

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGSItem No.301:CONTEMPT PETITION (CIVIL) Diary No(s). 21171/2024
in W.P.(C) No. 4677/1985

BINDU KAPUREA

Petitioner(s)

VERSUS

SUBHASISH PANDA

Respondent(s)/
Alleged contemnor([TO BE TAKEN UP ALONG WITH W.P.(C) NO. 4677/1985.]...
IA No. 117930/2024 - APPROPRIATE ORDERS/DIRECTIONS
IA No. 111340/2024 - EX-PARTE AD-INTERIM RELIEF
IA No. 124040/2024 - INTERVENTION/IMPLEADMENT)

WITH SMC(Cr1) No. 2/2024

With

Item No.302:Writ Petition(s)(Civil) No(s). 4677/1985
(FOR DIRECTIONS NAMES OF FOLLOWING ADVOCATES MAY BE TREATED TO HAVE
BEEN SHOWN IN THE LIST : MR. S GURU KRISHNA KUMAR, SR. ADVOCATE
(A.C.) MS. ANITHA SHENOY, SR. ADVOCATE (A.C.) MR. A.D.N. RAO, SR.
ADVOCATE (A.C.) MR. SIDDHARTHA CHOWDHURY, ADVOCATE (A.C.)
PETITIONER-IN-PERSON MR. G.S. MAKKER, MR. AMRISH KUMAR, MR. M.K.
MARORIA, MR. PRAVEEN SWARUP, MS. MANIKA TRIPATHY, MR. CHIRAG M.
SHROFF, ADVOCATES)

Date : 26-06-2024 These matters were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE ABHAY S. OKA
HON'BLE MR. JUSTICE UJJAL BHUYAN
(VACATION BENCH)Mr. A.D.N.Rao, Sr.Adv. (Amicus Curiae)
Mr. Siddhartha Chowdhury, AOR

By Courts Motion

For Petitioner(s)

Mr. Aditya N.Prasad, Adv.
Mr. Manan Verma, AOR
Mrs. Madhur Panjwani, Adv.
Mr. Ankit Shah, Adv.

For Respondent(s)

Mr. Mahesh Jethmalani, Sr. Adv.
Mr. Maninder Singh, Sr. Adv.
Ms. Manika Tripathy, AOR
Mr. Ashutosh Kaushik, Adv.
Mr. Dishant Bhati, Adv.
Mr. Naveen K. Saraswat, Adv.
Mr. Rony John, Adv.

Ms. Bani Dikshit, Adv.
Mr. Manish, Adv.
Mr. M.K. Maroria, AOR

Mr. Chirag M. Shroff, AOR

Mr. Praveen Swarup, AOR

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

CONTEMPT PETITION (CIVIL) Diary No(s). 21171/2024

1. The learned senior counsel representing the Delhi Development Authority (for short, "the DDA") states that today, the DDA is unable to make a statement about whether the record relating to the site visit of the Hon'ble LG made on 3rd February 2024 is available with the DDA. The learned senior counsel appearing for the DDA seeks time. We do not think that the request for a grant of time to find out such simple information is *bona fide*. Nevertheless, we grant time of one week to the DDA to comply with the directions contained in paragraph 2 of our order dated 24th June, 2024 by filing an affidavit. On instructions, the learned senior counsel appearing for the DDA states that at the time of the visit of the Hon'ble LG on 3rd February 2024, Shri Ashok Kumar Gupta, Member Engineering of the DDA, was present. We, therefore, direct Shri Ashok Kumar Gupta, Member Engineering, DDA to file a detailed

affidavit on exactly what transpired during the visit of the Hon'ble LG on 3rd February, 2024. He will also state whether the Hon'ble LG orally issued any directions. We make it clear that Shri Ashok Kumar Gupta, Member Engineering, will file his affidavit not as an officer of the DDA but as an officer of this Court. The Vice-Chairman of the DDA shall forward a copy of this order to Shri Ashok Kumar Gupta. The affidavit of Shri Ashok Kumar Gupta shall be filed within 10 days from today.

2. Pursuant to the last order, the learned senior counsel appearing for the DDA pointed out that there was an exemption granted to the DDA from the applicability of certain provisions of the Delhi Preservation of Trees Act, 1994 (for short, "the 1994 Act") in the exercise of powers under Section 29 of the 1994 Act. We have carefully perused the Notification dated 14th February, 2024 which is annexed to the affidavit dated 15th May, 2024 of the Vice-Chairman of the DDA. We may note here that the exemption has been granted only from the applicability of sub-section (3) of Section 9 of the 1994 Act. For ready reference, we reproduce Section 9 of the 1994 Act, which reads thus:

"9. PROCEDURE FOR OBTAINING PERMISSION TO FELL, CUT, REMOVE OR DISPOSE OF, A TREE.-(1) Any person desiring to fell or remove or otherwise dispose of, by any means, a tree, shall make an application to the concerned Tree Officer for permission and such application shall be accompanied by attested copies of such documents as may be prescribed in support of ownership over the land, (the number and kind of trees to be cut, their girth measure at a height of 1.85 metres from ground level and the reasons therefor, copy of sajra showing clearly the site and khasra numbers of the property.

