

BEFORE THE NATIONAL GREEN TRIBUNAL

PRINCIPAL BENCH, NEW DELHI

O.A. No. 764/2018

In the matter of:

Kissan Udey Samiti

...Applicant

Versus

State of Haryana & Ors.

... Respondent(s)

AND

O.A. No. 155/2020

Dr. (Mrs.) Manorama Sharma & Anr.

Applicant(s)

Versus

TDI infrastructure Limited & Ors.

Respondent(s)

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N. K. Gupta
Scientist-E

Central Pollution Control Board
Parivesh Bhawan, East Arjun Nagar
Delhi-110032

Dated: 12.04.2022

Place: Delhi

Central Pollution Control Board
Parivesh Bhawan
East Arjun Nagar , Delhi - 110032

Sub: Report of Joint Committee on Assessment of Environment Compensation.

Ref: In the matter O.A. No. 764/2018 titled; Kissan Udey Samiti Vs State of Haryana Ors. and OA No. 155/2020 (I.A. No. 86/2021 & I.A. No. 121/2021) titled; Dr. (Mrs.) Manorama Sharma &Anr. Vs TDI infrastructure Limited &Ors.

1.0 Background

Hon'ble NGT in above said matter vide order dated 28.09.2021 has directed as follows:

"We have noted that the Committee has determined compensation which is higher than the interim compensation determined by the Tribunal earlier. However, in doing so, the Committee has not considered the principles laid down by the Hon'ble Supreme Court referred to in the earlier order of this Tribunal dated 01.10.2020 quoted in Para 4 above and also judgement of the Hon'ble Supreme Court in Goel Ganga Developers India Pvt. Ltd. vs UOI relating to violation of law by a housing project and judgments in Alembic Chemicals v Rohit Prajapati , Keystone developers v. Anil Tharthare and MantriTechzone Pvt. Ltd. v. Forward Foundation and Ors., are also required to be taken into account.

The compensation can be the percentage of cost of the project so as to be deterrent. The Committee may accordingly give its supplementary report through the CPCB."

2.0 Compliance to NGT directions

In compliance to directions, meetings of the Joint Committee was convened on 11.11.2021, 14.2.2022 and 6.4.2022. During the course of meetings, discussion were made on the judgment of Hon'ble Supreme Court in the matter of Goel Ganga Developers India Pvt. Ltd. vs UOI as referred above in NGT directions. Copy of minutes of meeting is attached as Annexure-I.

The judgments of the Hon'ble Supreme Court in the matter of Goel Ganga Developers India Pvt. Ltd. v UOI refers that Environmental Compensation (EC) at the amount of 100 Crore or 10% of the total Project Cost, whichever is higher may be imposed in case of sever violations such as non - availability of Environment Clearance, Consent Management Conditions or 5 % of project case in case of violation of Conditions of Consent Management. Copy of Judgement is attached as Annexure-II.

As per decisions made during the first meeting, Sh. Rakesh Bansal, Assistant Town Planner, O/o Director, Town & Country Planning, Haryana, Chandigarh was requested to provide the project cost of concerned Projects. Sh. Rakesh Bansal has provided project cost details vide email dated 16.12.2021 in respect of 07 no. of projects [06 under reference and 01 additional (as mentioned at Sl. No. 2)].

Based on directions of Hon'ble NGT, Judgement of Hon'ble Supreme Court and violations identified by Committee, Environmental Compensation (EC) estimated by Joint Committee in 2020 and EC estimated at 5 % of Project Cost are summarized as follows:

S.no	Project Proponent	Environmental Compensation Estimated by Committee in 2020 (in Rs)	Project cost (in lacs)	EC estimated at 5 % of project cost (in Crores)
1	M/s TDI Infrastructure Ltd, (For TDI Kingsbury Apartments), G. T. Road, Sonipat-	18,49,08,165	14402.28	7.20114
2	M/s TDI Infrastructure Ltd, My Floor 2, Sector-60, Sonipat-	4,62,56,792	1401.72	0.70086
3	M/s TDI Infrastructure Ltd, Tuscan City, Sector - 58, Sonipat-	11,42,02,841	13017.11	6.508555
4	M/s TDI City (respondent in O.A. No. 155/2020)	Not assessed by Committee	45477.02	22.73851
5	M/s CMD Built-Tech Pvt. Ltd. (Ushay Towers), Sector -61, Kundli, Sonipat-	3,65,72,745	18592.52	9.29626
6	M/s Parker Estate Development Pvt. Ltd., Sector -61, Kundli, Sonipat.	4,70,88,735	9913.73	4.956865
7**	M/s Narang Constructions & Financiers Pvt. Ltd. (Max Height), Sector -62, Kundli, Sonipat.	5,50,38,531	Project cost is not provided by Town & Country Planning Department, Haryana.	
Note: In the matter of M/s CMD Built-Tech Pvt. Ltd. (Ushay Towers), Sector -61, Kundli, Sonipat- and M/s Parker Estate Development Pvt. Ltd., Sector -61, Kundli, Sonipat stay has been granted by Hon'ble Supreme Court.				

** - In this case total project cost was not available for the committee members therefore, compensation value calculated on the basis of the environmental compensation estimated in the earlier report submitted by the committee.

Based on above calculation, it is recommended by the joint committee that Environment Compensation (EC) shall be levied on project proponent as either estimated by Joint Committee in 2020 or estimated at 5 % of Project Cost whichever is higher. Accordingly, following EC is proposed by the Joint Committee:

S.no	Project Proponent	Environmental Compensation (InRs.)
1	M/s TDI Infrastructure Ltd, (For TDI Kingsbury Apartments), G. T. Road, Sonipat-	18,49,08,165
2	M/s TDI Infrastructure Ltd, My Floor 2, Sector-60, Sonipat-	4,62,56,792
3	M/s TDI Infrastructure Ltd, Tuscan City, Sector -58, Sonipat-	11,42,02,841
4	M/s TDI City (respondent in O.A. No. 155/2020)	22,73,85,100
5	M/s CMD Built-Tech Pvt. Ltd. (Ushay Towers), Sector -61, Kundli, Sonipat-	9,29,62,600
6	M/s Parker Estate Development Pvt. Ltd., Sector -61, Kundli, Sonipat.	4,95,68,650
7	M/s Narang Constructions & Financiers Pvt. Ltd. (Max Height), Sector -62, Kundli, Sonipat.	5,50,38,531

Sagnik Dey

Dr.Sagnik Dey,
Professor
IIT Delhi

N. K. Gupta

N. K. Gupta
Scientist 'E' & Head - UPC-I
Central Pollution Control
Board

Dr K K Garg

Dr K K Garg
Scientist 'C'
MOEFCC

Central Pollution Control Board
Parivesh Bhawan,
East Arjun Nagar, Delhi-110032

Minutes of Meeting Convened on 11.11.2021

In the matter of Hon'ble NGT Order dated 28.09.2021 (Copy enclosed) passed in the matter of OA No. 764/2018 (M.A. No. 175/2019 & M.A. No. 24/2021) titled as Kissan Udey Samiti Vs State of Haryana &Ors. and OA No. 155/2020 (I.A. No. 86/2021 & I.A. No. 121/2021) titled as Dr. (Mrs.) Manorama Sharma & Anr. Vs TDI infrastructure Limited & Ors.

- Meeting date & time** : 11th November, 2021 at 4:30 PM
- Mode of Meeting** : Video Conference
- Agenda** : To estimate Environment Compensation of Project Proponent as listed in Hon'ble NGT directions in **OA No. 764/2018 and OA No. 155/2020**
- Participants** : List is enclosed as **Annexure 1**

Background:

1. Matters are related to remedial action against violations of environmental norms inter alia by:
 - a. M/s TDI Infrastructure Ltd. (Developers of TDI Kingsburry Apartments G.T. Road, Sonipat),
 - b. M/s TDI Infrastructure Ltd., (Developers of My Floor2 housing project Sector - 60, Sonipat),
 - c. M/s TDI Infrastructure Ltd. Tuscan City, Sector - 58, Sonipat,
 - d. M/s CMD Built-Tech Pvt. Ltd. (Developers of Ushay Towers Sector - 61, Kundli, Sonipat)
 - e. M/s Parker Estate Development Pvt. Ltd., Sector - 61 Kundli, Sonipat and

- f. M/s Narang Construction & Financiers Pvt. Ltd. (Max Height Sector - 62, Kundli, Sonipat) - all parties to O.A No. 764/2018) and; TDI Infrastructure Ltd. (respondent in O.A. No. 155/2020).
2. All housing/township projects are located in Sectors 58 to 64 at Kundli, District Sonapat, Haryana and found non compliant with the environmental norms calling for remedial action.
3. The Hon'ble Tribunal sought a report from the Chief Secretary, Haryana about the status of compliance.
4. Based on the report, Hon'ble NGT imposed interim Environment Compensation and constituted committee comprising representatives of CPCB, MoEF&CC and IIT Delhi to determine compensation on polluter pays principle for the violations.
5. Major observations made by Hon'ble NGT are as follows:
 - a. "On polluter pays principle, compensation must be recovered."
 - b. "In the present case, though stay has been granted by the Hon'ble Supreme Court only in favour of M/s Parker Estate Development Pvt. Ltd., Sector - 61 Kundli, Sonipat and M/s CMD Built-Tech Pvt. Ltd. (Ushay Towers), Sector - 61, Kundli, Sonipat, compensation is not being recovered from other PPs. This needs to be done forthwith."
 - c. *"We have noted that the Committee has determined compensation which is higher than the interim compensation determined by the Tribunal earlier."*
 - d. "However, in doing so, the Committee has not *considered the principles laid down by the Hon'ble Supreme Court referred to in the earlier order of this Tribunal dated 01.10.2020 quoted in Para 4 above and also judgement of the Hon'ble Supreme Court in Goel Ganga Developers India Pvt. Ltd. v UOI*³ relating to violation of law by a housing project and judgments in *Alembic Chemicals v Rohit Prajapati*⁴, *Keystone developers v. Anil Tharthare*⁵ and *Mantri Techzone Pvt. Ltd. v. Forward Foundation and Ors.*⁶ are also required to be taken into account."
 - e. *"The compensation can be the percentage of cost of the project so as to be deterrent. The Committee may accordingly give its supplementary report through the CPCB."*
6. As per judgement of Hon'ble Supreme Court in the matter of *Goel Ganga Developers India Pvt. Ltd. v UO*, imposition of damages should be Rs 100 crores or 10 % of project cost whichever was higher. Copy of judgement is attached as Annexure 2.

7. Accordingly, it is decided that EC shall be estimated as per Judgement of Hon'ble Supreme Court in the matter of Goel Ganga Developers India Pvt. Ltd. v UOI.

In this context, meeting of the Committee on 11.11.2021 through video conference has been convened.

Proceedings:

List of participants is attached as **Annexure 1**.

Sh. N. K. Gupta, Scientist E and Head , UPC-I, CPCB welcomed all the participants and requested Sh. Vishal Gandhi, Scientist 'D' to present the matter before the Committee. Accordingly, presentation was made on background of the case as detailed above and proposed action to be taken as per Hon'ble NGT directions.

Sh. K K Garg, Sc D, MoEF& CC was of the opinion that committee should also consider the circle rate of projects for estimating Environment Compensation.

The matter was discussed at length and after the deliberations, following decisions recommendations were made:

1. HSPCB shall provide the compliance status of the projects with respect to environmental norms as listed in the directions of NGT (OA No. 764/2018 and OA No. 155/2020) on or before 30.11.2021.
2. Department of Town and Country Planning, Haryana shall provide the latest project cost of concerned Projects on or before 30.11.2021.
3. Circle rates of the projects shall also be considered for estimating Environment Compensation.
4. After receiving the said information another meeting may be convened for finalizing the revised Environment Compensation.

Meeting was ended with the vote of thanks to the Members.

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Annexure 1**List of Members attended the Meeting****Mode:** Video Conference**Date:** 11th November, 2021

Sl. No.	Name & Designation	Organization
1.	Professor Sagnik Dey, Professor	IIT Delhi, HauzKhas, New Delhi, Delhi
2.	Sh K K Garg, Scientist D, Regional Office, Chandigarh, MoEF& CC	Ministry of Environment, Forests & Climate Change, Chandigarh
3.	Sh. Bhupender Chahal Regional Officer, Sonapat	Haryana State Pollution Control Board, Region Sonapat
4.	Sh. Narender Gupta, Scientist B	Haryana State Pollution Control Board, Region Sonapat
5.	Representative, Department of Town and Country Planning	Department of Town and Country Planning, Haryana
6.	Sh. N. K. Gupta, Additional Director & Head-UPC-I	Central Pollution Control Board, Delhi
7.	Sh. Vishal Gandhi, Scientist D	Central Pollution Control Board, Delhi

Central Pollution Control Board
Parivesh Bhawan, East Arjun Nagar, Delhi-110032

Minutes of Meeting Convened on 14.02.2022

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In the matter of Hon'ble NGT Order dated 28.09.2021 (Copy enclosed) passed in the matter of OA No. 764/2018(M.A. No. 175/2019 & M.A. No. 24/2021) titled as Kissan Udey Samiti Vs State of Haryana & Ors. and OA No. 155/2020 (I.A. No. 86/2021 & I.A. No. 121/2021) titled as Dr. (Mrs.) Manorama Sharma & Anr. Vs TDI infrastructure Limited & Ors.

