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

+ CONT.CAS(C) 851/2021, CM APPL. 8253/2022, CM APPL. 21573/2022, CM APPL. 29368/2022 & CM APPL. 29369/2022

NEERAJ SHARMA ..... Petitioner

Through: Mr Aditya N. Prasad, Advocate.

versus

VINAY SHEEL SAXENA & ORS. .... Respondents

Through: Mr. Kirti Uppal and Mr. Rakesh Tiku and Senior Advocates with Mr. Javed Ahmad and Mr. Lokesh Bhardwaj, Advocates for respondent nos. 1, 2 & 3 along with R-1 to R-3 in person.

Mr. Sanjay Mishra and Ms. Stuti Mishra, Advocates for R-4 along with R-4 in person.

Ms. Punya Rekha Angara, Advocate for Mr. N. Hariharan, Senior Advocate (Amicus Curiae).

Mr. Gautam Narayan, ASC, GNCTD.

Mr. Bharat Gupta, Advocate for Mr. Shadan Farasat, ASC, GNCTD along with Mr. Amit Anand, DCF (HQ).

Mr. Rishikesh Kumar, ASC, GNCTD/Delhi Police.

**CORAM:**

**HON'BLE MR. JUSTICE NAJMI WAZIRI**

**ORDER**

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**13.07.2022**

The hearing has been conducted through hybrid mode (physical and virtual hearing).

1. It is noted that in the third last sentence of para 7 of the order dated 03.06.2022, the word “having” is a typographical error and it should be read as “have”. The corollary, therefore, would be that the respondents concerned have committed contempt of court. In CONT. APP. (C) 16/2022 preferred by respondent no. 1, a Division Bench has directed that affidavit dated 16.02.2022 and additional affidavit dated 04.05.2022 filed by the respondents, after issuance of show cause notice, be considered. The fact, however, remains that there is no reply to the show cause notice. The additional affidavit does not address the cause for which notice was issued. The apology tendered by respondent nos. 2 and 3 was through an affidavit dated 04.05.2022 which is an afterthought and far too late in the day i.e. about six months after issuance of the said notice. It should have been tendered in the first instance and remorse, if any, should have been evident. No such steps were taken. Instead respondent nos. 1, 2 & 3 chose not to file a reply to the show cause notice.
2. The court has put to the learned counsel for the aforesaid respondents whether they wish to address any submissions apropos affidavits which have been referred to in the afore-referred order dated 04.07.2022 of the Division Bench, the only statement made today by the learned counsel for R-1 and on behalf of R-2 and R-3 as well, is that: i) an apology was filed in February, 2022 and ii) the street-scaping project of the government being in the larger public interest was carried out. The said arguments are untenable and are rejected because firstly, the apology can never be accepted

in a case where it is in deliberate breach of the court's directions: not one but quite a few directions as noted in the order dated 03.06.2022; secondly, simply because it was a project on behalf of the government, purportedly in the larger public interest, would not qualify it to be carried out in breach of the law; thirdly, the engineers/officers who execute the project at site are expected to abide by the rules, their deliberate breach is their individual act, for which the government could not be blamed; fourthly, where a person/government officer has himself issued restraint and cautionary orders and is fully aware of court directions, as well as the statutory limitations, yet goes ahead to breach the same, he is in wilful default and conscious breach of the law, he renders liable himself for the consequences that would flow therefrom. The court has found the said officers guilty of the said breach and contempt. Not only that, the order dated 03.06.2022 reflects that the contemnors were given sufficient time to remedy the situation, if they so desired. More than five weeks have gone by, however, they have done nothing whatsoever, to mitigate the wrongdoing.

