
(2007) 11 RAJ CK 0050
In the Rajasthan High Court

Kalyan Sahai Kedawat

APPELLANT

Vs

State of Raj. and Others

RESPONDENT

Date of Decision : 06-11-2007

Acts Referred:

Jaipur Development Authority Act, 1982 — Section 16(h)

Citation : (2008) 2 RLW 1437

Hon'ble Judges : Shiv Kumar Sharma, J; Mahesh Chandra Sharma, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Shiv Kumar Sharma, J.—Challenge in these appeals is to the order dated July 1, 1996 of the learned Single Judge whereby following directions Were issued in the public interest in regard to all the roads connecting Jaipur with the National Highways:

(i) In accordance with the norms prescribed for building lines and control lines the roads and the width of the roads have to be maintained. The Tonk road upto Air-port circle is stated to have 160" width, but at Durgapura the road width is even reduced to 60". Similarly, even the permission has been given for construction of the houses at Tonk road on Income Tax colony where the width is 100". In respect of National Highway No. 8 i.e. Ajmer road upto Bridges, the width is said to be 100". There may be other areas where the constructions have been made in accordance with the permission issued by the then UIT or the JDA. I do not like to give any direction in respect of the constructions which were made after obtaining the proper sanction of the authorities concerned. The respondents have to see one fact that even if the permission has been given for construction, it is in the public interest that the road should be widened which has to be decided after taking into consideration the future prospects of the traffic and population. They can acquire the land and pay prevailing market rate for the land and construction thereon.

(ii) If the constructions have been made without permission, then the respondents have the jurisdiction to take the action in accordance with law. Such illegal constructions can be on the land encroached upon or on such land on which the person who has made the construction has title. If the construction has been made on the government land by encroaching upon it no right accrues in favour of the person and the construction has to be demolished by the JDA. If the land is in ownership of the person who has made the construction without permission in such a case the construction could be demolished in accordance with law.

(iii) In order to have uniformity of the width of the road, the JDA should take appropriate steps for widening the road and to acquire the said land where the width is less than the prescribed standard. In respect of five roads mentioned above, at least from bridges Tonk Phatak (Tonk Road), over-head bridge near civil lines at Ajmer Road, after Ghat-ki-Guni at Agra road after Ajmer town at Delhi Road and after Jhotwara circle near Amba Bari at Sikar road there should be a divider of the main road and thereafter the road should be of 11 meters and thereafter 3.5 meters land should be left or foot-path, drains, trees etc. The service line thereafter should be 6.5 meters and the last of the strip of 4 meters should be left for electrical and telephone poles and foot-path. There should be 80" width from the divider and thus the total area for the road would be 160". There cannot any encroachment of any sort on this area. At Durgapura where the road width is stated to be 60" a Committee to be constituted by Commissioner JDA, would examine the ways of widening the said road. The permission should not be given to construct the shops on the main road. The dealers should not be permitted to use any part of the land for their open godowns nor permission for stalls/ kiosks/tharis should be given. The hoardings should not be permitted in this area.

(iv) Opening the shops on the road hinders the traffic and therefore no scheme should be approved where the shops are proposed to be constructed on main roads. If any land is to be acquired for widening the road the constructions have been made by permission then the JDA should provide the alternative space for the shops at reserve price and should pay the compensation of the land acquired. If the land acquired is with some construction for which no permission was taken then compensation has to be paid with reference to the cost of land only. If the land also does not belong to the person who has made the construction then he has no right even to claim the compensation for cost of the land.

2. Since the scenario has undergone a sea change and various fly overs have been raised to control the heavy traffic congestion of Jaipur, we issued directions to the officers of JDA and Municipal Corporation to appear before this Court with latest plan in regard to construction of flyovers and over bridges to be constructed in near future in Jaipur.

