

Union of India through Secretary, Government of India, Ministry of Works and Housing

Vs

D. C. M. Limited and Others

With

Delhi Development Authority

Vs

D. C. M. Limited and Others

Civil Appeals Nos. 1401 and 1402 of 1990

(Ranganath Misra, M. M. Punchhi, S. C. Agarwal JJ)

13.03.1990

JUDGMENT

PUNCHHI, J. -

1. Special leave granted.

2. These two appeals respectively are directed by the Union of India and the Delhi Development Authority (hereinafter referred to as 'the DDA') against the Full Bench decision and order of the Delhi High Court dated May 22, 1987 declaring and by necessary implication directing that the DDA carry out and implement its Resolution No. 26 dated February 1, 1983, which resolution was said to have been substituted by it by a later Resolution No. 3 dated August 1, 1986 reiterated by another resolution dated November 3, 1986. These resolutions related to some affairs of the Delhi Cloth Mills Limited (hereinafter referred to as 'the DCM'), the writ petitioner before the High Court, and the official reaction thereon.

3. Some of the essential facts as culled out from the judgment of the High Court, and others which have come by in the meantime, would be necessary to be noticed. The Mill has a complex over an area of about 63 acres at sites at Bara Hindu Rao and Kishan Ganj at Delhi. The Delhi Development Act, 1956 envisages preparation by the DDA of a Master Plan for Delhi, which it did, and was enforced and one of its attributes is to assign land use. Bara Hindu Rao is a non-conforming area and the industry of the kind in which the Mill is engaged in has to be shifted out to a conforming area. 612 acres of land near about Narela was said to have been earmarked for conformed use of factories. The DCM in September 1982 approached the DDA and put forth its proposal for shifting the Mill and for re-developing the Mill area for group housing and flatted factories. On February 1, 1983 the DDA by Resolution No. 26 agreed to the scheme as propounded by DCM as feasible for implementation in phases. But in passing it recorded a fact that the shifting of the Mill would involve a lot of working population and consequently income and products manufactured by the DCM would carefully need to be looked into by the Delhi Administration and Ministry of Industries in terms of its affection (sic) to the economy of Delhi. On the other hand in September 1983 the

DDA turned down the request of the DCM for allotment of an alternate site measuring 150 to 200 acres of land in a conforming area for shifting having regard to the kind of industry the DCM was engaged in. The DCM then applied to the Secretary, Labour/Labour Commissioner, Delhi Administration for permission to close down the Mill under the provisions of Section 25-O of the Industrial Disputes Act. The reasons advanced by the DCM inter alia were that the Mill could not be kept located in a non-conforming area as otherwise penal consequences would follow as also that it had run into tremendous losses, the industry being unprofitable. On April 15, 1985, the request of the DCM was turned down by the Secretary, Labour/Labour Commissioner. In this state of affairs when the DCM had been given no place to shift to and the closure of the Mill had been declined, the DDA reviewed the situation and passed a fresh Resolution No. 3 dated August 1, 1986 reviewing its earlier resolution dated February 1, 1983 recalling the grant of approval with regard to the scheme propounded by the DCM. Further it felt justified in taking such step as the Master Plan was under process of review keeping the perspective of the year 2001 AD in view. The DDA even reiterated its resolution of August 1, 1986, by another resolution dated November 3, 1986 during the pendency of the writ petition in the High Court when asked to have a fresh look into the matter. These two later resolutions, as said before, were quashed by the High Court restoring the earlier resolutions dated February 1, 1983 taking a broader view that the Mill could not be kept working in a non-conforming area as otherwise it would attract penal action under the law after the lapse of three years from January 18, 1986, and that the DDA could not justify its action as even the proposals to modify the Master Plan with the perspective of year 2001 AD in view did not contain any proposal for change of land use of the site under the DCM, and as of original, it was a site marked for group housing and flatted factories.

4. The reasons advanced by the Secretary, Labour/Labour Commissioner declining request of the DCM for closure of the Mill under Section 25-O of the Industrial Disputes Act as recorded were as follows :

"The closure of the unit is not in public interest as this would render almost 6000 workers jobless and adversely affect thousands of their families members. Besides, trade and commercial activity associated with this Mill would be adversely affected on account of the closure. It is in public interest that the management makes all out efforts towards the efficient functioning of this Mill. Finally, the operations of this unit are not dangerous to the lives of the industrial workers and the people living around the factory. The location of the unit in a thickly populated locality therefore does not involve any community risk."

