

(2022) 07 DEL CK 0137

In the Delhi High Court

Case No : Civil Writ Petition No. 11261 Of 2022, Civil Miscellaneous Application No. 33057 Of 2022????

Delhi Development Authority

APPELLANT

Vs

Deputy Conservator Of Forests

RESPONDENT

Date of Decision : 29-07-2022

Acts Referred:

Citation : (2022) 07 DEL CK 0137

Hon'ble Judges : Najmi Wazri, J

Bench : Single Bench

Advocate : Prabhasahay Kaur, Kritika Gupta, Arkaj Kumar, S.K. Meena, Avishkar Singhvi, Naved Ahmed

Final Decision : Disposed Of

Judgement

Najmi Wazri, J

The hearing has been conducted through hybrid mode (physical and virtual hearing).

1. Issue notice. Notice is accepted by learned ASC for the respondent. At joint request, the petition is taken up for disposal.

2. By application under s.9 of the Delhi (Preservation of Trees) Act, 1994, the petitioner DDA had sought permission to cut some trees (693) for a public project i.e., Construction of Storm Water Drain at Sector-8, Dwarka, to prevent upstream water-logging especially during the monsoon season, in and around Indira Gandhi International Airport, Delhi. The proposed remedial measure includes widening of the northern and southern stretch of the drain upto Najafgarh. The project site was inspected by the Tree Officer, he held enquiries and after considering the matter, the requisite permission was granted. By notification dated 17.05.2022, published in Delhi Gazette-Extraordinary, an area of approximately 4.33 hectare was exempted from provisions of s.9(3) of the Act. In effect, 637 trees were recommended for transplantation and 56 trees

(keekar) were permitted to be cut. Compensatory plantation of 6930 trees (i.e. ten times of the number of trees which would be effected by the proposed project) was directed and an amount of Rs. 3,95,01,000/- towards administrative expenses and contingency charges was to be deposited by DDA. The tree varieties which could be planted were Neem, Amaltas, Peepal, Pilkhan, Gular, Bargad and Arjun along with other native species, at the locations identified and mentioned/ detailed in the said notification. The DDA promptly deposited the aforesaid amount and communicated the same to the Tree Officer.

3. However, by a letter dated 29.06.2022, the respondent – while acknowledging the “in-principal approval” of the transplantation/cutting of trees and of the deposit of the monies, informed the DDA that permission of felling of trees had been restricted on account of order dated 28.04.2022 passed by this Court in *Neeraj Sharma vs Vinay Sheel Saxena & Ors.* CONT.CAS(C) No. 851/2021. The relevant portion of the said order inter alia reads as under:

“...4. It will be logical and prudent to transplant fully grown trees instead of cutting them down. Let the department of Deputy Conservator of Forests (DCF) file an affidavit detailing:

i) the number of permitted trees to be cut down in the last three years, month-wise and zone-wise;

ii) how many trees were transplanted, if any,

iii) how many compensatory afforestation have been completed and the status of each compensatory afforestation with photographs.

...

8. In the circumstances, it would be appropriate that the Tree Officer(s) give due consideration to transplantation of each tree which is sought to be cut, before granting any further permission for cutting of trees. This would entail inspection of the trees which are sought. The reason for grant or denial of permission would have to be spelt out in the order of the Tree Officer along with photographs of each tree....”

4. The import of the said order required that the denial or permission of cutting of a tree would be preceded by inspection of the tree and consideration whether it could be transplanted. The Tree Officer had visited the DDA’s project site, carried out inspection, considered the matter and found that 637 trees could be transplanted while 56 trees could be cut – the latter being belonging to the vilayti keekar species. The corollary compensatory plantation and deposit of monies etc. was accordingly permitted by the aforesaid notification.

5. The learned counsel for the respondent submits that the impugned order of 29.06.2022 was more in the nature of erring on the side of caution, in view of the subsequent order passed in *Neeraj Sharma (supra)* on 19.05.2022. The said order reads inter alia, as under:

"...4. Remedial measures are warranted. It would, therefore, be in the fitness of things, in the public interest as well as for the sake of the environment for the present and future generations that tree-felling in Delhi is not permitted till the next date, so as to ensure that felling is done only when it is fully ensured by the applicant that the trees would at least be transplanted. Surely, there is no other way to mitigate Delhi's daily ecological and environmental degradation. Let the data be collated and filed by DCF (Headquarters) or an officer of equivalent or higher rank and an affidavit apropos exemptions granted under section 29 of the Act and of offence cases filed by the Tree Officer, for the years 2019, 2020 and 2021..."

(emphasis supplied)

6. However, it is clear that the order of 19.05.2022 also reiterates that issue of transplantation was to be examined and felling of trees was not precluded where transplantation was feasible. Clearly the aforesaid order is a reiteration of earlier order of 28.04.2022. In the present case over 90% of the trees were to be transplanted. Additionally ten times of the number of trees which would be affected by the project/tree felling were directed to be planted in the same neighbourhood.

7. Ms. Prabhsahay Kaur, the learned Standing Counsel for the DDA has shown to the court the area in which the trees will be cut and from where they will be taken out for transplantation. Satellite photograph of the same is reproduced herebelow:

8. In the demarcated portion the effected trees would be along the lower horizontal line tilted from left to right and continuing little distance up north. Even the lands where the transplantation and compensatory trees has to be done have been demarcated and the same are reproduced hereunder:

9. From the above it is evident that the impugned order of 29.06.2022 has misconstrued the aforesaid two orders passed in Neeraj Sharma (supra). Therefore, the impugned order is set aside.

10. DDA has undertaken to abide by the directions of the DCF as detailed in notification dated 17.05.2022 and also to keep the said officer informed of progress in the matter. An affidavit has been handed over by the learned Standing Counsel for the DDA, in which the Deputy Director (Horticulture), DDA has undertaken as under:

"...4. The deponent undertakes to maintain the above said trees and scrupulously adhere to all the conditions imposed by the Delhi Preservation of Trees Act, 1994 and the Notification/Permission dated 17.05.2022 and ensure the highest possibly survival rate..."

11. What is evident from the above is that the proposed transplantations are in the vicinity of multi-storied residential group housing societies and institutional lands. The beneficiaries will be the residents of that area, who will suddenly have

lush green neighbourhood in a few weeks post transplantation, in lieu of the otherwise barren lands, which they may have witnessed for years.

12. The learned ASC for the respondent submits, upon instructions, that the Tree Officer will supervise the transplantation of the trees.

13. The petition is disposed-off in terms of the above.