

(2015) 07 P&H CK 0038
In the Punjab And Haryana At Chandigarh
Case No : CWP No. 12545 of 2009 (O&M)

Jhanda Singh and Others

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision : 03-07-2015

Acts Referred:

Land Acquisition Act, 1894 — Section 17(1), 17(4), 4
Punjab Scheduled Roads and Controlled Areas Restriction of Unregulated Development Act, 1963 — Section 4, 4(1), 5, 5(4), 6

Citation : (2015) 07 P&H CK 0038

Hon'ble Judges : Satish Kumar Mittal, J; Harinder Singh Sidhu, J

Bench : Division Bench

Advocate : Shailendra Jain, Sr. Advocate assisted by Mannu Chaudhary and Kulbhushan Sharma, for the Appellant; Amar Vivek, Additional Advocate General, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Harinder Singh Sidhu, J.—This petition has been filed praying for directions to quash the order dated 8.7.2009 passed by respondent No. 1, whereby, the representation filed by the petitioners against the alignment of the V2(a) Road linking Delhi and Gurgaon and passing through village Kherki Daula from the places where the petitioners have constructed their residential houses as depicted in the Final Drawings forming part of the Gurgaon Manesar 2021 Final Development Plan dated 5.2.2007 was rejected.

2. It has also been prayed that the alignment of the proposed V2 (a) road from Dwarka Residential Complex of Delhi to National Highway No. 8 as given in the Final Drawing dated 14.11.2006 and in the said Final Development Plan 2021 for Gurgaon- Manesar Urban Complex be quashed.

3. The petitioners are residents of Village Kherki Daula, Tehsil Sohna, District Gurgaon. It is their grievance that due to wrong shifting in the alignment of the proposed V 2(a) road in the Final Development Plan of Gurgaon from the original

alignment as shown in the Draft Drawing dated 22.6.2006 attached with the Draft Development Plan dated 11.7.2006, the land on which the petitioners have constructed their residential houses and are running commercial establishments have come in the path of the proposed V2 (a) Road.

4. It is averred that 80% of the petitioners are original inhabitants of village Kherki Daula whereas the remaining 20% are the non-proprietors of village Kherki Daula who have settled there in due course of time due to increased urbanization and industrialization. It is their case that over the land which is shown as proposed V2 (a) road in the Final Development Plan the petitioners have raised their residential houses where they and their families are living. Some constructions raised over the said land are also being utilized for commercial purposes like small karyana shops, barber shops, tea stalls etc.

5. Narrating the legal and statutory basis of the said Development Plans it has been stated that in 1963 the State of Punjab enacted the Punjab Scheduled Roads and Controlled Areas (Restriction of Unregulated Development) Act, 1963 (hereinafter referred to as the "1963 Act"). As per this Act which is applicable to Haryana as well, restrictions were imposed to prevent haphazard and sub-standard development along side the Scheduled Roads and in the Controlled areas in the States of Punjab and Haryana. As per section 4 of the Act, the State Governments may, by notification, declare the whole or part of any area adjacent to and within a distance of eight kilometres on either side of the boundary of any town to be a Controlled area. Thereafter as per Section 5 of the Act, a development plan is required to be framed for the controlled areas of the town as per the procedure laid down in Section 5 of the Act. Once the development plan has been finalized, then Sections 6, 7 and 8 follow which deal with of change of land use and permission to build etc.

6. Vide notification dated 10th July, 1964 issued under Section 4(1) of the 1963 Act the State of Haryana declared the controlled area for the town of Gurgaon. The said controlled area was extended from time to time by subsequent notifications. Village Kherki Daula falls within the controlled area of the Gurgaon town.

