

Item No. 8

(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)

With

Caveat Application No. 20/2022

Kamlesh Jonwal

...Applicant

Versus

Uday Punj & Anr.

...Respondents

Date of hearing: 13.12.2023

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

Applicant: Applicant in person.

Respondents: Ms. Madhumita Singh, Advocate for respondent no. 1.
Ms. Kritika Gupta, Advocate for respondent no. 2-DDA.
Mr. Virendra Singh, Advocate for respondent no. 5-MCD with Mr. Surendra Singh, ADH.

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.

5. Written submissions on behalf of respondent no. 1 were filed vide email dated 10.01.2023. The relevant part of the written submissions read as under:-

"1. A writ petition was filed by Shri Satya Narain Prakash Punj bearing Writ Petition (Civil) No. 6390/2014 before the Hon'ble High Court of Delhi seeking the benefit of Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 which came into effect on 01.01.2014.

2. That the acquisition proceeding initiated under the Land Acquisition Act, 1894 and in respect of which Award No. 90/1980-81 dated 22/29.12.1980 was made, inter alia, in respect of the land in question, comprised in Khasra Nos. 480/396/87 (3-12), 479/396/87 (3-12), 86 (9-12), 88 (9-17) and 67 (4-01) in all measuring 30 bighas 14 biswas, in village Masoodpur, was deemed to have lapsed.

3. That, the concerned Land Acquisition Collector stated in its counter affidavit filed before the Hon'ble High Court of Delhi that physical possession of the subjected land had not been taken.

4. That, the Hon'ble High Court of Delhi vide its judgment dated 23.02.2015 held that the acquisition proceedings initiated under the Land Acquisition Act, 1894 in respect to the land in question has lapsed and the land reverts to its original owner. The relevant text of the judgment is reproduced hereunder:

"10. As such, in the present case, neither physical possession of the subject land has been taken nor has any compensation been paid to the petitioner. The Award was made more than five years prior to the coming into force of the 2013 Act. No period is liable to be excluded inasmuch as the second proviso, which has been newly inserted by virtue of the said Ordinance, is not applicable, as indicated above.

11. As a result, 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. It is so declared.

12. The writ petition is allowed to the aforesaid extent. There shall be no order as to costs".

The copy of the judgment dated 23.02.2015 is annexed herewith as Annexure 1.

5. That, aggrieved by the judgment dated 23.02.2015 passed by the Hon'ble High Court of Delhi the Delhi Development Authority (Respondent No. 3) filed a SLP bearing No. 32635/2015 which was later converted into Civil Appeal No. 4590/2016 which was tagged along with Civil Appeal No. 4544/2016.

6. That, the Hon'ble Supreme Court of India upheld the decision of the Hon'ble High Court of Delhi and dismissed the Appeal filed by the Delhi Development Authority (Respondent No. 3) vide its judgment dated 28.04.2016. The relevant text of which is reproduced as under:

"6. Under the above provision, once an award has been made by the Collector under Section 11 of the Act, 1894, the Collector has to take possession of the land and only thereupon, the land will vest in the Government free from all encumbrances. Therefore, passing of the award by itself will not enable the appellant to take a contention that the land has automatically vested with the Government on passing of the award.

7. It is not in dispute that in all these cases, the land has not been taken possession of by the Collector within five years or more prior to 01.01.2014 when the 2013 Act came into force.

8. In that view of the matter, there is no merit in these appeals. The appeals are, accordingly, dismissed. No costs".

The copy of the judgment dated 28.04.2016 is annexed herewith as Annexure 2.

7. That, aggrieved by the judgment dated 28.04.2016 a Review Petition (Civil) Diary No. 3373/2022 in Civil Appeal No. 4554/2016 and Review Petition (Civil) Diary No. 27968/2021 in Civil Appeal No. 4590/2016 was filed by the Delhi Development Authority (Respondent No. 3).

8. That, the Hon'ble Supreme Court of India dismissed the Review Petition The relevant text of the Order dated 31.03.2022 is reproduced as under:

"Having carefully gone through the petitions for review and the papers connected therewith, we do not find any ground warranting review of order dated 28.04.2016. The review petitions are, therefore, dismissed on the ground of delay as well as on merits".

The copy of the Order dated 31.03.2022 is annexed herewith as Annexure 3.

9. That, in view of the facts and the judgments of the Hon'ble Supreme Court of India and Hon'ble High Court of Delhi the title and the possession of the land in question is held by Shri Uday Punj son of Late Shri Satya Narain Prakash Punj. Further, the Delhi Development Authority (Respondent No. 3) is well aware of the fact that the land in question is the private property of Respondent No. 1 and the same land cannot be declared as green belt.

10. That, the allegation of cutting of trees by Respondent No. 1 in the petition is factually incorrect as no trees have been cut for the construction of the boundary wall."

6. The applicant also filed written submissions vide email dated 10.01.2023.

7. Reply has been filed by respondent no. 2-DDA vide email dated 10.05.2023. However no reply has been filed by respondent no. 5-MCD.

8. Vide order dated 12.01.2023 this Tribunal directed respondent no. 5- the District Magistrate (South West) Delhi to get the land in question demarcated through the concerned Revenue officials after notice to the applicant, respondent no. 1 and officials of DDA and MCD. Subsequently on being informed that area falls within jurisdiction of the District Magistrate (New Delhi), he was directed to get the land in question demarcated through the concerned Revenue officials after notice to the applicant, respondent no. 1 and officials of DDA and MCD. Status Report was filed by Mr. Vinay Kumar Jindal, Sub Divisional Magistrate, Vasant Vihar vide email dated 20.11.2023 that in view of orders passed by the Hon'ble Delhi High Court and the Hon'ble Supreme Court of India referred to in the status report no jurisdiction is left with the revenue authorities to carry out any demarcation.

