

* IN THE HIGH COURT OF DELHI AT NEW DELHI
+ WP(C) No.8178/2009 & WP(C) Nos.13017-32/2009

LAL MANI JAIN & ORS. ...Petitioners through
Mr. Nalin Tripathi with
Mr. Neeraj Sharma, Advs.

versus

UOI & ORS. ...Respondent through
Mr. Sanjay Poddar, Adv.
for ADM(South)/Competent
Authority
Mr. Sandeep Sethi, Sr. Adv.
with Mr. Suneet Kumar
Tyagi, Mr. Bibhakar Mishra,
Mr. Sumit Gupta, Mr. Vikas
Goel & Mr. Ravi Singhania,
Advs. for NHAI

% Date of Hearing : October 23, 2009

Date of Decision : November 16, 2009

CORAM:

* HON'BLE MR. JUSTICE VIKRAMAJIT SEN
HON'BLE MR. JUSTICE V.K. JAIN

- | | |
|--|-----|
| 1. Whether reporters of local papers may be allowed to see the Judgment? | Yes |
| 2. To be referred to the Reporter or not? | Yes |
| 3. Whether the Judgment should be reported in the Digest? | Yes |

VIKRAMAJIT SEN, J.

1. These Writ Petitions have been filed praying for the quashing of the National Highways Authority Amendment Act 16 of 1997 on the ground that it is *ultra vires* the Constitution of India; for the issuance of a writ of certiorari quashing Notification dated 13.11.2007 issued under Section 3-A of

National Highways Authority Act, 1956 ('NHA Act' for short); for the issuance of writ of certiorari quashing Notification dated 31.10.2008 issued under Section 3-D, and Notification dated 3.11.2008 issued under Section 3-G; and for a writ of mandamus directing the Respondents not to interfere with the peaceful possession and enjoyment of land comprised in Khasra No.37/5/1/1(2 bighas 5 biswas) and Khasra No.37/5/1/2(3 biswas) situated on Delhi-Mathura Road in village Badarpur.

2. The Petitions were heard along with Writ Petition Nos.790-92/2009 where similar grounds had been raised and similar prayers had been made. Writ Petition Nos.791-92/2009 were dismissed as withdrawn on 21.7.2009 after arguments were heard for some days. Mr. Ravinder Sethi, learned Senior Counsel appearing for those Petitioners, had clarified that if a decision favourable to those Petitioners was eventually given on the question of solatium, the Petitioners would avail of all the benefits; and that a claim for alternate plots would not be prejudiced by the withdrawal. All the grounds that have been raised before us in these Petitions had also been raised in those Petitions and had been given-up. We reiterate that all the Petitions were listed together.

3. Mr. Nalin Tripathi, learned counsel for the Petitioners, has not raised any argument on the contention that Section 3C(2) of

the NHA Act is unconstitutional or arbitrary. Challenge to the *vires* of Section 3C(2) of the NHA Act has, therefore, been abandoned. Instead, he has contended that the assailed Notification under Section 3A of the NHA Act has not been published in accordance with statutory stipulations. We find that apart from the publication of the Notification in the Official Gazette, publication was also carried out in Dainik Jagran and The Statesman. Section 3A(3) of the NHA Act mandates that the Notification should be published in two local newspapers, one of which will be in a vernacular language. The former is in Hindi and the latter in English; both have circulation in the subject locality. We hold that the requirements under Section 3A of the NHA Act have been complied with.

4. It has next been contended that no survey has been carried out prior to the Notifications, even though this exercise is envisaged in Section 3B of the NHA Act. A plain reading of the provision makes it palpably clear that its intendment is to empower any person authorised by the Central Government to make any inspection, survey, measurement, valuation or enquiry. This empowering for carrying out of any of the said exercises does not mean that they have been mandated by the Section. Obviously, after the issuance of the subject Notifications the need to inspect, survey, measurement etc. was

not felt by the Respondents and hence it was not carried out. No fault can be found on this score also.

