BEFORE THE NATIONAL GREEN TRIBUNAL

PRINCIPAL BENCH AT NEW DELHI

O.A. NO. 68 OF 2022

IN THE MATTER OF:

Raman Sharma ...Applicant

-Versus-

State of Haryana & Ors. ...Respondents

COMPILATION OF JUDGMENTS ON BEHALF OF RESPONDENT NO 8 M/S MALIBU ESTATE PVT. LTD IN VIEW OF ORDER DATED 30.01.2026.

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Place: New Delhi

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2010 SCC OnLine Del 3466 : (2010) 173 DLT 52

In the High Court of Delhi
(BEFORE DR. S. MURALIDHAR, J.)

Splendor Landbase Ltd. ... Petitioner;

versus

Delhi Pollution Control Committee ... Respondent.

W.P. (C) 543/2008 with 2714/08, 2771/08, 2772/08, 3815/08, 7081/08, 8143/08, 8144/08, 8145/08, 8146/08, 8147/08, 8148/08, 8149/08, 9040/08, 464/09, 465/09, 508/09, 509/09, 510/09, 511/09, 525/09, 794/09, 7575/09, 8208/09, 8751/09, 10860/09, 3095/08, 4319/08, 4321/08, 4322/08, 4323/08, 4330/08, 4333/08, 3905/08, 8789/08, 8901/08, 9128/09 & 1391 of 2010

Decided on September 30, 2010

A. Environment and pollution — Water (Prevention and Control of Pollution) Act, 1974 — S. 33-A — Air (Prevention and Control of Pollution) Act, 1981 — S. 31-A — Delhi Pollution Control Committee — Powers under — On a collective reading of Ss. 25 and 33-A, the legislative scheme appears to be that where there is a failure by a person to comply with either S. 25(1)(a) or S. 25(5) of the Water Act then it would be open to the DPCC to exercise its powers under S. 33-A of the Act — Without giving any show cause notice under S. 25(5) in the instant case and without waiting for the expiry of the time within which the corrective steps have to be taken, it will not be open to the DPCC to straightaway invoke its power under S. 33-A to order closure of the shopping mall or commercial or residential complex concerned — That would make such exercise of power vulnerable to invalidation on the grounds of arbitrariness and unreasonableness — The position as regards S. 31-A of the Air Act is no different — That power too cannot be exercised to straightaway order closure of a building without giving the person concerned a prior show cause notice consistent with the procedure outlined under the Rules under the Air Act

B. Environment and pollution — Water (Prevention and Control of Pollution) Act, 1974 — S. 25 — Air (Prevention and Control of Pollution) Act, 1981 — Ss. 21 and 22 — Delhi Pollution Control Committee — Penalties, fines and environment damages in the form of fixed sums of monies or by requiring bank guarantees — Levy of — Although the Chairman of the DPCC may be the Chairman of the CMC, he is but one member in the CMC — There is nothing to indicate that the decision of CMC was unanimous or by majority or that it was the decision only of the Chairman — There is no

power under the Water Act or the Air Act given to the Chairman to further sub-delegate his powers in regard to consent to establish or consent to operate to the CMC — Such sub-delegation was obviously bad in law — Unless it is shown, and it is not, that the other members of the CMC apart from the Chairman were performing a mere advisory role and had nothing to do with the actual grant or refusal of the consent to establish or consent to operate, such decision by the CMC is clearly *ultra vires* the Air Act and Water Act — Held no justification for the CMC to itself take decision as regards the grant and refusal of the consent to establish under the Water Act and consent to operate under the Air Act — Secondly, even where it agreed to grant consent to establish, the CMC imposed a pre-condition that the applicant should pay a penalty or fine or furnish a bank guarantee or in some cases all or some of them — There is no statutory basis for such a direction to be issued by the CMC, or for that matter by even the Chairman of the DPCC — The grant of the consent to establish or consent to operate ought not to be made conditional upon payment of some fine or penalty or furnishing of bank guarantee — Given the object of the Water Act and the Air Act, which is the prevention and control of pollution, the mere payment of fine or penalty or furnishing of bank guarantee is unlikely to prevent and control the likely pollution that can be caused — The basic approach adopted by the CMC where such penalty or fine has been levied or bank guarantee secured appears to be faulty — The decision to levy environmental damages and to seek the furnishing of bank guarantees has been sought to be justified by the DPCC with reference to S. 31-A of the Air Act and S. 33A of the Water Act — S. 31-A of the Air Act is more or less similarly worded as S. 33-A of the Water Act and both provisions have been inserted by the 1988 Amendments — Power includes the power of the DPCC to issue "any directions in writing to any person" — The 'Explanation' to the provision clarifies that the power to issue directions includes the power to direct "closure, prohibition or regulation of any industry, operation or process or the stoppage or regulation of supply of electricity, water or any other service" — Yet, this power has to be one coupled with a duty to act reasonably and fairly — It cannot be stretched to include a power to levy a penalty — Power to levy a penalty on any party is in the nature of a penal power — Unless there is a specific power in the statute enabling the authority to do so, it cannot levy penalties or damages with reference to the general power under S. 31-A of the Air Act or S. 33-A of the Water Act

C. Environment and pollution — Water (Prevention and Control of Pollution) Act, 1974 — S. 2(k) — Delhi Pollution Control Committee — Prior consent of — "Trade effluent" — Definition of — Amendment Act No. 53 of 1988 — What stood excluded from the definition of "trade effluent" was "domestic sewage" — The word "sewage, itself has been defined under S. 2 (g) to mean effluent from any sewerage system or sewage disposal works and includes sullage produced from open drains — The word 'sewage, when

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qualified by the word 'domestic, should necessarily mean sewage produced from premises used for domestic purposes — The word "domestic" when contra-distinguished from the expression "trade" could mean a place used for residence rather than for business or trade — Definition of "trade effluent" does not take a residential complex or even a commercial shopping complex or shopping mall out of the purview of S. 25(1) of the Water Act — A careful reading of S. 25(1) of the Water Act would show that it is intended to cover not just "industry" which discharges "trade effluent" but any "process or operation" that results in a discharge of "sewage" not limited to trade effluent — The expression "sewage or trade effluent" in S. 25(1)(a) Water Act which follows the words "operation or process, or any treatment and disposal system or any extension or addition thereto, which is likely to discharge..." is wide enough to cover all kinds of sewage and not just "trade effluent" — Likewise, the expressions "process" and "operation" is not meant to be confined to "industry" but to all kinds of processes and operations including those that take place in kitchens and bathrooms of residential complexes and retail sales in shops and restaurants and activities in the rest rooms of commercial shopping complexes and malls — Under S. 25(1)(b), Water Act if the operation, process or the process that is proposed to be established brings into use "any new or altered outlet for the discharge of sewage" then S. 25(1) will stand attracted — The proviso to S. 25(1) states that where the steps to establish an industry, operation or process have already commenced before the commencement of the 1988 Amendment Act, such steps may continue for a period of three months and if, the person who has taken such steps makes an application for consent within that period, till the disposal of such application — The proviso underscores the mandatory nature of the requirement of even an ongoing construction to obtain prior consent to establish from the State PCC

D. Environment and pollution — Air (Prevention and Control of Pollution) Act, 1981 — Ss. 21 and 22 — Delhi Pollution Control Committee — Prior consent of — Where it is a residential complex, while there may be no need to obtain prior consent to operate under S. 21(1) of the Air Act, once the construction activity commences, that activity has to be in consonance with the provisions of both the Air Act as well as the Water Act — Needless to mention, once the complex, whether commercial or residential or a shopping mall, is functional, the norms under both the Air Act and the Water Act, or for that matter the EPA or any other environmental law will have to be complied with

E. Environment and pollution — Air (Prevention and Control of Pollution) Act, 1981 — Ss. 21 and 22 — Delhi Pollution Control Committee — Prior consent of — The position where the construction of a commercial shopping complex or shopping mall has been allowed to be completed without a prior consent to operate — Unlike the fall back plan of action under S. 25(5) of the Water Act, the course of action available to the DPCC would be to

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inspect the building in exercise of its powers under the Air Act and the Rules thereunder and then issue a show cause notice requiring the builder or the owners or occupiers as the case may be to comply with the conditionalities imposed by it under the Air Act within a specified timeframe, failing which the DPCC can issue further directions under S. 31-A Air Act

F. Environment and pollution — Water (Prevention and Control of Pollution) Act, 1974 — Air (Prevention and Control of Pollution) Act, 1981 — Delhi Pollution Control Committee — Conclusions

(i) Where a person proposes to establish a commercial shopping complex or a shopping mall or even a residential complex, it would be necessary for such person to comply with the requirements of S. 25(1)(a) of the Water Act and apply to the DPCC for prior consent to establish.

(ii) Where a person has already established a commercial shopping mall or shopping complex or residential complex and has not been issued any show cause notice till the completion of such building then it would be pointless to require such person to thereafter comply with the requirements of S. 25(1) of the Water Act. The available course to the DPCC in such event is to invoke the powers under S. 25 (5) of the Water Act and set out a time limit for such person to comply with the requirements of the Water Act. Upon failure to comply with the requirements as specified by the DPCC, it would be open to the DPCC to invoke its powers under S. 33A of the Water Act after complying with the due process outlined under the Water Rules.

(iii) Where a person has made an application for consent to establish and four months have elapsed during which the DPCC has not communicated to him its decision thereon, then in terms of S. 25(7) Water Act consent to establish will be deemed to have been granted. In such event the question of the person being thereafter required to apply for consent to establish does not arise.

(iv) Where the builtup area is more than 20,000 sq.m., the requirement of obtaining an EIA clearance for such activity is mandatory. The mere fact that an EIA clearance has been applied for and obtained by a person seeking to establish a shopping mall, shopping complex or residential complex will not obviate the necessity of such person to again separately apply to the DPCC for a consent to establish under the Water Act.

(v) Where an EIA clearance has already been granted by the MoEF, and the DPCC is thereafter approached for grant of prior consent to establish or prior consent to operate, it would be incumbent on the DPCC to avoid re-examining those aspects that have been examined by the MoEF while granting EIA clearance. The DPCC will examine other aspects not covered by the EIA clearance.

(vi) The requirement of obtaining prior consent to operate under S. 21(1) of the Air Act applies to a commercial shopping complex or shopping mall as these would fall within the definition of 'industrial plant' under S. 2(k) of the Air Act. However on the present wording of S. 21(1) Air Act, there is no such requirement as regards a residential complex.

(vii) The requirement of having to obtain the consent to operate under S. 21 of

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the Air Act does not get obviated only because the person has an EIA clearance under the EPA.

(viii) The DPCC when approached with an application for consent to operate by a person who has already obtained an EIA clearance, will examine only those aspects not covered by the EIA clearance.

(ix) During the phase of construction, and post-construction, the provisions of the Water Act, the Air Act and the EPA and other environmental statutes will apply to all types of buildings and activities.

(x) Without issuing a show cause notice and without giving an opportunity to the alleged violator to rectify the defects detected during an inspection of the premises carried out in accordance with the relevant rules, the power to order a closure under either S. 33A Water Act or 31A Air Act should not generally be straightway invoked.

(xi) There is no power vested in the Chairman of the DPCC, either under the Water Act or under the Air Act to further sub-delegate the powers delegated to him by the DPCC as regards granting or refusing consent to establish or consent to operate under the Water Act and the Air Act respectively. Any Committee established by the Chairman of the DPCC like the CMC has no power to itself decide whether to grant or refuse the consent to establish or consent to operate. Such decision can be taken either by the DPCC itself or by its delegate *i.e.* the Chairman DPCC and no one else.

(xii) The decisions by the CMC or even by the Chairman, DPCC to levy penalty or environmental damages and insist on furnishing of bank guarantees as a condition for grant of consent to establish or consent to operate are without the authority of law. There is no power under the Air Act or the Water Act which enables the DPCC or its Chairman, much less the CMC, to pass such orders. Absent specific provisions under the Water Act and Air Act which permit the DPCC or its Chairman to levy and collect penalties, environmental damages or to pass orders for furnishing of bank guarantees, the general power to issue directions under S. 31A of the Air Act and S. 33A of the Water Act cannot be invoked for such purpose.

(xiii) Where there are multiple owners in a constructed building, the application for EIA clearance or consent to establish or operate, as the case may be, will be made jointly by the builder and such individual owners or occupiers. If the building has been completed without obtaining prior consent to establish under S. 25(1)(a) of the Water Act it would be incumbent upon the person first receiving a show cause notice from the DPCC in terms of S. 25(5) of the Water Act to inform the DPCC the names of the persons to whom the whole or part of the building in question has been sold or transferred. The position is more or less similar under the Air Act. Notices can then issue to such persons as well. Till such time the person first receiving a show cause notice furnishes the complete particulars of subsequent transferees and till discharged, such person will continue to be answerable under the Water Act and/or the Air Act.

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The Judgment of the Court was delivered by

Introduction

DR. S. MURALIDHAR, J.— These are 38 writ petitions filed by builders of various properties in the National Capital Territory of Delhi (NCT of Delhi) who have been issued show cause notices and also directions by the Respondent Delhi Pollution Control Committee ('DPCC.) for alleged violation of Section 25 of the Water (Prevention and Control of Pollution) Act, 1974 [hereafter 'the Water Act') and Sections 21 and 22 of the Air (Prevention and Control of Pollution) Act, 1981 [hereafter 'the Air Act']. Barring two petitions where the buildings constructed are residential complexes, in each of the other petitions the building constructed is a commercial shopping complex or a shopping mall.

2. The show cause notices have been issued on the ground that these Petitioners had not, prior to commencing construction, applied to the DPCC for and obtained from it the "consent to establish" under Section 25 of the Water Act or the DPCC's "consent to operate" under Section 21 of the Air Act.

3. Some of the petitioners have constructed commercial complexes or shopping malls of a builtup area of over 20,000 sq.m. They were therefore required to comply with the environment impact assessment (EIA) notifications in terms of the Environment (Protection) Act, 1986 (EPA). The EIA norms with which they are expected to comply are set out in the EIA. notification dated 27th January 1994 as further amended on 7th July 2004 and 14th September 2006. The issue that arises in

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some of these petitions, where the commercial or residential complex is of abuiltup area of over 20,000 sq.m. is whether independent of the EIA clearance obtained by such petitioners from the Government of India in the Ministry of Environment and Forests ('MoEF'), a separate consent to establish under the Water Act and a consent to operate under the Air Act would nevertheless be required to be obtained from the DPCC.

4. Another issue common to some of these petitions is the validity of the levy by the DPPC of penalties, fines and environment damages in

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the form of fixed sums of monies or by requiring the Petitioners to furnish bank guarantees as a condition to the grant of consent under the Air Act and the Water Act.

5. The case of the Petitioners broadly stated is that the residential and commercial shopping complexes and shopping malls are not covered under either the Water Act or the Air Act. Therefore there was no need for any of these Petitioners to have obtained from the DPCC either prior consent to establish under Section 25 of Water Act or prior consent to operate under Section 21 of the Air Act. The case of the DPCC is that the activity of construction of commercial complexes, shopping malls and even residential complexes is covered under both the Air Act and the Water Act and the failure to obtain prior consent to establish or prior consent to operate makes the petitioners liable under either or both Acts. For complexes where the builtup area is over 20,000 sq.m. the stand of the DPCC is that the mere obtaining by such builders of EIA clearance from the MoEF will not obviate the need to obtain separate prior consents from the DPCC under the Water Act and Air Act.

Background to the Water Act and amendments

6. The first issue to be considered is the applicability of the Water Act to the complexes in question. Emphasis has been placed by both sides on the background to the enactment of the Water Act. The Statement of Objects and Reasons ('SOR') to the Water Act as it was first enacted on 23rd March 1974 referred to a Committee set up in 1962 to draw up a draft enactment for the prevention of water pollution. The SOR noted that "the problem of pollution of rivers and streams has assumed considerable importable and urgency in recent years as a result of the growth of the industries and the increasing tendency to urbanization". The Report of the Committee was circulated to the State Governments and was also considered by the Central Council of Local Self-Government. Based on the recommendation of the Central Council a draft bill was prepared. The Bill was passed by both the Houses of Parliament and received the assent of the President in 1974.

7. The Water Act underwent further changes in 1978 and thereafter in 1988. Section 25 of the Water Act in its present form was a result of certain extensive amendments made to it in 1988. Para 2 of the SOR of the Amendment Act No. 53 of 1988, which is relevant for the present purposes, reads as under:

> "2. The Water Act is implemented by the Central and State Governments and the Central and State Pollution Control Boards. Over the past few years, the implementing agencies have experienced some more administrative and practical difficulties in effectively implementing the provisions of the Act. The ways and

means to remove these difficulties have been thoroughly examined in consultation with the implementing agencies.

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Taking into account the views expressed, it is proposed to amend certain provisions of the Act in order to remove such difficulties. The State Legislatures of Himachal Pradesh, Manipur and Tripura have passed resolutions under Article 252(2) of the Constitution authorizing the Parliament to amend the provisions of the Water Act to give effect to those amendments."

8. Thereafter in Paras 3(iii) and 3(vi) of the SOR, it was explained that the Bill *inter alia* sought to make the following amendments to the Act, namely:

"(iii) it is proposed to make it obligatory on the part of a person to obtain the consent of the relevant Board for establishing or taking any steps to establish any industry, operation or process which is likely to cause pollution of water and also to empower the Boards to limit their consents for suitable periods so as to enable them to monitor observance of the prescribed conditions;

.....

(vi) it is proposed to empower the Boards to give directions to any person, officer or authority including the power to direct closure on regulation of offending industry, operation or process or stoppage or regulation of supply of services such as water and electricity."

9. It is plain, therefore, that the amendments made in 1988 were with a view to making it obligatory on the part of the person taking any steps to establish "any industry, operation or process which is likely to cause pollution of water...." to obtain the prior consent of the State Pollution Control Committee (PCC).

Position under the Water Act

10. To recapitulate, one of the central issues in these petitions is whether there is statutory requirement in terms of Section 25(1)(a) of the Water Act for persons establishing a commercial shopping complex or shopping mall or a residential complex to obtain prior consent to establish from the DPCC. Section 25 of the Water Act which mandates such requirement reads as under:

"25. *Restrictions on new outlets and new discharges*—(1) Subject to the provisions of this section, no person shall, without the previous consent of the State Board—

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(a) establish or take any steps to establish any industry, operation or process, or any treatment and disposal system or any extension or addition thereto, which is likely to discharge sewage or trade effluent into a stream or well or sewer or on land (such discharge being hereafter in this Section referred to as discharge of sewage); or

(b) bring into use any new or altered outlet for the discharge of sewage; or

(c) begin to make any new discharge of sewage:

Provided that a person in the process of taking any steps to establish any industry, operation or process immediately before the commencement of the Water (Prevention and Control of Pollution)

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Amendment Act, 1988, for which no consent was necessary prior to such commencement, may continue to do so for a period of three months from such commencement or, if he has made an application for such consent, within the said period of three months, till the disposal of such application.

(2) An application for consent of the State Board under Sub-section (1) shall be made in such form, contain such particulars and shall be accompanied by such fees as may be prescribed.

(3) The State Board may make such inquiry as it may deem fit in respect of the application for consent referred to in Sub-section (1) and in making any such inquiry shall follow such procedure as may be prescribed.

(4) The State Board may—

(a) grant its consent referred to in Sub-section (1), subject to such conditions as it may impose, being—

(i) in cases referred to in Clauses (a) and (b) of Sub-section (1) of Section 25, conditions as to the point of discharge of sewage or as to the use of that outlet or any other outlet for discharge of sewage;

(ii) in the case of a new discharge, conditions as to the nature and composition, temperature, volume or rate of discharge of the effluent from the land or premises from which the discharge or new discharge is to be made; and

(iii) that the consent will be valid only for such period as may be specified in the order, and any such conditions imposed

shall be binding on any person establishing or taking any steps to establish any industry, operation or process, or treatment and disposal system of extension or addition thereto, or using the new or altered outlet, or discharging the effluent from the land or premises aforesaid; or

(b) refuse such consent for reasons to be recorded in writing.

(5) Where, without the consent of the State Board, any industry, operation or process, or any treatment and disposal system or any extension or addition thereto, is established, or any steps for such establishment have been taken or a new or altered outlet is brought into use for the discharge of sewage or a new discharge of sewage is made, the State Board may serve on the person who has established or taken steps to establish any industry, operation or process, or any treatment and disposal system or any extension or addition thereto, or using the outlet, or making the discharge, as the case may be, a notice imposing any such conditions as it might have imposed on an application for its consent in respect of such establishment, such outlet or discharge.

(6) Every State Board shall maintain a register containing particulars of the conditions imposed under this section and so much of the register as relates to any outlet, or to any effluent, from any land or premises shall be

open to inspection at all reasonable hours by any person interested in, or affected by such outlet, land or premises, as the case may be, or by any person authorized by him in this behalf and the conditions so contained in such register shall be conclusive proof that the consent was granted subject to such conditions.

(7) The consent referred to in Sub-section (1) shall, unless given or refused earlier, be deemed to have been given unconditionally on the expiry of a period of four months of the making of an application in this behalf complete in all respects to the State Board.

(8) For the purposes of this Section and Sections 27 and 30—

(a) the expression ‘new or altered outlet’ means any outlet which is wholly or partly constructed on or after the commencement of this Act or which (whether so constructed or not) is substantially altered after such commencement;

(b) the expression “new discharge” means a discharge which is not, as respects the nature and composition, temperature,

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volume, and rate of discharge of the effluent substantially a continuation of a discharge made within the preceding twelve months (whether by the same or a different outlet), so however that a discharge which is in other respects a continuation of previous discharge made as aforesaid shall not be deemed to be a new discharge by reason of any reduction of the temperature or volume or rate of discharge of the effluent as compared with the previous discharge."

11. For further understanding the scope of the expressions used in Section 25(1) of the Water Act, the definitions therein of the terms "outlet" occurring in Section 2(d)(d), "sewage effluent" under Section 2 (g) and "trade effluent" under Section 2(k) are relevant. They read as under:

"2(dd) 'outlet' includes any conduit pipe or channel, open or closed, carrying sewage or trade effluent or any other holding arrangement which causes, or is likely to cause, pollution;

.....

2(g) 'sewage effluent' means effluent from any sewerage system or sewage disposal works and includes sullage from open drains;

.....

2(k) 'trade effluent' includes any liquid, gaseous or solid substance which is discharged from any premises used for carrying on any industry, operation or process, or treatment and disposal system, other than domestic sewage."

12. One of the submissions made by Mr. Sorabjee, learned Senior Counsel on behalf of the Petitioners is that the requirement of obtaining prior consent to establish in terms of Section 25(1)(a) of the Water Act arises only where the activity in question is to establish an "industry, operation or process" which in turn discharges "trade effluent". The argument is that a residential complex cannot produce "trade effluent". It can only produce domestic sewage which the legislature

has consciously excluded from the expression "trade effluent". It is further urged that what takes place in a commercial shopping complex or shopping mall is mere retail sale of goods and services. There is no "industry, operation or process" that goes on inside a commercial shopping complex or mall that discharges "trade effluent". On behalf of the Petitioners, it is sought to be contended that the above provision was never intended to cover shopping complexes, malls or the residential complexes. Mr. Sorabjee submitted that the words

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"operation or process or any treatment and disposal system or any system of extension or addition thereto" following the word "industry" have to be read *ejusdem generis* the word "industry" and therefore was not meant to cover an activity which is not an industrial activity. It is contended that there is no industrial activity that takes place in a shopping complex or mall or a commercial complex. In other words, only industries such as chemical industries, metallurgical industry, engineering industry and so on are meant to be covered by the Water Act. Consequently, it is argued that Section 25(1) of the Water Act is not attracted in any of the present cases.

13. It must be noticed that the definition of "trade effluent" under Section 2(k) underwent a change with the Amendment Act No. 53 of 1988. The definition of "trade effluent" in the unamended Section 2(k) contained the words "carrying on any trade or industry" following the words "…any premises used for…." This was replaced by the words "… from any premises carrying on any industry, operation or process, or treatment and disposal system". The idea was to expand the use of the premises and not limit it to an industry but also any process or treatment and disposal system. What stood excluded from the definition of "trade effluent" was "domestic sewage". The word "sewage, itself has been defined under Section 2(g) to mean effluent from any sewerage system or sewage disposal works and includes sullage produced from open drains. The word 'sewage, when qualified by the word 'domestic, should necessarily mean sewage produced from premises used for domestic purposes. The word "domestic" when contra -distinguished from the expression "trade" could mean a place used for residence rather than for business or trade.

14. However, the above definition of "trade effluent" does not take a residential complex or even a commercial shopping complex or shopping mall out of the purview of Section 25(1) of the Water Act. A careful reading of Section 25(1) of the Water Act would show that it is intended to cover not just "industry" which discharges "trade effluent" but any "process or operation" that results in a discharge of "sewage" not limited to trade effluent. The expression "sewage or trade effluent" in Section 25(1)(a) Water Act which follows the words "operation or process, or any treatment and disposal system or any extension or addition thereto, which is likely to discharge…" is wide enough to cover all kinds of sewage and not just "trade effluent". Likewise, the expressions "process" and "operation" is not meant to be confined to "industry" but to all kinds of processes and operations including those that take place in kitchens and bathrooms of residential complexes and retail sales in shops and restaurants and activities in the rest rooms of commercial shopping complexes and malls.

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15. The definition of the words "operation" and "process" as occurring in the New Shorter Oxford English Dictionary (Leslie Brown Ed.) are as follows:

operation: An action, deed; exertion of force or influence; working,

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activity; an act of a practical or technical nature, esp one forming a step in a process

process: The action or fact of going on or being carried on; a continuous series of actions, events or changes; a systematic series of actions or operations directed at a particular end.

16. Under Section 25(1)(b), Water Act if the operation, process or the process that is proposed to be established brings into use "any new or altered outlet for the discharge of sewage" then Section 25(1) will stand attracted. The proviso to Section 25(1) states that where the steps to establish an industry, operation or process have already commenced before the commencement of the 1988 Amendment Act, such steps may continue for a period of three months and if, the person who has taken such steps makes an application for consent within that period, till the disposal of such application. The proviso underscores the mandatory nature of the requirement of even an ongoing construction to obtain prior consent to establish from the State PCC.

17. When the Water Act Was first enacted in 1974, the scale of both commercial and residential shopping complexes as a result of urbanization was perhaps not anticipated. There has been a dramatic increase in the number of residential and commercial shopping complexes that have come up in urban metropolises in the recent past. More significant is the size of such commercial/shopping complexes. Having huge shopping malls having a builtup area of 20,000 sq. m. is not an unusual feature as is evident in seven cases in the present batch of writ petitions. The volume of sewage that such residential and commercial complexes and shopping malls are likely to discharge into the sewage system would indeed be enormous. The recognition of the need to have the regulatory authority, in these cases the DPCC, to be approached by the builders of such complexes and malls for prior consent to establish under the Water Act is consistent with the object of the Water Act as amended in 1988. The ultimate object is to ensure that there is effective prevention and control of pollution.

Purposive construction

18. In the considered view of this Court, it is not possible to place a narrow construction on the words "operation" and "process" occurring in

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Section 25(1) of the Water Act. The words "operation or process" occurring in Section 25(1)(a) have to be given the widest possible meaning and scope. This approach is consistent with the SOR of the 1988 amendments to the Water Act which make it clear that the legislative intent was to expand the scope of the regulatory powers of the state PCC. The principle of *ejusdem generis* is therefore inapposite in the context. On the other hand the principle of purposive construction commends itself for application. In *Anderton* v. *Ryan*, (1985) 2 All ER 355, it was explained that: "Statutes should be given what has become known as the purposive construction, that is to say the Courts should identify the 'mischief that existed before passing of the statute and then if more than one construction is possible, favour that which will eliminate the mischief so identified." In *Pepper* v. *Hart*, (1993) 1 All ER 42, it was held: "The Courts now adopt a purposive approach which seeks to give effect to the true purpose of legislation and are prepared to look at much extraneous material that bears on the background against which the legislation was enacted." This has been consistently

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followed by our Supreme Court in *New India Assurance Co. Ltd.* v. *Nusli Neville Wadia*, (2008) 3 SCC 279; *Tanna and Modi* v. *CIT*, (2007) 7 SCC 434 : AIR 2007 SC 2301 and recently in a decision dated 31st August 2010 in Civil Appeal No. 5842 of 1998, *Grid Corporation of Orissa Ltd.* v. *Eastern Metals and Ferro Alloys*, VI (2010) SLT 581.

Position of residential complexes under the Water Act

19. While it is clear that commercial shopping complexes and shopping malls would stand covered under Section 25(1)(a) of the Water Act, the position *vis-a-vis* residential complexes is examined next. The DPCC is right in its contention that residential complexes where there are a large number of residential apartments would also be within the purview of Section 25(1)(a) of the Water Act. The residential complexes are likely to discharge large volumes of "sewage" as distinguished from "trade effluent". Section 25(1)(a) of the Water Act envisages any "operation or process" which is likely to discharge "sewage". The collective operation or processes that take place within a residential complex is likely to discharge large volumes of sewage into the municipal sewerage system. To repeat, these processes or operations may take place within the toilets and bathrooms and kitchens of a residential complex. They could also take place as a result of any treatment of such sewage collected in some effluent treatment

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plant within a residential complex. Then there is the watering of the lawns and plants in such residential complexes. Large volumes of water may be used for central air-conditioning or cooling. There can be many activities in a residential complex which result in the use of water, generation and discharge of sewage and the carrying of such sewage into main sewerage system for further treatment. In the circumstances, it is difficult to accept the contention of the Petitioners that residential complexes would fall outside the purview of Section 25(1)(a) of the Water Act.

20. The question whether the construction of a single-storeyed residential building of insubstantial dimensions would attract Section 25(1)(a) of the Water Act need not be answered in these petitions since none of them concerns such a situation. As far as the present cases are concerned, the two residential complexes which have been constructed have a builtup area of 23,281 sq.m. and 10,733 sq.m respectively. It is not possible therefore to underestimate the impact that the discharge from such residential complexes of large volumes of sewage would have on water pollution in general particularly when such sewage joins the main sewerage system.

21. It was urged that as long as the municipal sewage system is being treated in effluent treatment plants, and the discharged sewage from these complexes joins such systems, there is no need for each of these complexes to obtain a prior consent to establish from the DPCC under the Water Act. This argument although attractive does not account for the mandatory nature of the requirement to obtain consent to establish under the Water Act. It also does not account for the fact that at the stages of pre-construction, during construction and post-construction these complexes would continue to attract the provisions of the Water Act. The liability under the Water Act does not get exempted only because the sewage discharged from such complexes joins the main municipal sewerage system which may or may not be treated in keeping with the water pollution norms.

Water pollution during the construction phase

22. At this juncture it is important to understand the impact that the activity of construction of a commercial shopping or residential complex or a shopping mall is likely to have on water pollution. This Court wishes to draw a distinction between the pre-construction stage when Section 25(1), Water Act is attracted and a prior consent to establish is

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mandated and the construction phase itself which can also result in pollution being caused. For instance during construction, water is drawn from bore wells dug in the property itself or water is brought in through water tanks. Large quantities of water are used during construction and used water is also discharged. If unregulated, this could have an adverse impact on the neighbourhood, the ground water and generally on the municipal sewerage system.

23. The pollution that can possibly be caused by discharge of domestic sewage from a residential complex or trade effluent from a commercial complex or industry during the construction phase would attract the various provisions of the Water Act. Even after completion of construction a functional residential or commercial complex will have to abide by the water pollution norms stipulated by the Water Act. The DPCC has been constituted under Section 4(4) of the Water Act. Section 9 of the Water Act permits the constitution of committees by the DPCC. Under Section 11A the DPCC can delegate its powers to its Chairman. Section 16 of the Water Act sets out the functions of the Central Pollution Control Board ('CPCB'). Section 21 of the Water Act empowers the DPCC or any of its officials to take samples of water "from any stream or well or samples of any sewage or trade effluent which is passing from any plant or vessel or from or over any place into any such stream or well" for the purposes of analysis. The word 'sewage' in this context would include "domestic sewage" as well. Section 23 gives the DPCC power of entry at any time any place for the purposes of performing any of the functions entrusted by the DPCC to such officer for the purposes of determining "whether and if so in what manner, any such functions are to be performed or whether any direction or authorization served, made, given, or granted under this Act is being or has been complied with". Section 24 of the Water Act prohibits the use of a stream or well for disposal of polluting matters. Consequently, all of the above provisions of the Water Act get attracted when an activity, including an industrial, trade, commercial or domestic activity, causes pollution. This power can be exercised by the DPCC at any time during the construction phase and after the completion of construction when the complex in question becomes functional.

Applicability of Section 25 (5) Water Act to the cases on hand

24. While this Court accepts the contention of the DPCC that Section 25(1)(a) stood attracted in these cases, the DPCC for some reason did not act at a time when the construction of these residential and commercial complexes had either not commenced or having commenced, had not been completed. In other words, in most cases, as will be seen in the discussion of the individual petitions, the DPCC did not issue a show cause notice at a time when the constructions had either not begun or were in progress. The show cause notice was

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invariably issued by the DPCC after the construction had been completed and in many cases after the completion certificate was issued. In such a situation, to require the builder of such

complex to obtain "prior consent to establish" under Section 25(1)(a) of the Water Act was a direction that was not capable of being complied with. Unfortunately, this was the only provision invoked by the DPCC in each of the cases to pass consequential orders of either imposition of fine or damages or order closure.

25. It appears to this Court that with the buildings in question having already been constructed without obtaining prior consent to establish, the DPCC ought to have fallen back on the legislatively envisioned 'Plan B'. What ought to have been done by the DPCC was to invoke Section 25(5) of the Water Act. Section 25(5) talks of a situation where an industry operation or process has already been established or the steps for establishment have already been taken without obtaining the prior consent of the State PCC. In such an event the State PCC has to serve, on the person who has established or taken steps to establish, a notice imposing any such conditions as it might have imposed if an application had been made for its consent "in respect of such establishment, such outlet or discharge".

26. The DPCC ought to have proceeded on the premise that each of the buildings of the petitioners were constructed without its prior consent to establish and then should have invoked its powers under Section 25(5) of the Water Act. What the DPCC has however done in each of the cases is invoke Section 25(1) and therefore require the petitioners to apply at that stage to it for consent to establish. While the DPCC was armed with sufficient powers under Section 33A of the Water Act to issue directions, such directions must be such as are capable of being complied with.

27. It was urged by Mr. Sudhir Chandra, learned Senior Counsel for the DPCC that by letting off the petitioners who had admittedly acted in violation of Section 25(1)(a) of the Water Act a wrong message would be sent and a premium placed, as it were, on brazen violations of the Water Act. Such submission, in the considered view of this Court, does not reflect the correct legal position. If for some reason the DPCC has failed to take action against those who have established commercial or residential complexes without obtaining prior consent to establish, then it is not as if no action can at all be taken against the builders, owners or occupiers of such complexes. Section 25(5) has been enacted

precisely for such a contingency. Section 26 of the Water Act further arms the DPCC with review and monitoring powers and to change the conditions imposed if they are found to be not effective. The DPCC can even after the construction is complete, proceed to act in exercise of its powers under Section 25(5) of the Water Act. In other words, the Legislature expects that the DPCC will act vigilantly at all times to ensure that no violator escapes legal liability under the Water Act.

28. There is another aspect to the matter. There was no clarity about the correct legal position till now even as far as the DPCC was concerned. These cases were for the DPCC, in a sense, test cases. Section 25 of the Water Act was perhaps not invoked by the DPCC earlier and in any event not on this scale against commercial or residential complexes. Not having acted at a time when it should have under Section 25(1) of the Water Act and having allowed the construction of the complexes to be completed, it would not be reasonable for the DPCC to insist that these petitioners must go back to the stage of obtaining 'prior consent to establish'. If after a show cause notice is issued under Section 25(5) of the Water Act and within the

time stipulated, the corrective measures are not put in place by the person who has established the shopping mall or residential complex, then it would be open to the DPCC to take further steps in accordance with Section 33A of the Water Act. As long as the power to take action under Section 25(5) of the Water Act remains, there need not be any apprehension of any wrong message being given to those who failed to obtain consent of the DPCC prior to establishing the complexes.

Multiplicity of authorities does not render exercise of powers under the Water Act illegal

29. It was argued on behalf of the Petitioners that under Schedule XII to the Constitution of India, read with Article 243W thereof, the powers, authority and responsibility in relation to water and water treatment is exclusively vested in the municipalities, *i.e.*, in this case the Municipal Corporation of Delhi ('MCD'). It was further submitted that under the Delhi Municipal Corporation Act, 1957 ('DMC Act') the powers to grant permission and regulate constructions of buildings in Delhi are exclusively vested with the MCD. Reference is also made to the provisions of the Delhi Jal Board Act (Delhi Water Board Act). The submission is that there cannot be a multiplicity of authorities over the same subject matter and that if the control and regulation of water and sewage is within the exclusive domain of the MCD then the DPCC

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cannot also exercise such powers' in relation to the same subject matter under the Water Act.

30. This Court is unable to agree with the above submission. The Water Act is in a separate domain and its provisions will have to be complied with notwithstanding that the MCD has the power to lay down a separate set of regulations and bye-laws for use of water. For instance, the MCD may have the power to levy tariffs for the use of water. That does not mean that the DPCC cannot issue directions in regard to the prevention and control of pollution of water. They operate in separate fields and both sets of regulations and norms will have to be complied with. Incidentally Entry 5 in Schedule XII reads: "water supply for domestic, industrial and commercial purposes". It obviously does not cover the entire field of the use of water and treatment and discharge of sewage.

Deemed consent in terms of Section 25(7) Water Act

31. The Court would like to observe that when an application is made by a project proponent for consent to establish under the Water Act, the DPCC has to process and decide such application within four months in terms of Section 25(7) of the Water Act. As will be presently seen while discussing the individual cases, there has been no answer by the DPCC to the factual assertion in some of these cases that despite applying twice for the consent to establish under Section 25(1) of the Water Act, no response was received from the DPCC for well over four months after the making of such application. Consequently, where an applicant has not been communicated any decision of the DPCC for four months after the making of an application, the deeming provision of Section 25(7) would kick in and it would be deemed that the consent to establish has been granted. If thereafter DPCC finds that any activity in the building which has already been constructed attracts the provisions of the Water Act then it will have to proceed in accordance with other provisions of the Act to prevent or control such polluting activity. Section 25(1) of the Water Act cannot obviously be enforced if the DPCC has allowed the four

months period after the making of an application for consent to establish, as envisaged under Section 25(7) of the Water Act, to elapse.

Summary of the position under the Water Act

32. The discussion so far on the legal position under the Water Act in relation to the petitioners may be summarized thus:

(i) Section 25(1) of the Water Act is intended to cover not just

'industry' which discharges "trade effluent" but any 'process or operation' that results in a discharge of 'sewage' not limited to trade effluent.

(ii) The words "operation or process" occurring in Section 25(1)(a) have to be given the widest possible meaning and scope. This approach is consistent with the SOR of the 1988 amendments to the Water Act which make it clear that the legislative intent was to expand the scope of the regulatory powers of the state PCC. The principle of *ejusdem generis* is therefore inapposite in the context.

(iii) Commercial shopping complexes, shopping malls and even residential complexes are covered by Section 25(1)(a) of the Water Act.

(iv) The liability under the Water Act does not get exempted only because the sewage discharged from such complexes joins the main municipal sewerage system which may or may not be treated in keeping with the water pollution norms.

(v) The pollution caused by discharge of domestic sewage from a residential complex or trade effluent from a commercial complex or industry during the construction phase as well as at any stage after the complex becomes functional would attract the various provisions of the Water Act.

(vi) With the buildings in question having already been constructed without obtaining prior consent to establish, the direction of the DPCC that those who had failed to obtain prior consent to establish should now apply for such consent is a direction that is not capable of being complied with. Instead the DPCC should invoke the powers under Section 25(5) of the Water Act, issue show cause notices setting out the conditionalities required to be complied with within a timeframe and upon failure to do so, invoke the powers to issue directions under Section 33A, Water Act.

(vii) The Water Act is in a separate domain and its provisions will have to be complied with notwithstanding that the MCD has the power to lay down a separate set of regulations and bye-laws for use of water.

(viii) Where an applicant has not been communicated any decision of the DPCC for four months after the making of an application, the deeming provision of Section 25(7) would kick in and it would be deemed that the consent to establish has been granted. In such circumstances, Section 25(1) of the Water Act cannot obviously thereafter be enforced.

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Position under the Air Act

33. Next for consideration are the provisions of the Air Act and the validity of the action taken thereunder by the DPCC. It requires to be first noticed that the definitions of the different terms under the Air Act are not identical to the corresponding terms in the Water Act. The words "air pollutant" or "air pollution", "emission", "industrial plant" occurring in Sections 2(a), 2(b), 2(j) and 2(k) respectively of the Air Act read as under:

> "(a) "air pollutant" means any solid, liquid or gaseous substance including noise present in the atmosphere in such concentration as may be or tend to be injurious to human beings or other living creatures or plants or property or environment;
>
> (b) "air pollution" means the presence in the atmosphere of any air pollutant."
>
> .....
>
> (j) "emission" means any solid or liquid or gaseous substance coming out of any chimney, duct or flue or any other outlet;
>
> (k) "industrial plant" means any plant used for any industrial or trade purposes and emitting any air pollutant into the atmosphere."

34. The requirement of obtaining from the DPCC a prior consent to operate flows from Section 21(1) of the Air Act which reads as under:

> "21. *Restrictions on use of certain industrial plants.*—(1) Subject to the provisions of this section, no person shall, without the previous consent of the State Board, operate any industrial plant for the purpose of any industry specified in the Schedule in an air pollution control area:
>
> Provided that a person operating any industrial plant in any air pollution control area immediately before the commencement of Section 9 of the Air (Prevention and Control of Pollution) Amendment Act, 1987 (47 of 1987), for which no consent was necessary prior to such commencement, may continue to do so for a period of three months from such commencement or, if he has made an application for such consent within the said period of three months, till the disposal of such application."

35. After its amendment in 1988, the essential definitions remained unchanged. The consert to establish or operate had to be obtained only where it was concerning "any industrial plant in an air pollution control area". It appears to this Court that as far as the Air Act is concerned,

the emphasis was only on consent to operate having to be obtained for establishment of an industrial plant. Section 2(k) defines industrial plant to mean "any plant used for any industrial or trade purpose and made any area pollutant into the atmosphere". In the instant case, the expression "trade purposes" therefore have to be distinguished from the industrial purposes. The word "trade" could have a wide meaning. It could include the transaction that takes place within a Commercial shopping complex or a shopping mall. The word "air pollutant", as defined in Section 2(a), means the presence in the atmosphere "in such concentration as may be or tend, to be injurious to the atmosphere or the other breeding creatures or plants or property or environment".

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Therefore the activity has to be such that it results in the establishment of an industrial plant in an air pollution control area. Air pollution, in terms of Section 2(b) is "presence in the atmosphere of any air pollutant".

36. A collective reading of Section 21(1) of the Air Act with Section 2(a), 2(b) and 2(k) thereof leads this Court to the conclusion that a commercial shopping complex or a shopping mall would be covered within the scope of Section 21(1) of the Air Act. Mr. B.B. Gupta, learned Counsel for some of the Petitioners drew the attention of the Court to the Air (Prevention and Control of Pollution) Union Territory Rules, 1983 (UT Rules). He submitted that Rule 2(h) of the UT Rules is the only provision which defines the word "premises" which has been defined to mean "any building constructed or already used for industrial or commercial purposes". Far from supporting the submission of Mr. Gupta, this definition suggests that even a building used for commercial purposes would be covered by Section 21(1) of the Air Act. Likewise, Rules 9 and 10 of the UT Rules and the forms thereunder do not exclude a commercial/shopping complex from the applicability of the Section 21 of the Air Act.

37. One of the submissions on behalf of the DPCC was that in most of these buildings, whether it was a commercial shopping complex or a residential complex, there would be a 24-hour power back-up diesel generator set (DG set) that was likely to cause air pollution and attract the provisions of the Air Act. This submission was sought to be countered by the Petitioners by pointing out that only such DG sets that satisfy the pollution control norms would be used by the Petitioners and that this is an event that was likely to take place after the building was commissioned and not at the stage of consent to operate.

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38. Here the Court would like to make two observations. The position of the applicability of Section 21(1) of the Air Act to commercial shopping complexes and shopping malls is different from its applicability, to residential complexes. This will be discussed in some detail shortly hereafter. Secondly, these cases are concerned with the applicability of Section 21(1) of the Air Act at a stage when construction of the building in question has not commenced. The position of the applicability of the Air Act to any on-going construction and to any building complex which is functional is again different.

39. As far as commercial shopping complexes or shopping malls are concerned, it might be difficult to anticipate, even before the start of construction, what would be the extent of use of DG sets. In any event this need not be the only factor that will determine whether Section 21 (1), Air Act applies to commercial shopping complexes or shopping malls. Given the definition of "air pollutant" under Section 2(a) read with Section 21 (1) of the Air Act, and the fact that the commercial shopping complexes or shopping malls are going to be used for a trade or commercial activity, is sufficient to attract the provisions of Section 21(1) of the Air Act. Whether or not the use of a DG set will attract the provisions of the Air Act is a separate matter. It is obvious as and when the building begins to get used for a trade or commercial purpose and DG sets are used therein, if such DG sets do not comply with the pollution control norms, a separate cause of action arises for the DPCC to take action.

40. Next the position vis-a-vis residential complexes may be examined. Since

Section 21(1) of the Air Act only talks of obtaining prior consent to operate where the air pollution is likely to be caused as a result of the operation of any "industrial plant for the purpose of any industry specified in the Schedule", there is no possibility of expanding the meaning of the word "industrial plant", even on a purposive construction, to include a residential complex. Reliance was placed by learned Senior Counsel for the DPCC on the judgment of the Karnataka High Court in *Nitin Majumdar* v. *State of Karnataka*, 2007 (4) Kar LJ 569. That case concerned a place used for storage, which was held to be covered under the definition of 'plant'. It is not possible to stretch the meaning of the word 'plant' to include a residential complex. The ratio of the said decision is therefore inapplicable to a complex used only for residential purposes. The contrast with the corresponding words in Section 25(1)(a) of the Water Act is indeed striking when one

examines Section 21(1) of the Air Act. The crucial words "operation or process" inserted into Section 25(1)(a) of the Water Act after the 1988 amendment do not find place in Section 21(1) of the Air Act. The resultant position is that as far as a purely residential complex is concerned, on the present wording of Section 21 (1) of the Air Act, there is no requirement of obtaining the prior consent of DPCC to operate.

41. It was further contended on behalf of the DPCC that the construction activity itself could cause both air and water pollution. One of the purposes of requiring the obtaining of prior consents, as noticed by the Supreme Court in *T.N. Godavarman Tirumulpad* v. *Union of India*, 2006 (10) SCALE 246 (the Vasant Kunj Ridge matters) is the inevitable use of reinforced cement concrete (RCC) mix during construction. There is a likelihood of air pollution being caused due to use of loose cement during construction activity. Clearly, therefore, it is anticipated that the very activity of construction is likely to cause both air and water pollution. This can be appreciated in more than one context. Where what is being constructed is a building that has to be used for the purposes of a commercial complex or shopping complex or shopping mall, then apart from obtaining the consent to establish under the Water Act and consent to operate under the Air Act, after the construction activity commences such activity will have to nevertheless comply with the pollution control norms that would give rise to a separate cause of action to the DPCC for the applicability of the provisions of the Water Act and the Air Act.

42. Where it is a residential complex, while there may be no need to obtain prior consent to operate under Section 21(1) of the Air Act, once the construction activity commences, that activity has to be in consonance with the provisions of both the Air Act as well as the Water Act. Needless to mention, once the complex, whether commercial or residential or a shopping mall, is functional, the norms under both the Air Act and the Water Act, or for that matter the EPA or any other environmental law will have to be complied with.

43. The position where the construction of a commercial shopping complex or shopping mall has been allowed to be completed without a prior consent to operate is examined next. In such event, unlike the fall back plan of action under Section 25(5) of the Water Act, the course of action available to the DPCC would be to inspect the building in exercise of its powers under the Air Act and the Rules thereunder and then issue a show cause notice requiring the builder or the owners or occupiers as the case may be to comply with the conditionalities imposed by it

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under the Air Act within a specified timeframe, failing which the DPCC can issue further directions under Section 31A Air Act.

Summary of the position under the Air Act

44. The position under the Air Act may be summarized:

(i) A collective reading of Section 21(1) of the Air Act with Sections 2(a), 2(b) and 2(k) thereof leads this Court to the conclusion that a commercial shopping complex or a shopping mall would be covered within the scope of Section 21(1) of the Air Act.

(ii) The definition of "air pollutant" under Section 2(a) read with Section 21(1) of the Air Act, and the fact that the commercial shopping complexes or shopping malls are going to be used for a trade activity, is sufficient to attract the provisions of Section 21 (1) of the Air Act

(iii) As far as a purely residential complex is concerned, on the present wording of Section 21(1) of the Air Act, there is no requirement of obtaining the prior consent of the DPCC to operate.

(iv) During the construction phase and after the complex becomes functional, every building, whether it is a commercial shopping complex or a shopping mall or a residential complex, will have to comply with the norms under the Air Act and the Water Act and for that matter the EPA.

(v) Where the construction of a commercial shopping complex or shopping mall has been allowed to be completed without a prior consent to operate, the DPCC can inspect the building, issue a show cause notice requiring time bound compliance with the conditionalities imposed by it under the Air Act failing which it can issue directions under Section 31A Air Act.

The position under the EPA

45. The EIA Notification dated 14th September 2006 requires the obtaining of a prior EIA clearance for "new projects or activities listed in the schedule to this notification". The schedule includes, *inter alia*, building/construction projects/area development projects and townships. Serial 8(A) concerns building and construction projects. In column 4 it is stated that where the extent is of equal to or more than 20,000 sq.m. and less than 50,000 sq.m. of builtup area, the EIA clearance is mandatory.

46. The appendix to the above EIA Notification sets out the format in which an application has to be made for an EIA clearance. The second part of the format concerns "use of natural resources for construction or operation of the Project (such as land, water, materials or energy,

especially any resources which are non-renewable or in short supply)". Serial No. 2.2 asks for details about "Water (expected sources & competing users)". Appendix 2 sets out the exclusive requirement for construction projects. In para 2 there is a detailed check-list concerning 'Water Environment'. Para 2.1 requires the applicant to "give the total quantity of

water requirement for the proposed project with the breakup of requirements for various users". In particular, the following questions are asked:

> "2.9. What the impacts of the proposal on the ground water? (Will there be tapping of ground water give the details of ground water table, recharging capacity, and approvals obtained from competent authority, if any)
>
> 2.10. What precaution/measures are taken to the prevent the run-off from construction activities polluting land & aquifers? (Give details of quantities and the measures taken to avoid the adverse impacts)
>
> 2.11. How is the storm water from within the site managed? (Since the provisions made to avoid flooding of the area, details of the drainage facilities provided along with a site layout indication contour levels)
>
> 2.12. With the deployment of construction labourers particularly in the peak period lead to unsanitary conditions around the project site (Justify with proper explanation)
>
> 2.13. What on-site facilities are provided for the collection, treatment and safe disposal of sewage? (Give details of the quantities of wastewater generation, treatment capacities with technology and facilities for recycling and disposal)
>
> 2.14. Give details of dual plumbing system if treated waste used is used for flushing of toilets or any other use."

47. As regards 'Air Environment' para 5 of the form lists out the various questions that have to be answered by the applicant. The questions read as under:

> "5.1. Will the project increase atmospheric concentration of gas and result in heat islands? (Give details of background air quality levels with.....based for dispersion models taking into account the increased traffic generation as a result of the proposed constructions)
>
> 5.2. What are the impacts on generation of dust, smoke, odours,

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fumes or other hazardous gases? Give details in relation to all the metrological parameters.

5.3. Will the proposal create shortage of parking space for vehicles? Furnish details of the present level of transport infrastructure and measures proposed for improvement including the traffic management at the entry and exit to the project site.

5.4. Provide details of the movement patterns with internal roads, bicycle tracks, pedestrian pathways, footpaths, etc., with areas under each category.

5.5. Will there be significant increase in traffic noise and vibrations? Give details of the sources and the measures proposed for mitigation of the above.

5.6. What will be the impact of DG sets and other equipment on noise levels and vibration in and ambient air quality around the project site? Provide details."

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48. The contention of those Petitioners who have obtained EIA clearance for their projects is that by requiring them to again approach the DPCC for consent to establish under the Water Act and consent to operate under the Air Act, the same exercise is being unnecessarily asked to be repeated by the DPCC. It is further submitted that once the MoEF has already given clearance, it would not be open to the DPCC to again examine those very issues and refuse either the consent to establish under the Water Act or the consent to operate under the Air Act.

49. In reply it is pointed out by the DPCC that under most of the EIA clearances, one of the conditionalities imposed is that the applicant has to obtain consent to establish under the Water Act and consent to operate under the Air Act respectively from the DPCC. Additionally, reference is made to a Circular dated 21st November 2006 issued by the MoEF clarifying that an NOC from the State Pollution Control Board ("SPCB") and its consent to establish are "separate legal requirements, any project proponent has to fulfil". It is clarified that "NOCs are required under Water and Air Acts are mandatory requirement under those Acts and will have to be taken as required and do not require to be intended as environmental clearance". The DPCC has also pointed out that there is no question of repugnancy between the Air and Water Acts on the one hand and the EPA on the other. To be fair to the Petitioners, it was not their case that there is any repugnancy between

the statutes in question. Their submission is that once they have obtained EIA clearance under the EIA Notification dated 14th September 2006, they do not have to again go before the DPCC for a separate consent to establish and consent to operate.

50. This Court finds that there is indeed an element of overlap between some of the aspects examined by the MoEF while granting EIA clearance, and those aspects on which the DPCC grants either consent to establish or consent to operate or both. At the same time, the need to separately obtain consent to establish under the Water Act and consent to operate under the Air Act from the DPCC is mandatory as clarified by the MoEF in its Circular dated 21st November 2006. As explained by the Supreme Court in *State of Bihar* v. *Kedar Sao*, (2004) 9 SCC 344, it is possible that more than one enactment applies to the same facts and circumstances and it is possible that the applicant may have to get clearances from different agencies for the same activities. The mere fact that an EIA clearance has been obtained from the MoEF cannot be a ground to seek exemption from obtaining consent to establish under the Water Act and consent to operate under the Air Act.

51. A possible balance that can be struck with a view to avoiding duplication is to hold that when a holder of an EIA clearance applies to the DPCC for either consent to establish under the Water Act or consent to operate under the Air Act, it would be incumbent on the DPCC to ascertain the aspects that have already been examined by the MoEF in granting the EIA clearance. Those aspects need not be again examined by the DPCC. There is usually a role assigned to the SPCB under the EIA notifications. Even assuming that the position in Delhi is different and the DPCC does not come into the picture when an EIA clearance is granted by the MoEF, it would nevertheless be necessary for the DPCC to avoid repeating the same exercise which has been performed by the MoEF in granting the EIA clearance. Therefore, to the extent that certain aspects have not been covered by the EIA

clearance, it would certainly be open for the DPCC to examine those aspects and decide whether or not to grant consent to establish under the Water Act and consent to operate under the Air Act.

Who should apply for consent?

52. It was submitted on behalf of the Petitioners that after the completion of the construction in terms of validly sanctioned plans the ownership of the property, or portions thereof, usually changes hands. The question posed is, in such event, who should apply for consent to

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establish or to operate and who should be called upon to comply with the environmental norms?

53. It is not as if the person who originally applied for EIA clearance or the consent to establish or consent to operate would have nothing to do with the property in question once the construction is complete. There may indeed be multiple owners in a constructed building. In such event, if the builder already knows who they are, even before construction commences, then the application for EIA clearance or consent to establish or operate, as the case may be, will be made jointly by the builder and such individual owners. If the building has been completed without obtaining prior consent to establish under Section 25(1)(a) of the Water Act it would be incumbent upon the person receiving a show cause notice from the DPCC in terms of Section 25(5) of the Water Act to inform the DPCC the names of the persons to whom the whole or part of the building in question has been sold or transferred. Notices can then be issued to such persons as well. Till such time the person first receiving a show cause notice furnishes the complete particulars of subsequent transferees and till discharged, such person will continue to be liable to answer the show cause notice and to explain why he should not be proceeded against for the violations of the Water Act. The position would be more or less similar under the Air Act. In any event, since under the Rules under both the Water Act and the Air Act there is a requirement that the DPCC should conduct an enquiry or investigation before issuing a show cause notice, that might reveal the names of the persons to whom the notices should be issued.

The ambit of DPCC's powers under Section 33A, Water Act and Section 31A Air Act

54. This brings up the next question as to the scope of the powers of the DPCC under Section 33A of the Water Act and Section 31A of the Air Act which are more or less identically worded. Section 33A of the Water Act reads as under:

> "33A. *Power to give directions*—Notwithstanding anything contained in any other law, but subject to the provisions of this Act, and to any directions that the Central Government may give in this behalf, a Board may, in the exercise of its powers and performance of its functions under this Act, issue any directions in writing to any person, officer or authority, and such person, officer or authority shall be bound to comply with such directions.
>
> *Explanation*—For the avoidance of doubts, it is hereby declared that the power to issue directions under this Section includes the power to direct—
>
> (a) the closure, prohibition or regulation of any industry, operation or process; or

(b) the stoppage or regulation of supply of electricity, water or any other service."

55. The above provision opens with a non obstante clause. However, it is subject to the other provisions of the Water Act. It gives the DPCC the power to issue directions in writing to any person, officer or authority and such person, officer or authority shall be bound to comply with such directions. The directions would include the power to order closure prohibition or regulation of any "industry, operation or process" or the "stoppage or regulation of supply of electricity, water or any other service". The power of the DPCC under Section 33A Water Act is indeed wide. It implies within it the requirement of following the principles of natural justice before the exercise of such power. On a collective reading of Sections 25 and 33A, the legislative scheme appears to be that where there is a failure by a person to comply with either Section 25(1)(a) or Section 25(5) of the Water Act then it would be open to the DPCC to exercise its powers under Section 33A of the Act. Without giving any show cause notice under Section 25(5) in the instant case and without waiting for the expiry of the time within which the corrective steps have to be taken, it will not be open to the DPCC to straightaway invoke its power under Section 33A to order closure of the shopping mall or commercial or residential complex concerned. That would make such exercise of power vulnerable to invalidation on the grounds of arbitrariness and unreasonableness. The position as regards Section 31A of the Air Act is no different. That power too cannot be exercised to straightaway order closure of a building without giving the person concerned a prior show cause notice consistent with the procedure outlined under the Rules under the Air Act.

Validity of the levy of penalties and environmental damages

56. The powers of the DPCC to levy environmental damages and seek the furnishing of bank guarantees as a pre-condition to the grant of consents are examined next. Connected with this issue is the question whether the Chairman of the DPCC had the power to constitute a Consent Management Committee ('CMC') which proceeded to levy environmental damages, penalties, fines and require the furnishing of bank guarantees in some of these cases.

57. Section 15 of the Air Act provides for delegation of powers stating that a State Board may, by general or special order, delegate to the Chairman or the member-secretary or any other officer of the Board, its powers. Under Section 12(3B) of the Water Act, a similar

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power has been conferred on the State Board to delegate its powers.

58. It is pointed out by the Petitioners that the DPCC has, contrary to the relevant provisions of the Water Act and Air Act, delegated its powers with regard to granting prior consent to establish or consent to operate and to issue directions under Section 31A of the Air Act and Section 33A of the Water Act to the Chairman and Member-Secretary. It is stated that the Chairman DPCC is also the Chairman of the CMC which deals with the aspect concerning consent. It is accordingly sought to be contended that there can be no sub-delegation by the Chairman of his powers to the CMC and the decision taken by the Chairman with the assistance of the Members of the CMC is invalid.

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59. If indeed it was the Chairman alone who was acting in exercise of the powers delegated to him under Section 31A of the Air Act and Section 33A of the Water Act, then the final decision to either agree to or to refuse the consent to establish or consent to operate should have been taken independently by the Chairman. The minutes of the meetings, however, show that this was the decision of the CMC. Although the Chairman of the DPCC may be the Chairman of the CMC, he is but one member in the CMC. There is nothing to indicate that the decision of CMC was unanimous or by majority or that it was the decision only of the Chairman. There is no power under the Water Act or the Air Act given to the Chairman to further sub-delegate his powers in regard to consent to establish or consent to operate to the CMC. Such sub-delegation was obviously bad in law. Unless it is shown, and it is not, that the other members of the CMC apart from the Chairman were performing a mere advisory role and had nothing to do with the actual grant or refusal of the consent to establish or consent to operate, such decision by the CMC is clearly *ultra vires* the Air Act and Water Act.

60. In the instant case, this Court is unable to find any justification for the CMC to itself take decision as regards the grant and refusal of the consent to establish under the Water Act and consent to operate under the Air Act. Secondly, even where it agreed to grant consent to establish, the CMC imposed a pre-condition that the applicant should pay a penalty or fine or furnish a bank guarantee or in some cases all or some of them. There is no statutory basis for such a direction to be issued by the CMC, or for that matter by even the Chairman of the DPCC. The grant of the consent to establish or consent to operate ought

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not to be made conditional upon payment of some fine or penalty or furnishing of bank guarantee. Given the object of the Water Act and the Air Act, which is the prevention and control of pollution, the mere payment of fine or penalty or furnishing of bank guarantee is unlikely to prevent and control the likely pollution that can be caused. The basic approach adopted by the CMC where such penalty or fine has been levied or bank guarantee secured appears to be faulty.

61. The decision to levy environmental damages and to seek the furnishing of bank guarantees has been sought to be justified by the DPCC with reference to Section 31A of the Air Act and Section 33A of the Water Act. As already noticed, Section 31A of the Air Act is more or less similarly worded as Section 33A of the Water Act and both provisions have been inserted by the 1988 Amendments. A reference has already been made to Section 33A of the Water Act. The power under the said provision includes the power of the DPCC to issue "any directions in writing to any person". The 'Explanation' to the provision clarifies that the power to issue directions includes the power to direct "closure, prohibition or regulation of any industry, operation or process or the stoppage or regulation of supply of electricity, water or any other service". Yet, this power has to be one coupled with a duty to act reasonably and fairly. It cannot be stretched to include a power to levy a penalty.

62. In the considered view of this Court, the power to levy a penalty on any party is in the nature of a penal power. It is settled law that unless there is a specific power in the statute enabling the authority to do so, it cannot levy penalties or damages with reference to the general power under Section 31A of the Air Act or

Section 33A of the Water Act. The decisions in *Khemka & Co. (Agencies) Pvt. Ltd.* v. *State of Maharashtra*, (1975) 2 SCC 22; *J.K. Synthetics Limited & Birla Cement Works* v. *Commercial Taxes Officer*, (1994) 4 SCC 276 and *India Carbon Ltd.* v. *State of Assam*, (1997) 6 SCC 479 are relevant in this regard. In *Khemka & Co.*, the question was whether an assessee under the Central Sales Tax Act, 1956 could be made liable for penalty under the provisions of the Mysore Sales Tax, 1957 when there was no provision in the Central Act for imposition of penalty for default in payment of tax. Answering the question in the negative, the opinion of Ray CJ, writing for the majority explained (SCC, p. 31):

"25. Penalty is not merely sanction. It is not merely adjunct to

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assessment. It is not merely consequential to assessment. It is not merely machinery. Penalty is in addition to tax and is a liability under the Act. Reference may be made to Section 28 of the Indian Income-tax Act, 1922 where penalty is provided for concealment of income. Penalty is in addition to the amount of income-tax. This Court in *Jain Brothers* v. *Union of India*, [1970] 77 ITR 107 (SC) said that penalty is not a continuation of assessment proceedings and that penalty partakes of the character of additional tax."

63. In his concurring opinion Beg, J. (as His Lordship then was) observed (SCC @ p. 35):

"39. On a consideration of the provisions mentioned above, it seems to me to be clear that whatever may be the objects of levying a penalty, its imposition gives rise to a substantive liability which can be viewed either as an additional tax or as a fine for the infringement of the law. The machinery or procedure for its realization conies into operation after its imposition. In any case, it is an imposition of a pecuniary liability which is comparable to a punishment for the commission of an offence. It is a well settled cannon of construction of statutes that neither a pecuniary liability can be imposed nor an offence created by mere implication. It may be debatable whether a particular procedural provision creates a substantive right or liability. But, I do not think that the imposition of a pecuniary liability, which takes the form of a penalty or fine for a breach of a legal obligation, can be relegated to the region of mere procedure and machinery for the realization of tax. It is more than that. Such liabilities must be created by clear, unambiguous, and express enactment. The language used should leave no serious doubts about its effect so that the persons who are to be subjected to such a liability for the infringement of law are not left in a state of uncertainty as to what their duties or liabilities are. This is an essential requirement of a good government of laws. It is implied in the Constitutional mandate found in Section 265 of our Constitution: 'No tax shall be levied or collected except by authority of law'."

64. Later in *India Carbon Ltd.*, the question arose whether sales tax authorities in the States could charge interest when collecting and enforcing payment of central sales tax. Following the decision in *Khemka* it was held that absent a substantive provision in the central Act requiring the payment of interest on central sales tax, the authorities in the states could not charge interest thereon. The resultant position is that there being no specific provision in the Water Act or Air Act empowering the

DPCC to levy penalties, fines or environmental damages, or to require the furnishing of bank guarantees, no such order or direction can be issued by the DPCC, much less the CMC, in exercise of the general powers to issue directions under Section 33A Water Act and Section 31A, Air Act.

65. The DPCC has placed reliance upon the decision of the learned Single Judge of this Court dated 16th January 2009 in Writ Petition (C) No. 7516 of 2007 (*Regent Automobiles Pvt. Ltd.* v. *GNCTD*). The Court in Regent Automobiles was interpreting the provisions of the Delhi Common Effluent Treatment Plants Act, 2000 (DCETP Act). Section 11 of the DCETP Act which contains a specific provision for penalty reads as under:

> "11. Penalty for non-payment within the specified time. If any amount payable by any person is not paid within the date specified in the order it shall be deemed to be in arrears and the appropriate authority may after such inquiry as it deems fit, impose on such person a penalty not exceeding the amount in arrears."

66. Section 16 of the DCETP Act reads as under:

> "16. *Power to give directions*—Notwithstanding anything contained in any other law, but subject to the provisions of this Act, the appropriate authority may, in exercise of its powers and performance of its functions under this Act, issue any directions in writing to any occupier, society, person, officer or authority, and such occupiers, society, person, officer or authority shall be bound to comply with directions.
>
> *Explanation*—For the avoidance of doubts, it is hereby declared that the power to issue directions under this clause includes the power to direct—
>
> (a) the closure, prohibition or regulation of any industry, establishment, operation or process; or
>
> (b) the stoppage or regulation of supply of electricity, water or any other service."

67. Further Section 17, DCETP Act spells out the consequences of failing to comply with the direction issued by the authority. It enables the authority to levy a further penalty in the event of such failure. In addition, Section 18, DCETP Act talks of penalty for certain kinds of acts. Section 19, DCETP Act provides for residual penalty for contravention of certain provisions of the Act. It was noticed by learned Single Judge that, "but for Section 16 it can be argued that the entire range of sanctions including penalties have been specifically provided by various provisions such as Section 11, 18, 19 and 20". It was in the above context that the question posed by the learned Single Judge was

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'whether the general power to issue directions comprehends the power to require bank guarantees to be furnished'? After referring to certain decisions which explained that 'everything necessary to carry out the purposes of the grant can be done by the authority entrusted with the power', the learned Single Judge came to the conclusion that the "Court cannot limit the options available to statutory authorities to meet emerging challenges, towards ensuring compliance with the provisions". Yet, even in that case the Court accepted the contention of the Petitioners that in the show cause notices, preceding the impugned orders, there was no mention about the possibility of issuance of orders

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requiring bank guarantees to be furnished. Further the orders did not indicate the application of mind to what existed on site, and what was the standard required to be complied with. Therefore while the challenge on account of lack of power failed, the impugned orders were held not sustainable in law and set aside.

68. In the considered view of this Court, the above decision in Regent Automobiles is of no assistance to the DPCC in the present case. The provisions of the DCETP Act are different from the provisions of the Air Act and Water Act particularly with reference to the penalty provisions. In the DCETP Act, Sections 11, 17, 18 and 19 talk of penalties and it is in that context it was held that the power under Section 16 of that Act includes power to require furnishing of bank guarantee. Neither in the Water Act nor in the Air Act is there any provision that permits DPCC to levy a penalty. That power is with the Courts and that too after returning a conviction. Chapter VI of the Air Act and Chapter VII of the Water Act talks of penalties which result from a conviction for violation of the provisions. Clearly, the penalties envisaged under the Air Act and the Water Act can be levied only at the end of judicial proceedings before a criminal Court. That power cannot be exercised by the DPCC. There is no provision either under the Water Act or under the Air Act that empowers a State Board to levy penalties or environmental damages, much less require the furnishing of a bank guarantee.

69. This Court has, therefore, no hesitation in coming to the conclusion that orders issued by the CMC or even the DPCC in the instant case levying penalty and requiring furnishing of bank guarantees and making the grant of consent to establish under the Water Act and consent to operate under the Air Act conditional upon payment of such penalties and furnishing of such bank guarantees are

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entirely without the authority of law and require to be set aside. Procedural violations by the DPCC

70. This Court finds that the procedure adopted in the instant case by the DPCC in levying the damages and requiring the Petitioners to furnish bank guarantees was not consistent with the requirements of the Rules under the Air Act and Water Act. Under Rule 20A(3) of the UT Rules the requirement is of serving a copy on the alleged violator of the proposed directions and being given an opportunity of not less than 15 days from the date of service of a notice to file objections to the proposed directions. Where the direction is for the stoppage or regulation of electricity or water or any other service then under Rule 20A(4) copy of the proposed direction should be endorsed to the occupier of the industry, operation or process. After the receipt of the objection and within 45 days from that day, the DPCC should give an opportunity to the person to file objections and after considering the objections and for reasons to be recorded in writing, either confirm, modify or decide not to issue such directions. Where the DPCC decides that it is not expedient to provide such an opportunity on account of a likelihood of grave injury to the environment, it should record an opinion to that effect.

71. Rule 33 of the Water (Prevention and Control of Pollution) Rules, 1975 ('Water Rules') spells out the procedure for making an inquiry into application for consent. The said Rule reads as under:

"33. *Procedure for making inquiry into application for consent*—(1) On receipt of an application for consent under Section 25 or Section 26, the Central

Board may depute any of its Officers, accompanied by as many assistants as may be necessary, to visit the premises of the applicant, to which such application relates, for the purpose of verifying the correctness or otherwise of the particulars furnished in the application or for obtaining such further particulars or information as such officer may consider necessary. Such officer may, for that purpose, inspect any place where water or sewage or trade effluent is discharged by the applicant, or treatment plants, purification works or disposal systems of the applicant and may required the applicant to furnish to him any plans, specifications and other data relating to such treatment plants, purification works or disposal systems or any part thereof, that he considers necessary.

(2) Such officer shall before visiting any premises of the applicant for

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the purpose of inspection under Sub-rule (1) above, give notice to the applicant of his intention to do so in Form XIV. The applicant shall furnish to such officer all facilities that such officer may legitimately require for the purpose.

(3) An officer of the Central Board may, before or after carrying out an inspection under Sub-rule (1) above, required the applicant to furnish to him, orally or in writing such additional information or clarification, or to produce before him such documents, as he may consider necessary for the purpose of investigation of the application and may, for that purpose, summon the applicant or his authorised agent to the office of the Central Board."

72. This Court finds that in none of the cases the above procedure has been followed by the DPCC. This would be discussed in greater detail while dealing with the individual cases. This Court would like to emphasise the power of the DPCC under Section 31A of the Air Act and 33A of the Water Act, which is indeed a coercive power, has to be exercised with caution and after complying with the due process requirements. The Rules under both statutes have to be mandatorily followed while exercising such powers.

Conclusions

73. The summary of the conclusions of this Court are set out hereunder. It is clarified that these summary conclusions have to be read with the specific conclusions under different sub-topics already set out hereinbefore:

(i) Where a person proposes to establish a commercial shopping complex or a shopping mall or even a residential complex, it would be necessary for such person to comply with the requirements of Section 25(1)(a) of the Water Act and apply to the DPCC for prior consent to establish.

(ii) Where a person has already established a commercial shopping mall or shopping complex or residential complex and has not been issued any show cause notice till the completion of such building then it would be pointless to require such person to thereafter comply with the requirements of Section 25(1) of the Water Act. The available course to the DPCC in such event is to invoke the powers under

Section 25(5) of the Water Act and set out a time limit for such person to comply with the requirements of the Water Act. Upon failure to comply with the requirements as specified by the DPCC, it would be

open to the DPCC to invoke its powers under Section 33A of the Water Act after complying with the due process outlined under the Water Rules.

(iii) Where a person has made an application for consent to establish and four months have elapsed during which the DPCC has not communicated to him its decision thereon, then in terms of Section 25(7) Water Act consent to establish will be deemed to have been granted. In such event the question of the person being thereafter required to apply for consent to establish does not arise.

(iv) Where the builtup area is more than 20,000 sq.m., the requirement of obtaining an EIA clearance for such activity is mandatory. The mere fact that an EIA clearance has been applied for and obtained by a person seeking to establish a shopping mall, shopping complex or residential complex will not obviate the necessity of such person to again separately apply to the DPCC for a consent to establish under the Water Act.

(v) Where an EIA clearance has already been granted by the MoEF, and the DPCC is thereafter approached for grant of prior consent to establish or prior consent to operate, it would be incumbent on the DPCC to avoid re-examining those aspects that have been examined by the MoEF while granting EIA clearance. The DPCC will examine other aspects not covered by the EIA clearance.

(vi) The requirement of obtaining prior consent to operate under Section 21(1) of the Air Act applies to a commercial shopping complex or shopping mall as these would fall within the definition of 'industrial plant' under Section 2(k) of the Air Act. However on the present wording of Section 21(1) Air Act, there is no such requirement as regards a residential complex.

(vii) The requirement of having to obtain the consent to operate under Section 21 of the Air Act does not get obviated only because the person has an EIA clearance under the EPA.

(viii) The DPCC when approached with an application for consent to operate by a person who has already obtained an EIA clearance, will examine only those aspects not covered by the EIA clearance.

(ix) During the phase of construction, and post-construction, the provisions of the Water Act, the Air Act and the EPA and other environmental statutes will apply to all types of buildings and activities.

(x) Without issuing a show cause notice and without giving an opportunity to the alleged violator to rectify the defects detected during an inspection of the premises carried out in accordance with the relevant rules, the power to order a closure under either

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Section 33A

Water Act or 31A Air Act should not generally be straightway invoked.

(xi) There is no power vested in the Chairman of the DPCC, either under the Water Act or under the Air Act to further sub-delegate the powers delegated to him by the DPCC as regards granting or refusing consent to establish or consent to operate under the Water Act and the Air Act respectively. Any Committee established by the Chairman of the DPCC like the CMC has no power to itself decide whether to grant or refuse the consent to establish or consent to operate. Such decision can be taken either by the DPCC itself or by its delegate *i.e.* the Chairman DPCC and no one else.

(xii) The decisions by the CMC or even by the Chairman, DPCC to levy penalty or environmental damages and insist on furnishing of bank guarantees as a condition for grant of consent to establish or consent to operate are without the authority of law. There is no power under the Air Act or the Water Act which enables the DPCC or its Chairman, much less the CMC, to pass such orders. Absent specific provisions under the Water Act and Air Act which permit the DPCC or its Chairman to levy and collect penalties, environmental damages or to pass orders for furnishing of bank guarantees, the general power to issue directions under Section 31A of the Air Act and Section 33A of the Water Act cannot be invoked for such purpose.

(xiii) Where there are multiple owners in a constructed building, the application for EIA clearance or consent to establish or operate, as the case may be, will be made jointly by the builder and such individual owners or occupiers. If the building has been completed without obtaining prior consent to establish under Section 25(1)(a) of the Water Act it would be incumbent upon the person first receiving a show cause notice from the DPCC in terms of Section 25(5) of the Water Act to inform the DPCC the names of the persons to whom the whole or part of the building in question has been sold or transferred. The position is more or less similar under the Air Act. Notices can then issue to such persons as well. Till such time the person first receiving a show cause notice furnishes the complete particulars of subsequent transferees and till discharged, such person will continue to be answerable under the Water Act and/or the Air Act.

74. This Court would like to end this part of the judgment, before commencing to examine the individual petitions, with the observation that the DPCC should take proactive steps to make the correct legal position publicly known not only through its website, but act in coordination with the governmental and municipal agencies, the planning authorities, the construction industry, consumer associations as well as civil society groups involved in issues of environmental protection. Not only should DPCC reorganize itself as a vigilant regulator but seek the active cooperation of all of the above interested parties. Also, to avoid any criticism of selective application of law, the DPCC should ensure that the law applies and is

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enforced in a uniform, predictable and certain way, while ensuring that action taken is within the four corners of the law.

Consideration of individual petitions

75. The individual petitions are now taken up for consideration W.P. (C) No. 2714 of 2008 (Vardhman Properties Ltd.)

76. The building in this case is a shopping-cum-office complex built on a commercial plot. The total builtup area is 7700 sq.m. The show cause notice was issued by the DPCC on 13th February 2008 asking the Petitioner to explain why it should not be proceeded against for its failure to apply for a consent to establish under Section 25 of the Water Act and consent to operate under Section 21 of the Air Act. The show cause notice further stated with reference "you are proposing to construct/have started construction activities without obtaining prior 'Consent to Establish' under Air and Water Acts from DPCC". The Petitioner was asked to show cause why "prosecution proceedings should not be initiated against you and/or your establishment should not be closed under the appropriate provisions of the Acts for contravention of the provisions of the aforesaid Acts".

77. By the time the above show cause notice was issued, the building had already been constructed. In fact, construction commenced on 7th June 2005 in terms of the sanctioned building plan and was completed on 25th June 2007. The Petitioner replied to the above notice on 18th February 2008. *Inter alia*, it was pointed out that an application was made on 3rd September 2007 under the Right to Information Act, 2005 ('RTI Act') on the exact criteria adopted by the DPCC for identifying commercial complexes for the purposes of consent under the Air Act and the Water Act. The DPCC had replied that commercial/residential buildings not generating trade effluent are

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required to discharge their sewage into sewage system maintained by Delhi Jal Board/MCD/DDA which in turn was responsible for treating the sewage in the sewage treatment plant as per the norms prescribed under the pollution control laws and in such event consent was not required for the said commercial/residential buildings.

78. On 18th March 2008, an order was passed by the DPCC noting that a reply had been filed by the Petitioner to the show cause notice on 18th February 2008 that "no application has been made till date". The case was then placed before the CMC (Orange). It was decided by the CMC to direct the Petitioner to apply for consent to establish and submit "Environmental Clearance obtained from MoEF, Govt. of India" and an "affidavit indicating date of start of construction and completion of construction, approved architectural drawing and completion certificate within 15 days from the issue of this letter".

79. The challenge in the present petition is to the aforementioned order dated 18th March 2008.

80. As already held by this Court hereinbefore that there was no question of the Petitioner having to apply for environmental clearance from the MoEF in terms of the EIA Notification dated 14th September 2006 since the builtup area was not above 20,000 sq.m. In the present case the builtup area was 7700 sq.m. The categorization of an industry as Orange, Red or Blue appears to that of the DPCC. It is not found either under the Air Act or under the Water Act. Nevertheless, a

commercial shopping complex required prior consent to establish prior to commencement of construction. But once the construction was already complete, then it was pointless to require the Petitioner to apply thereafter for consent to establish.

81. Thirdly, the Petitioner.s reply dated 18th February 2008 has been noticed but not discussed by the DPCC in the impugned order. In particular, the Petitioner's response to the reply received by it under the RTI Act has not been adverted to at all. Although it is possible that the sewage generated by the shopping complex will join the main sewage system which is being taken to the effluent treatment plant of the DJB, that by itself will not obviate the need to obtain consent to establish from the DPCC.

82. It appears that DPCC itself was not very clear about the legal position and, therefore, the above reply was given under the RTI Act. It cannot be said that the DPCC estopped from rectifying its position or correcting its understanding of the law.

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83. Inasmuch as the building already was constructed on 25th June 2007, by the time the show cause notice dated 13th February 2008 was issued, the direction issued by the DPCC requiring the Petitioner to thereafter apply for a consent to establish under the Water Act and consent to operate under the Air Act was a direction which was incapable of being complied with.

84. This is, however, not the end of the matter. The DPCC can still proceed under Section 25(5) of the Water Act requiring the Petitioner to comply with the pollution control norms under the Water Act. This it can do after following the procedure under Section 25(5).

85. As far as Air Act is concerned, the DPCC can inspect the premises to ascertain what is the extent of the air pollution caused, if any, and then issue notice to the Petitioner.

86. The direction issued in the impugned order dated 18th March 2008, requiring the Petitioner to apply for consent to establish and consent to operate, is for the aforementioned reasons not sustainable in law. While setting aside the impugned order dated 18th March 2008 for the aforementioned reasons, this Court leaves it open to the DPCC to now proceed in accordance with Section 25(5) of the Water Act and other relevant provisions of the Air Act. If it finds after an inquiry or investigation that the use of the premises is causing either water or air pollution, and corrective action is not taken within the time limit set for the purpose, it can proceed further to issue directions as envisaged under Section 31A, Air Act and Section 33A, Water Act.

87. The writ petition is disposed of with the above directions.

W.P. (C) No. 2771 of 2008 (Vardhman Properties Ltd.)

88. The total builtup area in the present case is to an extent of 6131.22 sq.m. The building has been constructed on a commercial plot. The building is a shopping complex. Like in Writ Petition (C) No. 2714 of 2008, a show cause notice was issued by the DPCC on 13th February 2008 requiring the Petitioner to apply for prior consent to establish and consent to operate under the Air Act and the Water Act respectively. A similar response was received from the Petitioner on 18th February

2008 and a similar order as in Writ Petition (C) No. 2714 of 2008 was passed by the DPCC on 18th March 2008.

89. Here again the construction commenced on 15th February 2005 and was completed on 4th December 2006 *i.e.* much prior to the issuance of the show cause notice. For the reasons already explained in Writ Petition (C) No. 2714 of 2008, the impugned order cannot be

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sustained in law and is hereby set aside. It would nevertheless be open to the DPCC to now proceed in accordance with Section 25(5) of the Water Act and other relevant provisions of the Air Act but only after complying with the due process requirements under the Rules. If after making its own enquiry/investigations into the matter, it finds that the use of the premises is causing either water or air pollution, and the corrective action is not taken within the time limit set for the purpose, it can proceed further to issue directions as envisaged under Section 31A, Air Act and Section 33A, Water Act. The writ petition is disposed of with the above directions.

W.P. (C) No., 2772 *of 2008 (Vardhman Properties Ltd.)*

90. The building in this case is a shopping complex built on a commercial plot. The total builtup area is 5907.25 sq.m. The facts are identical to the facts in Writ Petition (C) Nos. 2714 and 2721 of 2008. The date of completion of the building is 14th December 2006.

91. For the reasons already stated hereinbefore, the impugned order dated 18th March 2008 passed by the DPCC is unsustainable in law and is hereby set aside. It would nevertheless be open to the DPCC to now proceed in accordance with Section 25(5) of the Water Act and other relevant provisions of the Air Act but only after complying with the due process requirements under the Rules. If after making its own inquiry/investigations into the matter if it finds that the use of the premises is causing either water or air pollution, and the corrective action is not taken within the time limit set for the purpose, it can proceed further to issue directions as envisaged under Section 31 A, Air Act and Section 33A, Water Act. The writ petition is disposed of with the above directions.

W.P. (C) No. 7081 of 2008 (Pankaj Buildwell Ltd.)

92. The total builtup area in this case is 1593 sq.m. The building is a shopping complex and is builtup on a commercial plot. The completion certificate was obtained on 2nd June 2008 itself. It is only thereafter on 14th February 2008 that the standard show cause notice was issued by the DPCC which was identically worded as the show cause notice dated 13th February 2008 in the cases of Writ Petition (C) Nos. 2714, 2771 and 2772 of 2008. The impugned order is dated 9th September 2008 which is again identically worded.

93. The decision taken by the CMC on 3rd September 2008 has been placed on record. It shows that apart from the Chairman, DPCC there were three other members along with the Executive Engineer, Assistant Executive Engineer and Joint Executive Engineer of the CMC. As regards the Petitioner, its contention that it had no DG set and no bore well and there was no effluent were noted. The decision was to let the unit file its application to the DPCC and its case would be considered by the CMC on 30th September 2008. The above decision of the CMC was

communicated to the Petitioner on 9th September 2008 asking it to file an application

for consent to establish. This is the decision which has been challenged in the writ petition.

94. For the reasons already stated hereinbefore, the impugned order dated 9th September 2008 passed by the DPCC is unsustainable in law and is hereby set aside. It would nevertheless be open to the DPCC to now proceed in accordance with Section 25(5) of the Water Act and other relevant provisions of the Air Act but only after complying with the due process requirements under the Rules. If after making its own inquiry/investigations into the matter if it finds that the use of the premises is causing either water or air pollution, and the corrective action is not taken within the time limit set for the purpose, it can proceed further to issue directions as envisaged under Section 31 A, Air Act and Section 33A, Water Act. The writ petition is disposed of with the above directions.

W.P. (C) No. 3815 of 2008 (Vardhman Properties Ltd.)

95. The building in question has a total builtup area 4735.62 sq.m. and is on a commercial plot. The construction of the building commenced on 27th November 2003 and was completed on 2nd December 2004. A show cause notice was issued on 24th April 2008 requiring Petitioner to apply for consent to establish. It was at this stage that the present writ petition was filed challenging the said show cause notice. An interim order was passed by this Court on 19th May 2008 directing the Respondent not to take coercive action pursuant to the abovementioned notice dated 24th April 2008.

96. In the reply filed to the petition, a reference is made by the DPCC to the Petitioner's response dated 6th May 2008 to the show cause notice in which it was mentioned that the DDA has already issued a completion certificate. It appears that the DPCC undertook an inspection of the site on 1st July 2008 and confirmed that the builtup area was 4735.62 sq.m., and that the completion of the construction took place on 2nd December 2004. The inspection team was also informed that the building was under occupation since 1st April 2005 and the occupancy was to the extent of 50 to 60 persons. There was one DG set of 140 KVA along with two more DG sets located at the terrace, there was no information about their KVA. Sewage connection was available and the estimated waste water generation was 11.2 KLD. It was informed that the CMC was yet to take any decision on the said

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report.

97. This Court finds that the builtup area being 4735.62 sq.m., there was no question of the Petitioner having to obtain an EIA clearance in terms of the EIA Notification dated 14th September 2006. The construction having already been completed on 2nd December 2004, the direction to the Petitioner to apply for consent to establish which had to happen prior to commencement of construction was incapable of being complied with.

98. The impugned orders dated 24th April 2008 of the DPCC are unsustainable in law and are hereby set aside. It would nevertheless be open to the DPCC to now proceed in accordance with Section 25(5) of the Water Act and other relevant provisions of the Air Act but only after complying with the due process requirements under the Rules. If after making its own enquiry/investigations into the matter if it finds that the use of the premises is causing either water or air pollution, and the corrective action is not taken within the time limit set for the purpose, it can

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proceed further to issue directions as envisaged under Section 31A Air Act and Section 33A Water Act. The writ petition is disposed of with the above directions.

W.P. (C) No. 8143 of 2008 (Manish Buildwell Pvt. Ltd).

99. The total builtup area of the commercial complex in the present petition is 2160 sq.m. Construction of the building commenced some time in May 2007 and was completed in May 2008. A show cause notice was thereafter issued on 6th June 2008. On 16th October 2008, a direction was issued by the DPCC requiring the Petitioner to apply for consent to establish. This is identically worded as the direction issued by the DPCC on 10th September 2008 in Writ Petition (C) No. 7081 of 2008.

100. For the reasons already explained hereinbefore, the directions contained in the order dated 10th September 2008 and 16th October 2008 passed by the DPCC are unsustainable in law and are hereby set aside. It would nevertheless be open to the DPCC to now proceed in accordance with Section 25(5) of the Water Act and other relevant provisions of the Air Act but only after complying with the due process requirements under the Rules. If after making its own inquiry/investigations into the matter if it finds that the use of the premises is causing either water or air pollution, and the corrective action is not taken within the time limit set for the purpose, it can

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proceed further to issue directions as envisaged under Section 31 A, Air Act and Section 33A, Water Act. The writ petition is disposed of with the above directions.

W.P. (C) No. 8144 of 2008 (Vardhman Properties Ltd.)

101. The total builtup area of the commercial complex constructed on a commercial plot in the present petition is 18,250 sq.m. Construction of the building was completed on 14th September 2007. An order was passed on 24th October 2008 by the DPCC in terms of the decision of the CMC at its meeting on 7th October 2008 asking the Petitioner to apply for consent to establish and also give parawise reply to the observation made by the special inspecting team on the inspection that was carried out on 3rd September 2008.

102. For reasons already mentioned, the direction to the Petitioner to apply for consent to establish is now incapable of being complied with inasmuch as construction was already completed on 14th September 2007. It is not clear if the due process requirement of a prior show cause notice was complied with by the DPCC before issuance of the above direction. While setting aside the impugned order dated 24th October 2008, this Court leaves it open to the DPCC to initiate appropriate proceedings in accordance with Section 25(5) of the Water Act and other relevant provisions of the Air Act but only after complying with the due process requirements under the Rules. If after making its own enquiry/investigations into the matter if it finds that the use of the premises is causing either water or air pollution, and the corrective action is not taken within the time limit set for the purpose, it can proceed further to issue directions as envisaged under Section 31A, Air Act and Section 33A, Water Act. The writ petition is disposed of with the above directions.

W.P. (C) No. 8145 of 2008 (Sachdeva Buildcon Pvt. Ltd.)

103. The total builtup area of the commercial shopping complex constructed on a commercial plot in the present petition is 2407.7 sq.m. Construction of the building

commenced some time in January 2005 and was completed in May 2006. It appears that on 28th April 2008 and 29th May 2008 the DPCC passed orders directing the Petitioner to apply for consent to establish.

104. For the reasons already explained hereinbefore, this Court finds that the impugned directions are unsustainable in law and are hereby set aside. It would nevertheless be open to the DPCC to now proceed in accordance with Section 25(5) of the Water Act and other relevant

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provisions of the Air Act but only after complying with the due process requirements under the Rules. If after making its own inquiry/investigations into the matter if it finds that the use of the premises is causing either water or air pollution, and the corrective action is not taken within the time limit set for the purpose, it can proceed further to issue directions as envisaged under Section 31 A, Air Act and Section 33A, Water Act. The writ petition is disposed of with the above directions.

W.P. (C) No. 8146 of 2008 (Rajesh Projects India Pvt. Ltd.)

105. The total builtup area of the building constructed on a commercial plot in the present petition is 5000 sq.m.(approx). Construction of the building commenced on 5th July 2005 and completed in April 2007. A show cause notice was issued on 24th April 2008 and a direction was issued on 4th November 2008 asking the Petitioner to apply for consent to establish.

106. For the reasons already explained hereinbefore, this Court finds that the impugned directions are unsustainable in law and are hereby set aside. It would nevertheless be open to the DPCC to now proceed in accordance with Section 25(5) of the Water Act and other relevant provisions of the Air Act but only after complying with the due process requirements under the Rules. If after making its own inquiry/investigations into the matter if it finds that the use of the premises is causing either water or air pollution, and the corrective action is not taken within the time limit set for the purpose, it can proceed further to issue directions as envisaged under Section 31 A, Air Act and Section 33A, Water Act. The writ petition is disposed of with the above directions.

W.P. (C) No. 8147 of 2008 (Rajesh Projects India Pvt. Ltd.)

107. The total builtup area of the shopping mall constructed on a commercial plot in the present petition is 3990 sq.m. Construction of the building commenced oil 27th February 2003 and was completed on 27th July 2006. A show cause notice was issued on 24th April 2008 and a direction was issued on 4th November 2008 asking the Petitioner to apply for consent to establish.

108. For the reasons already explained hereinbefore, this Court finds that the impugned directions are unsustainable in law and are hereby set aside. It would nevertheless be open to the DPCC to now proceed in accordance with Section 25(5) of the Water Act and other relevant provisions of the Air Act but only after complying with the due process requirements under the Rules. If after making its own inquiry/investigations into the matter if it finds that the use of the premises is causing either water or air pollution, and the corrective action is not taken within the time limit set for the purpose, it can proceed further to issue directions as envisaged under Section 31 A, Air

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Act and Section 33A, Water Act. The writ petition is disposed of with the above directions.

