

**BEFORE THE NATIONAL GREEN TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.**

(Through Physical Hearing with Hybrid VC Option)

Execution Application No. 24/2022
In
Original Application No. 60/2022

Alka Jain

...Applicant

Versus

North Delhi Municipal Corporation & Ors.

...Respondents

Date of hearing: 16.01.2023

**CORAM: HON'BLE MR. JUSTICE ARUN KUMAR TYAGI, JUDICIAL MEMBER.
HON'BLE DR. AFROZ AHMAD, EXPERT MEMBER.**

Applicant: Mr. Vikrant Pachnanda and Mr. Mukul Katyal,
Advocates with Ms. Alka Jain, in person.

Respondents: Ms. Jyoti Mendiratta, Standing Counsel, GNCTD for
the DM (Central), Delhi (through VC).
Mr. Narender Pal Singh, Advocate for the DPCC
(through VC).
Ms. Puja Kalra, Advocate for the MCD with Mr. Kumar
Mahendra, Executive Engineer, MCD.

**Application under Section 25 read with Sections 26 and 28 of the
National Green Tribunal Act 2010.**

ORDER

1. The applicant has filed the present Execution Application for execution of **order dated 16.02.2022** passed by this Tribunal in **O.A No. 60/2022 titled as Alka Jain Vs. North Delhi Municipal Corporation and Others.**

2. The applicant-Ms. Alka Jain filed the above said Original Application against Mr. Mohan Singh residing at house no. 420/06, Teacher Lane, Upper Anand Parbat, Delhi complaining that he is carrying on unauthorized construction and has also kept building material outside his house without taking necessary precautionary measures and the same is causing air pollution.

3. Vide order dated 16.02.2022 passed in above said Original Application, this Tribunal directed the District Magistrate and DCP, Central Zone as well as Commissioner, North Delhi Municipal Corporation to look into the matter and take remedial action within six weeks in accordance with law by following due process and the application was disposed of accordingly.

4. The applicant filed the present execution application claiming that no action has been taken by the above said Authorities in compliance of above said order.

5. Vide order dated 12.09.2022 this Tribunal directed the Member Secretary, Delhi Pollution Control Committee (DPCC) to submit a factual verification and action taken report within six weeks and also directed presence, through Video Conference Facility, of the District Magistrate and Deputy Commissioner of Police, Central Zone and Officer duly authorized by Commissioner, Municipal Corporation of Delhi (MCD) before this Tribunal.

6. In compliance thereof report of the Joint Committee was filed by the DPCC vide email dated 11.10.2022. Copy of Status Report of action taken on behalf of the MCD (North DMC) was sent by the DPCC along with its report.

7. In the Status Report, Mr. Rajesh Gupta, Executive Engineer (M)-II, Karol Bagh Zone stated that the Department has taken an encroachment removal action against the building material etc., stacked outside the House No. 420/06, Teacher Lane, Upper Anand Parbat, Central, Delhi on 23.09.2022. During action building material lying was removed completely. The photographs taken during the action were attached with the Status Report as annexure A.

8. The applicant sent photographs of the site taken on 08.10.2022 through email dated 11.10.2022 showing dumping of the construction material on the site in question.

9. A very strange fact position was noticed by this Tribunal by observing in order dated 12.10.2022 that that "the construction material is stated to have been removed on 23.09.2022 as shown by photographs taken by official of the MCD on that date but subsequently the construction material is stated to be lying there on 08.10.2022 as shown by the photographs taken by the applicant and the same appears to have been again removed as shown by photographs taken by official of the DPCC on 10.10.2022".

10. Ms. Shweta Chauhan, DCP (Central) Delhi and Mr. Deepak Chandra, ACP, Patel Nagar appeared through video conferencing and Ms. Puja Kalra, Advocate appeared on behalf of Municipal Corporation of Delhi with Executive Engineer, MCD who appeared through VC. But none appeared on behalf of the District Magistrate (Central), Delhi. No application for exemption from appearance was received from the District Magistrate (Central), Delhi. Vide order dated 12.10.2022 costs of Rs. 10,000/- were imposed on the District Magistrate, Central Zone which were ordered to be paid to the applicant on the next date of hearing.

