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

HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV

+ **W.P.(C) 11338/2015 & CM APPL. 29781/2015**

Between: -

GYAN MANGAT,
W/O LATE SHRI A.S. MANGAT,
R/O G-5, SAKET, NEW DELHI-I 10017PETITIONER NO.1

TRIPTA SOOD,
D/O LATE SHRI BALDEV SINGH GREWAL,
R/O G-I, GURUDWARA ROAD, SAKET,
NEW DELHI-110017PETITIONER NO.2

ANJU SOBTI,
W/O SHRI RAJIV SOBTI,
R/O G-12, GURUDWARA ROAD,
SAKET, NEW DELHI-110017PETITIONER NO.3

GROUP CAPTAIN BRIDGE MOHAN KARIR,
S/O LATE RAM REKHARNAL KARIR,
R/O F- 3A, DDA FLATS, SAKET,
NEW DELHI-110017PETITIONER NO.4

SAVITRI GUPTA,
W/O MR.D.K.GUPTA,
R/O F5B, SAKET,
NEW DELHI-110017PETITIONER NO.5

RAJAT RAI HANDA
S/O MR AMRIT RAI HANDA,
R/O G-96, SAKET,
NEW DELHI-110017PETITIONER NO.6

MONITA MALHOTRA,

Signature Not Verified
Digitally Signed
By:MAANAS JAJORIA
Signing Date:06.08.2024
19:27:35

Signature Not Verified
Digitally Signed
By:PURUSHAINDRA
KUMAR KAURAV

W/O MR.SUBHIR MALHOTRA,
R/O G-94, SAKET,
NEW DELHI-110017,

.....PETITIONER NO.7

RUCHI SINGHAL
W/O MR.DHRUV SINGHAL,
R/O G-92, SAKET
NEW DELHI-110017,

.....PETITIONER NO.8

JOSHINI TULI
D/O MR.JOGINDER TULI
R/O G-90, FIRST FLOOR
SAKET, NEW DELHI-110017

.....PETITIONER NO. 9

ANSHU BHATNAGAR,
S/O SH. SOHAN LAL BHATNAGAR,
R/O G-81, GROUND FLOOR,
SAKET, NEW DELHI-110017

.....PETITIONER NO. 10

AMIT CHAUDHARY
S/O LATE RAM SINGH MALIK
R/O G-29, SAKET,
NEW DELHI- 110017

.....PETITIONER NO. 11

JYOTSNA GOVIL,
W/O SH. SURENDRA PRAKASH GOVIL
RIO G-29, SAKET,
NEW DELHI-110017

.....PETITIONER NO. 12

DR. REENA RAMCHANDRAN,
D/O LATE DR. V. RANGANATHAN,
R/O H-53C, H- BLOCK, SAKET,
NEW DELHI-110017

.....PETITIONER NO. 13

KABITA GHOSH,
D/O N. G. MITRA,
R/O F-17A, SAKET,
NEW DELHI-110017

.....PETITIONER NO. 14

RAJ KRISHNA,
S/O LATE MR. RADHA KRISHNA,
R/O J-13, GROUND FLOOR, SAKET,

NEW DELHI-110017PETITIONER NO. 15
RADHAKRISHNAN BHAWALDAS GUMANI,
S/O LATE SHRI BHAWALDAS GUMANI,
R/O G-6, FIRST FLOOR, SAKET,
NEW DELHI-110017PETITIONER NO. 16

RAJAT BHATNAGAR,
S/O SH. R.P. BHATNAGAR,
R/O G-6, SECOND FLOOR,
SAKET, NEW DELHI-110017PETITIONER NO. 17

VISHAL SHARMA,
S/O SH. SURINDER KUMAR,
R/O G-9, FIRST FLOOR, SAKET,
NEW DELHI-110017PETITIONER NO. 18

DEEPAK CHOPRA,
S/O SH. HSP CHOPRA,
R/O G-9, THIRD FLOOR, SAKET,
NEW DELHI-110017PETITIONER NO.19

(Through: Mr. Arun Saxena, Mr. Rahul Kumar Singh and Mr. Amit Verma, Advs.)