W.P. (C) No. 8148 of 2008 (Manish Buildwell Pvt. Ltd.)

109. The total builtup area of the building constructed on a commercial plot in the present petition is 8485.75 sq.m. Construction of the building commenced on 15th June 2005 and was completed on 22nd May 2007. A show cause notice was issued on 13th February 2008 and a direction was issued asking the Petitioner to apply for consent to establish.

110. For the reasons already explained hereinbefore, this Court finds that the impugned directions dated 18th March 2008 and 29th May 2008 are unsustainable in law and are hereby set aside. It would nevertheless be open to the DPCC to now proceed in accordance with Section 25(5) of the Water Act and other relevant provisions of the Air Act but only after complying with the due process requirements under the Rules. If after making its own inquiry/investigations into the matter if it finds that the use of the premises is causing either water or air pollution, and the corrective action is not taken within the time limit set for the purpose, it can proceed further to issue directions as envisaged under Section 31A, Air Act and Section 33A, Water Act. The writ petition is disposed of with the above directions.

W.P. (C) No. 8149 of 2008 (Fargo Estates Pvt. Ltd.)

111. The total builtup area of the building constructed on a commercial plot in the present petition is 10,100 sq.m. Construction of the building commenced on 2nd May 2004 and was completed some time in May 2006. A show cause notice was issued on 21st May 2007 and an order was passed on 31st October 2008 requiring the Petitioner to pay environmental damages of Rs. 40 lakh and furnish bank guarantee of Rs. 95 lakhs.

112. The above directions were stayed by this Court by an order dated 17th November 2008.

113. For the reasons already explained hereinbefore, the impugned order dated 31st October 2008 cannot be sustained in law and is hereby set aside. It would nevertheless be open to the DPCC to now proceed in accordance with Section 25(5) of the Water Act and other relevant provisions of the Air Act but only after complying with the due process requirements under the Rules. If after making its own inquiry/investigations into the matter if it finds that the use of the

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premises is causing either water or air pollution, and the corrective action is not taken within the time limit set for the purpose, it can proceed further to issue directions as envisaged under Section 31A, Air Act and Section 33A, Water Act. The writ petition is disposed of with the above directions.

114. It will however not be open to the DPCC to levy any environmental damages or requiring the Petitioner to furnish any bank guarantee for non-compliance with the provisions of either Acts. The writ petition is disposed of with the above directions.

W.P. (C) No. 9040 of 1008 (Home Linkers Pvt. Ltd.)

115. The total builtup area of the building constructed on a commercial plot in the present petition is 3,526.83 sq.m. Construction of the building commenced on 11th November 2004 and was completed on 7th June 2006. A show cause notice was issued on 14th February 2008 and orders were passed on 18th March 2008 and 19th September 2008 requiring the Petitioner to apply for consent to establish.

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116. For the reasons already explained hereinbefore, the impugned orders dated 18th March 2008 and 19th September 2008 cannot be sustained in law and are hereby set aside. It would nevertheless be open to the DPCC to now proceed in accordance with Section 25(5) of the Water Act and other relevant provisions of the Air Act but only after complying with the due process requirements under the Rules. If after making its own enquiry/investigations into the matter if it finds that the use of the premises is causing either water or air pollution, and the corrective action is not taken within the time limit set for the purpose, it can proceed further to issue directions as envisaged under Section 31 A, Air Act and Section 33A, Water Act. The writ petition is disposed of with the above directions.

W.P. (C) No. 464 of 2009 (Vardhman Land Developers Pvt. Ltd.)

117. The Petitioner purchased a commercial plot measuring 5112 sq.m. in Raja Garden, New Delhi in an open auction held by the MCD on 6th May 2002 and a perpetual lease deed was executed and building plans were sanctioned by the DDA on 24th March 2004. A completion certificate was issued on 31st January 2005.

118. The Petitioners pointed out that although they did not consider it necessary to apply for consent to establish, they nevertheless did

apply on 22nd November 2007 with the DPCC. A show cause notice was issued on 5th December 2007 which was replied to on 13th December 2007 informing the DPCC that the application seeking "consent to establish, was already pending. No reply was received from the DPCC. The DPCC again sent a notice dated 14th March 2008 requiring the Petitioner to submit environmental clearance, approved architectural drawings and the completion certificate. Thereafter the DPCC sent a letter dated 26th May 2008 informing the Petitioner that its case was being placed before the CMC.

119. At its meeting on 21st August 2008, the CMC took note of the fact that the total project cost is Rs. 44.14 crores and that in similar cases the CMC has levied damages of 1% of the project cost and 2% of the project cost for bank guarantee which in the present case worked out to damages as cash penalty of Rs. 44 lakh and bank guarantee of Rs. 88 lakhs. The aforesaid damages as cash penalty and bank guarantee valid for three years was asked to be furnished by 17th September 2008. The Petitioner then made a representation which was again considered by the CMC in its meeting held on 7th October 2008. The CMC now reduced the penalty amount to Rs. 40 lakh and bank guarantee amount to Rs. 85 lakh and asked the unit to comply with the directions of 6th July 2008.

120. It was at that stage that the Petitioner filed the present writ petition in which by an order dated 27th January 2009 an interim order was passed restraining the Respondents from taking any coercive action against the Petitioner.

121. As explained hereinbefore, the DPCC had no power to require the Petitioner to pay environmental damages or to furnish bank guarantee and, therefore, the impugned direction is wholly unsustainable in law and is hereby set aside. If indeed the Petitioner had already filed an application for consent to establish on 22nd November 2007, then in the absence of any reply thereto by the DPCC in terms of Section 25(7) of the Water Act such consent is deemed to have been granted.

122. This will, in any event, not preclude the DPCC from taking action against the Petitioner after an inspection undertaken by it of the premises hereafter. If the Petitioner or any one in occupation of the building in question is found to be acting in violation of the provisions of either the Water Act or the Air Act, the DPCC can proceed to take action but only after following the due process of law as envisaged by

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the Rules. The writ petition is disposed of with the above directions.

W.P. (C) No. 543 of 2008 (Splendor Landbase Ltd.)

123. The property in question is an office complex-cum-shopping mall on Plot No. 3, District Centre, Jasola, New Delhi known as Splendor Forum. The area of the plot is about 5704 sq. m. It was purchased from the Delhi Development Authority for commercial purposes in an open auction. The Petitioner states that all the necessary permissions from all authorities concerned including the municipalities, electricity department, Chief Fire Officer, Delhi Urban Art Commission, and Airport Authority of India were taken. The construction of the building started in March 2004 and the construction up to the plinth level was completed in December 2005. The EIA Notification dated 7th July 2004 brought within its fold construction activity. The Petitioner states that in terms of the said EIA Notification where construction was complete till the plinth level, no environmental clearance was necessary. However, since DDA insisted on the Petitioner producing the EIA clearance certificate in order to process its case for additions, alterations and modifications, the Petitioner applied and was granted EIA clearance by the MoEF on 2nd November 2007.

124. In response to a notice dated 20th/21st August 2007 from the DPCC, the Petitioner applied for consent to establish under Section 25 (1)(a) of the Water Act on 5th September 2007. A reply to the notice dated 20th/21st August 2007 was also sent to the DPCC by the Petitioner. The aforesaid application for consent dated 5th September 2007 was never formally rejected by the DPCC. However, an order dated 31st December 2007 was passed by the DPCC issuing directions under Section 31A of the Air Act and Section 33A of the Water Act primarily on the ground that the construction was started and completed without first obtaining consent to establish. It was also alleged that there were certain violations of the conditions of the EIA clearance although according to the Petitioner this was outside the scope of the powers of the DPCC. By the impugned order dated 31st December 2007, the Petitioner was asked to pay fine and furnish a bank guarantee. The Petitioner submits that said order was passed without complying with the principles of natural justice and was contrary to the procedure under the Rules. The premises was inspected by MoEF. It is stated that in its report dated 5th May 2008 the MoEF recorded that there has been satisfactory compliance of most of the conditions laid down in the EIA clearance. It was concluded that the commencement of construction by the Petitioner in March 2004 could not be treated as a violation of the EPA. Hence no legal action was recommended by the MoEF against the Petitioner under the EPA.

125. The directions issued by the DPCC on 31st December 2007

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have been assailed as being *ultra vires* the powers of the DPCC under the Air Act and the Water Act. The said order is also challenged on the ground of non-compliance with the applicable Rules and further that DPCC cannot take action for alleged non-compliance with the conditions forming part of the EIA clearance.

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126. In its counter affidavit dated 31st January 2008 the DPCC contended that the Petitioner initially did not apply to the DPCC for prior consents under either the Water Act or the Air Act. It was only after a formal notice was issued to the Petitioner in August 2005 that on 5th September 2007, the Petitioner applied to the DPCC for consent to establish under the Water Act and consent to operate under the Air Act. According to the DPCC the Standing Counsel of the GNCTD advised it that it could not initiate actions under Sections 15, 16 and 19 of the EPA. An inspection was carried out in the premises on 23rd December 2007 and the deficiencies noted at that time have been listed out in the counter affidavit. The conditions imposed by the amended clearance dated 10th February 2007 and the status of compliance was also set out in detail in the counter affidavit. It is stated that the CMC at its meeting on 26th December 2007 and 28th December 2007 deliberated upon the matter considering the facts and circumstances including the representation dated 27th December 2007 made by the Petitioner. Thereafter the impugned order dated 31st December 2007 was passed under Section 31A of the Air Act and Section 33A of the Water Act asking the Petitioner to pay 0.5% of the project cost of Rs. 65 crores as fine, which was required to be deposited in the DPCC's account within 30 days. The DPCC's stand is that “any smaller amount of fine will only mean that a non-deserving Petitioner with no *bona fides* of commitment to preserving clean air and water in his environment, would not work towards a correction. Surely environment deserves ½% of his total project cost to make him realize the degree of his callousness”. A detailed parawise reply to the writ petition has also been given by the DPCC.

127. In its rejoinder filed on 6th February 2008, the Petitioner pointed out that it had in fact obtained EIA clearance. A reference was made to the website of the DPCC where under the caption ‘frequently asked questions’ under the sub-heading “consent procedure” the following questions and answers appear:

“Q. I am involved in trading activity, Do I need to apply for consent?

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Ans. At present, consents are not required for enterprises engaged only in trading activities.

Q. I have an office and have installed a D.G. Set. Do I need to take consent from DPCC?

Ans. DPCC does not issue consent for offices. For D.G. Sets you are required to install acoustic enclosure meeting the prescribed norms/standards for noise for D.G. Sets."

128. It is pointed out that it is only by the amendment with effect from 7th July 2004 that construction activity came to be added to the EIA Notification and again it was clarified that such amendment would not apply to "any construction project falling under Entry 31 of Schedule-1 including new townships, industrial townships, settlement colonies, commercial complexes, hotel complexes, hospitals and office complexes for 1,000 (one thousand) persons or below or discharging sewage of 50,000 (fifty thousand) litres per day or below or with an investment of Rs. 50,00,000/- (Rupees Fifty lakhs) or below." The Petitioner proceeded on the assumption that the term "investment" in the said Notification would include the amount invested in construction and raising the superstructure and since that was

around Rs. 34 crores, no EIA clearance was required. Thereafter when a further modified EIA Notification was issued on 14th September 2006, the Petitioner applied to the MoEF for EIA clearance on 12th March 2007. Time was granted by a Circular dated 21st November 2006 of the Central Government up to 30th June 2007 for applying for EIA clearance.

129. It is not the submission of learned Counsel for the Petitioner that there is any repugnancy between the EPA and the Air Act and the Water Act. On the other hand, it is not denied that the EPA would apply and that in the Petitioner's case, the EIA clearance would have to be obtained. What is contended is that once EIA clearance has been obtained, there is no occasion to again apply to the DPCC under the Air Act and the Water Act for consent to operate and consent to establish respectively. Further, it is submitted that there are many aspects of the EIA clearance which include water and air pollution and, therefore, the exercise would become repetitive and cumbersome. Thirdly, it is sought to be contended that the jurisdiction as regards the EIA clearance is of the Central Government and not of the DPCC particularly with reference to the National Capital Territory of Delhi.

130. The stand of the Respondents, on the other hand, is that

consent under the Air Act and the Water Act are independent of the EIA clearance and that although the DPCC may have no jurisdiction as regards the EIA clearance, to the extent that such EIA clearance itself mandates that the person in whose favour such clearance has been granted has to obtain consent under the Air Act and the Water Act, the DPCC.s jurisdiction will stand attracted. It is further submitted that the parameters that would weigh with the DPCC in processing an application for consent under the Air Act and the Water Act might be different from those which would weigh with the MoEF in granting EIA clearance.

131. This Court has considered the above submissions. In view of the builtup area of the building being over 20,000 sq.m., an EIA clearance is mandatory. For the reasons already discussed, it must be held that the requirement of obtaining consent to establish under the Water Act and consent to operate under the Air Act is independent of the EIA clearance obtained in respect of the Petitioner.s shopping complex or shopping mall. But this requirement would have applied at the stage when construction had not commenced.

132. However, in this case at the time when the Petitioner applied for and obtained the EIA clearance, the construction of the building was complete. There was no show cause notice issued to it by the DPCC from the time it commenced construction sometime in March 2004 till it completed its construction in December 2005. Clearly, the DPCC woke up very late. The first show cause notice was issued some time in August 2007. Even then the show cause notice was issued to M/s. G.S. Developers and Contractors Pvt. Ltd. who were only contractors whereas the whole shopping complex was built by the Petitioner. Be that as it may, for the reasons already discussed the course open to the DPCC was to invoke Section 25(5) of the Water Act to require the Petitioner to rectify any deficiency that must have been noticed on the inspection of the premises. Even under the Air Act, there is no question of now requiring the Petitioner to apply for “prior consent to operate” since the construction of the building is already complete.

133. There are enough provisions in both the Air Act and the Water Act to deal

with a situation where without obtaining prior consent a building been constructed and has become functional. As already pointed out the action under Section 31A of the Air Act and Section 33A of the Water Act will have to be exercised reasonably after complying with the rules envisaged under both these Acts. The exercise should not be a

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mechanical one. Since this is a building which has been granted EIA clearance, the DPCC should find out first whether there are other aspects, not covered by the EIA clearance that require to be rectified by the Petitioner both under the Water as well as the Air Acts. In other words, the exercise to be undertaken by the DPCC ought not to be repetitive of the exercise undertaken by the MoEF while granting EIA clearance.

134. Thirdly, there is no legal basis for the DPCC to impose penalty and environmental damages on the Petitioner or require it to furnish a bank guarantee. For the reasons already discussed, such orders are plainly outside the powers of the DPCC under the Water Act and the Air Act and cannot be sustained in law.

135. The DPCC has relied upon an order dated 14th October 2003 passed by the Supreme Court in Writ Petition (C) No. 657 of 1995 (*Research Foundation for Science Technology and National Resource Policy* v. *Union of India*) where in para 70.6 an observation was made to the following effect:

> "MoEF should consider making a provision for bank guarantee being given by importer while seeking permission to import used oil, furnace oil and zinc wastes to be released only on the imported consignment being found to be in conformity with the declared item of import. After taking a decision, affidavit shall be filed within four weeks."

136. The above observation of the Supreme Court does not by any means imply that an SPCB like the DPCC can begin to levy penalties and fines and environmental damages or require bank guarantees to be furnished in exercise of its powers under Section 31A of the Air Act and Section 33A of the Water Act. The above contention is accordingly rejected.

137. Reliance has been placed by the DPCC on an order dated 17th October 2006 passed by the Supreme Court in the Vasant Kunj Ridge matters. The above order was passed in an application filed seeking acceptance of the report of the Expert Committee relating to violation of environmental norms by certain parties who had constructed shopping malls or hotel complexes in the Vasant Kunj Ridge area. After referring to the earlier orders dated 19th August 1997 and 8th March 2004, the Supreme Court observed that the parties were not aware that they had to take EIA clearance in terms of the amended EIA Notification dated 7th July 2004. It was then observed as under:

> "The confusion arose because DDA all through all through gave an impression to the parties participating in auction that all requisite clearances had been obtained. Had such parties inkling of an idea that such clearances were not obtained by DDA, they would not have

invested such huge sums of money. The stand that wherever constructions have been made unauthorisedly demolition is the only option cannot apply to the present cases, more particularly, when they unlike, where some private individuals or private limited companies or firms being allotted to have

made contraventions, are corporate bodies and institutions and the question of their having indulged in any malpractices in getting the approval or sanction does not arise. Some of the allottees are the National Book Trust, School of Planning or Architecture, Shri Ram Vithala Sikha Seva Samiti, International Centre for Alternate Dispute Resolution and Institute for Studies and Industrial Development. In most of these cases the constructions are already complete and have become functional."

138. Consequently, the following directions were issued:

"10. In view of what has been stated above, the MoEF has now to take a decision by taking the land as constraint area. It is needless to say that even if the land is held to be constraint area the constructions thereon have to be made after having the requisite clearance. The MoEF shall take note of the stands projected by the Respondents. We are *prima facie* satisfied about the *bona fides* of the Respondents but at the same time it needs no emphasis that DDA should have been more transparent in ensuring that it was not putting a site for auction where there was scope for litigation. It had definitely created an impression that all necessary clearances had been obtained, though it does not appear to be so. What remains to be decided as to what remedial measures including imposition of such amounts as costs can be taken".

139. The position as far as the present set of cases is concerned, is not very different. The DPCC appears to have woken up after the construction of the shopping-cum-commercial complexes/malls was completed. Therefore as far as the present cases are concerned, the above orders do not come to the aid of the DPCC for seeking to proceed against the Petitioner for failing to obtain prior consent to operate under the Air Act and prior consent to operate under the Water Act. As already clarified, this would not preclude the DPCC from proceeding under the Air Act and Water Act in the manner already discussed hereinbefore.

140. The understanding of the law by the DPCC as reflected on its website should not be taken to be determinative. There is no estoppel

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against law. The position depicted by the DPCC on its website will be obviously subject to and in consonance with the correct legal position. There has been a lack of clarity even within the DPCC on whether the provisions of the Water Act and the Air Act apply to construction activity. Hopefully that confusion should not remain any longer.

141. For the aforementioned reasons, this Court while setting aside the order dated 31st December 2007 passed by the DPCC permits it to proceed in accordance with law against the Petitioner in terms of Section 25(5) of the Water Act and the relevant provisions of the Air Act.

142. A point has been urged by the Petitioner that substantial portions of the complex have been sold/leased out to different persons and, therefore, the complex is no longer in the control of the Petitioner. As and when a fresh show cause notice is issued to the Petitioner by the DPCC, it will be open to the Petitioner to furnish to the DPCC the name's of the individual owners of the different portions who might be liable to the extent of their respective portions. This by no means will absolve the Petitioner of its liability which is joint and several with such individual owners/

lessees. It will be for the DPCC to decide who should be made liable for complying with the various provisions under the Water Act and the Air Act.

143. The writ petition is accordingly disposed of with the above directions.

W.P. (C) No. 3095 of 2008 (DLF Ltd.).

144. The case of the Petitioner is that a plot of land admeasuring 15659.50 sq.m. situated at District Centre, Saket, New Delhi with an attached general parking plot admeasuring 14072.48 sq. m. was purchased in an auction from DDA to be used as retail/office/multiplex/service apartment purposes. Although according to the Petitioner no formal consent was required, to avoid any hyper-technical objection and impediment at a later stage and without prejudice to its rights, the Petitioner applied to the DPCC for consent to establish under the Water Act and consent to operate under the Air Act on 3rd June 2005. The first of the Applications has not till date been formally rejected and thus shall be deemed to have been granted on 2nd October 2005 in terms of Section 25(7), Water Act.

145. The Petitioner applied on 2nd December 2005 seeking EIA clearance under the EIA Notification as amended on 7th July 2004. As

per the requirement of the said Notification, a no objection certificate and public hearing was to be afforded by the public hearing panel of which the representative of the DPCC was a member.

146. The Petitioner states that all necessary permissions for commencement of construction including those from the MCD, Fire Department, Electricity Department, Airport Authority of India and Delhi Urban Arts Commission were taken. The MoEF granted EIA clearance to the Petitioner on 15th January 2007. DPCC wrote to the Petitioner on 20th and 30th August, 2007 that the earlier application filed by it for consent on 3rd June 2005 has been forwarded to the Government of India and that it should file a fresh application.

147. A fresh application for consent to establish was filed by the Petitioner with the DPCC on 25th/26th September, 2007. The said application was not disposed of or rejected within a period of four months thereafter. Thus consent was deemed to have been granted on 25th January 2008 in terms of Section 25(7), Water Act. Nevertheless, the DPCC issued the impugned order dated 4th April 2008 and directed the Petitioner to pay fine and furnish a bank guarantee. This has been challenged in the present writ petition.

148. The stand of the DPCC is no different from its stand in W.P.(C) No. 543 of 2008 (Splendor Landbase).

149. For the reasons already discussed, the need for the Petitioner to apply under the Air Act and the Water Act did not get obviated on account of the fact that it had an environmental clearance. However, here the construction was already complete. 50% of the construction was complete by end of 2006 and no show cause notice was issued to the Petitioner. An order was straightaway passed requiring the Petitioner to pay penalty and furnish a bank guarantee. Such a direction is, for reasons already stated, *ultra vires* the powers of the DPCC under the Water Act and the Air Act and is unsustainable in law.

150. For the aforementioned reasons, the impugned order dated 4th April

2008 is set aside. It would nevertheless be open to the DPCC to now proceed in accordance with Section 25(5) of the Water Act and other relevant provisions of the Air Act but only after complying with the due process requirements under the Rules. If after making its own inquiry/investigations into the matter, it finds that the use of the premises is causing either water or air pollution, and the corrective action is not taken within the time limit set for the purpose, it can proceed further to issue directions as envisaged under Section 31A. Air

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Act and Section 33A, Water Act. The writ petition is disposed of with the above directions.

W.P. (C) No. 4319 of 2008. (DLF Ltd.).

151. The Petitioner is the owner of a residential plot at W-Block, Greater Kailash-II, New Delhi. It purchased the property from a private individual in terms of Sale Deed dated 31st March 1959. The Petitioner proposed to construct a residential housing complex. The Petitioner filed an application on 23rd February 2007 with the MoEF for EIA clearance, which was granted on 26th December 2007. Without prejudice to its rights, the Petitioner applied to DPCC for consent to establish on 8th March 2007. The application remained pending and was not rejected for over four months thereafter. Consequently consent to establish was deemed to have been granted on 7th July 2007 in terms of Section 25(7) Water Act.

152. The Petitioner had not started the construction till the filing of this petition. Reminders dated 12th March 2008, 27th March 2008, 10th April 2008 and 16th May 2008 were sent to DPCC but to no effect. DPCC wrote to the Petitioner on 3rd April 2008 seeking to take action against the Petitioner for not taking the prior consent before commencement of construction. By letters dated 20th and 30th August 2007, the DPCC wrote to the Petitioner asking him to apply afresh as the earlier application had been forwarded to Central Government. During the course of hearing in other cases of group companies, it was explained that the project is for residential group housing and not for trade, commercial or industrial purposes; environment clearance had been granted and there was a deemed consent in view of the fact that their application dated 8th March 2007 was not rejected for over four months thereafter.

153. Feeling aggrieved by the threatened action of the Respondent, *inter alia*, of closure, imposition of penalty and bank guarantee, the Petitioner filed the present petition. It is further pointed out that during the present petition the DPCC has granted consent to establish. There is no denial by the DPCC of the above assertions by the Petitioner.

154. Even if the building had an EIA clearance, the provisions of the Water Act would continue to apply for the reasons already explained by this Court hereinbefore. However, considering that it is a residential complex the Petitioner was not required to obtain consent under the Air Act. The Petitioner has already been granted EIA clearance on 26th September 2007. The order passed by the DPCC directing the Petitioner to apply for consent to establish does not survive since consent to establish has been granted to the Petitioner. Any violations of either the Water Act or Air Act detected hereafter by the DPCC will obviously be actionable but only after the DPCC follow the due process requirements

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of the law.

155. The writ petition is disposed of.

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W.P. (C) No. 4321 of 2008 (Paliwal Developers Ltd.)

156. The Petitioner purchased a plot of land admeasuring about 5495 sq.m. situated at Mayur Vihar Phase-I Extension, Delhi in an open auction from the DDA for constructing a shopping complex. According to the Petitioner, since the builtup area proposed was 12325 sq.m. no environment clearance was considered necessary. All the necessary permissions for construction were granted by the MCD and other authorities. On 5th September 2006, an application for consent to establish was filed with the DPCC. The application remained pending and was not rejected for over four months thereafter. The Petitioner's case is that consent to establish should be deemed to have been granted on 4th January 2007. Reminders were sent on 12th March 2008, 27th March 2008, 10th April 2008 and 16th May 2008 to avoid any difficulty at a later stage but to no effect. DPCC wrote to the Petitioner on 2nd November 2007, 14th March 20008 and 21st April 2008 for taking action for not taking prior consent to establish and prior environment clearances. The Petitioner replied to these letters. The DPCC by letters dated 20th and 30th August 2007 asked the Petitioner to apply afresh as its earlier application dated 5th September 2006 had been sent to the Central Government. Another application for consent to establish was filed by the Petitioner with the DPCC on 8th February 2007. This was also not disposed of within four months. Consequently the Petitioner contends that for a second time consent to establish should be deemed to have been granted on 7th June 2007. After about one year of the filing of the second application, the DPCC asked the Petitioner to file an affidavit of compliance, which was complied with. It was explained that no environment clearance was necessary as the builtup area was less than 20,000 sq.m. In any event consent to establish should be deemed to have been granted. Yet, the DPCC insisted and threatened to take legal action including levying a penalty, asking for a bank guarantee and ordering closure. In the circumstances, the present writ petition was filed.

157. The DPCC has not denied the above contentions of the Petitioner. In particular there is no denial of the assertion that the application for consent to establish filed by the Petitioner on 5th September 2006 should be deemed to have been granted on 4th

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January 2007. Therefore, in this case even the proceedings under Section 25(5) of the Water Act cannot be initiated by the DPCC. This will, in any event, not preclude the DPCC from taking any action against the Petitioner upon any inspection taken hereinafter, if the Petitioner or any one in occupation of the building in question is found acting in violation of the provisions of either the Water Act or the Air Act. Such action will of course be taken only after due process of law as envisaged by the Rules.

158. The impugned orders passed by the DPCC on 2nd November 2007, 14th March 2008 and 21st April 2008 directing the Petitioner to apply for consent to establish are hereby set aside. The writ petition is disposed of with the above directions.

W.P. (C) No. 4322 of 2008 (DLF Ltd.)

159. The Petitioner states that it is the owner of a residential plot at E-Block, Greater Kailash-II, New Delhi having purchased the same from a private individual in terms of Sale Deed for the purpose of construction of a residential complex. According to the inspection report dated 2nd June 2008, the total builtup area is

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14,246.918 sq.m. As such, no environment clearance was necessary under EIA Notification. All necessary permissions to construct a residential housing complex were granted on 22nd August 2007. Before commencement of construction, the Petitioner filed an application dated 14th May 2007 with the DPCC, complete in all respects, seeking consent to establish. The said application was not rejected for over four months thereafter. The Petitioner submits that in the circumstances, in terms of Section 25(7), Water Act, consent to establish shall be deemed to have been granted on 13th September 2007. However, to avoid any difficulty at a later stage, reminders were sent to the DPCC by the Petitioner on 12th March 2008, 27th March 2008, 10th April 2008 and 16th May 2008. The DPCC threatened to take action against the Petitioner by its letters dated 3rd March 2008 and 2nd May 2008 for not taking prior consent and prior environment clearance. The Petitioner explained the entire position to the Respondent. By letters dated 20th and 30th August 2007, the DPCC asked the Petitioner to apply afresh as its earlier applications had been forwarded to the Central Government. During the course of hearing before the CMC, it was explained that the project was for residential group housing and not for trade, commercial or industrial purposes; no environment clearance was necessary and consent to establish should be deemed to have been granted since the Petitioners application dated 14th May 2007 for

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consent to establish had not been rejected even four months thereafter. Feeling aggrieved by the threatened action of the DPCC of directing closure, imposition of penalty and requiring the furnishing of bank guarantee, the present petition was filed.

160. The facts of this case are no different from the facts in W.P.(C) No. 4319 of 2008 except that the construction commenced on 5th March 2008 and the construction was proposed to be completed in 3 years from the date of its commencement. Further, the total builtup area is 14,246.918 sq.m. and, therefore, there was no requirement for obtaining EIA clearance. The DPCC is not disputing that the Petitioner had filed an application on 14th May 2007 which was not disposed of within four months thereafter. In terms of Section 25(7) of the Water Act, therefore, the consent to establish must be deemed to have been granted. This being a residential complex, there was no need to obtain consent to operate under the Air Act.

161. Consequently, the impugned orders dated 2nd November 2007, 3rd March 2008 and 2nd May 2008 passed by the DPCC directing the Petitioner to apply to the DPCC for consent to establish are hereby set aside. This will, in any event, not preclude the DPCC from taking any action against the Petitioner upon any inspection taken hereinafter, if the Petitioner or any one in occupation of the building in question is found acting in violation of the provisions of either the Water Act or the Air Act. Such action will of course be taken only after following due process of law as envisaged by the Rules. The writ petition is disposed of with the above directions.

W.P. (C) No. 4323 of 2008 (DLF Retailer Developers Ltd.)

162. The Petitioner purchased two plots of land bearing Nos. A-1 and P-2B Saket Place, New Delhi admeasuring about 9492 sq.m. and 8775.92 sq.m. respectively from the DDA in an open auction for the purpose of shopping-cum-commercial complex. EIA clearance was granted on 15th January 2007. According to the Petitioner, all necessary permissions from the MCD and other authorities

were granted in November 2006. On 1st June 2006, the Petitioner applied to DPCC for consent to establish. The application remained pending and was not rejected for over four months thereafter. The Petitioner.s case is that consent to establish is deemed to have been granted on 30th September 2006. However, to avoid any difficulty at a later stage, reminders were sent by the Petitioner to the DPCC in March/April 2008 but to no avail. During the course of hearing

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concerning other projects of the group companies, it was explained to the CMC that EIA clearance had been granted and that consent to establish should be deemed to have been granted. By its letters dated 20th and 30th August 2007 DPCC asked the Petitioner to apply a fresh for consent to establish as its earlier application had been forwarded to the Central Government. A fresh application for consent to establish was filed by the Petitioner with the DPCC on 25th September 2007. This too was not rejected for over four months thereafter. According to the Petitioner, for a second time consent to establish should be deemed to have been granted on 24th January 2008. On one of the visits to the office of the Respondent, the Petitioner was directed to file the affidavit of compliance. This was done by the Petitioner. Nevertheless, the DPCC threatened to take action against the Petitioner by ordering closure, imposing a penalty and/or requiring the furnishing of a bank guarantee on the ground that the Petitioner had commenced construction without prior consent to establish and without prior EIA clearance. In the circumstances, the present petition was filed.

163. The construction commenced in February 2007 and was completed in December 2008. The Petitioner obtained EIA clearance on 15th January 2007. The Petitioner applied to the DPCC for consent to establish on 1st June 2006 and there was no decision thereon for over four months thereafter. The consent to establish should be deemed to have been granted under Section 25(7) of the Water Act on 13th September 2006. The subsequent letters dated 20th and 30th August 2007 written by the DPCC requiring the Petitioner to apply afresh were without the authority of law. Nevertheless, even the fresh application filed on 25th September 2007 for consent was not rejected within four months thereafter. Therefore the Petitioner should deemed to have been granted consent to establish on 24th January 2008 as well.

164. With the DPCC having failed to act upon the Petitioner's application for consent to establish, there was no legal basis for its orders dated 20th and 30th August 2007. They are accordingly set aside. This will not preclude the DPCC in any event from taking any action against the Petitioner upon any inspection undertaken hereinafter, if the Petitioner or any one in occupation of the building in question is found acting in violation of the provisions of either the Water Act or the Air Act. Such action will of course be taken only after following due process of law as envisaged by the Rules. The writ petition is disposed of with the above directions.

W.P. (C) No. 4330 of 2008 (DLF Commercial Developers Ltd.)

165. The Petitioner purchased a plot of land bearing Nos. 10-11 at Jasola, New Delhi, admeasuring 12,880 sq.m. in an open auction held by DDA. The land was to be used for construction of a commercial and

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retail centre. The total builtup area of the proposed building was 47603.461 sq.m. The Petitioner was granted EIA clearance on 16th May 2007. The Petitioner states that all necessary permissions to construct from the municipal and other authorities were granted. On 6th September

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2006/14th October 2006, the Petitioner applied to the DPCC for consent to establish. The application was not rejected for over four months thereafter and in terms of Section 25 (7) of the Water Act it was deemed to have been granted on 13th February 2007. Reminders were sent by the Petitioner to the DPCC in March and April 2008 to avoid any difficulty at a later stage but to no avail. DPCC sent notices dated 18th March 2008 and 30th April 2008 and threatened to take action against the Petitioner for not obtaining prior consent to establish and prior environment clearance. The Petitioner replied to the DPCC stating that environment clearance had been granted and consent to establish should be deemed to have been granted. During the course of hearing before the CMC, this was reiterated. Nevertheless by its letters dated 20th and 30th August 2007, the DPCC required the Petitioner to apply afresh as the earlier application had been forwarded to the Central Government. A fresh application was filed on 8th February 2007. This too was not rejected for over four months thereafter. The Petitioner contends that for a second time, the consent to establish should be deemed to have been granted on 7th June 2007. On one of the visits to the office of the DPCC, the Petitioner was directed to file the affidavit of compliance. This was done. Nevertheless, the DPCC threatened to take action against the Petitioner for closure, imposition of penalty and furnishing of bank guarantee on the ground that it had commenced construction without obtaining prior consent to establish and without prior environment clearance. In the circumstances, the present writ petition was filed.

166. The total builtup area here is 47603.46 sq.m. The EIA clearance was obtained on 16th May 2007. The Petitioner commenced construction sometime in December 2006/January 2007 and completed it in August 2008. The letters received by the Petitioner on 20th August 2007 and 30th August 2007 asking it to apply for consent to establish were, in fact, to no effect since application had been filed earlier on 6th September 2006 and 14th December 2006 which were not rejected within four months thereafter. Again on 8th February 2007 a fresh application was filed. Therefore these two show cause notices were to

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no effect. The subsequent letters dated 18th March 2008 and 30th April 2008 asking the Petitioner again to apply were also to no effect. The said two letters are hereby set aside. It is made clear that this will, in any event, not preclude the DPCC from taking action against the Petitioner if upon any inspection undertaken hereinafter, the Petitioner or any one in occupation of the building in question is found to be acting in violation of the provisions of either the Water Act or the Air Act. Such action will be taken only after following the due process of law as envisaged by the Rules. The writ petition is disposed of with the above directions.

W.P. (C) No. 4333 of 2008 (Galleria Property Management Services Pvt. Ltd.)

167. The Petitioner purchased a plot of land at Shalimar Bagh, New Delhi admeasuring 14145.040 sq.m. in an open auction held by the DDA. The plot of land was to be used for construction of a shopping centre. The Petitioner was granted EIA clearance on 15th January 2007. All necessary permissions to construct from the municipal and other authorities were granted. On 5th April 2005, the Petitioner applied to the DPCC for consent to establish. The application was not disposed for over four months thereafter. According to the Petitioner, consent to establish should be deemed to have been granted in terms of Section 25(7), Water Act on 4th

August 2005. The DPCC sent notices dated 14th March 2008 and 9th May 2008 and threatened to take action against the Petitioner for not obtaining prior consent to establish and prior environment clearance. The Petitioner replied to the DPCC stating that EIA clearance had been granted and consent to establish should be deemed to have been granted. During the course of hearing before the CMC this was reiterated. By its letters dated 20th and 30th August 2007, the DPCC asked the Petitioner to apply afresh for consent to establish as its earlier application had been forwarded to the Central Government. A fresh application was filed on 25th September 2007. This too was not rejected for over four months. According to the Petitioner for a second time consent to establish should be deemed to have been granted on 24th January 2008. On one of the visits to the office of the Respondent, the Petitioner was directed to file an affidavit of compliance, which it did. Nevertheless the DPCC threatened to take action against the Petitioner for closure, imposition of penalty and furnishing of bank guarantee on the ground that it had not obtained consent to establish prior to commencement of construction. In the circumstances, the

present writ petition was filed.

168. This shopping complex has a total builtup area of 34895.55 sq.m. The Petitioner obtained EIA clearance on 15th January 2007. The letters received by the Petitioner from the DPCC on 14th March 2008 and 9th May 2008 asking him to apply for prior consent is to no effect since the Petitioner had applied as early as 5th April 2005 to DPCC which was not rejected within four months thereafter. A fresh application was filed on 25th September 2007 and that too was not rejected for over four months thereafter. Thus, for the second time, consent should be deemed to have been granted under the Water Act on 24th January 2008.

169. The orders dated 14th March 2008 and 9th May 2008 of the DPCC are accordingly set aside. It is made clear that this will not preclude the DPCC from taking action against the Petitioner upon any inspection undertaken hereinafter and if the Petitioner or any one in occupation of the building in question is found to be acting in violation of the provisions of either the Water Act or the Air Act. Such action will be taken only after following the due process of law as envisaged by the Rules. The writ petition is disposed of with the above directions.

W.P. (C) No. 3905 of 2008 (Regency Park Property Management Services Pvt. Ltd.)

170. The Petitioner states that in an auction held on 15th December 2003, the Petitioner purchased a commercial Plot No. 4 in the layout plan of Shopping Mall, Vasant Kunj, New Delhi admeasuring about 15300 sq. m. The necessary permissions from municipal authorities, Electricity, Airport Authority of India, Fire Services and Delhi Urban Art Commission were obtained. On 27th April 2005, an application for consent to establish was filed by the Petitioner with the DPCC. The DPCC was a party to the proceedings before the Supreme Court of India in W.P. (C) No. 202 of 1995 titled as *T.N. Godavarman Thirumulpad* v. *Union of India.* The Supreme Court, by an order dated 20th March 2006, took note of the ongoing construction and directed that as a special case, all permissions and clearances in the present case would be dealt with by the Central Government. The DPCC was directed to forward all the papers to the Central Government. The DPCC did so. A public hearing was organized to which a Member, DPCC was a party. One of the requirements of the public hearing was the grant of a No Objection Certificate by

the DPCC, which apparently was granted or was deemed to have been

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granted by the DPCC before conducting the public hearing. The EIA Notification 1994 as amended on 7th July 2004 was replaced by a Notification dated 14th September 2006. Certain clarificatory Circulars dated 13th October 2006 and 21st November 2006 were issued by the Central Government permitting the existing projects to continue. EIA clearance was granted by the MoEF on 24th November 2006. The application for consent to establish filed by the Petitioner with DPCC on 27th April 2005 remained pending. A reminder was sent by the Petitioner on 16th July 2007 to know the fate of their application. By letters dated 20th and 30th August 2007, the DPCC directed the Petitioner to file a fresh application for consent as the earlier application had been forwarded to the Central Government. A fresh application for consent to establish was filed by the Petitioner on 21st/25th September 2007 but this too was not rejected within four months. For a second time, the consent to establish was deemed to have been granted on 24th January 2008. It was for the first time on 18th March 2008 that the DPCC asked for certain documents. These were supplied. The CMC insisted on levying a penalty on the Petitioner apart from requiring the furnishing of a bank guarantee.

171. The total builtup area is 59731.67 sq.m. The construction commenced in September 2005 and was completed on 17th August 2008. EIA clearance was granted on 24th November 2006. On 27th April 2005, application for consent was filed. Fresh applications were filed on 21st/25th September 2007 and no rejection order was passed for at least four months thereafter. The Petitioner is right in its contention that consent under the Water Act must have been deemed to be granted on 24th January 2008. On 18th March 2008, DPCC asked for documents and these were supplied.

172. The order dated 18th March 2008 of the DPCC imposing environmental damages and requiring the Petitioner to furnish a bank guarantee are, for the reasons already explained, unsustainable in law. The said order is hereby set aside. It is made clear that this will not preclude the DPCC from taking any action against the Petitioner upon any inspection taken hereinafter, if the Petitioner or any one in occupation of the building in question is found acting in violation of the provisions of either the Water Act or the Air Act. Such action will be taken only after following the due process of law as envisaged by the Rules. The writ petition is disposed of with the above directions.

W.P. (C) No. 8789 of 2008 (Laxmi Buildtech Pvt. Ltd.)

173. The Petitioner states that EIA clearance had been granted to the Petitioner by the MoEF under the EPA on an application filed by it on 28th March 2007 *i.e.* much before it commenced construction. The very basis on which penalties are sought to be imposed on the

Petitioner under the Airland Water Acts do not per se amount to acts of pollution much less industrial pollution or air pollution or water pollution as contemplated by the said acts. This fact is not denied by Respondent No. 1 in its pleadings.

174. The case of the Petitioner is that the CMC or the DPCC has no power to impose environmental damages and/or seek bank guarantee under either the Water Act or the Air Act. It is submitted by the Petitioner that the "precautionary principle" and/or the polluter pays principle are being misconstrued and misused

by Respondent No. 1. Fee and fines/penalties are two totally different concepts in law. While a fee or a levy can be collected under an appropriate statute by way of a statutory interdict and used for the purpose for which it has been imposed, a fine or penalty cannot be collected and used for discharging governmental obligations or meeting expenses of the government. It is submitted that the actions of the Respondent in imposing and collecting penalties are ultra vires their powers under the Air Act and Water Act and beyond the powers vested in the said Respondent under the said Acts.

175. This is a commercial plot over a total builtup area of 27,667.288 sq.m. EIA clearance has been granted on 31st January 2008. The date of commencement of construction was sometime in March 2007 and it was proposed to be completed in June 2009. It appears, that by a letter dated 7th December 2007, the Petitioner was asked to apply for consent to establish which it disputed. The impugned order dated 15th October 2008 was passed imposing environmental damages and requiring the furnishing of bank guarantee and also directing the Petitioner to obtain consent to establish.

176. For the reasons already discussed, the order imposing environmental damages to the extent of Rs. 40 lakh and requiring the Petitioner to furnish a bank guarantee are unsustainable in law and hereby set aside. The direction that the Petitioner should now apply afresh for consent to establish is also not capable of being complied with. The said order is hereby set aside. It is made clear that this will, in any event, not preclude the DPCC from taking any action against the Petitioner upon an inspection being undertaken hereafter if the Petitioner or any one in occupation of the building in question is found to be acting in violation of the provisions of either the Water Act or the Air Act. Such action will be taken only after following the due process of law as envisaged by the Rules. The writ petition is disposed of with the

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above directions.

W.P. (C) No. 8901 of 2008 (Brightways Housing and Development Ltd.)

177. A commercial plot No. 7, Non-Hierarchical Commercial Centre, Jasola, New Delhi, measuring 5198 sq.m. was purchased by the Petitioner in an open auction of the DDA on 7th July 2004 for a total consideration of Rs. 33,07,50,000/-. A perpetual Lease Deed was executed in favour of the Petitioner on 29th September 2005 and the actual, physical possession of the said plot was also handed over on the same date. Building plans for raising construction on the said plot were sanctioned by the DDA on 7th February 2006. The Petitioner states that although no EIA clearance was required for raising construction on the said plot, either prior or subsequent to the raising of construction, but to avoid precipitate action, the Petitioner filed an application dated 1st September 2007 with Respondent No. 3 for EIA clearance and also submitted the requisite documents.

178. The Petitioner filed an application dated 25th October 2007 with the DPCC for consent to establish. A notice dated 18th March 2008 was received by the Petitioner from the DPCC alleging that the Petitioner had commenced construction without obtaining prior consent to establish. A reply dated 27th March 2008 was sent by the Petitioner informing that its application seeking consent to establish was already pending with the DPCC. The DPCC sent a notice dated 30th April 2008 requiring the Petitioner to submit an EIA clearance, approved architectural drawing

and completion certificate. Thereafter the DPCC sent a letter dated 1st July 2008 informing the Petitioner that its case was being placed before the CMC. The Petitioner submits that after exchange of correspondence and certain meetings held, the CMC in its meeting held on 28th August 2008, without appreciating the case of the Petitioner and without any authority imposed a penalty of Rs. 1 crore and further called upon the Petitioner to furnish a bank guarantee of Rs. 2 crores.

179. The MoEF intimated the Petitioner of the creation of a States Committee for obtaining environmental clearance. As a result the Petitioner applied afresh to the State Committee of the MoEF for an EIA Clearance by way of application dated 2nd September 2008. No decision was however taken on the said application. On a representation made by the Petitioner to the DPCC on 16th September 2008, the CMC of the DPCC in a meeting held on 24th November 2008 reduced the penalty to Rs. 72 lakh and required the Petitioner to

furnish a bank guarantee in the sum of Rs. 1.5 crores considering an amount of Rs. 28 lakh had been earlier paid by the Petitioner to the DDA.

180. This Court finds that the impugned order imposing the penalty has not been issued by DPCC but by the CMC, which is a Committee constituted by the Chairman, DPCC by an office order dated 28th December 2006. First, no power vests with the Chairman, DPCC under the Water Act or the Air Act to further delegate his powers to the CMC. Therefore CMC had no authority to conduct any proceedings for imposing penalty on the Petitioner. In any event, even the constitution of the CMC was solely for the purpose of granting/refusing/revoking of consent to establish. It had no power delegated to it to impose any penalty or seek bank guarantee or order closure of the premises or recommend prosecution. For the aforesaid reasons, the impugned order dated 24th November 2008 of the CMC imposing environmental damages to the tune of Rs. 72 lakh and requiring the Petitioner to furnish a bank guarantee in the sum of Rs. 1.5 crore is unsustainable in law and is hereby set aside.

181. The construction commenced in June 2005 and was completed in June 2007. It is only thereafter that an impugned notice dated 18th March 2008 was issued by the DPCC asking the Petitioner to apply afresh for consent to establish. For the reasons already mentioned, such a direction was not capable of being complied with. It would nevertheless be open to the DPCC to now proceed in accordance with Section 25(5) of the Water Act and relevant provisions of the Air Act but only after following the due process of law. If, after making its inquiry/investigations into the matter, the DPCC finds that the use of the premises is causing either water or air pollution, then it can proceed thereafter in accordance with law. It may be observed that EIA clearance was required for the project of the Petitioner since the total builtup area is 21096.513 sq.m. It is not clear whether the MoEF has taken a decision on the Petitioner.s application dated 2nd September 2005.

182. The writ petition is disposed of with the above directions.

W.P. (C) No. 1391 of 2010 (R.C. Sood and Co. Pvt. Ltd.)

183. The Petitioner is stated to be the owner of Plot No. 10, Shivaji Palace District Center, Shivaji Palace, Raja Garden, New Delhi. The size of the plot is 5,832 sq.m. The plot was purchased from the MCD through a tender process on 30th July

2004. The Petitioner was granted the requisite permission to construct

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a shopping-cum-residential complex by the DDA. The Petitioner, on 7th September 2006, applied to the MoEF for EIA clearance. The Petitioner resumed the construction of the shopping complex in accordance with the notifications and circulars.

184. The Petitioner states that it proceeded on the basis that it was not required to obtain consent to establish or consent to operate under the Water Act and Air Act respectively. However, since the Petitioner did not want any impediment in its project, it made an application dated 11th September 2006 to the DPCC seeking consent to establish along with requisite documents. The Petitioner alleges that the DPCC erroneously forwarded the said application of the Petitioner to the MoEF for issuance of a 'No Objection Certificate' under the 2006 Notification. The Petitioner claims to have been surprised to receive a notice dated 15th January 2007 from the DPCC to show cause why prosecution proceedings should not be initiated against it and why the establishment should not be closed down as the Petitioner had started construction without obtaining prior consent to establish under the Water Act and prior consent to operate under the Air Act. The Petitioner replied to the show cause notice on 28th February 2007 stating that it was the DPCC itself which had forwarded the application of the Petitioner to the MoEF. Nevertheless, as a measure of caution, the Petitioner re-submitted the application along with all requisite documents to the Respondent on 27th February 2007.

185. The Petitioner states that after an inordinate delay, DPCC replied to the Petitioner on 5th December 2007 by directing the Petitioner to first pursue its application for obtaining EIA clearance from the MoEF and thereafter forward a copy of the said EIA clearance to the DPCC for consideration of its application. The Petitioner was granted the EIA clearance by the MoEF on 26th March 2008 which the Petitioner forwarded to the DPCC on 27th March 2008. Thereafter the DPCC by letter dated 28th April 2008 directed the Petitioner to submit an affidavit giving item-wise compliance of all the conditions laid down in the EIA clearance. It is submitted that although the DPCC had no role in the matter of EIA clearance, the Petitioner, with a view to avoiding controversy, submitted the said affidavit under cover of its letter dated 10th June 2008.

186. The Petitioner was called for a hearing before the CMC of the DPCC on 17th September 2008. During the course of the hearing, it appeared that the Petitioner had been called for the purposes of deciding on the imposition of penalty and requiring the furnishing of a bank guarantee for the purported violation of the Water Act and Air Act on part of the Petitioner. Ultimately, the CMC imposed a penalty of Rs. 59 lakh and directed the Petitioner to furnish a bank guarantee for Rs.

1.18 Crores for a period of three years.

187. On 28th November 2008, the Petitioner received a letter from the DPCC alleging that the Petitioner had commenced construction activities without obtaining prior consent under the aforesaid Acts and therefore had violated the provisions of the aforesaid Acts. It was further alleged that certain deficiencies were noted in the project/building of the Petitioner. On 3rd December 2008, in another meeting called by the DPCC, the Petitioner tried to explain to the DPCC that it had not committed any violation of any of the laws, rules, regulations. On this, the DPCC made a marginal reduction of the penalty from Rs. 59 lakh to Rs. 50 lakh and

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of the bank guarantee from Rs. 1.18 crores to Rs. 1 crore. In response to the letter dated 28th November 2008 of the Respondent, the Petitioner filed an affidavit on 30th January 2009 claiming that the deficiencies pointed out by the DPCC in its letter dated 28th November 2008 had been duly rectified.

188. The Petitioner states that after the completion of construction it let out the building to M/s. Shoppers Stop Ltd. and executed a sub-lease dated 11th May 2007 for running a shopping mall in the said building. Shopper's Stop took possession of the building in June 2007. The DPCC in its meeting held on 23rd December 2008 directed Shoppers Stop Ltd. to apply for consent to operate.

189. The Petitioner states that it received another letter from the DPCC on 3rd March 2009 referring to the inspection conducted by “Special Inspection Team” of the DPCC on 16th January 2009 wherein certain deficiencies were noted by SIT in the premises of the Petitioner. On 23rd May 2009, the Petitioner clarified to the Respondent that it had already rectified the deficiencies pointed out by the SIT. The Petitioner states that it was given a hearing on 21st January 2010. According to the Petitioner, the DPCC at this meeting took a decision to launch prosecution against the Petitioner. The Petitioner received a letter dated 11th February 2010 from the DPCC stating that its earlier application of 11th September 2006 had become infructuous. With the Petitioner.s representation dated 26th February 2010 to the DPCC eliciting no response, the present writ petition was filed challenging the minutes of the CMC's meetings dated 17th September 2008, 3rd December 2008 and 21st January 2010.

190. The decision dated 17th September 2008 of the CMC of the DPCC imposing environmental damages to the tune of Rs. 59 lakh and

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requiring the Petitioner to furnish bank guarantee in the sum of Rs. 1.18 crores is for reasons already discussed unsustainable in law and is hereby set aside. The subsequent decisions dated 3rd December 2008 and 21st January 2010 are also without the authority of law and are hereby set aside. It is made clear that this will, in any event, not preclude the DPCC from taking any action against the Petitioner upon an inspection being undertaken hereafter if the Petitioner or any one in occupation of the building in question is found to be acting in violation of the provisions of either the Water Act or the Air Act. Such action will be taken only after following the due process of law as envisaged by the Rules. The writ petition is disposed of with the above directions.

W.P. (C) No. 9128 of 2009 (Ridge View Construction Pvt. Ltd.)

191. A commercial plot measuring 2500 sq.m. being Plot No. D-2, District Centre, Saket, New Delhi was purchased by the Petitioner in an open auction conducted by DDA on 29th September 2003 for a total consideration of Rs. 43,41,00,000/- and the possession of the said plot was handed over to the Petitioner soon thereafter. A perpetual lease deed dated 1st July 2004 was subsequently executed by the DDA in favour of the Petitioner. The DDA handed over to the Petitioner the architectural conditions and controls which enabled the Petitioner to raise construction as per the control drawings. Construction was thus raised by the Petitioner on the plot till the plinth level much before 7th July 2004.

192. The Petitioner filed an application with the MoEF seeking EIA clearance

on 2nd September 2008. The Petitioner also filed an application dated 2nd September 2008 with DPCC for consent to establish. The Petitioner states that it was surprised to receive a notice dated 9th August 2008 issued by the DPCC to M/s. Taneja Developers and Infrastructure Limited ('TDIL') wherein it was alleged that the construction of a retail-cum-office complex was being carried out by TDIL. The Petitioner states that on various occasions it clarified to the DPCC that the said commercial complex was being developed by the Petitioner. However the show cause notices continued to be issued to TDIL. Subsequently, the CMC by an order dated 15th October 2008 issued directions for closure of the Petitioners retail-cum-office complex immediately and further asked the electricity distribution companies to disconnect the electricity supply and the DJB to disconnect the water supply.

193. Aggrieved by the impugned order dated 15th October 2008,

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the Petitioner filed W.P.(C) No. 7850 of 2008. This Court stayed the operation of the impugned order. Another show cause notice dated 10th November 2008 was issued by the DPCC. This Court at the next hearing held that on account of issuance of the fresh show cause notice nothing survived in the said writ petition.

194. The Petitioner replied to the fresh show cause notice on 21st November 2008. Thereafter, the DPCC issued a letter dated 8th May 2009 directing the Petitioner to close its commercial building immediately and further directing the NDPL/BSES to disconnect the electricity supply and the DJB to disconnect the water connection to the said building. The said directions were purportedly as a result of a decision taken by the CMC on 23rd April 2009 and an inspection carried out at the site on 8th April 2009.

195. The Petitioner submitted that no EIA clearance was required since the builtup area of the premises (19,227.15 sq.m.) was less than 20,000 sq.m. The Petitioner had installed a Sewage Treatment Plant (STP) of 56 KLD capacity which was fully operational prior to 8th April 2009 and for which an adequacy report/certificate had also been granted by a recognised institute nominated by the DPCC itself. Regarding no permission having been obtained from the DJB for extraction of ground water from bore well, it is submitted that the Petitioner has already obtained permission from the concerned authorities. The Petitioner states that it is not utilizing the water from the bore well and it has deployed tankers for fulfilling its requirements of water in the complex. The Petitioner alleges that when its representative went to the DPCC to submit an application for consent to operate, the application was refused.

196. In the above circumstances, the present writ petition was filed challenging the closure order dated 23rd April 2009 communicated to the Petitioner on 8th May 2009.

197. For the detailed reasons already discussed, the question of the DPCC taking action for the Petitioner not having obtained EIA clearance does not arise. In any event, the Petitioner with the builtup area being less than 20,000 sq.m., there was perhaps no requirement to obtain such EIA clearance. If this was one of the reasons for the closure order then such closure order is unsustainable in law. As regards the other deficiencies pointed out, and the Petitioner's claim to have cured them, they involve disputed questions which this Court cannot possible go into. Nevertheless, it appears to this Court that the procedural requirement to be

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followed by the DPCC prior to passing such closure order was not complied with by the DPCC in the instant case.

198. For the aforementioned reasons, this Court sets aside the closure order dated 23rd April 2009 communicated to the Petitioner on 8th May 2009. However, this will not preclude the DPCC from taking any action against the Petitioner upon any inspection taken hereinafter, if the Petitioner or any one in occupation of the building in question is found acting in violation of the provisions of either the Water Act or the Air Act. Such action will of course be taken only after due process of law as envisaged by the Rules. The writ petition is disposed of with the above directions.

W.P. (C) No. 465 of 2009 (Prosperous Estates Pvt. Ltd.)

199. The total builtup area of the building constructed on a commercial plot in the present petition is 14,850.227 sq.m. Completion certificate was granted on 12th October 2006. No show cause notice was issued. On 5th December 2008, the DPCC issued a letter to the Petitioner giving it an opportunity of being heard on 23rd December 2008. On 23rd December 2008, an order was passed directing the Petitioner to pay damages, furnish bank guarantee and to apply for consent to establish.

200. For the reasons already explained hereinbefore, the impugned order dated 23rd December 2008 cannot be sustained in law and is hereby set aside. It would nevertheless be open to the DPCC to now proceed in accordance with Section 25(5) of the Water Act and other relevant provisions of the Air Act. The DPCC will follow the due process of law. If after making an inquiry/investigation into the matter it finds that the use of the premises is causing either water or air pollution, it can proceed to take action in the manner explained hereinbefore. It will however not be open to the DPCC to levy any environmental damages or requiring the Petitioner to furnish any bank guarantee for non-compliance with the provisions of either of the Acts. The writ petition is disposed of with the above directions.

W.P. (C) No. 508 of 2009 (Best Realtors India Pvt. Ltd.)

201. The total builtup area of the building constructed on a commercial plot in the present petition is 9171.63 sq.m. The construction of the building commenced sometime in January 2007 and was completed in January 2009. No show cause notice was issued. On 27th October 2008, the DPCC issued a letter to the Petitioner giving it an opportunity of being heard on 6th November 2008. On 6th November 2008, an order was passed directing the Petitioner to pay damages, furnish a bank guarantee and to apply for consent to establish. This order was communicated to the Petitioner on 9th January 2009 and the Petitioner was asked to take necessary action to

comply with the said order.

202. For the reasons already explained hereinbefore, the impugned order dated 6th November 2008 cannot be sustained in law and is hereby set aside. It would nevertheless be open to the DPCC to now proceed in accordance with Section 25(5) of the Water Act and other relevant provisions of the Air Act. The DPCC will follow the due process of law. If after making an inquiry/investigation into the matter it finds that the use of the premises is causing either water or air pollution, it can proceed to take action in the manner explained hereinbefore. It will however not be open to the DPCC to levy any environmental damages or requiring

the Petitioner to furnish any bank guarantee for non-compliance with the provisions of either Acts. The writ petition is disposed of with the above directions.

W.P. (C) No. 509 of 2009 (Nirvan Hire Purchase Ltd.)

203. The total builtup area of the building constructed on a commercial plot in the present petition is 8060.80 sq. m. Construction of the building commenced sometime in January 2007 and was completed in January 2009. No show cause notice was issued. On 27th October 2008, the DPCC issued a letter to the Petitioner giving it an opportunity of being heard on 6th November 2008. On 6th November 2008, an order was passed directing the Petitioner to pay damages, furnish bank guarantee and to apply for consent to establish. This order was communicated to the Petitioner on 9th January 2009 and the Petitioner was asked to take necessary action to comply with the said order.

204. For the reasons already explained hereinbefore, the impugned order dated 6th November 2008 cannot be sustained in law and is hereby set aside. It would nevertheless be open to the DPCC to now proceed in accordance with Section 25(5) of the Water Act and other relevant provisions of the Air Act. The DPCC will follow the due process of law. If after making an enquiry/investigation into the matter it finds that the use of the premises is causing either water or air pollution, it can proceed to take action in the manner explained hereinbefore. It will however not be open to the DPCC to levy any environmental damages or requiring the Petitioner to furnish any bank guarantee for non-compliance with the provisions of either Acts. The writ petition is disposed of with the above directions.

W.P. (C) No. 510 of 2009 (Maitri Mutual Benefits Ltd.)

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205. The total builtup area of the building constructed on a commercial plot in the present petition is 8060.80 sq. m. Construction of the building commenced some time in January 2007 and was completed in November 2008. No show cause notice was issued. On 27th October 2008, the DPCC issued a letter to the Petitioner giving it an opportunity of being heard on 6th November 2008. On 6th November 2008, an order was passed directing the Petitioner to pay damages, furnish bank guarantee and to apply for consent to establish. This order was communicated to the Petitioner on 9th January 2009 and the Petitioner was asked to take necessary action to comply with the said order.

206. For the reasons already explained hereinbefore, the impugned order dated 6th November 2008 cannot be sustained in law and is hereby set aside. It would nevertheless be open to the DPCC to now proceed in accordance with Section 25(5) of the Water Act and other relevant provisions of the Air Act. The DPCC will follow the due process of law. If after making an inquiry/investigation into the matter it finds that the use of the premises is causing either water or air pollution, it can proceed to take action in the manner explained hereinbefore. It will however not be open to the DPCC to levy any environmental damages or requiring the Petitioner to furnish any bank guarantee for non-compliance with the provisions of either Acts. The writ petition is disposed of with the above directions.

W.P. (C) No. 511 of 2009 (A.S. Buildwell Pvt. Ltd.)

207. The total builtup area of the building constructed on a commercial plot in the present petition is 989.548 sq. m. Construction of the building commenced

sometime in January 2006 and was completed in October 2007. No show cause notice was issued. On 27th October 2008, the DPCC issued a letter to the Petitioner giving it an opportunity of being heard on 6th November 2008. On 6th November 2008, an order was passed directing the Petitioner to pay damages, furnish a bank guarantee and to apply for consent to establish. This order was communicated to the Petitioner on 9th January 2009 and the Petitioner was asked to take necessary action to comply with the said order.

208. For the reasons already explained hereinbefore, the impugned order dated 6th November 2008 cannot be sustained in law and is hereby set aside. It would nevertheless be open to the DPCC to now proceed in accordance with Section 25(5) of the Water Act and other

relevant provisions of the Air Act. The DPCC will follow the due process of law. If after making an inquiry/investigation into the matter it finds that the use of the premises is causing either water or air pollution, it can proceed to take action in the manner explained hereinbefore. It will however not be open to the DPCC to levy any environmental damages or requiring the Petitioner to furnish any bank guarantee for non-compliance with the provisions of either Acts. The writ petition is disposed of with the above directions.

W.P. (C) No. 525 of 2009 (ESS CEE CEE and Associates (India) Pvt. Ltd.)

209. The total builtup area of the building constructed on a commercial plot in the present petition is 15883.097 sq. m. Construction of the building commenced on 10th January 2005 and was completed on 23rd February 2007. A show cause notice was issued on 5th December 2007 and an order was passed on 12th August 2008 requiring the Petitioner to pay environmental damages of Rs. 20 lakh and furnish a bank guarantee of Rs. 1 crore.

210. For the reasons already explained hereinbefore, the impugned order dated 12th August 2008 cannot be sustained in law and is hereby set aside. It would nevertheless be open to the DPCC to now proceed in accordance with Section 25(5) of the Water Act and other relevant provisions of the Air Act. The DPCC will follow the due process of law. If after making an inquiry/investigation into the matter it finds that the use of the premises is causing either water or air pollution, it can proceed to take action in the manner explained hereinbefore. It will however not be open to the DPCC to levy any environmental damages or requiring the Petitioner to furnish any bank guarantee for non-compliance with the provisions of either Acts. The writ petition is disposed of with the above directions.

W.P. (C) No. 794 of 2009 (Nipun Builders and Developers Pvt. Ltd.)

211. The total builtup area of the building constructed on a commercial plot in the present petition is 2802 sq. m. Construction of the building commenced on 10th September 2004 and was completed on 24th March 2005. A show cause notice was issued on 28th April 2008 and an order was passed on 6th November 2008 requiring the Petitioner to pay environmental damages of Rs. 2 lakh and furnish a bank guarantee of Rs. 4 lakhs.

212. For the reasons already explained hereinbefore, the impugned order dated 6th November 2008 cannot be sustained in law and is hereby set aside. It would nevertheless be open to the DPCC to now proceed in accordance with Section 25(5) of the Water Act and other relevant provisions of the Air Act. The

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DPCC will follow the due process of law. If after making an inquiry/investigation into the matter it finds that the use of the premises is causing either water or air pollution, it can proceed to take action in the manner explained hereinbefore. It will however not be open to the DPCC to levy any environmental damages or requiring the Petitioner to furnish any bank guarantee for non-compliance with the provisions of either of the Acts. The writ petition is disposed of with the above directions.

W.P. (C) No. 7575 of 2009 (Jindal Biochem Pvt. Ltd.)

213. The total builtup area of the building constructed on a commercial plot in the present petition is 3290 sq. m. Construction of the building commenced on 2nd February 2005 and was completed on 31st May 2006. A show cause notice was issued on 27th June 2008 and an order was passed on 6th November 2008 requiring the Petitioner to pay environmental damages of Rs. 2 lakh and furnish a bank guarantee of Rs. 4 lakh.

214. For the reasons already explained hereinbefore, the impugned order dated 6th November 2008 cannot be sustained in law and is hereby set aside. It would nevertheless be open to the DPCC to now proceed in accordance with Section 25(5) of the Water Act and other relevant provisions of the Air Act. The DPCC will follow the due process of law. If after making an inquiry/investigation into the matter it finds that the use of the premises is causing either water or air pollution, it can proceed to take action in the manner explained hereinbefore. It will however not be open to the DPCC to levy any environmental damages or requiring the Petitioner to furnish any bank guarantee for non-compliance with the provisions of either of the Acts. The writ petition is disposed of with the above directions.

W.P. (C) No. 8208 of 2009 (Best City Developers (India) Pvt. Ltd.)

215. The total builtup area of the building constructed on a commercial plot in the present petition is 1066 sq. m. No show cause notice was issued. On 7th January 2009, the DPCC issued a letter to the Petitioner giving it an opportunity of being heard on 6th November 2008. On 21st January 2009 an order was passed requiring the Petitioner to pay environmental damages of Rs. 1 lakh and furnish a bank guarantee of Rs. 1 lakh. This order was communicated to the Petitioner on 27th March 2009 and the 'Petitioner was asked to take necessary action to comply with the said order.

216. For the reasons already explained hereinbefore, the impugned order dated 21st January 2008 cannot be sustained in law and is

hereby set aside. It would nevertheless be open to the DPCC to now proceed in accordance with Section 25(5) of the Water Act and other relevant provisions of the Air Act. The DPCC will follow the due process of law. If after making an inquiry/investigation into the matter it finds that the use of the premises is causing either water or air pollution, it can proceed to take action in the manner explained hereinbefore. It will however not be open to the DPCC to levy any environmental damages or requiring the Petitioner to furnish any bank guarantee for non-compliance with the provisions of either of the Acts. The writ petition is disposed of with the above directions.

W.P. (C) No. 8751 of 2009 (Vardhman Properties Ltd.)

217. The total builtup area of the building constructed on a commercial plot in the present petition is 5461 sq. m. Construction of the building commenced on

10th September 2007 and was completed in April 2009. An order was received by the Petitioner on 3rd January 2009 directing the Petitioner to obtain consent to establish. Another show cause notice was issued on 9th March 2009 to apply for consent to establish. On 30th April 2009, an order was passed directing closure of the Petitioner's building.

218. For the reasons already explained hereinbefore, the impugned orders dated 3rd January 2009 and 30th April 2009 cannot be sustained in law and are hereby set aside. It would nevertheless be open to the DPCC to now proceed in accordance with Section 25(5) of the Water Act and other relevant provisions of the Air Act. The DPCC will follow the due process of law. If after making an enquiry/investigation into the matter it finds that the use of the premises is causing either water or air pollution, it can proceed to take action in the manner explained hereinbefore. It will however not be open to the DPCC to levy any environmental damages or requiring the Petitioner to furnish any bank guarantee for non-compliance with the provisions of either of the Acts. The writ petition is disposed of with the above directions.

W.P. (C) No. 10860 of 2009 (Manish Buildwell Pvt. Ltd.)

219. The total builtup area of the building constructed on a commercial plot in the present petition is 8478.27 sq. m. A show cause notice was received by the Petitioner on 13th February 2008 alleging that he had completed construction without obtaining the consent to establish. An order dated 18th March 2008 was passed directing the Petitioner to obtain consent to establish. On 24th July 2009 an order

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was passed directing the closure of the Petitioner.s building.

220. For the reasons already explained hereinbefore, the impugned orders dated 13th February 2008, 18th March 2008 and 24th July 2009 cannot be sustained in law and are hereby set aside. It would nevertheless be open to the DPCC to now proceed in accordance with Section 25(5) of the Water Act and other relevant provisions of the Air Act. The DPCC will follow the due process of law. If after making an inquiry/investigation into the matter it finds that the use of the premises is causing either water or air pollution, it can proceed to take action in the manner explained hereinbefore. It will however not be open to the DPCC to levy any environmental damages or requiring the Petitioner to furnish any bank guarantee for non-compliance with the provisions of either of the Acts. The writ petition is disposed of with the above directions.

Writ Petition disposed of.

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* IN THE HIGH COURT OF DELHI AT NEW DELHI

% *Judgment Reserved on : 16th January 2012*
Judgment Pronounced on: 23rd January, 2012

\+ **LPA 895/2010**

DELHI POLLUTION CONTROL COMMITTEE ..... Appellant
Through: Mr.C. Mohan Rao and Mr.Lokesh Sharma, Advocates with Mr.Dinesh Jindal, L.O.

versus

SPLENDOR LANDBASE LTD ..... Respondent
Through: Mr.B.B. Gupta, Ms.Mandeep Kaur and Mr.Harsh Hari Haran, Advocates

LPA 1/2011 & CM No.6781/2011 (Cross Objections)

DELHI POLLUTION CONTROL COMMITTEE ..... Appellant
Through Mr.C. Mohan Rao and Mr.Lokesh Sharma, Advocates with Mr.Dinesh Jindal, L.O.

versus

SACHDEVA BUILDON PVT LTD & ORS ..... Respondents
Through Mr.Sanjay Goswami, Advocate for R-1
Mr.Neeeraj Chaudhari, CGSC with Mr.Akshay Chandra and Mr.Khalid Arshad, Advocates for UOI

LPA 6/2011 & CM No.6779/2011 (Cross Objections)

DELHI POLLUTION CONTROL COMMITTEE ..... Appellant
Through Mr.C. Mohan Rao and Mr.Lokesh Sharma, Advocates with Mr.Dinesh Jindal, L.O.

versus

VARDHMAN PROPERTIES LTD & ORS ..... Respondents
Through Mr.Sanjay Goswami, Advocate for R-1

LPA 7/2011 & CM No.6780/2011 (Cross Objections)

DELHI POLLUTION CONTROL COMMITTEE ..... Appellant
Through Mr.C. Mohan Rao and Mr.Lokesh Sharma, Advocates with Mr.Dinesh Jindal, L.O.

versus

VARDHMAN PROPERTIES LTD & ORS ..... Respondents
Through Mr.Sanjay Goswami, Advocate for R-1

LPA 8/2011 & CM No.6782/2011 (Cross Objections)

DELHI POLLUTION CONTROL COMMITTEE ..... Appellant
Through Mr.C. Mohan Rao and Mr.Lokesh Sharma, Advocates with Mr.Dinesh Jindal, L.O.

versus

VARDHMAN PROPERTIES LTD & ORS ..... Respondents
Through Mr.Anil Sapra, Sr. Advocate with Ms.Urvi Kothiala, Ms.Praneeta Vir and Mr.Sanjay Goswami, Advocates

LPA 9/2011

DELHI POLLUTION CONTROL COMMITTEE ..... Appellant
Through Mr.C. Mohan Rao and Mr.Lokesh Sharma, Advocates with Mr.Dinesh Jindal, L.O.

versus

MANISH BUILDWELL PVT LTD & ORS ..... Respondents
Through Mr.Sanjay Goswami, Advocate for R-1

LPA 10/2011

DELHI POLLUTION CONTROL COMMITTEE ..... Appellant
Through Mr.C. Mohan Rao and Mr.Lokesh Sharma, Advocates with Mr.Dinesh Jindal, L.O.

versus

MANISH BUILDWELL PVT LTD & ORS ..... Respondents
Through Mr.Sanjay Goswami, Advocate for R-1

LPA 11/2011

DELHI POLLUTION CONTROL COMMITTEE ..... Appellant
Through Mr.C. Mohan Rao and Mr.Lokesh Sharma, Advocates with Mr.Dinesh Jindal, L.O.

versus

VARDHMAN LAND DEVELOPERS PVT LTD & ANR ..... Respondents
Through None

LPA 22/2011 & CM No.6824/2011 (Cross Objections)

DELHI POLLUTION CONTROL COMMITTEE ..... Appellant
Through Mr.C. Mohan Rao and Mr.Lokesh Sharma, Advocates with Mr.Dinesh Jindal, L.O.

versus

PANKAJ BUILDWELL LTD & ORS ..... Respondents
Through Mr.Sanjay Goswami, Advocate for R-1
Mr.Neeeraj Chaudhari, CGSC with Mr.Akshay Chandra and Mr.Khalid Arshad, Advocates for UOI

LPA 23/2011 & CM No.6832/2011 (Cross Objections)

DELHI POLLUTION CONTROL COMMITTEE ..... Appellant

Through Mr.C. Mohan Rao and Mr.Lokesh Sharma, Advocates with Mr.Dinesh Jindal, L.O.

versus

RAJESH PROJECTS INDIA PVT LTD & ORS. ..... Respondents
Through Mr.Sanjay Goswami, Advocate for R-1
Mr.Neeeraj Chaudhari, CGSC with
Mr.Akshay Chandra and Mr.Khalid Arshad,
Advocates for UOI

LPA 24/2011 & CM No.8168/2011 (Cross Objections)

DELHI POLLUTION CONTROL COMMITTEE ..... Appellant
Through Mr.C. Mohan Rao and Mr.Lokesh Sharma,
Advocates with Mr.Dinesh Jindal, L.O.

versus

BEST REALTORS (INDIA) LTD & ORS ..... Respondents
Through Mr.Sanjay Goswami, Advocate for R-1
Mr.Neeeraj Chaudhari, CGSC with
Mr.Akshay Chandra and Mr.Khalid Arshad,
Advocates for UOI

LPA 25/2011 & CM No.6828/2011 (Cross Objections)

DELHI POLLUTION CONTROL COMMITTEE ..... Appellant
Through Mr.C. Mohan Rao and Mr.Lokesh Sharma,
Advocates with Mr.Dinesh Jindal, L.O.

versus

BEST CITY DEVELOPERS (INDIA) PVT LTD.
& ORS ..... Respondents
Through Mr.Sanjay Goswami, Advocate for R-1
Mr.Neeeraj Chaudhari, CGSC with
Mr.Akshay Chandra and Mr.Khalid Arshad,
Advocates for UOI

LPA 26/2011 & CM No.6831/2011 (Cross Objections)

DELHI POLLUTION CONTROL COMMITTEE ..... Appellant
Through Mr.C. Mohan Rao and Mr.Lokesh Sharma, Advocates with Mr.Dinesh Jindal, L.O.

versus

HOME LINKERS PVT LTD & ORS ..... Respondents
Through Mr.Sanjay Goswami, Advocate for R-1
Mr.Neeeraj Chaudhari, CGSC with Mr.Akshay Chandra and Mr.Khalid Arshad, Advocates for UOI

LPA 27/2011 & CM No.6833/2011 (Cross Objections)

DELHI POLLUTION CONTROL COMMITTEE ..... Appellant
Through Mr.C. Mohan Rao and Mr.Lokesh Sharma, Advocates with Mr.Dinesh Jindal, L.O.

versus

RAJESH PROJECTS INDIA PVT LTD & ORS ..... Respondents
Through Mr.Sanjay Goswami, Advocate for R-1
Mr.Neeeraj Chaudhari, CGSC with Mr.Akshay Chandra and Mr.Khalid Arshad, Advocates for UOI

LPA 28/2011 & CM No.6826/2011 (Cross Objections)

DELHI POLLUTION CONTROL COMMITTEE ..... Appellant
Through Mr.C. Mohan Rao and Mr.Lokesh Sharma, Advocates with Mr.Dinesh Jindal, L.O.

versus

VARDHMAN PROPERTIES LTD & ORS. ..... Respondents

Through Mr.Sanjay Goswami, Advocate for R-1
Mr.Neeeraj Chaudhari, CGSC with
Mr.Akshay Chandra and Mr.Khalid Arshad,
Advocates for UOI

LPA 45/2011

DELHI POLLUTION CONTROL COMMITTEE ..... Appellant
Through Mr.C. Mohan Rao and Mr.Lokesh Sharma,
Advocates with Mr.Dinesh Jindal, L.O.

versus

JINDAL BIOCHEM PVT LTD & ORS ..... Respondents
Through Mr.Neeeraj Chaudhari, CGSC with
Mr.Akshay Chandra and Mr.Khalid Arshad,
Advocates for UOI

LPA 46/2011 & CM No.8164/2011 (Cross Objections)

DELHI POLLUTION CONTROL COMMITTEE ..... Appellant
Through Mr.C. Mohan Rao and Mr.Lokesh Sharma,
Advocates with Mr.Dinesh Jindal, L.O.

versus

AS BUILDWELL PVT LTD & ORS ..... Respondents
Through Mr.Sanjay Goswami, Advocate for R-1
Mr.Neeeraj Chaudhari, CGSC with
Mr.Akshay Chandra and Mr.Khalid Arshad,
Advocates for UOI

LPA 47/2011 & CM No.6825/2011 (Cross Objections)

DELHI POLLUTION CONTROL COMMITTEE ..... Appellant
Through Mr.C. Mohan Rao and Mr.Lokesh Sharma,
Advocates with Mr.Dinesh Jindal, L.O.

versus

MAITRI MUTUAL BENEFITS LTD & ORS ..... Respondents
Through Mr.Sanjay Goswami, Advocate for R-1
Mr.Neeeraj Chaudhari, CGSC with
Mr.Akshay Chandra and Mr.Khalid Arshad,
Advocates for UOI

LPA 48/2011 & CM No.6823/2011 (Cross Objections)

DELHI POLLUTION CONTROL COMMITTEE ..... Appellant
Through Mr.C. Mohan Rao and Mr.Lokesh Sharma,
Advocates with Mr.Dinesh Jindal, L.O.

versus

NIRVAN HIRE PURCHASE LTD & ORS ..... Respondents
Through Mr.Sanjay Goswami, Advocate for R-1
Mr.Neeeraj Chaudhari, CGSC with
Mr.Akshay Chandra and Mr.Khalid Arshad,
Advocates for UOI

LPA 50/2011 & CM No.6827/2011 (Cross Objections)

DELHI POLLUTION CONTROL COMMITTEE ..... Appellant
Through Mr.C. Mohan Rao and Mr.Lokesh Sharma,
Advocates with Mr.Dinesh Jindal, L.O.

versus

NIPUN BUILDERS & DEVELOPERS PVT
LTD & ORS ..... Respondents
Through Mr.Sanjay Goswami, Advocate for R-1
Mr.Neeeraj Chaudhari, CGSC with
Mr.Akshay Chandra and Mr.Khalid Arshad,
Advocates for UOI

LPA 51/2011& CM No.6829/2011 (Cross Objections)

DELHI POLLUTION CONTROL COMMITTEE ..... Appellant
Through Mr.C. Mohan Rao and Mr.Lokesh Sharma,
Advocates with Mr.Dinesh Jindal, L.O.



versus

VARDHMAN PROPERTIES LTD & ORS ..... Respondents
Through Mr.Sanjay Goswami, Advocate for R-1
Mr.Neeeraj Chaudhari, CGSC with
Mr.Akshay Chandra and Mr.Khalid Arshad,
Advocates for UOI

LPA 53/2011

DELHI POLLUTION CONTROL COMMITTEE ..... Appellant
Through Mr.C. Mohan Rao and Mr.Lokesh Sharma,
Advocates with Mr.Dinesh Jindal, L.O.

versus

ESS CEE CEE & ASSOCIATES (INDIA) PVT LTD .. Respondent
Through Mr.Anil Sapra, Sr. Advocate with Ms.Urvi
Kothiala, Ms.Praneeta Vir and Mr.Sanjay
Goswami, Advocates

LPA 54/2011 & CM No.6004/2011 (Cross Objections)

DELHI POLLUTION CONTROL COMMITTEE ..... Appellant
Through Mr.C. Mohan Rao and Mr.Lokesh Sharma,
Advocates with Mr.Dinesh Jindal, L.O.

versus

FARGO ESTATES PVT LTD ..... Respondent
Through Mr.Ankit Jain, Advocate

LPA 58/2011& CM No.6830/2011 (Cross Objections)

DELHI POLLUTION CONTROL COMMITTEE ..... Appellant
Through Mr.C. Mohan Rao and Mr.Lokesh Sharma,
Advocates with Mr.Dinesh Jindal, L.O.

versus

VARDHMAN PROPERTIES LTD & ORS ..... Respondents
Through Mr.Sanjay Goswami, Advocate for R-1
Mr.Neeeraj Chaudhari, CGSC with
Mr.Akshay Chandra and Mr.Khalid Arshad,
Advocates for UOI

LPA 94/2011

DELHI POLLUTION CONTROL COMMITTEE ..... Appellant
Through Mr.C. Mohan Rao and Mr.Lokesh Sharma,
Advocates with Mr.Dinesh Jindal, L.O.

versus

DLF RETAILER DEVELOPERS LTD ..... Respondent
Through Mr.B.B. Gupta, Ms.Mandeep Kaur and
Mr.Harsh Hari Haran, Advocates

LPA 95/2011

DELHI POLLUTION CONTROL COMMITTEE ..... Appellant
Through Mr.C. Mohan Rao and Mr.Lokesh Sharma,
Advocates with Mr.Dinesh Jindal, L.O.

versus

LAXMI BUILDTECH PVT LTD & ANR ..... Respondents
Through Mr.Kailash Vasdev, Sr. Advocate with
Ms.Neoma Vasdev Gupta, Ms.Ekta Mehta
and Ms.Joanne Pudussery, Advocates for
respondent No.1.
Mr.Neeeraj Chaudhari, CGSC with
Mr.Akshay Chandra and Mr.Khalid Arshad,
Advocates for UOI

LPA 96/2011

DELHI POLLUTION CONTROL COMMITTEE ..... Appellant
Through Mr.C. Mohan Rao and Mr.Lokesh Sharma,

Advocates with Mr.Dinesh Jindal, L.O.

versus

MANISH BUILDWELL PVT LTD & ORS ..... Respondents
Through Mr.Sanjay Goswami, Advocate for R-1
Mr.Neeeraj Chaudhari, CGSC with
Mr.Akshay Chandra and Mr.Khalid Arshad,
Advocates for UOI

LPA 97/2011

DELHI POLLUTION CONTROL COMMITTEE ..... Appellant
Through Mr.C. Mohan Rao and Mr.Lokesh Sharma,
Advocates with Mr.Dinesh Jindal, L.O.

versus

BRIGHTWAYS HOUSING & DEVELOPMENT
LTD & ANR ..... Respondents
Through Mr.Anil Sapra, Sr. Advocate with Ms.Urvi
Kothiala and Ms.Praneeta Vir, Advocates
for R-1.
Mr.Neeeraj Chaudhari, CGSC with
Mr.Akshay Chandra and Mr.Khalid Arshad,
Advocates for UOI

LPA 98/2011

DELHI POLLUTION CONTROL COMMITTEE ..... Appellant
Through Mr.C. Mohan Rao and Mr.Lokesh Sharma,
Advocates with Mr.Dinesh Jindal, L.O.

versus

DLF COMMERCIAL DEVELOPERS LTD ..... Respondent

Through Mr.B.B. Gupta, Ms.Mandeep Kaur and Mr.Harsh Hari Haran, Advocates

LPA 99/2011

DELHI POLLUTION CONTROL COMMITTEE ..... Appellant
Through Mr.C. Mohan Rao and Mr.Lokesh Sharma, Advocates with Mr.Dinesh Jindal, L.O.

versus

GALLERIA PROPERTY MANAGEMENT SERVICES PVT LTD ..... Respondent
Through Mr.B.B. Gupta, Ms.Mandeep Kaur and Mr.Harsh Hari Haran, Advocates

LPA 100/2011

DELHI POLLUTION CONTROL COMMITTEE ..... Appellant
Through Mr.C. Mohan Rao and Mr.Lokesh Sharma, Advocates with Mr.Dinesh Jindal, L.O.

versus

PROSPEROUS ESTATES PVT LTD ..... Respondent
Through None

LPA 101/2011

DELHI POLLUTION CONTROL COMMITTEE ..... Appellant
Through Mr.C. Mohan Rao and Mr.Lokesh Sharma, Advocates with Mr.Dinesh Jindal, L.O.

versus

REGENCY PARK PROPERTY MANAGEMENT SERVICES PVT LTD ..... Respondent
Through Mr.B.B. Gupta, Ms.Mandeep Kaur and Mr.Harsh Hari Haran, Advocates

25830

LPA 102/2011

DELHI POLLUTION CONTROL COMMITTEE ..... Appellant
Through Mr.C. Mohan Rao and Mr.Lokesh Sharma, Advocates with Mr.Dinesh Jindal, L.O.

versus

PALIWAL DEVELOPERS LTD ..... Respondent
Through Mr.B.B. Gupta, Ms.Mandeep Kaur and Mr.Harsh Hari Haran, Advocates

LPA 103/2011

DELHI POLLUTION CONTROL COMMITTEE ..... Appellant
Through Mr.C. Mohan Rao and Mr.Lokesh Sharma, Advocates with Mr.Dinesh Jindal, L.O.

versus

RIDGE VIEW CONSTRUCTION PVT LTD ..... Respondent
Through Mr.Anil Sapra, Sr. Advocate with Ms.Urvi Kothiala and Ms.Praneeta Vir, Advocates.

LPA 104/2011

DELHI POLLUTION CONTROL COMMITTEE ..... Appellant
Through Mr.C. Mohan Rao and Mr.Lokesh Sharma, Advocates with Mr.Dinesh Jindal, L.O.

versus

RC SOOD & CO PVT LTD ..... Respondent
Through Mr.Shobhit Chandra, Advocate

LPA 709/2011

DELHI POLLUTION CONTROL COMMITTEE ..... Appellant
Through Mr.C. Mohan Rao and Mr.Lokesh Sharma, Advocates with Mr.Dinesh Jindal, L.O.

versus

LODHI PROPERTY CO LTD ..... Respondent
Through Mr.B.B. Gupta, Ms.Mandeep Kaur and Mr.Harsh Hari Haran, Advocates

LPA 710/2011

DELHI POLLUTION CONTROL COMMITTEE ..... Appellant
Through Mr.C. Mohan Rao and Mr.Lokesh Sharma, Advocates with Mr.Dinesh Jindal, L.O.

versus

BHARTI REALTY LTD ..... Respondent
Through Mr.Dushyant Manocha and Ms.Tarunima Vijra, Advocates

LPA 866/2011

DELHI POLLUTION CONTROL COMMITTEE ..... Appellant
Through Mr.C. Mohan Rao and Mr.Lokesh Sharma, Advocates with Mr.Dinesh Jindal, L.O.

versus

ANUSH FINLEASE & CONSTRUCTION PVT LTD ..... Respondent
Through Mr.Ajay Kumar and Mr.Naveen Tayal, Advocates

2582

LPA 867/2011

DELHI POLLUTION CONTROL COMMITTEE ..... Appellant
Through Mr.C. Mohan Rao and Mr.Lokesh Sharma, Advocates with Mr.Dinesh Jindal, L.O.

versus

TIRUPATI INFRAPROJECTS PVT LTD ..... Respondent
Through Mr.Ajay Kumar and Mr.Naveen Tayal, Advocates

CORAM:
HON'BLE MR. JUSTICE PRADEEP NANDRAJOG
HON'BLE MS. JUSTICE PRATIBHA RANI

PRADEEP NANDRAJOG, J.

1. A batch of 38 writ petitions was decided by a learned Single Judge vide order dated September 30, 2010. The said decision has been followed subsequently by another learned Single Judge. Instant appeals lay a challenge to the said decisions pronounced by the learned Single Judges of this Court; and since the reasoned decision is the one which was pronounced on September 30, 2010, learned counsel for the parties conceded that it is said decision which needs to be reflected upon by us in the appeal(s).

2. Writ petitions were filed challenging notices issued by the Delhi Pollution Control Committee (DPCC) to the writ petitioners or penalties levied, which were paid under protest or bank guarantees submitted by the writ petitioners, which were under threat of being invoked. The petitions have succeeded, not in full, but in part. Directions have been issued to DPCC to take

action afresh and guided by the decision of the learned Single Judge.

3. The buildings with respect whereto action was proposed to be taken or was taken by DPCC, are of three kinds: (i) Residential Housing Complexes, (ii) Commercial Shopping Complexes, and (iii) Shopping Malls. Actions were initiated or decisions were taken on the allegation that with respect to the buildings constructed, the writ petitioners had not obtained a *'consent to establish'* as required under The Water (Prevention and Control of Pollution) Act, 1974 (hereinafter referred to as 'the Water Act') and *'consent to operate'* as required under The Air (Prevention and Control of Pollution) Act, 1981 (hereinafter referred to as 'the Air Act').

4. Issues have been debated before the learned Single Judge and even before us with reference to Sections 2(g), 2(gg), 2(k), Section 25 and Section 33A of the Water Act, and Sections 2(a), 2(j), 2(k), Section 21 and Section 31A of the Air Act. Thus, we begin our chartered journey by noting the said provisions.

5. Section 2(g), 2(gg), 2(k), relevant part of Section 25 and Section 33A of The Water (Prevention and Control of Pollution) Act, 1974 read as under:-

> "2. Definitions.– In this Act, unless the context otherwise requires,–
> (a) ……
> (b) ……
> (c) ……
> (d) ……
> (e) ……
> (f) ……

(g) 'sewage effluent' means effluent from any sewerage system or sewage disposal works and includes sullage from open drains;

(gg) 'sewer' means any conduit pipe or channel, open or closed, carrying sewage or trade effluent;

(h) .....
(i) .....
(j) .....

(k) 'trade effluent' includes any liquid, gaseous or solid substance which is discharged from any premises used for carrying on any industry, operation or process, or treatment and disposal system, other than domestic sewage.

25. Restrictions on new outlets and new discharges.–

(1) Subject to the provisions of this section, no person shall, without the previous consent of the State Board,–

(a) establish or take any steps to establish any industry, operation or process, or any treatment and disposal system or any extension or addition thereto, which is likely to discharge sewage or trade effluent into a stream or well or sewer or on land (such discharge being hereafter in this section referred to as discharge of sewage); or

(b) .....

(c) .....

Provided that a person in the process of taking any steps to establish any industry, operation or process immediately before the commencement of the Water (Prevention and Control of Pollution) Amendment Act,

1988, for which no consent was necessary prior to such commencement, may continue to do so for a period of three months from such commencement or, if he has made an application for such consent, within the said period of three months, till the disposal of such application.

(2) .....

(3) .....

(4) .....

(5) Where, without the consent of the State Board, any industry, operation or process, or any treatment and disposal system or any extension or addition thereto, is established, or any steps for such establishment have been taken or a new or altered outlet is brought into use for the discharge of sewage or a new discharge of sewage is made, the State Board may serve on the person who has established or taken steps to establish any industry, operation or process, or any treatment and disposal system or any extension or addition thereto, or using the outlet, or making the discharge, as the case may be, a notice imposing any such conditions as it might have imposed on an application for its consent in respect of such establishment, such outlet or discharge.

(6) .....

(7) The consent referred to in sub-section (1) shall, unless given or refused earlier, be deemed to have been given unconditionally on the expiry of a period of four months of the making of an application in this behalf complete in all respects to the State Board.

(8) .....

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> **33A. Power to give directions.–** Notwithstanding anything contained in any other law, but subject to the provisions of this Act, and to any directions that the Central Government may give in this behalf, a Board may, in the exercise of its powers and performance of its functions under this Act, issue any directions in writing to any person, officer or authority, and such person, officer or authority shall be bound to comply with such directions.
>
> *Explanation.–* For the avoidance of doubts, it is hereby declared that the power to issue directions under this section includes the power to direct–
> (a) the closure, prohibition or regulation of any industry, operation or process; or
> (b) the stoppage or regulation of supply of electricity, water or any other service."

6. Section 2(a), 2(j), 2(k), relevant part of Section 21 and Section 31A of The Air (Prevention and Control of Pollution) Act, 1981 read as under:-

> **2. Definitions.–** In this Act, unless the context otherwise requires,–
>
> (a) 'air pollutant' means any solid, liquid or gaseous substance (including noise) present in the atmosphere in such concentration as may be or tend to be injurious to human beings or other living creatures or plants or property or environment;
>
> (b) .....
>
> (c) .....
>
> (d) .....
>
> (e) .....

(f) .....

(g) .....

(h) .....

(i) .....

