

**BEFORE THE NATIONAL GREEN TRIBUNAL
CENTRAL ZONAL BENCH, BHOPAL**

Original Application No. 19/2015 (CZ)

and

Original Application No. 25/2015 (CZ)

CORAM:

**Hon'ble Mr. Justice Dalip Singh
(Judicial Member)**

**Hon'ble Mr. Ranjan Chatterjee
(Expert Member)**

BETWEEN:

Original Application No. 19/2015 (CZ)

Shahpura Jan Jagran Evam
Vikas Samiti Bhopal,
(Registration No. 12450/03),
Represented through its President Anand Pandey,
S/o Late Shri P. S. Pandey,
Age adult (Senior Citizen),
Office at Sector-C-3/373, Shahpura,
Bhopal – 462 039 (M.P.)

.....Applicant

Versus

1. Shri Santosh Jain,
R/o Sector-C-356, Shahpura,
Bhopal 462 039 (M.P.)
2. Shri Parshvanath Digambar Jain Samiti,
Office at : R/o Sector-C-356, Shahpura,
Bhopal 462 039 (M.P.)
3. Shri Deep Jain,
R/o Sector-C-274, Shahpura,
Bhopal 462 039 (M.P.)
4. Shri Subodh Jain,
Office : Sri Parshvanath Digambar Jain
Mandir Samiti, Sector-C, Shahpura,
Bhopal 462 039 (M.P.)

5. Sub Divisional Magistrate
T.T. Nagar, Habibganj Division,
12 Daftar, Jawahar Chowk,
Bhopal
6. Bhopal Municipal Corporation,
Represented through its Commissioner,
Mata Mandir, Bhopal (M.P.)
7. Madhya Pradesh State Pollution Control Board,
Through its Chairman,
E-5, Arera Colony,
Bhopal (M.P.)
8. State of M.P..
Through its Chief Secretary,
Vallabh Bhawan, Mantralay,
Bhopal (M.P.)
9. Bhopal Development Authority,
Through its CEO,
M.P. Nagar, Bhopal (M.P.)

.....Respondents

Counsel for BMC : : Shri Neel Choudhary Adv. for
Shri Vijay Choudhary, Adv. With
Shri O.P. Bhardwaj, OIC
Counsel for Respondent Nos.1 to 4: Shri Om Shankar Shrivastav, Adv.
Counsel for Respondent No. 8 : Shri Sachin K. Verma, Adv.

AND

Original Application No. 25/2015 (CZ)

Shri Rajkumar Maheshwari,
S/o Shri K.C. Maheshwari,
Aged about 43 Years,
R/o C-404, Shahpura,
Bhopal.

.....Applicant

Versus

1. Shri Deep Jain,
Executive Engineer,
Capital Project,
R/o C-274, Shahpura C Sector,
Bhopal.

2. Shri Subodh Jain,
Engineer, Municipal Corporation Bhopal,
R/o C.M. 76, Shahpura C Sector,
Bhopal.
3. Commissioner,
Municipal Corporation,
Bhopal.
4. Secretary to Government of M.P.,
Awas & Paryawaran Department ,
Bhopal.
5. Shri Kashiram,
Wood Cutter, Municipal Corporation,
Bhopal, Vehicle No. 5, M.P. 04-0798.

.....Respondents

Counsel for Applicant : Shri K.C. Maheshwari, Adv.
Counsel for BMC : : Shri Neel Choudhary Adv. for
Shri Vijay Choudhary, Adv. With
Shri O.P. Bhardwaj, OIC
Counsel for Respondent Nos 1 & 2 : Shri Om Shankar Shrivastav, Adv.

Dated : 22nd April, 2015

Delivered in the open Court by
Hon'ble Mr. Justice Dalip Singh, Judicial Member

1. These two Original Applications have been submitted by the residents of Shahpura C-Sector Colony, Bhopal (in O.A. No. 19/2015 and one of the residents in O.A. No. 25/2015) alleging that Parshvanath Digamber Jain Samiti through its members office bearers and devotees is organizing religious function at the Sourabh Park in the said colony and for the aforesaid purpose allegedly they have indulged in indiscriminate cutting of trees for holding the said function. It was alleged in the petition that huge number of devotees roughly 25,000 are liable to congregate during the period from 26.04.2015 to 01.05.2015 for the said functions which are primarily for the Panch *Kalyanak Prathishta Samaroh* and installation of the idols of the *tirthankar* in the temple of the Digamber Jain Samiti. It was further alleged that

