

Item No.1

(Court No. 2)

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

(Through Physical Hearing with Hybrid VC Option)

Original Application No. 355/2022

IN THE MATTER OF:

**Mr. HARI,
Gusana Village, Lohban, Mathura, U.P.
Phone: 9654269814**

...APPLICANT

VERSUS

1. Government of NCT of Delhi through Chief Secretary,
Government of New Delhi,
Delhi Secretariat, IP Estate, New Delhi-110002
Phone +91-11-23392100,23392101.
Email Address: csdelhi@nic.in

2. Vice Chairman, Delhi Development Authority
4, Mahatma Gandhi Road, IP Estate,
New Delhi, Delhi 110002
Email Address: vcdda@dda.org.in

3. CEO, Delhi Waqf Board
5028, Daryaganj, New Delhi, Delhi 110002
Email Address: ceodl@wakf.gov.in/
dwb_5028@hotmail.com

4. The Commissioner, Municipal Corporation of Delhi
Dr. S.P. Mukherjee Civic Center,
JLN Marg, New Delhi-110002.
Email Address: commissioner@mcd.nic.in/
chairperson@ndmc.gov.in

5. Deputy Conservator of Forests (South)
Office of The Deputy Conservator of Forests,
South, Asola Wild Life Sanctuary, Asola, New Delhi, Delhi
Email Address: dcfsouth.delhi@gov.in/
dcfhq.gnctd@gov.in

6. District Magistrate (South), Delhi
Mehrauli - Badarpur Road, Saket,
New Delhi, Delhi 110017
Email Address: dcsouth@nic.in

...RESPONDENT(S)

For Applicant:

None for the applicant.

For Respondents:

Ms. Jyoti Mendiratta, Advocate for respondent no. 1-Govt. of NCT of Delhi.

Ms. Kritika Gupta and Ms. Latika Malhotra, Advocates for respondent no.2-DDA.

Ms. Puja Kalra and Mr. Virender Singh, Advocates for respondent no.4-MCD.

Mr. Sanjeev Kumar Assistant Engineer, M-III, MCD.

PRESENT:

**HON'BLE MR. JUSTICE ARUN KUMAR TYAGI, JUDICIAL MEMBER
HON'BLE DR. AFROZ AHMAD, EXPERT MEMBER**

Judgment Reserved on:- 02.11.2023

Judgment pronounced on :- 20.12.2023

Application is registered based on a letter received by Post.

JUDGMENT

PRONOUNCED BY: HON'BLE MR. JUSTICE ARUN KUMAR TYAGI, JM

1. The grievance in the present anonymous letter petition sent to this Tribunal in the name of Forest Guard, which has been treated and registered as Original Application is that Mr. Dharam Singh alias Doctor and 10 other persons have encroached upon land behind graveyard near Max Hospital, Saket, New Delhi and the above said persons have cut Neem, Babool, Peepal and other trees from the green-belt and have stored scrap material. They are also burning plastic, polythene bags and electricity wires which results in emission of poisonous gases causing air pollution.

2. Vide order dated 20.05.2022, this Tribunal constituted a Joint Committee comprising of the DPCC, Commissioner, Municipal

Corporation, Delhi and DFO, New Delhi and directed the same to submit factual and action taken report within two months.

3. In compliance thereof report of the Joint Committee has been filed by DPCC vide email dated 18.10.2022. The relevant part of the report is reproduced below:-

“ACTION TAKEN REPORT ON BEHALF OF DELHI POLLUTION CONTROL COMMITTEE WITH RESPECT TO ORDER DATED 20.05.2022.

X X X X

1. That, the above mentioned matter was taken up by this Hon'ble Tribunal on 20.05.2022 and pleased to constitute a Joint Committee comprising of DPCC, Municipal Corporation, Delhi and Department of Forest and Wildlife. The joint Committee was directed to observe:

- (a) whether there is any green-belt near Max Hospital Saket, New Delhi,
- (b) whether there is any encroachment on any part of the green-belt,
- (c) whether any trees have been cut and removed from the green-belt,
- (d) whether any person has stored any scrap material or any other equipment or goods in the encroached area; and
- (e) whether any plastic, polythene bags or electric wires were/are being burnt in the area.

