



2024:DHC:3578-DB



\$~47

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**+ **LPA 350/2024****AZAD MARKET WELFARE ASSOCIATION
& ANR**

..... Appellant

Through: Mr. Rajiv Bajaj and Mr. Vidur
Marwah, Advocates
versus

**STATE (GNCT OF DELHI) THROUGH ENGINEER-IN-CHIEF &
ORS.** Respondent

Through: Ms Shobhana Takiar, Standing
Counsel, DDA with Mr. Kuljeet
Singh, Advocate
Mr. Tushar Sannu, Standing Counsel,
MCD with Mr. Manoviraj Singh,
Advocate and Mr. Gaurav Kumar, AE
(Project)

%

Date of Decision: 02nd May, 2024**CORAM:****HON'BLE THE ACTING CHIEF JUSTICE****HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA****JUDGMENT****MANMOHAN, ACJ : (ORAL)****CM APPL. 25720/2024 (for exemption)**

Allowed, subject to all just exceptions.

Accordingly, the present application stands disposed of.

LPA 350/2024

1. The present Letters Patent Appeal has been filed under Clause X of the Letters Patent of the then High Court of Judicature at Lahore, which



stands extended to the High Court of Delhi, challenging the impugned judgment dated 14th March, 2024, passed by the learned Single Judge in W.P.(C) 1149/2022, dismissing the said petition filed by the Appellants herein i.e., the residents/shops owners of Beri Wala Bagh/Azad Market Chowk, seeking restraint against the Respondent – Municipal Corporation of Delhi (‘MCD’) from erecting a wall in front of the Appellants’ properties for the purpose of construction of an under-pass.

1.1. The learned Single Judge, while dismissing the petition has observed that the Court does not act as an Appellate Authority over the decisions taken by the Municipalities and more particularly when Schemes are envisaged for the planned development of the city.

2. The subject matter of the writ petition was the scheme of “Widening of Kishan Ganj RUB¹” formulated by MCD and Railway in the year 1982 and which was finally sought to be completed in the year 2021. The project was undertaken to give relief to the general public, who use the said underpass and in fact, the subject work was being monitored by this Court in W.P.(C) 1285/2013.

3. The challenge in the writ petition was to the construction of the Retaining Wall, which was then being constructed in January, 2022. The writ petitioners were aggrieved as the wall was in front of the market having a row of shops and residences behind it. It was alleged that the construction of the Retaining Wall has blocked the air and light access of the market and residences. It was further alleged that the construction of the wall has rendered the shops of the Appellants unusable and it has affected the ingress and egress to the residential area, which includes MCD school, etc.

¹ Road under bridge



4. It is a matter of record that the Retaining Wall has since been constructed and is complete. The MCD in its counter affidavit dated 8th February, 2022 submitted that in fact construction of 125-meter length of the Retaining Wall stood complete in 2018 and the construction of the remaining length was in progress.

5. The MCD stated that the suggestion by the writ petitioner of providing low height wall with grills along with length of their shops and houses is technically unfeasible as this is a Retaining Wall, which has to cater to huge earth pressure due to the level difference of service road (which will be on the existing level) and main carriageway (which will be on the existing level and fall to the depth of 5-6 meters). The MCD stated that the Retaining Wall has been built as per the best engineering practices and its design has been approved by the Technical Committee.

6. The MCD has stated that the Retaining Wall has been constructed 20 feet away from the building line of shops and houses and therefore, the allegation of obstruction to light and air is misleading.

7. Learned counsel for the Appellants states that the Appellants are not opposed to the Retaining Wall since it already stands constructed. He states that in the present appeal, the Appellants are seeking a limited relief to the effect that small gates be carved out in the Retaining Wall so as to enable the residents to access the pavement on the other side of the wall. He states that this will enable the residents to access the school, etc. which is otherwise in close proximity and avoid longer distances.

8. As noted above, the MCD has filed a detailed counter affidavit explaining the public importance of the RUB built at the site. The MCD has also explained that the wall built along the side of the shops and residence of



the Appellants is not an ordinary wall, but a Retaining Wall. The MCD has sufficiently explained that the integrity of the Retaining Wall cannot be tampered with by carving out spaces in it as it has an important role in holding the earth's pressure.

9. In our considered opinion, neither the Courts nor the Appellants can substitute their opinion for the opinion of the technical experts, who have designed and constructed the Retaining Wall in due consultation with the Technical Committee overseeing the construction. It appears to us that the Appellant is being short-sighted in its demand for access through the Retaining Wall without appreciating the safety concerns highlighted by MCD.

10. We, therefore, find no merit in the present appeal and the same is dismissed.

ACTING CHIEF JUSTICE

MANMEET PRITAM SINGH ARORA, J

MAY 2, 2024/rhc/aa