

(2017) 11 DEL CK 0673

In the Delhi High Court

Case No : Letter Patent Appeal No. 183, 184 Of 2016, Civil Miscellaneous
Application No. 9871-9872, 9880, 41018 Of 2016

Rakesh Narang

APPELLANT

Vs

Delhi Development Authority

RESPONDENT

Date of Decision : 06-11-2017

Acts Referred:

National Capital Territory of Delhi Laws (Special Provisions) Second Act, 2011 —
Section 4 (d)

Citation : (2017) 11 DEL CK 0673

Hon'ble Judges : S. Ravindra Bhat, J;Sanjeev Sachdeva, J

Bench : Division Bench

Advocate : Sandeep Bajaj, Soayib Qureshi, Akanksha Nehra, Ved Prakash
Sharma, Amrit Kaur Oberoi, Abha Sharma, Shobhna Takiar, Udyan Khandelwal

Final Decision : Partly Allowed

Judgement

S.Ravindra Bhat, J

1. By the common impugned order, the learned Single Judge of this Court dismissed two writ petitions which had sought directions and intervention of

the Court against the DDA and the other respondents from demolishing the properties and premises, located at JNU Road, Village Kishan Garh.

2. In W.P.(C)4712/2011, the premises are RZ-137/9 (new No.52A) measuring 155 sq.yds . In W.P.(C) 7425/2011, the property in question is RZ-80-

C/9 measuring 800 sq. yds. The latter property is part of khasra no.2797/2016 and 1675/12. As stated earlier both these are located at JNU road,

Kishan Garh, Mehrauli. The petitioners claimed to be owners of the said two properties and had relied upon the documents such as Agreement to Sell,

General Power of Attorney, Affidavit etc. of 1991-92 and 2005. The petitioners contended that in violation of the guidelines and the protection granted

to the owners/occupiers under the National Capital Territory of Delhi Laws (Special Provisions) Second Act, 2011, demolition action was undertaken

on 06.07.2017 and part of the property was demolished. The DDA's position was that of one of denial; it was contended that both the appellants

were neither owners nor lawful occupant of the properties and that the title propounded by them was questionable. More fundamentally it was urged

that the Act, in that, Section 4 (d) enables the authorities, i.e., the Govt. of NCT of Delhi or the DDA as the case may be, to carve out exceptions, for

works for public purpose or public project. It was specifically contended that the DDA wished to widen the road.

3. A reading of the impugned order would show that the controversy centered around whether in fact the DDA's claim that a 45 meter wide road

expansion had been permitted in accordance with its documents and guidelines relied upon. The DDA has produced some records. Based upon the

contentions made, the learned Single Judge found as follows: -

20. I do not agree to the contention of Mr. Sharma that green area does not form part of the infrastructural facility or the road and

since the road has been made operational, therefore, the land for the purpose of green area cannot be retrieved. It is stated that the court

has to take holistic view of the project. If it is done then, the green belt of the plan will also form part of the project and the road. It is also

pertinent here to mention that this being the position, it is not open to the petitioner to contend that the road which has to be only of 10

meters carriage way on the either side and then there is a central verge of 1.5 meters, on one hand there is a foot path plus green area

extended upto 1.5 meters while as in the area of New Delhi, this area is much wider and broader nearly 2.5 meters. All these facts are only,

I would say, a mirage which is sought to be created by the petitioner to save its property.

21. During the course of arguments, Mr. Sharma had even offered a suggestion that so far as W.P. (C) No.4712/2011 is concerned, the

petitioner Navjot Pal Singh Randhawa is prepared to voluntarily give up the portion which is, more particularly, shown in orange which

will take care of the green belt proposed to be built by the respondent/DDA with the condition that the portion which will remain under the

occupation and available with the petitioner would be only 11 meters or so on which he will continue to have his rights till the time the same

is decided by an appropriate forum in accordance with law.

22. I feel that though the suggestion could have been considered by the respondent; however, Ms. Takiar was very emphatic in rejecting

this offer given by the learned counsel for the petitioner. Her contention was that as the petitioners do not have any right, title or interest in

the entire parcel of land and as the land itself belong to the DDA, therefore, there was no question of taking only a portion of the land and

the other portion permitted to remain with the petitioners.â??

