

REVISÉ
 ITEM NO.1 COURT NO.2 SECTION PIL-W

S U P R E M E C O U R T O F I N D I A
 RECORD OF PROCEEDINGS

Writ Petition(s)(Civil) No(s). 13381/1984

M.C. MEHTA

Petitioner(s)

VERSUS

UNION OF INDIA & ORS.

Respondent(s)

(...(1) IA NO. 487/2009 (APPLN. FOR DIRECTIONS ON BEHALF OF TAJ WESTERN GATE MARKET ASSN.)(2) IA NOS. 160731-IMPLEADMENT AND 160732/2022-DIRECTIONS (3) IA D. NO. 81951/2022 (APPLN. FOR PERMISSION TO CUT AND REMOVE TREES ON BEHALF OF STATE OF U.P.)(4) IA D. NOS. 85203/2022 AND 103208/2022 (APPLNS. FOR DIRECTIONS AND IMPLEADMENT ON BEHALF OF STATE OF RAJASTHAN)(5) IA NOS. 94794 and 94795/2019"ONLY" IN W.P. (C) NO. 13381/1984 ARE LISTED."ONLY" NAMES OF THE FOLLOWING ADVOCATES MAY BE TREATED TO HAVE BEEN SHOWN IN THE LIST.PETITIONER-IN-PERSON MR. A.D.N. RAO, ADVOCATE (A.C.)MR. AMRISH KUMAR,MR. M.K. MARORIA,MR. G.S. MAKKER, MR. VIJAY PANJWANI,MR. KAMLENDRA MISHRA, MR. SANDEEP KUMAR JHA, MR. M.C. DHINGRA, Mr. E.C. AGRAWALA, ADVOCATES)

IA NO.100802/2022- TREE CUTTING AND DIVERSION OF PROTECTED FOREST LAND

IA NO.87395/2022-TREE CUTTING AND DIVERSION OF PROTECTED FOREST LAND

IA NO.87400/2022-TREE CUTTING AND DIVERSION OF PROTECTED FOREST LAND

IA NOS.3975 & 3976 OF 2018-APPLICATIONS FOR DIRECTIONS AND EXEMPTION FROM FILING TYPED COPY OF THE PROJECT PROFILE ON BEHALF OF U.P. STATE INDUSTRIAL DEVELOPMENT CORPORATION

IA 116768/2018-FOR DIRECTIONS AND IA NO.114057/2018- FOR MODIFICATION

Date : 09-11-2022 These applications were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE SANJAY KISHAN KAUL
 HON'BLE MR. JUSTICE ABHAY S. OKA

Mr. A.D.N. Rao, Advocate (A.C.)

FOR PARTIES:-

Ms. Aishwarya Bhati, Ld.ASG
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Mr. S.O. Sudhi, Adv.

Mr. S.D. Sudhi, Adv.

UPON hearing the counsel the Court made the following
O R D E R

IA NO. 487/2009 (APPLN. FOR DIRECTIONS ON BEHALF OF
TAJ WESTERN GATE MARKET ASSN.

Learned Additional Solicitor General submits that the Ministry of Tourism would have to have a re-look on the rehabilitation plan *qua* existing shops in *Amrood-Ka-Tila* Parking Node.

An affidavit in this behalf be filed within six weeks, as prayed for.

Rejoinder, if any, be filed within two weeks thereafter.

List on 17.01.2023.

IA NO.160731/2022- FOR IMPLEADMENT

The application is allowed.

IA NO.160732/2022- FOR DIRECTIONS IN IA
NO.91272/2022 IN IA NO.487/2009 IN WRIT PETITION [C]
NO.13381/1984

The application is predicated on orders passed by this Court on 23/26-09-2022 which dealt with prayer 'A' for removal of all business activities within 500 meters from the boundary/peripheral wall of the monument Taj Mahal based on the principle of equality under Article 14 of the Constitution of India.

