

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

.....

ORIGINAL APPLICATION NO. 306 OF 2013

In the matter of:

M/s. Sanjay Kumar
S/o Sh. Narayan Singh
R/o 19/70, Dakshinpuri
Dr. Ambedkar Nagar,
New Delhi – 110 062



Versus

.....Applicant

1. Union of India
Through Secretary
Ministry of Environment & Forests
Prayavaran Bhawan, CGO Complex,
Lodhi Road, New Delhi – 110 003
2. Ministry of Urban Development
Union of India
Through Secretary
Nirman Bhawan, Central Secretariat
New Delhi – 110 001
3. Govt. of NCT of Delhi
Through Secretary
Environment & Forests
Department of Forests
Delhi Secretariat
New Delhi – 110 001
4. NDMC
Through Chairman
NDMC Bhawan
New Delhi – 110 001
5. South Municipal Corporation of Delhi
Through its Commissioner
Dr. SPM Civic Centre,
Minto Road,
New Delhi – 110 002

6. North Municipal Corporation of Delhi
Through its Commissioner
Dr. SPM Civic Centre,
Minto Road,
New Delhi – 110 002
7. East Municipal Corporation of Delhi
Through its Commissioner
Dr. SPM Civic Centre,
Minto Road,
New Delhi – 110 002
8. Commissioner of Police
Delhi Police Headquarter
ITO, New Delhi – 110 001
9. Ridge Management Board
Through its Member Secretary
Department of Forests,
Delhi Secretariat
New Delhi – 110 001
10. Sant Shri Asha Ramji Bapu Trust (Ashram)
Through its Sanchalak
Upper Ridge Road,
Karol Bagh,
New Delhi – 110 005

.....Respondents

Counsel for Applicant:

Mr. Gaurav Kumar Bansal, Advocates.

Counsel for Respondents :

Mr. Vikas Malhotra and Mr. MP Sahay, Advocates for Respondent No.1.

Mr. BV Niren, Advocate for Respondent No.2

Mr. Vivek Kumar Tandon, Advocates for Respondent No. 3, 8 & 9

Ms. Sidhi Arora, Advocate for Respondent No. 4

Mr. Balendu Shekhar and Mr. Vivek Jaiswal, Advocate for Respondent No. 5 & 7.

Mr. Sunil Goel with Mr. Varun Chawla, Advocates, North Delhi Municipal Corporation; Mr. Sidhu Arora for Mr. PL Gautam, New Delhi Municipal Council; for Respondent No. 6

Mr. Arun Bhardwaj, Sr. Advocate along with Mr. SN Pandey and Mr. Saurabh Ajay Gupta, Advocate, for Respondent No. 10.

ORDER/JUDGMENT

PRESENT :

Hon'ble Mr. Justice Swatanter Kumar (Chairperson)

Hon'ble Mr. Justice M.S. Nambiar (Judicial Member)

Hon'ble Dr. G.K. Pandey (Expert Member)

Hon'ble Dr. R.C.Trivedi (Expert Member)

Dated: 10th November, 2014

1. Whether the judgment is allowed to be published on the net?
2. Whether the judgment is allowed to be published in the NGT Reporter?

JUSTICE SWATANTER KUMAR, (CHAIRPERSON)

The applicant has approached this Tribunal by filing the present application under section 14 and 15(b) & 15(c) r/w section 18(1) and 18 (2) of the National Green Tribunal Act, 2010 (for short the 'NGT Act') for protection of the forest area and environment, particularly, in relation to the central ridge area of New Delhi, falling under the jurisdiction of New Delhi Municipal Corporation (for short the 'NDMC'), respondent no.4.

2. According to the applicant, on 24th May, 1994, the Lt. Governor of NCT of Delhi issued a notification whereby the "Ridge", rocky outcrop of Aravali Hills in Delhi, was declared as "Reserved Forest" in terms of the provisions of Section 4 of the Indian Forest Act, 1927 (for short 'Act of 1927'). Respondents no. 5 to 7, are local governing bodies amongst whose jurisdiction the notified ridge areas (the declared Reserved Forest Area), i.e. the northern ridge area, the central ridge area, the south central ridge area and the southern ridge area, falls. Vide the above notification a total area of

7777 hectares was demarcated as the Reserved Forest Area. Being forest area, non-forest activity is impermissible in such ridge area. The Supreme Court of India in *M.C. Mehta v. Union of India*, Writ Petition (C) No. 4677 of 1985 has clearly directed that the ridge should be maintained in its pristine glory. The Ministry of Urban Development and Poverty Alleviation, Land and Development office while referring to the afore-stated directions of the Supreme Court placed the land at the disposal of the government of National Capital Territory of Delhi on “as is where is” basis for the maintenance of the said land as green and for taking such appropriate measures including fencing the protection and maintenance of the land etc. It has also contemplated taking of action for removal of presently existing unauthorized occupation, as identified during the joint survey along with the Government of NCT of Delhi in collaboration with the Department stated in the notification.

3. It is further the case of the applicant that the ridge area which has been notified as “Reserved Forest” is extremely important for conservation of bio-diversity and for ensuring the survival of floral and faunal components of biodiversity, for the present as well as for the future. The Indian Board for Wildlife in its 21st meeting held on 21st January, 2002, adopted a Wildlife Conservation Strategy, 2002 wherein it was envisaged that ‘no diversion of forest land for non-forest purposes from critically and ecologically fragile habitat shall be allowed’.

