

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

Execution Application No. 50/2023
In
Original Application No. 60/2014

Society for Protection of Culture Heritage Environment
Tradition and Protection of National Awareness
(also known as SPCHETNA)

Applicant

Versus

Union of India & Ors.

Respondent(s)

Date of reserve of order: 15.05.2024

Date of pronouncement of order: 24.05.2024

**CORAM: HON'BLE MR. JUSTICE PRAKASH SHRIVASTAVA, CHAIRPERSON
HON'BLE MR. JUSTICE SUDHIR AGARWAL, JUDICIAL MEMBER
HON'BLE DR. AFROZ AHMAD, EXPERT MEMBER**

Applicant: Mr. M.L. Lahoty, Ms. Madhumita Singh & Mr. Sameer Sood, Advs. for applicant in EA 50/2023 (Through VC).

Respondent: Mr. Vivin Ahuja & Mr. Vikas Malhotra, Advs. for R – 3.

ORDER

1. This Execution Application has been filed by the applicant seeking implementation/compliance of the order dated 12.04.2019 passed in execution application no. 23/2019 in original application no. 60/2014 and also seeking directions to the respondent nos. 2 and 3 to immediately stop use of green area which is being used without running and operating the Tower Restaurant.

2. The applicant society had filed original application no. 60/2014 seeking a direction against respondent no. 2, Delhi Development Authority (DDA) to take possession of the land around the Asiad Tower situated adjacent to the Siri Fort Complex measuring 18,500 sqm along with the remaining area and restore the area to its natural state and maintain it as

green for the purpose of District Park for general use and had also challenged the letter dated 18.12.1997 along with the site plan wherein the said green area was handed over by the respondent no. 2, DDA to the respondent no. 3, M/s. Jhankar Banquets. The grievance of the applicant was that commercial activities like marriages, parties etc. were arranged by the respondent no. 3 under the shade of the respondent no. 2 in the above green area which was to be maintained as green as per MPD 1962, 2001 and 2021 Zonal Developmental Plan under which the area was to be treated as District Park. The plea of the applicant was that the Tower Restaurant was situated in a green park and the same was to be used as Green Park by the general public.

3. The Tribunal vide order dated 10.07.2015 had disposed of the original application no. 60/2014 permitting the third respondent (PP) to use the green area to the extent of 18500 sqm around the tower area not more than 10 days in a month subject to the condition that the PP also runs the Tower Restaurant. In review application no. 23/2015, filed by the respondent, the Tribunal by order dated 31.07.2017 had removed the rider of use of green area for limited period of 10 days and had permitted the PP to use the same in terms of the license uninterruptedly but there was no modification of the condition of use of the green area only while running the Tower Restaurant.

4. In the present execution application, the applicant has alleged non-compliance of the aforesaid order of the Tribunal by submitting that the respondent no. 3 is not running the Tower Restaurant but it is using the green area of 18500 sqm surrounding it for the commercial purposes. In support of such a plea, applicant has filed the photographs as Annexure A-12 and the advertisements issued by the respondent no. 3 along with Annexure A-11 for use of the green area for the events.

5. Submission of counsel for the applicant is that respondent no. 3 in violation of order of NGT is using green area of 18500 sqm without running the Tower Restaurant which is not permissible.

6. The respondent no. 3 does not dispute that it is using the green area of 18500 sqm without running the Tower Restaurant. The plea of the respondent no. 3 in its reply dated 01.05.2024 in this execution application is as under:-

“T. Indeed, even before this Hon'ble Tribunal, it was nobody's case that the 'Adjoining Area/Land' can only be used if the 'Tower Restaurant' was functional. Even the Applicant-Society never pleaded on those line, or to that effect. Moreover, as would be evident from the issues framed in the present matter for determination, no issue with regard to the restrictions to be imposed by this Hon'ble Tribunal for use of the 'Adjoining Area' by the respondent No.3, was framed.

