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

% **Date of decision: 18<sup>th</sup> July, 2024**

+ **W.P.(C) 9537/2024, CM APPL. 39088/2024 – INTERIM DIRECTIONS**

**SAHIL VIKLANG SAHAYTARTHA SAMITI & ANR.**

.....Petitioners

Through: Mr. Rajat Aneja, Mr. Mansimran Singh, Ms. Vishakha Ahuja, Ms. Amarjot Kaur and Mr. Neeraj Singh, Advs.

versus

**DELHI DEVELOPMENT AUTHORITY** .....Respondent

Through: Ms. Manika Tripathy, Standing Counsel with Tushar Sannu and Mr. Shobhan Sachdeva, Advs. with Mr. Shivam Kumar Aggarwal/Executive Engineer and Mr. Kehar Singh Meena, Assistant Engineer

**CORAM:**

**HON'BLE MR. JUSTICE DHARMESH SHARMA**

**DHARMESH SHARMA, J. (ORAL)**

1. The petitioners (*hereinafter referred as the 'petitioner society'*) are invoking the extra ordinary jurisdiction of this Court under Article 226/227 of the Constitution of India for issuance of a writ, directions, or order, thereby seeking setting aside/quashing of decision of the



respondent/DDA<sup>1</sup> conveyed vide letter No. CE(Dwk)26(28)/2024/DDA/242 dated 08.05.2024. By way of the impugned letter, the request of the petitioner society for booking of the DDA ground at Block-B, Janakpuri, New Delhi for celebration of the *Janamashtami Mohotasav* from 22.07.2024 to 03.09.2024 has been declined.

2. The matter was argued in some details on the last date of hearing i.e. 16.07.2024.

3. Ms. Manika Tripathy, learned Standing Counsel for the respondent/DDA is present along with the officers of the DDA.

4. It is submitted by Ms. Tripathy that the DDA cannot consent to the prayer made by the petitioner society since such disposition might bring them into direct or indirect conflict with the directions passed by this Court *vide* order dated 03.10.2023 in W.P. (C) 7266/2017<sup>2</sup>. It is pointed by the Ms. Tripathy that, pursuant to the directions passed by this Court in the aforesaid Writ Petition, the DDA is enjoined upon to plant trees through Deputy Conservator of Forest in the District Park in terms of previous order dated 18.08.2023, to ensure more green areas around the site.

5. *Per contra*, Mr. Rajat Aneja, learned counsel for the petitioner society, has urged that the order dated 18.08.2023 was challenged *vide* LPA 637/2023<sup>3</sup>, in which it was held, *vide* judgement dated 05.10.2023, that an area of 40,000 sq. mts. in the District Park is meant for “**multipurpose ground activities**” in terms of the MPD-

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<sup>1</sup> Delhi Development Authority

<sup>2</sup> Rishu Kant Sharma v. Union of India & Ors.

<sup>3</sup> Shri Ramleela Committee, Janakpuri v. Rishu Kant Sharma



2021<sup>4</sup>, further sanctified by the Zonal Plan Development. It was further submitted that only an area of 10,000 sq. mts. is required for holding the *Janamashtami Mohotasav*, which is clearly permissible as per the relevant rules and regulations. It would be apposite to reproduce the observations made by the Division Bench in LPA 637/2023, *vide* judgement dated 05.10.2023, which read as under: -

“23. The MPD-2021 in its Clause 4.0 of Chapter 17 Development Code, designates the Use Zones into nine categories like residential, commercial, industrial, recreational, transportation, utility, Government, Public and semi-public facilities and green belt/ and water body. The land use zone “**Recreational**” is further divided into three sub-categories namely:

P-1 Regional Park,

P-2 City Park, District Park and Community Park and

P-3 Historical Monuments.

