

* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ **W.P.(C) 2932/2011**

Reserved on : 20.07.2011

Decided on : 02.08.2011

IN THE MATTER OF :

SHRI KRISHNA JANMOTSAV SAMITI PUNJABI BAGH (REGD.)

..... Petitioner

Through: Mr. Harish Malhotra, Sr. Advocate

With Mr. Sachin Midha, Advocate

versus

MCD & ANR.

....Respondents

Through: Mr. Sudhir Nandrajog, Sr. Advocate with
Mr. Ajay Arora and Ms. Saroj Bidawat, Advocates
for MCD

Mr. N.K. Kaul, Sr. Advocate with Mr. P.D. Gupta,
Mr. Kamal Gupta & Mr. Abhishek Gupta,
Advocates for respondent No.3.

CORAM

*** HON'BLE MS.JUSTICE HIMA KOHLI**

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| 1. Whether Reporters of Local papers may 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 Digest? | Yes |

HIMA KOHLI, J.

1. The present petition is filed by the petitioner/Society praying *inter alia* for quashing of the impugned order dated 19.4.2011 passed by

respondent no. 2/Deputy Director (Horticulture) MCD, cancelling the booking made by the petitioner/Society in respect of three parks situated in Punjabi Bagh, Delhi, for the purpose of celebrating Janmashtmi Mahotsav from 11.7.2011 to 30.8.2011. It is further prayed that respondent No. 1/MCD be restrained from issuing permission to any other entity, to use the said parks for the aforesaid period.

2. The brief facts of the case are that as per its policy, respondent No.1/MCD grants permission to parties for booking of parks and function sites at various places in Delhi, including the lawns at Punjabi Bagh Stadium for the purposes of holding social, cultural and religious functions/gatherings. As per its Circular dated 7.9.2010, respondent No.1/MCD revised the rates and some procedures for booking the parks. One of the conditions imposed for booking of the parks was the requirement of obtaining the consent of the area Councillor or the Mayor of Delhi. It is the case of the petitioner/Society that on 15.11.2010, it applied to respondent No.1/MCD for booking of three lawns at Punjabi Bagh Stadium between 11.7.2011 to 30.8.2011, for holding celebrations on the occasion of Shri Krishna Janmashtmi. Prior to that, on 21.10.2010, the petitioner/Society applied to the Mayor, Delhi for his recommendation, which was granted to it on 24.10.2010. The booking was processed by respondent No.1/MCD after obtaining the approval from the Commissioner, MCD on 19.1.2011. Thereafter, as per the

petitioner/Society, it deposited the booking amount totaling to ₹61,030/- with respondent No.1/.MCD. However, the petitioner/Society claims that in April, 2011, it came to know from some reliable sources that respondent No.1/MCD was proposing to cancel the said booking in its favour and proceeding to grant the same to some other party. Apprehending such an action on the part of respondent No. 1/MCD, the petitioner/Society issued a legal notice dated 9.4.2011 to respondent No.1/MCD seeking to restrain it from allotting the said parks to some other entity. Thereafter, it received the impugned letter dated 19.4.2011 issued by respondent No.2, informing that the booking done by it for the three parks for the period from 11.7.2011 to 30.8.2011 was cancelled, and the booking amount of ₹61,030/- was being refunded. Aggrieved by the said order of cancellation, the petitioner/Society has approached this Court through the present petition, filed on 3.5.2011.

3. On 4.5.2011, notice was issued in the present petition returnable on 30.5.2011. On the same date, an interim order was passed directing that till the next date of hearing, *status quo* be maintained. On 30.5.2011, an application (C.M. No.7980/2011) was filed by Shree Krishna Janmashtmi Mahotsav Samiti (Regd.), Punjabi Bagh (subsequently impleaded as respondent No.3), praying *inter alia* for impleadment and directions. In the said application, it was averred that the applicant had been celebrating Janmashtmi in Delhi continuously

every year for the past 34 years and for the last 16 years, the three parks situated at Punjabi Bagh were being booked by it. It was further submitted that as per the usual practice, on 21.3.2011, the applicant approached the local Municipal Councillor to obtain his consent for booking the parks in question. On 5.4.2011, the applicant was also recommended by the Mayor of Delhi for the said booking and thereafter on 19.4.2011, booking receipts were issued by respondent No.1/MCD in this regard. It was averred that the petitioner/Society was fully aware of the aforesaid facts on the date when the writ petition was instituted and it deliberately failed to implead the applicant as a co-respondent, though it was a necessary and proper party in the present proceedings. As a result, an application for impleadment was filed, along with another application (C.M.No.7981/2011) praying *inter alia* for dismissal of the writ petition filed by the petitioner/Society.

