

BEFORE THE NATIONAL GREEN TRIBUNAL, PRINCIPAL BENCH

NEW DELHI

Original Application No. 60 of 2014

Society for Protection of Culture, Heritage,
Environment, Tradition and Protection of
National Awareness (also known as SPCHETNA)
A-403, Somdutt Chambers-1
5. Bhikaji Cama Place, New Delhi -110066.

----Applicant

Vs

1. Union of India, through Secretary,
Ministry of Environment, Forest and Climate Change,
Paryavaran Bhavan, Lodi Road, New Delhi-3.

2. Delhi Development Authority through its
Vice –Chairman, Vikas Sadan, New Delhi.

3. M/S Jhankar Banquets through its Partner
Usha Kapoor, G-87, Preet Vihar, Delhi-92

----- Respondents

Counsel for applicant: 1. Mr. M.L.Lahoty, Sr. Advocate
2. Ms. Garghi Bhatta, Mr. Rahul Dhawan,
3. Ms.Leeza Grower,Advocates.

Counsel for Respondent-1: Mr. Vivek Chib, Advocate,
Mr. Kushal Gupta, Advocate.

Counsel for Respondent-2: Mr. Dhruv Tamta, Mr. Rajiv Basal Advocates.

Counsel for Respondent-3: Mr. Ravi Gupta, Sr. Advocate,

Mr. P.S. Bindra, Mr. Ayay Gulati, Advocates.

Counsel for SDMC: Ms. Puja Kalra, Advocate.

Counsel for DPCC: Mr. Narenra Pal Singh, Mr. Dinesh Jinal, Advocates.

CORAM:

HON'BLE JUSTICE DR. P. JYOTHIMANI (JUDICIAL MEMBER)

HON'BLE MR. BIKRAM SINGH SAJWAN (EXPERT MEMBER)

ORDER

Delivered by Hon'ble Justice Dr. P. Jyothimani (Judicial Member) dated 10th July 2015

- 1) Whether the judgement is allowed to be published on the internet ----- yes / no
2) Whether the judgement is to be published in the All India NGT Report ----- yes / no

1. The applicant, which is a Non –Government and non –profit organization is a Society registered under the Societies Registration Act 1860, working for the protection of culture, heritage environment, traditions and promotion of national awareness and has initiated various programmes for the protection of environment like highlighting rampant deforestation causing global warming, exposed the collapse of drainage system in Delhi, parking mafia in Delhi, protecting ridges in and around Delhi etc., has filed the present application for a direction against the 2nd respondent to take possession of the land around the Asiad Tower situated adjacent to Siri fort complex measuring 18500 sq. mtrs along with the remaining area and restore the area to its natural state and maintain as green for the purpose of District Park and allow the

general public to use the same and to quash the letter dated 18-12-1997 along with the site plan wherein the green area/land measuring 18500 sq. mtrs around the Asiad Tower was handed over by the second respondent to the third respondent.

2. The applicant is stated to have been aggrieved by the commercial activities like the marriages, parties etc, arranged by the third respondent under the shade of the second respondent in the above area which is to be maintained as green area as per MPD 1962, 2001 and 2021 Zonal Development Plan under which the area is to be treated as a District Park .In the year 1996, the second respondent has granted lease for thirty years the restaurant in the Asiad Tower along with land measuring 916.43 sq. mtrs to the third respondent under a lease deed dated 24th December 1999. Under a deed of conveyance executed on the same date, the second respondent has conveyed the restaurant in the tower along with the building, construction structure with sanitary, electrical and other fittings and fixtures and land to the extent of 916.43 sq. mtrs. According to the applicant, the lease deed itself was executed nearly two years after handing over of possession. It is the further case of the applicant that, in addition to the above, the second respondent has illegally handed over to the third respondent, green land to the extent of 13491.16 sq. mtrs in and around Asiad Tower for holding marriages etc, on an annual licence fees fixed by the DDA. It is stated that in addition to the said illegal act, a further extent of 5008.84 sq.mtrs, totalling an extent of 18500 sq. mtrs was handed over on 18-12-199. These are the green lands.
3. The Tower is situated in green park and the same was used as a public park by all people. According to the applicant, after the lands were handed over, the third respondent has indulged in raising unauthorised construction in the green area apart from raising permanent and temporary constructions for conducting marriages etc. in violation of the MPD and preventing public from using the park. The commercial use

of the green area results in noise and air pollution. The applicant's grievance is only in respect of the area around the Tower to the extent of 18500 sq. mtrs. The application is filed on various grounds including, that the same is in violation of MPD 1962, 2001 and 2021 and the Zonal Development Plan which categorised the area as a designated District Park, that it is well established by the judicial precedent that the land use in Delhi has to conform to the Zonal Development Plan prepared under section 8 of the DDA Act 1957 and it has the force of law as held by the High Court of Delhi in, *Friend's Colony Residential Association Vs Lt. Governor of Delhi*, that section 14 of the Delhi Development Act 1957 prohibits any person from using the land prescribed in a zone not to be used for any other purpose and therefore the land that is categorised as green area cannot be used for different purpose, that the running of recreational club is not authorised by the authority competent, that the public trust principle has been breached by the second respondent in granting licence to the third respondent, that by the unauthorised construction in the green area, green character is ruined, that the Asiad Tower which is in the South Zone meant for District Park and not earmarked for marriages etc, that continued violation of law will render legal Provisions nugatory as held by the Hon'ble Supreme Court in *Indian Council for Enviro Legal Action Vs Union of India and others*, that right to clean environment is right to life guaranteed under Article 21 of the Constitution of India as held by the Hon'ble Supreme Court in *Intellectual Forum, Tirupathi Vs State Of Andhra Pradesh*, that the Hon'ble Supreme Court in *Dr.G.N.Khajuria Vs Delhi development Authority* has held that a land allotted for a park area cannot be carved out for a nursery school, that it is well settled that parks provide for certain lung space, apart from other contentions.

