

7(SB)

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

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

PROF DR SANJEEV BAGAI & ORS.

..... Petitioners

Through: Mr. Vivek Sibal, Sr. Advocate with
Ms. Anu Monga, Mr. Rahul Goel, Mr.
Shobhit Sharma and Mr. Paritosh
Dhawan, Advocates.
Mr Aditya N. Prasad, Advocate
(*Amicus Curiae*)

versus

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

Through: Mr Anupam Srivastava, ASC,
GNCTD/R-1,3 & 5 with Mr Vasuh
Misra, Advocate.
Mr Shadan Farasat, ASC,
GNCTD/Forest Department.
Ms Kritika Gupta, Advocate for DDA
(M:8826331177).
Mr Divya Prakash Pande, SC for
MCD.
Ms Sakshi Popli, Advocate for
DPCC.
Ms Ekta Mehta and Ms Akanksha
Agrawal, Advocate for R-18 in 7.
Ms. Kritika Gupta, Advocate for
DDA.

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

ORDER

% **10.05.2023**

The hearing has been conducted through hybrid mode (physical and

virtual hearing).

1. Apropos the court's directions in orders dated 11.04.2023 and 25.04.2023 to the Department of Forests ('DoF'), GNCTD, the latter has not responded to the issues apropos prudence and the validity of the Guidelines issued by it regarding pruning/cutting of trees in Delhi. The learned ASC, GNCTD, says that he is yet to receive complete instructions in this regard.
2. Be that as it may, over two months have gone by and the Tree Authority seems unmoved by the court's order. The guidelines provide, *inter alia*, as under:

9. If **Individuals/ General Public/ Society /RWAs** is desirous that any tree inside his house/premises is posing problems to him or the public and needs to be felled or pruned/ head backed, then he may apply for the same in 'Form B' along with photographs and number of tree/ trees in question to the DCF/ Tree Officer of his area for the permission. After inspection, the permission or otherwise is communicated to him/ her within 60 days as per merit of the case.

10. If the tree/trees for which felling or pruning/ head backing is required is standing on **Govt. land/ roads/ Parks/ govt. property in front of the house/ shop/ private property of an individual** and is posing problem to him, he has to apply for felling or pruning/ head backing of such tree on a simple piece of paper to the Deputy Director (Horti.) of the MCD/ NDMC/ DDA/ PWD/ CPWD (whoever is the land owning agency) with photographs of such tree/ trees.

11. It should neither be applied directly to concerned DCF nor Form B submitted directly which has to be filled and signed by the concerned Dy. Director (Horti) of the land owning agency. After inspection, the permission or otherwise is communicated within 60 days of receipt of such completed application/ Form B to the concerned Dy. Director (Horti), as per merit of the case.

3. With each redevelopment of a house or building, abutting city streets, if applications are moved by the land-owning agency such as the PWD, DDA, Municipal Corporation of Delhi, Cantonment Board, etc. for cutting of trees in front of private houses, in order to facilitate construction of new building/houses, and permission to cut the trees is granted simply on the averment that the trees were coming in the way of reconstruction, then sooner or later the city will be bereft of tree-lined avenues and a large part of its green cover. In a way this would be a creeping legalised genocide of trees and Delhi would soon resemble nothing but a mass of concrete. Paragraphs 9 and 10 of the aforesaid guidelines are *ex facie* incongruent with the provisions of the Delhi Preservation of Trees Act, 1994. In case there is an exigency for cutting down trees for large public projects or if it is absolutely necessary to cut down trees on a private entity's application, it will require the Tree Officer to personally inspect the site, assess the situation, apply his mind and if required, permit the cutting of a tree but only after having first exhausted all possibility of saving the tree and ensuring its transplantation, along with compensatory afforestation.
4. Guidelines are only a handbook, a course of action, process, practice for the authorities and the people to comply with the law. Sections 8 and 9 of the Delhi Preservation of Trees Act, 1994 govern pruning of trees. They read as under:

“8. Restrictions on felling and removal of trees.-

Notwithstanding anything contained in any other law for the time being in force or in any custom or usage or contract and except as provided in this Act or the rules made thereunder, no person shall fell or remove or dispose of any tree or forest

produce in any land, whether in his ownership or occupancy or otherwise, except with the previous permission of the Tree Officer:

Provided that if the tree is not immediately felled, there would be grave danger to life or property or traffic, the owner of the land may take immediate action to fell such tree and report the fact to the Tree Officer within twenty-four hours of such felling.

