

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

W.P.(C) 3479 OF 2010

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W.P.(C) 5481 OF 2011

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Judgments Reserved on:30.7.2012

Judgment Delivered on:13.09.2012

(1) W.P.(C) 3479 OF 2010

VINOD KUMAR JAIN

... PETITIONER

Through : Ms. Reena George, Advocate.

VERSUS

GOVT. OF NCT OF DELHI & ANR.

... RESPONDENTS

Through: Mr. N.Waziri, Standing Counsel
with Ms. Neha Kapoor, Advocate
for Govt. of NCT of Delhi.

Mr. Arun Birbal, Advocate for
DDA.

Mr. A.S. Chandhiok, ASG and Mr.
Sumeet Pushkarna, Mr. Vedit
Gupta, Advocates for UOI.

(2) W.P.(C) 5481 OF 2011

ANAND ARYA & ANR.

... PETITIONERS

Through : Mr. Arvind, Advocate.

Ms. Reena George, Advocate for
petitioner no.6

VERSUS

GOVT. OF NCT OF DELHI & ANR.

... RESPONDENTS

Through: Mr. N.Waziri, Standing Counsel
with Ms.Zubeda Begum and
Ms. Neha Kapoor, Advocates
for Govt. of NCT of Delhi.
Mr. Rajeev Bansal & Mr.
Rakesh Mittal, Advocates for
DDA.
Mr. A.S. Chandhiok, ASG and
Mr. Sumeet Pushkarna, Mr.
Vidit Gupta, Advocates for
UOI.

CORAM :-

HON'BLE MR. JUSTICE A.K. SIKRI

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

A.K. SIKRI, ACTING CHIEF JUSTICE:-

1. These writ petitions are treated in the category of Public Interest Litigation whereby the petitioners are opposing the construction of Bus Depot on an area which according to the petitioners is river flood plain and as per the Master Plan-2021, no construction can be carried out on such an area. The area in question is next to Nizamuddin Bridge and behind IP Power Station and falls in Sub-Zone-06, Zone-O, between Nizamuddin Railway Bridge and National Highway-24 measuring 390 hectares.

2. According to the petitioners, it amounts to encroachment on river flood plain/river front resulting a change in the land use. It is also stated that as per the Master Plan, the area is earmarked for recreation purposes on the West bank (Clause 9.2.1). It is pointed out that Draft Zonal Plan of the area was published in July, 2008 for the purpose of inviting objections. The Zonal Plan has specified the land use of the River and confirmed that it would be only for recreational use such as Biodiversity Park, Botanical Park, Forest etc. which would help in regenerating the environment. The grievance is that the site is on the flood plains and no permission has eventually been obtained from the DDA so as to ensure that construction is in line with the Master Plan-2021 and the Zonal Plan, this construction is illegal and would be an environment disaster as the area is located on the river flood plain/river front and is a water recharging area.

3. When the petitions were filed, the construction was underway and therefore, prayer was made not to allow the respondents to continue the construction. Since the construction has been carried out and DTC Depot is functioning therefrom, the petitioners want this construction to be demolished and the area restored and put back into the original condition which was there before the construction of the DTC Depot.

4. The petitioners have also pointed out that the DDA vide its communication dated 2.12.2010 in response to RTI query has confirmed that a 6 hectares strip of land between Akshardham Complex and the Commonwealth Games Village was indeed designated as 'Parking' in the approved lay out plan. The Delhi Urban Art Commission (hereinafter referred to as 'the DUAC') after its inspection carried out on 3.11.2010 had directed both the DDA and the DTC to vacate the river bed and to ensure the removal of all the constructions carried out in the past. Even the Shunglu Committee which has been set up to go into the conduct of Commonwealth Games-2010 has adversely commended upon the construction of the said structure and in its report observed as under:-

“All clearances were provided by the Lieutenant Governor for construction of a 'temporary' structure which was ostensibly to be dismantled after the conclusion of the Games. But this Project was implemented by the Transport Department, GNCTD and DTC right from the beginning as a 'permanent' structure. It appears as if the hosting of CWG provided a pretext for 'land grab' by various Government agencies after short circuiting the established rules and procedures.”

