged & infirm can rest and as a place reserved for recreation. It was held that through earlier such luxuries were a prerogative of the aristocracy and affluent but with growth of the concept of equality and recognition of importance of common man, they are a gift from people to themselves.

15. The ways in which people may savour a public park may be different; while some may like to merely walk around, others may want to run around or to use the open space for flexing/exercising their muscles and for which, generally in residences of today no open space except balconies are available. It is common sight today to find people doing Yoga or other exercises in the public parks. In my opinion, no differentiation can be made between one who chooses to do exercises or Yoga and the other who chooses to involve in a ball game with others, insofar as the existing infrastructure of the park is used and no demands, for additional infrastructure/facilities by raising construction be it of a concrete platform to create a court or seating stands or changing rooms etc. all of which were in Paryavaran Avam Januthan Mission held to be not permissible, is made. If children are not permitted to play in the parks also, they will be left with no other place except the busy streets, to play in and severely affecting their behaviour pattern, growth & health. The same holds good equally for the grown ups, wanting to either before or after work indulge in some physical activity.

16. The Petitioners thus cannot come in the way of fencing of the said section of the park intended to prevent the ball used during the play hurting those walking on the footpath in the park and also cannot prevent a section of the park from being used as a playground. However, the Respondent MCD in accordance with the judgment of the Division Bench which is not stated to have been set aside till now by the Apex Court, shall not be entitled to make a formal Volleyball Court or any construction in the said portion or do any other activity which has been prohibited by the Division Bench in the park.

The petition is disposed of. No order as to costs.