

\$~15

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

+ **W.P.(C) 5301/2017 & CM APPL. 22453/2017**

TATA COMMUNICATIONS LIMITED

..... Petitioner

Through Mr Dhruv Mehta, Senior Advocate
with Mr Mohit Rohatgi, Mr Rajendra Dangwal,
Mr Anmol Mehta, Advocates.

versus

GOVT OF NCT OF DELHI & ORS.

..... Respondents

Through Mr S.K. Tripathi, ASC, GNCTD with
Mr Shashank Tiwari, Mr Arpit Bist, Advocates
for R1 to R3.

Mr Yeeshu Jain, Advocate for R4/Lac.

Mr Dhanesh Relan, Standing Counsel for
DDA with Mr Gauri Chaturvedi, Mr Rajiv Jha,
Advocates.

Mr Anil Dabas, Mr Praveen Kumar, Advocates
for R5/UOI.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

%

21.05.2019

1. The petitioner (hereafter referred to as 'TCL') has filed the present petition, *inter alia*, praying as under:-

“(a) Issue a writ of certiorari, or any other appropriate writ, quashing the marking report dated 23.05.2017, a survey report dated 26.05.2017 and drawing prepared by the Respondent No.2;

(b) Issue a writ of mandamus, or any other appropriate writ, directing the Respondent Nos. 1 to 4 to immediately stop undertaking demolition exercise on the said Land of

the Petitioner;

(c) Issue appropriate orders for joint demarcation exercise to be carried out with the Petitioner in accordance with the order dated 1.09.2014 of this Hon'ble Court in W.P. (C) No. 2434 of 2011;”

2. TCL is in possession of a large area of land abutting the Outer Ring Road opposite Greater Kailash-II, New Delhi. The controversy in the present case relates to a small area of land which is required for widening of the Outer Ring Road. According to the respondents, the total area in question is approximately 662 sq. metres which are in possession of various entities: Sanjeev Gas Agency (6.75 sqm); DJB (185.25 sqm); TCL (160 sqm), BSES (235.20 sqm); and DMRC (74.25 sqm).

3. Mr Dhruv Mehra, learned Senior Counsel appearing for the petitioner states that the petitioner is also in possession of the areas, which are reflected to be in possession of BSES (235.20 sq metres) and DMRC (74.25 sq metres). According to the PWD, the said lands belong to the Government and it is asserted that the same have been encroached upon by TCL. It is stated that the Right of Way (ROW) of the entire ring road is 45 meters, except a stretch of 110 meters where the same ranges from 33 meters to 44 meters. In view of the above, PWD had commenced an exercise for demolition of the boundary wall and taking over possession of the said lands for purpose of widening the road in question.

4. In the aforesaid context, the petitioner had filed a writ petition W.P. (C) 2434/2011 captioned *Tata Communication Ltd. v. Government of NCT of Delhi and Ors.* The said petition was disposed of by an order dated

01.09.2014, which is set out below:-

“The respondents claim to be owners of certain portion of land which is stated to be in the possession of the petitioner. The notices impugned in the present petition seek to evict the petitioner from that portion of the land. The petitioner disputes that it is in possession of any land which is owned by the respondents. In the given circumstances, the learned counsel for the parties agree that the demarcation of land be carried out afresh, by Total Station Methods (TSM), on 22.09.2014. The petitioner is directed to cooperate in the said exercise.

The learned counsel for the respondent states that the notices impugned in the present petition will not be pursued by respondent Nos. 1 and 2 till the demarcation of land in question as directed above is complete and further would be subject to outcome of the said demarcation exercise.

In view of the above directions, the present petition is disposed of.

It is clarified that if the demarcation report is adverse to the petition, the petitioner is at liberty to apply.”

5. It is pointed out that at the material time the controversy related to four Khasra numbers – Khasra Nos. 93/1,1021/1,1024/1 and 1025/1. Pursuant to the aforesaid order, the respondent appointed a professional agency (M/s Dhyani Consultants) to conduct the survey by the Total Station Method (TSM). The said exercise was carried out after much delay and the resultant report dated 26.05.2017, is impugned in the present petition.

6. Mr Mehta points out that although the initial dispute was only with regard to the four Khasra numbers and the direction to conduct a survey ought to have been carried out only in respect of the Four Khasras,

however, the exercise carried out was not in conformity with the order and not in context with the dispute as crystallized in the said writ petition. He submits that an altogether new case has been set up and this time it involves 14 Khasras.

7. Learned counsel appearing for the PWD also concurs with Mr Mehta to the limited extent that the TSM Survey Report submitted is erroneous. He submits that the said report shows that the road is zig-zag and not as it exists on ground.

8. Since both the parties are claiming that the report is erroneous, the prayer made by the petitioner is accepted and the marking report dated 23.05.2017 and the survey report dated 26.05.2017 are set aside.

9. Insofar as the second prayer is concerned, namely, the relief regarding restraining the respondents from undertaking any demolition exercise on the land belonging to the petitioner is concerned, it is admitted that the said land is vacant and currently there is no structure standing on the land in question. It is submitted that there were guard rooms which had been constructed, however, the same had been demolished.

10. In view of the above, this court is of the view that it would not be apposite for this Court to pass any order restraining the PWD from carrying out any construction for widening of the road on the said land, pending resolution of the disputes. There is no dispute that the ROW of the Outer Ring road is 45 meters on the entire stretch but it narrows down to a range of 33 meters to 44 meters on a stretch of 110 meters at the junction near Greater Kailash-II. Resultantly, there are major traffic jams in the area.

11. In order to avoid any further disputes as to the measurement of the

land taken over by the petitioner, it would be apposite if a joint measurement of the disputed patch of land is taken. The joint measurement shall be carried out on 29.05.2019 at 10.30 a.m. TCL shall ensure that its authorised representative is present on the site for the conduct of the joint measurement.

12. Having stated the above, it is also clarified that all actions of the PWD would be subject to the resolution of the final disputes between the parties. Clearly, if the petitioner is the owner of the land in question, the petitioner would have to be duly compensated for the same. It is apparent that there are disputes regarding the ownership of the land in question and this court does not consider it apposite to entertain the said disputes in these proceedings. However, the petitioner is also not precluded from initiating appropriate action for establishing its title on the land in question.

13. Insofar as the prayer regarding conduct of joint demarcation exercise in accordance with the order dated 01.09.2014 is concerned, as noticed above, the demarcation exercise done in compliance with the said order passed by this Court in W.P. (C) 2434/2011, has not fructified in any acceptable report. Thus, there is much merit in the petitioner's contention that a survey is required to be conducted afresh.

14. In view of the above, the respondents are directed to appoint another agency for conducting the demarcation exercise and conduct the survey by the Total Station Method (TSM). The petitioner would be given due notice of the said exercise and also invited to join the same. However, it is clarified that the pendency of the said demarcation would not preclude the respondent from taking over the land from carrying out the

road widening works as are required.

15. The petition is disposed of in the aforesaid terms.

16. Order *dasti* under the signature of Court Master.

VIBHU BAKHRU, J

MAY 21, 2019

pkv