

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

+ CM Appl. No.11236/2009 in L.P.A. No.1609/2006

Date of Hearing: 21.08.2009

Date of Decision: 28 .08.2009

#Delhi Metro Rail Corporation
!

.....Appellant
Through: Mr.Pushkar Sood with
Ms.Kanchan Bala

Versus

\$Panchkuian Road Furniture Market Asson.

.....Respondents

Through Sh.P.N. Lekhi, Sr. Advocate
with Mr.Ravinder Kumar and Mr.Samar
Bansal for the respondent.
Mr.Rajeshwar Kumar Gupta for the
applicants.

CORAM :-

***THE HON'BLE MR.JUSTICE A.K.SIKRI**

THE HON'BLE MR. JUSTICE VALMIKI J. MEHTA

- 1.Whether Reporters of Local papers may be allowed to see the Judgment?
- 2.To be referred to the Reporter or not?
- 3.Whether the judgment should be reported in the Digest?

A.K. SIKRI, J.

1. Modification of the orders dated 14.7.2009 [though in essence it is the review of that order] is sought for by the applicants by means of this

application. By that order LPA No.1609/2006 along with other proceedings was disposed of. There is, however, a big hurdle in the way of the applicants. Orders dated 14.7.2009 was a consent order. Since the applicants contend otherwise, we first embark on this controversy. Along with LPA No.1609/2006 three more LPAs and two Writ Petitions were taken up from time to time. It is because of the reason that issues involved in all these cases were common. These cases were concerned with the shopkeepers at Panchkuian Road whose shops are sought to be taken away by the Delhi Metro Rail Corporation (DMRC) for the purpose of MRTS. The applicants and some other persons had filed the writ petitions. Two of these writ petitions, including that of the present applicants, were decided by the learned Single Judge vide judgment dated 2.6.2006. It is against that judgment that LPAs were preferred by DMRC.

2. It is not in dispute that DMRC needs the land in question, where these shops are situate, for Delhi Metro Rail. However, while allowing the writ petitions the learned Single Judge was of the view that such occupiers cannot be forcibly evicted and the proper course of action for the authorities was to pursue legal avenues for the ejectment and

removal of these shop occupiers which had been in their possession for decades.

3. Before the Division Bench these LPAs and writ petitions took different course. Instead of contesting the issues, attempts were made by the parties for amicable solution to the problem. Whereas land is required by the DMRC, at the same time it was felt that these shopkeepers also needed proper relocation. On 15.9.2008 after hearing the counsel for the parties the Court observed that a satisfactory solution seemed in the offing. We may reproduce the order passed on that date in its entirety which gives the indication of the direction in which the matter proceeded:-

“After parties were heard for sometime, a satisfactory solution seemed in the offing. The offer made by the Delhi Metro Rail Corporation (hereinafter to be referred as ‘DMRC’) which has been accepted by 104 allottees and being considered by the remaining allottees is that all the allottees shall be entitled to be accommodated in the already constructed building on Bhai Veer Singh Marg. The allocation will be by a draw of lots and out of the 192 claimants, 49 will get shops in the ground floor at the first instance and the remaining claimants shall be accommodated on the upper/remaining floors and subject to the further condition that all of them would be within 18 months of the plan being sanctioned be located on the ground floor of the additional building to be constructed by the DMRC, the appellant.

While the other respondents NDMC and MCD are present through their respective counsel, in order to expedite the fructification of this proposed settlement, it would be necessary to have the presence of Delhi Urban Arts Commission. Accordingly, we issue notice to the standing counsel of the said Commission with a direction to remain present on the next date of hearing.

The proposed plan for which sanction is being sought shall be brought to the Court on the next date of hearing. The MCD will also, in the meanwhile, ascertain the parties which are in possession of each of the 192 shops on Panchkuian Road, New Delhi, so that the process of facilitation of allotment in the new building can take place. In addition, counsel are requested to sit together to facilitate this process.

The mere allotment of a shop on any of the floor will not debar any of the allottees from bidding for any of the other shops being sold by public auction on Bhai Veer Singh Marg and the building to be constructed. The allotment shall be subject to the clearance of all license fees due to the MCD.

List on 17th September, 2008 at 2.00 p.m.

A copy of this order be given dasti to learned counsel for the parties under the signatures of the Court Master.”

4. It is clear from the above that offer was given by the DMRC which was accepted by 104 allottees there and then and remaining allottees wanted some time to consider the same. The offer was for accommodating all these allottees in the already constructed building

in Bhai Veer Singh Marg. Modalities for allocating them in the said building were also stated in the order. On the next date, i.e., 17.09.2008 counsel for all the parties reported that terms of settlement contained in the previous orders were acceptable to all the parties and their counsel. These included those who have preferred present application. We are reproducing this order as well in its entirety for the reason that it provides complete answer to the present application filed by the applicants:-

“The terms of settlement contained in the order dated 15th September, 2008, were found acceptable by all the parties and their counsel. The learned counsel appearing for the DUAC, Sh. Srivastava is present and has been supplied with a copy of the order dated 15th September, 2008.

