

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

Original Application No. 554/2023

IN THE MATTER OF:

Umesh AnandApplicant

Versus

Govt. of NCT of DelhiRespondent(s)

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Through



PUJA KALRA

Standing Counsel MCD

Chamber No. 430, Block-I

Delhi High Court, New Delhi.

Mobile - 9312839323

New Delhi
Dated:- 19.12.2023

BEFORE THE NATIONAL GREEN TRIBUNAL**PRINCIPAL BENCH, NEW DELHI****Original Application No. 554/2023****IN THE MATTER OF:**

Umesh Anand

.....Applicant

Versus

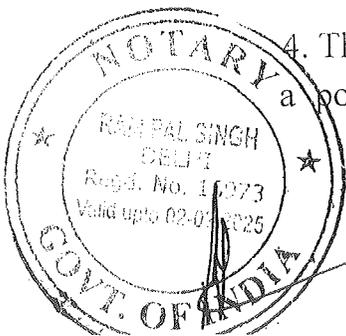
Govt. of NCT of Delhi

.....Respondent(s)

Affidavit of Sh. Bhaskar Seal S/o Sh. P.C. Seal, Aged about 45 years, Assistant Commissioner, Remunerative Project Cell, Municipal Corporation of Delhi, on behalf of the MCD.

I the above named deponent do hereby solemnly affirm and declare here as under:-

1. That I am presently working as Assistant Commissioner, Remunerative Project Cell, Municipal Corporation of Delhi and fully conversant with the facts of the case on the basis of the record maintained and made available in this regard and as such am competent to depose and swear the present affidavit on behalf of the respondent/ Municipal Corporation of Delhi.
2. That the present application was filed by the applicant against the mobile tower installed in a small park of MCD Pocket-A adjoining to A-444, Sarita vihar, New Delhi. ward no. 101/S (Latitude: 28.533119 Longitude: 77.288303).
3. That the present matter was listed before this Hon'ble NGT on 27.09.2023 and thereafter 18.12.2023 wherein this Hon'ble Tribunal passed directions to file response/ reply to the averments in the application.
4. That as per record maintained by the Municipal Corporation of Delhi a policy vide resolution no. 259 dated 04.01.2020 was passed for



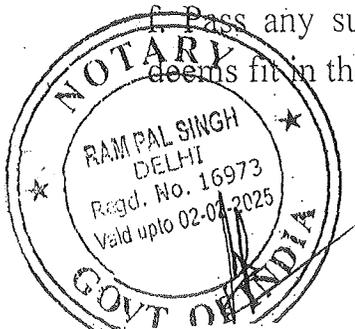
permission for installation of Cellular Towers on Wheels (COW) in South Delhi Municipal Corporation (erstwhile) areas.

5. That as per record, Indus Towers Ltd. applied for installation of Cellular Tower on Wheels (COW) at South Delhi Municipal Corporation (Now Municipal Corporation of Delhi) park Pocket-A adjoining to A-444, Sarita vihar, New Delhi. Ward no. 101/S (Latitude: 28.533119 Longitude: 77.288303). Copy of the permission bearing no. AC/RPC/SDMC/2021/D-164 dated 04.08.2021 is annexed herewith as ANNEXURE-A.

6. That It is apposite to note that the present issue which forms the substratum of this lisis already sub-judice before the Hon'ble Delhi High Court in *Writ Petition No. 13425 of 2021 titled Jan Kalyan Samiti, Pocket A, Sarita Vihar Vs. South Delhi Municipal Corporation* filed by the present Original Applicant before the Hon'ble High Court of Delhi qua the same subject matter. The prayer clause in the said Writ Petition is reproduced hereinunder for the convenience of this Hon'ble Tribunal:-

“ ...

- a. Allow the present Writ Petition and/or;
- b. Pass an order quashing the impugned permission letters dated 04.08.2021 passed by the SDMC permitting to install mobile towers in the Public Parks and/or;
- c. Directing the Respondents to submit latest and current findings before the Hon'ble Court with respect to harmful effects of EMF on living organisms,
- d. Pass an order directing the Respondents directing that permission letter dated 04.08.2021 is unconstitutional and violative of Article 14 and 21 of constitution of India,
- e. Pass an order directing the respondents to not energise the tower and act in pursuant to the permission letter dated 04.08.2021,
- f. Pass any such orders as this Hon'ble Court as this Hon'ble Court may deems fit in the interest of justice.”



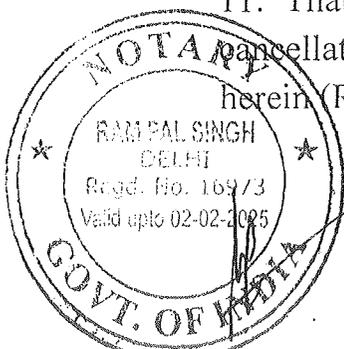
7. That the Hon'ble Delhi High Court has issued notice in the matter and no interim relief has been granted in favour of the Applicant/Petitioner therein. The writ petition is pending consideration and proceedings are next listed for further consideration on 19.01.2024. The orders are Annexed herewith as **Annexure B**.

8. Evidently the present original application has been filed before this Hon'ble Tribunal seeking identical relief as sought for in the aforementioned Writ Petition. In the humble submission of the Respondent, the Original Applicant has indulged in forum shopping whereby same relief has been sought before the Hon'ble High Court and subsequently without disclosing the said fact the Applicant has now preferred the present original application before this Hon'ble Tribunal. It is no more res integra that the Hon'ble Courts have condemned the practice of forum shopping by litigants and termed it as an abuse of law as held in (2019) 14 SCC 568.

9. It is trite law that the litigant ought to be bound by the doctrine of election as well as issue estoppel. In view of the fact that the matter is already pending before the Hon'ble Delhi High Court, the present matter ought not to be entertained and dismissed at the very outset in order to avoid multiplicity of proceedings as well as contradictory views being taken by the Hon'ble Courts.

10. That Admittedly, in similar matter as the present petition, the Hon'ble Tribunal rendered judgment in O.A. 232 of 2022 titled *Gautam Nagar Residents Association Regd. V Commissioner, SDMC & Ors.* Vide Order dated 19.07.2022 this Hon'ble Tribunal was pleased to direct the DPCC to take further action for compliance of environmental norms by exercising coercive measures against installation of telecom tower at the subject site. Furthermore, the Hon'ble Tribunal was pleased to direct the Municipal Corporation, Delhi to take remedial action in the matter to ensure that the park is not used for any other non- conforming purposes.

