

**BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI**

O.A. NO. 881/2022

In the matter of:

Rajinder Krishan Sharma & Anr.

...Petitioners

Versus

Union of India & Ors.

...Respondents

NDOH: 13.09.2023

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RESPONDENT NO. 8**

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Through

Shubham
D/9436/2022

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New Delhi
10.09.2023

BEFORE THE NATIONAL GREEN TRIBUNAL

PRINCIPAL BENCH

NEW DELHI

.....

Original Application No.127/2013

And

Original Application No. 155/2013

And

Original Application No. 156/2013

And

Original Application No. 120/2013

In the matters of:

1. Mrs. Ranjana Jetley
R/o House No. 185,
National Media Centre,
Gurgaon-122002
Haryana
2. Mrs. Harsaran Bir Kaur Pandey
R/o House No. 87,
National Media Centre,
Gurgaon-122002
Haryana
3. Mrs. Sudha Kumar
R/o House No. 100,
National Media Centre,
Gurgaon-122002
Haryana
4. Mr. Sanjay Ahirwal
R/o House No. 184,

National Media Centre,
Gurgaon-122002
Haryana

5. Mr. Lavneet Gyani
R/o House No. 65,
National Media Centre,
Gurgaon-122002
Haryana

.....Applicants

AND

1. Union of India,
Ministry of Environment and Forest
Through the Environment Secretary
Government of India
Paryavaran Bhavan,
CGO Complex, Lodhi Road,
New Delhi-110003
2. Central Pollution Control Board
Through its Secretary
Parivesh Bhawan,
CBD-cum-Office Complex
East Arjun Nagar,
Delhi-110032
3. The State of Haryana
Through the Chief Secretary,
Having office at:
4th Floor, Haryana,
Civil Secretariat, Sector-1,
Chandigarh
4. Haryana State Pollution Control Board
Through its Secretary
C-11, Sector-6,
Panchkula,
Haryana

5. Haryana Urban Development Authority
Through its Chairman
HUDA Office Complex,
C-3, Sector 6,
Panchkula
Haryana
6. Deputy Commissioner
Gurgaon Division
DC Office
Gurgaon
7. Commissioner of Police, Gurgaon
Police Commissionerate,
Gurgaon,
Haryana
8. DLF Limited
Through its Managing Director,
Having registered office at:
Shopping Mall, 3rd Floor,
Arjun Marg, DLF City Phase-I,
Gurgaon,
Haryana 122002

Also at

DLF Centre,
Sansad Marg,
Connaught Place,
New Delhi

.....Respondents

Counsel for Applicant:

Mr. Chetan Chawla, Sr. Adv. Along with Ms. Megha Mehta
Agarwal, Adv.

Mr. Rahul Choudhary, Adv. along with Ms. Richa Relhan, Adv. in Original Application No. 120/2013.

Counsel for Respondents:

Mr. Narender Hooda, Sr. Adv. , Mr. Vineet Malik, Adv. & Mr. D.P. Singh, Adv. for Respondent No. 1 & 2 in Original Application No. 120/2013

Ms. P. Batra Singh, Adv. and Mr. Salauddin Khan, Adv. for Respondent No. 1 in Original Application Nos. 127, 155, 156/2013

Mr. Rajkumar, Adv. for Respondent No. 2

Mr. Narender Hooda, Sr. Adv. with Mr. D.P. Singh, Adv. and Mr. Vineet Malik, Adv. for Respondent Nos. 3,4,6,7 & 10

Ms. Anubha Agrawal, Adv. with Mr. Ravneet Joshi and Mr. Pratham Devedi, Adv. for Respondent No. 5

Mr. Rajiv Nayar, Sr. Adv. and Mr. Karan Chopra, Adv., Ms. Deepti Sarin, Adv., Mr. Ishant Gaur, Adv. for Respondent No. 8

Mr. S. Nanda Kumar, Adv., Mr. Parivesh Singh & Mr. R. Satish Kumar, Adv., Mr. P. Dhayanand, Adv. for Respondent No. 9

NGT

JUDGMENT**PRESENT:****HON'BLE MR. JUSTICE DR. P. JYOTHIMANI (JUDICIAL MEMBER)****HON'BLE MR. JUSTICE M.S. NAMBIAR (JUDICIAL MEMBER)****HON'BLE DR. G.K. PANDEY (EXPERT MEMBER)****HON'BLE PROF. A. R. YOUSUF (EXPERT MEMBER)**

Hon'ble Dr. G.K. Pandey (EM)**Date: 1st, April, 2014**

1. The above applications were filed in NGT against the proposed widening of sectoral roads involving cutting of number of trees in front of National Media Centre (NMC). The Project Proponents stated to be involved in the project are Haryana Development Authority (HUDA) and DLF Ltd. The main contention of the applicants is that there will be significant air and noise pollution problems due to movement of traffic in the area due to cutting of trees which were acting as a buffer and reducing noise & dust pollution. Incidentally, an email was received by NGT from Haryali Welfare Society addressed to the Hon'ble Chief Minister of Haryana and the Copy was sent to NGT raising the similar issues pertaining to the cutting of trees by DLF/HUDA, which was treated as an Application no. 120/2013. Regarding this Application No. 120/2013, NGT passed the order restraining the Respondents from cutting/felling or uprooting any tree on the site in

question on 2/08/2013. Besides these two applications, other two applications were registered i.e. Application No. 156/2013 filed by Mrs. Krishan Devi and Application No. 155/2013 filed by Mr. Rajpal Yadav & Ors. VS Union of India & Ors.

2. The applicants have mentioned that there have been violations of numerous environmental obligations by the Respondents in respect of road widening project in Gurgaon being undertaken by Respondent no. 8 (DLF) and Respondent no. 5 (HUDA). The applicants have stated in their applications that there is NH-8 passing close to the National Media Centre (hereinafter referred to as "NMC") which is a housing society in which the applicants are residing. The area of NMC is about 2 acres having 200 meters of length and 50 meters of width. The plot of 2 acres was stated to be owned by the society. However, when the licence was issued by the State of Haryana (Respondent No.3), it was mentioned that the said area shall be retained as green belt. According to the applicant, there were 111 trees of various species and sizes with 51 trees of above 20 feet height. The contention of the applicant is that respondent no. 8 (DLF) has obtained right on the said 2 acres of land to expand the slip road appurtenant to NH-8 into their own projects and properties which are next to the NMC. Even though the slip road is adjacent to National Highway but the

extension of the slip road is being done privately by Respondent no. 8 for its own private use and for the purpose of making value addition of its own properties. It is alleged by the Applicant that this project will increase value of DLF property but is being undertaken by HUDA in a 50:50 participation basis. The Applicants submit that in order to achieve the goal of expanding the slip road, the Respondent No. 8, is seeking to destroy the entire green belt and to achieve the said purpose is removing the trees from the said plot of land. The entire extended 8 lanes fall upon the 50 meters green belt and would thereby destroy all trees on the said green belt which acts as a buffer against vehicular pollution. It is averred that the destruction of green belt would expose the residents to severe and incessant pollution which is likely to cause respiratory diseases as well as cancer, with the elderly and children being more prone to the ill effects.

3. Another Applicant, Haryali Welfare Society through Application No. 120/2013, has submitted that maintaining of green belt is a part of Para 4.2 of the National Forest Policy, 1988, which provides that green belt should be raised in urban/industrial areas as well as in arid tracts. The policy also provides for modifying the laws wherever necessary to facilitate and motivate individual institution to undertake tree farming. Further, in Lafarge Umiam Mining (P) Ltd. v. Union of India (2011)

7 SCC 338, the Hon'ble Supreme Court has held that the principles/guidelines mentioned in the National Forest Policy, 1988 should be read as part of the provisions of the Environment (Protection) Act, 1986 read together with the Forest (Conservation) Act, 1980. According to the applicant there is no requirement of widening of road from 60 meters to 78 meters from NH-8 to Sector-55 & 56 in Gurgaon. Also an accusation has been made by the applicants that the land available for compensatory plantation or the type of trees which will be planted by the HUDA is doubtful and without looking at the availability of land with HUDA, the Forest Department simply granted permission for cutting down 1055 trees in April 2012 for the purpose of the widening of the aforementioned road. The counsel for the applicants has also raised the requirement of seeking EC under the EIA Notification 2006 for the said project of widening of sectoral road. Ld. Counsel for the applicant has, further, submitted that the said road widening project has been done in the green belt area and no new green belt areas are being developed and already existing green belt areas are being shown as the areas for compensatory plantation works indicating that we are losing the green belt area for developmental works but not adding any further areas to be compensated for the losses of the green belt. In addition, there is no disclosure of the location of 246 transplanted trees and

their status about survival and the Forest Department has not verified the same.

4. While hearing the applications, the NGT felt the need of directing vide its order dated 06/01/2014 to the State of Haryana to file a specific affidavit to the effect as to whether the disputed land forms part of the extent of 1,54,706 hectares of land which includes 12,527.94 hectares stated to have been declared as forest land by the Government of Haryana. In addition to that the Ld. Additional Advocate General under took to produce copy of the affidavits before NGT which were filed before the Hon'ble Supreme Court on earlier occasion. In a written statement of Sh. SR Jotriwal, Principal Chief Conservator of Forest (PCCF), Haryana, it has been submitted that the land in question is a green belt maintained by Haryana Urban Development Authority where avenue plantations were raised by HUDA on either side of the HUDA sector road connecting National Highway No. 8 to HUDA sector 55/56 of Gurgaon. The said green belt in question has never been treated or maintained in Government record as forest and is not a part of 1,54,706 hectares of land including 11513/12527.94 hectares of land notified under section 4 and 5 of The Punjab Land Preservation Act (PLPA), 1900 as mentioned in the affidavit dated 8/12/1996 filed by the PCCF, Haryana in the Hon'ble Supreme Court in civil writ petition number 171 of 1996

in the case titled Environmental Awareness Forum vs State of Jammu & Kashmir and others. It has further been submitted by the PCCF, Haryana that the Forest Department has no jurisdiction or control on the said land except for giving permission for felling of trees on the land in question. It is seen from the document submitted before NGT that HUDA had written to the Forest Department on 24/11/2011 and 25/11/2011 seeking permission for cutting of 1080 Nos. of trees including transplantation of trees in respect of the upgradation of 60 meter wide road adjacent to NH-8 in Sector 55-56, Gurgaon for which the work was awarded to M/s DLF Ltd. The Forest Department on 22 March 2012 has accorded permission for transplantation of 236 trees with certain conditions. The Forest Department also granted permission on 4/4/2012 for felling of 1055 trees under Section 4 of the Punjab Land Preservation Act, 1900 with a condition that 10 times of the trees felled be planted at owners cost and preferably on owners land which will be monitored by the Forest Department. It also stated in its permission that out of 1055 trees, there are 246 trees falling in Misc. categories such as Eucalyptus, Poplar, etc. which are exempted and need no permission. A notification dated 28/11/1997 was brought out by the Forest Department which is valid for the period of 15 years from the date of its publication in the official gazette for

the specified areas that the cutting of trees or timber except Eucalyptus and Poplar or the collection or removal or subjection to any manufacturing process of any forest produce other than flower, fruit and honey, are allowed for bonafide domestic or agricultural purposes to the right holders in the land, provided that the owners of the land may sell trees or timber after obtaining permit to do so from the Forest Department. This notification was valid for 15 years from the date of its publication in the official gazette which has expired on 27/11/2012, and it is not known from the records available to us as to whether the notification/order dated 28/11/1997 has been further extended or not.

5. The horticultural division of HUDA of Gurgaon has intimated to the Range Forest Department, Gurgaon on 3/7/2013 that 11000 number of plants of various species have been planted/being planted by HUDA in the various sectors which include sector 9A Gurgaon, Sector 31, STP plant area in Gurgaon, Sector 90, 91, 92 in Gurgaon and Sector 53 in Gurgaon and photographs of afforestation were also submitted. It is seen from the photographs that mostly champa plants (smaller trees) have been planted which doesn't provide proper green cover and is of basically ornamental nature. As such, it may not serve the purpose of green belt which is expected to provide coverage at 3 levels i.e. Lower level, middle level and

upper level. In fact, this has been one of the contentions of the Ld. Counsel Mr. Rahul Choudhary for the Appellant No. 120/2013 that HUDA has mainly planted champa trees and such other species which do not provide proper green coverage to cover the 3 levels and the species planted can be cut without seeking permission from the Forest Department, thereby defeating the aims and objectives of the purpose of compensatory afforestation. The Ld. Counsel for the applicant Haryali Welfare Society also submitted that HUDA/DLF require EC for the road widening project and as the area under construction is more than 20,000 sq. meters, he felt that the provisions as given in the Schedule of the EIA notification, 2006 under 7(f) and 8(a) be read together and as such EC would be needed for the said project. He also emphasised that under the Forest Policy, it is necessary as per para 4.2 to maintain green belt in the urban areas, especially para 4.2.2 which reads as below:

“It is necessary to encourage the planting of trees alongside of roads, railway lines, rivers and streams and canals, and on other unutilised lands under State/corporate, institutional or private ownership. Green belts should be raised in urban/industrial areas as well as in arid tracks. Such a programme will help to check erosion and desertification as well as improve the microclimate.” But

then the Forest Policy has not been statutorily recognised so as to make it enforceable.

