

(2013) 10 DEL CK 0110

In the Delhi High Court

Case No : Writ Petition (C) 8683 of 2011 and 3416, 5368 of 2012

Nyaya Bhoomi

APPELLANT

Vs

Commissioner MCD and Others
 Antar Rashtriya Manav
Adhikaar Nigraani Parishad Vs Govt. of NCT of Delhi and
Others
 Court On Its Own Motion Vs Delhi Jal Board
and Another

RESPONDENT

Date of Decision : 29-10-2013

Acts Referred:

Citation : (2013) 204 DLT 490

Hon'ble Judges : Nuthalapati Venkata Ramana, C.J;Pradeep Nandrajog, J

Bench : Division Bench

Advocate : B.B. sharan, Ms. Shobha and Ms. Jyoti Rana, for the Appellant;
Zubeda Begum and Ms. Sana Ansari, Advocates for GNCT., Mr. Ajay Arora and Mr.
Kuldeep Singh Rathor, Advocates for MCD., Mr. Sumeet Pushkarana and Ms.
Ruchika Advocates for DJB., Ms. Mini Pushkarna, Advocate for EDMC., Mr. Arvind
Sah, Advocate for NDMC., Mr. Amitabh Marwah, Advocate for DDA., Mr. Rajeev
Sharma and Ms. Phaguni N. Lal, Advocates for Director Doordarshan, Ms. Mini
Pushkarna, Advocate for South DMC., Mr. Manjeet Singh Chugh and Jt. Secy, for
the Respondent

Final Decision : Disposed Off

Judgement

Pradeep Nandrajog, J.—The four captioned writ petitions, one of which is as per the Courts own motion raise a common issue of water logging during rainy season in Delhi. Additional issues have been raised in W.P. (C) No. 8683/2011 pertaining to:-(i) Garbage collection from houses, and for which it is prayed that the concerned Municipalities should be directed to lift garbage from each house; (ii) Pot holes on roads, and for which the suggestion is to involve representatives of resident welfare associations when road carpeting job is executed; (iii) Non-functional street lights and for which suggestion is that resident welfare associations be permitted to replace the street lights and seek reimbursement from the concerned authority; (iv) Unhygienic toilets in Government schools and

at public places and for which the suggestion is that registered volunteers of NGOs and resident welfare association be authorized to conduct surprise checks; (v) Inadequate number of safai karamcharis and the requirement to equally distribute the same and for which once again solution suggested is the involvement of resident welfare associations; and (vi) Inadequate municipal magistrates to find litter bugs. The order sheets in the writ petitions would reveal that this Court took upon itself the task of attempting to clean the city of Delhi evidenced by orders passed directing authorities to do this or that; but to no tangible result. On the contrary such orders have encouraged either applications to be filed or writ petitions to be filed seeking directions that a drain here or a sewage line there be cleaned. This Court cannot take over the municipal governance in Delhi. But the problems which exist and are not being paid heed to by the Municipal Authorities need a redressal for the simple reason the obligatory functions of the Corporations and various statutory bodies in Delhi such as the Delhi Jal Board, the Delhi Development Authority can be enforced by means of mandamus issued.

2. Pertaining to the additional issues raised in W.P. (C) No. 8683/2011, we find a contradiction of attitude in the directions sought for as per direction No. (i) and the other directions. As would be evident from what we have noted in paragraph 1 above, pertaining to pot holes, nonfunctional street lights, unhygienic toilets and inadequate number of safai karamcharis and equitable distribution thereof, the petitioner wants participation of residents welfare associations but when it comes to garbage collection from houses, to be dumped at the dhaloas i.e. garbage dumps constructed by Municipal Corporations in Delhi, the petitioner wants the Corporation to directly lift garbage from each house. It is the duty and responsibility of residents to throw their garbage in the dhaloas. Residents welfare associations employ garbage collectors to collect the garbage from each house for which each household pays between Rs. 100/- to Rs. 200/- per month, depending upon the number of households in the colony. Regretfully we note that in more than 80% of the authorized colonies in Delhi there are no functional residents welfare associations. If residents welfare associations cannot even organize themselves to execute the simple task of collecting garbage from the residents of the area, what use would it be to even consider any involvement of representatives of these associations in supervising re-carpeting of roads, replacing nonfunctional street lights, ensuring hygiene in public toilets etc. In unauthorized colonies the Residents Welfare associations are non-existent.

3. Further, we find that not a single resident welfare association in Delhi is able to ensure that its members do not encroach outside their plots and usurp storm water drains in the residential colonies. In every colony we find storm water drains being covered with concrete slabs so that extra space is available to park cars. So crazy is the city of Delhi with cars that it matters not whether any space is available. A car has become a status symbol.

