

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

Judgment reserved on: 15.05.2012

% **Judgment delivered on: 18.05.2012**

+ **W.P.(C) 5525/2011**

SAMAJ SUDHAR SAMITI HARKESH NAGAR (REGD) THROUGH
DHYAN SINGH Petitioner

Through: Mr. C. Mukund with Mr. Firdoz Vani,
Mr. Vinny Shangloo and Mr. Ravi,
Adv.

versus

GOVT. OF (NCT) OF DELHI AND ORS Respondents

Through: Ms. Indira Jai Sing, ASG with Mr.
Rajiv Nanda, Additional Standing
Counsel and Ms. Shawana Bari,
Adv. for R-1, 2 & 6.
Mr. Suresh Tripathy with Mr.
Mayank Singh Chauhan, Adv. for
Delhi Jal Board.

**CORAM:
HON'BLE MR. JUSTICE VIPIN SANGHI**

J U D G M E N T

VIPIN SANGHI, J.

1. The present writ petition under Article 226 of the Constitution of India has been preferred by the Samaj Sudhar Samiti Harkesh Nagar (Regd.), through its General Secretary, Sh. Dhyan Singh to seek a writ

order or direction in the nature of prohibition, to prohibit the respondents from closing, or in any manner interfering or restricting the access to the residents of Harkesh Nagar Colony from the main road i.e., the Ma Anand Mai Marg.

2. The case of the petitioner is that it is an association of residents of Harkesh Nagar Colony, which was an unauthorized colony regularized by the MCD vide Resolution No.631 dated 06.12.1990. The petitioner submits that its members and residents have been using a connecting road from its colony to the Maa Anand Mai Marg over the years, which falls on an open tract of land.

3. The respondents impleaded in the present writ petition are the Director (Works), GNCT of Delhi; the Chairman, IIT; the Director (Delhi Jal Board); the Commissioner (Industries), GNCT of Delhi; the President, Okhla Industrial Association (Regd.), and; the Commissioner of Police in that order.

4. The grievance of the petitioner is that the land, whereon the said connecting road is located, has now been allotted to respondent no.2, IIT to set up their campus, and respondent no.2 is seeking to cordon off the said road, and to prevent the members of the petitioner association from using the same. The petitioners case is that there are about two lacs residents in Harkesh Nagar Colony and the blockade of

the connecting road would create chaos for the said residents as they would not be able to access Maa Anand Mai Marg, which is the main/trunk road used by the residents of Harkesh Nagar Colony for coming into or going out of the said colony.

5. The petitioners submit that they have no other alternate way to approach the colony, and if the said connecting road is cut off, the petitioners colony would become land locked. The action of the respondents, and in particular respondent no.2, is claimed to be in breach of the master plan and also in breach of the fundamental rights of the residents of Harkesh Nagar Colony. The petitioners have placed on record photographs to show the said connecting road being used by them, a part of which lies along boundary of G.B. Pant Polytechnic.

6. The petition is opposed by all the respondent authorities, namely, respondent nos.1, 2, 3, 4 and 6. However, respondent no.5, Okhla Industrial Estate Association (Regd.) supports the petitioners case on the ground that the alternate route sought to be provided to the residents of Harkesh Nagar Colony adversely affects their interest.

7. Mr. Mukund, learned counsel for the petitioner submits that merely because respondent no.2 claims to have been allotted the land, over which the said connecting road is located, is no ground to cut off the said road. He submits that when the allotment of the land in

question was made to respondent no.2, they were well aware of the fact that a connecting road exists thereon from Harkesh Nagar Colony to Maa Anand Mai Marg, which is in regular use by the residents of Harkesh Nagar Colony for accessing Maa Anand Mai Marg. Therefore, the allotment was accepted by respondent No.2 with the above limitations. They cannot seek to alter the position now to the disadvantage of the residents of Harkesh Nagar Colony.

8. Learned counsel for the petitioner further submits that there are any number of other instances, such as the Delhi University and Jamia Millia University, where the campus of the university is spread out, and there exist public roads/streets, open to the public for the purpose of commutation. He submits that there is no need for the respondent no.2 to cordon off its entire campus in such a manner as to block the connecting road, which the residents of Harkesh Nagar Colony have been using for five decades.

9. Learned counsel for the petitioner has shown to the Court the plan of the area to submit that the petitioners are only seeking the maintenance of the connecting road partially, since, according to him, the remaining portion of the connecting road, which runs along the boundary of G.B. Polytechnic, in any event, would continue to exist.

