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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P.(C) 3433/2020&CM APPL. 12178/2020 (interim relief)

NITIN GUPTA

..... Petitioner

Through: Mr. R.K. Kapoor and Ms. Priya Pande, Advocate.

versus

NORTH DELHI MUNICIPAL CORPORATION AND ORS.

..... Respondents

Through: Mr. Ramesh Singh, SC for GNCTD.
Mr. Ajay Arora, SC for North DMC.
Mr. Gautam Narayan, ASC for GNCTD.
Mr. Baharu Barqi, Advocate for R-2.
Mr. Satya Priya Kamrah, Advocate for Applicant in CM. APPL. 18018/2020.
Mr. Rizwan and Mr. Azadar Husain, Advocates for R-3, R-4 & R-6.
Mr. Manish Kumar Srivastava, Advocate for R-5.

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

ORDER

% **06.08.2020**

The hearing was conducted Through: video conferencing.

CM APPL. 18019/2020 (exemption from Court Fees)

1. Exemption allowed, subject to the condition that the applicant will file the duly sworn/attested affidavit and the requisite Court fee

within 72 hours from the date of resumption of the regular functioning of this Court.

2. The application stands disposed-off.

CM APPL. 18018/2020 (fresh by Mr. Kushmakar Rastogi, applicant, for impleadment)

3. Issue notice.

4. The learned counsels named above accept notice on behalf of the non-applicants.

5. For the reasons mentioned in the application, it is allowed. The applicant-Mr. Kushmakar Rastogi, is impleaded as petitioner no. 2 in the array of parties.

6. The application stands disposed-off.

7. Amended Memo of Parties be filed before the next date.

W.P.(C) 3433/2020&CM APPL. 12178/2020 (interim relief)

8. Copy of the petition has been served upon the learned counsel for the parties.

9. In the forenoon, Mr. Ajay Arora, the learned Standing Counsel for North Delhi Municipal Corporation ('NDMC'), Mr. Ramesh Singh and Mr. Gautam Narayan, the learned Standing Counsel and the learned ASC, respectively, for GNCTD, had sought time to obtain instructions, as to what immediate measures could be taken to ensure that the 300 year-old *badh* tree -- *Ficus Benghalensis*, could be saved from being choked by concrete and restored to some health from the extensive cutting of its branches, prop-roots and subterranean roots.

10. Photographs filed by the intervenor show horrific and merciless

mutilation and cutting of the majestic grand old tree. The living entity which has been a mute and patient spectator to the unfolding of history in the city of Delhi for the past three centuries. Apparently, the builder/R-2, failed to appreciate this invaluable heritage in its courtyard. The builder -R2 would rather lop-off the tree to extend living quarters. Perhaps, iron and concrete and value of built-up real estate was more attractive to R-2.

11. So first, the builder extensively cuts the decades-old branches, then chops-off its intricate labyrinthian prop-roots and then digs the earth about 12-14 feet deep – all around the tree, for erecting concrete walls/support base for a steel and iron superstructure. In the process the subterranean roots have been cut, depriving the tree of the essential sources of sustenance from the earth. Its stability too has been shaken. It has been ‘cabined, cribbed, confined’, in a constricted concrete space. Indeed, the photos show that the tree has already been wrapped in dark plastic sheet, like an ominous black shroud, as if its end is nigh. However, the silent plaintive cry of this 300 year-old majestic *badh* tree has been heard by the intervenor Mr. Kushmakar Rastogi and the petitioner Mr Nitin Gupta. They seek its protection and restoration. The court shall so order.
12. The photographs filed by the intervenor show the damage as under:











13. After having obtained instructions, in the post-recess session, Mr. Narayan, learned ASC for GNCTD, informs the Court that the Tree Officer and other personnel of the Forest Department,

GNCTD, have reached the site. They confirm extensive damage to the tree. However, the Tree Officer is hopeful that the tree can be saved and restored to some good health. But first the concrete poured into the earth will have to be removed, the iron girders and all building material and concrete will have to be cleared from the courtyard, and manure enriched earth will have to be filled around the tree and duly watered, to give its sustenance and stability. The court directs the Tree Officer to promptly imitate all requisite measures to save the tree and endeavour to nurture it to health.