4. Thus, the additional issues raised in W.P. (C) No. 8683/2011 are beyond a

measurable judicial standard in a public interest litigation for being monitored by this Court, and we would suggest to the writ petitioner to take the crusade to the houses of the residents of Delhi and educate them on the importance of public hygiene. It pains us to record that household after household in Delhi reflects the self-centred attitude: I shall clean my house but shall dump the garbage at the door of the neighbour. We are left wondering as to why the personal hygiene is not being translated into public hygiene.

5. But, the issue of water logging and drainage of water during monsoon season has reached an alarming level of concern requiring judicial intervention for the reason we find that over the last fifteen years this Court has tried to solve the problem by issuing directions in over 300 writ petitions which were filed. Unfortunately, the localized directions to dredge a major drain or to de-silt a minor drain solved the problem temporarily, but not on a long term basis because by the year next after the problem re-surfaced with a vengeance.

6. The issue of drainage of rain water and use of storm water drains for wet waste i.e. sludge and domestic and commercial sewage to flow and dump itself into river Yamuna has started causing health related issues and other environmental problems, evidenced by the fact that the houses abutting major drains in Delhi such as the Najafgarh drain, as it flows past the colony of Punjabi Bagh in North Delhi, have started facing problem of corrosion of air conditioning equipment evidencing high level of sulphur dioxide gas being emitted from these drains; and the cause for the gas being emitted is the bio waste flowing in these storm water drains.

7. The city of Delhi is located in the North Indian plane at Longitude 28° 68' N and Latitude 77° 21' E. Being the Capital of India the city has grown. There is heavy migration from different parts of the country into the city of Delhi resulting in rapid changing land use pattern within the city. Unfortunately, the Delhi Development Authority, which is charged with the duty of planned development of Delhi has totally failed in carrying out the object for which the authority was constituted. The problem has been compounded due to Government after Government overlooking rampant unauthorized colonization in Delhi. Throwing town and country planning norms to the winds the land mafia colonized on agricultural land as also acquired lands. Whenever a colony is carved out, attention is paid to sewage disposal, drainage of rain water during monsoon, water supply and sanitation in the area. Lay out plans are prepared keeping into account the density norms i.e. the sustainable limit of the land. The standards of population density and building density are taken into account. Division of sites for erection of buildings is on scientific principles of township and colony development. Land for roads, open spaces, gardens, re-creation, schools, markets and other public purposes is earmarked. Provisions are made for trunk sewers and storm water drains. All this is found missing in these unauthorized colonies, and we find that today more than 50% of colonies in Delhi are unauthorized colonies.

8. As when a bus is missed by the passengers, the next bus is bound to be over crowded. Every over crowded brings hosts of problems. This is the phenomenon which we are witnesses in Delhi. It appears that nobody in the Government has a clue to the way forward. This explains grandiose promises, without any content, being made to the citizens of Delhi, who in their stupor lap it up all when votes have to be caste. But when it comes to translating the promises into realities, we find clueless Governments.

9. The present population of the city has reached 16.7 million with an annual population growth of 4% and is expected to cross over 25 million by 2021. There is increasing load on existing drainage system day by day, which was formulated way back in 1976 under the Master Plan Delhi-2001 by Delhi Development Authority in the year 1990.

10. As the counter affidavits inform this Court, the Irrigation and Flood Control Department of the Government of NCT of Delhi is responsible for the major drains, being 17 as we are informed, in Delhi which carry rain water to the river Yamuna during monsoon. These drains also carry sewage of Delhi.

11. The Master Plan of Delhi-2021 has accordingly incorporated a fresh approach to drainage problem in Delhi; incorporating a number of initiatives like provision of effluent treatment plants at outfall of drains and aeration units at interceptions with advanced techniques, a time bound action programme for augmentation and capacity revision of existing and new drains due to increasing ground water table and storm water holding points, wherever needed. Removal of encroachments by slum dwellers along drains, prohibition of blockage of natural depressions and drainage channels which causes choking of drains and flooding of up-stream areas due to reduce carrying capacity is also suggested in MPD-2021, the drainage is to be linked with ecology and green network by adopting the concept of bio-drainage. It is also provided that regular desilting of drains and control of dumping of solid waste/garbage into drains should be taken up. Public awareness programmes need to be taken up in association with NGOs and RWAs to make people aware about consequences of dumping garbage into drains. The other measures essential for proper drainage recommended in the Master Plan-2021 are:-

(i) Drainage to be integral part of Road Development Plans/Flyover/Grade Separators,

(ii) a proper database should be prepared and GIS based drainage mapping and planning to be promoted,

(iii) sub-wells need to be developed under flyovers for trapping rainwater,

(iv) pump houses in low-lying areas should be provided with back-up power,

(v) remodelling of selected drains to be reviewed considering the upstream flow in the region.