U The Review Order dated 31-07-2017 is very clear that the Respondent No. 3 is permitted to utilise the land in terms of the licence granted by DDA, un-interrupted. Further, the intention of the Hon'ble Tribunal has been firmly expressed in para 25 that the Respondent no. 3 shall also run the Tower restaurant, so that it cannot be separated and the same person i.e., the respondent no. 3 shall pay all the necessary lease and license charges in accordance with the terms and conditions of lease and license to DDA.

V The allotment of the two Premises ('Tower Restaurant' and 'Adjoining Area'), though made under the same auction notice, but their user were independent of each other. The 'Adjoining Area' could be put to use right from the inception, whereas the 'Tower Restaurant' could only be used after obtaining requisite permissions and licenses from various agencies. Therefore, user of the two Premises ('Tower Restaurant' and 'Adjoining Area'), which is independent of each other, could not have been inter-linked.

W Such a stipulation, and/or restriction, being contrary to the commercial terms already agreed between the Parties (the respondent-DDA and the respondent No. 3), could not have been introduced/ added by this Hon'ble Tribunal. This was extensively submitted and argued before this Hon'ble Tribunal during hearing of the Review Application No.23 of 2015, and, therefore, the said stipulation was whittled down by this Hon'ble Tribunal in its Order dated 31.07.2017.

X Thus, the very basis and/or substratum of the present execution Application of the Applicant-Society, is completely missing and/or flawed. The present Application is, thus, factually misconceived and legally untenable. In the respectful submission

of the respondent No.3, it is a gross abuse of the process of law and this Hon'ble Tribunal.”

7. The submission of learned counsel for the respondent no. 3 is that in terms of the lease/license agreement and the modified order of the Tribunal in review, the respondent no. 3 is entitled to use the green area of 18500 sqm for commercial purposes and for organizing the events, marriage parties etc. without running the Tower Restaurant.

8. We have heard learned counsel for the parties and perused the records.

9. Tribunal while passing the final order dated 10.07.2015 in original application no. 60/2014 had found as under:-

“26. It is not in dispute that the Tower Restaurant and the adjacent area are forming part the District Park. While so, the statutory rules under the Delhi Development Act in the form of Master Plan 1962, 2001 and 2021 governs the field. As elicited above, the District Park can include within itself not only the restaurant but also recreational activities, however subject to certain restrictions contained in the Master Plan like the extent of the area etc. It is nobody's case that the restrictions of the Master Plan has been violated by the third respondent. In any event if such violations are effected it is the statutory duty of the second respondent either as a lessor or licensor to take appropriate action As long as the statutory nature of the Master Plan remains operative and unchallenged in an appropriate manner in the appropriate forum, it is not for this Tribunal to hold that the second respondent is either not entitled to lease or give on license either the Tower Restaurant or the surrounding areas. Moreover, there has been a specific finding that during these years, the third respondent has taken steps to make the green area by planting more trees. Therefore looking into any angle, we are unable to accept the contentions of the learned senior counsel for the applicant in this regard.

27. The third respondent, in addition to the use of Tower Restaurant and the land under it measuring 916.43 sqt. Mtrs, on 30 years lease basis, has also been permitted to use 13491.16sq. mtrs of green area around the Restaurant under a letter dated 18-12-1997 for holding marriages, parties etc., on an annual license fees as may be fixed by the DDA. The letter however states that the use of the land has to be maintained green and to be used by temporary tents for marriage etc., and that permanent structure shall not be put up. By an affidavit filed by the DDA it is stated that the license fees has been fixed as 31 lakhs per year to be enhanced at the rate of 20% every 3 years. A reading of the said letter which is the only document available

