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BEFORE THE NATIONAL GREEN TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

Original Application No. 63 of 2016

IN THE MATTER OF:

1. Varun Seth
S/o Mr. Vijay N. Seth
R/o-6A Jantar Mantar Road,
New Delhi

2. Vijay N. Seth
S/o Late Sh. N. Seth,
R/o-6A Jantar Mantar Road,
New Delhi

3. Mrs. Juhi Seth
W/o Mr. Vijay N. Seth
R/o-6A Jantar Mantar Road,
New Delhi

4. Mani Dhawan
W/o Mr. D. Dhawan
R/o-6, Jantar Mantar Road,
New Delhi

5. Harisimram Singh
S/o Late S. Daya Singh Sandhu
R/o 5-J Jantar Mantar, New Delhi

6. Zorawar Singh
S/o Sh. Harisimran Singh
R/o 5-J Jantar Mantar, New Delhi

7. Jaivir Singh
S/o Sh. Harisimran Singh
R/o 5-J Jantar Mantar, New Delhi

..... Applicant(s)

Versus

1. Police Commissioner, Delhi Police,
PHQ, M.S.O Building,
New Delhi

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2. Chairman, NDMC
Palika Kendra, New Delhi

3. Govt. of Delhi,
Through Chief Secretary,
Govt. of NCT Delhi
A-Wing, 5th Floor
Delhi Secretariat, New Delhi

4. Home Secretary, Union of India
North Block, New Delhi

5. Ministry of Environment & Forest,
Indira Paryavaran Bhawan,
Through Secretary, UOI,
Jor Bagh, New Delhi

6. Central Pollution Control Board
Parivesh Bhawan, CBD-cum-Office Complex,
East Arjun Nagar, Delhi-110032

.....Respondent(s)

COUNSEL FOR APPLICANTS:
Mr. Riju Raj Jamwal, Mr. Munazir Hasan and Mr. Lohit Sankar, Advs

COUNSEL FOR RESPONDENTS:

Mr. Tarunvir Singh Khehar, Adv. , Ms. Guneet Khehar, Adv., Mr. Charan Jeet Singh, Adv.for respondent no.1& 3
Ms. Sakshi Popli, Adv., Mr. Anurag Kumar, Adv. for NDMC Mr. Pankaj Pandey & Mr. Utkarsh Jaiswal, Adv. For respondent no.2
Mr. B.V. Niren, with Mr. Vinayak gupta, Advs. for respondent no.4 CGSC
Ms. Deep Shikha Bharati, Adv. for respondent no.5, MoEF
Mr. Rajkumar, Adv. For respondent no.6, CPCB

JUDGEMENT

PRESENT:

Hon'ble Mr. Justice Raghuvendra S. Rathore, Judicial Member
Hon'ble Dr. Satyawan Singh Garbyal, Expert Member

Reserved on: 09th June, 2017
Pronounced on: 05th October, 2017

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1. Whether the judgment is allowed to be published on the net?
2. Whether the judgment is allowed to be published in the NGT Reporter?

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RAGHUVENDRA S. RATHORE J (JUDICIAL MEMBER)

1. It is an unusual circumstance in which this application has been filed by permanent and bonafide residents of Jantar Mantar Road, New Delhi. This stretch is between the Ashoka road and Parliament Street. These residents have been living in the said area for more than three to four decades. During the course of the proceeding, other residents of the area had approached the Tribunal and they have also been impleaded as party to the application.

The plight of the residents is that though the area has been earmarked as residential even in Delhi Master Plan, 2021, as notified on 07.02.2007, but the stretch of road has become a 'symbolic, protest battle ground' where protests are organized by various politically affiliated groups, religious sects, students, followers of arrested religious persons, retired army personnel, etc. Such protestors have erected tents and other arrangements where people have been staying for months together and in some cases even for years. About fifty persons are permanently staying. The organizers of protests make arrangements for food, lodging, etc. The sanitation and cleaning facility on that stretch of road is said to be provided by NDMC with two mobile toilets. The protestors have fixed loud speakers, a traditional horn type on trees, electric/telephone poles, on tents, etc. On some occasions,

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the residents have to pay extra money from their pockets to ensure that the area is clean of litter, left by the protestors. The adverse health effects because of noise pollution and sanitation is Writ-large.

Therefore, the permanent residents of Jantar Mantar road have filed this application invoking the jurisdiction of the Tribunal under Section 14,15 & 18 of the NGT Act, 2010. They have sought relief from the Tribunal, for passing appropriate orders to the respondents to disallow the protestors on Jantar Mantar road, stretch between Ashoka road and Parliament Street or prevent them from using loud speaker or public address system, causing adverse health effect on the residents and children. It has also been prayed that the respondents should remove the loud speakers or public address systems from trees and poles in the residential area of the applicants. The applicants have also requested that barricades at a sufficient distance be installed so as to prevent vehicular movement.

Brief Facts

2. On Jantar Mantar road, particularly the stretch between the Ashoka road and Parliament street, there are residential houses where people are living for number of decades by now. This stretch on Jantar Mantar road, falling between the intersection on Ashoka road and Parliament street, has been earmarked as residential area

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even under the Master Plan, 2021. The said road, houses not only residences of members of Parliament but also State Guest house of Kerala, office of Delhi Metro Corporation and offices of political parties. It has become a ground for organizing protest by various categories of groups, political and non-political. Such protests are not temporary or transient. The protestors have rather put up tents and other arrangements where people have been staying for many months. Some of the structures have been on the site for past several years.

The organizers of these protests make arrangement for food, lodging, etc. on such make shift structures. They have also affixed loud speakers at various places in the area. NDMC has provided the facility of sanitation and cleaning by making provision for only two mobile toilets. The photographs attached to the application (annexure 2&p3) clearly depicts the plight of the poor residents, some of them being senior citizens, who had been protesting against unhygienic conditions, litters, crowds, noise pollution, etc. for last couple of years. Apart from it, the personals of police/paramilitary force at the said stretch of road, which on some days of protest go up to around 200 to 400, also adds to the congestion in the area. The sanitation facility provided, in such a situation, is grossly inadequate which results in smell emanating from the mobile toilet vans and nearby areas creating unhygienic

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conditions and low aesthetic value for the residents and others visiting the area. Moreover, some protestors under the garb of cow protection have brought in cows to the said stretch of road and kept them for nearly sixteen months. Even a bullock cart had been kept at the site by the protestors.

3. The residents of the area, including the applicants, have time and again made representations to various authorities, respondents and those responsible for maintaining law and order. But they did not receive any response. It is pertinent to mention here that the stretch of Jantar Mantar road is being used as a protest site despite there being specific executive/judicial orders for Ram Leela Maidan, which has been earmarked as a protest site. The site at Jantar Mantar is being used as protest site on account of an administrative order issued by the police.

4. During the course of heavy protest day, the police completely blocks the road of Jantar Mantar by barricading which coerces the residents of the area to park their vehicles elsewhere and make way to their residences on foot. This becomes extremely difficult for senior citizens and small children. In fact, there had been instances of medical emergencies where police had to plough the ambulance through the vehicles of the protestors, the police and the crowd. The presence of large number of

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people as well as vehicles in the area causes traffic jams.

The protestors continuously play drums, music, microphones, etc. which disturb the peace and tranquility of the place. The noise emanating from the said area on account of aforesaid loudspeaker, etc. definitely generates noise which exceeds the permissible limit. Under the Noise Pollution (Regulation and Control) Rules, 2000 and the schedule given therewith the ambient air quality standards in respect of the noise for a residential area is 55 db (A) leq during the day time and 45 db (A) leq in the night.

5. The **case of the applicants** is that the stretch of Jantar Mantar road between Ashoka road and Parliament street has been earmarked as part of residential area in Delhi Master Plan, 2021. It was so even in the previous Master Plans. During day time, noise exceeds the prescribed limits, as prescribed under the schedule to Rule 3(1) and rule 4(1) of the Noise Pollution (Regulation and Control) Rules, 2000. As said stretch of road is less than 400 mtrs, many times there are more than five thousand protestors which not only makes it difficult for the residents to move in and out from their place but the noise pollution from the loud speakers also makes it equally difficult to perform/do anything.

6. It is further the case of the applicants that the constitutional right to freedom of expression includes a right to decline to listen but the respondents have totally

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failed to curtail/stop the noise on the stretch of Jantar Mantar road. Further, the case of the applicant is that the Hon'ble Supreme Court, has clarified the position of noise pollution and made reference to its growing menace, from time to time. In the instant case, noise pollution has been contributed by continuously playing songs, speeches on loud speakers, etc. which has resulted in medical ailments of the children as well as grown up people. The respondents have failed to act against the violators despite of there being specific provisions of law under the Noise Pollution Rules of 2000. The grievance of the applicant is also that the respondents have failed to respond to their representations. In fact, none of the respondents have responded to any of the representations.

7. Police Commissioner, Delhi Police, respondent no.1 through the Deputy Commissioner of Police, has filed an **affidavit**, in reply to the application. The deponent has raised objections with regard to delay in filing the application. According to the deponent demonstration/protest at Jantar Mantar have been taking place since 1990 and as the applicants have not shown any sufficient cause for the delay in filing the application, therefore, the same is barred by limitation.