It is the say of the applicants that under the pretext of the aforesaid orders, notices have been issued by the Agra Development Authority to about 2000 people located in Tajganj Township where apparently both residential and commercial activities are going on. It is their say that the purport of the order cannot be extended to the area of Tajganj Township.

On hearing learned counsel for the parties it thus, transpires that the area of Tajgunj Township falls within 500 meters radius. However, on our query, learned counsel for the Agra Development Authority fairly states that the notices dated 02.10.2022 or all other similar notices have been purely based on the aforesaid orders passed by us in IA No.91272/2022 and not on any independent verification.

We do believe that all these aspects were never pointed out at the relevant stage when the aforesaid orders were passed and the purport of the order was that the persons who were similarly situated as the 71 people and who continued to be on the periphery of the Taj Mahal, if any, action should be taken.

Learned Amicus Curiae points out that there are earlier orders *inter alia* of 24.03.1998 which, in turn, would require an Environmental Impact Assessment (EIA) to be done, based on the necessary

survey in this 500 meters where this area also falls. On our query whether any such assessment was done, it appears that the same has not happened reflecting a sorry state of affairs where a life sentence of 14 years is also not been found a time enough to do the needful! We, faced with the aforesaid position, on suggestions of the Amicus appoint National Environmental Engineering Research Institute (NEERI), Nagpur to carry out the necessary impact assessment within the periphery of Tajganj to the extent of 500 meters and suggest necessary remedies i.e. which of the places would require shifting or closures of businesses depending on their environmental impact on Taj Mahal.

We call upon NEERI to carry out the necessary impact assessment as early as possible and submit a report to this Court. The charges will be paid by the Agra Development Authority. In case of any difficulty in implementation, NEERI is given liberty to move this Court.

The notices already issued, needless to say, would not be acted upon awaiting that report.

The application stands disposed of.

On submission of the report, the matter would be considered for necessary directions.

IA D. NO.81951/2022- APPLICATION FOR PERMISSION TO CUT AND REMOVE TREES ON BEHALF OF STATE OF U.P.

The prayer made in this application is to cut and remove 1032 trees/plants coming in the way of proposed four lane road to be constructed from Yamuna Expressway to Vrindavan which is proposed from 108th Km of Yamuna Expressway to *Pagal Baba Mandir* at Vrindavan of total stretch of 7.278 Kms. A status report dated 20.10.2022 has been filed by the Central Empowered Committee called for in pursuance to our order dated 23.09.2022.

On visit of the site and on verification of areas for afforestation, considering that the project involves construction of a four lane road for vehicle movements through decongestion and would reduce the pollution, the request has been accepted as per the report and non-forest land for compensatory plantation also has been identified by the project authorities who are agreeable to bear the costs of raising minimum of 10,350 plants in lieu of 1032 plants required to be felled.

On hearing learned counsel for parties and more specifically the Amicus who joins the request for acceptance of the report, we consider appropriate to permit felling of these 1032 trees for development of 7.278 Kms long four lane road way on terms and conditions *inter alia* for afforestation specified in

para 8 of the report as under:

"i) the felling of trees along the proposed four lane road alignment shall be restricted to the bare minimum and which is absolutely unavoidable;

ii) compensatory plantation of minimum 10350 trees of indigenous species in lieu of 1032 trees proposed to be felled shall be undertaken by the Regional Director, Social Forestry, Agra at the cost of the Applicant on the 10.40 Ha. Of non-forest land allotted for the purpose in Khasra No.02 me, in Village Tatrota Khadar, Tehsil Mahavan, District Mathura falling within the TTZ area;

iii) the 10.40 ha of the Compensatory Afforestation land shall be handed over to the Regional Director, Social Forestry, Agra free from all encumbrances and the said land shall be chain-link fenced on 2 feet high footwall at the cost of the project proponent/Applicant;

iv) the cost of compensatory afforestation including cost of chain-link fencing as

assessed by Uttar Pradesh Forest Department at present day cost will be deposited in a Savings Bank account in a nationalized bank before grant of permission for felling of trees under the Uttar Pradesh Protection of Trees Act, 1976;

v) the Chairman, Taj Trapezium Zone (Divisional Commissioner, Agra) will take all necessary measures to ensure that no felling of trees takes place within the area falling in TTZ without first obtaining permission of this Hon'ble Court; and

vi) the Regional Office of the Ministry of Environment, Forest and Climate Change will monitor the implementation of compensatory planting activity."

