

**BEFORE THE NATIONAL GREEN TRIBUNAL  
SITTING AT PUNE**

**ORIGINAL APPLICATION NO. 41 of 2023**

**BETWEEN:**

**Arun Gaikwad ... APPLICANT**

**VERSUS**

Secretary, Environment Department of the Government of  
Maharashtra, & others ... **RESPONDENTS**

**INDEX**

SR. NO.	DESCRIPTION	ANNE- XURE	PAGE NO.
1.	Combined Rejoinder		414-426
2.	Relevant page of Maharashtra Regional and Town Planning Act, 1966, which defines the Floor Space Index.	A-1	427
3.	Text of Judgment of the Hon'ble Supreme Court in the case of Keystone Realtors, which mandates a prior Environment Clearance on expansion of projects.	A-2	428-445
4.	Ruling of the Hon'ble National Green Tribunal in the case of	A-3	446-447



	Sanjay Gupta, which mandates that a Recreation Ground reservation cannot be changed.		
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Secretary, Environment Department of the Government of  
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**COMBINED REJOINDER TO AFFIDAVIT-IN-REPLY OF  
RESPONDENT NO. 5 (Ministry of Environment, Forests and  
Climate Change) and Respondent No. 6 (State Level  
Environment Impact Assessment Authority)**

I, Arun Nathuram Gaikwad, the Applicant above-named,  
residing at Mumbai, do hereby solemnly affirm and state as under:

**1.** The Appellant has gone through the copy of the Affidavits-in-Reply of the abovementioned Respondents i.e. Respondent No. 5, Ministry of Environment, Forests and Climate Change (MOEFCC). Since, the fundamental issues raised in both the Affidavits-in-Reply are fundamentally the same, accordingly, this Combined Rejoinder is being filed dealing with the core issues at stake, which are essential to determining the "substantial questions relating to environment" traversed through in this Original Application.

**2.** The Applicant submits that a perusal of the Affidavit-in-Reply, shows that there are essentially 5 core issues, which emerge with



reference to the issues at stake. Accordingly, these core issues are being dwelt upon hereunder:

### **3.0 THE CORE ISSUES:**

#### **3.1 ISSUE NO. 1:**

#### **Respondents do not deny this is a Township and Area Development Project:**

One of the main core questions which have been traversed through in the Original Application, is that Wadala Truck Terminal is a Township and Area Development Project. Therefore, a specific Environment Clearance, was required by following the elaborate procedures, stipulated in the Environment Impact Assessment Notification of 2006 related to Township and Area Development Project. This includes determining the "Terms of Reference" and thereafter preparing an "Environment Impact Assessment Report".

It is pertinent to note that "These Respondents" have not disputed the fact that this is a Township and Area Development Project. All they have contended is that since the project construction started in the year 1985, hence no Environment Clearance is required.

This stand taken by "These Respondents" is untenable, for the reason that this project was made subject to substantial expansion post 14<sup>th</sup> September, 2006, when the Environment Impact Assessment Notification of 2006 was brought to force.

This is apparent from the following facts:



- (a) A fresh layout of the project was prepared on 16<sup>th</sup> November, 2010 having an area of 109.24 hectares (*annexed as ANNEXURE-‘A-7’ in the Original Application*). This layout obviously, was made after the promulgation of the Environment Impact Assessment Notification of 2006. Accordingly, it was necessary that this Township and Area Development Project ought to have taken prior Environment Clearance.
- (b) Even the layout prepared as above, was further revised and this Township and Area Development Project was further expanded vide layout of 16<sup>th</sup> September, 2019, a copy of which has been annexed along the Original Application and marked as **ANNEXURE-‘A-2’**. Through this fresh layout, **the size of this project was increased from 109.24 hectares to 122.10 hectares**. Therefore, this becomes an expansion case and accordingly, an Environment Clearance was required. This is more particularly apparent from Para 2 of the Notification which is quoted as under:

**“2. REQUIREMENTS OF PRIOR ENVIRONMENTAL CLEARANCE (EC):-**

The following projects or activities shall require prior environmental clearance from the concerned regulatory authority, which shall hereinafter referred to be as the Central Government in the Ministry of Environment and Forests for matters falling under Category ‘A’ in the Schedule and at State level the State Environment Impact Assessment Authority (SEIAA) for matters falling under Category ‘B’ in the said Schedule, before any construction work, or preparation of

land by the project management except for securing the land, is started on the project or activity:

(i) All new projects or activities listed in the Schedule to this notification;

(ii) **Expansion and modernization of existing projects** or activities listed in the Schedule to this notification with addition of capacity beyond the limits specified for the concerned sector, that is, projects or activities which cross the threshold limits given in the Schedule, after expansion or modernization;

(iii) Any change in product - mix in an existing manufacturing unit included in Schedule beyond the specified range.”

**(Emphasis supplied).**

(c) At the time, when the project was conceived the Floor Space Index (FSI) was '1'. However, vide Notification dated 18<sup>th</sup> September, 2019 annexed as **ANNEXURE-'A-8'** in the Original Application, the FSI was substantially increased to '4' and this was further made intense by using a concept of 'Global FSI', which has got no statutory force. This is because while the word FSI has been defined in the Maharashtra Regional and Town Planning Act, 1966, (relevant legal provision annexed as **ANNEXURE-'A-1'**) however, a prefix "**Global**" was added, which is not permitted under the legal maxim – '*A verbis legis non recedendum est*', i.e. "From the words of law, there must be no departure".



Be that as it may, this was tantamount to an expansion of the project.

Considering the facts stated in (a) to (c) above, it is overwhelmingly clear that there has been a substantial expansion to this Township and Area Development Project, and therefore, a prior Environment Clearance before the expansion was necessary, which was not taken in this case.