6. Ld. Counsel Mr. Rahul Choudhary for the applicant has also argued that HUDA has not indicated any new areas where green belt will be provided as also the details of the plant species to be planted have not been given. Also, there is no averment made by the Forest Department with respect to the monitoring of the stipulated conditions which were provided by them during the time of according permission for cutting of various trees.

7. Mr. Rahul Choudhary, Ld. Adv. has also cited the NGT judgement dated 08/04/2013 passed in Application No. 15/13 (P.B. No. 13/2011 THC) in the matter of Association of Socio Environmental Assistance & Action Vs Union of India, wherein the need of raising green belt was emphasised and project proponent was directed to provide the same failing which the project proponent was made liable to pay a compensation of Rs. 5 crores.

8. Mr. Chetan Chawla, Ld. Senior Adv. for the appellant contended that it is HUDA and the State Government that are answering the issues raised during the hearing and the DLF did not answer/ reply to the arguments on merit in respect of environmental concerns raised. The provision of Section 14 of the NGT Act are applicable in this case as water table is diminishing in Gurgaon and the provisions of The Air (Prevention and Control of Pollution)

Act, 1981 are also attracted due to the said widening of sectoral road project which may lead to air pollution creating noise problems to the residents of the area due to movement of vehicles. He also submitted that the prevailing ambient noise levels in the area which were already on higher side may further go up.

9. The Counsel for the respondents have however refuted the contentions made by the advocate for the applicant and stated that the relevant issues are not covered in the Forest Conservation Act 1986 as forest land is not involved in cutting of the green belt as also the provisions of the EIA Notification 2006 and EPA, 1986 are not attracted as no EC is required. However, the Advocate for the Applicant, disagreeing with the above submissions stated that India is signatory to a number of International Treaties and Conventions on environment and there are substantial questions of environment involved due to cutting of large number of trees and emissions of toxic gases from the vehicles which may have adverse effects on the residents of the area, especially on the NMC residents who are located in close proximity to the widening of sectoral road project. He vehemently opposed the project in question which he felt is against the protection provided to the citizens under the Article 21 of the Constitution of India, which states that no person shall be deprived of his life or personal liberty except through the procedure

established by law. Right to Life is one of the basic human right and not even the State has the authority to violate that right; *Siddharam Satlingappa Mhetre v. State of Maharashtra*, JT 2010 (13) SC 247: (2010) 12 SCALE 691.

10. He, further, argued that about 150 trees have already been cut by DLF/HUDA and 75 trees are only left in the area in question. However, according to the Ld. Additional Advocate General, Haryana, only 26 trees are required to be cut. Mr. Chetan Chawla, Ld. Senior Adv. for the appellant further stated that urban areas should have green belt as per para 4.2 of the National Forest Policy 1988. He also cited *Lafarge Case* decided by the Hon'ble Supreme Court in I.A. NOs.1868, 2091, 2225-2227, 2380, 2568 AND 2937 IN WRIT PETITION (CIVIL) No. 202 OF 1995 highlighting the importance of green belt/cover and afforestation. He also cited NGT judgement on *Goa Foundation* in M.A. 49 of 2013 in Application No. 26 of 2012 regarding maintainability in terms of the provisions of the NGT Act. All cases where substantial question relating to environment and disputes are involved, they fall in the domain of NGT.

11. Mr. Narender Hooda, Ld. Sr. Adv. appearing for R-3, R-4, R-6, R-7 and R-10, has stated that in the matter of *T.N. Godavarman Thirumulkpad vs Union of India & Ors.* on 12 December, 1996, the State Government has informed to the Hon'ble Apex Court that about 12,000 hectares of

land is forest land in Haryana. He clarified that the project in question does not fall under the category of the said forest land and as such the provisions of the Forest Conservation Act, 1980, are not attracted. He, further, informed that the project is not falling under the Aravalli Notification of MoEF and is about 20 Km. away from the Sultanpur National Park. The documents submitted by HUDA also indicate that the plants to be cut are not part of Aravalli Plantations. He, also stated that the provisions of the EIA Notification 2006, are also not applicable to the project in question as it does not fall under widening of the National Highways or State Highways. In fact the project in question involves the widening of the Slip/sectoral road and at best the project is covered under The Punjab Land Preservation Act, 1900 and for cutting of trees proper permission was taken under Section 4 of The Punjab Land Preservation Act. In fact, Mr. Hooda, Sr. Adv. also raised the issue of maintainability of the application under Section 14 of the NGT Act as none of the Acts included under the Schedule given to the NGT Act, 2010 are involved in this case.

12. Ms. Anubha Agrawal, Adv. for R-5(HUDA) informed the court that no forest land is involved for the project site in question and the land in the disputed site falls in the category of the green belt which is out of the purview of the forest land. EC is also not required from MoEF for the

widening of the side/ sectoral roads and she categorically stated that the project in question is not an extension of the National Highway or the State Highway. Efforts have already been made to save maximum number of trees possible and the plants/trees have been cut or proposed to be cut to the bare minimum and after taking proper permission from the Forest Department. She, further, stated that the larger public interest is involved in the project in question and as such interest of individuals or small group of people may not be looked into as laid down by the Hon'ble Supreme Court. She also stated that the project in question is also out of the Aravalli Notification. Ld. Advocate for DLF has also expressed the similar views, akin to HUDA & State Govt's views on the disputed site in question.

13. From the above averments and documents placed before us, basically the following issues are required to be settled in respect of the project in question:-

1. Whether the land falling in the widening of the side/ sectoral road (project in question) is a forest land?
2. Whether required permission for cutting of trees was taken?
3. Whether the residents of the NMC will be affected due to the project in question?
4. Whether proper permission from environmental angle was obtained by the project proponent?

5. Whether afforestation work has been proposed/undertaken in lieu of cutting of the trees at the site of the project in question?

14. Now we propose to address the above issues one by one.

Issue No: 1

It has been clearly stated by the Ld. Senior Counsel for Respondents- 3, 4, 6, 7 and 10 that the project site involving widening of the side road does not fall in the forest area as informed by the State Government to the Hon'ble Supreme Court. Even though, the land in question is basically impinging on the green belt which was raised by the State Government as side road plantations for the purpose of raising green belt. However, it can be put to other uses after taking the required permission, including permission for cutting of trees. The documents filed to show that the land in question does not fall in the forest land are quite clear. We hold no reason to that the land in question does not fall within the domain of the forest land and as such the provision of the Forest Conservation Act, 1980 are not attracted as has been categorically asserted by the Ld. Sr. Counsel of the State Government. The issue is answered accordingly.

Issue No: 2

According to the project proponent all efforts were made to save the trees but certain trees which are coming on the

way of alignment/widening of the said road cannot be saved and are required to be cut (about 26 trees). He has stated that efforts have been made/will be made to transplant certain trees if it is feasible and for every tree cut at least 10 trees will be planted as per the permission obtained from the Forest Department. As permission has already been obtained from the competent authority, while answering the issue in favour of the respondents, we feel it necessary to issue suitable directions for compensatory afforestation.

Issue No: 3

It has been stated by the Ld. Counsel for Applicants that about 190 families are living for the last several years in NMC and a green cover of 50 m. wide and 200 m. in length existed which the project proponent started cutting and it was pointed out by the Ld. Counsel for Applicant that a number of trees have already been illegally cut. The project proponent mentioned that as per the revised plan only 26 trees will be required to be cut in front of the NMC in the land which belongs to the Government. No tree will be cut from the land belonging to the NMC which has considerable width of green belt in front of the project in question. Due to the widening of the slip road/ sectoral road proposed to be undertaken, it is expected that the same will result in smooth flow of traffic and as such the congestion and traffic jams will be taken care of. This

may result in containing air and noise pollution which would have otherwise been continued if no expansion or widening of the sectoral road have been taken due to the resultant congestion and slow movement of vehicles in the area in question.

Ambient noise levels encountered in the area are exceeding the residential area standards as per the report submitted by the Applicant which was measured on 05.02.2014 by Shri Ram Analytical Laboratory, Ghaziabad. Similarly, the report filed by HUDA on ambient noise levels indicated that the noise levels were found to exceed the prescribed standards. This report was got prepared by M/s. Perfect Researchers Pvt. Ltd. which is NABL accredited laboratory. In both the reports, the ambient noise levels in residential areas were found exceeding the prescribed threshold limits. Therefore, we feel that there is need to provide proper measures including acoustical barriers to reduce vehicular noise so as to minimise the adverse impact on the residents on NMC and other human settlements of the nearby areas. In view of this matter, we strongly feel that acoustic barriers must be provided to safeguard nearby residents from the noise pollution problems. In addition, wherever possible plantation work must be taken up in close proximity of the project in question as also in the other areas not very far from the said project. By this process the noise level

would be mitigated to the benefit of the residents. Issue answered accordingly.

Issue No: 4

From the various averments, documents and submissions made before us, it is quite clear that for the project in question EC is not required under the EIA notification 2006. Also no forest clearance is required under the Forest Conservation Act, 1980. The project is also far away from Sultanpur Bird Sanctuary (about 20 km) and the provision of Aravalli Notification brought by MOEF are also not attracted as the plants in question are not part of Aravalli Plantations as per the records submitted before us. However, permission is required to be taken from the Forest Department for the cutting of trees for which it was stated before us by the counsel for the respondents that no tree will be cut without taking proper permission and that afforestation work will be undertaken in lieu of the trees which are required to be removed as per the conditions stipulated by the regulatory authority. Issue answered accordingly.

Issue No. 5

It was stated by the Ld. Counsel appearing for the Applicants that HUDA has cut number of trees in different sectors and no proper afforestation work has been undertaken by the HUDA or other concerned departments which has resulted in considerable reduction of green

cover in Gurgaon. According to him, the green cover left in Gurgaon is only 3.8 per cent in the year 2010 and it might have gone further down due to massive urbanisation policy of HUDA. He, further, mentioned that 3.8 per cent green cover in Gurgaon is against the State Policy of having 20 per cent green cover which is even much shorter of the requirement of 33 per cent of green cover as per the National Forest Policy. Be that as it may, there are no two opinions that there is need to have more and more greenery in the urban areas where significant concretisation/number of building structures have come up in Gurgaon making it difficult for the residents to have fresh air to breath. We, therefore, call upon the Forest Department and HUDA to make it compulsory that environmental issues right from beginning at the project planning stage itself should become the necessary component of the project so that environmental and forestry issues are addressed early and become an integral part of the project.

The concept of sustainable development is to be considered in terms of the pressing requirement of expanding infrastructure pertaining to transport sector. Urban city roads/sectoral roads are required to be expanded in order to avoid congestion and traffic jams due to increased Vehicular population and are required to be addressed by increasing the supportive and assimilating

capacity of traffic movement in the area. While applying the concept of sustainable development, one has to keep in mind the “Principle of Proportionality” based on the concept of balance and there is a need to have trade-off between the development & environment. As such, we have to balance the priorities of development on the one hand and environmental problems on the other. So sustainable development should address the requirement of development that can be allowed and which can be sustained by environment with or without any significant adverse impacts, keeping in view the public interests rather than the interests of handful of persons or group of persons, according to a ‘reasonable person’s test’.

NGT in its recent judgement in Appeal No. 12/2012 in the matter of M.P. Patil Vs. UOI & Ors. has stated as below:-

“It has to be respectfully accepted as a proposition of law that individual interest or, for that matter, smaller public interest must yield to the larger public interest.

To an extent, there is a right to development. However, even this right is not free of limitations and regulations. It is not an unfettered right so as to completely give a go by to the issues of environment. Development may be carried out to satisfy the need of a developing society but it has to be regulated so as to satisfy the requirement of preservation and nurturing of the natural recourses, which are the real assets of the society.”

15. In the light of the above principles, we have to ensure that the widening of road project does not unduly affect the residents of nearby areas.

16. Traversing through the documents, affidavits, counter affidavits, and submissions made by the applicants and respondents and banking upon the Principles of Sustainable Development and recognising the need of the project in question which will serve the larger public interest by way of resulting in smoother flow of traffic, we are of the opinion that the project in question may be allowed subject to the environmental safeguard which would keep the likely adverse impacts to the bare minimum. We, therefore, feel that the following directions are required to be issued for implementation of the project without causing any significant adverse impacts on environment:-

1. Afforestation work- The project proponent must have a proper plan with time frame and financial commitment to undertake afforestation work according to the permission given by the Forest Department. Local plant species should be preferred involving smaller, medium and larger trees to be forming part of the green belt. The Forest Department must ensure that the project proponent implement the conditions so stipulated by them and the periodical check-up/verification be undertaken. In case it is found that the project proponent has done any violation with respect of

raising of green belt, a penalty upto Rs. 5 crore will be imposed on DLF/HUDA.