4. Notice was issued in the aforesaid applications, vide order dated 30.5.2011, returnable for the date fixed, i.e., on 13.9.2011. In the meantime, the petitioner/Society filed yet another application (C.M. No.9413/2011) for stay, which was listed on 7.7.2011, and notice was issued thereon, returnable for the date fixed. On 14.7.2011, a third application (C.M.No.9883/2011) for stay was filed by the petitioner/Society, but in the course of submissions, an oral prayer was made on behalf of the petitioner/Society for advancing the date of hearing

which was duly acceded to and the matter was directed to be listed on 19.7.2011 for addressing arguments. On 19.7.2011, in view of a no objection given by the petitioner/Society to the impleadment of Shree Krishna Janmashtmi Mahotsav Samiti (Regd.), Punjabi Bagh, the said application was allowed and the Samiti was impleaded as respondent No.3 in the present proceedings. Both the parties also agreed that due to paucity of time and in view of impending Janmashtami celebrations, the submissions made in the said application would be treated as a counter affidavit of respondent No.3/Samiti.

5. The main contention of Mr. Harish Malhotra, learned Senior Advocate appearing for the petitioner/Society was that the petitioner/Society had been informed that the three parks were allotted by respondent No.1/MCD on a first-come-first-serve basis, because of which it had applied for the use of the parks for the purpose of Janmashtmi celebrations well in advance. Having been granted such permission by respondent No. 1/MCD, it could not have cancelled the booking unilaterally without affording an opportunity of hearing to the petitioner/Society. It was contended that by doing so, respondent No.1/MCD had violated the principles of *audi alteram partem*, i.e., having failed to give a hearing to the petitioner/Society before taking an action which adversely affected it. Thus, the impugned letter dated 19.4.2011 issued by respondent No.1/MCD, cancelling the booking of the

petitioner/Society was sought to be set aside.

6. Counsel for respondent no.1/MCD submitted that the grant of permission to the petitioner/Society to use the three lawns at Punjabi Bagh, was done under a mistaken impression that the petitioner/Society was the same society which had been conducting the Janmashtmi celebrations in the said parks for the past 34 years. It was stated that though the petitioner/Society got registered on 18.11.2010, it applied to the Mayor of Delhi prior thereto on 15.11.2010, for being recommended to book the three lawns in question to celebrate Krishna Janmashtmi in the year 2011. On 21.3.2011, respondent No.3/Samiti made a representation to the area Councillor to book the aforementioned lawns in their favour for conducting the Krishna Janmashtmi Mahotsav celebrations. Vide letter dated 5.4.2011, the area Councillor recommended the name of respondent No.3/Samiti for booking the lawns from 11.7.2011 to 1.9.2011. The matter was thereafter discussed by the area Councillor with the Mayor of Delhi during which discussions, the latter stated that the petitioner/Society had misguided him by stating that they had been celebrating Janamshtmi in these lawns for the last many years which was factually inaccurate and based on their misrepresentation, he had mistakenly recommended the name of the petitioner/Society for booking the lawns. Vide letter dated 5.4.2011, the Mayor of Delhi admitted the aforesaid error and requested respondent

No.1/MCD to allot these lawns in the name of respondent No.3/Samiti, as recommended by the Local Councillor, instead of the petitioner/Society. Consequently, the booking made in favour of the petitioner/Society was cancelled and the amount deposited by it was refunded by respondent No.1/MCD on 19.4.2011. Further, on the recommendation of the area Councillor and the Mayor of Delhi, also supported by the recommendation of one Member of Parliament and the MLA of the area, the booking of the three lawns was done in favour of respondent No.3/Samiti on 19.4.2011, with the approval of the Commissioner, MCD.

