

SUPREME COURT OF INDIA

National Building Construction Corporation Ltd & Ors.

Vs.

Khosmendir Singh Gahunia & Ors.

C.A.No.8747 of 2016

(T.S.Thakur,CJI., A.M.Khanwilkar and Dr.D.Y.Chandrachud,JJ.,)

02.09.2016

JUDGMENT

Dr.D.Y.Chandrachud,J.,

SLP (Civil)No.23464 of 2016

1. Leave granted.
2. These Appeals by the National Building Construction Corporation, a public sector enterprise, arise from a judgment and order of the Delhi High Court dated 7 April 2016.
3. Under the Master Plan of 2021, Delhi Development Authority issued a Zonal Development Plan for Zone (Division) -D on 27 July 1993, under which Kidwai Nagar East was earmarked as a colony for re-development. Spread over an area of 86 acres, the colony comprised of 2331 housing units meant for employees of the Central Government. Apart from residential units, the colony had three schools and two local shopping markets. Within its precincts, there is a protected monument, called Darya Khan's Tomb on an area of about 2 acres.
4. The Master Plan took effect on 7 February 2007, following final approval and a notification in the Gazette of India. Following the approval of the plan for re-development by the Union Cabinet on 12 October 2010 and by the Cabinet Committee on Economic Affairs on 23 March 2012, a Letter of Intent was issued to the Appellants who were nominated as the executing agency on 22 June 2012. The projected cost of re-development of the colony is Rs. 5,300/- crores with a stipulated date of completion of December 2019. The project envisages the construction of 4608 residential units (comprised of type II-VII residential units) for employees and officers of the Union Government and office space for its agencies.
5. The petitioner submitted a layout plan together with a plan for re-development, for sanction to the NDMC on 23 July 2012. An environment clearance was issued on 13 August

2012. On 18 October 2012, the Ministry of Urban Development handed over the land to the Appellants and issued no objection certificate for re-development. The new layout plan and plan of proposed structures was sanctioned by NDMC on 13 March 2014. The work of re-development has proceeded upon receipt of statutory clearances.

6. The bone of contention is a road by the name of Veer Chandra Singh Garhwali Marg. The road traverses a distance of 680 meters commencing from Aurobindo Marg to its terminal point at Darya Khan's Tomb.

7. Writ Petitions were filed before the Delhi High Court under Article 226 of the Constitution by the Residents' Welfare Association of South Extension Part-I, and by associations inter alia representing the residents of Kotla Mubarakpur and Village Pillanji, among others. The grievance in the Writ Petitions was that after re-development commenced in September 2013, NBCC progressively encroached upon the public road. On 24 December 2015, the residents of South Extension, Part-I, Village Pillanji and Kotla Mubarakpur found that the road had been completely cordoned off and blocked. A sign board was put up stating that the road would be permanently closed on 10 January 2016. As a result of the closure of the road, which according to the petitioners before the High Court is a public road, access was being denied from Aurobindo Marg for onward journey towards South Mehrauli or North Central Delhi and beyond. The action of NBCC of closing what is described as a public street within the meaning of the NDMC Act 1994, was urged to be contrary to law; the grievance being that the residents of localities in the area had utilized it for over 60 years to access Aurobindo Marg, INA metro station and market and other public amenities.

8. A mandamus was sought inter alia to the Appellants to maintain the road by the removal of encroachments made thereon. A prohibitory direction was sought for restraining the Appellants from closing the road.

9. During the course of the hearing of the Writ Petitions before the High Court, the Appellants and NDMC filed their respective counter affidavits. The defense of the Appellants was that Veer Chandra Singh Garhwali Marg together with other roads and passages inside the colony are internal roads and do not constitute a public street within the meaning of Section 2 (39) of the NDMC Act, 1994. The case which the Appellants specifically pleaded in their counter affidavit was that in the layout plan which was sanctioned by NDMC, the road in question was not reflected as a road or passage and infact formed a portion of a new building/tower. The Appellants relied upon the fact that on 1 October 2013, the office of the Superintending Engineer (Roads-II), NDMC had issued a no objection certificate in respect of roads and pavements before the project was approved. The Appellants contended that if the road was a public street as alleged in the Writ Petition, the layout plan would not have been approved by NDMC. In the following extract from the counter affidavit filed by the Appellants in the High Court it was stated specifically that the road was not shown as a road/passage in the new layout plan sanctioned by NDMC :

“The layout plan submitted with NDMC is a entirely new plan which contains complete changes of buildings layout, internal passages/road etc. the existed internal road in question i.e.

“Veer Chandra Singh Garhwali Marg” was not shown as road/passage in the new plan and it is portion of new building/tower. The internal road/passages were therefore altered/shifted as per new layout plan, the new layout plan and internal passages/roads in the layout plan and detailed plans were submitted by respondent No. 2 to NDMC for approval and same was duly approved/sanctioned by NDMC on 19.3.2014 under Section 217 showing building/Tower thereon, open space, park, school market, space for other public purpose, allotment of site for street, line of streets etc. (Id. at p- 120-121)

(emphasis supplied)

On the other hand in the counter affidavit that was filed by NDMC before the High Court, it was stated that while sanctioning the layout plan, the road had been retained and only its entry and exit points have been shifted. The counter affidavit contains the following statement:

“That in the Zonal Development Plan (Zone-D), a 30 mt. wide road starts from Aurobindo Marg upto surrounding of Darya Khan’ s Tomb. Accordingly, answering Respondent sanctioned the layout plan wherein the said road was retained, only the entry and exit points have been shifted towards Aurobindo Marg as per the NOC of UTTIPEC [Unified Traffic and Transportation Infrastructure] (Plg. & Engg.) Centre]. (Id. at p-136-137)

(emphasis supplied)

This is again reiterated in paragraph 7 of the counter affidavit which reads as follows :

“7). It is also wrong and denied that the said road is closed by the answering Respondent. It is further denied that the said road emanates at the Aurobindo Marg on one side and passes by the Darya Khan’ s Tomb, east Kidwai Nagar, New Delhi. It is further submitted that answering Respondent sanctioned the layout plan wherein the said road has been retained, only the entry and exit points have been shifted towards Aurobindo Marg as per the NOC of UTTIPEC [Unified Traffic and Transportation Infrastructure (Plg. & Engg.) Centre.] (Id. at p-137)

10. In this background, what clearly emerged before the High Court was the clear and categorically statement in the affidavit by NDMC that in the layout plan which it had sanctioned, the road had been maintained. Contrary to this was the statement of the Appellants as the executing agency of the project that the road is not shown as a road or

passage in the new plan and that it was infact a portion of a new building tower. In this background, the Division Bench of the High Court while placing reliance on the counter affidavit filed by NDMC held that it was not open to the Appellants to shut down the road, which was in existence for sixty years, for an unstated duration as was sought to be done without the issuance of a proper sanction.

11. NDMC was accordingly directed to take appropriate steps for enforcing the sanctioned layout plan for the area in question pertaining to Veer Chandra Sigh Garhwali Marg and to take all necessary and consequential steps in accordance with law.

12. When the Appellants filed Special Leave Petitions before this Court seeking to challenge the judgment of the Delhi High Court, they reiterated the position that the road had been shifted under the approved plan to make way for the construction of 3 towers comprising of a ground floor and 14 floors with 3 basements.

13. During the course of the hearing, the learned Attorney General urged that the road was being only temporarily closed to facilitate the work of construction. Moreover, it was submitted that save and except for realignment of the entry and exit points, the road would be retained. The hearing was adjourned to enable the Appellants to clarify this position in a further affidavit. During the course of the hearing a further affidavit has been filed on behalf of the Appellants. In the affidavit filed on behalf of the Appellants by Shri Arun Kumar Sharma, who is working as a General Manger (Engineering) for the re-development project, reliance has been placed on the approved layout plan. It has been stated that under the approved plan of 12 February 2014, the road has been realigned at its entry and exit points as indicated in the plan. Paragraph 3 of the affidavit inter alia states as follows :

“3). The entry point from Point “A” to Darya Khan’ s Tomb will have to be closed for a temporary period for carrying out necessary construction activities of the project by the Petitioner. After completion of the requisite construction activities, the petitioner shall rebuild/re-lay the said road with entry/exit as per the approved layout plan. (Id. At p-1) The statements in paragraphs 4 and 6 of the affidavit are material for the purposes of the present controversy and read as follows :

“4). The petitioner respectfully submits that the petitioner is required to close the said road at this stage, at least till December 2018, for undertaking major construction and related activities at site, including the road (interconnecting basements and other underground services viz. sewerage connection, electricity and water). The stipulated date of completion of the project is 30.11.2019. However, it shall be the endeavor of the Petitioner to restore the road by the end of December 2018...

6). Currently, the Veer Chandra Singh Garhwali Marg is dug up on either side about 35-40 feet in depth for facilitating construction work of basements which will be interconnected at points which would fall under the said road. The use of this road which is currently being done by the public is fraught with danger. The ingress and

ingress of the public including commercial transportation needs to be stopped forthwith to avoid any mishaps and the said road will be used by the Petitioner for completing the project. The road will be reopened after the realignment from Point “B” by the end of December 2018.” (Id. At p- 2)

14. During the course of the hearing, it has been stated before this Court that a temporary closure of the road is required until December 2018 and that the road would be reopened after realignment of the entry and exit points as indicated in the approved plan.

15. The Delhi High Court cannot be faulted for having proceeded on the basis of the clear statement in the counter affidavit filed by NDMC to the effect that it has sanctioned the layout plan in which the road was retained and it was only the entry and exit points which have been shifted towards Aurobindo Marg in accordance with the NOC issued by the Unified Traffic and Transportation Infrastructure (Planning & Engineering). This being the clear and categorical statement of the planning authority, the High Court observed that the Appellants were bound by the layout plan which was sanctioned by NDMC. We also take note of the fact that in the application that was submitted by the Appellants to the State Expert Appraisal Committee (a copy of which is attached as Annexure “A” to the further affidavit filed on behalf of the Appellants), it has been stated that “no new road will be constructed during construction or operation.”

16. The position that now emerges before this Court from the further affidavit which has been filed on behalf of the Appellants is that the existing road shall be closed temporarily until December 2018. This is to facilitate the work of reconstruction and to obviate any danger or mishaps. The closure is temporary and not for an indefinite duration. The Appellants have furnished an undertaking to restore the road to its original form and width thereafter in terms of the approved plan.

17. 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. 5,300/-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.

18. 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 feet 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 re-development 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 to 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 re-development shall proceed unhindered. However, we leave it to open to the High Court to impose suitable safeguards in pursuance of the present judgment, to allay the apprehensions of the original petitioners.

19. The Civil Appeals shall accordingly stand disposed of in these terms. The order passed by the High Court shall accordingly stand substituted by the above directions. No costs.