5. It has next been contended that what is proposed to be constructed is an elevated corridor, which is not a highway within the contemplation of NHA Act. In WP(C) Nos.791-92/2009 Mr. Sethi had endeavoured to convince us that since the acquisitions were intended to enable the widening of Mathura Road, which road does not find specific mention in the Schedule contained in the NHA Act, the acquisitions were illegal. That challenge has been withdrawn; and the one before us is only slightly altered, but argued on the same dialectic. What the learned Advocate has in focus is Section 3A(1) which ordains that land may be acquired if it is required for the building, maintenance, measurement or operation of a highway or any part of it. Since the term "Highway" has not been defined, it is argued that an elevated corridor is not a highway. We find no merit in the contention, since a highway can be on the surface, or above or below it. Black's Law Dictionary defines highway as "any main route on land, on water or in the air". What Parliament had in contemplation while dealing with a highway can be gleaned from Section 2(e) of the Control of National Highways (Land and Traffic) Act, 2002, which reads thus:-

(e) “Highway” means a National Highway declared as such under Section 2 of the National Highway Act, 1956 (48 of 1956) and includes any Expressway or Express Highway vested in the Central Government, whether surfaced or unsurfaced, and also includes—

- (i) all lands appurtenant to the Highway, whether demarcated or not, acquired for the purpose of the Highway or transferred for such purpose by the State Government to the Central Government;
- (ii) all bridges, culverts, tunnels, causeways, carriageways and other structures constructed on or across such Highway; and
- (iii) all trees, railings, fences, posts, paths, signs signals, kilometre stone and other Highway accessories and materials on such Highways;

6. When this definition is woven into the fabric of the NHA Act it is palpably clear that the “elevated corridor” is an integral part or an essential adjunct of the NH-2 which the Schedule to the NHA Act describes thus – “The highway connecting Delhi, Mathura, Agra, Kanpur, Allahabad, Banaras, Mohania, Barhi Palsit, Baidyabati, Bara, Calcutta”.

7. Learned counsel for the Petitioners draws our attention to the reference to National Highways contained in MPD-2001 as well as MPD-2021 inasmuch as they segregate roads into various classes and in respect of National Highway states – “The recommended minimum right of way (ROW) is 90 meters, wherever possible. However, within the city it shall not be less

than 60 metres. All the National Highways with the NCTD shall be access controlled upto the Delhi Border". We are unable to appreciate how this reference can advance the case of the Petitioners. We note that MPD-2021 makes an appreciable change in the manner in which roads are dealt with. The latter MPD-2021 speaks of National Highways, Arterial Roads, Sub Arterial Roads, Local Streets, Urban Relief Roads, Underground Roads, Grade Separators, Freeways, Mass Rapid Transit System under the head 'Roads'. If the argument raised on behalf of the Petitioner is that 'Elevated Highways' are narrower in breadth, the obvious response is that there has to be a segregation of the width of the roads. Modern design has weaned away from having a single road in favour of several roads intended to separate traffic into different directions. The introduction of the concept of 'freeways' in MPD-2021 militates against the argument raised in favour of the Petitioners.

8. We think it advantageous to reproduce hereunder extracts from the detailed Project Report from km 16.700 km to km 19.700 of NH-2 prepared by RITES, Highway Division:-

It is envisaged to develop the existing 4-lane carriageway configuration to 6-lane elevated highway configuration with the facility of access controlled road in order to ensure uninterrupted smooth speed of travel with comfort and safety. The Project road has been

proposed to have design provisions compatible with National Highway Standards.

....

The elevated highway is realigned under these schemes in order to provide full interchange of traffic at Mehrauli junction as well as to make room for wider carriageway requirements of traffic on ground. Realignment is aimed at making room for interchange while causing minimum disturbance to the major establishments on ground, overhead transmission line and drainage aspects. Most critical road section between Mehrauli and Jaitpur junctions is provided with 2x3 lanes road on ground along with 7m wide service road for Badarpur village.

....

At present, Badarpur bus stand is located at the middle of the highway and no plan exists with DTC for relocation of the same. Therefore, alternative schemes are formulated keeping the bus terminus at its present location. With the present level of turning traffic at Sarai Bypass, a priority intersection may be adequate. However, Sarai Bypass has the potential to serve as Faridabad bypass for the freight traffic, at a later date.