VERSUS

SOUTH DELHI MUNICIPAL CORPORATION,
THROUGH COMMISSIONER, SOUTH ZONE,
SDMC, SAKET, NEW DELHI-L 10017.....RESPONDENT NO.1

K.C. KHANNA
THROUGH LEGAL HEIRS:-
(i) MR. ABHISHEK KHANNA,
S/O SH. SUNIL KHANNA, GRANDSON OF MR. K.C. KHANNA,
R/O G-4. SAKET, NEW DELHI-110017
.....RESPONDENT NO.2
(LEGAL HEIR)

(ii) SHIV KHANNA,
S/O SH. SUNIL KHANNA, GRANDSON OF MR. K.C. KHANNA,
R/O G-4, SAKET, NEW DELHI- 110017
.....RESPONDENT NO.3

(LEGAL HEIR)

*(Through: Mr. Mukesh Gupta, SC for MCD along with Mr. Shashi Gupta and Mr. Arnav Gupta, Advs. for Respondent 1.
Mr. Deepak Khadaria, Adv. for Respondent 2.)*

% Reserved on: 09.07.2024
Pronounced on: 06.08.2024

J U D G M E N T

The petitioners in the instant writ petition seek directions for declaration of the permission granted by respondent no. 1 to respondent no.2 for the use of property bearing property no. G-4, Gurudwara Road, Saket, New Delhi (hereinafter 'disputed property') in question for commercial/non-residential use as illegal, and to restrain respondent no.2 from using the said property for other than residential purposes.

2. Shorn of unnecessary details, the facts necessary for deciding the controversy would reveal that the petitioners are residents of Gurudwara Road (hereinafter 'GD Road'), Saket, New Delhi. They seem to have a grievance with the manner of usage of the disputed property by respondent no.2. The petitioners state that respondent no.2 is running a hotel/guest house on above two floors of the said property by the name of Khanna Residency and has leased out the ground floor to HDFC Bank for running its branch. They also state that the disputed property abuts the 13 meters (40 ft 6 inches) wide road known as Gurudwara Road, Saket, which is different from the main Mehrauli-Badarpur Road (hereinafter 'MB Road'). It is stated that the ground

floor of the disputed property cannot be permitted to be let out for operating a bank, and if that be done, the same would be in violation of the criteria laid down in **Master Plan of Delhi 2021** (hereinafter 'MPD 2021'). The area in question, that is Block G of Saket, falls under Category C of MPD 2021, where the banks are only permissible on residential plotted development, abutting a road of minimum 18 meters Right of Way (hereinafter 'RoW'). He placed reliance on Chapter 15 of the MPD 2021. The petitioners, therefore, have stated that respondent no.1-Corporation has illegally accorded approval to respondent no.2 for opening a bank on the said premises, by erroneously treating GD Road as a part of MB Road.

3. Respondent no.1-Corporation, by way of Status Report dated 12.01.2016, stated that the disputed property consists of the ground floor, first floor, second floor and third floor. The permission for running a guest house on the first floor, second floor, and third floor was granted by the Building Department, South Zone, *vide* order dated 13.07.2004, and a permission/NOC for running a bank on the ground floor was issued by the Building Department on 10.10.2014, after realizing requisite charges. As per the Status Report, respondent no.1-Corporation justified operation of the bank and guest house stating therein that MPD 2021 permits banks to be operated in C and D colonies under the head of 'Other Activity' requiring 18 meters RoW in regular residential plotted development and 13.5 meters RoW in rehabilitation colonies and 9 meters RoW in regularized-unauthorized colonies, resettlement colonies, walled city, special area and urban villages and in pedestrian shopping streets (of less than 6 meters RoW). It is further stated that as per the Town Planning Department, the plot in question abuts within 250 feet of RoW.

