

SUPREME COURT OF INDIA

Govt. of NCT of Delhi & Ors.

Vs.

Anand Arya & Ors.

C.A.No.888 of 2016

(T.S.Thakur,CJI., A.K.Sikri and R.Banumathi,JJ.)

05.02.2015

JUDGMENT

A.K. Sikri. J.

(Arising Out of S.L.P. (Civil) No. 35037 of 2015)

1. Notice, returnable forthwith.

2. Respondent Nos. 1 and 2 (hereinafter referred to as the “respondents”), who are the real contesting respondents, have appeared on Caveat and accepted notice. Keeping in view the nature of order which we propose to pass in these appeals, it was not found necessary to serve other respondents. Insofar as counsel for the appellants as well as counsel for the respondents are concerned, they were ready to argue the matter finally. Accordingly, we heard the matter finally at this stage itself.

3. Leave granted in both these matters.

4. The appellants in these two appeals are Government of NCT of Delhi and Delhi Transport Corporation respectively. They feel aggrieved by the orders dated October 20, 2015 passed by the High Court of Delhi in CM No. 12299 of 2015 in Writ Petition (Civil) No. 5481 of 2011. In order to have a glimpse of the controversy, we may state that the matter pertains to the construction of Bus Depot by the appellants on an area situated next to Nizamuddin Bridge and behind I.P. Power Station. Writ Petition (Civil) No. 5481 of 2011 was disposed of by the High Court vide orders dated September 13, 2015. It was found that as per the Master Plan 2021 (MPD 2021) for Delhi the aforesaid Bus Depot, popularly known as Millennium Bus Depot, was shown as “river flood plain” and on such are no construction could be carried out as per MPD 2021. The High Court, however, gave six months' time to the authorities to change the Master Plan, as per law, if the same was permissible, failing which the Millennium Bus Depot was to be removed from the site. This has not happened, though the order of the High Court is dated September 13, 2012. The DTC filed an application for extension of time , i.e., CM No. 12299 of 2015. By the impugned order dated

October 20, 2015, the High Court has rejected the prayer for extension of time and dismissed the application. It is this order which is the subject matter of the instant appeals.

5. The matter has some history. In order to appreciate the position taken by the parties on the either side, it would be necessary to traverse the historical trajectory. As we unfold the events that have taken place, the narration thereof would not only reflect the position taken by the parties on either side, some of the answers which apparently flow from these facts would also automatically become available. For these reasons, we take note of these events that are material for these appeals but avoiding unnecessary details at the same time.

6. As is clear from the glimpse of the lis mentioned above, the appellants have constructed Millennium Bus Depot at the site in question. As per the respondents, the site is river flood plain and as per Master Plan - 2021, no construction can be carried out on such an area. The area in question is next to Nizamuddin Bridge and behind I.P. Power Station and falls in Sub-Zone-06, Zone-O, between Nizamuddin Railway Bridge and National Highway-24 measuring 390 hectares. This prompted the respondents to file Writ Petition (Civil) No. 5481 of 2011 by way of Public Interest Litigation. The petition was filed at a time when the construction was still underway. The respondents wanted stay of construction as well. However, no such interim prayer was granted. By the time the matter came up for final hearing, the construction had been completely carried out and DTC Bus Depot had started functioning therefrom. Under these circumstances, the respondents pressed their relief for demolition of the construction and restoration of area in its original condition.

7. It was averred by the respondents that the construction in question amounted to encroachment on river flood plain/river front resulting a change in the land use. It was also stated that as per the Master Plan, the area is earmarked for recreation purposes on the West Bank (Clause 9.2.1). It was pointed out that Draft Zonal Plan of the area was published in July, 2008 for the purpose of inviting objections. The Zonal Plan has specified the land use of the River and confirmed that it would be only for recreational use such as Biodiversity Park, Botanical Park, Forest etc. which would help in regenerating the environment. The respondents also pointed out that the DDA vide its communication dated December 2, 2010 in response to RTI query had confirmed that a 6 hectares strip of land between Akshardham Complex and the Commonwealth Games Village was indeed designated as 'Parking' in the approved lay out plan. The Delhi Urban Art Commission (hereinafter referred to as 'the DUAC') after its inspection carried out on November 02, 2010 had directed both the DDA and the DTC to vacate the river bed and to ensure the removal of all the constructions carried out in the past. Even the Shunglu Committee which was set up to go into the conduct of Commonwealth Games-2010 had adversely commended upon the construction of the said structure and in its report by observing as under:-

“All clearances were provided by the Lieutenant Governor for construction of a 'temporary' structure which was ostensibly to be dismantled after the conclusion of the Games. But this Project was implemented by the Transport Department, GNCTD and DTC right from the beginning as a 'permanent' structure. It appears as if the

hosting of CWG provided a pretext for 'land grab' by various Government agencies after short circuiting the established rules and procedures.”

