

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CWP-1389-2009

Pronounced on : 24th December, 2015

H.B.Garg and others

.... Petitioners

VERSUS

The State of Haryana and others

..... Respondents

CORAM: **HON'BLE MR. JUSTICE RAJIVE BHALLA**
HON'BLE MS. JUSTICE REKHA MITTAL

Present: **Mr.Anupam Gupta, Senior Advocate, with**
Mr.Siddharth Sharma, Advocate, for the petitioners.

Ms.Tanisha Peshawaria, DAG, Haryana.

Mr.R.D.Bawa, Advocate, for respondents No.2 to 4.

RAJIVE BHALLA, J.

The petitioners, who are owners of and reside in houses, in Sector 12-A, Panchkula, pray for issuance of a writ in the nature of mandamus, directing the respondents not to change the user of the open space/green belt/park situated in front of Houses No.720 to 725, 726 to 733, 676 to 679 and also 768 to 771, and to desist from altering the original plan from an area reserved for open space/green belt/park to an area for construction of houses. The petitioners also pray for issuance of a direction to the respondents to develop the open area situated in front of their houses as a park.

The petitioners, as already recorded, are owners of houses and reside in Sector 12-A, Panchkula. The petitioners purchased

plots from original allottees and constructed houses. The plots were originally allotted in the year 1981 and as per the petitioners, the area, in dispute, was earmarked as a park and though not fully developed, trees were planted on the periphery and a board was fixed to show that the land, in dispute, is reserved as a park. The petitioners pray that as Sector 12-A is a fully developed residential area, this open space reserved for a park may be developed. The petitioners aver that petitioner No.1, addressed a letter dated 21.08.2006 to respondent No.3, pointing out that as the park is being used to dump garbage, cattle belonging to villagers from adjoining villages graze in the park, the land may be developed as a park. An application was filed under the Right to Information Act, 2005, seeking information regarding the status of the park, the authority required to develop the park and the amount spent on development of the park etc. After directions were issued by the State Information Commissioner, the approved lay out plan was provided to the petitioners but to the shock of the petitioners, it was discovered that the respondents have changed the layout plan and transferred the land to the PWD (B&R) for construction of ministers' houses, without inviting objections from the general public, as required by law. A part of the land has now been earmarked for construction of houses for judicial officers.

Counsel for the petitioners in his passionate and erudite submissions, urges that the respondents admit the fact that as in the

original layout plan the land was earmarked for an open space/park, the land cannot be diverted to any other use much less for construction of ministers' houses or for construction of houses for judicial officers, posted at Panchkula. A fully developed park exists at the spot as is apparent from the photographs appended with a miscellaneous application. The residents of Sector 12-A, Panchkula, have spent a lot of money and effort in developing the park. In case, houses are constructed, the park would be destroyed depriving residents of the area of the only open green space available to them thereby converting the entire area into a concrete jungle.

Counsel for the petitioners further submits that public parks and playgrounds are integral to and necessary for an urban area and for protection of the environment. The petitioners have a legal right, recognised by law to require that the open space be retained as a park. The diversion of this land for construction of houses is a matter of grave public concern and while emphasising and in fact supporting the need for providing housing for judicial officers posted at Panchkula, counsel for the petitioners submits that saving the park should take precedence over housing. An alternative piece of land can always be identified and provided for houses for judicial officers but the land for the park, once diverted, cannot be retrieved. It is further submitted that public interest in maintaining existing open spaces whether as parks or otherwise, far outweighs the need for housing. The interest of the petitioners should not be sacrificed by

diverting the park for any other use. Counsel for the petitioners further submits that open spaces in urban areas are at a premium having shrunk to a bare minimum, replaced as they are with concrete structures thereby rendering the need to issue a mandamus, directing the respondents to desist from diverting the park to any other use all the more urgent. The respondents may, therefore, be restrained from diverting this green area for construction of houses. In support of his submissions, counsel for the petitioners relies upon a judgment of the Hon'ble Supreme Court in Bangalore Medical Trust Vs. B.S.Muddappa and others (1991) 4 SCC 54. Counsel for the petitioners prays that this park be saved and may not be sacrificed because the interest of judiciary is involved.

Counsel for the State of Haryana, submits that the petitioners do not have a right, whether based upon their allotment letters, sale deeds or the layout plan to insist that the land be not used for houses. The land, in dispute, was originally left as a vacant piece of land and may at one stage have been referred to as a park but even as per the petitioners, was a vacant piece of land, which even on the date of filing of the writ petition was used for dumping garbage, grazing of cattle and was over grown with shrubs and bushes. A perusal of the photographs appended with the petition, at the time of filing of the petition, reveal an open space, a garbage dump, cattle grazing, trees planted at the periphery but does not reveal a park.

The photographs appended with the miscellaneous application,

however, reveal a lush green fully developed park with path ways and other amenities. The petitioners appear to have taken advantage of the pendency of the writ petition and developed the park with the malafide object of presenting this court with a fait accompli. Counsel for the State further submits that the plans were notified for different sectors with broad uses but a revised plan was issued by the Administrator HUDA, vide memo No.S-1-89/140 dated 05.01.1990, allotting the land to the PWD (B&R) for construction of a ministers' housing complex. The houses were completed long ago and are occupied by ministers and officers. The open space which was earlier proposed in front of plots No.676 to 679 was relocated to a plot in front of plots no.671 to 674. Out of the remaining land, 4 acres was to be allotted for construction of houses for judicial officers but only 2.6 acres has been allotted. A complex to house judicial officers posted at Panchkula, has been approved, tenders allotted and work is at an advanced stage of construction, except for the land in dispute. The project cannot be bifurcated as no other suitable piece of land is available. The State has already spent a large sum of money and alternative land is not available. To a specific query, about the number of parks in existence, counsel for the State submits that the park existing within the ministers' houses can be used by the petitioners without any impediment.

