

(2012) 11 DEL CK 0015

In the Delhi High Court

Case No : L.P.A. No. 613 of 2012 and CM No's. 15559 of 2013 and 15561 of 2012

Senior Citizen Council of Delhi

APPELLANT

Vs

Delhi Development Authority

RESPONDENT

Date of Decision : 22-11-2012

Acts Referred:

Citation : (2012) 11 DEL CK 0015

Hon'ble Judges : D. Murugesan, C.J.; Rajiv Sahai Endlaw, J

Bench : Division Bench

Advocate : Arvind Kumar Sharma, for the Appellant; Ajay Verma, for the Respondent

Final Decision : Dismissed

Judgement

Rajiv Sahai Endlaw, J.—This intra court appeal impugned the order dated 7.8.2012 of the Learned Single Judge dismissing the WP (C) No. 4716/2012 preferred by the appellant, as well as the order dated 23.8.2012 in CM No. 10120/2012 filed by the appellant in the said disposed of writ petition. Counsel for the respondent DDA appeared on advance notice and was vide order dated 12.9.2012 directed to produce the files relating to the construction and maintenance of "old age corner" as well as of construction of "rain shelter" in the Deer Park. On the subsequent date, even though the record was not produced but certain interim measures were directed. Counsel for the respondent DDA has today produced the record and we have heard the Learned Counsels. The writ petition was filed pleading, (i) that the respondent DDA had in the Deer Park in Hauz Khas area provided facilities like walking track, playground, swings for children etc., for the residents of the nearby localities of Safdarjung Enclave, Green Park, R.K. Puram, Munirka and Hauz Khas etc.; (ii) that in one corner of the said Deer Park, next to Park Baluchi Restaurant, senior residents had been assembling in the morning and after morning walk they would sit and hold social functions, since the year 1979; (iii) that the said activity neither hindered any of

the other users of the park or cause disturbance to the animals in the mini zoo in the park nor does it cause noise pollution and disturbance; (iv) that gradually the number of such senior citizens increased and started using the empty restaurant in the park; (v) that, however in the year 1995-96 the DDA leased out the said restaurant building to Park Baluchi and owing where to the senior citizens could not use the same as they were earlier doing; (vi) that the senior citizens thus requested the DDA to construct a shed in the portion of Deer Park where they had been assembling in the morning so that they get shelter from sun and rain during the morning assembly; (vii) Lt. Governor of Delhi directed the construction of a corner shelter for senior citizens, having capacity to accommodate about 200 people and which came to be known as "Old Age Corner" and has been in existence since the year 1995-1996; (viii) that the said shed was open from all sides but had roof on top and DDA also provided electric connection for operating lights, fans and microphones for the comfort of the senior citizens; (ix) that the said senior citizens in or about the year 2005-2006 organized themselves and formed the appellant society; (x) that with the intervention of Member of Parliament from South Delhi, DDA in the year 2006 also expanded the earlier shelter and "handed over the possession of the same to the senior citizens" forum"; (xi) that the DDA in the year about 2008 further beautified the said corner and also constructed a stage and store room to enable the senior citizens to store their durries, carpets, sheets and mike etc. therein; (xii) that the said work was inaugurated by the Minister for Urban Development; (xiii) that repair works were also carried out in the year 2011; (xiv) however in May 2012, the appellant was informed of the orders of the Lt. Governor of Delhi not to permit the members of the appellant in the said shed any more as they had been assembling for the past several decades and the employees of the DDA also disconnected the electricity supply to the shed and took other steps to prevent the members of the appellant from meeting in the shed; (xv) that in the circumstances, WP (C) No. 3635/2012 was filed to restrain DDA and in which vide order dated 1.6.2012, the DDA was restrained from disconnecting the electric supply or from preventing the senior citizens from continuing their morning activity and the writ petition was directed to be treated as a representation and DDA was directed to take a decision thereon within four weeks; (xi) that though in pursuance to the said direction electricity supply was restored on 4.6.2012 but the DDA vide order dated 4.7.2012 rejected the representation of the appellant as under:-

DELHI DEVELOPMENT AUTHORITY

OFFICE OF THE DY. DIRECTOR (HORT.)-IV

Sheikh Sarai, Phase I, New Delhi-110017.

No. F10 (2)11-12/HD-IV/DDA/212 dated 4.7.12

To

Shri J.R. Gupta

President

Senior Citizens Council of Delhi (SJE)

D-2/73B, Safdarjung Enclave

New Delhi-110029

Sub : Stop the prohibited activities in the Protected Forest & Enclosure of Deer Park, Hauz Khas.

Ref. Senior Citizens Council of Delhi vs. DDA CWP No. 3655/2012

Sir,

The Writ Petition No. 3635/2012 on behalf of Senior Citizens Council of Delhi was filed by you against the DDA for Restrain from disconnection of Electric Supply to the shed as alleged by old age corner at Deer Park, Hauz Khas, New Delhi. The Hon"ble High Court of Delhi on 1.6.12 has disposed of the Writ Petition and directed the DDA to treat the CWP as a representation and dispose of the same within four weeks.