11. That the aforementioned O.A. 232 of 2022 was filed seeking cancellation of permission letter issued to the answering respondent herein (Respondent No. 4 in O.A. 232 of 2022) in SDMC Park opposite



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Gulmohar Enclave, Gate No. 4, Gautam Nagar, Ward No. 62/S, New Delhi- 110049 for installation of mobile infrastructure at the said site. Subsequent to passing of the said order by this Hon'ble Tribunal, the Project proponent Indus Towers, by way of CM(M) No. 1380 of 2022 titled *M/s Indus Towers Ltd v Gautam Nagar Residents Association Regd. & Ors.* approached the Hon'ble High Court of Delhi assailing the orders dated 19.07.2022 in O.A. 232 of 2022 and 20.09.2022 in R.A. 27 of 2022.

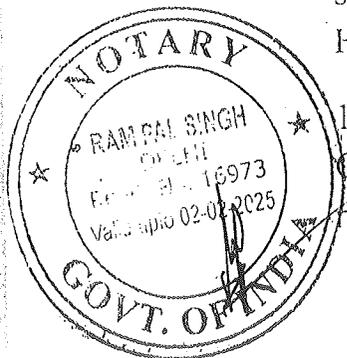
12. That the Hon'ble High Court of Delhi vide Order dated 09.12.2022 has been pleased to stay the operation of both the aforementioned orders. Furthermore, the consequential Notice issued by the SDMC dated 18.08.2022 to the Respondent therein directing the Petitioner to remove the subject tower from the site in question has also been kept in abeyance by the Hon'ble High Court. The orders dated 9.12.22 are annexed herewith as **Annexure C**.

13. The said CM(M) No. 1380 of 2022 is presently pending before the Hon'ble High Court as is next listed for consideration on 05.01.2024.

14. That In light of the grievance of the Original Applicant in the present original application being identical to that in O.A. 232 of 2022, the present Original Application ought not to be entertained by this Hon'ble Tribunal and the same merits to be dismissed. It is the case of the answering Respondent that the relief, if any, available to the Original Applicant lies before the Hon'ble High Court, that is presently in consideration of the subject matter and not before this Hon'ble Tribunal.

15. That another matter titled "Vasant Vihar Welfare Association Vs Commissioner, Municipal Corporation of Delhi & ors." O.A. No. 333 of 2023 wherein also similar identical issue regarding the mobile tower being installed in the public park in the Vasant Vihar Colony was listed before this Hon'ble Tribunal on 22.11.2023 which was adjourned sine die in view of the pendency of CM(M) No. 1380 of 2022 before Hon'ble High Court of Delhi.

16. That it is further submitted that in an another similar case titled as Guldeep Bhatia and ors vs Govt of NCT of Delhi and ors bearing number OA 24/2023, Hon'ble NGT, Principal Bench vide its order



dated 11.07.2023 desired to await the order of the Hon'ble High Court of Delhi. Orders dated 11.7.23 and 22.11.23 are annexed as **Annexure D (COLLY)**

17. That the Operation of the Orders dated 19.07.2022 IN O.A. 232 OF 2022 AND 20.09.2022 IN R.A. 27 OF 2022 passed by this Hon'ble Tribunal are already stayed in CM(M) NO. 1380 OF 2022.

18. That It is no more res integra that when the Hon'ble High Court, being a Constitutional Court is in seisin of a matter, the Hon'ble Tribunals ought to refrain from entertaining a lis pertaining to the same cause of action.

19. That in view thereof and in the humble submission of the answering respondent , adjudicating the present O.A. while the issue is pending before the Hon'ble High Court would lead to multiplicity of proceedings and possibly result in contradictory views being taken qua the same subject matter/ issue. Thus, the present Original Application merits to be dismissed.

20. That Furthermore, the lis sought to be adjudicated is no more res integra in terms of the judgment rendered by this Hon'ble Tribunal in the matter of Dr. Arvind Gupta versus Union of India, O.A. No. 62 of 2013 constituting of a larger 4 judge bench.

[Handwritten Signature]
19/12/23

DEPONENT

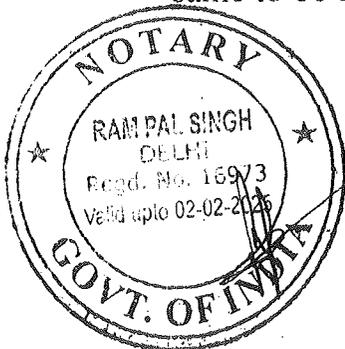
Assistant Commissioner
Ramunerative Project Cell, MCD

VERIFICATION:

19 DEC 2023

Verified at Delhi on this ____ day of December 2023, that the contents of the above affidavit are true and correct to my knowledge derived from the official records maintained by the MCD and I believe the same to be true and correct.

I identify the Deponent who has signed in my Presence



CERTIFIED THAT THE DEPONENT
Sd/-
P.C. Seal
Puja Katra
(96)

[Handwritten Signature]
19/12/23

DEPONENT

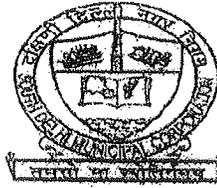
Adm Assistant Commissioner
Ramunerative Project Cell, MCD

Notary Public, Delhi (INDIA)

19 DEC 2023

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Annexure - A

**SOUTH DELHI MUNICIPAL CORPORATION,
OFFICE OF THE ASSTT. COMMISSIONER,
REMUNRATIVE PROJECT CELL,
Dr. Shyama Prasad Mukherjee Civic Centre (25TH Floor),
Jawaharlal Nehru Marg, New Delhi-110002**

No.:- AC/RPC/SDMC/2021/D-164

Dated:- 04.08.2021

Permission Letter

M/s Indus Towers Ltd.,
Building No. 10, Tower-B,
4th Floor, DLF Cyber City,
Gurugram- 122002

Name of site: SDMC Park, Pocket-A, Near Flat No.444, adjacent to BSES 66KVA Grid, Sarita Vihar, Ward No.101/S (Longitude: 77.288303, Latitude: 28.533119)