4. Respondent no.2, while filing reply to the writ petition, opposed the petition and stated that the petition is nothing but an abuse of the process of law. A submission is made in his reply that the petitioners have selectively targeted respondent no.2 and have failed to raise any grievance with respect to similar activities on the same road. The disputed property is claimed to have been situated abutting main MB Road which has 250 feet RoW.

5. The petitioners in their rejoinder have opposed the claims made in the counter-affidavit and have stated that the other properties in question are not in the nature of commercial operation under the MPD 2021, but fall under professional activities and thus, no grievance arises.

6. The petitioners also highlighted that there is no 18 meters continuous RoW for the disputed property as required under MPD 2021 for running commercial businesses from a residential colony. They state that as per the directions of the National Green Tribunal (hereinafter 'NGT'), commercial activities are prohibited in Green Belt.

7. Thereafter, an additional affidavit was filed by respondent no.2, who has brought on record the layout plan certified/verified by the Delhi Development Authority (hereinafter 'DDA'). A layout plan has also been submitted by respondent no.1-Corporation.

8. Mr. Arun Saxena, learned counsel appearing for the petitioners, while reiterating the averments made in the writ petition, submitted that earlier, W.P.(C) 9100/2014 was filed against unauthorized construction on the disputed property, however, the said petition came

to be withdrawn on the respondent-Corporation taking steps and issuing a stopping work/sealing order.

9. He, however, submitted that, in July 2015, when the construction work recommenced, a joint inspection was conducted by respondent no.1-Corporation with the petitioners and other residents, where respondent no.1-Corporation measured GD Road and included the green belt area, stormwater drains and pedestrian walkway within the RoW. The inspection report is sought to be relied on to establish that there does not exist the 18 meters RoW and instead, the same is only 13 meters. It is reiterated that the disputed property is situated on GD Road and not on the MB Road. According to the petitioners, in the present scenario, RoW cannot include green belt area, storm water drains and the pedestrian walkway, and the same is confirmed by the physical inspection done by respondent no.1-Corporation in the presence of the petitioners and qualified residents, and therefore, available RoW is only 13 meters. The said fact indicates a clear violation of the provisions of Chapter XV Clause 15.7 of the MPD 2021, which prescribes 18 meters RoW as the minimum requirement for commercial activity in a residential area.

10. Reliance is placed on a decision of the Supreme Court in the case of **Aniruddh Kumar v. Municipal Corporation**¹, wherein, it has been held that “*there is an element of public interest involved when a commercial user is being permitted in a residential colony*”. It is averred that the said commercial activity undertaken by respondent no. 2 will cause obvious nuisance and hardship to the residents, which according to the petitioners, violates the rights of the people to

peaceful, comfortable, and pollution-free life, enshrined in Article 21 of the Constitution of India.

11. Mr. Mukesh Gupta, learned counsel who appears for respondent no.1-Corporation submits that the instant petition deserves to be dismissed as the petitioners seek to assign completely unacceptable and innovative definition of RoW. He submits that there is no violation of MPD 2021. The disputed property is situated on a road which allows commercial activity with 18 meters RoW and according to the respondents, there exists 80 meters RoW, which should not be confused by misunderstanding different roads or the width cannot be in exclusion to green belt, footpath, storm water drains, etc. He submits that there is no violation of the NGT order and therefore, the petition deserves to be dismissed.

12. Mr. Deepak Khadaria, learned counsel appearing for respondent no.2 has taken the Court through the layout plan and he submits that the decisions to allow the activities in question have been granted through valid permissions. So long as the permissions are not set aside, the respondents have the unfettered right to continue with the concerned activities. He subscribes to the submissions made by respondent no.1-Corporation and submits that had there been any unauthorized activity, respondent no.1-Corporation would have taken necessary action. He reiterates that the disputed property is situated abutting the MB Road with more than 80 meters RoW and therefore, in view of Sub-Clause 2 of Clause 15.2 of MPD 2021, the activity mentioned in Clause 15.7 being guest house and bank are permitted.

