

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Judgment reserved on: 18.03.2009**
Judgment delivered on: 30.03.2009

+ **W.P(C)NO.3290 OF 2007**

INDRAPRASTHA MEDICAL CORPORATION Petitioner
Through: Mr. Lalit Bhasin with Ms. Ratna
Dhingra and Ms. Shreya Sharma,
Advocates.
versus

NATIONAL HIGHWAYS AUTHORITY OF INDIA Respondent
Through: Mr. Sumit Gahlot, Advocate for
NHAH/respondent no.1.
Mr. V. K. Tandon, Advocate for
respondent no.2.
Mr. L. K. Garg, Advocate for
GNCTD/respondent no.3.
Ms. Reema Upadhyaya, for Ms.
Mansi Gupta, Advocate for MCD.
Mr. Ajay Verma with Mr. Amit
Mehra, Advocates for DDA.

CORAM:

HON'BLE MR. JUSTICE MUKUL MUDGAL
HON'BLE MR. JUSTICE VIPIN SANGHI

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| 1. Whether the Reporters of local papers may be allowed to see the judgment? | No |
| 2. To be referred to Reporter or not? | Yes |
| 3. Whether the judgment should be reported in the Digest? | Yes |

J U D G M E N T

VIPIN SANGHI, J.

1. The present writ petition filed by Indraprastha Medical Corporation Ltd.(IMCL) seeks the issuance of a writ of certiorari to quash the

notice/letter dated 22.3.2007 bearing Ref. No.NHAI/CMU/MTR/15011(02)/2007/D-7407 issued by respondent no.1, National Highway Authority of India(NHAI) and the proceedings initiated pursuant thereto. The other respondents in the writ petition are the Revenue Department of the Government of NCT of Delhi represented through the Deputy Commissioner (South), the Government of NCT of Delhi, the Delhi Development Authority (DDA) and the Municipal Corporation of Delhi(MCD).

2. The case of the petitioner is that the Delhi Administration, which is now known as the Government of NCT of Delhi, along with Apollo Group of Hospitals, Chennai promoted the petitioner company for establishing a multi-speciality hospital in Delhi. For the purpose of setting up the hospital, land was allotted by the DDA to the Government of NCT of Delhi which in turn entered into a lease dated 16.3.1994 in favour of the petitioner. The lease was in respect of the land admeasuring 71 bighas in village Jasola, New Delhi, now known as Sarita Vihar. The details of the land leased out to the petitioner as found in the lease placed on record, are as follows:-

<u>KHASARA NO.</u>	<u>AREA</u>	
	BIGHA	BIS
93	3	17
94	6	05
95	3	14
96	2	18

682/97	10	02
681/97	2	19
98	13	11
119	6	10
686/120	3	01
685/120	8	04
685/120	3	14
685/120	3	14
121	6	05
	71	00

3. Possession of the land was delivered to the petitioner on 12.4.1990 whereafter is has set up its multi-speciality hospital.

4. In W.P(C) No.4582/2003, ***Kalyan Sanstha V. Union of India***, a Public Interest Litigation, the Court appointed various Court Commissioners including Mr. Sanjay Bansal, Advocate as the Court Commissioner for Central Zone. The Court Commissioner, it appears on his inspection conducted on 26.10.2006 noticed encroachments by the petitioner along the National Highway between Ashram Chowk and Badarpur border. He sent his report to NHAI on 26.10.2006 itself. On 6.11.2006, it appears that the NHAI informed the Court Commissioner that action would be taken only upon demarcation of the land being done by the Revenue Authorities [DC (Revenue) GNCTD]. The Court Commissioner (Central Zone), Mr. Sanjay Bansal, Advocate, it appears filed his 3rd report dated 10.01.2007, *inter alia*, seeking directions to the NHAI for removal of large scale encroachments on

the National Highway, Mathura Road (from Ashram Chowk upto Badarpur border). On 14.2.2007, the Court passed directions, inter alia, stating:-

“Court Commissioner for the Central Zone has filed his report indicating therein several incidents of encroachments on the government lands. He has also sought for certain directions, which are itemized in paragraph 5 of the report. Let response to this report be filed by the concerned authorities namely DDA, MCD, GNCTD, PWD of GNCTD and National Highways Authority of India, within two weeks from today. Copies of the report be furnished to these authorities within a week from today.”

