
(2010) 03 AHC CK 0119
In the Allahabad High Court

Shyam Manohar Srivastava and Others	APPELLANT
Vs	
State of U.P. and Others	RESPONDENT

Date of Decision : 12-03-2010

Acts Referred:

Uttar Pradesh Municipal Corporation Act, 1959 — Section 114(vii)

Citation : (2010) 2 UPLBEC 1289

Hon'ble Judges : Amitava Lala, Acting C.J.;Ashok Srivastava, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Amitava Lala, A.C.J.

1. This writ petition, in the form of public interest litigation, has been filed for the following reliefs:

I. Issue an appropriate writ, order or direction to the respondents to bring on record the scheme if any framed and got approved from the competent authority for construction of Overhead Tank and Underground Water Tank in Central Park, Geeta Nagar, Kanpur Nagar and quash the same.

II. Issue a further writ, order or direction in the nature of mandamus commanding the respondents not to make any construction in Central Park Geeta Nagar, Kanpur Nagar and destroy the use and benefits of park for which it was established.

III. Issue any other and further writ, order or direction of suitable nature to the respondents to shift the said scheme in nearby Mohallas where Govt. land, Gaon Sabha land and Kanpur Development Authority land is vacant and available for construction of overhead tank and underground water tank.

IV. Issue any other writ, order or direction which this Hon''ble Court may deem fit and proper in the facts and circumstances of the case to meet the ends of justice.

V. Award cost of the present writ petition.

2. The petition has been filed by five persons in the capacity of local residents of the area, where the Central Park, Geeta Nagar is situated. According to the writ petitioners, Jal Nigam Authorities are going to construct an overhead tank and underground water reservoir/tank in such park, which will change the nature and character of the park. Not only the private respondents, but the State be also prohibited in doing so.

3. Sri Bhupendra Nath Singh, learned Counsel appearing for the petitioners has relied upon a Division Bench decision of this Court reported in (1987) UPLBEC 665, Arun Kumar v. Nagar Mahapalika, Allahabad and Ors., wherein even for putting a pump- house to protect the tube-well for water and sub-station for distributing electricity in the park reserved for little children was stopped by the Court. He has also placed reliance upon another Division Bench decision of this Court reported in (1986) UPLBEC 781 (U.P. Krishak Samaj, Lucknow v. The Administrator, Nagar Mahapalika, Allahabad and Ors.), where also the starting of 120 shops for exhibition in a public park was stopped. He has further relied upon an interim order passed by a Division Bench of this Court dated 12.4.2005 passed in Civil Misc. Writ Petition No. 28267 of 2005 (Junior Lawyers Association v. The State of U.P. and Ors.) not to carry out office work by the District Inspector of Schools and his subordinates within the area of a College. The necessity of showing such judgments by Mr. Singh is that the work is required to be done in accordance with the Uttar Pradesh Parks, Playgrounds and Open Spaces (Preservation and Regulation) Act, 1975 (hereinafter referred to as "the Act"). Section 6 of such Act says that no park, playground or open space shall be used for any purpose other than the purpose for which it has been made, unless previous sanction of the prescribed authority. This provision is analogous to Section 7 of the Act which provides for maintenance of parks, playgrounds and open spaces. Section 8 of the Act prohibits construction of any building without the previous sanction of the prescribed authority. Section 11 of the Act pertains to removal of unauthorized persons from the parks, playgrounds and open space, which is not relevant for the purposes of present case. The fact remains that the manner in which the respondents are going to construct the overhead tank and underground water reservoir/tank, will ultimately interfere with the purpose of using the park specially its utilization as playground. Therefore, the same cannot be allowed to be done. In support of his contention, Mr. Singh has brought on record the copy of lay out plan which has been annexed as Annexure-3 to the writ petition, from which it appears that on one side of the Central Park there is a Ramlila stage and a Temple and on the other side of the park the proposed water reservoir and the old pump house are situated, but the site of the overhead tank has been shown in the middle of the park.