during this period the organising committee is going to use loudspeakers through which *religious sermons and chanting of shloaks and bhajans* will be carried out, thus causing noise pollution and also causing disturbance to the students taking their examination. It was alleged that for the cutting of trees no prior permission has been taken and therefore the organizing committee of the said function be directed not to go ahead with organizing any such function in Sourabh Park, C-Sector, Shahpura, Bhopal as also they should be made liable on account of the indiscriminate felling of the trees in the said park.

2. Notice was issued to the Respondent to put in their appearance, who submitted that in fact no felling of trees has been carried out and only with a view to facilitate the movement of the persons coming to attend the function in the park that the branches which would otherwise obstruct the movements of the people, have been trimmed and that too after taking the necessary permission from the Municipal Authorities to whom the park belongs.

3. The Municipal Authorities admitted that after the District Administration had granted the permission to the Respondents/organizing committee for holding the said function at the Sourabh Park, an application was received from the organizing committee for the trimming of the trees which would cause obstruction in the free movements of the devotees and as a result thereof, the Municipal Authorities proceeded to cut some of the branches and in fact no tree was cut by the Municipal Authority and that the aforesaid trimming of the branches was also carried out under the guidance of the Tree Officer of the Bhopal Municipal Corporation (BMC).

4. In response to the Application as filed O.A. No. 25/2015 the Respondent/organizing committee alleged that in fact the residents of the Colony have no objection and it is only at the instance of the Applicant Shri Rajkumar Maheshwari who runs the business of tent house and engages the park for storage of his material on the premises

of the park that this petition has been filed, particularly since the organizing committee did not engage the services of said Shri Rajkumar Maheshwari.

5. Taking due account of the aforesaid facts and circumstances as also the submission of the Learned Counsel for the State of MP that the District Administration having accorded the permission on 25.03.2015, thereafter received complaints in this behalf allegedly from some of the residents requesting for revoking of permission and as a result thereof a show cause notice had been issued to the organizing committee and that till 15.04.2015 i.e. the last date for submission of the reply, the members of the organizing committee had not submitted their response to the show cause notices as to why the permission granted earlier on 25.03.2014 be not revoked.

6. In the light of the above, on 15.04.2015 the case was adjourned directing the Sub Divisional Magistrate (SDM) to issue the show cause notice on 08.04.2015 to take decision in accordance with law on the issues.

7. On the next date 17.04.2015 it was brought to our notice that SDM has passed the order after considering the reply of the show cause notice and granted conditional permission and refusing some of the terms and conditions of the earlier directions granted on 25.03.2015 pertaining to the use of loudspeakers with restricted decibel levels as also the timings and further that the entire function would be monitored. Also the SDM directed the Tehsildar, Nuzul T.T. Nagar, Bhopal to conduct an enquiry and submit a report as to whether the trees which are alleged to have been cut were in fact allowed to be cut in accordance with the provisions contained in Madhya Pradesh Land Revenue Act, 1959 and more particularly Section 253 (1) thereof. Having considered the aforesaid and having heard the Learned Counsel for the parties, the Tribunal directed that in case the park is allowed to be used for the function, the organizing committee shall ensure the maintenance of cleanliness and hygiene in the park and for the aforesaid purpose, they shall submit a fresh bond to the extent of

Rs. 1,00,000/- before the SDM. It was submitted by Shri Sachin K. Verma, Learned Counsel that this amount of Rs. 1,00,000/- by way of surety has already been submitted by the organizing committee. It was also directed by the Tribunal that the use of loudspeakers shall be restricted to the stage where the religious ceremony pertaining to the idols would be confined and the decibel levels shall be kept at the bare minimum and also the use of the loudspeakers shall be restricted between 10.00 am to 6 .00 p.m. The organizing committee was further directed by the SDM that the vehicular traffic within the colony would be restricted and a designated place shall be earmarked for devotees and no vehicle of the devotees would be allow to come within the residential colonies in question.