....

Dealing with this package it has been found that since this road passes through Badarpur industrial area to Faridabad town, over a period of time, due to manifold increase in the traffic volume, acute traffic congestion is faced along this part of National highway 2 while passing through the Badarpur town. Apart from traffic on the present road (43183 from Ashram to

Faridabad and from Badarpur to Ashram 39490 between 6 a.m. to 10 p.m. at BTPS junction), five other major roads, namely bypass road, and sector road, Jetpur road and Mehrauli road radiate from project main carriageway. In this stretch local traffic is mixing up with 'through traffic'. Due to the restricted width of carriageway the operative speed of through traffic on NH-2 in the town is of the order of 20 km/h. This necessitates the need of widened carriageway. Severe right of way constraints in built up area of town along left-hand side ruled out widening at grade in the project stretch. After analysis of several options elevated carriageway option has been found feasible and DPR has been sought for this option.

....

- a) The proposed project will reduce air and noise pollution due to better access and free traffic.
- (b) Mostly proposed project requires only marginal land acquisition therefore R&R problem in minimum.
- (c) The selection of alignment for widening – right, left or centre as suitable- has significantly reduced the number of trees to be cut.
- (d) The proposed project does not affect any water body.
- (e) The proposed project will open new area of business, ease transportation between Faridabad and Delhi.

9. Once again, we are at a loss as to how these extracts from the RITES Report can be of any support to the case of the Petitioners. It is, in fact, to the contrary. Thus, the argument

that the proposed road system is not an intrinsic part of NH-2 is devoid of any merit.

10. Learned counsel for the Petitioners has also placed reliance on the first conclusion contained in Chapter-X of the said RITES Report which is to the following effect - "It has been imperative to realign the elevated highway at Mehrauli junction to achieve desired level of traffic flow. The DDA land is proposed to be acquired for these purposes". This Recommendation cannot be stretched to the extent that it would rule out acquisition of any private land. This may have been a possible understanding if the second sentence started with the word 'only'. As we see it, the Recommendation was that so far as is possible the DDA land should be utilized. Obviously, where acquisition of private land could not be avoided, it was not ruled out. So far as the facts of the case in hand are concerned, this is exactly what has happened. Large tracts of land have been raised but the highway network could not possibly have been designed without taking in sweep the lands of the Petitioners. The argument is, therefore, without any substance. We also find that no advantage enures to the benefit of the Petitioners because of the statement contained in the Counter Affidavit on behalf of NHAI to the effect that the "lands in adjoining Khasra Nos.36/28/2, 36/29/2, 32/25/2/1 have not been acquired, if

required, the same shall be acquired in accordance with law. The petitioners have no concern to the aforesaid land”.

11. It has next been contended that the subject Notification does not contain a description of the land, as is envisaged under Section 3-A(2) of the NHA Act. The Notification dated 13.11.2007, *inter alia*, reads as follows:-

In exercise of the powers conferred by sub-section(1) of section 3A of the National Highways Act, 1956 (48 of 1956) (hereinafter referred to as the said Act), the Central Government, after being satisfied that for the public purpose, the land, the brief description of which is given in the Schedule below, is required for building, maintenance, management and operation of National Highway No.2 on the stretch of land from km 16.300 to km 18.725 (Delhi-Agra Section) in District South Delhi in the National Capital Territory of Delhi, hereby declares its intention to acquire such land.

Any person interested in the said land may, within twenty-one days from the date of publication of this notification in the Official Gazette, object to the use of such land for the aforesaid purpose under sub-section(1) of Section 3 C of the said Act.

Every such objection shall be made to the competent authority, namely, the Additional District Magistrate, Office of the Deputy Commissioner(South), District South Delhi, National Capital Territory of Delhi, in writing and shall set out the grounds thereof and the competent authority shall give the objector an opportunity of being heard, either in person or by a

legal practitioner, and may, after hearing all such objections and after making such further enquiry, if any, as the competent authority thinks necessary, by order, either allow or disallow the objections;

Any order made by the competent authority under sub-section(2) of section 3C of the said Act shall be final; and

The land plans and other details of the land covered under this notification are available and can be inspected by the interested person at the aforesaid office of the competent authority.