10. The petition is primarily opposed by respondent no.2. Ms.

Indira Jaising, learned Additional Solicitor General, who appears on behalf of respondent nos.1 and 2 submits that the connecting road in question is not a public street in terms of the definition contained in section 2(44) of the Delhi Municipal Corporation Act (DMC Act). She submits by reference to the counter-affidavit filed by Public Works Department of the GNCT of Delhi that the said connecting road does not vest in the Corporation. She submits that the connecting road has neither become, nor has been declared to be, a public street.

11. She further submits it is not even the petitioners case that the connecting road in question is a public street within the meaning of the expression as defined in section 2(44) of the DMC Act. She submits that the members of the petitioner association have no vested right to claim the right to continue to use the said connecting road as it falls on government land, which stands allotted to respondent no.2.

12. She submits that, firstly, the connecting road is not the only access road for the residents of Harkesh Nagar Colony to come into, or get out of the said colony. She further submits that, in any event, all the petitioners could ask for is the right to access the trunk road, so that they are not land locked. She submits that the respondent no.2 has, therefore, already laid a 7 meter wide road along the periphery of its boundary, which eventually connects to the public street leading to

Maa Anand Mai Marg. She submits that the said street falls entirely on the land allotted to respondent no.2, and respondent no.2 would undertake to maintain the same in good functional use. She has reflected to the plan filed by respondent No.2 with its counter affidavit.

13. Ms. Indira Jaising submits that the only difference between the connecting road being used by the petitioner's members presently, and the street constructed by respondent no.2 over its land is that the said street increases the distance between the petitioners colony and Maa Anand Mai Marg by about 500 meters. Otherwise, it is as broad as the existing connecting road. She has also drawn the attention of the Court to the affidavit of respondent nos.1, 3 and 4.

14. Respondent no.1, Public Works Department of the GNCT of Delhi has stated in its affidavit that the existing connecting road in question exists on the campus of respondent no.2; the road and the land belong to respondent no.2 and; the road of Public Works Departments does not enter the campus of respondent no.2. It is also stated by respondent no.1 that the Public Works Department has made a 500 meter long and 7 meter wide concrete road as alternate access for the residents of the petitioner association. The said new concrete road was built by Public Works Department along side of boundary of the land of respondent no.2, that is to say - within the land of

respondent no.2.

15. Respondent no.3 has stated that the land in question does not belong to the Delhi Jal Board. Ms. Jaising submits that the Delhi Jal Board has no objection to the construction of the alternate street which the Public Works Department has already constructed. Respondent no.4 i.e., the Commissioner of Industries, GNCTD in their counter-affidavit, submits that it has no objection to the creation of the alternate route for the residents of Harkesh Nagar Colony.

16. Ms. Jaising submits that the respondent no.2 cannot permit a connecting road to exist on its campus, as the existence of a thoroughfare would disturb the working of the institution. She submits that, as there would be a hostel blocks both for male and female students erected on the campus, to protect the property and the students studying in the institute living in the hostel, it is necessary to cordon off and sanitise the premises of the institute.

17. Ms. Jaising submits that the connecting road is an unauthorized road constructed with the blessings of the local MLAs and from their fund. She submits that the construction of the alternate street was undertaken by the Public Works Department after due deliberation and in consultation with all the concerned authorities. Respondent no.2 has placed on record alongwith its counter-affidavit,

the minutes of the meeting held on 02.02.2009 under the chairmanship of the Principal Secretary to Chief Minister. In this meeting, the officers from various departments of the Government of Delhi, such as the Secretary, Training and Technical Education; Department of Revenue; Officers of the MCD; Officers of the Delhi Jal Board; Officers of the GB Pant Polytechnic; respondent no.2, and; Delhi Police were present.

18. In this meeting, the existence of the connecting road and the disturbance which the same was causing in the architectural alignment of the proposed building of IIIT was noted and the possibility to explore a separate entry to Harkesh Nagar Colony was required to be explored. The actions suggested included the provision of an independent road to Harkesh Nagar Colony. It was agreed that if land is needed for constructing the road, the same shall be provided by the respondent no.2.

19. Respondent no.2 has also placed the minutes of another meeting held on 17.02.2009, once again, in the presence of about 21 officers drawn from various departments and authorities. The fact that the delay in raising the construction could lead to loss of an academic year was also noted. With regard to the construction of alternate access road for Harkesh Nagar residents, it was agreed that the

alternate access road be constructed over the MCD nala and the bridge/culvert be widened. It was also agreed that the unauthorized access road would be closed once the alternate access road is completed.

