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2024 SCC OnLine SC 5555

In the Supreme Court of India

(BEFORE ABHAY S. OKA AND UJJAL BHUYAN, JJ.)

Contempt Petition (Civil) Diary No(s). 21171/2024 in W.P.(C) No. 4677/1985

Bindu Kapurea ... Petitioner(s);

Versus

Subhasish Panda and Others ... Alleged Contemnor (s)/Respondent(s).

(IA No. 111340/2024 - Ex-Parte Ad-Interim Relief, IA No. 117930/2024 - Appropriate Orders/Directions, IA No. 124040/2024 - Intervention/Impleadment, IA No. 135723/2024 - Intervention/Impleadment and IA No. 146833/2024 - Intervention/Impleadment)

With

Diary No(s). 21740/2024 (Pil-W) [Item No. 301.1)

(IA No. 113516/2024 - Ex-Parte Stay, IA No. 143276/2024 - Intervention/Impleadment, IA No. 143277/2024 - Appropriate Orders/Directions)

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.) and Mr. Siddhartha Chowdhury, Advocate (A.C.) Smc(Crl) No. 2/2024 (XVII) [Item No. 301.2]

W.P.(C) No(s). 4677/1985 (PIL-W) [Item No. 59]

(W.P. (C) No. 4677/1985 and I.A. Nos. 135707 and 135709/2024)

(Applns. for Impleadment and Direction on Behalf of Bhavreen Kandhari)

(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, Mr. Manan Verma, Advocates)

Contempt Petition (Civil) Diary No(s). 21171/2024 and W.P.(C) No. 4677/1985

Decided on July 12, 2024

Advocates who appeared in this case:

Mr. S. Guru Krishna Kumar, Sr. Adv. (A.C.), Mr. A.D.N. Rao, Sr. Adv.

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Petitioner-in-person, Dr. Surender Singh Hooda, AOR, M/s. Parekh &

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ORDER

CONTEMPT PETITION (CIVIL) Diary No(s). 21171/2024 (ITEM NO. 301)

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1. IA No. 146833/2024 seeking intervention cannot be entertained in the Contempt Petition as it is a matter between the Court and the contemnors. Therefore, we reject this Application for intervention.

2. We have perused the two affidavits filed by the Vice-Chairman of the DDA on 3rd and 11th July, 2024. We have also perused the affidavit filed by the Principal Secretary, Environment and Forest Department, Government of NCT of Delhi.

3. *Prima facie*, it appears to us that there was a reluctance on the part of all concerned to bring on record what exactly transpired during the visit of the Hon'ble LG of Delhi to the site on 3rd February 2024. Now, the truth has come out. The note sheet dated 2nd July 2024 of the Chief Secretary of the Government of NCT of Delhi has been placed on record by the Vice-Chairman of the DDA, which discloses what transpired during the visit. Most importantly, Shri Ashok Kumar Gupta, Additional Director General (Projects) Delhi, has filed an affidavit as an officer of this Court and has explicitly stated what exactly transpired at the time of the visit of the Hon'ble LG. We find that the officers attached to the Hon'ble LG, including his Principal Secretary, Shri Naresh Kumar, the Chief Secretary of the Government of NCT of Delhi, Shri A.K. Singh, Principal Secretary of the Environment and Forest Department, Shri Suneesh Buxy, Additional Principal Chief Conservator of Forests, Shri Manoj Talreja, Chief Engineer-cum-Executive Director of CAPFIMS, CPWD, Shri Ashok Kumar Gupta, Engineer Member, Shri Ravishankar, Principal Commissioner (LM) of the DDA, and Shri Kamal Singh Meena, Chief Engineer (SZ) of the DDA and his team were present during the visit of the Hon'ble LG. The presence of the forest officers shows that the visit had something to do with the forest. What transpired in the meeting is reproduced in paragraph 7 of the affidavit filed by Shri Ashok Kumar Gupta. For ready reference, we reproduce paragraph 7 as follows:

> "7. From CAPFIMS Hospital, the Hon'ble LG stopped on CAPFIMS road (i.e., road from CAPFIMS Hospital to SAARC University) and walked for a short distance. Hon'ble LG enquired about the progress of the road construction work and directed to expedite it. Following directions were given by Hon'ble LG during the inspection:
>
> (a) The Hon'ble L.G. expressed his concern on the slow progress of road widening work and stressed upon speeding it up.
>
> (b) The Hon'ble LG of Delhi also desired to know as to how the DDA proposes to deal with trees/shrubs coming on the alignment of road portion to be widened. On this, it was informed to Hon'ble LG that permission for felling/translocation of trees is awaited from the competent authority, therefore, the work of felling of trees has not been initiated. On this, the

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Hon'ble LG informed that for the trees falling under DPTA, the forest department has already taken approval from him as per due process on file. He directed the forest department to convey the same to DDA at the earliest.

