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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CONT.CAS(C) 220/2022, CM APPL. 10046/2022, CM APPL.
16889/2022 & CM APPL. 38765/2022
NEW DELHI NATURE SOCIETY Petitioner

Through: Mr. Aditya N. Prasad, Advocate.

versus

SH. RAJESH BANSAL & ORS. Respondents

Through: Mr. I.S. Alagh, Sr. Advocate with Mr.
Sameer Vashisht, ASC (Civil)
GNCTD, Mr. Vanshay Kaul,
Advocate, Mr. Rakesh Jindal, EE and
Mr. M.K. Mahobia.
Mr. Anupam Varma, Mr. Nikhil
Sharma, Mr. Aditya Gupta and Ms.
Manu Tiwari, Advocates.

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

ORDER

% **18.05.2023**

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

1. On 14.03.2022, the respondent nos. 2 and 3 were held guilty of having committed contempt of court and for wilfully disobeying the directions of this court. Today, the case is listed for their sentencing. In the aforesaid order, it is noted *inter-alia* as under:

“2. As is evident, the said contempt notice was issued to the respondents as they were prima facie found to be in breach of the following orders of this court as well as the order of the National Green Tribunal ('NGT'): (a) Kalpavriksh v. Union of

India & ors., W.P. (C) 1772/2007 dated 19.09.2007; (b) S.C. Jain v. Union of India and Anr., W.P. (C) no. 11162/2009 dated 10.02.2010; (c) New Delhi Nature Society v. Shri Vinay Sheel Saxena, CONT.CAS(C) 660/2020 dated 19.01.2021; (d) Aditya N. Prasad & Ors. v. Union of India & Ors., O.A. no. 82/2013 dated 23.04.2013.

3. The learned counsel for the petitioner submits that a site visit on 11.03.2022, in the presence of Mr. Sudhir Nandrajog, the learned Senior Advocate for R-1, Mr. Gautam Narayan, the learned ASC for GNCTD representing the Tree Officer, GNCTD as well as Mr. Jawahar Raja, learned counsel for Public Works Department ('PWD'), it was observed that, despite a status-quo order being issued by this court on 25.02.2022, construction work/laying of cables/pipes was still continuing at the site, unmindful of the aforesaid orders, and in total disregard to any care or concern for the living trees. The latter have been rooted into the earth for possibly two decades. The said work was being earned out on a road maintained by PWD. It was for PWD to have ensured that the work at site was stopped. It chose not to, in clear breach of the court's directions. The court is informed that the aforesaid order has been placed before the Chief Secretary, GNCTD and an enquiry has been initiated apropos the breach of directions and seeming administrative recalcitrance. Let the enquiry report be placed before the court within three weeks."

2. The court had in particular noted that status-quo was not maintained at the site and no reply was filed by R-2 and R-3 in terms of the show-cause notice issued to them, therefore, there has been breach and disobedience of the order dated 25.02.2022 of this court and the orders of the National Green Tribunal (NGT).
3. In Cont.Cas(C) 851 of 2021, the court on 03.12.2021 had directed the Public Works Department ('PWD'), to exercise due caution apropos

all its ongoing civil works as well as for all future projects. This exercise seems to not have been done. The respondent nos. 2 and 3 have also failed to comply with the directions of this court dated 10.02.2022 in *S.C. Jain vs. Union of India* in WP(C) No. 11162/2009, *inter alia*, reads as under:-

“...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...”

4. Furthermore, in its order dated 14.03.2022, the court had directed as under:-

“5. 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, DBA, 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. (Hi) 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....”

6. The Principal Chief Engineer, PWD and all Executive Engineers were conscious of the modified circular issued by the PWD on 01.03.2021 of the need to abide with the aforesaid directions.

7. As noted in para 9 of the previous order, PWD stated that damage to many trees has been done. It was for the PWD to have ensured that such damage was prevented. Not doing so, it has been complicit in the damage to the trees. PWD itself has re-laid the pavements and created manholes of 6'x6' radius around 16 trees, as is evident from the photographs.

8. In the circumstances R-2 and R-3, under whose directions and watch the project has been undertaken are held guilty of having committed contempt of court. Let them be present in court on the next date for orders on sentencing.”

5. What is seen from the above is that despite repeated directions and orders passed of this court and of the NGT, there has been a consistent disregard in compliance of the same. Such recalcitrance to abide by the law and defiance of the court's orders cannot merit anything less than a sentence.
6. In the circumstances, respondent nos.2 and 3 are hereby sentenced under section 12 of the Contempt of Courts Act, 1971, to undergo simple imprisonment for a period of four months and two months respectively, along with fine of Rs. 2000/- each.
7. This sentence shall be kept in abeyance for a period of ten weeks from

the date of uploading the order on the court's website, so as to accord them sufficient opportunity to avail their legal remedies, as maybe available to them. Should this order not be altered or stayed, then upon the expiry of the ten weeks, the contemnors shall present themselves before the Registrar General of this court for them to be sent to judicial custody.

8. Additionally, the response of the Chief Secretary, GNCTD apropos compliance of paragraph 15 of the order dated 25.02.2023 and paragraphs 15, 16 and 18 of the order dated 14.03.2023 has not been filed. Let the same be ensured within four weeks.
9. List on 07.07.2023.

NAJMI WAZIRI, J

MAY 18, 2023

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