

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

**ORIGINAL APPLICATION 195/2023**

**In the matter of:**

**Vivek Mahna**

**Applicant**

**Vs**

**Govt. of NCT of Delhi & Ors.**

**Respondents**

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**DATE:** 29/04/24

**FILED BY:**

*Sameer*

**ADV. MADHUMITA SINGH & ADV. SAMEER SOOD**

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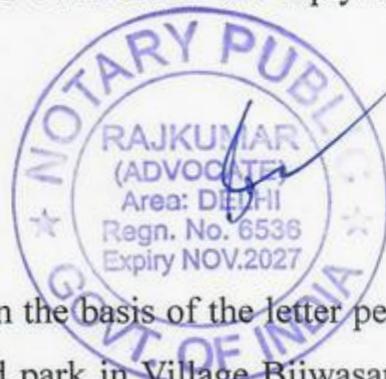
REPLY ON BEHALF OF APPLICANT TO THE JOINT COMMITTEE  
INSPECTION REPORT DATED 19<sup>th</sup> MARCH 2024 & CPCB REPORT  
DATED 7<sup>th</sup> MARCH 2024

I, Vivek Mahna, S/o Late Sh. Satya Paul Mahna, aged about 78 yrs., R/o H-5, Pushpanjali Farms, Bijwasan, Delhi-110061 do hereby solemnly affirm and state as under:

That I am the Applicant in the present petition and am well acquainted with the facts and circumstances of the present case and as such, competent to make and affirm the present reply affidavit. I have gone through the joint inspection report dated 19.03.2024 and CPCB report dated 07.03.2024 the reply to the same is tabulated as under: -

**MOST RESPECTFULLY SHOWETH:**

1. The Original Application was registered on the basis of the letter petition with the grievance that the green area and park in Village Bijwasan and Bhartal, New Delhi is being used daily for holding wedding and other



social functions causing air pollution with the release of huge dust in the atmosphere and also resulting in water pollution due to discharge of sewage on the open land and the roads.

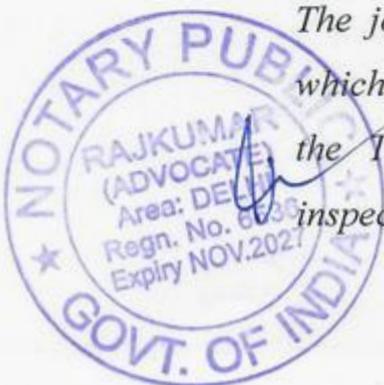
2. That, this Hon'ble Tribunal vide order dated 28.04.2023 had constituted a joint Committee with the following directions: -

*"3. In our view, a substantial question relating to environment due to implementation of Scheduled enactment under NGT Act, 2010 has arisen but before taking any further action in the matter, we find it appropriate to obtain a factual action taken report, for the purpose whereof, we constitute a joint Committee comprising DPCC and District Magistrate, South West Delhi who shall visit the site, collect relevant information and submit a factual report within two months by e-mail at judicial-ngt@gov.in preferably in the form of searchable PDF/ OCR Support PDF and not in the form of Image PDF."*

3. That, a report on 30.10.2023 had been filed by District Magistrate, District Southwest and the Hon'ble Tribunal after a perusal of the said report passed the following Order:

*"4. A report on 30.10.2023 has been filed under the signature of the District Magistrate, District South West but a perusal of the said report reveals that the report is based upon the joint inspection done by JEE, DPCC and Patwari, Revenue Department.*

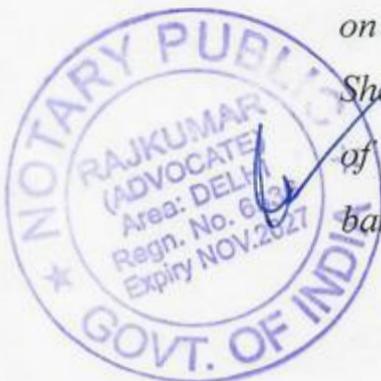
*The joint inspection has not been done by the joint Committee which was constituted by this Tribunal and as per the direction of the Tribunal. A perusal of the report also reveals that the inspection was done when no function was being held at the*



*alleged site. The violation by concerned person at the time of holding of functions can be ascertained if the inspection is done at the time when the activity is going on at the site. We also gather from the photographs that a DG set has been kept there but there is no report in respect of the pollution being caused by it”.*

4. That, in compliance with the Order dated 31.10.2023, a report under the signatures of District Magistrate (Southwest) dated 06.12.2023 had been filed. The Hon'ble Tribunal vide its Order dated 11.01.2024 observed as under:

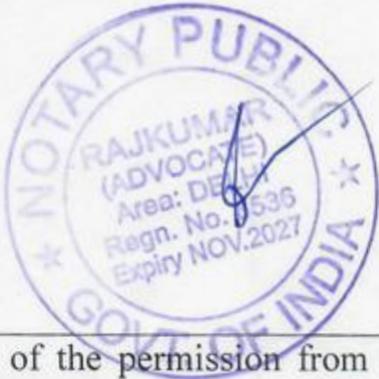
*“4. Now again, a report dated 06.12.2023 under the signature of District Magistrate, District South West alone has been filed. It does not contain the signature of the Member or authorized representative of DPCC. The report is incomplete. It has been pointed out by the applicant that there are three banquet halls namely Crystal, Pearl and Sapphire in Krishna Greens and the report does not reflect as to which banquet hall was inspected. It has also been stated that there are toilets and washrooms in the banquet halls but they have not been inspected and it has not been disclosed as to where the sewage from these toilets is going when no sewer connection has been provided by the MCD. It has also been stated by Counsel for the applicant that even the capacity of the STP set up has not been disclosed and that the report relating to the noise pollution is in respect of the sample which was taken on 08.06.2023, much prior to the previous direction of the Tribunal. She has also pointed out that the report does not reflect the number of borewells and the extent of ground water being drawn by these banquet halls.”*



