

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

Date of Decision : May 21, 2014

+ **W.P.(C) 3383/2013**

ZAMRUDPUR WELFARE ASSOCIATION Petitioner

Represented by: Mr.Sanjeev Anand, Advocate with
Mr.Abhas Kuma, Mr.Arush Khanna
and Mr.Subham Tripathi, Advocates
versus

SOUTH DELHI MUNICIPAL
CORPORATION & ORS.

..... Respondents

Represented by: Mr.Sanjeev Sabharwal, Advocate for
R-1, R-3, R-4 and R-5
Mr.Ajay Verma, Advocate for R-2
Mr.Maninder Singh, Sr.Advocate
instructed by Mr.Kamal Gupta,
Advocate for R-6 and R-7

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MR. JUSTICE JAYANT NATH

PRADEEP NANDRAJOG, J. (ORAL)

1. The writ petitioner, an association of residents and traders in Zamrudpur prays that a mandamus be issued to the respondents to ensure proper circulation of traffic in the Zamrudpur Community Centre area as per the roads shown in Annexure P-6 and P-7 annexed to the writ petition and to quash a decision dated December 08, 2008 passed by the Screening Committee of the Delhi Development Authority approving use of a community hall site with open space (green) adjoining/abutting thereto, to be used as a barat ghar.
2. We had heard learned counsel for the parties at length on May 19, 2014 and have also heard them at length today.
3. Before we adjudicate on the pleas urged in the writ petition and the relief sought for, at the outset we express our displeasure at the sorry state of affairs concerning municipal governance in Delhi. The facts which have transpired during hearing of the instant writ petition show a complete lawlessness and recklessness in municipal governance in Delhi by the Delhi Development

Authority, the erstwhile Municipal Corporation of Delhi (now the South Delhi Municipal Corporation) and the Public Works Department of the Government of NCT of Delhi. The facts show that it is useless for the Government to constitute committees because members of the committees are just not interested in solving problems, or lack the will to do so or probably lack the intelligence to comprehend issues which confront them.

4. One facet of urban town planning is to prepare the lay-out plans of colonies. The importance of the lay-out plans is that they depict the situs of the plots in the colony and indicate the roads on which the plots abut. The extent of permissible construction on plots is governed by the Master Plans drawn up, in which plans, the Floor Area Ratio (FAR) is stipulated. The FAR determines the built up area on a plot. Many Master Plans provide for larger FAR on plots abutting broad roads. Many Master Plans provide for mixed land use on roads having specified and above widths.

5. The Master Plan for Delhi is no exception. A larger FAR is permitted in certain colonies on plots abutting roads having 80 feet width or more. Mixed land used is also permitted in certain areas provided the width of the road is of the prescribed span. Thus, in a lay-out plan for a colony in Delhi, it assumes importance to freeze the width of the roads and unless the same is done the rights of the owners of the plots abutting the road cannot be determined. Besides, a person may like to buy a plot or a wide road and would pay a seller more price vis-a-vis a plot which abuts a narrow road. Another purpose of a lay-out plan is to make it known to the inhabitants of the area, and those who would buy plots in an area, as to what would be the width of the roads in the colony. Needless to state a road is meant for movement, on foot by pedestrians and by non-mechanised and mechanised vehicles.

6. As per Annexure P-6, which as per the petitioner is the approved lay-out plan for the Zamrudpur Complex, the roads are as under:-

with the exception that the road between point B and C and the point X and Y do not exist in approved lay-out plan.

7. The grievance is two-fold. The first is that the road between point A and B has vanished due to encroachments which are not being removed by the authorities. The second is to the width of Nandi Vithi Marg, claimed in the writ petition to be a road having width of 80 feet, but at site a small stretch having width of 80 feet and thereafter at various points heavy encroachment resulting in the width of the road narrowing down to 35 feet.

8. During arguments an issue was also raised to a green patch which is depicted in the site plan, reproduced by us hereinabove, as '*Central Park Greater Kailash*' being encroached upon by respondents No.6 and 7.

9. As claimed by the writ petitioner, the position of the roads, as per the lay-out plan relied upon by the petitioner, would be that Nandi Vithi Marg, which forms a T-junction with Lala Lajpat Rai Marg in the western side of Lala Lajpat Rai Marg, moves at a perpendicular in the southern direction and three cul-de-sacs branch out in the eastern direction of Nandi Vithi Marg, as shown in the site plan extracted by us above. At point A of the cul-de-sac, a road, which is like a water course exists till point Z, which is on the eastern side of the Lala Lajpat Rai Marg. In other words, if at the T-point of Nandi Vithi Marg on Lala Lajpat Rai Marg one enters Zamrudpur, one can drive along a road which forms an irregular C so as to reach Lala Lajpat Rai Marg at point Z. The non-existence of the stretch of the road from point A to B is claimed to be a traffic hazard and a nuisance.