### **3.2 ISSUE NO. 2:**

**MOEFCC has incorrectly stated that that instead of the Environment Clearance required for the entire Township and Area Development Project, it would suffice if individual plot owners take respective Environment Clearance:**

In their Affidavit-in-Reply, the MOEFCC has stated that since the development of the project started in the year 1985, therefore, it was not necessary to have taken Environment Clearance for the entire Township and Area Development Project. Instead, Environment Clearance would be required only if individual plots were to cross the threshold limit of 20000 square metres.

More particularly, the MOEFCC has stated as under:

“It is submitted that since the majority of the layout/infrastructure is developed prior to the EIA Notification, it is opined that the MMRDA shall ensure that the individual plot owners to obtain prior EC in case the Built-up Area is more than 20000 square metres.”



This contention taken by the MOEFCC becomes legally untenable, because the parameters of taking Environment Clearance for the Township and Area Development Projects, are fundamental different. While the Township and Area Development Projects come under the more intense Category 8 (a) of the Schedule of the Notification, the projects of the size of 20,000 to 150000 square metres, come under the easy Category- 8 (b) of the Schedule.

Needless to add that for a Category 8(a) project an elaborate exercise of preparing the "Terms of Reference" and thereupon an "Environment Impact Assessment Report" is required, this stipulation is not applicable to the Category 8 (b) project.

Accordingly, this argument taken by the MOEFCC pales into insignificance.

### **3.3 ISSUE NO. 3:**

**'These Respondents' have taken a position which is contrary to the ruling of the Hon'ble Supreme Court in relation to the expansion of existing projects:**

The Applicant submits that the Hon'ble Supreme Court in the case of *Keystone Realtors Pvt. Ltd. v. Anil V. Tharthare (ANNEXURE-'A-2')*, has clearly stated that if there is any expansion of an existing project, then a prior Environment Clearance was required.

More particularly, the Hon'ble Supreme Court held as under:



“17. At the time of the second increase, the total construction area of the appellant’s project was enlarged from 32,395.17 square metres to 40,480.88 square metres. As a result of the expansion, the appellant constructed sixteen additional flats which were sold at the prevailing market rate. The appellant did not comply with the procedure set out under paragraph 7(ii) of the EIA Notification but rather sought an “amendment” to the EC. The third respondent did not require the appellant to submit an updated Form 1 nor was the proposal processed and evaluated by the fourth respondent. The “amendment” to the EC dated 13 March 2014 does not discuss the potential environmental impact of the increase in construction area, but merely records that the construction area now stands at 40,480.88 square metres. **The procedure set out under paragraph 7(ii) of the EIA Notification exists to ensure that where a project is expanded in size, the environmental impact on the surrounding area is evaluated holistically considering all the relevant factors including air and water availability and pollution, management of solid and wet waste and the urban carrying capacity of the area. This was not done in the case of the appellant’s project.** It was not open to the third respondent to grant an “amendment” to the EC without following the procedure set out in paragraph 7(ii) of the EIA Notification.

**18.** We further note that as on the date of the impugned order construction at the project site had already been completed. A core tenet underlying the entire scheme of the EIA Notification is that construction should not be executed until ample scientific evidence has been compiled so as to understand the true environmental impact of a project. **By completing the construction of the project, the appellant denied the third and fourth respondents the ability to evaluate the environmental**



**impact and suggest methods to mitigate any environmental damage. At this stage, only remedial measures may be taken.** The NGT has already directed the appellant to deposit Rupees one crore and has set up an expert committee to evaluate the impact of the appellant's project and suggest remedial measures. In view of these circumstances, we uphold the directions of the NGT and direct that the committee continue its evaluation of the appellant's project so as to bring its environmental impact as close as possible to that contemplated in the EC dated 2 May 2013 and also suggest the compensatory exaction to be imposed on the appellant."

**(Emphasis supplied).**

The Applicant submits that the aforesaid ruling of the Hon'ble Supreme Court is crystal-clear and unambiguous. If there is any expansion in the size of an existing project, then an Environment Clearance would be mandatory, and which has not been taken in this case.

Unfortunately, despite the fact that the impugned project got substantially expanded not once, but twice, accordingly, a prior Environment Clearance was required in terms of the ruling of the Hon'ble Supreme Court mentioned above.

#### **3.4 ISSUE NO. 4:**

**'These Respondents' are completely silent on the aspect that the primary requisite of having a Garden of 30.5 hectares has been sacrificed:**

The Applicant submits that in the Ground No. 3 of the Original Application (at page 18) it has been brought out, specifically in detail,

that a garden area of 30.5 hectares was required, and which has been sacrificed.

This aspect has been completely set aside by in the Affidavit-in-Reply of the MOEFCC and the SEIAA. Accordingly, this point ought to be assumed to have been admitted in view of the following provisions of the Civil Procedure Code, 1908:

**Order VIII of the Civil Procedure Code, 1908, the relevant part of which is quoted hereunder:**

**3. Denial to be specific --** It shall not be sufficient for a defendant in his written statement to deny generally the grounds alleged by the plaintiff, but the defendant must deal specifically with each allegation of fact of which he does not admit the truth, except damages.

... ..

**5. Specific denial –** (1) Every allegation of fact in the plaint, if not denied specifically or by necessary implication, or stated to be not admitted in the pleading of the defendant, shall be taken to be admitted except as against a person under disability:

To reiterate, since 'These Respondents' have not denied the averment in the Original Application stated above. Hence this fact has been admitted and which thus entitles the Original Applicant for the environment-related relief sought in the Original Application.

