

# Nitin Gupta & Anr vs North Delhi Municipal Corporation And ... on 13 August, 2020

**Author: Najmi Waziri**

**Bench: Najmi Waziri**

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\* IN THE HIGH COURT OF DELHI AT NEW DELHI  
+ W.P.(C) 3433/2020, CM APPL. 12178/2020 & CM. APPL.  
18894/2020  
NITIN GUPTA & ANR. .... Petitioners  
Through: Mr. R.K. Kapoor and Ms. Priya Pande,  
Advocates for petitioner No. 1.  
Mr. S.P. Kamrah, Advocate for petitioner  
No. 2.  
versus  
NORTH DELHI MUNICIPAL CORPORATION AND ORS.  
.... Respondents  
Through: Mr. Ajjay Arora, Standing Counsel along  
with Mr. Sanjeev Sabharwal, for NDMC/R-  
1.  
Mr. Salman Khurshid, Sr. Advocate for R-2.  
Mr. Gautam Narayan, ASC for GNCTD  
along with Mr. Rizwan, Ms. Shivani Vij and  
Mr. Azahar Hussain, Advocates for R-3,  
R-4 & R-6.  
Mr. Manish Kumar Srivastava, Advocate for  
R-5.  
Mr. Qayam Ud Din, Advocate for applicant  
in CM. APPL. 18894/2020.

CORAM:  
HON'BLE MR. JUSTICE NAJMI WAZIRI  
ORDER

% 13.08.2020 The hearing was conducted through video conferencing.

1. The Tree Officer, GNCTD and the Municipal Corporation have filed their compliance affidavits. Let the same be brought on record. Photographs have been shared on the computer screen by the Tree Officer showing that some restorative measures have been initiated - the thick, congealed layer of concrete which was poured over the subterranean roots of the badh tree has been removed. The Tree Officer has personally supervised these restoration measures. However, the Court notes that glaring obstructions have not been addressed by the Tree Officer, i.e., the 14-foot deep brick wall which has been erected by the Builder, literally 5 to 6 feet away from the main trunk. It so surrounds, engulfs and encloses the tree from three sides. The Tree Officer should have addressed this issue and should have asked for the removal of the said wall, obviously to lend stability to the tree. Not doing so will obviously prevent the lateral growth of its roots. There is another concrete

structure around the tree trunk which too should be removed, especially in terms of the order passed by the National Green Tribunal (NGT) that: atleast 1 metre radius around a tree trunk should be free of concrete. The order passed by the NGT dated 23.04.2013 reads as under:

" . . .  
 . . . .

The learned counsel appearing for the Applicant has placed on record a report on tree census conducted by the NGO wherein it is pointed out that nearly 89% of the trees at Sarvodaya Enclave alone suffer from concretization. He also brings to our notice an article appearing in the Times of India dated 22nd April, 2013, titled "Ads nail city's greens". In this article, it is shown that the Delhi Transport Corporation (DTC) has fixed its Bus Stop boards in the and trees, advertising boards on the trees. Not only this, even electric line wirings of high tension have been tightened fitted on the trees. Apparently, from these indisputable facts, it is clear that all public authorities and Respondents have failed to discharge their statutory obligations. They have not only violated various statutes but in turn have also infringed their legal obligations arising out of the Environment Act. It is the obligation of the State to provide healthy environment to the citizens and prevent reckless injury to the trees, which ultimately results in their felling. This is a clear infringement of law and failure on the part of the authorities concerned to discharge their statutory obligations.

The learned counsel appearing for Respondent No.1 and 14 submits that they have issued directions under the Central Laws but still the authorities concerned in this regard are not carrying out orders in true spirit.

In the light of the above and at the oral request of the applicant, DTC is also impleaded as Respondent No.15.

