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2024 SCC OnLine Cal 6083

In the High Court of Calcutta

(BEFORE T.S. SIVAGNANAM, C.J. AND HIRANMAY BHATTACHARYYA, J.)

People United for Better Living in Calcutta (Public)

Versus

State of West Bengal and Others

WPA (P)/569/2023

Decided on June 20, 2024, [Reserved On : 21.05.2024]

Advocates who appeared in this case :

Mr. Siddharth Mitra, Sr. Adv.
Ms. Ajeya Choudhury, Adv.
Mr. Dipendra Nath Chunder, Adv.
Mr. Sagnik Mukherjee, Adv. ....For the Petitioner.
Mr. Anirban Ray, Ld. Government Pleader
Mr. Tapan Kumar Mukherjee, Adv.
Mr. Sk. Md. Galib, Adv.
Ms. Shamim ul Bari, Adv.
Mr. Somnath Naskar, Adv.
Ms. Sujata Mukherjee, Adv. .....For the State.
Mr. Ashoke Kumar Chakraborty, Ld. ASGI
Mr. Kumar Jyoti Tewari, Adv.
Mr. Tarun Jyoti Tewari, Adv.
Mr. Tirtha Pati Acharyya, Adv. .....For the Respondent Nos. 2 & 5.
Mr. Sakya Sen, Adv.
Mr. Suvadeep Sen, Adv.
Mr. Ram Pada Biswas Adv. .....For the Respondent No. 3
Mr. Alak Kumar Ghosh, Adv.
Mr. Arijit Dey, Adv. ....For the KMC

The Judgment of the Court was delivered by

T.S. SIVAGNANAM, C.J.:— This public interest litigation has been filed by a Citizen Action Group called “People United For Better Living in Kolkata (public)”. In this writ petition, the petitioners seeks for issuance of a writ of mandamus to respondent no. 3 namely Rail Vikas Nigam Limited hereinafter referred to as Metro Rail to forthwith stop all construction work in the Maidan area adjoining Victoria Memorial; to issue a writ a mandamus to Metro Rail to call for review of proposed project by independent experts in urban system and transport planning; to direct the Metro Rail for setting up an Expert Committee to

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examine and submit a report on the feasibility of transplanting of the trees which has been proposed; to issue a writ of prohibition to prohibit all the respondents from proceedings with the plan to set up the Victoria Metro Station and writ of prohibition prohibiting all the respondents from proceeding with the plan to set up the metro station. The writ petitioner would contend that from various news reports, they came to understand that 700 trees in the Maidan area are to be transplanted and 500 trees will have to be removed to make way for permanent structures and additionally 200 trees will be transplanted to allow movement of trailers and construction machineries like trains etc.

2. The associate of the petitioner group is stated to have filed an application under the Right to Information Act, 2005 seeking particulars of the trees that are proposed to be uprooted, the details of the spots where the proposed transplantation will take place and information about permission taken for uprooting of the trees etc. By another application information was sought for as to whether a study was conducted to determine if another station is needed on the Maidan whether Metro Rail considered any other option for setting up a station at Maidan, whether any systematic assessments led to the decision to uproot 700 trees on the Maidan and whether an environmental impact assessment plan has been envisaged.

3. The petitioner is stated to have addressed the Chairman and Managing Director of the Metro Rail to review the decision of constructing the proposed Metro Station on the Kolkata Maidan opposite to Victoria Memorial and the consequent uprooting of 700 trees in order to facilitate construction of the same. By another application, information was sought for on the proposed new stations such as their details, estimated financial profitability etc. The petitioner would state that the applicant had not received any reply for the information which was sought for. The petitioner would admit that the construction work for the proposed Victoria Metro Station has already commenced and part of the Maidan near the Victoria Memorial has been cordoned off and machinery has been brought in.

4. The petitioner apprehends that the expression “transplant” is being euphemistically used when in reality the trees will be felled since transplanting such ancient and enormous trees is almost impossible and the survival rate is likely to be negligible. It is further submitted that the expression “transplant” is being used to wriggle out of the statutory mandates laid down under the West Bengal Trees (Protection and Conservation in Non-Forest Areas) Act, 2006 as well as mislead the relevant authorities. The petitioner refers to a news article to state that only 33.33% of 16461 trees transplanted in Delhi in the course of the last three years have survived. So far as the compensatory planting is concerned, it is stated that it would serve no purpose in this case since

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the trees would take decades to grow and gain the crown size of the felled trees.

5. It is stated that Kolkata Maidan serves as the most critical carbon sink and ground water re-charger which renders indispensable services to the city in its entirety. 1200 acres of open space in the heart of the city is considered to serve as a "heat regulator" for large sections of surrounding areas. Referring to an article published in a English Daily on July 15, 2023, it is submitted that both the Indian Army and the State Government concur that the Maidan must be protected at all cost and have therefore turned down a proposed transport terminus citing the need to preserve the greenery. Thus, it is stated that the importance of Maidan, not only from the environmental point of view, but also in terms of the social, cultural and economic aspects has been judicially recognised in numerous pronouncements. In this regard, reference was made to the decision in the case of *Alfred Morris Deane* v. *Commissioner of Police (Calcutta)*[1] and the decision in *Hindustan Mitra Club* v. *State of West Bengal*[2], it is alleged that the respondents Nos. 1 and 2 have neglected their duty and have absolutely failed to protect and preserve Maidan which they are obliged to do under Article 48A of the Constitution of India. Reference was made to the decision of the Division Bench in WPA (P) 16 of 2020 wherein it was held that any attempt to put up concrete construction on the Maidan is illegal and cannot be done without Army permission and it is submitted that the present construction is in violation of the said order. With the above pleadings, the petitioner seeks for the reliefs as mentioned above.