9. Procedure for obtaining permission to fell, cut, remove or dispose of, a tree.-

(1) Any person desiring to fell or remove or otherwise dispose of, by any means, a tree, shall make an application to the concerned Tree Officer for permission and such application shall be accompanied by attested copies of such documents as may be prescribed in support of ownership over the land, (the number and kind of trees to be cut, their girth measure at a height of 1.85 metres from ground level and the reasons therefor, copy of sajra showing clearly the site and khasra numbers of the property.

(2) On receipt of the application, the Tree Officer may, after inspecting the tree and holding such enquiry as he may deem necessary, either grant permission in whole or in part or for reasons to be recorded in writing, refuse permission: Provided that such permission may not be refused if the tree-

(i) is dead, diseased or wind fallen; or

(ii) is silviculturally mature, provided it does not occur on a steep slop; or

(iii) constitutes a danger to life or property; or

(iv) constitutes obstruction to traffic; or

(v) is substantially damaged or destroyed by fire, lightening, rain or other natural causes; or

(vi) is required in rural areas to be cut with a view to appropriating the wood or leaves thereof, or any part thereof for bone fide use for fuel, fodder, agricultural implements or other domestic use.

(3) *The Tree Officer shall give his decision within sixty days from the date of receipt of the application: Provided that no permission shall be granted to any person from the same area on more than two occasions during the same year subject to a maximum area of one hectare at a time.*

(4) *If the Tree Officer fails to communicate his permission on request within the period specified under sub-section (3), the permission referred to in section 8, shall be deemed to have been granted.*

(5) *Every permission granted under this Act shall be in such form and subject to such conditions, including taking of security for ensuring regeneration of the area and replanting of trees or otherwise, as may be prescribed.”*

5. Therefore the guidelines cannot dilute the strict mandate of the statute.

The aforesaid clause 5 of the guidelines reads as under:-

5. For the purpose of clarity and transparency to the meaning of light and heavy pruning, following would constitute as above:

Term	Branches of girth size	Permission required or not	Remarks
Regular Pruning/ General Tending	Upto 15.7 cm.	No	May be got done by Civic Agencies at regular intervals
Light Pruning	Greater than 15.7 cm but less than and equal to 40 cm.	Required	From concerned Tree Officer on submission of prescribed Form B and other documents as prescribed in DPTA, 1994.
Heavy Pruning	Greater than 40 cm	Required	

6. On 11.04.2023, the following order was passed:

1. *The learned counsel for DDA refers to the compliance affidavit apropos the extensive work undertaken by them towards restoration of its park and for creation of a dense green area within the residential colony for the benefit of the residents and the city as a whole. The photographs are reproduced hereunder:*

BEFORE



AFTER



WORK OF PLANTATION IN PROGRESS ON 28-03-2023





2. *She further submits that extensive digging-up was done to facilitate the Tree Officer in finding out the number of fully grown trees which were cut from the ground level and have been covered up with mud to hide the damage caused to the environment. She also submits that DDA is alive to its duty of creating and maintaining the said park and a protective fence of barbed wire up to a height of 5 ft will be erected around the park. Let the same be done and a Status Report be filed after 6 months.*
3. *The DCF(West) has inspected the site and an affidavit has been filed to the effect that he surveyed the colony and found that the damage to the environment has been caused as under:*

S.No.	Block	Total Trees as per MCD	Felled	Pruned	Pruned more than 15.71 cms
1.	A	1005	08	209	29

