

CALCUTTA YOUTH FRONT & ORS.
v.
STATE OF WEST BENGAL & ORS.

AUGUST 18, 1987

[A.P. SEN AND B.C. RAY, JJ.]

Calcutta Municipal Corporation Act, 1980—Section 353(2) thereof with Explanation thereto—Validity of grant thereunder of licence of sub-soil of Satyanarayan Park, Calcutta for implementation of development scheme.

The petitioners filed a writ petition in the High Court, challenging the legality and propriety of the grant of a licence by the Calcutta Municipal Corporation of the sub-soil of Satyanarayan Park to respondent No. 14—Messrs. Happy Homes & Hotels Private Limited—for a period of 30 years for the implementation of a development scheme, namely, construction of a two-storeyed air-conditioned under-ground basement market and parking place. The High Court (Single Judge) repelled the contentions of the petitioners and dismissed the writ petition. Against the judgment and order of the Single Judge, the petitioners preferred an appeal before the Division Bench of the High Court. The Division Bench dismissed the appeal. Aggrieved by the decision of the High Court, the petitioners filed petitions for special leave before this Court for relief.

Disposing of the petitions, the Court,

HELD: In these petitions, two questions mainly arose, namely, (i) whether the grant of licence by the Municipal Corporation in favour of respondent No. 14, Messrs. Happy Homes and Hotels Pvt. Ltd., of the sub-soil of Satyanarayan Park for the implementation of a development scheme, namely, to hold the said market for 30 years on payment of a premium of Rs.30 lakhs and a licence fee of Rs.40,000 per month on certain terms and conditions, was in breach of its statutory powers under sub-s. (2) of s. 353, read with the Explanation thereto of the Calcutta Municipal Corporation Act, 1980, and (ii) should the expression 'development work' in s. 353 (2) of the said 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? [991G-H; 992A-C]

A Counsel for the petitioners assailed the action of the Municipal Corporation substantially on two grounds briefly stated as (i) The Municipal Corporation had no power to alienate or part with possession of any public street, park, square or garden or the sub-soil thereof for the purpose of implementation of any development work, etc., and (ii) On a true construction of sub-s. (2) of s. 353, read with the Explanation thereto, the development work either underground or on the surface of a public street, park, square or garden, must be for development and improvement by way of proper and adequate or better utilisation of any such public street, park, etc. [992D-F]

C Shri Somnath Chatterjee, counsel for respondent No. 14, contended that the grant of licence by the Municipal Corporation of the sub-soil 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 to give a restrictive meaning to the expression 'development work' in s. 353(2) of the Act, read with the Explanation thereto. He drew attention D of the Court to a supplementary affidavit filed by his client, showing that the structural work of the underground market had been completed and the concrete roof had been laid, and all that remained was the laying of a park. It appeared therefrom that the value of the work done so far was Rs.2.30 crores out of the estimated cost of Rs.4.50 crores, and the underground air-conditioned market was likely to be commissioned within a couple of months, and also that the respondent No. 14 E had entered into a contract with Joshi & Associates, Architects, for the re-development and relaying of the Satyanarayan Park as a terrace garden; a letter of the Agri-Horticultural Society of India gave a detailed scheme for such re-location of the park as a terrace garden, etc. [992H; 993A-C]

F The material on record clearly showed that the intrinsic character of the Satyanarayan Park as public park would not be destroyed by the construction of the underground market which with its raised height at 6 feet from the road level was to have a terrace garden. Under the scheme, there would be no construction on the park; the underground G market would be under the park and not over the park, and the Satyanarayan Park would become a real park with a lush green garden, tall trees and shrubs, etc. It was significant that the Division Bench had issued a writ of *mandamus* commanding the respondents to restore Satyanarayan Park as a public part as stipulated in the deed of licence and to maintain it as a public park. The High Court (Single Judge) gave H the finding that the development scheme would not create any ecological

imbalance, but would ensure the creation of a green belt. There would thus be a 'patch of green' in the thickly congested Burrabazar area which would tend to improve the ecological balance and provide a place of recreation for all. [993D-G; 994A-C]