4. The appellants argued that the documents on record clearly established that in fact what was proposed and cleared by the then Technical

Committee of the DDA (which was later reconstituted the formation of the larger body of UTTIPEC) was only the proposal for a comprehensive 45

meter wide road expansion which included all other improvements such as a green belt and the road margins, pavements etc. Learned counsel

emphasized that the road plan/map produced provisioned only for 45 meter wide expansion and that what is contended now by the DDA is that in

addition to 45 meter wide carriageway on either side 30 meters green belt is proposed.

5. Counsel for the DDA, on the other hand, submitted that the entire controversy had been examined on the basis of the record by the Single Judge

and that this Court should not interfere with the findings recorded. It was submitted that the DDA had cleared the proposal, which is now sought to be

acted upon, far back in the year 1995. It was submitted that the Court had sought a clarification in this regard by order dated 06.04.2016 to the

following effect: -

â??The controversy in issue is whether the plans finally approved by the Delhi Development Authority (DDA) â?" accordingly to the latter

on 11.09.1996 that in fact permit â??green beltâ? on either side of the proposed green belt of 30 meters each on either side of the 45

meters widened carriage way for road purpose. The appellants relied upon the affidavits of the DDA at different places mention the

carriage way the width of the proposed road at a maximum of 45 meters but barring counter affidavit before the Single Judge nowhere

mention the width as 60 meters. The copy of the plan sanction finally does not contain a legend. It is also not known as to whether and if so

when it was officially published by the DDA. What was produced before the learned Single Judge was a proposed plan (which did not

specify the exact extent of the green belt width on either side of the proposed carriage way).

The DDA shall file the affidavit of its Vice Chairman in this regard, disclosing the relevant particulars, especially the date on which the plan

produced by it before this Court (i.e. approved on 11.09.1996) was published or placed on the public domain. The affidavit shall be filed

within two weeks.

List on 20.05.2016.

It is stated that the DDA is not taking any action in the near future. In these circumstances, no interim order is called for at present.â??

6. Learned counsel relies on the affidavit of the Vice Chairman of the DDA, which, inter alia, states that the road alignment plan of Aruna Asaf Ali

Road with 45 meter right of way from outer ring road up to Mehrauli-Mahipal Pur road is as per recommendations of the Technical Committee of the

DDA and that it was approved by the authority by its Resolution No.88/95 on 11.09.1995.

7. During the course of hearing, the Court took into consideration the road map which is part of the Single Judge's records - that was directed to

be produced and is a part of the record in these appeals. The relative Resolution of the DDA dated 11.09.1995 reads as follows: -

â??Item No.88/95

A-11.09.1995

Sub: Alignment plan of Aruna Asaf Ali Road â?" Road Number 16 along the Eastern Side of Jawahar Lal Nehru University from Outer Ring

Road to Mehrauli-Mahipalpur Road.

File Number F.5(3)72-MP(D-75)

Drawing Number TT-35/PPW/93/(3 parts/sheets)

PRECIS

1. Location

Aruna Asaf Ali Road is a Master Plan Road connecting Outer Ring Road with

Mehrauli-Mahipal Pur Road. It is abutting the eastern boundary of the Jawahar Lal Nehru University Complex. Length of this road is 4.25 km approximately and falls in Zone 'F'. Location plan is at (Appendix 'CC' P.No.110).

2. Background

An alignment plan of this road was prepared earlier with 30 meter right-of-way and the same was approved by the Coordination Committee

Meeting under Engineer Member, DDA on 03.11.1982. The alignment plan of this road was discussed in the Technical Committee Meeting

held on 20.10.1987 in which following decision was taken:

'Right-of-way of this road be increased from 30 meter to 45 meter'

The proposed alignment plan of this road with 45 meter right-of-way was recommended for approval by the Technical Committee in its

meeting held on 08.02.1994 with the observation that it may be examined whether the service road within the Jawahar Lal Nehru University

Complex can be included in the right-of-way of this road without affecting the existing trees. Technical Committee also desired that the

approved name of the road, i.e., Aruna Asaf Ali Road may be used in the report/drawings.

