

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

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**Application No. 278/2013
And
M.A. No. 110/2014**

In the matter of :

**The Braj Foundation
Through its Secretary, Mr. Rajneesh Kapur**Applicant

Versus

- 1. Government of Uttar Pradesh
Through its Chief Secretary, Lucknow-226001**
- 2. Union of India
Through its Secretary,
Ministry of Environment & Forests
FC Division, Paryavaran Bhawan,
CGO Complex, Lodhi Road, New Delhi- 110010**
- 3. The Principal Secretary (Forests)
Government of Uttar Pradesh
17, Rana Pratap Marg, Lucknow- 226001**
- 4. Principal Chief Conservator of Forests
Social Forestry
17, Rana Pratap Marg, Lucknow – 226001**
- 5. Government of Rajasthan
Through its Chief Secretary,**
- 6. Government of Haryana
Through its Chief Secretary**Respondents

Counsel for Applicants;

Mr. Rakesh Munjal, Sr. Adv., Ms. Anita Pandey and Ms. Yashita Munjal, Ms. Kunal Bhargava, Mr. Ankur Arora, Advocates.

Counsel for Respondents:

**Ms. Savitri Pandey and Rashmi Singh, Adv for respondent 1,3,& 4.
Ms. Panchajanya Batra Singh with Mr. Salauddin Khan, Advocates for Respondent No. 2
Mr. D. Rajeshwar Rao, Mr. Aditya Sharma, Mr. Vimal Nigam, Advocates for Respondent No. 5
Mr. Narender Hooda Sr. Adv., Mr. D.P. Singh and Mr. Vineet Malik , Mr. B. Yadav, Advocates for Respondent No. 6**

ORDER/JUDGMENT

PRESENT :

Hon'ble Mr. Justice Dr. P. Jyothimani (Judicial Member)

Hon'ble Mr. Justice M.S. Nambiar (Judicial Member)

Hon'ble Dr. G.K. Pandey (Expert Member)

Hon'ble Prof. Dr. P.C. Mishra (Expert Member)

Hon'ble Mr. Ranjan Chatterjee (Expert Member)

Dated: 5th August,

2014

JUSTICE DR. P. JYOTHIMANI (JUDICIAL MEMBER):

- 1. This Application is preferred by the applicant which is a registered trust constituted to preserve world heritage for humanity, seeking for a direction against the respondents to execute the Memorandum of Understanding (M.O.U) and to handover forest lands to the applicant trust for the development of those sites on the mutually decided targets as can be achieved by dividing the financial load as per the capacity of the department and the applicant.**

2. According to the applicant trust, the Braj Foundation, heritage has suffered in recent decade which warrants immediate action. The Braj is situated 115 kms from Delhi on the Delhi - Agra National Highway spanning across the Mathura District of Uttar Pradesh, part of Bharatpur District of Rajasthan and part of Palwal District of Haryana. It covers a span of 5000 acres in 1300 villages centering around Vrindavan. Most part of the prime land situated which connect National Highways NH-2 is being exploited by the vested interest.
3. The applicant trust registered in the year 2005 is stated to have worked towards forestry in Mathura and elsewhere apart from planting trees for restoration of Ratnagiri Hills in Barsana. It is stated that during 2008-09, a protective fencing for restoration of Uddav Kyari Forest with the financial grant of Rs.12,00,000/- from NTPC was undertaken through a tri-partite agreement between the applicant, NTPC and District Forest Officer, Mathura. It is stated that for restoration of Vrindavan Forest, Power Grid Corporation of India has also granted Rs. 25 Lakhs in 2008-09.
4. The U.P. Forest Department in the advertisement issued on 26.06.2010 invited applications from NGO's for plantation in the protected forest of Uttar Pradesh, giving the last date of submission of application as 07.07.2010. It is stated that pursuant to the advertisement, the applicant submitted an application on 01.07.2010 apart from the additional information of detailed work done, on 27.07.2010. It is stated that at the instance of the respondent Government as per the letter dated