10. Annexure P-7 is a smaller version of Annexure P-6 and thus learned counsel for the parties concede that the minor variations between the two can be ignored and issue raised in the writ petition could be decided with reference to Annexure P-6.

11. Now, if the authenticity of Annexure P-6 as the approved lay-out plan of the colony is not in dispute there would not be any impediment to grant the

relief prayed for concerning the stretch of the road between points A and B.

12. There is a problem. In the records of Delhi Development Authority, since handed over to the erstwhile Municipal Corporation of Delhi and now available with the South Delhi Municipal Corporation, the lay-out plan relied upon by the petitioner bears a date January 14, 1976, but makes no reference to any resolution number by which Delhi Development Authority accorded approval to the lay-out plan. The record available with the South Delhi Municipal Corporation would evidence that as per resolution No.549 dated September 30, 1965, revised subsequently at a meeting of the Village Development Committee constituted by Delhi Development Authority on July 02, 1969, the approved lay-out of the area showed the existence of Nandi Vithi Marg with a width of 60 feet, and the three cul-de-sacs, which find a place in the lay-out plan annexed as Annexure P-6 by the writ petitioner, no road, branching from the cul-de-sac at point A till point Z exists. The road between points B to C as also point X to Y does not exist. In other words, the circulation of traffic was not complete. Entry into Zamrudpur from Lala Lajpat Rai Marg was to be from Nandi Vithi Marg and the three cul-de-sacs were the means of access within Zamrudpur. It was apparent that there were three dead ends and the return traffic was in the reverse direction. Obviously, there would result a traffic chaos.

13. Record would evidence that Zamrudpur area was declared a development area, for being developed by the Delhi Development Authority, and after Delhi Development Authority claimed to have executed the development works the area was handed over to the erstwhile Municipal Corporation of Delhi. On March 05, 2012 a lay-out plan of the Zamrudpur Complex was drawn up and signed by the Engineers of the Delhi Development Authority and the Municipal Corporation of Delhi. The said lay-out plan shows that no road exists between point A to B. A road exists between point B to C. A road also exists between point X to Y. In other words, circulation of

traffic as one enters from Lala Lajpat Rai Marg on to Nandi Vithi Marg would be along the arrows shown in the site plan depicted by us hereinabove till one reaches point Z on Lala Lajpat Rai Marg. In the said lay-out plan, Nandi Vithi Marg is shown as having width of 80 feet.

14. The problem which we lamented at the beginning of our decision is self-evident.

15. The only authentic approved lay-out plan is the one which was drawn up on September 30, 1965 as modified on July 02, 1969. But at site what exists is what has been depicted on the site plan drawn up on March 05, 2012. Was the original lay-out plan ever amended? If yes when? And what was the amended lay-out plan? The answers remained abegging. The questions continue to loom large.

16. When was the width of Nandi Vithi Marg increased from 60 feet to 80 feet? Nobody has a clue. But look at the magnitude of the problem which has now been created. In the original approved lay-out plan which was drawn up on September 30, 1965, the width of Nandi Vithi Marg was 60 feet. Abutting its western side was the colony Greater Kailash Part I and abutting towards the east was Zamrudpur. On which side was land to be used to increase the width of the road to 80 feet? Was it on the west or was it on the east? Was it on both? If on both sides, was it equal? Was it unequal? Nobody has a clue. If required to be restored to the width of 80 feet, on which side would the encroachments exist?

17. In the absence of an approved lay-out plan modifying the lay-out plan approved in the year 1965, nobody would know what to do. How would the authorities defend the litigation initiated by those who oppose the demolition of their structures to make Nandi Vithi Marg 80 feet wide?

18. We had lamented hereinabove that when Committees are constituted by the Government to solve problems, they are either just not interested in solving the problem or lack the will to do so or probably lack the intelligence to

comprehend the issue which confront them.

19. We give proof of said opinion expressed by us.

20. The Government of NCT of Delhi has constituted a Public Grievance Commission. The residents of Zamrudpur had made a grievance registered as PGC/2007/MCD/Central/656 to the Public Grievance Commission on March 07, 2007 which was heard for the first time by the Public Grievances Commission on March 27, 2007. The record of the Commission would evidence that no plan could be produced before it by either the Delhi Development Authority or the Municipal Corporation of Delhi to resolve as to what was the width of Nandi Vithi Marg and in what manner the issue could be resolved. The record would evidence that it was at the asking of the Public Grievances Commissions that the officers of the Delhi Development Authority and the erstwhile Municipal Corporation of Delhi prepared a plan after surveying the Zamrudpur Complex and depicting thereon the existing buildings and the various roads. The site plan dated March 05, 2012 was drawn up. The record of the Public Grievances Commission would evidence that it was the common case of all authorities before the Commission that said plan would be treated as the approved lay-out plan. The record would evidence that the members of the Commission held as many as 24 sittings on various dates but failed to comprehend the issues which confronted them.