(c) The Hon'ble LG was also apprised about the hindrances coming in the alignment of the portion to be widened. On this, the Hon'ble LG directed the concerned department to take following necessary action-

(i) All the court cases related to land falling in Right of Way of the above road should be clubbed together and defended before Hon'ble Court accordingly.

(ii) Some BSES electric poles, overhead cables, underground cables etc. were also causing hindrances in the widening of the road. The concerned officers of BSES were directed by Hon'ble LG to shift these lines on priority.

(iii) Some PNG Gas pipe lines of IGL were also coming in the alignment of the portion of the road to be widened. The concerned IGL officers were directed to shift PNG Gas Pipeline, on priority.

(iv) Surplus excavated earth was stacked in the CAPFIMS hospital and this earth was required to be removed from the hospital area. The Hon'ble LG directed that surplus earth lying there should be shifted for filling the low-lying areas in the vicinity."

(underlines supplied)

4. It can be inferred from what is recorded in the affidavit that Hon'ble LG stated that tree felling under the Delhi Preservation of Trees Act, 1994 (for short, "the 1994 Act") had already been permitted based on his approval. Therefore, the DDA should be informed about the approval. Many senior officers of the Delhi Government, such as the Chief Secretary, Principal Secretary of the Environment and Forest Department, officers of the Forest Department, etc., were present then. It is not clear from the affidavit of Shri Ashok Kumar Gupta whether any of them pointed out to the Hon'ble LG about the requirement of obtaining permission from this Court for the felling of trees from the ridge area and, even otherwise, the requirement of obtaining permission from the Tree Officer under the 1994 Act. We are not examining, at this stage, how the Hon'ble LG ordered the road widening to proceed in the absence of permission from this Court. As the Delhi Government and the DDA are before us, if any of the officers who, during the visit of the Hon'ble LG, had brought to notice of the Hon'ble LG the orders passed by this Court and the requirement of obtaining permission of the Tree Officer, those officers are free to file their affidavits indicating that they had informed the Hon'ble LG. We direct

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that the copies of the affidavits of the Vice Chairman and Shri Ashok Kumar Gupta shall be supplied to all the officers of the Delhi Government and the DDA whose names appear in the affidavit of Shri Ashok Kumar Gupta so that they can tell the truth before this Court. We expect the Chief Secretary and others to file affidavits on this aspect before the next date.

5. As far as the DDA is concerned, the question which must be answered is whether the DDA or its officers instructed the Contractor to fell the trees on the basis of the oral direction issued by the Hon'ble LG on 3rd February 2024 or whether there was any independent decision taken by any authority of the DDA to proceed with the felling of trees. We direct the Vice-Chairman of the DDA to file an affidavit on this aspect. The DDA can always file an affidavit of any other officer who can throw light on this aspect.

6. As the actual cutting of trees has been done by the Contractor, we issue notice to the Contractor, namely, M/s. Satya Prakash & Brothers Pvt. Ltd., returnable on 31st July, 2024. The address details of the Contractor are as follows:

> "M/s. Satya Prakash & Brothers Pvt. Ltd. A-1 CC Colony, Opposite Rana Pratap Bagh, Delhi-110007"

We direct the added party (Contractor) to file an affidavit stating the basis on which he carried out the tree felling. He will also produce written instructions, if any.

7. The Delhi Government has filed an affidavit and claimed that an order of seizure of the logs of the cut/felled trees has been passed. We are unsure whether the seized logs are of trees felled illegally. Therefore, while filing an affidavit, the Contractor will also disclose where he has stored the logs of the cut or felled trees and the location of the transplanted trees. If the logs are still in his custody, he shall hand them over to the officials of the Delhi Government. He will state the names of the officials who were present at the time of tree felling. The affidavit shall be filed before the returnable date.

8. We also direct the Delhi Government to file a supplementary affidavit stating whether any officer of the Forest Department or any officer forming part of the Tree Authority was present at the time of the felling of trees. If any such officer was present, the Delhi Government will file an affidavit of the said officer and produce the record, if any, regarding the report submitted by the said officer so that the species and other details of the felled trees can come on record.