04.01.2011 seeking information about the signing authority of the Braj Foundation, particulars were furnished apart from the required fees for MOU. It appears that there has been some reminder from the respondent Government on 02.02.2011 based on which certain clarification were made by the applicant on 28.02.2012. It is the case of the applicant that the respondent has communicated on 05.03.2012 informing that the applicant has been shortlisted for the afforestation of the forest area. It is also the case of the applicant that in response to certain letters from the respondent, the applicant has informed that the signing authority on behalf of the applicant is Mr. Rajneesh Kapur and on behalf of the sponsoring party the agreement shall be signed by an executive of HR-CSR Department. A copy of Site plan was also stated to have been submitted assuring the respondent that if empanelled, the applicant shall convert the entire barren forest area into lush green forest. After seeking permission from the Department of Forest, U.P. and obtaining clarifications from the applicant, it appears that the applicant has deposited a sum of Rs. 6000 towards the processing fees. It is the case of the applicant that the Principal Chief Conservator of Forests has written a letter on 09.07.2012 to the Principal Secretary of Forests, stating that it is the State government which alone can enter such M O U. The special Secretary of Forest, Government of U.P in the letter dated 26.10.2013 addressed to the Secretary, Ministry of Environment and Forest, Government of India is stated to have informed that the applicant foundation has been selected for the plantation work in Mathura District. However, no further action

was taken by the respondent state government to permit the applicant to proceed with the work. It was due to the delaying tactics of the respondents, not only the afforestation of the Vrindavan area stood neglected but also the efforts of NGO's like the applicant have been discouraged.

5. On the basis, that the conduct of the respondents amount to neglect of taking care for the ecological balance, to protect and improve the environment and to safeguard the forest and wildlife and in spite of the fact that by a transparent method the applicant has been selected for the afforestation purposes, the respondent State failed to act and thus the applicant has no other remedy than filing the present application.
6. In the reply the State of Haryana, respondent no. 6 stated that the area of Braj development is not within the territory of State of Haryana. State of Uttar Pradesh namely respondent no 1, 3 and 4 would submit that the State Government had initiated process to implement the guidelines issued by the Ministry of Environment and Forest dated 07.06.1999 for participation of private Sector through involvement of NGO's and Forest Department in afforestation. Pursuant to the advertisement, about 68 proposals were received by the department and on scrutiny it was found that none of the 68 proposals were eligible. In so far as it related to Braj Foundation, as against the requirement of 5 years of registration as NGO it was only having 3.5 years. Since all the proposals were found to be ineligible, expression of interest was issued again, pursuant to which 58 proposals were received and the applicant Foundation was satisfying the conditions mentioned

in the revised expression of intention. For the purpose of handing over forest land to an NGO for afforestation, the guidelines issued by the Ministry of Environment and Forest, Government of India dated 07.06.1999, contemplates the proposals to be submitted under the Forest Conservation Act, 1980. The rules also prescribe for prior approval of Central Government before implementation of such proposal. The above said process has not been duly followed in respect of the applicant. It is also denied that the applicant has carried out any restoration work in Manpur Forest Block. It is also stated that Ratnagiri Hill Barsana Mathura does not fall in the forest area. It is the case of the State Government that no tripartite agreement will have any authority of law unless and until it precedes the sanction by the State/Central Government who are the authorities under the Forest Conservation Act. It is also stated that merely by making application to the State Government, an NGO cannot claim any right to carry on afforestation work in the Government land. The mere allegation that a public sector undertaking like that of the Power Grid Corporation of India has released some funds to the applicant Trust without checking up as to whether Government's permission has been obtained for working on the Government land, does not confer any right to the applicant to get possession of the Government land.

