

\$~10

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

+ W.P.(C) 10430/2015 & CM No. 26160/2015

**SHRUTI CO-OPERATIVE GROUP HOUSING
SOCIETY**

..... Petitioner

Through: Mr G. S. Chaturvedi and Mr R.
Madhav Bera, Advocates.

versus

GOVT. OF NCT OF DELHI & ANR

..... Respondents

Through: Mr Siddhartha Shankar Ray,
Advocate for R-1 & 2.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

%

06.11.2017

VIBHU BAKHRU, J

1. The petitioner – a Group Housing Society – has filed the present petition, *inter alia*, impugning an order dated 27.03.2012 (hereafter ‘the impugned order’) passed by the Deputy Conservator of the Forests, Government of NCT of Delhi acting as a ‘Tree Officer’ under the Delhi Preservation of Trees Act, 1994 (hereafter ‘the Act’) whereby a compounding fee of ₹4,50,000/- has been imposed on the petitioner society for illegal felling of trees. The petitioner also impugns a notice dated 30.09.2015 issued for recovery of the aforesaid compounding fee with interest as an arrears of land revenue.

2. Briefly stated, the relevant facts necessary to address the controversy

are as under:-

2.1 A complaint was made by one Mr A. P. Sharma, resident of the Shruti Apartment, Dwarka, New Delhi-110075 alleging illegal cutting of trees at the group housing complex constructed on Plot No.22, Sector-7, Dwarka, New Delhi-110075. It was alleged that trees were illegally felled by the *mali* (one Shri Ram Kishore) of the petitioner society under the direction of Shri H. M. Singh, the then President of the society.

2.2 The impugned order dated 27.03.2012 indicates that an inspection of the site was carried out by the forest guards and they had reported illegal cutting/pruning of trees as indicated below:-

S. No.	Particulars
1	32 Ashoka Trees around perepheri of the society pruned illegally at 15' height.
2	One neem tree felled illegally at the height of 34 cm.
3	One siras tree fully felled illegally.
4	One bigonia tree head back illegally (now dead).
5	Two rubber tree pruned illegally at the height of 12 feet.
6	One neem tree pruned illegally.
7	One Anar tree pruned illegally.

2.3 The allegations made in the complaint were denied by the petitioner through its office bearers. It was specifically denied that any of the trees had been cut. Notwithstanding such denial, the Tree Officer was convinced that the offence complained of had been committed and, accordingly, passed the impugned order imposing an aggregate compounding fee of ₹4,50,000/-. The breakup of of the compounding fee levied is as under:-

Sl.No.	Particulars	Penalty Imposed	Remarks
1	32 Ashoka Trees around periphery of the society Pruned illegally of 15' height	(32x10,000)- Rs.3,20,000/-	A compounding fee of Rs.10,000/- per tree
2	One neem tree felled of the height of 34 cm.	(01x30,000)- Rs.30,000/-	(Rs.10,000/- compounding charges Rs.10,000 value of timber and Rs.10,000/- as loss to Environment).
3	One siras free fully felled illegally	(02x30,000)- Rs.30,000/-	-do-
4	One Bigonia tree head back (now dead)	(01x30,000)- Rs.30,000/-	-do-
5	Two rubber tree pruned illegally at the height of 12 feet.	(02x10,000)- Rs.20,000/-	A compounding fee of Rs.10,000/- each tree.
6	One neem tree pruned illegally.	(01x10,000)- Rs.10,000/-	-do-
7	One Anar tree pruned illegally.	(01x10,000)- Rs.10,000/-	-do-
	TOTAL	Rs.4,50,000/-	

3. Learned counsel for the petitioner has assailed the impugned order essentially on two fronts. First, he states that the petitioner had not made any application to compound the alleged offence, since it is not admitted that any offence was committed. He points out that the impugned order also records that the allegations made in the complaint were disputed and denied.

4. Second, he submits that the definition of the expression “to fell a tree”

as defined under Section 2(h) of the Delhi Preservation of Trees Act, 1994 does not include pruning a tree. He submits that the principal allegation that 32 Ashoka trees around the society had been pruned at a height of 15' ft. is disputed; however, even if it is accepted that the said trees were pruned, the same would not constitute an offence under the Delhi Preservation of Trees Act, 1994. He also referred to a circular dated 26.08.2016 issued by the Department of Forest and Wildlife, Government of National Capital Territory of Delhi clarifying that pruning of trees, which do not cause damage or death of a tree, could not be termed as a Tree Offence.

