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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **W.P.(C) 4206/2020**

SUNIL B. SHARMA & ORS.

.....Petitioners

Through: Mr. Gaurav Sharma and Mr. Prateek
Bhatia, Advocates.

versus

**SOUTH DELHI MUNICIPAL
CORPORATION & ORS.**

..... Respondents

Through: Mr. Ajjay Aroraa, Standing Counsel
with Ms. Puja Kalra, Advocate for R-
1/SDMC.
Mr. R.K. Dhawan, ASC for R-
2/DDA.
Dr. Saif Mahmood and Mr. Amit Kr.
Singh, Advocates for R-3.
Mr. Gautam Narayan, ASC for R-4.

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

ORDER

% **18.08.2020**

The hearing was conducted through video conferencing.

CM APPL. 15136 /2020 (exemption)

1. Allowed, subject to all just exceptions. The applications stands disposed-off.

CM APPL. 15137/2020 (permission to file dim documents)

2. For the reasons mentioned therein, the application is allowed and disposed-off accordingly.

W.P.(C) 4206/2020 & CM APPLs. 15135/2020 (interim stay)

3. Issue notice.
4. The learned counsel named above accept notice on behalf of the respondents.

5. Since the Outer Ring Road is owned by the Public Works Department (PWD), it is a necessary party. Accordingly, it is impleaded as R-4.
6. Issue notice. Mr, Gautam Narayan, learned ASC, accepts notice on behalf of R-4.
7. Reply, if any, to be filed within one week. Rejoinder, if any, to be filed in a week thereafter.
8. The petitioners are aggrieved by the construction of a multi-storeyed building in their neighbourhood on land abutting the Outer Ring Road, opposite Nehru Place.
9. The *lis* in this matter could be settled if it authoritatively stated by the its oner the PWD as to what is the width of the Outer Ring Road (ROW) – starting from the petrol pump across the Nehru Place Bus Stop and until after the EPDP Colony. According to the Master Plan for Delhi 2021 notified by DDA, this stretch of the road is notified in the category of ‘Mixed Use Streets’. Serial No. 12 of the table detailing mixed use streets of the Central Zone annexed to the Master Plan reads as under:

“Outer Ring Road From EPDP Road from Petrol Pump: ROW–64 meters”
10. Ms. Puja Kalra, learned counsel for the South Delhi Municipal Corporation (SDMC), submits that the building plan has been sanctioned because the land on which the building is sought to be constructed abuts a road which has been notified as ‘mixed use land’. She refers to the aforementioned table annexed to the Master Plan for Delhi 2021, at page 63 of the writ petition, which reads as under.

