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

+ **W.P.(C)414/2013**

OLD TYRES DEALERS ASSOCIATION Petitioner
Through None.

versus

NORTH DELHI MUNICIPLA CORPORATION Respondent
Through Ms.Puja Kalara, Advocate for North
MCD.
Mr.Anupam Varma with Mr.Nikhil
Sharma and Mr.Abhishek Pundir,
Advocates for TPDDL.
Mr.Wajeesh Shafiq, standing counsel
for Delhi Waqf Board.
Mr. Om Prakash with Mr. R. K.
Singhal for Northern Railway.
Mr. Gaurav Mitra, Advocate with
Mr. Luv Mannan and Ms. Rashmita
Roy Chowdhury, Advocates for DCM.

+ **W.P.(C) 1285/2013**

DCM ROAD OLD TYRES ASSOCIATION ... Petitioner
Through Mr. Luv Mannan and Ms. Rashmita
Roy Chowdhury, Advocates for
DCM.

versus

NORTH DELHI MUNICIPAL CORPORATION
AND ANR ... Respondents
Through Ms.Mini Pushkarna, standing counsel
for North DMC.
Mr.Anupam Varma with Mr.Nikhil

Sharma and Mr.Abhishek Pundir,
Advocates for TPDDL.
Mr.Wajeesh Shafiq, standing counsel
for Delhi Waqf Board.
Mr. Om Prakash with Mr. R. K.
Singhal for Northern Railway.

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Date of Decision: 07th September, 2018

CORAM:
HON'BLE MR. JUSTICE MANMOHAN

J U D G M E N T

MANMOHAN, J: (Oral)

CM APPLs.5365-5366/2017 & 31077/2018

While CM Appls.5365-5366/2017 have been filed by the Delhi Waqf Board seeking its impleadment as well as directions to the respondents not to demolish or interfere with the Waqf property, CM APPL.31077/2018 has been filed by M/s DCM Limited seeking its impleadment as well as a direction to the MCD to clear encroachment on the remaining stretch of approx.880 meter DCM Gaushala Road to enable it to complete the widening of the road.

On 23rd February, 2017, learned counsel for the Waqf Board confined his prayer to relocation/compensation. He had assured this Court that the applicant-Waqf Board would not come in the way of execution of the projects in question.

In response to the said applications, the North Delhi Municipal Corporation has filed an affidavit dated 20th August, 2018, in which it has been averred as under:-

“3) That the request of M/s. DCM Ltd. that it is ready and willing to construct at its own cost to carry out the widening and re-

development of the remaining 880 meter stretch of DCM-Gaushala Road, is beyond the scope of the present project relating to construction of Rani Jhansi Grade Separator. The widening of DCM-Gaushala Road, which was part of the present project, has already been completed and is being used by the general public.

4) That the DCM-Gaushala Road is under the jurisdiction of PWD, GNCTD. M/s. DCM Ltd. may take up the matter with the PWD. Further, the Unified Traffic and Transportation Infrastructure Center (UTTIPEC), DDA under the Chairmanship of Principal Secretary, PWD is already seized of the issue inter-alia regarding de-congestion of Rani Jhansi Marg Corridor due to commissioning of Rani Jhansi Flyover. M/s. DCM Ltd. may approach Principal Secretary, PWD in regard to the prayer made by it.

5) That it is also pertinent to mention here that there are residential houses on both sides of the road. Thus, further exercise of widening of the road will entail acquisition, compensation etc., which is a long drawn process. The PWD, under whose jurisdiction the DCM-Gaushala Road falls, will take appropriate decision accordingly.

6) That as regards the application of the Wakf Board, CM No. 5365/2017, it is submitted that the structure of mosque alongwith its adjoining land measuring about 500 sq. yds. is still in existence and under their possession. Only shops outside the boundary of the mosque were demolished from the DCM-Gaushala Road, which were in the nature of encroachment. The Wakf Board has still not submitted any documents showing their private ownership over the land from which the shops were demolished outside the boundary of the mosque. The Wakf Board may make representation to the Commissioner, North DMC as regards their claims and submit documents of their ownership. The North DMC will consider the representation and documents submitted by the Wakf Board and take a decision therein. In case the Wakf Board is aggrieved by the decision of the North DMC, it can raise appropriate legal proceedings. However, the disputed questions of facts as raised by Wakf Board claiming ownership and compensation, cannot be decided by this Hon'ble Court in these proceedings."

(emphasis supplied)

Though learned counsel for the applicants seriously dispute the aforesaid averments, yet this Court is of the view that the issues raised by the Delhi Waqf Board and DCM cannot be decided in the present proceedings as they involve disputed questions of fact and are beyond the scope of the present proceedings respectively.