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Meeting date & time : 14th February, 2022 at 03.00 P.M

Mode of Meeting : Video Conference

Agenda : To Estimate Environment Compensation of Project Proponent as listed in NGT directions (OA No. 764/2018 and OA No. 155/2020)

Participants : List is enclosed as Annexure

Background:

1. Matters relate to remedial action against violations of environmental norms inter alia by:
 - a. M/s TDI Infrastructure Ltd. (Developers of TDI Kingsburry Apartments G.T. Road, Sonipat),
 - b. M/s TDI Infrastructure Ltd., (Developers of My Floor2 housing project Sector - 60, Sonipat),
 - c. M/s TDI Infrastructure Ltd. Tuscan City, Sector - 58, Sonipat,
 - d. M/s CMD Built-Tech Pvt. Ltd. (Developers of Ushay Towers Sector - 61, Kundli, Sonipat),
 - e. M/s Parker Estate Development Pvt. Ltd., Sector - 61 Kundli, Sonipat and

- f. M/s Narang Construction & Financiers Pvt. Ltd. (Max Height Sector – 62, Kundli, Sonipat) - all parties to O.A No. 764/2018) and;
 - g. TDI Infrastructure Ltd. (respondent in O.A. No. 155/2020).
2. All housing/ township projects are located in Sectors 58 to 64 at Kundli, District Sonapat, Haryana and found non compliant with the environmental norms calling for remedial action
3. The Tribunal sought a report from the Chief Secretary, Haryana about the status of compliance.
4. Based on the report, NGT imposed interim Environment Compensation and constituted committee comprising representatives of CPCB, MoEF&CC and IIT Delhi to determine compensation on polluter pays principle for the violations.
5. Major observations made by NGT are as follows:
 - a. On polluter pays principle, compensation must be recovered.
 - b. In the present case, though stay has been granted by the Hon'ble Supreme Court only in favour of M/s Parker Estate Development Pvt. Ltd., Sector – 61 Kundli, Sonipat and M/s CMD Built-Tech Pvt. Ltd. (Ushay Towers), Sector – 61, Kundli, Sonipat, compensation is not being recovered from other PPs. This needs to be done forthwith.
 - c. *We have noted that the Committee has determined compensation which is higher than the interim compensation determined by the Tribunal earlier.*
 - d. However, in doing so, the Committee has not *considered the principles laid down by the Hon'ble Supreme Court referred to in the earlier order of this Tribunal dated 01.10.2020 quoted in Para 4 above and also judgement of the Hon'ble Supreme Court in Goel Ganga Developers India Pvt. Ltd. v UOI³ relating to violation of law by a housing project and judgments in Alembic Chemicals v Rohit Prajapati⁴, Keystone developers v. Anil Tharthare⁵ and Mantri Techzone Pvt. Ltd. v. Forward Foundation and Ors.,⁶ are also required to be taken into account.*
 - e. *The compensation can be the percentage of cost of the project so as to be deterrent. The Committee may accordingly give its supplementary report through the CPCB.*
6. As per judgement of Hon'ble Supreme Court in the matter of Goel Ganga Developers India Pvt. Ltd. v UO, imposition of damages should be Rs 100 crores or 10 % of project cost whichever was higher. Copy of judgement is attached as Annexure.
7. Accordingly, it is concluded that EC shall be estimated as per Judgement of Hon'ble Supreme Court in the matter of Goel Ganga Developers India Pvt. Ltd. v UO

In this context, meeting of the Committee on 11.11.2021 through video conference has been convened.

Proceedings:

List of Participants is attached as Annexure I.

Second meeting of the Joint Committee convened on 14.02.2022 at 03.00 P.M. Sh N K Gupta, Additional Director welcomed the participants and briefed the members about the background of the case and also presented the estimated Environment Compensation as per NGT directions.

It was informed to the Committee members that as per decision made in first meeting, Department of Town and Country Planning, Haryana was requested to provide the project cost of concerned Projects. Information has been received received from Department of Town & Country Planning, Haryana. Accordingly, EC has been estimated and same has been tabulated with some remarks as follows:

S. No.	Name of the Project	Name of the Developer	Project cost (in lacs)	Remarks
1.	TDI Kingsburry Apartment.	TDI Infrastructure Ltd.	14402.28	For each of the projects, 10% of the project costs are less than Rs 100 Crore. Hence, EC may be determined as Rs 100 Crore for each of the projects under reference.
2.	TDI City		45477.02	
3.	TDI Myfloor 2 Housing Sector-60		1401.72	
4.	Tuscan City		13017.11	
5.	CMD Buildtech Ushay Tower, Sector-61	CMD Pardesi Developers	18592.52	
6.	Parker Residency, Sector-61	Parker Estates Developers Pvt. Ltd.	9913.73	
7.	Max Heights, Sector-62	Narang Construction and Financers Pvt. Ltd.	Not informed	

Communication received from the T&C Planning Department is attached as Annexure II.

It was unanimously decided by the committee that Environment Compensation of Rs 100 crores be imposed as per NGT directions for each of the projects under reference.

Meeting was ended with the vote of thanks to the Members.

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Annexure 1**List of Members attended the Meeting****Mode:** Video Conference**Date:** 11th November, 2021

Sl. No.	Name & Designation	Organization
1.	Professor Sagnik Dey, Professor	IIT Delhi, Hauz Khas, New Delhi, Delhi
2.	Sh K K Garg, Scientist D, Regional Office, Chandigarh, MoEF & CC	Ministry of Environment, Forests & Climate Change, Chandigarh
3.	Sh. Bhupender Chahal Regional Officer, Sonapat	Haryana State Pollution Control Board, Region Sonipat
4.	Sh. Narender Gupta, Scientist B	Haryana State Pollution Control Board, Region Sonipat
5.	Representative, Department of Town and Country Planning	Department of Town and Country Planning, Haryana
6.	Sh. N. K. Gupta, Additional Director & Head-UPC-I	Central Pollution Control Board, Delhi
7.	Sh. Vishal Gandhi, Scientist D	Central Pollution Control Board, Delhi

Central Pollution Control Board
Parivesh Bhawan, East Arjun Nagar, Delhi-110032

The Third meeting of the Joint Committee convened on 06.04.2022 at 03.00 P.M. Sh N K Gupta, Additional Director welcomed the participants and briefed the members about the progress made in the case. The judgment of Hon'ble Supreme Court in the matter of Goel Ganga Developers India Pvt. Ltd. v UOI referred in the directions of NGT was scrutinize. It is observed that Environment Compensation can be imposed on Project Proponent at the rate of 5 % of project for violation of Environmental norms for Sewage Treatment, Solid Waste Management and Conditions of Consent Management.

In the matter of O.A. No. 764/2018 titled; Kissan Udey Samiti Vs State of Haryana Ors, Joint Committee has submitted the report on Environment Compensation before the Hon'ble NGT based on following violations identified in report of Haryana SPCB.:

- a. Non-complying with respect to provisions of Solid Waste Management Rules, 2016 in all project proponent;
- b. Only 01 housing society has valid Consent to operate (CTO) from Haryana SPCB;
- c. STPs of 04 housing societies were not comply with specified norms.

Further, in the matter of OA No. 155/2020 (I.A. No. 86/2021 & I.A. No. 121/2021) titled; Dr. (Mrs.) Manorama Sharma & Anr. Vs TDI infrastructure Limited & Ors, Joint Committee identified the violations of Consent Management and Environment Clearance.

Based on directions of Hon'ble NGT, Judgement of Hon'ble Supreme Court and violations identified by Committee, Environment Compensation (EC) estimated by Joint Committee in 2020 and EC estimated at 5 % of Project Cost is summarized as follows:

S.no	Project Proponent	Environmental Compensation Estimated by Committee in 2020 (in Rs)	Project cost (in lacs)	EC estimated at 5 % of project cost (in Crores)
1	M/s TDI Infrastructure Ltd, (For TDI Kingsbury Apartments), G. T. Road, Sonipat-	18,49,08,165	14402.28	7.20114
2	M/s TDI Infrastructure Ltd,	4,62,56,792	1401.72	0.70086

S.no	Project Proponent	Environmental Compensation Estimated by Committee in 2020 (in Rs)	Project cost (in lacs)	EC estimated at 5 % of project cost (in Crores)
	My Floor 2, Sector-60, Sonipat-			
3	M/s TDI Infrastructure Ltd, Tuscan City, Sector - 58, Sonipat-	11,42,02,841	13017.11	6.508555
4	M/s TDI City (respondent in O.A. No. 155/2020)	Not assessed Committee	45477.02	22.73851
5	M/s CMD Built-Tech Pvt. Ltd. (Ushay Towers), Sector -61, Kundli, Sonipat-	3,65,72,745	18592.52	9.29626
6	M/s Parker Estate Development Pvt. Ltd., Sector -61, Kundli, Sonipat.	4,70,88,735	9913.73	4.956865
7**	M/s Narang Constructions & Financiers Pvt. Ltd. (Max Height), Sector -62, Kundli, Sonipat.	5,50,38,531	Not Provided	
Note: In the matter of M/s CMD Built-Tech Pvt. Ltd. (Ushay Towers), Sector -61, Kundli, Sonipat- and M/s Parker Estate Development Pvt. Ltd., Sector -61, Kundli, Sonipat stay has been granted by Hon'ble Supreme Court.				

** In this case total project cost was not available for the committee members therefore, compensation value calculated on the basis of the environmental compensation estimated in the earlier report submitted by the committee

Based on above calculation, it is decided that Environment Compensation (EC) shall be levied on project proponent as estimated by Joint Committee in 2020 or estimated at 5 % of Project Cost whichever is higher. Accordingly, following EC is proposed.

S.no	Project Proponent	Environmental Compensation (IN RS)
1	M/s TDI Infrastructure Ltd, (For TDI Kingsbury Apartments), G. T. Road, Sonipat-	18,49,08,165
2	M/s TDI Infrastructure Ltd, My Floor 2, Sector-60, Sonipat-	4,62,56,792

S.no	Project Proponent	Environmental Compensation (IN RS)
3	M/s TDI Infrastructure Ltd, Tuscan City, Sector -58, Sonipat-	11,42,02,841
4	M/s TDI City (respondent in O.A. No. 155/2020	22,73,85,100
5	<i>M/s CMD Built-Tech Pvt. Ltd. (Ushay Towers), Sector -61, Kundli, Sonipat-</i>	9,29,62,600
6	<i>M/s Parker Estate Development Pvt. Ltd., Sector -61, Kundli, Sonipat.</i>	4,95,68,650
7	M/s Narang Constructions & Financiers Pvt. Ltd. (Max Height), Sector -62, Kundli, Sonipat.	5,50,38,531

Meeting was ended with the vote of thanks to the Members.

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Annexure 1**List of Members attended the Meeting****Mode:** Video Conference

	Name & Designation	Organization
1.	Professor Sagnik Dey, Professor	IIT Delhi, Hauz Khas, New Delhi, Delhi
2.	Sh K K Garg, Scientist D, Regional Office, Chandigarh, MoEF & CC	Ministry of Environment, Forests & Climate Change, Chandigarh
3.	Sh. J P Singh, SEE	Haryana State Pollution Control Board
4.	Sh. N. K. Gupta, Additional Director & Head-UPC-I	Central Pollution Control Board, Delhi
5.	Sh. Vishal Gandhi, Scientist D	Central Pollution Control Board, Delhi

GOEL GANGA DEVELOPERS (INDIA) (P) LTD.
v. UNION OF INDIA

257

(2018) 18 Supreme Court Cases 257

a (BEFORE MADAN B. LOKUR AND DEEPAK GUPTA, JJ.)
GOEL GANGA DEVELOPERS INDIA PRIVATE
LIMITED .. Appellant;

Versus

b UNION OF INDIA THROUGH SECRETARY MINISTRY OF
ENVIRONMENT AND FORESTS AND OTHERS .. Respondents.
Civil Appeals No. 10854 of 2016 with Nos. 10901 of
2016 and 5157-58 of 2018[†], decided on August 10, 2018

c **A. Environment Law — Environmental Clearance/NoC/Environment
Impact Assessment (EIA) — Specific Clearances — Development Projects —
Environment Impact Assessment (EIA) Notification, 2006 — Construction
in violation of the environmental clearance (EC), as in the present case, in
violation of the clearance granted under Noti. dt. 4-4-2011 — Establishment
and Effect of — “Built-up area” under Notis. dt. 4-4-2011 and 14-9-2006 —
Concept of floor space index (FSI)/floor area ratio (FAR) — Non-relevance of,
for computation of “built-up area” for which EC is granted**

d — **Imposition of damages of Rs 100 crores or 10% of project cost,
whichever was higher, for violation of environmental clearance in addition
to Rs 5 crore damages imposed by NGT, instead of directing demolition —
Detailed coercive directions issued to ensure deposit of these damages within
six months**

e — Held, the concept of FSI or non-FSI may be relevant for the purposes
of building plans under municipal laws and regulations but it has no linkage
or connectivity with the grant of EC and both will have an equally deleterious
effect on the environment — When EC is granted for a particular construction
it includes both FSI and non-FSI areas — Held, the built-up area under the
Noti. dt. 14-9-2006 means all constructed area which is not open to the sky and
the built-up area under the Noti. dt. 4-4-2011 means all covered area including
basement and service areas

f — EC dt. 4-4-2008 was granted to the project proponent for construction
of built-up area 57,658.42 sq m, whereas the total construction raised by it was
1,00,002.25 sq m — Rejecting the contention of project proponent that while
calculating the built-up area the constructions mentioned in Rr. 15.4.1.1(a), (b)
and (c), 17.7.3 and 15.4.2 of the Pune Municipal Corporation Development
Control Rules, 1982 were to be excluded, held, the construction raised
g by the project proponent was in violation of the environmental clearance
granted to it — However, considering that the project proponent had already
taken money and a large number of flats and shops had already been

h [†] Arising from the Judgment and Order in *Tanaji Balasaheb Gambhire v. Union of India*, 2016 SCC
OnLine NGT 4213 [National Green Tribunal, (Western Zone) Pune Bench, Application No. 184
of 2015 (WZ), dt. 27-9-2016] and *Tanaji Balasaheb Gambhire v. Union of India* [National Green
Tribunal, (Western Zone) Pune Ben *v* Application No. 35 of 2016, dt. 8-1-2018]

occupied and persons belonging to the middle class had invested their life's earnings, demolition not ordered/directed — However, inter alia, damages of Rs 100 crores or 10% of the project cost, whichever was higher, in addition to Rs 5 crores as levied by NGT, imposed on the project proponent — Words and Phrases — “Built-up area” — Pune Municipal Corporation Development Control Rules, 1982, Rr. 15.4.1.1(a), (b) & (c), 17.7.3 and 15.4.2 (Paras 14, 17, 53, 58.2, 66.1, 66.2 and 66.9)