MIXED USE STREETS:- CENTRAL ZONE

Sl.No.	Name of Road/Street	Stretch of Road From-To	ROW (Mtrs)
1 ¹	Ram Bhorai Marg Pillangi	2028 to 2043	11.1
2 ¹	Ring Road Lajpat Nagar-III	H.No.38 to 73	63.84
3 ¹	Ring Road Lajpat Nagar-IV	H.No.1 to 42	63.84
4 ¹	Jangpura Road Bhogal	Jang Pura Road	16.72
5 ¹	Bhogal Road Jangpura	Bhogal Road	16.72
6 ¹	Church Road Bhogal Jangpura	Charch Road	16.72
7 ¹	Mathura Road	Bhogal Jangpura Stretch	45
8 ¹	Main Road (Zakir Nagar)	Batla House to NFC A-Block	10.64
9 ¹	Masihgarh Road Sukhdev Vihar	Masih Garh Charch to Sukhdev Vihar	9
10 ¹	Okhla Bazar Road Okhla	Okhla Nehar to Tikona Park	7.6
11 ¹	Okhla Bazar Road Okhla	Batla House to Juice Corner	6
12 ¹	Outer Ring Road	Outer Ring Road From EPDP Road to Petrol Pump	64
13 ¹	Gali No.12 Tughlaka Bad Ext.	House No.RZ-9/73 to 9/43	6
14 ¹	Gali No.12 Tughlaka Bad Ext.	House No.RZ-9/73 to 9/43	6
15 ¹	Gali No.19 Tughlaka Bad Ext.	Sub Station to RZ-353	6
16 ¹	Gali No.22 Tughlaka Bad Ext.	House No.RZ-338 to RZ-378	6
17 ¹	Tenkhand Village Road	House No. 107 to T-74	18
18 ¹	Mathura Road	Savita Vihar to Badarpur Border	45
19 ²	Road in Lajpat Nagar-II	H.No. B-II/7 to B-II/62	15.00
20 ²	Road in Lajpat Nagar-II	H.No. C-II/71 to round About	15.00
21 ²	Road in Lajpat Nagar-II	H.No. C-II/48 to round about	15.00
22 ²	Road in Lajpat Nagar-II	Round about to C-11/118	15.00
23 ²	Road in Lajpat Nagar-II	Round about to C-II/85	15.00
24 ²	Road in Lajpat Nagar-II	Road From DVB sub st. to Ram Lai Marg	15.00
25 ²	Road in Lajpat Nagar-II	Ram Lai Marg to Ram Ful	15.00
26 ²	Road in Lajpat Nagar-II	Veer Sarverkar Marg to Ram Pui	15.00
27 ²	Road in Lajpat Nagar-II	H.No. I-83 to E-56	13.00
28 ²	Road in Lajpat Nagar-II	H.No. L-II/37 to L-II/42	15.00
29 ²	Road in Lajpat Nagar-II	Road from Veer Sarverkar Marg To I-II/83	15.00
30 ²	Road in Lajpat Nagar-I	Gurdwara Road	15.00
31 ²	Road in Lajpat Nagar-I	Road from Veer Sarverkar marg to Round about Vinoba	15.00
32 ²	Road in Lajpat Nagar	From Hakikat Rai Marg to Round about near H.No. 10	15.00
33 ²	Raja Dhir Sen Marg	Capt. Gour Marg to Kallu Mohalla	24.00
34 ²	E.P.D.P. Road	E.P.D.P. Road	24.00
35 ²	Road From EPDP (CR Park)	E.P.D.P. Road to CGHS	13.50
36 ²	Chitranganj Park/Kalka Ji	From K-17 to Ravi Das Marg	18.00
37 ²	Chitranganj Park/Kalka Ji	From K-13B to Ravi Dass Marg	18.00
38 ²	Road in Kalka Ji	From F-17 to F-26 Kalka Ji	13.50
39 ²	Road in Kalka Ji	From Arya Samaj Mandir to A-476 Double Story Qrs.	13.50

Sl.No.	Name of Road/Street	Stretch of Road From-To	ROW (Mtrs)
40 ²	Road in Kalka Ji	From M-7 to Ravi Dass Marg	13.50
41 ²	Road in Kalka Ji	A-120D/S to E.P.D.P. Road	13.50
42 ²	Ring Road	E-1 to E-27 Defence Colony	63
43 ³	Batla House Jamia co.op. Road	H.No-A-8 to H.No-F-12	13.5
44 ³	Ramesh Market, Garhi Village	H.No-198/53 to 198/15-C	6
45 ³	Sant Nagar Mkt.Lane	H.No-430/4 to 327	9
46 ³	Nehru Mkt., Badarpur	Mathura Road to NTPC Wall	9
47 ³	Patera Mkt., Badarpur(Gali No-1)	Masjid to Kabristan Corner	6
48 ³	Mathura Road (One side only) towards Bhogal	Railway Line to Sai Hospital	45
49 ³	Road Between, A-I Block & B-II Block.Lajpat Nagar-II	H.No-A-I/118 to H.No-A-I/ 89	13.5
50 ³	Gidwani Marg Lajpat Nagar-IV	Nalla Block No-7,ODS to Cap.Gaur Marg	10.5
51 ³	Main Road Dviding Amar Colony Road and Daya Nand Colony From the back of Ring Road Banglow upto Sapna Crossing	Sapna Crossing to Back of Ring Road Old Double Story Lajpat Nagar-IV	18

11.The Court is of the view that till such time that the Master Plan is altered, respondent no. 3 would have a right to continue construction. Until the statutory notification is challenged or set aside, there will be a presumption in favour of validity of the sanctioned building plan.

