

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

% *Date of Decision : November 30, 2015*

+ **LPA 793/2015**

NAV CHETNA KALYAN SAMITIAppellant
Represented by: Mr.J.K.Panchal in person

versus

GOVT. OF NCT OF DELHI & ORS.Respondents
Represented by: Ms.Mahua Kalra, Advocate with
Mr.Peeyoosh Kalra, Advocate for
R-1

CORAM:

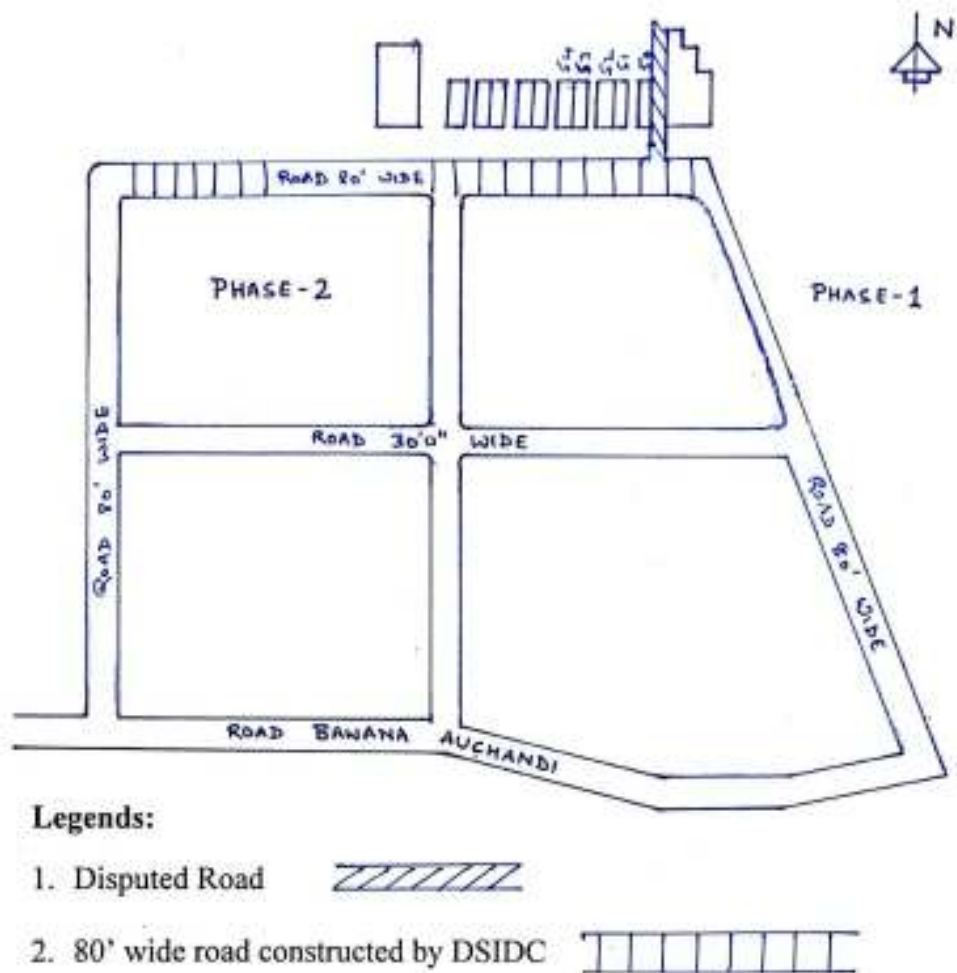
HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE MUKTA GUPTA

PRADEEP NANDRAJOG, J.

1. Two writ petitions, one filed by the appellant and the other by one Pramod Kumar Jain have been decided by the learned Single Judge vide a common order dated September 09, 2015. Whereas Pramod Kumar Jain appears to be satisfied by the impugned decision, the appellant lays a challenge to the order dated September 09, 2015.

2. To appreciate the controversy it would be advisable for us to extract the lay-out plan of Badli Industrial Area. It is as under:-



3. From the southern side of the Bawana Auchandi Road an 80 feet wide road was laid by Delhi State Industrial Development Corporation (DSIDC) when the Corporation developed an industrial estate called the Badli Industrial Estate. It encircles the industrial estate on the Eastern Northern and Western side. The official lay-out plan does not show any road branching towards the North from the North Eastern corner of the 80 feet wide road. The dispute concerns : whether a road exists as shown in the plan with slanting lines.

