

Item No. 4

(Court No. 2)

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

(Through Physical Hearing with Hybrid VC Option)

Original Application No. 914/2022
(I.A. NO 817/2023,I.A. NO 69/2024,I.A. NO 42/2024)

Kamlesh Jonwal

...Applicant

Versus

Uday Punj & Anr.

...Respondents

Date of hearing: 09.02.2024

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

Applicant: Mr. Rajnish Kumar and Mr. Ankit Raj, Advocates for
Applicant alongwith Applicant in Person.
Respondents: Ms. Madhumita Singh and Mr. Jatin Mandoraria,
Advocates for Respondent No. 1.
Ms. Kritika Gupta and Ms. Latika Malhotra, Advocates
for respondent no.2- DDA. (Through VC)
Ms. Jyoti Mendiratta, Advocate for respondent no. 4-
DM (New Delhi).
Mr. Prateek, SDM. (Through VC)
Mr. Virendra Singh Proxy Counsel for Ms. Puja Kalra,
Advocate for Respondent No. 5-MCD.

Application under the provisions of the National Green Tribunal Act, 2010

ORDER

1. The Residents Welfare Association having its office at Kaveri Apartment, D6, Vasant Kunj, New Delhi has filed the present application seeking order for saving green belt on Kaveri Apartment's exit gate road.

2. In the application, the applicant association has submitted that green belt at both sides of road connecting Masoodpur Road to Kaveri Apartment exit gate and Yamuna Apartment, D6, Vasant Kunj, New Delhi, with coordinates as mentioned in the application, was left by the concerned urban planning Authorities for greenery and breathing of earth. The green belt has been encroached upon by building brick wall at the footpath in

November 2022 and trees existing in the greenbelt were illegally cut by respondent no. 1-Mr. Uday Punj on 05.12.2022.

3. Caveat was filed by Mr. Uday Punj (impleaded as respondent no. 1 in the present application) for granting him opportunity of being heard before passing of any injunctive order on application, if any, filed in respect of property bearing Khasra Nos. 480/396/87 (3-12), 479/396/87 (3-12), 86 (9-12), 88 (9-17) and 67 (4-01) measuring 30 bighas 14 biswas situated in the area of Village Masoodpur, New Delhi.

4. Vide order dated 05.01.2023, notices were ordered to be issued to respondents no. 1 to 5. Consequent thereto responses were filed by the respondents which have been placed on record.

5. I.A. No. 817/2023 has been filed by respondent no. 1 for placing on record copy of order dated 21.07.2023 passed by Hon'ble Supreme Court of India in Miscellaneous Application diary No. 4543/2023 which is allowed and copy of above said order is taken on record.

6. I.A. No. 42/2024 has been filed by applicant praying that the name of Residents Welfare Association Vasant Kunj D-6, Kaveri Apartment through its Vice President Ms. Richa Jain be substituted in place of Mr. Kamlesh Jonwal President, Residents Welfare Association Kaveri Apartment, D-6, Vasant Kunj, New Delhi. In view of the fact that Mr. Kamlesh Jonwal has resigned from the post of the President of RWA and the reasons mentioned in I.A No. 42/2024, the same is allowed and name of Residents Welfare Association, Kaveri Apartment, D-6, Vasant Kunj, New Delhi through its Vice President Ms. Richa Jain is substituted as applicant in place of Mr. Kamlesh Jonwal President, Residents Welfare Association Kaveri Apartment, D-6, Vasant Kunj, New Delhi. The Registry is directed to amend memo of parties accordingly.

7. In compliance thereof report was filed by respondent no. 2-DDA vide email dated 13.12.2023.

8. Vide order dated 13.12.2023 this Tribunal permitted filing of objections to the demarcation report and directed District Magistrate, New Delhi and DDA to file specific response with respect to the aspects mentioned therein. The relevant part of the order is reproduced as under:-

“13. The factual situation emerging from the rival contentions and material placed on record is full of complexity. Construction of barat ghar, pump house and road and development of green belt by itself shows that possession of the land underneath the same was taken by DDA. Questions arise as to when possession of the land on, which barat ghar, pump house and road were constructed and on which green belt was developed, was taken by DDA and when barat ghar, pump house and road were constructed and green belt was developed and whether the facts about such construction of barat ghar, pump house and road and development of green belt were brought on record during pendency of writ petition or there was any fraud or misrepresentation by any of the parties.