8. The Tribunal, keeping in view the fact that certain trees had been damaged as a result of the alleged cutting/ pruning by the Members of the Organizing Committee through the Bhopal Municipal Corporation and from the photographs it did appear that the Sourabh Park was in a dire straits, directed the Organizing Committee to deposit by way of surety, a sum of Rs. 5 lakhs within 10 days before the SDM to be used for upliftment and betterment of the Park. For want of response on these issues, the matter was adjourned for today.

9. Today, the Learned Counsel appearing on behalf of the Organising Committee and so also Respondent No. 2 Shri Santosh Jain, Secretary of the Organising Committee of the Parshvanath Digambar Jain Samiti submitted an application that the Samiti had decided not to go ahead and organise the Panchkalyanak Pranpratishtha at the Sourabh Park, C-Sector, Shahpura Colony between 26.04.2015 to 01.05.2015. With the aforesaid submission made before us in writing by way of M.A.No. 251/2015, the dispute raised in these two Original Applications, so far as issuing directions restraining the holding of the function in the Sourabh Park, C-Sector, Shahpura Colony of Bhopal, has become infructuous.

10. However, we find from the photographs, etc. which have been placed before us that it is amply clear that at the instance of the Organizing Committee, the trees were pruned to a large extent and were also indiscriminately. It is also clear that the said park is in dire straits and in very poor condition with hardly any flower bed or trees, benches, etc. There is no protection of the park, either by way of any hedge or wall or fencing. It is on account of the aforesaid reason, from the photographs, it is clear that the park was being used by the Tent house as its storage place at a suitable area and this was being carried out, as submitted before us, since the past 10-15 years. The very fact that it is mandatory under the Town and Country Planning Guidelines for residential colonies while being given permission for developers, to keep open spaces and park for the benefit of the residents. These open spaces and parks are deemed to be lungs of the colony and required for the environmental and recreational purposes. On the contrary, we find that the park has been neglected, despite the fact that the approval of the colony was granted by the concerned authority, and that no measures have been taken by the local authorities for the maintenance of the park.

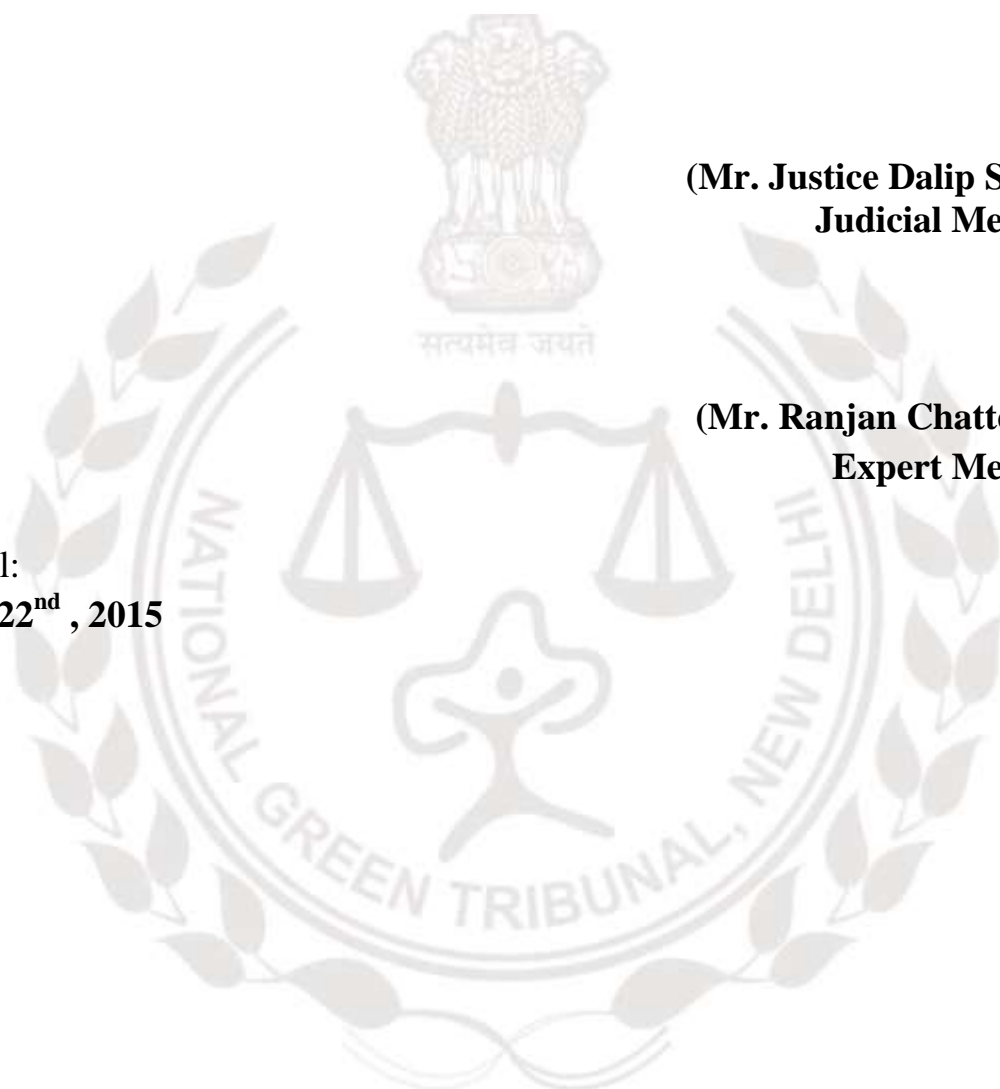
11. In the facts and circumstance of the present case, we direct that since the use of the park was being made by the owner of the tent house Shri Rajkumar Maheshwar who has filed O.A.No. 25/2015 and admittedly had been using the space of the park, though, partially for storage by tent house material for the last 15 years, he shall be liable to deposit with the Bhopal Municipal Corporation an amount of Rs. 5 lakhs (Five Lakhs) towards the unauthorised use & occupation by way of damages to the park. At the same time, the Organizing Committee which sought permission from the Bhopal Municipal Corporation for pruning, we find that pruning that has been done in the instant case should be made liable for causing irreparable damage to the existing trees in the park and therefore, we are of the view that with a view to improve the present condition of the park and to ensure that the park comes up in a proper manner, the Organizing Committee shall be liable for submitting an equal amount of Rs. 2.5