7. Vide notification dated 11.7.2006 issued under Section 5(4) of the 1963 Act, the Draft Development Plan, 2021-AD for Gurgaon- Manesar Urban Complex was issued by respondent No. 1. In the Draft Drawing dated 22.6.2006, the proposed road link between Dwarka Residential Complex of Delhi to National Highway No. 8 at Gurgaon had been marked as V2(a) road. In clause VIII of the Draft Development Plan, the land reservation for the said V2 (a) road had been earmarked as 150 metres wide road with 30 metres wide green belt on both sides, making a total of 210 metres reservation for the V 2 (a) road. A period of 30 days was specified for submitting objections to the Draft Development Plan. It is averred that khasra nos for the lands falling in the alignment of the proposed road had not been mentioned in the notification and as on an examination of the drawings attached to the draft development plan the petitioners found that their

properties were not falling within the proposed reservation of 210 metres wide strip reserved for the road, hence they did not submit any objections in respect of the Draft Development Plan as they were not affected by the proposed road because the road alignment did not fall over the lands over which their residential houses and other construction had been raised.

8. On 5.2.2007 the Final Development Plan 2021-AD Gurgaon- Manesar Urban Complex, was notified along with Final Drawing dated 14.11.2006. With the said notification several restrictions and conditions on use of land were also notified. It has been averred that in the final drawing dated 14.11.2006 the alignment of the V 2(a) road has been drastically changed with the result that the properties of the petitioners also fall in the 210 metres wide strip reserved for the proposed road which was not so in the draft drawing dated 22.6.2006. It is alleged that the area over which the said V2 (a) road was proposed to be laid as per the draft drawing dated 22.6.2006 belongs to either builders or their collaborators but in the Final Drawings and the Final Development Plan the said area has been shown to be falling in the commercial belt and instead the lands of the petitioners over which there exists a complete Basti and over 100 and more residential houses has been included for laying the said V2 (a) road.

9. The petitioners earlier filed CWP No. 4666 of 2008 challenging the alignment of the V2 (a) road in the Final Development Plan dated 5.2.2007 on various grounds including that they did not get any opportunity to file objections after the change of the alignment was made from that in the draft drawing and draft development plan, that the National Capital Region Planning Board constituted under the National Capital Region Planning Act, 1985 (hereinafter referred to as the "1985 Act") was not consulted which was a necessary requirement under the said Act. The other contentions were that there was alternative vacant land available through which the V2 (a) road could be aligned and such alignment would save the constructed houses of the petitioners, that the alignment had been changed with a malafide intent to give benefit to builders and colonizers, whose land fell along the earlier alignment etc. The said writ petition along with a bunch of other petitions was disposed of vide order dated 18.9.2008. The petitioners were given liberty to file their objections within 15 days which were required to be considered by authorities concerned after giving opportunity of hearing to the parties, within 15 days thereafter. The authorities were directed to pass orders on merits after taking into consideration National Capital Region Planning Act, 1985 and Punjab Scheduled Roads and Controlled Areas (Restrictions of Unregulated Development) Act, 1963. It was observed that in case the petitioners are able to convince the authorities with their objections and submissions, the authorities would be expected to act fairly and pass appropriate order by withdrawing the notifications. It was left open to the petitioners to re-agitate the impugned notifications before the Court in case their claims were not satisfactorily considered by the authorities.

10. Pursuant to the aforesaid directions, the petitioners submitted detailed

objections. The petitioners and their Counsel were heard, and detailed order dated 8.7.2009 was passed by Financial Commissioner and Principal Secretary to Government Haryana, Town and Country Planning Department, Haryana, whereby their representation was rejected.

11. The petitioners have filed the instant challenging the aforesaid order of rejection and have prayed that the impugned alignment of the proposed road as given in the Final Drawing dated 14.11.2006 be quashed.

12. The grounds for quashing the aforesaid order and the alignment of the road as given in the Final Drawing of the Final Development Plan as raised in the present petition are the same as had been raised in the representation filed by the petitioners which has been rejected by the Financial Commissioner and Principal Secretary to Government Haryana, Town and Country Planning Department, Haryana, Chandigarh through the impugned order. The impugned order is a detailed and reasoned order and has dealt with every objection. Hence unless the reasons for rejecting the representation are shown to be legally or factually untenable, the writ petition must fail.

