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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Decision: 03.12.2019

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W.P.(C) 9438/2015 & CM No.22055/2015 (for stay)

**SUKHDEV VIHAR WELFARE ASSOCIATION
& ORS**

..... Petitioners

Through: Mr.Pawan Bahl, Adv. with Mr.S.N.
Mehrotra, Adv. & Mr.Sandhya
Chaturvedi, Adv.

Versus

GOVT. OF NCT OF DELHI & ORS

..... Respondents

Through: Mr.Satyakam, Adv. for R-1 & 2.
Mr.Santosh K. Tripathi, ASC with
Mr.Rajat Mangla, Adv. for R-3.
Mr.Arjun Pant, Adv. for R-4/DDA.
Mr.Hemant Dixit, Adv. for R-5.

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE C.HARI SHANKAR

JUDGMENT

D.N. PATEL, Chief Justice (Oral)

1. This public interest litigation has been preferred with the following prayers:-

“a) *Issue an appropriate writ/orders/direction including a writ of mandamus directing the respondent No.1 to 2 not to open Zonal Transport Office on the land allotted to DTC for Bus Depot in the vicinity of Sukhdev Vihar residential colony; and*

b) *Issue appropriate writ/orders/directions to the respondent No.5 to take action against the respondent No.1 and 2 for raising the unauthorized*

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construction on the land of DTC Depot, near Sukhdev Vihar residential colony; and

- c) Issue appropriate directions to the respondent No.4 not to allow any activity on Sukhdev Vihar Bus Depot other than for which the land was allotted to respondent No.3; and*
- d) Pass such further order as this Hon'ble court may deem fit and proper in the facts and circumstances of the case."* *(emphasis supplied)*

2. Thus, shifting of Regional Transport Office at Sukhdev Vihar area has given birth to this Public Interest Litigation. This petitioner does not want shifting of RTO Office, nearby his residence.

3. Counsel appearing for the petitioners submitted that an affidavit dated 10.03.2016 filed by the Delhi Development Authority - respondent no.4, reveals the fact that the Regional Transport Office (hereinafter referred to as "RTO") cannot be constructed by the respondent nos.1 & 2 at the Delhi Transport Corporation Depot Campus, situated at Sukhdev Vihar, New Delhi. Counsel appearing for the petitioners has also relied upon a reply to Right to Information Act, filed by the concerned respondent-authority which is at page 42 of the paper book, which reveals that permission of Delhi Transport Corporation (DTC) has not been obtained for the construction of "RTO" by the respondent nos.1 & 2. Thus, it is submitted by counsel for the petitioners that permission of the Delhi Transport Corporation-respondent no.3 is required for construction of "RTO" by the Government of National Capital Territory of Delhi-respondent nos.1 & 2, which has not been obtained so far.

4. It is further submitted by the counsel for the petitioners that as per Section 12 read with Section 13 of the Delhi Development Act, 1957, the construction of "RTO" by the respondent nos.1 & 2 at DTC Depot Campus, Sukhdev Vihar, New Delhi is not permissible in the eyes of law. Counsel for the petitioners has also relied upon an order passed by this Court on 18.02.2009 in WP(C) No.5466/2008 titled as "*Sukhdev Vihar Welfare Association Vs. GNCTD*". Furthermore, it is submitted by counsel for the petitioners that as per the affidavit filed by South Delhi Municipal Corporation-respondent no.5 dated 18.01.2016, part of the construction so far done by the respondent nos.1 & 2 of the "RTO" at Delhi Transport Corporation Depot Campus, Sukhdev Vihar, New Delhi is unauthorised, and therefore the said property has been sealed by the South Delhi Municipal Corporation.

5. Counsel for the petitioners has also taken to this Court to the various annexures of the affidavit filed by the South Delhi Municipal Corporation-respondent no.5 and has submitted that no steps have been taken by the respondent nos.1 & 2 for regularization of the construction and hence respondent nos.1 & 2 cannot continue with the construction of the "RTO" at Delhi Transport Corporation Depot Campus, Sukhdev Vihar, New Delhi. Therefore, respondent nos.1 & 2 may be permanently restrained from executing any construction at "RTO" at Delhi Transport Corporation Depot Campus, Sukhdev Vihar, New Delhi.

