

N.D.H.: 25.05.2026**BEFORE HON'BLE NATIONAL GREEN TRIBUNAL, PRINCIAL  
BENCH NEW DELHI**

INTERLOCUTORY APPLICATION NO. \_\_\_\_ OF 2026

IN

EXECUTION APPLICATION NO. 3 OF 20205

IN

ORIGINAL APPLICATION NO.60 OF 2014

**IN THE MATTER OF :**

SOCIETY FOR PROTECTION OF CULTURE,  
HERITAGE, ENVIRONMENT, TRADITIONS  
AND PROMOTION OF NATIONAL AWARENESS  
[ALSO KNOWN AS SPCHETNA] ...APPLICANT

VERSUS

DELHI DEVELOPMENT AUTHORITY  
AND ANOTHER ...RESPONDENTS

INDEX

S.NO.	PARTICULARS	PAGE NO.
1.	Objection on behalf of the Respondent No.2 against IA for Additional Documents filed by the Applicant with affidavit	1 – 5
2.	<b><u>ANNEXURE O-1</u></b> A True copy of the Writ Petition No. 15988 of 2023 (without annexures) filed before the High Court Delhi at New Delhi dated Nov. 2023	6 – 62

**Place:** New Delhi**Date:** 02.05.2026

FILED BY:-



**(GAURAV AGARWAL)**  
Advocate for Respondent No.2

GRV LEGAL  
Advocates and Legal Consultants  
O-703, Aditya Mega City,  
Vaibhav Khand, Indrapuram,  
Ghaziabad, U.P. NCR- 201014,  
Mob.: 8802911392  
Email. : [gaurav@grvlegal.in](mailto:gaurav@grvlegal.in)

**BEFORE HON'BLE NATIONAL GREEN TRIBUNAL,  
PRINCIAL BENCH NEW DELHI**

INTERLOCUTORY APPLICATION NO. \_\_\_\_ OF 2026

IN

EXECUTION APPLICATION NO. 3 OF 20205

IN

ORIGINAL APPLICATION NO.60 OF 2014

**IN THE MATTER OF :**

SOCIETY FOR PROTECTION OF CULTURE,  
HERITAGE, ENVIRONMENT, TRADITIONS  
AND PROMOTION OF NATIONAL AWARENESS  
[ALSO KNOWN AS SPCHETNA] ...APPLICANT

VERSUS

DELHI DEVELOPMENT AUTHORITY  
AND ANOTHER ...RESPONDENTS

**OBJECTION ON BEHALF OF THE RESPONDENT NO. 2  
AGAINST IA FOR ADDITIONAL DOCUMENTS  
FILED BY THE APPLICANT**

**Preliminary Submission :**

1. That the instant Execution Application is filed on behalf of the Applicant seeking execution/compliance of the order of this Hon'ble Tribunal dated 24.05.2024 passed in EA No. 50 of 2023 in OA No. 60 of 2014, along with execution/compliance of order dated 10.07.2015 passed in OA No. 60 of 20214.
2. That by the Applicant has filed an IA seeking to bring on record additional documents which are complaints to the

commissioner of police traffic and the video recording of the car parking.

3. That at the outset it is submitted that the Applicant has no right to file an IA bringing additional documents at this stage after the pleadings are complete and the matter is listed for final hearing. The filing of the IA at his stage is complete misuse of the process of law.
4. That it is submitted that the IA under reply deserves to be rejected for the above stated reason as well for the reason that the documents sought to be brought on record neither within scope of present Execution application nor within the scope of jurisdiction of this Tribunal.
5. That the email at Annexure A-1 and Annexure A-2 are clearly in respect of traffic disruption and public nuisance. The complaint made in the email does not pertain to any issue of environment much less any substantial question of law relating to environment.
6. That the Annexure A-3 are the allegedly videos and photographs of the vehicles parked on road. The said are alleged to be of guests at Respondent No. 2 banquet. It is denied that the said parked vehicles are of guests of Respondents No. 2. Further, merely vehicles parked on roads does not imply by itself that the same are being parked at the behest of the Respondent no. 2.
7. That it is again stated at cost of repetition that the issue of parking on public road and encroachment is beyond the

scope of jurisdiction of this Hon'ble Tribunal as no environmental issue arises.


8. That the IA seeks to bring in new issues no before the Tribunal in the OA. Moreover, the present being an Execution Application cannot travel beyond the original order sought to be executed. Hence, the IA deserves to be rejected.
9. That the additional documents sought to be brought on record are neither relevant nor necessary for the determination of issue before the Tribunal. Therefore, Additional documents should not be taken on record.
10. That it is submitted that there is another Writ Petition No. 15988 of 2023 pending before the High Court of Delhi filed by one Asiad Village Society seeking a bundle of prayers. The present Applicant is Respondent no. 6 in the said writ petition and is well aware of the same. In the said writ petition by way of an IA similar documents were filed seeking relief against the answering Respondents. However, no relief could be obtained on that IA. A True copy of the Writ Petition No. 15988 of 2023 (without annexures) filed before the High Court Delhi at New Delhi dated Nov. 2023 is **ANNEXURE O-1**
11. That filing of the present IA at this stage bringing similar documents on record could only mean abuse of process and forum shopping. Where no relief could was granted by High Court to the Petitioner therein, on basis of similar documents, relief is sought to be claimed from this

Tribunal. The IA for additional documents, therefore, is liable to be dismissed.

12. That it is lastly submitted that Execution proceedings has a limited scope of executing the decree/order. Present IA is an attempt to enlarge the scope of the EA which is impressible. Further, the entire Execution proceedings in present case is liable to be dismissed for want of legally valid decree/ order.

Jhankar Banquets  
Respondent no. 2

Through

  
**(GAURAV AGARWAL)**  
Advocate, Supreme Court  
GRV LEGAL

Advocates and Legal Consultants  
O-703, Aditya Mega City,  
VaibhavKhand, Indirapuram,  
Ghaziabad, U.P. NCR- 201014  
Mob.: 8802911392  
Email. : [gaurav@grvlegal.in](mailto:gaurav@grvlegal.in)

**BEFORE HON'BLE NATIONAL GREEN TRIBUNAL,  
PRINCIPAL BENCH NEW DELHI**  
INTERLOCUTORY APPLICATION NO. \_\_\_\_ OF 2026  
IN  
EXECUTION APPLICATION NO. 3 OF 20205  
IN  
ORIGINAL APPLICATION NO.60 OF 2014

**IN THE MATTER OF :**

SOCIETY FOR PROTECTION OF CULTURE,  
HERITAGE, ENVIRONMENT, TRADITIONS  
AND PROMOTION OF NATIONAL AWARENESS  
[ALSO KNOWN AS SPCHETNA] ...APPLICANT

VERSUS

DELHI DEVELOPMENT AUTHORITY  
AND ANOTHER ...RESPONDENTS

**AFFIDAVIT**

I, USHA KAPOOR, aged about 64 years, W/o Shri Mahesh Kapoor, R/o G-87, Preet Vihar, Delhi -110092, do hereby state on solemn affirmation as under:

1. That I am a Partner of the answering Respondent in the present Execution Application as such I am well conversant with the facts and circumstances of the present case and hence, competent to swear this affidavit.
2. That I have gone through the accompanying Reply from para 1 to 12 and say that the contents thereof are true and correct to the best of my knowledge and belief and I believe the same to be true.

That the Annexures O-1 to the reply are true copy of the documents.

I solemnly affirmed on this \_\_ day of May, 2026 at New Delhi,

*Usha Kapoor*  
**DEPONENT**

**VERIFICATION**

**02 MAY 2026**

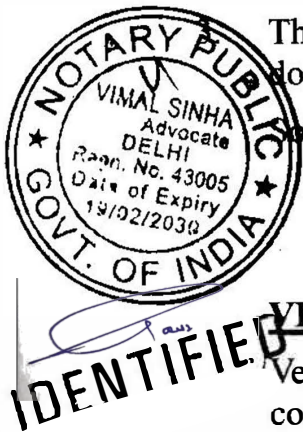
Verified at New Delhi on this \_\_ day of May, 2026 that the contents of my above affidavit are true and correct to my knowledge and no part of it is false and nothing material has been concealed therefrom.

*Usha Kapoor*  
**DEPONENT**

EMPOWERED TO ADMINISTER THE OATH  
SECTION 139 OF CPC 1908  
SECTION 297 OF CRPC 1973  
DELHI HIGH COURT RULES 1967  
PART-6, CHAPTER XVIII-227  
EVIDENCE BY AFFIDAVIT BEFORE NOTARY  
SUPREME COURT RULES, 2013  
ORDER IX-7

*V. Sinha*  
**ATTESTED**  
NOTARY PUBLIC DELHI  
GOVT. OF INDIA  
Mob. No. : 9213778773

**02 MAY 2026**



IN THE HIGH COURT OF DELHI  
AT NEW DELHI  
EXTRAORDINARY ORIGINAL CIVIL JURISDICTION  
W.P. (C) No.            OF 2023

**IN THE MATTER OF:**

Asiad Village Society

...Petitioners

Vs.

Delhi Development Authority and Ors.

... Respondents

**MEMO OF PARTIES**

Asiad Village Society (Regd.)

Pradhuman Singh Marg,

Asiad Village Complex

New Delhi – 110049

Through its Secretary

...Petitioner

VERSUS

1. Delhi Development Authority  
Through its Vice-Chairman  
Vikas Sadan, INA Market  
New Delhi
2. Union of India  
Through Ministry of Housing and Urban Affairs  
Nirman Bhawan  
Maulana Azad Road  
New Delhi – 110011
3. M/s Jhankar Banquets  
Through its Partners

G-87, Preet Vihar,  
New Delhi – 110092

4. Archaeological Survey of India  
Through its Director General  
Dharohar Bhawan,  
24 Tilak Marg  
New Delhi – 110001

5. Municipal Corporation of Delhi  
Through its Commissioner  
Civic Centre, Minto Road  
New Delhi – 110002

6. Society for Protection of Culture, Heritage, Environment, Tradition and Protection of  
National Awareness (SPCHETNA)  
A – 403, Somdutt Chambers – 15  
Bhikaji Cama Place  
New Delhi – 110066

7. Delhi Jal Board  
Through its Chairman  
Delhi Jal Board HQ,  
Varunalaya Ph-II,  
Jhandewalan, Karol Bagh  
New Delhi – 110005

THROUGH

... Respondents



Mr. Raghav Kumar, Mr. Aditya Ladh  
Ms. Gahena Gambani  
Advocates  
19, Sundar Nagar, New Delhi - 110

IN THE HIGH COURT OF DELHI  
AT NEW DELHI  
EXTRAORDINARY ORIGINAL CIVIL JURISDICTION  
W.P. (C) No.            OF 2023

**IN THE MATTER OF:**

Asiad Village Society

...Petitioners

Vs.

Delhi Development Authority and Ors.

...Respondents

**Writ Petition under Article 226 and 227 of the Constitution of India**

To,

The Hon'ble Chief Justice

And his companion of Judges,

Honourable High Court of Delhi at New Delhi

The humble petition of the above-named petitioner;

**MOST RESPECTFULLY SHOWETH:**

1. This present Writ Petition is being filed to challenge the manner in which M/s Jhankar Banquets ("**Respondent No.3**") has been permitted by Respondent No.1 & 2 to illegally and arbitrarily usurp prime public land and has set up a banqueting facility, making profits of exorbitant amounts to the tune of tens of crores of Rupees, and to the detriment of the Protected Monuments of National Importance and at the cost of the publicly owned land, public interest and loss to the public exchequer. The Respondent No.3, under the guise of operating the Tower Restaurant, has illegally occupied and taken control of surrounding land and set up banqueting facility and has not ever operationalised the Tower Restaurant.

2. This present Writ Petition has also been filed by the Petitioners to set aside the judgements dated 10.07.2015 and 31.07.2017 ("**Impugned Judgments**") passed by the Hon'ble National Green Tribunal ("**Hon'ble NGT**") in the matter of Society for Protection of Culture, Heritage, Environment, Tradition and Protection of National Awareness vs. Union of India, OA No. 60 of 2014, which are illegal and without jurisdiction. The Hon'ble NGT has, on a petition filed by one NGO, wrongly, illegally and without any jurisdiction, granted contractual rights to Respondent No.3 by directing DDA to execute a license agreement for District Park land around/surrounding the Tower Restaurant. The Hon'ble NGT failed to appreciate that its jurisdiction is limited to determining and adjudicating matters arising out of the specific environmental statutes listed in the schedule of the NGT Act 2010, and while the Hon'ble NGT may issue directions to regulate issues pertaining to the environment, but the NGT cannot grant rights over land to any private party. The same is grossly illegal and arbitrary as the land over which rights have been granted to Respondent No.3 is a public land, to be used as a District Park under the Master Plan of Delhi and for the benefit of the public in Delhi and therefore, it cannot be given to private parties to reap profits by running a banqueting facility. Moreover, the said license has been executed for a paltry sum of Rs. 31,00,000/- per annum for thirty years for acres of prime land to be commercially exploited by Respondent No.3. Not only the judgment of the Hon'ble NGT a nullity as being without jurisdiction but also it is illegal and wrong.
3. The present writ petition has also been filed against the DDA and MCD for failure to perform their statutory and public duty, for extending arbitrary illegal benefits to Respondent No.3, and for being negligent/failing to take any action against Respondent No.3 for using the subject land in blatant violation of the Terms of Allotment/Lease Deed and in gross violation of the Master Plan of Delhi and Zonal Development Plan.
4. Respondent No.3 was granted a 30 years' lease in 1997 for operating the iconic Tower Restaurant located in Asiad Village Society, subject to the condition that the said Tower Restaurant would be operationalised within 6 months and would be properly maintained, the lifts be kept in working condition, and at the cost of Respondent No.3. Further, as a part of the long-term lease given to Respondent

No.3 for operating the Tower Restaurant, the Respondent No.3 was also incidentally permitted, as part of the restaurant, to use 2000 sq. yards of the surrounding land (i.e. the District Park) for the purposes of marriages and parties on annual license basis. However, the said permission to use the surrounding land was subject to (a) Respondent No.3 running the Tower Restaurant, (b) Respondent No.3 using only 2000 sq. yards, (c) DDA maintaining the surrounding land (District Park) as a District Park, (d) no nuisance to be caused to the neighbours, (e) there would be compliance by Respondent No.3 with the Master Plan of Delhi, (f) compliance with ASI Act, Rules and Regulations, and (g) compliance with all other statutory laws, rules and regulations.