4. It is the case of the applicant that respondent no. 10, Sant Sh. Asha Ramji Bapu Trust (Ashram) has illegally constructed an ashram and other *pucca* and semi *pucca* constructions in the central ridge area, Karol Bagh, New Delhi. The construction raised by respondent no. 10 in the Central Ridge Area is unauthorized construction and the activity being carried on there is non-forest activity. Respondent no. 9, it is apprehended by the applicant, has allowed the development against the procedure established by law. Various articles in newspapers, including the article dated 3rd October, 2013 in an English daily, "Hindustan Times", had confirmed such apprehensions. All the respondents, particularly respondents no. 2 and 9 have a constitutional and fundamental duty to record all the data pertaining to registration of properties situated in the ridge area as well as to maintain and protect the notified ridge area. Furthermore, respondent no. 9 has a fundamental duty to administer, manage and regulate the ridge area and ensure that no unauthorized construction or non-forest activity is carried on in the notified areas under its jurisdiction. Respondent no. 10 had itself acknowledged much earlier that it had raised illegal encroachment on a large portion of land situated in the central ridge area near Shankar Road, Karol Bagh, New Delhi. Accordingly, respondent no. 2 issued a notice to respondent no. 10 for eviction, but neither was respondent no. 10 evicted nor was the illegal construction demolished. The applicant also raises challenge to other unauthorized constructions raised in various properties in the ridge area, but has primarily confined himself to the property of

respondent no. 10 in the present application. It is, thus, the applicant's case that Delhi Ridge Area, being a protected area in light of the above circumstances, is required to be protected by the respondents under the provisions afore-stated, as well as under Article 51A(g) of the Constitution of India.

5. In light of the above averred facts, the applicant prays for demolition of the illegal and unauthorized construction made by respondent no. 10, for initiation of criminal proceedings against respondent no. 10, for submission of a detailed list of the illegal encroachments present in the Ridge Area, for constitution of a team for removal and eviction of all the illegal encroachment present in the Ridge Area and also to all stop non-forest activities in these areas.

6. In response to the above case of the applicant, Respondent no. 1 filed a very short affidavit confirming that the Notification dated 24th May, 1994 has been issued, declaring the Ridge Forest Land as notified area. However, the land has not been so far transferred to the Delhi Forest Department. The land is owned by Land and Development Officer, Ministry of Urban Development and Poverty Alleviation. It is also stated that no diversion of forest land for non-forest purposes is permissible without the prior approval of the Central Government. The issue raised in the petition squarely falls within the purview of Government of NCT of Delhi. Respondent Nos. 4, 5 and 6 have filed affidavits stating that the area in question is under the jurisdiction of the Forest Department of Government of

NCT of Delhi and these respondents are not directly concerned with the area which has been encroached upon by respondent no. 10.

7. A common short affidavit has been filed on behalf of respondent no. 3 and 9. In that affidavit, the stand taken by these respondents is that in the case of *M.C. Mehta* (supra), the Supreme Court had constituted a special Committee to find out the exact area under the occupation of respondent no. 10. The two Members Committee submitted its report dated 7th November, 1996 which, vide order of the Supreme Court dated 8th November, 1996, was accepted. It was stated in that report that area of 4312 sq. yards could be left with respondent no. 10 while the remaining land was directed to be taken over by the Ridge Management Board, herein respondent no. 9. CPWD on behalf of respondent no. 9 took over the possession of the remaining area, leaving the area of 198' x 196' sq. feet with a 6 feet wide and 350 feet long passage with the Ashram, in terms of the order of the Supreme Court. The initial Notification dated 9th May, 2004 was issued notifying the ridge area and in pursuance thereto, vide Notification dated 19th May, 2004, out of 864 hectares of Central Ridge, 423 hectares of land had been handed over to Forest Department on 6th September, 2004 by the Office of Land & Development Officer in the first phase. Area under possession of respondent no. 10 was not part of the 423 hectares of land which was handed over. Vide letters dated 11th and 28th September, 2013, the authorities noticed that the claim filed by respondent no. 10 before the Forest Settlement Officer have been dismissed by the ADM South in 2009. Consequently, occupation by

respondent no. 10 has become an encroachment in the eyes of law and is liable to be removed in pursuance to the order of the Supreme Court and the authorities were requested to take action in accordance with law. With reference to the above correspondence, it is submitted by the appellant that occupation by Respondent No. 10 was unauthorized. Further, that the Ministry of Urban Development had required Respondent No. 10 to handover the land and to remove the said unauthorized construction in a time bound manner. Thereafter, the Land & Development Officer, Ministry of Urban Development on 6th July, 2005 served notice for vacation of the said land on respondent no. 10. Respondent no. 10 thereupon filed an application before the Forest Settlement Officer on 11th October, 2006 and 9th May, 2007 with the request that their occupation and construction be regularized and the area in question be notified as a non-forest area. This application came to be rejected vide order dated 10th February, 2009 passed by the Forest Settlement Officer.

8. Respondent no. 2 has also filed an affidavit which is in line with and supports the averments made by respondent no. 3 and 9 in their joint affidavit. Respondent no. 2 has laid greater emphasis upon the order of the Supreme Court in the case of *M.C. Mehta* (supra). The relevant part thereof reads as under:

“We accept the report and permit the area to the extent it is suggested by the Committee in its report to be left with the Asram. The remaining area will be taken over by the Ridge Management immediately.”