13. Written statement dated 23.10.2009 has been filed on behalf of respondents 1 to 3 wherein the impugned order and the alignment of the V2(a) road has been sought to be justified. Referring to the impugned order it has been stated that it was inter alia observed in the order that the whole aim of the petitioners is to get their own land excluded from the alignment of the Northern Periphery Road ("NPR"), though none of the petitioners had disputed the need and benefits of the said road and have failed in providing any alternate solution which would pass through lesser constructed area. The order also mentions that only 14% of constructed area comes in the 150 meter wide Northern Periphery Road. 1795 objections had been filed after publication of the draft notification dated 11.7.2006 and the same were duly considered. In the development plan of Gurgaon-Manesar Urban Complex-2021, there was a provision of 150 meter wide road. This road was to commence from National Highway No. 8 providing a link to New Palm Vihar towards Dwarka residential complex in Delhi. The Delhi Development Authority had a provision of 80 meter wide road commencing from the territory of Gurgaon towards Dwarka residential complex. The matter of widening of the road in the area falling in the territory of Delhi was taken during the meetings dated 26.10.2006 and 30.11.2007 with the Delhi Authorities wherein agreement was reached that the road in the territory of Delhi also be of the same width of 150 metres. (Reference minutes of the meeting dated 30.11.2007).

14. It has been asserted that the development plan and the provision of the 150 meter wide NPR had been made after due deliberations and after the experts had considered the provision from all angles as mentioned in detail in the order dated 8.7.2009. The oustees would be entitled for allotment of plots as per the policy for rehabilitation and resettlement of land owners/land acquisition oustees, contained in Government notification dated 7.12.2007.

15. It is further stated that there is already a huge rush of traffic on Delhi-Jaipur National Highway No. 8 and traffic jams and road accidents are almost a daily feature at IFFCO Chowk and Signature Chowk. The provision of the Northern Periphery Road is of immense importance to cope up with the load of the present and future traffic and to avoid traffic jams and accidents. About the steps undertaken towards construction of the road it has been stated notification dated 25.1.2008 under Section 4 read with Section 17(1) and 17(4) of the Land Acquisition Act, 1894 was issued to acquire 660.37 acres of land for the development and utilization of the land for the NPR. Thereafter, notification under section 6 dated 18.3.2008 was issued to acquire 611.17 acres of land. It is stated that out of the total compensation of Rs. 2986200292/- an amount of Rs. 2365055964/- has already been distributed amongst the land owners. The possession of land measuring 32.02 acres has been stayed by the Hon'ble Court and thus not taken. The laying of the Northern Periphery Road has already commenced and an amount of Rs. 300 crores (approx.) had been spent till the filing of the written statement.

16. Disputing the basic premise of the petitioners that the alignment of the NPR in the stretch where the land/ residential houses of the petitioner are located, has been changed in the Final Development Plan of Gurgaon-Manesar Urban Complex-2021 from that earlier notified in the Draft Development Plan of Gurgaon- Manesar Urban Complex-2021 it has been asserted that it is wrong that the alignment of NPR in the Final Development Plan has been changed. Elaborating and explaining this further, it has been stated that one end of the Northern Periphery Road is connecting the Dwarka Residential Complex while the other end is meeting at Delhi- Jaipur Highway No. 8 just before the existing Toll Plaza of Delhi- Gurgaon Expressway which is situated at 41.9 kilometers stone. The proposal for acquisition of the NPR was first prepared and forwarded by the office of the District Town Planner, Gurgaon on 14.11.2006 on the basis of the Draft Development Plan, Gurgaon Manesar Urban complex, (hereinafter referred to as DDP-2021) published vide drawing No. 1475/06 dated 22.6.2006. The Final Development Plan 2021 Gurgaon-Manesar Urban complex, (hereinafter referred to as FDP-2021) was published on 5.2.2007. Therefore, when the proposal for acquisition of land falling within the said NPR had already been forwarded to the higher authorities earlier, the question of change in the alignment of the said NPR in the FDP-2021 from that as in the DDP-2021 does not arise. It has been asserted that the alignment of the said road and location of its take off point was fixed in the FDP-2021 strictly as per the parameters laid down in the explanatory note of the DDP -2021 dated 11.7.2006. The relevant portion of the explanatory note of the Draft Development Plan has been reproduced in the written statement.

