

ALLAHABAD LADIES CLUB
v
JITENDRA NATH SINGH AND ORS.

MARCH 20, 2007

[DR. ARIJIT PASAYAT AND LOKESHWAR SINGH PANTA, JJ.]

Constitution of India, 1950:

Article 226—Writ Petition—Scope and ambit of—PIL making grievance that illegal leases granted and constructions put up in company park in violation of law—High Court cancelled the lease granted to appellants—Justification of—Held: High Court has unnecessarily enlarged the scope of writ petition —Hence, not justified in directing cancellation of lease.

The writ petition filed PIL before the High Court making grievance that the park known as the Company Bagh has ceased to be a park and illegal leases have been put up in violation of the provisions of the Uttar Pradesh Parks, Playgrounds and Open Spaces (Preservation and Regulations) Act, 1975. High Court held that there has been clear violation of the provisions of the 1975 Act and the Uttar Pradesh Urban Planning and Development Act, 1973 and directed cancellation of lease.

In appeal to this Court, appellant contended that in the writ petition, there was no challenge to the lease granted to any of them nor prayer for cancellation of any lease and they were pleased in the writ petition by this Court's direction as they were not parties when the matter was earlier disposed of. Moreover, the constructions made by the appellants were clearly authorized.

Disposing of the appeal, the court

HELD: 1. The High Court was not justified in directing cancellation of lease. The High Court has unnecessarily enlarged the scope of he writ petition. Though in a public interest litigation it is permissible to take note of the necessary/connected matters, the position was not so in the present case. Challenge was not to the grant of lease. There was no averment made in petition

A that the Constructions by the appellants were unauthorized. [Paras 6 and 7]

B 2.1. The parties were not asked to place any material regarding validity of leases as that was not the subject matter of challenge in the writ petition. It would be relevant to note ss. 6, 7 and 8 of the Uttar Pradesh Parks, Playgrounds and Open spaces (Preservation and Regulation Act, 1975 which have relevance so far as the present dispute is concerned. S.6 deals with prohibition of the use of parks, playgrounds and open spaces in certain cases. A bare reading of the provision indicates that no park, playground or space shall except with the previous sanction of the prescribed authority be used for any purpose other than the purpose for which it was used on the date immediately preceding the date of commencement of Act. Therefore, if on the date of commencement of the Act a park, playground or open space was being used for a particular purpose the same can be continued. [Para 9]

D 2.2. Under s.8 there is prohibition on construction of buildings etc. except with the previous sanction of the prescribed authority. That obviously means that construction of buildings etc. can be done with the previous sanction of the prescribed authority. The High Court has been taken note of the effect of ss. 6 and 7 of the Act. The State Government is directed to find out: (a) If there is any encroachment (b) if there is violation of any terms of the Act after taking note of ss 6 7 and 8 thereof; (c) The existing Master plans have to operate and the effect thereof is also to be considered by the appropriate authority [Para 9]

F 3. It is for the Allahabad Development Authority to find out whether there is any violation of Development Act and if there is any, it is open to the authority to take such action as is warranted, as provided in law. [Para 10]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 6211 of 2007.

From the Judgment and Order dated 2.6.1999 of the High Court of Allahabad in E.C. No. 1/1991 arising out of C.M.W. No. 19296 of 1986.

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Civil Appeal No. 159/2001, 2875/2001.

H Shanti Bhushan, Dinesh Dwivedi, Prashant Bhushan, K.K. Mohan and Rakesh Uttamchandra Upadhyay for the Appellant.

Ajatshatru, Rachma Srivastava, Pramod Swarup for the Respondents. A

The Judgment of the Court was delivered by

DR. ARIJIT PASAYAT, J. 1. Challenge in these appeals is to the judgment rendered by a Division Bench of the Allahabad High Court, inter-alia, directing that the lease granted to the appellant in Civil Appeal No.6211 and Civil Appeal No. 159 of 2001 be cancelled. Certain other directions given are subject matter of challenge in the other appeal. All constructions made were also directed to be demolished. B

2. A brief reference to the factual aspects would suffice: C

3. A petition styled to be a "public interest litigation" was filed before the Allahabad High Court primarily making a grievance that the park known as the Company Bagh has ceased to be a park and illegal leases have been granted and constructions have been put up in alleged violation of the provisions of the Uttar Pradesh Parks, Playgrounds and Open Spaces (Preservation and Regulation) Act, 1975 (in short the 'Act'). The writ petition was disposed of with certain directions. The State Government field special leave petition before this Court questioning correctness of the order passed. The same was disposed of by order dated 9.4.1991 with the following order: D