In furtherance to the order of the Supreme Court, the area was permitted to remain with Respondent no. 10 and possession of the rest of the area was taken over by Respondent no. 9.

9. Respondent no. 10 filed a reply affidavit dated 25th November, 2013 as well as an additional affidavit dated 15th January, 2014 in response to the case of the applicant and the affidavits filed by other respondents. According to this respondent, the present application is barred by the Principle of *res judicata* as the matter stands concluded by the orders passed by the Supreme Court in the case of *M.C. Mehta* (supra) and the present application is not maintainable. It is stated that the present respondent is carrying on its activity for the past few decades and the occupation of this land is in pursuance to its rights. It is stated that upon a chance discovery of an idol of Lord Hanuman at the site in question in the year 1940, a temple was constructed by devotees. The construction was completed in the year 1952. The Temple was provided with municipal water connection in 1965 and electricity connection in 1968. In the year 1974, the devotees formed a Trust by the name “Mahant Baba Balak Das Shri Manokamna Sidha Hanuman Mandir Trust” for managing the affairs of the temple.

10. A Notification was issued on 24th May, 1994 declaring the area as “Reserved Forest”. On 26th August, 1994, there was a proclamation under Section 6 of the Act of 1927 requiring persons claiming right over the lands in question. The trust filed the claim which was decided by the order dated 11th August, 1995. Vide that order, partially the right of respondent no. 10 was accepted as well

as the passage of a width of 8-10 feet, from the main road to the temple, was allowed to remain in existence. However, the Government was granted liberty to remove other structures like Ayurvedic Dispensary, Administrative Block, Kitchen, Verandah etc. in accordance with law. Later on, the Trust was taken over by Sant Shri. Asharam. According to this respondent, the Committee appointed by the Supreme Court in *M.C. Mehta v. Union of India* (supra) had submitted a report that only religious activity was carried out on the land in question and there was nothing objectionable about the same. It was accepted that the area of 4312 sq yards is in possession of the Respondent no. 10. It is also submitted by respondent no. 10 that they had also approached the Land & Development Officer, Ministry of Urban Development for allotment/regularization of the land atleast up to the extent to which Committee recommended it. The Land & Development Officer, on 22nd April, 2002 had required respondent no. 10 to furnish certain documents for regularization process which were furnished. The Supreme Court had later also required the said respondent to file an undertaking which was filed on 9th January, 2003 before the Supreme Court in IA No. 1820. The impugned structures were in existence even at that time and the order of the Supreme Court has not been fully complied with as according to L & DO Department, the implementation of the order is under consideration.

11. In the additional affidavit filed by Respondent No. 10, the objection has been taken with regard to maintainability of the

application. In the undertaking/affidavit dated 21st December, 2002 submitted by the replying Respondent, it has been specifically stated that the said Respondent had undertaken not to raise any further construction beyond the structures existing as shown in the photographs of that time and which was accepted by the Supreme Court. The application is *mala fide*.

Discussion

12. From the above noticed stands of the respective parties to this application, the undisputed facts which emerge from the records are that a Notification dated 24th May, 1994 had been issued by the Lt. Governor of NCT, Delhi declaring the entire ridge area admeasuring about 864 hectares in the Central Ridge of NCT, Delhi as a Reserved Forest Area under Section 4 of the Act of 1927. No non-forest activity can be permitted in this area except with the specific permission of the Central Government. Nobody has taken permission, none has been granted.

13. The area admeasuring round about 4312 sq yards of the Central Ridge is under the possession of respondent no. 10 who has even raised certain constructions in that area and it was running its activity now for some time.

14. The Supreme Court vide its order dated 8th November, 1996 had accepted the report submitted by the two Member Committee appointed in the case of *M.C. Mehta* (supra). The area suggested by the Committee was directed to be left with the Ashram while the remaining entire area was required to be taken over by respondent

no. 9 in accordance with law. Respondent no. 10 had at that time stated before the Supreme Court that the area would be handed over within one month. For the undisputed position afore-stated, it is clear that the entire area is a Reserved Forest in terms of the provisions of the Act of 1927 and no non-forest activity can be permitted in that area. The area of land in their possession and the extent of construction which was reported to exist by the Committee afore-referred was duly accepted by the Supreme Court vide its order dated 8th November, 1996.

With the passage of time, respondent no. 10 appears to have raised additional constructions and even extended the area of its occupation. From the records before the Tribunal, it appears that even the applications of the Ashram for regularization of the area in their power and possession and activity has not been accepted by the concerned department. On the contrary, their application containing the prayer to that effect stood rejected by the order of the Additional District Magistrate/Forest Settlement Officer dated 10th February, 2009. This order refers to various earlier proceedings as well as the orders passed by the authorities and the Supreme Court of India. The relevant extract of the said order reads as under:

“The cause of action arose with the notice of Ministry of Urban Development to Sant Shri Asaramji Trust Delhi. Executive Engineer, Ministry of UD Govt. of India vide notice dated 6th July, 2005 issued notice to the applicant Trust informing the Trust that they have unauthorizedly and illegally occupied the Government land, thereby directing the trust to vacate the land measuring 0.94 Acre situated at Upper Ridge Road, Ridge Area, New Delhi. Aggrieved of this an application was filed by the Sant Shri Asaramji Trust Delhi, Vande Matram Marg, New Delhi on 11th Octobr, 2006 and subsequent

application dated 9th May, 2007 with the prayer that the respondent departments be directed to denotify/regularize the subject land in the forest area and make allotment of the said land to the applicant trust as per the orders and directions of the Hon'ble Supreme Court of India.

