

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

%

**Date of decision: 30<sup>th</sup> September, 2014**

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

**+ W.P.(C) 5559/2013 & CM No.15049/2013 (for directions)**

**RAGHURAJ SINGH**

**..... Petitioner**

Through: Mr. Kirti Uppal, Sr. Adv. with Mr.  
Pramod Arora & Mr. Anshuman  
Sahni, Advs.

**Versus**

**UNION OF INDIA & ORS**

**..... Respondents**

Through: Mr. Abhay Prakash Sahay and Ms.  
Indu Prabha, Advs. for UOI.  
Mr. Gaurav M. Liberhan, Adv. for R-2.  
Mr. Anuj Kumar Ranjan, Advs. For  
R-3.  
Mr. Narender Hooda, Sr. Adv. with  
Mr. Sonam Sharma & Ms. Nidhi  
Jaswal, Advs. for R-4.  
Ms. Zubeda Begum, Adv. for R-6.

**CORAM:-**

**HON'BLE THE CHIEF JUSTICE**

**HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW**

**RAJIV SAHAI ENDLAW, J**

1. This petition filed as a Public Interest Litigation (PIL) flags the issue of, the State of Uttar Pradesh (respondent no.3), State of Haryana (respondent no.4), State of Rajasthan (respondent no.5) and Government of

NCT of Delhi (respondent no.6) acting in contravention of the Regional Plan drawn up by the National Capital Region Planning Board (NCRPB) constituted under the National Capital Region Planning Board Act, 1985. The petition avers that though the said State Governments are obliged to prepare their respective Sub-Regional Plan and Master Plan for the parts of their respective States covered by National Capital Region (NCR) in conformity with the Regional Plan and to thereafter only carry out development in the said parts but are going ahead and allowing development contrary to the Regional Plan, thereby defeating the very purpose of harmonious development of the NCR to save Delhi from population explosion and to avoid haphazard development. It is yet further the plea in the petition that inspite of the petitioner representing to the Chairman NCRPB and other authorities, apprising them of the development in NCR contrary to the Regional Plan, no action has been taken. The petition seeks the reliefs of, i) direction to the NCRPB to coordinate enforcement and implementation of Regional Plan and Sub-Regional Plans and bring any derogation of the provisions of the NCRPB Act committed by the said States to the notice of this Court, ii) direction to the respondents no.3 to 6 States to prepare Sub-Regional Plans in conformity with the Regional Plan as per the

NCRPB Act and to take requisite approval of their Sub-Regional Plans from the NCRPB before finalizing / publishing the same; iii) direction to the respondents no.3 to 6 States to restrain them from giving effect to any Sub-Regional Plans and Master Plans not approved by NCRPB and a direction to the respondents no.3 to 6 States to ensure that no land use be changed contrary to the Regional Plan.

2. Notice of the petition was issued. Counter affidavits have been filed by the respondent no.2 NCRPB, respondent no.3 State of Uttar Pradesh, respondent no.4 State of Haryana and respondent no.5 State of Rajasthan and respondent no.6 GNCTD and to which rejoinders have been filed by the petitioner. An additional affidavit has also been filed by the respondent no.2 NCRPB. We have heard the counsels for the parties.

3. The respondent no.2 NCRPB has pleaded, i) that the Regional Plan prepared by it is a broad policy document indicating *inter alia* the broad land uses to which the land falling in NCR can be put to, for example, urbanizable area, agriculture, green buffer etc. and within the urbanizable area which uses and functions can be carried out on the land; however it is for the participating States to draw up the exact location and the particular use / functions, the said land / area can be put to in their Master /

Development Plans; the Regional Plan does not indicate exact location for any particular use and function in the urbanizable area; ii) that the participating States are to prepare their Sub-Regional Plans in conformity with the Regional Plan and containing slightly elaborated particulars; iii) thereafter the Master / Development Plans are prepared by the respective departments in the participating States in conformity with the Regional and Sub-Regional Plan for the respective towns in the NCR wherein the location of lands at micro level and their uses as allowed in the Regional Plan are indicated; iv) coordination and monitoring of the implementation of the Regional Plan, policies and proposals is being done at various levels; v) that the representations of the petitioner have been responded to and action taken thereon; vi) it is denied that it is causing development contrary to the Regional Plan; vii) that it has been pursuing with the participating States for immediate preparation of the Sub-Regional Plans; viii) that Sub-Regional Plan for the State of Uttar Pradesh sub-region had been approved; and, ix) that the Master Plan for Greater Noida was approved in compliance of the order dated 1<sup>st</sup> October, 2011 of the Allahabad High Court.

4. The respondent no.2 NCRPB in the additional affidavit has pleaded that it has issued a number of letters to the participating States for violation

of the Regional Plan and also issued notices to the participating States under Section 29(2) of the NCRPB Act; particulars of such letters / notices are given and copies thereof have been filed along with the additional affidavit.

