
(2008) 01 DEL CK 0098

In the Delhi High Court

Case No : Writ Petition (C) 17855 of 2005

Delhi Villagers Development

APPELLANT

Vs

Govt. of India and Others

RESPONDENT

Date of Decision : 04-01-2008

Acts Referred:

Citation : (2008) 01 DEL CK 0098

Hon'ble Judges : T.S. Thakur, J;S.N. Aggarwal, J

Bench : Division Bench

Advocate : Pramod Ahuja, for the Appellant; B.B. Gupta, Isha Khanna for DPCC and Sanjay Katyal, for UOI, for the Respondent

Final Decision : Dismissed

Judgement

T.S. Thakur, J.—In this petition for a writ of mandamus filed in public interest, the petitioner prays for a direction against the respondents to construct a third outer ring road near the border of NCT of Delhi on an alignment suggested by the petitioner. It also prays for a direction to the respondents to shift the wholesale markets (mandies) located in Delhi to the peripheral third outer ring road proposed by the petitioner apart from certain further incidental directions. The controversy arises in the following circumstances:

2. As a part of Urban Extension Plan, 2001, the respondents propose to construct a 100m wide road connecting NH-8 to NH-1 through NH-10 as an Urban Extension Road-II (UER-II). The proposed road, it appears, is a part of the road network plan prepared by the National Capital Region Planning Board constituted under the National Capital Region Planning Board Act, 1985. The Board co-ordinates the efforts of Union Territory of Delhi and the adjoining states through a plan for the National Capital Region which includes some parts of Haryana, Uttar Pradesh and Rajasthan besides National Capital Territory of Delhi. The road network plan prepared by the Board aims at widening the balanced development of the city of Delhi. The proposed Urban Extension Road-II running over nearly 46 kilometers is a part of that development plan and would connect the four

national highways passing through the city. Once completed, it would connect the proposed Urban Extension areas and avoid additional traffic in the congested parts of the city.

3. The petitioner finds fault with the alignment of the road aforementioned as proposed by the respondents and prays for a shift in the said alignment. The prayer for mandamus against the respondents to adopt an alternative alignment of the road is in the following words:

A) Issue a writ or order or direction in the nature of MANDAMUS directing the respondents in declaring the action of the 4th respondent in proposing to lay the road of 100 meter wide connecting the National Highway No.8 (Gurgaon - Jaipur Road) and National Highway No. 1 (G.T. Karnal Road) crossing National Highway No. 10 (Rohtak Road) and passing from NH 8 (Gurgaon Road) via Dwarka Sub-city-Village Bhartal-Village Dhulsaras-Village Chhawla-Village Tajpur- Village Goyla Khurd-Deenpur-Roshanpura-Najafgarh-Masoodabad-Village, Nangli Sakrawati-Village Dichaon Kalan-Village Baderwara and village Mundka connecting NH 10 Rohtak Road). Further the route between National High Way No.1 (G.T. Karnal Road) as mentioned in the sketch marked with Pink colour from point A to B as being violative of Article 21 and also being opposed to Articles 47 and 48 of the Constitution and also to the principles of Ecology:

4. Consequential to the construction of the road on the periphery of the city is a prayer for shifting the wholesale markets (mandies) located in Delhi to the said peripheral area to reduce the vehicular traffic within the city and consequent pollution which is according to the petitioner making the life of the citizens miserable.

5. The respondents have opposed the writ petition in the counter affidavits filed by them. The DDA has in the reply filed on its behalf inter alia stated that measures have been taken in the restructuring of the road networks in the NCR. The Master plan classifies the roads into : (a) National Highways, (b) Arterial Roads which include primary roads with access control and primary all purpose roads, (c) Sub Arterial roads which include primary or secondary collector streets ; and (d) local streets. The master plan also envisages developing modern wholesale markets to be incorporated with freight complex where the whole sale business could be operated more efficiently and in a proper environment. The affidavit goes on to state that new wholesale markets have already been developed at suitable locations in different parts of the city and that integration of goods movement by road and rail between these freight complexes has also been recommended. The affidavit states that freight complexes are located at Madanpur Khadar (NH-2), Patparganj (NH-24), G.T. Road(NH-1), Barthal (NH-8). These complexes have to be inter-connected by providing road links as proposed in MPD-2001 but the construction of these roads have been pending on account of non-finalization of the road development plan (RDP) by the consultants appointed for that purpose. A comprehensive consultative process involving the railways, Delhi TRANSCO, NDPL, DJB, NHAI has to be

undertaken before the road development plan is finalized. The DDA has further stated that before determining the alignment of UER-II, sub-committees were constituted for detailed feasibility of the roads and a detailed proposal of rationalization of the proposed road put up for consideration to the DDA Technical Committee in its meeting held on 29th January, 2004. The alignment of the road was discussed in the said Committee of the DDA and eventually approved by the Lieutenant Governor of Delhi. According to the DDA the proposed alignment between NH-8 and NH-10 is one of the major alignments connecting the freight complexes proposed at Dwarka. It is asserted that the basic approach for the development of the road in question is to connect the proposed urban extension areas and to avoid additional traffic in the congested parts of the city.