As per the directions of the Hon'ble Supreme Court of India dated 30th October, 1996, Inspection Report was submitted by Shri Ranjit Kumar and Shri. D.C. Khanduri on 7th November, 1996 and the report is as under:-

“In pursuance of the above direction the discussion was held with Mr. Suri and spot inspection was carried out. The earlier area of 190' x 170' was worked out by including temple portion, office & residence and tree and parikrama by taking the boundary touching the walls of the temple portion. However, on the suggestion of Mr. Ranjit Kumar, the Committee felt that certain additional area to move about is required and therefore four corners of the area were fixed. On measuring it was found that the area now has length 198' and width as 196'. If this land is left, with the management, the area will work out to 4312 sq. yds. A sketch map showing the location and distances of the structure is attached.

The committee was further directed by the Hon'ble Supreme Court to consider the use of the approach path. We are of the firm view that the approach path, which has the length approx. 350 feet, should in no case be used by the vehicles. We therefore, propose that a 6 feet wide path will be in good enough for the devotees to approach temple on foot. Since the ridge road, from where this approach path bifurcates, is also not sufficiently wide, necessary instructions to the traffic police are required to be issued for making it a 'no parking zone' in front of the Ashram.”

Thereafter the Hon'ble Supreme Court vide its order dated 8th November, 1996 ordered as under:

“We accept the report and permit the area to the extent it is suggested by the committee” in the report to be left with the Ashram. The remaining area shall be taken over by the Ridge Management Board immediately. Mr. Suri states that possession of the said land shall be handed over to the Ridge Board within one month.”

Further, the Hon'ble Supreme Court vide its order dated 5th December, 2002 directed the applicant's trust as under:

“Let an affidavit be filed within three weeks on behalf of Baba Asa Ramji Ashram that the structures in existence are temporary in nature and further undertaking that no permanent structure would be constructed.”

In compliance of above direction, the applicant trust filed an affidavit on 21st December, 2002 before Hon'ble Supreme Court in I.A No. 18 WP(C) No. 4677/1985 titled “M.C. Mehta v/s Union of India & Ors.” wherein the applicant trust has mentioned as under:

“Apart from the structures in existence at the time this Hon'ble Court passed its order dated November 8, 1996, additional structures temporary in nature were put. These temporary structures are the “Meditation Pandals”, sheds around the Bad-Dada (Holy Tree) and sheds for providing facilities to the public.

That the trust undertakes that apart from the permanent structures already in existence at the time of the passing of the order dated November 8, 1996 which were allowed to be retained by the Trust, as mentioned above, the Trust will not raise any structure or structures in the future which is or are permanent in nature.

It is further stated that the existing permanent structures are old and dilapidated and need immediate repairs. The Trust undertakes that while repairing the existing structures, the Trust shall not carry out any additions either of a temporary or of a permanent nature in respect of those structures.”

In the interim period between Supreme Court order in 1996 and the above affidavit filed by the Trust, Conservator of Forest vide letter dated 10th August, 2001 informed Dy. L&DO, Ministry of Urban Development that in case if they decide to allot the land to Sant Shri Bapu Asaram Trust at Upper Ridge a proposal has to be sent as per Forest Conservator Act, 1980 for seeking approval of the Govt. of India. However, the decision was left to the L&DO which course of action they have to initiate.

As mentioned above, the subject land is covered under the said notification and the undersigned by virtue of deriving his powers from the Notification dated 10th May, 20036 proceed/find as under in view of the above facts and position elucidated above:

1. It is confirmed by both L&DO as well Forest Department that the subject land falls under Central Ridge and is covered very much under Notification dated 24th May, 1994.
2. Further, the Central Ridge was kept at the disposal of Delhi Government vide Notification dated 19th May, 2004 for maintaining it as a 'green' and for taking such appropriate measures including fencing for protection and maintenance of this land as may be required to serve the said purposes in accordance with the order dated 3rd January, 1996 passed by Hon'ble Supreme Court subject to the condition that the ownership and title of the land shall continue to be vested with the Govt. of India.
3. It was also mandated by the said notification dated 19th May, 2004 that action for removal of presently existing unauthorized occupation as identified through joint survey along with GNCTD shall be initiated by GNCTD in collaboration with CPWD and L& DO.
4. Explanation under section 4 of the Indian Forest Act, 1927 states that for the purpose of clause (b) of section 4, it shall be sufficient to describe the limits of the forest by roads, rivers, ridges or other well-known or readily intelligible boundaries.
5. The said land forms part of the Central Ridge as per the notification of 24th May, 1994.
6. The claimant Trust has mentioned that a right accrued in their favour by virtue of Supreme Court direction dated 8th November, 1996 where it was mentioned that certain area of land should be left with the Ashram. Whereas the right which is alleged to have accrued in favour of the Ashram Trust is subject to the conditions imposed by the Committee appointed by the Hon'ble Supreme Court. The Hon'ble Supreme Court in its order has mentioned that the report of the Committee is accepted. The report clearly mentions that "no parking zone" should be maintained in front of the Ashram. Whereas an inspection was conducted by the undersigned on 8th February, 2008 and 9th February, 2008 photographs were also taken. The copy of the photographs are enclosed as **Annexure-I**. As the photographs, nearly 1.5' Kms all along the road vehicles were parked and half of the road in front of the Ashram was blocked by the Ashram meaning thereby that the Ashram Trust has violated the stipulation (as much as 20 ft road was taken out and being used exclusively for the

Trust). Hence, a right which is based upon certain conditions cannot accrue once those conditions are not fulfilled.

