
(2005) 03 DEL CK 0013
In the Delhi High Court
Case No : WP (C) 914 of 2005

Welfare Association (Regd.) APPELLANT
Vs
Delhi Metro Rail Corporation and Others RESPONDENT

Date of Decision : 10-03-2005

Acts Referred:

Citation : (2005) 03 DEL CK 0013

Hon'ble Judges : S. Ravindra Bhat, J

Bench : Single Bench

Advocate : Sunita Bhardwaj, for the Appellant; Virender Sood and Puskkar Sood for respondent No. 1 and Roopesh Kanwar, for MCD, for the Respondent

Judgement

S. Ravindra Bhat, J.—In these proceedings under Article 226 of the Constitution of India a direction in the nature of Mandamus against the first respondent Delhi Metro Rail Corporation (DMRC) to restore what is termed as a "link road", that is stated pass through a portion of the land owned by it, linking the Main Boulevard Road to the residential complex of the petitioners, has been claimed.

2. The petitioner is an Association claiming to represent the residents of MCD flats. These flats exist or are adjacent to the Boulevard Road. They were constructed by the Slum and JJ Wing of the DDA and allotted to various persons. The members of the petitioner's Association are such residents.

3. The petitioner avers that as per the sanctioned lay out plan of the locality/ area, a 3.6 mtr. metalled road exists dividing the various flats within the colony; that road is stated to link the main Boulevard Road.

4. The DMRC purchased a portion of land adjacent to the colony of the petitioner Association. This land was acquired in two lots; the first in December, 2001 and the second, in February, 2003. The total area so purchased was 2048.27 sq.mtrs. A consideration of Rs.71 Lacs was paid to the MCD in this regard.

5. The petitioner's grievance is that after the acquisition of the land, DMRC

proceeded to construct a boundary wall and also obstruct the ingress and egress to the colony on the metalled road laid down.

6. After issuance of notice, DMRC as well as the MCD have filed their replies. The MCD in its reply has averred that the lay out plan relied upon by the petitioner no doubt was originally prepared; however, it avers that the document was a proposed lay at plan and that the road was never laid since the land proposed for construction was under encroachment. The specific averment in this regard is at Para 4; it reads as follows :

"That there was a link road as alleged by the petitioner in the proposed lay out plan Annexure A. But this road was never constructed because the land proposed for construction of road was under encroachment. Therefore this route was never used by the residents of petitioner society for ingress and egress."

7. The DMRC, on the other hand, has taken a plea that the petitioner's allegation about lack of ingress and egress into the colony is not correct and that there is an existing road which links the main Boulevard Road. It relies upon a plan which has market, inter alia, Pillar Nos.662,63 and 64. According to the affidavit of DMRC the road which links the colony of the petitioner in fact is between Pillar No.61 and Pillar No.62.

8. Learned counsel for the petitioner, Ms. Bhardwaj, contests the stand taken by the DMRC. She has relied upon the original lay out plan as well as two other plans which were produced along with the rejoinder. It is contended that as per this plan, the road indicated between Pillar No.61 and 62, is not a clear road since it leads to Butler Girls High School. It has also been submitted that the said road is subject to encroachment by transporters etc., since it proceeds to certain transport god owns. Learned counsel for the petitioner has further submitted that the metalled road always existed and that the stand of the respondent that the road in question passing through the land of DMRC was under encroachment, is without basis. She has also relied upon the same site plan which has been placed by the DMRC on record to submit that at the time of handing over, the area was not under encroachment. It is, Therefore, submitted that at all material times a road has existed between pillar No.62 and 63.

9. Mr. Sood learned counsel appearing for DMRC submits that the original lay out plan relied upon by the petitioner cannot be pressed into service since it was only a proposal. He has also contested the correctness of the two maps relied upon by the petitioner in the rejoinder.