12. The average annual rainfall in Delhi is approximately 670mm (27 inches) most of which falls during the monsoons. The rainy season is from July to October.

13. River Yamuna originates from the Yamunotri in the State of Uttrakhand. Flowing through Haryana it enters Delhi at Village Palla and travels a distance of about 48 km up to the last village Jaitpur at the Southern end. The river Yamuna provides a natural drainage system since the 17 major drains, carrying storm water (as well as sewage of Delhi) outfall into it.

14. The storm water drainage system of Delhi is broadly divided in the five drainage basins; namely: Najafgarh, Kanjhawala, Alipur, Shahdara and Mehrauli. Major drains receiving run-off from these basins are as under:-

a) Najafgarh Drain

b) Supplementary Drain

c) Barapullah Nala

d) Shahdara Out fall Drain

15. Apart from the above major drains, most of the city storm water drains directly outfall into river Yamuna on its right bank catering to the walled Delhi (Old Delhi) and Central/New Delhi areas. Most of these drains have been provided with regulators at outfall points to check the back flow of river Yamuna into the city in times of flood. Besides this, the entire sewage of Delhi finds its way into the major storm water drains since there is no independent sewage disposal mechanism in Delhi.

16. The drainage system of Delhi was conventionally designed to carry storm water, but as a result of an inadequate sewage disposal system a large quantity of untreated sewage finds its way into these storm water drains thereby reducing the existing designed discharge capacity of the storm water drains. Further, direct disposal of sewage, cow dung from dairies, solid and liquid waste from industries, dumping of garbage into storm water drains chokes these drains, thereby reducing the carrying capacity of the drains.

17. Encroachments, unplanned growth and unauthorized colonization has blocked the natural drainage channels resulting in heavy water logging during monsoon.

18. The drainage system of Delhi is looked after by various local bodies: Delhi Development Authority (DDA), North Delhi Municipal Corporation, East Delhi Municipal Corporation, South Delhi Municipal Corporation, New Delhi Municipal Committee (NDMC), Delhi Cantonment Board and the Public Works Department/ Irrigation and Flood Control Department which are responsible within their jurisdiction. The Irrigation and Flood Control Department of Delhi is responsible for planning and execution of main drains having discharge capacity of more than 1000 cusecs (28 cumecs). However, some drains having lesser discharge capacity are also being maintained by the said department. Likewise some

drains, having higher capacity are also being maintained by other departments.

19. The Master Plan for Delhi-2021 has overlooked:

- (i) Water holding capacity of different catchment areas and ponds etc.
- (ii) Overall drainage system of unauthorized colonies.
- (iii) Fixing the service level bench mark/milestone.

20. We find that the Government of Delhi has appointed a body under the aegis of Prof. Gosain of IIT Delhi to prepare a workable infrastructure for the present and the future requirement of drainage which would include remodelling of the existing storm water drains and construction of new drains, taking into consideration the following factors:-

- i) Study of road network.
- ii) Study of density of population.
- iii) Study of sewage disposal system.
- iv) Study of depleting ground water table.
- v) Study of water basins in Delhi.
- vi) Study of soil conservation bunds.
- vii) Study of soil conservation bunds.
- viii) Utility of existing soil conservation bunds.
- ix) Study of rainfall.
- x) Study of run off.
- xi) Study of Water quality.
- xii) Study of Water harvesting in the water bodies by constructing catch water drains including study of water harvesting in water bodies, flyovers, grade separators, underpasses, berms of roads by construction of catch water drains and water harvesting pits.
- xiii) Study of water harvesting in the drains.
- xiv) Study of garbage disposal system to prevent its disposal into storm water drains.
- xv) Study of Rural and Urban population density to evolve a suitable drainage system in Rural, Semi Urban and Urban areas.
- xvi) Drainage of Cantonment area, N.D.M.C. area as part of whole drainage system.
- xvii) Study of drainage in hilly terrain in South Delhi.

