

15.06.2017
Item No.02
SB

CAN 4873 of 2017
With
CAN 5402 of 2015
In
W.P. 14905 (W) of 2014

Mr. Jayanta Mitra,
Mr. Ranjan Bachawat,
Mr. Koushik Mondal,
Mr. Debnath Ghosh,
Mr. Sarosi Dasgupta,
Ms. Somali Bose.....for the applicants/petitioners.

Mr. Koushik Chanda,
Mr. Tarun Jyoti Tiwari.....for the U.O.I.

Mr. Kishore Dutta,
Mr. Prithu Dudheria.....for the State.

Mr. Bikash Ranjan Bhattacharya,
Mr. Rajkumar Basu.....for the KMRCL.

Mr. Moloy Kumar Das,
Ms. Aparna Banerjee.....for the Railway Board.

Ms. Venetha Mehariafor the I.O.C.L.

Ms. Era Ghose.....for the K.M.C.

Mr. Subir Sanyal,
Mr. Om Narayan Rai,
Ms. Sumouli Sarkar.....for the CESC Ltd.

Ms. Meharia, learned advocate appearing for the respondent no.8, Indian Oil Corporation Limited (hereafter the IOCL submits that possession of the plot on which its petrol pump was operational has since been taken over by the Government and an alternative plot allotted in place thereof. In that view of the matter,

presence of the IOCL is no longer necessary for a decision on this writ petition and the particulars of the respondent no.8 ought to be expunged from the array of respondents.

The submission of Ms. Meharia is not opposed by any of the parties.

Office is directed to delete the particulars of the respondent no.8 from the cause title of the writ petition.

Mr. Bhattacharya, learned senior advocate appearing for the KMRCL has concluded his argument

Mr. Mitra, learned senior advocate for the petitioners is in the midst of his argument. Due to paucity of time, hearing is adjourned.

On the last occasion, Mr. Chanda, learned Additional Solicitor General submitted that the National Monuments Authority has permitted the Delhi Metro Railway Corporation (hereafter Delhi Metro) to carry on construction activity within the regulated area as defined in the Ancient Monuments And Archaeological Sites And Remains Act, 1958 (hereafter the 1958 Act) and not within the prohibited area and, therefore, the two projects cannot be equated.

However, in course of hearing, Mr. Bhattacharya has placed before this Bench a document titled "*The Heritage Line*" issued by Delhi Metro. In Chapter 5 of such document titled "*Hard Rock In The Way*", it is claimed by Delhi Metro that railway tracks have

been put in place within 17 meters of a national monument called Khooni Darwaza. In Chapter 9 of such document titled *“Triple Interchange At Kashmere Gate”*, it is mentioned as follows:

“This stretch has also passed beneath a number of heritage structures and historical monuments like Kashmere Gate Monument,”

It is the contention of Mr. Bhattacharya that both Kashmere Gate and Khooni Darwaza are national monuments and, therefore, if the stand of the National Monument Authority is to be accepted that no construction activity is permissible within the prohibited area in terms of the 1958 Act, an explanation ought to be offered by the Central Government as to how such constructions were allowed to be undertaken by Delhi Metro within the prohibited area.

In that view of the matter and considering the urgency that is involved, this Bench grants liberty to the Cabinet Secretary to swear an affidavit by Tuesday next (June 20, 2017) indicating therein as to whether any construction activity has been carried on by Delhi Metro within the prohibited area of Kashmere Gate/Khooni Darwaza or not. Since it has also been alleged that construction activity has been carried on within the prohibited area of another national monument i.e. Jama Masjid, the affidavit shall also deal with such allegation.

In the event the Cabinet Secretary considers it necessary to depute persons for undertaking survey to facilitate preparation of the affidavit, he shall also be at liberty to do so and may include in his affidavit the reports so prepared by the deputed persons.

Needless to observe, since the submission of Mr. Chanda made on the last occasion did not touch upon the construction activity actually undertaken, may be for lack of proper instructions, and it has been noticed that due and proper attention to the issue at hand is not being bestowed at the end of the Central Government, this Bench expresses hope and trust that the Cabinet Secretary would depute such persons in whom he reposes utmost faith and confidence so that the real picture is placed for consideration.

It must be borne in mind that since the East-West Metro Rail Project has been conceived in the greater public interest and crores of rupees must have been spent by now, any misstatement or misrepresentation of fact from the side of the Central Government is likely to be viewed with utmost seriousness and any remissness on the part of any official, if detected, would not go unpunished.

Put up the writ petition along with the applications on Monday next (June 19, 2017) at 3.30 p.m.

Learned advocates appearing for the parties have agreed that even if there be a request made by the Bar for early rising at 3.30

p.m. on that date on the ground of demise of any member of the Bar, the proceedings will continue in their presence notwithstanding such request.

Whatever documents have been relied on by the parties in Court today, which are not part of any affidavit, shall be incorporated in further affidavit(s) to be filed on the next date.

Mr. Chanda shall be at liberty to establish contact with the Cabinet Secretary for the purpose of exploring ways and means to break the impasse. This Bench is certain that no stone shall be left unturned in this behalf to avoid adverse orders being passed.

(DIPANKAR DATTA, J.)