11. We interacted with DCP, Central Zone who could not inform us about any action taken in compliance with order dated 16.02.2022 passed by this Tribunal in **O.A No. 60/2022 titled as Alka Jain Vs. North Delhi Municipal Corporation & Others**. The Executive Engineer, MCD could not make any communication due to some technical problem on his part.

12. Vide order dated 12.10.2022, presence of the District Magistrate and the DCP (Central Zone) and concerned officer in charge of the concerned branch/division of the MCD was ordered and notice was also ordered to be issued to the respondent no. 4-Project Proponent- Mohan Singh requiring him to file his reply **within three weeks**. The DPCC was directed to verify the facts as to who had dumped the construction/demolition materials on the site in question and take appropriate action for imposition of environmental compensation by issuing notice to the person concerned and following due process of law and submit its action taken report within six weeks.

13. In compliance thereof the DPCC has filed status report vide email dated 15.12.2022, *inter alia* mentioning therein that show cause notices for imposition of environmental compensation have been issued to M/s. Mohan Singh and M/s. Prem.

14. The DCP, Central District, Delhi has also filed Action Taken Report vide email dated 14.12.2022. The relevant part of the same reads as under :-

“Action Taken Report as per the Direction passed by Hon’ble National Green Tribunal, Principal Bench of New Delhi Vide Order dated 12.10.2022.”

X

X

X

X

1. With reference to the above mentioned order, it is submitted, that enquiry into the matter has been conducted by SI Satyam Gupta and it is revealed that the Complaints which had been sent to NGT by complainant Mrs. Alka Jain which is pending consideration before the NGT had also been received is PS Anand Parbat, Delhi vide GD No. 82A dated 23.09.2019.

2. Keeping in view the complaints of the complainant Alka Jain action for encroachment of public property was taken against Mohan Singh vide FIR No. 223/2019, U/s 283 IPC, dated 26.09.2019. An FIR was also registered against Mr. Ramesh S/o Deepchand vide FIR 244/2019, U/s 283/290 IPC for encroachment on Cemented Road, Anand Parbat, Delhi.

3. *While considering the said complaint the NGT had directed Police as well as other authorities to take remedial action in this regard in order dated 16.02.2022 in OA No. 60/2022.*

4. *As Action had already been taken by the police on the same complaint vide FIR No. 223/2019, U/s 283 IPC, dated 26.09.2019, No further action was taken after 16.02.2022.*

5. *It is further submitted that action had been taken on each and complaint of the present complainant.*

6. *It is further submitted that at present no such activity is reported. If any kind of such activity is reported, action will be taken in accordance with the legal provision."*

15. Written submissions have been filed by the applicant vide emails dated 15.12.2022, 11.01.2023 and 12.01.2023. The applicant has submitted that the question raised by applicant before this Tribunal through present execution application is not whether at present building material is lying on cemented road or not but the question is that the authorities did not do anything in compliance of order dated 16.02.2022, passed by this Tribunal till the filing of this present execution petition, despite the fact that the authorities were made time bound by said order to take action within six weeks. The concerned Authorities be punished under sections 26 and 28 of NGT Act, 2010 for failing to comply the order dated 16.02.2022.

16. Mr. Mohan Singh-respondent no. 4, appeared in person and submitted that he did not store any construction material and did not violate any environmental norms.

17. Report on behalf of the Municipal Corporation of Delhi in pursuance of order dated 16.10.2022 has been received by post. The relevant part of the report of the Municipal Corporation is reproduced below:-

"REPORT ON BEHALF OF THE RESPONDENT, MUNICIPAL CORPORATION OF DELHI IN PURSUANCE OF ORDER DATED 16.10.2022.