4. The second respondent DDA, in its reply has raised a preliminary objection about the maintainability of the application on the ground that the applicant has suppressed the material fact. The applicant has proceeded as if the land is a public park which is not true. It is not a public park but the land is part of district park and there are permissible uses under the master plan 2001 and 2021. Therefore, the land which has been given on lease for 30 years have been put to use for the purpose mentioned in the plan. Moreover for the same relief various complaints and writ petitions have been filed and the same have been dismissed by the Division Bench of the Hon'ble High Court of Delhi. Further, an inspection conducted in 2000 has revealed that greenery has increased in the area by the growth of more trees over the years by the third respondent. When the issue has become final, the present application is filed only with a malafide intention. While dealing with the facts of the case, the second respondent states that the Asiad Village was constructed in 1982, when Asian Games were conducted in Delhi, that when large number of people were to be accommodated and in order to meet the water requirement it was decided to build a over head water tank to supply water to Asiad Village. Accordingly, the Project Board setup by the DDA under the Chairmanship of the Vice-Chairman of the DDA to oversee the activities of the project of Asian Games Village, had accepted the proposal for building a over head tank-cum viewing gallery-cum-restaurant and that the restaurant then came to be called as Tower Restaurant, built by the DDA at the cost of 72 lakhs on a plot of land which was then earmarked in the Master Plan- Delhi 1962 for recreational use like outdoor games, restaurant etc subject to the permission of the DDA. It was in 1984, that the Tower Restaurant was allotted on a monthly licence fees of Rs 50000 or 5% of gross sales whichever was higher initially for a period of 5 years which was subsequently extended to another 5 years. The allotment was, however, surrendered

in July 1988 and it was decided to dispose of the Tower Restaurant through tender at a reserve price of Rs 87.1 lakhs, but there was no bidder. It was in April 1990 it was again decided to put auction at a reserved price of Rs 98 lakhs and a bid of Rs 1 crore was received which was not accepted as it was only marginally higher than the reserved price. Steps taken to give to Public Sector Tourism Corporation of various States also failed as the seating capacity of the restaurant was only 100 and, therefore, it was finally decided to auction the Tower Restaurant on leasehold basis for 30 years with the surrounding land on licence fees basis. The Asiad Society filed a case in Delhi High Court against the proposed allotment in 1993 and the High Court, after extensive hearing refused to grant stay and it was in 1996 that it was decided to proceed with the tender. The area surrounding the tower was reassessed and the Horticultural Department confirmed the surrounding area as 16784 sq. mtrs or 4.15 acres and in the meeting held on 17-06-1996, it was decided to modify the earlier agenda and add certain additional facilities like, disposal of the Tower Restaurant along with the green area measuring 16784.50 sq mtrs or 4.15 acres around the restaurant, water body under the complex and the fountain on lease basis and the remaining area around the tower on annual licence fees basis, exit-entry route will be developed by the DDA, entry leading through the Asian Games Village and exit towards Siri Fort Sports Complex, providing car parking space measuring 1450.0 sq. mtrs approximately for 30 cars in the area over and above the said 4.15 acres, permitting to put temporary structures which are removable for catering on the upper portion of the green area on condition that the green area in and around fountains of both the sides of the stairs to be kept permanently open and even temporary structure not to be permitted therein and the mode of disposal through sealed tenders. Pursuant to the above decision, tenders were invited clearly stating that the DDA will

allow 13491.16 sq.mtrs for marriage, parties etc on annual licence fees as fixed by it, temporary tents are permissible, no permanent construction will be permitted etc., The tenders were opened and found two bids received, one from M/S Jhankar Banquet for Rs 2.20 crores against the reserved price of Rs 1.88 crores and another from Cottage Industries Exposition Ltd. The bid of the former being highest was accepted of Rs 2.20 crores for the Tower Restaurant apart from Rs. 31 lakhs per year as annual licence fees to be enhanced at 20% every three years as against the reserve price of Rs 25.50 lakhs per annum for the green area around the Tower Restaurant, after taking approval of the Lt. Governor. Accordingly, conveyance deed and lease deed were executed on 24-12-99, however, licence deed could not be executed as various cases were instituted.