to show that the third respondent has been given license to use the large extent of green area around the Tower Restaurant which shows that there are no other specific terms and conditions of license. It is also relevant to note that the tender called for by the DDA itself relates to the Tower Restaurant at Asian Games Village Complex along with the green area. Therefore both the lease of Tower Restaurant and license of green area are inseparable and cannot be given individually to different persons. To be precise, the green area as per the tender notification was intended to be given on license only to the person who is a successful bidder as lessee of Tower Restaurant. Consequently it is clear that if the lessee fails to use the Tower Restaurant, he cannot independently use the green area for recreation. In the absence of any details regarding terms and conditions of license in the letter date 18-12-1997, no presumption can be drawn that other users of green area are precluded from using the same during the time when there are no marriages, parties etc., In other words the license granted to the third respondent does not by any term permanently preclude public from using the green area as lung space for walking and other purposes, of course whenever the marriage and other functions are not conducted by the third respondent. It is relevant to note that the order of the Appellate Tribunal MCD dated 3-02-2014 has also directed the DDA to completely demolish the enclosure the put up by the third respondent.

10. The Tribunal vide order dated 10.07.2015 had disposed of the original application no. 60/2014 by issuing the following directions:-

“31. Accordingly while partly allowing the application, we issue the following directions which are to be scrupulously followed by the second and third respondents apart from the SDMC and DPCC and ensure that proper and continuous compliance is carried out and take appropriate actions whenever there are violations and giving liberty to the applicant to move appropriate applications before the Tribunal.

- 1. The third respondent shall be entitled to use the green areas to the extent of 18500 sq mtrs around the Tower restaurant for marriages. parties, etc., not more that 10 days in a month and subject to the condition that it shall also run the Tower Restaurant and pay all necessary lease and license charges in accordance with the terms and conditions of lease and license to be executed.*
- 2. It will be open to the second respondent to execute the necessary license deed in favour of the third respondent regarding the use of 18500 sq mtrs of green area around Tower restaurant subject to the above conditions and other conditions as may be stipulated by it.*
- 3. The second respondent shall ensure that the third respondent complies with all the conditions of lease/license and take appropriate action on violation of the same.*

4. *The third respondent shall be responsible for the conduct of anyone permitted by it to use the green area for any recreational activities regarding the adherence of standards of noise level as prescribed by DPCC both during day and night hours. In the event of the limit being exceeded either by loud speakers or by use of crackers, the SDMC, DPCC and local police shall take immediate action including criminal prosecution. This direction is needed to protect the interest of senior citizens, children and unhealthy persons undergoing medical treatments, as right to life includes decent living with peaceful conditions guaranteed under the constitution of India and repeatedly insisted by the Hon'ble Supreme Court of India.*
5. *The third respondent shall not be permitted to put any permanent structures in the green area and even the temporary structures erected for recreation shall be removed immediately and while doing so ensure that no damages are caused to trees, green area or land in the surrounding area.*
6. *The second respondent shall permit public including the members of applicant association in the remaining 20/21 days to be used as lung space however with usual conditions as may be imposed by it as the policy.*
7. *The third respondent shall ensure that vehicular parking is regulated properly on the roads adjoining the green area and in the surrounding areas during the times of marriages and parties.*
8. *In the event of failure of the third respondent in ensuring any of the above conditions the second respondent shall take all appropriate legal actions in accordance with the terms of lease and license and in accordance with the law.*

With the above directions the application stands disposed of. There shall be no order as to cost.”

11. Against that order review application no. 23/2015 was filed by the respondents in the OA and the Tribunal by order dated 31.07.2017 had disposed of the review application by modifying the earlier order to the following effects:-

“24. As a result while confirming the findings of this Tribunal on various points recorded, we are of the opinion that the ban imposed by this Tribunal by the Judgment under review restricting the use of the land measuring 18500 sq. mtrs by the Respondent No. 3 for a limited period of 10 days in a month needs to be modified and we permit him to utilise the land in terms of the licence granted by DDA un-interrupted.”

