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IN THE HIGH COURT OF DELHI AT NEW DELHI

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W.P.(C) 313-19/2005 & CM APPL. 19953/2015

AMRIT LAL GHAI AND ORS. Petitioners

Through Mr. Kirti Uppal, Senior Advocate
with Ms. Prema Priyadarshini,
Mr. Praoyot Pravash and Ms. Wamika
Trehan, Advocates

versus

D.D.A. AND ORS.

..... Respondents

Through Mr. Arjun Pant, Standing Counsel for
DDA.
Mr. Naushad Ahmed Khan, Addl.
Standing Counsel (Civil) for Govt.
NCTD of Delhi.

WITH

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W.P.(C) 3818/2014 & CM APPL. 7679/2014

RADHEY SHYAM AND ORS. Petitioners

Through Ms. Prema Priyadarshini, Advocate

versus

UNION OF INDIA AND ORS. Respondents

Through Mr. Ripu Daman Bhardwaj, CGSC
with Mr. T.P. Singh, Advocate for
R-1/UOI.
Mr. Arjun Pant, Standing Counsel for
DDA.
Mr. Naushad Ahmed Khan, Addl.
Standing Counsel (Civil) for Govt.

NCTD of Delhi.
Mr. Mukesh Gupta, Standing Counsel
for SDMC.

AND

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+ W.P.(C) 3846/2014 & CM APPL. 7749/2014

BAL KISHAN Petitioner
Through Mr. Rahul Rajpal, Advocate

versus

DELHI DEVELOPMENT AUTHORITY
AND ORS

..... Respondents
Through Mr. Pawan Mathur, Standing Counsel
for R-1/DDA.
Mr. Gursharan Singh, Advocate for
R-2 and 3.
Mr. Ripu Daman Bhardwaj, CGSC
with Mr. T.P. Singh, Advocate for
R-5/UOI.
Mr. Mukesh Gupta, Standing Counsel
for SDMC.

AND

24.

+ W.P.(C) 7372/2014 & CM APPL. 17234/2014

HARJEET SINGH AND ANR. Petitioners
Through Ms. Prema Priyadarshini, Advocate

versus

UNION OF INDIA AND ORS. Respondents

Through Mr. Bhagvan Swarup Shukla, CGSC
for R-1/UOI.

Mr. Satyakam, Addl. Standing
Counsel (Civil) with Mr. Nikhil
Bhardwaj, Advocate for R-2 &
3/GNCTD.
Mr. Sanjeev Sabharwal, Standing
Counsel for DDA.
Mr. G.D. Mishra, Standing Counsel
for R-4/SDMC.

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Date of Decision : 7th October, 2015

CORAM:
HON'BLE MR. JUSTICE MANMOHAN

J U D G M E N T

MANMOHAN, J: (Oral)

1. Present batch of writ petitions has been filed seeking a direction to respondents not to demolish residential houses/properties of the petitioners at K Block, Krishna Park Extension and Mahavir Nagar, Tilak Nagar, Outer Ring Road, New Delhi-110018.
2. Mr. Kirti Uppal, learned senior counsel for petitioners states that respondents have not acted in accordance with the order dated 11th December, 2003 passed by HMJ Sanjay Kishan Kaul while disposing of writ petition being W.P.(C) 2006/1997. He states that survey has not been carried out in accordance with the regularisation plan and consequently, road widening after demolishing properties of the petitioners is impracticable. He urges that encroachment on public land has been done by the residents of either Anand Kunj Society or Gujarawalan Society and not by the petitioners.

3. Mr. Naushad Ahmed Khan, learned additional standing counsel appearing for Government of NCT of Delhi states that the mandate given by HMJ Sanjay Kishan Kaul in the order dated 11th December, 2003 has been complied with inasmuch as a survey has been carried out in accordance with the regularisation plan by TSM method. He points out that there is encroachment by the petitioners in the form of commercial shops on 200 ft. wide road shown in the regularisation plan dated 22nd April, 1983.

4. Since both parties had not produced the regularisation plan dated 22nd April, 1983, they were directed to place on record the same. Today in Court, they have handed over a copy of the said plan duly signed by learned counsel for petitioners and respondent-Govt. of NCT of Delhi along with footnote and same is taken on record in W.P.(c) No.313-19/2005. In the opinion of this Court, the location of K-145 is irrelevant to the issue of construction of ring road which is shown independently on the plan.