7. Otherwise, it is the catagoric case of the State Government that there is no enforceable contractual obligation on the part of the Government. When once the legal requirements are not followed, simply by entering a memo of understanding, no right can be

conferred on any party. It is also stated that in any event, it is not open to any private Organization or agency to claim as a matter of right to take possession of the Government land in the guise of making development or afforestation. It is also stated that the Forest Department, Uttar Pradesh Government itself has taken massive efforts in undertaking afforestation and soil and moisture conservation and formulating a composite development plan stated to have already been started. About 22,300 saplings of various local species are stated to have been planted by the Government already. Apart from installation of new irrigation work, it is also stated that the Department itself has professionally trained manpower, technical know-how and funds for afforestation. Owing to the availability of adequate funds, the Government is thinking in terms of dropping involvement of NGO's in the afforestation process. It is also stated that by allowing the third parties to do the developmental work, there is a possibility of illegal encroachment and mining of lands which the Government desires not to encourage.

8. When the matter was taken up for admission, while ordering notice to the respondents, this Tribunal in the order dated 18th September 2013 ,directed the parties to maintain status quo. On 29th October 2013, as the learned counsel appearing for the state of Uttar Pradesh, while opposing the main application as not maintainable, contended that the government as a matter of policy has decided not to give any of the portion of Mathura and Vrindavan to any private individual or any NGO and itself intends to prepare a scheme for maintaining and beautifying

Mathura and lands in Vrindavan. Therefore, we directed the learned counsel appearing for the State to produce such scheme by the next date of hearing. After the matter was adjourned again on 25th November, it was on 27th November 2013, a Management scheme for Eco-Restoration of Mathura was filed. Of course, we have also directed the Government to study about the restriction of building construction in the Parikrama area. Again on 27th January 2014, the government of U P sought time to submit a policy decision of the government not to involve private individuals, by the next date of hearing. On 26th February 2014, the learned counsel of the Government submitted a policy decision taken by the government not to involve any private individual in beautifying Vrindavan.

9. Explaining the conduct of the government in interfering in the administration of justice by making false statement before the Tribunal, the applicant Foundation has filed M A no 110/2014 under section 2(b) r/w section 12 of the Contempt of Court Act to punish the respondent government. It was the further contention of the learned senior counsel for the applicant that no such policy decision was available with the government as on 29-10-2013 and the learned counsel for the government made a false statement before the Tribunal. The said application was vehemently opposed by the learned counsel appearing for the state of UP. According to her, some delay on the part of the government due to administrative reasons cannot be branded either as a willful disobedience or interference with the administration of justice. She also contended that an application under the Contempt Of

Court Act is not maintainable before this Tribunal. As we are of the view that both the main application and the issue raised in the MA are to be jointly deliberated, we have heard both the applications together.

10. Mr. Rakesh Munjal, the learned senior counsel would contend that , when it is admitted by the government that it was pursuant to the decision of the government to involve private agencies in the project , the application of the applicant has been taken into consideration as it is seen in many communications it was decided to execute the MOU, and therefore it is not proper for the government to go back. It is his vehement contention that there is a deemed concluded contractual obligation and the government is bound by that. There is absolutely no allegation of encroachment against the applicant which is a reputed organization with many eminent persons in the helm of affairs. Regarding the contempt application, it is his submission that the conduct of the government in deflecting course of judicial proceedings, and prolonging the matter with oblique motive amounts to interference with the administration of justice in not allowing the Tribunal from performing its function. Regarding the maintainability, the learned senior counsel pointed out that, as the creation of the Tribunal is traceable to Articles 323B and 253 of the Constitution of India, the power of contempt should be treated as inherent. To substantiate his contention, he would rely upon the judgments of the Honorable Supreme Court Of India reported in State Of Karnataka Vs Vishvabharathi House Building Coop. Society And Others 2003 (2) SCC 412 and Union

Of India And Another Vs Delhi High Court Bar Association And Others 2002 (4) SCC 274. He also submitted that even if Contempt of Court Act is not applicable, contempt petition can be referred to the Honorable Apex Court which is empowered under Article 129. He has also attempted to state that if the Tribunal is treated as subordinate to the High Court, the application can be referred to the High Court.