9. In the present case it is not disputed by DDA that the residential complex in question namely Kaveri Apartments was constructed by DDA and green belt on both sides of the road leading to the said apartment and other public facilities for the same were provided by DDA/MCD. For ascertaining as to whether any part thereof falls in land belonging to respondent no. 1, which was acquired vide Award no. 90/1980-81 dated 22/29.12.1980 but which acquisition had lapsed, this Tribunal constituted a Joint Committee comprising of the Officers duly authorised by the Vice Chairman, DDA, District Magistrate (New Delhi) and Commissioner, Municipal Corporation of Delhi to demarcate the land of Kaveri Apartments and land of respondent no. 1 in question and submit report specifically mentioning as to whether any part of Kaveri Apartments, green belt connecting to the end gate of said apartment and public facilities drinking water/gas pipelines/ sewage etc. fall into the land belonging to respondent no. 1.

10. In compliance thereof report has been filed by respondent no. 2-DDA vide email dated 13.12.2023. The relevant part thereof reads as under:-

***“Status Report Cum Affidavit on behalf of respondent no.-
2-DDA***

X

X

X

X

3. That in compliance of Order dated 20.11.2023 passed by the Hon'ble Tribunal in this matter, a joint site survey of the subject area was carried out on 21.11.2023 along with the concerned Revenue Staff of SDM (Vasant Vihar), AE/SPD-1 (DDA) and Sh. Birender (Habib, Surveyor). After survey of the land, which is subject matter of the case, a TSS plan has been prepared and provided by the Surveyor.

4. That as per TSS plan for the area of land which is the subject matter of case:

Site 01 (Area under Green): *This site is adjacent to service road connecting Exit gate (Kaveri Apartment) and Vasant Kunj Road and in the right while going towards Exit gate (Kaveri Apartment). Area measuring 384.88 sqm in Khasra No. 93 and*

989.37 sq. in Khasra No. 87 is under Green Belt. Photos of this site is also enclosed.

Site 02 (Area under Green): This site is adjacent to service road connecting Exit gate (Kaveri Apartment) and Vasant Kunj road and in the left while going towards Exit gate (Kaveri Apartment). Area measuring 1159.648 sqm in Khasra No. 87 is under Green belt. Photos of this site is also enclosed.

Site 03 (Area under Pump House, Kaveri apartment): Area measuring 587.134 sqm is under pump house in Kasra No. 87 min, 88 min & 93 min. Photos of this site is also enclosed.

Site 04 (Area under Barat Ghar, Kaveri apartment): Area measuring 1601.024 sqm is under Barat Ghar in Khasra No. 88 min, 89 min and 93 min. Photos of this site is also enclosed.

Site 05 (Area under DDA market): Area measuring 1168.020 sqm is under DDA market in. Khasra no. 88 min & 89 min. Photos of this site is also enclosed.

Site 06 (Area proposed for Police Station): Area measuring 12326.05 sqm in Khasra no. 86 min, 88 min & 67 min is lying vacant at the site and is partly under green. Photos of this site is also enclosed.

The TSS plan duly signed and verified by the Revenue staff of SDM (Vasant Vihar) with respect to the reference point shown by them, Revenue Staff of DDA, AE (DDA) and Surveyor is enclosed.

That as per the land records of the DDA, Khasra No 480/396/87(3-12), 479/396/87(3-12), 86(9-12), 88 (9-17), 398/329/93/2(9-11), 330/93(4-17) and 67(12-3) of Village Masoodpur was acquired vide Award No. 90/80-81 and physical possession of area 08 bigha 02 biswa of Kh. No. 67, 398/329/93/2, min(08-09) and 330/93(4-17) was handed over to DDA by LAC/L&B Dept. GNCTD on 29-12-1980 and Khasra no. 480/396/87(3-12), 479/396/87(3-12), 86(9-12), 88(9-17) and 67 min(04-01) was handed over to DDA by LAC/L&B Dept. GNCTD on 21-04-2007. An amount of Rs 17,37,385/- and Rs 10,000,00/- was paid by DDA to L&B Dept. GNCTD against the said award vide cheque no. 908137 & 906691 dated 09-01-1981.

6. That the respondents have violated the order dated 13.12.2023 of the Hon'ble Tribunal by cutting down the trees in the area in question. Photographs of the cutting down of trees in question are attached herewith as Annexure R-1."

11. Learned Counsel for respondent No.1 seeks time to file objections against the demarcation report.

12. Objections if any to the demarcation report may be filed **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).

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).

15. Further the aspects as to why DDA raised construction of barat 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 and we request the Central Vigilance Commission to look into this aspect in the present case and other similar cases in which acquisition proceedings have lapsed on

similar grounds and take appropriate action and also to send a copy of its report to this Tribunal.

16. List for further consideration on 10.01.2024.

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

18. A copy of this order be sent to Secretary, Central Vigilance Commission, the Vice Chairman, DDA and the District Magistrate (New Delhi) by email for requisite compliance.

Arun Kumar Tyagi, JM

A. Senthil Vel, EM

Dr. Afroz Ahmad, EM

December 13th, 2023
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