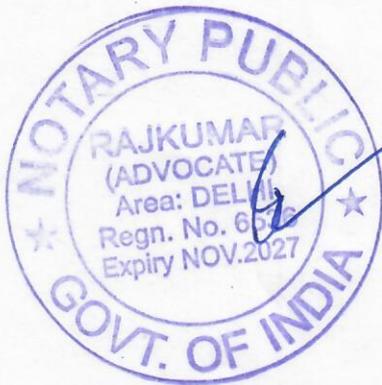
5. That, vide Order dated 11.03.2024 this Hon'ble Tribunal directed DPCC and District Magistrate, District Southwest to file its joint inspection report. Relevant text of the Order is reproduced as under:

*11. Let the compliance report of this order be filed by District Magistrate, South West Delhi at least one week before the next date of hearing. Let the joint Committee also furnish the report within the same period in terms of the direction dated 28.04.2023 by e-mail at judicial-ngt@gov.in preferably in the form of searchable PDF/ OCR Support PDF and not in the form of Image PDF.*

**Pointwise Response to joint inspection on 16-03-2024 & report dated 19.03.2024 and CPCB inspection on 25-02-2024 and Report dated 07.03.2024.**

Joint inspection Report by DPCC on 16.03.2024	Applicant's Reply/Comment on Report by DPCC and also as per CPCB Report inspection dated 25- 02-2024
Premises has a valid Consent to operate (CTO) under Water and Air Act valid upto: 25.05.2033. 	It is respectfully submitted that the consent to operate was obtained by the banquet owners only in May 2023 from DPCC and is valid up to 25.05.2033. This clearly means that prior to May 2023 the banquets were functioning without consent to operate.
A copy of the permission from MCD	It is respectfully submitted that the

dated 27.04.2009 was produced for commercial use of farmhouse holding social functions such as weddings and parties etc., without specifying area of the premises, with the condition by Area ACP Delhi Police, at page 92, that parking should be inside farm house, separately demarcated entry and exit gates, no parking is permitted outside farm house/Vatika on roadside along with copy of payment receipt of MCD dated 05.03.2024, 06.02.2023, and 09.08.2023.



permission granted by MCD is 15 years old and it should have been renewed from time to time after due examination of the premises.

Both the Reports are completely silent about separate entry and exit gates and specifically demarcated parking inside.

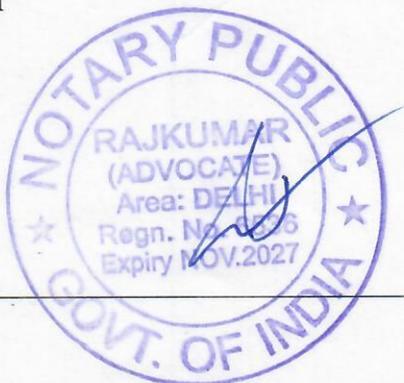
CPCB Report has admitted parking on roadside.

Since, the Farm house is located on National Highway, permission for commercial use could not have been granted by MCD within 60 meters of RoW from Highway, whereas the farm house is situated in close proximity to National Highway. MCD could not have allowed setting up farmhouse even after charging fee as per judgment pronounced by Hon'ble Supreme Court in the case of **Municipal Corporation of Delhi vs. Rishi Raj Jain & another [(2006) 13 SCC 246 – Para 11.**

Fire safety certificate has expired on

It is respectfully submitted that the

11.03.2024.	joint inspection report is silent on the aspect of presence of stock yard of Bharat Petroleum within 200 yards of the banquet halls. In absence of Fire Safety Certificate, the banquet is only inviting catastrophe.
<p><b>Sources of Water in the unit: -</b></p> <p>(i) Outside water from Tankers each with carrying capacity of 5000 liters – report is silent whether there is any water storage tank with 5000 liters capacity.</p> <p>(ii) Packaged water</p> <p>(iii) Treated effluent from treatment plant.</p> <p>(iv) 01 Borewell – Permission from Central Ground water as stated in the Index as annexure -6 at page no.(s) 13 to 15 is not there.</p>	<p>As per CPCB Report, at the time of inspect a function was going on but neither there was any tanker nor there is any water storage tank with 5000 liters capacity.</p> <p>A water meter has not been installed at the bore well to know how much water is extracted and no documents from Central Ground Water Authority have been shown to the team.</p>
<p><b>Waste Water</b></p> <p>Details from where wastewater is generated in the unit: -</p> <p>(i)Toilets/urinals of each Hall</p> <p>(ii)Kitchen</p>	<p>It is respectfully submitted that this Hon'ble Tribunal has issued specific directions in the past on disposal of sewage discharge. The joint inspection report should have mentioned whether the disposal is being done as per directions given by this Hon'ble Tribunal.</p>



<p>Mode of disposal of discharge from toilets/urinals/bathrooms: The Unit has installed a common septic tank in the premises for collecting the waste from toilets. Septage is being disposed through an outside agency namely Gopal Gulia (Safety Tank Cleaning System), Lallu Pandit, Near MCD office, Samalkha, New Delhi-110037. It was informed that cleaning is done on a regular basis.</p>	<p>Both the Reports are silent as to how the waste from septic tanks is being transported out of the premises or disposed off by Gopal Gulia and where? The Reports are also silent whether there is any Common STP operational in the area or surrounding area where the waste from septic tank is being transported carried for treatment and how?</p> <p>In absence of the aforesaid facts in the report it appears that the bills have been placed on record just to show some compliance, hence there is a need to conduct thorough investigation, may be DCP Level officer of Delhi Police may have to be involved.</p>
<p><b>Treatment of wastewater – DPCC Report – speaks about STP.</b></p> <p>Treatment of Wastewater generated from the Kitchen and mode of disposal of treated effluent:</p> <p>As per joint inspection Report by</p>	<p><b>CPCB Report – speaks about ETP.</b></p> <p>It is respectfully submitted that the inspection report submitted by CPCB is contrary to the Report submitted by DPCC.</p>



going on in open area in front of Banquet Hall which was booked for 150 persons but around 100 persons were there.