6. Metro Rail filed their affidavit-in-opposition dated November 06, 2023 alleging that the petitioner has not approached this court with clean hands and suppressed material facts before this court and furnished misleading information and also made several mis-representations for the purpose of obtaining an experte ad interim order which was wholly uncalled for. It is submitted that the petitioner has impleaded the respondent No. 3 disclosing only the address of the registered office even though from the statements in the petition, it is apparent that the petitioner was aware that the Kolkata office of the respondent No. 3 is besides the Tollygunge Railway Station which is the implementing agency and such knowledge of the petitioner would be evident from the applications purportedly made under the Right to Information Act. With regard to the applications said to have been filed under the Right to Information Act, after setting out certain facts, it is stated that the documents which were produced by the petitioner does not show that the applications for information under the Right to Information Act were actually received by the appropriate officer of RVNL.

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7. It is submitted that the petitioner has alleged that the present construction work of the station was in violation of the order dated July 08, 2005 passed in WPO 384 of 2005 but the petitioner has failed to disclose that an application was filed in 2021 in the said writ petition seeking modification of the earlier orders specifically for the purpose of allowing the applicant namely RVNL to undertake underground work in the Maidan area for construction of three stations and cross over portion by cut and cover method over the ground. The said application was allowed by order dated February 04, 2022 specifically referring to the nature of the work required to be done for construction of underground metro including three stations and cross over portion by cut and cover method within the Maidan area for which modification of scheme from viaduct to underground has been approved by the Railway Board to avoid any effect to the surface features and having regard to the requirements of maintaining the ecology of the Maidan and transplantation and plantation of trees as indicated in the said application. It is submitted that the cost of construction of underground metro is five times more than the cost of elevated metro construction and inspite of that, Railway Board has agreed to change the scheme of metro construction from viaduct to underground to maintain ecology and skyline of Maidan area and also to comply the directions issued by this court in the order dated February 04, 2022. It is reiterated that the implementing agency of the Metro project has not been impleaded as a party and deliberately the registered office of RVNL has been indicated in the cause title which is actually not concerned with the implementation of the project despite the fact that the writ petitioner had knowledge of the same. Further it is submitted that the public interest litigation cannot be initiated solely on the basis of newspaper reports without proper verification of the issues highlighted in such newspaper reports and therefore the writ petition is liable to be dismissed.

8. The steps taken by implementing agency is stated to be in accordance with the law and also with a view to promote public interest and the following facts have been placed on record in the affidavit-in-opposition which are quoted verbatim:—

(a) The work of Metro Railway construction between Joka and BBD Bagh was sanctioned by Ministry of Railway vide PB item no. 39/10-11 and the work transferred to RVNL for implementation by Railway Board vide letter No. 07/Proj/C/5/2 dated 15-03-2010 at total sanctioned cost of Rs. 2,619.02 crores.

(b) Pursuant to the aforesaid sanction of work, the applicant herein has substantially completed the construction work from Joka to Majherhat. Joka to Taratala section has already been opened and the stretch between Taratala Station to Majerhat Stationis likely to

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be opened for public use within this financial year. The work between Majherhat and Mominpur has also been started.

(c) Mutually the entire project envisaged an elevated corridor from Joka to BBD Bagh but on request of Transport Department, Government of West Bengal the scheme of corridor in Maidan area has been modified from elevated to underground so as to maintain the ecology and skyline in Maidan area.

(d) The General Manager, Metro Railway, in his letter No. MRTS/W-90/49(RVNL) dated 26.03.2010 had proposed to go for underground work near Race Course and across Maidan area. Accordingly, RVNL modified the scheme from elevated to underground in Maidan area. It is also to be noted that the Railway Board has already sanctioned the material modification for underground construction in Maidan area in 2019 at a cost of Rs. 2,825.63 crores. The proposed underground stations as per modified scheme within the Maidan area will be as follows:—

(i) Victoria Station (12.040 Kilometer)

(ii) Park Street (13.290 Kilometer)

(iii) Esplanade (13.934 Kilometer)

The said underground construction will be done through Tunnel Boring Machine(TBM) in between stations and by cut and cover method in station area and cross over portion.

(e) The underground Metro in Maidan area (beyond Tolly Nallah up to Esplanade) is 3.712 kilometer out of which 2.40 kilometer will be constructed by Tunnel Boring Machine(TBM) and 1.311 Kilometer will be done by cut and cover method.

(f) There will be no effect on surface features of Maidan area where Tunnel Boring Machine (TBM) shall be used. The trees which would fall within the station area and cross over portion, will be transplanted judiciously and further new tree will also be planted as per the rules and norms of Forest/Environment Department.

(g) It is further mentioned that work permission in Command Hospital area and Maidan area has already been received from Ministry of Defence on 04.01.2016 subjected to clearance from the Hon'ble High Court, Calcutta in view of the fact in the present writ petition being W.P.O. No. 384 of 2005 there is an interim order of injunction in respect of any work in Maidan area and Victoria Memorial

(h) One working permission for construction of Mominpur to Command Hospital has been received from Ministry of Defence on 13.01.2017. Another principal approval has been received from Public Works Department and Kolkata municipal Corporation on 02.12.2010 and 01.12.2010 respectively. Furthermore, clearance

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has also been given by the Environment Department on 10.12.2010 and 17.08.2018 in respect of the said work and no objection has been received from the Superintendent of Police, South 24 Parganas on 06.12.2010. It is further stated that the notification under section 7(3) of the Private land acquisition has been published in the newspaper on 01.11.2020.

(i) The work in the Maidan area could not start in view of an order dated July 8, 2005 passed in another writ petition which inter alia prohibited that no construction could be made in the Maidan area. In the circumstances, an application was caused to be filed in WPO No. 384 of 2005 praying inter alia for appropriate modification of the order dated July 8, 2005 enabling the applicant to undertake underground work in Maidan area for construction of three (3) stations and cross over portion by cut and cover method having regard to the fact that the applicant would undertake transplantation of the trees which would fall within the station/cut & cover area and further new trees would be planted as per rules and norms of the Environment Department.

