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

+ W.P.(C) 9761/2024

RESIDENT WELFARE ASSOCIATION G AND K BLOCK MAIN
ROAD KALKAJI THROUGH AUTHORIZED REPRESENTATIVE
MR. VINEET SAHNI

.....Petitioner

Through: Ms.Khushboo Kohli, Advocate.

versus

MUNICIPAL CORPORATION OF DELHI & ORS.Respondents

Through: Mr.Manu Chaturvedi, standing
counsel for MCD with Ms.Devika
Singh Roy Chowdhury, Advocates
and Mr.Ankush Tanwar, Jr.Secretariat
Assistant.

Mr.R.K.Dhawan, standing counsel for
DDA with Ms.Nisha Dhawan,
Mr.V.K.Teng and Ms.Shivani Taneja,
Advocates.

CORAM:

HON'BLE THE ACTING CHIEF JUSTICE

HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

ORDER

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19.07.2024

1. Present public interest petition has been filed challenging the Notifications dated 29th December, 2022, 03rd May, 2023 and 23rd May, 2023 passed by respondent no. 1/Municipal Corporation of Delhi ("MCD") in furtherance of the act of converting the public park situated at Govindpuri K-block Gali No.1, Kalkaji into surface parking.



2. At the outset, learned counsel for the respondent-MCD, who appears on advance notice states that there has been suppression of facts inasmuch as the order dated 01st July, 2024 passed by the learned Single Judge disposing of the petitioner's writ petition being W.P.(C) No.8810/2024 has not been disclosed to this Court. He has handed over a copy of the said order dated 01st July, 2024, which reads as under:-

"1. The petitioner in the instant writ petition seeks to challenge the notifications dated 29.12.2022, 03.05.2023 and 23.05.2023 passed by respondent No.1.

2. The principal ground raised by the petitioner is that vide aforesaid notifications, the said respondent seeks to convert the public park situated at Govind Puri, K-Block, Gali No.1, Kalkaji, into a parking site in violation of the provisions of various Statutes while exceeding its jurisdiction.

3. The facts would show that the petitioner is a resident welfare society registered under the Societies Registration Act, 1860 and the same is located diagonally opposite to the concerned public park. As per the petitioner, the said park is being used by the residents of surrounding areas for recreation purposes and for organising various other events. However, through the impugned notifications, respondent No.1 issued e-tender notice alongwith offer letter and possession letter for allotment of surface parking sites.

4. On 14.08.2023, the Ram Leela Yuva Committee obtained permission from respondent No.1 for utilising the open space in the park for holding Ram Leela celebrations for a period of ten days. A notification to that effect was issued to the tenderer on 18.08.2023. Aggrieved by the said notification, the tenderer preferred a writ petition bearing W.P.(C) No. 12568/2023, wherein, this Court vide order dated 22.09.2023 held that the 50% of the parking site would be vacated for Ram Leela celebrations for the concerned period while the remaining 50% shall be utilised by the tenderer.

5. A bare perusal of the notification dated 29.12.2022 would indicate that the Municipal Corporation of Delhi (hereinafter „MCD“) invited etender for the aforesaid purpose way back on 29.12.2022 itself. It is also noticed that in W.P.(C) No. 12568/2023, which came to be decided by this Court on 22.09.2023, wherein, the concerned contractor/tenderer was aggrieved by some of the actions taken by the MCD, the present petitioner also participated in the proceedings therein. Despite the aforesaid circumstances, the petitioner chose not to challenge the principal notification and instead preferred to challenge the same with few other subsequent notifications issued in the year 2024, after almost about two years. Learned counsel for the petitioner submits that the petitioner was not aware of the initial notification and therefore, the same could not be challenged earlier.



6. However, looking at the facts and circumstances involved in the instant case and more importantly, the fact that the petitioner in the year 2023 did participate in W.P.(C) No. 12568/2023, the petitioner's submission seems to be bereft of merit. Under the circumstances, at this stage, it would be highly inappropriate to interdict the parking facility which has already been created. Moreover, there does not appear to be any infraction of fundamental rights of the petitioner which would warrant any indulgence by this court while exercising the extraordinary writ jurisdiction. If the petitioner so desires, it may take alternative remedy for ventilation of its grievance and if such recourse is taken, the same shall be decided in accordance with law without being influenced by any of the observation made hereinabove.

7. With the aforesaid observations, the petition stands disposed of.”

3. In the opinion of this Court, the aforesaid order is a material and a relevant one and it should have been filed by the petitioner along with the present writ petition.

4. Accordingly, this Court is in agreement with the preliminary objection advanced by learned counsel for the respondent-MCD that there has been a suppression of a material and a relevant fact. Consequently, the present writ petition is dismissed.

ACTING CHIEF JUSTICE

TUSHAR RAO GEDELA, J

JULY 19, 2024
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