In its affidavit filed by the DUAC, it also categorically mentioned that no proposal regarding the alleged construction was ever referred to the DUAC at any time and no sanction or approval was thus obtained. It was also mentioned that site was inspected by the DUAC and thereafter matter was considered by the DUAC in its meeting held on November 10, 2010.

In nutshell, the case set up by the respondents was that the construction of Bus Depot is contrary to Master Plan; it would affect the ecology and environment of the area; by ignoring the same the appellants were violating the principle of Puyblic Trust, principle of Sustainable Development, Polluter Pays Principle, Principle of Inter-Generational Equity; and all this amounted to infuriation of Articles 21, 48A, 51A of the Constitution.

8. The DTC and Delhi Government filed their respective affidavits explaining that the land in question was allotted for the development of a Bus Deport to be used during the Commonwealth Games which where to be held in New Delhi in October, 2010. The position taken by the DTC was that it was imperative to have such a bus depot which was utilised for operating buses in the city of Delhi and almost 900 buses were providing services from this Depot which was serving major bus terminals. Since it was serving public purpose, there was necessity for such a depot. At the same time, DTC also accepted the position that as per Master Plan, the area was shown as river bed and no such construction could be carried our on river bed. In view of such a situation, it was stated in the affidavit that the DTC vide letter dated November 09, 2010 had requested the DDA for change of land use. The public purpose was highlighted by stating that the Millennium Park Bus Parking acts as a life line for nearly one fourth of the bus commuters of Delhi. It caters to approximately ten lakhs people every day and is immensely beneficial to lower and middle class sections of society who cannot afford a means of transport other than public bus service. Shutting down the Millennium Park Bus Parking would deprive lakhs of people of cheap and convenient bus service and would render jobless nearly 2,000 employees of the DTC such a drivers, conductors, mechanics, etc.

9. The DTC also denied that there is a construction on the flood plains of Yamuna River. As per the DTC, the Millennium Park Bus is situated at a suitable distance from the river bund. It was submitted that before development of the said land into a bus depot, the same was used by the Indraprastha Thermal Power Plant for dumping of residual fly-ash. Almost 20 meters of fly-ash spared over many acres were leveled, compacted and covered with granular sub base to enable the ground to bear the 13.5 ton weight of each Low Floor Bus. Incidentally, a high tension electricity transmission tower-which is an essential part of the infrastructural needs of the city, is situated right in the center of this area. The DTC also sought to project that no commercial activity to the detriment of the ecological balance of the said land or the Yamuna River is taking place as a result of the operation of the bus depot. It emphasized that the DTC had spent an amount of approximately 100 crores on the development of this infrastructure.

10. An additional affidavit was filed by the DTC giving certain material to support its contention that the scientific study conducted by an expert body like NEERI recommended the area in question for usage as parking space.

11. After taking note of the respective stand of the parties the High Court went into the question as to whether the aforesaid Bus Depot could be constructed at the given site. It was found that since there was no dispute that as per MPD-2021 the land use of the site was shown as “River Water Body” on which construction of the type carried out by the DTC was impermissible as law mandates construction in conformity with the Master Plan. Because of this reason the High Court disposed of the writ petition by giving six months' time to the appellants to get the Master Plan amended, if it was possible in law.

12. The flavour of the said order and the manner in which the writ petition was disposed of can be gazed from paras 17 to 19 thereof, which we reproduce hereunder for sake of clarity:

“17. The moot question, however, is as to whether this Bus Depot could be constructed at the given site? The petitioners have sought to demonstrate that the construction is carried out at the place which forms part of flood plains/river built (sic - bed) and this is denied by the DTC/Government of NCT of Delhi. On the other hand, the respondents argue that it is not a river bed and having regard to previous user of the site for fly-ash for last number of years, use thereof as bus depot is appropriate, it is in public interest and no other suitable site is available or at least identified by DDA so far. We are, however, of the view that it may not be necessary even to go into these questions. The stark reality is that as per MPD-2021 the land use of the site is “River Water Body”. Admittedly, any construction has to be in conformity with the Master Plan. May be for this reason, when the land was allotted to the DTC to take care of the need of Commonwealth Games, it was for the purpose of 'temporary' parking, that too, in view of the security threat perceptions prevailing in the region. The Government was conscious of the fact that there cannot be a permanent Bus Depot without amendment of the Master Plan, 2021. It is for this reason, even during the argument, Mr. Waziri made a submission that the Government was planning to make modification in the Master Plan.