B. Environment Law — National Green Tribunal Act, 2010 — S. 19(4)(f) — Review petition — Who can hear and where — Held, the powers of review which NGT exercises are akin to those of a civil court — In terms of Or. 47 R. 5 CPC, a review petition should normally be heard by the same Bench which passed the original order

— Further, this normal rule should not be disturbed unless it is virtually impossible for the original Bench to hear the matter or the members of the Bench themselves opt not to hear the matter — Further, under sub-rule (2) of R. 22 of 2011 Rules the matter should ordinarily be heard at the same place of sitting where it was originally decided, however, this is not a mandatory direction — National Green Tribunal (Practices and Procedure) Rules, 2011 — Rr. 22(2) and 22(3) — Civil Procedure Code, 1908 — Or. 47 R. 5 — Practice and Procedure — Review (Paras 36, 38 and 40)

C. Environment Law — National Green Tribunal Act, 2010 — S. 19(4)(f) — Exercise of power of review — Impermissibility of, when appeal already pending

— Statutory appeal was pending in the Supreme Court against the original order when the respondent's review application, inter alia, praying for demolition of the illegal structures and enhancement of compensation, was taken up for hearing by NGT — In the present case, held, project proponent/appellant had not only challenged original order of NGT on the ground that he had not violated EC but also on the ground that the damages awarded were highly excessive — Therefore, the Bench hearing the review application erred in holding that review application was maintainable — Civil Procedure Code, 1908 — Or. 47 R. 1(2) — Practice and Procedure — Review (Paras 7, 45 and 47)

D. Environment Law — Polluter Pays Principle and Remedial/Compensatory/Punitive Measures — Remedial action/Reclamation/Rehabilitation measures/Compensation/Disgorgement of gains of wrongdoer — Damages for carrying out construction in violation of environmental clearance (EC) — Quantification of — Carbon footprint as basis

— Rejecting the contention that damages should be assessed on the basis of “carbon footprint”, held, the courts cannot introduce a new concept of assessing and levying damages unless expert evidence in this behalf is led or there are some well-established principles — However, in a case where expert evidence is led or on the basis of empirical data it is established that by applying the principles of carbon footprint damages can be assessed, court may rely upon

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a such data — Evidence Act, 1872 — S. 45 — Words and Phrases — “Carbon footprint” (Paras 59 to 63)

E. Environment Law — Environment (Protection) Rules, 1986 — Rr. 3 to 5 — EIA Notifications issued under — Cannot be varied/abrogated by officials of MoEF — Environment (Protection) Act, 1986, S. 4

b **F. Public Accountability, Vigilance and Prevention of Corruption — Corruption/Abuse of Power — Environmental Clearance/NoC — Improper grant of — Fine imposed upon the PMC and direction given by NGT to PMC to take appropriate action against the erring officials, and directions to enquire into conduct of other officials concerned, also upheld**

c The project proponent i.e. M/s Goel Ganga Developers India Pvt. Ltd., purchased 79,100 sq m or 7.91 ha of land comprised in six Survey Nos. 35, 36, 37, 38, 39 and 40 in Vadgaon, Pune. These survey numbers were amalgamated in accordance with the rules and the plot became one plot of 79,100 sq m.

d The project proponent applied for environmental clearance (EC) for the project and in the proposal dated 27-6-2007, he had shown that he would be erecting/constructing 12 buildings having 552 flats, 50 shops and 34 offices. The 12 buildings were to have stilts with basement and 11 floors. The total built-up area was indicated as 57,658.42 sq m. EC was granted to the project proponent on 4-4-2008.

The original applicant filed an application before the National Green Tribunal (“NGT”, for short) claiming that the project proponent i.e. M/s Goel Ganga Developers India Pvt. Ltd., had raised construction in violation of the environmental clearance (“EC”, for short) granted for the project and also in violation of the various municipal laws.

e The case of the project proponent was that the term “built-up area” is synonymous with “floor space index” or FSI and that the constructed area, which is exempted from FSI area, or is a non-FSI area, is not a part of the “built-up area”. The project proponent contended that while calculating the built-up area, the constructions mentioned in Rules 15.4.1.1(a), (b) and (c) and Rule 17.7.3 of the Pune Municipal Corporation Development Control Rules, 1982 (“DCR”, for short), in addition to the areas specifically exempted under Rule 15.4.2 are to be excluded. It was contended that if the built-up area is calculated in accordance with DCR then the project proponent has till date not constructed the built-up area of 57,658.42 sq m, which it was permitted to construct under the EC granted to it on 4-4-2008. The stand of the Union of India and the original applicant was that built-up area means all area which is covered regardless of the area being FSI or non-FSI in terms of the EIA Notification of 2006.

g The issues involved in this appeal were:

1. Whether the project proponent i.e. M/s Goel Ganga Developers India Pvt. Ltd., had raised construction in violation of the environmental clearance.

2. Whether NGT could have entertained a review application/reviewed its order dated 27-9-2016, when an appeal against the same was already pending before the Supreme Court?

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Held :

Under the notification of 2006, all constructed area, which is covered and not open to the sky has to be treated as “built-up area”. There is no exception for non-FSI area. (Para 16)

Indeed, the concept of FSI or non-FSI has no concern or connection with grant of EC. The same may be relevant for the purposes of building plans under municipal laws and regulations but it has no linkage or connectivity with the grant of EC. When EC is to be granted, the authority which has to grant such clearance is only required to ensure that the project does not violate environmental norms. While projects and activities, as mentioned in the notification, may be allowed to go on, the authority while granting permission should ensure that the adverse impact on the environment is kept to the minimum. Therefore, the authority granting EC may lay down conditions which the project proponent must comply with. While doing so, such authority is not concerned whether the area to be constructed is FSI area or non-FSI area. Both will have an equally deleterious effect on the environment. (Para 17)

Notification dated 4-4-2011

It is not at all necessary to decide whether the Notification dated 4-4-2011 issued by the Ministry of Environment and Forests is clarificatory or is in substitution of the original notification of 2006. There is no ambiguity with regard to the definition of “built-up area” even under the notification of 2006 and it covers all constructed area not open to the sky. The notification of 2011 only provides that the built-up area or covered area shall be the area of all floors put together including basement(s) and other service areas. (Para 19)

Clarification dated 7-7-2017

The Notification dated 14-9-2006 was issued by the Central Government and published in the gazette after inviting objections from the public. The first clarification with regard to this notification was issued on 4-4-2011. These two decisions of the Central Government which were notified as per the provisions of law could not have been set at naught by the Joint Director even if it was issued with the approval of a higher authority. Since such decision has not been notified in the gazette, the statutory Notification dated 14-9-2006 and its subsequent clarification dated 4-4-2011 could not have been virtually set aside by the office memorandum dated 7-7-2017 issued by the Joint Director, Ministry of Environment, Forests and Climate Change. (Para 22)

Common Cause v. Union of India, (2017) 9 SCC 499, relied on

Environmental clearance (EC) for expansion of the project in question granted to it by the State Level Environment Impact Assessment Authority (SEIAA) on 20-11-2017

SEIAA has laid down general conditions for pre-construction phase and the first condition itself clearly shows that the non-FSI area constructed by the project proponent under first EC of 4-4-2008 has not been taken into consideration. (Para 27)

In case the total construction raised by the project proponent is taken as 1,00,002.25 sq m and if the area of the proposed construction is added then the project will fall in B-1 category and, therefore, SEIAA had no authority to grant EC by treating the project as falling under Category B-2. Furthermore, the EC

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- a dated 20-11-2017 is also illegal as the same has been granted on the presumption of the order dated 31-5-2016 passed by the Principal Secretary, Environment Department, State of Maharashtra holding that the construction of 18 buildings instead of 12 buildings is permissible. (Para 28)

Allegations made by the original applicant against various officials

- b The law is well settled that no person can be condemned unheard. It would, therefore, not be fair to deal with allegations made against individuals who are not parties to the petition and who have had no chance to reply to the allegations levelled against them. (Para 30)

However, as far as their official capacity is concerned, NGT was fully justified in coming to the conclusion that certain officials of PMC were going out of their way to help the project proponent and therefore, directions given by NGT in its order dated 27-9-2016 in this regard, upheld. (Para 31)

- c Prima facie, the Principal Secretary, Environment Department, Government of Maharashtra has not acted in a fair and transparent manner. The allegations made by the original applicant cannot be lightly brushed aside. His actions need to be looked into and, therefore, direction given by NGT directing the Chief Secretary to the State of Maharashtra to take notice of the conduct of the officers concerned, upheld. (Paras 32 and 66.8)

- d *Challenge to the order dt. 8-1-2018 passed in Tanaji Balasaheb Gambhire, 2018 SCC OnLine NGT 302*

- e Section 19(4)(f) of the National Green Tribunal Act, 2010 provides that the Tribunal shall have the same powers as are vested in civil courts while trying a suit in respect of matters relating to review of its decisions. Therefore, the power of review vested with NGT is akin to the power vested with the civil court. As such, the principles which govern the exercise of review jurisdiction before a civil court will apply with equal force to NGT. (Para 34)

- f A review petition should normally be heard by the same Bench which originally decided the matter. A review petition should not be heard by any other Bench unless it is impossible or totally impracticable for the earlier Bench to hear the matter. In a review petition, like in the present case, where the review petitioner contends that certain arguments raised by him have not been considered then it is only the Judges who originally heard the matter who can decide whether such point was urged or not. (Para 38)

- g Any judicial authority including NGT which is presided over by a judicial member who may be a retired Judge of the Supreme Court or of a High Court is expected to deal with all contentions raised before it. There is a presumption that judicial authorities must have dealt with all the contentions raised before them. (Para 39)

- h According to sub-rule (2), the matter should ordinarily be heard at the same place of sitting where it was originally decided. However, this is not a mandatory direction because sub-rule (2) itself contemplates that the matter shall "ordinarily" be heard at the same place. In tribunals like NGT where members may be transferred from one Bench to another or may be attending a Bench on circuit then problems can sometimes arise. These issues can be easily resolved by resorting to

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the latest technology and if necessary, the arguments in such cases can be heard by videoconferencing. (Para 40)

Northern India Caterers (India) Ltd. v. Lt. Governor of Delhi, (1980) 2 SCC 167 : 1980 SCC (Tax) 222, referred to

In terms of Order 47 Rule 5 CPC, a review should normally be heard by the same Bench which passed the original order. (Para 43)

Malthesh Gudda Pooja v. State of Karnataka, (2011) 15 SCC 330 : (2014) 2 SCC (Civ) 473, relied on

Malthesh Gudda Pooja v. State of Karnataka, 2009 SCC OnLine Kar 919; *Malthesh Gudda Pooja v. State of Karnataka*, 2009 SCC OnLine Kar 918, referred to

As far as the facts of this case are concerned, the original applicant could have raised all issues which he raised in the review application even by filing a counter-affidavit in the appeal filed by the project proponent or by challenging the original order in the Supreme Court as he has done now. In this context, once the Supreme Court was seized of the matter and all issues were being urged, NGT should not have proceeded to hear the review application. (Para 45)

The project proponent had not only challenged the original order of NGT on the ground that he had not violated the EC but also on the ground that the damages awarded were highly excessive. Therefore, the question that what should be the extent of damages was specifically before the Supreme Court. (Para 47)

Tanaji Balasaheb Gambhire v. Union of India, 2016 SCC OnLine NGT 4217; *Tanaji Gambhire v. Union of India*, 2017 SCC OnLine NGT 1954, referred to

On 23-5-2016, the project proponent filed reply to the affidavit dated 18-5-2016 filed by the original applicant in which they raised objections that such affidavit was not filed on 18-5-2016 and the copy of the same was handed over to them on 20-5-2016 and the original applicant had no permission to file such an affidavit. All these disputed issues as to whether such an affidavit was filed with the permission of the Court or it was referred to in the first hearing or in the second hearing could only be decided by the Bench which had heard the matter. (Para 51)

Tanaji Balasaheb Gambhire v. Union of India, 2016 SCC OnLine NGT 4201; *Tanaji Balasaheb Gambhire v. Union of India*, 2016 SCC OnLine NGT 4204; *Tanaji Balasaheb Gambhire v. Union of India*, 2016 SCC OnLine NGT 4205; *Tanaji Balasaheb Gambhire v. Union of India*, 2016 SCC OnLine NGT 4206; *Tanaji Balasaheb Gambhire v. Union of India*, 2016 SCC OnLine NGT 4219; *Tanaji Balasaheb Gambhire v. Union of India*, 2016 SCC OnLine NGT 4203; *Tanaji Balasaheb Gambhire v. Union of India*, 2016 SCC OnLine NGT 4207; *Tanaji Balasaheb Gambhire v. Union of India*, 2016 SCC OnLine NGT 4208; *Tanaji Balasaheb Gambhire v. Union of India*, 2015 SCC OnLine NGT 838; *Tanaji Balasaheb Gambhire v. Union of India*, 2016 SCC OnLine NGT 1330; *Tanaji Balasaheb Gambhire v. Union of India*, 2016 SCC OnLine NGT 4209; *Tanaji Balasaheb Gambhire v. Union of India*, 2016 SCC OnLine NGT 4215; *Tanaji Balasaheb Gambhire v. Union of India*, 2016 SCC OnLine NGT 4210; *Tanaji Balasaheb Gambhire v. Union of India*, 2016 SCC OnLine NGT 4211; *Tanaji Balasaheb Gambhire v. Union of India*, 2016 SCC OnLine NGT 4202; *Tanaji Balasaheb Gambhire v. Union of India*, 2016 SCC OnLine NGT 4212; *Tanaji Balasaheb Gambhire v. Union of India*, 2016 SCC OnLine NGT 4214, referred to

Is demolition the only answer?