3. Pursuant to the said directions the officers appeared in this Court and placed before us Zerox copies of two maps, one showing existing flyovers and another

tentative alignment of the ring-road which may change after approval of State Level Screening Committee. Report submitted by the officers reads as under:

Various National Highways are passing through Jaipur City and to ease out the traffic and also to provide the facility to the citizens of Jaipur City, the JDA has prepared a plan for construction of over-bridges and Fly overs to this effect.

Three National Highways pass through Jaipur City i.e. (a) National Highways-8 (Delhi to Bombay); (b) National Highway-11 (Agra to Bikaner); and (c) National Highway-12 (Jaipur to Jabalpur).

These National Highways have 5 links through Jaipur City:

- (i) Jaipur-Delhi;
- (ii) Jaipur-Ajmer;
- (iii) Jaipur-Agra;
- (iv) Jaipur-Bikaner;
- (v) Jaipur-Tonk.

These National Highways were constructed by the Public Works Department (for short "PWD"), Government of Rajasthan and National Highway-I, most Govt. of India.

PWD, Government of Rajasthan permitted JDA to construct a flyover and take up the maintenance work of National Highway-12 from 0 to 12.20 km (upto Sanganer). Later on National Highway-12 was further transferred to JDA from 12.20 to 18.20 for further maintenance. Similarly National Highway-8 was transferred to JDA in 2006 for maintenance. JDA has further proposed a Ring-road all around the City, which will be about 144 km in length. This road will be developed with right of way of 90 meter (i.e. about 300 ft.).

A number of Road over-bridges/Railway-over bridges/flyovers will be constructed on Ring-road and on Highways passing through the city for smooth movement of the city traffic. The detail of road over bridges and flyovers falling on National Highways passing through Jaipur City has been indicated as under:-

I. National Highway-12 (Jaipur to Tonk)

- (i) Road over-bridge at Tonk Phatak: this is an old existing road over-bridge.
- (ii) Flyover at Gopalpura: this flyover was complete in 2001.
- (iii) Flyover at Sanganer Circle : this is an existing flyover completed in 2003.
- (iv) Road over bridge at Sitapura; this road over bridge was opened to traffic in 2004.

Apart from these four existing road over bridges/flyovers two structures are under consideration and planning:

(a) Flyover at Durgapura : This is part of the Bus Rapid Transit system (BRTS) package-II. This is likely to be sent to Government of India for clearance under Jawahar Lal Nehru National Urban Renewal Mission.

The Phase-I of BRTS has been cleared by the Government of India and work has been started since October 23, 2007.

Phase-II, is likely to be cleared by December, 2007. As soon as the clearance is received, JDA will go for expression of interest and work is likely to commence from the next financial year.

(b) Road over Bridge at Shivdaspora: This is pending for approval with NHAI. However JDA is also planning to construct a road over bridge here as part of the Ring Road, since ring road passes through Shivdaspora.

II. National Highway-8 (Jaipur to Ajmer)

There are four road over bridges/flyovers on this section which are existing:

- (a) Road over bridge at Gopalbari on Ajmer Road which is over 50 years old,
- (b) Flyover at C-zone Bypass;
- (c) Flyover at Bhankrota;
- (d) Flyover at Heerapura.

There are two road over bridges which are proposed for construction:

- (i) Flyover at Govt. Hostel, which is under stay order by Hon''ble High Court.
- (ii) Elevated Road from Jacob Road to Queens Road junction (as part of BRTS Package-II).

This will ease the heavy traffic congestion in this particular section.

(III) National Highway-8 Jaipur to Delhi):

There is no road over bridge/flyover existing.

Flyover at Transport Nagar junction is under consideration.

(IV) National Highway-11 (Jaipur to Sikar)

There is one flyover at C-zone bye-pass at Todi Harmada. Another very important flyover at Khashakothi Junction is under consideration by JDA, aligned from Railway Station towards Sindhi Camp Bus stand. Another flyover is under consideration from Chinkara Canteen to Panipech section as part of Package-H of BRTS.

(V) National Highway-11 (Jaipur to Agra):

There is existing no flyover/over bridge existing on this national highway.

