

Item No. 06

(Court No. 1)

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

(By Video Conferencing)

Original Application No. 49/2021
(I.A. No. 147/2021)

(With report dated 06.10.2021)

Bandhua Mukti Morcha NGO

Applicant

Versus

Rajeev Kumar & Ors.

Respondent(s)

Date of hearing: 08.10.2021

**CORAM: HON'BLE MR. JUSTICE ADARSH KUMAR GOEL, CHAIRPERSON
HON'BLE MR. JUSTICE SUDHIR AGARWAL, JUDICIAL MEMBER
HON'BLE MR. JUSTICE BRIJESH SETHI, JUDICIAL MEMBER
HON'BLE DR. NAGIN NANDA, EXPERT MEMBER**

Applicant: Mr. Yash Prakash, Advocate

Respondent: Ms. Sakshi Popli, Advocate for DPCC

ORDER

1. Grievance in this application is against failure to take remedial action against pollution arising out of illegal business of building material and use of heavy machinery like cranes, earth movers, trucks, dumpers, trailers and tractors etc. at plot no. 1 in Village & P.S. Pul Pehlad Pur, South-East District, New Delhi and Badarpur Market, Main Mathura Road, Near Tughlakabad Metro Station, Badarpur, New Delhi. It is stated that pollution is being caused by respondent nos. 1 to 7 - Mr. Rajeev Kumar, Mr. Sunder, Mr. Arvind Kumar, Mr. Neeraj Kumar, c/o. Plot No. 1, Pul Pehlad Pur, on Delhi Haryana Border, Village & P.S. Pul Pehlad Pur, South-East District, New Delhi, Mr. Rajkumar Verma, Mr. Pawan Kumar and Hansraj Bhati, c/o. Rodi, Bajri, Dust and Badarpur

Market, Main Mathura Road, Near Tughlakabad Metro Station, Badarpur, New Delhi-110044, respectively.

2. Vide order dated 03.03.2021, the Tribunal directed the statutory authorities to look into the matter, take appropriate action, following due process of law and file an action taken report. A joint Committee comprising Central Pollution Control Board (CPCB), Delhi Pollution Control Committee (DPCC) and District Magistrate, South-East district was constituted, with DPCC as nodal agency.

3. In pursuance of above, DPCC has filed report on 06.10.2021 as follows:

“ xxxxxxxxx
3. ***That the joint team carried out inspection of the Site-1 near Tughlakabad Metro Station and Site-2 near P.S. Pul Pehlad Pur) on 07.04.2021. Finding of the inspection are as follow:-***

A. Site-1 near Tughlakabad Metro Station:-

- a. Plot where trading of construction material was going on is approximately 4 acres.
- b. There are approximately 10 vendors involved in the plot and 50 vehicles were seen including trucks, tractors, JCB, dumper etc
- c. Construction material was lying uncovered.
- d. After the reaching of team sprinkling of water started by the workers.
- e. Plot is divided into 2 parts. One part has boundary wall of approximately 4 mtr. (Fibre sheet) and second part has approximately a boundary wall of 2 mtr. No wind breaking wall has been provided at the front side (only green net is provided).
- f. One of the vendors Sh. Vikrant was contacted for the information on legal papers i.e. Proof of land possession/ NOC from SDMC or other department/ water bills/ electricity bills etc.). No papers were provided to the joint team.

B. Site-2 near P.S. Pul Pehlad Pur:-

- a. Plot where trading of construction material was going on is approximately 2.5 acres.
- b. Construction material was lying uncovered and no dust control measures had been taken.

- c. No boundary wall or green net has been provided.
- d. No responsible person was present on the site and no documents regarding proof of land possession/ NOC from SDMC or other department/ water bills/ electricity bills etc.) Were shown.
- e. As per revenue department records, the land bearing Kh. No. 321 to 323 has been acquired by Government of NCT of Delhi for DDA through award No. 63/82-83.

Inspection reports of both the sites are enclosed herewith as **Annexure 1** and **Annexure 2** respectively.

4. That as per section 416 of the DMC Act, 1957, No person shall, without the previous permission of the MCD, establish any trading activity in the premises. As the activity on the sites was storing and trading of building material, a letter was issued to SDMC on 01/07/2021 for taking necessary action including levy of fine/ Environmental Damage Compensation in terms of the orders passed by this Hon'ble Tribunal from time to time. Copy of the letter issued to SDMC dated 01.07.2021 is enclosed herewith as Annexure 3.

5. That land owing agency is responsible for removing any unauthorized activity on its land as decided by the Chief Secretary. As the land in this matter belongs to DDA, therefore, a letter was also issued to DDA on 01/07/2021 for taking necessary steps for stopping illegal activity on its land, including levy of fine/ Environmental Damage Compensation in terms of the orders passed by this Hon'ble Tribunal from time to time. This letter was also sent to District Magistrate (South East) for taking urgent necessary action. Copy of the letter issued to DDA/ DM (SE) is enclosed herewith as **Annexure- 4.**

6. That the Site -1 near Tughlakabad Metro Station falls under the jurisdiction of SDM (Santa Vihar) and site -2 i.e. site near PS Pul Pehladpur falls under the jurisdiction of SDM (Kalkaji).

