

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

Date of decision: 21st March, 2011.

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W.P.(C) 905/2010

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**M/S GAIETY HOUSING & LAND DEVELOPMENT (P)
LTD & ORS.**

..... Petitioners

Through: Mr. Amit Khemka, Adv.

Versus

UNION OF INDIA & ORS.

..... Respondents

Through: Mr. Kapil Dutta, Adv. for Mr. Ajay
Arora & Mr. Sarjraz Ahmed,
Advocates for MCD with Mr. S.L.
Bairwa, Executive Engineer, MCD.

CORAM :-

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

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| 1. | Whether reporters of Local papers may
be allowed to see the judgment? | No |
| 2. | To be referred to the reporter or not? | No |
| 3. | Whether the judgment should be reported
in the Digest? | No |

RAJIV SAHAI ENDLAW, J.

1. The petitioners claim to be entitled to Property No.3/1, Rani
Jhansi Road, New Delhi comprising of land admeasuring 1027 sq.

yds. It is the case of the petitioners that the said land is part of land admeasuring 2.277 acres, lease whereof was originally granted to one Sardar Nehchal Singh. The petitioners claim that the said 1027 sq. yds. came in their share pursuant to proceedings for partition of the larger property. The petitioners further claim that the respondent MCD commenced the work of digging up of the front portion of their property without acquiring the same or without paying any compensation therefor. This writ petition was filed to restrain the respondent MCD from doing so.

2. Notice of the writ petition was issued. The counsel for the respondent MCD appearing on advance notice on 11th February, 2010 stated that as per the sanction for construction accorded on 26th February, 2001, some portion of the property was surrendered by the owners for the purposes of road widening and that all the other properties in the area had also agreed to road widening and given possession of the extra land required for that purpose. The road widening was also stated to be part of the project of the

Commonwealth Games. No interim order was granted to the petitioners.

3. Subsequently, the counsel for the respondent MCD on 15th March, 2010 handed over in the Court a letter dated 11th March, 2010 of MCD to Director of the petitioner no.1 confirming that in lieu of land surrendered for road widening, FAR on gross plot area would be made available if land is surrendered free of cost.

4. The petitioners then sought confirmation from respondent MCD that the gross plot area of their property was 1027 sq. yards.

5. This Court accordingly on 20th September, 2010 directed the Executive Engineer concerned of the respondent MCD to appear before this Court to make a statement with respect to the plot size of the petitioners and as to how much of the same had been taken for road widening.

6. On the next date of hearing i.e. 21st September, 2010 Mr. S.L. Bairwa, Executive Engineer (Project), MCD appeared before this Court and stated that he was unable to give confirmation of the size of

the plot as 1027 sq. yards. It was informed that respondent MCD had written to L&DO in this regard but no such confirmation was forthcoming. It was yet further informed that an area of approximately 15 ft. had been taken for road widening but out of which 10 ft. belonged to the respondent MCD itself and only 5 ft. had been taken out from Property No.3/1 of the petitioners. It was also contended that the petitioners are only two out of three owners of Property No.3/1.

7. Respondent MCD since then has filed an affidavit stating that the petitioners despite asking, had failed to supply the sanctioned building plan of their property; that the owners of adjoining two properties on either side of the property of the petitioners, while earlier seeking sanction of the building plans had surrendered certain portions of their properties in favour of the respondent MCD for road widening in accordance with the layout plan; that the road in front of the property of the petitioners had been widened in alignment of the road in front of adjoining properties; that the petitioners on 25th February, 2010 had demanded either compensation for the land or being allowed

additional FAR for the remaining plot. It was thus pleaded that the petitioners now cannot take a plea that their land had been illegally taken away.

8. Vide order dated 21st September, 2010 the petitioners were directed to file the perpetual lease deed along with affidavit as to whether any part of their plot was acquired or taken away on any earlier occasion.

9. The petitioners have filed an affidavit in which a references is made to a sanctioned plan of April, 1956 but the counsel for the petitioners states that the same is not available and only the Completion Certificate is available. With respect to the perpetual lease, it is stated that it is of the entire plot admeasuring 2.277 acres and not of the plot admeasuring 1027 sq. yards of the petitioners only. The petitioners in para 3 of the affidavit have also stated that no part of their property admeasuring 1027 sq. yards had on any earlier occasion been acquired by the NDMC, MCD or any other Government Authority. The petitioners have again sought measurement to be

carried out by the respondent MCD of the area taken out from the property of the petitioners so that in future there is no dispute as to FAR on how much land, the petitioners are entitled to.

10. Mr. S.L. Bairwa, Executive Engineer, MCD has again been called to this Court today. While the counsel for the petitioners states that 105 sq. m. of their property has been taken away, Mr. S.L. Bairwa states that without record of the extent of the size of the property of the petitioners, it is not possible to mention as to how much land of the petitioners has been taken over for road widening.

11. The counsel for the petitioners on the contrary contends that if there is to be any uncertainty on this aspect, the petitioners impugn the taking over of the land itself. The counsel for the petitioners contends that the demand for compensation or additional FAR was without prejudice to the challenge to taking over of the land.

12. However, a perusal of the letter dated 25th February, 2010 (supra) and the affidavit does not show so. The only dispute which now remains is as to how much land of the petitioners has been taken

over or as to what was the size of land of petitioners before the take over for road widening impugning which this petition was filed.

13. In view of the stand that the respondent MCD is unable to make any statement in this regard, in these proceedings, no such finding can be returned. The measurements as sought by the petitioners, would also in my opinion yield any result. According to respondent MCD, the co-lessees of the petitioners as a condition for obtaining sanction for works earlier undertaken on the property, had agreed to make land available for road widening without claiming any compensation. It will have to be adjudicated, whether the petitioners are also bound by the said undertaking and whether the road could be widened only in front of the portions of the others who had given the undertaking and not in front of the portion of the petitioners. In fact the entire attempt of petitioners to obtain an admission from the respondent MCD in this petition, without having the same adjudicated and in the presence of the other co-lessees, creates doubt.

14. I therefore do not deem it expedient to issue any direction for

measurement, as sought, in this proceeding. The petitioners would be well advised to have the size of their plot declared in a suit, by impleading MCD and other co-lessees etc. and by proving the same.

15. The counsel for the petitioners also denies that any such undertaking has been given by any of the co-lessees. The counsel for the petitioners today states that the respondent MCD had misguided this Court on 11th February, 2010 that the petitioners had given an undertaking and owing where to interim order was not granted. A perusal of that order does not show that the statement of the respondent MCD was such. Moreover, it is not deemed expedient to make any further observation on the factual controversy.

16. The writ petition is dismissed as not maintainable with liberty to the petitioners to take appropriate proceedings for declaration/determination of the area of the plot on which the petitioners would be entitled to the FAR.

No order as to costs.

**RAJIV SAHAI ENDLAW
(JUDGE)**

MARCH 21, 2011/bs