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

+ **CONT.CAS(C) 940/2018**

SONU DEVI Petitioner

Through **Mr. Satyanand, Advocate.**

versus

JALAL AHMAD & ORS Respondents

Through **Mr. Sanat Kumar, Sr. Advocate with
Mr. Tanmay Mehta, Mr. Abhimanyu
Garg, Mrs. Preety Makkar,
Mr. Vinayak Batta and Ms. Ayushi
Makkar, Advocates for R-1.
Ms. Mini Pushkarna, Standing
Counsel, DUSIB with Ms. Swagats
Bhuyan, Ms. Khushboo Nahar and
Ms. Latika Malhotra, Advs. for R-2 &
R-3.**

CORAM:

HON'BLE MR. JUSTICE A. K. CHAWLA

ORDER

% 22.01.2020

The instant contempt petition is founded on the allegations that the respondents have wilfully breached the directions given by the Division Bench on 10.08.2011, which reads as under:

“ORDER
10.08.2011

Heard Mr. Satyanand, learned counsel for the petitioner and Ms. Saroj Bidawat, learned counsel for the Municipal Corporation of Delhi.

The singular grievance of the petitioner in this public interest litigation is that the park situate at mangolpuri, near North Gate, Delhi-110083 is not properly maintained. The

MCD is directed to see that the park is properly maintained as it is the duty of the Corporation to do so. The authorities of the Corporation must realize that the park has a different meaning to persons who go there and traditionally it is a place where one sees lush green and further the place has the effect potentiality to revitalize because of unpolluted air.

We hope and trust, the MCD shall stay alive to the aforesaid facet and take adequate steps in quite promptitude.

With the aforesaid directions, the writ petition stands disposed of.”

It is the case of the petitioner—Ms. Sonu Devi, who claims to be the Secretary of Rajiv Gandhi Park, Residents Welfare Association (Regd.), that the park situated at Mangolpuri, near North Gate, Delhi-110083 was required to be maintained as a park and park only, but, contrary to the intent thereof, the respondent no.3—Shri R.C. Goyal, Engineer, Delhi Urban Shelter Improvement Board (DUSIB) had demolished the boundary wall and grill of Rajiv Gandhi Park, F-2 Block, Near Flyover Mangol Puri, Outer Ring Road, Delhi-110083, for the purposes of illegal/industrial/commercial construction thereof.

During the course of hearing, it transpires that prior to the filing of the writ petition in which the foregoing order dated 10.08.2011 came to be passed, another person namely Urmila had filed a writ petition bearing W.P.(C) No.4153/2010 titled ‘Smt. Urmila vs. Additional Commissioner Slums and J.J. Delhi’ and that was disposed of by the Division Bench on 22.03.2011, with the observations and the directions, as follows:

“Heard Mr. Satyanand, learned counsel for the petitioner, Mr.Mithilesh Kumar, learned counsel for the respondent No. 1 and Mr. K.K. Rai, learned senior counsel along with Mr. S.K Pandey, learned counsel for the respondent No. 2.

2. The singular question that emanates for consideration is whether the respondents are justified in allowing the construction of a CNG dispensing station on the land which has been earmarked for 'park'. It is submitted by Mr. Satyanand that photographs, which have been brought on record, will clearly indicate that it is a park. Mr. Rai, learned senior counsel appearing for the respondent No. 2, per contra, would contend that the area which is 'green' and the 'park' which is alleged by the petitioner is situated below the area, has been treated and marked as 'green' in the layout plan. Learned senior counsel would further submit that it is the DDA which can really clarify the position.

3. Mr. Satyanand, learned counsel for the petitioner would resist the said submissions with immense vehemence that there is no distinction between a park and green. There might be artificial connotations to it and in the absence of DDA being a party, we cannot really venture to adjudicate the said lis. However, we would request Mr. A.S. Chandhiok, learned Additional Solicitor General to intimate the DDA to take a decision in consonance with the Master Plan whether the area in question is a park or not and whether the construction of a CNG dispensing station is permissible or not. The DDA shall take a decision within a period of four weeks after being so intimated by the learned ASG and the decision shall be intimated to the petitioner as well as her counsel. The communication by the DDA shall ascribe cogent reasons so that the petitioner and her counsel would know the reasons and, if required, challenge the same. If the petitioner is aggrieved by the said communication, liberty is granted to her to approach this Court. The writ petition is disposed of accordingly. No order as to costs."