11. Per contra, Ms Savitri Pandey, learned counsel appearing for the State of Uttar Pradesh would submit that, apart from the fact that there is no enforceable contract, no private person as a matter of right can claim the government land to be maintained especially when the government, as a matter of policy has decided to maintain itself. She has also submitted that even otherwise, contractual obligations cannot be decided by this Tribunal. She also submitted that the government has already started implementing the scheme. Insofar as it relates to the contempt, apart from reiterating her stand that administrative delay in framing the scheme cannot be treated as a disobedience of the order and that the Contempt of Court Act would not apply to this Tribunal, distinguished the powers of the tribunals and other courts, relying on the judgment of the Hon'ble Supreme Court reported in Nahar Industrial Enterprises Limited Vs Hong Kong And Shanghai Banking Corporation etc, 2009(8) SCC 646. Therefore it is her submission that both the main application and the contempt application are liable to be dismissed.

12. We have heard the learned senior counsel appearing for the applicant and the learned counsel for respondents, referred to the

various documents filed in both the main application and contempt application and given our combined and considered thought to the issues raised in this case.

13. It is submitted that the Government of U.P. has issued a public notification on 26/06/2010 inviting proposals from reputed NGOs for carrying out afforestation work in U.P. It was pursuant to the said notification, the applicant has applied to the Government on 1/7/2010 and the application is still pending. In the mean time the Government appears to have taken a decision that the beautification of Mathura including Vrindavan will be taken up by the Government itself, as the Government has sufficient funds. In this regard it is relevant to know that on 7/03/2008 there was MOU as it is seen in the typed papers filed by the applicant's trust. The MOU stated to have been signed by one Sri K. Raja Mohan, Divisional Director, Social Forestry Division, Mathura of the Forest Dept of the Government of U.P. on one hand apart from the applicant trust as a second party and N.T.P.C, a company incorporated under the Companies Act, 1956 as a third party. But it is not known as to under what authority the Divisional Forest Officer of the Forest Dept has become a party in the said MOU. However, in as much as the Govt. has issued a public notification as stated above on 26/02/2010 and the applicant has also applied pursuant to that, in effect the MOU has become insignificant.

14. Except the above said MOU, there is no other MOU / Agreement between the applicant and the Government. If the prayer of the applicant to give effect to the MOU relates to the above said

document dt. 07/03/2008, we have no hesitation to hold that the MOU has no legal sanction. The signature of the officer of the Government does not contain any official seal. Further, when the applicant itself has applied to the Government based on the subsequent notification, the MOU dt. 07/03/2008 cannot be deemed to continue. The validity or otherwise of the said MOU is not within the purview of this Tribunal.

15. As we have stated earlier, the applicant trust has made application on 01/07/2010. This application is based on the public advertisement of the Forest Department dt. 26/06/2010 inviting proposals. Therefore at the most, it can be held that the notification of the Government is 'An Invitation to Treat'. The application of the applicant dt. 1/10/2010 is an offer made by the applicant which is yet to be accepted by the Government so as to make it as an agreement enforceable by law. Even otherwise, the applicant trust cannot claim any right to carry out the work by taking possession of the Government lands. It is true that there has been some subsequent communications by the Government officials with the applicant Trust even in the rank of the Principal Chief Conservator of Forests requiring to furnish various information. It is also seen that the dept. has required the applicant to pay certain processing fees of Rs. 6000/- which has in fact been paid by the applicant Trust. In one of the communications, the Principal Chief Conservator of Forests has in fact imposed certain conditions and asked for sanctioning the proposal of the organization for signing a tripartite agreement vide letter dt. 24/05/2012. Therefore, it means that the MOU dt.