The trees to be felled are specified as Annexure R to the report which is also to be adhered to.

The suggestion of completing afforestation within a period of six months is accepted and the Amicus will ensure the same by calling for the reports from the concerned authorities with photographs, if necessary, visit to the site.

The application stands disposed of.

IA D. No.85203/2022- FOR DIRECTIONS

Learned Amicus submits the report in this behalf by the Central Empowered Committee is awaited.

The application be placed before the Court after the report is received.

IA NO.94794/2019- INTERVENTION

Application is allowed.

IA No.94795/2019 - FOR MODIFICATION

It is submitted that change of technology has called for moving the present application seeking modification of the order dated 25.11.2004 passed by this Court in IA 426/2004 by changing condition Nos.6 and 13 requiring that the ASI was to issue computerized electronic ticketing and boarding passes to visitors 24 hours in advance for night view. It is submitted that the process is now online for the day visits and the time limitation of 24 hours results in persons requiring to stay over night in Agra and then apply within the time stipulated. This would be obviated if the process is made online.

There appears to be no objection to the aforesaid process by any of the stakeholders.

We thus, permit the prayer in the aforesaid terms permitting the process of booking for night viewing by the e-process and the ASI would adhere to

the direction in terms thereof modifying order dated 25.11.2004 to that extent.

The application stands disposed of.

IA NO.100802/2022- TREE CUTTING AND DIVERSION OF PROTECTED FOREST LAND

IA NO.87395/2022-TREE CUTTING AND DIVERSION OF PROTECTED FOREST LAND

IA NO.87400/2022-TREE CUTTING AND DIVERSION OF PROTECTED FOREST LAND

Taken on Board.

It is submitted that these are arising on account of the requirements of the National Highway Authority of India for tree felling etc. The prayer is made that they may be referred to the Central Empowered Committee for its report.

Ordered accordingly.

List after the report is received.

IA NOS.3975 & 3976 OF 2018- APPLICATIONS FOR DIRECTIONS AND EXEMPTION FROM FILING TYPED COPY OF THE PROJECT PROFILE ON BEHALF OF U.P. STATE INDUSTRIAL DEVELOPMENT CORPORATION

Taken on Board.

At request, the aforesaid applications also be put on the next date when the matter is listed.

IA 116768/2018-FOR DIRECTIONS AND IA NO.114057/2018-FOR IMPLEADMENT

Taken on Board.

Learned Amicus states that the appropriate

authority would be the Gas Authority of India Ltd.
(GAIL) which is required to respond to the same.

Let notice issue to GAIL to place on record
their responses to these applications.

These applications be listed on the next date
when the other applications are listed.

List on 17.01.2023.

(ASHA SUNDRIYAL)
ASTT. REGISTRAR-cum-PS

(POONAM VAID)
COURT MASTER (NSH)

ITEM NO.1

COURT NO.2

SECTION PIL-W

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Writ Petition(s)(Civil) No(s). 13381/1984

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Date : 09-11-2022 These applications were called on for hearing today.

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UPON hearing the counsel the Court made the following
O R D E R
IA NO. 487/2009 (APPLN. FOR DIRECTIONS ON BEHALF OF
TAJ WESTERN GATE MARKET ASSN.

Learned Additional Solicitor General submits that the Ministry of Tourism would have to have a re-look on the rehabilitation plan *qua* existing shops in *Amrood-Ka-Tila* Parking Node.