We direct HUDA to internalise environmental issues at the project planning stage and all efforts should be made to cut bare minimum number of trees and undertake massive afforestation works wherever possible in the urban areas.

As was stated by Ld. Additional Advocate General, Haryana that not more than 26 trees will be cut in the area in question (in front of NMC) after re-orientation of alignment of sectoral road, we direct HUDA/DLF not to cut more than 26 trees in the project area. The Forest Department will supervise the cutting operation and maintain record. They shall submit a status report on the total number of trees cut at the project site along with the details of afforestation done by the Project Proponent within six months.

2. Noise Prevention- The project proponent should provide adequate and effective acoustic barrier in front of NMC and other nearby human settlements to avoid any noise pollution problems to the residents. Also, this stretch of land in question be declared as “No Honking Zone”. The Haryana Pollution Control Board and Traffic Police through Superintendent of Police, Gurgaon, will ensure that such measures are provided and there is no violation of the noise standards as per the provision of The Air (Prevention and

Control of Pollution) Act, 1981 and the Environment Protection Act, 1986.

3. Internalisation of Environmental Issues- In order to internalise environmental issues at the planning stage of the projects, it will be desirable for DLF & HUDA to have an Environmental Adviser who would report to the top Executive, say Chairman or Managing Director so that environmental issues get addressed quickly by way of policy interventions and financial commitments at the initial stage of the projects.

The above directions shall be implemented *pari passu* with the construction work of the proposed project.

The applications are disposed of with the above directions. The concerned Departments shall submit compliance report within 6 months before the Registry.

Hon'ble Mr. Justice Dr. P. JYOTHIMANI
Judicial Member

Hon'ble Mr. Justice M.S. NAMBIAR
Judicial Member

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

Hon'ble Prof. A. R. Yousuf
Expert Member

New Delhi

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

.....

ORIGINAL APPLICATION NO. 123 OF 2016

IN THE MATTER OF:

Mr. Rajinder Krishan Sharma IFS Retd.
C/o Forest Conservation Society (Unregistered)
B-54, Surya Vihar, Opp-Sector-4
Gurgaon-122001 (Haryana)

..... Applicant

Versus

1. UNION OF INDIA
Ministry of Environment,
Forests & Climate Change
Through the Secretary,
Government of India,
Paryavaran Bhawan
Jor Bag
Lodhi Road, New Delhi-110003
2. Central Pollution Control Board
Through its Secretary
Parivesh Bhawan,
CBD-Cum office Complex
East Arjun Nagar
New Delhi-110032
3. State of Haryana
Through the Chief Secretary
4th Floor, Haryana Civil Secretariat
Sector-1, Chandigarh 1600
4. Haryana State Pollution Control Board
Through its Secretary
C-11, Sector-6
Panchkula, 134102 (Haryana)
5. Haryana Urban Development Authority
Through its Chairman
HUDA Office Complex,
C-3, Sector,
Panchkula, 134102-Haryana

6. Deputy Commissioner
Gurgaon Division
DC Office, Gurgaon122001
7. Commissioner of Police, Gurgaon
Police Commissionerate
Gurgaon, 122001- Haryana
8. DLF Limited
Through its Managing Director,
Having registered office at
Shopping Mall, 3rd Floor,
Arjun Marg, DLF City Phase-41
Gurgaon, Haryana-122002
Also at DLF Center, Sansad Marg,
Connaught Place
New Delhi
9. National Highway Authority of India
Through The Chairman, G-5 & 6, Sector -10
DWARKA, New Delhi 110075.
10. Principal Chief Conservator of Forests,
Government of Haryana
Van Bhawan, Plot No. C-18,
Sector -6, Panchkula, 160062.

..... Respondents

FOR APPLICANT:

Mr Rajinder Krishan Sharma, Applicant in person

COUNSEL FOR RESPONDENTS :

Mr. Rajesh Kumar Singh Adv. for Respondent No. 1
 Mr. Rajkumar & Mr. S. Chandra Advs for Respondent No. 2
 Mr. Anil Grover AAG with Mr. Rahul Khurana, Mr. Sandeep Yadav
 Advs. for Respondent No. 3 to 7 & 10
 Mr. Pinaki Misra Sr. Adv. with Ms. Ruby Singh and Ms. Deepti
 Sarin, Ms. Aakanksha, Mr. Arvind & Mr. Shublam Saiqal Adv for
 Respondent No.8
 Mr. Karan Chopra, Adv. for Respondent No. 9

ORAL JUDGMENT**PRESENT:****Hon'ble Dr. Justice Jawad Rahim (Judicial Member)****Hon'ble Mr. Ranjan Chatterjee (Expert Member)****Per Dr. Justice Jawad Rahim**

Reserved on: 09th August, 2017**Pronounced on: 22nd September, 2017**

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?

1. The Application filed by Mr. Rajinder Krishan Sharma, has gained access to this Tribunal under Section 14 and 15 read with Sections 18(1) of the National Tribunal Act, 2010 (for short NGT Act) whereby he seeks declaration from the Tribunal to the effect that sector road widening project of Respondent No. 8 and Respondent No. 5 is illegal and contrary to the provisions of, Environment Protection Act, 1986, Indian Forest Act 1927, Forest Conservation Act, 1980 and the Punjab Land Preservation Act of 1900. Consequential relief to injunct the Respondent No. 8 from going ahead with project and directing Respondent No. 3 to 10 to ensure that no further felling of tress is carried out is also sought.

2. Upon notice the respondents have entered appearance and each one of them have filed reply which are on record and the applicant have filed rejoinder to their replies. Upon completion of pleadings we have heard all the concerned parties.

3. They have raised contentions, which has received our serious consideration.
4. Before we advert to it, a brief reference to the factual matrix is necessary.
5. The applicant claims to be a former officer of Indian Forest Service who now claims to be engaged in environment protection and allied services for the society. Through his application he has sought direction as referred to above, on assertive contention Respondent No. 8 DLF and HUDA have undertaken a project in contravention of all the provisions of the environmental laws resulting in total destruction of the trees and impact environment adversely.
6. The pleadings are aplenty but for the purpose of determining the main issues following reference will be sufficient.
7. The substance of the contention is that the project undertaken to widen the NH 8 from the present width of 60m to 70m is not necessary and that project activity is without lawful authority as required sanctions have not been obtained. Having said so, the applicant further contradicted himself in stating that there is a connivance between Respondent No. 8 and the Forest Officers who have granted permission without proper application of mind and arbitrarily.
8. We shall refer to other averments while dealing with the contentions urged, but before that we may refer to the defence taken by Respondent No. 8 through their counter reply.

9. While raising preliminary objection with regard to maintainability of the application, the Respondent No. 8 has referred to earlier proceeding before this Tribunal in O. A. No. 127/2013, 155/2013, 156/2013 and 120/2013 preferred by Mrs. Ranjana Jaitley, Ms. Krishna Devi, Mr. Raj Pal Yadav and Haryali Welfare Society seeking similar relief. It is further stated that the primary grievance of the applicant raised in this case is same and identical as raised for consideration in those cases. They have further referred to the issues framed by the Tribunal in those cases and finding recorded on each of those points negating the assertion and declining to pass any order with regard to the project in question.

10. On this factual position, it is contented that the present application is barred in law as the same issues have already been decided and concluded.

11. Further it is urged that Tribunal vide its order dated 01.04.2014 has held in clear term that the land in question which is used or likely to be affected by the project in question does not fall in the definition of forest land and further held that land in question is not within the domain of the Forest Act and as such the provisions of Forest Conservation Act, 1980 do not apply or are attracted. They have relied on the communication issued by the Divisional Forest Officer, Gurgaon District, Haryana, granting requisite permission on 04.04.2012 for felling of trees and the fact that the same issue was considered by the Tribunal held in favour of the project proponent and against the Applicant.

12. As regards HUDA is considered, the defence is identical and they have justified the project activity and hence requires no further detailed extraction of their defence. However, we shall add that the Respondent No. 8 and HUDA have conceived this project as joint venture and proceeded further to implement it.

13. In the circumstances, we now frame the following points for consideration:-

1. Whether action initiated by the applicant is sustainable in law or it is barred under the provision of Order 2 Rule 2 and Section 11 of the CPC, 1908 i.e. constructive res judicata.
2. Whether the applicant has succeeded in establishing that the land in question which is likely to be affected by the project is forest land.
3. What is the stage of the project at the time when the application was filed.
4. Whether there is any ill-motive or connivance in the office of the Forest Department and Respondent No. 8.
5. Whether the project comes within the mischief of EIA Notification 2006 or under the Forest Conservation Act, 1980 or whether it also comes within the mischief of notification issued by Ministry of Environment with regard to Aravali.

14. We have perused the pleadings and noticed that the project conceived by HUDA and implemented by DLF was undisputably a joint venture. It is also not in dispute that sector road was in existence and what has been undertaken is widening of the said road. The Road as it was, measured 60 m and by this project it was

intended to be widened up to 78 m in Sector 55-56 in Gurgaon. Respondent No. 8 and HUDA have assertively contented that it is not a national highway but a sector road. The averments in the application is that it is at Sector 55 and 56 within which widening has been done. Therefore, on facts we notice that the area comes within the Sector 55 & 56 and it is reasonable to believe that it not a national highway. Besides, the applicant has not established that it was national highway and was a fresh road being laid which attracted the restriction of the National Forest Policy 1908 and provisions of Environment Protection Act, 1986 and rules made thereunder. On the facts, it is seen that 1055 trees were to be felled for which the Project Proponent-HUDA were before the Competent Authority, who by order passed in the month of April, 2014, has granted permission. We have also perused the letter addressed by the Divisional Conservator of Forest, who while granting permission, has recorded that the area does not come under the Forest. As regard EIA Notification 2006 is concerned, undoubtedly it applies to all project indicated therein. In the instant case, the defence of the project proponent-HUDA, is that the widening of the sector road does not come under the mischief of EIA Notification 2006. Besides, since 246 trees were transplanted during the project activity and it is also noticed that during the earlier proceedings referred to above, the Tribunal had called upon the State of Haryana to file an affidavit as to whether the disputed land forms part of the extent of 154706 hectares which includes 12,527.94 hectares, declared as forest land by the Government of Haryana.

Learned Additional Advocate General on behalf of Haryana has filed affidavit which is nothing but copy of the affidavit filed before the Hon'ble Supreme Court on earlier occasion declaring that the present land in question forming part of Sector 55 to 56 in Gurgaon is not covered under the land so declared as forest land by the said Notification. As regards Green Belt is concerned, the Government of Haryana is on record to state that the land measuring 1,54,706 hectares of land including 11513/12527.94 notified under section 4 and 5 of the Punjab Land Preservation Act, 1900, as mentioned in the affidavit filed in Hon'ble Supreme Court on 08.12.1996, excludes the land in question.

15. They have brought on record the proceeding in Writ Petition No. 171/1996 in the case of the Environmental Awareness Forum Vs. State of Jammu & Kashmir and Others in which case the Principal Conservator of Forest, Haryana, had declared before the court that the forest department has no jurisdiction or control of the land, except for giving permission or felling of trees on the land in question. Besides, it is not in dispute, that respondents had written to the Forest Department on 24/11/2011 and 25/11/2011 seeking permission for cutting 1080 nos. of trees including transplantation of trees in respect of upgradation of 60 meter wide road, adjacent of NH-8 in Sector 55-56 which work was awarded to DLF. The Forest Department vide its letter dated 22 March, 2012 has accorded the required permission and that has not been questioned under the provision that are available.

16. Further, it is noted from the undisputed fact that after granting of permission the felling of trees commenced in the year 2012 when the project was to commence. It is further brought on record that Horticulture Division of HUDA has intimated to Range Officer, Forest Department, Gurgaon on 03/07/2013 that 11,000 number of plants of various species have been planted or are being planted which are by way of afforestation at different places in the various sectors which include Sector 9A Gurgaon, Sector 31, STP plant area in Gurgaon, sector 90, 91, 92 in Gurgaon and Sector 53. The photographs of plantation were also produced by the Project Proponent- HUDA who contend that not only they felled the trees after due and valid permission in law but they have complied with the direction to plant 10 times the number of trees and accordingly 11,000 number of trees have been planted and this fact has not been disputed before us by the applicant.

17. Be that as it may, every aspect pleaded need not be traversed for the reason that the same issues were subject matter of consideration before this Tribunal in O.A. No. 127/2013 155/2013, 156/2013 and 120/2013 in the case of Mrs. Ranjana Jaitley, Mrs. Harsaran Bir Kaur Pandey, Mrs. Sudha Kumar, Mr. Sanjay Ahirwal & Mr. Lavneet Gyani Vs. Union of India and ors. Those matters were clubbed together and taken for consideration. We notice from the Judgment rendered by this Tribunal on 1st April, 2014 that the factual aspect pleaded by the applicant were virtually the same with grammatical variation and difference in drafting. The Tribunal having noticed that the same issues are raised for consideration in

all the cases clubbed and determined points in dispute by taking relevant points into consideration.