With reference to your application received dated 15.04.2021 and subsequent LOI (Letter of Intent) No. AC/RPC/SDMC/2021/D-101 dated 05.07.2021 issued by this office and after receipt of payment of three months of advance Monthly Rental Charges/Monthly Fee and Security Deposit equivalent to 2 months of Monthly Rental Charges/Monthly Fee in respect of setting up of Communication Cellular Mobile Towers on Wheels (COWs)/MBTS at SDMC Park, Pocket-A, Near Flat No.444, adjacent to BSES 66KVA Grid, Sarita Vihar, Ward No.101/S (Longitude: 77.288303, Latitude: 28.533119), the Competent Authority is pleased to allow you to operate the said site from the date of issue of this permission letter alongwith incubation period as mentioned in Para 30 below for a period of three years on monthly rental charges. The monthly rent will be charged from the date of completion of incubation period, @ Rs. 91,225/- for an area of 269.10 sq.ft., on the following terms & conditions:

1. The monthly rental charges/monthly fee for the site allotted for COW/MBTS shall be @ Rs.339/- (Rs. Three Hundred Thirty Nine only) per sq.ft./per month + applicable taxes (including co-sharing with other telecom company/telecom service provider/infrastructure provider-I(IP-I)). The monthly rental charges/monthly fee shall be enhanced after every three years @ 8% per annum, compounding on yearly basis. Besides, the revision of rates will be within the absolute discretion of the SDMC.
2. SDMC will provide bare space for placement and operational requirement for the COW/MBTS. The telecom company / service provider /infrastructure provider-I(IP-I) will follow all relevant guidelines of Department of Telecom, TRAI, etc.in this regard. If the telecom company / service provider / infrastructure provider-I (IP-I) need to operate the allotted land after completion of maximum period of three years then the telecom company / service provider /infrastructure provider-I(IP-I) can apply three months prior to expiry of three years period of the allotment and the request/application of the telecom company /service provider /infrastructure provider-I(IP-I) will be treated as AFRESH.
3. Since the Policy already provides for installation of COW/MBTS for a minimum period of 3 months and maximum period of 3 years, so after the initial minimum period of 3 months, the telecom company / service provider /infrastructure provider-I(IP-I) can surrender the permission by giving three months advance notice in writing along with payment of the Monthly Rental Charges/Monthly Fee for the notice period. On expiry of

- the said notice period, the permission shall stand terminated/revoked and security deposit will be refunded accordingly.
4. The maximum height of any structural element installed with COW/MBTS will be upto 30 mtr. above the ground level at any location.
 5. The COW/MBTS shall be installed for the enhancement of mobile signal and the SDMC will reserve the right to ensure that there is no violation of the same.
 6. The telecom company / service provider /infrastructure provider-I(IP-I) shall take the site on "As is where is basis".
 7. All the sites will be tentative and are subject to change of site by SDMC for which the telecom company / service provider /infrastructure provider-I(IP-I) will not seek any adjustment in the monthly rental charges/monthly fee or any claim, compensation, damages or any other consideration whatsoever. It will be the absolute discretion of the SDMC to direct re-location of the already allotted site in case of any need as may be deemed appropriate by the SDMC.
 8. The infrastructure facilities such as electric connection shall be arranged by the telecom company / service provider / infrastructure provider-I (IP-I) and the cost of electric connection including cabling, penal, electric meter, electric charges and other ancillary charges, shall be borne by telecom company / service provider /infrastructure provider-I(IP-I). The telecom company / service provider /infrastructure provider-I(IP-I) will ensure that all the electric wiring, gazettes are used and maintained properly and are in good conditions.
 9. No excess space will be covered by the telecom company / service provider / infrastructure provider-I(IP-I) on any pretext. (It will be the absolute discretion of SDMC to determine and allow the space upto 50 sq.mtrs.).
 10. The telecom company / service provider /infrastructure provider-I(IP-I) at its own cost shall take the necessary statutory permissions/certificates if required for the same from any other agency or deptt. as per law:-
 - a) The telecom company / service provider /infrastructure provider-I(IP-I) will indemnify the SDMC to keep harmless from all losses / damage/ fire.
 - b) As per guidelines of Department of Telecommunications (DoT), a copy of application for Standing Advisory Committee on frequency Allocation (SACFA) clearance acknowledged by WPC Wing of Department of Telecommunication, Govt. of India with registration number for the individual location will be submitted along with the application for new towers in the SDMC and the SACFA clearance, when obtained will be submitted within 6 months of granting permission. The self-declaration in this regard will be submitted by the applicant. In case of existing mobile towers the SACFA clearance, wherever available, will be submitted alongwith the application in the SDMC.
 11. The telecom company / service provider /infrastructure provider-I(IP-I) shall install/operate the COW/MBTS within the designated site and shall maintain the same in neat and sanitary conditions and comply with all applicable laws of the country.
 12. The telecom company / service provider /infrastructure provider-I(IP-I) shall ensure high standard of hygienic and cleanliness so as to create a clean and healthy environment to enhance the image of SDMC. In case the telecom company / service provider /infrastructure provider-I(IP-I) fails to maintain the same, the fine as per applicable laws will be imposed on it. In this regard, the directions/guidelines of the Hon'ble Court or the departments/agencies shall be followed.
 13. Any physical (or otherwise) damage or injury to the commuters/passersby due to lapse on the part of the telecom company / service provider /infrastructure provider-I(IP-I) will be

I(IP-I) only and the SDMC will have no legal obligations or liabilities towards the injured. Telecom company / service provider /infrastructure provider-I(IP-I) will indemnify and can be indemnified by the SDMC for any losses on this account.