(1) Provision of additional road links between Delhi and Gurgaon

Provision of 150m wide peripheral road:

For smooth flow of inter-city traffic and intra-city traffic of Gurgaon - Manesar

Urban Complex, a 150 m wide peripheral road has been proposed. The take off point of this road from NH-8 shall be before toll plaza towards Gurgaon.

17. Thus, the alignment of the said NPR has been effected in the FDP-2021 and in the Sectoral Plans of the respective sectors strictly as per the parameters already laid down in the explanatory note of the Draft Development Plan of Gurgaon-Manesar Urban Complex-2021.

18. It is further stated that the alignment of the said NPR was depicted in the FDP-2021 based on the ground level field surveys conducted for framing the acquisition proposal of the said road. The entire exercise of integration of revenue based village plans for finalization of FDP-2021 and acquisition proposal of NPR was going on side by side. The acquisition proposal of said road was finalised on the revenue based sajra plans, on priority, prior to the publication of the FDP-2021. The same alignment of NPR as indicated in the DDP-2021 has been notified for acquisition. Thus, it has been asserted that there is, factually, no change in the alignment of the said road in the FDP-2021 as alleged by the petitioner.

19. Regarding the contention of the petitioners that the alignment of the road could be made through a less constructed vacant area it has been stated that the impugned order records that the petitioners while not disputing the need and benefits of the said road have failed to provide any alternative solution which would pass through lesser constructed area. On the other hand, the Department was able to specifically point out that keeping in view the constraints of onward linkages within Delhi, the objections of National Highway Authority of India pertaining to revenue linkages and limited maneuverability available in ensuring a smooth alignment and disturbing minimum construction on the way, an attempt has been made to align the said 150 m Northern Periphery Road to cater to the exponential growth in future traffic between Gurgaon and Delhi before the emergence of any crisis situation. It is practically impossible to get vacant land through which a road could be laid without having many turns and bends. It has been stressed that if such wide roads have many turns and bends they lose their significance as periphery roads because it results in disruption of free flow of traffic, loss of fuel efficiency besides being more prone to accidents.

20. Detailing the developments that have taken place after the notification of the Final Development Plan it has been stated that after the publication of the final development plan on 5.2.2007, the Government has already granted 16 licences under the Haryana Development and Regulation of Urban Areas Act, 1975 in the last 2 years for development of residential, commercial and IT parks, covering more than 250 acres area which have direct access from the service road of the NPR. It is stated any change in the alignment of the Northern Periphery Road at this stage would disturb the approach for most of these projects and would put these projects in jeopardy. Several of these licencees have already started development works at site. Third party rights stand created in favour of thousands of persons by such developers and any change in the alignment of the

150 meter Northern Periphery Road is likely to result in a further flood of litigation from the adversely affected parties who would have made their investments for undertaking development works in accordance with the provisions of the notified Development Plan, after obtaining necessary statutory approvals from the Government as well as from those who would have booked their space in accordance with the projects floated by the developers as per the licences granted to them.

21. It has been further stated that an ISBT cum Metro Depot is proposed towards the north of the said road, whereas, commercial cum residential Sector-83 is located towards south of the said NPR. Further it is stated, that the said alignment has no bearing on the petitioner's land since it remains located within the non-conforming land use zone, as earlier, as per the Draft Development Plan-2021. Consequently it is pleaded that the writ petition deserves to be dismissed on this score alone.

