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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment reserved on : 18.01.2017.

Judgment delivered on : 23.01.2017.

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W.P.(C) 5629/2013 & C.M. No.12433/2015

GREEN PARK ASSOCIATION (REGD.) & ANR Petitioners

Through Mr. Kunal Tandon and Ms. Snigdha
Sharma, Advs.

versus

SOUTH DELHI MUNICIPAL CORPORATION & ORS

..... Respondents

Through Ms. Biji Rajesh and Mr. Amresh
Anand, Advs for Mr. Gaurang Kanth,
Adv for SDMC.

Mr. Rishi Kumar for Ms. Neha
Rustogi, Adv for R-5 along with
Inspector Sanjay Singh and SI Ram
Tirth.

CORAM:

HON'BLE MS. JUSTICE INDERMEET KAUR

INDERMEET KAUR, J.

1 The petitioner is the Green Park Association which is a registered association. It is aggrieved by the acts of the South Delhi Municipal Corporation (SDMC).

2 The averments in the petition disclose that this colony i.e. Green Park Main was developed by the Urban Development Housing and Construction Private Limited as a private colony in the year 1955. On 02.04.1962, a revised layout plan of the Green Park was finalized by the then Standing

Committee. Different areas were earmarked for different purposes. The ground floor of the property at S-1 to S-39 of Green Park Main was declared as a local market area with a 40 feet lawn in front. This area i.e. S-1 To S-39 abuts a 60 feet wide road. On the other side, there are residential houses bearing Nos. G-31 to G-56. Submission in the petition being that this 60 feet street on the market has been converted into a parking area which has since been handed over to an outsourced contractor.

3 Initially the said contractor had been arrayed as respondent No.3 but since the contract with the said respondent had expired by efflux of time, the name of respondent No.3 has been directed to be deleted.

4 In June-July, 2006, the Corporation has broken 10 feet from the 40 feet lawn/footpath in front of shop's No. S-1 to S-39 and converted the same into an alleged parking area. It has also demarcated the opposite side of the market i.e. G-31 to G-56 which are residential houses (earmarked) as an authorized parking area.

5 Several letters have been addressed to the Municipal Corporation to take stock of the objections of the petitioner association qua the aforementioned parking which is not only illegal but creates a huge traffic mess and these traffic hazards caused an inconvenience to the residents of the locality. The

grievance of the petitioner association not having been addressed, the petitioner was constrained to file the present petition.

6 The counter affidavit of respondent No.1/SDMC states that as per the approved layout plan of the area in question, the said parking area is marked as a lawn. It is not a part of the main road but the same is adjacent to the 60 feet wide main road. The layout plan has also been placed on record. The fact that this area which has been marked as a lawn and is now being used as a parking site by the Corporation is admitted. It is also admitted that as per the approved layout plan, the area has been shown as a lawn and there has been no change in the user of the layout plan yet the Corporation is using this lawn for a parking.

7 The further stand of the SDMC is that the shop owners had started using this lawn for parking their own vehicles; it was never maintained as a lawn at any point of time; because of public difficulties and considering the need of the general public visiting Green Park area and there being no other parking site there, this area was converted by the SDMC into an authorized parking zone. This act of the Corporation is not only in the public interest but also for residents as it provides sufficient parking space at a nominal rate; same has been outsourced; it had earlier been given to respondent No.3 but

his contract has now expired by efflux of time. This Court has been informed that a new license has been issued to a third contractor who is now running the contract.

8 The stand of the local police (respondent No.5) is also on record. Their stand is that this market has approximately 1500 vehicles visiting it on a daily basis; these vehicles could escalate to 2,500 vehicles on weekends. The market approach road faces commuters coming to the market; the visitors to this market are generally the residents of surrounding areas. There was no prescribed parking space near the market area. The main approach road of the market accommodates parking of about 150-200 vehicles on either side of the road covering one lane on either side. Earlier there was one lane parking space allocated by the SDMC on west side of the road. On the eastern side, one lane of the road was used by local residents and shopkeepers to park their personal vehicles. Only one lane remained navigable on both directions and if one vehicle stops for the purpose of alighting, the whole carriageway gets obstructed. A team of one Assistant Sub-Inspector, one Head-Constable and two Constables had been deployed in this locality to regulate traffic and remove obstructive parking and take action against the violators. A long term solution has been suggested in this

report which is to the effect that the concerned authorities should take steps to construct an underground/multilevel parking to accommodate the heavy flow of vehicles in this area.