(j) 'emission' means any solid or liquid or gaseous substance coming out of any chimney, duct or flue or any other outlet;

(k) 'industrial plant' means any plant used for any industrial or trade purposes and emitting any air pollutant into the atmosphere;

21. Restrictions on use of certain industrial plants.– (1) Subject to the provisions of this section, no person shall, without the previous consent of the State Board, establish or operate any industrial plant in an air pollution control area:

Provided that a person operating any industrial plant in any air pollution control area immediately before the commencement of section 9 of the Air (Prevention and Control of Pollution) Amendment Act, 1987 (47 of 1987), for which no consent was necessary prior to such commencement, may continue to do so for a period of three months from such commencement or, if he has made an application for such consent within the said period of three months, till the disposal of such application.

(2) .....

(3) .....

(4) Within a period of four months after the receipt of the application for consent referred to in sub-section (1), the State Board shall, by order

in writing, and for reasons to be recorded in the order, grant the consent applied for subject to such conditions and for such period as may be specified in the order, or refuse such consent:

Provided that it shall be open to the State Board to cancel such consent before the expiry of the period for which it is granted or refuse further consent after such expiry if the conditions subject to which such consent has been granted are not fulfilled:

Provided further that before cancelling a consent or refusing a further consent under the first proviso, a reasonable opportunity of being heard shall be given to the person concerned.

(5) .....

(6) .....

(7) .....

31A. Power to give directions.– Notwithstanding anything contained in any other law, but subject to the provisions of this Act and to any directions that the Central Government may give in this behalf, a Board may, in the exercise of its powers and performance of its functions under this Act, issue any directions in writing to any person, office or authority, and such person, officer or authority shall be bound to comply with such directions.

Explanation.– For the avoidance of doubts, it is hereby declared that the power to issue directions under this section includes the power to direct–

(a) the closure, prohibition or regulation of any industry, operation or process; or

(b) the stoppage or regulation of supply of electricity, water or any other service.

7. With reference to the Water Act as originally framed in the year 1974 and as amended in the year 1988 and with reference to the Statement of Objects and Reasons of the Amending Act, the learned Single Judge has opined that the legislative amendments carried out in the original Water Act were intended to expand the scope of the Water Act. The learned Single Judge has highlighted that the expression *'establish any industry, operation or process or any treatment and disposal system or any extension or addition thereto, which is likely to discharge sewage or trade effluent'* in clause (a) of Sub-Section (1) of Section 25 made it clear that the requirement to obtain previous consent to establish any industry, operation or process was no longer restricted to trade effluent being discharged but would also encompass if 'sewage effluent' was discharged and with reference to the definition of 'sewage effluent' as per Section 2(g), has held that the same would include sewage of any kind, including domestic sewage. The learned Single Judge has also noted the expanded definition of 'trade effluent' as per Section 2(k) of the Water Act. Noting the definition of the words 'operation' and 'process' in para 12 of the decision, and thereafter noting the decisions that purposive construction needs to be followed where the mischief which existed before passing the statute was detected and was intended to be remedied, the learned Single Judge has concluded that *collective operation or process of*

bathing in the bathroom and such processes as take place in the toilet and cooking and washing in the kitchen would be operations and processes contemplated by Section 25(1)(a) of the Water Act for its applicability to residential complexes. This is the conclusion arrived at in para 16, but in the immediate next para i.e. para 17, the learned Single Judge has lodged a caveat by stating that he was not answering the question with reference to single storeyed constructions.

8. With reference to the commercial complexes i.e. Commercial Shopping Complexes and Shopping Malls, the learned Single Judge has held that the definition of 'trade effluent' as per Section 2(k) would encompass all kinds of non-domestic sewage and has thus held that these buildings would be governed by clause (a) of Sub-Section 1 of Section 25 of the Water Act.

9. As regards the very act of constructing a building, in paras 19 and 20, the learned Single Judge has held that the very act of constructing a commercial shopping complex, shopping mall or a residential complex would make applicable clause (a) of Sub-Section 1 of Section 25 and for which the reasoning of the learned Single Judge is that construction of commercial shopping or residential complexes is likely to have impact on water pollution because large quantities of water are used during construction and are also discharged.

10. Since, in all the cases, DPCC rose from the slumber after buildings were completed and put to use, the learned Single Judge opined that DPCC could not levy penalties and for which remedial action, as per the learned Single Judge, was as provided

in Sub-Section 5 of Section 25 of the Water Act.

11. The argument of DPCC that the power to give directions under Section 33A of the Water Act has been negated by the learned Single Judge, with reference to various decisions cited which hold that the power to levy penalty has to be expressly conferred by the statute.

12. Pertaining to the Water Act, the learned Single Judge has summarized the legal position, in para 29 as under:-

> "29. The discussion so far on the legal position under the Water Act in relation to the petitioners may be summarized thus:
>
> (i) Section 25 (1) of the Water Act is intended to cover not just 'industry' which discharges 'trade effluent' but any 'process or operation' that results in a discharge of 'sewage' not limited to trade effluent.
>
> (ii) The words 'operation or process' occurring in Section 25(1)(a) have to be given the widest possible meaning and scope. This approach is consistent with the SOR of the 1988 amendments to the Water Act which make it clear that the legislative intent was to expand the scope of the regulatory powers of the state PCC. The principle of *ejusdem generis* is therefore inapposite in the context.
>
> (iii) Commercial shopping complexes, shopping malls and even residential complexes are covered by Section 25(1)(a) of the Water Act.
>
> (iv) The liability under the Water Act does not get exempted only because the sewage

discharged from such complexes joins the main municipal sewerage system which may or may not be treated in keeping with the water pollution norms.

(v) The pollution caused by discharge of domestic sewage from a residential complex or trade effluent from a commercial complex or industry during the construction phase as well as at any stage after the complex becomes functional would attract the various provisions of the Water Act.

(vi) With the buildings in question having already been constructed without obtaining prior consent to establish, the direction of the DPCC that those who had failed to obtain prior consent to establish should now apply for such consent is a direction that is not capable of being complied with. Instead the DPCC should invoke the powers under Section 25(5) of the Water Act, issue show cause notices setting out the conditionalities required to be complied with within a time frame and upon failure to do so, invoke the powers to issue directions under Section 33A Water Act.

(vii) The Water Act is in a separate domain and its provisions will have to be complied with notwithstanding that the MCD has the power to lay down a separate set of regulations and bye-laws for use of water.

Where an applicant has not been communicated any decision of the DPCC for four months after the making of an application, the deeming provision of Section 25(7) would kick in and it would be deemed that the consent to establish has been granted. In such circumstances, Section 25(1) of the Water Act cannot

obviously thereafter be enforced."

13. Discussing the applicability of the Air Act, as conceded to by learned counsel for the parties at the hearing of the appeal, the learned Single Judge has inadvertently referred to the pre-amended provisions of the Air Act, though the learned Single Judge has referred and noted the fact that the Air Act of 1981 was amended in the year 1988.

14. Pertaining to residential complexes, the learned Single Judge has noted the unamended Section 21 of the Air Act which did not have the word 'establish' and had only the word 'operate' in Sub-Section 1 thereof, and thus the learned Single Judge has held that no permission from DPCC is needed to establish residential complexes, but on the same reasoning as followed in paras 19 and 20 pertaining to the Water Act, has held that during construction phase of residential complexes, permission under the Air Act has to be obtained. Qua shopping complexes and shopping malls, it has been held that under the Air Act, for these complexes, to operate them, prior permission has to be obtained as also during construction phase.

15. The learned Single Judge has summarized the position under the Air Act, in para 41 as under:-

> "41. The position under the Air Act may be summarized:
>
> (i) A collective reading of Section 21(1) of the Air Act with Section 2(a), 2(b) and 2(k) thereof leads this Court to the conclusion that a commercial shopping complex or a shopping mall would be covered within the scope of Section 21(1) of the Air Act.



(ii) The definition of 'air pollution' under Section 2(a) read with Section 21(1) of the Air Act, and the fact that the commercial shopping complexes or shopping malls are going to be used for a trade activity, is sufficient to attract the provisions of Section 21(1) of the Air Act.

(iii) As far as a purely residential complex is concerned, on the present wording of Section 21(1) of the Air Act, there is no requirement of obtaining the prior consent of the DPCC to operate.

(iv) During the construction phase and after the complex becomes functional, every building, whether it is a commercial shopping complex or a shopping mall or a residential complex, will have to comply with the norms under the Air Act and the Water Act and for that matter the EPA.

(v) Where the construction of a commercial shopping complex or shopping mall has been allowed to be completed without a prior consent to operate, the DPCC can inspect the building, issue a show cause notice requiring time bound compliance with the conditionalities imposed by it under the Air Act failing which it can issue directions under Section 31A Air Act."

16. A perusal of Section 25 of the Water Act would reveal, on a bare reading thereof, that without the previous consent of the State Pollution Board, '*no person could establish or take any steps to establish <u>any industry, operation or process,</u>..... which is likely to discharge sewage or trade effluent*'. Thus, even if sewage effluent as defined in Section 2(g) was discharged from any

industry, operation or process intended to be established, the requirement of prior consent would be necessary and to this extent the view taken by the learned Single Judge is correct.

17. But, what would encompass *'any industry, operation or process'*?

18. The Water Act does not define, 'industry', 'operation' or 'process'. As held in the decisions reported as 1993 (3) SC 2529 *Commissioner of Income Tax Orissa vs. M/s.N.C.Budhiraja & Co.* and 2010 (320) ITR 420 (Delhi) *Ansal Housing & Construction Ltd. vs. Commissioner of Income Tax*, the ordinary dictionary meaning of 'industry' or an 'industrial undertaking' would not include the activity of construction. The word 'operation' is defined, as noted by the learned Single Judge, in the New Shorter Oxford English Dictionary (Lesie Brown Ed.) as follows:

> "**operation:** An action, deed; exertion of force or influence; working, activity; an act of a practical or technical nature, *esp* one forming a step in a process."

19. The same dictionary defines 'process', as noted by the learned Single Judge, as under:-

> **"process :** The action or fact of going on or being carried on; a continuous series of actions, events or changes; a systematic series of actions or operations directed at a particular end."

20. As noted herein above, applying purposive construction, the learned Single Judge has held, in para 15, that the two words 'operation' and 'process' have to be given their widest amplitude and meaning. The purposive construction

applied by the learned Single Judge is that widest amplitude needs to be given to Section 25(1)(a) of the Water Act.

21. The error committed by the learned Single Judge is to mechanically note the definition of '*operation'* and *'process',* and ignore the sweep of the span of the two words. We do so. Operation is defined as an *activity or an act of a practical or technical nature*, with emphasis of the acts forming *'a step in a process'.* The word *'process'* is a going on action or a continuous series of actions *'directed at a particular end'*. Thus, an operation would be a working or an activity, where the core of the act constituting the activity is of a practical or technical nature especially one forming a step in a process, and since process is an going on action or a continuous series of action directed at a particular end, the conjoint reading of an operation and a process or even if the two have to be read disjunctively would mean that the expression *'establish or take any steps to establish any industry, operation or process, or any treatment and disposal system or any extension or addition thereto, which is likely to discharge sewage or trade effluent'* would mean to take steps to establish any industry, establishment or undertaking where the operation or process i.e. activity is of a practical or technical nature, at the core of which are ongoing acts, in a series, directed at a particular end. Thus, the act of ablution in the toilet or washing vegetables and dishes in the kitchen of a residential complex, within the precincts of residential flats, by no stretch of imagination can be called or labeled as an operation or a process.

22. The view taken by the learned Single Judge pertaining

to shopping malls and commercial shopping complexes on the applicability of the Water Act is accordingly upheld and the view taken pertaining to the applicability of the Water Act to residential housing complexes is incorrect.

23. A building where shops would be made and in which shops goods or services would be sold as also shopping malls would be buildings where operation and or process is carried on for the reason they would be places where the activity carried on is of a practical or a technical nature and at the core of which activity would be ongoing acts, in a series, directed at a particular end i.e. if goods are purchased and sold, the sale and purchase of goods; and if service is rendered, the rendition of service directed towards a particular end. If from these buildings sewage is discharged, since sewage effluent as defined in Section 2(k) of the Water Act means effluent from any sewage system, if these buildings are intended to be established, necessary permission would be required from the Board under the Water Act.

24. With respect to the decisions reported as 1993 (3) SC 2529 *Commissioner of Income Tax Orissa vs. M/s.N.C.Budhiraja & Co.* and 2010 (320) ITR 420 (Delhi) *Ansal Housing & Construction Ltd. vs. Commissioner of Income Tax,* where it has been held that constructing a building per-se is not an industrial activity the view taken by the learned Single Judge that constructing a building, whether to be used for a residential purpose or to be used for a commercial shopping complex or for shopping malls would be an industrial activity; running contrary to the aforesaid judgments is incorrect.

25. The reasoning of the learned Single Judge to expand the scope of Section 25(1)(a) of the Water Act; that the object of the Water Act was to control water pollution in its widest amplitude and hence the reasoning that while constructing buildings, water is used and sometimes discharged thus requiring a wider meaning to be given, ignores that the Environment (Protection) Act 1986 deals with this larger issue in the context of 'environment' therein being defined to include water, air and land and the inter relationship which exists amongst them and human beings and other living creatures, plants and micro-organisms. The said Act and the Rules framed under the said Act are wide enough to cover exploitation of water and the impact thereof on environment and we see no vacuum in the fight against environmental degradation, by understanding the various expressions and their meaning in Section 25(1)(a) of the Water Act as adopted by us.

26. A word on purposive construction. It simply means that while adopting a purposive approach, Courts should seek to give effect to the true purpose of legislation and must keep in view all material that bears on the background against which a legislation was effected and where more than one construction is possible, the one which eliminates the mischief identified should be favoured. But, where only one construction is possible, the Court is not to strain backwards and then bend forward followed by leaning to the left and then to the right to appropriate a space not intended to be appropriated by the legislation. The Water Act requires prior permission to establish any industry, operation or

process which is likely to discharge sewage or trade effluent. It is not intended to apply to all and sundry establishments. It is restricted to only when a building, housing an industry is sought to be established or a building in which an operation or a process is intended to be carried on where effluent or trade effluent would be discharged.

27. To summarize the position under the Water Act the position may be summarized thus: 'Section 25(1) of the Water Act would apply where a building is proposed to be constructed to set up an industry or carry on an operation or a process as explained in para 21 above and this would mean that the Water Act would not apply to buildings housing residential apartments/units. It would apply to all other buildings where effluent or trade effluent is discharged, be they where manufacturing activity is carried on, sale or purchase of goods is carried on or services are provided.

28. Pertaining to the Air Act, there is a material difference in the language used in Section 21 of the said Act, vis-à-vis the language used in Section 25 of the Water Act. Whereas the Water Act requires a permission to establish any industry, operation or process, the Air Act restricts its span to prior permission being necessary only where it is intended to establish or operate any industrial plant.

29. Since the learned Single Judge has referred to the unamended provision and has ignored the amendments carried out to the Air Act in the year 1988, we note that as per the amended Section 21, the obligation to obtain the consent of the State Pollution Control Board is only to establish or operate any

industrial plant in an Air Pollution Control Area. Section 2(k) defines an 'industrial plant' to mean any plant used for any industrial or trade purposes and emitting any air pollutant.

30. The learned Single Judge has read the unamended Section 21 of the Air Act to mean that prior consent is needed to operate an industrial plant. Since the decision of the learned Single Judge has not noted the language of the amended Section where the words 'establish or' have been inserted prior to the word 'operate', we need to re-look into the issue.

31. Highlighting the definition of the words 'industrial plant' as defined in Section 2(k) of the Air Act, the learned Single Judge has noted that the definition expands the meaning of the words 'industrial plant' to include a building used for a trade purpose and with reference to Section 21 of the Air Act has held that a building where trade is carried on the prior consent would be required to operate the building.

32. Since the learned Single Judge has noted the unamended Section 21 and since the amended Section 21 requires prior consent even to establish an industrial plant in an Air Pollution Control Area, agreeing with the reasoning of the learned Single Judge that in view of the extended definition of the expression 'industrial plant', which includes a building where trade is carried on, the inevitable conclusion has to be that prior consent under the Air Act would be needed where a building is proposed to be constructed wherefrom trade would be carried on and since from a shopping mall and from a commercial shopping complex trade is carried on, we hold that prior consent under the Air Act

would be required when commercial shopping complexes and shopping malls are established i.e. at the commencement of the process of establishment i.e. before the building construction activity commences.

33. As noted herein above, the learned Single Judge has held construction per-se as requiring prior permission, both under the Water Act and the Air Act, and thus the learned Single Judge has held that under the Air Act, consent during construction phase would have to be obtained.

34. For our reasoning herein above pertaining to the Water Act, the said reasoning of the learned Single Judge pertaining to the Air Act is overruled, but would make no difference to the final conclusion arrived at by us pertaining to the applicability of the Air Act when construction activity commences in respect of shopping malls and commercial shopping complexes for the reason, prior consent to establish the same is required on the language of Section 21 of the Air Act in view of the expanded definition of the expression 'industrial plant'. But, for residential complexes, we hold that neither to establish nor to operate, (in fact the concept of 'to operate' is not even applicable to a residential complex), any permission is required under the Air Act.

35. The learned Single Judge has held that neither the language of Section 33A of the Water Act nor the language of Section 31A of the Air Act contemplates the power on the State Pollution Boards to levy any penalty.

36. The learned Single Judge has noted the decisions reported as 1975 (2) SCC 22 *Khemka & Co. (Agencies) Pvt. Ltd. vs.*

State of Maharashtra, 1994 (4) SCC 276 *J.K.Synthetics Ltd. & Birla Cement Works vs. Commercial Taxes Officer* and 1997 (6) SCC 479 *India Carbon Ltd. vs. State of Assam* to opine that power to levy penalty has to be conferred by a substantive provision in the enactment.

37. We concur with the reasoning of the learned Single Judge in paras 58 to 64 of the impugned decision and thus do not elaborate any further, but would additionally highlight that the power to issue directions under Section 33A of the Water Act and the power to issue directions under Section 31A of the Air Act, on their plain language, does not confer the power to levy any penalty. We would further highlight that under Chapter VII of the Water Act, and under Chapter VI of the Air Act penalties and procedure to levy the same have been set out. A perusal of the provisions under the Water Act would reveal that penalties can be levied as per procedure prescribed and only Courts can take cognizance of offences under the Act and levy penalties, whether by way of imprisonment or fine. Similar is the position under the Air Act. The legislature having enacted specific provisions for levy of penalties and procedures to be followed has specifically made the offences cognizable by Courts and the power to levy penalties under both Acts has been vested in the Courts. The role of the Pollution Control Boards is to initiate proceedings before the Court of Competent Jurisdiction and no more.

38. We would be failing not to note that on the issue of a delegatee not being empowered (by law) to further sub-delegate the delegated power, learned counsel for DPCC conceded to said

position and thus we leave undisturbed the view taken by the learned Single Judge on the subject.

39. Since our reasoning aforesaid results in the finding, by way of interpreting the provisions in the Water Act and the Air Act, as requiring prior consent to establish and operate shopping malls and commercial shopping complexes and the provisions being not applicable to residential complexes, we declare void actions initiated by DPCC pertaining to residential complexes and we further hold that said writ petitions are allowed in terms of the prayers made. The impugned decision(s) by the learned Single Judge(s) qua residential complexes is set aside. Qua shopping malls and commercial shopping complexes, since we have held that prior permission is required under both Acts to establish shopping malls and commercial shopping complexes as also to operate them and noting that even DPCC was not too sure of the legal position and thus misinformed a few applicants that no permission was required and qua most persons permitted them to commence and complete construction of shopping malls and commercial shopping complexes, the question which now needs to be answered is: Whether, pertaining to the Water Act, Sub-Section 5 of Section 25 is the answer to what needs to be done and in the absence of a similar provision in the Air Act, what action needs to be directed to be taken.

40. The language of Sub-Section 5 of Section 25 of the Water Act makes it plain clear that the only solution to a situation of a building being constructed to establish an industry, operation or process without obtaining prior consent of the State Pollution

Control Board is the power of the Board to serve upon the person concerned a notice imposing such conditions as might have been imposed on an application seeking prior consent; and we find that the learned Single Judge has correctly so opined and has rightly issued the direction that the only way out, pertaining to the Water Act, is to permit DPCC to inspect the shopping malls and the shopping commercial complexes and if it is found that pertaining to discharge of sewage from these buildings any steps are required to prevent water pollution, DPCC would be authorized to issue notices requiring the owner of the building to take steps in terms of the notice issued. Pertaining to the Air Act, notwithstanding there being no similar provision, but the concept of a post decisional hearing may be made applicable with the modification that no hearing would be required inasmuch as there is no decision, but DPCC should be empowered to inspect the shopping malls and the shopping commercial complexes and pertaining to air pollution, if any deficiencies are found, to notify the same to the owner requiring corrective action to be taken. Needless to state, if the owners of the buildings do not take corrective action, DPCC would always have the power to file criminal complaints before the Courts of Competent Jurisdiction, which Courts would alone have the power to impose fine and additionally impose sentence of imprisonment upon the offending persons.

41. On the issue of Air Pollution, we would like to pen a post-script pertaining to shopping complexes and shopping malls for the reason the only activity of air pollution in these buildings

would be through the air conditioning plants and generators installed to supply electricity to the buildings in case of power cuts, for the reason the trade of sale and purchase of goods in these complexes does not entail any activity which causes air pollution. We find that pertaining to DG sets, permissions in any case have to be obtained from DPCC if the capacity of the DG set is beyond a prescribed wattage and thus DPCC may suitably reconsider all shopping complexes and shopping malls where consent of DPCC has been obtained with respect to DG sets installed as also air-conditioning plants installed in the buildings, for if for the DG sets and air-conditioning plants, sanctions have already been obtained, nothing further remains to be got sanctioned under the Air Act.

42. In a few cases, we find that since DPCC was not permitting the buildings to be occupied, under protest, the owners paid the penalty to DPCC and have immediately approached the Court seeking refund and the same has been ordered for the reason neither under the Water Act nor under the Air Act there exists any power in DPCC to levy penalty or impose conditions of furnishing bank guarantee. The decision of the learned Single Judge is correct in directing the bank guarantees to be discharged and penalties levied to be refunded for the reason the said act of DPCC is ultra-vires its power under the two statutes and the levy of penalty is without any authority of law. In the decision reported as 1997 (5) SCC 536 *Mafatlal Industries Ltd. & Ors. vs. UOI & Ors*., under writ jurisdiction refund can be directed where the levy is without jurisdiction and the same would include a penalty levied

without any jurisdiction. In the instant case the penalty levied is unconstitutional being not sanctioned by any power vested in DPCC either under the Water Act or the Air Act. The impugned decisions where penalty levied has been directed to be refunded are upheld.

43. The appeals filed by DPCC are dismissed and the cross objections filed are allowed in terms of paras 27, 33, 34 and 39 above.

44. We leave the parties to bear their own costs.

45. All interim orders stand vacated.

(PRADEEP NANDRAJOG)
JUDGE

(PRATIBHA RANI)
JUDGE

JANUARY 23, 2012
dk

BEFORE THE NATIONAL GREEN TRIBUNAL
SOUTHERN ZONE, CHENNAI
Application No.154 of 2014 (SZ)
AND
M.A. No. 284 of 2014 (SZ)

In the matter of:

1. D.V. Girish
   Kalleshwara Estate
   Kaimara P.O.,
   Chikmagalur
   Karnataka

2. Shreedev Huilkere
   Woodway Estate
   Jakkanahalli Post
   Chikmagalur
   Karnataka

3. S. Girijashankar
   Sai Madhuvana Layout
   Chikmagalur
   Karnataka … Applicants

AND

1. The Secretary to Government
   (Environment and Ecology)
   Department of Forest Environment and Ecology
   Room No. 708, Gate 2, Multi Storied Building
   Dr. Ambedkar Veedhi,
   Bangalore – 560 001

2. The Principal Chief Conservator of Forests (Wildlife)
   Aranya Bhavan, 2nd floor, Malleshwaram
   Bangalore – 560 003

3. The Additional Principal Chief Conservator of Forests
   Field Director – Project Tiger – Shimoga Circle
   Shimoga

4. The Deputy Conservator of Forests
   Territorial Forest Division
   Chikmagalur
   Karnataka – 577101

5. The Conservator of Forests
   Bhadra Wildlife Division
   Chikmagalur, Karnataka – 577101

6. KSS Hotels and Resorts Pvt Ltd
   Trivik Chikamagalur
   Chinnabi Khan Estate
   Channagondanahalli Village
   Vasatre hobli, Chikamagalur District
   Karnataka

7. Prim Rose
   Bagneheddal
   Bayaravalli hobli
   Chikmagalur District
   Karnataka

8. Green Woods
   Rashi Eco Tourism
   Attigundi
   ID Peeta Village
   Jagara Hobli
   Chikmagalur, Karnataka

9. Jhari Eco Stay
   Rashi Eco Tourism
   Attigundi
   ID Peeta Village

Jagara Hobli
Chikmagalur, Karnataka … Respondents

Counsel for Appearing:

Applicant: M/s. K. Thilageswaran, G. Balamanikandan, P. Sundararajan, and M. Subha, Advocates

Respondents: Shri Devaraj Ashok, Advocate for respondent Nos. 1 to 5; Shri Sanjay Upadhya for M/s. A. Thayaparan, L.G. Sahadevan, Shri P. Rajendrakumar, Advocates for respondent No. 6; Shri Paul, Hudson Samuel, Advocate for respondent No. 7; M/s. Thomas V. Peter and R. Manohar, Advocates for respondent No. 8; M/s Pitty Parthasarthy and S. Kolandasamy, Advocates for respondent No. 9.

Appeal No. 5 of 2015(SZ)

In the matter of:

D.V. Girish
Kalleshwara Estate
Kaimara P.O.,
Chikmagalur
Karnataka … Applicant

AND

1. The Member Secretary
National Tiger Conservation Authority
Ministry of Environment and Forests
Government of India
Annexe No. V, Bikaner House
Shajahan Road, New Delhi 110 011

2. The Principal Secretary to Government
Forest, Ecology & Environment Department

Room No. 448, 4th floor
M.S. Building, Bangalore - 560 001

3. The Secretary
Revenue Department
Government of Karnataka
Multistoreyed building
Ambedkar Veedhi
Bangalore

4. The Principal Chief Conservator of Forest
Aranya Bhavan
Malleswaram, Bangalore

5. The Deputy Commissioner
Chikamagalur District
Chikamagalur – 577 101
Karnataka

6. The Conservator of Forests
Bhadra Wildlife Division
Chikmagalur, Karnataka – 577101

7. The Member Secretary
Karnataka Pollution Control Board
"Parisara Bhavan"
49, Church Street
Bangalore – 560 001
Karnataka

8. KSS Hotels and Resorts Pvt Ltd
Trivik Chikamagalur
Chinnabi Khan Estate
Channagondanahalli Village
Vasatre hobli, Chikamagalur District
Karnataka … Respondents

Counsel Appearing:

Applicant: M/s. M. Radhakrishnan, P. Sundararajan and Vetri Selan, Advocates.

Respondents: Smt. C. Sangamithirai, Advocate for respondent No. 1; Shri Devaraj Ashok, Advocate for respondent Nos. 2 and 6; Shri Thirunavukarsu, Advocate for respondent No. 7; Mr. Sanjay Upadhaya for M/s. A. Thayaparan, L.G. Sahadevan, Shri P. Rajendrakumar, Advocates

R.A. No. 1 of 2015 in Appeal No. 5 of 2015 (SZ)

In the matter of:

KSS Hotels and Resorts Pvt Ltd
Trivik Chikamagalur
Chinnabi Khan Estate
Channagondanahalli Village
Vasatre hobli, Chikamagalur District
Karnataka …. Appellant/Respondent No. 8

AND

1. D.V. Girish
   Kalleshwara Estate
   Kaimara P.O.,
   Chikmagalur, Karnataka … Respondent No. 1/Appellant

2. The Member Secretary
   National Tiger Conservation Authority
   Ministry of Environment and Forests
   Government of India
   Annexe No. V, Bikaner House
   Shajahan Road, New Delhi 110 011

3. The Principal Secretary to Government
   Forest, Ecology & Environment Department
   Room No. 448, 4th floor
   M.S. Building, Bangalore - 560 001

4. The Secretary
   Revenue Department
   Government of Karnataka
   Ambedkar Veedhi, Bangalore

5. The Principal Chief Conservator of Forest
   Aranya Bhavan
   Malleswaram, Bangalore

6. The Deputy Commissioner
   Chikamagalur District
   Karnataka – 577 101

7. The Conservator of Forests
   Bhadra Wildlife Division
   Chikmagalur, Karnataka – 577101

8. The Member Secretary
   Karnataka Pollution Control Board
   "Parisara Bhavan"
   49, Church Street
   Bangalore – 560 001 … Respondent Nos. 2 to 8/
   Respondent Nos. 1 to 7

Counsel for Appearing:

Review Applicant : M/s. Thayaparan and P. Rajendrakumar, Advocates.

Respondents : M/s. M. Radhakrishnan, P. Sundararajan and M. Vetriselvan, Advocates for respondent No. 1(Appellant in Appeal No. 5 of 2015

(SZ); Smt. C. Sangamithirai, Advocate for respondent No. 2; Shri Devaraj Ashok, Advocate for respondent Nos. 3 to 7; Shri Thirunavukkarasu, Advocate for respondent No. 8

JUDGMENT

Present:

1. Hon'ble Shri Justice M. Chockalingam
   Judicial Member

2. Hon'ble Prof. Dr. R. Nagendran
   Expert Member

Dated, 09th April, 2015

(Hon'ble Shri Justice M. Chockalingam, Judicial Member)

Application No. 154 of 2014 (SZ):

This Application has been filed by the applicants who claim to be environmental activists residing in Chikmagalur, State of Karnataka seeking direction against the respondents/administrative authorities to take appropriate action with regard to the encroachment and illegal constructions being made in Bababudangiri and Mullayanagiri hill areas in the State of Karnataka. The facts in brief as found in the Application are summarised below:

2. Bababudangiri and Mullayanagiri are hill areas in the State of Karnataka which are located within 10 km from the boundary of Bhadra

Tiger Reserve (Tiger Reserve) in Chikmaagalur district. These mountain ranges are the offshoot and integral part of the Western Ghats, which is a global biodiversity hotspot and are located within Ecologically Sensitive Zone of Tiger Reserve and it is one among the 25 bio-hotspots in the World.

3. These mountains are vital part of the active wildlife corridor that connects the Tiger Reserve with other reserve forests such as Masagali, Udev, Churche Gudda, Gangooru, Thimmapura, Yemme Dhoddi etc. There has been scientific documentation on regular movement of endangered animals such as tiger, leopard, porcupine, sambar and so on in this area and it is a habitat for several rare species of birds such as Rufous Bellied Eagle, Falcons, Blue Rock Thrush etc. According to Birdlife International UK, Lesser Kestrel, White Bellied Short Wing categorized as one of the threatened bird species is found in this area. This landscape is also an important catchment area for several perennial streams which flow through the Tiger Reserve and are the tributaries of River Bhadra feeding water to thousands of people downstream.

4. However, a number of unauthorized and illegal constructions are being carried out in these hill areas affecting the biological nature and the environment. A number of resorts are under construction and these constructions either block or divert the fresh water streams which flow through the Tiger Reserve on the higher reaches of the mountains.

These hill areas are also the water catchment areas of the habitations situated in the foot of the hills but the constructions are affecting the fresh water ecosystem in the entire catchment area by reducing the water flow, altering the vegetation downstream and reducing the water availability for agriculture and basic sustenance of people's livelihood. These resorts also alter the land use pattern by taking up large scale land excavation and construction, destabilizing the fragile slope in the 'shola' grassland ecosystem over the mountains.

5. The applicants sent various representations to the respondents who are having statutory duty to curtail those encroachment and illegal constructions which have neither been considered nor replied with.

6. **Appeal No: 5 of 2015:** This Appeal is converted from Application No.53 of 2015 filed by the first applicant herein who filed the Application No.154 of 2014 above by the Orders of this Tribunal dated 20.02.2015. The facts of the case adduced from the averments made in the Appeal Memorandum are as follows:

7. The appellant who is one of the applicants in Application No. 154 of 2014 (SZ) an environmental activist having come to know about the construction of a large scale commercial resort with an investment of over Rs.45 Crore by respondent No.7 at the base of Mullayangiri hill (the highest peak in Karnataka) in survey No.344 (3.25 acres) and survey No.216 (3.25 acres) of Channagondanahalli village of Vasatre

hobli in Chikmangalur district, Karnataka, made an appeal along with one Shreedev Hulikere and one Girijashankar made an appeal on 21.02.2013 to respondent No.4 and other authorities of the State of Karnataka to cancel the permit granted to respondent No.8. In the said appeal, the appellant *inter alia* stated as follows:

> *"In addition to large scale excavations and erection of huge concrete structures, the perennial streams flowing through the ever green shola forest (which are common property resources) leading to Bhadra Tiger Reserve have been diverted to meet the unsustainable demands of the resort. The wildlife movements in the area including that of tiger are being disturbed due to the usage of heavy machinery and movement of heavy motor vehicle supplying raw materials to the site and expansion of road leading to the resort. More than 100 resident labourers employed in the construction work at this site have been repeatedly illegally entering the nearby evergreen shola forests and over extracting wood from the deemed forest.The Mullayangiri hill range is part of the Western Ghats and is located within three kilometers from the Bhadra Tiger Reserve. The resort construction site falls well within the Buffer Zone of Bhadra Tiger Reserve and the landscape around harbors a variety of rare, endangered and endemic wildlife including species like Tiger, leopard, white bellied short wing (bird), Nyctilbatrachus dattatreyensis (frof) etc. This range is also of great religious significance to the local people. In addition, several perennial streams also take birth in this high altitude shola grassland forest which feed river Bhadra supporting innumerous life systems*

dependent on these fresh water streams down the valley".

8. A copy of the said appeal appears to have been forwarded to respondent No.1, National Tiger Conservation Authority (NTCA), New Delhi. Respondent No.1 *vide* its letter dated 01.04.2013 addressed to the Chief Wildlife Warden, Government of Karnataka, Bengaluru requested a factual status report on the subject matter of the appeal of the appellant dated 21.02.2013 before the respondent authorities for further processing in the matter. No action whatsoever was taken by the respondent No.2 on the request of the respondent No.1. Respondent No.2 ought to have sent a factual status report regarding the proposed construction of resorts by the respondent No.8 to the respondent No.1.The appeal of the applicant appears to have been forwarded to the respondent No.6 by the respondent No.4 instead of the respondent No.2. Respondent No.6 who is not competent to decide the question of grant or cancellation of permit for construction of the resorts in the aforesaid survey nos. by the respondent No.8 passed an order dated 07.06.2013 addressed to the applicant and two others, who made the aforesaid appeal to the respondent No.4. The said order was served on the applicant through his counsel during the course of hearing of Application No.154 of 2014 (SZ) by the Tribunal on 11.02.2015. Immediately on receipt of the said order dated 07.06.2013 passed by the

respondent No.6 on the appeal of the applicant dated 21.02.2013 made to the respondent No.4 as well as the respondents 2 and 5, the appellant filed this appeal against the order dated 07.06.2013 served on the applicant on 11.02.2015.

9. **M.A. No. 284 of 2014 in Application No. 154 of 2014 (SZ):**

The Applicants in Application No. 154 of 2014 have filed this M.A. No. 284 of 2014 seeking an amendment to the prayer clause in Application No. 154 of 2014 by substituting the expression "**therefore the applicants pray that the Hon'ble Tribunal be pleased to restrain respondents 6 to 9 from further proceedings with the construction of resorts in Bababudangiri and Mullayangiri hill ranges adjacent to Bhadra Tiger Reserve in Chickmagalur District, State of Karnataka"**, for the expression **"Therefore, the applicants pray that this Hon'ble Tribunal may be pleased to direct the respondents to take appropriate action on the representation made by the applicants dated 16.02.2012 with regard to the encroachment and illegal constructions being made in Bababudangiri and Mullayangiri hill areas in the State of Karnataka within the time frame that may be fixed by this Hon'ble Tribunal and thus render justice".**

10. **R.A.No.1 of 2015 (SZ) in Appeal No.5 of 2015 (SZ):**

This is a review Application filed by the respondent No.8 in Appeal No.5 of 2015 on conversion of the Application No.53 of 2015 by an order dated 20.02.2015 passed by this Tribunal to review *ibid* orders.

11. As seen above, the applicants who claim to be environmental activists in Chickmagalur District in the State of Karnataka have filed the Application No. 154 of 2014 seeking a direction against the respondents to take appropriate action on their representation made on 16.02.2012 alleging encroachment and illegal constructions made in Bababudangiri and Mullayangiri hill areas in the State of Karnataka. On entering appearance, the respondents have filed their replies. Pending enquiry of the said Application, the applicants filed M.A.No. 284 of 2014 seeking an amendment of the relief clause in Application No. 154 of 2014. Aggrieved over an order made by the Conservator of Forest (CoF) and Director, Bhadra Wild CAT C, Chickmagalur Division, Chickmagalur dated 07.06.2013, the 1st applicant in Application No. 154 of 2014 filed an application which was converted into Appeal No. 5 of 2015.

12. On admission, the 8th respondent in Appeal No. 5 of 2015 (SZ) therein and 6th respondent in Application No. 154 of 2014 (SZ) filed a Review Application which was taken on file as R.A. No. 1 of 2015. Since the questions that arose in all the above proceedings are inter-

connected and also on the same subject matter, all were taken up for joint enquiry. On the pleadings placed by the parties, the following questions were formulated:

13. Application No. 154 of 2014:

(i) Whether the applicants are entitled for a direction to the 1st to 5th respondents to consider their representation dated 16.02.2012 with regard to the encroachment and illegal constructions made in Bababudangiri and Mullayanagiri hill areas in the State of Karnataka within a time frame.

14. M.A. No. 285 of 2014 in Application No. 154 of 2014:

(i) Whether the application seeking an amendment of prayer in Application No. 154 of 2014 filed by the applicants has to be ordered.

15. Appeal No. 5 of 2015:

(i) Whether the appeal is maintainable on the question of jurisdiction for all or any of the reasons putforth by the appellant.

16. R.A. No. 1 of 2015 in Appeal No. 5 of 2015:

(i) Whether the Review Application is maintainable and has to be allowed.

17. The arguments advanced by the learned counsel for the applicants, the appellant and also the respondents are heard. All the

materials made available were looked into. The Tribunal paid its anxious consideration on the same.

Application No. 154 of 2014:

18. The only grievance ventilated by the applicants in this Application is the non-consideration of their representation dated 16.02.2012 with regard to the encroachment and illegal constructions being made in the hill areas of Bababudangiri and Mullayanagiri in the State of Karnataka and hence they have sought for a direction to the respondents to take appropriate action. A perusal of the representation dated 16.02.2012 as found in Sl. No. 9 (Page No.37) in the typeset of papers filed by the applicant would indicate that the same was addressed by the applicant to the Chief Conservator of Forests (CCF), Field Director, Project Tiger, Shimoga Circle, Shimoga who is shown as 3rd respondent in Application No. 154 of 2014. There is nothing to indicate that any copy of the same was addressed to the other respondents therein.

19. Pointing to the representation made by the applicants, the learned counsel for the applicant would submit that after giving full description of the location of the said hill area within 10 km of the boundary of Bhadra Tiger Reserve (Tiger Reserve), ecological sensitivity, native bio-diversity, fresh water eco-system in a catchment area, by the said representation the applicants have made a request for

immediate action to halt the construction in Bababudangiri and Mullayanagiri hill range adjacent to the Tiger Reserve. It was specifically stated therein that the construction of numerous resorts would involve opening of new area, cutting of trees, construction of roads, power lines, pipelines etc., which would lead to destruction, fragmentation and alteration of natural habitat in the area violating the Forest Act and Wildlife Act and in view of ecological importance of the said hill range which is located next to the Tiger Reserve and its significance from larger social welfare perspective it becomes necessary to protect the sensitive and fragile Western Ghat ecosystem. But the authorities have not exercised any care to consider the representation and take any appropriate action on that regard and hence it becomes necessary to issue a direction to the respondent/authorities to initiate action against the other respondents who have been carrying on the construction activities in violation of law and without obtaining any permits and licenses from the authorities concerned.

20. Countering the above contention, the learned counsel for the 1st to 5th respondents who are the authorities would submit that the application has got to be dismissed since it is much beyond the period of limitation under the National Green Tribunal (NGT) Act, 2010 and the relief sought for is beyond the scope of Sections 14, 15 and 18 of the NGT Act, 2010. The application is not maintainable in facts and law and

apart from that the application has got to be dismissed for the suppression of the material fact, namely, the subsequent representations made by the same applicants to the respondent authorities and appropriate order made thereon.

21. Vehemently opposing the application, the learned counsel for other respondents who are appearing for the resorts against whom allegations of encroachment and illegal constructions are made would submit that the allegations of encroachment on an ecologically sensitive area of the Western Ghat of Tiger Reserve and illegal constructions are thoroughly baseless and unfounded. The constructions are neither unauthorized nor irregular in any manner since they are not made within the legally protective areas or the buffer zone or ecologically sensitive areas, reserve forests or even on a deemed forest land. Pointing to the documents placed, the learned counsel would submit that the land in Survey Nos. 216 and 344 in which the said resort was originally built was a coffee plantation which was purchased on 18.06.2010 shown under Annexure I. The conversion of 3.25 acres of the said land was sought for from the Deputy Commissioner, Chickmagalur District before starting the construction work in the year 2011. Another permission was sought for on 08.09.2011 for the land in second Survey No. 344. The Karnataka State Pollution Control Board (KSPCB) has duly granted Consent for Establishment (CFE) on 27.02.2013. The office of the

Executive Engineer has given the sanction order for electric power connection on 28.12.2012 shown under Annexure 14. The KSPCB has also given the consent to expand by an order dated 21.08.2013 and the concerned *Panchayat* Development Officer has granted business license on 02.06.2014 which was made based on an approved plan sanctioned by the village *panchayat.* It is pertinent to point out that the said ecotourism facility/resort also conformed to the EIA Notification, 2006 particularly under Entry 8 (a) of Schedule I of the above Notification. The ecotourism facility/resort is located on the private land and situate at about 5.8 km away from the boundary of the Tiger Reserve which is confirmed by the State regulatory and competent authorities as per the forest records. Even as per the affidavit of the 1st to 5th respondents, the facility is more than 4 km from the Tiger Reserve, 2.8 km from the ecologically sensitive area which is excluded from Kasturi Rangan Report which formed basis of the Ministry of Environment and Forests Notification dated 14.03.2014 declaring ecologically sensitive zones in the Western Ghat outside the buffer zone and more importantly the said activity is a regulated activity and not a prohibited one. When a detailed consultative process was adopted by the State Government in declaring the buffer zone/area of the Tiger Reserve, all the applicants have been parties to the process of identifying the villages that should fall within the ecologically sensitive

areas and the same is evidenced by the proceedings of the meeting dated 20.09.2011 shown under Annexure 9. The applicants have concealed the facts and thus they have not come before the Tribunal with clean hands. The eco-tourism facility is not only a legal activity but it is even permissible inside a protected area subject to sections 28 and 33 of the Wildlife Protection Act, 1972. No guidelines, notifications or court orders are currently applicable prohibiting eco-tourism or its facilities if carried out in accordance with law. While the respondents have fully complied with all statutory requirements and undertake to adhere to all conditions imposed hitherto by regulatory and statutory authorities, the applicants cannot have any grievance to ventilate and thus all the allegations are unfounded. Added further the learned counsel that the applicants have failed to raise any substantial question on environment much less any specific violation of any environmental law or norm by the respondents. Though the applicants have pleaded that the construction made by the respondents are unauthorized, illegal and by encroachment within the Tiger Reserve and eco-sensitive zone of the Western Ghats, they have not placed a single evidence to prove the same. On the contrary, the respondents have placed all the materials for undertaking the construction which the respondents obtained from various departments which were granted after spot inspections and physical verification carried out by the officials of the Forest Department. All these

would be indicative of the fact that the respondents have not violated any provision of law as contended by the applications and hence the application has got to be dismissed.

22. Admittedly, the applicants made the representation on 16.02.2012 to the 3rd respondent, Deputy Conservator of Forests alleging that construction of numerous resorts if allowed would lead to ecological degradation. The averments there were as generic as they could be. They did not make any specific complaint or indicate any violation of law against the construction activities of any specific resort in particular or any one of the respondents shown in the application. However, it cannot be disputed that the cause of action for the application first arose on 16.02.2012, the date of representation made to the Deputy Conservator of Forest. Invoking the original jurisdiction of the Tribunal, the applicants have filed this application. Hence, the applicants must plead and raise the following: - (a) it should be a civil case, (b) various substantial questions relating to environment or enforcement of any legal right relating to environmental issues and (3) such questions arise out of implementation of the enactments specified in Schedule I of the NGT Act, 2010. Section 18(2) of the NGT Act, 2010 provides the details in regard to locus and character of an applicant who is entitled to move the Tribunal by filing an application for the grant of relief or compensation or settlement of dispute. Section 18 (2) is worded by the

Legislature with wide amplitude besides covering any person aggrieved and the legal representatives of the various categories. The expression 'substantial question relating to environment' or 'enforcement of any legal right to environment' cannot be interpreted so generically that it would even include a direction to the respondent authorities to take action against other respondents when there are no specific allegations or violations are made.

23. Speaking on the period of limitation for filing an application before the NGT, section 14 of the NGT Act, 2010 reads as follows:

> *"14. Tribunal to settle disputes.- (1) The Tribunal shall have the jurisdiction over all civil cases where a substantial question relating to environment (including enforcement of any legal right relating to environment), is involved and such question arises out of the implementation of enactments specified in Schedule I.*
>
> *(2) The Tribunal shall hear the disputes arising from the questions referred to in sub-section (1) and settle disputes and pass order thereon.*
>
> *(3) No application for adjudication of dispute under this section shall be entertained by the Tribunal unless it is made within a period of six months from the date on which the cause of action for such disputes first arose;*
>
> *Provided that the Tribunal may, if satisfied that the applicant was prevented by sufficient cause from filing the application within the said period, allow it to be filed within a further period not exceeding sixty days".*

24. The instant application was filed on 30.05.2014 long beyond the limitation period as stated above. What is all stated in the application is that the application is being filed within the period of limitation and no more averments are made and no explanation is forthcoming. The only explanation tendered by the learned counsel for the applicants is that though the representation was made on 16.02.2012, the authorities have not taken any action and so long no action is taken, the application can be well maintained since the cause of action would continue. Even if his contention has got to be accepted, the applicants are not entitled for the relief for more reasons than one.

25. From the documents made available, it could be seen that the 1st representation on the strength of which the instant application was filed was made by the applicants on 16.02.2012. On 21.02.2012, all the three applicants sent a letter addressed to the PCCF, Karnataka, the 2nd respondent herein appealing to cancel the permit for construction of the resorts by the 6th respondent in Survey Nos. 344 (3.25 acres) and 216 (3.25 acres) in Channagondanahalli village of Vasatre hobli in Chickmaglur District. Equally, the applicants sent a communication dated 25.02.2013 to the PCCF, Forest, Ecology and Environment Department, Karnataka making a request to refrain from permitting the resorts in Bababudangiri and Mullayanagiri hill range. A perusal of these two communications made by the applicants to the authorities would clearly

indicate that they have reiterated the very same grievance which they originally made in the representation dated 16.02.2012. It is pertinent to point out that the applicants have not revealed anything about those communications which were made after the 1st representation dated 16.02.2012 and before filing the instant application, but on the very same subject matter. The Deputy Inspector General, National Tiger Conservation Authority (NTCA) of the MoEF, on receipt of a copy of the representation dated 21.02.2013 stated *supra* has sent a communication dated 01.04.2013 to the Chief Wildlife Warden, Government of Karnataka, Bangalore to furnish factual status for further process in the matter. The Principal Secretary to Government, Forest, Ecology and Environment Department, Government of Karnataka, Bangalore, applicants issued a direction to the PCCF, the 2nd respondent herein to take suitable action by considering the same in accordance with rules in that regard. Pursuant to the above direction, an order came to be passed by the Conservator of Forest and Director, Bhadra Wild CAT C, Chickmagalur, the 5th respondent herein as seen in Annexure 5 filed by the 1st to 4th respondents. It would be more apt and appropriate to reproduce the order which will suffice to answer the allegations levelled against the respondents which reads verbatim as follows:

> *"In the letter vide Ref.(1) above, as you have been informed that M/s. K.S.S. Hotel & Resorts Company have constructing the resorts in the*

land in Sy.No.216 and 344 situated at Channagndanahalli village, Vasthere Hobli, Chickmagalore Taluk ; and due to this, causing problem to wild lives; and hence in this regard it was notified to submit a report to the Asst. Conservator of Forests, Bhadra Wild life Sub-Dvn., Lakkavalli/ Chickmagalore, by making spot inspection of the above said place, in this regard.

Accordingly as per his report in the letters vide Ref.(2) & (3) above, as per order of Buffer Project reserved area of Bhadra life CAT C, vide No. FEE/122/ FWL/2009 dated :29-01-2010; and corrigendum order dated : 24-02-2011 in No: FEE/122/ FWL/2009; the date : 29-10-2010 is amended as 29-01-2011; the said village is not coming within the jurisdiction of Buffer Zone; and the proposal of Eco Sensitive Zone by preparing the same and submitted to the Government for its approval; and even the village of Channagondanahalli village did not mention there itself also. This village is coming in the jurisdiction of Chickmagalore Regional Division.

In continuation of the same, in respect of the matter as you have been informed, the Asst. Conservator of Forests,Bhadra Wild Life Sub-Dvn, Chickmagalore, has made spot inspection and inspected the area by visit to it, where construction work of the said resorts made by M/s. KSS Hotels & Resorts Company; and accordingly the construction work is already completed at 75% and when enquired the manager, who doing construction work, it is stated that the land in Sy.No.216 and 344 of Channagodanahalli, is being Hiduvali land; and M/s. KSS Hotels & Resorts have purchased it and registered the same in its name; and they had

submitted an application to the Hon'ble Deputy Commissioner for land conversion of the above said land; and they got land conversion of the said land etc. As informed by him. (for the construction of resorts in the concerned area, got attested by preparing sketch map of the said spot from Tahsildar, Chickmagalore; and also for commercial purpose by preparing above said sketch map got a report in this regard from Asst. Director of City planning, Chickmagalore; and Karnataka State Pollution Control board, Chickmagalore; and also from Hon'ble Deputy Commissioner, Chickmagalore, respectively and they have issued conditional permit in this regard, etc. as stated by himself).

In continuation of the same Range Forest Officer, Muttodi Divisional range,Muttodi, he informed that due to the construction of resort made by them, it will cause problem to the wild lives and effected on the environment etc. stated in the notice dated 6-8-2012 issued and informed to M/s.KSS Hotels and Resorts in this regard. Even the said resort company that they have stated to take suitable action in this regard by putting Sewage Plant in not causing any harm to the environment, not giving chance to the sound pollution and not in causing water pollution and also not causing any problem to the wild lives due to their resort.

The area constructing the above said resorts is of GPS reading as N: 13 23' 32.2" E-:75 41' 23.4'; and Bhadra Wild CAT C preserved area is with a distance of 5.8 km from D line of Seegekan. It is found that there are constructing very big buildings in more quantity in the said area constructed by the above said K.S.S. Hotel and Resorts in the said area and hence for that reason

there is a possibility of creating hurdle to the walking of wild animals in the said area. This area is a reservoir of streams water flowing in the said Bhadra Wild CAT C protected area; and the garbage and water if leaved to flow without refining the same, which are using in the said resort, all these made effect directly and there is a chance to be flow such dirty water in the said Bhadra Wild CAT C prohibited area. Therefore it is hereby informed that it will be taken care in not causing any problem in such above manner from this Resort in this regard".

26. A reading of the above order would clearly indicate that the said village in which the project is undertaken is not coming within the jurisdiction of Buffer Zone but under the jurisdiction of Chickmagalur Division. On inspection, it was found that the construction work was already completed by 75%. A part of the land was purchased and registered in the name of the respondent/resorts and the remaining land was got by the 6th respondent on conversion on an application made to the Deputy Commissioner for Land Conversion. The 6th respondent had obtained other necessary permits from the concerned authorities. The resort company has also undertaken to take suitable action by putting up the Sewage Treatment Plant (STP) and also measures to prevent noise and water pollution and any problem to the wildlife. It is pertinent to point out that the authorities while concluding the order stated that it would take care to ensure that no problems are created in any manner. In the

face of the above detailed order, it would be futile to contend that no action was taken on the representation of the applicants.

28. The learned counsel for the applicants would submit that the original representation made on 16.02.2012 was not acted upon and not even been referred to in the above order and hence a direction has got to be issued to take necessary action on the representation dated 16.02.2012. The Tribunal is unable to notice any substance in the above contention. It is true that in the above said order there is no reference in respect of the 1st representation dated 16.02.2012, but as pointed out earlier, the representation made to both the authorities on 21.02.2013 and 25.02.2013 were made by the very same applicants and in respect of the complaints on the same subject matter. Hence, the applicants cannot have any grievance to state the 1st representation dated 16.02.2013 was not acted upon since it merged with other two representations dated 21.02.2013 and 25.02.2013. Again, it has to be pointed out that having suppressed the later representations which were actually acted upon, the applicants cannot be permitted to state that the original representation was not acted upon. Equally, the contention of the applicants that the copy of the order dated 07.06.2013 made by the Conservator of Forest and Director, Bhadra Wild CAT C, Chickmagalur was not served upon the applicants has to be rejected in view of the fact that it is indicated in that order that it was addressed to all the three

applicants and was also despatched on 17.06.2013. The suppression of the later representations dated 21.02.2013 and 25.02.2013 and order made thereon by the applicants in the application would cast a doubt that they were purposefully made so and if made it would be against them. The applicants have chosen to file the application on the strength of the 1st representation dated 16.02.2012 taking advantage of the fact that the same was not referred to in the order dated 07.06.2013. Hence, it has got to be concluded that the 1st representation was merged with the other representations dated 21.02.2013 and 25.02.2013 which were considered and after passing the order, they were served upon the applicants. Thus the case of the applicants that their representation dated 16.02.2012 was not acted upon is baseless, unfounded and worth to be ignored.

29. The learned counsel appearing for the resorts pointed to necessary documents to show that the lands in question do not come under the Buffer Zone of the Tiger Reserve as could be seen under Annexure 12 and 13. The KSPCB has granted the CFE as found in Annexure 10. The electrical power supply was granted as shown in Annexure 14. The KSPCB granted the consent for expansion shown under Annexure 16. The Panchayat Development Officer has given business license shown under Annexure 21. The same was based on the approval plan sanctioned by the Panchayat shown in Annexure 22.

Equally, the 7th respondent has also filed his documentary evidences such as permissions and licenses obtained. In view of the permissions, licenses, CFE etc., granted by the respective authorities, it cannot be stated that the respondents are carrying on illegal construction or violating any of the provisions of law. If the applicants were really aggrieved by the grant of those permissions, licenses, CFE and other approvals, they could have questioned the same, if so advised, in accordance with law. But, the applicants have not challenged any of those permissions, licences, CFE etc., in this proceedings.

30. Pending the Main Application No. 154 of 2014, the applicants have filed M.A. No.284 of 2014 under rule 16(7) of the NGT (Practices and Procedure) Rules, 2011 to amend the prayer in Application No. 154 of 2014. By the said amendment the applicants intend to substitute the following expression in the relief clause:

> *"Therefore, the applicants pray that the Hon'ble Tribunal may be pleased to restrain respondents 6 to 9 from further proceeding with the construction of resorts in Bababudangiri and Mullayangiri hill ranges adjacent to Bhadra Tiger Reserve in Chickmagalur District, State of Karnataka and thus render justice".*

in place of:

> "*Therefore, the applicants pray that this Hon'ble Tribunal may be pleased to direct the respondents to take appropriate action on the representation made by the applicants dated*

16.02.2012 with regard to the encroachment and illegal constructions being made in Bababudangiri and Mullayangiri, the hill areas in the State of Karnataka within the time frame that may be fixed by this Hon'ble Tribunal and thus render justice".

31. It was submitted by the learned counsel for the applicant that originally the applicants sought for a direction to the respondents to take appropriate action on the representation made by the applicants on 16.02.2012 with regard to the encroachment and illegal construction being made in Bababudangiri and Mullayangiri hill areas within a time frame. The representation was to the immediate and effective action that was needed to protect the Western Ghat ecosystem from the eco-tourism by halting the construction of resorts in the hill ranges. Since the 1st to 5th respondents have taken the stand that they have already taken steps to verify the allegations contained in the said representation dated 16.02.2012 and found them incorrect it became necessary for the applicants to seek an amendment to the prayer clause in the main application to restrain the 6th to 9th respondents from proceeding further with the construction of resorts. The counsel for the respondents vehemently opposed the application. After hearing both sides, the Tribunal is of the considered opinion that this application is got to be dismissed for many reasons. In the original application no specific allegation was made against the 6th to 9th respondents. But, it was

generic in nature stating that there were encroachment and illegal constructions are made in Bababudangiri and Mullayangiri hill areas. It was also not pleaded with any specific violation of law. It was only on the specific cause of action that a representation was made on 16.02.2012 and in view of the inaction on the part of the 1st to 5th respondents, direction were sought to be issued. The amendment which is for a substitution of relief clause in entirety, if allowed it would be without any corresponding pleading or evidence and apart from that on altogether a different cause of action. In the instant case, both the parties were given opportunity to putforth their pleadings. The amendment sought for to substitute the relief clause if permitted would alter the very original and fundamental character of the original application. It is a settled law that the amendment shall not be allowed if the amendment would change the character of the application and that too by a different cause of action.

32. It is true that an amendment under rule 16 (7) of the NGT (Practices and Procedure) Rule, 2011 can be ordered. But, an application or appeal can be maintained on only one cause of action. Rule 14 of the *ibid* Rule, 2011 reads as follows:

> "*14. Plural remedies. - An application or appeal, as the case may be, shall be based upon single cause of action and may seek one or more reliefs provided that they are consequential to one another*".

33. The Hon'ble Western Zone Bench of the NGT at Pune had an occasion to consider the question of maintainability of an application in a composite form of application-cum-appeal filed in view of the availability of the plural remedies in accordance with rule 14 of NGT Rules, 2011 in *Vikas K. Tripathi Mumbai Vs. The Secretary, MoEF reported in 2014 ALL (I) NGT Reporter (3) (Pune) 95* and has held as follows:

> *" 21..... We shall deal with his contention in order to set right issue once for all, in as much as it is likely to be raised in many such cases on similar ground. Rule 14 of the NGT (Practices and Procedure) Rules, 2011 reads as follows*:
>
> *"Rule14. Plural remedies. - An application or appeal, as the case may be, shall be based upon a single cause of action and may seek one or more relief provided that they are consequential to one another*".
>
> *22. Perusal of Rule 14, without any prejudicial notions in the mind, will make it amply clear that any Application or Appeal, as the opening words imply are distinct remedies under which the particular relief may be sought on single cause of action. Thus, if properly read the rule provide as follows:*
>
> *i) There may be either single Application or Appeal. In other words, it cannot be a comprehensive or hybrid type of pleadings like Appeal-cum-*

Application, as captioned by the Appellant-cum-Applicant (Vikas Tripathy) as in the present Application/Appeals.

ii) The Appeal or Application, whatsoever it may be must be filed on single cause of action. Thus, it cannot be filed on several causes of action. In other words, an Appeal cannot be filed with combined causes challenging different ECs or orders, nor an Application can be filed challenging different orders or different violations under the different laws.

iii) Still, however, choice given to the Appellant/Applicant is to ask for grant of more than one relief in case such reliefs are of consequential character. In other words, if a relief depends upon grant of another relief, then grant of more than one relief is permissible.

*22. ****

23. We cannot overlook and brush aside main provisions of the NGT Act, which do not provide for any kind of permission to allow filing of two Appeals, one against the time barred EC, coupled with another EC for revised construction plan along with an Application under Sections 14,15 and 18 of the NGT Act, 2010. In case, Vikas Tripathi is genuinely interested in the cause of environment and feels that the project in question has caused violations of EC conditions/

deterioration of the environment, then he is at liberty to file a separate Application under Section 14 (1) (2) read with Sections 15 and 18 of the NGT Act, 2010 if so advised and if it is permissible under law. He cannot, however, club all such Appeals and Applications together and explore to examine whether one cap fits on another".

34. In view of the same, the request of the applicants seeking amendment to the prayer clause in the Application No. 154 of 2014 (SZ) has got to be negatived. Hence, the M.A. No. 284 of 2014 (SZ) is dismissed.

35. In the result, the Application No. 154 of 2014 (SZ) and the M.A. No.284 of 2014(SZ) are dismissed.

36. APPEAL No. 5 of 2015 (SZ)

The appellant herein originally made an application and at the time of admission a direction was issued to the Registry of the Tribunal to convert the application into an appeal. The respondents have filed R.A. No. 1 of 2015 questioning the maintainability of the appeal on different grounds *inter alia* on limitation and jurisdiction.

37. The Tribunal heard the learned counsel for the appellant and also for the respondents and paid its anxious consideration on the submissions made.

37. This appeal is brought forth seeking to set aside an order dated 07.06.2013 made by the Conservator of Forest and Director, Bhadra Wild CAT C, Chickmagalur shown as 6th respondent and also for a direction to the 4th and 5th respondents to decide the representation dated 27.02.2013 on merits and in accordance with the law.

38. The order under challenge was made on 07.06.2013 by the 6th respondent Conservator of Forest and Director, Bhadra Wild CAT C, Chickmagalur. Admittedly, it was in response to a communication dated 21.02.2103 made by the appellant appealing to cancel the permit given for construction of the resort by the 6th respondent. The entire complaint was that the permission was granted for construction activities for the resort by the 6th respondent. Speaking on the appellate jurisdiction, section 16 of the NGT Act, 2010 makes it clear that any person aggrieved by any order or decision made on or after the commencement of the NGT Act, 2010 can challenge the same provided if the impugned order or decision falls with those order/decision enumerated therein within the stipulated period. But the said order challenged is not from an order or decision enumerated under section 16 of the NGT Act, 2010. On the applicability of the section 16 of the NGT Act, 2010, the Hon'ble Principal Bench of NGT in M.A. No. 894 of 2014 in O.A. No. 26 of 2012 dated 24.12.2014 has held that section 16 provides for appeals to the

Tribunal from clauses (a) to (j) and prescribes the order against which appeal would lie before the Tribunal. The intent of the Legislature in excluding other orders being appealed before the Tribunal is implicit in section 16 of the NGT Act, 2010. Thus, it is quite evident that the appeal is beyond scope, powers and jurisdiction of the Tribunal and hence the appellant cannot maintain the appeal. Therefore, the appeal has to be dismissed as not maintainable.

39. One more contention raised by the learned counsel for the appellant is that the representation by way of an appeal made by the appellant was decided by the authority who was not competent to decide the same and hence on that ground the impugned order has to be set aside. This contention does not merit consideration in view of the aforesaid finding that the appeal itself lies outside the jurisdiction and power of the Tribunal. However, in view of the facts and circumstances of the case, the Tribunal feels it fit that liberty has to be given to the appellant to approach the appropriate authorities for necessary reliefs, if so advised.

40. Once an appeal does not lie before the Tribunal against a given order, it will not be appropriate for the Tribunal to exercise judicial jurisdiction under section 14 or any other provisions of the NGT Act, 2010.

41. In view of the dismissal of the appeal, the Review Application is disposed of accordingly.

42. In the result, the Application No. 154 of 2014 (SZ) and M.A. No.284 of 2014 (SZ) are dismissed.

No cost.

43. The Appeal No. 5 of 2015 (SZ) is dismissed with liberty to the appellant to approach the appropriate authorities for necessary relief, if so advised.

No cost

44. The R.A. No. 1 of 2015 (SZ) in Appeal No. 5 of 2015 (SZ) is disposed of.

No cost.

45. All other connected Miscellaneous Applications pending, if any, are closed.

No cost.

(Justice M. Chockalingam)
Judicial Member

(Prof. Dr. R. Nagendran)
Expert Member

Chennai
Dated, 09th April, 2015

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(2020) 2 Supreme Court Cases 66

2019
Dec. 3

(BEFORE DR D.Y. CHANDRACHUD AND AJAY RASTOGI, JJ.)

KEYSTONE REALTORS PRIVATE LIMITED .. Appellant;

Versus

2-Judge Bench

ANIL V. THARTHARE AND OTHERS .. Respondents.

Civil Appeal No. 2435 of 2019†, decided on December 3, 2019

Environment Law — Development Projects — Environment Impact Assessment Notification 2006, bearing S.O. 1533 — Paras 2 and 7 — Interpretation of — Objectives of EIA Notification, clarified

— Amendment of environmental clearance (EC) which had already been granted, for expansion of projects — Impermissibility of — Fresh clearance can be obtained from authorities for expansion, held, only by following procedure laid down under Para 7(ii) — Mandatory nature thereof, emphasised

— On facts held, amendment of EC for expansion of the project was impermissible — NGT direction of imposition of Rs One crore towards compensatory costs, affirmed — Expert committee to evaluate environmental impact and to suggest total compensatory costs to be imposed

— Held, EIA Notification seeks to ensure protection and preservation of environment during execution of new projects and expansion or modernisation of existing projects — It imposes restrictions on execution of new projects and on expansion of existing projects, until their potential environmental impact has been assessed and approved by grant of EC

— In a case where text of provisions require interpretation, court must adopt an interpretation which is in consonance with object and purpose of legislation or delegated legislation as a whole — EIA Notification was adopted with intention of restricting new projects and expansion of new projects until their environmental impact could be evaluated and understood — It cannot be disputed that as size of project increases, so does magnitude of project's environmental impact — Interpretation lending meaning that EIA Notification which would permit, incrementally or otherwise, project proponents to increase construction area of project without oversight from Expert Appraisal Committee or State Level Expert Appraisal Committee (SEAC), as applicable — It is not for courts to lay down bright-line test as to what constitutes marginal increase and what constitutes material increase — As EIA Notification currently stands, expansion within limits prescribed by Schedule is subject to procedure set out in Para 7(ii)

— Plain reading of second half of Para 2(ii) would indicate that it applies to cases where project was initially below threshold limits stipulated in Schedule but after the proposed expansion, would breach threshold limits — Therefore, it does not cover a case where project had already crossed lower threshold limit set out in Schedule and expansion does not cross upper limit stipulated by Schedule

† Arising from the Judgment and Order in *Anil Tharthare* v. *State of Maharashtra*, 2019 SCC OnLine NGT 876 [National Green Tribunal, Principal Bench at New Delhi, Appeal No. 122 of 2018 (Earlier Appeal No. 9 of 2014), dt. 11-2-2019]

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— Para 2(ii) must be r/w Para 7(ii) — Para 7(ii) lays down exact procedure to be followed by project proponent in case of expansion — Two crucial aspects of Para 7(ii) are: (A) it uses phrase "expansion with increase in production capacity beyond the capacity for which prior environment clearance has been granted"; and (B) qualifying language referring to breaching threshold limits "after expansion" is absent — "Expansion" can occur even after grant of EC when project first crossed the lower limit stipulated in threshold — It is not necessary for project to breach upper limit after expansion — Therefore close reading of Para 7(ii) would mean that even after obtaining EC if project is expanded beyond limits for which the prior EC was obtained, fresh application would need to be made even if expansion is within upper limit prescribed in Schedule

— If Para 2(ii) does not cover a case where expansion is within limits stipulated by Schedule, project proponent may incrementally keep increasing size of project area over time — This would result in significant increase in project size without assessment EIA resulting from expansion — Such outcome would defeat entire scheme of EIA Notification which is to ensure that any new or additional environmental impact is assessed and certified by relevant regulatory authorities

— There is considerable merit in observations of Committee constituted by MoEF that requirement of an EC at time of expansion forms a critical step in environmental clearance regime — It assists officials not just in evaluating and mitigating any adverse impact caused by expansion but also in assessing whether project proponent is in compliance with their existing obligations — Crucially, any form of expansion necessarily puts a strain on local environment and infrastructure and needs to be carefully evaluated in holistic manner

— Lower limit of Entry 8(a) of Schedule is built-up area of 20,000 sq m and upper limit is 1,50,000 sq m — Environmental impact of construction of 1,50,000 sq m is drastically more than 20,000 sq m — At the time of second increase in present case, total construction area of appellant's project enlarged from 32,395.17 sq m to 40,480.88 sq m — As result of such expansion, appellant constructed 16 addition flats which were sold at prevailing market rate — Appellant did not comply with procedure set under Para 7(ii) — It rather sought amendment to EC — Amendment to EC dated 13-3-2014 did not discuss potential environmental impact of increase in construction area — But merely records that construction area now stands at 40,480.88 sq m

— Procedure set out under Para 7(ii) exists to ensure that where project is expanded in size, environmental impact on surrounding area is evaluated holistically considering all 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 case of appellant's project — Held, it was not open to authorities to grant amendment of EC without following procedure set out in Para 7(ii)

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— As appellant had completed construction, authorities were denied ability to evaluate environmental impact and suggest methods to mitigate any environmental damage — Therefore, only remedial measures may be taken — Hence, direction of NGT to appellant to deposit Rs One crore affirmed — Expert committee constituted by NGT directed to continue its evaluation of project so as to bring environmental impact as close as possible to that contemplated in EC dt. 2-5-2013 and also suggest compensatory exaction to be imposed on appellant — Housing and Real Estate — Building/Planning Norms — Development Permission/Occupancy Certificate/NOC/Environmental NOC — Interpretation of Statutes — Basic Rules — Purposive construction/interpretation/Mischief rule/Heydon's rule — Polluter Pays Principle and Remedial/Compensatory/Punitive Measures — Remedial action/Reclamation/Rehabilitation measures/Compensation/Disgorgement of gains of wrongdoer — Restitution — Disgorgement of Gains of Wrongdoer (Paras 6 and 13 to 21)

Anil Tharthare v. *State of Maharashtra*, 2019 SCC OnLine NGT 876, *affirmed*

Keystone Realtors (P) Ltd. v. *Environment Department*, 2016 SCC OnLine Bom 9340, *cited*

The appellant, a project proponent of residential redevelopment, received commencement certificate. When project commenced, area was 8720.32 sq m. As area of construction was increased to 32,395.17 sq m, the appellant applied for Environmental Clearance (EC) under Environment Impact Assessment (EIA). The State Level Expert Appraisal Committee for Maharashtra (SEAC) recommended the grant of an EC for the project. On 2-5-2013 the third respondent, the State Level Environment Impact Assessment Authority for Maharashtra (SEIAA), based on the recommendations of SEAC granted an EC for total construction of 32,395.17 sq m. The appellant increased total construction area by 40,480.88 sq m. Therefore, in environmental clearance given on 2-5-2013, the appellant sought amendment. Accordingly, amendment was granted to EC dated 2-5-2013.

Respondent 1 challenged grant of amended environmental clearance before the National Green Tribunal (NGT). The appellant raised several grounds questioning maintainability of petition before NGT. The contentions raised by the appellant were rejected. The appellant approached the High Court, which held that appeal on behalf of Respondent 1 not maintainable and challenge to the environmental clearance barred by limitation. However, this dispute was transferred to Principal Bench of NGT and decided against the appellant, which is challenged in this appeal. While dismissing the appeal, the Supreme Court held as above.

G-D/63343/C

Advocates who appeared in this case :

Mukul Rohatgi, Senior Advocate (Kunal Tandan, Pranaya Goyal, Aman Raj Gandhi, Nikhil Rohatgi, Abhishek Sharma, Ms Sanjana Arora, Ms Richa Saudilya and Ms Narayani Bhattacharyya, Advocates) for the Appellant;

Aditya Pratap, Munawwar Naseem, Chirag M. Shroff, Ms Mahima C. Shroff, Ms Yashika Verma and Riya Thomas, Advocates) for the Respondents.

Chronological list of cases cited ***on page(s)***

1. 2019 SCC OnLine NGT 876, *Anil Tharthare* v. *State of Maharashtra* 69*a*
2. 2016 SCC OnLine Bom 9340, *Keystone Realtors (P) Ltd.* v. *Environment Department* 70*d*

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The Judgment of the Court was delivered by

DR D.Y. CHANDRACHUD, J.— The present civil appeal arises from an order dated 11-2-2019[1] of the Principal Bench of the National Green Tribunal (NGT). In its order, 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 14-9-2006 (EIA Notification) of the Ministry of Environment and Forests. NGT found that the appellant had undertaken an "expansion" as set out in Para 2 of the EIA 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 (CPCB). Noting that the construction at the project site had been completed, 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 400 050. On 8-6-2010 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 8720.32 sq m. The ambit of the project was expanded, and the constructed area was increased to 32,395.17 sq m. Under the EIA Notification, an Environmental Clearance (EC) was necessary if the total construction area exceeded 20,000 sq m. Hence, the appellant applied for an EC under the EIA Notification.

3. The fourth respondent, the State Level Expert Appraisal Committee for Maharashtra (SEAC) recommended the grant of an EC for the project. On 2-5-2013 the third respondent, the State Level Environment Impact Assessment Authority for Maharashtra (SEIAA), based on the recommendations of SEAC granted an EC. It is not in dispute that at the time when EC dated 2-5-2013 was granted, the total construction area of the project was 32,395.17 sq m. The grant of 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 24-9-2013, the appellant informed the Environment Department of the Government of Maharashtra, the second respondent, that the construction area was being further increased by 8085.71 sq m, as a result of which the total construction area of the project would stand enhanced to 40,480.88 sq m. In its letter, the appellant sought an "amendment" to EC dated 2-5-2013 by the third respondent to reflect the increase in the total construction area. On 13-3-2014, the third respondent granted an "amendment" to EC dated 2-5-2013 on the ground that there was only a "marginal increase

1 *Anil Tharthare* v. *State of Maharashtra*, 2019 SCC OnLine NGT 876

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in built-up and construction area". The third respondent noted the changes in the specification of the project as follows:

Description	*As per EC dated 2-5-2013*		*Amendment*	
FSI area	16,346.32 sq m		21,365.54 sq m	
Non-FSI area	16,048.85 sq m		19,115.34 sq m	
Total construction area	32,395.17 sq m		40,480.88 sq m	
Nos. of tenements	Members 64	Sale 61	Members 64	Sale 77
Building configuration	Member	2 Basement	Member	2 Basement

5. The first respondent, claiming to be a resident of MIG Colony, Gandhinagar, Bandra East, Mumbai, challenged the grant of the amended EC dated 13-3-2014 before the Pune Bench of 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 4-5-2016, the Pune Bench of 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 NGT. The Bombay High Court, allowing the writ petition held by an order dated 23-8-2016[2], that the appeal was not maintainable at the behest of the first respondent, and the challenge against the grant of the amended EC dated 13-3-2014 was barred by limitation. By an administrative order dated 31-7-2018, the dispute was transferred from the Pune Bench of 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 of 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. Para 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 regulatory authority concerned, 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:

2 *Keystone Realtors (P) Ltd.* v. *Environment Department*, 2016 SCC OnLine Bom 9340

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(*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 sector concerned, 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)

7. 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 SEAC. Where a project falls within the parameters stipulated in the Schedule, Para 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.

8. In order to secure an EC, the project proponent must submit an application in the manner set out in Form 1 and Supplementary Form 1-A (if applicable) of the EIA Notification. Under Para 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. Para 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 Expert Appraisal Committee or State Level Expert Appraisal Committee concerned 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)

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Clause (*ii*) of Para 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. Para 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 1-A (as applicable).

9. 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 sq m but less than 1,50,000 sq m". Entry 8 of the Schedule to the EIA Notification is as follows:

8 — *Building/Construction projects/Area Development projects and Townships*			
8(*a*)	Building and construction projects	≥20,000 sq m and <1,50,000 sq m 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 m	All projects under Item 8(*b*) shall be appraised as Category B1

Issue

10. 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 sq m. However, in September 2013 the appellant informed the second respondent of an increase by 8085.71 sq m as a result of which the total construction area of the project would be 40,480.88 sq m. In seeking an "amendment" to EC dated 2-5-2013 the appellant did not submit an updated Form 1. Further, the "amendment" to EC was granted by the SEIAA without the recommendations of SEAC. The issue before this Court is whether the "amended" EC dated 13-3-2014 granted by the SEIAA without following the procedure stipulated in Para 7(*ii*) of the EIA Notification is valid.

Submissions

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

11.1. When construction began, the total construction area of the appellant's project was 8720.32 sq m. As the EIA Notification requires projects with a total built-up area of or more than 20,000 sq m to procure an EC prior to the start of construction, no EC was required before construction of the appellant's project commenced;

11.2. Pursuant to the first increase, when the appellant's project crossed the 20,000 sq m threshold provided for in the EIA Notification, the appellant submitted Form 1 and was granted a valid EC dated 2-5-2013 by the third respondent;

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11.3. Pursuant to the second increase, the built-up area of the appellant's project only marginally increased by 8085.71 sq m to a total construction area of 40,480.88 sq m, which is within the upper limit of 1,50,000 sq m 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 Para 2 of the EIA Notification and no fresh Form 1 or EC was required at the time of the second increase;

11.4. Clause (*ii*) of Para 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 Para 2 and does not require compliance with the procedure under Para 7(*ii*) of the EIA Notification;

11.5. The increase in the appellant's project is only marginal and does not have an adverse impact on the environment;

11.6. 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 2-5-2013; and

11.7. NGT had no basis to impose the fine of rupees one crore on the appellant.

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

12.1. Under clause (*ii*) of Para 2 read with Para 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 sq m and the second increase of 8085.71 sq m constituted an "*expansion beyond the threshold limit*" and hence required a fresh EC;

12.2. 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 SEAC, as applicable in accordance with Para 7(*ii*) of the EIA Notification;

12.3. Adopting the appellant's interpretation of Clause (*ii*) of Para 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;

12.4. 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 Para 7(*ii*) of the EIA Notification, it was incumbent on the SEIAA to place the matter before SEAC for appraisal and recommendations; and

12.5. 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.

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Interpreting Paras 2 and 7

13. The central controversy between the parties to the present dispute is the manner in which Paras 2 and 7 of the EIA Notification should be interpreted. Clause (*ii*) of Para 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 sector concerned". 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 Para 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 Para 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.

14. However, Clause (*ii*) of Para 2 must be read with Para 7(*ii*) of the EIA Notification. Para 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 Para 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 Para 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 the upper limit prescribed in the Schedule.

15. The dangers effectively articulated by the learned counsel for the first respondent are real. If Clause (*ii*) of Para 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 sq m and the upper limit is 1,50,000 sq m. It cannot be doubted that the environmental impact of a construction of 1,50,000 sq m is drastically more than construction of 20,000 sq m. If the appellant's argument is accepted in totality, a project proponent could potentially secure an EC for constructing 20,000 sq m and by

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"amendment" steadily increase the area of construction up to 1,50,000 sq m without submitting an updated Form 1 or any substantive review by SEAC.

16. We note that subsequent to the EIA Notification being published in 2006, a draft notification was issued on 19-1-2009[3].The draft notification proposed the following amendment:

> "In Para 2 [of the EIA Notification], after sub-para (*iii*), the following shall be inserted; namely:
>
> 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."

17. 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, (*iii*) 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

3 Notification S.O. 195 (E) dated 19-1-2009.

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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)

18. 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.

19. 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 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 there being a violation of

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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 Para 7(*ii*).

20. At the time of the second increase, the total construction area of the appellant's project was enlarged from 32,395.17 sq m to 40,480.88 sq m. 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 Para 7(*ii*) of the EIA Notification but rather sought an "amendment" to 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 EC dated 13-3-2014 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 sq m. The procedure set out under Para 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 EC without following the procedure set out in Para 7(*ii*) of the EIA Notification.

21. 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. 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 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 EC dated 2-5-2013 and also suggest the compensatory exaction to be imposed on the appellant.

22. The appeal is dismissed. There shall be no order as to costs. Pending application(s), if any, shall stand disposed of.

Item No. 05 (Pune Bench)

BEFORE THE NATIONAL GREEN TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

(Through Video Conferencing)

Original Application No. 23/2016 (WZ)
(M.A. No. 137/2016 & M.A. No. 164/2016)

Vikas K. Tripathi Applicant(s)

Versus

State of Maharashtra & Ors. Respondent(s)

Date of hearing: 27.08.2020
Date of uploading: 07.09.2020

CORAM: HON'BLE MR. JUSTICE SHEO KUMAR SINGH, JUDICIAL MEMBER
HON'BLE DR. SATYAWAN SINGH GARBYAL, EXPERT MEMBER

For Applicant (s) : Ms. Sreeja Chakraborty, Advocates for Applicant
Mr. Vikas K. Tripathi, Applicant-in-Person

For Respondent(s) : Mr. Raghunath Mahabal alongwith Mr. Deepak Gupta, Advocates for Respondent Nos. 1, 2 & 3
Mr. D. M. Gupte, Advocate for Respondent
Ms. Manasi Joshi, Advocate for Respondent No.4
Mr. Manoj Wad alongwith Mr. Kapil Agarwal i/b Mr. J. S. Wad & Co. Advocates for Respondent No.5
Mr. Abhay N. Manudhane, for Respondent No. 8
Mr.Arif Bookwala, Senior Counsel with Mr.Parag Kabadi, Ms.Falguni Thakkar and Mr.Pranav Shelar i/by. M/s.DSK Legal, Advocates for Respondent No. 9
Mr. Sachin Subhash Gore, Advocate
Mr. Dhruv Mehta Sr. Adv., Mr. Abhishek Puri, Ms. Surbhi Gupta and Ms. Anupma Dhruve, Advocates for Respondent No.10
Ms. Anu Radha Bhatia, Sr. Hydrogeologist, Central Ground Water Board, Pune for Respondent Nos. 6 & 7

ORDER

1. Heard the argument and perused the record.

2. In a series of litigation, the applicant has filed this original application with the following reliefs:

> *"(A) Orders may be issued under the provisions of section 5 of the Environment Protection Act, 1986, to clear the strip of 30 m from all sides of the plot strictly in terms of the "Green Belt" Notification dated 12th July, 2005, and to demolish all the construction which has taken place within the said "Green Belt". Further, once the said land is cleared and to plant 608*

or more trees on the said Green Belt" as has been stipulated in the Environment Clearance.

(B) Once the land stipulated to be under the "Green Belt" is cleared, then 608 trees of the requisite sizes and varieties be planted as per the Central Pollution Control Board guidelines, and that adequate distances be provided to ensure that the trees grow up to their full natural height. Such 608 trees have been mandated to be planted by the Environment Clearance based on which the construction has taken place.

(C) Since extra basements have been constructed, hence such basements, which are more than what has been mentioned in FORM-1 be demolished.

(D) The 'Polluter-Pays Principle' be invoked and that the Project Proponent be asked to restore the damaged environment by filling up basements, seeking to restore thee acquirers and to pay compensation to the Government of Maharashtra for taking steps for improving environment and to provide for all the measures for restitution. Further, the 'Precautionary Principle' be invoked and all the 3 Developers of the project be asked to take responsibility of restitution.

(E) In view of the plethora of illegalities linked to the project, and since the impugned Environment Clearance has expired hence 'Stop Work Order' be issued by invocation of powers under Section 5 of the Environment Protection Act, 1986 and that the electricity and water connection be severed pursuant to the provisions Section 5 of the Environment Protection Act, 1986.

(F) Since there has been an enormous drawly of ground water illegally, hence the Central Ground Water Authority be asked to take steps to restore the aquifers as far as possible by invocation of the provisions of Section 3 of the Environment Protection Act, 1986 and the 'Polluter-Pays Principle' and 'Precautionary Principle' ingrained therein.

(G) No fresh application for the extension of the validity of Environment Clearance be processed till the time the project becomes fully compliant to the environment laws.

H) Since the Project Proponent is using and FSI larger than the stipulated, hence the construction be pruned proportionately.

(I) Orders may be issued in reducing a part of the construction so that after providing marginal open spaces for fire and emergency vehicles as stipulated under Regulation 29 of the Development Control Regulations of Greater Mumbai, 1991, 20% of the land area be earmarked for Recreation Ground in terms of the area stipulations set in Regulation 23 of the said Regulations.

(J) Orders may be issued for taking action against the public servants because of whose connivance and abdication of powers that such an enormous act of violation of environment laws could be done by the Developer."

3. The facts giving rise to the application are that in this case, the Maharashtra State Government in the Urban Development Department on request of the Mumbai Metropolitan Regional Development Authority (MMRDA) vide letter no. T/MMRDA/MRTS/2004 dated 12.01.2005 had initiated modification to the Sanctioned Revised Development Plan (SRDP) of K/W ward for deletion of the reservation set for) i) Sewerage plant, ii) Recreational Ground iii) Housing for Dishoused iv) Govt. staff quarters v) Retail market & vi) 13.40 mtr. wide access road so as to reserve the land bearing CST No. 866 S. No. 111-A/B/C of village Ambivali, Taluka Andheri (hereinafter referred to as the "Land") for Mass Rapid Transit System (MRTS) car depot & allied activities & commercial use for Versova-Andheri-Ghatkopar corridor of rail based MRTS and in pursuance to the same issued notice on 16.02.2005. After considering the proposed modification requested by the MMRDA, the State Government sanctioned to reserve the said Land for the purpose of the said Plan vide Notification No. TPB/4304/1430/CR-15/05/UD-11 dated 12.07.2005, issued in accordance to Section 37 (2) of Maharashtra Regional & Town Planning Act, 1966 (MRTP Act, 1966). Further, in pursuance of the same Notification, dated 12.07.2005, MMRDA was appointed as the appropriate Authority and the Project Implementing Agency for the said Plan.

4. Thereafter, in the year 2008, on the request of letter dated 08.04.2008 by MMRDA the State Government has issued directives under Section 37(1) along with Section 154 of the MRTP Act, 1966 vide Notification No. TPB 4308/674/CR-146/08/UD-11 dated 17.07.2008 and bought into force a new regulation thereby

modifying the Development Control Regulation for Greater Mumbai, 1991 for the development of the said Plan, based upon the principles/ concept of accommodation reservation in accordance to the said Regulations, so as to make 75% of the said Land available for the Plan and thereby further allowing the remaining 25% of the said Land to be developed by the owner's in possession of the same. Further entitling the owners (namely respondent nos. 8 and 9) to retain 25% of land for their own development and the maximum use of 75% of the normal permissible FSI of the gross plot of the land and hand over 75% of land free of cost to MMRDA for construction of a Metro Rail Car Shed for operation of the Versova-Andheri-Ghatkopar (VAG) metro line of Mumbai metro.

5. In the consent terms agreed to in the *Writ Petition No. 1944 of 2007* before the Hon'ble High Court of Judicature at Bombay, the State Government which is authorised to issue all the notifications under the MRTP Act, 1966 and the said Regulations, MMRDA the Project Implementing Agency, M/s Housing Development & Infrastructure Ltd. (HDIL - respondent no. 8), M/S Ecstasy Reality Pvt. Ltd. and 11 other parties agreed upon certain consent terms which was accepted by the Hon'ble High Court of Bombay on 04.08.2008, the said consent terms being executed along with the plans, which are duly signed by the concerned authorities. As per said consent term, concerned Department State Government of Maharashtra shall cause the Planning Authority i.e. M.C.G.M. & environment Committee to approve the building plans and grant NOC as per the case.

A. Construction by M/s. HDIL:

M/s. HDIL has submitted the proposal through their Architect M/S Bidco Engineering Division and Intimation of Disapproval for the building was issued under no. CE/9509/WS/ K/W on 24.03.2009 for residential wing having 4 basement + stilt + 1 podium + 21 upper floors & commercial wing having 3 basement + ground + 1st Floor for total built up area 37,152.37 sq.mt. Commencement Certificate was issued on 20.05.2009.

Secondly, plans area amended on 28.07.2010 for Residential Wing 4 basement + stilt + 1 Podium +16 Upper Floors for built up area 23956.64sq.mt. & commercial wing 3 basement + Ground + 6th upper floor for BUA 12,470.72 sq. mtrs.

Third amended plans were approved on 24.09.2010 for Residential Wing 4 Basement + Stilt+ Podium +27th Part Upper Floor for BUA 39649.93 sq. mtrs. & Commercial Wing 3 basement + ground (Retail) + 6th upper floor for BUA 12470.70 sq. mtrs.

Lastly, amended plans were approved on 06.03.2014 for Residential Wing 4 Basement + Stilt + Podium +31st upper Floor for BUA 49521.30 sq.mtrs. and Commercial Wing 3 basement + Ground + 1st & 2nd Commercial + 3 to 5th Podium for parking +6th amenity floor + 7th to 26th part Upper Floor for Residential BUA 66213.10 sq.mt. & accordingly Commencement Certificate re-endorsed on 07.03.2014.

B. Construction By M/s. Ecstasy Reality Pvt. Ltd.:

M/s Ecstasy Reality Pvt.Ltd has submitted the proposal through M/s Talathi & Panthaky Associates. Intimation of Disapproval under no. CE/9509A/WS/AK for the building was

issued on 30.04.2010 for 5 basement + Stilt + 25th Upper Floor for BUA 16702.02 sq. mtrs. Plinth Commencement Certificate was issued on 21.05.2010.

Lastly amended plans were approved on 11.03.2013 for 5 basements of height 18.29 mtrs. + Stilt + 31st upper floor for Residential of BUA 34889.66 sq.mtrs. & further commencement was endorsed upto 31st floor on 16.03.2013. Accordingly work was in progress on both the sites.

Project Proponent has got the environment clearance for both the projects on 12.5.2009. Further amended environment clearance has been obtained on 2.4.2013.

Regarding 30 Meter Buffer Zone, upon the request of the MMRDA vide letter no. T/MMRDA/MRTS/2004 dated 12.01.2005, the State Government issued Notification bearing no. TPB/4304/1430/CR-15/05/UD-11 dated 12.07.2005 to delete the reservation set for i) Sewerage plant, i) Recreational Ground ii) Housing for Dishoused iv) Govt. staff quarters v) Retail market & vi) 13.40 mtr. wide access road and instead, reserve the Land for MRTS Depot suggested by MMRDA therein subject to the condition that 30 mtrs. of width around the periphery of the said Land be reserved as Buffer Zone so as to avoid noise pollution and that, only tree plantation shall be allowed in this buffer zone for which MMRDA shall be the Project Implementing Agency and appropriate authority, and in pursuance to the same, the State Government issued a notice on 16.02.2005. Further, after considering the proposed modification requested by the MMRDA, the State Government sanctioned to reserve the said Land for the purpose of

the Plan vide Notification No. TPB/4304/1430/CR-15/05/UD-11 dated 12.07.2005, issued in accordance to Section 37(2) of MRTP Act, 1966.

6. Subsequent to this Notification, the State Government had published a Notification bearing no. TPB 4308/674/CR-146/08/UD-11 dated 17.07.2008 for development of the above said Plan as per Regulation 9 Table 4 of DCR Regulation. As per this Notification, the State Government under Section 154 of MRTP Act, 1966 directed the Municipal Corporation of Greater Mumbai (MCGM) to initiate modification to Regulation 9 Table 4 of DCR Regulation for the purpose of the development of the Plan, wherein the condition providing 30 mtrs. width of Buffer Zone was not included in the said notification or specifically deleted, as per the request of MMRDA dated 08.04.2008.

7. The respondent has argued that the unauthorised work and change of user as alleged by the applicants, does not fall under the provisions specified in Schedule-I to the NGT Act and thus, the present application is, therefore, not maintainable, and that the action to be taken under Section 10 of Maharashtra Government Servants Regulation of Transfer and prevention of Delay discharge of Official Duties Act, 2005 does not fall within the purview of this Tribunal.

8. By filing the reply by respondent nos. 1 to 3, it has been stated that the said project has been granted Environmental Clearance (EC) amendment dated 2nd May, 2013. Applicant has raised objection on the procedure followed for grant of amendment. As such those

objections ought to have been challenged only by way of Appeal and can't be challenged under Section 14 or 15 of the NGT Act.

9. The EC granted under 2(ii) of the EC Notification is not the extension, but the fresh EC which would be valid for 7 years from the date of its issue, as per the current status of EC Notification. EC is site specific to the project and is granted in favour of the project proponent. Accordingly, as per record, the EC is in the name of the *M/s. HDIL* - respondent no. 8, who was the project proponent to this expansion application and it has also been stated that all the points raised by the applicant by way of filing this application cannot be raised and entertained and under Section 14 and 15 of the National Green Tribunal Act, 2010.

