

Calcutta Youth Front and Others

Vs

State of West Bengal and Others

Special Leave Petitions (Civil) Nos. 5678-79 of 1987

(A. P. Sen, B. C. Ray JJ)

18.08.1987

ORDER

A. P. SEN, J. -

1. These special leave petitions are directed against a judgment and order of a Division Bench of the High Court of Calcutta dated April 8, 1987 upholding the judgment and order of a learned Single Judge dated July 17, 1986 dismissing the petition filed by the petitioners under Article 226 of the Constitution. By the writ petition the petitioners had challenged the legality and propriety of the grant of licence by the Calcutta Municipal Corporation of the subsoil of Satyanarayan Park to respondent 14 Messrs Happy Homes and Hotels Private Limited for a period of 30 years for the implementation of a development scheme, namely, construction of a two-storeyed air-conditioned underground basement market and parking place on manifold grounds inter alia that the construction of the said underground market would affect the ecological balance because the park was situated in a densely populated area like Burrabazar in the Metropolitan City of Calcutta, that the construction would effect traffic jams in or about the said area leading to a further ecological imbalance and that the Corporation had no authority to grant the licence of the subsoil of the park for the implementation of any development scheme which was not for the development of the park by way of a proper and adequate or proper utilisation of such park. In a considered judgment, the learned Single Judge (Umesh Chandra Banerjee, J.) repelled the contentions advanced on behalf of the petitioners. He considered the questions in depth and held that the grant of licence of the subsoil of Satyanarayan Park for construction of the underground market would not destroy its intrinsic character as a park and the implementation of the development scheme by the Municipal Corporation was a bona fide exercise of its statutory powers. The contention regarding ecological imbalance has been negated by the learned Single Judge as being based on an erroneous assumption of facts, observing :

The contention of ecological imbalance, in my view, is wholly on an erroneous assumption of facts. It is not that there will be no park as such - a park would be there, the children's playground would be there and all the other amenities which a modern park enjoys would be provided for. The difference being whereas the existing one is on the ground level, after the completion of the project the park will be on an elevated level. Incidentally, it is to be recorded that Satyanarayan Park for about a decade is in a deplorable state and excepting there being some tall trees, there was no maintenance of the park as a park by the Corporation Authorities.

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The contention that greenery would be lost in the park cannot also be accepted. There was not a

blade of grass on the park. The importance of a green spot in a highly congested area like Burrabazar cannot be disputed but the continuation of the project would not, in the facts and circumstances of the case and as appear from record affect such a green spot. On the contrary, it would ensure the creation of such a green belt.

Agreeing with the learned Single Judge, a Division Bench (Chittatosh Mookerjee, C.J. and Amarendra Chandra Sen Gupta, J.) dismissed the appeal preferred by the petitioners. According to the learned judges, there were no allegations of mala fides and there was no doubt whatever that the Municipal Corporation acted in bona fide exercise of its statutory powers under the Act to grant the licence of the subsoil of Satyanarayan Park for the construction of the underground market and therefore the court ought not to strike down the action of the Municipal Corporation as ultra vires under Section 353(2) of the Calcutta Municipal Corporation Act, 1980. They further held that they were unable to subscribe to the restricted construction placed on behalf of the petitioners that the expression 'development work' in Section 353(2) read with the Explanation thereto can only mean development work either underground or on the surface of the park qua development of the park i.e. for the development and improvement by way of proper and adequate or better utilisation of any such park.

2. In these petitions, two questions mainly arise, namely : (1) Whether the grant of licence by deed of licence dated February 15, 1985 by the Municipal Corporation in favour of respondent 14 Messrs Happy Homes and Hotels Private Limited of the subsoil of Satyanarayan Park in the Burrabazar area of the Metropolitan City of Calcutta for implementation of a development scheme, namely, to build and construct a two-storeyed underground air-conditioned basement market, and to hold the said market for a period of 30 years from the date of execution of the deed on payment of a premium of Rs. 30 lakhs and a licence fee of Rs. 40,000 per month on condition that the licensee shall at its own cost relocate and maintain the park on the top of the said market for augmenting and improving amenities to the citizens which shall always remain as a public park belonging to the Municipal Corporation, was in breach of its statutory powers under sub-section (2) of Section 353 read with the Explanation thereto of the Calcutta Municipal Corporation Act, 1980. (2) Should the expression 'development work' in Section 353(2) of the Act read with the Explanation thereto be construed to mean development work qua the park i.e. such development work must be confined to the proper and better utilisation of the park ?

3. Shri Shanti Bhushan, learned counsel for the petitioners assails the action of the Municipal Corporation substantially on two grounds : (1) The Municipal Corporation has no power to alienate or part with possession of any public street, park, square or garden or the subsoil thereof for the purpose of implementation of any development work. The Corporation being a creature of the statute must function within the four confines of the Act creating it and in the absence of any provision for the conferral of such a power, it had no authority to grant a licence of the subsoil of Satyanarayan Park for the purpose of construction of the underground market. (2) On a true construction of sub-section (2) of Section 353 read with Explanation thereto the development work either underground or on the surface of a public street, part, square or garden must be for development and improvement by way of proper and adequate or better utilisation of any such public street, part, square or garden. The learned counsel placed reliance on the decision in Attorney General v. Corporation of Sunderland [LR (1875-76) 2 Ch D 634] for the submission that the position of the Municipal Corporation in regard to public parks, gardens, squares and streets under the Act was that of a trustee and the Corporation would be guilty of breach of trust in employing any part thereof for purposes other than those contemplated by the Act.

