

Neeraj Sharma vs Vinay Sheel Saxena & Ors on 3 June, 2022

Author: Najmi Waziri

Bench: Najmi Waziri

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IN THE HIGH COURT OF DELHI AT NEW DELHI
CONT.CAS(C) 851/2021, CM APPL. 8253/2022 & CM APPL.
21573/2022
NEERAJ SHARMA

Through: Mr. N. Hariharan, Sen
(Amicus Curiae) with
Sharma and Ms. Punya
Angara, Advocates.
Mr. Aditya N. Prasad,
along with petitioner

versus

VINAY SHEEL SAXENA & ORS.

Through: Mr. Rishikesh Kumar,
along with Ms. Sheenu
Advocates for R-4/Del
Mr. Anuj Aggarwal, AS
for PWD.
Mr. Shadan Farasat, A
along with Mr. Bharat
Advocate with Mr. Ami
(H.Q.) and Mr. Navnee
DCF (West).

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI
ORDER

% 03.06.2022 The hearing has been conducted through hybrid mode (physical and virtual hearing).

1. On 03.12.2021, the court had issued Show Cause Notice (SCN) to the respondents. R-1, 2 and 3 were served through ordinary process/ dak receipt.

Respondent no.4 was served through ASI, Police Station-Preet Vihar on 16.12.2021. Only R-1 has filed a reply. More than six months have gone by. The case has been listed and heard 12 times thereafter. Counsel for PWD have appeared on each occasion, yet R-2 and R-3, who are officers of PWD, have chosen not to file any response to the SCN. Their right to file a reply, stands closed.

2. The reason why the SCN was issued is detailed in the aforesaid order, and is reproduced hereunder:

".....CM APPL. 43232/2021 (By petitioner for early hearing and direction)

1. This application seeks early hearing of the case as well as to bring on record victimisation of certain trees in the area concerned.

2. The learned ASC for GNCTD submits that a joint inspection was carried out at the site by the Deputy Conservator of Forest („DCF) and PWD on 19.11.2021 and remedial instructions have been issued in terms of the directions of this court and orders of the National Green Tribunal („NGT), apropos preservation of trees and for keeping the area around the tree trunk concrete-free. Let a Status Report be filed, by the Executive Engineer (PWD) within in a week, along with photographs showing that the trees are duly protected. Any grievance, as may be noticed, shall be attended to.

3. The application is allowed and disposed-off in terms of the above. CONT.CAS(C) 851/2021

4. At joint request, the case is taken up for hearing.

5. Issue Notice. Mr. Anjum Javed, ASC for GNCTD, accepts notice on behalf of R-1 to 4.

6. Looking at the facts of the case, the court is of the opinion that the Deputy Conservator of Forests (Central) would be a necessary party. Accordingly, DCF(Central) is impleaded as Respondent no.5.

7. Issue notice to respondent no. 5. Mr. Shadan Farasat, ASC GNCTD, accepts notice on behalf of respondent no.5.

8. Let the Amended Memo of Parties be filed before the next date.

9. Reply be filed in two weeks.

10. The photographs annexed to the petition and reproduced hereunder, show glaring victimisation of trees on account of construction work being carried out along Vikas Marg, by PWD, GNCTD. The petitioner contends that the said construction activity is in breach of this court's direction dated 19.01.2021 in CONT.CAS(C) 660/2020 and other judicial orders.

By:KAMLESH KUMAR Signing Date:06.06.2022 11:01:10 By:KAMLESH KUMAR
Signing Date:06.06.2022 11:01:10

11. In Kalpavriksh vs. Union of India & Ors, W.P.(C) 1772/2007, a Division Bench of this court had on 19.09.2007 directed as under:

"... 2. We had issued orders for stopping concretization around trees and asked the authorities to take remedial action to save the trees as concretization is causing damage to the trees. Such concretization is also in violation of the Delhi Preservation of Trees Act, 1994, as indiscriminate concretization and constructions have been made around trees on the pavements of Delhi.

6. The Central Government has issued guidelines for greening of urban areas and landscaping in Delhi. The first paragraph of the said guidelines provides that unnecessary and excessive tiling of the roadside pavements should be avoided. There are some other constructive ideas and points and directions incorporated in the same, which are required to be implemented by the public utility departments of Delhi.