5. It is submitted that the Master Plan of Delhi, ASI Rules & Regulations, the fundamental conditions of grant of lease and the terms of allotment are being violated by Respondent No.3 in, *inter-alia*, the following manner:

(i) Respondent No. 3 did not and till date has not operationalised the iconic Tower Restaurant, which was the primary purpose of the lease, and in fact, Respondent No.3 has completely changed the nature, character and complexion of the allotment by operating and exploiting the District Park by using it as a banqueting facility contrary to the terms of allotment/lease deed, Zonal Plan, Master Plan of Delhi and the ASI norms, the District Park surrounding the Tower Restaurant has been barricaded, and Respondent No.1 has illegally usurped the land where the Protected Monument of National Importance are situated, and clandestinely converted the entire park (including the Protected Monument with massive national, heritage and cultural value) into a banqueting facility;

(ii) Respondent No.3 has been using the public land for banqueting facilities i.e. for purposes it has not been legally authorised or permitted, without operationalising and/or operating the Tower Restaurant ever since the commencement of the Conveyance Deed/Lease Deed;

(iii) District Parks are never given in concession to private parties to exploit and earn huge revenues. However, the Respondent State Authorities have arbitrarily permitted Respondent No.3 to exploit the said land

categorised as District Park for purposes not permissible and which is in direct contravention to the Master Plan of Delhi and the ASI Rules and Regulations. The decision of the Respondent State Authorities to permit Respondent No.3 to exploit the District Park and Protected Monument as a banqueting facility is a clear case of excess abuse of discretion vested with them and gross impropriety due to non-consideration and non-application of mind.;

- (iv) The value of the said lands which is arbitrarily and illegally licensed to Respondent No.3 is worth hundreds of crores which Respondent No.3 is being permitted to exploit and earn exorbitant amount of revenues from the said prime public land by operating banqueting facilities and conducting parties which was never permissible under the terms for which the said land was given to Respondent No.3;
- (v) Respondent No. 3 had been given on lease a Tower Restaurant in a District Park to run a restaurant on certain prescribed terms and conditions, however, Respondent No.3 has failed to adhere to the said terms and conditions;
- (vi) Respondent No.3 is not permitted to run a banqueting facility on the lands adjacent to the restaurant and/or to barricade the grounds and take over the park and change the park's character from being a District Park to a private banquet facility. This act of Respondent No.3 is contrary to the Master Plan of Delhi as also the terms of allotment and Lease Deed;
- (vii) As per the terms of allotment, consistent with the Master Plan, the Respondent No.3 was only permitted to use a limited portion of the District Park land incidentally for marriages and parties on a license basis and the said land was to be maintained as a park by the DDA;
- (viii) Respondent No.3 has, however, failed to operate the restaurant and further in complete violation of the Master Plan and the letter and spirit of the terms of allotment of the Tower Restaurant, Respondent No.3 also

failed to run the Tower Restaurant and has infact converted the District Park upon which the Tower Restaurant is located into a banqueting facility.

- (ix) Further, Respondent No.3 never entered into a License Deed until 2018. Further, the License Deed entered into in the year 2018 is itself ex-facie illegal, unlawful and void as the same was entered into in furtherance of the judgment passed by the Hon'ble NGT which has been by the Hon'ble NGT without any lawful jurisdiction.
- (x) The use of land adjacent to the Tower Restaurant was permitted to be used on license basis and the use of said land by Respondent No.3 is illegal as Respondent No.3 never entered into a license deed and thereafter the license deed of 2018 is unlawful, as when entering into the said license deed, the Respondent No. 1 and 2 ought to have considered that Respondent No.3 is not at all operating the Tower Restaurant which was the prime consideration and purpose for which the said land adjacent to the Tower Restaurant was given to Respondent No.3;
- (xi) It is a settled law that the State holds public property as a trustee of the public and any alienation of public property or creation of any rights, title and interest therein in favour of a private party has to satisfy the test of reasonableness, equality and fairness. The act of Respondent No.1 & 2 leasing/licensing acres of prime public land i.e. the District Park and the land where Protected Monuments of National Importance are situated, does not satisfy the test of reasonableness, equality and fairness enshrined in Article 14 of the Constitution. The general public has the fundamental right to enjoy the said public land and Respondent No.1 & 2 ought not to have leased/licensed said land, that too in violation of the Master Plan of Delhi and without proper tender and for a paltry sum totally disproportionate to the value of the land and significant national, general, heritage and cultural value it holds;
- (xii) The Respondent No.1 & 2 have to exercise their administrative power within a system of controls informed by relevance and reason, keeping in

mind the purpose the State seeks to serve by exercising its power and the manner in which it attempts to do so. The Respondent No.1 & 2 failed to take into consideration that the limited purpose for which adjacent land was given to Respondent No.3 was with the object of operationalising the Tower Restaurant. However, Respondent No.3 has never till date operationalised the Tower Restaurant but has usurped prime publicly owned land of District Park and Protected Monument for its own commercial gain;

(xiii) The Respondent No.1 & 2 had no discretion to lease/license the publicly owned land, i.e. District Park and Protected Monuments, for the purposes which Respondent No.1 & 2 are not statutorily permitted to do, and where the nature of powers and statute provide certain permissible things and regulations, the Respondent No.1 & 2 ought to have acted in consonance with the same. By arbitrarily leasing/licensing acres of prime public lands to Respondent No.3, the Respondent No.1 & 2 have acted in gross violation of the Master Plan of Delhi, ASI Act, Rules & Regulations and DMC Act which clearly mandate that the District Park can be given by certain prescribed purposes (not banqueting facilities) and Protected Monuments of National Importance are to be preserved;

(xiv) The Respondent No.1 & 2 have failed to conform to the principle of non-arbitrariness which is a significant facet of Article 14 and has breached the reasonable/legitimate expectations of the general public and larger public interest who are affected by abuse of power of State which has acted against the Master Plan of Delhi, ASI Act, Rules & Regulations, and other statutes by wrongfully and arbitrarily permitting Respondent No.3 to conduct banqueting facilities from acres of prime public land of District Park and Protected Monuments, which should have been preserved for the enjoyment of larger public, and where the larger public have reasonable/legitimate expectations to enjoy the said lands as part of their fundamental right, except for the purposes where State can permit certain activity which Respondent No.3 is not conducting.

- (xv) The Respondent No.1 & 2 have clearly made error in law by neglecting the duties imposed upon them and acting against the statutory provisions of law by permitting Respondent No.3 to conduct banqueting facilities from the land categorised as District Park and encompassing land (including protected monument itself) as its private commercial land where the Protected Monument of National Importance are situated. The Respondent No.3 actions are *ultra-vires* as it cannot operate any commercial activity within 100 meters and 200 meters of the Protected Monuments which are 'prohibited areas' and 'regulated areas' respectively, much less incorporating the Protected Monument itself as part of the land from where banqueting facilities are conducted.
- (xvi) The Respondent No.1 & 2 are also in breach of legitimate expectations of the Petitioner and of larger public as public have fundamental right and legitimate expectation to enjoy the green zone District Park and the Protected Monuments of National Importance, however, by the arbitrary, illegal and negligent actions and conduct of Respondent No.1 & 2 of illegally leasing/licensing out the prime public land, the Petitioners and larger public are deprived of enjoying the aforesaid and the actions of State fall foul of the legitimate expectations of the Petitioners and larger public.
6. The present petition is also filed against the Archaeological Survey of India (ASI) as the operation of the banqueting facility is contrary to the Rules, Regulations and principles governing "Protected Monuments" of National Importance. The Siri Fort Wall and Bul-bulki Mosque are few of the surviving structures of architectural marvel from the medieval era period. Siri was one of the 7 cities of Delhi and serves as a symbol of national identity and rich cultural and architectural heritage of India, attracting several tourists, historians, researchers. Various heritage organisations and conservations have put in efforts to ensure that the historical architectural site remains and serve as a reminder of the shared heritage that transcends regional and cultural diversity of India. Preservation of these historical sites like Siri Wall and Bul-bulki Mosque is vital to safeguard the cultural architectural legacy of India. However, the Respondent

state authorities, including ASI, have grossly failed and/or neglected to save and preserve these Protected Monuments of National Importance by permitting Respondent No.3 to exploit the prime public property for its own commercial gain and private purposes by operating commercial banqueting facility from the same land where the said Protected Monuments are situated and thereby abuse the national and cultural significance of the protected monuments and the lands where the same are situated.

7. The petition is also against Delhi Jal Board (DJB) which is responsible for the production, distribution and prevention of contamination of drinking water and to regulate the supply of water for domestic purpose in accordance with the Delhi Jal Board Act 1998.

#### **PARTIES**

8. The Petitioner is a Society registered under Regulation 41 of the Housing Societies Regulations 1968 framed by Respondent No.2 in exercise of its powers under Section 57 of the Delhi Development Act 1957. The Petitioner comprises of the residents of the Asiad Village Society who have sufficient interest and are aggrieved by the arbitrary, illegal, irrational and unreasonable actions of the Respondents in respect of the Tower Restaurant, District Park, lackadaisical management of Protected Monuments by ASI and abuse of water supply in its neighbourhood, and the same is causing immense nuisance, creating hazardous and unhygienic living conditions, disturbing the peace of mind of residents and causing serious impediment to the life and well-being of the residents and children in the neighbourhood. Petitioner's right to life which is a meaningful right to live life with healthy living conditions and dignity is being impinged by the illegal actions of the Respondents.

Copy of constitution of Petitioner Society and a Certificate of Registration with DDA are annexed herewith as **Annexure – P1 (Colly.)**.

9. The Respondent No.1 is the Delhi Development Authority constituted under the Delhi Development Act, 1957 for the planned development of Delhi. Respondent No.2 is the Union of India through Ministry of Housing and Urban Affairs. Respondent No.1 and 2 are the statutory authorities who have wrongfully

licensed prime public land to Respondent No.3, directly detrimental to the public interest, the rights of the public and at the expense to causing significant loss to the public exchequer, and further have illegally allotted the subject licensed premises and, have failed to take any action against Respondent No.3 in violation of their statutory duty.

10. Respondent No.3 is M/s Jhankar Banquets through its Partners Mr. Mahesh Kapoor and Mrs. Usha Kapoor and have been impleaded in this present Writ Petition as they are the beneficiaries of the arbitrary illegal acts of the Respondents state authorities.
11. Respondent No. 4 is the Archaeological Survey of India (ASI), through Ministry of Culture, and is the government agency with the responsibility for protection of Protected Monuments of National Importance, for the archaeological researches, protection of cultural heritage of the country and maintenance of ancient monuments and archaeological sites of the country. Respondent No.4 ASI has also failed in performance of its statutory duty as Respondent No.3 has blatantly encroached and usurped the 'prohibited area' and 'regulated area' of the "protected monuments" of national importance i.e., the *Siri Fort Wall and Bul-bul-ki-Masjid*.
12. Respondent No.5 is the Municipal Corporation of Delhi (MCD) which has been established under the Municipal Corporation of Delhi Act 1957, tasked with the responsibility to ensure compliance with the Master Plan of Delhi and other bye-laws. It was incumbent upon Respondent No.5 MCD that the land surrounding Tower Restaurant which is categorised as District Park to be maintained as a District Park and not be encroached, exploited, usurped by any private party to earn exorbitant amounts of money, in direct contravention to the Master Plan of Delhi and terms of allotment.
13. Respondent No. 6 is the NGO namely SPCHETNA which had filed the Original Application 60/2014 before the National Green Tribunal wherein the Hon'ble NGT has passed the Impugned Judgments and the Petitioner Society was not a party in the said case in which the Impugned Judgments have been passed.

However, the Petitioner Society is directly affected by the impugned orders passed by the Hon'ble NGT for the reasons and grounds detailed herein in this instant Writ Petition.

14. Respondent No. 7 is Delhi Jal Board (DJB) constituted under the Delhi Jal Board Act 1998 and is responsible for the production and distribution of water, supply of water for prescribed purposes and to check the flow of and wrongful diversion of water by any person. Respondent No.7 has failed to act in accordance with its statutory duty and obligation as Respondent No.3 has been illegally accessing the underground water storage and exploiting it for its own unlawful commercial activities. Further, the water tank situated in the premises is solely for the lawful consumption of the neighbourhood residents and for the operation of the Tower Restaurant. However, Respondent No.3 has never and/or failed to operationalise the Tower Restaurant and have been exploiting the distribution, production and supply of water by abusing the water supply for the banqueting services on the usurped public land and further contaminating the underground water.