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-s. (2) of s. 353 of the Calcutta Municipal Corporation Act, 1980 and the construction of the underground market was not intended and meant to destroy the intrinsic character of the Satyanarayan Park as a public park; on the contrary, the scheme was to re-locate and re-develop the part as a public park. There was no justification whatever to interfere with the judgment of the High Court. [994C-D]

The Court directed that the grant of a fully air-conditioned market on a premium of Rs.30 lakhs and a rent of Rs.40,000 per month, which was revisable at the end of 30 years had 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. The Court directed the parties to revise the terms and posted the case for further directions on August 12, 1987. On that day, Shri Som Nath Chatterjee filed an affidavit on behalf of his client, giving an undertaking to the following effect:- (1) M/s. Happy Homes & Hotels Pvt. Ltd. shall pay licence fee @Rs.75,000 per month which shall be revisable at the end of the every three years; (2) It shall maintain the underground market in proper state of affairs and the air-conditioning plant therein in proper workman-like condition until the expiry or determination of the licence; (3) It shall re-locate and re-develop Satyanarayan Park as a public park at its own expense as provided in the deed of licence for which it has entered into a contract with Agri-Horticultural Society of India, and it shall maintain properly the said park as a public park throughout the entire period of 30 years. [994E-H; 995A]

The Special Leave Petitions were dismissed subject to this modification. [995B]

Attorney General v. Corporation of Sunderland LR— [1875-76] 2 CH. D. 634, referred to.

CIVIL APPELLATE JURISDICTION: Special Leave Petitions (Civil) Nos. 5678-79 of 1987.

A From the Judgment and Order dated 8.4.1987 of the Calcutta High Court in F.M.A.T. Nos. 2256 and 1350 of 1986.

S.R. Srivastava for the Petitioners.

B Tapas Ray, Somnath Chatterjee, Sushil Kumar Jain, B.P. Singh and A. Misra for the Respondents.

The Order of the Court was delivered by

C SEN, J. 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 Art. 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 no. 14 Messrs Happy Homes & D 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 situate in a densely populated area like Burrabazar in the Metropolitan City of Calcutta, that the construction would effect traffic jams in E 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, F 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* G *fide* exercise of its statutory powers. The contention regarding ecological imbalance has been negatived by the learned Single Judge as being based on an erroneous assumption of facts, observing:

H "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 enjoins 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 Satya Narayan 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, CJ 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 s. 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 s. 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.

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 no. 14 Messrs Happy Homes & Hotels Private Limited of the subsoil of Satyanarayan Park in the Burrabazar area of the Metropolitan City of

- A Calcutta for implementation of a development scheme, namely, to build and construct a two-storeyed underground airconditioned 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
- B 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-s. (2) of s. 353 read with the Explanation thereto of the Calcutta Municipal Corporation Act, 1980. (2) Should the expression 'development work' in s. 353(2) of the Act read with the Explanation thereto
- C 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?

Shri Shanti Bhushan, learned counsel for the petitioners assails the action of the Municipal Corporation substantially on two grounds:

- D (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
- E a licence of the subsoil of Satyanarayan Park for the purpose of construction of the underground market. (2) On a true construction of sub-s.(2) of s. 353 read with Explanation thereto the development work either underground or on the surface of a public street, park, square or garden must be for development and improvement by way of proper and adequate or better utilisation of any such public street,
- F park, 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
- G other than those contemplated by the Act.

- H In reply Shri Somnath Chatterjee, learned counsel appearing for respondent no. 14 Messrs Happy Homes & 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 s. 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 no. 14 has entered into a contract with Joshi & 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 re-location 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 park 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* 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 re-located 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.

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

A 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-s.(2) of s. 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 re-locate 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.

Before parting with the case, we wish to mention that we impressed upon Shri Somnath Chatterjee, learned counsel for respondent no. 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 filed an affidavit sworn by Ram Niranjana Kajaria, Director, Messrs Happy Homes & Hotels Private Limited giving an undertaking to the following effect: (1) Messrs Happy Homes & 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 condition until the expiry or determination of the licence. (3) It shall re-locate 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 Agri- 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. **A**

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

S.L.

Petitions dismissed.