7. As the notification and the affidavits filed by the L&DO and Forest Department clarify that this area has to be maintained as 'green', the same cannot be denotified and should remain as a green. There is no positive direction for allotment of land by the Hon'ble Supreme Court and the inspection report (dated 7th November, 1996) of the two member committee appointed by the Supreme Court clearly indicates that this area should be made a no traffic zone in front of the Ashram. Besides this, the Ashram also contains few shops which are indulging in commercial activities by way of selling their products. Ashram does not include commercial establishment and its contrary to the existing land use. Moreover, the entire ground area occupied by the trust is carpeted with bricks duly cemented. By virtue of these activities, the Trust is also liable for contempt of Hon'ble Supreme Court order dated 8th November, 1996.
8. Further, right on the basis of Supreme Court order does not accrue for another reason that the Ashram Trust has violated their own submissions filed before Hon'ble Supreme Court. As referred in preceding paras, a site plan was filed by Babu Asaram Ji Trust which is appended to this order as **Annexure-II**. As per this order, the trust has to maintain the same structures as per the site plan. Whereas the photograph at **Annexure-III** indicate that they have constructed another structure adjacent to Ayurvedic Dispensary. In the site plan, which they have submitted before the Hon'ble Supreme Court on 21st December, 2002, the following structures were shown in one block:-

Waiting Tin Shed,

Ayurvedic Dispensary

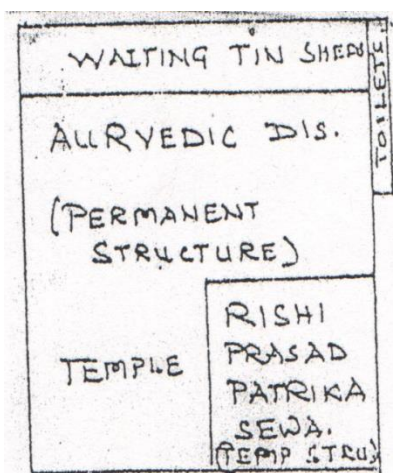
(Permanent Structure)

Temple

Rish Prasad Patrika (Temporary Structure)

Toilets

The above described area from part of one structure as per the site plan and this portion is scanned from site plan and appended below:



As per the above site plan, there should not be any other structure. However, the Ashram Trust has constructed another structure and this does not form part of the Four boundaries mentioned above. The alignment of this new structure is clearly distinguishable from (**Annexure-III**) what they have mentioned in their affidavit before the Hon'ble Supreme Court.

Besides this, there are no structures adjacent to Office-cum-Administrative Block as per the site plan submitted to the Hon'ble Supreme Court whereas new permanent structures were constructed which are said to be the residential quarters for the Sant. This portion is reflected as 'R' on the site plan at **Annexure-II**.

9. Section 4 (c) describes the role of a Forest Settlement Officer where it is mentioned as under:

“to inquire into and determine the existence, nature and extent of any rights alleged to exist in favour of any person in or over any land comprised within such limits or in or over any forest-produce, and to deal with the same as provided in this Chapter.”

10. The undersigned, in view of the reasons explained above, determine that there exist no right for the Trust to claim as it has not fulfilled the conditions imposed by the Hon'ble Supreme Court of maintaining the road in front of the Ashram as No Parking Zone. Besides this the Trust itself has violated its own affidavit submitted before the Supreme Court by constructing additional structure as explained above.

Accordingly, in view of the reasons mentioned above, the prayer of the Trust to denotify the subject land from Forest Area is not tenable and the application of Trust for denotification/existence of their Right is dismissed. The department concerned are at liberty to seek clarification from appropriate forum/ may take necessary action accordingly as per the process of law in the light of Hon'ble Supreme Court's decision."

15. As already noticed, certain reliefs have been granted in favor of respondent no. 10 in claim No. 34 of 1994 vide order dated 11th August, 1995. The report of the Committee constituted by the Supreme Court finally led to the passing of order dated 8th November, 1996 by the Supreme Court. Thus, a plea in regard to the construction and the area occupied by respondent no. 10 which is protected by the order of the Supreme Court dated 8th November, 1996 cannot be raised as an issue before the Tribunal even if the non-forest activity was being carried out in Reserved Forest Area. But the contention of respondent no. 10 that the present application would be hit by the principle of *res judicata* in relation to the entire subject matter of the application has no merit. The areas which have been occupied and permanent and temporary structures that have been raised in the forest area, subsequent to the inspection by the Committee constituted by the Supreme Court and which is causing pollution and are non-forest activities in the forest area, would certainly be issues that would fall within the domain of the Tribunal's Jurisdiction. Respondent no. 10 cannot claim any protection in regard to the events which relate to a period subsequent to the order of the Supreme Court dated 8th November, 1996. In fact, in the affidavit filed by respondent no. 10 itself before

the Supreme Court in IA No. 1820 on 21st December, 2002, it had given a clear undertaking that it would not raise any structures temporary or permanent thereafter. Paragraph 5 and 6 of the said affidavit reads as under:

“That the trust undertakes that apart from the permanent structures already in existence at the time of the passing of the order dated 8th November, 1996, which were allowed to be retained by the Trust, as mentioned above, the Trust will not raise any structure or structures in the future which is or are permanent in nature.