18. In view of the above, we are of the opinion that these petitions can be disposed of by permitting the respondents to take steps for amendment in the Master Plan, as per law, if it is permissible. There is a specific procedure for effecting the change in the Master Plan which includes notice to the public at large and inviting objections. Once this procedure is followed and objections are invited, it would be open to the petitioners to file their objections and raise issue of ecology and environment which will have to be considered. Thus, arguments raised before us by the petitioners in this behalf can be duly taken into consideration at that stage. Naturally, if there is any substance in the contention of the petitioners, it may not result change in the Master Plan. On the other hand, at that stage it will also be open to the respondents, particularly DTC, to put forth its case that the site in question was used as fly-ash purposes since 1960s and on the construction of bund, the area was segregated and,

therefore, it is not going to have any impact on river built/flood plains. What we are emphasizing is that the respective contentions on this aspect can be considered and looked into and decision thereupon taken.

19. These petitions are accordingly disposed of by granting six months time to the respondents to take steps for the change in the Master Plan, if it is possible, thereby changing the land user and bringing it in conformity with the present use. In case, the Master Plan is amended in this manner, the natural consequence thereof would be that the Bus Depot would continue to operate from the given site. On the other hand, if attempt to amend the Master Plan fails, there would be no option to re-locate the Bus Depot to some other place. In that event, it will be for the DTC to ask the DDA to allot alternate site and feasibility of site at Mayur Vihar can also be considered at that stage.”

13. Following aspects are discernible from the aforesaid order:

“(a) The construction of Millennium Bus Depot is on the land, which according to MPD-2021 is shown as 'River Water Body'.

(b) Position in law is clear, on which there is no dispute, that any construction has to be in conformity with the Master Plan.

(c) If the land use of the site in question is 'River Water Body' as per MPD-2021, construction thereupon is not permissible and such area cannot be used as Bus Depot.

(d) The DTC, however, contended that land site was wrongly shown as 'River Water Body' in the MPD 2021 as it was actually not so. It contended that the previous user of the site was for fly-ash and the argument of the appellants in the High Court was that it was not a river bed and, therefore, same could be used as Bus Depot, which user was in public interest. The respondents herein, on the other hand, contended that the user of the site as Bus Depot was a threat to ecology and environment.

(e) Since as per the MPD-2021, the land use of the site is 'River Water Body', on which construction was not permissible without amendment of the Master Plan, the appellants conceded that in order to continue the Bus Depot, amendment in the Master Plan was needed.”

14. Keeping in mind the aforesaid aspects, the High Court granted six months time to the authorities to take steps for change in the Master Plan, if it was possible in law, thereby changing the land user and bringing it in conformity with the present use. It was pointed out that the procedure that has to be followed for change of Master Plan included giving opportunity to the respondents herein to file their objections and raise the issue of ecology and environment and for DTC to put forth its case that the site in question was used as fly-ash purposes since 1960 and on construction of the Bund the area was segregated and, therefore, use of site as Bus Depot was not going to have any impact on the river bed/flood

plains. The purpose was, thus, to give an opportunity to the appellants to establish that area could not be treated as 'river bed' and if that is proved, it could pave way for change of MPD 2021.

15. There is no amendment in the MPD-2021 till date on the aforesaid aspect and as per the said Master Plan, land use remains the same, which has not been altered. The DTC has its own explanation as it is contended that though steps were taken by the DDA to change the land use, but it was taking time because of the dispute that had arisen between DDA and the Land and Development Office (L&DO) about the ownership of the land in question. Be as it may, the Master Plan remains unaltered.

16. Since time of six months granted by the High Court expired and the consequence thereof was that as per the directions contained in the order dated 13.09.2012 the appellants had to relocate the Bus Depot to some other place, and the same was not done, the respondents herein filed Contempt Petition No. 474 of 2013 in Writ Petition No. 5481 of 2011. Some significant developments which took place in the Contempt Petition need to be mentioned at this stage.