We have heard counsel for the parties, considered averments in the petition, the reply, the additional affidavits, the

miscellaneous application and despite the passionate plea raised by counsel for the petitioners, a plea we must acknowledge is neither misplaced nor misguided, express our inability to grant any relief to the petitioners for reasons that we shall proceed to record.

A perusal of the judgment in Bangalore Medical Trust Vs. B.S.Muddappa and other case (supra), reveals that a public park is not only a necessity but integral to an urban area. We cannot but agree with the ratio of the judgment but in view of the fact that the layout plan was altered by memo No.S-1-89/140 as far back as 05.01.1990, by allotting the land to the PWD (B&R), (the land, in dispute, is part of this land) for construction of a ministers' housing complex, almost two decades before the filing of the writ petition, cannot allow the petitioners to turn the clock back and undo a fact that became a reality almost two decades ago. The ministers' houses were constructed before the eyes of the petitioners and though the land, in dispute, remained vacant, it was no longer a park.

Admittedly, houses for ministers which are now occupied by ministers, officers, members of various tribunals etc. have already been constructed. A part of the land meant for ministers' houses has been allotted for construction of houses for judicial officers. The land having been transferred to the PWD (B&R) for construction of ministers' houses by issuance of a revised plan in the year 1990, in our considered opinion, disentitles the petitioners to any relief.

The land, in dispute, as already noticed, has been allocated as part of an integrated complex for construction of houses for judicial officers. The complex consists of multi-storyed buildings for Civil Judges (Senior/Junior Division) and houses for Additional District & Sessions Judges, posted at Panchkula. The open space/the so-called park is located on a part of the land reserved for construction of houses for judicial officers. Admittedly, the land has been demarcated, tenders invited, work allotted and construction, apart from the land in dispute is in progress. But for the writ petition the project may have been completed by now.

We may have taken into consideration the necessity of a park and ordered that the park, developed by the petitioners be saved and houses for judicial officers, be relocated but for another significant fact. A perusal of averments in the original petition filed in the year 2009, reveal a prayer for development of the open area as a park. The petitioners have in fact clearly and categorically averred in paragraph 8 of the petition as follows: -

“8. That the petitioner no.1, wrote a letter dated 21.8.2006 which is annexed as Annexure P-2, to the Respondent no.3, thereby stating that a park in front of the houses of the petitioners is in a very dilapidated condition and asked for the cleanliness of the park and also stated that he has met him personally also and some work was done in a day and further stated that the park is full of congress grass and haphazard growth and garbage is there and in the night the nearby villagers leave their cattle for grazing and made a request that if it could not be developed as a park then atleast it should be kept neat and clean otherwise epidemic can spread and can become a cause of serious disease.”

The above extract reveals that the land, in dispute, was

vacant land which, even as per the petitioners, was being used as a garbage ground, for grazing of cattle by residents of adjoining villages and was overgrown with weeds and bushes. The petition, in fact, contains repeated references to the undeveloped open land and the main prayer in the writ petition, apart from directing that the land may not be diverted for any other use, is for issuance of a direction to develop the park, but surprisingly photographs appended with an application filed by Mr.H.B.Garg (petitioner) reveal a well laid out lush green grass park with walking tracks, shelters, slides etc. as depicted in photographs Annexure A-2 (colly). The photographs are in sharp contrast to photographs (Annexure P-14), appended with the original petition. The photographs (Annexure P-14) show a vacant piece of land whereas Annexure A-2 (Colly) reveal a well developed park. The petitioners, it appears, have taken advantage of the pendency of the writ petition and developed, a part of the land, probably at their own expense, as a park with the apparent object of presenting the court with a fait accompli and pleading that this developed park be not used for construction of houses for judicial officers. The petitioners, therefore, cannot plead any rights and equities in their favour on the plea that they have developed a park.

Admittedly, a large park exists in the vicinity of the petitioners' houses but for some unfathomable reason, has been closed to the general public. Counsel for the State of Haryana has made a veiled reference to the need for security of occupants of

official houses but eventually conceded that this park is a public place and may have been closed by some over zealous security personnel on the premise of security for ministers and other dignitaries occupying these houses. The respondents, however, are unable to place before us any justification for depriving the general public, including the petitioners, of access to this park constructed and maintained at public expenses whether on the ground of security or otherwise.

A public park/open space cannot be reserved for any particular category of persons, howsoever high or mighty. A perceived security threat cannot be used as an excuse to exclude the general public from using a park. As an example, a large number of parks and open spaces abut houses of Judges, ministers, senior officers, residing in various sectors of Chandigarh but these parks/open spaces have not been closed to the public at large. The so called ministers' park is bounded by a high wall and its gates have been locked apparently on a misplaced notion of security for a privileged few.

Counsel for the State of Haryana, admits, on instructions, that this park has not been reserved for ministers or for officers and states that this park shall be open to the general public and access to the park would not be denied to any person whatsoever.

Consequently, taking into consideration what has been recorded hereinabove, the writ petition is dismissed with the

following directions:-

- (a) The public at large shall be entitled to an unhindered access to the so called ministers' park.
- (b) The gates shall be opened forthwith and security personnel posted with officers residing in these houses shall not restrain any person whatever from using the park.
- (c) The so called ministers' park shall be open to the public at large and no person shall place any lock on its gates or hinder access thereto.
- (d) Any park in Sector 12-A, Panchkula developed or to be developed, shall be accessible to the petitioners and the public at large without any hindrance whether on the ground of security or otherwise.

No order as to costs.

[RAJIVE BHALLA]
JUDGE

24th December, 2015
shamsher

[REKHA MITTAL]
JUDGE