18. We have perused the pleadings in this case and pleadings of parties in those cases and find merit in the contention of Respondent No. 8 and HUDA that pleadings are virtually and practically the similar issues were raised for consideration.

19. This Tribunal had formulated the following points in those cases.

1. Whether the land falling in the widening of the side/Sectoral road project in question) is a forest land?
2. Whether required permission for cutting of trees was taken?
3. Whether the residents of the NMC will be affected due to the project in question?
4. Whether proper permission from environmental angle was obtained by the project proponent?
5. Whether afforestation work has been proposed/undertaken in lieu of cutting of trees at the site of the project in question?

20. The Tribunal has answered all the issues in O. A. No. 127/2013, 155/2013, 156/2013 and 120/2013 against the applicants and in favour of the project proponent by the following reasons which we feel relevant to extract, it reads thus:

Issue No: 1

It has been clearly stated by the Ld. Senior Counsel for Respondents- 3, 4, 6, 7 and 10 that the project site involving widening of the side road does not fall in the forest area as informed by the State Government to the Hon'ble Supreme Court. Even though, the land in question is basically impinging on the green belt which was raised by the State Government as side road plantations for the purpose of raising green belt. However, it can be put to other uses after taking the required permission, including permission for cutting of trees. The documents filed to show that the land in question does not fall in the forest land are quite clear. We hold no reason to that the land in question does not fall within

the domain of the forest land and as such the provision of the Forest Conservation Act, 1980 are not attracted as has been categorically asserted by the Ld. Sr. Counsel of the State Government. The issue is answered accordingly.

Issue No: 2

According to the project proponent all efforts were made to save the trees but certain trees which are coming on the way of alignment/widening of the said road cannot be saved and are required to be cut (about 26 trees). He has stated that efforts have been made/will be made to transplant certain trees if it is feasible and for every tree cut at least 10 trees will be planted as per the permission obtained from the Forest Department. As permission has already been obtained from the competent authority, while answering the issue in favour of the respondents, we feel it necessary to issue suitable directions for compensatory afforestation.

Issue No: 3

It has been stated by the Ld. Counsel for Applicants that about 190 families are living for the last several years in NMC and a green cover of 50 m. wide and 200 m. in length existed which the project proponent started cutting and it was pointed out by the Ld. Counsel for Applicant that a number of trees have already been illegally cut. The project proponent mentioned that as per the revised plan only 26 trees will be required to be cut in front of the NMC in the land which belongs to the Government. No tree will be cut from the land belonging to the NMC which has considerable width of green belt in front of the project in question. Due to the widening of the slip road/ sectoral road proposed to be undertaken, it is expected that the same will result in smooth flow of traffic and as such the congestion and traffic jams will be taken care of. This may result in containing air and noise pollution which would have otherwise been continued if no expansion or widening of the sectoral road have been taken due to the resultant congestion and slow movement of vehicles in the area in question.

Issue No: 4

From the various averments, documents and submissions made before us, it is quite clear that for the project in question EC is not required under the EIA notification 2006. Also no forest clearance is required under the Forest Conservation Act, 1980. The project is also far away from Sultanpur Bird Sanctuary (about 20 km) and the provision of Aravalli Notification brought by MOEF are also not attracted as the plants in question are not part of Aravalli Plantations as per the records submitted before us. However, permission is required to be taken from the Forest Department for the cutting of trees for which it was stated before us by the counsel for the respondents that no tree will be cut without taking proper permission and that afforestation work will be undertaken in lieu of the trees which are required to be removed as per the conditions stipulated by the regulatory authority. Issue answered accordingly.

Issue No. 5

It was stated by the Ld. Counsel appearing for the Applicants that HUDA has cut number of trees in different sectors and no proper afforestation work has been undertaken by the HUDA or other concerned departments which has resulted in considerable reduction of green cover in Gurgaon. According to him, the green cover left in Gurgaon is only 3.8 per cent in the year 2010 and it might have gone further down due to massive urbanisation policy

of HUDA. He, further, mentioned that 3.8 per cent green cover in Gurgaon is against the State Policy of having 20 per cent green cover which is even much shorter of the requirement of 33 per cent of green cover as per the National Forest Policy. Be that as it may, there are no two opinions that there is need to have more and more greenery in the urban areas where significant concretisation/number of building structures have come up in Gurgaon making it difficult for the residents to have fresh air to breath. We, therefore, call upon the Forest Department and HUDA to make it compulsory that environmental issues right from beginning at the project planning stage itself should become the necessary component of the project so that environmental and forestry issues are addressed early and become an integral part of the project.

The concept of sustainable development is to be considered in terms of the pressing requirement of expanding infrastructure pertaining to transport sector. Urban city roads/sectoral roads are required to be expanded in order to avoid congestion and traffic jams due to increased Vehicular population and are required to be addressed by increasing the supportive and assimilating capacity of traffic movement in the area. While applying the concept of sustainable development, one has to keep in mind the "Principle of Proportionality" based on the concept of balance and there is a need to have trade-off between the development & environment. As such, we have to balance the priorities of development on the one hand and environmental problems on the other. So sustainable development should address the requirement of development that can be allowed and which can be sustained by environment with or without any significant adverse impacts, keeping in view the public interests rather than the interests of handful of persons or group of persons, according to a 'reasonable person's test'.

NGT in its recent judgement in Appeal No. 12/2012 in the matter of M.P. Patil Vs. UOI & Ors. has stated as below:- "It has to be respectfully accepted as a proposition of law that individual interest or, for that matter, smaller public interest must yield to the larger public interest.

To an extent, there is a right to development. However, even this right is not free of limitations and regulations. It is not an unfettered right so as to completely give a go by to the issues of environment. Development may be carried out to satisfy the need of a developing society but it has to be regulated so as to satisfy the requirement of preservation and nurturing of the natural recourses, which are the real assets of the society."

15. In the light of the above principles, we have to ensure that the widening of road project does not unduly affect the residents of nearby areas.

16. Traversing through the documents, affidavits, counter affidavits, and submissions made by the applicants and respondents and banking upon the Principles of Sustainable Development and recognising the need of the project in question which will serve the larger public interest by way of resulting in smoother flow of traffic, we are of the opinion that the project in question may be allowed subject to the environmental safeguard which would keep the likely adverse impacts to the bare minimum. We, therefore, feel that the following directions are required to be issued for implementation of the project without causing any significant adverse impacts on environment.

21. From the above finding recorded by this Tribunal, we are convinced that the present proceeding on identical issues have to be tested applying the doctrine of res judicata.
22. It is also material to note that the action initiated earlier in which this Tribunal has rendered judgment was an action in rem and not in personam. This proceeding is also an action in rem and not in personam as contented by the applicant.

Section 11 of CPC reads thus-

11. Res judicata.-

No Court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a Court competent to try such subsequent suit or the suit in which such issue has been subsequently raised' and has been heard and finally decided by such Court.

23. The opinion that this proceeding is hit by the principle of Res Judicata is fortified from the decision of the Hon'ble Supreme Court which needs reference. It is extracted below:-

Dr. Subramanian Swamy vs. State of Tamil nadu & Ors. Civil Appeal No. 10620 of 2013 and T. Sivaraman & 18 Ors. vs. State of Tamil Nadu & Ors. Civil Appeal No. 10622 of 2013 wherein the Hon'ble Supreme Court, in similar fact circumstances, applied the Principle of Constructive Resjudicata held thus:-

23. The scope of application of doctrine of res judicata is in question. The literal meaning of "res" is "everything that may form an object of rights and includes an object, subject-matter or status" and "res judicata" literally means "a matter adjudged a thing judicially acted upon or decided; a thing or matter settled by judgments". "Res judicata pro veritate accipitur" is the full maxim which has, over the years, shrunk to mere "res judicata", which means that res judicata is accepted for truth.

24. The doctrine contains the rule of conclusiveness of the judgment which is based partly on the maxim of Roman jurisprudence "interest reipublicae ut sit finis litium" (it concerns the State that there 24 Page 25 be an end to law suits) and partly on the maxim "nemo debet bis vexari pro uno et eadem causa" (no man should be vexed twice over for the same cause).

Even an erroneous decision on a question of law attracts the doctrine of *res judicata* between the parties to it. The correctness or otherwise of a judicial decision has no bearing upon the question whether or not it operates as *res judicata*. (Vide: *Shah Shivraj Gopalji v. ED-, Appakadh Ayiassa Bi & Ors.*, AIR 1949 PC 302; and *Mohanlal Goenka v. Benoy Kishna Mukherjee & Ors.*, AIR 1953 SC 65). 25. In *Smt. Raj Lakshmi Dasi & Ors. v. Banamali Sen & Ors.*, AIR 1953 SC 33, this Court while dealing with the doctrine of *res judicata* referred to and relied upon the judgment in *Sheoparsan Singh v. Ramnandan Singh*, AIR 1916 PC 78 wherein it had been observed as under:

“..... the rule of *res judicata*, while founded on ancient precedents, is dictated by a wisdom which is for all time.... Though the rule of the Code may be traced to an English source, it embodies a doctrine in no way opposed to the spirit of the law as expounded by the Hindu commentators. *Vijnanesvara* and *Nilakantha* 25 Page 26 include the plea of a former judgment among those allowed by law, each citing for this purpose the text of *Katyayana*, who describes the plea thus: 'If a person though defeated at law, sue again, he should be answered, "you were defeated formerly". This is called the plea of former judgment.'... And so the application of the rule by the courts in India should be influenced by no technical considerations of form, but by matter of substance within the limits allowed by law”

26. This Court in *Satyadhyan Ghosal & Ors. v. Smt. Deorajin Debi & Anr.*, AIR 1960 SC 941 explained the scope of principle of *res judicata* observing as under:

“7. The principle of *res judicata* is based on the need of giving a finality to judicial decisions. What it says is that once a *res* is *judicata*, it shall not be adjudged again. Primarily it applies as between past litigation and future litigation, When a matter - whether on a question of fact or a question of law - has been decided between two parties in one suit or proceeding and the decision is final, either because no appeal was taken to a higher court or 19 because the appeal was dismissed, or no appeal lies, neither party will be allowed in a future suit or proceeding between the same parties to canvass the matter again. This principle of *res judicata* is embodied in relation to suits in S. 11 of the Code of Civil Procedure; but even where S. 11 does not apply, the principle of *res judicata* has been applied by courts for the purpose of achieving finality in litigation. The result of this is that the original court as well as any higher court must in any future litigation proceed on the basis that the previous decision was correct.”

A similar view has been re-iterated by this court in *Daryao & Ors. v. The State of U.P. & Ors.*, AIR 1961 SC 1457; *Greater Cochin Development Authority v. Leelamma Valson & Ors.*, AIR 2002 SC 952; and *Bhanu Kumar Jain v. Archana Kumar & Anr.*, AIR 2005 SC 626.

27. The Constitution Bench of this Court in *Amalgamated Coalfields Ltd. & Anr. v. Janapada Sabha Chhindwara & Ors.*, AIR 1964 SC 1013, considered the issue of *res judicata* applicable in writ jurisdiction and held as under:

“...Therefore, there can be no doubt that the general principle of *res judicata* applies to writ petitions filed under Article 32 or Article 226. It is necessary to emphasise that the application of the doctrine of *res judicata* to the petitions filed under Art. 32 does not in any way impair or affect the content of the fundamental rights guaranteed to the citizens of India. It only seeks to regulate the manner in which the

said rights could be successfully asserted and vindicated in courts of law.”

34. This Court, while considering the binding effect of the judgment of this Court, in *State of Gujarat & Anr. v. Mr. Justice R.A. Mehta (Retd.) & Ors.*, AIR 2013 SC 693, held:

“There can be no dispute with respect to the settled legal proposition that a judgment of this Court is binding,.....It is also correct to state that, even if a particular issue has not been agitated earlier, or a particular argument was advanced, but was not considered, the said judgment does not lose its binding effect, provided that the point with reference to which an argument is subsequently advanced, has actually been decided. The decision therefore, would not lose its authority, "merely because it was badly argued, inadequately considered or fallaciously reasoned". (Vide: Smt. Somavanti & Ors. v. The State of Punjab & Ors., AIR 1963 SC 151; Ballabhdas Mathuradas 31 Page 32 Lakhani & Ors. v. Municipal Committee, Malkapur, AIR 1970 SC 1002; Ambika Prasad Mishra v. State of U.P. & Ors., AIR 1980 SC 1762; and Director of Settlements, A.P. & Ors. v. M.R. Apparao & Anr., AIR 2002 SC 1598).”

24. The proposition and interpretation of Section 11 of CPC by the Hon'ble Supreme Court in following decisions, applies to the present proceedings.

25. These proceedings are under the provision of NGT Act and Section 14 read with section 18 is invoked. The applicants in those cases and the present applicant in this case contend that they have no personal interest but they are championing the cause of environment. Therefore, the declaration was on behalf of the society and environment which is a party in absencia. Issue raised in that case and issues raised in this case are same. Therefore the applicant comes in the category of “parties claiming under the same title”. The finding of the Tribunal in those cases is that the project activity has commenced lawfully and felling of trees was not illegal but has sanction of law. It is further declared by the judgment in question that it was sector road widening and not national highway as contended in this case same issue has arisen.