The DCM filed Civil Writ No. 1281 of 1985 in the High Court which was allowed by a Full Bench of the High Court on March 1, 1989 ordering closure of the Mill, though much after the decision instantly appealed against. The Lt. Governor, Delhi Administration sought special leave vide S.L.P (C) No. 3630 of 1989. Another sequential petition S.L.P. (C) No. 3369 of 1989 was preferred by the DCM against the order of the Full Bench of the High Court passed two days later on March 3, 1989 extending time for grant of permission by the Lt. Governor for closure of the factory till March 30, 1989. When these matters were called in this Court along with the SLPs now appeals, it transpired that the DCM and its employees, ranging about 6000 in number, had fortunately reached an agreement in the matter of closure of the factory. The High Court also had come to the conclusion that indisputably the location of the factory in Bara Hindu Rao, within the municipal limits of New Delhi was not congenial from the point of view of sanitation and was otherwise hazardous. Keeping such finding and the settlement between the DCM and its employees in view, the Full Bench judgment of the High Court dated March 1, 1989 was left uninterfered with dismissing the Special

Leave Petition No. 3630 of 1989 on March 27, 1989, with a consequential direction :

"So far as the payment of statutory compensation which forms part of the agreement, we direct that DCM shall credit the amounts payable to the individual employees by opening an account with a nationalised bank as per the time schedule indicated in the agreement by making fixed deposits for an initial period of 91 days. Payment into the account and making over the fixed deposit receipt, so far as the disbursement of the statutory compensation is concerned, shall be taken to have been satisfied when such fixed deposit receipt is made over to the respective employees."

Sequelly S.L.P. No. 3369 of 1989 preferred by the DCM was also dismissed on the same date.

5. What survived on March 27, 1989, were the instant two special leave petitions, now appeals, and during the course of their hearing Mr. Nariman appearing for DCM on his own indicated that DCM was prepared to locate community centre and a hospital to serve the requirements to the employees as also the residents of the locality. He further submitted that notwithstanding the pendency of those two petitions, the Delhi Administrative, should proceed too process the application of DCM for requisite permission for locating the proposed flatted factories and residential accommodation for officers and workmen in accordance with the Master Plan, subject to the result of these petition. In these circumstances, the Municipal Corporation of Delhi, which was not a party to these proceedings (though later represented by counsel), as well as the two petitioners, Union of India and the DDA were given directions to process applications for permission and proceed with the same in accordance with law pending disposal of the special leave petitions. This order was later clarified on April 10, 1989 to say that processing of the applications by the three aforementioned functionaries did not include making of a final order and no final order disposing of the applications be made until the special leave petitions are finally disposed of. It was further directed that in the matter of processing, the Master Plan and the relevant law be kept in view.

6. The scope of these matters is now considerably reduced and easily discernible. The factory has been ordered to be closed and the employer and the employees have entered a settlement. The supposed basis for reviewing or recalling dated February 1, 1983 on the basis of its affectation (sic) to the industry and economy of Delhi as also to the workmen has vanished. On this footing and on the events which have come by, the challenge to the judgment and order of the High Court loses vigour and this does not now at least remain a case calling for interference under Article 136 of the Constitution except what we intend adding thereto to further the cause of justice.

7. Resolution No. 26 dated February 1, 1983 approving the scheme as given by the DCM provided that the scheme had taken all necessary safeguards and controls which would help triggering re-development and rehabilitation in the congested areas of the central core of the capital. The Technical Committee of the DDA assisting in the matter was even of the opinion that when permitting flatted factories, it could be ensured that a reasonable percentage in the scheme is reserved for rehabilitating small industrial units presently functioning in the State in non-conforming areas and that the scheme only be implemented if it had the approval of the Delhi Administration and the Government of India. To further that object, during the course of these proceedings up-to-date plans as prepared and submitted by the DCM to Municipal Corporation of Delhi, together with the sanction accorded thereon by the Standing Committee of the Municipal Corporation of Delhi vide Resolution Nos. 1136 and 1137 dated November 24, 1989, were sent to the DDA for approval on December 6, 1989. These had to be examined by the DDA in accordance with the assurance given to this Court by Shri G. Ramaswamy, its learned counsel and keeping in

view the Master Plan. These plans were examined vis-a-vis the plans earlier submitted by the DCM in 1982-83. We have been conveyed that the objections as raised by the Municipal Corporation of Delhi within their own domain have been adopted by the DDA as their own objections, which are extracted below :

"I. Flatted Factories. - The scheme has been formulated on a piece of land measuring 24.55 acres. This land is earmarked for flatted factories in Delhi Master Plan and partly for widening of road. The Master Plan provides on page 18 about the DCM site as follows :

'The Delhi Cloth Mills have to move out of this congested area to the extensive industrial districts according to the time schedules given for non-conforming uses. The present site should be developed for flatted factories in gradual stages to relocate the industries now located in Ahata Kidara and other areas.'

2. Therefore, this site after development in stages for flatted factories is to be utilised only for providing accommodation to the existing units in the above referred areas. The number of flatted factory units will depend upon/be related to the units located/functioning in these areas. Therefore, in the proposed scheme of flatted factory, all these aspects have to be provided for and it should fulfil these requirements. The scheme has to be modified accordingly as no such details provisions are indicated in the scheme.
3. Regarding the No Objection Certificate from the land use point of view, as required under bye-law 6.2.2 which was come into force w.e.f. June 23, 1983, DCM is required to obtain the NOC from the land use point of view from the DDA before the plans can be approved by MCD. In the present case, no such NOC under bye-law 6.2.2 has been applied for by the DCM.
4. The right of way of National Highway No. 10 as per Master Plan for Delhi is 200 ft. whereas in the scheme, it is shown as 150 ft., the scheme accordingly needs suitable modification.
5. In the proposed scheme an entry/exit is provided from the proposed National Highway No. 10 which would not be technically feasible because of the proposed road underbridge at this point.
6. In the proposed scheme, 2 basements have been provided equivalent to 40 per cent of the ground coverage whereas the basement should be equivalent to the ground coverage, provided in the scheme and should be used for essential services and for parking. This condition has also been imposed in the NOC issued by Commissioner (Slum) under the Slum Improvement and Clearance Act, 1956.