14. The telecom company / service provider /infrastructure provider-I(IP-I) will ensure that fire detection, lightening and special measures are installed at the applicable site and are kept in good condition.
15. The telecom company / service provider /infrastructure provider-I(IP-I) agrees voluntarily and unequivocally to provide un-fettered access to the authorized representative of the SDMC for inspection at any time and agrees voluntarily and unequivocally to abide by and comply with all instructions as may be indicated by the SDMC. Non compliance will be treated as breach and permission, so granted, will be revoked.
16. **Encroachment:** The telecom company / service provider /infrastructure provider-I(IP-I) will strictly not encroach upon any area and shall restrict to allotted site only. In case, the telecom company / service provider /infrastructure provider-I(IP-I) encroaches upon the public land, the SDMC reserves the right to revoke the permission and forfeit the interest free performance security.
17. **Security arrangement:** The telecom company / service provider /infrastructure provider-I(IP-I) will ensure safety and security of the equipments installed at the allotted sites and will be responsible for safety and security of the sites. The SDMC in any case will not take any responsibility of theft/ loss.
18. **No Signage:** The telecom company / service provider /infrastructure provider-I(IP-I) can install mandatory non-commercial signage only, as per provisions of Department of Telecommunication notification dated 15.11.2016, which was published in Gazette of India on 16.11.2016, since this Policy is based on the said Notification. In case, the telecom company / service provider /infrastructure provider-I(IP-I) installs any type of signage(s) other than mandatory non-commercial, for any purpose inside/or outside the sites, a fine of Rs.10,000/- (Rupee Ten Thousand) per day per site will be imposed upon telecom company / service provider /infrastructure provider-I(IP-I) for a maximum period of seven days, after which SDMC reserves the right to revoke the permission w.r.t. such site(s) without any notice/communication.
19. **Compliance with the Law:** The sites and the fixtures and the appurtenances thereto conform to every applicable requirement of law or duly constituted authority or the requirements of the carriers of all insurance on or relating to the sites. The telecom company / service provider /infrastructure provider-I(IP-I) at its sole risk and expense, at all times, during the term thereof promptly comply with all such requirements. The telecom company / service provider /infrastructure provider-I(IP-I) shall comply with all applicable statutes, rules and regulations of central, state governments, municipal bodies, and all applicable rules and also regulations of the Delhi Fire Department. **The telecom company/telecom service provider/infrastructure provider-I(IP-I) shall comply with and abide by the judgments passed from time to time by Hon'ble Supreme Court / High Court or any other judicial/quasi judicial body/authority. The same shall be the responsibility of telecom company / service provider /infrastructure provider-I(IP-I).**
20. The installation of COW/MBTS and its operation shall be such that it should not disturb the free movements of the traffic/public and shall preferably be away from the heavy traffic and public movement is being done.

21. The COW/MBTS may include the base of the tower on Wheels subject to fulfilment of the safety measures and structural stability.
22. The telecom company / service provider /infrastructure provider-I(IP-I) shall ensure the safety guidelines issued by DoT in letter & spirit.
23. After expiry of the period of permission due to efflux of time or termination of the permission whichever is earlier, a 15 days period will be provided to the telecom company / service provider /infrastructure provider-I(IP-I) to remove its material from the sites and peacefully handover the vacant sites.

The telecom company / service provider /infrastructure provider-I(IP-I) shall vacate the sites by taking away all its articles and hand over the vacant sites before such period otherwise the SDMC shall have the right to seize these material. Unauthorized occupancy charges (equivalent to twice the monthly rental charges/monthly fee) will be levied after expiry of such 15 days Grace Period.

24. Transfer: The telecom company / service provider /infrastructure provider-I(IP-I) during the tenure of permission shall not transfer, assign or part with the sites or any portion thereof permanently or temporarily to anybody else and shall not be allowed to take any person to share the towers, except in accordance with this permission, without the prior permission of the SDMC.
25. Assignment and Subletting: Any form of assigning the right to the permission or subletting the whole or part thereof of the sites, will strictly not be allowed at any point during the period of permission and violation of the same, will lead to the revocation of the permission, with the SDMC reserving the right to forfeit all interest free performance security and payments made.
26. Duration of permission period: - The permission would remain applicable subject to fulfillment of the terms and conditions, and such permission should expire with efflux of time. The monthly rental will be charged from the date of issue of permission letter.
27. Compliance with applicable Laws: The telecom company / service provider /infrastructure provider-I(IP-I) shall bear all salaries, wages, bonuses, payroll taxes or accruals including gratuity, superannuating, pension and provident fund contributions, contributions to worker's compensations funds and employees state insurance and other taxes and charges and all fringe and employee benefits including statutory contributions in respect of such personnel as per law and it is agreed they shall at no point of time be or construed to be employees of the SDMC and the telecom company / service provider /infrastructure provider-I(IP-I) shall be solely responsible for compliance with all Labour laws which shall include all liabilities of the Provident Fund Act, ESI Act, Workmen's Compensation Act, Minimum Wages Act and other Labour Welfare Act in respect of its personnel.
28. Employees conduct: The telecom company / service provider /infrastructure provider-I(IP-I) shall ensure that all persons employed by it behave in an orderly and disciplined manner and that the said employees are prohibited from carrying on any unfair activities, demonstrations in the vicinity of the site.
29. For dispute of any kind, the jurisdiction of courts will be Delhi only.

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30. **Incubation Period:-** 30 days incubation period, excluding the day of issuance of permission letter, is allowed to you for carrying out works relating to installation of COW/MBTS. However, the monthly rental/monthly fee will be charges from 31st day excluding the day of issuance of permission letter or from the date of actual installation/operation of COW/MBTS whichever is earlier. In the case of regularization of existing COW/MBTS no incubation period will be allowed.

31. **Payment Terms:**

FEE STRUCTURE:-

The advance amount equivalent to three months rental charges/monthly fee paid by the telecom company / service provider /infrastructure provider-I(IP-I) shall be adjusted towards the monthly rental charges/monthly fee for first three months. Thereafter, the telecom company / service provider /infrastructure provider-I(IP-I) shall submit to the SDMC, the advance monthly rental charges/monthly fee per month for each site and other dues, if any, on or before 7th day of the month.

Non-payment of monthly rental charges/monthly fee and other dues within the prescribed date will constitute breach of the terms of permission and shall render the permission liable to be revoked. Besides, the telecom company / service provider /infrastructure provider-I(IP-I) shall pay an interest @ 15% per annum on the amounts of permission and other dues payable remaining outstanding after the due date and falling in arrears. Interest shall continue to accrue till the monthly rental charges/monthly fee and other dues are finally squared up. Such interest shall be charged for the full month if the payment of monthly rental charges/monthly fee and other dues are not made by the due date with arrears, if any. In case, payment remains outstanding for a maximum period of 45 days, the permission shall stand terminated.

This allotment will be governed by the policy of South Delhi Municipal Corporation on COW (Communication Cellular Mobile Towers on Wheels) and DOT (Department of Telecommunication) Notification dated 15th November, 2016, which was published in Gazette of India on 16th November, 2016.


 04.08.21
Assistant Commissioner
(R.P Cell)/SDMC

Handed Over

Taken Over

Name & Signature of authorized person

12
Annexure - B

§~36 to 46

* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ W.P.(C) 2621/2019 & CM APPL. 12187/2019.

MAINPAL & ORS Petitioners

versus

UNION OF INDIA & ORS Respondents

+ W.P.(C) 1087/2021 & CM APPLs. 3029/2021, 8042/2023,
8047/2023.A A2 BLOCK RESIDENTS
WELFARE ASSOCIATION Petitioner

versus

SDMC & ORS. Respondents

+ W.P.(C) 6218/2021 & CM APPL. 19709/2021.