9 In the course of the proceedings before this Court on 23.08.2016, this Court had directed respondent No.5 to ensure that as an interim measure parking should be permitted only on one side of the alleged parking site. On 04.11.2016, these directions had been reiterated and noting the stand of respondent No.5 that a special drive had been carried out against the improper parking in the Green Park Main market as a result of which 403 vehicles had been prosecuted; a round the clock vigil by the police was directed to be ensured; the police team had also been directed to coordinate with the Residents Welfare Association (RWA) and vice-verse.

10 On the next date i.e. on 18.01.2017, this Court has been informed that inspite of repeated directions having been given by the Court, there is little improvement in the traffic congestion which continues to hold ransom the residents of the locality as they are the persons who are most adversely affected by this congestion.

11 Arguments have been heard. In the course of arguments, learned counsel for the petitioner submits that since the parking is now being carried

out in the lawn area (abutting the 60 feet wide road) (Annexure P-1) and although admittedly this area was shown as a green area/lawn in the layout plan and no change of user in the layout plan has been effected yet there being no other authorized parking available with the Green Park Main colony, the petitioner is not aggrieved by the fact that this lawn area is now being used by the Corporation as a parking.

12 Learned counsel for the Corporation on 23.08.2016 had admitted before this Court that there has been no change in the user of the layout plan; in the layout plan the place where the parking is now being carried out i.e. lawn continues to be shown as lawn area but because of the need of the general public and there being no other area available for use as a parking, this lawn is now being used as an authorized parking by the Corporation.

13 This Court again notes the stand of the petitioner; he is not aggrieved by this act that this lawn has now been maintained as a parking area.

14 Learned counsel for the petitioner is however aggrieved by the fact that this parking is being maintained by the Corporation; submission being that the ownership of this area does not vest with the Corporation; they are also not permitted to manage it; the outsourcing of the parking to a third party is yet another grievance of the petitioner; submission being that the

Residents Welfare Association/petitioner association would be in a much better position to carry out this work. The additional argument propounded by the learned counsel for the petitioner is that the residents of the locality have to pay a parking fee for parking their cars in the market area which is against the principle of natural justice. A resident of the locality who goes to his own market should not be asked to pay any charge for parking his vehicle. Learned counsel for the petitioner in support of his submission has placed reliance upon a judgment of a Bench of this Court reported as 2000 V AD (Delhi) 561 Green Park Association (Regd.) Society Vs. Corporation of Delhi and Another.

15 This case related to a school; provisions of Section 313 of the DMC Act had been discussed; a Resolution passed by the Corporation holding that some of the area (which had been earmarked for a school in the layout plan) can be used for an office in the absence of the change of the user of the lawn was held to be a void resolution. Learned counsel for the petitioner to support his contention has drawn attention of this Court to para 10 of the judgment; submission being that the ownership and management are two distinct acts. On this proposition, his submission is that since the lawn area (now used as a parking) is not owned by the Corporation, they also cannot

manage it.

16 This Court is not in agreement with this submission of the learned counsel for the petitioner. This Court notes that para 10 of the judgment (supra) (highlighted by the learned counsel for the petitioner) the Court has drawn a distinction between ownership and management; the Corporation is not holding itself out to be the owner of this land; the clear stand of the Corporation is that in public interest and for their larger benefit, the management of this parking area has been taken over by the Corporation. At the cost of repetition, it is not claiming ownership. That apart, provisions of Section 313 may not be relevant as the petitioner is not aggrieved by the fact that this lawn area (without change of user in the layout plan) is being used as a parking; the grievance has been reiterated to the effect that this parking is being managed by the Corporation who in turn has outsourced it to a third party.

