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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ LPA 721/2019 & CM No.49431/2019 (for stay)

NORTH DELHI MUNICIPAL CORPORATION Appellant

Through: Mr. Sanjay Poddar, Sr. Adv. with Ms.
Puja Kalra, Adv.

Versus

PUSHPA DEVI & ORS Respondents

Through: Mr. Ankur Mittal and Mr. Ankur
Saboo, Adv.

AND

+ LPA 722/2019 & CM No.49450/2019 (for stay)

NORTH DELHI MUNICIPAL CORPORATION Appellant

Through: Mr. Sanjay Poddar, Sr. Adv. with Ms.
Puja Kalra, Adv.

Versus

SARITA GUPTA & ORS Respondents

Through: Mr. Ankur Mittal and Mr. Ankur
Saboo, Adv.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

HON'BLE MS. JUSTICE ASHA MENON

ORDER

% **09.12.2020**

[VIA VIDEO CONFERENCING]

CM No.29343/2020 in LPA No.721/2019 & CM No.29344/2020 in LPA No.722/2019 (both of respondent No.1 in each of the appeal for vacation of stay and for directions)

1. The senior counsel for the appellant North Delhi Municipal Corporation (NrDMC) appears on advance notice and claims that these applications are of the appellant NrDMC but which is not so. Be that as it may, the senior counsel for the appellant NrDMC states that he has also filed applications which may not have been listed today.

2. These appeals have been preferred by the appellant NrDMC against

LPA 721/2019 & LPA 722/2019

Page 1 of 4



the judgment dated 18th September, 2019 of the Single Judge allowing the writ petitions filed by the respondent No.1 in each of the appeals and issuing a mandamus restraining the appellant NrDMC from disturbing the peaceful physical possession of the respondent No.1 in each of the appeals over their respective parcels of land.

3. The appeals came up before this Court first on 18th November, 2019, when, while issuing notice thereof, recording the undertaking on behalf of the appellant NrDMC that it shall not disturb the possession of the respondent No.1 in each of the appeals in respect of the subject land, the operation of the impugned judgment was stayed.

4. These applications have been filed by the respondent No.1 in each of the appeals stating that the appellant NrDMC, while carrying out the works of widening of the road and construction of flyover, have constructed the flyover touching the first floor of the properties of the respondent No.1 in each of the appeals on the said land, putting the properties of the respondent No.1 in each of the appeals to grave risk.

5. From a perusal of the impugned judgment, it transpires that the properties of the respondent No.1 in each of the appeals are in an unauthorised colony, developed on private land, probably use whereof was agricultural or green, and which colony has since been regularised.

6. The writ petitions, from which these appeals arise, were filed contending that the appellant NrDMC, without acquiring the properties of the respondent No.1 in each of the appeals, was threatening to make a road over a portion of the properties of the respondent No.1 in each of the appeals and which the appellant NrDMC, by the impugned judgment, has been held to be not entitled to.



7. We have enquired from the counsel for the respondent No.1/applicant in each of the appeals, the legal right of the respondent No.1, on which the claim in these applications, directing the appellant NrDMC to maintain a distance between the properties of the respondent No.1/applicant in each of the appeals and the road and/or the flyover, is based. We have informed the counsel for the respondent No.1/applicant in each of the appeals that though in a colony developed after a layout plan has been sanctioned by the Municipal Authorities, such rights exist but not in an unauthorised colony, even though it may be regularised subsequently. We have further asked the counsel for the respondent No.1/applicant in each of the appeals, to show us the regularisation terms wherefrom only such a right can be claimed. In absence thereof, as long as there is no encroachment physically over the properties of the respondent No.1/applicant in each of the appeals, there is no right to restrain the appellant NrDMC from constructing a road or flyover on their own land, even if abutting/touching the properties of the respondent No.1/applicant in each of the appeals.

8. It cannot also be lost sight of that here, the rights of the public are pitted against the individual rights of the respondent No.1/applicant in each of the appeals and the general principle of law is that it is the rights of the public at large which prevails. Generally, the provision for roads and road widening is made in the Master Plan and which Master Plan, in our *prima facie* opinion, will prevail over regularisation, even if any done of any unauthorised development.

9. The counsel for the respondent No.1/applicant in each of the appeals seeks time to argue.

10. We have enquired from the senior counsel for the appellant NrDMC,



the reason for the applications stated to be filed by the appellant NrDMC.

11. The senior counsel for the appellant NrDMC states that the appellant NrDMC, by the said applications is seeking to deposit the compensation for taking over the front portion of the properties of the respondent No.1 in each of the appeals, which is coming in the right of way as per the layout plan.

12. On enquiry, it is informed that the layout plan is on record.

13. It appears that the relief claimed in the said applications is also in the nature of a final relief.

14. We have thus enquired the status of the appeals.

15. It is stated that the appeals are listed next before the Joint Registrar on 7th January, 2021, for completion of pleadings.

16. In an appeal, no pleadings are to be completed.

17. List the appeals for hearing, whether physically or virtually, on 7th January, 2021.

RAJIV SAHAI ENDLAW, J.

ASHA MENON, J.

DECEMBER 9, 2020

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