22. Regarding the contention of the petitioners that the development plan is not khasra based it is stated that it is standard universal practice that development plans are never khasra based. The development plans are supposed to provide a broad outline of the physical development and infrastructure planning proposals for the development of an urban area for a perspective year, which is normally adopted as 20 years, keeping in view the inherent strengths and growth potentials of a town. These development plans form a macro-level physical planning exercise done on large scale (viz.1:50000 scale) and are not based on cadastral/ revenue maps, because of several inherent complications. The area bounded within the Final Development Plan, Gurgaon Manesar Urban Complex-2021 encompasses the revenue boundaries of around 106 villages. Integrating the cadastral maps of those number of villages and doing a micro-level planning is to form the second stage, i.e. the preparation of tentative sectoral plans, which comes after the publication of Draft Development Plan Gurgaon-Manesar Urban Complex-2021. It is reiterated that this is a standard universal procedure which has also been followed in the case of Development Plan of Gurgaon.

23. Stressing upon the urgency of construction of the proposed road it has been stated that Gurgaon has seen unprecedented urbanization pressure during the last 5-7 years on account of the proliferation of the IT enabled services/ BPO industry as well as the Auto/ Auto ancillary industry. The population of Gurgaon is slated to grow from its present estimated strength of 11- 12 lakh to approx 37 lakh in the next 10-12 years period. The development activities are taking place at unprecedented pace. The present road links between Gurgaon and Delhi prove to be just sufficient for the present day traffic, which has been increasing at a very fast pace. To serve the traffic and transportation requirements of the future, the State Government has been in dialogue with all concerned stakeholders, viz., National Capital Region Planning Board, Government of National Capital Territory, Delhi, DDA, MCD etc. to plan additional linkages for future. Its attempts have

borne fruit and the Delhi Government has already agreed to provision of two additional linkages, one of which is the present link and the other is via Gual Pahari, Jaunapur, Mandi etc.

24. The contention of the petitioners that the road has been planned unilaterally without taking the Delhi Administration into confidence has been refuted by stating that initially the DDA in its Zonal plan of Zone-K-II has provided only a 80m ROW road in Delhi portion coming from Dwarka, the ROW of which has been decided to be upgraded to 150 m as per the ROW specified in the Gurgaon stretch, which shall meet the 150m proposed road. It has been stated that without this additional link, the existing roads would never be able to take up the future load and the present economic developments underway in Gurgaon would choke under the future load of traffic. The provision of the said Northern Peripheral Road link to Delhi is a well thought out infrastructure provisioning by the Government to cater to the future growth of the town.

25. It has been pointed out that the Final Development Plan Gurgaon-Manesar Urban Complex-2021 has been notified in February, 2007 after following the wider consultative process at the district level under the aegis of District Level Committee (DLC) chaired by the local Deputy Commissioner and with all the local district level officers and local representatives as its members - the recommendations of which are then considered by the State Level Committee chaired by the Hon'ble Chief Minister, Haryana. The plan has been in force since February, 2007 and a host of development initiatives already stand taken to implement the plan during the course of last few years.

26. We have heard the Ld. Counsel for the parties and gone through the record including the impugned order.

27. We find that there is no procedural irregularity in the formulation and finalization of the Development Plan. The procedure as laid down in Section 5 of 1963 Act has been followed. The DDP- 2021 was published vide notification dated 11th July, 2006. A period of 30 days was specified for submitting objections to the DDP-2021. 1795 objections had been filed after its publication. But the petitioners did not file any objection because according to them their lands did not fall in the alignment of the NPR. The objections filed were duly considered and the FDP-2021 was published on 5.2.2007.

