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

+ **CONT.CAS(C) 1844/2023**

AZAD MARKET WELFARE ASSOCIATION AND ANR.

..... Petitioners

Through: Mr. Rajiv Bajaj, Ms. Shruti Khosla
and Mr. Vidur Marwah, Advocates.

versus

MUNICIPAL CORPORATION OF DELHI AND OTHERS

..... Respondents

Through: Mr. Dhanesh Relan and Mr. Arindum
Dey, Advocates for MCD.
Mr. Sanjay Vashishtha, with Mr.
Vishal Kumar and Mr. Akash Mishra,
Advocates for DDA.

+ **W.P.(C) 1149/2022 & CM APPLs. 32577/2023, 40749/2023,
40750/2023 & 43732/2023**

AZAD MARKET WELFARE ASSOCIATION & ANR.

..... Petitioners

Through: Mr. Rajiv Bajaj, Ms. Shruti Khosla
and Mr. Vidur Marwah, Advocates

versus

STATE (GNCT OF DELHI) & ORS.

..... Respondents

Through: Mr. Anuj Aggarwal, ASC for
GNCTD with Mr. Aakash Dahiya and
Mr. Yash Upadhyay, Advocates for
R-1 and 4.
Mr. Dhanesh Relan and Mr. Arindum
Dey, Advocates for MCD.
Mr. Shreeyash U. Lalit, Mr. Abhinav
Aggarwal, Mr. Himanshu Vats, Ms.



Runjhun Garg and Mr. Krishnagopal
Abhay, Advocates for DDA.

CORAM:
HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

ORDER

14.03.2024

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1. The Petitioners who are the residents/shop owners of Beri Wala Bagh/Azad Market Chowk have approached this Court for a request to consider a representation given to the Municipal Corporation of Delhi requesting them to restrain from erecting a wall in front of the properties of the Petitioners for the purpose of construction of an under-pass.
2. Notice in the Writ Petition was issued on 19.01.2022. Counter affidavit has been filed on behalf of the MCD.
3. The counter affidavit reveals that a scheme for widening of Kishanganj railway underbridge (RUB) was prepared by the MCD and the Railway by providing four spans, i.e. two spans of 9 mts. each with clearance of 5.5 mts. and two spans of 7.5 mts with headway clearance of 4.5 mts. It is stated that as per the Scheme, Railways had to construct four RCC boxes for passage of traffic under the running Railway lines and MCD had to construct approach roads, drainage system, footpaths, retaining wall, sump well and pump house etc. It is further stated that on 28.08.1982, the alignment plan of the Scheme was approved by the Technical Committee of the DDA and on 25.11.1992 the scheme amounting to Rs.24.3635 crores was approved by the Ministry of Surface Transportation, Government of India. Expenditure sanction was accorded by the MCD on 13.06.1994. It is stated that the revised scheme was approved by the Hon'ble Lt. Governor of



Delhi on 25.08.2006 for Rs.56.4695 crores and expenditure sanction was accorded by the MCD on 21.09.2007 and a total of Rs.26.41 crore was paid to the Railways for construction of boxes as per their demand. It is also stated that vide letter dated 23.09.2017, the Railways intimated that due to passage of time there has been inflation in the cost of construction and a revised estimate was given by the Railways demanding an additional Rs.31 crores for completion of the project. Material on record indicates that substantial time has passed and only after getting permissions at various levels has the project been implemented.

4. It is well settled that Courts do not run the Government. It is equally well settled that while implementing a scheme some inconvenience is caused to the public in locality but that project cannot be stopped/curtailed for the inconveniences faced by the inhabitants of the area. The Apex Court in National Building Construction Corporation Limited & Ors. v. Khosmendir Singh Gahunia & Ors., (2016) 16 SCC 36, has observed as under:-

"18. The original petitioners before the High Court have expressed apprehensions during the course of the hearing about whether the road would be restored in a manner as is required under the sanctions issued by NDMC. On their behalf, it has been urged that necessary safeguards may be instituted by this Court so that these apprehensions are duly allayed. On the other hand, the learned Attorney General submitted that as a result of the judgment of the Delhi High Court, the execution of the project, which involves an outlay of Rs 5300 crores, has been stalled and it is necessary for the earlier completion of the project that this state of impasse should end. Moreover, it has been urged that the original petitioners before the High



Court are not residents of Kidwai Nagar (East) which was a colony for government servants but are residents of nearby localities. It was urged that a temporary closure of the road to facilitate the progress of the work would not cause any prejudice to the residents of colonies in the vicinity who have alternative means of ingress and egress. Moreover, it was urged that since the appellants have now stated clearly that they shall restore the road by December 2018 in accordance with the terms of the approved layout plan, the apprehensions of the residents' associations would be duly met.

*19. We have adverted to the affidavit which has been filed on behalf of the appellants during the course of the hearing and to the undertaking that the appellants would by December 2018 restore the road in accordance with the terms of the approved layout plan. In other words, the closure of the road is not of a permanent nature but is of a temporary character to facilitate the completion of the work. Presently, it has been stated that Veer Chandra Singh Garhwali Marg has been excavated to a depth of 35 to 40 ft for facilitating the construction of basements which will be interconnected at points which would fall under the road. A temporary closure of ingress and egress has been necessitated to avoid any mishaps. That being the position, we see merit in the grievance of the appellants that at this stage, **the balance of convenience would lie in allowing the completion of the project. We accept the assurance furnished by the appellants on affidavit and through the learned Attorney General in Court. The project for redevelopment having received the statutory approvals, it is necessary to facilitate the completion of the project on schedule.** The statements which have been made on behalf of the appellants in the further affidavit as well as the undertaking would adequately*



protect the concerns of the petitioners who had moved the Delhi High Court. At the same time, we deem it appropriate and proper in the interests of justice to remit the proceedings to the High Court to consider whether any additional safeguards should be introduced so as to allay the genuine apprehensions of the petitioners before it. For that purpose, the proceedings shall stand remitted back to the High Court for the limited purpose of considering whether any such additional safeguards are required and if deemed necessary to provide for them. In the meantime, we clarify that in view of the statements made before this Court on affidavit by the appellants and the undertaking before this Court as noted earlier, the project for redevelopment shall proceed unhindered. However, we leave it to open the High Court to impose suitable safeguards in pursuance of the present judgment, to allay the apprehensions of the original petitioners."(emphasis supplied)

5. A suggestion was put forward as to whether certain gaps can be provided in the wall for the egress and ingress of the inhabitants of the area, who otherwise have to walk a kilometer for crossing the road. In response to the suggestion made, it is stated by the learned Counsel for the MCD that this proposal cannot be accepted as the same can put the lives of the inhabitants in danger.
6. As stated earlier, this Court does not 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.
7. Accordingly, the Writ Petition is dismissed along with the pending applications.
8. In view of the fact that the Writ Petition has been dismissed, no orders



are required to be passed in the contempt petition.

9. It is always open for the Petitioners to approach the Traffic and other authorities for construction of the Foot Over Bridge over the constructed road to ensure that the inhabitants of the area are not put to any inconvenience.

10. Photographs have been filed showing that the passage between the underpass and the shops is not being maintained properly. MCD is directed to ensure that the passage between the underpass and the shops is cleaned on a regular basis.

SUBRAMONIUM PRASAD, J

MARCH 14, 2024

Rahul