- xviii) Feasibility of check dams.
- xix) Space problem for the disposal of desilted material from drains in the urban areas.
- xx) Study of drainage system of neighbouring states, which pass through the Territory of Delhi and also affects its drainage system.
- xxi) Study of existing bridges/culverts/including new bridges, along with remodelling of a existing drainage system.
- xxii) Study of Railway Bridges and their future requirement along with remodelling of drains.
- xxiii) Study of usage of surplus water from canals and treated effluent from Sewage Treatment Plants.
- xxiv) Study of construction of link drains, pond drains connected to nearest main drains.
- xxv) Areas of deficiency/non-implementation of the Master Plan 1976 by various agencies.
- xxvi) Feasibility for diversion of drains/reversing their flows to reduce the load on the drains having inadequate capacity.
- xxvii) Study of aqua ducts/siphons not functioning properly along with methods of improvements.
- xxviii) Study of pumping equipments for storm water pumping stations and sewage pumping stations with power back up.
- xxix) Study of water logging under the bridges.
- xxx) Study with respect to non-integration of local drainage system with National Highways/Flyovers/Bridges and Master Plan roads by various agencies.
- xxxi) Comparative study on alternative to select the optimum improvement plan, etc. including dynamic model study with respect to local rainfall with the intensity of rain and design for the flooding time of concentration shall be varied in line with international practices starting from zero tolerance to approx. 15 minutes of flooding and suitability to Delhi system and environment.

21. The task of the body is to survey and investigate:

- a) G.I.S. based drainage mapping and planning of the study areas with a scale or 1:10,000 or any suitable scale and the contour line interval of 5 m or as acceptable to the committee, constituted for overseeing the project.
- b) Collecting actual topographical data by surveying, dividing the city into manageable sub-watersheds, clearly demarcating the dividing lines (ridges) between the mini water sheds and the natural drainages (villages) of the mint

watersheds by using existing maps and ground survey.

- c) Longitudinal profiling and cross-sectional survey of all the drains.
- d) Longitudinal profiling and cross-sectional survey along River Yamuna area.
- e) Longitudinal profiling and cross-sectional survey along the roads which functions as banks of the drains.
- f) Topographical survey at the proposed sites of major structures with a scale of 1/200 approximately or suitable scale accepted by the committee.
- g) Maps showing salient features in each Drainage Basin.
- h) Maps and data information available for storm water drains such as (L-sections, cross-sections, locations, invert levels, design parameters of the existing drains etc. shall be provided by the nodal officers appointed by the various authorities involved in the project.
- i) Topographical survey required i.e. L-section and cross-section of drains, roads and embankments which may not be available with the department will have to be carried out by the consultant for planning and designing.
- j) Map showing salient features of Delhi as a whole in Hard and Soft copies as per the requirements of the employer.
- k) Geological and soil investigations at the proposed sites of major structures being proposed.

22. From the aforesaid scheme of the Government of Delhi it is apparent that the Government is aware of the fact that the existing drainage system in Delhi has inherent deficiencies in the system. It recognizes that improvements/rehabilitation/remodelling of existing main drains and its tributaries is warranted on a urgent war footing. The need is to identify and revive the natural drainage courses and further to provide for new drainage schemes. Blockage of natural depressions and drainage channels which cause choking of drains and flooding in the upstream areas has been recognized as one of the many causes of the problem. The concept of GIS based drainage maps of the existing as also the proposed drains is envisaged. DSSDI/Geospatial Delhi Ltd., IT Department of the Government of India is to provide data with further obligation to continue to assist all stakeholders in the implementation of the project.

23. The conceptual plan is scientific and we are of the opinion that the only tweaking it requires is on the three aspects we have noted in paragraph 20 above and thus we direct that while preparing the plan the expert body would include within its proposals the overall drainage system of unauthorized colonies and if need be relocation of unauthorized colonies along the major drains if it is found that their existence chokes the natural flow of water in the 17 major drains in Delhi.

24. Accordingly, we issue the direction that the Committee constituted by the

Government of Delhi tasked with the functions as per para 21 above (and should we have missed any, as per the terms of its constitution) would expeditiously submit a report which shall be placed before this Court on March 26, 2014 and while doing so would also include the study as per para 20 above.

25. It would be useless to have all writ petitions listed again and again and thus we terminate proceedings in W.P. (C) No. 8683/2011, W.P. (C) No. 3416/2012 and W.P. (C) No. 5023/2013. Further proceedings shall continue in W.P. (C) No. 5368/2012. Since the said writ petition has been initiated on the Courts own motion we permit counsel in the other writ petitions to appear in said writ petition and render such assistance as they desire.

26. W.P. (C) No. 8683/2011, W.P. (C) No. 3416/2012 and W.P. (C) No. 5023/2013 stand disposed of. W.P. (C) No. 5368/2012 shall be listed for directions on March 26, 2014.