10. Maharashtra Pollution Control Board (MPCB), respondent no. 4 had submitted a reply which is as follows:

> *"The subject matter in respect of the construction activity being done at CRS No. 866 Vill. Ambivili, Andheri, West , Mumbai by Respondent No. 8, 9 & 10 comes under the jurisdiction of Regional Office Mumbai, who is overall in charge and responsible for implementation of various Environmental Laws, such as Water (Prevention & Control of Pollution) Act, 1974, Water (Prevention & Control of Pollution) Cess Act, 1977, the Air (Prevention & Control of Pollution) Act, 1981 and the Act, 1986 and various Rules made thereunder, as per the jurisdiction.*
>
> *The Respondent- Board had granted Cons to Respondent No. 8 on 16.3.2009 for total built up area of 217688 certain terms and conditions, wherein one of the condition at Sr. No. take effective steps for implementation of the said project before obtaining Environment Clearance as per EIA Notification , 2006 and amendments thereto.*
>
> *Respondent Nos.8 & 9 had obtained Environment Clearance from Respondent No.3 for the proposed residential and commercial complex at Vill-Ambivali, Andheri —West, Mumbai on 12.5.2009 for total plot area of 1,24,436.50 sq. mtrs. and total proposed built up area of 2,17,688.42 sq mtrs on certain terms and conditions, wherein one of the condition at Sr.No.7 was that, the green belt shall be developed and total 608 nos*

of new trees to be planted and the trees shall be planted as committed to SEIAA.

The Respondent No.8 had further obtained amended EC for the said project on 2.5.2013 and the other terms and conditions stipulated in even number of EC dtd. 12.5.2009 remained the same.

The EC granted on 12/5/2009 to Respondent. No.8 & 9 was valid for a period of 5 years and further amended EC was granted by the Respondent No. 3 to Respondent No.8 on 2/5/2013, hence the decision regarding validity of period of 5 years from date of issue of EC or date of issue of amendment to EC comes under the purview of Respondent No.3.

The Applicant had made a complaint dtd. 17.8.2015 in respect of violation of EIA Notification, 2006 by Respondent No.8 to the Respondent No.3. The Respondent No.3 vide letter dated 15.9.2015 directed the Respondent- Board to verify the said compliant and submit the report. Accordingly, the officials of the Respondent- Board at Mumbai, visited the said site on 30.11.2015 and reported that the Respondent No.8 had obtained Consent to establish on 16.3.2009 and EC on 2.5.2013. The construc residential project was observed in complete state, the plumbing, finishing work etc. were found in operation. The Re installed STP for domestic effluent and possession of flats were not given to the flat owners. The said project is adjacent to the East-ward side by Metro Deptt. / Workshop, the South-ward compound of the Respondent No.8 is adjacent to M/s. Adani, whose construction work was in progress and the north-ward side is adjacent to the office of Metro Deptt. and West-ward side compound is adjacent to Respondent No. 10. The Metro Deptt. / workshop adjacent to the residential project, had no buffer zone / green belt of 30mtrs between them. The visit report dtd. 30/11/2015 was submitted to the Respondent No.3 by email on 22.2.2016.

Regarding maintaining of buffer zone of 30 mtrs. width around the periphery of the said land has not been provided by the Competent Authority i.e. MMRDA as per the Notification dated 12.7.2005 issued by the Urban Development Department."

11. The respondent no. 5- Municipal Corporation of Greater Mumbai has raised the first issue with regard to the delay in filing the application and stated that at the outset, the respondent no. 5 denies all the contentions of the applicants unless those that are specifically admitted. In pursuance to the same, it is submitted that the present application is a gross abuse of the due process of law by the applicants who with *mala-fide* intention have waited for

so many years to file the present application after the cause of action arose. It is submitted that there is no explanation whatsoever in the present application as to why the application was not filed within a reasonable period from the date the cause of action arose. In furtherance to the same, it is submitted that the present application has not been filed within six months from the date the cause first arose and thus, the present application having not being filed within the time stipulated by law is not maintainable in law and is thus, time barred in law since the period of limitation for filling the same has lapsed. It is submitted that the earlier application was dismissed by this Tribunal wherein it further provided that the applicant shall have the liberty to file afresh application. Such liberty provided by the Tribunal does not in any way give an exemption pertaining to the period of limitation within which this application should have been filed, as the application should have been filed within the stipulated period of six months, from the date of cause of action or from the date of the order dated 01.10.2014 passed by this Tribunal. This application having being filed after the limitation period prescribed under the law has expired, the present application suffers from delay and latches which cannot be condoned in the present application. Thus, the present application being time barred and is liable to be dismissed with costs on this ground.

12. It is further submitted by respondent no. 5 that, as per Section 14(1) of the NGT Act, the Tribunal has jurisdiction over all civil cases where a substantial question relating to environment (including enforcement of any legal right relating to environment) is involved and such question arises out of the implementation of the

enactments specified in Schedule I to the NGT Act. respondent no. 5 states that the unauthorised work, consumption of excess FSI and demolition of excess work than the permissible FSI and issuing stop work order or revalidation of Environment Clearances alleged by the applicants, does not fall under the provisions specified in Schedule-I to the NGT Act and thus, the present application is not maintainable and is, therefore, liable to be dismissed with costs.

13. Further respondent no. 8 - *M/s. HDIL* had also raised the similar issue as follows:

> *"15. Under Section 15(3), the period of limitation prescribed is 5 years from the date on which the cause for such compensation or relief first arises. Therefore, limitation has to be calculated from the date on which the construction activity in the green belt started. The Applicant cannot contend that there is a continuous cause of action under the provisions of the Limitation Act having regard to the express stipulation of Section 15(3) of the NGT Act. The Applicant being aware of these limitations has deliberately kept silent on the date on which according to him the cause for claiming relief under Section 15(3) first arose. The omission to do so renders the entire pleadings made by the Applicant in respect of limitation otiose. It is, therefore, submitted that the present Application under Section 15 of the NGT Act is barred by the law of limitation.*
>
> *17. Section 14 of the NGT Act clearly provides that no Application for adjudication of dispute under the said section would be entertained unless it is made within a period of 6 months from the date when the cause of action arose. It is submitted that the Applicant in the present Application has raised challenges, inter alia, in respect of construction activities being carried out by the Respondent since at least 2009 and Environmental Clearances in respect of which have been granted in the year 2009 and subsequently revised in the year 2006. The cause of action therefore, for these events are much prior to the period of 6 months prescribed by the NGT Act for filing any Application under Section 14.*
>
> *19. Even the liberty granted in the order dismissing the earlier Appeal cum application would not save the period of limitation since the Applicant has waited for a period for over six months since the time the said order dated 1st October, 2014 was passed by this Hon'ble Tribunal.*
>
> *54. In 2013, the Applicant herein had filed a composite Appeal cum Application under Section 18 read with Sections*

14, 16 and 17 of the NGT Act, 2010. In the said Application the Applicant had raised various challenges to the construction being carried out by this Respondent including inter alia on the grounds of : (i) absence of green belt as per the Environment Clearance, (ii) Revised Environment Clearance being granted by the Respondent No. 3 without referring the matter to SEIAA, (iii) Environment Clearance was granted without following the procedure under the 2006 EIA Notification including by not framing terms of reference, (iv) Alleged illegality committed by the Respondent Nos. 8 and 9 in respect of the construction of basement, (v) No permission being taken for extraction of ground water from the Respondent Nos. 6 and 7.

55. The said appeal cum application was dismissed by this Tribunal vide its order dated 1st October 2014 at which time the Tribunal held that plural applications for different reliefs are not maintainable and also refused to condone the delay of the Applicant of filing the said Appeal cum Application.

56. The said order was challenged by the Applicant before the Supreme Court in Civil Appeal Nos. 4450 and 4451 of 2015. The said Appeals were however dismissed by the Hon'ble Supreme Court by its order dated 1st July 2015.

57. In the entire period between October 2014 to July 2015, the, Applicant did not take any steps or make any complaints in respect of the construction activities being carried out by the Respondent Nos. 8, 9 and 10 on the said property. It was only after the civil appeals were dismissed by the Hon'ble Supreme Court that the Applicant, as a means of inventing a cause of action for filing the present application, chose to address complaint letters to various authorities in respect of project on grounds identical to the grounds taken by him in the application and also added certain superfluous grounds to somehow create a new cause of action for filing the present application.

71. In any event and without prejudice to the aforesaid, it is submitted that the purported requirement of a 30 meter buffer zone was, as per the Applicant's own admission in existence since 2005. Admittedly, the first Environmental Clearance to the project was granted on 12th July, 2009. Construction has commenced prior to 2009. The said allegation is therefore barred by the law of limitation having regard to the provisions of the NGT Act, 2010. Thus, the alleged requirement of a buffer zone is relatable to the first permission granted in 2009 and not to the subsequent amendment in 2013. This issue as such cannot be a ground, for challenge to the amendment of the Environmental Clearance or any Application under Sections 14 and 15 of the NGT Act."

14. Sufficient cause or reasonable cause was dealt in the matter of *M.A. No. 247/2012* in *Appeal No. 76/2012, Nikunj Developers vs.*

State of Maharashtra & Ors. decided on 14.03.2013 which was reported in *MANU (GT) 0030/283*, it was held as follows:

> *"5. The stand taken by the non-applicant is that there is no cause much less a 'sufficient cause' shown by the applicant, for condonation of delay. There is complete inaction and negligence on part of the applicant, right from 2nd of June, 2012, till 20th September, 2012, the date on which the appeal was filed. Even if it is taken to be correct that the brother of applicant no. 3 was ill and he died as a result of his illness on 13th June, 2013, even then there is no reason stated post 13th June, 2012 as to why the appeal was not filed till 20th September, 2012. In the alternative, the submission is that even if it is assumed that there is sufficient cause shown by the applicant for condonation of delay, still this Tribunal shall have no jurisdiction to condone the delay because the appeal has been filed beyond the prescribed period of 90 days, which includes even the extended period of 60 days. Thus, in their submission, the appeal filed by the appellant is liable to be dismissed, being barred by limitation.*
>
> *6. Now, firstly, we have to examine the interpretation of the expression 'sufficient cause', as it emerges from the various judgments of the courts, particularly the Supreme Court of India. The use of expression 'sufficient cause' in Section 16 of the NGT Act is not a legislative innovation but is a derivative reference from other enactments. Section 5 of the Limitation Act, 1963, also uses the same expression 'sufficient cause'. An applicant praying for condonation of delay in instituting the appeal under Section 16 of the NGT Act is required to show a sufficient cause, if the appeal is filed beyond a period beyond 30 days from the date of communication of the Environmental Clearance order as prescribed.*
>
> *7. The expression 'sufficient cause' is not to be construed in isolation. The attendant circumstances and various other factors have to be taken into consideration by the Courts/Tribunals while dealing with the question of condonation of delay. Thus, it is important at this stage to deal with the meaning and connotation, that this expression has received in various judicial pronouncements, in some elucidation.*
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> *8. The term 'sufficient cause' has to be considered keeping in view the facts and circumstances of each case. The expression 'sufficient cause' implied by the legislature is adequately elastic to enable the Courts to apply the law in a meaningful manner, which subserves the ends of justice - that being the life-purpose for the existence of the institution of Courts. This view was expressed by Supreme Court in Collector, Land Acquisition, Anantnag and Anr. v. Katiji and Ors. AIR 1987 SC 1335.*
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> *9. The term 'sufficient cause' must receive a liberal meaning and has to be incorporated so as to introduce the concept of*

reasonableness, as it is understood in its general connotation. Certainly, the Limitation Act is a substantive law and its provisions have to be adhered to in a manner that once, a valuable right accrues in favour of one party, as a result of unexplained sufficient or reasonable cause and directly as a result of negligence, default or inaction of the other party, such a right cannot be taken away lightly and in a routine manner.

10. The Courts have also taken the view that the expression 'sufficient cause' be considered with pragmatism in a justice oriented approach rather than the technical detection of sufficient cause for every day's delay.

11. 'Sufficient cause' must necessarily be tested on the touchstone of doctrine of reasonableness. It may not be a very appropriate approach to apply principles of limitation with absolute rigidity resulting in irreparable injustice to the parties; a balanced approach may better serve the ends of justice.

12. In P.K. Ramachandran vs. State of Kerala and Anr., J.T. 1997 (8) 189, the Supreme Court took the view that the law of limitation may harshly affect a particular party but it has to be applied with all its rigour when the statute so prescribes and the Courts have no power to extend the period of limitation on equitable grounds.

13. However, the Courts have also taken the view that the approach of the Courts must be to do even-handed justice on merits in preference to the approach which scuttles the decision on merits, thus, showing greater inclination to accept a liberal approach.

14. The equitable principles have also been applied to the law of limitation but with great circumspection. The clear language of law will always prevail over the equitable principles as equity cannot defeat the law. At this stage we may notice some of the principles which have been reiterated with approval by the Supreme Court in the case of Rajghunath Rai Bareja and another vs Punjab National Bank and Ors. (2007) 2 SCC 230 where the Court held as under:

"30. Thus, in Madamanchi Ramappa and Anr. v. Muthaluru Bojjappa [1964]2SCR673 this Court observed:

"What is administered in Courts is justice according to law, and considerations of fair play and equity however important they may be, must yield to clear and express provisions of the law".

31. In Council for Indian School Certificate Examination v. Isha Mittal and Anr. : (2000)7SCC521 this Court observed:

"Considerations of equity cannot prevail and do not permit a High Court to pass an order contrary to the law."

32. Similarly in P.M. Latha and Anr. v. State of Kerala and Ors. [2003]2SCR653 this Court observed:

"Equity and law are twin brothers and law should be applied and interpreted equitably, but equity cannot override written or settled law"

33. In Laxminarayan R. Bhattad and Ors. v. State of Maharashtra and Anr. [2003]3SCR409 this Court observed:

It is now well settled that when there is a conflict between law and equity the former shall prevail....

34. Similarly in Nasiruddin and Ors. v. Sita Ram Agarwal [2003]1SCR634 this Court observed:

In a case where the statutory provision is plain and unambiguous, the court shall not interpret the same in a different manner, only because of harsh consequences arising therefrom....

35. Similarly in E. Palanisamy v. Palanisamy (Dead) by Lrs. and Ors. AIR2003SC153 this Court observed:

...Equitable considerations have no place where the statute contained express provisions....

36. In India House v. Kishan N. Lalwani [2002]SUPP5SCR522 this Court held that:

...The period of limitation statutorily prescribed has to be strictly adhered to and cannot be relaxed or departed from by equitable considerations....

39. In Hiralal Ratanlal v. STO [1973] 2 SCR 502, this Court observed:

In construing a statutory provision the first and foremost rule of construction is the literary construction. All that the Court has to see at the very outset is what does the provision say. If the provision is unambiguous and if from the provision the legislative intent is clear, the Court need not call into aid the other rules of construction of statutes. The other rules of construction are called into aid only when the legislative intent is not clear.

15. In a more recent judgment, the Supreme Court, in Balwant Singh (Dead) Vs. Jagdish Singh and Ors. (2010) 8 SCC 685, while dealing with the expression 'sufficient cause', elaborately stated the principles of condonation of delay. It also elucidated the approach to be adopted by a Court in such cases and held as under:

"It must be kept in mind that whenever a law is enacted by the legislature, it is intended to be enforced in its proper perspective. It is an equally settled principle of law that the provisions of a statute, including every word, have to be given

full effect, keeping the legislative intent in mind, in order to ensure that the projected object is achieved. In other words, no provisions can be treated to have been enacted purposelessly. Furthermore, it is also a well settled canon of interpretative jurisprudence that the Court should not give such an interpretation to provisions which would render the provision ineffective or odious. Once the legislature has enacted the provisions of Order 22, with particular reference to Rule 9, and the provisions of the Limitation Act are applied to the entertainment of such an application, all these provisions have to be given their true and correct meaning and must be applied wherever called for. If we accept the contention of the Learned Counsel appearing for the applicant that the Court should take a very liberal approach and interpret these provisions (Order 22 Rule 9 of the CPC and Section 5 of the Limitation Act) in such a manner and so liberally, irrespective of the period of delay, it would amount to practically rendering all these provisions redundant and inoperative. Such approach or interpretation would hardly be permissible in law. Liberal construction of the expression 'sufficient cause' is intended to advance substantial justice which itself presupposes no negligence or inaction on the part of the applicant, to whom want of bona fide is imputable. There can be instances where the Court should condone the delay; equally there would be cases where the Court must exercise its discretion against the applicant for want of any of these ingredients or where it does not reflect 'sufficient cause' as understood in law. [Advanced Law Lexicon, P. Ramanatha Aiyar, 2nd Edition, 1997] The expression 'sufficient cause' implies the presence of legal and adequate reasons. The word 'sufficient' means adequate enough, as much as may be necessary to answer the purpose intended. It embraces no more than that which provides a plentitude which, when done, suffices to accomplish the purpose intended in the light of existing circumstances and when viewed from the reasonable standard of practical and cautious men. The sufficient cause should be such as it would persuade the Court, in exercise of its judicial discretion, to treat the delay as an excusable one. These provisions give the Courts enough power and discretion to apply a law in a meaningful manner, while assuring that the purpose of enacting such a law does not stand frustrated. We find it unnecessary to discuss the instances which would fall under either of these classes of cases. The party should show that besides acting bonafide, it had taken all possible steps within its power and control and had approached the Court without any unnecessary delay. The test is whether or not a cause is sufficient to see if it could have been avoided by the party by the exercise of due care and attention."

18. .....According to the non-applicant, the Tribunal will have no jurisdiction to condone the delay in view of the language of Section 16 of the NGT Act, which reads as under:

"16. Tribunal to have appellate jurisdiction - Any person aggrieved by,-

********* *h. an order made, on or after the commencement of the National Green Tribunal Act, 2010, granting environmental clearance in the area in which any industries, operations or processes or class of industries, operations and processes shall not be carried out or shall be carried out subject to certain safeguards under the Environment (Protection) Act, 1986;*

********* *may, within a period of thirty days from the date on which the order or decision or direction or determination is communicated to him, prefer an appeal to the Tribunal:*

Provided that the Tribunal may, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal within the said period, allow it to be filed under this section within a further period not exceeding sixty days."

19. From language of the above provision it is clear that the Tribunal loses jurisdiction to condone the delay if the delay is of more than 90 days. Every appeal has to be filed within 30 days from the date of communication of the order. That is, what an applicant is required to ensure before the appeal is heard on merits. However, the Tribunal has been vested with the jurisdiction to entertain the appeal which is filed after 30 days from the date of communication of an order. This power to condone the delay has a clear inbuilt limitation as it ceases to exist if the appeal is filed in excess of 60 days, beyond the prescribed period of limitation of 30 days from the date of communication of such order. To put it simply, once the period of 90 days lapses from the date of communication of the order, the Tribunal has no jurisdiction to condone the delay. The language of the provision is clear and explicit. It admits of no ambiguity and the legislative intent that Tribunal should not and cannot condone the delay in excess of 90 days in all, is clear from the plain language of the provision.

20. As stated in the cases Hiralal Ratan Lal and India Houses (supra) the period of limitation statutorily prescribed, has to be strictly adhered to and cannot be relaxed and or departed from, on equitable consideration. Further, in construing a statutory provision, the first and the foremost rule of construction is that of literary construction. We do not see any reason to expand the scope of the provision and interpret the proviso to Section 16 in the manner that Tribunal can be vested with the power of condoning the delay beyond 90 days. Such interpretation would be contrary to the specific language of the Section and would defeat the very legislative intent and object behind this provision.

21. This controversy need not detain us any further as it is no more res integra and stands answered by the judgment of the Supreme Court in the case of Chhattisgarh State Electricity Board Vs. Central Electricity Regulatory Commission and others (2010) 5 SCC 23 where the court held as under:

"29. Section 34(3) of the Arbitration and Conciliation Act, 1996, which is substantially similar to Section 125 of the Electricity Act came to be interpreted in Union of India v. Popular Construction Company : (2001) 8 SCC 470. The precise question considered in that case was whether the provisions of Section 5 of the Limitation Act are applicable to an application challenging an award under Section 34 of the Arbitration and Conciliation Act, 1996. The two- Judge Bench referred to earlier decisions in Mangu Ram v. Municipal Corporation of Delhi: (1976) 1 SCC 392, Vidyacharan Shukla v. Khubchand Baghel AIR 1964 SC 1099, Hukumdev Narain Yadav v. L.N. Mishra (supra), Patel Naranbhai Marghabhai v. Dhulabhai Galbabhai : (1992) 4 SCC 264 and held:

12. As far as the language of Section 34 of the 1996 Act is concerned, the crucial words are "but not thereafter" used in the proviso to Sub- section (3). In our opinion, this phrase would amount to an express exclusion within the meaning of Section 29(2) of the Limitation Act, and would therefore bar the application of Section 5 of that Act. Parliament did not need to go further. To hold that the court could entertain an application to set aside the award beyond the extended period under the proviso, would render the phrase "but not thereafter" wholly otiose. No principle of interpretation would justify such a result.

16. Furthermore, Section 34(1) itself provides that recourse to a court against an arbitral award may be made only by an application for setting aside such award "in accordance with" Sub-section (2) and Sub-section (3). Sub-section (2) relates to grounds for setting aside an award and is not relevant for our purposes. But an application filed beyond the period mentioned in Section 34, Sub-section (3) would not be an application "in accordance with" that Sub-section. Consequently by virtue of Section 34(1), recourse to the court against an arbitral award cannot be made beyond the period prescribed. The importance of the period fixed under Section 34 is emphasised by the provisions of Section 36 which provide that "where the time for making an application to set aside the arbitral award under Section 34 has expired ... the award shall be enforced under the Code of Civil Procedure, 1908 in the same manner as if it were a decree of the court".

This is a significant departure from the provisions of the Arbitration Act, 1940. Under the 1940 Act, after the time to set aside the award expired, the court was required to "proceed to pronounce judgment according to the award, and upon the judgment so pronounced a decree shall follow" (Section 17). Now the consequence of the time expiring under Section 34 of the 1996 Act is that the award becomes immediately enforceable without any further act of the court. If there were

any residual doubt on the interpretation of the language used in Section 34, the scheme of the 1996 Act would resolve the issue in favour of curtailment of the court's powers by the exclusion of the operation of Section 5 of the Limitation Act.

30. In Singh Enterprises v. C.C.E., Jamshedpur and Ors. (supra), the Court interpreted Section 35 of Central Excise Act, 1944, which is pari materia to Section 125 of the Electricity Act and observed:

8. The Commissioner of Central Excise (Appeals) as also the Tribunal being creatures of statute are vested with jurisdiction to condone the delay beyond the permissible period provided under the statute. The period up to which the prayer for condonation can be accepted is statutorily provided. It was submitted that the logic of Section 5 of the Limitation Act, 1963 (in short "the Limitation Act") can be availed for condonation of delay. The first proviso to Section 35 makes the position clear that the appeal has to be preferred within three months from the date of communication to him of the decision or order. However, if the Commissioner is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of 60 days, he can allow it to be presented within a further period of 30 days. In other words, this clearly shows that the appeal has to be filed within 60 days but in terms of the proviso further 30 days' time can be granted by the appellate authority to entertain the appeal. The proviso to Sub-section (1) of Section 35 makes the position crystal clear that the appellate authority has no power to allow the appeal to be presented beyond the period of 30 days. The language used makes the position clear that the legislature intended the appellate authority to entertain the appeal by condoning delay only up to 30 days after the expiry of 60 days which is the normal period for preferring appeal. Therefore, there is complete exclusion of Section 5 of the Limitation Act. The Commissioner and the High Court were therefore justified in holding that there was no power to condone the delay after the expiry of 30 days' period.

22. The same view was reiterated in Commissioner of Customs, Central Excise v. Punjab Fibres Ltd. : (2008) 3 SCC 73.

"31. In Commissioner of Customs and Central Excise v. Hongo India Private Limited and Anr. (2009) 5 SCC 791, a three-Judge Bench considered the scheme of the Central Excise Act, 1944 and held that High Court has no power to condone delay beyond the period specified in Section 35H thereof. The argument that Section 5 of the Limitation Act can be invoked for condonation of delay was rejected by the Court and observed:

"30. In the earlier part of our order, we have adverted to Chapter VI-A of the Act which provides for appeals and revisions to various authorities. Though Parliament has specifically provided an additional period of 30 days in the case

of appeal to the Commissioner, it is silent about the number of days if there is sufficient cause in the case of an appeal to the Appellate Tribunal. Also an additional period of 90 days in the case of revision by the Central Government has been provided. However, in the case of an appeal to the High Court under Section 35G and reference application to the High Court under Section 35H, Parliament has provided only 180 days and no further period for filing an appeal and making reference to the High Court is mentioned in the Act.

32. As pointed out earlier, the language used in Sections 35, 35B, 35EE, 35G and 35H makes the position clear that an appeal and reference to the High Court should be made within 180 days only from the date of communication of the decision or order. In other words, the language used in other provisions makes the position clear that the legislature intended the appellate authority to entertain the appeal by condoning the delay only up to 30 days after expiry of 60 days which is the preliminary limitation period for preferring an appeal. In the absence of any clause condoning the delay by showing sufficient cause after the prescribed period, there is complete exclusion of Section 5 of the Limitation Act. The High Court was, therefore, justified in holding that there was no power to condone the delay after expiry of the prescribed period of 180 days.

xxxxx xxxxx xxxxx

35. It was contended before us that the words "expressly excluded" would mean that there must be an express reference made in the special or local law to the specific provisions of the Limitation Act of which the operation is to be excluded. In this regard, we have to see the scheme of the special law which here in this case is the Central Excise Act. The nature of the remedy provided therein is such that the legislature intended it to be a complete code by itself which alone should govern the several matters provided by it. If, on an examination of the relevant provisions, it is clear that the provisions of the Limitation Act are necessarily excluded, then the benefits conferred therein cannot be called in aid to supplement the provisions of the Act. In our considered view, that even in a case where the special law does not exclude the provisions of Sections 4 to 24 of the Limitation Act by an express reference, it would nonetheless be open to the court to examine whether and to what extent, the nature of those provisions or the nature of the subject-matter and scheme of the special law exclude their operation. In other words, the applicability of the provisions of the Limitation Act, therefore, is to be judged not from the terms of the Limitation Act but by the provisions of

the Central Excise Act relating to filing of reference application to the High Court.

32. In view of the above discussion, we hold that Section 5 of the Limitation Act cannot be invoked by this Court for entertaining an appeal filed against the decision or order of the Tribunal beyond the period of 120 days specified in Section 125 of the Electricity Act and its proviso. Any interpretation of Section 125 of the Electricity Act which may attract applicability of Section 5 of the Limitation Act read with Section 29(2) thereof will defeat the object of the legislation, namely, to provide special limitation for filing an appeal against the decision or order of the Tribunal and proviso to Section 125 will become nugatory."

23. Section 34 of the Arbitration and Conciliation Act, 1996 uses the expression 'not thereafter' while the provision under our consideration uses the terms 'not exceeding'. Both these expressions use negative language. The intention is to divest the Courts/Tribunals from power to condone the delay beyond the prescribed period of limitation. Once such negative language is used, the application of provisions of Section 5 of the Limitation Act or such analogous provisions would not be applicable.

24. The use of negative words has an inbuilt element of 'mandatory'. The intent of legislation would be to necessarily implement those provisions as stated.

25. Introduction or alteration of words which would convert the mandatory into directory may not be permissible. Affirmative words stand at a weaker footing than negative words for reading the provisions as 'mandatory'. It is possible that in some provision, the use of affirmative words may also be so limiting as to imply a negative. Once negative expression is evident upon specific or necessary implication, such provisions must be construed as mandatory. The legislative command must take precedence over equitable principle. The language of Section 16 of the NGT Act does not admit of any ambiguity, rather it is explicitly clear that the framers of law did not desire to vest the Tribunal with powers, specific or discretionary, of condoning the delay in excess of total period of 90 days. At this stage, we may also refer to Principle of Statutory Interpretation by Justice G.P. Singh, 13th Edition, where it is stated as under:

"(c) Use of negative words another mode of showing a clear intention that the provision enacted is mandatory, is by clothing the command in a negative form. As stated by CRAWFORD: "Prohibitive or negative words can rarely, if ever, be directory. And this is so even though the statute provides no penalty for disobedience." As observed by SUBBARAO, J.: "Negative words are clearly prohibitory and are ordinarily used as a legislative device to make a statute imperative". Section 80 and Section

87-B of the Code of Civil Procedure, 1908; section 77 of the Railways Act, 1890; Section 15 of the Bombay Rent Act, 1947; section 213 of the Succession Act, 1925; section 5-A of the Prevention of Corruption Act, 1947; section 7 of the Stamp Act, 1899; section 108 of the Companies Act, 1965; section 20(1) of the Prevention of Food Adulteration Act, 1954; section 55 of the Wild Life Protection Act, 1972 (as amended in 1956); section 10A of Medical Council Act, 1965 (as amended in 1993) and similar other provisions have therefore, been construed as mandatory. A provision requiring 'not less than three months' notice' is also for the same reason mandatory.

But the principle is not without exception. Section 256 of the Government of India, 1953, was construed by the Federal Court as directory though worded in the negative form. Directions related to solemnization of marriages though using negative words have been construed as directory in cases where the enactments in question did not provide for the consequence that the marriage in breach of those directions shall be invalid. Considerations of general inconvenience, which would have resulted in holding these enactments mandatory, appear to have outweighed the effect of the negative words in reaching the conclusion that they were in their true meaning merely director. An interesting example, where negative words have been held to be directory, is furnished in the construction of section 25-F of the Industrial Dispute Act, 1947, where compliance of clause (c) has been held to be directory; although compliance of clauses (a) and (b) which are connected by the same negative words is understood as mandatory. These cases illustrate that the rule, that negative words are usually mandatory, is like any other rule subordinate to the context, and the object intended to be achieved by the particular requirement."

26. The provision of Section 16 of the NGT Act are somewhat similar to Section 34 of Arbitration and Conciliation Act, 1996. Thus, adopting an analogous reasoning, as was adopted in Chhattisgarh State Electricity Board (supra), we would have no hesitation in coming to the conclusion that we have no jurisdiction to condone the delay when the same is in excess of 90 days from the date of communication of the order to any person aggrieved.

27. Thus, the application must fail on this ground alone. We are of the considered view that the Tribunal has no jurisdiction to condone the delay of 19 days in filing the present appeal, the same being in excess of 90 days computed from the admitted date of communication of order, that is 2nd June, 2012."

Limitation

15. Learned counsel for the applicant has submitted that the application is in compliance of the order of NGT Passed in the Appeal and in reply thereof, the learned counsel for the respondent had submitted that the above order passed by the Tribunal was subject to law of limitation. He has relied on *2013 SCC Online NGT 84, Aradhana Bhargav Vs. MoEF&CC:*

> *"9. Pointing to Section 14(3) and 15(3) of the NGT Act, 2010, the Learned Counsel would submit that an analysis of the statute providing the period of limitation, it would be quite clear that the application filed by the applicant was barred by time. The close reading of the above provisions would make it abundantly clear that there is a bar, if it is not within limitation and the special period of limitation for application falling under Section 14(1) is a period of six months which is further extendable for a period not exceeding 60 days and also the starting point for the period of limitation is on the date of which such cause of action first arose. It is well known that the expression 'cause of action' means all such bundles of facts which a suitor is required to prove in court of law in order to succeed in getting a particular relief. In that view of the matter, so long as the applicants do not prove that environmental approval dated 21.04.1986 and the subsequent communication dated 30.11.2005 are not valid, they cannot maintain the application. Therefore, the cause of action is strictly relatable to the existence of these two letters. The use of the words 'first arose' in the said provisions are of immense significance. These words, not only are the indicators of the unambiguous legislative intent and scheme expressed in plain words, but statutorily fix the starting point of the period of limitation. These words, no doubt, relate to the earliest point of time of inception of the cause of action. The plain and unambiguous words of statute scheme and intention should be given effect to. This is further re-enforced by the use of the words "from the date" which again would imply that there is a definite occurrence of the cause of action. It is pertinent to point that similar language is used for the Section 15(3) of the Act also. The contention put forth by the applicant side that there is a continuing cause of action is thoroughly misplaced and untenable in law. The applicants are well aware that the application in the present form is not within the period of limitation. In respect of the aspect of limitation, the applicants have tried to explain the same by averring that the project proponent had illegally commenced the construction on 04.11.2012 without valid prior environmental clearance and thus, was continuously violating the provisions of the Environmental (Protection) Act, 1986 and other Acts enumerated under Schedule-I of the NGT Act and since, the construction and other related activities were going on, the cause of action was continuing and the application is well within limitation. For the purpose of reckoning the limitation of Section 1493) and 15(3) of the Act, the averments made by the applicant*

as above were wholly irrelevant and of no consequence since the concept of continuing cause of action is foreign to the expressed provisions of the statute of limitation engrafted under Section 14(3) and 15(3) of the Act. The NGT Act is a special enactment and hence, there is statutory prescription of the special period of limitation under Section 14(3) and 15(3) of the Act which will certainly exclude the general law of limitation. The assumption that the project proponent has illegally commenced the construction on 04.11.2012 was factually incorrect and misleading. The plain and simple language of Section 14(3) i.e. unless it is made within the period of six months from the date on which the cause of action/dispute first arose negates the principles of continuing cause of action. If the plea of continuing cause of action is accepted within the limitation, the statute would be eschewed of the important and vital words namely "first arose". On the facts of the present case, Section 22 of the Limitation Act will have no effect. Though, the same being a part of the general law of limitation since it would stand excluded by the special provision of limitation. In the special law, under Section 14(3) and 15(3) of the Act. The NGT Act is a special law enacted for the effective and expeditious disposal of cases related of Environment (Protection) Act and conservation of forest and other natural resource. Hence, the law provides the period of limitation which would be have overriding effect over the Limitation Act which is general law. If the plea of the applicants of principles of continuing cause of action for the purpose of brining a dispute under Section 14(1) within the limitation or reliefs under Section 15 (1) within the limitations of 15(3) is to be accepted, then it would lead to the serious, anomalous and undesirable consequences. Apart from that it would be contrary to the"

23. Speaking on the jurisdiction powers and proceedings of the Tribunal, Section 14 of the NGT Act, 2010 reads as follows:

"14. Tribunal to settle disputes. — (1) The Tribunal shall have the jurisdiction over all civil cases where a substantial question relating to environment (including enforcement of any legal right relating to environment), is involved and such question arises out of the implementation of the enactments specified on Schedule- I.

(2) The Tribunal shall hear the disputes arising from the questions referred to in sub-section (1) and settle such disputes and pass order thereon.

(3) No application for adjudication of dispute under this section shall be entertained by the Tribunal unless it is made within a period of six months from the date on which the cause of action for such dispute first arose:

Provided that the Tribunal may, if it is satisfied that the application was prevented by sufficient cause from filing the application within the said period, allow it to be filed within a further period not exceeding sixty days."

27. It would be apt and appropriate to reproduce the following observation made by the Principal Bench, NGT presided over by the Hon'ble Justice Shri Swatanter Kumar, Chairperson,

NGT, New Delhi in Appeal No. 01 of 2013 Ms. Medha Patkar v. Ministry of Environment & Forest, Union of India on the point of limitation:

"The Tribunal must adopt a pragmatic and practical approach that would also be in consonance with the provisions of the Act providing limitation. Firstly, the limitation would never begin to run and no act would determine when such limitation would stop running as any one of the stakeholders may not satisfy or comply with all its obligations prescribed under the Act. To conclude that it is only when all the stakeholders had completed in entirety their respective obligations under the respective provisions, read with the notification of 2006, then alone the period of limitation shall begin to run, would be an interpretation which will frustrate the very object of the Act and would also cause serious prejudice to all concerned. Firstly, the completely frustrates the purpose of prescription of limitation. Secondly, a project proponent who has obtained environmental clearance and thereafter spent crores of rupees on establishment and operation of the project, would be exposed to uncertainty, dander of unnecessary litigation and even the possibility of jeopardizing the interest of his project after years have lapsed. This cannot be the intent of law. The framers of law have enacted the provisions of limitation with a clear intention of specifying the period within which an aggrieved person can invoke the jurisdiction of this Tribunal. It is a settled rule of law that once the law provides for limitation, then it must operate meaningfully and with its rigour. Equally true is that once the period of limitation starts running, then it does not stop. An applicant may be entitled to condonation or exclusion of period of limitation. Discharge of one set of obligations in its entirety by any stakeholder would trigger the period of limitation which then would not stop running and equally cannot be frustrated by mere non-compliance of its obligation to communicate or place the order in public domain by another stakeholder. The purpose of providing a limitation is not only to fix the time within which a party must approach the Tribunal but is also intended to bring finality to the orders passed on one hand and preventing endless litigation on the other. Thus both these purposes can be achieved by a proper interpretation of these provisions. A communication will be complete once the order granting environmental clearance is place in public domain by all the modes referred to by all or any of the stakeholders. The legislature in its wisdom has, under the provisions of the Act or in the notification of 2006, not provided any other indicator or language that could be the precept for the Tribunal to take any other view.""

16. He has further relied on *2016 SCC Online Bom 5613, Windsor Realty Pvt. Ltd. v. Ministry of Environment and Forest*, where it was held as follows:

"26. There are two conflicting interests viz right of citizens to ensure that there is due compliance of the provisions of

Environment (Protection) Act, 1986 and, at the same time Developers and Builders who have already completed the Project are not harassed by the applications being filed after considerable lapse of time. These two conflicting interests will have to be reconciled by laying down proper law in accordance with the provisions of the Act.

34. Section 14(3) of the National Green Tribunal Act, 2010 reads as under:

"14(3) No application for adjudication of dispute under this section shall be entertained by the Tribunal unless it is made within a period of six months from the dae on which the cause of action for such dispute first arose."

35. A bare perusal of the said section clearly discloses that period of limitation is six months from the date on which the cause of action first arose. Prima faice, therefore it cannot be interpreted by any stretch of imagination that it would arose from the date of knowledge of the original applicant of the alleged violation taking place or from the date on which the Environmental Authorities were informed about violation and inaction on their part. There appears to be a lot of confusion in the mind of NGT Bench, Pune on various aspects of continuous cause of action. Perusal of the said Section indicates that the concept of continuous cause of action cannot apply to the complaints which are filed before the NGT because had it been so, the legislature would not have stated that the limitation would be six months from the date on which the cause of action for such dispute first arose. If the interpretation which is sought to be given to the provision by the NGT Bench, Pune in the impugned order is accepted, the complaint could be filed by the aggrieved person at any point of time, claiming that he came to know about the violation after 10 or 20 years. At the same time, if there is any violation of the provisions of the Environment (Protection) Act, 1986, the same have to be addressed and looked into. The only question is by which Authority."

17. He has further relied on *2013 SCC Online NGT 72, Raza Ahmad V. State of Chhattisgarh:*

"26. It would be apt and appropriate to reproduce the following observation made by the Principal Bench, NGT, New Delhi in Appeal No. 01 of 2013 Ms. Medha Patkar v. Ministry of Environment & Forest, Union of India on the point of limitation:

> *"The Tribunal must adopt a pragmatic and practical approach that would also be in consonance with the provisions of the Act providing limitation. Firstly, the limitation would never begin to run and no act would determine when such limitation would stop running as any one of the stakeholders may not satisfy or comply with all its obligations prescribed under the Act. To conclude that it is only when all the stakeholders had completed in entirety their respective obligations under the*

respective provisions, read with the notification of 2006, then alone the period of limitation shall begin to run, would be an interpretation which will frustrate the very object of the Act and would also cause serious prejudice to all concerned. Firstly, the completely frustrates the purpose of prescription of limitation. Secondly, a project proponent who has obtained environmental clearance and thereafter spent crores of rupees on establishment and operation of the project, would be exposed to uncertainty, dander of unnecessary litigation and even the possibility of jeopardizing the interest of his project after years have lapsed. This cannot be the intent of law. The framers of law have enacted the provisions of limitation with a clear intention of specifying the period within which an aggrieved person can invoke the jurisdiction of this Tribunal. It is a settled rule of law that once the law provides for limitation, then it must operate meaningfully and with its rigour. Equally true is that once the period of limitation starts running, then it does not stop. An applicant may be entitled to condonation or exclusion of period of limitation. Discharge of one set of obligations in its entirety by any stakeholder would trigger the period of limitation which then would not stop running and equally cannot be frustrated by mere non-compliance of its obligation to communicate or place the order in public domain by another stakeholder. The purpose of providing a limitation is not only to fix the time within which a party must approach the Tribunal but is also intended to bring finality to the orders passed on one hand and preventing endless litigation on the other. Thus both these purposes can be achieved by a proper interpretation of these provisions. A communication will be complete once the order granting environmental clearance is place in public domain by all the modes referred to by all or any of the stakeholders. The legislature in its wisdom has, under the provisions of the Act or in the notification of 2006, not provided any other indicator or language that could be the precept for the Tribunal to take any other view."

34. It is not that the Tribunal is unmindful of the fact that the subject matter in question related to environment which is of serious concern and the Tribunal is specially constituted to deal with all environment disputes and dismissing the appeal as not maintainable would appear to be unreasonable. But the Tribunal is helpless, being a statutory body, the Tribunal is bound by the language of the statute. Hence, in view of the discussions made above, the Tribunal has no option than to dismiss the appeal not maintainable as barred by time and one outside the jurisdiction of the Tribunal. Hence, the appeal is dismissed accordingly. No order as to cost."

18. In *2015 SSC Online NGT 145 V. Sundar Proprietor Chemicals India Vs. Union of India:*

"*31…..The question 'what is communication' came up for consideration before the Principal Bench of NGT in Save Mon Region Federation and Lobsang Choedar v. Union of India, Manu/GT/0029/2013 and it was held as follows*:

> *"18. The limitation as prescribed under Section 16 of the NGT Act shall commence from the date of order is communicated. As already noticed, communication of the order has to be by putting it in the public domain for the benefit of the public at large. The day the MOEF shall put the complete order of Environmental Clearance on its websidte and when the same can be downloaded without any hindrance or impediments and also put the order on its public notice board, the limitation be reckoned from that date. The limitation may also trigger from the date when the Project Proponent uploads the Environmental Clearance order with its environmental conditions and safeguards upon its website as well as publishes the same in the newspapers as prescribed under Regulation 10 of the Environmental Clearance Regulations, 2006. It is made clear that such obligation of uploading the order on the website by the Project Proponent shall be complete only when it can simultaneously be downloaded without delay and impediments. The limitation could also commence when the Environmental Clearance order is displayed by the local bodies, Panchayats and Municipal Bodies along with the concerned departments of the State Government displaying the same in the manner afore-indicated. Out of the three points from which the limitation could commence and be computed, the earliest in point of time shall be the relevant date and it will have to be determined with reference to the facts of each case. The applicant must be able to download or know from the public notice the factum of the order as well as its content in regard to environmental conditions and safeguards imposed in the order of the Environmental Clearance. Mere knowledge or deemed knowledge of order cannot form the basis for reckoning the period of limitation.*
>
> * * *
>
> *39. Once we examine the provision of Section 16 of the NGT Act in the light of the above principle, it is clear that the provision is neither ambiguous nor indefinite. The expressions used by the legislature are clear and convey the legislative intent. The communication of an order granting the Environmental Clearance has to be made by the MoEF as well as the Project Proponent in adherence to law. The communication would be complete when it is undisputedly put in the public domain by the recognised modes, in accordance with the said provision. The limitation of 30 days would commence from that date. If the appeal is presented beyond the period of 30 days, in that event, it becomes obligatory upon the applicant to show sufficient cause explaining the delay. The delay must be bona fide and not a result of negligence or intentional inaction or mala fide and must not result in the abuse of process of law. Once these ingredients*

are satisfied the Tribunal shall adopt a balanced approach in light of the facts and circumstances of a given case".

36. Trite law it is that the special law of limitation in any given enactment will always exclude the general law of limitation. The NGT Act, 2010, a special enactment specifically provides a period of limitation under section 14(2) and 15(3). The Principal Bench, NGT has already held in Jesurathinam v. MoEF, Union of India reported in 2012 (2) FLT 811 NGT that when a specific provision for limitation is provided under the special statute, the general provisions of the Limitation Act, 1963 are inapplicable. Hence, the Tribunal is afraid whether the theory of continuing cause of action can be made applicable to the present factual position of the case for which the specific period of limitation is available under the NGT Act, 2010.

38. The rule 14 of the NGT, Rules 2011 reads as follows:

"14. Plural remedies.-An application or appeal, as the case may be, shall be based upon a single cause of action and may seek one or more relief provided that they are consequential to one another".

The appellant has sought for reliefs in Clauses A and B as follows:

A) To set aside the EC granted by the 3rd respondent in letter No. SEIAA/TN/F. No. 474/CHN/EC-334/8(a) dated 15.07.2014;

(B) To set aside the Office Memorandum of the MoEF bearing Ref. No. J- 11013/41/2006-IA II(I) dated 12.12.2012 pending disposal of the present appeal.

39. The appellant has also sought for other reliefs in Clauses C to G. The very reading of the rule 14 of the NGT Rules, 2011 would make it abundantly clear that the applicant or the appellant can seek for one or more reliefs provided they are consequential to one another. But, the application or appeal shall be based upon a single cause of action. As could be seen from the relief clauses, the appellant has sought for by seeking to set aside EC granted by the 3rd respondent in letter No. SEIAA /TN /F. No. 474/CHN/EC-334/8(a) dated 15.07.2014 has invoked the appeal jurisdiction under section 16 of the NGT Act, 2010 while claiming the relief by seeking to set aside the Office Memorandum of the MoEF bearing Ref. No. J-11013/41/2006-IA II(I) dated 12.12.2012, he has invoked the original jurisdiction under section 14 of the NGT Act, 2010. The cause of action for the relief clause claimed under Clause A is the EC granted by the 3rd respondent dated 15.07.2014 while the cause of action for Clause B is the issuance of an Office Memorandum of the MoEF dated 12.12.2012. Thus, it would be quite clear that reliefs sought for on two distinct and different causes of action would be repugnant to rule 14 of the NGT Rules, 2011. The words 'consequential' to one another employed in rule 14 of the NGT Rules, 2011 would make the intention of the Legislature explicit that the reliefs sought for by the applicant or appellant can be more than one if they are consequential to one another but

certainly not on two different causes of action. 'Consequential relief should flow directly as a natural sequence from the main and substantive relief and it can even be incidental also. But, it should be wholly connected to the main or the substantive relief and thus should arise from the same cause of action. In the instant case, two different and distinctive reliefs based on two separated causes of action are asked for by the appellant. The submission by the learned counsel for the appellant that the relief was for striking down the 2011 Office Memorandum and setting aside of EC are intrinsically linked is worth to be ignored. In the face of rule 14 of NGT Rules, 2011 as seen above, it would be futile to contend that the rule 14 does not restrict the jurisdiction of cause of action. The Hon'ble Western Zone Bench of the NGT at Pune had an occasion to consider the question of maintainability of the application in a composite form of application-cum-appeal filed in view of the availability of the plural remedies in accordance with rule 14 of NGT Rules, 2011 in Vikas K. Tripathi Mumbai v. The Secretary, MoEF reported in 2014 ALL (I) NGT Reporter (3) (Pune) 95 and has held as follows:

> *"21……. We shall deal his contention in order to set right issue once for all, in as much as it is likely to be raised in many such cases on similar ground. Rule 14 of the NGT (Practices and Procedure) Rules, 2011 reads as follows:*
>
> *"Rule 14. Plural remedies.-An application or appeal, as the case may be, shall be based upon a single cause of action and may seek one or more relief provided that they are consequential to one another".*
>
> *22. Perusal of Rule 14, without any prejudicial notions in the mind, will make it amply clear that any Application or Appeal, as the opening words imply are distinct remedies under which the particular relief may be sought on single cause of action. Thus, if properly read the rule provide as follows:*
>
> *i) There may be either single Application or Appeal. In other words, it cannot be a comprehensive or hybrid type of pleadings like Appeal-cum-Application, as captioned by the Appellant-cum-Applicant (Vikas Tripathy) as in the present Application/Appeals.*
>
> *ii) The Appeal or Application, whatsoever it may be must be filed on single cause of action. Thus, it cannot be filed on several causes of action. In other words, an Appeal cannot be filed with combined causes challenging different ECs or orders, nor an Application can be filed challenging different orders or different violations under the different laws.*
>
> *iii) Still, however, choice given to the Appellant/Applicant is to ask for grant of more than one relief in case such reliefs are of consequential character. In other words, if a relief depends upon grant of another relief, then grant of more than one relief is permissible.*
>
> *22. * * **

> *23. We cannot overlook and brush aside main provisions of the NGT Act, which do not provide for any kind of permission to allow filing of two Appeals, one against the time barred EC, coupled with another EC for revised construction plan along with an Application under Sections 14, 15 and 18 of the NGT Act, 2010. In case, Vikas Tripathi is genuinely interested in the cause of environment and feels that the project in question has caused violations of EC conditions/deterioration of the environment of the environment, then he is at liberty to file a separate Application under Section 14(1)(2) read with Sections 15 and 18 of the NGT Act, 2010 if so advised and if it is permissible under law. He cannot, however, club all such Appeals and Applications together and explore to examine whether one cap fits on another".*

40. Applying the principle laid down as above, we have no hesitation to hold that the appellant on two distinct and independent causes of action cannot maintain the present appeal.

41. In the result, the appeal is dismissed as not maintainable on the grounds of limitation and also on joinder of causes of action."

19. Respondent no. 9 – *M/s. Adani Estates Pvt. Ltd.* has raised issue of forum shopping and stated that the application is a gross abuse of process and one of a series of dishonest and malicious attempts made by the applicant, directly and indirectly, to obstruct the development project at village Ambivali, Andheri (West), Mumbai ("Project") undertaken by respondent nos. 8 and 9. The applicant has been forum shopping in an effort to stall the Project with *mala-fide* intentions and ulterior motives. Since he was not successful in his previous attempts, he made another attempt by filing the above application to achieve the same goal. The same allegations substantially, are made over and over again against the respondents, in different forms and with superficial differences, to confuse the judicial authorities into entertaining the applicant's proceedings as new proceedings, which is depicted as follows:

(i) In *Appeal No. 80 of 2013* before this Tribunal, the applicant challenged the amended EC dated 2nd May, 2013 (Amended

EC) issued for the Project on various grounds, including that the procedure specified in the Environment Impact Assessment Notification dated 14th September, 2006 of the Ministry of Environment and Forests, Government of India (MoEF Notification) has not been followed i.e. the State Level Expert Appraisal Committee (SEAC) was by passed by Secretary of State Level Environment Impact Assessment Authority (SEIAA). Terms of Reference was not prepared, height of building disproportionate to width of road was allowed, five basements were constructed instead of two, ground water was extracted without permission and that the authorities were guilty of fraud, collusion and corruption in overlooking the said alleged violations and issuing the Amended EC.

Besides impugning the Amended EC, the applicant also impugned the original EC issued for the project on dated 12th May, 2009 on the basis that SEIAA issued the said environmental clearance without including the alleged stringent condition recommended by SEAC to maintain 30 mtr. Buffer Zone as per Notification dated 12th July, 2005 issued by the Government of Maharashtra under Section 37(2) of the Mumbai Regional and Town Planning Act, 1966 (MRTS Reservation Notification). However, the said allegation regarding Buffer Zone was not included as a ground and no relief was sought for cancelling the original EC as it would have been time barred.

The said appeal was dismissed as barred by limitation by the order dated 1st October, 2014 of this Tribunal.

(ii) In *Original Application No.17 of 2013* before this Tribunal, applicant challenged the alleged violation of law in Construction of basements and ground water extraction for the Project and alleged inaction of SEIAA on a Complaint dated 12th February, 2013 sent by him regarding the said alleged violations.

In the said application also, the applicant impugned Original EC on the same basis as contained in *Appeal No. 80 of 2013*. In the said application also, the allegation regarding Buffer Zone was not included as a Ground and no relief was sought in respect thereof.

By the aforesaid order dated 1st October, 2014 of the Tribunal, the said application was also dismissed on the ground that it contravened the bar on Plurality of Remedies in Rule 14 of the NGT (Practice and Procedure) Rules, 2011.

(iii) Civil Appeals Nos. 4450-4451 of 2015 was filed before the Hon'ble Supreme Court of India for challenging the order dated 1st October, 2014 of this Tribunal passed in the aforesaid *Appeal No. 80 of 2013*. By an order dated 1st July, 2015 passed by the Hon'ble Supreme Court of India, the said Civil Appeals were dismissed.

(iv) *Writ Petition No.1020 of 2014* before the Hon'ble Bombay High Court. The petitioner challenged the grant of permission for development of the project on the basis that it had not enforced the requirement of the 30 meter buffer zone. In said Writ Petition, although the petitioner one Mr. Ramkumar Chaubey, the Advocate for the Petitioner was the same as

that of the applicant in the present application and the appellant/applicant in the aforesaid Appeal No. 80 of 2013 and *Original Application No. 17 of 2013*, thereby showing a nexus between the said parties. This respondent (being respondent no.10 in the said Writ Petition) filed an affidavit in reply dated 23rd February, 2016 opposing admission of the said Writ Petition and grant of interim/ad-interim reliefs therein. Thereafter, on the application of the petitioner to withdraw the said petition with liberty to take out alternative appropriate remedy, an order dated 1st March, 2016 was passed by which the petitioner was permitted to withdraw the said *Writ Petition No. 1012 of 2014* as prayed and the said Writ Petition was disposed of with no order as to costs. The liberty sought by the petitioner to take out alternative appropriate remedy was not granted to the petitioner.

(v) *Suit No. 619 of 2014* before the Court filed by Mr. Ramkumar Chaubey against Chaubey against *inter-alia* respondent nos. 8, 9 and 10 **(therein being Defendant Nos.4, 41 and 42)** wherein, *inter-alia*, the plaintiffs have prayed for a declaration that the plaintiffs are entitled and owners of 1/7th undivided share and interest in the property being the land comprised in the project and for an order directing the said **Defendant Nos.40, 41 and 42** to hand over peaceful possession of 1/7th share in the Suit Property and for interim reliefs by way of appointment of court receiver and temporary injunction against the defendants dealing with the said property.

After filing of this application, the aforenamed Mr. Ramkumar Chaubey, filed another *Writ Petition No. 1667 of 2016* in the Hon'ble High Court wherein he made the same false allegations and sought the same reliefs and prayers in substance as in his previous Petition. Respondent nos. 8, 9 and 10 of this application, were also respondents in the said *Writ Petition No. 1667 of 2016*. The said Writ Petition was opposed on the preliminary ground that the reliefs claimed in the petition and the parties are the same as in the previous Writ Petition, and in view of the withdrawal of the previous *Writ Petition No. 1012 of 2014*, *Writ Petition No. 1667 of 2016* was not maintainable. By an order dated 25th August 2016, recorded a finding that the subject-matter and reliefs claimed in both the said Writ Petitions were the same and dismissed.

20. It is argued that it is called forum hunting and it is intended to continue till the appellant does not achieve a desired goal. The platform of the Tribunal or the Courts cannot be made a platform to compel the opposite party to pass a desired order. The matter cannot be agitated and to be continued till infinity and it should come at rest. The Hon'ble Supreme Court in *Dr. Buddhi Kota Subbarao Vs. K Parasaran & Ors., AIR 1996 SC 2687*, the Hon'ble Supreme Court has observed as under:-

> *"No litigant has a right to unlimited drought on the Court time and public money in order to get his affairs settled in the manner he wishes. However, access to justice should not be misused as a licence to file misconceived and frivolous petitions."*

Similar view has been reiterated by the Supreme Court in K.K. Modi Vs. K.N. Modi & Ors., (1998) 3 SCC 573.

In Tamil Nadu Electricity Board & Anr. Vs. N. Raju Reddiar &

Anr. AIR 1997 SC 1005 the Hon'ble Supreme Court held that filing successive misconceived and frivolous applications for clarification, modification or for seeking a review of the order interferes with the purity of the administration of law and salutary and healthy practice. Such a litigant must be dealt with a very heavy hand.

In Sabia Khan & Ors. Vs. State of U.P. & Ors., (1999) 1 SCC 271, the Hon'ble Apex Court held that filing totally misconceived petition amounts to abuse of the process of the Court and such litigant is not required to be dealt with lightly.

In Abdul Rahman Vs. Prasoni Bai & Anr., (2003) 1 SCC 488, the Hon'ble Supreme Court held that wherever the Court comes to the conclusion that the process of the Court is being abused, the Court would be justified in refusing to proceed further and refuse the party from pursuing the remedy in law."

"It is well established rule of interpretation of a statute by reference to the exposition it has received from contemporary authority. However, the Apex Court added the words of caution that such a rule must give way where the language of the statute is plain and unambiguous. Similarly, in Collector of Central Excise, Bombay-I & Anr. Vs. M/s. Parle Export (P) Ltd., AIR 1980 SC 644, the Hon'ble Supreme Court observed that the words used in the provision should be understood in the same way in which they have been understood in ordinary parlance in the area in which the law is in force or by the people who ordinarily deal with them. In Indian Metals and Ferro Alloys Ltd., Cuttack Vs. The Collector of Central Excise, Bhubaneshwar, AIR 1991 SC 1028, the Hon'ble Supreme Court has applied the same rule of interpretation by holding that "contemporanea expositio by the administrative authority is a very useful and relevant guide to the interpretation of the expression used in a statutory instrument." Same view has been taken by the Hon'ble Supreme Court in State of Madhya Pradesh Vs. G.S. Daal and Flour Mills (Supra); and Y.P. Chawla & Ors. Vs. M.P. Tiwari and Anr., AIR 1992 SC 1360. In N. Suresh Nathan & Ors. Vs. Union of India & Ors, 1992 (Suppl) 1 SCC 584; and M.B. Joshi & Ors. Vs. Satish Kumar Pandey & Ors., 1993 (Suppl.) 2 SCC 419, the Apex Court observed that construction in consonance with long-standing practice prevailing in the concerned department is to be preferred."

21. In *M/s. J.K. Cotton Spinning & Weaving Mills Ltd. & Anr. Vs. Union of India & Ors., AIR 1988 SC 191*, it has been held that the maxim is applicable in construing ancient statute but not to interpret Acts which are comparatively modern and an interpretation should be

given to the words used in context of the new facts and situation, if the words are capable of comprehending them. Similar view had been taken by the Apex Court in *Senior Electric Inspector & Ors. Vs. Laxminarayan Chopra & Anr., AIR 1962 SC 159*.

22. In *Desh Bandhu Gupta & Co. & Ors Vs. Delhi Stock Exchange Association Ltd., AIR 1979 SC 1049*, the Apex Court observed that the principle of contemporenea expositio, i.e. interpreting a document by reference to the exposition it has received from Competent Authority can be invoked though the same will not always be decisive of the question of construction. The administrative construction, i.e. the contemporaneous construction placed by administrative or executive officers responsible for execution of the Act/Rules etc. generally should be clearly wrong before it is over-turned. Such a construction commonly referred to as practical construction although not controlling, is nevertheless entitled to considerable weight and is highly persuasive. However, it may be disregarded for cogent reasons. In a clear case of error the Court should, without hesitation refuse to follow such construction for the reason that "wrong practice does not make the law." (Vide *Municipal Corporation for City of Pune & Anr. Vs. Bharat Forge Co. Ltd. & Ors., AIR 1996 SC 2856*). In *D. Stephen Joseph Vs. Union of India & Ors., (1997) 4 SCC 753*, the Hon'ble Supreme Court has held that "past practice should not be upset provided such practice conforms to the rules" but must be ignored if it is found to be de hors the rules.

23. However, in *Laxminarayan R. Bhattad & Ors. Vs. State of Maharashtra & Anr., AIR 2003 SC 3502*, the Apex Court held that

"the manner in which a statutory authority had understood the application of a statute would not confer any legal right upon a party unless the same finds favour with the Court of law dealing with the matter".

> *Therefore, "contemporanea exposito" by the State instrumentality is very useful and relevant for providing guidance to interpretation of expression used in the Rules. The administrative construction placed by the executive officers, responsible for execution of rules should be accepted and does not warrant over-turning unless found not in conformity of the Rules."*
>
> *"When a person approaches a Court of Equity in exercise of its extraordinary jurisdiction under Article 226/227 of the Constitution, he should approach the Court not only with clean hands but also with clean mind, clean heart and clean objective. (Vide The Ramjas Foundation & Ors. Vs. Union of India & Ors., AIR 1993 SC 852; K.P. Srinivas Vs. R.M. Premchand & Ors., (1994) 6 SCC 620). Thus, who seeks equity must do equity. The legal maxim "Jure Naturae Aequum Est Neminem cum Alterius Detrimento Et Injuria Fieri Locupletiorem", means that it is a law of nature that one should not be enriched by the loss or injury to another."*

24. In *Nooruddin Vs. (Dr.) K.L. Anand (1995) 1 SCC 242*, the Hon'ble Supreme Court observed as under:

> *".....Equally, the judicial process should never become an instrument of appreciation or abuse or a means in the process of the Court to subvert justice."-*
>
> *Similarly, in Ramniklal N. Bhutta & Anr. Vs. State of Maharashtra & Ors., AIR 1997 SC 1236, the Hon'ble Apex Court observed as under:-*
>
> > *"The power under Art. 226 is discretionary. It will be exercised only in furtherance of justice and not merely on the making out of a legal point..... the interest of justice and public interest coalesce. They are very often one and the same. ..... The Courts have to weight the public interest vis-à-vis the private interest while exercising the power under Art. 226..... indeed any of their discretionary powers. (Emphasis added)"*

In Dr. Buddhi Kota Subbarao Vs. K Parasaran & Ors., AIR 1996 SC 2687, the Hon'ble Supreme Court has observed as under:-

> *"No litigant has a right to unlimited drought on the Court time and public money in order to get his affairs settled in the manner he wishes. Easy, access to justice should not be misused as a licence to file misconceived and frivolous petitions."*

Similar view has been reiterated by the Supreme Court in K.K. Modi Vs. K.N. Modi & Ors., (1998) 3 SCC 573.

In M/s. Tilokchand Motichand & Ors. Vs. H.B. Munshi & Anr., AIR 1970 SC 898; State of Haryana Vs. Karnal Distillery, AIR 1977 SC 781; and Sabia Khan & Ors. Vs. State of U.P. & Ors., (1999) 1 SCC 271, the Hon'ble Apex Court held that filing totally misconceived petition amounts to abuse of the process of the Court and such a litigant is not required to be dealt with lightly, as petition containing misleading and inaccurate statement, if filed, to achieve an ulterior purpose amounts to abuse of the process of the Court."

25. In *Agriculture & Process Food Products Vs. Oswal Agro Furane & Ors., AIR 1996 SC 1947*, the Apex Court had taken a serious objection in a case filed by suppressing the material facts and held that if a petitioner is guilty of suppression of very important fact his case cannot be considered on merits. Thus, a litigant is bound to make "full and true disclosure of facts". While deciding the said case, the Hon'ble Supreme Court had placed reliance upon the judgment in *King Vs. General Commissioner, (1917) 1 KB 486*, wherein it has been observed as under:-

> *"Where an ex parte application has been made to this Court for a rule nisi or other process, if the Court comes to the conclusion that the affidavit in support of the application was not candid and did not fairly state the facts, but stated them in such a way as to mislead the Court as to the true facts, the Court ought, for its own protection and to prevent abuse of its process, to refuse to proceed any*

further with the examination of its merits.....”

In Abdul Rahman Vs. Prasony Bai & Anr., AIR 2003 SC 718; and S.J.S. Business Enterprises (P) Ltd. Vs. State of Bihar & Ors., (2004) 7 SCC 166, the Hon’ble Supreme Court held that whenever the Court comes to the conclusion that the process of the Court is being abused, the Court would be justified in refusing to proceed further and refuse relief to the party. This rule has been evolved out of need of the Courts to deter a litigant from abusing the process of the Court by deceiving it. However, the suppressed fact must be material one in the sense that had it not been suppressed, it would have led any fact on the on the merit of the case.”

26. It is argued that the order issued by the respondent no. 1 is without jurisdiction and without application of the mind and thus is not to be complied with. It is to be noted that even if the order as stated by the applicant is without application of the mind but it was contested for more than two times before the Hon’ble High Court and it was passed by a competent authority having jurisdiction to decide it, the applicant is bound to follow the orders especially the directions issued by the Hon’ble High Court.

27. In a case reported in *2011 (3) SCC 364, Krishnadevi Malchand Kamathia v. Bombay Environmental Action Group*, it was held as follows:

“16. It is a settled legal proposition that even if an order is void, it requires to be so declared by a competent forum and it is not permissible for any person to ignore the same merely because in his opinion the order is void. In State of Kerala v. M.K. Kunhikannan Nambiar Man jeri Manikoth Naduvil, (1996) 1 SCC 435, Tayabbhai M. Bagasarwalla v. Hind Rubber Industries (P) Ltd., (1997) 3 SCC 443, M. Meenakshi v. Metadin Agarwal and Sneh Gupta v. Devi Sarup, (2009) 6 SCC 194, this court held that whether an order is valid or void, cannot be determined by the parties. For setting aside such an order, even if void, the party has to approach the appropriate forum.

17. In State of Punjab V. Gurdev Singh this court held that a party aggrieved by the in validity of an order has to approach the court for relief of declaration that the order against him is inoperative and therefore, not binding upon him. While

deciding the said case, this Court placed reliance upon the judgment in Smith v. East Elloe RDC, wherein Lord Radchiffe observed: (AC pp. 769-70)

> *"...An order, even if not made in good faith, is still an act capable of legal consequences. It bears no brand of invalidity (on) its forehead. Unless the necessary proceedings are taken at law to establish the cause of invalidity and to get it quashed or otherwise upset, it will remain as effective for its ostensible purpose as the most impeccable of orders."*

18. In Sultan Sadik v. Sanjay Raj Subba, (2004) 2 SCC 1377, this court took a view observing that once an order is declared non est by the court only then the judgment of nullity would operate erga omnes i.e. for and against everyone concerned. Such a declaration is permissible if the court comes to the conclusion that the author of the order lacks inherent jurisdiction/competence and therefore, it comes to the conclusion that the order suffers from patent and latent invalidity.

19. Thus, from the above it emerges that even if the order/notification is void/voidable, the party aggrieved by the same cannot decide that the said order/notification is not binding upon it. It has to approach the court for seeking such declaration. The order may be hypothetically a nullity and even if its invalidity is challenged before the court in a given circumstance, the court may refuse to quash the same on various grounds including the standing of the petitioner or on the ground of delay or on the doctrine of waiver or any other legal reason. The order may be void for one purpose or for one person, it may not be so for another purpose or another person."

28. The learned counsel appearing for the applicant had argued that

> *"8. Applicant herein had previously filed an Appeal No. 80/ 2013 along with MA. 628 of 2013 for condonation of delay before this Hon'ble Tribunal challenging the amendment dated 2nd May, 2013 in Environment Clearance dated 12th May, 2009 on the ground that the construction project of Respondent No. 8, 9 & 10 involves built up area more than 1,50,000 sq mt but no fresh appraisal by stages of scoping, appraisal, public hearing and necessary evaluation was conducted without providing any reason whatsoever. He also filed an Application No. 17/ 2013. The appeal No. 80/2013 along with MA. 628 OF 2013 and the Application no. 17/2013 was dismissed on account of delay in preferring the appeal and for plurality of the remedy sought. The reason for such dismissal as recorded in this Hon'ble Tribunals order dated 1st October, 2014 at para 23:*
>
> > *"23 We cannot overlook and brush aside main provision of the NGT Act, which does not provide for any kind of permission to allow filing of two (2) Appeals, one against time barred EC, coupled with another EC for revised*

construction plan along with an Application under section 14,15, and 18 of the NGT Act, 2010. In case, Vikas Tripathi is genuinely interested in the cause of environment and feels that the project in question has caused violations of the EC conditions/ deterioration of the environment, then he is at liberty to file a separate Application under Section 14 (1) (2) read with section 15 and 18 of the NGT Act, 2010, if so advised and if its is permissible under the law. He cannot, however, club all such Appeals and Application together and explore to examine whether one cap fits or another."

9. In the following paragraph at para 25 the Tribunal held:

"25. Through, we have elaborately heard learned Advocate Mr Aditya Pratap for the Appellant/ Applicant, on merits of the Application as well as the Appeal, and learned Advocates for the other side yet, we do not find it proper and desirable to deal with the grounds raised by them, inasmuch as it is likely to prejudice Vikas Tripathi, if he decides later on to file such application separately. We should not create legal hurdle in his seeking such legal remedy on any count. Therefore, we refrain ourselves from saying anything about merits of the Application as well as Appeal. We record, at this juncture that we have not expressed any opinion on merits in respect of any legal ground stated in the Appeal or Application for the simple reason that the legal point available of "plurality of remedies" to Vikas Tripathi under section 14 of the National Green Tribunal (Practices & Procedure) Rules, 2011, is being decided against him and clubbing of his two (2) Applications and the Appeal, is now found improper, illegal, unwarranted. We have also recorded our finding that the Appeal No. 80 of 2013, is barred by limitation and therefore, is liable to be dismissed." (emphasis supplied) (Refer Annexure-1 page 372 to 394 of Vol-A, Respondent No.9's affidavit).

10. Thus, a simple reading of this Hon'ble Tribunals order dated 1st October, 2014 makes it abundantly clear that Appeal No.80/2013 was dismissed as it was time barred and Application No.17/2013 was dismissed on the ground of non-conformity with the NGT (Practices & Procedure) Rules, 2011. There was simply no adjudication on merits of the Appeal & Application. Rather, this Hon'ble Tribunal granted liberty to the Applicant herein to file a technically sound application if he is genuinely interested in the cause of environment and feels that the project in question has caused violation of the EC condition/ deterioration of the environment. It is submitted that after dismissal of the Appeal and Application vide order dated 1st October, 2014, the Applicant herein has pursued the issue of non-compliance of EC condition and the resulting deterioration from such noncompliance with various authorities, but all such attempts failed as none of the Authorities acted against the ongoing illegality, except MPCB who conducted a site investigation and found truth to the allegations of the Applicant herein."

29. Next issue which has been raised by the respondent is that the application is barred by the Principle of Res Judicata. It has been stated that

> *"The allegations raised by the Applicant in the present Application would also be barred having regard to the principles of Constructive resjudicate, since the Applicant had initially filed a comprehensive application under Sections 14, 15 and 16 of the NGT Act. There is no explanation as to why the aforesaid grounds adopted by the Applicant today were not available to the Applicant at the time when the order was passed"*

30. It is to be noted that a Writ Petition was filed as *W.P. No. 1944 of 2007* in which Hon'ble High Court of Bombay has passed an order as follows:

> *"1. The learned counsel for the parties including the learned A.G.P. on behalf of the State of Maharashtra submits that the parties have worked out the subject matter of the dispute in the petition by arriving at a Consent Terms. The learned counsel for the parties and the learned A.G.P. confirm that the Consent Terms have been read over, explained and understood by the parties and it does not violate any statutory or legal provision which prohibits any such settlement.*
>
> *2. The parties have also furnished consent minutes of the order signed by all the learned counsel for the parties. We, therefore, take the Consent Terms alongwith the Consent Minutes of Order and mark 'X' collectively for the purposes of identification. Writ Petition is disposed of in terms of the Consent Minutes of Order and the Consent Terms."*

31. A *Miscellaneous Application No. 628 of 2013* in *O.A. No.17 of 2013* was filed before the National Green Tribunal and it was decided on 01.10.2014 where it was held as follows*:*

"J U D G M E N T

2. The issue of limitation, thus, loomed at large since day one of filing of the present Appeal. Learned Advocate for the Appellant was made aware about such objection in respect of limitation, particularly, when we directed learned Counsel for the Respondent No.7, to file reply affidavit to delay condonation Application, stating relevant information as to the date of communication by way of placing Environmental Clearance (EC) in the public domain on the website, including time of placing it on the website and for how much period it was so on the display. At the relevant time when such direction was given by order dated September 28th, 2013, learned Counsel for the Respondent No.6, made a categorical statement that there was newspaper publication of revised E.C.

3. Subsequent development is rather interesting, inasmuch as learned Advocate for the Appellant sought amendment of the Appeal Memo, on the ground that he desires to make it comprehensive Application-cum-Appeal under Sections 14,15 and 16 of the NGT Act, 2010. He contended that there are plural remedies available in view of the facts stated in the Appeal Memo. Accordingly, he got the Appeal Memo amended and requested that his further Memo of Appeal filed by him, may be amalgamated with the previous Appeal No.80 of 2013, and that is what he desired to describe as comprehensive amended Application. By order dated October 29th, 2013, this statement of learned Advocate Mr. Aditya Pratap is amply clear. We may reproduce the same for ready reference:

> *" We have heard Learned Counsel Mr. Aditya Pratap.*
>
> *By Order dated 9th October 2013, in Appeal No.80 of 2013, we noted that Learned Counsel desires to amend the Appeal, in order to make it as a comprehensive Application-cum- Appeal under Sections 14, 15 and 16 of the National Green Tribunal Act 2010. The Counsel then submitted that due to availability of plural remedies, he desires to amend the Appeal Memo for conversion of the same into the form of Application. The Counsel for the Respondent No.7 indicated that he may not take any objection, if such Application is submitted and amendment is carried out.*
>
> *What we find today is that the Learned Counsel has presented Memorandum of another Appeal, without carrying out any amendment, as such. He argued that the Second Appeal may amalgamated with earlier Appeal and that is what he describes as comprehensive Amendment Application. According to him, the second Memorandum of*

Appeal itself can be termed as amendment in view of the provision of Rule 16(7) of the National Green Tribunal (Practices & Procedure) Rules 2011.

We pointed out to the Learned Counsel that filing of Second Appeal by submitting a letter dated 21st October 2013, addressed to the Registry, is not the true compliance of the earlier order, in as much as, he is supposed to submit a regular Amendment Application, by indicating proposed amendments to be carried out in the Memorandum of Appeal and then, to file the amended Application. The procedure for filing of Amendment Application is well settled. Amendment Application will be treated as Misc. Application, in as much as, the amendment must be restricted to the relief, which may be sought within permissible limits of Sections 14, 15 and 16 of NGT Act. The Applicant may not be allowed to include unnecessary pleadings or irrelevant pleadings in the Amendment Application. The purpose of amendment is to secure that the pleadings are focused to the issues, which are involved in the lis. Therefore, filing of separate Amendment Application is always essential and copy of such Application has to be served on the other side, in order to get response of other side as regard a nature of the amendment to be carried out. The Applicant cannot carry out any kind of amendment, as per his whim and choice. It must have some nexus with the nature of the litigation and the case put forth by him.

The Counsel for the Applicant/Appellant vehemently argued that the Civil Procedure Code, is not strictly applicable and therefore, the Application for Amendment, need not be filed and that the present Second Appeal may be treated as Amendment Application. It is true; no doubt, those provisions of the Civil Procedure Code are not strictly applicable to the proceedings before this Tribunal. However, when the Rule 16(7) of the NGT (Practices & Procedure) Rules 2011, categorically states that Order VI, Rule 17 of the Civil Procedure Code, will be applicable, then the Amendment ought to be carried out, in accordance with the said procedure. In other words, we cannot exclude the said provision, when it has been so specifically enumerated for the Rules.

Under the circumstances, we direct the Applicant to take appropriate steps to file the Amendment Application, as per Order VI, Rule 17 of the C.P.C. and to do the needful. The Application/Appeal will be deemed as dismissed, in case no such Application is filed within a period of three (3) weeks. If the Application for Amendment, is filed, the Registry then to serve copy thereof on the other side without

any delay. The Applicant may file such Amendment Application in the Registry, as provided under Order VI, Rule 17 of the Civil Procedure Code and, it shall be registered as Miscellaneous Application."

4. It appears that subsequently learned Counsel for the Appellant desired to file an Application for amendment and it was so filed which was treated as Application No.17 of 2013.

5. For sake of convenience, we refer the Appellant by his name as 'Vikas Tripathi' , Respondent No.1- as MoEF, Respondent No.2 as – State Environment Impact Assessment Authority (SEIAA), Respondent No.3 as – Environment Department, Respondent Nos.4 and 5 as Central Groundwater Board Authority (CGWB) and Respondent No.6 - HDIL as Project Proponent-I, and Respondent No.7 as – Project Proponent II.

6. Vikas Tripathi, seeks to assail the revised EC granted on 2nd May, 2013, to develop the project by SEIAA, in favour of Project Proponent –II. The prayers in the Appeal may be reproduced as below:

"(A)THAT orders may be issued under the provisions section 5 of the Environment Protection Act, 1986,to cancel the Impugned Revised Environment Clearance since it violates the law. As a consequence whereof. it may be directed to stop the construction of the project of the Project Proponent at once, and to demolish that entire portion, which has been constructed beyond the Form 1 and lA, as submitted before the State Level Expert Appraisal Committee.

(B) THAT the Project Proponent be asked to submit and entirely new application for Environment Clearance stating true facts and then the State Level Expert Appraisal Committee may consider it on merits and by following the procedures contained for Category 'A' projects.

(C) THAT all that construction which has not been approved by the State Level Expert Appraisal Committee, be demolished.

(D) THAT a view may be taken for the nepotistic orders passed by the public servants in the matter and which has led to such a massive violation of the environment laws.

(E) THAT a minor delay of less than a month in the filing of this Appeal with reference to the issuance of the revised Environment Clearance may be condoned.

(F) Any other order which this Hon'ble Tribunal may deem fit to pass considering the facts and circumstances of this case."

7. The Appeal No.80 of 2013, came to be filed on July 17th, 2013, before the Hon'ble Principal Bench, New Delhi. Vikas Tripathi, however, claims that after the amendment he filed so called second Appeal or comprehensive amended Appeal-cum-Application in this Tribunal on April 22nd, 2014, on the ground that he is entitled to seek plural remedies, in view of Rule 16(7) of the National Green Tribunal (Practices & Procedure) Rules, 2011.

8. Before we proceed to consider whether such comprehensive Application can be entertained on the so called ground about availability of plurality of the remedies and particularly by way of amendment of the Original Appeal, after the objection was raised in respect of issue of limitation, on the very first date, because Notice on the Misc Application on the question of limitation, was issued by the Hon'ble Principal Bench. It is worthwhile to note that basic issues raised in the Appeal itself, are also required to be culled out, in order to examine whether even assuming that such plural remedies are available, yet can they be availed by the Appellant, being of incidental nature to the main challenge to the 2nd C dated 2nd May, 2013.

9. According to Vikas Tripathi when Project Proponent-submitted an Application for grant of EC for development of proposal of land situated at Andheri (W), there were reservations which were challenged by the State Govt. There was stipulation that 30 mtr ground buffer zone, shall be maintained around the land in question. Govt. of Maharashtra accordingly, issued Notification dated 12th July,2005, whereby the land bearing CTS No.866, Survey No.111/A/B/C, of village Ambiwali, Taluka Andheri, to the extent of 13.8 Ha, was reserved for I-Sewerage Plant, (Site No.580), II- recreation ground, (Site No.205), III- House for development for dishoused (Site No.549), IV- Govt. Staff Quarters (Site No.535- Retail Market (Site No.436) and West access road, VII, it was deleted from reservation and reserved for MRTS Car depot/workshop and allied activities and commercial use, as shown on the plan attached. The MMRDA, was appointed as Authority for reservation. The Govt. Notification further shows that buffer zone of 30mtrs width, shall be kept around peripheral site land, so as to avoid noise pollution and tree plantation shall be allowed in this buffer zone.

10. The case of Vikas Tripathi is that EC letter No. SEAC-2009/127/CR-23/ TC.I, dated 12-5-2009, was issued without mentioning the conditions enumerated as above, including keeping of buffer zone as a condition precedent. He alleges that after such EC was initially granted in 2009, the Project Proponent – I, started construction in the area. According to Vikas Tripathi, during intervening period new concept of tangible FSI was evolved and therefore the Project Proponent claims that he was entitled to get more FSI. Such claim of the Project Proponent was fraudulent, inasmuch as massive concession in the FSI was already received by him and he had constructed five basements in the building. The Project Proponent was not, therefore, entitled for any additional FSI.

11. Case of Vikas Tripathi, further is that based on such Application of the Project Proponent, SEIAA issued 'nepotistic' revised EC dated 25th March, 2013 for additional structure sought by the Project Proponent. The revised EC, is totally illegal, inasmuch as it was extension of project, which ought have been treated as category B-I Project, and hence, should have been referred to MoEF, in accordance with EIA Notification dated 14th September, 2006, for the reason that the construction project involves area of more than 1,50,000 sq.mtrs. Thus, according to Vikas Tripathi, stages of scoping, appraisal, public hearing and necessary evaluation ought to have been followed, in accordance with the said Notification, which were given go-by without any reason. The Project Proponent, according to Vikas Tripathi, must have arrived at some extraneous arrangements with the public servants in the manner, which would suit his nefarious intention, but concomitantly, would in violation of noble provisions of Law.

12. Another plank of submission of the Appellant is that width of the road, in accordance with the O.M. of MoEF, issued on 7th February,2012, ought to be at least 30 mtrs, but shockingly this aspect was overlooked when the revised EC was issued by SEIAA.

13. Next ground indicated in the Appeal of Vikas Tripathi is that inspite of the fact that only two basements were permitted in the first EC issued in 2009, yet the Project Proponent completed/provided five basements, which was blatant breach of the conditions of EC issued in 2009. But, it was conveniently overlooked while granting EC for expansion of the project in 2013. Thus, impugned EC is bad in Law, results into the flouting of Regulation 37 (9) of the Development Control Regulations and deserves to be quashed.

14. Vikas Tripathi, further alleges that the EC conditions for extraction of the groundwater was granted on condition that permission would be obtained from CGWA, yet the Project Proponent never obtained such permission although a pit of more than 100 ft depth was dug, in order to make five basements. On basis of these averments, Vikas Tripathi seeks quashing of both the ECs and particularly, the revised EC granted on 2nd May, 2013, as well as reservation of the area under construction.

15. As stated before, Vikas Tripathi, filed Appeal No.80 of 2013, before the NGT (PB), New Delhi, on July 17th, 2013, for the first time, which should be taken as date of filing of the Appeal. He filed MA No.628 of 2013, for condonation of delay, seeking condonation of delay which according to him, had occurred in filing of the Appeal due to certain unavoidable reasons. It is pertinent to note that the delay condonation Application shows that the delay is only of forty two (42) days, in regard to the revised EC dated 2nd May,2013. Section 16 of the NGT Act, 2010, provides for prescribed period of thirty (30) day for filing of the Appeal. The proviso appended to Section 16, however, gives discretion to the Tribunal, that if it is satisfied "that the Appellant was prevented by sufficient cause" from filing the Appeal, within the said period, it may allow (the Appeal) to be filed under this Section within a further period not exceeding sixty (60) days. Thus, limitation period can be extended only up to period of sixty (60) days only, if it is demonstrated by the Appellant that there was cause for him, which prevented him from filing of the Appeal, within initial prescribed period of limitation. In ***Sunil Kumar Samanta, M/s. Samanta Engineering Workds, 1, B.T. Road, Barrackpore, North 24-Parganas, v. West Bengal Pollution Control Board & Ors. (****2014 India NGT Reporter (Part 3) 250), the Hon'ble Principal Bench of this Tribunal, elaborately considered the relevant proviso of Section 16 of the NGT Act, 2010. The Hon'ble Principal Bench also considered analogues provisions of the Limitation Act. The Hon'ble Principal Bench, held that:*

> *33. Normally, the statutory period of limitation provided in a provision like under the NGT Act, is un-extendable by recourse to provisions of Section 5 of the Limitation Act. While applying the provisions of limitation, besides applying the rule of strict construction, the Tribunal has to keep a balance between rival rights of the parties; appellant who has lost his right or whose remedy is barred by time and other to whom a benefit has accrued as a result of loss of right of the first. At this stage, it may be appropriate to make reference to a recent judgment of the Supreme Court, in the case of Esha Bhattacharjee v. Managing Committee of*

Raghunathpur Nafar Academy and others [JT 2013 (12) SC 450), where the Court was primarily concerned with the condonation of delay in filing an appeal. The Court adverted itself towards the respective rights and obligations of the parties and held as under:

> *"26. The law of limitation is a substantive law and has definite consequences on the right and obligation of a party to arise. These principles should be adhered to and applied appropriately depending on the facts and circumstances of a given case. Once a valuable right has accrued in favour of one party as a result of the failure of the other party to explain the delay by showing sufficient cause and its own conduct, it will be unreasonable to take away that right on the mere asking of the applicant, particularly when the delay is directly a result of negligence, default or inaction of that party. Justice must be done to both parties equally. Then alone the ends of justice can be achieved. If a party has been thoroughly negligent in implementing its rights and remedies, it will be equally unfair to deprive the other party of a valuable right that has accrued to it in law as a result of his acting vigilantly.*
>
> *vii) The concept of liberal approach has to encapsulate the conception of reasonableness and it cannot be allowed a totally unfettered free play."*

33.1. ln light of these principles, the contention of the appellant that the National Green Tribunal is the forum to which first appeal is provided against the orders specified in Section 16 of the NGT Act and that these provisions should be construed liberally, can hardly be accepted. Also there is no question of depravation of right to appellant. The right of appeal is a statutory right and can be exercised within the prescribed period of limitation. If a party chooses to sleep over its right and permits the remedy available to it to become barred by time, then it can hardly be heard to contend that it has lost a valuable right and the result is unjust. Such interpretation would be a normal corollary of application of rule of 'plain construction'. This would be in line with the object and purpose of the Act and would also sub serve the cause of justice. This interpretation would not preclude any litigant from taking recourse to an appropriate remedy prescribed in in accordance with law.

16. Coming to MA No.628 of 2013, it is worthwhile to note that nowhere the Appellant alleges that he did not receive the information about impugned EC dated 2nd May, 2013, at late stage/particular date, subsequent to grant of such EC. It appears that the revised EC dated 2nd May, 2013, was placed on the website of SEIAA on 7th May, 2013 and therefore, it was on public domain within few days after issuance thereof. Interestingly, what the Appellant alleges is that he has preferred the Appeal before the NGT on the following causes of action:

a) Against the inaction by the Environment Department, Govt. of Maharashtra, on his complaint dated 12th February, 2013'

b) Gross violation of laws in issuance of the amended EC dated 2nd May, 2013.

17. From the above averments in the Application, it is difficult to ferret out as to on what ground the Appellant really seeks exemption under the proviso appended to Section 16 of the NGT Act, 2010, in the context of prescribed period of limitation? Both the grounds (2) and (3) in the Application about above two statements, pertain to the explanation he wants to give in regard to delay caused in filing of the Application under Section 14(3) of the NGT Act, 2010.

18. So far as the impugned EC dated 2nd May, 2013, is concerned, only vague statement made by him in paragraph (4) of the Application, is that the Appellant got know about the order dated 2nd May, 2013, only after same was uploaded on the website, after substantial lapse of time. He states as follows:

> *"Since the complainant got to know about this impugned order through the website, he immediately started working on the legal points specifically to this impugned order and thereafter promptly filed this Application. Hence, condonation of delay of forty (40) days, may be given with respect to filing of this Appeal". The averments in paragraph (4), do not make head or tail, as to when the Appellant really gained knowledge about the impugned order of EC dated 2nd May, 2013. He vaguely states that he got knowledge about the same only after same was uploaded on the website, "after substantial lapse of time".*

19. At this juncture, it is significant to note that the Appellant did not give any particulars about the date and time as to when the impugned EC dated 2nd May, 2013, was put on the website of the Environment Department. Nor, he has stated anything as to when he made access to the website of the Environment Department. Hence, it can be said that he could immediately have access to the website of the Environment Department.

20. In this context, additional affidavit filed by Shri. A.K.Pimparkar, Scientist-I of the Environment Department, Govt. of Maharashtra, categorically shows that the amended EC dated 2nd May, 2013, was placed on the website w.e.f. 7th May, 2013, (At 14:04:50) and still is shown on the website for

the information of the public at large. His affidavit further shows that SEIAA not only placed the EC on its website, but also placed concerned additional recommendations of the SEAC and SEIAA, respectively on the website of the Environment Department, Govt. of Maharashtra. His affidavit shows that the said recommendations and the EC of the above project are still displayed on the website of the Govt. of Maharashtra. This affidavit is filed on 3.10.2013, and it is not specifically denied by Vikas Tripathi. So, such untraversed statement may be accepted. There is no any material on record to show that a copy of website information was sought and obtained by the Vikas Tripathi. The subsequent explanation of Vikas Tripathi cannot make due "acceptable and satisfactory explanation" within the legal framework of the proviso appended to Section 16 of the NGT Act.

21. We cannot and shall not overlook mandate of the proviso appended to Section 16 of the NGT Act, 2010, which carve out exception to the general Rule provided under Section 16 of the NGT Act, 2010. It is well stated that 'proviso' is always an exception to the main Rule, which is set out in the provision of the Rules. Needless to say, the 'proviso' will not supersede the main provision. The language of proviso, appended to Section 16, would make it amply clear that the Tribunal "must be satisfied by the Appellant with tangible reasons, which prevented him from filing of the Appeal within prescribed period of limitation, in order to make him eligible to ask for concession for extension of time". True, interpretation of the proviso has to be primarily made and the same cannot be used as cobweb to deprive a genuine litigant from approaching the Tribunal. Still, however, in an appropriate case, where there is absolutely no acceptable explanation given by the Appellant, then extension of period of under the proviso, is unwarranted grant of premium inspite of absence of satisfactory reason being stated in the delay condonatin Application. Such an Application cannot be granted just for asking by a litigant, who fails to explain reasons for the delay of about one month and twenty two days on his own showing. In our opinion, Vikas Tripathi, has failed to show that as to when first date of 'cause of action' triggered for challenging of the revised EC dated 2nd May, 2013. We are of the opinion that the Appeal No.80 of 2013, is barred by limitation. We find it difficult to condone the delay in the present situation and hence, deem it proper to dismiss Misc Application No.628 of 2013. This takes us to the question of maintainability of the Application in a composite form, which he says is dual- Appeal-cum-Application, filed in view of availability of plural remedies, in accordance with Rule 14 of the National Green Tribunal (Practices and Procedure)

Rules, 2011. We shall deal with his contention, in order to set right the issue once for all, inasmuch as it is likely to be raised in many such cases, on similar ground. Rule 14 of the NGT (Practices and Procedure) Rules, 2011, reads as follows:

> *"Rule 14. Plural remedies- An application or appeal, as the case may be, shall be based upon a single cause of action and may seek one or more relief provided that they are consequential to one another."*

22. Perusal of Rule 14, without any pre-judicial notions in the mind, will make it amply clear that any Application or Appeal, as the opening words imply are distinct remedies under which the particular relief may be sought on single cause of action. Thus, if properly read, the Rule provides as follows:

> *i)There may be either single Application or Appeal. In other words, it cannot be a comprehensive or hybrid type of pleadings like Appeal-cum-Application, as captioned by the Appellant-cum-Applicant (Vikas Tripathi), as in the present Application/Appeals.*
>
> *ii) The Appeal or Application, whatsoever it may, be must be filed on single cause of action. Thus, it cannot be filed on several causes of action. In other words, an Appeal cannot be filed with combined causes challenging different ECs or orders, nor an Application can be filed challenging different orders or different violations under the different Laws.*
>
> *iii) Still, however, choice given to the Appellant/Applicant is to ask for grant of more than one relief in case such reliefs, are of consequential character. In other words, if a relief depends upon grant of another relief, then grant of more than one relief is permissible.*
>
> *For example; in case EC for grant of a project is challenged on the ground that there is no permission from CRZ Authority to the construction carried out, then consequential relief to demolish illegal construction carried out, without CRZ Authority's permission, which falls within CRZ area/NDZ area.*

23. We cannot overlook and brush aside main provisions of the NGT Act, which do not provide for any kind of permission to allow filing of two (2) Appeals, one against time barred EC, coupled with another EC for revised construction plan along with an Application under Sections 14,15 and 18 of the NGT Act, 2010. In case, Vikas Tripathi is genuinely interested in the cause of environment and feels that the

project in question has caused violations of the EC conditions/ deterioration of the environment, then he is at liberty to file a separate Application under Section 14 (1) (2) read with Sections 15 and 18 of the NGT Act, 2010, if so advised and if it is permissible under the Law. He cannot, however, club all such Appeals and Applications together and explore to examine whether one cap fits or another.

24. We may take note of the fact that large number of authorities were cited by both the sides. We have not referred them herein because, the relevant issues are not being dealt with, so as to avoid any prejudicial opinion on any of the issue. We have also not dealt with impact of enactment of the Environment (Protection) Act, 1986, on the NGT Act, 2010, inasmuch as the NGT Act, is a special statute. It is well settled that the Rules framed under the provisions of the Statute are always subordinate to the main provisions in the Act. The NGT (Practices and Procedure) Rules, 2011, would show at the outset that they are framed in exercise of powers available under Section 4(4) read with Section 34 of the NGT Act, 2010. Obviously, these Rules must sub-serve main purpose of the provisions of the NGT Act and cannot be read in derogation or in excess of limitations thereunder.

