

**BEFORE THE NATIONAL GREEN TRIBUNAL
PRINCIPAL BENCH, NEW DELHI
ORIGINAL APPLICATION NO. 528/2025**

IN THE MATTER OF:

SOCIETY FOR PROTECTION OF CULTURE, HERITAGE,
ENVIRONMENT, TRADITIONS & PROMOTION OF
NATIONAL AWARENESS (SP--CHETNA)APPLICANT

VERSUS

UNION OF INDIA & ORS. ... RESPONDENTS

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VOLUME-III

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Filed by:



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Place: New Delhi

Dated: 20.01.2026

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ANNEXURE R-7

**BEFORE THE NATIONAL GREEN TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI
ORIGINAL APPLICATION No. 612 of 2023**

IN THE MATTER OF:

Society for Protection of Culture, Heritage,
Environment, Traditions & Promotion of
National Awareness (Regd.)

Also known as (SP-CHETNA)

... Applicant

Versus

Union of India & Ors.

... Respondents

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Date: 05.01.2024

Filed By:



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

ORIGINAL APPLICATION No. 612 of 2023

IN THE MATTER OF:

Society for Protection of Culture, Heritage,
Environment, Traditions & Promotion of
National Awareness (Regd.)

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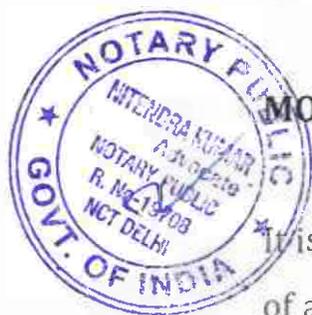
**APPLICANT'S REJOINDER TO THE PRELIMINARY REPLY ON BEHALF
OF RESPONDENT No.9/DIAL**

I, Anil Sood a Senior Citizen, S/o Sh. M.C. Sood, R/o.- C-1/1056, Vasant Kunj,
New Delhi-110070, aged about 67 years, 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 rejoinder affidavit. I have gone through the
preliminary objections filed by Respondent No. 9/DIAL and the reply to the
same is as under:

MOST RESPECTFULLY SHOWETH:

It is submitted that the present petition is based on an entirely fresh cause
of action i.e. noncompliance with the notification dated 18th June, 2018 by
the respondents affecting day to day life of the citizens who are residing in
the landing and take-off funnel of the aircrafts and the respondent no.9



instead of answering the said issue and being supportive of the citizens, is taking an adversarial stand like an ordinary litigant and making baseless and frivolous allegations and averments. It is submitted that all reliefs claimed in the present application are justified in the facts and circumstances of the present case because of the noncompliance of the notification dated 18th June 2018 by the respondents and their failure to control the noise pollution and bring it within the prescribed limits under the said notification. It is denied that any false statement has been made by the petitioner.

PARAWISE REPLY:

1 to 3. The contents of paras 1 to 3 of the preliminary reply do not call for any reply.

4. The contents of para 4 of the preliminary reply are absolutely baseless, frivolous and derogatory and defamatory. Absolutely false and incorrect allegations and averments have been made for which the applicant reserves his right to seek appropriate remedy against the officials of respondent no.9 who have sought to make false and frivolous allegations and derogatory and defamatory remarks. The applicant takes very serious objection to the tone and tenor of the language used by respondent no.9, especially to it alleging the applicant to be a serial litigant who habitually initiates frivolous litigations with no substance and for its own self-serving purpose. The applicant is a society working for the public cause as mentioned in para 2A of the application and initiates litigation where necessary and only when the parties like respondent no.9 are not discharging their duties and functions and are playing havoc with the citizens lives and rights, as in the present case. It is relevant to point out that whatever litigation has been initiated by the applicant has resulted in public good and favourable orders in favour of the applicant directing the Government bodies to do their duty. Even in Appeal No.60 of 2013 (THC) decided by this Hon'ble Tribunal



vide order dated 24th November 2017 the respondents were exposed and found lacking in performance of their duties and this Hon'ble Tribunal directed the respondents to take measures for mitigating noise pollution and only did not deem fit to pass the order for night curfew for reasons mentioned in the said order. Respondent no.9 be directed to list out the so-called frivolous litigations it is referring to in para 3 of the application which it claims the applicant has filed for its own self-serving purpose.

It is denied that the present OA does not raise any question of law relating to environment or that OA has been drafted in a confusing manner deliberately or that any notification has been misstated or misinterpreted for any reason alleged or otherwise. It is denied that the applicant is guilty of deceit or concealment of any facts as alleged or otherwise.

REPLY TO BRIEF FACTS:

5. It is denied that the reliefs prayed in the present application are not maintainable for any reason alleged or otherwise. Contents of para 5 (i) to (ix) to the extent are matters of record do not call for any reply. However, contents of para 5(x) are denied as the respondent no.9 is wrongly contending that it is displaying the noise levels on its website in terms of the judgment dated 18th September 2019 passed by this Hon'ble Tribunal. The contents of Annexure R-8(Colly) to the reply are also denied. The petitioner submits that no link on website of R-9, is available whereby the noise levels have been disclosed. The documents annexed as (Annexure R-8(Colly)) are merely typed statements indicating monthly average noise levels without disclosing, the source from which these are downloaded, which appears whenever any document is downloaded from any website. The printout of various pages of Website of R-9 is annexed herewith as **Annexure-1 (Colly)**. Further, the Applicant has downloaded the last report recording noise levels uploaded by R-6 in January 2009 at Vasant Kunj, a copy of which is annexed herewith as **Annexure-2**. Thereafter



Respondent No.6, for reasons best known to it has not uploaded any report. The Applicant has downloaded the PDF reports of all the ten monitoring stations, from 02-01-2024, 03-01-2024 and 04-01-2024 available on the Online Noise Monitoring link provided by Respondent No.2, from its website. The copies of the same are annexed herewith as **Annexure - 3(Colly)**. On perusal of the reports, it emerges that except for R.K. Puram Residential Area, the reports recording noise levels in other residential areas are also not available. The recordings placed on record by the applicant clearly establish the fact that it has correctly recorded all the three noise levels. Respondent no.9 has sought to wrongly dispute the noise levels recorded by the applicant and submitted by way of additional documents without any basis.

REPLY TO PRELIMINARY OBJECTIONS TO THE ORIGINAL APPLICATION:

6. The contents of para 6 of the reply are wrong and denied. It is denied that the present application is barred by res judicata for any reason alleged or otherwise. It is submitted that the present application is based on a fresh cause of action arising out of the noncompliance of the notification dated 18th June, 2018 issued by Respondent no.1 post the order dated 24th November, 2017 passed by this Hon'ble Tribunal in the earlier matter. It is denied that the issues and reliefs claimed in the present application already stand decided vide this Hon'ble Tribunal's order dated 24th November, 2017. The comparison sought to be made in the table is wholly misconceived and has no merit and will be demonstrated by the applicant during the hearing. The order dated 18th September 2019 passed by this Hon'ble Tribunal will make it clear that the notification dated 18th June, 2018, violation of which is complained of in the present application was not the subject matter of consideration and adjudication in the Execution Petition filed by the applicant.



7. In reply to para 7 it is submitted that with regard to Noise Standard for Airports (d), the respondent no.9 has not complied with the noise prescribed norms of the notification dated 18th June, 2018 and the noise levels claimed to have been recorded are not correct. Respondent no.9 claims to have installed Aircraft Noise Monitoring Terminals (NMT's). However, the map annexed to the reply does not provide locational coordinates and does not show the exact location of NMT installed at Vasant Kunj. It is further submitted that respondent no.2 has not installed any NMT in any of the landing funnels in the last 12 years as per its annual report annexed as annexure 12 at page no.(s) 92-109 of additional documents filed by the applicant. Similarly Respondent No.6, has stopped uploading of Noise levels recorded by it at 40 locations in Delhi after January 2009, as is evident from statement downloaded from its website annexed as annexure - 2 (supra). With regard to the Aircraft Noise Complaint Redressal System (f), it is submitted that the said system deployed by respondent no.9 is an eyewash as will be clear from the complaints made by the applicant and the responses received to them from respondent no.9. Further, the Respondent No, 9 for reasons best known to it has not placed on record the Noise Levels recorded at the Boundary of the Airport as provided under sub clause (iii) (page 68) read with clause no. 6 at page 69 of the OA, of the Environmental Clearance dated 30th May 2018, Part -B – General Conditions. Further, Respondent No.2 and Respondent No.6 are monitoring the stipulated conditions on half yearly basis as per clause 4 of the Environmental Clearance by Regional office of Respondent No.2 and Respondent No.6 (at page 68 of OA). With regard to other claims made by the respondent no.9, applicant has no means to verify the correctness of the claims made by it.



11. The contents of paras 8 to 11 are wrong and denied. It is submitted that the notification dated 18th June 2018 required the respondent no.9 (DIAL) to define the Airport Noise Zone area on the basis of existing GSR 751 (E) issued by the Ministry of Civil Aviation which

was to be approved by the Director General of Civil Aviation (DGCA) and displayed on the website of respondent no.9. It is submitted that there is no Airport Noise Zone area posted on the website of respondent no.9. It is submitted that the letter dated 7th April 2022 vide which DGCA has granted the approval of the Airport Noise Zone has reference to document no. DIAL/ANZ/2021-22/Verl., which is neither on their official website nor has been submitted before this Hon'ble Tribunal. Reference to CAR dated 18th December 2014 issued by DGCA is wholly misconceived. This circular is irrelevant for the issue at hand as the same relates to **"Noise Management of Aircraft Operations at Airports"**. The issue involved in the present application is high noncompliance of Para 2 of Notification 18th June 2018 with regard to noise limits in landing funnel. It is denied that any pleading in the present application is false or baseless.

12. In reply to para 12, the applicant submits that the present petition is bonafide and merits consideration based only on the ground that the norms laid down by the notification dated 18th June 2018 are not being adhered to and mitigating measures even if being taken are not seeming adequate, requiring passing of further suitable directions by this Hon'ble Tribunal.

In view of the submissions made above, the applicant submits that there is no merit in the objections taken by respondent no.9 and the present application be heard on merits.



I identified the deponent who has signed in my presence

05 JAN 2024

Deponent

VERIFICATION: CERTIFIED THAT DEPONENT

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:

Identified by me [Signature]

Notary Public [Signature]

NOTARY PUBLIC
GOVT. OF INDIA

Deponent

1/3/24, 4:40 PM

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Delhi Airport (DIAL) is one of the Greenest Airports in the World



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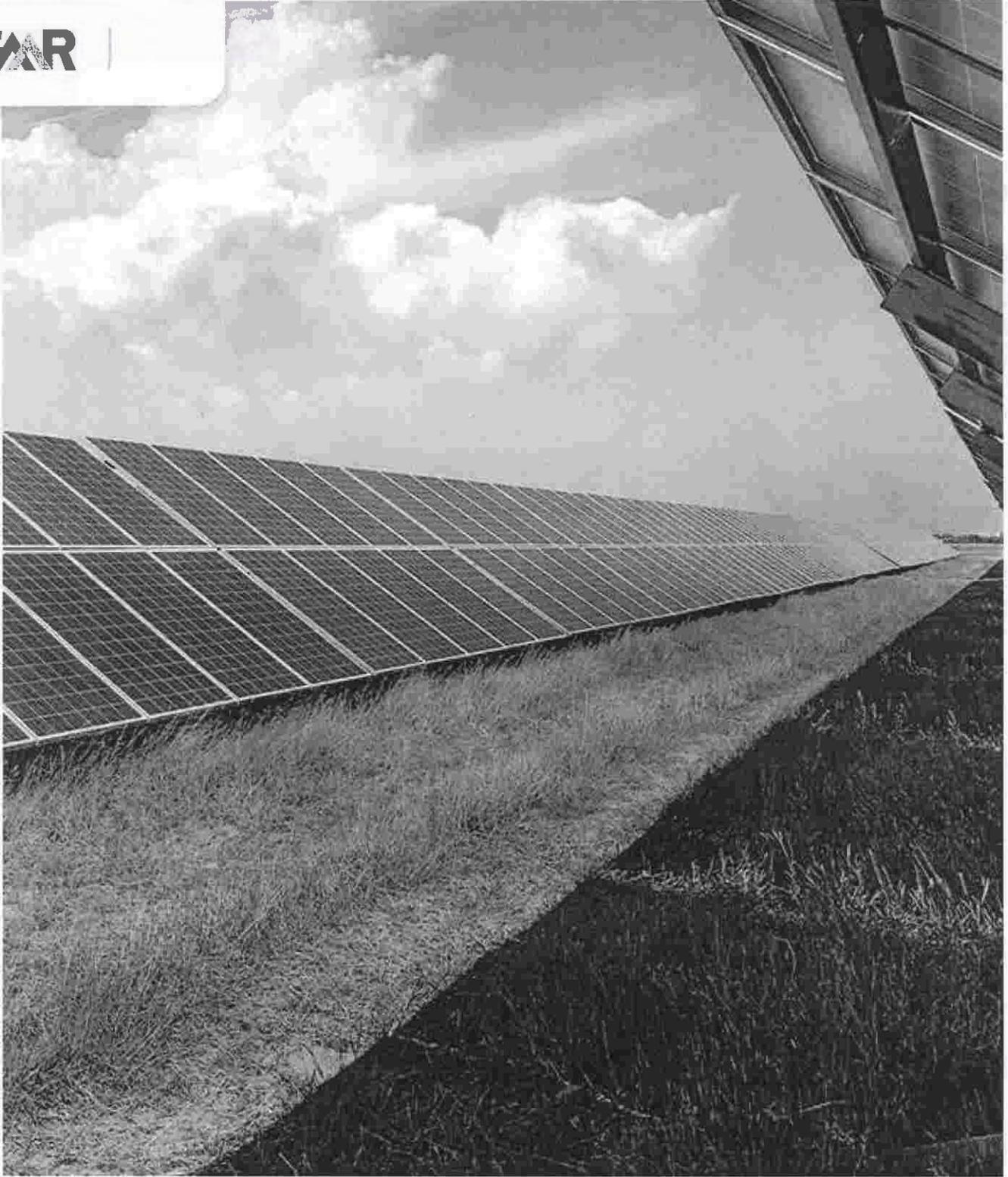
21 January 2022

Sustainability is not just need of the hour but also the mantra for a successful business proposition. Businesses cannot turn sustainable overnight, it needs series of efforts done persistently with a vision in horizon.

Green initiatives taken by DIAL to effectively manage CO2 emissions has made GMR run Delhi Airport - world's 5th busiest - **One of the greenest airports in the world.**

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Delhi Airport (DIAL) is one of the Greenest Airports in the World



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According to a recent study by an online tool Airport Tracker, a joint project by the non-profits International Council on Clean Transportation, ODI, and Transport & Environment, CO₂ emission at Delhi Airport is significantly lower than the major global airports of its size and capacity like Singapore's Changi airport, South Korea's Incheon Airport, Germany's Frankfurt airport and Hong Kong airport, each of which produces over 10 million tonnes of CO₂ per annum.

In 2020, Delhi Airport became the first airport in Asia Pacific region to get Level 4+ (Transition) accreditation, which is the top Level achieved by any airport in the world, under the ACI's Airport Carbon Accreditation Program.

Some of the initiatives adopted by Delhi Airport for reducing Green House Gas (GHG) emission from airport operations include use of green building concept in construction and operation, use of renewable energy, energy efficient building materials, electro mechanical systems, efficient lighting systems, double glassed facade that ensure reduced electricity consumption and lead to reduction of emissions from the Terminal operation.

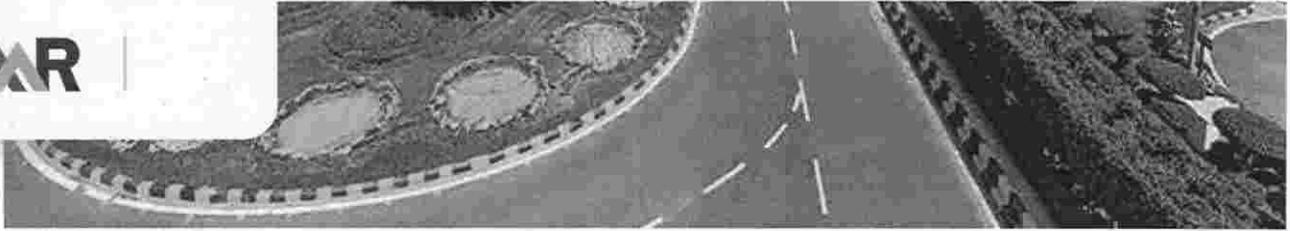
DIAL uses energy efficient systems, equipment and operational improvement measures such as Airport Collaborative Decision Making (A-CDM), Bridge Mounted Equipment (BME), Electric vehicles, Fuel Hydrant Systems etc



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Delhi Airport (DIAL) is one of the Greenest Airports in the World

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GEMS (GMR Engineering & Management Services), a pioneer in the field of engineering and management offers a bouquet of services to airports worldwide. At the core, we have expanded our engineering and management capabilities with focus on operational excellence, commercial performance and sustainability. Our experience in managing the highly acclaimed Indra Gandhi International Airport, Delhi and Rajiv Gandhi International Airport, Hyderabad is indeed our greatest strength.

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for airports and beyond, we offer high-quality and cost-effective solutions. With a diverse skillset of over 250 highly qualified engineers, we help our clients enhance their business with efficient, flexible and sustainable services that are cost-effective, high-quality solutions.

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Testing &
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Managed by
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experienced
professionals

Project execution
and operational
management
capabilities

Integrated Services
Management

Additional &
alteration of existing

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INDIA

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Standing by our commitment to maintain environment sustainability (2/2)

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Standing by our commitment to maintain environment sustainability (2/2)

30 June 2020

Every successful relationship is based on a two-way process- the more you take, the more you need to give. And, preserving ecological balance is no additional task but our bit of maintaining a healthy relationship with nature, which was long being solely managed by the latter only.

The UN 1987 report on Environment and development said that sustainable development is one which meets the needs of the present without compromising the well-being of future generations. This has long been adapted in GMR's work culture. Even with the steep and sustained rise in the air traffic at GMR led Indira Gandhi International Airport (IGIA) and Rajiv Gandhi International Airport (RGIA), due focus is laid at ensuring long term development of the airport eco-system and its stakeholders. Sustainability at these airports is majorly being achieved through deployment of technology and innovation.



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Standing by our commitment to maintain environment sustainability (2/2)



Green Energy - Solar Energy

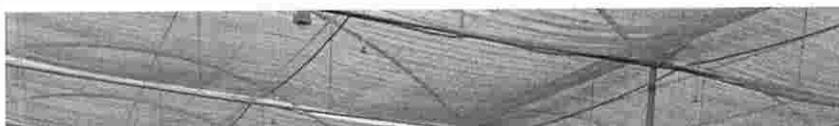
Right from the design and construction phase, GMR led IGIA and RGIA have extensively ingrained environmental protection as an integral part of their businesses. Based on their respective environment policies, developed with co-operation of all the stakeholders, both the airports have successfully maintained green buildings.

While, IGIA's Terminal 3 has been the first 'Leadership in Energy and Environmental Design' (LEED) Gold Accredited airport terminal building in the world for its green footprint; RGIA on the other hand, got the silver rating LEED certification in 2008 by US Green Building Council.

Spreading the word of environment protection

GMR has a CSR arm - GMRVF. The Foundation works in several surrounding villages with the aim of participatory rural development and strengthening of village communities and their institutions. Several vocational training programmes are conducted for youth. Some key training programs targeting towards environmental conservation include making of jute bags and training for landscape maintenance. The foundation also conducts awareness programmes on environmental conservation for school children. Both the airports very actively promote environmental awareness to sensitize the airport community and passengers by observing various days like World Environment Day, World Forestry Day, Ozone Layer Protection Day, Earth Day, etc.

RGIA, as part of promoting greening even beyond its campus, has a shop at the arrivals for selling plants, under the brand name of Udyannam. These plants are reared at GHIAL nursery and marketed through this outlet, thus cultivating a culture of 'green gifting'! In addition, regular Knowledge Sharing, Skills and Attitude (KSSA) sessions on developments in the environment are conducted with employees & stakeholders at Delhi Airport. This helps us achieve high operational efficiency and long term sustainability.



1/3/24, 4:54 PM

Standing by our commitment to maintain environment sustainability (2/2)



Rainwater
Harvesting
Pits 300

Water holding
capacity
of 6,00,000 cubic
meters

To enhance water resources and become water sustainable, rainwater harvesting structures (~300 rainwater harvesting pits) have been installed and are spread across the airport. On the other hand, RGIA has also developed a comprehensive water management plan, which includes reinforcement of its rainwater harvesting capabilities by constructing a large reservoir with a water holding capacity of 6,00,000 cubic meters, which is sufficient to meet the considerable quantum of airport's requirement throughout the year.

Judicial use of water

Since, water is among the most critical of natural resources, it needs conservation and effective means for reducing its wastage and optimizing utilization. In line with this, IGI and RGIA have used several innovative measures for water conservation. Some of these initiatives include:

Giving a robust technology boost to its ongoing environment sustainability measures, GMR led Hyderabad International Airport became India's first airport to induct a cloud based Central Irrigation Control System using an "IMMS online" (Irrigation Management and Monitoring Software) mechanism to control the intricate Automatic Irrigation System across the 80 acres of landscape spread along the 8.4 km stretch of the airport spine road. A first of its kind technology to be introduced in India, the control of irrigation system is precise and timely, enabling the airport to save water up to 35% over the conventional mode of irrigation system.

An advanced 10 MLD Sewage Treatment Plant (STP) has been installed at IGI Airport to conserve



1/3/24, 4:54 PM

Standing by our commitment to maintain environment sustainability (2/2)

and sustain water resource at the airport. The plant treats the sewage water generated within the airport and the treated water is then being used for HVAC, flushing and horticulture activities of IGIA.

Efficient Sewage Treatment Plants (STPs) have been installed to treat wastewater at RGIA. The sewage from various facilities is collected and transferred to the 2STPs which are of 925KLD capacity each coupled with a wide network of sewerage system. The treated wastewater is recycled for use in flushing, cooling tower makeup water and irrigation of the extensive greenery within the Airport.

Few key training programs targeting towards environmental conservation include making of juice bags and training for landscape maintenance.



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Delhi International Airport Limited, India

Delhi International Airport Limited (DIAL) is a joint venture, formed as a consortium between GMR Airports Limited (Subsidiary of GMR Infrastructure Limited) (64%), Airports Authority of India (26%), and Fraport AG Frankfurt Airport Services Worldwide (10%). We believe in creating passenger delight every time they fly and this has been reflected in every facet of the airport.

Passenger Delight has remained our primary objective at Delhi Airport, steering our company, services, goals, and overall

1/3/24, 4:42 PM

Delhi International Airport Limited



identity. This commitment will continue to guide our path in the future. Our aim is to bring some of the finest airport business concepts to life for passengers at Delhi Airport, unlocking boundless possibilities for both travellers and ourselves.

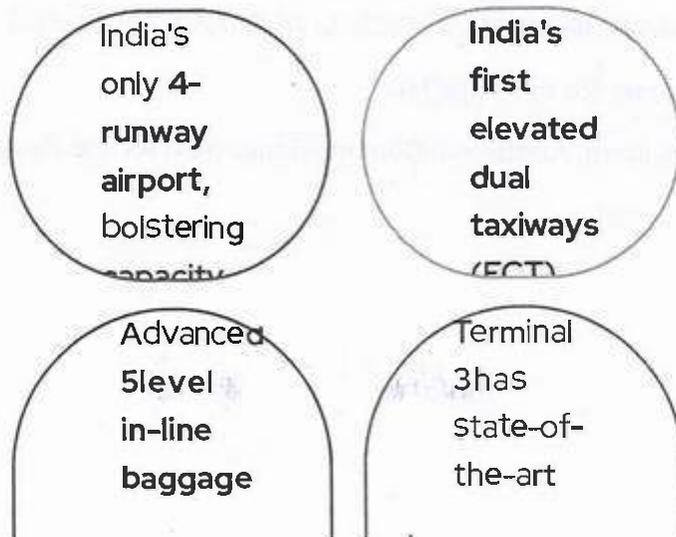
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16.8 **4** **144**

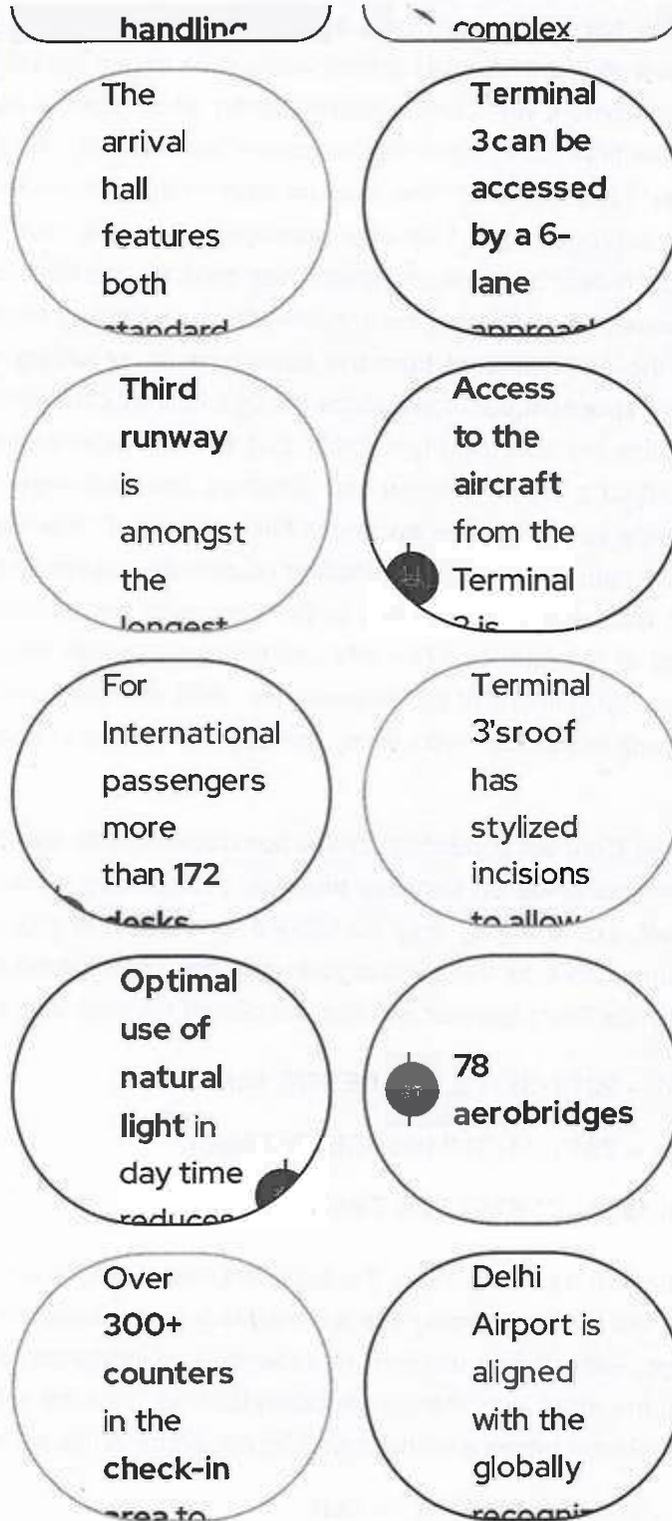
PASSENGERS PER YEAR RUNWAYS ROUTES

Salient Features



1/3/24, 4:42 PM

Delhi International Airport Limited



OPERATING ASSETS

UNDER DEVELOPMENT

AIRPORT LAND DEVELOPMENT

National Presence

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Delhi International Airport Limited



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(https://www.dpcc.delhigovt.nic.in/)

Delhi Pollution Control Committee Government of NCT of Delhi



सत्यमेव जयते

NOISE LEVEL AT 40 LOCATION

NOISE

Noise Level At 40 Location(https://www.dpcc.delhigovt.nic.in/noiselevelat40location)

Noise Level At 40 Location

Ambient Noise Levels Observed at Different Locations in Delhi

◆ Day time standard for residential area 55dB (A)

1/2/24, 11:34 AM

Delhi Pollution Control Committee

◆ Night time standard for residential area 45dB (A)

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◆ All values in LeqdB(A)

Locations	Jun(2008)		Jul(2008)		Aug(2008)		Sep(2008)		Oct(2008)		Nov(2008)		Dec(2008)		Jan(2009)	
	Noise (Day Time)	Noise (Night Time)														
Adarsh Nagar	62.3	53.0	61.6	52.2	62.9	52.4	62.7	55.1	63.4	55.8	59.1	47.1	61.2	52.5	60.5	51
And Vihar	63.1	57.5	62.5	55.9	63.0	56.0	64.3	54.4	62.7	53.9	62.0	56.0	61.6	52.7	60.4	53.3
Chok Vihar	61.7	52.6	61.3	62.2	60.2	51.5	61.4	55.1	**	**	61.3	50.9	60.4	51.9	60.1	50.1
Badli	58.7	49.1	57.1	50.9	57.4	50.6	63	55.8	**	**	61.4	57.2	59.6	51	60.6	54
Cham Puri	59.6	54.0	57.7	53.6	56.6	51.5	59	54.2	**	**	59.6	52.2	60.4	54.6	59.9	53.7
Charyaganj	64.0	57.4	62.3	52.5	63.7	56.8	62.2	53.4	**	**	62.1	52.5	62.8	56.2	60.6	55.8
Defence Colony	60.1	53.8	60.9	55.2	60	54.3	63	57.1	64	57.4	61.6	55.6	60.3	54.3	59.8	53.7
Dwaraka	60.9	52.3	59.2	51.3	61.2	52.1	62.9	55.9	**	**	59	51.1	59.3	55.8	58.1	54.5
Greater Kailash	63.1	62.2	61.8	56	63.9	62.6	62.7	57	61.5	55.9	61.7	53.1	62.8	55.5	59.2	49.7
Indrapuri	59.4	55.9	59.1	53.8	59.6	54.6	62	57.9	**	**	60.6	55.2	61.7	53.3	60.2	53.1
Indrapuri	62.7	55.1	61.9	55.6	61.2	53.9	62.9	56.1	**	**	62.5	60.5	62.8	57.6	59.4	53.1

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Delhi Pollution Control Committee

Locations	Jun(2008)	Jul(2008)	Aug(2008)	Sep(2008)	Oct(2008)	Nov(2008)	Dec(2008)	Jan(2009)								
Karawal Nagar	62.2	53.2	62.4	52.9	61.4	52.5	63.9	57.7	62.9	56.3	60.5	54.7	63	61.2	61.2	60.8
Barol Bagh	62.9	61.3	62.4	60.6	62	61	62.9	54.4			61.8	56.4	62.8	54.9	64	57.4
Kondli	60.0	50.3	60.1	51.1	60.4	54.2	62.4	56.8	62.2	54.7	62.2	54	64.4	54	60.8	48.3
Pat Nagar	63.6	61.8	64.6	62.3	63.6	61.5	62.5	55.9	61.9	55.5	63.1	53.1	61.3	55.1	61.2	51.9
Lawrence Road	59.0	50.9	59.7	52.2	59.1	52.6	62.4	53.2	**	**	61.4	56.8	62.3	56.5	62.4	49
Landavali	61.7	56.5	63.2	56.6	62.4	55.1	62	57.2	61.6	54.2	63	56.9	59.3	51.3	60.9	52.7
Angol Puri	62.8	56.2	61.6	55.9	62.5	55.9	63.6	56.8	**	**	61.4	56.8	61.3	54.3	62.6	57.6
Neera Bagh	60.0	52.00	59.4	51.60	60.2	52.0	61.4	54.8	**	**	61.0	56.9	62.8	56.2	60.5	52.5
Mehrauli	61.3	55.1	62.3	58	62.7	53.4	63.9	54.3	61.1	51.2	60.5	56.8	60.9	57.8	62.7	55.4
Loti Bagh	59.3	52.4	58.2	52.2	58.7	51.8	62.1	53	61.6	52.9	62.4	51.3	58.7	52.2	58.6	47.7
Loti Nagar	61.2	57.8	60.9	54.2	61.9	57.9	61	52.5			62.9	54.8	62.9	54.8	59.5	53.5
Mukherji Nagar	61.7	55.5	61	56.2	62.2	55.9	64.8	56.4	61.6	50.7	61.8	53.8	61.1	55.6	62.8	56.2
Hand Nagri	60.6	55.8	59.7	55	60.3	55.4	61.9	53.9	61.4	56.1	62.4	55.7	60.6	55.8	59.4	55.9
Varaouji Nagar	60.5	52.6	60.5	55.6	60.9	53.7	61.9	56.1	62.6	51.6	62.9	56.6	60.7	52.8	59.6	51.6
W Friends Colony	60.1	53.2	62.8	56.5	62.2	53.5	62.9	55.2	63.1	55.6	61.8	56.7	61.3	56.2	59.2	53.5
Thar Ganj	63.6	60.4	63.1	57.6	67.0	59.1	63.8	59.2	**	**	61.9	55.4	62.7	60.1	62.6	57.6

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Delhi Pollution Control Committee

Locations	Jun(2008)	Jul(2008)	Aug(2008)	Sep(2008)	Oct(2008)	Nov(2008)	Dec(2008)	Jan(2009)									
	HOME (https://www.dpcc.delhi.govt.nic.in/) ABOUT US Acts, Rules & standards El/4 (https://www.cipcc.delhi.govt.nic.in/ei																
Wazirpur	57.4	51.7	57.9	54.1	59.2	51.8	61.3	53.9	**	**	62.2	54.7	57.8	51.4	59.9	48.4	
Connaught Place	57.6	48.7	59.6	52.3	58	48.6	61.7	55.4	**	**	62.1	55.5	56.8	48.3	60.2	50.5	
Connaught Place	63.0	59.1	59.4	54.5	62.4	57	61.9	56.1	61.6	52.9	62.8	52.8	60.5	57.6	61.7	56.5	
K. Puram	60.2	55.7	60.4	57.1	60.6	55.5	62	55.6	63.1	55	59	51.6	59.6	53.4	58.7	49.1	
Rajpura Road	62.1	52.5	60.2	52.3	62.4	52.8	63.8	57.2	63.3	53	59.2	52.7	60.2	51.6	57.6	48.7	
Na Pratap Bagh	61.0	51.4	60.3	50.8	61.8	52.9	63.6	56.8	**	**	62.4	52.1	60.6	51.2	59.3	52.4	
Rohini	64.0	54.3	61.1	53.5	62.3	53.4	63.5	54.7	**	**	61.7	56.8	63.3	53.9	64	57.4	
Rita Vihar	69.0	59.1	60.4	51.7	67.2	58	62.8	54.3	63.3	56.5	63	55.5	60.5	52	63.6	54.3	
Chalimar Bagh	62.6	57.6	63.3	57.6	61.7	54.8	63.8	54.3	**	**	62	54.8	62.4	55.2	61.7	55.7	
Anti Vihar	61.3	55.1	65.9	56.0	59.7	48.3	63.1	59.2	**	**	63.0	55.5	58.6	47.7	59.1	47.5	
Connaught Place	62.1	54.9	61.5	54.5	62.2	54.9	65	55.6	**	**	60.5	53.9	59.4	53.5	59.2	48.4	
Connaught Place	**	**	**	**	**	**	**	**	**	**	62.2	52.6	61	52.5	61.3	48.5	
Sant Kunj	62.9	58.6	63.5	58.9	61.7	56.6	61.8	56.8	61.6	55.2	63.5	58.9	61.9	54.9	59.5	55.8	
Samuna Vihar	59.6	51.6	59.9	51.3	60.1	52.5	62.7	51.8	63	53.9	63.8	51.3	58.6	51.2	59.9	51.1	
Min	57.4	48.7	57.1	50.8	56.6	48.3	59	51.8	61.1	50.7	59	47.1	56.8	47.7	57.6	47.5	
Max	69	62.2	65.9	62.3	67.2	62.6	65	59.2	64	57.4	63.8	60.5	64.4	61.2	64	60.8	

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Delhi Pollution Control Committee

Locations	Jun(2008)	Jul(2008)	Aug(2008)	Sep(2008)	Oct(2008)	Nov(2008)	Dec(2008)	Jan(2009)								
Average	61.473	54.96	61.02	54.81	61.413	54.47	62.6625	55.53	62.38	54.42	61.69	54.5	60.9	54.1	60.54	60.54
**Data not available																



Download Green Delhi App for redressal of Pollution related complaints



https://play.google.com/store/apps/details?id=com.green_delhi_poll
 Public Awareness Audio Clip
 (https://dpcc.delhigovt.nic.in/allaudioclips)



<https://apps.apple.com/in/app/green-delhi/id1586987377>

0:00 / 0:30



United Nations Environment Programme(UNEP)
[\(https://www.unenvironment.org/\)](https://www.unenvironment.org/)

U.S. Environmental Protection Agency
[\(https://www.epa.gov/\)](https://www.epa.gov/)

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Delhi Pollution Control Committee

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Sl. No.	Name of the Project	Location	Date of Issuance	Status	Remarks
1
2
3
4
5
6
7
8
9
10

TABLE OF NOISE LEVEL RECORDINGS BY CPCB IN DEL HI AS DOWNLOADED FROM CPCB WEBSITE

(IN dBA)

SR. NO.	NAME OF THE STATION	ZONE	DATE	TIME	LAF#1		LAS#1		LAE#1	
					Max	Min	Max	Min	Max	Min
1.	DEL - DCE	Residential	04-01-24	NA						
2.	DEL DGDN	Residential	04-01-24	NA						
3.	DEL ITO	Commercial	02-01-24	6:10	69.30	68.30	69.70	69.50	67.00	66.30
4.	DEL NSIT	Residential	04-01-24	7:10	56.70	45.90	57.00	46.20	68.10	46.80
5.	DEL - CPCB	Residential	04-01-24	7:10	67.40	39.20	67.40	39.50	75.50	38.30
	DEL - CPCB	Residential	04-01-24	7:20	67.40	39.20	67.40	39.50	75.50	38.30
6.	DEL - R K Puram	Residential	02-01-24	10:40	73.40	54.40	69.10	54.20	72.90	54.40
	DEL - R K Puram	Residential	03-01-24	15:20	69.60	53.80	78.80	53.70	69.70	53.80
	DEL - R K Puram	Residential	03-01-24	20:40	69.60	53.80	78.80	53.70	69.70	53.80
	DEL - R K Puram	Residential	03-01-24	20:50	69.60	53.80	78.80	53.70	69.70	53.80
	DEL - R K Puram	Residential	04-01-24	5:10	61.10	53.50	61.60	53.70	61.70	53.50
	DEL - R K Puram	Residential	04-01-24	5:30	61.10	53.50	61.60	53.70	61.70	53.50
	DEL - R K Puram	Residential	04-01-24	6:20	66.40	53.50	61.60	53.70	66.20	53.50
	DEL - R K Puram	Residential	04-01-24	7:00	68.50	53.50	61.60	53.70	68.50	53.50
7.	DEL - Anand Vihar	Commercial	04-01-24	7:10	70.10	49.00	71.70	49.40	76.50	49.60
8.	DEL CIVIL LINE	Commercial	04-01-24	7:30	73.80	38.10	73.00	38.30	70.40	41.30
9.	DEL - Mandir Marg	Residential	04-01-24	NA						
10.	DEL - Punjabi Bagh	Residential	04-01-24	7:20	58.60	35.60	57.90	35.60	58.60	35.90

Notes

1. **"LAF#1"** in noise measurement refers to "Level of the Maximum A-Weighted Sound Level for a specified time period (#1)." It represents the maximum A-weighted sound level that occurs during a specific duration.

A-weighting is a filtering process applied to noise measurements, emphasizing frequencies to mimic the sensitivity of the human ear. LAF#1 measures the highest A-weighted sound level within a particular timeframe, often indicating the peak or maximum noise level during that period.

2. **"LAE #1"** typically refers to "Level of the A-Weighted Sound Exposure for a specified time period (#1)."

This metric represents the total accumulated A-weighted sound energy or exposure during a specific duration. It measures the total sound energy that an individual would experience over the specified time frame.

LAE#1 is valuable in assessing cumulative noise exposure, especially in situations where prolonged or repeated exposure to noise needs to be evaluated. It helps in understanding the total impact of sound on individuals or environments over a specific time period, aiding in occupational safety assessments, environmental noise studies, and other contexts where prolonged exposure to noise is a concern.

3. **LAS#1** in noise measurement stands for "Level of the Average A-Weighted Sound Level for a specified time period (#1)." It represents the average A-weighted sound level over a particular duration, typically indicating the average noise level during that timeframe.

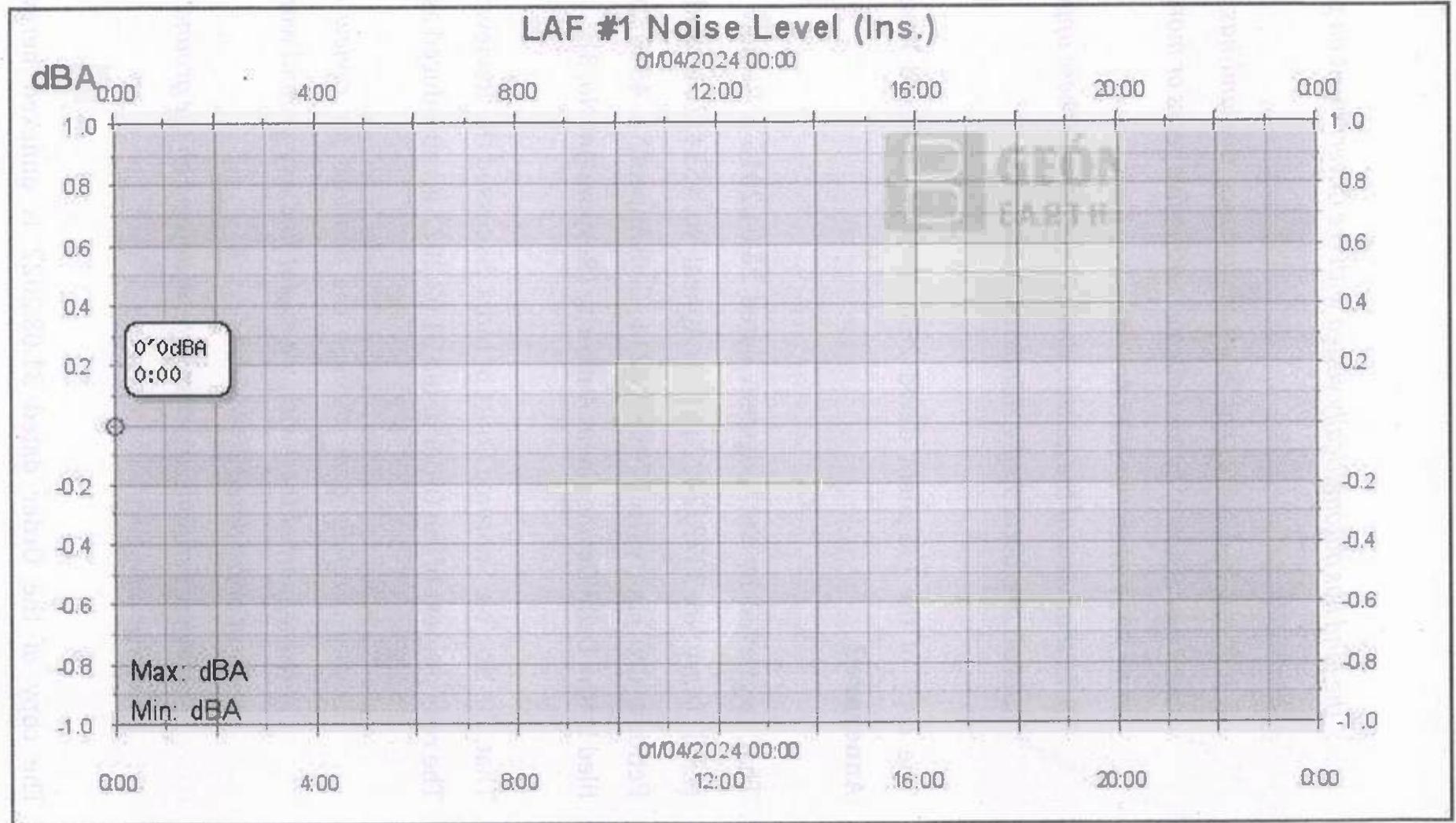
A-weighting is a method used in noise measurements to reflect the sensitivity of the human ear by emphasizing certain frequencies. LAS#1 calculates the average A-weighted sound level during the specified period, providing an overall picture of the noise exposure averaged over that time.

DEL_DCE

Noise Mapper #1 (Ins.)												
	04/1											
	01:00	03:00	05:00	07:00	09:00	11:00	13:00	15:00	17:00	19:00	21:00	23:00
0/0												
1/1												
2/2												
3/4												
4/8												
5/16												
6/32												
<div style="display: flex; justify-content: space-between; border: 1px solid black; padding: 5px;"> OK Calibration check failure Cponderation noise level alarm A ponderation noise level alarm </div> <div style="display: flex; justify-content: space-between; border: 1px solid black; padding: 5px; margin-top: 5px;"> Calibration check in progress Saturated input signal Noise Mapper communication failure </div>												

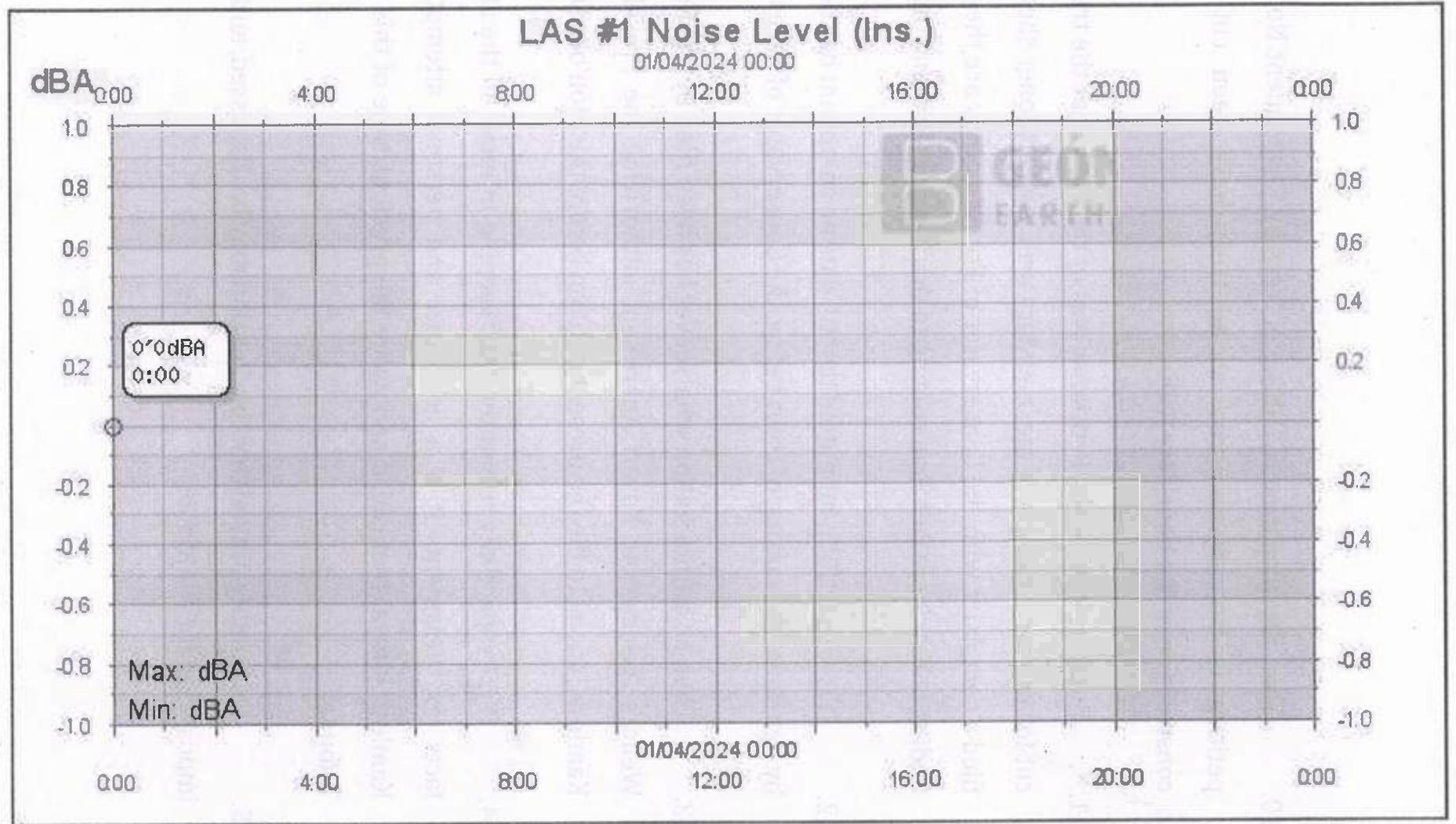
Town: Delhi - Latitude: 28°45' 0.54" N - Longitude: 77°7' 3" E - Altitude: 216 M

DEL_DCE



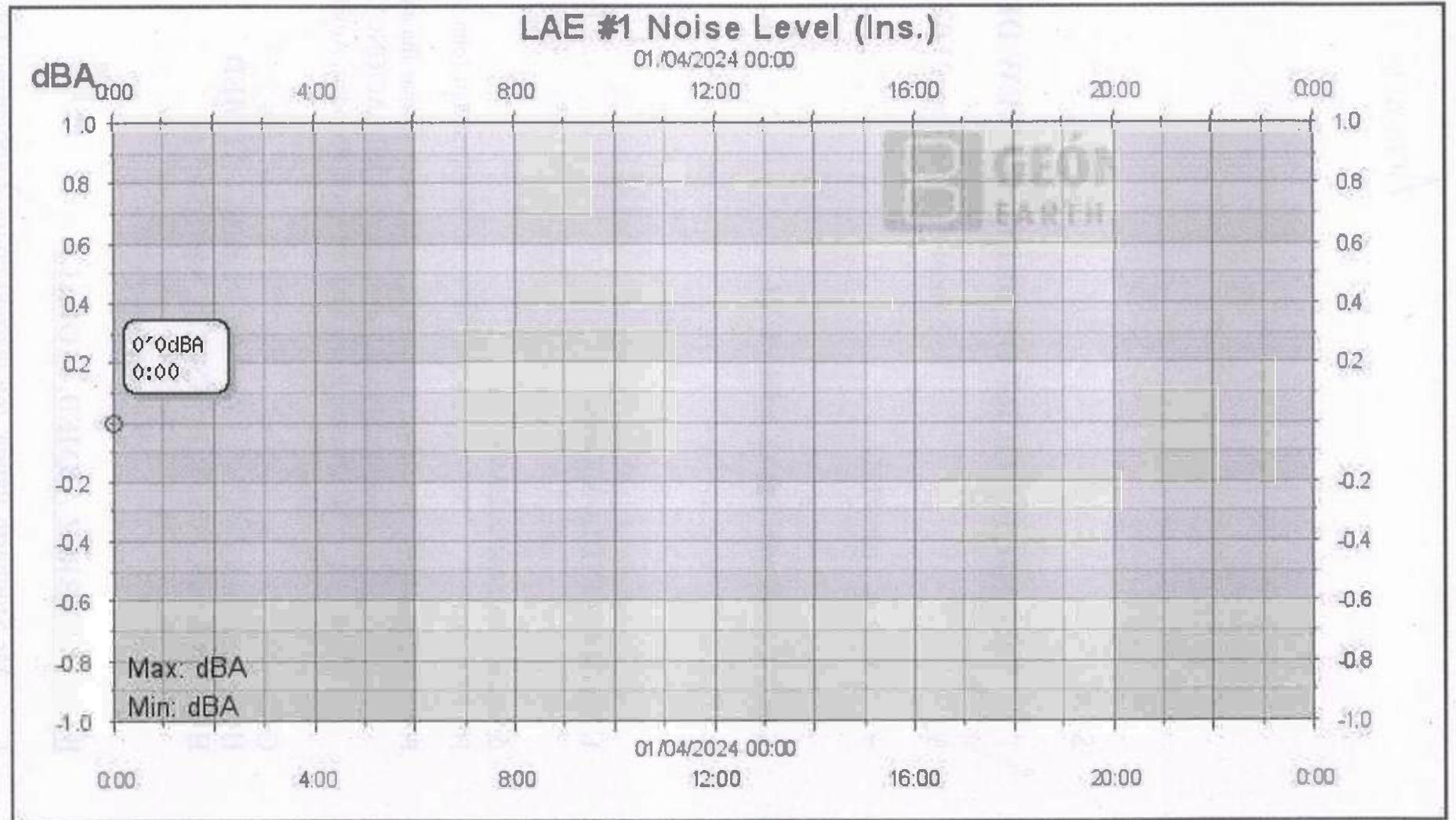
Town: Delhi - Latitude: 28°45' 0.54" N - Longitude: 77°7' 3" E - Altitude: 216 M