It is also deposed in the reply affidavit that earlier the demonstrations were permitted at Boat Club lawns but due to increase in number of people gathering, it was

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found that the same was causing problem to the traffic around Boat Club. In order to ease the problem of general public the venue was shifted to Jantar Mantar for holding demonstrations. It has been submitted that in case of a demonstration of more than five thousand people, the same is not permitted at Jantar Mantar but they are directed to be at Ram Leela Maidan.

8. Further, it has been submitted in the reply that different residents of the same area or adjoining societies had filed various litigations wherein orders had been passed by the Hon'ble courts. In this regard the respondents have mentioned about the case filed by *Dhawandeep Residents Welfare Association welfare vs. U.O.I (W.P (C) No. 2680/2011),* wherein certain directions have been passed on 31.05.2011. Another Writ Petition was filed by *Rajeev Singh vs. U.O.I (W.P (C) No. 5778/2014).* It is submitted that the said petition is pending for adjudication before Hon'ble High Court of Delhi, wherein similar reliefs have been sought.

9. It has also been deposed in the reply affidavit that prior permission is required for protest/demonstration at Jantar Mantar from the office of the Deputy Commissioner of police, New Delhi so that sufficient force can be deployed to control the situation along with intelligence inputs, with paramount object of maintaining public order, safety, smooth flow of traffic, security of citizens, tranquility in the

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neighborhood and maintenance of law and order. In case any demonstrator creates or establishes any structure at Jantar Mantar or adjoining area, the said information is immediately forwarded to the NDMC to take appropriate steps for removal/demolition of the same. Delhi Police provides adequate staff for removal of the structure whenever such request is received from NDMC.

10. It has been submitted in the affidavit that as per the directions of Hon'ble High Court of Delhi on 31.05.2011, in the case of *Dhawandeep Residents Welfare Association vs. U.O.I (Supra),* it is always ensured by the police that the protestors and demonstrators are not denied their right to speak and express their point of view but at the same time the demonstrators cannot hold the public at ransom and must show concern and respect for their rights. In continuation of compliances of the order passed by High Court of Delhi, Delhi police post had been established at Jantar Mantar. Further, it is stated that in case of any problem or obstruction that may arise before the residents at Jantar mantar, they can directly contact the Deputy Commissioner of Police, New Delhi, SHO, Parliament Street, Division officers and other staff deployed to maintain law and order. In case of large demonstrations, the police personnel deployed to maintain law and order are given clear directions that people residing on Jantar Mantar and adjoining area are not to be

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obstructed or prevented from using the road and allowed to go to their offices/residences.

11. Further, it is deposed that Delhi police is not required to provide sanitation facilities to the protestors and is responsible only for maintaining law and order. It is the primary responsibility of the land owning agency, more particularly NDMC to provide adequate sanitation/toilet facilities to the protestors. In case of installation of tents and/or makeshift structures by the demonstrators, police role is to inform the concerned land owning agency about it and it is the responsibility of the said agency to remove any tent/structure created/installed by the demonstrators, during the protest.

12. A **short reply affidavit** has been filed, **on behalf of New Delhi Municipal Corporation, respondent no.2 through** its Medical Officer of Health, to the application filed by the applicant. The deponent has denied all the averments/allegations as manifested in the application, except what is specifically and expressly admitted. A leave was also sought to file a detailed para wise reply at a later stage, but no such reply was ever filed. It has been submitted that the maintenance of the area as regards to sanitation, cleanliness and garbage collection, apart from action and removal of permanent or temporary unauthorized structures is the responsibility of NDMC i.e the answering respondent. It has also been submitted that

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answering respondent makes it sure that the place is thoroughly cleaned in the morning and evening. The answering respondent, from time to time, take action against the temporary structures also.

13. It has been further submitted that there are permanent facilities for urinal and water closet for men and women. Whenever there is an increase in number of dharna and crowd, more mobile toilets are provided by NDMC. During this period the number of safai karamcharis are increased. There is a regular deployment, on daily basis, of eleven safai karamchari in morning shift from Jantar Mantar Road, Tolstoy Marg and Parliament Street and four are deployed in the evening. It has been submitted that NDMC is making all efforts to keep the area clean and garbage free. During dharna pradarshan and large gathering these numbers are enhanced to maintain the area clean. The Sanitary Inspector of the area is directed to keep the area spick and span.

14. By way of a **rejoinder**, the applicant has filed an affidavit **to the reply affidavit of NDMC**. It has been deposed that the protestors have been occupying the pavement with make shift structures along the Jantar Mantar Road stretch between Ashoka Road intersection and Tolstoy Marg. The said stretch of the road is shown in Annexure A-1. The map shows blatant violation whereby a road along with pavement which traverses through a

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residential area is being used as a protest site. Further, the photographs enclosed clearly shows that the trees along the road/pavement and the poles of the make shifts structures are being used to hang loudspeakers.

15. It is also submitted that though the protestors at Jantar Mantar road have been allowed to exercise fundamental right to protest by way of loudspeakers, but the said right cannot be provided by the State to curtail the rights of the residents citizens, qua the right not to listen. The said principle of Restriction of the rights, is enshrined in Article 19 (2) to (6) of the Constitution of India and the burden of proof on State to justify reasonability. This has been upheld by the Hon'ble Supreme Court of India in the case of *Ram Leela Maidan Incident, IN RE, (2012) 5 SCC* 1.

16. While submitting para wise reply to the reply affidavit filed by NDMC, the applicant has submitted that the Corporation has admitted, in para 3 & 4, the existence of encroachment on pavements along the Jantar Mantar road stretch between Ashoka road and Tolstoy marg. Contrary to assertion in para 4 of the reply affidavit, till date NDMC has not removed any temporary structures along the aforesaid road. Though NDMC provides mobile urinals and sanitation staff but on a heavy protest day where the number of the people is between 1000 to 5000, these provisions are simply incapable of meeting the

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demand. Resultantly lot of garbage and pungent smell permeates along the area of protest.

17. The applicant has emphatically denied that the contents of the reply affidavit para 5, 6 and 7 and submitted that no additional staff is being provided by NDMC at the protest site. Further, it is submitted that NDMC has neither enclosed any circular nor office order in respect to directions to the Sanitary Inspector to maintain cleanliness at the protest site. It has been submitted that NDMC has given an evasive reply and presented facts in a convoluted manner and though no permission under Section 225 of the NDMC Act, 1994, for creating temporary structures or squatting or hawking license under Section 330 of the NDMC Act, has been given, but they are squatting or hawking in the NDMC area without permission or a license and are continuing to operate there. Thereby they are liable to be removed under Section 226 and 369 (2 of the Municipality Act).

18. A **Counter affidavit** has been filed **on behalf of MoEF & CC, respondent no.5,** through its Scientist 'F', to the Original Application. It has been deposed in the counter affidavit that Central Government, through MoEF & CC, have notified Noise Pollution (Regulation and Control) Rules on 11.02.2000, under Environment (Protection) Act, 1986, wherein different zones such as industrial, residential, commercial and silence zones have

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been categorized for the purpose of regulation and control of noise producing and generating sources. These rules govern the restriction of the use of loud speaker, public address system, noise producing system, etc. Provisions have also been made for ambient air quality standards in respect of noise to control the noise from source. The said Noise rules have been amended four times i.e. on 22.11.2000, 11.02.2002, 19.09.2006 and 11.01.2010.

By the last amendment several issues have been addressed in line with the orders of Hon'ble Supreme Court, from time to time. Emphasis has been laid on making the night peaceful. Night time has been defined (10:00 PM to 6:00 PM) and restrictions have been imposed on the use of horns, noise emitting, construction equipment and bursting of fire crackers during that time.

While submitting para wise reply it has been deposed that the contents of para 6,7 & 8 pertains to Commissioner of Delhi Police. However, it has been submitted that the answering respondents have framed the Rules of 2000 and implementation of these Rules rests upon the authority or officer designated by concerned State/UT government under the Rules.

19. Further, it is submitted that contents of para 9 pertains to Commissioner Delhi Police. The Noise Pollution Rules, 2000 have provisions for restrictions on use of loud speakers/public address system. With regard to contents

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of para 10, it has been submitted that Ministry has no comments to offer. As far as contents of para 11, 12,13 & 14 are concerned, it has been submitted that it is a matter of record and is to be examined by the implementing authority under Rules of 2000. Similarly, contents of para 15, 16 & 17 are also said to be matter of record. It has been submitted on behalf of respondent no.5 that its role was in enacting the rules but the implementation lies with the authorities concerned.

20. A **reply affidavit** has been filed **on behalf of Central Pollution Control Board, respondent no.6,** through its Scientist 'E', who has deposed that as per the Noise Pollution Rules, 2000, a loud speaker or public address system is not to be used except after obtaining written permission from the authority. As per the definition given in Rules of 2000, the authority means and includes any authority or officer authorized by Central Government, or as the case may be, the State Government in accordance with laws enforced and includes a District Magistrate, Police Commissioner, or any other officer not below the rank of Deputy Superintendent of Polic, designated for maintenance of ambient air quality standards in respect of noise under any law for the time being in force.

21. Further, it has been submitted by CPCB that under Sub Rule 4 (4) of Rule 5 of the Noise Pollution Rules, 2000,

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the noise level at the boundary of the public place, where loud speaker or public address system or any other noise source is being used, shall not exceed 10 db (A) above the ambient air quality standard or of 75 db (A) whichever is lower. It is also provided under Sub Rule 1 of Rule 4 of the Noise Pollution Rules, 2000, that the authorities shall be responsible for enforcement of noise pollution control measures and due compliance of the ambient air quality standard in respect of noise.