5. As, there has been some deviation committed by the allottee, in respect of whom many complaints were received, a show cause notice was issued. The allottee has approached the civil court by filing a suit and obtained an order of status quo regarding the construction put up by him which was ultimately vacated, against which an appeal was filed which was also dismissed and while the revision was pending, the allottee has agreed to remove the unauthorised construction put up by him. Thereafter the structures were removed. However after recommendation of a committee, the DDA has granted approval for certain additional construction including the area for DG set and storing of furniture, toilets, kitchen and dish wash area , ETP, garbage bin area, U.G tank for fire fighting and landscape features etc. In the meantime W.P. No1657 of 93 was filed in the High Court, while another Writ Petition in the name of *V.P. Singh Vs Union of India and others*, was filed before the High Court of Delhi alleging that the lease and licence of the Tower Restaurant and adjoining land are in violation of the Master Plan apart from raising the existence of Siri Fort Wall and

applicability of the notification dated 16-06- 1992 under the Ancient Monuments and Archaeological Sites and Remains Act. After perusal of all the records produced and referring to all the relevant provisions of law, the High Court has held that the Tower Restaurant was built before 1992 notification and in as much as the place belongs to the DDA, no fault can be found with and hence dismissed the Writ Petitions. However regarding the applicability of the Ancient Monuments and Archaeological Sites and Remains Act, the High Court in the order dated 25-09-2002, has referred the matter to the ASI directing it to pass appropriate orders after examining the existence of Siri Fort Wall. The Director General of ASI has passed an order on 10-07-2003, directing the lessee/ licensee to remove the construction mentioned in the order, against which the lessee filed a suit in the High Court in Suit No 1576/2003 and the High Court has stayed the demolition and the same is pending. According to the second respondent, the High Court in its final judgement dated 08-02-2011 and passed in CWP No.1657/93 reiterated its earlier judgement dated 25-09-2002 and also held against the contention of the petitioner resident association that it has an exclusive right of maintenance over the land or any of the portion of the complex.

6. The Lt. Governor, based on the repeated complaints from the occupants of the Asiatic village has sought a report from Air Vice Marshal (Retd). V. K. Dayalu, Advisor (SA&GR), who in his report dated 01-04-2009, has recommended that the Banquet owner of M/S Jhankar must be cautioned to pay his dues promptly, that there shall be no compromise on the lease agreement and dues must be recovered promptly, that a police force must be considered during marriage seasons and large get together and that the lease agreement for green areas has to be resolved. According to the DDA, as in the meantime, the premises of the Tower Restaurant were sealed in June/ July 2010, the recommendation of Dayalu's report could not be pursued. It is stated that the

matter is pending before the Hon'ble Supreme Court. However it is stated that the issue of allotment for commercial activities has been settled in the High Court and the execution of the licence deed is now under consideration. After the Monitoring Committee appointed by the Hon'ble Supreme Court directed sealing of the restaurant, a show cause notice was issued to the said M/S Jhankar Bonquets on 04-06-2010 which was replied on 14-06-2010, but in the meantime the Monitoring Committee has directed sealing of the entire premises. M/S Jhankar Banquet had filed an application before the Hon'ble Supreme Court for de-sealing the premises and an order came to be passed on 05-05-2011, permitting the Restaurant based on its undertaking to demolish the objectionable structures and to do the same the premises was directed to be de-sealed.

7. After the lessee filed a report, the premises was inspected on 06-07-2011 and DDA filed an affidavit before the Hon'ble Supreme Court along with its report in July 2011. The Monitoring Committee also filed a report highlighting that the structures reported by the DDA are to be demolished, that the Municipal Corporation has restricted to convert the dismantled area to green and the same is required to be maintained by the DDA and that the boundary wall alleged to have been raised by the licensee should be removed to enable public to have access to the park, that the construction permitted by the DDA on 05-12-2001 are unauthorised and violates the AMASR Act 1958, that the Director General ASI in July 2003 has stated that all the temporary /permanent erections are liable to be removed, that Dayalu's report has shown many irregularities, that it was reported that there is a huge un-authorised construction on the ground floor of the Tower Restaurant, that there has been complaints from the residents regarding the conducting of marriages and other functions in the park and that the Hon'ble Supreme Court has already held that in the

designated parks ,there cannot be functions for more than ten days. The DDA has filed the relevant provisions of the Master Plan 2001, before the Hon'ble Supreme Court and stated that the Plan not only permits the banqueting including the marriages etc., but also permits parking, public convenience and temporary structures.

8. It is the further case of the DDA that the allegation that the place where the Tower Restaurant is situated is a public park is not correct. It is also stated that ever since M/S Jhankar Banquet has taken charge of the restaurant, it has not operated due to strictures from the Delhi Fire Service and additional staircase suggested by the DFS was not possible due to the reason of restraint from DUAC and ASI under AMASR Act as reported by the architects. The staircase issue was resolved in the Hon'ble High Court in the Writ Petition No.11984/2009 filed by the lessee and by the time the work could be taken up, the Monitoring Committee of the Supreme Court has sealed the premises. According to the DDA, the Hon'ble Supreme Court has questioned it as to why lease deed has not been executed even though amounts have been received. The lessee was directed to approach the DDA for execution of lease deed. It was thereafter that lease deed and conveyance has been executed, however licence deed could not be finalised due to the reason of pendency of certain court cases and the representations. The party has already deposited licence fees up to 2011-2012. It is the case of the DDA that the initial allotment of the tower was for 5 years from 1982-83, litigations were pending till 1997 and the authority has taken a decision in 1996 to allot the restaurant on lease and its surrounding areas on license basis for 30 years. The horticulture department in 2000 conducted an inspection and found that the lessee has increased the greeneries by growing more trees. It is stated that the Hon'ble Supreme Court has transferred all cases pertaining to sealing by Monitoring

Committee to Appellate Court and on direction of the Appellate Court of MCD the premises was de-sealed on 21-02-2014.