**BRIEF FACTS RELEVANT AND NECESSARY FOR THE ADJUDICATION OF THIS INSTANT WRIT PETITION ARE AS FOLLOWS.**

15. That the Asiad Village was set up as one of the infrastructure residential facilities for the Asian Games which were to be held in 1982. An overhead water tank was also built as a source of water supply for the residents of the Asiad Village. Since the appearance of the erected water tank was considered to be unpleasant from the outside, it was decided to camouflage the water tank by giving a specific architectural treatment in the nature of building a Tower Restaurant in order to beautify the outward unpleasant appearance of the water tank.
16. The Tower Restaurant is a unique piece of architecture and a landmark in Delhi. The running of Tower Restaurant would require significant outlay and expenditure, and therefore, it was determined to grant a long-term lease so that the person running the tower restaurant would have adequate time to recuperate its investment.
17. Accordingly, a decision was taken to auction the Tower Restaurant on "as is where is" basis for a lease of 30 years. Tenders were invited on 20.07.1993 for

the said auction of the Tower Restaurant. It was also decided by Respondent No.1 that DDA will allow use of 2,000 sq. yards of land around and in front of the Tower Restaurant for marriages, parties, etc. on annual license fee basis, as may be fixed by DDA.

Copy of Notice for invitation of Tender dt. 20.07.1993 published by Respondent No.1 have been annexed herewith as **Annexure – P2**.

18. Subsequent to the Notice for invitation of Tender dated 20.07.1993, the Petitioner filed *Writ Petition (C) No. 1657/1993* titled as *Asiad Village Society vs. Union of India*, challenging, *inter-alia*, the acts and omissions of Respondent No.1 for allotting/alienating parts of common area and services to Respondent No.3, and the said challenge was on the basis that the said land had already been allotted to the residents of Asiad Village Society. The said Writ Petition was dismissed by this Hon'ble Court *vide* judgment dated 08.02.2011.
19. Since the first tender was unsuccessful, another invitation for auction was published in 1996 and tender was floated by the Respondent No.1 in the year 1997 for auctioning the Tower Restaurant on leasehold basis for a period of 30 years. Respondent No.3 tendered for operating the Tower Restaurant and emerged as the highest tenderer in the process. It was provided that the successful tenderer would be granted 30 years leasehold right to operate the Tower Restaurant on certain terms & conditions. It was further provided that the allottee will be allowed to use the land around the Tower Restaurant on a license basis. Certain relevant terms & conditions of the tender document are set out below:

**"2. OFFERING OF TENDER**

*(i) ...The tender shall be for the amount of premium for the perpetual leasehold right of the Tower Restaurant for a period of 30 years leasehold basis on 'As is where is basis'. ....*

.....

*(xviii) **The Horticulture green character of the land in the Tower Restaurant complex will be so maintained by the DDA.** The allottee shall have no objection to the maintenance of the character of land as green by the Horticulture Wing of DDA. He shall not have any objection to the entry or for working of any staff, employees or officers of DDA on the said land and to the planting of the trees, shrubs and landscaping of*

*the land under reference in any manner, as may be found appropriate by the DDA.*

***(xix) DDA shall be at liberty to revoke the license at any time without assigning any reason with respect to the land to be given on license – fee basis and such revocation, shall not be called in question in any proceeding on any ground. Immediately on expiry / revocation of the license to use the open green ground floor the licensee shall forthwith hand over the possession of the same to DDA peacefully and without any demur. In the event of breach of any terms and conditions subject to which the license will be granted, in respect whereof decision of the VC, DDA shall be final and binding and the licensee shall not claim any refund of the annual license fee deposited by him and such action shall not be called into question in any proceeding or on any ground whatsoever. The legal possession of such land shall continue to vest in DDA even during the license period. The fountain – cum – lighting facility would be maintained by the allottee at his expense.***

.....

#### **4. CONVEYANCE / LEASE DEED AND OTHER CONDITIONS THEREOF**

.....

***(iii) The allottee shall be responsible to maintain with the lifts provided in Tower Restaurant and keep them in working order at all times. He shall ensure at his own cost and expenses that lifts are working 24 hours either with electricity or with the help of generator. The officers/officials of DDA, MCD and any other official agency charged with responsibility of maintaining the Tower Restaurant, overhead water tank, etc. shall have access through the lifts at any time and the allottee shall not be entitled to control or restrict in any manner, the use of the lifts by them.***

.....

***(vi) The allottee / lessee of the Tower Restaurant will have to start the business of the Tower Restaurant within a period of six months from the date of taking over possession of the Tower Restaurant.***

.....

***(x) The allottee shall faithfully follow and abide by all the provisions of the Delhi Development Act, Master Plan, Zonal Development Plans, Delhi Municipal Corporation Act, Bye-laws & Rules and Regulations made thereunder and the provision of the Delhi shops and Establishment Act, and any other law applicable to the running of Restaurants, for the time being in force.***

.....

*(xiii) The allottee shall not do or permit to do anything in or outside the Tower Restaurant which may be a nuisance to the neighbours, visitors or to the passerby and which may be repugnant to morals.*

.....  
*(xv) If the allotment / lease / conveyance of the Tower Restaurant is obtained by mis-statement or if there is any breach of the conditions hereinstated or as stated in the format of lease conveyance deed and license deed, the lease / conveyance and license will be determined and the possession of the Tower Restaurant will be taken over by the DDA/lessor and the allottee will not be entitled to claim any compensation thereof, nor the return of any portion of the premium paid by him.*

*(xvi) No changes/ alterations/additions shall be made anywhere without any prior written approval of the DDA, shutters, doors, windows, etc. as existing in the building shall not be permitted to be shifted from their places or re-located in any circumstances.*

*(xvii) The terms and conditions of the tender / lease conveyance & license shall be strictly followed by the allottee/lessee. In case there is any breach of the terms and conditions of the allotment or of the lease lease/conveyance/license, lease / conveyance or license shall be determined/cancelled under the orders of VC/DDA and his decision in this respect or in respect to the interpretation of any of the terms and conditions of the bid and / or of the lease shall be final, binding and shall not be called in question in any proceedings whatsoever."*

Copy of the Notice for invitation of Tender dated 20.11.1996 has been annexed herewith as **Annexure – P3**.

Copy of Tender terms & conditions signed on 30.06.1997, bearing signatures of the partners of Jhankar, the highest tenderer, is annexed herewith as **Annexure P4**.

20. In furtherance to Respondent No.3 being the successful tenderer, a Conveyance Deed and a Lease Deed for a period of 30 years, commencing from 19.07.1997, were executed between Respondent No.1 and Respondent No.3 for the operation of the Tower Restaurant Building consisting of an area of 916.43 sq. meters. Relevant clauses of the Lease Deed commencing from 19.07.1997 have been extracted hereinbelow for the sake of convenience:

***"15. The lessee shall not use or permit to be used the said land or restaurant thereon for any purpose other than that as a restaurant or do or suffer to be done therein any act or thing whatsoever which in the opinion of the lessor may be a nuisance, annoyance or disturbance to the lessor and other persons living in the neighborhood.***

***16. The lessee shall at all reasonable times shall grant access to the lessor or any officer duly authorized by the lessor to the electric sub-section for the purpose of ensuring proper functioning of the electric installations around the space adjacent to the Tower Restaurant or for other purposes. The lessee will be allotted land for construction of ESS on license fee basis. The land underneath the AC plants will also be on license basis. The open green ground or around and in front of the Tower Restaurant measuring around 2000 sq. yds. as delineated in schedule, may be allotted to the lessee on annual license fee basis payable in advance every year to be increased by 20% every three years and for which purpose separate license deed would be executed."***

Copy of the Conveyance Deed dated 24.12.1999 is annexed herewith as **Annexure P5.**

Copy of the Lease Deed dated 24.12.1999 is annexed herewith as **Annexure P6.**

21. Therefore, upon bare perusal of the terms & conditions of the Tender and Lease Deed, the following could be summarized:

a. Respondent No.3 had taken on lease the Tower Restaurant and was bound to make it operational within a period of 6 months.

b. Respondent No.3 could use only 2000 sq. yards of the land around the Tower Restaurant:

i. only on an *ad-hoc* basis, upon license from Respondent No.1, which will continue to be in possession of the land. A separate license deed was to be executed in this regard;

ii. and the land around would be maintained by Respondent No.1 as a District Park.

- c. The green character of the land had to be maintained by the Horticulture Wing of the Respondent No.1 and that the allottee will have no objection to the said character of the land being maintained;
- d. Respondent No.1 shall be at the liberty to revoke / cancel the license issued to the allottee, for the use of green land, at any time and such revocation shall not be challenged on any ground in any proceeding. Further, the legal possession of the green land around and in front of the Tower Restaurant shall vest with the Respondent No.1 even during the license period;
- e. It will be the responsibility of the allottee to maintain the lifts in the Tower Restaurant and to ensure that the lifts are in working condition 24 hours, either with the electricity or through the generator;
- f. It is the duty of the allottee to faithfully abide by all the provisions of the Delhi Development Act, Master Plan, Zonal Development Plans, Delhi Municipal Corporation Act, Bye-laws & Rules and Regulations made thereunder and the provision of the Delhi Shops and Establishment Act, and any other law applicable to the running of Restaurants, for the time being in force;
- g. If there is any breach of the conditions mentioned in the terms & conditions or the clauses of the conveyance deed and / or lease deed and / or license deed, the said conveyance deed / lease deed / license deed shall be revoked;
- h. It is the duty of the allottee to ensure that no nuisance, annoyance or disturbance is caused to the neighbors, visitors and passers-by due to any operations being carried out in the Tower Restaurant or the surrounding green area;
- i. The terms and conditions of the tender / lease, conveyance & license deed shall be strictly followed by the allottee / lessee. In case there is any breach of the terms and conditions of the allotment or of the lease / conveyance / license, then the lease / conveyance or license shall be determined / cancelled under the orders of VC / Respondent No.1;

- j. A separate license deed needs to be executed so as to permit the allottee use of the green land around and in front of the Tower Restaurant;
  - k. The possession of the Tower Restaurant and the green area around and in front of the Tower Restaurant shall only be granted once the allottee submits with the Dy. Director (CE) the conveyance deed, lease deed and the license deed duly stamped from the Collector of Stamps;
  - l. In addition, the allottee was not allowed to raise any permanent structures in the green area around and in front of the Tower Restaurant and only temporary structures could be erected for the purpose of facilitating the marriages, parties, etc.
22. As per the terms & conditions of the tender, clauses of the Conveyance Deed and License Deed, the Respondent No.3 was bound to operationalize the Tower Restaurant within 6 months. Respondent No.3 however, failed to do so. Further, though no License was granted for using the green area in front of and surrounding the Tower Restaurant, and even though Respondent No.3 did not make the Tower Restaurant operational, as was a material condition of the tender and grant of lease, the Respondent No.3 started to and continues to illegally utilize the entire District Park/green area around the Tower Restaurant and usurped the same and converted it into a banqueting facility. It did not have a license at all in respect of the green area and yet proceeded to illegally encroach upon the land. Moreover, even the terms of the license which would have been granted in terms of the Conveyance / Lease Deed, would only be for the Tower Restaurant and but to incidentally use the District Park to host parties and marriages. There was no license to operate a Banqueting facility in the land surrounding the Tower Restaurant and on the land where Protected Monuments of National Importance are particularly situated. Further, the possession of the land was always to remain with the Respondent No.1, who was bound to maintain it as a District Park under the Master Plan of Delhi. Respondent No.3 wrongly encroached upon the said Park and erected structures upon it, in

flagrant violations of the terms & conditions of the Tender, Conveyance Deed, Lease Deed and Master Plan of Delhi.

23. It is noteworthy to mention here that the Tower Restaurant, for whose operation the entire exercise was undertaken by the Respondent No.1 in the first place, has never been operated by Respondent No.3 till date. However, without ever even commencing the operation of the Tower Restaurant, Respondent No.3 wrongly commenced and continues to conduct its banqueting operation in the green area around and in front of the Tower Restaurant and on the land where Protected Monuments of National Importance are situated.
24. Once the operation around the Tower Restaurant began, Respondent No.3 started to flagrantly violate the Master Plan of Delhi/Zonal Development Plan, the terms & conditions of the tender, clauses of the Lease Deed and applicable law, in the following manner:
- a. As per the Master Plan of Delhi ("MPD"), the recreational use of a District Park allows running of only a Restaurant. Conversion of a District Park into a banqueting facility is not permissible. As per the Zonal Development Plan, the Tower Restaurant and the area surrounding it has been designated as a District Park. However, Respondent No.3, from the very beginning, has been violating this important provision as it has been running a banquet and undertaking banquet facilities from the area surrounding the Tower Restaurant.
  - b. As per the terms & conditions of the Tender, the Horticulture Wing of Respondent No.1 was required to maintain the green character of the area as per the Master Plan of Delhi. However, by undertaking commercial activities in the nature of banqueting, Respondent No.3 has completely changed the use, complexion and character of the area.
  - c. The limited use of some part of the green area around and in front of the Tower Restaurant was entirely incidental to the Tower Restaurant being operated by Respondent No.3 in the first place. Further, the Tower Restaurant had to be started within 6 months from the date of handing over

- of the possession to the successful tenderer. However, Respondent No.3 unauthorizedly and illegally usurped the entire District Park, without ever operating the restaurant, without abiding by the term of starting the Tower Restaurant within 6 months from the date of receiving possession.
- d. Respondent No.3 was to ensure that no nuisance is caused to the neighborhood and the residents of the Petitioner Society while it undertakes its operations from and around the Tower Restaurant. However, the actions of Respondent No.3 were in stark contrast of the said term. Marriages, parties, extravagant events, etc. were held and organized on a daily basis thus causing problems, disturbance and annoyance to the residents of the Applicant society in different ways, such as noise pollution due to use of loudspeakers, traffic problems due to marriage processions, parking spots being occupied by the cars arriving for marriages, parties etc.
- e. Once the possession of the premises was handed over to Respondent No.3, it completely barricaded the premises thus illegally taking over possession of the District Park, the land where Protected Monuments of National Importance are situated which should be open for public, and changing the character of the District Park contrary to the one allowed as per Master Plan of Delhi and terms & conditions of its allotment.
- f. It was also seen that Respondent No.3, despite being specifically instructed not to raise any permanent structures on the green area around and in front of the Tower Restaurant, have raised unauthorized structures being permanent in nature.
- g. The permanent structures so raised by Respondent No.3 were in direct contravention to the Notification dated 16.06.1992 issued by Archaeological Survey of India wherein it has been stated that no construction activity can be permitted within the 100 meters of a 'Protected Monument' and any construction activity beyond 100 meters but within 200 meters of the 'Protected Monument' can only be undertaken after prior permission has been obtained from ASI.

h. "Bulbul ki Mosque", being a Heritage Monument in the list of INTACH and a Protected Monument, was being used as a godown for tent material and as piece of display within the premises of the banqueting facility.