22. In reply to para 1 to 14 of the application, the answering respondent no.6 has submitted that MoEF & CC has notified the Noise Pollution Rules, 2000 in the gazette on 14.02.2000 and subsequently amended them, from time to time, under the environment Protection Act, 1986. In reply to contents of para 15 to 17 which relates to noise pollution caused by traditional horns/loud speakers. It is submitted that as per Sub Rule (1) of Rule 5 of the Rules of 2000, loud speaker or public address system shall not be used except after obtaining written permission from the authority. The authority has been defined under the Rules of 2000. Further it is admitted that under Sub Rule 4 of Rule 5 provides Noise Pollution Rules, 2000, the noise level at the boundary of public place where loudspeakers or public address system or any other noise source is being used shall not exceed 10 db(A) above the ambient noise standards for the area or 75 db (A), whichever is lower.

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Under Sub rule (1) of Rule 4 the Rules of 2000, the authorities shall be responsible for the enforcement of noise pollution control measures and due compliance of ambient air quality standards in respect of noise.

23. It has also been submitted by respondent no.6 that it has launched a continuous National Ambient Noise Monitoring Network in nine million plus cities in February, 2011. Delhi has ten noise monitoring stations. The findings of the noise monitoring system in Delhi are being displayed for public at monitoring locations and CPBB's web portal on a regular basis. Respondent CPCB has published a report on Status Of Ambient Noise level in India in 2016 which is available in the public domain at CPCB's website. As per the report, the noise level (2011-2014) in Delhi are exceeding to the prescribed standards at all stations except CPCB's headquarters.

As regards, the contents of the grounds of applicant, the answering respondent no.6 has reiterated about the Noise Pollution Rules, 2000 already notified by MoEF & CC. In the last, respondent no.6 has prayed that appropriate directions may be issued to the concerned respondents for compliance of the ambient air quality standards in respect of noise or pass any orders which may deem fit and proper to which CPCB shall abide.

24. The applicant has filed a **rejoinder to the reply filed on behalf of CPCB, respondent no.6**. In the

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rejoinder, applicant has reiterated averments made earlier, in so far as preliminary submissions are concerned. As regards, para wise reply to the reply affidavit of CPCB, it has been submitted that par 1 to 6 of are matter of record. Further, para 7 to 10 pertains to rules in respect of noise pollution which is also a matter of record. The applicant has submitted in reply to para 11 that respondent CPCB has admitted allegations of the applicant qua the noise pollution but has stopped short of replying on to the noise pollution as recorded in Jantar Mantar road or the ambient air quality with respect to noise and findings as represented in annexure A-5. In respect of contents of para 12 & 13 to the reply affidavit, It has been deposed that they are matter of record and therefore needs no reply.

25. Further, it has been submitted that respondent CPCB has explicitly admitted and upheld the finding of the respondent, qua the issue of noise pollution. Further, it has been submitted by the applicant that respondent CPCB has raised similar or same prayer as that of the applicant, with respect to the removal of protestors who have come up with make shift structures along the pavements on Jantar Mantar road stretch, between Ashoka road intersection and Tolstoy Marg, in order to curtail noise pollution. In addition to it, respondent no.6 has admitted and prayed for directions to the authorities as prescribed under Sub Rule 1 of Rule 4 of the Noise

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Pollution Rules, 2000 to curtail noise pollution on Jantar Mantar Road.

26. Besides the aforesaid pleadings by the party, the **applicant** has also **filed a short affidavit** before the Tribunal on 05.04.2016. He has reiterated the facts with regard to the location of the area in question namely; Jantar Mantar road and that the same has been earmarked as residential area in the Delhi Master Plan. Further, he has submitted in respect of other buildings on the said road which are residential, guest houses, etc. It has also been deposed that the stretch of the said road is being used as a protest site. The protestors are not only assembling for protest but come there with makeshift structures and stay for a long time.

The applicant has also deposed that earlier the protests were held on Boat Club lawns and Delhi police has, through an administrative order, dedicated residential area at Jantar Mantar road as a protest site. In case the participants exceeds five thousand in number, then Ram Leela Maidan has been categorized as a protest site. It has been specifically submitted that Delhi police did not have any executive instructions to declare the said stretch as a protest site.

27. The applicant has further deposed that in fact Delhi police has dedicated Jantar Mantar, an archeological protected monument, as a protest site and not the stretch

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of Jantar Mantar road. But despite of it, the stretch of the Jantar Mantar road which is a residential area, is being allowed to be used as a protest ground at the expenses/inconvenience of the residents. Further, it has been submitted that though the applicant had made a number of representations to various authorities but without any response from any of them, till date.

The applicant has also submitted that in response to an RTI application filed by the residents, Delhi police has provided the data of the protest which were held on Jantar Mantar road where participants were exceeding hundred in number but less than five thousand. The applicant has submitted that the response of Delhi Police to the said RTI application clearly depicts the plight of the residents who have been facing the noise pollution arising out of continuous protest, by the use of amplified unregulated public address systems.

28. The applicant has submitted that, in order to gauge the noise pollution which arises from such protest, he used a professional sound level meter SM-10 with specification as Standard applied-IEC 651 type 2, ANSI 1.4 type-2, frequency range 31.5 Hz-4kHz, measuring level range-40-130db (40-80db, 50-90db, 60-100db, 70-110 db, 90-130db), accuracy -+-2dB. The applicant has prepared a chart measuring the noise on said stretch of Jantar Mantar road for over a period of two months i.e. from March to

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April, 2016 during the day time which is between 6:00 AM to 10:00 PM and night time from 10:00PM to 6:00 AM.

29. The applicant has also deposed that there are certain protestors who are residing on the said stretch of road in makeshift structures and continuously playing drums or some music or using amplified microphone, which disturbs the peace/tranquility of the area and the said noise far exceeds the permissible limit for the residential area as prescribed under Schedule to Rule 3(1) and 4(1) of the Noise Pollution (Regulation and Control) Rules, 2000. The said schedule has been extracted in the affidavit wherein the limit decibel for residential area is 55 and 45 during day time and night time respectively. A comparison of the rule with the chart, mentioned aforesaid, clearly goes to show the cumulative noise which arises out of the protest area or protestors who are permanently residing in makeshift structures stay on Jantar Mantar road.

30. The applicant has also mentioned about harmful effects resulting from noise pollution by the various studies made by World Health Organization. He has referred to a recent study undertaken by AIIMS hospital which shows the adverse effect and health consequences of community noise pollution.

31. The applicant has further referred to judicial pronouncement of the Hon'ble Supreme Court of India in

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the similar cases. *IN RE: Implementation of laws for restricting the use of loud speakers and high volume producing sound systems,* while examining the issue of noise pollution at large caused by people and various apparatus such as loud speakers etc., the Hon'ble Court and has also issued detailed guidelines/directions to be complied with regarding noise pollution; *(2005) 5 SCC 733*. Also in the case of *Dr. Balwant Singh vs. Commissioner of Police and Ors.,* the Hon'ble Supreme Court has further elaborated on the provisions of fundamental rights and the State's responsibility towards its citizens; *(2015) 7 SCC 779*. In addition to it, the applicant has also referred to the judgement of the Hon'ble High Court of Bombay in *PIL Writ Petition NO. 85 of 2007 "Awaaz Foundation & Anr. Vs. the State of Maharashtra & Ors"*. While adjudicating a similar issue, responsibility has been fixed upon the authorities and issued certain directions pertaining to 'silent zones'. The applicant has also referred to the judgment of the Hon'ble Supreme Court in the case of *State of Rajasthan vs. G. Chawla and Dr. Pohumal; 1959 Supp (1) SCR 094* and the case of *Acharya Maharajshri Narendra Prasad ji Anandprasadji Maharaj and Ors vs. the State of Gujarat and Ors. MANU/SC/0034/1974.*

The applicant has deposed that the said judicial court have unambiguously laid down the framework for noise pollution, complemented with the Noise Pollution

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Rules, 2000, for the stakeholders or the authorities to act upon those violating the said guidelines/rules.

32. It is deposed in the affidavit that the applicant has approached the Tribunal for noise pollution arising out of the protest area or protestors who reside in a makeshift structures, constantly produce noise which is in gross violation of prescribed limits under Rule 3 of the Rules of 2000 and also because the said act is violative of Article 21 of the Constitution of India. Further, it has been submitted that none of the authorities have acted upon the representation of the applicant and therefore, he has invoked jurisdiction of this Tribunal.

Discussion by the Court:

33. Having considered the case of the parties we now proceed on merits. Though a limited grievance was raised, to begin with but during the course of hearing the scope got enlarged and the Tribunal has been addressed on the issue from many angels.

As a matter of fact, there are about 60 persons, along with their families and children, residing at Jantar Mantar Road. The residents of Jantar Mantar road have lately been disheartened and distressed by the fact that the said road has become a place for dharnas, processions and agitations frequently held by social groups, political parties, religious groups, NGOs, etc. In earlier times such like procession and agitations used to be held at Ramleela

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ground, near Ajmeri gate in Delhi. Thereafter, the venue for such activities came to Boat Club. Later on dharnas, agitations, etc were shifted from Boat Club to Jantar Mantar, which is a protected monument under the Archeological Survey of India Act. Therefore, the shifting of the venue for dharnas, agitation, etc. at the site of Jantar Mantar was by itself not proper.