6. On behalf of Government of India, R-1, an affidavit has been filed by Sh. A. Senthil Vel, Additional Director in Ministry of Environment of Forests. The affidavit states that the road proposed by the respondents does not fall under the preview of the Environment Impact Assessment Notification, 1994 so as to call for prior environment clearance of the Government of India. To the same effect is an affidavit filed by Sh. H.S. Dhillon, Joint Director (planning) Traffic and Transportation of the DDA who has stated that environmental clearance in terms of Government of India notification dated 14th September, 2006 is required only for National Highways and State Highways. The proposed UER-I, UER-II and UER-III are, however, neither state nor national highways. These roads are only Arterial roads of the city passing through Narela, Rohini and Dwarka and do not Therefore, require prior environmental clearance.

7. An affidavit has been filed even by Sh. S.S. Ghonkrokta, Member Secretary, Delhi Pollution Control Committee. The affidavit inter alias states that no request for conducting any public hearing has been received by the DPCC relating to the project in question. It further states that highways require environmental clearance only if they are new national or state highways or involve an expenditure more than the prescribed amount for expansion of an existing highway.

8. We have heard learned Counsel for the parties and perused the record. A three-fold argument was advanced before us by learned Counsel for the petitioner in support of the petition. It was firstly submitted that the alignment of the proposed new road was not technically feasible as the same passed through areas that are heavily built upon. The alternative road/alignment suggested by the petitioners was, according to the learned Counsel, more feasible as the same passed through agricultural lands and Therefore, did not cause any inconvenience or disturbance to inhabitants. Secondly, it was contended that construction of the road on an alignment which would take the road through human habitation would jeopardize and adversely affect the environment in those areas on account of heavy vehicular traffic which is likely to pass by the same. Thirdly, it was contended that the respondents had not taken the requisite environmental clearance from the authorities in terms of the Government of

India notification requiring an environmental impact study to be conducted before the project was undertaken.

9. On behalf of the respondent it was on the other hand argued that the petition was misconceived and mala fide inasmuch as the purpose underlying the petition was to shift the road on the proposed alternative alignment only to benefit the owners of the land through which the road would eventually pass. It was argued that the construction of a road results in an immediate spurt in the prices of real estate especially when the road is going to be 6 lanes, 100 ft. wide road. Alternatively, it was contended that the alignment of the proposed road has been settled after comprehensive studies by technical staff and eventually the Technical Committee of DDA, which alignment was found to be the most ideal to connect the highways on the periphery of the city and to decongest the traffic in the congested areas. The very fact that some unauthorized colonies on the alignment suggested by the respondents have come up or that some structures would have to be demolished would not render the alignment technically unsound. It was also argued that the petitioners were raising the spectre of environmental hazards for the inhabitants of the area only as a pretext of getting the alignment shifted to benefit the owners of the area through which they want the road to pass. The contention that the environmental impact study has not been conducted in terms of the notification issued by the Government of India is also, according to the learned Counsel, misconceived in the light of the affidavits filed by the respondents to the effect that such a study and permission was not a condition precedent for non-national and state highways or Urban Extension Roads like the one proposed in the instant case.

10. We have given our careful consideration to the submission made at the bar and perused the record. The petition, as noticed earlier, is not adversarial in nature. It has been filed in public interest. The Supreme Court has, no doubt, adopted a liberal rule as to locus standi in favor of public interest litigants who draw the attention of the Courts in matters of utmost public importance or matters where directions are prayed for the benefit of under-privileged and less fortunate sections of the society. Cases involving relief to bonded labourers, undertrial prisoners, prison inmates, cases involving disadvantaged sections of the society like women, children and unorganized labour, cases involving exploitation of children arising out of inter-country adoption and education of the children of prostitutes, cases where judicial intervention was considered necessary for the protection of the sanctity of democratic institutions and cases where administrative decision relating to development were found to be harmful to the environment jeopardizing people's rights to natural resources such as air and water have been dealt with by the Courts and appropriate directions issued. The Apex Court has, all the same, sounded a note of caution that the newly evolved doctrine of PIL should not be abused by a mere busy body or a meddlesome interloper or wayfarer or officious intervener. The Court has emphasized the need for adopting a cautious approach to prevent any abuse of its process by unscrupulous litigant for their personal needs or to wreck