lakhs (Two lakhs fifty thousand). Other residents of C-Sector, Shahura Colony including the Applicants who will be liable to pay Rs. 2.5 lakhs (Two lakhs fifty thousand) for development of the park. The Officer of the Bhopal Municipal Corporation who is present submitted that there a policy of the Municipal Corporation that as per the Scheme of Jan Bhagidari Yojna, if the residents of the colony and other persons provide some amount for the development of the park, the Municipal Corporation gives an equal amount for development of the park in the residential colonies. As have been directed hereinabove, since an amount of Rs. 5 lakhs have been directed to be deposited by the Shri Rajkumar Maheshwar (O.A.No. 25/2015) and Rs. 2.5 lakhs by Parshvanath Digambar Jain Samiti (O.A.No. 19/2015) and another Rs. 2.5 lakhs by Shahpura Jan Jagran Evam Vikas Samiti Bhopal, an equal amount shall be set aside by the Bhopal Municipal Corporation for development of the park. The amount of Rs. 20 lakhs, for development of Sourabh Park shall primarily be utilised by the Bhopal Municipal Corporation for protecting the area of the park by carrying out the construction of wall / fence, plantation of trees and shrubs, proper layout of flower beds, both seasonal and perennial varieties, so also for the development of the park as it is essential to have a source of water, the BMC shall install tubewell and provide electricity. The park shall also cater to the needs of children of the locality which would include facility for their playing, swings, walkways and benches in the shade of trees for residents of all age groups. The Municipal Authority while carrying out the development plan shall also take measures for proper illumination in the park. In case the residents of the colony want to give any specific additional proposals for development of the park, they would be free to submit the same before the Municipal Authorities. The Commissioner, Bhopal Municipal Corporation shall carry out the above order and shall be responsible for recovery of the above mentioned amount from the three parties and sanction of the matching amount by the BMC and complete the development of the park by 31.08.2015.

12. With the aforesaid direction, the Original Application No. 19 of 2015 and Original Application No.25 of 2015 stand disposed of. The pending Miscellaneous Applications also stand disposed of accordingly.

For reporting compliance the matter be listed in Court on **15th September, 2015.**

Bhopal:
April 22nd, 2015



(Mr. Justice Dalip Singh)
Judicial Member

(Mr. Ranjan Chatterjee)
Expert Member

NGT