Consequently, both the Delhi Waqf Board as well as DCM are permitted to make representations to the Commissioner, North Delhi Municipal Corporation as well as to the PWD respectively in accordance with the aforesaid affidavit dated 20th August, 2018. In the event, Delhi Waqf Board and DCM are not satisfied with the decision on their representations, they shall be at liberty to file appropriate proceedings in accordance with law. The rights and contentions of all parties are left open.

With the aforesaid liberty, present applications stand disposed of.

CM APPL.827/2013 in W.P.(C)414/2013

CM APPLs. 2459/2013, 16230/2014, 7918/2015, 12945/2015, 12946/2015, 13176/2015, 20946/2015, 26209/2015, 1623/2016, 1624/2016, 4701/2017 in W.P.(C)1285/2013

Learned counsel for the parties state that in view of the orders passed from time to time, these applications have become infructuous.

Accordingly the present applications stand disposed of as infructuous.

W.P.(C) No.414/2013

W.P.(C) No.1285/2013

1. In the present writ petitions, Rani Jhansi Grade Separator, widening of DCM Gaushala Road and Kishan Ganj Road under Bridge projects are involved.
2. Projects for widening of Kishan Ganj Road and construction of RUB (Road Under Bridge) at Kishan Ganj were approved by the Ministry of Surface

Transport, Government of India, vide their letter dated 21st March, 1992. This project involved shifting and rehabilitation of 121 shops from Kishan Ganj to Sanjay Gandhi Transport Nagar. Resolution No.240 dated 14th October, 2009 had been passed by the Standing Committee for allotment of plots to these 121 persons at Sanjay Gandhi Transport Nagar, Phase-1.

3. Thereafter, these 121 persons were shifted from Kishan Ganj RUB site to SGTN, Phase-1.

4. Similarly, scheme of construction of Grade Separator at Rani Jhansi Road from Filmistan to St. Stephen Hospital and construction of two ramps at DCM Chowk for traffic coming from/going to DCM-Gaushala Road was mooted and work order for the same was awarded by the erstwhile MCD in the year 2008.

5. 170 number of tyre shops were required to be shifted from Rani Jhansi Road and DCM-Gaushala Road for undertaking the project for construction of Grade Separator at Rani Jhansi Road. Vide Resolution of the Standing Committee dated 21st January, 2009, it was resolved that these 170 tyre shops from Rani Jhansi Road and DCM-Gaushala Road be relocated in Sanjay Gandhi Transport Nagar, Phase-1.

6. Some of the 170 shopkeepers on DCM-Gaushala Road and the vendors who were to be displaced from Rani Jhansi Road and DCM-Gaushala Road, approached this Court by way of present writ petition being W.P.(C) 1285/2001, DCM Road Old Tyres Association Vs. North DMC, thereby resisting shifting to SGTN Phase-1 on the ground of non-availability of Civic amenities in SGTN, Phase-1. The second writ petition being W.P.(C) No.414/2013 Old Tyres Dealers Association Vs. North DMC was filed by those shopkeepers who had already shifted from Rani Jhansi Road and DCM-Gaushala Road to SGTN Phase-1. They prayed that the remaining shopkeepers

still having their shops on DCM-Gaushala Road also be shifted.

7. Under orders dated 28th October, 2014, 20th November, 2014, 18th December, 2014, 13th February, 2015, 13th March, 2015, the remaining shopkeepers occupying DCM-Gaushala Road were directed to shift to SGTN Phase-1 after fulfilling all the formalities like furnishing undertakings and affidavits regarding shifting and payment of their outstanding dues towards development charges of SGTN Phase-1.

8. Specific order dated 22nd May, 2015 was passed by this Court wherein it was clarified that MCD shall be free to remove any unauthorised construction or any illegal occupant for giving effect to the projects of construction of Rani Jhansi Grade Separator and widening of Kishan Ganj RUB.

9. Thus, under specific directions of this Court, all the unauthorised shopkeepers and other illegal encroachments were removed from Rani Jhansi Road and DCM-Gaushala Road. This Court vide order dated 10th July, 2015, directed the North DMC to place on record the progress of these inter-connected projects viz., construction of Rani Jhansi Grade Separator; widening of DCM-Gaushala Road and construction of RUB at Kishan Ganj. This Court also directed the North DMC to complete these infrastructural projects at the earliest.

10. Since some of the shopkeepers had still not shifted, this Court by order dated 28th September, 2015 noted that 125 allottees had already got their land physically demarcated in SGTN Phase-1 after furnishing undertaking/affidavits and consents to shift. Thus, as a last opportunity and one time measure, two and a half months were granted to members of the petitioner association to shift to Sanjay Gandhi Transport Nagar. On 28th September, 2015, this Court again gave North DMC the liberty to demolish any illegal and unauthorized construction which was coming in the way of these projects, in accordance

with law.

11. In order to facilitate shifting of shopkeepers from the affected areas to SGTN Phase-1, this Court also ensured that all facilities be developed at SGTN Phase-1, by the North DMC and other Government departments including setting up of Police Station, Fire Station, Dispensary, facilities for drinking water, laying sewer, developing green area, etc.