Now there are 807 flats and 117 shops which are either constructed or under construction. Keeping in view the interest of these third parties who were not parties before NGT, in the peculiar facts and circumstances of the case, demolition is not the answer. This would put innocent people at loss. (Para 53)

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a The project proponent cannot be permitted to build nothing more than 807 flats, 117 shops/offices, cultural centre and clubhouse. (Para 54)

b The project proponent who has violated law with impunity cannot be allowed to go scot-free. This Court has in a number of cases awarded 5% of the project cost as damages. This is the general law. However, in the present case damages should be higher keeping in view the totally intransigent and unapologetic behaviour of the project proponent. He has manoeuvred and manipulated officials and authorities. Instead of 12 buildings, he has constructed 18; from 552 flats the number of flats has gone up to 807 and now two more buildings having 454 flats are proposed. The project proponent contends that he has made smaller flats and, therefore, the number of flats has increased. He could not have done this without getting fresh EC. With the increase in the number of flats the number of persons, residing therein is bound to increase. This will impact the amount of water requirement, the amount of parking space, the amount of open area, etc. Therefore, in the present case, we are clearly of the view that the project proponent should be and is directed to pay damages of Rs 100 crores or 10% of the project cost whichever is more. We also make it clear that while calculating the project cost the entire cost of the land based on the circle rate of the area in the year 2014 shall be added. (Para 64)

c The base year has been fixed as 2014 since the original EC expired in 2014 and most of the illegal construction took place after 2014. In addition thereto, if the project proponent has taken advantage of transfer of development rights (for short "TDR") with reference to this project or is entitled to any TDR, the benefit of the same shall be forfeited and if he has already taken the benefit then the same shall either be recovered from him or be adjusted against its future projects. The project proponent shall also pay a sum of Rs 5 crores as damages, in addition to the above for contravening mandatory provisions of environmental laws. (Paras 64 and 66.9)

d The project proponent is granted six months' time to deposit the amount of damages imposed above in the Registry of the Supreme Court. In case the project proponent does not deposit the amount within six months then all the assets of the project proponent as well as its Directors shall be attached and the amount of damages shall be recovered by sale of those assets. It is further directed that in case this amount is not deposited within the period of six months then the licence/registration/permission granted to the project proponent to develop any "real estate project" within the meaning of the Real Estate (Regulation and Development) Act, 2016 shall be cancelled and the project proponent and its Directors shall not be granted permission to develop any "real estate project" under the Real Estate (Regulation and Development) Act, 2016 without permission of the Court. (Para 66.13)

e ***Whether the original applicant is entitled to special damages?***

This litigation is obviously not a public interest litigation. Therefore, the claim of the original applicant to award him special damages cannot be accepted. (Para 57)

Tanaji Balasaheb Gambhire v. Union of India, 2016 SCC OnLine NGT 4213, partly reversed
Tanaji Balasaheb Gambhire v. Union of India, 2018 SCC OnLine NGT 302, reversed

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VN-D/61010/S

Advocates who appeared in this case :

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Chronological list of cases cited

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	25. 2009 SCC OnLine Kar 918, <i>Malthesh Gudda Pooja v. State of Karnataka</i>	279b-c
b	26. (1980) 2 SCC 167 : 1980 SCC (Tax) 222, <i>Northern India Caterers (India) Ltd. v. Lt. Governor of Delhi</i>	278g-h

The Judgment of the Court was delivered by

DEEPAK GUPTA, J.— Applications for intervention/impleadment are allowed. Application for amendment of grounds of appeal in Civil Appeal No. 10854 of 2016 is allowed.

c 2. These matters are being decided by one judgment since they all arise out of one original application filed by Shri Tanaji Balasaheb Gambhire (hereinafter referred to as “the original applicant”) before the National Green Tribunal (“NGT”, for short) being Application No. 184 of 2015.

d 3. The original applicant filed an application before NGT claiming that the project proponent i.e. M/s Goel Ganga Developers India Pvt. Ltd., had raised construction in violation of the environmental clearance (“EC”, for short) granted for the project and also in violation of the various municipal laws. It was prayed that the illegal structures be demolished; the State Level Environment Impact Assessment Authority (SEIAA) and the Maharashtra State Pollution Control Board be directed to initiate appropriate action against the project proponent for violation of the Environment Impact Assessment (EIA) Notification, 2006; the Union of India be directed to take action against SEIAA; and lastly, it was prayed that the project proponent be directed to pay/deposit a heavy amount of compensation in the environment relief fund. NGT vide its order dated 27-9-2016¹ allowed the application in the following terms: (*Tanaji Balasaheb case*¹, SCC OnLine NGT para 54)

f “54. For the aforesaid reasons, the applicant succeeds in his legal pursuit to challenge the non-compliance of EC conditions by Respondent 9 and obtain certain directions. Hence the Application is allowed and we issue following directions:

g 1. Respondent 9-PP shall pay environmental compensation cost of Rs 100 crores or 5% (five per cent) of the total cost of project to be assessed by SEAC whichever is less for restoration and restitution of environment damages and degradation caused by the project proponent by carrying out the construction activities without the necessary prior environmental clearance within a period of one month. In addition

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1 *Tanaji Balasaheb Gambhire v. Union of India*, 2016 SCC OnLine NGT 4213

to this, it shall also pay a sum of Rs 5 crores for contravening mandatory provision of several Environmental Laws in carrying out the construction activities in addition to and exceeding limit of the available environment clearance and for not obtaining the consent from the Board.

2. In view of our finding that there has been manifest, deliberate or otherwise suppression of facts of illegality in the project activity of Respondent 9-PP by the officer of PMC, we impose fine of Rs 5 lakhs upon the PMC and direct Commissioner PMC to take appropriate action against the erring officers. The amount of Rs 5 lakhs shall be paid within one month.

3. We direct the Chief Secretary, State of Maharashtra and the competent authority to take notice of the conduct of the officers concerned who have misled the Department of Environment in the matter relating to interpretation of FSI and BUA in terms of which order dated 31-5-2016 has been issued in particular the Principal Secretary, Department of Environment who has authored the order dated 31-5-2016.

4. PMC, DoE and SEIAA are directed to pay cost of Rs 1 lakh each to the applicant within 4 weeks.”

4. Aggrieved by the aforesaid order of NGT, the project proponent filed Civil Appeal No. 10854 of 2016. Pune Municipal Corporation (“PMC”, for short) also challenged the said order insofar as it adversely affects PMC by filing Civil Appeal No. 10901 of 2016.

5. Review application being Application No. 35 of 2016 was filed by the original applicant before NGT. This application was partly allowed on 8-1-2018² and Direction 1 in the original order dated 27-9-2016¹ was modified and substituted as under: (*Tanaji Balasaheb case*¹, SCC OnLine NGT para 54)

“54. ... ‘1. Respondent 9-PP shall pay environmental compensation cost of Rs 100 crores or 5% (five per cent) of the total cost of project to be assessed by SEAC, whichever is less, for restoration and restitution of environment damage and degradation caused by the project proponent by carrying out the construction activities without the necessary prior environmental clearance within a period of one month. In addition to this, it shall also pay a sum of Rs 5 crores for contravening mandatory provision of several environment laws in carrying out the construction activities in addition to and exceeding limit of the available environment clearance and for not obtaining the consent from the Board.’ ”

6. Thereafter, the project proponent filed IA No. 8000 of 2018 for permission to amend its appeal permitting it to challenge the order passed in review application dated 8-1-2018², which we have allowed.

² *Tanaji Balasaheb Gambhire v. Union of India*, 2018 SCC OnLine NGT 302

¹ *Tanaji Balasaheb Gambhire v. Union of India*, 2016 SCC OnLine NGT 4213

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7. Appeal being Diary No. 3911 of 2018 was filed by the original applicant challenging the original order dated 27-9-2016¹ as well as the order dated 8-1-2018² passed in review application praying that demolition of the illegal structures be ordered and the compensation be enhanced to Rs 500 crores.

The factual matrix

8. The facts briefly stated are that the project proponent purchased 79,100 sq m or 7.91 ha of land comprised in six Survey Nos. 35, 36, 37, 38, 39 and 40 in Vadgaon, Pune. These survey numbers were amalgamated in accordance with the rules and the plot became one plot of 79,100 sq m. From the documents placed on record, it is apparent that as per the Development Control Plan for the city of Pune, 3 roads of the width of 36 m, 30 m and 18 m bisected this plot into two which for the sake of convenience were referred to as Plot No. 1 and Plot No. 2. As per the Development Plan, there are certain statutory reservations in addition to the roads and some land has to be left out or reserved for schools, cultural centres, open areas, etc. The remaining area is referred to as the “balance plot area” which in this case works out to 46,993.79 sq m. Out of this “balance plot area” 15% is to be reserved for amenity space and another 10% area is to be compulsorily left out as open space leaving “net plot area” of 41,455.21 sq m. Prima facie these calculations do not appear to be correct. However, this will not impact the merits of the case. Be that as it may, the undisputed fact is that FSI has to be calculated on the “net plot area”. We may, at this stage, point out that the aforesaid figures are based on the written submissions submitted on behalf of the Union of India by the learned Additional Solicitor General and these figures have not been disputed before us.

9. On 12-3-2007, the project proponent applied for sanction of layout and building proposal plan on an area of 15,141.70 sq m, originally depicted as Plot No. 3 and the sanctioned FSI was 15,313.16 sq m. Thereafter, on 5-9-2007, revised layout plan was submitted for an area measuring 28,233.23 sq m and the sanctioned FSI was 39,526.54 sq m. The project proponent applied for EC for the project and in the proposal dated 27-6-2007, he had shown that he would be erecting/constructing 12 buildings having 552 flats, 50 shops and 34 offices. The 12 buildings were to have stilts with basement and 11 floors. The total built-up area was indicated as 57,658.42 sq m. The EC was granted to the project proponent on 4-4-2008. Paras 2 and 3 of the communication granting EC read as under:

“2. The project proponent is proposing for construction of group housing project at Sl. Nos. 35 to 40, Village Vadgaon Budruk, Singhad Road, Pune, Maharashtra at a cost of Rs 10,737.14 lakhs. The project involves construction of 12 buildings with stilt, basement plus 11 floors for 552 flats, 50 shops and 34 offices. The total plot area is 79,100.00 sq m. Total built-up area as indicated is 57,658.42 sq m. Total water requirement will be 745 KLD and 400 KLD of waste water will be generated from

¹ *Tanaji Balasaheb Gambhire v. Union of India*, 2016 SCC OnLine NGT 4213
² *Tanaji Balasaheb Gambhire v. Union of India*, 2018 SCC OnLine NGT 302

the buildings which will be treated in sewage treatment plant. The treated waste water will be used for landscaping, DG set cooling and horticulture purpose. The solid waste generated from the buildings will be 1500 kg/day and disposed as per the MSW Rules, 2000. The parking space is proposed for parking of 1072 cars.

3. EAC after due consideration of the relevant documents submitted by the project proponent and additional clarifications furnished in response to its observations have recommended the grant of environmental clearance for the project mentioned above subject to compliance with EMP and other stipulated conditions. Accordingly, the Ministry hereby accords necessary environmental clearance for the project under Category 8(a) of the EIA Notification, 2006 subject to the strict compliance with the specific and general conditions mentioned below:”

10. EC was granted, subject to certain conditions. We may refer to certain relevant conditions which read as under:

“Part A—Specific conditions

I. Construction phase

* * *

v. Permission to draw and use groundwater for construction work shall be obtained from competent authority prior to construction/operation of the project.

* * *

5. In the case of any change(s) in the scope of the project, the project would require a fresh appraisal by this Ministry.”

Concept of “built-up area” under the Notification dated 14-9-2006

11. It is not disputed that EC was granted for built-up area of 57,658.42 sq m. The main dispute is with regard to the interpretation of the term “built-up area”. The case of the project proponent is that the term “built-up area” is synonymous with “floor space index” or FSI and that the constructed area, which is exempted from FSI area or is a non-FSI area is not a part of the “built-up area”. On the other hand, the submission made by the original applicant as well as by the learned Additional Solicitor General appearing for the Ministry of Environment, Forests and Climate Change is that the built-up area will cover all constructed area and the concept of FSI area or non-FSI area is totally alien to environmental laws.

12. The learned Senior Counsel for the project proponent has drawn our attention to the Development Control Rules for Pune Municipal Corporation, Pune, 1982 (“DCR”, for short). Under DCR, no building can be constructed without grant of building permission/commencement certificate by Pune Municipal Corporation. There is a detailed procedure for obtaining the building permission/commencement certificate wherein layout plans, building plans, etc. have to be submitted. The main emphasis was on Rule 2.13 of DCR, which defines “built-up area” as follows:

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a “2.13. **Built-up area.**—Area covered immediately above the plinth level by the building or external area of any upper floor whichever is more excepting the areas covered by Rule 15.4.2.”

Rule 2.39 defines “floor area ratio” as follows:

b “2.39. **Floor area ratio (FAR).**—The quotient obtained by dividing the total covered area (plinth area) on all floors excluding exempted areas as given in Rule 15.4.2 by the area of the plot.

$$\text{FAR} = \frac{\text{Total converted area on all floors}}{\text{Plot area}}$$

Note.—The term FAR is synonymous with floor space index (FSI).”

13. Strong reliance is placed on Rule 15.4.2, which reads as under:

c “15.4.2. In addition to Rules 15.4.1.1(a), (b) and (c) and 17.7.3, the following shall not be included in covered area or FAR and built-up area calculations:

(a) A basement or cellar space under a building constructed on stilts and used as parking space, and air conditioning plant rooms used as accessory to the principal use;

d (b) Electric cabin or substation, watchman’s booth of maximum size of 1.6 sq m with minimum width or diameter of 1.2 m, pump house, garage shaft, space required for location of fire hydrants, electric fittings and water tanks;

(c) Projection as specifically exempted under these Rules;

e (d) Staircase room and/or lift rooms above the topmost storey, architectural features, chimneys, elevated tanks of dimensions as permissible under these Rules;

Note.—The shaft provided for lift shall be taken for covered area calculations only on one floor up to the minimum required as per these Rules;

f (e) One room admeasuring 2 m × 3 m on the ground floor of cooperative housing societies or apartment owners/cooperative societies buildings and other multi-storeyed buildings as office-cum-letter box room;

(f) Rockery, well and well structures, plant, nursery, water pool, swimming pool, (if uncovered) platform round a tree, tank fountain, bench, chabutra with open top and unenclosed sides by walls, ramps, compound wall, gate, slide, swing, overhead water tank on top buildings;

g (g) (*Deleted*);

(h) Sanitary block subject to provision of Rule 15.4.1(a) and built-up area not more than 4 sq m.”

h 14. The contention of the learned Senior Counsel appearing for the project proponent is that while calculating the built-up area the constructions mentioned in Rules 15.4.1.1(a), (b) and (c) and Rule 17.7.3 in addition to the



areas specifically exempted under Rule 15.4.2 are to be excluded. He submits that if the built-up area is calculated in accordance with DCR then the project proponent has till date not constructed the built-up area of 57,658.42 sq m, which it was permitted to construct under the EC granted to it on 4-4-2008.