10. By an order dated 18.1.2005 a Local Commissioner was appointed to visit the site and indicate the nature of the road and construction existing on the subject land. Pursuant to this the Local Commissioner submitted his report. The material portion of that report is reproduced below :

"1.The road of the residential complex is approximately 9-mtrs wide concrete which further reduced to around 6-mtrs. At few steps ahead and become kachha

road as shown in the Photographs annexed as annexure L-1.

2. There is RCC Column work of 37-mtrs. Stretch in front of the residential complex, the concrete slabs and debris lying at the subject land as shown in the photograph annexed as annexure L-2.

3. Between Pillar No.61 and 62 there is a road of 9-mtrs in width in existence which is connecting the main Boulevard road to the Butler Girls School and same road is merged with residential complex road. This road provide access to the residents of the complex to the main Boulevard Road and I also found some transport vehicle e.g. Trucks, Tempos etc. blocking the access to the residential complex as shown in the Photograph annexed herewith as annexure L-3.

4. There is a brick wall construction of around 2.5 ft high and 27-mtrs long existing between the Pillar No.62 and 63, constructed by DMRC and, there is also a footpath adjacent to the bricks wall constructed between the Pillar No.62 and 63 which seems to have been constructed earlier as shown in the Photograph annexed herewith as annexure L-4 and 5."

11. There is no denial of the fact that the land in question namely, which these proceedings are concerned, pillars No.61 and 62 on Boulevard Road as well as adjacent land have been transferred to the DMRC. The physical possession of this land, being over 2048 Sq.Mtrs. was handed over to DMRC. The latter also paid valuable consideration to MCD in that regard. The issue, Therefore, requiring determination is as to whether the claim of the petitioner that its members are entitled to a passage between the property of DMRC and that whether such a passage existed at all material times, is well founded.

12. The map produced as part of ANNEXURE A-9 to the rejoinder shows that there is indeed a road which bifurcates the colony of MCD. This maps also discloses that a road curves into the Boulevard Road; it falls between pillar No.61 and 62. The petitioner's contention, however, is that this road (one falling within pillar No.61 and 62) is not a proper road and then there is a common wall between Butler High School and the property of DMRC.

13. Having considered the rival submissions and the materials on record, I am of the view that the status of the road between pillars No.61 and 62 is undeniably that as a public road. The fact as to whether there existed a metalled road or not; passing through the area award by DMRC; whether the same was an authorised road, etc. has to be now seen in view of the subsequent circumstance that the entire property has been sold to the DMRC. That took place as far back as in the year 2001-2003.

14. Even if the pleadings were not to be considered and the consideration were to be confined to the factual situation as existing the report of the Local Commissioner specifically shows that a road exists, that links the colony of the petitioner to Boulevard Road. This is clear from Para 3 of the report which says that a road of a 9 metres width is linking the Boulevard Road to Butler Road and

it merges with the petitioners' complex road. The report also records that this road provides access to the residential complex. The further observation is that certain vehicles such as Trucks, transport vehicles were blocking that road.

15. In view of this specific observations in the report, about the existence of the road, and the complete absence of any mention of the road which is claimed to have been existing from a long time, there cannot be any finding that the petitioner's had access through the metalled road directly from their colony into Boulevard Road. The local commissioner's report has not been disputed.

16. In view of the above Conclusion, the only direction that can, in my view be issued in these proceedings is that the MCD should ensure that ingress and egress to members of the petitioner Association is kept free on the road which merges from the main Boulevard Road between pillar No.61 and 62 with the road to their colony (and also connects the Butler School). The MCD is, Therefore, directed to ensure that ingress and egress to the petitioner's colony is kept free, (on the said public road of 9 metres width, which leads to Boulevard Road, between Pillar Nos.61 and 62 and members are of the petitioner are able to move without any hindrance to the metalled road existing inside the colony.

17. With the above direction, the writ petition is disposed of with no order as to costs.

CM No.2063/05:

Learned counsel seeks to withdraw the application with liberty to file an appropriate application in this regard. Liberty granted. C.M. stands disposed of.