In the meanwhile, we direct all the public authorities, more particularly Municipal Corporation of Delhi, DDA, DTC, DMRC, NHAI and all Government respondents in this petition including the Director General of CPWD, the Chief Engineer, PWD, to ensure that:

- (i) All the sign boards, names, advertisements, any kind of boards or signages, electric wires and high tension cables or otherwise are removed from the trees forthwith.
- (ii) They shall also ensure that the concrete surrounding the trees within one metre of the trees are removed forthwith and all the trees are looked after well and due precaution is taken in future so that no concrete or construction or repairing work is done atleast within one metre radius of the trunk of trees.

The Vice- Chairperson, the Commissioner, the Chief Engineer, the Director General and all other senior most officers of the Departments/authorities concerned shall be personally responsible for carrying out this order.

(iii) The Departments/authorities concerned shall take all and every prohibitive measures to prevent the defacing of the trees in any manner whatsoever, save only its trimming in accordance with law.

(iv) All the respondents whose boards are fixed on the trees shall be prosecuted by the respective authorities under in accordance with therelevant law.

..."

2. Let an affidavit be filed by the Tree Officer as to why this issue was not addressed. Mr. Ajay Arora, learned Standing Counsel for the Corporation, submits that construction work at the site has been stopped. The SHO of the area concerned has been intimated to ensure that no further construction activity is carried out and the Corporation itself is keeping a special watch on the project. For the moment, the Corporation and the respondent/Builder undertake to remove all building material from the site, to facilitate water to seep into the soil to strengthen and firm-up the roots and to lend the tree some stability.

3. According to the learned counsel for the Corporation, as noted in the previous order, the Building Plan prepared by an architect, was submitted online by the respondent/builder. However, it conspicuously did not disclose the existence of this grand old tree. It is sated that had it been so mentioned, perhaps the Corporation would have taken a different view, visited the site and directed the prior permission of the Tree Officer, etc. The Corporation states that it is in the process of revocation of the sanctioned Building Plan. Be that as it may, and as noted in the previous order, the Executive Engineer concerned who earlier visited the site did not notice the damage caused to the tree, when he filed his first Status Report. Therefore, for the Corporation to submit that they would have taken action apropos protection of the tree is hollow. The Court is informed that the Commissioner, NDMC, has already directed an inquiry in this regard and the same is likely to be completed by 18.08.2020.

4. The learned Senior Advocate for the respondent/Builder, submits that the said respondent has realized the historic value of the tree and the need to preserve such environmental heritage and is therefore ready and willing, to assist the authorities in every way possible, to ensure that the tree is restored to good health. The respondent/Builder, would do everything possible, to ensure that no harm is caused to the tree. Therefore, it is urged that it would be best that the Tree Officer and other authorities, specifically direct the Builder as to what measures have to be taken at the site. In the circumstances, let the Executive Engineer of the Corporation and the Tree Officer, GNCTD, be present at the site tomorrow to instruct the respondent/Builder apropos corrective measures, as may be deemed necessary, for the protection and restoration of the tree. The Tree Officer shall further pass such orders as deemed appropriate so that the tree roots are protected and that there is restoration of the tree in a more scientific method.

5. The Municipal Corporation has identified approximately 1900 trees in the City/SP Zone which may need to be protected and preserved. In view of the ongoing Shahjahanabad Redevelopment Project, the Court is assured that these trees shall be given special care. Therefore, to begin with the Corporation may consider restorative measures apropos the old trees on Subhash Marg, in Dariba

and in Urdu Bazar. A Status Report, along with photographs, be filed regarding measures taken by the next date. Meanwhile, let a copy of the Corporation's Tree Census be supplied to the Tree Officer, who too shall ensure, if necessary by site visits, that the trees are being nursed and taken care of scientifically. The advice and directions of the Tree Officer shall be duly followed by all agencies, including the Municipal Corporation.

6. Copies of the replies be supplied to the learned counsel for the parties.

7. List on 31.08.2020.

8. The order be uploaded on the website forthwith. Copy of the order be also forwarded to the counsels through e-mail.

NAJMI WAZIRI, J AUGUST 13, 2020 RW