12. The Schedule to the Notification makes a mention of lands that fall within the contemplation of the Notification. We are of the view that substantive compliance has been made with Section 3A(2) of the NHA Act. Similar is our view with regard to the Notification dated 31.10.2008 which makes a declaration contemplated by Section 3D of the NHA Act which reads as follows:-

Whereas by the notification of the Government of India in the Ministry of Shipping, Road Transport and Highways (Department of Road Transport and Highways), number S.O.1921(E), dated the 13th November 2007, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section(ii) and issued under sub-section (1) of section 3A of the National Highways Act, 1956 (48 of 1956) (hereinafter referred to as the said Act), the Central Government declared its intention to acquire the land specified in

the Schedule annexed to the said notification for building, maintenance, management and operation of National Highways No.2 on the stretch of land from km 16.300 to 18.725 (Delhi-Agra Section) in District South Delhi in the National Capital Territory of Delhi;

And whereas the substance of the said notification has been published in "Dainik Jagran" and "Statesman", both dated the 11th January 2008 under sub-section(3) of section 3A of the said Act;

And whereas objections have been received and the same have been considered and disallowed by the Competent Authority;

And whereas, in pursuance of sub-section(1) of section 3D of the said Act, the competent authority has submitted its report to the Central Government;

Now, therefore, upon receipt of the said report of the competent authority and in exercise of the powers conferred by sub-section(1) of section 3D of the said Act, the Central Government hereby declares that the land specified in the said Schedule should be acquired for the aforesaid purpose;

And further, in pursuance of sub-section(2) of section 3D of the said Act, the Central Government hereby declares that on publication of this notification in the Official Gazette, the land specified in the said Schedule shall vest absolutely in the Central Government free from all encumbrances.

13. The Schedule to the said Notification is in great detail. Beyond the *ipse dixit* that Plans have not been shown, there is no further evidence or cogent material to convince us to

conclude that Plans were not available for inspection in the Office of the Appropriate Authority.

14. The next ground advocated on behalf of the Petitioners is that their land need not be acquired *in toto* in that even after the construction of the Highway Network there would be large chunks which shall not be needed for the roads. We find this contention entirely devoid of merit since it is inconceivable that residential or commercial activity should be permitted immediately within and adjacent to the Highway Network. Learned counsel for the Respondent has graphically and poignantly drawn our attention to the network of roads/flyovers both at the intersections at AIIMS and Dhaula Kuan in New Delhi. He has submitted that residential government accommodation, which came within the said road system, was demolished, and greenery had been developed in its place. This is essential not only for aesthetics but also for the essential need to have clear visibility on the roads. The Petitioners, therefore, cannot be heard to submit that they should be permitted to reside or to carry on commercial activities within the Highway Network.

15. It is lastly contended that the Plans provide for traffic flowing from the Railway Station to the NH-2. This traffic would necessarily pass along or in front of the Petitioners' property.

Hence, it is argued that there is no justification for acquiring the Petitioners' properties and compelling them to move residence to another site. In the first place, the free flow of traffic from the Railway Station to NH-2 need not necessarily run counter to or separate from the network of roads to be constructed. The presence of residential units and people in the area would indubitably interfere with and impede traffic movement and thereby create a danger to the public. However, it has been explained by Mr. Sethi, and we accept it, that when the entire network scheme is completed, it will not be possible for the traffic to pass under the elevated highway since that would be supported by concrete built-up support walls or reinforced walls on the other side. Traffic from the railway station side would not be able to go across the radius of the proposed national highway network.

16. It has also been contended that it is mandatory that solatium should be granted to the Petitioners and since this has not been provided for, the acquisition is illegal. A similar plea has been negatived by the Division Bench of Punjab & Haryana High Court, Appeal to which is pending in Supreme Court. In connected writ petitions, which have been withdrawn, had been brought to our notice by Mr. Ravinder Sethi that the said Judgment has been assailed before the Supreme Court and

accordingly in WP(C) 790-91/2009 we had made it clear that in the event that the decisions of their Lordships would be favourable to the Petitioners on the question of solatium, the Petitioners may claim all consequential benefits that flow from that decision by approaching this Court by means of fresh writ petitions.