9. While denying all the averments made by the applicant, the second respondent has stated that the Asiad Tower adjacent to Siri Fort measuring 18500 sq mtrs forms part of the district park which can be utilised for conducting marriages etc. It is the further case of the second respondent that it was as per the advertisement in the newspaper in the year 1996, the Tower Restaurant along with the lawn was given to the third respondent and it was by the process of tender, and the lease deed could not be executed for nearly two years because of the pendency of certain litigations and representations .It is also stated that no extra lands were handed over to the third respondent and everything was done as per the contents of the tender .It is stated that the area was not a green belt but is only green area and is being maintained as such. The area was already fenced from the beginning. The Appellate Tribunal MCD to which the matter was referred by the Hon'ble Supreme Court, by an order dated 03-02-2014 has directed the DDA to completely demolish the enclosure of the ground floor of the Tower Restaurant and the solar system installed near the kitchen and permanently de-seal the premises by the DDA after receiving the affidavit of unconditional undertaking.
10. It is stated by the second respondent that after de-sealing of the premises, no activity has taken place in the area and the DDA has been regularly monitoring the area .Apart from stating that it is not a public park, it is the case of the second respondent that a part of the district park is designated for the use of marriages etc. even before the allotment was made to the third respondent. The allotment to the third respondent for conducting of marriages etc., has been the subject matter of various court cases and ultimately the matter has attained a finality after the Hon'ble High Court has upheld

the same. Master plan being a statutory document, any amendment by the judicial process, of a statute is not permissible in law. That apart, the various legal grounds raised by the applicant are denied. It is reiterated that it is the part of the district park which is meant for recreational purposes and permissible usage area under the Master Plan. With the above averments the second respondent has prayed for the dismissal of the application.

11. The third respondent, in its reply while concurring with the reply filed by the second respondent, has stated that the filing of the application is an abuse of the process of law. The third respondent would reiterate that the lease and licence given to the third respondent has been upheld by the Hon'ble High Court, twice, one in W.P.(C) No. 1657/1993, *Asiad Village Society Vs Union of India and others* reported in 2011 III AD (Del) 402 and another in W.P.(C) No. 3319/2002, *Vishwanath Prathap Singh Vs Union of India and others* reported in 102 (2003)DLT 72(DB). According to the third respondent, all the issues raised in this application have been specifically raised in the above said two cases extensively and answered by the Hon'ble High Court which have become final and this short ground the application is liable to be dismissed. Further the applicant has deliberately suppressed about the above said material fact. The third respondent has elicited some of the paragraphs of the judgement of the Hon'ble High Court to substantiate its contention that the issues have been settled finally and there is no reason to reopen the same.

12. It is also stated that in an yet another Civil Writ Application No.4677/1985, filed before the Hon'ble Supreme Court in *M.C. Mehta & others Vs Union of India and others*, the Hon'ble Supreme Court has appointed a Monitoring Committee and on the recommendation of the said Committee, the Tower Restaurant was sealed on 28-05-2010, 16-06-2010 and 17-06-2010. It was on the application moved by the third

respondent seeking for a direction to de-seal the premises, the Hon'ble Supreme Court in the order dated 30-04-2013 gave liberty to the parties to move the MCD Appellate Tribunal and also to seek de-sealing of the premises. It was based on the said observation, the third respondent has moved the Appellate Tribunal, and the Tribunal taking note of the decisions of the Hon'ble High Court and various reports of the Monitoring Committee, has directed the authorities to de-seal the premises and directed to act as per the lease deed. According to the third respondent, the applicant having lost in the earlier rounds of litigation through its persons has chosen to file the present application to which it has no *locus standi*. Even otherwise it cannot be disputed by the applicant that in the past ten years the green area in the disputed place has been developed by the third respondent and, therefore, it cannot be said that there is any environmental degradation.

13. While dealing with the merits of the case, while reiterating its preliminary objections to the maintainability of the application, it is denied by the third respondent that the lease has been granted in its favour against the provisions of MPD 1962, 2001 and 2021. It is also denied by the third respondent that the green belt area was ever used as public park and goes on to further deny that after allotment the third respondent has been using the place for any illegal purposes or raised any unauthorised constructions. He further, stresses that the area is neither a designated park nor is it meant for public purposes. There is no noise pollution created by the third respondent or anyone acting on its behalf or under its permission. The legal grounds raised by the applicant are also denied. While it is not denied that the place allotted to the third respondent forms part of the district park as per the Zonal plan, the activities permitted are in accordance with the provisions contained in MPD 2001. It is also stated that MPD 2021 does not apply to the facts of the case, as the land and the surrounding areas were

leased out to the third respondent prior to 2001. It is also reiterated that while granting the lease, the DDA has followed all the legal procedure. It is also denied by the third respondent that large green area has been concretized but on the contrary in the past years large number of trees and shrubs have been grown. While it is not denied by the third respondent that the green area around the Tower Restaurant is part of the district park, it is denied that the area is not meant for holding marriages and other functions. Therefore, the third respondent prays for the dismissal of the application.