SHIVA KUMAR & ORS. Petitioners

versus

GOVERNMENT OF NCT OF DELHI & ORS. Respondents

+ W.P.(C) 10596/2021 & CM APPL. 32687/2021

RESIDENT WELFARE ASSOCIATION
POCKET- K AND Petitioner

versus

SOUTH DELHI MUNICIPAL
CORPORATION & ORS. Respondents

W.P.(C) 2621/2019 & connected matters.

Page 1 of 5

This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above.

The Order is downloaded from the DHC Server on 19/12/2023 at 12:06:36



- + W.P.(C) 11372/2021 & CM APPL. 35024/2021.
RESIDENT WELFARE ASSOCIATION
C-II VASANTKUNJ NEW DELHI Petitioner
- versus
- GOVT OF NCT DELHI & ORS. Respondents
- + W.P.(C) 12079/2021 & CM APPLs. 37750/2021, 51275/2023
HARI KUNJ RWA Petitioner
- versus
- SOUTH DELHI MUNICIPAL
CORPORATION & ORS. Respondents
- + W.P.(C) 12547/2021 & CM APPL. 39510/2021.
DB BLOCK RWA HARI NAGAR Petitioner
- versus
- SDMC & ORS. Respondents
- + W.P.(C) 7515/2021 & CM APPL. 23597/2021.
M BLOCK SAKET RESIDENTS
WELFARE ASSOCIATION REGD. Petitioner
- versus
- SOUTH DELHI MUNICIPAL
CORPORATION & ORS. Respondents
- + W.P.(C) 9717/2021 & CM APPL. 29989/2021.



RAHUL HITESHI

..... Petitioner

versus

COMMISSIONER SOUTH DELHI
MUNICIPAL CORPORATION & ANR.

..... Respondents

+ W.P.(C) 11242/2021 & CM APPLs. 34616/2021, 40593/2021,
48787/2023.

NAVJIWAN COOPERATIVE
HOUSING BUILDING SOCIETY & ORS.

..... Petitioners

versus

SOUTH DELHI MUNICIPAL
CORPORATION & ORS.

..... Respondents

✓ + W.P.(C) 13425/2021 & CM APPL. 42330/2021.

JAN KALYAN SAMITI POCKET A
SARITA VIHAR NEW DELHI

..... Petitioner

versus

SOUTH DELHI MUNICIPAL
CORPORATION & ORS.

..... Respondents

Appearances:

For the petitioners:

Mr. Gaurav Deshraj, Advocate in item No. 36.

Ms. Shriya Chanda, Advocate in item No. 37.

Mr. Paul Kumar K., Advocate in item No. 38.

Mr. Abhishek Bhardwaj, Mr. s. Nagpal, Advocates in item Nos. 39 and
45.

Mr. Avdhesh Kumar Singh, Mr. Rajendra Kumar Singh, Mr. Rajesh
Kumar Singh, Mr. Rakesh Kumar, Mr. Gaurav, Ms. Preety Kumari,



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Advocate in item No. 40.

Mr. Himanshu Kaushik, Ms. Dolly Bhati, Advocates in item Nos. 41 and 42.

Mr. Siddharth Silwal, Advocate in item No. 43.

Mr. Gaurav Bahl, Advocate in item No. 46.

For the respondents:

Mr. K. Sashiprabhu, Mr. Vishnu Sharma, Mr. Tushar Bhardwaj, Mr. Manan, Advocates for R-4 in item No. 37 and 36.

Mr. Ajjay Aroraa, SC Mr. Kapil Dutta, SC with Mr. Vansh Luthra, Advocate for MCD in item Nos. 38 and 45.

Mr. Rakesh Mittal, SC with Mr. Ajay Harshana, Advocate for MCD in item Nos. 37 and 39.

Mr. Manjul Bajpai, Advocate for R-4 in item No. 40.

Mr. Rishab Raj Jain, SC for R-2 in item No. 37.

Mr. Rohit Jain, Advocate for Indus Towers Ltd in item Nos. 37, 43 and 46.

Mr. Harshit Anand, Advocate for Mr. Shadan Farasat, ASC for GNCTD in item No. 38, 40.

Ms. Ishita Pathak, Advocate for Mr. Ajay Dignpaul, SC for MCD in item No. 44.

Mr. Swetank Shantanu, Mr. Rahul Ranjan Singh, Advocates for R-3 in item Nos. 41 and 42.

Mr. Sanjeev Kumar Sharma, Mr. Rajiv Dalal, Mr. Vikash Bhardwaj, Ms. Dipti Singh, Advocates for R-3 in item Nos. 39 and 40.

Mr. Sanjeev Bindal, Advocate for R-3 in item Nos. 44 and 45.

Mr. Santosh Kumar Tripathi, SC with Mr. Arun Panwar, Mr. Pradyumn Rao, Advocates for GNCTD in item Nos. 42, 44 and 36.

Mr. Tushar Sannu, SC with Mr. Yash Singh, Advocate for MCD in item No. 46, 40.

SI Naresh Kumar, PS – Tilak Nagar in item No. 44.

Ms. Beenashaw Soni, SC with Ms. Mansi Jain, Ms. Ann Joseph, Advocates for MCD in item Nos. 36 and 41.

Mr. S. Shantanu, Mr. Pradeep Shanker, Advocates for R-3 in item Nos. 41 and 42.

Mr. Avinsh Singh, SPC with Mrs. Pushplata Singh, Mr. Vishal Kr. Yadav, Ms. Kanchan Kumari, Advocates for UoI in item No. 45.

Mr. Arnav Kumar, CGSC with Mr. Arnya Sahay, Mr. Gurdas Khurana, Advocates for R-3 in item No. 38.

W.P.(C) 2621/2019 & connected matters.

Page 4 of 5

This is a digitally signed order.

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The Order is downloaded from the DHC Server on 19/12/2023 at 12:06:36



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**CORAM:
HON'BLE MR. JUSTICE PRATEEK JALAN**

ORDER
08.11.2023

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Counter affidavits by the respondents be filed within four weeks, if not already filed. Rejoinder thereto, if any, may be filed within two weeks thereafter.

List on 19.01.2024.