### **3.5 ISSUE NO. 5:**

**'These Respondents' have obscured the conspicuous fact, that a garden of 6.76 hectares was sacrificed in violation of**

**the settled position in law that a Garden Reservation cannot be compromised:**

Despite the fact that in the Affidavit-in-Reply of the MOEFCC it has been mentioned that the site was inspected by the Regional Office, Nagpur, yet 'These Respondents' in their Affidavit-in-Reply have clearly omitted to mention the fact that in the layout of the year 2010 **(ANNEXURE-'A-7' of the Original Application)**, Recreation Ground i.e. RG of 6.76 hectares was earmarked in Block-C the project. However, in open violation of the law, this mandatory RG was deleted **(ANNEXURE-'A-2' of the Original Application)**.

Needless to add that it is a settled position in the law that once a land has been earmarked as a RG, then this reservation cannot be ever deleted. While this gets support from the eminent principles of non-regression, this has been more specifically stipulated by the Hon'ble Supreme Court in the landmark case of Bangalore Medical Trust.

While considering this ruling of the Apex Court, the Hon'ble National Green Tribunal in the case of Hon'ble National Green Tribunal, Special Bench, in Original Application No. 10 of 2022, in the case of Sanjay Gupta & others v. Ghaziabad Nagar Nigam ( annexed as **ANNEXURE-'A-3'**) came to the following self-explanatory inference:

**“3.** In this regard, in Lal Bahadur v. State of UP & Others, (2018)15SCC407, change of master plan and converting green area into residential one was considered. The issue was, whether such conversion is conducive to protection of environment or not. In the master plan of 1995 of Lucknow, area in dispute was reserved as green belt. In master plan 2021, the same



area, shown earlier as green belt, was converted as residential. This part of master plan 2021 was challenged before Lucknow bench of Allahabad High Court. Writ petition was dismissed. The matter came in appeal before Supreme Court. Court held in para 12 of judgment that change of area from green belt to residential is in violation of Article 21, 48A and 51A (g) of the Constitution. **Reliance was placed on Bangalore Medical Trust v B.S. Muddappa & Others, (1991)4SCC54, wherein Court had said that protection of environment, open spaces for recreation and fresh air, playground for children, promenade for the residents and other conveniences or amenities are matters of great public concern and avital interest to be taken care of in a development scheme. Public interest in the reservation and preservation of open spaces for parks and playgrounds cannot be sacrificed by leasing or selling such sites to private persons for conversion to some other use.** Court also relied on an American Supreme Court Judgment *Agins vs. City of Tiburon*, [447 us 255 (1980)], wherein Court said: '... it is in the public interest to avoid unnecessary conversion of open space land to strictly urban uses, thereby protecting against the resultant adverse impacts, such as ..... pollution, .... destruction of scenic beauty, disturbance of the ecology and the environment, hazards related geology, fire and flood, and other demonstrated consequences of urban sprawl'.

4. In para 15, Court said that, "This Court had clearly laid down that such spaces could not be changed from green belt to residential or commercial one. It is not permissible to the State Government to change the parks and playgrounds contrary to legislative intent having constitutional mandate, as that would be an abuse of statutory powers vested in the authorities. Court also observed, when master plan was prepared earlier and



authorities found importance of this place to be kept as open space. Court said, "The importance of park is of universal recognition. It was against public interest, protection of the environment and such spaces reduce the ill effects of urbanisation, it was not permissible to change this area into urban area as the garden/ Greenbelt is essential for fresh air, thereby protecting against the resultant impacts of urbanization, such as pollution etc. The provision of the Act of 1973 and other enactments relating to environment could not be permitted to become statutory mockery by changing the purpose in the master plan from green belts to residential one. Authorities are enjoined with duty maintain them as such as per doctrine of public trust."

(Emphasis supplied).

Accordingly, by removing the RG area of 6.76 hectares, and doing this without taking any prior Environment Clearance, makes this entire project as being violative of the Environment Impact Assessment Notification of 2006.

5. Considering the aforesaid, it is apparent that the contentions put forward by 'These Respondents' are simply preposterous and ought to be rejected. Accordingly, the Applicant humbly reiterates that the contentions raised by these Respondents, in their Affidavits-in-Reply be rejected and the prayers made in the Original Application be made absolute.

APPLICANT



### VERIFICATION

I, Arun Nathuram Gaikwad, having his address as 523/7 Fernandes Chawl, New Mill Road, Kurla West, Mumbai – 400070, do hereby verifies that the contents of aforesaid paras in this Rejoinder to the Affidavit-in-Reply of Respondent No. 5 and Respondent No. 6, are true to my personal knowledge and belief and that I have not suppressed any material fact.

*[Signature]*  
**APPLICANT**

11

**8 JAN 2024**  
**DATE: 8<sup>th</sup> January, 2024**

**PLACE: Mumbai**



**BEFORE ME**

*[Signature]*

**B.R. KASHID**  
 ADVOCATE & NOTARY  
 GOVT. OF INDIA

**8 JAN 2024**

**NOTED & REGISTERED**  
 Sr. No. 32 Page No. 9 Reg. No. 01  
 Date **8 JAN 2024**

(9) "Development plan" means a plan for the development or re-development of the area within the jurisdiction of a Planning Authority <sup>2</sup>[<sup>3</sup>[and includes revision of a development plan and] proposals of a special planning Authority for development of land within its jurisdictions];

<sup>4</sup>[(9A) "development right" means right to carry out development or to develop the land or building or both and shall include the transferable development right in the form of right to utilise the Floor Space Index of land utilisable either on the remainder of the land partially reserved for a public purpose or elsewhere, as the final Development Control Regulations in this behalf provide;]

(10) "Director of Town Planning" means the officer appointed by the State Government as the Director of Town Planning.