As Jantar Mantar is situated on the corner of the intersection of Tolstoy road, Parliament street and Jantar Mantar road, the place for processions, demonstrations and agitation had gradually shifted to Jantar Mantar road. Also for the reason that they all primarily aimed for going towards the Parliament House.

34. Jantar Mantar is a historical monument which was constructed between the year 1727-1734 for the purposes of astronomical observations. The observatory of Jantar Mantar, as commonly known, incorporate multiple buildings of unique forms and each with a specialized purpose for astronomical measurement. The structures with their striking combination of geometric forms at large scale, has captured the attention of architectures, artists and art historians all over the world. The Archeological Survey of India, under the Ministry of Culture, is the premier organization for archeological researches and protection of cultural heritage of the nation. Maintenance of ancient monuments and archeological sites as well as

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the remains of national importance is the prime concern of the Archeological Survey of India. It is under an obligation to regulate archeological activities in and around the monument as per the provisions of Ancient Monuments and Archeological Sites and Remains Act, 1958.

35. But Jantar Mantar and its surrounding areas, once known for its history, has now become a battle ground for protestors and agitators. The area has become a permanent place for filth and litter indulged in by the protestors. The other civic authorities such as NDMC and the Police authorities have also miserably failed to maintain cleanliness in and around Jantar Mantar. They have further neglected and failed to ensure peaceful and comfortable living for the residents of the locality. The petitioners have placed on record a number of photographs [annexure P 1 (Colly)] which shows permanent structure erected for delivering public speeches, temporary shelters, tents for living. They have mushroomed in the locality. Vehicles are delivering food, drinks, eatables and the protestors cooking food, washing and drying their clothes, etc.

36. Since long, on the stretch of Jantar Mantar road protest/dharnas are being regularly organized (despite there being no legal or administrative order/permission for designating of place as a protest ground). In recent past, the number of protest/dharnas, as well as that of people

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constituting them have tremendously increased. The pollution in the area have also increased many folds, on account of noise, large gathering of people, waste, etc. The noise pollution has been increased due to installation of traditional public address system based on the horn loud speakers by protestors. Besides, assembling of large crowds which is at times in thousands, also contribute to the noise pollution. Further, the plight of the residents is compounded by deployment of large number of police and para military personals to control and manage the protestors.

In the result, it not only restricts entry/exit of the residents from their respective residences but also, at times, permits access to the residents only by foot due to complete stoppage of vehicles. There have been instances where the visitors of the people residing in the area have to park their vehicles at the other end of Jantar Mantar road due to restrictions imposed by the police. In fact there is absolutely no space left on the road since the protestors occuppy the same and the police personal monitoring the activity are found to be standing/sitting outside the houses of the residents.

In addition to it, on the entire road there is littering and despite of the best efforts of NDMC, it cannot be cleared because of large crowd gathering in the area and are having food etc. and using mobile toilets/sanitary

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services at the site of protest. There are protestors who have, in the name of cow protection, been bringing the cows along with bullock carts on the stretch of Jantar Mantar road which aggravates the problem, being faced by the residents since long.

The residents who have to bear the aforesaid problem includes their children and old aged family members. The constant loud noises, round the year, from the protest ground seriously disturb the children even during their examination time. Similarly, the elderly residents have also been diagnosed with noise age related problem. The residents on the stretch of Jantar Mantar road are totally at the mercy of the protestors.

37. The processions, demonstrations and agitations by social groups, NGOs, religious groups and political parties had become a regular feature, so much so, that everyday dharnas, agitations, etc. are being held on Jantar Mantar road. Consequently, the lives of the petitioners and all other residents on Jantar Mantar road is being persistently disturbed by the dharnas which are a few thousands every year. These dharnas and protests are stretched almost on the entire Jantar Mantar road, on both sides and even across the width of the road. Dharnas on Jantar Mantar road are coupled with non-stop slogans and it has developed into a place of inhabitation for the protestors who also carry with them tents and temporary shelters. It

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is used as a place for sleeping, to take bath, cook food, etc. by the protestors and they live there for months together. Above all, the people sitting on dharna, carrying on processions and agitations continuously play loud speakers, not only during day but also till late night.

38. The continuous activity of the protestors, agitators and dharna/processions for a number of years by now, the site has virtually become hell for the residents of the locality who cannot sleep at night, face noise pollution during the day, having difficulties in ingress and egress to their residences, much less to say, to take their vehicles up to their residences. Many a times, when dharnas, agitations, processions, etc. are on their peak specially during Parliament session, the residents are even prevented or with great difficulty they are able to walk down to their residences because the Police for the purpose of maintaining law and order puts barricades and even close the road. Such being the situation of the stretch on Jantar Mantar road, great difficulties have been created to the children/students residing in that area. The situation is being aggravated day by day and has resulted in health problems for the residents as many of them now have high blood pressure, become heart patient and old age persons have now started suffering from chronic ailments. The road starting from Jantar Mantar and leading to Parliament has turned into a place of totally different

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nature which is being used for various purposes. The protestors come there from various parts of the country traveling by trucks, buses, etc., and they park their vehicles in and around the residential buildings. In fact, the locality has completely changed where one finds that men, women and children are bathing, washing their clothes under Delhi Jal Board tankers and the situation becomes worse when the people are seen defecating in the open, on pavements, etc. which creates a totally unhygienic situation on the entire road.

39. The petitioners have made all efforts for protest/objections starting from the SHO, Police station Parliament Street, the officials of NDMC, MPs and MLAs with the request to clear the entire area by removing the protestors from Jantar Mantar road. But the residents could not get anything except empty assurances and false promises, as made by the authorities. The residents of the area had also approached courts of law from time to time and appropriate directions were issued but without any substantial results.

40. It is relevant to mention here that continuous noise by non-stop slogans and use of loudspeakers by the protestors, for hours together, is more than just a nuisance. It constitutes a real and present danger to people's health. Day and night, at home, at work, and at play, noise can produce serious physical and psychological

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stress. No one can be immune to this stress. Though we try to adjust to noise by ignoring it, the ear, in fact, never closes and the body still responds-sometimes with extreme tension, as to a strange sound in the night.

Noise is a type of atmospheric pollution. It is a growing menace which has increased in the modern age of industrialization and technological advancement. Although a soft rhythmic sound in the form of music and dance stimulates brain activities, removes boredom and fatigue, but its excessiveness may prove detrimental to living things. Researches have proved that a loud noise during peak marketing hours creates tiredness, irritation and impairs brain activities so as to reduce thinking and working abilities. Noise pollution was previously confined to a few special areas like factory or mill, but today it engulfs every nook and corner of the globe, reaching its peak in urban areas. Industries, automobiles, rail engines, aeroplanes, radios, loudspeakers, tape recorders, hawkers, pop singers, etc., are the main ear contaminators of the city area and its market place. The regular rattling of engines and intermittent blowing of horns emanating from the caravan of automobiles do not allow us to have any respite from irritant noise even in suburban zones.

41. In the modern times noise has become one of the major pollutants and it has serious effects on human health. Effects of noise depend upon sound's pitch, its

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frequency, time pattern and length of exposure. Noise has both auditory and nonauditory effects depending upon the intensity and the duration of the noise level. It affects sleep, hearing, communication, mental and physical health. It may even lead to madness of people.

It has been determined that noise has an explicit effect on blood vessels, especially the smaller ones known as pre-capillaries. Ultimately, noise makes these blood vessels narrower. Noise causes peripheral blood vessels in the toes, fingers, skin and abdominal organs to constrict, thereby decreasing the amount of blood supply to these areas.

Investigations have revealed that blood vessels which feed the brain, dilate in the presence of noise. This is the reason why headaches result from listening to persistent high noise.

42. Field studies have also been conducted on various other groups such as people living near airports, and school children exposed to traffic noise, showing that there may be some risk for these people. In addition, laboratory studies on animals and humans have demonstrated a relationship between noise and high blood pressure. Other studies have shown that noise can induce heart attacks. Prolonged chronic noise can also produce stomach ulcers as it may reduce the flow of gastric juice and change its acidity.

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Stress can be manifested in any number of ways, including headaches, irritability, insomnia, digestive disorders, and psychological disorders. Workers who are exposed to excessive noise frequently complain that noise just makes them tired.

43. There is ample evidence that environment has a role in shaping the physique, behavior and function of men and animals, from conception and not merely from birth. The fetus is capable of perceiving sounds and responding to them by motor activity and cardiac rate change Lestre W. Sontang, The Fels Research Institute. (Quoted in Noise: A Health Problem, United States Environmental Protection Agency, Office of Noise Abatement and Control, Washington, D.C., August 1978.).

The fetus is not fully protected from noise. Noise may threaten fetal development. Noise has been linked to low birth weights. Levels of noise which do not interfere with the perception of speech by adults may interfere significantly with the perception of speech by children as well as with the acquisition of speech, language, and language-related skills. Because they are just learning, children have more difficulty in understanding language in the presence of noise than adults do. Reading ability also may be seriously impaired by noise. Apart from children, the noise pollution causes several adverse effects on human beings generally. Some of these are: (i) hearing loss, (ii) no

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auditory physiological response such as stress, arousal response, cardiovascular effects etc.,(iii) communication interference, (iv) performance interference, and (v) sleep disturbance and so on.