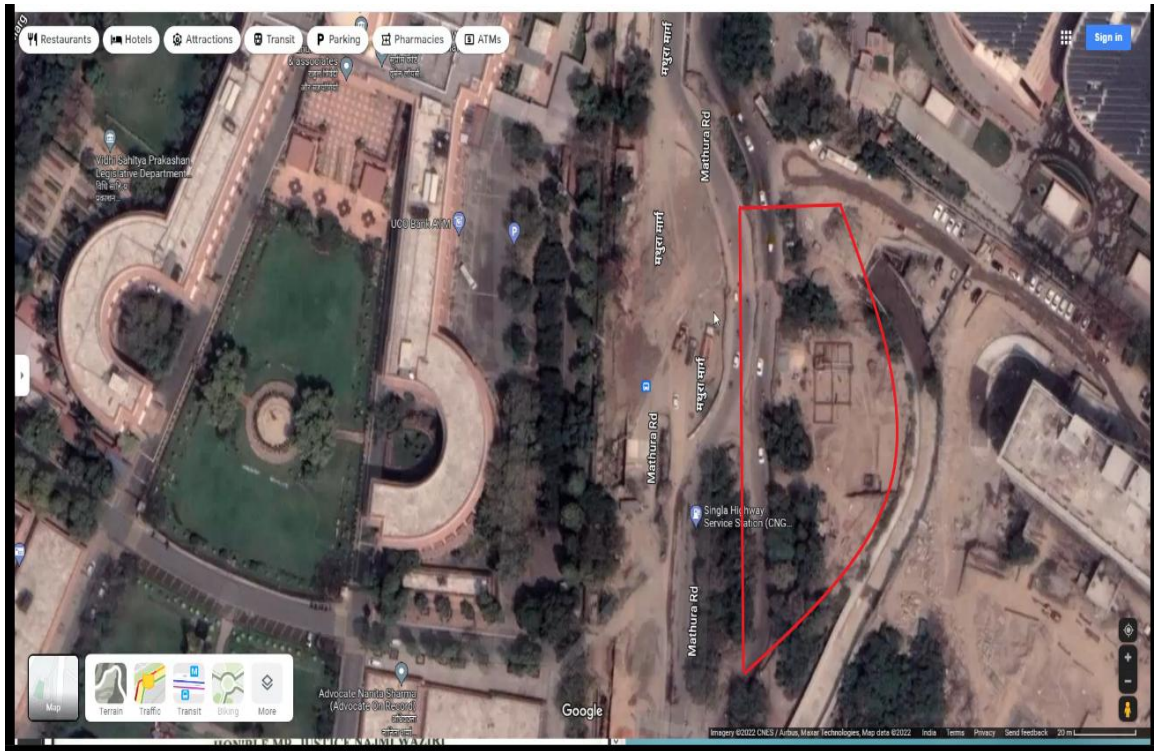
3. It appears that the project was sought to be executed without any ostensible concern for the green cover, in a city which gasps for fresh air every moment. If there was such concern and caution envisaged in the project, then it should have been duly implemented, without breaching the court directions. In the order dated 11.07.2022 it has been noted that 77,420 trees were permitted to be cut-down/felled in the years 2019, 2020 and 2021 through applications under sections 9 and 29 of the Delhi

Preservation of Trees Act, 1994 (“DPT Act”). If the average age of each tree was 20 years, then Delhi has lost 1,54,000 years of tree-life because of the permitted tree-felling. The other data, as noted in para 3 of the previous order is presently not on record. When furnished it would likely increase the loss manifold. Each felled tree only aggravates the ever increasing air and noise pollution. Government projects would necessarily be required to keep these environmental issues into consideration. No amount of concrete-scraping can replace the loss of or damage to the green cover.

4. The Tree Officer has recorded that damage has been caused to 80 trees and 3 trees were felled in the first instance. It is another matter that the breach was compounded by the Tree Officer, which the petitioner says, could well be the cause for further proceedings. Statutory permission was not taken from the Tree Officer by the PWD officers; the digging-up, damage to roots, etc. and concretization was in breach of the court’s directions. They have committed contempt of court.
5. Even if the additional affidavit of 04.05.2022 is taken into consideration, it does not address the felling/cutting down of one tree (para 16 of the order dated 03.12.2021). Surely, a tree on PWD roads/lands cannot vanish or be felled without knowledge of the officer incharge of that stretch of road/land. The affidavit is silent in this regard. After site inspection, the Tree Officer has recorded damage to 80+3 trees. Therefore, paras 24 to 27 of the said affidavit are untenable. Civil construction works for clearance of clogged drains, as may, could not be undertaken in breach of