5. The DUAC is a statutory body established under Delhi Urban Art Commissioner Act, 1973 and its functions are of advisory in nature. The function of the DUAC as enumerated under the Act is to

advise the Central Government in the matter of maintaining, preserving and developing the aesthetic quality of urban and environmental design within Delhi and to provide advice and guidance to any local body in respect of any project of building operations or engineering operations or any development proposal which affects or is likely to affect the skyline or the aesthetic quality of surrounding or any public amenity provided therein. Every local body, before according approval in respect of any building operations, engineering operations or development proposals referred to in Section 11 is to refer the same to the answering respondent no.8 for scrutiny and the answering respondent as required under the said Act scrutinizes, approves, rejects or modifies the proposals in respect of the matters as provided under Section 11 of the Act.

6. In its affidavit filed by the DUAC, it has categorically mentioned that no proposal regarding the alleged construction was ever referred to the DUAC at any time and no sanction or approval was thus obtained. It is also mentioned that site was inspected by the DUAC and thereafter matter was considered by the DUAC in its meeting held on 10.11.2010. The minutes of the said meeting were recorded and conveyed to the CMD of the DTC as well as DDA. It is also mentioned that a letter dated 24.5.2011 has been received from the DDA stating that the land use of the land under reference is river and water body as per MPD-2021 and land use has been shown as

“Recreational” as per zonal development plan of Zone-E. It is further stated that as per Zonal Development Plan of Zone-O [Clause 9.2.2 (vi)] the area falls in river front and should be conserved and developed considering the eco-sensitive nature of River Yamuna and based on comprehensive scheme. It is also the submissions of the petitioners that there is no clearance from the Environment Ministry.

In nutshell, the case sought to be set up by the petitioner is that the construction of Bus Depot is contrary to Master Plan; would affect the ecology and environment of the area and ignoring the same the respondent State is violating the principle of Public Trust, principle of Sustainable Development, Polluter Pays Principle, Principle of Inter-Generational Equity which amounts to infurcation of Article 21, 48A, 51A of the Constitution.

7. In support of the aforesaid pleas, the petitioner have referred to the following judgments:-

- (i) In *Intellectual Forums, Tirupathi Vs. State of Andhra Pradesh and others* (2006) 3 SCC 549, the Supreme Court has observed “A high degree of judicial scrutiny is provided on any action of the government that attempts to restrict the use of natural resources freely available to the public- to

properly scrutinize such actions of the government, courts make a distinction between government's general obligation to act for public benefit, and special obligation which it may have as a trustee of certain public resources." Further, "At the same time the decision of the court cannot be based solely on the investments made by any party. Since otherwise, it would seem that once any party makes any investment in a project, it would be a fait accompli and this court will have no other option but deem it legal."

(ii) In **Baldev Singh Dhillon Vs. UOI** (2005) DLT Vol 121 page 606, this Court has observed "it is high time that officers of these public authorities are given this important task to save government land from encroachments not to allow illegal construction and ensure that development takes place in accordance with the provisions contained in the Master Plan." Further "I am conscious of that fact that the area is populated and uprooting the petitioners may create cataclysmic effect. But then it is the result of rampant and brazen illegal construction and the petitioners are to blame themselves for creating the situation and they are getting their comeuppance."

(iii) In **Harsh Gupta Vs. NDMC**, 1995 (3) AD 1001 holding as under:-

"....Land use indicated in Master Plan can be enforced as it has a statutory backing, which is apparent from the various provisions of the DDA Act, namely, Section 7.8 and 14 thereof.

Section 7 of the DDA Act deals with the preparation of a Master Plan for Delhi.

According to the above, the authority is required to carry out a civic survey of Delhi and prepare a Master Plan for Delhi. It also lays down as to what the Master Plan shall contain. It postulates the division of Delhi into zones for the purposes of development. It also indicates the manner in which the land in each zone is to be used. Section 8 provides for preparation of Zonal Development plan for each of the zones into which Delhi may be divided.