25. Though, we have elaborately heard learned Advocate Mr. Aditya Pratap for the Appellant/Applicant, on merits of the Application as well as the Appeal, and learned Advocates for the other side yet, we do not find it proper and desirable to deal with the grounds raised by them, inasmuch as it is likely to prejudice Vikas Tripathi, if he decides lateron to file such Application separately. We should not create legal hurdle in his seeking such legal remedy on any count. Therefore, we refrain ourselves from saying anything about merits of the Application as well as Appeal. We record, at this juncture, that we have not expressed any opinion or merits in respect of any legal grounds stated in the Appeal or Application for the simple reason that the legal point regarding availability of "plurality of remedies" to Vikas Tripathi, under Rule 14 of the National Green Tribunal (Practices & Procedure) Rules 2011, is being decided against him and clubbing of his two (2) Applications and the Appeal, is now found to be improper, illegal and unwarranted. We have also recorded our finding that the Appeal No.80 of 2013, is barred by limitation and therefore, it is liable to be dismissed.

26. In the result, Appeal No.80 of 2013 and M.A.No.628 of 2013, along with Application No.17 of 2013, and other Applications, are dismissed. We make it clear that other issues are kept open, including the question of locus standi of Vikas Tripathi, limitation of his filing of the Application under

Sections 14,15 and 18 of the NGT Act, 2010 and his being 'aggrieved person 'or not for such purpose. We grant him liberty to file such Application, if it is so advisable and legally permissible. In view of the findings recoded above, the Application No.17of 2013, is disposed of granting liberty to the Applicant to file fresh Application, as discussed herein above and keeping all the issues open. The M.A. Application, and the Appeal, are accordingly disposed of. No costs."

32. Aggrieved by the order Civil Appeal no. 4450/4451 of 2015 was filed before the Hon'ble Supreme Court and it was decided as follows :

"1. These appeals are directed against the judgment and order passed by the National Green Tribunal (Western Zone) Bench, Pune in M.A No. 628/2013 in Application No. 17/2013 in Appeal No. 80/2013 and appeal No. 80/2013, dated 01.10.2014.

2. We have heard learned Counsel for the appellant and carefully perused the material available on record. In our considered opinion, we do not see any good ground to interfere with the judgment and order passed by the National Green Tribunal. Accordingly, the civil appeals are dismissed."

33. Other petitions, filed are enumerated as follows:

i. W.P. No. 1020/2014- Bombay High Court

ii. Suit No. 619/2014

iii. W.P. No. 594/2015 Bombay High Court

iv. M.A. No. 137/2016

v. Appeal No. 80/2013

vi. O.A. No. 17/2013

34. The respondent has argued that the applicant is not person aggrieved and in reply thereof the applicant relied on *Vimal Bhai Vs MoEF and Ors, [Appeal No. 5 of 2011]* on 14th December, 2011,

dealt with the interpretation of section 16 and section 18 to explain the meaning of 'person aggrieved' under the NGT Act and observed:

> *"The person injured per-se as occurred in Section 18 (2) of the NGT Act is only for the purpose of claiming relief, compensation or settlement of disputes, is altogether different from the person aggrieved as available in Section 16. Person aggrieved and person injured are two different words which connote different meaning. Under Section 16, any person aggrieved can approach this Tribunal by way of filing an appeal, whereas, under Section 18 (2), the person injured per-se, whether it is an individual or a body of individual or a social organization or a Hindu joint family, etc.*
>
> *Further, under Section 14 and 16 any person can approach this Tribunal for appropriate relief including the relief under Section 18.*
>
> *The only exception to be made for treating an appeal/application as not maintainable could be a matter which falls beyond the seven (7) Acts as notified in Schedule I of the NGT Act 2010 and in a case of mala-fide and vexatious litigation brought before this Tribunal and not otherwise."*

35. In *M.C. Mehta Vs University Grants Commission & Ors on 17 July, 2014 (Original Application No.12 of 2014),* this Tribunal has examined and explained intent of legislature and scope of Section 14,15 and 16 of the NGT Act, 2010. In the said decision, the Principal Bench spelt out that "jurisdiction under Section 16 of the Act is distinct from that of Ss.14 and 15" and held:

> *"12. This Tribunal is vested with three different jurisdictions. Firstly, it has the original jurisdiction in terms of Section 14 of the 10 NGT Act to deal with all civil cases raising a substantial question relating to environment and where such questions arise out of the implementation of the enactments specified in Schedule I of the NGT Act. Secondly, it is vested with appellate jurisdiction against the various orders / directions / decisions as stated in Section 16 (a) to (j) of the NGT Act. Thirdly it has a special jurisdiction in terms of Section 15 to grant relief of compensation and restitution as per the scheme contemplated under that provision. Admittedly, the present application has been filed under Section 14 of the NGT Act. Thus, it must plead and raise the following:*
>
> *It should be a civil case.*

Where a substantial question relating to environment or enforcement of any legal right relating to environment is involved.

Such question arises out of implementation of enactment specified in Schedule I of the NGT Act.

13. Once these three ingredients are satisfied, then Section 14 does not appear to place any restriction on the locus or character of the Applicant who wishes to move an application under Section 14 of the Act. Similarly, Section 15 also does not describe the description of an Applicant who can move the Tribunal for seeking reliefs like compensation, restitution of the property and the environment. In contradistinction thereto, Section 16 restricts the Applicant entitled to file an Appeal to be 'any person aggrieved'. In other words, it is only a person aggrieved who can invoke the jurisdiction of the Tribunal under Section 16 and not any Applicant. Section 18 deals with the procedure which has to be followed by an applicant or appellant, who prefers to file an application or appeal before the Tribunal. It deals with all the three jurisdictions specified under Section 14, 15 and 16 of the NGT Act. However, Section 18 (2) of the NGT Act provides the details in regard to locus and character of an Applicant who is entitled to move the Tribunal by filing an Application for grant of relief or compensation or settlement of dispute. Section 18(2) has been worded by the legislature with wide amplitude besides covering any person aggrieved and the legal representatives of the various categories. In terms of Section 16, it includes various other persons as described under clauses (a) to (d) and (f) of sub-Section 2 of Section 18. The locus and character of an applicant specified under these provisions has to receive liberal construction and would cover variety of applicants. As far as Section 14 (1) of the NGT Act is concerned, the only restriction that appears to be imposed is that it must satisfy the prerequisites stated in that Section."

36. Respondent had submitted that the applicant is not aggrieved within the definition of the law and stated that :

"5. Section 18 of the NGT Act grants following persons the right to file an Application;

"a) The person, who has sustained the injury; or

(b) The owner of the property to which the damage has been caused; or

(c) Where death has resulted from the environmental damage, by all or any of the legal representatives of the deceased; or

(d) Any agent duly authorized by such person or owner of such property or all or any of the legal representatives of the deceased, as the case may be; or

(e) Any person aggrieved, including any representatives body

10. The Applicant admittedly does not reside in the vicinity of the project site and is in fact residing at a distance of over 20 Kms from the project site. None of the local residents residing in the vicinity of project have raised complaints of any environmental degradation being caused by the construction. As such the concern expressed by the Applicant in respect of purported environmental degradation due to construction carried out by this Respondent is a mere ruse to hold himself out as an aggrieved person before this authority. Thus the actions of Applicant are obviously male fide and for oblique personal motives."

37. Respondent no. 9 had submitted that:

"8. The applicant has claimed to have filed the above Application under Section 14 and 15 of the NGT Act read with Section 18 of the said act on the basis that he is a socially concerned person and is concerned about the alleged rapid degradation of the environment in the city of Mumbai. However, the said Sections 14 and 15 (which contain the powers of the NGT to hear applications as specified therein) and sub-section (2) of the said Section (18) (which provides an exhaustive list of the persons entitled to file such applications) provide a remedy under the NGT Act only for persons who are personally and directly impacted. The said provisions do not entitle socially concerned persons who are not 'Aggrieved Persons' within the context of the NGT Act to file an application. As the Project of Respondent no. 9 is situated at village Ambivali, Andheri (West), Mumbai, whereas the address of the applicant is shown in the application as being at Matunga Road in Mumbai, the applicant is clearly not affected by the said Project and is not an "Aggrieved Person". The Applicant is, therefore, not entitled to file the above Application and the said Application is not maintainable. "

38. Only a person who has suffered, or suffers from legal injury can challenge the act/action/order etc. in a court of law. A petition is maintainable either for the purpose of enforcing a statutory or legal right, or when there is a complaint by the Appellant that there has been a breach of statutory duty on the part of the Authorities. Therefore, there must be a judicially enforceable right available for enforcement, on the basis of which jurisdiction is resorted to. The Court can of course, enforce the performance of a statutory duty by

a public body, using its writ jurisdiction at the behest of a person, provided that such person satisfies the Court that he has a legal right to insist on such performance. The existence of such right is a condition precedent for invoking the writ jurisdiction of the courts. It is implicit in the exercise of such extraordinary jurisdiction that, the relief prayed for must be one to enforce a legal right. Infact, the existence of such right, is the foundation of the exercise of the said jurisdiction by the Court. The legal right that can be enforced must ordinarily be the right of the Appellant himself, who complains of infraction of such right and approaches the Court for relief as regards the same. (Vide: State of Orissa v. Madan Gopal Rungta MANU/SC/0012/1951MANU/SC/0012/1951: AIR 1952 SC 12; Saghir Ahmad and Anr. v. State of U.P. MANU/SC/0110/ 1954 MANU/SC/0110/1954:AIR 1954 SC 728; Calcutta Gas Co. (Proprietary) Ltd. v. State of West Bengal and Ors. MANU/SC/0063/1962 MANU/SC/0063/1962 : AIR 1962 SC 1044; Rajendra Singh v. State of Madhya Pradesh MANU /SC/0690/1996 MANU /SC/0690/1996:AIR 1996 SC 2736; and Tamilnad Mercantile Bank Shareholders Welfare Association (2) v. S.C. Sekar and Ors. MANU/SC/8375/2008 MANU/SC /8375/2008 : (2009) 2 SCC 784).

39. A “legal right”, means an entitlement arising out of legal rules. Thus, it may be defined as an advantage, or a benefit conferred upon a person by the rule of law. The expression, "person aggrieved" does not include a person who suffers from a psychological or an imaginary injury; a person aggrieved must therefore, necessarily be one, whose right or interest has been adversely affected or jeopardised. (Vide: Shanti Kumar R. Chanji v.

Home Insurance Co. of New York MANU/SC/0017/1974 MANU/SC/0017/1974 : AIR 1974 SC 1719; and State of Rajasthan and Ors. v. Union of India and Ors. MANU/SC/0370/1977MANU/SC/0370/1977: AIR 1977 SC 1361).

40. In *Anand Sharadchandra Oka v. University of Mumbai MANU/SC/7106/2008MANU/SC/7106/2008 : AIR 2008 SC 1289*, a similar view was taken by Court, observing that, if a person claiming relief is not eligible as per requirement, then he cannot be said to be a person aggrieved regarding the election or the selection of other persons.

41. In *A. Subhash Babu v. State of A.P. MANU/S C /0845/2011 MANU/SC/0845/2011 : AIR 2011 SC 3031*, Court held:

> *"The expression 'aggrieved person' denotes an elastic and an elusive concept. It cannot be confined within the bounds of a rigid, exact and comprehensive definition. Its scope and meaning depends on diverse, variable factors such as the content and intent of the statute of which contravention is alleged, the specific circumstances of the case, the nature and extent of complainant's interest and the nature and the extent of the prejudice or injury suffered by the complainant."*

42. Hon'ble Court, even as regards the filing of a habeas corpus petition, has explained that the expression, 'next friend' means a person who is not a total stranger. Such a petition cannot be filed by one who is a complete stranger to the person who is in alleged illegal custody. (Vide: Charanjit Lal Chowdhury v. The Union of India and Ors. MANU/SC/0009/1950MANU/SC/0009/1950 : AIR 1951 SC 41; Sunil Batra (II) v. Delhi Administration MANU/SC/ 0184/1978MANU/SC/0184/1978 : AIR 1980 SC 1579; Mrs. Neelima Priyadarshini v. State of Bihar MANU/SC/0253/1987

MANU/SC/0253/1987 : AIR 1987 SC 2021; Simranjit Singh Mann v. Union of India MANU/SC/ 0058/1993MANU /SC/ 0058/1993 : AIR 1993 SC 280; Karamjeet Singh v. Union of India MANU/SC/0059/1993MANU/SC/0059/1993 : AIR 1993 SC 284; and Kishore Samrite v. State of U.P. and Ors. MANU/SC/0892/ 2012MANU/SC/0892/2012 : JT (2012) 10 SC 393).

43. Hon'ble Court has consistently cautioned the courts against entertaining public interest litigation filed by unscrupulous persons, as such meddlers do not hesitate to abuse the process of the court. The right of effective access to justice, which has emerged with the new social rights regime, must be used to serve basic human rights, which purport to guarantee legal rights and, therefore, a workable remedy within the framework of the judicial system must be provided. Whenever any public interest is invoked, the court must examine the case to ensure that there is in fact, genuine public interest involved. The court must maintain strict vigilance to ensure that there is no abuse of the process of court and that, "ordinarily meddlesome bystanders are not granted a Visa". Many societal pollutants create new problems of non-redressed grievances, and the court should make an earnest endeavour to take up those cases, where the subjective purpose of the lis justifies the need for it. (Vide: *P. S. R. Sadhanantham versus Arunachalam and another* MANU/ SC /0083 /1980 MANU/SC/0083/1980 : AIR 1980 SC 856; *Dalip Singh versus State of U.P. and others*. MANU/SC/1886/2009MANU/SC/1886/2009 : (2010) 2 SCC 114; *State of Uttaranchal versus Balwant Singh Chaufal and others* MANU/SC/0050/2010MANU/SC/0050/2010 : (2010) 3 SCC 402; and *Amar Singh versus Union of India and*

others MANU/SC/0596/2011MANU /SC /0596 /2011 : (2011) 7 SCC 69).

44. Even as regards the filing of a Public Interest Litigation, Court has consistently held that such a course of action is not permissible so far as service matters are concerned. (Vide: *Dr. Duryodhan Sahu and Ors. v. Jitendra Kumar Mishra and Ors.* MANU/SC/0541/1998MANU/SC/0541/1998 : AIR 1999 SC 114; *Dattaraj Natthuji Thaware v. State of Maharashtra* MANU/SC/1 060/2004MANU/SC/1060/2004 : AIR 2005 SC 540; and *Neetu v. State of Punjab and Ors.* MANU/SC/7008 /2007MANU/SC/ 7008/2007 : AIR 2007 SC 758).

45. In Ghulam Qadir v. Special Tribunal and Ors. MANU/SC/0608/2001MANU/SC/0608/2001 : (2002) 1 SCC 33, Court considered a similar issue and observed as under:-

> *"There is no dispute regarding the legal proposition that the rights under Article 226 of the Constitution of India can be enforced only by an aggrieved person except in the case where the writ prayed for is for habeas corpus or quo warranto. Another exception in the general rule is the filing of a writ petition in public interest. The existence of the legal right of the Petitioner which is alleged to have been violated is the foundation for invoking the jurisdiction of the High Court under the aforesaid article. The orthodox rule of interpretation regarding the locus standi of a person to reach the Court has undergone a sea change with the development of constitutional law in our country and the constitutional Courts have been adopting a liberal approach in dealing with the cases or dislodging the claim of a litigant merely on hyper-technical grounds. ----In other words, if the person is found to be not merely a stranger having no right whatsoever to any post or property, he cannot be non-suited on the ground of his not having the locus standi."*

46. Hon'ble Supreme Court in Ravi Yashwant Bhoir v. District Collector, Raigad and Ors. MANU/SC/0186/2012MANU /SC / 0186/2012 : (2012) 4 SCC 407, held as under:

> *"Shri Chintaman Raghunath Gharat, ex-President was the complainant, thus, at the most, he could lead evidence as a witness. He could not claim the status of an adversarial litigant. The complainant cannot be the party to the lis. A legal right is an averment of entitlement arising out of law. In fact, it is a benefit conferred upon a person by the rule of law. Thus, a person who suffers from legal injury can only challenge the act or omission. There may be some harm or loss that may not be wrongful in the eye of the law because it may not result in injury to a legal right or legally protected interest of the complainant but juridically harm of this description is called damnum sine injuria.*
>
> *The complainant has to establish that he has been deprived of or denied of a legal right and he has sustained injury to any legally protected interest. In case he has no legal peg for a justiciable claim to hang on, he cannot be heard as a party in a lis. A fanciful or sentimental grievance may not be sufficient to confer a locus standi to sue upon the individual. There must be injuria or a legal grievance which can be appreciated and not a stat pro ratione voluntas reasons i.e. a claim devoid of reasons.*
>
> *Under the garb of being a necessary party, a person cannot be permitted to make a case as that of general public interest. A person having a remote interest cannot be permitted to become a party in the lis, as the person who wants to become a party in a case, has to establish that he has a proprietary right which has been or is threatened to be violated, for the reason that a legal injury creates a remedial right in the injured person. A person cannot be heard as a party unless he answers the description of aggrieved party."*

47. A similar view has been re-iterated by Court in K. Manjusree v. State of Andhra Pradesh and Anr. MANU/SC/ 0925 /2008MANU/SC/0925/2008 : (2008) 3 SCC 512, wherein it was held that, the applicant before the High Court could not challenge the appointment of a person as she was in no way aggrieved, for she herself could not have been selected by adopting either

method. Moreover, the appointment cannot be challenged at a belated stage and, hence, the petition should have been rejected by the High Court, on the grounds of delay and non-maintainability, alone.

48. In Balbir Kaur and Anr. v. Uttar Pradesh Secondary Education Services Selection Board, Allahabad and Ors. MANU/SC/7743 /2008 MANU/SC/7743/2008 : (2008) 12 SCC 1, it has been held that a violation of the equality clauses, enshrined in Articles 14 and 16 of the Constitution, or discrimination in any form, can be alleged, provided that, the writ Petitioner demonstrates a certain appreciable disadvantage qua other similarly situated persons.

49. While dealing with the similar issue, The Court in Raju Ramsingh Vasave v. Mahesh Deorao Bhiavapurkar and Ors. MANU/SC/3754/2008MANU /SC / 3754/2008 : (2008) 9 SCC 54 held:

> *"We must now deal with the question of locus standi. A special leave petition ordinarily would not have been entertained at the instance of the Appellant. Validity of appointment or otherwise on the basis of a caste certificate granted by a committee is ordinarily a matter between the employer and the employee. This Court, however, when a question is raised, can take cognizance of a matter of such grave importance suo motu. It may not treat the special leave petition as a public interest litigation, but, as a public law litigation. It is, in a proceeding of that nature, permissible for the court to make a detailed enquiry with regard to the broader aspects of the matter although it was initiated at the instance of a person having a private interest. A deeper scrutiny can be made so as to enable the court to find out as to whether a party to a lis is guilty of commission of fraud on the Constitution. If such an enquiry subserves the greater public interest and has a far-reaching effect on the society, in our opinion, this Court will not shirk its responsibilities from doing so."*

(also: Manohar Joshi v. State of Maharashtra and Ors. (2012) 3 SCC 619)

50. In Vinoy Kumar v. State of U.P. MANU/SC/ 0252 / 2001 MANU/SC/0252/2001 : AIR 2001 SC 1739, Court held:

> *"Even in cases filed in public interest, the court can exercise the writ jurisdiction at the instance of a third party only when it is shown that the legal wrong or legal injury or illegal burden is threatened and such person or determined class of person is by reason of poverty, helplessness or disability or socially or economically disadvantaged position, unable to approach the court for relief."*

51. It is further argued that the present application is not maintainable under section 18 sub clause 2 under the proviso of sub clause f which is as follows:

> *"Provided further that the person, the owner, the legal representative, agent, representative body or organisation shall not be entitled to make an application for grant of relief or compensation or settlement of dispute if such person, the owner, the legal representative, agent, representative body or organisation have preferred an appeal under section 16."*

The perusal of the record and the argument and version as stated by the respondent reveals that the applicant had moved an appeal before the National Green Tribunal which has been heard and decided finally against which Civil Appeal was filed before the Hon'ble Apex Court which has also been decided. Thus, in light of the above provisions it is argued and stated that the present application is not maintainable.

52. It is argued on behalf of learned counsel for the respondent no. 6 and 7- CGWB that permission is required in the condition when the ground water is extracted by the user. In reply thereof, the respondent had submitted that:

"Re: Extraction of ground water

99. The Applicant has contended that the Respondent Nos. 8 and 9 ought to have obtained permission from the Central Ground Water Authority for extraction of ground water. This contention is also incorrect.

100. It is submitted that the term 'extraction of ground water' connotes that a well or borewell is sunk into the ground for drawing ground water for the purposes of use either as drinking water or for the purpose of construction. In the present case, the Respondent No. 8 and 9 have not sunk any wells or bore-wells for extraction of ground water from the project site. The aforesaid position is clear from the guidelines published by the Central ground water authority for extraction of the ground water as well as the form prescribed by the said Authority for extraction of ground water. A copy of the said form is annexed hereto as Annexure "15".

101. In fact, the entire requirements for water for construction of the project, as well as for workers on the construction site have been met by obtaining tankers from the MCGM and private parties. The Respondent Nos.8 and 9 crave leave to refer to the receipts in respect of same as and when produced."

Since underground water has not been extracted thus there is no need of permission from respondent no. 6 and 7-CGWB.

53. It is further argued that the application is barred by Non-Joinder of necessary parties :

"10. The applicant has not joined the Mumbai Metropolitan Region Development Authority ("MMRDA") and Mumbai Metro One Pvt. Ltd. ("MMOPL") as Respondents to the above Application even though they are necessary parties in view of the following:

i). The Applicant has alleged that the Project Proponents have breached the MRTS Reservation Notification of the Government of Maharashtra in implementation of their project.

ii). However, the said Notification has reserved land for "MRTS Car Depot/Workshop & Allied Activites and Commercial use" and has designated MMRDA as the Appropriate Authority and Project Implementing Authority for the said reservation.

iii). The metro line has been constructed by MMoPL and is under the operation of MMOPL, by virtue of MMOPL having been appointed by the Government of Maharashtra for this purpose.

11. In view of the above, it is clear that the burden of complying with the conditions specified in the MRTS Reservation Notification lies on MMRDA and MMOPL and not the Project Proponents. Therefore, MMRDA and MMOPL are necessary parties to the above Application and since the Applicant has failed to join them as Respondents herein, the application is liable to be dismissed for non-joinder of necessary parties.

12. It is pertinent to point out that in both Writ Petition No. 1012 of 2014 and Writ Petition No. 1667 of 2016 which had been filed in the Hon'ble Bombay High Court challenging the grant of permission for development on the plot without enforcing he requirement of the 30 meter buffer zone (by Ram Kumar Chaubey who is colluding with the Applicant in the manner explained above), both MMRDA and MMOPL were added as Respondents and a specific relief was sought against them. This also clearly shows that MMRDA and MMOPL are necessary parties for the adjudication of the above application."

54. While the applicant argued that it is respondent no.9's self - admission that the Hon'ble Bombay High Court vide order dated 4th August, 2008 in *W.P No. 1944 of 2007*, disposed of the Writ Petition in terms of Consent Terms between Urban Development Department (UDD) of the Government of Maharashtra, legal heirs of the Original owner, respondent no. 8 and 9 and MMRDA. It was decided before the Hon'ble Court that respondent no. 8 and 9 were to hand over 93,327.375 sq. Mt to MMRDA which is 75 % of the vacant plot and retain 31, 109.125 sq. mt which is 25% of the vacant plot. (Refer Written submissions on behalf of respondent no. 9 dated 28th August, 2020)

55. It is submitted that respondent no. 8 & 9 proposed to construct a Residential and Commercial complex on the 25% of the vacant plot

for which they sought Environment Clearance and Consent to Establish. The environmental condition and liability of maintaining Green Zone and plantation of 608 trees arises from the grant of such Clearance/ Consent by SEIAA and MPCB respectively. Thus, it is not out of place to conclude that "Non-joinder of MMRDA as a party has to be considered as ground for disposal of this Petition" is a frivolous argument and is not even worth the paper on which it is printed and submitted before this Tribunal.

56. It is submitted that relief sought in the instant Application which is filed under Section 14 of NGT Act, raising substantial question related to environment from the ongoing non- compliance of the conditions of the Environment Clearance dated 12th May, 2009 and amendment to the Environment Clearance dated 2nd May, 2013. The instant Application is also filed under Section 15 of the NGT Act, 2010 for restitution of the environment and aquifers that are disturbed from the excavation work undertaken illegally for the construction of extra basements in violation of the law. The Environment Clearance dated 12th May, 2009 was granted under category 8 (a) of the EIA Notification, 2006 and such Notification is issued under Environment (Protection) Act, 1986 and the consent to establish dated 16th March, 2009 was issued under the Air (Prevention and Control of Pollution) Act, 1981 and Water (Prevention and Control of Pollution) Act, 1974. All the three legislation under which the clearance and consent is granted are the enactments specified in Schedule-1 of the National Green Tribunal Act, 2010. Hence this Tribunal has jurisdiction and statutory power to issue directions as prayed for through the instant Application.

57. In a series of litigation in this project in another writ petition, some members of the *Kabali* family filed *Writ Petition No. 1944 of 2007* against the State of Maharashtra in respect of the proposal of the MMRDA to acquire the said land only by paying compensation through TDR. The said Writ Petition was eventually settled by Consent Terms dated 4th August, 2008. The respondent nos. 8 and 9 and MMRDA were added as respondent nos. 8, 9 and 10 to the said Writ Petition under the Consent Terms. A perusal of the said Consent Term discloses that the Kabali family had sold their undivided interest in the suit property to respondent nos. 8 and 9. Under the Consent Term it was agreed that the said property would be developed as per the aforesaid provisions of clause 4 of Table 4 of Regulation 9 to the D.C.R. Under the said provision, 75% of the said land was to be handed over to the MMRDA free of cost for developing the MRTS Car Depot and other allied activities as per the Reservation. The balance 25% of the said land was to be retained by the respondent nos. 8 and 9 for development. 75% FSI of the said property was to be utilized by respondent nos. 8 and 9, whilst the balance 25% was to be used by the MMRDA.

58. The Consent Terms also did not provide for any 30 meter wide buffer zone. In accordance with these Consent Terms, 75% land of the said property has been handed over to the MMRDA for development of the MRTS Car Depot as far back as on 4th August, 2008. The balance 25% is being utilized by the respondent nos. 8 and 9 for developing a residential cum commercial project on their respective parts of land. For the aforesaid construction, the respondent nos. 8 and 9 have respectively obtained the necessary permissions, clearances, approvals and No Object Certificates from

the requisite authorities including inter-alia Municipal Corporation of Greater Mumbai (MCGM, as Planning Authority), the Chief Fire Officer of the MCGM, the High Rise Committee constituted under the DCR and the Civil Aviation Authority._As aforesaid, respondent nos. 8 and 9 applied for EC from the respondent no. 3 Authority in 2009. After appraisal by the SEAC, EC was granted to the respondent nos. 8 and 9 vide the aforesaid Environmental Clearance letter dated 12th May, 2009.

59. Subsequently, there were changes in the project on account of the following:

Additional area from the said property, which was to be developed by respondent nos. 8 and 9 under the aforesaid consent terms, was handed over to MMRDA on 13th August, 2009 in lieu of additional FSI. As a result of this there was a minor increase in FSI. Revised approval was obtained from the Civil Aviation Authority for increasing the permissible height of the buildings being constructed by respondent nos. 8 and 9. Amendment to the DCR by which the concept of fungible FSI against payment of premium was introduced. As a result of this additional FSI was available to the respondent nos. 8 and 9.

60. At the time of making the application in 2009, the respondent nos. 8 and 9 had not indicated the built- up area of the project, since the practice followed by the respondent no.3 at that time was to only take into account FSI area. The subsequent amendment to the EIA Notification of 2006 dated 1st April, 2011 provided that built up area or covered area on all the floors put together including basements and other service areas. A clarification by way of an

office memorandum dated 2nd April 2012 was also received from the respondent no. 2 Ministry wherein the aforesaid position was reiterated.

61. In view of these minor modifications, respondent nos. 8 and 9 by their letter dated 25th March, 2013 applied to the respondent no. 3 for clarification in the EC to update the same as per the changed regulations and to include further and better particulars of the project as aforesaid. Respondent nos. 8 and 9 also filed updated Form 1 and Supplementary Form 1A with the respondent no. 3.

The respondent nos. 8 and 9 also provided the exact built up area calculations of the proposed buildings, both as per the position existing in 2009 (ascertained from the plans submitted to respondent No.3 and also plans approved by the MCGM while issuing Intimation of Disapproval) and the changes in the built up area due to the addition of FSI and fungible FSI.

62. In view of the said letter, the respondent no.3 examined the submissions made by the respondent nos. 8 and 9 for amendment of the environmental clearance granted earlier. The respondent no. 3 considered the proposal in its 58th meeting and noted that:

There was a marginal increase in FSI of around 0.75%. Since there was no prior practice of showing built-up area (inclusive of non FSI area) and only FSI area had been shown and as the total Non FSI area duly sanctioned in 2009 was 1,75,472.6 sq. mtrs., while now the total Non FSI area was 1,87,032.83 sq.mtrs. i.e. an increase of 6 to 7%.

There was reduction in certain other parameter including water requirements, sewage generation and solid waste generation.

Considering the aforesaid changes were not high and there was reduction in other parameters the respondent no. 3 authority decided to accord approval to the clarificatory amendments sought by the respondent nos. 8 and 9.

63. It is pertinent to note that the earlier Notification dated 12th July, 2005, being relied upon by the applicant provided for reservation of the entire property as MRTS Car Depot workshop and allied activities and commercial use and as such the sole use of the property was to be for the purposes of the MRTS depot. The stipulation under the said G.R. for the reservation was amended by the subsequent G.R. dated 17th July, 2008 where under the said property was permitted to be developed under accommodation reservation as per clause 4 of Table 4 of DCR 9. Under the said G.R. there was no requirement of providing a 30 meter buffer zone and the same was not insisted upon. The Applicant has deliberately suppressed the subsequent Government Resolution dated 17th July, 2008 under which the said project is being developed. A perusal of the said Resolution shows that there is no requirement of a 30 meter wide buffer zone being maintained around the periphery of the said property as per the said Notification.

64. It is submitted that the applicant's contentions in respect of the expiry of the EC are misconceived and incorrect. It is submitted that the Clause 9 of the EIA Notification of 2006 clearly provides that in case of area development projects and township project, the validity period of the EC is till the activities being carried out by the applicant as the Developer. It is, thus, clear that as far as EC

granted for building construction projects are concerned, the same are valid till the completion of activities by the applicant. In the present case, the completions of activities set out under the EC are still remaining to be carried out and as such, the validity of the EC has not lapsed.

65. Even otherwise, it is pertinent to note that the EC dated 12th May, 2009 does not make any reference to any validity period. As such, there was no cause for the amended EC to make any reference to a validity period. Thus, the contention of the applicant that no extension was taken in the amended EC is of no consequence.

66. The applicant had alleged that the respondent nos. 8 and 9 have illegally constructed greater number of basements, despite the fact that under the earlier EC only two basements have been permitted.

67. It is further argued that the allegations in respect of number of basements is also misconceived. The EC dated 12th May, 2009 does not impose any restriction upon the number of basements which can be constructed by the respondent nos. 8 and 9. Initially, the respondent Nos.8 and 9 had proposed a 3-level basement for both the residential and commercial buildings. A perusal of the plan annexed to the presentation made by respondent nos. 8 and 9 to the SEAC shows that a total basement area of 18.29 meters depth had been provided for parking and service area.

68. At the time of the presentation to SEAC, respondent nos. 8 and 9 had pointed out the GR dated 5th September, 2008 issued by the Government of Maharashtra for proposing modifications to table No.10 of Regulation 36 of the DCR. Under the proposed amendment, the parking requirement for residential and

commercial buildings was doubled resulting in an increase of the area required for parking.

69. In view of this submission, the SEAC, while according sanction to the project in its Meeting dated 5th March, 2009, had imposed the following condition:

> "Copy *of the sanction of MCGM for the proposed including special permission for extra basement and podium should be furnished."*

As such, even the SEAC did not restrict the level of basements which were to be constructed by the respondent nos. 8 and 9 as is being claimed by the applicant.

70. In fact, there has been no change in the actual depth of the basements (which is the primary concern for granting EC for construction of basements as it involves excavation of soil for construction). A perusal of the sanctioned plan of the basements, as approved by the MCGM and constructed by respondent no. 8 shows that the depth of the basement in the commercial as well as the residential building is maintained at 18.29 meters as per the representation made to the respondent no. 2 and SEAC.

71. In any event, as per the Development Control Regulations, there is no restriction on the number of basements, which can be constructed. Further, it is submitted that the basements are being used exclusively for the purposes of parking and providing services (such as sewage treatment plant, etc.) which cannot be provided on the ground level having regard to the peculiar circumstances and the hardship faced by respondent nos. 8 and 9, as the entire 75% FSI and the TDR of the entire plot was proposed to be consumed on

25% area of the plot. Further, the open space on the plot at ground level is limited as 75% has been handed over to MMRDA for construction of the MRTS Car Depot. Thus, by providing extra levels within the existing depth of the basement, respondent nos. 8 and 9 have in fact endeavored to ensure that maximum parking space is available within the building itself so as to avoid congestion on the roads surrounding the building due to lack of parking. Thus, the said measure is in fact, an environmentally friendly measure.

72. Furthermore, no 5 level basements have been constructed by the respondent no.8. The respondent no.8 has in fact constructed 3 levels of basement in the residential buildings as represented to the respondent no.2 and SEIAA and has subdivided the 3-level basement in the commercial cum residential buildings into 4 levels to provide extra parking. The depth of the basement has remained at the same level as represented to the respondent no.2 and SEAC and has not been changed. The applicant has alleged that due to the increase in number in basements the depth of basements has increased and, therefore, the amount of excavation has increased. There is no merit in this allegation since as aforesaid the assumption of the applicant in respect of the increase in depth of basement is incorrect. As such, there is no question of any environmental concern arising out of the construction of these basements. The respondent no. 8 has obtained the necessary requisite permissions for construction of these basements as can be seen from the aforesaid plans. Thus, it has complied with the requirement put forth by the SEAC.

73. By filing the additional affidavit, respondent no. 9 had submitted that:

"3. By an order dated 20th August, 2019 the National Company Law Tribunal, Mumbai Bench has admitted Company Petition No. CP (IB)-27/I&BP/MB/2019 filed against Respondent No. 8 (referred to as "Corporate Debtor" therein under Section 7 of the Insolvency and Bankruptcy Code, 2016 and inter alia, prohibited, "the institution of suits or continuation of pending suits or proceedings against the Corporate Debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority". Mr. Abhay Narayan Manudhane has been appointed as the Interim Resolution Professional.

4. As stated in the Further Affidavit, in Appeal No. 80 of 2013 filed by the Applicant, besides impugning the Amended Environmental Clearance dated 2nd May, 2013 ("Amended Environmental Clearance"), the applicant had also impugned the Original Environment Clearance dated 12th May, 2009 ("Original Environmental Clearance") issued for the Project on the basis that SEIAA issued the said environmental clearance without including the stringent condition allegedly recommended by SEAC to maintain 30 mtr. Buffer Zone as per a Notification dated 12th July, 2005 issued by the Government of Maharashtra under Section 37(2) of the Mumbai Regional and Town Planning Act, 1966, ("MRTS Reservation Notification". Infact, there was no such condition recommended by SEAC. A copy of the said MRTS Notification dated 12th July, 2005 is annexed as Annexure '1' to the captioned Application at Page 175. The said Appeal No. 80 of 2013 was dismissed by this Hon'ble Tribunal as barred by limitation by a Judgment dated 1st October, 2014. A copy of the said Judgement dated 1st October, 2014 is annexed as Annexure '1' in the COD at Page 372. Civil Appeal Nos. 4450-4451 of 2015 filed by the said Applicant was rejected by the Hon'ble Supreme Court by an Order dated 1st July, 2015 a copy of which is annexed as Annexure '2' in the COD at Page 395.

5.Being fully aware that he cannot again challenge the alleged violation of the Buffer Zone by impugning the issuance of the Original Environmental Clearance by the SEIAA, in the present Application, the Applicant has changed the basis for challenging the said alleged violation by now alleging that it is a condition of the Original Environmental Clearance (i.e., the alleged Condition No. 7 and that the said condition is being violated and the MRTS Reservation Notification is being breached by the Project proponents on a day to day basis by not planting 608 trees. Without prejudice to Respondent No . 9's submission that the Applicant ought not to be allowed to overcome the bar of limitation by such artificial device and clever drafting, I state as under.

13. The Government of Maharashtra has issued a Notification dated 3rd April, 2018 sanctioning modification to the MRTS Reservation Notification as under:

Existing	*Modification*
Buffer Zone of 30 mt. width	*The MMRDA shall provide*

shall be kept around the periphery of the said land so as to avoid noise pollution and only tree plantation shall be allowed in this buffer zone	*necessary noise abatements measures to reduce noise pollution at their own cost and all along the periphery of MRTS Car Depot. Certificate to that effect shall be obtained from Maharashtra Pollution Control Board.*

Thus, the Buffer Zone in the said Property stands deleted. Respondent No. 9 has now come to know that the said Notification dated 3rd April, 2018 was challenged by the Applicant before the Hon'ble Bombay High Court by filing Writ Petition No. 595 of 2019. The said Writ Petition has been dismissed by an order dated 5th April, 2019. Hereto annexed and marked as Annexure 2 and 3 are copies of the said Notification dated 3rd April, 2018 and the said order dated 5th April, 2019."

74. Learned counsel appearing for the respondent had further submitted that the similar matter was challenged before the Hon'ble High Court by filing the *W.P No. 595/2019* which was decided on 5th April, 2019 and the court observed as follows :

"1.By this writ petition under Article 226 of the Constitution of India, the petitioner seeks quashing and setting aside of notification dated 3rd April, 2018. That notification is at page 81 of the paper book. This notification has been issued in terms of the powers conferred under section 31(1AA)(c) of the Maharashtra Regional and Town Planning Act, 1966 (hereinafter referred to as "the MRTP Act"). The notification reads thus:-

"Maharashtra Regional & Town Planning Act, 1966.

** Sanctioned modification to sanctioned Revised Development Plan of K(West) WARD OF Gr. Mumbai under section 31(1AA) (c) of the Act.*

GOVERNMENT OF MAHARASHTRA
Urban Development Department
Mantralaya, Mumbai 400 032.
Dated:- 3rd April, 2018

NOTIFICATION

No. TPB 4313/868/CR-120/2013/UD-11:

Whereas, the Development Plan of K(West) Ward of Greater Mumbai (hereinafter referred to as "the said Plan") has been sanctioned by the Government vide Urban Development Department's Notification No.4392/5840/UD- 11(RDP) dated 19th March, 1993, under section 31 of the Maharashtra Regional and Town Planning Act, 1966 (hereinafter referred to as "the said Act") to come into force with effect from 4th May, 1993;

And whereas, the land bearing CTS No.866, S. No. 111-A/B/C village Ambivali, Taluka Andheri admeasuring about 13.8 Ha. was reserved for (i) Sewerage Plant (Site No.580) (ii) Recreational Ground (Site No.205) (iii) Housing for Dishoused (Site No.549) (iv) Govt. Staff Quarters (Site No.535) (v) Retail Market (Site No.476) and (vi) 13.40 mt. wide Access Road (hereinafter referred to as "the said lands");

And whereas, the proposal for implementation of rail- based Mass Rapid Transit System (MRTS) along Versova- Andheri-Ghatkopar corridor through Public Private Participation (PPP) has been approved by the Govt. for the purpose of which Govt. has appointed Mumbai Metropolitan Region Development Authority (MMRDA) as a 'Project Implementing Agency';

And whereas, the Mumbai Metropolitan Region Development Authority (hereinafter referred to as "MMRDA") vide letter No.T/MMRDA/MRTS/2004 dt. 12/1/2005 had requested Govt. to earmark the said land for MRTS Car Deport/ Workshop & Allied Activities and Commercial use for Versova-Andheri-Ghatkopar Corridor which is identified as a part of Priority-I corridor of Mumbai Metro Master Plan;

And whereas, after considering the request of the MMRDA, the State Government had sanctioned modification to the said Plan to reserve the said lands for MRTS Car Depot/ Workshop and Allied Activities and Commercial use, vide Notification No.TPB 4304/1430/CR- 15/05/UD-11 dated 12th July 2005 (hereinafter referred to as "the said Notification") with condition that the buffer zone of 30mt. width shall be kept around the periphery of the said lands so as to avoid noise pollution and only tree plantation shall be allowed in this buffer zone.

And whereas, the State Government in Urban Development Department had issued directives under Section 37(1) along with Section 154 vide No.TPB 4308/674/CR-146/08/UD-11 dated 17.7.2008 and brought into force a new regulation for development of MRTS Car Depot/ Workshop and Allied Activities and Commercial use, based on principles/concept of accommodation reservation to make 75% of the land available for MRTS Car Depot/ Work shop and allied uses and allow the entire potential of land to be developed on the remaining 25% of the land in owner's possession and accordingly issued Notification in this respect under Section 37(2) of the Act, vide No.TPB 4312/223/Cr-29/2013/Ud-11 dated 28th April 2015.

And whereas, the State Government in Urban Development had issued guidelines to reduce noise from existing and

proposed elevated roads, flyovers and elevated rail corridors, in which use of installation of noise barriers is recommended, vide circular no.TPB 4308/4011/Cr-343/08/UD-11 dated 3rd December 2008, which has been revised vide order no.TPB4312/208/CR- 2013/UD-11 dated 26th October 2015.

And whereas, the Metropolitan Commissioner, MMRDA vide letter dated 8/4/2008 and 5/7/2013 has requested to the State Government that MRTS activities are environment friendly and will not create any noise or environmental pollution, the buffer zone of 30 mt. around periphery to be deleted so as to accommodate the MRTS as per technical and safety requirements in the available land and submitted a letter dated 2/9/2013 from Central Road Research Institute, New Delhi stating that tree plantation is not a scientific option for reduction of noise levels.

And whereas, in view of the facts and circumstances mentioned above Government was of opinion that the condition of the buffer zone of 30 mt. around periphery of reservation of MRTS Car Depot/ Workshop & Allied Activities and Commercial use imposed by the said Notification be amended;

And whereas, considering the above facts, in the public interest it was necessary to urgently carry out suitable modification to the said Plan, the State Government, in exercise of the powers conferred under sub-section (1AA) of Section 37 of the said Act, had issued Notice of even No. dated 1st February 2016 for inviting suggestions/ objections from general public with regard to the proposed modification in respect of buffer zone of 30 mt. around periphery of reservation of MRTS Car Depot/ Workship & Allied Activities and Commercial use (hereinafter referred to as "the proposed modification"), proposed in the Schedule of the said Notice and ***appointed the Deputy Director of Town Planning, Greater Mumbai as the officer (hereinafter referred to as "the said officer"****) to submit a report on the suggestions/ objections received in respect of the proposed modification to the Govt. after giving hearing to the concerned persons and the Planning Authority;*

And whereas, the Notice of even no. dated 1st February 2016, was published in Maharashtra Government Gazette dated the 18th - 24th February 2016 (hereinafter referred to as "the Official Gazette");

And whereas, the said Officer has submitted his Report vide letter dt.12th January 2017, through the Director of Town Planning, Maharashtra State, after completing the legal procedure stipulated under Section 37(1AA) of the said Act;

And whereas, after considering the Report of the said Officer, and after consulting the Director of Town Planning, Maharashtra State, the Government is of the opinion that the proposed modification is required to be sanctioned with some changes;

Now therefore, in exercise of the powers conferred upon it under section 37(1AA)(c) of the said Act, the Government hereby:-

(A) Sanctions the said proposed modification as more specifically described below.

(B) Fixes the date of publication of this Notification in the Official Gazette, as the date of coming into force of this modification.

(C) Directs the Municipal Corporation of Greater Mumbai that, in the Schedule of Modifications sanctioning the said Development Plan, after the last entry, the Schedule appended hereunder shall be added.

Sanctioned Modification

The condition mentioned at Sr. No.(B) in the Notification NO.TPB 4304/1430/CR-15/05/UD-11 dated 12th July 2005 in respect of sanctioned modification to the Sanctioned Revised Development Plan of K(West) ward of Gr. Mumbai is replaced as follows:-

Existing Condition	*Proposed Condition*
Buffer Zone of 30 mt. width shall be kept around the periphery of the said land so as to avoid noise pollution and only tree plantation shall be allowed in this bufferzone.	*The MMRDA shall provide necessary noise abatements measures to reduce noise pollution at their own cost & all along the periphery of MRTS Car Depot. Certificate to that effect shall be obtained from Maharashtra Pollution Control Board.*

This Notice shall also be available on the Govt. of Maharashtra website: www.maharashtra.gov.in.

By order and in the name of the Governor of Maharashtra,

(Pradeep Gohil)
Under Secretary to Government"

2. The issue raised is that this notification contravenes the mandate of Article 21 of the Constitution of India. Now, no trees will be planted. The intent and purpose was to have a Buffer Zone, but that too on conditions. Now, this notification is issued in order to enable the Mumbai Metro Rail Corporation Limited to get over the provisions of law as also the conditions imposed on it while allowing it to create a car depot/workshop.

3. Our attention has been invited by Mr.Panchal to the terms and conditions, based on which the development permission was granted, copy of which is at page 44 of the paper book and Condition No.8 therein. Mr.Panchal would submit that by the proposed modification, the Mumbai Metropolitan Region Development Authority (MMRDA) is obliged to provide noise abatement measures to reduce noise pollution, but there is no requirement of tree plantation.

4. On a perusal of the petition and the annexures as also the impugned notification, we are unable to agree with Mr.Panchal. First of all, a notification dated 12th July, 2005 has been issued sanctioning the revised development plan of K/West Ward of Greater Mumbai. That notification is dated 12th July, 2005. A copy of this notification is at page 22 of the paper book and it reads as under:-

"Maharashtra Regional & Town Planning Act, 1966.

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**** Sanctioned Revised Development Plan of K(West) ward of Gr.Mumbai.***

**** Notification under section 37(2).***

GOVERNMENT OF MAHARASHTRA
Urban Development Department Mantralaya, Mumbai 400-032.
Dated 12th July, 2005

NOTIFICATION

No. TPB 4304/1430/CR-15/05/UD-11:

Whereas, the Development Plan of K(West) Ward of Greater Mumbai (hereinafter referred to as "the said Plan") has been sanctioned by the Government vide Urban Development Department's Notification No.4392/5840/UD- 11(RDP) dated 19th March, 1993, under section 31 of the Maharashtra Regional and Town Planning Act, 1966 (hereinafter referred to as "the said Act") to come into force with efect from 4th May, 1993;

And whereas, the land bearing CTS No.866, S. No.111- A/B/C village Ambivali, Taluka Andheri admeasuring about 13.8 Ha. is reserved for (i) Sewerage Plant (Site No.580) (ii) Recreational Ground (Site No.205) (iii) Housing for Dishoused (Site No.549) (iv) Govt. Staff Quarters (Site No.535) (v) Retail Market (Site No.476) and (vi) 13.40 mt. wide Access Road (hereinafter referred to as "the said lands");

And whereas, the proposal for implementation of rail- based Mass Rapid Trnasit System (MRTS) along Versova- Andheri-Ghatkopar corridor through Public Private Participation (PPP) has been approved by the Govt. for the purpose of which Govt. has appointed Mumbai Metropolitan Region Development Authority (MMRDA) as a 'Project Implementing Agency';

And whereas, the MMRDA vide letter No.T/MMRDA/MRTS/2004 dt. 12/1/2005 has requested Govt. to earmark the said land for MRTS Car Depot/Workshop & Allied Activities and Commercial use for Versova-Andheri-Ghatkopar Corridor which is identified as a part of Priority-I corridor of Mumbai Metro Master Plan;

And whereas, after asserting the aforesaid facts, the Govt. finds it necessary to carry out certain changes in the reservation in the said lands by taking recourse to provisions contained in section 37(1AA) of the said Act;

And whereas, considering the urgency of the matter and the public purpose for which the said lands are required, Government is of opinion that the said lands should be reserved for "MRTS Car Depot/ Workshop & Allied Activities and Commercial use" after following procedure laid down under section 37(1AA) of the said Act (hereinafter referred to as "the said modification");

And whereas, in view of the facts and circumstances mentioned above and in exercise of the powers contained in sub-section (1AA) of section 37 of the said Act, Government has issued the notice of even no. dated 16/2/05 (hereinafter referred to as "the said notice") for inviting suggestions/ objections from any person with respect to the said modification;

And whereas, the said notice was published in the Government Gaszette (Ordinary) dated 16/2/05 and the said notice was published in the news paper namely Vartahar dated 23/2/05 and the Midday dated 23/2/05;

And whereas, as per the said notice Government has appointed Dy. Director of Town Planning Gr.Mumbai as an officer under section 162 of the said Act (hereinafter referred to as "the said officer") scrutinize any suggestions/ objections received, grant hearing to the persons submitting suggestions/ objections including Municipal Corporation of Gr.Mumbai (hereinafter referred to as "the said Corporation") and to submit his report to the Government regarding the said modification;

As reported by the said Officer 4 suggestions/ objections were received all of which were forwarded to the said Authority on 6/4/05 as per the provisions under section 37(1AA) of the said Act;

After completing the procedure as laid down under section 37(1AA) of the said Act, the said Officer has submitted his report to Govt. on 29/4/05 (hereinafter referred to as "the said Report") and whereas, hearing was granted by the said officer to the concerned persons including the MMRDA;

And whereas, after consulting Director of Town Planning, Maharashtra State, Govt. is of opinion that the said modification should be sanctioned with some changes.

Now therefore, in exercise of the powers vested under section 37(2) of the said Act, Government hereby sanction the said modification as mentioned in the schedule below:

SCHEDULE

a) "The land bearing CTS No.866, S.No.111-A/B/C village Ambivali, Taluka Andheri admeasuring about 13.8 Ha. reserved for (i) Sewerage Plant (Site No.580 (ii) Recreational Ground (Site No.205) (iii) Housing for Dishoused (Site No.549) (iv) Govt Staff Quarters (Site No.535 (v) Retail Market (Site No.476) and (vi) 13.40 mt. wide Access Road are ….. reservation and reserved for "MRTS Car Depot/ Workshop & Allied Activities and Commercial use" as shown on the plan attached herewith and the MMRDA shall be Appropriate Authority for this reservation.

b) Buffer Zone of 30 mt. width shall be kept around the periphery of the said land so as to avoid noise pollution and only tree plantation shall be allowed in this buffer zone.

c) Fixes the date of publication of this notification in the Government Gazette as the date of coming into force of this notification.

d) Direct the MCGM that, in the schedule of modification sanctioning the said plan fater the last entry, the schedule referred to as (a), (b) & (c) above shall be added.

By order and in the name of the Governor of Maharashtra.

(S.R.Kini)
Under Secretary to Government

***Note:- This notification is also available on Government web site www. Urban*. Maharashtra. gov.in"**

5. A bare perusal of this notification denotes that the modification was sanctioned as per the Schedule and sites/ portions thereof were reserved for public purpose. One of the users was Mass Rapid Transit System (MRTS) Car Depot/ Workshop and Allied Activities and Commercial use. The Buffer Zone shall be kept around the periphery of the said land so as to avoid noise pollution and only tree plantation shall be allowed in this Buffer Zone. In terms of this notification and the further order, copy of which is at page 25 of the paper book dated 17th July, 2008, directions can be issued by the Government to the Municipal Corporation of Greater Mumbai. Those directions were issued on the requirement of the MRTS Car Depot/ Workshop. The reservation of MRTS Car Depot/ Workshop and Allied

Activities and Commercial use was to be included in Regulation 9 (Table No.4) of the said Development Control Regulations (DCR) for Greater Mumbai, 1991. That is why directions under section 154 of the MRTP Act were issued. These directions read as under:

Now, therefore in exercise of the powers vested under section 37(1) of the said Act read with provisions contained in section 154 of the said Act, Government is pleased to issue the following directions-

DIRECTIONS

A) The Municipal Corporation of Gr. Mumbai shall initiate modification to regulation 9 (Table 4) by adding the provision specified in the schedule attached herewith.

B) The said Corporation shall publish the requisite notice inviting suggestions/ objections over the said modification within a period of 90 days from the date of issue of this order.

C) After completing the legal procedure, as laid down under section 37(1) of the said Act, the said modification proposal shall be submitted to the Government for final sanction.

D) Pending sanction to these modification by the Govt. under section 37(2) of the said Act, the aforementioned modification shall come into effect forthwith.

E) Direction vide Order No.TPB 4308/674/CR-146 /08 / UD - 11 Dt.29.04.2008 has been withdrawn.

By order and in the name of the Governor of Maharashtra.

*(**Abhiraj Girkar)***
Under Secretary to Government.

Note: This order also published on government web site at www.urban.maharashtra.gov.in.

6. The Schedules to these notifications are highlighted, but what we have found is that the MRTS Car Depot had to be constructed for which a development permission was necessary. One M/s.Bidco Engineering Division sought such permission and that permission was granted. That permission, copy of which is at Exhibit 'E' at pages 44 and 45, contains several terms. One of the terms is that as per the modification under Notification No.TPB-4304/1430/CR-15/05/UD-11 dated 12th July, 2005, the buffer zone of 30 meters width shall be kept around the periphery of the land under reservation of MRTS Car Depot/ Workshop and Allied Activities so as to avoid noise pollution and only tree plantation shall be allowed in this Buffer Zone.

7. We have not seen any alteration being made as projected by Mr.Panchal. All that the letter at page 63 clarifies

is that Condition No.8 in the above communication has been retained. The Project Head may have received some communication from the Maharashtra Pollution Control Board, but that is not something with which we are concerned. The Municipal Corporation had informed the Deputy Director of Town Planning about the conditions. The proposed modification of the sanctioned development plan of K/West Ward was made after complying with all the legal provisions, including inviting suggestions and objections from the general public. Thereafter, what we find is that the impugned notification has been issued, but this notification does not make a substantial modification. It only says that the the MMRDA shall provide necessary noise abatement measures to reduce noise pollution at their own cost and all along the periphery of MRTS Car Depot. Certificate to that effect shall be obtained from Maharashtra Pollution Control Board. This is an environment friendly and protective measure. Only tree plantation was to be allowed in the Buffer Zone. That does not mean that this tree plantation cannot be made. Any activity, other than making a Buffer Zone so as to avoid noise pollution and preserve greenery can be, therefore, placed at site. We have not seen that by this modification, the authority has done away with the earlier stipulations. What would be allowed is only tree plantation and nothing else. It is very clear that the modification does not contravene the mandate of Article 21 of the Constitution of India. It ensures protection of the environment. It does not prohibit putting up of trees either. All that the notification says and in clearest terms that noise pollution measures have to be put in place and the only activity that is permitted is plantation of trees.

8. It is in these circumstances, we are unable to agree with Mr. Panchal. The affidavit also explains that the activities are environment friendly and steps are taken to avoid noise pollution. In the light of the above, we find no merit in the writ petition. It is dismissed. There would be no order as to costs."

75. It is argued that the matter has been raised and decided by the Competent Court thus, this is barred by Principle of Res Judicata and relied on (1986) 1 SSC 100 *Forward Constructions Co Vs. Prabhat Mandal (Regd.),* which is as follows:

"20. So far as the first reason is concerned, the High Court in our opinion was not right in holding that the earlier judgment would not operate as res judicata as one of the grounds taken in the present petition was conspicuous by its absence in the earlier petition. Explanation IV to s.11 C.P.C. provides that any matter which might and ought to have been made ground of defence or attack in such former suit shall be deemed to have been a matter directly and substantially in issue in such suit. An adjudication is conclusive and final not only as to the

actual matter determined but as to every other matter which the parties might and ought to have litigated and have had it decided as incidental to or essentially connected with the subject matter of the litigation and every matter coming with the legitimate purview of the original action both in respect of the matters of claim or defence. The principle underlying Explanation IV is that where the parties have had an opportunity of controverting a matter that should be taken to be the same thing as if the matter had been actually controverted and decided. It is true that where a matter has been constructively in issue it cannot be said to have been actually heard and decided. It could only be deemed to have been heard and decided. The first reason, therefore, has absolutely no force.

29. The avowed function of the Corporation is the improvement of Greater Bombay. Section 61 of the Municipal Corporation Act enumerates the obligatory and discretionary duties of the Corporation Section 61(t) refer to the improvement of Greater Bombay. Section 63(k) authorises the Corporation to take any measures to promote public safety health, convenience. The plot in question admittedly lies in a commercial zone and if any facilities are given to the people of that locality providing for commercial offices those facilities would go towards the improvement of Bombay. It cannot, therefore, be said that the transaction was outside the Bombay Corporation Act.

32. The mere fact that the Corporation was to make a gain of the non-refundable premium did not mean that was the only purpose which was in view. The purpose obviously was the best utilisation of the available space. If in a commercial zone the Corporation was able to make available accommodation for commercial purposes we do not see why such a venture cannot be one either for the purpose of promoting public safety, convenience or in the nature of facilities being made available as a part of the improvement of the city, If commercial activities are to be pin-pointed in a commercial zone and for that purposes the Municipal Corporation takes a step to provide accommodation for commercial purposes it cannot be said that the property of the Corporation was being acquired or held for purposes other than the purposes of the Act."

76. He has further relied on *2013 SSC online NGT 31 Rana Sengupta Vs. Union of India* where it was held:

"13. So far as locus-standi of the Appellant is concerned, it would be appropriate to examine what he has pleaded in the Memorandum of Appeal. He alleged that although he has no personal interest in the matter, yet because he is working for the welfare of the people, particularly for those whose concern might have otherwise remained unrepresented, he is aggrieved. Secondly, he states that he has been raising the issue of non- compliance of environmental norms by the Project

Proponent and had filed earlier Appeal No. 32/2011 with a view to stall installation of Ductile Iron Pipe Plant Project. He says that he is a public spirited citizen with working experience in steel and iron industry and has full knowledge of the impact of these industries on ecology, environment and human lives. These are the reasons given by him to demonstrate that he is competent to file the appeal.

Section 16 of the NGT Act, 2010 provides appellate jurisdiction to the Tribunal. The opening words of Section 16 go to show that "any person aggrieved" by order made granting EC can prefer appeal under Section 16(h) of the NGT Act, 2010. The expression "person aggrieved by" imply some or other reason which might have aggravated the person to undertake the legal remedy. Such a person must demonstrate that he is directly or indirectly concerned with the adverse environmental impact which is likely to be caused due to granting of EC by the competent authority. The Appellant, admittedly, resides at Babu Bagan, Dhakuria area of Kolkata. The main project and expansion area of the subsequent project is situated at Shyamraipur (District Paschim Medinipur). It is not the case of the Appellant that he has any property in the adjoining area of village Shyamraipur. It is not his case that he is personally adversely affected due to the installation of the expansion project in question. He vaguely states that he is a public spirited citizen with experience of working with steel and iron industries and has full knowledge of the impact of these industries on ecology, environment and human lives. He vaguely proclaims that he is working for the welfare of the people and particularly who have remained unrepresented.

14. We do not find any tangible material which would plausibly show that the Appellant has credentials as expert in the field of steel and iron industries and we are at a loss to know in what manner he is working for the welfare of unrepresented members of the public. It is not his case that he represents any NGO. His self-proclaimed status as "public spirited citizen" is of no much avail. There is absolutely no record to show that he participated in the public consultation process and raised any issue regarding the environment or socio-economic adverse impact on account of establishment of the proposed project. The only reason that he has unsuccessfully preferred Appeal No. 32/2011 against granting of earlier EC for production of Ductile Iron Pipe Plant is of no much significance and is irrelevant. Moreover, that appeal came to be dismissed and there is no finding of this Tribunal that the Appellant is to be treated as "an aggrieved person". Considering forgoing discussion, we have come to the conclusion that the Appellant has no locus-standi to prefer the present appeal. He cannot be treated as an aggrieved person and the appeal filed by him cannot be entertained. This answers the point no. 1. Re: Point No. (ii)

23. There cannot be two opinions about proposition that Section 20 of the National Green Tribunal Act, 2010 mandates the Tribunal, while passing any order or decision, to apply the principles of sustainable development, the

precautionary principle and the polluters pay principle. In the context of the project in question, there is hardly any material to show that it would cause excessive emission from the plant which may cause pollution beyond tolerable degree. The concept of "sustainable development" implies development which would not severally degrade the environment. That does not mean absence of environmental impact but means a minimal impact which can be endured / tolerated by human beings. It also means that environment will not be degraded to such a degree that future generation will be deprived of a clean and healthy environment to a reasonable degree. It is common knowledge that everything is changing in this world. So also the environment. In "Lafarge Umiam Mining Private Limited vs. Union of India" (2011) 7 SCC 338 the Apex Court observed :-

"75. Universal human dependence on the use of environmental resources for the most basic needs renders it impossible to refrain from altering the environment. As a result, environmental conflicts are ineradicable and environmental protection is always a matter of degree, inescapable requiring choices as to the appropriate level of environmental protection and the risks which are to be regulated. This aspect is recognized by the concept of "sustainable development". It is equally well settled by the decision of this Court in Narmada Bachao Andolan v. Union of India that environment has different facets and care of the environment is an ongoing process. These concepts rule out the formulation of an across-the-board principle as it would depend on the facts of each case whether diversion in a given case should be permitted or not, barring "no go" areas (whose identification would again depend on undertaking of a due diligence exercise). In such cases, the margin of appreciation doctrine would apply.

76. Making these choices necessitates decision, not only about how risks should be regulated, how much protection is enough, and whether ends served by environmental protection could be pursued more effectively by diverting resources to other uses. Since the nature and degree of environmental risk posed by different activities varies, the implementation of environmental rights and duties requires proper decision-making based on informed reasons about the ends which may ultimately be pursued, as much as about the means for attaining them. Setting the standards of environmental protection involves mediating conflicting visions of what is of value in human life."

24. It is necessary to strike a balance between development and environment protection to facilitate economic growth as well to secure adequate adherence to the cause of environment. We mean to say, there cannot be any lop sided approach in environment related matters."

77. Further by filing the additional affidavit by respondent no. 10, it is stated that:

> *"3. The Deponent states that the prayers sought by the Applicant in the present application no. 23 of 2016 are without any basis and no grounds have been made out therein to invite indulgence of this Hon'ble Tribunal and as such the Application deserves to be dismissed, in view of the following facts:*
>
> *A. The Notification dated 12.07.2005 issued by the Government of Maharashtra under the Maharashtra Regional and Town Planning Act, 1966, which is the basis of filing the present Application by the Applicant has now been set aside vide Notification dated 03.04.2018 issued by the Government of Maharashtra, and the requirement that only "tree plantation shall be allowed in this buffer zone" now stands deleted and replaced by the modified notifications.*
>
> *4. It is stated that Application No. 23 of 2016 has been filed by the Applicant averring at Para 1 – "Ground No. 1" that there is a requirement to maintain a "30 metre wide notified Green Belt" as per Notification dated 12.07.2005 under the Maharashtra Regional and Town Planning Act, 1966. It has been further averred at Para 3.1 that the Municipal Corporation has also stipulated that this Statutory Notification dated 12.07.2005 be complied with and that on the basis of the said statutory Notification, Condition No. 7 was inserted in the Environmental Clearance of 2009 wherein it is directed that "The Green Belt shall be developed"*
>
> *6. In view of the above, it is an admitted fact that the origin and the basis of the requirement of maintaining the Green Belt/Buffer Zone is the Notification dated 12.07.2005 which had been passed by the Government of Maharashtra under Maharashtra Regional and Town Planning Act, 1966. It is submitted that this requirement has now been deleted and replaced by way of a subsequent Notification dated 03.04.2018 passed by the Government of Maharashtra under Maharashtra Regional and Town Planning Act, 1966 which inter-alia stipulates as under:*
>
> ***Sanctioned Modification***
>
> *The condition mentioned at Sr. No.(B) in the Notification NO.TPB 4304/1430/CR-15/05/UD-11 dated 12th July 2005 in respect of sanctioned modification to the Sanctioned Revised Development Plan of K(West) ward of Gr. Mumbai is replaced as follows:-*

Existing Condition	*Proposed Condition*
Buffer Zone of 30 mt. width shall be kept around the periphery of the said land so as to avoid noise pollution and only tree plantation shall be allowed in this bufferzone.	*The MMRDA shall provide necessary noise abatements measures to reduce noise pollution at their own cost & all along the periphery of MRTS Car Depot. Certificate to that effect shall be obtained from Maharashtra Pollution Control Board.*

7. A perusal of the Notification dated 03.04.2018, further makes it clear that:

(i) It has always been the obligation of Mumbai Metropolitan Regional Development Authority (MMRDA) who is possession of 75 % of the subject land bearing CTS No.866, S.No.111-A/B/C village Ambivali, Taluka Andheri (hereinafter referred to as land) to maintain the Buffer Zone of 30mtrs. Width around the periphery of the land. Since MMRDA never maintained this buffer, the Green Belt required vide Environmental Clearance dated 12.05.2009 per force could never have been maintained.

(ii) This is the reason why it was upon MMRDA's request that the State Government has sanctioned the modification vide Notification dated 03.04.2018.

8. The fact that MMRDA was required to maintain the Buffer Zone on which the Green Belt had been proposed to be developed is further made clear from the Notification dated 17.07.2008 by way of which modification was made with respect to land use/allocation/development plan on the baisis of the understanding arrived at between MMRDA and the orgianal owners whereby the original owners were allowed to retain only 25 % of the land for development which further included provisioning for internal access roads.

9. Despite this MMRDA who is in control of 75 % of the land was never made a party by the Applicant and this area now lies almost completely concretized. In view of the same and considering the fact that internal access roads had to also be mandatorily provided maintaining a 30 mtrs. Green Belt / Buffer Zone has to be in the small portion of land lying with Respondents No. 8,9 and 10 is a near impossibility. Respondent no. 10 was constructing the building on an even smaller portion of the 25 % of the land accorded to the owners, approximately 18 %. This stipulation having now been deleted by way of Notification dated 03.04.2018, there exists no requirement for maintaining the 30 mtrs. Wide Buffer Zone/ Green Belt" A copy of the Block Plan and the Sub Plot Area Diagramsshowing the allocation / distribution of the subject land bearing CTS No. 866, S.No.111-A/B/C village Ambivali, Taluka Andheri.

78. It is argued that, even otherwise, the prayers now sought in the present application are infructuous in as much as there is no area on the said land wherein the green belt can be developed. The part Occupation Certificate dated 15.12.2018 has also been issued to the residential + commercial building known as western heights which was being constructed by respondent no. 10. Furthermore, as of today 456 units out of 487 units in the building have already been sold by respondent no. 10 to the allottes. A true copy of the satellite image obtained from Google Earth of the subject land, copy of the part Occupation Certificate dated 15.12.2018 issued by Municipal Corporation of Greater Mumbai in favour of respondent no. 9 is also attached.

79. Considering totality of the for-going discussions, argument raised by the parties, we conclude as follows:

(i) The issues raised by way of filing this application were raised in appeal as aforesaid which was heard and decided against which the applicant filed a Civil Appeal before Hon'ble the Apex Court which has been heard and decided.

(ii) The issues raised by way of filing this application has already been raised, heard and decided by Hon'ble High Court.

(iii) The appeal was filed before this Tribunal and was decided against which Civil Appeal was filed before Hon'ble the Supreme Court.

(iv) In light of above matter and in the light of proviso contained to Section 18 of the NGT Act after decision of the appeal, no fresh O.A. is maintainable.

(v) Accordingly, the matter raised by way of filing this application has been heard and finally decided accordingly and the issued are barred by the principle of Res Judicata.

(vi) The application is barred by time.

(vii) The project is in accordance with the EC issued from the Competent authority and notification issued from the State of Maharashtra.

(viii) The applicant failed to prove that the project is detrimental to the cause of environment.

(ix) We hold that the project as approved by the competent authority is within the permissible limits of sustainable development.

(x) The net result of the findings recorded above is that the application is destitute of merits. Therefore, it fails. Accordingly, the reliefs sought are not maintainable.

(xi) We have noticed that the applicant inspite of the matter decided in appeal upto the Hon'ble Supreme Court and again raised before the High Court which was heard and decided, again indulged in the litigation without any proper cause and once it was heard and decided, he is not an aggrieved party as such it is high time to discourage such practise of fuelling the litigation without any substantial reason. Hence, this application is dismissed with cost with further direction to special cost of Rs. 25,000/- which shall be deposited by the applicant into the Legal Aid Fund of National Green Tribunal Bar Association, Pune and in case the cost is not deposited

by the applicant within a period of four weeks, the Registrar to take proper action for the recovery of the said amount as provided under order (xxi) Rule 30 of the CPC or as per law.

80. The application and other miscellaneous applications are disposed of accordingly.

Sheo Kumar Singh, JM

Dr. Satyawan Singh Garbyal, EM

September 07, 2020
Original Application No. 23/2016 (WZ)
R & AG

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(2024) 16 Supreme Court Cases 781

(BEFORE B.R. GAVAI AND B.V. NAGARATHNA, JJ.)

2J

STATE OF UTTAR PRADESH AND OTHERS . . Appellants;

Versus

UDAY EDUCATION AND WELFARE TRUST AND ANOTHER . . Respondents.

Civil Appeals Nos. 2407-12 of 2021† with Nos. 2547-48 of 2020, 3132-38 of 2022, 3141 of 2022, 3142-46 of 2022†, 3147-49 of 2022 and 4061-62 of 2022, decided on October 21, 2022

A. **Environment Law — Forests, Wildlife and Zoos — Forest Produce/Felling of Trees/Felled Trees/Sawmills/Timber/Wood-based Industries — Forest based industries — Bar/Licence/TWP/Permission/Quota/Illegality/Irregularity — Licence — Irregularity — Establishment of new wood based industries (WBIs) — Cancellation of licences issued — Validity — No infirmities in issuance of licence — Cancellation of licence, held, illegal**

— Court permitted grant of additional licences if additional timber was found to be available, in accordance with 2016 Guidelines — FSI conducted survey and submitted its report — In said report estimation showing that sufficient timber was available legally to run new WBIs which was done by FSI by applying scientific method and had arrived at conclusion based on satellite data — Held, NGT erroneously brushed aside such a scientific exercise and set aside licences issued for establishment of new wood based industries

— Felling of trees in prohibited category — When permissible — Procedural safeguards — Regard to

— NGT has brushed aside a scientific exercise of FSI by merely recording finding that figures arrived at were by estimation and not realistic — NGT given finding that FSI survey also takes into consideration prohibited trees, felling of which is not permissible — Held, when estimation was done by FSI by applying scientific method and had arrived at conclusion based on satellite data, such a report could not have been brushed aside by NGT lightly

— Further, Notification dt. 7-1-2020 issued by Government of Uttar Pradesh provides that prohibited trees shall not be felled till 31-12-2025 except under unavoidable circumstances, such as when a tree is dead or dying or it constitutes a danger to persons or property, or its felling is necessary for executing development work approved by Government, or if fruit bearing capacity of such tree has declined substantially — Such trees cannot be felled unless permission to fell such tree has been obtained in writing from competent authority — Tree owners are also required to maintain 10 trees in place of each tree felled — It is thus clear that there is no absolute prohibition for felling trees which are in prohibited category — Prohibited trees also include

† Arising from the Judgment and Order in *Samvit Foundation* v. *State of U.P.*, 2020 SCC OnLine NGT 531 (National Green Tribunal, OA No. 335 of 2019, dt. 18-2-2020) and *Uday Education & Welfare Trust* v. *State of U.P.*, 2020 SCC OnLine NGT 3361 (National Green Tribunal, RA No. 40 of 2020 in OA No. 313 of 2019, dt. 2-12-2020) **[Reversed]**

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trees like mango, jamun, etc. which are fruit bearing trees — After a particular number of years, fruit bearing capacity of such trees drastically reduces and as such, farmers normally fell such trees and go in for replantation of orchard — Apart from that, CEC itself approved availability of timber for State of Uttar Pradesh in its report dt. 19-4-2007, which included 17.77 lakh cubic metres of prohibited trees — Said report of CEC was approved by Supreme Court vide its order dt. 18-5-2007

— Further in pursuance of order of NGT a Committee of Experts submitted its report giving therein details about availability of timber — Not only this, but in pursuance of directions issued by NGT, another detailed affidavit was filed on behalf of State Government, giving therein details about availability of timber — It was specifically stated in said affidavit that eucalyptus and poplar are main species of TOF (trees outside forest) and 80% of wood is derived there from — It was further pointed out that farmers in State of Uttar Pradesh were not getting remunerative prices and are forced to sell their produce at a very cheap rate mainly to middlemen — It was also pointed out that there would be an expected investment of about Rs 3000 crores in State with establishment of new WBIs — Same would employ more than 80,000 people, mostly in rural areas of State — However, all these factors have been ignored by NGT

— NGT grossly erred in deducting availability of timber from prohibited trees — By now, it is more than settled that courts should not enter into an area that is domain of experts. — FSI, which is undisputedly an expert body, had arrived at its estimation based on scientific method — NGT could not have sat in appeal over opinion of expert

— When 2016 Guidelines (issued by Ministry of Environment and Forest and Climate Change) itself provided for consumption of timber by WBIs based on report of IPIRTI (Indian Plywood Industries Research and Training Institute), there was no purpose to again get assessment done by IPIRTI — Thus, plea that even after SLC decided to get assessment done by IPIRTI not had done so not tenable as it had strong reasons for not doing so — Thus, decision-making process has not been vitiated either on account of illegality, irrationality or procedural impropriety — Therefore, when a body having expertise in the field, i.e. FSI, upon a scientific study, has concluded that there is sufficient timber available in State impugned orders of NGT not sustainable in law — Regulatory Framework, Bodies and Judicial Intervention — National Green Tribunal Act, 2010, S. 20

B. **Environment Law — Forests, Wildlife and Zoos — Forest Produce/ Felling of Trees/Felled Trees/Sawmills/Timber/Wood-based Industries — Forest based industries — Bar/Licence/TWP/Permission/Quota/Illegality/ Irregularity — Establishment of new wood based industries (WBIs) — Sanction of granting licences having regard to sustainable development**

— For sustainable development of State and on account of availability of timber, sanction of granting licences can be permitted to continue, however, as a responsible State, it needs to ensure that environmental concerns are duly attended to

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— Therefore, State Government directed to ensure that while granting permission for felling trees of prohibited species, it should strictly ensure that permission is granted only when conditions specified in Notification dt. 7-1-2020 are satisfied — State Government shall also ensure that when such permissions are granted to applicants, applicants scrupulously follow mandate in said notification of planting 10 trees against 1 and maintaining them for five years

C. **Environment Law — National Green Tribunal Act, 2010 — Ss. 19(1) and 20 — Establishment of new wood based industries (WBIs) — Cancellation of licences issued — Validity — Held, cancellation is illegal without notice to affected persons — When NGT exercised its judicial powers, it could not have ignored principles of natural justice, which, even under S. 19(1), it is bound to follow**

D. **Environment Law — National Green Tribunal Act, 2010 — Ss. 19 and 20 — Challenge to licence issued to forest based industries — Credentials and bona fides of original applicants — Applicants not involved in any activity with regard to protection of environment; they had not been engaged in promoting plantation; aims and objectives of original applicants not clear; and sources of funding, etc. also not known**

— Though NGT have a power to take suo motu cognizance however, when credentials and bona fides of a litigant approaching NGT are seriously disputed, same cannot be ignored — Before a litigant is permitted to knock doors of justice and seek orders which have far-reaching effects of affecting employment of thousands of persons, stopping investment in State, prejudicing interests of farmers; credentials and bona fides of applicants must be tested

E. **Administrative Law — Judicial Review — Generally — Nature and Scope — Duty of the court is to confine itself to question of legality — Its concern should be: whether a decision-making authority exceeded its powers; committed an error of law; committed a breach of rules of natural justice; reached a decision which no reasonable tribunal would have reached or; abused its powers**

— Therefore, it is not for court to determine whether a particular policy or particular decision taken in fulfilment of that policy is fair — It is only concerned with manner in which those decisions have been taken — Extent of duty to act fairly will vary from case to case

— Shortly put, grounds upon which an administrative action is subject to control by judicial review can be classified as under: (i) Illegality: This means decision-maker must understand correctly law that regulates his decision-making power and must give effect to it; (ii) Irrationality, namely, *Wednesbury* unreasonableness and; (iii) Procedural impropriety

— Above are only broad grounds but it does not rule out addition of further grounds in course of time

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In pursuance of the order passed by the Supreme Court dated 5-10-2015 in *T.N. Godavarman Thirumulpad*, (2016) 13 SCC 586, the Ministry of Environment and Forest and Climate Change (MoEFCC) issued the Wood Based Industries (Establishment and Regulation) Guidelines, 2016 vide Notification No. S.O. 3456 (E) dated 11-11-2016.

Subsequent to the 2016 Guidelines, timber assessment for trees outside forest (TOF) in the State of Uttar Pradesh for wood based industries (WBIs) was done for the period between February 2017 and December 2017 by the Forest Survey of India (FSI). The FSI thereafter submitted its report, which contains district-wise, species wise and diameter class wise number of stems (trees), volume and annual potential production of timber from TOF in rural areas of all the districts of the State.

In pursuance of the 2016 Guidelines, the matter was placed before the State Level Committee (SLC) for grant of licences to various WBIs. The SLC in its meeting considered the matter about the grant of licences to various WBIs after taking into consideration the availability of wood in the State of Uttar Pradesh for determining the amount of timber available for new WBIs. In the said meeting, it was also decided that, in order to determine the correct number of new licences to be issued to WBIs under different categories against the timber available in the State, a reassessment may be done by the Indian Plywood Industries Research and Training Institute (IPIRTI).

In the meeting of the SLC, held on 7-9-2018, since it was found that the capacity of plywood units is taken as fixed by the 2016 Guidelines, which, in turn, was based on the assessment of IPIRTI, a decision was taken that there was no need for the fresh assessment of the capacity by IPIRTI.

In pursuance of the aforesaid decision, between 12-12-2018 and 31-12-2018, online letters of offer were issued to 1348 successful applicants. Subsequently, in the months of February and March 2019, provisional licences were issued to 1215 successful applicants in the 8 categories to set up their WBIs. Subsequent thereto, on 1-3-2019, a notice was issued by the Government of Uttar Pradesh communicating the grant of provisional licences to the newly selected WBIs.

Being aggrieved thereby, original application came to be filed by Uday Education and Welfare Trust before the NGT. Vide order dated 28-3-2019, the NGT directed the State Government to submit a report from the Joint Committee.

Being aggrieved by the notice dated 1-3-2019 issued by the State Government, original applications also came to be filed by Samvit Foundation and U.P. Timber Association respectively before the NGT.

Vide the impugned order dated 18-2-2020, the NGT allowed the said original applications and quashed and set aside the notice dated 1-3-2019 issued by the State Government for establishing new WBIs and all the provisional licences given.

Thus, the present appeals in the Supreme Court.

The respondent contended that FSI, while conducting the survey, has not taken into consideration the rotation period and, therefore, the survey is erroneous on the said count.

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Allowing the appeals, the Supreme Court

Held :

The Supreme Court in *T.N. Godavarman*, (1997) 2 SCC 267 passed a subsequent order on 4-3-1997 directing that all unlicensed sawmills, veneer and plywood industries in the State of Maharashtra and the State of Uttar Pradesh are to be closed forthwith and the State Government would not remove or relax the condition for grant of permission/licence for the opening of any such saw mill, veneer and plywood industry and it shall also not grant any fresh permission/licence for this purpose. (Paras 40 and 41)

Vide order dated 9-5-2002, the Supreme Court constituted CEC for monitoring of the implementation of the orders passed by it and for placing non-compliances of the cases before the Supreme Court. (Para 42)

Vide order dated 1-9-2006, the Supreme Court allowed licences to be issued to the closed sawmills, veneer and plywood units as per availability of timber and eligibility and seniority as per CEC recommendation. (Para 44)

In pursuance of the orders passed by the Supreme Court, SLC was constituted by the State of Uttar Pradesh for verification and compilation of information about closed WBIs. (Para 45)

The Supreme Court considered the report of CEC and passed the following order on 18-5-2007: (*T.N. Godavarman Thirumulpad case*, (2010) 13 SCC 325, SCC pp. 325-26, paras 4-5): The matters relate to sawmills, plywood and veneer units. CEC has considered the availability of wood for the industries, which was assessed as 43.70 lakh cu m from trees outside forests and 02.00 lakh cu m from government forests. It has also assessed the units into four categories. The Supreme Court accepted the CEC's recommendations. The sawmills, plywood and veneer units may be permitted, on the basis of the recommendations made by CEC. Licences may be given by the State Level Committees (SLCs). (Para 48)

In view of the permissions granted by the Supreme Court, the licences were granted to the unlicensed sawmills which were closed on account of the orders passed by the Supreme Court taking into consideration the availability of timber between 2007 and 2010. However, said licences were granted only to the units which were closed and not to the new units. (Para 51)

The matter again came up for consideration before the Supreme Court on 30-4-2010, when the Supreme Court passed order granting of additional licences if additional timber was found to be available (*T.N. Godavarman Thirumulpad case*, (2010) 13 SCC 316, SCC p. 319, para 12). (Paras 52 and 53)

Matter again came up for consideration before the Supreme Court on 5-10-2015 with regard to WBIs: (*T.N. Godavarman Thirumulpad case*, SCC p. 613, paras 130-31). Vide the order dated 5-10-2015, SLCs were authorised to take decisions regarding the grant of licence/permission to the WBIs. Vide the said order, it was also directed to constitute SLC under the Chairmanship of the Principal Chief Conservator of Forests with a representative of MoEFCC and an officer of the State Forest Department/Industries Department not below the rank

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of the Chief Conservator of Forests/equivalent rank. The Supreme Court further directed the SLCs to be constituted in each State/Union Territory for which the SLC was not yet constituted. The MOEF was also authorised to issue appropriate guidelines in conformity with the orders and directions issued by the Supreme Court and also the existing guidelines to the SLCs relating to the assessment of timber availability for WBIs. Appeals could be filed before MoEFCC against the decision of the SLC. (Paras 55 and 56)

T.N. Godavarman Thirumulpad v. *Union of India*, (2016) 13 SCC 586 : (2016) 13 SCC 612 (2); *T.N. Godavarman Thirumulpad* v. *Union of India*, (1997) 2 SCC 267; *T.N. Godavarman Thirumulpad* v. *Union of India*, (2010) 13 SCC 325; *T.N. Godavarman Thirumulpad* v. *Union of India*, (1997) 3 SCC 312; *T.N. Godavarman Thirumulpad (50)* v. *Union of India*, (2013) 8 SCC 198; *T.N. Godavarman Thirumulpad (57)* v. *Union of India*, (2008) 16 SCC 337; *T.N. Godavarman Thirumulpad* v. *Union of India*, 2006 SCC OnLine SC 1439; *T.N. Godavarman Thirumulpad* v. *Union of India*, (2016) 13 SCC 586 : (2016) 13 SCC 600; *T.N. Godavarman Thirumulpad* v. *Union of India*, (2010) 13 SCC 316, *considered*

In accordance with the directions issued by the Supreme Court vide order dated 5-10-2015, MoEFCC issued 2016 Guidelines on 11-11-2016. The 2016 Guidelines provided for the constitution of the SLC as well as the powers and functions of SLC. Under Clause 4 of the 2016 Guidelines, the SLC was authorised to assess the availability of timber for wood based industrial units in the State/UT every five years. The SLC was also authorised to approve appropriate locations for setting up of wood based industrial units. It was also authorised to approve the name of wood based industrial units which may be considered for grant of fresh licence or enhancement of the existing licensed capacity. (Para 57)

In pursuance of the 2016 Guidelines, the SLC was reconstituted in the State of Uttar Pradesh under the Chairmanship of Principal Chief Conservator of Forest/ Head of Forest Department on 17-5-2017. Vide Notification dated 11-9-2017, MoEFCC amended the 2016 Guidelines. (Para 60)

Subsequently, in accordance with the 2016 Guidelines, the SLC assessed the availability of timber for WBIs in the State of Uttar Pradesh, through the FSI. For assessing the availability of timber, the FSI conducted a survey and arrived at the annual potential production of timber from TOF in rural areas of all the districts of the State. FSI assessed the annual potential production from TOF at 77.74 lakh cubic metres. Subsequent to the survey and assessment, the SLC in its meeting dated 4-5-2018 considered the matter for grant of licence to various WBIs.

On the basis of the decision of the SLC, e-lottery was held. After following the procedure, provisional licences were issued to 1215 successful applicants in 8 categories of WBIs in February and March 2019. After the issuance of provisional licences, on 1-3-2019, the State Government issued a notice with regard to grant of provisional licences to the newly selected WBIs which came to be challenged before the NGT by way of filing the original applications by the respondents. The NGT after passing various interlocutory directions finally passed the impugned order and quashed and set aside the notice dated 1-3-2019 issued by the State Government and provisional licences given in pursuance thereof. (Para 62)

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In accordance with the 2016 Guidelines, the FSI conducted scientific survey and submitted its report in March 2018. (Para 66)

FSI considered various aspects before concluding and submitting its 101 page report. (Para 70)

Estimation as arrived at by the FSI was by applying a proper and adequate scientific method. (Para 71)

However, it is surprising that the NGT has brushed aside such a scientific exercise conducted by FSI by merely recording a finding that the figures arrived at were by estimation and not realistic. (Para 72)

Forest Survey of India (FSI) has published a paper on "Trees Outside Forest Resources in India". The contributors to the said paper are (*1*) Dr Subhash Ashutosh, DG, FSI; (*2*) Prakash Lakhchaura, DDG, FI, (*3*) Kamal Pandey, DD, FI; (*4*) Dr Sourav Ghose, Proj. Scientist D; (*5*) Sushila Tripathi; and (*6*) H.K. Tripathi. The paper shows that the timber and panel products of trees outside forest (TOF) origin have emerged as the major alternative to timber from forests and thus TOF have significantly obviated pressure from forests. The report shows that, the extent of TOF in the country has been assessed at 29.38 m hectare, which is around 8.94% of the total geographical area of the country. The report further shows that based on the recommendations of the National Commission on Agriculture (NCA, 1976), the Government of India launched a social forestry programme in the late seventies on a large scale. The paper further shows that, these days satellite data in a wide range of spectral, spatial, radiometric and temporal resolutions are available from various Remote Sensing Agencies of several countries. It further shows that there has been a rapid advancement in the development of digital image processing software. It, therefore, observes that the desired mapping of natural resources with reasonable accuracy is possible. The report refers to the methodology of assessment of TOF in different countries of the world and refers to various authorities. It refers to different types of methodologies used for different periods; the first one being from 1991 to 2001; the second period being from 2001 to 2016; and the third period being from 2016 onwards. The report shows that the State of Maharashtra has the highest potential annual yield of timber in India followed by the States of Uttar Pradesh and Karnataka. (Para 73)

It could thus be seen that the FSI has also emphasised the need of promoting TOF. It has been observed that TOF are significant natural, renewable resources which make vital contributions to the agro-ecology, socio-economy of the rural area, and environmental amelioration in the urban area and feed WBIs with raw material and thus generate significant employment. (Para 75)

When the estimation was done by the FSI by applying the scientific method and had arrived at the conclusion based on satellite data, such a report could not have been brushed aside by the NGT lightly. (Para 76)

Insofar as the finding of the NGT that the survey also takes into consideration the prohibited trees, the felling of which is not permissible, it will be relevant to note that the Notification dated 7-1-2020 issued by the Government of Uttar Pradesh

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provides that the prohibited trees shall not be felled till 31-12-2025 except under unavoidable circumstances, such as when a tree is dead or dying or it constitutes a danger to persons or property, or its felling is necessary for executing development work approved by the Government, or if the fruit bearing capacity of such tree has declined substantially. Such trees cannot be felled unless permission to fell such tree has been obtained in writing from the competent authority. The tree owners are also required to maintain 10 trees in place of each tree felled. It is thus clear that there is no absolute prohibition for felling the trees which are in the prohibited category. However, the same can be done only in exceptional circumstances. (Para 77)

It is to be noted that the prohibited trees also include trees like mango, jamun, etc. which are fruit bearing trees. After a particular number of years, the fruit bearing capacity of such trees drastically reduces and as such, the farmers normally fell such trees and go in for replantation of the orchard. Apart from that, CEC itself approved the availability of timber for the State of Uttar Pradesh in its report dated 19-4-2007, which included 17.77 lakh cubic metres of prohibited trees. The said report of the CEC was approved by the Supreme Court vide its order dated 18-5-2007. (Para 78)

Further in pursuance of the order of the NGT dated 28-3-2019, a Committee of Experts [Joint Committee comprising of representative of Principal Secretary (Forest), U.P. and Principal Chief Conservator of Forest, U.P.] had submitted its report on 3-8-2019. Not only this, but in pursuance of the directions issued by the NGT on 18-12-2019, another detailed affidavit was filed on behalf of the State Government on 21-1-2020, giving therein the details about the availability of timber. It was specifically stated in the said affidavit that eucalyptus and poplar are the main species of TOF and 80% of the wood is derived therefrom. It was further pointed out that the farmers in the State of Uttar Pradesh were not getting remunerative prices and are forced to sell their produce at a very cheap rate mainly to middlemen. It was also pointed out that there would be an expected investment of about Rs 3000 crores in the State with the establishment of new WBIs. The same would employ more than 80,000 people, mostly in the rural areas of the State. However, all these factors have been ignored by the NGT. (Para 79)

As such, the NGT has grossly erred in deducting the availability of timber from the prohibited trees. By now, it is more than settled that the courts should not enter into an area that is the domain of the experts. FSI, which is undisputedly an expert body, had arrived at its estimation based on the scientific method. The NGT could not have sat in appeal over the opinion of the expert. (Para 80)

The NGT has failed to take into consideration the stand of MoEFCC, which also supported the stand of the State that sufficient timber was available legally to run the new WBIs. (Para 82)

Insofar as the contention of the respondents that, though in the meeting of the SLC dated 4-5-2018, it was decided to get the assessment done by IPIRTI, the SLC in its meeting dated 7-9-2018 did a volte face and decided not to get the assessment done from IPIRTI, the perusal of the minutes of the meeting of

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the SLC dated 7-9-2018 would reveal that it was found that the IPIRTI had not done any new study/assessment of the consumption of timber by various WBIs in any State/Union Territory. It was noticed that, as per the report of the FSI, the TOF available was 77,74,522 cubic metres. Adding the timber available in the forest area of 2,57,273 cubic metres, the total quantity of availability of timber was 80,31,795 cubic metres. It is to be noted that the SLC had taken note of the letter dated 29-8-2018 issued by the Director, IPIRTI, where he had communicated that no assessment pertaining to the annual consumption of timber by veneer and Plywood Industries was undertaken by the IPIRTI during the last two years in any State of the country. It was found that the 2016 Guidelines itself provided for annual consumption of timber based on the report of IPIRTI. In this premise, it was found that there was no need to conduct a fresh study/assessment for the consumption of timber by WBIs by IPIRTI. It was decided to accept the figures as provided in the 2016 Guidelines. (Para 83)

It can thus be seen that the decision of the SLC for not getting the assessment done by the IPIRTI is based on sound reasons. When the 2016 Guidelines itself provided for the consumption of timber by WBIs based on the report of the IPIRTI, there was no purpose to again get the assessment done by IPIRTI. (Para 84)

Scope of judicial review

Scope of judicial review has been succinctly explained by the Supreme Court in *Tata Cellular*, (1994) 6 SCC 651 thus: The duty of the court is to confine itself to the question of legality. Its concern should be:

(*1*) Whether a decision-making authority exceeded its powers?

(*2*) Committed an error of law,

(*3*) committed a breach of the rules of natural justice,

(*4*) reached a decision which no reasonable tribunal would have reached or,

(*5*) abused its powers.

Therefore, it is not for the court to determine whether a particular policy or particular decision taken in the fulfilment of that policy is fair. It is only concerned with the manner in which those decisions have been taken. The extent of the duty to act fairly will vary from case to case. Shortly put, the grounds upon which an administrative action is subject to control by judicial review can be classified as under:

(*i*) Illegality: This means the decision-maker must understand correctly the law that regulates his decision-making power and must give effect to it.

(*ii*) Irrationality, namely, *Wednesbury*, (1948) 1 KB 223 (CA) unreasonableness.

(*iii*) Procedural impropriety.