(11) "engineering operations" includes the formation or laying out of a street or means of access to a road or laying out of means of water-supply, drainage, electricity, gas or other public service;

(12) "existing-land-use map" means a map indicating the use to which lands in any specified area are put at the time of preparing the map;

(13) "final plot" means a plot allotted in a final town planning scheme;

<sup>5</sup>[(13A) "Floor Space Index" means the quotient or the ratio of the combined gross floor area to the total area of the plot, viz :—

"ANNEXURE A-2"

**REPORTABLE**

**IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION**

**Civil Appeal No. 2435 OF 2019**

**Keystone Realtors Pvt. Ltd.**

**...Appellant**

**Versus**

**Shri Anil V Tharthare & Ors.**

**...Respondents**

**J U D G M E N T**

**Dr Dhananjaya Y Chandrachud, J**

1. The present Civil Appeal arises from an order dated 11 February 2019 of the Principal Bench of the National Green Tribunal<sup>1</sup>. In its order, the NGT held that the increase in the total construction area of the appellant's project was an "expansion" under a notification (bearing number S.O. 1533) dated 14 September 2006<sup>2</sup> of the Ministry of Environment and Forests. The NGT found that the appellant had undertaken an "expansion" as set out in Paragraph 2 of the EIA

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<sup>1</sup> NGT

<sup>2</sup> EIA Notification

Notification without complying with the regulatory procedure prescribed. The appellant was directed to deposit an amount of Rupees one crore with the Central Pollution Control Board<sup>3</sup>. Noting that the construction at the project site had been completed, the NGT appointed a five-member expert committee to study the impact of the appellant's expanded project and to suggest remedial measures.

### *The facts*

2. The appellant is the project proponent of a residential redevelopment, called 'Oriana Residential Project' situated at CTS no 646, 646 (Pt) Gandhinagar, Bandra (East), Mumbai 400050. On 8 June 2010 the appellant received a Commencement Certificate to carry out the development and erect a building situated at the project property. The appellant began construction. When the construction commenced, the total construction area was 8,720.32 square metres. The ambit of the project was expanded, and the constructed area was increased to 32,395.17 square metres. Under the EIA Notification, an Environmental Clearance<sup>4</sup> was necessary if the total construction area exceeded 20,000 square metres. Hence, the appellant applied for an EC under the EIA Notification.

3. The fourth respondent, the State Level Expert Appraisal Committee for Maharashtra<sup>5</sup> recommended the grant of an EC for the project. On 2 May 2013 the third respondent, the State Level Environment Impact Assessment Authority

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<sup>3</sup> CPCB

<sup>4</sup> EC

<sup>5</sup> SEAC

for Maharashtra<sup>6</sup>, based on the recommendations of the SEAC granted an EC. It is not in dispute that at the time when the EC dated 2 May 2013 was granted, the total construction area of the project was 32,395.17 square metres. The grant of the EC was conditional on the appellant obtaining a ‘consent for establishment’ from the Maharashtra Pollution Control Board under the Air (Prevention and Control of Pollution) Act 1981 and the Water (Prevention and Control of Pollution) Act 1974.

4. By a letter dated 24 September 2013, the appellant informed the Environment Department of the Government of Maharashtra, the second respondent, that the construction area was being further increased by 8,085.71 square metres, as a result of which the total construction area of the project would stand enhanced to 40,480.88 square metres. In its letter, the appellant sought an ‘amendment’ to the EC dated 2 May 2013 by the third respondent to reflect the increase in the total construction area. On 13 March 2014, the third respondent granted an ‘amendment’ to the EC dated 2 May 2013 on the ground that there was only a “marginal increase in built up and construction area”. The third respondent noted the changes in the specification of the project as follows:

<b>Description</b>	<b>As per EC dated 2 May 2013</b>		<b>Amendment</b>	
FSI area	16,346.32 sq mts		21,365.54 sq mts	
Non FSI area	16,048.85 sq mts		19,115.34 sq mts	
Total Construction area	32,395.17 sq mts		40,480.88 sq mts	
Nos of tenements	Members 64	Sale 61	Members 64	Sale 77

<sup>6</sup> SEIAA

Building Configuration	Member	2 Basement	Member	2 Basement
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5. The first respondent, claiming to be a resident of MIG Colony, Gandhinagar, Bandra East, Mumbai, challenged the grant of the amended EC dated 13 March 2014 before the Pune Bench of the NGT. In response, the appellant filed two applications, challenging the standing of the first respondent and contending that the challenge was barred by limitation. By an order dated 4 May 2016, the Pune Bench of the NGT rejected the applications questioning the maintainability of the proceedings and setting up the bar of limitation. The appellant filed a writ petition before the High Court of Judicature at Bombay to challenge the decision of the Pune Bench of the NGT. The Bombay High Court, allowing the writ petition held by an order dated 12 August 2016, that the appeal was not maintainable at the behest of the first respondent, and the challenge against the grant of the amended EC dated 13 March 2014 was barred by limitation. By an administrative order dated 31 July 2018, the dispute was transferred from the Pune Bench of the NGT to the Principal Bench which heard the parties and delivered the impugned order.

*Relevant clauses of the EIA Notification*

6. The present dispute raises important questions regarding the interpretation the EIA Notification. The EIA Notification seeks to ensure the protection and preservation of the environment during the execution of new projects and the expansion or modernisation of existing projects. It imposes restrictions on the execution of new projects and on the expansion of existing projects, until their

potential environmental impact has been assessed and approved by the grant of an EC. Paragraph 2 of the EIA Notification reads thus:

**“2. Requirement for prior Environmental Clearance (EC): -**

The following projects or activities shall require prior environmental clearance from the concerned regulatory authority, which shall hereinafter be referred to as the Central Government in the Ministry of Environment and Forests for matters falling under Category ‘A’ in the Schedule and at State level the State Environment Impact Assessment Authority (SEIAA) for matters falling under Category ‘B’ in the said Schedule, before any construction work, or preparation of land by the project management except for securing the land, is started on the project or activity:

(i) All new projects or activities listed in the Schedule to this notification;

**(ii) Expansion and modernisation of existing projects or activities listed in the Schedule to this notification with addition of capacity beyond the limits specified for the concerned sector, that is, projects or activities which cross the threshold limits given in the Schedule after expansion or modernisation;**

(iii) Any change in product – mix in an existing manufacturing unit included in Schedule beyond the specified range.”

