

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

% Judgment delivered on: 15.01.2015

+ **WP(C) 5239/2014**

KANGRA ADARSH COOPERATIVE GROUP
HOUSING SOCIETY LTD.

..... Petitioner

Versus

GOVT. OF NCT OF DELHI & ANR.

..... Respondents

Advocates who appeared in this case:

For the Petitioner: Mr P.S. Rana, Adv.

For the Respondents: Mr Amiet Andley, Adv. with Mr Ravinder Yadav,
Executive Engineer, PWD

CORAM:
HON'BLE MR. JUSTICE RAJIV SHAKDHER

RAJIV SHAKDHER, J

1. The point of attrition in the present writ petition is the elevated signal-free corridor being constructed on the outer ring road, which stretches from Vikas Puri to Mukarba Chowk (hereafter referred to as the elevated corridor). The petitioner society is aggrieved by the action of respondent no.1 [which in effect is represented by the Public Works Department (in short the PWD)], whereby it has taken a decision to shift the elevated corridor eight (8) metres from the central verge.

1.1 The petitioner society, in effect, says that this decision of respondent no.1 would adversely impact the interest of its members, who are residents of the Housing Complex built in the vicinity (in short the Housing Complex), on account of the following:

(i) While the elevated corridor continues to align with the central verge

between Vikas Puri and Meera Bagh, a shift of nearly eight (8) metres from the central verge takes place at a point where the corridor reaches the area which is in close proximity to the Housing Complex. According to the petitioner society, this has been done to benefit certain business persons, who are dealers in second-hand cars.

(ii) The elevated corridor could in fact be shifted on the other side of the central verge, where illegal encroachments obtain on public land.

(iii) The said decision has resulted in removal of green zone, which abutted the boundary wall of the Housing Complex in issue.

(iv) The impugned decision has also resulted in uprooting of a bus-stop, which was positioned just outside the Housing Complex in issue.

(v) The proposal to remove the over-head electricity and telephone wires, gas pipes, drinking water pipes, etc., and to install the same below the surface of the earth, is dangerous and hazardous.

(vi) The proposed height of the elevated corridor will result in blockage of ventilation and light.

2. Upon notice being issued, respondent no.2, i.e., PWD has filed its return, which is also relied upon by respondent no.1. The petitioner has filed a rejoinder to the said counter affidavit.

3. Learned counsels for the parties have argued their case based on the stand taken in their respective pleadings. Mr Rana, who appears for the petitioner, has assailed the decision of PWD, to shift the elevated corridor by eight (8) metres from the central verge, on the aforementioned grounds indicated in the pleadings.

3.1 Learned counsel emphasized that in fact there is a large mass of land on the other side of the central verge, which is illegally encroached upon, and that, therefore shifting of the corridor towards the Housing Complex,

was not at all necessary.

3.2 Learned counsel for the petitioner, vehemently pressed for appointment of an expert, to ascertain as to whether or not, it was necessary to shift the elevated corridor in the manner it was sought to be done by the PWD.

4. The learned counsel for PWD was assisted by Sh. Ravidner Yadav, Executive Engineer. He informed the court that there was sufficient buffer of nearly 17.5 metres available between the embankment wall of the elevated corridor and the boundary wall of the Housing Complex.

4.1 Mr Yadav submitted that under the Master Plan for Delhi, there is a provision for creation of an outer ring road having a Right of Way (ROW) of 60 metres, and that, land for this purpose was acquired in 1973-1974. He stated that this land was handed over by DDA to PWD on 25.09.1974.

4.2 It was further contended that due to pressure of population and increase in the number of vehicles, and therefore, to ease the movement of traffic, a proposal was formulated for construction of an elevated signal-free corridor, as indicated above, from Vikas Puri to Mukarba Chowk, with a thirty (30) metre width on either side of the central line, comprising of three (3) lanes on either side, both at the ground and elevated level.

4.3 The proposal thus envisages, according to Mr Yadav, a ramp area of 12.6 metres; a 9.9 metre carriage way at ground level, with 1 metre footpath, 1.5 metre footpath-cum-drain and 5 metre service lane, alongside the boundary wall of the Housing Complex.

4.4 Mr Yadav further informed the court that since unauthorized occupants were positioned on the road, on which the elevated corridor was proposed, PWD, in order to avoid objections being raised, in future, by various interests groups, obtained, in February, 2013, demarcation of the

ROW of 60 metres of the outer ring road from Vikas Puri to Meera Bagh.

4.5 This demarcation was carried out by Sub-Divisional Magistrate, Patel Nagar with the assistance of the revenue and the planning department of DDA. He stated that a physical verification of the area was also carried out, by using a “total station machine”.

4.6 Mr Yadav thus stated that the central line of the corridor was fixed keeping in mind the demarcation of the ROW. The demarcation drawing, according to Mr Yadav, bears this out.

4.7 He further submitted that all pillars, along the corridor, have been constructed as per the approved drawings and, therefore, shifting the pillars, as sought for by the petitioner society, was not a feasible option.

5. I was also informed that the residents of the petitioner society had also approached the National Green Tribunal (NGT), which disposed of original application no. 149/2013 as also certain interlocutory applications, with directions contained in its order dated 04.09.2014. Those directions, inter alia, have been incorporated in the execution of the project. This fact is not disputed by the counsel for the petitioner society.