21. They got the Revenue Department officers to bring the revenue map of village Zamrudpur and were rightly informed that Nandi Vithi Marg would not be shown in the Sizra i.e. the revenue map of the village for the obvious reason the said road was to be laid down for the first time when the colony Greater Kailash Part I came up and an approved lay-out plan of the area was finalized in the year 1965. The Commission remained happy with inchoate material produced before it in the form of some acquisition resorted to of land in the revenue estate of village Zamrudpur so that the right of way of Nandi Vithi Marg could be 80 feet. The record of the Commission would show a reference

to some awards being made, but without the award number or the date thereof being noted by the Commission. The record produced before us would show that in the record of the meetings being minuted, a loose and laconic language has been used: ‘*as per acquisition process initiated in respect of Khasra Nos. 56, 74, 320/75’*.

22. A minutes drawn on June 24, 2013 would evidence that the Commission formed an opinion that at some stage Nandi Vithi Marg, as approved under a lay-out plan, was to have a width of 80 feet. That except for a portion of 360 meters the road has a width of 80 feet. The Commission found out that as per survey carried out in March 2008 by the Municipal Corporation of Delhi, 13 occupants could not produce title documents. The record of the Revenue Department evidence that no acquisition proceedings were ever initiated for land comprised in Khasra Nos.56, 74, 320/75 and that part of land comprised in said Khasras was necessary for width of Nandi Vithi Marg to be uniformly made 80 feet. The Commission noted that some part of land comprised in Khasra No.103 was required for laying Nandi Vithi Marg and that in respect thereof two suit Nos.261/2012 *Om Prakash Vs. DDA & Ors.* and 99/2013 *Sheesh Pal Vs. Delhi Sachivalaya & Ors.* were pending before the Senior Civil Judge at Saket Court Complex.

23. The Commission closed the proceedings.

24. Now, the Commission ought not to have closed the proceedings. The reason being that firstly the Commission ought to have conclusively determined and then issued directions as to on what side could Nandi Vithi Marg be expanded so as to have the right of way of 80 feet keeping in view that no acquisition was commenced for such lands comprised in Khasra Nos.56, 74, 320/75 but possibly were required for expansion of Nandi Vithi Marg. It was also the obligation of the Commission to have clearly got demarcated the 60 feet wide strip of land on which Nandi Vithi Marg was originally conceived of as per the approved lay-out plan of the year 1965 and in all probability the road

was laid at site. The Commission ought to have superimposed, on the same scale, the approved lay-out plan as of the year 1965 on the village revenue map and then determine the exact place where Nandi Vithi Marg would exist on being superimposed on the revenue map. This would have thrown light on whether such lands in Khasra Nos.56, 74, 320/75 which were un-acquired were on the 20 feet wide strip of Nandi Vithi Marg having width of 80 feet or was it that lands in said Khasra numbers also a part of the original 60 feet wide Nandi Vithi Marg. The Commission ought to have done so, so that if not having width of 80 feet, Nandi Vithi Marg could be restored to at least a width of 60 feet.

25. We then have a further problem, which the Commission could have resolved. The same was with respect to the strip of land between point A to B. As noted above in the approved lay-out plan drawn up in the year 1965 the road from point A to point Z did not exist. The road from point B to C did not exist. The road from point X to Y did not exist. But at some point of time the road between point B to C was laid and the road between point B to Z was also laid. Another road was laid between point X to Y. The third cul-de-sac ceased to be a cul-de-sac : having no dead end. Having the shape of a trapezium, a road branching at point C on the cul-de-sac, and moving in the southern direction till point B and then in the eastern direction to reach point X and therefrom in the northern direction to reach point Y, which is the dead end of the cul-de-sac. A road came into being.

26. The Commission could have, in the least, directed that what was frozen at the site as per the plan drawn up on March 05, 2012 could be formalized as the approved lay-out plan. For this, necessary directions ought to have been issued by the Commission. The further problem of the third cul-de-sac, which now at site is not a cul-de-sac; having no dead end at point Y, also having encroachments, could have been resolved by directing encroachments to be removed.

27. What appears to have happened is that a lay-out seems to have been prepared on January 14, 1976, having a road connecting point A to point Z on the site plan extracted by us hereinabove, but having no road between point B to C and point X to Y. Obviously said road from point A to Z was laid, evidenced by the fact that even today a road exists from point B to point Z. But thereafter at some point of time a road was laid between point X to point Y, which is parallel to the stretch of the hitherto before laid road from point A to point Z. Illegal encroachments appear to have been resorted to by some auto dealers.

