

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

Original Application No. 381/2023

IN THE MATTER OF :-1. YOGESH YADAV S/o R P Yadav **....PETITIONER**

VERSUS

2. DELHI POLLUTION CONTROL COMMITTEE

..RESPONDENT NO. 1

3. HITESH SAXENA

L-289 AND 290

EXT MOHAN GARDEN, UTTAM NAGAR

DELHI – 110059

....RESPONDENT NO. 2**L.D.O.H. – 14.12.2023****Objections Filed By The Petitioner On The Report Submitted by
Respondent no. 1 , Delhi Pollution Control Committee**

It is most humbly submitted :-

1. That this Hon'ble Tribunal taken up this matter on 14.12.2023 in which the compliance report was submitted by DPCC on 13.12.2023 hence the petitioner did not have ample time to file objections in written form.

2. That DPCC issued a letter on 25.08.2023 to Deputy Commissioner, Municipal Corporation of Delhi, without reading / considering the contents of the petition and the nature of the complaint.

In said letter DPCC informed the MCD officials to take action against owner of premises **who is ironically complainant** in this said petition. The action was to be taken against respondent no. 2 who was the tenant in said premises i.e. **WE-120/121, Mohan Garden, Rama Park Road, Uttam Nagar Delhi and owner of Shree Balaji Service Station**. In aforesaid mentioned letter it was mentioned that

“That the matter pertains to the illegal activities by owner of premises WE-120/121, Mohan Garden, Rama Park Road, Uttam Nagar Delhi.”

3. That the DPCC along with MCD took action in a hurried manner and did not bother to inform the petitioner who is owner of the premises and sealed the premises on 14.09.2023 without any advance notice and his knowledge which is against the basic statutory law of taking action against petitioner itself in a situation where offence is committed by the tenant i.e respondent no. 2 in present case.
4. That respondent no. 1 has acted with closed eyes as it has been prayed in the petition in prayer clause (iii)

“Pass an order in favour of Petitioner and direct Respondent no. 1 to not to take any adverse action against Petitioner or said property of Petitioner as Petitioner who is owner of said property has filed the complaint;

According to the letter issued by respondent no. 1 on 25.08.2023, adverse action has been taken on directions of DPCC by MCD by sealing the aforesaid property premises of petitioner instead action was to be taken against Respondent no. 2

5. That in similar case, the Hon'ble High Court of Delhi demarcated and clarified the difference between “**closure and sealing**” of industry which has been overlooked by DPCC and MCD officials. It was observed and mentioned in the judgment of a writ petition titled as Sunita Aggarwal vs Delhi Pollution Control Committee W.P. (C) 15585/2022 in para no. 15

“

15. As per the judgment of ld. Single Judge of this Court in Gopi Nath (supra), which was passed under the provisions of the Air Act, 1981, which are pari materia to the provisions of the Water Act, 1974, an order of the DPCC directing closure or prohibiting the use of the premises shall be violative of the provisions of the Act itself. The relevant paragraphs of the said judgment in Gopi Nath (supra) are set out below:

“

19. As I see it, a closure order is an order prohibiting the use of the premises as respects which an order is made for any purpose which violates the provisions of the Act and would not operate to close such user as is offending the provisions of the Act. Closure of the industry, operation or process would thus imply closure of only manufacturing or other such activity which is found offending the provisions of the Act through the management

and/or the workers of such Unit and even others like customers etc. may still have easy or regulated ingress or egress from such a Unit. Closure here would thus mean discontinuance of the objectionable activity. An order to seal the industry would lead to consequences much harsher than closure. Sealing would prevent access to and egress from (an area or space), and thus close (entrances) for this purpose. Sealing means to fasten with or as with seal; to close (an aperture, etc.) securely by placing a coating of wax, cement, or lead over the orifice, or in wider sense, by any kind of fastening that must be broken before access can be obtained. And if that be so, what happens to the other non-offending activities of the petitioner? Closing down all industrial activity is neither the purpose nor the object of the Act. Prevention of pollution is. If one particular component is the cause of pollution, the Board may well, means much more than mere closure. In any case, if the Committee found its direction of closure having not been acted upon it could take recourse to Section 37 of the Act.

16. Thus, on the basis of the above judgment, it is clear that the closure of any industrial unit or other activity, alleged to be polluting in nature, only results in discontinuance of the objectionable activities. The use of the subject premises for non-polluting or non-offending activities cannot be stopped as the sealing of the premises itself can have a deleterious impact. Moreover, the landlady cannot be deprived of the use and enjoyment of the subject premises due to the Tenant's offending activities."

6. That the DPCC / MCD did not mention fine / EPC in its report submitted on 13.12.2023 on respondent no. 2 for the violation of environmental laws.

It is humbly requested that due to wrong information issued by DPCC to MCD officials, grave inconvenience and loss has been caused to petitioner and title of the petitioner's property has been compromised as "**sealed property**"

Hence this Memo of objections.

The Hon'ble Tribunal Principal bench is requested again to consider the following objections and direct concerned authorities to do the following: -

- i. Rectify the error in order issued by DPCC to MCD officials in which it was mentioned to take order against owner of the premises
- ii. In future if any notice is to be issued to Mr. Hitesh Saxena , respondent no. 2 for any fine, environmental compensation, the address shall be according to the address mentioned in memo of parties and not the petitioner's premises address as Respondent no. 2 has vacated the premises.
- iii. Issue direction to concerned authorities to pass the order to De-seal the petitioner's property

Date : 27.02.2024

Petitioner

Place : New Delhi

**Counsel for the Petitioner
Advocate Hemlata Jaimini**

VERIFICATION

Verified at New Delhi on 27th day of February 2024 that the contents of the petition are true and correct to my personal knowledge. The last para is prayer to this Hon'ble Principal Bench to pass the order in favour of Petitioner on basis submitted petition.



PETITIONER

DATED : 27.02.2024

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....PETITIONER

VS.

1. DELHI POLLUTION

CONTROL COMMITTEE

...RESPONDENTNO. 1

2. HITESH SAXENA

...RESPONDENTNO. 2

AFFIDAVIT

I, Yogesh Yadav, s/o Late Sh. Rampal Yadav r/o Wz-1247 B, Nangal raya, Delhi 110046 age of 46 years, the above named deponent do hereby solemnly affirm and declare as under:-

1. That I am the Petitioner in the above noted case and am well conversant with the facts thereof and as such competent to swear this affidavit.
2. That the accompanying objections has been drafted by my counsel under my instruction.

That the contents of the same are true to my knowledge as the same have been read as understood by me. The same may be read as part



27 FEB 2024

and parcel of this affidavit and same are not being repeated herein for sake of brevity and true and correct and nothing material has been concealed there from.



Gogesh

DEPONENT

VERIFICATION

Verified at Delhi on this 27 day of February 2024 that the contents of the above affidavit are true to my knowledge and belief as per the record with us and no part of it is false and nothing has been concealed there from.

Gogesh

DEPONENT



ATTESTED
[Signature]
NOTARY PUBLIC

27 FEB 2024