DEL_DCE



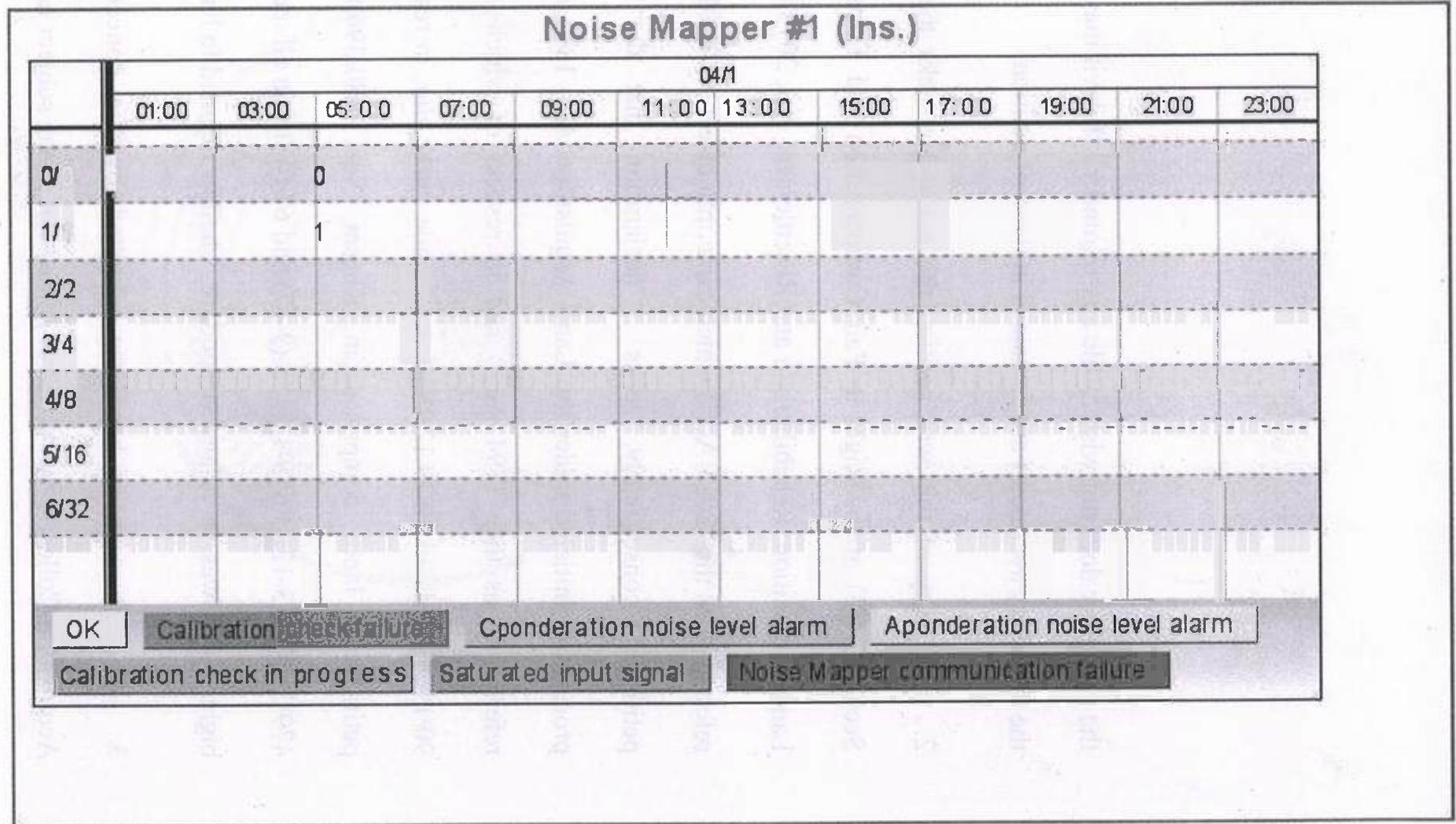
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DEL_DCE



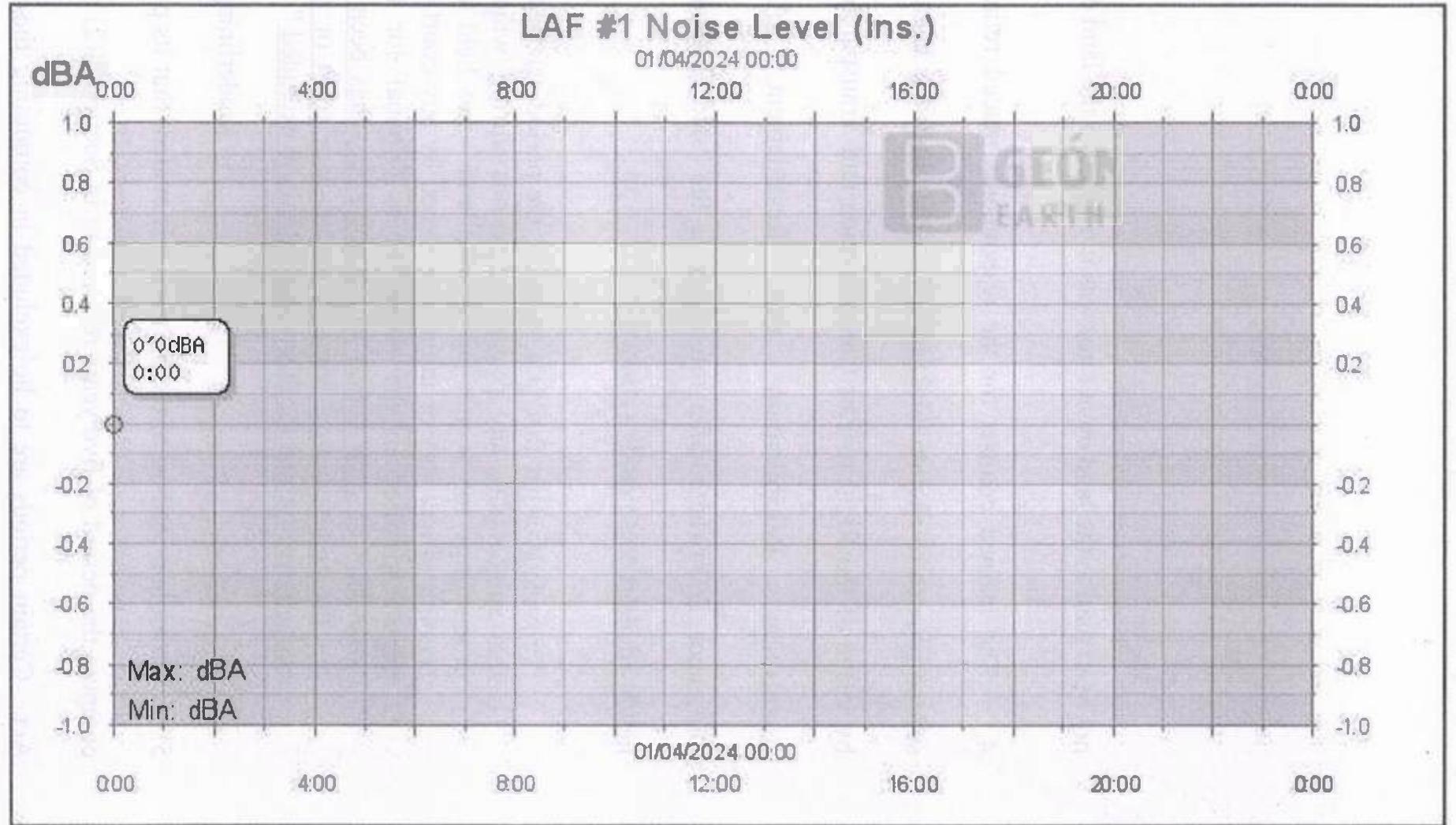
Town: Delhi - Latitude: 28°45' 0.54" N - Longitude: 77°7' 3" E - Altitude: 216 M

DEL_DGDN



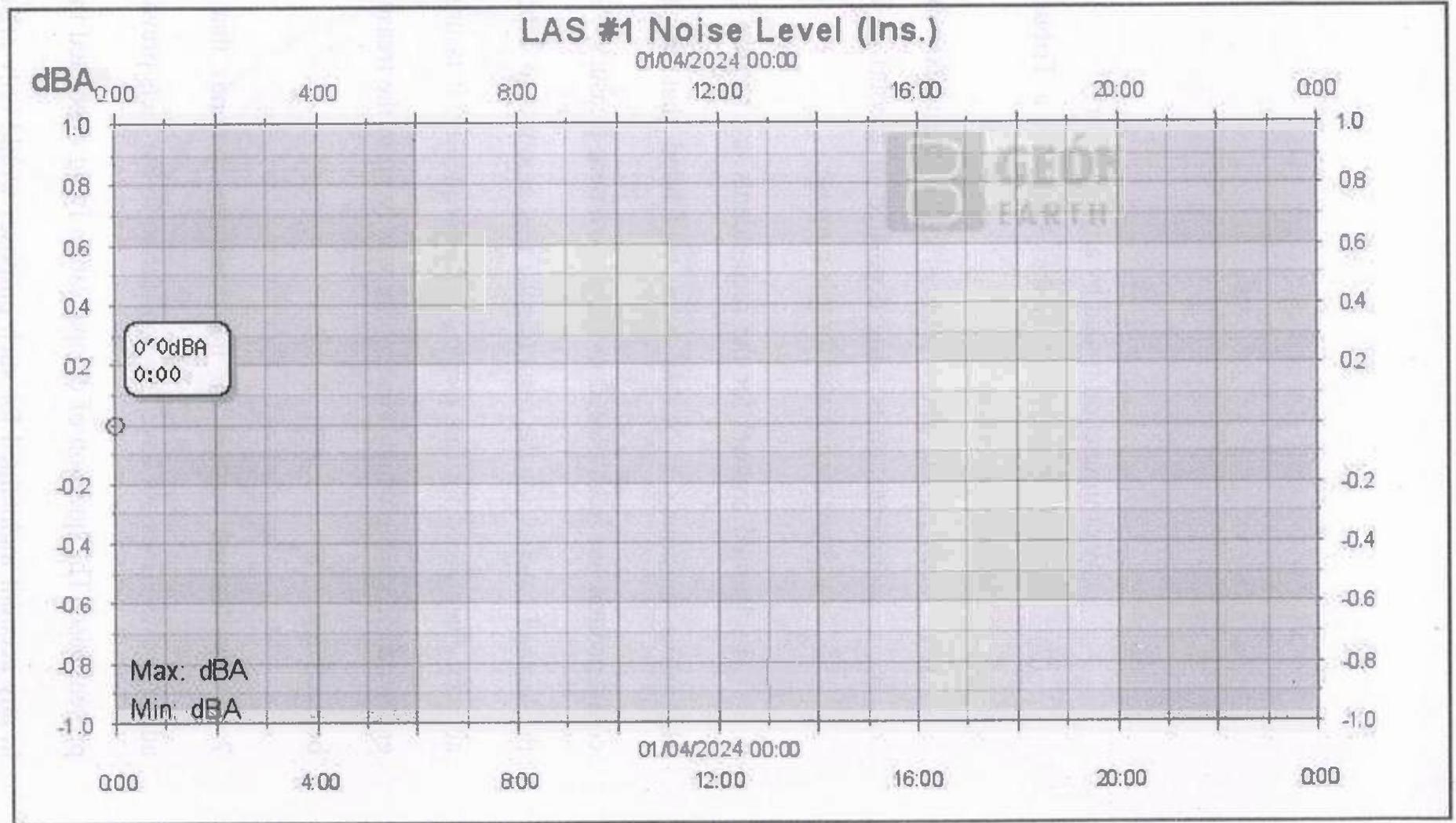
Town: Delhi - Latitude: 28°40' 6.2" N - Longitude: 77°19' 5.99" E - Altitude: 210 M

DEL_DGDN



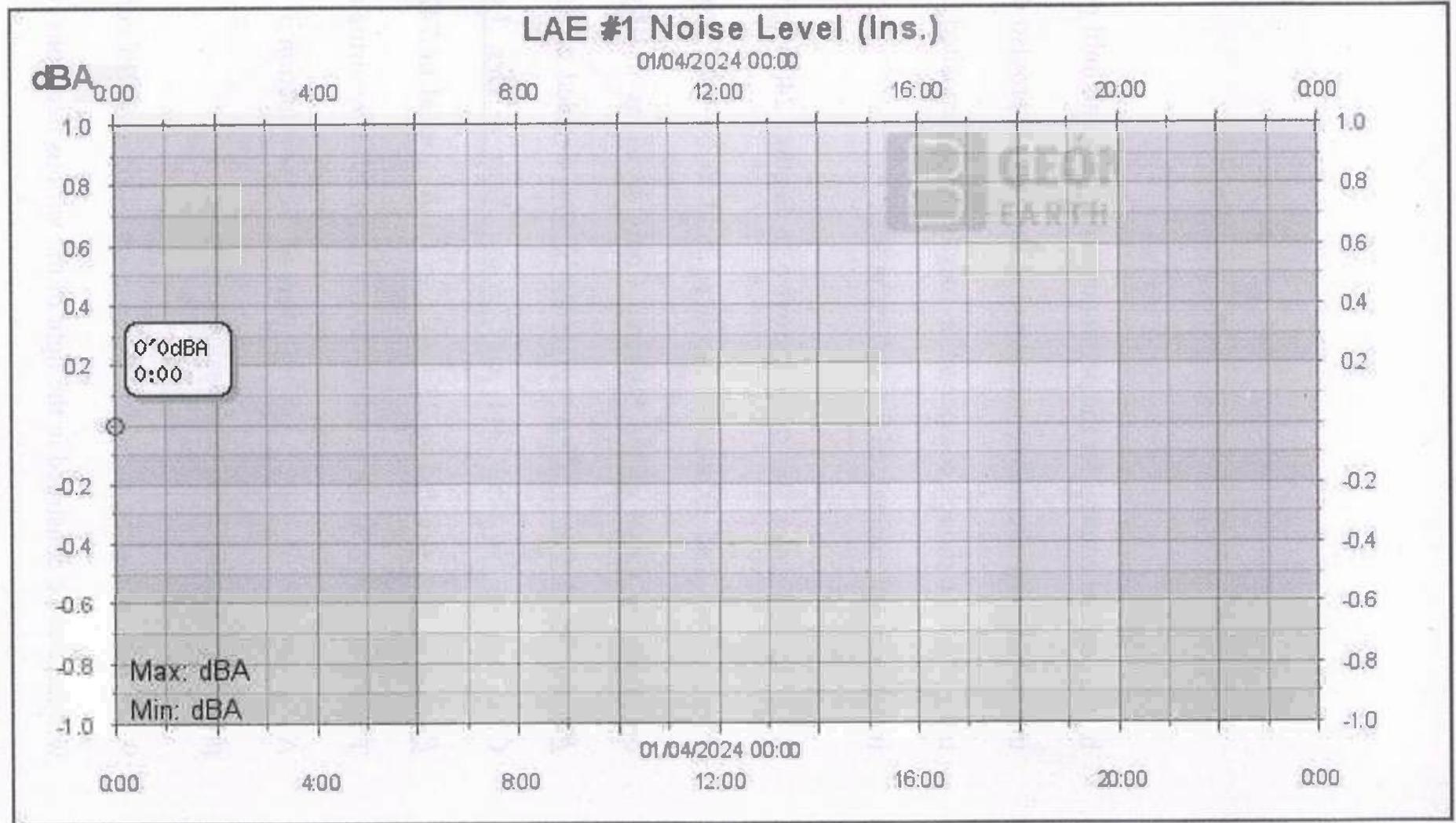
Town: Delhi - Latitude: 28°40' 6.2" N - Longitude: 77°19' 5.99" E - Altitude: 210 M

DEL_DGDN



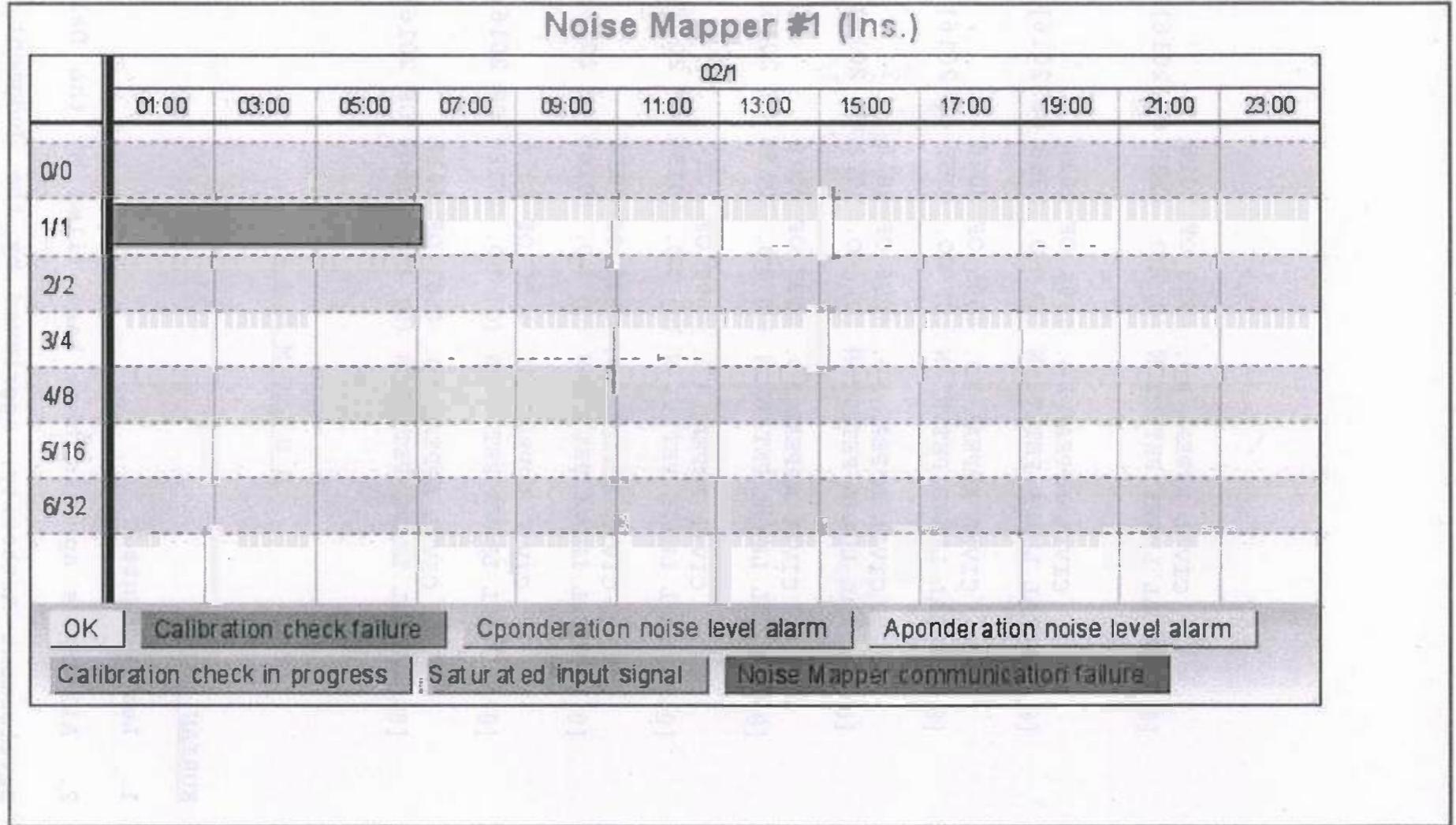
Town: Delhi - Latitude: 28°40' 6.2" N - Longitude: 77°19' 5.99" E - Altitude: 210 M

DEL_DGDN



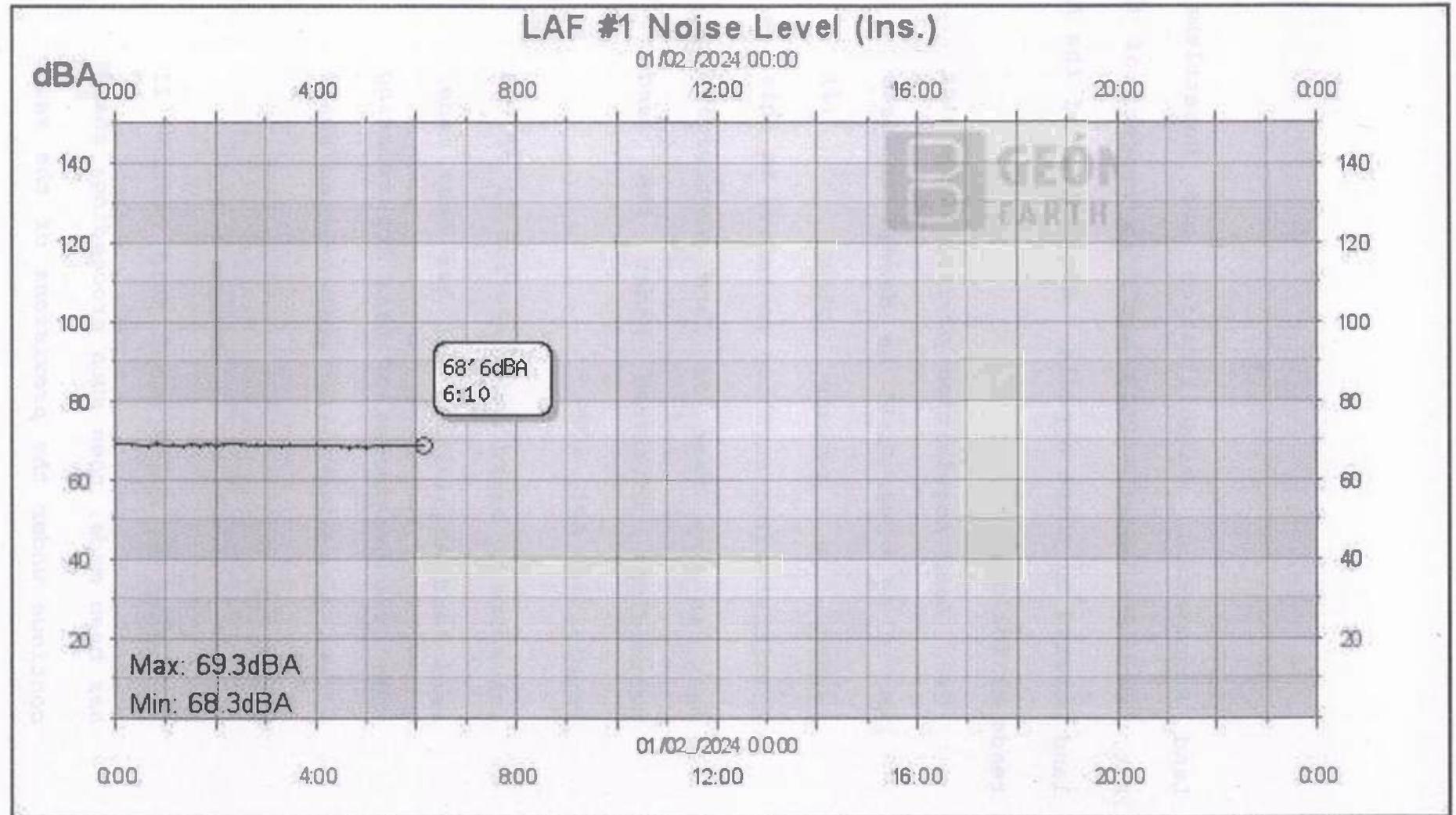
Town: Delhi - Latitude: 28°40' 6.2" N - Longitude: 77°19' 5.99" E - Altitude: 210 M

DEL_ITO



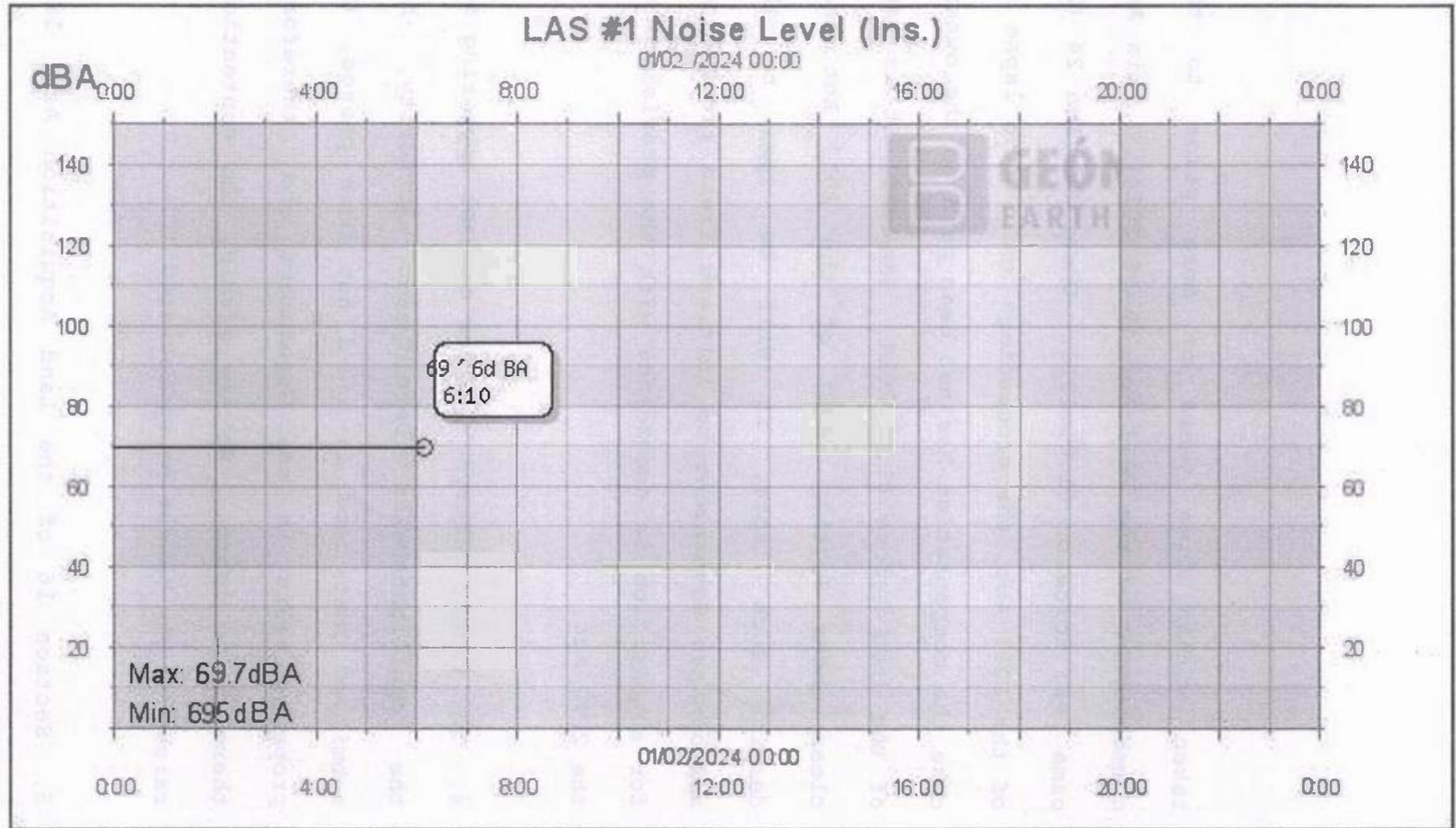
Town: Delhi - Latitude: 28°37' 23.05" N-Longitude: 77°14' 27.99" E-Altitude: 211 M

DEL_ITO



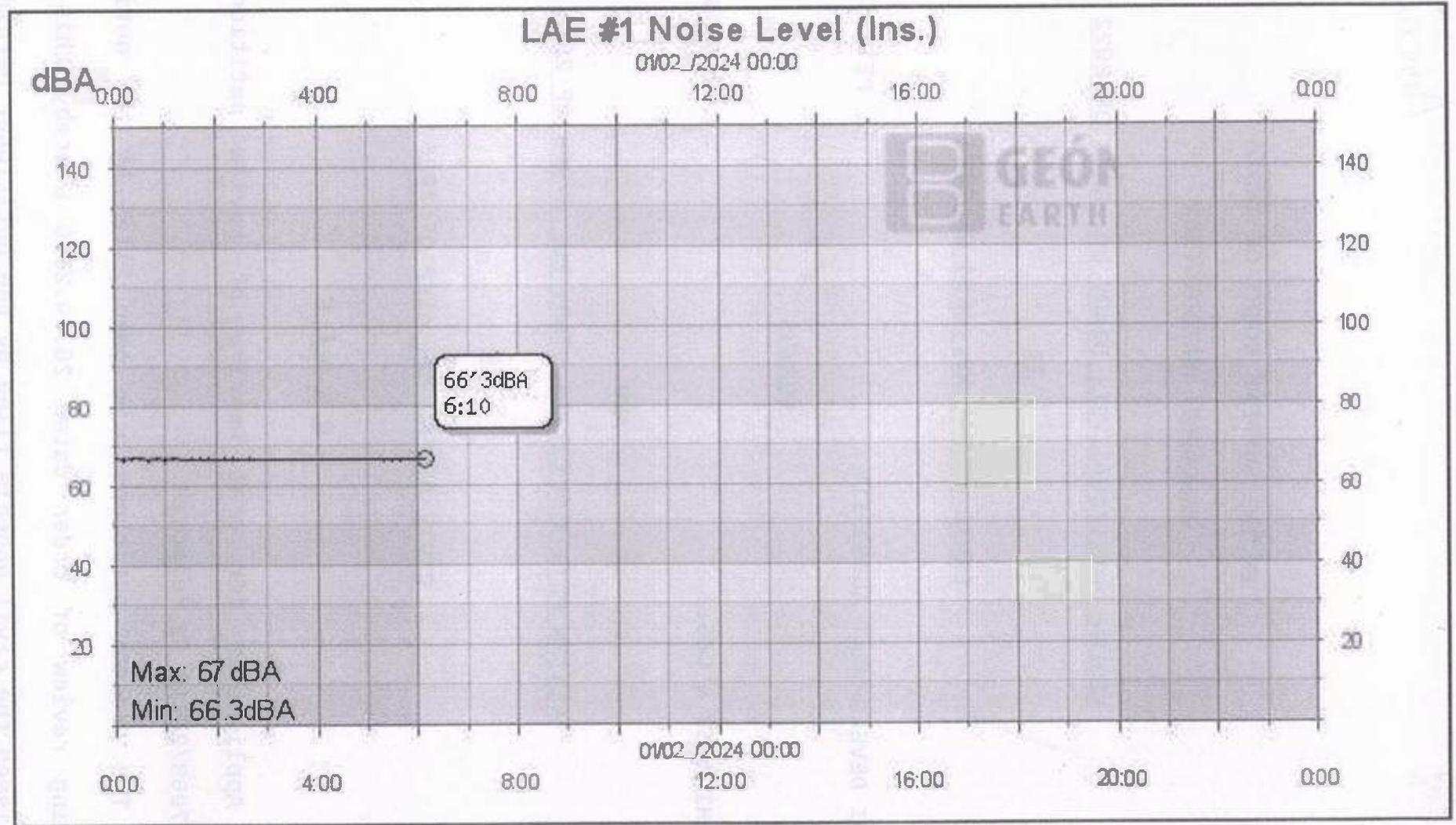
Town: Delhi - Latitude: 28°37' 23.05" N - Longitude: 77°14' 27.99" E -Altitude: 211 M

DEL_ITO



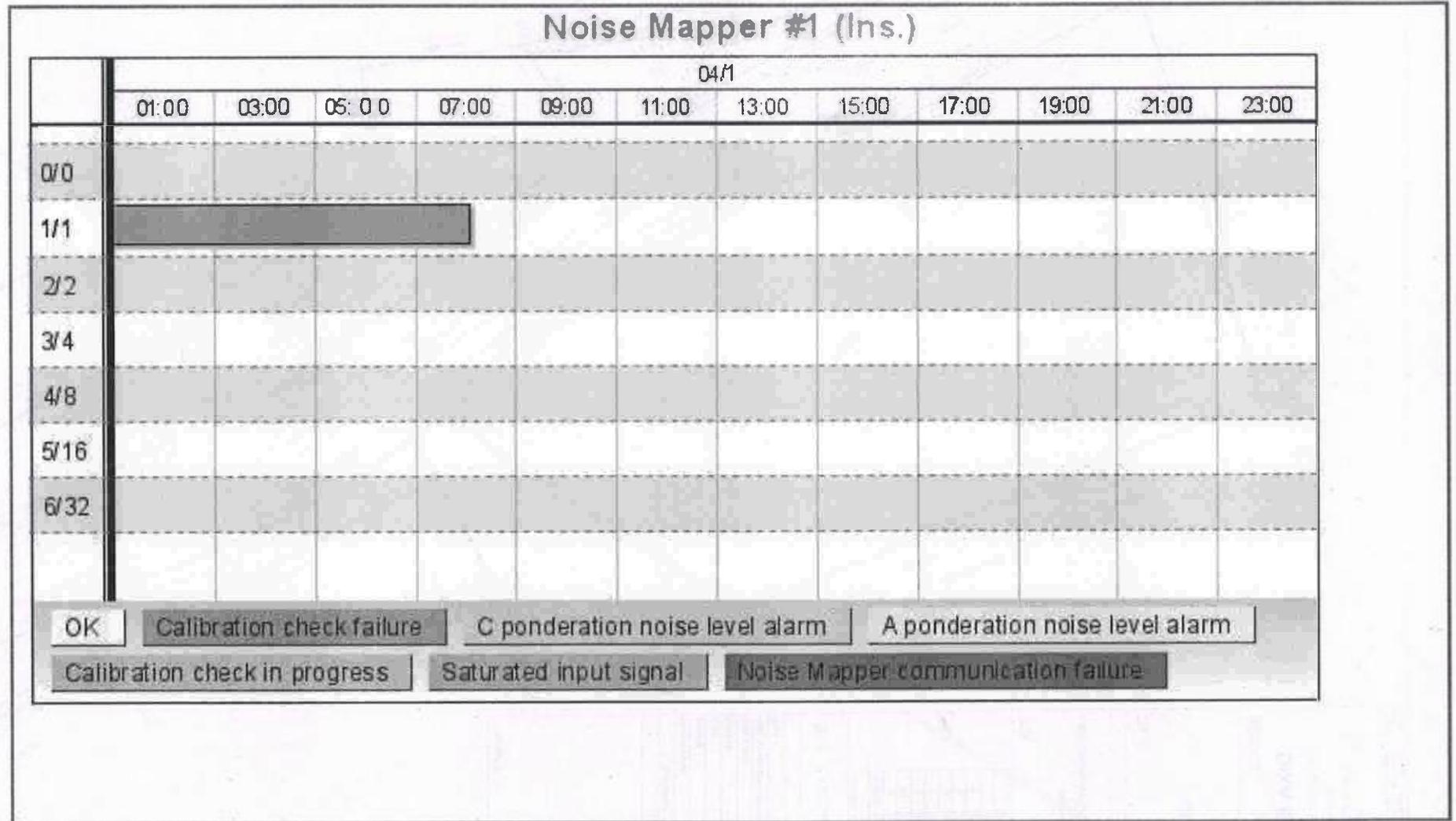
Town: Delhi - Latitude: 28°37' 23.05" N - Longitude: 77°14' 27.99" E - Altitude: 211 M

DEL_ITO



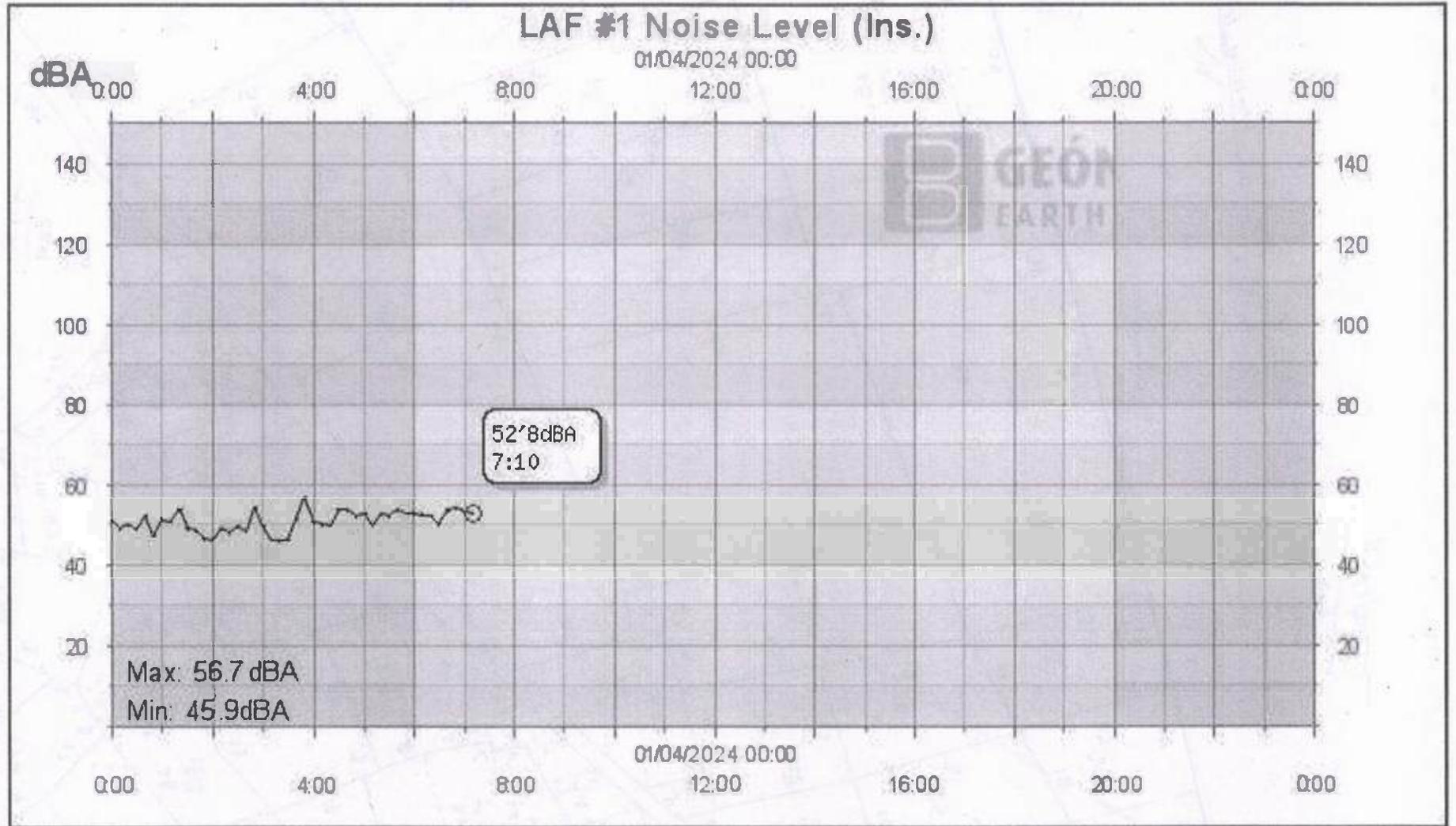
Town: Delhi - Latitude: 28°37' 23.05" N - Longitude: 77°14' 27.99" E - Altitude: 211 M

DEL_NSIT



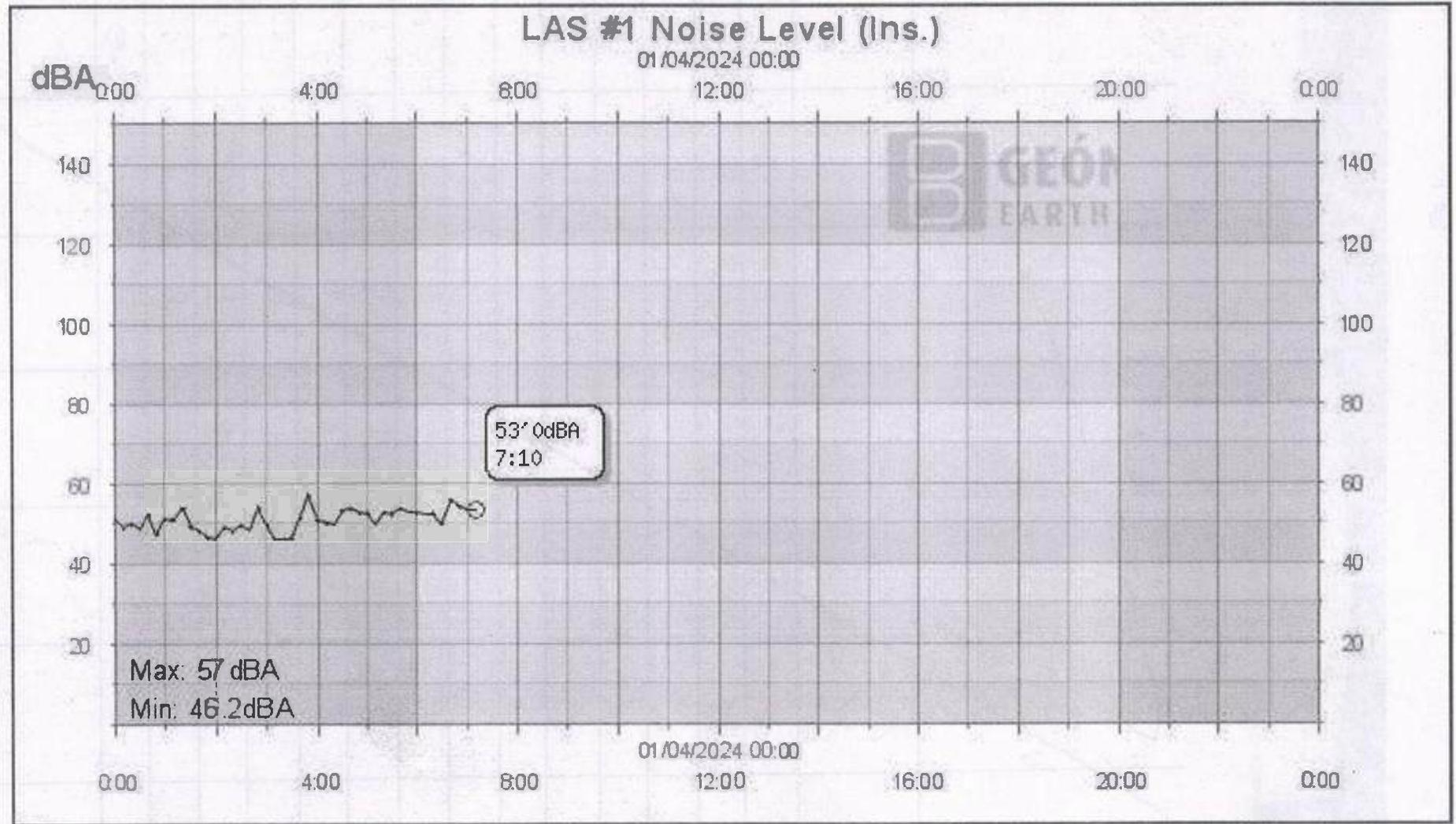
Town: Delhi - Latitude: 28°36' 14.46" N - Longitude: 77°2' 27.99" E - Altitude: 219 M

DEL_NSIT



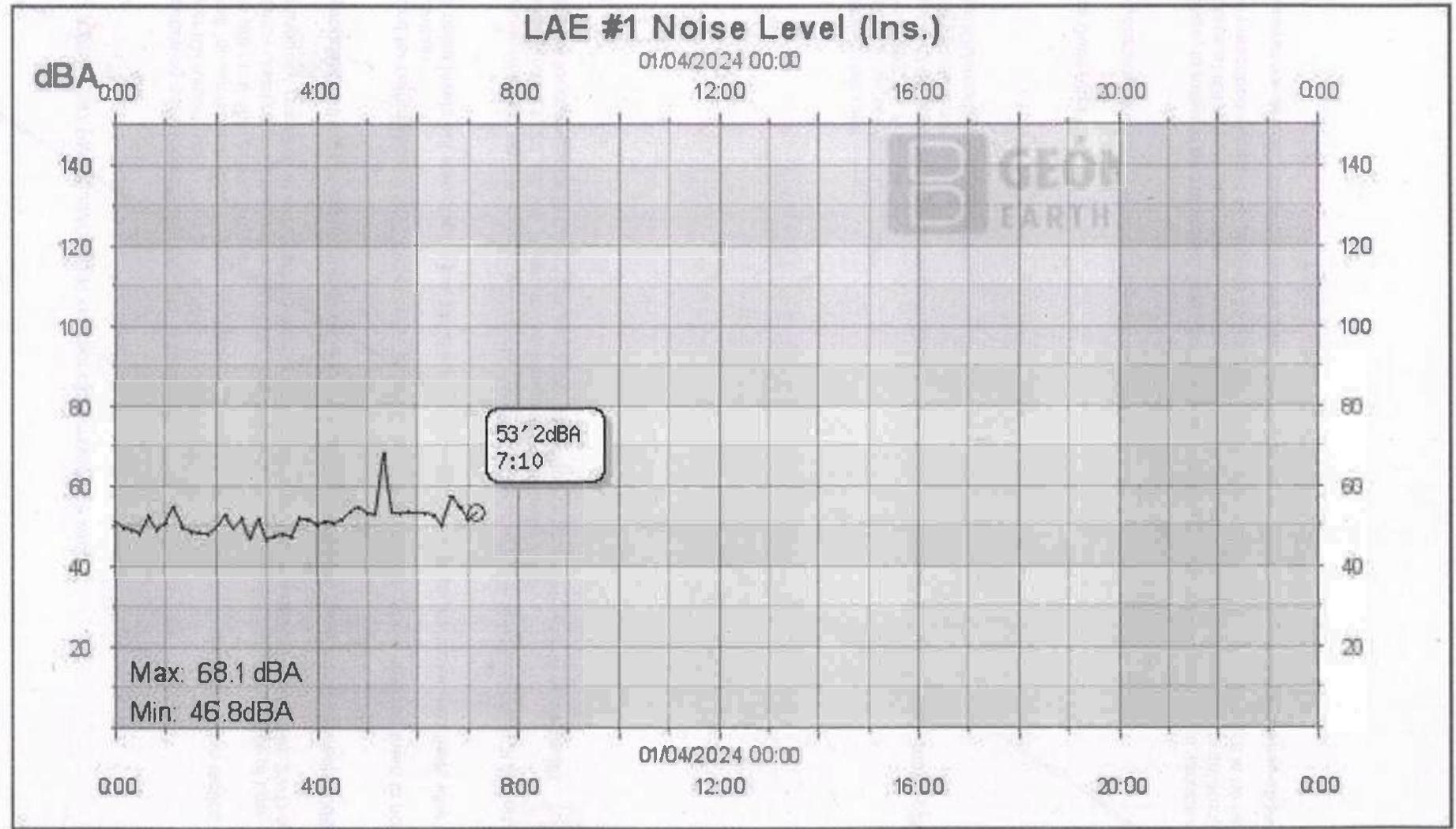
Town: Delhi - Latitude: 28°36' 14.46" N - Longitude: 77°2' 27.99" E -Altitude: 219 M

DEL_NSIT



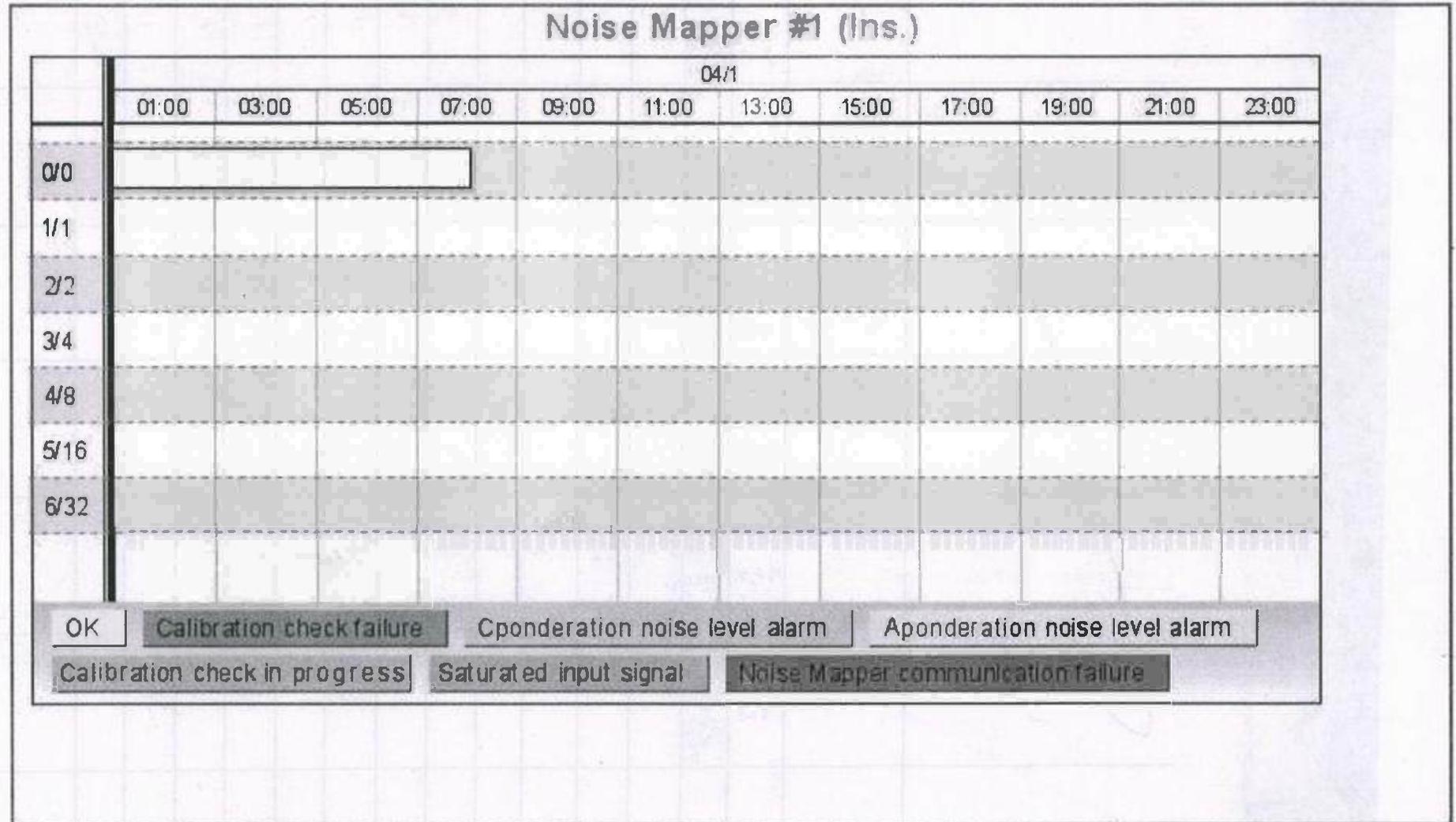
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DEL_NSIT



