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

% *Date of Order: 15th May, 2018*

+ W.P.(C) 3791/2015

MAHENDER KUMAR & ORS. Petitioners
Through Ms. Esha Mazumdar, Advocate

versus

LT. GOVERNOR OF DELHI & ORS. Respondents
Through Mr.Yeeshu Jain, Standing Counsel
with Ms. Jyoti Tyagi, Advocate for
L&B/LAC.
Mr. Arjun Pant, Advocate for the
DDA along with Mr. Jagbir Singh
Executive Engineer (RPD-IV), DDA.

+ W.P.(C) 3822/2015

SATYA PRAKASH & ORS. Petitioners
Through Ms. Esha Mazumdar, Advocate

versus

LT. GOVERNOR OF DELHI & ORS. Respondents
Through Mr.Yeeshu Jain, Standing Counsel
with Ms. Jyoti Tyagi, Advocate for
L&B/LAC.
Mr. Arjun Pant, Advocate for the
DDA along with Mr. Jagbir Singh
Executive Engineer (RPD-IV), DDA.

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

G.S.SISTANI, J. (ORAL)

CM.APPLs 16426/2016 & 17759/2018 in W.P.(C) 3791/2015

CM.APPLs 16296/2016 & 17510/2018 in W.P.(C) 3822/2015

1. Since facts of both the cases are common, for the sake of convenience the facts mentioned in the application filed in W.P.(C).3791/2015 are being noticed for the disposal of these applications.
2. By the present applications, the applicants/DDA seeks vacation of the interim orders granted by this Court on 20.04.2015. Post filing of these applications in the year 2016, the DDA has also filed an additional affidavit with an application. The grounds urged before this Court for vacating the interim orders granted are that the DDA convened a meeting under the Chairmanship of the Lt. Governor of Delhi in which it was decided to explore/identify approximately 10 acres of land for cluster bus depot at Rohini area for allotment of the same to the Transport Department of the Government of NCT of Delhi. Subsequently, on 14.11.2014 with a view to implement the decision of the Lt. Governor, a joint inspection was carried out. A site measuring approximately 10 acres in Pocket-11 in public and semi public area, Sector-32, Rohini, Phase-IV, adjacent 80 meter wide road(UER-III) was identified. On the basis of a joint inspection, Additional Commissioner/Secretary(STA), Transport Department, Government of NCT of Delhi had confirmed that the site measuring 4.0 hectare in Pocket-11, Block-C, PSP area, Sector-32, Rohini, Phase-IV was found suitable for the Transport Department and the same was conveyed to the DDA on 18.01.2014. Upon receiving the consent from the Transport Department on 18.11.2014, the DDA

approved the aforesaid sites and accordingly an advance copy of the lay-out plan of Sector-32, Phase-IV, Rohini for the proposed bus depot of the land earmarked with the aforesaid proposed sites was released to Land Disposal Wing of the DDA and Engineering Wing, DDA for further action. The DDA started inviting objections/suggestions with respect to approval for issue of public notice which was issued/published in Gazette of India, Part-II, Sector-3, Sub-Section (ii) on 31.07.2015 in four newspapers. It is submitted that at that stage, the DDA learnt about the orders dated 20.04.2015 passed by this Court. Reliance is also placed on the fact that the Supreme Court was seized of the W.P.(C).13029/1985 titled ***M.C. Mehta v. Union of India*** regarding air pollution and improvement of public transport in Delhi. An order has been passed to ensure delivery of land to State Government. The DDA thereafter, has filed an additional affidavit adding additional grounds for vacation of stay. Paras 3 and 4 of the additional affidavit read as under:

“3. It is submitted that the land in question falls in Sector 31 and 32, Rohini. Presently in these sectors, peripheral sewer lines and road work is in progress. In North side of this Sector 60 m r/w road constructed during 2009-10 is already existing and fully functional and traffic is plying through this road. The work of providing and laying peripheral sewer lines in these sectors is held up due to the status quo with regard to the nature, title and possession of the subject land falling in the alignment of the sewer line in the service land of this 60 m R/w road towards Sector 32, Rohini, New Delhi. The khasra plan/plan of Sector 32 indicating location where the work of laying of sewer line through service lane is held up due to status quo (approximate 90.00 Meters length of sewer line) are annexed as ANNEXURE-1(Colly). All the peripheral lines

have been laid in this sector except this portion bearing Khasra Nos.10//10/3 and 10//11/1 of Village Pansali, which is under status quo. This area is required to be developed on priority basis because some of the plots in Sector 32, Rohini are to be allotted to the registrants of the Rohini Residential Scheme 1981 and are under monitoring with the Hon'ble Supreme Court, details of which are mentioned in the C.M. No.16426/2016 and the same are not reproduced herein for the sake of brevity.

4. The abovementioned work of the drain is part of the essential services to be provided by the answering respondent/applicant herein in the Rohini Residential Scheme. In the event, the work of the sewer drain is not completed before the monsoon, there could be flooding in the areas of Sector 34-37 of Rohini, Delhi.”

3. Ms. Esha Mazumdar, learned counsel appearing on behalf of the petitioners/non-applicants submits that sufficient grounds are not available for the interim orders to be vacated. The applications were filed in the year 2016 and not pressed till 2018. The grounds taken in the initial applications pertain to the construction of a proposed bus depot. However, in the additional affidavit filed by the DDA it is stated that a drain is to be constructed. She further submits that the land was acquired while relying on Section 17 of the Land Acquisition Act, 1894 (urgency clause). She submits that no right of hearing was granted to the petitioners under Section 5A of the Land Acquisition Act, whereas in fact there was no urgency in the matter and the petitioners could not have been deprived of their statutory and constitutional right of hearing under Section 5A, which has been duly recognized by various judgments of the Supreme Court of India.

4. However, after some hearing in the applications, Ms. Mazumdar submits that if the land of the petitioners is coming in the way of development for a public purpose, the petitioners would not come in their way. However, she submits that all grounds raised by her in the writ petitions pertaining to possession should be kept open. She contends that physical possession of the said land continues to remain with the petitioners, which is evident from the fact that the DDA could not carry out their work as the possession was with the petitioners. She submits that the stand of the DDA that the possession was taken would not hold any ground as the respondents did not follow the settled law, no witnesses were available at the time when the possession was taken. She submits that she would rely on all other grounds as raised in the writ petitions at the time of final hearing.
5. We have heard the learned counsels for the parties. We have examined the site plan, which has been handed over in Court by Mr.Arjun Pant, learned counsel appearing on behalf of the DDA, which shows that 90% of the work pertaining to drain stands completed barring some portion where work could not be carried out on account of the *status quo* order. We are rather surprised as to why this fact was not brought to the notice of this Court when the interim orders were granted.
6. Leaving all the contentions of the parties open, the interim orders dated 20.04.2015 are vacated. We make it clear that all the grounds raised by the petitioners in the writ petitions, including the grounds that the petitioners are in possession of the land and that the possession was not taken in accordance with law are kept open.

7. The applications stand disposed of.

W.P.(C) 3791/2015 & CM.APPL 6789/2015
W.P.(C) 3822/2015 & CM.APPL 6828/2015

8. List on 01.08.2018.

G.S.SISTANI, J.

SANGITA DHINGRA SEHGAL, J.

MAY 15, 2018

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