(j) In the said GA No. GA/3/2021, Union of India represented by Ld. Addl. Solicitor General submitted a report indicating the permission has been given by the Defense. Upon hearing the parties, the Hon'ble Division Bench by order dated 4th February, 2022 was pleased to pass an Order to the effect that keeping in view of the larger public interest involved in the smooth completion of the Metro Railway project and having regard to the proposal regarding transplantation and plantation of trees for the purpose of maintaining the ecology of Maidan, have allowed the prayers in the said application subject to compliance of relevant provisions of the Act and the Rules and obtaining necessary permission from the competent authorities. A copy of the said order dated 4th February, 2022 is annexed hereto and marked with the letter "D". The Hon'ble Court also took into consideration an earlier order dated 8th March, 2021 passed in GA No. 2 of 2020 in respect of Zeerut Bridge. A copy of the order dated 8th March, 2021 is annexed hereto and marked with the letter "E".

(k) In terms of the said order a contract has been awarded to M/s. L&T vide a letter of acceptance dated 25th July, 2023, a copy whereof is annexed hereto and marked with the letter "F".

(l) Soon thereafter a further application has been made to the appropriate authorities of the Ministry of Defence i.e. SO Land, Head Quarter, HQ Bengal Sub-Area recording inter alia that working permission has already been taken from the Defence authority and the land has also been handed over by Defence

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authority for construction of underground station. A joint inspection with SDO III, the representative of Defence Estate Officer, was conducted and during such inspection it was certified that certain number of trees would fall within the construction area. The certified drawing with tree list was forwarded to the authority for approval of concerned Defense Authority and necessary action for the purpose of enabling the trees falling in the permanent construction area to be transplanted.

(m) Upon such NOC being granted further application will be made to the Conservator of Forests for according permission, if any required. In another case relating to the Metro Railway construction from New Garia to Airport similar permission was sought for where the concerned Divisional Forest Officer by a communication dated 22nd may 2019 had informed that transplantation of trees does not require any specific permission under West Bengal Trees Protection & Conversation in Non-Forest Areas Act, 2006 and the appropriate rules thereof. Copy of the said communication is annexed hereto and marked with the letter "G".

9. With regard to the allegations that construction work of the proposed Victoria Metro Station is going on has been specifically denied and it has been stated in the affidavit-in-opposition dated November 06, 2023 that only cordoning of the area proposed for Victoria Metro Station has taken place and no question of construction work arises at the relevant stage before grant of no objection certificate (NOC) from the defence authorities and subsequent permission, if any, from the forest authorities. Further it is submitted that only identification of trees that will fall within the station area allowed to be constructed by an earlier order of this court has been done and as such there is no cause of action to move the instant writ petition and there is no urgency pleaded to move the writ petition during the vacation.

10. It is submitted that the writ petition is based on apprehension and the allegations are without any basis. Further it is submitted that it has been made clear by the Divisional Forest Officer, North 24 Parganas that transplantation of trees is not synonymous with felling of trees and does not require permission under the 2006 Act and the rules framed thereunder. It is submitted that a development project for the benefit of the public at large is sought to be stalled and/or delay by filing of the instant writ petition without disclosure of full and complete information and on the other hand by furnishing misleading information and therefore the petition should be dismissed with heavy costs.

11. The writ petitioner has filed a supplementary affidavit dated November 20, 2023 stating that it has been filed for the purpose of

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bringing on record certain facts which will assist in proper adjudication of the matter. It is submitted that the writ petitioner is aggrieved with the proposed transplantation of 700 trees which the writ petitioner apprehends will result in death of 700 valuable and large trees. The petitioner refers to the opinion given by the environmentalists who have opined that the survival rate of transplanted trees is as low as 10%. The petitioner has suggested two alternate proposals and according to them if one such alternate proposal is adopted, there will be no loss of trees and no assault on the, Maidan apart from the reduction in the acceptance.

12. The Metro Rail, the respondent no. 3 has filed an affidavit-in-opposition dated December 15, 2023 to the supplementary affidavit filed by the writ petitioner dated November 23, 2023. It is stated that in the supplementary affidavit, the petitioner purports to question the alignment of the proposed metro project from Joka to Esplanade which is beyond the scope of consideration in the present pxublic interest litigation in as much as the said alignment is based on a detailed project report prepared by RITES and the project have been duly approved by the Railway Board and transferred for execution to RVNL on March 15, 2012. Further the material modification for change in alignment from elevated to underground corridor was sanctioned by the Railway Board on July 04, 2019. The Hon'ble Division Bench in its order dated February 04, 2022 passed in GA 3 of 2021 in WPO No. 384 of 2005 has considered the change in alignment in the Maidan area from elevated to underground which was duly sanctioned by the Railway Board and considering the same allowed the prayer sought for in GA No. 03 of 2021 filed by the RVNL thereby permitting construction of the metro stations by TBM methods for tunnel portions as well as cut and cover methods for four metro stations, out of which one metro station at Khidderpore and three metro stations in Maidan area.