X

X

X

X

1. The property bearing no. 420/06, Teacher Lane, Uper Anand Parbat, Delhi-110005 has been inspected again by the area Junior Engineer (Bldg.)/Assistant Engineer(Bldg.) on 17.12.2022 and 28.12.2022, in compliance of the order dated 16.12.2022 passed by the Hon'ble NGT. They have reported that neither any construction activity is going on in the impugned premises nor any building material had been found to be stacked at the site.

2. The Counsel representing the Appellant had been contacted by the area Assistant Engineers (Bldg.) to have the exact sites, if any, where building materials are lying but no response has been received. We had also contacted the Appellant through the Counsel for joint inspection but that has also not materialized.

3. The entire reach/road upon which the property abuts as also the adjoining areas has also been got inspected. No building material has been found to be stacked in the entire reach. However, if any building material is seen in the vicinity or upon the road in future then challans shall be issued promptly.”

18. Action Taken Report has been filed by Ms. Sema Grover, Tehsildar (Patel Nagar) through speed post on 02.01.2023. The relevant part of the report is reproduced below:-

“ACTION TAKEN REPORT

1. A letter No. SDM/KB/2022/6959-61 dated 23/12/2022 was received in West District from SDM (Karol Bagh) of Central District informing about the notice of Hon'ble NGT in the matter of Alka Jain Vs. NDMC & Ors in Case Execution No. 24/2022 and OA No. 60/2022. Vide said letter, it was informed that the property bearing H.No. 420/6, Teacher Lane, Anand Parbat, New Delhi-110005 does not fall under the jurisdiction of District Central and the said address pertains to SDM (Patel Nagar) of District West **(Annexure-I).**

2. It was reported by the revenue officials that the property, in question is situated under the revenue estate Sidhora Khurd falling under SDM (Civil Lines) of Central District. This observation is supported by several revenue documents like Aksizra of Village Khampur Raya, Award No. 20/88-89 related to property no. 4-5/A, Upper Anand Parbat, Village Sadhora Khurd and copy of the same are enclosed for reference please. However, the said property falls under Police Station Anand Parbat and all police related matters are being dealt by SDM (Patel Nagar) of West District.

3. Keeping in view of the seriousness of the case and after receipt of letter dated 23/12/2022 from SDM (Karol Bagh), immediately a joint inspection was carried out at the site by revenue officials of SDM (Patel Nagar) of District West and SDM (Karol Bagh) & SDM (Civil Lines) of District Central on 29/12/2022.

4. As per joint inspection report, no construction material is lying outside the said property and photographs taken during inspection are attached herewith for reference please. The joint inspection report dated 29/12/2022 along with statement of Sh. Mohan Singh R/o H.No. 420/6, Teacher Lane, Anand Parbat and photographs taken from the site are also enclosed as **(Annexure-II)**.

5. It is pertinent to mention here that last proceedings before Hon'ble NGT held on 16/12/2022 was attended by Standing Counsel of the Department and District Magistrate (Central District) **(Annexure-III)** and communication with regard to jurisdiction of the property has been made with West District by SDM (Karol Bagh) vide letter dated 23/12/2022 Immediately afterwards, a joint inspection was carried out and it was found that presently no construction material is lying outside the said property at H.No. 420/6 Lane, Anand Parbat, New Delhi. As regard, unauthorized construction/encroachment at the site is concerned, the matter pertains to MCD, Karol Bagh Zone."

19. Status Report has been filed by Ms. Sonika Singh, DM (District Central), Delhi vide email dated 12.01.2023. Relevant part of the report reads as under :-

"Status report by DM (Sonika Singh, DM-District Central)

X X X X

➤ That, in response of Hon'ble National Green Tribunal vide its order dated 12.10.2022 sought that presence of DM, DCP Central Zone and concerned officers of MCD on 16.12.2022. On the schedule date, Ms. Jyoti Mendiratta, Standing Counsel, GNCTD appeared before the Hon'ble Tribunal on behalf of Respondent NO. 3 alongwith DM (Central) through VC and sought time to file reply on their behalf. Hon'ble Tribunal granted 03 weeks time for the same.