15. On the other hand, the stand of the Union of India and the original applicant is that built-up area means all area which is covered regardless of the area being FSI or non-FSI in terms of the EIA Notification of 2006. The building/construction projects are covered by Item 8 of the schedule to the EIA Notification dated 14-9-2006. Construction of a project which is covered under the schedule can be commenced only after obtaining EC in terms of Para 2 of the said notification. The schedule itself categorises the various projects and activities into two categories being “Category A” and “Category B”. “Category A” projects require clearance by the Central Government in the Ministry of Environment, Forests and Climate Change on the recommendation of the Expert Appraisal Committee to be constituted by the Central Government whereas those activities which form “Category B” of the schedule including modernisation and expansion of such projects require EC from the State/Union Territory Environment Impact Assessment Authority (SEIAA) and such authority is required to base its decision on the recommendation of the State/Union Territory Level Expert Appraisal Committee (SEAC). There is further division of “Category B” into B-1 and B-2. B-1 projects require Environmental Impact Assessment (EIA) Report to be prepared and scoping to be done whereas B-2 projects do not require any Environmental Impact Assessment Report. Item 8 of the schedule, with which we are concerned, reads as follows:

“(1)”	(2)	(3)	(4)	(5)
8		Building/Construction projects/Area development projects and townships		
(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)
(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 B-1.”

16. From a bare perusal of the two hashtags (#) in Columns 4 and 5 of Item 8(a), it is apparent that what is shown under Column 5 is actually a continuation of Column 4 and basically it describes or defines “built-up area” to mean covered construction and if the facilities are open to the sky, it will be taken to be the activity area. This by itself clearly shows that under the notification of 2006, all constructed area, which is covered and not open to the sky has to be treated as “built-up area”. There is no exception for non-FSI area.

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- 17.** Indeed, the concept of FSI or non-FSI has no concern or connection with grant of EC. The same may be relevant for the purposes of building plans under municipal laws and regulations but it has no linkage or connectivity with the grant of EC. When EC is to be granted, the authority which has to grant such clearance is only required to ensure that the project does not violate environmental norms. While projects and activities, as mentioned in the notification, may be allowed to go on, the authority while granting permission should ensure that the adverse impact on the environment is kept to the minimum. Therefore, the authority granting EC may lay down conditions which the project proponent must comply with. While doing so, such authority is not concerned whether the area to be constructed is FSI area or non-FSI area. Both will have an equally deleterious effect on the environment. Construction implies usage of a lot of materials like sand, gravel, steel, glass, marble, etc., all of which will impact the environment. Merely because under the municipal laws some of this construction is excluded while calculating the FSI is no ground to exclude it while granting the EC. Therefore, when EC is granted for a particular construction it includes both FSI and non-FSI areas. As far as environmental laws are concerned, all covered construction, which is not open to the sky is to be treated as built-up area in terms of the EIA Notification dated 14-9-2006.

Notification of 4-4-2011

18. Our attention has been drawn to the Notification dated 4-4-2011 issued by the Ministry of Environment and Forests. By means of this notification, the words of Column 5 against Item 8(a) have been replaced and substituted as under:

- “The built-up area for the purpose of this Notification is defined as ‘the built-up or covered area on all the floors put together including basement(s) and other service areas, which are proposed in the building/construction projects’.”

This notification clearly defines “built-up area” as all constructed area including basement and service areas without any exception.

- 19.** The learned Senior Counsel appearing for the project proponent has submitted that this notification is only prospective in nature and, therefore, will not affect the notification of 2006. On the other hand, it has been submitted by the original applicant that this is only a clarificatory notification and as such it will come into force with effect from 2006. In our opinion, it is not at all necessary to decide whether this notification is clarificatory or is in substitution of the original notification of 2006. We say this because as held by us above, there is no ambiguity with regard to the definition of “built-up area” even under the notification of 2006 and it covers all constructed area not open to the sky. The notification of 2011 only provides that the built-up area or covered area shall be the area of all floors put together including basement(s) and other service areas. We may again re-emphasise that this definition also is in consonance with the concept of grant of EC for construction as explained

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above and it is obvious that the concept of FSI or non-FSI area is alien to environmental laws.

Clarification dated 7-7-2017

20. Strong reliance has been placed by the project proponent on the office memorandum dated 7-7-2017 issued by Dr Ashish Kumar, Joint Director, Ministry of Environment, Forests and Climate Change. The said office memorandum reads as follows:

F. No. 22-35/2017-IA.III

Government of India

Ministry of Environment, Forests and Climate Change

(Impact Assessment Division)

Indira Paryavaran Bhawan

Jor Bag Road, Aliganj,

New Delhi - 110 003

Dated 7-7-2017

OFFICE MEMORANDUM

Sub.: Clarification on the date of applicability of Notification No. S.O.(E) 695 dated 4-4-2011 issued by MoEF & CC defining "built-up area" of the project.

The Ministry is in receipt of a reference dated 3-4-2017 from Confederation of Real Estate Developers Association of India (CREDAI) seeking clarification on the abovementioned subject. CREDAI has requested that the definition of built-up area (BUA) given vide Notification No. S.O. 695(E) dated 4-4-2011 should have prospective effect.

2. The matter has been examined in the Ministry. BUA defined in Notification No. S.O. 1533 (E) dated 14-9-2006 mentions at Item 8(a) Columns 4 and 5 "built-up area for covered construction, in the case of facilities open to sky, it will be the activity area".

3. The Ministry has further defined BUA vide its Notification No. S.O. 695 (E) dated 4-4-2011 which reads as, "the built-up or covered area on all the floors put together including its basement and other service areas, which are proposed in the building or construction project".

4. The definition provided in the Ministry's notification will have its effect from the prospective date of the notification only. The projects which are not covered in the period of above notifications should be assessed as per the definition of built-up area provided in the building by-laws or Development Control Regulation (DCR) of the local authorities in the States.

5. This issues with approval of competent authority.

sd/-

(Dr Ashish Kumar)

Joint Director Ph: 011-24695474

Email: ashish.k@nic.in

All States/UTs/SIEAAs/MoEF & CC Divisions

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21. It is urged on the basis of the aforesaid memorandum that prior to the Notification dated 4-4-2011, the built-up area had to be calculated and assessed as per the building bye-laws or the Development Control Regulations of the local authorities in the States. On behalf of the original applicant, it has been urged that this memorandum is meaningless and that it has been issued when the matter was pending before NGT, at the instance of one of the Directors of the project proponent, Shri Atul Goel, who was Joint Secretary of Confederation of Real Estate Developers Association of India (CREDAI), Pune.

22. Without going into this aspect of the matter, we are clearly of the view that such an office memorandum could not and should not have been issued. The Notification dated 14-9-2006 is a statutory notification issued in terms of Rule 5(3) of the Environment (Protection) Rules, 1986 which provides that before such a notification is issued, the Central Government has to give notice of its intention of issuing a notification and objections to the same are invited. No doubt the Central Government is empowered in public interest to dispense with the requirement of notice but this obviously has to be done in exceptional cases. The Notification dated 14-9-2006 was issued by the Central Government and published in the gazette after inviting objections from the public. The first clarification with regard to this notification was issued on 4-4-2011 to which we have adverted above. These two decisions of the Central Government which were notified as per the provisions of law could not have been set at naught by the Joint Director even if it was issued with the approval of a higher authority. We are of the view that since such decision has not been notified in the gazette, the statutory Notification dated 14-9-2006 and its subsequent clarification dated 4-4-2011 could not have been virtually set aside by this office memorandum.

23. We are also of the view that the so-called office memorandum is not at all clarificatory in nature. As held by us above, the notification of 2006 with regard to “built-up area” was absolutely clear and needed no clarification. We fail to understand how the concept of built-up area as understood in the building bye-laws or DCR could be introduced into the notification of 2006 by this office memorandum which virtually made the notification of 2006 totally redundant. Therefore, we quash the office memorandum dated 7-7-2017.

24. This is not the first time that we have noticed such clarificatory communications being issued by the officials of the Ministry of Environment, Forests and Climate Change, which virtually have the effect of nullifying the statutory provisions and notifications. We have adverted to some of these communications in our judgment in *Common Cause v. Union of India*³. We expect the officials of the Ministry of Environment, Forests and Climate Change to take a stand which prevents the environment and ecology from being damaged, rather than issuing clarifications which actually help the project proponents to flout the law and harm the environment.

h

25. In view of the above, we are clearly of the view that the EC granted to the project proponent on 4-4-2008 was for constructing a total built-up area of 57,658.42 sq m and this would include all covered construction not open to the sky. No artificial division on the basis of FSI and non-FSI area can be made. Therefore, NGT was fully justified in coming to the conclusion that the construction raised by the project proponent was in total violation of the EC granted to it.

Environmental clearance dated 20-11-2017

26. The project proponent has drawn our attention to the EC for expansion of the project in question granted to it by the State Level Environment Impact Assessment Authority (SEIAA) on 20-11-2017. We may note that this clearance indicates that the existing construction comprises of 738 flats and 115 shops which have been completed, 69 flats and 2 shops which are under construction, meaning thereby that 807 flats and 117 shops are already in existence and in addition thereto 454 more flats and cultural centre are sought to be constructed. This will take the total number of flats to 1261 and number of shops to 117. We may also notice that SEIAA has laid down general conditions for pre-construction phase and the first condition is as follows:

“(1) This environmental clearance (EC) is issued for total built-up area of 1,47,219.45 m² as approved by local planning authority. It is noted that the total proposed construction area is 1,47,219.45 m² which includes the area of previous EC (dated 4-4-2008) 57,658.42 m² and the proposed expansion area of 89,561.03 sq m. However, the above area of 1,47,219.45 sq m is notional as the non-FSI area component of the previous EC is not included in 1,47,219.45 m². After considering the non-FSI area of the previous EC, the total built-up area becomes 1,81,230.94 m². SEIAA has also taken note of the clarification issued by MoEF and CC vide office memorandum dated 7-7-2017, stating the definition of built-up area will be assessed as per the building bye-laws or DCR of the local authorities in the States.”

27. The aforementioned condition itself clearly shows that the non-FSI area constructed by the project proponent under first EC of 4-4-2008 has not been taken into consideration. The project proponent has raised construction in Plot No. 1 of an FSI area measuring 48,424.66 sq m, and non-FSI area measuring 46,088.47 sq m. Therefore, the total construction raised in Plot No. 1 is 94,513.13 sq m. In Plot No. 2, the construction raised on an FSI area is 630.55 sq m and on the non-FSI area is 4,858.57 sq m and, therefore, the total construction already raised in Plot No. 2 is 5489.12 sq m. The total construction raised by the project proponent is 1,00,002.25 sq m against the built-up area of 57,658.42 sq m mentioned in the EC of 4-4-2008. This could not have been ignored by SEIAA.

28. In case the total construction raised by the project proponent is taken as 1,00,002.25 sq m and if the area of the proposed construction is added then the project will fall in B-1 category and, therefore, SEIAA had no authority to

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- a grant EC by treating the project as falling under Category B-2. Furthermore, the EC dated 20-11-2017 is also illegal as the same has been granted on the presumption of the order dated 31-5-2016 passed by the Principal Secretary, Environment Department, State of Maharashtra holding that the construction of 18 buildings instead of 12 buildings is permissible. The EC completely lost sight of the fact that the order dated 31-5-2016 was quashed and set aside by NGT in its order dated 27-9-2016¹. We may note that the official who
- b passed the order on 31-5-2016 was the same official, who held the office of Member-Secretary of SEIAA, which granted environmental clearance on 20-11-2017. Therefore, the EC dated 20-11-2017 was beyond the authority of SEIAA and was granted under a totally false assumption and the same is therefore quashed and set aside.

Allegations made by the original applicant against various officials

- c **29.** NGT in its order dated 27-9-2016¹, has found that there was suppression of facts by the officers of PMC. NGT also directed the Chief Secretary to the State of Maharashtra to take notice of the conduct of the officers who were misleading the Department of Environment. Costs were imposed on PMC, Department of Environment and SEIAA. This has been challenged before us by
- d PMC.

- e **30.** The original applicant, both in his original application filed before NGT and in appeal filed before us as well as in other proceedings, has made serious allegations against individual officers of PMC as well as SEIAA and specially the Principal Secretary, Environment Department, Government of Maharashtra. However, for reasons best known to the original applicant, none of these individuals has been made a party in personal capacity in these proceedings. The law is well settled that no person can be condemned unheard. It would, therefore, not be fair on our part, to deal with allegations made against individuals who are not parties to the petition and who have had no chance to reply to the allegations levelled against them. Therefore, we refrain from commenting on the conduct of the officials in their individual capacity.

- f **31.** However, as far as their official capacity is concerned, we are of the view that NGT was fully justified in coming to the conclusion that certain officials of PMC were going out of their way to help the project proponent and we, therefore, uphold the directions given by NGT in its order dated 27-9-2016¹ in this regard. In view of what we have discussed above, it is more than apparent that despite notifications of 2006 and 2011 being clear and unambiguous, the
- g officials of PMC have given an interpretation which was tailor-made to suit the project proponent. This was being done even before the clarification of 7-7-2017 was issued. This clearly indicates that some officials of PMC were espousing the case of the project proponent at the cost of the environment.