13. Further it is submitted that the issue regarding viability of the proposed alignment cannot be permitted to be raised by way/of a supplementary affidavit. Pursuant to the order passed by the Division bench dated February 4, 2022 contract has already been awarded to M/s. Larsen and Toubro Limited vide letter of acceptance dated July 25, 2023 and any change of alignment as proposed by the writ petitioner will cause termination of the said contract causing huge financial loss to the public exchequer. Reference was made to the report submitted by the Forest Research Institute, Dehradun to the Ministry of Environment, Forest and Climate Change on trees transplantation in India and what emerges from the said report is that transplantation has been accepted as a procedure for infrastructural projects, broad guidelines were framed regarding transplantation of trees which were uprooted in the course of infrastructural project. M/s. Green Morning Horticulture

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Private Limited having their registered office in Hyderabad is the pioneer in tree transplantation in India having transplanted more than 1,20,000 trees and they have certified that the average survival rate of trees transplanted to be more than 80%.The said company has undertaken the plantation in respect of various government projects as NDMC-Telangana, National High Speed Rail Corporation-Gujarat Pune Metro Rail, Hyderabad Metro Rail, Forest Department Telangana, Andhra Pradesh and Odisha, Indian Railways, Indian Army, CPWD-Central Secretariat-New Delhi, Airport Authority of India and Noida International Airport. Copy of a presentation submitted by the said company has been annexed to the affidavit-in-opposition dated December 15, 2023. Further it is submitted that the said company M/s. Green Morning Horticulture Private Limited is on the empanelled list of the Departments of Forest and Wildlife, Government of NCT of Delhi to carry out the work of tree plantation in the NCT of Delhi. Therefore, it is submitted that the writ petitioner has taken recourse to bald allegations without appropriate research on the subject nor has relied upon any expert opinion in this regard. The opinion of certain environmentalist which have been referred to by the petitioner is not conclusive having regard to the overall policy in vogue in the country relating to transplantation and when the Committee has already submitted their report to the Ministry of Environment which reveal that transplantation measure is generally accepted as a possible viable solution for infrastructural projects to be carried on which also subserves public benefit without disturbing the ecological balance. It is submitted that the Hon'ble Supreme Court has considered the conflict between public infrastructure projects and environmental concerns but nevertheless allowed public projects to be carried out on without any hindrance by granting approval to the methods of plantation and compensatory afforestation.

14. The aforesaid method has already been adopted in the instant project for which necessary permission has been granted in the earlier order dated February 04, 2022. The respondent no. 7, the Chief Conservator of Forest has filed an affidavit dated December 06, 2023 stating that the procedure for felling up trees in non-forest areas has been described in the 2006 Act and the 2007 Rules for which the application has to be submitted to the competent authority for permission for felling of trees and the Divisional Forest Officer, Forest Utilisation Division, Kolkata is the notified competent authority for the concerned area. The competent authority on receipt of the application along with the requisites namely, plantation plan,/land document etc. for felling of trees, conducts a field enquiry and if the competent authority is satisfied with the enquiry report and all other particulars, the said plantation plan is approved and clearance certificate is issued

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which contains the number of trees to be planted by the applicant. Thereafter the competent authority on_ being satisfied that the number of trees required to be planted as per the approved plantation plan and clearance certificate has actually been planted, issue the felling permission to the applicant.

15. In the instant case, RVNL submitted letter dated August 26, 2023 addressed to the Deputy Conservator of the Forest intimidating for transplantation of trees in Maidan area and Joka in connection with the Mominpur-Esplanade section of the Joka-Esplanade Metro corridor. In the said intimation, it is stated that 673 trees are required to be transplanted in permanent construction area while 273 trees are required to be transplanted in temporary working area. Thus, the total number of 946 trees are required to be transplanted. RVNL again had addressed the Deputy Conservator of Forest by letter dated October 28, 2023 informing that construction work was awarded to M/s. Larsen and Toubro and construction work has started in the Maidan area. It is stated that taking permission for felling of trees is mandatory under the provisions of the 2006 Act. The Divisional Forest Officer by letter dated November 01, 2023 requested the Chief Project Manager, RVNL to submit an application for felling of trees as per the applicable law and procedure through online mode. It is further submitted that the 2006 Act and the 2007 Rules framed thereunder do not provide provisions for transplantation of trees and the law only provides for felling of trees subject to adherence of stipulated rules and procedures. However, as transplantation of tree involves uprooting of such tree, the involvement and/or approval of the Department of Forest, Government of West Bengal is required and in the absence of provisions of “transplantation” definition of “felling of trees” as per the 2006 Act and the rules will be applicable in the case of transplantation. 16. On November 02, 2023 RVNL submitted their online application seeking permission for felling in the Victoria location and Park Street area. The Divisional Forest Officer, the competent authority raised certain queries by letters dated November 06, 2023 and November 17, 2023. It is submitted that the process of transplantation of trees is a very complex one and the chances of survival of a tree which is being transplanted is very poor (less than 30%). It is submitted that the Department of Forest, Government of West Bengal does not possess the requisite infrastructure to perform transplantation of trees. The modern equipment and technical knowhow required for performing the transplantation process are not readily available with the Department of Forest. Respondent No. 5 namely the Defence Department have filed their affidavit-in-opposition dated April 04, 2024. Preliminary objection has been raised regarding the maintainability of the writ petition before this court by contending that the National Green Tribunal would be the

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appropriate forum which the petitioner did not approached. With regard to the project in question, it is submitted that the NOC was given to RVNL for construction of the metro project with a direction for carrying planned plantation of trees in the Maidan areas, in the area of Brigade Parade Ground. The Headquarter Bengal Sub Area along with RVnL is ensuring survival of trees by carrying out re-plantation in near vicinity along with existing tree line in areas close metro alignment and continuous endeavour being taken to water shrinking of open space. Local Military Authorities is collaborating with the Department of Forest, Government of West Bengal for undertaking development of affected areas by metro construction. 17. It is submitted that the Joka-BBD Bag Metro Project was initially conceived in 2010-2011 and for the purpose of ensuring continued availability of open space for public utilisation and military purposes and to make sure the least number of trees are affected for this project, the metro route alignment was changed from over ground to underground.

16. It is further submitted that large number of trees transplantation has already effected to compensate the tree felling in Maidan area. The details of the tree plantation carried out in the Maidan area along with satellite imagery has been annexed to the affidavit-in-opposition. It is further submitted that this is not the first time when any public project is been carried on through the Maidan area and previously keeping a reasonable balance between public convenience and environmental impacts, similar projects having public importance i.e. the Park Street Flyover Park, Curzon Park (East West Corridor) and the Esplanade Metro Station of Blue Line have been under taken in or around Maidan. It is stated that the petition has been filed merely on apprehension and mostly by taking into consideration of articles published in the newspapers.