17. Learned counsel for the Petitioners next presses for the grant of alternative allotment to the Petitioners so that the sting of the acquisition may be neutralised. The Division Bench of this Court has considered and rejected similar prayers in *Sanjay Goel -vs- Union of India*, 150 (2008) DLT 677 : 2008(103) DRJ 378 : 2008 VI AD Delhi 7, basing its decision on the view expressed in ***Ravi Khullar*** -vs- *Union of India*, (2007) 5 SCC 231 : AIR 2007. The extracts from ***Ravi Khullar***, relied on by the Division Bench, are the following:-

44. The documents relied upon by the respondents do establish that though at different stages the question of rehabilitation of the affected persons as a result of the acquisition was considered, no firm decision was ever taken to rehabilitate the industries affected thereby. The decision taken was only to provide alternative sites for residence of the oustees from village Nangal Dewat in village Rangpuri. The proposal to allot lands for setting up the displaced industrial units was always turned down and it was decided that owners of such industries would only be entitled to compensation

under the Land Acquisition Act. Having regard to the material on record we are satisfied that no scheme was ever framed for rehabilitation of industrial units. The scheme was framed only for the affected villagers of village Nangal Dewat and that too for residential purpose alone.

45. Learned counsel for the appellants strenuously urged before us that the land in village Rangpuri is still available and even if the three industries with which we are concerned in the instant batch of appeals are allotted land to the extent of 25,000 sq. yards each, as recommended in the Joint Survey Report, their purpose will be served. We are afraid we cannot accede to the request because that is a matter of policy and it is for the government to take appropriate decision in that regard. In law we find no justification for the claim that even in the absence of a scheme for rehabilitation of displaced industries alternative sites should be allotted to them for relocating the industrial units. It is no doubt true that the acquisition of land in village Rangpuri by issuance of Notification under Section 4, of the Act on December 23, 1986 was for the public purpose, namely - for rehabilitation of the persons displaced or affected due to the expansion/development of the Palam airport. Learned counsel appearing for the State contended that this public purpose has been achieved and the persons who were displaced from Page 1925 village Nangal Dewat in view of the acquisition of their lands for the development of Palam airport have been allotted plots in village Rangpuri for their residence. There is nothing in the Notification

which obliges the State to provide equal alternative site to the industries for their rehabilitation.

46. We find substance in the stand of respondents.

18. As in that case, we reiterate that the Petitioners do not possess any vested right to claim allotment of alternative plots *in lieu* of their properties and/or in addition to the concept of compensation receivable by them as a consequence of the acquisition.

19. No other grounds have been raised before us.

20. As we have mentioned in the commencement of this Judgment, arguments have been raised by Mr. Ravinder Sethi, learned Senior Counsel for a group of Petitioners in WP(C) 790-92/2009. After the close of the arguments on behalf of the Respondents in those cases, who are Respondents before us, Mr. Ravinder Sethi had withdrawn the challenge contained in those writ petitions. The present Petitions were also heard along with those Petitions and in these circumstances we find no justification for learned counsel for the Petitioners to have raised arguments on the plea that the Petitioners are different and that their lands are also different. We would have ordinarily thought it fit to dismiss the Petitions with exemplary costs of Rupees 10,000/- per Petitioner, but in view of the fact that considerable delay has occurred in the tender or payment of

compensation, we desist from doing so. However, the Petitions are dismissed with costs of Rupees 1,000/- per Petitioner. We take note of the fact that the Respondents have deposited the amount of the Award with the ADM(South)/Competent Authority on 13.10.2009. Accordingly, the interim orders stand recalled. The costs imposed on the Petitioners to be deposited with the Registrar-General of this Court within four weeks to abide by further orders as may be passed from time to time.

(VIKRAMAJIT SEN)
JUDGE

November 16, 2009
tp

(V.K. JAIN)
JUDGE