It is further stated that the existing permanent structures are old and dilapidated and need immediate repairs. The Trust undertakes that while repairing the existing structures, the Trust shall not carry out any additions either of a temporary or of a permanent nature in respect of those structures.”

16. In light of the above documents on record, it is clear that the structures and area which are protected by the order of the Supreme Court have to be of a date prior to 8th November, 1996. In fact, IA No. 1820 was filed before the Supreme Court for violation of its orders. However, in view of the undertaking filed on behalf of the respondent no. 10, particularly, paragraph 5 as afore-reproduced, the Supreme Court decided that no further orders were required to be passed on that application and disposed of the same accordingly. The plan that was placed before the Supreme Court was on the basis of the construction as existed on 8th August, 2002 i.e. the date of spot inspection carried out by the Delhi Development Authority and the Ridge Management Board and not of the time prior to the passing of the order dated 8th November, 1996. Even after 8th August, 2002, there have been changes in the coverage of the area as well as the constructed portion. Certain areas have been

newly constructed and covered. From the point of view of pollution, the municipal waste is being dumped and there is no proper mechanism for collection and disposal of municipal waste in the premises of Respondent no. 10. Furthermore, there is a pipeline from which sewage is being discharged in the open part of the Reserved Forest Area. According to respondent no. 10, this pipeline is only meant to drain out the water collected because of the rainy season or otherwise and no sewage is discharged from the Ashram. We are unable to accept this contention of respondent no. 10, in view of the report of the inspection team which we shall shortly proceed to discuss. The constructions which have been raised and areas that have been occupied, subsequent to the order of the Supreme Court dated 8th November, 1996 and in any case, after the inspection carried out on 8th August, 2002 cannot be permitted by this Tribunal. They are non-forest activities in the forest area. In fact, it could carry out no activity because over that forest area, respondent no. 10 has no right in law or otherwise. Secondly, it has raised illegal & unauthorized structures in the Reserved Forest Area which are completely prohibited in terms of the provisions of the Act of 1927 as well as the Notification dated 24th May, 1994, more so in violation of its own undertaking given to the Supreme Court of India. Further, in any event, respondent no. 10 cannot cause any environmental pollution and degradation of the Reserved Forest Area by spreading and storing Municipal Solid Waste (MSW) or by discharging sewage. It was contended on behalf of respondent no. 10 that they have a septic tank where the sewage is been

discharged into and which is emptied mechanically in regular intervals. It is not in dispute that large number of people gather on the site in question. Consequently, generation of large quantity of municipal solid wastes and sewage cannot be disputed. Thus, under the provisions not only of the Act of 1927 but even that of the Environmental Protection Act, 1986 read with the Municipal Solid Waste Rules, 2000, respondent no. 10 is under a statutory and public law obligation to ensure that no pollution results from its activity in the Reserved Forest Area. All the respondents, particularly, respondent nos. 2, 9 and 10 have a constitutional and statutory obligation to protect the forest areas.

17. At this stage, it needs to be noticed that vide order dated 6th May, 2014, this Tribunal had directed constitution of a Committee consisting of Additional Principal Chief Conservator of Forest, a representative of the Ministry of Environment and Forest and a representative of the Ridge Management Board to inspect the premises in question and submit inspection report, while particularly answering the following two questions:

1. Whether there is any excess area than what was permitted by Hon'ble Supreme Court of India vide its order dated 8th November, 1996 occupied by the respondent no. 10.
2. The total area is indicated as 4312 sq. yard along with the approach path of 350 ft approximately in all. Whether any construction made recently or in excess of the one that existed at the time of passing of the order by the Hon'ble Apex Court.

The Committee conducted an inspection and submitted its report to the Tribunal. The relevant part of the said report reads as under:

“Observations:

TOR 1: Whether there is any excess area what was permitted by Hon’ble Supreme Court of India vide its order dated 8.11.1996

To determine the area under usage by the Ashram, the Committee commissioned a physical survey done through total station method (TSM). This survey has revealed that the perimeter of the ashram area is 4271.00 sq yards and the approach road is 218.90 sq yards, which totals to 4489.99 sq yards. As the earlier maps provided to the Committee have been drawn by hand and not accurate, it is accepted that the perimeter and the area covered by the Ashram is the same as was permitted by the Hon’ble Supreme Court vide its order dated 8.11.1996. However, the committee, during its inspection observed that the Asaram Ashram’s footprint exceeds the area that has been demarcated for its usage. The accompanying photographs and the map prepared by TSM survey shows that there is clearing of undergrowth in the adjoining area to the Ashram. This indicates that the area is in continuous use and this is in violation of the Hon’ble Supreme Court directive. The attached map shows the area (marked A).

The committee also observed during its inspection that garbage was dumped in the ridge area. This is in clear contravention of the Hon’ble Court orders and will degrade the forest area. The Committee also found a sewage pipe that was discharging foul and noxious water into the ridge. This pipe was concealed but it was close to the Asaram Ashram area.