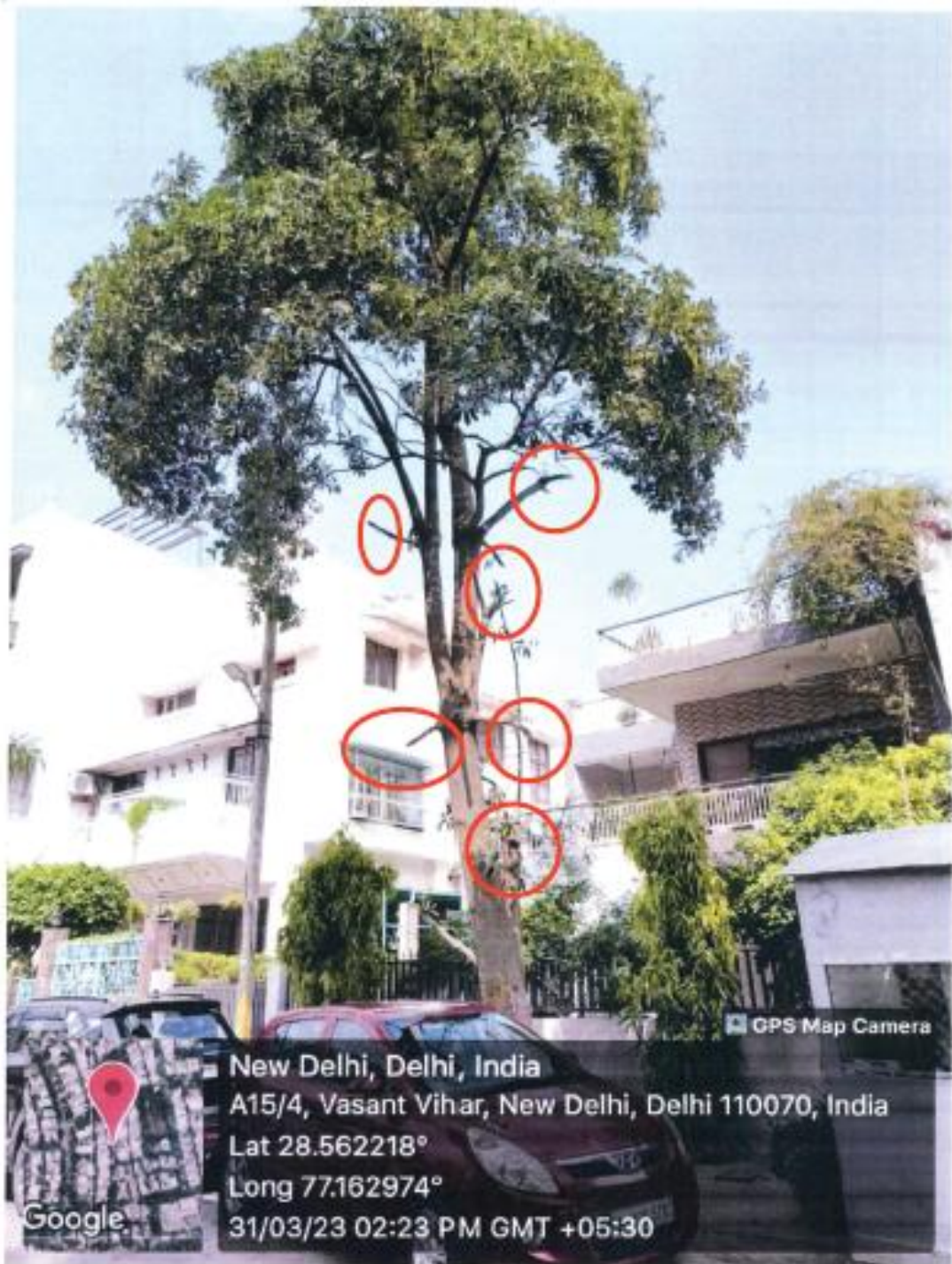
2.	<i>B</i>	598	09	09	06
3.	<i>C</i>	430	0	0	0
4.	<i>D</i>	599	01	181	61
5.	<i>E</i>	787	0	0	0
6.	<i>F</i>	490	0	69	27
Total		3909	18	468	123