07/03/2008 stands automatically rescinded. It is also seen that the Principal Chief Conservator of Forests has enclosed a draft agreement on 09/07/2012, however stating in the said letter by quoting a Government order that he was not competent. By a letter dt. 26/10/2012 the Special Secretary to the Government has communicated to the MoEF, that in a meeting of the officials after considering all the applications it was decided to select the applicant trust and enter a tripartite agreement and sought permission from the Government of India. Ultimately, the Government of India in its letter dt. 08/01/2013 addressed to the Government of U.P., has left it to the state Government to take action in accordance with the guidelines issued by the Ministry on 7/6/2009. It was thereafter, the Government of U.P. has taken a decision not to involve any private organizations or individuals in beautification and afforestation of Mathura including Vrindavan. Therefore on the face of it there is no concluded contract between the parties so as to enable the applicant to insist the Government to follow. Whether the conduct of the officials of the state government would amount to implied consent or not is again not for this Tribunal to adjudicate upon. It is for the applicant to work out his remedy in the manner known to law.

16. There is another aspect relevant to be considered in this case.

When once the state Government which is the authority, has taken a decision as a matter of policy not to involve any private individuals, it is not for this Tribunal to give any contrary directions. It is so even in respect of NGOs like that of the applicant which is no doubt a reputed organization consisting of

eminent persons. Therefore viewed from any angle, the applicant trust is not entitled for any remedy asked for in the main application. For these reasons the main application deserves to be dismissed.

17. The above decision of ours leads to the next issue relating to the punishment of the U.P. Government for an alleged contempt. As narrated in the beginning of this judgment, the Government of U.P. which was stated to have decided to formulate a comprehensive scheme for beautifying the Braj area has taken some time to produce the said scheme and policy document before the Tribunal. In fact it was on 29/10/2013, the learned Counsel appearing for the State Government has submitted before the Tribunal that the Government intends to prepare a scheme and therefore we directed the counsel to place the scheme on the next date of hearing which was 25/11/2013. The scheme was submitted on 27-11-2013, while the policy document not involving the NGO was produced on 26-2-2014. In between 27-11-2013, the matter was adjourned at request, to 18-12 - 2013 and 27-01-2014 .According to Mr Rakesh Munjal the learned Senior Counsel appearing for the applicant trust, such long delay by the Government in framing the scheme and placing a document of policy decision is not only deliberate but also intended to interfere with the administration of justice and therefore the officials of the U.P. Government are liable for punishment for contempt. This was repudiated by Ms Savitri Pandey, learned counsel appearing for U.P Government stating that the administrative delay in governance of the state is not with any intention and therefore no

motive can be imputed on any officials. On reference to our various orders we see that on request we have granted time to the Government to produce scheme, and policy on various occasions. We have no hesitation to conclude that there is no deliberate violation so as to initiate contempt proceedings against the officials of the U.P govt.

18. The application in M.A. No. 110/ of 2014 has been filed by the applicant u/s. 2(b) r/w Section 12 of the Contempt of Court Act 1971. As we have already found prima facie that there was no contempt and there was some doubt as to whether Sec 12 of the Contempt of Court Act would apply to this Tribunal, without issuing statutory notice to the respondent Government, we permitted the learned counsel on both sides to make their submissions on both the main application and contempt application. Even though we have concluded that there is no contempt involved in the conduct of the respondent Government officials, we proceed to examine the legal issues raised by the counsel.

19. Mr. Rakesh Munjal, learned senior Counsel for the applicant has brought to the notice of the Tribunal that the Tribunal having been created in accordance with the terms of Article 323 B of the Constitution of India, it has inherent powers of punishing a person for contempt. To substantiate his contention, he would rely upon the judgments of the Hon'ble Supreme Court of India reported in 2003 (2) SCC 412 and 2002(4) SCC 274. It is also his submission that even otherwise, the Tribunal can refer the matter to the Hon'ble Supreme Court of India which is empowered to

punish a person for contempt, being a court of record under Art 129. He would further submit that if Article 235 of the Constitution of India is applied, the Tribunal is to be treated as subordinate to the High Court and in that event the matter can be referred to the High Court. He would also make a reference to the judgment reported in 1981 CrI LJ 283 and 1886 CrI LJ 1543.