14. Mr. Lahoti, the learned senior counsel appearing for the applicant has raised the following three points:

1. He has made it very clear that the applicant is not objecting to the lease of 916.43 sq. mtrs wherein the Tower Restaurant is situated. He submits that except the above said extent, the remaining portions in occupation of the third respondent are to be treated as encroachment of the public lands. It is his submission that the decisions of the Hon'ble High Court have not dealt with the excess lands in unauthorised occupation of the third respondent and, therefore, it is still open to the applicant to raise the same before this forum. As the encroachment is a continuing conduct, there is no question of any limitation and the respondents have no manner of right whatsoever to raise objection relating to the maintainability of the application. He has raised objection that while lease was given by way of a deed on 24-12-1999, a letter dated 18-12-1997 by the DDA has permitted the third respondent to use 13491.16 sq. mtrs which is illegal. Public land cannot be given by a letter for commercial exploitation. Therefore, the permission is prior in time and has nothing to do with

the lease of the Tower Restaurant and in any event the excess land permitted must remain as green area. He has also submitted that when a portion in the earmarked park, as per the Master Plan, is to be permitted for using recreational purposes, the DDA Act requires a public notice to be issued for conversion of land user, which has not been done in this case. He has also extensively referred to the decisions of the Hon'ble High Court referred to by the respondents to say that the above issues were never the subject matter in the two cases. Moreover, the applicant was never a party in those cases.

2. His next contention is about the noise pollution caused by the third respondent while conducting of marriages and other functions in the park frequently affecting the public at large. He has also referred to the judgement of the Hon'ble Supreme Court reported in (2005) 5 SCC 733, not only to substantiate his contention that to raise the issue of noise pollution no *locus standi* is required but also to insist about the importance of noise free surroundings and various directions issued by the Hon'ble Supreme Court in that regard.
3. He finally submitted that it is preposterous to think that the green public land can be conveyed.

15. Per contra, it is the contention of Mr.Ravi Gupta, the learned Senior Counsel appearing for third respondent that the DDA maintained parks are different from the public parks. He has also referred to the historical events leading to the grant of lease and also the licence and payment of all necessary charges by the third respondent and various decisions of the court referred to above. It is his submission that the same issue have been raised earlier in the names of various persons in which finality has

been arrived at and the present application is filed by a person who is living in Vasanth Kunj, which is nearly 10 Km away from the area in question and according to him, that itself would show the malafide intention of the applicant and others. He has specifically submitted that 18500 sq. mtrs. was the subject matter of discussion in V.P. Singh's case. He has submitted that under the First Master Plan of Delhi-1962, district park meant green area and recreational area and the said usage was permissible. The Second Master Plan 1990 has approved the Tower Restaurant. The district park is not considered as an entire green area but it included green area and recreation area. He has also narrated as to how in spite of efforts taken by the DDA there was no offer forthcoming and ultimately the third respondent was the successful bidder. He also submitted that the DDA has not violated any law or procedure.

16. Mr. Rajiv Bansal, the learned counsel appearing for the second respondent, DDA would vehemently contend that the filing of the present application is an abuse of process of law when especially the issue has been finally settled in the higher courts. According to him in a district park, if a place is denoted as recreational purpose, no one can as a matter of right claim to enter, especially when the DDA has followed the transparent method in inviting public tender with wide publicity. He would also submit that while the cause of action for this application filed under section 14 of the National Green Tribunal Act arose 17 years ago, this application is filed now and the same is liable to be dismissed on the point of limitation. He also submits that the pendency of the other cases was not a bar for the applicant to raise the issue of environment at the appropriate time. This is only a tactics played by the applicant in collusion with the prior litigants who fought and lost case throughout and it is at their instigation the present application is filed and is liable to be dismissed. Mr. Bansal has also taken us to the various portions of the earlier judgements of the Hon'ble Supreme

Court to contend that the entire issue raised in this case have been dealt with and final decision rendered and in such circumstances it may not be proper to reopen the case again. Therefore he prayed for the dismissal of the case.

17. We have also heard the learned counsel appearing for the South Delhi Municipal Corporation M/s. Puja Kalra and the Delhi Pollution Control Committee Mr. Narender Pal Singh, who were directed to be issued notice at the request of the learned counsel for the applicant and who have also made their submissions in the line of the DDA.

18. We have heard all the learned counsel appearing for the parties, carefully considered the pleading and all the documents filed and applied our mind to the issues involved in this case. On an overall analysis, it has become necessary for this Tribunal to address and decide the following issues:

1. Whether the letter dated 18-12-1997 would confer any right of license on the third respondent in respect of the green area in the district park to the extent of 18500 sq. mtrs :
2. Whether the issue raised in this case has already attained finality:
3. Whether the third respondent is entitled to exclusive use of 18500 sq. mtrs around Asiad Tower Restaurant for the marriages and parties or the green area is liable to be used by public for recreation also:
4. To what other relief the parties are entitled to?

