

A NATIONAL BUILDING CONSTRUCTION CORPORATION
LTD AND ORS.

v.

KHOSMENDIR SINGH GAHUNIA AND ORS.

B (Civil Appeal No. 8747 of 2016)

SEPTEMBER 02, 2016

[T.S. THAKUR, CJI, A.M. KHANWILKAR AND
DR. D.Y. CHANDRACHUD, JJ.]

C *Urban development – Re-development of colony – Plea of*
respondent-writ petitioners that appellant-Corporation, the
nominated executing agency for re-development, progressively
encroached the public road thereby denying access to the general
public – Assurance of appellant-Corporation by way of affidavit
and undertaking that closure of the road is not of a permanent
D *nature but is of temporary character to facilitate the completion of*
work and that it would restore the road in accordance with the
terms of the approved layout plan – Held: A temporary closure of
ingress and egress was necessitated to avoid any mishaps and at
this stage, the balance of convenience would lie in allowing the
E *completion of the project – However, it is open to the High Court to*
impose suitable safeguards, to allay the apprehensions of the
respondents/writ petitioners – NDMC Act, 1994 – s.2 (39).

F **Appellant-Corporation was nominated as an executing**
agency for re-development of a colony. The respondent filed
writ petition contending that after re-development commenced
in September 2013, the appellant-corporation progressively
encroached the public road thereby denying access to the general
public. High Court 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. Hence, the present appeals.

G **Disposing of the appeals, the Court**

H **HELD: 1. The affidavit and the undertaking filed by the**
appellants to the effect that the appellants would by December
2018 restore the road in accordance with the terms of the
approved layout plan. A temporary closure of ingress and egress

was necessitated to avoid any mishaps. That being the position, the grievance of the appellants that at this stage, the balance of convenience would lie in allowing the completion of the project is accepted. 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 High Court. It is 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. The project for re-development shall proceed unhindered. However, it is to open to the High Court to impose suitable safeguards, to allay the apprehensions of the original petitioners. [Para 18] [999-E, G-H, 1000-A-B, C-D]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 8747 of 2016.

From the Judgment and Order dated 07.04.2016 of the High Court of Delhi, New Delhi in W. P. (C) No. 303 of 2016.

WITH

C. A. No. 8748 of 2016

Mukul Rohatgi, AG, Manoj K. Dass, Nikilesh Ramachandran, Piyush Bhardwaj, Neeraj Jha, Saurabh Mishra, Ms. Rekha Chaudhary, Advs. for the Appellants.

Keshav Dayal, Ajit Kumar Sinha, Sr. Advs., Alok Gupta, R. K. Rathore, Vibhu Shankar Mishra, D. S. Mahra, Dr. Salone Kantroo, Advs. for the Respondents.

K. S. Gahunia, Respondent-in-person.

The Judgment of the Court was delivered by

DR. D. Y. CHANDRACHUD, J. 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.

A 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
B 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.

C 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
D 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 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.

E 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
F March 2014. The work of re-development has proceeded upon receipt
of statutory clearances.

F 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.

G 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
H road. On 24 December 2015, the residents of South Extension, Part-I,

Village Pillanji and KotlaMubarakpur 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 AurobindoMarg 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 AurobindoMarg, 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 GarhwaliMarg 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 in fact 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

A 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 :

C “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 :

E “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)

G 10. In this background, what clearly emerged before the High Court was the clear and categorical 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 in fact 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

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it was not open to the Appellants to shut down the road, which was A
inexistence 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 B
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 C
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 D
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 E
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 F
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 G
the purposes of the present controversy and read as follows :

“4). The petitioner respectfully submits that the petitioner is required H
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

A 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...

B 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 egress 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)

D 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.

E 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 AurobindoMarg 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."

G 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.

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The Appellants have furnished an undertaking to restore the road to its original form and width thereafter in terms of the approved plan. A

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 asis 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. B
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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 E
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- A 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.

- D 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.

Ankit Gyan

Appeals disposed of.