13. I have heard learned counsels appearing for the parties and perused the record.

14. The parties are at a considerable variance as regards the formula for the calculation of the dimension of RoW. Thus, the primary question which falls for consideration of this Court is whether the area ascribed to green belts, stormwater drains, pedestrian ways, footpath curbs, barricades, etc. ought to be excluded or included while measuring the RoW?

15. It is significant to note that none of the parties have placed on record any definition of RoW either from MPD 2021 or from any other applicable rules or regulations.

16. So far as the order of the NGT dated 08.11.2017 is concerned, the same records the submission of respondent no.1-Corporation that the trees in the area in question will be maintained and will not be made to fell. The said order further records the submission of the counsel that the area adjacent to the trees which have been protected by a barbed wire fence shall be protected fully and no parking will be permitted there. Further, another order dated 30.11.2015 records that *prima facie*, the 13-14 meters wide green belt falls on a stretch of 1.5 kilometers abutting Saket Colony, Gurudwara Road, and further records that there shall be no tree cutting on the stretch of green belt and no commercial activities beyond the activities specified in Table 9.4 of MPD 2021 shall be permitted along the said stretch of green belt.

17. In the absence of a defined term for "Right of Way" under MPD 2021 or any other applicable rules or regulations, and lacking binding precedents on this matter, the Court must adjudicate the issue based on general practice and established conventions. The Supreme Court in

CWT v. Officer-in-Charge (Court of Wards), Paigah² interpreted the scope of “Agricultural land” where the statute in dispute did not provide for a definition of the same. The relevant extract is produced below:-

“15. ...The correct rule is that we have to endeavour to find out the exact sense in which the words have been used in a particular context. We are entitled to look at the statute as a whole and give an interpretation in consonance with the purposes of the statute and what logically follows from the terms used. We are to avoid absurd results.”

18. This Court is further aware of the principle of interpretation, as enunciated in **Expeditious Trial of Cases Under Section 138 of NI Act, 1881, In re, (2021)**³, wherein, it was observed that a Court must not rewrite a statute, neither to enlarge nor to contract it. The duty of the Court is only to interpret and apply the law, not to change it and the Court cannot add words to a statute or read words into it which are not there.

19. Based on an understanding of the limits in which this Court is permitted to interpret the term, it is deemed fit to find out the context in which the word “Right of Way” has been used in the given scenario. For such purpose, the Court is expected to look at the statute as a whole and give an interpretation in consonance with the purposes of the statute and what logically follows from the terms thus used.

20. Before dealing with the aforesaid aspect, it is noteworthy that GD Road and MB Road run parallel to each other for approximately 1.5 kilometers, separated by a green belt for this distance. MB Road is a longer stretch i.e. akin to an Urban Highway compared to GD Road,

² (1976) 3 SCC 864

³ (2021) 16 SCC 116

which is around 1.5 kilometers long. The disputed property is located on GD Road, which appears to function as a sub-road.

21. The GD Road is akin to a small diversion parallel to MB Road which eventually leads to MB Road again; and along the diverted portion, there exists a green belt in between GD Road and MB Road. The GD Road, therefore, can be considered as a 'Frontage Road' to the MB Road.

22. The petitioners, on the basis of measurements, as provided in the Master Plan given by the respondents, assert that property abutting the GD Road has an average RoW of 13 meters.

23. Therefore, it is unequivocally found that there exists 13 meters admitted wide RoW on the Frontage - GD Road. This 13 meter RoW on GD road exists independent of the 14 meters green belt area and additional storm water drain abutting the main MB road as per the petitioners. The petitioners also assert that storm water drains and pedestrian way also need to be excluded. However, the Court is not inclined to accept the aforesaid submission, under the facts of this case, for the reason that even NGT, in its order dated 30.11.2015, has taken note of table 9.4, permission of use for the premises in sub-use zones and within green belt-use zone, and the permitted activities include *inter alia* forest, agriculture use, vegetation belt, dairy farms. The said table is reproduced as under:-

“Table 9.4 permission of use premises in Sub Use Zones.

