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IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment Reserved on: 29.03.2016

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Judgment Pronounced on: 07.04.2016

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W.P.(C) 271/2016

NEW DELHI SOUTH EXTENSION PART-I, RESIDENTS

WELFARE ASSOCIATION (REGD.) & ORS Petitioners

Through: Mr.Amiet Andley Adv., Mr.Gaurav
Batra, Gen.Secy. and Mr.Manjeet Singh Chugh,
Vice President, Resident Welfare Association,
NDSE-I

versus

UNION OF INDIA & ORS Respondents

Through: Mr.Sanjeev Narula, CGSC and
Mr.Ajay Kalra, Adv. for R-1

Mr.Manoj Kumar Das, Adv. for R-2

Mr.Anil Grover. Standing Counsel with Ms.
Kanika Singh, ASC and Ms.Noopur Singhal,
Advs. for NDMC/R-3

Mr.Peeyoosh Kalra, ASC GNCTD with Mr.Ankit
Khurana, Adv.for R-4 & R-5

AND

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W.P.(C) 303/2016

KHOSMENDIR SINGH GAHUNIA Petitioner

Through: Petitioner in person

versus

NATIONAL BUILDING CONSTRUCTION
CORPORATION LTD. & ORS.

..... Respondents

Through: Mr.Manoj Kumar Das, Adv. for R-1
to R-4.

Mr.Akshay Makhija, CGSC with Ms.Sanjugeeta
Moktan, Adv. for R-5 to R-7

**CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE JAYANT NATH**

JAYANT NATH, J. (JUDGMENT)

1. These are two public interest litigations filed seeking directions to the respondents to maintain the road named as 'Veer Chandra Singh Garwahli Marg', East Kidwai Nagar, New Delhi as a public road by removing the encroachments of heavy trucks etc. and to ensure smooth flow of traffic on the road. Relief is also sought to restrain the respondents from permanently closing the said road. Other connected reliefs are also sought. For the sake of convenience pleadings as filed in W.P.(C) 271/2016 are being referred to in the present order.

2. The area in question which is the subject matter of the present petitions is East Kidwai Nagar, New Delhi. It is urged that the said road, namely, 'Veer Chandra Singh Garwahli Marg' is a 'public street' within the meaning of Section 2 (39) of the New Delhi Municipal Council Act, 1994 for the last over 60 years. It is averred that this is a public road and has been used by the general public and residents of the nearby localities including South Extension Part-I, residents of village Pillanji and Kotla Mubarakpur as a means of entry and exit into the respective colonies. The road it is urged is 60 ft. wide and emanates at Aurobindo Marg on one side and passes through Darya Khan's Tomb and ends at the Ring Road adjoining South Extension Part-I, New Delhi.

3. It is further pointed out that in 2010 the redevelopment of East Kidwai Nagar project was entrusted to respondent No.2/National Buildings

Construction Corporation Ltd.(hereinafter referred to as 'NBCC') by the Ministry of Urban Development. Under the scheme, the existing general pool residential accommodation provided by Central Government for its employees were to be demolished and the entire area was proposed to be reconstructed with a newer and modern design involving the construction of 4747 houses of category of Type-II to Type-VII and commercial space of about 1,04,413 sq.mtr. It is urged that in the course of construction, in September 2013 onwards NBCC slowly began to encroach upon the said public road, namely, 'Veer Chandra Singh Garhwali Marg'. On 24.12.2015 the residents realised that the Marg in question had been completely cordoned off/blocked by NBCC and a signboard was put up stating that the public road will be permanently closed on 10.01.2016. It is urged that several complaints were made to the concerned SHO, NBCC, etc. but to no avail. Hence, the present Public Interest Litigation has been filed.

4. NDMC has filed its counter-affidavit. In the affidavit it is stated that the road is 30 meters wide. It starts at Aurobindo Marg and goes upto the surroundings of Darya Khan's Tomb. The NDMC has sanctioned the layout plan for the redevelopment of the area, where it is stated that the road has been retained but only the entry and exit points have been shifted towards Aurobindo Marg. It is admitted that the road has been in existence for a long time.

5. The NBCC have also filed their counter-affidavit in CWP 303/2016 and have adopted the same stand for both the Writ Petitions. As per NBCC, the lay out plans have been submitted to NDMC which is entirely a new plan. It is urged that the said road, namely, 'Veer Chandra Singh Garwahli Marg' was not shown as a road/passage in the new plan. In the same

paragraph, however, it is stated that the internal road/passage were altered/shifted as per the new lay out plan.

6. We have heard learned counsel for the parties. Learned counsel appearing for the petitioner has pointed out that there is an attempt to block the ingress and egress of the road in question which is not permissible in view of the stand taken by NDMC pointing out that the road has been approved in the lay out plan with only minor changes in the entry and exit. Learned counsel for NDMC has supported the aforesaid stand of the petitioners.

7. It appears that the problem lies in the stand taken by the NBCC. Learned counsel has admitted that NBCC would remain bound by the lay out plan approved by NDMC. It is, however, stated that there are some shifts/alterations envisaged in the road in the layout plan and the road has to be temporarily shut and will be open for use subsequently after the construction is completed. It is urged that this is necessary keeping in view the nature of construction sought to be raised by NBCC.

8. We may have a look at the counter-affidavit filed by NDMC. The relevant portion of the counter-affidavit pertaining to the present road in question states as follows:-

“6.That in the Zonal Development Plan (Zone-D), a 30 mt.wide road starts from Aurbindo Marg upto surrounding of Darya Khan Tomb. Accordingly, answering respondent sanctioned the layout plan wherein the said road was retained, only the entry and exit points have been shifted towards Aurbindo Marg as per the NOC of UTTIPEC [Unified Traffic and Transportation Infrastructure (Plg. & Engg.) Centre].

7. It is further denied that the said road emanates at the Aurbindo Marg on one side and passes by the Darya Khan Tomb, East Kidwai Nagar, New Delhi. It is submitted that the said road is 30 mt.wide which starts from Aurbindo Marg upto surrounding of Darya Khan Tomb. It is further submitted that answering respondent sanctioned the layout plan wherein the said road has been retained, only the entry and exit points have been shifted towards Aurbindo Marg as per the NOC of UTTIPEC [Unified Traffic and Transportation Infrastructure (Plg.& Engg.) Centre]. It is further submitted that the respondent No.2 has given a certificate in the sanctioned layout plan of East Kidwai Nagar i.e., “There are no boundary walls in the proposed redevelopment plan.”

9. NBCC, even as per their admission are bound by the lay out plan approved by NDMC. NBCC has failed to point out as to how they can shut down the road temporarily as was argued by learned counsel appearing for NBCC. Admittedly, the road has been existing for the last 60 years or so. It is a densely populated area and presumably the road is used frequently by the local residents. The NBCC cannot be permitted to shut down the road for an unstated duration as is sought to be done without proper sanctions. This would obviously cause lot of inconvenience to the general public. Even otherwise a perusal of sections 217 to 219 of the NDMC Act shows that NBCC cannot alter or make streets otherwise than in conformity with the orders of the Council.

10. In view of the above, we direct respondent NDMC to take appropriate steps as per law for enforcement of the sanctioned lay out plan for the area

in question pertaining to 'Veer Chandra Singh Garwahli Marg'. All necessary consequential steps in this regard would also be taken as per law. The petition is disposed of with the above directions.

**JAYANT NATH
(JUDGE)**

CHIEF JUSTICE

APRIL 07, 2016
n/v