19. Taking note of the comprehensive nature of the issues, all the issues can be dealt with in a combined manner. At the outset, we have to assert that there are no much dispute relating to the factual aspects .It is the admitted case of the applicant society, as submitted by the learned senior counsel appearing for it, that so far as the grant of lease in respect of the Tower Restaurant, situated in the extent of 916.43 sq. mtrs is

concerned, there is no dispute. The applicant questions only the license granted to the third respondent in respect of 18500 sq. mtrs of the land which form part of the green area surrounding the Restaurant. The question is as to whether such license is permissible in law. Admittedly the DDA has executed a lease deed for 30 years in respect of the Tower Restaurant on 24-12-1999 following the tender process. The lease deed no doubt contains a clause that the open green ground or around in front of the Tower Restaurant measuring around 2000 sq. yards as lineated in the schedule may be allotted to the lessee on an annual licence basis payable in advance which may be increased by 20% once in three years. This was in furtherance to the resolution of the DDA dated 23-03-1993. But by a subsequent resolution dated 17-06-1996, the DDA, took note of the fact that there was no proper response due to the reason that the seating capacity of the hotel was very minimal and, therefore, decided to give additional facilities to the hotel by providing the green area surrounding the Tower measuring an extent of 16784.50 sq. mtrs on annual license basis. Accordingly, fresh tenders were called for denoting last date for receipt of tender as 20-11-1996. It was in accordance with the tender notification, when the third respondent requested for the allotment of the open space on license basis, the Dy. Director (CE) of the DDA, in his letter dated 18-02-1997, has allowed the third respondent to use 13491.16 sq. mtrs of green area for holding marriages, parties etc. Merely because the extent of the green area thus permitted is not mentioned correctly in the lease deed, which is totally different and distinct, in our view the license will not become unauthorised.

20. The next question is as to whether the issue involved in this case has already been finally decided by the competent courts and therefore it would not be open to the applicant to raise the issue once again. In *Vishwanath Pratap Singh Vs Union of India and others*, even though, the prayer in the Writ Petition before the Hon'ble High

Court was to cancel the lease of 4.7 acres granted to the third respondent herein, the area was never a subject matter of lease dated 24-12-1999 wherein it was a lease relating to the Tower Restaurant situated in an extent of 916.43 sq. mtrs, the Hon'ble High Court has made it very clear that the arguments were restricted only to the construction activity in the vicinity by the present third respondent. It was by an elaborate judgement rendered on 26-09-2002, held that the Tower Restaurant was in existence for more than 20 years, the land in question belongs the DDA and, therefore, no fault could be found with DDA in giving lease of the Tower Restaurant to M/S Jhankar Banquet but held that any construction activity by the lessee against 1992 notification cannot be permitted. Therefore, it is clear that in that case there was no decision relating to the license granted to the present third respondent relating to the surrounding green area. Therefore, the judgement does not create any bar on the part of the applicant to the issue about the alleged license.

21. Again, in *Asiad Village Society Vs Union of India and others*, the Hon'ble High Court was dealing with a prayer in the Writ Petition made by the petitioner society consisting the residents, for a direction against the DDA not to handover Asiad Village complex or to grant lease of the Tower and appurtenant thereto either to the third respondent herein or any other person. The Hon'ble High Court has considered the argument that the resident association and its members being the beneficiaries to enjoy the open green land are also entitled to maintain the same for their benefit. After referring to various provisions of the DDA (Management and Disposal of Housing Estate) Regulations 1968, it was held that the petitioner society has no right of exclusive control or to administer the complex .It was also held that the residents of the dwelling houses who are the members of the petitioner society would hardly be in a position to maintain services such as water supply etc. Therefore, the issue raised in

this case was not decided in both the cases, even though the third respondent was a party in both the cases.

22. The Delhi Development Act 1957, which came into force on 30-12-1957, the Central Act, enacted with the object of providing development of Delhi, has created the Delhi Development Authority (DDA), a body corporate, apart from Advisory Council and committees to carry out the object of the Act. Section 7 of the said Act mandates the DDA, immediately after the Act or as soon as possible, to carry out a civic survey and prepare a Master Plan for Delhi, defining the various zones into which Delhi may be divided for the purpose of development and also to indicate the manner in which the land in each zone is proposed to be used and the stage by which the development to be carried out, which shall also serve the basic pattern of frame work within which the zonal development plans of various zones may be prepared.
23. Section 8, again imposes a responsibility on the DDA, to prepare simultaneously or as soon as it may be possible, a zonal development plan for each zones into which Delhi may be divided and such zonal plan may contain a site plan and use plan for the development of the zone and the approximate locations and extent of land use as public buildings and other public work and other utilities, roads, housing, recreation, industry, business, markets, schools, hospitals and public and private open spaces etc. After preparation of such Master Plan and Zonal Development Plan, the same is to be placed by the DDA, to Central Government for approval. Before submitting the said plans for approval, the DDA shall publish a draft plan as may be prescribed by the rules by making the copy of the draft rules available for inspection and invite objections and suggestions from any person giving specific date .The DDA shall also give opportunity to the local authorities to give representations. It is after considering all the objections, representations and suggestions, the final plan must be prepared and

submitted to the Central Government for approval. The Central Government while considering such plans for approval may direct the DDA to furnish any further information that may be deemed necessary. On approval of the plans by the Central Government, the DDA shall publish the plan/plans as prescribed by the regulation and also inform the place where the plan can be inspected. Section 11A, enables both the DDA as well as the Central Government to modify the Master Plan as well as the Zonal Development Plan by following the procedure contained therein.

