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IN THE HIGH COURT OF DELHI AT NEW DELHI

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W.P. (C) No. 8557/2009 and CM No. 5596/2009

Date of Decision : May 21, 2009

KARAWAL NAGAR ROAD MARKET
WELFARE ASSOCIATION & ORS.

.....Petitioners

Through: Mr. Ravinder Sethi, Sr. Advocate
with Mr. L.B. Rai and Mr. Rajeev Rai,
Advocates for the petitioners

Versus

UOI & ORS.

.....Respondents

Through: Mr. Sanjay Pathak and Mr. Mukesh
Kumar, Advocates for Mr. Sanjay
Poddar, Advocate for respondents
Nos. 2 to 4

CORAM :

HON'BLE MR. JUSTICE SANJAY KISHAN KAUL
HON'BLE MR. JUSTICE SUDERSHAN KUMAR MISRA

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?

SANJAY KISHAN KAUL, J. (ORAL)

1. A notification was issued under Section 4 of the Land Acquisition Act, 1894 (hereinafter referred to as 'the said Act') on 29.1.2007 in respect of the land situated in the revenue estate of Village Mirpur Turk, Biharipur, Mustafabad and Dayalpur for the purpose of constructing an 80 ft. wide road. The affected parties including the petitioners filed objections under Section 5A of the said Act. After consideration of the objections, a declaration was issued under Section 6 of the said Act on 17.10.2007 and thereafter, the Land Acquisition

Collector passed an award dated 19.3.2009. The present writ petition seeks to raise a challenge to the said acquisition proceedings.

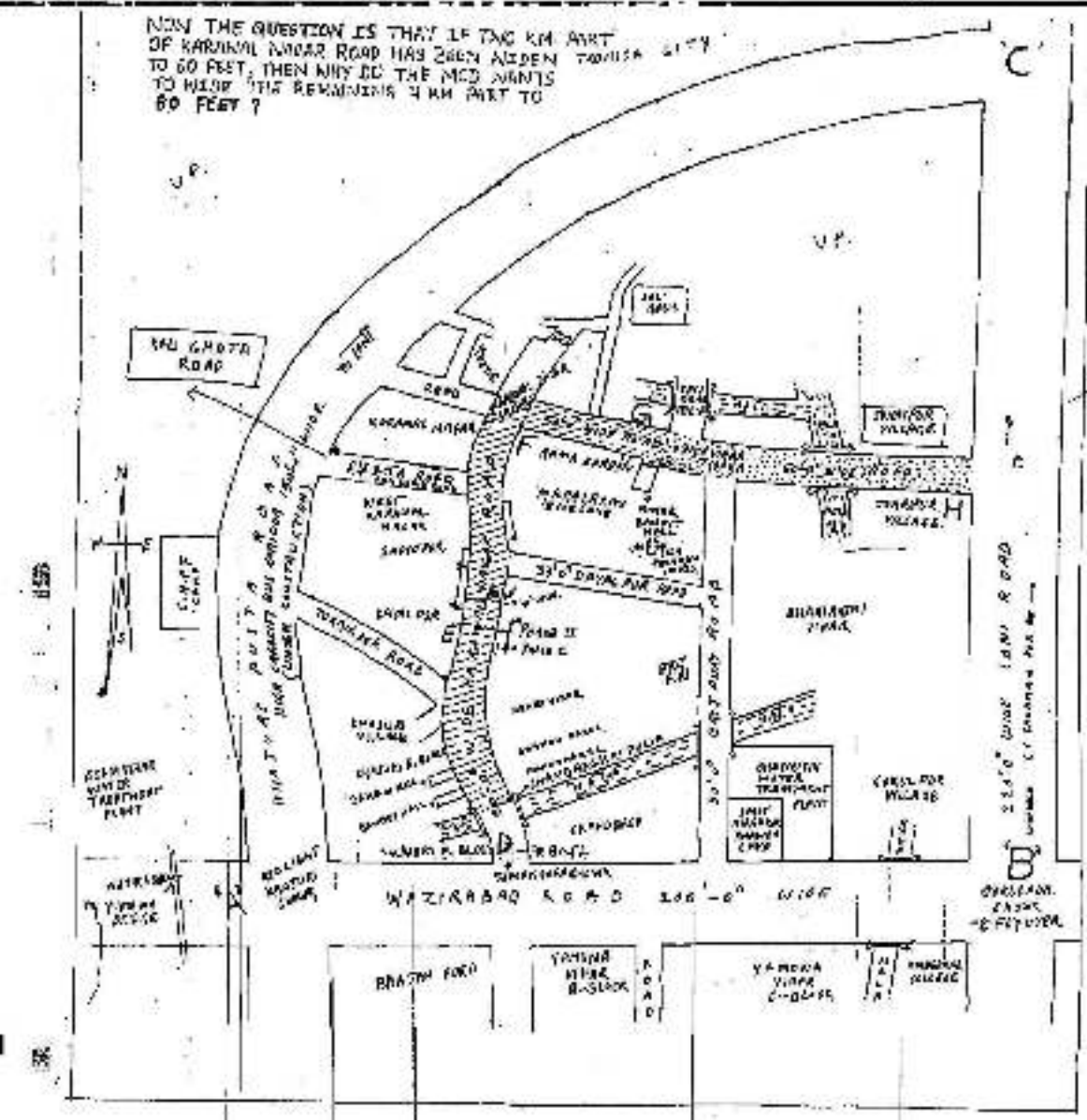
2. Learned senior counsel for the petitioners contends that the acquisition proceedings are malafide for the reason that there is no need to extend the road but the same was being done with the object of favouring the influential owners of some banquet halls which were earlier functioning on this road and now stand closed in view of the fact that such banquet halls can function only on an 80 ft. wide road. It is thus submitted that the entire exercise is motivated with the objective of facilitating the owners of these banquet halls to once again start their operation. It is also pleaded by learned counsel that the proposal for acquisition has to emanate from the DDA, which is not so in the present case and even the master plan envisages only a 60 ft. wide road. The last aspect urged is that it would result in the displacement of number of small shopkeepers who have shops adjacent to the road.