20. Per contra, it is the contention of the learned counsel appearing for the Government of U.P., Ms. Savitri Pandey, that there is no contempt committed by the Government and mere administrative delay cannot be construed to be interference with the administration of justice. She further submits that in any event the application for contempt u/s 12 of Contempt of Courts Act 1971 is not maintainable. By relying on a judgment of the Supreme Court reported in 2009 (8) SCC 646 she has attempted to distinguish between the Tribunal and Court, She has also submitted that the State Government is serious in implementing the scheme within the time frame.

21. At the outset one has to remember that the National Green Tribunal Act 2010 under which this Tribunal is created, itself was enacted by the Parliament of India to give effect to the true spirit of the terms of Article 253 of the Constitution of India which runs as follows:

Article 253: Legislation for giving effect to international agreements

“Notwithstanding anything in the foregoing provisions of this Chapter, Parliament has power to make

any law for the whole or any part of the territory of India for implementing any treaty, agreement or convention with any other country or countries or any decision made at any international conference, association or other body.”

22. It was in June 1972, the U.N. Conference on Human Environment held at Stockholm in which India was a participating country, it was decided to call upon the member States of the U.N. not only to take appropriate steps for protection and improvement of the human environment, but in a subsequent conference held at Rio de Janeiro, on Environment and Development in June 1992 in which also India was a participant by way of a resolution all member States were called upon to provide effective access to judicial and administrative proceeding including redressal and remedy apart from developing national laws regarding liability and the compensation for the victims of pollution and other Environmental damages.

23. It was squarely in accordance with the decision taken by the U.N. Conference and by virtue of powers conferred on it by the Constitution of India, “The Basic Document of The Country”, in Article 253, the Parliament of India in its wisdom has enacted The National Green Tribunal Act 2010 to establish a National Green Tribunal for the effective and expeditious disposal of the cases relating to environmental protection and conservation of forests and natural resources etc. Therefore it is clear that the National Green Tribunal is distinct from other tribunals either

created as per the provisions of the Constitution of India or otherwise. It is a constitutional creature with a specific purpose on the basis of certain principles like sustainable development, precautionary principle, and polluter pay principle. The NGT which proceeds to adjudicate the disputes which involve substantial questions relating to environment, consists of Expert Members from various fields connected with environment apart from Judicial Members selected by a committee constituted as per the Act with its Chairperson who is either a sitting or a Retired Judge of the Supreme Court of India. Therefore there is no iota of doubt in our mind that this Tribunal has inherent power of not only enforcing its orders but also treating with any person who either disobeys or violates its orders.

24. Even otherwise the NGT Act itself confers enormous power on the Tribunal to deal with any person who fails to comply with the order or award either by punishing with imprisonment up to 3 years or to impose a fine up-to 10 Crores under Section 26 which is as follows:

S 26. Penalty for failure to comply with orders of Tribunal

(1) Whosoever, fails to comply with any order or award or decision of the Tribunal under this act, he shall be punishable with imprisonment for a term which may extend to three years, or with fine which may extend to ten crore rupees, or with both and in case the failure or contravention continues, with additional fine which may

extend to twenty-five thousand rupees for every day during which such failure or contravention continues after conviction for the first such failure or contravention:

Provided that in case a company fails to comply with any order or award or a decision of the Tribunal under this Act, such company shall be punishable with fine which may extend to twenty-five crore rupees, and in case the failure or contravention continues, with additional fine which may extend to one lakh rupees for every day during which such failure or contravention continues after conviction for the first such failure or contravention.

(2) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), every offence under this Act shall be deemed to be non-cognizable within the meaning of the said Code.

While such powers are given in the Act itself one need not traverse to any other statute like Contempt of Courts Act. Therefore, we are of the view that the section 26 of the NGT Act empowers the Tribunal to deal with any person who disobeys its order. However in the present case prima facie, the Respondent U.P. Government has not committed any disobedience of our order.