5. Upon the matter being further pursued by the Court Commissioner, inspection was fixed for 22.3.2007 when Shri S. K. Singh, Additional District Magistrate(South) informed the Court Commissioner that the NHAI right of way at Apollo hospital had already been demarcated by the Revenue Department on 12.5.2006 in the presence of officials of NHAI, DDA (Land Management) and Apollo Hospital. The ADM was requested to get a Nazri Naksha (site map) prepared and to give the same to NHAI so that the encroachment by the petitioner could be identified. The site map was prepared by the revenue staff on 22.3.2007 and delivered to NHAI. From the same, it appeared that the petitioner had encroached on land admeasuring about 8 x 153 mts. On that basis the impugned communication was sent by NHAI to the petitioner on 22.3.2007 itself. The petitioner responded to the aforesaid notice on 5.4.2007. Objections were raised to

the issuance of the notice dated 22.3.2007. Consequently the Court Commissioner called a meeting on 9.4.2007 wherein it was decided to inspect the site again on 12.4.2007 in the presence of the officials of NHAI, DDA, MCD, Revenue department and the petitioner. On 12.4.2007, the site was again inspected in the presence of officials and representatives of the petitioner, namely, Sh. Som Sundram, Advisor Finance and Mr. Jay Kumar, Manager (Projects). The earlier prepared demarcation report dated 12.5.2006 was found to be correct. On 14.4.2007, the SDM (Kalkaji), it appears sought re-demarcation in the presence of his representatives. Accordingly re-demarcation was done once again in the presence of DC (South) and others concerned on 17.4.2007. In this re-demarcation process, encroachment to the extent of 24' 9" on full front side of the hospital was reconfirmed and the earlier demarcation report dated 12.5.2006 was reaffirmed. Founded upon the aforesaid developments the learned Court Commissioner (Central Zone) submitted his fourth report dated 23.4.2007 before the Court in W.P.(C) No.4582/2003, stating that the front boundary wall of the petitioner encroaches on public land to the extent of about 25ft towards the National Highway. On 25.4.2007, the Division Bench dealing with W.P(C)4582/2003 made the following observations:-

“In the said report it is stated that the Apollo Hospital has encroached upon public land

measuring about 25 feet towards the highway. We are also informed that representatives of the hospital and the DDA were also present in one of the two demarcations carried out. We find no reason as to why unauthorized occupation in government land, which is a part of the highway, should not be removed and taken over by the National Highways Authority of India. The National Highways Authority of India shall file an action taken report in respect of the aforesaid statements made in the report within three weeks.”

6. In this background, the petitioner has preferred the present writ petition to challenge the notice dated 22.03.2007 issued by the NHAI.

7. The submission of the petitioner primarily is that the petitioner has been allotted 71 bighas of land which translates to about 15 acres by a duly executed lease deed. The petitioner states that it is not encroaching on any part of public land. It is also the case of the petitioner that the NHAI has no locus standi or authority to issue the impugned communication or threaten the petitioner with any action for removal of the so-called encroachment, since the NHAI is not the owner of the land. The land, in any event, belongs to the DDA and the DDA has not initiated any action.

8. Upon notice being issued, the Government of NCT of Delhi has filed its counter affidavit. It is stated by the Government of NCT of Delhi that it had executed the lease produced by the petitioner in respect of 71 bighas of land in village Jasola, Sarita Vihar, New Delhi. In para 9 of the counter

affidavit, it is stated that the land allotted by DDA was given on lease to the petitioner and the land in question has to be 71 bighas. The Government of NCT of Delhi, however, also states that the land in possession of the petitioner may be got surveyed and measured.

9. NHAI in its counter affidavit submits that the impugned communication dated 22.3.2007 was issued as a consequence of the aforesaid order dated 14.02.2007 passed by this Court in W.P(C) 4582/2003, and on the basis of the demarcation done by the concerned revenue authorities on 12.05.2006, which disclosed that a strip of land belonging to the respondent had been encroached upon by the petitioner. It is stated that after the issuance of the impugned communication and upon consideration of the reply given by the petitioner, a meeting was convened on 9.4.2007 headed by the Court Commissioner, Central Zone in which officials of the Revenue Department, MCD, DDA and the NHAI participated. It was decided in the meeting to inspect the site in dispute again on 12.4.2007 to recheck the demarcation report in the presence of the officials of all concerned. On 12.4.2007, upon re-inspection, the demarcation report was found to be correct in the presence of the Court Commissioner, Central Zone and officials of NHAI, MCD, DDA and the representative of the petitioner. On that basis, the Court Commissioner, Central Zone submitted his fourth report dated 23.4.2007 informing the

Court that the petitioner had encroached on public land abutting the National Highway.

10. It is further stated that after the passing of the aforesaid order dated 25.4.2007, respondent no.1 issued another communication dated 5.5.2007 whereby the petitioner was asked to remove the encroachment on the front side of the hospital building within three days. The petitioner responded by letter dated 7.5.2007 seeking three days time on the ground that the matter is sub-judice. On 10.5.2007, respondent no.1 went to the site to remove the encroachment. At that stage the petitioner suo moto gave an undertaking that it would, on its own, remove the encroachment by 13.5.2007. A copy of the undertaking has been placed on record as Annexure R-1/3. The said undertaking inter alia reads as follows:-

“In this regard, we hereby unconditionally undertake, to remove/demolish the boundary wall on our own immediately but in any case before Sunday i.e. 13th May, 2007 failing which NHAI shall have full liberty to take appropriate action.”