17. It is further submitted that the land in question is a defence land and working permission was granted by the Ministry of Defence exclusively RVNL, Ministry of Railways by order dated March 20, 2023 on defence land measuring about 54 acres for construction of Joka-BBD Bag Metro Line subject to terms and conditions. Thus, it is submitted that the importance of the land in question has been preserved and military authorities have implemented the guidelines issued in WPA No. 395 of 2005 and the order dated February 04, 2022 in GA No. 3 of 2011 in WPA No. 384 of 2005 whereby the Division Bench granted permission to RVNL subject to taking clearance/NOC from the competent authorities.

18. The writ petitioner has filed an affidavit-in-reply dated May 21, 2024 to the affidavit-in-opposition by the defence department dated April 4, 2024.While denying the allegations made in the affidavit of the defence department, it is stated that no effort has been made to

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ascertain whether the RVNL has the capability to undertake transplantation of 29 trees. The trees were not earmarked before NOC was issued and no expert agency was consulted to ascertain whether the 29 trees are fit for transplantation. The petitioner would reiterate the importance of the Maidan which apart from being utilised by the military it also serves as a playground for general public. Metro Rail have filed supplementary affidavit dated May 02, 2024 wherein the details regarding the no objection certificates which were issued have been set out and the approval of the plantation plan etc. It is thus submitted that necessary permission for felling/transplantation of trees in the Victoria area for construction of metro rail project has been duly approved from the appropriate authorities and their conditions have been duly complied with by RVNL. The appropriate authorities have granted their approval in accordance with the applicable laws and regulations.

19. It is submitted that by communication dated April 30, 2024 addressed to the various authorities, RVNL intimidated that the work of transplantation of trees as indicated in the annexure to the permit dated April 23, 2024 shall be commenced on and from April 30, 2024. The petitioner has filed affidavit-in-reply dated May 15, 2024 to the supplementary affidavit filed by the Metro Rail dated November 06, 2023. The writ petitioner also filed an affidavit-in-reply dated May 15, 2024 to the affidavit-in-opposition of metro rail dated December 15, 2023 to the supplementary affidavit filed by the writ petitioner denying and disputing the allegations made in the affidavit-in-opposition. The writ petitioner has filed affidavit-in-opposition dated May 21, 2024 to the supplementary affidavit filed by the Metro Rail dated May 02, 2024. It is submitted that the NOC given by the defence department provides that the intending Agency will be responsible for taking all regulatory clearances and the maintenance and ensuring survival of trees will be responsibility of the applicant agency. Besides giving such vague direction, the defence department has failed to understand the implication of grant of NOC. Once replanted, the trees will die if due care is not taken from the beginning of the process. It is submitted that in the NOC granted by the Forest Department, the respondents no. 7, the word “re-plantation” or “transplantation” do not appear in the said document even once which will go to show that the purported NOC is for chopping down of trees and no re-plantation or transplantation.

20. Further it is submitted that plantation of 145 new plants are irrelevant since 145 newly planted trees can never be an adequate compensation for felling of 29 fully grown trees. Further the plantation programme is taking place in Joka when the 2006 Act provides for plantation of trees in place of trees felled, should be in the same plot of land. It is submitted that from the NOC issued by the respondent no. 5,

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defence department, it is not clear as to how the number of trees to be felled came down from a staggering 1046 trees to 29 trees. The other averments in the supplementary affidavit have been denied.

21. We have elaborately heard the submissions by the learned advocates appearing for the parties and have given our anxious consideration to the materials placed on record.

22. Before we examine as to what relief the petitioner would be entitled to in this writ petition, we need to remind ourselves about the precautionary principles as well as the principles of Sustainable Development. In this regard, it will be beneficial to refer to the decision of the Hon'ble Supreme Court in *T.N Godavarman Thirumulpad in Re* v. *Union of India*[3], the application was filed before the Hon'ble Supreme Court concerning the Delhi Metro Rail Project. The relief sought for in the said application was to refer the matter to the Central Empowered Committee appointed by the Hon'ble Supreme Court for detailed consideration and examination of the proposal of the applicant for construction of metro alignment, tunnels and metro station forming part of the 22.34 kilometres Aerocity - Tughlakabad Metro Corridor being proposed for construction for Phase IV of MRTS Project on South Central/Morphological Ridge; to allow the applicant for carrying out the alignment, tunnelling/station/shaft construction activity, in the South Central/Morphological Ridge for construction of the tunnel and Metro Corridor. There were other applications filed for incidental and ancillary reliefs and the prayers sought for were objected by the respondents therein.

23. In paragraph 20 of the said judgment, reports submitted by the Central Empowered Committee dated May 13, 2021 has been referred to and extracted. Paragraph 18 of the said report states that the felling of planted trees outside the forest are regulated under the provisions of the Delhi Preservation of trees Act, 1994 (similar to the 2006 Act in West Bengal). The Central Empowered Committee was of the considered view that the PWD land on which the planted trees are seen are neither notified as forest nor recorded in any Government records as forests. The trees not being of natural origin cannot be branded as forest for the purpose of Forest (Conservation) Act, 1980. It was therefore recommended for consideration of the Hon'ble Supreme Court that the prayer of the applicant therein to declare 5.3 kilometres stretch in the area in question being non-forest area to be allowed subject to the conditions that the Delhi Metro Rail Corporation Limited will felled the trees only after obtaining permission under the Delhi Preservation of the Trees Act, 1994 from the authorities concerned and after complying with the conditions associated with such approvals including compensatory planting of 10 times the number of trees closed to the site from where the trees are being felled.