25. M.A. No 110/2014 filed by the applicant for contempt under the Contempt of Courts Act is totally misconceived. While section 12 of The Contempt of Courts Act 1971 imposes punishment for

contempt of court, the said section actually deals with the powers of the High Courts to punish for civil contempt defined u/s 2(b) for violation of the orders of courts which are subordinate to the High Court. Under the provisions of the National Green Tribunal Act there is absolutely nothing to presume that the National Green Tribunal is either subordinate to any High Court or under the powers of superintendence of any High Court. In fact under the Act all the awards/decisions/orders are appealable to the Honorable Supreme Court of India u/s. 22 on the grounds available under section 100 Code of Civil Procedure 1908, like the second appeal provision which only relates to the substantial questions of law . Therefore the decision of the Tribunal is subject to regular appeal to the Honorable Supreme Court. In our considered view the question of supervisory power of any High Court does not arise, of course unless and until the Honorable Apex court ultimately resolves the legal issue. Even on this ground the application under Contempt of Courts Act is liable to be rejected.

26. In respect of the inherent powers of the statutory tribunals especially relating to execution of their orders, a three Judge Bench of the Hon'ble Supreme Court of India had occasion to decide in relation to the Consumer Protection Act, 1986 creating hierarchy of courts namely, the District Fora, State Commission and National Commission. That was the decision rendered in State of Karnataka Vs. Vishwabharti House-Building Coop. Society & Ors, reported in (2003) 2 SCC 412. While holding

that a parliamentary statute can create a tribunal and also that non-compliance of its order would be punishable with imprisonment or fine, has also observed that the cardinal principle of interpretation of statute is that, courts or tribunals must be held to possess power to execute their own orders. The relevant portions of the order of the Supreme Court in this regard are as follows:

“57. A bare perusal of Section 25 of the Act clearly shows that thereby a legal fiction has been created to the effect that an order made by District Forum/State Commission or National Commission will be deemed to be a decree or order made by a civil court in a suit. Legal Fiction so created has a specific purpose i.e. For the purpose of the execution of the order passed by the Forum or the Commission. Only in the event the Forum/State Commission or the National Commission is unable to execute its order, the same may be sent to the civil court for its execution. The High Court, therefore was not correct to hold that in each and every case the order passed by the District Forum/ State Commission/National

Commission are required to be sent to the civil courts for execution thereof.

58. Furthermore, Section 27 of the Act

also confers an additional power upon the Forum and the Commission to

execute its order. The said provision is

akin to the Order 39 Rule 2- A of the

Code of Civil Procedure or the

provisions of the Contempt of Courts

Act or Section 51 read with Order 21

Rule 37 of the Code of Civil

Procedure. Section 25 should be read

in conjunction with Section 27. A

Parliamentary statute indisputably

can create a tribunal and might say

that noncompliance with its order

would be punishable by way of

imprisonment or fine, which can be in

addition to any other mode of recovery.

59. It is well settled that the cardinal principle

of interpretation of statute is that courts

or tribunals must be held to possess to

execute their own order.

60. It is also well settled that a statutory tribunal

which has been conferred with the power to

adjudicate a dispute and pass necessary order

has also the power to implement its order.

Further, the Act which is self-contained code, even if it has not been specifically spelt out, must be deemed to have conferred upon the Tribunal all powers in order to make its order effective.”

27. Again, while dealing with the constitution of Banking Tribunal under the Recovery of Debts Due to Banks and Financial Institutions Act 1993, in terms of Article 50 of the Constitution of India, the Hon'ble Supreme Court has held that even if such tribunals may not in strict sense come within the concept of “Judiciary” envisaged in Article 50, but they are nevertheless effective part of the justice delivery system. That was the judgment delivered in Union of India & Anr Vs. Delhi High Court Bar Association and Anr., reported in (2002) 4 SCC 275.

