

Item No.02

**BEFORE THE NATIONAL GREEN TRIBUNAL
CENTRAL ZONAL BENCH, BHOPAL**

(By Virtual Mode)

Original Application No.16/2023(CZ)

O.N. Thapar

Applicant(s)

Versus

Bhopal Development Authority & Ors.

Respondent(s)

Date of hearing: 01.08.2023

**CORAM: HON'BLE MR. JUSTICE SUDHIR AGARWAL, JUDICIAL MEMBER
HON'BLE DR. AFROZ AHMAD, EXPERT MEMBER**

For Applicant(s) : Mr. Shantanoo Saxena, Advocate
For Respondent(s) : Mr. Sachin K. Verma, Advocate for State of MP
Mr. Nikhil Sharma, Advocate for R-1
Mr. Nayan Sharma, Advocate for R-2

ORDER

1. The issue raised in the matter is whether land in question which is said to be a park, its nature could have been changed by raising construction of a primary school and other construction activities. It is no doubt true that a land earmarked for park cannot be damaged by raising any construction thereon and issue on this aspect has categorically been settled by Supreme Court.

2. In ***Lal Bahadur vs. State of UP & Others, (2018) 15 SCC 407***, change of master plan and converting green area into residential one was considered. The issue was, whether such conversion is conducive to protection of environment or not. In the master plan of 1995 of Lucknow, area in dispute was reserved as green belt. In master plan 2021, the same area, shown earlier as green belt, was converted as residential. This part of master plan 2021 was challenged before Lucknow bench of Allahabad High Court. Writ petition was dismissed. The matter came in

appeal before Supreme Court. Court held in para 12 of judgment that change of area from green belt to residential is in violation of Article 21, 48A and 51A(g) of the Constitution. Reliance was placed on **Bangalore Medical Trust v B.S. Muddappa & Others, (1991) 4 SCC 54**, wherein Court had said that protection of environment, open spaces for recreation and fresh air, playground for children, promenade for the residents and other conveniences or amenities are matters of great public concern and a vital interest to be taken care of in a development scheme. Public interest in the reservation and preservation of open spaces for parks and playgrounds cannot be sacrificed by leasing or selling such sites to private persons for conversion to some other use. Court also relied on an American Supreme Court Judgment **Agins vs. City of Tiburon, [447 us 255 (1980)]**, wherein Court said,

“... it is in the public interest to avoid unnecessary conversion of open space land to strictly urban uses, thereby protecting against the resultant adverse impacts, such as pollution,destruction of scenic beauty, disturbance of the ecology and the environment, hazards related geology, fire and flood, and other demonstrated consequences of urban sprawl.”

3. In para 15, Court said that, *“This Court had clearly laid down that **such spaces could not be changed from green belt to residential or commercial one.** It is not permissible to the State Government to change the parks and playgrounds contrary to legislative intent having constitutional mandate, as that would be an abuse of statutory powers vested in the authorities’.* Court also observed, when master plan was prepared earlier and authorities found importance of such space, it was their bounden duty not to change its very purpose when they knew very well the importance of this place to be kept as open space. Court said,

*“The **importance of park is of universal recognition.** It was against public interest, protection of the environment and such spaces reduce the ill effects of urbanisation, it was **not permissible to change this area into urban area as the garden/ Greenbelt is essential for fresh air, thereby protecting against the***

resultant impacts of urbanization, such as pollution etc. The provision of the Act of 1973 and other enactments relating to environment could not be permitted to become statutory mockery by changing the purpose in the master plan from green belts to residential one. Authorities are enjoined with duty maintain them as such as per doctrine of public trust.”

4. However, respondents 4 and 5 in their replies have brought before us that Municipal Corporation, Bhopal cancelled building permission on the land in question whereagainst respondent 2 who is constructing a school, filed *Writ Petition No.2485/2023, Rajmata (Bharat Mata) Shiksha Evam Samaj SEwa Samiti vs. The State of Madhya Pradesh*. Therein High Court of Madhya Pradesh at Jabalpur vide order dated 10.02.2023, granted stay to the order passed by Municipal Corporation, Bhopal.

5. Subsequently, on 06.03.2023, residents of the society also appeared before High Court and pointed out that the land on which construction was being raised is reserved for park and its nature cannot be changed by raising construction. High Court noted this fact in the order dated 06.04.2023 and observed that this fact that the land was reserved for park was not disclosed to it and taking into account this fact, High Court modified its interim order by directing parties to maintain *status quo* and also by directing that no construction will be raised in the area. Order passed by High Court of Madhya Pradesh at Jabalpur on 06.04.2023, is reproduced as under:

“Learned Sr. counsel appearing for intervenor submitted that they are residents of the society and the place which is reserved as parks has been allotted to the petitioner for construction of school. It is submitted that use of land and the purpose for which it has been reserved cannot be changed. There is stay in the matter and petitioner is continuing with construction work. Ex-parte stay has been granted in favour of petitioner. This fact was not before the court that place where construction is being raised is reserved for parks.

In view of the same order dated 10.02.2023 is modified to the extent that status quo be maintained till the next date of hearing and no construction will be raised in the area.

Learned counsel for the petitioner prays for and is granted two weeks' time to file reply to applications for interventions. State Govt., DDA and Municipal Corporation shall also seek instructions in the matter and file reply.

List the matter in week commencing 24.04.2023."

6. Since the issued raised before us is already ceased with High Court of Madhya Pradesh at Jabalpur, the same issue cannot be allowed to be raised simultaneously before this Tribunal also. It is the order of High Court which shall prevail and parties will have to be governed by the orders passed by High Court.

7. In this view of the matter, we do not find that continuance of proceedings would be appropriate.

8. The application is accordingly disposed of with the liberty to the parties to pursue their matter in High Court of Madhya Pradesh at Jabalpur in the pending *Writ Petition No.2485/2023 (supra)*. However, it is made clear that the parties are always at liberty to approach Tribunal if any new different cause of action survive or arise in future, after the matter is decided by High Court.

Sudhir Agarwal, JM

Dr. Afroz Ahmad, EM

August 01, 2023
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