5. We may notice that the respondent no.4 State of Haryana has also placed before us the reply sent to the notices of NCRPB.

6. The respondent no.3 State of Uttar Pradesh in its counter affidavit has pleaded, i) that it has prepared its Sub-Regional Plan and got the same approved from the NCRPB; ii) that the development carried out by different developmental authorities / agencies in the Uttar Pradesh sub-region are with the concurrence of the Government of Uttar Pradesh and in consonance with the Regional Plan; iii) it is denied that the State of Uttar Pradesh was allowing any illegal developments in contravention of the Regional Plan; iv) that there is no provision in the NCRPB Act for the participating States to obtain approval of the Master Plans of their towns from the NCRPB; and, v) planning is a State subject and participating States are responsible to plan their own areas considering the local requirements.

7. The State of Haryana in its counter affidavit has pleaded, i) that the State of Haryana is making every effort to comply with the provisions of the

Regional Plan prepared by NCRPB and the violations if any are on account of ever changing dynamics of development which could not be envisaged at the time of preparation of Regional Plan and the requirements of the area for which planning is being done; ii) that the Regional Plan itself is in the process of being revised; iii) that land is a State Subject under List II of VIIth Schedule of the Constitution of India and the State Government is empowered to make laws for regularization of land use despite the fact that by resolution the State of Haryana agreed to the constitution of NCRPB; iv) the Regional Plan is expected to lay down only the broad contours of the land use / other policies and its detailing has to be done by the State concerned; v) that there necessarily has to be a time gap between the date of preparation of the Regional Plan and the Sub-Regional Plan by the respective State Governments and during this period development at ground cannot be stalled; vi) that the development plans are prepared keeping in view the broad policy framework of the Regional Plan; and, vi) that the State of Haryana has already prepared its Sub-Regional Plan and forwarded the same to NCRPB.

8. The State of Rajasthan in its counter affidavit has pleaded; a) that the petitioner has failed to point out as to which development in the State of

Rajasthan is in violation of the Regional Plan and had only vaguely alleged such violation; b) that there is nothing in the NCRPB Act that prohibits development in the absence of Sub-Regional Plan; c) all that the NCRPB Act requires is that participating State should not undertake any development in contravention of the Regional Plan; d) that the Sub-Regional Plan of the State of Rajasthan is under preparation; e) that the development in the Sub-Region is being carried out as per the Master Plans of the towns of Rajasthan sub-region of NCR duly prepared and approved under the State laws and in conformity with the Regional Plan; f) that in preparing the said Master Plans, it has followed the norms specified under the Regional Plans; g) that it has always provided a copy of the draft Master Plan of the towns to the NCRPB for consideration and for seeking suggestions if any in respect thereof – no objection had been received from the NCRPB in respect of any of the Master Plans till date; and, h) that before finalizing any Master Plan, objections from the public also are invited and the petitioner had never raised objection to any of the Master Plans.

9. Upon the senior counsel for the petitioner urging before us that the Master Plans prepared by the respondents no.3 to 6 States of the towns falling in their respective sub-region are in contravention of the Regional

Plan, we had enquired from the senior counsel whether the territorial jurisdiction of this Court extends to striking down Master Plans of towns falling in the States of Uttar Pradesh, Haryana and Rajasthan and which otherwise are beyond the territorial limits of this Court. No specific allegation of any violations of the Regional Plan within the territorial jurisdiction of this Court was highlighted. We in this regard also drew the attention of the senior counsel for the petitioner to the fact that NCRPB Act does not appear to extend the territorial jurisdiction of this Court to sub-regions of the other participating States i.e. the States of Uttar Pradesh, Haryana and Rajasthan even though falling in the NCR.

10. The senior counsel for the petitioner could not controvert the aforesaid position and agreed that the challenge if any to the Master Plans of any of the towns in the other participating States would have to be made in the respective High Court of that State or in accordance with the laws of that State. He however contended that it is within the jurisdiction of this Court to issue directions to the NCRPB situated within the jurisdiction of this Court. Attention in this regard is invited to Sections 7 to 9 and Section 29 of the NCRPB Act.



11. Section 7 of the NCRPB Act detailing the functions of the NCRPB *inter alia* describes one of functions as “enforcement and implementation of the Regional Plan, Functional Plans, Sub-Regional Plans and Project Plans through the participating States and the Union Territory” and “to ensure proper and systematic programming by the participating States and the Union Territory in regard to project formulation, determination of priorities in the NCR or sub-regions and phasing of development of the NCR in accordance with stages indicated in the Regional Plan”. Similarly Section 8 while defining the powers of the NCRPB *inter alia* empowers the NCRPB to call for reports and information from the participating States and the Union Territory and to ensure the preparation, enforcement and implementation of the Functional Plans and / or Sub-Regional Plans and to review the implementation *inter alia* of the Regional Plan.