28. The petitioners filed CWP No. 4666 of 2008 challenging the alignment of the V2 (a) road in the FDP-2021 on various grounds including that its alignment had been changed from that as proposed in the DDP-2021 and that they did not get any opportunity to file objections after the change of the alignment so made. The writ petition along with a bunch of other petitions was disposed of vide order dated 18.9.2008 giving liberty to the petitioners to file their objections within 15 days which were required to be considered by authorities concerned after giving opportunity of hearing to the parties, within 15 days thereafter.

29. Thus, as a result of these directions, the petitioners got an additional

opportunity to file objections. The objections filed by the petitioners were duly considered and impugned order dated 8.7.2009 was passed by the Financial Commissioner and Principal Secretary Government of Haryana, Department of Town and Country Planning.. In the impugned order every single contention of the petitioner has been considered and dealt with in detail.

30. The basic premise of the petitioners that the alignment of the NPR in the stretch where the land/ residential houses of the petitioner are located, has been changed in the FDP-2021 from that earlier notified in the DDP-2021 has been refuted. It has been pointed that the proposal for acquisition of the NPR was first prepared and forwarded by the office of the District Town Planner, Gurgaon on 14.11.2006 on the basis of the DDP-2021 hence the question of change in the alignment of the said NPR in the FDP-2021 from that as proposed in the DDP-2021 does not arise. It has been asserted that the alignment of the said road and location of its take off point was fixed in the FDP-2021 strictly as per the parameters laid down in the explanatory note of the DDP -2021. Consequently the allegations that the alignment of the NPR has been changed to benefit colonizers has also been effectively refuted. In any case the allegations as contained in para 17 of the writ petition are vague, generalized and bereft of particulars to effectively substantiate the claim of malafide. In the context of malafide it would be pertinent to refer to the decision of the Hon''ble Supreme Court in Union of India (UOI) Vs. Dr. Kushala Shetty and Others, AIR 2011 SC 3210 : (2011) 8 JT 160 : (2011) 4 RCR(Civil) 353 : (2011) 7 SCALE 654 : (2011) 12 SCC 69 : (2011) 2 SCR 1087 : (2011) AIRSCW 5115 :

"25. The plea of the respondents that alignment of the proposed widening of the national highways was manipulated to suit the vested interests sounds attractive but lacks substance and merits rejection because except making a bald assertion, the respondents have neither given particulars of the persons sought to be favoured nor placed any material to prima facie prove that the execution of the project of widening the national highways is actuated by mala fides and, in the absence of proper pleadings and material, neither the High Court could nor this Court can make a roving enquiry to fish out some material and draw a dubious conclusion that the decision and actions of the appellants are tainted by mala fides"

31. The above observations equally apply to the present case as well.

32. It has also been pointed out that the development plan and the provision of the 150 meter wide NPR had been made after due deliberations and after the experts had considered the provision from all angles. The petitioners failed to provide any alternative solution which would pass through lesser constructed area. On the other hand, the Department was able to specifically point out that keeping in view the constraints of onward linkages within Delhi, the objections of National Highway Authority of India pertaining to revenue linkages and limited maneuverability available in ensuring a smooth alignment and disturbing minimum construction on the way, an attempt has been made to align the said

150 metre Northern Periphery Road to cater to the exponential growth in future traffic between Gurgaon and Delhi before the emergence of any crisis situation. It is practically impossible to get vacant land through which a road could be laid without having many turns and bends. It has been stressed that if such wide roads have many turns and bends they lose their significance as periphery roads because it results in disruption of free flow of traffic, loss of fuel efficiency besides being more prone to accidents.