Section 14 interdicts the use of the land and building for a purpose which is not authorised by the Master Plan or Zonal Plan.

From the aforesaid provisions it clearly follows that the Master Plan and Zonal Development Plan has a statutory force and the land cannot be used for a purpose which is not permitted or authorised by the same. The case in point is Municipal Corporation of Delhi Vs. Kishan Doss and another Air 1969 (2) S.C.R.166 wherein it was held that when any particular and definite use of land is indicated in the Master Plan, a different use of it cannot be permitted. In P.S. Gill and others Vs. Union of India and others 16(1979)DLT266 it has been held by a Division Bench of this Court that on coming into operation of the Master Plan or the Zonal Development Plan, the land cannot be used or developed except in accordance with the plan.

The first Master Plan for Delhi came into force on September 1, 1962. Despite the lapse of more than

three decades the Master Plan has not achieved its purpose. As is well known Delhi has large number of unauthorised colonies in contravention of the planning controls. There are many number of cases of violation of the prescribed land use. The new Master Plan namely, "Master Plan for Delhi Perspective 2001" which came into force in August 1, 1990 must achieved its purpose for which it has been brought into force. Unless strict measures are adopted and the master plan is enforced in letter and spirit, the document will merely remain a piece of literary work with high sounding words but no action.

It is neither quite lawful nor quite right for the appellants to use the., land for a purpose other than the one assigned for it. The appellants, Therefore, cannot be permitted to use the land for the purpose of commercial activity which is not a permitted user., They cannot seek the equitable jurisdiction of this court for obtaining an ad-interim order which tantamount to legitimising their illegal activities.

Therefore, it is apparent from the above decision that land cannot be used for a purpose which is not authorised by the Master Plan or a Zonal Development Plan.....”

8. In the affidavit filed by the Delhi Transport Corporation, it is stated that the land in question was allotted for the development of a Bus Depot to be used during the Common Wealth Games held in New Delhi in October 2010. The Millennium Park Bus Parking was

constructed for the said purpose and is now being utilized for operating buses in the city of Delhi. Nearly 900 buses of which 800 are owned by the DTC and 100 are run under the Cluster Bus Scheme, provide their services from the said depot. The buses from this depot serve all major bus terminals i.e. Anand Vihar, Old Delhi, New Delhi and Nizamuddin Railway Stations, three ISBTs and other important commercial centres of the city such as Nehru Place, Connaught Place, Okhla etc. Although industrial activity of running a thermal power generation plant is permitted from the said land, yet in order to comply with subsequent change in the MPD, insofar as it purports to override the previous permissible user, the DTC vide letter dated 09.11.2010 has requested the DDA for change of land use.

9. It is stated that the Millennium Park Bus Parking acts as a life line for nearly one fourth of the bus commuters of Delhi. It caters to approximately ten lakhs people every day and is immensely beneficial to lower and middle class sections of society who cannot afford a means of transport other than public bus service. Shutting down the Millennium Park Bus Parking would deprive lakhs of people of cheap and convenient bus service and would render jobless nearly 20,00 employees of the DTC such as drivers, conductors, mechanics, etc.

10. It is also denied that there is a construction on the flood plains of Yamuna River. As per DTC the Millennium Park Bus Parking is

situated at a suitable distance from the river bund. It is submitted that before development of the said land into a bus depot, the same was used by the Indraprastha Thermal Power Plant for dumping of residual fly-ash. Almost 20 meters of fly-ash spared over many acres were leveled, compacted and covered with granular sub base to enable the ground to bear the 13.5 ton weight of each Low Floor Bus. Incidentally, a high tension electricity transmission tower – which is an essential part of the infrastructural needs of the city, is situated right in the centre of this area. It is also sought to project that no commercial activity to the detriment of the ecological balance of the said land or the Yamuna River is taking place as a result of the operation of the bus depot. It is emphasized that the DTC has spent an amount of approximately ₹ 100 crores on the development of this infrastructure.