26. In the circumstances the judgment passed O.A. No. 127/2013 155/2013, 156/2013 and 120/2013 is judgment in *rem* and *not personam*. The applicant has sought in this case to pass an order in *rem* but *not in personam*. Therefore, the provisions of Section 11 of CPC applies and as on his own volition the applicant admits that he himself was an employee of DLF before he initiated this action. The respondent no. 8 is justified in contending the mala-fide attributed to them for the project and connivance of its officers is nothing but revengeful action to tarnish their name. We do not find reason to reject such contention, however, we do not want to go into this question as that is not the issue for our consideration. Be that as it may, this observation was necessitated as the applicant himself wanted this Tribunal to record that there was connivance between the DLF and officials of Forest Department, who granted the permission for felling 1055 trees.

27. For the reason discussed above we find no merit in this application.

28. In the circumstances, the application fails and O.A. NO. 123/2016 is rejected, with no order as to costs.

....., JM
(Dr. Justice Jawad Rahim)

....., EM
(Ranjan Chatterjee)

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. _____/2018
(@CIVIL APPEAL DIARY NO(S). 14013/2018)

RAJINDER KRISHAN SHARMA IFS RETD.

APPELLANT(s)

VERSUS

UNION OF INDIA & ORS.

RESPONDENT(s)

O R D E R

Delay condoned.

While dismissing the review petition by the impugned order the Tribunal has given two reasons which are as follows:

1. The issue raised by the appellant in the Original Application was the same which was the subject matter of the previous proceedings in O.A. Nos. 127/2013, 155/2013, 156/2013 and 120/2013 wherein the same issue was dismissed and the said judgment in rem and not in personam and because of this reason the appellant could not have filed another Original Application on the same issue. In the opinion of the Tribunal it operates as a bar to the subsequent proceedings which was raised in Original Application No. 123/2016 instituted by the appellant.

2. The review application was filed after the expiry of 30 days and, therefore, such a review application was not maintainable.

Insofar as second reason is concerned, we need not go into the same. We find that Original Application No. 123/2016 which was

filed by the appellant was dismissed vide order dated 22.09.2017

inter alia on the following grounds:

"11. Further it is urged that Tribunal vide its order dated 01.04.2014 has held in clear term that the land in question which is used or likely to be affected by the project in question does not fall in the definition of forest land and further held that land in question is not within the domain of the Forest Act and as such the provisions of Forest Conservation Act, 1980 do not apply or are attracted. They have relied on the communication issued by the Divisional Forest Officer, Gurgaon District, Haryana, granting requisite permission on 04.04.2012 for felling of trees and the fact that the same issue was considered by the Tribunal held in favour of the project proponent and against the applicant."

It is clear from the above that there was a specific finding arrived at in the previous proceedings that the land in question is not a forest land and this finding, the Tribunal rightly concluded, was finding in rem. There is no reason to interfere with the order impugned.

The appeal is dismissed.

.....J.
[A.K. SIKRI]

.....J.
[ASHOK BHSUHAN]

NEW DELHI;
MAY 14, 2018.

ITEM NO.15

COURT NO.6

SECTION XVII

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

CIVIL APPEAL Diary No(s). 14013/2018

RAJINDER KRISHAN SHARMA IFS RETD

Petitioner(s)

VERSUS

UNION OF INDIA & ORS.

Respondent(s)

(IA No.65231/2018-CONDONATION OF DELAY IN FILING and IA
No.65234/2018-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT)

Date : 14-05-2018 This petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE A.K. SIKRI
HON'BLE MR. JUSTICE ASHOK BHUSHAN

For Petitioner(s) Mr. Vaibhav Verma, Adv.
Mr. Jitendar Singh, Adv.
Mr. Sahil Tagotra, AOR

For Respondent(s) Mr. Pinaki Misra, Sr. Adv.
Ms. Ruby Singh Ahuja, Adv.
Ms. Deepti Sarin, Adv.
Ms. Aakanksha Munjhal, Adv.
Ms. Manik Karanjawala, Adv.
M/S. Karanjawala & Co., AOR

UPON hearing the counsel the Court made the following
O R D E R

Delay condoned.

The appeal is dismissed in terms of the signed order.

Pending application(s), if any, stands disposed of
accordingly.

(ASHWANI THAKUR)
COURT MASTER (SH)

(MALA KUMARI SHARMA)
COURT MASTER

(Signed order is placed on the file)

Subject: Minutes of the meeting held on 28.4.92 at 3.30 PM under the Chairmanship of Chief Minister Haryana at Chandigarh to discuss proposed amendments in draft development plan, Gurgaon.

The following were present: -

Shri Bhajan Lal, Chief Minister, Haryana----In Chair.

1. Smt. Veena Eagleton, IAS
Secretary, Forest and Environment Deptt., Haryana.
2. Sh. Pradeep Kumar, IAS
Secretary, Town & Country Planning Deptt. Haryana.
3. Sh. Manik Sonawane, IAS
Director, Town & Country Planning-cum-Chief Administrator, HUDA
4. Sh. Ashok Lavasa, IAS
Managing Director, Haryana Tourism Corporation,
Chandigarh.
5. Sh. P.K. Mahapatra, IAS
Deputy Commissioner, Gurgaon.
6. Sh. I.D. Kaushik, IAS
Director, Panchyat Department, Haryana, Chandigarh.
7. Sh. Alak Dhari, IAS
Director, Tourism, Haryana, Chandigarh.
8. Sh. K.K. Khandelwal, IAS
Administrator, HUDA, Gurgaon.
9. Principal Chief Conservator of Forest, Haryana,
Chandigarh
10. Sh. M.K. Aggarwal,
Engineer-in-Chief, PWD, B&R, Haryana, Chandigarh.
11. Sh. M.L. Kansal,

Chief Engineer, Drainage, Haryana, Chandigarh.

12.Sh. J.C. Chopra,

Chief Town Planner, Haryana, Chandigarh.

13.Sh. B.D. Gulati,

Chief Coordinator Planner, NCR, Haryana, Gurgaon.

14.Sh. B.K. Wadhwa,

Chief Engineer, HUDA, Panchkula.

15.Sh. H.B. Munjal,

Superintending Engineer, HUDA, Gurgaon.

16.Sh. R.C. Aggarwal,

Senior Town Planner, Enforcement, Chandigarh.

17.Sh. A.K. Kalra,

Executive Engineer, Drainage, Gurgaon.

18.Sh. S.B. Verma,

Distt. Town Planner, NCR, Haryana, Gurgaon.

19.Sh. B.N. Sharma,

Distt. Town Planner, Gurgaon.

At the outset, Commissioner & Secretary, Town and Country Planning explained in brief the background about the Draft Development Plan for Gurgaon which was prepared by the Deptt. of Town & Country Planning in 1982, in which area of about 260 acres along Delhi Haryana border was shown as reserved for 'Forests' mainly due to two reasons: -

- a) a green buffer was kept on the border as suggested in Delhi Master Plan.
- b) the land was uneven in topography and was dissected by Nallahs and creeks.

Although the topography of this land has not changed, it has come under great pressure of urbanisation due to sprawl of Delhi on one side and urban

spread of Gurgaon on the other side. Due to the construction of re-aligned National Highway-8 which bisects this land, this area has opened up and has become vulnerable to encroachments and unauthorised construction. The area of this land is about 260 acres, out of which about 80 acres has already been transferred to Haryana Tourism & balance is owned by the Panchyat & the private owners.

Director Haryana Tourism informed that land measuring about 80 acres falls in the revenue estate of Dundahera and has been transferred to the Tourism Deptt. Some villagers have gone to the court against this transfer and the case is pending in the court of District Revenue officer/ Gurgaon. He further clarified that the Distt. Revenue Officer, Gurgaon has to establish from the record whether this land falls under the category of Patti/Thola or mushtkashamlat. D.C. Gurgaon stated that mutation has already been done in the name of Tourism Deptt, and the Distt. Revenue Officer, Gurgaon has to ascertain the facts mentioned by the Director, Panchayat from the record of 1947. Chief Minister desired that the case may be got decided expeditiously from the court.

Commissioner, & Secretary Forest & Environment and Principal Chief Conservator of Forest clarified that this area is not a notified reserved forest under the Indian Forest Act and that they have no programme of planting forest on this land.

Engineer-in-Chief PWD B&R pointed out that there is a Radar establishment close to this land and any restrictions of Defence Deptt. vis-a-vis this land may be looked into. C.M. observed that this may be confirmed and if any such restrictions are there, they should be observed. Engineer-in-Chief PWD further suggested that the restrictions of scheduled road should be observed while examining the Building Plans, which was agreed.

Chief Engineer, Drainage explained that a deep Nallah existed at site and a lot of water flows into it during rainy season which enters into Delhi Territory. There was a steep gradient and the rain water results in cutting and erosion of soil during extraordinary heavy rains. He was of the view that with the urbanisation on both the sides of Nallah discharge of water will increase and its proper drainage shall be necessary. D.C. Gurgaon informed that there have been no heavy rains for the last 15 years and no floods/problem of drainage has been observed in Haryana territory. The Hon'ble Chief Minister agreed that the drainage measures must be taken if necessary. However, it should be kept in mind that with the urbanisation on both sides of Nallah, the storm water will be taken care of partly by the Drainage system of the city being developed and the catchment area of the Nallah might be reduced to a great extent. The land is very valuable and if it is not brought under urbanization in a planned way, the land was likely to be subjected to haphazard development and unauthorised construction. The topography of this land being uneven and linear in shape, it could be imaginatively exploited for intensive urban uses.

After due deliberations, it was decided that the area which had been reserved for forest in 1982 Development Plan should be converted into a Special Zone, with Recreation and Entertainment, Commercial, Group Housing and Institutional uses as permissible in this Zone. The area is very valuable and there is no advantage in keeping this small area of 260 acres as green on the border of Delhi especially as it is very vulnerable and is subject to pressure of encroachments and haphazard growth. As the cost of development in this area due to peculiar topography, would be high, plotted development for residential use should not be allowed. Each individual party including Haryana Tourism who would apply for a change of land use and approval of their Building plans will have to keep the topographical conditions into consideration and make

proper arrangements of the storm water drainage and disposal etc. These aspects will be examined in detail by the competent authority at the time of approval of any scheme.

The meeting ended with the vote of thanks. to the Chair.

To
The Divisional Forest Officer
Gurgaon
Haryana

Memo No. 3786 dated 27.08.2002

Subject: Abandonment and levelling of earthen bund located in the revenue estate of Village Nathupur, Tehsil & District Gurgaon

The above said bund was constructed sometimes during the year of 1950-52 as marked in the Gurgaon Master Plan (attached). Its construction was to safeguard the inhabitants and village Abadies on down stream of this bund from the furry of floods, corning from its catchment area, consisting the Aravail hills in addition to flood protection measures, this bund used to be source of direct Indirect Irrigation to the farmers for agricultural purpose. Then there was no urbanisation in this vicinity. But as per present position, a rapid urbanisation on both side of this bund have come up, which have reduced the culture farming to nil and a huge jungle of concrete is coming up fast. This has changed the scenario for which this bund was constructed as it has lost its original utility.

The abandonment and levelling of this bund is under the active consideration of the Government and desired that a certificate be recorded that the band in question does not fall in reserved forest and Forest Department has no objection for its disposal.

I am also enclosing herewith a Notification dated 09.01.1992 from the Ministry of Environment and Forest Government of India which clearly defines the definition of reserved forests.

In view of the above facts, it is requested that a No Objection Certificate for its abandonment and levelling may please be issued so that Government is informed accordingly.

Copy of Shajra Plan and Jamabandhi is also enclosed herewith for your perusal which gives the details of the ownership as the land does not belong to Irrigation Department.

An early action is requested please.

EXECUTIVE ENGINEER
MEWAT WATER SERVICES DIVISION
NUH

Encl.: As above

Dated : 23.08.2016

To

The Additional Chief Secretary,
Government of Haryana
Forest and Wildlife Department,
Chandigarh.

Sub. : Request to pass instructions to Divisional Forest Officer (T) Gurgaon to withdraw the prosecution case No.7G/08-09 filed in the Environment Court in Faridabad as per directions of Principal Chief Conservator of Forest, Haryana, Chandigarh vide his order No.NT/D-III-6381/4344 dated 16.10.2015 while cancelling the Damage Report No.29065 dated 14.05.2008 issued by the Divisional Forest Officer, Gurgaon against Mr. Raj Singh Gehlot alleging diversion of land comprising in various Khasra Nos. in the revenue estate of Village Nathupur, Tehsil & District Gurgaon under Sikanderpur Nathupur Bund a Protected/Reserved Forest as per provisions of Indian Forest Act, 1927 in view of Notification No. S.O.251/C.A.16/27/S.29/81 dated 02.12.1981.

