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IN THE HIGH COURT OF JAMMU & KASHMIR AND LADAKH AT JAMMU

WP(C) No. 1588/2024

Reserved on :25.03.2025
Pronounced on: 07 .04.2025

1. Palm Island Space Owners Welfare Association through President Ashwani Kumar
2. Ashwani Kumar son of Prem Nath resident of 50B Tirth Nagar, Jammu
3. Lokesh Sharma son of Suraj Parkash Sharma resident of 51, Hazipura Last Morh Gandhi Nagar, Jammu
4. Pawan Singh Manhas son of Sh. Bhim Singh resident of Patel Nagar, Jammu
5. Rajan Gupta son of Dev Raj Gupta resident of JMC 680 Lane No.5 Bhawani Nagar Talab Tillo Jammu
6. Vishal Sharma son of V.P.Sharma resident of 508/E Sainik Colony Jammu
7. Pushap Lata Slathia wife of Atma Singh Slathia resident of 238 Patel Nagar TalabTilo, Jammu
8. Mayank Gupta son of Sunil Gupta resident of 101 A/D Green Belt Park Gandhi Nagar, Jammu
9. Dhruv Malhotra son of Dinesh Malhotra resident of 194 A/D Green Belt Park Gandhi Nagar, Jammu
10. Naveen Kumar Gupta son of Om Parkash Gupta resident of 15/2 Nanak Nagar Jammu
11. Ashok Sharma son of Lachhman Dass resident of 64 Lane No.3 Greater Kailash Jammu
12. Rohini Khajuria daughter of Jagdish Chander Khajuria resident of 73/A Subash Nagar Rajpura Road Jammu

...petitioners

Through: -

Mr. Vikram Sharma Sr. Advocate with Mr. Sachin Dev Singh Advocate.

Mr. S. Sanpreet Singh and

Mr. Zaheer Abbas Khan Advocate.

Vs.

Union of India and others

…respondents

Through: -

Mr Rahul Pant Sr. Advocate with

Mr. Anirudh Sharma Advocate

Mr. Sunny Mahajan Advocate

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Mr. Mohd Aleem Beg Advocate with
Mr. Harmit K. Mehta Advocate

CORAM: HON'BLE MR. JUSTICE SANJAY DHAR, JUDGE

JUDGMENT

1 Petitioners Nos. 2 to 12 claim to be the members of petitioner No.1-Association and owners of commercial spaces in Palm Island Mall, Canal Road, Jammu. Through the medium of present writ petition, they have sought a direction upon the official respondents to carry out the construction work of 4-Lane Flyover from 4th Bridge near Bhagwati Chowk to Canal Head on the Jammu-Akhnoor Road Section of NH-144A in Jammu strictly in accordance with the approved Detailed Project Report (for short 'DPR') and technical specifications. A further direction has been sought upon the official respondents to adhere to and not to deviate from the approved design and technical specifications of the DPR of the said Flyover, with a direction restraining the official respondents from reducing the width of the road in front of Palm Island Mall by constructing a blind wall.

2 According to the petitioners, the commercial complex, Palm Island Mall, was constructed after approval of the building plan from the Building Operations Controlling Authority of Jammu Municipal Corporation and as per the sanctioned plan, a provision was made for entry into the Mall from the Akhnoor Road side with a 40- feet wide road. It has been submitted that, even as per Master Plan 2021 and Master Plan 2032, there is a requirement of minimum road width of 15 meters for a commercial complex/Mall. It has been further

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submitted that the Mall in question houses three multiplexes, two restaurants, two food courts, shopping stores, and office spaces, and it is comprising of three basement storeys and five storeys above ground. The Mall is stated to have become operational in the year 2018, after obtaining all requisite NOCs and after its operationalization, the widening work of Akhnoor Road was undertaken by the respondent-National Highways & Infrastructure Development Authority Ltd.('for short 'the Authority')