II. Group Housing Residential Complex at Kishan Ganj

1. The scheme on an area measuring 39.73 acres has been formulated by the DCM in Kishan Ganj area comprising of (i) freehold land of DCM, (ii) leasehold land with DCM where lessor is DDA, measuring 11.98 acres and (iii) the DDA land encroached by the DCM, measuring 5091 sq. mtrs. As per the terms of lease, the lessee cannot use, without permission, in writing, of the lessor, land for any purpose other than that for which it has been given by the lessor. The scheme, therefore, needs modification to exclude the leasehold land which has been included in this scheme.

2. Land, measuring 5091, sq. mtrs. has been illegally encroached by DCM. This land belongs to DDA which has not been given on a leasehold basis to the DCM. This land has been included in the redevelopment Scheme. Since the ownership of the land is with the DDA, the scheme will have to be modified to exclude this land also. Therefore, lands leased out and unauthorisedly occupied should be deleted and the scheme should confine to the freehold land. The scheme needs modification.

3. The scheme formulated is without any distinction of the freehold, leasehold, and the unauthorisedly occupied land. Therefore, the plan has to be modified to ensure that the scheme on the leasehold land is a separate entity because in the eventuality of permission being granted by the lessor to allow use of the land for group housing purposes, it would be necessary as there may be occasion for determining the lease for violation of the lease terms and this will be possible only if the leasehold land has a separate identity on the ground.

4. As per June 1983, Municipal Building Bye-laws, under the byelaw 6.2.2 a 'no objection certificate' from land use point of view from DDA is required to develop this land for residential use. Therefore, the DCM have to obtain 'No Objection Certificate' from land use point of view from DDA for the development of this land under the provisions of this bye-law before their scheme could be considered and sanctioned by the Municipal Corporation of Delhi.

5. In the scheme formulated, it is observed that some of the areas for facilities such as nursery school, shopping centers etc. have been included for coverage and FAR calculations as part of the group housing area; while as per Master Plan stipulations, the area for community facilities within group housing scheme cannot be included for the purpose of calculations of coverage and FAR. These should be left as independent plots for providing such facilities.

6. The present Master Plan Zoning regulations prescribe a height of 80 ft. for residential group housing whereas the height provided is more than that.

7. The present scheme has been formulated having some of the blocks of 12 floors (ground plus 11 storeys). The Master Plan Zoning regulations provide a maximum height of 80 ft. i.e. ground plus 7 storeys. Therefore, the scheme needs modifications accordingly.

8. In the proposed scheme 2 basements have been provided for parking, servicing and storage whereas the basement should be provided equivalent to the ground coverage for essential services and for parking which is also one of the conditions imposed by the Commissioner (Slum) while granting NOC under the Slum Improvement and Clearance Act, 1956.

III. Government of India Ministry of Urban Development Communication this regard

Director (DD), Min. of U.D. vide his letter No. 16021/3/87-DD II/V-A dated December 11, 1989 has stated that the land use and the proportion in which the land has to be developed for various uses, the provisions of the Master Plan of 1962 and the proposals made in PDP 2001 will have to be borne in mind. Further, it is

mentioned that a view is to be taken for the use for which the Nazul land given on lease is to be put. Thus, keeping in view the above communication from the Ministry, the scheme will require modifications in the light of the proposals made in PDP 2001."

The DDA thus requires the aforesaid objections to be first met before it could give its final approval. It is worthy of record that under interim direction of this Court, afore referred to, its approval shall proceed after the disposal of these appeals. And we feel that time for that purpose has arrived.

8. Having heard learned counsel for the parties and having taken note of the objections above referred to, we take the view that the appeals be dismissed conveying a direction that the DDA shall grant to the DCM conditional approval subject to removal of the above enumerated objections raised or such of them as are valid and tenable in law after DCM is heard by the Municipal Corporation of Delhi which the DDA has adopted and the matter be formalised forthwith by the DDA and other authorities connected therewith within eight weeks from today do that the settlement between the workers and the DCM and other matters connected do not stagnate and rather move further to the benefit of all concerned. It appears that to the 6000 workmen the grant of such approval even though conditional, would be beneficial; so are the terms of the settlement.

9. Saddling the order appealed against with the above direction we dismiss these appeals. No costs.

10. I.A. No. 1 of 1989 for intervention by a co-sharer named Tara Chand Bhatia voicing grievance that the DCM has undervalued its property at Bara Hindu Rao etc. and that it should be ordered to be revalued, is also dismissed as it has no connection with the main issue.

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