*14. Respondent no.1, the District Magistrate (New Delhi) and DDA are directed to file their specific response in this regard **on or before 08.01.2024** through **E-filing portal (not through E-mail)** in the **form of searchable PDF/OCR Support PDF** (not in the form of Image PDF). .”*

9. Status report has been filed by DDA vide email dated 08.01.2024. The relevant part of the status report is reproduced as under: -

“Status Report on behalf of Respondent no. 2/DDA

2. The Respondent No. 2/DDA respectfully places the following submissions for the kind consideration of this Hon'ble Tribunal:

a. That the land, on which the Barat Ghar, Pump House, Road and Green belt is developed, was taken over physically by the Respondent No. 2/ DDA on 21.04.2007 and 29.12.1980 from the LAC/Land & Building Department, GNCTD. True Copy of possession proceedings dated 21.04.2007 and 29.12.1980 are enclosed herewith as Annexure R1 Colly.

b. That the Barat Ghar, the Pump House, Road and the Green belt has been developed by the Respondent No. 2/ DDA after approval of

Facilities Plan of Kaveri Apartment by the HUPW-COORDINATION (DDA) in its 284th Screening Committee vide Item no.148 in the year 2009. True Copy of Facilities Plan of Kaveri Apartment is enclosed herewith is Annexure R2.

c. *That as per said Facilities Plan of Kaveri Apartment:*

A) total area measuring 3430 sqm was approved for facilities of the Kaveri Apartments, whose further approved area utilization is as under:

i) total area measuring 1100 sqm was approved for C.S.C (Commercial Shop Centre) and is currently existing as DDA market at site.

ii) total area measuring 1700 sqm was approved for Community Hall and is currently existing as Barat Ghar at the site.

iii) total area measuring 630 sqm was approved for Pump House & UGR and is currently existing as Pump House.

B) total area measuring 3665 sqm was under the Green cover.

C) total area measuring 9360 sqm was under the Road.

*3. That it is specifically denied that physical possession of the subjected land i.e., Khasra nos. 480/396/87 (3-12), 479/396/87 (3-12), 86 (9-12), 88 (9-17) and 67 (4-01) had not been taken, **as stated by concerned Land Acquisition Collection in its counter affidavit filed before the Hon'ble High Court of Delhi in civil writ petition 6390/2014.** In this regard, copy of possession proceedings dated 21.04.2007 of handing-over/taking-over of Khasra nos. 480/396/87 (3-12), 479/396/87 (3-12), 86 (9-12), 88 (9-17) and 67 (4-01) is relied upon.*

4. That the Hon'ble High Court of Delhi vide its Judgment dated 23.02.2015 in WP (C) 6390/2014 passed an order that the petitioner is entitled to a declaration that the said acquisition proceedings initiated under the 1894 Act in respect of the subject lands are deemed to have lapsed. The DDA filed a SLP (C) No. 32635/2015 in Civil Appeal No. 4590/2016 against the Judgment dated 23.02.2015 of the Hon'ble High Court of Delhi and the same was dismissed vide order dated 28.04.2016.

5. That the Respondent No. 2/DDA then filed Review petition (C) Diary. no. 27968/2021 in Civil Appeal No. 4590/2016 and the same was dismissed vide order dated 31.03.2022.

6. That after the Award was made by the Collector under Section 11 of Land Acquisition Act 1894 in 1980. Compensation amount of Rs 17,37,385/- and Rs 10,000,00/- was paid by the DDA to Land & Building Department, GNCTD against the said Award vide cheque numbers 908137 and 906691 respectively dated 09-01- 1981. As per Judgement dated 06.03.2020 of Hon'ble Supreme Court of India in Indore Development Authority V/s Manoharlal & Ors., SLP (c) No. 9036-9038 of 2016:

The provisions of Section 24(2) providing for a deemed lapse of proceedings are applicable in case authorities have failed due to their inaction to take possession and pay compensation for five years or more before the Act of 2013 came into force, in a proceeding for land acquisition pending with concerned authority as on 1.1.2014.