2. That in compliance of the direction dated 20.05.2022, the joint committee visited the site, but the inspection could not be completed due to law and order problem. To avoid law and order problem, Police protection was also sought by the inspecting team. Copy of inspection report dated 08.06.2022 is enclosed herewith as Annexure-1.

3. That afresh inspection was carried out on 22.06.2022 by the officials of DPCC and Deputy Conservator of Forest (South). To protect the inspecting team, Delhi Police provided assistance. MCD officials DID not join the inspection. Following are the observations of the team:-

- Ownership of the land mentioned in the said complaint could not be identified.
- As informed by the official of Forest Department the land may be assumed to be deemed forest land (area approx. 06 hectare).
- On the land some jughies were present behind the Kadeem Zari Muslim Eidgah, Hauz Rani Village. No paper/documents were shown by the jhuggi dwellers.

Therefore, it seems to be that they have encroached on the said land.

- *Some Scrap Material Shops were observed which were being operated by the people living in juggis.*
- *Plastic, polythene bags and other dump material were found dumped in the said land.*
- *Some fallen trees were also found naturally.*
- *No burning of plastic, polythene bags or electric wires was observed. Copy of the inspection report dated 22.06.2022 is enclosed herewith as ANNEXURE-2.*

4. That DPCC issued letters to Municipal Corporation of Delhi, Department of Forest and Wild Life and SDM (Hauz Khas) on 28.06.2022 to take necessary action with regard to encroachment on MCD land/ deemed forest land and to provide Action Taken Report by 08.07.2022. Copy of the letter date 28.06.2022 is enclosed herewith as ANNEXURE-3. As no response was received from Municipal Corporation of Delhi and Department of Forest and Wild Life, therefore, reminders were issued on 15.07.2022, 25.07.2022 and 03.08.2022 to provide action taken report in the matter. Copy of the reminder letters are collectively enclosed herewith as ANNEXURE-4 (Colly).

5. That the Tehsildar (Hauz Khas) provided a report along with the photographs of the site. It was informed that a field inspection by Revenue Department was carried out on 07.07.2022 regarding the encroachment upon land behind Graveyard near Max Hospital Saket, New Delhi. Total encroachment is about on 2000-2500 sq. yards by jhuggi dwellers. This piece of land belongs to Delhi Wakf Board. DDA is developing the park nearby graveyard. No fallen trees were found in this land. However, some naturally fallen trees were observed in the nearby park developed by DDA. Copy of report received from the Revenue Department along with photographs is enclosed herewith as ANNEXURE-5.

6. That DPCC issued a letter on 09.09.2022 to Commissioner, MCD and Conservator of Forest to provide action taken report with regard to letters issued earlier (as annexed herein above in annexure-4). Copy of the letter dated 09.09.2022 is enclosed herewith as ANNEXURE-6.

7. That DPCC issued a letter on 29.09.2022 to The Chief Executive Officer, Delhi Wakf Board (DWB) for removal of encroachment from the land belongs of Wakf Board and provide action taken report. Copy of the letter dated 29.09.2022 is enclosed herewith as ANNEXURE-7.

8. That, Dy. Conservator of Forests (South) has provided action taken report vide letter dated 26.09.2022. In the letter it is mentioned that, the area falls under jurisdiction of DDA and DDA is not responding to their request for a joint inspection for conducting enumeration of all the trees standing in the said area. Copy of the letter dated 26.09.2022 received from Dy. Conservator of Forests (South) is enclosed herewith as ANNEXURE-8.

9. That, Municipal Corporation of Delhi has provided action taken report vide letter dated 26.09.2022. In the letter it is mentioned that, the area is known as "Haus Rani Park" and there are jhuggies, which are engaged in scrap material shope, plastic polythene bags etc. No sign of burning of plastic is noticed.

Copy of the letter dated 26.09.2022 received from MCD is enclosed herewith as ANNEXURE-9.

10. As can be seen, the issue in hand is about encroachment and land owning agency is not clear. It may be DDA or Delhi Waqf Board. Hence, suitable direction may be issued by this Hon'ble Tribunal to these departments for removal of encroachment."