11. NHAI further states that on 14.5.2007, in compliance of the order dated 24.5.2007 of the Court in W.P(C) No.4582/2003, it removed the encroachment by the petitioner on the respondent's land.

12. Counter affidavit has also been filed by the Revenue Department of the Government of NCT of Delhi through the SDM(Kalkaji). It is stated that in pursuance of a direction issued by a Committee appointed by this Court

in ***Hemraj V. Commissioner of Police and Others***, the Revenue Department had carried out the demarcation of National Highway “NH 2” from Badarpur to Ashram Chowk on 12.5.2006 in the presence of representatives of NHAI, DDA and the petitioner. Once again a request was received from NHAI on 22.3.2007 for getting the demarcation of the land in question done by the revenue authorities. Accordingly demarcation was fixed for 17.4.2007 and the same was carried out in the presence of the members of the Monitoring Committee, Sh. R. S. Gupta, Deputy Commissioner (South); ADM(South); Deputy Secretary, Health, Department of Government of NCT of Delhi; officer from NHAI; DDA and the representative of the petitioner. This demarcation was carried out with the help of total station method by employing a machine. It was found that as a result of this demarcation process, that Khasra No.83 forming part of Mathura Road which is recorded in the revenue records as “Sarkar Daulat Madar” had been encroached upon by the petitioner. Two demarcation reports dated 12.05.2006 and 17.04.2007 have been placed on record by respondent no.2 along with the English translation copies. The counter affidavits filed by the MCD and DDA are not of much significance and do not throw any further light on the matter.

13. We have heard learned counsel for the parties at some length. The submission of Mr. Bhasin, learned counsel for the petitioner is that the

petitioner is not in occupation of land in excess of 15 acres i.e. 71 bighas. The land which is in possession of the petitioner was the one allotted and delivered to the petitioner. The petitioner has not encroached on any part of government property. In any event, the so-called encroached land does not belong to respondent no.1, NHAI and NHAI has no locus standi in the matter. The authority of NHAI to issue the impugned communication dated 22.03.2007 is questioned.

14. On the other hand it is pointed out by learned counsel for NHAI, DDA and the Revenue Department of the GNCTD that the petitioner is in unauthorized occupation of Khasra no.83 which has repeatedly been found to be encroached upon by the petitioner. The land falling in the said khasra has admittedly not been allotted to the petitioner and does not form part of the land leased to the petitioner. It is further argued by learned counsel for the DDA, Mr. Ajay Verma that the demarcation reports prepared by the Revenue Department have not been challenged by the petitioner in accordance with law, namely under the Delhi Land Revenue Act. To this, learned counsel for the petitioner has pointed out that in its rejoinder filed to the counter affidavit by respondent no.1, the petitioner has indeed challenged the demarcation reports.

15. Having heard learned counsel for the parties, we are of the view that the present petitioner deserves to be dismissed for more than one reason.

Firstly we find that the petitioner has not raised a challenge to the demarcation reports in its writ petition which was filed on or about 1.5.2007 i.e. after all these reports have been made by the revenue department of the Government of NCT of Delhi. Demarcation, it appears, was carried out on 12.05.2006, 12.04.2007 and again on 17.04.2007. Pertinently, the petitioner participated in all the demarcation proceedings. Merely raising a challenge to two of the reports in the rejoinder filed in the present writ petition, does not amount to a challenge to the proceedings to seek a relief of quashing the same. No relief in respect of the said demarcation reports has been sought, and none could have been sought. Section 28(1) of the Delhi Land Revenue Act, 1954 states that "*All disputes regarding boundaries shall be decided by the Deputy Commissioner, as far as possible, on the basis of existing survey maps, ...*". The demarcation reports above referred to, including those dated 12.05.2006 and 12.04.2007 are referable to Section 28 of the Delhi Land Revenue Act, 1954. Section 64 of this Act confers a right of appeal, and under Section 64(1)(c), an appeal lies "*to the Chief Commissioner from orders passed by the Deputy Commissioner, Additional Collector, Settlement Officer or Record Officer.*" Consequently, the petitioner had an efficacious remedy available to it to challenge the demarcation reports, which right the petitioner has failed to exercise.

16. The demarcation report dated 12.5.2006, inter alia records:

The situation was explained to the representatives of Apollo Hospital that in the Khasra No.94 (6-5) and 95 (3-14) shown as allotted to them, its total area is not with them but in front of it (Apollo Hospital) as per the site, about 3 pits in Khasra No.83 (Mathura road), Village Jasola, Apollo Hospital has been extended illegally by constructing a boundary wall and all the persons present there accepted this illegal construction as correct as per the Demarcation of Kh.No.83 Apollo Hospital.”