20. Respondent no.2 has also placed on record the minutes of meeting held in the chamber of the Hon'ble Minister of Development, Revenue, I&FC, PWD and Welfare for SC/St on 08.02.2010. In this meeting, the concerned MLA was also present, who represents the residents of Harkesh Nagar.

21. Ms. Jaising submits that in the presence of the concerned MLAs, it was decided that the alternate road be constructed adjacent to the Delhi Jal Board drain. The Public Works Department informed that tender for the same had been called and the work would be taken up soon. The Public Works Department was required by the Hon'ble Minister to do the needful at the earliest. She submits that the decision to construct an alternate street has been taken collectively and after due consideration by all concerned, including the representative of the members of the petitioner association, i.e. local MLAs. She submits that since the alternate street has already been constructed, the present petition should be dismissed.

22. Though respondent no.5 has supported the petitioners case, none has appeared on their behalf to advance any submission. The stand taken by respondent no.5 in its counter-affidavit is that the opening of an alternate street would adversely affect the industries being run in Okhla Industrial Estate. It is stated that the traffic from Harkesh Nagar would be diverted into Okhla Industrial Estate. Respondent no.5 has stated that there are various knowledge based prestigious industries operating in Okhla Industrial Estate, and they would be adversely affected by the proposed move.

23. Mr. Jaising submits that respondent no.5, while objecting to the alternate street constructed by respondent no.2, proceeds on the incorrect premise that the alternate street is located on the land falling within the Okhla Industrial Estate. She submits that the street has been constructed entirely on the land falling within the area allotted to respondent no.2. She further submits that the said alternate route has been completely cordoned off from Okhla Industrial Estate, inasmuch, as, boundary walls have been constructed on both the sides of the said alternate street having width of 7 meters throughout.

24. In his rejoinder, learned counsel for the petitioner has argued that the alternate street constructed by respondent no.2 ends on a culvert which is narrow and creates a bottleneck. He submits that the

residents would, therefore, face great difficulty in accessing the public street from this alternate street due to heavy traffic. He further submits that the existing connecting road is much wider, i.e. about 40 feet wide, whereas the alternate street constructed by respondent no.2 is only 7 meters wide.

25. In response to the aforesaid submission, Ms. Jaising submits, on instructions, that the respondent no.2 is willing to undertake to this Court, and would abide by direction issued by this Court, requiring respondent no.2 to keep the alternate street maintained in good operational condition. She further submits that respondent no.2 would also be ready and willing to take whatever steps are required to be taken for the broadening of culvert over the Delhi Jal Board drain, if not already widened, so that no bottle neck is created and the traffic can flow smoothly on the alternate street, including over the culvert. She further submits that the submission of the petitioner with regard to the width of the existing connecting road being 40 feet is not correct, inasmuch, as, the metal road is more or less 7 meters width throughout. She has tendered in Court the comparison chart prepared by the respondent authorities of the alternate route and the existing unauthorized road in this regard, which is taken on record.

26. The tabulation prepared by the respondent authorities

containing the comparison of the existing unauthorized road/connecting road and the alternate road/street reads as follows:

	Distances			L (m)	W (m)	Status
ALTERNATE ROAD PROVIDED						
Between	Mother diary to culvert	Along Phase III		579	7	Existing bitumin top
Between	Culvert to dustbin	Along Harkesh Nagar		433	7	New Concrete Road
ALTERNATE ROAD PROVIDED			Distance	1012	7	
EXISTING UNAUTHORIZED ROAD						
At	500m	Mother diary		100	6	Existing Bitumin top
At	400m	Our present entry		100	6	Existing Bitumin top
At	300m	GBP Main gate		100	5.5	Existing Bitumin top

At	200m	Turn		100	8.2	Existing Bitumin top
At	100m			102	7	Existing Bitumin top
At	0	Dustbin			7	Existing Bitumin top
Existing Unauthorized ROAD			Distance	502	6.6	

27. Having heard learned counsels for the parties, in view of the fact that the respondents have provided an alternate street/road to the residents of Harkesh Nagar Colony to access the main road, i.e. Maa Anand Mai Marg, I am not inclined to permit the members of the petitioner association and the residents of Harkesh Nagar Colony to continue to use the existing connecting road, which falls over the land allotted to respondent no.2 for developing its campus.