4. Vide order dated 07.12.2022, notices were ordered to be issued to (1) Government of NCT of Delhi through its Chief Secretary, (2) DDA through its Vice Chairman, (3) CEO, Delhi Waqf Board, (4) Commissioner, Municipal Corporation of Delhi, (5) Deputy Conservator of Forests (South), and (6) District Magistrate (South), Delhi, who stand impleaded as respondents No. 1 to 6, requiring them to file their reply/response.

5. In compliance thereof reports have been filed by respondent no. 2-DDA vide email dated 20.07.2023, by respondent no.5-DCF (South) vide email dated 10.04.2023 and by respondent no. 6-DM (South), Delhi vide email dated 27.01.2023.

6. The relevant part of the report filed by respondent no. 2-DDA vide email dated 20.07.2023 is reproduced below:-

"SHORT	STATUS	REPORT	ON	BEHALF	OF
RESPONDENT/DDA					
X	X		X		X

03. That brief facts of the matter are Mr. Dharam Singh alias Doctor and 10 other persons have encroached upon land behind graveyard near Max Hospital Saket, New Delhi and the above said persons have cut Neem, Babool, Peepal and other trees from the green-belt and have stored scrap material and

they are also burning plastic, polythene bags and electricity wires which results in emission of poisonous gases causing air pollution.

4. Further, vide order dated 20.05.2022 the Hon'ble NGT constituted a Joint Committee comprising of the DPCC, Commissioner, MCD and DFO, New Delhi and directed them to submit factual and action taken report within 2 months.

That a fresh inspection was carried out on 22.06.2022 by officials of Joint Committee and following are the observations of Joint Committee:

(i) Ownership of the land mentioned in the said complaint could not be identified.

(ii) On the land, some jhuggies were present behind the Kadeem Zari Muslim Eidgah, Hauz Rani Village.

(iii) Some Scrap Material Shops were observed which were being operated by the people living in jhuggies.

(iv) Plastic, polythene bags and other dump material were found dumped in the said land.

(v) Some fallen trees were also found naturally.

(vi) No burning of plastic, polythene bags or electric wires was observed.

(vii) No paper/documents were shown by the jhuggi dwellers/scrap shops when asked. Therefore, it seems to be that they have encroached on the said land.

5. In order to assess the extant encroachment, a letter dated 31.03.2023 was sent to SHO (Malviya Nagar) to provide necessary police protection to field/revenue staff of DDA for carrying site inspection of subject land on 24.04.2023 is attached herewith as Annexure R1.

6. It is submitted that revenue officials of S&S-II/LM Branch along with AE/SMD-5/DDA & local Police visited the land in question site, adjoining to Max Hospital, Saket on 26.04.2023 wherein, it was observed that there is Kabristan, Hauz Rani which is situated at right side and adjacent to Max Hospital, Saket. There are also 200 jhuggies (approx.), 15-20 Kabadi Shops and Car Workshop for Denting Painting with tin boundary walls. Peoples were residing there alongwith dogs, cows & goats over the said land. Plastic, Polythene bags and other dump materials were found on said land and some naturally fallen trees were found on said land. At the time of said site inspection, no burning of plastic, polythene bags or electric wires was observed. Joint site inspection report dated 26.04.2023 and photographs taken during said site inspection are attached herewith as Annexure R-2(Colly).

7. Furthermore, as evident from the record available with Respondent/DDA, land in question falls in Khasra No. 197 (5-11) and Khasra No. 198 (2-10) of village Hauz Rani which were transferred to DDA from Ministry of Rehabilitation (MOR) vide Package Deal dated 02.09.1982 and was placed at the disposal of dDA vide notification No. F9/22)/78/L&B dated 22.02.1979 annexed herewith as Annexure R-3.

8. The physical possession of the same was handed over to DDA on 13.08.1987 which is annexed herewith as Annexure R-4.

X X X X

7. The relevant part of the report by respondent no.5-DCF (South) vide email dated 10.04.2023 is reproduced below

“STATUS REPORT ON BEHALF OF THE DEPUTY CONSERVATOR OF FORESTS, SOUTH FOREST DIVISION, DEPARTMENT OF FORESTS AND WILDLIFE, GOVERNMENT OF NATIONAL CAPITAL TERRITORY OF DELHI.