6. We have heard counsel appearing for respondent nos.1 & 2- Government of National Capital Territory of Delhi, who has

submitted that the construction of the "RTO" at Delhi Transport Corporation Depot Campus, Sukhdev Vihar, New Delhi, is extremely important in public interest. It is further submitted by counsel for the respondent nos.1 & 2 that initially "RTO" was situated at Sheikh Sarai, New Delhi. Looking to the public need and as per the policy decision taken by the respondent nos.1 & 2, the same is required to be shifted at two different places viz.-

- (a) Vasant Vihar, New Delhi.
- (b) Delhi Transport Corporation Depot Campus, Sukhdev Vihar, New Delhi.

7. Furthermore, it is submitted by counsel for the respondent nos.1 & 2- Government of NCT of Delhi that due to the stay granted by this Court vide order dated 14.03.2016, the "RTO" has been started at Sarai Kale Khan, New Delhi but respondent nos.1 & 2 are also having a big Depot Campus of Delhi Transport Corporation-respondent no.3 at Sukhdev Vihar, New Delhi and respondent nos.1 & 2 wants to start the "RTO" within the Depot Campus of Delhi Transport Corporation in accordance with Master Plan for Delhi, 2021 and in accordance with the building by-laws of the concerned Corporation viz. South Delhi Municipal Corporation-respondent no.5. It is also submitted by counsel for the respondent nos.1 & 2-Government of NCT of Delhi that this litigation at the behest of these petitioners, is not tenable in law as the will and wish of the petitioners cannot stand against the public need and against the policy decision of the concerned respondent authorities. In fact, these petitioners are staying within the "gated colony" at Sukhdev Vihar, New Delhi and in nearby there is a

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separate existing Delhi Transport Corporation Depot Campus and in that Depot Campus, which is belonging to the respondent no.3, respondent nos.1 & 2-Govt. of NCT of Delhi wants to start "RTO".

8. It is submitted by counsel for the Govt. of NCT of Delhi that Delhi Transport Corporation-respondent no.3 has no objection to allow the respondent nos.1 & 2, to start "RTO" within their Depot Campus. **Hence, the petitioners cannot be wiser than the original owner-respondent no.3** within who's Depot Campus, the "RTO" is to be started by the respondent nos.1 & 2. Substantial public interest and need lies in favour of the respondent nos.1, 2 and 3. The petitioners cannot decide individually, singly and as per their whims and caprice as to where the "RTO" is to be started by the respondent nos.1 & 2. In fact, this falls within the ambit of sovereign function and authority of the respondent nos.1, 2 & 3 and hence individual interest should be given a go-by against the interest of the public at large. Hence, this petition may not be entertained by this Court. The owner of the Delhi Transport Corporation Depot Campus is the respondent no.3 where the "RTO" is to be started by the respondent nos.1 & 2 and hence at the highest, DTC-respondent no.3 can take objection against the same and not any other person like the petitioners, that too, in a so called public interest litigation and hence also this writ petition may not be entertained by this Court.

9. We have also heard the counsel appearing for the Delhi Transport Corporation-respondent no.3. Counsel appearing for the Delhi Transport Corporation vehemently submitted that they are the actual owner of the Depot Campus where "RTO" is to be started by

the respondent nos.1 & 2. They are capable enough to protect their right, title and interest in the property in question. It is also submitted by counsel for the respondent no.3 that initially in this writ petition, an affidavit was filed by them on 02.03.2017 and on the basis of paragraph 2 thereof, it is submitted that **the construction of the "RTO" is in consonance with the Master Plan for Delhi - 2021.**

The provisions of the Master Plan have been pointed out in paragraph-2 in the said affidavit of Delhi Transport Authority who is the owner of the Delhi Transport Corporation Depot Campus where "RTO" is to be started by the respondent nos.1 & 2. It is submitted by counsel for respondent no.3 **that if the respondent nos.1 & 2 wants to start their "RTO" within the Depot Campus of respondent no.3, they have no objection at all whatsoever.** Such type of construction of "RTO" is absolutely in accordance with the provisions of Delhi Development Act, 1957 to be read with Master Plan for Delhi 2021. This aspect of the matter has been highlighted in their affidavit dated 02.03.2017 filed in this writ petition.

10. Looking to the affidavit dated 02.03.2017 filed by the respondent no.3 and the submissions made by the counsel for the respondent no.3, it seems that the owner of the Delhi Transport Corporation Depot Campus has no objection if the "RTO" is started by the respondent nos.1 & 2 in the Depot Campus of respondent no.3. Hence, the petitioners cannot be wiser than the actual owner of the Delhi Transport Corporation Depot Campus. Moreover, the respondent no.3 is quite capable to protect its right and hence there is no need of these petitioners to file such type of petition much less a

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public interest litigation.