The urgency of the matter owing to the closure of one of the arteries of West Delhi traffic to Central Delhi was communicated to Sh. Srivastava, who has assured the Court that expeditious action would be taken but at least four weeks time is required for the same. Accordingly, the plans of the building (i.e. the Delhi Metro Buildings) sought to be constructed at Bhai Vir Singh Marg shall be submitted to the NDMC on or before 3rd October, 2008. The said Plans shall be processed by the NDMC and after clearance, the same shall be transmitted to the DUAC. The DUAC shall consider the said Plans and pass appropriate orders on the same within four weeks of receiving it from the NDMC.

The learned Senior Counsel appearing for the private respondents Sh.V.P. Singh, Shri Ashok Bhasin and

Shri Sandeep Sethi have submitted that as contemplated by the settlement and after the sanction of the Plan, some reasonable period should be provided to the respondents to shift from their present premises at Panchkuian Road. We, therefore, direct that from the date of the sanction of the Plans, as communicated to this Court and all occupants through their counsel, all the occupants shall be given a period of four weeks to shift from their present premises to the new premises.

List for directions on 31st October, 2008.

Copy of the order be given *dasti* to the learned counsel for the parties.”

5. Thus, remaining shopkeepers also accepted the proposal. In the penultimate para name of counsel who appeared for these applicants, namely, Sh. V.P. Singh is mentioned whose submission along with other counsel was confined to giving reasonable period to shift from the present premises at Panchkuian Road. Matter was thereafter taken up from time to time and some other modalities for effecting the aforesaid broad terms of the settlement worked out and various directions to the authorities were given in this behalf. Ultimately on 14.7.2009 orders were passed disposing of the appeals as well as the writ petition on agreed terms. The steps which were taken to resolve the issue amicably were taken note of and the issue regarding FAR was also settled, which was pending consideration. It was specifically

recorded in this order that the private respondents, namely, the present shopkeepers including these applicants shall remain bound by the orders dated 17.9.2008.

6. Notwithstanding the disposal of the LPA in the aforesaid manner, i.e., by passing agreed order acceptable to all the parties including the applicants, present application is filed for modification of order dated 14.7.2009. By this application entire issue is sought to be reopened. Endeavour is made to demonstrate that only 7 ft. area in width falling in these shops is required by DMRC and as remaining land in possession of these shopkeepers is not required, that could not be taken. In this process arguments are made by learned counsel for the applicants that the applicants should not be deprived of their fundamental right to carry on business. Plea of violation of Article 300-A of the Constitution is also raised. Mr. Lekhi has gone to the extent of arguing that provisions of the Delhi Metro Rail Act 1978 have not been followed while seeking to take possession of the land and therefore, action of DMRC is not valid. A passionate attempt is made by contending that when order dated 14.7.2009 is erroneous, the Court should not feel shy in correcting such an error. For this proposition the learned senior counsel has relied upon the judgment of the Apex Court

in ***M.S. Ahlawat v. State of Haryana and Another***, (2000) 1 SCC 278 where the Court observed that “to perpetuate an error is no virtue but to correct it is a compulsion of judicial conscience”. Our attention is also drawn to the judgment in ***Secretary of State for the Home Department v. MB Secretary of State for the Home Department v. AF***, 2008 (1) All. E.R. 657 where similar message is echoed by the House of Lords in England.

7. All these fanciful arguments have no legs to stand. Before advertng to this application, we chose to point out the manner in which settlement was arrived at between the parties with the purpose of demonstrating that a satisfactory workable solution acceptable to all the parties was arrived at and consent orders were passed. It is stated at the cost of repetition that applicants as well as their counsel had also specifically consented to the arrangement arrived at on the basis of which orders were passed from time to time which culminated into final orders dated 14.7.2009. In these circumstances, it is not open to the applicant even to file such an application and raise such issues. It is impermissible to thwart such a consensual arrangement arrived at by the parties during the court proceedings with the active support of the court. The only plea, though a feeble one, which is taken is that

applicants were not consenting parties and confusion was created by other writ petitioners and the appellants. This is far from truth. The orders reproduced above stare at the face of the applicants which manifest specific consent of the applicants as well as their counsel given by the applicant after due consideration and after taking time to deliberate upon the same. It was a conscientious decision by the applicants and no legal plea is even raised which could nullify arrangement arrived at by the parties by means of settlement.

8. Even the premise on which the present application is filed has no basis. Though we are not even required to go into this issue, but are constrained to remark that the requirement of the DMRC is not to the extent of 7 Ft. or near about, which is the case sought to be made out by the applicants. Learned counsel for the DMRC has referred to the plans already on record as per which entire area in occupation of these applicants is needed by it. We may also state at this stage that all other shopkeepers who were parties in the other LPAs or the writ petitions still stand by the terms of settlement/arrangement on which the matters were disposed of.

9. In these circumstances, we dismiss this application as wholly frivolous and amounting to misuse and abuse of law, with costs quantified at Rs.25,000/- to be paid to the Delhi High Court Mediation and Conciliation Centre.

(A.K. SIKRI)
JUDGE

August 28, 2009
hp.

(VALMIKI J. MEHTA)
JUDGE