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

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Judgment delivered on:01.10.2018

+ **W.P.(C) 4520/2018, CM APPL 17480/2018 & CM APPL 28965/2018**

FERRARI ESTATES LLP

..... Petitioner

versus

UNION OF INDIA AND ANR.

..... Respondents

+ **W.P.(C) 4521/2018, CM APPL 17482/2018 & CM APPL 28962/2018**

PURSHOTAM BEHL

..... Petitioner

versus

UNION OF INDIA AND ANR.

..... Respondents

Present: Mr.Roopansh Purohit, Mr.Shaantanu Jain and Mr.Harsh Panwar, Advocates.

Mr.Rajesh Gogna, CGSC for UOI.

Ms.Gunjan Sinha Jain, Advocate for NHAI.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE A. K. CHAWLA

S.RAVINDRA BHAT, J.(ORAL)

1. The petitioners' grievance in these two writ proceedings is with respect to the notification under Section 3(A)(1) – consequent upon the declaration under Section 3(D) of the National Highways Act, 1956.

2. Brief facts are that the petitioner owns an aggregate of 7150 sq. yards of land spread over 3 Khasras (i.e. Khasra Nos. 427, 430 and 431) in joint Khata No. 31A/28, Village Rangpuri. By a notification dated 12.01.2018 the respondent-National Highways Authority of India ("NHAI" hereafter) proposed to acquire land for a stretch of about 1.5 k.m. towards the maintenance, management and operation of the proposed Dwarka Expressway. Notification- schedule to which described the details including Khasra numbers of the lands proposed to be acquired reads as follows:

“MINISTRY OF ROAD TRANSPORT AND HIGHWAYS

NOTIFICATION

New Delhi, the 12th January, 2018

S.O. 175(E).—*In exercise of the powers conferred by sub-section (1) of Section of 3(A) of the National Highways Act, 1956 (48 of 1956) (here in after referred to as the said Act), the Central Government, after being satisfied that for the public purpose, the land, the brief description of which is given in the Schedule below, is required for building (Widening/Four*

laning, etc.), maintenance, management and operation of Proposed Dwarka Expressway, on the stretch of the land from Km. 0.000 to Km. 1.500 in District New Delhi in the State of Delhi, hereby declares its intention to acquire such land.

Any, person interested in the said land may, within twenty-one days from the date of publication of this notification in the Official Gazette, object to the use of such land for the aforesaid purpose under sub-section (1) of section 3C of the said Act.

Every such objection shall be made to the competent authority, namely the ADM, New Delhi, in writing, and shall set out the grounds thereof and the competent authority shall give the objector an opportunity of being heard, either in person or by a legal practitioner, and may, after hearing all such objections and after making such further enquiry, if any, as the competent authority thinks necessary, by order, either allow or disallow the objections.

Any order made by the competent authority under sub-section (2) of Section 3C of the said Act shall be final.

The land plans and other details of the land covered under this notification are available and can be inspected by the interested person at the aforesaid office of the competent authority.”

3. It is not in dispute that the petitioners objected to the acquisition, by filing their representations under Section 3(C)(1) of the Act on 01.02.2018. Besides stating that no public purpose would be fulfilled by the proposed acquisition, it is also contended that the land sought to be acquired did not in any manner promote the objective of building any highway and that the Dwarka Expressway and its connection to Vasant Kunj was not in any manner a feasible proposal as there was no existing highway under the provisions of the

Act. Besides, it was contended that the mandate of law required that a brief description of the land had to be given, which was not fulfilled and no proper plan accompanied the notification.

4. The NHAI in its counter affidavit states that the report dealing with the objections, and rejecting them was forwarded to it on 04.04.2018. The NHAI's position is that the Dwarka Expressway would boost the development of road infrastructure and inures to the larger public benefit; it alludes to Development Plan 2031 of the Gurgaon Manesar Urban Complex (GMUC), Northern Peripheral Road (NPR)/ Dwarka Expressway and states that the traffic originating from Dwarka and Gurgaon which is to proceed towards Airport or Jaipur and uses the existing NH 8. Further, it states that rapid increase in traffic between Delhi and Gurgaon on NH 8 and other road network has resulted in heavy congestion and that consequently the proposed Dwarka Expressway would provide a bypass to existing NH 8. It is stated that the alignment of Dwarka Expressway takes off from Km 20 Shiv Murti (NH 8) and terminates at Km 40 (near Kerki Daula) of NH 8 at CPR-NH 8 - SPR intersection (at Km 40.070 of NH 8), approx. 2 Km before the Kherki Daula toll plaza.