3 It has been submitted that an e-tender dated 10.08.2021 was floated by the Authority for the construction of a 4-lane road with a paved shoulder configuration, along with a service road, from 4th Tawi Bridge (D.Ch.0.000) near Bhagwati Chowk to Canal Head (D.Ch.1.350) on Jammu-Akhnoor road section of NH-144A. After completion of tendering process, the contract for the construction of Flyover was awarded to M/S Maan Builders-respondent No.5 herein, in terms of a letter of acceptance dated 24.09.2022. As per this letter of acceptance, the proposed length of the Flyover was 1.350 km, extending from 4th Bridge to Canal Head, and its estimated cost was shown as Rs.158.97 crores. As per the approved DPR, the Flyover was to culminate with its merger with the existing Flyover at the specified merger point at 1.350 km. According to the petitioners, the Flyover from Bhagwati Chowk was to be raised at the level of existing Flyover and an entry ramp was proposed to be constructed from Canal Head Chowk, to be raised to merge with the Flyover at 1.050 km, i.e., at a point between Pillar Nos.6 and 7 of the proposed Flyover. It has been

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submitted that the DPR was approved keeping in mind the fact that the main entrance to the Mal in question on the existing Akhnoor Road is located on the left side of the proposed flyover. Thus, according to the petitioners, the merger of the flyover with the existing flyover was proposed at 1.350 km to ensure that the road in front of the Mall right at its entrance gate is not reduced in width and that the front elevation and aesthetics of the said complex and other buildings are not adversely affected.

4 It has been submitted that while the project was under execution, the petitioners noticed that the height of the pillars raised ahead of Canal Chowk towards Akhnoor Road was considerably lesser than what was designed and approved in the DPR, as a result of which, they became suspicious and sought clarifications from the contractor. Upon inquiry, the petitioners came to know that the contractor has been asked to deviate from the approved DRP, so that, instead of merging the proposed 4-lane flyover with the existing flyover at the approved point at 1.350 km, the flyover is being made to land short of the approved point i.e at 1.000 km by tapering down its height immediately after crossing the Canal Head rotary. It has been submitted that the said deviation has been made by the official respondents with an ulterior motive, as a result of which, the entire commercial viability of the Mall in question would get adversely impacted which, in turn, would affect the commercial interests of the space holders. It has been alleged that the proposed deviation would result in reduction of entry road to the Mall to a mere 14 feet.

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5 The petitioners have challenged the aforesaid action of the respondents on the ground that the official respondents have changed the approved DPR and technical specifications in an arbitrary, illegal and *mala fide* manner. It has been contended the respondent No.5-contractor has no authority or competence to change the structural specifications of the entire 4-lane flyover and that the contractor has to execute the work in accordance with the approved DPR. It is also being claimed that even the respondent-Authority or its consultants have no authority to alter the design specifications of the flyover. It has been contended that as per the approved DPR and the specifications, it was ensured that width of the entry to the Mall is not reduced and aesthetics of the existing buildings are not adversely impacted. It has been further contended that the official respondents are intending to descend the flyover proceeding from 4th Bridge midway onto the main Jammu-Akhnoor Road almost right in front of the main gate of the Mall which would result in blocking the front entrance of the commercial spaces of the petitioners and the Mall itself. It has also been claimed that the deviation proposed by the official respondents is not technically feasible and it may even have serious consequences on the security and safety aspects of the flyover. It has been contended that the proposed deviation would result in traffic congestion and the object for which the flyover has been proposed would get defeated.

6 Respondents No. 1,2,6,7, & 8, in their objections to the writ petition, have submitted that NH-144A from 4th Tawi Bridge (Km 0.000) to Hanuman Chowk (Km 30.097) was entrusted to the Authority