7. Mr. Neeraj Kishan Kaul, learned Senior Advocate appearing for respondent No.3/Samiti urged this Court to dismiss the writ petition on the ground that on the date of its institution, the same had been rendered infructuous in view of the fact that respondent No.1/MCD had already cancelled the allotment in favour of the petitioner/Society and allotted the parks in question in favour of respondent No.3/Samiti, which fact the petitioner/Society was very well aware of, but had intentionally withheld from the Court. It was further submitted that the *status quo* order passed on 4.5.2011 would have in any case meant that the parks having been allotted to respondent No.3/Samiti on 19.04.2011, the booking made by the latter would be maintained. It was canvassed on behalf of respondent No.3/Samiti that apart from it being infructuous, the writ petition also suffered from suppression of material facts. Learned

counsel for respondent No.3/Samiti contended that the petitioner/Society had failed to reveal to this Court the factum of a round of litigation between the parties, which took place as recently as in the year 2010, when one Shri Bal Krishan Aggarwal, former General Secretary of respondent No.3/Samiti filed a civil suit for injunction and declaration on the original side of this Court, registered as CS(OS) No.1155/2010, against the office bearers of respondent No.3/Samiti and other trustees, claiming *inter alia* that he and his group of supporters and associates were entitled to conduct the Janmashtmi celebrations on behalf of respondent No.3/Samiti. However, the said suit ended in a compromise duly reduced into writing (Annexure PA-1 to C.M. No.7980/2011), wherein apart from other terms and conditions of settlement, it was agreed between the parties, i.e., the two rival groups, identified as Group A led by Shri Bal Krishan Aggarwal and his associates (plaintiffs in the suit) and Group B led by Shri Amrit Singhala and his associates (defendants in the suit), that the affairs of Janmashtmi Mahotsav Samiti would be handed over to Group B and its office bearers, who would celebrate Janmashtmi at the Punjabi Bagh parks without any interference or intervention from Group A. It was further agreed that Group A would form a new trust/society and be entitled to take over the Dharamshala plot situated at Vrindavan which was registered in the name of respondent No.3/Samiti. In the compromise, Group A specifically undertook not to

celebrate Janmashtmi in Punjabi Bagh for a period of two years.

8. It was the contention of the learned counsel for respondent No.3/Samiti that after the aforesaid agreement was signed by Group A and Group B, it was duly acted upon, inasmuch as the pending civil suit filed by Shri Bal Krishan Aggarwal was withdrawn and in furtherance to the compromise, a Trust was formed by Group A in the name of Shree Krishna Nishkaam Charitable Trust (Regd.) (hereinafter referred to as '**Nishkaam Trust**'), Punjabi Bagh which got the Dharamshala plot at Vrindavan registered in its name. Later on, with the *mala fide* intention of wriggling out of the aforesaid settlement, four of the founder trustees of the aforesaid Nishkaam Trust became office bearers of the petitioner/Society, i.e., Shree Krishna Janmotsav Samiti, Punjabi Bagh (Regd.), which got itself registered with the Registrar of Societies on 18.11.2010. Attention of the Court was drawn to a copy of the resolution filed with the writ petition and typed out on the letter head of the petitioner/Society which reveals that four of the office bearers of the petitioner/Society, namely, Shri Ram Rishi Goel, Shri Satnarayan Mittal, Shri Manoj Garg and Shri Vinod Bansal, are also prominent members of the Nishkaam Trust, as is apparent from a perusal of the Brochure of the said Trust (Annexure A-4 to C.M.No.7980/2011). It was argued that the members of the aforesaid petitioner/Society, being also members of Group A, knowing fully well that they were bound by the terms of the

compromise recorded in the civil suit, and that they could not have held the Krishna Janmashtmi celebrations at the lawns at Punjabi Bagh for a period of two years, sought to frustrate the settlement by floating the petitioner/Society in November 2010 and further, adopted a name deceptively similar to that of respondent No.3/Samiti, with the sole intention of deceiving the public at large and for taking advantage of the name and goodwill of respondent No.3/Samiti built over the past 34 years. Counsel for respondent No.3/Samiti submitted that even though the registered office of the petitioner/Society was situated at Paschim Vihar, Delhi, in a devious manner, it had adopted the name of "Shri Krishna Janmotsav Samiti (Regd.)", with a suffix "Punjabi Bagh", added to the name so as to create confusion in the public at large since the registered office of respondent No.3/Samiti is actually situated at Punjabi Bagh and it too has the suffix "Punjabi Bagh" after its name.

