



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

+ LPA 91/2022, CM APPL. 6455/2022 (Stay) and CM APPL. 6458/2022 (Add. Document)

Date of decision: 20th July, 2023

**RESIDENT WELFARE ASSOCIATION
KAPASHERA**

..... Appellant

Through: Ms. Mandakini Ghosh and Ms. Kirti
Dhoke, Advs.

versus

**SUB DIVISIONAL MAGISTRATE
KAPASHERA & ORS.**

..... Respondents

Through: Mr. Rakesh Mittal, Standing
Counsel for MCD with Ms. Yamini
Mittal, Mr. Ajay Harshana, Advs.
Mr. Kusharga Aman and Mr. Daksh
Arora, Advs. for R-3
Ms. Meghna Mital Sankhla and Ms.
K. Hema, Adv. for DDA

CORAM:

HON'BLE MR. JUSTICE YASHWANT VARMA

HON'BLE MR. JUSTICE DHARMESH SHARMA

J U D G M E N T

DHARMESH SHARMA, J. (ORAL)

1. This judgement shall decide a Letters Patent Appeal filed by the appellant Resident Welfare Association Kapashera in terms of Clause X of Letters Patent of Lahore (as applicable to the Delhi High Court) read with Section 10 of the Delhi High Courts Act, 1996, challenging the final judgment/order dated 22 February 2021 passed in W.P.(C)



No. 4927/2020 in case titled *Smt. Geeta Singh & Anr. v. The Sub Divisional Magistrate (Kapashera) & Ors.*, passed by the learned Single Judge, whereby the Writ Petition was disposed of with certain directions allowing respondent No. 2 Kapashera Estates' Resident Welfare Association to erect gates at points 'A' and 'B' (as indicated in the map, which form part of the judgment) on a public road in Kapashera Estate, New Delhi.

BRIEF FACTS:

2. Briefly stated, respondent No. 3 Smt. Geeta Singh was at logger head with the respondent No. 2 Kapashera Estates' Resident Welfare Association over installation of gates at points 'A' and 'B' on a public road in Kapashera Estates'. The Writ Petition No. 4927/2020 was filed by respondent No.3 Smt. Geeta Singh wife of late Sh. N.B. Singh, seeking quashing of order dated 16 July 2020 passed by the learned Sub-Divisional Magistrate, Kapashera/R-1, whereby the application of Respondent No.2, the Kapashera Estates' Welfare Society for installation of security gates at points 'A' and 'B' in the Kapashera Estate, as shown in the map annexed, was allowed.

3. In a nutshell, the grievance of the petitioner/respondent No. 3 Ms. Geeta Singh resident of Farm no. 1 was that the iron gates had only been sought to be erected to confer benefit to a handful of Farm houses viz., occupants of Farm Nos.2, 6 to 9 over land, that too on the land belonging to the *Gaon Sabha*. She refuted the assumptions that the iron gates had been put up for security reasons of the Kapashera Estate and claimed that it was being done to protect interest of few



elitist farm owners in connivance with the SDM & other authorities concerned. She claimed that she was a senior citizen of 71 years of age living alone at Farm No. 1 Kapashera Estate. It was brought out that her late husband was the founding member of the association and her grievance was that the non-inclusive association were determined to put iron gates and exclude her Farm and deny her access to the public road and severely hamper her movement.

4. *Per contra*, the Resident Welfare Association Kapashera relied on directions in W.P.(C) No. 8242/2017 dated 30 April, 2019 whereby the High Court of Delhi had passed directions to them to make a fresh application for installation of iron gates to the SDM, Kapashera and the SDM was directed to afford a hearing to the Society as well as Ms. Geeta Singh with liberty to the parties to place all the relevant documents before the SDM and after affording hearing to decide the dispute within four weeks.

5. Suffice to state that whereas the Resident Welfare Association Kapashera produced map showing probable locations of gates at points 'A' and 'B', Ms. Geeta Singh wanted the gate to be installed at point 'C' instead of at point 'B' as shown in the Map produced by the RWA. It would be expedient to re-produce the decision rendered by the SDM vide order dated 16 July 2020, which reads as under:-

“After hearing both the parties and all the above facts as well as keeping in mind the safety and security of all residents living in the Kapashera Estate, the undersigned is of view that the request of RWA Association Kapashera is liable to be allowed and hereby allowed that the gate should be installed at point 'A' & 'B' (instead of point 'C') as shown in the map enclosed herewith because gates



are being erected at the ends of roads and I am of the view that there is no partiality.

