



\$~14

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

+ W.P.(C) 5986/2022

MOHD ARSLAN Petitioner

Through: Mr. Mutiur Rehman, Advocate.

versus

GOVT OF NCT OF DELHI & ORS. Respondents

Through: Ms. Richa Dhawan with Mr. Anuj Chaturvedi, Advocates for respondent/DUSIB.
Ms. Jyoti Dutt Sharma, ASC, MCD with Mr. Ayush Bhatt and Mr. Angad Gautam, Advocates for respondent/MCD.

CORAM:

HON'BLE THE ACTING CHIEF JUSTICE

HON'BLE MS. JUSTICE MINI PUSHKARNA

ORDER

%

17.11.2023

1. On the last date of hearing, learned counsel for Shahi Imam/ Managing Committee of Jama Masjid had sought time to seek instructions. However, even at the passover stage, none is present for the Shahi Imam/ Managing Committee of Jama Masjid.
2. Learned counsel for Municipal Corporation of Delhi states that the North Park and South Park abutting Jama Masjid despite being public parks are not in their possession. This is a serious issue.
3. The importance of maintenance of green cover in the present milieu needs no emphasis. The open spaces and green cover provide the much needed breathing zones for the people when the society as a whole is grappling with the hazardous scenario of ever increasing pollution. The



parks are like an oasis in the concrete jungle that exist in cities. The move to lock the gates of a public park and denying access to the public is totally unacceptable. The public at large including the young and the old, need green spaces for playing, walking, exercising etc. Denial of this right would be infringement of Right to Life guaranteed under Article 21 of the Constitution of India.

4. Holding that protection of environment, open spaces and playgrounds for children are matters of great public concern, the Supreme Court in ***Bangalore Medical Trust vs. B.S. Muddappa and Others, (1991) 4 SCC 54*** has held as follows:

*“24. Protection of the environment, open spaces for recreation and fresh air, playgrounds for children, promenade for the residents, and other conveniences or amenities are matters of great public concern and of vital interest to be taken care of in a development scheme. It is that public interest which is sought to be promoted by the Act by establishing the BDA. The 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 user. Any such act would be contrary to the legislative intent and inconsistent with the statutory requirements. Furthermore, it would be in direct conflict with the constitutional mandate to ensure that any State action is inspired by the basic values of individual freedom and dignity and addressed to the attainment of a quality of life which makes the guaranteed rights a reality for all the citizens. [See *Kharak Singh v. State of U.P.*, (1964) 1 SCR 332 : AIR 1963 SC 1295 : (1963) 2 Cri LJ 329; *Municipal Council, Ratlam v. Vardhichand*, (1980) 4 SCC 162 : 1980 SCC (Cri) 933 : (1981) 1 SCR 97; *Francis Coralie Mullin v. Administrator, Union Territory of Delhi*, (1981) 1 SCC 608 : 1981 SCC (Cri) 212 : (1981) 2 SCR 516; *Olga Tellis v. Bombay Municipal Corporation*, (1985) 3 SCC 545; *State of H.P. v. Umed Ram Sharma*, (1986) 2 SCC 68 : AIR 1986 SC 847 and *Vikram Deo Singh Tomar v. State of Bihar*, 1988 Supp SCC 734 : 1989 SCC (Cri) 66 : AIR 1988 SC 1782]”*

5. It has been held time and again by the Courts that the Public Trust Doctrine enjoins upon the government authorities to protect natural



resources like air, sea, waters and green cover that must not only be used for a public purpose, but it must be available for use by the general public. Thus, in *M.C. Mehta Versus Kamal Nath and Others, (1997) 1 SCC 388*, the Supreme Court has held as follows:

“25. The Public Trust Doctrine primarily rests on the principle that certain resources like air, sea, waters and the forests have such a great importance to the people as a whole that it would be wholly unjustified to make them a subject of private ownership. The said resources being a gift of nature, they should be made freely available to everyone irrespective of the status in life. The doctrine enjoins upon the Government to protect the resources for the enjoyment of the general public rather than to permit their use for private ownership or commercial purposes. According to Professor Sax the Public Trust Doctrine imposes the following restrictions on governmental authority:

“Three types of restrictions on governmental authority are often thought to be imposed by the public trust: first, the property subject to the trust must not only be used for a public purpose, but it must be held available for use by the general public; second, the property may not be sold, even for a fair cash equivalent; and third the property must be maintained for particular types of uses.”

XXX XXX XXX

34. Our legal system — based on English common law — includes the public trust doctrine as part of its jurisprudence. The State is the trustee of all natural resources which are by nature meant for public use and enjoyment. Public at large is the beneficiary of the sea-shore, running waters, airs, forests and ecologically fragile lands. The State as a trustee is under a legal duty to protect the natural resources. These resources meant for public use cannot be converted into private ownership.”

6. In view thereof, this Court directs Municipal Corporation of Delhi to take action in accordance with law to take over the parks in question so that the same are utilised and available for use of the general public.
7. If any police assistance is asked for, the same shall be provided.



8. After all, a statutory authority cannot lose possession of the public parks.
9. Let a fresh status report be filed within four weeks.
10. List on 21st December, 2023.

THE ACTING CHIEF JUSTICE

MINI PUSHKARNA, J

NOVEMBER 17, 2023

c