3. We have heard learned counsel for the parties at length and perused the record. We had in fact adjourned the proceedings on the last two dates to facilitate the respondents to bring the complete record and so that the counsel for the petitioners could have the benefit of perusing the record especially in view of the allegation of malafides.

4. In so far as the aspect of the requirement for widening of the road is concerned and the action taken in pursuance to the same, it emerges that the road which is sought to be widened is the Karawal Nagar Road which is at present a 50 ft. wide road. This road connects a 200 ft. wide Wazirabad Road to a 50 ft. wide road on which is located Karawal Nagar Chowk. On the corner of the Karawal Nagar Chowk,

there is a bus depot and thus the case of the respondents is that the exercise of acquisition is after a detailed study and the finding of necessity for not only better traffic flow but for the facility of the residents of the area as the bus route takes the buses from the depot to Wazirabad Road via Karawal Nagar Road.

5. Learned counsel for the petitioners has put forth before us the sketch plan of the area which is extracted below:-



6. The picture which clearly emerges from the aforesaid map is that as per the respondents, since the Government owned land adjacent to the Bhajan Pura Chowk, that portion of the road has been widened and

phase 1 of the widening will take place from the Bhajan Pura Chowk to approximately the middle of Karawal Nagar Road and Phase 2 will thereafter result in widening of this road up to Karawal Nagar Chowk and on the right side along the existing 50 ft. wide road up to Shiv Vihar Tiraha. It has been explained by the learned counsel for the respondents that the depot exists next to the Karawal Nagar Chowk and thus there would be flow of traffic on the Karawal Nagar Road to the Wazirabad Road.

7. The aforesaid exercise has been undertaken after scrutiny by the Standing Committee of the MCD and the Resolution passed by the MCD. The factum of there being displacement especially in respect of Phase-2 part of the expansion of the road project was asked to be examined by the Lieutenant Governor as per the noting but the ultimate decision taken is for the expansion of the complete road. This is relevant since one of the pleas advanced in this behalf by learned Senior counsel for the petitioners is that no purpose would be served by expansion of the road half way through till phase -1, if phase 2 of the widening of the road does not take place.

8. The complete history as to how this project has been envisaged is available from a copy of the Resolution No. 785 passed in the meeting of the MCD on 12.1.2009 as item No. 47, which is reproduced below:-

“Item No. 47:- Widening of Karawal Nagar Road from Wazirabad Road to Shiv Vihar Tiraha from its existing width of 50’ to 80’.

i) Commissioner’s letter No. F. 33/Engg./1870/C & C dated 10.10.2008.