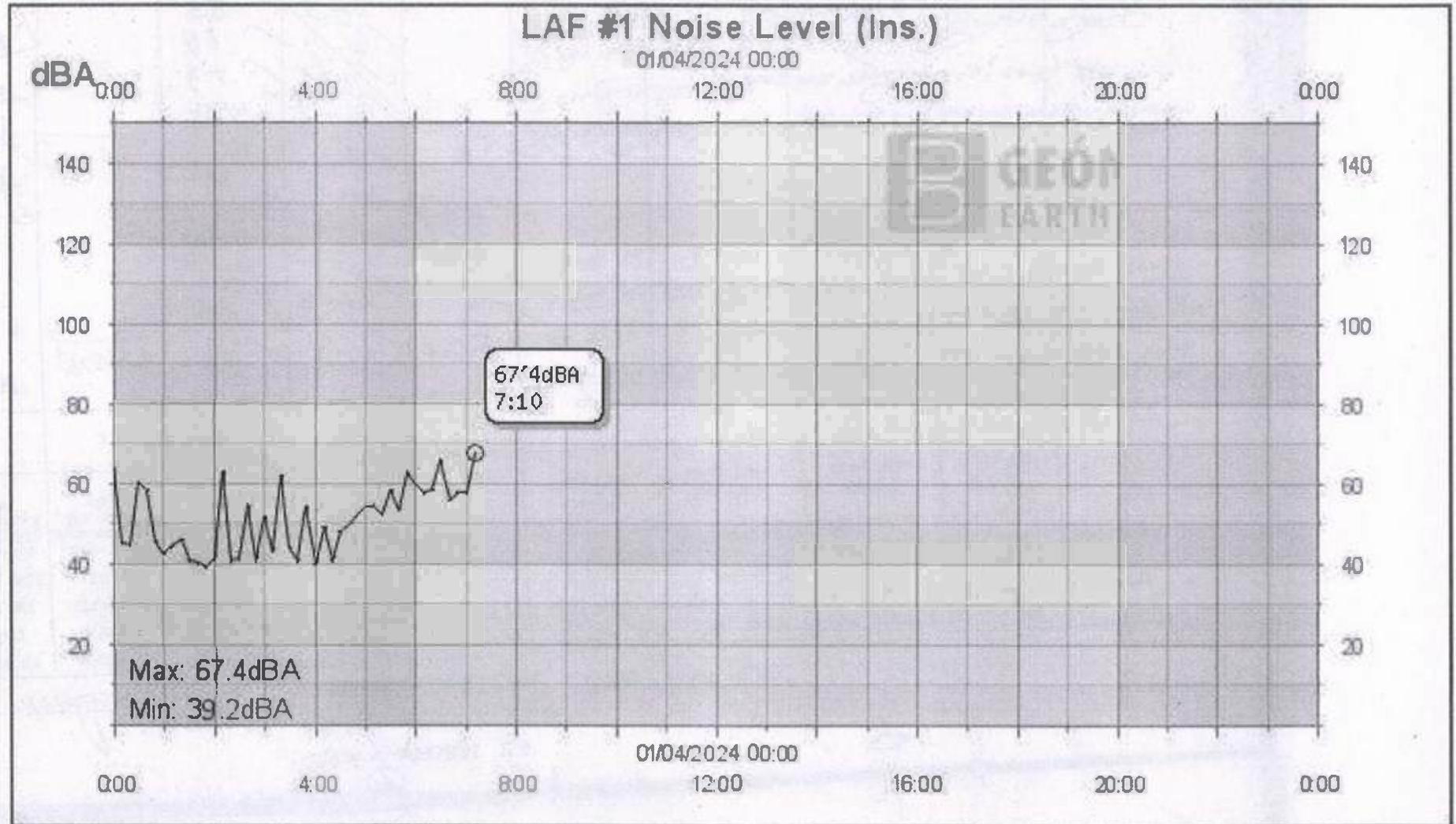
Town: Delhi - Latitude: 28°36' 14.46" N - Longitude: 77°2' 27.99" E -Altitude: 219 M

Del_CPCB



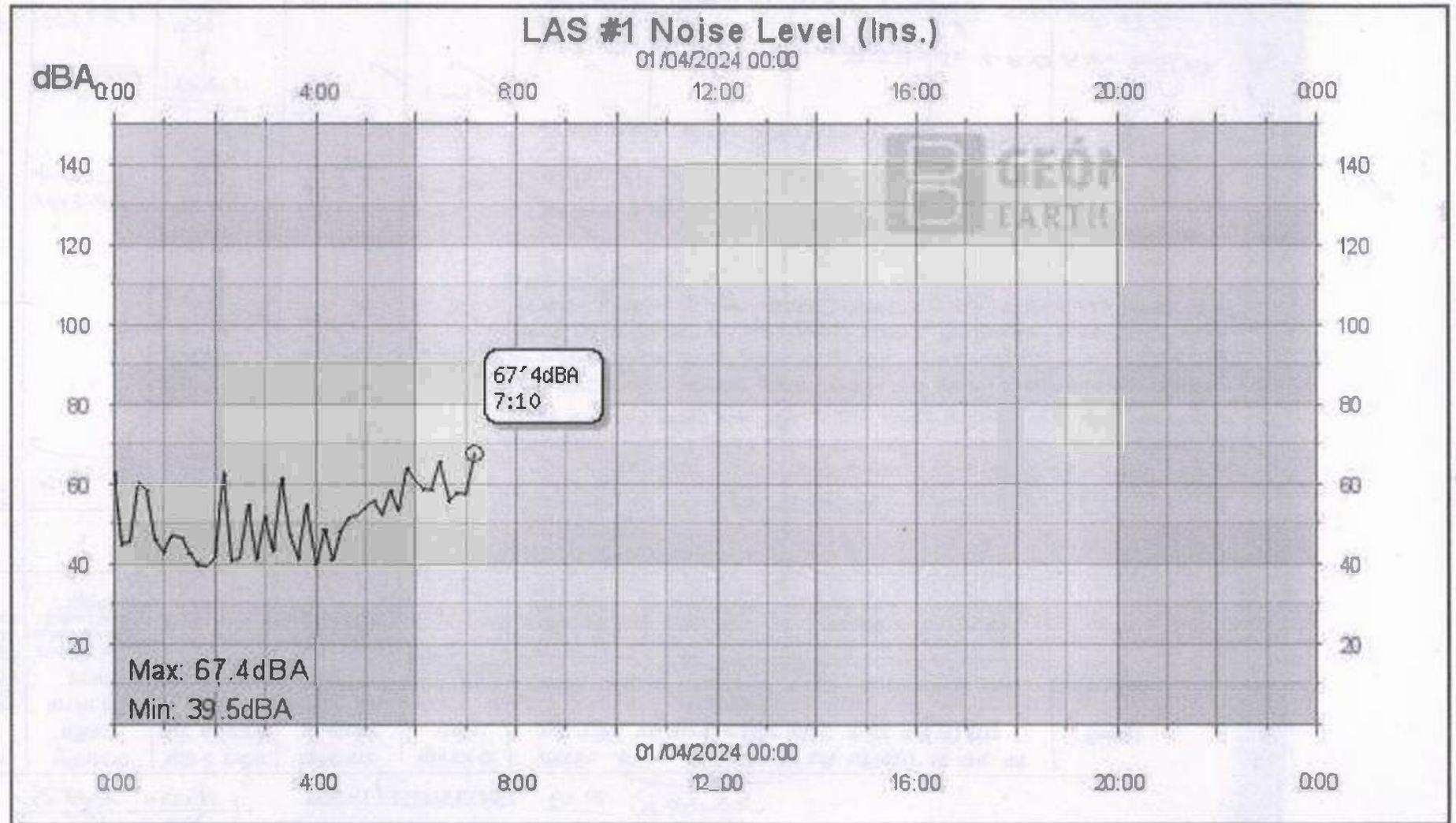
Town: Delhi - Latitude: 28°39' 21.09" N - Longitude: 77°17' 38.99" E - Altitude: 204 M

Del_CPCB



Town: Delhi - Latitude: 28°39' 21.09" N - Longitude: 77°17' 38.99" E - Altitude: 204 M

Del_CPCB



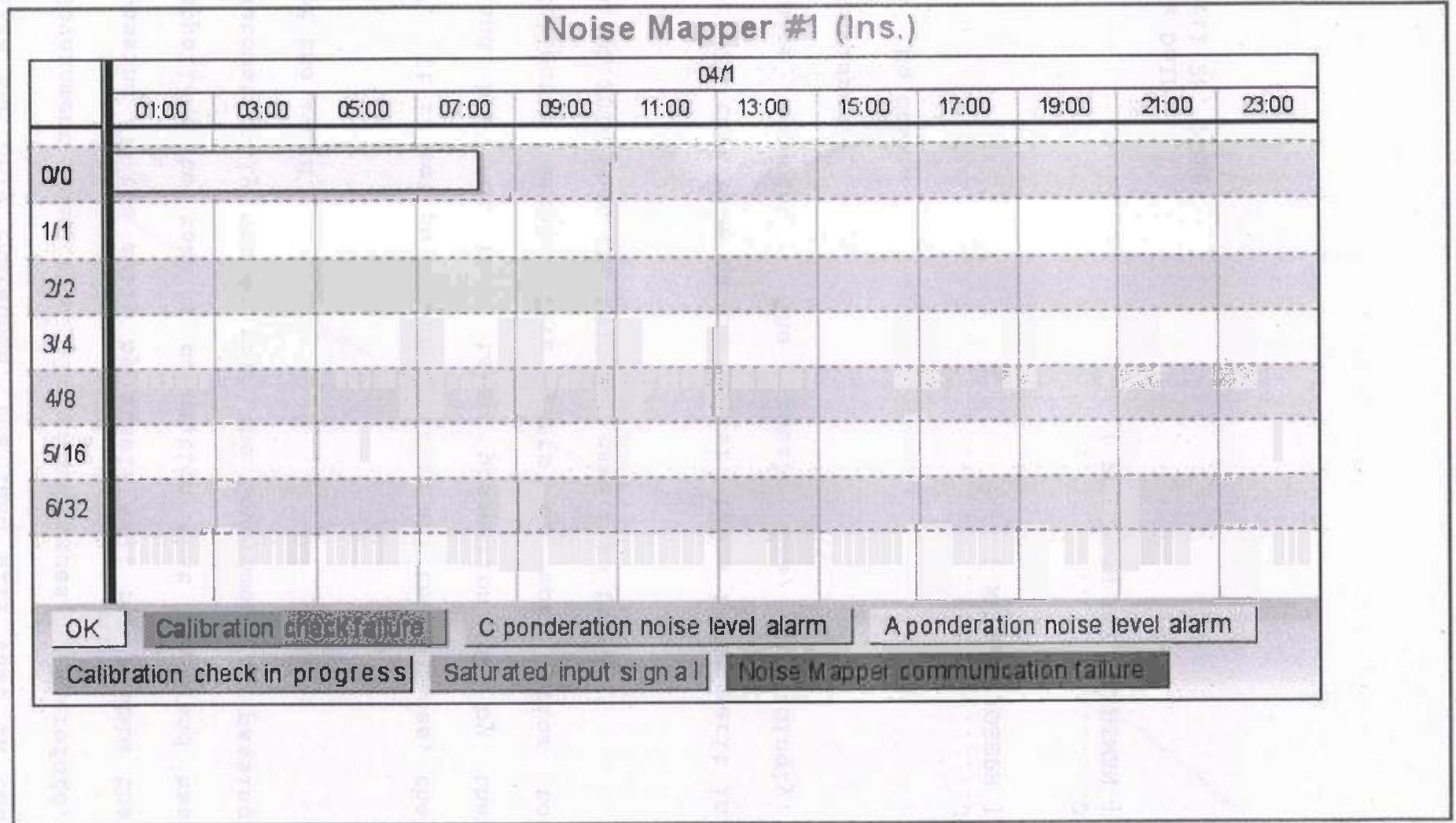
Town: Delhi - Latitude: 28°39' 21.09" N - Longitude: 77°17' 38.99" E - Altitude: 204 M

Del_CPCB



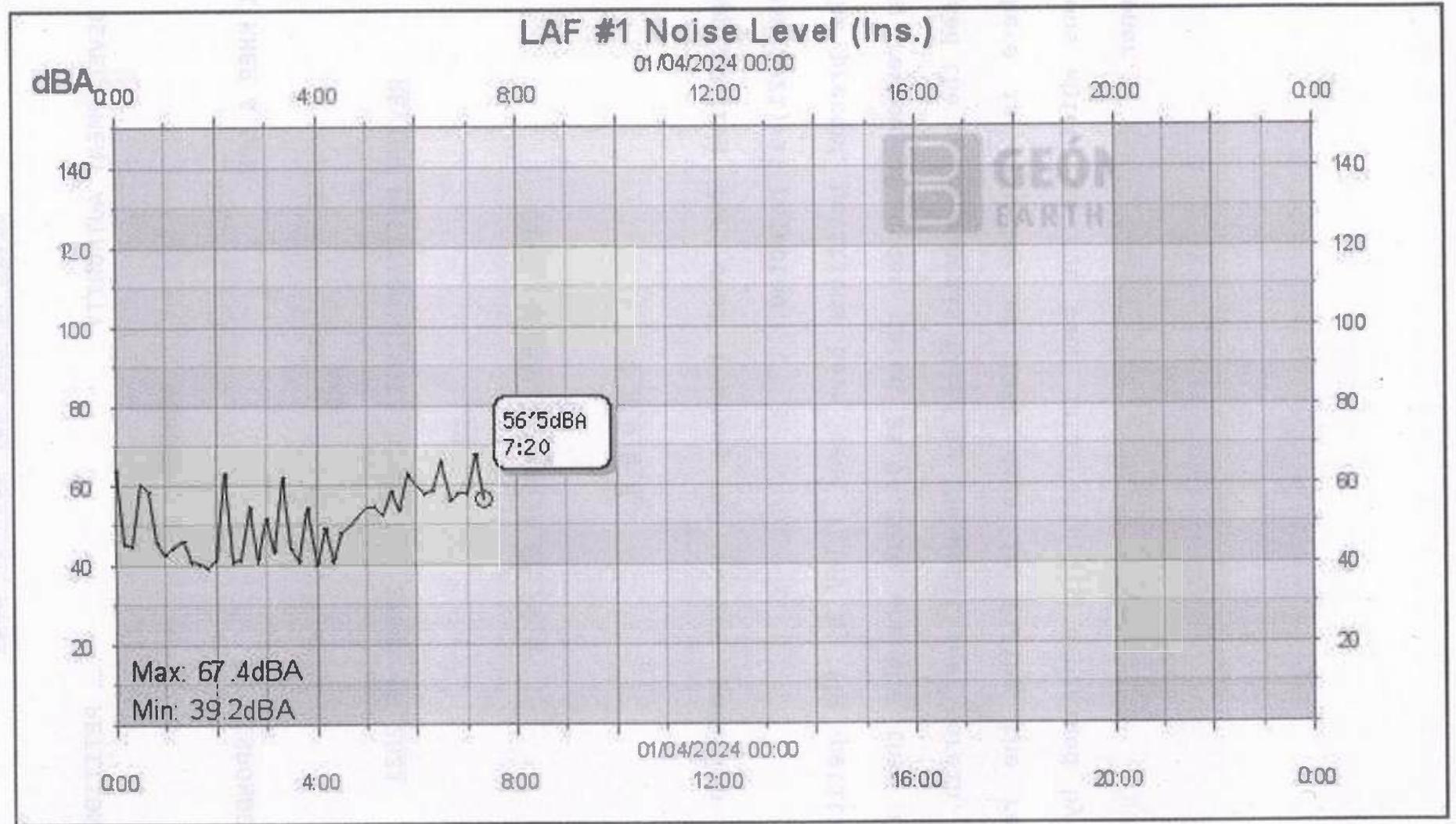
Town: Delhi - Latitude: 28°39' 21.09" N - Longitude: 77°17' 38.99" E - Altitude: 204 M

Del_CPCB



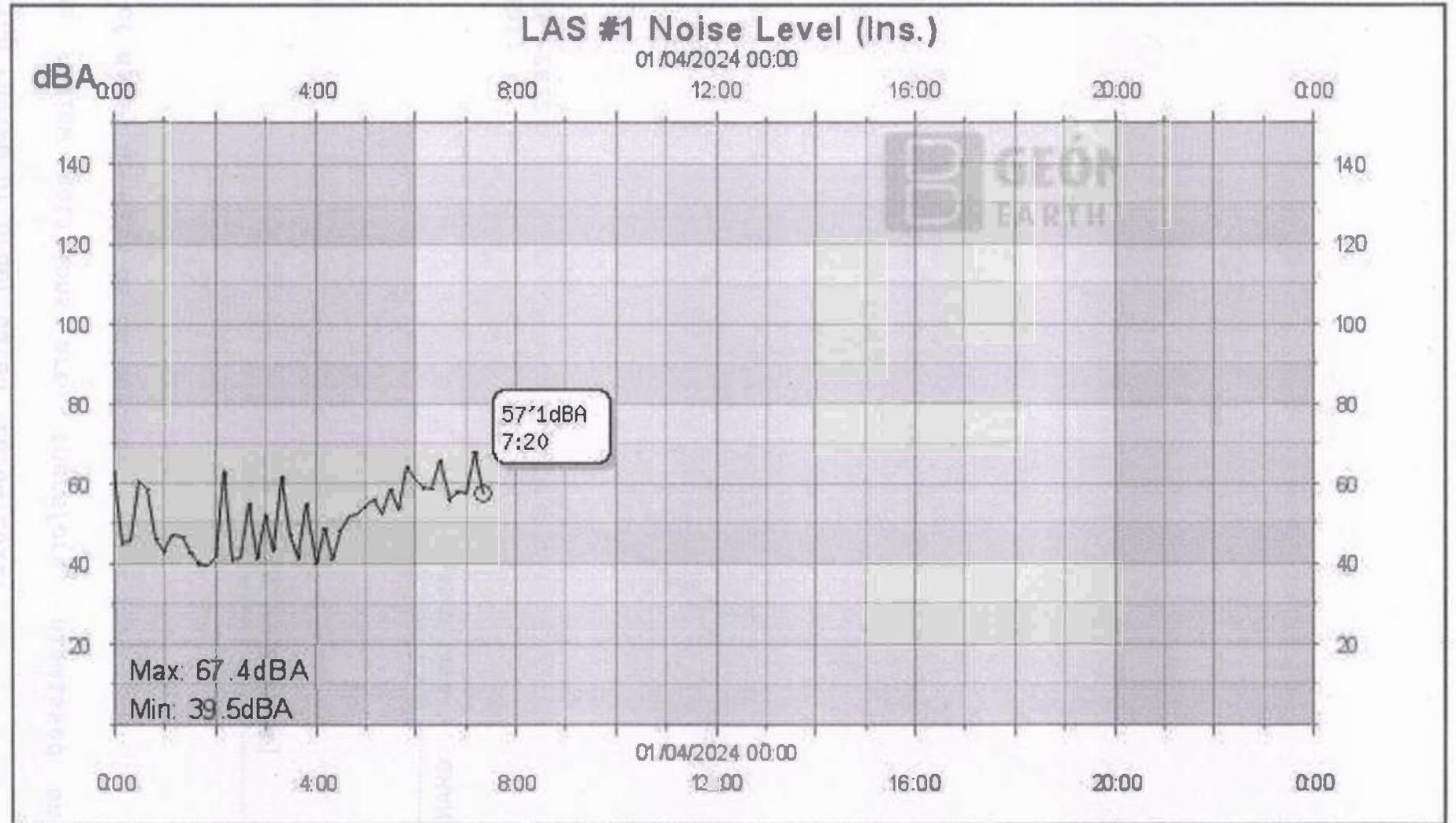
Town: Delhi - Latitude: 28°39' 21.09" N - Longitude: 77°17' 38.99" E - Altitude: 204 M

Del_CPCB



Town: Delhi - Latitude: 28°39' 21.09" N - Longitude: 77°17' 38.99" E - Altitude: 204 M

Del_CPCB



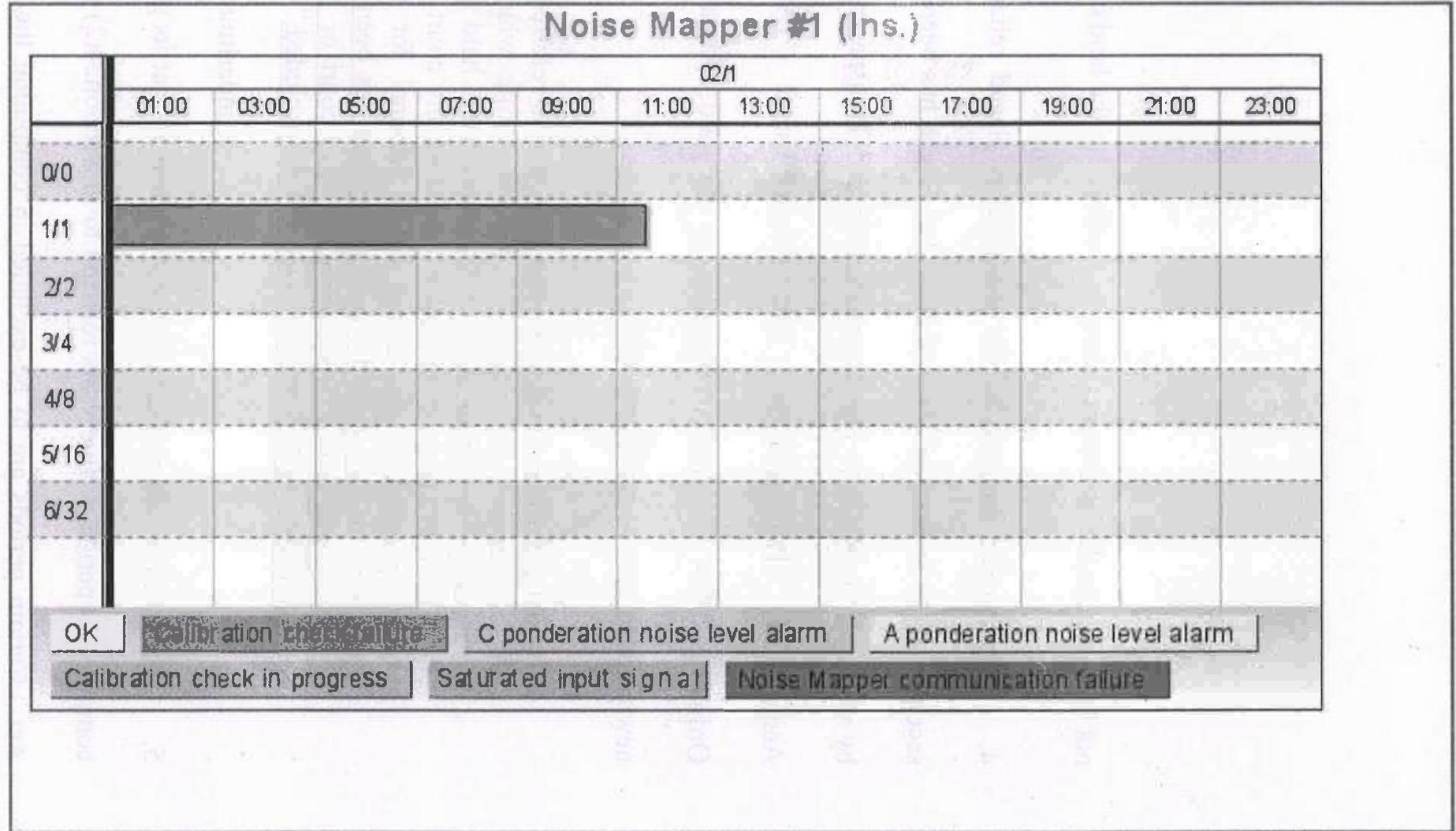
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Del_CPCB



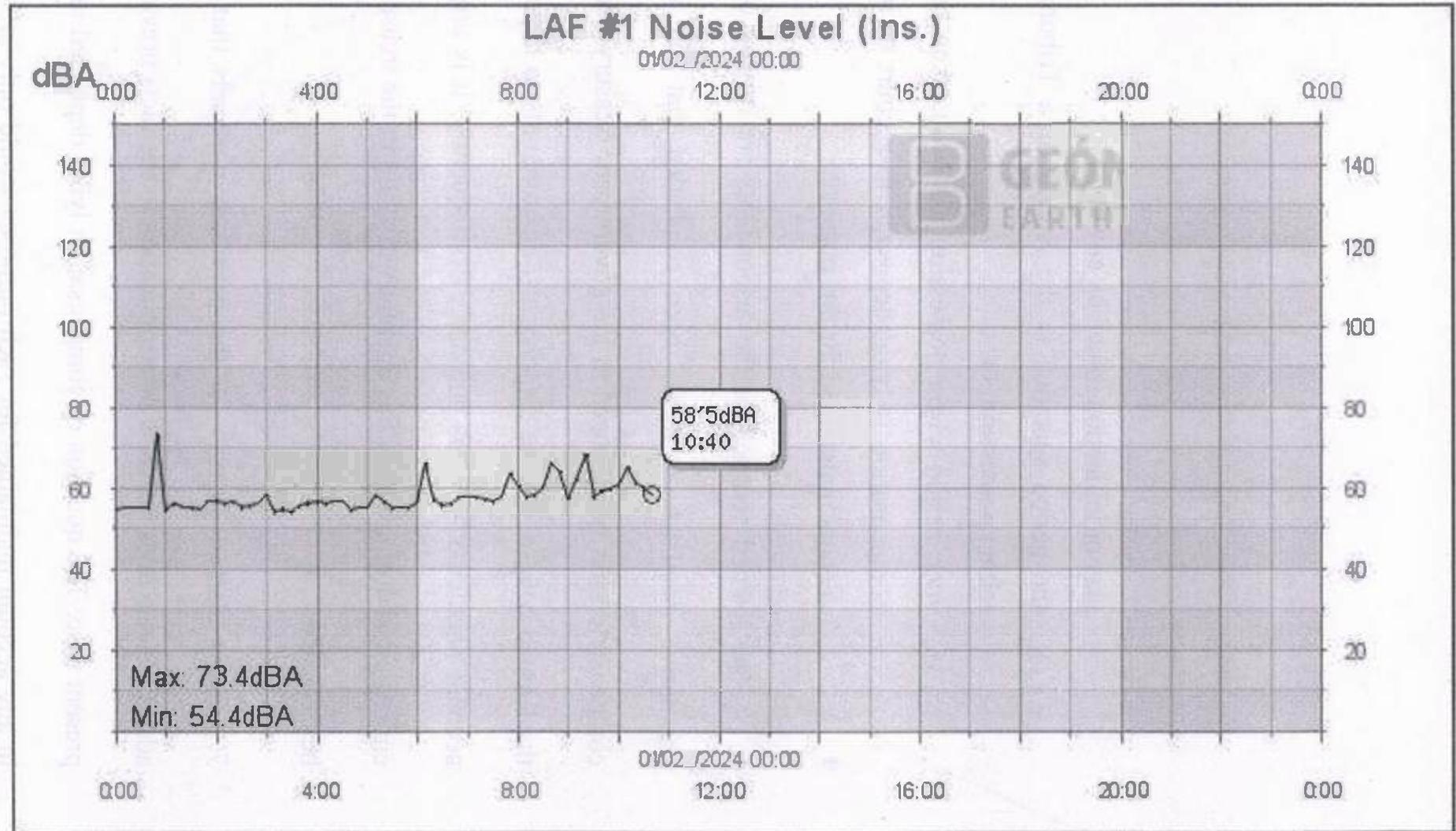
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Delhi, R K Puram



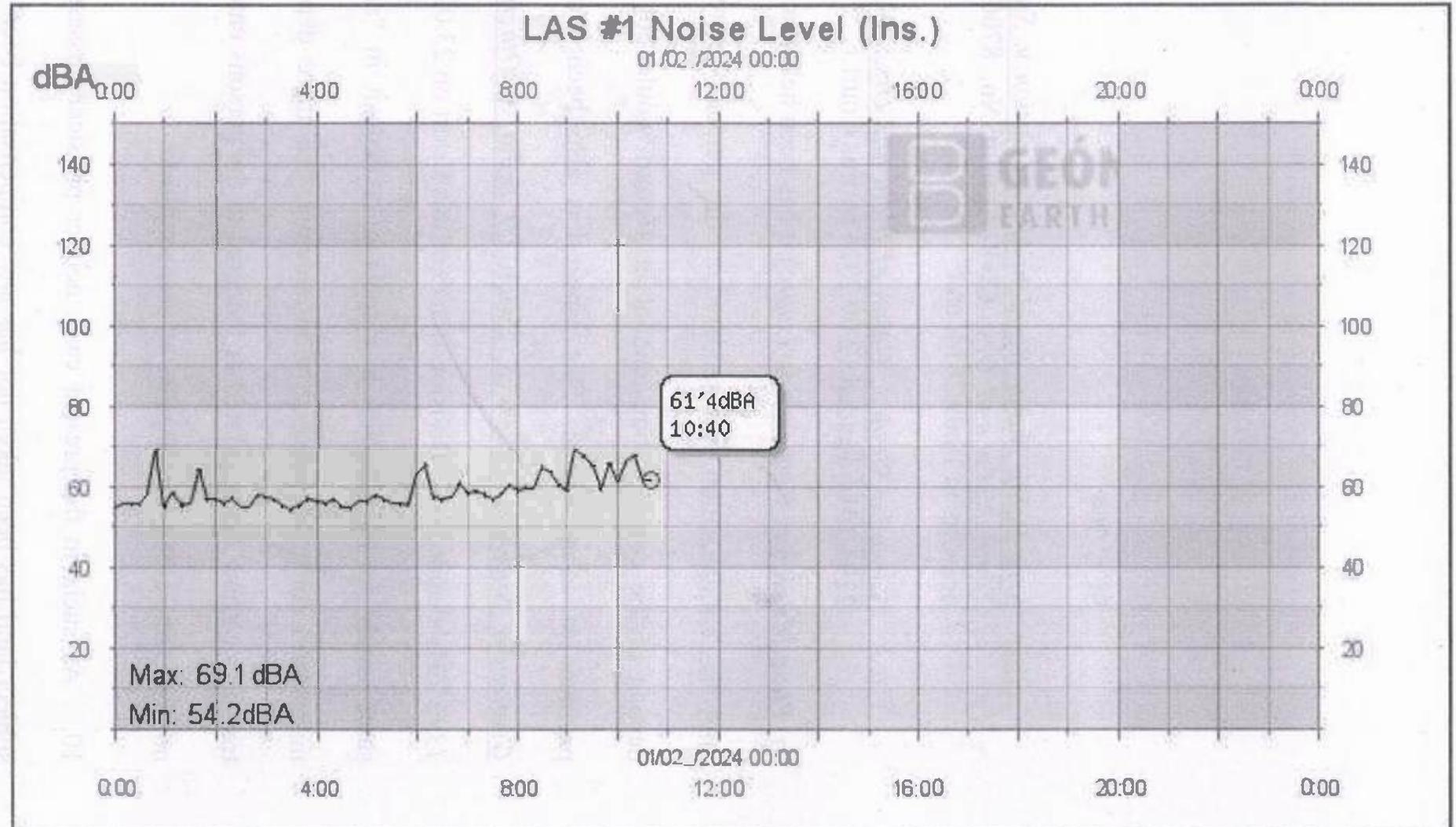
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Delhi, R K Puram



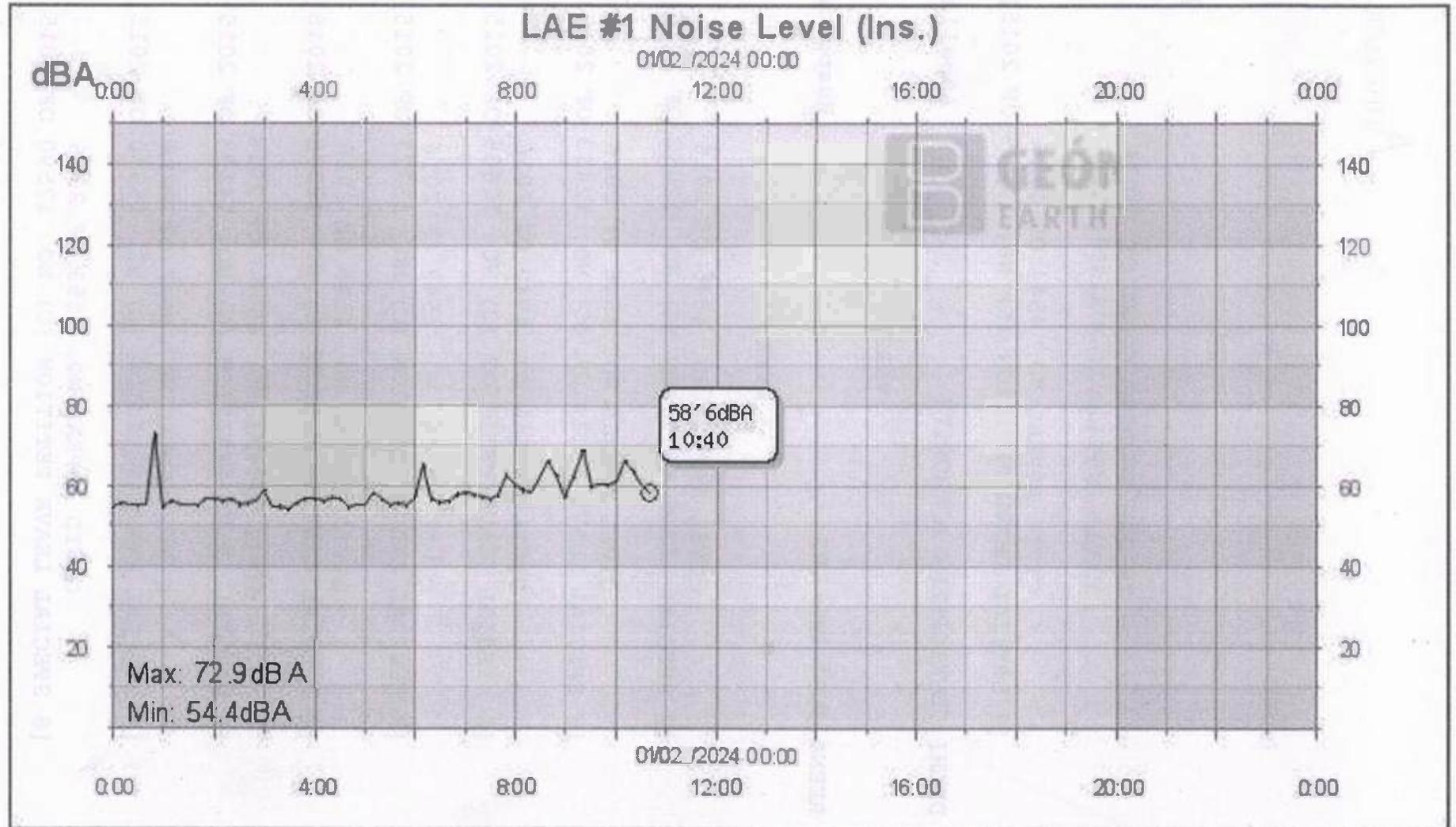
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Delhi, R K Puram



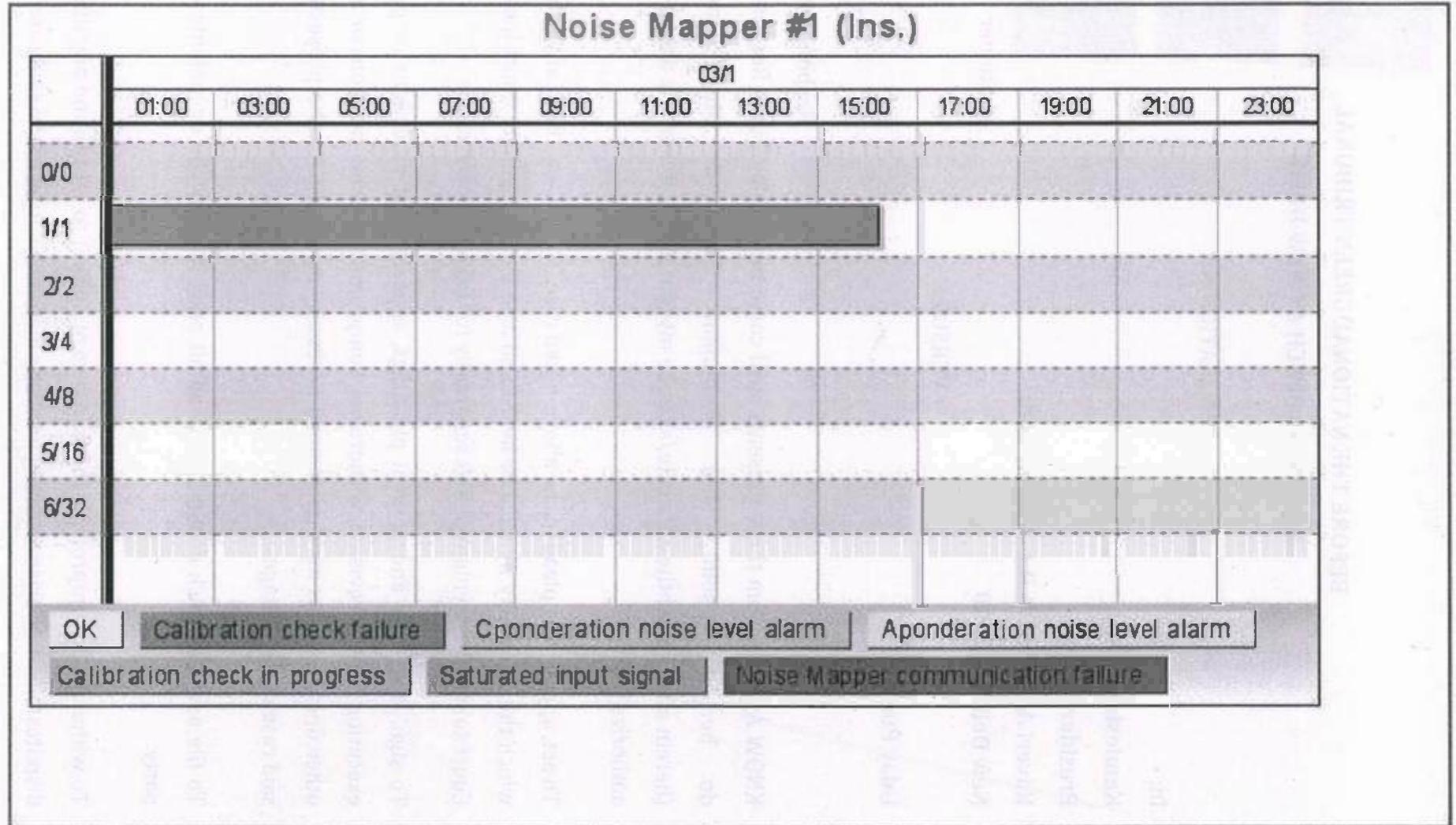
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Delhi, R K Puram



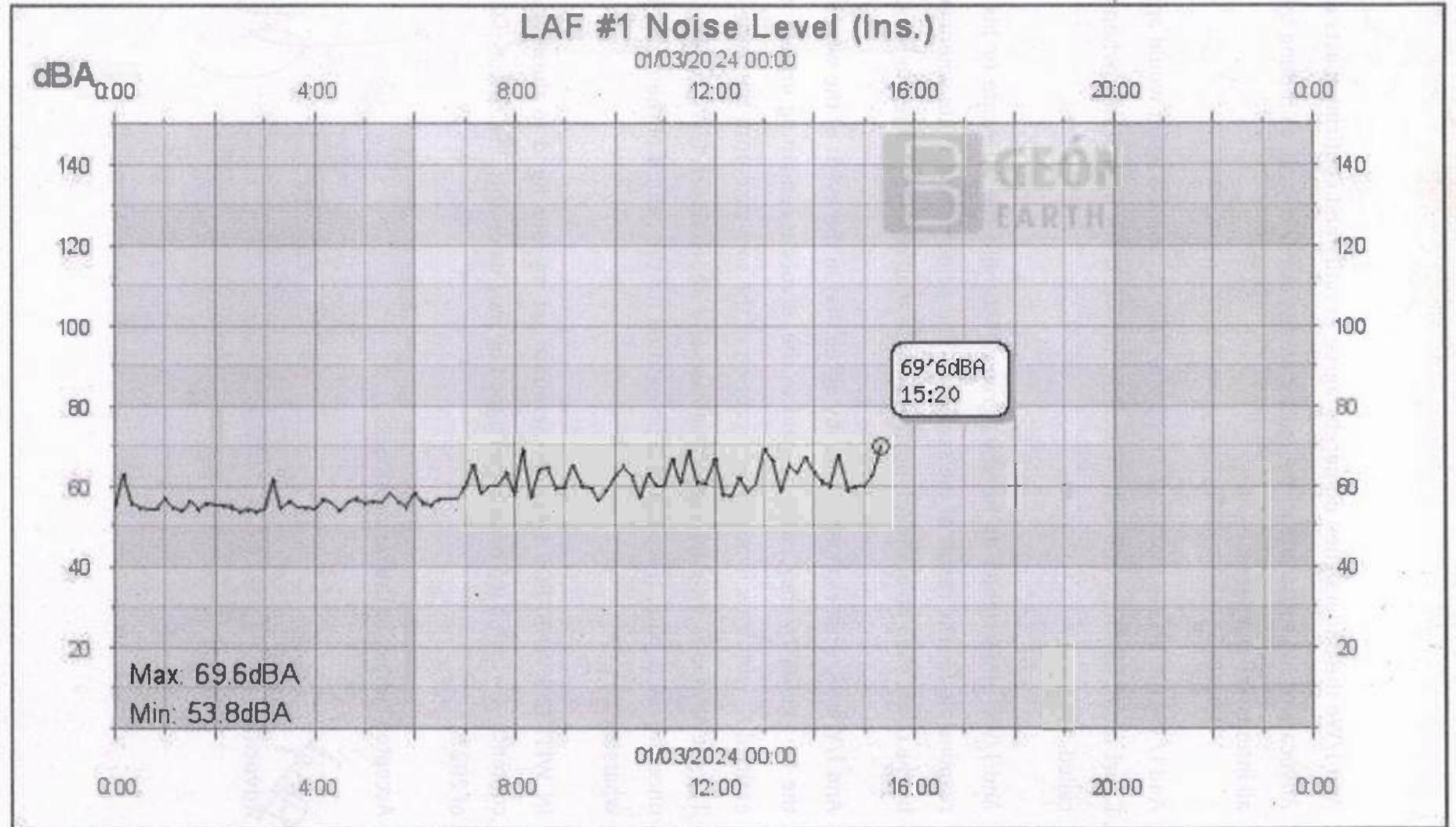
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Delhi, R K Puram



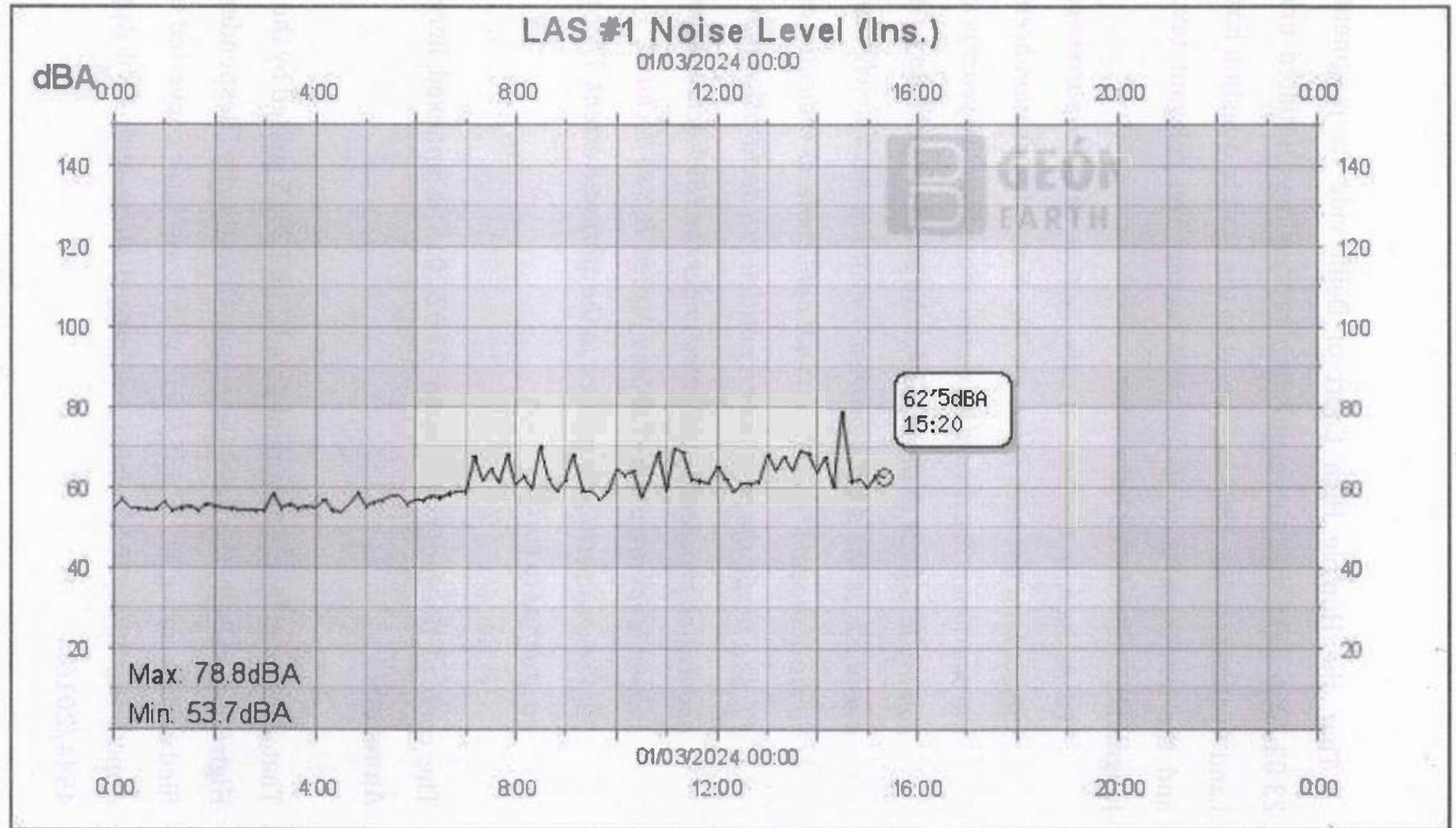
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Delhi, R K Puram



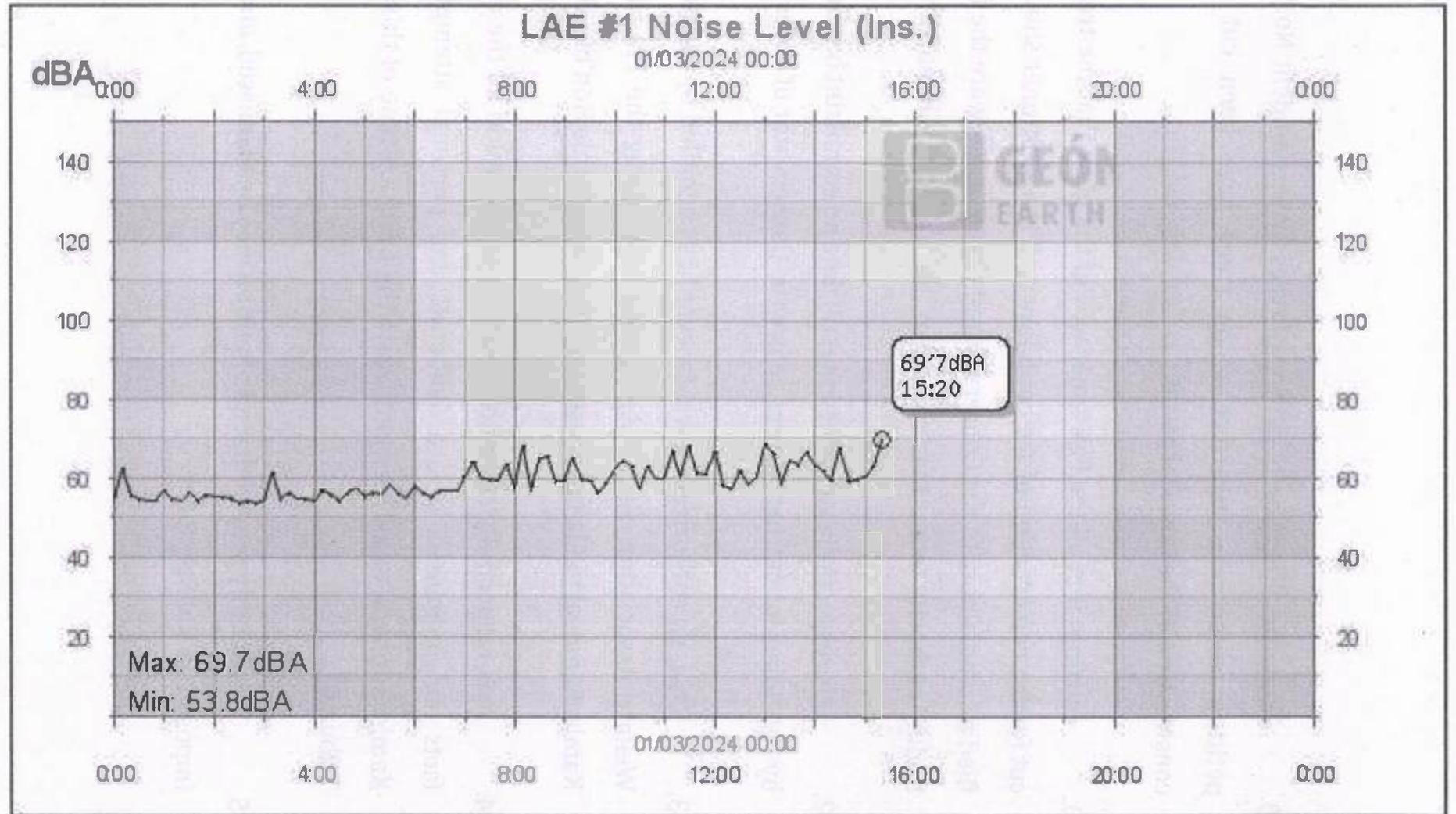
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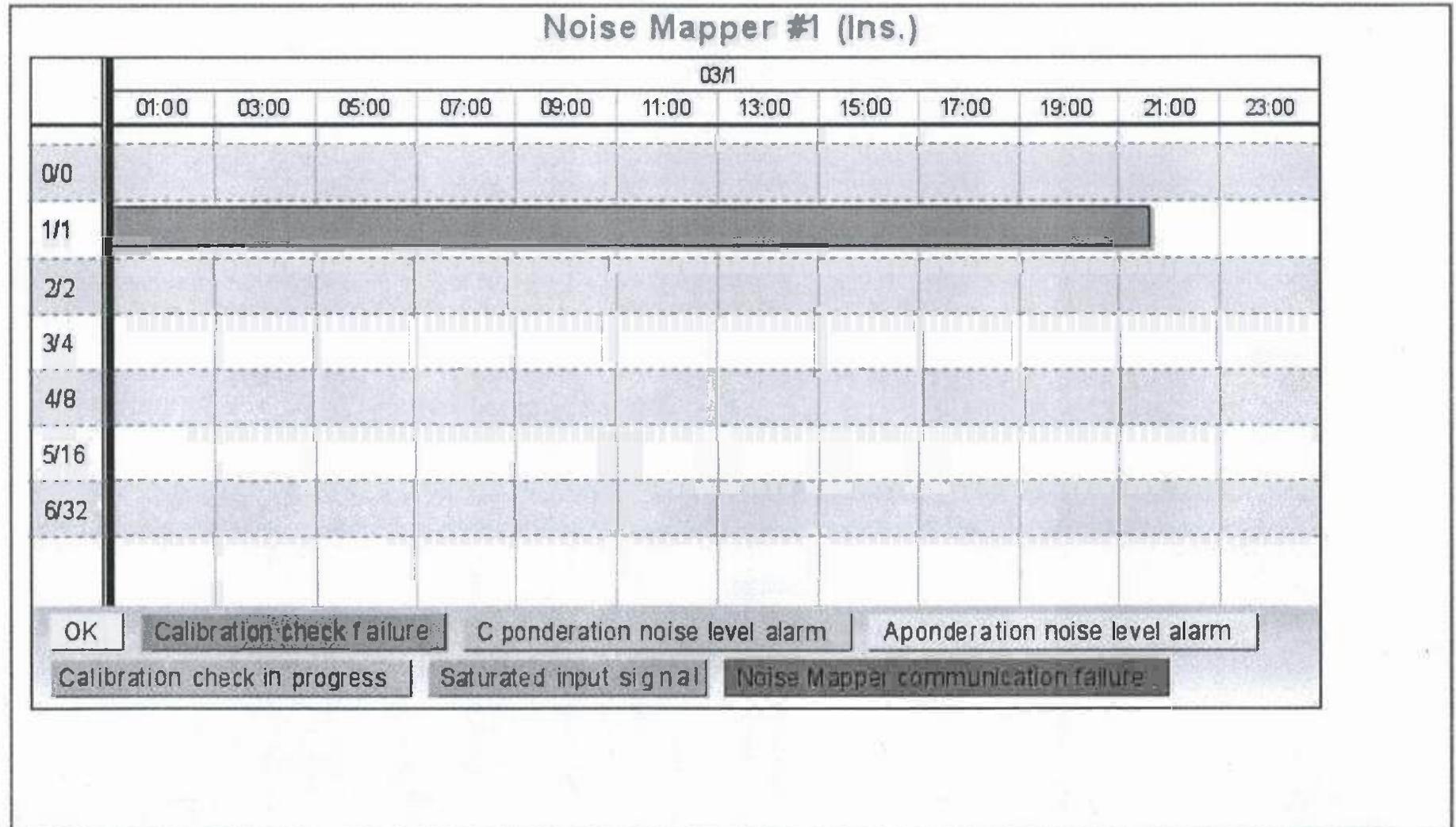
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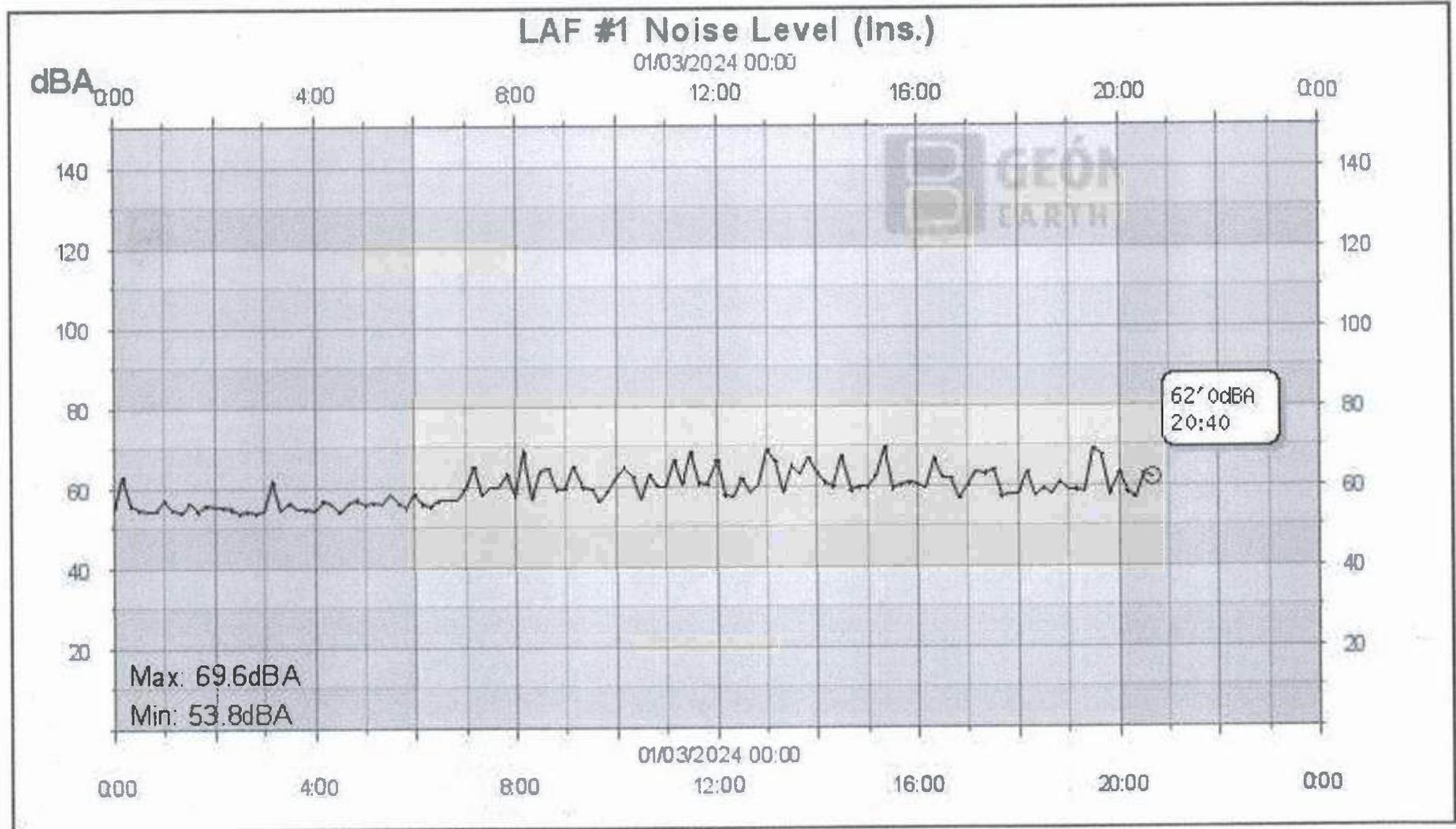
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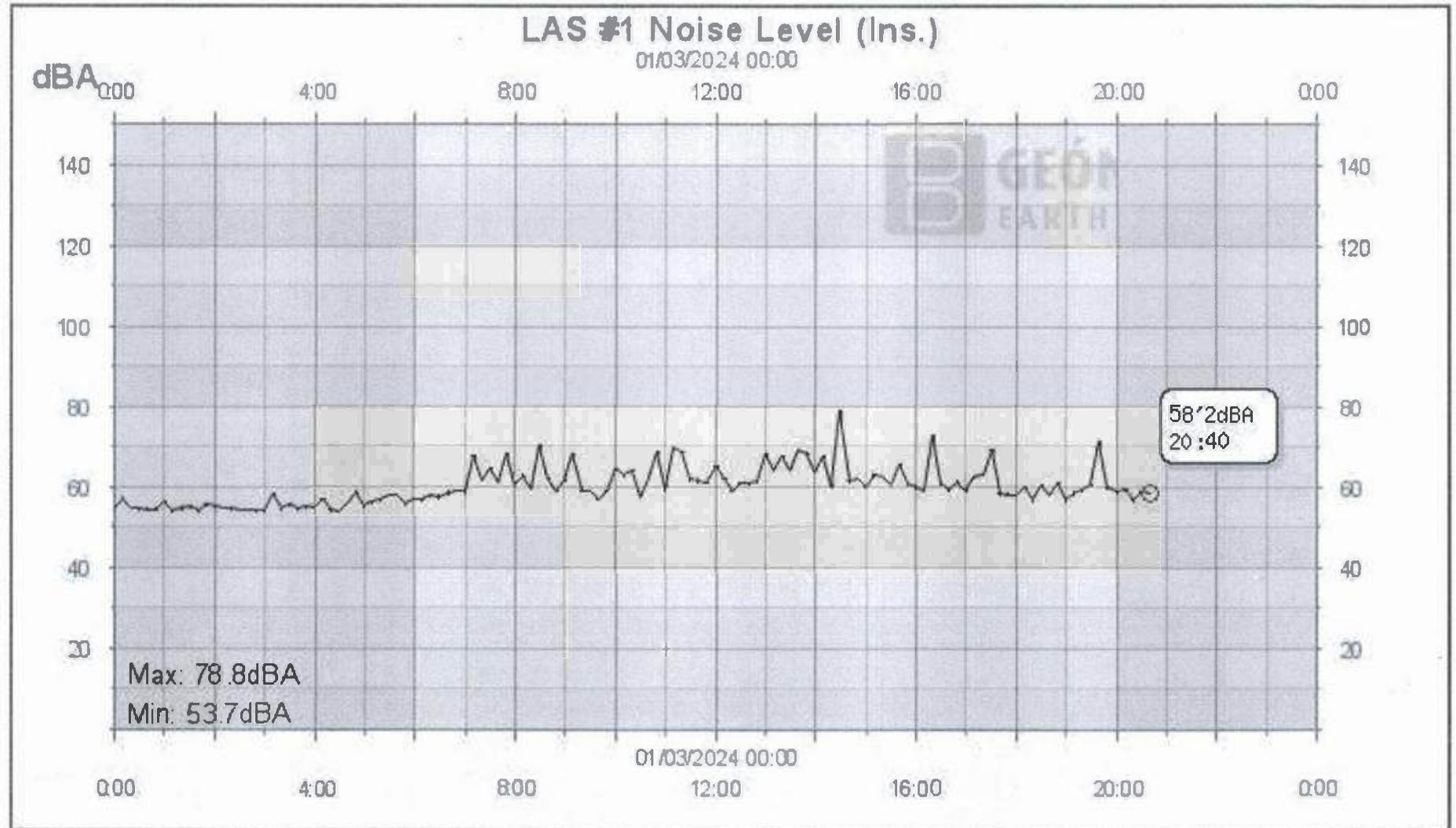
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Delhi, R K Puram