9. It was contended on behalf of respondent No.3/Samiti that by taking advantage of its name sounding similar to that of respondent No.3/Samiti, the petitioner/Society had successfully misrepresented itself to be respondent No.3/Samiti before the Mayor of Delhi and had obtained his recommendation for booking the parks in question to hold Janmashtmi celebrations there in this devious manner. It was only in March 2011 when respondent No.3/Samiti got wind of the deliberate misrepresentation made by the petitioner/Society that the same was

brought to the notice of the Mayor of Delhi, who withdrew his earlier recommendation in favour of the petitioner/Society and instead recommended cancellation of the booking done in its favour. In the subsequent letter dated 5.4.2011 addressed by the Mayor, Delhi to DC(West), it was stated that respondent No.3/Samiti had been celebrating Janmashtmi in the parks in Punjabi Bagh for the last number of years and it was by mistake that a recommendation had been issued in favour of the petitioner/Society for booking the same park.

10. It was next submitted by the learned Senior Advocate for respondent No.3/Samiti that the petitioner/Society was all along aware of the fact that as on the date of filing the writ petition, i.e., on 3.5.2011, the parks in question had already been allotted to respondent No.3/Samiti, which fact was deliberately withheld from the Court. In support of the said submission, the attention of this Court was drawn to ground (iv) of the grounds taken in the writ petition which reads as below:-

“(iv) Because a bare perusal of the impugned action of the respondent No.1 in revoking the permission granted to the petitioner and granting the same to the respondent No.3 who had admittedly applied much after the petitioner shows that the petitioner has been discriminated and it is clear case of bias. The same makes the impugned action of the respondents discriminatory and thus liable to be set aside by this Hon’ble Court as the same is unreasonable and amount to bias and arbitrariness.” (emphasis added)

11. Counsel for respondent No.3/Samiti urged that having regard to the fact that the petitioner/Society had initially impleaded only the MCD as respondent No.1 in the present proceedings and there being no respondent No.3 arrayed in the list of respondents, there was no question of mentioning "respondent No.3" in ground (iv) and fact of the matter was that respondent No.3/Samiti had intentionally not been made a party in the present proceedings so as to mislead the court and deliberately withhold certain material facts from it. Continuing in the same strain, it was submitted that the relief framed under prayer (b) of the writ petition, calling upon the court to restrain respondent No.1/MCD from issuing any permission in respect of the lawns in question to any other entity, could not have been sought on the date of institution of the writ petition unless the petitioner/Society was aware of the fact that allotment of the parks in question had already been made in favour of respondent No.3/Samiti. The fact that on the date of filing of the writ petition, the petitioner/Society was quite aware that allotment of the said parks had already been made in favour of respondent No.3/Samiti would mean that the writ petition itself had been rendered infructuous on the very date of filing.

12. In rebuttal, counsel for the petitioner/Society vehemently denied that the petitioner/Society had deliberately suppressed material information from the court or that the writ petition was infructuous on the

date of its institution. It was urged that as per the guidelines of the MCD, the petitioner/Society was only required to file an application with respondent No.1/MCD with the recommendation of the Mayor/Municipal Councillor of the area, which it did, and that merely because on the date of submitting an application to the Mayor of Delhi for his recommendation, i.e., on 15.11.2010, the petitioner/Society was not registered as a society, would not be a sufficient ground to disqualify it from being allotted the park in question. It was further submitted that by the date when the recommendation was given by the Mayor, i.e., by 24.11.2010, the petitioner/Society had already been registered on 18.11.2010. It was reiterated that once the allotment had been made by respondent No.1/MCD in favour of the petitioner/Society, the same could not have been withdrawn without affording an opportunity of hearing to it. The petitioner/Society asserted that it was not set up by the Bal Krishan Aggarwal Group and in any event, the civil litigation between the said Group and respondent No.3/Samiti was not before the MCD when it cancelled the allotment, hence it would be inconsequential for the present proceedings. In the course of arguments, learned Senior Advocate for the petitioner/Society also handed over a list of 40 members of "Group A", as described in the written compromise agreement enclosed with the application filed by Shri Bal Krishan Aggarwal for withdrawing the civil suit, to contend that that the names of about 12-13 members of the said