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24. With regard to the permission for construction activities in notified ridge area and forest land and non-forest land situated outside the notified ridge area, the Committee made its recommendations, among other things noted that it is not possible to align the metro corridor outside the ridge area that the project is in public interest, the metro corridor will serve the densely populated areas. The total number of trees were taken note of, the number of trees which are to be transplanted, the number of trees which have to be felled and the number of saplings which have to be planted as compensatory planting etc. With such observations, the Committee recommended to the Hon'ble Supreme Court for consider permitting use of 7.42 hectares of ridge area including morphological ridge and 3.79 hectares of deemed forest land involving 6961 trees (break up being felling of 4766 trees and transplantation of about 2195 trees) for construction of the Metro alignment tunnel and Metro Stations in South Central Ridge and Morphological Ridge. The recommendation also contains certain conditions.

25. The Hon'ble Supreme Court noted that the parties are not opposed to Phase IV of MRTS Project and the main consideration is making available transport facilities to the public at large in NCR of Delhi in the form of metro rail while. at the same time preserving the ecology and environment of the areas surrounding the alignment of the Metro Railways. Thus, the issues concern sustainable development and preservation of environment and ecology of NCT of Delhi/NCR. The Hon'ble Supreme Court pointed out that to meaningfully arrest the problem of the declining tree cover, the civil society must also be placed with the responsibility to carry out reafforestation activities. It was pointed out that while it cannot ignore the importance of governmental responsibilities in materialising the goals of sustainable development through re-afforestation, the Hon'ble Supreme Court strongly endorse the idea of collective responsibility towards ensuring of sustainable future. Ultimately, the Hon'ble Supreme Court having regard to the specific recommendations of the Central Empowered Committee disposed of the interlocutory applications with certain directions pointing out that the direction is issued having regard to the precautionary principles as well as the principle of Sustainable Development.

26. In SLP (C) No. 25047 of 2018, the challenge was to the judgment and order passed by the Division Bench of this court dated August 31, 2018 holding that felling of 356 trees was necessary for implementing the important public project of constructing the five railway over-bridges. The Division Bench further held that the State of West Bengal was entitled to fell only 356 trees and no other trees. The Court directed the State to carry out the compensatory plantation of

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atleast five trees for every trees felled in the same plot or in a plot as near to the plot as possible where the trees will be felled. The Hon'ble Supreme Court stayed the operation of the judgment by an interim order dated September 20, 2018. Subsequently, the Hon'ble Supreme Court appointed a Committee of Experts consisting of five members to take a decision about the best course to be adopted in the said case and make a report to the Hon'ble Supreme Court. The Hon'ble Supreme Court noted that the Committee in its recommendation found that the bridges will have to be constructed to resolve the congestion at the railway crossing and recommended certain other modalities. 29. In paragraph 15 of the order, the Hon'ble Supreme Court pointed out that the contest between development and environmental concerns is ever on going. While there is no doubt that ecology and environment need to be protected for the future generations, at the same time, development projects cannot be stalled which are necessary not only for the economic development of the country but at times for the safety of the citizens as well. It was further pointed out that the protection of environment and ecology are important, however at the same time it cannot be denied that human life is also equally important. The court noted that on account of non-construction of railway over bridges, a number of accidents have taken place at railway crossings resulting in death of hundreds of human beings. The court also noted the report of the Committee which shows that there is congestion, on account of which, the construction of the project is necessary. It was further held that on one hand there is a necessity to protect the trees and in the event it is not possible to protect, to direct compensatory afforestation and with these observations the decision of this court permitting felling of 356 trees by the State Government with compensatory afforestation was upheld.

27. The legal principle that could be culled out from the above decision as well as the other decisions on the point is that there should be a balance, a delicate balance between the protection of ecology and environment and implementation of development projects in public interest. As rightly pointed out by the learned advocate appearing for RVNL, the foundation of writ petition is primarily based on newspaper reports. By way of a supplementary affidavit, the writ petitioner sought to slightly improve upon their case by making a vague plea regarding alternate alignment of the existing project. Alignment of the Metro Rail is a very complex issue which are best left to the experts to decide upon. There has been an earlier litigation concerning the very same project being WPA 384 of 2005. In the said writ petition, RVNL filed GA No. 3 of 2021 seeking appropriate order permitting them to undertake underground/preparatory work in Maidan for construction of Metro Rail Corridor by tunnel boring machinery including three stations by cut and

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cover method over the ground for larger public interest. The said application was filed in the background of the fact that by order dated July 08, 2005 there was a direction issued in WPA 384 of 2005 that there will be no felling of trees whatsoever which are standing in the area; there should be no construction of any kind whatsoever. The said application filed by RVNL was allowed by the order dated February 04, 2022 having regard to the large public interest and also keeping in view the plea taken by RVNL in respect of maintaining the ecology of the Maidan and transplantation and plantation of trees and also the report submitted by the learned additional solicitor general.

28. The Hon'ble Division Bench noted that the work has been substantially completed from Joka to Majerhat. The work between Majerhat and Mominpur has been started but for the construction in Maidan areas, permission is required. Further the court noted that the alignment in the Maidan area was modified from elevated to underground so as to maintain the skyline in the Maidan area and that the Railway Board has already sanctioned the material modification for underground construction in Maidan area. Further the court noted that the underground construction will be done through Tunnel Boring Machine (TBM) in between the stations and by cut and cover method in the station area and the underground metro in the Maidan area is 3.712 kilometres out of which 2.400 kilometres will be constructed by TBM and 1.312 kilometres will be done by cut and cover method and there will be no effect on surface features of Maidan areas where TBM will be used and the trees which would fall within the station area will be transplanted and further new trees will be planted as per rules and norms of the Environment Department.