12. Section 9 describes the functions of the Planning Committee constituted by the NCRPB (under Section 4 of the NCRPB Act) and which are *pari materia* to the functions of the NCRPB. Section 29 dealing with violation of Regional Plan, vide sub-section (1) thereof prohibits development in the region inconsistent with the Regional Plan and vide sub-section (2) empowers the NCRPB to direct the erring participating States /

Union Territory to stop violation of the Regional Plan and in the event of the participating State / Union Territory not doing so further empowers the NCRPB to withhold financial assistance to the concerned participating State.

13. In the aforesaid position of the statute, we have enquired from the senior counsel for the petitioner that the directions to the NCRPB also cannot be, to do anything other than what it is entitled to do under Section 29 of the Act. Though Sections 7 and 8 of the Act describe the functions / empower the NCRPB to enforce and implement the Regional Plan but the only machinery therefor placed at the disposal of the NCRPB is to issue direction to the participating State / Union Territory and if such participating State / Union Territory fails to abide thereby, to withhold the financial assistance to it.

14. The counsel for the NCRPB states that NCRPB has already issued communications in terms of Section 29(2) of the Act to the erring States as detailed in the additional affidavit and assures that the NCRPB would exercise all its powers to ensure compliance / implementation by the participating States of the Regional Plan.

15. The senior counsel for the petitioner laments that the NCRPB has been spurred into action only upon notice of this petition being issued and prior thereto had failed to perform its duties / functions.

16. Though the importance and necessity of planned development, and with which objective the NCRPB Act was enacted, cannot be undermined but on account of territorial limits of our jurisdiction, our hands are tied. All that we can direct in this petition is, for the NCRPB to be vigilant of the developments in the NCR and to, wherever finds any violation, immediately act in accordance with Section 29(2) of the Act. However since the NCRPB Act itself does not empower the NCRPB to take any other coercive steps to ensure compliance of the Regional Plan and / or to prevent violations thereof, we are unable to issue any other directions. However we find that Section 39 of the said Act empowers the Central Government to dissolve the NCRPB if *inter alia* of the view that the NCRPB has failed in its objectives. NCRPB would certainly be deemed to have failed in its objective if the NCRPB either fails to keep a track of the developments in the region, with a view to gauge and determine whether the same are in consonance with the Regional Plan or not or if the NCRPB inspite of finding violations of the Regional Plan fails to issue any directions to the erring State / Union

Territory or if the NCRPB notwithstanding the erring State / Union Territory not complying with such directions does not withhold financial assistance to such participating State or Union Territory or if notwithstanding all of this, the participating States / Union Territory still proceed and continue with the violations of the Regional Plan. Section 39 further provides that upon the dissolution of the NCRPB, the Central Government would discharge the functions entrusted under the Act to the NCRPB. We are of the opinion that the Central Government, exercising powers of NCRPB would be in a better position to ensure compliance thereof and would be justified in dissolving the Board and taking over its functions unto itself.

17. We also implore the respondents no.3 to 6 States to appreciate and realize the importance of the subject and which is in the common good of the residents / citizens of all the participating States / Union Territories. Neither of the participating State / Union Territory for its own short term gains ought to indulge in violations of the Regional Plan. It cannot be lost sight of that NCRPB Act has come into being only upon the Governments of each of the participating States resolving to abide thereby and each of the participating States is a constituent of the NCRPB. We do not see any reason as to why any of the participating State should not abide by the

resolution of its respective Government in pursuance whereunto the NCRPB Act has come into force. We are constrained to make these observations owing to the plea in the counter affidavits of some of the States, of land being a State subject. We remind the said States that having consented to be regulated by the NCRPB law, it is now not open to them to renege therefrom and to contend that land is a State subject. The States should not forget that they shall also be victims of the havoc resulting from violations of the Regional Plan and anarchy in development.

18. We accordingly dispose of this petition,

A. by directing the NCRPB:

- (i) to monitor and be vigilant of the developments at site in the NCR and also in preparation of the Sub-Regional Plans and the Master Plans of the towns falling in the NCR;
- (ii) to immediately, upon finding any violations thereof, take action under Section 29(1) of the Act;

(iii) to regularly, from time to time, keep the Central Government informed of the violations if any of the Regional Plan;

- B. by directing the Central Government to also stay abreast of the functions of the NCRPB and to, if finds NCRPB unable to fulfill its functions and purpose, dissolve the same and take over its functions and ensure compliance of the Regional Plan;
- C. by imploring the State Governments to, forgetting legalese and technicalities, ensure that the purpose for which the NCRPB was created is fulfilled in letter and spirit by ensuring the developments in the respective sub-regions of the NCR are in accordance with the Regional Plan and by fully cooperating with the NCRPB in this respect.

No costs.

**RAJIV SAHAI ENDLAW, J**

**CHIEF JUSTICE**

**SEPTEMBER 30, 2014**

‘gsr’