

Item No. 01

Court No. 1

**BEFORE THE NATIONAL GREEN TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

Original Application No. 334/2023

Naresh Chaudhary

Applicant

Versus

Union of India & Ors.

Respondent(s)

Date of hearing: 09.05.2023

**CORAM: HON'BLE MR. JUSTICE ADARSH KUMAR GOEL, CHAIRPERSON
HON'BLE MR. JUSTICE SUDHIR AGARWAL, JUDICIAL MEMBER
HON'BLE DR. A. SENTHIL VEL, EXPERT MEMBER**

Applicant: Mr. Gaurav Kumar Bansal, Advocate

ORDER

1. Grievance in this application is against violation of environmental norms in constructions at 6 Flag Staff Road and 45-47 Rajpur Road, New Delhi by PWD, Delhi. In the course of development, permanent and semi-permanent constructions have been raised and more than 20 trees cut. The constructions required approval of Delhi Urban Art Commission (DUAC) under the DUAC Delhi Urban Art Commission Act, 1973 which was declined by the DUAC in its 1564th meeting dated 06.11.2020 *inter-alia* with the following observations:-

“xxx.....xxx.....xxx

*h. The parking provision made in the front set-back be suitably relocated somewhere else and the **green area be extended further to make it a large consolidated green space with appropriate landscaping. A lot of hard areas have been provided in the site without indicating its***

application/use, the same needs to be minimised. There is an extensive peripheral road network around the site which needs to be rationalised with efficient site planning.”

2. Section 12 of the DUAC Act provides that without approval of DUAC, approval to development proposal could not be granted by the concerned Municipal Corporation. Thus, construction was raised illegally, ignoring the observations of DUAC for increasing the green area which ipso facto is violation of Delhi Municipal Corporation Act, 1957 requiring valid approval for construction. Such violations are to the detriment of environment.

3. It is further stated that permissions were granted for felling 28 trees on different dates between 10.11.2020 to 12.04.2022 as per following chart annexed to the petition which is said to be a copy of record of Forest Department:-

SL. No.	File no.	Online ID	Permission given for Transplant/Felling	Location of Transplant	Status of Transplant / Felling on ground	Compensatory Plantation (CP)	Status of CP on ground	Remarks
1	F. No.09/NFD/TC/Felling/2020-21 dated 10.11.2020	offline	9 trees (Mango-3, Amla-2, Citrus-2, Kadipatta-2) for transplant from 6 Flag Staff Road, Civil Lines	PWD Office, Khyber pass, KNR, Civil Lines	Mango-4, Amla-2 found at transplantation in dead & dry condition.	90 trees to be planted at Green belt at Metcalfe House, DRDO Complex.	Only 83 Pilkhan (Ficus Wrens) trees have been found	Mango-4, Amla-2 trees, which were transplanted, have been found dead & dry on ground. No numbers have been found on tree.
2	F.No.19/NFD/TC/Felling/20-21 dated 04.01.2021	offline	2 nos.of Mango trees to be transplant from 6 Flag Staff Road , Civil Lines	PWD Office, Khyber pass, KNR, Civil Lines	No mango tree on transplantation site have been found	20 trees to be planted at Green belt at Metcalfe House, DRDO Complex.	planted out of 280 at proposed CP site. There were 60 pits having no sign of plant there (might have died).	No mango tree on transplantation site have been found
3	F.No.13/NFD/TC/Felling/2021-22 dated 17.08.2021	3440	6 nos. of bottle palm trees for felling from 6 Flag Staff Road , Civil Lines	Nil	Nil	60 trees to be planted at Green belt at Metcalfe House, DRDO Complex.	There have been no sign of planting of 137 tree saplings at the same site.	-
4	F.No.44/CFD/TC/online/Felling/21-22 dated 28.02.2022	6288	06 trees Transplant-4 (Ashok-3, Bargad-1) and Felling-2 (Ficus benjamina-1& Lasoda-1) from 45-47 Rajpur road	PWD Nursery near Majnuka Tila	Only 1 Bargad tree has been found on ground with no. 99 on trunk	60 trees to be planted at Green belt at Metcalfe House, DRDO Complex.	There have been no sign of planting of 137 tree saplings at the same site.	Only 1 Bargad tree has been found on ground with no. 99 on trunk

5	F.No.05/CFD/TC Felling/online ID 6483/22-23 dated 12.04.2022	6483	05 trees (Transplant-4 & Felling-1) (Ashok-3, Jamun-1, Neem-1) at 45-47 Rajpur road	PWD Nursery near Majnuka Tila	Ashok-3, Neem- 1, Jamun-1 found at transplantation site in dead & dry condition	50 trees to be planted at Green belt at Metcalf -House, DRDO Complex.	4 trees, which were transplanted, have been found dead & dry at site. Nonumbers have been found on tree.
			Total 19 trees to be transplanted		Bargad-1 tree found healthy. 11 trees found dead & dry. Remaining 7 trees were not found on ground.	280 trees to be planted at CP site.	Only 83 trees have been found planted at CP site. Out of 19 trees, only Bargad-1 tree found healthy condition. Other 11 trees were in dead & dry condition. Remaining 7 trees were not found on ground.