29. The above order dated February 04, 2022 has attained finality and no attempt can be entertained at the behest of the writ petitioner to reopen the said issue and to make the order unworkable. Therefore, any such plea raised by the writ petitioner either concerning the alignment or the manner in which the project is to be implemented namely by use of TBM or cut and cover method cannot be entertained and such plea is accordingly rejected.

30. Undoubtedly the metro rail project is in public interest. Kolkata has a unique distinction of being the first city in the entire country to have the Metro Rail Project. One more unique aspect is that Kolkata is the first city where the underwater metro tunnel has been constructed and successfully being put to use. Therefore, the court has to necessary balance the public interest. We are fully conscious of the need to protect ecology and environment. To do so, the court has to examine as to what are the parameters which have been adopted, are those parameters prima facie safe and sound and would best serve the purpose sought to be achieved.

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31. The Metro Rail construction project between Joka and BBD Bag was sanctioned by the Ministry of Railways during March 2010 with a sanctioned cost of Rs. 2619.02 crores. The project has been substantially completed i.e. from Joka to Majerhat and the section from Joka to Taratalla has already been opened and the stretch between Taratalla Station to Majerhat Station was likely to be opened for public use within this financial year. The work between Majerhat and Mominpur has also been started. Initially the entire project was envisaged as an elevated corridor from Joka to BBD Bag, but on the request of the Transport Department, Government of West Bengal the scheme of corridor in Maidan area has been modified from elevated to underground so as to maintain the ecology and skyline in Maidan area. As noted by the Hon'ble Division Bench in its order dated February 04, 2022 the underground construction will be done through TBM in between stations and by cut and cover method in station area and the cross over portion.

32. It is not in dispute that the Ministry of Defence, has granted working permission. The joint inspection was conducted with the SDO III, the representative of the Defence Estate Officer in which it was certified regarding the number of trees which would fall within the construction area. The certified drawing with tree list was forwarded to the authority for approval of the concerned defence authority and necessary action for the purpose of enabling the trees falling in the permanent construction area to be transplanted.

33. At this juncture, we take note of the interim directions issued by this court by its order dated November 17, 2023. When the matter was heard, RVNL expressed grave concern that on account of the interim order dated October 16, 2023, the entire project would be stalled and the interim order has a great impact. We have clarified that the apprehension may not be justified since the court in its order dated October 26, 2023 had not injuncted the project but passed a limited order of injunction on RVNL to stop uprooting of trees in the Maidan area until RVNL and the Union of India/Ministry of Environment filed their respective affidavits. Therefore, it was clarified that there was nothing to intend that the project has been stalled or stopped by this court vide its interim order dated October 26, 2023. The court noted the submissions made on behalf of the RVNL that as on the relevant date, RVNL is not in a position to uproot any of the trees since requisite permissions are yet to be obtained. Subsequently the applications which were filed were processed by the appropriate authorities. The defence department by order dated December 19, 2023 issued no objection certificate for re-plantation of 29 trees in the Maidan area for underground metro work from Mominpur to Esplanade from Joka-Esplanade Metro Corridor. The petitioner would fault the no objection

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certificate granted by the defence department to be vague and devoid of reasons and particulars. We are not persuaded to accept the said submission as no objection certificate which was issued contains terms and conditions and for better appreciation, the same are quoted herein below:—

NO OBJECTION CERTIFICATE of LOCAL MILITARY AUTHORITY (LMA), KOLKATA MILITARY STATION FOR REPLANTATION of 29 TREES IN MAIDAN AREA FOR UNDERGROUND METRO WORKS FROM MOMINPUR (EXCL.) TO ESPLANADE of JOKA-ESPLANADE METRO CORRIDOR

1. *Refer the following:—*
   - *(a) Rail Vikas Nigam Limited (RVNL) letter No RVNL/KOL/METRO/MMN-ESP/Tree/827 dated 21 November 2023*
   - *(b) MoD Working Permission vide Memo No-791/US(L)/D (L)/2011/Vol. II dated 20 March 2023.*
   - *(c) MoD Policy on Planting & Maintenance of Trees on Defence Land letter No 11026/I/US/D(Lands)/1995 dated 01 April 2005*
2. *In pursuance to MoD Working Permission for Joka-BBD Bagh Metro Project, NOC is hereby issued for disposal of trees, strictly as per the terms & conditions of MoD letter especially para 2 (XV), i.e. "the cost of trees coming in the way of project, if any, as assessed by DEO Kolkata shall be deposited by IA with DEO, Kolkata and para 2 (VIII), ie" "Intending Agency will be responsible for taking all regulatory clearances from Ministry of Environment and Forest. Police Authorities, West Bengal Fire and Emergency Services, Pollution Control Board and other departments before commencing any activity (including preparatory activities) at the sites".*
3. *Additionally NOC for Rail Vikas Nigam Limited (RVNL) is hereby granted to plant/re-plant trees on the defence land jointly identified, subject to under mentioned Term & Conditions -*
   - *(a) All terms & conditions of MoD Working Permission is adhered to.*
   - *(b) The trees being planted on the def land shall remain the property of the Government and will be disposed of when dried or otherwise required to be felled, by the Defence Estates Officer to the best advantage of the State as at present.*
   - *(c) Maintenance of trees & ensuring their survival will be the responsibility of the applicant agency.*
   - *(d) Entire expenditure on the supply, planting and maintenance of trees (including the provision of trees, guards, manure, implements and labour etc.) shall be met by the applicant agency (e) Applicant will suitably mark the trees and submit*

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the list to this HQ. (f) Any usufructs of temporary nature of such trees will not be sold or disposed off without permission from this HQ

(g) Only tree guards of temporary nature are allowed around the tress, if necessary No structure of any other kind will be erected.

(h) There shall be no environmental and other degradations of the land and the land shall be restored to its original condition with appropriate cleanliness by the applicants at his own cost.

(j) No posters/signboards are permitted to be displayed.

(k) Existing land form and existing structures, if any, will not be altered in any way. All trees and saplings will be duly protected.