17. Similarly in the second demarcation report dated 17.4.2007 which was carried out by using Electronic Distance Meter Machine, it was recorded:

“In the measurement taken manually and now with the machine, there is difference of about one pit. Thereafter, the mark made after measurement with the help of machine, this corner is the west-south corner of Kh. O. 95 of Village Jasola as per Shajra ad according to Apollo Hospital, Kh. No. 95 village Jasola has been given to them on lease, but after the measurement at site, some land of above said Khasra No. 95 Village Jasola comes under the DDA park adjacent with Apollo Hospital. Thereafter, the width of Kh. No. 83 from West-south corner of Khasra No. 95 village Jasola to Mathura Road is 35 pits as per Masawi/Shajra and Field Book and Apollo Hospital wants its re-demarcation. Therefore, measurement of 35 pits was made, with the help of their above mentioned machine, according to the Shajra/Masawi and Field Book and a mark was made, which was found correct on the east-south corner of Khasra No. 83 (in P.S. Sarita Vihar at the site) and thereafter, the measurement of 25 pits was made on southern dole of Khasra No. 82 as per field book, in the presence of all the persons present there and a mark was made, which correctly touched the permanent wall on railway land. In this

manner, after the measurement of Kh. No. 82, upto the satisfaction of persons present there, according to the Field Book Shajra, the measurement of width of Mathura Road Kh. No. 83 completed, which is found correct as per previous demarcation. Demarcation completed."

18. Since the aforesaid demarcation reports have not been challenged before the competent forum and have not been upset in appeal, we see no reason not to rely upon the same. From the reports, it appears that though the petitioner may have been deprived of user of land falling in Khasra No.95, the petitioner is occupying land falling in Khasra No.83 which, admittedly, has not been leased out to it. Merely because the petitioner may not have been placed in possession of the parcel of land allotted to it, the petitioner does not become entitled to occupy and encroach upon land which was not allotted to it. The petitioner may have a remedy so far as the area falling in Khasra No.95 is concerned, of which the petitioner has been granted a lease but has not been placed in possession, but the petitioner cannot encroach on land which is not allotted to it.

19. The issue raised by the petitioner in this writ petition, in any event, involves the determination of highly disputed questions of fact. It is not for this court to determine the issue as to whether the petitioner is encroaching, as a matter of fact, on public land or not. That is the task of the revenue authorities who have already made their determination and which has remained unchallenged before the appropriate forum.

20. So far as the locus standi of respondent no.1 to issue the impugned communication is concerned, we are satisfied that the NHAI has sufficient locus standi to take action against encroachment of lands falling along the National Highways. NHAI is constituted by Section 3 of the National Highways Authority of India Act, 1988. "National Highway" is defined in Section 2(e) to mean *"any highway for the time being declared as a national highway under section 2 of the National Highways Act, 1956."* Section 11 of this Act empowers the Central Government to vest in or entrust to the NHAI such national highway or any stretch thereof, as it may, by issuance of a notification in the Official Gazette.

21. Learned counsel for NHAI has produced in Court the notification dated 4.2.1999 published in the Gazette of India : Extraordinary [Part II-Sec.3(ii), issued in exercise of power vested in the Central Government under Section 11 of the National Highway Authority of India Act, 1988 inter alia in respect of National Highway II i.e. "Delhi to Delhi/Haryana Border 0.0 km to 18.80 km". Consequently the NH II whereon the petitioner's hospital falls undoubtedly vests in and stands entrusted to the NHAI. The functions of the NHAI are prescribed in Section 16 of the aforesaid Act which is primarily to *"develop, maintain and manage the national highways and any other highways vested in, or entrusted to it, by the Government."* Section 16(2) enumerates some of the functions that the NHAI is obliged to

perform. Clause (a) thereof reads “*survey, develop, maintain and manage highways vested in, or entrusted to it*”.

22. In our view, the responsibility of maintaining and managing National Highways vested in or entrusted to the NHAI entails the functions of preventing or removing encroachments along the National Highway. Encroachments along the National Highway are bound to obstruct the use of the National Highway and impede the flow of traffic on the National Highway. Consequently, we cannot accept the argument of learned counsel for the petitioner that since the encroachment, if any, is not exactly on the National Highway itself, but on land abutting the National Highway, the encroachment does not concern the NHAI. NHAI has a statutory duty to prevent and remove the encroachment along the National Highways vested in, or entrusted to it, and the impugned communication dated 22.3.2007 was issued in discharge of the said responsibility.

23. For all the aforesaid reasons, we find no merit in this writ petition and dismiss the same, leaving the parties to bear their respective costs.

(VIPIN SANGHI)
JUDGE

(MUKUL MUDGAL)
JUDGE

MARCH 30, 2009
as