S.No	Use Zone	Activities Permitted
1.	Green Belt	Forest, Agriculture use, Vegetation belt, Dairy Farms, Piggery, Poultry farms Low Density Residential Plots, Wild Life Sanctuary, Bird Sanctuary, Biodiversity Park, Veterinary Centre

		Police Post, Fire Post, Smriti Van, Plant Nursery, Orchard, Area for water-harvesting, Floriculture farm, Open Playground, Agro Forestry, Amenity structures (List given in note), Exiting village abadis, already Regularized Unauthorisedly colonies and already approved Motels may continue subject to development control mentioned in Table 5.4 and Clause Chapter 17.0”
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24. This Court in the case of ***Sudama Singh v. Government of Delhi***⁴, vide order dated 11.02.2010 has held that “*what exactly constitutes by RoW is not clear*”. Although the observation came in a case concerning the re-location of jhuggis, the Court found that the RoW was not defined. In ***Nyaya Bhoomi v. GNCT of Delhi***⁵, the question as to what constitutes RoW again came up for consideration, although in a different factual backdrop. While giving a general definition of the concept, the Division Bench of this Court observed as under:-

“9. What is a Right of Way? It is the distance between the straight line of houses on either side of a road. Thus, one must not confuse the Right of Way and a road. The former is wider and the latter narrower.”

25. Thus, RoW has been held to be the distance between the straight line of houses on either side of the road. It is not equivalent to the width of the road, which is a narrower space meant for movement. Nevertheless, the lack of a definition or a precedent providing any definition cannot come in the way of the adjudicatory functions of the Court. In light of this scenario, the Court deems it fit to rely on statutes that deal with the same subject matter. In ***Bangalore Turf Club Ltd. v.***

⁴ 2010 SCC OnLine Del 612

⁵ 2012 SCC OnLine Del 5841

*ESI*⁶, the Supreme Court has observed that “two statutes are said to be *in pari materia* with each other when they deal with the same subject-matter. The rationale behind this rule is based on the interpretative assumption that words employed in legislations are used in an identical sense.” No doubt, the first endeavour of the Court must be to trace the meaning of a term within the four corners of the statute in which it has been used. However, once such an exercise is not possible, the Court is at liberty to examine other statutes of a similar nature to arrive at a logical and most common-sensical meaning of the term, so as to ensure that both literary and purposive sanctity are preserved.

26. This Court notes that the Master Plan for Delhi-2021 (MPD-2021) is prepared by the Delhi Development Authority under Section 11A(2) of the **Delhi Development Act 1957** (hereinafter ‘DDA Act’). Thus, the parent Act of the MPD-2021 is the DDA Act. The object of the DDA Act is to “*provide for the development of Delhi according to plan and for matters ancillary thereto*”. In this regard, we may find it pertinent to refer to the object of **The Goa (Regulation of Land Development and Building Construction) Act 2008** (hereinafter ‘Goa Act’), wherein “*Right of Way*” is defined. The object of the Goa Act is to “*provide for the regulation and control on building construction and land development in the State of Goa and other incidental and ancillary matters connected therewith*”.

