BEFORE THE NATIONAL GREEN TRIBUNAL SOUTH ZONE AT CHENNAI

Application No. 239 of 2021

Navroz Kersasp Mody & Anr

…Applicant

v.

The Auroville Foundation & ors

…Respondents

WRITTEN SUBMISSIONS FILED BY THE 1ST RESPONDENT

The present application bearing no. 239 of 2021, preferred under Section 14, 15 read with 18(1) of the NGT Act, prays to:

a. *Direct the 1st Respondent to Prepare a detailed development plan including a mobility plan which is based on and respects the present day ground realities to be approved as mandated in the master plan and implement projects based on such plan after necessary impact estimates and feasibility studies in an environmentally sustainable manner*
b. *Direct the respondents to pay cost to the applicant.*

II

a. The above prayer clearly indicates that the applicant seeks a mandatory injunction directing the respondent to implement projects in their township after the detailed development plan is prepared and approved and for costs.
b. The applicant has described this subject project in paragraph 6 of the application. A reading of the application would demonstrate that the triggering point for filing the application was the activity of the respondent in laying the crown road which is a road encircling the

centre of the township. The pleading also discloses that the roads have been indicated in a master plan already available. The grounds on which the mandatory injunction is sought areas under:

(i) That the respondent is felling the trees for the purpose of laying the road without permission.

(ii) The respondent has not assessed the impact of proposed road projects on "fragile ecology" of Auroville.

(iii) The master plan is not a project document and each component of the master plan needs to be studied and assessed before implementation.

(iv) The action is arbitrary and illegal.

c. The admitted facts are asunder:

(i) Auroville was inaugurated on 28.02.1968

(ii) The lands in question are owned by Auroville Foundation.

(iii) Auroville Foundation is an autonomous organisation created by an Act of Parliament in 1988.

(iv) A master plan for Auroville was formulated in 1999 by the Residents Assembly of Auroville Foundation for the approval of the Governing Board.

(v) The Governing Board referred the plan formulated by the Residents Assembly to the Town and Country Planning Organisation (TCPO) of the Ministry of Urban Development (GoI) for an expert review. The TCPO and other experts improved the plan but retained the overall lay-out with the circular Crown Road, the outer ring and radials connecting both.

(vi) The plan thus named as "*Auroville Universal Township Master Plan (perspective 2025)*" was approved by the Governing Board and the Ministry of HRD in February 2001 and was notified in the Gazette in August 2010.

d. The Respondent filed a counter explaining the entire backdrop of the case and contended that the vested interest of certain persons is being fought by the Applicant who himself has felled enough number of trees to put up a building where he stays while some other residents had put up a shack abetting the Crown road and removal of the shack also

triggered this application. The respondent also contended that the application is misconceived and at the most a pure civil litigation has taken the shape of an environmental issue.

e. The applicant filed an additional affidavit after obtaining an interim order *ex-parte* and thereafter filed a rejoinder and paper books in instalments while the matters were being argued by him.

f. The applicant changed gears and pressed into service the provisions of the Tamil Nadu Town and Country Planning Act, 1971 and focused his attention mainly on the absence of approval by the said authority.

III. The pleadings and the provisions of law relating to thesame:

- The procedure for preferring the application is governed by the provisions of the National Green Tribunal Act, 2010 and rules framed there under. Section 14 enables any aggrieved person to prefer an application before this Hon'ble Tribunal seeking compensation or settlement of dispute. The dispute in this case is building a road on respondents own land and nothing more.
- Under Section 18, an application has to be made in the manner prescribed.
- Rule 8 of the National Green Tribunal Practice and Procedure Rules, 2010 deals with filing of application. An application is to be presented in form I.
- Rule 13 deals with content of the application and it also requires the documents to be relied upon by the applicant to be referred to as annexures A1, A2,etc.
- Rule 16 deals with filing of reply by the Respondent and sub- rule (3) requires adherence to Order 6 Rule 15 of CPC. Amendment of pleadings is permitted under Rule 16(7) which intern refers to Order 6 Rule 17 CPC. The reading of the provisions clearly indicates that even though the strict procedure adopted in the civil courts may not be applicable, pleading in a specified manner is a prerequisite and it is so because a person called upon to answer a complaint or a plaint should know the case that he has to meet.
- These provisions are referred to only to show that the plea taken by

the applicant in the application is quite different from the one projected in the additional affidavit and rejoinder and the pleadings were never sought to be amended.

- The general principle of approbate and reprobate by the applicant deserves to be considered by this Hon'ble Tribunal. It is thus most respectfully submitted that in the absence of the applicant seeking leave to amend the pleadings in a manner provided under the rules, the applicant ought not to be permitted to plead a completely new case through the additional and rejoinder affidavit.