An affidavit in this behalf be filed within six weeks, as prayed for.

Rejoinder, if any, be filed within two weeks thereafter.

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IA NO.160732/2022- FOR DIRECTIONS IN IA
NO.91272/2022 IN IA NO.487/2009 IN WRIT PETITION [C]
NO.13381/1984

The application is predicated on orders passed by this Court on 23/26-09-2022 which dealt with prayer 'A' for removal of all business activities within 500 meters from the boundary/peripheral wall of the monument Taj Mahal based on the principle of equality under Article 14 of the Constitution of India.

It is the say of the applicants that under the pretext of the aforesaid orders, notices have been

issued by the Agra Development Authority to about 2000 people located in Tajganj Township where apparently both residential and commercial activities are going on. It is their say that the purport of the order cannot be extended to the area of Tajganj Township.

On hearing learned counsel for the parties it thus, transpires that the area of Tajgunj Township falls within 500 meters radius. However, on our query, learned counsel for the Agra Development Authority fairly states that the notices dated 02.10.2022 or all other similar notices have been purely based on the aforesaid orders passed by us in IA No.91272/2022 and not on any independent verification.

We do believe that all these aspects were never pointed out at the relevant stage when the aforesaid orders were passed and the purport of the order was that the persons who were similarly situated as the 71 people and who continued to be on the periphery of the Taj Mahal, if any, action should be taken.

Learned Amicus Curiae points out that there are earlier orders *inter alia* of 24.03.1998 which, in turn, would require an Environmental Impact Assessment (EIA) to be done, based on the necessary survey in this 500 meters where this area also falls. On our query whether any such assessment was

done, it appears that the same has not happened reflecting a sorry state of affairs where a life sentence of 14 years is also not been found a time enough to do the needful! We, faced with the aforesaid position, on suggestions of the Amicus appoint National Environmental Engineering Research Institute (NEERI), Nagpur to carry out the necessary impact assessment within the periphery of Tajganj to the extent of 500 meters and suggest necessary remedies i.e. which of the places would require shifting or closures of businesses depending on their environmental impact on Taj Mahal.

We call upon NEERI to carry out the necessary impact assessment as early as possible and submit a report to this Court. The charges will be paid by the Agra Development Authority. In case of any difficulty in implementation, NEERI is given liberty to move this Court.

The notices already issued, needless to say, would not be acted upon awaiting that report.

The application stands disposed of.

On submission of the report, the matter would be considered for necessary directions.

IA D. NO.81951/2022- APPLICATION FOR PERMISSION TO CUT AND REMOVE TREES ON BEHALF OF STATE OF U.P.

The prayer made in this application is to cut and remove 1032 trees/plants coming in the way of

proposed four lane road to be constructed from Yamuna Expressway to Vrindavan which is proposed from 108th Km of Yamuna Expressway to *Pagal Baba Mandir* at Vrindavan of total stretch of 7.278 Kms. A status report dated 20.10.2022 has been filed by the Central Empowered Committee called for in pursuance to our order dated 23.09.2022.

On visit of the site and on verification of areas for afforestation, considering that the project involves construction of a four lane road for vehicle movements through decongestion and would reduce the pollution, the request has been accepted as per the report and non-forest land for compensatory plantation also has been identified by the project authorities who are agreeable to bear the costs of raising minimum of 10,350 plants in lieu of 1032 plants required to be felled.