➤ That, DM (Central) forwarded this matter to SDM, Karol Bagh (District Central) for necessary action who further forwarded the same to SDM, Patel Nagar (District West) on 23.12.2022 **as the area/location bearing H. No. 420/06, Teacher Lane, Upper Anand Parbat, Delhi does not fall within the jurisdiction of Sub-Division, Karol Bagh.** SDM, Patel Nagar (District West) vide his letter No. PA/SDM(PN)/Misc./2022-23/1091-93 dated 31.12.2022 informed that a joint inspection of the above said property was conducted through the revenue field officials of West District and Central District on 29.12.2022 and it was reported that no construction material was found/lying outside the said property on the date of inspection. Copy of joint inspection report alongwith photographs is placed opposite in file.

➤ That, it is submitted that as per Action Taken Report dated 02.01.2023 of Tehsildar, Patel Nagar (District West), the above said property falls under police station Anand Parbat and police related matters pertains to SDM (Patel Nagar), District West. Copy of ATR is enclosed herewith.

➤ *That, as the above said property falls under the Police Station Anand Parbat which fall under the jurisdiction of SDM (Patel Nagar), District West, the Hon'ble Tribunal is requested that cost levied on DM (Central) may be waived off as warranted action did not lie within the jurisdiction of DM (Central)."*

20. In the present execution application this Tribunal was concerned with two aspects (i) removal of building material lying on the road, which has been removed after filing of the present execution application and passing of further orders on the same and (ii) non-compliance of order dated 16.02.2022 passed by this Tribunal whereby the authorities specified were directed to take action within six weeks, for which no plausible explanation has been given by the concerned authorities. Territorial Divisions and orders for Distribution of Work and Conferment of Jurisdiction are meant to facilitate discharge of obligations of the Democratic Welfare State and its instrumentalities to its Citizens and not to delay, defeat or obstruct the same. All the instrumentalities of the State have to facilitate such discharge of obligations by the State to its Citizens by communication, coordination and timely response and can not simply ignore and take refuge under the pleas of lack of territorial jurisdiction and/or non-entrustment under distribution of work. The District Magistrate (Central) Delhi was duty bound to forward the order dated 16.02.2022 passed by this Tribunal to the concerned District Magistrate for taking appropriate action or make request to this Tribunal for modification of the order dated 16.02.2022 but the District Magistrate (Central), Delhi ignored the same and did not even appear before this Tribunal on 12.10.2022 despite due communication of order dated 12.09.2022. In the facts and circumstances of the case there is no valid ground for waiver of the costs imposed on the District Magistrate (Central) Delhi.

21. Even though the construction material lying on the road has been subsequently removed but there was unwarranted non-compliance with order dated 16.02.2022 by the District Magistrate and DCP, Central Zone as well as Commissioner, North Delhi Municipal Corporation. However, such non-compliance, which appears to have been caused by apathy/negligence/administrative inefficiency, cannot be said to be deliberate and intentional to favour the defaulters/Project Proponents. In the facts and circumstances of the case, we are of the considered view that no action is required to be taken under Sections 26 and 28 of NGT Act, 2010 on the present execution application.

22. In view of the above discussion the execution application is disposed of as fully satisfied with the directions that (i) the DPCC shall take appropriate action for imposition and realization of environmental damage compensation from the defaulters on the show cause notices issued in accordance with law and (ii) the District Magistrate (Central), Delhi shall deposit the costs within one month and on such deposit the same shall be liable to be disbursed to the applicant. In case of non-payment of the costs, the same shall be liable to be realized in accordance with law.

23. A copy of this order be sent to the Chief Secretary, Government of the NCT, Delhi and the District Magistrate (Central), Delhi for information/requisite compliance.

Arun Kumar Tyagi, JM

Dr. Afroz Ahmad, EM

January, 16 2023
AG