In this regard, it is to inform that the rain shelter has been constructed in the DDA Park, Hauz Khas as a shelter to protect the visitors from adverse weather condition and in CW No. 1521/1999 Hon"ble High Court directed that no religious, political function, commercial activities can be allowed in the park.

There is no "Old Age Corner" shown in the Landscape plan of Deer Park, DDA (stated as Mater Plan in the Writ Petition). As per the direction dated 10.8.2000 in CW No. 1521/1999 of the Hon"ble High Court as well as guidelines of Central Zoo Authority, Reserve Forest Act, Wild Life Act the religious/political/noise pollutions are not allowed in the protected forest. The mini Zoo is existed in this area and there are so many types of animals and birds i.e. Deers, Rabbits, Ducks and Peacock etc.

This office has considered your petition (treated as representation) and found that the same is not acceptable. It is, therefore, requested you to kindly stop the Religious/political activities in the protected forest adjoining to Mini Zoo and remove the unauthorized encroachment including Boards, Boxes, Loudspeakers, electrical equipments etc and vacate the store/room so that animals in the Mini Zoo are not disturbed and the morning and evening walkers, visitors and Tourists may enjoy without noise pollution and disturbance.

This office has never obstructed any morning walker, visitors and tourists for using the shelter. However, being part of reserve forest and near the deer enclosure the religious/political activities can not be permitted. The electrical connection in the shed is unauthorized and should be disconnected forthwith.

Encl. As above

Sd/-

Deputy Director (Hort)

Horticulture Division IV.

2. Accordingly, the writ petition from which this appeal arises was filed impugning the aforesaid order dated 4.7.2012 and to direct the DDA to restore the electricity supply, water supply, use of toilets and to open the lock and store room where iron stage board, aluminum boxes containing utensils, glasses, jugs, table fans, mike and batteries etc of the appellant/its members were kept.

3. It was the plea of the appellant in the writ petition and is also the contention before us that the DDA having constructed the shed at the request of the appellant/its members and having allowed the appellant/its members use thereof for the last over three decades, could not deprive the appellant and its members from use thereof; reliance is placed on photographs of various functions held at the said old age corner showing participation of various political leaders and on letters written by the appellant/its members to the DDA for providing certain facilities at the said old age corner. Counsel for the appellant has laid much emphasis on :-

(i) The letter dated 29.3.2011 of the Department of Social Welfare, Government of NCT of Delhi sanctioning grant in aid of Rs. 21,000/- to the appellant.

(ii) Letter dated 2.4.2008 of the Executive Engineer, South West Division of the DDA regarding beautification of the rain shelter and referring to the meeting with the officials of the appellant.

(iii) Minutes of the meeting held in the Chamber of the Chief Engineer (SZ) of the DDA on 13.9.2011 with the officials of the appellant regarding working of the said park;

(iv) Undertaking dated 10.7.2012 furnished by the appellant to the DDA to the effect that no statues/idols/murti would be installed in the old age corner shed and no commercial activity will be carried out therein and the volume of the mike would be kept low only to enable 500 senior citizens to hear.

(v) Letters of various organizations/leaders supporting the case of the appellant.

4. Learned Single Judge dismissed the writ petition observing that permissive use of the "old age corner" cannot be misconstrued for organized activities as being carried out as apparent from the photographs on record and the objectives of the appellant society run counter to the restrictions placed by the Division Bench of this Court vide order dated 10.8.2000 in CW No. 1521/1999 concerning the same park and which prohibited the use of the park for religious, cultural or commercial activities.

5. Learned Single Judge has further observed that if the appellant is permitted to undertake such activities on daily basis, the same would tantamount to misuse of the "Old Age Corner" and encourage other organizations to demand separate space in district parks for such like regular activities. Learned Single Judge has

yet further observed that the communication dated 4.7.2012 (supra) of the DDA did not prohibit the appellant from using the old age corner for routine activities like yoga, low key satsang and chanting etc.

6. Accordingly, the writ petition was dismissed. However, time period of 12 weeks was granted to the appellant to continue using the shelter as before but in compliance of the undertaking dated 10.7.2012 (supra). The appellant thereafter filed CM No. 10120/2012 before the learned Single Judge seeking directions to the DDA to make the toilet, water and store room facilities operational to enable the appellant to hold satsang at the old age corner. Counsel for the DDA though conceded that the fans, water and sanitation facilities shall be provided, did not concede to allowing the use of the store rooms as sought. Vide order dated 23rd August, 2012, it was observed that the facility of storeroom could not be allowed as members of appellant can carry their yoga mats everyday. It was further clarified that the old age corner/shelter, concerned was not for exclusive use of the appellant but for general public.

7. We had vide interim order dated 19.9.2012 permitted the floor mats, harmonium, tables etc. belonging to the members of the appellant to be kept in the store room though under the lock and key of the staff of the DDA.