The above are only the broad grounds but it does not rule out addition of further grounds in course of time. (Para 84)

R. v. *Secy. of State for the Home Deptt., ex p Brind*, (1991) 1 AC 696 : (1991) 2 WLR 588 (HL), *relied on*

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Applying the aforesaid principle to the present case, it cannot be said that the decision-making process in the present case has been vitiated either on account of illegality, irrationality or procedural impropriety. (Para 85)

Tata Cellular v. *Union of India*, (1994) 6 SCC 651; *Associated Provincial Picture Houses Ltd.* v. *Wednesbury Corpn.*, (1948) 1 KB 223 (CA); *R.* v. *Secy. of State for the Home Deptt., ex p Brind*, (1991) 1 AC 696 : (1991) 2 WLR 588 (HL), *followed*

Uday Education & Welfare Trust v. *State of U.P.*, 2019 SCC OnLine NGT 1307; *Samvit Foundation* v. *State of U.P.*, 2019 SCC OnLine NGT 2227, *considered*

It cannot be disputed that Section 20 of the NGT Act itself directs the Tribunal to apply the principles of sustainable development, the precautionary principle and the polluter pays principle. Undisputedly, it is the duty of the State as well as its citizens to safeguard the forest of the country. The resources of the present are to be preserved for the future generations. However, one principle cannot be applied in isolation of the other. (Para 88)

It is necessary that, while protecting the environment, the need for sustainable development has also to be taken into consideration and a proper balance between the two has to be struck. (Para 89)

As already discussed hereinabove, the majority of TOF, is from two species i.e. poplar and eucalyptus. These trees are fast growing. If a market is available for the said trees, there will be impetus to the farmers for large-scale plantations. The rotation in these species is quite fast. This will, in turn, increase the green coverage. NGT has taken a lopsided view. It has failed to take into consideration the concerns expressed by the State. The NGT has committed patent error in ignoring the expert's report and sitting in appeal over the same. The NGT has also failed to take into consideration the stand taken by MoEFCC, which supported the stand of the State. As already discussed hereinabove, the State had emphasised many advantages of granting new licences to WBIs. It was also emphasised that the timber from the State of Uttar Pradesh was being exported to the State of Haryana. However, none of these aspects have been considered by the NGT. Therefore, the impugned orders of the NGT are not sustainable in law. (Para 95)

There is another reason, why the order of the NGT would not be sustainable. Though, on the date on which the review applications were rejected, 1215 provisional licences were already granted and 633 units had already been established and commenced production, the NGT has passed the impugned order1 which adversely affects their interest. Either some of such industries ought to have been impleaded in their representative capacity or a public notice should have been given so that such licence-holders could have represented their case. However, the said contention is lightly brushed aside by the NGT by holding that, since the issue is related to the general decision of the State which is applicable uniformly to all the proposed provisional licencees, it is not necessary to consider the issue raised in the impleadment applications. It is more than a settled law that the principles of natural justice are required to be followed even in administrative actions when such actions adversely affect the rights of the citizens. When the NGT exercised its judicial powers, it could not have ignored the principles of natural justice, which, even under Section 19(1) of the NGT Act, it is bound to follow. (Para 96)

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Another aspect that needs consideration is that a serious issue was raised before the NGT by the appellants in present case with regard to the credentials and bona fides of the original applicants. (Para 97)

One applicant is Uday Education and Welfare Trust; the second applicant is Samvit Foundation and the third applicant is U.P. Timber Association. Undisputedly, the U.P. Timber Association was a litigant interested in the litigation. However, insofar as the other original applicants i.e. Uday Education and Welfare Trust and Samvit Foundation could not answer the specific queries with regard to the activities undertaken by the said original applicants were made as to whether they were involved in any activity with regard to the protection of the environment; had they at least been engaged in promoting plantation; what were the aims and objectives of the said original applicants; and what are the sources of funding, etc. Apart from the fact that they (original applicants) had previously filed some public interest litigations wherein orders were passed in their favour, they had no other information. (Para 98)

NGT, cannot be equated with other Tribunals and in environmental matters, it will also have a power to take suo motu cognizance. However, when the credentials and bona fides of a litigant approaching the NGT are seriously raised, the same cannot be ignored. (Para 99)

Municipal Corpn., Greater Mumbai v. *Ankita Sinha*, (2022) 13 SCC 401, *impliedly distinguished*

Before a litigant is permitted to knock the doors of justice and seek orders which have far-reaching effects of affecting the employment of thousands of persons, stopping investment in the State, prejudicing the interests of the farmers; the credentials and bona fides of the applicants must be tested. In the present case, there is scope to infer that the litigation could be at the behest of the existing WBIs who wanted to avoid competition and continue to get raw material at a cheaper rate. (Para 100)

Though the Supreme Court allowed the appeals, setting aside the orders of the NGT, and upheld the action of the State Government in granting licences, the State and its authorities reminded that it is their duty to protect the environment. The State and its authorities should ensure that necessary steps are taken for arresting the problem of declining forest and tree cover. The State and its authorities should make meaningful and concerted efforts to ensure that the green cover in the State of Uttar Pradesh is not reduced and to ensure that it increases. (Paras 101 to 106)

Samatha v. *State of A.P.*, (1997) 8 SCC 191; *State of H.P.* v. *Ganesh Wood Products*, (1995) 6 SCC 363; *Essar Oil Ltd.* v. *Halar Utkarsh Samiti*, (2004) 2 SCC 392; *Indian Council for Enviro-Legal Action* v. *Union of India*, (1996) 5 SCC 281; *Maharashtra Land Development Corpn.* v. *State of Maharashtra*, (2011) 15 SCC 616; *Glanrock Estate (P) Ltd.* v. *State of T.N.*, (2010) 10 SCC 96; *T.N. Godavarman Thirumulpad* v. *Union of India*, (1997) 2 SCC 267, *followed*

Though for the sustainable development of the State and on account of the availability of the timber, sanction of granting licences can be permitted to continue, however, as a responsible State, it needs to ensure that environmental concerns are duly attended to. Therefore, the State Government directed to ensure that while granting permission for felling trees of the prohibited species, it should

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strictly ensure that the permission is granted only when the conditions specified in the Notification dated 7-1-2020 are satisfied. The State Government shall also ensure that when such permissions are granted to the applicants, the applicants scrupulously follow the mandate in the said notification of planting 10 trees against 1 and maintaining them for five years. (Para 107)

Samvit Foundation v. *State of U.P.*, 2020 SCC OnLine NGT 531; *Vaneer Welfare Assn.* v. *State of U.P.*, 2020 SCC OnLine NGT 3367; *Uday Education & Welfare Trust* v. *State of U.P.*, 2020 SCC OnLine NGT 3361; *U.P. Timber Assn.* v. *State of U.P.*, 2020 SCC OnLine NGT 3354, *reversed*

Samvit Foundation v. *State of U.P.*, 2019 SCC OnLine NGT 2746; *Uday Education & Welfare Trust* v. *State of U.P.*, 2019 SCC OnLine NGT 2139; *State of U.P.* v. *Uday Education & Welfare Trust*, 2020 SCC OnLine SC 1441; *Kshitij Agnihotri* v. *Union of India*, 2018 SCC OnLine NGT 1752; *Common Cause* v. *Union of India*, (2017) 9 SCC 499; *Mantri Techzone (P) Ltd.* v. *Forward Foundation*, (2019) 18 SCC 494; *Pragnesh Shah* v. *Arun Kumar Sharma*, (2022) 11 SCC 493, *cited*

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4. 2020 SCC OnLine NGT 3361, *Uday Education & Welfare Trust* v. *State of U.P.* **(reversed)** 794*a*, 796*a*, 819*b-c*
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6. 2020 SCC OnLine SC 1441, *State of U.P.* v. *Uday Education & Welfare Trust* 796*a*
7. 2020 SCC OnLine NGT 531, *Samvit Foundation* v. *State of U.P.* **(reversed)** 793*f-g*, 795*f-g*, 806*b-c*, 815*f*, 819*b-c*
8. (2019) 18 SCC 494, *Mantri Techzone (P) Ltd.* v. *Forward Foundation* 799*f*

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9. 2019 SCC OnLine NGT 2746, *Samvit Foundation* v. *State of U.P.* 795*e*, 795*f-g*
10. 2019 SCC OnLine NGT 2227, *Samvit Foundation* v. *State of U.P.* 795*f-g*, 797*a*, 811*a-b*
11. 2019 SCC OnLine NGT 2139, *Uday Education & Welfare Trust* v. *State of U.P.* 795*e-f*, 795*f-g*
12. 2019 SCC OnLine NGT 1307, *Uday Education & Welfare Trust* v. *State of U.P.* 795*c*, 811*a*
13. 2018 SCC OnLine NGT 1752, *Kshitij Agnihotri* v. *Union of India* 799*c-d*
14. (2017) 9 SCC 499, *Common Cause* v. *Union of India* 799*f*
15. (2016) 13 SCC 586 : (2016) 13 SCC 612 (2), *T.N. Godavarman Thirumulpad* v. *Union of India* 794*c-d*, 795*e-f*, 796*g*, 803*c-d*, 804*d*, 807*a*, 813*c-d*
16. (2016) 13 SCC 586 : (2016) 13 SCC 600, *T.N. Godavarman Thirumulpad* v. *Union of India* 802*b-c*, 802*c*
17. (2013) 8 SCC 198, *T.N. Godavarman Thirumulpad (50)* v. *Union of India* 801*a-b*
18. (2011) 15 SCC 616, *Maharashtra Land Development Corpn.* v. *State of Maharashtra* 818*a*
19. (2010) 13 SCC 325, *T.N. Godavarman Thirumulpad* v. *Union of India* 798*g*, 801*f-g*, 801*g*, 806*g-h*, 810*h*
20. (2010) 13 SCC 316, *T.N. Godavarman Thirumulpad* v. *Union of India* 802*f*, 806*g-h*
21. (2010) 10 SCC 96, *Glanrock Estate (P) Ltd.* v. *State of T.N.* 818*a*, 818*a-b*
22. (2008) 16 SCC 337, *T.N. Godavarman Thirumulpad (57)* v. *Union of India* 801*b*
23. 2006 SCC OnLine SC 1439, *T.N. Godavarman Thirumulpad* v. *Union of India* 801*d*, 806*g*
24. (2004) 2 SCC 392, *Essar Oil Ltd.* v. *Halar Utkarsh Samiti* 817*e-f*
25. (1997) 8 SCC 191, *Samatha* v. *State of A.P.* 817*b-c*
26. (1997) 3 SCC 312, *T.N. Godavarman Thirumulpad* v. *Union of India* 800*g*
27. (1997) 2 SCC 267, *T.N. Godavarman Thirumulpad* v. *Union of India* 798*d-e*, 800*c-d*, 818*d-e*
28. (1996) 5 SCC 281, *Indian Council for Enviro-Legal Action* v. *Union of India* 817*f-g*
29. (1995) 6 SCC 363, *State of H.P.* v. *Ganesh Wood Products* 817*b-c*
30. (1994) 6 SCC 651, *Tata Cellular* v. *Union of India* 812*c-d*
31. (1991) 1 AC 696 : (1991) 2 WLR 588 (HL), *R.* v. *Secy. of State for the Home Deptt., ex p Brind* 813*a*
32. (1948) 1 KB 223 (CA), *Associated Provincial Picture Houses Ltd.* v. *Wednesbury Corpn.* 812*g-h*

The Judgment of the Court was delivered by

B.R. GAVAI, J.— For the reasons stated in the applications for impleadment/intervention, the same are allowed. This bunch of appeals challenges the order dated 18-2-2020[1], passed by the learned National Green Tribunal, Principal Bench, New Delhi (hereinafter referred to as "the learned NGT") in Original Applications Nos. 313, 335 and 396 of 2019, thereby quashing and setting aside the Notice dated 1-3-2019 issued by the State of Uttar Pradesh for establishing new wood based industries (hereinafter referred to as "WBIs") and also setting aside all the provisional licences given in pursuance thereof.

1 *Samvit Foundation* v. *State of U.P.*, 2020 SCC OnLine NGT 531

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2. The appeals also challenge the orders dated 18-3-2020[2], 2-12-2020[3], and 21-12-2020[4] vide which the review applications filed by the State of Uttar Pradesh and the provisional licence-holders have been rejected.

3. Civil Appeals Nos. 2407-2412 of 2021 are filed by the State of Uttar Pradesh. The rest of the civil appeals are filed by the provisional licence-holders, who were granted licences in pursuance of the notice dated 1-3-2019, issued by the State of Uttar Pradesh.

Factual background

4. For the sake of convenience, we will refer to the facts as found in Civil Appeals Nos. 2407-2412 of 2021 filed by the State of Uttar Pradesh.

5. There are series of orders passed by this Court and the Central Empowered Committee (hereinafter referred to as "CEC") appointed by this Court, issuing various directions for prohibiting/regulating the felling of trees as well as the establishment of WBIs. We will refer to them extensively in the subsequent paragraphs.

6. In pursuance of the order passed by this Court dated 5-10-2015 in *T.N. Godavarman Thirumulpad* v. *Union of India*[5], the Ministry of Environment and Forest and Climate Change ("MoEFCC" for short) issued the Wood Based Industries (Establishment and Regulation) Guidelines, 2016 (hereinafter referred to as "the 2016 Guidelines") vide Notification No. S.O. 3456 (E) dated 11-11-2016.

7. Subsequent to the 2016 Guidelines, timber assessment for trees outside forest ("TOF" for short) in the State of Uttar Pradesh for WBIs was done for the period between February 2017 and December 2017 by the Forest Survey of India ("FSI" for short). The FSI thereafter submitted its report, which contains districtwise, specieswise and diameter classwise number of stems (trees), volume and annual potential production of timber from TOF in rural areas of all the districts of the State.

8. In pursuance of the 2016 Guidelines, the matter was placed before the State Level Committee ("SLC" for short) for grant of licences to various WBIs. The SLC in its meeting held on 4-5-2018, considered the matter about the grant of licences to various WBIs after taking into consideration the availability of wood in the State of Uttar Pradesh for determining the amount of timber available for new WBIs. In the said meeting, it was also decided that, in order to determine the correct number of new licences to be issued to WBIs under different categories against the timber available in the State, a reassessment may be done by the Indian Plywood Industries Research and Training Institute ("IPIRTI" for short).

2 *Vaneer Welfare Assn.* v. *State of U.P.*, 2020 SCC OnLine NGT 3367
3 *Uday Education & Welfare Trust* v. *State of U.P.*, 2020 SCC OnLine NGT 3361
4 *U.P. Timber Assn.* v. *State of U.P.*, 2020 SCC OnLine NGT 3354
5 (2016) 13 SCC 586 : (2016) 13 SCC 612 (2)

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9. In the meeting of SLC, held on 7-9-2018, since it was found that the capacity of plywood units is taken as fixed by the 2016 Guidelines, which, in turn, was based on the assessment of IPIRTI, a decision was taken that there was no need for the fresh assessment of the capacity by IPIRTI.

10. In pursuance of the aforesaid decision, e-lottery was held on 12-12-2018 for grant of licences to various WBIs for the establishment of WBIs in 8 categories. Between 12-12-2018 and 31-12-2018, online letters of offer were issued to 1348 successful applicants. Subsequently, in the months of February and March 2019, provisional licences were issued to 1215 successful applicants in the 8 categories to set up their WBIs. Subsequent thereto, on 1-3-2019, a notice was issued by the Government of Uttar Pradesh communicating the grant of provisional licences to the newly selected WBIs.

11. Being aggrieved thereby, Original Application No. 313 of 2019 came to be filed by Uday Education and Welfare Trust before the learned NGT in March 2019. Vide order dated 28-3-2019[6], the learned NGT directed the State Government to submit a report from the Joint Committee comprising of the representative of Principal Secretary (Forest), U.P. and the Principal Chief Conservator of Forest, U.P. to examine the issues.

12. Being aggrieved by the Notice dated 1-3-2019 issued by the State Government, Original Applications Nos. 335 and 396 of 2019 also came to be filed by Samvit Foundation and U.P. Timber Association respectively, before the learned NGT.

13. In pursuance of the directions issued by the learned NGT, the Joint Committee Report came to be submitted on 3-8-2019. Vide order dated 6-8-2019[7] passed in Original Applications Nos. 313, 335 and 396 of 2019, the learned NGT directed the State Government to review the notice dated 1-3-2019 with regard to the establishment of new WBIs by 1350 units strictly in terms of the judgment of this Court in *T.N. Godavarman Thirumulpad* v. *Union of India*[5]. Vide order dated 1-10-2019[8], the learned NGT directed the status quo to be maintained.

14. The State of Uttar Pradesh filed an Interlocutory Application No. 732 of 2019 in OAs Nos. 313, 335 and 396 of 2019, seeking modification of the order dated 6-8-2019[7] and the order dated 1-10-2019[8]. Vide order dated 18-12-2019[9], the learned NGT issued directions to the State Government to provide certain data. Subsequently, vide the impugned order dated 18-2-2020[1], the learned NGT allowed the said original applications and quashed and set aside the Notice dated 1-3-2019 issued by the State Government for establishing new WBIs and all the provisional licences given.

6 *Uday Education & Welfare Trust* v. *State of U.P.*, 2019 SCC OnLine NGT 1307
7 *Samvit Foundation* v. *State of U.P.*, 2019 SCC OnLine NGT 2746
5 (2016) 13 SCC 586 : (2016) 13 SCC 612 (2)
8 *Uday Education & Welfare Trust* v. *State of U.P.*, 2019 SCC OnLine NGT 2139
9 *Samvit Foundation* v. *State of U.P.*, 2019 SCC OnLine NGT 2227
1 *Samvit Foundation* v. *State of U.P.*, 2020 SCC OnLine NGT 531

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15. Being aggrieved thereby, Civil Appeal (Diary) No. 12004 of 2020 was filed before this Court. Vide order dated 26-10-2020[10], this Court dismissed the said appeals as withdrawn with a liberty to file review application before the learned NGT. Vide orders dated 18-3-2020, 2-12-2020[3], and 21-12-2020[4], the learned NGT rejected the review applications.

16. The appellants, therefore, approached this Court being aggrieved by the orders passed by the learned NGT in the original applications as well as in the review petitions.

Submissions

17. We have heard Shri Vikas Singh, Shri P.S. Patwalia and Mr Rana Mukherjee, learned Senior Counsel appearing on behalf of the State of Uttar Pradesh, Shri V. Giri, Shri Syed Waseem Qadri, Shri V.K. Uniyal, Shri Vinay Navare, Shri V.K. Shukla, learned Senior Counsel, Ms Prerna Singh, and Mr Rudraksh Gupta, learned counsel appearing on behalf of the appellants, who were granted provisional licences. We have also heard Shri Dhruv Mehta and Shri Brijender Chahar, learned Senior Counsel appearing on behalf of Respondent 1.

18. Shri Vikas Singh, learned Senior Counsel, submitted that the decision of the State Government to establish WBIs is in accordance with the 2016 Guidelines issued by MoEFCC. He submits that the timber requirement by 1215 new WBIs, which were issued provisional licences is only 12.35 lakh cubic metres per year, whereas the total timber available in the State is 80.30 lakh cubic metres per year. It is, therefore, submitted that, as such, the requirement is not even 20% of the total availability of timber.

19. The learned Senior Counsel submitted that the only authorised agency in the country to conduct a survey of the forest as well as TOF is FSI. It is submitted that the object of IPIRTI is not to conduct a survey of either forest or TOF. It is submitted that, as a matter of fact, the learned NGT itself has directed such a study to be conducted by FSI, which has already undertaken similar studies for many States like Punjab, Maharashtra and others. It is submitted that when the survey with regard to availability of timber in the State of Uttar Pradesh was done by the very same agency, the learned NGT fell in gross error in again directing the State Government to conduct such a survey through FSI.

20. It is submitted that even MoEFCC had supported the stand taken by the State of Uttar Pradesh and, therefore, the learned NGT ought not to have interfered with the decision of the State Government.

21. Shri P.S. Patwalia, learned Senior Counsel also submitted that the decision of the State Government was in tune with the decision of this Court dated 18-5-2007 and 5-10-2015 passed in *T.N. Godavarman Thirumulpad* v. *Union of India*[5]. It is submitted that when an expert body like the FSI had done an elaborate study, there was no reason for the learned NGT to have sat in appeal over the same. He further submits that though a detailed affidavit has

10 *State of U.P.* v. *Uday Education & Welfare Trust*, 2020 SCC OnLine SC 1441
3 *Uday Education & Welfare Trust* v. *State of U.P.*, 2020 SCC OnLine NGT 3361
4 *U.P. Timber Assn.* v. *State of U.P.*, 2020 SCC OnLine NGT 3354
5 (2016) 13 SCC 586 : (2016) 13 SCC 612 (2)

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been filed on behalf of the State of Uttar Pradesh in compliance with the order of the learned NGT dated 18-12-2019[9], regarding the availability of timber, the learned NGT has totally ignored the same.

22. Shri V. Giri, learned Senior Counsel, submits that the learned NGT erred in passing orders which have vitally affected the rights of the citizens who were granted provisional licences. He submits that the order impugned is totally in breach of the principles of natural justice. It is submitted that, from the perusal of the record, it is clear that the State of Haryana while calculating its requirement for wood also takes into consideration the import from the State of Uttar Pradesh. It is submitted that when there is excess wood available in the State of Uttar Pradesh, there is no reason why the same should be permitted to be exported to the State of Haryana at the cost of entrepreneurs in the State of Uttar Pradesh.

23. Shri Vinay Navare, learned Senior Counsel, submitted that the timber used in the WBIs is from the trees which are agro-based. He submits that though the State of Uttar Pradesh had adopted an elaborate procedure right from June 2018 till the grant of licences, the applicants before the learned NGT had taken no steps. Shri Navare submits that only after the provisional licences were issued and 632 out of 1215 WBIs provisional licence-holders had already been established and commenced operations, the applications were entertained and the orders were passed to the prejudice of the WBIs. It is submitted that Section 19(1) of the National Green Tribunal Act, 2010 (hereinafter referred to as "the NGT Act") mandates following of the principles of natural justice. It is submitted that though the applications for impleadment were made by the WBIs, the applicants were not granted an opportunity of being heard.

24. Shri V.K. Uniyal, learned Senior Counsel submitted that the learned NGT had erred in using the word "allotted". It is submitted that there is no question of allotment of timber to the WBIs and they are required to purchase the same from the open market.

25. Shri V.K. Shukla, learned Senior Counsel submitted that the State Government decided to grant provisional licences for 8 different categories of WBIs. The requirement of raw material for different categories of WBIs is different. It is submitted that the learned NGT has grossly erred in considering all categories of WBIs together and setting aside the licences granted to all of them. It is submitted that the said industries are established in pursuance of the National Agro Forestry Policy of 2014 and as such the learned NGT ought not to have interfered.

26. Ms Prerna Singh, learned counsel appears for the appellants, who have been granted provisional licences for plywood (press only) category. She submits that for plywood (press only) industries, there is no requirement of consumption of timber directly. It is submitted that initially veneer is manufactured out of round/fresh timber. Veneer then so manufactured is glued and pressed together to manufacture plywood. It is submitted that the learned NGT has considered the requirement of timber as twice the actual requirement.

9 *Samvit Foundation* v. *State of U.P.*, 2019 SCC OnLine NGT 2227

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She submits that in the State of Uttar Pradesh, veneer is manufactured in surplus, which is exported to the State of Haryana.

27. Shri Rudraksh Gupta, learned counsel, submits that the learned NGT has failed to take into consideration the report of the National Poplar Commission of India.

28. All the learned counsel appearing on behalf of the appellants, in unison, submit that the original applicants before the Court were not bona fide litigants. It is submitted that there are reasons to believe that the proceedings were initiated at the instance of either the existing WBIs in the State of Uttar Pradesh to prevent competition or they were filed at the instance of the WBIs in the State of Haryana who were importing timber from the State of Uttar Pradesh at cheaper rates.

29. Shri Dhruv Mehta, learned Senior Counsel appearing on behalf of Respondent 1, on the contrary, submits that this Court has repeatedly held that the principles of sustainable development, the precautionary principle and the polluter pays principle are to be followed consistently. He raised a preliminary objection on the ground that in view of Section 22 of the NGT Act, the scope of an appeal before this Court could be limited to that of Section 100 of the Code of Civil Procedure, 1908. It is, therefore, submitted that unless a substantial question of law is raised, the appeal could not be tenable.

30. Shri Dhruv Mehta submits that this Court vide order dated 12-10-1996[11] has specifically prohibited the felling of trees in any forest, public or private. He further relies on the report of CEC dated 15-3-2005 to buttress his submission that WBIs can be permitted only if they exclusively use timber derived from poplar and eucalyptus species or agriculture waste products. It is submitted that the said guidelines also specifically provided that if the unit is found to have used any timber other than poplar and eucalyptus whether from a legal source or otherwise, the license granted to the unit shall be liable to be cancelled. He further relies on the report of CEC dated 12-10-2006. He submits that an assessment has to be done on the basis of the districtwise survey about timber availability from the TOF category. He submits that the said report of CEC itself would reveal that the assessment of the State is much less than what was initially projected by the State Government. He submits that unless the timber availability for the new WBIs is assessed and the SLC examines and recommends its approval, it is not permissible to establish new WBIs.

31. Shri Mehta further submits that the report of CEC dated 18-4-2007, accepted by this Court vide its order dated 18-5-2007[12], would show that the availability of timber for WBIs in the State of Uttar Pradesh is only 45.70 lakh cubic metres per year. The learned Senior Counsel submits that taking into consideration the fact that presently many imported machines from China are being used, the capacity of the existing units has gone much higher and,

11. *T.N. Godavarman Thirumulpad* v. *Union of India*, (1997) 2 SCC 267
12. *T.N. Godavarman Thirumulpad* v. *Union of India*, (2010) 13 SCC 325

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therefore, the timber which is available in the State of Uttar Pradesh would not be sufficient to meet the demand of the existing industries.

32. Shri Mehta submits that when SLC in its meeting dated 4-5-2018 had decided to get a report from IPIRTI, there was no occasion for it to review its decision in its subsequent meeting dated 7-9-2018. He submits that the Senior Officer of the Forest Department of the rank of Chief Conservator of Forest, Kanpur Division, Kanpur recommended that the report from IPIRTI should be obtained before deciding to issue the new licences. It is submitted that the letters of the said officer dated 11-9-2019 and 20-4-2018 have been ignored by the SLC.

33. Shri Dhruv Mehta further submits that Annexure I to the 2016 Guidelines is in contravention of the recommendations of CEC, which takes the requirement of timber for plywood unit as "NIL".

34. The learned Senior Counsel submits that vide Notification dated 20-7-2012, the State of Uttar Pradesh had notified 7 species of trees in the prohibited category. However, vide another Notification dated 31-10-2017, the said trees were taken out of the prohibited category. The learned NGT had set aside the said Notification of 2017 by order dated 11-9-2018[13]. It is submitted that the said order of the learned NGT has been accepted by the State of Uttar Pradesh and a fresh Notification has been issued on 7-1-2020, again bringing the said trees in the prohibited category. The learned Senior Counsel submits that while assessing the availability of timber, the trees under the said prohibited category have also been taken into consideration. He submits that if 20.75 lakh cubic metres is deducted from the availability of the timber, then the timber available in the State would be much less.

35. The learned Senior Counsel further submits that the survey has not been conducted for all the districts and has been conducted only for 30 districts and, therefore, the survey itself is erroneous.

36. The learned Senior Counsel further submits that FSI, while conducting the survey, has not taken into consideration the rotation period and, therefore, the survey is erroneous on the said count also. The learned Senior Counsel, in support of his submissions, relies on the judgment of this Court in *Common Cause* v. *Union of India*[14], *Mantri Techzone (P) Ltd.* v. *Forward Foundation*[15], *Municipal Corpn., Greater Mumbai* v. *Ankita Sinha*[16] and *Pragnesh Shah* v. *Arun Kumar Sharma*[17].

37. Shri Dhruv Mehta, relying on the judgment of this Court in *Ankita Sinha*[16], submits that this Court itself has considered the learned NGT to be a special Tribunal and held that it will even have jurisdiction to take suo motu cognizance of the environmental issues. He, therefore, submits that the

13 *Kshitij Agnihotri* v. *Union of India*, 2018 SCC OnLine NGT 1752
14 (2017) 9 SCC 499
15 (2019) 18 SCC 494
16 (2022) 13 SCC 401
17 (2022) 11 SCC 493

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arguments made on behalf of the appellants with regard to locus are without substance.

38. Shri Vikas Singh, learned Senior Counsel, in rejoinder, submits that the only distinction between the prohibited trees and non-prohibited trees is that the non-prohibited trees can be felled without permission, whereas the prohibited trees can be felled only in certain circumstances and only after the requisite permission is granted. He submits that the perusal of the FSI survey would reveal that even after the timber requirement for 1215 new units is taken into count, the State, still, will have 26.36 lakh cubic metres in reserve. He submits that if the new WBIs are permitted, it would result in more farmers going in for agro forestry in the State, which, in turn, will increase the forest cover. It is submitted that said 1215 units are likely to give employment to around 80,000 people. The learned Senior Counsel, therefore, submits that the impugned orders deserve to be quashed and set aside.

Earlier orders of this Court

39. For appreciating the rival submissions, it will be apposite to refer to certain orders passed by this Court.

40. This Court in *T.N. Godavarman*[11] passed an order on 12-12-1996. The relevant part thereof is as under: (SCC pp. 271-72, para 5)

> "*5.* … 6. Each State Government should within two months file a report regarding:
>
> (*i*) the number of sawmills, veneer and plywood mills actually operating within the State, with particulars of their real ownership;
>
> (*ii*) the licenced and actual capacity of these mills for stock and sawing;
>
> (*iii*) their proximity to the nearest forest;
>
> (*iv*) their source of timber.
>
> 7. Each State Government should constitute within one month, an Expert Committee to assess:
>
> (*i*) the sustainable capacity of the forests of the State qua sawmills and timber-based industry;
>
> (*ii*) the number of existing sawmills which can safely be sustained in the State;
>
> (*iii*) the optimum distance from the forest, qua that State, at which the saw mill should be located."

41. Vide subsequent order dated 4-3-1997[18], this Court directed thus: (SCC p. 315, para 6)

> "*6.* All unlicensed sawmills, veneer and plywood industries in the State of Maharashtra and the State of Uttar Pradesh are to be closed forthwith and the State Government would not remove or relax the condition for grant

11. *T.N. Godavarman Thirumulpad* v. *Union of India*, (1997) 2 SCC 267
18. *T.N. Godavarman Thirumulpad* v. *Union of India*, (1997) 3 SCC 312

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of permission/licence for the opening of any such saw mill, veneer and plywood industry and it shall also not grant any fresh permission/licence for this purpose. The Chief Secretary of the State will ensure strict compliance of this direction and file a compliance report within two weeks."

42. Vide order dated 9-5-2002[19], this Court constituted CEC for monitoring of the implementation of the orders passed by this Court and for placing non-compliances of the cases before it.

43. Vide order dated 29-10-2002[20], this Court further directed thus: (SCC p. 348, paras 44-45)

"*44*. No State or Union Territory shall permit any unlicensed sawmills, veneer, plywood industry to operate and they are directed to close all such unlicensed unit forthwith. No State Government or Union Territory will permit the opening of any sawmills, veneer or plywood industry without prior permission of the Central Empowered Committee. The Chief Secretary of each State will ensure strict compliance with this direction. There shall also be no relaxation of rules with regard to the grant of licence without previous concurrence of the Central Empowered Committee.

45. It shall be open to apply to this Court for relaxation and or appropriate modification or orders qua plantations or grant of licences."

44. Vide order dated 1-9-2006[21], this Court allowed licences to be issued to the closed sawmills, veneer and plywood units as per availability of timber and eligibility and seniority as per CEC recommendation.

45. In pursuance of the orders passed by this Court, SLC was constituted by the State of Uttar Pradesh for verification and compilation of information about closed WBIs.

46. The FSI conducted its assessment and assessed the annual availability of wood from TOF in the State of Uttar Pradesh at 55.61 lakh cubic metres vide report dated 3-4-2007.

47. On the basis of the report of the FSI, the SLC assessed the annual availability of timber for WBIs from TOF at 53.01 lakh cubic metres. CEC further reduced the same to 43.70 lakh cubic metres. However, it added 2.00 lakh cubic metres per year as timber available from government forests, and, therefore, assessed the annual availability of timber at 45.70 lakh cubic metres.

48. It is to be seen that in its report itself, the CEC included 17.77 lakh cubic metres of timber from the prohibited species. This Court considered the report of CEC and passed the following order on 18-5-2007[12]: (*T.N. Godavarman Thirumulpad case*[12], SCC pp. 325-26, paras 4-5)

"*4*. The matters relate to sawmills, plywood and veneer units. CEC has considered the availability of wood for the industries, which was assessed as 43.70 lakh cu m from trees outside forests and 02.00 lakh cu m from

19 *T.N. Godavarman Thirumulpad (50)* v. *Union of India*, (2013) 8 SCC 198
20 *T.N. Godavarman Thirumulpad (57)* v. *Union of India*, (2008) 16 SCC 337
21 *T.N. Godavarman Thirumulpad* v. *Union of India*, 2006 SCC OnLine SC 1439
12 *T.N. Godavarman Thirumulpad* v. *Union of India*, (2010) 13 SCC 325

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government forests. It has also assessed the units into four categories. We accept the CEC's recommendations. The sawmills, plywood and veneer units may be permitted, on the basis of the recommendations made by CEC. Licences may be given by the State Level Committees.

5. If there are any objections regarding grant of licences, the parties would be at liberty to submit their applications before the CEC for consideration."

49. It could thus be seen that in 2007 itself, this Court had accepted the recommendations of the CEC wherein the CEC had computed the total availability of timber and had also taken into consideration the availability of timber from the prohibited category.

50. Vide order dated 29-2-2008[22], this Court considered the issue regarding the manufacturing of medium density fibre board (MDF) and particle board in the States of Punjab, Uttarakhand and Karnataka. While considering the same, this Court passed the following order: (*T.N. Godavarman Thirumulpad case*[22], SCC pp. 601-602, para 34)

"*34*. The matter relates to manufacturing of Medium Density Fiber board (MDF) and particle board in the States of Punjab, Uttarakhand and Karnataka. CEC has filed its report and stated that there is a growing trend to use more and more MDF/particle board in place of industrial timber. The MDF/particle board help in reducing the pressure on natural forests. The lops and tops and small wood available from the plantations of eucalyptus, poplar, etc. raised on the non-forest area can be used by MDF/particle board plants."

51. In view of the permissions granted by this Court, the licences were granted to the unlicensed sawmills which were closed on account of the orders passed by this Court taking into consideration the availability of timber between 2007 and 2010. However, it is to be noted that the said licences were granted only to the units which were closed and not to the new units.

52. The matter again came up for consideration before this Court on 30-4-2010[23], when this Court passed the following order: (*T.N. Godavarman Thirumulpad case*[23], SCC p. 319, para 12)

"*12*. … (*ii*) after meeting the requirement of the licensed wood-based industry, the units permitted by this Hon'ble Court and the units whose category is yet to be finalised, the plywood/veneer units falling in Category IV may be considered for grant of license to the extent of timber availability and strictly in the order of seniority, subject to the one-time payment of Rs 9 lakhs per *press* in respect of the veneer units and compliance with the other conditions that have been stipulated. The one-time payment of penalty will be in addition to the normal licence fee and the other charges, if any, payable to the U.P. Forest Department. As decided earlier, the abovesaid amount should be kept in a designated interest bearing bank account and

22 *T.N. Godavarman Thirumulpad* v. *Union of India*, (2016) 13 SCC 586 : (2016) 13 SCC 600
23 *T.N. Godavarman Thirumulpad* v. *Union of India*, (2010) 13 SCC 316

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should be utilized only after the scheme in this regard is approved by this Hon'ble Court;"

53. It could thus be seen that this Court permitted granting of additional licences if additional timber was found to be available.

54. The CEC in its meeting held on 26-5-2010 with the SLC and representatives of WBIs Associations in the State of Uttar Pradesh, after taking into consideration the capacity of timber for vertical band saw (VBS) sawmill, modified/reduced the value of capacity of timber for VBS sawmills up to 10 hp from 540 to 270 cubic metres per year for the State of Uttar Pradesh in line with other States. As such, additional 9,58,230 cubic metres of timber became available for licences from 3,549 such VBS units. In view of this position between 2010 and 2015, licences came to be issued by the State of Uttar Pradesh to unlicensed WBIs, which were closed earlier by the order of this Court, as per the criteria recommended by the CEC and accepted by this Court.

55. The matter again came up for consideration before this Court on 5-10-2015[5] with regard to WBIs, when this Court passed the following order: (*T.N. Godavarman Thirumulpad case*[5], SCC p. 613, paras 130-31)

"*Category I: Matters relating to wood-based industries*

130. We have heard Shri Harish Salve, learned amicus curiae, Shri Ranjit Kumar, learned Solicitor General of India, Shri K.K. Venugopal, learned Senior Counsel and other learned Senior Counsel/counsel. Accordingly, we pass the following orders:

130.1. The State Level Committees for Wood-Based Industries ("SLCs") are, subject to the compliance with the prescribed guidelines and procedure, authorised to take decisions regarding the grant of license/permission to the wood-based industries.

130.2. In each State/UT for which the SLC has so far not been constituted, the SLC under the Chairmanship of the Principal Chief Conservator of Forests with a representative of the Ministry of Environment and Forest and Climate Change ("MoEFCC") and an officer of the State Forest Department/Industries Department not below the rank of the Chief Conservator of Forests/equivalent rank will immediately be constituted.

130.3. The MoEF is authorised to issue appropriate guidelines in conformation with the orders and directions issued by this Court and also the existing guidelines to the SLCs relating to assessment of timber availability for wood-based industries and grant of license/permission to the wood-based industries including addition of new machineries and also utilization of amounts recovered from the wood-based industries and connected matters.

130.4. Any person aggrieved by the decision taken by the SLC may file an appeal before MoEFCC seeking appropriate relief within 60 days' time. If, for any reason, any person is aggrieved by the orders so

5 *T.N. Godavarman Thirumulpad* v. *Union of India*, (2016) 13 SCC 586 : (2016) 13 SCC 612 (2)

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passed in the appeal, he may prefer an appropriate petition/application/appeal before the appropriate forum/Court for grant of appropriate relief(s).

131. We also permit MoEFCC to condone the delay, if any, in filing an appeal, if sufficient cause is made out by the applicant(s)/appellant(s)."

56. It is thus seen that vide the said order, SLCs were authorised to take decisions regarding the grant of license/permission to the WBIs. Vide the said order, it was also directed to constitute SLC under the Chairmanship of the Principal Chief Conservator of Forest with a representative of MoEFCC and an officer of the State Forest Department/Industries Department not below the rank of the Chief Conservator of Forests/equivalent rank. This Court further directed the SLCs to be constituted in each State/Union Territory for which the SLC was not yet constituted. The MOEF was also authorised to issue appropriate guidelines in conformity with the orders and directions issued by this Court and also the existing guidelines to the SLCs relating to the assessment of timber availability for WBIs. Appeals could be filed before MoEFCC against the decision of the SLC.

MoEFCC Guidelines

57. In accordance with the directions issued by this Court vide order dated 5-10-2015[5], MoEFCC issued 2016 Guidelines on 11-11-2016. The 2016 Guidelines provided for the constitution of the SLC as well as the powers and functions of SLC. Under Clause 4 of the 2016 Guidelines, the SLC was authorised to assess the availability of timber for wood based industrial units in the State/UT every five years. The SLC was also authorised to approve appropriate locations for setting up of wood based industrial units. It was also authorised to approve the name of wood based industrial units which may be considered for grant of fresh license or enhancement of the existing licensed capacity.

58. Clause 5 of the 2016 Guidelines provides for the assessment of the availability of timber for wood based industrial units. It requires that the quantity of timber would be assessed by commissioning the study, preferably in collaboration with institutes/universities of repute, once in five years. Under Clause 6 of the 2016 Guidelines, the timber requirement for various units as assessed by IPIRTI was given in Annexure I. The said Annexure I reads thus:

"The Indian Plywood Industry Research and Training Institute (IPlRTI), Bangalore an autonomous body under the Ministry of Environment, Forest and Climate Change has assessed the timber requirement per unit for peeling length of 4 feet and 8 feet size in the plywood/veneer units as 5 cu m and 11 cu m respectively per day on an average of 8 working hours per day. By assuming that the peeling units work for 8 hours per day on an average for 300 days in a year the normal timber requirement of the peeling length of 4 feet size in veneer units is 1500 cu m. The total timber requirement for the standalone veneer units may be assessed by calculating the equivalent number of 4 feet length

5 *T.N. Godavarman Thirumulpad* v. *Union of India*, (2016) 13 SCC 586 : (2016) 13 SCC 612 (2)

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machines and by taking its normal installed capacity as 1500 cu m per annum.

a The timber requirement of a plywood unit may be taken as 'nil' on the ground that the round timber is used as timber in the veneer units only and that the plywood units are the secondary users which use the veneer as the raw material produced by the veneer units. The plywood units use presses of various sizes such as 8 × 4 × 6, 8 × 4 × 12, 8 × 4 × 15, 4 × 4 × 7, 4 × 4 × 10. A 8 × 4 × 10 capacity press can produce up to 10 plywood pieces of 8'
b × 4' size per hour whereas a 8 × 4 × 15 capacity press can produce up to 15 plywood pieces of 8' × 4' size per hour and so on. The normative installed capacity of the plywood units will accordingly depend upon the number and the type of presses. This number and type of presses installed in each of the plywood unit may be assessed and thereafter equivalent number or presses of 8 × 4 × 10 capacity may be calculated. The normative annual
c timber requirement for an integrated plywood unit having a 8 × 4 × 10 capacity press may be taken as 2000 cu m per annum, and accordingly the total requirement of timber for the plywood units should be calculated."

59. It could thus be seen that even as per the assessment of the IPIRTI, the timber requirement of a plywood unit is required to be taken as "NIL" on the ground that the round timber is used as timber in the veneer units only and that
d the plywood units are the secondary users which use the veneer as raw material. It could thus be seen that the plywood units use presses of various sizes...

60. In pursuance of the 2016 Guidelines, the SLC was reconstituted in the State of Uttar Pradesh under the Chairmanship of Principal Chief Conservator of Forest/Head of Forest Department on 17-5-2017. Vide Notification dated 11-9-2017, MoEFCC amended the 2016 Guidelines.

e **61.** Subsequently, in accordance with the 2016 Guidelines, the SLC assessed the availability of timber for WBIs in the State of Uttar Pradesh, through the FSI. For assessing the availability of timber, the FSI conducted a survey and arrived at the annual potential production of timber from TOF in rural areas of all the districts of the State. FSI assessed the annual potential production from TOF at 77.74 lakh cubic metres. Subsequent to the survey and
f assessment, the SLC in its meeting dated 4-5-2018 considered the matter for grant of license to various WBIs. The SLC decided to get the reassessment done by IPIRTI to determine the correct number of new licences to be issued to WBIs under different categories against the available timber. However, subsequently, the SLC, in its meeting dated 7-9-2018, found that IPIRTI had not done any new study/assessment of the consumption of timber by various WBIs in any State/
g Union Territory. It was also found that the State of Haryana had adopted the timber consumption figures based on the CEC figures of 2007. It was therefore unanimously resolved by the SLC that there was no need for any fresh study/ assessment for the consumption of timber by WBIs to be conducted by IPIRTI and to adopt the figures for WBIs as were referred to in the 2016 Guidelines. It further found that the CEC in its meeting dated 26-5-2010 had reduced the
h annual consumption of timber of sawmills up to 10 hp or less hp to 270 cubic metres from 540 cubic metres.

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62. On the basis of the decision of the SLC, e-lottery was held. After following the procedure, provisional licences were issued to 1215 successful applicants in 8 categories of WBIs in February and March 2019. After the issuance of provisional licences, on 1-3-2019, the State Government issued a notice with regard to grant of provisional licences to the newly selected WBIs which came to be challenged before the learned NGT by way of filing the aforesaid original applications by the respondents. The learned NGT after passing various interlocutory directions finally passed the impugned order and quashed and set aside the Notice dated 1-3-2019 issued by the State Government and provisional licences given in pursuance thereof. As such we are required to examine the correctness of the decision of the learned NGT.

Considerations

63. The learned NGT while passing the impugned order[1] has set aside the notice of the State of Uttar Pradesh on the following grounds:

63.1. That the WBIs can be allowed to operate only after ensuring timber and raw material availability to sustain such industries and this has to be determined in actual terms and not on mere assumptions.

63.2. That it is difficult to accept the stand of the State of Uttar Pradesh that there was availability of timber/raw material to sustain the new WBIs.

63.3. That it is the stand of the State of Uttar Pradesh that the total potential availability of timber per year in the State of Uttar Pradesh is 80.30 lakh cubic metres, which includes 2.56 lakh cubic metres from the government forests and 77.74 lakh cubic metres from TOF. Out of 80.30 lakh cubic metres, 71.8 lakh cubic metres were stated to be available from 22 species and 8.50 lakh cubic metres from the other species. Out of 22 species, there are 10 species that are prohibited from felling and as such, 20.75 lakh cubic metres from these 10 species are liable to be excluded.

63.4. That the major contribution is from eucalyptus (28 lakh cubic metres) and Poplar species (15 lakh cubic metres), a total of which is 43 lakh cubic metres. Thus, the figure is not actual but presumptive.

63.5. That the standard error percentage adopted by the FSI is not correct and is much higher.

63.6. That the total availability of timber for consumption including that from the government forests would not be more than 40-45 lakh cubic metres per year.

63.7. That the potential availability of 77.74 lakh cubic metres from TOF as given in the affidavit has been overestimated.

64. It is to be noted that after this Court allowed the licences to be issued to the closed sawmills vide order dated 1-9-2006[21], the SLCs were constituted. The permissions were to be granted on the recommendations of the CEC. Vide order dated 18-5-2007[12], this Court had also accepted the recommendation of the CEC. Vide another order dated 30-4-2010[23], this Court permitted additional

1 *Samvit Foundation* v. *State of U.P.*, 2020 SCC OnLine NGT 531
21 *T.N. Godavarman Thirumulpad* v. *Union of India*, 2006 SCC OnLine SC 1439
12 *T.N. Godavarman Thirumulpad* v. *Union of India*, (2010) 13 SCC 325
23 *T.N. Godavarman Thirumulpad* v. *Union of India*, (2010) 13 SCC 316

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licences to be granted if additional timber was available. Accordingly, licences were granted between 2010 and 2015. Vide subsequent order dated 5-10-2015[5], this Court allowed the grant of license/permission to unlicensed WBIs in the country. This Court had directed the reconstitution of the SLCs for WBIs. In pursuance of the directions issued by this Court, the 2016 Guidelines were issued by MoEFCC. As per the 2016 Guidelines, the SLC was reconstituted in the State of Uttar Pradesh on 17-5-2017.

65. One of the duties which was cast upon the SLC was to assess the availability of timber for wood based industrial units in the State. The SLC was to assess the availability of timber by commissioning studies, preferably in collaboration with institutes/universities of repute, once in five years.

66. In accordance with the 2016 Guidelines, the FSI conducted the survey and submitted its report in March 2018. It will be relevant to refer to the relevant part of the Foreword of the said report of the FSI.

> "In the recent past, a number of requests were received for establishment of wood based industries in the State for which the raw material would come from outside the forest areas. Since accurate assessment of TOF is needed for effective planning and management, Uttar Pradesh Forest Department requested FSI to make Agro-Climatic zone wise assessment on the basis of inventory already done during its regular course of inventory conducted in the State. As per the final report, the total stems as estimated from the study is 299.43 million with a volume of 79.40 m. cum. The total yield in the Uttar Pradesh is estimated 7.8 million cum.
>
> The report gives an assessment of the growing stock existing outside State forest reserves. The report has also indicated districtwise, specieswise and girth classwise number of stems and volume in each Agro-Climatic Zone wise of inventoried districts. I am confident that this report would provide useful data for arriving at informed policy and programme interventions to give a fillip to forestry sector in the State besides providing benchmark data for tree crop in non-forest area."

67. After conducting the survey, the FSI has come to a finding that the State of Uttar Pradesh had an annual potential production of 77,74,521 cubic metres of timber. For conducting the survey, the FSI acquired satellite data for the inventoried districts of Uttar Pradesh State from National Remote Sensing Centre, Hyderabad. The entire gambit of scientific methodology was applied. The data processing was carried out independently for all the inventoried districts of Uttar Pradesh. It will be relevant to refer to the following part of the report of the FSI:

> "The data processing was carried out independently for all the inventoried districts of Uttar Pradesh. Estimates of stems per ha and volume per ha were generated according to species and diameter class for block, linear and scattered stratum under each district. Estimated stems and their volumes were generated according to species and diameter class by aggregating stem per hectare and volume per hectare over the entire

5 *T.N. Godavarman Thirumulpad* v. *Union of India*, (2016) 13 SCC 586 : (2016) 13 SCC 612 (2)

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Rural CNF Area of each stratum for each district by combining the estimated stems and volumes under block, linear and scattered stratum. By aggregating the estimates of stems and volume of all the three strata, the estimates of stems and volumes according to species and diameter class has been prepared for rural area separately."

68. The FSI had also divided the State of Uttar Pradesh into 9 Agro-climatic zones to generate the estimate of growing stock and annual potential production. Districtwise production was estimated before concluding that 77,74,521 cubic metres of timber was the annual potential production. The contention of the respondents that the rotation method was not applied is totally incorrect. It will be relevant to refer to Para 5.4 of the said report, which reads thus:

"5.4. *Estimates of Annual Potential Production of Wood from TOF (Rural)*

Yield of a forest depends on several factors such as its structure, growth, density, productive capacity of site, etc. The estimate of yield been generated for rural area using growing stock estimates. The Uttar Pradesh Forest Department was supplied the complete list of tree species which were found in the survey. The Uttar Pradesh Forest Department was asked to indicate tree species being used as 'timber' and 'non-timber' and rotation period of specified timber species. *The Uttar Pradesh Forest Department informed that they do not have rotation period of all species and requested Forest Survey of India to use their rotation period used for estimation of annual potential production of wood.* The species are arranged into two groups; one containing the species having timber values and another containing rest by agro-climatic zone wise. The yield has been calculated using Von Mentel formula as given below:

$$\text{Yield} = 2GS/R$$

Where GS: Growing Stock

R: rotation period

Using the information of timber value, growing stock and rotation period in the above mentioned formulae specieswise yield were calculated. The Agro-Climatic Zone wise yield has been given in Annexure 11."

(emphasis supplied)

69. The standard error was also determined by applying the appropriate scientific method.

70. The FSI, hence, considered various aspects before concluding and submitting its 101 page report.

71. It could thus be seen that the estimation as arrived at by the FSI was by applying a proper and adequate scientific method.

72. However, it is surprising that the learned NGT has brushed aside such a scientific exercise by merely observing that the figures arrived at were by estimation and not realistic.

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73. The FSI has published a paper on "Trees Outside Forest Resources in India". The contributors to the said paper are (*1*) Dr Subhash Ashutosh, DG, FSI; (*2*) Prakash Lakhchaura, DDG, FI, (*3*) Kamal Pandey, DD, FI; (*4*) Dr Sourav Ghose, Proj. Scientist D; (*5*) Sushila Tripathi; and (*6*) H.K. Tripathi. The paper shows that the timber and panel products of TOF origin have emerged as the major alternative to timber from forests and thus TOF have significantly obviated pressure from forests. The report shows that, the extent of TOF in the country has been assessed at 29.38 m hectare, which is around 8.94% of the total geographical area of the country. The report further shows that based on the recommendations of the National Commission on Agriculture (NCA, 1976), the Government of India launched a social forestry programme in the late seventies on a large scale. The paper further shows that, these days satellite data in a wide range of spectral, spatial, radiometric and temporal resolutions are available from various Remote Sensing Agencies of several countries. It further shows that there has been a rapid advancement in the development of digital image processing software. It, therefore, observes that the desired mapping of natural resources with reasonable accuracy is possible. The report refers to the methodology of assessment of TOF in different countries of the world and refers to various authorities. It refers to different types of methodologies used for different periods; the first one being from 1991 to 2001; the second period being from 2001 to 2016; and the third period being from 2016 onwards. The report shows that the State of Maharashtra has the highest potential annual yield of timber in India followed by the States of Uttar Pradesh and Karnataka.

74. It will be relevant to refer to the conclusion of the said paper, which is as follows:

> "**5. Conclusion**
>
> TOF play a significant role in the socio-economic lives of people both in rural and urban areas of the country by enriching the people and society at large economically as well as ecologically. The management of TOF assumes high significance in the country for realising much higher potential which it offers in generating wood based economy and ecosystem services including carbon sequestration. Periodic assessment of TOF resources including its spatial distribution is prerequisite for its scientific management in the country. FSI is mandated with this task however there is need for continuous improvement in the methodology and inclusion of more number of variables in the assessment. The organisation will have to be further strengthened particularly in terms of manpower, to address the emerging information needs on TOF. There has been regular refinement in methodologies in the last three decades to quantify TOF resources using various statistical designs and estimates with better precision. The advancement of technologies in the field of remote sensing, satellite image processing and availability of high resolution satellite data made the methodology much precise and easier. The progression of science may further refine the existing method of TOF assessment in near future.

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TOF also act as an important source for timber and fuel wood to meet the demands of fast growing population of the country. There is a need to put focus on increasing the growing stock per hectare or yield of TOF by better management and planning. There is also a need for a separate policy on TOF to ensure its expansion and sustainable management for multiple ecological benefits, timber production, carbon sequestration and for obviating pressure from the natural forests.

Occupying nearly 9% of the geographical area of the country, TOF are significant natural, renewable resource which make vital contribution to the agro-ecology, socio-economy of the rural areas, environmental amelioration in the urban areas and feed wood based industries with the raw material and thus generate significant employment. TOF form a nearly 38% of the carbon sink in forest and tree cover of the country. TOF offers the path for achieving the national policy goal of 33% of forest and tree cover in the country. Through expansion of TOF, particularly in agro-forestry and on culturable wastelands, India can substantially increase its carbon sink to achieve its international commitments of NDC and LDN by 2030."

75. It could thus be seen that the FSI has also emphasised the need of promoting TOF. It has been observed that TOF are significant natural, renewable resources which make vital contributions to the agro-ecology, socio-economy of the rural area, and environmental amelioration in the urban area and feed WBIs with raw material and thus generate significant employment.

76. It is our considered view that, when the estimation was done by the FSI by applying the scientific method and had arrived at the conclusion based on satellite data, such a report could not have been brushed aside by the learned NGT lightly.

77. Insofar as the finding of the learned NGT that the survey also takes into consideration the prohibited trees, the felling of which is not permissible, it will be relevant to note that the Notification dated 7-1-2020 issued by the Government of Uttar Pradesh provides that the prohibited trees shall not be felled till 31-12-2025 except under unavoidable circumstances, such as when a tree is dead or dying or it constitutes a danger to persons or property, or its felling is necessary for executing development work approved by the Government, or if the fruit bearing capacity of such tree has declined substantially. Such trees cannot be felled unless permission to fell such tree has been obtained in writing from the competent authority. The tree owners are also required to maintain 10 trees in place of each tree felled. It is thus clear that there is no absolute prohibition for felling the trees which are in the prohibited category. However, the same can be done only in exceptional circumstances.

78. It is to be noted that the prohibited trees also include trees like mango, jamun, etc. which are fruit bearing trees. After a particular number of years, the fruit bearing capacity of such trees drastically reduces and as such, the farmers normally fell such trees and go in for replantation of the orchard. Apart from that, it is to be noted that the CEC itself approved the availability of timber for the State of Uttar Pradesh in its report dated 19-4-2007, which included 17.77 lakh cubic metres of prohibited trees. The said report of the CEC was approved by this Court vide its order dated 18-5-2007[12].

12 *T.N. Godavarman Thirumulpad* v. *Union of India*, (2010) 13 SCC 325

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79. It is further to be noted that in pursuance of the order of the learned NGT dated 28-3-2019[6], a Committee of Experts [Joint Committee comprising of representative of Principal Secretary (Forest), U.P. and Principal Chief Conservator of Forest, U.P.] had submitted its report on 3-8-2019. Not only this, but in pursuance of the directions issued by the learned NGT on 18-12-2019[9], another detailed affidavit was filed on behalf of the State Government on 21-1-2020, giving therein the details about the availability of timber. It was specifically stated in the said affidavit that eucalyptus and poplar are the main species of TOF and 80% of the wood is derived therefrom. It was further pointed out that the farmers in the State of Uttar Pradesh were not getting remunerative prices and are forced to sell their produce at a very cheap rate mainly to middlemen. It was also pointed out that there would be an expected investment of about Rs 3000 crore in the State with the establishment of new WBIs. The same would employ more than 80,000 people, mostly in the rural areas of the State. However, all these factors have been ignored by the learned NGT.

80. As such, the learned NGT has grossly erred in deducting the availability of timber from the prohibited trees. By now, it is more than settled that the Courts should not enter into an area that is the domain of the experts. FSI, which is undisputedly an expert body, had arrived at its estimation based on the scientific method. The learned NGT could not have sat in appeal over the opinion of the expert.

81. It is relevant to note that MoEFCC, in pursuance of the directions issued by the learned NGT had filed its opinion on 18-12-2019. It will be relevant to refer to Para 8 of the said opinion.

> "8. That based on the examination of available documents in light of the provisions of the Wood Based Industries (Establishment and Regulation) Rules, 2016, MoEFCC is of the opinion that the State of U.P. has followed the Wood Based Industries (Establishment and Regulation) Guidelines, 2016 (as amended in 2017) issued by MoEFCC. The availability of wood in the State has also been assessed by the SLC through FSI. The Ministry is, therefore, of the view that the SLC may approve setting up of new industries in the State if it is satisfied that sufficient timber is available legally to run the new wood based industries."

82. The learned NGT has failed to take into consideration the stand of MoEFCC, which also supported the stand of the State that sufficient timber was available legally to run the new WBIs.

83. Insofar as the contention of the learned counsel for the respondents that, though in the meeting of the SLC dated 4-5-2018, it was decided to get the assessment done by IPIRTI, the SLC in its meeting dated 7-9-2018 did a volte face and decided not to get the assessment done from IPIRTI, the perusal of the minutes of the meeting of the SLC dated 7-9-2018 would reveal that it was found that the IPIRTI had not done any new study/assessment of the

6 *Uday Education & Welfare Trust* v. *State of U.P.*, 2019 SCC OnLine NGT 1307
9 *Samvit Foundation* v. *State of U.P.*, 2019 SCC OnLine NGT 2227

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consumption of timber by various WBIs in any State/Union Territory. It was noticed that, as per the report of the FSI, the TOF available was 77,74,522 cubic metres. Adding the timber available in the forest area of 2,57,273 cubic metres, the total quantity of availability of timber was 80,31,795 cubic metres. It is to be noted that the SLC had taken note of the letter dated 29-8-2018 issued by the Director, IPIRTI, where he had communicated that no assessment pertaining to the annual consumption of timber by veneer and plywood industries was undertaken by the IPIRTI during the last two years in any State of the country. It was found that the 2016 Guidelines itself provided for annual consumption of timber based on the report of IPIRTI. In this premise, it was found that there was no need to conduct a fresh study/assessment for the consumption of timber by WBIs by IPIRTI. It was decided to accept the figures as provided in the 2016 Guidelines.

84. It can thus be seen that the decision of the SLC for not getting the assessment done by the IPIRTI is based on sound reasons. When the 2016 Guidelines itself provided for the consumption of timber by WBIs based on the report of the IPIRTI, there was no purpose to again get the assessment done by IPIRTI. The scope of judicial review has been succinctly explained by this Court in *Tata Cellular* v. *Union of India*[24], which has been consistently followed in a catena of cases. This Court, in the said case, observed thus: (SCC pp. 677-78, para 77)

> "*77.* The duty of the court is to confine itself to the question of legality. Its concern should be:
>
> 1. Whether a decision-making authority exceeded its powers?
> 2. Committed an error of law,
> 3. Committed a breach of the rules of natural justice,
> 4. Reached a decision which no reasonable tribunal would have reached or,
> 5. Abused its powers.
>
> Therefore, it is not for the court to determine whether a particular policy or particular decision taken in the fulfilment of that policy is fair. It is only concerned with the manner in which those decisions have been taken. The extent of the duty to act fairly will vary from case to case. Shortly put, the grounds upon which an administrative action is subject to control by judicial review can be classified as under:
>
> (*i*) Illegality: This means the decision-maker must understand correctly the law that regulates his decision-making power and must give effect to it.
>
> (*ii*) Irrationality, namely, *Wednesbury*[25] unreasonableness.
>
> (*iii*) Procedural impropriety.

24 (1994) 6 SCC 651

25 *Associated Provincial Picture Houses Ltd.* v. *Wednesbury Corpn.*, (1948) 1 KB 223 (CA)

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The above are only the broad grounds but it does not rule out addition of further grounds in course of time. As a matter of fact, in *R.* v. *Secy. of State for the Home Deptt., ex p Brind*[26], Lord Diplock refers specifically to one development, namely, the possible recognition of the principle of proportionality. In all these cases the test to be adopted is that the court should, 'consider whether something has gone wrong of a nature and degree which requires its intervention'."

85. Applying the aforesaid principle to the present case, it cannot be said that the decision-making process has been vitiated either on account of illegality, irrationality or procedural impropriety.

86. With regard to the contention of Shri Dhruv Mehta, learned Senior Counsel, that Annexure I to the 2016 Guidelines providing the timber requirement of a plywood unit to be taken as "NIL" is contrary to the CEC recommendations is concerned, we do not find any substance in the said submission. Firstly, the 2016 Guidelines have been issued by MoEFCC in pursuance of the directions issued by this Court dated 5-10-2015[5]. In any case, the raw material for plywood industries is "veneer" and the raw material for veneer is "timber". We find substance in the contention of the appellants that, if timber is to be considered again as a raw material for plywood, then it will amount to showing the consumption of the same timber more than once, which is, in fact, not consumed. It is not in dispute that veneer is a raw material for plywood, which is derived from timber. The same timber is used for deriving veneer and such veneer, which is used for manufacturing plywood, cannot be counted twice. In any case, as long as the 2016 Guidelines which are issued in pursuance of the directions issued by this Court are not set aside, the contention in that regard is without substance.

87. That leads us to consider the contention of the respondents that this Court has repeatedly emphasised the principles of sustainable development, the precautionary principle and the polluter pays principle. No doubt that the protection of the environment is of utmost importance. It is the duty of this generation to protect the environment for future generations.

Conclusion

88. It cannot be disputed that Section 20 of the NGT Act itself directs the learned Tribunal to apply the principles of sustainable development, the precautionary principle and the polluter pays principle. Undisputedly, it is the duty of the State as well as its citizens to safeguard the forest of the country. The resources of the present are to be preserved for the future generations. However, one principle cannot be applied in isolation of the other.

89. It is necessary that, while protecting the environment, the need for sustainable development has also to be taken into consideration and a proper balance between the two has to be struck.

26 (1991) 1 AC 696 : (1991) 2 WLR 588 (HL)

5 *T.N. Godavarman Thirumulpad* v. *Union of India*, (2016) 13 SCC 586 : (2016) 13 SCC 612 (2)

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90. A body having expertise in the field i.e. the FSI, upon a scientific study, has concluded that there is sufficient timber available in the State of Uttar Pradesh. Not only that, but the respondents themselves have placed on record a project report on "Study to know the percentage and value of the raw material sourced through U.P. Forests by Plywood and Khair (Kattha) Industries in U.P." The said report is prepared by RAK Management Consultants on the instructions of the Department of Planning, Economic and Statistics Division, Government of Uttar Pradesh. The said report itself shows that the consultants, during the field survey, observed resentment among the plywood manufacturers against the process of issuing new licences to the WBIs by the State Government.

91. The report further goes on to show that on an average 1500-1700 trucks/tractor trollies of the eucalyptus and popular wood from all over Haryana, Punjab, Himachal Pradesh and Uttar Pradesh go to Yamuna Nagar, Haryana daily. Out of the said trucks/trollies, approximately 300-350 tractor trollies and some other small vehicles per day come from Uttar Pradesh. The report shows that approximately 5 to 6 lakh metric tons of timber per year is exported to Yamuna Nagar. The said material belongs to the western districts of Uttar Pradesh i.e. Muzaffarnagar, Saharanpur, Shamli, Baghpat and Meerut. It is stated that there is no sufficient market for this produce in the said area. The report further finds that the western districts of Uttar Pradesh i.e. Meerut, Muzaffarnagar, Saharanpur, Baghpat and Shamli, etc. do not have sufficient number of plywood and veneer units and as such, they are not sufficient for the entire farmers' produce available in the said area. The report itself shows that the western districts need around 80-85 plywood and veneer units. The report goes on further to show that there is dissatisfaction among the already existing industrialists about the assessment made by the FSI.

92. It is further to be noted that the State has specifically pointed out before the learned NGT that on the establishment of WBIs, an investment of about Rs 3000 crore was likely to be attracted in the State; employment opportunities to over 80,000 people will be available and the farmers of the State would get a more remunerative price. This would result in more impetus for large-scale plantation and agro-forestry. The State also emphasised that this will reduce dependence on traditional/cash crops and also reduce migration of people to urban areas. It is also emphasised that if the new WBIs are permitted, it will reduce the import of WBIs produce. However, all these aspects have not been taken into consideration by the learned NGT.

93. It will be relevant to note that the Forest Research Institute, Dehradun, Uttarakhand has published "Country Report of Poplars and Willows Period : 2012-2015". The Report states that the timber from poplar and willow is the backbone of vibrant plywood, board, match, paper and sports goods industries. The Report further states that in tune with Indian Agroforestry Policy, 2014, the plantation of poplar has been promoted. It further states that the Planning Commission of India has given special grants to certain States for the diversification of agriculture where farmers are advised to move away from paddy cultivation to sustain agricultural production. Poplar and eucalyptus

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are among the few trees promoted under this diversification plan. The Report states that poplar plays a significant role in rural development by generating employment for many categories of skilled, semi-skilled and unskilled workers.

94. The paper on "Trees Outside Forest Resources in India" published by the FSI, cited supra, also emphasises that TOF are significant natural, renewable resources which make vital contributions to the agro-ecology, socio-economic improvement of the rural areas, environmental amelioration in the urban areas and feed WBIs with raw material and thus generate significant employment. TOF form nearly 38% of the carbon sink in the forest and tree cover of the country. It states that TOF offers the path for achieving the national policy goal of 33% of forest and tree cover in the country. It states that through the expansion of TOF, particularly in agro-forestry and on culturable wastelands, India can substantially increase its carbon sink to achieve its international commitments of NDC and LDN by 2030.

95. As already discussed hereinabove, the majority of TOF is from two species i.e. poplar and eucalyptus. These trees are fast growing. If a market is available for the said trees, there will be impetus to the farmers for large-scale plantations. The rotation in these species is quite fast. This will, in turn, increase the green coverage. We are of the considered view that the learned NGT has taken a lopsided view. It has failed to take into consideration the concerns expressed by the State. The learned NGT has committed patent error in ignoring the expert's report and sitting in appeal over the same. The learned NGT has also failed to take into consideration the stand taken by MoEFCC, which supported the stand of the State. As already discussed hereinabove, the State had emphasised many advantages of granting new licences to WBIs. It was also emphasised that the timber from the State of Uttar Pradesh was being exported to the State of Haryana. However, none of these aspects have been considered by the learned NGT. We are, therefore, of the considered view that the impugned orders of the learned NGT are not sustainable in law.

96. There is another reason, in our view, why the order of the learned NGT would not be sustainable. Though, on the date on which the review applications were rejected, 1215 provisional licences were already granted and 633 units had already been established and commenced production, the learned NGT has passed the impugned order[1] which adversely affects their interest. Either some of such industries ought to have been impleaded in their representative capacity or a public notice should have been given so that such licence-holders could have represented their case. However, the said contention is lightly brushed aside by the learned NGT by holding that, since the issue is related to the general decision of the State which is applicable uniformly to all the proposed provisional licencees, it is not necessary to consider the issue raised in the impleadment applications. It is more than a settled law that the principles of natural justice are required to be followed even in administrative actions when such actions adversely affect the rights of the citizens. When the learned NGT exercised its judicial powers, it could not have ignored the principles of natural justice, which, even under Section 19(1) of the NGT Act, it is bound to follow.

1 *Samvit Foundation* v. *State of U.P.*, 2020 SCC OnLine NGT 531

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97. Another aspect that needs consideration is that a serious issue was raised before the learned NGT by the appellants herein with regard to the credentials and bona fides of the original applicants.

98. When the matter was heard by us, we too made pertinent queries to Shri Mehta and Shri Chahar with regard to the credentials of the applicants before the learned NGT. One applicant is Uday Education and Welfare Trust; the second applicant is Samvit Foundation and the third applicant is U.P. Timber Association. Undisputedly, the U.P. Timber Association was a litigant interested in the litigation. However, insofar as the other original applicants i.e. Uday Education and Welfare Trust and Samvit Foundation, for whom Shri Dhruv Mehta and Shri Brijender Chahar, learned Senior Counsel are appearing, specific queries with regard to the activities undertaken by the said original applicants were made as to whether they were involved in any activity with regard to the protection of the environment; had they at least been engaged in promoting plantation; what were the aims and objectives of the said original applicants; and what are the sources of funding, etc. Shri Mehta and Shri Chahar, learned Senior Counsel, fairly submitted that apart from the fact that they (original applicants) had previously filed some public interest litigations wherein orders were passed in their favour, they had no other information.

99. Shri Dhruv Mehta, learned Senior Counsel has rightly relied on the judgment of this Court in *Ankita Sinha*[16] to submit that the learned NGT is empowered to take suo motu cognizance. This Court has held that, taking into consideration the nature of functions of the learned NGT, it cannot be equated with other Tribunals and in environmental matters, it will also have a power to take suo motu cognizance. However, when the credentials and bona fides of a litigant approaching the learned NGT are seriously raised, the same cannot be ignored.

100. We find that before a litigant is permitted to knock the doors of justice and seek orders which have far-reaching effects of affecting the employment of thousands of persons, stopping investment in the State, prejudicing the interests of the farmers; the credentials and bona fides of the applicants must be tested. In the present case, there is scope to infer that the litigation could be at the behest of the existing WBIs who wanted to avoid competition and continue to get raw material at a cheaper rate. There is also scope to infer that it could be at the behest of the WBIs in the adjoining Yamuna Nagar District of Haryana where lakhs of tons of timber is exported from the State of Uttar Pradesh. There is scope to infer that it could be in the interest of middlemen who are engaged in exporting timber from Uttar Pradesh to Haryana. We would, therefore, only request the learned NGT that, when credentials and bona fides of such litigants are seriously raised and when entertaining the grievance of such litigants, which is likely to adversely affect the rights of many, it should ensure the bona fides and credentials of such litigants.

101. Though we are allowing the appeals, setting aside the orders of the learned NGT, and upholding the action of the State Government in granting licences, we would like to remind the State and its authorities that it is their

16 *Municipal Corpn., Greater Mumbai* v. *Ankita Sinha*, (2022) 13 SCC 401

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duty to protect the environment. The State and its authorities should ensure that necessary steps are taken for arresting the problem of declining forest and tree cover. The State and its authorities should make meaningful and concerted efforts to ensure that the green cover in the State of Uttar Pradesh is not reduced and to ensure that it increases.

102. The conservation of forest plays a vital role in maintaining the ecology. It acts as processors of the water cycle and soil and also as providers of livelihoods. As such, preservation and sustainable management of forests deserve to be given due importance in formulation of policies by the State. In this regard, it will be apposite to refer to certain earlier pronouncements of this Court.

103. In *Samatha* v. *State of A.P.*[27], a three-Judge Bench of this Court after referring to the earlier judgment in *State of H.P.* v. *Ganesh Wood Products*[28] observed that, even while considering the grant of renewal of mining leases, the provisions of the Forest (Conservation) Act, 1980 and the Environment (Protection) Act, 1986 would apply. This Court held that the MOEF and all the States have a duty to prevent mining operations affecting forests. It further observed that, whether mining operations are carried on within the reserved forest or other forest area, it is their duty to ensure that the industry or enterprise does not denude the forest to become a menace to human existence nor a source to destroy flora and fauna and biodiversity. It has further been held that if it becomes inevitable to disturb the existence of forests, there is a concomitant duty upon the State to reforest and restore the green cover and to ensure adequate measures to promote, protect and improve both man-made and natural environment, flora and fauna as well as biodiversity. It further held that there can be no distinction between government forests and private forests in the matter of forest wealth of the nation and in the matter of environment and ecology.

104. In *Essar Oil Ltd.* v. *Halar Utkarsh Samiti*[29], this Court discussed the need for a balance between the economic and social needs and development on the one hand and environment considerations on the other. It was observed that laws on environment should be to create harmony between the two since neither one can be sacrificed at the altar of the other. In this regard, the observations of this Court in *Indian Council for Enviro-Legal Action* v. *Union of India*[30] were quoted as under: (*Indian Council for Enviro-Legal Action case*[30], SCC p. 296, para 31)

> "*31.* … While economic development should not be allowed to take place at the cost of ecology or by causing widespread environment destruction and violation; at the same time, the necessity to preserve ecology and environment should not hamper economic and other developments. Both development and environment must go hand in

27 (1997) 8 SCC 191
28 (1995) 6 SCC 363
29 (2004) 2 SCC 392
30 (1996) 5 SCC 281

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hand, in other words, there should not be development at the cost of environment.…"

105. In *Maharashtra Land Development Corpn.* v. *State of Maharashtra*[31] reference was made to *Glanrock Estate (P) Ltd.* v. *State of T.N.*[32] wherein it was observed as under: (*Glanrock Estate case*[32], SCC p. 109, paras 27-30)

"*27*. … Forests in India are an important part of the environment. They constitute [a] national asset. In various judgments of this Court delivered by the Forest Bench of this Court in *T.N. Godavarman Thirumulpad* v. *Union of India* (Writ Petition No. 202 of 1995), it has been held that 'inter-generational equity' is part of Article 21 of the Constitution.

28. What is inter-generational equity? The present generation is answerable to the next generation by giving to the next generation a good environment. We are answerable to the next generation and if deforestation takes place rampantly then inter-generational equity would stand violated.

29. The doctrine of sustainable development also forms part of Article 21 of the Constitution. The 'precautionary principle' and the 'polluter pays principle' flow from the core value in Article 21.

30. The important point to be noted is that in this case we are concerned with vesting of forests in the State. When we talk about inter-generational equity and sustainable development, we are elevating an ordinary principle of equality to the level of overarching principle."

106. Of course, one cannot ignore one of the several dicta of this Court in *T.N. Godavarman Thirumulpad* v. *Union of India*[11] wherein this Court enunciated the definition of "forest" in the following words: (SCC pp. 269-70, para 4)

"*4*. The Forest Conservation Act, 1980 was enacted with a view to check further deforestation which ultimately results in ecological imbalance; and therefore, the provisions made therein for the conservation of forests and for matters connected therewith, must apply to all forests irrespective of the nature of ownership or classification thereof. The word "forest" must be understood according to its dictionary meaning. This description covers all statutorily recognised forests, whether designated as reserved, protected or otherwise for the purpose of Section 2(*i*) of the Forest Conservation Act. The term "forest land", occurring in Section 2, will not only include "forest" as understood in the dictionary sense, but also any area recorded as forest in the Government record irrespective of the ownership. This is how it has to be understood for the purpose of Section 2 of the Act. The provisions enacted in the Forest Conservation Act, 1980 for the conservation of forests and the matters connected therewith must apply clearly to all forests so understood irrespective of the ownership or classification thereof."

31 (2011) 15 SCC 616
32 (2010) 10 SCC 96
11 (1997) 2 SCC 267

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107. Though we find that for the sustainable development of the State and on account of the availability of the timber, sanction of granting licences can be permitted to continue, however, as a responsible State, it needs to ensure that environmental concerns are duly attended to. We, therefore, direct the State Government to ensure that while granting permission for felling trees of the prohibited species, it should strictly ensure that the permission is granted only when the conditions specified in the Notification dated 7-1-2020 are satisfied. The State Government shall also ensure that when such permissions are granted to the applicants, the applicants scrupulously follow the mandate in the said notification of planting 10 trees against 1 and maintaining them for five years.

108. In the result, the appeals are allowed. The impugned orders[1, 2, 3, 4] passed by the learned National Green Tribunal, Principal Bench, New Delhi in Original Applications Nos. 313, 335 and 396 of 2019 as well as in the review applications are quashed and set aside. Pending applications, if any, shall stand disposed of. No costs.

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1 *Samvit Foundation* v. *State of U.P.*, 2020 SCC OnLine NGT 531
2 *Vaneer Welfare Assn.* v. *State of U.P.*, 2020 SCC OnLine NGT 3367
3 *Uday Education & Welfare Trust* v. *State of U.P.*, 2020 SCC OnLine NGT 3361
4 *U.P. Timber Assn.* v. *State of U.P.*, 2020 SCC OnLine NGT 3354

Item No.04 Court No.1

BEFORE THE NATIONAL GREEN TRIBUNAL
EASTERN ZONE BENCH, KOLKATA
(THROUGH PHYSICAL HEARING WITH HYBRID MODE)

Appeal No.05/2021/EZ
(I.A. No.78/2021/EZ)

IN THE MATTER OF:

Anand Kumar Jha
Son of Shri Bhalchandra Jha,
Resident of Type-B, Dakra,
Dakra Colliery,
Ranchi .....Appellant(s)

Versus

1. Union of India,
Through its Secretary,
Ministry of Environment, Forests and Climate Change,
Indira Paryavaran Bhawan, Jor Bagh Road,
New Delhi-11003;

2. Jharkhand State Pollution Control Board,
Through its Member Secretary,
H.E.C., Dhurwa,
Ranchi-834004;

3. State of Jharkhand,
Through Chief Secretary,
Project Bhawan, Doranda,
Ranchi-834002;

4. Damodar Valley Corporation (DVC),
Through its Chairman-cum-Managing Director DVC Towers,
VIP Road, Kolkata-700054

.....Respondent(s)

Date of hearing: 15.05.2023

CORAM: HON'BLE MR. JUSTICE B. AMIT STHALEKAR, JUDICIAL MEMBER
HON'BLE DR. ARUN KUMAR VERMA, EXPERT MEMBER

For Appellant(s) : Mr. Kaustav Dhar, Advocate (in Virtual Mode)

For Respondent(s) : Mr. Apurba Ghosh, Advocate for R-1,
Mr. Ashok Prasad, Advocate for R-2 (in Virtual Mode),
Ms. Aishwarya Rajyashree, Adv. for R-3 (in Virtual Mode),
Mr. Sanjay Upadhyay, Advocate a/w
Mr. Prasun Mukherjee, Advocate and
Mr. Deepak Agarwal, Advocate for R-4

ORDER

1. This Appeal has been filed by the Appellant seeking quashing of the Environmental Clearance dated 28.04.2021 granted to the Respondent No.4, Damodar Valley Corporation (DVC), for Tubed Coalmine Project of 6 MTPA in the District of Latehar, Jharkhand.

2. The contention of the Appellant is that the said mining block is located in an area of 460 ha; the EIA report of the project does not estimate the background concentration of Mercury (Hg) and Chromium (Cr) in Particulate Matter as required by Standard ToR No.15; there is no detailed timeline, maps etc. provided in the EIA report with respect to Additional ToR No.15; no details have been given in the EIA report regarding ecological restoration and mine reclamation plan prepared with local/native species found in the area as was required by Additional ToR No.3; the Palamau Tiger Reserve and other Protected areas are in close proximity to the site of the Tubed Coalmine Project and there is no presence of Schedule-I species which appears to be unlikely.

3. In the present Appeal the Environmental Clearance dated 28.04.2020 is under challenge, as such the Tribunal raised a preliminary objection regarding limitation.

4. Learned Counsel for the Appellant has relied upon the judgment of the Hon'ble Supreme Court dated 23.09.2021 in *Miscellaneous Application No. 665 of 2021 in SMW(C) No. 03 of 2021; Re: Cognizance for Extension of Limitation*. It is mentioned therein that the limitation period has itself been extended by the Hon'ble Supreme Court by the said judgment in cases where limitation would have expired during the period from 15.03.2020 till 02.10.2021.

5. The Respondent No.4, Damodar Valley Corporation, has filed counter-affidavit dated 26.04.2022 wherein a preliminary objection of limitation has been taken. The second ground of objection is whether the Appellant can be permitted to maintain the present Appeal as an 'aggrieved person'.

6. We will first take up the second issue namely as to whether the Appellant can be said to be an aggrieved person within the meaning of Section 16 and 18 of the National Green Tribunal Act, 2010 to entitle him to maintain the present Appeal. Section 16 of National Green Tribunal Act, 2010, reads as under: -

> *"**16. Tribunal to have appellate jurisdiction**-*
> *Any person aggrieved by, -*
>
> *(a) an order or decision, made, on or after the commencement of the National Green Tribunal Act, 2010, by the appellate authority under section 28 of the Water (Prevention and Control of Pollution) Act, 1974 (6 of 1974);*
>
> *(b) an order passed, on or after the commencement of the National Green Tribunal Act, 2010, by the State Government under section 29 of the Water (Prevention and Control of Pollution) Act, 1974 (6 of 1974);*
>
> *(c) directions issued, on or after the commencement of the National Green Tribunal Act, 2010, by a Board, under section 33A of the Water (Prevention and Control of Pollution) Act, 1974 (6 of 1974);*
>
> *(d) an order or decision made, on or after the commencement of the National Green Tribunal Act, 2010, by the appellate authority under section 13 of the Water (Prevention and Control of Pollution) Cess Act, 1977 (36 of 1977);*
>
> *(e) an order or decision made, on or after the commencement of the National Green Tribunal Act, 2010, by the State*

Government or other authority under section 2 of the Forest (Conservation) Act, 1980 (69 of 1980);

(f) an order or decision, made, on or after the commencement of the National Green Tribunal Act, 2010, by the Appellate Authority under section 31 of the Air (Prevention and Control of Pollution) Act, 1981 (14 of 1981);

(g) any direction issued, on or after the commencement of the National Green Tribunal Act, 2010, under section 5 of the Environment (Protection) Act, 1986 (29 of 1986);

(h) an order made, on or after the commencement of the National Green Tribunal Act, 2010, granting environmental clearance in the area in which any industries, operations or processes or class of industries, operations and processes shall not be carried out or shall be carried out subject to certain safeguards under the Environment (Protection) Act, 1986 (29 of 1986);

(i) an order made, on or after the commencement of the National Green Tribunal Act, 2010, refusing to grant environmental clearance for carrying out any activity or operation or process under the Environment (Protection) Act, 1986 (29 of 1986);

(j) any determination of benefit sharing or order made, on or after the commencement of the National Green Tribunal Act, 2010, by the National Biodiversity Authority or a State Biodiversity Board under the provisions of the Biological Diversity Act, 2002 (18 of 2003),

may, within a period of thirty days from the date on which the order or decision or direction or determination is communicated to him, prefer an appeal to the Tribunal:

Provided that the Tribunal may, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal within the said period, allow it to be filed under this section within a further period not exceeding sixty days.

7. Section 18 of the National Green Tribunal Act, 2010 reads as under: -

> ***18. Application or appeal to Tribunal-***
>
> *(1) Each application under sections 14 and 15 or an appeal under section 16 shall, be made to the Tribunal in such form, contain such particulars, and, be accompanied by such documents and such fees as may be prescribed.*
>
> *(2) Without prejudice to the provisions contained in section 16, an application for grant of relief or compensation or settlement of dispute may be made to the Tribunal by--*
>
> *(a) the person, who has sustained the injury; or*
>
> *(b) the owner of the property to which the damage has been caused; or*
>
> *(c) where death has resulted from the environmental damage, by all or any of the legal representatives of the deceased; or*
>
> *(d) any agent duly authorised by such person or owner of such property or all or any of the legal representatives of the deceased, as the case may be; or*
>
> *(e) any person aggrieved, including any representative body or organization."*

8. In the paragraph-1 under the heading 'Facts' in the Memo of Appeal the Appellant has described himself as a resident of Village Dakra in Ranchi District of Jharkhand and he *"is stated to be concerned by the environmental impact of the mining activities of the Respondent No.4 in the State of Jharkhand".* It is stated that the Appellant has been observing for the past several years that the air quality in various parts of the State of Jharkhand especially in the region around the coal mines has severely deteriorated due to large number of coal mines in Jharkhand. The Appellant is stated to have observed that due to pollution being caused, there is an

increase in the respiratory illness in the persons residing in the region and he has been raising the issue of pollution and other environmental issues due to coal mines in electronic and other media. It is also stated that the Appellant being a resident of Jharkhand is concerned by the grant of Environmental Clearance to Tubed Coal Mines Project of Respondent No.4 and hence has filed the present Appeal.

9. In our opinion, merely saying that he is concerned with pollution in Jharkhand, the Appellant cannot be said to be a 'person aggrieved' within the meaning of Section 16 and Section 18 of the National Green Tribunal Act, 2010. The Tubed Coal Mines Project of the Respondent No.4 is located in Latehar District of Jharkhand. The Appellant is not a resident of Latehar District nor has he stated that he is a resident of any of the villages which may fall within the area of operation of the Tubed Coal Mines Project of the Respondent No.4. The Project Proponent in its counter-affidavit has stated that the place of residence of the Appellant is about 200 km from the Project site.

10. Among the various issues raised for assailing the grant of Environmental Clearance to the Respondent No.4 one of the grounds taken by him is that 'Public Consultation' was not conducted as per the EIA Notification, 2006 and that the process of 'public consultation' has not been done in the present case while granting Environmental Clearance to the Project of Respondent No.4.

11. Nowhere in the body of the Appeal has the Appellant claimed that he had sought hearing during public consultation as a matter of right but was not given such opportunity. None of the persons who

live in the vicinity of the villages covered by the Tubed Coal Mines Project of the Respondent No.4 are present before this Tribunal to complain that they were not provided opportunity of public hearing and that public consultation was not held as per the EIA Notification, 2006.

12. In this view of the matter, we hold that the Appellant is not a person aggrieved within the meaning word "any person aggrieved" under Section 16 and Section 18 of the National Green Tribunal Act, 2010.

13. Mr. Sanjay Upadhyay, learned Counsel for the Project Proponent submitted that it is also not disclosed in the body of the Appeal other than what has been reproduced hereinabove and which is based upon the Appellant's own disclosure, to show what are his credentials and *bonafides* in approaching the Tribunal. Reliance has been placed on the judgment of the Hon'ble Supreme Court in *Civil Appeal No.2407-2421 of 2021, State of Uttar Pradesh & Ors. vs. Uday Education and Welfare Trust & Anr.*

14. The Hon'ble Supreme Court in *Civil Appeal No.2407-2412 of 2021, The State of Uttar Pradesh & Ors. Etc. Etc. vs. Uday Education and Welfare Trust & Anr. Etc. Etc.* and connected cases, has held that when issues and objections to the credentials and *bonafides* of litigants approaching the National Green Tribunal are seriously raised, the same cannot be ignored. Before a litigant is permitted to knock the doors of justice and seek orders which have far reaching effects of affecting the employment of thousands of persons, stopping investment in the State, prejudicing the interests of the farmers; the credentials and *bonafides* of the Applicants must be tested. The Hon'ble Supreme Court, therefore, laid stress

that when credentials and *bonafides* of such litigants are seriously raised and when entertaining the grievance of such litigants, which is likely to affect the rights of many, the National Green Tribunal should ensure the *bonafides* and credentials of such litigants. The Hon'ble Supreme Court also observed that the Tribunal must examine questions as to what were the aims and objectives of the Applicants and what are their sources of funding etc. Merely filing some Public Interest Litigations in the past would not suffice. Paragraphs-96 to 99 of the said judgment read as under: -

> *"96. Another aspect that needs consideration is that a serious issue was raised before the learned NGT by the appellants herein with regard to the credentials and bonafides of the original applicants.*
>
> *97. When the matter was heard by us, we too made pertinent queries to Shri Mehta and Shri Chahar with regard to the credentials of the applicants before the learned NGT. One applicant is Uday Education and Welfare Trust; the second applicant is Samvit Foundation and the third applicant is U.P. Timber Association. Undisputedly, the U.P. Timber Association was a litigant interested in the litigation. However, insofar as the other original applicants, i.e. Uday Education and Welfare Trust and Samvit Foundation, for whom Shri Dhruv Mehta and Shri Brijender Chahar, learned Senior Counsel are appearing, specific queries with regard to the activities undertaken by the said original applicants were made as to whether they were involved in any activity with regard to the protection of the environment; had they at least been engaged in promoting plantation; what were the aims and objectives of the said original applicants; and what are the sources of funding, etc. Shri Mehta and Shri Chahar, learned Senior counsel, fairly submitted that apart from the fact that they (original applicants) had previously filed some public interest litigations wherein orders were passed in their favour, they had no other information.*

98. Shri Dhruv Mehta, learned Senior Counsel has rightly relied on the judgment of this Court in the case of Ankita Sinha and Others (supra) to submit that the learned NGT is empowered to take suo motu cognizance. This Court has held that, taking into consideration the nature of functions of the learned NGT, it cannot be equated with other Tribunals and in environmental matters, it will also have a power to take suo motu cognizance. However, when the credentials and bonafides of a litigant approaching the learned NGT are seriously raised, the same cannot be ignored.

99. We find that before a litigant is permitted to knock the doors of justice and seek orders which have far reaching effects of affecting the employment of thousands of persons, stopping investment in the State, prejudicing the interests of the farmers; the credentials and bonafides of the applicants must be tested. In the present case, there is scope to infer that the litigation could be at the behest of the existing WBIs who wanted to avoid competition and continue to get raw material at a cheaper rate. There is also scope to infer that it could be at the behest of the WBIs in the adjoining Yamuna Nagar district of Haryana where lakhs of tons of timber is exported from the State of Uttar Pradesh. There is scope to infer that it could be in the interest of middlemen who are engaged in exporting timber from Uttar Pradesh to Haryana. We would, therefore, only request the learned NGT that, when credentials and bonafides of such litigants are seriously raised and when entertaining the grievance of such litigants, which is likely to adversely affect the rights of many, it should ensure the bonafides and credentials of such litigants."

15. In the present case, nothing has been indicated by the Appellant as to why he is **only** concerned by the environmental impact of the mining activities of the 'Respondent No.4' in the State of Jharkhand as stated by him in paragraph-1 of the **"FACTS".** What is his source of funding to maintain the Appeal or to take up such

environmental issues has not been disclosed. Assailing the Environmental Clearance, several scientific and technical facts and documents have been referred to by the Appellant; what is his source of funding and source of obtaining such documents, has not been disclosed. Not a single person who may be said to be a resident of any village affected by the mining operation of the Tubed Coal Mines Project of the Respondent No.4 is before us. Therefore, a serious shadow of doubt is cast upon the credentials and *bonafides* of the Appellant to maintain the present Appeal and in our considered view he cannot be said to be a 'person aggrieved' within the meaning of Section 16 and Section 18 of the National Green Tribunal Act, 2010 and, therefore, this Appeal is not maintainable at the behest of the Appellant.

16. The next preliminary issue raised by the Respondent No.4 is with regard to limitation. The Tribunal even on the first date while entertaining the Appeal had raised the issue of limitation and the same had been kept open for decision.

17. Mr. Sanjay Upadhyay, learned Counsel for the Respondent No.4, Damodar Valley Corporation, submitted that though the Environmental Clearance was granted to the Respondent No.4 on 28.04.2020 for 06 million tonnes per annum of the Tubed Coal Mines Project and uploaded on the Website of DVC (www.dvc.gov.in) under the head 'Business' sub-heading 'mining', the recommendations for grant of Environmental Clearance was made in the 51st Meeting of Expert Appraisal Committee on 05.12.2019, the Minutes of which were uploaded on the portal and, therefore, the decision of the Expert Appraisal Committee was already in public domain and, therefore, in the knowledge of the

Appellant whereas the present Appeal has been filed after a delay of almost one and half years challenging the Environmental Clearance granted to Respondent No.4.

18. The learned Counsel has also referred to the provisions of Paragraph-8 of the MoEF&CC Notification dated 14.09.2006 also known as 'EIA Notification, 2006' and submitted that Paragraph-8 provides that the regulatory authority shall consider the recommendations of the EAC or SEAC concerned and convey its decision to the Applicant within forty-five days of the receipt of the recommendations of the Expert Appraisal Committee or State Level Expert Appraisal Committee concerned or in other words within one hundred and five days of the receipt of the final Environmental Impact Assessment Report, and where Environmental Impact Assessment is not required, within one hundred and five days of the receipt of the complete application with requisite documents.