X X X X

2. That in compliance with the direction dated 20.05.2022, Tree Officer (South) directed the forest guard to inspect the site with regards to tree offence. The inspection was duly carried out. While inspecting it was observed that there is a Kabristan named Qadeem Muslim Kabristan near the hospital but no tree offence was found to have occurred in the area.

A copy of the inspection report dated 07.06.2022 supported by photographs and Google Earth Images is annexed herewith as Annexure-1.

3. That in compliance with the above-mentioned direction dated 20.05.2022, the joint committee visited the site, but the inspection could not be completed due to a law-and-order problem. To avoid law and order problems, Police protection was also sought by the inspecting team.

A copy of the inspection report dated 08.06.2022 is enclosed herewith as Annexure-2.

4. That afresh inspection was carried out on 22.06.2022 by the officials of DPCC and the Deputy Conservator of Forest

(South). To protect the inspecting team, Delhi Police provided assistance. MCD officials did not join the inspection.

The relevant extract of the observations of the team reads as under: -

- 1. "Ownership of the land mentioned in the said complaint is not be identified as no official was present from the Revenue Dept., Delhi.*
- 2. As informed by the official of the Forest Department the land is assumed to be deemed forest land (area approx. 06 hectares).*
- 3. On the land some jughies were present behind the Kadeem Zari Muslim Eidgah, Hauz Rani Village.*
- 4. During the survey of these jhuggi in the land, scrap material shops wereoperating by the people living in these juggis.*
- 5. Plastic, polythene bags and other dump material were found dumped in this land.*
- 6. Some trees found to be naturally fallen.*
- 7. No burning of plastic, polythene bags or electric wires was observed*
- 8. No paper/documents were provided by the people living in these jhuggi/ scrap shops when asked Therefore it seems to be that they have encroached in this land "*

A copy of the inspection report dated 22.06.2022 is enclosed herewith as Annexure-3.

5. That DPCC issued letters to the Conservator of Forests on 28.06.2022 to take necessary action. In this regard, letters dated 15.7.2022, 03.8.2022, and 26.09.2022 were sent to the DDA by Dy. Conservator of Forests (as it is a land-owning agency of the Green Belt area behind Max Hospital Saket New Delhi) in regards to carrying out a joint inspection along with officials of South Forest Division in order to conduct an enumeration of all the trees standing in the said area so that the same could be filed before the Hon'ble National Green Tribunal. However, till date reply from DDA is still awaited.

A copy of the letter dated 28.06.2022 issued by DPCC and the letters dated 15.7.2022, 03.8.2022, 26.09.2022 issued by DCF (South) are annexed herewith as Annexure-4 (Colly)

6. That Tree Officer (South) directed the Dy Range Officer (DRO) to inspect the site along with Delhi Development Authority. The inspection was duly carried out in presence of Sh. Vijay Kumar, DRO, Forest Department, Sh. Murlidhar, Dy Dir(Hort) DDA, Asstt. Dir(Hort) DDA, SO (Hort) DDA on

30.09.2022. While inspecting it was observed that there is a Kabristan named Qadeem Muslim Kabristan near the hospital surrounded by various species of trees. Dump materials were found dumped on this land and some encroachment was also found. The Staff of the DDA informed the DRO that for taking further steps, they have to consult the matter with the higher rank officers. A copy of the inspection report dated 30.09.2022 supported by photographs is annexed herewith as Annexure-5.

7. It is submitted that after the Joint inspection dated 30.09.2022, till date no communication has been received from the DDA with regards enumeration list with the numbering of trees on the site to this office. Therefore, letters dated 07.11.2022, 22.11.2022, and 02.12.2022, 06.12.2023 were written to the DDA. DDA has not responded to the above-mentioned letters.