12. Since the year 2013, this Court has been regularly monitoring the progress of the projects in question. By order dated 15th January, 2016, this Court directed the Commissioner, North DMC to appoint one Nodal Officer for all the three projects i.e. Rani Jhansi Grade Separator, Kishan Ganj-RUB and widening of DCM-Gaushala Road and another Nodal Officer for Sanjay Gandhi Transport Nagar for developing civic amenities by various Government agencies at SGTN Phase-1.

13. Due to various obstructions faced by North DMC in the progress of these projects, this Court issued notices vide order dated 27th May, 2016 to BSES Rajdhani Power Ltd. and Tata Power Delhi Distribution Ltd. in order to take up the issue regarding shifting of electrical services from the alignment of Grade Separator. Similarly, officials of Delhi Jal Board were also directed to be present vide order dated 27th May, 2016 for monitoring the issue regarding shifting of water and sewer lines from the alignment of Grade Separator.

14. As there were encroachments in the shape of five temples and one mosque on DCM-Gaushala Road, this Court vide orders dated 29th July, 2016 and 16th September, 2016 directed the Religious Committee to take a decision in accordance with law. Further, as no decision was being taken by the Religious Committee despite passage of a long time, Additional Secretary (Home) was directed to be personally present with relevant records in Court on 02nd September, 2016. Subsequently, the religious committee took a decision.

15. Similarly, vide order dated 29th July, 2016, Railways was also directed to file its response with respect to the issues raised qua the Northern Railways. Acting upon various directions from this Court, the Northern Railways handed over land to the North DMC at Loco Shed Colony and Motia Bagh Colony for construction of Rani Jhansi Grade Separator, in exchange of land at Bhavbhuti Marg and Qutub Road, near New Delhi Railway Station.

16. By order dated 17th October, 2016 this Court directed the Chief Secretary, Government of NCT of Delhi to convene meetings to sort out the issues regarding the shifting of Religious structures as well as shifting of underground cables, water lines and sewer lines. All the departments including North DMC, Delhi Jal Board, Delhi Police, Railways as well as BSES YPL and TPDDL were directed to attend the meeting with Chief Secretary.

17. Under supervision of this Court, the Delhi Jal Board, BSES YPL and TDPPL shifted the obstructing structures like cables, transformers, underground water lines and sewer lines from the area of alignment. Vide order dated 28th July, 2017, this Court recorded the statement of counsel appearing for Delhi Jal Board that water pipelines in question had been shifted by the Delhi Jal Board and that the Delhi Jal Board had completed its work with regard to Rani Jhansi Grade Separator.

18. On 15th September, 2017, this Court was informed that the North DMC had removed unauthorized religious structures i.e. two mazar/graves as well as unauthorized structures on the area ad measuring 102 sq. mtrs. at Beri Wala Bagh.

19. Thereafter, various status reports were filed time and again before this Court informing it regarding the progress made with regard to the projects in question.

20. This Court is pleased to note that the work of construction of Rani Jhansi Grade Separator, on the left hand side of the flyover from Filmistan to Tis Hazari has been completed in all aspects on 15th August, 2018.
21. As regards the right hand side of flyover from Filmistan to St.Stephen, the structure has been completed on 05th September, 2018. Installation of crash barriers, railings and laying of bituminous dense carpeting on approximately 50 meters of road is left on the right hand side of flyover, which learned counsel for North DMC states shall be completed by 30th September, 2018.
22. Ms. Mini Pushkarna, learned counsel for North DMC assures this Court that the work of construction of Rani Jhansi Grade Separator shall be completed by 30th September, 2018 and the same shall be opened to the traffic the very next day.
23. Work of widening of DCM-Gaushala Road connecting the said road to the Rani Jhansi Grade Separator has already been completed and is open to traffic.
24. One box at RUB Kishan Ganj has already been constructed by Railways and is open to traffic since 31st August, 2018.
25. Learned counsel for the Railways assures this Court that the award of work for the remaining three boxes shall be completed on or before 19th September, 2018. Learned counsel for North Delhi Municipal Corporation assures this Court that the revised estimate for the three boxes shall be forwarded to Hon'ble Lt. Governor and a decision thereon shall be taken on or before 21st September, 2018.
26. The North DMC, Railways and State Government are directed to issue the work orders and release the monies as ordered by the Hon'ble Lt. Governor within a period of one week of receipt of the said order.

27. In view of the aforesaid, this Court is of the view that no further orders are called for. Accordingly, with the aforesaid directions, both the writ petitions stand disposed of. This Court places on record its appreciation for the services rendered by the learned counsel for the parties, in particular, Ms. Maninder Acharya, learned senior counsel and Ms. Mini Pushkarna, learned Standing counsel for North DMC.

Order dasti under the signature of Court Master.

MANMOHAN, J

SEPTEMBER 07, 2018
KA/j