Karawal Nagar Road starts from Bhajanpura Chowk (Wazirabad Road) and leads up to Shiv Vihar Tiraha. It is a main road of this area. The approximate length of the road is 4.20 km. and the existing right of way is 50’ (approx.).

Corporation vide its Resolution No. 382 dated 25.10.2004 has approved the Resolution No. 3 of the Ward Committee, Shahdara (North) Zone when it is recommended by Standing Committee vide its Resolution No. 241 dated 25.8.2004 that widening of Karawal Nagar Road from 50' to 80' width be carried, so that the problems related to area get resolved.

Keeping in view of the above and the actual requirement of the area, the Karawal Nagar Road was got surveyed by the Planning Department and the survey plan of the existing road was prepared.

Accordingly, the case was placed before LOSC for its recommendation for widening of Karawal Nagar Road up to 80'. LOSC vide Item No. 63/06 dated 28.7.2006 has recommended as under:-

- A. The Right of Way of Karawal Nagar Road from Wazirabad Road to Shiv Vihar Tiraha be increased from 60' to 80' and the matter be put up before the Standing Committee for its approval.
- B. Simultaneously the Engineering Department should start re-surveying the area for preparation of alignment plan as per the increased Right of Way. The alignment plan shall be prepared by the Engineering Deptt. after approval from the Standing Committee.

On recommendation of LOSC the Standing Committee approved the revision of the Right of Way of Karawal Nagar Road from 60' to 80' vide its Resolution No. 258 dated 31-08-2006.

Accordingly request for land acquisition was made to Land & Building Department, Delhi Government.

Simultaneously the scheme for widening of Karawal Nagar Road was also approved by the TYADB for providing the necessary funds.

Corporation had also given Administrative Approval and Expenditure Sanction amounting to Rs. 485.08 lacs for the first phase of the scheme from Bhajanpura Chowk to Sherpur chowk. The scheme for the second phase is being placed before the corporation through Works Committee for accord of Administrative Approval and Expenditure Sanction by A.O. C&C vide No. 167 dated 28.4.2008.

Acquisition of land has been processed by the Secretary (L & B), Delhi Govt., which is at final stage. The MCD has deposited the land acquisition charge amounting to Rs. 202.68 lacs with Secretary (L&B), Delhi Government.

Now Corporation vide its Resolution No. 509 dated 27.11.2007, Item No. 55, notice of Resolution under provision to section 74 of DMC Act by Sh. Mahak Singh, Municipal Councillor has resolved as under:-

“Therefore, this meeting of the Corporation resolves that one the aforesaid Karawal Nagar Road the Road from Chand Bagh culvert to Shiv Vihar Tiraha ‘T’ Point to widened upto 60’ consequently the road will be widened and on the other hand the livelihood of residents residing since 25-30 years will not be affected as well as it is also resolved that the initiated proceedings of land acquisition for widening of aforesaid road be stopped with immediate effect.”

A reply in the shape of preamble to the Resolution No. 509 dated 29.11.2007 was sent to Corporation through Standing Committee for consideration and decision as deemed fit.

The Standing Committee vide its Resolution No. 262 dated 16.7.2008 has referred back the same with the comments “Resolved that the case be referred back to the Commissioner in the light of discussion held in the meeting.” Annexure A.

In this regard it is again submitted that:-

- i) Karawal Nagar Road starts from Mangal Pande Marg (Wazirabad Road) to Shiv Vihar Tiraha and further it connects with Loni Road through Joharipur Road and again looped with Mangal Pande Marg (Wazirabad road) through Brijpuri Road. It caters all type of local as well as interstate vehicular traffic. This road feeds the population of about 13 sq. Km. area.
- ii) The road is surrounded with thickly populated several unauthorized, unauthorized regularized colonies and rural villages. The colonizers have not left the required area/space for services in these colonies. About 15% area for roads & drain is available against approx. 30% area required as per town planning norms. The extra load of services of these colonies is bound to carve on Karawal Nagar Road. Hence the relief lies on Karawal Nagar Road.
- iii) The projected traffic has been calculated on the basis of average national growth of the traffic i.e. 7.5%. The estimated passenger car unit (PCU's) on this corridor would be in the range of 30,000-50,000 PCU's. However, the traffic of Delhi is much higher than National growth. It would therefore, be well nigh impossible to accommodate such a huge fleet of vehicles unless sufficient road width is made available well in time

and before it is too late. There is a requirement of widening this road to make it 80 feet wide.