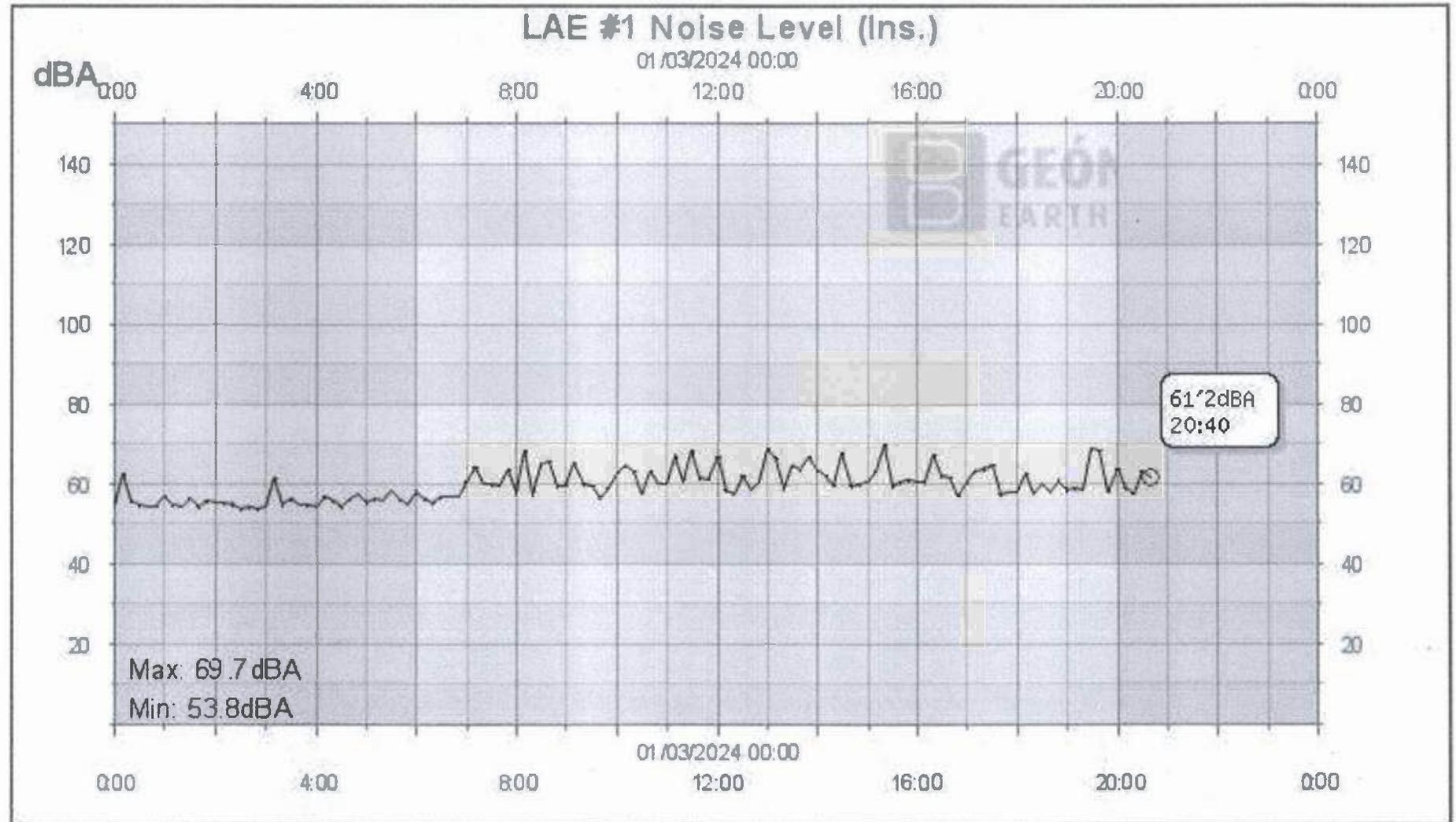
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Delhi, R K Puram



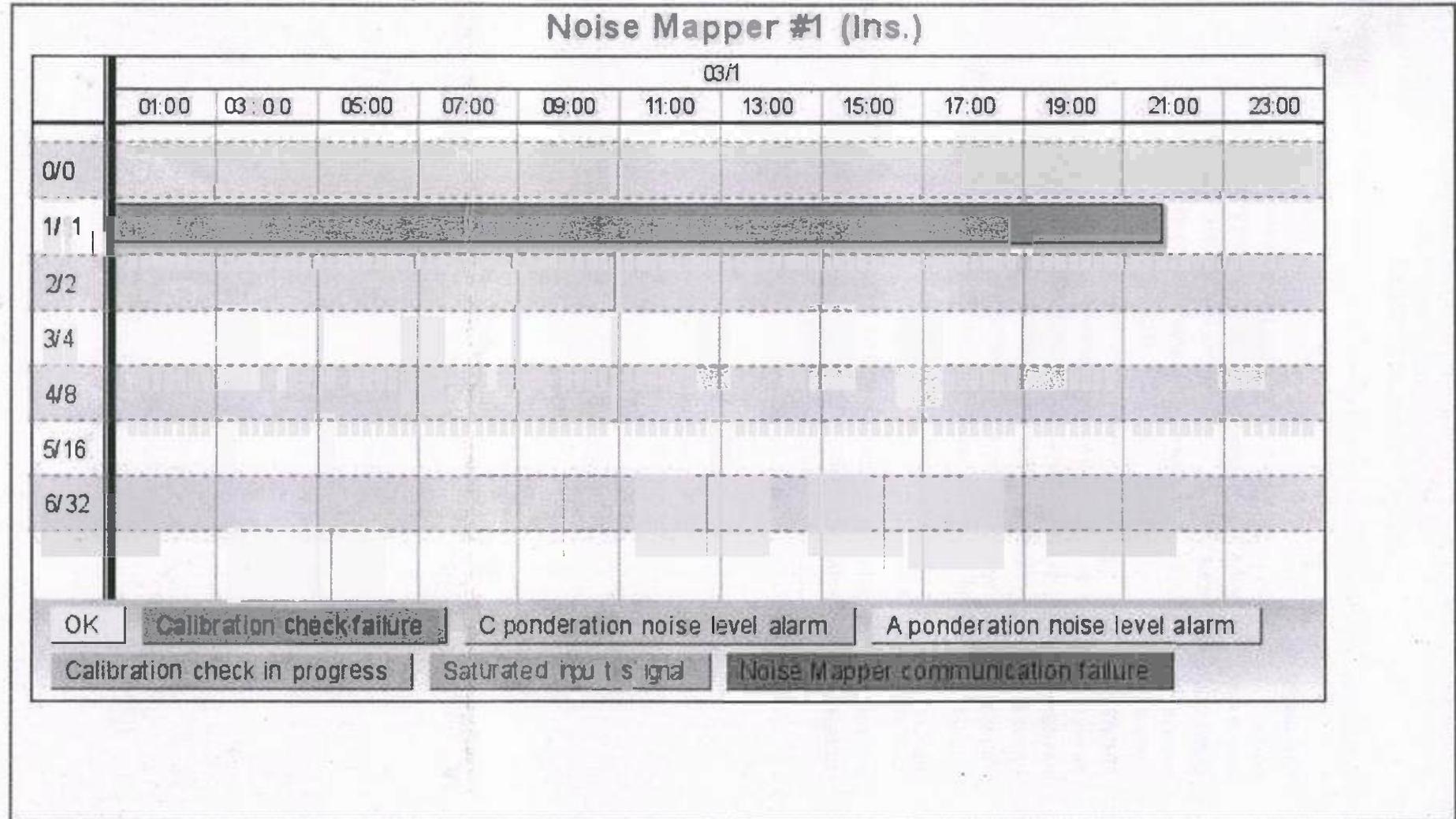
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Delhi, R K Puram



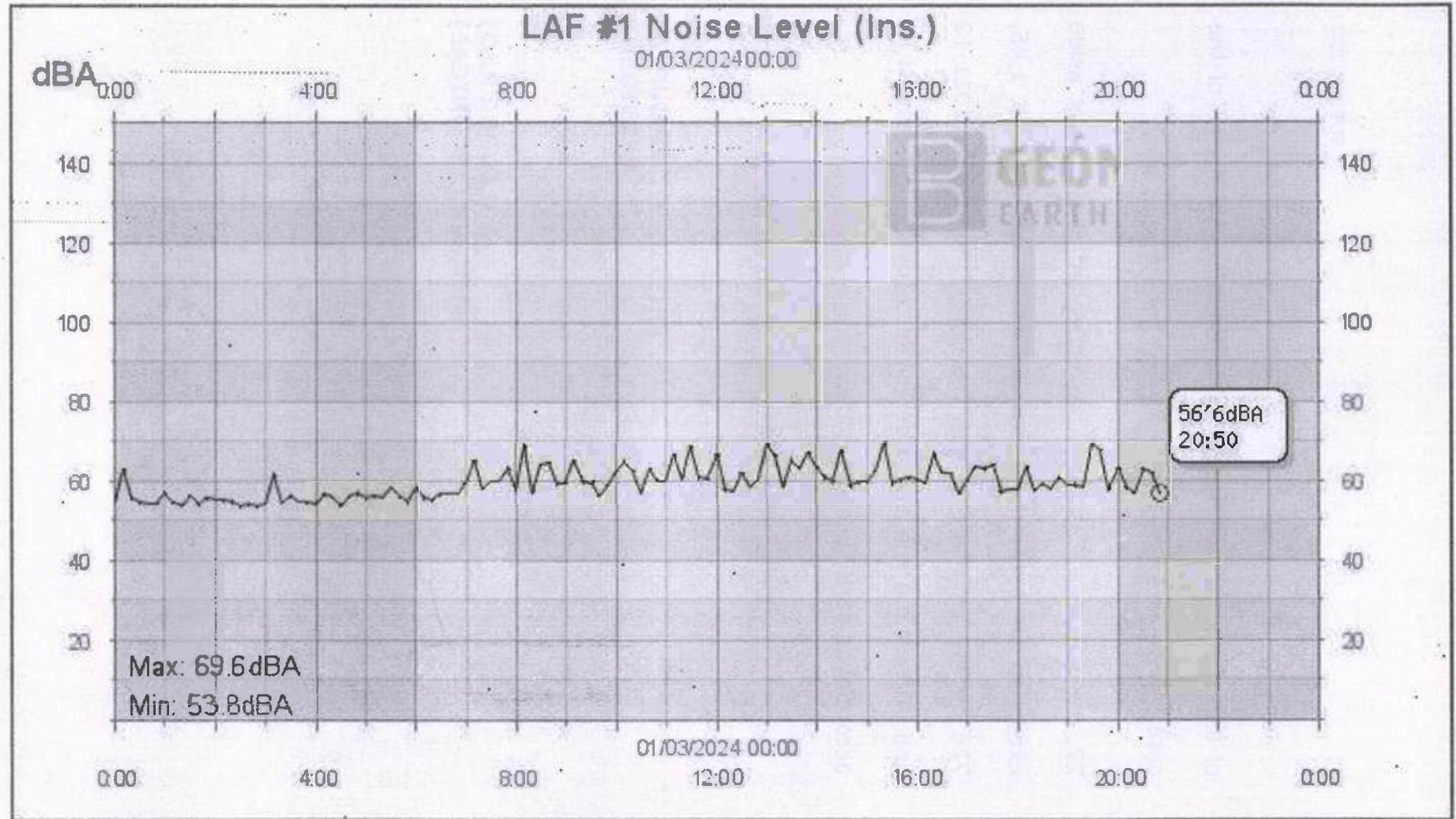
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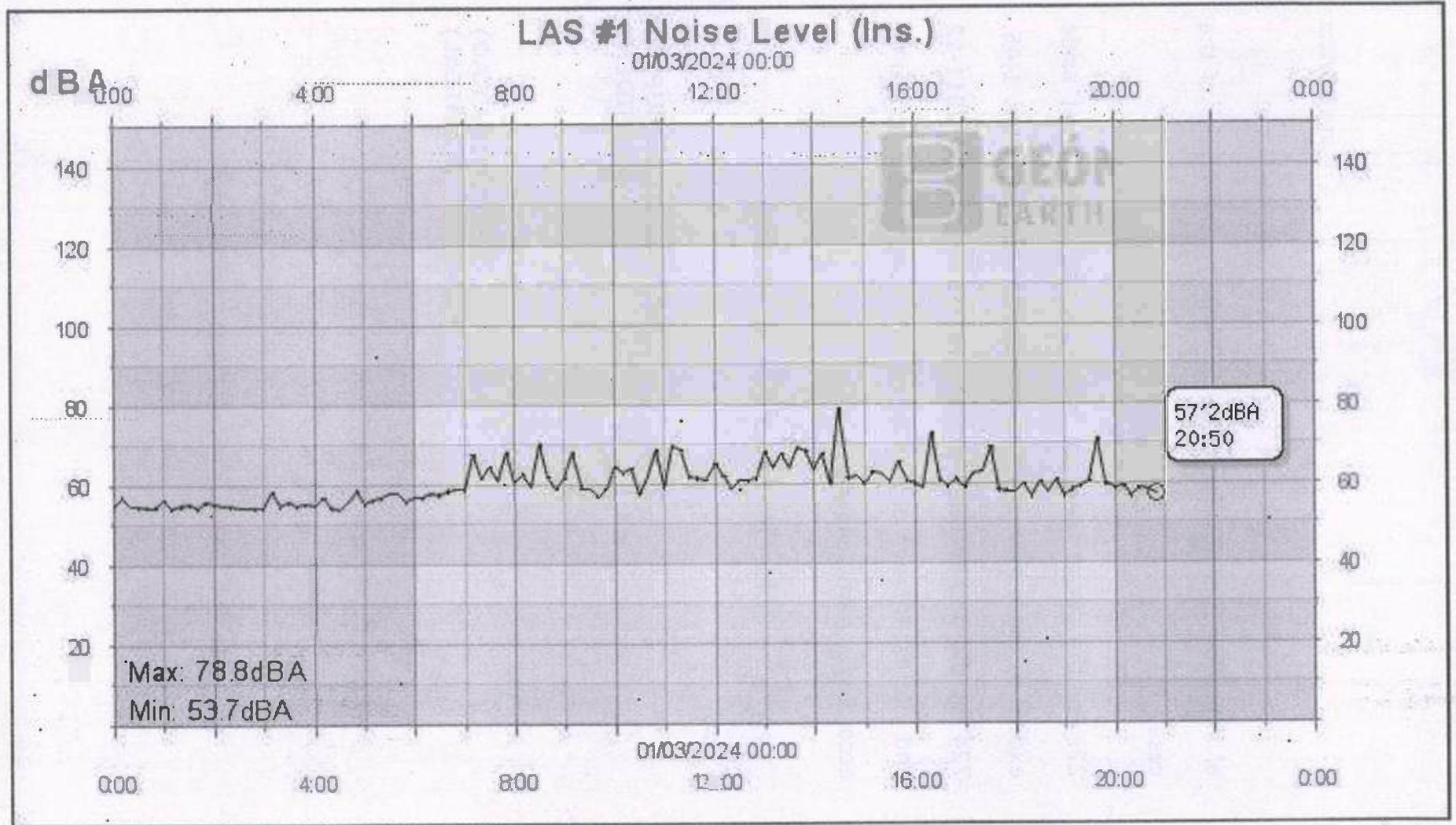
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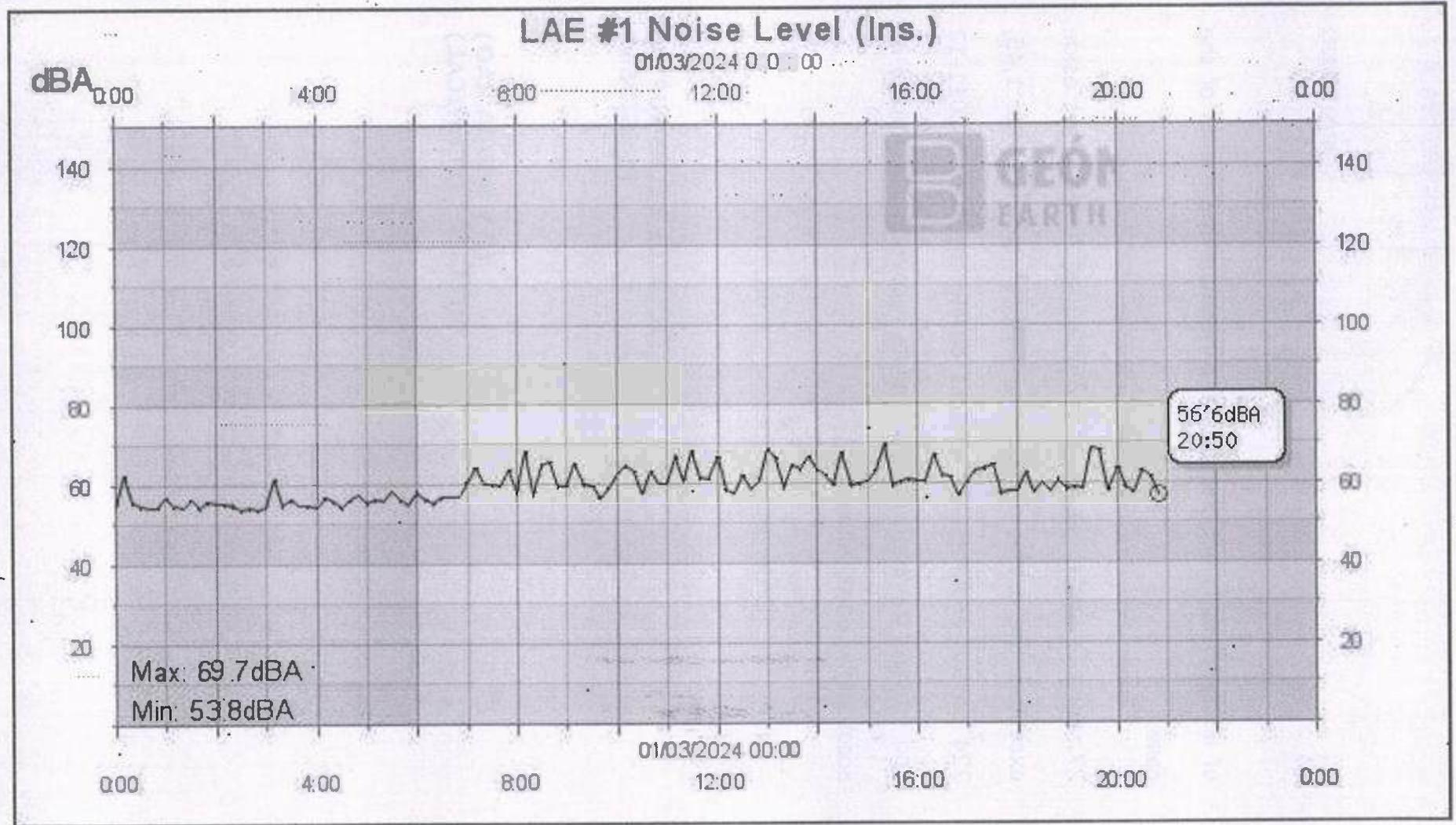
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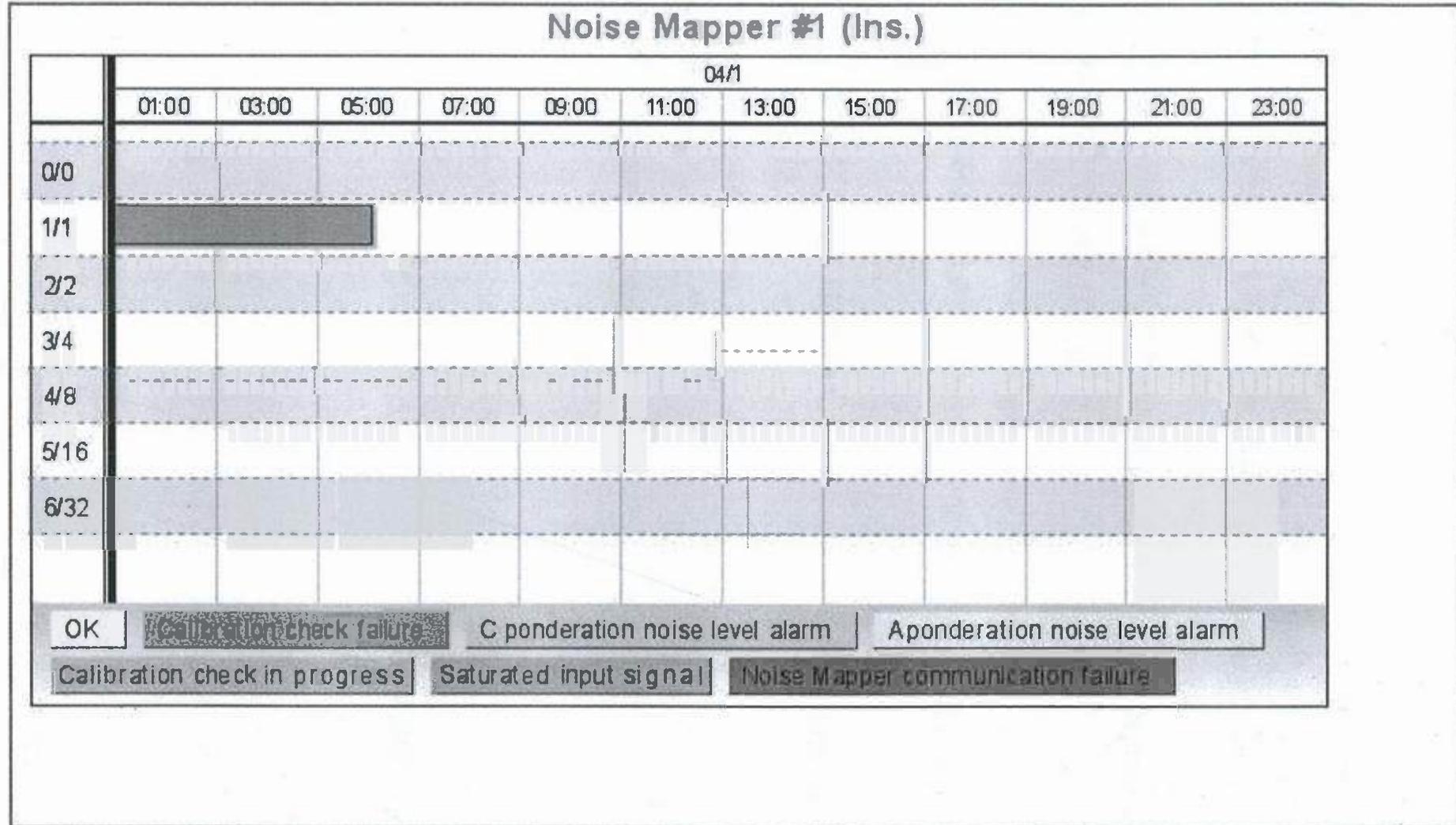
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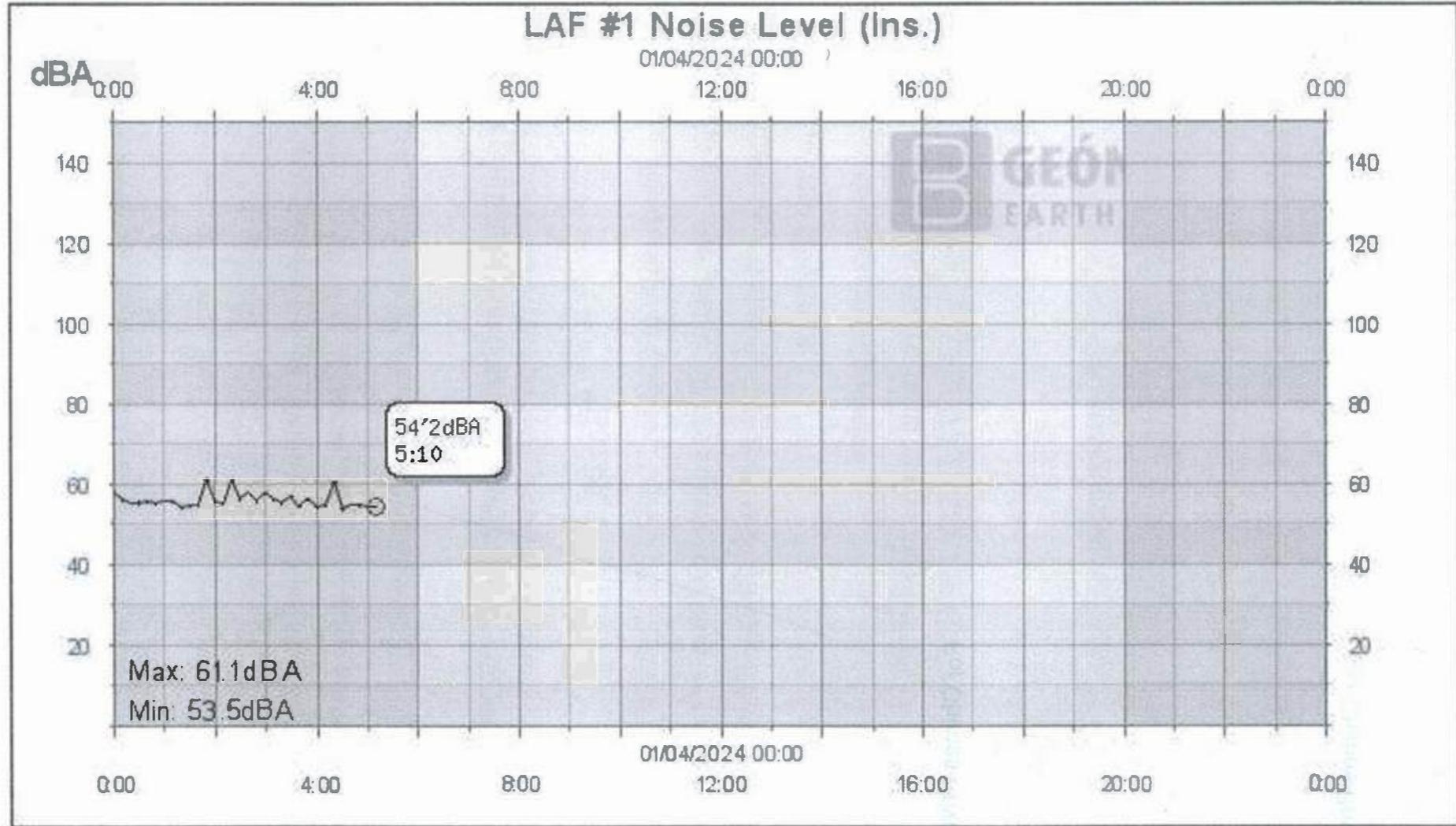
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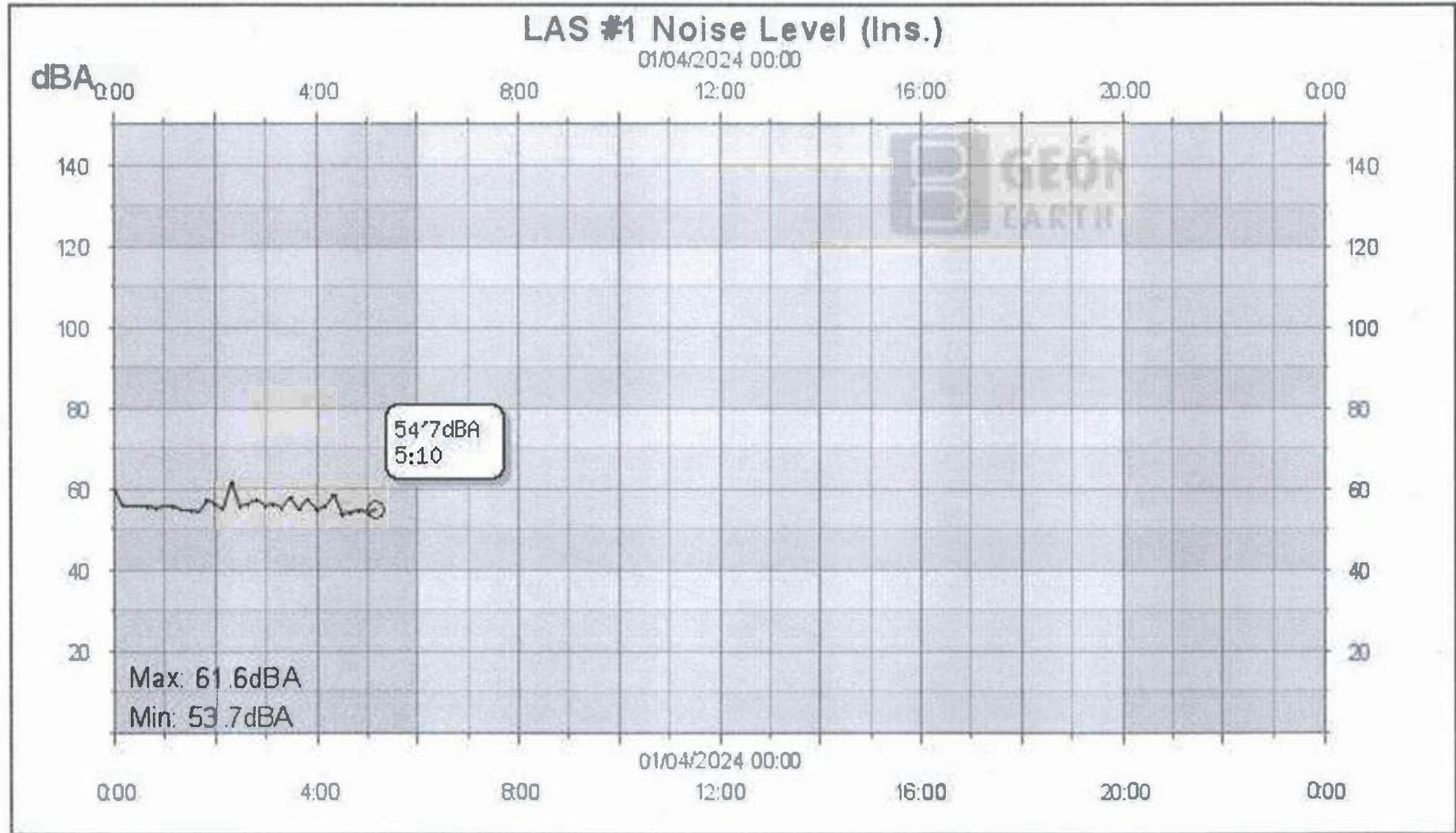
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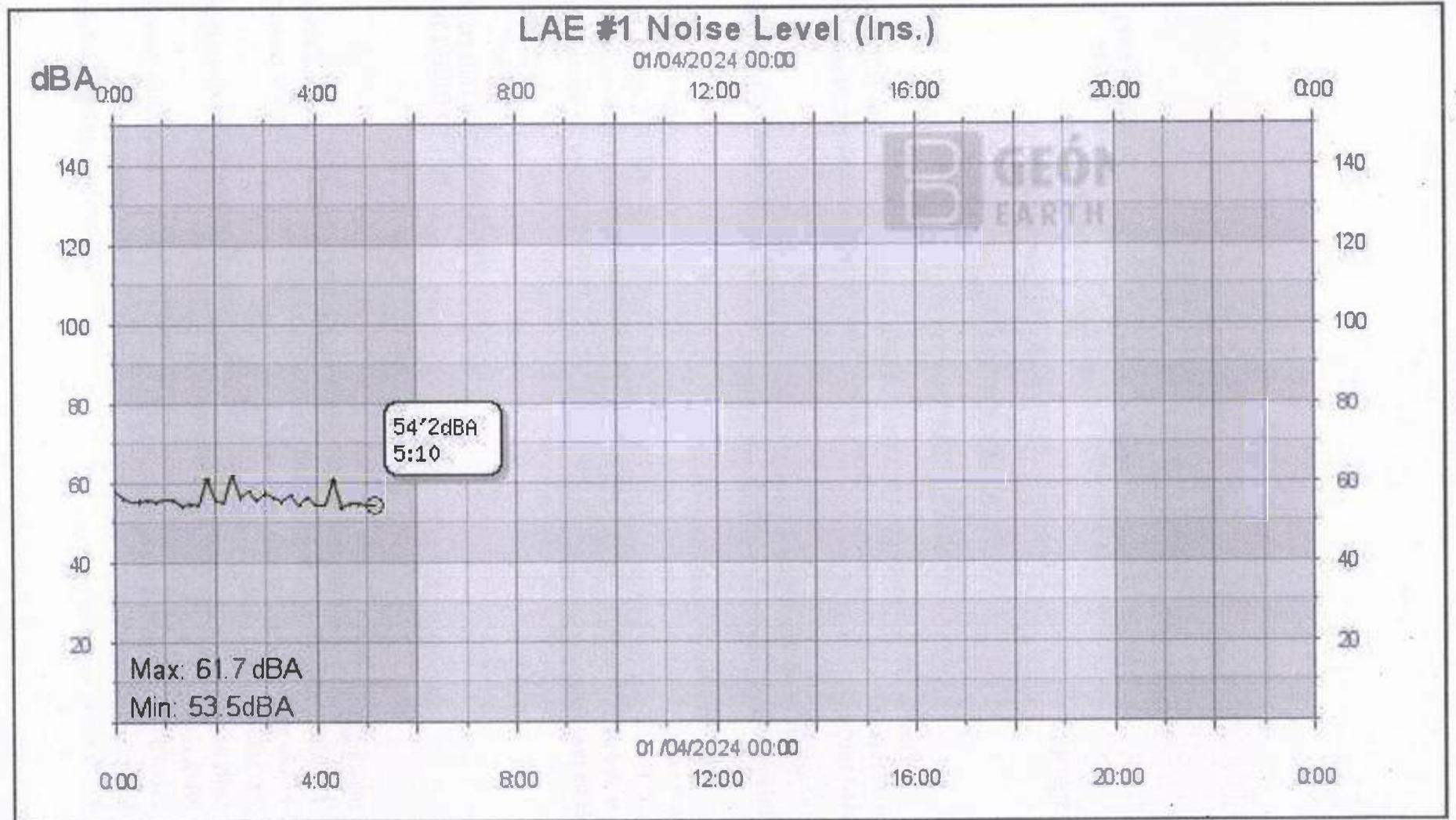
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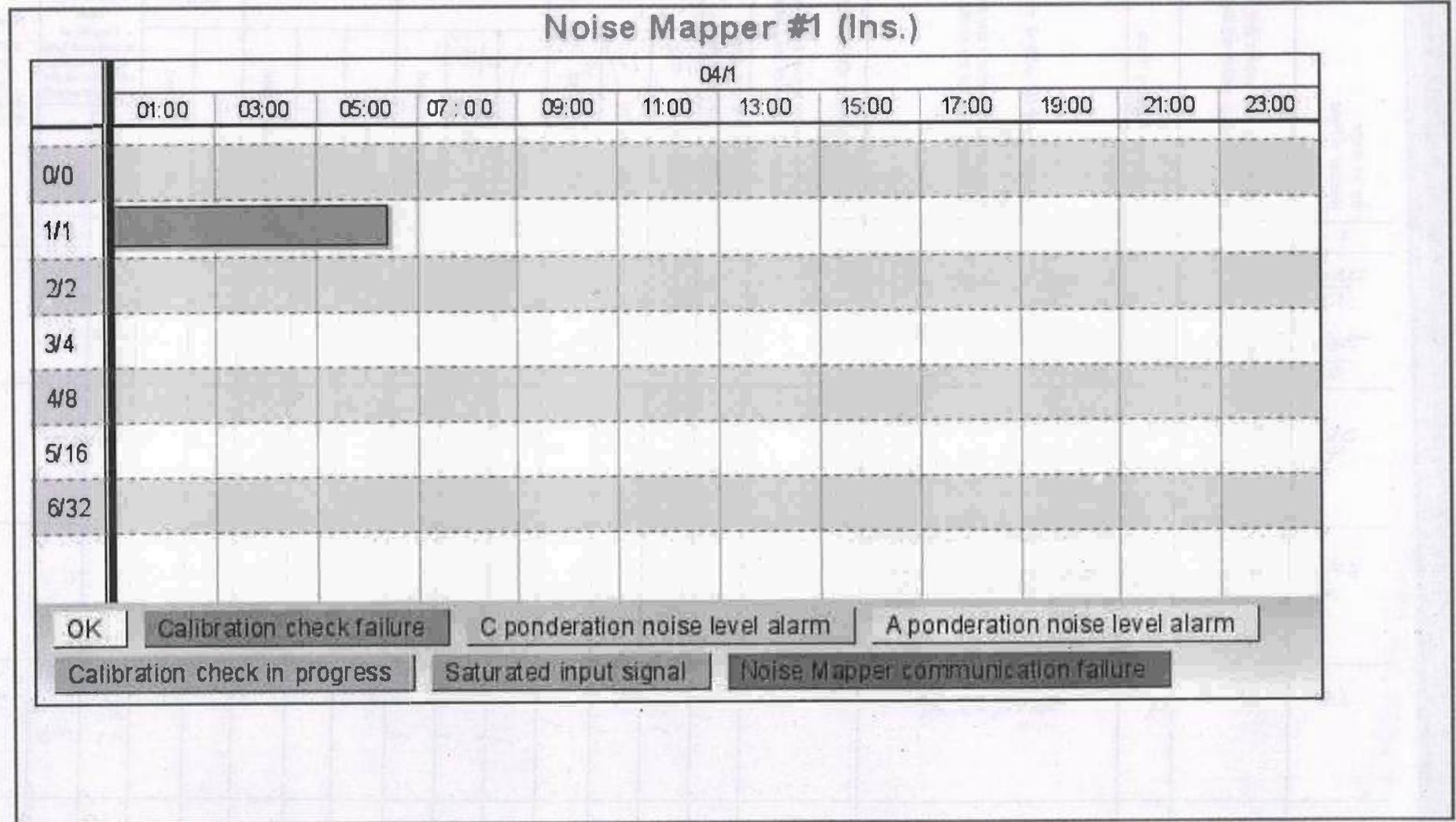
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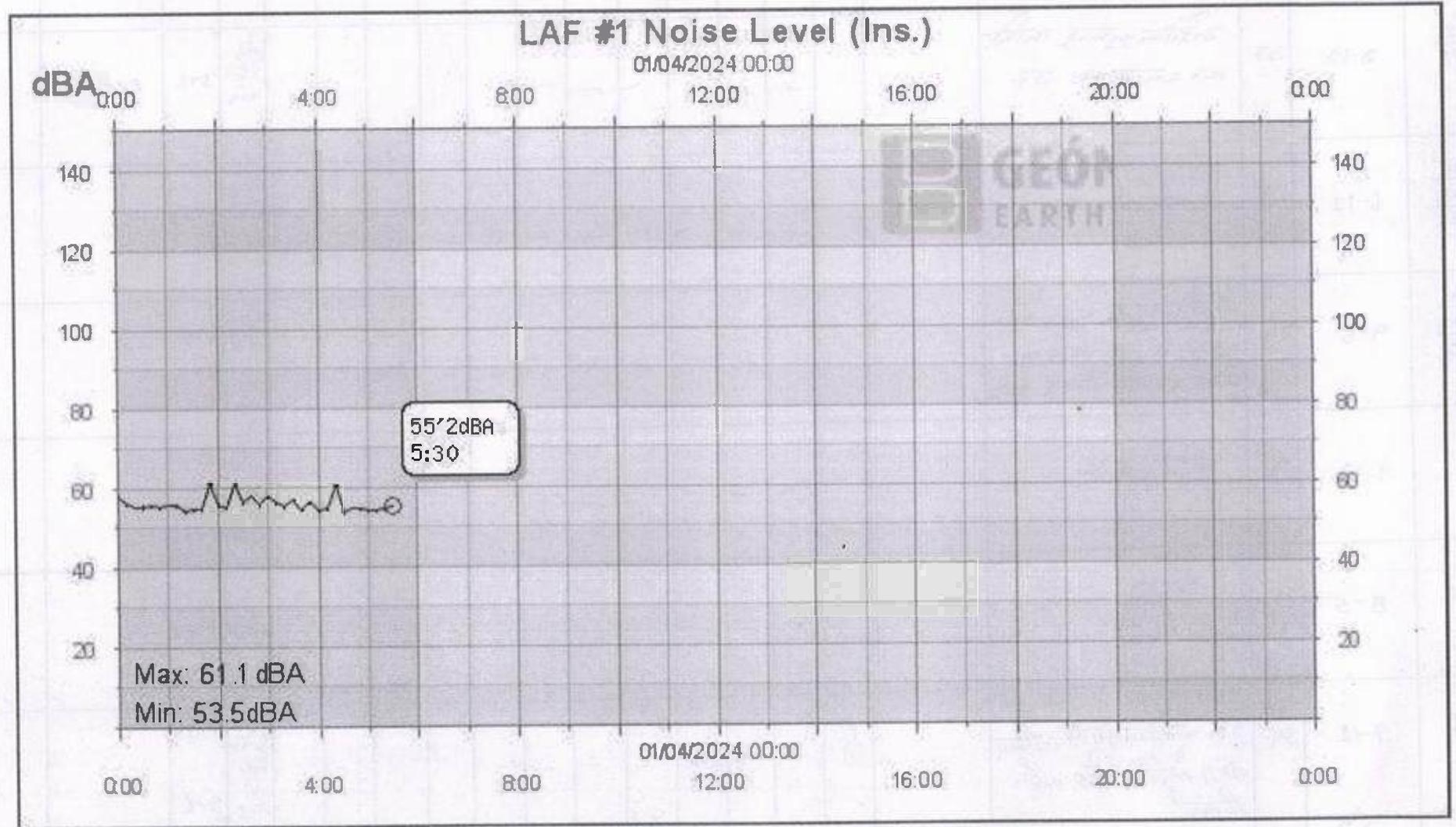
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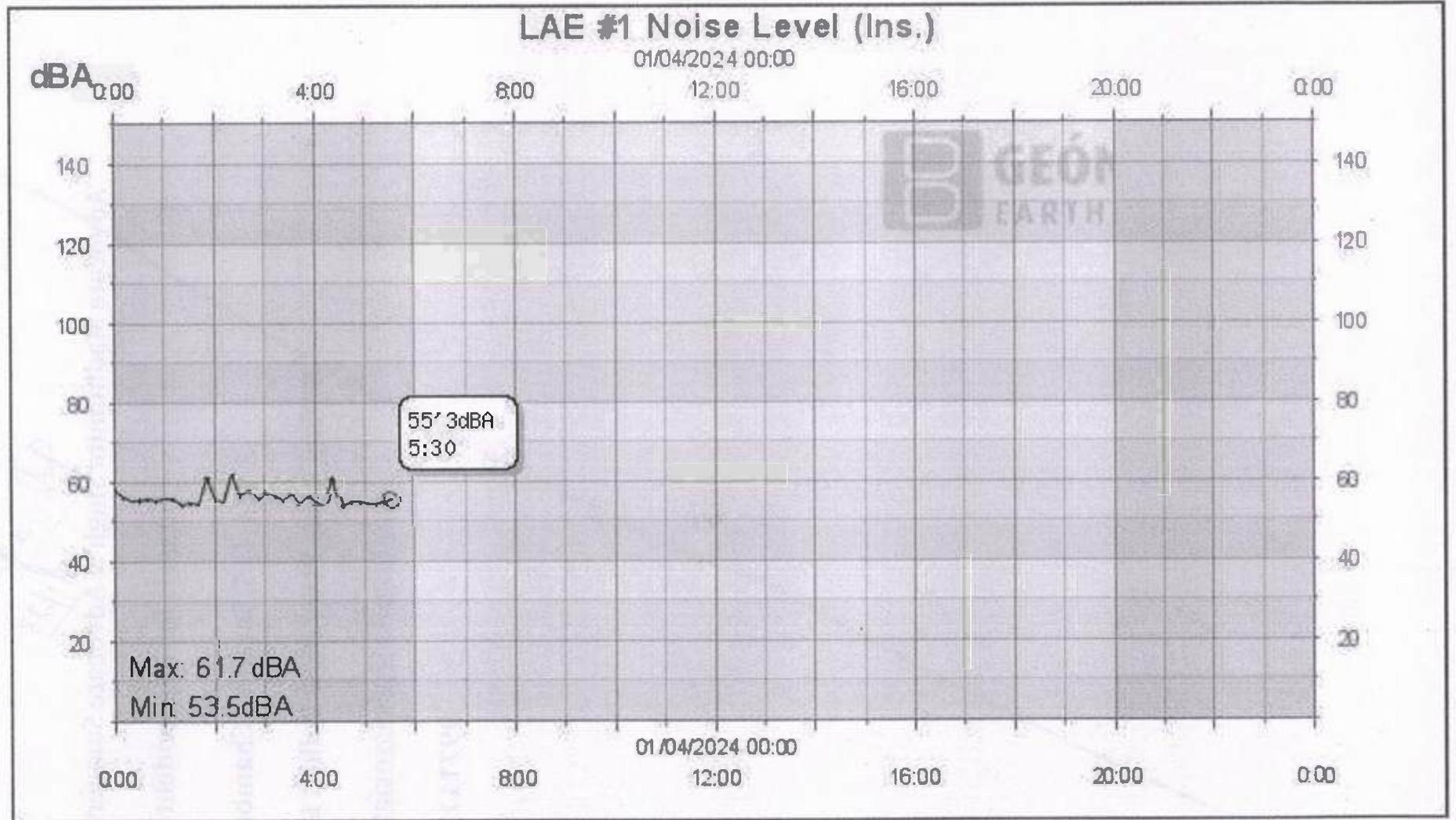
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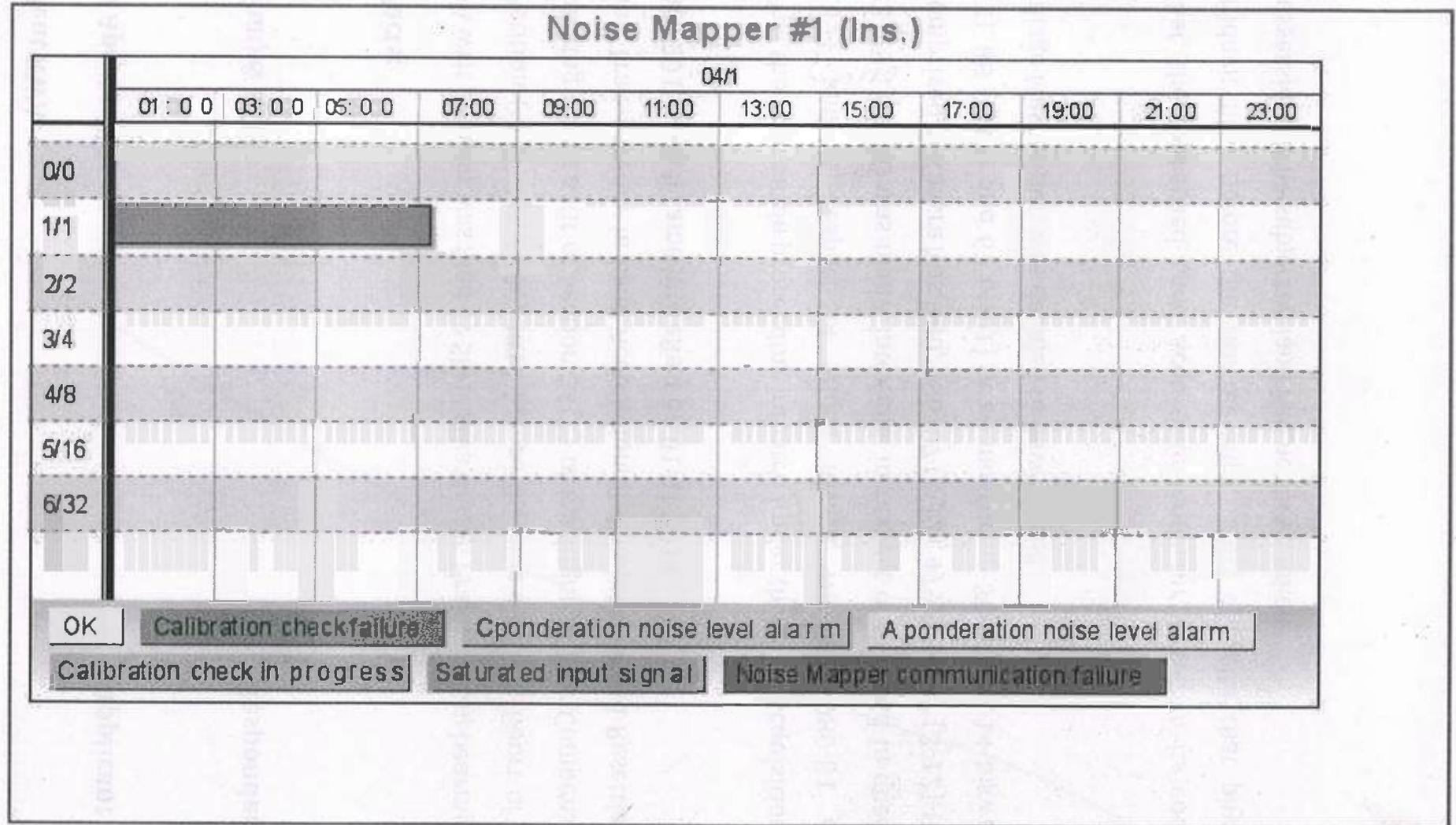
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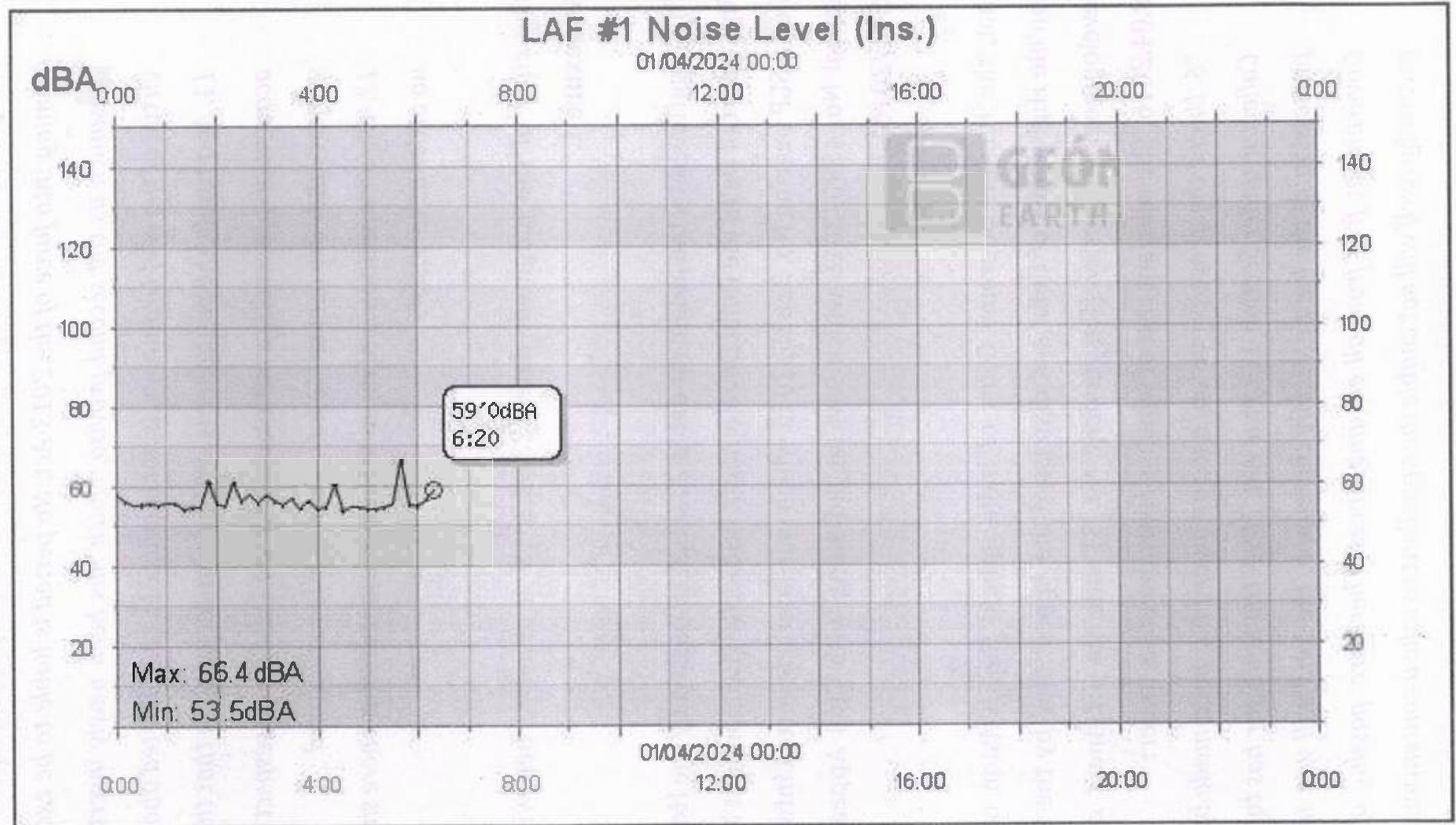
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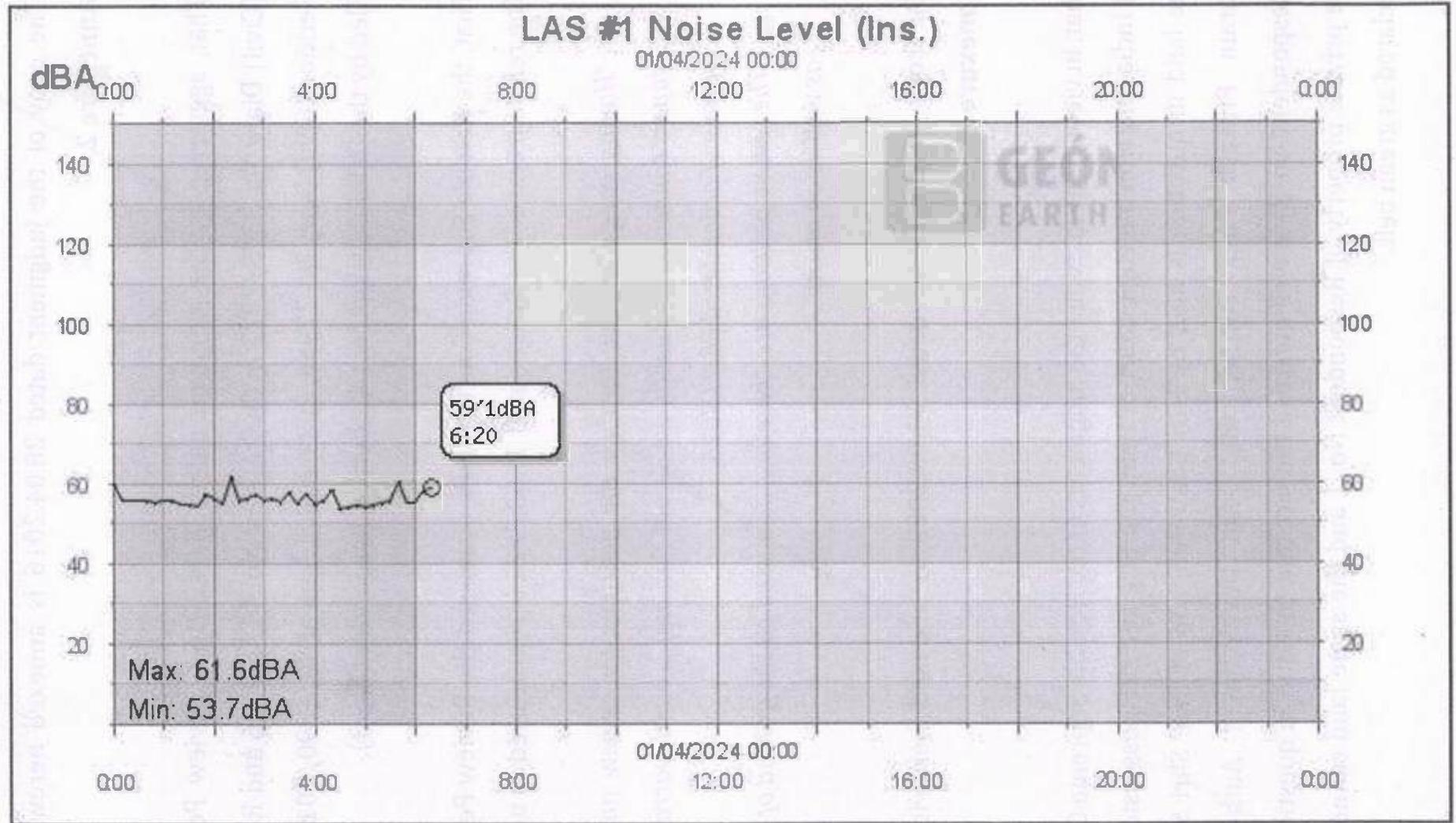
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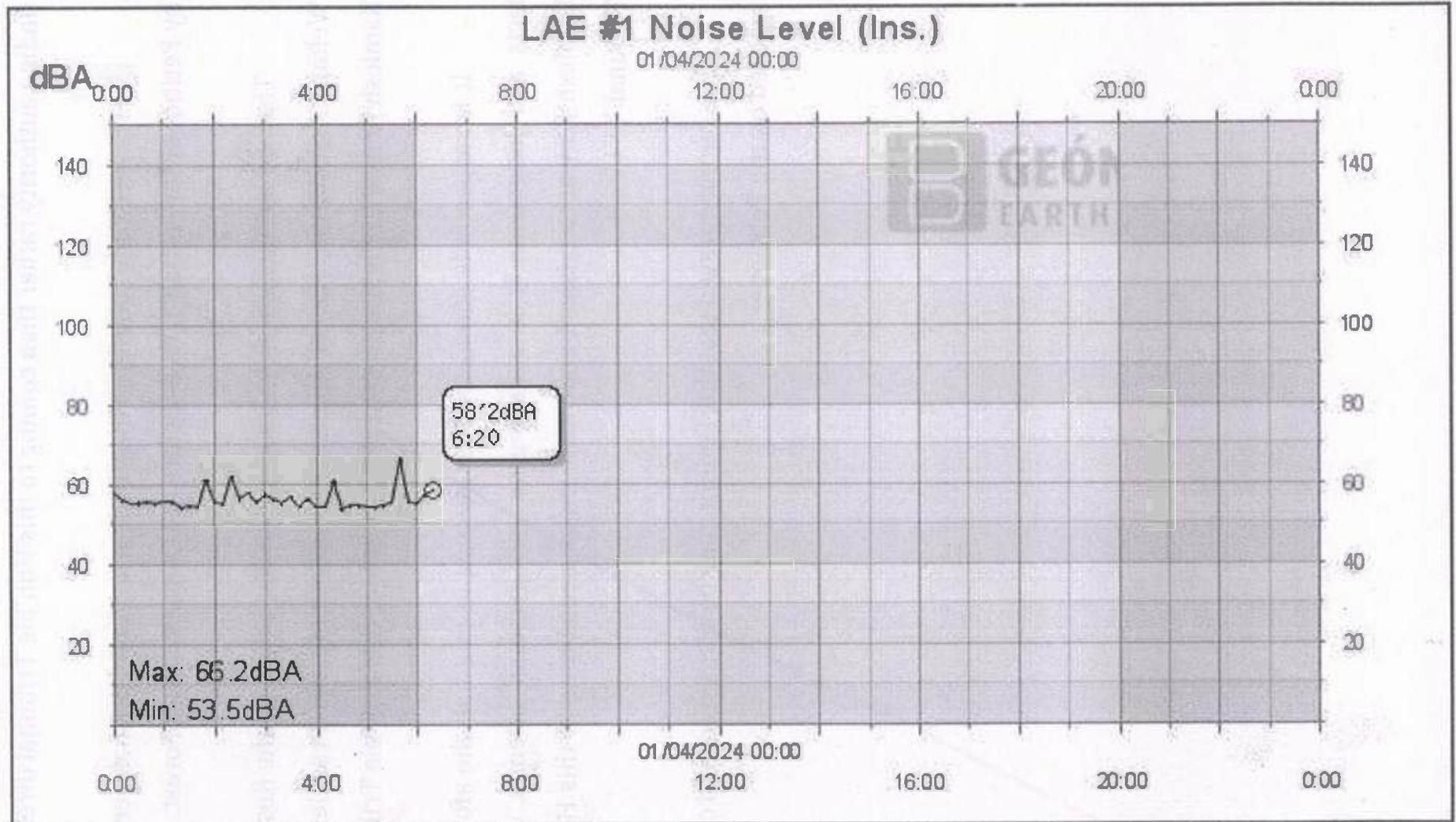
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Delhi, R K Puram



