

BEFORE THE NATIONAL GREEN TRIBUNAL, PRINCIPAL BENCH, NEW DELHI

Original Application No. 195/2023

In the matter of:

Vivek Mahna

..... Applicant

Versus

Govt. of NCT of Delhi & Ors.

..... Respondents

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REPLY ON BEHALF OF APPLICANT TO THE JOINT INSPECTION REPORT FILED BY DM (SOUTH-WEST), SDM (KAPASHERA) & JEE (DPCC) DATED 06.12.2023.

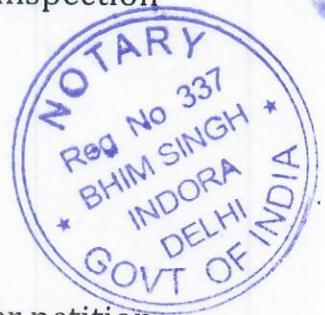
I, Vivek Mahna, S/o Late Sh. Satya Paul Mahna, aged about 78 yrs., R/o H-5, Pushpanjali Farms, Bijwasan, Delhi - 110061, do hereby solemnly affirm and state as under:

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 06.12.2023 and the reply to the same is 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 Bharthal, 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".

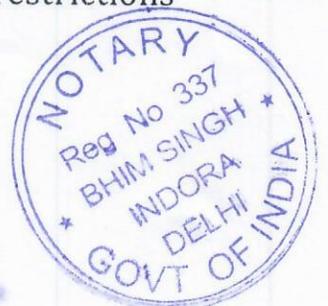


4. That, in compliance with the Order dated 31.10.2023, a report under the signatures of District Magistrate (Southwest) dated 06.12.2023 has been filed. However, from the photographs the identity of the inspection team who has actually carried out the inspection is not clear.
5. It is respectfully submitted that it is also not clear whether the photographs have been clicked by the inspecting team or any other person. Further, the date on which the inspection has been carried out is not appearing anywhere in the report.

PARA WISE REPLY TO THE JOINT INSPECTION REPORT:

1. That in response to para 1 of the joint inspection report it is respectfully submitted that in Krishna Green there are three Banquet Halls i.e., Crystal, Pearl and Sapphire. Further, in the joint inspection report it is not clear which banquet amongst the three was visited and inspected by the joint committee and on which date the inspection was carried out.
2. That in response to para 2 of the joint inspection report it is respectfully submitted that from perusal of the pictures annexed with the joint inspection report it can be clearly seen that the toilets/washrooms have not been inspected by the team. It is pertinent to mention herein that there is no sewer connection provided by MCD for the site in question therefore, where the wastewater of the washrooms is being discharged in absence of sewer line is not forming part of the joint inspection report.
3. That in response to para 3 of the joint inspection report it is respectfully submitted that the team only relied upon the statements made by the representative of the unit and did not inspect the unit for this purpose. Further, in the whole joint inspection report there is no whisper about the capacity of the effluent treatment plant. Also, the report is silent on the aspect of the number of bore wells in the vicinity and the quantity of water being extracted from these bore wells for fulfilling water requirements of the three banquet halls.
4. That in response to para 4 of the joint inspection report it is respectfully submitted that it is an admitted position that there is a service road in front of the banquet hall. The Hon'ble Supreme Court of India in the case of **Municipal Corporation of Delhi vs Rishi Raj Jain & Anr. [(2006) 13 SCC 246]** has reproduced 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



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:-

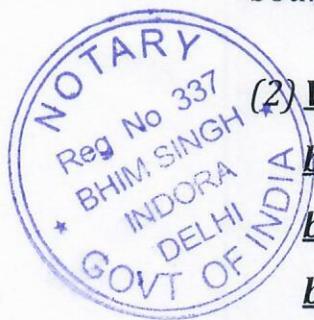
(a) Orchard & Vegetable Farm - 1 hectare

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

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

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

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

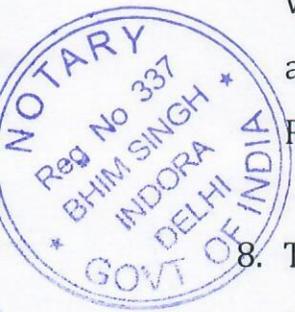


(2) Where the property abuts an urban road, the dwelling house building should be set back from the centre line of that road by 200 ft. where the property abuts a village road, the building set back from the centre line of that road should be 100 feet.

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

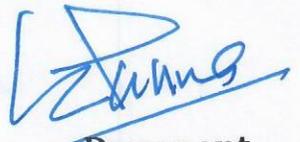
Therefore, in view of these Delhi Building Byelaws, 1983 the MCD cannot allow banqueting on a service road.

5. Further, it is also stated in the joint inspection report that adjacent property No. H2 & H3 are being used for parking vehicles. It is submitted that the team doing the inspection did not inspect the documents/ lease agreements entered upon by the Krishna Greens for using property No. H2 & H3 for parking purposes. Therefore, this Hon'ble Tribunal may direct the respondents to place on record the lease agreements for using the adjacent property as parking space.
6. That in response to para 5 of the joint inspection report it is respectfully submitted that the test certificate annexed with the joint inspection report is that of noise level and not of air pollution being caused using generators. Further, generators do not comply with CPCB4 current air pollution control standards. Therefore, these report does not serve the purpose for which the Committee was constituted address the issues raised in the present O.A.
7. That in response to para 6 of the joint inspection report 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 before May 2023 the banquets were functioning without consent to operate. Further, the consent to operate has not been annexed to the joint inspection report filed by the respondents. The Respondents may be directed to place the consent to operate on record.
8. That in response to para 7 of the joint inspection report it is respectfully submitted that an amount of Rs. 56,67,327/- has been deposited with MCD for holding social functions at a farm for the period July 2023 to December 2023. The report is totally silent on the number of functions that were held prior to July 2023.
9. That in response to para 8 of the joint inspection report it is respectfully submitted that the photographs have been clicked using GPS Map Camera



which is a mobile application and the authenticity and accuracy of which cannot be determined. Further, the photographs annexed do not cover the whole vicinity or the site in question, especially with respect to toilets/washrooms and parking area.

Therefore, in terms of the submissions made above the joint inspection report is liable to be rejected and it is humbly prayed to this Hon'ble Tribunal that a Court Commissioner may be appointed so that a clear and true picture can be brought before this Hon'ble Tribunal.


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:




Deponent

 SATI W MANDOUALLA
Enrol. No - D/118⁰⁹/23

IDENTIFY THE DEPONENT/EXECUTANT
WHO HAS SIGNED IN MY PRESENCE

ATTESTED


BHIM SINGH INDORA
NOTARY GOVT. OF INDIA

08 JAN 2024

ENTERED AT SL No. 10334-24