17 On a query put to the learned counsel for the petitioner as to how they would be in a better position to manage this parking, they have no answer. It has also nowhere been averred in the entire body of the petition that the petitioner association would be in a better position to manage the parking; in fact this is also not the prayer in the present petition. Prayers (a) and (c) are

alone alive. Prayer (b) had been declared infructuous in view of the order passed by this Court on 23.08.2016. Prayers (a) and (c) are confined to a mandamus to be issued to the SDMC for having approved the parking in the said area.

18 On this count, learned counsel for the respondent Corporation has also placed on record a draft lease deed which had earlier been entered into by the Corporation with the earlier contractor and which has now come to an end by efflux of time. The submission of the learned counsel for the Corporation is that all such licenses stipulate that concessional rates to traders (having shops and offices in the area) will be charged; at that point of time, it was Rs.150/- per month for cars or an equivalent and Rs.75/- for scooters; the parking would be free for the residents of the area and this concession would be allowed for one vehicle per house/office/shop. Learned counsel for the respondent additionally submits that the Corporation itself neither has the manpower and nor the expertise to run a parking and it is not as if in the Green Park Main alone that parking has been outsourced to a third party; it has been done in most of the localities falling within the jurisdiction of the SDMC.

19 This Court takes judicial notice of this fact. The submission of the

learned counsel for the petitioner that he is in a better position to run this parking has neither been averred in the petition and nor has it been borne out from any argument made before this Court; this Court is of the view that the manner in which parking is being run by the respondent Corporation and the respondent outsourcing it to an authorized contractor does not call for any interference.

20 However the traffic congestion and the plea of the petitioner association on this count cannot be ignored. The interim directions passed by this Court time and again will remain; they are reiterated and respondent No.5 (represented in Court) undertakes and ensures this Court that a round the clock vigil will be maintained by the police in this area to ensure that there is no traffic violation and the traffic-flow is kept as smooth as possible. The team of the police comprising of one Assistant Sub-Inspector, one Head-Constable and two Constables will be maintained.

21 The interim direction passed by this Court on 23.08.2016 and 04.11.2016 are confirmed.

22 This Court has also noted the Resolution of the SDMC i.e. Resolution No.167 dated 15.10.2014 relating to 'de-congestion and improvement of the parking situation in Delhi by changes in the existing parking policy.' The

object of this policy was to control the near chaotic situation of continual increase in, both the population as well as number of personal and commercial vehicles, along with traffic congestion, delays, air pollution, increasing road accidents and cases of road rage, due to problems in finding a commuting space and parking space which has become a daily struggle for the residents. This policy has detailed that the SDMC would be charging concessional fee and as far as possible over-charging/illegal pricing, parking area violations by the contractors and harassment of the citizens of Delhi shall be addressed.

23 The respondent Corporation will hand-over a copy of the contract entered into by the Corporation with the third party to the petitioner association. The contractor will as far as possible endeavor to coordinate with the petitioner association and with the active assistance of respondent No.5 ensure that there is no traffic congestion at the site. The undertaking of respondent No. 1 that the contractor would not be charging any parking fee from the residents of the locality (provided they have proof of the same) i.e. for parking in the market area but this would be confined to one vehicle per person/office/shop is also an undertaking which is noted and even if this clause is not specifically contained in the present license deed, the same shall

be adhered to.

24 A submission has been made by the learned counsel for the petitioner that Khan Market parking is free and parking in Green Park should also follow the same terms. This Court may not be able to agree to this suggestion of the petitioner. Besides the fact that Khan Market is being managed by the market association of the Khan Market traders' and the market Association of Green Park not being a party before this Court; it is also an admitted fact that the market Association of Khan Market has expended a huge amount of money to maintain this parking area, the parity sought for on this count really does not the petitioner.

25 Before parting with this petition, this Court emphasizes the need of a multi-level parking in this area which is a suggestion of respondent No.5 as well. Respondent No.1 in coordination with the other statutory bodies may consider this proposal in a positive light and endeavor to implement it. The undertaking of respondent No.1 on this count is taken on record.

26 No further orders are called for on this petition which is disposed of accordingly.

INDERMEET KAUR, J

JANUARY 23, 2017/A