Copy of the relevant extracts of the Master Plan of Delhi 1962, 2001 and 2021 have been annexed herewith as **Annexure P7 (Colly.)**.

Copy of the relevant extract of the Zonal Development Plan and Notification dated 16.06.1992 has been annexed herewith as **Annexure P8 (Colly.)**.

Copy of pictures of the barricaded District Park and Protected Monument and unoperational Tower Restaurant are annexed herewith as **Annexure P9**.

25. Thereafter, an action was brought against Respondent No.1 and Respondent No.3 before this Hon'ble Court by way of a *Civil Writ Petition No. 3319 of 2002* titled as "*Vishwanath Pratap Singh v. Union of India*", wherein the Petitioner Society was not a Party. This Hon'ble Court, *vide* its judgment dated 25.09.2002, referring to the applicability of ASI's Notification dated 16.06.1992 to the premises of Tower Restaurant and green land surrounding it, and nature of construction activity permitted to be determined by the ASI and directed ASI to pass necessary order(s) accordingly. As per the said ASI Notification dated 16.06.1992, no construction activity can be permitted with the 100 meters of a protected monument and any construction activity beyond 100 meters but within 200 meters of the protected monument can only be undertaken after prior permission has been obtained from ASI.

26. In pursuance of the above-mentioned judgment dated 25.09.2002 passed by the Hon'ble Delhi High Court, the Director General ASI passed an Order dated 10.07.2003 ("**ASI Order**"), which duly recorded serious violations of the provisions of the "Archaeological Monuments Act and Rules" thereof. The said ASI Order recorded that as many as 13 permanent structures were erected by Respondent No.3, which were in violation of the ASI Notification dated 16.06.1992. Thus, ASI passed an order for demolition of the said structures. Copy of the Order dated 10.07.2003 passed by the Director General, ASI has been annexed herewith as **Annexure P10**.

27. The ASI Order was challenged by Respondent No.3 through its partner, Mr. Mahesh Kapoor, before this Hon'ble Court (which was later transferred to the Saket District Court), *vide Suit No.1576 of 2003* titled as "*Mahesh Kapoor & Ors. v. Union of India & Ors.*" seeking a declaration that the ASI Order is null and void. However, the said Suit was later on withdrawn by the Plaintiff therein, and thus, the ASI Order attained finality.

28. The Hon'ble Supreme Court in the Writ Petition (C) No. 4677 of 1985, *vide Order dated 24.03.2006*, appointed a Monitoring Committee to look into the aspect of sealing of the premises by the non-conforming users. The relevant extract of the said Order is being reproduced here for the sake of convenience:

*"In order to over-see the implementation of the law, namely sealing of offending premises in terms of the letter and spirit of this Court's directions, it is necessary to appoint a monitoring committee instead of leaving any discretion with the officers of the MCD. Accordingly, we appoint a Monitoring Committee comprising of Mr. K.J. Rao, Former Advisor to Election Commissioner, Mr. Bhure Lal, Chairman, E.P.C.A. and Maj.Genl.(Retd.) Som Jhingan."*

29. Meanwhile, the residents of the Petitioner Society wrote numerous letters and representations to authorities like Respondent No.1 and the Lieutenant Governor of Delhi requesting them to take strict and stringent actions against Respondent No.3 whose conduct, in relation to the use of green spaces and protected monuments, was unauthorized and in stark violation of terms & conditions, clauses of the Lease Deed and provisions of the Archaeological Monuments Act and Rules thereof. Taking cognizance of the same, the Lieutenant Governor of Delhi sought a Report on the issue from Air Vice Marshal (Retd.) V.K. Dayalu.

30. The Report was submitted by Air Vice Marshal (Retd.) V.K. Dayalu, along with certain observations. Relevant extract of the said Report has been reproduced herein for the sake of convenience:

***"Master Plan Green Land / Public Park***

*4. This area was handed over to M/s. Jhankar Banquets on 19.7.97. Till the time it was handed over, it was being used as a Public Park with full access for Public and with occasional hiring out for marriages etc. at nominal charges by DDA. ....*

.....  
 6. No document such as the tender documents or the lease deed etc. envisaged handing over of the area to the Private party. In fact they specifically mention that the area will be maintained by DDA. ...

7. Running of Banquets by M/s. Jhankar Banquets is clearly a commercial activity not permitted in the green / public park area as per the Master Plan. Running of **'Restaurant' only** (As against the 'Banquets') is permitted under certain conditions and when it is clearly incidental to re-creational use by the public. **It is ironic that it was running of the restaurant which started the whole exercise way back in 1993 and that is the one thing which remains closed.** The present activity, being purely commercial directly violates the provisions of MPD. It may be pertinent to mention here that in the year 2000, Shri Jagmohan the then Minister of Urban Development, was constrained to observe that **'that DDA was not well-advised to let Master Plan green to be used by a private party whatever the commercial calculations in its mind'** (Annexure - V).

8. It is strange indeed that a large chunk of Prime land has been handed over to a private party, ostensibly for a period of 30 years, **without**, any license deed in spite of the fact that all documents such as tender documents / lease deed for the area under the tower (executed in December, 1999), mention and call for execution of a license deed. As pre-condition and such surrounding area is restricted to a max. of 2000 Sq.yards (1670 Sq. Mtr. Approx.). This act of DDA violates the tender conditions and possession can only be given **after receiving the duly stamped 'license deed'**.

9. From time to time, it has been seen, even by the inspection team of DDA/ASI that M/s. Jhankar Banquets have violated and continue to violate the conditions regarding temporary / permanent construction specified whether the tender conditions or the ASI rules/regulations. Noise pollution/traffic jam and occurrence of the unsavory incidents involving law and order are also on record. The letter once again is in violation of the lease terms.

.....  
 Tower Restaurant

.....  
 14. The 'Restaurant' was to be commissioned within six months of possession being given, i.e. is by 19.1.1998, it remains closed till today. A penalty of Rs.500/- per day provided in the lease conditions remains unapplied.

15. *The original conditions did not allow shifting of doors/windows alterations/additions. No discretion was allowed in some of these, while other required prior permission and not post-facto. There have been extensive violations of these conditions.*

16. *There is a misconception that the lease/conveyance deed concerning the Tower Restaurant is irrevocable. The conveyance deed in this case is a special deed with the following peculiarities:*

a) *The land under the tower is specifically excluded from the conveyance unlikely the other conveyance deeds for free-hold conversion. The land is on lease for 30 years and no 'perpetual'*

b) *The tower restaurant structure itself is conveyance only for a period of 30 years without absolute ownership.*

17. *... Further, the conditions of the lease deed specify the occasion which warrant forfeiture / re-entry or otherwise revocation of the conveyance / lease deed. ..."*

Copy of the report submitted by Air Vice Marshal (Retd.) V.K. Dayalu to the Lieutenant Governor of Delhi has been annexed herewith as **Annexure P11**.

31. However, upon no action being taken by the authorities such as Respondent No.1 DDA, MCD etc., the Petitioner Society were left with no other option and addressed a representation to the Monitoring Committee appointed by the Hon'ble Supreme Court of India requesting the Committee to take into consideration its plight and resolve the issue with respect to the unauthorized use of the green land by Respondent No.3 thereby causing continuous violation of laws governing encroachment of public land/property and improper land use under the Master Plan of Delhi, resulting into nuisance to the residents of the Petitioner Society. It was prayed that the area be completely sealed and orders be passed for eviction.

Copy of the Representation dated May 2010 bearing Ref. No. AVS/SCMC/2010 by the Petitioner Society to the Monitoring Committee has been annexed herewith as **Annexure P12**.

32. Thereafter, taking into cognizance the said Representation by the Petitioner Society, the Monitoring Committee inspected the premises surrounding the Tower Restaurant and thereafter, completely sealed the Tower Restaurant on

16.06.2010 on the ground that it is a green area and supposed to be a garden, a public space, however, Respondent No.3 have made it their empire, constructing whatever, wherever they like. The Monitoring Committee also took note of various violations of the Master Plan of Delhi committed by Respondent No.3. Copy of the Press Reports covering the entire incident of sealing of the premises has been annexed herewith as Annexure P13.

33. Once the premises were sealed by the Monitoring Committee, Respondent No.3 then applied before the Hon'ble Supreme Court of India for de-sealing of the premises. The Monitoring Committee submitted a report i.e. Report No.78 dated 20.07.2010 to the Hon'ble Supreme Court, wherein it highlighted the violations of the Master Plan of Delhi and the clauses of the terms & conditions and the Lease Deed by Respondent No.3 and therefore, recommended that Respondent No.3's request for de-sealing may not be entertained on the grounds mentioned in the report. Relevant portions of the said Report have been reproduced herein for the sake of convenience:

*"After going through the records made available and the site inspection, the following irregularities were notice by the Monitoring Committee*

.....

- a) ... *The Master Plans do not permit banqueting activities. ....*
- b) *The green area surrounding the Tower Restaurant has been totally destroyed by using granite to make suitable floors for holding parties, marriage parties etc.*
- c) *Entry of residents of the neighbourhood has been totally restricted and further the entire premises handed over to the applicant have been barricaded either with a wall/temporary cordon.*
- d) *There is unauthorized construction in the premises and semi - permanent and permanent structures have been built.*
- e) *Some of the semi - permanent structures are being used as accommodation for some of the employees of the applicant firm.*
- f) *Huge tentage equipment has been stored in some of the green areas and at other places in the premises.*

.....

*...As per the Master Plan, running of a Restaurant only is permissible in a Public Park in Recreational Use Zone under certain conditions. However, the DDA has permitted the use of the Public Park in an area of 17,541 sqm for commercial activities.*

...

*The tender documents or the lease deed did not envisage the handing over of the entire area to the party awarded the bid. Further, it has been specifically mentioned in the tender documents that the area would be maintained by the DDA. After the premises were handed over to the applicant, the entire premises so handed over have been totally barricaded, thus, the entry of residents of the neighbourhood to the public park has been totally denied by the applicant.*

*The Monitoring Committee submits that while no Restaurant is functioning from the Tower, the viewing gallery on the top of the Tower is being used by M/s. Jhankar Banquets for cozy parties, disco, etc. As per the terms & conditions of the tender on the basis of which the area was handed over to the applicant, the restaurant was to be commissioned within 6 months of possession, i.e. by 19.1.1998, but the same remains closed till today. ...*

.....  
*... The Monitoring Committee has noticed that the applicant has made alterations and additions to the ground floor of the Tower by covering the entire ground floor and also putting up partitions in total violation of the lease deed. **The ground floor of this premises is being used for various commercial activities like banqueting, parties, etc. besides sub-letting a portion to a private company named above.***

.....  
*The nuisance created by holding such commercial activities in the green area to the neighborhood can be well imagined as sometimes, nearly 5-6 marriage functions/other parties are held on a single day and as per the Website, the banqueting complex can accommodate nearly 8,000 guests.*

*The applicant has made large scale unauthorized construction in the premises as is evident from the photographs taken during the inspection of the premises.... While temporary tents/structures only are allowed for marriage functions in any Park or public place under certain conditions, the applicant has made permanent & semi-permanent structures for holding the functions. As per the Website the premises have a large air-conditioned hall for banqueting and corporate conventions etc. The Monitoring Committee has noticed these permanent structures.*

.....  
*The cooking for all these functions appears to be done from the kitchen which has been permitted by the DDA in the green area. The applicant has converted a large chunk of green area as permanent structure by using granite. The Monitoring Committee has noticed that the applicant has stacked slabs of granite and cement, etc. in the area adjacent to the generating set area.*

.....

*In view of the foregoing, the Monitoring Committee recommends that:*

1. *The DDA may be directed to conduct an enquiry into the matter and take action against the officers involved in this matter.*
2. *The request of the applicant for de-sealing of the premises may not be entertained.*

....."

Copy of extract of the relevant portion of the Report No.78 dated 20.07.2010 is being annexed herewith as **Annexure P14**.

34. Respondent No.3 thereafter appeared before the Monitoring Committee and stated that it is prepared to remove all the misuse and also unauthorized construction. The Monitoring Committee, in its Report No.80 dated 28.09.2010, submitted that this is a case where Respondent No.1 has allowed green land to be used for banqueting facilities in violation of the Master Plan of Delhi. Further, there were irregularities in the allotment of the premises to Respondent No.3. Therefore, the Monitoring Committee did not accede to the request made by Respondent No.3.

Copy of the extract of Report No.80 dated 28.09.2010 has been annexed herewith as **Annexure P15**.

35. Pursuant to the sealing of the premises on the order of the Monitoring Committee, an undertaking was given by Respondent No.3 that it shall facilitate demolition of the objectionable structure. On the basis of the said undertaking, the Hon'ble Supreme Court of India *vide* Order dated 05.04.2011 directed the premises to be de-sealed for that purpose.