Group find mention in the invitation cards got printed by respondent No.3/Samiti for holding the Janmashtmi Celebrations at Punjabi Bagh and as a matter of fact, they now form a part of respondent No.3/Samiti, which also amounts to violating the compromise arrived at between the two groups. He submitted that the compromise agreement between Sh.Bal Krishan Aggarwal and respondent No.3/Samiti was only a bogey raised by respondent No.3/Samiti to mislead this Court and the status quo order dated 4.5.2011 could not be interpreted against the petitioner/Society. The mention of respondent No.3 in Ground (iv) of the grounds taken in the writ petition, was sought to be shrugged off as insignificant and as a mere typographical error.

13. This Court has heard the counsels for the parties and has perused the documents placed on record. The two fold submission on the part of respondent No.3/Samiti is that the present writ petition is liable to be dismissed on the ground that the same had been rendered infructuous on the date of its institution and secondly, on the ground that the petitioner/Society had deliberately suppressed and concealed material facts from this Court, including the factum of the recent civil litigation between the parties, which itself would be a disqualification for it to invoke the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India.

14. It is a settled law that when a party approaches the High Court and seeks the invocation of its jurisdiction under Article 226 of the Constitution of India, it must place on record all the relevant facts before the Court without any reservation. In exercising its discretionary powers and extraordinary jurisdiction under Article 226 of the Constitution of India, the High Court not only acts as a court of law, but also as a court of equity. Therefore, in case there is a deliberate concealment or suppression of material facts on the part of the petitioner or it transpires that the facts have been so twisted and placed before the Court, so as to amount to concealment, the writ court is entitled to refuse to entertain the petition and dismiss it without entering into the merits of the matter [Refer: Prestige Lights Ltd. vs. State Bank of India **(2007) 8 SCC 449**]. The judgment of the Kings Bench in the case of R. vs. Kensington Income Tax Commrs. reported as **(1917) 1 KB 486** highlighted the object underlying the aforesaid principles in the following manner: -

“[I]t has been for many years the rule of the court, and one which it is of the greatest importance to maintain, that when an applicant comes to the court to obtain relief on an ex parte statement he should make a full and fair disclosure of all the material facts – facts, not law. He must not misstate the law if he can help it – the court is supposed to know the law. But it knows nothing about the facts, and the applicant must state fully and fairly the facts, and the penalty by which the court enforces that obligation is that if it finds out that the facts have not been fully and fairly stated to it, the court will

set aside, any action which it has taken on the faith of the imperfect statement.”

15. After taking note of the aforesaid judgment in the case of Prestige Lights Ltd. (supra), the Supreme Court held as below:-

“35. It is well settled that a prerogative remedy is not a matter of course. In exercising extraordinary power, therefore, a writ court will indeed bear in mind the conduct of the party who is invoking such jurisdiction. **If the applicant does not disclose full facts or suppresses relevant materials or is otherwise guilty of misleading the court, the court may dismiss the action without adjudicating the matter. The rule has been evolved in larger public interest to deter unscrupulous litigants from abusing the process of court by deceiving it. The very basis of the writ jurisdiction rests in disclosure of true, complete and correct facts. If the material facts are not candidly stated or are suppressed or are distorted, the very functioning of the writ courts would become impossible.** (emphasis supplied)”

16. In the case of K.D. Sharma vs. SAIL reported as **(2008) 12 SCC 481**, it was observed that the jurisdiction of the Supreme Court under Article 32 and of the High Court under Article 226 of the Constitution of India is extraordinary, equitable and discretionary. It is, therefore, of utmost necessity that the petitioner approaching the writ court must come with clean hands, put forward all the facts before the Court without concealing or suppressing anything and seek an appropriate

relief. If there is no candid disclosure of relevant and material facts or the petitioner is guilty of misleading the Court, his petition may be dismissed at the threshold without considering the merits of the claim.