Respected Sir,

In the subject case, it is humbly submitted as under:-

1. That in the year 1992 a meeting was held under the Chairmanship of Chief Minister, Haryana at Chandigarh on 28.04.1992 to discuss and approve the proposal to convert 260 acres of land comprising in various Khasra nos. in the revenue estate of village Nathupur and Dundahera, Tehsil & District Gurgaon into Special Zone and to amend the Draft Development Plan, Gurgaon accordingly. Said meeting was attended by 19 senior officials and head of various Deptt. of Govt. of Haryana including the Secretary Forest and Environment Deptt., Haryana, Principal Chief Conservator Forest, Haryana and Sh. M.L. Kansal Chief Engineer, Drainage, Haryana. The Secretary, Forest and Environment and PCCF had made the following statement in the said meeting on 28.04.1992:-

“Commissioner and Secretary, Forest and Environment and Principal Chief Conservator of Forest clarified that this area is not a notified reserve forest under the Indian Forest Act and that they have no program of planting forest on this land.”

Chief Engineer, Drainage Department has made the following statement in the said meeting dated 28.04.1992:-

“Chief Engineer, Drainage explained that a deep Nallah existed at the site and as lot of water flows into it during the rainy season which enters into Delhi Territory. There was a steep gradient and the rain water results in cutting and erosion of soil during extra ordinary heavy rains. He was of the view that with the urbanization on both sides of Nallah discharge of water will increase and its proper drainage shall be necessary.”

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After deliberations in the said meeting the proposal for creation special zone was approved.

2. That M/s HLF Enterprises Pvt. Ltd., a company owned by Mr. A.L. Seth & Family purchased 22.98 acres of land comprising in various khasra nos. in the revenue estate of Village Nathupur, Tehsil & District Gurgaon within the boundary of Special Zone as per Development Plan of Gurgaon.

3. After that M/s HLF Enterprises Pvt. Ltd. applied for issuing of licence for development of group housing colony on 18.98 acres of land and Change of Land Use (CLU) for development of hotel cum recreational complex on 4 acres of land by the office of Director, Town & Country Planning, (DTCP), Haryana. The DTCP, Haryana, Chandigarh minutely scrutinizes the land records not only with respect to ownership and possession over the land for which licence application is filed but also restriction if any applicable on such land before issuing any licenses for the development under the provisions of Haryana Development and Regulation of Urban Areas Act of 1975 and the rules framed thereunder and the Punjab Scheduled Roads and Controlled Areas Restriction of Unregulated Development Act, 1963 and the rules framed thereunder. During the process of appraisal of our said licence application office of DTCP, Haryana enquired once about the existence of Sikanderpur Nathupur Bund to which clarification was given by the company that the Sikanderpur Nathupur Bund does not extend on the land in question. On the other hand there exists a nallah. Revenue records since 1939-40 onwards were submitted in support of the contention DTCP, Haryana after considering all the submissions, documents and records and due application of mind issued licence no.19 of 1993 dated 09.07.1993 for the development of group housing on 18.98 acres of land and Change of Land Use (CLU) vide G/688-10DP-94/1011 dated 15.09.1994 for development of on balance 4 acres of land in the name of M/s HLF Enterprises Pvt. Ltd.. Copy of licence No.19/1993 dated 9th July, 1993 for development of group housing on 18.98 acres of land and CLU for development of hotel on 4 acres of land is annexed herewith. After that in the year 1994 the company M/s HLF Enterprises Ltd. was acquired by Ambience Group headed by Shri Raj Singh Gehlot and name of the company was changed to M/s Ambience Developers & Infrastructure Pvt. Ltd. Aforesaid company vide Memo No.6903 dated 06.05.1996 got sanctioned building plans for development of group housing comprising of 345 dwelling units besides other areas on 10.98 acres of land comprising in Khasra No. 3min north(0-12-0), 529 South West (1-16-0), 534(6-18-0), 530(0-4-0), 531(5-8-0), 532(0-8-0), 533(0-2-0), 535(1-15-0), 2/2/1(0-8-11)in the revenue estate of village Nathupur, Gurgaon and named it as 'Lagoon Residential Apartments Complex'. Development of group housing complex was undertaken in 1996 and was completed in 2001 and accordingly application for issuing of occupation certificate was filed vide letter dated 27.12.2001 which was issued by DTCP, Haryana vide Memo No.16708 dated 31.12.2001 After obtaining occupation certificate and other permissions/clearances, possession of the apartments was handed over to the buyers in the year 2001-02 who are in occupation of their respective apartments since that time. Copy of application letter dated 27.12.2001 and occupation certificate dated 31.12.2001 is enclosed herewith.

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4. That after a lapse of about 19 years of issuing of abovesaid licence no.19 of 1993 and after 10 years of issuing of occupation certificate of the completion of Lagoon Residential Apartment Complex a notice dated 15.05.2012 was received from Divisional Forest Officer (DFO), Gurgaon. The notice was in the name of Sh. Raj Singh Gehlot not in the name of owner company of Lagoon Residential Apartment Complex wherein it was stated that Nathupur Bund is a notified protected forest vide Haryana Govt. Gazette Notification No. S.O.251/C.A.16/27/S.29/81 dated 02.12.1981 and Sh. Raj Singh Gehlot of Ambience Island Lagoon Apartment, NH-8, Km24-25 left side near Delhi border Gurgaon has used 6080 sq.mtr. of land i.e. 380 meters x 16 meters for Ambience Lagoon Residential Apartment Complex and therefore, the said affected forest land needed to be retrieved within sixty days of issue of notice and in case of failure necessary action will be taken against Sh. Raj Singh Gehlot. It was also stated in the notice that a Damage Report No.29065 dated 14.05.2008 was issued by Divisional Forest Officer (DFO) Gurgaon in the name of Shri Raj Singh Gehlot for the alleged diversion of forest land admeasuring 6080 sq.mtr. of Sikanderpur Nathupur Bund a declared protected forest for non forest purposes without the permission of Central Government. It is pertinent to mention that the said Damage Report dated 14.05.2008 was issued without any prior notice, intimation, hearing, enquiry, verification or opportunity in any manner either to the company or to Sh. Raj Singh Gehlot. A notice dated 31.05.2008 was claimed as sent / served on Sh. Raj Singh Gehlot. It is also pertinent to submit that Mr. Raj Singh Gehlot or the company has never received any notice/intimation for DFO Gurgaon or any other officials of forest deptt. to enquire about the allegations against Sh. Raj Singh Gehlot and/or the company. Mr. Raj Singh Gehlot and the company came to know of the Damage Report dated 14.05.2008 only after a gap of four (4) years when the notice dated 15.05.2012 was received from Divisional Forest Officer (DFO), Gurgaon requiring Sh. Raj Singh Gehlot for retrieval of the said 6080 sq.mtrs. of land allegedly claimed to be part of Nathupur Bund a declared protected forest vide Notification No. S.O.251/C.A.16/27/S.29/81 dated 02.12.1981. Moreover, no details or description or map etc. of the land allegedly diverted were given either in the report of Range Forest Officer Gurgaon dated 14.05.2008 or in the Damage Report no.29065 date 14.05.2008 or in the notice dated 31.05.2008 in the notice dated 15.05.2012. Copy of all these are are enclosed herewith.
5. That rebuttal to the allegations made by the DFO Gurgaon in the Notice dated 15.05.2012 and said Damage Report dated 14.05.2008 was filed on behalf of Shri Raj Singh Gehlot vide letter dated 5th June, 2012 alongwith detailed submissions and documents. Besides other contentions and non-servicing of earlier notices/report it was clarified that the land in question is private land owned and possessed by Ambience Developers & Infrastructure Pvt. Ltd. and the same is not protected forest as it is not part of Nathupur Bund and therefore, not affected by Notification No. S.O.251/C.A.16/27/S.29/81 dated 02.12.1981. Copy of said letter dated 5th June, 2012 is enclosed herewith. In view of that it was requested that the notice dated 15.05.2012 may kindly be withdrawn and also to afford an opportunity of hearing in the matter.

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6. That the Divisional Forest Officer neither heard the accused nor passed any order and straight way filed a prosecution suit No. 7G/08-09 against Shri Raj Singh Gehlot in the Environment Court Faridabad which also took cognizance and issued notice to Shri Raj Singh Gehlot. Aggrieved with all these Sh. Raj Singh Gehlot filed a criminal Revision Petition No.34200 of 2012 before the Hon'ble Punjab & Haryana High Court which was pleased to stay the proceedings in the matter before the Environment Court at Faridabad.
7. That we made several representations to the various authorities of forest department against the arbitrariness and high handedness of DFO, Gurgaon in issuing of Damage Report No.29065 dated 14.05.2008 and filing of prosecution suit No.7G/08-09 before Environment Court at Faridabad in complete contravention of facts of the case and applicable provisions of the law. After sustained efforts Principal Chief Conservator of Forest (PCCF) Haryana was kind enough to see reason in our submissions and to make enquiries and also to afford opportunity of hearing in the matter. Principal Chief Conservator of Forest (PCCF), Haryana heard and considered detailed submissions made in the representations, facts of the case, supporting documents made available to him reports of field and other officials of forest deptt. and also the applicable provisions of the law and after that vide order no.NT/D-II-6381/4344 dated 16.10.2015 decided that the land allegedly diverted by M/s Ambience Developers & Infrastructure Pvt. Ltd. is not forest land under Indian Forest Act, 1927 and the Damage Report issued by the DFO, Gurgaon for violation of Indian Forest Act on that basis is not tenable and in view of that Damage Report No.29065 dated 14.05.2008 issued by DFO, Gurgaon against Sh. Raj Singh Gehlot was cancelled and DFO(T), Gurgaon was asked to withdraw the prosecution suit No.7G/08-09 filed by him against Sh. Raj Singh Gehlot in the Hon'ble Environment Court, Faridabad. The order dated 16.10.2015 of the Principal Chief Conservator of Forest Haryana is a speaking and detailed order, copy of which is enclosed herewith.
8. That the fact of quashing of Damage Report dated 14.05.2008 by PCCF Haryana vide order dated 16.10.2015 was brought to the notice of the Hon'ble Punjab & Haryana Court at Chandigarh and in response to the pointed query of Hon'ble High Court whether forest authorities would likely to continue with the proceedings in the said circumstances, the learned State Counsel sought time to confirm the said fact. Copy of the order dated 16.10.2015 of PCCF, Haryana was taken on record by the Hon'ble High Court. Copy of the order dated 04.11.2015 of the Hon'ble High Court is enclosed herewith. In the meantime we requested the Hon'ble High Court to withdraw the status quo order on the proceedings before the Environment Court at Faridabad in order to get the prosecution case No.7G/08-09 disposed. But it is strange that State Counsel has sought adjournment on the subsequent date. In the meantime we came to know change in stand of the state to go for trial in the prosecution case. Keeping in view the change in stand of the state, we have again requested the Hon'ble High Court to revive the order regarding staying of proceeding in the case with Environment Court at Faridabad which was allowed by the

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Hon'ble High Court vide order dated 20.05.2016. Copy of which is enclosed herewith. Similarly, it is also surprising that DFO Gurgaon has not complied with order dated 16.10.2015 of PCCF, Haryana, Chandigarh till date. In fact the matter should have been settled till date but we are not able to understand why no action has been taken in the matter by DFO Gurgaon so far inspite of clear directions in the order dated 16.10.2015 of PCCF, Haryana, Chandigarh.

Sir, it appears that as in past some invisible power with vested interests or ulterior motive is again in action to derail the process in order to harm Sh. Raj Singh Gehlot and the Ambience Group of Companies. It goes without saying that the conduct of the DFO Gurgaon has been quite arbitrary, irrational, unfair, illogical and illegal as he completely ignored merits and facts of the case, applicable provisions of the law and basic principle of natural justice to provide an opportunity of hearing to the accused. However PCCF Haryana was kind enough to allow an opportunity of hearing in the matter, heard the submissions considered the supporting not only facts and documents furnished but also applicable provisions of law, obtained independent report of the field staff and other officials of the Deptt. and after that with due application of mind has passed the order dated 16.10.2015 which is quite detailed, reasoned, logical, balanced, self explanatory and speaking and should have been implemented without any delay. We seek your kind permission to submit the gist of our submissions made before the Principal Chief Conservator of Forest Haryana for your ready reference and perusal as under:-

- i) All the lands owned by Ambience Group of Companies including the land subjected to Damage Report (DR) dated 14.05.2008 and prosecution case no.7G/08-09 in the revenue estate of Village Nathupur, Tehsil & District Gurgaon now Special Zone as per Development Plan of Gurgaon have been and are the private property and no part of their land was ever owned by the Forest Deptt. or any other Government Department.