(Emphasis supplied)

The Schedule to the EIA Notification classifies potential projects into Category ‘A’ and Category ‘B’ based on their size and potential environmental impact. Category ‘A’ projects require project proponents to secure an EC from the Ministry of Environment, Forests and Climate Change. Category ‘B’ projects require project proponents to secure an EC from the SEIAA, based on the recommendations of the SEAC. Where a project falls within the parameters stipulated in the Schedule, paragraph 2 of the EIA Notification provides that no construction work shall begin unless an EC is granted in regard to three types of activity: (i) new projects or activities provided in the Schedule, (ii) expansion or

modernisation of existing projects or activities provided in the Schedule, and (iii) changes in the product mix in existing manufacturing units provided in the Schedule beyond the specified range. The present dispute raises questions as to how the second type of activity, the “expansion” of existing projects, should be construed under the EIA Notification.

7. In order to secure an EC, the project proponent must submit an application in the manner set out in Form 1 and Supplementary Form 1A (if applicable) of the EIA Notification. Under paragraph 7(i) of the EIA Notification, the project proponent must also submit a pre-feasibility report. However, in the case of projects under item 8 of the Schedule, only a conceptual plan is required to be submitted. Paragraph 7(ii) of the EIA Notification states that:

**“7(ii) Prior Environmental Clearance (EC) process for Expansion or Modernisation of Change of product mix in existing projects:**

**All applications seeking prior environmental clearance for expansion with increase in the production capacity beyond the capacity for which prior environmental clearance has been granted under this notification or with increase in either lease area or production capacity in the case of mining projects or for the modernisation of an existing unit with increase in the total production capacity beyond the threshold limit prescribed in the Schedule to this notification through change in process and or technology or involving a change in the product mix shall be made in Form 1 and they shall be considered by the concerned Expert Appraisal Committee or State Level Expert Appraisal Committee within sixty days, who will decide on the due diligence necessary including preparation of EIA and public consultation and the application shall be appraised accordingly for grant of environmental clearance.”**

(Emphasis supplied)

Clause (ii) of paragraph 2 of the EIA Notification requires the project proponent to secure an EC from the relevant regulatory authority prior to undertaking any “expansion” of an existing project. Paragraph 7(ii) further stipulates that all applications for an EC in cases of “expansion” resulting in the increase of production capacity or lease area beyond the capacity/area stipulated in the previous EC shall be made in the manner set out in Form 1 or 1A (as applicable).

8. The appellant’s application in Form 1 acknowledges that the project fell under entry 8(a) of Schedule 1 of the EIA Notification. Entry 8 deals with ‘Building and Construction projects having a built-up area of or greater than 20,000 square metres but less than 1,50,000 square metres.’ Entry 8 of the Schedule to the EIA Notification is as follows:

<b>8 – Building / Construction projects / Area Development projects and Townships</b>			
8(a)	Building and Construction projects	≥20,000 sq mts and <1,50,000 sq mts of built-up area	Built-up area for covered construction: in the case of facilities open to the sky, it will be the activity area
8(b)	Townships and Area Development projects	Covering an area ≥ 50 ha and or built up area ≥1,50,000 sq mts	All projects under item 8(b) shall be appraised as Category B1

*Issue*

9. In applying for the original EC, the appellant submitted an application in Form 1 as required under the provisions of the EIA Notification. The total construction area identified in the appellant's Form 1 was 32,395.17 square metres. However, in September 2013 the appellant informed the second respondent of an increase by 8,085.71 square metres as a result of which the total construction area of the project would be 40,480.88 square metres. In seeking an 'amendment' to the EC dated 2 May 2013 the appellant did not submit an updated Form 1. Further, the 'amendment' to the EC was granted by the SEIAA without the recommendations of the SEAC. The issue before this Court is whether the 'amended' EC dated 13 March 2014 granted by the SEIAA without following the procedure stipulated in paragraph 7(ii) of the EIA Notification is valid.

*Submissions*

10. Mr Mukul Rohatgi, learned Senior Counsel appearing on behalf of the appellant submitted that:

- (i) When construction began, the total construction area of the appellant's project was 8,720.32 square metres. As the EIA Notification requires projects with a total built up area of or more than 20,000 square metres to procure an EC prior to the start of construction, no EC was required before construction of the appellant's project commenced;

- (ii) Pursuant to the first increase, when the appellant's project crossed the 20,000 square metre threshold provided for in the EIA Notification, the appellant submitted a Form 1 and was granted a valid EC dated 2 May 2013 by the third respondent;
- (iii) Pursuant to the second increase, the built up area of the appellant's project only marginally increased by 8,085.71 square metres to a total construction area of 40,480.88 square metres, which is within the upper limit of 1,50,000 square metres prescribed by entry 8(a) of the Schedule to the EIA Notification. Therefore, the second increase was not an "expansion" within the meaning of clause (ii) of paragraph 2 of the EIA Notification and no fresh Form 1 or EC was required at the time of the second increase;
- (iv) Clause (ii) of paragraph 2 only applies to situations where the project crosses the lower or upper threshold limits stipulated in the Schedule. Any increase in production capacity or construction area within the limits set out in the Schedule would not constitute an "expansion" within the meaning of Clause (ii) of paragraph 2 and does not require compliance with the procedure under paragraph 7(ii) of the EIA Notification;
- (v) The increase in the appellant's project is only marginal and does not have an adverse impact on the environment;
- (vi) The SEIAA applied its mind to the appellant's request for an 'amendment'; noted that the increase in construction area was only

marginal and issued an amendment to the original EC dated 2 May 2013; and

- (vii) The NGT had no basis to impose the fine of Rupees one crore on the appellant.

