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

+ **W.P.(C) 827/2015 & CM No. 1448/2015**

BINDU KAPUREA & ORS. Petitioners
Through: Mr Aagney Sail, Adv.

versus

GOVERNMENT OF NCT OF DELHI & ORS. Respondents
Through: Mr Raman Duggal, Standing Counsel
with Mr Sudhir Kumar, Adv. for R-1.
Mr Sanjeev Sabharwal, Adv. for DDA.
Ms Sunita Narain, Amicus Curiae.

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

ORDER

25.05.2015

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1. The petitioners had approached this court, essentially, to ventilate their grievance with regard to the decision taken by respondent no. 1 and 2 to cut down 810 trees for facilitating their road widening project undertaken on the Mehrauli- Mahipalpur Road. The widening of the road is a project which has its starting point located at Andheria Modh and is supposed to terminate at the traffic light located at Fortis Hospital.

2. The petitioners, who are residents of Vasant Kunj, assailed the decision taken in this behalf by respondent no.1 and 2.

2.1 Primarily, the case which was set up by the petitioners before me, was that, respondent no.3 i.e. UTTIPEC, as per its own approved plan, had in the first instance, taken a decision that the road widening project would require felling of 226 trees, and this decision underwent a dramatic change as, thereafter, a view was firmed up to cut-down 810 trees.

2.2 Based on this plea, I had issued notice in the writ petition on

28.01.2015 and directed status quo to be maintained vis-à-vis felling of trees by the respondents.

2.3 Since, the matter required some amount of domain expertise, vide order dated 11.03.2015, I appointed Ms Sunita Narain, an environmentalist, who is associated with Centre for Science, to act as an amicus curiae. Thereafter several hearings were held in the matter and directions were issued by me, from time to time, so that a composite report could be prepared, which reflect the consensus of all those who are concerned and/or could possibly get impacted by the issue raised in the present writ petition.

2.4 Ms Narain, to achieve this end, convened several meetings which were attended to, by not only the representatives of the petitioner, but also, by the officials of respondent no.2/ PWD, UTTIPEC and the Forest Department. The consensus which has emerged, and which largely forms part of the final report dated 13.05.2015, submitted by Ms Narain, is as follows:

- (i) 167 trees, on the 6.4 metre (mtr) footpath, ***will not be cut***. PWD will, however, ensure that the footpath is, appropriately, made so that pedestrians face no difficulty in using the same
- (ii) 43 trees in the 3 mtr median ***will not be cut***.
- (iii) 309 trees, which fall in the 7 mtr, fourth (4th) bus lane, ***will not be cut*** for the present. In case fourth (4th) bus lane is required to be constructed, PWD will seek fresh permission for cutting the said trees. The UTTIPEC in its plan, I am told, for this stretch of road has indicated that the fourth (4th) bus lane/ BRT space, will be used as Multi-Utility Zone (MUZ) till it is actually constructed.
- (iv) 113 trees, on the 6 mtr cycle track ***will be cut***. PWD, will attempt to minimize the number of trees which are required to be cut without

compromising safety and accessibility.

(v) 189 trees on the three (3) lane carriage way, falling on either side, ***will be cut*** so as to ensure safety of those who commute on the carriage way.

(vi) For the present 832 trees, which stand on the 27 mtr MUZ and shared street, ***will not be cut***. The area will be converted into a green buffer zone. Provision will be made for common services, such as, electricity etc. This area will be maintained as a green buffer zone to enable liveable conditions to sustain, for the nearby residents, and also help, in protecting them from dust, pollution and noise. As and when shared street is required for vehicular movement by PWD, the 446 trees standing thereon may be cut subject to PWD seeking the requisite permissions under the Delhi Preservation of Trees Act, 1994 (in short the Trees Act). PWD will, however, make this request only if, changed circumstances require the shared street to be used for vehicular movement.

(vii) PWD, as a measure of compensatory afforestation, will plant 644 trees on the same stretch of the road, in the area, which is demarcated as green buffer zone.

(viii) PWD, in consultation with the authorities dealing with traffic, will endeavour to install, if necessary, additional traffic lights, and also, Foot-Over Bridges (FOBs) to ensure safety and convenience of those persons, who would move around on foot.

(ix) Since, there is a bottleneck at the point, at which, Merhraul-Mahipalpur road meets, the Mehrauli-Gurgaon stretch, because of delay, in the acquisition of land, in the interregnum, PWD will take measures which will do away with inconvenience caused to pedestrians, and those, who use public transport, such as, the metro rail.

(x) PWD, will construct the road as per the plan approved by UTTIPEC.

