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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P.(C) 2317/2023, CM APPL. 8779/2023 & CM APPL. 8781/2023

PROF DR SANJEEV BAGAI & ORS. Petitioners

Through: Mr. Vivek Sibal, Sr. Adv. with Ms. Anu Monga, Mr. Shobhit Sharma, Mr. Paritosh Dhawan and Mr. Shubham Khanna, Advocates.

versus

DEPARTMENT OF ENVIRONMENT GOVT OF NCT OF DELHI
THROUGH ITS PRINCIPAL SECRETARY (ENVIRONMENT
AND FOREST) & ORS. Respondents

Through: Mr. Kailash Vasdev, Sr. Advocate with Ms. Ekta Mehta, Ms. Akanksha Agrawal and Ms. Shagun Sabharwal, Advocates for R-18.
Mr. Anupam Srivastava, ASC, GNCTD and Mr. Vasuh Misra, Adv. for R-1, 3, 5, 10 and 11.
Mr. Shourya Dasgupta, Advocate for Mr. Shadan Farasat, ASC GNCTD for Tree Authority.
Ms. Divya Prakash Pandey, Advocate for Rs-2, 4 and 8.
Mr. Arun Birbal and Mr. Sanjay Singh, Advocates for DDA.
Ms. Sakshi Popli, Advocate for DPCC/R-9.
Mr. Aditya N. Prasad, Advocate (*Amicus Curiae*)

CORAM:
HON'BLE MR. JUSTICE NAJMI WAZIRI

ORDER

% **01.03.2023**

The hearing has been conducted through hybrid mode (physical and

virtual hearing).

CM APPL. 8780/2023 (Exemption)

1. Allowed, subject to all just exceptions.
2. The application stands disposed-off.

CM APPL. 8781/2023 (Permission to file lengthy synopsis and list of dates)

3. For the reasons mentioned in the application, it is allowed.
4. The application stands disposed-off.

W.P.(C) 2317/2023 & CM APPL. 8779/2023

5. Issue notice. The learned counsel named above accepts notice on behalf of the respondents.
6. This petition impugns the order dated 19.01.2023 in Original Application No. 911/2022 passed by the National Green Tribunal ('NGT'), whereby it has held that:

“32. In the meanwhile, further pruning of the trees, if considered necessary, be carried out by the concerned Civic Authorities, MCD/DDA as the case may be strictly in accordance with the provisions of the Delhi Preservations of Trees Act, 1994 and Guidelines dated 01.10.2019 issued by the Deputy Conservator of Forest, (HQ)/Member Secretary, Tree Authority for Pruning of Trees under the Delhi Preservations of Trees Act, 1994.”

7. The genesis of this order was the desire of the RWA-Vasant Vihar to prune certain trees in the colony. They made representations to the Municipal Corporation of Delhi and the Tree Officer, but nothing worthwhile came forth, so they approached the NGT which has passed the aforesaid order.

8. Mr. Vivek Sibal, the learned Senior Advocate for the petitioners submits that the Delhi Preservation of Trees Act, 1994, provides statutory protection to trees in Delhi, the essential part of the preservation is that a tree should not be damaged in a manner, which would impede its growth or otherwise severely affect its re-growth and re-generation impossible. Referring to the photographs attached to the petition, he submits that quite a few trees have been lopped-off thereby causing extensive damage to them and setting back the greenery by a decade or a decade and a half, in certain areas of the colony. He further submits that approximately 800 trees have been pruned/lopped-off in the colony and it is well nigh impossible for the Tree Officer to have inspected all of them or to have ensured that trees with branches of less than 15.7 cms in circumference only have been cut. There were no tools or equipment for the Tree Officer to have so measured or ensured. He further submits that Guidelines referred to by the Tree Officer and relied upon by the RWA-Vasant Vihar are contrary to the Act itself. The Guidelines cannot overreach or undermine the statute. Therefore, insofar as they undermine the statute, they are *ultra-vires*.

9. According to the learned Senior Advocate for the petitioners, there can be no occasion for measuring a branch of 15.7 cm in circumference. The Act defines tree as under:

“2(i) "tree" means any woody plant whose branches spring from and are supported upon a trunk or body and whose trunk or body is not less than five centimetres in diameter at a height of thirty centimetres from the ground level and is not less than one metre in height from the ground level;”

10. In other words, any woody plant which has a height of 30 cm and a trunk diameter of not less than 5 cm is considered a 'tree' and is to be protected under the Act. The pruning etc. would have to be only with strict permission of the Tree Officer and not on general Guidelines. Once a 'woody plant' gets classified as a tree, any alteration to its body or being will have to be in terms of the procedure prescribed under section 9 of the Act. That procedure has not been followed in the present case; therefore, according to the learned Senior Advocate for the petitioners the entire process, adopted towards pruning of trees, is illegal.
11. A more detailed assessment of the activity done by the RWA needs to be carried out. Further pruning in the area concerned has to be stopped right-away. In the circumstances, this court appoints Mr. Aditya N. Prasad, Advocate, who is present in court as *Amicus Curiae* to assess the situation at site and assist the court. A copy of the petition be supplied to him. Let the learned *Amicus Curiae* be assisted at the site by the Tree Officer, Deputy Director (Horticulture) South Zone, SHO- Vasant Vihar, Deputy Director (Horticulture), PWD, Executive Engineer, PWD, Deputy Director (Horticulture), MCD of the area concerned, Deputy Director (Horticulture) DDA along with the petitioners and/or their representatives on 05.03.2023 at 10:00 a.m at the MCD Office, Block-A, Vasant Vihar. Extensive photographs and a report, in this regard, shall be filed by the Tree Officer as well as the Municipal Corporation. A copy of the same shall be supplied to the learned counsel for the parties and also to the

learned *Amicus Curiae*. A fresh affidavit shall be filed by the Tree Officer in terms of what he may notice at the site and further orders, as may be necessary, too shall be issued by the Tree Officer.

12.The learned *Amicus Curiae* states that he is a counsel in CONT.CAS(C) 778/2021 in which the Petitioner No.1 has moved an application for impleadment. However, neither the petitioners nor any of the parties have any objection to the appointment of Mr. Aditya N. Prasad as *Amicus Curiae*. He further submits that the Guidelines were framed by the Tree Authority; therefore, they would be a necessary party in the present case. In view of the above, the Tree Authority is impleaded as R-19.

13.Issue notice. The learned counsel named above accepts notice on behalf of the newly impleaded R-19. Let Amended Memo of Parties be filed before the next date.

14.Reply be filed by the parties and relevant records of the Tree Authority qua the Guidelines too be brought to the court on the next date.

15.List on 10.03.2023.

16.In view of the above, further pruning in the area shall be kept in abeyance.

17.The learned counsel for the parties submits that they will request for an adjournment of the case listed on 10.03.2023 before the NGT.

NAJMI WAZIRI, J

MARCH 1, 2023

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