6. Aggrieved of the said order dated 16 July 2020, respondent No.3 Ms. Geeta Singh and Respondent No. 4 Mr. Mahinder Kumar Tandon R/o Farm No.1A Kapashera filed W.P.(C) No. 4927/2020 which is still sub-judice before this Court. The present Letters Patent Appeal is filed separately by the Resident Welfare Association Kapashera Village assailing the impugned order dated 22 February 2021 passed by the learned Single Judge which goes as under:

“10. Accordingly, the following directions are issued:

- i. Within a period of two weeks, the cost of installation of four gates Z1, Z6, A and B shall be worked out by the RWA. The RWA may then approach all the residents of the 53 farmhouses if they are willing to contribute for the four gates i.e., Z1, Z6, A and B. If so, the cost of the gates shall be equally borne by all farmhouse residents.
- ii. The RW A shall receive contributions for two weeks thereafter. If the contributions are made for the installation of the said four gates, the same may be got installed by the RWA within a period of eight weeks from today.
- iii. If however, the contributions are not received for installation of Z1 and Z6, then the RWA may go ahead and install gates at points 'A' & 'B'. Access through the said two gates shall however be open 4x7 to all residents of their Kapashera Estate and their visitors.
- iv. Any other parties, who are residents of Kapashera Estate and who wish to install any other gates, may approach the SDM with a request for the same. The same shall be decided in accordance with law.

The above order shall be implemented only after the Petitioners pay all their dues of RWA within two weeks. If they do not clear their dues, they shall not be permitted to contribute for the gates at points 'Z1' and 'Z6' and neither shall the same be installed. In such an eventuality gates at point 'A' and 'B' shall be installed.

11. Mr. Yadav insists that the costs of the gates at points 'Z1' and 'Z6' ought to be borne by the RWA. Mr. Bhatnagar on the other hand submits that the said association has only 15 members and none of the other residents are contributing. In view thereof, all or



at least a majority of the other residents of Kapashera Estate shall contribute for installation of the gates. Only then the said gates at points 'Z1' and 'Z6' would be installed. It would be unreasonable to impose the burden of installing gates for all 53 farmhouses on the owners/occupants of 15 farmhouses.

12. The petition, along with all pending applications, is disposed of in the above terms.”

7. All the respondents have been duly served in the present appeal. When the matter came up for hearing on 20 July 2023, we asked the learned counsel for the appellant/Resident Welfare Association Kapashera as to what was their *locus standi* in the present appeal since they were not even a party to the main Writ Petition bearing W.P.(C) No. 4927/2020. It was vehemently urged by the learned counsel for the appellant that the learned Single Judge has allowed construction of iron gates at points ‘A’ and ‘B’ overlooking the core issue that erection of gates on public road requires permission of Deputy Commissioner of SDMC as per the provision of **Delhi Municipal Act, 1954**,¹ and Guidelines dated 25 June 2007 issued under Section 320 of the DMC Act.

8. It was vehemently urged that by allowing erection of the gates at points indicated in the impugned order, the Id Single Judge overlooked that the road falls in Khasra No. 65 and comprises of land measuring 17 Bigha 16 Biswas belonging to *Gaon Sabha* of Village Kapashera besides additionally the *Shamlat deh* measuring 1 Bigha 8 Biswas of the *Gaon Sabha*, Village Kapashera in Khasra No. 27/29/2 that also falls within the area between the aforementioned points ‘A’

¹ DMC Act



& 'B'. It was urged that the impugned order would block free access of the residents of village Kapashera to the inner public roads in the Farm Houses and it was pointed out that they have made several requests to the DDA to convert the *Shamlat* land into a play ground in the nature of basketball and/or tennis court etc.

9. *Ex facie*, the present appellant has no *locus standi* to assail the impugned order by way of intra-court appeal. There are filed no documents on the record that would suggest even remotely that the proposed gates at points 'A' and 'B' in any manner encroach on *Shamlat Deh* or land belonging to the *Gaon Sabha* and whether the proposed use is commensurating with the **MPD-21**². The DDA is not even impleaded in the matter. The appellant cannot be recognized to claim an indefensible right to enjoy usage of public land. More so, when that land is not shown to be reserved for purposes claimed by the appellant. A bare look at the map filed by respondent No. 2 Kapashera Resident Welfare Society would show that the learned single judge has very rightly relied upon the Circular dated 25 July 2007 of the MCD whereby the iron gates have to be installed at the main access to the Colony/Block/Pocket. The villagers of Kapashera cannot claim any right of egress or ingress inside the roads leading inside private farm house as a matter of right.

10. Interestingly, the appellant in the present appeal initially sought impleadment by moving CM No. 37085/2021 which came up for

² Master Plan Development Delhi, 2021



hearing on 25 October 2021, during the hearing of main C.W.P No. 4927/2020 but the said application was withdrawn. Although it was withdrawn with liberty to the applicant to take re-course to the remedies available in accordance with law, it is manifest that the appellant was watching the proceedings throughout this time and came to this Court only after passing of the impugned order dated 20 February 2021 passed by the learned Single Judge in W.P. (C) No. 4927/2020 which appeal has been instituted as per the Registry on 23 February 2022. This conduct of the appellant reflects that it has no real or genuine legal interest in the matter except for perhaps conflating the issues as between the respondent No. 2 and respondent No.3, Ms. Geeta Singh.

11. Taking a serious note of such conduct of the appellant, we have no hesitation in dismissing the present appeal. We refrain from imposing any costs. However, nothing contained herein shall tantamount to an expression of opinion on the merits of the matter in LPA No. 90/2021.

12. The appeal, along with all pending applications, is disposed of accordingly.

YASHWANT VARMA, J.

DHARMESH SHARMA, J.

JULY 20, 2023

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LPA 91/2022

Page 7 of 7