24. Therefore, after following all the above said legal formalities when once the Master Plan or the Zone Development Plan is published, it acquires the statutory character. Following the above said procedure, the DDA has promulgated the Master Plan of Delhi in 1962 (MPD-62). In the said Plan, by and large, a scheme for Large Scale Acquisition and Development of Land was formulated. The MPD-62, while mentioning about the term 'Recreational', in paragraph 23, states under 'uses permitted',

'All public and semi-public recreational uses including parks, play grounds, parkways and boulevards; special recreation areas and special educational and recreational areas; bus and railway passenger terminals and car parking area. Parking area requirements must be approved in all cases.'

Subsequently, in the Master Plan for Delhi 2001 (MPD-2001), the DDA has substantially reiterated the planning process which was outlined in MPD-62, as could be seen mainly as land use plan in three levels namely, Master Plan, Zonal Plans and Layout Plans for specific development schemes within each zone. The MPD-2001, which was notified on 01-08-1990, has visualised the permitted uses in the district parks. The use premises permitted in the district park are stated as, ' District park, Residential Flat, Play Ground, Swimming Pool, Recreational Club, Children Traffic

Park, Specialised Park/Ground, National Memorial, Bird Sanctuary, National Garden and Zoological Garden.’ Uses /use activities permitted in use premises are stated as follows: ‘Recreational Club, Multipurpose Hall, Restaurant/Cafeteria/Snack Bar, (only for Public Recreational Clubs) Residential Component (15% of the total area and to the max of 300sqm),Indoor Games including Gymnasium and Health Clubs, Library, Outdoor Games and Swimming Pool’.

25. While dealing with environment, while formulating MPD-2021, wherein the quantitative and qualitative shortages and deficiencies were observed with a need for redevelopment and densification of the existing urban areas and city improvement, the Plan provides for agricultural land as Green Belt along the border of NCT of Delhi. Table 9.4, which speaks about Permission of Use Premises in Sub Use Zones states as follows:

Sl. No	Use Zone	Activities Permitted
1.	Green Belt	Forest, Agriculture Use, Vegetation belt, Dairy Farms, Piggery, Poultry farms, Farm house, Wild life sanctuary, Bird sanctuary, Biodiversity Park, Veterinary Centre, Police Post, Fire Post, Smiriti Van, Plant Nursery, Orchard, Area for water- harvesting, Floriculture farm, Open Playground, Agro forestry, Amenity structures (as per list). Existing village abadis, already Regulrised Unauthorised Colonies and already approved Motels may continue.
2.	Regional Park	Ridge, Residential Flat (for watch & ward), Picnic Hut, Park, Shooting Range, Zoological Garden, Bird Sanctuary, Botanical Garden, Local Government Office (Maintenance)

Open Air Theatre, Police Post, Fire Post, Orchard, Plant Nursery and forest.

Approved Farm House sanctioned prior to 01-08-90 may

Continue.

3. City Park Aqua park/water sports park, Arboretum, Botanical Garden, National Memorial (approved by Cabinet/ Govt.of India), Amphitheatre, Open Playground, Aquarium, Other activities Same as permitted in District Park.

30% of the area shall be developed with plantation of native species.

4. District Park

District Park, Theme Park, Recreational Club, National Memorial, Open- air food court, Children Park, Orchard, Plant Nursery, Area for water harvesting, Archaeological Park, Specialised Park, Amusement Park, Children Traffic Park, Sports Activity, Playground, Amenity structures.

Restaurant in a District Park having an area about 25 Ha.

Subject to following:

- a. Area of the restaurant plot shall not be more than 0.8 Ha.

Or 1% of the District Park, whichever is less.

- b. Restaurant plot shall have no physical segregation from the rest of the District Park area.

- c. The building shall be a single storey structure with max.

FAR of 5 and height not more than 4m.without any residential facility and to harmonize with the surroundings.

- d. In case there is no parking lot in the vicinity, parking should be provided at a reasonable distance from the restaurant.

Parking area should not form part of the restaurant complex/greens.

- e. 30% of the area shall be developed as dense plantation.

5. Community Park

Park, Children Park, Open- air food court, Playground etc.

6. Multipurpose Ground

Public meeting ground, Public address podium, Social Functions, Soft drink and snack stalls etc.

26. It is not in dispute that the Tower Restaurant and the adjacent area are forming part of 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.