7. Since the aforesaid guidelines have been issued by the Central Government, the public utility services of Delhi are bound to comply with the aforesaid guidelines, which are issued.

8. We, therefore, issue a direction to the public utility departments including the Municipal Corporation of Delhi. New Delhi Municipal Council, PWD and also the DDA to comply with the directions contained in the guidelines and also to see that the intention behind issuance of the aforesaid guidelines is understood and the said guidelines should be implemented in their letter and spirit.

(Emphasis supplied) ..."

12. In CONT.CAS(C) 660/2020, titled New Delhi Nature Society vs. Shri Vinay Sheet Saxena & Ors., this court had passed the following orders on 19.01.2021:

"...

1. Let R-1 and R-2 file a another affidavit, with better particulars, indicating that: i) apart from the fine imposed and recovered, ii) what other actions have been contemplated and/or initiated against the officials concerned and iii) what remedial measures have been advised and supervised to ensure the provision of conducive environs, so that the trees which have been extensively damaged and victimized on account of the callous civil works undertaken by the PWD, can heal themselves overtime.

2. For reasons best known to him, the SHO/R-3 has not filed any reply/counter affidavit. Let R-3s affidavit reply as to whether the Beat Staff had noticed any ongoing civil works and related damage to trees and/or whether any complaints had been made apropos the construction undertaken by R-1 and R-2. In particular, the SHO shall state as to what actions he took apropos the complaint made by the petitioner on 12.08.2020.

3. According to the petitioner, the Tree Officer (DCF), South, GNCTD was intimated in February 2020, of the civil works undertaken by the PWD in blatant breach of the orders of the National Green Tribunal („NGT), yet no action was taken. Receipt of the petitioner s letter is admitted in an RTI reply. Yet, the Tree Officer states that he was intimated of the orders passed by the NGT only in August, 2020. Let the Tree Officer file an affidavit in this regard, along with supporting documents.

4. Referring to the orders passed by this Court as well as by the NGT, the petitioner submits that the respondents were i) duty bound to comply with the same regarding their ongoing civil works and ii) in all future contracts incorporate a clause that the directions of the learned NGT would have to be strictly followed. Indeed, R-2, the HoD of PWD had duly undertaken to do so before the NGT. There is evident default in compliance.

5. The photographs show that damage caused to the trees is extensive and shows callous disregard of the woefully inadequate green areas we have in the city. They are reproduced hereunder:

By:KAMLESH KUMAR Signing Date:06.06.2022 11:01:10 By:KAMLESH KUMAR Signing Date:06.06.2022 11:01:10 By:KAMLESH KUMAR Signing Date:06.06.2022 11:01:10 By:KAMLESH KUMAR Signing Date:06.06.2022 11:01:10 By:KAMLESH KUMAR Signing Date:06.06.2022 11:01:10

6. Let the fresh affidavits, be filed by the respondents within two weeks. Rejoinder thereto, if any, be filed before the next date.

7. In view of the above, let due caution be exercised by the PWD apropos the all its ongoing civil works and due cautionary measures be initiated for all future projects.

8. Renotify on 18.02.2021.

9. The order be uploaded on the website forthwith."

13. Another direction issued on 10.02.2010 by a Division Bench of this court in S.C. Jain vs. UOI & Anr., W.P.(C) 11162/2009 reads as under:

"...Status report filed by the Govt. of NCT of Delhi is taken on record. The counsel appearing for the MCD and NDMC to file their status report during the course of the day. DDA is given further time of two weeks to file status report. Needless to say that the Authorities shall continue to carry out the work of removal of concretes around the trees and file further status report. The Authorities shall not use an area of 6 x6 around the trees while laying down pavements or any other road etc...."

(Emphasis Supplied)

14. On 23.04.2013, the National Green Tribunal in Aditya N. Prasad & Ors. Vs. Union Of India & Ors., O.A. No. 82/2013 directed, inter-alia, as under:

"...

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 the relevant law. ..."