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in terms of Gazette Notification No.615 dated 20.03.2015. It has been submitted that the project was divided into four packages, out of which, based on the availability of land, Jammu-Akhnoor Road Package-II & Package- III i.e., from Canal Head (Km 0.800) to Ganesh Vihar (Km. 6.000) and From Ganesh Vihar (Km 6.000) to Thathi Chowk (Km 26.350), were awarded to the respective contractors on 15.03.2018 and 20.03.2019. It has been submitted that initially, it was proposed that the construction of package-II flyover would be restricted at Km 1.350 and separate entry and exit ramps would be provided from the sides to make the flyover functional. However, the said proposal was not approved by the headquarters, as by then, the proposal of package-I was not finalized, and it would have delayed the completion of package-II Flyover. It is, in these circumstances, that the DPR of package-I was prepared, keeping in view the most feasible integration option of restricting package-II flyover at 1.350 km and providing entry and exit ramps from the sides as the package-II was still under construction at the relevant time. Accordingly, based on the aforesaid DPR, the Authority invited bids for the project, but by then, the planned up-ramp and down-ramp portion of package-II flyover for merger of package-I was completed by the concerned contractor. The Jammu Akhnoor Road package-II flyover was finally made operational for traffic on 15.10.2022, but by then, the package-I project was still not finalized and the same was under tendering stage. Thus, according to the respondents, delaying package-II project would have resulted in

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additional costs to the Government exchequer and inconvenience to the public at large.

7 It has been submitted by the respondents that it is in the circumstances explained hereinabove, that the tenders were invited on the basis of the DPR which involved integration of package-I flyover with package-II flyover at Km 1.350 and providing separate entry and exit ramps from sides, whereas, by that time, package-II flyover was already complete and was functional. It has been claimed by the respondents that if the proposal for merger of package-I flyover with package-II flyover, as provided in the original DPR, was carried out, it would have led to demolition of approximately 450 meters of the already completed package-II flyover. This prompted the official respondents to explore other options, as the demolition of existing flyover to the extent of 450 meters would have resulted in inconvenience in the form of traffic congestion, difficulties to the residents of the locality for about 4 years, along with loss to the Government exchequer. Keeping these ground conditions in view, the respondents proposed to terminate package-I flyover within Km 1.000 after crossing Canal Head Chowk instead of Km 1.350 and providing entry and exit ramps from the sides. It has been submitted that the contractor was asked to submit a fresh design, which is under consideration. It has been further submitted that there may be need to acquire additional land to execute the new proposed design. The respondents have submitted that the acquisition of the additional land would partially affect the structures, including an empty plot of land,

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gates and some portion of the Palm Island Mall, and the front portion of 04 shops after crossing the Mall. It has been specifically mentioned that this would, in no way, lead to blocking of the entry or exit to the Mall or reduce width of the entry. It has been submitted that, as per the fresh proposal, a proper entry is being provided to the Mall from the service road of NH-144A.

8 The respondents have explained that if the project is executed as per the already approved DPR, it would lead to the demolition and reconstruction of the existing flyover up to Km 1.350 which would lead to coming up of pillars for the entry and exit ramps in front of the commercial establishments from Km 0.800 to Km 1.350 on the left hand side, which includes the Palm Island Mall. This, according to the respondents, would require acquisition of more land at this belated stage. The respondents have submitted that, in terms of Clauses 3.1 and 5.2 of the contract agreement dated 15.12.2023, it has been expressly provided that no representation regarding the accuracy, adequacy correctness, reliability of any assessment, assumptions, statements or information provided by the respondents is being made, and the contractor shall have no claim against the authority in this regard.

9 Respondent No.5, the contractor, has filed a separate reply to the writ petition. It has been submitted that the approved DPR has been prepared so as to ensure that that aesthetics of the commercial establishments and access to the Mall in question is not affected. It has

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been submitted that, as per clause 3.3 of the DPR, there is a provision for removal the silt ramp for merger of package-I and package-II of the project, which, in other words, according to the respondent, contractor, means that the contention of the official respondents as regards the dismantling of a portion of the flyover was already provided for in the merger plan as envisaged in the approved DPR. It has been further submitted that respondent No.5, contractor, is under pressure not to work in accordance with the approved DPR and that the official respondents are making frequent changes to the project. Respondent No.5, contractor, while admitting that he is bound by the decision of the official respondents and that he cannot execute the work on his own, has submitted that any deviation from the approved DPR would compromise with the safety and viability of the flyover, which is to be maintained by him for next 10 years after completion of the project. It has been submitted that respondent No.5 has already submitted its objections to proposed deviation in terms of his communication dated 24.07.2024, but the official respondents are proposing to deviate the specifications and the DPR. It has been submitted that if the proposed deviations are approved, the same may create black spots and hazardous conditions in future, and it may also give rise to traffic congestion and may become an issue of public safety.