(2) On receipt of the application, the Tree Officer may, after inspecting the tree and holding such enquiry as he may deem necessary, either grant permission in whole or in part or for reasons to be recorded in writing, refuse permission:

Provided that such permission may not be refused if the tree:-

- (i) is dead, diseased or wind fallen; or
- (ii) is silviculturally mature, provided it does not occur on a steep slope; or
- (iii) constitutes a danger to life or property; or
- (iv) constitutes obstruction to traffic; or
- (v) is substantially damaged or destroyed by fire, lightning, rain or other natural causes; or
- (vi) is required in rural areas to be cut with a view to appropriating the wood or leaves thereof, or any part thereof for bone fide use for fuel, fodder, agricultural implements or other domestic use.

(3) The Tree Officer shall give his decision within sixty days from the date of receipt of the application:

Provided that no permission shall be granted to any person from the same area on more than two occasions during the same year subject to a maximum area of one hectare at a time.

(4) If the Tree Officer fails to communicate his permission on request within the period specified under sub-section (3), the permission referred to in section 8, shall be deemed to have been granted.

(5) Every permission granted under this Act shall be in such form and subject to such conditions, including taking of security for ensuring regeneration of the area and replanting of trees or otherwise, as may be prescribed."

(underlines supplied)

3. In view of the said Notification, the provision that the Tree Officer shall decide the application within 60 days will not apply

which means that the Tree Officer can take his own time to pass an order. The other consequence of the exemption is that the deeming provision under sub-section (4) of Section 9 of the 1994 Act will not apply. There is something more shocking about the Notification dated 14th February, 2024. Clause 5 of the said Notification reads thus:

"Permission for transplantation/felling of 422 numbers of trees is being granted to the User Agency at their own risk and without prejudice the claim(s) of any other person(s) who may be having any right(s) over the land or the trees."

4. Under the 1994 Act, permission for felling trees is required under Section 8, read with Section 9. The permission can be granted only by the Tree Officer appointed by the Government as provided in clause (j) of Section 2 read with Section 5. The State Government has no authority to grant permission for the felling and transplantation of trees under the 1994 Act. The Notification dated 14th February 2024 is not an order which exempted the DDA from the requirements of obtaining permission under Section 8 read with Section 9 of the 1994 Act. Apart from this, it is admitted that based on the Notification dated 14th February, 2024, the DDA has indulged in cutting at least 200 more trees than what was purportedly permitted (422 trees). The DDA paid the amount payable in terms of the said Notification on 1st March, 2024.

5. Our impression is that many more than 633 trees were illegally felled. When we made a query to the Vice-Chairman of the DDA, who is present in the Court today, about the place where the timber of the felled trees can be found, the officer of the DDA had no

answer. Every single tree has been felled in contravention of the 1994 Act. What is required to be done under the 1994 Act is immediate seizure as contemplated by Section 15 of the 1994 Act. The Government of National Capital Territory of Delhi is formally not a party, though a learned counsel represents the Forest Department of the Delhi Government. The Delhi Government will have to answer many questions, including how it could usurp the powers of the Tree Officer under Section 9 of the 1994 Act by purportedly granting permission while exercising the power under Section 29 of the 1994 Act. In fact, the very Notification purportedly granting exemption indicates that the exemption from applicability of the provisions of Sections 8 and 9 of the 1994 Act was not granted to the DDA. Therefore, the Delhi Government must explain how such gross illegality has been committed.

6. Every violation or contravention of the provisions of the 1994 Act is an offence punishable under Section 24 of the 1994 Act. Though the Forest Department of the Delhi Government is fully aware of the gross violation by the DDA of the provisions of the 1994 Act, no steps have been taken to set the criminal law in motion against the offenders. In this case, there is an admitted violation of the provisions of the 1994 Act by the DDA and its officers.

7. Even the Tree Authority will have to give several answers. The learned counsel appearing for the applicant in IA No.135709/2024 in Writ Petition (C) No.4677/1985, based on what is stated in the Application, claims that the Tree Authority constituted under

Section 3 of the 1994 Act is hardly functional.

8. We issue a notice of this Contempt Petition to the Government of the National Capital Territory of Delhi through the Principal Secretary of the Environment and Forest Department. The Principal Secretary of the Environment and Forest Department will file an affidavit explaining how the Government purported to grant permission for the felling of the trees by exercising the powers of the Tree Authority under the 1994 Act. He will also explain why action was not taken against the DDA, even though the Forest Department of the Delhi Government was fully aware of gross violations by the DDA. Thirdly, we direct the Principal Secretary of the Environment and Forest Department to ensure that the criminal law is set in motion for taking penal action in accordance with Sections 22, 23 and 24 of the 1994 Act as well as other relevant laws. The Principal Secretary of the Environment and Forest Department shall also state whether the Tree Authority under Section 3 of the 1994 Act has been fully constituted and whether the same is functioning. He shall also state the infrastructure made available to the Forest Department. The affidavit by the Principal Secretary of the Environment and Forest Department shall be filed on or before 11th July, 2024.

