

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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W.P.(C) No. 422 of 2010

C.R.PARK M, N & P BLOCKS RESIDENTS WELFARE

ASSOCIATION & ANR.

..... Petitioners

Through: Mr. Kirti Uppal, Advocate.

versus

UNION OF INDIA & ORS

..... Respondents

Through: Ms. Sangeeta Chandra, Advocate for
DDA.

Mr. D.S. Mehandru, Advocate for R-1 & R-2.

CORAM:

HON'BLE DR. JUSTICE S.MURALIDHAR

1. Whether reporters of the local news papers

be allowed to see the judgment?

Yes

2. To be referred to the Reporter or not ?

Yes

3. Whether the judgment should be reported in the

Yes

Digest ?

ORDER

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21.01.2010

1. Mr. Kirti Uppal, learned counsel for the Petitioners at the very outset points out that the correct name of Petitioner No. 1 is 'C.R. Park (M, N & P Blocks) Residents Welfare Association (Regd.)' and that the name of Petitioner No.1 as appearing in the memo of parties as well as in the writ petition and other documents should read accordingly. This prayer is allowed and it is directed that as far as the present petition is concerned, the name of Petitioner No.1 should read as 'C.R.Park (M, N & P Blocks)

Residents Welfare Association (Regd.).’

2. The Petitioner No.1 is an association of the residents of Blocks M, N and P of Chittranjan Park (‘CR Park’), New Delhi. Petitioner No.2 is a welfare association of the residents of CR Park Block 52.

3. The principal grievance of the Petitioners is against the allotment made by a letter dated 12th May 1997 of a piece of land in Plot Nos. 2 and 3 adjoining Pocket 52 and Blocks, M. N & P, C.R. Park, New Delhi in favour of Respondent No.4, a Buddhist Mission called the Buddha Tri Ratna Mission (‘BTRM’). It is contended that the allotment is contrary to the applicable rules and bylaws. It is accordingly prayed that the Respondents to maintain the said land allotted to BTRM as open area as mentioned in the lay out plan.

4. This is not the first time that the said allotment to BTRM has been questioned in this Court by residents of CR Park. Writ Petition (C) No. 1672 of 1997 was filed by some of the residents of CR Park, challenging the said allotment on the ground that the said land was in fact being used as a park and was liable to be maintained as such.

5. In the said writ petition, the Delhi Development Authority ('DDA') filed a counter affidavit stating that under the original lay out plan of the area, any three sides measuring 0.25 acres each were earmarked as religious sites. One of the plots already stood allotted. The Plot Nos. 2 and 3 were earmarked as a religious site under the layout plan. A proposal has been received from the Land & Development Office ('L&DO') for utilisation of the said plots as religious plots to be allotted to the Buddhist Mission. It was in those circumstances that the Vice Chairman of the DDA has passed an order on 6th October 1995 for handing the site to the L&DO. Therefore, the use of the plots for a religious purpose was in accordance with the layout plan.

6. On its part the L&DO supported the stand of the DDA. They pointed out that "the residents of the area opposed the allotment of the land to the Buddhist Mission on the ground that the majority of the residents surrounding the land are Bengalis and they want to retain this land as a permanent puja park as well as an open park to be used by children as playground. Since the plot was meant for religious activities, it is not possible to create certain pockets/colonies exclusively on caste and religious basis. The land earmarked as religious site is to be allotted to Buddhist Mission."

7. After noting the above submission, the learned Single Judge of this Court on 23rd October 2003 disposed of the writ petition with the following directions:

“In view of the aforesaid, in my considered view, the only direction liable to be passed against the respondents is that the plots in question should be utilized only in accordance with the layout plan of the area concerned as amended from time to time. The writ petition stands disposed of with the aforesaid direction.”

8. It appears that thereafter one of the Petitioners in the above writ petition, Shri P.K. Paul of CR Park made an application on 17th August 2007 under the Right to Information Act 2005 (‘RTI Act’) to the L&DO seeking information on the allotment of the land in question to Respondent No.4. In response thereto on 27th December 2007 the L&DO wrote to Shri Paul as under:

“Sir,

I am directed to refer to your letter dated 17/8/2007 received through Delhi Division, Ministry of Urban Development on 28/8/2007 on the above cited subject and to furnish the following information:-

1 & 2. Area of the site in question was taken over from DDA on 6/10/95. The land use of the site as per L.O.P. of the area was religious and was allotted to the Mission on

12/5/1997. Clarification regarding any change of land use can be had from DDA i.e. Notification No. and date etc. There is no proposal for cancellation the allotment of land to Buddha Tri Ratna Mission as the matter is subjudice.

3. There is no proposal to allot the open space to Buddha Tri Ratna as the matter is subjudice.

4. The Status quo of the said plots has been maintained and the Land & Development Office does not have any intention to ignore the direction/orders of Hon'ble High Court. The case of Buddha Tri Ratna Mission v. DDA and others is still pending before the Hon'ble Supreme Court of India.

Yours

faithfully,

(H.K.

Beniwal)

Central Public Information

Officer.”

9. Shri Paul also made an application under the RTI Act to the DDA on 19th September 2007. It appears that by its letter dated 10th October 2007/17th October 2007 the Director (AP) informed Shri Paul that Plot Nos. 2 and 3 Pocket 52 CR Park “is notified as residential as per layout plan in records.”