However, it is silent that how many cars were parked in the H3 and how many cars were parked in service lane.

is as follows :-

1. Hall No.1 Sapphire Hall – 130-150 persons.
2. Open lawn adjoining Sapphire – No information of capacity provided.
3. Hall No.2 – Pearl – 180 to 200 persons.
4. Hall No. 3 – Crystal – 200 to 220 persons.

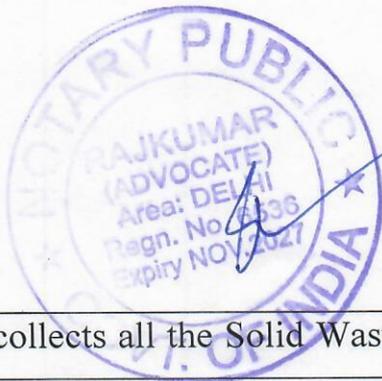
At the time of inspection approximately 300 persons were present in Hall 1 and lawn and about 100 persons were present in Hall -2 Pearl.

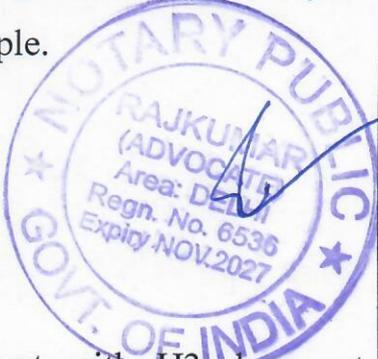
As per Report Unit had deployed Traffic Marshals and Valet Parking and cars were parked in H3. A few cars were parked on service lane. It was also noted that the entry and exit gates were common.

The Report is silent on number of cars parked in H-3 and contract with Valet Service has not been placed on record, which would have shown number of cars handled by them.

The unit collects all the Solid Waste in

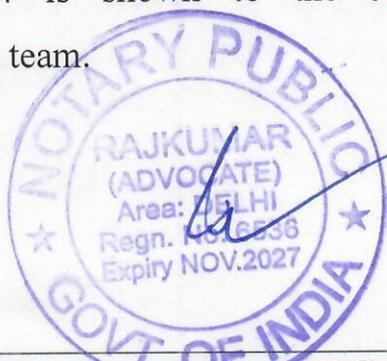
It is respectfully submitted collecting



<p>playing in the area.</p>	
<p>01 Borewell was found installed in the banquet for which unit owner had shown certificate of registration from CGWA dated 10.11.1998. However, purpose for which the permission was given is not shown to the joint committee whether it was given for agriculture purpose or commercial purpose. Currently the borewell is being used for commercial purpose. No permission from the District Advisory Committee (DAC) for 12.7.2010.</p>	<p>It is respectfully submitted that the certificate of registration dates back to the year 1998 which is silent on the purpose of the borewell. Therefore, the legality of bore well for usage of commercial purpose is doubtful.</p>
<p><b>Parking</b></p> <p>Unit informed the joint committee that properties H2 and H3 are for parking purpose. A copy of the agreement with property H3 provided but no parking agreement of property H2 was furnished by the owner.</p> <p>The agreement with H3 does not specify the size of the plot and how many cars can be parked. The agreement is only for 11 months.</p> <p>DPCC Report states that a function was</p>	<p><b>Parking</b></p> <p>It is respectfully submitted that properties H2 and H3 cannot cater to parking facility for the gathering of 400-500 people.</p> <p>The agreement with H3 does not specify the size of the plot and how many cars can be parked. The agreement is only for 11 months.</p> <p>As per CPCB Report the capacity of</p> 

<p>2. 6 DG sets with acoustic enclosure- 3x125KVA, 2x250KVA and 1x380KVA. These DG Sets are non-compliant wrt CAQM direction no. 76.</p> <p>3. Logbook of DG sets is not maintained as it is not shown to the joint inspection team.</p>	<p>sets are non-compliant with respect to CAQM directions, and no logbook is also being maintained.</p> <p>Both the Reports are silent about the specific noncompliance/violation.</p>
<p>All 06 DG sets are non-compliant wrt CAQM directions No-76 Unit owner informed that they are in the process of installing Retrofitting Emissions Control Device (RECD) and unit also provided purchase order of 6 RECD dated 05.03.2024.</p>	<p>It is respectfully submitted that in absence of fire safety permission usage of tandoors is a big threat keeping in view the close proximity of the stock yard of Bharat Petroleum.</p>
<p>Unit has provided acoustic systems for noise control on DG sets and during the inspection the owner informed that all 3 halls in the banquet are soundproof. Also, during the inspection function was going in the open part of the banquet and DJ sound system was not</p>	

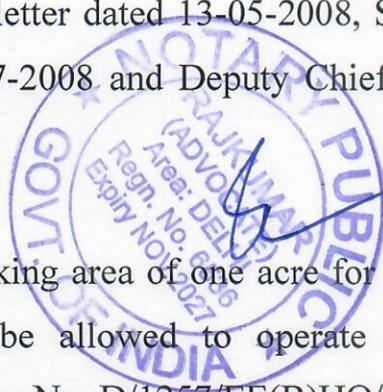
<p>DPCC Unit has installed <b>STP</b> for the treatment of effluent generated from the kitchen from washing of utensils. The owner informed that the plant capacity is 20KLD and treated effluent is reused in the banquet as water for flushing in toilets, sprinkling and for gardening purposes in the banquet. Treatment plant consists of Oil and Grease Trap, Aeration tank, Chemical dosing tank, settling tank and Filtration tank and clear water tank.</p> <p>During the time of inspection, the operator started the plant and the same was found operational Flow meter was not found installed in the plant. Log-book of the plant from 01.01 2024 to 16.03.2024 is shown to the Joint inspection team.</p>	<p>As per CPCB, the <b>ETP</b> was found non-functional, the oil &amp; grease trap and drainage system for transporting effluent were chocked and filled with solid waste, there was no operator, there was no logbook maintained regarding operation and maintenance of ETP, flow meter was not installed. No provision for storage of untreated water during maintenance of ETP. No information was provided regarding utilization of treated water. Unit did not provide any document regarding layout diagram and capacity of ETP Further, there is no provision to store the treated water.</p> <p>Thus, it appears that all the documents not shared with the CPCB Team but shared with DPCC team have been fabricated to wriggle out of the report submitted by DPCC.</p>
<p><b>Details of Power supply and DG sets in the unit:</b></p> <p>1. Unit has one Electricity connection of sanction load (6 kVA)</p>	<p>It is respectfully submitted that the report clearly states that all the DG</p>