- iv) In future it will be very difficult to acquire the required land width for widening of this road as area is developing at high pace.

The Resolution No. 509 dated 29.11.2007 is concerned with the livelihood of likely affected residents/persons. It may be pointed out the acquisition process intends payment of compensation and the loss caused to the owners is made good by payment of compensation. The acquisition charges have already been deposited with Secretary (L&B), Delhi Government. This is a main arterial road for the use of residents as well as to and fro traffic of Delhi UP through three border entries viz. from Joharipur, Lal Bagh colony and Kali Ghata road. In view of the above any proposal of reduction in the right of way of Karawal Nagar Road from 80 feet would not serve any purpose and hence not advisable as per engineering point of view.

In view of the above clarification the proposal of reduction in the right of way of the Karawal Nagar Road from 80 feet would not serve any purpose and hence not advisable as per engineering point of view. The reply in the shape of amended preamble incorporating the above may again be placed before the Corporation for appraisal through Standing Committee that any reduction in the right of way of Karawal Nagar Road would not serve any purpose and hence not advisable as per engineering point of view as well as present requirement of the area.”

8. The aforesaid is self explanatory. There has been an earlier view of the Standing Committee, reconsideration by the Standing Committee and the final decision by the MCD. The displacement aspect has been noticed and the remedy for the same has also been set out in the Resolution. There has been consideration of the traffic flow aspect. Since the acquisition proceedings would result in payment of compensation, it has been found that the loss caused to the owners would be made good.

9. We would like to notice at this stage itself the scope and ambit of judicial scrutiny in such acquisition proceedings, more so

when they are related to infrastructure projects. We considered this aspect in recent decision in WP(C) No. 7284/2009 titled as Shri Rajeev Joshi & Ors. Vs. UOI & Ors. decided on 23.4.2009. Reliance was placed on the observation of the Supreme Court in Ramniklal N. Bhutta & Anr. Vs. State of Maharashtra & Ors. (1997) 1 SCC 134, where it was observed in para 10 as under:-

“10. Before parting with this case, we think it necessary to make a few observations relevant to land acquisition proceedings. Our country is now launched upon an ambitious programme of all-round economic advancement to make our economy competitive in the world market. We are anxious to attract foreign direct investment to the maximum extent. We propose to compete with China economically. We wish to attain the pace of progress achieved by some of the Asian countries, referred to as “Asian tigers”, e.g., South Korea, Taiwan and Singapore. It is, however, recognised on all hands that the infrastructure necessary for sustaining such a pace of progress is woefully lacking in our country. The means of transportation, power and communications are in dire need of substantial improvement, expansion and modernisation. These things very often call for acquisition of land and that too without any delay. It is, however, natural that in most of these cases, the persons affected challenge the acquisition proceedings in courts. These challenges are generally in the shape of writ petitions filed in High Courts. Invariably, stay of acquisition is asked for and in some cases, orders by way of stay or injunction are also made. Whatever may have been the practices in the past, a time has come where the courts should keep the larger public interest in mind while exercising their power of granting stay/injunction. The power under Article 226 is discretionary. It will be exercised only in furtherance of interests of justice and not merely on the making out of a legal point. And in the matter of land acquisition for public purposes, the interests of justice and the public interest coalesce. They are very often one and the same. Even in a civil suit, granting of injunction or other similar orders, more particularly of an interlocutory nature, is equally discretionary. The courts have to weigh the public interest vis-à-vis the private interest while exercising the power under Article 226 — indeed any of their discretionary powers. It may even be open to the High Court to direct, in case it finds finally that the acquisition was vitiated on account of non-compliance with some legal requirement that the persons interested shall also be entitled to a particular amount of damages to be awarded as a lump sum or

calculated at a certain percentage of compensation payable. There are many ways of affording appropriate relief and redressing a wrong; quashing the acquisition proceedings is not the only mode of redress. To wit, it is ultimately a matter of balancing the competing interests. Beyond this, it is neither possible nor advisable to say. We hope and trust that these considerations will be duly borne in mind by the courts while dealing with challenges to acquisition proceedings.”