28. In the absence of any approved lay-out plan having a co-relation to what exists at site emerging, we having nothing but chaos all around.

29. The writ petition has made no headway and the reasons are obvious. The absence of authentic record.

30. What is the way forward?

31. One way would be to treat the site plan drawn up on March 05, 2012, which shows what needs to be at site i.e. de facto to conform to de jure; meaning thereby to direct that the plan drawn up on March 05, 2012 should be finalized as the approved lay-out plan of the Zamrudpur Complex followed by such steps as are required to be taken to ensure that the width of the roads is as reflected in the said plan. The onward march would require encroachments to be removed and such of them which exists on Government land to be demolished forthwith for the reason the Delhi Laws (Special Provisions) Act, 2006, which has frozen any punitive action against illegal constructions which have come up in Delhi on or after January 01, 2006, does not extend a protective umbrella to illegal and unauthorized constructions on public lands which are meant for public streets except those which are protected by clause (c) of sub-Section 1 of Section 3 of the said Act; and we find that the protection is to encroachment by slum and JJ dwellers, by hawkers and vendors on public streets.

32. We are informed that maintenance of Nandi Vithi Marg has since been entrusted to the Public Works Department of the Government of NCT of Delhi.

33. The problem which would be faced now would be that the two suits filed by Om Prakash and Sheesh Pal, to which we have made a reference hereinabove, are being defended by the Delhi Development Authority, which as of today has no concern with the road. The records have been handed over to the erstwhile Municipal Corporation of Delhi and are now in the custody of the South Delhi Municipal Corporation, which also has no concern with the road. The authority which has the concern with the road i.e. the Public Works Department of the Government of NCT of Delhi, has no record with it. It is not even a defendant in the suit.

34. Regretfully, the Commission did not bother to look into this aspect of the matter and issue suitable directions for the two suits to be defended. What would happen in the future in the suits can be reasonably foreseen. The contesting party i.e. the Delhi Development Authority would be proceeded against ex-parte and the two suits would be decreed. Public interest would suffer.

35. Since a lot of factual issues need to be sorted out and administrative decisions to be taken, thereafter to be formalized as statutory decisions, we dispose of the writ petition issuing the following directions:-

(i) Nandi Vithi Marg would be restored to a uniform width of 60 feet at the first instance and all encroachments which come on the right of way of 60 feet shall be removed save and except, if affected by suit No.261/2012 and suit No.99/2013 pending before the Senior Civil Judge, Saket Court.

(ii) Proceedings before the Public Grievances Commission pertaining to grievance No.PGC/2007/MCD/Central/656 are revived with a direction to the Commission to pass further directions after ascertaining the record in light of the observations made hereinabove concerning the right of way of various roads in Zamrudpur.

(iii) The Public Grievances Commission would issue suitable directions for acquisition of land if required to have right of way of Nandi Vithi Marg to be 80 feet.

(iv) The Public Grievances Commission would issue suitable directions to authenticate and freeze the approved lay-out plan of the Zamrudpur Complex and would ensure that the same is notified to the public as required by the Delhi Development Act, 1957.

(v) Such other directions as would be necessary to give effect to the approved lay-out plan shall be issued by the Public Grievances Commission, and needless to state it would be the duty of the Commission to ensure compliance therewith.

(vi) The Government of NCT of Delhi through its Public Works Department would seek impleadment in suit No.261/2012 and suit No.99/2013 by filing appropriate applications pleading its interest in the litigation for the reason Nandi Vithi Marg is under the jurisdiction of the Public Works Department of the Government of NCT of Delhi.

(vii) The Delhi Development Authority and the South Delhi Municipal Corporation shall provide all documents as are required by the Public Works Department of the Government of NCT of Delhi to defend the two suits referred to in the preceding paragraph.

36. We observe that it would be open to the writ petition to seek impleadment in the two suits which we have referred to hereinbefore to ensure that the interest of the inhabitants of Zamrudpur Complex is adequately protected by the suits being properly defended and for which we observe that any application filed seeking impleadment would be decided by the learned Civil Judge keeping in view the observations made by us in the present order.

37. As regards the land occupied by respondents No.6 and 7, since they claim allotment under the Delhi Development Authority, we issue no directions concerning the dispute whether said respondents have encroached upon a green

area for the reason concededly said respondents have not trespassed on any land. They have allotments in their favour, and as of today since status of an approved lay-out plan is not emerging with clarity, it is not possible for us to record any finding that the site allotted to the two respondents was actually a green area. However, such areas which are now required to be maintained as a green area as per the site plan drawn up on March 05, 2012 shall be maintained as green areas.

38. No costs.

(PRADEEP NANDRAJOG)
JUDGE

(JAYANT NATH)
JUDGE

MAY 21, 2014
Mamta