5. This Court is of the opinion that HMJ Sanjay Kishan Kaul by his order has given a mandate to the respondents to construct the 200 ft. wide road in accordance with the regularisation plan. The said order has attained finality. Consequently, the same is binding upon all the parties. The order dated 11th December, 2003 passed by the HMJ Sanjay Kishan Kaul in W.P.(C) 2006/1997 is reproduced hereinbelow:-

“The petitioners have impugned the letter dated 25.4.1997 of PWD Department of the Government of NCT of Delhi stating that there is illegal possession of land comprised in the road and that the possession has to be removed. The aforesaid letter was issued in view of the project for road widening and the apathy of the respondent department has resulted in a situation where this project is a stand still for the last six years. The land in question was acquired in terms of award No.20/73-74 and was placed at

the disposal of the PWD Department on 2.7.1975. The area was declared as a developmental area but in terms of notification dated 13.7.1987 the area was denotified as a developmental area. Learned counsel for the petitioner referred to the notification in terms whereof the area was denotified. The denotification is limited to the issue of the developmental area and the land as such acquired was never denotified. A colony in the meantime was constructed on the land and in terms of a regularisation plan, the colony is stated to have been regularised. The regularisation plan shows 200 ft. wide road which had to be constructed and apparently at the stage of regularisation there was not really much problem of encroachment on that road. This is stated to have been arisen subsequently. Learned counsel for the petitioner contends that the alignment of the road was such that only a few properties were being affected and other properties which are now sought to be demolished were not to be affected by the road widening. This submission is based on the regularisation plan. The respondents have filed their plans though the regularisation plan filed by the petitioner is not disputed. In terms of the plans filed by the respondents, it is stated that extensions have been made by persons and certain properties are affected which would require to be removed for the road widening. The aforesaid aspect was taken up in the present petition as far back on 27.2.97. It was noticed that there was even a PWD office (stated to be temporary at that stage of time) which was falling in the road way. The PWD Department has stated that the same would also be removed but learned counsel for the petitioner states that now it is permanent structure. In terms of the directions passed on the said date, the PWD was directed to file a bigger plan of the particular block. This plan has however not been filed and the affidavit filed by the DDA really relies upon regularisation plan filed by the petitioner.

In my considered view all that required to be done is that a survey has to be made and whatever falls within the road widening has to be removed. It has to be appreciated that the land in question in fact was acquired and the question whether

any one has taken compensation or not as raised by learned counsel for the petitioner is immaterial for the present proceedings. The regularisation plan itself envisages a particular width of the road and the bottlenecks cannot be created in the said project. There is also an element of public interest involved as traffic create bottlenecks in the area in question. It may also be noticed that the photographs show that the properties are being used for commercial purpose. The regularisation was for a residential user. It is not clear as to whether this commercial user is as per authorisation given by an authority and as per any modified user plan. If it is so no further direction is required. But in case there is commercial user contrary to the prescribed user then it would call for forthwith action by the concerned authorities.

The respondents No.2 and 3 which are the concerned respondents are thus directed to carry out a survey of the area within a maximum period of two months taking the basis as the regularisation plan and proceed thereafter for the construction of the road by removing all the structures which fall within the road widening project. The petitioner can supply necessary documents within 15 days. It may be noticed that some trunk load documents have been filed which respondents No.2 and 3 is directed to collect from the Registry against receipt. The writ petition stands disposed of with the aforesaid directions.”

6. From the aforesaid, it is apparent that even the regularisation plan relied upon by the petitioners itself shows a 200 ft. wide encroachment free road. HMJ Sanjay Kishan Kaul had directed that a survey be carried out on the basis of regularisation plan and further that whatever encroachment falls within the 200 ft. wide road be removed. In the said order it had been emphasised that by way of the regularisation plan only a residential colony had been regularised and not commercial encroachment on the proposed road.

7. Learned Judge had also pointed out that there was also an element of public interest involved in the present proceedings.

8. Consequently, this Court is of the opinion that the issue raised in the present writ petitions are barred by principles of *res judicata*.

9. As far as the factual disputes, i.e., whether survey is in accordance with the regularisation plan or whether petitioners or Anand Kunj Society or Gujrawalan Society have encroached upon the public land, this Court is of the view that they are in the nature of disputed questions of fact which cannot be adjudicated in the present proceedings.

10. As construction of Ring Road which is a major infrastructural project has been delayed because of the pending petitions, all respondents are directed to cooperate with each other and are directed to complete the construction of 200 ft. wide road in accordance with the regularisation plan immediately. In the event any demolition is to be carried out for construction of the said road, respondents are directed to take action in accordance with law.

With the aforesaid directions, present batch of writ petitions and applications stand disposed of and all interim orders stand vacated. Order dasti.

MANMOHAN, J

OCTOBER 07, 2015

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