

Rajesh Jain & Ors vs Commissioner North Mcd Delhi & Anr on 22 October, 2020

Author: Najmi Waziri

Bench: Najmi Waziri

KAMLESH KUMAR

23.10.2020 10:30

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* IN THE HIGH COURT OF DELHI AT NEW DELHI
+ W.P.(C) 8370/2020
RAJESH JAIN & ORS. Petitioners
Through: Mr. Rahul Sharma and Ms. Abhilasha
Shrawat, Advocates.
versus

COMMISSIONER NORTH MCD DELHI & ANR.....Respondents
Through: Mr. Ram Kumar, Advocate for NDMC/R-1.
Mr. Arun Birbal, Advocate for DDA/R-2.

CORAM:
HON'BLE MR. JUSTICE NAJMI WAZIRI
ORDER

% 22.10.2020 The hearing was conducted through physical court. CM APPL. 27184/2020 (Exemption)

1. Allowed subject to all just exceptions. Application stands disposed off.

W.P.(C) 8370/2020, CM APPL. 27183/2020

2. The petitioners are aggrieved by the conversion of a children's park situated opposite H.No. B-205, Saraswati Vihar, in Ward No. C- 65/KPZ. The park has been laid, maintained and used as per the Colony's approved Lay-out plan (Annexure A). The petitioners are aggrieved by the encroachment of the children's play valuable space and construction thereon by the respondent-Corporation. It is argued that this is an illegal, highhanded and arbitrary action; that the Corporation did not even bother to consider that for the helpless children of the neighbourhood the most essential, open space where they could play in safe environments, is being snatched away. The nature of construction is as under:

3. A mere glance at the photographs show that when the construction is completed, the park will be dominated by the concrete structure and will be visited primarily by grown-ups and even by people from outside the colony for yoga and other activities, as is proposed. It will inevitably not remain a place where children could play safely and run about in a care free manner. Parents would not send

their children to a park within the residential colony which would have suddenly been transformed into a public place visited by strangers and grown-ups. The court is conscious that there is shortage of safe open spaces in Delhi, for children to play and have fun with their peers. If they don't play and interact with their peers socially, how will they grown healthy bones and develop self-confidence and social skills. Deprivation of the playground is an assault on their right to a healthy environment and essential open play areas for their growth.

4. The corporation has intimated the residents of the neighbourhood that it was initiating the construction and changing the user of the park. Its action lacks courtesy and is arbitrary. Further construction is stayed as shown in the photographs hereinabove, the building material lying outside and outside the park shall be removed in 48 hours. The dug-up pits shall be covered-up so that children can resume their visit to the play area without fear of getting injured. Another site may be considered for elders. Surely the restricted movement of people cannot be an occasion by the corporation to construct the platform, etc so as to render a fait accompli. In any case, the Corporation is not the landowner, it only maintains the colony in terms of the approved layout plan. The residents have a first say on the land and for it to be used and maintained as per the layout plan. It is without the understanding the colony will remain as per the approved lay-out, that houses may have been bought for residence. A change of the user would be unfair to them and would cause them irreparable injury. The Corporation cannot change the user of the parks or raise any construction therein.

5. Issue notice. The learned counsel, as named above, accept notice. Reply be filed within four weeks. Rejoinder, if any, be filed before the next date of hearing.

6. Till the next date of hearing status quo shall be maintained.

7. List on 25.03.2021.

8. The order be uploaded on the website forthwith. Copy of the order be also forwarded to the counsels through e-mail.

NAJMI WAZIRI, J OCTOBER 22, 2020/kk