PRATEEK JALAN, J

NOVEMBER 8, 2023
'Bhupi'



§~33 to 43

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P.(C) 2621/2019 & CM APPL. 12187/2019
 MAINPAL & ORS Petitioners

versus

UNION OF INDIA & ORS Respondents

+ W.P.(C) 1087/2021, CM APPL. 3029/2021, CM APPL. 8042/2023
 & CM APPL. 8047/2023
 A A2 BLOCK RESIDENTS
 WELFARE ASSOCIATION Petitioner

versus

SDMC & ORS. Respondents

+ W.P.(C) 6218/2021 & CM APPL. 19709/2021
 SHIVA KUMAR & ORS. Petitioners

versus

GOVERNMENT OF NCT OF DELHI & ORS. Respondents

+ W.P.(C) 10596/2021 & CM APPL. 32687/2021
 RESIDENT WELFARE ASSOCIATION
 POCKET- K AND Petitioner

versus

SOUTH DELHI MUNICIPAL
 CORPORATION & ORS. Respondents

+ W.P.(C) 11372/2021 & CM APPL. 35024/2021
 RESIDENT WELFARE ASSOCIATION
 C-II VASANTKUNJ NEW DELHI Petitioner

versus

GOVT OF NCT DELHI & ORS. Respondents



- + W.P.(C) 12079/2021 & CM APPL. 37750/2021
HARI KUNJ RWA Petitioner
versus
SOUTH DELHI MUNICIPAL CORPORATION & ORS. Respondents
- + W.P.(C) 12547/2021 & CM APPL. 39510/2021
DB BLOCK RWA HARI NAGAR Petitioner
versus
SDMC & ORS. Respondents
- + W.P.(C) 7515/2021 & CM APPL. 23597/2021
M BLOCK SAKET RESIDENTS WELFARE ASSOCIATION REGD. Petitioner
versus
SOUTH DELHI MUNICIPAL CORPORATION & ORS. Respondents
- + W.P.(C) 9717/2021 & CM APPL. 29989/2021
RAHUL HITESHI Petitioner
versus
COMMISSIONER SOUTH DELHI MUNICIPAL CORPORATION & ANR. Respondents
- + W.P.(C) 11242/2021 & CM APPL. 34616/2021 & CM APPL. 40593/2021
NAVJIWAN COOPERATIVE HOUSING BUILDING SOCIETY & ORS. Petitioners
versus



SOUTH DELHI MUNICIPAL
CORPORATION & ORS.

..... Respondents

+ W.P.(C) 13425/2021 & CM APPL. 42330/2021
JAN KALYAN SAMITI POCKET
A SARITA VIHAR NEW DELHI
versus

..... Petitioner

SOUTH DELHI MUNICIPAL
CORPORATION & ORS.

..... Respondents

Appearances:

For petitioner:

Mr. Gaurav Deshraj, Advocate in Item No. 33.

Ms. Shriya Chanda, Advocate in Item No. 34.

Mr. Paul Kumar, Mr. Amit Kumar, Advocates in Item No. 35.

Mr. Avdhesh Kumar Singh, Mr. Rajendra Kumar Singh, Mr. Rajesh Kr. Singh, Advocates in Item No. 37.

Mr. Chandan Kumar Jha, Advocate in Item Nos. 36 and 42.

Mr. Himanshu Kaushik, Dr. Harish Kaushik, Mr. Md. Mousin Raja, Mr. Mahesh Tripathi, Ms. Deepika Vashistha, Mr. Balkrishan Sharma, Mr. S. Pratap Singh, Mr. Mohit, Advocates in Item Nos. 38 and 39.

Ms. Nivedita Grover, Advocate in Item No. 40.

Mr. Gaurav Bahl, Advocate in Item No. 43.

For Respondents:

Mr. Kunal Vajani, Mr. Kunal Mimani, Mr. Kartikye Bhatt, Mr. Shubhang Tandon, Advocates for MCD.

Mr. K.R. Sasiprabhu, Mr. Tushar Bhardwaj, Mr. Manan Shishodia, Advocates for respondent No. 4 in Item No. 33.

Mr. Rakesh Mittal, SC with MMs. Yamini Mittal, Mr. Ajay Harshana, Advocates for MCD in Item Nos. 34 and 36.

Mr. Arnav Kumar, CGSC with Mr. A. Shahi, Mr. Gurdas Khurana, Advocates for R-3 in Item No. 35.

Mr. Aman Naqvi, ASC for GNCTD in Item Nos. 35 and 37.

Mr. Sanjeev Kumar Sharma, Mr. Vikash Bhardwaj, Advocates for R-3 in Item Nos. 36 and 37.



Mr. Manjul Bajpai, Advocate for R-4 in Item No. 37.

Mr. Tushar Sannu, SC with Mr. Azad Bansala, Advocate for MCD in Item No. 37 and in Item No. 43.

Ms. Beenashaw Soni, SC with Ms. Ann Joseph, Advocates for R-1 in Item No. 38.

Mr. S. Shatanu, Mr. Pratap Shanker, Advocates for R-3 in Item Nos. 38 and 39.

Mr. Rohit Jain, Mr. Gaurav Jain, Advocates for R-3 in Item No. 40 and for R-4 in Item No. 43.

Ms. Swati Kwatra, Advocate for Mr. Ajay Dignpaul, SC for MCD in Item No. 41.

Mr. Sanjeev Bindal, Advocate for R-3 in Item Nos. 41 and 42.

Mr. Chavan Singh, ASI, PS – Tilak Nagar. S

Mr. Avnish Singh, Mr. Aditya Vikram Dambla, Advocates for UoI in Item No. 42.

CORAM:

HON'BLE MR. JUSTICE PRATEEK JALAN

ORDER

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07.08.2023

1. A written request for adjournment has been circulated on behalf of Mr. Kunal Vajani, learned Standing Counsel for Municipal Corporation of Delhi ["MCD"] in W.P.(C) 2621/2019.
2. List on 08.11.2023.
3. MCD is directed to comply with the orders for filing of a status report, if any.
4. Interim orders, if any, to continue.

PRATEEK JALAN, J

AUGUST 7, 2023

SS/



Annexure - E

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§-47

* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ CM(M) 1380/2022

M/S INDUS TOWERS LTD. Petitioner

Through: Mr. V. Lakshmikumar, Ms. Kanika
Agnihotri, Ms. Snehal K., Mr.
Yogendra Aldak and Ms. Bhavya
Shukla, Advocates

versus

GAUTAM NAGAR RESIDENTS ASSOCIATION

REGD. & ORS. Respondents

Through: None

CORAM:

HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

ORDER

09.12.2022

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[The proceeding has been conducted through Hybrid mode]CM No.53434/2022 (Exemption)

1. Allowed subject to all just exceptions.

CM(M) 1380/2022 and CM No.53433/2022 (stay)

2. Petitioner impugns order dated 19.07.2022 and order dated 20.09.2022 passed by National Green Tribunal (hereinafter in short, referred to as the 'Tribunal') in O.A. 232/2022 and Review Application No.27/2022 respectively.