11. Joining issue with the above submissions, Mr Aditya Pratap, learned counsel appearing on behalf of the first respondent submitted that:

- (i) Under clause (ii) of paragraph 2 read with paragraph 7(ii) of the EIA Notification, any expansion beyond the “threshold limit” requires a fresh EC. The appellant’s project had crossed the threshold limit of 20,000 square metres and the second increase of 8,085.71 square metres constituted an ‘expansion beyond the threshold limit’ and hence required a fresh EC;
- (ii) Once a project breaches the lower threshold limit set out in the Schedule to the EIA Notification, any expansion or modernisation, even within the upper threshold set out in the Schedule, will require the submission of a fresh Form 1 and the matter to be placed before the Expert Appraisal Committee or the SEAC, as applicable in accordance with paragraph 7(ii) of the EIA Notification;
- (iii) Adopting the appellant’s interpretation of clause (ii) of paragraph 2 would defeat the object and purpose of the EIA Notification as a whole. It would allow project proponents to incrementally increase

the construction area and over time significantly impinge on the environmental impact of the project without seeking a fresh EC;

- (iv) If the law prescribes an act to be done in a particular manner, it must be done only in that manner and no other. Under paragraph 7(ii) of the EIA Notification, it was incumbent on the SEIAA to place the matter before the SEAC for appraisal and recommendations; and
- (v) The EIA Notification is an operationalisation of the precautionary principle, which forms a part of the environmental law of India. The EIA Notification must be read in a manner which gives effect to the precautionary principle.

*Interpreting paragraphs 2 and 7*

12. The central controversy between the parties to the present dispute is the manner in which paragraphs 2 and 7 of the EIA Notification should be interpreted. Clause (ii) of paragraph 2 of the EIA Notification stipulates that a project proponent shall require an EC prior to the start of construction in the case of an “expansion”. Clause (ii) uses the phrase “expansion...beyond the limits specified for the concerned sector”. The first respondent sought to lay emphasis on this construction to argue that any expansion beyond the lower limit stipulated in the Schedule would attract the requirement of a prior EC under paragraph 2. However, the above language in clause (ii) is further qualified by the phrase “that is, projects or activities which cross the threshold limits given in the Schedule

after expansion or modernisation.” A plain reading of the second half of clause (ii) would indicate that it applies to cases where a project was initially below the threshold limits stipulated in the Schedule but after the proposed expansion, would breach the threshold limits. Clause (ii) of paragraph 2 of the EIA Notification therefore would not appear to cover a case where a project had already crossed the lower threshold limit set out in the Schedule and the expansion does not cross the upper limit stipulated by the Schedule.

13. However, clause (ii) of paragraph 2 must be read with paragraph 7(ii) of the EIA Notification. Paragraph 7(ii) lays down the exact procedure to be followed by a project proponent in the case of an expansion. Two crucial points must be noted with respect to paragraph 7(ii). First, it uses the phrase, “expansion with increase in production capacity beyond the capacity for which prior environment clearance has been granted”. Second, the qualifying language referring to breaching the threshold limits “after expansion” is absent. An “expansion” can occur even after the grant of an EC when the project first crossed the lower limit stipulated in the threshold and it is not necessary for the project to breach the upper limit after the expansion. Therefore, a close reading of paragraph 7(ii) would support the interpretation put forth by the first respondent – that even after obtaining an EC if the project is expanded beyond the limits for which the prior EC was obtained, a fresh application would need to be made even if the expansion is within upper the limit prescribed in the Schedule.

14. The dangers effectively articulated by the learned counsel for the first respondent are real. If clause (ii) of paragraph 2 does not cover a case where the expansion is within the limits stipulated by the Schedule, a project proponent may incrementally keep increasing the size of the project area over time resulting in a significant increase in the project size without an assessment of the environmental impact resulting from the expansion. Such an outcome would defeat the entire scheme of the EIA Notification which is to ensure that any new or additional environmental impact is assessed and certified by the relevant regulatory authorities. In the present case, the lower limit of Entry 8(a) of the Schedule is a built up area of 20,000 square metres and the upper limit is 1,50,000 square metres. It cannot be doubted that the environmental impact of a construction of 1,50,000 square metres is drastically more than construction of 20,000 square metres. If the appellant's argument is accepted in totality, a project proponent could potentially secure an EC for constructing 20,000 square metres and by 'amendment' steadily increase the area of construction up to 1,50,000 square metres without submitting an updated Form 1 or any substantive review by the SEAC.

15. We note that subsequent to the EIA Notification being published in 2006, a draft notification was issued on 19 January 2009.<sup>7</sup> The draft notification proposed the following amendment:

“in para 2 [of the EIA Notification], after sub-para (iii), the following shall be inserted; namely:-

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<sup>7</sup> Notification S.O. 195 (E) dated 19 January 2009.

However modernisation or expansion proposals without any increase in pollution load, and, or without any additional water and or land requirement are exempted from the provisions of this Notification:

Provided that, a self certification, stating that the proposals shall not involve any additional pollution load, waste generation or water requirement, be submitted to the regulatory authority by the project proponent.”