10. This Court noticing the observation of Supreme Court in Sooraram Pratap Reddy & Ors. Vs. District Collector, Ranga Reddy District & Ors. and other connected matters (2008) 9 SCC 552 observed as under:-

“21. It has been specifically observed that while considering the eminent domain of the Government in respect of the land to be acquired and the existence of public purpose a holistic approach has to be adopted especially in cases of an integrated and indivisible joint venture mechanism for infrastructural development. The same cannot be split into different components to consider whether each and every component will serve public good. In such integrated and indivisible joint venture mechanism to tap resources of private sector for infrastructural development for fulfillment of public purpose the acquisition of land was held to be legal and lawful and not *malafide*. The compensation in the facts of the case was paid by a nodal agency developing the project which would facilitate socio-economic progress and even a token contribution from public revenue was held not to *ipso facto* be treated as colourable exercise of power. If these principles are applied in the given facts of the present case we find that the compensation of the land is paid by AAI which in turn had entered into a consortium in the form of M/s. DIAL with private parties to execute the project. It can, thus, hardly be said that there is absence of a clear public purpose involved in such a project.

22. The Supreme Court has also emphasized that the role of the court is narrow and restrictive in such matters of exercise of eminent domain and the court should not seek to substitute its judgement for the legislature’s judgement as to what constitutes a public purpose unless the use is palpably without reasonable foundation. In fact, the judgement also deals with the aspect of whether it is Part-II or Part-VII of the said Act which would come into play in case of such joint

ventures and concluded that where the entire amount of compensation is paid by the State agency, Part-VII would have no application.

23. We are, thus, unable to conclude that the present case is one where the acquisition was for a company and thus Part-VII would have any role to play.
24. The Supreme Court has further emphasized that while dealing with this power of eminent domain the same inalienable, eminent domain is an implied collective necessity preferred against individual's proprietary rights. It is sufficient that a public purpose derives advantage from the scheme and once again at the cost of repetition we emphasize that construction of an airport is certainly something where the public derives an advantage. It is well within the domain of the Government to adopt the methodology of build, operate, transfer or any other appropriate methodology to ensure proper allocation of resources by the Government. These are aspects of economic considerations in which the Government has unfettered power and absolute play for carrying out necessary development activity. The Government is not bound to develop the airport itself as may have been originally envisaged but the arrangement shows development of the airport in a phased manner with limited cost to the Government.
25. We may note at this stage that in Ramniklal N. Bhutta Anr. case (supra) it has been emphasized that there are many ways of affording appropriate reliefs and redressing a wrong; quashing the acquisition proceedings is not the only mode of redress."

11. It cannot be disputed that Delhi has grown by leaps and bounds. There has been enormous growth of population. A number of vehicles both private and public ply on the road. Traffic Jams are the order of the day. In such a situation, if the project is undertaken by the concerned authorities to widen the road both for the benefit of flow of traffic as well as for the residents of area, the exercise cannot be stated to be a malafide one and thus squarely falls within the definition of public purpose.

12. A reference to the Resolution dated 12.1.2009 and the material forming the basis for the same shows that the request for land acquisition was made to the Land and Building Department and the scheme for widening of the Karawal Nagar Road was approved by the Trans Yamuna Area Development Board of which both DDA and the MCD are members apart from State Government. Thus, the DDA has been very much involved with the aspect of approval of this project for widening of the road. This aspect has been examined by us since the contention of the learned Senior counsel for the petitioners is that in terms of an administrative order of Delhi Administration for acquiring the land for road planning purpose, the same would be routed through the DDA. There is thus no violation of even this policy decision. The aspect of the extent to which the road should be widened is in fact a joint decision of the Delhi Government, MCD, DDA, all of whom are members of Trans Yamuna Board.

14. The aforesaid aspects are really matters of planning and are best left to the concerned authorities and the experts in the field. Learned counsel for the respondents has also pointed out that there is some adjacent land being utilized for the purpose of Commonwealth Games and a holistic view of the traffic flow and other requirements has to be taken. It is not permissible for us to look into the pleas of learned senior counsel for the petitioners to the effect that there is better traffic flow management from the existing roads and that wide roads are already available parallel to the existing roads or the changes contemplated do not make it more effective.

15. The acquisition for the first phase is complete and learned counsel for the respondents assures that the process of acquisition for

the second phase is on and the road will be completed as per Resolution passed by the MCD.

16. We thus find no reason to exercise jurisdiction under Article 226 of the Constitution of India.

17. Dismissed.

SANJAY KISHAN KAUL, J.

MAY 21, 2009
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SUDERSHAN KUMAR MISRA, J.