Further to regulate the growth along with National Highways, JDA has enacted

Jaipur Development Authority (Higher Controller)" Regulations, 2001. As per that on the National Highways as well as on some State Highways no construction of any kind including boundary walls will be allowed upto 35 meters from the centre of the road. This means that on 15 meter width (500 ft.) no construction will be permitted by the JDA.

4. The Apex Court admitted exceptions from the strict rules relating to affidavit, locus standi and the like in the case of a class of litigations which have acquired classification as public interest litigation, that is, where the public in general are interested in the vindication of some right or the enforcement of some public duty. High Courts have started following this practice in their jurisdiction under Article 226 of the Constitution and the Supreme Court approved this practice (vide Chaitanya Kumar and Others Vs. State of Karnataka and Others, The High Courts being in a position to have a clever awareness and easy monitoring of the local issues in their respective status in the light of the law laid down by the Supreme Court they must shoulder greater responsibilities in this respect.

5. In order to provide for the establishment of an Authority for the purpose of planning co-ordinating and supervising the proper, orderly and rapid development of Jaipur Region and of executing plans, projects and schemes for such development and to provide for matters connected therewith the Jaipur Development Authority Act, 1982 (for short" JDA Act") was enacted. Jaipur Region has been defined in Section 2(8) thus:

Jaipur Region means the areas in the limits of the city, towns, and villages specified in Schedule-I. The State Government may, from time to time, in the notification published in the official Gazette, amend that Schedule by adding thereto or deleting therefrom any area specified in such notification, and there upon the modified area shall be the Jaipur Region.

6. Section 16(h) of JDA Act provides that for preparing schemes and advising the concerned authorities departments for development in formulating and undertaking schemes for development of agriculture, horticulture, floriculture, forestry, dairy development, transport communication, schooling cultural activities, sports, medicare, tourism entertainment and similar other activities.

7. The roads and their width are regulated by the National Highways Act, 1956. The Rajasthan Highways Act, 1955 which was published in Rajasthan Gazette dated November 22, 1955 provides for construction, maintenance and development of highways. Learned Single Judge took notice of aforequoted acts and observed as under:

The matter of widening of the road is of greater public importance and therefore no lethargy or leniency in the matter should be taken. The steps should now be taken immediately to acquire the land for widening of road.

8. We find ourselves unable to agree with this view. Even if the roads are widened, the congestion of traffic would still be all around. In the last five years,

because of easy accessibility of bank loans, we see flood of four wheelers every where on the roads and for the smooth movement of city traffic, constitution of Roads, over bridges/Railway over bridges/Railway under bridges/fly overs is the need of the day.

9. For these reasons we dispose of instant appeals as under:

(i) Impugned judgment dated July 1, 1996 of the learned Single Judge stands set aside.

(ii) In view of the traffic situation prevailing in Durgapura, Sodala, Transport Nagar, Ghat ki Guni, Malpura Gate, Sanganer, Gujar-ki-Thadi, Stadium Chouraha Sanganer, Goner-road railway phatak, San-ganeri Gate-Moti Doongari Road, Panipench and Sikar Road we direct JDA to forthwith draw plans for constructing Road Over bridges/Railway Over-bridges/flyovers in these areas;

(iii) Line crossings of Kartarpura (84C) Kalyan Nagar (83C) and Laxmi Mandir (213C) gates are situated at a height of 10 feet. In order to control the traffic under Bridges are required to be constructed in these crossings. The JDA, shall draw the plan of Railway Under Bridges in consultation with the Railway Board.

(iv) The JDA shall ensure compliance of the order prior to December 31, 2007 and it is expected that construction as indicated above shall begin in some of the areas within this period.

(v) Mr. Virendra Dangi, Advocate is appointed as Commissioner to monitor the function of JDA and to submit periodical report before this Court. The JDA is directed to provide all necessary facilities as required by the Commissioner to facilitate his work.

(vi) As and when progress report is submitted by the Commissioner, the Registry shall place it before us.