3. Keeping in view the decision of Technical Committee dated 08.02.1994 that a large number of trees (342) (refer (App.'DD' P-

111-114) were affected in the proposal and the land to be taken from Jawahar Lal Nehru University for developing a service road, and

alignment plan with the following modifications was placed in the Technical Committee Meeting held on 21.02.1995 vide Item No.12/95TC.

(i) Right-of-way of road from Outer Ring Road to Road No.11 (sought of IIT Institutional Area) be retained within the Jawahar Lal Nehru

University boundary on the western side and the Ber Sarai DDA Complex/IIT Boundary in the East. There is no need of service road along

Jawahar Lal Nehru University, same be provided only along eastern side in this stretch.

(ii) From Road No.11 (south of IIT Institutional Area) to the 30 meter right-of-way road to Vasant Kunj: 30 meter (100 feet) right-of-way be

taken without any service road on either sides. The existing link in the road be removed with a straight bridge as already suggested in the

plan and approved by the Technical Committee.

(iii) From the junction of the above said 30 meter right-of-way road to Mehrauli-Mahipalpur Road 45 meter right-of-way be taken. Service

road be provided only along western side toward Vasant Kunj. A green belt be taken on the eastern side.

(iv) The junction design with Outer Ring Road and Mehrauli-Mahipal Pur Roads be integrated with slip roads and champhering of corners.

4. The decision of the Technical Committee dated 21.02.1995 vide Item No.12/95 TC is reproduced as under:

The Technical Committee recommended the approval of Alignment Plan with the modification that right-of-way of Aruna Asaf Ali Road

(Road No.16) may be maintained as 45 meter. The land from Jawahar Lal Nehru University may be acquired for widening of the Road to 45

meter of way.

5. As per the above said decision of Technical Committee, the right-of-way of the Aruna Asaf Ali Road (Road No.16) has been taken as 45

meter wide from the Outer Ring Road up to Mehrauli-Mahipalpur Road by taking land from Jawahar Lal Nehru University as shown in the

modified plan laid in the table.

6. The case is placed before the Authority for the consideration of the following:

(a) Approval of the alignment plan of the road with 45 meter right-of-way from outer Ring Road up to Mehrauli-Mahipalpur Road as

recommended for approval by the Technical Committee in its meeting dated 21.02.1995 vide Item No.12/95 TC with the proposed

modifications.

(b) PWD, Government of NCTD shall take up the acquisition of land from the Jawahar Lal Nehru University Complex as per the alignment

plan.

(c) PWD, Government of NCTD shall plant four times the number of trees required to be cut.

(d) PWD, Government of NCTD shall construct the road as per the alignment plan and protect its right-of-way.

RESOLUTION

Resolved that the proposals contained in para 6 of the Agenda item be approved.â??

8. The road map produced before the Court - which was also part of the Single Judgeâ??s records clearly shows firstly the 16 meter wide green belt

followed by 2.5 meter wide footpath which is then followed by 10 meters carriageway on one side then 1 meter central verge as a median that divides

the road from the other carriageway which is also of an equal dimension (10 meters wide) followed by a 1.5 meter wide footpath and then lastly by 4

meter wide green belt. These materials, in the opinion of the Court, clearly establish that the total land needed for the improvement - which include not

only the carriageway on either side of the expanded road but also green belt, pavements and the median verge cannot exceed 45 meters width in the

aggregate.

9. Having regard to these facts, the Court is of the opinion that the DDAâ??s contentions made earlier in the proceedings that the approval exists for

developing 30 meter wide green belt on either side of the road is without foundation.

10. During the course of hearing, learned counsel had submitted that their clients, i.e., the appellants in these cases have no objection if any

encroachment or structure that exists within the entirety of the 45 meter wide area, which is sought to be improved (including carriageway, green belt

etc.) is removed/demolished. This statement has been made by the counsel on the basis of the instructions obtained in both appeals.

11. In view of the above discussion, the appeals are partly allowed. It is hereby declared that the DDA can remove any encroachment if it falls within

the 45 meters right of way in the manner described above.

12. The appeals are partly allowed in the above extent.