5.1 I was further informed that the PWD has, as per the directions of NGT, also obtained the approval of the Forest Department to uproot trees, which fell in the way of the corridor.

5.2 Furthermore, Mr Yadav stated that there is a provision to construct a foot over bridge, along with a lift, at a distance of about 242 metres from the gate of the Housing Complex. This apart, I was told, that there is also a proposal to build two bus queue shelters at a distance of 351 and 340 metres, respectively, from the gate of the Housing Complex.

5.3 Allegations with regard to the decision being coloured, in as much as, they were taken at the behest of persons having business interest in the area,

were denied.

6. I have heard the learned counsel for the parties and perused the record. According to me, no doubt, the impugned decision would have caused some amount of consternation to the residents of the Housing Complex, the discomfort caused, will, however, have to be appreciated in the background of the traffic congestion in the area. The petitioner society's interest will have to yield in the face of a larger public interest.

7. The affidavit filed on behalf of PWD, i.e., respondent no.2, would show that there is a buffer of nearly 17.5 metres between the boundary wall of the Housing Complex, and the embankment wall of the elevated corridor. There is also provision for footpath, which is, nearly 2.5 metres wide, with a separate carriage way for vehicles, having a width of 9.9 metres. This apart, there is a service lane of, nearly, 5 metre width provided for. Thus, in effect, the effective distance between the ring road and the boundary wall of the Housing Complex, is nearly 7.5 metres, if one were to include the space provided for the footpath as well.

7.1 For all these reasons, I am unable to accept the contention of the petitioner society that the elevated corridor is abutting the boundary wall of the Housing Complex.

8. Furthermore, the provision of foot over-bridge, along with a facility for a lift, as also the proposal to construct two bus shelters, should allay the apprehensions of the residents of petitioner society that the pedestrians generally, and those, living in the vicinity, would find it difficult to cross over to the other side of the elevated corridor.

9. In so far as apprehension of the petitioner society with regard to underground provisioning of utility services is concerned, the same is completely misplaced. In most developed countries, utility services are

generally provided for, below the surface of the earth. Therefore, the proposal to place Delhi Jal Board's pipe lines, the IGL gas pipe lines, and electricity cables, below the surface of the earth, cannot be found fault with. One of the reasons, why this step is taken is to prevent illegal abstraction of water, gas and electricity by delinquent persons/ entities.

10. Though not argued, but on a perusal of the petition, it is found that there is an assertion to the effect that there are two religious structures in the path of the corridor which are under execution. The stand of PWD, in this behalf, is that, the matter has been submitted to the Religious Committee constituted for the said purpose. Needless to say, the PWD would proceed ahead only after obtaining relevant approval in that behalf, if the same has not already been obtained.

11. In so far as removal of encroachments in the area is concerned, I am informed that there are writ petitions filed in this court, in which, interim orders have been passed. The PWD, therefore, can proceed with work qua those areas, only upon resolution of disputes raised therein.

12. The photographs placed on record show that a substantial quantum of work has already been executed. Having regard to the same, any further delay would obviously lead to further escalation of costs. A 2011 PWD report placed on record by the petitioner would show that the preliminary estimate of the work for the stretch of outer ring road between Vikas Puri and Meera Bagh was estimated at Rs. 559.60 crores. In view of various impediments placed in the way of execution of this project, it is obvious that the costs would have increased, substantially, by now.

12.1 The petitioner society has relied upon the said PWD report to contend that the proposal was to provide for a fourteen (14) metre buffer between the gate of the Housing Complex and the ring road. According to me, this

argument ignores the fact that even according to the petitioner, this was a report which was approved as far back as in 2011, and since then, much time has elapsed, and therefore, one would have to go by what has been placed on record by the PWD by way of its affidavit filed in September, 2014. I have no reason to conclude that there are any malafides involved, as alleged or at all, given the facts and circumstances of the present case, in the PWD providing a main carriage way at surface level, which is 9.9 metres wide, along with a service lane and footpath, which are 5 metre and 2.5 metre wide respectively. This is especially so having regard to the fact that demarcation of ROW was done and a central line was, accordingly, ascertained. If the elevated corridor is being built along the central line, then given the fact that a decision has been taken that it would have a width of 30 metres on either side, no fault can be found with the fact that the width of the road work has got reduced.

13. The other submission with regard to light and ventilation being blocked, on account of the height of the elevated corridor; I am afraid, I am unable to accept that contention, as well. The PWD has categorically stated that the height of the ramp facing the front gate of the Housing Complex would be only 3.36 metres and not 10 to 15 metres, as averred in the petition. The chances of light and ventilation being blocked, as averred, are also slim in view of the fact that the distance between boundary wall of the Housing Complex and the elevated corridor is, 17.5 metres.

14. The other aspect, which is adverted to in the pleadings, and once again not argued, is that the demarcation was carried out not by the SDM (Patel Nagar), but by a private agency. I find nothing wrong in the demarcation being carried out in this fashion (if at all it has been carried out, in the manner as suggested), as long as the said work was executed under the

supervision of the SDM. There is no averment that the concerned SDM had no role to play in demarcation of the ROW.

15. Therefore, keeping in mind the aforesaid discussion, I find no merit in the petition. The same is, accordingly, dismissed leaving parties to bear their own costs in the matter.

RAJIV SHAKDHER, J

JANUARY 15, 2015
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