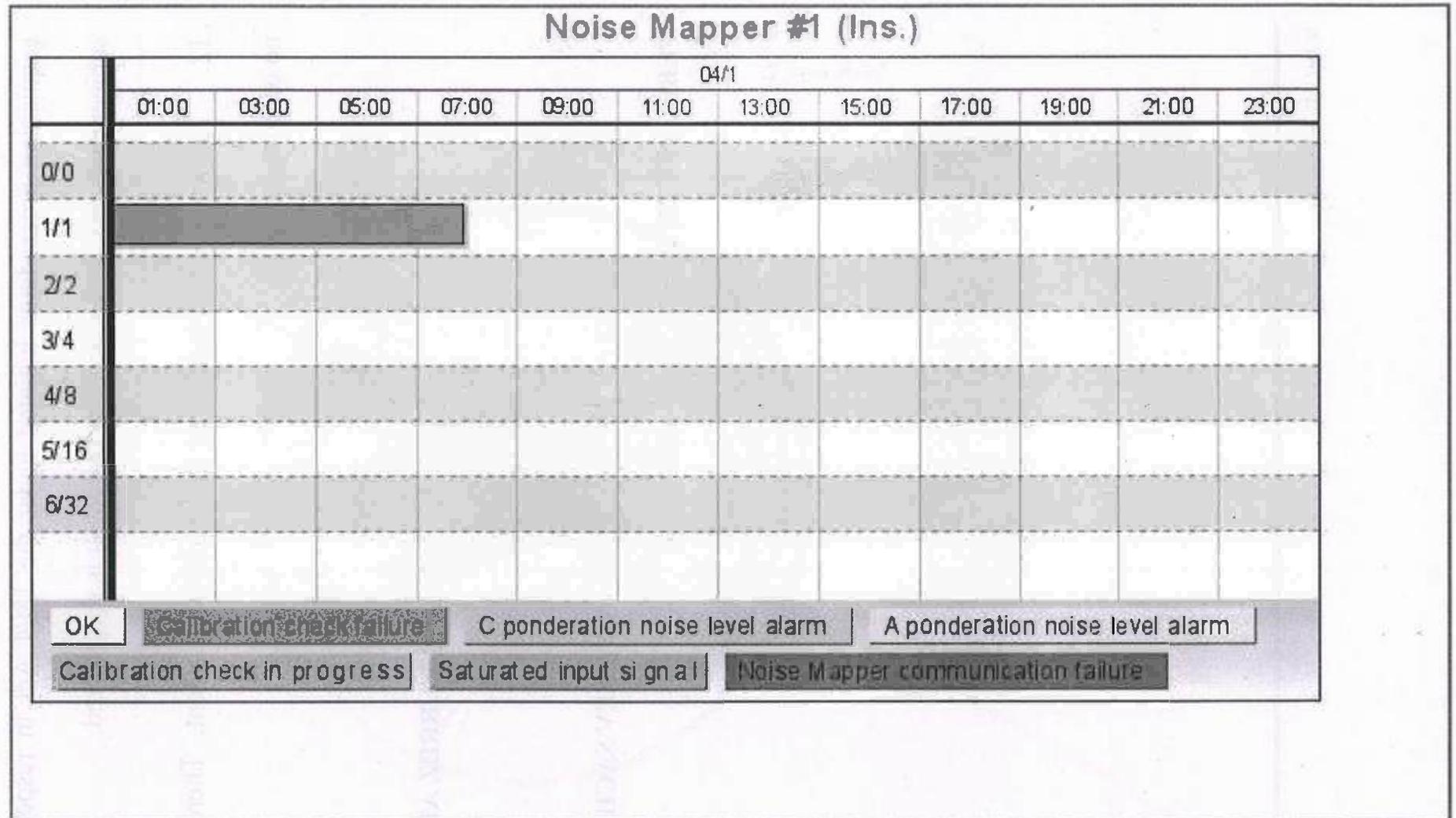
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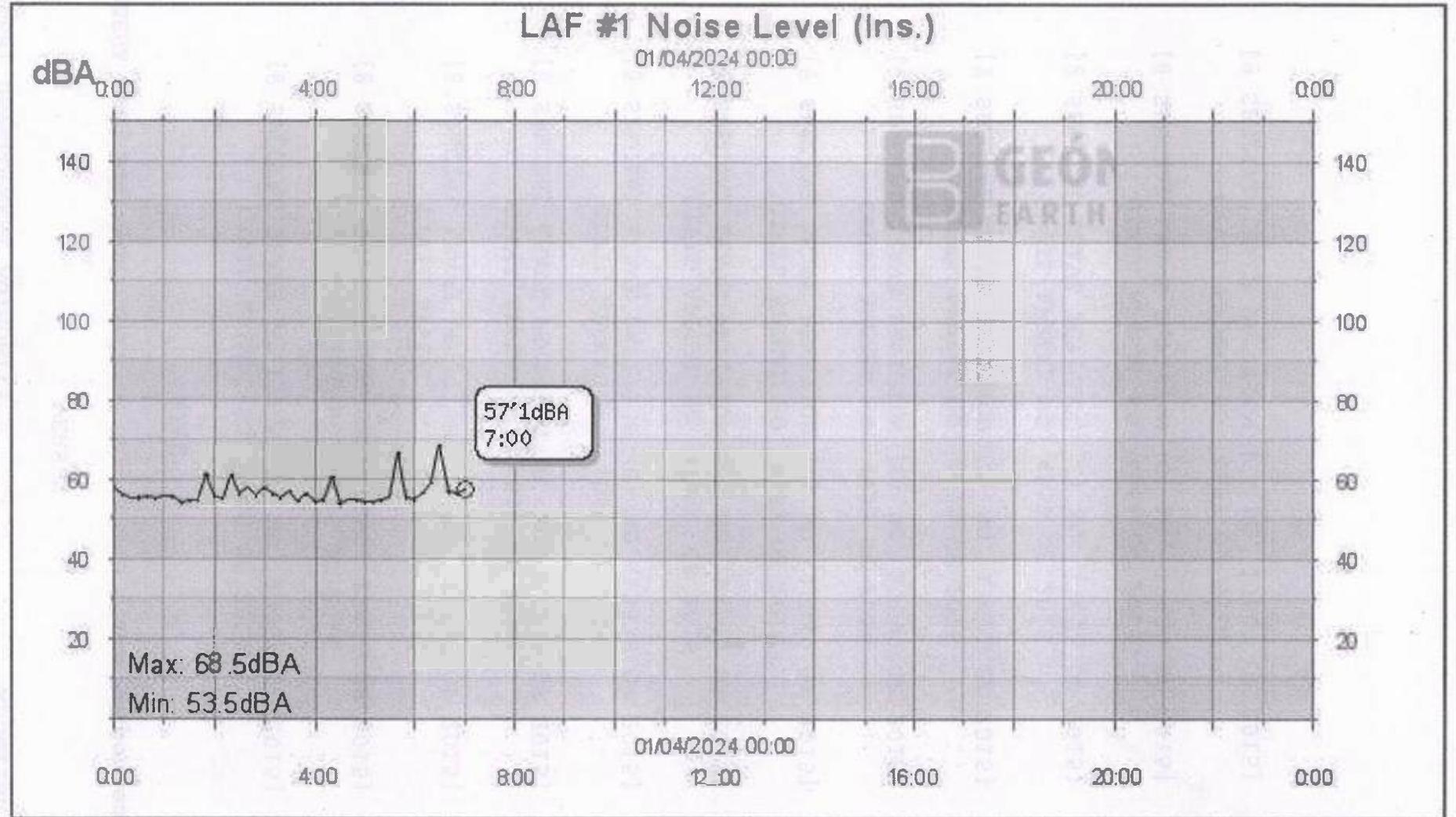
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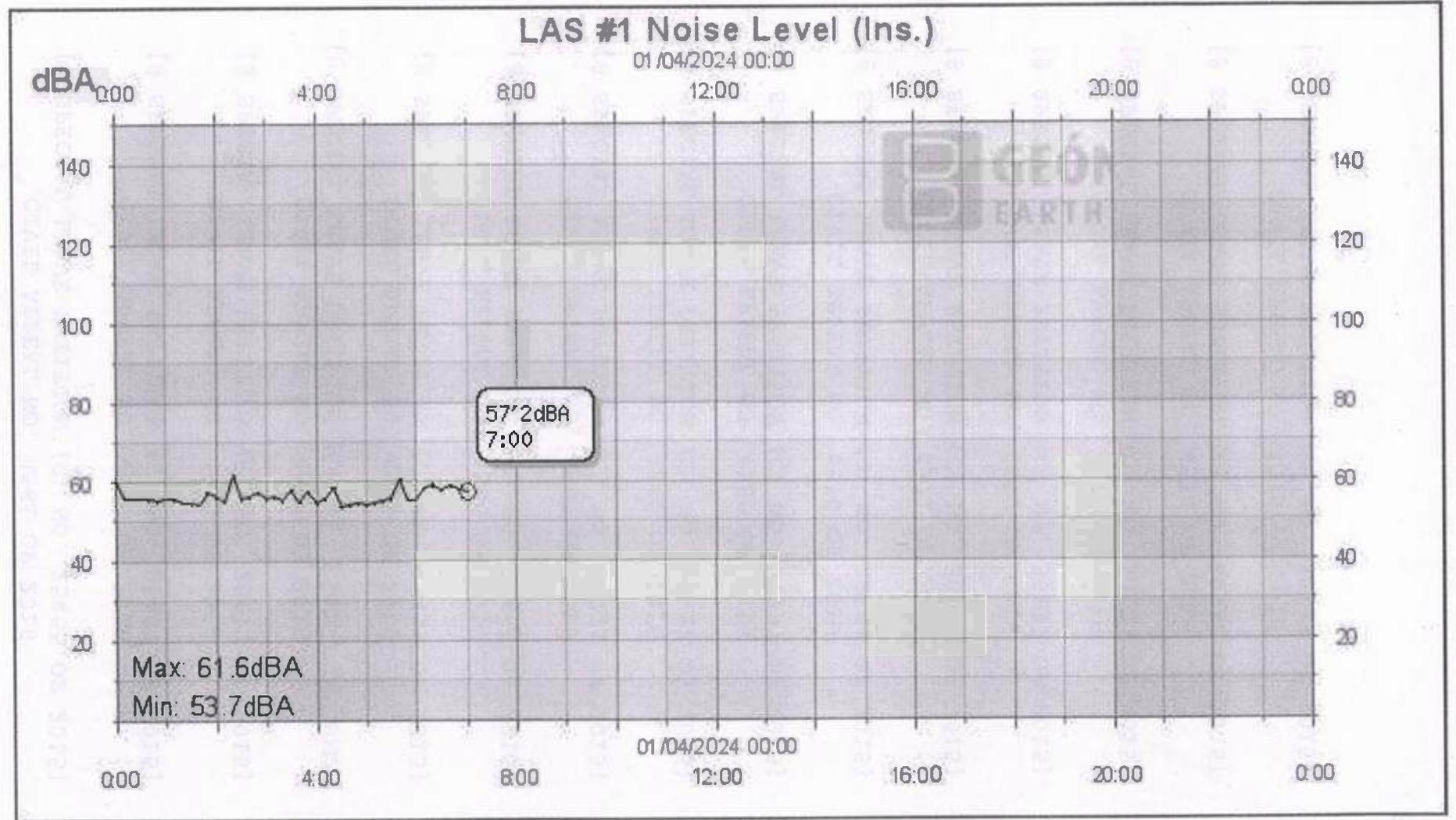
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Delhi, R K Puram



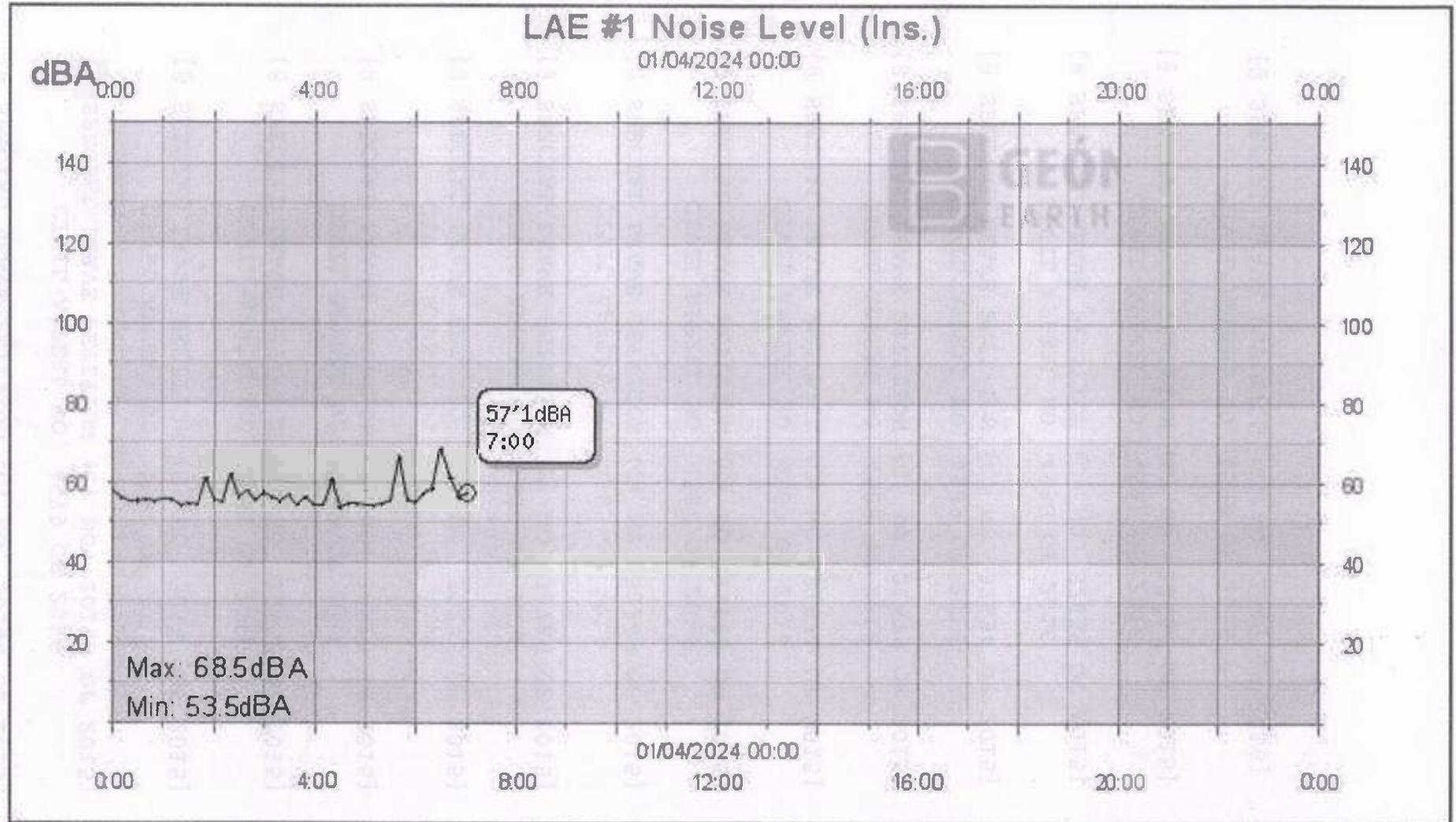
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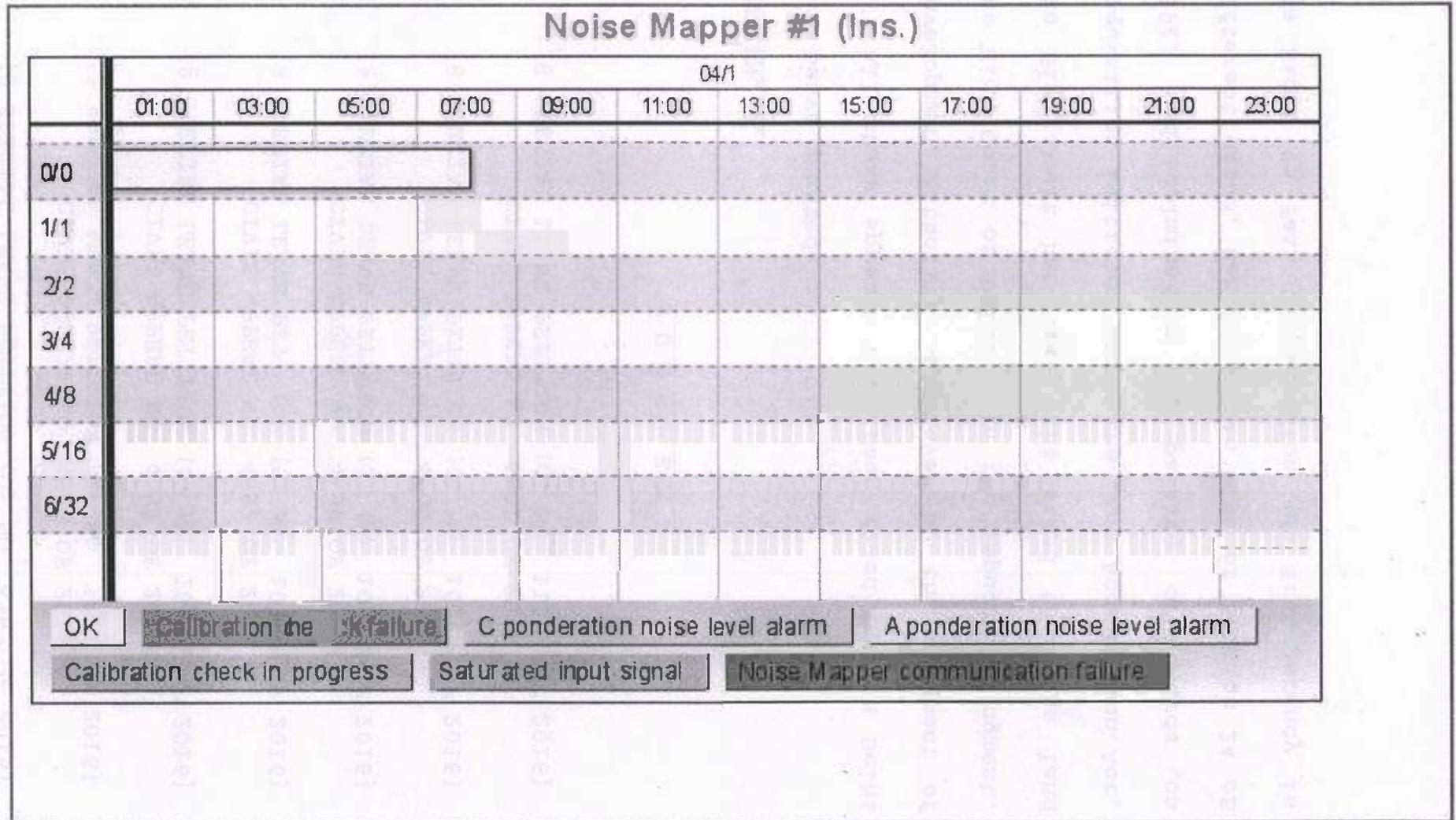
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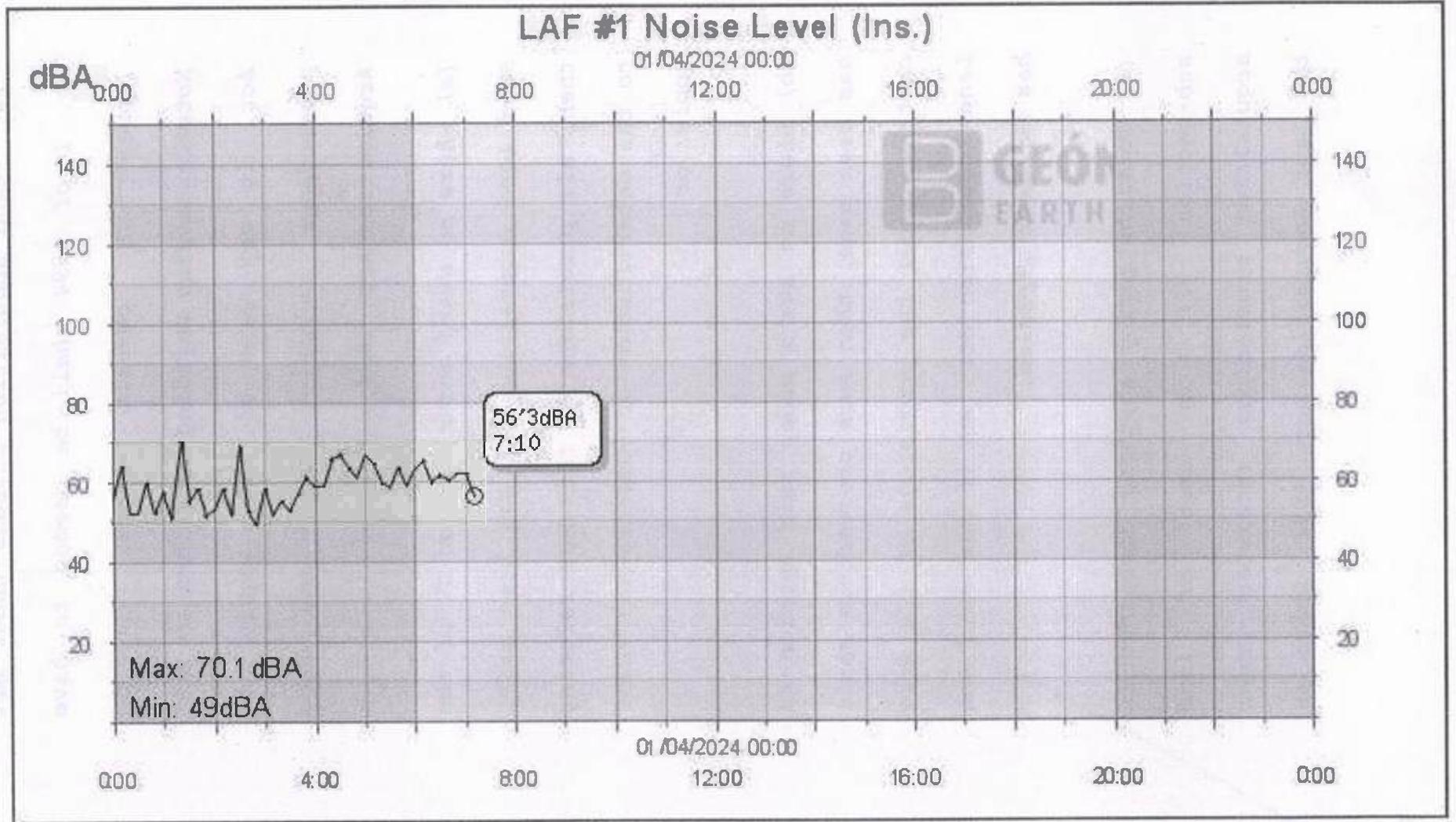
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Delhi_Anand Vihar



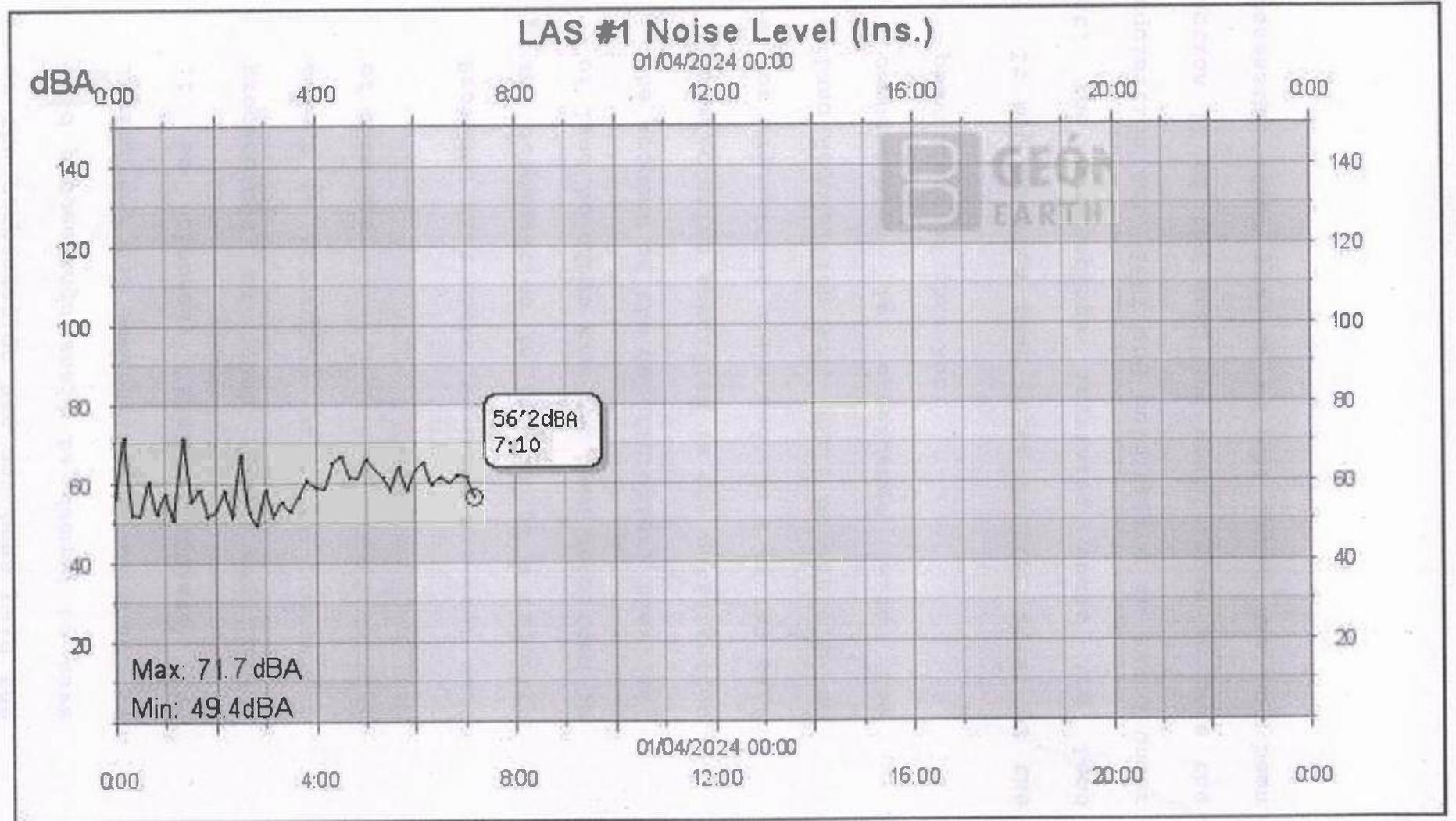
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Delhi_Anand Vihar



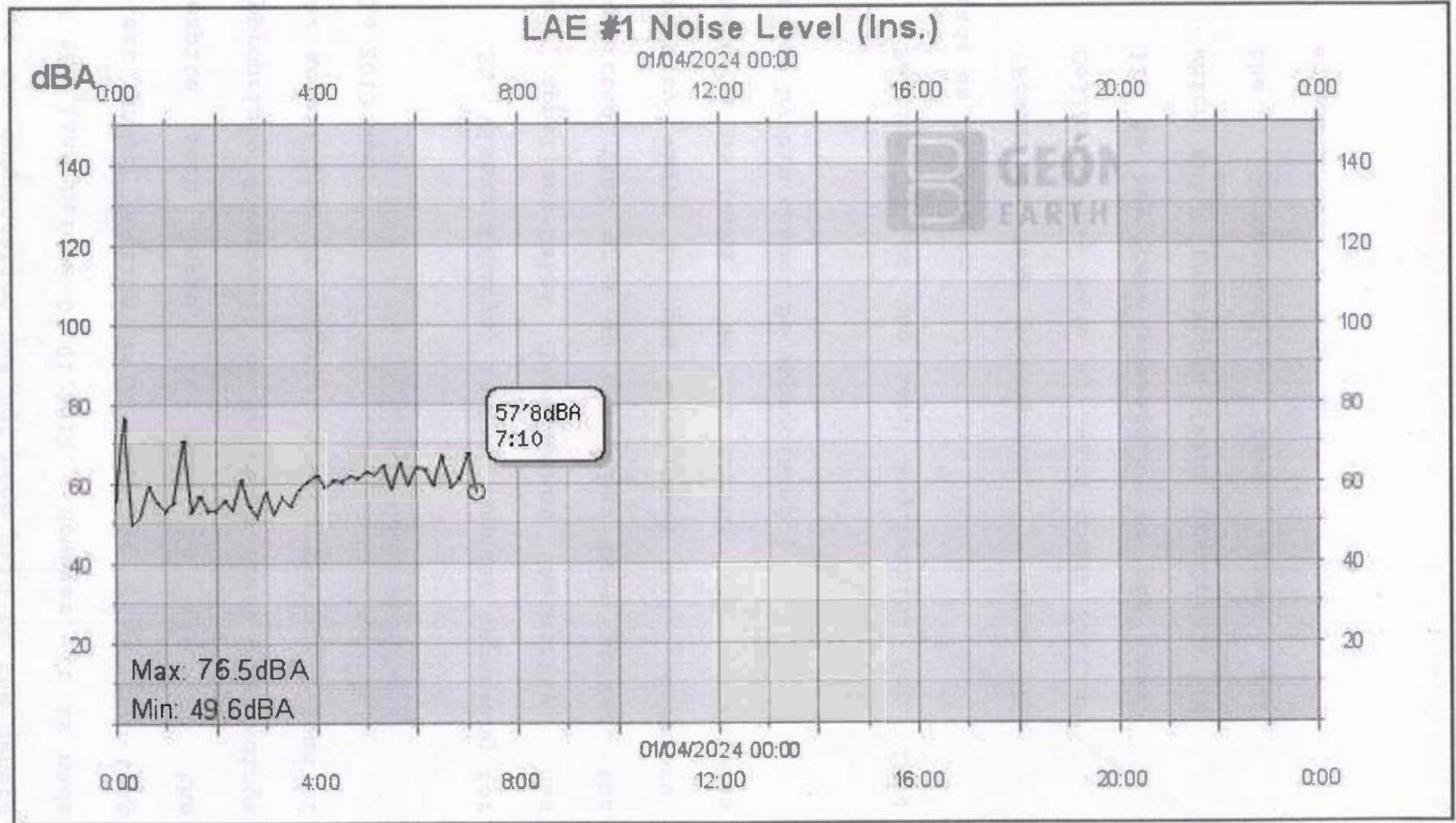
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Delhi_Anand Vihar



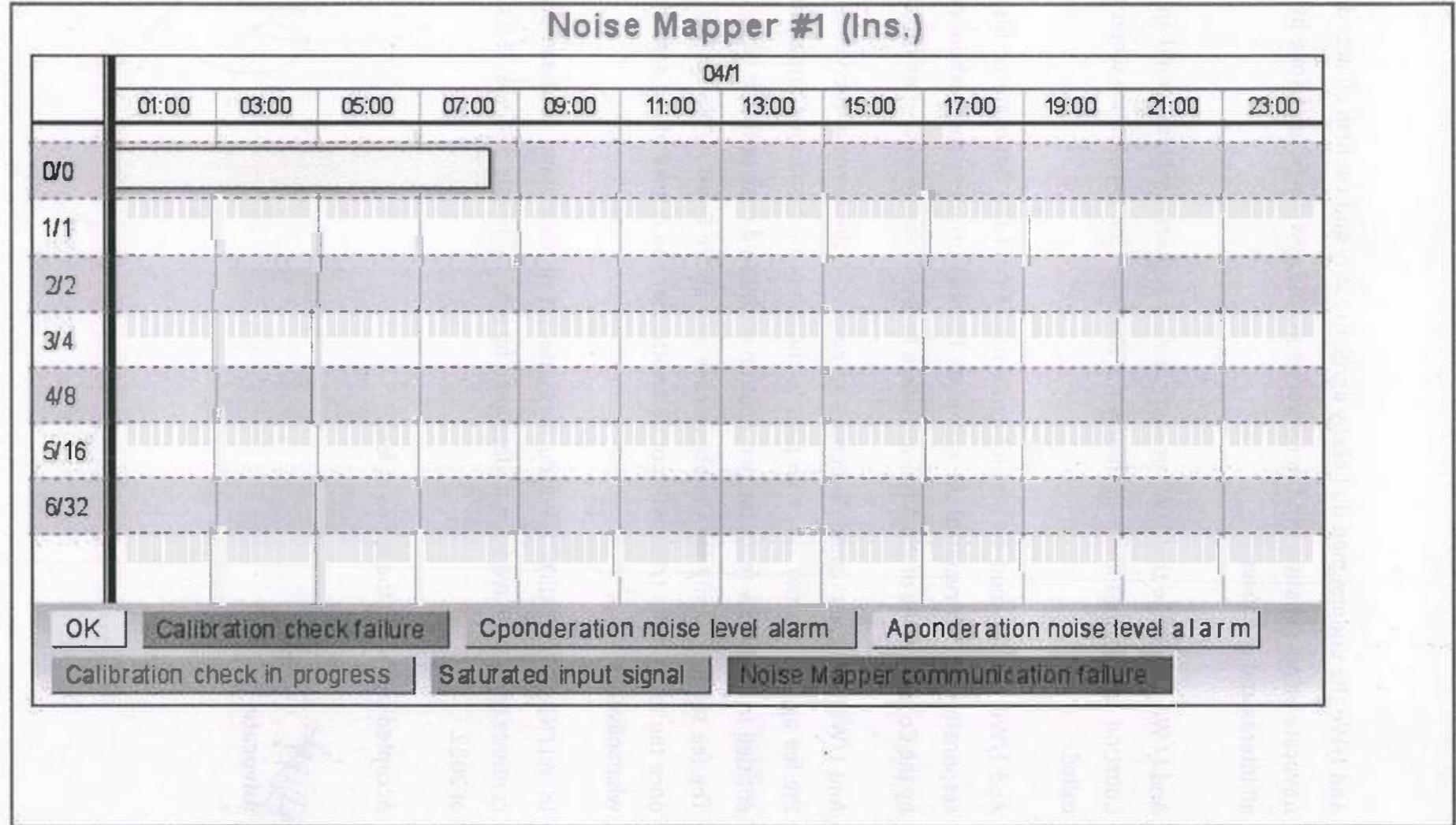
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Delhi_Anand Vihar



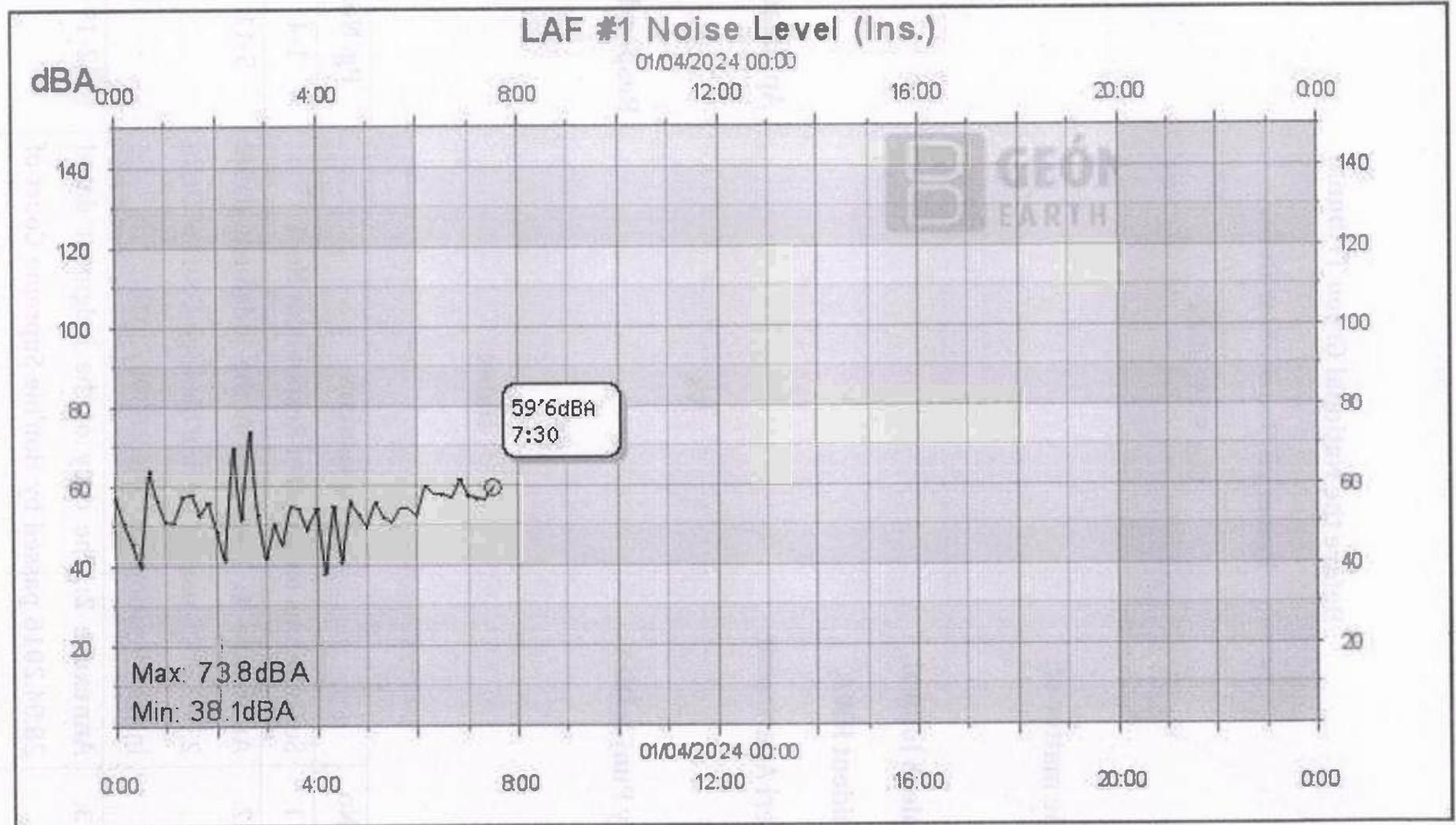
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Delhi_Civil Line