5. He also submitted that the allegations that one *Anar* tree and two Rubber trees had been pruned illegally is also incorrect but even if it is accepted, it would not constitute an offence as there is no allegation that any permanent damage had been caused to the trees in question. He submitted that it is well accepted that pruning of trees is healthy for the plants. He contended that the allegation that one *siras* tree and one *neem* tree had been cut is also bereft of any particulars since neither girth nor the height of the trees has been specified.

6. The learned counsel for the respondent argued that the petitioner's contention that it had not applied for compounding was not established by the petitioner, as no such application has been filed on record. Plainly, the said contention is bereft of any merit. The petitioner had made an unequivocal statement in his petition that no request for compounding of any offence was made. Despite sufficient notice, the respondent has not produced any material to indicate that any such request had been made by the petitioner. It is difficult to understand as to how the petitioner can prove

the negative by producing an application, which it asserts was never made.

7. The respondent has also not produced any details of the trees or any material to substantiate that any offence had taken place. It is noticed that the present petition was moved on 05.11.2015 and the learned counsel for the respondent had accepted notice on the said date. However, no response to the petition was filed. On 27.09.2016, learned counsel for the respondent prayed for further time to file counter affidavit and on such request, four weeks were granted to the respondent to do so. On 21.04.2017, learned counsel for the respondent requested for further time to file the counter affidavit yet again. This too was acceded to and further time of four weeks was granted to the respondent to do so. It is thus seen that the respondent had sufficient opportunity to controvert the allegations made in the petition. However, despite the same, the respondent has not filed any affidavit or any material to controvert the averments made in the petition and thus the same remain uncontroverted.

8. The contention that the impugned order does not reflect any material to establish the offence in respect of the trees that had been pruned, is persuasive. The expression “to fell a tree” is defined under Section 2(h) of the Delhi Preservation of Trees Act, 1994, which reads as under:-

“2. (h) “to fell a tree” with its cognate expression, means severing the trunk from the roots, uprooting the tree and includes bulldozing, cutting, girdling, lopping, pollarding, applying arboricides, burning or damaging a tree in any other manner,”

9. It is seen that the above definition is in wide terms. However, merely pruning certain branches of a tree - which is a normal gardening practice -

that does not damage the tree in any manner cannot possibly be considered as an offence of felling a tree.

10. It is also relevant to refer to the circular dated 26.08.2016, the relevant extract of which is set out below:

“2. The Sec. 2 (h) of DPTA, 1994 states that “to fell a tree” with its cognate expression, means severing the trunk from the roots, uprooting the tree and includes bulldozing, cutting, girdling, lopping, pollarding, applying arboricides, burning or damaging a tree in any other manner as factors causing the death of a tree. Thus it would be apparent that its implied meaning does not appear to carry any implicit connotation that pruning of trees which do not cause damage or death of a tree could be termed as a Tree Offence.”

11. The impugned order does not indicate that the trees alleged to have been pruned had been permanently damaged. The allegation that two other trees, namely, neem tree allegedly felled at the height of 34 cm and the bigonia tree felled illegally, is also bereft of relevant particulars. Clearly, the petitioner cannot be penalized or prosecuted for any offence that is not clearly established.

12. In view of the statement that no application for compounding had been made by the petitioner, the question of recovering any compounding fees does not arise. As far as the impugned order dated 27.03.2012 is concerned, it is noticed that the Tree Officer has unequivocally stated that if the compounding fee is not paid then prosecution would be initiated. Since, it is petitioner's unequivocal stand that it had neither applied nor willing to pay compounding fee, the only recourse available to the Tree Officer would be to initiate appropriate proceedings and establish that an offence had been

committed (which is stoutly disputed by the petitioner).

13. Needless to mention that in the event the respondents seek to initiate any proceedings in respect to the said alleged offence the respondents shall have to produce relevant material to establish commission of the offence. Needless to state that as and when such material is produced the petitioner would have full opportunity to controvert the same as per law.

14. In view of the above, the petition is allowed. Since the petitioner had not made any application for compounding of the offence, the levy of compounding fee is unsustainable. The impugned order dated 27.03.2012 is set aside. The notice dated 30.09.2015 is also unsustainable and is, accordingly, quashed.

15. The parties are left to bear their own costs.

NOVEMBER 06, 2017
MK

VIBHU BAKHRU, J