33. The developments that have taken place after the publication of the FDP-2021 also cannot be ignored. Notification dated 25.1.2008 under Section 4 read with Section 17(1) and 17(4) of the Land Acquisition Act, 1894 was issued to acquire 660.37 acres of land for the development and utilization of the land for the NPR. Thereafter, notification under section 6 dated 18.3.2008 was issued to acquire 611.17 acres of land. Out of the total compensation of Rs. 2986200292/- an amount of Rs. 2365055964/- has already been distributed amongst the land owners. The possession of land measuring 32.02 acres has been stayed by the High Court and thus could not be taken. Thereafter the laying of the Northern Periphery Road had already commenced and about Rs. 300 crores (approx.) had been spent till the filing of the written statement i.e., 23.10.2009. In CM No. 7165 of 2015 dated 25.5.2015 filed by the State of Haryana praying for vacation of the order staying dispossession of the petitioners it has been stated that out of the total length of 18 kilometers, 16.5 km road has already been constructed. It is on record that as on the date of filing of the written statement, 16 licences had been issued under the Haryana Development and Regulation of Urban Areas Act, 1975 for development of residential, commercial and IT parks, covering more than 250 acres area which have direct access from the service road of the NPR. It is rightly stated that any change in the alignment of the Northern Periphery Road at this stage would disturb the approach for most of these projects and would put these projects in jeopardy. Several of these licencees have already started development works at site. Third party rights stand created in favour of thousands of persons by such developers and any change in the alignment of the 150 meter Northern Periphery Road is likely to result in a further flood of litigation from the adversely affected parties who would have made their investments for undertaking development works in accordance with the provisions of the notified Development Plan, after obtaining necessary statutory approvals from the Government as well as from those who would have booked their space in accordance with the projects floated by the developers in accordance with the licences granted to them. It has been further stated that an ISBT cum Metro Depot is proposed towards the north of the said road, whereas, commercial cum residential Sector-83 is located towards south of the said NPR.

34. Additionally, what cannot be lost sight of is that formulation of development plans including alignment of roads is essentially a matter for the experts. In the absence of any patent arbitrariness or malafide, it would not be proper to interfere therewith.

35. The following observations of the Hon"ble Supreme Court in Kushala Shetty"s case (supra) are pertinent on the point:

"28. Here, it will be apposite to mention that NHAI is a professionally managed statutory body having expertise in the field of development and maintenance of national highways. The projects involving construction of new highways and widening and development of the existing highways, which are vital for the development of infrastructure in the country, are entrusted to experts in the field of highways. It comprises of persons having vast knowledge and expertise in the field of highway development and maintenance. NHAI prepares and implements projects relating to development and maintenance of national highways after thorough study by experts in different fields. Detailed project reports are prepared keeping in view the relative factors including intensity of heavy vehicular traffic and larger public interest. The courts are not at all equipped to decide upon the viability and feasibility of the particular project and whether the particular alignment would subserve the larger public interest. In such matters, the scope of judicial review is very limited. The court can nullify the acquisition of land and, in the rarest of rare cases, the particular project, if it is found to be ex facie contrary to the mandate of law or tainted due to mala fides. In the case in hand, neither has any violation of mandate of the 1956 Act been established nor has the charge of malice in fact been proved. Therefore, the order under challenge cannot be sustained."

36. The Delhi High Court in WP(C) No. 17855 of 2005 in the matter of Delhi Villagers Development vs. Government of India also observed on similar lines. In that case the Court was dealing with similar issue in relation to the challenge of alignment of 100m wide road connecting NH-8 to NH-1, passing through NH-10, as an Urban Extension Road-II, in which the alignment of the said road was challenged. However, this petition was dismissed vide order dated 4.1.2008 by the Hon"ble Court by observing that :

"That is, all the more so when the alignment of the proposed road has been determined by the experts in that field and has been debated at various levels by them both from 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 essential part of planning of a project which court must leave to the executives. A vague and generalized assertion that alignment as 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 specific plea that the alignment proposed by the experts is not perfect.

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 courts own opinion over that of the engineers and technical experts, who have worked and planned the project in question.

Hence, in view of the submissions made above, the present writ petition along with all other bunch of similar writ petitions deserves to be dismissed."

37. Thus, there is no merit in the writ petition and the same is dismissed.