19. Reference has also been made to Paragraph-8 (ii) which provides that the regulatory authority shall normally accept the recommendations of the Expert Appraisal Committee or State Level Expert Appraisal Committee concerned. In cases where it disagrees with the recommendations of the Expert Appraisal Committee or State Level Expert Appraisal Committee, the regulatory authority shall request reconsideration by the Expert Appraisal Committee or State Level Expert Appraisal Committee concerned within forty-five days of the receipt of the recommendations of the Expert Appraisal Committee or State Level Expert Appraisal Committee concerned while stating the reasons for the disagreement and intimation of this decision shall be simultaneously conveyed to the Applicant.

20. Paragraph-8 (i) & (ii) of the EIA Notification, 2006, read as under: -

"8. Grant or Rejection of Prior Environmental Clearance (EC)-

(i) The regulatory authority shall consider the recommendations of the EAC or SEAC concerned and convey its decision to the applicant within forty five days of the receipt of the recommendations of the Expert Appraisal Committee or State Level Expert Appraisal Committee concerned or in other words within one hundred and five days of the receipt of the final Environment Impact Assessment Report, and where Environment Impact Assessment is not required, within one hundred and five days of the receipt of the complete application with requisite documents, except as provided below.

(ii) The regulatory authority shall normally accept the recommendations of the Expert Appraisal Committee or State Level Expert Appraisal Committee concerned. In cases where it disagrees with the recommendations of the Expert Appraisal Committee or State Level Expert Appraisal Committee concerned, the regulatory authority shall request reconsideration by the Expert Appraisal Committee or State Level Expert Appraisal Committee concerned within forty-five days of the receipt of the recommendations of the Expert Appraisal Committee or State Level Expert Appraisal Committee concerned while stating the reasons for the disagreement. An intimation of this decision shall be simultaneously conveyed to the applicant. The Expert Appraisal Committee or State Level Expert Appraisal Committee concerned, in turn, shall consider the observations of the regulatory authority and furnish its views on the same within a further period of sixty days. The decision of the regulatory authority after considering the views of the Expert Appraisal Committee or State Level Expert Appraisal Committee concerned shall be final and conveyed to the applicant by the regulatory authority concerned within the next thirty days."

21. According to the Respondent No.4, the recommendations for Environmental Clearance was made in the 51st Meeting of the Expert Appraisal Committee on 05.12.2019, Minutes of which were uploaded on the website/portal on 13.12.2019. Under sub

paragraph-(i) of paragraph-8 of the EIA Notification, 2006, the period of hundred and five days (105) would end on 28.03.2020. The period of limitation has been extended by the Hon'ble Supreme Court in view of the outbreak of COVID-19 pandemic in *Miscellaneous Application No.21 of 2022 in Miscellaneous Application No.665 of 2021 in Suo Motu Writ Petition (C) No.3 of 2020, Re: Cognizance for Extension of Limitation* and connected cases, and on 23.03.2020 the Hon'ble Supreme Court directed extension of the period of limitation in all proceedings pending before the Courts and Tribunals with effect from 15.03.2020 till further orders and which has been further extended till 28.02.2022. The present Appeal was filed on 08.10.2021 i.e. within the extended period of limitation and, therefore, the same cannot be said to be barred by limitation.

22. However, since we have already held the Appeal to be not maintainable considering the *bonafides* and credentials of the Appellant we dismiss this Appeal as not maintainable.

23. In view of the above, the Appeal No.05/2021/EZ is dismissed.

24. Interlocutory Applications, if any stand disposed of accordingly.

25. There shall be no order as to costs.

.....
B. Amit Sthalekar, JM

.....
Dr. Arun Kumar Verma, EM

May 15, 2023
Appeal No.05/2021/EZ
(I.A. No.78/2021/EZ)
MN

Item No.03 Court No.1

BEFORE THE NATIONAL GREEN TRIBUNAL
EASTERN ZONE BENCH, KOLKATA
(THROUGH PHYSICAL HEARING WITH HYBRID MODE)

Original Application No.53/2023/EZ
(I.A. No.28/2023/EZ)

Satyabrata Sanjeev Kumar Mohanta Applicant(s)

Versus

MoEF&CC & Ors. Respondent(s)

Date of hearing: 18.07.2023

CORAM: HON'BLE MR. JUSTICE B. AMIT STHALEKAR, JUDICIAL MEMBER
HON'BLE DR. ARUN KUMAR VERMA, EXPERT MEMBER

For Applicant(s) : Mr. Md. Akram, Advocate (in Virtual Mode)

For Respondent(s) : Ms. Anamika Pandey, Adv. for R-1 (in Virtual Mode),
Mr. Ashok Kumar Parija, Advocate General a/w
Mr. Tarun Patnaik, ASC for R-2 to 6,
Mr. Dipanjan Ghosh, Advocate for R-7,
Mr. Sanjay Upadhyay, Advocate a/w
Mr. Dhananjaya Mishra, Mr. Biswaranjan Sahoo, and
Ms. Mansi Bachani, Advocates for R-8,

ORDER

1. Mr. Md. Akram, learned Counsel holding brief of Ms. Soumya Mishra, learned Counsel is present (in Virtual Mode) for the Applicant.

2. Affidavit dated 15.07.2023 has been filed by Respondent No.8, Private Respondent; the same is taken on record.

3. Counter-affidavit dated 15.07.2023 has been filed by the Divisional Forest Officer, Keonjhar; the same is taken on record.

4. Mr. Dipanjan Ghosh, learned Counsel files Vakalatnama on behalf of the Respondent No.7, Odisha Power Transmission Corporation Limited (OPTCL); the same is taken on record.

5. We have heard the learned Counsel for the parties and perused the documents on record.

6. Final order of the said case will be uploaded in the website by separate sheets of paper.

.....
B. Amit Sthalekar, JM

.....
Dr. Arun Kumar Verma, EM

July 18, 2023,
Original Application No.53/2023/EZ
(I.A. No.28/2023/EZ)
MN

Item No.03 Court No.1

BEFORE THE NATIONAL GREEN TRIBUNAL
EASTERN ZONE BENCH, KOLKATA
(THROUGH PHYSICAL HEARING WITH HYBRID MODE)

ORIGINAL APPLICATION NO.53/2023/EZ
(I.A. NO.28/2023/EZ)

IN THE MATTER OF:

Satyabrata Sanjeev Kumar Mohanta,
Aged about 35 years,
S/o – DambarudharaMohanta,
At- Karadia, P.O. /P.S.- Karanjia,
Dist. –Mayurbhanj,

.... Applicant(s)

Versus

1. **Ministry of Environment, Forest & Climate Change (MoEF&CC),**
Represented through its Secretary,
At- 2nd Floor, Agni Block,
Indira Paryavaran Bhawan,
Jorbagh Road,
New Delhi – 110003

2. **Forest, Environment and Climate Change Department,**
Represented through its Secretary,
Government of Odisha,
Kharavel Bhavan,
Bhubaneswar,
Odisha

3. **Divisional Forest Officer (D.F.O.), Keonjhar,**
At- Kamapala Street,
Keonjhar Town, Keonjhar,
Odisha – 758001

4. **Collector & District Magistrate,**
At- Office of the Collector cum District Magistrate,
Collectorate, Keonjhar,
P.O./Dist. – Keonjhar,
Odisha

5. **Divisional Forest Officer (D.F.O.), Bonai,**
At/P.O. - Bonaigarh,
Dist. – Sundergarh,
Odisha - 770038

6. **Collector & District Magistrate, Sundergarh,**
At- District Collectorate, Sundergarh,
Office of the Collector-cum-District Magistrate,
Collectorate Sundergarh,
At/P.O. – Sundergarh,

Dist. – Sundergarh,
Odisha – 770001

7. Odisha Power Transmission Corporation Limited (OPTCL),
Represented through Managing Director,
At – Janpath Road,Gridco Colony,
Industrial Area, Satya Nagar, Bhubaneswar,
Odisha – 751022

8. M/s. Rungta Mines Ltd.
Represented through its Managing Director,
At- Rungta House,Chaibasa,
Dist. – West Singhbhum,
Jharkhand – 833201
And
At – Rungta Mines Ltd.
Main Road, Barbil HO,
Barbil, Dist. – Keonjhar,
Odisha – 758035

And
At- 8A Express Tower,
42A, Shakespeare Sarani,
Kolkata – 700017
West Bengal

.... Respondent(s)

Date of hearing: 18.07.2023

CORAM: HON'BLE MR. JUSTICE B. AMIT STHALEKAR, JUDICIAL MEMBER
HON'BLE DR. ARUN KUMAR VERMA, EXPERT MEMBER

For Applicant(s) : Mr. Md. Akram, Advocate (in Virtual Mode)

For Respondent(s) : Ms. Anamika Pandey, Adv. for R-1 (in Virtual Mode),
Mr. Ashok Kumar Parija, Advocate General a/w
Mr. Tarun Patnaik, ASC for R-2 to 6,
Mr. Dipanjan Ghosh, Advocate for R-7,
Mr. Sanjay Upadhyay, Advocate a/w
Mr. Dhananjaya Mishra, Mr. Biswaranjan Sahoo, and
Ms. Mansi Bachani, Advocates for R-8,

ORDER

1. The Applicant in the present Original Application is, *inter-alia*, seeking a direction to the Respondent No.8, M/s Rungta Mines Ltd., to comply with the conditions stipulated in Stage-I and Stage-II of the Forest Clearance granted to it and also to pay Environmental Compensation for causing damage to forest land to the Project of 132 KV Transmission Line.

2. The allegation of the Applicant is that the Respondent No.8, M/s Rungta Mines Ltd. was granted Stage-I Approval letter from the Ministry of Environment, Forests and Climate Change, Eastern Regional Office, Bhubaneswar, on 25.06.2020 for diversion of 35.507 hectares of forest land (31.806 hectares of forest land under Keonjhar Division and 3.701 hectares of forest land under Bonai Division) for construction of 132 KV Transmission Line from 132/33KV OPTCL Grid Station, Barbil, Keonjhar to Kamanda Steel Plant of M/s Rungta Mines Ltd. at Village-Kamanda in Sundergarh, Odisha. It is stated that the route alignment for construction of 132 KV Transmission Line from 132/33 KV OPTCL Grid Station, Barbil, Keonjhar to Kamanda Steel Plant of M/s Rungta Mines Ltd. at Village-Kamanda in Sundergarh, Odisha, has been diverted without prior sanction of the Central Government.

3. It is alleged that the User Agency has also changed the layout plan of the proposal without prior approval of the MoEF&CC at Latitude: 22°5'18"N Longitude 85°22'38"E on 28.06.2021 and thus obstructing the elephant movement in violation of the conditions stipulated in Stage-I and Stage-II Forest Clearance. It is also stated that the Elephant Corridor, namely, Karmpada, is situated 7.5 KM from the proposed forest area but the site falls under Elephant Habitat Zone – 2.

4. It is further alleged that as per Condition No. viii of Stage-I Clearance dated 25.06.2020, the base of electric transmission towers in the forest area must be fenced with barbed wire, in addition to installation of spike on the legs of the towers in order to avoid elephant and other wildlife getting electrocuted but the

Project Proponent has not installed spikes and barbed wire on the electric towers in the forest area.

5. It is also alleged that the Project Proponent, Respondent No.8, has resorted to felling of trees, although they were only permitted felling to a minimum number in the diverted forest land and that too after depositing the cost of felling of the trees with the Forest Department.

6. It is also alleged that Condition No. xviii of the Stage-I Clearance also provides that the layout plan of the proposed forest land shall not be changed by the Project Proponent without the approval of the Central Government but the Respondent No.8 in gross defiance of the said conditions has diverted the sanctioned latitude plan without prior sanction of the Central Government for which the State Forest Department, Keonjhar Division, has also lodged an FIR being FIR No. 10 BL of 21/22 on 28.06.2021. The said FIR records that the incident occurred at Sunderabasti, Barbil near Jagada Sahi near Ward No.15 and one Bijay Kumar Pandey and Avimanyu Das have been arrayed as accused persons who happened to be the contractor of the Respondent No.8 and five felled Sal logs were also seized from their possession and also two quintals of fire wood, which have been kept in the custody of Forest Guard, Mr. Malaya Kumar Jena.

7. It is further alleged that though the Forest Department has not handed over its forest land to the Project Proponent, Respondent No.8, to execute its project work but unauthorisedly 133 KV electricity has been supplied by the OPTCL Grid Station, Barbil, Keonjhar to Kamanda Steel Plant of M/s Rungta Mines Ltd.,

Respondent No.8, at Village-Kamanda in Sundergarh, Odisha, on 01.12.2022.

8. The allegation further is that though Condition No.ii of the Stage-I Clearance provides that Compensatory Afforestation shall be raised over 37.281 hectares of non-forest land identified in Plot Nos. 232 (P), 233(P) and 234(P), Khata No. 67 (AAA), Kisam-Parbat of Village-Lungajhar under Banspal Tahasil of Keonjhar District, (32.261 hectare) and Plot No. 1263(P), Khata No. 77, Kissam-Patita of Village-Badabanga under Lephiapara Tahasil of Sundergarh District (5.02 hectares), but so far the User Agency, Respondent No.8, has only deposited the money for Compensatory Afforestation but the State Forest Department has failed to supply plant saplings to the User Agency.

9. It is also alleged that the User Agency, Respondent No.8, was allowed to fell 1359 trees (795 Sound and 564 unsound), 1230 Poles below 30 cm girth as per the letter of the Divisional Forest Officer, Keonjhar, 16.03.2021 but the Respondent No.8 has failed to execute the work process and before Government orders could be passed, the execution of the work has already been started by the Respondent No.8. It is also stated that despite non-compliances of the conditions of the Stage-I clearance, the MoEF&CC has illegally granted Stage-II Approval to the Respondent No.8 on 31.03.2021.

10. The Applicant has sought the following reliefs in the Original Application:-

> *"a. Admit this original application, Issue Notice; and*
> *b. Direct the Opp. Party No.8 to immediately comply the non-complied conditions stipulated under Stage-I & II of the forest*

clearance granted to the user agency/project proponent i.e., M/s Rungta Mines Ltd.

c. Direct the Opp. Party No.8 to give environmental compensation for damaging the forest land due to the abovementioned project of 132 KV transmission line.

d. Direct the Opp. Party No.8 to give environmental compensation for damaging the forest land due to violation of the conditions stipulated under Stage-I & II of the forest clearance.

e. Direct the Opp. Party No.8 to restore the forest land degraded due to the aforesaid project.

f. Direct the Opp. Party No.1 to 7 to conduct a joint inspection in all respect to ensure the compliance of conditions stipulated under Stage-I & II of the forest clearance to avoid further damage to the environment.

g. To take action against the errant Opp. Party No.1 to 7 and to impose heavy penalty on the errant user agency/O.P. No.8 i.e., M/s Rungta Mines Ltd. for violation of Forest (Conservation) Act, and also for violation of para 1.21 of Chapter-1 of Handbook of Guidelines issued under F.C. Act, 1980 vide Ministry's letter No.5-2/2017-FC dated 28.03.2019."

11. The Applicant has also filed **I.A. No.28/2023/EZ**, *inter-alia*, seeking the following interim reliefs:-

"a) Stay/stoppage of the supply of Electricity from OPTCL Power grid Barbil to Kamanda Steel Plant of Rungta Mines Ltd. as the Forest Land has been handed over fraudulently during the pendency of a case for changing the lay out plan without prior sanction of Central Government."

b) Direct stay operation of Kamanda Steel Plant till environmental compensation is adequately paid by the Applicant would suffer irreparable loss and injury, which cannot be compensated otherwise.

c) And pass such any other order as this Hon'ble Court may deem fit and proper."

12. A preliminary objection has been raised by Mr. Sanjay Upadhyay, learned Counsel appearing for Respondent No.8, Project Proponent,

that the present Original Application is not maintainable in view of the provisions of Section 16(e) of the National Green Tribunal Act, 2010 (hereinafter referred to as 'Act, 2010')under which only an appeal could be filed if the Applicant was aggrieved by any order or decision made by the State Government or other authority under Section 2 of the Forest (Conservation) Act, 1980.

13. Section 16(e) of the Act, 2010, reads as under:-

> ***"16. Tribunal to have appellate jurisdiction.-***
>
> *.....xxx.....xxx.....xxx.....xxx.....*
>
> *(e) an order or decision made, on or after the commencement of the National Green Tribunal Act, 2010, by the State Government or other authority under section 2 of the Forest (Conservation) Act, 1980;"*

14. We find that although the Applicant has not challenged any order as such or decision made by the State Government under Section 2 of the Forest (Conservation) Act, 1980, but the sum and substance of the reliefs claimed is a challenge to Stage-I Clearance granted by the Ministry of Environment, Forests and Climate Change, Regional Office, Bhubaneswar, on 25.06.2020 as would be clear from para 7 of the Original Application and also Stage-II Clearance approved by the Ministry of Environment, Forests and Climate Change on 31.03.2021 as stated in para 17 of the Original Application. Paras 7 and 17 of the Original Application read as under:-

> ***"7.*** *That, as per condition no. viii of the Stage - 1 approval letter of MOEF & CC, Eastern Regional Office, Bhubaneswar vide F.No.5 ORC418/2020-BHU, Dated 25.06.2020, the base of electric transmission towers in the forest area must be fenced with barbed wire in addition to installation of spike on the legs of the towers in order to avoid elephant and other wildlife electrocution. But, no electric tower of the said project of Rungta*

Mines Ltd. has been installed with spikes and barbed wire in the said forest area and such gross irregularity and violation of the aforesaid condition no. viii of the Stage - 1 approval letter can be verified and inspected by appropriate authority."

*"**17**. That, on 31.03.2021, the user agency fraudulently managed to get the stage-2 approval of MOEF & CC even though the industry is non-compliant of stage-1 approval of forest clearance."*

15. Learned Counsel for the Applicant submitted that the Applicant was not challenging any order of the State Government under Section 2 of the Forest (Conservation) Act, 1980, and, therefore, the present Original Application is maintainable.

16. However, from the allegations made in the present Original Application, particularly in para 7 and para 17 thereof, we find that under the garb of the reliefs claimed in the Original Application without challenging the order dated 25.06.2020 granting Stage-I Clearance and the order dated 31.03.2021 granting Stage-II Clearance for the Project in question, the Applicant is, in fact, assailing the grant of Stage-I and Stage-II Clearances granted by the Ministry of Environment, Forests and Climate Change and, therefore, in our view, the present Original Application is not maintainable.

17. There is another aspect of the matter which needs to be examined by this Tribunal, particularly in view of the serious objections raised by Mr. Ashok Kumar Parija, learned Advocate General of Odisha assisted by Mr. Tarun Patnaik, learned Additional Standing Counsel appearing for State Respondents, Government of Odisha.

18. Mr. Parija has drawn attention of this Court to para 4 of the affidavit of the Divisional Forest Officer, Keonjhar, dated 15.07.2023, and submitted that the Applicant has not approached

this Tribunal with clean hands. He submitted that in 2021 a PIL being W.P. (C) No.33158 of 2021 had been filed before the Hon'ble High Court of Orissa at Cuttack with the cause title "*Ashirbad Pattnaik & Ors. Vs. State of Odisha & Ors.*", wherein the State Government and certain other private respondents were impleaded as parties. The allegations raised in the said PIL were similar to those raised in another petition, namely, "*Ranjan Panda & Ors. Vs. State of Odisha & Ors.*". Para 7 of that petition has been quoted in para 4 of the affidavit of the Divisional Forest Officer, Keonjhar, to show that what was alleged in the said Writ Petition, which is also extracted herein below:-

"4. .....XXX.....XXX.....XXX.....XXX.....

> *"**7**. That it is also pertinent to mention here that, as per the news reported by the Indian Express dated 03.07.2021 and Oriya Weekly Newspaper, Bartta corroborating their statements with certain live photographs stated therein, that the Rungta Mining Company has cut down numerous amount of trees of the reserve forest area for its personal gain without obtaining the prior permission from the forest department near Jagadasahi Village under Joda Block of Keonjhar district. The aforesaid firm needs power supply of 132 KB electricity line for its proposed project at Kamanda Village under Bonai tehsil of Sundergarh district by utilizing 31 Hectares of forest land and such deforestation is largely affecting the environment of the said mining areas for which the presence of trees is utmost essential. Further, the forest range officer of Barbil enquired about the said activity of the said mining firm, lodged a case against the said mining firm for blatant violation of the forest laws. The above said violation is against the provision of Sec. 2 of the Forest Conservation Act, 1980 which clearly states that for any non-forest activity within forest land, needs prior approval from the Ministry of Environment and Forest and Climate Change (MOEF & CC). But at the instant case the said erring mining*

firm not felt necessary to obtain the said permission before the illegal deforestation activity."

19. It is further stated that the W.P. (C) No. 33158 of 2021 was duly considered by a Division Bench of the Hon'ble High Court and the same was dismissed by the Hon'ble High Court vide judgment and order dated 02.12.2021 with a cost of Rs. 5,000/- (Rupees Five Thousand only) against each of the petitioners (10 in number) totaling Rs. 50,000/- (Rupees Fifty Thousand only). Paras 9, 10 and 11 of the judgment read as under:-

"9. With the above observations, the present writ petition stands dismissed.

10. We would have ordinarily observed something againast the counsel appearing in the case. However, keeping in view the early stages of his career, we refrain from commenting upon his conduct except to advise him to be careful in future and not be a party to such a litigation initiated by unscrupulous litigants.

The Registry is also directed to stringently comply with the rules as indicated hereinabove while dealing with Public Interest Litigations so as to prevent valuable judicial time from being wasted and prevent certain unscrupulous elements from weaponizing petitions in courts of law.

11. We feel constrained to direct the petitioners (10 in number) to deposit cost of Rs. 5,000/- each (totalling Rs.50,000/-) before the Orissa High Court Bar Association Advocates Welfare positively within four weeks from today, failing which Collector, Keonjhar shall proceed to recover the same as arrears of land revenue and ensure the deposit of the recovered amount as stated hereinabove."

20. Thereafter, I.As. were filed by the petitioners therein (in the High Court) seeking expunging of certain portions of the judgment of the Hon'ble High Court dated 02.12.2021 wherein negative connotation had been made against Mr. Sambit Samal, Counsel who was

appearing on behalf of the petitioners in W.P. (C) No. 33158 of 2021 and the said I.As. were also dismissed by a Division Bench of the Hon'ble High Court vide order dated 10.03.2021. Paras 13, 14, 15 & 16 of the order read as under:-

> *"**13**. The observations made in Paragraph 3 and 10 of the judgment dated 02.12.2021 in no way affects the image of the arguing counsel. It was only a note of caution sounded to the counsel so that he may not get involved with unscrupulous litigants. It was merely a reminder on the duty of the counsel to the court and to his profession. The court has, in fact, restrained itself from passing any adverse order considering the petitioner's lesser length of practice at the Bar.*
>
> ***14.** This court makes it clear that in the absence of any disparaging remark made against the counsel for the petitioners, he should take the observations of this Court in the manner in which it was intended, i.e. as a fillip to mould his legal career in a better way in future.*
>
> ***15**. In view of the above, this Court is not inclined to accept the prayer of the petitioners made in the I.As. to effect any change in the judgment dated 02.12.2021 passed by this Court in W.P.(C) No.33158 of 2021.*
>
> ***16**. Accordingly, both the I.As. are dismissed."*

21. Learned Advocate General also submitted that the judgment of the Hon'ble High Court was challenged by the petitioners before the Hon'ble Supreme Court in Special Leave to Appeal (C) No.8637/2022 and the said SLP was dismissed by the Hon'ble Supreme Court vide its order dated 09.09.2022 and the judgment of the Hon'ble High Court was upheld and the Hon'ble Supreme Court observed that the Special Leave Petitions are an abuse of process of Court and the said Special Leave Petitions were

dismissed with cost of Rs. 25,000/- (Rupees Twenty Five Thousand only). The order of the Hon'ble Supreme Court reads as under:-

> ***"UPON hearing the counsel the court made the following***
>
> ***O R D E R***
>
> *Permission to file the Special Leave Petition granted.*
>
> 2. *Delay in refiling the Special Leave Petition is condoned.*
>
> 3. *Application for permission to implead the High Court of Orissa is dismissed.*
>
> 4. *Having heard senior counsel appearing on behalf of the petitioners, we see no reason to entertain the Special Leave Petitions. The High Court was entirely justified in coming to the conclusion that the petition was filed after suppressing the fact that an earlier petition filed by the same advocate had been dismissed as withdrawn. The subsequent petition contains substantially the same averments. The Special Leave Petitions are an abuse of process. We accordingly dismiss the Special Leave Petitions with costs quantified at Rs.25,000, which shall be paid to the Supreme Court Bar Association within four weeks.*
>
> 5. *Pending application, if any, stands disposed of."*

22. Learned Advocate General further submitted that the address given by the Counsel for the present Applicant Ms. Soumya Mishra, has upon verification been found to be the same as that of Mr. Sambit Samal, the Counsel who had filed the PIL being W.P. (C) No. 33158 of 2021 before the Hon'ble High Court of Orissa, as being 552/t/13, Friends Colony, B.K. Road, P.O.-Buxi Bazar, P.S.-Mangalabag, District-Cuttack, Odisha, Pin – 753001, as stated in the affidavit of the Divisional Forest Officer, Keonjhar, dated 15.07.2023.

23. This fact has not been disputed by Mr. Md. Akram, Counsel holding brief of Ms. Soumya Mishra. Even the photocopy of the

registered post on record, filed with the affidavit of service, mentions the address of Ms. Soumya Mishra as 'Friends Colony.'

24. In this view of the matter, the submission of Ashok Kumar Parija, learned Advocate General as well as Mr. Sanjay Upadhyay, learned Counsel appearing for Respondent No.8, is that the present Original Application has been originated in the same chamber as that of Mr. Sambit Sambal, though under the name of different parties and in the name of a different Counsel which amounts to a fraud upon the Court and also amounts to abuse of process of Court.

25. Ms. Soumya Mishra, learned Counsel who has filed the present Original Application is not present today. Mr. Md. Akram's Vakalatnama is on record and he is present today and has been heard. As we have already noted hereinabove Mr. Akram could not dispute either the legal position as to the non-maintainability of the present Original Application or the fact of dismissal of the PIL WP (C) No.33158 of 2021 and allied cases by the Hon'ble High Court of Orissa as well as dismissal of SLP (C) No. 8637 of 2022 by the Hon'ble Supreme Court.

26. We are, therefore, satisfied that not only is the Original Application not maintainable but the same is an abuse of process of Court in view of the order passed by the Hon'ble High Court of Orissa at Cuttack and the Hon'ble Supreme Court.

27. In view of above, the Original Application No.53/2023/EZ is accordingly dismissed with a cost of Rs. 10,000/- (Rupees Ten Thousand only) against the Applicant, Satyabrata Sanjeeb Kumar. The amount of cost shall be deposited by the Applicant with the Ld. Registrar, National Green Tribunal, Eastern Zone Bench, Kolkata,

within one week from the date of this order. In case the Applicant fails to deposit the amount of cost with the Ld. Registrar, National Green Tribunal, Eastern Zone Bench, Kolkata, the same shall be recovered from him by the Collector & District Magistrate, Keonjhar, in accordance with law and the same shall be deposited with the Ld. Registrar, National Green Tribunal, Eastern Zone Bench, Kolkata.

28. Let a copy of this order be also forwarded to the Collector & District Magistrate, Keonjhar, for due compliance.

29. I.As. if any, stand disposed of accordingly.

.....
B. Amit Sthalekar, JM

.....
Dr. Arun Kumar Verma, EM

July 18, 2023,
Original Application No.53/2023/EZ
(I.A. No.28/2023/EZ)
AK

2025 INSC 347

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO(s). 5781-5782 OF 2022

THE AUROVILLE FOUNDATION ....APPELLANT

VERSUS

NAVROZ KERSASP MODY
& ORS. ....RESPONDENT(S)

J U D G M E N T

BELA M. TRIVEDI, J.

1. The present Appeals stem from the final judgment and order dated 28.04.2022 passed by the National Green Tribunal, Chennai (hereinafter referred to as the "Tribunal") in O.A. No. 239/2021, and from an interim order dated 27.07.2022 passed by the said Tribunal in the M.A. No.6/2022 in O.A No.239/2021. The directions given by the Tribunal in the impugned judgment dated 28.04.2022 read as under:-

Signature Not Verified
Digitally signed by RAVI ARORA
Date: 2025.03.17 17:16:26 IST
Reason:

I. **"125.** In the result, this Original Application is allowed in part and disposed of with the following directions: **-**

(i) The 1st Respondent is directed to prepare a proper township plan either in respect of 778 Ha which is in their possession now or in respect of 1963 Ha which was visualized by the MOTHER by identifying the locations where each zone will have to be located, where the roads will have to be laid showing the location of the ring roads with their width and further road, if any, to be constructed, the nature of industries and other activities which they are expected to establish in the township and if it is not going to be implemented as one phase, how many phases in which they are going to complete the project and then apply for Environmental Clearance (EC) as it will fall under Item 8 (b) of the EIA Notification, 2006 as amended from time to time. Till then they are directed not to proceed with further construction in the project area."

(ii) Considering it as an exceptional circumstances, even before obtaining Environmental Clearance (EC) for further activity, we are permitting the 1st Respondent to complete the crown road on the following conditions: **-**

a. The Joint Committee appointed by this Tribunal viz., (i) the District Collector who is the Chairman of the District Green Committee of the concerned district along with (ii) the Forest Officer not below the rank of Conservator of Forest, as deputed by the Principal Chief Conservator of Forests, (Head of Forests Force) and Chief Wildlife Warden, State of Tamil Nadu to inspect the area in question and ascertain whether by

reducing the width of the road at suitable places or by slight realignment (if any) required, so that the number of trees to be cut can be minimized so that the vision of the MOTHER of creating a green cover in that area can be protected.

b. The Joint Committee is also directed to ascertain as to whether there are any water bodies/streams exists in that area and if the road passes through the water body, then what is the manner in which the road will have to be constructed by elevation without affecting the water body/water flow or a bed level causeway with box type of vents will suffice. If such a recommendation is made, that also will have to be implemented, and the 1st Respondent is to undertake the construction as suggested by the committee.

c. The Joint Committee is directed to complete the process and submit the report to the 1st Respondent within a period of two months and on receipt of the same, the 1st Respondent is directed to carry out the crown road work, in the impugned area with tree cover, strictly in accordance with the recommendations made by the Joint Committee.

d. Till that exercise is completed, the 1st Respondent is directed not to cut any further trees from the property. The 1st Respondent is at liberty to undertake the crown road work in the remaining stretches where there are no trees. The 1st Respondent is also at liberty to take action against unauthorized occupations, if any, strictly in accordance with the law in force.

(iii) The 1st Respondent is also directed to plant trees in the ratio of 1: 10 for the number

> of trees to be cut, and the species to be recommended by the Joint Committee may be considered for planting either on the side of the road or other area identified by the Joint Committee, in order to protect environment and also to maintain the green cover in that area.
>
> (iv) Considering the circumstances, parties are directed to bear their respective costs in the application.
>
> (v) The Registry is directed to communicate this order to the members of the Joint Committee appointed by this Tribunal, the Principal Chief Conservator of Forests (Head of Forests Force) and Chief Wildlife Warden, State of Tamil Nadu, the Ministry of Environment, Forests & Climate Change (MoEF&CC) and the Additional Chief Secretary to Government, Department of Environment, Forests & Climate Change for their information and compliance of directions."

II. The following further directions were given by the Tribunal by passing the interim order dated 27.07.2022 in MA No. 6/2022:

> **"7.** In the meantime, the Joint Committee appointed by this Tribunal vide Judgment dated 28.04.2022 is also directed to file the report regarding the nature of work done and observations made by them at the time of inspection."

2. This Court on 13.12.2023 passed the following interim order pending these Appeals.

> **"5.** Having regard to the said prayer which was sought by the Respondent No.1 (original applicant) and having regard to the final directions given by the Tribunal in the impugned order, we are of the prima facie opinion that the direction contained in Para 125(i) being outside the jurisdiction of the Tribunal, the same is required to be stayed till further orders, and is ordered accordingly."

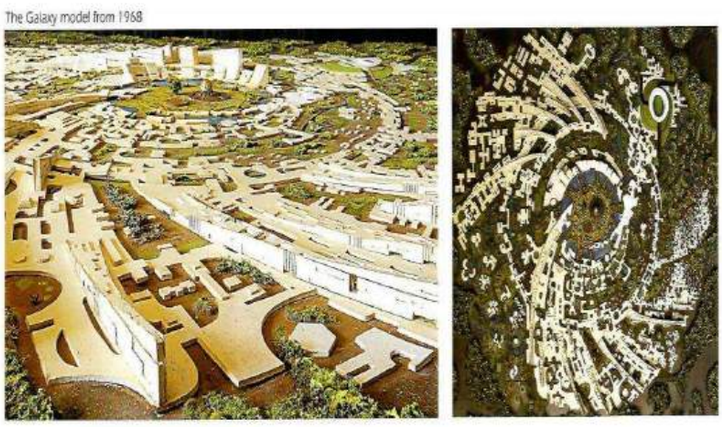
3. Prelude on the History of Auroville:-

I. Before appreciating the issues involved, it would be apt to peep into the history of Auroville. In 1965, the "Mother" (Mirra Alfassa, a French lady), a spiritual collaborator of Sri Aurobindo (a Spiritual reformer, Philosopher and Educationist), envisioned to launch the project of Auroville, with an aim to establish an international universal township, where men and women of all countries are able to live in peace and harmony, above all creeds, all politics and all nationalities and to realise human unity. The project of Auroville was formerly inaugurated by the "Mother" in 28.02.1968. The Charter of Auroville given by the "Mother" was the following:

> **"1.** Auroville belongs to nobody in particular. Auroville belongs to humanity as a whole. But to live in Auroville one must be a willing servitor of the Divine Consciousness.

> 2. Auroville will be the place of an unending education, of constant progress and a youth that never ages.
>
> 3. Auroville wants to be the bridge between the past and the future. Taking advantage of all discoveries from without and from within, Auroville will boldly spring towards future realisations.
>
> 4. Auroville will be a site of material and spiritual researches for a living embodiment of an actual Human Unity."

II. The original Master Plan of the Auroville was conceptualized in Galaxy shape, and was planned to eventually accommodate 50,000 residents, a number which the "Mother" considered sufficient to allow the experiment in human unity to take on a meaningful and significant dimension. Picture of Galaxy Model Plan conceptualized in 1968 is shown below:



III. The project Auroville was legally started as the project of a charitable organization, “The Sri Aurobindo Society” in Pondicherry, which was created to diffuse Sri Aurobindo’s thoughts. The development of Auroville in the initial few years showed good progress and it developed at a rapid pace. Number of Indians and foreigners settled down in Auroville and devoted themselves to various activities showing a remarkable harmony amongst the members of Auroville, which gave a promise to the Government of India of an early fulfilment of the ideals for which Auroville was established. It was also encouraged by UNESCO and other International Organizations of the world. However, after the “Mother” passed away in 1973, the situation changed, and number of complaints came to be received by the Government of India with regard to the mismanagement in the working of the Sri Aurobindo Society. Following the requests by majority of Auroville residents, the Government of India issued a Presidential Ordinance called the Auroville (Emergency Provisions) Ordinance, 1980, later replaced by the Auroville (Emergency Provisions) Act, 1980.

Finally, the Government of India created a unique status for Auroville by passing the Auroville Foundation Act, 1988 (hereinafter referred to as the "A.F.Act").

4. <u>Constitution of Auroville Foundation and its Standing Orders</u>-

I. The Government of India notified the Constitution of Auroville Foundation as a statutory body on 29.01.1991 under the A.F. Act, and at present it is under the realm of Ministry of Human Resource Development (Department of Higher Education) as the Central Government undertaking.

II. As transpiring from the record, the original Galaxy Plan envisioned by the "Mother" in 1968 was the plan with four zones in Auroville, with the centripetal force, being the "Matrimandir". The said Galaxy Plan was revised in 1972 as the First Master Plan called the "Town Plan". As the A.F. Act required statutory Master Plan as contemplated in Section 17(e) read with Section 19(2)(c) of the said A.F. Act, the Master Plan was approved by the Governing Board and the Residents' Assembly of the Appellant Foundation in 1999. The said 1999 Master Plan was further

approved by the competent authority- the Town and Country Planning Organisation (TCPO), Ministry of Urban Development, on 15.02.2001 under the Model Town and Country Planning Act. The said Master Plan was notified on 16.08.2010 and published in the Official Gazette on 28.08.2010.

III. In view of Section 11(3) of the A.F. Act, the Governing Board decided, that “Standing Orders” not inconsistent with the provisions of the A.F. Act and the Rules made thereunder, on the matters that the Governing Board may consider appropriate and necessary, shall be notified from time to time, by the Auroville Foundation. The said Resolution was notified in the Gazette of India, Part III dated 05.03.2011 by the Ministry of Human Resource Development (Department of Higher Education).

IV. Since the said approved Master Plan prescribed the “Town Development Council” as the body for implementing the Master Plan with the organizational structure as in Appendix V of the Master Plan, the Governing Board in terms of the provisions of the Master Plan, constituted the

Town Development Council for the purpose of implementation of the Master Plan, vide the Standing Order No. 6/2011 dated 01.05.2011, which was notified in the Government of India Gazette, Part III, dated 11.06.2011. The said Standing Order dated 01.05.2011 came to be replaced by the Standing Order No. 1/2019 dated 04.06.2019.

V. Again, the said Standing Order dated 04.06.2019 came to be replaced by the Standing Order No.1/2022 dated 01.06.2022, which was notified in the Gazette of India, Part III, on 15.07.2022. On 01.06.2022, the Auroville Foundation issued the Office Order for the re-constitution of the Auroville Town Development Council (ATDC). The Appellant-Foundation thereafter also issued a Corrigendum dated 07.12.2022, to the Standing Order No. 1/2022 dated 01.06.2022, in order to clarify and add the source of statutory power in the Preamble to the said original Standing Order dated 01.06.2022. The said Corrigendum was also published in the Gazette of India, Part III, on 10.12.2022.

5. Prefatory Facts:-

I. The Respondent Nos. 1 and 2 (the original Applicants) had filed an Application being O.A. No.239/2021 before the Tribunal, raising a grievance with regard to cutting of large number of trees by the Appellant-Auroville Foundation, alleging *inter alia* that the Master Plan for Auroville as envisaged by the 'Mother' was approved by the Governing Board of the Auroville Foundation in consultation with the Residents' Assembly, and it further led to preparation of the Auroville Universal Township Master Plan-Perspective 2025, which was approved by the Ministry of Human Resources Development in 2001. However, now the Appellant-Foundation was focusing on the manifestation of the roads mentioned in the Master Plan, e.g. the Crown Road, a road encircling the centre of the Township, and the outer ring road, and was intending to distract Darkali Forest by using huge machineries causing deterioration to the environment. According to the Respondents-original Applicants, the said lands covered under the deemed Forest, were entitled to the

protection as mandated in ***T.N. Godavarman Thirumulpad Vs. Union of India and Others***[1] case.

II. The Respondents Applicant therefore had sought the following reliefs in the said O.A. No.239/2021.

> "**INTERIM RELIEF:**
> A. Injunct the 1st respondent from felling any tree or clearing undergrowth in the Darkali forest or any area in Auroville for the proposed crown road project.
> B. Issue such other orders as it deems fit in the interest of the case and render justice.
>
> **MAIN PRAYER:**
> A. Direct the 1st respondent to prepare a Detailed Development Plan including a mobility plan which is based on and respects the present-day ground realities, to be approved as mandated in the Master Plan and implement projects based on such plan after necessary impact assessments and feasibility studies in an environmentally sustainable manner.
> B. Direct the respondent to pay costs to the applicant.
> C. Issue such other orders as it deems fit in the interest of the case and render justice."

III. The Tribunal initially vide the order dated 10.12.2021 granted an interim order directing the Appellant-Foundation not to cut any further trees till the next date of hearing. The said interim order thereafter was extended till the final disposal of the case.

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[1](1997) 2 SCC 267

IV. The Appellant-Foundation (1st Respondent before the Tribunal) had filed a counter affidavit raising various contentions including the maintainability of the Application itself as also the jurisdiction of the Tribunal to entertain the Application. It was specifically contended that neither the word 'Forest' did appear in the Auroville Charter nor in the Act of 1988. Auroville or any part of it, was neither a Forest nor a deemed Forest requiring protection or clearance under the Forest (Conservation) Act, 1980.

V. The Respondent No.3-Union of India through the Ministry of Environment, Forest and Climate Change (MoEF&CC- the Respondent No.2 before the Tribunal) had also filed a counter-affidavit stating in detail the stand and role of the Ministry and contending *inter alia* that the requirement of prior Environmental Clearance for certain categories of construction and developmental activities (new construction projects and new industrial estates) in the country was inserted in Schedule-I, after Item 30, through an amendment in EIA Notification, 1994 (operative at that time) vide the Notification dated 07.07.2004. The

Central Government under the Environment (Protection) Act, 1986 had issued Environment Impact Assessment Notification dated 14.09.2006 superseding Environment Impact Assessment Notification 1994, which required prior Environmental Clearance from the concerned Regulatory Authority. It was further contended that the Auroville Project was examined by the said regulatory authority for the applicability of environmental clearance as directed by the Tribunal and it was found that the Auroville Township Project was under construction much before the EIA Notification, 1994 and its amendment in 2004, and substantial building work of Auroville Project was completed at various stages as far back as in 2001. Therefore, it could not have been considered as a new project under the provisions of the Notification dated 07.07.2004. It was specifically contented that there was no change in the scope of Township project from the original Master Plan, and as such the Township project would not affect the provisions of the EIA Notification, 2006 and its

amendments for grant of Environmental Clearance.

VI. The Tribunal raised the following points for consideration.

> "**65.** The points that arise for consideration are:
> **(i)** Whether the application is maintainable?
> **(ii)** Whether it was barred by limitation?
> **(iii)** Whether the intended activity of the 1st respondent requires any prior Environmental Clearance or clearance under the Forest (Conservation) Act, 1980 as claimed by the applicant. Even if they are not required, is there any necessity to issue any directions applying the "*Precautionary Principle*" to protect environment and if so, what are the nature of directions to be issued?"

VII. The Tribunal assuming the jurisdiction observed that a substantial question of alleged violation of environmental laws in the implementation of the project having been involved, the Application was maintainable. Disagreeing with the stand taken by the MoEF&CC that the Project would fall within the exempted category of 2004 Notification and did not require the Environmental Clearance, the Tribunal held that any further activity to be done by the Appellant-Foundation can be permitted to be carried out only after obtaining the necessary prior Environmental Clearance. As regards the

disputed Crown Road, the Tribunal held *inter alia* that the major portion of Crown Road has already been completed and only a small portion has remained, and that if it was not allowed to be completed, there would be hardship caused to the Appellant-Foundation. The Tribunal, on the question as to whether the area in question was a Forest as envisaged in ***T.N. Godavarman's*** case, held that it could not be treated as a Forest, as in none of the Government documents produced, it was treated as Forest, and admittedly it was man-made plantation of some species. The Tribunal therefore held that it would not come under the definition of "Forest" for the purposes of obtaining clearance under the Forest (Conservation) Act, 1980.

VIII. The Tribunal after recording such findings applied the "Precautionary Principle" and issued the directions as stated earlier, vide the impugned judgment and order dated 28.04.2022 in O.A. No. 239/2021, and the impugned order dated 27.07.2022 in M.A. No. 6/2022, which are assailed by the Appellant-Foundation in these Appeals.

IX. It may be noted that one of the intervenors before the Tribunal, Ms. Natasha Storey had also filed a Writ Petition being No.25882/2022 challenging the Notification dated 01.06.2022 containing the Standing Order No. 1/2022 issued by the Appellant-Foundation, and the Civil Appeal No. 13651/2024 arising out of the order passed in the said Writ Petition was also heard simultaneously with the present set of Appeals. The said Appeal is also being decided simultaneously by a separate judgment.

6. <u>Statutory Provisions of the NGT Act</u>

I. As the long title of the Act states, the National Green Tribunal Act, 2010 (for short "NGT Act") was enacted to provide for the establishment of a National Green Tribunal for the effective and expeditious disposal of cases relating to environmental protection and conservation of forest and other natural resources including enforcement of any legal right relating to environment and giving relief and compensation for damages to persons and property and for the matters connected therewith and incidental

thereto. Section 2(1)(m) defines “substantial question relating to environment” as under:

> **“2(1)(m)** "substantial question relating to environment" shall include an instance where,—
>
> (i) there is a direct violation of a specific statutory environmental obligation by a person by which,—
> (A) the community at large other than an individual or group of individuals is affected or likely to be affected by the environmental consequences; or
> (B) the gravity of damage to the environment or property is substantial; or
> (C) the damage to public health is broadly measurable;
>
> (ii) the environmental consequences relate to a specific activity or a point source of pollution;”

II. Chapter III of the said Act pertains to the jurisdiction, powers and proceedings of the Tribunal. Section 14 and Section 15 thereof being relevant in respect of the jurisdiction of the Tribunal, the same are reproduced hereunder:

> **“14. Tribunal to settle disputes.**—
>
> (1) The Tribunal shall have the jurisdiction over all civil cases where a substantial question relating to environment (including enforcement of any legal right relating to environment), is involved and such question arises out of the implementation of the enactments specified in Schedule I.
> (2) The Tribunal shall hear the disputes arising from the questions referred to in

sub-section (1) and settle such disputes and pass order thereon.

(3) No application for adjudication of dispute under this section shall be entertained by the Tribunal unless it is made within a period of six months from the date on which the cause of action for such dispute first arose:
Provided that the Tribunal may, if it is satisfied that the applicant was prevented by sufficient cause from filing the application within the said period, allow it to be filed within a further period not exceeding sixty days.

15. Relief, compensation and restitution.—

(1) The Tribunal may, by an order, provide,—
(a) relief and compensation to the victims of pollution and other environmental damage arising under the enactments specified in the Schedule I (including accident occurring while handling any hazardous substance);
(b) for restitution of property damaged;
(c) for restitution of the environment for such area or areas, as the Tribunal may think fit.

(2) The relief and compensation and restitution of property and environment referred to in clauses (a), (b) and (c) of sub-section (1) shall be in addition to the relief paid or payable under the Public Liability Insurance Act, 1991 (6 of 1991).

(3) No application for grant of any compensation or relief or restitution of property or environment under this section shall be entertained by the Tribunal unless it is made within a period of five years from the date on which the cause for such compensation or relief first arose:
Provided that the Tribunal may, if it is satisfied that the applicant was prevented

> by sufficient cause from filing the application within the said period, allow it to be filed within a further period not exceeding sixty days.
>
> (4) The Tribunal may, having regard to the damage to public health, property and environment, divide the compensation or relief payable under separate heads specified in Schedule II so as to provide compensation or relief to the claimants and for restitution of the damaged property or environment, as it may think fit.
>
> (5) Every claimant of the compensation or relief under this Act shall intimate to the Tribunal about the application filed to, or, as the case may be, compensation or relief received from, any other court or authority."

III. Section 19 of the NGT Act pertains to the Procedure and Powers of the Tribunal, which *inter alia* states that the Tribunal shall not be bound by the procedure laid down by the Code of Civil Procedure, 1908, but shall be guided by the principle of natural justice. It also states that the Tribunal shall not be bound by the rules of evidence contained in the Indian Evidence Act, 1872. Section 20 provides that the Tribunal shall, while passing any order or decision or award, apply the Principles of Sustainable Development, the Precautionary Principle and the Polluter Pays Principle.

IV. The enactments in respect of which the Tribunal has the jurisdiction to grant relief under Section 14 and 15 are specified in Schedule-I appended to the NGT Act, which reads as under:

> **"SCHEDULE I**
> [See sections 14(1), 15(1), 17(1)(a), 17(2), 19(4)(j) and 34(1)]
>
> 1. The Water (Prevention and Control of Pollution) Act, 1974;
> 2. The Water (Prevention and Control of Pollution) Cess Act, 1977;
> 3. The Forest (Conservation) Act, 1980;
> 4. The Air (Prevention and Control of Pollution) Act, 1981;
> 5. The Environment (Protection) Act, 1986;
> 6. The Public Liability Insurance Act, 1991;
> 7. The Biological Diversity Act, 2002."

ANALYSIS:

7. As transpiring from the Section 14, the Tribunal has the jurisdiction over all civil cases where the substantial question relating to environment including enforcement of any legal right relating to environment, is involved and such question arises out of the implementation of the enactments specified in Schedule I. Therefore, for the exercise of jurisdiction by the Tribunal under Section 14, it has to be shown that (1) a substantial question relating to environment including enforcement of any legal right relating to environment is involved;

and (2) such questions arise out of the implementation of the enactments specified in Schedule I. The term "substantial question relating to environment" as defined in Section 2(1)(m) of the Act would include, *inter alia,* the question where there is a direct violation of a specific statutory environmental obligation by a person by which (a) the community at large other than the individual or group of individuals is affected or likely to be affected by the environmental consequences; or (b) the gravity of damage to the environment or property is substantial; or (c) the damage to public health is broadly measurable. The substantial question would also include the environmental consequences relating to a specific activity or a point source of pollution. In view of the said definition also the Tribunal before exercising the jurisdiction has to satisfy itself that a substantial question pertaining to the violation of or implementation of any specific statutory environmental obligations contained in any of the enactments specified in Schedule I, is involved.

8. Recently in case of ***State of Madhya Pradesh Vs. Centre for Environment Protection Research and Development***[2]***,*** this Court held as follows:

[2] **(2020) 9 SCC 781**

> **"42.** In view of the definition of "substantial question relating to environment" in Section 2(1)(*m*) of the NGT Act, the learned Tribunal can examine and decide the question of violation of any specific statutory environmental obligation, which affects or is likely to affect a group of individuals, or the community at large.
>
> **43.** For exercise of power under Section 14 of the NGT Act, a substantial question of law should be involved including any legal right to environment and such question should arise out of implementation of the specified enactments.
>
> **44.** Violation of any specific statutory environmental obligation gives rise to a substantial question of law and not just statutory obligations under the enactments specified in Schedule I. However, the question must arise out of implementation of one or more of the enactments specified in Schedule I."

Similar view is also taken in case of ***H.P. Bus-Stand Management and Development Authority Vs. Central Empowered Committee***[3]***.***

9. From the above, it is explicitly clear that every question or dispute raised by an Applicant before the Tribunal pertaining to the environment cannot be treated as a substantial question. It has to be a substantial question relating to environment as contemplated in Section 2(1)(m), and such substantial question must arise out of the implementation of any of the

[3] **(2021) 4 SCC 309**

enactment/enactments specified in Schedule I. Though strict law of evidence may not be applicable to the cases filed before the Tribunal, the Applicant has to raise the substantial question in his Application specifically alleging the violation of a particular enactment specified in Schedule I.

10. So far as the facts of the present Appeal are concerned, as stated hereinabove, the only grievance raised by the Respondents (original Applicants) in their O.A. was with regard to the Appellant-Foundation constructing the roads as mentioned in the Master Plan which was already approved by the Governing Board of the Foundation and by the Minister of Human Resource Development way back in 2001, and published in the official gazette in 2010. The allegation made in the Original Application was that while constructing the said roads particularly the Crown road, or road encircling the centre of township, and an Outer Ring Road, the forest area known as Darkali forest was being destructed. According to the Respondents, the said area was required to be treated as a deemed forest and was required to be protected as mandated in the ***T.N. Godavarman's*** **Case.** Except the said bare allegations, there was no other allegation

made with regard to any violation of any of the enactments specified in Schedule I.

11. Significantly, the Tribunal specifically negated the said allegations raised by the Respondents by observing *inter alia* in para 118 of the impugned judgment that the said area cannot be treated as a Forest, as in any of the Government documents produced, it was not treated as a Forest and not even shown as a Forest, and that admittedly, it was a man-made plantation of some species, and therefore, it will not come under the definition of Forest for the purpose of obtaining clearance under the Forest (Conservation) Act, 1980. Curiously, after having held that the area in question could not be treated as a Forest and that there was no clearance required under the Forest (Conservation) Act, the Tribunal proceeded further applying the "Precautionary Principle" and appointed a Joint committee to inspect the area in question and ascertain whether any modification could be made in the width of the road, and further directed the Appellant-Foundation to prepare a proper Township plan in respect of the area in their possession and in respect of the area visualized by the "Mother".

12. In our opinion, the Tribunal has completely misdirected itself by entering into the restricted domain of judicial review under the guise of applying “Precautionary Principle” in extraordinary circumstances, and in interfering with the implementation of Master Plan which was already approved by the competent Authority way back in the year 2001. As stated earlier, the original Galaxy Plan envisaged by the “Mother” in 1968 was the structure with 4 zones in Auroville with the centripetal force, being “Matrimandir”. The said Galaxy Plan was revised in 1972 as the First Master Plan called the “Town Plan”. Since the Auroville Foundation Act required Statutory Master Plan as contemplated in Section 17(e) read with Section 19(2)(c), the said Master Plan was approved by the Governing Board of the Appellant Foundation in 1999, and was further approved by the competent authority-Town and Country Planning Organisation, Ministry of Urban Development on 15.02.2001. The said Master Plan was also notified on 16.08.2010 and published in the Official Gazette on 28.08.2010.

13. Thus, the said Master Plan having been approved by the competent Authority as back as in 2001 had attained a statutory force and a finality. There are

about more than 2000 substantial constructions/ developments, which have taken place in Auroville since then till this date. The construction of roads as mentioned in the said approved Master Plan including the Crown Road, a Road encircling the Centre of the Township and an outer Ring Road, being on the verge of completion, except few patches, which could not be completed because of the obstructions caused by the disgruntled Residents like the Respondents, the Tribunal thoroughly misdirected itself by directing the Appellant to prepare a proper Township Plan. It is also significant to note that the Auroville Foundation Act is a Special Act enacted to provide for the Acquisition and Transfer of the Undertakings of Auroville and to vest such undertakings in a Foundation established for the purpose with a view to making long term arrangements for the better management and further development of Auroville in accordance with its Original Charter and for the purpose connected therewith and incidental thereto. As per Section 27 of the said Act, the provisions of the said Act have the effect notwithstanding anything inconsistent therewith contained in any other law for time being in force or in any instrument having effect by virtue of any law other

than the Act, or in any decree or order of any Court, Tribunal or other Authority. Thus, in view of the overriding effect of A.F. Act also the impugned direction issued by the Tribunal without any jurisdiction as circumscribed under Section 14 of the NGT Act, would not be tenable at law.

14. The Tribunal has also travelled beyond its jurisdiction in giving the impugned directions under the guise of exceptional circumstances applying the "Precautionary Principle." At this juncture, it is very pertinent to note that as stated earlier, the Ministry of Environment, Forest and Climate Change in its affidavit filed before the Tribunal had made its stand very clear that the Auroville Township Project was under construction much before the EIA Notification, 1994 and its amendment in 2004 and therefore could not be considered as a new Project under the said Notification of 2004. It was also made clear that there was no change in the scope of Township Project from the Original Master Plan and as such, the Township Project would not affect the provisions of EIA Notification, 2006 and its amendments for the grant of Environment Clearance. Again curiously, the Tribunal without any material on record, brushed aside the said

stand taken by MoEF&CC in its affidavit, by holding that any further activity to be done by the Appellant-Foundation, could be permitted to be carried out only after obtaining necessary prior Environmental Clearance, and then proceeded to appoint the Joint Committee to inspect the area in question and to ascertain whether the width of the Road at suitable places could be reduced so that the number of trees to be cut can be minimized. Such directions clearly fall outside the purview of the jurisdiction of the Tribunal particularly when there was no substantial question relating to the environment was shown to have arisen in implementation of any of the enactments specified in Schedule I appended to the NGT Act. There is no whisper in the impugned order as to which of the provision and which of the enactment specified in Schedule I was violated.

15. It would not be out of place to regurgitate the law developed so far on the protection of environment. In the landmark Judgment in case of ***Vellore Citizens Welfare Forum Vs. Union of India & Others***[4], it was stated that the traditional concept that Development and Ecology are opposed to each other is no longer

[4] **(1996) 5 SCC 647**

acceptable. “Sustainable Development” has been accepted as a viable concept to eradicate poverty and improve the quality of human life, while living within the carrying capacity of supporting ecosystems. “Sustainable Development” as defined by Brundtland Report means “development that meets the needs of the present without compromising the ability of the future generations to meet their own needs.” The “Sustainable Development” therefore has been held to be a balancing concept between Ecology and Development as a part of the customary international law.

16. In ***Essar Oil Ltd. Vs. Halar Utkarsh Samiti & Ors.***[5]***,*** this Court after referring to the principles enunciated in the Stockholm Declaration, made very apt observations in Para 26 and 27, which maybe quoted hereunder: -

> **“26.** Certain principles were enunciated in the Stockholm Declaration giving broad parameters and guidelines for the purposes of sustaining humanity and its environment. Of these parameters, a few principles are extracted which are of relevance to the present debate. Principle 2 provides that the natural resources of the earth including air, water, land, flora and fauna especially representative samples of natural ecosystems must be safeguarded for the benefit

[5] **(2004) 2 SCC 392**

of present and future generations through careful planning and management as appropriate. In the same vein, the fourth principle says:

> "man has special responsibility to safeguard and wisely manage the heritage of wildlife and its habitat which are now gravely imperilled by a combination of adverse factors. Nature conservation including wildlife must, therefore, receive importance in planning for economic developments."

These two principles highlight the need to factor in considerations of the environment while providing for economic development. The need for economic development has been dealt with in Principle 8 where it is said that "economic and social development is essential for ensuring a favourable living and working environment for man and for creating conditions on earth that are necessary for improvement of the quality of life". The importance of maintaining a balance between economic development on the one hand and environment protection on the other is again emphasized in Principle 11 which says:

> "The environmental policies of all States should enhance and not adversely affect the present or future development potential of developing countries nor should they hamper the attainment of better living conditions for all;"

27. This, therefore, is the aim, namely, to balance economic and social needs on the one hand with environmental considerations on the other. But in a sense all development is an environmental threat. Indeed, the very existence of humanity and the rapid increase in the population together with consequential demands to sustain the population has resulted in the concreting of open lands, cutting down of forests, the filling up of lakes and pollution of water resources and the very air which we breathe. However, there need

> not necessarily be a deadlock between development on the one hand and the environment on the other. The objective of all laws on environment should be to create harmony between the two since neither one can be sacrificed at the altar of the other. This view was also taken by this Court in Indian Council for Enviro-Legal Action v. Union of India [(1996) 5 SCC 281] , where it was said: (SCC p. 296, para 31)
>
> > "While economic development should not be allowed to take place at the cost of ecology or by causing widespread environment destruction and violation; at the same time the necessity to preserve ecology and environment should not hamper economic and other developments. Both development and environment must go hand in hand, in other words, there should not be development at the cost of environment and vice versa, but there should be development while taking due care and ensuring the protection of environment."

17. Though it is true that the "Precautionary Principle" and the "Polluter Pays Principle" are part of the environmental law of the country, it is equally true that while the right to clean environment is a guaranteed fundamental right under Articles 14 and 21 of the Constitution of India, the right to development through industrialisation equally claims priority under fundamental rights particularly under Articles 14,19 and 21 of the Constitution of India. There is therefore a need for "Sustainable Development" harmonising and striking a golden balance between the right to

development and the right to clean environment. In ***N.D. Jayal & Anr. Vs. Union of India & Ors.***[6]**,** it is observed as under: -

> "**25.** Therefore, the adherence to sustainable development principle is a *sine qua non* for the maintenance of the symbiotic balance between the rights to environment and development. Right to environment is a fundamental right. On the other hand, right to development is also one. Here the right to "sustainable development" cannot be singled out. Therefore, the concept of "sustainable development" is to be treated as an integral part of "life" under Article 21. Weighty concepts like intergenerational equity (*State of H.P.* v. *Ganesh Wood Products* [(1995) 6 SCC 363]), public trust doctrine (*M.C. Mehta* v. *Kamal Nath* [(1997) 1 SCC 388]) and precautionary principle (*Vellore Citizens* [(1996) 5 SCC 647]), which we declared as inseparable ingredients of our environmental jurisprudence, could only be nurtured by ensuring sustainable development."

18. As demonstrated earlier, in the instant case, no substantial question relating to environment had arisen, nor violation of any of the enactments specified in Schedule-I was alleged. The Tribunal therefore had committed gross error in assuming the jurisdiction and giving directions untenable in law.

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[6] **(2004) 9 SCC 362**

19. In that view of the matter, the impugned Orders passed by the Tribunal being without jurisdiction and legally untenable deserve to be quashed and set aside, and are hereby set aside. The Appeals stand allowed accordingly.

.....J.
[BELA M. TRIVEDI]

……..……..…….. J.
[PRASANNA B. VARALE]

NEW DELHI;
17th MARCH, 2025

2026 INSC 77

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO(S). OF 2026
(Arising out of SLP (Civil) No(s).11480 of 2020)

RAJ SINGH GEHLOT & ORS. ....APPELLANT(S)

VERSUS

AMITABHA SEN & ORS. ....RESPONDENT(S)

WITH

CIVIL APPEAL NO(S). OF 2026
(Arising out of SLP (Civil) No(s).5971 of 2021)

CIVIL APPEAL NO(S). OF 2026
(Arising out of SLP (Civil) No(s).14797 of 2020)

AND

CIVIL APPEAL NO(S).872-874 OF 2021

Signature Not Verified
Digitally signed by
RASHI GUPTA
Date: 2026.01.20
17:48:23 IST
Reason:

J U D G M E N T

Mehta, J.

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A. CIVIL APPEALS @ SLP(C) NO(S). 11480 OF 2020; SLP(C) NO(S). 5971 OF 2021; SLP(C) NO(S). 14797 OF 2020

1. Heard.

2. Leave granted.

3. At the outset, it would be apposite to clarify that Civil Appeal Nos. 872–874 of 2021, though tagged

together, emanate from the orders passed by the National Green Tribunal in Original Application No. 238 of 2015. The said appeals pertain exclusively to allegations of environmental violations and issues falling within the specialised jurisdiction of the National Green Tribunal. In view thereof, and having regard to the distinct factual matrix and legal considerations involved, the said appeals have been examined independently and are being dealt with separately from the present batch of matters.

4. The above captioned appeals arise out of judgment and order dated 10th July, 2020 passed by the High Court of Punjab and Haryana at Chandigarh[1] in Civil Writ Petition No. 20330 of 2015 and involve overlapping questions of facts and law and hence, the same have been heard together and are being decided by this common judgment.

5. The tabular chart of parties in these appeals is noted hereinbelow for the sake of convenience:-

S. No.	**NAME OF PARTY**	**POSITION OF PARTIES**	
		Before High Court	Before this Court
A. Civil Appeal @ SLP(C) No(s). 11480 of 2020			

[1] Hereinafter, referred to as "High Court".

1.	Mr. Raj Singh Gehlot	Respondent No. 1	Appellant No. 1
2.	M/s Ambience Private Limited (Formerly Ambience Limited) through its Managing Director Mr. Raj Singh Gehlot	Respondent No. 2	Appellant No. 2
3.	M/s Ambience Developers and Infrastructure Private Limited through its Authorized Person Mr. Raj Singh Gehlot	Respondent No. 3	Appellant No. 3
	Vs		
1.	Mr. Amitabha Sen	Petitioner No. 1	Respondent No. 1
2.	Mrs. Dipika Sen	Petitioner No. 2	Respondent No. 2
3.	The Chief Secretary, Government of Haryana, Vice-Chairman, Haryana Development Urban Authority	Respondent No. 8	Respondent No. 3
4.	The Chief Administrator Haryana Urban Development Authority	Respondent No. 9	Respondent No. 4
5.	The Chief Town Planner Town and Country Planning Department,	Respondent No. 10	Respondent No. 5
6.	Mr. A.K. Ganju	Respondent No. 4	Respondent No. 6
7.	A.K. Ganju & Associate	Respondent No. 5	Respondent No. 7

8.	Mr. Rajeev Khanna	Respondent No. 6	Respondent No. 8
9.	Grid Architecture Interiors Private Limited	Respondent No. 7	Respondent No. 9
B. Civil Appeal @ SLP(C) No(s). 5971 of 2021			
1.	Kohler India Corporation Private Limited, through its Authorized Signatory Sh. Dhiraj Mishra	Not a party	Appellant
Vs			
1.	The Chief Secretary, Government of Haryana, Vice-Chairman, Haryana Development Urban Authority	Respondent No. 8	Respondent No. 1
2.	M/s Ambience Developers and Infrastructure Private Limited through its Authorized Person Mr. Raj Singh Gehlot	Respondent No. 3	Respondent No. 2
3.	Mr. Raj Singh Gehlot	Respondent No. 1	Respondent No. 3
4.	M/s Ambience Private Limited (Formerly Ambience Limited) through its Managing Director Mr. Raj Singh Gehlot	Respondent No. 2	Respondent No. 4
5.	Mr. A.K. Ganju	Respondent No. 4	Respondent No. 5
6.	A.K. Ganju & Associate	Respondent No. 5	Respondent No. 6

7.	Mr. Rajeev Khanna	Respondent No. 6	Respondent No. 7
8.	Grid Architecture Interiors Private Limited	Respondent No. 7	Respondent No. 8
9.	The Chief Administrator Haryana Urban Development Authority	Respondent No. 9	Respondent No. 9
10.	Dr. Amitabha Sen	Petitioner No. 1	Respondent No. 10
11.	Mrs. Dipika Sen	Petitioner No. 2	Respondent No. 11
C. Civil Appeal @ SLP(C) No(s). 14797 of 2020			
1.	The Chief Town Planner Town and Country Planning Department	Respondent No. 10	Appellant
Vs			
1.	Dr. Amitabha Sen	Petitioner No. 1	Respondent No. 1
2.	Mrs. Dipika Sen	Petitioner No. 2	Respondent No. 2
3.	Mr. Raj Singh Gehlot	Respondent No. 1	Respondent No. 3
4.	M/s Ambience Ltd.	Respondent No. 5	Respondent No. 4
5.	M/s Ambience Developers and Infrastructure Private Limited	Respondent No. 6	Respondent No. 5
6.	Mr. A.K. Ganju	Respondent No. 7	Respondent No. 6
7.	A.K. Ganju & Associate	Respondent No. 8	Respondent No. 7
8.	Mr. Rajeev Khanna	Respondent No. 9	Respondent No. 8
9.	Grid Architecture Interiors Private Limited	Respondent No. 10	Respondent No. 9
10.	The Chief Secretary,	Respondent No. 11	Respondent No. 10

	Government of Haryana Vice-Chairman, Haryana Development Urban Authority		
11.	The Chief Administrator, Haryana Urban Development Authority	Respondent No. 12	Respondent No. 11

6. Appellant No. 1-Raj Singh Gehlot[2] is the authorized representative of the appellant No. 3-M/s. Ambience Developers and Infrastructure Private Limited[3], and also serves as the Managing Director of appellant No.2-M/s. Ambience Private Limited.[4]

I. BRIEF FACTS

7. Civil Appeal @ SLP(C) No. 11480 of 2020 is treated as the lead matter and reference to facts and issues is being made therefrom for the purpose of disposal of the batch of appeals.

8. Before proceeding further, it would be apposite to set out, a brief chronology of dates and events

[2] Hereinafter, referred to as "appellant-Raj Singh Gehlot".
[3] Hereinafter, referred to as "appellant No.3-Ambience Developers"
[4] Hereinafter, collectively referred to as "appellants-developers".

which are necessary and relevant for proper adjudication of the present appeals-:

LIST OF DATES AND EVENTS	
DATE	**PARTICULARS**
23.10.1991	M/s. HLF Enterprises (P) Limited[5] was incorporated.
1991-1992	M/s. HLF Ltd., acquired 22.98 acres of land in Nathupur, Gurgaon.
17.02.1992	M/s. HLF Ltd. applied for a license to set up a residential colony at Village Nathupur, Gugraon.
09.07.1993	An agreement was executed between M/s. HLF Ltd. and Director, Town and Country Planning Department, Chandigarh, Haryana[6], granting M/s. HLF Ltd. permission to develop a residential colony.
15.07.1993	License No. 19 of 1993 was granted by DTCP to M/s. HLF Ltd. for setting up a residential colony on 18.98 acres.
30.03.1994 / June, 1994	Appellant-Raj Singh Gehlot, joined M/s. HLF Ltd. as a Director along with Mohan Singh Gehlot and Narender Mohan Gupta with effect from 30th March, 1994 and upon clearance of all dues, the appellant-Raj Singh Gehlot acquired complete control of M/s. HLF Ltd. in June, 1994.
1994-95	M/s. HLF Ltd. submitted building plans to the DTCP for approval to develop a residential colony on the first 10.98-acre parcel under License No. 19 of 1993.
07.09.1994	M/s. HLF Ltd. sought Change of Land Use approval from the DTCP to develop a five-star hotel & recreational complex on 4 acres land comprising Khasra Nos. 3 and 529.
15.09.1994	DTCP issued CLU No. G/688-10DP-94/1011 for developing a hotel, recreational, and cultural complex over 4 acres in Khasra Nos. 3 and 529.
24.07.1995	DTCP sanctioned the Layout and Building Plan of Ambience Lagoon Complex/Residential colony on 10.98 acres of land.
11.12.1995	M/s. HLF Ltd. applied to the DTCP for a license over 106.175 acres (excluding the earlier 22.98 acres) to

[5] Hereinafter, referred to as "M/s. HLF Ltd.".
[6] Hereinafter, referred to as "DTCP".

	develop an integrated colony with residential, commercial, and ancillary facilities.
06.05.1996	DTCP approved the Ambience Lagoon Complex layout and building plans on 10.98 acres in Phase-I, post-renewal of License No. 19 of 1993.
March-April, 2000	Advertisements were given in newspaper for the Ambience Lagoon Housing Project.
18.07.2000	M/s. HLF Ltd. sought DTCP's license to develop a commercial complex on 8 acres.
28.09.2001	DTCP issued letter of Intent to de-license 8 acres of land out of license No. 19 of 1993.
16.10.2001 / 18.10.2001	License No. 8 of 2001 was granted by the DTCP on 16.10.2001 for the development of a commercial colony on 8 acres of land and same came to be notified on 18th October, 2001.
18.10.2001	DTCP de-licensed area of 8 acres and licensed the M/s. HLF Ltd. to develop commercial complex on 8 acres.
20.10.2001	Apartment Buyers' Agreement was entered between M/s. HLF Ltd. and respondent Nos. 1 & 2.
31.12.2001 / 10.01.2002	DTCP issued occupancy certificate followed by a Part completion certificate.
31.01.2002	M/s. HLF Ltd. obtained DTCP's permission to construct B1 and C1 (EWS) blocks on the remaining area of 10.98 acres in Ambience Lagoon Complex.
31.01.2002	DTCP sanctioned the Building Plans of a commercial complex on 8 acres of land.
05.02.2004	DTCP approved the application dated 11th December, 1995 for development of an integrated residential-commercial colony over 106.175 acres, pursuant to which License Nos. 13-18 of 2004 were granted.
09.11.2004	DTCP approved Ambience Island's zoning plan for mixed-use development over 132.06 acres.
-	In the mid-2000s, M/s. HLF Ltd. was re-named as Ambience Developers and Infrastructure Private Limited.
01.03.2005	DTCP approved the consolidated/composite layout plan of integrated township on 132.065 acres.
-	C-1 block, originally sanctioned as EWS flats, was converted into a regular apartment block, leading to an additional utilization of 0.85 acres from

	Licence No. 2 of 2004 and increasing the area of the residential colony to 11.83 acres.
31.03.2005	Residents of Ambience Island Lagoon Apartments filed Consumer Complaint No. 28 of 2005 before National Consumer Disputes Redressal Commission[7] against the appellants-developers seeking directions to execute and register sale deed.
14.03.2007	The commercial complex was made operational after the issuance of Occupation Certificate by the DTCP.
25.03.2009	Appellant No. 3-Ambience Developers submitted deed of declaration under section 2 read with section 11 of the Haryana Apartment Ownership Act, 1983 for land admeasuring 11.83 Acres.
01.02.2010	Ambience Lagoon Apartments Residents Welfare Association[8] instituted a Civil Suit No. 27 of 2010[9].
09.02.2010	The Civil Judge ordered that no illegal construction be carried out on the land allotted to the plaintiff association and this was subsequently stayed by the High Court on 22nd February, 2010.
2010	ALARWA filed Civil Writ Petition No. 15817 of 2010[10] before the Punjab and Haryana High Court challenging the delayed filing of the Deed of Declaration.
01.09.2010	DTCP sanctioned the construction of commercial complex on Plot No. 3 admeasuring 5.81 acres, comprised in Khasra Nos. 536 and 526 and forming part of the License Nos. 13 and 14 of 2004.
31.05.2011	High Court dismissed the 2010 writ petition.
31.01.2012	ALARWA filed Civil Writ Petition No. 2147 of 2012 seeking quashing of Memo No. 10894 dated 01st September, 2010.
16.03.2015	2010 civil suit came to be dismissed as withdrawn.
03.06.2015	Original Application No. 238 of 2015 was filed before National Green Tribunal[11] seeking restoration of damaged parks/open spaces; compliance with earlier NGT's order dated 10th April, 2015 in the case "*Vardhaman Kaushik vs*

[7] Hereinafter, referred to as "NCDRC".
[8] Hereinafter, also referred to as "ALARWA".
[9] Hereinafter, also referred to as "2010 civil suit".
[10] Hereinafter, referred to as "2010 writ petition".
[11] Hereinafter, also referred to as "NGT".

	Union of India"; and payment of suitable compensation, after the first Original Application No. 160 of 2015 was directed to be withdrawn.
08.07.2015	This Court, in Writ Petition (C) No. 338 of 2015, directed respondent Nos. 1 & 2 to approach the High Court.
06.09.2015	Respondent Nos. 1 & 2 approached the High Court by filing Civil Writ Petition No. 20330 of 2015.
05.05.2016	Shri Mohan Singh, District Town Planner submitted his report before the NGT in Original Application No. 238 of 2015.
16.08.2016	NGT appointed a Court Commissioner to inspect the site.
19.09.2016	Court Commissioner submitted the report.
11.05.2018	Consumer Complaint No. 28 of 2005 before NCDRC was dismissed as the complainants chose to file individual complaints instead of contesting jointly.
29.04.2019	NGT directed the Ministry of Environment, Forest and Climate Change[12] to file report with respect to environmental compensation.
07.11.2019	MoEF&CC quantified environmental compensation at Rs. 68,51,250/-.
09.01.2020	Appellant No. 3-Ambience Developers was directed by the NGT to pay interim compensation of Rs. 68,51,250/-.
16.01.2020	High Court disposed of the Civil Writ Petition No. 2147 of 2012.
11.02.2020	NGT ordered revision of MoEF&CC's compensation assessment and appointed a Joint Expert Committee comprising of MoEF&CC, Central Pollution Control Board, and Indian Institute of Forest Management, Bhopal.
13.02.2020	NGT dismissed the Review Petition.
10.07.2020	High Court delivered impugned judgment and order in Civil Writ Petition 20330 of 2015.
03.12.2020	Joint Expert Committee recommended imposition of fine of Rs. 138.83 crores, Rs. 10.33 crores environmental compensation, withholding 25–50% of profits, and possible demolition of the commercial complex.
05.08.2021	Pursuant to the order dated 16th January, 2020, the DTCP passed an order dated 5th August, 2021,

[12] Hereinafter, also referred to as "MoEF&CC".

	which is subject matter of challenge in Civil Writ Petition No. 6047 of 2025 before the High Court.
29.12.2023	CBI filed chargesheet before the Court of Chief Judicial Magistrate, Panchkula.

9. M/s. HLF Ltd. was incorporated on 23rd October, 1991, *inter alia*, with the primary objective of carrying on the business of hotel construction, colonisation and development, including acting as builders, town planners, decorators, and developers of resorts and amusement parks. M/s. HLF Ltd. acquired a parcel of land admeasuring 22.98 acres at village Nathupur, District Gurgaon, Haryana. On 17th February, 1992, M/s. HLF Ltd. moved an application to the Director, Town and Country Planning Department, Chandigarh, Haryana, seeking permission to set up a residential colony on the aforesaid tract of land. It was specifically mentioned at Serial No. 9 of the said application, that the applicant intended to establish a residential colony (group housing society) over an area measuring 18.98 (19) acres from the above chunk of land. The said application culminated into an agreement dated 9th July, 1993 executed between M/s. HLF Ltd. and the DTCP, pursuant to which M/s. HLF Ltd., was granted

License No. 19 dated 15th July, 1993 for development of a residential colony on 18.98 acres of land.

10. The appellant-Raj Singh Gehlot, joined M/s. HLF Ltd. as a Director along with Mohan Singh Gehlot and Narender Mohan Gupta with effect from 30th March, 1994. Upon clearance of all dues and completion of other formalities, the appellant-Raj Singh Gehlot acquired complete control of M/s. HLF Ltd. in June, 1994.

11. The appellants-developers have set up a case that the layout plan for this residential colony, later named as Ambience Lagoon Group Housing, was sanctioned on 24th July, 1995 and in this plan, there is a clear indication that the residential colony would be constructed on an area of 10.98 acres of land.

12. M/s. HLF Ltd. was having other parcels of land in the surrounding areas and hence, another application dated 11th December, 1995 was moved on its behalf seeking grant of license in respect of land admeasuring 106.175 acres, distinct from and in addition to the aforesaid tract of 22.98 acres, for development of an integrated colony comprising residential and commercial complexes along with ancillary services. It is the case of the appellants-

developers that the said application was duly considered and accepted by the DTCP and the development plans submitted along with the application were approved on 5th February, 2004, pursuant to which License Nos. 13 to 18 of 2004 came to be granted.

13. The appellants-developers issued advertisements for the Ambience Lagoon Housing Project in newspapers in March-April, 2000. The appellants-developers unequivocally maintain that in these advertisements, it was never projected or promised that the residential colony would be constructed on entire 18.98 acres of land and that rather, the approved layout plan clearly manifested that the project would be coming up over 10.98 acres of land only.

14. Another application was submitted by M/s. HLF Ltd. in July, 2000 to the DTCP seeking de-licensing of 8 acres out of total 18.98 acres of land covered under License No. 19 of 1993. The language of the said application would be relevant and germane for decision of these appeals and hence, the same is reproduced hereinbelow for the sake of convenience:-

" HLF ENTERPRISES PRIVATE LIMITED

Dated: 18.07.2000

To

The Director,
Town & Country Planning Haryana,
Aayojana Bhawan, Sector 18-A,
Madhya Marg, Chandigarh.

Sub: APPLICATION FOR ISSUANCE OF LICENCE TO DEVELOP COMMERCIAL COMPLEX/COLONY ON 8 ACRES OF LAND BY DELICENCING THIS 8 ACRES OF LAND BEING PHASE-II OF RESIDENTIAL GROUP HOUSING COLONY ON TOTAL 18.98 ACRES OF LAND UNDER LICENCE NO.19 OF 1993 BY M/S, HLF ENTERPRISES PVT. LTD.

Dear Sir,

With due respect, it is submitted that we have been issued Licence No.19 of 1993 dated 9.7.1993 to set up a residential group housing colony on 18.98 acres of land and CLU to set up hotel, recreational and cultural complex on 4 acres of land vide Memo No.10011 dated 15.9.94 at our "Ambience Island" project tin the revenue estate of Village Nathupur, NH-8, District Gurgaon. Zoning plans of the residential group housing colony and hotel recreational and cultural complex were sanctioned by your office vide Memo No.14510 dated 29.12.1994 and Memo No.394 dated 10.01.1995 respectively. **However, keeping in view the topography and site conditions of the licenced land and your stipulation to obtain a fresh clearance from the drainage department, 18.98 acres of land of residential group housing colony for construction purposes was bifurcated into two phases i.e., Phase-l and Phase-II comprising of 10.98 acres and 8 acres of land respectively. The development and construction of Phase I of the group housing colony is going on in full swing as per plan sanctioned by the competent authority in your esteemed office vide Memo No.8903 dated 6.5.1996.** The above said licence to set up group housing colony and CLU to set up hotel

project have duly been renewed from time to time and are valid as on date.

We further applied in 1995 & 1996 for issuance of additional licence to develop the land owned by our different group companies in "Ambience Island" in Special Zone allowing group housing, commercial, institutional and recreation & entertainment uses.

Schematic layout plan of the said colony was submitted to the department earmarking the total area of "Ambience Island" complex i.e., licenced area of 22.98 acres and area of 106.175 acres applied to be licenced for various purposes allowed in special zone.

This area of 8 acres presently licenced for setting up residential group housing colony is to be developed in Phase II of licence No.19 of 1993 and is adjoining to hotel, recreational and cultural complex, therefore, it shall be more prudent, convenient, practicable and viable to develop a shopping, commercial and recreational complex on this land. Norms of town planning definitely favour such type of blended, balanced and mixed development of the area. Moreover, it is also necessary to develop this 8 acres of land as a shopping, commercial and recreational complex keeping in view the overall perspective and layout of the "Ambience Island" project. It is also significant to submit that the development and construction of Phase-I of residential group housing colony on 10.98 acres of land under Licence No. 19 of 1993 is going on in full swing and it is likely to be habituated very soon. Development of hotel project is also likely to be commenced on as the building plans of the project have already been got sanctioned in July, 2000. In this respect, it is noteworthy that no other development of commercial nature is coming up at present in the Special Zone. Moreover, Special Zone being having all the locational advantages e.g., nearest to Indira Gandhi International Airport, National Capital Region of Delhi and so many posh South Delhi colonies and it being facing lush green farm houses

in village Rajokri and situated immediately on Delhi Haryana border at the outskirts of Delhi or NH-8, must consist of an ultra modern shopping, commercial and recreational complex. It shall serve the purpose of decongesting of the national capital region of Delhi by relocating of the existing and prospective offices of Government, Semi-Govt., Multinational and Private corporations in upcoming Satellite Township of Gurgaon as conceptualise din the NCR Act and Plan. It is also submitted that the international chains of hotel are not comfortable with the development of residential apartment complex on the land immediately adjoining to the land of hotel, recreational and cultural complex and they are insisting us to develop the proposed ultra modern international standard and size of shopping-cum-commercial and office complex on this 8 acres of adjoining land. We, therefore, propose to develop the abovesaid 8 acres of land as a ultra modern shopping and commercial complex comprising of shops, offices, marketing, recreational and entertainment outlets.

Keeping these aspects in mind, we propose to develop an ultra modern shopping, commercial, office and recreational complex on the abovesaid 8 acre of land to have natural blending with the existing CLU for hotel, recreational and cultural complex on 4 acres of land and with this object, we request your goodself:-

1. To delicence the licenced area of 8 acres of Phase II of group housing colony under Licence No.19 of 1993 dated 9.7.1993 and simultaneously to issue licence to set up a commercial colony on this delicenced 8 acres of land. It may please be noted that the delicencing of the land is co-terminus with the issuance of licence to set up the commercial colony on this land as per provisions of Haryana Development & Regulation of Urban Areas Act, 1975. We are filing requisite application in Form LC-I for issuing us the licence to set up and to develop the proposed shopping, commercial and recreational complex/colony on this 8 acres of

land. All other relevant documents/papers/ information as per rules are also submitted alongwith the Form LC-1.

2. To allow us to adjust the proportionate amount of external development charges (EDC) alongwith interest, licence application fee and scrutiny charges already paid by us for the abovesaid 8 acres of land requested to be delicenced being part of the total licenced land of 18.98 acres under Licence No.19 of 1993 towards the amount of EDC, licence application fee and scrutiny charges payable by us for issuance of licence to set up the proposed shopping, commercial and recreational complex/colony on abovesaid 8 acres of land as per prevalent policy of the Government. It is, significant to submit that the department has followed this policy in past in several cases. It is submitted for your ready reference and perusal that we have deposited all installments of external development charges alongwith interest amounting to Rs.806.33 lacs in respect of the total licenced area of 18.98 acres of land under group housing colony including this 8 acres of land now to be delicenced.

3. To allow us to deposit the differential amount of EDC, licence application fee and scrutiny charges on issuance of your in principal approval to our abovesaid request in order to avoid any complication as it is the case of considering the issuance of licence for our already licenced land. We hereby undertake and assure to pay these charges/fee to the Government immediately on demand.

It is also pertinent to mention that for the area of 8 acres proposed to be delicenced and afterwards to be licenced for setting up the proposed shopping, commercial and recreational complex/colony, the defence authorities and irrigation department have already issued their respective No Objection Certificates/clearances which are on record of your department, therefore, for consideration and issuance of abovesaid licence, no further permission/clearance need to be obtained by us either from the defence authorities or from the

> irrigation department. However, we shall comply with the conditions/stipulation laid in the above No Objection Certificate/clearance issued by these authorities/department.
>
> We, therefore, request your goodself to get our application for setting up of a commercial colony on 8 acres of land processed by the competent authority in your office at the earliest. We further request that in case your goodself require any further information, detail, explanation, document, undertaking, affidavit and bond etc. in this respect, please do let us know for compliance.
>
> Thanking you,
> Yours faithfully,
> For HLF ENTERPRISES PVT. LTD.
> Sd/-
> (RAJ SINGH GEHLOT)
> Director
> Encl: 1) Form LC-I alongwith requisite documents, certificates, details, informations and explanation for issuance of licence to set up commercial colony on 8 acres of land."

15. The aforesaid application seeking de-licensing was acknowledged and accepted by the DTCP *vide* Memo No. 13948 dated 18th October, 2001 whereby an area admeasuring 8 acres out of the total licensed area of 18.98 acres was formally de-licensed, resulting in the licensed area under License No. 19 of 1993 being curtailed to 10.98 acres, matching with the approved layout plan for the residential colony.

16. The DTCP issued a permission letter dated 16th/18th October, 2001 authorising M/s. HLF Ltd. to

raise a commercial complex over the de-licensed area admeasuring 8 acres in the revenue estate of Village Nathupur, Gurgaon, Haryana. The same came to be published by Endst. No. SDP 2001/13959 dated 18th October, 2001. While respondent Nos. 1 and 2 contend that the permission to construct the commercial complex was granted on 16th October, 2001, prior to the de-licensing order dated 18th October, 2001, the appellants-developers assert that the permission attained the cloak of legality only *vide* notification issued on 18th October, 2001, and not on 16th October, 2001.

17. Shortly thereafter *i.e.*, on 20th October, 2001, respondent No.1-Amitabha Sen and respondent No.2-Dipika Sen, entered into an Apartment Buyers' Agreement with M/s. HLF Ltd. for the purchase of a flat/apartment in Ambience Lagoon.

18. The construction was commenced and part completion certificate was issued by the DTCP on 10th January, 2002 in respect of Ambience Lagoon Housing Project. The DTCP, *vide* Memo No. 2161 dated 31st January, 2002 sanctioned the building plans for construction of a commercial complex over the land area admeasuring 8 acres which had been

de-licensed and re-licensed in October, 2001. It is the case of the appellants-developers that construction of the integrated commercial complex comprising of the Leela Ambience Hotel over 4 acres of land and Ambience Mall/Ambience Commercial Tower-I over 8 acres of land was commenced sometime in the year 2002 and concluded in the year 2007.

19. On 25th March, 2009, appellant No.3-Ambience Developers filed a Deed of Declaration under Section 2 read with Section 11 of the Haryana Apartment Ownership Act, 1983, with respect to land admeasuring 11.83 acres stating that the external roads were specifically excluded from the scope of common areas.

20. The flat owners of Ambience Lagoon formed an association named Ambience Lagoon Apartments Residents Welfare Association. Few members of the ALARWA instituted a Civil Suit No. 27 of 2010[13] under Section 34 of the Specific Relief Act, 1963 before the District Court at Gurgaon, Haryana, seeking a declaration that there were flagrant illegalities and statutory violations in the

[13] Hereinafter, referred to as "2010 civil suit".

development of the Ambience Lagoon Housing Project, arraying the Chief Secretary, Government of Haryana, and others as defendants. Notably, the appellants-developers were not impleaded as party to the said suit at the time of its institution. Subsequently, an application under Order I Rule 10 of the Code of Civil Procedure, 1908 was moved, which came to be allowed by the trial Court *vide* order dated 17th March, 2010, and appellant No.3-Ambience Developers was impleaded as defendant No.9 in the said civil suit. It is pertinent to note that respondent No.1-Amitabha Sen, was representing ALARWA in the said proceedings in the capacity of an advocate.

21. In the meantime, the DTCP, *vide* Memo No. ZP--318/JD(BS)/2010/10894 dated 01st September, 2010, acting on an application dated 9th June, 2010 submitted by appellant No. 3–Ambience Developers, sanctioned the construction of commercial complex on Plot No. 3 admeasuring 5.81 acres, comprised in Khasra Nos. 536 and 526 and forming part of the License Nos. 13 and 14 of 2004, subject to specified terms and conditions.

22. Respondent No. 1-Amitabha Sen and respondent No.2-Dipika Sen, in the capacity of flat owners, approached this Court by way of writ petition under Article 32 of the Constitution of India being Writ Petition (C) No. 338 of 2015 alleging that the appellants-developers had put up constructions in violation of the applicable building laws and without obtaining the requisite sanctions from the concerned authorities. This Court *vide* order dated 8th July, 2015 relegated them to approach the High Court for ventilating their grievances. Pursuant thereto, respondent No. 1-Amitabha Sen and respondent No.2-Dipika Sen,[14] instituted the captioned Civil Writ Petition No. 20330 of 2015 before the High Court of Punjab and Haryana at Chandigarh wherein the following reliefs were sought:-

> "a) Issue Writ, Order or Direction to the Respondents to stop illegal construction of the commercial complex on the land earmarked for the Ambience Lagoon Complex and seal the commercial building forthwith to prevent any further construction thereon; and
> b) Issue Writ, Order or Direction to the Respondent for the demolition, of the illegally constructed commercial complex; and
> c) Order CBI to investigate the illegal usurpation of Land by the Builder in active connivance with the Public Authorities and the Engineers and the Architects; and

[14] Hereinafter, collectively referred to as "writ petitioners".

> d) Issue Writ, Order or Direction to the Respondents to strictly maintain the 35% Ground Floor coverage and the maximum FAR for a Group Housing as stipulated by and under the law for the said Ambience Lagoon Apartment Complex; and
> e) Issue Writ, Order or Direction to the Respondent for handing over the peaceful possession of the land measuring 18.98 acres, including the Ambience Mall to the Petitioners along the other Apartment Owners of the Ambience Lagoon Complex, and
> f) Pass any other order(s) or direction(a) as the Hon'ble Court may deem fit and proper under the facts and circumstances of the case."

23. It is pertinent to mention that ALARWA had also instituted Civil Writ Petition No. 2147 of 2012[15] before the High Court, seeking the following relief:—

> "(i) Issue an appropriate writ, order or direction quashing Memo No.10894 dated 01.09.2010 (Annexure P-11) granting permission to the construction plans of commercial building to respondent No.9 by District Town Planner on behalf of Chairman Building Plan Approval Committee."

24. The appellants-developers raised an objection to the maintainability of Civil Writ Petition No.2147 of 2012 on the ground that a civil suit had already been filed in year 2010 seeking the very same reliefs and was pending before the competent civil Court. In response, the said 2010 civil suit was unconditionally withdrawn and disposed of as such *vide* order dated 16th March, 2015, without any liberty having been

---

[15] Hereinafter, referred to as "2012 writ petition".

sought or granted to approach any other forum. The said order is reproduced hereinbelow: -

> "Resolution on behalf of Smt. Anita for withdrawing the present suit filed. Heard. Keeping in view the statement dated 12.3.2015, the present suit is hereby dismissed as withdrawn. File be consigned to record room, after due compliance."