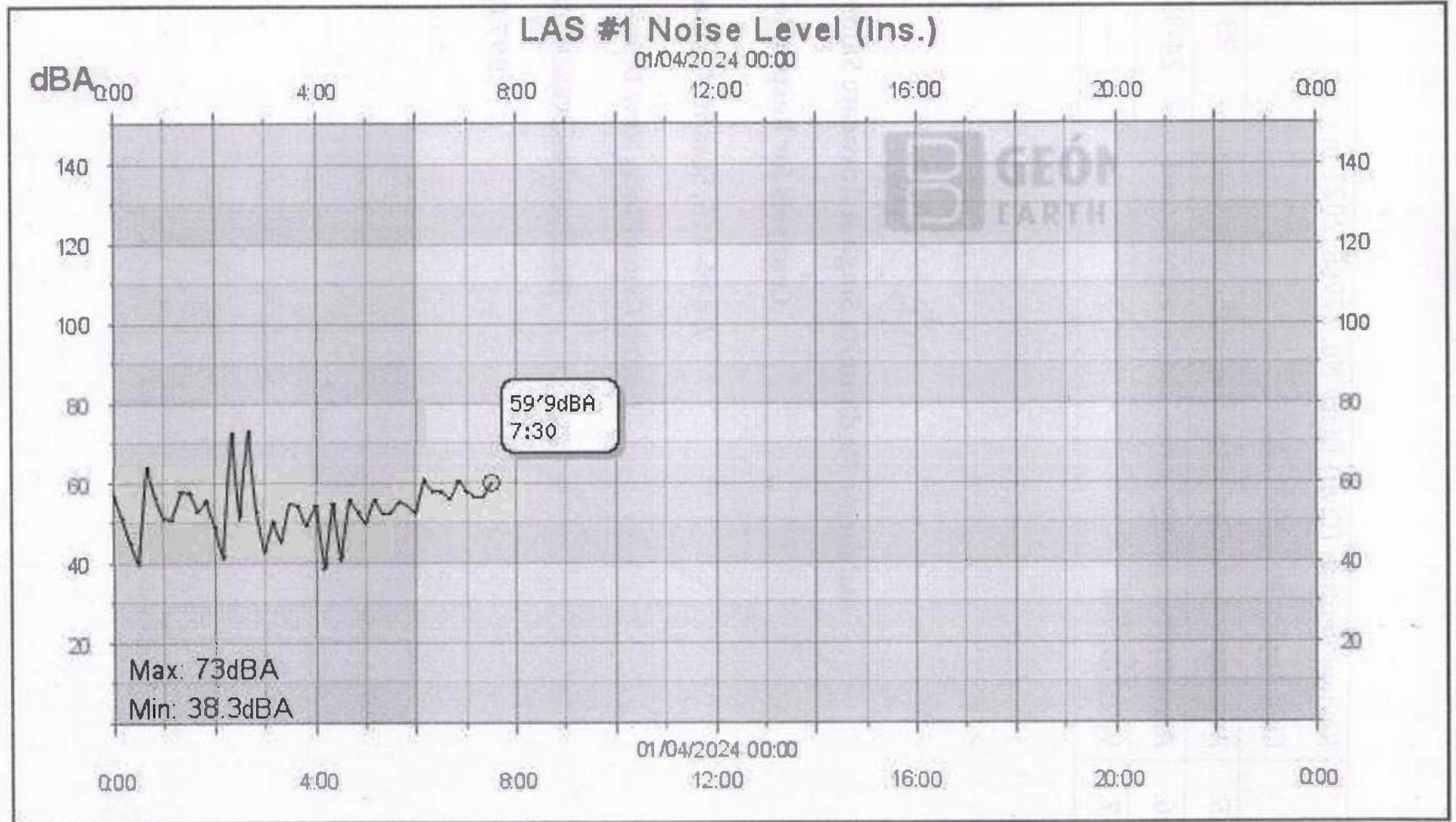
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Delhi_Civil Line



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Delhi_Civil Line



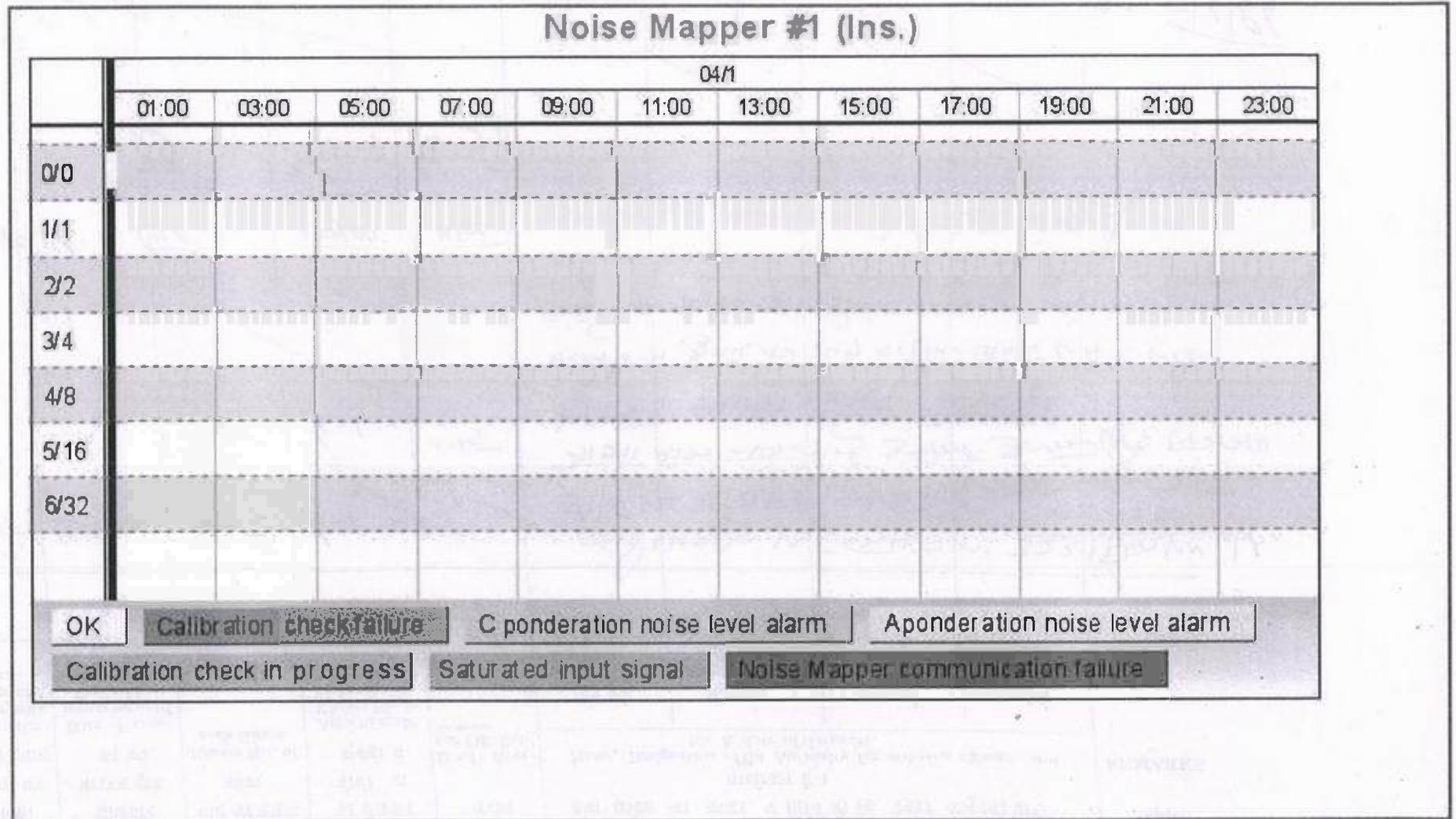
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Delhi_Civil Line



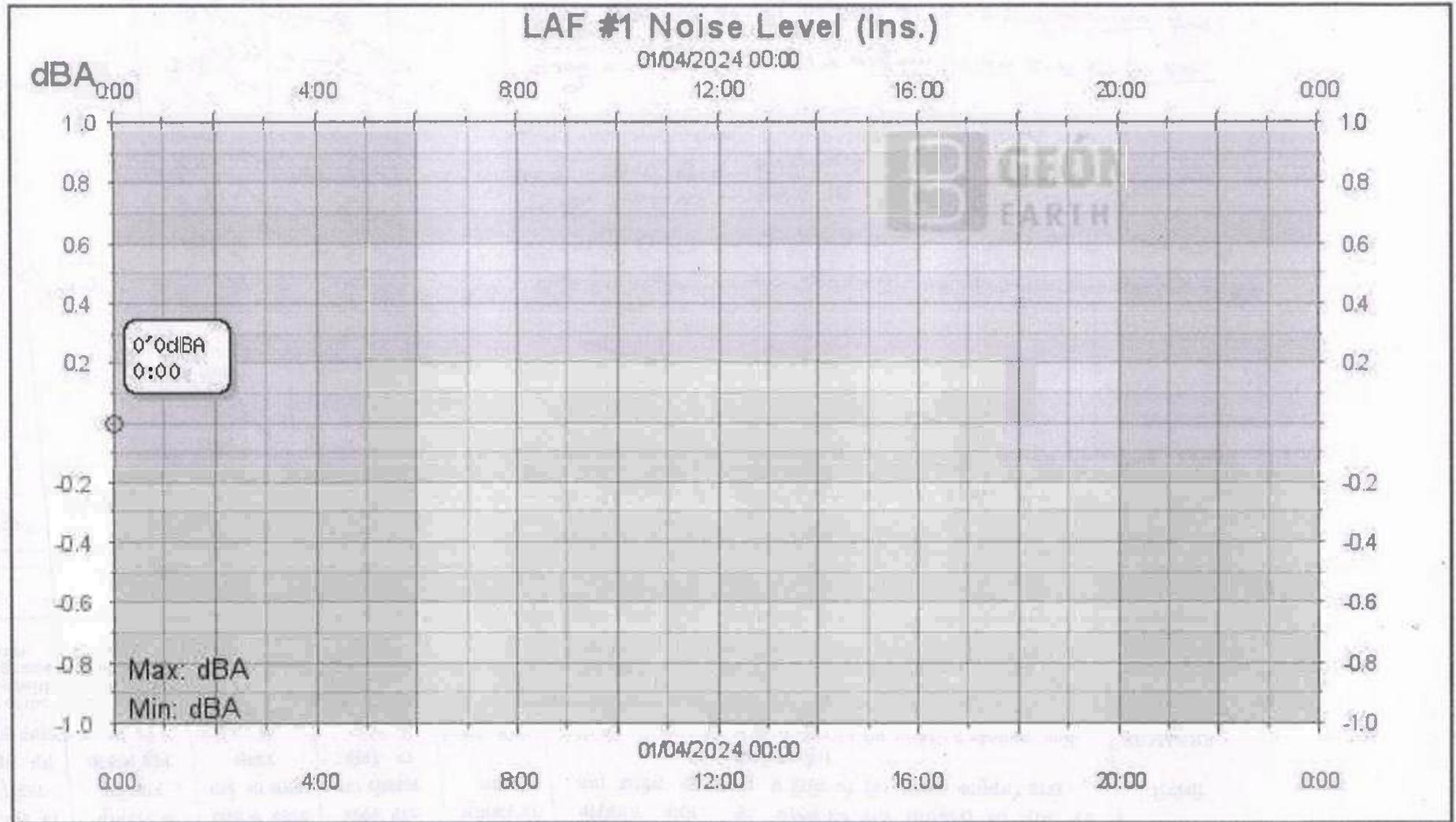
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Delhi_Mandir Marg



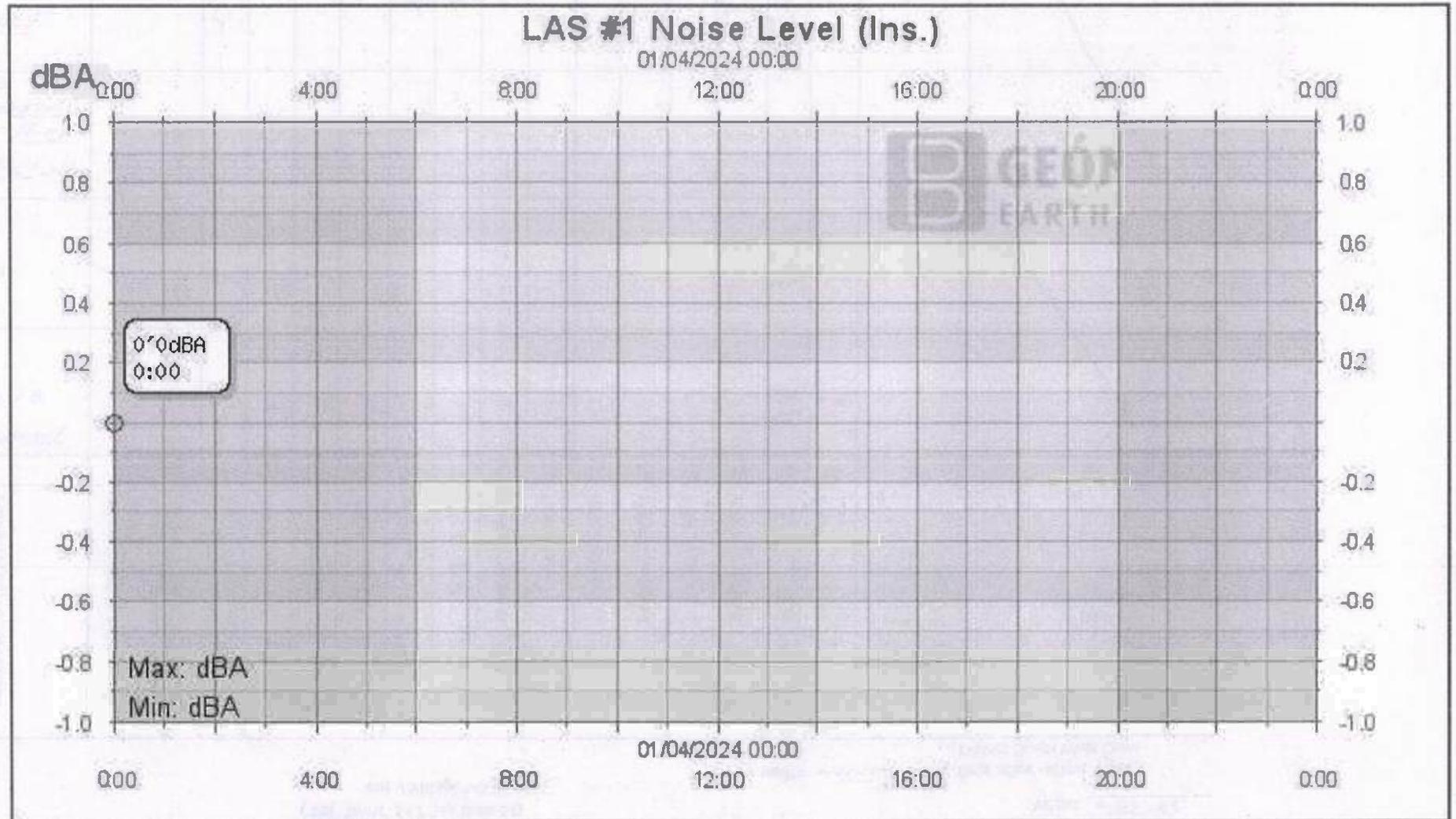
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Delhi_Mandir Marg



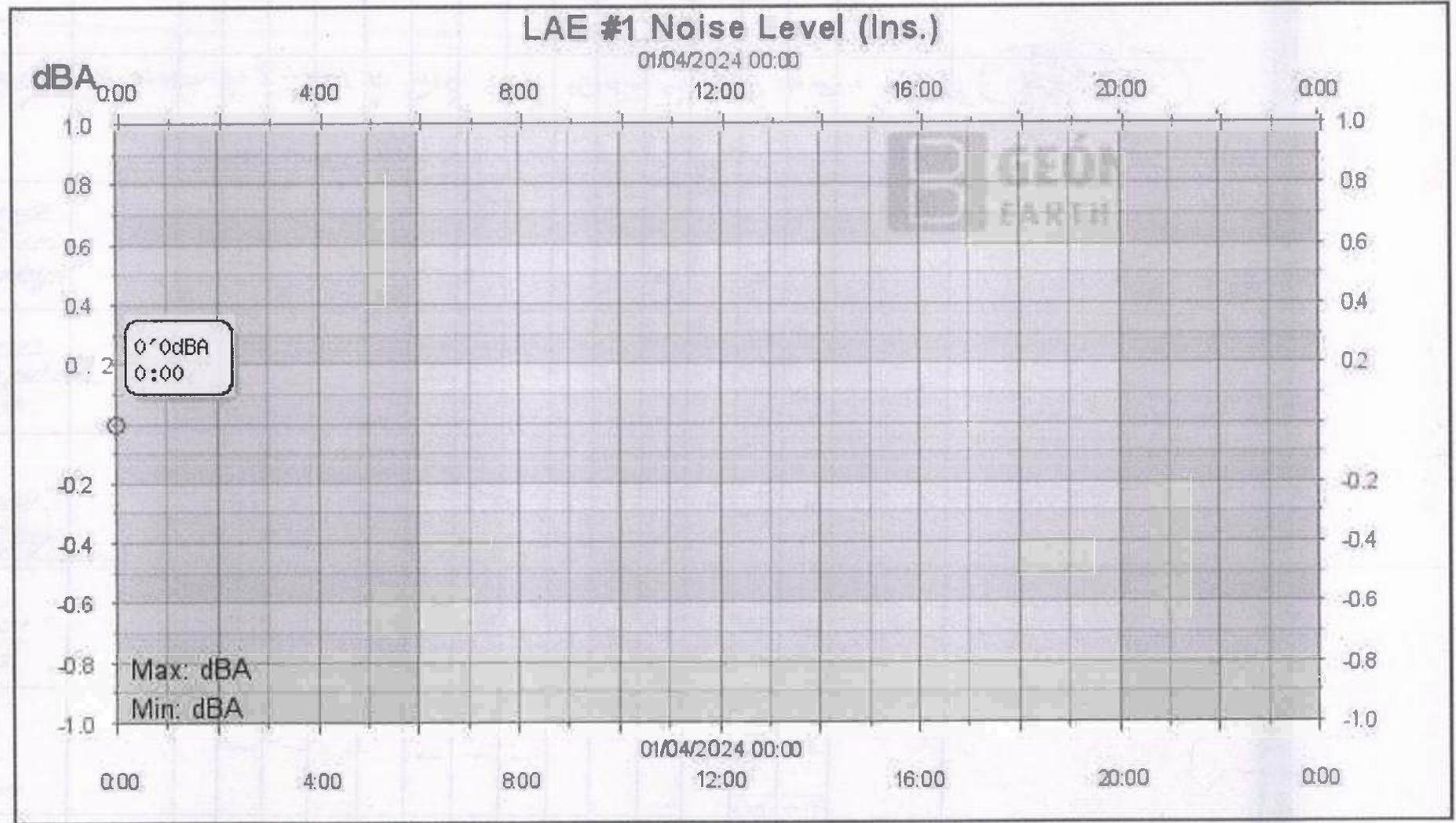
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Delhi_Mandir Marg



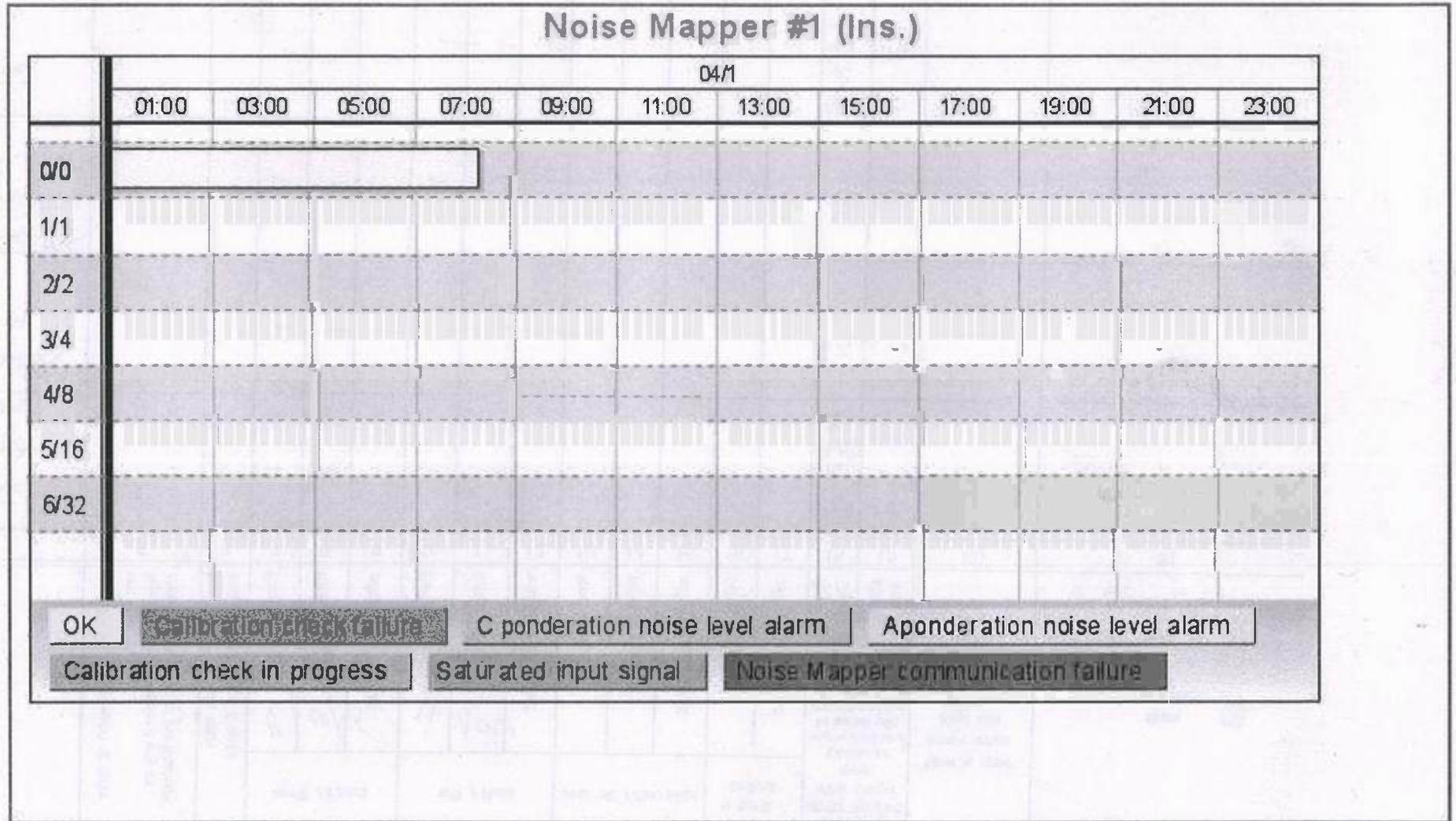
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Delhi_Mandir Marg



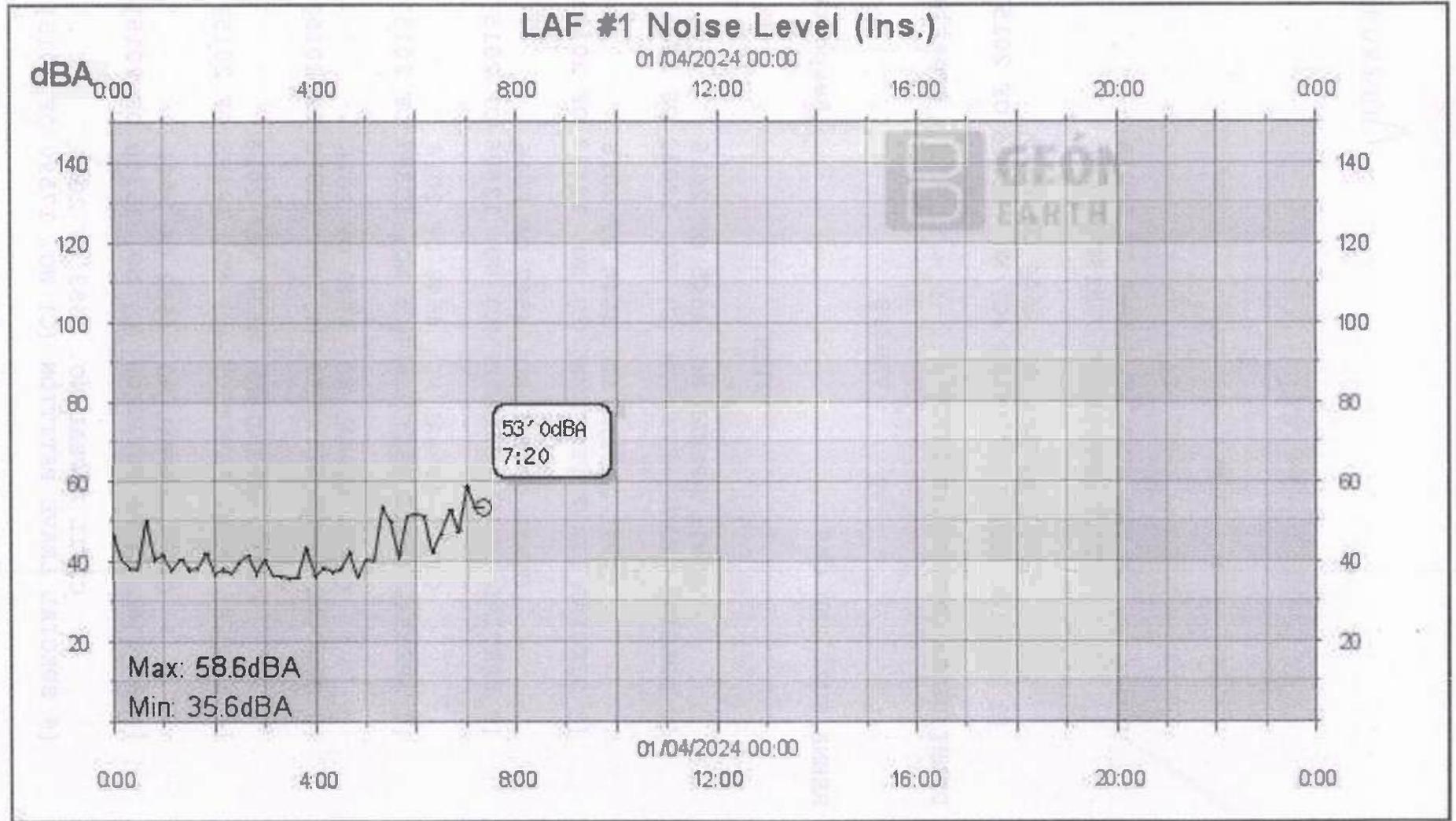
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Delhi_Punjabi Bagh



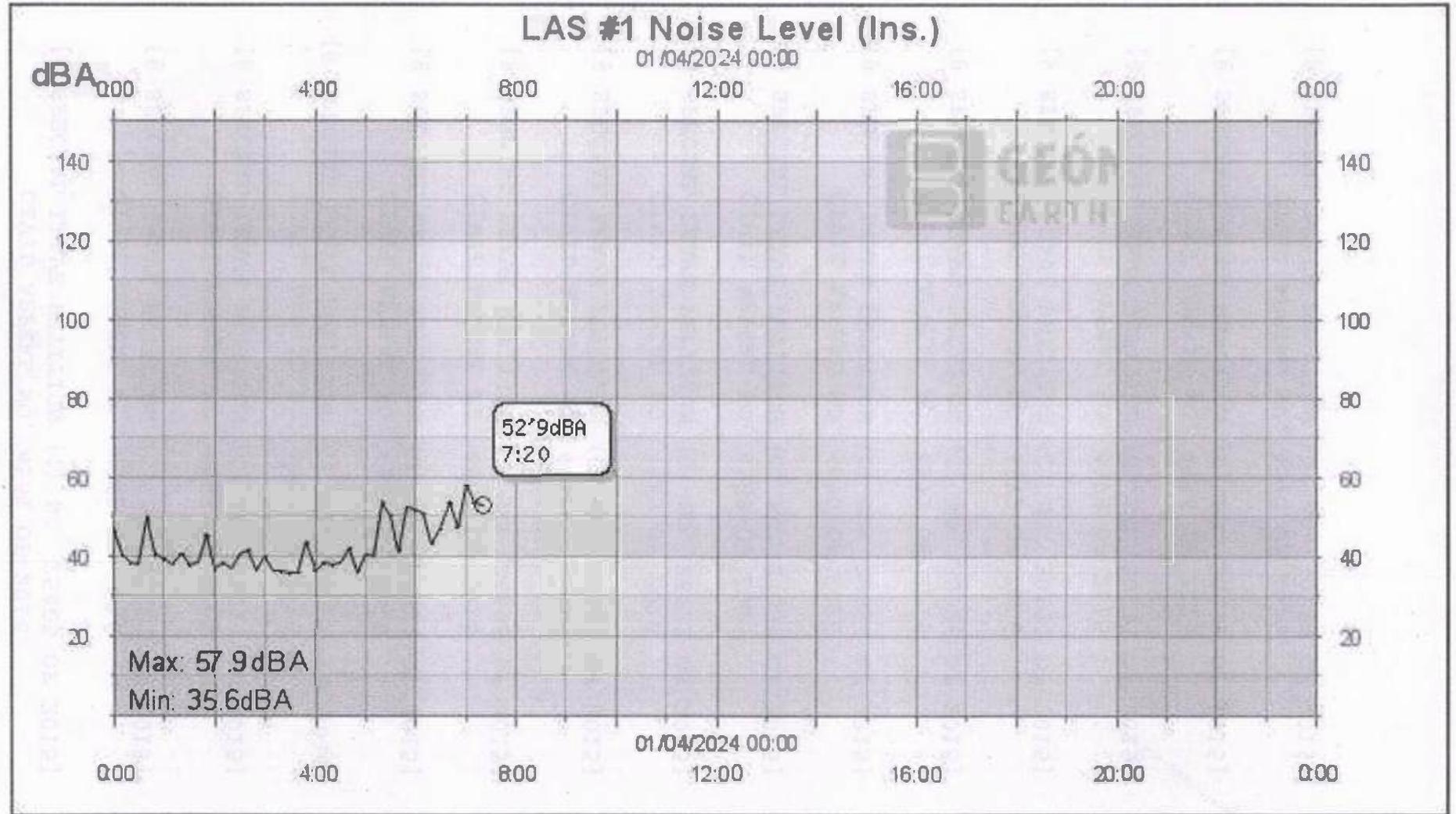
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Delhi_Punjabi Bagh



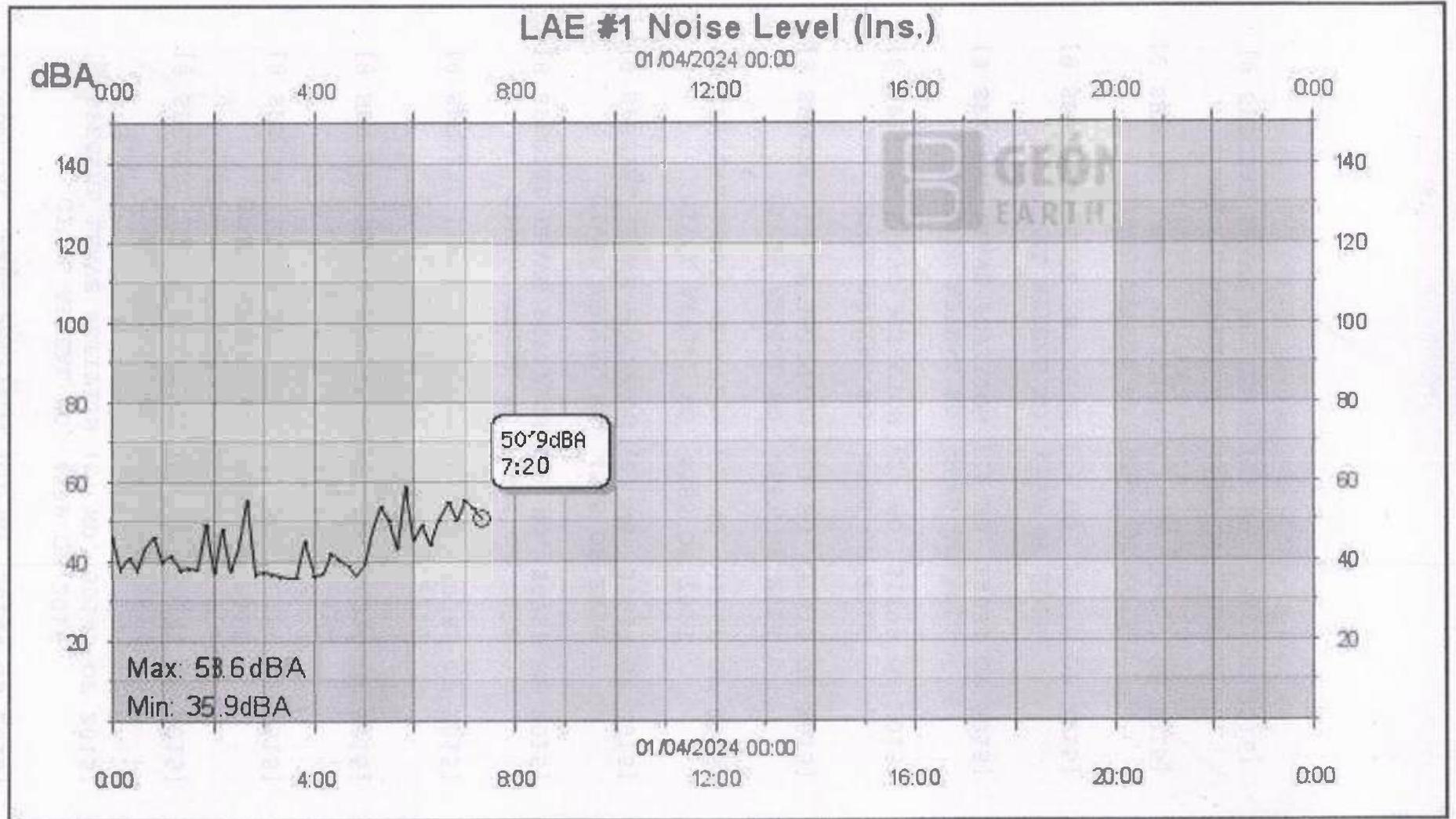
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Delhi_Punjabi Bagh



Town: Delhi - Latitude: 28°40' 12.82" N - Longitude: 77°7' 53.99" E - Altitude: 214 M

Delhi_Punjabi Bagh



Town: Delhi - Latitude: 28°40' 12.82" N - Longitude: 77°7' 53.99" E -Altitude: 214 M

906 ANNEXURE R-8

**BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI
ORIGINAL APPLICATION NO. 612/2023**

IN THE MATTER OF:

SOCIETY FOR PROTECTION OF CULTURE,
HERITAGE, ENVIRONMENT, TRADITIONS
& PROMOTION OF NATIONAL AWARENESS
(SP-CHETNA)

...APPLICANT

VERSUS

UNION OF INDIA & ORS

... RESPONDENTS

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THROUGH

Anjana Gosain

**MS. ANJANA GOSAIN, MS. NIPPUN SHARMA
& MS. HETIKA VADHERA
COUNSEL FOR RESPONDENT
CHAMBER NO. 442,
DELHI HIGH COURT,
NEW DELHI-110003
MOB- 9971403194**

**BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI
ORIGINAL APPLICATION NO. 612/2023**

IN THE MATTER OF:

SOCIETY FOR PROTECTION OF CULTURE,
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(SP-CHETNA)

... APPLICANT

VERSUS

UNION OF INDIA & ORS

... RESPONDENTS

**PRELIMINARY OBJECTIONS ON BEHALF OF RESPONDENT/
DIRECTORATE GENERAL OF CIVIL AVIATION**

MOST RESPECTFULLY SHOWETH-

1. In accordance with the order dated 10.10.2013 issued by this Hon'ble Tribunal, Respondent No. 5 (DGCA) is filing the short affidavit only addressing the maintainability of the current Petition and seeks permission from this Hon'ble Tribunal to file a detailed comprehensive affidavit, if so required or directed by Hon'ble Court.
2. Before raising objections about the maintainability of the present Petition, it is crucial to present compliances carried out by the DGCA for the consideration of this Hon'ble Tribunal:
 - i. In terms of para 5 of the MoEF&CC Notification dated 18.06.2018, Airport Noise Mapping has to be carried out at all airports as per the specifications specified by answering respondent and the same has been complied by DIAL for the IGI Airport and other applicable airports.

- ii. As per para 4 of MoEF&CC Notification dated 18.06.2018, the answering respondent has issued airport noise zone approval and Lmax for aircrafts of IGI Airport dated 07.04.2022 which is annexed as **Annexure – R1**.
 - iii. As per Civil Aviation Requirements (“CAR”), Section 10 – Aviation Environment Protection Series ‘A’ Part I Issue I dated 18.12.2014 issued by answering respondent, all busy airports should install noise monitoring stations and perform noise mapping etc. All the CAR requirements have been fulfilled by DIAL and other applicable airports have complied. Presently, the documented noise levels at Delhi Airport and other applicable airports complying with the specifications delineated in the MoEF&CC Notification dated 18.06.2018.
 - iv. Further, the Airport Authority of India has released periodic Aeronautical Information Publications (AIP) detailing the prescribed noise levels for aircraft. The most recent publication, dated 11.08.2022 for IGI airport, specifying the noise levels for aircraft (as Lmax) at 105 dB(A) during the daytime (6AM to 10PM) and 95 dB(A) during the nighttime (10PM to 6AM).
3. In light of the foregoing, it is apparent that there has been no violation of the MoEF&CC Notification dated 18.06.2018 at IGI Airport, which was also communicated by the answering Respondent to the Applicant vide its letter dated 18.08.2022 and consequently, the Applicant's contention lacks substance. Copy of the answering Respondent's letter dated 18.08.2022 is annexed as **Annexure- R2**.
 4. This Hon'ble Tribunal while considering the first challenge laid by the Applicant in Appeal No. 60 of 2013 had rejected a similar prayer as sought in the present Original Application i.e., a prohibition on landing

and taking off of flights at the Delhi Airport from 10pm to 6pm. on the ground of Principle of Sustainable Development. This rejection has not been challenged by the Applicant before any appellate forum, therefore the Applicant cannot be permitted to raise a similar prayer which was already been decided and disposed of by this Hon'ble Tribunal vide its judgment dated 24.11.2017.

5. The Applicant has also deposed falsely before this Hon'ble Tribunal contending in its present Original Application that the rejection of its plea for a stay on landing and take-off by flights at Delhi airport was attributed to the MoEF&CC Notification allowing a two-year period for implementing a suitable mechanism. The Applicant asserted, "*That may have been the reason why the prayer to impose night curfew and insulation of flats falling under the landing funnel was rejected.*" However, in accordance with paragraph 12 of the judgment dated 24.11.2017, this Hon'ble Tribunal dismissed the plea, deeming that "*The rights of people are subject to restrictions that must be reasonable. To assert that the airport should be shut for the entire night would neither be in consonance with the Principle of Sustainable Development nor would it be an option open to the State in the peculiar circumstances prevailing internationally today.*"
6. Furthermore, as previously mentioned, there is no infringement of the MoEF&CC Notification dated 18.06.2018; hence, the Applicant 's plea for the implementation of the said Notification lacks merit. It is pertinent to note that the Applicant deliberately omitted to disclose to this Hon'ble Tribunal that they had filed an execution application bearing number Execution Application No. 24 of 2019 (**'Execution Application'**) seeking enforcement of the judgment dated 24.11.2017 passed in Appeal No. 60 of 2013. Additionally, the Applicant failed to disclose that in the

judgment dated 18.09.2019 issued by this Hon'ble Tribunal, the matter concerning the MoEF&CC Notification dated 18.06.2018 was addressed based on the Action Taken Report submitted by the airport operator, Delhi International Airport Ltd.

7. That the prayer of publishing the noise pollution generated by aircrafts which are recorded live with each landing and take-off on the website of Respondents No. 2,4, 5,6,8 and 9, is similar to the direction passed by this Hon'ble Tribunal in its judgment dated 18.09.2019, wherein this Hon'ble Tribunal had directed the airport operator, Delhi International Airport Ltd as under:

7. We suggest that DIAL should not only measure and maintain the prescribed noise levels but also display the same in public domain.

8. The Applicant intentionally omitted to mention the Execution Application and the judgment dated 18.09.2019 rendered by this Hon'ble Tribunal in the said execution application. The failure to plead material facts reflects a lack of credibility on the part of the Applicant and accordingly the present Petition is liable to be dismissed.
9. It is pertinent to clarify that the Applicant has alleged that the Respondent 2 i.e., CPCB and Respondent 6 i.e., DPCC admitted that it does not permit distribution of high noise pollution but have passed on responsibility to the answering Respondent who has even refused to acknowledge the existence of the problem. As already mentioned above, the answering respondent has duly responded to the communication from the Applicant with regard to his concerns raised by Applicant in his complaints, which has not been brought on record by the Applicant. The

responses made by the answering respondent is annexed herewith as **Annexure –R3 (Colly)**

10. Further, the Airport operator in the Execution Application had also stated about the implementation of Mixed Mode Operations at the Delhi Airport, which is also stated in the AIP dated 11.08.2022 issued by AAI. In light of the above, since this issue has been considered and dealt with by this Hon'ble Tribunal in Appeal No. 60 of 2013 and in the Execution Application filed by the Applicant, which remained unchallenged by the Applicant. Accordingly, the Applicant is now precluded from raising the identical argument in the current Original Application.
11. In light of the reasons stated above the present Petition deserves to be dismissed on the ground of res judicata. However, Respondent No. 5 craves leave to file a more detailed and comprehensive response to the present Original Application in due course as and when directed by this Hon'ble Tribunal as at present this Hon'ble Tribunal is first considering the maintainability of the present Petition.

THROUGH



**MS. ANJANA GOSAIN, MS. NIPPUN SHARMA
& MS. HETIKA VADHERA
COUNSEL FOR RESPONDENT
CHAMBER NO. 442,
DELHI HIGH COURT,
NEW DELHI-110003
MOB- 9971403194**

BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI
ORIGINAL APPLICATION NO. 612/2023

IN THE MATTER OF:

SOCIETY FOR PROTECTION OF CULTURE, HERITAGE,
ENVIRONMENT, TRADITIONS & PROMOTION OF
NATIONAL AWARENESS (SP-CHETNA) ... APPLICANT

VERSUS

UNION OF INDIA & ORS ... RESPONDENTS

AFFIDAVIT

I, Rohit Thakur, S/O Sh. I.S Thakur aged about 39 years working as Deputy Director, AE, Directorate General of Civil Aviation, New Delhi – 110066 do hereby solemnly affirm an oath as declare:

1. That I am the deponent herein and in my official capacity, as stated above, I am well conversant with the facts and circumstances of the case, as such I am competent and authorized to swear by way of the present Affidavit for and on behalf of the answering Respondents.
2. That the contents of accompanying preliminary objections are true as per the information derived from the official records.
3. That I have read and understood the contents of the present Affidavit. It is further submitted that the contents thereof are true to the best of my knowledge and information obtained from the official records and no part of it is false and nothing material has been concealed therefrom.



*Identify the Executant/Deponent
Signed in my Presence*

21 NOV 2023

VERIFICATION

Verified at Delhi this ___ day of ___, 2023 that the contents of the above Affidavit are true and correct to my knowledge and as per the official records, and no part of it is false and nothing material has been concealed therefrom.

Rohit Thakur

DEPONENT
रोहित ठाकुर / ROHIT THAKUR
उप निदेशक / Deputy Director
वायुयान इंजिनियरिंग निदेशकालय
Aircraft Engineering Directorate
भारत विमानन महानिदेशकालय
Directorate General of Civil Aviation
नई दिल्ली-3 / New Delhi-3

Rohit Thakur

DEPONENT

रोहित ठाकुर / ROHIT THAKUR
उप निदेशक / Deputy Director
वायुयान इंजिनियरिंग निदेशकालय
Aircraft Engineering Directorate
भारत विमानन महानिदेशकालय
Directorate General of Civil Aviation
नई दिल्ली-3 / New Delhi-3

CERTIFIED THAT THE CONTENTS EXPLAINED TO THE
DEPONENT/EXECUTANT WHO IS SEEMED PERFECTLY TO
UNDERSTAND AFFIRMED & DEPOSED BEFORE ME AT NEW DELHI

IDENTIFY THE EXECUTANT/DEPONENT WHO HAS
SIGNED IN MY PRESENCE

NAND KISHOR AGARWAL, Advocate
NOTARY PUBLIC (NEW DELHI)

Nand Kishor Agarwal

21 NOV 2023

913

GOVERNMENT OF INDIA
OFFICE OF THE
DIRECTOR GENERAL OF CIVIL
AVIATION
OPP. SAFDARJUNG AIRPORT,
NEW DELHI - 110 003



भारत सरकार
महानिदेशक नागर विमानन
का कार्यालय
सफदरजंग एरपोर्ट के सामने
नई दिल्ली - ११० ००३

Aircraft Engineering Directorate

Telephone/ दूरभाष: +91-11-24611504

E-mail/ ई-मेल: rthakur.dgca@nic.in

Reference No./ संख्या: 04-01/2019 - AED

Dated/ दिनांक: 07 Apr, 2022

विमान अभियांत्रिकी निदेशालय

To,
Delhi International Airport (P) Limited,
New Udaan Bhawan, Opposite Terminal 3
Indira Gandhi International Airport
New Delhi -110037
India.

(Kind Attention: Dr.M. Muthukrishnan,Head- Environment, Delhi Airport)

Subject: Approval of Airport Noise Zone developed by Delhi International Airport Limited, New Delhi

Sir,

Reference is invited to the G.S.R 568(E) dated 18/06/2018, on Airport Noise Zone area at Airports to define Noise Contour for day and night period, considering all approach and departure funnels and Instrument Flight Procedures in consultation with airports Air Navigation Service Provider as per the Master Plan of the Airport.

In this regard, Delhi International Airport (P) Limited (DIAL), New Delhi has carried out the study and developed the Airport Noise Zone document no DIAL/ANZ/2021-22/Ver1. The submitted document has been examined in accordance with G.S.R 568(E) issued by Ministry Of Environment, Forest and Climate Change (MoEF) dated 18/06/2018 and found satisfactory.

DGCA shall review the noise contour and Lmax of DIAL, New Delhi airport after two years and based on the satisfactory evaluation the approval will be renewed further for another two years.

This approval shall remain valid for a period two years from the date of issue unless suspended/revoked/cancelled. The airport operator shall display the approved noise zone on their official website.

Yours faithfully

(Rohit Thakur)

Deputy Director (AE)

for Director General of Civil Aviation

Copy to:-

- 1) The Chairman, Airports Authority of India, Block -C, Rajiv Gandhi Bhawan, Safdarjung Airport, New Delhi - 110003
- 2) Dy. Director General, Directorate of Aerodrome Standards, DGCA HQs, opposite Safdarjung Airport, New Delhi- 110003

334250/2022/AED-DGCA
GOVERNMENT OF INDIA
OFFICE OF THE
DIRECTOR GENERAL OF CIVIL AVIATION
OPP. SAFDARJUNG AIRPORT,
NEW DELHI - 110 003

DGCA-27025/3/2022-AED-DGCA

914

429



भारत सरकार
महानिदेशक नागर विमानन
का कार्यालय
सफदरजंग एरपोर्ट के सामने
नई दिल्ली - ११० ००३

Aircraft Engineering Directorate
Telephone/ दूरभाष: +91-11- 24611504
E-mail/ ई-मेल: rthakur.dgca@nic.in

Reference No./ संख्या: DGCA-27025/3/2022-AED-DGCA
Dated/ दिनांक: 18 Aug, 2022

विमानअभियांत्रिकीनिदेशालय

To,
Sh Anil Sood, Hony President- CHETNA
A 403, Somdutt Chamber -1,
5 Bhikajicma Place, New Delhi

**Subject: Grievance No. 914/5/2022: Humongous Noise Pollution by Aircrafts landing at
RW 29/11 - 25-05-2022**

Reference:

i) CPCB letter no. CP-25/3/2021-UPC-I-HO-CPCB-HO1893-94 dated 04 July

Sir,

Reference is made to the File No. CP-25/3/2021-UPC-I-HO-CPCB-HO1893-94 dated 04 July 2022 regarding a complaint of abnormally high noise from aircraft movement.

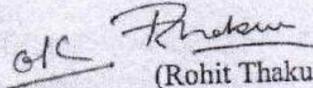
It is stated that Ministry Of Environment, Forest and Climate Change (MoEF) has issued G.S.R 568(E) dated 18/06/2018, on Airport Noise Zone area to define Noise Contour for day and night period, considering all approach and departure funnels and Instrument Flight Procedures in consultation with airports Air Navigation Service Provider as per the master Plan of the Airport.

In this regard, it may be noted that Delhi International Airport Limited (DIAL), New Delhi has developed the airport noise zone, using Noise Model in accordance to the noise limit prescribed in G.S.R 568(E) dated 18/06/2018.

At present, no substantial complaint has been received regarding violation of limits prescribed in the noise zone defined as per G.S.R 568(E) dated 18/06/2018. Further as per information provided by DIAL, there is no violation of limits as prescribed by MoEF and DGCA

This issues with approval of competent authority

Yours faithfully


(Rohit Thakur)

Deputy Director (AE)
for Director General of Civil Aviation

Copy to:-

- 1) Shri N K Gupta, Divisional Head, UPC -I, CPCB, Ministry Of Environment, Forest and Climate Change, 2nd Floor, Prithivi Wing, Indira Paryavaran Bhawan, Aliganj, Jorbagh, New Delhi- 11003

सर्त किया/ISSUED

AED-DGCA

915



केन्द्रीय प्रदूषण नियंत्रण बोर्ड
CENTRAL POLLUTION CONTROL BOARD
पर्यावरण, वन एवं जलवायु परिवर्तन मंत्रालय भारत सरकार
MINISTRY OF ENVIRONMENT, FOREST & CLIMATE CHANGE GOVT. OF INDIA

File No: CP-25/3/2021-UPC-I-HO-CPCB-HO

1893-94

July 04, 2022

To,

- | | |
|--|---|
| 1. The Director General
Director General of Civil Aviation
DGCA Headquarters,
Opp. Safdarjung Airport, Delhi-110003 | 2. The Member Secretary
Delhi Pollution Control Committee
6th floor, C wing, Delhi Secretariat,
I P Estate, Delhi - 110002 |
|--|---|

Sub: Complaint regarding abnormally high noise from aircraft movement.

Ref.: i) CPCB e-mail dated 26/04/2022,

ii) MoEF&CC letter No. Q-16016/72/2022-CPA, dated 6/05/2022

iii) [Ticket Id: 25269298864] Grievance No. 914/5/2022, dated 9/6/2022

Sir,

Please find enclosed herewith complaints/grievances received as referred above from Sh. Anil Sood, Hony President - CHETNA, A 403, Somdutt Chamber - 1, 5 Bhikajicama Place, New Delhi regarding above mentioned subject. The contents are self-explanatory.

It is to state that repeated complaints/grievances regarding above subject have been received by this office. Therefore, it is requested that the matter may please be examined at appropriate level and action as deemed fit, may please be taken. Copy of the Action Taken Report may please be provided directly to the complainant.