<p>polyethene's without segregating dry and wet waste and is stored in an open area adjacent to the treatment plant. Owner informed that they give waste to M/s Delhi Waste Management Najafgarh Pvt. Ltd for disposal. Unit has also installed composting machine for the treatment of garden and bio-degradable waste.</p>	<p>of solid waste in polyethene's without segregating dry and wet waste and storing the same in open area is leading to pollution. Further, the process adopted for composting does not form part of the inspection report.</p>
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6. Since both the Reports are contradictory. Report by CPCB has pointed out glaring violations in terms of purchase and storage of 5000 Liters of water, non-treatment of waste water, no provision regarding storage of waste water during maintenance of ETP/STP, questionable conduct of disposal from septic tanks, expired fire safety permission, capacity of halls, common entry and exit point of car parking, no car parking inside the premises, parking in service lane, which is contrary to the terms of permission dated 27-04-2009, (annexure -2 at page no. 92) granted by MCD, Building Department Najafgarh Zone and also contrary to the permission granted by A.C.P Delhi Police, Najafgarh Sub- Div vide letter dated 05-05-2008 and ACXP Traffic vide letter dated 13-05-2008, SDM Vasant Vihar Kapashera letter dated 09-07-2008 and Deputy Chief fire officer vide letter dated 20-03-2009.

7. Because the Farmhouse does not have parking area of one acre for each 2.5 acres within farmhouse, it cannot be allowed to operate with immediate effect as per MCD Policy bearing No. D/1257/EE(B)HQ/2007 Dated 30/10/2007, copy of which is annexed herewith as **Annexure 1**.



8. Because the farmhouse has been set up at a distance less than prescribed norms of National Highway Authority of India and in violation of judgment pronounced by Apex Court in the case of **Municipal Corporation of Delhi vs. Rishi Raj Jain & another [(2006) 13 SCC 246 – Para 11, relevant text of which is reproduced as under:-**

*"II. "Agricultural Green Belt" and "Rural" Use Zones*

*In order to preserve these Zones in agricultural use certain restrictions on the size of the dwelling units should be imposed.*

*They are as under: -*

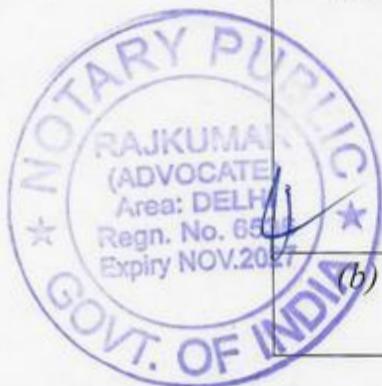
*(i) The minimum size of a farm shall be as under:-*

*(a) Orchard & Vegetable Farm - 1 hectare*

*(b) Poultry, Stud, Dairy & other livestock farms- 2 hectare*

*(ii) The minimum coverage and height of dwelling units, shall be as under:-*

<i>Sl. No.</i>	<i>Size of farm</i>	<i>Maximum coverage of dwelling unit</i>	<i>Maximum height of dwelling unit</i>
<i>(a)</i>	<i>1 hectare and above but less than 2 hectare</i>	<i>100 sq. mtrs. (including mezzanine floor)</i>	<i>Single storeyed maximum height. 6 m</i>
<i>(b)</i>	<i>2 hectares and above</i>	<i>150 sq. mtrs.</i>	<i>Single storeyed</i>



		(including mezzanine floor)	maximum ht. 6 m.
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N.B. (1) *Set back for dwelling house should be 50 feet from any boundary line of the property.*

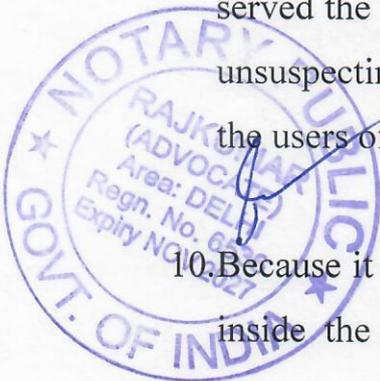
(2) *Where the property abuts an urban road, the dwelling house building should be set back from the centre line of that road by 200 ft. where the property abuts a village road, the building set back from the centre line of that road should be 100 feet.*

(3) *No dwelling unit should be built within two furlongs of the right of way of any National Highway*

A copy of the judgment is annexed herewith as **Annexure -2.**

9. Because the farmhouse is operating in violation of permission dated 27-04-2009 granted by MCD because it does not have one acre parking inside the farm house and is operating illegally by constructing multiple halls in space meant for parking, which fact is in the knowledge of MCD as it has charged huge fee as is evident from receipts annexed at page No.(s) 94 to 96, it has not filed any response till date despite having served the compliant. MCD cannot be permitted to play with the lives of unsuspecting public visiting farmhouse for attending functions and also the users of National Highway which is now called Dwarka Expressway.

10. Because it is admitted position that the Farmhouse does not have parking inside the farmhouse as per permission dated 27-04-2009 granted by



MCD and is operating illegally both in terms of permission granted and in violation of judgment pronounced by Hon'ble Supreme Court, the farmhouse must be sealed immediately without any further delay.

11. That, in terms of the submissions made above based on both the Reports submitted by CPCB and DPCC along with documents it is humbly prayed to this Hon'ble Tribunal that the farmhouse may be sealed till all the recommendations and all requisite permissions are adhered to and heavy fine should be imposed for operating without having consent to operate.