vengeance against political or other adversaries. The Court has declared that public interest litigation is a weapon to be used with great care and circumspection and that the judiciary has to be extremely careful to see that behind the veil of public interest there is no ugly private malice, vested interest and/or publicity lurking. See T.N. Godavarman Thirumalpad Vs. Union of India (UOI) and Others, , Gural Singh Vs. State of Punjab and Others, , Kushum Lata Vs. Union of India (UOI) and Others, , Janata Dal Vs. H.S. Chowdhary and Others, .

11. The grievance made by the petitioner in this petition does not in our view stand closer scrutiny. The argument that the alignment proposed by the respondents is going to affect the inhabitants of the area through which the road passes, has not impressed us. The petitioner does not purport to represent the interests of the inhabitants, who are likely to be affected by the demolition of the structures in connection with the construction of the road. Even otherwise, there is no averment in the writ petition that the built-up structures are authorized by the Municipal Corporation of Delhi or that the colonies in which the structures have been raised are planned and regular colonies. The nature and the extent of structures that may fall on the alignment proposed by the respondents is also not clear. The petitioner has, no doubt, placed certain photographs on record but in the absence of clear assertions and particulars as to the total extent of structures that may fall on the alignment of the road as proposed by the respondents, it will not be possible to hold that the alignment suggested by the respondents to be technically unsound or imprudent. That is, all the more so when the alignment of the proposed road has been determined by experts in the field and has been debated at various levels by them both from the administrative as well as technical angles. That apart, what should be the alignment for the construction of the road is a matter for the concerned authorities to determine. It is an essential part of the planning of a project which the Courts must leave to the executive. A vague and generalized assertion that the alignment suggested by the respondents is not technically feasible simply because some unauthorized colonies have been constructed on that alignment would not justify interference with the proposed road on the specious plea that the alignment proposed by the experts is not perfect. The executive in a responsible government is responsive to and aware of the problems of the inhabitants and sensitive to their needs and requirements. We have no reason to believe that, that expectation has failed in the instant case. If the alignment has been determined after proper deliberations and discussions at various levels, we would not like to sit in appeal over the same or substitute our own opinion over that of the engineers and the technical experts, who have worked and planned the project in question.

12. This is true even in regard to the alternative submission made on behalf of the petitioners that the constructions of the road on the alignment suggested by the respondents would cause environmental pollution and hazards for the inhabitants of the area. There are two facets even to this part of the petitioner's

case, one making grievance against the possible pollution of the environment in the area to the detriment of the inhabitants and the other suggesting an oblique motive on the part of the petitioners in having the alignment shifted to benefit the owners of land through which the proposed road may run. It is common ground that the two alignments viz; one suggested by the petitioner and the other by the respondents are just about a kilometer and a half apart. If that be so one fails to understand how the hazards of pollution, assuming that any such hazards are inevitable, would in the post-completion scenario of the project be reduced if the alignment is shifted by just about a kilometer and a half as proposed by the petitioners. Environmental pollution is not localized. This is especially so in case of pollution caused by the vehicular traffic which is bound to spread to the areas in the vicinity of the source. If a highway or urban extension road like the one we are dealing with in the instant case is going to be a source of pollution, it would be so not only for those in the immediate vicinity of the road but also to those living at some distance from the same. The object of decongesting Delhi and the connecting highways to relieve the ever increasing vehicular pressure on them is laudable. As a matter of fact, the construction of such arterial roads on the periphery to divert heavy vehicular traffic which is passing through Delhi away from the core area was long overdue. It is only if these peripheral roads provide the requisite connectivity to vital business and other establishments that the city can be decongested to make it habitable. We have, Therefore, no hesitation in rejecting the alternative argument advanced by the petitioner that the hazards of pollution resulting from the movement of vehicular traffic over the proposed road should justify and call for a shift in the alignment as proposed by the petitioners.

13. The third and the only other submission made on behalf of the petitioner is equally devoid of merit. The environment impact study in terms of the notification relied upon by the petitioner has no application and is not a condition precedent in cases of urban extension roads like the one proposed by the respondents in the instant case. That position is clear from the affidavits filed by the respondents which we have no difficulty in accepting as the correct position.

14. In the result, there is no merit in this petition which fails and is hereby dismissed but in the circumstances without any order as to costs.