III. The defence is on the following grounds:

1. The application is not maintainable as the application as was originally preferred does not satisfy the conditions set out in Section 14 of the NGT Act.
2. The place earmarked in the master plan for laying the Crown and other roads is not a forest as is witnessed from revenue records.
3. Environment impact assessment does not apply to such laying of roads which is actually an internal road of Auroville to have access to various places in Auroville, including the Matrimandir (the soul of Auroville in the words of the Mother), Bharat Nivas, various community services etc..
4. The Tamil Nadu Town and Country Planning Act, 1971 is not applicable to the project referred to in the application.
5. The ownership of the lands has been vested in the Auroville Foundation by the Central Government and would revert to Central Government on dissolution of the Auroville Foundation and are therefore ultimately owned by the Central Government.

IV. Applicability of Section 14 of the National Green Tribunal Act,2010:

Section 14 deals with the jurisdiction of this Hon'ble Tribunal to settle disputes. It postulates that all civil cases can be entertained by this Hon'ble Tribunal only if such civil case involves substantial question relating to environment.

It is also necessary that such substantial question relating to environment

should arise out of the implementation of the enactments set out in Schedule I. Schedule I lists out 7 acts. The applicant has referred to an internal access road of Auroville as a forest. His case, though not explicitly spelt out in the application, may have relevance to the Environment (Protection) Act, 1986. Hence, the applicant should establish that the area referred to in the application is a forest within the meaning of the Forest Conservation Act, 1980 or the impact study as per Section 3 of the Environment (Protection)Act,1986.

The contention of the applicant is that there were trees in the project area and that these were being felled to lay the road. According to the applicant, if trees are found anywhere, it could mean that there is a forest. Therefore, according to the logic of applicant, even a man-made tree plantation, for any purpose, including trees grown inside Auroville would come within the meaning of "forest".

The averment made by the applicant that there were trees is only a part of the truth. The entirety of the allegation has to be proved by the applicant. In this context it is therefore relevant to scan through the Auroville Universal Township Masterplan. This document is referred to and relied upon by both the applicant as well as the respondent.

The very preamble of the master plan document states that a master plan serves an important instrument to guide the process of urban development. Paragraph 1.1.2 makes it clear that it is a policy framework and therefore has to be implemented.

The township boundary is referred to in para 1.3.2 (page 13 of the master plan document). The lands constituting the township is situated both in Tamil Nadu and in Union Territory of Puducherry. These lands are owned by the Auroville Foundation and the applicant has no ownership right into and upon the lands or the buildings on it, including the buildings where he is staying or working (refer to para1.12.1 on page 37 of the document).

In para 1.12.2, it is show that 83% of the land within the city area is under the control of Auroville Foundation while the remaining 17% needs to be acquired (status as in 2001).

Table 22 on pages 76 to 81 of the master plan document gives details of the "Development Plan Five Year Programme 2001-2006".Serial no.2 in part F of the table deals with the "Crown and outer ring" and "Security lighting" with estimated costs of respectively INR 1.60 Crore and INR 0.75 Crore. This goes to show that the implementation of the Crown road was included in the master plan itself.

Paragraph 1.4.2 of the master plan describes that the central part of the designated township is more than 50m above sea level causing uncontrolled run off and soil erosion. It is for this reason that bunds were built and trees were planted even in areas designated for future roads and buildings.

Matrimandir is called as a spiritual centre and in the words of Mother, "the symbol of Divine's answer to man's aspiration for perfection, union with the Divine manifesting in a progressive human entity" (refer to Para 1.9.18 and 1.9.19). The crown road gives access to the city centre, including the Matrimandir and to the township zones.

It is an admitted fact that the masterplan deals with the access roads to Matrimandir and the township as a whole.

Trees have been planted in four area categories as follows:

a. Trees planted in the greenbelt.
b. Trees planted in the green corridors inside thecity.
c. Trees planted outside the masterplan area.
d. Trees planted within the city for the sole purpose of preventing soil erosion until the time of development, as contemplated by the masterplan.

The trees referred to in categories 'a' to 'c' above would not be felled whereas trees in category 'd' are meant to be removed at the time of development. None of the trees planted in Auroville result in any part of Auroville becoming a forest by the mere fact of such tree plantation. Even the trees planted in the a-c categories listed above, do not make any of these land areas into a "forest" or "deemed forest".

The revenue records have been produced and they demonstrate that the lands were not ever considered to be forest. This is supported by the

documents.