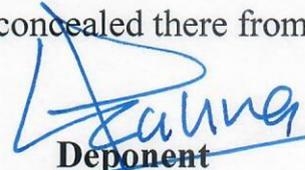
**Deponent**

**VERIFICATION:**

That the contents of the Affidavit are true and correct to the best of my knowledge and belief and nothing material has been concealed there from.

**Place:** New Delhi

**Date:** 29/4/24



**Deponent**



**ATTESTED**

**Notary Public, Delhi**

**29 APR 2024**

MUNICIPAL CORPORATION OF DELHI  
OFFICE OF THE ADDITIONAL COMMISSIONER (ENGG.)  
TOWN HALL, CHANDNI CHOWK , DELHI

No.D/1257/EE(B)HQ/2007

Dated 30/10/2007

Sub: Permitting commercial use of Farm Houses for social Function.

Hon'ble High Court of Delhi vide its order dated 10.10.07 in W.P.C. No. 14261/2004 in the matter of Bharashtachar Virodhi Sangthan V/s Lt. Governor and others has disposed the said matter with the observations that they are satisfied by the guidelines proposed by Government of NCT of Delhi for permitting use of farmhouses for organizing social functions. In view of the said court orders the guidelines issued by Government of NCT of Delhi is to be Strictly followed while permitting social functions in farmhouses. A copy of the Hon'ble High Court order along with the guidelines as placed before the court is enclosed herewith.

Encl: As above

Sd/-

ADDITIONAL COMMISSIONER (ENGG.)

Distribution :

1. All Zonal Dy. Commissioner
2. E-in-C
3. All CEs
4. Chief Town Planner
5. All SEs
6. All E.Es (Bldg.)

Copy for information to :

1. Chief Secretary, GNCTD
2. Principal Secretary (UD), GNCTD
3. Divisional Commissioner, GNCTD
4. Commissioner of Police , Delhi
5. P.S. to Additional Commissioners.
6. All Additional Commissioners.
7. Additional Commissioner (Slum & JJ)
8. Chief Law Office, MCD.
9. Sh. Anoop Bagai Standing Counsel , MCD.

Copy also for information to :

1. Mayor
2. Chairman, Standing Committee
3. Leader of the House
4. Leader of Opposition.

## Guidelines for permitting Commercial use of Farm House for social functions

The DDA is in the process of locating suitable places for auction for private entrepreneurs to develop facilities for social functions. The completion of arrangements are likely to take some more time. The Lt. Governor Delhi has therefore temporarily permitted the use of certain categories of farm houses for holding social functions such as wedding, parties etc subject to fulfillment of the following guidelines :-

1. Farm house constructed as per sanctioned building plan and having sufficient Parking space (minimum 1 acre for each 2.5 acre farm area) inside their boundary wall may apply to the Office of the Zonal Dy. Commissioner, MCD for holding social functions on their premises. The parking area within the farm houses should be property demarcated with separate Entry and Exit gates. Farm houses owners shall deploy their own security guards to manage the parking within the premises.
2. No parking shall be permitted outside the farm houses on the roadside and in the event of violations, the violators will be prosecuted in accordance with the law.
3. Only such farm houses should be selected which have proper access road from main road to the farm houses. The minimum width of the access road to such farm house from the main road should be 60 feet. Farm houses should not be located at a road which ends in a dead end.
4. For each social function, an amount of Rs. 20,000/- per event for farm houses of 05 acres and above, and Rs. 10,000 /- per event for farm house below 05 acres but not less than 2.05 acre would be levied by the DDA or the MCD as the case may be Booking of Farm house (s) by MCD may be done thorough **Citizen Services Bureau (CSB)/Internet**.
5. A committee under the Chairmanship of the Zonal Dy. Commissioner, with the Asstt. Commissioner of Traffic Police, ACP (Sub-Division), Divisional fire Officer, the Sub-Divisional Magistrate, and a representative of DDA in case of DDA Area Land, would scrutinize such applications.
6. Permission should be given on rotational basis within the municipal zone so that each farm house is not used for more than 120 days in a year. Permission should be based on factors such as number of guests, approximate number of vehicles, nature of function etc.
7. Farm houses shall take special precautions regarding use of noiseless generators, use of loudspeakers, musical instruments etc., so that noise pollution level remains within the permissible limit in conformity with the guidelines / norms issued by CPCB/ DPCC. Similarly, use of fire -crackers within and outside the farm houses should be within the permissible limit and the air pollution level should not exceed the prescribed limits stipulated by the CPCB/ DPCC.

8. No loudspeaker and bands should be permitted beyond 10.00 P.M.
9. Processions and horse-drawn carriage should not be permitted on the roads outside the farm houses.
10. Strict enforcement action should be taken by the concerned authorities against those farm houses that use their premises for commercial purposes without the permission of the DMC Committee.
11. Sanitary conditions should be maintained in and around Farm House during and after the functions and in the event of violation, the violators will be prosecuted in accordance with the law.
12. These instruction / guidelines shall remain in force till further orders and can be reviewed by the Government.

Sd/-  
(MADHUKAR)  
JOINT SECRETARY (UD)

1. Vice Chairman, DDA.
2. Development Commissioner, GNCTD.
3. Commissioner of Police.
4. Commissioner, MCD
5. Commissioner, Excise.
6. Secretary Environment cum-Chairperson, DPCC.

246 SUPREME COURT CASES (2006) 13 SCC

(2006) 13 Supreme Court Cases 246

(BEFORE S.B. SINHA AND DALVEER BHANDARI, JJ.)

MUNICIPAL CORPN. OF DELHI .. Appellant; <sup>a</sup>

*Versus*

RISHI RAJ JAIN .. Respondent.