44. According to Center for Community Medicine, All India Institute of Medical Sciences, New Delhi:-

> *"Noise is regarded as a pollutant under The Air (Prevention and Control of Pollution) Act, 1981. It has been defined as unwanted sound. Noise consists of unpleasant obtrusive, annoying, distracting, or persistent sounds that interfere with sleep or the ability to concentrate or enjoy life. The WHO guidelines for community noise recommend less than 30 A-weighed decibels (dB [A]) in bedrooms during the night for a sleep of good quality and less than 35 dB(A) in classrooms to allow good teaching and learning conditions. The WHO guidelines for night noise recommend less than 40 dB(A) of annual average (Lnight) outside of bedrooms to prevent adverse health effects from night noise. Noise is an underestimated threat that can cause a number of short and long-term health problems. It is increasingly becoming a potential hazard to health, physically and psychologically and affects the general well-being of an individual. Excessive noise interferes with people's daily activities at school, at work, at home, and during leisure time. It can disturb sleep, cause cardiovascular and psychophysiological effects, reduce performance and provoke annoyance responses and changes in social behaviour."*

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"It also interferes with communication, and this can even endanger life. However, it is a physical pollutant, not visible and the damage occurs silently, going undetected. This is also because sensitivity of the human ear gets automatically adjusted to ambient noise levels. Moreover, noise pollution control is overshadowed by other types of pollution such as air, water pollution, largely due to lack of awareness about its health implications. Epidemiologic studies on hearing and noise exposure are also lacking although it is the most common preventable cause of sensori-neural hearing loss.

There are two major settings where noise occurs, viz., community noise and industrial noise. Community noise (also called environmental noise, residential noise, or domestic noise) is defined as noise emitted from all sources, except noise at the industrial workplace. Major sources of community noise are automobiles, construction work, loudspeakers, recreational activities, fireworks, etc."

45. Several studies have been conducted in various parts of the country to assess the ambient noise level. Majority of the total environmental noise is caused by motor vehicles.

"Noise generated by different vehicles was also measured. None of the vehicles emitted within the permissible limits for road traffic noise. Vehicular air horns emitting loud noise and their misuse have been reported to be the major contributor to high noise levels. In a study which

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measured noise levels in the four zones as categorized by the Central Pollution Control Board, the highest average day-time noise level was detected in silence zones (73.5. dB[A]), i.e., not less than 100 m around hospitals, educational institutions, court, and religious places; and lowest in residential areas (63.5 dB[A]). The highest average noise level for night time was in traffic intersection areas (71.18 dB[A]) and lowest in the industrial areas. Increasing population, transportation demands, vehicular increase, and congestion of roads are factors that have intensified traffic noise pollution significantly in recent years."

"Daily exposure to such noise levels over a long period can have harmful effects. With rapid urbanization, often unmatched by proper layout of roads, highways and buildings, industrial, residential, and commercial areas lie in close proximity. This disturbs the peaceful environment of residential areas. The ambient noise levels in silence zones were found to go even up to 90 dB. Both day time and night time noise levels in these silence zones were above the permissible limits. It causes distractions and annoyance in not only in institutional areas, but also much discomfort and mental disturbance to patients in hospitals. Night time noise levels in residential areas also exceeds the prescribed limits of 55 dB(A) in day-time and 45 dB(A) at night time."

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46. The World Health Organization has listed critical health effects, with corresponding noise levels and exposure time in specific environmental settings:

> "The adverse health effects of noise are auditory disorders such as hearing impairment, tinnitus, ear ache, noise-induced hearing loss, and non-auditory manifestations which include irritability, inability to concentrate on one's work thereby reducing work efficiency, disturbance in sleep and rest and interference with speech communications."

> "Hearing impairment has been defined as an increase in the threshold of hearing. The affected person is unable to understand speech in day-to-day life. Noise-induced hearing impairment mainly occurs in the frequency range of 3,000-6,000 Hz, and with increased exposure, at lower frequencies. Speech intelligibility can be reduced even at 10 dB, averaged over 2,000-4,000 Hz, over both ears. Above 30 dB hearing impairment (averaged over 2,000-4,000 Hz, over both ears), a social hearing handicap is noticeable. Significant hearing impairment occurs on exposure to prolonged exposure to noise levels of 70-85 dB."

> "Noise-induced hearing loss has been scientifically established as an adverse health effect of noise. In temporary hearing loss, the hearing threshold is elevated

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temporarily, known as temporary threshold shift. With chronic exposure, permanent threshold shift occurs. In this case, hearing loss becomes permanent due to irreversible damage to the sensory cells of the cochlea. Noise-induced hearing loss usually first affects the hearing threshold at high frequencies above the range of speech perception at around 4 kHz. Hence, it is often not noticed till it becomes severe. The susceptibility of an individual to develop noise-induced hearing loss varies greatly. Therefore, it is difficult to predict the extent of hearing loss a person will acquire when exposed to a certain noise."

47. Studies have also reported hypertension to be associated with noise exposure. A study conducted in Pakistan showed that workers exposed to high noise levels were more likely to be hypertensive (Odds ratio: 4:41, confidence interval:2.123-9.196), and at risk for pre-hypertension (Odds ratio: 3,809; confidence interval; 1.804-8.042) when compared with those working at normal sound levels. Another study observed that residential proximity to high traffic and traffic noise is predisposed to higher blood pressure and hypertension.

48. A primary psychologic response to noise is annoyance. People who are annoyed by neighbourhood noise over a long time were found to be at higher risk for cardiovascular disease, depression, and migraine. People who were persistently annoyed by traffic noise were found

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to be at higher risk for respiratory health problems. Emotional stress triggered by noise was suggested to play a role in the respiratory problems in children.

A study conducted in Orissa found that, though people experienced noise-induced symptoms such as headache, bad temper, hearing problem, loss of concentration, and sleep disturbance, they were unaware of the ill-effects of noise on health. Noise pollution creates negative emotions of annoyance in the people. Residents living near roadways reported frequent irritation (52%), hypertension (46%) and loss of sleep (48.6%) due to noise pollution.

49. Noise exposure among vulnerable groups, such as children, is an area of major concern. Children in the noisier areas had manifested psycho-physiological changes. Resting systolic blood pressure and urinary cortisol were raised. Elevated heart rate to a stressor (reading test), and higher perceived stress symptoms were also observed. In another study, children exposed to higher noise levels had different physiological parameters, viz., high blood pressure and low heart rate, when compared with those in quieter areas. Children exposed to aircraft and road traffic noise had impaired cognition such as reading comprehension, recall, and reported annoyance. Early hearing impairment in children is a grave consequence of continuous exposure

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to noise. High impact loud sounds can cause more damage.

50. Now we come to the position of law in our country in respect of noise - Statutory as well as the judicial precedents. Under our Constitution, Article 21 provides guarantees for life and personal liberty to all persons. It is well settled by repeated pronouncements of Hon'ble Supreme Court as also the High Courts that right to life is not of mere survival or existence. It guarantees a right to a person to live with human dignity. This includes, all the aspects of life which go to make a person's life meaningful, complete and worth living. Anyone who wishes to live in peace, comfort and quiet within his house has a right to prevent the noise, as pollutant, reaching him. No one has a right to create noise even in his own premises which would travel beyond his precincts and cause nuisance to neighbours or others. Any noise which has the effect of materially interfering with the ordinary comforts of life, judged by the standard of a reasonable man, is nuisance.

Those who make noise often take shelter behind Article 19(1)A pleading freedom of speech and right to expression. Undoubtedly, freedom of speech and right to expression are fundamental rights but they are not absolute. Nobody can, as a right, create noise by amplifying the sound of his speech with the help of loudspeakers. While one has a right to speech, others have a right to

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listen or decline to listen. Nobody can be compelled to listen and no one can claim that he has a right to make his voice trespass into the ears or mind of others. Nobody can indulge into aural aggression. If anyone increases his volume of speech and that too with the assistance of artificial devices so as to compulsorily expose unwilling persons to hear a noise raised to unpleasant or obnoxious levels then such person is violating the right of others to a peaceful, comfortable and pollution-free life. Article 19 cannot be pressed into service for defeating the fundamental right guaranteed by Article 21. Right to live in an atmosphere free from noise pollution has been held as the one guaranteed under Article 21 of the Constitution.

51. The Air (Prevention and Control of Pollution) Act, 1981:

Noise was included in the definition of air pollutant in Air (Prevention and Control of Pollution) Act in 1987. Thus, the provisions of the Air Act, became applicable in respect of noise pollution, also.

The Environment (Protection) Act, 1986:

Although there is no specific provision to deal with noise pollution, the Act confers powers on Government of India to take measures to deal with various types of pollution including noise pollution.

52. The Noise Pollution (Regulation and Control) Rules, 2000:

"In exercise of the powers conferred by Cl. (ii) of sub-section (2) of Sec. 3, sub-section (1) and Cl. (b) of

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sub-section (2) of Sec. 6 and Sec. 25 of the Environment (Protection) Act, 1986 (29 of 1986) read with rule 5 of the Environment (Protection) Rules, 1986, the Central Government has made the following rules vide Notification dated 14.02.2000 for the regulation and control of noise producing and generating sources, namely: -The Noise Pollution (Regulation and Control) Rules, 2000.