- h **32.** We may also observe that prima facie we are of the view that the Principal Secretary, Environment Department, Government of Maharashtra

¹ *Tanaji Balasaheb Gambhire v. Union of India*, 2016 SCC OnLine NGT 4213

has not acted in a fair and transparent manner. The allegations made by the original applicant cannot be lightly brushed aside. In the original order dated 27-9-2016¹, NGT held as follows: (*Tanaji Balaseheb case*¹, SCC OnLine NGT para 42)

“42. From the extracted portion of the order dated 31-5-2016 of Principal Secretary, Environment Department, it is seen that he has declared construction of 18 buildings on the site instead of 12 buildings is permissible which, according to him, only a changes on configuration of buildings. This opinion undoubtedly is based on his erroneous conclusion that total BUA which is nothing but FSI consumed i.e. 48,617.14 sq m which is within the EC limit as against the actual construction activity which has exceeded over 1,00,000 sq m BUA. Hence, we set aside that order/communication dated 31-5-2016.”

The official holding the post of Principal Secretary must have been aware of these directions because he was a party to the proceedings before NGT. Despite that, while granting fresh EC on 20-11-2017, this official noticed that reference to the Environment Department for verification of files was withdrawn vide letter dated 31-5-2016 and the matter has been considered afresh. When the letter dated 31-5-2016 had been quashed the obvious result would be that action had to be taken in accordance with the earlier directions in the 27th meeting of SEAC III (Non-MMR) held from 10-3-2015 to 13-3-2015 and the 87th meeting of SEIAA held on 10-8-2015 to 12-8-2015. This was not done. His actions need to be looked into and, therefore, we uphold the direction given by NGT directing the Chief Secretary to the State of Maharashtra to take notice of the conduct of the officers concerned. We further direct the Chief Secretary to file detailed report in respect of the conduct of the then Principal Secretary, Department of Environment to NGT within 3 months which will thereafter pass appropriate directions in the matter.

***Challenge to the order dated 8-1-2018 passed in Tanaji Balasaheb Gambhire v. Union of India*²**

33. This order has been challenged both by the project proponent by amending the appeal and by the original applicant by filing a separate appeal.

34. Section 19(4)(f) of the National Green Tribunal Act, 2010 provides that the Tribunal shall have the same powers as are vested in civil courts while trying a suit in respect of matters relating to review of its decisions. Therefore, the power of review vested with NGT is akin to the power vested with the civil court. As such, the principles which govern the exercise of review jurisdiction before a civil court will apply with equal force to NGT.

35. Rule 22(2) of the National Green Tribunal (Practices and Procedure) Rules, 2011 provides that a review application shall ordinarily be heard by the Tribunal at the same place of sitting which has passed the order unless the Chairperson may, for reasons to be recorded in writing, direct it to be heard by

1 *Tanaji Balasaheb Gambhire v. Union of India*, 2016 SCC OnLine NGT 4213
2 2018 SCC OnLine NGT 302

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a the Tribunal sitting at any other place. Sub-rule (3) of Rule 22 provides that ordinarily review application shall be disposed of by circulation.

36. Since the powers of review which NGT exercises are akin to those of a civil court, it would be pertinent to refer to the relevant portions of Order 47 of the Civil Procedure Code, 1908, which read as follows:

b “1. *Application for review of judgment.*—(1) Any person considering himself aggrieved—

(a) by a decree or order from which an appeal is allowed, but from which no appeal has been preferred,

(b) by a decree or order from which no appeal is allowed, or

(c) by a decision on a reference from a Court of Small Causes,

c and who, from the discovery of new and important matter or evidence which, after the exercise of due diligence was not within his knowledge or could not be produced by him at the time when the decree was passed or order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree passed or order made against him, may apply for a review of judgment to the court which passed the decree or made the order.

d (2) A party who is not appealing from a decree or order may apply for a review of judgment notwithstanding the pendency of an appeal by some other party except where the ground of such appeal is common to the applicant and the appellant, or when, being respondent, he can present to the appellate court the case on which he applies for the review.

* * *

e **5. *Application for review in court consisting of two or more Judges.*—**

f Where the Judge or Judges, or any one of the Judges, who passed the decree or made the order, a review of which is applied for, continues or continue attached to the court at the time when the application for a review is presented, and is not or are not precluded by absence or other cause for a period of six months next after the application from considering the decree or order to which the application refers, such Judge or Judges or any of them shall hear the application, and no other Judge or Judges of the court shall hear the same.”

g **37.** The project proponent has urged various grounds to challenge the order passed in the review application. The first ground is that whereas the original order was passed by a Bench comprising of Dr Justice Jawad Rahim and Dr Ajay A. Deshpande, the review application was heard and decided by a Bench comprising of Justice U.D. Salvi and Dr Nagin Nanda. It has been urged that Dr Justice Jawad Rahim continues to be a Judicial Member of NGT and, in fact, was sitting in the Western Bench at Pune on 8-1-2018 when the impugned judgment² in review was pronounced by NGT.

h **38.** We are clearly of the view that a review petition should normally be heard by the same Bench which originally decided the matter. A review

2 *Tanaji Balasaheb Gambhire v. Union of India*, 2018 SCC OnLine NGT 302

petition should not be heard by any other Bench unless it is impossible or totally impracticable for the earlier Bench to hear the matter. In a review petition, like in the present case, where the review petitioner contends that certain arguments raised by him have not been considered then it is only the Judges who originally heard the matter who can decide whether such point was urged or not. In the present case, the review application was based mainly on the contention that the affidavit dated 18-5-2016 was not taken into consideration by the Bench.

39. It is well known that parties raise various contentions in their pleadings or in their evidence. On many occasions when arguments are heard many of the pleas are not urged. Any judicial authority including NGT which is presided over by a judicial member who may be a retired Judge of this Court or of a High Court is expected to deal with all contentions raised before it. There is a presumption that judicial authorities must have dealt with all the contentions raised before them. If a party urges that some of the contentions urged by it have not been taken into consideration then it has to file a review application and it is but obvious that such review application should be heard by the same Bench which had originally heard the matter.

40. Sub-rule (3) of Rule 22 of the National Green Tribunal (Practices and Procedure) Rules, 2011 clearly lays down that a review application shall be disposed of by circulation. If the review application is to be disposed of by circulation then there is no problem in the matter being circulated before the very same Bench which had earlier heard the matter. This can be done even at a place which may be different from the original place of hearing. It is only if the Bench decides to give oral hearing in the review application and notice is issued to the opposite party that sub-rule (2) of Rule 22 will come into operation. According to sub-rule (2), the matter should ordinarily be heard at the same place of sitting where it was originally decided. However, this is not a mandatory direction because sub-rule (2) itself contemplates that the matter shall “ordinarily” be heard at the same place. In tribunals like NGT where members may be transferred from one Bench to another or may be attending a Bench on circuit then problems can sometimes arise. These issues can be easily resolved by resorting to the latest technology and if necessary, the arguments in such cases can be heard by videoconferencing. The normal rule that the same Bench should hear the review application should not be disturbed unless it is virtually impossible for the original Bench to hear the matter or the members of the Bench themselves opt not to hear the matter.

41. In this behalf, we must remind ourselves that the power of review is a power to be sparingly used. As pithily put by V.R. Krishna Iyer, J., “A plea for review, unless the first judicial view is manifestly distorted, is like asking for the moon”⁴. The power of review is not like appellate power. It is to be exercised only when there is an error apparent on the face of the record. Therefore, judicial discipline requires that a review application should be heard by the same Bench. Otherwise, it will become an intra-court appeal to another

⁴ *Northern India Caterers (India) Ltd. v. Lt. Governor of Delhi*, (1980) 2 SCC 167, p. 173, para 14 : 1980 SCC (Tax) 222

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a Bench before the same court or tribunal. This would totally undermine judicial discipline and judicial consistency.

b 42. We may refer to the judgment of this Court in *Malthesh Gudda Pooja v. State of Karnataka*⁵. In that case, a writ appeal was disposed⁶ of by a Division Bench comprising of Hon'ble V. Gopala Gowda and L. Narayana Swamy, JJ., at the Dharwad Circuit Bench of the Karnataka High Court. Thereafter, a review petition was filed before a Bench comprising of Hon'ble K. Sreedhar Rao and Ravi Malimath, JJ. An objection was raised that the review petition should be heard by the same Judges who had originally heard the matter but this objection was overruled and the review petition was allowed⁷ and the appeal was ordered to be listed afresh before the Division Bench. This appeal was listed before the Dharwad Circuit Bench consisting of Hon'ble D.V. Shailendra Kumar and N. Ananda, JJ. This Bench held that the order of review passed was a nullity since
c the Judges who had heard the review should not have heard the same especially when the Judges of the original Bench were available. The matter came to this Court and this Court after referring to Order 47 Rule 5 CPC and Rule 5 of the High Court of Karnataka Rules, 1959 and taking note of the fact that the Chief Justice of the Karnataka High Court had passed an order that the review petition be listed as per roster held as follows: (SCC pp. 341-42, paras 18-20)

d “18. Order 47 Rule 5 of the Code and Chapter 3 Rule 5 of the High Court Rules require, and in fact mandate that if the Judges who made the order in regard to which review is sought continue to be the Judges of the Court, they should hear the application for review and not any other Judges unless precluded by death, retirement or absence from the Court for a period of six months from the date of the application. An
e application for review is not an appeal or a revision to a superior court but a request to the same court to recall or reconsider its decision on the limited grounds prescribed for review. The reason for requiring the same Judges to hear the application for review is simple. Judges who decided the matter would have heard it at length, applied their mind and would know best, the facts and legal position in the context of which the decision
f was rendered. They will be able to appreciate the point in issue, when the grounds for review are raised. If the matter should go before another Bench, the Judges constituting that Bench will be looking at the matter for the first time and will have to familiarise themselves about the entire case to know whether the grounds for review exist. Further, when it goes before some other Bench, there is always a chance that the members of the new Bench
g may be influenced by their own perspectives, which need not necessarily be that of the Bench which decided the case.

h 5 (2011) 15 SCC 330 : (2014) 2 SCC (Civ) 473
6 *Malthesh Gudda Pooja v. State of Karnataka*, 2009 SCC OnLine Kar 919
7 *Malthesh Gudda Pooja v. State of Karnataka*, 2009 SCC OnLine Kar 918

19. Benjamin Cardozo's celebrated statement in *The Nature of Judicial Process* (pp. 12-13) is relevant in this context:

'There is in each of us a stream of tendency, whether you choose to call it philosophy or not, which gives coherence to thought and action. Judges cannot escape that current any more than other mortals. All their lives, forces which they do not recognise and cannot name, have been tugging at them—inherited instincts, traditional beliefs, acquired convictions ... In this mental background every problem finds its setting. We may try to see things as objectively as we please. Nonetheless, we can never see them with any eye except our own.'

20. Necessarily, therefore, when a Bench other than the Bench which rendered the judgment, is required to consider an application for review, there is every likelihood of some tendency on the part of a different Bench to look at the matter slightly differently from the manner in which the authors of the judgment looked at it. Therefore the rule of consistency and finality of decisions, makes it necessary that subject to circumstances which may make it impossible or impractical for the original Bench to hear it, the review applications should be considered by the Judge or Judges who heard and decided the matter or if one of them is not available, at least by a Bench consisting of the other Judge. It is only where both Judges are not available (due to the reasons mentioned above) the applications for review will have to be placed before some other Bench as there is no alternative. But when the Judges or at least one of them, who rendered the judgment, continues to be members or member of the court and available to perform normal duties, all efforts should be made to place it before them. The said requirement should not be routinely dispensed with."

43. A perusal of the above judgment leaves no manner of doubt that this Court has held that in terms of Order 47 Rule 5 CPC, a review should normally be heard by the same Bench which passed the original order. We may reiterate the reasons given by this Court. These are:

43.1. The Judges who heard the matter originally have applied their mind and would know best the facts and legal position;

43.2. They will be in the best position to appreciate the matter in issue when a review is filed;

43.3. If the matter goes before another Bench that Bench will have to virtually hear the matter afresh;

43.4. Most importantly, when the matter goes to a new Bench the members of the new Bench may go by their own perspective and philosophy which may be totally different to that of the Bench which originally heard the matter.

44. We may again re-emphasise that judicial discipline, judicial traditions and consistency in pronouncements require that the Bench which heard the matter originally should hear the review petition unless it is virtually impractical for the original Bench to hear the matter, or where the members of the original Bench recuse.

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a 45. Another ground raised is that the statutory appeal was already pending
in this Court against the original order when the review application was taken up
for hearing. It is contended, on the basis of Order 47 Rule 1(2) CPC, that review
application should not have been taken up for hearing because the original
applicant could have before this Court taken up all the points which he had
taken in his review application. It is also contended that this is not a case where
there is an error apparent on record and as such the power of review could
b not have been exercised. As far as the facts of this case are concerned, we are
clearly of the view that the original applicant could have raised all issues which
he raised in review application even by filing a counter-affidavit in the appeal
filed by the project proponent or by challenging the original order in this Court
as he has done now. In this context, once this Court was seized of the matter
and all issues were being urged, NGT should not have proceeded to hear the
c review application.

d 46. We may add that on 21-12-2016⁸, the review application itself was
listed before the Bench of Dr Justice Jawad Rahim and Dr Ajay A. Deshpande,
which adjourned the matter to 25-1-2017 to hear it regarding maintainability
of the review application in view of the statutory appeal provided under the
National Green Tribunal Act, 2010. However, the matter got listed before the
e other Bench and on 25-7-2017⁹, the said Bench considered this objection raised
by the project proponent in terms of Order 47 Rule 1 CPC and the Bench held
as follows: (*Tanaji Gambhire case*⁹, SCC OnLine NGT)

f “Having perused the record, we find that the appellant is seeking
quashing of the order of compensation in totality and the review applicant
is seeking enhancement of the compensation granted by the Tribunal. We
e do not see any commonality in the grounds resorted to by the applicant
and appellant in the said appeal. Exception to sub-clause (2) of Order 47
Rule 1 of the Code of Civil Procedure, therefore, does not come to the
help of Respondent 9. We are, therefore, of the considered opinion that
the review application is maintainable. Plea of non-maintainability of the
review application is rejected.”

g 47. We are of the view that the aforesaid finding is incorrect. The project
proponent had not only challenged the original order of NGT on the ground that
he had not violated the EC but also on the ground that the damages awarded
were highly excessive. Therefore, the question that what should be the extent
of damages was specifically before this Court. We are, therefore, clearly of
the opinion that the Bench hearing the review application erred in holding that
the review application was maintainable despite the appeal pending before this
Court.

h 48. We may also note that the Bench which heard the review has rejected
all other grounds of review mainly on the ground that there is no error apparent
on the face of the record but has only dealt with the issue of enhancement

⁸ *Tanaji Balasaheb Gambhire v. Union of India*, 2016 SCC OnLine NGT 4217

⁹ *Tanaji Gambhire v. Union of India*, 2017 SCC OnLine NGT 1954

of damages to be imposed on the basis of “carbon footprint” relying on the affidavit dated 18-5-2016. The Bench noted that this affidavit had not been taken into consideration by the earlier Bench. How could the latter Bench hearing the review application know whether any reference was made to this affidavit at the time of original hearing or not? In fact, the project proponent urges that this affidavit was never filed on 18-5-2016.