TOR 2: The total area is indicated as 4312 sq. yard along with the approach path of 350 ft approximately in all. Whether any construction made recently or in excess of the one that existed at the time of passing of the order by the Apex Court.

During the inspection the Committee observed that there were a large number of structures in the Ashram area. To verify if these were made recently or in excess of what existed at the time of passing of the order by the Supreme Court, the Committee commissioned a detailed survey of the proceedings of the Hon’ble Supreme Court. It has found that there is substantial change from the map of

1996. The construction – some temporary and some permanent – do not exist in the map dated 7.10.1996 and therefore, it can be concluded that these have been made subsequent to the Hon'ble Supreme Court order.”

18. From the bare reading of the above, it is clear that ashram was/is devoid of vegetation. The Committee also noticed garbage in the Ridge which emanated from the Ashram and that the sewage pipe opened out near the garbage dumped. It is further clear that Ashram's foot prints exceed the area that has been demarcated for its usage which is in violation of the order of the Supreme Court. The sewage pipe was discharging foul and noxious water into the Ridge. The pipe was concealed but it was close to the Ashram area. Lastly, it was found that there is substantial change in construction and area of occupation from the map of 1996 and these constructions have been made subsequent to the order of the Supreme Court.

19. From the above inspection report submitted by the inspection committee in furtherance to the orders of the Tribunal, it is clear that there has been a substantial change in the structure existing on the site in question, whether permanent or temporary. The inspection team has annexed along with their report, a sketch showing structures in the area occupied by respondent no. 10 as on 7th October, 1996. They have also annexed the Total Station Method (TSM) map of the location of the Ashram along with the structures existing as on the date of inspection. Respondent no. 10 itself has filed a copy of the map while highlighting the structures as on 1st July, 2014. There cannot be any dispute to the findings of the Committee that there is a substantial change from the sketch of

1996 in relation to permanent or temporary structures at the site in question. If one compares the sketch of 1996 with the map prepared by the Committee on 1st July, 2014, it is clear that in the office block a number of additional rooms (nearly 10), Satsang Pandal in front of residence-cum-office building, ayurvedic dispensary and stores have been constructed. As far as permanent structures are concerned, tin sheds, stores, toilets, mess and additional rooms have been constructed subsequent to 1996. Temporary structures like tin sheds, book stores and satsang pandal have been raised. These permanent or temporary constructions have been raised by respondent no. 10 taking advantage of the order of the Supreme Court dated 8th November, 1996, wherein they were given protection with regard to the areas under their occupation. Furthermore, if one even compares the sketch submitted by respondent no. 10 itself as on 8th August, 2002 with the detailed map submitted by the Committee as well as by respondent no. 10, apparently, there are substantial changes in the permanent and/or temporary structures existing and area occupied on the site. In the two maps, there was ayurvedic dispensary along with a temporary structure known as Rishi Prasad Patrika Sewa. However, presently additional rooms, stores, toilets and tin sheds have been constructed by respondent no. 10. Permanent or temporary structures have been raised near the tin shed meant for kar sewa earlier. Additional tin shed has been constructed near the temple; another tin shed has been constructed behind the temple block. There have been additional permanent or temporary

structures raised in and adjacent to the office block. Apparently, these structures have been raised in a forest area without permission of any competent authority and in fact, in violation of the undertaking given by respondent no. 10 on 9th January, 2003 before the Supreme Court in IA No. 1820.

20. Keeping in view the jurisdictional limitations of this Tribunal, in this application, we are not concerned with the issues relating to the nature and legality of the Ashram's possession over the forest area and other administrative matters relating thereto. As such the Tribunal is primarily concerned with issues relating to environment, protection of forests and ensuring that no non-forest activity is permitted to be carried on in the Reserved Forest Area. If the authorities responsible for carrying such duties have failed, then they are liable to be directed by this Tribunal to perform their statutory duties particularly in relation to the acts stated under Schedule I & II of the NGT Act.

21. In view of the above discussion, we shall pass the following directions for their strict and expeditious compliance by all concerned, including respondent no. 10:

- a. All the permanent or temporary structures raised by respondent no. 10 subsequent to the order of the Hon'ble Supreme Court dated 9th January, 2003 in the forest area under its occupation /possession including the area of 4312 sq. yards shall be demolished by respondent no. 10 within four weeks from the date of passing of this order. In

the event of default respondents no. 3 & 9 and all other official respondents shall ensure that such permanent or temporary structures are removed in accordance with law. In that event respondent no. 10 shall be liable to pay all the costs for removal of the said structures.