11. Explaining the position in respect of the land in question, where the construction is made, it is stated in the affidavit of DTC that before the allotment of the land in question, the DDA itself vide letter dated 16.10.2007 had offered a choice between three different locations for development of a bus depot for the Common Wealth Games. A Committee of four officers of the answering respondent made a joint inspection of the site on 5.11.2007. During the site inspections, the DDA indicated another site i.e. Site no.4. Details of the sites offered by DDA are as under:-

- (i) Site No.1: Located on the Ring Road between Pragati Maidan and the present Millennium Park Bus Parking. Subsequently, it was found that the site belongs to MCD where the Rajiv Smriti Park has been developed. The site also fell near the railway crossing and was found unsuitable for development as a bus depot.
- (ii) Site No.2: Site opposite Millennium Park in possession of IPGCL used for dumping residual ash slurry.
- (iii) Site No.3: Located at a narrow road near marginal Bund Road opposite Mayur Vihar. The road from the main road leading to the site was too narrow to allow the passage of buses coming in from opposite directions. Enquiry from the local residents also revealed that the area got flooded during monsoons.
- (iv) Site No.4: New site offered by DDA and was located on the other side of the Games Village. The site was found unsuitable since it was located in a low lying area. Additionally, if the depot was located at this site the buses would have to take a longer route for reaching the Common Wealth Games Village, thus adding to loss of time and costs towards dead mileage.

The Committee of Officers observed that site no.2, which incidentally, is the site presently being utilized for the Millennium Bus Depot, was most suitable for development as a bus parking. Vide

letter dated 25.02.2008 the DTC requested the DDA to develop site nos. 2 & 3 as per its requirements and complete the work at least three month prior to commencement of the Common Wealth Games. The site near Mayur Vihar District Centre earmarked for construction of a regular DTC bus Depot in MPD-2021 was inspected by the DTC but was found to be in possession of the Delhi Jal Board. It was enclosed with a boundary wall and three rooms were constructed on it. Vide letter dated 09.09.2008 the DTC again requested the DDA for allotment of a proper encroachment free site for parking of buses during the Common Wealth Games 2010. On this basis, the site in question for construction of Bus Depot is sought to be justified.

12. Pursuant to orders dated 21.3.2012 passed in this writ petition, additional affidavit dated 21.5.2012 was filed by the DTC informing that a meeting was convened by the Hon'ble Lt. Governor on 31.1.2012 to discuss and consider the issues raised in the petitions i.e. relating to the DTC Bus Parking Site at Millennium Park. In the said meeting, the Hon'ble Lt. Governor, observed that the flood plains on river Yamuna used for storing fly-ash stood protected long before the Common Wealth Games-2010 by the construction of a bund since 1960s. It was also observed that the allotment of an alternate site of similar size anywhere else in Delhi was not possible for accommodation of the increased bus fleet of DTC and Cluster Bus

Services and in any case, an alternative site could lead to comparatively greater environmental degradation.

13. Another additional affidavit dated 9.7.2012 is also filed on behalf of the DTC annexing certain records and correspondence in order to show that the land in question where the temporary Millennium Bus Depot has been developed was earmarked since 1960 for dumping of fly ash/waste-ash generated from the thermal power plant at IP Estate. Thus, there is an attempt project on that basis that way back from the 1960s the dumping of fly-ash was a permissible activity in the said lands according to the applicable Master Plan. The lands were put to the prescribed user till a portion of the same was allotted for the emergent need for developing the temporary Millennium Bus Depot in view of the Commonwealth Games and the urgent demand for a suitable land for parking of the large fleet of buses inducted into Delhi as per the Cluster Bus Scheme. The morphology/topography of the land could not subsequently change by itself so as to render it a part of the river floodplain in Master Plan for Delhi (MPD) 2021. The river and the river front area has since long been sequestered by a bund/flood protection embankment. This segregation was done in 1960s to protect the Thermal Power Plant from the Yamuna flood plains. Therefore, the land on the west of the bund no longer retains the character of riverbed/flood plains. Referring to the Zonal Plan Development for river Yamuna/river front,

it is pointed out that Zone 'O' received the authentication of Government of India on 30th June 2010. The Zonal Plan takes into account the study of National Environmental Engineering and Research Institute (NEERI) on Environmental Management Plan for Rejuvenation of River Yamuna in particular of the existing situation in the flood plains and guidelines for the development. It records:

“NEERI has recommended sub zone wise development based on which the zonal plan development proposals have been worked out. Plan is placed at MAP-II.”