24. The “**District Park**” is defined in **Clause 3.2.2 Hierarchy of Urban Development of Chapter 3.Entry 4 of Table 3.3.** provides at Sr. 21 that the District Park shall have a total area of 2,90,000 Sq. Mtrs. In this District Park, the area of 2,50,000 Sq. Mtrs. shall be used as a park while 40,000 Sq. Mtrs. can be used for Multipurpose Ground/ park. **Chapter 9** which deals with “**Environment**”, in its **Table 9.4** defines “Multipurpose Grounds”. It observes that “Experience shows that common parks are fouled if used for marriages/ public functions etc. Therefore, a special category is proposed to take care of the same at three levels in the following manner.” The three categories enumerated therein are: Multipurpose Grounds, District Multipurpose Grounds and Community Multipurpose Grounds. Further, Table 9.4 further defines “Permission of Use Premises in sub-use Zones” wherein, Entry 4 provides that District Parks may be permitted to be used for Clean Park, Recreational Park, National Memorial, Open Air Food Court, Children Park, Orchard Plant Nursery, Area for water harvesting, Archaeological Park, Specialized Park, Amusement Park, Children Traffic Park, Sports activity, play ground, amenity structure, Restaurant in District Park having an area above 25 hectare, is also permitted subject to the requirements stated therein. Entry 6 provides Multipurpose Grounds may be used for public meeting ground/ public address podium/ social function/ soft drink

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<sup>4</sup> Master Plan Delhi-2021



and snacks stalls etc.

**25.** The various provisions of the DD Act, 1957 r/w. Rules 1958 and MPD-2021 as mentioned above, make it evident that Delhi is defined into various zones like residential, commercial etc. where one of the zone defined is that of the “Recreational Park” which includes setting up of City Park, District Park and Community Parks. It further defines that District Park should have an area of 2,90,000 Sq. Mtrs., out of which 2,50,000sq.Mtrs. shall be used singularly as a Park, while area of 40,000 Sq. Mtrs. may be used as Multipurpose Ground. In the Multipurpose Ground various activities like public functions etc. may be permitted to be carried out. Therefore, MPD-2021 has been finalized and notified by the Central Government in exercise of the powers by invoking Section 11A(2) of the DD Act, 1957 which is done after obtaining the prior approval of Ministry of Urban Development. If the zones are intended to be used in accordance with the provisions of MPD-2021, the permissions shall also be governed by the procedures as provided in Chapter 17 of the MPD-2021.

**26.** The basic concern of respondent No.1 has been that despite such minute planning, the District Parks which are the lung spaces of every colony, are being choked by being permitted to be used for other activities. However, as already discussed above, the use of 40,000 Sq. Mtrs. out of the District Park are permitted under the Plan itself to be used as Multi-purpose Grounds.

**27.** The learned Counsel on behalf of respondent No.1 had claimed that use of District Parks as Multipurpose Grounds amounts to modification of the Master/ Zonal Development Plan and this cannot be done without following the procedure as laid down in Chapter 3A of the DD Act, 1957 , which requires prior approval of the Central Government. Further grievance of the respondent No.1 is that even if it is to be considered as the Use Zone change, to which Rule 12 of DD Rules, 1959 applies, which also provides for the prior approval of Central Government.

**28.** These submissions on behalf of the respondent No.1 do not hold any merit. As discussed above, it is specifically provided in the MPD2021 itself that 40,000 Sq. Mtres area out of 2,90,000 Sq. Mtrs., (which should be the area of District Park) can be used for Multipurpose Ground. This aspect also finds mention in the Minutes of the Technical Committee. It was noted that the “Landscape plan of Green area opposite Musical Fountain, Janakpuri, Dussehra Park” was prepared by the Landscape Wing, DDA and approved by EM, DDA vide file No.PA/Dir (LS)/2002/393 dated 10.09.2002. As per this Landscape Plan, 2.62 Ha has been utilized for two function sites (Function Site No.1 – 0.62 ha and Function Site No.2 – 0.6 ha). The Landscape Plan of



Green Delhi opposite Musical Fountain, Janakpuri Dussehra Park prepared by Landspace Wing, DDA shows that as per MPD-2021 the total area of the scheme is shown as 2.62 hectares (6.47 acres). Even though as per the Order issued by the Director (Horticulture) vide letter F.No.DHNW (Misc.) Hort. NW/2018 dated 20.11.2018 total area is reflected as 10 acres when in fact the area of this District Park shows only 2.62 hectares i.e. 6.47 acres. This area is shown in the Layout Plan of District Park as approved by MPD-2021, as a multipurpose ground.