11. We have also heard the counsel appearing for the Delhi Development Authority-respondent no.4 who has submitted that they have no objection if the respondent nos.1 & 2 are constructing the "RTO" within the Depot Campus of the DTC situated at Sukhdev Vihar, New Delhi.

12. It is further submitted by counsel for the DDA-respondent no.4 that earlier an affidavit was filed by them on 10.03.2016 in this writ petition. Since said affidavit was not in accordance with the proper interpretation of provisions of the Master Plan of Delhi-2021 and hence a new and corrected affidavit dated 20.02.2018 has been filed by the Delhi Development Authority-respondent no.4 (Page No.153) and as per this affidavit, the construction of the "RTO" within the Depot Campus of Delhi Transport Corporation at Sukhdev Vihar, New Delhi, is absolutely in consonance with the Master Plan for Delhi-2021 and Delhi Development Act, 1957. Therefore, Delhi Development Authority has no objection if the "RTO" is being shifted by the respondent nos.1 & 2 within the Delhi Transport Corporation Depot Campus at Sukhdev Vihar, New Delhi. It is further submitted by the counsel for respondent no.4 that the provisions of the law for the said purpose has been pointed out in their second affidavit dated 20.02.2018 filed in this writ petition.

13. We have also heard the counsel appearing for the South Delhi Municipal Corporation-respondent No.5, who has submitted that if the construction of "RTO" by the respondent Nos.1 & 2 within the Delhi Transport Corporation Depot Campus is as per the building by-laws



and as per the building Rules, they have no objection because the construction of the "RTO" is to be done within the Depot Campus of Delhi Transport Corporation. The role of the South Delhi Municipal Corporation is only to the extent that the nature of the construction should be as per the building bye-laws and building rules applicable to the facts of the case. If there is any slight deviation in the existing construction of the "RTO" at Delhi Transport Corporation Depot Campus Sukhdev Vihar, New Delhi then the respondent nos.1 & 2 can put their house in order-

- (a) either by applying for regularization of the existing construction;
- (b) by changing the construction so that it may fall within the four corners of building by-laws or the existing building rules; &
- (c) if any exemption is allowed for the construction of "RTO" by the Government then such application may be preferred by the respondent nos.1 & 2 before respondent no.5 and the same will be appreciated in accordance with law, rules, regulations and Government policy.

14. It is further submitted by counsel for South Delhi Municipal Corporation-respondent no.5 that principally they have no objection at all for transfer of the "RTO" to the Delhi Transport Corporation Depot Campus, Sukhdev Vihar, New Delhi so long as the construction for the "RTO" is done in accordance with the building by-laws and building rules applicable to the facts of the case.

15. Having heard the counsel for both sides and looking to the facts and circumstances of the case, it appears that there is a DTC Depot Campus which is situated at Sukhdev Vihar, New Delhi. As per the **policy decision** taken by the respondent nos.1 & 2, which was situated at Sheikh Sarai, New Delhi is required to be shifted at-

- (a) Vasant Vihar, New Delhi.
- (b) Delhi Transport Corporation Depot Campus, Sukhdev Vihar, New Delhi.

16. Thus, the decision taken by the respondent nos.1 & 2 to shift **"RTO Office"** is a policy decision of the respondent nos.1 & 2- Government of NCT of Delhi. This decision is taken by them in public interest. Looking to the public need and administrative exigencies, the shifting of the "RTO" **is always permissible in the eyes of law**. This Court in exercise of the powers under Article 226 of the Constitution of India, is not inclined to restrain respondent nos.1 & 2 from shifting the "RTO" because they are the best authority to decide where "RTO" requires to be shifted or not looking to the development of the city of Delhi.

17. It further appears from the facts of the case that these petitioners who are staying in a "gated colony", have preferred this public interest litigation for permanently restraining the respondents- authorities from shifting their "RTO Office" at DTC Depot Campus, Sukhdev Vihar, New Delhi. The stay has been granted by this Court vide order dated 14.03.2016. Thus, the shifting of the **"RTO Office"** by Government of NCT of Delhi at DTC Depot Campus, Sukhdev Vihar, New Delhi could not be done.