9. We also issue notice to the Tree Authority constituted under Section 3 of the 1994 Act through its Chairman. The notice will be forwarded to the Principal Secretary of the Environment and Forest Department of the Delhi Government for effecting service to the Tree Authority. We direct the Tree Officer to file an affidavit

explaining the inaction of the Tree Authority, notwithstanding the knowledge of gross violations made by the DDA. The Tree Officer shall also file an affidavit stating whether the Tree Authority meets at least once in three months as required by sub-section (1) of Section 4 of the 1994 Act. He shall also state whether proper infrastructure, such as office, staff, etc. is provided to the Tree Authority. We also direct the Tree Officer to immediately take action under Section 15 of the 1994 Act of seizure of the felled trees and parts thereof. The Tree Officer shall report compliance with the directions above by filing an affidavit by 11th July, 2024.

10. We direct the DDA to immediately ascertain the location of the felled trees or parts thereof and communicate the said information to the Tree Officer within one week from today. We expect the DDA to render full cooperation to the Tree Officer for seizure under Section 15 of the 1994 Act.

11. We expect the Forest Department of the Delhi Government and the Tree Authority to keep a constant vigil in the entire area of the National Capital Territory of Delhi about the activities of illegal felling or damaging of trees. Unless these two Authorities do so, the very purpose of enacting various forest and tree laws will be completely frustrated. The State Government shall immediately create the necessary infrastructure, including the availability of modern technology. While filing the affidavit, we expect the Forest Department and the Tree Authority to state on oath what machinery they have created to keep a constant vigil.

In Re: Preliminary Reports

12. We have perused the preliminary report of the Committee of the three experts.

13. We direct the DDA to take steps for implementation of the recommendations made in paragraph 1 under the heading 'Suggestions/Recommendations' starting from sub-clause (a). As far as sub-clauses (a) and (b) are concerned, there is an element of urgency. The suggestions/recommendations in terms of paragraph 1 of the preliminary report of the Committee of three experts shall be implemented by the DDA under the supervision and advice of the three-member Committee. Compliance shall be reported to this Court on or before 11th July, 2024. The three-member Committee is free to file a report on the implementation of this order.

14. At this stage, we may also note that in paragraph 6 of the preliminary report of the Committee of the three experts, it is stated that the road project site falls inside the Eco-Sensitive Zone (ESZ) around Asola Bhati Wildlife Sanctuary. A Notification of the Eco-Sensitive Zone (ESZ) has also been annexed to the preliminary report. It is also stated that strengthening the existing roads and construction of new roads fall under the regulated activities under point 18 of the Notification. It is also noted that the road construction has been done without any mitigation measures, such as rainwater harvesting, adoption of clean technology for all activities and restoration of degraded land/forests/habitat, including water conservation measures. All

concerned should note what is observed in paragraph 6 by the Committee of Experts in their preliminary report.

15. Regarding the Forest Survey of India, the preliminary report states that the field work will be completed by the first week of July 2024, and final estimates of the number of trees felled and carbon stock loss will be prepared by the end of July 2024. It is further submitted that the final report will be submitted by mid-August 2024.

16. We grant time to the Forest Survey of India in terms of what is stated in paragraphs 21, 22, and 23 of the preliminary report. The Forest Survey of India shall file further preliminary reports after the completion of work in paragraphs 21 and 22 before the final report is submitted.

SMC (CRL.) NO. 2/2024

17. List on 12th July, 2024.

WRIT PETITION (CIVIL) NO.4677 OF 1985

18. Considering the illegal and high-handed acts of felling of trees which are brought on record in the Contempt Petition, we issue specific notice to the following Authorities:

(i) The Government of National Capital Territory of Delhi through the Secretary of the Environment and Forest Department;

(ii) The Tree Authority constituted under the Delhi Preservation of Trees Act, 1994;

(iii) Municipal Corporation of Delhi; and

(iv) New Delhi Municipal Council.

The notice is made returnable on 12th July 2024.

19. The Secretary of the Forest Department of the Delhi Government will convene a meeting of the responsible officers of all these Authorities and the other Authorities in the presence of the Committee of three experts appointed in the Contempt Petition to discuss the comprehensive measures to be taken to enhance the green cover of the National Capital Territory of Delhi.

20. IA Nos.135707/2024 and 135709/2024 shall be listed along with this Writ Petition on 12th July, 2024.

**(ANITA MALHOTRA)
AR-CUM-PS**

**(ASHISH KONDLE)
COURT MASTER**

**(AVGV RAMU)
COURT MASTER**