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

Date of decision: 05.01.2018

\+ **LPA 460/2016, CM APPLs. 29648/2016 (for stay) & 38488/2017 (for stay)**

HANUMAN ROAD RESIDENTS WELFARE ASSOCIATION (REGD) ..... Appellant

Through: Mr. Jagdeep Singh Bakshi and Mr. Abhishek Mohan Sinha, Advs.

versus

GOVT OF NCT OF DELHI & ORS ..... Respondents

Through: Mr. Anil Grover, Standing Counsel with Mr. Jitender Tripathi, ASC, Ms. Mishal Vij and Ms. Noopur Singhal, Advocates for NDMC with Mr. Surender Kumar, Ex. Engineer and Mr. S.K. Singh, Asstt. Engineer, NDMC.
Mr. Ruchir Mishra and Mr. Mukesh Kr. Tiwari, Advocates for L&DO.
Ms. Sunanda Tukyan, Adv. for DDA.
Mr. Sanjoy Ghose, ASC with Mr. Rhishabh Jetley, Adv. for GNCTD.

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MR. JUSTICE A. K. CHAWLA

HON'BLE MR. JUSTICE S. RAVINDRA BHAT (ORAL)

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1. The appellant-Hanuman Road Residents Welfare Association ('RWA') is aggrieved by the judgment and order of the learned Single Judge dated 07.07.2016 rejecting the writ petition.

2. The claim in the writ proceedings was for a direction to restrain the New Delhi Municipal Corporation (NDMC) from appropriating 350 sq. mts. in an existing park area (measuring about 4033 sq. mtrs.) at Hanuman Road, New Delhi. Before the learned Single Judge, the appellant had contended that the NDMC could not have changed the land use. Alternatively, it was also urged that the land belonged to the RWA and its residents. Both the pleas were negated by the learned Single Judge holding that the Master Plan for Delhi (MPD-2021) and the concerned Zonal Plan permitted the construction of an electric sub-station in the proposed area. Learned Single Judge also relied upon some decisions of the Supreme Court. The impugned judgment also negated the plea of the RWA as to the ownership of the land forming part of the park.

3. During the pendency of the proceedings, the Court had on various dates of hearing considered the submissions of the parties. By order dated 11.09.2017, the Court had impleaded the Delhi Development Authority ('DDA'), to consider, whether in terms of the MPD-2021 and the Zonal Plan, the site of the electric sub-station, was permissible. On 22.11.2017, the Court was informed by the counsel for NDMC that instead of the originally proposed area of 350 sq. mtrs., the construction of the electrical sub-station and the enclosing wall would be confined to 150 sq. mtrs. This was supported by an affidavit on behalf of the NDMC, which was furnished to the Court on 13.12.2017 (Affidavit of Mr. V.K. Pandey, Chief Engineer (E-I), NDMC). The said affidavit, *inter alia*, states as follows:-

"3. That it is submitted the Hanuman Road Park where the proposed electric sub-station is to be constructed measures 109 mtrs in length and 37 mtrs in width approximately. The total area of the park sums up to be 4033 sq mtrs.

4. That the park is situated in the centre of the Hanuman Road Residents' welfare society and due to the increase in the electricity requirement/load of the area in question the present sub-station was necessitated in order to meet the needs of the residents of the society exclusively. Layout plan of Hanuman Road Area is being attached herewith as Annexure R3/1.

5. That Respondent no.4 vide letter dated 23.04.2002 allotted a plot of land measuring 350 sq mts to the answering Respondent for construction of electric Sub-Station behind Hanuman Mandir, Hanuman Road, New Delhi copy of the letter dated 23.04.2017 along with the sanctioned layout plan is being attached herewith as Annexure R3/2.

6. That is submitted the Respondent no.3 has proposed to utilize only 150 sq. mtrs. Instead of original allotted area of 350 sq mtrs to construct the Electric Sub-Station for setting up the transformer. Proposed layout plan of the sub-station is being attached herewith as Annexure R3/3."

4. The Court has considered the affidavit as well as the proposed amended plan for the site of the electric sub-station. Counsel for the appellant-RWA submitted that just outside the existing park, a square patch of a vacant plot of land belonging to the L&DO exists, which can be well utilised by the NDMC for its proposed electric sub-station.

The Court is of the opinion that a fresh proposal is something which cannot be gone into in appeal, given that no pleadings were urged in this regard. Furthermore, the RWA's basic opposition was that the site for the electric sub-station itself was unlawful in terms of the MPD-2021, as it would be an unauthorised construction. This plea of the RWA – with respect to the MPD-2021, in the opinion of the Court, is not substantiated and is not covered by the provisions of the Master Plan. The Layout Plan, which was produced by the DDA during the proceedings (in terms of the Zonal Plan, it is to be utilised by the NDMC) had granted the liberty to the NDMC to use the area for its purposes. No doubt, the park existed and continues to do so; at the same time, the amendment to the Layout Plan, is within the jurisdiction of the NDMC. Therefore, having regard to the subsequent developments qua the original area having been brought to less than half, instead of the original proposed 350 sq mtrs, fresh proposal being of 150 sq. mtrs, the Court is of the opinion that the NDMC's proposal is reasonable and acceptable. In these circumstances, the NDMC shall proceed to construct the electrical sub-station in the 150 sq. mtrs. area proposed by it in terms of the Layout Plan furnished to the Court (As Annexure R3/3). The NDMC is directed to ensure that while constructing the electric sub-station and the enclosing walls, the ingress and egress shall not be through the park nor shall any part of the park be utilised for that purpose. Furthermore, the NDMC shall ensure that all safety measures are put in place to assure the residents of the appellant-RWA that at no point of time would any of them suffer any injury or hazard from the wires

and cables etc. Lastly, the NDMC shall ensure that access into the electric sub-station shall be quite apart from the main entrance to the park. In other words, the personnel of the electric sub-station should be able to access such sub-station independently.

5. The appeal is disposed of in terms of the above directions.

S. RAVINDRA BHAT, J

A. K. CHAWLA, J

JANUARY 05, 2018
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