In pursuance of the foregoing observations and the directions given by the Division Bench on 22.03.2011, Mr. Chandhiok, the then ld. ASG had taken up the subject with DDA and the DDA responded to him vide its communication No.F3(40)05/MP/Pt.-II/D-126 dated 19.07.2011, as follows:

*“Shri Amarjit Singh Chandhiok,
443, Lawyers’ Chambers,
High Court of Delhi,
New Delhi-110024.*

*Sub: Urmila through Satyanand Advocate Vs.
Additional Commissioner Slum & JJ Delhi & Ors.*

Sir,

This is with reference to your D.O. letter no. 092/ASG(DHC)/2011 dated 5th May, 2011, addressed to Vice-Chairman, DDA, on the above mentioned subject. In this regard, I am directed to submit the following:

- 1. The site in question is a part of resettlement scheme of Mangolpuri, a copy of layout plan of which has been procured from slum & JJ Department. As per layout plan, the area of the scheme is about 230.50 ha. And meant for residential use. As per the provisions of MPD-2021 two fuel stations (one Petrol pump + CNG station) are permitted per 150ha of gross Residential area.*
- 2. As per MPD-2021, CNG Station is permitted in all use Zones-except in Regional-Park/Ridge, Developed District Park.*
- 3. The site in question is earmarked as a park in the layout plan. This is not a Regional Park / District Park. This is a layout level park & part of Gross Residential use.*
- 4. As such one fuel station in the site in question is permitted subject to modification of the layout plan. The modification of the layout plan is the subject matter of Slum & JJ Department. However, it is generally advisable to obtain consent of the Residents’ since this is a developed colony.”*

The foregoing stance taken by DDA left no doubt that the park, which has been the subject matter of the petitions to achieve the same objective, though, earmarked as a park, was not a Regional park / District park and therefore its use and change thereof, was permissible. When the second

writ petition came to be filed by another person namely Sonu Devi, it comes to be stated, no mention come to be made in such petition as regards the proceedings emanating from W.P.(C) 4153/2010, which invited the involvement of the Id. ASG and on which the DDA took a clear stand as regards the user of the subject park vide its foregoing communication dated 19.07.2011.

In the submissions of Mr. Satyanand, Id. Counsel for the petitioner, the order dated 10.08.2011 was meant to maintain the sanctity of the park and it could not be allowed to be utilised for any other purpose. It appears that the said order was passed by the Division Bench at the initial stage itself without even calling for any counter-affidavits to have the actual and the factual status of the land, which was being used as a park. It is so apparent from the fact that vide the said order the Division Bench expressed hope and reposed trust in the MCD to see that the park is maintained in lush green condition. It so happened, in the absence of any advertence to the earlier proceedings which resulted into the letter dated 19.07.2011 being issued by the DDA to Mr. Chandhiok, which clarifies the actual ground position as regards the use of the subject piece of land, which appears to be a big chunk of land.

Be that as it may, the order disposing of the said writ petition is of 10.08.2011. The instant contempt petition came to be filed sometime in December, 2018 and during the course of hearing, it emerges that a portion of the subject park / land is required to be utilised for installation of a CNG station, which is meant for public utility purposes. In the given situation, if, the land owning agency by itself permitted the change of use for a public utility purpose for a portion thereof and which is stated to have been

approved by the Lt. Governor, the petition made is unmerited. Should the petitioner or other persons be aggrieved of the decision of the DDA for permitting change of user or DUSIB joining hands for the purpose and/or so the IGL, their actions can be agitated in the appropriate proceedings.

For the foregoing reasons, the contempt proceedings are dropped.

A. K. CHAWLA, J

JANUARY 22, 2020

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