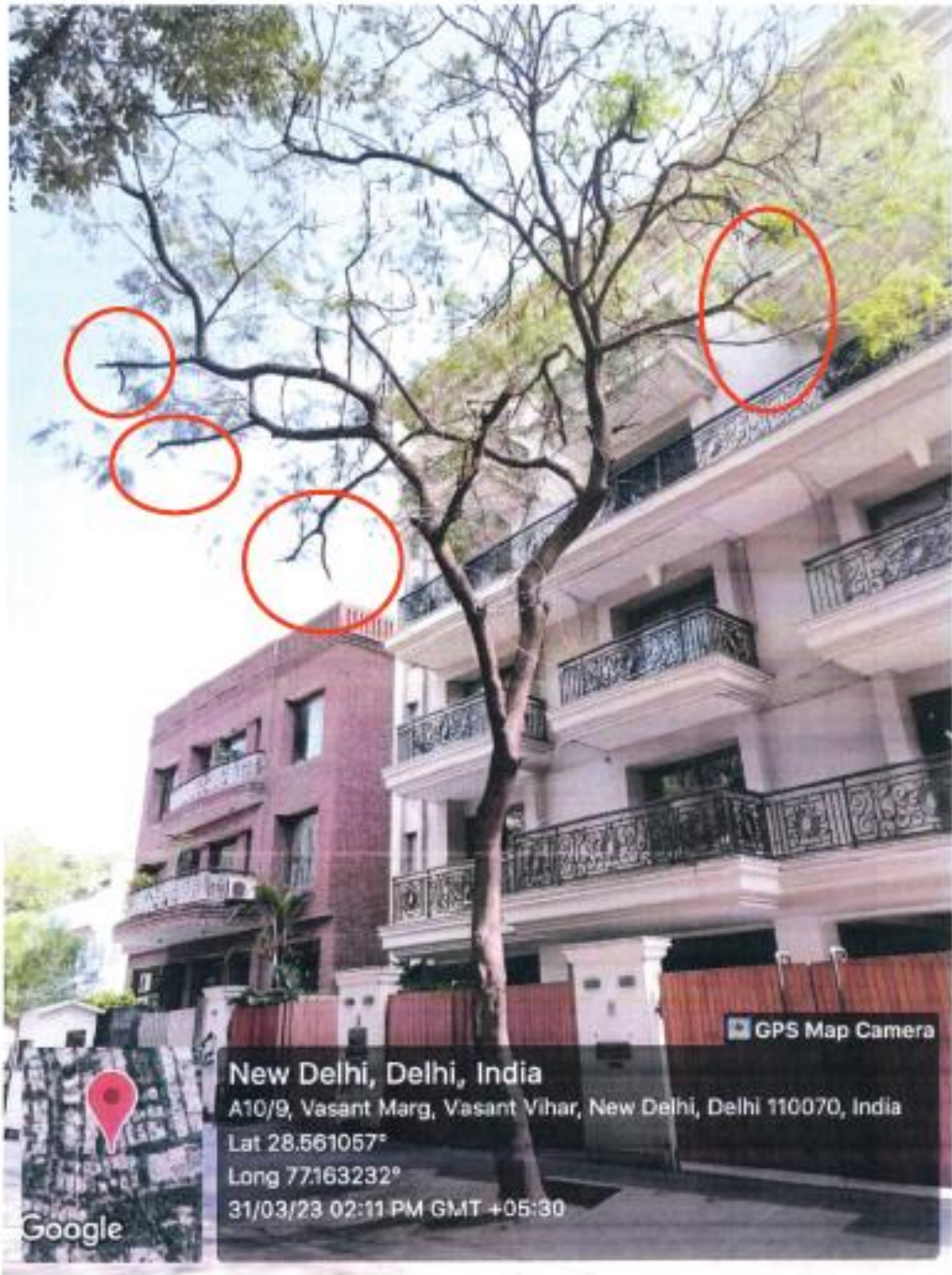
4. *In effect, branches of 123 trees have been pruned beyond the permissible limits of 15.71 cms as per the guidelines and 18 trees have been felled without any reason. Otherwise in all 468 trees have been pruned. Indeed, the Tree Officer says that the pruning and felling continued even after the notice dated 24.03.2023 was issued by him to the President, Vasant Vihar Welfare Association, Deputy Director Horticulture MCD, President of Vasant Vihar Club House, Petitioner No.1 and Forester, West Forest Division. In order to get a sense of the extensive damage caused to the environment which has laid bare, the otherwise green cover, which was to the benefit of all residents and visitors to the residential colony, some photographs are reproduced hereunder:*













New Delhi, Delhi, India
A-13/1, Block A, Vasant Vihar, New Delhi, Delhi 110057, India
Lat 28.564349°
Long 77.163477°
31/03/23 02:41 PM GMT +05:30

5. *The DCF says that requisite statutory proceedings are underway. Let the same be completed within a period of two months from today. The next date of hearing before the DCF is tomorrow i.e. 12.04.2023. The learned counsel for the parties submit that they will assist the DCF in every way possible to have the matter disposed-off and reach a final conclusion at the earliest. Let the proceedings be completed and brought to a logical end.*
6. *Mr. Vivek Sibal, the learned Senior Advocate for the petitioners submit that the guidelines are in contravention of the statute itself because insofar as the tree is protected under section 2(i) read with 2(h) of the Delhi Preservation Of Trees Act, 1994 ('Act'), Act no cutting or pruning will be permitted unless each tree is examined and a reason is given for the pruning. The procedure for obtaining permission, in this regard, has been detailed in section 9 of the Act which reads as under:*

“9. Procedure for obtaining permission to fell, cut, remove or dispose of, a tree:-

(1) Any person desiring to fell or remove or otherwise dispose of, by any means, a tree, shall make an application to the concerned Tree Officer for permission and such application shall be accompanied by attested copies of such documents as may be prescribed in support of ownership over the land, the number and kind of trees to be cut, their girth measure at a height of 1.85 metres from ground level and the reasons therefore, copy of sajra showing clearly the site and khasra numbers of the property.