Copy of the Order dated 05.04.2011 passed by the Hon'ble Supreme Court of India has been annexed herewith as **Annexure P16**.

36. However, as per another Report No. 87 dated 03.05.2011 filed by the Monitoring Committee, it was stated that Respondent No.3 had not removed the unauthorized construction *in-toto* and had simply made superficial demolitions. The relevant extract of the Report No.87 dated 03.05.2011 has been reproduced hereinbelow:

".....

*The Monitoring Committee, duly accompanied by the officers of MCD, ASI & DDA, inspected the premises today, the 3rd May 2011, and noticed that the applicant has not removed the unauthorized constructions in toto and has simply made superficial demolition.*

.....  
*The Monitoring Committee submits that the green area around the Tower Restaurant was flat as verified from the photographs taken in September 1997..... The applicant has dug up large area to lower it and make some unauthorized construction to meet his requirement of having necessary platforms for marriages and other banqueting activities. The applicant has to make all this area flat and green as existed in 1997.*

.....  
*The Monitoring Committee submits that the premises of M/s. Jhankar Banquet falls in district park area as per zonal plan prepared under MPD-1962/2001/2021, where no commercial activity other than a Restaurant is permitted.*

.....  
 Copy of the relevant extract of the Report No.87 dated 03.05.2011 has been annexed herewith and marked as **Annexure P17**.

37. Further, the Monitoring Committee, in its Report No.89 dated 03.08.2011, recorded that Respondent No.3 destroyed the green character of the land by concreting large areas which would take long time to get back to its original shape. Further, the said green area was required to be maintained by the Respondent No.1 in the first place, who handed it over to Respondent No.3 in complete violation of the Lease/Conveyance Deed dated 24.12.1999. Relevant extracts of the said Report have been reproduced herein for ready reference and convenience:

.....  
*...On the other hand, as per the conveyance deed the green area is required to be maintained by the DDA which had handed over the entire green area to the applicant in violation of the conditions of lease/conveyance. ...*

.....  
*The Monitoring Committee submits that the DDA has allowed unauthorized construction in the green area and has also violated the provisions of the Ancient Monuments & Archaeological Sites & Remains Act, 1958 by allowing these unauthorized constructions within the protected area of heritage monuments.*

.....  
 ...The report submitted by Air Vice Marshal Dayalu brought out various irregularities in the matter, most of which have been mentioned by the Monitoring Committee in its Report furnished to the Hon'ble Supreme Court. ...

As regards the maintenance of the green character of the area, the reply given by DDA is that the number of plants have increased, but conveniently skipped the fact that the applicant had built pucca structures on the green area, some of which have now been dismantled but the green area has still to be restored.

The Monitoring Committee further submits that the unauthorized construction in the ground floor of the Tower Restaurant is also huge and has to be completely removed. The residents of the Asiad Games Village have also complained about the large number of marriages/banqueting activities in the District Park leading to traffic problems water problems and noise pollution. In this connection, the Monitoring Committee submits that the Hon'ble Supreme Court had in the main matter in respect of the CWP No.4677 of 1985 directed on 6th December 1996 that the designated parks should not be used for holding functions more than 10 days in a month and is should be progressively reduced. These directions of the Hon'ble Supreme Court have also been blatantly violated by holding banqueting functions in the park."

Copy of the relevant extract of the Report No.89 dated 03.08.2011 has been annexed herewith as Annexure P18.

38. Thereafter, the Hon'ble Supreme Court of India vide Order dated 30.04.2013 remitted the Writ Petitions and the IAs to the Hon'ble High Court of Delhi for consideration of the challenge raised to the Parliamentary enactments, as also, the challenge to the Master Plan and the Notifications issued thereunder by Respondent No.1. It was further recorded that, in purview of the powers granted to vide Order dated 24.03.2006 passed by the Hon'ble Apex Court, the Monitoring Committee had passed orders of sealing of the premises of the non-conforming users. It was directed that all such sealing orders shall be deemed to have been passed by the concerned statutory authority in exercise of the powers conferred under Section 345A of the MCD Act. Further, several applications for de-sealing were filed by the applicants whose premises were sealed by the virtue of the sealing orders passed by the Monitoring Committee. It was directed

that such de-sealing applications be treated as appeals against the sealing orders and be placed before the respective Appellate Tribunals constituted under Section 347A of the MCD Act, Section 253 of the NDMC Act and Section 31B of the DDA Act. All the appeals, i.e., the de-sealing applications, were directed to be disposed of within a period of one year from the date of receipt of the papers. Furthermore, the properties already sealed were directed to remain sealed till a final decision was taken by the concerned Appellate Tribunal and in case, the Tribunal decided in favor of the applicant, the Monitoring Committee was empowered to recommend the MCD/NDMC/DDA to prefer a writ petition before the Hon'ble High Court of Delhi for assailing the order passed in favor of an applicant.

Copy of the Order dated 30.04.2013 passed by the Hon'ble Supreme Court of India has been annexed herewith as Annexure P19.

39. In view of the powers envisaged in the Apex Court's Order dated 30.04.2013, the Appellate Tribunal of MCD passed an erroneous order dated 03.02.2014, thereby de-sealing the premises leased out to Respondent No.3. It was erroneously recorded that the major removals of the objectionable structures have already taken place and thus, permanent de-sealing of the premises was allowed by the Appellate Tribunal of MCD along with certain directions therein.

Copy of the Order dated 03.02.2014 passed by the Appellate Tribunal of MCD ordering permanent de-sealing of the premises has been annexed herewith as Annexure P20.

40. Respondent No.1 filed a Writ Petition before this Hon'ble Court W.P. (C) No. 4310 of 2014 titled as *Delhi Development Authority vs. M/s. Jhankar Banquet*, assailing the order of de-sealing dated 03.02.2014 passed by the Appellate Tribunal of MCD. This Hon'ble Court passed an Order dated 13.11.2014, disposing off the said Writ Petition, wherein the statement of the Senior Counsel appearing on behalf of the Respondent No.1 was recorded, admitting that the Senior Counsel for Respondent No.1 is not challenging the de-sealing order and his grievance is only on account of excess area having been occupied by the Respondent No.3 herein. The following observations were recorded in the said Order:

"... 12. I find force in this contention of the learned counsel that the question of area being leased or licensed not being directly or substantially in issue may perhaps not be binding between these parties.

13. With these observations the writ petition is treated as disposed of.

...."

41. Therefore, even though the Respondent No.1 DDA had the right to appeal against the Order of the Appellate Tribunal of the MCD which directed the desealing of the premises, and a Writ Petition was too filed on behalf of the Respondent No.1 assailing the said Order, but for the reasons best known to Respondent No.1 - contrary statements were made by the learned Counsel appearing for Respondent No.1 in the said Writ Petition (C) 4310/2014.

Copy of the Order dated 13.11.2014 passed by the Honble Delhi High Court in the case titled as *Delhi Development Authority v. M/s. Jhankar Banquet, W.P. (C) No. 4310 of 2014* has been annexed herewith as Annexure P21.

42. Thereafter, in May 2019, the entire disputed premises in the Asiad Games Village was again sealed by the Monitoring Committee owing to serious violations on part of Respondent No.3. It was stated by the Monitoring Committee that Respondent No.3 has not even fulfilled all the conditions laid out by the Appellate Tribunal of MCD on the basis of which Respondent No.3's premises were de-sealed earlier. Moreover, there were other violations related to the green norms and concretization. It was further added by the Monitoring Committee that some of the unauthorized constructions were also found inside the premises which were too close to a heritage structure i.e. Protected Monuments of National Importance.

Copy of the news coverage with respect to the sealing of the premises in May 2019 has been annexed herewith as Annexure P22.

43. The Honble Supreme Court of India vide Order dated 13.09.2022 in W.P. (C) No.4677/1985 titled as "*M.C. Mehta v. Union of India*", observed that the pendency of the applications before the Monitoring Committee, which was appointed for sealing the premises of the non-conforming users, has increased. Further, the matter being largely factual in nature and as challenge to the

decisions of the Monitoring Committee lied before the Hon'ble Supreme Court, the Hon'ble Supreme Court virtually became the first Court of judicial fact finding over the reports of the Monitoring Committee. Therefore, the Hon'ble Supreme Court of India appointed a Judicial Committee which would facilitate a quick disposal of almost 150 applications pending. The Judicial Committee, as recorded in the said Order, was empowered as follows

" .....

*We have opined that once the Judicial Committee so appointed directs de-sealing or rejects the same, the application would lie to this Court and we would be adopting the SLP approach.*

.....

*Such a Judicial Committee is necessary to be empowered to analyze all aspects of the matter, i.e. what is the nature of allotment, whether there is any change of policy of that allotment, what according to the norms prevalent is permissible and what are the nature of violation and in view thereof pass necessary orders. The power to direct compounding on payment of charges, if compliance is possible under the existing norms, is also an aspect which must vest with the Committee."*

44. The Judicial Committee appointed by the Hon'ble Supreme Court of India vide Order dated 13.09.2022 passed an Order dated 23.02.2023 allowing the desealing of the Tower Restaurant on the basis that unauthorized constructions have been removed. The Petitioner herein filed an Intervention Application in W.P. (C) No.4677 of 1985 titled as "M.C. Mehta v. Union of India", challenging the said de-sealing Order, however, as the grievance of the Petitioners is not limited to the unauthorised construction which it now understands was the basis for the sealing and de-sealing of the premises. Although the Petitioners had no concern while the premises was sealed, and its cause of action has arisen after the sealing, the grounds for challenging the actions of the Respondents are within the writ jurisdiction of this Hon'ble Court.

45. However, as a result of the de-sealing, a fresh cause of action has arisen as Respondent No.3 has now once again commenced illegal operations of its banqueting facilities from illegally and wrongfully usurped prime publicly owned land/green areas around the Tower Restaurant in flagrant violation of the Master Plan of Delhi, ASI Rules & Regulations and the terms of the allotment. The

Respondent No.3 continues to encroach and abuse the heritage structures i.e. the Protected Monuments of National Importance by exploiting and illegally using the Protected Monuments and the lands where the said Protected Monuments are situated as part of its illegal banqueting facility premises. Therefore, the Petitioner is constrained to move the present writ petition challenging the re-opening and continuance of operations by Respondent No.3 of its banqueting facilities. It is relevant to state that none of the previous petitions have decided the issues relating to violation of Master Plan or violation of the terms of allotment:

- a) In the case of Vishwanath Pratap Singh vs. Union of India, WP (C) 3319/2002 and wherein the Petitioners herein were not a Party, this Hon'ble Court was considering the applicability of ASI's Notification dated 16.06.1992 to the premises of Tower Restaurant and green land surrounding it, the right of MDA to give the Tower Restaurant to Jhankar Banquets (Respondent No.3 herein), and the nature of permissible construction activity was to be determined by the ASI. This Hon'ble Court was pleased to dispose-off the said writ petition with directions to the Director General ASI to consider the aspects of legality of construction and unauthorised constructions at the site and pass appropriate orders. The Director General ASI passed an Order recording several serious violations by Respondent No.3 and ordered demolitions of the illegal structures erected by Respondent No.3. However, despite the express directions of this Hon'ble Court and the consequent directions of Director General ASI, the Respondent No.3 continues to exploit the Protected Monuments for its own personal commercial gain earning exorbitant amounts of profits by illegally usurping and barricading prime public land where the said heritage structures protected monuments of national importance i.e. Siri Wall and Bul-bulki Mosque are located and land which is categorised as green areas/District Park, thereby causing harm to the public interest, public lands and public exchequer. This Hon'ble Court vide its judgement dated 25.09.2002 in Vishwanath Pratap Singh vs. Union of India further held that:

"25. ... one thing is clear that the Tower Restaurant is in existence for more than 20 years and in any case it was

*constructed much before 1992 notification. The land in question also belongs to DDA. Therefore, action of the DDA in giving the said Tower Restaurant to M/s Jhankar Banquet cannot be faulted with. However, any construction activity by the Jhankar Banquet which is contrary to 1992 notification cannot be permitted."*

- b) In the case of Asiad Village Society vs. Union of India & Ors., WP 1657/1993, the Petitioners therein challenged the issuance of the tender dated 20.07.1993 for leasing out the Tower Restaurant & claimed the exclusive right to user of the Tower Restaurant and the area of the grounds and maintain the common areas and common facilities of the Asiad Village Complex vests with the Petitioner Society and the same was promised to the Petitioners therein at the time the residents were allotted the flats in the Asiad Village Society. This Hon'ble Court *vide* judgment dated 08.02.2011 made vital observations and was pleased to dismiss the said Writ Petition by relying on the provisions of the brochure and on the provisions of the DDA (Management and Disposal of Housing Estates) Regulations, 1968 and held that:

*"23. It is no doubt true that the Division Bench in that case has held – "the Tower Restaurant is in existence for more than 20 years and in any case it was constructed much before the 1992 notification... the land in question also belongs to DDA... Therefore, action of the DDA in giving the said Tower Restaurant to M/s Jhankar Banquets cannot be faulted with." To that extend it would not be proper for us to re-examine the matter. However, the Division Bench in that case did not examine the rights of the residents on the land in issue, if any, and proceeded on the assumption that DDA was the absolute owner of the land and Tower Restaurant. On the other hand, the case of the petitioner society in this case is based on its alleged right of exclusive user and maintenance under the brochure, DDA (Management and disposal of Housing Estates) Regulations, 1968 and the price paid by the members. This aspect of the matter was not decided by this Court in that case. The petitioner was not a party to that case. Thus, while we do not intend to deal with the contention of the petitioner that user of land as a restaurant is contrary to Master Plan or the notification dated 16.6.1992 issued under rule 32 of Ancient Monuments and Archaeological Sites and Remains Rules, 1959, we proceed to examine the contentions in this writ petition for directions to DDA to hand over common area and common services including Tower Restaurant to the petitioner society for their maintenance.*

\*\*\*  
 30. A reading of the above provisions shall show that the petitioner society has no right of exclusive control or to administer the portions of the complex in the sense claimed by it. Its functions are of the kind which are required for providing assistance to the local authorities in exercise of their functions. The residents of the dwelling houses who are the members of the petitioner society would hardly be in a position to maintain services such as water supply, drainage, lighting etc. The allotment letter on record stipulates that many of these amenities even in the housing estate are eventually to be taken over by the MCD and till such time the allottees shall pay service charges. It is not shown that in Delhi members of other such societies are maintaining such services including overhead water tanks. Maintenance of these services requires specialized knowledge.