In this context, it is relevant to refer to the judgment in *Anand Arya and Anr. Versus Union of India (2011) 1 SCC 744.* The relevant paragraphs are paragraphs 17, 19, 25, 28, 29, 30, 35 and 37. The ratio laid down is that mere existence of trees would not make an area a forest. In paragraph 8 of the judgment, a reference is made to Order dated 12.12.1996 in T.N. Godavarman Tirumalpad's case 1997 2 SCC 267. A direction therein was given to the state government to all state governments to constitute an expert committee and identify areas which are forests irrespective of whether they are so notified, recognised or classified under any law and irrespective of ownership of land of such forests and few other aspects. This township has not been consciously declared as forest land pursuant to the direction of the Supreme Court. It is yet another factor to show that the land involved is not forest land.
Consequently, Forest Conservation Act does not stand attracted.

EIA Notification, 2006 does not deal with the project that is presently being undertaken. The Ministry of Environment, Forest and Climate Change was directed to file a specific counter in this case. In paragraph 13 and 14 of the said counter, it is specifically averred that the township project does not attract EIA Notification, 2006 and its subsequent amendments. Consequently, environment protection Act, 1986 is not applicable. The result would be that Section 14 of the National Green Tribunal Act, 2010 is not attracted and the application deserves to be dismissed.

V. Applicability of TamilNadu Town and Country Planning Act,1971.

At the oustet, as has been submitted above, the Tamil Nadu Town and Country Planning Act,1971 is not on the enactments mentioned in Schedule I of section1 4 and hence is outside the scope of consideration of this Hon'ble Tribunal. In Aurguendo and without prejudice to the said primary submission, it is submitted that Section 2(13) of the Act defines 'development'. The legislature has employed the expression "means" and the definition is therefore exhaustive. The proviso to Section 2(13) excludes a few activities from the ambit of the expression 'development'. Two such exceptions are to be noted. They are:

- The use of any building or other land within the curtilage of a dwelling house for any purpose incidental to the enjoyment of the dwelling house as such.
- The carrying out by local authority of any temporary work required for maintenance or improvement of work or works carried out on the land

within the boundaries of around.

Section 2(2) of the Act defines 'amenities' to include streets. The road is an amenity and a provision for the same cannot be treated as a project that impacts the environment. The settled principle of law in environmental jurisprudence is that there has to be a balance between development and environment protection and the present regime is aimed at principle of proportionality. Viewed from this angle, the project undertaken cannot be brought within the meaning of development under the Tamil Nadu Town and Country Planning Act, 1972.

Before proceeding with the Town and Country Planning Act, it is necessary to consider the Auroville Foundation Act, 1988. Section 3 transfers all undertakings of the society to the Central Government. Section 4 explains the vesting and Section 11 deals with Governing Board and Section 17 deals with the powers of the governing board. Section 17(e) mandates the governing board to prepare a master plan of Auroville in consultation with the Resident Assembly to ensure development of Auroville as so planned. The masterplan of Auroville is therefore the masterplan of the Cultural Township. Section 19(2)(b) requires Resident Assembly to formulate the master plan of Auroville and make necessary recommendations for the recognition of organisations engaged in activities relatable to Auroville for the approval of the Governing Board. Section 22 deals with dissolution of foundation and states that on dissolution, as per sub clause 2(c), all properties of the Foundation shall vest in the Central Government. Section 27 gives an overriding effect to the Act. Thus, it can be seen that Central Government is the ultimate owner of the lands. The execution of works at Auroville began in 1968 itself and as such, it cannot fall within the ambit of Schedule 8(b) of the Environment Impact Assessment Notification, 2006.

The control of development and use of land in the Town and Country Planning Act, 1971 is dealt with from Section 47 onwards. Sections 47 exempts State and Central Governments or Local Authority from using any land to carry out any development otherwise done in conformity with such development plan. Similar exemptions are drawn out in Sections 48 and 49 also. Section 58 deals with development by Central Government. All these aspects have been considered by a full bench of the Hon'ble High Court of

Judicature at Madras in the matter of P. Karthikeyan V. Commissioner of Corporation, vide order dated 07.10.2021. Attention is invited to paragraphs 151 to 155. Section 58 requires an information to be given and this has been done. The applicant had referred to a letter addressed to the member of parliament to the government of Tamil Nadu and the content would show that it was merely for the information of the Government of Tamil Nadu.

In any event, the arguments based on Town and Country Planning Act cannot be entertained by virtue of Section 27 of the Auroville Act, 1988 which provides for an overriding clause and as submitted above, is outside the jurisdiction of this Hon'ble Tribunal.

It is therefore prayed that this Hon'ble Tribunal may be pleased to dismiss this instant application.

Dated at Chennai, on this 24th day of January 2022

Counsel for the 1st respondent