

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

+ **W.P.(C) 5481/2011**

Pronounced on: October 20, 2015

ANAND ARYA AND ANR Petitioners

Through: Mr.Shanti Bhushan, Sr.Adv. with
Ms.Reena George, Adv.

Versus

GOVT. OF NCT OF DELHI AND ORS Respondents

Through: Mr.Arun Panwar, Ms.Aayushi Gupta,
Advs. for Mr.Raman Duggal, Standing Counsel
for GNCT of Delhi.

Ms.Avnish Ahlawat, Adv. with Ms.Latika
Chaudhary, Adv. for DTC/Applicant.

Mr.Rajiv Bansal, Adv. with Mr.Anukrit Gupta,
Ms.Arпита, Ms.Sriparna, Advs. for DDA.

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE JAYANT NATH

J U D G M E N T

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Ms. G. ROHINI, CHIEF JUSTICE

C.M.No.12299/2015 (for directions)

1. W.P.(C) No.5481/2011, filed as a public interest litigation was disposed of along with W.P.(C) No.3479/2010 by order dated 13.09.2012.

2. The said petitions were filed opposing the construction of Bus Depot on an area situated next to Nizamuddin Bridge and Behind I.P. Power Station contending *inter alia* that the area over which the construction of Bus Depot was taken up being river flood plain, no construction is

permissible under Master Plan – 2021 and that there was no permission from the DDA.

3. After hearing both the parties, the writ petitions were disposed of by order dated 13.09.2012 holding:

“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.”

(emphasis supplied)

4. Be it noted that even by the date of the filing of the said writ petitions, the construction of Bus Depot was underway. As could be seen from the

order dated 13.09.2012, the construction was subsequently completed and the Bus Depot called 'Millennium Bus Depot' has been functioning.

5. The present application came to be filed by the Delhi Transport Corporation (DTC) seeking extension of time by another six months so as to enable DTC to approach DDA for change of land use. It is pleaded in the application that after the disposal of the writ petitions, though steps have been initiated for change of land use, the same could not be finalized so far. It is explained that in view of the orders passed by the National Green Tribunal while dealing with the issues of Air Pollution, more number of public transport buses have been added by DTC and, therefore, GNCT of Delhi had also requested DDA to take expeditious steps for change of land use of Millennium Bus Depot in conformity with the existing use. A request has also been made to provide about 500 acres of land for construction and maintenance of a new Bus Depot since more space is required by DTC to accommodate the fleet of additional buses acquired in terms of the directions of the National Green Tribunal. Since, the proceedings initiated by DDA for change of land use are still in progress, further extension of time of six months is required.

6. The application has been opposed by the writ petitioners stating that they filed a contempt petition being CCP No.474/2013 in which DTC had given an undertaking on 23.01.2014 to shift the Bus Depot away from the river bed by 31.10.2014.

7. A detailed counter affidavit has also been filed by DDA stating that the objections/suggestions received in response to the public notice dated

17.04.2013 were heard by the Board of Inquiry constituted by the Government of India vide notification dated 08.08.2012 and in pursuance thereof DDA by letter dated 14.08.2013 informed the DTC about the conditions to be complied with to enable DDA to take further steps under Section 11A of DDA Act and the Rules made thereunder. In the meanwhile, by letter dated 02.09.2013 addressed by Land & Development Office, Government of India, DDA was informed that the DTC did not have any formal allotment in its favour and, therefore, it was asked to hand over the possession of the land back to Land & Development Office. Thereafter, several meetings were held between the officials of DTC, GNCTD and DDA for relocation of the Millennium Bus Depot and certain sites were identified. There were also directions by the National Green Tribunal to the authorities of DDA, Municipal Corporations and GNCTD to take immediate and effective steps for re-possessing the flood plain area under the unauthorized and illegal occupation of any person and/or any other body. Thus, it was submitted by DDA that the change of land use of the area in question from 'river and water body' to 'transportation for DTC Bus Depot' could not be processed. Consequently, the DDA allotted three sites for relocation of Millennium Bus Depot from Zone-O after notifying the change of land use vide notification No.S.O.770(E) dated 16.03.2015. The following are the details of the land so allotted:-

S.No.	Location	Area (acre)
1.	Rohini, Phase-V, Rani Khera (Zone-M&N)	20
2.	Anand Vihar, Integrated Passenger Terminal (IPT)	16.33
3.	Narela	10
	Total:	46.33

8. Having heard the learned counsel for both the parties and having perused the material available on record, particularly the response of DDA, it appears to us that the steps taken for change of land use in the Master Plan failed. The six months' time granted to the respondents was only for the purpose of taking steps for change in the Master Plan. What should follow in those circumstances was also mentioned by this Court in the order dated 13.09.2012 in W.P.(C) No.5481/2011. Now that DDA states that it is not possible for changing the land use in the Master Plan and that alternative lands have also been allotted to DTC, we do not find any justifiable reason for granting extension of time as sought by DTC, particularly in view of the fact that the six months' time granted by this Court had expired long back. We have also taken note of the fact that DTC has given an undertaking before this Court in Contempt proceedings to hand over the land in question within stipulated period. In the light of the said undertaking, the present application filed for extension of time long after the expiry of the time initially granted is nothing but abuse of process of the Court.

9. For the reasons mentioned above, the applicant is not entitled for extension of time as prayed for and accordingly, the application is dismissed.

CHIEF JUSTICE

JAYANT NATH, J

OCTOBER 20, 2015

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