31. The present writ petition has no merits. The same stands dismissed with no order as to costs."

46. That while preparing the case against Respondent No.3, one of the residents of the Petitioner Society apprised the Petitioner on 14.04.2023 that one NGO namely 'Society for Protection of Culture, Heritage, Environment, Tradition and Protection of National Awareness ("**SPCHETNA**") has filed an Intervention Application in the matter titled as *M.C. Mehta vs. Union of India, W.P. 4677/1985* pending before the Hon'ble Supreme Court of India, and that the said Intervention Application has been filed against the Order dated 23.02.2023 passed by the Judicial Committee ordering de-sealing of the premises of Respondent No. 3. Subsequently, a soft copy of the said Intervention Application was also shared with the Petitioner via email dated 14.04.2023.

Copy of Intervention Application filed before Hon'ble Supreme Court of India has been annexed herewith as **Annexure – P23**.

47. That while perusing the said Intervention Application & its Annexures, the Petitioner noticed that the SPCHETNA NGO had also filed a case before the Hon'ble NGT titled as *Society for Protection of Culture, Heritage, Environment, Tradition and Protection of National Awareness vs. Union of India, OA No. 60 of 2014*, wherein SPCHETNA had sought a direction from the Hon'ble NGT to direct Respondent No.1 herein (DDA) to take possession from Respondent No.3 herein of the land admeasuring 18,500 sq. meters as the said land is a green area and further prayed for quashing of a letter dated 18.12.1997 by virtue of

which Respondent No.3 had been granted the license to use the said green area.

48. That the Hon'ble NGT, in the case of *SPCHETNA vs. Union of India*, OA 60/2014, passed two judgments (Impugned Judgments herein) i.e. the final judgment dated 10.07.2015 in the aforesaid case and thereafter another judgment dated 31.07.2017 which was passed in a Review Application numbered as 'RA 23/105' preferred by Respondent No.3 herein. These two Impugned Judgments were annexed along with the Intervention Application filed before the Hon'ble Supreme Court of India.

Copy of Impugned Judgments dated 10.07.2015 and 31.07.2017 have been annexed herewith as Annexure – P24 and Annexure – P25 respectively.

49. The Impugned Judgments are a nullity as they have been passed without jurisdiction. The Hon'ble NGT has erroneously proceeded to adjudicate upon the issue of whether Respondent No 3 had any legal right and entitlement to license for 18,500 sq. meters of green area surrounding and in front of the Tower Restaurant. It is respectfully submitted that the issue of a person's legal right and entitlement to license of land is solely within the jurisdiction of a Civil Writ Court. The Hon'ble NGT has been established only for effective and expeditious disposal of cases relating to environment protection, conservation of forests and other natural resources and only in respect of the statutes which are listed in the Schedule to the NGT Act 2010.

50. The Hon'ble NGT has completely overstepped the scope of its jurisdiction and has traversed into the Civil Writ jurisdiction of the Court, whereby NGT has determined the license rights of Respondent No.3 and Respondent No.1, and have effectively issued a Writ of Mandamus to the Respondent No.1 to execute a License Deed in favour of Respondent No.1. The Petitioner being a directly affected party was not even heard.

51. That Section 14 of the National Green Tribunal Act 2010 prescribes that the Hon'ble NGT shall have jurisdiction only over civil cases where a substantial question of environment is involved and when such question is arising out of the

implementation of enactments mentioned in Schedule-I of the Act. The enactments mentioned in Schedule-I are The Water (Prevention and Control of Pollution) Act 1974, The Water (Prevention and Control of Pollution) Cess Act 1977, The Forest Act (Conservation) Act 1980, The Air (Prevention and Control of Pollution) Act 1981, The Environment (Protection) Act 1986, The Public Liability Insurance Act 1991 and The Biology Diversity Act 2002.

52. it is respectfully submitted that the Hon'ble NGT has no jurisdiction to entertain and/or adjudicate any issue or dispute other than the issues arising from the aforementioned enactments. The impugned Judgments are vitiated by complete non-application of mind, occasioning failure of justice and suffer from patent perversity.

53. It is submitted that no Court/Tribunal of limited jurisdiction can give itself jurisdiction by a wrong decision on a point collateral to the merits of the case upon which the limits to its jurisdiction depends. In the present case, the jurisdiction of Hon'ble NGT is limited to statutes mentioned in the NGT Act 2010.

54. The Hon'ble NGT has failed to act judicially by adjudicating upon issues which are not entrusted upon it by the legislature and/or any other law in force. In view of this, the Impugned Judgments dated 10.07.2015 and 31.07.2017 ought to be declared as having been passed without any jurisdiction and are liable to be set-aside and quashed by this Hon'ble Court.

55. That while perusing through the said Intervention Application filed by SPCHETNA before the Hon'ble Supreme Court of India, the Petitioner also learnt to its utter shock and surprise that in view and furtherance to the order of the Hon'ble NGT which was illegal and without jurisdiction, the Respondent No. 1 and 3 had also entered into a License Deed on 08.08.2018 and making it applicable from retrospective effect i.e. from 19.07.1997.

56. This License Deed entered into with retrospective effect from 19.07.1997 was executed between Respondent No.1 and 3 for grant of license for all the green land around and in front of the Tower Restaurant admeasuring 18,500 sq. meters excluding the monument measuring 42.50 sq. meters and excluding area under

the Tower Restaurant admeasuring 916.43 sq. meters, therefore, the total licensed area being 17,541.07 sq. meters. This is despite the fact that as per the Lease Deed, Respondent No. 3 was only entitled to use 2000 sq. yds and that too subject to several conditions, none of which were satisfied. This License Deed dated 08.08.2018 was also annexed with the Intervention Application.

Copy of the License Deed dated 08.08.2018 has been annexed herewith as **Annexure – P26.**

57. It is submitted that the benefits given to Respondent No.3 are arbitrary, illegal, unfair and causing wrongful loss to the public exchequer and wrongful gain to Respondent No.3 as the Respondent No.3 has been wrongfully using the publicly owned land without any legal authority and without making any corresponding investment/payment for using the said public land and further, the Respondent No.3 has been making and continues to make big exorbitant profits to the tune of approximately Rs. \_\_\_ crores annually by illegally using public land which it was never legally authorised and/or permitted to do so. The said actions of the Respondent No.3 in collusion with and/or due to negligence of the Respondent State Authorities have caused significant and drastic loss to the public exchequer and revenue.

58. It is submitted that the License Deed unequivocally and unambiguously states that the sole and fundamental basis of entering into the said License Deed on 08.08.2018 is due to the directions passed by the Hon'ble NGT in the Impugned Judgments. Since the Impugned Judgments passed by the Hon'ble NGT have been passed in flagrant disregard of statutory laws and in excess of jurisdiction, therefore, the License Deed executed between Respondent No.1 & 3 in furtherance to the said Impugned Judgments also ought to be declared by this Hon'ble Court as invalid, unlawful and *void-ab-initio*. The Respondent No.3 also ought to be restrained from doing any commercial act and operations the right to which accrues to Respondent No.3 by virtue of the said illegal License Deed dated 08.08.2018.

59. It is evident and logically discernible from the foregoing that Respondent No.1 and 3 have also been in connivance and blatantly colluded with each other in

order to extract commercial gain from public land. As per Clause 15 of the Lease Deed and Clause 4 Sub-Clause (ix) of Tender Terms and Conditions, it is unambiguously provided that the Tower Restaurant and the premises will be used only for the purpose of restaurant. However, Respondent No.3 has changed the whole complexion and purpose of the Tender and the Lease Deed by not operating the Tower Restaurant at all but unrestrictedly using/conducting marriages, banqueting, parties, etc. at the subject premises. This amounts to irregularity in the allotment of public land given to Respondent No.3 as Respondent No.3 is blatantly misusing the said land by using the public land for purposes not legally permitted.

60. Further, without prejudice to the foregoing and the illegality of the License Deed dated 08.08.2018, the Clauses 6 and 25 of the said illegal Licensed Deed also required the Respondent No.3 not to use the licensed premises for any other purpose other than stipulated under the terms & conditions of the tender. Since the Tender and the Lease Deed provided that the premises could only be used for the primary purpose of Tower Restaurant, therefore, the grant of license for marriages, parties etc. is also contrary to the License Deed's own terms and conditions, as also of the terms & conditions stipulated in the Tender and Lease Deed.

61. This act of Respondent No.3 not only amounts to cheating the State Authorities but is also a breach of Clause 15 of the Lease Deed and Clause 4 Sub-Clause (ix) of the Tender Terms & Conditions. Accordingly, in the event of such breach, as per Clause 4 Sub-Clause (xv) & (xvii), Respondent No.1 ought to determine/cancel the Lease Deed executed between Respondent No.1 and Respondent No.3.

62. That in the absence of execution of a License Deed until 2018, Respondent No.3 was illegally using the said premises for approximately 20 years without any legal authority. The inaction of Respondent No.1 in this regard and the decision allowing Respondent No.3 to illegally use the publicly owned land surrounding the Tower Restaurant is an arbitrary action, abuse of power and gross failure to perform its statutory duty. This clearly suggests that Respondent No.1 has been

complicit, if not negligent, in its actions and misused their power by allowing Respondent No.3 to illicitly occupy the said premises for decades.

63. In addition to the foregoing, Respondent No.3 is also in flagrant violation of the Ancient Monuments and Archaeological Sites and Remains Act 1958 and its Rules of 1959 ("**AMASR Act/Rules**") by conducting/undertaking the impermissible activities within the limits of 'prohibited area' and 'regulated area' of *Siri Fort Wall* and *Bul-bul-ki-Masjid*, which have been declared as 'Protected Monuments of National Importance' under the AMASR Act and the Rules framed thereunder.

64. That the Government of India *vide* Gazette Notification No.4759 dated 09.08.1919 declared the *Siri Fort Wall* and *Bul-bul-ki-Masjid* to be protected monuments within the meaning of The Ancient Monuments Preservation Act, 1904 ("**AMP Act 1904**"). Thereafter, when the Constitution of India came into force in 1950, "Delhi" was specified as a Part-C State, and by the virtue of Section 126 of the State Reorganisation Act 1956, all monuments within the limits of Delhi which were declared as protected monuments under the AMP Act 1904 were duly recognised and declared to be ancient and historical monuments of national importance.

Copy of Gazette Notification No. 4759 dated 09.08.1919 has been annexed herewith as **Annexure-P27**.

65. Subsequently, the AMASR Act 1958 came into being and its Section 3 provided that all ancient and historical monuments and all archaeological sites and remains which have been declared by Section 126 of the State Reorganisation Act 1956 to be of national importance shall be deemed to be ancient and historical monuments or archaeological sites and remain declared to be of national importance for the purpose of the AMASR Act 1958. In view of this, Section 39 of the AMASR Act 1958 also thereby repealed Section 126 of the State Reorganisation Act 1956 and, as per Section 2(j) of the AMASR Act 1958, the *Siri Fort Wall* and *Bul-Bul-ki-Masjid* became 'protected monuments being ancient monuments declared to be of national importance'.

66. That the Government of India issued a Notification dated 16.06.1992 under Rule 32 of the AMASR Rules 1959 declaring an area upto 100 meters from the protected limit of the monument to be 'prohibited area' for any construction activity and further upto 200 meters to be 'regulated area' in which construction could be allowed only after prior permission.

67. This Hon'ble Court in the case of *Vishwanath Pratap Singh vs. Union of India & Ors, W.P. (C) 3319/2002*, also held that while the mere act of Respondent No.1 giving the Tower Restaurant to Respondent No.3 cannot be faulted with, however, any construction activity by Respondent No.3 which is contrary to the 1992 notification cannot be permitted. Despite this Order of this Hon'ble Court, the Respondent No.3, right under the nose of and in collusion with Respondent No.1, has encroached significant prohibited area and regulated area and has illegally constructed various structures within 100 meters and 200 meters of the Siri Fort Wall and Bul-bul-ki-Masjid and now continues to conduct banqueting facilities, marriages and parties by clandestinely incorporating these prohibited areas and regulated areas (public lands) as part of his premises and earning exorbitant amounts of money as profits.