5. It is submitted that studies of projects of decongestion of Delhi are also under preparation and the decongestion of Delhi Projects cannot be made functional without the implementation of Dwarka Expressway which in turn depends upon the proposed multilevel

interchange at the point of acquisition which is the subject matter of the present proceedings.

6. During the hearing, learned counsel for petitioner reiterated the grounds urged in support of these petitions. It was submitted that neither the notification nor the plans kept in the NHAI's office had any clarity in respect of land sought to be acquired; the mere reference to extent did not in any manner fix the points of acquisition.

7. Thus, the notification and the proposed plans were vague and have to fail on that score. It was consequently urged that the documents produced by the NHAI – notably reply to the queries show that the grade separated interchange was proposed at the point in question (Shiv Murti) which also includes connectivity to the proposed Rangpuri bypass connecting to the Nelson Mandela Marg in Vasant Kunj. Learned counsel emphasized that this shows that there were some deviations and highlights that as on date when the notification was issued and published, even the feasibility report was not ready with the NHAI. It is urged that moreover, on the basis of the report called by the competent authority – which is now produced, that the preparation of feasibility report of Package-1 for the section of Dwarka Expressway from Shiv Murti to Rail under Bridge (RuB) in Dwarka, Sector-21 was in advanced stage, though not available, and that the NHAI as late as on 16.01.2018 admitted that as and when the report would be available, it would be posted on its website.

8. Counsel for NHAI refuted the petitioners' submissions and relied upon the plans kept in its office as a part of the acquisition

notification. She also relied upon another map which is part of the record. It is submitted that the petitioner has placed on record the grade separator interchange drawings. Learned counsel denied that any deviations from the plan were made. Reliance has also been placed upon full objections and the notes given by the NHAI.

9. So far as the first objection with respect to the vagueness of the notification is concerned, this Court is not persuaded by the petitioners' arguments. As is evident from the extract of the notification under Section 3A, impugned in this case dated 12.01.2018, a specific reference to the plans available in the office of the NHAI can be found. That apart, the extent of land proposed to be acquired in respect of each survey too was spelt out with clarity. The map which was available in the office of the NHAI too is a part of the record. If there were any doubt as to which of survey number/khasra number were to be acquired, it would have been dispelled at a plain look at the map. Khasra no.428 was proposed to be acquired entirely whereas parts of other three Khasra numbers – an exact orientation of which were also proposed and indicated in the map. In these circumstances, the challenge on the ground of vagueness has to fail.

10. As to the other submissions i.e. with respect to the un-preparedness of NHAI, so to say, regarding the proposal to construct a highway with a specific reference to the multilevel grade separator, this Court wishes to make two observations. The first is that this area falls within pure executive policy over which the Court has extremely circumscribed jurisdiction. As to the convenience or

the greater feasibility of one or the other plan is hardly a choice that can be legitimately gone into under Article 226 proceedings. Secondly, the Court is of the opinion that the petitioners' query – in the form of objections were considered and adequately dealt with by the NHAI. This is evident from the following extract of the NHAI's reply to the ADM on 07.03.2018. Relevant extract of those comments are as follows:

***“OFFICE OF THE PROJECT DIRECTOR, PROJECT
IMPLEMENTATION UNIT***

*201E/A, Second Floor, D21, Corporate Park (Near Dwarka
Sector-8 Metro Station), Sector-21, Dwarka, New Delhi-
110075*

NHAI/PIU/DWE/01/09/233

Date : 07.03.2018

To

*Add. District Magistrate, New Delhi
12/1, Jam Nagar House
Shah Jahan Road,
New Delhi-110011*

Sub: *Development of Dwarka Expressway-Notification u/s
3(A) of NH Act, 1956 hearing U/s 3C (2) of NHAI Act,
1956-reg.*

Ref: (i) *Hearing held on 19.02.2018 to 20.02.2018 at
your good office.*
(ii) *Your Office letter no. F.No. 09341661 / NHAI /
ADM / ND / 2017-18/53 dated 26.02.2018.*

Sir,

*Please refer to letter under reference (ii) vide which
you had forwarded objections under section 3C of NH Act,*

1956 to this office for furnishing technical comments to allow you to take final decision on the issue.