10 Respondent No.3, the authority, which has prepared the DPR in its reply to the writ petition, has submitted that the DPR has been prepared by it in consultation with the local authorities and the administration as per the requirements of the project.It has been

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submitted that the DPR was prepared after proper field work and after taking into account the engineering design and available land resources. It has, however been submitted that the DPR prepared by it is not binding upon the Authorities of the official respondents and that the same can be altered and changed as per the requirements and description. It has also been submitted that the flyover or road cannot be constructed for conferring benefit upon the one person, but the same has to be constructed keeping in view the lager interests of the society.

11 Pursuant to order dated 10.12.2024 passed by this Court, a supplementary affidavit came to be filed by respondent No.7 in which it has been submitted that keeping in view the requirements of defence forces and issues regarding congestion being faced by the general public, it was decided to go ahead with the construction of the project relating to flyover starting from 4th Tawi Bridge up to Hanuman Chowk, Akhnoor in four stages as it was practically impossible to have entire parcel of land for the project in one go. The first phase of the project starts from 4th Tawi Bridge near Bhagwati Nagar Chowk up to Canal Head (Km 0.000 to Km 1.350). The second package was up to Km 6.000 from Canal Head to Ganesh Vihar. Pakage-IIIA and Package-IIIB was up to hanuman Chowk, Akhnoor.

12 It has been submitted that the work on package-II from Canal Head to Ganesh Vihar was started in the year 2019 and it was concluded on 15.10.2022 but during its execution, Package-II and Package-I could not be finalized as there were issues with regard to

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alignment and land acquisition. It has been submitted that the DPR for package-I was prepared in view of the most feasible integration option of restricting package-II flyover at Km 1.350 and providing entry and exit ramps from the sides as Jammu-Akhnoor Road Package-II flyover at that time was still under construction and was not completed. On this basis, the bids were invited. Package-II flyover was completed by the contractor and it became operational on 15.10.2022.

13 According to respondent No.7, because package-II was already complete and the scope of package-1 was from Km 0.000 to km 1.350, it would have involved demolition of a part of the existing flyover under package-II for giving effect to the merger plan proposed in the DPR. It has been submitted that in such an eventuality the already constructed flyover under package-II would have been rendered non-operational for two to three years, besides it would have caused wasteful expenditure to the tune of approximately Rs.50 crores. In is, in these circumstances, that respondent No.5,contractor was asked to provide other options for merger of package-I and Package-II. The proposals submitted by the contractor, according to respondent No.7, are under review and have been submitted to the headquarter of the Authority for approval.

14 According to respondent No.7, in terms of Article 13 of contract agreement, there is a provision for change in the scope of work and that the DPR is not a binding document upon the respondent-Authority. Respondent No.7 has denied that change in the scope of

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work is motivated by any ulterior reason. It has been submitted that the change in the scope of work is in the interests of public at large, national security and the Government exchequer. It has been submitted that the respondent-Authority is well within its right to change the scope of work to avoid any inconvenience to the public and to avoid loss to the Government exchequer.

15 Respondent No.7 has specifically stated that the project will not proceed further till such time the safety concerns relating to the project are properly met. It has been further submitted that the Mall in question has been made operational in the year 2018, whereas the project was handed over to the Authority in the year 2015 in terms of Gazette Notification dated 20.03.2015, therefore, it was incumbent upon owners of the Mall in question to seek permission of the National Highway Authority, in terms of Sections 28, 29 and 38 of the Control of National Highways (Land and Traffic) Act, 2002. It has been submitted that promoters/builders of the Mall have 7 meters of service roads in front of the Mall and they have another entry to the Mall from back side as well. It has been submitted that even if the proposed change in the DPR is carried into effect, still then, the promoters/builders will have the service lane of same width i.e 7 meters. It has been further submitted that construction of the project as per the proposed change will not, in any manner, affect the petitioners.

