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IN THE HIGH COURT OF DELHI AT NEW DELHI

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W.P.(C) 3006/2022 & CM APPL. 8699/2022(Direction), CM APPL. 13222/2022 (Interim Direction)

KAILASH GUPTA

..... Petitioner

Through: Mr. Vineet Chadha, Mr. Ankur Bhasin and Mr. Pavit Singh, Advs.

versus

GOVT OF NCT OF DELHI & ORS.

..... Respondents

Through: Mr. Satyakam, ASC with Ms. Krishnashree Devee, Adv. with Mr. Khageswar Kalah, EE, PWD and Mr. Jai Prakash, AE/PWD.

CORAM:

HON'BLE MR. JUSTICE YASHWANT VARMA

ORDER

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05.07.2022

1. This writ petition has been preferred seeking the following reliefs:-

“a) Issue a writ of certiorari and/or any other appropriate writ order and/or direction thereby quashing the impugned order (exact particulars not known) passed by respondent no. 1 and 2 whereby the public park situated between Gali No. 16 and 17 of Govindpuri, Kalkaji, New Delhi has been ordered to be converted into a Mohalla Clinic;

b) Issue a writ of certiorari and/or any other appropriate writ order and/or direction thereby and for quashing the impugned letter dated 4/2/2022 bearing no. 23(AAMC/ A.E/SD-2/ south east (building) m/2021 -2022/09 passed by respondent no.3-Assistant Engineer-II Public Works Department;

c) Issue a writ of mandamus and/or any other appropriate writ order and/or direction thereby directing the respondent no.1-3 to restore the public park to its original position and for removing the recently constructed structures therein;

d) Issue a writ of mandamus and/or any other appropriate writ order and/or direction thereby restraining the Respondents No. 1-3 from carrying any further excavation and Construction work in the said Public

Park;

e) Issue any other appropriate writ, order and/or direction which this Hon'ble Court deems fit and proper in the facts and circumstances of the instant case and in the interest of justice and equity.”

2. The petition itself is based on the allegation that a park which had come to be created pursuant to directions issued by this Court on W.P.(C) 910/2011 was being used for unauthorized purposes. It becomes pertinent to note that the aforesaid writ petition came to be disposed of on 14 October 2011 in the following terms: -

“(a) Respondent No.2/PWD shall ensure that the park in question, described as a “public park” is converted into a green area by removing the concrete flooring thereon and greening the same by carrying out plantation there.

(b) A garden shall be laid out in the designated area by the Horticulture Department of respondent No.2/PWD within a period of two months and thereafter shall be continued to be maintained as such.

(c) A zigzag gate shall be fixed by respondent No.2/PWD at the entrance of the park within four weeks and it shall be ensured that it is not encroached upon in future.

(d) Till the zigzag gate is fixed at the entrance of the park in question and even thereafter, respondent No.2 and particularly respondent No.5, shall ensure that there is no encroachment on the said land.

(e) After completion of the task of laying out the park by carrying out plantation work and greening the same within the time granted, respondent No.2/PWD shall file an affidavit along with the photographs to show the manner in which the park has been gated, greened and converted into a public park for the use of the public at large. Needful shall be done on or before 13.4.2012, with an advance copy to the counsel for the Petitioner.”

3. Upon the Court taking cognizance of the grievances as raised in the present writ petition, it placed the respondents on notice and further noted the stand of respondent Nos. 1 to 4 that the construction was being made only on a right of way and that green area is not being touched. Taking note of that submission, the Court on 17 February 2022 had permitted the

respondents to proceed with the construction of the Mohalla Clinic and not encroach upon any park/green area.

4. On 16 March 2022 when the matter was taken up for consideration again, the Court further took on board the statement made on behalf of the respondents that they were not encroaching upon or utilizing any designated park or green area for the purposes of construction of the Mohalla Clinic. From the recordal of facts above and as is evident from the judgment of 14 October 2011, it transpires that the said writ petition had come to be instituted at a time when a private party had encroached upon a piece of government land and had started utilizing the same for parking purposes. It was taking note of the aforesaid complaint that directions were framed for removal of all encroachments and for the entire area in question being developed as a park. The respondents are also stated to have filed a compliance report in those proceedings and from a perusal of the disclosures made in that report it appears that certain steps were in fact taken to designate the area in dispute, the encroachments removed and preliminary steps taken for the creation of a park. That park was to be maintained, according to the respondents, by the Department of Horticulture.

5. However, by the time the present writ petition came to be preferred and as would be evident from the photographs placed along with the status report filed on behalf of the fourth respondent, no vestige of a green area or a park remains. As those photographs would indicate, the entire area has clearly fallen into disuse and appears to have been converted into a garbage dumping zone.

6. Viewed in that backdrop this Court is of the considered opinion that the establishment of a Mohalla Clinic and the creation of an attendant green

area as per the maps which have been submitted along with the status report and which stand appended as Annexure R-4 would not only lead to the resurrection of the plot itself but also add a useful public facility which would be of immense use to the residents of the entire locality. The implementation of the entire project as proposed by the respondents would not only add a useful amenity for the members of the locality, it would also subserve the original directions which were issued. As the Court views the maps which have been placed on the record, it is evident that the clinic would only take up a part of the entire plot. Additionally, the respondents also propose to create a green area over an adjacent plot. On a holistic examination of the proposal, the Court is of the opinion that the project would be beneficial to the residents of the locality and must be implemented as per the proposed plan in public interest.

7. The Court bears in mind that the plot in question was not designated as a green belt or a park under the Master Plan or Zonal Plan that may have been framed. The initial steps taken to develop it as a green area was pursuant to the directions issued by this Court on the earlier writ petition. The establishment of the clinic does not appear to militate against that objective especially when only a part of the entire plot is proposed to be utilized to establish that clinic. Both the purposes cannot be said to be either mutually destructive or be incompatible. The steps which the respondents now propose to take would thus be in accord with public interest and would clearly not fall foul of any direction that the Court may have issued.

8. The Court additionally notes that the directions framed by the Court while disposing of the earlier writ petition had clearly not been complied with since although initially a park/green area may have been created, it

clearly fell into disuse and was never maintained. That mistake cannot be permitted to be made again. The respondents are duty bound to ensure that the park/green area is duly developed as per the plan submitted and acts as a useful adjunct to the clinic itself. The Court thus observes that while permitting the respondents to construct the Mohalla Clinic, it also takes note of their obligation to ensure that the remainder part of the plot in question is duly developed and maintained as a park/green area and the initial directions as contained in the order of the Court are also complied with. In order to ensure that this time around the entire area does not fall into disuse, it would be appropriate for the present writ petition being retained on the board of this Court in order to review progress periodically.

9. Accordingly, while the respondents are permitted to proceed further with the establishment of the Mohalla Clinic, they shall also take emergent and simultaneous steps to ensure that the green area adjacent to that clinic and which stands depicted in Annexure R-4 is also developed in accordance with the assurances which have been placed on the record. The respondents shall consequently place a further status report on the record of this writ petition within a period of two months. That report shall also carry pictorial evidence of regeneration of the plot and area surrounding the Mohalla Clinic.

10. List again on 27.10.2022.

YASHWANT VARMA, J.

JULY 5, 2022
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