Section 24 applies to a proceeding pending on the date of enforcement of the Act of 2013, i.e., 1.1.2014. It does not revive stale and time-barred claims and does not reopen concluded proceedings

nor allow landowners to question the legality of mode of taking possession to reopen proceedings or mode of deposit of compensation in the treasury instead of court to invalidate acquisition.

7. *Therefore, in view of the dictat of the Judgment dated 06.03.2020 of Hon'ble Supreme Court of India in **Indore Development Authority V/s Manoharlal & Ors. , SLP (c) No. 9036-9038 of 2016**, there seems to be no lapse of acquisition proceedings initiated under the 1894 Act.*

8. *That the videography of green-belt, site 01, 02 and 06 as indicated in the Status report cum affidavit on behalf of DDA filed on 13.12.2023, was carried out and is enclosed herewith as google drive links (Annexure R3)*

9. *The respondent/DDA craves leave of this Tribunal to file additional affidavit in case the need so arises."*

10. Written submissions have been filed by the applicant vide email dated 09.01.2024. In his written submissions the applicant has taken objections to the demarcation report.

11. Reply has been filed by respondent no. 1 vide email dated 06.02.2024.

12. I.A. No. 69/2024 has been filed by respondent no. 1 for condonation of delay of 5 days in filing of reply to the status report filed by respondent no. 2-DDA. The application is not opposed and for the reasons mentioned I.A No. 69/2024 is allowed and delay in filing of reply is condoned.

13. Vide order dated 20.11.2023 this Tribunal constituted a Joint Committee to carry out the requisite demarcation.

14. In his reply respondent no. 1 has submitted that in view of the Judgments of Hon'ble High Court of Delhi and Hon'ble Supreme Court of India, respondent no. 1 is the lawful owner of the land on which respondent no. 2 has illegally constructed Pump House and Commercial Complex and had allegedly allotted a parcel of respondent no. 1's land for construction of a Police Station. The issue of the construction of the Commercial Complex and its auction and allotment of land for the construction of the police station is the subject matter of CS (OS) 244/2020 before the Hon'ble High

Court of Delhi. So far as Barat Ghar is concerned it has never been constructed at all till date.

15. However, no specific objections have been taken as to correctness of the map filed before this Tribunal.

16. Respondent no. 1 is given opportunity to file specific response with reference to the correctness of the map filed DDA vide email dated 08.01.2024 within one month by email judicial-ngtsz@gov.in preferably in the form of searchable PDF/OCR Supported PDF and not in the form of Image PDF.

17. It may be observed here that in the present case this Tribunal has no jurisdiction to look into and is also not looking into the question as to whether the acquisition of the land in question lapsed which question has already been decided by the Hon'ble High Court of Delhi and Hon'ble Supreme Court of India. This Tribunal has the jurisdiction to look into and is looking into the environmental questions of illegal cutting of trees and damage to the green belts on road sides etc. and remedial measures required to be taken regarding the same and this Tribunal is for that purpose seeking verification of the factual position particularly in the context of mandate of environmental laws for provision of environment related facilities of protection of trees, green cover, green belt on road sides, drinking water supply and sewage systems and also related question as to whether the concerned respondents are required to consider the question of fresh acquisition of land under environment related public utilities as permitted by the provisions of Section 24 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 in view of the essentiality thereof.

18. Vide order dated 13.12.2023 the District Magistrate (New Delhi) was directed to file specific response but no specific response has been filed by the District Magistrate (New Delhi).

19. The District Magistrate (New Delhi) is directed to file specific response with reference to the demarcation report and also the factual submissions regarding taking of possession and raising of construction made in the Status Report filed by DDA vide email dated 08.01.2024 within one month by email judicial-ngtsz@gov.in preferably in the form of searchable PDF/OCR Supported PDF and not in the form of Image PDF.

20. It may be observed here that the Joint Committee constituted by this Tribunal conducted the survey on 21.11.2023 on the basis of which the survey report seems to have been prepared but Dy. Director/LM(NDZ) had written letter dated 30.11.2023 that re-survey needs to be carried out and a demarcated plan of the land in question, duly verified by revenue officers of GNCTD and DDA, has to be placed before this Tribunal. No such demarcated plan of land in question duly signed by the revenue officers of the GNCTD and DDA has been placed before this Tribunal. As mentioned above the applicant has filed objections to the demarcation. This Tribunal has passed number of orders and granted sufficient time for filing of demarcation report/map/plan before this Tribunal but no authenticated demarcation report/map/plan duly signed by the concerned officers has been filed before this Tribunal.