(Emphasis Supplied)

15. On 01.03.2021, a "Modified Circular" was issued by the Pr. Chief Engineer (South), PWD, which cautions the Department apropos preservation of trees and exhorts compliance of the aforesaid directions. The Circular reads as under:

16. For reasons best known to the PWD, a healthy full-grown tree was cutdown, as shown in the sequence of photographs reproduced herebelow. First, the roots of the tree were cut, weakening its foundation and depriving it of essential life sustaining water, minerals and nutrients. Then its branches were hacked-off, crippling it fatally. Lastly, the tree trunk was cut from the base to reduce it to a stump. The last photograph possibly being its epitaph in the name of development.

17. The learned counsel for the petitioner apprehends that another tree along the on-going construction stretch, as shown in the photographs below, is also likely to meet the same fate:

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18. The learned ASC for GNCTD submits that no construction is being carried out at the moment. However, that is hardly of any relief as the damage, as noted hereinabove, has already been done.

19. The photographs in paragraphs 10, 16 and 17, clearly show that all the aforesaid directions and guidelines have been violated. Prima-facie, the court is of the view that R-1 to R-4 have committed contempt of court. There is nothing on the record to show that any permission was taken from the Tree Officer with respect to protection of the trees, especially in view of the aforesaid judicial orders. Issue notice to Respondent Nos: 1-4 to show cause, why contempt proceedings be not initiated against them under Section 2(b) read with section 12 of the Contempt of Courts Act, 1971.

20. The petitioner refers to an affidavit filed by the Conservator Of Forest, GNCTD in the Supreme Court in W.P.(C) 202/1995 in T. N. Godavarman Thirumulkpad vs. Union of India & Others, which reads inter-alia as under:

"... 1. That a committee in terms of the Supreme court's judgement dated 12th Dec, 1996, has been constituted to identify forest area. Another committee has also been constituted to file status report about the Identification of Forest areas.

3. That the committee has taken decision to identify areas above 2.5 acre having density of 100 trees per acre as well as stretches of land along roads, drains etc, having length of 1.0 km, besides areas already shown as forest/etc. In revenue land records.

14. That the details of the forest areas and plantation areas along roads under P.W.D. are at Annexure-IX. ..."

21. Annexure IX of the said affidavit provides a list of forest areas and plantation areas along the roads maintained by PWD. The learned counsel for the petitioner submits that as per the aforesaid affidavit, the Green Belt along Vikas Marg, are deemed forest. Requisite permission ought to have been obtained by the Authority concerned. He says that the trees along Vikas Marg have been victimised by the ongoing construction by the PWD.

22. The learned counsel for the respondents submits that the permission was taken from the Forest Department. Let the same be filed along with an affidavit, with the approval of the Additional Chief Secretary (Environment), GNCTD.

23. The learned counsel for the petitioner refers to a report by the Mr. T.M. Das, Professor, University of Calcutta, titled "Revaluation of Services of a Tree in 2012"; according to which the total environmental and social benefits derived from a tree during 50 years of growth is Rs.3,55,13,000/-

or \$7,10,260, in terms of table-1 of the Report: Indian Biologist, Vol 44(1), pp 13-17 (2012), the same is reproduced as under:

25. The date of 23.02.2022, stands cancelled. CM APPL. 40976/2020 (Stay)

26. The applicant seeks stay of further construction work. The learned ASC GNCTD submits that no construction work is going on because of orders passed by the Supreme Court.

27. In view of the above, the application is not pressed. However, the learned counsel for the applicant submits that further work should be carried out only in terms of the directions and caution already noted hereinabove.

28. The application stands disposed-off accordingly....."

3. The work on Vikas Marg was evidently carried out with the consent/ sanction of R-2/Engineer-in-Chief/the Head of the Department of PWD, GNCTD. R-3 was the PWD's jurisdictional Executive Engineer. Both of them should have stopped the victimization and cutting-down of the trees.

There cannot be any concretization of land within a radius of 6" around the tree trunks in terms of the directions of this court, National Green Tribunal (NGT) as well as circulars issued on 01.03.2021 by PWD. All three PWD Officers have chosen not to comply with the court's orders, NGT Orders, and indeed of PWD's own Circulars, as quoted in the SCN.