28. The DDA is a public authority and ownership of the lands in Delhi are vested on it. Therefore it is the custodian of the all the lands vested which includes open spaces, parks, gardens which are public property and in respect of those lands the public trust doctrine will apply against DDA in respect of usage. Because the MPD allows portion of District Park to be used for recreational purposes, it does not mean that such

portion can be put to the exclusive domain of such licensees preventing public from using the green area during the other times when the recreational activities does not takes place. Therefore in our considered view, the license to third respondent does not give it the right of exclusive usage for all times to come but only during the time of marriages, parties etc.,

29. Delhi being the national capital is one of the most populated cities in the world, with its population as per 2011 standing at 110 lakhs and is estimated to have increased to 182 lakhs in 2015. The population of the city is growing continuously due to migration and entry of people for employment and various other opportunities. Consequently, there is increasing pressure on the limited open areas, parks and gardens. Equally important is the fact that the growth of the population and consequent growth in number of vehicles is also leading to higher level of air pollution. The quality of air is one of the worst among all the mega cities of the world. The levels of PM 2.5, PM 10, NO_x, SO₂ etc are dangerously high. The open spaces, parks and garden and the trees provide as a pollution mitigation measure working as sink for the carbon and thereby ameliorate harsh climatic conditions. The air pollution is also impacting the health of the people and increasing number of cases related to respiratory and even cardio-vascular diseases. It is therefore critical that green spaces are protected and people given access to such areas preferably in their neighbourhood. Privatising and commercialising such green areas will not only deny people using these areas for recreation and health benefits but will also go against the public trust doctrine and precautionary principles as enunciated by the Hon'ble Supreme Court in *M C Mehta Vs Kamal Nath* (1997)1 SCC 388. Further, in *Bangalore Medical Trust v. B.S.Muddappa and Others* (1991) 4 SCC 54 the Supreme Court has held as follows,

“24. Protection of the environment, open spaces for recreation and fresh air, play grounds for children, promenade for the residents, and other conveniences or amenities are matters of great public concern and of vital interest to be taken care of in a development scheme. It is that public interest which is sought to be promoted by the act by establishing BDA. The public interest in the reservation and preservation of open spaces for parks and play grounds cannot be sacrifice by leasing or selling such sites to private persons for conversion to some other user. Any such act would be contrary to the legislative intent and inconsistent with the statutory requirements. Furthermore, it would be in direct conflict with the constitutional mandate to ensure that any state action is inspired by the basic values of individual freedom and dignity and addressed to the attainment of a quality of life which makes guaranteed rights a reality for all the citizens.

25. Reservation of open spaces for parks and play grounds is universally recognized as a legitimate exercise of statutory power rationally related to the protection of the residents of the locality from the ill effects of urbanisation.”

30. While appreciating that the recreational and aesthetic uses of the park cannot be curtailed, the Hon’ble Supreme Court, in *MC Mehta v. Union of India and Others* (2009)17 SCC 683 held as follows.

“6. We agree with Mr. Mehta that the recreational and other aesthetic uses of the parks cannot be curtailed. Mr, Mehta is also

correct that the permitted use of the parks being recreation under the Master plan, it cannot be permitted for any other use. But in the same time, keeping in view the need of the society, it is necessary to bring the parks back to their normal use in a sustained manner.

7. We are of the view that MCD, NDMC and DDA shall in phased manner stop the granting of permission for the use of the parks for commercial/marriage purposes, etc., The material placed on record shows that MCD has permitted such use in 1023 parks, DDA in 146 parks and NDMC in 51 parks.

8. After hearing learned Counsel for the parties, we direct as under:

1. The use of parks by MCD, NDMC and DDA for the purposes mentioned above shall not be permitted more than 10 days in a month. In other words, when any of the designated parks is used for such purposes 10 days in a month, no function thereafter shall be permitted during the remaining 20/21 days.

2. MCD, DDA and NDMC shall make endeavour to construct community halls for the purposes of marriages, etc

3. The number of parks indicated by three authorities used for marriages, etc., shall be reduced by 30% by 30-06-1997. It shall be reduced by further 20% by 31-12-1997. In other words, by the end of December 1997, the use of the parks for marriages, etc., shall be reduced for 50%. The authorities

concerned shall file an affidavit stating the progress in the projects for the construction of community halls and also stopping the use of the parks for marriages, etc., by the end of December 1997.”

We, therefore hold that although the third respondent licensee is entitled to the use of green area around the Tower Restaurant, the applicant society or public at large cannot be prevented from access to this area for recreation, leisure and usage as lung space during the time when the third respondent is not using for marriages etc., However it will be open to the second respondent, being the owner and custodian of the green area to regulate access by public to the green area in accordance with its general policy.

30. For the reasons stated above we answer issue No.1 in the affirmative and against the applicant holding that the letter 18-12-1997 would confer a right of license on third respondent in respect of 18500 sq mtrs in the green area for use for marriages, parties etc., Issue No. 2 is held in favour of applicant holding that the issue relating to the use of 18500 sq mtrs in the green area around Tower Restaurant has not attained finality. In respect of issue No.3, we hold that the third respondent is not entitled to exclusive use of 18500sq mtrs around Asiad Tower Restaurant but entitled to use for conducting marriages not more than 10 days in a month as held by the Hon'ble Supreme Court of India and on the remaining days the public shall be allowed to use the green area, however subject to the policies of the DDA in this regard.
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 area 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 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.

Delivered by video conferencing from the South Zone
Bench at Chennai and simultaneously at the Principal
Bench at New Delhi on 10th day of July 2015.



Justice Dr. P. Jyothimani (JM)

Mr. Bikram Singh Sajwan (EM)

NGT