16 Besides the aforesaid pleadings, pursuant to order dated 31.12.2024 passed by this Court, respondents 1,2,6,7 and 8 have placed

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on record copies of as many as 50 communications exchanged by the parties, *inter se*, on the subject starting from 11.07.2014 to 30.01.2025. Reference to the relevant communications shall be made at the appropriate stage of this judgment.

17 I have heard learned counsel for the parties and perused record of the case.

18 Mr. Vikram Sharma, learned Senior Counsel appearing for the petitioners, has contended that if the proposed change in the merger plan of package-I and Package-II of the flyover is given effect to, it would have adverse consequence for the petitioners, who are owning commercial spaces in Palm Island Mall, which is located on one side of the Jammu-Akhnoor NH-144A. The concern of the petitioners is that the proposed deviations in the DPR would block/narrow down the entry to the Mall in question and it would also adversely impact its aesthetics. This, in turn, would have disastrous consequences on the commercial interests of the petitioners, who are operating their business from the said Mall, as it would be difficult for the commuters and customers to access the Mall. The learned Senior counsel has submitted that the proposed change in the DPR has been made with a view to benefit some influential people and that the respondent-Authority has no jurisdiction to change the scope of work after the DPR has been approved. In this regard, the petitioners find support from the stand taken by the contractor respondent No.5, both in his pleadings as well

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as the in the arguments advanced by learned counsel appearing for the said respondent.

19 Mr. Rahul Pant, learned Senior counsel appearing for the respondents, (except respondent No.5), has contended that the present litigation has been sponsored by respondent No.5, who has certain disputes with the respondent-Authority. He has contended that the official respondents are well within their rights to change the scope of work in terms of clauses of the contract and, in the instant case, the decision to change the scope of the work has been taken in the best interests of the public, the Government exchequer and the technical feasibility of the project. It has been submitted that, with the change in the scope of work, the petitioners are not going to be adversely affected, as neither the entry to the Mall would get blocked, nor would its width get reduced. The learned Senior counsel has also contended that before making the Mall operational, the promoters/builders should have obtained NOC from the National Highway Authority of India, which, in the instant case, has not been done. Therefore, it is not open to the petitioners to challenge the proposed action of the official respondents.

20 So far as the contention of the learned Senior counsel appearing for the official respondents that the present litigation appears to be a sponsored litigation on behalf of respondent No.5, the contractor is concerned, the same appears to be without any substance, for the reason that the official respondents, in their reply, have clearly stated

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that the proposed change in the scope of work would require acquisition of additional land, which would partially affect three to four structures, including an empty plot of land, gates and some portion of the Palm Island Mall, and the front portions of 04 shops after crossing the Mall. The fact that proposed change in the scope of work may result in shifting the exit/entry gate of the Mall and altering the outside boundary wall, is a good enough reason for the petitioners to apprehend that access to the Mall and its open parking space would get adversely impacted. It is for this reason that the petitioners have approached this Court by way of present writ petition. Merely because respondent No.5, the contractor, is supporting their case, does not make it a sponsored litigation. The contention of the official respondents in this regard is, therefore, without any merit.

21 That takes us to the merits of the case. As already stated, according to the petitioners, as well as according to respondent No.5, it is not open to the official respondents to change the scope of work once the DPR has been approved, on the basis of which, the work has been put to tenders. In this regard, if we have a look at Articles 13.1 and 13.2 of the contract agreement, it is clear that the contract provides for change in the scope of work. As per Article 13.1, the National Highway Authority of India has the power to require the contractor to make modifications/alterations to the works, where-after, the contractor has to submit a proposal for the said change. The term 'change in scope' has been defined to include changes in specifications of any item of the work, omission of any work from the scope of the project,

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any additional work, plant, materials or services which are not initially included in the scope of project. Article 13.2 provides for procedure for change of scope. It lays down that the contractor will have to submit a detailed proposal within 15 days from the receipt of change of scope notice. The detailed proposal submitted by the contractor has to be considered by the respondent-Authority and it may, at its sole discretion, either accept such change of scope with modification or reject the proposal and inform the contractor of its decision. The contractor cannot undertake any change of scope without the express consent of the respondent-Authority, except for meeting any emergency, that too, with verbal approval of the Authority.