21. As already observed by this Tribunal a complex and also strange factual situation emerges from the material placed on record and respective pleadings. The Land Acquisition Collector filed counter affidavit in W.P. (C) No. 6390/2014 that physical possession of the land in question had not been taken. Strangely enough DDA did not file any counter affidavit to the

writ petition. The above said writ petition was allowed by the Hon'ble High Court of Delhi vide Judgment dated 23.02.2015 which was, on filing of **Civil Appeal no 4590/2016 (tagged with Civil Appeal No. 4544/2016)** by DDA, upheld by Hon'ble Supreme Court of India vide Judgment dated 28.04.2016. Subsequently, DDA filed review petition on the ground of taking of possession on 21.04.2007 which was dismissed by Hon'ble Supreme Court of India vide Judgment dated 31.03.2022. Respondent no. 1 has claimed that respondent no. 2 had illegally constructed Pump House, and Commercial Complex and had illegally allotted a parcel of respondent no. 1's land for construction of a Police Station and illegally handed over a parcel of land to MCD on 31.05.2016 for development of green belt. As already observed by this Tribunal in order dated 13.12.2023 construction of barat ghar, pump house and road and development of green belt by itself shows that possession of the land underneath the same was taken by DDA. Questions arise as to when possession of the land on, which barat ghar, pump house and road were constructed and on which green belt was developed, was taken by DDA and when baraat ghar, pump house and road were constructed and green belt was developed and whether the facts about such construction of barat ghar, pump house and road and development of green belt were brought on record during pendency of writ petition or there was any fraud or misrepresentation by any of the parties. These facts need to be ascertained by the Government of NCT of Delhi and DDA. The aspect as to why DDA raised construction of baraat ghar, pump house and road and developed green belt by incurring huge expenditure if possession of the land underneath the same was not taken within five years by the concerned Authorities, as claimed by respondent no.1 which claim has been accepted by Hon'ble Delhi High Court and Hon'ble Supreme Court, also needs to be looked into by the Government of NCT of Delhi and DDA.

22. In these facts and circumstances, the Chief Secretary, Government of NCT of Delhi and Vice Chairman, DDA are directed to get the land in question properly demarcated and factual position regarding the aspects referred to above verified and file their response alongwith demarcation report/map/plan of the land in question duly signed by the concerned officers before this Tribunal within one month by email judicial-ngtsz@gov.in preferably in the form of searchable PDF/OCR Supported PDF and not in the form of Image PDF.

23. The case involves the substantial questions relating to environment arising out of implementation of the enactments specified in Schedule I to the National Green Tribunal Act, 2010 particularly the Water (Prevention and Control of Pollution) Act, 1974 and the Environment (Protection) Act, 1986 specifically as to the relief claimed by the applicant being barred by limitation, liability of green belt, road, Pump House etc. constructed over the land in question to removal/demolition and entitlement of the residents of Kaveri Apartments and the locality to user thereof as part of fundamental right to clean and healthy environment arise in the present case.

24. Written request for adjournment has been made on behalf of respondent no. 1 on the ground of inability of learned Senior Counsel for respondent no. 1 to appear due to some personal difficulty.

25. In view of the reasons mentioned, the written request for adjournment is allowed.

26. The matter be listed on 20.03.2024 for further consideration.

27. Interim order dated 23.11.2023 shall continue to operate till further orders to the contrary.

28. In view of the facts and circumstance of the case, we also consider personal appearance of the Chief Secretary, Government of NCT of Delhi and Vice Chairman, DDA through VC and District Magistrate, (New Delhi) physically on the next date of hearing to be essential for producing the relevant record and assisting this Tribunal in just and proper adjudication of the questions involved in the case and they are directed to remain present before this Tribunal on that date accordingly.

29. A copy of this order be sent to the Chief Secretary, Government of NCT of Delhi, the Vice Chairman, DDA and the District Magistrate, (New Delhi) by email for requisite compliance.

Arun Kumar Tyagi, JM

Dr. Afroz Ahmad, EM

February 09th 2024
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