68. That Rules 7, 8 and 10 of the AMASR Rules 1959 provide that no protected monument shall be used for the purpose of holding any meeting, reception, party or entertainment and no person shall undertake any construction or shall be permitted within the protected monument to do any act which may cause damage to the protected monument or be permitted to cook or consume food within a protected monument. It is submitted that Respondent No.3 has been in direct and blatant violation of the AMASR Act 1958 and Rules framed thereunder, by conducting banqueting, marriages, parties, etc. within the impermissible lands and limits of the Siri Fort Walls and Bul-bul-ki-Masjid which are protected monuments under the Act. In view of the foregoing, the Respondent No.3 is liable to be punished with Penalty under Section 30 and ought to be convicted of the offence under Section 30A & 30B of the AMASR Act 1958. Relevant extracts of Rule 7, 8 and 10 of the AMASR Rules 1959 are reproduced hereinbelow for ready reference and convenience of this Hon'ble Court:

*7. Holding of meetings, etc., in monuments. – (1) No protected monument shall be used for the purpose of holding any meeting, reception, party, conference or entertainment except under and in accordance with a permission in writing granted by the Central Government. ...*

*8. Prohibition of certain acts within monuments. – No person shall, within a protected monument, –*

*(a) do any act which causes or is likely to cause damage or injury to any part of the monument; or*

*...*

*(c) cook or consume food except in areas, if any, permitted to be used for that purpose; ...*

*...*

*10. Permission required for construction, etc. – (1) No person shall undertake any construction or mining operation within a protected area except under and in accordance with a permission granted in this behalf by the Central Government. ... "*

69. In view of the foregoing breaches of the Lease Deed, the Tender Terms and Conditions and violations of the AMASR Act 1958: Clause 4 Sub-Clause (xv) & (xvii) of Tender Terms & Conditions mandatorily required that in the event of a breach, the Respondent No.1 is to determine/cancel the Lease Deed executed with Respondent No.3. That Respondent No.1 had no discretion but ought to have cancelled the Lease Deed. Respondent No.1 has acted in gross defiance and failure of its statutory and public duty by its arbitrary inaction of not determining/cancelling the Lease Deed. Therefore, this Hon'ble Court also ought to declare the Lease Deed executed between Respondent No.1 and Respondent No. 3 as invalid and illegal.

70. This present Writ Petition is preferred by the Petitioner on the following grounds which are taken without prejudice to one and another.

### GROUNDS

**(I) VIOLATION OF MASTER PLAN OF DELHI / ZONAL DEVELOPMENT PLAN.**

A. Because as per the Master Plans of Delhi and Zonal Development Plan, the land around and in front of the Tower Restaurant has been designated as a District Park which can be used only for recreation purposes mentioned therein. The Master Plan of Delhi and Zonal Development Plan do not permit the land around and in front of the Tower Restaurant to be used for

banqueting business, marriages, parties etc. Therefore, the use by Respondent No.3 of the said lands (which is designated as District Park) for the purposes other than what is permitted under law is clearly illegal, and Respondent No.3 ought to be restrained from illegally using the said lands.

- B. BECAUSE the District Park is a specific kind of land under the Master Plan of Delhi and the Master Plan permits only specific rights for which permission can be granted, therefore, act of Respondent No.3 of using the District Park for banqueting, marriages, etc. is a violation and beyond what is legally permitted and therefore, Respondent No.1 ought to take over the possession of the land surrounding the Tower Restaurant from Respondent No.3.
- C. BECAUSE the very performance of the contractual right/act for which permission/license has been granted to Respondent No.3 cannot be done without superseding the provisions of the Master Plan of Delhi, Zonal Development Plan and/or without violation of and/or disobedience to the statutory laws, rules and regulations.
- D. BECAUSE the Respondent State Authorities have acted with excess abuse of discretion and gross impropriety due to non-consideration and non-application of mind, by permitting Respondent No.3 to exploit the publicly owned land for its own commercial gain by conducting activities not permissible under any statute, rules and regulations.
- E. BECAUSE the State has even grossly ignored commercial principles and abused its discretion by arbitrarily and illegally licensing prime public acres of land worth hundreds of crores for a disproportionate paltry sum and wrongly permitting Respondent No.3 to commercially exploit and earn exorbitant amounts of revenues.
- F. BECAUSE the Respondent State Authorities ought to have taken into consideration before entering into the illegal License Deed of 2018 that Respondent No.3 has never operationalised the Tower Restaurant since 1997, which was the fundamental condition of licensing/leasing land adjacent to Tower Restaurant for marriages and parties.

- G. BECAUSE the larger general public and society have the fundamental right to enjoy the public land i.e. the green areas, the environment, the District Park and the Protected Monuments of National Importance and the Respondent State Authorities ought not to have alienated such public land to any private party as the State holds the public land as a trustee of the public and any alienation has to satisfy the test of reasonableness, fairness and equality, which the State have failed to meet such tests enshrined under Article 14 of the Constitution of India.
- H. BECAUSE the Respondent State Authorities failed to exercise their administrative powers within the system of controls of relevance and reason by failing to take into consideration that the relevance of giving the land was Tower Restaurant and same being operationalised, however, the Respondent No.3 never operationalised the said Tower Restaurant but has rather usurped acres of prime public land of District Park and Protected Monument under the guise of Tower Restaurant.
- I. BECAUSE Respondent State Authorities had no power to exercise its discretion to lease/license prime public land of District Park green areas and Protected Monuments for the purposes which are not statutorily permissible and where the nature of powers under statute prescribe regulations, the State ought exercise its power and discretion within the certain statutorily prescribed limits, therefore, the Respondent No.1 and 2 have acted in gross violation of the Master Plan of Delhi, ASI Act, Rules and Regulations, DMC Act and Zonal Development Plan which prescribe green areas to be preserved and used for certain purposes and the protected monuments to be preserved.
- J. BECAUSE Respondent State Authorities ought to abide by the principle of non-arbitrariness which is a significant facet of Article 14 and upkeep the legitimate/reasonable expectations of the public that District Park and Protected Monuments would be preserved by the State, however, the State has acted by abusing its power and permitting Respondent No.3 to conduct banqueting facilities from the prime public land by usurping the green areas

and the protected monuments which is against the Master Plan of Delhi, the DMC Act, ASI Act Rules and Regulations and the Zonal Development Plan of Delhi.

- K. BECAUSE Respondent No.1 & 2 are in breach of the legitimate expectations of the Petitioner and larger public as general public and the citizens have the fundamental right and legitimate expectations to enjoy the green zone, the environment, the District Park and the Protected Monuments of National Importance, however, by arbitrary illegal and negligent acts of Respondent No.1 & 2, the Petitioners and the citizens are deprived from enjoying their fundamental rights of enjoying the aforesaid and the actions of the State fall foul of the legitimate expectations of the Petitioner, the public and the citizens of this Country.

**(II) VIOLATION OF TERMS OF ALLOTMENT (TENDER) / LEASE DEED.**

- L. BECAUSE Respondent No.3 has no right to use the land around the Tower Restaurant to set up a wedding, parties and banqueting business as Clause 15 of the Lease Deed and Clause 4 Sub-Clause (ix) of Tender Terms and Conditions unambiguously provide that the Tower Restaurant and the premises will be used only for the purpose of restaurant. Further, the illegally executed License Deed also provides in Clause 6 and 25 that the land shall not be used for any other purpose than what has been permitted. However, Respondent No.3 has changed the whole complexion and purpose of the Tender, Lease Deed and License by not operating the Tower Restaurant at all but unrestrictedly using/conducting marriages, banqueting, parties, etc. This act of Respondent No.3 amounts to cheating the State authorities and is also a breach of the terms of the Lease Deed. Accordingly, as per Clause 4 Sub-Clause (xv) & (xvi), Respondent No.1 ought to determine/cancel the Lease Deed executed between Respondent No.1 and Respondent No.3.
- M. BECAUSE as per the Lease Deed executed between Respondent No.1 and 3, the Respondent No.3 was only entitled to land admeasuring 2,000 sq. yards surrounding and in front of the Tower Restaurant. However, in blatant violation of the Lease Deed, in collusion with and right under the nose of

Respondent No.1, the Respondent No. 3 has been using land admeasuring 18,500 sq. meters without any legal authority and therefore, the license granted and lease executed in favour of Respondent No.3 ought to be declared illegal by this Hon' and rescinded/revoked by Respondent No.1 or be determined/cancelled by this Hon'ble Court.

- N. Because the use of the land allotted by way of Tender and Lease Deed to Respondent No.3 by the Respondent No.1 for incidental usage requires execution of a separate License Deed in favour of Respondent No.3 by Respondent No.1, and Respondent No.3 could not have been be permitted to use/occupy the land admeasuring 18,500 sq. meters on basis of a flimsy letter dated 18.12.1997. Since no License Deed was ever executed until 2018 and that the License Deed executed on 08.08.2018 is also illegal, invalid and void-ab-initio, therefore, Respondent No.3 has no legal right and/or authority to use/occupy the green lands around and in front of the Tower Restaurant.
- O. Because the terms of the Tender and Lease Deed necessarily required Respondent No.3 to operationalise the Tower Restaurant within 6 months of getting allotted by Respondent No.1 and use of green lands surrounding Tower Restaurant was only incidental and connected to the functioning of the Tower Restaurant. However, the Respondent No.3 has till date not operationalised the said Tower Restaurant but has been *malafidely* and illegally using the green lands around and in front of the Tower Restaurant for the impermissible purpose of banqueting business, marriages, parties, etc.
- P. BECAUSE Respondent No.3 ought not to have barricaded and usurped the public land (District Park and Protected Monuments) as its own private property and thereby restricting the larger public society from enjoying their fundamental rights to enjoy the green areas, environment and protected monuments of national importance.

**(III) CONTRACTUAL RIGHTS, IF ANY, CANNOT SUPERSEDE MASTER PLAN OF DELHI/ZONAL DEVELOPMENT PLAN OR ANY OTHER STATUTORY RULES AND REGULATION.**

- Q. BECAUSE the use of the subject land (District Park) for the purpose not permitted by the Master Plan of Delhi amounts to disobedience of law, defeats the provisions of MPD and is in supersession of the Master Plan of Delhi and other statutory rules and regulations. Therefore, District Park cannot be used by Respondent No.3 for the purposes of banqueting, marriages, parties, etc., as the same defeats the purpose sought to be achieved by the statute and is beyond what is permitted under the Master Plan of Delhi and the Zonal Development Plan, and accordingly, any agreement and/or license deed by Respondent No.1 in favour of Respondent No.3 is legally unenforceable and void.
- R. BECAUSE Respondent No.1 cannot legally permit Respondent No.3 to use the subject land surrounding the Tower Restaurant for an object/activity which is impermissible under the Master Plan of Delhi, terms and conditions of the Tender, Lease Deed, and therefore, this Hon'ble Court ought to take judicial notice of this illegal act by the Respondents as the same is an affront to the statutes, rules and wisdom of the law-makers.
- S. BECAUSE if actions of banqueting, marriages, parties are continued by the Respondent No.3, which are forbidden by law, and if permitted to continue, they would also have wider repercussions affecting adversely the public at large and the fundamental rights guaranteed under the Constitution of India.
- T. BECAUSE usage of the District Park for the impermissible purpose of banqueting, marriages, etc. is forbidden by law and therefore, the contract, if any, entered into between Respondent No.1 and 3 is opposed to public policy and contrary to statutes, and it loses its legal force and in view of this, Respondent No.3 ought to be restrained from using the said land and no right would accrue in favour of Respondent No.3 to use/occupy the land around and in front of the Tower Restaurant.

**(IV) THE ORDER PASSED BY HON'BLE NGT IS WITHOUT JURISDICTION.**

- U. BECAUSE the Hon'ble NGT erred in law and has acted in excess of its jurisdiction and in flagrant disregard of the provisions of the National Green Tribunal Act 2010. As per the relevant provisions of the said Act, there must be a substantial question relating to environment and that question must be in dispute. Therefore, Hon'ble NGT has a limited jurisdiction to adjudicate only those cases where a substantial question relating to environment has arisen out of The Water (Prevention and Control of Pollution) Act 1974, The Water (Prevention and Control of Pollution) Cess Act 1977, The Forest Act (Conservation) Act 1980, The Air (Prevention and Control of Pollution) Act 1981, The Environment (Protection) Act 1986, The Public Liability Insurance Act 1991 and The Biology Diversity Act 2002.
- V. BECAUSE the Hon'ble NGT has erred by acting beyond the powers and jurisdiction statutorily conferred upon it by adjudicating on the legal rights and entitlement of Respondent No.3 to the license over green land admeasuring 18,500 sq. meters around and in front of the Tower Restaurant.
- W. BECAUSE the Impugned Judgements arise from improper exercise of jurisdiction not entrusted to Hon'ble NGT by any law in force and by adjudicating on an issue not raised before it, the Impugned Judgments passed by the Hon'ble NGT suffer are without jurisdiction and ought to be set-aside on this ground alone.
- X. BECAUSE the power and jurisdiction to decide the question of whether on the basis of Tender conditions, a party is entitled to seek specific performance of the Tender terms and conditions is a jurisdiction that solely vests with the Civil and/or Writ Courts, and the Hon'ble National Green Tribunal is not empowered to adjudicate the same as the NGT is a specialised judicial body established only for the effective and expeditious disposal of cases relating to environmental protection and conservation of forests and other natural resources.

Y. BECAUSE the Hon'ble NGT has failed to act judicially by not acting within the limits of its jurisdiction and the Hon'ble NGT ought not to have given any opinion, much less a conclusive finding and direction with respect to Respondent No.3's legal rights and entitlement to license over land admeasuring 18,500 sq. meters.

Z. BECAUSE the pivotal threads of the Hon'ble NGT's jurisdiction are environmental justice and environmental equity and the Hon'ble NGT has committed grave dereliction of its statutory duty by adjudicating beyond these principles which has led to flagrant violation of the fundamental principles of law, and grave injustice would be caused if this Hon'ble Court does not set-aside and / or quash the Impugned Judgments wrongfully passed by the Hon'ble NGT.

A.A. BECAUSE the License Deed dated 08.08.2018 executed in furtherance to the Impugned Judgments also ought to be declared illegal, invalid and void-*ab-initio* since the said License Deed executed on 08.08.2018 between Respondent No.1 and 3 unequivocally and unambiguously mentions that the sole and fundamental reason of execution of the said License Deed is due to the directions contained in the Impugned Judgments passed by the Hon'ble NGT.