Prior to adopting the draft notification, hearings were conducted and written comments were solicited from various stakeholders including: (i) Central Ministries and Departments, (ii) State Governments and their Agencies, (ii) Industries and their Associations and (iv) Civil Society including NGOs. A committee was constituted by the Ministry of Environment and Forests, Government of India which published a report in October 2009. The committee specifically recommended against the adoption of the above amendment, noting:

“The amendments propose to exempt modernisation and expansion of projects based on a self certification by project authorities that there is no increase in pollution load. **It is totally unacceptable that the modernisation and expansion of projects be removed from the environmental clearance regime, with or without the requirement of self certification.** There are several industries operating in critically polluted areas or are in violation of their environmental clearance conditions, which need to be considered before the expansion of a project is considered. What is to be considered is not just whether there is an increase in pollution load but also the current impact of the project and its compliance with environmental clearance conditions. We can provide clear examples wherein the non-compliance of the clearance conditions has not been considered while granting clearance for expansion which includes adding new components to the existing industrial operations etc. This has allowed several projects to continue their activities and expand despite blatant non compliance. Finally, it is only with industrial, thermal power and other such related operations that one can decide on parameters of pollution. **Development projects like highways, airports and other infrastructure projects which seek to expand might have a detrimental impact due to factors such as**

**change in land use (i.e. construction over a wetland, grassland or agricultural land etc).** Despite this, the project proponent can certify that there is no change in pollution load and hence expansion is to be allowed. **The current process seeks a detailed EIA report to determine whether impacts can be mitigated. If the amendment is brought into force, it will simply do away with this critical and necessary step in the environmental clearance process.** Therefore, this amendment should not be allowed.

...

The draft notification takes a myopic view of environmental and social impact of modernisation and expansion. **Any modernisation/expansion projects will necessarily entail increase in production, increase in transportation, increase in pressure on the local infrastructure and local natural resources and increase in the pollution load during the construction phase.** So, even if a modernisation/expansion does not lead to an increase in the pollution load or water or land requirement within the factory premises during the operation phase, it will lead to an increase in environmental and social impact outside the premise.”

(Emphasis supplied)

The draft amendment was not adopted in subsequent amendments to the EIA Notification. We find considerable merit in the observations of the committee that the requirement of an EC at the time of expansion forms a critical step in the environmental clearance regime. According to the committee, it assists officials not just in evaluating and mitigating any adverse impact caused by the expansion but also in assessing whether the project proponent is in compliance with their existing obligations. Crucially, any form of expansion necessarily puts a strain on the local environment and infrastructure and needs to be carefully evaluated in a holistic manner.

16. In a case where the text of the provisions requires interpretation, this Court must adopt an interpretation which is in consonance with the object and purpose of the legislation or delegated legislation as a whole. The EIA Notification was adopted with the intention of restricting new projects and the expansion of new projects until their environmental impact could be evaluated and understood. It cannot be disputed that as the size of the project increases, so does the magnitude of the project's environmental impact. This Court cannot adopt an interpretation of the EIA Notification which would permit, incrementally or otherwise, project proponents to increase the construction area of a project without any oversight from the Expert Appraisal Committee or the SEAC, as applicable. It is true that there may exist certain situations where the expansion sought by a project proponent is truly marginal or the environmental impact of such expansion is non-existent. However, it is not for this Court to lay down a bright-line test as to what constitutes a 'marginal' increase and what constitutes a material increase warranting a fresh Form 1 and scrutiny by the Expert Appraisal Committee. If the government in its wisdom were to prescribe that a one-time 'marginal' increase (e.g. 5% or 10%) in project size, within the threshold limit stipulated in the Schedule, could be subject to a lower standard of scrutiny without diluting the urgent need for environmental protection, conceivably this Court may give effect to such a provision. This would be subject to any challenge on the ground of their being a violation of the precautionary principle. However, as the EIA Notification currently stands, an expansion within the limits prescribed by the Schedules would be subject to the procedure set out in paragraph 7(ii).

17. At the time of the second increase, the total construction area of the appellant's project was enlarged from 32,395.17 square metres to 40,480.88 square metres. As a result of the expansion, the appellant constructed sixteen additional flats which were sold at the prevailing market rate. The appellant did not comply with the procedure set out under paragraph 7(ii) of the EIA Notification but rather sought an 'amendment' to the EC. The third respondent did not require the appellant to submit an updated Form 1 nor was the proposal processed and evaluated by the fourth respondent. The 'amendment' to the EC dated 13 March 2014 does not discuss the potential environmental impact of the increase in construction area, but merely records that the construction area now stands at 40,480.88 square metres. The procedure set out under paragraph 7(ii) of the EIA Notification exists to ensure that where a project is expanded in size, the environmental impact on the surrounding area is evaluated holistically considering all the relevant factors including air and water availability and pollution, management of solid and wet waste and the urban carrying capacity of the area. This was not done in the case of the appellant's project. It was not open to the third respondent to grant an 'amendment' to the EC without following the procedure set out in paragraph 7(ii) of the EIA Notification.

18. We further note that as on the date of the impugned order construction at the project site had already been completed. A core tenet underlying the entire scheme of the EIA Notification is that construction should not be executed until ample scientific evidence has been compiled so as to understand the true environmental impact of a project. By completing the construction of the project,

the appellant denied the third and fourth respondents the ability to evaluate the environmental impact and suggest methods to mitigate any environmental damage. At this stage, only remedial measures may be taken. The NGT has already directed the appellant to deposit Rupees one crore and has set up an expert committee to evaluate the impact of the appellant's project and suggest remedial measures. In view of these circumstances, we uphold the directions of the NGT and direct that the committee continue its evaluation of the appellant's project so as to bring its environmental impact as close as possible to that contemplated in the EC dated 2 May 2013 and also suggest the compensatory exaction to be imposed on the appellant.

19. The appeal is dismissed. There shall be no order as to costs.

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

.....J  
[Dr Dhananjaya Y Chandrachud]

.....J  
[Ajay Rastogi]

**New Delhi;  
December 3, 2019.**

## "ANNEXURE-A3"

Item No. 02

(Court No. 1)

**BEFORE THE NATIONAL GREEN TRIBUNAL  
SPECIAL BENCH**

(By Video Conferencing)

Original Application No. 10/2022

Sanjay Gupta &amp; Ors.