22 Thus, the contention of the petitioners that once DPR has been approved, on the basis of which, tenders are invited, it is not open to the official respondents to change the scope of work, is without any merit. The contract document specifically provides and gives authority to the official respondents to change the scope of work and allows the contractor to submit a proposal in this behalf. The changed proposal can be put into execution only after the same is approved by the official respondents.

23 The second ground of attack against the proposed change of scope of work that has been launched by the petitioners is that the same is not technically feasible, inasmuch, it will block the entry to the Mall, cause traffic congestion, and pose safety risks for the commuters. According to the petitioners, the approved merger plan of flyover

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package-II was technically feasible and appropriate, and the manner in which the official respondents intend to execute the merger plan will have disastrous consequences as the same is not technically feasible.

24 I am afraid the merits of the contention raised by the petitioners cannot be gone into by this Court. The Supreme Court and various High Courts of the country have time and again held that the issues pertaining to technical aspects regarding infrastructure projects are subject matter of experts. Neither this Court nor the petitioners are at all equipped to decide upon the viability and feasibility of the proposed change of scope of work. Whether the merger scheme proposed by the official respondents would be technically feasible or whether it would serve the larger public interest are matters beyond the scope of judicial review.

25 The Supreme Court, **in the case of Union of India vs Kushala Shetty and others, (2011) 12 SCC 69**, while dealing with a similar issue relating to a project that was being executed by the National Highway Authority of India, has observed as under:

> "*24. Here, it will be apposite to mention that NHAI is a professionally managed statutory body having expertise in the field of development and maintenance of National Highways. The projects involving construction of new highways and widening and development of the existing highways, which are vital for development of infrastructure in the country, are entrusted to experts in the field of highways. It comprises of persons having vast knowledge and expertise in the field of highway*

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development and maintenance. NHAI prepares and implements projects relating to development and maintenance of National Highways after thorough study by experts in different fields. Detailed project reports are prepared keeping in view the relative factors including intensity of heavy vehicular traffic and larger public interest. The Courts are not at all equipped to decide upon the viability and feasibility of the particular project and whether the particular alignment would subserve the larger public interest. In such matters, the scope of judicial review is very limited. The Court can nullify the acquisition of land and, in rarest of rare cases, the particular project, if it is found to be ex-facie contrary to the mandate of law or tainted due to mala fides. In the case in hand, neither any violation of mandate of the 1956 Act has been established nor the charge of malice in fact has been proved. Therefore, the order under challenge cannot be sustained".

26 From the foregoing analysis of law on the subject, it is manifest that this Court, while exercising its writ jurisdiction, cannot go into the question as to whether the approved merger plan of package-I and Package-II of the flyover in question was more technically feasible and beneficial to public interest or whether the new plan, which is still under consideration, would be better suited keeping in view the over all facts and circumstances. This is a matter which cannot be decided by this Court and it is best left to the judgment of the experts of the respondent-Authority.

27 The other contention of the petitioners is that if the proposed change in the scope of work is given effect to by the

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respondents, it will block access to the Mall or at least, it would narrow down the entry to the Mall, thereby adversely impacting the commercial interests of the petitioners, who have invested their hard-earned money in purchasing commercial spaces in the Mall.

28 In the above context, it is to be noted that the official respondents have taken a specific stand that even if the proposed new merger plan of the two stages of the flyover is executed, it will not narrow down the width of access to the Mall. It has been specifically stated by the official respondents in their reply that the entry to the Mall will remain 7 meters wide. In fact, respondent No.7, in his affidavit, has specifically stated that, as on today, the promoters/builders of the Mall have a 7 meters service road in front of the Mall, and even after the change in scope of work, the Mall will still have a 7 meter wide service lane. The apprehension of the petitioners in this regard has been taken care of by the affidavit of respondent No.7.