- land parameters, court directions or without requisite permission.
6. In the circumstances, the court sentences R-1 under s. 12 of the Contempt of Courts Act, 1971 to undergo simple imprisonment for a period four months along with fine of Rs.2,000/-.
  7. R-2 was the Head of Office in the PWD; the project of streetscaping would have necessarily received his approval; it was for him to ensure that there was no damage to the trees and/or breach of the court's directions. Reference is also made to the order dated 23.04.2013 passed by the National Green Tribunal ('NGT'), which made it clear that the Head of the Department would be held responsible. The damage to the trees and breach of the court's directions happened during the tenure of R-2 as Engineer-In-Chief. R-3 was the jurisdictional EE, and had a duty to see due compliance. It is not as if he was not aware of the project of which R-1 was charge. R-3 should have seen that the breach was not done or that it was immediately stopped.
  8. Mr. Prasad, the learned counsel for the petitioner submits that another contempt matter is pending against R-1 regarding similar breaches at Meera Marg, Delhi and R-2 has also been arrayed as a respondent (CONT. CAS (C) No.660/2020) for similar breaches.
  9. The learned counsel for R-4 submits that he was never served a copy of the show-cause notice. He seeks to refer to certain documents and the relief sought in I.A. No. 8253/2022. Issue notice. The petitioner accepts notice. Reply be filed. In the circumstances further orders regarding R-4, are deferred.
  10. At this stage, Mr. Kirti Uppal and Mr. Rakesh Tiku, the learned

Senior Advocates representing R-1 and R-2 and R-3 state, upon instructions, that to mitigate their wrongdoings, the said respondents volunteer to plant 830 trees (ten times the damaged trees) in and around the Supreme Court, as well as on the stretch of Mathura Road starting from the ‘W’ point to Bhogal flyover, and such other areas in the Central and East Delhi as may be identified by the Forest Department, primarily along roads owned or maintained by the PWD. To begin with at least 100 trees will be planted opposite the Supreme Court in the land which has now been freed-up, abutting an underground loop between Pragati Maidan, and the Supreme Court. Satellite pictures of the same are reproduced hereunder:





11.A map showing the land owned by PWD starting from 'W' Point Mathura Road in the north of Supreme Court, all the way up to Bhogal Flyover be filed, showing the site for plantation of 300 trees having a height of at least 8'. The area shall be visited by a senior officer of the Forest Department along with the petitioner and/or his learned counsel, as well as counsel for the GNCTD including Delhi Police, to identify by 15.07.2022, the places where trees could be planted/transplanted. The earth will be prepared for receiving the big trees and as far as possible, they will be planted by 20.07.2022. Assistance and advice of the DCF concerned will be sought.

12. Apropos the remaining 530 trees volunteered to be planted, Annexure-9 of the affidavit of the Conservator of Forest (at PDF 110 of the paper book) will be examined; it lists Deemed Forest Area where further afforestation could be carried out in terms of the judgment dated 12.12.1996 in *T.N.Godavarman Thirumulpad v. Union of India & Ors.* (W.P.(Civil) No.202/1995).
13. It is only in view of the assurance to mitigate to some extent the damage caused by the contemnors that the sentence order is kept in abeyance till the next date. This voluntary exercise of mitigation would have no bearing upon orders passed by the Tree Officer imposing a fine, etc. or other orders under the DPT Act. Since this exercise would be carried on PWD lands, coordination with the said Department would be necessary. In the circumstances, the incumbent Engineer-in-Chief, PWD, GNCTD is impleaded as R-5 and issued notice. Amended Memo of Parties be filed in two weeks. Mr. Gautam Narayan, ASC, GNCTD is directed to accept notice. A copy of this order shall be made available to Mr. Narayan.
14. The learned counsel for the Forest Department submits that the data is being collected in terms of para 5 of the order dated 11.07.2022 and an affidavit will be filed before the next date. Let it be so done.
15. The Delhi Police has filed a copy of the charge-sheet against R-1. Let the same be brought on record.



16.Renotify on 21.07.2022.

**JULY 13, 2022***/rd/ss/rw*

**NAJMI WAZIRI, J**