14.Mr. Ajay Arora, the learned Standing Counsel for the NDMC, submits that despite notices having been issued to respondent no.2, no response has been received. Furthermore, neither the said respondent nor his architect informed the Corporation about the existence of the *badh* tree in the courtyard. Building construction has extended upto the tree trunk. He submits that as of this moment, senior officers of the Building Department of the Corporation have reached the site and are in the process of dismantling/removing the unauthorised construction.

15.Mr. Bahar Barqi, the learned counsel for R-2, states, upon instructions from Mr. Abhinav Tyagi, Advocate and from Mr. Anup Soni, the Director of respondent no. 2, that parts of a tree which are lying on top of the nearby terraces, as seen in the photographs, do not belong to the present damaged *badh* tree but are of an earlier *peepal* tree, which was cut and for which fine was imposed on the said respondent, by the Tree Officer.

16.Let the Tree Officer, ascertain whether the branches, roots and

other parts of the tree, as seen in the photographs, lying on the terraces, belong to the existing *badh* tree or to the *peepal* tree which was earlier cut by respondent no. 2.

17. The learned counsels for GNCTD and the North DMC assure the Court that they will pick up samples of the cut roots and branches from the terraces today itself, so that they are not pilfered or removed from the site and the same can be tested by the Tree Officer.
18. The SHO of the area is directed to assist the Tree officer and North DMC in ensuring that no part of the roots of the trees, etc., lying on the terraces are not removed by R-2. The Tree Officer however, may take portions of it for his testing. The SHO shall render all assistance as may be requisite, for all the aforesaid purpose.
19. The learned Standing Counsel for North DMC further submits that, in compliance of the previous order, an enquiry has been initiated by the Corporation against the officers who may well be responsible for the oversight/lapse apropos the aforesaid unauthorised construction, as well as for the damage caused to the tree. He submits that proceedings will also be initiated against the architect, who did not mention the tree in the Building Plan, which was submitted by R-2 for online sanction.
20. The learned counsel for respondent no.2 submits that full cooperation shall be extended to the Corporation and to the Tree Officer, GNCTD, to comply with the Court's orders apropos removal of construction and concrete, so that the tree can be restored to health. R-2 undertakes not to create any obstruction or

hindrance in the exercise. The undertaking is accepted.

21. It is submitted by the learned counsels for the GNCTD and the Corporation, that the matter is being examined from the aspect of criminal law and action, as may be appropriate, shall be initiated against the builder-R2. Especially, since R-2 is a repeat offender. In 2018, the Tree Officer had imposed a fine of Rs.80,000/- upon the builder, for having cut an old *peepal* tree. Now again, having extensively cut and damaged the *badh* tree, displays the builder's nefarious attitude towards trees and utter disregard to the law, as the builder did not even bother to seek the statutory permission from the Tree Officer to prune/cut the tree. Instead, the tree trunk was encircled with concrete for the past many months, perhaps to gradually ebb-out its life. It cannot be denied that in the Walled City, especially in the densely populated and heavily built-up area of Chandni Chowk, there are hardly many trees. Therefore, each tree in that neighbourhood, is valuable and would need protection. Perhaps, the Tree Officer and Corporation can jointly embark on tree census exercise, in the Walled City. The Corporation's Building Department would have a fair knowledge of trees in the area. Additionally, they could invite information in this regard, from the general public. Let a compilation of the known or identified trees, be filed by the Corporation and the Tree Officer by the next date.

22. The learned counsel for GNCTD states, upon instructions, that the aforesaid fine was not paid by the respondent but R2 states that it has been paid. Let the details of the same be brought on record

before next date.

23. At joint request renotify on 13.08.2020, by which time, affidavits of compliance shall be filed by all parties along with photographs and action taken reports. Advance copies of the affidavits shall be shared between the learned counsels for the parties.

24. The order be uploaded on the website forthwith.

NAJMI WAZIRI, J

AUGUST 06, 2020

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