4. An unauthorized colony named Raja Vihar came up on the agricultural land of village Siraspur across the railway line on the

Northern side of the Badli Industrial Estate. The appellant, which claims to be a representative body of the residents of the colony, claims that the road in dispute exists and is the only means of access to their colony. Pramod Kumar Jain disputes said fact and claims that the land in question is a part of plot No.M-1. As per DSIDC the land concerning the road in dispute belongs to it and is not part of plot No.M-1.

5. Before the writ petition was filed, since there was apprehension of peace being breached, the Sub-Divisional Magistrate took cognizance. Under the chairmanship of the Hon'ble Lt.Governor of Delhi a meeting of the officials was held on August 11, 2014 which recognized that no road which was claimed by the appellants existed. The assertion of the appellant that except for the road in dispute there is no access to their colony was found to be incorrect because there was a road in existence which leads to the colony. At one point of time DSIDC was willing to give the land in question to the Public Works Department of the Government of NCT of Delhi for laying a road but demanded compensation in sum of ₹1.5 crores. The proposal was not accepted by the Government of NCT of Delhi.

6. In view of the approved lay-out plan of Badli Industrial Area, the learned Single Judge has held that prayer by the appellant cannot be allowed. The learned Single Judge has held that the disputed plot is adjacent to plot No.M-1 owned by Pramod Kumar Jain but is not a part of plot No.M-1. Since because of the dispute Pramod Kumar Jain could not raise construction of an industrial building on plot No.M-1 he has been granted two years' time to complete the construction. The learned Single Judge has held that there would be no access through the disputed road.

7. Sh.J.K.Panchal who has filed the writ petition on behalf of the appellant conceded before us that an alternative road leading into the

unauthorized colony called Raja Vihar exists, but said that it passes through a Jhuggi Jhopri cluster and was a very narrow road. As per him, when the Government of NCT of Delhi took a decision to regularize unauthorized colonies the inhabitants of the colonies were called upon to form an association which had to submit a lay-out plan of the unauthorized colony for approval. As per him, in the plan submitted by the appellant for approval of Raja Vihar, a road has been shown at the disputed site. He claims that approval has been granted to the colony Raja Vihar and this would subsume an approval to the road in question.

8. A writ appeal would lie on a question of law, and in the instant case the question of law would be : whether the learned Single Judge has properly applied himself to the facts before him to draw the conclusion that no road, as claimed by the appellant, exists in any approved lay-out plan.

9. In view of the approved lay-out plan of Badli Industrial Area the view taken by the learned Single Judge cannot be faulted, for the reason the approved lay-out plan does not show the existence of any road at the disputed site.

10. Since the learned Single Judge has not addressed the issue as to what is the legal effect of the in principle decision taken by the Government of NCT of Delhi to grant approval to the unauthorized colony called Raja Vihar it would be our obligation to discuss so.

11. The decision in question simply records that the colony Raja Vihar is eligible to be regularized. No decision has been shown approving the lay-out of the colony Raja Vihar. It assumes importance that the colony Raja Vihar is at some distance from the Badli Industrial Area and merely because the residents of the colony have shown access to their colony through the 80 feet wide road encircling Badli Industrial Area, with the

disputed road branching out from the 80 feet wide road to their colony, would not mean that the in principle decision taken to regularize Raja Vihar subsumes regularization of the disputed road in question.

12. The appellant has no title to the land in dispute. No official agency claims to have laid a road passing through the disputed land. It is also not a case where the only access to the unauthorized colony is through the road in dispute.

13. That the road which leads to the unauthorized colony called Raja Vihar, which has since been regularized in principle, passes through a Jhuggi Jhopri cluster is neither here nor there, for the reason, the law of easement guides us that an access to a site which is land locked can be claimed on the principle of necessity which principle cannot be extended on the plea that the existing access to the locked land is an inconvenient access.

14. The appeal is accordingly dismissed.

15. No costs.

CM No.26127/2015

Dismissed as infructuous.

(PRADEEP NANDRAJOG)
JUDGE

(MUKTA GUPTA)
JUDGE

NOVEMBER 30, 2015

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