4. Against this background, Mr. Zafar Nayyar, learned Additional Advocate General appearing on behalf of the respondents, has contended before us that the construction of overhead tank and water reservoir/tank is necessary for

public purpose. There is huge scarcity of water and unless the water tank is constructed and water is supplied, the people at large will continue to suffer, which is far more important work and is required to be done. Moreover, the proposed work is being carried out on one side of the park without disturbing the purpose and necessity of the park. He has further stated that various representations of local residents for making arrangement for supply of water are lying with the respondents and they undertake before the Court that after construction of such work, they will re-lay it so that the purpose of use of park, over and above the overhead tank and underground reservoir, is not disturbed. Apart from this, when the respondents are constructing the proposed water reservoir/tank on one side of the park, no cause of disturbance of use of park is available. As per Section 114 (vii) of the Uttar Pradesh Municipal Corporations Act, 1959 (hereinafter referred to as "the Act 1959"), respondents are duty bound through the Corporation to supply water for domestic, industrial and commercial purposes. However, Mr. Singh has joined the issue by saying that the Corporation is also duty bound for maintenance of open space of the park and for supply of water for above purposes.

5. However, Mr. Nayyar has further contended that the Corporation is empowered to make such construction u/s 263 of the Act, 1959. He said that the map, which has been shown by the petitioners, is incorrect one. The respondents are proceeding with the sanctioned lay out plan made by the Nagar Ayukt, Kanpur. The plan has been shown before us, from which it appears that the proposed site is lying on one side of park. The entire park covers an area of 160 meters. X 102 meters, whereas the proposed area of construction is 60 meters X 78 meters and after completion of the work, it will be re-layed so that the purpose of use of park is not disturbed. Apart from that, overhead tank, which is required to be constructed, is on one side of the park. He has given an emphasis to an order passed by a Division of the Lucknow Bench of this Court dated 21.1.2010 in Writ Petition No. 447 (MB) of 2010 (Dr. Ankur Kumar and Anr. v. State of U.P. and Ors.). One of the paragraphs of such order, which is very important, is quoted below:

In regard to the raising/construction of the water tank, suffice it would be to mention that supply of drinking water is an essential requirement and is fundamental right of the residents. To meet the scarcity of water in the city of Lucknow or in the area in question, if the Nagar Nigam has decided and Jal Nigam is permitted to construct the water tank, no exception can be taken, more so when it is the specific instruction of the Nagar Nigam that park would be retained in appropriate manner and shape, as it is required, after construction of the water tank.

Since larger public interest requires that the water tank should be allowed to be constructed, we do not find any ground to interfere with the same.

The petition is dismissed.

Before parting, we would like to observe that the Nagar Nigam shall maintain the park after the construction of such a water storage tank.

6. The other part of the argument of Mr. Nayyar is that one Geetanjali Cricket Club allegedly claims that the park is being used as a playground. Such Geetanjali Cricket Club has initiated a civil proceeding before the concerned Civil Court by filing Original Suit No. 1991 of 2008 with an application for grant of injunction, but no interim injunction was granted and the said suit was dismissed for default on 5th September, 2009. This writ petition is nothing but a proxy petition on behalf of such Club. However, Mr. Singh, appearing for the petitioners, has stated that the suit is pending, but in any event there is no interim order.

7. We have carefully considered the rival contention of the parties. In a public interest litigation, no private interest would be adhered to. This case has not been claimed to be for private interest unless, of course, it is hidden. If it is not, then two aspects of this writ petition are there - one is public purpose for utilization of park or open space and the other is public purpose for making water reservoir/tank to supply water to the local residents of the area. Thus, such public purposes should not be made to be disturbed or interfered with by the Courts of Law. Though several judgments have been shown by the learned Counsel for the petitioners before this Court, which stand on their own footings of fact, and much water has flown from the river Ganges from 1986-87 till 2010 when engineering concept has become much more developed to make balance between the protection of parks and utilization of water by making water reservoirs.

8. Against this background, we cannot appreciate the stand of the petitioners not to allow the construction work of overhead tank and underground water reservoir/tank. We have been told that the work has already commenced strictly in accordance with the sanctioned lay out plan. It appears that the construction work is being carried out on one side of the park and the use of park for playing games like Football, Hockey or Cricket will not be disturbed. Moreover, on one side of the park there are Ramlila stage and a Temple and on the other side of the park an old pump house. Thus, it can safely be construed that the park cannot only be utilized for the purposes of games but it can also be used for other purposes.

9. Having so, we do not find any cogent reason to interfere with the work commenced by the appropriate authorities and hence the writ petition, in the form of public interest litigation, fails and is hereby dismissed, however, without imposing any cost.

10. I agree.