17. On receiving the notice of contempt, in which Chairman-cum- Managing Director (CMD) of DTC was impleaded as respondent/ contemnor, the CMD filed an affidavit dated 23.01.2014 on behalf of the DTC wherein undertaking was given to the Court to vacate the site in question on or before 31.10.2014. It was also mentioned by the DTC in the affidavit that the problem could be solved by the DDA with the allotment of alternate land. Since the officials of the DDA was also impleaded as a contemnor in the said Contempt Petition, they filed periodic Status Reports in respect of allotment of land. The ultimate result was that the DDA allotted 8.25 acres of additional land at Sarai Kale Khan, 10 acres of land at Narela, 16.33 acres of land at Anand Vihar and 20 acres of land at Rohini Phase-V. The stand of the DTC was that some portion of the land allotted by the DDA had been encroached upon illegally and the land use had also not been changed because of which the DTC was unable to shift. In the meantime, the application for extension of time was filed, as aforesaid, which was pending consideration by the Division Bench of the High Court and because of this reason, the Contempt Petition was adjourned from time to time to await the result of the said application. When the Division Bench dismissed the application for extension of time vide impugned order dated 20.10.2015, the Contempt Petition was taken up by the learned Single Judge of the High Court and taking note of the said dismissal, the High Court pointed out that the DTC had to forthwith comply with the order dated 13.09.2012. As on that date, the DTC informed the Court that 500 out of 800 buses that were being parked at the Millennium Bus Depot had already been shifted to other Bus Depots. In this scenario, the Court granted the DTC two months further time, i.e. till 27.01.2016, to vacate the Bus Depot by shifting remaining buses as well to some other Depots.

18. The position that emerges from the aforesaid events can be summed up as under: Though an opportunity was granted by the High Court to the appellants to have the MPD-2021 amended, if the same was possible, and the time of six months was granted for this purpose, even when almost four and a half years have passed, there is no amendment in the

Master Plan. In the absence of said amendment, the legal position is that Millennium Bus Depot at the given site cannot operate. In the Contempt Petition, undertaking was given by the DTC to vacate the Bus Depot by 31.10.2014. That undertaking is not adhered to. No doubt, application for extension of time was pending and because of this reason the Contempt Petition was adjourned from time to time, but the said application for extension has been dismissed taking note of the fact that the appellants have failed to get the Master Plan amended. In the impugned order, while dismissing the said application, the High Court has taken note of the circumstances because of which there is no amendment to the Master Plan.

19. Another material fact which is to be noticed is that in respect of this very issue, there was a meeting held under the Chairmanship of the Chief Minister of Government of NCT of Delhi on 15.01.2014 wherein the background of the development of the Millennium Bus Depot was explained by the Chief Secretary. After understanding this background, the Chief Minister pointed out the urgent need to protect the land along the riverbed of the river Yamuna to increase recharge and to supplement the water needs of the city of Delhi. He was, therefore, of the view that DTC should vacate the land in question and move its buses to some alternate location and the same be done in a time bound manner. As the Minutes of the said meeting reflect, the demand of the Chairman of the DTC was that the DDA should immediately provide alternate land for relocating thousand buses which are parked and maintained at the said Depot. It was explained that if no alternate site is immediately made available, the DTC will face great difficulty in parking its fleet as there are huge constraints in its existing depots for the fleet in question. DTC even gave the explanation by submitting that it had got the Environmental Impact Assessment from WAPCOS (a Government of India body under the Ministry of Water Resources) and it was committed to following the said Report in all respects. It also mentioned that the DTC was making efforts in creating greenery in the area and setting up of effluent treatment plants. Significantly, notwithstanding the above, the Chief Minister expressed that DTC should relocate to some other place. The entire discussion thereof proceeded on the alternate land to be allotted by the DDA to the DTC.

20. If only the aforesaid features are to be kept in mind, there is hardly any reason to interfere with the order passed by the High Court. In fact, Mr. Shanti Bhushan and Mr. Jayant Bhushan, learned senior counsel appearing for the respondents, on the other hand, submitted that the aforesaid circumstances, as pointed out by the appellants, had no bearing on the issue and having regard to the solemn undertaking given by the DTC in its affidavit to shift the Bus Depot by 31.10.2014, which had already been flouted, and the DTC was in clear contempt, no further chance should be given to the appellants in this behalf.