28. Since we have held that the powers u/s. 12 of the Contempt of Court Act, 1971 are that of High Court against the courts subordinate to it and the National Green Tribunal, in the teeth of the provisions of the National Green Tribunal Act, 2010 cannot be held to be subordinate to the High Court's especially when regular Appeal is provided against its orders on substantial questions of law to the Hon'ble Supreme Court. Therefore the judgment relied upon by the learned Senior Counsel appearing for the applicant rendered in Sheikh Mohammad Bhikhan Hussain Bhai etc., Vs. The Manager, Chandra Bhanu Cinema and Ors etc., a full bench judgment of the Hon'ble Gujarat High

Court reported in 1986 CrLJ. 1543 is of no assistance to his contention. Of course the judgment of the Hon'ble Apex Court in Nahar Industrial Enterprises Ltd Vs. Hong-Kong and Shanghai Banking Corporation etc., reported in (2009) 8SCC 646, relied upon by the learned counsel appearing for the State while dealing with the powers of the High Court in transferring the suit from civil court to Debt Recovery Tribunal and in that judgment the distinction between Civil Court and Tribunal have been clearly analyzed .In any event the findings in the said judgment are not relevant for the purpose of deciding the issue in this case.

29. For all the reasons stated above, we dismiss the main application as well as M.A. No. 110 of 2014. However there shall be no order as to the costs.
30. Before parting with this case, we are constrained to make certain observations regarding the management scheme for eco-restoration of Mathura prepared and produced before the Tribunal by the Social Forestry Division, Mathura, Uttar Pradesh Forest Department. Even though we appreciate the scheme in the sense that it is exhaustive in nature, we fail to understand as to why the Government needed a direction from the Tribunal for framing such scheme relating to maintenance of a place of religious importance like Mathura including Vrindavan. It would have been appreciable if such scheme was already implemented. In any event, as it is usually said, "better late than never", the government has at least now woken up after the direction issued by the Tribunal which is

appreciable. We have to necessarily reiterate that the entire contents of the scheme are really scientific and would be fascinating and fruitful if it is implemented in true spirit by the implementing agency, namely the Social Forestry Division, Mathura, as it is seen in the scheme itself. The total outlay of the management scheme is stated to be Rs.95542.80/- thousands with the goal of the scheme as “Ecological Restoration through Removal of Invasive Species and Reestablishment of appropriate native plant communities, offering assistance in utilizing the opportunities extended for ravine reclamation through improved vegetative cover supported by appropriate soil and water conservation measures”. The project aims to strengthen the eco-restoration to improve the governance of natural resources. The scheme also contains the different density of forest blocks in Mathura apart from soil condition, wildlife-census, financial estimate etc. We are of the view that the implementing agency under the scheme shall implement the entire scheme in its proper perspective expeditiously. It is also an admitted fact that in and around the vast Parikrama area, adedicated devotees face various hardships .The Government of U. P., Haryana and Rajasthan shall also take steps to preserve the Parikrama path apart from restricting the growth of buildings and develop large number of native trees and plantations on both sides of the Parikrama passage. Further, we direct the Government of U.P., Haryana and Rajasthan to declare both sides of atleast 100 Mts, all along Braj Parikrama route as ‘No Development Zone’ where no new Ashrams, Hotels, Buildings

and Industrial Units will be permitted except shelters for pilgrims to protect them from the rains, scorching sun and cold weather expeditiously and in any event not more than nine months. The shelters may include rest rooms & refreshment facilities. The drinking water, medical facilities shall also be made available to the pilgrims.



.....,JM

(Dr. P. Jyothimani)

सत्यमेव जयते

.....,JM

(M.S. Nambiar)

.....,EM

(Dr. G. K. Pandey)

.....,EM

(Prof. Dr. P. C. Mishra)

.....,EM

(Mr. Ranjan Chatterjee)

NGT

New Delhi,
5th August, 2014.

The judgment delivered through video conferencing from the Eastern Zone Bench of NGT at Kolkata in the presence of the other Hon'ble Judicial and Expert Members of the Bench present in the Principal Bench at New Delhi simultaneously by video-conferencing.