(2) On receipt of the application, the Tree Officer may, after inspecting the tree and holding such enquiry as he may deem necessary, either grant permission in whole or in part or for reasons to be recorded in writing, refuse permission:

Provided that such permission may not be refused if the tree-

(i) is dead, diseased or wind fallen; or

(ii) is silviculturally mature, provided it does not occur on a steep slop; or

(iii) constitutes a danger to life or property; or

*(iv) constitutes obstruction to traffic; or
(v) is substantially damaged or destroyed by fire, lightning, rain or other natural causes; or
(vi) is required in rural areas to be cut with a view to appropriating the wood or leaves thereof, or any part thereof for bone fide use for fuel, fodder, agricultural implements or other domestic use.*

(3) The Tree Officer shall give his decision within sixty days from the date of receipt of the application:

Provided that no permission shall be granted to any person from the same area on more than two occasions during the same year subject to a maximum area of one hectare at a time.

(4) If the Tree Officer fails to communicate his permission on request within the period specified under sub-section (3), the permission referred to in section 8, shall be deemed to have been granted.

(5) Every permission granted under this Act shall be in such form and subject to such conditions, including taking of security for ensuring regeneration of the area and replanting of trees or otherwise, as may be prescribed.”

- 7. Prima-facie the court is of the view that the rationale of applying the circumference of a tree to that of a branch is misapplication of law... Therefore, damage cannot be permitted to a tree except in terms of section 9 of the Act. Such extension of the definition of a tree to its branches is unjustified.*
- 8. The issues raised in this petition concern the validity of the guidelines issued by the Forest Department. Mr. Shadan Farasat, the learned ASC for GNCTD seeks and is granted 10 working days to file a response to the same..”*
- 9. Since no further orders are required to be passed apropos DDA in this regard, Ms. Kritika Gupta, the learned counsel for DDA is appointed as the Court Commissioner to ensure the upkeep of the area for the next three years.”*

10. On 25.04.2023, *inter alia*, the following order was passed:

“...

2. *The petitioners draw the court’s attention to the order dated 23.03.2023, which has observed as under:*

“...3. *All proceedings relating to statutory rights, liabilities and obligations would be expected to be conducted in a procedure that is ex-facie fair and transparent. However, as is noticed in the present case and the learned counsel for the petitioner refers to other cases as well, that ordinarily when a complaint is made about damage to or felling of a tree, the complainant is hardly ever notified or intimated apropos the progress/result of the proceedings, if any initiated in relation thereto. There can be no dispute that a complainant would be required to be heard apropos complaint made or otherwise be kept informed throughout the proceedings. The Counter-affidavit dated 20.02.2023 of the GNCTD reads as under:*

“....

4) *It is submitted that in connection to Prayer Clause (b) of the Writ Petition (C) 12271/2022, only the Government of NCT of Delhi is empowered to issue the guidelines/directions which are to be issued under the provisions of section 33 of the Delhi Preservation of Trees Act, 1994.*

5) *It is submitted that in compliance of the directions passed by the Hon’ble Court, the Department is formulating a standard operating procedure for the approval of the Govt. of NCT of Delhi for effective adjudication of registered tree offence in accordance with mandate laid down under the Delhi Preservation Tree Act, 1994.*

6) *It is submitted that the SOP shall include (a) the ‘Cognizance Phase’ for elucidating the manner in which offences are to be received for effective adjudication of complaints (b) the ‘Trial Phase’ for*

conducting examination/cross-examination of evidences, reports, submissions of the parties and (c) the 'Judgement Phase' for pronouncement of orders and appeals thereto u/s 14 of the DPTA, 1994.

7) It is submitted that the SOP shall be issued within one month after seeking approval of Govt. of NCT of Delhi."

3.The petitioners state that pruning of trees is not in terms of the guidelines. Therefore, it would be expected that the DCFs and the Tree Officers shall observe due caution in granting fresh permission for pruning of trees, while relying upon the extant guidelines. Mr Shadan Farasat, the learned ASC, GNCTD/Forest Department seeks and is granted a week's time to obtain instructions and to bring the relevant documents on record."

11.In view of the preceding discussion, Clause 5 which permits the regular pruning tending of branches of girth size upto 15.7cms without reference to the Tree Officer, does not find any approval in the Act. *Prima facie* this part of the Guidelines is incongruous with the statutory requirements, as mandated in sections 8 and 9 of the Delhi Preservation of Trees Act, 1994.

12.Therefore, to ensure that there is no felling of trees for the asking or of chopping of large branches of trees at will to reduce them to a mere pole-like entity (as noted in the photograph at page 15 supra), clause 5 of the Guidelines shall not be given effect to till the next date. It is hoped that the Tree Authority will respond to the notice by then.

13.Renotify on 24.05.2023.

NAJMI WAZIRI, J

MAY 10, 2023/rd