3. *Ambient air quality standards in respect of noise for different areas/zones. –*

(1) The ambient air quality standards in respect of noise different areas/zones shall be such as specified in the Schedule annexed to these rules.

(2) The State Government may categorize the areas into industrial, commercial, residential or silence areas/zones for the purpose of implementation of noise standards for different area.

(3) The State Government shall take measures for abatement of noise including noise emanating from vehicular movements and ensure that the existing noise levels do not exceed the ambient air quality standards specified under these rules.

(4) All development authorities, local bodies and other concerned authorities while planning developmental activity or carrying out functions relating to town and country planning shall take into consideration all aspects of noise pollution as a parameter of life to avoid noise menace and to achieve the objective of maintaining the ambient air quality standards in respect of noise.

(5) An area comprising not less than 100 meters around hospitals, educational institutions and courts may be declared as silence area/zone for

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the purpose of these rules

4. *Responsibility as to enforcement of noise pollution control measures.- (1) The noise levels in any area/zone shall not exceed the ambient air quality standards in, respect of noise as specified in the Schedule.*

(2) The authority shall be responsible for the enforcement of noise pollution control measures and the due compliance of the ambient air quality standards in respect of noise.

(3) The respective State Pollution Control Boards or Pollution Control Committees in consultation with the Central Pollution Control Board shall collect, compile and publish technical and statistical data relating to noise pollution and measures devised for its effective prevention, control and abatement.

5. Restrictions on the use of loud speakers/public address system [and sound producing instruments]. – (l) A loudspeaker or a public address system shall not be used except after obtaining written permission from the authority.

(2) A loud speaker or a public address system or any sound producing instrument or a musical instrument or a sound amplifier shall not be used at night time except in closed premises for communication within, like auditoria, conference rooms, community halls, banquet halls or during a public emergency.]

(3) Notwithstanding anything contained in sub-rule (2), the State Government may, subject to such terms and conditions as are necessary to reduce noise pollution, permit use of loud speakers or

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(public address system and the like during night hours) (between 10.00 pm to 12.00 midnight) on or during any cultural or religious festive occasion of a limited duration not exceeding fifteen days in all during a calendar year) (The concerned State Government shall generally specify in advance, the number and particulars of the days on which such exemption would be operative.)

(4). The noise level at the boundary of the public place, where loudspeaker or public address system or any other noise source is being used shall not exceed 10 dB (A) above the ambient noise standards for the area or 75 dB (A) whichever is lower;)

((5). The peripheral noise level of a privately owned sound system or a sound producing instrument shall not, at the boundary of the private place, exceed by more than 5dB (A) the ambient noise standards specified for the area in which it is used.)

7. Complaints to be made to the authority.-(1) A person may, if the noise level exceeds the ambient noise standards by 11) dB (A) or more given in the corresponding columns against any area/zone,[or, if there is a violation of any provision of these rules regarding restrictions imposed during night time], make a complaint to the authority.

(2) The authority shall act on the complaint and take action against the violator in accordance with the provisions of these rules and any other law in force.

8. Power to prohibit etc. continuance of music sound or noise.- *(1) If the authority is satisfied from the report of an officer in charge of a police station or other information received by him that it is necessary to do so in order to prevent annoyance, disturbance, discomfort or injury risk of annoyance,*

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disturbance, discomfort or injury to the public or any person who dwell or occupy property on the vicinity, he may, by written order issue such directions as he may consider necessary to any person for preventing, prohibiting, controlling or regulating: -
(a) The incidence or continuance in or upon any premise of-
(i) Any vocal or instrumental music,
(ii) Sounds caused by playing, beating, clashing, blowing or use in any manner whatsoever of any instrument including loudspeakers, public address systems, appliance or apparatus or contrivance which is capable of producing or re-producing sound, or
(b) The carrying on in or upon, any premises of any trade, avocation or operation or process resulting in or attended with noise.
(2) The authority empowered under sub-rule (1) may, either on its own motion, or on the application of any person aggrieved by an order made under sub-rule (1), either rescind, modify or alter any such order: Provided that before any such application is disposed of, the said authority shall afford to the applicant an opportunity of appearing before if either in person or by a person representing him and showing cause against the order and shall, if it reflects any such application either wholly or in part, record its reasons for such rejection."

53. As early as, in the year 1985, the issue of noise pollution was taken up by Calcutta High Court in the case of **Rabin Mukherjee v. State of West Bengal (AIR1985Cal222).** The use of air horns was prohibited by the court to prevent noise pollution. The Court observed:

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(1). *"...it is found that the atmosphere and the environment is very much polluted from indiscriminating noise emitted from different quarters and on research it was found that persons who are staying near the Airport, are becoming victim of various ailments. Such persons even become victim of mental disease. On such research it was also found that workers in various factories even become deaf and hard of hearing. It was further found on such research that as a result of this excessive noise pollution, people suffer from loss of appetite, depression, mental restlessness and insomnia. People also suffer from complain of excessive blood pressure and heart trouble. It is not necessary to go into the question about direct effect of such noise pollution because of indiscriminate and illegal use of such electric and air horn as it is an admitted position that the same is injurious to health and amongst different causes of environmental pollution, sound pollution is one which is of grave concern."*

(2). In the case of **People United for better Living in Calcutta v. State of West Bengal (:AIR1993Cal215)** the Calcutta High Court observed:

"In a developing country there shall have to be developments, but that development shall have to be in closest possible harmony with the environment, as otherwise there would be development but no environment, which would result in total devastation, though, however, may not be felt in present but at some future point of time, but then it would be too late in the day, however, to control and improve the environment. In fact, there should be a

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proper balance between the protection of environment and the development process. The society shall have to prosper, but not at the cost of the environment and in similar vein, the environment shall have to be protected but not at the cost of the development of the society and as such a 08-09-2017 (Page 22 of 40) www.manupatra.com PRINCIPAL BENCH LIBRARY balance has to be found out and administrative actions ought to proceed accordingly."

(3). In ***P.A. Jacob v. the Superintendent of Police: (AIR1993Ker1)***, Kerala High Court had held:–

""However wide a right is, it cannot be as wide, as to destroy similar or other rights in others. Jefferson said: No one has a natural right to commit aggression on the equal rights of another. J.S. Mill said: If all mankind minus one were of one opinion, and if only one person was of contrary opinion, mankind would be no more justified in silencing that one person, than he, if he had the power, would be justified in silencing mankind."

(4). In ***Appa Rao, M.S. v. Govt. of T.N., (1995) 1 LW 319 (Mad),*** the Madras High Court taking note of the serious health hazard and disturbance to public order and tranquility caused by the uncontrolled noise pollution prevailing in the State, issued a writ of mandamus directing State Government to impose strict conditions for issue of license for the use of amplifiers and loudspeakers and for directing Director-General, Police (Law and Order) to impose total ban.

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(5). In the case of ***Church of God (Full Gospel) in India v. K.K.R. Majestic Colony Welfare Assn (2000CriLJ4022)*** the Hon'ble Supreme Court held that:

"Under the Environment (Protection) Act, 1986, rules for noise-pollution level are framed which prescribe permissible limits of noise in residential, commercial, industrial areas or silence zone. The question is - whether the appellant can be permitted to violate the said provisions and add to the noise pollution. In our view, to claim such a right itself would be unjustifiable. In these days, the problem of noise pollution has become more serious with the increasing trend towards industrialisation, urbanization and modernisation and is having many evil effects including danger to health. It may cause interruption of sleep, affect communication, loss of efficiency, hearing loss or deafness, high blood pressure, depression, irritability, fatigue, gastrointestinal problems, allergy, distraction, mental stress and annoyance etc. This also affects animals alike. The extent of damage depends upon the duration and the intensity of noise. Sometimes it leads to serious law and order problem. Further, in an organized society, rights are related with duties towards others including neighbours……"

"….. because of urbanization or industrialization the noise pollution may in some area of a city/town might be exceeding permissible limits prescribed under the Rules, but that would not be a ground for permitting others to increase the same by beating of drums or by use of voice amplifiers, loudspeakers or by such other musical instruments and, therefore, rules prescribing reasonable restrictions including

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the Rules for the use of loudspeakers and voice amplifiers framed under the Madras Town Nuisances Act, 1889 and also the Noise Pollution (Regulation and Control) Rules, 2000 are required to be enforced."

"We have referred to a few of the judgments. Suffice it to observe that Indian Judicial opinion has been uniform in recognizing right to live in freedom from noise pollution as a fundamental right protected by Article 21 of the Constitution and noise pollution beyond permissible limits as an in-road on that right."

(6). In ***Free Legal Aid Cell Shri Sugan Chand Aggarwal alias Bhagatji v. Govt. of NCT of Delhi and Ors. (AIR2001Delhi455),*** it was said by the Delhi High Court that:

"Pollution being wrongful contamination of the environment which causes material injury to the right of an individual, noise can well be regarded as a pollutant because it contaminates environment, causes nuisance and affects the health of a person and would therefore, offend Article 21, if it exceeds a reasonable limit."

(7). **In Re: Noise pollution- Implementation of the laws for restricting use of loudspeakers and high volume producing sound systems. AIR 2005.SC. 3136.**

"The noise level at the boundary of the public place, where loudspeaker or public address system or any other noise source is being used shall not exceed 10 dB(A) above the ambient noise standards for the area or 75 dB(A) whichever is lower."