Encl: As above

Yours faithfully

[N K Gupta]

Divisional Head, UPC-I

Copy for kind information to:

1. Sh. R. N. Pankaj, Scientist 'D'
CP Divisin,
Ministry of Environment, Forest and Climate Change,
2nd Floor, Prithivi Wing, Indira Paryavaran Bhawan,
Aliganj, Jorbagh Road, New Delhi -110003
- ✓ 2. Sh. Anil Sood, Hony President - CHETNA
A 403, Somdutt Chamber - 1,
5 Bhikajicama Place, New Delhi

GOVERNMENT OF INDIA
OFFICE OF THE
DIRECTOR GENERAL OF CIVIL AVIATION
OPP. SAFDARJUNG AIRPORT,
NEW DELHI – 110 003



भारतसरकार
महानिदेशकनागरविमानन
काकार्यालय
सफदरजंगएरपोर्टकेसामने
नईदिल्ली – ११०००३

Aircraft Engineering Directorate

Telephone/ दूरभाष: 011-24622495
E-mail/ई-मेल: meenu.dgca@nic.in

Reference No./ संख्या: DGCA-27033/2/2022-AED
Dated/ दिनांक: 10 April, 2023

विमानअभियांत्रिकीनिदेशालय

To,

Divisional Head, UPC-1,
Parivesh Bhawan,
East Arjun Nagar,
Delhi-110032

Subject: Complaint regarding abnormally high noise from aircraft movement.

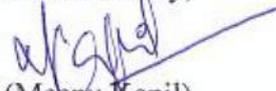
Sir,

Reference is made to your letter No. CP-15099/1/2021-UPC-I-HO-CPCB-HO/7809 dated 04th January, 2023 on the above subject.

It may be noted that no violation of the noise levels set forth by CPCB Notification 568E of June 18, 2018 has come to the notice of this office. M/s. Delhi International Airport Limited (DIAL) has also confirmed that the noise levels of the aircrafts landing at IGI airport are within the noise limits established by CPCB notification 568E dated 18th June 2018 and are being complied with by a variety of noise mitigation measures. Hence, no action is envisaged against the airport or any airline. Please find attached the reply received from M/s. DIAL Airport in the instant matter.

This issues with the approval of the DG (CA).

Yours faithfully,


(Meenu Kapil)
Director (AE)

836/ JDG(R.K)/23

917

17/01/23

केन्द्रीय प्रदूषण नियंत्रण बोर्ड
CENTRAL POLLUTION CONTROL BOARDपर्यावरण, वन एवं जलवायु परिवर्तन मंत्रालय भारत सरकार
MINISTRY OF ENVIRONMENT, FOREST & CLIMATE CHANGE GOVT. OF INDIAरे.ई.डी. सेक्शन / A.E.D. Section
दफ्तरी नं. / Dairy No. 23/124
दिनांक / Date 17/01/2023

No: CP-15099/1/2021-UPC-I-HO-CPCB-HO (7809)

January 04, 2023

To,

✓ The Director General
Directorate General of Civil Aviation
DGCA Headquarters,
Opp. Safdarjung Airport,
Delhi - 110003

23/11
JDG(RK)
DDG(CP)

Sub: Complaint regarding abnormally high noise from aircraft movement.

- Ref.: i) CPCB letter No. CP-25/3/2021-UPC-I-HO-CPCB-HO/1893, dated 04/07/2022,
ii) CPCB letter No. CP-25/3/2021-UPC-I-HO-CPCB-HO/6318, dated 15/09/2022
iii) CPCB letter No. CP-15099/1/2021-UPC-I-HO-CPCB-HO/7109, dated 03/11/2022
iv) CPCB e-mail dated 26/04/2022 (upc1.cpcb@gov.in)
v) MoEF&CC letter No. Q-16016/72/2022-CPA dated 14/11/2022
vi) MoEF&CC letter No. Q-16016/72/2022-CPA, dated 6/05/2022
vii) MoEF&CC letter No. Q-16016/72/2022-CPA dated 21/06/2022
viii) Anil Sood E-mail dated 26/12/2022

Sir,

Please find enclosed herewith copies of repeated complaints received vide e-mail dated 30/10/2022, 25/11/2022, 26/11/2022 & 30/11/2022 from Sh. Anil Sood, Hony President - CHETNA, A 414-415, Somdutt Chamber-1, 5 Bhikajicama Place, New Delhi on the above mentioned subject. The contents of the complaints are self-explanatory.

Earlier, CPCB had forwarded similar complaints/grievances vide letters of even number dated 26/04/2022, 04/07/2022, 15/09/2022 and 03/11/2022 for necessary action and ensuring the compliance of Environment (Protection) Amendment Rules, 2018 (GSR 568(E) dated 18th June, 2018).

As per point no. 2 of Environment (Protection) Amendment Rules, 2018 (GSR 568(E) dated 18th June, 2018) "Compliance of noise levels applicable to Airport Noise Zone as specified above shall lie with the airport operator and overseen by the Directorate General of Civil Aviation".

Designated authorities are responsible to control noise pollution in their respective regions and take necessary action against the violators.

AEO(MSR)

Please examine
17.01.2023
12/01/2023A. examine urgently &
put up draft reply.

17/01
DAB(MK)
DDG(RT)
AD(CRUS)

Cond P-2/2

from Page 1/-

In view of the above, it is once again requested that the matter may please be examined at appropriate level and action as deemed fit, may please be taken. Copy of the Action Taken Report may please be provided to the complainant and Ministry of Environment, Forest & Climate Change.

Encl: As above

Yours faithfully,

[Signature]

[N K Gupta]

Divisional Head, UPC-I

Copy to:

1. The Member Secretary
Delhi Pollution Control Committee
6th floor, C wing, Delhi Secretariat,
I P Estate, Delhi - 110002 : To ensure compliance of
Environment (Protection)
Amendment Rules, 2018 (GSR no.
568(E) dated 18th June, 2018) please.
2. Sh. Anil Sood
Hony President - CHETNA,
A 414-415, Somdutt Chamber-1,
5 Bhikajicama Place, New Delhi : For kind information please.
3. Sh. Ved Prakash Mishra, Director (CP)
Indira Paryavaran Bhawan, Jorbagh
Road, New Delhi - 110003 : For kind information please.

VAKALTANAMA

In the Courts of Hon'ble National Green Tribunal, New Delhi
 Suit/Appeal/W.P. No. OA No. 612 of 19.2023
 Petitioner/Plaintiff/Appellant
SP-CHETNA Versus Union of India Defendant/Respondent
 KNOW ALL MEN BY THESE PRESENTS THAT I/We Directorate General of
Civil Aviation, India do hereby appoint

ANJANA GOSAIN**442 Lawyer Chambers, DELHI HIGH COURT****ENROLMENT NO.- D/239/1978 Mob.: 9810100674**

To be my/our lawful attorney Advocate in the matter noted above and authorise him/them on my/our behalf for me/us and or in our/my name to do amongst other things all the following acts, deeds and things or any of them that is to say.

1. To institute and defend the above noted suit action, application or proceedings and to file plaint, written statement and other necessary pleadings and application including applications for execution of decree.

2. To act, appear, and plead in the above-mentioned case in this Court or in any other Court in which the same may be tried or head in the first instance or in appeal/revision or execution or at any other stage of its progress until its final decision.

3. To sign and present pleadings, appeals, cross-objections or petitions for revision, review, revision, withdrawal, compromise restoration, setting aside exparty proceedings or decree or orders or other petitions or affidavits or other documents as shall be deemed necessary or advisable for the prosecution of the said case in all its stages.

4. To withdraw or compromise the said case or submit to arbitration any differences or dispute that shall arise touching or in any manner relating to the said case or the whole of the matter dispute or any part thereof.

5. To receive moneys and grant receipts therefor and to do all other acts and things which may be necessary to be done for the progress and in the course of the said case or thereafter in connection therewith or arising therefrom.

6. To employ any other Legal Practitioner authorising him to exercise the powers and authorities hereby conferred on the Advocate whenever he may think fit to do so and to take for himself any costs of adjournment of otherwise, awarded by the Court against the opposite party without my/our having any claim or right thereto.

Any costs ordered to be paid by me/us shall be borne by me/us and the said Advocate will in no way be liable to pay the same or any part thereof from his pocket.

AND I/we hereby agree to ratify whatever he/them or his/this substitute shall do or cause to be done in pursuance of this authority.

AND I/we hereby agree not to hold the Advocate or his substitute responsible for the result of the said case in consequence of his absence from the Court when the said case is called up for hearing and I/we undertake to be present in person or through or an authorised representative on all hearings.

AND I/we further agree to meet the Advocate in this Chamber/office on the last working day before every hearing to give him clear and final instructions for next hearing.

And I/we further agree that in the event of the whole or any part of the fee agreed by me/us to be paid to Advocate remaining unpaid, he shall be entitled to withdraw from the prosecution of the said case until the same is paid. I/we also undertake to pay separate fees for work done outside Delhi or at non-court hours or on holidays. I/we further agree not to claim back any part of the fees once paid to the said Advocate on any account whatsoever.

IN WITNESS WHEREOF I/we hereunto set my/our hand to these presents, the contents, of which have explained to and understood by me/us this the.....

.....day of..... 199

Accepted subject to the terms of fees.

Anjana Gosain
Advocate

Rohit Thakur

Client

Signature or thumb impression

Rohit Thakur
Deputy-Director-AE

रोहित ठाकुर
ROHIT THAKUR
उप निदेशक (ए.ई.डी.)
Deputy Director (AED)

ANJANA GOSAIN.....

ADVOCATE

442, LAWYERS CHAMBERS
DELHI HIGH COURT
NEW DELHI-110003
PHONE : 23385773

Alama Hetika
12/24/17 D/6814/2022

920
ANNEXURE R-9

BEFORE THE NATIONAL GREEN TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI

ORIGINAL APPLICATION No. 612 of 2023

IN THE MATTER OF:

Society for Protection of Culture, Heritage,
Environment, Traditions & Promotion of
National Awareness (Regd.)
Also known as (SP-CHETNA)

... Applicant

Versus

Union of India & Ors.

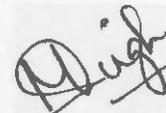
... Respondents

INDEX

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Date:

Filed By:




Adv. Madhumita Singh & Adv. Sameer Sood

A 414-415, Somdutt Chambers 1,

Bhikaji Cama Place, New Delhi-11006

Email: madhumita@casassociates.in

sameer@casassociates.in

Ph: 9971117818

9999245900

9999345900

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

ORIGINAL APPLICATION No. 612 of 2023

IN THE MATTER OF:

Society for Protection of Culture, Heritage,
Environment, Traditions & Promotion of
National Awareness (Regd.)

Also known as (SP-CHEटना)

... Applicant

Versus

Union of India & Ors.

... Respondents

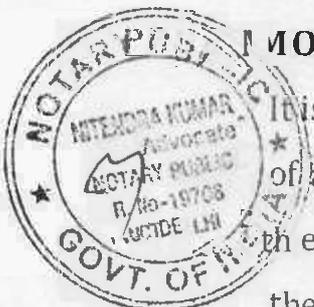
**APPLICANT'S REJOINDER TO THE PRELIMINARY OBJECTIONS FILED
BY RESPONDENT No.5 (DIRECTORATE GENERAL OF CIVIL AVIATION)**

I, Anil Sood a Senior Citizen, S/o Sh. M.C. Sood, R/o.- C-1/1056, Vasant Kunj, New Delhi-110070, aged about 67 years, 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 rejoinder affidavit. I have gone through the preliminary objections filed by Respondent No. 5/DGCA and the reply to the same is as under:

MOST RESPECTFULLY SHOWETH:

It is submitted that the present petition is based on an entirely fresh cause of action i.e. noncompliance with the notification dated 18th June, 2018 by the respondents affecting day to day life of the citizens who are residing in the landing and take-off funnel of the aircrafts and the objection that the present application is barred by res judicata or on any other ground has no merit.



The applicant respectfully submits that the issue may be the same, parties may be the same, but the cause of action is different and hence the bar *res judicata* does not apply. Reliance is placed on the following judgment pronounced by Hon'ble Supreme Court of India in the case of **Jamia Masjid v. K.V. Rudrappa [2021 SCC OnLine SC 792 at page 259]**

64. The High Court dismissed the second appeal holding that the courts conclusively decided on the title to the suit property in the first suit (OS No. 92 of 1950-51) and that any subsequent suit on the same issue of title would be barred by the principles of res judicata. In view of the discussion above, this finding arrived at by the High Court is erroneous. While holding that the judgment in the first suit has conclusively decided that the title over the suit property belongs to Abdul Khuddus, the High Court has lost sight of the observations in paras 7 and 10 of the judgment of the trial court. It has been specifically held there that the suit property was a khazi service Inam and that Abdul Khuddus has a prima facie right to the suit property. There was no adjudication to the effect that Abdul Khuddus had an absolute title to the suit property. Additionally, the decision of the courts in the first suit was delivered before the suit property was notified as a wakf property in view of Notification No. MWB 19(11) dated 6-7-1965. The principle of res judicata can thus not be applied without taking into consideration this changed circumstance.

A copy of the aforesaid judgment is annexed herewith as **Annexure 1**.

PARAWISE REPLY:

1. The contents of para 1 do not call for any reply.



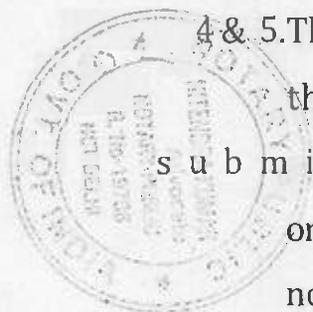
In reply to paras 2 & 3, the applicant denies DGCA has carried out compliance of the notification dated 18th June 2018, as alleged or otherwise. It is submitted that the notification dated 18th June 2018 required the respondent no.9 (DIAL) to define the Airport Noise Zone area on the basis of existing GSR 751 (E) issued by the Ministry of Civil Aviation which was to be approved by respondent no.5 (DGCA)

and displayed on the website of respondent no.9. It is submitted that there is no Airport Noise Zone area posted on the website of respondent no.9. It is further submitted that the letter dated 7th April 2022 vide which DGCA has granted the approval of the Airport Noise Zone has reference to document no. DIAL/ANZ/2021-22/Verl., which is neither on the official website of respondent no.9 nor has been submitted before this Hon'ble Tribunal by it. It is submitted that even respondent no.5 (DGCA) has not filed the said purported document no. DIAL/ANZ/2021-22/Verl. along with the reply, which it claims to have approved vide its letter dated 7th April, 2022, with reference to CAR dated 18th December 2014.

It is respectfully submitted that any reference to CAR dated 18th December 2014 issued by DGCA is wholly misconceived. This circular is irrelevant for the issue at hand as the same relates to **"Noise Management of Aircraft Operations at Airports"**.

It is submitted that the communication dated 18th August 2022 from respondent no.5 to the applicant is merely based on the representation made to respondent no.5 (DGCA) by respondent no.9 (DIAL) and not based on any information. It is submitted that no information was either furnished to the applicant nor has been placed before this Hon'ble Tribunal. It is submitted that the purported representation/information provided by respondent no.9 (DIAL) to respondent no.5 (DGCA) has been proved wrong by the information submitted by the applicant at pages 321 to 462 by way of additional documents filed on 30-10-2023.

4 & 5. The contents of paras 4 & 5 are denied and disputed. It is denied that the applicant has deposed falsely, as alleged or otherwise. It is submitted that the present petition and the reliefs sought are based on entirely fresh cause of action i.e. noncompliance with the notification dated 18th June, 2018 by the respondents. It is submitted that as the respondents are not complying with the norms laid down by the notification dated 18th June, 2018 with regard to noise levels



and mitigating measures even if being taken by them as claimed by them are not seeming adequate, it is a fit case for this Hon'ble Tribunal to issue suitable directions to grant relief to the citizens as prayed by them in the present petition.

6 to 8. The contents of paras 6 to 8 are admitted to the extent that the applicant had filed Execution Application no.24/2019 seeking enforcement of the judgment dated 24th November, 2017 passed in Appeal No.60/2013 and the order dated 18th September, 2019 was passed by this Hon'ble Tribunal. It is submitted that the said execution petition and the order dated 18th September 2019 passed therein pertained to the execution of the order dated 24th November 2017 and its noncompliance which have no relevance to the matter in issue in the present OA, the same being violation of the notification dated 18th June, 2018 in the hands of the respondents. It is relevant to note that the respondents had been granted two years' time under the notification dated 18th June 2018 to meet the parameters laid therein and the said two years period expired only on 18th June 2020 after which only the cause could arise and arose about the infringement of the said notification. It is submitted that despite this Hon'ble Court's order dated 18th June 2019, respondent no.9 is not posting the noise levels on its website as there is no link on its website disclosing noise levels.

9 & 10. In reply to paras 9 & 10, the applicant reiterates what has been stated in the application. Perusal of respondent no.5's response will make it clear that DGCA is only relying on the claims being made to it by respondent no.9 (DIAL) and not based on any information that may have been furnished by respondent no.9 (DIAL) to respondent no.5 (DGCA). It is submitted that no data was either furnished to the applicant nor has been placed before this Hon'ble Tribunal showing that the parameters laid down in the notification dated 18th June 2018 have been and are being met with regard to the noise levels prescribed therein.



11. The contents of para 11 are denied and disputed. It is denied that the present petition deserves to be dismissed on the ground of res judicata, as alleged or otherwise.

In view of the submissions made above, the applicant submits that there is no merit in the objections taken by respondent no.5 and the present application be heard on merits.

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: 05 JAN 2024

Deponent

Deponent
I identified the deponent who has signed in my presence



CERTIFIED THAT DEPONENT

Sr./Ms..... Age.....
 S/o, W/o, D/o *Amal Saw*
 R/o.....
 Identified by *me saw* Delhi
 has solemnly sworn that the
 contents of *made by*
 & explained to me are true & correct to
 his/her knowledge.

[Signature]
 NITENDRA KUMAR, NOTARY PUBLIC
 Govt. of India, DELHI

**(2022) 9 Supreme Court Cases 225 : (2022) 4 Supreme Court
Cases (Civ) 590 : 2021 SCC OnLine SC 792**

In the Supreme Court of India

(BEFORE DR D.Y. CHANDRACHUD, VIKRAM NATH AND HIMA KOHLI, JJ.)

JAMIA MASJID.. Appellant;

Versus

SRI K.V. RUDRAPPA (SINCE DEAD) BY LEGAL
REPRESENTATIVES AND OTHERS .. Respondents.

Civil Appeal No. 10946 of 2014¹, decided on September 23, 2021

**A. Civil Procedure Code, 1908 — S. 11 and Or. 14 Rr. 1 & 2 — Res
judicata — Plea of — When may be decided as preliminary issue — Law
clarified**

— Plea of res judicata, held, may in an appropriate case be determined as a preliminary issue when : (a) neither a disputed question of fact, nor, (b) a mixed question of fact and law, has to be adjudicated for resolving it, nor, (c) has there been any material alteration in the fact(s) since the decision in the earlier proceedings was rendered, which would require proof of any such new fact(s)

— Court while undertaking an analysis of applicability of plea of res judicata determines first, if requirements of S. 11 CPC are fulfilled and if this is answered in the affirmative, it will have to be determined if there has been any material alteration in law or facts since first suit was decreed as a result of which principle of res judicata would be inapplicable — Contention that res judicata can never be decided as a preliminary issue, held, is not tenable

— In certain cases, particularly when a mixed question of law and fact is raised, issue of res judicata should await a full-fledged trial after evidence is adduced — In present case though, a determination of components of res judicata turns on pleadings and judgments in earlier suits which have been brought on record — Issue has been argued on that basis before trial court and first appellate court; followed by two rounds of proceedings before High Court (second following upon an order of remand by Supreme Court on ground that all parties were not heard) — All documentary material necessary to decide issue is before court and arguments have been addressed by contesting sides fully on that basis — Plea of res judicata, held, thus could be decided as a preliminary issue in the present case

**B. Civil Procedure Code, 1908 — S. 11 — Res judicata — Subsequent suit,
or, issue raised in subsequent suit — Whether barred by res judicata —
Matters to be determined — Material alteration in law or facts since earlier**

proceedings were decided – Effect of

– Held, court while undertaking an analysis of the applicability of the plea of res judicata determines first, if the requirements of Section 11 CPC are fulfilled – If this is answered in the affirmative, it will have to be determined if there has been any material alteration in law or facts since the first suit was decreed as a result of which the principle of res judicata would be inapplicable

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C. Civil Procedure Code, 1908 – S. 11 – Res judicata – Test for identification of whether an issue has been conclusively decided in previous suit – Held twin tests are : (i) whether adjudication of issue was “necessary” for deciding the principle issue (“necessity test”); and (ii) whether judgment in suit is based upon decision on that issue (“essentiality test”)

D. Civil Procedure Code, 1908 – Ss. 92 and 11 – Representative suit under S. 92 – Principles of res judicata, held, applicable if the requirements therefor are satisfied – A suit under S. 92 is of a representative character and all persons interested in the trust in question, held, would be bound by the judgment in such suit, and persons interested would be barred by principle of res judicata from instituting a subsequent suit on the same or substantially the same issue

E. Civil Procedure Code, 1908 – Or. 23 Rr. 3 & 3-A and S. 11 – Compromise decree – Res judicata – Whether applicable – While a compromise decree in a prior suit will not bar a subsequent suit by virtue of res judicata, held, subsequent suit could be barred by estoppel by conduct – Furthermore, Or. 23 R. 3-A only bars a suit to set aside a compromise decree on the ground that compromise on which it is based is unlawful – Hence, held, Or. 23 R. 3-A will not apply to the question whether subsequent suit is barred by estoppel by conduct based on a prior compromise decree

– However, in the present case, held, neither compromise petition nor final decree in second suit indicate that a compromise on title to suit property was arrived at – Compromise was restricted to issue of erstwhile lessee handing over possession of suit property at end of lease – Hence subsequent suit for declaration of title, possession and injunction could not be barred by principle of res judicata in the present case – Evidence Act, 1872, S. 115

F. Civil Procedure Code, 1908 – S. 92 – Representative suit – Determination of scheme of management – Issues that might require

determination — While deciding on a scheme for administration in a representative suit filed under S. 92, court may, if title is contested, have to decide if property in respect of which scheme of administration and management is sought, belongs to trust

G. Civil Procedure Code, 1908 — Ss. 11 and 92 — Bar of res judicata — Whether attracted — Determination of — Suit for declaration of title, possession and injunction — Matters substantially in issue in first suit, which was a suit for administration and management of trust properties and for accounts, in present case, held, are distinct from issues in suit out of which instant proceedings arise — Suit for declaration of title, possession and injunction in present case, held, not barred by res judicata in view of decision in first suit — Suit restored to file of trial court for determination in accordance with law

H. Civil Procedure Code, 1908 — S. 11 — Res judicata — Third suit — Simpliciter injunction claimed — No question of title was raised and none was adjudicated upon in third suit — Third suit filed on apprehension that property likely to be alienated by legal representatives of defendant — Before third suit was withdrawn, suit out of which present proceedings arise was instituted for seeking comprehensive reliefs in terms of a declaration of title and a permanent injunction — Therefore, decision in third suit, held, does not bar initiation of suit out of which instant proceeding arises

The issues for determination before the Supreme Court were:

(i) Whether the plea of res judicata can be decided as a preliminary issue?

(ii) Whether while deciding on a scheme for administration in a representative suit filed under Section 92 CPC, if title is contested, it can be decided by court if property in respect of which scheme for administration and management is sought belongs to trust?

(iii) Whether in a suit under Section 92 CPC all persons interested in trust would be bound by judgment in suit or not, and persons interested would be barred by principle of res judicata or not from instituting a subsequent suit on the same or substantially the same issue?

(iv) Whether when matters substantially in issue in first suit, which was a suit for administration and management of trust properties and for accounts, are distinct from issues in suit out of which instant proceedings arise, instant suit for declaration of title, possession and injunction would be barred by res judicata in view of decision in first suit?

(v) Whether when compromise was restricted in first suit to issue of erstwhile lessee handing over possession of suit property at end of lease, subsequent suit for

declaration of title, possession and injunction could be barred by principle of res judicata?

(vi) Whether when in a third suit simpliciter injunction had been claimed, suit out of which present proceedings arise was instituted for seeking comprehensive reliefs in terms of a declaration of title and a permanent injunction, could be barred by principle of res judicata?

Allowing the appeal, the Supreme Court

Held:

The court while undertaking an analysis of the applicability of the plea of res judicata determines first, if the requirements of Section 11 CPC are fulfilled; and if this is answered in the affirmative, it will have to be determined if there has been any material alteration in law or facts since the first suit was decreed as a result of which the principle of res judicata would be inapplicable.

(Paras 19 to 26)

Syed Mohd. Salie Labbai v. Mohd. Hanifa, (1976) 4 SCC 780; *Sushil Kumar Mehta v. Gobind Ram Bohra*, (1990) 1 SCC 193; *Mathura Prasad Bajoo Jaiswal v. Dossibai N.B. Jeejeebhoy*, (1970) 1 SCC 613, *followed*

Alka Gupta v. Narender Kumar Gupta, (2010) 10 SCC 141 ; (2010) 4 SCC (Civ) 73, *distinguished on fact*

Alka Gupta v. Narender Kumar Gupta, 2009 SCC OnLine Del 2776, *held, overruled*

Madhukar D. Shende v. Tarabai Aba Shedage, (2002) 2 SCC 85; *Ram Harakh v. Hamid Ahmed Khan*, (1998) 7 SCC 484; *Vinayak Gopal Limaye v. Laxman Kashinath Athavale*, 1956 SCC OnLine Bom 62, *referred to*

Alka Gupta v. Narender Kumar Gupta, 2009 SCC OnLine Del 510, *cited*

The contention of the appellants that res judicata can *never* be decided as a preliminary issue is not tenable. In certain cases, particularly when a mixed question of law or fact is raised, the issue should await a full-fledged trial after evidence is adduced. In the present case, a determination of the components of res judicata turns on the pleadings and judgments in the earlier suits which have been

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brought on the record. The issue has been argued on that basis before the trial court and the first appellate court; followed by two rounds of proceedings before the High Court (the second following upon an order of remand by the Supreme Court on the ground that all parties were not heard). All the documentary material necessary to decide the issue is before the court and arguments have been addressed by the contesting sides fully on that basis.

(Para 27)

OS No. 92 of 1950-51 was a representative suit filed under Section 92 CPC,

specifically under clause (g) thereof, for settling the scheme of administration of the mosque. It has been consistently contended by K that Item 2 of the suit schedule property was granted to him as a khazi inam, and is thus not a mosque property. In order to adjudicate on the applicability of the plea of res judicata vis-à-vis the first suit, it is necessary to decide the following three issues:

- (i) The scope of the first suit which was instituted under Section 92 CPC;
- (ii) Whether the parties in the first suit and the instant proceedings are the same and;
- (iii) Whether the issue of title over the suit property was conclusively decided in the first suit.

(Para 35)

Relief sought in the first suit (OS No. 92 of 1950-51) under Section 92 CPC was for determination of a scheme of management of the mosque. A determination of the title of the suit property with respect to the mosque was *ancillary* to the main relief, under Section 92 CPC.

(Paras 36 to 38)

Pragdasji Guru Bhagwandasji v. Patel Ishwarlalbhai Narsibhai, (1952) 1 SCC 323 : AIR 1952 SC 143, *applied*

Abdur Rahim v. Mohd. Barkat Ali, 1927 SCC OnLine PC 98 : (1927-28) 55 IA 96, *relied on*

Whether the parties in the instant proceedings (OS No. 149 of 1998) are the same as the first suit (OS No. 92 of 1950-51) : First suit was a representative suit filed by interested parties of the mosque Jamia Masjid while the instant suit was filed by the President of the Jamia Masjid in his representative capacity. When a suit is brought under Section 92, it is brought by two or more persons interested in the trust who have taken upon themselves the responsibility of representing all the beneficiaries of the trust. In such a suit, though all the beneficiaries may not be expressly impleaded, the action is instituted on their behalf and relief is claimed in a representative character. This position immediately attracts the provisions of Explanation VI to Section 11 CPC. Where a representative suit is brought under Section 92 CPC and a decree is passed in such a suit, law assumes that all persons who have the same interest as the plaintiffs in the representative suit were represented by the said plaintiffs and, therefore, are constructively barred by res judicata from reagitating the matters directly and substantially in issue in the said earlier suit.

(Paras 39 and 40)

Raje Anandrao v. Shamrao, (1961) 3 SCR 930 : AIR 1961 SC 1206; *Ahmad Adam Sait v. M.E. Makhri*, (1964) 2 SCR 647 : AIR 1964 SC 107, *followed*

A representative suit is binding on all the interested parties. Therefore, the judgment of the court in the first suit would be binding on Jamia Masjid and would preclude it from instituting another suit on the same issue if it has been conclusively decided.

(Paras 41 and 42)

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R. Venugopala Naidu v. Venkatarayulu Naidu Charities, 1989 Supp (2) SCC 356; *Shiromani Gurdwara Parbandhak Committee v. Harnam Singh C.*, (2003) 11 SCC 377, *followed*

The twin test that is used for the identification of whether an issue has been conclusively decided in the previous suit is : (i) Whether the adjudication of the issue was "necessary" for deciding on the principle issue ("the necessity test"); and (ii) Whether the judgment in the suit is based upon the decision on that issue ("the essentiality test").

(Paras 43 to 48)

Sajjadanashin Sayed Md. B.E. Edr. v. Musa Dadabhai Ummer, (2000) 3 SCC 350; *Gram Panchayat of Village Naulakha v. Ujagar Singh*, (2000) 7 SCC 543; *Nand Ram v. Jagdish Prasad*, (2020) 9 SCC 393 : (2021) 2 SCC (Civ) 672, *followed*

Jagdish Prasad v. Nand Ram, 2010 SCC OnLine Del 3939, *held, overruled*

Sulochana Amma v. Narayanan Nair, (1994) 2 SCC 14; *Vangarai Selliamman Ayyanar Uthirasomasundareswarar Temple v. Rajanga Asari*, 1964 SCC OnLine Mad 116 : AIR 1965 Mad 355; *Pragdasji Guru Bhagwandasji v. Patel Ishwarlalbhai Narsibhai*, (1952) 1 SCC 323 : AIR 1952 SC 143; *Run Bahadour Singh v. Lachoo Koer*, 1884 SCC OnLine PC 26 : (1884-85) 12 IA 23 : ILR (1885) 11 Cal 301; *Asrar Ahmed v. Durgah Committee*, 1946 SCC OnLine PC 29 : AIR 1947 PC 1, *referred to*

Isher Singh v. Sarwan Singh, AIR 1965 SC 948; *Syed Mohd. Salie Labbai v. Mohd. Hanifa*, (1976) 4 SCC 780, *cited*

On applying the necessity test to the present case, the court has to identify if the decision on the principal issue of framing a scheme for the administration of the mosque could not have been arrived at without adjudication of the title of the suit.

(Para 49)

The first suit under Section 92 CPC was for settling a scheme of administration of Jamia Masjid and the management of its properties and the rendering of accounts of its funds and income by the defendant. In the subsequent suit, the prayer was for the declaration of the suit property as a wakf property. In the first suit, it was recorded finding that the suit property was "prima facie" the property of K; that it was given to his forefathers as a service inam, for his functions as a khazi. The cause of action in the subsequent suit arose because the successors of K alienated the suit property. The matters were adjudicated upon in the former suit are not the same as those in the subsequent suit for two reasons : *Firstly*, there

was a changed circumstance resulting from the notification declaring the suit property as a wakf property which was issued after the first suit was decreed; *secondly*, in the first suit, which was essentially a suit for administration, the suit property was recorded to prima facie belong to K as a khazi inam.

(Para 51)

The adjudication on the suit property was focussed around whether it belonged to the mosque. Though the suit property was prima facie declared to not belong to the mosque, it would not as a corollary mean that it was the personal property of K over which he possessed an absolute or inalienable right, particularly in view of his deposition that the property was given as an inam to his forefathers for their services as khazi. There was no discussion on whether the suit property was a personal inam or an inam attached to the office; there was no adjudication in the earlier suit on the terms of the grant. Thus, no adjudication on the absolute title over the suit property was rendered in the former suit.

(Para 52)

On reading together the findings which have been arrived at in the judgment of the trial court in the first suit, it is evident that the trial court did not enter a conclusive finding that Item 2 of the schedule to that suit (which corresponds to

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the suit schedule property in the present case) was the personal property of K. In fact, the use of the expression "prima facie right" in the judgment of the trial court clearly indicates that there was no conclusive finding in the judgment of the trial court. The trial court also noted that it would be open to the trust to take steps as they deem fit in respect of Item 2 and Item 3 of the schedule in that suit, if the defendant had not fulfilled the terms specified in the grant. Thus the finding on Issue 1 that schedule Items 1, 4 and 15 belong to the mosque must specifically be read in the context of what has been stated above. From the above analysis, it becomes clear that there was no adjudication in the earlier suit that K had an absolute title to the suit property.

(Para 53)

In view of the above discussion, the suit that gives rise to the instant proceedings is not barred by the first suit for the following reasons:

(i) The court in the first suit was not ousted from determining if the suit property belonged to the mosque while settling a scheme for administration in a suit under Section 92 CPC;

(ii) The suit under Section 92 is of a representative character and the decree would bind all persons interested in the trust property;

(iii) There was a "prima facie" finding in the former suit that the suit property belonged to K;

(iv) There was no adjudication or finding that K had absolute title over the

property, particularly in view of the deposition of *K* that the property was given as a khazi inam, coupled with the observation of the court that he had a "prima facie" right over the property. Therefore, the alleged claim of title of *K* was not adjudicated.

Thus, the matters which were in issue before the court in the first suit and the instant proceedings are distinct.

(Para 54)

It is contended by the appellant that since a compromise deed was arrived at between the Mysore State Board of Wakf, *K* and the lessee with regard to the possession of the suit property, the other reliefs have been abandoned. It was thus contended that in view of the compromise deed, the claim of title to the suit property has been abandoned and cannot be raised in the subsequent suit. On a perusal of the compromise deed, it is evident that a compromise was reached only on the issue of possession and lease. When no compromise was arrived at between the parties on the title to the suit property, then no estoppel by conduct could also be inferred. Additionally, the counsel for the respondent referred to Order 23 Rule 3-A CPC to contend that a subsequent suit is barred when the previous suit is dismissed through a compromise decree. However, the provision would not be applicable to the case at hand since it only bars the challenge to a compromise decree on the ground that it is unlawful. Therefore, the disposal of the second suit in view of the compromise would not bar the filing of the suit out of which the instant proceedings arise.

(Paras 58 to 60)

Pulavarthi Venkata Subba Rao v. Valluri Jagannadha Rao, AIR 1967 SC 591; *Sunderabai v. Devaji Shankar Deshpande*, (1952) 2 SCC 92 : AIR 1954 SC 82, followed

The third suit of 1983 instituted by the Karnataka Board of Wakfs was a suit for injunction simpliciter. No question of title was raised and none was adjudicated upon. As a matter of fact, the suit was instituted on the apprehension that the

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property was likely to be alienated by the legal representatives of *K*. Before the suit of 1983 was withdrawn, the suit out of which these proceedings arise was instituted for seeking comprehensive reliefs in terms of a declaration of title and a permanent injunction. Therefore, the decision in the third suit does not bar the initiation of the suit out of which the instant proceeding arises.

(Para 63)

In view of the discussion above, the findings of the Court may be summarised as below:

(i) Issues that arise in a subsequent suit may either be questions of fact or of law or mixed questions of law and fact. An alteration in the circumstances after the decision in the first suit, will require a trial for the determination of the plea of res judicata if there arises a new fact which has to be proved. However, the plea of res judicata may in an appropriate case be determined as a preliminary issue when neither a disputed question of fact nor a mixed question of law or fact has to be adjudicated for resolving it.

(ii) While deciding on a scheme for administration in a representative suit filed under Section 92 CPC the court may, if the title is contested, have to decide if the property in respect of which the scheme for administration and management is sought belongs to the trust.

(iii) A suit under Section 92 CPC is of a representative character and all persons interested in the trust would be bound by the judgment in the suit, and persons interested would be barred by the principle of res judicata from instituting a subsequent suit on the same or substantially the same issue.

(iv) Since the first suit (OS No. 92 of 1950-51) was filed by members interested in the Jamia Masjid and the suit out of which the instant proceedings arise (OS No. 149 of 1998) was filed by the President of Jamia Masjid, the formulation in clause (iii) above is satisfied (Persons interested would be barred by principle of res judicata from instituting a subsequent suit on same or substantially same issue if it has been conclusively decided).

(v) There was no adjudication in the first suit (OS No. 92 of 1950-51) on whether K had absolute title to the suit property. There was only a prima facie determination that Items 2 and 3 of the schedule of properties to the first suit belonged to K. The matters substantially in issue in OS No. 92 of 1950-51, which was a suit for administration and management of trust properties and for accounts, are distinct from the issues in the suit out of which the instant proceedings arise. Therefore, OS No. 149 of 1998 is not barred by res judicata in view of the decision in the first suit.

(vi) While a compromise decree in a prior suit will not bar a subsequent suit by virtue of res judicata, the subsequent suit could be barred by estoppel by conduct. However, neither the compromise petition dated 27-10-1969 nor the final decree in the second suit dated 27-10-1969 indicate that a compromise on the title to the suit property was arrived at. The compromise was restricted to the issue of the erstwhile lessee handing over possession of the suit property at the end of the lease.

(vii) The third suit (OS No. 100 of 1983) was a suit for an injunction simpliciter. The third suit was withdrawn after the suit out of which the instant proceeding arises was filed for seeking a substantive declaration and an

(Para 66)

Jamia Masjid v. K.V. Rudrappa, 2012 SCC OnLine Kar 1722, *reversed*

Jamia Masjid v. K.V. Rudrappa, 2014 SCC OnLine SC 1841; *Provash Chandra Dalui v. Biswanath Banerjee*, 1989 Supp (1) SCC 487; *Byram Pestonji Gariwala v. Union Bank of India*, (1992) 1 SCC 31; *Sarguja Transport Service v. STAT*, (1987) 1 SCC 5 : 1987 SCC (Cri) 19; *Jamia Masjid v. K.V. Rudrappa*, 2008 SCC OnLine Kar 304; *K.V. Rudrappa v. Jamia Masjid*, 2010 SCC OnLine SC 1468, *referred to*

RM-D/69102/CV

Advocates who appeared in this case :

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Basava Prabhu Patil, Senior Advocate [Balaji Srinivasan (Advocate-on-Record), Shanmukhappa, Ms Shwetha Shanmukhappa, Prateek Yadav, Ashok Mathur (Advocate-on-Record) and Kumar Mihir (Advocate-on-Record), Advocates], for the Respondents.

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27. (1961) 3 SCR 930 : AIR 1961 SC 1206, *Raje Anandrao v. Shamrao* 250c
28. 1956 SCC OnLine Bom 62, *Vinayak Gopal Limaye v. Laxman Kashinath Athavale* 245a-b
29. (1952) 2 SCC 92: AIR 1954 SC 82, *Sunderabai v. Devaji Shankar Deshpande* 257f, 257g
30. (1952) 1 SCC 323: AIR 1952 SC 143, *Pragdasji*

Guru Bhagwandasji v. Patel Ishwariabhai 248d, 249f, 250a, 252f-g,
Narsibhai 254f

31. 1946 SCC OnLine PC 29: AIR 1947 PC 1, *Asrar Ahmed v. Durgah Committee* 252f-g

32. 1927 SCC OnLine PC 98 : (1927-28) 55 IA 96, *Abdur Rahim v. Mohd. Barkat Ali* 248f-g

33. 1884 SCC OnLine PC 26 : (1884-85) 12 IA 23 :
 ILR (1885) 11 Cal 301, *Run Bahadoor Singh v. Lachoo Koer* 252f-g

The Judgment of the Court was delivered by

DR D.Y. CHANDRACHUD, J.—

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1. A Single Judge of the High Court of Karnataka dismissed¹ a second appeal filed under Section 100 of the Code of Civil Procedure, 1908 ("CPC"), affirming the decision of the trial court and the first appellate court that the suit instituted by the appellant-plaintiff is

barred by the principle of res judicata. The

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appellant moved this Court in a special leave petition to challenge the decision of the Single Judge. Leave has been granted on 8-12-2014².

A. The facts

2. Described as the Jamia Masjid Gubbi in the cause-title, the appellant instituted the suit³ through its President for seeking the following reliefs:

(i) A declaration that the State Wakf Board is the owner in possession of the suit schedule property, being Survey No. 2 of Gubbi Village admeasuring 2 acres and 4 guntas of non-agricultural land with a cinema building;

(ii) A decree for possession against the defendants;

(iii) An injunction to restrain the defendants from interfering with the possession and enjoyment of the plaintiff; and

(iv) A decree for mesne profits.

3. The case of the appellant-plaintiff is as follows:

3.1. The suit property is a "Khazi Service Inam". Abdul Khuddus, the spouse of the fifth defendant and father of the sixth to ninth defendants was the mutawalli who was managing the property for and on behalf of the Wakf Board. Abdul Khuddus, was entitled to the usufruct of the property subject to the condition precedent that he would perform his service as a khazi or mutawalli. During his lifetime he had given up his service as a khazi upon being appointed by the Gubbi Muslim Jamath as the Pesh Inam on a monthly salary of Rs 30 for performing the Namaz (daily prayers).

3.2. Upon the enactment of the Wakf Act, 1954, which was adopted by the then Mysore State in 1955, the Assistant Commissioner conducted a survey of Wakf Properties in 1963. Abdul Khuddus gave a declaration to the Wakf Board for the registration of the suit schedule property as a wakf. A notice inviting objections for registration of the suit schedule property as a wakf property was issued. No objection to the registration of the suit schedule property was raised and eventually the property was notified as a wakf property at Serial No. 136 of Mysore Gazette Notification No. MWB 19(11) dated 6-7-1965.

3.3. Under Section 6 of the Wakf Act, 1954, if any dispute arises on a property declared as a wakf property, a claim can be raised within one year of the publication of the notification. There is a prohibition on alienation under Rule 5 of the Wakf Rules framed under the Wakf Act,

1965 unless approved by a two-thirds majority of the Wakf Board.

3.4. A person by the name of H.S. Gururajarao and his brothers were granted a lease over the schedule suit property on 8-12-1944 by the muzrai officer to run a "cinema talkies". A suit, OS No. 748 of 1968, was instituted by the Wakf Board against Abdul Khuddus and H.S. Gururajarao seeking possession of the suit property and a declaration that the property constitutes a wakf. The suit was compromised with Abdul Khuddus being permitted to collect the rent from the lessee (H.S. Gururajarao) on behalf of the Board.

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3.5. After the death of Abdul Khuddus, Defendants 6 to 9 took possession of the suit property. Allegations of mismanagement of the suit property were made against them. The Chairman, D.W.C. Tumkur recommended that the suit property be directly managed by the Board under Section 43(A) of the Wakf Act, 1954. Pursuant to the recommendation, the State Wakf Board passed an order dated 6-4-1983 taking over the management.

3.6. H.S. Gururajarao who was in possession of the suit schedule property as a lessee, handed over possession of the cinema building to the Wakf Board on 29-6-1983. Defendants 5 to 9 however executed sale deeds in respect of the property in favour of Defendants 1 to 4. Any alienation by Defendants 5 to 9 is void since the Board did not approve the transaction with a two-thirds majority.

3.7. The cause of action arose on 16-4-1983 when Defendants 1 to 4 together with other defendants interfered with the possession of the plaintiff on the strength of the sale in their favour executed by Defendants 5 to 9.

4. In May 2010, Defendants 2 to 4 filed their written statement raising the defence that:

4.1. *The suit is barred by res judicata* : OS No. 92 of 1950-51 ("the first suit") was filed by the members of the mosque known as Jamayat Masjid in which Abdul Khuddus (the predecessor of Defendants 5-9) was a party. In the said suit, the District Judge by a judgment dated 31-3-1954 declared the suit schedule property to be the personal property of Abdul Khuddus. Abdul Khuddus instituted an appeal before the High Court challenging a portion of the order of the District Judge. The High Court upheld the judgment of the District Judge on 14-8-1959. Since the parties and the subject-matter of the first suit and the present suit are the same, the suit instituted by the appellant is barred by res

judicata.

4.2. The suit schedule property is not a Khazi Service Inam but was the personal property of Abdul Khuddus and his successors have rightfully sold it in favour of Defendants 1-4.

4.3. The suit schedule property was leased to one H.S. Gururaja Rao by Abdul Khuddus and not by the then muzrai officer as contended by the plaintiff. From 1995, a lease was granted in favour of Shri K.V. Rudrappa who was running a theatre in the name of "Channabasaveswara Talkies". After the death of Rudrappa, Defendants 1-4 are running the theatre after obtaining a licence from the District Magistrate.

4.4. OS No. 748 of 1968 ("the second suit") was instituted by the Mysore Board of Wakf against Abdul Khuddus seeking a declaration that the suit property is a wakf and for possession of the suit property. However, the suit was decreed in terms of the compromise petition filed by the parties and therefore, the Wakf Board gave up its claim in respect of the suit schedule property. The subsequent suit is hit by the principle of res judicata.

4.5. OS No. 100 of 1983 ("the third suit") was instituted by the Karnataka Board of Wakf seeking an injunction restraining the defendants (the heirs of Abdul Khuddus) from interfering in the peaceful possession of the suit property. This suit was withdrawn by the plaintiff.

B. Proceedings before the courts

5. The trial court took up two issues—Issues 5 and 6—relating to res judicata and limitation as preliminary issues. By its judgment dated 3-2-2006, the trial court held that the suit was not barred by limitation. However, the court held that the suit was barred by res judicata by virtue of the decisions in the suits instituted earlier:

5.1. OS No. 92 of 1950-51 was filed by the members of the public of Gubbi in their representative capacity by virtue of Section 92 CPC. Abdul Khuddus contended that the suit schedule property was his personal property. The first issue framed in the suit was whether "*the schedule properties belong to the Jamia Mosque, Gubbi as alleged in the plaint*". The plaintiff was held to have failed to prove that two of the suit schedule properties (Sy. Nos. 2 and 3, of which Sy. No. 2 is the suit schedule property in the instant proceedings) belongs to the Jamia Mosque. The High Court on second appeal⁴ held that the properties in

Sy. Nos. 2, 3 and 4 do not belong to the mosque. Thus, the issue with regard to the ownership of the suit schedule property has reached finality in view of the decision of the High Court of Karnataka which was not assailed before this Court.

5.2. A judgment in a representative suit is binding on all the interested parties in view of Explanation IV to Section 11 CPC. Though the first suit was not filed by the Jamia Masjid in its individual capacity, it was filed by parties interested in the administration of the mosque and thus all parties interested in the mosque are bound by the judgment even if they were not impleaded as a party.

5.3. The judgment of the trial court cannot be nullified by a notification issued by the Government declaring the suit property as a wakf property.

5.4. OS No. 748 of 1968 filed by the plaintiff seeking a declaration that the wakf is the owner of the suit property ended in a compromise by which the Wakf Board has admitted that Abdul Khuddus has the right to collect the rent from the lessee. Thus, the Wakf Board has relinquished its title over the suit property.

5.5. OS No. 100 of 1983 was filed seeking an injunction against Abdul Khuddus. However, the suit was dismissed on 22-11-1984 after a memo of withdrawal was filed by the plaintiff's counsel. Thus the Wakf Board has relinquished rights over the suit property.

6. An appeal against the decree of the trial court was dismissed by the 3rd Additional District Judge at Tumkur on 2-7-2007 for the following reasons.

6.1. The finding in OS No. 92 of 1950 and by the High Court on appeal was not challenged by Abdul Khuddus. It was also not contested that the title of a property cannot be determined in a representative suit filed under Section 92 CPC.

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6.2. A representative suit filed under Section 92 CPC binds not only the parties named in the suit but also those who are interested in the suit. Therefore, a decision in a previous representative suit will bind all interested parties even if they were not impleaded as a party to the suit.

6.3. The submission that the trial court had only *prima facie* found Abdul Khuddus to possess title to the suit property and that hence, it was not conclusively held that he had absolute title, is erroneous. To

determine if a scheme should be framed for the maintenance of a trust, the court will have to satisfy itself whether the property is owned by the trust.

6.4. The plaintiff has not specified when Abdul Khuddus made the declaration for notifying the suit property as wakf property. If the notification was made in 1963, there was no reason for the Wakf Board to file the suit, as late as in 1983.

6.5. OS No. 748 of 1968 filed by the Wakf Board against Abdul Khuddus for a declaration that the suit property belongs to the Wakf Board ended in a compromise. The Wakf Board has waived its right over the suit property and such a compromise creates an estoppel based on the decisions in *Provash Chandra Dalui v. Biswanath Banerjee*⁵ and *Byram Pestonji Gariwala v. Union Bank of India*⁶.

6.6. OS No. 100 of 1983 was filed by the Wakf Board for seeking an injunction against the defendants. The suit was dismissed by filing a memo without seeking leave to file the instant suit. The decision in *Sarguja Transport Service v. ST.AT*⁷ was relied upon.

7. The High Court by its judgment and order dated 2-7-2008⁸ allowed a regular second appeal and remanded the matter to the trial court for disposal in accordance with law. The High Court held that:

7.1. The present suit is not barred by res judicata since OS No. 92 of 1950-51 was instituted under Section 92 CPC for settling a scheme. Para 10 of the judgment of the trial court noted that the defendant has a prima facie right to the suit property and that if the terms of the grant have not been satisfied by the defendant, the trustees can take steps. Therefore, the question of title was not conclusively decided. The issue that was substantially in issue in OS No. 92 of 1950-51 is not in issue in the instant proceedings. The judgment of the High Court in appeal as well cannot be read to mean that the suit schedule property belongs absolutely to Abdul Khuddus.

7.2. A suit under Section 92 CPC is filed as a representative suit and is not a suit filed to vindicate the private right of an individual.

7.3. The compromise decree in OS No. 748 of 1968 did not declare the ownership of Abdul Khuddus, the predecessor-in-interest of Defendants 1 to 4. It only states that the second defendant would continue as the lessee of Abdul Khuddus.

7.4. The present suit was instituted on behalf of the State wakf Board prior to the disposal of OS No. 100 of 1983 and was hence not

barred.

7.5. The nature of the relief sought in the instant proceeding is different from the relief sought in OS No. 92 of 1950-51. Jamia Masjid was not the plaintiff in OS No. 92 of 1950-51 and OS No. 748 of 1968.

C. Proceedings before the High Court

8. A special leave petition² was instituted before this Court by Defendants 1 to 4. By a judgment dated 30-8-2010¹⁰, this Court remanded the proceedings back to the High Court on the ground that the High Court had heard only one of the defendant—caveators and that all the defendants were not represented before the High Court. After remand, the High Court by its judgment dated 23-1-2012¹ dismissed the appeal for the following reasons.

8.1. The ownership of the suit schedule property has been conclusively decided in OS No. 92 of 1950-51 in favour of Abdul Khuddus.

8.2. The judgment in a representative suit under Section 92 CPC binds the parties to the suit and those who are interested in the trust (*R. Venugopala Naidu v. Venkatarayulu Naidu Charities*¹¹).

8.3. When a suit is filed for determination of a scheme for administration of a trust, the court must primarily be satisfied that the property belongs to the trust. The court has the power under Sections 92(e) and (cc) CPC to order delivery of possession of the property to any person who is entitled to possession.

8.4. If a declaration was made by Khazi Abdul Khuddus declaring the suit property as a Wakf property in 1965, there is no explanation as to why the plaintiff was silent till the filing of OS No. 100 of 1983.

8.5. An issue that was substantially decided by a competent court of limited jurisdiction will operate as res judicata, though such court in view of its limited jurisdiction would not be competent to try the subsequent suit (*Sulochana Amma v. Narayanan Nair*¹²).

9. The judgment obtained through a consent decree in OS No. 748 of 1968 was intended to put the litigation to an end. It would thus operate as res judicata in the subsequent suits.

10. Leave was granted by this Court on 8-12-2014².

D. Submissions of the parties

11. We have heard Ms V. Mohana, learned Senior Counsel appearing on behalf of the appellant and Mr Basava Prabhu Patil, learned Senior

Counsel with Mr Balaji Srinivasan, learned counsel for the contesting respondents.

12. On behalf of the appellant, the following submissions have been urged:

(i) OS No. 92 of 1950-51

12.1. The suit was instituted by Muslims in the locality interested in the proper management of the mosque since Abdul Khuddus was trying to set up his own title to the suit property.

12.2. The suit was not for a declaration of title to the suit property and the appellant was not a party to the suit. It was a suit seeking to set up a scheme for the administration of the suit property.

12.3. There was no final declaration that the suit property is a private property belonging to Abdul Khuddus.

12.4. In a suit for settling a scheme under Section 92 CPC, the Court possessed limited jurisdiction and could not have issued declaratory relief.

(ii) OS No. 748 of 1968

12.5. The basis of the suit was that Abdul Khuddus by virtue of his office as a khazi only has the right to the usufruct and the suit was instituted as an unlawful construction was in place.