4. Further case of the applicant is that permissions for tree cutting were taken by manipulation and circumvention of order dated 10.02.2009. Instead of disclosing that 28 trees were to be cut in which permission of higher authority was required, permissions were taken in instalments of less than 10 trees. Order dated 10.02.2009 is reproduced below:-

**“GOVERNMENT OF NCT OF DELHI
DEPARTMENT OF FORESTS AND WILD LIFE
A Block, 2nd Level, Vikas Bhavan, IP-Estate, New Delhi-2
Tel: 01 1-23370506; Fax: 011-23378513
<http://forest.dethigovt.nic.in/>**

No. F. 8(207)/CF/HQ/DPTA/07-08/ Dated: February, 2009

ORDER

In view of the sensitivity involved in removal of trees in NCT of Delhi, the Tree Officers are hereby directed that applications seeking permission for felling of trees numbering 10 to 20 and more than 20 trees under the Delhi Preservation of Trees Act, 1994, be processed and submitted to the Conservator of Forests and Secretary (E&F), Govt. of NCT of Delhi, respectively, before granting such permission.

This issues with the approval of the Secretary (E&F), Govt. of NCT of Delhi

(Kamal Preet)

Dy. Conservator of Forests (HQ)"

5. It is further stated that conditions for grant of permissions for cutting of trees required planting of 280 saplings. However, only 83 trees were

planted and thus, cutting of trees is in violation of conditions of permission. Such cutting is illegal for which accountability of the person responsible should be fixed as per law.

6. The applicant has also relied upon judgment of Delhi High Court dated 28.04.2022 in *Neeraj Sharma v. Vinay Sheel Saxena & Ors.*, CONT.CAS(C) 851/2021 & CM APPL.8253/2022, laying down as follows:

*“7. (...) It has to be borne in mind that permission is sought under the Delhi Tree Preservation Act, in which “preservation” of trees is the primary objective. The Tree Officer is repository of public faith and trust, that trees which form an essential part of people’s lives are not allowed to be cut needlessly or wantonly. The statutory duty cast upon the Tree Officer necessarily requires assessment of the necessity to cut a tree for the project for which the permission is sought. A site visit would be prudent. The shortage of Tree-Officers, necessary support staff, cannot be an excuse for granting permission for cutting down trees in the city. The adverse environmental impact of such denudation is all too well-known. Compensatory afforestation if at all carried out, on the fringes of the city, far-removed from the congested areas of human habitation, where the sole decades-old-tree once stood as a carbon-sump-cum-fresh oxygen generator-cum-shade provider-cumvisual respite from the ever increasing concretization; the geographically distant and nascent compensatory plantation can hardly be of any respite or actual compensation. In any case, it will take decades for the compensatory forests to be of any reckonable benefit. **In this capital city with its ever-bourgeoning populating, the cacophony of voices and rampant commercialization of every other street – robbing the residents of the familiar ambience of their residential neighbourhood, the ever-increasing motor-vehicular traffic, the choking air-pollution and the ever-creeping concretization, trees hold out as welcome and assuring living entities of hope, sanity, environmental redemption and even companionship.**”*

7. We have considered the matter and heard learned Counsel.

8. In view of above averments and significance of requirement of compliance for cutting trees and providing green belt as a condition for constructions in congested and polluted city of Delhi, we consider it necessary to ascertain the factual position by constituting a joint Committee comprising Chief Secretary, Delhi, Principal Secretary (Environment & Forest), Delhi, nominee of Delhi Urban Art Commission

and District Magistrate of the area (District Magistrate, North). Meeting of the Committee may be held within one week and report may be furnished within three weeks from today by e-mail at judicial-ngt@gov.in preferably in the form of searchable PDF/ OCR Support PDF and not in the form of Image PDF. The Committee will be free to interact with any other Department or Authority and undertake visit to the site. It may meet online or offline as may be found viable. If any violations are found, the Committee may take remedial action in coordination with the concerned statutory authorities, in accordance with law. It may give a copy of its report to alleged violators for response before this Tribunal, if any, before the next date.

List for further consideration on 31.05.2023.

A copy of this order be forwarded to Chief Secretary, Delhi, Principal Secretary (Environment & Forest), Delhi, Delhi Urban Art Commission and District Magistrate, North by e-mail for compliance.

The applicant may serve a set of papers on Chief Secretary, Delhi, Principal Secretary (Environment & Forest), Delhi, Delhi Urban Art Commission and District Magistrate, North and file an affidavit of service within one week.

Adarsh Kumar Goel, CP

Sudhir Agarwal, JM

Dr. A. Senthil Vel, EM

May 9, 2023
Original Application No. 334/2023
SN