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(8). The Hon'ble Supreme Court has recently considered a case having similar issue and facts as circumstances as in the present case, in that of ***Dr. Balwant Singh v. Commissioner of Police & Ors 2014 (10) SCJ 205***

The petitioner in that case was resident of Jaipur (Rajasthan) and after his retirement as Director General of Police, he constructed a house in residential colony, Jyoti Nagar, Jaipur. The location of the house of the petitioner was very near to Vidhan Sabha, (State Assembly building).

Subsequently, the petitioner therein noticed that frequently thousands/hundreds of people belonging to political/non-political parties were gathering on the road approaching Vidhan Sabha in agitated mood while the State Assembly was in session. They were undertaking their protest march or dharna/procession for ventilation of their grievances. The protestors were also using indiscriminately loud speakers by erecting temporary stages on road where speeches were being delivered, one after the other, throughout the day. Such activities, some time, used to continue for a long time. Such gatherings were also making use of compound walls of nearby houses, including that of the petitioner, to ease themselves frequently, at any time.

In order to regulate such activities and to maintain law and order situation, the State and Police Administration used to put barricades and depute

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hundreds of police personnel to see that no untoward incident occurs. These barricades used to be installed just in front of the gates of the houses of the residents including the appellant's house. The police personnel like others would also use the walls of the residential houses including that of the appellant's house to ease and nobody was in a position to object to such activities in front of their houses. The appellant also noticed that these activities had gained considerable momentum while the State Assembly was functioning making living of the residents of that area a miserable one because neither they were in a position to stay comfortably and peacefully inside the house nor do any work due to constant noise pollution nor were in a position to come out of their house due to constant fear of insecurity and restrictions put by the State.

The appellant was one of the most affected persons whose living in his house had become impossible due to these activities and finding no solution to the problem faced. This compelled him to first approach the Commissioner of Police and make an oral complaint but finding that no action was taken he filed a written complaint on 21.11.2011.

In the complaint, the appellant narrated the aforementioned grievances in detail and requested the Commissioner of Police to take immediate effective remedial steps to prevent such events

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Since the Commissioner of Police did not take any action on the complaint, the appellant had, on 06.03.2012, filed a complaint before the National Human Rights Commission (NHRC), New Delhi under the provisions of the Human Rights Commission Act, 2005 (hereinafter referred to as "the Act"). The NHRC forwarded the appellant's complaint to the Rajasthan State Human Rights Commission (RSHRC) for taking appropriate action in accordance with law. The RSHRC, on receipt of the complaint, registered the same being Petition No. 12/17/1720 and by order dated 24.09.2012 partly allowed the appellant's petition and directed the Additional Home Secretary to order the concerned officials to effectively stop interference with the right of the appellant herein to lead an independent and peaceful life and ensure that :

"1. The crowd of demonstrators does not assemble, on both roads opposite to the petitioner's house during the assembly sessions.

2. The demonstrators are not allowed to use high powered loudspeakers during day and night.

3. The road is not closed after stopping traffic and traffic movement is maintained in a sustained and orderly manner.

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4. The policemen are stopped from urinating in the proximity of the wall of the petitioner's house from the side of the M.L.A.'s complex during the Assembly Sessions.

5. No barricading is done on the road opposite to, and near, the house of the petitioner."

Despite issuance of the aforementioned directions, the State did not ensure its compliance and on the other hand, some miscreants attacked the appellant's house and hence out of disgust, the appellant was compelled to file writ petition being S.B. Civil Writ Petition No. 2273 of 2013 before the High Court of Rajasthan Bench at Jaipur, seeking appropriate reliefs by issuance of writ of prohibition/mandamus against the State and its authorities to protect the interest of the appellant, his property and his peaceful living.

Thereafter the matter was heard and disposed of by the learned single Judge holding that the State Government has already taken the requisite action within its power, to ensure for peaceful living of the petitioner in his residential house and is not unduly disturbed. Further it was observed that it was expected that the submission made by the Additional Advocate General before the High Court would be strictly implemented. Being dissatisfied with the order, the petitioner filed an Intra Court Appeal. The learned Division Bench decided the matter, more or less on

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the same lines on which the learned single Judge had disposed of the Writ Petition.

Being aggrieved of the same, the petitioner filed an SLP before the Hon'ble Supreme Court. The Hon'ble Supreme Court, followed the principles of law laid down in the case of In Re: Implementation of Laws for Restricting Use of Loud Speakers and High Volume Producing System, (Supra). The Hon'ble Supreme Court had also taken into consideration the case of *Ram Leela Maidan incident, In Re, (2012) 5 SCC 1.* Consequently, the appeal was allowed in part and the respondents were directed to ensure strict compliance of the directions contained in para 174 to 178 of the judgement of noise pollution (v) In Re (Supra).

54. Reverting to the facts of the case before us, as mentioned above it is important to note that earlier the protest/dharna/agitations were allowed only at Ram Leela Maidan, near Ajmeri Gate in Delhi. The said area was the place where people used to assemble for purposes ofprotest march and processions. It was the point from where the agitators were to start for their destinations like Parliament House, office/residence of the Chief Minister, the Home Minister, etc. etc. Subsequently, the battle ground for protestors and agitators came to be the Boat Club, near India Gate. Later, the Police shifted the place of agitation from Boat Club to Jantar Mantar, apparently for the reason that the said place was creating obstruction to traffic. It

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was the department of Police, as is also mentioned in the reply, that fixed this new place for agitations, dharnas, starting of processions, etc. upto a total number of 5000 people and in case of more, the venue would be Ram Leela Maidan. Though on this question both the parties are ad-idem that as on date Jantar Mantar is the place for holding dharna/agitations but strangely enough no order to that effect has been placed on record. It was specifically pointed out to the learned counsel for department of Police, New Delhi and was asked to submit the order by which the venue of dharna/agitation was ordered to be at Jantar Mantar, but they failed to do so.

55. Moreover, with passage of time, the place for agitators/protestors to assemble and start their processions had no longer remained at Jantar Mantar but came down to Jantar Mantar road which, as on date, is fully occupied by protestors, agitators, dharnas, temporary structures/make shifts, demonstrations, slogans, display of various articles and even animals like cows, buffalo's, etc. It had so happened mainly because the agitators and protestors were to ultimately move towards the Parliament House. But strangely, neither the Police nor NDMC tried to prevent them in moving away from Jantar Mantar. Resultantly, the entire Jantar Mantar road, stretching to its total width, has been covered by the protestors. Above all, when the agitation consisting of thousands and thousands

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of people assemble on Jantar Mantar road, no one is there to check their total number and in case of exceeding five thousand, to send them to Ram Leela ground at Ajmeri Gate.

56. Such a situation is nothing but misfortune of the applicant and other residents of Jantar Mantar road whose rights to live peacefully are not only affected by noise pollution, etc. but they are literally prevented from free ingress and egress to their residences. So far as taking of vehicles to the residences, on Jantar Mantar road is concerned even two wheelers, cannot go through. Residents are left to mercy of God in cases of emergency, even during day and in night, in the eventuality of ailments of children, aged members of the family or for any other reason which calls for immediate medical help/assistance. It is rather unique that the residents of Jantar Mantar road do not, many a times, use main entry gates/doors and on large number of occasionally they come either through back doors or after crossing over the premises of their neighbors.

57. In view of the above it is clear that the residents of Jantar Mantar road are not living a normal life, so much so that minimum requirement of using personal vehicles, etc. are not being available on account of large gathering of agitators and protestors who remain there round the clock. Day by day protests and dharnas are increasing tremendously, so also the number of people involved

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therein. The people in dharnas are also in large number and they stay at Jantar Mantar road, for days, months and in some cases also over a year. The difficulties of the residents are increasing and now they normally access their residences by going on foot. It is a matter of common experience for those living in Delhi and having the occasion of passing through that area, that the situation have deteriorated and it has become extremely difficult for anyone to even pass from a nearby place or around Jantar Mantar road. The condition of the residents of Jantar Mantar road can very well be visualized and their day to day difficulties can be assessed.

58. Apart from the aforesaid problems of petitioner and other residents of Jantar Mantar road to approach their residences, there are many other difficulties as for instance, health which varies like hearing problem, blood pressure, hypertension, and other serious diseases relating to heart, etc. with which the elderly persons are suffering. The children living there are not only having health problems but it is also effecting their education because of everyday difficulty in attending their educational institutions. Moreover, it has become extremely difficult for them to study at home because of constant disturbance coming from the road side which includes noise of slogans of the protestors/agitators and long speeches which are delivered through loud speakers by different protestors who are on

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dharna on Jantar Mantar road. As mentioned earlier, constant noise pollution results in many ailments and diseases particularly to the children who are still at the age of infancy and those who are senior citizens.