3. By way of the impugned order dated 19.07.2022, the Tribunal has directed the Commissioner, Municipal Corporation of Delhi and the DPCC to take action in accordance with directions passed in the

CM(M) 1380/2022

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impugned order and directed removal of the cell tower of the Petitioner, which is installed at Sadbhawna Park, Opp. Gulmohar Enclave Gate No.4, Gautam Nagar, Ward No.62/S, New Delhi.

4. Mr. Lakshmikumaran submits that the Tribunal while passing the impugned order overlooked the fact that it did not have jurisdiction at all to entertain the *lis*. Learned counsel also submits that the Petitioner had relied upon the judgment rendered by four-Member Bench of the NGT in the case of *Dr. Arvind Gupta v. Union of India and Ors.* and other batch matters, pronounced on 10.12.2015 in O.A. 61/2012, which had concluded that the Tribunal would not have any jurisdiction in respect of any activity which do not fall within Section 14 of the NGT Act.

5. This judgment was also brought to the notice of the Tribunal.

6. Learned counsel submits that the learned Tribunal overlooked the binding decision rendered by a larger Bench of the Tribunal in the case of *Dr. Arvind Gupta (supra)*. Learned counsel referred to a judgment rendered by this Court in *Indus Towers Ltd. Vs. North Delhi Municipal Corporation, 2022 SCC Online Del 568* in support of his submissions.

7. Learned counsel also refers to the judgment rendered by the Division Bench of the Allahabad High Court in the case of *Residents Welfare Associates vs. Union of India and Ors.*, WP(C) No.16888/2022, rendered on 11.11.2022 whereby in a similar case pertaining to the Petitioner herein, the Division Bench had considered the case of *Smt. Asha Mishra vs. Union of India and Ors., 2016 (4) AWC 3427* wherein the allegation regarding the ill effects of the



radiation on human health arising out of installation of mobile cell towers was found to be without merits. Relying on the said judgment, the Division Bench upheld the view that there is no evidence that the installation of cell tower would cause any ill effects on the human health.

8. Learned counsel also relies upon judgment rendered by Division Bench of this Court in *Kapil Chaudhary and Anr. Vs. Union of India and Ors.*, (2016) SCC Online Del. 2558 and draws the attention to para 12 to submit that the Tribunal not only exceeded its jurisdiction but also overlooked the judgments rendered by a Division Bench of the Allahabad High Court as well as that of this Court apart from the judgment rendered in the case of *Dr. Arvind Gupta (supra)* and has committed material irregularity in passing the impugned orders.

9. There is no representation on behalf of the Respondents. Mr. Lakshmikumarān submits that they have been served copies in advance.

10. Be that as it may, for the purpose of preliminary hearing, this Court has to consider whether *prima facie* there is any substance in the arguments put forth by learned counsel for the Petitioners.

11. The foremost aspect which comes to the mind of this Court is that when a larger Bench judgment is rendered by either a Court or any Tribunal, it would be in line with judicial discipline and propriety to follow the same unless there are factors, relevant to the issue, on the basis whereof the same can be distinguished.

12. This Court has considered the judgment rendered in the case of



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Dr. Arvind Gupta (*supra*) and relevant paragraph to the issue involved is extracted hereunder :-

"28. From the provisions of the various acts that we have reproduced above, it is clear beyond doubt that the radiation from electromagnetic waves resulting from such towers is not explicitly covered in any of the scheduled acts to the NGT Act. In fact, even under the NGT Act, relevant definition under provisions do not refer to the radiation specifically.."

Para 33 of the said judgment is also relevant to the issue in dispute which is extracted hereunder :-

"33. In view of the above discussion, we are of the considered view that radiation i.e. emission of electromagnetic waves from the towers constructed by the respective respondents does not fall within the ambit, scope and jurisdiction vested in this Tribunal under the provisions of the NGT Act with reference Environment (Protection) Act, 1986."

13. From the above paragraphs, it is clear that four-Member Bench of the Tribunal had categorically concluded after a detailed discussion on various aspects that the emission of electromagnetic waves from the towers constructed by Institutions/Companies like the Petitioner and other similarly situated companies do not fall within the ambit, scope and jurisdiction vested in the Tribunal under the provisions of the NGT. This was rendered with reference to the Environment (Protection) Act, 1986.

14. Coming next to the case rendered by a Coordinate Bench of this Court in the matter of *Indus Power Ltd. (supra)*, the Co-ordinate



Bench had in fact reiterated the finding rendered by a Division Bench of this Court in *Kapil Choudhary (supra)* and held as under :-

“10. Further, it may be noticed that the objection raised by the residents that the tower is likely to cause harm to children, old people and pregnant women is no longer res integra as by judgment dated 26.04.2016 a Division Bench of this Court in W.P. (C) No. 5550/2015 titled Kapil Chaudhary & Anr. Vs. Union of India & Ors. has categorically held that there is no scientific data available to show that installation of mobile phone tower and emission of waves by the said tower is in anyway harmful for the health or hazardous to the health of citizens. There is no conclusive data to the said effect.

11. The Division Bench in Kapil Chaudhary (supra) was considering a public interest petition seeking removal of the mobile towers installed in residential area. The ground raised in the petition inter alia was that the presence of the towers will cause diseases on account of radiation that is emitted. The Union of India had filed a Counter Affidavit therein stating that “many studies have been conducted on the health hazard of radiations of mobile phone towers/networks. These studies have been conducted under the aegis of WHO. The studies have concluded that there is no conclusive scientific evidence of adverse health effects due to low level of RF emission from mobile phone towers.”

12. The Division Bench after considering several Judgments of various High Courts wherein similar pleas had been rejected held as under:

“12. In view of the above, it is clear that there is no scientific data available to show that installation of mobile phone towers and the emission of the waves by the said towers is in any



way harmful for the health or hazardous to the health of citizens. There is no conclusive data to the said effect. The petitioner has not been able to produce any data whatsoever showing any such harmful effects on the health of human beings. The petitioner has also not been able to show violation of any norms by the respondent."

13. In view of the above, the work stop notice issued by the respondent Corporation, solely on the ground of the above referred complaints received from residents, is not sustainable. Accordingly, the work stop notice dated 27.08.2021 is quashed."