4. The learned counsel for Delhi Police submits that one Diary Entry i.e. DD No. 22A was registered at Police Station-Preet Vihar, later a FIR No.173/2022 was also registered under section 188 IPC. Almost four months have passed but the investigation is nowhere near conclusion.

5. The Tree Officer's Report records that 80 trees have been damaged. The said Report is reproduced hereunder:

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6. The PWD has undertaken construction activities involving deep trenching within one meter radius from the trunk of the trees using heavy machinery, JCB/ Earth moving machine on Vikas Marg near Swasthya Vihar in East Delhi. No permission has been taken from the Tree Officer or the Forest Department for cutting the trees or carrying out the construction work, which evidently was in breach of the court's direction as noted in the SCN and the fact of damage having been caused to the trees stands proven in view of the report of the Deputy Commissioner of Forest (Central), GNCTD/ Tree Officer. His inspection of the site on 04.10.2021 have revealed that:

"....80 trees had been damages by having their roots exposed and 3 trees has been cut down from the ground level, without obtaining prior permission from the competent

authority. ..."

7. As noted above, the said work was being carried out under the supervision of R-1 with the concurrence and sanction of R-2 and the jurisdictional supervision of R-3. R-4 too was liable under the law to protect any damage to the trees, as directed by the orders noted hereinabove. Delhi Police was sensitized to the need to protect the trees, two intensive workshops were held by GNCTD: one for its officers and one exclusively for Delhi Police, apropos judicial orders. The jurisdictional police officer is deemed to have knowledge of the orders and was obliged to prevent the victimization/damage to the trees and to take immediate action against the person(s) committing the breach. Surely, such extensive work on one of the arterial road of the city could not have escaped the attention of the local police. The SHO should have ensured that he was shown due permission by the PWD before cutting the tree or constructing any drain or concretizing the earth within the prohibited radius of 6' around a tree¹. Insofar as the SHO concerned has not answered the SCN nor is there anything on record to show that he had endeavoured to prevent damage to the trees, he would be deemed to be complicit in breach of the court's directions. The petitioner

4. The Ministry of Urban Development and Poverty Alleviation, Government of India, issued the "Guidelines for Greening of Urban Areas and Landscaping" dated 21.07.2000 for the National Capital Territory of Delhi. The Guidelines, apart from other issues regarding protection of Trees in the city, specifically mandates leaving kutcha space around trees. Relevant entries of the aforesaid Guidelines are reproduced herein below:

"6. Adequate space to be left around trees An area of 6"x 6" around the trees should be left uncemented. Widening of roads upto the trunk of trees is to be avoided as roots come under the asphalted roads and will gradually die. In case of storm, these trees can topple down. Activities which adversely affect the roots are to be kept at a minimum.

7. Digging near trees to be avoided Digging near the trees by allowing telephone, electricity, sewage lines should be avoided to avoid root injury; sufficient space should be left along the ground for the trees. In no case should roots be exposed. Washing avenue trees foliage may be done on a tri-monthly basis to get rid of particulate matter from the foliage.

11. Compactness of soil near trees to be avoided had filed a total of 11 complaints with: (i) PWD, (ii) Forest Department and the (iii) Delhi Police. The latter was specifically intimated on 08.10.2021. There was no response. It is only when the case was taken up before the court and a reply was sought from the DCP that the said FIR was registered. The court is assured by the learned counsel for the Delhi Police, upon instructions, that investigation will be completed within the next ten days. However, the fact remains that each of the officers have been complicit in having breached and having committed contempt of court orders dated 10.02.2010 passed by this court in WP(C) No.11162/2009 S.C. Jain vs Union of India and order dated 23.04.2013 of NGT in OA No.82 of 2013 Aditya N. Prasad & Ors. Vs Union of India & Ors. The court

is informed that one of the respondents has already been held guilty of contempt for similar breaches on Meera Marg (Lodi Colony) area. Let R-1 to 4 be present in court on the next date.

8. List for orders on sentencing on 07.07.2022.

NAJMI WAZIRI, J JUNE 3, 2022 RW Compactness of soil should be avoided within at least one meter around the tree. Perforated metallic frame can be used for this purpose. Soil surveys around the trees should be done by removing stones."