9. Now we turn to the stand taken by the Delhi Government. After arguing the matter for some time, Dr Aditya Sondhi, learned senior counsel appearing for the Delhi Government, on instructions of the officer of the Delhi Government, states that the Delhi Government will

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withdraw the Notification dated 14th February 2024, purportedly issued under Section 29 of the 1994 Act. On the face of it, the Delhi Government purported to grant permission to the DDA to fell 422 trees. On instructions, Dr Aditya Sondhi, learned senior counsel, stated that part of the trees covered by the Notification also formed part of the ridge area. It is an admitted position, as reflected in the statement made by the Tree Officer that for felling 422 trees, the Tree Officer had never granted any permission. The Delhi Government must take the blame for granting permission to fell 422 trees, though there was no statutory power vesting in the Delhi Government to grant such permission. Thus, apart from the trees in the ridge area, the Government facilitated cutting and felling the trees outside the ridge area without permission under the 1994 Act. Like the DDA, the Delhi Government has shown a lack of sensitivity about protecting the environment. The State Government has not even provided the Tree Officer and Tree Authority an office or basic infrastructure. The Delhi Government must come before the Court and tell the Court how it will compensate for the damage caused to the environment due to its illegal acts. The affidavit of the Delhi Government also shows that this is not the only instance where the Forest Department of the Delhi Government purported to grant permission for the felling of trees. They had done it earlier also. The stand of the Delhi Government is that the DDA has accepted that they misread the Notifications issued by the Delhi Government. That will not absolve the Delhi Government of its responsibility of passing orders permitting the felling of trees, though no statutory power is vested in the Delhi Government. Therefore, the Delhi Government must also come out with an action, if any, taken against the erring officers who have purported to grant such permissions for the felling of trees, not once, but more than once. Apart from a statement on oath which we expect the Delhi Government to make about compensating the loss caused to the environment, we hope and trust that the Delhi Government will immediately stop exercising the non-existent power of granting permissions for the felling of trees. While we do so, we direct the Delhi Government to ascertain how many such permissions have been granted by the Delhi Government in the last five years and place all those permissions on record.

10. Dr Aditya Sondhi, learned senior counsel appearing for the Delhi Government, further states that the office infrastructure, staff and necessary hardware and software will be made available to the Tree Authority and the Tree Officer within six weeks from today. The Delhi Government shall also ensure that the Tree Authority is properly constituted before the next date.

11. Regarding the Forest Department of the State Government, the entire infrastructure must be put in place within two months from

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today. The Delhi Government must file an affidavit indicating what measures the Forest Department is taking to prevent environmental damage, including keeping vigil to stop the illegal felling of trees.

12. Today, Shri Mahesh Jethmalani, learned senior counsel, states that he represents the Hon'ble LG. He will provide the name of his Advocate-on-Record to the Court Master. As Hon'ble LG is represented, we are sure that the orders of this Court passed from time to time are placed before him to enable him to take action. It must be remembered that he is the Chairman of the DDA.

13. The Delhi Government must ensure that all the logs of the trees illegally felled are seized. If a record regarding the description of the trees felled is required, the DDA will make that record available to the Delhi Government.

14. List for further hearing on 31st July 2024 at 2 : 00 p.m. All affidavits are to be filed before the next date.

15. For the time being, the personal presence of Shri Subhasish Panda, Vice-Chairman of the DDA, is dispensed with. If possible, he may remain present through video conference.

CONTEMPT PETITION (CIVIL) DIARY NO(S). 21740/2024 (ITEM NO. 301.1)

IA No. 143276/2024 (FOR IMPLEADMENT)

1. Before we implead the parties mentioned in paragraph 3, for the time being, we issue notice on this application to the parties mentioned in paragraph 3 at serial nos. a, b and c. The notice is made returnable on 31st July, 2024.

IA No. 143277/2024 (FOR DIRECTIONS)

2. At this stage, we may not issue any directions. However, we make it clear for the benefit of all the Authorities that no one will harass the petitioner in the Contempt Petition only because the petitioner has filed the Contempt Petition and brought to the notice of this Court the gross breach of the orders passed by this Court.

3. For the time being, this warning is sufficient to protect the interests of the petitioner.

4. List the Petition on 31st July, 2024 at 2 : 00 p.m.

5. For the time being, the personal presence of the alleged contemnors is dispensed with so long as their respective learned counsel represents them before this Court.

SMC (CRL.) NO. 2/2024 (ITEM NO. 301.2)

1. List on 31st July, 2024 at 2 : 00 p.m.

WRIT PETITION (C) NO. 4677/1985 (ITEM NO. 59)

1. On the last hearing, i.e., 26th June 2024, we passed an order in

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this Writ Petition issuing notice to the various Authorities. They have been entrusted with the task of taking comprehensive measures to enhance the green cover of the NCT of Delhi. During the next meeting, the Authorities will deal with the development of a comprehensive plan for maintaining constant surveillance in the entire area to ensure that there is no illegal felling of trees. Machinery shall be created by using modern technology to keep realtime monitoring and constant surveillance so that instances of the unlawful felling of trees are brought to the notice of the concerned Authorities and immediate action is taken. It will be advisable if, at the time of the next meeting, the Principal Secretary of the Environment and Forest Department invites the learned *Amicus Curiae* appointed by this Court to the meeting so that they can give their valuable suggestions.

2. List the Writ Petition along with IA Nos. 135707/2024 and 135709/2024 on 31st July, 2024 at 2 : 00 p.m.

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