12. The Tribunal in the original order dated 10.07.2015 passed in original application no. 60/2014 in paragraph 31(1) (2) had held that the third respondent will be entitled to use the green areas to the extent of 18500 sq mtrs around the Tower restaurant for marriages. parties, etc., not more than 10 days in a month and subject to the condition that it will also run the Tower Restaurant and pay all necessary lease and license charges in accordance with the terms and conditions of lease and license to be executed. The license deed was to be executed subject to above condition.

13. The above order clearly reflects that the respondent no. 3 was permitted to use the green area of 18500 sqm around the Tower Restaurant for marriage parties etc. subject to the condition that it will run the Tower Restaurant. By the review order, the use of the green area for a period of 10 days in a month restricted by original order was modified and PP was permitted to utilize the land in terms of the license granted by the DDA uninterrupted. Thus by review order only the rider of 10 days use was removed. The other part of the direction that PP will use the green area of 18500 sqm only if he runs the Tower Restaurant, was not modified. It is very clear from the review order dated 31.12.2017 passed in RA 23/2015 by which the earlier order was modified to the following effect:-

“24. As a result while confirming the findings of this Tribunal on various points recorded, we are of the opinion that the ban imposed by this Tribunal by the Judgment under review restricting the use of the land measuring 18500 sq. mtrs by the Respondent No. 3 for a limited period of 10 days in a month needs to be modified and we permit him to utilize the land in terms of the license granted by DDA un-interrupted.”

14. The applicant had earlier filed EA 23/2019 which was disposed of by the Tribunal vide order dated 12.04.2023 by directing as under:-

*“.....
In view of the above, we dispose of the Execution Application by directing DDA to verify the factual position and ensure that conditions*

for use of green area i.e. running of the tower restaurant are duly observed.”

15. The counsel for the respondent no. 3 referring to the license deed dated 08.08.2018 executed between the DDA and the respondent no. 3 has submitted that in that license deed there is no condition that respondent no. 3 will use the green area of 18500 sqm subject to the condition of running the restaurant. Such a plea cannot be accepted as in para 31(2) of the original order dated 10.07.2015, the Tribunal had directed that the DDA to execute the necessary license deed in favour of the respondent no. 3 regarding the use of 18500 sqm of green area around Tower Restaurant subject to the condition no. 31(1) which require the use of green area around the Tower Restaurant for marriage parties etc. on the condition of running the Tower Restaurant. The lease deed has been executed subsequently, therefore, the said condition which was modified subsequently by the order dated 31.07.2017 in RA was required to be incorporated in the lease deed. Hence, non-compliance of the order of the Tribunal and non-incorporation of such a condition in the lease deed does not give any right to the respondent no. 3 to use 18500 sqm green area without running the Tower Restaurant.

16. It is undisputed before the Tribunal that the respondent no. 3 is using the green area of 18500 sqm at the Siri Fort Sports Complex for marriage parties etc. without running the Tower Restaurant and he has acted in contravention of order of the Tribunal dated 10.07.2015 passed in original application no. 60/2014 as modified by the order dated 31.07.2017 in Review application no. 23/2015. Therefore, the respondents are required to take immediate action to ensure that the respondent no. 3 uses the green area of 18500 sqm strictly in terms of the order of the Tribunal. The respondent no. 3 has violated the order of the Tribunal and

has use the green area of 18500 sqm unauthorizedly, therefore, for past violation Environmental Compensation (EC) is also required to be imposed.

17. Hence, we direct the Member Secretary, Delhi Pollution Control Committee (DPCC) to ensure that the EC is imposed upon the respondent no. 3 for the past violation by duly complying with the principles of natural justice within a period of three months and submit action taken report before this Tribunal.

18. EA is accordingly disposed of.

19. A copy of this order be forwarded to the Member Secretary, DPCC by e-mail for compliance.

Prakash Shrivastava, CP

Sudhir Agarwal, JM

Dr. Afroz Ahmad, EM

May 24, 2024
EA No. 50/2023 in OA 60/2014
AVT