Civil Appeals No. 4125 of 2006<sup>†</sup> with No. 4143 of 2006<sup>‡</sup>,  
decided on September 14, 2006

**A. Municipalities — Delhi Municipal Corporation Act, 1957 (66 of 1957) <sup>b</sup>**  
— S. 115(4)(c) — General tax — Exigibility to — Respondent constructing a  
dwelling house in his farmhouse measuring 2.5 hectares, which was within  
the agricultural green belt — Appellant Corporation seeking to levy general  
tax on the entire area contending that once a dwelling house was built on an  
agricultural land, the entire area becomes exigible for levy of tax in the  
event it is found that it is not being used for agricultural purposes — Held, <sup>c</sup>  
only the extent of land, on which the dwelling house has been constructed,  
together with the land appurtenant thereto in terms of the Building  
Bye-Laws, would be exigible to general tax — Delhi Building Bye-Laws,  
1983, Item II Appendix ‘J’ (Paras 3, 9, 10, 11, 12 and 17)

*Maharaj Singh v. State of U.P.*, (1977) 1 SCC 155; *Municipal Board, Saharanpur v. <sup>d</sup>*  
*Shahdara (Delhi) Saharanpur Light Rail Co. Ltd.*, (1999) 1 SCC 586; *Municipal Corpn.*  
*of Delhi v. Naresh Kumar*, (1997) 4 SCC 766, considered

**B. Municipalities — Delhi Municipal Corporation Act, 1957 (66 of 1957)**  
— S. 115(4)(c) — General tax — Respondent constructing a dwelling house  
in his farmhouse measuring 2.5 hectares — Determination of “land  
appurtenant” to dwelling house for levy of tax — Authority competent for  
— Power of High Court — Appellant Corporation seeking to levy general  
tax on the entire area — High Court by the impugned judgment, inter alia, <sup>e</sup>  
holding that the size of the land appurtenant to a dwelling unit of maximum  
permissible limit constructed in a farmhouse having the minimum size of 2.5  
acres and above for proper and convenient enjoyment of the dwelling house  
shall be “half an acre” including the land over which the dwelling unit is  
made for the purpose of levying property/general tax and the remaining  
land shall be preserved as an agricultural land — Held, it was not for the  
High Court to issue any directions in this behalf — Each case has to be <sup>f</sup>  
considered on its own facts — Superior courts, although, can interpret a  
statute, cannot issue a guideline which would be contrary to the provisions  
of the statute or the rules framed thereunder — Constitution of India —  
Art. 226 — Scope of interference — Issue of directions, orders or guidelines  
— Limits of — Words and Phrases — “Land appurtenant” (Paras 6 and 17)

P-M/AJ/34986/S <sup>g</sup>

Advocates who appeared in this case :

Ms Amita Gupta, Advocate, for the Appellant;  
Sudhir Nandrajog, Advocate, for the Respondent.

<sup>†</sup> Arising out of SLP (C) No. 17116 of 2004. From the Interim Order dated 6-4-2004 of the High <sup>h</sup>  
Court of Delhi at New Delhi in CM (M) No. 270 of 1999

<sup>‡</sup> Arising out of SLP (C) No. 17463 of 2004

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**Chronological list of cases cited** **on page(s)**

- |   |  |        |
|---|--|--------|
| a | 1. (1999) 1 SCC 586, <i>Municipal Board, Saharanpur v. Shahdara (Delhi) Saharanpur Light Rail Co. Ltd.</i> | 251b-c |
|   | 2. (1997) 4 SCC 766, <i>Municipal Corpn. of Delhi v. Naresh Kumar</i>                                      | 252a   |
|   | 3. (1977) 1 SCC 155, <i>Maharaj Singh v. State of U.P.</i>   | 250b-c |

The Judgment of the Court was delivered by

**S.B. SINHA, J.**— Leave granted.

b 2. The respondent is the owner of a farmhouse. He had constructed a dwelling house therein. The area of the farmhouse is said to be 2.5 acres. The said land is within the agricultural green belt.

c 3. General tax is levied by the appellant Corporation in terms of Section 115 of the Delhi Municipal Corporation Act, 1957 (“the Act”, for short). Clause (c) of sub-section (4) of Section 115 of the said Act exempts agricultural lands and buildings from the purview of levy of general tax. Dwelling houses, however, are not saved. In terms of the Building Rules contained in Item II of Appendix ‘J’ of the Delhi Building Bye-Laws, 1983, construction of dwelling house on agricultural land is permitted with certain restrictions providing:

“II. ‘Agricultural Green Belt’ and ‘Rural’ Use Zones

d In order to preserve these zones in agricultural use certain restrictions on the size of the dwelling units should be imposed. They are as under:

(i) The minimum size of a farm shall be as under:

- |  |              |
|--|--------------|
| (a) Orchard and vegetable farm                     | — 1 hectare  |
| (b) Poultry, stud, dairy and other livestock farms | — 2 hectares |

e (ii) The minimum coverage and height of dwelling units, shall be as under:

Sl. No.	Size of farm	Maximum coverage of dwelling unit	Maximum height of dwelling unit
f (a)	1 hectare and above but less than 2 hectare.	100 sq. m. (including mezzanine floor).	Single storeyed maximum height 6 m.
(b)	2 hectare and above.	150 sq. m. (including mezzanine floor).	Single storeyed maximum height 6 m.

g *N.B.* (1) Set back for dwelling house should be 50 ft from any boundary line of the property.

(2) Where the property abuts an urban road, the dwelling house building should be set back from the centre line of that road by 200 ft where the property abuts a village road, the building set back from the centre line of that road should be 100 ft.

h (3) No dwelling unit should be built within two furlongs of the right of way of any National Highway.

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(4) In the case of special farms, for example, horse breeding farms covering a large area, the Government may allow a larger coverage as may be considered necessary for farmhouses to be built on these farms.” a

4. The appellant Corporation contends that once a dwelling house is built on an agricultural land, the entire area becomes exigible for levy of tax in the event it is found that it is not being used for agricultural purposes.