(xi) PWD, will also provide a footpath, having a minimum width of 1.5 mtr. In the interregnum, a temporary bus shelter will also be built. The carriageway will be 7 mtr wide, which situation will obtain till further land is acquired.

(xii) PWD, will place in public domain the composite road project plan. The said plan would, inter alia, provide details of trees that have to be cut, the provision made for pedestrian crossings including exit and entry points for residential sectors and other services which PWD would provide. The plan would also indicate the particulars of the person and the office which would be involved in the execution of the project. The said plan will also be uploaded on PWD's website for the benefit of general public.

(xiii) PWD will also upload on its website the details of its compensatory afforestation plan. A copy of the same will also be made available at the PWD project office.

(xiv) PWD, will ensure that the green buffer zone, which is adverted to above, will be maintained. Every endeavour will be made to ensure that it does not turn into a dumping ground for garbage. Steps will also be taken to prevent encroachment. In this behalf, PWD will collaborate with the Residents Welfare Association and Traders Association. The green buffer zone will be fenced with suitable entry and exit points.

3. I am informed that if the aforementioned directions are complied with, 298 trees will be saved, out of a total of 810 trees. Accordingly, the respondents are directed to adhere to the directions contained in para 2.4 (i) to 2.4 (xiv) above.

4. Apart from the above, what came to light, was that, more often than not, the difficulties which arose in the present matter, could have been avoided had the relevant authorities been brought on board at the appropriate

stage. Experience has shown that governmental authorities, which are tasked with executing infrastructural projects, approach the Forest Department under the Trees Act only after tenders have been issued and plans have been approved by UTTIPEC. Though personnel of the Forest Departments are inducted as members of the committees formed by UTTIPEC, their input at that stage is inadequate as they do not have with them the necessary information as regards the number of trees that are to be felled if, a project is to be implemented. As a matter of fact, delays are caused in obtaining relevant approval under the Trees Act and, more often than not, legal entanglements arise on this account. This causes prejudice to all stake holders, which include, inhabitants, bidders, public authorities etc.

5. Accordingly, in so far as future projects are concerned, once again, with the help of the amicus curiae, respondents have agreed to the following:

(i) UTTIPEC will obtain from the PWD and other road owning agencies, in the very first instance, a composite plan which will include details of number of standing trees which obtain in the project area, and those, which are required to be cut-down. The information obtained by UTTIPEC should be provided to the Forest Department, as well. The Forest Department should participate in the proceedings at the project approval stage, so that, requisite inputs are obtained at that stage itself, and if, necessary, necessary modifications are incorporated in the plan so that least amount of damage is caused to the trees.

(ii) A formal application should be made under the Trees Act by PWD, and other road owning agencies, after a modified plan with requisite input of Forest Department in place.

(iii) The permission for cutting the trees would be given by the Deputy Conservator of Forest, who is the authorized tree officer.

- (iv) The Forest Department should prepare a quarterly report detailing out the particulars of permission given in the city for felling of trees. This report should be placed in public domain by having it uploaded on its website.
- (v) The Forest Department should monitor and ensure compensatory afforestation and in that behalf prepare an annual report of compliance. The report should also include details of instances, where security deposit, given for felling of trees, is forfeited. This report should also be placed in public domain by having it uploaded on its website.
- (vi) In order to ensure, that in future road projects requisite provision is made for path ways and cycle tracks, PWD and other road owning agencies, would implement and execute the work envisaged in the UTTIPEC approved plans by adopting *end-to-middle* principle as against middle-to-end principle in the execution of its projects.
- (vii) Post the execution of the project, UTTIPEC should carry out a compliance audit so as to ensure that the execution is in line with the approved plan/ drawings. The compliance report of the project should also be placed in the public domain by having it uploaded on the website of UTTIPEC as well as the road owning agency.

6. The aforesaid directions contained in paragraph 5(i) to 5(vii) will be complied with by the respondents and other road owning agencies qua their future projects.

6.1 Needless to say, the official respondents, in particular the PWD, would be entitled to apply for suitable adjustments in respect of 298 trees which would be saved as regards obligations undertaken by them for compensatory afforestation and monies deposited with the relevant authorities.

7. No further directions are called for. Writ petition and the pending

application are disposed of in accordance with the directions contained hereinabove. Accordingly, the interim order stands vacated in view of the final directions issued by this order.

8. Before I conclude, I must record my appreciation for the assistance rendered by Ms Sunita Narain and the support extended to the cause, not only by the counsels who appeared for opposing parties, but also the officers of the various departments, who were involved in the matter.

RAJIV SHAKDHER, J

MAY 25, 2015

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