The said stay is continued since March, 2016 till today. Looking to the pressing need of the society, the **"RTO Office"** has now been shifted at Sarai Kale Khan, New Delhi, but, as per the arguments canvassed by respondent nos.1 & 2, still they want to start "RTO" within the Depot Campus of Delhi Transport Corporation, at Sukhdev Vihar, New Delhi. The Delhi Transport Corporation Depot Campus is owned by respondent no.3 and it is basically situated at land allotted by the Delhi Development Authority and managed by respondent no.3. **Neither respondent no.3 nor Delhi Development Authority-respondent No.4 have any objection for shifting the "RTO" within the Delhi DTC Depot Campus, Sukhdev Vihar, New Delhi. Hence we see no reason to entertain this petition which deserves to be dismissed.**

18. Much has been argued out by the counsel for the petitioners about the so called violation of Master Plan of Delhi-2021, if the "RTO" is permitted to be shifted at Delhi Transport Corporation Depot Campus, Sukhdev Vihar, New Delhi. We are not in agreement with this contention of the petitioners, looking to the affidavit filed by the Delhi Development Authority-respondent no.4 dated 28.02.2018, paragraph 2 & 3 thereof reads as under:-

"2. In this regard, it is humbly submitted that there is no specific mention of use/use premise namely "Regional Transport Office" (RTO) in Master Plan for Delhi (MFD) - 2021. However, as per Table 12.7 of Chapter 12.0 Transportation, the "Administrative Office" & "Other . Offices" are permissible activities in Bus Terminal/Bus Depot

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use allotted for premise under Transportation use zone. Land allotted for Bus Depot, the Regional Transport Office as part of "Other Offices" based on the Development Control Norms as specified in Table 12.7 of MPD-2021 is a permissible activity. As per Master Plan Table 12.7 development controls for transportation. RTO office can be accommodated within the Bus Depot premises.

3. There is no other land earmarked for Transportation use zone except Bus Depot adjoin CRRRI along Mathura Road in Sukhdev Vihar."

19. In view of the aforesaid provisions of the Master Plan for Delhi-2021, construction of the "RTO" within Delhi Transport Corporation Depot Campus of respondent no.3 is always permissible in the eyes of law. There is no violation of the Master Plan for Delhi-2021 nor there is any violation of Delhi Development Act, 1957.

20. Looking to the arguments canvassed by counsel for the Delhi Transport Corporation-respondent no.3, who has also filed their affidavit dated 17.03.2017, it appears that they have also no objection if the "RTO" is shifted to their Depot Campus situated at Sukhdev Vihar, New Delhi.

21. Looking to the earlier order passed by this Court in WP(C)No.5466/2008 dated 18.02.2009 upon which the reliance is placed by counsel for the petitioners, it appears that shifting of the "RTO" from one place to another by Government of NCT of Delhi is not in violation of the Delhi Development Act, 1957 and much less which can be in violation of the Master Plan for Delhi - 2021. Shifting of the "RTO" is a policy decision taken by the respondent

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nos.1 & 2 for which neither respondent no.3 nor respondent no.4 have any objections and hence also this petition deserves to be dismissed.

22. So far as the nature of the construction of the building is concerned, it is expected from respondent nos.1 & 2 that they shall construct the building in accordance with the building by-laws and the building Rules applicable to the facts of the case. If there is any existing construction of the "RTO" within the Delhi Transport Corporation Depot Campus, Sukhdev Vihar, New Delhi and if there is any irregularities in the said construction, the respondent nos.1 & 2 will put their house in order, either by getting it regularized or can place a revised maps/ plans for the construction, but, the facts remains that the respondent nos.1 & 2 shall construct "RTO" as per the existing building by-laws and the building Rules of the concerned Corporation, namely, South Delhi Municipal Corporation.

23. It also appears that this petition is not a public interest litigation at all. The "RTO" is to be shifted from one place to another by the Government of NCT of Delhi. A conscious decision has been taken by the respondent nos.1 & 2 which is a policy decision of the respondent nos.1 & 2. The Court will be extremely careful and conservative in interfering with the policy decision of the respondent nos.1 & 2 especially while exercising the powers under judicial review. There is no violation of any of the fundamental rights. There is no violation of the rights of the petitioners much less any fundamental rights. In fact this is a publicity interest litigation. The individual interest should be given a go-by against the public interest especially when a policy decision is being taken by the respondent

nos.1 & 2 for shifting of the "RTO" at Delhi Transport Corporation Depot Campus of the respondent no.3 and when neither Delhi Transport Corporation-respondent no.3 nor Delhi Development Authority-respondent no.4 have any objection for shifting of the "RTO" at Delhi Transport Corporation Depot Campus, Sukhdev Vihar, New Delhi.

24. For the aforesaid facts and reasons, there is no substance in this writ petition and the same is hereby dismissed. Stay granted by this Court vide order dated 14.03.2016 is hereby vacated.


CHIEF JUSTICE


C.HARI SHANKAR, J.

DECEMBER 03, 2019

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