On hearing learned counsel for parties and more specifically the Amicus who joins the request for acceptance of the report, we consider appropriate to permit felling of these 1032 trees for development of 7.278 Kms long four lane road way on terms and conditions *inter alia* for afforestation specified in para 8 of the report as under:

"i) the felling of trees along the proposed four lane road alignment shall be restricted

to the bare minimum and which is absolutely unavoidable;

ii) compensatory plantation of minimum 10350 trees of indigenous species in lieu of 1032 trees proposed to be felled shall be undertaken by the Regional Director, Social Forestry, Agra at the cost of the Applicant on the 10.40 Ha. Of non-forest land allotted for the purpose in Khasra No.02 me, in Village Tatrota Khadar, Tehsil Mahavan, District Mathura falling within the TTZ area;

iii) the 10.40 ha of the Compensatory Afforestation land shall be handed over to the Regional Director, Social Forestry, Agra free from all encumbrances and the said land shall be chain-link fenced on 2 feet high footwall at the cost of the project proponent/Applicant;

iv) the cost of compensatory afforestation including cost of chain-link fencing as assessed by Uttar Pradesh Forest Department at present day cost will be deposited in a Savings Bank account in a nationalized bank before grant of permission for felling of

trees under the Uttar Pradesh Protection of Trees Act, 1976;

v) the Chairman, Taj Trapezium Zone (Divisional Commissioner, Agra) will take all necessary measures to ensure that no felling of trees takes place within the area falling in TTZ without first obtaining permission of this Hon'ble Court; and

vi) the Regional Office of the Ministry of Environment, Forest and Climate Change will monitor the implementation of compensatory planting activity."

The trees to be felled are specified as Annexure R to the report which is also to be adhered to.

The suggestion of completing afforestation within a period of six months is accepted and the Amicus will ensure the same by calling for the reports from the concerned authorities with photographs, if necessary, visit to the site.

The application stands disposed of.

IA D. No.85203/2022- FOR DIRECTIONS

Learned Amicus submits the report in this behalf

by the Central Empowered Committee is awaited.

The application be placed before the Court after the report is received.

IA No.94795/2019 - FOR INTERVENTION

It is submitted that change of technology has called for moving the present application seeking modification of the order dated 25.11.2004 passed by this Court in IA 426/2004 by changing condition Nos.6 and 13 requiring that the ASI was to issue computerized electronic ticketing and boarding passes to visitors 24 hours in advance for night view. It is submitted that the process is now online for the day visits and the time limitation of 24 hours results in persons requiring to stay over night in Agra and then apply within the time stipulated. This would be obviated if the process is made online.

There appears to be no objection to the aforesaid process by any of the stakeholders.

We thus, permit the prayer in the aforesaid terms permitting the process of booking for night viewing by the e-process and the ASI would adhere to the direction in terms thereof modifying order dated 25.11.2004 to that extent.

The application stands disposed of.

IA NO.100802/2022- TREE CUTTING AND DIVERSION OF PROTECTED FOREST LAND

IA NO.87395/2022-TREE CUTTING AND DIVERSION OF PROTECTED FOREST LAND

IA NO.87400/2022-TREE CUTTING AND DIVERSION OF PROTECTED FOREST LAND

Taken on Board.

It is submitted that these are arising on account of the requirements of the National Highway Authority of India for tree felling etc. The prayer is made that they may be referred to the Central Empowered Committee for its report.

Ordered accordingly.

List after the report is received.

IA NOS.3975 & 3976 OF 2018- APPLICATIONS FOR DIRECTIONS AND EXEMPTION FROM FILING TYPED COPY OF THE PROJECT PROFILE ON BEHALF OF U.P. STATE INDUSTRIAL DEVELOPMENT CORPORATION

Taken on Board.

At request, the aforesaid applications also be put on the next date when the matter is listed.

IA 116768/2018-FOR IMPLEADMENT AND IA NO.114057/2018-FOR DIRECTIONS

Taken on Board.

Learned Amicus states that the appropriate authority would be the Gas Authority of India Ltd. (GAIL) which is required to respond to the same.

Let notice issue to GAIL to place on record their responses to these applications.

These applications be listed on the next date
when the other applications are listed.

List on 17.01.2023.

(ASHA SUNDRIYAL)
ASTT. REGISTRAR-cum-PS

(POONAM VAID)
COURT MASTER (NSH)