- b. The MSW in and around the site shall be collected by respondent no. 10, who shall ensure its disposal in accordance with the Municipal Solid Waste Rules, 2000. It will collect the MSW and ensure that it is removed from the forest area, in default the official respondents, particularly, the concerned Corporation and respondent no. 9, shall ensure removal of MSW in accordance with rules on regular intervals and at the cost of Respondent No. 10. Under any circumstance, no MSW shall be permitted to be stored in and around any part of the Reserved Forest Area/Ridge Area. Respondent no. 10 is hereby prohibited from throwing or storing MSW in the Reserved Forest Area.
- c. The pipeline which has smell of sewage and other foul smell shall be dismantled and closed by respondent no. 10 within four weeks from today. The sewage and urine collected or otherwise shall only be discharged into the septic tanks which have been constructed in the premises, as stated by respondent no. 10 and it shall be evacuated mechanically on regular intervals to prevent generation of any foul smell in the Reserved Forest Area and to avert pollution of

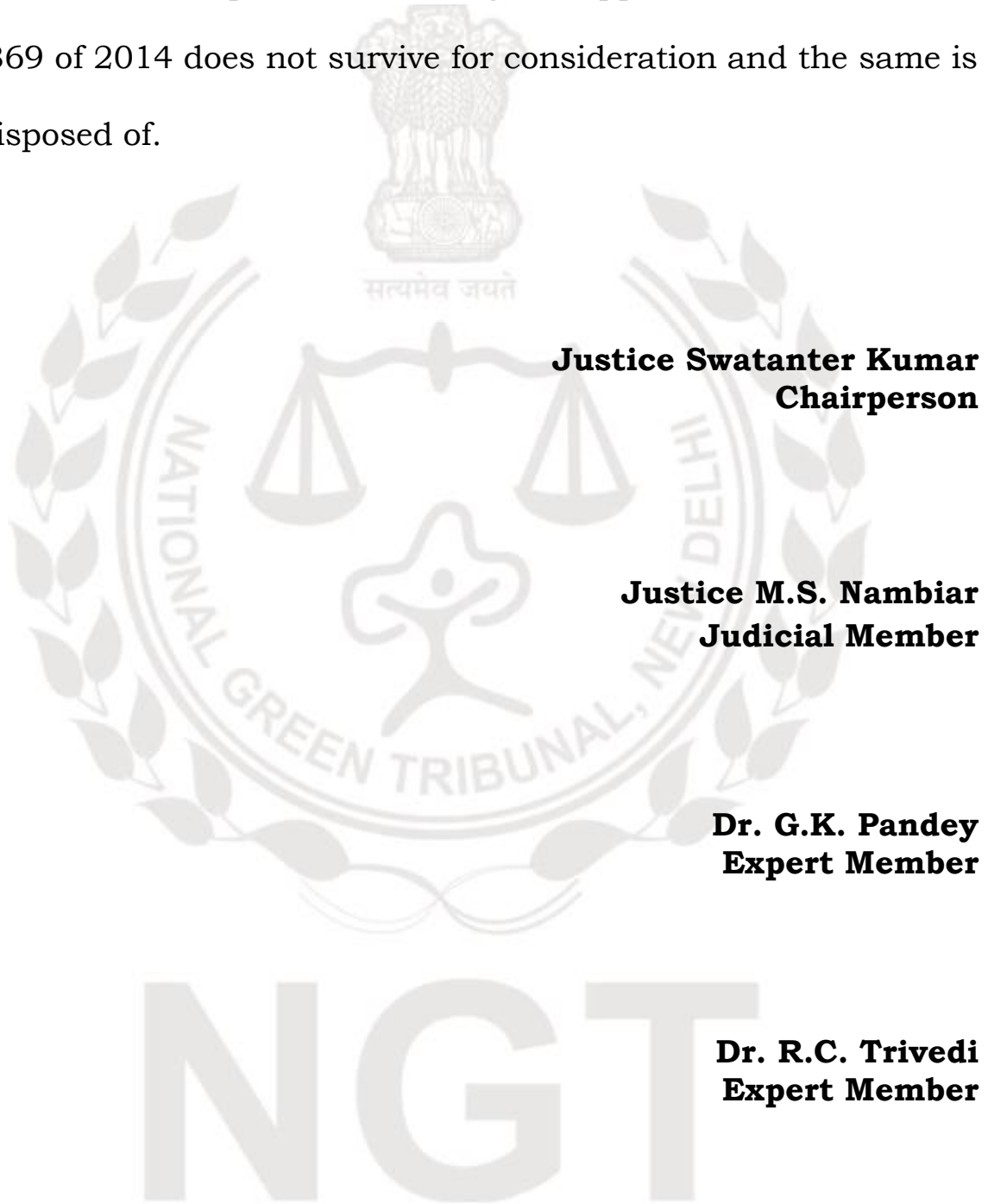
environment, in consultation and approval of the Delhi Pollution Control Committee.

- d. Respondent no. 10 within six weeks from today shall ensure that in and around the area in its occupation, trees of different kinds are planted by it. At least 1,000 trees will be planted by respondent no. 10 in and around the site adjoining its boundary and under the supervision of the Forest Department.
- e. All the government departments, particularly, respondent nos. 3 & 9, are hereby directed to take possession of the excess area as aforesaid, falling under the Reserved Forest Area, in possession of respondent no. 10, without further delay. Further we direct the said respondents to appropriately maintain and conserve the Reserved Forest Area. They should also ensure that no further environmental or ecological degradation is permitted to take place in that area, including carrying on of any non-forest activity in the entire Reserved Forest Area, falling under the Central Ridge Area.
- f. The Committee constituted by this Tribunal vide order dated 6th May, 2014, shall submit a compliance report in relation to the above compliance within eight weeks from today, which then shall be placed before the Tribunal by the Registry.

22. With the above directions, this Original Application 306 of 2013 is finally disposed of while leaving the parties to bear their own costs.

Miscellaneous Application

In view of the disposal of the Original Application 306 of 2013, M.A. 369 of 2014 does not survive for consideration and the same is also disposed of.



New Delhi
10th November, 2014