5. General tax was levied accordingly upon the respondent. He preferred an appeal before the Appellate Authority. The Appellate Authority opined:

“... In the instant case although the covered area of the dwelling unit admittedly does not exceed 196.44 sq yd yet the assessing authority has taken market price of land measuring 2.5 acres into consideration solely on the grounds that no farmhouse can be approved if the area of the farmhouse is less than 2.5 acres. In the eyes of this Court, the assessment authority is not justified in taking into consideration the market price of land measuring 2.5 acres on the aforesaid ground especially when there is nothing such in the impugned assessment order itself and that for want of evidence, the assessment authority presumed that the entire land of 2.5 acres is necessary and is being used for enjoyment of the dwelling house. When the respondent is having sufficient field staff for inspection of the appeal farmhouse, I see no reason why the assessment authority should go by presumption against the appellant showing an arbitrary attitude of the assessment authority.” b c d

6. A writ petition was filed thereagainst. By reason of the impugned judgment, the High Court held:

“While deciding the size of the appurtenant land necessary for a proper and convenient enjoyment of the dwelling unit in a farmhouse the Court cannot be oblivious of the fact that the dwelling unit on a farmhouse is not on a par with a dwelling unit on a residential plot. Whenever, a person decides to live in a farmhouse his object and purpose is to live in wide open area with a vast lawn than in the crowded residential area as he wants to enjoy the fruits of unpolluted green expansive area and therefore appurtenant land necessary for a proper and convenient enjoyment of the dwelling unit has to be higher than permissible in plotted residential zone. e f

After having discussed the matter with the counsel for MCD as well as the counsel for the respondent and also on the premise of reasonableness and rationality this Court feels as there is consensus that size of the appurtenant land necessary for appropriate and convenient enjoyment of the dwelling unit in a farmhouse of the minimum size of 2.5 acres and above should be half an acre for appropriate and convenient enjoyment of the dwelling unit. Any area either lower or higher would not be in consonance with the concept of living in a farmhouse. In the view of this Court, this norm should be adopted by every assessing authority for the purpose of levying general tax as contemplated under Section 115 of the Delhi Municipal Corporation Act. g h

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a For the remaining land the authorities concerned have the powers to take action under various laws viz. the Delhi Land Reforms Act and the Income Tax Act if it is found being used for non-agricultural/commercial purposes. For instance Section 81 of the Delhi Land Reforms Act empowers the Revenue Authority to direct the owner to put the land back into agricultural use or face consequences if agricultural land is found being used for non-agricultural or commercial purposes. Similarly, if any commercial or non-agricultural activity on an agricultural land is carried out, such a land loses its character of being agricultural land as the very object of preserving and maintaining the green zone in the farmhouse as contemplated in Appendix 'J' stands frustrated and any income from such a user ceases to be exempted from tax. Similarly, the authority concerned, for instance, MCD can levy tax or penalty or take any action permissible under law for using the agricultural land for non-agricultural or commercial purposes.

c Upshot of the aforesaid discussion is that the size of the land appurtenant to a dwelling unit of maximum permissible limit constructed in a farmhouse having the minimum size of 2.5 acres and above for proper and convenient enjoyment of the dwelling house shall be 'half an acre' including the land over which the dwelling unit is made for the purpose of levying property/general tax and the remaining land shall be preserved as an agricultural land. In case the non-agricultural or commercial activities are found to be carried on in the said remaining land which has to be necessarily preserved as a green zone it shall be subjected to appropriate legal actions as these activities shall take away the agricultural character of the land as contemplated under Section 115 of the Delhi Municipal Corporation Act. This norm shall be applicable with retrospective effect so as to avoid discrimination."

The appellant is, thus, before us.

7. Ms Amita Gupta, learned counsel appearing on behalf of the appellant submitted that if the land in question is not used for agricultural purposes, the entire land becomes exigible to levy of general tax.

f 8. Mr Sudhir Nandrajog, learned counsel appearing on behalf of the respondent, on the other hand, supported the impugned judgment.

9. Indisputably, the Building Bye-Laws framed by the appellant Corporation operate having regard to the areas and locations as well as the nature of the lands/premises. Farmhouses, although, are primarily meant to be used for agricultural or horticultural purposes; construction of a dwelling house therein is permissible in law.

g 10. We have noticed hereinbefore that in terms of the Building Bye-Laws, the permissible limit for construction of a dwelling house would be about 100 sq. m. out of total 11,000 sq. m. of land i.e. about 4.5% of the total land.

h 11. Tax, indisputably, is imposable keeping in view the nature of the land. If the nature of the land is agricultural, the Corporation cannot levy tax only because no agricultural operations are carried out therein.

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12. Sub-section (4) of Section 115 of the Act provides for an exception as regards payment of tax providing that no tax shall be levied on agricultural lands and buildings. Dwelling house, however, is not within the purview of the exempted category. Buildings on an agricultural land may be constructed for different purposes. They may be built for agricultural purposes. A dwelling house constructed by the owner thereof, however, has a different connotation. Whereas buildings/houses built for agricultural purposes are specifically excluded from levy of tax, dwelling houses are not. What would be the extent of the land, which, however, would be exigible to tax would, in our opinion, be the extent of land upon which it has been constructed and the land appurtenant thereto. What would be the meaning of the land appurtenant thereto came up for consideration before this Court in *Maharaj Singh v. State of U.P.*<sup>1</sup>, wherein it was opined: (SCC p. 168, paras 26-28)

“26. The heated debate at the bar on this and allied aspects need not detain us further also because of our concurrence with the second contention of the Solicitor General that the large open spaces cannot be regarded as appurtenant to the terraces, stands and structures. What is integral is not necessarily appurtenant. A position of subordination, something incidental or ancillary or dependant is implied in appurtenance. Can we say that the large spaces are subsidiary or ancillary to or inevitably implied in the enjoyment of the buildings qua buildings? That much of space required for the use of the structures *as such* has been excluded by the High Court itself. Beyond that may or may not be necessary for the *hat* or *mela* but not for the enjoyment of the chabutras as such. A hundred acres may spread out in front of a clubhouse for various games like golf. But all these abundant acres are unnecessary for nor incidental to the enjoyment of the house in any reasonable manner. It is confusion to miss the distinction, fine but real.