17. Taking note of the aforesaid judgment and a number of judgments on the same lines, the opening lines in a recent decision of the Supreme Court in the case of Dalip Singh vs. State of Uttar Pradesh & Ors. reported as **(2010) 2 SCC 114** read as below:-

"1. For many centuries Indian society cherished two basic values of life i.e. "satya" (truth) "ahinsa" (non-violence). Mahavir, Gautam Budha and Mahatma Gandhi guided the people to ingrain these values in their daily life. Truth constituted an integral part of the justice-delivery system which was in vogue in the pre-Independence era and the people used to feel proud to tell truth in the courts irrespective of the consequences. However, post-Independence period has seen drastic changes in our value system. The materialism has overshadowed the old ethos and the quest for personal gain has become so intense that those involved in litigation do not hesitate to take shelter of falsehood, misrepresentation and suppression of facts in the court proceedings.

2. In the last 40 years, a new creed of litigants has cropped up. Those who belong to this creed do not have any respect for truth. They shamelessly resort to falsehood and unethical means for achieving their goals. In order to meet the challenge posed by this new creed of litigants, the courts have, from time to time, evolved new rules and **it is now well established that a litigant, who attempts to pollute the stream of justice or who touches the pure fountain of justice with tainted hands, is not entitled**

to any relief, interim or final. (emphasis supplied)”

18. In the case at hand, on a perusal of the pleadings of the parties and submissions made by both sides, this Court finds that several material facts which were well within its knowledge, have been suppressed by the petitioner/Society. In the first instance, the petitioner/Society did not disclose to this Court the factum of the recent litigation between certain members of respondent No.3/Samiti led by Shri Bal Krishan Aggarwal (Group A) and the respondent No.3/Samiti itself, which was pending adjudication on the original side of this Court and was settled through a compromise as recently as last year. It is not denied that out of the seven office bearers mentioned on the letterhead of the petitioner/Society, enclosed as Annexure A-15 to the writ petition, four of the members namely, Shri Satyanarayan Goyal (Up-Pradhan), Shri Ramrishi Goyal (Mahamantri), Shri Vinod Bansal (Koshadhyaksha) and Shri Manoj Garg (Sadasya) are trustees of Nishkaam Trust floated by the same Group A, after it entered into the compromise in **CS(OS) 1155/2010** entitled Shri Krishna Janmashtami Mahotsav Samiti vs. Amrit Singla & Ors., wherein Group A undertook not to hold a separate Janmashtmi Celebrations in Punjabi Bagh for a period of two years, while conceding therein that Group B (respondent No.3/Samiti herein) would

take over the affairs of the Samiti and the office bearers of the said group would celebrate Janmashtmi in Punjabi Bagh without any interference from Group A.

19. Secondly, the petitioner/Society did not reveal to the Court the fact that on the date of institution of the present writ petition, i.e., on 03.05.2011, it was conscious of the fact that the three parks in Punjabi Bagh had already been allotted by respondent No.1/MCD to respondent No.3/Samiti. The argument of the counsel for respondent No.3/Samiti is well founded that there is no justification for the petitioner/Society to have mentioned "respondent No.3" in ground (iv) of the grounds taken in the writ petition if it had been unaware of the allotment of the park in favour of respondent No.3/Samiti, particularly, when originally only two respondents were arrayed in the Memo of Parties, while excluding respondent No.3/Samiti. For the petitioner/Society to seek to casually brush away the mention of "respondent No.3" in ground (iv) as a typographical error is untenable and unacceptable for the reason that ground (iv) makes a mention of "respondent No.3" in the context of revocation of permission granted to the petitioner/Society by respondent No.1 and grant of the same to "respondent No.3" and further elucidates that the said respondent No.3 had "admittedly applied much after the petitioner". This Court is inclined to agree with the submission of learned counsel for respondent No.3/Samiti that in the course of finalizing the

petition, the petitioner/Society slipped up by maintaining ground (iv) as it was while overlooking the fact that there was no mention of respondent No.3 in the body of the petition and prayer clause (b) was carefully drafted in an ambiguous manner by seeking to restrain respondent No.1 from issuing any permission in respect of the three lawns for the period from 11.07.2011 to 30.08.2011 "in favour of any other entity", instead of "respondent No.3."