**29.** Since the MPD-21 which is duly notified with due approval of the Central Government, Chapter 17 Sub-clause 8(2) of MPD-2021 becomes applicable which provides for special permission of Use Premises in Use Zones from the Authority and no additional permission of Central Government is required.

**30.** It was not disputed that this plot of land is lying barren and has no grass and has a few trees around the periphery, apparently since it has been intended to be used as a Multipurpose Ground and has always been so used. It has further not been denied that right in front of this park across the road, is a much bigger District Park which is being used exclusively as a District Park and no function of any kind are being permitted to be held in the said District Park. Prima facie, it appears that while the major portion of the park is being used as District Park, a small portion of that area is being used a Multipurpose Ground, as is reflected in MPD-2021. The entire confusion has arisen because this part of ground is being considered as a District Park which appears to be distinct and exists opposite this Multipurpose Ground. However, without going into this controversy and also considering that the matter is pending before the learned Single Judge to be considered on merits, no final expression on merits is expressed. **31.** Admittedly, Shri Ram Leela has been permitted to be held, without creating any equities or precedent, by way of Interim Orders by Division Bench in 2018 as well as 2019 and by the learned Single Judge in the year 2022, because of the peculiar circumstances, as the appellant has been conducting Ramleela on the same ground for the last about 30 years.

**32.** Considering that the similar situation prevails even today and there is no change in the circumstances since the previous Orders made in this regard, the permission is granted to the appellants to host Dussehra/ Ramleela celebrations on this ground for this current year i.e. 2023 from the date of this Order till 30.10.2023. It is further directed that the Dussehra Mela shall be held in accordance with all the norms applicable as well as by taking all the precautions including safety, traffic, fire arrangement, etc. The appellants shall ensure that no damage or harm is caused to the



green cover/ trees already existing in the ground. A concern has been expressed that despite repeated directions of this Court this area continues to be barren with a few trees planted around it. This Order does not in any way vary the directions given by the learned Single Judge in the impugned Order dated 18.08.2023 to the DDA/ Dy. Conservative Forests to plant trees in the part and to take steps for its beautification for the welfare of the residents of the colony.

**33.** It is hereby reiterated that nothing stated herein is an expression on the merits of this case and is confined to the specific issue of grant of permission to hold the Ramleela for the dates as specified.

**34.** We accordingly dispose of the Appeal”

6. The aforesaid judgment commences with the slogan “WE ARE CHOKING”. However, for purely rightful legal reasons, the request for holding a religious function at the site was allowed, taking into account the religious sensitivities of the parties involved. A bare perusal of the aforesaid directions indicates that the site in question can be used for holding social functions. On the other hand, the learned Standing Counsel for the respondent/DDA has submitted that the plantation work has been a continuous exercise at the site by way of planting of new saplings at the site *viz. inner periphery* of the District Park in accordance with a series of directions passed by this Court in other writs on the subject.

7. As per the site plan produced today and shown by the Executive Engineer of the respondent/DDA, along with the photographs placed on record by way of the Status Report dated 22.11.2023 by the DDA, it is quite evident that trees and fresh saplings have been planted along the inner side boundary wall of the District Park on almost all four sides. There is a *kachha pakka* waking/jogging track running alongside the plantation done. The site plan shows that the middle ground is envisaged to be used as ‘Function site-I’ with an area of



0.62 HA and, 'function site-II' with an area 0.60 HA. The photographs placed on record shows its GPS<sup>5</sup> location starting from 13.09.2023 to 06.11.2023, allowing for a virtual visualization of the site.