#### **(V) VIOLATION OF ASI RULES AND REGULATIONS.**

BB. Because Respondent No.3, right under the nose of and in collusion with Respondent No.1, has been illegally using and encroaching the lands and premises of the Siri Fort Wall and Bul-bul-ki-Masjid which have been declared as protected monuments under the Ancient Monuments and Archaeological Sites and Remains Act 1958 and Rules framed thereunder, and Respondent No.3 without any legal authority or permission has been raising unauthorised constructions within the prohibited and regulated area of the said protected monuments.

CC. BECAUSE the *Siri Fort Wall* and *Bul-bul-ki-Masjid* are protected monuments within the meaning of the AMASR Act and a treasure and symbol of pride of

the country reflecting the rich cultural heritage of India. That Article 49 of the Constitution of India also imposes a constitutional obligation to protect every monument of national importance from spoliation, disfigurement, destruction, removal, etc. Therefore, the illegal actions of Respondent No.3 are not only in gross violations of the AMASR Act and Rules thereof but also diminishing the cultural heritage of the country and value of Siri Fort Wall and Bul-bul-ki-Masjid by causing glaring destruction and raising unauthorised construction.

DD. Because Respondent No.3 is in direct violation of AMASR Act 1958 and AMASR Rules by blatantly encroaching upon the prohibited area and regulated area of Siri Fort Wall and Bul-bul-ki-Masjid to extract wrongful gains and unjustly enrich itself through its illegal commercial activities and thereby effacing the significance and value of the said monuments.

EE. BECAUSE the actions of Respondent No.3 are contrary to the Notification of 1992 issued by the Govt of India which prohibited any construction activity within 100 meters and 200 meters of a protected monument. That Respondent No.3 by raising unauthorised constructions has not only acted in conflict with the 1992 notification but also in contempt to the judgment of this Hon'ble Court in the case of VP Singh vs. Union of India, wherein this Hon'ble Court expressly held that any construction activity in conflict with the 1992 notification cannot be permitted.

**(VI) THREAT TO WATER SECURITY.**

FF. BECAUSE the water tank was built primarily to provide adequate source of water supply to the residents of the Asiad Village Society. However, by granting access to the said water tank and underground water system to Respondent No.3 and exposing it to unlawful commercial activities, the arrangement of adequate water supply for the residents of Petitioner society is highly at risk of getting contaminated and thereby, also directly impinging upon Article 21 of the Constitution of India.

GG. BECAUSE the Petitioner is at a constant risk and threat of harmful effluents, chemicals, commercial waste and toxic substances being flown in to the

water tank and underground water system of the Petitioner society through the unlawful and unscrupulous business and commercial activity unrestrictedly conducted by Respondent No.3.

HH. BECAUSE Section 10 and Section 11 of the Delhi Jal Board Act mandate that no person shall use or allow use of water supplied for domestic purpose for any purposes other than domestic purpose, and further supply of water for domestic purpose shall not be deemed to include supply for, inter-alia, any trade, manufacture or business. Therefore, the use of water by Respondent No.3 for the purpose of banqueting business is in direct violation of the Delhi Jal Board Act 1958.

II. BECAUSE Respondent No.3 was legally mandated not to wilfully or negligently obstruct or hinder the flow of water or divert the flow of water. That Respondent No.3 with sheer and wilful disobedience to law and with intention to cause hinderance, if not negligence, has been cause hindrance, using and diverting the flow of water for its own commercial activities.

JJ. BECAUSE Respondent No.3 has been exploiting for commercial activities the water supply from the water tank which was built solely for as a source of water supply for the residents of the Asiad Village Society.

**(VII) FAILURE OF DUTY AND MISUSE/ABUSE OF POWER BY THE STATE.**

KK. BECAUSE Respondent No. 1 and 4 have grossly failed in performance of not only their statutory public duty but also in their sacred constitutional duty of protecting the Siri Fort Walls and Bul-bul-ki-Masjid which are the protected monuments of ancient and national importance.

LL. BECAUSE the Respondent No.1 has acted with gross abuse and misuse of its power by permitting the Respondent No.3 to continue to use/occupy the said premises admeasuring 18,500 sq. meters without any license deed and/or any formal legal document in favour of Respondent No.3.

MM. BECAUSE the validity of every act of a State Authority is liable to be tested on the touchstone of transparency, arbitrariness, reasonableness, irrationality and public interest, and the arbitrary and/or negligent actions of Respondent No.1 permitting Respondent No.3 to use the land admeasuring 18,500 sq. meters without any legal formal document is liable to be declared unconstitutional, unlawful and invalid.

NN. BECAUSE Respondent No. 1 and 3 have acted in connivance and collusion since 1997 by not executing a License Deed till 08.08.2018, whereas usage of the alleged licensed premises required execution of a separate License Deed between Respondent No.1 and Respondent No.3.

OO. BECAUSE every action of the State has public element to it and by giving the License Deed dated 08.08.2018 a retrospective effect with effect from 19.07.1997, the Respondent No.1 and 3 have illicitly attempted to clandestinely legalise the entire illegal possession and usage of last 20 years.

PP. BECAUSE Respondent No. 1 and 3 have acted in connivance with the *mala-fide* intention of exploiting commercial gains out of a public land making the actions of Respondent No. 1 are illegal, arbitrary, discriminatory, and strike at the root of Article 14 of the Constitution of India.

QQ. BECAUSE the arbitrary actions of Respondent No.1 clearly suggest that Respondent No.1 has acted with colourable exercise of power and has acted bereft of any principle.

**(VIII) INFRINGEMENT OF PETITIONER'S RIGHTS.**

RR. BECAUSE the marriages, banqueting, parties, etc. conducted by Respondent No.3 causes immense nuisance, hazardous and unhygienic living conditions to the residents and children living in the Petitioner Society and also people living in the neighbourhood, disturbing peace of mind and therefore, the actions of Respondent No.3 directly impinge the right to life of the Petitioners guaranteed under Article 21 of the Constitution of India.

55. BECAUSE it is a settled law that right to life is a meaningful right guaranteed under Article 21 of the Constitution of India promising healthy living and right to live life with dignity and comfort, and the said fundamental right of the Petitioner is being threatened by the arbitrary illegal actions of the Respondents.

71. The Petitioner is constrained to file this present Writ Petition and has no other alternative efficacious remedy except to invoke the extraordinary and writ jurisdiction of this Hon'ble Court under Article 226 and 227 of the Constitution of India.

72. The cause of action to file this instant Writ Petition arose when while preparing an appeal against the de-sealing order passed by the Judicial Committee, one of the residents of the Petitioner Society brought to the knowledge of the Petitioner that SPCHETNA NGO has filed an Intervention Application before the Hon'ble Supreme Court of India and thereafter shared a copy of the said Intervention Application with Petitioner through email dated 14.04.2023. The cause of action has further arisen as the Petitioners became aware of the impugned judgments dated 10.07.2015 and 31.07.2017 passed by the Hon'ble NGT. Although these illegal activities have been continuing for years, the cause of action has arisen now as the premises of Respondent No.3 has been de-sealed recently (it lay sealed for several years) upon an undertaking given to remove unauthorised construction and Respondent No.3 has recently recommenced banqueting operations. This Hon'ble Court has the requisite territorial and original jurisdiction to entertain and adjudicate this instant petition.

73. The Petitioner has not filed any other similar Writ Petition before this Hon'ble Court or any other High Court or Hon'ble Supreme Court of India.

74. This instant Writ Petition has been filed bona-fide and in the interest of justice. The Petitioner has stated facts relevant and necessary for fair adjudication of this Writ Petition, and craves liberty of this Hon'ble Court to place additional facts and

documents as and when may be necessary for fair, just and necessary adjudication and in the interest of justice.

### PRAYERS

In the facts and circumstances of the present case, the Petitioner most humbly prays that this Hon'ble Court may be pleased to:

- a) Issue a Writ of Mandamus or any other appropriate writ, order and/or direction directing that the land used by Respondent No.3 cannot be used as a banqueting facility;
- b) Issue a Writ of Mandamus or any other appropriate writ, order and/or direction directing that the Tower Restaurant must be operationalised, failing which the land around it cannot be used;
- c) Issue a Writ of Mandamus or any other appropriate writ, order and/or direction directing DDA to take action to cancel allotment for not abiding by the terms of allotment;
- d) Issue a Writ of Mandamus or any other appropriate writ, order and/or direction directing Respondent No.3 disgorge all profits earned from banqueting facility;
- e) Call for records of the case being *Society for Protection of Culture, Heritage, Environment, Tradition and Protection of National Awareness vs. Union of India*, OA No. 60 of 2014 from the Hon'ble National Green Tribunal, and set-aside the Impugned Judgments dated 10.07.2015 and 31.07.2015;
- f) Issue a Writ of Certiorari or any other appropriate writ, order and/or direction quashing and/or setting-aside the Impugned Judgments dated 10.07.2015 and 31.07.2017 passed by Hon'ble National Green Tribunal;
- g) Issue a Writ of declaration or any other appropriate writ, order and/or direction declaring that the License Deed dated 08.08.2018 executed between Respondent No.1 and 3 is invalid, illegal and *void-ab-initio*;

Alternatively, and without prejudice to the above:

Issue a Writ of Mandamus and/or Certiorari or any other appropriate writ, order and/or direction directing Respondent No.1 to revoke, rescind and/or determine/cancel the License Deed dated 08.08.2018 executed between Respondent No.1 and 3;

h) Pass an Order in favour of the Petitioner and against the Respondents staying the operation of License Deed dated 08.08.2018 till the final disposal on merits of this instant Writ Petition

i) Issue a Writ of declaration or any other appropriate writ, order and/or direction declaring that the Lease Deed executed between Respondent No.1 and 3 is invalid, illegal and void-ab-initio;

Alternatively, and without prejudice to the above:

Issue a Writ of Mandamus and/or Certiorari or any other appropriate writ, order and/or direction directing Respondent No.1 to revoke, rescind and/or determine/cancel the Lease Deed executed between Respondent No.1 and 3;

j) Issue a Writ of Mandamus or any other appropriate writ, order and/or direction directing Respondent No.1 to take over the possession of the Tower Restaurant and the land admeasuring 18.500 sq. meters around and/or in front of the Tower Restaurant;

k) Pass an Order staying the operation of the Lease Deed entered into between Respondent No. 1 & 3, till the final disposal on merits of this instant Writ Petition;

l) Pass an Order restraining Respondent No.3 from operating any commercial activity from the premises conveyed/leased/licensed by Respondent No.1 to

Respondent No 3 by the virtue of Conveyance Deed, Lease Deed and License Deed:

m) Issue a Writ of Mandamus or any other appropriate writ, order or direction directing Respondent No 4 ASI to furnish the present status of encroachment and unauthorised construction done by Respondent No 3 within the prohibited and regulated area of protected monuments and direct Respondent No.4 to demolish all such unauthorised constructions done by Respondent No 3

n) Issue a Writ of Mandamus or any other appropriate writ, order or direction directing a Magistrate of the 1<sup>st</sup> Class to try the offences committed by Respondent No 3 under the Ancient Monuments and Archaeological Sites and Remains Act, 1958 and Rules of 1959 framed thereunder, and to punish Respondent No 3 for contravention of provisions of the Ancient Monuments and Archaeological Sites and Remains Act, 1958 and Rules of 1959 framed thereunder

o) Pass any other appropriate order(s) which this Hon'ble Court may deem fit and proper in the interest of justice.

  
PETITIONER

THROUGH



Mr. Raghav Kumar, Mr. Aditya Ladha  
and Ms. Gahena Gambani

D/2952/2019, D/10185/2021,

MAH/9675/2023

Advocates for the Petitioner

19, Sundar Nagar,

New Delhi – 110003

+91-8178322908

IN THE HIGH COURT OF DELHI  
AT NEW DELHI  
EXTRAORDINARY ORIGINAL CIVIL JURISDICTION  
W.P. (C) No. OF 2023

**IN THE MATTER OF:**

Asiad Village Society

...Petitioners

Vs.

Delhi Development Authority and Ors.

...Respondents

**AFFIDAVIT**

I, Dr. Ravi Bhutani, S/o Mr. Ram Lubhaya Bhutani, R/o Flat No. 730 Mahabir Prasad Block, Asiad Village, Khelgaon, New Delhi – 110049, aged about 57 years, Secretary of the Petitioner Society, do hereby solemnly affirm and state as under:



1. I am the Secretary of the Petitioner Society above-named and I am fully conversant with facts of the case and duly authorized to file and competent to swear this affidavit.

2. I have read and understood the contents of the accompanying pleadings and the same has been drafted by the Counsels under my instructions. The facts stated therein are correct to the best of my knowledge and based on information gathered from the records of the Petitioner and believed to be true. The same are not being reproduced herein for the sake of brevity and may be read as part and parcel of this affidavit.

*Rajesh*  
I identified the deponent who has signed in my presence.

7 8 NOV 2023

*R. Bhutani*  
DEPONENT

**VERIFICATION:**

I, the above-named Deponent do hereby verify that the contents of paragraph nos. 1 to 2 of the above affidavit are true and correct to my knowledge. No part of it is false and nothing material has been concealed therefrom.

Verified at New Delhi on this \_\_\_\_\_ day of November 2023

CERTIFIED THAT THE DEPONENT  
Shri/Smt./K...  
S/o, W/o R/o...  
Identified by Sh...  
Has solemnly sworn before me at  
Delhi on...  
That the contents of the affidavit which  
have been read & explained to him/her  
are true & correct to his/her knowledge

*R. Bhutani*  
DEPONENT

7 8 NOV 2023

NOTARY