(l) No obstruction should be caused to free movement of public due to the activity.

(m) No labour camp or cooking arrangement will be allowed in the vicinity of the area.

(n) Measures for preservation of nearby historical mo monument, if any will be ensured.

(o) The said land would not be used for conducting any commercial activity.

(p) In case of any cases emanating, all legal cost of LMA will be borne by the applicant.

4. Ministry of Defence or Local Military Authority or any representative there of shall remain indemnified from any loss, damage, hurt caused to any individual, property or any other thing in the process of disposal and plantation of ibid trees.

34. As is evident from the above certificate, the terms and conditions have been set out in clear and unambiguous terms. Therefore, there is not hing brought on record by the writ petitioner to discredit the certificate. The certificate has been issued by the Executive Engineer (Civil) Parks and Square Department granting permission for transplanting/felling of 29 trees. The application submitted by RVNL was approved by the Municipal Commissioner of the Kolkata Municipal Corporation on February 20, 2024 and the Member, MIC Parts and Square Department, Sports and Advertisement, Kolkata Municipal Corporation on February 23, 2024. The application given by RVNL was recommended for the reasons that there is construction work proposed Victoria station for Joka-Esplanade Metro Corridor and in this regard 29 number of trees located within the mentioned construction site are required to be felled/transplanted. 29 trees were marked as T1-T10 and T12- T13 that are required to be felled/transplanted. The transplantation/felling work was subject to the conditions that 29

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number of big trees will have to be planted in an around the Maidan area by RVNL; 145 number of compensatory plantation will be done in the same area/vicinity as per Forest Rules, Government of West Bengal. The plantation programme submitted by the RVNL on April 03, 2024 has been approved by the Forest Department. In the plantation programme, the total number of trees to be planted is 145 and the species have been mentioned apart from the location. There are other conditions as well. Along with the plantation programmes, a lay out drawing has been annexed which indicates the proposed location of the trees. The Deputy Conservator of Forest, Utilisation has issued certificate of clearance dated April 12, 2024 subject to the following conditions:—

1. *This Certificate is non-transferable.*
2. *The developer shall take up Plantation of trees over 0.3948 ha (subject to a minimum of 5 times the trees, if any, to be felled) in the same plot(s) of the land being developed in accordance with the approved Plantation plan and complete the same within 1 (ONE) months(s) from the date of sanction of the building/construction plan by the sanctioning authority.*
3. *As provided in the proviso to sub-section (9) of section 9 of the West Bengal Trees (Protection and Conservation in Non-Forest Areas) Act, 2007, the Plantation has to be implemented before the development project is initiated;*
4. *Formal permission for selling of trees on the land being developed, if necessary, will be granted only after the sanction of the building/construction plan;*
5. *This Certificate shall cease to be valid if the building/construction plan is rejected by the sanctioning authority or if the Plantation work is not completed within the period as specified in the Condition No. 2 above.*

35. The Deputy Conservator of Forest Utilisation has issued permission for felling/disposal of trees in non-forest areas in terms of the Rule 5(2) of the Rules by order dated April 23, 2024 subject to the following conditions:—

This permit is non-transferable and valid only up to 1(one) Month's

1. *The applicant of a developer) shall take up Plantation. of trees in accordance with the approved Plantation plan and the Certificate of Clearance within 1 (ONE) month from the date of sanction of the building/construction plan by the sanctioning authority;*
2. *The applicant (if not a developer) shall take up Plantation of ……..number of trees…….over the Plot(s)*

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No.....within..... months from the date of issue of this permit; 3. As provided in section 10 of the West Bengal Trees (Protection and Conservation in Non Forest Areas) Act, 2006. the applicant (if not a developer) shall start preparatory work for Plantation within sixty days from the date for permit or the date of receipt of directions from the undersigned, as the case may be and shall undertake Plantation for trees in accordance with such directions;

4. *The applicant shall inform the undersigned in writing immediately on completion of the Plantation of trees;*
5. *The applicant shall, within a week of carrying out felling of trees submit a report to the undersigned indicating the total number of logs and firewood produced against each species;*
6. *Stamps of the felled trees shall be retained for at least one month from the date of felling;*
7. *The telling and carnage of trees shall not be carried out after the sunset and below the sunrise.*
8. *This permission is subject to the provisions of the West Bengal forest (Establishment and Regulation of Saw Mills and Other Wood-based Industries) Rules, 1982 and The West Bengal Forest Produce Transit Rules, 1950.*
9. *This permit should be produced for inspection on demand to the undersigned or any of the authorities specified in sections 15 and 17 of the West Bengal Trees (Protection and Conservation in Non Forest Areas) Act. 2006.*

36. The annexure to the said permission in Form III gives the species which are to be felled.

37. In the light of the above, it would be incorrect on the part of the petitioner to allege that there is no proper plantation programme nor there is any identification or marking of the trees etc. Thus, all the submissions made by the petitioner appears to be based on apprehension as their writ petition s fully founded on the information secured from the newspapers. The other factual averments which were set down by the respondent in their affidavit-in-opposition, as quoted in paragraph 8 has not been demonstrated to be factually incorrect.

38. In the light of the above, we are fully convinced that the requisite permission has been obtained by RVNL for the purpose of transplantation/felling of trees and those permission cannot be stated to be either arbitrary or unreasonable as they are subject to certain stringent conditions as envisaged thereunder. Hence the petitioner has not made out any case to interfere with the implementation of the project in question.

39. For all the above reasons, the writ petition is dismissed. The

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interim orders which have been granted earlier are vacated and the applications are dismissed and RVNL is permitted to proceed with the project. No costs.

HIRANMAY BHATTACHARYYA, J.:— I Agree.

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[1] AIR 1960 Cal 664

[2] (2002) 4 CHN 1

[3] (2022) 4 SCC 289

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