Applicant(s)

Versus

Ghaziabad Nagar Nigam

Respondent

Date of hearing: 27.01.2022

**CORAM: HON'BLE MR. JUSTICE SUDHIR AGARWAL, JUDICIAL MEMBER  
HON'BLE DR. NAGIN NANDA, EXPERT MEMBER  
HON'BLE DR. AFROZ AHMAD, EXPERT MEMBER**

Applicant: Mr. Ravi Prakash Mehrotra, Senior Advocate with Mr. Mukesh Verma and  
Mr. Apoorv Srivastava, Advocates

**ORDER**

1. This application has been filed under Section 14, 15 and 20 of National Green Tribunal Act, 2010 (hereinafter referred to as 'NGT Act, 2010') making a complaint that the Resident's Welfare Association of a multi-storey developed residential colony namely; Olive County proposed to place the bust of a martyr who happened to be son of the President of a society of the aforesaid RWA in a park which is part of green belt and on the said request, Municipal Corporation, Ghaziabad has also passed a resolution and recommended the competent authority of Corporation to take further action in the matter. It is contended that a green belt cannot be allowed to be converted for a purpose unconnected with maintenance of green belt and particularly, installation of a statue in a public place is against the order passed by the Supreme Court in ***Petition(s) for Special***

**Leave to Appeal (C) No(s) 8519/2006, Union of India & Anr. v. State of Gujarat & Ors.** Relevant extracts of the order of Supreme Court dated 18.01.2013 is as follows:

*4. Until further orders, we direct that the status quo, as obtaining today, shall be maintained in all respects by all concerned with regard to the Triangle Island where statue of late Shri N. Sundaran Nadar has been permitted to be sanctioned. We further direct that henceforth, **State Government shall not grant any permission for installation of any statue or construction of any structure in public roads, pavements, sideways and other public utility places.** Obviously, this order shall not apply to installation of high mast lights, street lights or construction relating to electrification, traffic, toll or for development and beautification of the streets, highways, roads etc. and relating to public utility and facilities.*

**5. The above order shall also apply to all other states and union territories. The concerned Chief Secretary/Administrator shall ensure compliance of the above order.”**

2. However, learned counsel appearing for the applicant could not dispute that though such resolution was passed in February, 2021 but till date Corporation has not taken any further action in the matter and therefore, in our view, no cause of action has arisen to file this application and it is premature. Be that as it may, we also intent to place on record that a green belt cannot be used or converted for any purpose unconnected with maintenance of green belt.

3. In this regard, in **Lal Bahadur v. State of UP & Others, (2018)15SCC407**, change of master plan and converting green area into residential one was considered. The issue was, whether such conversion is conducive to protection of environment or not. In the master plan of 1995 of Lucknow, area in dispute was reserved as green belt. In master plan 2021, the same area, shown earlier as green belt, was converted as residential. This part of master plan 2021 was challenged before Lucknow bench of Allahabad High Court. Writ petition was

dismissed. The matter came in appeal before Supreme Court. Court held in para 12 of judgment that change of area from green belt to residential is in violation of Article 21, 48A and 51A (g) of the Constitution. Reliance was placed on **Bangalore Medical Trust v B.S. Muddappa & Others, (1991)4SCC54**, wherein Court had said that protection of environment, open spaces for recreation and fresh air, playground for children, promenade for the residents and other conveniences or amenities are matters of great public concern and a vital interest to be taken care of in a development scheme. Public interest in the reservation and preservation of open spaces for parks and playgrounds cannot be sacrificed by leasing or selling such sites to private persons for conversion to some other use. Court also relied on an American Supreme Court Judgment **Agins vs. City of Tiburon, [447 us 255 (1980)]**, wherein Court said: *'... it is in the public interest to avoid unnecessary conversion of open space land to strictly urban uses, thereby protecting against the resultant adverse impacts, such as ..... pollution, .... destruction of scenic beauty, disturbance of the ecology and the environment, hazards related geology, fire and flood, and other demonstrated consequences of urban sprawl'*.

4. In para 15, Court said that, *"This Court had clearly laid down that **such spaces could not be changed from green belt to residential or commercial one.** It is not permissible to the State Government to change the parks and playgrounds contrary to legislative intent having constitutional mandate, as that would be an abuse of statutory powers vested in the authorities.* Court also observed, when master plan was prepared earlier and authorities found importance of such space, it was their bounden duty not to change its very purpose when they knew very well the importance of this place to be kept as open space. Court said,

*“The **importance of park is of universal recognition.** It was against public interest, protection of the environment and such spaces reduce the ill effects of urbanisation, it was **not permissible to change this area into urban area as the garden/ Greenbelt is essential for fresh air, thereby protecting against the resultant impacts of urbanization, such as pollution etc.** The provision of the Act of 1973 and other enactments relating to environment could not be permitted to become statutory mockery by changing the purpose in the master plan from green belts to residential one. Authorities are enjoined with duty maintain them as such as per doctrine of public trust.”*

5. Further, Supreme Court on the issue of installation of a statue in a public place has also passed a restraint order and made it clear that the said order shall apply to all the States. Therefore, all the Authorities in the country are bound by the aforesaid order of Supreme Court and neither expected nor even otherwise can act in the teeth of such order of Supreme Court.

6. We therefore, hope and trust that Municipal Corporation, Ghaziabad would also not do something which is not permissible in law and contrary to law laid down by Supreme Court as referred to hereinabove.

With the aforesaid observations, we dispose of the Application.

Sudhir Agarwal, JM

Dr. Nagin Nanda, EM

Dr. Afroz Ahmad, EM

January 27, 2022  
Original Application No. 10/2022  
AB