The abovesaid contention is supported by the revenue records since 1939-40 which are already on the file of the DFO, Gurgaon. Further confirmation in this respect given by the Irrigation Deptt., Revenue Deptt. and Town & Country Planning Deptt. also on the file of DFO, Gurgaon. DFO Gurgaon has all along been claiming that the ownership of the land of Nathupur-Sikanderpur Bundh vests with the Irrigation Department whereas Executive Engineer, Mewat Water Service Division, Nuh. vide letter no.3786 dated 27.08.2002 addressed to the DFO Gurgaon has clarified that Irrigation Department is not the owner of the land under Sikanderpur Nathupur Bund. Copy of Shajra Plan and Jamabandi of land under Sikanderpur Nathupur Bund were also sent alongwith the said letter. It was also clearly stated in the said letter that land on which the Sikanderpur Nathupur Bundh was built is completely private ownership land and no land is owned by Irrigation Department. This fact was further supported by Revenue Deptt. and

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Town & Country Planning Deptt.. Copy of the said letter No.3786 dated 27.08.2002 is enclosed herewith. It is therefore clear that the claim of the DFO Gurgaon that the ownership of the land of Nathupur-Sikanderpur Bundh vests with the Irrigation Department is completely baseless and false as is clear from the said letter no.3786 dated 27.08.2002 of Irrigation Deptt. It is surprising that inspite of all this DFO, Gurgaon has issued the Damage Report dated 14.05.2008 and file the prosecution case No.7G/08-09 in the Environment Court at Faridabad. He has even concealed these material facts not only from the Deptt. but also in the reply filed before the Hon'ble High Court in order to cover up his arbitrary and illegal action which is not only an act of insubordination and indiscipline but also contempt of court of Hon'ble Punjab & Haryana High Court at Chandigarh.

- ii) None of the khasra no. of the land owned by Ambience Group of Companies including the one in question has ever been and is part of Sikanderpur Nathupur Bund. It is clear from the revenue records, details of khasra nos. under Sikanderpur Nathupur Bund sent by Irrigation Deptt. to DFO Gurgaon, statement of senior officials and heads of the Forest Deptt. itself and also from the facts licences were issued by the DTCP, Haryana, Chandigarh of all facts and without any stipulation as to obtaining of any clearance from the Forest Deptt. or irrigation deptt. in respect of Sikanderpur Nathupur Bund.

Copy of revenue records since 1939-40 were submitted to the DFO, Gurgaon and PCCF, Haryana, Chandigarh and as per these revenue record there is no mention of existence of Sikanderpur Nathupur Bund over the khasra nos. owned by Ambience Group of Companies in the revenue estate of Village Nathupur, Tehsil & Distt. Gurgaon.

Irrigation Deptt. in the annexure to the letter No. 3786 dated 27.08.2002 of its Executive Engineer, Nuh had provided details of all khasra nos. under the Sikanderpur Nathupur Bund and as per that the Sikanderpur Nathupur Bund exists in the revenue estate of village Nathupur Tehsil & District Gurgaon on the land comprising only in the Khasra Nos. 436, 430, 405, 392, 391, 389, 88, 109, 120, 119, 118, 117, 97, 96, 94, 93, 91, 92, 150, 153, 165, 154, 157, 158, 159. In the reply filed by DFO, Gurgaon in CRP No.34200 of 2012, it is stated that details and records of the land under Sikanderpur Nathupur Bund are available with Irrigation Deptt. of Haryana not with his office. Copy of the reply filed by DFO, Gurgaon in CRP No.34200 of 2012 is enclosed herewith. It is also pertinent to mention that DFO Gurgaon in his reply in CRP No.34200 of 2012 before the Hon'ble Punjab & Haryana High Court at Chandigarh has also stated that Sikanderpur Nathupur Bund exists on part of land comprising in khasra no. 531, 533 & 535 in the revenue estate of Village Nathupur Tehsil & District Gurgaon but none of the khasra nos.531, 533 & 535 is in the list of the khasra nos. sent by Irrigation Deptt. which has been stated as part of Sikanderpur Nathupur Bund.

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In this respect the observations/statements made by the Secretary Forest and Environment Deptt., Haryana, Principal Chief Conservator Forest, Haryana and Sh. M.L. Kansal Chief Engineer, Drainage, Haryana in the meeting held under the Chairmanship of Chief Minister, Haryana at Chandigarh on 28.04.1992 to discuss and approve the proposal to convert 260 acres of land comprising in various Khasra nos. in the revenue estate of village Nathupur and Dundahera, Tehsil & District Gurgaon into Special Zone and to amend the Draft Development Plan, Gurgaon, are quite relevant in order to make the things clear that none of the land owned by Ambience Group of Companies in the revenue estate of Village Nathupur, Tehsil & Distt. Gurgaon.

The Secretary, Forest and Environment and PCCF had made the following statement in the said meeting on 28.04.1992:-

“Commissioner and Secretary, Forest and Environment and Principal Chief Conservator of Forest clarified that this area is not a notified reserve forest under the Indian Forest Act and that they have no program of planting forest on this land.”

Chief Engineer, Drainage Department has made the following statement in the said meeting dated 28.04.1992:-

“Chief Engineer, Drainage explained that a deep Nallah existed at the site and as lot of water flows into it during the rainy season which enters into Delhi Territory. There was a steep gradient and the rain water results in cutting and erosion of soil during extra ordinary heavy rains. He was of the view that with the urbanization on both sides of Nallah discharge of water will increase and its proper drainage shall be necessary.”

From the perusal of the above statements it can be concluded that

- a) 260 acres of land converted into Special zone was not part of Protected/Reserved Forest. Even there was no program of planting forest on this land by the Forest Deptt.
- b) There is no mention in any of the statement made in the said meeting about existence of Nathupur-Sikanderpur Bundh on the 260 acres of land earmarked for Special Zone.

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- c) There was Deep Nallah at the site in which lot of water used to flow during the rainy season which enter into Delhi Territory. It is clear from the statement of Chief Engineer Drainage Deptt, Haryana that the topography of land was low and during rainy season flow of water from this land was towards Delhi but not towards Nathupur Village. It is also quite clear that the Chief Engineer Drainage Deptt. had not made a mention of existence of Nathupur Sikanderpur Bundh on this land. Further nallah with flowing water and Bundh on any land can not co-exist.
- d) Damage Report dated 14.05.2008 and prosecution case No.7G/08-09 initiated by the DFO Gurgaon are completely contrary to the statement made by the Secretary Forest and Environment Harayna and PCCF, Haryana both head and senior officials of the Forest Deptt. in the high level meeting held on 28.04.1992 under the Chairmanship of Chief Minister of Haryana. In this respect, it is pertinent to note that the Notification No. S.O.251/C.A.16/27/S.29/81 dated 02.12.1981 was issued by the Forest Deptt. way back in the year 1981 and that must be in the knowledge of the Forest Deptt. and Government. Making of statement after a lapse of 16 years of issuing of notification dated 02.12.1981 by the Forest Deptt. itself is quite strange and amounts to misuse of authority or his post in complete violation of established norms in Govt. and strict action needs to be taken for such insubordination and indiscipline.

It is also clear from the fact that the Director Town & Country Planning (DTCP), Haryana, Chandigarh had issued various licences / CLUs to Ambience Group of Companies in respect of the land owned by the various companies which includes the land allegedly claimed by the Deptt. under the Sikanderpur Nathupur Bund and building plans of the carrying out the development were sanctioned by the esteemed offices of DTCP, Haryana, Chandigarh after detailed scrutiny and verifications and no forest land and/or existence of Sikanderpur Nathupur Bund was ever found by the DTCP, Haryana, Chandigarh. It may please be noted that DTCP, Haryana made detailed enquiries about the ownership and nature of the land for which licences is issued and licence is issued only after complete satisfaction of various officials at the office of DTCP, Haryana. Had there seen a forest land then DTCP, Haryana would have not issued any licence to Ambience Group of Companies in respect of the land owned by them in the revenue estate of village Nathupur, Tehsil & District Gurgaon now special zone as per Development Plan of Gurgaon.

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- iii) As per Section 29 of Indian Forest Act, 1927 State Government is empowered to issue protected forest notification and declare Government Forests Land or Waste land not included in a reserved forest but are the property of the Government or over which the Government has proprietary rights or to the whole or any part of the forest produce of which the Government is entitled. It is further stated that no such notification under the provisions of Indian Forest Act, 1927 shall be made unless the nature and extent of the right of Government and of private persons in or over the forest land or waste land comprised therein have been inquired into and recorded at a survey or settlement or in such other manner as the State Government thinks sufficient. It also states that land to be protected Forest will not abridge or affect any existing rights of individuals or communities. In the Notification No. S.O.251/C.A.16/27/S.29/81 dated 02.12.1981, it is stated that the strips of Government forests land or waste lands whether under tree growth or not on either side of the metalled surface of the roads, under the control of Public Works Department (Buildings and Roads), as well as on either side of the flowing water courses of all canals branches distributaries, major, minors, drains and channels etc., under the control of Irrigation Department, the land along the Railway track and station yards under the control of Northern Railway, escape abandoned canal, bunds and other lands and transferred to the Forest Department of management, mentioned in the Schedule below, to be projected forests, and the provisions of Chapter IV of said Act, to be applicable to them. It is significant to submit that none of the land or khasra nos. owned by Ambience Group of Companies is government land or government has any interest of whatsoever nature in the land. Further Sikanderpur Nathupur Bund is not on the land owned by Ambience Group of Companies. Therefore, even accordingly to Section 29 of Indian Forest Act, 1927 and Notification No. S.O.251/C.A.16/27/S.29/81 dated 02.12.1981 no parcel of land owned by Ambience Group of Companies can be called a Protected/Reserved Forest. In the reply filed in the CRP No.34200 of 2012 before the Hon'ble High Court Chandigarh, DFO Gurgaon has cited the ruling of Hon'ble Supreme Court of India that Forests Act is also applicable even on private land but contention of DFO Gurgaon is quite wrong because in the Damage Report No.39065 dated 14.05.2008 and prosecution case no.7G/08-09 the issue is whether land in question is forest land at all. In order to make applicable forest laws in any land first it must be a forest land and then the issue will come up whether it is government or private. Our contention has all along been that none of the land is forest land either under the provisions of Indian Forest Act, 1927 and/or in terms of Notification No. S.O.251/C.A.16/27/S.29/81 dated 02.12.1981. We are raising issue of nature of ownership to ascertain which land can be declared as protected forest under the provision of Indian Forest Act, 1927 and in terms of Notification No. S.O.251/C.A.16/27/S.29/81 dated 02.12.1981. It is only government land which can be declared as protected forest. As per Section 29 of Indian Forest Act, 1927 and contents of Notification dated 02.12.1981 the land owned by Ambience Group of Companies in the revenue

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estate of Village Nathupur, Tehsil & District Gurgaon now in Special Zone is not a forest land and thus provision of Forest Laws are not applicable on it. It may please be noted once it is established that a land is forest land then it is either subjected to the Forest Laws owned by Government or private person but first it is to be decided whether it was forest land or not. It is also pertinent to mention that as per principal of natural justice the right of individual or communities could not be abridged at all and therefore the land in question owned by Ambience Group of Companies can not fall in the category of Protected Forest just by issuing of the notification dated 02.12.1981 till the time procedure and compliance as per section 29 of Indian Forest Act, 1927 is not followed properly as provided in the law. It is also significant to submit that the title of the land in question as per revenue records is in the name of Ambience Group of Companies only and there is no mention of any Government land any where in record of any deptt. which is the foremost requirement in terms of section 29(1) of Indian Forest Act, 1927 and Notification dated 02.12.1981 in order to notify a land as protected forest.

- iv) The Notification No. S.O.251/C.A.16/27/S.29/81 dated 02.12.1981 was not issued in compliance to the provisions of Indian Forest Act, 1927 as the enquiries as to the nature and extent of the right of Government and of private persons in or over the forest land or waste land comprised therein were not made and recorded at a survey or settlement or in such other manner as the State Government was required to make in terms of provisions of Indian Forest Act, 1927. This fact was duly confirmed by the Forest Deptt. while supplying information under RTI Act vide its letter No.1733 dated 22.11.2012, copy of which is enclosed herewith. In view of that land under Sikanderpur Nathupur Bund cannot be called the protected/reserved forest in terms of provision of Indian Forest Act, 1927 and therefore, issuing of Damage Report dated 14.05.2008 and filing of prosecution case no.7G/08-09 on that basis was not tenable. It is a fact that the Forest Deptt. was not even aware of the khasra numbers and details of land and its ownership till the year 2002 as DFO Gurgaon got to know of these only through letter bearing No.3786 dated 27.08.2002 from Executive Engineer, Water Services Division, Mewat, Nuh. So much so Irrigation Deptt. has proposed to abandon the Bund and the level and free the land of Nathupur Sikanderpur Bundh. Sizra Plan comprising of the ownership details of the land and all the Khasra No. under the bundh was annexed with the said letter. It was also stated in the said letter dated 27.08.2002 of Irrigation Deptt, that whole of land under Sikanderpur Nathupur Bund in the revenue estate of Village Nathupur, Tehsil & Dist. Gurgaon is owned by the private person not by Irrigation Deptt. It means this fact was in the knowledge of Forest Deptt then the probably Sikanderpur Nathupur Bund would have not been made part of Notificateion dated 02.12.1981.