6.4.2 Proposed Land Utilisation in Different Sub Zones by NEERI

For the Sub Zone:

“New Railway Bridge to NH 24 Bridge” (i.e. the zone within which the temporary Millennium Bus Depot exists):

Fly Ash Brick Plant, Parking and Constructed Wetland”

14. On the aforesaid basis, submission of DTC is that the scientific study conducted by an expert body like NEERI itself clearly recommends the area in question for usage as parking space. The present use of the land as temporary parking for public buses is as per the recommendation of needy, duly incorporated in the Zonal Plan.

15. We have considered the respective submissions of counsel for all the parties made on the aforesaid lines.

16. It is not in dispute that there was a need of land for the DTC to construct Bus Depot for large part of their fleet. The DTC has emphasized the importance of this Bus Depot which may be in public interest and as it not only provides required services, that caters to the need of 1/4th bus commuters of Delhi. The figures given by the DTC is approximately one million people every day and, therefore, it is stated to be immensely beneficial to lower and middle class section of the society. It therefore cannot be denied that there is a need for such a Bus Depot.

17. The moot question, however, is as to whether this Bus Depot could be constructed at the given site? The petitioners have sought to demonstrate that the construction is carried out at the place which forms part of flood plains/river built and this is denied by the DTC/Government of NCT of Delhi. On the other hand, the respondents argue that it is not a river bed and having regard to previous user of the site for fly-ash for last number of years, use thereof as bus depot is appropriate, it is in public interest and no other suitable site is available or at least identified by DDA so far. We are, however, of the view that it may not be necessary even to go into these questions. The stark reality is that as per MPD-2021 the land use of the site is "River Water Body". Admittedly, any construction has to be in conformity with the Master Plan. May be for this reason, when the land was allotted to the DTC to take care of the need of

Commonwealth Games, it was for the purpose of ‘temporary’ parking, that too, in view of the security threat perceptions prevailing in the region. The Government was conscious of the fact that there cannot be a permanent Bus Depot without amendment of the Master Plan, 2021. It is for this reason, even during the argument, Mr. Waziri made a submission that the Government was planning to make modification in the Master Plan.

18. In view of the above, we are of the opinion that these petitions can be disposed of by permitting the respondents to take steps for amendment in the Master Plan, as per law, if it is permissible. There is a specific procedure for effecting the change in the Master Plan which includes notice to the public at large and inviting objections. Once this procedure is followed and objections are invited, it would be open to the petitioners to file their objections and raise issue of ecology and environment which will have to be considered. Thus, arguments raised before us by the petitioners in this behalf can be duly taken into consideration at that stage. Naturally, if there is any substance in the contention of the petitioners, it may not result change in the Master Plan. On the other hand, at that stage it will also be open to the respondents, particularly DTC, to put forth its case that the site in question was used as fly-ash purposes since 1960s and on the construction of bund, the area was segregated and, therefore, it is not going to have any impact on river built/flood plains. What we are

emphasizing is that the respective contentions on this aspect can be considered and looked into and decision thereupon taken.

19. These petitions are accordingly disposed of by granting six months time to the respondents to take steps for the change in the Master plan, if it is possible, thereby changing the land user and bringing it in conformity with the present use. In case, the Master Plan is amended in this manner, the natural consequence thereof would be that the Bus Depot would continue to operate from the given site. On the other hand, if attempt to amend the Master plan fails, there would be no option to re-locate the Bus Depot to some other place. In that event, it will be for the DTC to ask the DDA to allot alternate site and feasibility of site at Mayur Vihar can also be considered at that stage.

20. No costs.

ACTING CHIEF JUSTICE

**(RAJIV SAHAI ENDLAW)
JUDGE**

SEPTEMBER 13,2012
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