2. The objections were forwarded to NHAI's Technical M/s AECOM who via e-mail dated 07.03.2018 has furnished detailed technical replies. Based on the same, the comments on the objections are as follows :-

S.no.	Objections	Comments
1.	The objectors and Counsels for the objectors argued upon the drawing and design of this project. Many of them raised questions with respect to design of this project according to objectors, this type of design will lead to more accidents and it will become accident prone area. It is also stated by the objectors that the minimum speed prescribed for any expressway cannot be reach with this type of drawing and design. Some	As per the decision of Hon'ble Minister, RT&H held on 01.06.2017, it was decided that Dwarka Expressway would be implemented in 5 packages (2 in Haryana + 2 in Delhi + 1 for western Airport Connectivity) The project being referred to is 1st package of Dwarka Expressway (from Shiv Murti upto RUB in Dwarka, 5.9 km). The expressway alignment of the main carriageway from Shiv Murti till the Rail under Bridge (RuB) shall be through shallow tunnel as the existing RoW is not adequate for having at grade segregated separate carriageways for Expressway/Link Road and Service road, the alternative could have been taking the entire corridor elevated, but Airport Authority of India has not agreed to elevated structure for Dwarka Expressway from Shiv Murti upto RUB in Dwarka as it infringe in some of the radar influence area.

	objectors have alleged that alignment of the expressway has been shifted to 400 m south from present meeting point of Dwarka Expressway to NH-48 save some influential persons.	Therefore, as described above the Dwarka Expressway near Shiv Murti would be in Shallow Tunnel (i.e. -1 level) For the purpose of covering movements and turns in all directions a grade separated interchange has been proposed. As per the interchange design, the traffic from Mahipalpur, Rangpuri & Gurgaon towards Dwarka Expressway would be elevated at +1 level crossing above NH 8. So from elevated structure at +1 level, traffic destined to Dwarka shall access the shallow tunnel and therefore requires to go at -1 level below the ground. For this transition from +1 level to -1 level, ramp length of about 800 m are required which are proposed to be constructed in AAI land (about 28 acres) near Shiv Murti between ROW & Airport boundary and adjusting the ramp within this land of AAI (without disturbing the NSG establishment). Constraint cited above is the control point of design of multi-level interchange at Shiv Murti. The earlier proposal of taking the Dwarka Link Road straight towards Vasant Kunj was designed without considering the
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		interchange at NH 8. The design approved by UTTIPEC was deficient in terms of providing overall connectivity and did not include the grade separated right turns from Dwarka towards Gurgaon, Gurgaon towards Vasant Kunj, Dhaula Kuan towards Dwarka and Vasant Kunj towards Dhaula Kuan. If all these movements are included in the same alignment, the interchange shall infringe inside the Airport boundary wall and the elevated portion shall be closer to the 3rd runway. As per UTTIPEC proposal, a straight tunnel was proposed which is not Technically feasible and the ramp length required for the tunnel may not be constructed in the available land. As per the same proposal, the road was supposed to connect Abdul Gaffar Khan Marg near Ryan International School. However, this connection will not serve any purpose as the section of Abdul Gaffar Khan Marg near Ryan International school is already congested. It will also pass through dense settlements of Rangpuri thereby affecting the residential structures. NHAI proposed to connect Rangpuri Bypass directly with Nelson Mandela Marg. In this alignment proposal minimum built
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		<i>structures will be affected.</i> <i>Therefore, due to further connectivity of Rangpuri Bypass and constraints cited for Shiv Murti Interchange, the alignment change is mandatory.</i> <i>One would further appreciate that for developing Shiv Murti Interchange, minimum private land and maximum government land has been considered. If AAI land and in rarest of rare cases, the particular project, if it is found to be ex-facie contrary to the mandate of law or tainted due to malafides. In the case in hand, neither any violation of mandate of the 1956 Act has been established nor the charge of malice in fact has been proved. Therefore, the order under challenge cannot be sustained.</i> <i>Considering the above, no specific comments are offered on the alignment of the Dwarka Expressway. However, as mentioned above, the control point of design of interchange is adjusting the ramp within this land of AAI (without disturbing the NSG establishment) is the control point of design of multi-level interchange at Shiv Murti.</i>
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11. In view of the above extract, it is clear that the alternatives that were considered included the proposal in question. The other option which the NHAI, contemplated would have resulted in disturbing the existing NSG facility; besides the Airport Authority did not concur with that option. The NHAI also relied upon the judgment of the Supreme Court in *Union of India Vs. Dr. Kushala Shetty* (2011) 12 SCC 69, which also indicates “hands off” approach in such policy matters. In view of the foregoing discussion, this Court is of the opinion that the challenge to the notification under Section 3A and declaration under Section 3(D) has to fail.

12. The writ petitions are therefore dismissed. All pending applications too are disposed of accordingly.

S. RAVINDRA BHAT, J

A. K. CHAWLA, J

OCTOBER 01, 2018

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