12.Mr. Ajjay Aroraa, learned Standing Counsel for SDMC, submits that this Court has already held: that Right of Way (ROW) includes the entire passageway -- from one building-line to the opposite building-line; the only exception being, that there should be no ‘greenbelt’ in between. He refers to the judgement in *Arvind Singhal & Ors. v. Max Therapiya Limited & Ors.*, 2014 SCC OnLine Del 2050, had recorded, *inter alia*, as under:

“71. ...As per the Department of Town Planning and stand taken by the MCD in various litigations, for calculating the ROW, the total width of the road starting from the service lane till the ring road has to be taken into account...”

13. Ms. Kalra refers to the definition of Right of Way as laid down in DDA's Notification dated 22.03.2016 titled as Unified Building Bye-Laws for Delhi 2016, clause 1.4.96, which reads as under:

"1.4.96 Road/Street: Any highway, street, lane, pathway, alley, stairway, passageway, carriageway, footway, square, place or bridge, whether a thoroughfare or not, over which the public have a right of passage or access or have passed and had access uninterruptedly for a specified period, whether existing or proposed in any scheme, and includes all bunds, channels, ditches, storm-water drains, culverts, sidewalks, traffic islands, roadside trees and hedges, retaining walls, fences, barriers and railings within the street lines."

14. It is submitted that if that is indeed the position, then the Right of Way would definitely measure-up to what has been notified in the Master Plan. Additionally, reference is made to Clause 15.3.2 of the notification, regarding 'mixed land use', which reads, *inter alia*, as under:

*".....
15.3.2 The extent of mixed use permissible in various categories of colonies is further clarified as follows:*

-*
- 2. In colonies falling in categories C & D*
- Mixed use in the form of Retail shops shall continue to be permissible as per conditions in para 15.6, in plots abutting notified mixed use streets.*
 - "Other activity" in terms of para 15.7 shall be permissible in plots abutting roads of minimum 18m ROW in regular plotted development, 13.5m ROW in rehabilitation colonies and 9m ROW in Walled City, regularized -unauthorized colonies,*

resettlement colonies, Special Areas, and urban villages, subject to conditions in para 15.7.

- *Notification of mixed use streets in future, of minimum 18 m ROW in regular residential plotted development, 9 m ROW in rehabilitation colonies and any road in regularized- unauthorized colonies, resettlement colonies, Walled City, Special Area and urban villages in terms of para 15.3.3 shall be subject to consultation with RWAs concerned in terms of para 15.10.*

- *Mixed use shall be permissible in pedestrianized shopping streets as per para 15.3.3.*

- *Professional activities shall be permissible as per conditions laid down in para 15.8.*

.....”

15.The petitioners' colony falls under categories C and D. In other words, all that has to be seen is whether the road ahead of the land concerned is, at the very least, a length of 18 meters. According to the petitioners it is approximately 44 metres. That being the position, there would be hardly any cause of action or cause for challenge to the sanctioned Building Plan, because for a C and D colony the street abutting the land should be at least 18 meters.

16.The petitioner contends that the road in the front of the property is 9 metres, and then the main road starts. This argument is untenable in view of the definition of a Right of Way, as recorded hereinabove.

17.At this stage, Mr. Sharma, learned counsel for the petitioners, seeks some more time to prepare himself, so as to assist the Court fully on the next date.

18. At his request, renotify on 31.08.2020.

19. The order be uploaded on the website forthwith. Copy of the order be also forwarded to the counsels through e-mail.

NAJMI WAZIRI, J

AUGUST 18, 2020/rd/ab