12.6. A compromise memo was filed in the suit stating that the second defendant would continue to remain as a tenant for some time and would thereafter hand over peaceful possession to Abdul Khuddus.

12.7. On 27-10-1969, a compromise petition was filed by the parties under Order 23 Rule 1 CPC.

12.8. The compromise decree neither concedes title of the suit property to the defendants nor does it create any new right in their favour.

12.9. The suit proceeded on the basis that Abdul Khuddus was only entitled to the usufruct and the decree based on the compromise deed protected possession without any adjudication of title.

(iii) OS No. 100 of 1983

12.10. The suit was instituted by the Karnataka Wakf Board for a permanent injunction, apprehending a sale at the instance of the heirs of Abdul Khuddus to Defendants 1-4.

12.11. The appellant was not a party to the suit.

12.12. The suit was dismissed without costs after the plaintiff filed a memo for dismissal.

12.13. Before the dismissal of the suit, the present suit which is a comprehensive suit seeking declaration and possession had been instituted.

13. In view of the above position, it was urged that the ingredients for the application of the doctrine of *res judicata* have not been fulfilled. In summation, it was urged that:

13.1. The issue of title to the suit schedule property has not been decided in any of the three prior suits.

13.2. In view of Notification No. MWB 19(11) dated 6-7-1965 the suit property was notified as wakf property.

13.3. A collateral finding does not demonstrate an adjudication of title.

13.4. In the absence of a prior adjudication, the doctrine of *res judicata* would not be attracted.

13.5. The notification of the suit schedule property as a wakf was pursuant to a declaration dated 28-4-1963 executed by Abdul Khuddus for the general benefit of the community.

13.6. Once the property is constituted as a wakf, it would remain so in that character and no objection to the notification was filed either by Abdul Khuddus or by any person claiming through him.

13.7. Without prejudice to the above submissions, the issue of *res judicata* raises mixed questions of law and fact and, in any event, ought to have been decided as a comprehensive issue pursuant to a full-fledged trial.

14. Opposing the above submissions, Mr Basava Prabhu Patil, learned Senior Counsel submitted that:

14.1. In the first suit — OS No. 92 of 1950-51 — there was a specific finding that the suit schedule property was the personal property of Abdul Khuddus. Thus, the court having conclusively decided on the title of the suit property, a subsequent suit raising the same issue is barred by the principles of *res judicata*.

14.2. In the second suit which was instituted by the State Wakf Board, there was a prayer for declaration and possession. A compromise having been arrived at on a portion of the reliefs claimed in the second suit (relating to possession), this would necessarily amount to an abandonment of the other reliefs. Once a compromise is arrived at, Order 23 Rule 3-A bars the maintainability of a subsequent suit.

14.3. The third suit was for a permanent injunction against alienation of the suit property. This suit was dismissed as withdrawn.

14.4. Jamia Masjid is seeking a declaration of the title on behalf of

the Wakf Board. The Wakf Board is not a party to the suit and its application for being impleaded has been rejected.

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E. The analysis

15. The rival submissions now fall for analysis.

16. The primary issue is whether the suit — OS No. 149 of 1998¹³ — which was instituted by Jamia Masjid is barred by the principles of *res judicata*. In order to analyse whether the doctrine of *res judicata* is attracted, it is necessary that we decide on the plea with respect to the three prior suits:

- (i) OS No. 92 of 1950-51;
- (ii) OS No. 748 of 1968 and;
- (iii) OS No. 100 of 1983.

17. Before analysing the three suits specifically, it is necessary that we visit the jurisprudence on *res judicata*. Section 11 CPC states as follows:

"11. Res judicata.—No court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such court.

* * *

Explanation IV.—Any matter which might and ought to have been made ground of defence or attack in such former suit shall be deemed to have been a matter directly and substantially in issue in such suit.

Explanation V.—Any relief claimed in the plaint, which is not expressly granted by the decree, shall, for the purposes of this section, be deemed to have been refused.

Explanation VI.—Where persons litigate *bona fide* in respect of a public right or of a private right claimed in common for themselves and others, all persons interested in such right shall, for the purposes of this section, be deemed to claim under the persons so litigating.

* * *

Explanation VIII.—An issue heard and finally decided by a court of

limited jurisdiction, competent to decide such issue, shall operate as res judicata in a subsequent suit, notwithstanding that such court of limited jurisdiction was not competent to try such subsequent suit or the suit in which such issue has been subsequently raised."

18. In order to attract the principles of res judicata, the following ingredients must be fulfilled:

(i) The matter must have been directly and substantially in issue in the former suit;

(ii) The matter must be heard and finally decided by the Court in the former suit;

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(iii) The former suit must be between the same parties or between parties under whom they or any of them claim, litigating under the same title; and

(iv) The Court in which the former suit was instituted is competent to try the subsequent suit or the suit in which such issue has been subsequently raised.

19. In *Syed Mohd. Salie Labbai v. Mohd. Hanifa*¹⁴, S. Murtaza Ali, J. speaking for a Bench of two Judges observed that before a plea of res judicata can be given effect, the following conditions must be proved : (SCC p. 790, para 7)

"7. ... (1) that the litigating parties must be the same;

(2) that the subject-matter of the suit also must be identical;

(3) that the matter must be finally decided between the parties; and

(4) that the suit must be decided by a court of competent jurisdiction."

The Court noted that "the best method" to decide the question of res judicata is first to determine the case of the parties as they are put forward in their respective pleadings of their previous suits, and then to find out as to what had been decided by the judgments which operate as res judicata. In that case, it was held that the judgment in the previous suit was confined to two points:

(i) The plaintiffs claimed certain rights for the performance of ceremonies in the properties and a share in the income accruing to the mosque from the worshippers; and

(ii) A claim, insofar as the graveyard was concerned for receiving pit fees for burials. Consequently, it was held that the trial court had

not decided upon either the public character of the mosque or the mode and manner or the effect of the dedication of the site for the purpose of the mosque or the graveyard.

E.1. Res judicata as a preliminary issue

20. Before we undertake an analysis on the applicability of the principles of res judicata vis-à-vis the three suits that were initiated with regard to the suit property it is necessary to discuss the submission of the counsel for the appellant that res judicata, being a mixed question of law and facts ought not to have been decided as a preliminary issue by the trial court. It was contended that any determination of the application of the principle of res judicata can only be made after evidence is adduced pursuant to a full-fledged trial. For this purpose, reliance was placed on the decision of a two-Judge Bench of this Court in *Alka Gupta v. Narender Kumar Gupta*¹⁵ ("Alka Gupta") authored by R.V. Raveendran, J.

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21. In *Alka Gupta*¹⁵, the trial court had dismissed the subsequent suit on various preliminary grounds, one of which was that the filing of the subsequent suit stood barred by res judicata. However, on appeal, the two-Judge Bench of this Court held that the second suit was not barred by res judicata : (SCC pp. 149 & 151, paras 19-20 & 26)

"19. The learned trial Bench passed the order on 13-3-2009¹⁶ on the preliminary issue (Issue 1) relating to res judicata. *But there is absolutely no discussion in the order¹⁶ of the learned Single Judge in regard to the bar of res judicata except the following observation at the end of the order: 'Of course it cannot be said that the present suit is barred by res judicata inasmuch as the said claims were not decided in that case. But the principle of constructive res judicata is applicable.'* This was not interfered with by the Appellate Bench. Both proceeded on the basis that the suit was not barred by res judicata, but barred by the principle of constructive res judicata without assigning any reasons.

20. Plea of res judicata is a restraint on the right of a plaintiff to have an adjudication of his claim. *The plea must be clearly established, more particularly where the bar sought is on the basis of constructive res judicata. The plaintiff who is sought to be prevented by the bar of constructive res judicata should have notice about the plea and have an opportunity to put forth his contentions against the same.* In this case, there was no plea of constructive res judicata,

nor had the appellant-plaintiff an opportunity to meet the case based on such plea.

* * *

26.... In the instant case, the High Court has not stated what was the ground of attack that the appellant-plaintiff ought to have raised in the first suit but had failed to raise, which she raised in the second suit, to attract the principle of constructive res judicata. The second suit is not barred by Constructive res judicata."

(emphasis supplied)

22. The finding of the trial Judge on the applicability of the principles of res judicata was set aside on the ground that the plea was not clearly established and the plaintiff was not given the opportunity to contest the plea. Thus, in *Alka Gupta*¹⁵, this Court set aside the decision¹⁷ of the High Court on the above ground.

23. Order 14 Rule 2 CPC states that if questions of fact and law arise in the same suit, the court can dispose of the case on the question of law alone if it relates to the following:

"**2. (2)(a)** the jurisdiction of the Court, or

(b) a bar to the suit created by any law for the time being in force, and for that purpose may [...]"

(emphasis supplied)

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24. It has been held by this Court that a determination of whether res judicata is attracted raises a mixed question of law and facts. In *Madhukar D. Shende*¹⁸ and *Ram Harakh*¹⁹, it was held that the plea of res judicata was a mixed question of law and facts. In both the cases, the plea of res judicata was taken for the first time before this Court. K. Ramaswamy, J. writing for a three-Judge Bench of this Court in *Sushil Kumar Mehta v. Gobind Ram Bohra*²⁰ held that the principle of res judicata cannot be fit into the pigeonhole of "mixed question of law and facts" in every case. Rather, the plea of res judicata would be a question of law or fact or a mixed question of both depending on the issue that is claimed to have been previously decided. The court while determining the applicability of the plea of res judicata would determine if there has been any material alteration in the facts and law applicable : (*Sushil Kumar Mehta case*²⁰, SCC pp. 205-206, para 26)

"26.... The doctrine of res judicata under Section 11 CPC is founded on public policy. An issue of fact or law or mixed question of

fact and law, which are in issue in an earlier suit or might and ought to be raised between the same parties or persons claiming under them and was adjudicated or allowed uncontested becomes final and binds the parties or persons claiming under them. Thus, the decision of a competent court over the matter in issue may operate as res judicata in subsequent suit or proceedings or in other proceedings between the same parties and those claiming under them. But the question relating to the interpretation of a statute touching the jurisdiction of a court unrelated to questions of fact or law or mixed questions does not operate as res judicata even between the parties or persons claiming under them. The reason is obvious; a pure question of law unrelated to facts which are the basis or foundation of a right, cannot be deemed to be a matter in issue. The principle of res judicata is a facet of procedure but not of substantive law. The decision on an issue of law founded on fact in issue would operate as res judicata. But when the law has since the earlier decision been altered by a competent authority or when the earlier decision declares a transaction to be valid despite prohibition by law it does not operate as res judicata. Thus a question of jurisdiction of a court or of a procedure or a pure question of law unrelated to the right of the parties founded purely on question of fact in the previous suit, is not res judicata in the subsequent suit. A question relating to jurisdiction of a court or interpretation of provisions of a statute cannot be deemed to have been finally determined by an erroneous decision of a court. Therefore, the doctrine of res judicata does not apply to a case of decree of nullity. If the court inherently lacks jurisdiction consent cannot confer jurisdiction. Where certain statutory rights in a welfare legislation are created, the doctrine of waiver also does not apply to a case of decree where the court inherently lacks jurisdiction."

25. In *Mathura Prasad Bajoo Jaiswal v. Dossibai N.B. Jeejeebhoy*²¹, the application of the plaintiff in the Court of the Civil Judge for the determination of standard rent under Section 11 of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 was dismissed on the ground that the statute did not apply to a case of open land let for the construction of buildings. This decision was affirmed in appeal. However, in view of another decision²² of the Bombay High Court which held that the statute would be applicable to leased land, the plaintiff

filed a fresh proceeding in the Court of Small Causes. The trial court and the High Court held that the subsequent suit was barred by res judicata. However, J.C. Shah, J. writing for a three-Judge Bench held that the subsequent suit was not barred by res judicata : (*Mathura Prasad Bajoo Jaiswal case*¹, SCC pp. 617 & 619, paras 5 & 11)

"5. But the doctrine of res judicata belongs to the domain of procedure : it cannot be exalted to the status of a legislative direction between the parties so as to determine the question relating to the interpretation of enactment affecting the jurisdiction of a court finally between them, even though no question of fact or mixed question of law and fact and relating to the right in dispute between the parties has been determined thereby. A decision of a competent court on a matter in issue may be res judicata in another proceeding between the same parties : *the "matter in issue" may be an issue of fact, an issue of law, or one of mixed law and fact. An issue of fact or an issue of mixed law and fact decided by a competent court is finally determined between the parties and cannot be reopened between them in another proceeding. The previous decision on a matter in issue alone is res judicata : the reasons for the decision are not res judicata....*

* * *

11.... The matter in issue, if it is one purely of fact, decided in the earlier proceeding by a competent court must in a subsequent litigation between the same parties be regarded as finally decided and cannot be reopened. A mixed question of law and fact determined in the earlier proceeding between the same parties may not, for the same reason, be questioned in a subsequent proceeding between the same parties. But, where the decision is on a question of law i.e. the interpretation of a statute, it will be res judicata in a subsequent proceeding between the same parties where the cause of action is the same, for the expression "the matter in issue" in Section 11 of the Code of Civil Procedure means the right litigated between the parties i.e. the facts on which the right is claimed or denied and the law applicable to the determination of that issue. Where, however, the question is one purely of law and it relates to the jurisdiction of the Court or a decision of the Court sanctioning something which is illegal, by resort to the rule of res judicata a party affected by the decision will not be precluded from challenging the validity of that order under the rule of res judicata, for a rule of procedure cannot supersede the law of the land.

(emphasis supplied)

26. The court while undertaking an analysis of the applicability of the plea of res judicata determines first, if the requirements of Section 11 CPC are fulfilled; and if this is answered in the affirmative, it will have to be determined if there has been any material alteration in law or facts since the first suit was decreed as a result of which the principle of res judicata would be inapplicable.

27. We are unable to accept the submission of the appellants that res judicata can *never* be decided as a preliminary issue. In certain cases, particularly when a mixed question of law or fact is raised, the issue should await a full-fledged trial after evidence is adduced. In the present case, a determination of the components of res judicata turns on the pleadings and judgments in the earlier suits which have been brought on the record. The issue has been argued on that basis before the trial court and the first appellate court; followed by two rounds of proceedings before the High Court (the second following upon an order of remand by this Court on the ground that all parties were not heard). All the documentary material necessary to decide the issue is before the Court and arguments have been addressed by the contesting sides fully on that basis.

E.2. The plea of res judicata and the three previous suits

28. We will now refer to the proceedings in the three suits to decide if the bar of res judicata would be applicable in view of judgments in any of the previous suits.

I. OS No. 92 of 1950-51/The first suit

29. OS No. 92 of 1950-51 was instituted by five residents of Gubbi Town against Abdul Khuddus who was managing the mosque. The suit was instituted under the provisions of Section 92 CPC to settle a scheme for the management of the mosque since Abdul Khuddus was alleged to be misappropriating the funds accruing to the mosque and was trying to set up his own title to the property of the mosque. The reliefs which were sought in the suit were for:

- (a) Settling a scheme for the administration of Jamia Masjid situated in Gubbi and the management of its properties; and
- (b) Directing the defendant to render accounts in respect of the income and other funds.

The schedule to the plaint contained six properties of which Serial No. 2 (which corresponds to the suit schedule property) is described thus:

"2. Dry land bearing Survey No. 2, measuring 2 acres 4 guntas, assessed at Rs 4 and situated in Gubbi Village."

30. The issues which were framed by the trial court were as follows:

"(1) *In the schedule properties being to the Jamia Masjid at Gubbi as alleged in the plaint?*

(2) Is the said mosque a public religious institution as alleged by the plaintiff?

(3) Is it a private institution belonging to the defendant's family?

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(4) Are the schedule shops built out of defendant's private funds?

(5) Are plaintiffs persons interested in the masjid and is the suit maintainable?

(6) Is the defendant entitled to continue in management of the mosque in question?

(7) Is the court-fee sufficient?

(8) To what relief is the plaintiff entitled?"

(emphasis supplied)

31. The 1st Additional District Judge decreed the suit in the following terms:

"14.... the suit is decreed directing the settlement of the scheme towards the proper management of the Jamia Masjid in Gubbi and for the due and proper administration of suit schedule Items 1, 4 and 5 subject to the observation made above in respect of these items. The defendant shall pay costs of this suit in the plaintiff's pleader's fee Rs 30."

32. In the course of the judgment, the District Judge discussed the evidence adduced by both the parties and came to the prima facie finding that of the six suit properties, the mosque did not have the title to two of the properties, namely, Item 2 which is the suit property in the instant proceedings in OS No. 149 of 1998 and suit Item 3. Abdul Khuddus in his testimony as DW 6 deposed that the mosque has nothing to do with the lands (Items 2 and 3) given to him by the Government as khazi inam. Considering that no proof to the contrary was adduced by the plaintiffs in the suit, the District Judge recorded the following finding in para 7:

"The plaintiffs have not produced anything to show that the suit Items 2 and 3 were granted or acquired for the mosque. *It must therefore be held that these two items are khazi granted personally to the ancestors of the defendant they do not form part of properties of the mosque.*"

(emphasis supplied)

33. Significantly, after the above observation, the District Judge entered the following finding in para 10:

"10. In his written statement the defendant claimed all the suit schedule immovable as his own. *But as observed before the evidence discloses his prima facie right to only suit schedule Items 2 and 3.* Those two items therefore be considered as belonging to the mosque. It shall however be open for the trustees to be appointed to take such steps as may deem fit if they consider that in respect of those two items (Items 2 and 3) the defendant has not satisfied the terms of the grant."

(emphasis supplied)

34. An appeal was filed by Abdul Khuddus before the High Court⁴ assailing the finding of the District Judge that Items 1, 4 and 5 belonged to the mosque. In a judgment dated 14-8-1959, the appeal was partly allowed with respect to Items 1 and 5 with the following finding:

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"The result is that this appeal is allowed in part. In substitution of the decree made by Court below, we direct that the learned District Judge will now settle a scheme for the due administration of the mosque and its properties which are Items 1 and 5."

35. OS No. 92 of 1950-51 was a representative suit filed under Section 92 CPC, specifically under clause (g), for settling the scheme of administration of the mosque. It has been consistently contended by Abdul Khuddus that Item 2 of the suit schedule property was granted to him as a khazi inam, and is thus not a mosque property. In order to adjudicate on the applicability of the plea of *res judicata vis-à-vis* the first suit, it is necessary that we decide on the following three issues:

35.1. (A) The scope of the first suit which was instituted under Section 92 CPC.

35.2. (B) Whether the parties in the first suit and the instant proceedings are the same.

35.3. (C) Whether the issue of title over the suit property was conclusively decided in the first suit.

E.2.1. Determination of title in a representative suit

36. In *Pragdasji Guru Bhagwandasji v. Patel Ishwarlalbhai Narsibhai*²³, a three-Judge Bench of this Court explained the ambit of a

representative suit under Section 92 CPC. In that case, one of the reliefs sought was the declaration of the suit property as the religious and charitable trust property of Kaivalya or Karuna Sagar Panth while the defendant contended that the suit property was private property. B.K. Mukherjea, J. speaking for the Bench expounded on the scope of a suit under Section 92 CPC, particularly in view of the relief seeking a declaration: (SCC pp. 326-27, paras 9-11)

"9. A suit under Section 92 CPC is a suit of a special nature which *presupposes the existence of a public trust of a religious or charitable character*. Such suit can proceed only on the allegation that there is a breach of such trust or that directions from the Court are necessary for the administration thereof, and *it must pray for one or other of the reliefs that are specifically mentioned in the section*. It is only when these conditions are fulfilled that the suit has got to be brought in conformity with the provision of Section 92 CPC. As was observed by the Privy Council in *Abdur Rahim v. Mohd. Barkat Ali*²⁴ a suit for a declaration that certain property appertains to a religious trust may lie under the general law but is outside the scope of Section 92 CPC.

10. In the case before us, the prayers made in the plaint are undoubtedly appropriate to the terms of Section 92 CPC and the suit proceeded on the footing that the defendant, who was alleged to be the trustee in respect of a public trust, was guilty of breach of trust. *The defendant denied the*

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existence of the trust and denied further that he was guilty of misconduct or breach of trust. The denial could not certainly oust the jurisdiction of the court, but when the courts found concurrently, on the evidence adduced by the parties, that the allegations of breach of trust were not made out, and as it was not the case of the plaintiffs, that any direction of the court was necessary for proper administration of the trust, the very foundation of a suit under Section 92 CPC, became wanting and the plaintiffs had absolutely no cause of action for the suit they instituted. In these circumstances, the finding of the High Court about the existence of a public trust was wholly inconsequential and as it was unconnected with the grounds upon which the case was actually disposed of, it could not be made a part of the decree or the final order in the shape of a declaratory relief in favour of the plaintiffs.

11. It has been argued by the learned counsel for the respondents that even if the plaintiffs failed to prove the other allegations made

in the plaint, they did succeed in proving that the properties were public and charitable trust properties — a fact which the defendant denied. In these circumstances, there was nothing wrong for the court to give the plaintiffs a lesser relief than what they actually claimed. *The reply to this is, that in a suit framed under Section 92 CPC the only reliefs which the plaintiff can claim and the court can grant are those enumerated specifically in the different clauses of the section. A relief praying for a declaration that the properties in suit are trust properties does not come under any of these clauses. When the defendant denies the existence of a trust, a declaration that the trust does exist might be made as ancillary to the main relief claimed under the section if the plaintiff is held entitled to it; but when the case of the plaintiff fails for want of a cause of action, there is no warrant for giving him a declaratory relief under the provision of Section 92 CPC. The finding as to the existence of a public trust in such circumstances would be no more than an obiter dictum and cannot constitute the final decision in the suit.*"

(emphasis supplied)

37. *Bhagwandasji*²³ lays down the following principles on the ambit of a representative suit under Section 92 CPC.

37.1. The plaintiff can only seek reliefs that fall under any of the clauses in Section 92 CPC. A declaration that the suit property belongs to the trust, does not fall under the scope of any of the reliefs enumerated in Section 92 CPC and is outside the scope of the provision.

37.2. Merely because the defendant denies the title of the trust over the suit property, the jurisdiction of the court cannot be ousted.

37.3. When the title of the trust is contested, a determination of the title of the suit property is necessary for the purpose of adjudication on the final relief, and thus it can be made ancillary to the main relief if the plaintiff is entitled to the relief sought under Section 92 CPC.

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37.4. If the plaintiff is not entitled to the relief sought, then in that case no determination on the title of the suit property can be made since it would be inconsequential to the final decision in the suit.

38. On applying the principles evolved in *Bhagwandasji*²³ to the facts of the case, the relief sought in the first suit under Section 92 CPC was for determination of a scheme of management of the mosque. A determination of the title of the suit property with respect to the

mosque was *ancillary* to the main relief, under Section 92 CPC.

E.2.2. Representative suit and res judicata

39. We next advert to identifying if the parties in the instant proceedings (OS No. 149 of 1998) are the same as the first suit (OS No. 92 of 1950-51). The first suit was a representative suit filed by interested parties of the mosque Jamia Masjid while the instant suit was filed by the President of the Jamia Masjid in his representative capacity. In *Raje Anandrao v. Shamrao*²⁵, P.B. Gajendragadkar, C.J. (as he then was) speaking for a two-Judge Bench of this Court said : (AIR p. 1211, para 12)

"12. ... a suit under Section 92 is a representative suit and binds not only the parties thereto but all those who are interested in the trust."

40. In *Ahmad Adam Sait v. M.E. Makhri*²⁶, P.B. Gajendragadkar, C.J. (as he then was) speaking for a three-Judge Bench held : (AIR pp. 113-14, para 16)

"16. ... when a suit is brought under Section 92, it is brought by two or more persons interested in the trust who have taken upon themselves the responsibility of representing all the beneficiaries of the trust. In such a suit, though all the beneficiaries may not be expressly impleaded, the action is instituted on their behalf and relief is claimed in a representative character. This position immediately attracts the provisions of Explanation VI to Section 11 of the Code. Explanation VI provides that where persons litigate bona fide in respect of a public right or of a private right claimed in common for themselves and others, all persons interested in such right shall, for the purposes of this section, be deemed to claim under the persons so litigating. It is clear that Section 11 read with its Explanation VI leads to the result that a decree passed in suit instituted by persons to which Explanation VI applies will bar further claims by persons interested in the same right in respect of which the prior suit had been instituted. Explanation VI thus illustrates one aspect of constructive res judicata. Where a representative suit is brought under Section 92 and a decree is passed in such a suit, law assumes that all persons who have the same interest as the plaintiffs in the representative suit were represented by the said plaintiffs and, therefore, are constructively barred by res judicata from reagitating the matters directly and substantially in issue in the said earlier suit."

41. The same principle was reiterated in *R. Venugopala Naidu*¹¹. In a two-Judge Bench decision in *Shiromani Gurdwara Parbandhak Committee v. Harnam Singh C.*²², this Court held : (*Shiromani Gurdwara Parbandhak Committee case*²², SCC pp. 389-90, para 19)

"19. As observed by this Court in *R. Venugopala Naidu v. Venkatarayulu Naidu Charities*¹¹ a suit under Section 92 CPC is a suit of special nature for the protection of public rights in the public trust and charities. The suit is fundamentally on behalf of the entire body of persons who are interested in the trust. It is for the vindication of public rights. The beneficiaries of the trust, which may consist of the public at large, may choose two or more persons amongst themselves for the purpose of filing a suit under Section 92 CPC and the suit-title in that event would show only their names as plaintiffs. Can we say that the persons whose names are in the suit-title are the only parties to the suit? The answer would be in the negative. The named plaintiffs being the representatives of the public at large which is interested in the trust, all such interested persons would be considered in the eye of the law to be parties to the suit. A suit under Section 92 CPC is thus a representative suit and as such binds not only the parties named in the suit-title but all those who share common interest and are interested in the trust. It is for that reason that Explanation VI to Section 11 CPC constructively bars by res judicata the entire body of interested persons from reagitating the matters directly and substantially in issue in an earlier suit under Section 92 CPC."

42. On a perusal of the above authorities it is evident that a representative suit is binding on all the interested parties. Therefore, the judgment of the court in the first suit would be binding on Jamia Masjid and would preclude it from instituting another suit on the same issue if it has been conclusively decided. It is now to be analysed if the substantive issue in the instant suit was conclusively decided in the first suit.

E.2.3. Conclusive decision and res judicata

43. The locus classicus on the point of determining if an issue was "directly and substantially" decided in the previous suit is the decision of M. Jagannadha Rao, J. (writing for a two-Judge Bench) in *Sajjadanashin Sayed Md. B.E. Edr. v. Musa Dadabhai Ummer*²⁸. During the course of the judgment, the Court analysed the expression "directly and substantially in issue" in Section 11 and laid down the twin test of *essentiality* and *necessity*: (SCC pp. 357 & 359-60, paras 12 & 18-19)

"12. It will be noticed that the words used in Section 11 CPC are "directly and substantially in issue". If the matter was in issue

directly and substantially in a prior litigation and decided against a party then

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the decision would be res judicata in a subsequent proceeding. Judicial decisions have however held that if a matter was only "collaterally or incidentally" in issue and decided in an earlier proceeding, the finding therein would not ordinarily be res judicata in a latter proceeding where the matter is directly and substantially in issue.

* * *

18. In India, Mulla has referred to similar tests (*Mulla*, 15th Edn., p. 104). The learned author says : a matter in respect of which *relief* is claimed in an earlier suit can be said to be generally a matter "directly and substantially" in issue but it does not mean that if the matter is one in respect of which *no relief* is sought it is not directly or substantially in issue. It may or may not be. It is possible that it was "directly and substantially" in issue and it may also be possible that it was only collaterally or incidentally in issue, depending upon *the facts of the case*. The question arises as to what is the *test* for deciding into which category a case falls? *One test is that if the issue was "necessary" to be decided for adjudicating on the principal issue and was decided, it would have to be treated as "directly and substantially" in issue and if it is clear that the judgment was in fact based upon that decision, then it would be res judicata in a latter case* (*Mulla*, p. 104). One has to examine the plaint, the written statement, the issues and the judgment to find out if the matter was directly and substantially in issue (*Isher Singh v. Sarwan Singh*²⁹ and *Syed Mohd. Salie Labbai v. Mohd. Hanifa*³⁴). We are of the view that the above summary in *Mulla* is a correct statement of the law.

19. We have here to advert to another principle of caution referred to by Mulla (p. 105):

'It is not to be assumed that matters in respect of which issues have been framed are all of them directly and substantially in issue. Nor is there any special significance to be attached to the fact that a particular issue is the first in the list of issues. Which of the matters are directly in issue and which collaterally or incidentally, must be determined *on the facts of each case*. A material test to be applied is whether the court considers the adjudication of the issue *material and essential* for its decision.'

(emphasis in original and supplied)

44. Adverting to the decision in *Pragdasji Guru Bhagwandasji*²³ and

two earlier decisions³⁰, the Court held that these were instances where in spite of adverse findings in an earlier suit, the finding on that specific issue was not treated as *res judicata* as it was purely incidental, auxiliary or collateral to the main issue in each of these cases and not necessary in the earlier case.

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45. In another decision in *Gram Panchayat of Village Naulakha v. Ujagar Singh*³¹, it has been held that the decision in an earlier suit for an injunction, where no question of title was adjudicated upon will not be binding on the question of title : (SCC pp. 547-48, para 10)

"10. We may also add one other important reason which frequently arises under Section 11 CPC. The earlier suit by the respondent against the Panchayat was only a suit for injunction and not one on title. No question of title was gone into or decided. The said decision cannot, therefore, be binding on the question of title. See in this connection *Sajjadanashin Sayed Md. B.E. Edr. v. Musa Dadabhai Ummer*²⁸ wherein this Court, on a detailed consideration of law in India and elsewhere held, that even if, in an earlier suit for injunction, there is an incidental finding on title, the same will not be binding in a later suit or proceeding where title is directly in question, unless it is established that it was "necessary" in the earlier suit to decide the question of title for granting or refusing injunction *and* that the relief for injunction was *founded* or *based* on the finding on title. Even the mere framing of an issue on title may not be sufficient as pointed out in that case."

(emphasis in original)

46. However, in *Sajjadanashin Sayed*²⁸, an earlier judgment in *Sulochana Amma*¹² and the Madras High Court's judgment in *Vangarai*³² were referred to in order to lay emphasis on the unique facts of each case and its importance for determination of whether the issue was substantially decided. In both the referred cases, the issue was whether the finding of title in an injunction suit would operate as *res judicata* to a subsequent suit for declaration of title. While in *Sulochana Amma*¹², it was held that by the doctrine of *res judicata*, the finding would bar the subsequent suit, in *Vangarai*³², it was held that the title was not conclusively decided and that the subsequent suit would not be barred. It was observed that the twin tests of *necessity* and *essentiality* might lead to different conclusions on suits of a similar nature based on the facts and circumstances in each of them.

47. In a more recent decision in *Nand Ram v. Jagdish Prasad*³³ a Bench of two Judges reiterated the principle that if a matter has only collaterally or in an auxiliary manner been in issue or decided in an earlier proceeding, the finding would not ordinarily be res judicata in a later proceeding where the matter is directly and substantially in issue. Hemant Gupta, J. (writing for a two-Judge Bench) noted that the material test to be applied is whether the adjudication of the issue is *material and essential* for the decision. In

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*Nand Ram*³³, the land leased by the plaintiffs to the defendants was acquired under the Land Acquisition Act, 1894. A dispute arose on the apportionment of the compensation. The suit was decided against the defendant on the ground that defendant did not pay the lease rent for more than 12 months and thus according to the lease agreement, the lease had come to an end. It was thus held that the defendant would not be entitled to the compensation. Subsequently, the plaintiff filed an eviction suit asserting that the defendant was in possession of the land that was not included in the lease deed. The High Court in the second appeal held³⁴ that the subsequent suit was barred by res judicata since the former suit had conclusively decided on the title of the suit property. On appeal, this Court set aside the judgment³⁴ of the High Court on the ground that the issue of title was not conclusively decided in the former suit.

48. In view of the authorities cited above, the twin test that is used for the identification of whether an issue has been conclusively decided in the previous suit is:

A. Whether the adjudication of the issue was "necessary" for deciding on the principle issue ("the necessity test"); and

B. Whether the judgment in the suit is based upon the decision on that issue ("the essentiality test").

49. On applying the necessity test to the case at hand, we will have to identify if the decision on the principal issue of framing a scheme for the administration of the mosque could not have been arrived at without adjudication of the title of the suit.

50. The plaint contains two distinct allegations against the defendant, Abdul Khuddus : (i) that he was misappropriating the funds of the mosque; and (ii) that he was setting up his own title to the suit property. The defendant contested that the suit property belonged to him. Therefore, since the title was contested, it was necessary that the court in the first suit determine if the suit property belonged to the

mosque to adjudicate on the scheme of administration of the mosque. The contention that the trial court could not have adjudicated on the title of the suit property in a representative suit has already been addressed in the preceding section relying on *Bhagwandasji*²³. On applying the essentiality test to the judgment in the first suit, it has to be identified if the final decision rendered by the court in that case would be altered if the issue on title was determined otherwise. Whether the scheme for the administration of the mosque would also cover the suit property was necessary for adjudication in the former suit. In the next section we shall explore what precisely was the nature and import of the adjudication in the former suit.

E.2.3.1. Similarity in issue and res judicata

51. Apart from the issue whether the title to the suit property was conclusively decided in the first suit, it is necessary that we identify if the matters in issue in the former and the subsequent suits are the same. The first suit under Section 92 CPC was for settling a scheme of administration of Jamia Masjid and the management of its properties and the rendering of accounts of its funds and income by the defendant. In the subsequent suit, the prayer was for the declaration of the suit property as a wakf property. In the first suit, it was held that the suit property was "prima facie" the property of Abdul Khuddus; that it was given to his forefathers as a service inam, for his functions as a khazi. The cause of action in the subsequent suit arose because the successors of Abdul Khuddus alienated the suit property. The matters were adjudicated upon in the former suit are not the same as those in the subsequent suit for two reasons : *Firstly*, there was a changed circumstance resulting from the notification declaring the suit property as a wakf property which was issued after the first suit was decreed; *secondly*, in the first suit, which was essentially a suit for administration, the suit property was observed to prima facie belong to Abdul Khuddus as a khazi inam.

52. The adjudication on the suit property was focussed around whether it belonged to the mosque. Though the suit property was Prima facie declared to not belong to the mosque, it would not as a corollary mean that it was the personal property of Khazi Abdul Khuddus over which he possessed an absolute or inalienable right, particularly in view of his deposition that the property was given as an inam to his forefathers for their services as khazi. There was no

discussion on whether the suit property was a personal inam or an inam attached to the office; there was no adjudication in the earlier suit on the terms of the grant. Thus, no adjudication on the absolute title over the suit property was rendered in the former suit.

53. On reading together the findings which have been arrived at in para 7 and para 10 of the judgment of the trial court in the first suit, it is evident that the District Judge did not enter into a conclusive finding that Item 2 of the schedule to that suit (which corresponds to the suit schedule property in the present case) was the personal property of Abdul Khuddus. In fact, the use of the expression "prima facie right" in para 10 extracted above (in para 33 hereinabove) clearly indicates that there was no conclusive finding in the judgment of the District Judge. The District Judge also noted it would be open to the trust to take steps as they deem fit in respect of Item 2 and Item 3 of the schedule in that suit, if the defendant had not fulfilled the terms specified in the grant. Thus the finding on Issue 1 that schedule Items 1, 4 and 15 belong to the mosque must specifically be read in the context of what has been stated above. From the above analysis, it becomes clear that there was no adjudication in the earlier suit that Abdul Khuddus had an absolute title to the suit property.

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54. In view of the above discussion, the suit that gives rise to the instant proceedings is not barred by the first suit for the following reasons:

54.1. The court in the first suit was not ousted from determining if the suit property belonged to the mosque while settling a scheme for administration in a suit under Section 92 CPC.

54.2. The suit under Section 92 is of a representative character and the decree would bind all persons interested in the trust property.

54.3. There was a "prima facie" finding in the former suit that the suit property belonged to Abdul Khuddus.

54.4. In the context of a suit for settling a scheme of administration, the issue in the first suit was whether the suit property belonged to Jamia Masjid. There was no adjudication or finding that Khazi Abdul Khuddus had absolute title over the property, particularly in view of the deposition of Abdul Khuddus that the property was given as a khazi inam, coupled with the observation of the court that he had a "prima facie" right over the property. Therefore, the alleged claim of title of Abdul Khuddus was not adjudicated. Thus, the matters which were in

issue before the court in the first suit and the instant proceedings are distinct.

II OS No. 748 of 1968 : the second suit

55. The suit was instituted by the Mysore State Board of Wakf. Abdul Khuddus and H.S. Gururajarao were impleaded as the first and second defendants to the suit. The plaint contained the following averments:

55.1. The suit property is a wakf property dedicated as a "Khazi Service Inam". People who perform the service of a khazi are entitled to remain in possession of the service inam and to realise the usufruct after paying the wakf fund.

55.2. Abdul Khuddus was entitled to remain in possession by virtue of his office as khazi, apart from which he had no right, title or interest.

55.3. The suit property had been notified as a wakf pursuant to enquiry. A Gazette Notification had been issued on 10-7-1965 notifying the suit property as a wakf property.

55.4. The cause of action arose on 10-7-1965 when the illegal and forcible occupation of the suit property by the second defendant came to the knowledge of the plaintiff.

55.5. The reliefs sought were:

- (a) A declaration that the property constitutes a wakf;
- (b) A decree for possession of the suit property.

56. The second defendant filed a written statement stating that he was prepared to pay rent in the event that the property was held to be wakf property. A Compromise petition was filed by the parties under Order 23 Rule 1 CPC on 27-10-1969 which envisaged that the second defendant shall continue to be the lessee of the suit property till the expiry of the period of lease (end of May 1971) for which the lease amount shall have to be paid to the first defendant. In

the alternative, if he desired to extend his lease thereafter, he could enter into a fresh agreement of lease with the first defendant, failing which he would vacate after demolition of the building. The suit was decreed on 27-10-1969 in terms of the compromise petition.

57. The basis and foundation in the second suit was that:

57.1. The plea that the suit property is a wakf on the basis of which a declaration was sought.

57.2. Abdul Khuddus was entitled to possession only in his capacity as a khazi, the grant being a khazi service inam.

57.3. The property has been notified as a wakf in the Mysore State

Gazette on 10-7-1965 pursuant to a declaration of a wakf subscribed to by Abdul Khuddus.

57.4. The compromise decree envisages that H.S. Gururajarao would pay the rent to the first defendant and hand over possession of the suit property to the first defendant on the completion of the tenure of the lease. There is no clause in the compromise deed that Abdul Khuddus had absolute title to the property.

57.5. In the second suit, the State Wakf Board sought declaratory relief and a decree for possession. A reading of the plaint would indicate that the essential nature of the grievance was in respect of a lease granted to the second defendant. The case of the Wakf Board was that the property had been dedicated as a wakf and was notified in the Gazette as a wakf; Abdul Khuddus was entitled by virtue of his office as khazi to the usufruct; and the lease in favour of the second defendant would not bind the Wakf Board. The suit was compromised and the second defendant agreed to hand over possession to the first defendant. No part of the claim was abandoned on the question of title of Abdul Khuddus.

E.2.4. Compromise decree and res judicata

58. It is contended by the counsel for the appellant that since a compromise deed was arrived at between the Mysore State Board of wakf, Abdul Khuddus and the lessee with regard to the possession of the suit property, the other reliefs have been abandoned. It was thus contended that in view of the compromise deed, the claim of title to the suit property has been abandoned and cannot be raised in the subsequent suit. In *Pulavarthi Venkata Subba Rao v. Valluri Jagannadha Rao*³⁵ and *Sunderabai v. Devaji Shankar Deshpande*³⁶, this Court held that since a compromise decree is not a decision of the court, the principle of res judicata cannot be made applicable. However, it was held that the compromise decree may *in effect* create estoppel by conduct between the parties, and the parties by estoppel will be prevented from initiating a subsequent suit.

59. Bhagwati, C.J. (as he was then) writing for a three-Judge Bench in *Sunderabai*³⁶ observed : (SCC p. 100, para 15)

"15. The bar of "res judicata" however, may not in terms be applicable in the present case, as the decree passed in Suit No. 291 of 1937 was a decree in terms of the compromise. The terms of Section 11 of the



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© 2024 Eastern Book Company. The text of this version of this judgment is protected by the law declared by the Supreme Court in Eastern Book Company v. D.B. Modak, (2008)1 SCC 1 paras 61, 62 & 63.

the underlying principle of estoppel would still apply. Vide the commentary of Sir Dinshaw Mulla on Section 11 of the Civil Procedure Code at p. 84 of the 11th Edn. under the caption "Consent decree and estoppel":

'The present section does not apply in terms to consent decrees; for it cannot be said in the cases of such decrees that the matters in issue between the parties 'have been heard and finally decided' within the meaning of this section. A consent decree, however, has to all intents and purposes the same effect as "res judicata" as a decree passed "in invitum". It raises an estoppel as much as a decree passed "in invitum".'

60. Since it is the principle of estoppel by conduct that will bar the institution of the subsequent suit, it is pertinent that we refer to the compromise decree to determine if any compromise was arrived at between the parties on the title to the suit property. On a perusal of the compromise deed, it is evident that a compromise was reached only on the issue of possession and lease. When no compromise was arrived at between the parties on the title to the suit property, then no estoppel by conduct could also be inferred. Additionally, the counsel for the respondent referred to Order 23 Rule 3-A to contend that a subsequent suit is barred when the previous suit is dismissed through a compromise decree. However, the provision would not be applicable to the case at hand since it only bars the challenge to a compromise decree on the ground that it is unlawful. Therefore, the disposal of the second suit in view of the compromise would not bar the filing of the suit out of which the instant proceedings arise.

III. OS No. 100 of 1983: the third suit

61. The suit was instituted in the Court of Munsif at Gubbi by the Karnataka Wakf Board. The defendants were Khazi Abdul Masood, son of Abdul Khuddus (the first defendant) while the second, third, fourth and fifth defendants were persons to whom the property was sought to be alienated by the first defendant.

62. It was averred in the plaint that the cause of action arose when the first defendant who had no right and interest in the suit schedule property was trying to interfere with the possession of the plaintiff with the assistance of the second, third and fourth defendants. The relief which was sought in the suit was a permanent injunction restraining the defendants from interfering with the possession of the plaintiff—Karnataka Board of Wakfs. The suit was instituted on 4-8-1983. Significantly, the suit out of which the present dispute arises was instituted on 5-11-1984 for seeking declaration and possession. It was only thereafter on 22-11-1984 that OS No. 100 of 1983 was withdrawn. OS No. 100 of 1983 was a suit for a bare injunction and no declaration

was claimed. In any event there was no adjudication on merits.

63. The third suit of 1983 instituted by the Karnataka Board of Wakfs was a suit for injunction simpliciter. No question of title was raised and none was adjudicated upon. As a matter of fact, the suit was instituted on

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the apprehension that the property was likely to be alienated by the legal representatives of Abdul Khuddus. Before the suit of 1983 was withdrawn, the suit out of which these proceedings arise was instituted for seeking comprehensive reliefs in terms of a declaration of title and a permanent injunction. Therefore, the decision in the third suit does not bar the initiation of the suit out of which the instant proceeding arises.

64. The High Court dismissed the second appeal holding that the courts conclusively decided on the title to the suit property in the first suit (OS No. 92 of 1950-51) and that any subsequent suit on the same issue of title would be barred by the principles of *res judicata*. In view of the discussion above, this finding arrived at by the High Court is erroneous. While holding that the judgment in the first suit has conclusively decided that the title over the suit property belongs to Abdul Khuddus, the High Court has lost sight of the observations in paras 7 and 10 of the judgment of the trial court. It has been specifically held there that the suit property was a khazi service Inam and that Abdul Khuddus has a *prima facie* right to the suit property. There was no adjudication to the effect that Abdul Khuddus had an absolute title to the suit property. Additionally, the decision of the courts in the first suit was delivered before the suit property was notified as a wakf property in view of Notification No. MWB 19(11) dated 6-7-1965. The principle of *res judicata* can thus not be applied without taking into consideration this changed circumstance.

65. We are also of the opinion that the High Court has committed an error in applying the principle of *res judicata* based on the judgment in the second suit. It was observed by the High Court that the second suit that was decreed in terms of the compromise was intended to put the litigation to an end and would thus bar any subsequent suit on the title to the suit property by virtue of the principle of *res judicata*. For this purpose, reliance was placed on a two-Judge Bench decision of this Court in *Byram Pestonji Gariwala*⁶ wherein it was held that a challenge to a consent decree six years later was vitiated by reason of delay, estoppel, and *res judicata*. However, the High Court lost sight of the fact that the compromise deed was entered into specifically with regard

to the handing over of possession of the suit property by the lessee at the end of the lease and no compromise on the title to the suit property was arrived at.

F. The conclusion

66. In view of the discussion above, we summarise our findings below:

66.1. Issues that arise in a subsequent suit may either be questions of fact or of law or mixed questions of law and fact. An alteration in the circumstances after the decision in the first suit, will require a trial for the determination of the plea of res judicata if there arises a new fact which has to be proved. However, the plea of res judicata may in an appropriate case be determined as a preliminary issue when neither a disputed question of fact nor a mixed question of law of fact has to be adjudicated for resolving it.

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66.2. While deciding on a scheme for administration in a representative suit filed under Section 92 CPC the court may, if the title is contested, have to decide if the property in respect of which the scheme for administration and management is sought belongs to the trust.

66.3. A suit under Section 92 CPC is of a representative character and all persons interested in the trust would be bound by the judgment in the suit, and persons interested would be barred by the principle of res judicata from instituting a subsequent suit on the same or substantially the same issue.

66.4. Since the first suit (OS No. 92 of 1950-51) was filed by members interested in the Jamia Masjid and the suit out of which the instant proceedings arise (OS No. 149 of 1998) was filed by the President of Jamia Masjid, the formulation in para 66.3 above is satisfied.

66.5. There was no adjudication in the first suit (OS No. 92 of 1950-51) on whether Abdul Khuddus had absolute title to the suit property. There was only a prima facie determination that Items 2 and 3 of the schedule of properties to the first suit belonged to Abdul Khuddus. The matters substantially in issue in OS No. 92 of 1950-51, which was a suit for administration and management of trust properties and for accounts, are distinct from the issues in the suit out of which the instant proceedings arise. Therefore, OS No. 149 of 1998 is not barred by res judicata in view of the decision in the first suit.

66.6. While a compromise decree in a prior suit will not bar a subsequent suit by virtue of *res judicata*, the subsequent suit could be barred by estoppel by conduct. However, neither the compromise petition dated 27-10-1969 nor the final decree in the second suit dated 27-10-1969 indicate that a compromise on the title to the suit property was arrived at. The compromise was restricted to the issue of the erstwhile lessee handing over possession of the suit property at the end of the lease.

66.7. The third suit (OS No. 100 of 1983) was a suit for an injunction simpliciter. The third suit was withdrawn after the suit out of which the instant proceeding arises was filed for seeking a substantive declaration and an injunction. No adjudication on the rights of the parties was made in the third suit.

67. For the above reasons, we allow the appeal and set aside the impugned judgment and order of the High Court of Karnataka dated 23-1-2012 in *Jamia Masjid v. K.V. Rudrappa*¹. OS No. 149 of 1998 is restored to the file of the Principal Civil Judge (Senior Division), Tumkur for trial. Having regard to the fact that the suit was instituted in 1998, the trial Judge is requested to dispose of the suit and to complete trial within a period of one year from the date of the receipt of the certified copy of this judgment. There shall be no order as to costs.

68. Pending application(s), if any, shall stand disposed of.

¹ Arising from the Judgment and Order in *Jamia Masjid v. K.V. Rudrappa*, 2012 SCC OnLine Kar 1722 (Karnataka High Court, RSA No. 2189 of 2007, dt. 23-1-2012) [Reversed]

¹ *Jamia Masjid v. K.V. Rudrappa*, 2012 SCC OnLine Kar 1722

² *Jamia Masjid v. K.V. Rudrappa*, 2014 SCC OnLine SC 1841

³ OS No. 149 of 1998

⁴ RA No. 510 of 1954

⁵ *Provash Chandra Dalui v. Biswanath Banerjee*, 1989 Supp (1) SCC 487 : AIR 1989 SC 1834

⁶ *Byram Pestonji Gariwala v. Union Bank of India*, (1992) 1 SCC 31 : AIR 1991 SC 2234

⁷ *Sarguja Transport Service v. STAT*, (1987) 1 SCC 5 : 1987 SCC (Cri) 19 : AIR 1987 SC 88

⁸ *Jamia Masjid v. K.V. Rudrappa*, 2008 SCC OnLine Kar 304

⁹ SLP (C) No. 26047 of 2008

¹⁰ *K.V. Rudrappa v. Jamia Masjid*, 2010 SCC OnLine SC 1468

¹¹ *R. Venugopala Naidu v. Venkatarayulu Naidu Charities*, 1989 Supp (2) SCC 356 : AIR 1990 SC 444

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- ¹² *Sulochana Amma v. Narayanan Nair*, (1994) 2 SCC 14
- ¹³ The suit out of which the issue in the present appeal arises is Suit No. 96 of 1984 renumbered as Suit Nos. 162 of 1989 and 149 of 1998. For convenience we will refer to the suit as OS No. 149 of 1998.
- ¹⁴ *Syed Mohd. Salie Labbai v. Mohd. Hanifa*, (1976) 4 SCC 780
- ¹⁵ *Alka Gupta v. Narender Kumar Gupta*, (2010) 10 SCC 141 : (2010) 4 SCC (Civ) 73
- ¹⁶ *Alka Gupta v. Narender Kumar Gupta*, 2009 SCC OnLine Del 510
- ¹⁷ *Alka Gupta v. Narender Kumar Gupta*, 2009 SCC OnLine Del 2776
- ¹⁸ *Madhukar D. Shende v. Tarabai Aba Shedage*, (2002) 2 SCC 85
- ¹⁹ *Ram Harakh v. Hamid Ahmed Khan*, (1998) 7 SCC 484
- ²⁰ *Sushil Kumar Mehta v. Gobind Ram Bohra*, (1990) 1 SCC 193
- ²¹ *Mathura Prasad Bajoo Jaiswal v. Dossibai N.B. Jeejeebhoy*, (1970) 1 SCC 613
- ²² *Vinayak Gopal Limaye v. Laxman Kashinath Athavale*, 1956 SCC OnLine Bom 62
- ²³ *Pragdasji Guru Bhagwandasji v. Patel Ishwarlalbhai Narsibhai*, (1952) 1 SCC 323 : AIR 1952 SC 143
- ²⁴ *Abdur Rahim v. Mohd. Barkat Ali*, 1927 SCC OnLine PC 98 : (1927-28) 55 IA 96
- ²⁵ *Raje Anandrao v. Shamiao*, (1961) 3 SCR 930 : AIR 1961 SC 1206
- ²⁶ *Ahmad Adam Sait v. M.E. Makhri*, (1964) 2 SCR 647 : AIR 1964 SC 107
- ²⁷ *Shiromani Gurdwara Parbandhak Committee v. Harnam Singh C.*, (2003) 11 SCC 377 : AIR 2003 SC 3349
- ²⁸ *Sajjadanashin Sayed Md. B.E. Edr. v. Musa Dadabhai Ummer*, (2000) 3 SCC 350
- ²⁹ *Isher Singh v. Sarwan Singh*, AIR 1965 SC 948
- ³⁰ *Run Bahadoor Singh v. Lachoo Koer*, 1884 SCC OnLine PC 26 : (1884-85) 12 IA 23 : ILR (1885) 11 Cal 301; *Asrar Ahmed v. Durgah Committee*, 1946 SCC OnLine PC 29 : AIR 1947 PC 1
- ³¹ *Gram Panchayat of Village Naulakha v. Ujagar Singh*, (2000) 7 SCC 543
- ³² *Vangarai Selliamman Ayyanar Uthirasomasundareswarar Temple v. Rajanga Asari*, 1964 SCC OnLine Mad 116 : AIR 1965 Mad 355
- ³³ *Nand Ram v. Jagdish Prasad*, (2020) 9 SCC 393 : (2021) 2 SCC (Civ) 672
- ³⁴ *Jagdish Prasad v. Nand Ram*, 2010 SCC OnLine Del 3939
- ³⁵ *Pulavarthi Venkata Subba Rao v. Valluri Jagannadha Rao*, AIR 1967 SC 591



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³⁶ *Sunderabai v. Devaji Shankar Deshpande*, (1952) 2 SCC 92 : AIR 1954 SC 82

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