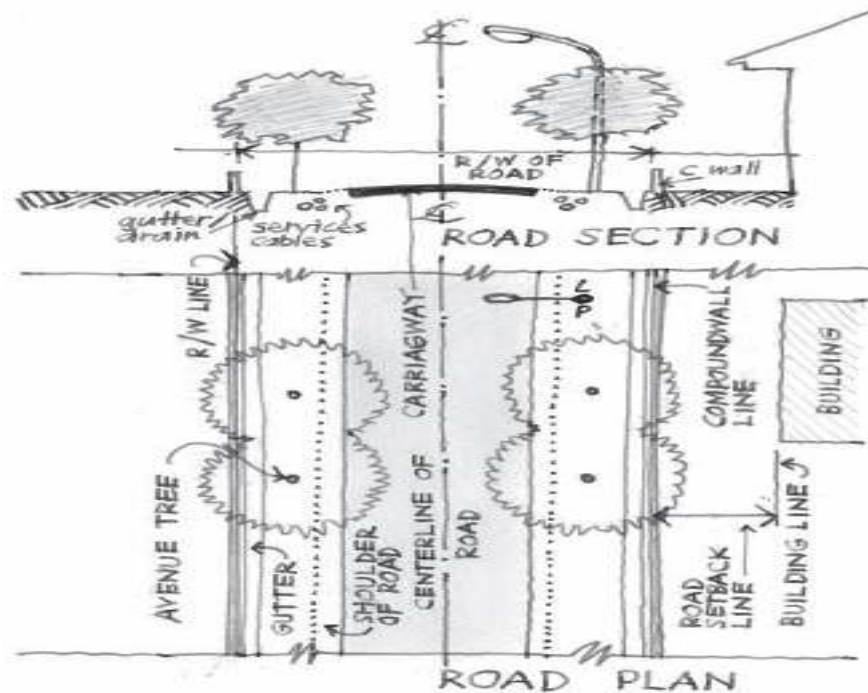
27. Thus, the underlying objects of both the legislations, DDA Act and Goa Act, are similar and primarily aim towards a planned development of the city. Accordingly, the Court deems it fit to take

note of the definition under Definition Regulation/Clause 2 (113) in Goa Act, 2008, wherein, the RoW is defined as “Road or Right of way” (R/W), means the right of way of the road or street inclusive of the carriageway, shoulder, drain, footpaths, and shall be measured at right angles to the course of direction of such road or street”.

Refer Sketch No. 1 Chapter No. 28

Note: – In case of road embankments, the road embankment width should be provided in addition to the prescribed R/W.

Sketch No. 1 Definition (113) & Regulation 12.1 R/W section with components.



28. It is thus seen that the RoW is a wider concept, as compared to a road or street. It is composed of “right of way of the road or street inclusive of the carriageway, shoulder, drain, footpaths”. The said definition is consistent with the view taken by the Division Bench of this Court in *Nyaya Bhoomi (supra)*, the RoW has been held to be a wider concept and covers the entire width between the straight line of houses on either side, thereby meaning that it is inclusive of the

carriageway, shoulders, drains, footpaths etc. It is not the case of the petitioners that despite inclusion of the said features, the width of RoW falls short of the dimension stipulated in MPD 2021. Thus, the finding on the issue framed by this Court does not align with the case of the petitioners. Moreover, it has been contended by respondent no. 2, and not denied by either side, that it is not only respondent no.2 who is operating a guest house and bank on its premises, rather, various other similar commercial activities are being conducted therein.

29. Undeniably, any observation or direction issued herein may adversely affect various other occupants. Unless the nature of relief sought to be agitated in the instant petition is based on any established right, the same may not be enforced by way of a writ petition under Article 226 of the Constitution of India. More so, the Court finds that the building permissions- for Hotel and Guest House dated 13.07.2004 and for letting the premises on lease to the Bank dated 10.10.2014 - are not specifically challenged in these proceedings, despite having been placed on record. So long as the permissions granted remain in force, the Writ Court cannot abruptly pass any direction to interfere with the permissible activity as per the Rules and Regulations of the Municipal Corporation of Delhi. The permissions, unless set aside by a competent Court, qualify as legal sanction.

30. If the petitioners find that the applicable rules and regulations are not being followed, in any manner whatsoever, the matter can of course be taken forward before the competent authority which shall deal with the same in accordance with law. However, only on the pretext that at the GD Road, where the subject property is situated, the

requisite RoW, the operation of the premises cannot be stopped as the said ground has been rejected by the Court for want of substance.

31. In view of the aforesaid observations, the instant writ petition along with pending application stands dismissed.

(PURUSHAINDRA KUMAR KAURAV)
JUDGE

AUGUST 06, 2024/MJ