21. Notwithstanding the above position, Mr. K.K. Venugopal, learned senior counsel appearing for the DTC, and Dr. Rajeev Dhawan, learned senior counsel appearing for the Govt. of NCT of Delhi, made a passionate plea for grant of some more time as according to them there was still a possibility of amending the Master Plan suitably in near future. Such a plea was predicated on the developments which have taken place after the passing of the

impugned order. Explaining the position, it was submitted that no amendment in MPD 2021 would be carried out earlier because of the following three hurdles:

“1) L&DO land ownership issue.

2) Yamuna Standing Committee approval.

3) Forest Department approval. Mr. Venugopal submitted that on all three fronts, the ground realities had undergone a total change. It was pointed out that even when L&DO had raised the issue of land ownership, it had in principle accepted to grant No Objection Certificate for the retention of DTC Bus Depot. Even Yamuna Standing Committee had granted its approval in principle, which was evident from the Minutes of the Meeting held on 17.09.2013 and 04.10.2013. Likewise, Forest Department approval was under consideration, which was clear from the correspondence that was exchanged in this behalf and it was explained that no prior environment clearance was needed in this case as the built up area in the complex is less than 20,000 sq.mts. The learned counsel also referred to the minutes of the meeting held under the Chairmanship of A.S. (UD) in the Ministry of Urban Development, on 17.10.2015 wherein following was agreed:

(i) DDA will take immediate steps, possibly within a period of one month, for demarcation of 'O' zone area after collecting the required statistics from the Irrigation & Flood Control Department of GNCTD.

(ii) MD, DTC will actively coordinate with DDA for facilitating collecting the data and also in whatever way possible for conducting the demarcation of 'O' zone and also approaching the Principal Committee for its permission.

(iii) Once the required permission from the Principal Committee is available and the court cases are disposed of, L&DO will take necessary action for issuing the required NOC for land use for the Bus Depot. It was submitted that Minutes of the said Meeting were prepared only on 28.10.2015 and, therefore, could not be placed before the High Court when the matter was taken up on 20.10.2015 and impugned order passed.”

22. Another significant development which was pointed out was the order dated 13.01.2015 of the National Green Tribunal passed in OA No. 6/2012 and MA Nos. 967/2013 and 275/2014 in the matter of Manoj Mishra v. Union of India & Ors. That case pertains to cleaning of River Yamuna. In the aforesaid order, after comprehensively reviewing the situation in the light of various technical reports etc., the Tribunal has given some directions which, inter alia, include the direction to all concerned authorities, including the DDA, Municipal Corporations and the Govt. of NCT of Delhi, to take immediate and effective steps for identification of floodplain. The Tribunal has directed preparation of a map in this regard and physically demarcate the entire floodplain. There is also a direction to the Principal Committee to identify which structures were to be demolished and which ones

were to be retained, in the interest of ecology and environment. The public interest in retaining the said Bus Depot was again emphasized and it was submitted that once the aforesaid exercise of demarcation of the entire floodplain is carried out by the Principal Committee, the stand of the appellants would be vindicated that the area in question where the Bus Depot has been constructed does not fall within the floodplain thereby paving way for the amendment of the Master Plan.

23. We have considered the respected submissions of learned counsel for the parties on either side. As is clear from the tenure and spirit behind the orders dated 13.09.2012 passed by the High Court, the chance was given to the appellants to have the MPD 2021 amended if it was permissible in law and the period of six months was given for this purpose. This was done by the High Court keeping in view the submission of the appellants herein that the Bus Depot in question was constructed to serve greater public purpose; the area in question was, as a matter of fact, was not falling on the river bed; and there was no threat to environment or ecology in having the Bus Depot at the given site. Exercise to consider the aforesaid aspect has not taken place, or for some reason or the other, whether it was because of dispute between L&DO and DDA on the issue of land ownership or otherwise. However, the development which have taken place in recent times, particularly the orders of the National Green Tribunal, point out to the fact that things are started moving and it would be known in near future as a result of study conducted by the Expert Committee, whether area in question where the Bus Depot stands, is viable for this purpose or not, directing the DTC to demolish the Bus Depot at this juncture may not be appropriate and the decision in this regard can be deferred for some time to await the outcome of the report of the identification of floodplain.

24. Accordingly, we dispose of these appeals by granting one year time to the DTC during which period the DTC shall either get the MPD 2021 amended, failing which it shall shift the Depot in question. We make it clear that no further time on any ground whatsoever shall be granted in this behalf.

CJI.

(T.S.THAKUR)

J.

(A.K. SIKRI)

J.

(R. BANUMATHI)

NEW DELHI;

FEBRUARY 05, 2016.

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