10. Shri Paul appears to have made a third application under the RTI Act in 2009 to the L&DO. The letter dated 11th August 2009 by the L&DO addressed to Shri Paul reads as under:

“Sir,

I am directed to refer to your letter NIL (received in the Section concerned on 8.7.2009) on the above subject and to inform you as under:-

S.No	Question	Answer
1.	Status quo of the said plot has been maintained or not.	The allottee had filed a court case CWP No. 159/98 in the High Court of Delhi challenging the rates of allotment. The said petition was rejected by the Court.
2.	Next date of hearing and the case No. in the matter of Buddha Tri Ratna Mission v. DDA & others	The institution filed an appeal and as per the order of the Hon’ble High Court dated 30.8.2001, it was noted by the Hon’ble Court that “learned counsel for respondent no.2 states that as on date a sum of Rs.40,99,163/- is due from the Appellant to the L&DO. He further says that the appellant is permitted to pay the aforesaid amount in four quarterly installments along with interest at the rate of 12%.” The said position has been upheld by the Hon’ble Supreme Court in Civil Appeal No. 4889 of 2002. However the Mission has not paid the said interest on belated payment of premium and up-to-date ground rent and interest thereon and therefore, the possession has not been handed

		over.
3.	Total area of the plot in question.	Total area of the plot in question is 2023 sq.m.
4.	----- - Area allotted to mission on 12.5.1997.	
5.	If the area is more than 400 sq.m the reason for ignoring master plan norms which state that the area for religious purpose is 400 sq.m in residential area having population of 5000.	The reference is not clear as the Master Plan norm has not been specifically indicated.”

11. Much is made of the above three letters to contend that inconsistent stands have been taken by the Respondents as regards the permissible use of the plots in question and on the question whether an allotment has at all been made in favour of BTRM.

12. There is no merit in this contention. The letter dated 27th December 2007 of the L&DO is consistent with the stand taken by it before this Court in Writ Petition (C) No. 1672 of 1997. The L&DO has clearly stated that use of the site as per layout plan of the area was religious and that it was allotted to the BTRM on 12th May 1997. The letter also makes it clear that there was no proposal for cancellation of the allotment. The further clarification that

there was no proposal to allot the open space on account of the pending litigation, in fact refers to the case filed by the BTRM against the DDA regarding the payment of ground rent and the rates of allotment. Whether in fact BTRM has paid the ground rent or the rates of allotment as demanded, is a matter for the DDA to examine and take appropriate action. That by no means can wipe out the fact that the land in question was in fact allotted to the BTRM way back in May 1997.

13. The Petitioners seek to rely on a letter dated 18th June 2007 written by the Chief Engineer, DDA to its Director (PR) stating that three sites, including Plot Nos. 2 and 3 between Pocket 52 and N Block, CR Park were available for holding marriages/social functions. As far as this Court can see, this letter again cannot be said to nullify the fact of allotment of the land in question to the BTRM on 12th May 1997. It is then contended that under the Master Plan for Delhi 2021 ('MPD 2021') the total area that can be allotted for religious purposes cannot exceed 800 sq.m. whereas BTRM has been allotted 2023 sq.m. In the first place it needs to be noted that the allotment was made way back on 12th May 1997 when the MPD 2021 was not in force. The objection that the allotment was consistent with the MPD 1962 as amended by the MPD 2001 was a question that raised in the earlier writ petition filed in 1997. The mere fact that the petitioner associations

were not parties to that petition makes no difference since the petitioners were residents of CR Park. The order dated 23rd May 2003 by this Court disposing of the said petition has attained finality. It would be an abuse of the process of law to permit endless rounds of litigations by the residents of CR Park, whether as individuals or as members of a residents' welfare association, to repeatedly challenge the allotment of the land in question in favour of the BTRM on either the same or on different grounds. There has to be a finality to the litigation on this aspect at some point in time.

14. In the present petition again, it is sought to be urged that the use of the land in question is residential and not religious. This has already been dealt with and negatived in the order dated 23rd October 2003 passed by the learned Single Judge of this Court. That issue, therefore, cannot be permitted to be re-opened. Merely because the majority of the residents of a colony want to use the plots in question for holding their own social functions, the allotment made in favour of BTRM consistent with the layout plan cannot be permitted to be cancelled. It may be useful to recall that Article 15(2) of the Constitution prohibits discrimination in the matter of access to public spaces. In a residential colony in an urban metropolis any attempt by the members of the dominant community of that colony to exclude members of any other community from access to public space and reserve such space to

themselves must be frowned upon. Such a move will defeat the objective of a true integration of populations irrespective of their religious or linguistic denomination. The Master Plan for Delhi 2021 consistent with the provisions of Article 15 of the Constitution is meant to foster equitable and non-discriminatory access to public spaces as much as to land held by the state agency, in this case the DDA. The court should not be used to achieve the impermissible practice of segregation of populations in a colony may be comprised predominantly of the members of a particular community. In the present case, the mere fact that CR Park is dominated by Bengalis, cannot justify the denial of an allotment of land, on equitable basis, to other communities.

15. As already observed, if the BRTM has not complied with the terms of the allotment made to it then it is open to the Respondents to take appropriate action against it in accordance with law. That however does not give the Petitioners locus to seek cancellation of the allotment in favour of BTRM. Further, if the real concern of the Petitioners is about not having space for their social functions, then it is open to them to make a representation to the Respondents for permission to use any other open space that may be available for such purposes either in CR Park or its neighbourhood consistent with the permissible uses of such space under the

MPD 2021 and other applicable laws.

16. There is no merit in this writ petition and it is dismissed as such.

S. MURALIDHAR, J

JANUARY 21, 2010

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