Copies of the letters dated 07.11.2022, 22.11.2022, 02.12.2022, 06.12.2023 issued by DCF (South) are annexed herewith as Annexure-6 (Colly)

X X X X

8. The relevant part of the report by respondent no. 6-DM (South), Delhi vide email dated 27.01.2023 is reproduced below:-

“SUBMISSION REPORT ON BEHALF OF DEPUTY
COMMISSIONER /DISTRICT MAGISTRATE (SOUTH)
(RESPONDENT NO. 6)

X X X X

3. That in compliance to the direction of this Hon'ble Commission, it is humbly submitted the revenue officials visited the spot (Graveyard) on 04/01/23 at the adjoining site of Max Hospital, Saket and reported that during the visit on 04/01/23, it has been noticed that there is a 'Qabristan Hauz Rani' which is situated right side and adjacent to Max Hospital, Saket. There are also seen some Jhuggis, work shop of Denting Painting of cars and Tin Boundary wall were observed on the this land. Some people were residing at site along with domestic animal i.e goats. Several old & new Graves were found at this site. Inquiry was made from 8-10 persons present at the site informed that they all are belong to Village Hauz Rani.

A display showing Delhi Waqf Board was found at the site. There is kucha passage/Road between the Hospital and Qabristan from main road.

As per revenue record Aks Shizra, this area seems to falls under the Kh. No.197 & Kh No.198 of Village Village Hauz Rani. Further as per revenue record Khasra Girdawari, khasra No. 197 (5 bigha 11 biswa) is in the name of Gairmumkin Qabristan and Khasra no.198 (02 bigha 10 biswa) is in the name of Sarkar daultmadar . The revenue record khasra girdawari pertaining to Kh No. 197 (5-11) & 198 (2-10) of Village Hauz Rani along with Halqa Patwari Report are annexed as Annexure-I

Further, it is also submitted that as per notification vide no. F.9(22)/78/L&B /5450 dated 23.02.79 issued under section 22 of The Delhi Development Act. 1957, these khasras (197 & 198) of Hauz Rani Village placed at the disposal of the Delhi Development Authority for the purpose of development in accordance with the provisions of said Act. Copy of notification is annexed as Annexure-II .

X X X X”

9. Vide order dated 21.07.2023, this Tribunal observed that in its report in Para 4(i), DDA has submitted that ownership of the land mentioned in the said complaint could not be identified.

10. ***Learned Counsel during the course of hearing has submitted that due to law and order problem, the order has not been complied with and DDA was directed to identify the land and ensure to take action against the persons who are violators of the law and further to calculate the compensation/cost of the trees and plantation at its 10 times and submit a report within two months.

11. In compliance thereof status report has been filed by the respondent no. 2-DDA vide email dated 01.11.2023. The relevant part of the report filed by respondent no. 2-DDA is reproduced below:-

“Second Status report on behalf of respondent/DDA

X X X X

2. That as per the anonymous letter received by the Hon’ble NGT, it is alleged that one Mr. Dharam Singh alias Doctor and 10 other persons have encroached upon land behind graveyard near Max Hospital Saket, New Delhi and the above said persons have cut Neem, Babool, Peepal and other trees from the

green-belt and have stored scrap material and they are also burning plastic polythene bags and electricity wires which results in emission of poisonous gases causing air pollution.

3. That the present Status Report is being filed in compliance of the order dated 21.07.2023 passed in this matter wherein DDA was directed to identify the land and ensure to take action against the person who are violators of the law and to calculate the compensation/cost of the trees and plantation and submit the report within 2 months

4. That as per the records of the Respondent/DDA, the land in question in the present matter falls is Khasras No. 197 (5-11) and 198 (2-10) of Village Hauz Rani, Delhi where unauthorized encroachment exists.”

5. That as per Order/Judgment dated 14-01-2010 passed Hon'ble SCJ-cum-RC(Central)/Delhi in Suit No. 1144/06/79 titled Muslim Kabristan Village vs UOI, the DDA was restrained from taking possession of land in Khasra No. 184(3-02), 194(9-07), 197(5-11), 231(9-16), 513/150(2-18) of village Hauz Rani, Delhi. True Copy of order dated 14.01.2010 of Hon'ble SCJ cum RC(Central)/Delhi in Muslim Kabristan Village vs UOI is attached herewith as Annexure R-1.

6. That a regular second appeal, being RSA 98/2012 titled 'DDA Vs Muslim Kabristan' has been filed pursuant to the said order/Judgment dated 14-01-2010 of Hon'ble SCJ cum (Central)/Delhi.