28. Respondent no.2 has been allotted the said site for setting up a State University in accordance with the IIIT Delhi Act, 2007 for the purpose, and with the mission of setting up a global centre of excellence in information technology education, training and research. Respondent no.2 aims to train and educate at both undergraduate and post graduate levels, engineers of outstanding ability, who could

become innovators and new product creators. Respondent no.2 has been allotted 25 acres of land at the site in question, out of a total of 65 acres of land initially granted to G.B. Pant Polytechnic established in the year 1961. Respondent no.2 currently has three academic programmes, i.e. B-Tech, M-Tech and PhD with a total of 400 students, which includes males and females, and the faculty of about 20 highly qualified doctorates.

29. From the counter-affidavit filed by the Public Works Department, it is abundantly clear that the connecting road in question is not a public street within the meaning of section 2(44) of the DMC Act. It is clear that the same has been unauthorisedly constructed over government land, which has eventually been allotted to respondent no.2. The location of the said connecting road is such that it divides the land allotted to respondent no.2 practically into two halves. The land allotted to respondent no.2 is an irregular shaped plot and the existence of the said connecting road running through its area is, therefore, bound to create difficulties in the development and proper utilization of the area by respondent no.2. If allowed to remain, the said connecting road would not only hamper the development of the area, but would also create security risks and disturb the atmosphere and peace of an educational institution. Therefore, the right of respondent no.2 to cordon of its area for purpose of setting up

its institution cannot be denied or disputed by the petitioner.

30. Merely because Delhi University and Jamia Millia University have public streets running within their campus is no ground for the maintenance of the connecting road in question in respect of the campus of respondent no.2. The said campus admeasures only 25 acres which is far less compared to the campus of either Delhi University or Jamia Millia University. Moreover, respondent no.2 is a single institution university, unlike the Delhi University and the Jamia Millia University, which have different institutions and departments within its campus. These institutions have their own boundary walls.

31. The petitioners, in any event, have no right to dictate to respondent no.2 that they must continue to maintain the connecting road, particularly when all the respondent authorities have collectively applied their mind, and decided to provide and, in fact, provided an equally convenient alternate road/street to them along the periphery of the area allotted to respondent no.2. The only difference is that whereas the existing connecting road admeasures 502 meters, the alternate road/street admeasures 1012 meters.

32. The submission of Mr. Mukund, learned counsel for the petitioner that the width of the existing connecting road is 40 feet does not appear to be correct. From the comparative table drawn by the

respondent authorities, it appears that the width of the bitumen top of the existing connecting road, at the highest, is 8.2 meters and goes down to even 5.5 meters, whereas the width of the alternate road/street provided by the respondent authorities for use of the residents of the petitioner association is consistently maintained at 7 meters.

33. There can be no issue that the fundamental rights of the residents of Harkesh Nagar Colony have to be preserved. They cannot be left in a land locked state, assuming that there was no other connecting street/road apart from the one in question (before the construction of the alternate street by the respondent-PWD on the land of respondent No.2). However, it does not mean that the rights of the community at large to benefit from development of the respondent No.2 institute should be sacrificed only to maintain status quo in respect of the user of the unauthorized road by the residents of Harkesh Nagar Colony. In a developing country like ours, there are bound to be competing claims made by different sections of the society whenever developmental works are undertaken. Someone is bound to oppose the same on the ground of being inconvenienced. Human beings, by their very nature, prefer to maintain status quo and seldom welcome change, and particularly when it causes some slight inconvenience to them. The authorities would, in such situations, have

to balance the rights of all stakeholders. No one section or group of persons can claim that their rights should override the rights of others.

34. In the present case, the residents of Harkesh Nagar Colony have now been provided with a new concrete road, which has been constructed on the land allotted to respondent no.2. The respondent no.2 has undertaken to this Court that they shall continue to maintain the said road in good condition. They have also put to rest the apprehension of respondent no.2 with regard to the width of the culvert. In fact, a perusal of the minutes of the meeting held on 17.12.2009, as aforesaid, shows that one of the decisions reached by agreement was that:

"1.3 The alternate access road is over a MCD nala, the bridge/culvert is to be widened. The CE, MCD confirmed that they have no objection to the widening of the culvert".

35. Respondent no.2 has also undertaken to the Court that they would undertake to the widening of the culvert, in case the same has not already been widened, so that a bottleneck is not created and the traffic runs smoothly on the alternate road/street connecting Harkesh Nagar to the main trunk road, i.e. Maa Anand Mai Marg via the existing public street. Respondent no.2 shall remain bound by its undertaking given to the Court, which is accepted by the Court.

36. In view of the aforesaid position, the present petition stands disposed of. Interim orders passed in this petition stands vacated.

MAY 18, 2012
sr

VIPIN SANGHI, J