8. It may also be indicated that learned Standing Counsel for the respondent/DDA submitted that fresh saplings have been planted in recent past, but in this short period of time, it was not possible to place the photographs on record. The official of the respondent/DDA, when asked, submitted that at present, no proposal is pending for the beautification of the park, and no funds have been earmarked or allocated for any environmental work at the site. Unfortunate as it may seem, despite many directions passed by this Court, the respondent/DDA has not cared to take any time-bound beneficial measures for the beautification of the park, and no tangible s have been taken to allow the site to be used for recreational purposes as well as for making the environment clean.

9. But then, forget beautification, which perhaps would be a utopian idea, this Court finds that there is no proper concrete or synthetic walking/jogging track in the District Park. There are no basketball and/or volleyball courts, no tennis courts, and not even a playable football or hockey field. The photographs placed on the record demonstrate that it is an open, uneven ground in the middle with no grass or plantation. Unhesitatingly, it is manifest that the respondent/DDA does not know what to do with this site in question. Is it not high time that the respondent/DDA must ponder over what

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<sup>5</sup> Global Positioning System



they have done to this city in terms of providing recreational activities open to all? How they intend to make Delhi a ‘smart city’? The people have every right to ask, where are the parks and play grounds in Delhi where children from every walks of life could indulge in various recreational and sporting activities, intermingle with individuals from different social and economic backgrounds, and not only spend some quality time in various sporting activities, but also bring about peace and harmony, thereby realising the cherished constitutional ideals in fostering the spirit of fraternity.

10. However, the Government by implementing MPD-2021, modified up to 31.08.2022, has decided that instead of recreational use, this District Park is meant for *multipurpose ground activities* in the nature of allowing public meeting ground, public address, podium, social functions, soft drink and snack stalls etc. What is more important for the people, I leave it for them to decide.

11. Avoiding any further lecturing or sermonising, it is imbibed in us that the law is “*what it is, not what it ought to be.*” Thus, all said and done, there is no legal impediment in allowing the present Writ Petition, provided that certain safeguards are adhered to and enforced. This is to ensure that there is at least a minimal guarantee that no damage shall ensue to the plantation work already done at the site. Needless to state, the pith and substance of the directions passed by this Court in other writ petitions should not be tinkered with.

12. Accordingly, the present writ petition is disposed of, thereby quashing the impugned order dated 08.05.2024 passed by the respondent/DDA and allowing the petitioner society, through its





Officer Bearers, to organize the religious *Janamashtami Mohotasav* w.e.f. 22.07.2024 to 03.09.2024 in terms of their request letters dated 29.04.2024 and 03.06.2024 at District Park, B-Block, Janakpuri, New Delhi, subject to the fulfilment of the prescribed codal formalities. It is made clear that no digging work for installation of tents or temporary structure of any kind shall be carried out in the inner peripheral area, where the trees are standing and saplings have been planted. An appropriate undertaking with financial security must be taken from the petitioner society.

13. Finally, although the site in question in the present matter appears to have been used *hitherto* for various religious purposes and wedding sites, it is made clear that this order shall not be construed as a precedent for allowing religious function of such kind or magnitude in the future. The respondent/DDA should rather brace itself for the inevitable demand that will arise for the use of the site in question for other religious and social functions in the near future.

14. To conclude, this order does not in any way mean or imply variations of the directions passed by this Court *vide* order dated 18.08.2023 and 03.10.2023, whereby the DDA/Deputy Conservator of Forests has been directed to plant trees, take steps for beautification, and implement other measures not only for the welfare of the residents of the colony but also for impacting the overall environment, howsoever insignificant it might be. This Court only hopes that the respondent DDA will sooner or later come out with some meaningful policy decision to dedicate the District Park to the children, allowing them to indulge in various recreational activities including sports for



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their all-round mental, physical and psychological development, for the betterment of the society and the nation.

15. The present Writ Petition, along with the pending application stands disposed of accordingly.

**DHARMESH SHARMA, J.**

**JULY 18, 2024**

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