15. It appears that in pursuance of the directions issued by the Tribunal, the Municipal Corporation of Delhi by letter dated 22.08.2022 informed the Tribunal as well as the present Petitioner that the subject site park is not to be used for any non-conforming purpose and thereby directing the Petitioner to remove the mobile tower from the subject site.

16. Mr. Lakshmikumaran referred to page 269 to submit that based on the impugned order, a deluge of applications are now being filed before the Tribunal against the present Petitioner seeking removal of the Cell towers from different locations in Delhi.

17. Be that as it may, that is not the subject matter of the present petition and therefore, no orders are expected to be passed thereon.

18. After having heard Mr. Lakshmikumaran and considering all the judgments, it appears, *prima facie*, that the learned Tribunal has overlooked the law on the said subject and mis-directed itself while passing the impugned orders. The issue with respect to the installation



of the cell towers, the apprehension of ill-effects on the health of human lives as well as the larger issue as to whether the Tribunal had any jurisdiction to pass any such order, as the impugned one, needs consideration.

19. Issue notice to the Respondents of the CM(M) 1380/2022 as well as CM APPL.53433/2022, by all prescribed modes, additionally through counsel appearing before the Tribunal, returnable on 11.07.2023.

20. Reply be filed within four weeks. Rejoinder thereto, if any, be filed within four weeks thereafter.

21. In the meantime, impugned order dated 19.07.2022 passed in O.A. No.232/2022 and order dated 20.09.2022 passed in Review Application No.27/2022, case titled as *Gautam Nagar Residents Association Regd. Vs. Commissioner, SDMC and Ors.*, passed by the Tribunal are stayed and consequently, the order date 18.08.2022 issued by Municipal Corporation of Delhi annexed at page 121 of the paper book is also kept in abeyance till further orders.

TUSHAR RAO GEDELA, J

DECEMBER 9, 2022/ yg

Item No. 10

Court No. 1

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

Original Application No. 24/2023

Guldeep Bhatia & Ors.

Applicant(s)

Versus

Govt. of NCT of Delhi & Ors.

Respondent(s)

Date of hearing: 11.07.2023

**CORAM: HON'BLE MR. JUSTICE SHEO KUMAR SINGH, CHAIRPERSON
HON'BLE MR. JUSTICE ARUN KUMAR TYAGI, JUDICIAL MEMBER
HON'BLE DR. A. SENTHIL VEL, EXPERT MEMBER**

Applicant: Mr. Guldeep Bhatia, Applicant in Person
Respondent: Ms. Puja Kalra, Adv. for MCD
Ms. Kanika Agnihotri & Ms. Snehal Kaila, Advs. for M/s Indus
Towers Limited

ORDER

1. The matter was initiated in light of the order dated 19.07.2022 in O.A. No. 232/2022. Learned Counsel for the respondent has filed the response with the copy of the order passed in Petition No. CM (M) 1380 of 2022 order dated 09.12.2022 in which it has been stated:

"In the meantime, impugned order dated 19.07.2022 passed in O.A. No. 232/2022 and order dated 20.09.2022 passed in Review Application No. 27/2022, case titled as Gautam Nagar Residents Association Regd. Vs. Commissioner, SDMC and Ors. passed by Tribunal are stayed and consequently, the order dated 18.08.2022 issued by Municipal Corporation of Delhi annexed at page 121 of the paper book is also kept in abeyance till further orders."

In view of the above order, it is desirable to await the order of the Hon'ble High Court of Delhi.

2. Parties are directed to submit further progress report before the next date of hearing.

3. List this matter on 20th October, 2023

Sheo Kumar Singh, CP

Arun Kumar Iyagi, JM

Dr. A. Senthil Vel, EM

July 11, 2023
Original Application No. 24/2023
HB

Item No.06

Court No. 2

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

(Through Physical Hearing with Hybrid V.C. Option)

Original Application No.333/2023
(I.A. No. 597/2023)

Vasant Vihar Welfare Association

Applicant

Versus

Commissioner, Municipal Corporation
Delhi & Ors.

Respondent(s)

Date of hearing: 22.11.2023

**CORAM: HON'BLE MR. JUSTICE SHEO KUMAR SINGH, CHAIRPERSON
HON'BLE MR. JUSTICE ARUN KUMAR TYAGI, JUDICIAL MEMBER
HON'BLE DR. A. SENTHIL VEL, EXPERT MEMBER**

Applicant: Ms. Zainab Khan Advocate for Ms. Ekta Mehta
Advocate for Applicants.

Respondent: Ms. Puja Kalra and Mr. Virender Singh Advocates for
MCD.
Ms. Tanisha Samantha Advocate for Mr. Balendu
Shekhar Advocate for DPCC. (Through VC)
Ms. Snehal Kaila for Ms. Kanika Aghnihotri for
Respondent No. 4 (Through VC)

ORDER

1. Vasant Vihar Association has filed the present application under Sections 14 and 15 of the National Green Tribunal Act, 2010 for issuance of directions to the respondents for removal/relocation of the Mobile towers setup in the public parks in the Vasant Vihar colony and restoration of the parks at the costs of the respondents and also to cease and desist from permitting construction/installation of mobile towers in any public parks in Delhi.

2. Vide order dated 10.05.2023 notices were issued to the respondents.

3. Pursuant to notice Report were filed by DPCC vide email dated 08.08.2023 and by MCD vide email dated 21.11.2023.

4. I.A. No. 597/2023 has been filed by respondent no. 4-M/s Indus Towers Limited with the submission that this O.A. has been filed solely on the basis of directions issued by this Tribunal vide order dated 19.07.2022 passed in O.A. no. 232 of 2022 the operation of which has been stayed by the Hon'ble Delhi High Court vide order dated 09.12.2022 passed in CM(M) No. 1380 of 2022 titled as "M/s Indus Tower Ltd. Vs. Gautam Nagar Residents Association Regd. & Ors". Respondent no. 4 has prayed that the present proceedings be kept in abeyance till the final outcome of the above said case.

5. As per the information obtained from the website of the Hon'ble Delhi High Court the above said case has been adjourned to 05.01.2024.

6. In the facts and circumstances of the case the present O.A. no. 333/2023 is adjourned sine die to be taken up for further proceedings after decision of CM(M) No. 1380 of 2022 by the Hon'ble Delhi High Court.

Arun Kumar Tyagi, JM

Dr. Afroz Ahmad, EM

November 22nd, 2023

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