7. That communication was also sent to Deputy Commissioner (South East) on 16/08/2021 for taking necessary action in the matter and submission of ATR. Subsequently, status/ATR has been received from SDM (SaritaVihar) and SDM (Kalka ji). Copies of both the ATR are enclosed herewith as **Annexure-5 (Colly).**

- a) SDM (SaritaVihar) vide its ATR dated 02.07.2021 &13.09.2021 has forwarded the following action/ Status:-
 - i. has allotted the land to Badarpur Traders Union, Plot No. 7, Mathura road, Badarpur.
 - ii. All the stock at the venue belongs to 02 vendors i.e. Sh. Raj Kumar Verma and Sh. Vikrant.
 - iii. Challan of Rs. 1.0 Lakh [@Rs. 50,000/- each] has been levied on the vendors. Shri Vikrant has deposited the amount whereas in the matter of other challan some dispute remains.
 - iv. During the inspection conducted on 25.08.21 by Tehsildar /Executive Magistrate (Sarita Vihar), all

stock of construction material was found covered and there was no movement of any vehicle. However, some vehicle (trucks etc.) were found standing on the venue.

b). SDM (Kalka Ji) vide its ATR dated 14.09.2021 has forwarded the following action/ Status :-

- i. Land owning agency is DDA and the village Pul Pehlad is an urbanized village and therefore the land use falls under the purview of south MCD.
- ii. A team of sub-division Kalka ji headed by Tehsildar (kalkaji) visited the site and imposed Environmental Compensation. Copies attached show that EDC of Rs. 1.0 Lakh [@ Rs. 50,000/- each] has been levied on the two vendors.

8. That the ATR of SDMC has also been received on 14.09.2021. The status as mentioned in the report is as follows:-

- A. No teh bazari were allocated by SDMC w.r.t. either of the above mentioned sites.
- B. As the lands belong to DDA, therefore any encroachment/removal drive needs to be conducted by DDA itself.

Copy of the ATR is enclosed herewith as Annexure-6.

9. That no action taken report from DDA has been received till date.

10. That, as no concrete report was received from any corner, **DPCC carried out the inspection of both the sites on 01.10.2021. Following were the observations on both the sites:**

A. Site-1 near Tughlakabad Metro Station:-

- i. Wind breaking wall of sufficient height (i.e 10 meter) have not been erected all around the boundary.
- ii. No water sprinkling system has been installed to control the dust pollution whenever the fine aggregate is loaded or unloaded and the sprinkling with pipe was not found sufficient.
- iii. Entire fine aggregate was not fully covered with green net/ tarpaulin.
- iv. The internal pathway where vehicles movement is carried out were not concretized resulting in dust pollution.
- v. Workers involved in handling in material have not been provided with face mask.

B. Site-2 near P.S. Pul Pehlad Pur:-

- i. Wind breaking walls of sufficient height (i.e 10 meter) have not been erected all around the boundary. However,

it was observed that wind breaking barrier of height 10 feet was maintained.

- ii. No proper water sprinkling system has been installed to control the dust pollution whenever the fine aggregate is loaded or unloaded and the sprinkling with pipe was being done.*
- iii. Entire fine aggregate was not fully covered with green net/ tarpaulin.*
- iv. The internal pathway where vehicle movement is carried out were not concretized resulting in dust pollution.*
- v. Workers involved in handling in material have been provided with face mask.*

*Copy of the Inspection report of DPCC are enclosed herewith as **Annexure-7(Colly)**.*

11. That on the basis of the inspection dated 01.10.2021, EDC of Rs 50,000/-each has been imposed against 16 vendors/traders working on both the sites in terms of the order dated 04.12.2014 passed by this Hon'ble Tribunal in OA 21/2014. In the direction it was also directed that no trading activity shall be carried out at the site till dust pollution control measures are in place at site.

12. That orders were also issued to both the SDMs concerned to ensure the compliance of dust pollution control measures at site and to ensure that no trading activity take place till these measures take place. Copy of the direction issued to SDMs is enclosed herewith as **Annexure-8** (Colly).”

4. Learned Counsel for the applicant states that there is no meaningful action taken on the ground. Serious violation of environmental norms is taking place on account of illegal business of building material and use of heavy machinery without any safeguards, in violation of the Air (Prevention and Control of Pollution) Act, 1981 (Air Act) and Sections 268 to 271, 278 and 284 IPC. DPCC has neither coordinated with the police authorities nor filed prosecution itself before the concerned Court, even after finding violations.

5. Learned Counsel for the DPCC states that though violations have been found and compensation assessed, further action is to be taken in coordination with the Delhi Police and the SDMs. The objection of the SDMs that the land-owning agency is DDA to remove the encroachment

is not tenable as the polluting activity can be stopped by the statutory regulators irrespective of who owns the land.

In view of above, let DPCC take further action in accordance with law in coordination with other authorities, following due process. We also issue notice to the alleged violators – Respondents herein mentioned in para 1 above. The applicant may serve notice by speed post. DPCC may also serve notice on the said violators so that they have opportunity to put forward their response, if any, before this Tribunal within one month. The Registry may also issue notice by email/whatsapp as per particulars furnished by the applicant.

List for further consideration on 11.01.2022.

I.A. No. 147/2021

This application is for action under Section 26 of the NGT Act for violation of order of this Tribunal. Since forum for action under Section 26 is the jurisdictional Magistrate, as per section 30 of the NGT Act, the application is disposed of as not maintainable.

Adarsh Kumar Goel, CP

Sudhir Agarwal, JM

Brijesh Sethi, JM

Dr. Nagin Nanda, EM

October 8, 2021
Original Application No. 49/2021
I.A. No. 147/2021
DV