29 Regarding the acquisition of additional land without affecting the Mall, this Court has come across a copy of communication dated 13.01.2025 addressed by respondent No.4 to respondent No.5 whereby the said respondent has been asked to explore the possibility of utilizing the empty land so that land acquisition is restricted till 0+870 and it has been impressed upon the respondent that the land acquisition at Palm Island Mall should be avoided, meaning thereby that the official respondents are at pains to avoid a situation whereby the promoters/builders of the Mall will have to either shift

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their gate or to shift the outer boundary wall. This shows that there is no *mala fide* intention on the part of the official respondents in changing the scope of work. They have clearly spelt out the reasons for change in the scope of work by stating that same has been necessitated with a view to: (i) avoid loss to the Government exchequer to the tune of Rs.50 crores, (ii) avoid in-operation of existing flyover for more than two years, which would lead to traffic congestion for the local public of Jammu,(iii) account for the strategic importance of existing flyover for army troops, and the demolition would lead to inconvenience to them, and (iv) mitigate the air and noise pollution that would ensue due to the demolition of a portion of the existing flyover. Thus, the reasons for change in the scope of work assigned by the official respondents, their intention to avoid acquisition of any portion of the Mall, and their assurance that there will be a 7 meter wide service lane for access to the Mall go on to show that the interests of the petitioners are being taken care of by the official respondents while changing the scope of work.

30 Apart from the above, the issue with regard to access to the national highway is a matter within the domain of experts, and it would not be open to the High Court to interfere in such decisions of the experts by exercising of its powers of judicial review. The matters with regard to the need for providing entry and exit points on national highways or flyovers fall under the domain of specialists, and it has to be presumed that such matters have been duly considered by the experts. The High Court, while exercising its judicial review cannot act an appellate authority over the expert decisions regarding the project

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costs, provisions for entry/exit points, safety, technical feasibility of the project, and the related aspects.

31 The petitioners in the instant case are claiming their individual rights of entry and exit to the Mall, which are to be weighed against the larger public interest. The petitioners demand that the original merger plan of phase-I of the flyover should be adhered to and that no change to the said plan should be made, as the proposed new plan is going to affect their rights adversely. The respondents, on the other hand, have offered cogent and convincing reasons for abandoning the originally approved merger plan and coming up with a new merger plan which is still under consideration. They have also assured unhindered access to the Mall, with no change in the width of the entry and exit points. Merely because it may have been more convenient for the petitioners and their customers to access the Mall directly from the Akhnoor Road under the earlier scheme does not give them a right to resist any change in the plan of merger of the two stages of the flyover, which would be beneficial for the larger public good. Merely because the petitioners and their customers may face certain possible inconvenience cannot form a basis for the official respondents to abandon their proposed change in the scope of work and adhere to the earlier approved merger scheme at the cost of larger public interests. Any indulgence granted to the petitioners by this Court at this stage may lead to similar demands from other quarters at multiple points along the flyover, which is going to defeat the very object of the project.

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32 The Supreme Court has time and again held that the Court should be extremely loathe in interfering with the infrastructure projects and keeping this in mind, the legislature has amended the Specific Relief Act, 1963 by virtue of Act 18 of 2018, whereby clause (ha) has been inserted in Section 41 of the said Act. The said clause provides that no injunction can be granted if it would impede or delay the progress or completion of any infrastructure project or interfere with the continued provision of related facility related thereto or services being the subject matter of such project. **In M/S N.G. Projects Limited vs M/S Vinod Kumar Jain, (2022) 6 SCC 127**, the Supreme Court has held that the High Court should keep in mind the intent of the legislature that infrastructure projects should not be stayed. While holding so, the Supreme Court referred to the legislative intent contained in Act 18 of 2018 whereby clause (ha) was inserted in Section 41 of the Specific Relief Act. The Court went on to observe that the said provision should be kept in view even by the writ Court while exercising its jurisdiction under Articles 226 of the Constitution of India .

33 In view of the foregoing legal position, it would not be open to this Court to direct the official respondents to abandon their proposal to change the scope of work relating to merger of the two stages of the flyover and to go ahead with the original merger plan which, as already stated, would not only delay the project, but also

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cause a lot of inconvenience to the public and result in a loss to the Government exchequer.

34 For the foregoing reasons, there is no merit in this writ petition. The same is dismissed accordingly. The interim orders, if any, shall stand vacated.

(Sanjay Dhar)
Judge

Jammu
07. 04.2025

whether order is reportable: ***Yes***