49. Here, it would be pertinent to mention that according to the original applicant he was given oral permission by the Bench to file such an affidavit on 23-2-2016. We have perused the order dated 23-2-2016¹⁰ and find that it makes no mention of any such request being made. If there is no such request then the question of issuing an oral direction to file such an affidavit does not arise. We may also add that after 23-2-2016, the matter was listed on numerous occasions i.e. 16-3-2016¹¹, 5-4-2016¹², 18-4-2016¹³, 22-4-2016¹⁴, 2-5-2016¹⁵ and 5-5-2016¹⁶ before NGT. In none of the orders there is any reference to carbon footprint or to any affidavit to be filed by the original applicant. If an oral permission had been given, obviously the original applicant would have either filed an application or would have made a request that he wants to file such an affidavit.

50. The affidavit in question is dated 18-5-2016 and it is alleged that it was filed on 18-5-2016. The matter was listed for hearing on 19-5-2016¹⁷ on which date also there is no reference to any such affidavit. It would be pertinent to note that in between the project proponent had filed an MA No. 389 of 2016 before the Principal Bench stating that an interim order dated 23-12-2015¹⁸ had been passed against it and the matter was not being heard and, therefore, it may be heard by a Bench presided over by Dr Justice Jawad Rahim, who apparently was holding Court in the Pune Bench at that time and the Principal Bench allowed the same on 2-5-2016¹⁹ directing that the matter be listed before the Bench presided over by Dr Justice Jawad Rahim. On 19-5-2016, the original applicant sought time stating that he had filed review application against the order dated 2-5-2016¹⁹ before the Principal Bench praying that the matter should be heard by the earlier Bench presided over by Justice U.D. Salvi and, therefore, the matter could not be heard by Dr Justice Jawad Rahim on that day and was further adjourned to 23-5-2016. There is no reference to carbon footprint in the order dated 19-5-2016¹⁷. On 23-5-2016²⁰, the matter was heard by the Bench presided over by Dr Justice Jawad Rahim and the orders reserved.

10 *Tanaji Balasaheb Gambhire v. Union of India*, 2016 SCC OnLine NGT 4201
11 *Tanaji Balasaheb Gambhire v. Union of India*, 2016 SCC OnLine NGT 4204
12 *Tanaji Balasaheb Gambhire v. Union of India*, 2016 SCC OnLine NGT 4205
13 *Tanaji Balasaheb Gambhire v. Union of India*, 2016 SCC OnLine NGT 4206
14 *Tanaji Balasaheb Gambhire v. Union of India*, 2016 SCC OnLine NGT 4219
15 *Tanaji Balasaheb Gambhire v. Union of India*, 2016 SCC OnLine NGT 4203
16 *Tanaji Balasaheb Gambhire v. Union of India*, 2016 SCC OnLine NGT 4207
17 *Tanaji Balasaheb Gambhire v. Union of India*, 2016 SCC OnLine NGT 4208
18 *Tanaji Balasaheb Gambhire v. Union of India*, 2015 SCC OnLine NGT 838
19 *Tanaji Balasaheb Gambhire v. Union of India*, 2016 SCC OnLine NGT 1330
20 *Tanaji Balasaheb Gambhire v. Union of India*, 2016 SCC OnLine NGT 4209

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a In this order also there is no reference to the affidavit with regard to carbon footprint. If the filing of the affidavit would have been brought to the notice of the Bench, it would have recorded in the order that some fresh affidavit had been filed. Subsequently, the project proponent, who is the contesting respondent, filed an application on 20-7-2016 praying that in the meantime he had obtained permission of the Environment Department and SEIAA to which we have adverted hereinabove.

b **51.** The original applicant sought time to file counter-affidavit. The matter was adjourned²¹ to 28-7-2016 for rehearing deleting the same from reserved list since there were subsequent developments. On 28-7-2016²², the matter was got adjourned to 2-8-2016 on which date²³ some execution application for implementation of the interim orders was taken up and direction was issued to PMC. The matter was again taken up on 8-8-2016²⁴, 19-8-2016²⁵
c and 24-8-2016²⁶ when the hearing was closed and judgment was pronounced through videoconferencing on 27-9-2016¹. In none of these orders any mention was made for carbon footprint or to the affidavit on the basis of which the review application was filed. On 23-5-2016, the project proponent filed reply to the affidavit dated 18-5-2016 filed by the original applicant in which they raised objections that such affidavit was not filed on 18-5-2016 and the copy of
d the same was handed over to them on 20-5-2016 and the original applicant had no permission to file such an affidavit. All these disputed issues as to whether such an affidavit was filed with the permission of the Court or it was referred to in the first hearing or in the second hearing could only be decided by the Bench which had heard the matter on 23-5-2016²⁰ or on 24-8-2016²⁶ on which dates the original application was reserved for orders.

e **52.** We are of the considered view that the review application should have been heard by a Bench headed by Dr Justice Jawad Rahim who was admittedly available and in fact continues to be a member of NGT. Therefore, we are constrained to set aside the order passed in *Tanaji Balasaheb Gambhire v. Union of India*² dated 8-1-2018.

f ***Is demolition the only answer?***

53. The next issue which arises is that what we should do with the construction. A large number of flats are already occupied and a large number of persons have paid money for occupying these flats. The learned counsel appearing for those persons who have purchased the flats urged that the flats should not be demolished otherwise they shall be put to great monetary loss.

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21 *Tanaji Balasaheb Gambhire v. Union of India*, 2016 SCC OnLine NGT 4215
22 *Tanaji Balasaheb Gambhire v. Union of India*, 2016 SCC OnLine NGT 4210
23 *Tanaji Balasaheb Gambhire v. Union of India*, 2016 SCC OnLine NGT 4211
24 *Tanaji Balasaheb Gambhire v. Union of India*, 2016 SCC OnLine NGT 4202
25 *Tanaji Balasaheb Gambhire v. Union of India*, 2016 SCC OnLine NGT 4212
26 *Tanaji Balasaheb Gambhire v. Union of India*, 2016 SCC OnLine NGT 4214
h
1 *Tanaji Balasaheb Gambhire v. Union of India*, 2016 SCC OnLine NGT 4213
20 *Tanaji Balasaheb Gambhire v. Union of India*, 2016 SCC OnLine NGT 4209
2 2018 SCC OnLine NGT 302

As pointed out above, now there are 807 flats and 117 shops which are either constructed or under construction. These flats are 1, 1.5 and 2 BHK flats and small shops and offices. The project proponent has already taken money from these persons and a large number of flats and shops have already been occupied and even where the remaining flats and shops are not occupied, persons belonging to the middle class have invested their life's earnings in this project. Keeping in view the interest of these third parties who were not parties before NGT, we are of the view that in the peculiar facts and circumstances of the case, demolition is not the answer. This would put innocent people at loss. Normally, this Court is loath to legalise illegal constructions but in the present case we have no option but to do so.

54. We hasten to clarify that the project proponent cannot be permitted to build any more flats. What we are permitting him to do is to only complete construction of 807 flats, 117 shops/offices and cultural centre including the clubhouse. We make it clear that he shall not be allowed to build the two buildings in which he was to construct 454 tenements, and will obviously have to return the money with interest @ 9% p.a. to the individual(s) who have invested in the same. There is no equity in favour of these persons since the plan to raise this construction was submitted only after 2014 when the validity of the earlier EC had already ended. Therefore, though we uphold the order of NGT dated 27-9-2016¹ that demolition is not the answer in the peculiar facts of the case, we also make it clear that the project proponent cannot be permitted to build nothing more than 807 flats, 117 shops/offices, cultural centre and clubhouse.

Whether the original applicant is entitled to special damages?

55. On behalf of the original applicant various issues were raised before us which had not been raised before NGT and find no mention either in the original order or even in the order under review. We are not considering those issues. It was urged that the project proponent has reduced the area of cultural centre. This averment is not correct as pointed out by the Senior Counsel appearing for the Union of India. The development plan is not only for the area under the project but covers a much larger area where more than one builder and projects may be involved. It is not the responsibility of only one builder to provide the entire community services and these have to be provided pro rata by all developers of projects in the area. It was also alleged that the builder had built 3 basements which are illegal.

56. On the other hand, it was contended by the learned Senior Counsel for the project proponent that one of the basements has already been blocked and the other two basements shall also not be put in use and would be completely blocked off. We make it clear that PMC and SEIAA will ensure that the project proponent blocks the basements in such a manner that they can never be put to any use. Another argument raised by the original applicant was that the project proponent had stated that though he would not use any groundwater, however, it has utilised the groundwater and violated the condition of the EC. Reliance

¹ *Tanaji Balasaheb Gambhire v. Union of India*, 2016 SCC OnLine NGT 4213

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a is placed on certain photographs showing water being pumped. On the other hand, on behalf of the project proponent it has been urged that this water was being pumped out from the excavated area when the building was built and the water level had risen. We cannot decide this disputed question of fact in these proceedings.

b **57.** We may also point out that in this case the original applicant has tried to project the case as if he is filing the case in the public interest and has prayed for certain general directions. He has also claimed special damages for himself. The main grievance of the original applicant is with regard to the violation of the EC and according to him these violations started in the year 2009. The original applicant had applied for a flat in the project in question and had issued notice to the project proponent on 21-10-2011 about deficiency in service. This notice was replied to on 17-11-2011. Thereafter, the original applicant filed Consumer Complaint No. 95 of 2012 on 22-2-2012. This complaint was decided on 20-11-2014. Thereafter, the order of the District Consumer Disputes Redressal Forum was challenged before the State Consumer Disputes Redressal Commission both by the project proponent and original applicant in February 2015. It appears that thereafter there were complaints and counter-complaints filed by the parties against each other and the project proponent filed a civil suit for defamation against the original applicant on 2-12-2015 and it was only thereafter on 7-12-2015 an application was filed in NGT by the original applicant. We are highlighting these facts only to emphasise the fact that this litigation is obviously not a public interest litigation. Therefore, the claim of the original applicant to award him special damages cannot be accepted.

e ***Quantification of damages***

58. We need to decide and re-assess the issue of damages since the original applicant has also challenged the original order of NGT. While assessing the damages we may note certain facts:

f **58.1.** The EC was granted on 4-4-2008 but construction commenced after issuance of consent to establish dated 20-6-2009 and the EC would be valid for a period of 5 years from the date of such consent i.e. up to 19-6-2014;

58.2. The EC dated 4-4-2008 was granted for construction of built-up area of 57,658.42 sq m, whereas admittedly, as of now the constructed built-up area is 1,00,002.25 sq m. Therefore, there is clear-cut violation of the terms of the EC;

g **58.3.** Any construction raised after 19-6-2014 is without any EC especially since we have held that EC granted on 20-11-2017 is invalid.

Carbon footprint

h **59.** The main case of the original applicant is that the damages should be assessed on a scientific basis by calculating the damage caused to the environment by the project proponent on the basis of "carbon footprint". In the

absence of detailed submissions, we find ourselves totally unequipped to go into this aspect of the matter.

60. In the original application filed by the original applicant before NGT, there is no reference to carbon footprint. Even when evidence was initially led, no reference was made to the same. The concept of carbon footprint was introduced by the original applicant only in his affidavit dated 18-5-2016. In fact, according to the project proponent, this affidavit was not even filed on 18-5-2016. It appears to us that there is no order of NGT specifically permitting the original applicant to file such an affidavit. The submission of the original applicant is that he was orally permitted to file the same. These disputed questions would have been only decided by the Original Bench and, therefore, we have already set aside the order passed in *Tanaji Balasaheb Gambhire v. Union of India*² dated 8-1-2018.

61. The courts cannot introduce a new concept of assessing and levying damages unless expert evidence in this behalf is led or there are some well-established principles. We find that no such principles have been accepted or established in the present case. When there are no pleadings in this regard we fail to understand how the concept of carbon footprint can be introduced after evidence has been closed, at the stage of arguments. We cannot assess the impact in actual terms and, therefore, we can only impose damages or costs on principles which have been well settled by law.

62. We may also note that the method to which the original applicant referred to is not part of any law, rule or executive instructions. This method is no doubt used to compensate and impose damages on nations but we cannot apply this method while imposing damages on a person who violates the EC. We may also add that the calculation made by the original applicant in his affidavit dated 18-5-2016 filed before NGT are based on assumptions some of which we have not found to be correct, namely — (1) use of groundwater; (2) reduction of cultural centre space; (3) construction of basements, etc.

63. We may make it clear that we are not laying down the law that damages cannot be assessed on the basis of carbon footprint. In a case where expert evidence in this behalf is led or on the basis of empirical data it is established that by applying the principles of carbon footprint damages can be assessed, the Court may, in the facts and circumstances of the case, rely upon such data but, in the present case, there is no such reliable material.