27. ‘Appurtenance’, in relation to a dwelling, or to a school, college ... includes all land occupied therewith and used *for the purposes thereof* (*Words and Phrases Legally Defined* — Butterworths, 2nd Edn.):

“The word “appurtenances” has a distinct and definite meaning.... Prima facie it imports nothing more than what is strictly *appertaining to the subject-matter of the devise or grant*, and which would, in truth, pass without being specially mentioned. Ordinarily, what is necessary for the enjoyment and has been used for the purpose of the building, such as easements, alone will be appurtenant. Therefore, what is necessary for the enjoyment of the building is alone covered by the expression “appurtenance”. If some other purpose was being fulfilled by the building and the lands, it is not possible to contend that these lands are covered by the expression “appurtenances”. Indeed “it is settled by the earliest authority, repeated without contradiction to the latest, that land cannot be appurtenant to land. The word ‘appurtenances’ includes all the incorporal hereditaments attached to the land granted or demised,

1 (1977) 1 SCC 155

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such as rights of way, of common ... but it does not include lands in addition to that granted” ( *Words and Phrases*).

a 28. In short, the touchstone of ‘appurtenance’ is dependence of the building on what appertains to it for its use as a building. Obviously, the *hat*, bazar or *mela* is not an appurtenance to the building. The law thus leads to the clear conclusion that even if the buildings were used and enjoyed in the past with the whole stretch of vacant space for a *hat* or *mela*, the land is not appurtenant to the principal subject granted by Section 9 viz. buildings.”

b 13. Yet again, in *Municipal Board, Saharanpur v. Shahdara (Delhi Saharanpur Light Rail Co. Ltd.*<sup>2</sup> the question which arose for consideration was: “As to whether for imposition of house tax, all the buildings of the respondent situated in the ‘common compound’ and forming part of one complex could be treated as one unit for imposing house tax?” Section c 128(1)(i) of the U.P. Municipalities Act, 1916 reads as under:

“128. *Taxes which may be imposed.*—(1) Subject to any general rules or special orders of the State Government in this behalf, the taxes which a municipality may impose in the whole or any part of a municipality are—

(i) a tax on the annual value of buildings or lands or of both;”

d 14. Interpreting the said provision, it was held: (SCC pp. 593-94, para 7)  
“For imposing house tax on buildings under Section 140(1)(a), it has to be shown that the buildings with their common appurtenant land or the land in common appurtenance to several buildings situated nearby are available for imposing such a tax thereon. It is only such appurtenant land which can form part of the buildings for attracting house tax assessment proceedings. But if the ‘common compound’ in which such e buildings with appurtenant lands are situated also includes land which cannot be said to be a common appurtenance to several buildings situated therein or separately appurtenant to any given building, such land would be outside the sweep of the term ‘building’. Such land, however, on its own could be legitimately made the subject-matter of separate levy of house tax as an independent unit being open land, as seen from Section f 140(1)(b) itself as the Board can impose the tax on annual value of lands which may not be covered by the sweep of the definition of the term ‘building’. Once that conclusion is reached, it becomes obvious that all the buildings situated along with their appurtenant lands in one ‘common compound’ belonging to the same owner cannot be treated as one unit for the purpose of imposing house tax under Section 128(1)(i). The reasoning of the High Court in this connection cannot be found fault with g on the scheme of the Act. It is pertinent to note that ‘common compound’ which is relevant for the water tax as per Section 129 of the Act to which we have made a detailed reference while deciding the companion Appeal No. 1218 of 1976 is conspicuously absent in connection with imposition of house tax on the annual value of buildings or lands or both as found in h Section 128(1)(i).”

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15. Our attention has been drawn to a decision of this Court in *Municipal Corpn. of Delhi v. Naresh Kumar*<sup>3</sup> wherein this Court opined: (SCC p. 770, para 6)

“6. The next question is — if a ‘dwelling house’ is exigible to levy of general tax, how much of the adjacent land should be treated as an integral part of the dwelling house. In other words, the question is whether the entire land surrounding or abutting a farmhouse is subject to general tax along with the dwelling house. The answer to this question is: A dwelling house includes within its ambit such appurtenant land as is necessary for a proper and convenient enjoyment of the dwelling house. The extent of such appurtenant land is naturally a question of fact to be decided in each case. We have only stated the test. It is for the appropriate assessing authority to determine the extent of land which can be called appurtenant land to a given dwelling house.”

16. The findings we have arrived at do not militate against the said dicta. In fact, the judgments of this Court support the same.

17. It was, thus, not for the High Court to issue any directions in this behalf, as has been sought to be done by reason of the impugned judgment. Each case has to be considered on its own facts. The superior courts, although, can interpret a statute, cannot issue a guideline which would be contrary to the provisions of the statute or the rules framed thereunder. The directions issued by the High Court, therefore, are set aside. We direct that only the extent of land, on which the dwelling house has been constructed, together with the land appurtenant thereto in terms of the Building Bye-Laws, would be exigible to general tax under Section 115 of the Delhi Municipal Corporation Act.

18. The appeals are disposed of in terms of the observations and directions incorporated in the preceding paragraphs. Parties shall, however, pay and bear their own costs.

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(BEFORE S.B. SINHA AND DALVEER BHANDARI, JJ.)

STATE, CBI

.. Appellant;

*Versus*

SASHI BALASUBRAMANIAN AND ANOTHER

.. Respondents.

Criminal Appeal No. 1100 of 2006<sup>†</sup>, decided on October 31, 2006

**A. Income Tax — Kar Vivad Samadhan Scheme, 1998 — Ss. 91, 95(iii), 87(a), (f), (j), (k), 88 and 90 [of Finance (No. 2) Act, 1998] — Immunity from prosecution — Public servants, if entitled to — Provision in S. 91, held, not applicable to public servants who could not file a declaration and are under investigation for offences under IPC, Prevention of Corruption Act and S. 136 of Customs Act for granting advance licence under Duty Exemption**

<sup>3</sup> (1997) 4 SCC 766 : JT (1997) 3 SC 436

<sup>†</sup> Arising out of SLP (Crl.) No. 996 of 2006. From the Judgment and Final Order dated 20-1-2005 of the High Court of judicature at Madras in Crl. OPs Nos. 31422 and 36254 of 2004