25. An application for amendment of Civil Writ Petition No. 2147 of 2012 was filed on 12th February, 2016. The said writ petition ultimately came to be disposed of by Division Bench of the High Court of Punjab and Haryana at Chandigarh *vide* order dated 16th January, 2020 which is very relevant for the present controversy and is reproduced hereinbelow for the sake of ready reference: -

> "Grievance of the petitioner inter alia is that after grant of licence dated July 15, 1993, Annexure P-1 by the Director, there was a declaration to raise a construction of apartments buildings, apartment complex, club building and building for economically weaker sections of the society. There was no mention of any commercial activity to come up. However, vide order dated September 1st, 2010, Annexure P-11, wherein it is mentioned that the Director, Town and Country Planning allowed raising construction of commercial building over the land. This is despite the fact that there is no mention in the licence pursuant to which the builder can be allowed to raise commercial project.
>
> **At the outset, Mr. Mittal, learned State counsel submits that the matter shall be reconsidered by the Director General, Urban Estates, Department of Town and Country Planning within three months and a speaking order shall be passed which shall be duly conveyed to the Petitioner.**

> It is made clear that while reconsidering the issue, order Annexure P-11 shall not stand in the way of the concerned authority.
> Disposed of."
>
> (Emphasis supplied)

26. The Civil Writ Petition No. 20330 of 2015 came to be decided by the High Court *vide* judgment and order dated 10th July, 2020 which is the subject matter of challenge in these appeals. For the sake of ease and convenience, it would be essential to reproduce the relevant extracts from the said judgment: -

> "At the border or Delhi-Gurgaon village Nathupur is situated. Due to increasing shortage of space in Delhi, builders thronged to Gurgaon with various housing projects. Certain builders, including the present one, floated companies to buy land in village Nathupur and other adjacent villages with the avowed purpose of developing housing projects. Apparently, this move was welcomed by the State Government as well. It had in fact already enacted a statute known as Haryana Development and Regulation of Urban Areas Act, 1975 within the framework of which such housing projects could be set-up/developed. This enactment was with a view to regulate the use of land in order to prevent ill-planned and haphazard urbanization in or around the towns and for development of infrastructure.
>
> The builder identified a piece of land measuring 18.93 acres in village Nathupur and submitted an application for establishing a group housing project thereon. The firm HLF Enterprises made an application in form LC-1 under rule 3(1) of the Haryana Development and Regulation of Urban Areas Rules, 1976 (hereinafter referred to as the 1976 Rules). A copy of the application is on record. Surprisingly, perusal thereof shows that builder at

the outset made certain changes/interpolations in the application dated 17.2.1992 itself. The format for the application is provided in rule 3(1) of the 1976 rules. The application was required to be filled in form in LC-1. Clause 2(v) whereof reads as under:-

> *"(v) Layout plan of the colony on a scale of 1 centimetre to 10 metre showing the existing and proposed means of access to the colony, the width of streets, sizes and types of plots, site reserved for open spaces, community buildings and schools with area of each and proposed building lines on the front and sides of plots."*

However, in the application the builder made changes as per his will and submitted an application which was not in the prescribed format. This would be evident by plain reading of the various clauses of the actual application submitted by the builder. Form LC-1 is reproduced hereunder:-

> *"Form LC-I [see rule 3(1)]*
>
> *Registered*
>
> *To*
> *The Director,*
> *Town and Country Planning, Haryana,*
> *Chandigarh.*
>
> *Sir,*
>
> *I/ We beg to apply for grant of licence to set up a residential/ industrial /Commercial colony at _____at tehsil _____and district_____. The requisite particulars are as under:-*
>
> *1. to 10 xxx xxx*
>
> *2. I/We enclose the following documents in triplicate:—*

(i) Copy or copies of all title deeds and/or other documents showing the interest of the applicant in the land under the colony, along with a list of such deeds and/or other documents.
(ii) a copy of the shajra plan showing the location of the colony along with the names of revenue estate, Khasra number of each field and the area of each field.
(iii) A guide map on a scale of not less than 10 centimetres to 1 Kilometre showing the location of the colony in relation to surrounding geographic features to enable the identification of the site.
(iv) A survey map of the land under the colony on a scale of 1 centimetre to 10 metres showing the spot levels at distance of 30 metres and where necessary, contour plans. The survey will also show the boundaries and dimensions of the said land, the location of streets, buildings, and premises within a distance of at least 30 metres of the said land and existing means of access to if from existing roads.
(v) Layout plan of the colony on a scale of 1 centimetre to 10 metres showing the existing and proposed means of access to the colony, the width of streets, sizes and types of plots, sites reserved for open spaces, community buildings and schools with area under each and proposed building lines on the front and sides of plots.
(vi) An explanatory note explaining the salient feature of the proposed colony, in particular the sources of water supply arrangement for disposal and treatment of storm and sullage water and site for disposal & treatment of storm and sullage water.
(vii) Plans showing the cross-sections of the proposed roads showing in particular the width of the proposed carriage ways, cycle tracks and footpaths, green verges,

position of electric poles and of any other works connected with such roads.
(viii) Plans as referred to in clause (vii) above indicating in addition the position of sewers, storm water channels, water supply and other public health services.
(ix) Detailed specifications and designs of road works shown in clause (vii) above and estimated cost thereof.
(x) Detailed specifications and designs of sewerage, storm-water and water supply schemes with estimated cost of each.
(xi) Detailed specification and design for disposal and treatment of storm and sullage water and estimated cost of works.
(xii) Detailed specification and designs for electric supply including street lighting.

3 to 5 xx xx xx
[Amenities

6. I/We solemnly affirm that the particulars given in para 1 above are correct to the best of my/ our knowledge and belief.

Dated :
Place :

Your faithfully

Attested : Oath Commissioner/Magistrate, Ist Class (Name and address)"

It was mandatory for the builder to apply as per the above format, however, in the application submitted by him, many changes were made. Same would be evident from a perusal thereof. Relevant part thereof is being reproduced hereunder:-

"HRY. DEV. & REGULATION OF URBAN AREA RULES, 1976

Form LC-I
[see rule 3 (1)]

To

The Director,
Town and Country Planning Department,
Haryana, Chandigarh.

Sir,

We beg to apply for grant of licence to set up a residential colony at Village Nathupur, Distt. Gurgaon, Haryana.

The requisite particulars are as under:-

1 to 6 xxx xxx

7. Details of movable/immovable Property held by the applicant:	*Land admeasuring 23 acres, bearing khasra no.2/2,3,4,5,528,529,530, 531,532,533,535,527 at Village Nathupur, Distt. Gurgaon.*
8.Whether the application had ever been granted permission to set up a colony under any other law, if so, details thereof:	*No.*
9.Whether the applicant has ever established a colony or is establishing a colony and if so, details thereof:	*Not done earlier intends to establish a residential complex (Group Housing on 19 acres. Land out of mentioned above.*

We enclose the following documents in triplicate:—

(i) Copy or copies of all title deeds and/or other documents showing the interest of

the applicant in the land under the proposed colony, along with a list of such deeds and/or other documents.

(ii) a copy of the shajra plan showing the location of the colony along with the names of revenue estate, Khasra number of each field and the area of each field.

(iii) A guide map on a scale of not less than 10 centimetres to 1 Kilometre showing the location of the colony in relation to surrounding geographic features to enable the identification of the site.

(iv) A survey map of the land under the colony on a scale of 1 centimetre to 10 metres showing the spot levels at distance of 30 metres and where necessary, contour plans. The survey will also show the boundaries and dimensions of the said land, the location of streets, buildings, and premises within a distance of at least 30 metres of the said land and proposed building lines on the front and sides of plots.

(v) An explanatory note explaining the salient feature of the proposed colony, in particular the sources of water supply arrangement for disposal and treatment of storm water and sullage water.

(vi) Plans showing the cross-sections of the proposed roads showing in particular width of the proposed carriage ways, cycle tracks and footpaths, green verges, position of electric poles and of any other works connected with such roads.

(vii) Plans as referred to in clause

(viii) above indicating in addition the position of sewers, storm water channels,

water supply and other public health services.

(ix) Detailed specifications and designs of road works shown in clause (vii) above and estimated cost thereof.

(x) Detailed specifications and designs of storm-water and water supply schemes with estimated cost of each.

(xi) Detailed specification and design for disposal and treatment of storm and sullage water and estimated cost of works.

(xii) Detailed specification and designs for electric supply including street lighting."

A comparison of the prescribed format in LC-1 and the application submitted by the builder purportedly in form LC-1 shows that he omitted clause (v) from the application which provides for submission of a lay out plan of the colony on a scale of 1 centimetre to 10 metre showing the existing and proposed means of access to the colony, the width of streets, sizes and types of plots, site reserved for open spaces, community buildings and schools with area of each, besides proposed building lines on the front and sides of plots. He made changes in clause (iv) and omitted the line "….. and existing means of access to it from existing roads" and instead substituted the same by "….proposed building lines on the front and sides of plots." In a clever move he projected as if the application contained all (xii) clauses envisaged by rule 3(1). A careful perusal, however, shows that one para i.e. para 2(v) with regard to lay out plan is missing which was mandatory. Strangely, this application was accepted by the authorities as such and licence was granted. It is inconceivable that concerned authorities failed to notice the stark omissions, interpolations and tampering with the basic document required for purpose of initiation of a project. This is fortified from the fact that during the course of hearing when

we asked the authorities to produce the original record they straightway referred to licence No.19 granted on 9.7.1993 to M/s HLF Enterprises. Para 3(a) thereof reads as under:-

> *"3. Licence is granted subject to the conditions:-*
>
> *(a) That the colony is laid out to conform to the approved layout plan and development works are executed according to the designs and specifications shown in the approved plan accompanying this licence."*

On being asked to refer to the lay out plan stated to be accompanying the licence, the State counsel showed his inability. He sought instructions from the officials of the department, who were present in court, they had no option but to admit that there was no lay-out plan available on record either with the licence or with the application submitted by the builder. It is thus not a matter of chance that in the initial application submitted by the builder that very para was omitted which referred to the lay out plan. It appears, the builder never intended to submit the lay out plan as his intention from the very beginning was just not to establish a housing project but other commercial buildings within the area sanctioned for group housing. We find it difficult to accept that all these clever tactics went unnoticed by the department. On the other hand, it points to their active connivance from the very initiation of the project. Needless to say that this fraudulent exercise had a cascading effect on the project resulting into non-adherence to FAR, lack of open spaces, reduced width of streets and absence of community buildings and schools etc. This was a result of omission of clause 2(v) from the application which was not submitted as per format LC-1 (under rule 3 of the 1976 rules). We are constrained to draw a conclusion that the possibility of builder acting in collusion with the authorities and duping innocent buyers of apartments cannot be ruled out. It appears they were made to sign on

the dotted line in the Builder-Buyer Agreement, oblivious of the probable mischief by the builder in connivance with State officials.

In this context it is apposite to refer to section 3(2) of the 1975 Act which is as below:-

> 3. [(I) xxx xxx
>
> (2) On receipt of the application under sub-section (I), the Director shall, among other things, enquire into the following matters, nameIy:-
>
> (a) title to the land;
> (b) extent and situation of the land;
> (c) capacity to develop a colony
> (d) the layout of a colony
> (e) plan regarding the development works to be executed in a colony; and
> (f) conformity of the development schemes of the colony land to those of the neighbouring areas."

A perusal of the aforesaid section shows that a duty is cast on the Director to enquire into the title of the land, extent and situation thereof, capacity to develop a colony and layout of the colony, plans of the works to be executed in the colony and conformity of the development scheme of the colony land to those of neighbouring areas. It is inexplicable how the Director conducted the enquiry in the absence of the layout plan of the colony which was admittedly not submitted by the builder. Even other related aspects could not have been enquired into as the builder interpolated form LC-1 as per his convenience. Needless to say that this appears to be a result of pre-conceived design and deceit.

A perusal of record further shows that on 6.5.1996, the Director, Town & Country Planning granted approval to erect building on 18.98 acre for group housing scheme in phase I in accordance with the building plan submitted by the builder. On the

basis of this letter the builder issued a brochure in 1998 promising following amenities to the buyers:-

> *"**Amenities and Facilities***
>
> *24 hour water supply with 100% power back-up. Round-the-clock 3 Tier Security System with CCTVs and intercom. Cables, internet and Telephone wiring. One live telephone line with connection in every apartment. Club House with recreational facilities including indoor Badminton, Squash & TT courts, Gym, Billiard Room & Swimming Pool. Recreation space even for drivers. High speed elevators. Multi-level covered parking. More than 80% area reserved for open and community services. Total landscape surrounded by water falls, fountains and lagoons. Fully developed water body/channel for recreational facilities and recycling of water. Hassle-free property management services. Optimum space utilisation."*

Prominent amongst the above promises made to the buyers was that 80% areas shall be reserved for open and community services out of 18.98 acres. It is pertinent to point out here that it is the requirement of rule 4 of 1976 rules as well. As per said rule 45% area is otherwise required to be kept as open area for roads, schools, community buildings etc. Same is reproduced as under:-

> ***"4. Percentage of area under roads, open space etc. in layout plans [Sections 3(3) 4 and 24]—****(1) In the layout plan of a colony, other than an industrial colony [or low-density-eco friendly colony], the land reserved for roads, open spaces, schools, public and community buildings and other common uses shall not be less than forty five percent of the gross area of the land under the colony;*

Provided that the Director may reduce [after recording reasons therefor] this percentage to a figure not below thirty-five where in his opinion the planning requirements and the size of the colony so justify."

However, things did not stop here as suddenly an application came forth from builder seeking delicensing of 8 acres of land out of 18.98 acres with further permission for erection of commercial complex thereon. Ignoring all statutory provisions and throwing caution to winds, the authorities acted more promptly than expected. The order granting permission on 8 acres of land to establish a commercial complex out of 18.98 acres was passed on 16.10.2001 while the order to delicense the same area was passed on 18.10.2001 i.e. two days before the order of delicensing, showing a preconceived plan for a commercial complex to be raised within the area licenced for residential complex. This led to a situation that almost every statutory provision contained in the Act and the Rules was violated resulting in a cascading effect compromising open spaces, roads, parks, community buildings and schools etc.

At this juncture the State counsel was asked to refer to the provisions under which the order of delicensing was passed by the authorities. He, however, candidly admitted that there was no such provision in the Act. He tried to justify this act by referring to clause 21 of the General Clauses Act that power to grant a licence also contains implied power to delicense as well. We, however, find the argument bereft of any merit or logic. The Act contains a specific provision for cancellation of licence in case the builder fails to comply with specific conditions of licence. If any such situation had arisen the only option with the authorities was to have invoked powers under section 8 of the Act and cancel the licence. In this context the term 'delicensing' is a misnomer. Besides, provisions of the statute have to be strictly interpreted as they exist. Reference to clause 21 of General Clauses Act

is only an *ex post facto* justification and an after-thought. Law is settled on the point that State affidavit/plea cannot augment or add to the orders passed by the authority. The reasons, if any, have to be contained in the order itself as same would only be subject to judicial review. No authority by adopting a circuitous route can circumvent the settled legal position.

This court finds equally absurd the stand of the State as spelt out in response to information sought under RTI (supplied vide memo No.RTI-648/613 dated 15.1.2010) by the office of Director, Town & Country Planning, Annexure P-43, same reads as under:-

> *"Since the Director is empowered under the Act to grant a license and undertake regulatory functions for development of a colony, it is an implied function of the Director to allow an exit route to a developer who is not interested to pursue the development of a project and wishes to withdraw from its obligations. The Director after ensuring that no public interest is harmed, allow such withdrawal after forfeiture of scrutiny fees, licence fees, conversion charges etc. Though at times the same land can be again considered or g rant of separate licence. The entire process of grant of licence or change of project is at times referred as* ***"delicencing" though such item does not exist in the Act/Rules****."*

The aforesaid stand of the Department which aims to provide exit plan to the builder by delicencing part of the housing project (8.0 acre) out of total 18.98 acres for establishing commercial complex is clearly in derogation to the object of the 1975 Act. Such a plea is preposterous in view of provisions of Section 8 which confer enough power on the State to deal with a situation in which a builder is unwilling to complete the project as sanctioned.

It is noteworthy that in the reply dated 15.1.2010, Annexure P-43, the State has clearly admitted that no item such as 'delicencing' exists in the Act/Rules. Thus, origin of power, if any, can be traced to Section 8, which, however, does not deal with delicencing. It contemplates only cancellation of licence and obligations of the Director, Town & Country Planning, thereafter.

There is no dispute about the fact that the provisions of Haryana Apartments Ownership Act, 1983 are also attracted to a group housing project sanctioned under 1975 Act. This finds mentioned in clause 27 of the Builder-Buyer Agreement as well. As per section 6(1) and (2) thereof, the undivided interest of each apartment owner in the common area would be in the percentage expressed in the Deed of Declaration. The percentage of undivided interest of each apartment owner as expressed in the Deed of Declaration has to have a permanent character and cannot be altered without consent of the apartment owners expressed in an amended declaration duly executed and registered as provided. By resorting to delicencing and sanction of the commercial project the authorities completely ignored the vested right of the apartment owners and acted in flagrant violation of section 6 (1) and (2) of 1983 Act. Section 6(1) and (2) read as under:-

> *"**6. Common areas and facilities-***
> *(1) Each apartment owner shall be entitled to an undivided interest in the common areas and facilities in the percentage expressed in the declaration. Such percentage shall be computed by taking as a basis the value of the apartments in relation to the value of the property; and such percentage shall reflect the limited common areas and facilities.*
>
> *(2) The percentage of the undivided interest of each apartment owner in the common areas and facilities as expressed in the declaration shall have a permanent*

character and shall not be altered without the consent of all of the apartment owners and expressed in an amended declaration duly executed and registered as provided in this Act. The percentage of the undivided interest in the common areas and facilities shall not be separated from the apartment to which it appertains and shall be deemed to be conveyed or encumbered with the apartment even though such interest is not expressly mentioned in the conveyance or other instrument."

This apart as per section 2 of the 1983 Act, the builder had to submit a Deed of Declaration within 90 days of being granted part completion under the rules framed under 1975 Act and in case of failure to do so, penalties as provided under section 24-A would be attracted. The said section lays down that builder who does not file Deed of Declaration within the period specified under section 2 would be punished with imprisonment which may extend to three years and also fine of not less than Rs.50,000/- and Rs.10,000/- for each day of continuing offence. From the record it is evident that part completion certificate was granted to the builder vide memo no.5DB-2002/927 dated 10.01.2002 under rule 16 of 1976 Rules. However, Deed of Declaration was submitted by the builder on 25.3.2009. It is inexplicable as to why authorities did not resort to the provisions of Section 24-A of the 1983 Act forthwith on expiry of the prescribed period which would be considered as date of offence under section 24-A of the Act. Said provision leaves no room for doubt that failure to submit the Deed of Declaration within the period prescribed attracts a penalty of Rs.50,000/- straight-way whereafter it is considered a continuing offence inviting a penalty of 10,000/- per day.

The conclusion is inescapable that the submission of Deed of Declaration was intentionally delayed for so many years as there appears to be dishonest intention of the builder from the very

inception of project to dupe the buyers by raising a commercial complex within the space sanctioned for group housing project. The design to develop a commercial complex was never divulged either by the builder or State authorities to the innocent buyers at any stage. An ambiguous term was used in the Builder-Buyer agreement that 8.0 acre was reserved for "future development". It is beyond comprehension how builder himself could reserve a part of the area (8.0 acres) out of 18.98 acres for future development. The builder acted in a manner as if he was not governed by any Enactment/Rules. In view of same, the reliance placed by the counsel for the builders repeatedly on Builder-Buyer agreement is absurd. An agreement between parties cannot override the law lay down to regulate urbanization and to prevent ill-planned and haphazard development.

As regards delicencing of an area of 3.9 acres vide order dated 1.9.2010 this court does not intend to give any finding on the same, it being subject matter of CWP No.2147 of 2012 wherein the matter is pending before the concerned authority. The petitioners, in the instant petition, however, maintained that they were left with 7.9 acres out of 18.93 acres meant for housing project.

The probability of connivance between the builder and the Department cannot be ruled out in view of delicencing of area meant for residential purposes and allocating the same to commercial projects. Entire sequence of events points to a prior meeting of minds between the builder and the officials who dealt with the matter. Apart from above, the fact that there has been undue enrichment of the builder perhaps with the active involvement of the State officials, cannot be ignored by this Court. Such enrichment is not just in violation of various enactments but also a loss to public exchequer at the cost of general public, the apartment buyers in particular. However, this aspect needs to be investigated by an expert agency.

The entire record leaves no room for doubt that various authorities, builders and probably some facilitators got unnatural gains with impunity making the entire scheme contained in Acts and Rules with respect to setting up a group housing project a mockery. Unjust enrichment has been defined by the Courts as retention of benefit by one to the loss of another or retention of money or property of another against the fundamental principles of justice, equity and good conscience. A person is enriched if he has received a benefit and is unjustly enriched if retention of benefit would be illegal. Such enrichment occurs if he has retained money for benefits which actually belonged to another ***(See Indian Council for Enviro-Legal Action v. Union of India, (2011)8 SCC 161).***

As regards the action of the authorities in "delicensing" area meant for housing project, the same can be termed as nothing but a colourable exercise of power. It is settled position that when a custodian of power is influenced in its exercise by considerations outside those for promotion of which the power is vested, such exercise amounts to colourable exercise of power ***(see State of Punjab v. Gurdial Singh, (1980)2 SCC 471).*** It is settled proposition of law that fraud on power vitiates the State action. If State seeks to do some action indirectly though it has no power to do it directly, such action cannot be sustained. In other words, fraud vitiates all actions ***(see Uddar Gagan Properties Ltd. v Sant Singh, (2016)11 SCC 378).***

In ***Kerala State Coastal Zone Management Authority Vs State of Kerala Maradu Municipality & Ors., (2019)7 SCC 248,*** setting up of a resort was challenged as the same was set up within 200 meters of the High Tide Line, construction activities whereof are strictly restricted under the provisions of Coastal Regulations Zones. Permission from Kerala State Coastal Zone Management Authority was not sought. The resort was set up on the basis of permission granted by local Panchayat. Kerala High Court found the action

illegal and directed demolition of the resort. It rejected the argument that resort would promote tourism in Kerala and it had immense potential for creation of jobs. It held that notification issued under the Environment Protection Act was meant to protect the environment and bring about sustainable development. It held that the law of the land was meant to be obeyed and enforced. The *fait accompli* of the construction made in teeth of notification was unsustainable. Hon'ble Supreme Court upheld the view of the Kerala High Court.

In the case in hand, no justification whatsoever is forthcoming for delicensing of part of the area meant for housing project for commercial purpose and a huge mall (Ambience Mall) having been allowed to be raised thereon. We are, thus, faced with a similar situation as in Kerala case (supra) due to flagrant violation of provisions of 1975 Act which are meant to prevent ill-planned and haphazard urbanization in or around towns.

In ***Rameshwar & Ors Vs State of Haryana & Ors (2018)6 SCC 215***, Hon'ble Supreme Court found that State sought to acquire land issuing notification by the process contemplated under Land Acquisition Act. Certain private builders, however, purchased the land from land owners at higher price post issuance of notification and thereafter State denotified the same. It is thus observed that this action led to unjust enrichment of individuals and revealed unholy nexus between the builder and the State authorities. It found that where power is conferred to achieve a particular purpose, same has to be exercised reasonably and in good faith. Where power is exercised for extraneous or irrelevant considerations, it would unquestionably be a colourable exercise of power. It further held that State had enabled the builder to enter the field after initiation of acquisition to seek colonization of the land covered by acquisition defeating the objective for which the land was acquired. The Supreme Court thus declared the action of State illegal and also ordered CBI investigation into the matter.

It would be relevant to reproduce the order of Hon'ble Supreme Court passed while disposing of Writ Petition (Civil) No.338 of 2015 on 8.7.2015 filed by the instant petitioners, which is as below:-

> *"Upon hearing the learned counsel for the petitioners and upon perusal of the papers, we find that the main allegation, along with other allegations, in the petition is that the respondent-Builder has put up construction in violation of the Building Bye-laws and without having proper sanction from the concerned authority.*
>
> *In the aforesaid circumstances, it would be proper if the petitioners ventilate their grievance before the High Court. If the petitioners approach the High Court, the High Court will do the needful to prevent the construction activities if the same are in violation of the Building Bye-laws or if the construction is being put up without getting building plans sanction.*
>
> *We are sure that if the High Court finds that the irregularities are committed, the same will be looked into quite seriously and shall take appropriate action against all persons including the builders and erring officers as soon as possible.*
>
> *With the above directions, the writ petition stands disposed of."*

Though irregularities, as pointed out above, at the time of initial submission of application sans the layout plan and drastic changes made in the format by the builder, it cannot be disputed that the original idea was to set up group housing complex on entire 18.93 acres. The court thus feels that the rights of the residents of the housing project need to be preserved. The court cannot countenance blatant violation of statutory provisions and erection of buildings,

particularly commercial in nature, conceived by a builder for unjust enrichment, at the cost of general public. It cannot turn a blind eye to such illegal actions and possible collusion between private builder and State authorities. The interpolations and/or tampering with the application form and record is, however, a matter of investigation. We thus have no option but to hold that the order delicencing part of residential area for commercial purpose is without authority of law and needs to be quashed. As regards, the illegal actions and offence, if any, made out, and possible collusion between the builder and State authorities, a separate investigation is necessary by an independent agency.

We thus hold as under:-

(a) Delicensing orders dated 18.10.2001 (Annexure P-9), orders granting license/permission vide order dated 16.10.2001 (Annexure P-10) and dated 01.09.2010 (Annexure P-13) passed after submission of Deed of Declaration on 25.03.2009 (Annexure P-8) are hereby quashed;

(b) In view of our findings in the foregoing paragraph, the State shall take necessary consequential steps forthwith;

(c) In view of the fact that the responsibility has to be fixed it is further directed that the Central Bureau of Investigation would investigate the entire issue after registering a formal FIR by a team of Officers to be chosen by the Director, CBI within six weeks from today. An effort shall be made to complete the entire investigation within six months and a status report be submitted in sealed cover within three months.

The original record of HUDA be retained in the safe custody of Registrar (Judicial). CBI shall be at liberty to move an application for obtaining the record after it begins its proceedings."

27. Hence, these appeals have been instituted challenging the above judgment.

28. It is relevant to mention here that pursuant to the order dated 16th January, 2020, the DTCP passed a detailed order dated 5th August, 2021 whereby, the action of de-licensing and grant of permission for construction of the disputed commercial project over 8 acres of land and the commercial and office complex on 5.81 acres of land have been found to be within the four corners of law. The said order is reproduced hereinbelow for ready reference:-

> "11. On the basis of the orders of Hon'ble High Court and hearing granted to the petitioners alongwith the developer company the following three issues have emerged:-
>
> A. Whether, the impugned orders dated 01.09.2010 with regard to approval of building plan is against the provision of licence no. 19 of 1993.
> B. Whether, the impugned orders are against the deed of declaration.
> C. Whether, the area of licence no. 19 of 1993 was reduced by 3.9 acres on account of impugned orders dated 01.09.2010.
> D. Whether, the De-licensing of 8.00 acres land forming part of licence no. 19 of 1993 was permissible.
> E. Whether, the Deed of Declaration filed by the licencee is in order.

12. I have heard the petitioner as well as the licencee company and gone through the relevant record. The findings/decision is as under:-

A. Whether, the impugned orders dated 01.09.2020 with regard to approval of building plan is against the provision of licence no. 19 of 1993.

a. The main contention in the writ petition was that commercial building was being constructed and the licence was not granted for commercial purpose, directly against licence no. 19 of 1993 granted by the Department. It has also been alleged that the commercial building has become property of apartment owners who have purchased the apartment in the residential colony by virtue of Haryana Apartment Ownership Act, 1983. The reference made in the petitioner is with regard to commercial plot no. 3 of the integrated colony measuring 132.06 acres for which building plans were approved on 01.09.2010.

b. Licence no. 19 of 1993 dated 09.07.1993 was(*sic*) granted to HLF Enterprises Pvt. Ltd. Seeting up of group housing colony over an area measuring 18.98 acres under the provision of section 3 of Act of 1975. The Khasra no. of licence no. 19 of 1993 were 527, 528, 529, 530, 531, 532,533, 534,535, 2/2/1 and 3 min north. The building plans were approved on 06.05.1996 for an area of 18.98 acres. An area measuring 8 acres (phase-II) was reserved for further expansion.

c. The occupation certificate was granted for building blocks A to M, basement and club to group housing under licence no. 19 of 1993 on 31.12.2001 and thereafter, part completion certificate under Rule 16 of Rules of 1976 was granted on 10.01.2002.

d. The area measuring 8 acres reserved for further expansion was de-licenced and re-licenced by granted of licence for setting up of commercial colony on 16.10.2001. The de-licensing and re-licensing was done with the approval of Government in reference to the legal opinion of Law & Legislative Department which is reproduced as under: -

> ".... Power to grant licence also included power to withdraw or refuse withdrawal. It is, however, made clear that the authority would have been within its right to refuse withdrawal of the original licence or even grant of fresh licence. However, there is nothing in the Act debarring the authority for issuing a fresh licence after allowing withdrawal of original licence....."

e. The licence no. 8 of 2001 and orders of de-licensing were issued on 18.10.2001. The Khasra nos, of licence no. 08 of 2001 are 527min, 528, 529 south west min, 530 min, 531 min, 534 min. The Khasra no. of licence no.19 of 1993 for an area measuring 10.98 acres after de-licensing are 529 min, 531 min, 532, 533, 534 min, 535, 2/2/1 and 3min norther.

f. Subsequently, licence no. 12 of 2002 was granted to develop commercial colony for an area measuring 4 acres on 05.06.2002.

g. Thereafter, licence no. 1 & 2 of 2004 for an area measuring 0.317 acres and 0.05625 acres respectively were granted on 08.01.2004. Thereafter, licence no. 3 of 2004 for 0.985 acres was granted on 14.01.2004 and then licence no. 13 to 18 of 2004 was granted for 106.17 acres on 05.02.2004 and licence no. 23 of 2004 dated 11.02.2004 was granted for area measuring 10.552 acres.

h. The khasra no. of licence no. 13 of 2004 are **536**, 537, 538,541, 543, 544, 562, 563, 564, 539, 540, 542, 545, 546, 561 and khasra no. of licence no. 14 of 2004 are 577, 578, 579, 580, 582, 583, 584, 585, 586, 587, 588, 589, 433, 435, 448, 449, 450, **526**.

i. After the grant of the above mentioned licenses zoning plan of integrated group housing/commercial colony namely Ambience Island measuring 132.06 acres including licence no. 19 of 1993 and subsequent licences was issued on 09.11.2004, wherein an area measuring 79.10 acres under the use of residential group housing and 52.965 acres for commercial purpose were allowed.

j. A master layout plan for the integrated colony over an area measuring 132.065 acres was also approved. For proper identification of the land of integrated colony, the entire 'Ambience Island' 1322.06 acres was divided by the colonizer into 29 plots for residential, commercial and institutional purposes as per approved Master Layout Plan on 01.03.2005. As per the Master layout Plan, Lagoon Residential Apartment Complex was assigned Plot no. 29, whereas, the area for which building plans were approved on 01.09.2010 for commercial purpose was assigned plot no. 3 having area 23500 Sq. mtr (5.807 acres).

k. Occupation Certificate for two towers Block BI & CI was granted on 02.03.2005.

l. The plot no. 3 is not part of the licensed area of licence no. 19 of 1993 granted to develop a group housing colony over an area measuring 18.98 acres. The plot no. 3 has been constructed on part of khasra no. **536** and **526** of village Nathupur, District Gurugram. From the perusal of the land schedule of licence no. 13 of 2004 and licence no. 14 of 2004, it is revealed that khasra no. **536** is part of licence no. 13 of 2004 and khasra no. **526** is part of licence no. 14 of 2004. **Hence, the plot no. 3 is not constructed over the land forming part of licence no. 19 of 1993.**

m. The Hon'ble High Court of Punjab and Haryana has quashed the approval of building plans as approved on 01.09.2010 vide orders dated 10.07.2020 passed in CWP No. 20330 of 2015. The Department has already filed SLP No. 14797 of 2020 for challenging the orders of the Hon'ble High Court. The Hon'ble Apex Court vide orders dated 08.310.2020 in SLP No.11480 of 2020 filed by the licencee company has ordered that no coercive steps be taken by any of the authorities.

Accordingly, I do not find any merit for quashing approval of building plan approved vide memo dated 01.09.2010 (P-11) as the same is not part the licence no. 19 of 1993 granted for area measuring 18.98 acres.

The building plans cannot be restored after the approval of same have been quashed by Hon'ble

High Court vide orders dated 10.07.2020 passed in CWP No. 20330 of 2015.

B. Whether, Deed Declaration filed by the licensee is in order.

a) Haryana Apartment Ownership Act, 1983 was enacted to provide for the ownership of an individual apartment in a building and to make such apartment heritable and transferable property and matters connected therewith. As per the provisions of section 2 of Act of 1983, DOD is required to be filed within a period of 90 days from the dame of grant of occupation certificate/part completion certificate/completion certificate. The provision of section 2 are reproduced are as under:-

> "The provisions of this Act shall apply to every apartment lawfully constructed for residential purposes, integrated commercial complexs, flatted factories, Information Technology Industrial Unit, Cyber Park and Cyber City for the purpose of transfer of ownership of an individual apartment in a building whether constructed before or after the commencement of this Act. In case of licenses issued under the Haryana Development and Regulation of Urban Areas Act, 1975 (8 of 1975), the owner of such property/building shall duly execute and get registered a declaration within a period of ninety days after obtaining part completion/completion certificate under the rules framed under the Haryana Development and Regulation of Urban Areas Act, 1975 (8 of 1975), or occupation certificate under the rules framed under the Punjab Scheduled Roads and Controlled Areas Restricted of Unregulated Development Act, 1963 (41 of 1963), whichever is earlier, in case of property/building falling in the area developed by the Haryana Urban Development Authority, the owner of such property/building shall duly execute and get registered a declaration within a period of ninety days after

> obtaining occupation certificate of the building under regulations framed under the Haryana Urban Development Authority Act 1977 (13 of 1977). In case of property/building where the owner has already obtained part completion/completion certificate or occupation certificate under the rules and regulations framed under the said Acts, the period of ninety days shall take effect from the commencement of this Act."

b) DOD is required to be filed for building containing 5 or more apartments and the definition of building is reproduced as under:-

> "building" means a building containing five or more apartments or two or more buildings, each containing two or more apartments, with a total of five or more apartments for all such buildings and comprising a part of the property;

c) The "common areas and facilities" unless otherwise provided in the declaration or lawful amendments thereto have been defined in section 3(f) of Act of 1983. Since, DOD has been filed in the present case, therefore, common areas and facilities shall be considered as per DOD.

d) The DOD has been examined in reference to the provisions of the Act of 1983. It has been observed that the DOD has been filed on 25.03.2009 for an area measuring 11.83 acres having khasra Nos. 529 South West, 530, 531, 532, 533, 534, 535, 2/2/1 under licence no.19 of 1993, whereas, actually the Lagoon Residential Complex extends beyond the boundary of licence no. 19 of 1993.

e) It has also been mentioned in the DOD that the Lagoon Residential Complex is part of the integrated township, Ambience Island being developed on 132.065 Acres. The details of khasra nos. mentioned in the DOD are of licence no. 19 of 1993 and licence no. mentioned in the DOD is also licence no.19 of 1993.

f) The area of 11.83 acres mentioned in the DOD is in accordance with the FAR consumed and as per

the as built drawings. The perusal of the Shajra plan of the area of the as built drawing super imposed on the Shajra plan reveals that part of the said land forms part of Khasra no. **536 min**, which has not been mentioned in the DOD.

g) As per Section 13 of Act of 1983, the DOD is required to be registered by Sub-Registrar under the Indian Registration Act, 1908. In the present case, the DOD has been registered by Sub-Registrar, Gurugram.

h) Since, the licence no. 19 of 1983 has become part of integrated township having an area of 132.065 acres and the integrated layout plan was also issued on 01.03.2005, therefore, the licence nos. of all the licences forming part of 132.065 acres should have been mentioned in the DOD and also the revenue details for the area for which DOD was filed. Therefore, the mentioning of licence no. 19 of 1993 only with its land schedule is not correct and thus requires amendment.

Accordingly, the licensee is directed to file amendment DOD by rectifying the revenue particulars and license no. by including additional licenses on which the constructed has been raised beyond the licensed area forming part of licence no. 19 of 1993.

Apart from the above, it was observed that Ambience Developers and Infrastructure Pvt. Ltd. had filed the DOD on 25.03.2009 with a substantial delay. The notice for taking penal action against the licensee was issued on 06.11.2020. In reference to the notice, the licensee made representation viz-a-viz legal provisions and requested for hearing before taking penal action. The request of the licensee has been accepted and hearing has been granted on 13.04.2021. The subsequent action after issuance of notice shall be taken after hearing the licensee company.

C. Whether, the impugned orders are against the Deed of Declaration.

DOD is required was filed for an area measuring 11.83 acres for the group housing colony. As deliberated in part 10-A above, the land forming part of plot no.3 is separate from the land of licence no.19 of 1993. Hence, impugned orders with regard to

approval of building plans of plot no. 3 area not related the DOD filed for Lagoon Residential Complex.

D. Whether, the area of licence no. 19 of 1993 was reduced by 3.9 acres on account of impugned orders dated 01.09.2010.

The DOD was filed for an area measuring 11.83 acres and the petitioner has worked out the reduced area measuring 3.9 acres by excluding the area under fencing measuring 7.96 acres from 11.83 acres. The petitioner has not referred to the actual area of plot no.3, which is 5.807 acres. As deliberated in para 12-A above, the land forming part of plot no. 3 is separate from the land of licence no. 19 of 1993. **Hence, the area of licence no.19 of 1993 was not reduced by 3.9 acres on account of impugned orders dated 01.09.2010.**

E. Whether, the De-licensing of 8.00 acres land forming part of licence no. 19 of 1993 was permissible.

a) The licence no. 19 of 1993 was granted to develop group housing colony over an area measuring 18.98 acres. The building plans of the group housing colony was approved on 06.05.1996 and 8.00 acres of land was reserved for future expansion as phase-II. However, subsequently a request was submitted by the licensee wherein be requested to de-license 8.0 acre land from the already granted license and to re-licence the same for setting up of commercial colony.

b) The matter was examined and on the basis of earlier advice of Law and Legislative Department, Haryana, the request was considered. This advice is in consonance with Clause 21 of the General Clauses Act, 1897. The above advice of Law and Legislative Department of the State was categorically mentioned which processing the case of 8.00 acres of Group Housing land for de-licensing and for re-licensing the same land for commercial complex which was permissible activity in the special zone earmarked in the Final Development Plan prevailing at that time.

c) In order to make explicit provision in the law, amendment has been carried out by the State Legislature by inserting Sub-Section (3A) in Section

3 of Haryana Development and Regulation of Urban Areas Act, 1975 (hereinafter referred to as 'Act of 1975') which is effective from 30th January 1975 and notification in this regard has been issued on 14.09.2020. The inserted provision in the Act of 1975 is as under-

> (3A) "Where, by virtue of any section of this Act, power to grant any license or issue any notification, order, rule or direction is conferred, then that power shall include power exercisable in like manner and subject to terms and conditions, as may be prescribed, to add to, amend, vary, suspend, withdraw or rescind such licence or such notification, order, rule or direction or to de-licence".

d) The Statement of Objects and Reasons before enactment of the inserted provision as appended to the Bill passed by the State Legislature duly clarifies that the Bill was proposed primarily to make express statutory provisions to clarify certain provisions of the Haryana Development and Regulation of Urban Areas Act, 1975 by drawing upon the land down law in provision of Section-21 of the General Clauses Act, 1897 and Section-20 of the Punjab General Clauses Act, 1956 and to validate various actions taken and being taken by the Department as a consequence which would have the effect of reconciling the conflicting judicial pronouncements on the issue. **Hence, no ambiguity w.r.t. de-licensing remains as on with regard to de-licensing of 8.00 acres land forming part of licence no. 19of 1993.**

11. The matter is decided with the directions given in the para 10-B above. These orders are appealable under section 19 of Haryana Development and Regulations of Urban Areas Act, 1975.

Final orders reserved on 19.10.2020 are pronounced today. To be communicated to the all concerned."

(Emphasis Supplied)

29. The aforesaid order was challenged before the High Court in Civil Writ Petition No. 4573 of 2022, which was disposed of as withdrawn on 9th March, 2022 with liberty to exhaust the statutory remedy under Section 19 of the Haryana Development and Regulation of Urban Areas Act, 1975[16], pursuant where to Appeal No. 19 of 2022 was filed and stands rejected *vide* order dated 24th October, 2024 on the ground of non-maintainability and lacking in merit. The said order is under challenge in Civil Writ Petition No. 6047 of 2025, pending consideration before the High Court of Punjab and Haryana at Chandigarh.

II. ARGUMENTS ON BEHALF OF APPELLANTS

30. Shri Abhishek Manu Singhvi, and Shri Mukul Rohatgi learned senior counsel, representing the appellants-developers, vehemently and fervently contended that the High Court has fallen in grave error in entertaining the Civil Writ Petition No. 20330 of 2015 which was filed after long and unexplained delay of more than 10 years for oblique purposes and mala fide motives. It was submitted that the flat owners' association *i.e.,* ALARWA had earlier

[16] Hereinafter, referred to as "1975 Act".

instituted Civil Writ Petition No. 2147 of 2012 seeking almost identical reliefs, which came to be disposed of by the High Court *vide* order dated 16th January, 2020. The impugned judgment, however, completely glosses over the earlier order, thereby rendering the High Court's approach self-contradictory. Furthermore, the High Court erred in entertaining a highly belated writ petition involving gravely disputed questions of fact, at the instance of the writ petitioners who are well versed in law, respondent No.1-Amitabha Sen being a practising Advocate. In rendering the impugned decision, the High Court misread the documentary record and misconstrued the material facts.

31. It was submitted that in the original application dated 17th February, 1992, filed by M/s. HLF Ltd., a generic reference was made that the residential colony would be built on 18.98 acres of land. However, the appellants-developers, at the very inception, intended to bring up the Ambience Lagoon Housing Project on 10.98 acres of land only. The approved layout plan for the Ambience Lagoon Housing Project clearly portrayed that it would be set up on 10.98 acres of land only. The entire thrust of

the High Court's decision that the area of 8 acres, de-licensed *vide* order dated 18th October, 2001 was also meant for Ambience Lagoon Housing Project, is patently erroneous and contrary to record. It was urged that the burden was on the writ petitioners before the High Court to establish by unimpeachable material that the entire 18.98 acres of land was meant for the residential colony. The finding recorded by the High Court that no layout plan was filed at the time of submission of the permission to construct is also erroneous and contrary to record. The approved layout plan dated 24th July, 1995 was available right from the inception and a copy thereof had been submitted on record by the appellants-developers with their reply to the captioned Civil Writ Petition No. 20330 of 2015. Attention of this Court in this regard was drawn to paragraph Nos. 5 and 6 of the said reply, which reads as below: -

> "5. That after having obtained the license no. 19/1993 for the development of group housing colony, the Respondent No.3 in 1994-95 decided to develop group housing colony on 10.98 acres of land, in the first phase and accordingly submitted an application for sanction on building plan for development of group housing colony only on 10.98 acres of land. The balance 8 acres of land was reserved by Respondent No.3 for further development. The land admeasuring 10.98 acres and 8 acres were clearly bifurcated, identified and

> demarcated not only on paper but also at site. **Copy of the said plan showing 3 parcels of land i.e. 10.98 acres, 8 acres and 4 acres is annexed herewith and marked as Annexure 'R-3/6'**.
>
> 6. That under the sanctioned plan, the Respondent No.3 were to provide 24 mtrs wide access road from NH-8. The area of land utilized for the said access road came to 4.20 acres. The group housing colony along with internal roads, EWS apartments, school and sewage treatment were to be developed on the balance 6.78 acres of land. **The hatched plan showing separate areas of the access road of 24 mtrs. and other components and group housing complex is annexed herewith and marked as Annexure 'R-3/7'**. As per norms of Town and Country Planning, 15% of the area was left for greens."

32. It was vehemently and fervently urged that the duly approved layout plan clearly indicated that the residential colony would be constructed only on 10.98 acres of land.

33. Shri Abhishek Manu Singhvi, learned senior counsel, while drawing attention of the Court to Apartment Buyers' Agreement dated 20th October, 2001 executed between M/s. HLF Ltd. and the writ petitioners (respondent No. 1-Amitabha Sen and respondent No.2-Dipika Sen), submitted that the said agreement expressly mentioned the appellants-developers' intention to develop the Lagoon Residential Apartments Complex over an area admeasuring 10.98 acres out of the total licensed

land of 18.98 acres in Phase-I, and that the building plans for the said Phase-I development had been duly sanctioned and approved by the competent authority in the office of the DTCP. On this basis, it was contended that the writ petitioners were, from the very beginning, fully aware of the scope of the licensed development and the phased manner in which the project was to be executed, thereby repelling the aspersions of fraud, concealment or illegality levelled in the writ petition in relation to the construction of the subject housing project. There was no averment in the writ petition that the builder promised in the Apartment Buyers' Agreement that the housing project would be developed over an area of more than 10.98 acres of land.

34. Learned senior counsel Shri Singhvi and Shri Rohatgi strenuously contended that there was no violation of the applicable building bye-laws in the construction of the residential colony. They asserted that the stipulated requirement of maintaining 80% open spaces, public amenities and green areas had been duly complied with, within the 10.98 acres of land earmarked for the residential colony and the development is completely in conformity with the

project brochure, and the approved layout plan. They urged that the High Court's conclusion to the contrary, is unreasonable, arbitrary and against the material on record.

35. It was further contended that the construction of the Ambience Mall/Ambience Corporate Office Tower-I over 8 acres of land and the Leela Ambience Hotel over 4 acres of land, which together comprise the integrated commercial complex on Plot No. 1, commenced in the year 2002 and was completed by 2007. The writ petitioners and other flat owners were well aware of the said construction activities undertaken throughout this period of five years. Yet they chose to remain silent for this long period and it was only in the year 2010 that the construction of the commercial complex was challenged for the first time, by way of a civil suit, which was subsequently dismissed as withdrawn. Civil Writ Petition No. 2147 of 2012, filed by ALARWA, raising similar concerns culminated in a direction by the High Court noting that the issues relating to the alleged violations in construction of the projects would have to be examined by the DTCP. Pursuant to such direction, the DTCP, after due consideration of material

available on record, has passed a detailed reasoned order dated 5th August, 2021, expressly ruling out the concerns of illegality or violations in the impugned actions of the developer.

36. Moreover, the writ petition giving rise to the present appeals suffers from gross delay as the same was instituted in the year 2015. Notably, respondent No.1-Amitabha Sen had earlier represented ALARWA in Civil Suit No. 27 of 2010 as its Advocate and hence the successive institution of proceedings by the same set of interested flat owners, choosing different forums at varying points of time, clearly demonstrates an intentional attempt at covering up for the delayed action and indulging in forum shopping, with the collateral objective of exerting pressure upon the appellants-developers for extraneous and oblique motives. It was contended that such repeated invocation of jurisdictions demonstrates a calculated attempt to re-agitate settled issues and to pursue couched personal agenda under the guise of public interest litigation.

37. It was further contended that there was no element of illegality or criminality in the procedure followed by the appellants-developers or the planning

authority and thus the High Court committed manifest error in directing the Central Bureau of Investigation[17] to straightaway register an FIR. The said direction is in teeth of settled jurisprudential principles. The impugned judgment rests purely on conjectures and surmises, bereft of any credible or tangible basis justifying such a drastic direction.

38. They referred to the chargesheet dated 29th December, 2023 filed by the CBI in the Court of Chief Judicial Magistrate, Panchkula and urged that after thorough investigation, the agency found no criminality in grant of the original license; did not support the alleged absence of layout plan and held no substantive/tangible illegality in de-licensing/re-licensing process, zoning approvals, or delayed filing of Deed of Declaration. The chargesheet categorically records that both the de-licensing of the 8 acres and the grant of the fresh license were approved on the same date, i.e. 16th October, 2001, and the formal letters were dispatched on 18th October, 2001; consequently, it was not a case where the license for the commercial project was issued prior to the de-

[17] Hereinafter, referred to as "CBI".

licensing of the said land. Moreover, the investigation revealed that commercial complex constructed on Plot No. 3 does not overlap on any part of land set apart for development of the residential colony. However, the investigation agency did return a finding that the appellant-Raj Singh Gehlot and the appellant No.3-Ambience Developers concealed some material facts from flat owners while executing the Apartment Buyers' Agreement in October 2001, thereby committing offences of cheating and conspiracy under Sections 420 and 120B of the Indian Penal Code, 1860. As per learned senior counsel, the said finding is patently erroneous and yet to be tested before the appropriate court and hence, the same cannot be read to the detriment of the appellants-developers.

39. Learned senior counsel thus submitted that the conclusions drawn by the High Court in the impugned judgment are manifestly erroneous and contrary to record. Furthermore, most of the conclusions in the impugned judgment have not been found substantiated pursuant to extensive investigation conducted by the CBI and by the DTCP

while passing the detailed reasoned order dated 5th August, 2021.

40. It was further submitted that the High Court has contradicted itself while deciding the writ petition holding the actions of the appellants-developers to be in contravention of law while specifically observing that the issues could not be decided because the order dated 1st September, 2010 passed by the DTCP was subject matter of challenge in 2012 Writ Petition.

41. Learned senior counsel appearing for the appellants-developers urged that the High Court gravely erred in entertaining a writ petition involving seriously disputed questions of fact while exercising its jurisdiction under Article 226 of the Constitution of India. They urged that a writ petition ought not to be entertained, particularly where the issues raised require detailed evaluation of evidence and factual determination beyond the scope of writ proceedings.

42. It was further submitted that all the issues raised in the writ petition have been extensively examined by the competent authority *i.e.* DTCP who passed a detailed reasoned order dated 5th August, 2021 wherein, the actions of de-licensing and the consequent grant of permission to raise the

commercial complex on 8 acres of land have been found to be within the legal framework. The said order is under challenge before the High Court in Civil Writ Petition No. 6047 of 2025, and hence, the findings recorded in the impugned judgment would prejudice the appellants-developers gravely and may also influence the outcome of the said writ petition. Hence, it was submitted that the impugned judgment deserves to be quashed and set aside leaving it open for the High Court to examine the legality and validity of the order dated 5th August, 2021 in the pending writ petition.

43. Shri Tushar Mehta, learned Solicitor General, along with Shri Lokesh Sinhal, learned A.A.G., representing the appellant-Chief Town Planner, Town and Country Planning Department, in Civil Appeal @ SLP(C) No(s). 14797 of 2020, submitted that the expression "de-licensing" is a misnomer in law. Shri Mehta contended that a "license" under the 1975 Act is essentially a permission regulating the use of land for any of the purposes falling within the definition of a "colony" under Section 2(c) of the 1975 Act. What is colloquially referred to as "licensing" is, in substance, nothing but permission for change of land use. Such

permission, it was argued, can validly be granted, modified, or regulated from time to time in accordance with law, including by permitting a modification of the purpose of land use or by simply accepting the surrender of the license by the coloniser.

44. Learned Solicitor General relied upon the provisions of General Clauses Act, 1897 to contend that the power to grant a license, by necessary implication includes the power to withdraw, modify, or rescind the same. It was submitted that the DTCP, being the competent authority to grant a license for land use, is equally empowered to de-license the land or to bifurcate a license into residential and commercial components, in accordance with the applicable statutory framework.

45. Learned Solicitor General further submitted that the State Legislature has now enacted Haryana Development and Regulation of Urban Areas (Second Amendment and Validation) Act, 2020[18] as a legislative measure validating actions taken by the DTCP under the 1975 Act. The 2020 Amendment

[18] Hereinafter, referred to as "2020 Amendment".

expressly recognises that the power to grant licenses includes the power to modify, suspend, revoke, or de-license them, in sync with Section 21 of the General Clauses Act, 1897, and retrospectively validates actions taken earlier in good faith, without conferring any new authority. He thus urged that the impugned judgment is unsustainable in the eyes of law.

46. Shri Mehta further submitted that, upon an enquiry pursuant to the impugned judgment passed by the High Court, it has come to light that as many as 58 projects have been developed in a similar fashion pursuant to de-licensing undertaken in exercise of statutory powers. He submitted that if the impugned judgment is allowed to stand, all such projects, which were brought up long back, would be exposed to serious jeopardy.

47. Ms. Madhavi Divan, learned senior counsel appearing for the appellant–Kohler India Corporation Private Limited[19] in Civil Appeal @ SLP (C) No(s). 5971 of 2021, submitted that the said appellant had purchased commercial premises situated on the 6th floor of Ambience Corporate Office Tower–I from

[19] Hereinafter, referred to as "appellant-Kohler India Corporation".

appellant No.3–Ambience Developers under a registered sale deed dated 27th September, 2007, for a total consideration exceeding Rs.30.81 crores, along with applicable stamp duty and registration charges. It was contended that any coercive or precipitative action in respect of the said complex would directly and adversely affect the crystalized proprietary rights of the appellant-Kohler India Corporation. It was further submitted that the appellant-Kohler India Corporation had not been impleaded as a party to the original writ proceedings, despite being a bona fide purchaser for consideration.

48. They, thus, implored the Court to allow the appeals and set aside the impugned judgment while leaving it open to the parties to pursue Civil Writ Petition No. 6047 of 2025 pending before the High Court.

III. ARGUMENTS ON BEHALF OF RESPONDENTS

49. Ms. Uttara Babbar, learned senior counsel and Ms. Kamini Jaiswal, learned counsel, appearing for the respective respondents, submitted that the Ambience Lagoon Housing Project was originally sanctioned over an area admeasuring 18.98 acres under License No. 19 of 1993. It was contended that

the appellants-developers, in collusion with State authorities, unlawfully reduced the residential area first to 10.98 acres and thereafter to 7.93 acres only by diverting the illegally de-licensed portions of the originally licensed area for construction of the Ambience Mall and other commercial complexes, thereby defeating the object of the original license and acting in patent violation of the governing statutory framework.

50. It was submitted that the appellants-developers had made deliberate strategic interpolations in the original application form, specifically referring to the omission in Clause 2(v), which expressly required the submission of a layout plan. It was further contended that, notwithstanding the absence of a layout plan, the competent authorities proceeded to entertain the application and granted the license with closed eyes. According to the respondents' counsel, such approval in the face of a mandatory statutory deficiency could not have materialized without active connivance and collusion on the part of the concerned officials.

51. It was further submitted by the learned counsel that the 1975 Act does not contain any express or implied provision enabling the State authorities to de-

license land once a license has been granted for a specific project and purpose. Any purported exercise of de-licensing is therefore wholly without jurisdiction, *de hors* the statutory framework and was rightly struck down by the High Court as contrary to the Act and the Rules framed thereunder.

52. Learned counsel for the respondents contended that, notwithstanding representations in the brochures assuring nearly 80% open and community areas, the subsequently raised illegal commercial constructions substantially increased ground coverage and correspondingly impinged upon green and open spaces of the residential colony. It was submitted that the progressive regression in the land area earmarked for the residential colony resulted in a gross violation of the permissible Floor Area Ratio[20], thereby imposing an excessive and unsustainable burden on the existing civic and infrastructural facilities in the residential colony.

53. It was argued that the Court Commissioner's report dated 19th September, 2016 submitted in pursuance of the order dated 16th August, 2016

[20] Hereinafter, referred to as "FAR".

passed by the National Green Tribunal, New Delhi[21] conclusively establishes that the portions of land areas earmarked as Green Area Nos. 10 and 11 in the sanctioned layout plan were never developed or maintained as green spaces on the ground. Instead, Green Area No. 10 stands encroached upon by a multi-storeyed commercial building, while Green Area No. 11 has been converted into a road and areas of private use. The report, being an independent factual verification ordered by the NGT, clearly demonstrates a gross deviation from the sanctioned plan and substantiates the allegations of misuse and illegal construction by the concerned respondents. They thus implored the Court to dismiss the appeals and uphold the impugned judgment.

IV. DISCUSSION AND ANALYSIS

54. We have given our thoughtful consideration to the submissions advanced at the bar and have gone through the impugned orders and the material placed on record.

55. The main thrust of arguments of the writ petitioners before the High Court was that there had

[21] Hereinafter, referred to as "NGT".

been a blatant violation of the statutory provisions and the rules made thereunder while raising the residential colony and the commercial complex. The specific case set up by the writ petitioners before the High Court was that while originally, the residential colony was sanctioned over land area admeasuring 18.98 acres, the construction was in fact carried out only on 10.98 acres of land. The writ petitioners thus, prayed for demolition of the commercial complex on the ground that it had been constructed by encroaching on 8 acres of land which, according to them, was originally earmarked for the residential colony and the use thereof could not have been diverted for raising the commercial construction. They further sought a direction for a CBI investigation into the alleged usurpation of 8 acres of residential land by the appellants-developers in active connivance with the concerned authorities. Additionally, a prayer was made for issuance of appropriate directions to the appellants-developers to adhere to and maintain the prescribed ground coverage and the maximum FAR applicable to the group housing project under the governing statutory framework. In submissions before the High Court,

the appellants-developers as well as the State authorities, took a specific stand that out of the original land mass admeasuring 18.98 acres, an extent of 8 acres was de-licensed in accordance with law *vide* Memo No.5DP-2001/13948 dated 18th October, 2001 and thereafter permission was diligently granted by the DTCP to construct a commercial complex on this chunk of land admeasuring 8 acres, which had been already been de-licensed, *vide* Endst. No. SDP 2001/13959 dated 18th October, 2001.

56. The High Court observed that despite the absence of a layout plan and the presence of serious omissions, deletions, interpolations and tampering in the original application form, allegedly benefiting the appellants-developers, the authorities inexplicably accepted the defective application and granted the license without noticing such glaring irregularities. According to the High Court, the entire exercise was fraudulent, which in turn had a cascading effect on the Ambience Lagoon Housing Project, including non-adherence to FAR, lack of open spaces, insufficient width of streets/roads and total lack of essential community facilities such as schools and

other public amenities. The High Court noted that the possibility of the appellants-developers acting in collusion with the concerned authorities and duping innocent apartment buyers, could not be ruled out. The buyers were made to sign on the dotted line, as by using couched language, some misleading clauses were introduced by the appellants-developers in the Apartment Buyers' Agreement, in connivance with the State authorities. The High Court concluded that as per the approval granted by the DTCP, the township was to be constructed on 18.98 acres of land from which 80% area was to be reserved for open and community services. The de-licensing of 8 acres out of the total land admeasuring 18.98 acres, and the subsequent grant of permission for raising the commercial complex thereon, were done in sheer violation of the extant statutory provisions, with the authorities acting more promptly than warranted. The order granting permission for construction of a commercial complex over 8 acres of land falling within 18.98 acres licensed area was passed on 16th October, 2001 whereas the order de-licensing the said 8 acres was issued subsequently on 18th October, 2001. The fact that permission preceded de-

licensing by two days was held to indicate a preconceived and premeditated plan to raise a commercial complex within land originally licensed for residential colony. The High Court also held that the Town Planning authority had no power to de-license the land in respect of which a license had already been granted for a particular purpose, as there was no provision for de-licensing under the 1975 Act or rules framed thereunder. It was further held that, by dint of such fraudulent action, the appellants-developers stood unjustly enriched, while the flat owners were deprived of their legitimate entitlement to open spaces, amenities and green areas. It was accordingly concluded that the de-licensing order dated 18th October, 2001; the order granting license/permission dated 16th October, 2001 and the order dated 01st September, 2010 passed pursuant to submission of the deed of declaration dated 25th March, 2009, were illegal and hence, the same were fit to be quashed and struck down. The State was further directed to take all consequential steps; the CBI was directed to investigate the issues after registering a formal FIR

and to submit a status report before the High Court in a sealed cover within the stipulated time.

57. From the foregoing narration of facts and circumstances, the following indisputable conclusions can be drawn.

58. That the Apartment Buyers' Agreement executed in the year 2001 unequivocally conveyed that the Ambience Lagoon Housing Project (residential colony) would be coming up on 10.98 acres of land out of the total licensed land of 18.98 acres in Phase-I.

59. Upon a careful examination of the pleadings in Civil Writ Petition No. 20330 of 2015, we find no averment whatsoever to the effect that the flat owners, including the writ petitioners, were unaware of the contents of the Apartment Buyers' Agreement. Rather they are completely silent on this most vital aspect of the case which flows from the contractual obligations of the parties. On the contrary, the appellants-developers took a specific and categorical plea in their reply that the township had been developed strictly in accordance with the area and specifications stipulated in the Apartment Buyers' Agreement as well as the approved layout plan. It was

only for the first time in the rejoinder that the writ petitioners sought to propound a new theory, namely, that the Apartment Buyers' Agreement had been drafted by the appellants-developers to serve their own interests, allegedly taking advantage of a dominant position. According to the respondents, the said agreement could, therefore, not be enforced to the detriment of the apartment owners.

60. At this stage, we may advert to the observations made by the Civil Judge, Junior Division, Gurgaon, Haryana in paragraph 13 of the order dated 10th September, 2014 while deciding the application filed by the ALARWA under Order XXXIX Rule 2 of the Code of Civil Procedure, 1908, which read as under:

> "Admittedly, the plaintiff is claiming their right as per the said Apartment Buyers Agreement and they cannot go beyond the said Agreement. It is clearly mentioned in the said agreement that the Residential Apartment Complex is to be built on 10.98 acres of land out of the total licenced land i.e. 18.98 acres. As per the said Agreement service road is meant to be used by all complex residents and users of integrated township. Admittedly the said road is the only main road passing through the entire township and is a common road to be used by all occupants, visitors or other persons having interest in the township. In such circumstances, it cannot be said that balance of convenience lies in favour of the plaintiff even if he proves the prima facie case in his favour. Further even if it is assumed or presumed that the said road is meant only for the plaintiffs use then also the balance of convenience is also not in their favour."

61. We are of the considered view that, as the writ petition was instituted in the year 2015 containing allegations of the so-called misuse of dominant position by the appellants-developers, the plea raised for the first time in the rejoinder that the writ petitioners were compelled to sign the Apartment Buyers' Agreement by keeping them in dark is wholly unconvincing and untenable. The finding recorded by the High Court that the flat owners were made to sign on the dotted line is, *ex facie*, conjectural and unsupported by any pleadings or credible material or pleadings. Significantly, the apartment buyers did not plead, either in the writ petition filed in 2015 or in the earlier civil suit instituted in 2010, that any fraud, misrepresentation, coercion, or deceit had been practised in the execution of the Apartment Buyers' Agreement. In the absence of any foundational pleadings or credible evidence, the conclusion arrived at in the impugned judgment that the agreement was executed under misrepresentation of facts is wholly unjustified and unsustainable in law.

62. The finding recorded by the High Court that any agreement between the parties cannot override the law laid down to regulate the regulations and to prevent hazardous development, is also contrary to record. It bears reiteration that the Apartment Buyers' Agreement was never put to challenge in the writ proceedings. That apart, it is a matter of serious concern that the High Court proceeded to entertain and effectively sustain a challenge to the said agreement, despite the absence of any foundational pleadings, and that too after the lapse of more than a decade from its execution.

63. Though the writ petitioners have taken a vacillating stand before the High Court and this Court with regard to the actual area on which the residential colony stands but from the material available on record, more particularly, the order dated 5th August, 2021 passed by the DTCP, it becomes crystal clear that the residential colony has been constructed on 11.83 acres of land which includes the extent of land utilised to develop the approach road.

64. Inspite of the seriously disputed questions of facts, the High Court seems to have been swayed by

the unsubstantiated assertions of the writ petitioners and proceeded to hold that the appellants-developers had reduced the availability of green areas and amenities/facilities. For reaching to this conclusion, the High Court treated the residential colony as sanctioned over 18.98 acres.

65. We are of the firm view that the High Court has proceeded on a totally erroneous assumption that the residential colony was required to be developed over the entire 18.98 acres and not 10.98 acres. The above conclusion drawn is *ex facie* erroneous in face of the contract executed between the parties and the approved layout plan.

66. The observation of the High Court that the layout plan was not placed before it, is also contrary to the record. In a writ petition, which is decided on affidavits, the burden of establishing the existence of the facts asserted squarely lies upon the writ petitioner, and such burden can be discharged only by placing clear and unimpeachable material on record. This Court in ***Bharat Singh v. State of Haryana***[22], while emphasising that a writ petitioner

[22] AIR 1988 SC 534.

is required to specifically plead and substantiate the supporting facts by placing cogent material on record, held as follows:-

> "13. As has been already noticed, although the point as to profiteering by the State was pleaded in the writ petitions before the High Court as an abstract point of law, there was no reference to any material in support thereof nor was the point argued at the hearing of the writ petitions. Before us also, no particulars and no facts have been given in the special leave petitions or in the writ petitions or in any affidavit, but the point has been sought to be substantiated at the time of hearing by referring to certain facts stated in the said application by HSIDC. **In our opinion, when a point which is ostensibly a point of law is required to be substantiated by facts, the party raising the point, if he is the writ petitioner, must plead and prove such facts by evidence which must appear from the writ petition and if he is the respondent, from the counter-affidavit. If the facts are not pleaded or the evidence in support of such facts is not annexed to the writ petition or to the counter-affidavit, as the case may be, the court will not entertain the point.** In this context, it will not be out of place to point out that in this regard there is a distinction between a pleading under the Code of Civil Procedure and a writ petition or a counter-affidavit. While in a pleading, that is, a plaint or a written statement, the facts and not evidence are required to be pleaded, in a writ petition or in the counter-affidavit not only the facts but also the evidence in proof of such facts have to be pleaded and annexed to it. So, the point that has been raised before us by the appellants is not entertainable. But, in spite of that, we have entertained it to show that it is devoid of any merit."
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> (Emphasis Supplied)

67. Respondent Nos. 1 and 2, being the writ petitioners before the High Court, in our considered

opinion, miserably failed to do so. On the contrary, it has been the consistent and emphatic case of the appellants-developers that the layout plan was always available on record and had, in fact, been filed before the High Court along with their reply.

68. Upon examining the reply filed by the appellants-developers to Civil Writ Petition No. 20330 of 2015, it is evident that a copy of the layout plan demarcating three distinct parcels of land, measuring 10.98 acres, 8 acres, and 4 acres respectively, was duly placed on record. Moreover, the writ petitioners themselves have expressly referred to the said layout plan and relied upon its contents in their rejoinder, purportedly to demonstrate what they allege to be inconsistencies in the appellants-developers' stand.

69. It is an undisputed position that the construction of the Ambience Mall/Ambience Commercial Tower-I over an area of 8 acres of land and the Leela Ambience Hotel over an area of 4 acres of land commenced in the year 2002, and both the projects were completed somewhere in the year 2007-2008. The flats in Ambience Lagoon Residential Colony had been occupied in the beginning of this period and thus, the flat owners cannot be expected

to be ignorant of the construction activities going on in the area appurtenant to the residential colony. The rank silence and utter indifference shown by the flat owners in taking any action for a period of almost a decade for the alleged violation of their rights creates a serious doubt on the bonafides of the actions of the writ petitioners. Admittedly, Amitabha Sen, writ petitioner No. 1 before the High Court had represented the plaintiff-ALARWA in Civil Suit No. 27 of 2010, which was instituted in respect of an analogous dispute and was ultimately disposed of as withdrawn.

70. The present writ petition came to be filed in the year 2015, that is, almost 8 years after the Ambience Mall and the Leela Ambience Hotel had been constructed and had become fully operational. In this backdrop, the gross delay in approaching the High Court constituted a material and decisive factor, which by itself ought to have disentitled the writ petitioners to any sort of discretionary relief under Article 226 of the Constitution. However, the High Court seems to have totally ignored this material aspect of the case which, in our opinion, goes to the root of the matter.

71. Furthermore, in Civil Writ Petition No. 2147 of 2012, which raised overlapping and substantially similar issues, the Division Bench of the High Court, *vide* order dated 16th January, 2020, had directed the DTCP to examine the entire controversy and to pass a detailed and reasoned order. Pursuant thereto, the DTCP has passed a comprehensive order dated 5th August, 2021, and held that the approval of building plans for Plot No.3-Ambience Corporate Office Tower 2, did not violate License No. 19 of 1993, as Plot No. 3 formed part of separate licenses (Licenses Nos. 13 and 14 of 2004) and not the original group housing license No. 19 of 1993. The DTCP also concluded that the de-licensing of 8 acres reserved for Phase-II expansion under License No. 19 of 1993 and its re-licensing for commercial use was legally permissible, being supported by prior legal opinion, Section 21 of the General Clauses Act, 1897, and expressly validated by the 2020 Amendment inserting Section 3(3A) in the 1975 Act with retrospective effect. It was further held that the area under License No. 19 of 1993 was not reduced by 3.9 acres by effect of the order dated 01st September, 2010. The Deed of Declaration, duly registered, was found to be broadly

in conformity with the Haryana Apartment Ownership Act, 1983. Certain deficiencies were noted regarding incomplete disclosure of licenses forming part of the integrated township, for which amendment was directed and penalty was charged. Consequently, no merit was found in the challenge to the approval of building plans or the de-licensing action, subject to corrective steps being taken in respect of the Deed of Declaration. The said order conclusively determines the controversy in favour of the appellants-developers.

72. Section 3(3A), introduced by the 2020 amendment retrospectively validating the disputed actions of the town planning authorities, is not under challenge before this Court, nor would it be appropriate to entertain any such challenge in the present proceedings, particularly when the said issue can be independently agitated by the parties before the appropriate forum, if they so desire.

73. Moreover, the High Court itself, while rendering the impugned judgment, expressly recorded that it would not enter into or examine the issues covered by the order dated 1st September, 2010. Notwithstanding the said self-imposed limitation, the

High Court, at the stage of final adjudication, proceeded to hold that the entire action of the appellants-developers, including the construction of the commercial complex, was in violation of law, and went on to quash the order dated 1st September, 2010. This, in our opinion, indicates a fundamental error in the impugned judgment.

74. It is also not in dispute that the order dated 5th August, 2021 passed by the DTCP in effect covering all the disputed issues is subject matter of assail in Civil Writ Petition No. 6047 of 2025, which is pending before the High Court and in case the impugned judgment is upheld, it would definitely prejudice the outcome of the said writ petition and effectively foreclose all available defences of the appellants-developers.

75. We are further of the view that the direction given by the High Court to the CBI for registering the FIR was also uncalled for as the said direction was given on unverified and inconclusive material. Be that as it may, in the intervening period, the CBI registered the FIR and has since filed a report under Section 173(2) of the Code of Criminal Procedure, 1973. In the said report, the act of de-licencing of 8

acres of land has been found to be in accordance with law. However, the only illegality attributed to the appellants-developers pertains to the alleged misrepresentation in the Apartment Buyers' Agreement, in respect whereof the following findings have been recorded in the report:-

> "(16.77) Investigation further revealed that the de-licencing & re-licencing of the 8 acre of land for commercial purpose was approved on 16.10.2001 and even then, the builder executed Builder-Buyer Agreement dated 20.10.2001 with Sh. Amitabha Sen & Smt. Dipika Sen, petitioner of the instant matter in the Hon'ble High Court of Punjab & Haryana, without mentioning a word about the same.
> (16.78) Investigations revealed that before the Builder-Buyer Agreement with Sh. Amitabha Sen, the builder had already applied for de-licensing 8 acres for commercial use and this fact was concealed from the buyer. Although the Builder-Buyer Agreement mentioned a license for a group housing colony on 18.98 acres, details about the application for commercial conversion and subsequent approval were omitted, misleading the buyer. The de-licensing & re-licensing of the 8 acres for commercial use was sanctioned on 16.10.2001. Surprisingly, on 20.10.2001, the Builder-Buyer Agreement with Sh. Amitabha Sen & Smt. Dipika Sen was executed without any mention of these crucial developments. Investigation has revealed that in the builder buyer agreement, it is, inter alia, mentioned that
>
> > ".....The company intends/plans to develop Lagoon Residential Apartments Complex on 10.98 acres of land out of total licensed land of 18.98 acres in phase-i building plans of which have already been sanctioned/approved by the Competent Authority at the Office of Director, Town & Country Planning, Haryana, Chandigarh....."

From the above, it is evident that it was clearly mentioned in the Builder-Buyer Agreement that the company holds licence to set up a group housing colony on 18.98 acre. However, the facts pertaining to filing of application for conversion to commercial licence for the rest of 8 acres and subsequent obtainment of the said commercial licence was concealed from the buyer.

(16.79) Investigation has revealed that M/s HLF Enterprises Pvt. Ltd. engaged in communication with the department well in advance of entering into the Builder-Buyer Agreement with buyer i.e. Sh. Amitabha Sen & Smt. Dipika Sen. Specifically. the builder had initiated the process of acquiring a license for the commercial use of 8 acres of land by submitting an application dated 18.07.2000 and subsequently, on 15.10.2001, he had complied with the conditions of LOI dated 28.09.2001 for issuance of license to develop the commercial colony on 8 acres of land by d licensing the same from the licenced group housing colony, even before the Builder-Buyer Agreement was executed. This crucial information, pertaining to the ongoing efforts to obtain a commercial license, was intentionally omitted from the subsequent agreements with buyer. Consequently, the Builder-Buyer Agreement, executed on 20.10.2001 with Sh. Amitabha Sen & Smt. Dipika Sen, failed to disclose the fact that the builder had sought de-licensing and re-licensing of the land for commercial purposes and finally he got the license, creating a situation where the true nature of the property was not transparently conveyed to the buyer.

(16.80) From the facts and circumstances discussed above, it is established that the accused builder Raj Singh Gehlot, Director in M/s Ambience Developers & Infrastructure Pvt. Ltd. (formerly known as M/s HLF Enterprises Pvt. Ltd.) dishonestly & fraudulently during the period Oct, 2001 executed builder buyer agreement with the dishonest intention from the beginning, concealed material facts from the buyer and true nature of the property was not transparently conveyed to the buyer in order to deceive the buyer for purchasing the flats in the said colony, thereby causing wrongful loss to buyer and wrongful gain to

himself and the said company and thereby committed the offence of conspiracy and cheating punishable U/s120B r/w 420 of IPC & substantive offence of 420 IPC.
(16.81) Thus, the aforesaid facts disclosed commission of offence punishable under Section 120B r/w 420 of IPC & substantive offence of 420 IPC on the part of the accused company M/s Ambience Developers & Infrastructure Pvt. Ltd. (formerly known as M/s HLF Enterprises Pvt. Ltd.) through its director, and Sh. Raj Singh Gehlot.
(16.82) In view of the aforesaid, it is prayed that M/s Ambience Developers & Infrastructure Pvt. Ltd. (formerly known as M/s HLF Enterprises Pvt. Ltd.) through its director, and Sh. Raj Singh Gehlot may kindly be summoned and tried as per the provisions of law."

76. These findings are issues which would fall for consideration and adjudication before the competent court before which the chargesheet has been filed and as such, if the impugned judgment is allowed to stand, outcome of the trial may also be prejudiced.

V. CONCLUSION

77. In wake of the discussion made hereinabove, we are of the firm view that the impugned judgment dated 10th July, 2020 rendered by the High Court is, *ex facie*, unsustainable in facts and in law and hence, the same cannot be sustained. The same is, thus, set aside.

78. We make it clear that none of the observations made by us in this judgment may be treated as prejudicing the disposal of the Civil Writ Petition No. 6047 of 2025 pending before the High Court. The High Court shall proceed to consider and decide the said writ petition uninfluenced by this judgment.

79. The appeals are allowed accordingly. No order as to costs.

80. Pending application(s), if any, shall stand disposed of.

B. CIVIL APPEAL NO(S).872-874 OF 2021

81. Heard. Admit.

82. These civil appeals are directed against the orders dated 9th January, 2020 and 11th February, 2020 passed by the National Green Tribunal, Principal Bench, New Delhi in Original Application No. 238 of 2015 and order dated 13th February, 2020 passed in Review Application No. 10 of 2020 in the same O.A. By order dated 9th January, 2020, the NGT after considering the report of the Ministry of Environment, Forest, and Climate Change dated 22nd November, 2019 directed the appellant, Ambience

Developers & Infrastructure Pvt. Ltd.[23], to pay an interim environmental compensation of Rs.68,51,250/-. Subsequently, *vide* order dated 11th February, 2020, NGT constituted a Joint Expert Committee comprising the MoEF&CC, Central Pollution Control Board and Indian Institute of Forest Management, Bhopal and directed the said committee to re-assess the environmental compensation. NGT, *vide* order dated 13th February, 2020, dismissed the application filed by the appellant-Ambience Developers seeking review of the order dated 9th January, 2020.

I. BRIEF FACTS

83. The factual background of the present appeals being substantially similar to that of the connected appeals, the same is not being re-stated herein to avoid repetition.

84. The Original Application No. 238 of 2015 was instituted by the respondent-Anil Uppal and his companions being the flat owners[24] in the Ambience Lagoon Apartment Housing Complex. The

[23] Hereinafter, referred to as "appellant-Ambience Developers".
[24] Hereinafter, referred to as "respondents-applicants".

respondents-applicants, *inter alia*, sought following reliefs:-

> "A. Direct the Respondents to restitute the damage caused to the park/open spaces and the Environment.
> B. Direct the Respondents to strictly comply with the order dated 10.04.2015 of this Hon'ble Tribunal in the matter of Vardhman Kaushik v Union of India & ors.
> C. Direct the Respondents to restore the open areas / tot lots to their natural / original position.
> D. Direct the Respondent No.7 to take necessary action against the person(s) concerned for felling of trees.
> E. Stay the construction of the commercial complex being built and other construction activities
> F Appoint Court Commissioners to visit the site and present a status report.
> G. Appoint an independent agency to measure the area of the resident's locality and present the findings before this Hon'ble Tribunal.
> H. Direct Respondent No.3 to measure the Ambient Air Quality in the area and submit a report before this Hon'ble Tribunal.
> I. Direct the Respondent No.5 to deposit all original records with this Hon'ble Tribunal.
> J. Direct the Respondent No.4 to enforce status quo with respect to all constructions on the said areas.
> K. Direct the Respondent No.8 to undertake a critical study of the area and submit a report before this Hon'ble Tribunal.
> L. Direct the Ministry of Environment and forests, Government of India to fulfil its responsibilities under the Environment Protection Act, 1986.
> M. Hold the officers of various public authorities personally liable.
> N. Award penalty on the defaulting public authorities.
> O. Award costs of the Application to the Applicants.
> P. Award suitable compensation to the Applicants.
> Q. Pass such other and further order or orders as this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case."

85. The NGT directed the Haryana State Pollution Control Board and the DTCP to inspect the site and submit a status report. Pursuant thereto, the said authorities submitted a report dated 5th May, 2016, stating that there was no violation with respect to the green and open areas. However, the respondents-applicants before the NGT contended that the said report had been furnished without conducting an actual site inspection. In this backdrop, the NGT, *vide* order dated 16th August, 2016 appointed a Court Commissioner to carry out a site visit and submit an independent report.

86. The Court Commissioner in his report dated 19th September, 2016 indicated that Green Area No. 10, which was designated as a green area in the approved layout plan, was occupied by a nursery school, a sewage treatment plant, and an electric sub-station. Green Area No. 11, also earmarked as a green area, was found to be non-existent; a portion thereof was covered by a road, while another portion was occupied by a flat. The Court Commissioner further reported that ready-mix concrete trucks were

plying in the area, generating high decibel noise, and that the sewage treatment plant was engulfed in foam.

87. The appellant-Ambience Developers having been impleaded as respondent No. 6 in the proceedings before the NGT, contested the allegations by asserting that the subject project formed part of an integrated larger development known as "Ambience Lagoon Island," within which the prescribed green area norms were being duly maintained, and that all requisite statutory approvals had been duly obtained.

88. During the course of the proceedings, the NGT, *vide* order dated 24th April, 2019, directed the MoEF&CC to submit its report on the issue of environmental compensation and observed as follows:-

> "4. The Tribunal found it necessary to quantify the compensation for the loss of environmental benefits/services, if any. The matter was adjourned thereafter on 24.01.2018, 01.02.2018, 27.02.2018 and 06.04.2018 at the request of learned Counsel for the parties.
> 5. On 25.07.2018, the Tribunal noted the absence of Counsel for the applicants but an adjournment was granted. Today though Counsel for the applicants and Respondent No. 6 are present, they state that they are not the main Counsel and will not procced in the matter. We do not find any justification for a Counsel appearing before this Tribunal and at the

> same time saying that they are not the 'main' Counsel. We do not understand why they have put in appearance, if they are not the Counsel.
> 6. Be that as it may, report of the Ministry of Environment, Forest and Climate Change (MoEF&CC) on the issue of environmental compensation in terms of order dated 09.01.2018 is still awaited though more than one year has gone. Learned Counsel for the MoEF & CC submits that the report will be submitted within one month positively. The report may be furnished to the Tribunal by email at ngt.filing@gmail.com. It is made clear that there will be no further adjournment on any account without adverse orders against the party in default.
> List for further consideration on 20.08.2019."

89. In pursuance of the said order, the MoEF&CC submitted a report dated 7th November, 2019, assessing the environmental damage to the tune of Rs.68,51,250/-.

90. Upon submission of the said report, the respondents-applicants contended that it was incomplete, on the ground that it did not address the issue of alleged illegal constructions in Green Areas Nos. 10 and 11, which were earmarked as open and green areas in the approved layout plan and, according to them, could not have been converted into covered areas in violation of environmental laws. The respondents-applicants further assailed the adequacy of the assessed compensation, particularly with respect to the alleged loss of ecological services

resulting from purported illegal commercial constructions in the designated open areas.

91. The NGT, *vide* interim order dated 9th January, 2020 directed the appellant-Ambience Developers, to deposit a sum of Rs.68,51,250/- towards interim environmental compensation. The said amount has since been deposited by the appellant-Ambience Developers on 11th December, 2020.

92. In light of the submissions advanced by the respondents-applicants, the NGT in its order dated 11th February, 2020, observed that a Joint Expert Committee comprising representatives of the MoEF&CC, the Central Pollution Control Board, and the Indian Institute of Forest Management, Bhopal, was required to examine whether, in light of the original Deed of Declaration and the sanctioned layout plan for the residential colony developed over 10.98 acres with stipulated open areas, any revised plan implemented after the allotment of apartments had illegally deprived the respondents-applicants of their entitlement to ecological benefits envisaged under the original plan. The NGT further directed the Committee to consider whether such changes amounted to a violation of law, including

impermissible alteration of common areas for private commercial gain to the detriment of the environment, and to assess the consequential environmental compensation. The Joint Expert Committee was accordingly directed to submit its report.

93. The appellant-Ambience Developers filed an application seeking review of the order dated 9th January, 2020 contending that no opportunity had been afforded to it to file objections to the report of the MoEF&CC dated 7th November, 2019. The NGT, however, dismissed the said review application, terming the plea as an afterthought.

II. SUBMISSIONS ON BEHALF OF THE APPELLANT

94. Shri Pinaki Misra, learned senior counsel representing the appellant-Ambience Developers, submitted that the orders passed by the NGT travel beyond the scope of proceedings contemplated under the National Green Tribunal Act, 2010,[25] inasmuch as they impinge upon the issues relating to alleged violations of the approved plan, which were already the subject matter of consideration before the High

[25] Hereinafter, referred to as "NGT Act".

Court as well as DTCP, pursuant to order dated 16th January, 2020 passed by the High Court in Writ Petition No. 2147 of 2012. It was thus prayed that the impugned orders are *ex facie* illegal and unsustainable in the eyes of law.

95. Learned senior counsel further contended that the appellant-Ambience Developers, was not afforded any opportunity to file objections to the report of the MoEF&CC dated 7th November, 2019, before it was saddled with the penalty, thereby causing serious prejudice to the appellant-Ambience Developers.

96. Learned senior counsel further contended that the NGT committed a manifest error in placing reliance on the report submitted by the Court Commissioner, which, according to them, was factually incorrect, misleading, and did not accurately reflect the ground realities, thereby vitiating the findings recorded by the NGT.

97. It was further submitted that the appellant-Ambience Developers, had consistently complied with the mandatory requirement of maintaining green and open spaces within the residential colony, and that the actual existing green area exceeded 17%, thereby surpassing the prescribed statutory

minimum. It was also urged that provisions for a nursery school, a sewage treatment plant, and an electric sub-station were made in other parts of the larger Ambience Island Project, rather than within the Ambience Lagoon Residential Colony. He, thus, urged that the impugned orders passed by the NGT are contrary to law and facts on record, and hence, the same deserve to be set aside.

III. SUBMISSIONS ON BEHALF OF THE RESPONDENTS

98. Ms. Kanika Agnihotri, learned counsel appearing for the respondents-applicants submitted that the respondents-applicants had no grievance with respect to the construction of the residential colony on 10.98 acres of land. However, their primary grievance was that the construction of the commercial complex over 5.81 acres of land, situated directly in front of the residential flats, had obstructed their access to natural light and air. She vehemently contended that the said construction had been raised in violation of the designated land use and statutory norms, and urged that the offending commercial construction over the said 5.81 acres deserved to be demolished.

99. The areas originally designated for essential services such as a nursery school, a sewage treatment plant, and an electric sub-station were instead encroached upon and occupied by the commercial complex, resulting in the displacement of these essential utilities and necessitating their relocation to other areas.

100. It was urged that the respondents-applicants possess an indivisible, and permanent interest in the common areas and facilities of the complex, which forms an integral part of their proprietary rights. Such common areas and facilities cannot be altered, alienated, reduced, or diverted for any other use, nor can any portion thereof be siphoned off, except with the express, informed, and prior consent of all the flat owners in accordance with law.

IV. DISCUSSION AND ANALYSIS

101. We have given our thoughtful consideration to the submissions advanced by learned counsel for the parties and have gone through the impugned orders passed by the NGT.

102. We are of the considered opinion that the issues sought to be agitated before the NGT and those forming the subject matter of dispute in the

proceedings before the High Court were overlapping to a great extent and hence, the decision of the NGT without taking into account the pendency and scope of the proceedings before the High Court on issues involving seriously disputed questions of fact, is indeed questionable.

103. The Tribunal placed implicit reliance upon the report of the Court Commissioner dated 19th September, 2016 on the premise that the appellant-Ambience Developers had not objected to it, and thereafter, while considering the review petition, declined to entertain the plea of denial of opportunity on the ground that it had been raised belatedly.

104. We are of the firm opinion that, as the matter relating to alleged illegality in change of land use was already under scanner in the writ petition filed before the High Court in the year 2015, the NGT was not justified in interfering with the issues concerning violation of building plans in relation to the construction of commercial premises. We also feel that the aforesaid issues are beyond the scope and purview of the proceedings before the NGT under Section 14 of the NGT Act which reads as below:-

> **"14. Tribunal to settle disputes.**—(1) **The Tribunal shall have the jurisdiction over all civil cases where a substantial question relating to environment (including enforcement of any legal right relating to environment), is involved and such question arises out of the implementation of the enactments specified in Schedule I.**
> (2) The Tribunal shall hear the disputes arising from the questions referred to in sub-section (1) and settle such disputes and pass order thereon.
> (3) No application for adjudication of dispute under this section shall be entertained by the Tribunal unless it is made within a period of six months from the date on which the cause of action for such dispute first arose:
> Provided that the Tribunal may, if it is satisfied that the applicant was prevented by sufficient cause from filing the application within the said period, allow it to be filed within a further period not exceeding sixty days."
>
> (Emphasis supplied)

105. The dispute relating to the non-adherence of the building plans *qua* the open and green spaces was intrinsically connected and co-related to the ones under adjudication before the High Court. The appellant-Ambience Developers was agitating before the High Court that there was no deviation from the sanctioned layout plan so far as the residential colony is concerned. While deciding the connected appeals, we have found favour with the aforesaid argument raised by the appellant-Ambience Developers. In this view of the matter, we are of the

prima facie opinion that the issue of environment was not a substantial question before the NGT thereby justifying its invocation of jurisdiction by the NGT in this matter. Rather, the present matter involved disputed claims of the parties in relation to irregularities in utilisation of the land belonging to the appellant-Ambience Developers in developing the residential colony.

106. In this regard, reference may be made to recent judgment of this Court in ***Auroville Foundation v. Navroz Kersasp Mody***[26], wherein this Court held as follows:-

> "30. As transpiring from Section 14, the Tribunal has the jurisdiction over all civil cases where the substantial question relating to environment including enforcement of any legal right relating to environment, is involved and such question arises out of the implementation of the enactments specified in Schedule I. Therefore, for the exercise of jurisdiction by the Tribunal under Section 14, it has to be shown that (1) a substantial question relating to environment including enforcement of any legal right relating to environment is involved; and (2) such questions arise out of the implementation of the enactments specified in Schedule I.
>
> 31. The term "substantial question relating to environment" as defined in Section 2(1)(m) of the Act would include, inter alia, the question where there is a direct violation of a specific statutory environmental obligation by a person by which : (a) the community at large other than the

[26] (2025) 4 SCC 150.

individual or group of individuals is affected or likely to be affected by the environmental consequences; or (b) the gravity of damage to the environment or property is substantial; or (c) the damage to public health is broadly measurable. The substantial question would also include the environmental consequences relating to a specific activity or a point source of pollution.

32. In view of the said definition also the Tribunal before exercising the jurisdiction has to satisfy itself that a substantial question pertaining to the violation of or implementation of any specific statutory environmental obligations contained in any of the enactments specified in Schedule I, is involved.

33. Recently in *State of M.P.* v. *Centre for Environment Protection Research & Development* [*State of M.P.* v. *Centre for Environment Protection Research & Development*, (2020) 9 SCC 781] , this Court held as follows : (SCC pp. 801-802, paras 42-44)

> "*42.* In view of the definition of "substantial question relating to environment" in Section 2(1)(*m*) of the NGT Act, the learned Tribunal can examine and decide the question of violation of any specific statutory environmental obligation, which affects or is likely to affect a group of individuals, or the community at large.
>
> *43.* For exercise of power under Section 14 of the NGT Act, a substantial question of law should be involved including any legal right to environment and such question should arise out of implementation of the specified enactments.
>
> *44.* Violation of any specific statutory environmental obligation gives rise to a substantial question of law and not just statutory obligations under the enactments specified in Schedule I. However, the question must arise out of implementation of one or more of the enactments specified in Schedule I."

> Similar view is also taken in *H.P. Bus-Stand Management & Development Authority* v. *Central Empowered Committee* [*H.P. Bus-Stand Management & Development Authority* v. *Central Empowered Committee*, (2021) 4 SCC 309] .
>
> **34.** From the above, **it is explicitly clear that every question or dispute raised by an applicant before the Tribunal pertaining to the environment cannot be treated as a substantial question. It has to be a substantial question relating to environment as contemplated in Section 2(1)(*m*), and such substantial question must arise out of the implementation of any of the enactment/enactments specified in Schedule I. Though strict law of evidence may not be applicable to the cases filed before the Tribunal, the applicant has to raise the substantial question in his application specifically alleging the violation of a particular enactment specified in Schedule I**."
>
> (Emphasis supplied)

107. Viewed in light of the aforesaid precedent, a serious doubt arises as to the jurisdiction of the NGT to entertain the original application.

108. Further, we have already concluded in the foregoing part of the decision in Civil Appeals @ SLP(C) No(s). 11480 of 2020; SLP(C) No(s). 5971 of 2021; SLP(C) No(s). 14797 of 2020; that the issues of violations in raising the constructions stand concluded in favour of the appellants-developers *vide* order dated 5th August, 2021 passed by the DTCP, which is under challenge before the High Court in Civil Writ Petition No. 6047 of 2025.

V. CONCLUSION

109. Thus, the order passed by the NGT directing the formation of the Joint Expert Committee, deserves to be stayed for the present. Consequently, the report of Joint Expert Committee dated 3rd December, 2020 which recommends the imposition of fine of Rs.138.83 crores, Rs.10.33 crores environmental compensation, withholding 25–50% of profits, and possible demolition of the commercial complex, shall not be acted upon for now.

110. The proceedings before the NGT shall remain in abeyance till disposal of the aforesaid Civil Writ Petition No. 6047 of 2025 before the High Court. Pursuant to the disposal of the said writ petition, it would be open to the parties to seek revival of the proceedings before the NGT which may examine the same upon being strictly satisfied regarding the substantial questions relating to environment as contemplated in Section 2(1)(m) of the NGT Act, 2010, if any, surviving pursuant to disposal of the writ petition.

111. The appeals stand disposed of in these terms. No order as to costs.

112. Pending application(s), if any, shall stand disposed of.

.....J.
(J. B. PARDIWALA)

.....J.
(SANDEEP MEHTA)

NEW DELHI;
JANUARY 20, 2026.

Gmail ENVIRO LEGAL DEFENCE FIRM <eldflegal@gmail.com>

Service in Raman Sharma Vs. State of Haryana & Ors. (O.A. No. 68/2022/PB)

1 message

ELDF <eldflegal@gmail.com> Thu, Feb 26, 2026 at 8:03 PM
To: rkhuranalegal@gmail.com, "noopur4@gmail.com" <noopur4@gmail.com>, Radhika Gautam <gautamradhika.r@gmail.com>
Cc: Shubham Upadhyay <Shubham@eldfindia.com>, Surya Gupta <surya@eldfindia.com>

Dear Sir/Ma'am

Please find attached copy of the Compilation of Judgments on behalf of Respondent No. 8 M/s Malibu Estate Pvt. Ltd.

Thanks & Regards
--
Sameer Manher
Clerk
Enviro Legal Defence Firm
29, Presidential Estate LGF,
Nizamuddin East New Delhi – 110013
Ph. No. 011-40573181

COMPILATION OF JUDGMENTS.pdf