8. Though, counsel for the appellant at the beginning of the hearing stated that the appellant would be satisfied if the DDA acts in terms of its communication dated 4.7.2012 but when we started recording the said statement, the counsel wanted to smuggle in certain conditions to enable the appellant use of the store room. The same was vehemently opposed by the counsel for the DDA. In spite of the counsel for the appellant having earlier made a categorical statement, we nevertheless allowed the counsel to argue on merits.

9. The case, in a nutshell, of the counsel for the appellant is that the DDA having constructed, the shed and the store room and having carried out other works viz. construction of stage, providing of electricity, water and sanitation facilities, all at the request of the appellant, cannot deprive the appellant from the use which it/ its members have been making of the said portion in the park for the last number of years.

10. On the contrary counsel for the respondent DDA has handed over the souvenir for the year 2012-13 published by the appellant in the form of a book comprising of more than 300 pages detailing the various activities of the appellant which have all been carried out from the said old age corner. A perusal thereof leaves no doubt whatsoever that the activities carried out by the appellant in the said park (it is not the case of the appellant that the said activities have been carried out from any other place) tantamount to the appellant and its members usurping a portion of the said park. Though undoubtedly the said portion is not lockable, save the store where the appellant and its members keep large number of their goods used in the course of the said activities and which the counsel for the appellant states can remain under the

lock and key of the DDA with the staff of the DDA opening the same to allow the members/officers of the appellant to take out the goods as and when required on a daily basis, but a case of the appellant appropriating and/or wanting to appropriate the said portion of the park for its own activities is clearly made out.

11. We have no doubt whatsoever in our mind, as also held by the learned Single Judge, that the same is impermissible and no individual or group of individuals have a right to such public parks or spaces or a portion thereof and cannot claim a right to exclusively carry out their activities therefrom; the said spaces vest in the public at large. A reading of the order dated 10.8.2000 (*supra*) of this Court shows that at that point the petition, probably in public interest, was filed since various cultural functions with the construction of a huge platform were being held in the same park. A Division Bench of this Court held that "surely the park cannot be used in this manner and needs to be preserved." The souvenir aforesaid published by the appellant, as also the souvenir for other years shown in the Court disclose the appellant to be holding not only the meetings of its governing council in the said old age corner of the park but also of holding satsang and various other functions in the park. The said souvenir also contains a large number of commercial advertisements. It is thus clear that the appellant society has been using the park not only for holding its meetings but also as a place for all its activities. Counsel for the appellant, inspite of our coaxing has been unable to show any such right in favour of the appellant save for the same having been permitted by the DDA for past number of years and also having patronage of certain officials of the DDA and of various political and social leaders.

12. We are afraid the same cannot be the basis for any right. We are governed by the rule of law and not by rule of men; no authority in favour of any official of the DDA to so allow the appellant or its members can be cited or can possibly be cited. None of the officials of the DDA are competent to, on their whims and fancies, allow such use of public parks/spaces to a particular body/organization which would amount necessarily to the exclusion of other users. Similarly, merely because various leaders including those holding high offices have participated in the functions organized by the appellant in the said park cannot confer any legitimacy to the presence otherwise illegal, of the appellant and its members in the park. It is also worth mentioning that a number of communications of DDA relied upon by counsel for the appellant refer to the portion of the park called "old age corner" by the appellant, as the rain shelter. Counsel for the DDA has also placed before us the original files containing the sanctioned composite landscape plan of the said park which also refers to rain shelters only and not to any shelter for the appellant or its members. It is the stand of the DDA that the store room, to use whereof the appellant claims a right, was also constructed for storing the maintenance equipment of the DDA used in the park and not for the benefit of the appellants or its members. The work order placed by the CPWD in the year 2008 for works carried out also refers to a rain shelter and not to the old age corner. There is nothing in the said records from which it can be said that

any rights were conferred on the appellant or that any portion of the park was developed for the benefit and use of appellant/its members. Similarly, the agreements of the year 1996, also refer to rain shelters only. The appellant and its members appear to have christened the rain shelter as old age corner and started claiming right thereto.

13. It is not as if DDA is interfering in any manner with the use by the senior citizens or for that matter any other citizens of the nearby localities of use of the park for the activities permitted. The communication dated 4.7.2012 (*supra*) clarifies that the DDA is not obstructing the said citizens or members of the appellant from using the park for their walks, picnic etc. Learned Single Judge has in the impugned order rightly observed that if this Court was to grant relief sought by the appellant, it would lead to other such organizations laying similar claims to other public parks in the city and which would convert them into clubs/ activity centers, from open parks. The sight of the users/visitors of the parks carrying their water bottles or mats for sitting or exercising is not uncommon in all the parks. However, all the said persons take back their said goods when leaving the park and do not attempt to make the park their second home as the appellant and its members are attempting to do. We, therefore, do not find any merit in this appeal and vacate the interim arrangement earlier made and dismiss the appeal. No costs.