"After hearing the parties for a considerable period of time, we think it will be just and fair to pass the following directions:- E

- (i) The High Court will drop the proceedings for contempt;
- (ii) The High Court will hear all the parties and will try to solve the problem regarding the shifting of the stadium and other problems in a fitting manner after taking suggestions, if any, given by the parties as well as by the State Government as in our opinion, the High Court will be the fitting and proper authority to dispose of the matter in order to promote public interest; and F
- (iii) The High Court will hear all the parties appearing before the Court. G

4. Pursuant to the directions of this Court all the parties were heard and the respective stand was considered. The High Court by the impugned order which is common to these appeals held that there has been clear violation of the provisions of the Act and the Uttar Pradesh Urban Planning and H

A Development Act, 1973 (in short 'Development Act'). The appellants have questioned correctness of the view expressed by the High Court on several grounds. Primarily it is contended that there was no challenge to the lease granted to any of them. There was not even any prayer for cancellation of any lease. All the leases were executed long time back i.e. much before the Act and the Development Act were enacted. The appellants were impleaded in the writ petition by this Court's direction as they were not parties when the matter was earlier disposed of. There was no challenge in the writ petition to any unauthorized construction. The constructions made by the appellants were clearly authorized. The original writ petitioners have not made any grievance so far as the present appellants are concerned and the writ petition was filed making grievances to a limited extent which have nothing to do with the leases granted to the appellants. Therefore, the directions as given cannot be maintained.

D 5. Learned counsel for the Allahabad Development Authority has stated that the impugned order virtually rules out any developmental activity and even nullifies works already done.

E 6. We find that the High Court has unnecessarily enlarged the scope of the writ petition. Though in a public interest litigation it is permissible to take note of the necessary/connected matters; the position was not so in the present case. Challenge was not to the grant of lease. There was no averment made in petition that the constructions by the appellants were unauthorized. In the writ petition a few officers were impleaded.

7. The High Court was not justified in directing cancellation of lease.

F 8. Sections 6, 7 and 8 of the Act have relevance. They read as follows.

G "*6. Prohibition of the use of parks, playgrounds and open spaces in certain cases*—No park, playground or open space, specified in the list published under Section 3 or Section 4, as the case may be, shall except with the previous sanction of the prescribed authority, be used for any purpose other than the purpose for which it was used on the date immediately preceding the date of commencement of this Act.

H *7. Maintenance of parks, playgrounds and open spaces.* The local authority shall maintain in a clean and proper condition all parks, playgrounds and open spaces belonging to or vested in it and included

in the list published under Section 3 or Section 4.

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8. *Prohibition of construction of buildings, etc.*—No person shall except with the previous sanction of the prescribed authority, construct any building or put any structure likely to affect the utility of the park, playgrounds and open space specified in the list published under Section 3 or Section 4.”

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9. Above being the position, we dispose of these appeals with the following directions:

(1) The parties were not required to place any material regarding validity of leases as that was not the subject matter of challenge in the writ petition. It would be relevant to note that Sections 6, 7 and 8 of the Act which have relevance so far as the present dispute is concerned. Section 6 deals with prohibition of the use of parks, playgrounds and open spaces in certain cases. A bare reading of the provision indicates that no park, playground or space shall except with the previous sanction of the prescribed authority be used for any purpose other than the purpose for which it was used on the date immediately preceding the date of commencement of the Act. Therefore, if on the date of commencement of the Act a park, playground or open space was being used for a particular purpose the same can be continued.

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(2) Under Section 8 there is prohibition on construction of buildings etc. except with the previous sanction of the prescribed authority. That obviously means that construction of buildings etc. can be done with the previous sanction of the prescribed authority. The High Court has not taken note of the effect of Sections 6 and 7 of the Act as quoted above. The State Government is directed to find out :

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(a) If there is any encroachment.

(b) If there is violation of any terms of the Act after taking note of Sections 6, 7 and 8 thereof.

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(c) The existing Master plans have to operate and the effect thereof is also to be considered by the appropriate authority.

10. It is for the Allahabad Development Authority to find out whether

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A there is any violation of the Development Act and if there is any, it is open to the authority to take such action as is warranted, as provided in law.

11. To the aforesaid extent the appeals are allowed. Costs made easy.

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Appeals allowed.