That as per Order/Judgment dated 14-01-2010 DDA was restrained from taking possession of said khasras or removing the graves from said land or converting the said land into garden except in due course of law. Therefore, DDA has been restrained by Hon'ble court from taking any action with respect to Khasra No. 197 (5-11) of Village Hauz Rani. There is no stay granted by the Hon'ble court with respect to Khasra No. 198 of Village Hauz Rani, however, a demarcation of Khasra No.198 of Village Hauz Rani is required in order to identify the extent, limits or boundaries of K.hasra No.198 so as to remove the encroachment existing at Khasra No.198 of Village Hauz Ran. Demarcation of said Khasra is to be done by Revenue Department, GNCTD and DDA shall take the matter with Revenue Department, GNCTD to provide the demarcation report of said Khasra at the earliest.

8. That it is pertinent to mention regarding calculation of cost/compensation of trees and plantation, it is submitted that as per report of site inspection of Joint Committee constituted by Hon'ble NGT and as per report of site inspection carried out by LM/S&S-II alongwith Engineering Wing/DDA, naturally fallen trees were found and no tree was found being manually cut or fallen by encroachers at said land.

X

X

X

X”

12. We have heard learned Counsel for the respondents and gone through the relevant record.

13. It is evident from the material on record that the land in question in the present matter falls in Khasra No. 197 (5-11) and 198 (2-10) of Village Hauz Rani, Delhi. Some jughies were present behind the Kadeem Zari Muslim Eidgah, Hauz Rani Village. Some Scrap Material Shops were observed which were being operated by the people living in juggis. Plastic, polythene bags and other dump material were found dumped in the said land. As per report of the Joint Committee constituted by this Tribunal and as per report of site inspection carried out by LM/S&S-II alongwith Engineering Wing/DDA, naturally fallen trees were found and no tree was found to have been manually cut or fallen by encroachers at said land. No burning of plastic, polythene bags or electric wires was observed by the Joint Committee. Unauthorized encroachments exist over the same as mentioned in the report of the Joint Committee. By Order/Judgment dated 14-01-2010 passed by Hon'ble SCJ-cum-RC(Central)/Delhi in Suit No. 1144/06/79 titled Muslim Kabristan Village vs UOI, DDA was restrained from taking possession of land in Khasra No. 184(3-02), 194(9-07), 197(5-11), 231(9-16), 513/150(2-18) of village Hauz Rani, Delhi. Thereby DDA has been restrained from taking any action with respect to Khasra No. 197 (5-11) of Village Hauz Rani. However, there is no stay granted by the Hon'ble court with respect to Khasra No. 198 of Village Hauz Rani and DDA has submitted that DDA shall take up the matter with Revenue Department, GNCTD to provide the demarcation report of said Khasra at the earliest. The aspects of law of encroachments over the land in question do not fall within the

jurisdiction of this Tribunal. Suit No. 1144/06/79 titled Muslim Kabristan Village vs UOI is pending regarding Khasra no. 197 (5-11) of Village Hauz Rani. Appropriate action for removal of encroachments is to be taken by the concerned authorities in accordance with law and no intervention by this Tribunal in respect thereof is called for.

14. In the present case no burning of plastic, polythene bags or electric wires was observed by the Joint Committee and no tree was found to have been manually cut or fallen by encroachers at said land.

15. In view of the factual position duly verified by the Joint Committee we are of the considered view that no further action is required to be taken by this Tribunal on the present application which is disposed of accordingly.

16. However, some scrap material shops are being operated by the people living in Juggies and plastic, polythene bags and other material is dumped in the land in question. It needs to be ensured that scrap dealers operate with due authorization under the rules and follow safety norms. Further, it has also to be ensured that no environmental damage including damage to the green-belt/trees is thereby caused. The statutory authorities may take appropriate remedial measures in accordance with law.

17. Although, we consider it unnecessary to so clarify but do so by abundant caution that in case of illegal cutting of any tree by any of the encroachers the applicant may make complaint to the DCF/Tree Officer who shall be bound to take appropriate action on the same in accordance with law.

18. A copy of this order be supplied to the applicant and also the respondents by email/post for information and compliance.

Arun Kumar Tyagi, JM

Dr. Afroz Ahmad, EM

December 20th, 2023
AG