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In the letter No.3786 dated 27.08.2002, details of khasra no.s and their ownership whose land was under the Sikanderpur Nathupur Bund were duly given. As per that only khasra number 436, 430, 405, 392, 391, 389, 88, 109, 120, 119, 118, 117, 97, 96, 94, 93, 91, 92, 150, 153, 165, 154, 157, 158, 159 in the revenue estate of Village Nathupur, Tehsil & District Gurgaon were under Sikanderpur Nathupur Bund and none of these khasra nos. is owned by Irrigation Deptt. but all are owned by private persons. Thus DFO Gurgaon could have very well ascertained that the land owned by Ambience Group of Companies was not part of Nathupur Sikanderpur Bund and Protected/Reserved Forest. It is also relevant to add that the Forest Department has accepted the reported view of Irrigation Deptt. that Notification dated 02.12.1981 was vague as specific khasra nos. were not mentioned in the said notification as part of Nathupur-Sikanderpur Bundh. So much so till the year 2008 the Forest Department has not ever reported that any land owned by Ambience Group of Companies was part of Nathupur-Sikanderpur Bundh when for the first time in the DR No. 29065 dated 14.05.2008 allegation was made against Sh. Raj Singh Gehlot for diverting forest land admeasuring 6080 sq.mt. i.e. a strip of 380 mtrs x 16 mtrs but without any details of any khasra no.

- v) DFO Gurgaon has filed the Damage Report (DR) dated 14.05.2008 completely in arbitrarily manner without making any enquiry to ascertain factual and legal position. So much so he did not enquire and ascertain the khasra no. on which Bund exists. He was not in possession of any documents or details in respect of the land under Sikanderpur Nathupur Bund. Similarly he was not having any documents or proofs in his possession to support the allegation of diversion of forest land for non forest purposes but for so called site visit report of the Range Officer of his office. DFO Gurgaon had issued the DR 14.05.2008 merely on assumptions with the object to harass us either of his own or at the instance of some invisible hands/authority. Even if he was justified for imagination sake even then he was completely wrong in taking cognizance Sikanderpur Nathupur Bund after lapse of 27 years of Notification dated 02.12.1981 and of the alleged offence of land under Sikanderpur Nathupur Bund in Ambience Island after lapse of 15 years and then filing the prosecution case no.7G/08-09 after lapse of four (4) years of issuing of DR dated 14.05.2008 and that too by completely ignoring the facts and submissions made in letter dated 05.06.2012 submitted to his office on behalf of Sh. Raj Singh Gehlot in response to notice dated 15.05.2012 and top of all without affording any opportunity of hearing to the accused in the matter. It is pertinent to submit that DFO, Gurgaon has tried to collect proofs/documents post facto in order to cover up his illegal, irrational and arbitrary action. It is quite strange that the DFO Gurgaon even ignored the proofs/documents so collected by him only to post facto issuing of the DR dated 14.05.2008 and filing of prosecution case no.7G/08-09 in the Environment Court, Faridabad against Sh. Raj Singh Gehlot. It may please be noted that DFO Gurgaon gathered and cited

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three proofs post facto i.e. confirmation of Irrigation Deptt., endorsement number 7315 dated 09.08.2012 of District Town Planner, Gurgaon in reference to letter no.136-141 dated 15.05.2012 issued by the DFO, Gurgaon to DTP Gurgaon and super imposing of satellite imagery / google imagery on the khasra numbers in the revenue estate of village Nathupur, Tehsil & District Gurgaon to show the passing of Sikanderpur Nathupur Bund through the land comprising in Khasra no. in question i.e. 531, 533 & 535 in the revenue estate of Village Nathupur, Tehsil & District Gurgaon but these three proofs are not supporting the false and baseless allegations leveled by DFO Gurgaon in the matter. From the letter dated 28.08.2002 of Irrigation Deptt., it was clear that none of the khasra no. owned and possessed by Ambience Group of Companies is in the list of Khasra nos. on which Irrigation Deptt. claimed the existence of Sikanderpur Nathupur Bund. Similarly it was expressly told that the land under the Sikanderpur Nathupur Bund is not owned by Irrigation Deptt. as the same is owned by private persons. It is pertinent to add that as per Notification dated 02.12.1981 no private land was declared as protected forest. Similarly letter of DTP referred to raising of query and after clarification it was clear to him that there was no Bund and in view of that licence was issued for that land and that too without any reference to Sikanderpur Nathupur Bund and/or stipulation to take any clarification/NOC from the Irrigation Deptt. or Forest Deptt. in the matter. In fact this fact was clearly mentioned in the covering letter of STP, Gurgaon but DFO Gurgaon to best of his wisdom ignored that statement of STP and made the choice which fit into his design.

Similarly DFO Gurgaon has wrongly claimed that Khasra No.531, 533 and 535 are part of Nahupur Sikanderpur Bundh on the basis of super imposition of Sizra of Nathupur Sikanderpur Village on Google image of 2000 but the same was taken in 2002. By what imagination, it was imagined by him that an image taken in 2002 will tell the actual site position of the year 2000. There are documents which prove that the development of Lagoon Residential Apartment Company was commenced in 1998 and completed in 2001 and Occupancy certificate was filed in 2001 itself so much so even occupation certificate was issued by DTCP Haryana on 10.11.2002. Further forest department is bound to act in accordance with the provisions of Indian Forest Act, 1927 as well as the notification and the violations of forest also to be ascertained on the basis of the provisions of the Act and the Notification whereas Forest Department has wrongly placed reliance upon the Google Images of 2000 which is beyond the scope of the Act and the notification itself. In this respect, it is pertinent to mention the following facts.

- a) The Sizra of Nathupur Sikanderpur Village is unscaled and it is not possible to get reliable results without having a scaled Sizra hence could have not been relied upon.

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- b) Our above observation is factually justified on the ground that department claims the Violation on a strip of 380 mtr x 16 mtr; and the length passing through khasra no.531, 533 and 535 as per revenue record is merely 50 Gatha i.e. 125 meters only.
- c) The claim of the Forest Department that the Bundh passing through khasra no.531, 533 and 535 is clearly seen in Google imagery 2000 is totally unfounded. For the fact that construction of Group Housing Complex was raised after procuring license for development from DTCP Haryana in 1993 and the structures were erected on the said land in question much before the year 2000. Thus the facts mentioned above make it abundantly clear that the claim of the department is totally ill founded, malafide and baseless especially it does not have any viability in the provisions of Indian Forest Act 1927 and protected Forest Notification which is the basis for any stand to be taken by the Department in any matter.

Further even if for imagination sake, allegation made by DFO, Gurgaon diversion of forest land in khasra no.531, 533 & 535 in the revenue estate of Village Nathupur, Tehsil & Dist. Gurgaon for non forest purposes then also the allegation is falling flat in view of total area alleged diverted. Total area of Khasra no.531, 533 & 535 worked out on the basis of even total length of the said khasra nos. i.e. 531, 533 & 535 which 50 gathas means 125 meters by the width of 16 meter of the Bund taken by the DFO Gurgaon does not match to the total area alleged diverted by DFO Gurgaon in DR dated 14.05.2008 and prosecution case no.7G/08-09.

- vi) DFO. Gurgaon has wrongly issued Damage Report dated 14.05.2008 and filed prosecution case no.7G/08-09 against Sh. Raj Singh Gehlot even on the basis of that these are filed against Shri Raj Singh Gehlot who is neither owner of the alleged land nor was the director of the owner company at the time of issuing of licence no.19 to 1993 when the alleged land was licenced and would have been diverted Mr. A.L. Seth and his family were the divertor as well as owner of the company M/s HLF Enterprises Pvt. Ltd. Mr. Raj Singh Gehlot came into the company only in 1994. As per provisions of Indian Forest Act, 1927 and/or in the Forest Conservation Act, 1980 and Notification No. S.O.251/C.A.16/27/S.29/81 dated 02.12.1981 proceedings, if any were to be initiated only against the owner company or maximum against the director with owner company. It is categorically stated that Mr. Raj Singh Gehlot has never held/owned any land in the revenue estate of Village Nathupur, Tehsil & District Gurgaon. This fact was clarified to the DFO Gurgaon on the basis of the revenue record submitted to DFO Gurgaon alongwith the reply dated 05.06.2012 in response to his notice dated 15.05.2012. In spite of that he has not corrected his mistake and proceeded against Shri Raj Singh Gehlot and filed the prosecution case no.7G/08-09. It supports the allegation against DFO Gurgaon was working either at the instance of some invisible hands or was having ulterior design/motive against Sh. Raj Singh Gehlot.

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- vii) As stated above, the proceedings were initiated by DFO Gurgaon at the instance of some invisible hands with vested interest or suo motto by him with ulterior motive/design only to harm Sh. Raj Singh Gehlot and Ambience Group unnecessarily and arbitrarily as there was no reason with him to proceed in such a manner. It got strengthened that so much so DFO Gurgaon never sent the Damaged Report dated 14.05.2008 to Sh. Raj Singh Gehlot and/or Ambience Group of Companies.

He did not ascertain the facts and legal position in the case. He even did not take the pain to comply with the basic norms or procedure in this respect. He did not allow an opportunity of hearing to the accused. He did not considered the merits in the submissions made to him in the matter. He even failed to pass a speaking order. He tried to cover up his misdeeds by collecting the proofs/documents post facto of his action. So much so he did not consider the facts and merits in the proof/documents so collected by himself. In fact he worked with predetermined mind and even ignored the statements made by the heads of Forest Deptt. in the matter. It is fit case of insubordination and indiscipline.

- viii) We filed Criminal Revision Petition (CRM 34200 of 2012 Sh. Raj Singh Gehlot V/s State of Haryana) before the Hon'ble Punjab and Haryana High Court to seek remedy against the arbitrary and illegal action of the Forest Department in issuing Damage Report dated 14.05.2008 and initiation of prosecution in Environment Court, Faridabad against Sh. Raj Singh Gehlot in individual capacity on false and imaginary grounds by ignoring of the factual and legal position by DFO Gurgaon and taking of cognizance by the Environment Court Faridabad and The Hon'ble Punjab and Haryana High Court was pleased to grant relief by passing an order staying the proceedings in the prosecution case no.7G/08-09 filed by DFO Gurgaon in the Environment Court, Faridabad and at present the matter is pending adjudication with Hon'ble Punjab & Haryana High Court at Chandigarh.

In the light of above, it is humbly submitted that the order of the PCCF Haryana is a detailed, logical and speaking order passed after considering of material facts on record and reports taken from officials of forest department in the field and others and is completely in consonance with the provisions of Indian Forest Act, 1927 and there is no adverse order of the Govt. or any other authority or court so far against the abovesaid order dated 16.10.2015 of the PCCF, Haryana, Chandigarh, therefore the order dated 16.10.2015 has attained finality in the matter therefore, needs to be implemented without any delay. We therefore humbly request your goodself to pass on necessary orders or directions to DFO Gurgaon for withdrawal of prosecution case no.7G/08-09 and to issue a confirmation letter that all allegations as to diversion to forest land by Ambience Group of Companies of Mr. Raj Singh Gehlot have been dropped.

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However, in case your goodself have any reservation of whatever nature in the matter then we humbly request your goodself to allow an opportunity of hearing to make further submissions or clarification in support of the contention made herein and also to apprise you the facts and legal position of law in details and to explain the order dated 16.10.2015 passed by PCCF, Haryana Chandigarh before framing any adverse opinion in the matter.

We do hope that keeping in view the heavy loss of time, reputation and money suffered by us due to arbitrary and illegal acts and deeds of the DFO Gurgaon, your goodself will do the needful at the earliest and oblige.

Thanking you

Yours faithfully,
For Ambience Developers & Infrastructure Private Limited

(Raj Singh Gehlot)
Director

Encl. : As above.



Proof of Service

Lex office <lexoffice21@gmail.com>

Advance Service in OA No, 881/2022 - Rajinder Krishan Sharma & Anr. vs UOI & Ors.

1 message

Lex office <lexoffice21@gmail.com>

Mon, Sep 11, 2023 at 10:49 AM

To: "rksharma.fcs@gmail.com" <rksharma.fcs@gmail.com>, "pawanbansal@gmail.com" <pawanbansal@gmail.com>, kaushalsanjeev@hry.nic.in, pccf-hry@nic.in

Dear Sir/ma'am,

Please find attached a copy of Additional documents on behalf of the Respondent No. 8 to be filed before the Hon'ble National Green Tribunal in the above captioned matter.

Copies to

01. Rajinder Krishan Sharma
Applicant No. 1
Email : rksharma.fcs@gmail.com
02. Pawan Bansal
Applicant No. 2
Email Id: pawanbansal@gmail.com
03. State of Haryana
Through Chief Secretary
Respondent No. 3
Email Id : kaushalsanjeev@hry.nic.in
04. Principal Chief Conservator of Forests, Haryana
Respondent No. 9
Email Id : pccf-hry@nic.in
05. Chief Conservator of Forests
Respondent No. 10
Email Id : pccf-hry@nic.in

*Regards**Shubham Yadav**Advocate**for the Respondent No. 8**Mobile No.: 9310884005*

 **Additional documents Compilation - 10.09.2023.pdf**
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