20. Lastly, in the course of addressing arguments on 19.07.2011, learned counsel for respondent No.3/Samiti had particularly drawn the attention of this Court to an individual sitting in the second row of the Court who was instructing the counsel for the petitioner/Society as also the Senior Advocate engaged by the petitioner/Society and had been identified as one Mr. Pawan Garg, who, it was submitted, was a part of the list of Group A members. The identity of the said person was not denied by the counsel for the petitioner/Society. The question which has remained unanswered is that if the petitioner/society had no connection with the aforesaid Group A members, as claimed by it, then why would the aforesaid gentleman be present in Court to instruct the counsels engaged by the petitioner/society. Pertinently, the name of Shri Pawan Garg finds mention at Sr.No.7 as one of the signatories to the compromise recorded in the civil proceedings initiated by Shri Bal Krishan Aggarwal(Annexure A-3). His name also features at Sr.No.28 of the list of Group A members

handed over by the counsel for the petitioner/Society the very next day, i.e., on 20.07.2011. At the relevant time, the said Shri Pawan Garg was holding the post of Treasurer of respondent No.3/Samiti.

21. All the above is a pointer to the fact that the petitioner/Society is actually a front for Group A led by Sh.Bal Krishan Aggarwal and once the veil is pierced, then it becomes clear that the petitioner/society is only an alter ego of the same Group A. The attempt on the part of the petitioner/Society to counter the above by submitting that the names of 12-13 persons mentioned in the list of Group A members, also find mention in the invitation card recently printed by respondent No.3/Samiti itself, cannot take its case any further for the reason that as per the petitioner/society, the two entities are entirely different from each other. If at all anybody can have a grievance in that regard, it is the same Group A and not the petitioner/Society herein, which has taken a stand that it has no connection with Group A or with the previous litigation between the parties. This is the third material fact, which has also weighed with this Court in its decision to decline to exercise its discretion under Article 226 of the Constitution of India in favour of the petitioner/Society.

22. When all the aforesaid fragments of events are gathered and assembled on the factual canvas, the picture that emerges, leaves this Court with a clear impression that in order to wriggle out of the

compromise arrived at between the two rival groups, who were a part of respondent No.3/Samiti earlier and who had become signatories to the settlement recorded in CS(OS) 1155/2010, wherein there was a specific condition imposed on Group A that it would not hold a separate Janmashtmi celebration in Punjabi Bagh for a period of two years and that Group B alone would be entitled to celebrate Janmashtmi in Punjabi Bagh, the petitioner/Society was got registered in a span of less than four months from the date on which the suit was withdrawn by Shri Bal Krishan Aggarwal, for it to lay a claim on the same three lawns at Punjabi Bagh, where respondent No.3/Samiti has admittedly been celebrating Shri Krishna Janmotsav for the past over 16 years. Curiously enough, there is not a whisper of all the aforesaid events in the writ petition and had respondent No.3/Samiti not entered appearance and sought impleadment in the present proceedings, this Court would never have got the wind of it. The submission made on behalf of the petitioner/society that the aforesaid facts were not before the respondent/MCD when it canceled the allotment of the three parks made in favour of the petitioner/society is contrary to the stand taken by the respondent/MCD in its reply, where the circumstances under which the parks being initially booked in favour of the petitioner/society and then cancelled, have been spelt out in detail.

23. It is well settled law that relief under Article 226 of the Constitution of India is discretionary in nature and a petitioner, who

approaches the Court for such a relief must freely, frankly and fully disclose all material facts and if she/he fails to do so and conceals the same, her/his petition is liable to be dismissed. In view of the above facts and circumstances, this Court refuses to entertain the present petition. As the petitioner/Society has not approached this Court with clean hands and has failed to candidly disclose all the facts, which were in its knowledge and were quite material, the petition is dismissed without going into the merits of the claim of the petitioner, while quantifying the costs as ₹10,000/- payable in equal shares to respondent No.1/MCD and respondent No.3/Samiti.

AUGUST 02, 2011
mk/pm/rkb

(HIMA KOHLI)
JUDGE