One of the major cause of health problem to the residents of the area is that they are unable to have complete sleep due to the disturbances on the road, just infront of them. The Hon'ble Supreme Court had taken a serious note of essential requirement of sleep and its entitlement of a citizen in the case of *Ramlila Maidan incident, In RE, (2012) 5 SCC.1.,* wherein it had observed as under:

> *" 327. An individual is entitled to sleep as comfortably and as freely as he breathes. Sleep is essential for a human being to maintain the delicate balance of health necessary for its very existence and survival. Sleep is, therefore, a fundamental and basic requirement without which the existence of life itself would be in peril. To disturb sleep, therefore, would amount to torture which is now accepted as a violation of human right. It would be similar to a third degree method which at times is sought to be justified as a necessary police action to extract the truth out of an accused involved in heinous and cold-blooded crimes. It is also a device adopted during warfare where prisoners of war and those involved in espionage are subjected to treatments depriving them of normal sleep."*

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59. It was emphasized by the counsel for the petitioner that it was extremely difficult to attend cases of emergency or of urgent need as they themselves remain in a state of uncertainty and under great mental pressure, as to how to deal with such a situation. Many a times it is difficult for the residents to have supply of essential items through vendors or nearby market places. They are gradually being isolated from their relatives, friends and as a matter of fact socially because the situation has so aggravated that the people have restrained themselves from coming to meet the residents at Jantar Mantar road. They are unable to have family functions or get together at their residences and they have to move out to some other venue.

60. Despite of pathetic conditions which the residents of Jantar Mantar road are facing, the civic authority namely; New Delhi Municipal Corporation have grossly failed to clean the area which has become a place for filth and litter, being caused by the people holding dharna, protest, etc. Similarly, the police authorities have also neglected their duty to maintain peace or make living of the residents of the area comfortable. A bare look to the material on record, primarily the photographs placed by the petitioner, leaves no room of doubt that Jantar Mantar road have turned into a battle ground for protestors and a permanent place to live for such people, including those from outstation. As a matter of fact, Jantar Mantar road has become an easy

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place of politics for the politicians, NGOs, religious groups, social organizations, etc. In addition to this, the difficulties of the residents are aggravated due to presence of large number of police and para military personals who are deployed there in the name of managing and controlling law and order.

61. The respondent State and its authorities have not even properly responded, much less to say taken appropriate steps, on the complaints, objections, representations which the residents have been making for all this period. On the contrary, the situation has worsened. The State has totally failed to protect the rights of the citizens to have pollution free environment, who are living in the area of Jantar Mantar road. It is the duty of the State as well as its authorities to ensure that the rights of the people to live a peaceful and comfortable life are not infringed at the hands of those who are creating noise pollution in the name of their right of freedom of speech and expression which can never be unlimited. The other people also have a right not to listen to those who are amplifying their speech with the help of loud speakers. Such people cannot force the others to listen to them by increasing the volume of their speech through devices, so as to force the unwilling persons to hear the noise which is of obnoxious level. The law of the land is that a citizen has a right to live in an atmosphere which is free from noise

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pollution and the same is guaranteed under the Constitution.

62. So called steps taken by the respondent State and its authorities are nothing but an eye wash. Not only the representation given by the petitioner and others to the authorities were left unattended but even before us the stand taken by the police department was that they are only to maintain law and order in the area when required. Further, it was submitted that it is the duty of the Corporation to clean the area and to remove unwarranted material. The stand of the Municipal Corporation was that they were only to take steps when complaints are raised by them or a specific information is sent from the site. It is only thereafter that they would be sending their persons on the spot for doing the needful. The net conclusion is that various authorities have been shifting their responsibilities on to the other and residents of Jantar Mantar road were being shunted from pillar to post, leaving them in a situation which is unimaginable and unheard of.

63. It is pertinent to note here that, the respondent State and its Authorities have in their counters/pleadings, as well as, submissions made before us, raised more technical objections than addressing on merits, to meet the case of the applicants who have raised contentions from many angles to show that their rights to live peacefully and comfortably have been infringed and there is violation of

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environmental laws, particularly in relation to noise pollution, health due to unhygienic conditions created in front of their residences, etc, etc. This reminds us of the observation made by Hon'ble Justice M.C Chagla, Chief Justice of Bombay High Court, in the case of ***Firm Kaluram Sitaram Vs. The Dominion of India,*** *AIR 1954 Bombay 50.* The Hon'ble Chief Justice had in that case reminded the State of their duty towards the citizen while contesting rights qua State. The significant observations made by the High Court were as follows:

> *"....We have often had occasion to say that when the State deals with the citizens which should not ordinarily rely on technicalities, and if the State is satisfied with the case of the citizen is a just one, even though legal defences may be upon it, it must act, as has been said by eminent Judges, as an honest person...."*

The said statement of law needs to be followed as the Constitution cast a duty on the State and its authorities to ensure that every citizen's cherish right guaranteed under it are respected as well as preserved and he/she is allowed to enjoy it in letter and spirit subject to reasonable restriction put on them, as dreamt by the framers of the Constitution.

64. In view of the aforementioned facts and circumstances it is amply clear that the petitioners are suffering because of gross violation of laws, air pollution

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and health hazards due to lack of cleanliness and non-performance of duty by the authorities of the State which is endangering their life. The environmental condition at Jantar Mantar road in relation to noise pollution, cleanliness, management of waste and public health has grossly deteriorated. Besides, constant dharana, slogans, etc. noise pollution, health problems due to unhygienic conditions generated by the agitators, round the clock, is unique in the instant case. Such a situation is being faced by the petitioners and other residents of the area since a long time and all efforts made by them to persuade the authorities to make Jantar Mantar road clean and pollution free have not yielded any result. The residents are not living in normal conditions much less to say in a peaceful and comfortable atmosphere, at any point of time.

The situation is becoming alarming, day by day, in so far as health conditions of the petitioners and other residents are concerned. A long span of polluted environment has been affecting the health of the persons of different age groups who are residing in the area. As mentioned above, noise pollution alone in the present case is at its extreme. Moreover, it continues even after sunset and many a times in the early hours of the morning. Even for the respondent authority, in respect of noise pollution, public health, etc. as it exists at Jantar Mantar road, appears to be beyond their control. During the course of

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hearing on 09th May, 2017, after taking stock of the situation and on submissions made from both the sides, respondents were asked to inform if there is an alternative site for the purpose of protest and dharnas. Thereafter, on the next date of hearing it was submitted on behalf of respondents that there is an alternative site available namely; Ram Leela Maidan, for the said purpose.

65. For the reasons stated supra, it is crystal clear that the case of the petitioner has merits. The protest/dharna and agitation on the stretch on Jantar Mantar road is without any authorization or order from a competent authority, wholly illegal and in gross violation of laws, interalia, relating to pollution. The activities to have make shifts and temporary structures, use of loud speaker, public address system, etc., etc. are without permission from any competent authority and therefore the same is wholly illegal. The continuance use of the area by the protestors/agitators is violation of environmental laws including Air (Prevention and Control of Pollution) Act, 1981. The petitioners have a right to live peacefully, comfortably and in an atmosphere free from pollution at their residences. The people participating in dharna, protest, etc. and raising slogans as well as giving speeches through amplifiers and loud speakers have no right to compel petitioner and others living in the area to listen the same and tolerate it day and night.

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66. In the circumstances we are of the considered opinion that merely giving directions to the respondent authorities to control the agitators would not be of any use. More so when the circumstances show that even the respondent authorities have failed to control and regulate the protestors in their activities, held at Jantar Mantar road. It is a settled principle of law that the court should grant such reliefs as the parties may be found to be entitled to equity and justice. In order to make a remedy claim by the party to be just and meaningful and in accordance to the realities, a court should grant appropriate relief. Having considered the facts and circumstances, the history of a long period, the action taken by the respondent authorities and the severity of the grievance raised by the petitioners, issuance of directions alone to the respondents to control and regulate would neither be sufficient nor adequate. Moreover, it is a fact that the activities at Jantar Mantar road are being carried on illegal and unauthorizedly without any order of the competent authority. As per the case of the respondents, even now when the gathering of people is more than five thousand the dharna and protests are to be at Ram Leela Maidan. Therefore, in our view, it would serve the ends of justice and equity demands that the venue for dharna/protest be shifted to the alternative place available as per the statement made by the respondents. Even otherwise it would be in the fitness of

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things to have a single venue for the purpose of assembling of people for dharna/agitation. The place for such activities has already been earmarked at Ram Leela Maidan, for gathering of more than five thousand people. This would strike a balance between the rights of the people in respect of their freedom of speech and expression and that of all the residents of the Jantar Mantar road to live a peaceful, comfortable and pollution free life at their residences.

67. Consequently, we allow this application and issue the following directions:

I. The respondent Government of Delhi, New Delhi Municipal Corporation and Police Commissioner, Delhi to immediately stop all the activities of dharna, protest, agitations, assembling of people, public speeches, using of loud speakers, etc.at Jantar Mantar road.

II. NDMC is directed to remove all make shifts/temporary structures, loud speakers and public address system from the said stretch of Jantar Mantar road.

III. NDMC is also directed to remove the garbage/waste lying on the stretch of Jantar Mantar Road and clean the entire area.

IV. The respondent shall shift the protestors, agitators and the people holding dharnas to the alternative site at Ram Leela Maidan, Ajmeri Gate, forthwith.

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V. The respondents are directed to comply with this order within four weeks from the date of pronouncement of the judgement.

VI. The Chairman, New Delhi Municipal Corporation, the Police Commissioner, Delhi and Government of NCT of Delhi shall file their respective compliance report before the Tribunal within five weeks from the date of the judgement.

When such reports are received, the registry is directed to register the same and place before the Tribunal. There shall be no order as to cost.

.....
Justice Raghuvendra S. Rathore
(Judicial Member)

.....
Dr. Satyawan Singh Garbyal
(Expert Member)

New Delhi.
Dated: 05th October, 2017