4. In reply Shri Somnath Chatterjee, learned counsel appearing for respondent 14 Messrs Happy Homes and Hotels Private Limited contended that the grant of licence by the Municipal Corporation of the subsoil of Satyanarayan Park was a bona fide exercise of its statutory powers and the construction of the underground market would not destroy its intrinsic character as a park and there was no warrant, as the High Court has held, to give a restrictive meaning to the expression 'development work' in Section 353(2) of the Act read with the Explanation thereto. At the hearing, the learned counsel drew our attention to the supplementary affidavit filed on behalf of his client dated July 25, 1987 showing that the structural work of the underground market has been completed and the concrete roof has been laid. All that remains is the laying of a park. It appears therefrom that the value of the work done so far is Rs. 2.30 crores out of the estimated cost of Rs. 4.51 crores and that the underground airconditioned market is likely to be commissioned within a couple of months. It also appears that respondent 14 has entered into a contract with Joshi and Associates, Architects for re-development and re-laying of Satyanarayan Park as a terrace garden. The letter of the Agri-Horticultural Society of India dated July 24, 1987 gives a detailed scheme for such relocation of the park as a terrace garden with tall trees. It provides for laying of a spacious lawn admeasuring about 12,000 square feet with replantation of fast growing tall trees and dwarf trees, laying of shrubs etc. The material on record clearly shows that the intrinsic character of Satyanarayan Park as a public part would not be destroyed by the construction of the underground market which with its raised height at 6 feet from the road level is to have a terrace garden with tall trees all around and it would remain a place of recreation. This dispels the contention of Shri Shanti Bhushan based on Attorney General v. Corporation of Sunderland [LR (1875-76) 2 Ch D 634] that the construction of the underground market would destroy the intrinsic character of Satyanarayan Park as a park. Under the scheme there would be no construction on the park; the underground market would be under the park and not over the park. The only difference is that the park would be relocated at a height of 6 feet above the road level easily accessible by three separate staircases. Under the scheme, Satyanarayan Park would become a real park with a lush green garden with tall trees, shrubs etc. and a centre for relaxation of the thickly congested Burrabazar locality and in particular for the children as a playground. It is significant that the Division Bench has issued a writ of mandamus commanding the respondents to restore Satyanarayan Park as a public park as stipulated in the deed of licence dated February 15, 1985 and to maintain it as a public garden.

5. Shri Somnath Chatterjee has drawn our attention to the finding of the learned Single Judge that the development scheme would not create any ecological imbalance. On the contrary, the implementation of the scheme would ensure the creation of a green belt. It was conceded before the learned Single Judge that the terrace garden with green grass would be laid on the upper basement of the underground market. As regards the apprehension expressed by Shri Shanti Bhushan that tall trees would disappear from the park, it is enough to say that the learned Single Judge has in his judgment observed that there is no basis for this apprehension at all. He records that as a matter of fact, replantation of tall trees has already been effected in terms of the earlier order passed by the Division Bench under the expert supervision of the Agri-Horticultural Society of India. Thus, there would be a 'patch of green' in the thickly congested Burrabazar area which would tend to improve, rather than retard, ecological balance and there would be a place of recreation for all and in particular for the children as a playground. In the facts and circumstances of the case, the High Court was justified in holding that the implementation of the development scheme would squarely fall within the ambit of sub-section (2) of Section 353 of the Calcutta Municipal Corporation Act, 1980 and the construction of the underground market is not intended and meant to destroy the intrinsic character of Satyanarayan Park as a public park but on the contrary, the scheme is to relocate and re-develop the park as a public park as a place for public recreation. We find no

justification whatever to interfere with the judgment of the High Court.

6. Before parting with the case, we wish to mention that we impressed upon Shri Somnath Chatterjee, learned counsel for respondent 14 that the grant of a fully airconditioned underground market on a premium of Rs. 30 lakhs and a rent of Rs. 40,000 per month which was revisable at the end of every 30 years has to be altered. It was clearly against the public interest to grant the market on a rent of Rs. 40,000 per month having regard to the spiral rise of rents of commercial premises in all urban areas throughout the country. We directed the parties to revise the terms and posted the case for further directions on August 12, 1987. We are happy to record that on that day Shri Chatterjee made a statement that his client is prepared to revise the terms as to the rate of licence fee. He filled an affidavit sworn by Ram Niranjana Kajaria, Director, Messrs Happy Homes and Hotels Private Limited giving an undertaking to the following effect : (1) Messrs Happy Homes and Hotels Private Limited shall pay licence fee @ Rs. 75,000 per month which shall be revisable at the end of every three years. (2) It shall maintain the underground market in proper state of repairs and the airconditioning plant installed therein in proper workman like (sic working) condition until the expiry or determination of the licence. (3) It shall relocate and re-develop Satyanarayan Park as a public park at its own expense as provided in the deed of licence dated February 15, 1985 for which it has entered into a contract with Agro-Horticultural Society of India, Alipore, Calcutta and it shall maintain properly the said park as a public park throughout the entire period of 30 years.

7. Subject to this modification, the special leave petitions are dismissed without any order as to costs.

(E. S. Venkataramiah, K. N. Singh JJ)

(B. C. Ray, K. Jagannatha Shetty JJ)

(M. M. Dutt, M. H. Kania JJ)

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