64. Having held so we are definitely of the view that the project proponent who has violated law with impunity cannot be allowed to go scot-free. This Court has in a number of cases awarded 5% of the project cost as damages. This is the general law. However, in the present case we feel that damages should be higher keeping in view the totally intransigent and unapologetic behaviour of the project proponent. He has manoeuvred and manipulated officials and authorities. Instead of 12 buildings, he has constructed 18; from 552 flats the number of flats has gone up to 807 and now two more buildings having 454 flats are proposed. The project proponent contends that he has made smaller flats

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a and, therefore, the number of flats has increased. He could not have done this without getting fresh EC. With the increase in the number of flats the number of persons residing therein is bound to increase. This will impact the amount of water requirement, the amount of parking space, the amount of open area, etc. Therefore, in the present case, we are clearly of the view that the project proponent should be and is directed to pay damages of Rs 100 crores or 10% of the project cost, whichever is more. We also make it clear that while calculating
b the project cost the entire cost of the land based on the circle rate of the area in the year 2014 shall be added. The cost of construction shall be calculated on the basis of the schedule of rates approved by the Public Works Department (PWD) of the State of Maharashtra for the year 2014. In case the PWD of Maharashtra has not approved any such rates then the Central Public Works Department rates for similar construction shall be applicable. We have fixed the
c base year as 2014 since the original EC expired in 2014 and most of the illegal construction took place after 2014. In addition thereto, if the project proponent has taken advantage of transfer of development rights (for short "TDR") with reference to this project or is entitled to any TDR, the benefit of the same shall be forfeited and if he has already taken the benefit then the same shall either be recovered from him or be adjusted against its future projects. The project
d proponent shall also pay a sum of Rs 5 crores as damages, in addition to the above for contravening mandatory provisions of environmental laws.

e **65.** Normally, this Court is not inclined to grant ex post facto EC. However, in the peculiar facts of this case, we direct that once the project proponent deposits the amount of damages as directed by us then the project proponent may approach the appropriate authority for grant of EC. The authority may impose such conditions for grant of EC as it deems necessary.

Findings and directions

66. We summarise our findings and directions as follows:

66.1. That built-up area under the notification of 14-9-2006 means all constructed area which is not open to the sky.

f **66.2.** Built-up area under the Notification of 4-4-2011 means all covered area including basement and service areas.

66.3. The communication dated 7-7-2017 is totally illegal and accordingly quashed.

66.4. The original application cannot be treated as a public interest litigation.

g **66.5.** We are not taking note of the allegations levelled against the individuals who have not been arrayed as parties.

66.6. That the order dated 27-9-2016¹ of NGT is upheld except insofar as Direction 1 is concerned.

66.7. The order in review application passed by NGT on 8-1-2018² is held to be totally illegal and is accordingly set aside.

h ¹ *Tanaji Balasaheb Gambhire v. Union of India*, 2016 SCC OnLine NGT 4213
² *Tanaji Balasaheb Gambhire v. Union of India*, 2018 SCC OnLine NGT 302

66.8. We uphold the original order dated 27-9-2016¹ holding that the construction raised by the project proponent was in violation of the environmental clearance granted to it on 4-4-2008. We uphold the fine imposed upon PMC and the direction given to PMC to take appropriate action against the erring officials. We also uphold the direction given to the Chief Secretary to the State of Maharashtra and in addition, direct that the Chief Secretary to the State of Maharashtra shall look into the conduct of the official holding the post of Principal Secretary (Environment) to the Government of Maharashtra on 27-9-2016 and will submit his report to NGT within three months from today.

66.9. We impose damages of Rs 100 crores or 10% of the project cost, whichever is higher, on the project proponent and in addition thereto, project proponent will pay Rs 5 crores as levied by NGT in its order dated 27-9-2016¹.

66.10. Project proponent shall not be permitted to raise construction of two buildings having 454 tenements.

66.11. We direct that the project proponent shall only be permitted to complete construction of a total 807 flats, 117 shops/offices and cultural centre including clubhouse.

66.12. The project proponent will only be permitted to seek environmental clearance for completion of the project subject to payment of costs in the aforesaid terms and it may be granted ex post facto environmental clearance in the peculiar facts of the case, on such terms and conditions as the environmental authority deems fit and proper.

66.13. The project proponent is granted six months' time to deposit the amount of damages imposed in terms of Direction 66.9 supra in the Registry of this Court. In case the project proponent does not deposit the amount within six months then all the assets of the project proponent i.e. M/s Goel Ganga Developers India Pvt. Ltd. as well as its Directors shall be attached and the amount of damages shall be recovered by sale of those assets. It is further directed that in case this amount is not deposited within the period of six months then the licence/registration/permission granted to M/s Goel Ganga Developers India Pvt. Ltd. to develop any "real estate project" within the meaning of the Real Estate (Regulation and Development) Act, 2016 shall be cancelled and the project proponent i.e. M/s Goel Ganga Developers India Pvt. Ltd. and its Directors shall not be granted permission to develop any "real estate project" under the Real Estate (Regulation and Development) Act, 2016 without permission of this Court.

66.14. The matter be listed on 22-10-2018 for issuing appropriate directions as to how the amount of damages are to be utilised;

67. All the appeals are disposed of in the aforesaid terms. Pending application(s), if any, shall also stand disposed of.

¹ *Tanaji Balasaheb Gambhire v. Union of India*, 2016 SCC OnLine NGT 4213

Item Nos. 02 & 05

(Court No. 1)

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

(By Video Conferencing)

Original Application No. 764/2018
(M.A. No. 175/2019 & M.A. No. 24/2021)

(With reports dated 21.06.2021)

Kissan Udey Samiti

Applicant

Versus

State of Haryana & Ors.

Respondent(s)

AND

Original Application No. 155/2020
(I.A. No. 86/2021 & I.A. No. 121/2021)

(With reports dated 21.01.2021)

Dr. (Mrs.) Manorama Sharma & Anr.

Applicant(s)

Versus

TDI infrastructure Limited & Ors.

Respondent(s)

Date of hearing: 28.09.2021

**CORAM: HON'BLE MR. JUSTICE ADARSH KUMAR GOEL, CHAIRPERSON
HON'BLE MR. JUSTICE SUDHIR AGARWAL, JUDICIAL MEMBER
HON'BLE MR. JUSTICE BRIJESH SETHI, JUDICIAL MEMBER
HON'BLE DR. NAGIN NANDA, EXPERT MEMBER**

Applicant: Mr. Shiv Charan Garg, Advocate in O.A. 764/2018
Mr. Sachin Jain, Advocate in O.A. NO. 155/2020

Respondent: Mr. Rahul Khurana, Advocate for State of Haryana & HSPCB
Ms. Yashodhara Gupta, Advocate for M/s TDI Infrastructure Ltd.
(R-3 in O.A. 764/2018 & R-1 in O.A. 155/2020)
Mr. Aman Bhalla, Advocate for CPCB in O.A. 764/2018
Mr. Amit Singh Chauhan, Advocate for CPCB in O.A. 155/2020
Mr. Rakesh Mahajan, Advocate for MoEF&CC

ORDER

1. This common order will cover O.A. No. 764/2018 and O.A. No. 155/2020 and MAs/IAs filed in the said matters. Both the matters relate

to remedial action against violations of environmental norms inter alia by M/s TDI Infrastructure Ltd. (Developers of TDI Kingsburry Apartments G.T. Road, Sonipat), M/s TDI Infrastructure Ltd., (Developers of My Floor2 housing project Sector – 60, Sonipat), M/s TDI Infrastructure Ltd. Tuscan City, Sector – 58, Sonipat, M/s CMD Built-Tech Pvt. Ltd. (Developers of Ushay Towers Sector – 61, Kundli, Sonipat), M/s Parker Estate Development Pvt. Ltd., Sector – 61 Kundli, Sonipat and M/s Narang Construction & Financiers Pvt. Ltd. (Max Height Sector – 62, Kundli, Sonipat) - all parties to O.A No. 764/2018) and TDI Infrastructure Ltd. (respondent in O.A. No. 155/2020). All housing/township projects are said to be located in Sectors 58 to 64 at Kundli, District Sonapat, Haryana and are said to be non compliant with the environmental norms calling for remedial action. Reason for taking up the matters together is adjoining locations and somewhat similar nature of violations. In many projects same project proponent (PP) or sister concerns are involved. To the extent necessary, distinction will be noticed in the order.

O.A. No. 764/2018

2. Issue raised in this application is environmental violations affecting public health and rule of law in developing the housing projects in question, mentioned earlier and failure of the statutory regulators – the Town and Country Planning Department, SEIAA, State PCB, MoEF and District Administration in taking remedial action. The OA was initially disposed of vide order dated 16.10.2018 with the direction that the Oversight Committee constituted by this Tribunal to look into the issues of waste management may first look into the matter. The matter was revived vide order dated 06.05.2019 in M.A. No. 142/2019 for the reasons mentioned in the said order. The Tribunal sought a report from the Chief Secretary, Haryana about the status of compliance. Considering the

report of the Chief Secretary dated 09.06.2019, acknowledging large scale violations, vide order dated 23.10.2019, the Tribunal issued directions for remedial action by statutory regulators and also constituted a joint Committee comprising representatives of CPCB, MoEF&CC and IIT Delhi to determine compensation on polluter pays principle for the violations. The report filed by the Chief Secretary, Haryana is as follows: -

“After receipt of the above recommendations, directions have been issued.

- (i) TCP Department shall ensure that all tankers discharging the effluent to the STP of 7.5 MLD capacity be fitted with GPS and a monitoring cell be established by HSVP at District Head Quarters to monitor the movement and regular discharge from all stakeholder units. HSVP shall also ensure maintaining the logbook of its STP to which the effluent is sent and reconcile with its movement records.*
- (ii) District Administration shall review the matter every fortnight and ensure that no effluent is discharged on land/dumped illegally. HSPCB shall take legal steps against the violators and sent a monthly report in this regard to Environment Department.*
- (iii) ULB Department and Municipal Corporation of Sonapat shall ensure the compliance of Solid Waste Management, 2016 in the district and Deputy Commissioner shall review the progress in his fortnightly review, as directed by Hon’ble NGT in O.A. No. 606/2018.*
- (iv) TCP Department shall not issue any Occupation/Completion Certificate to the upcoming/completed Projects, till the infrastructure and sewer systems are completely in place. Also, no further license/Consent to Operate shall also be issued by the Departments/Board concerned till the completion of all infrastructure facilities.*
- (v) TCP Department has been directed to issue a Public Notice in this regard, if necessary.*
- (vi) The Health Department has been directed to conduct a study to assess the possible adverse impact of the illegal discharge/pollution on the health of local residents.*
- (vii) TCP Department has also been directed to expedite and ensure timely completion of the laying of sewer lines and establishment of the proposed STP (with a capacity of 15 MLD) so that the issue is solved scientifically and permanently.”*

3. The Tribunal fixed interim compensation for restoration of environment as follows:

Sl. No.	Name of the Units	Interim Compensation

1.	M/s TDI Infrastructure Ltd, (For TDI Kingsburry Apartments), G.T. Road, Sonipat-	Rs. 10 Crores
2.	M/s TDI Infrastructure Ltd, My Floor 2, Sector-60, Sonipat.	Rs. 2.5 Crores
3.	M/s TDI Infrastructure Ltd, Tuscan City, Sector-58, Sonipat-	Rs. 2.5 Crores
4.	M/s CMD Built-Tech Pvt. Ltd. (Ushay Towers), Sector-61, Kundli, Sonipat-	Rs. 2.5 Crores
5.	M/s Parker Estate Development Pvt. Ltd., Sector-61, Kundli, Sonipat.	Rs. 2.5 Crores
6.	M/s Narang Constructions & Financiers Pvt. Ltd. (Max Height), Sector-62, Kundli, Sonipat.	Rs. 2.5 Crores

4. The compensation determined by the Committee as per its report dated 21.02.2020 is as follows:

S. No.	Name of Banquet	No. of Days	EC for violation (in Rs.)	Solid Waste non-compliance EC (in Rs.)	Total Environmental Compensation (in Rs.)
1.	M/s TDI Infrastructure Ltd. (For TDI Kingsburry Apartment), G.T. Road, Sonipat	2826	15,63,13,125	2,85,95,040	18,49,08,165
2.	M/s TDI Infrastructure Ltd., My Floor 2, Sector - 60, Sonipat	815	4,50,79,687.5	11,77,104	4,62,56,792
3.	M/s TDI Infrastructure Ltd. Tuscan City, Sector - 58, Sonipat	2022	11,18,41,875	23,60,966.4	11,42,02,841
4.	M/s CMD Built-Tech Pvt. Ltd. (Ushay Towers), Sector - 61, Kundli, Sonipat	658	3,63,95,625	1,77,120	3,65,72,745
5.	M/s Parker Estate Development Pvt. Ltd., Sector - 61 Kundli, Sonipat	830	4,59,09,375	11,79,360	4,70,88,735
6.	M/s Narang Construction & Financiers Pvt. Ltd. (Max Height),	966	5,34,31, 875	16,06,656	5,50,38,531

	Sector – 62, Kundli, Sonipat				
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5. The matter was last considered on 01.10.2020 in the light of the report of the joint Committee determining compensation and status report filed by the State PCB. We consider it appropriate to reproduce the discussion in the said order:-

“1...xxx.....xxx.....xxx

2. The matter was earlier considered in the light of the report of Chief Secretary Haryana dated 19.06.2019, 05.07.2019 and 28.08.2019 based on inspection conducted by the State PCB, District Town Planner, Haryana Sehari Vikas Pradhikaran (HSVP) and Municipal Council Sonapat finding serious violations of environmental norms in the building project in question and suggesting short term and long term action plans. After considering the findings and observations in the inspection report, the Tribunal observed:-

“5.From the above report, violations of Environment laws by the units in question can be briefly summed up as follows:

- a) **No prior Environmental Clearance & CTE was obtained**
- b) **The projects have been constructed without obtaining Environmental Clearance and without CTE/CTO from HSPCB.**
- c) **In terms of STP, the deficiencies observed during sampling relates to absence of flow meter at the inlet of STPs, non-maintenance of log book, the outlet of STPs are exceeding the prescribed limits of board, etc.**
- d) **Untreated effluents from STPs are being discharged either through tanker or on open land near village Nagal for percolation.**
- e) **The units are non-complying with SWM Rules and no facility for collection segregation and disposal of solid waste exists**

6. Fourth report has been filed on 22.10.2019 by the State Pollution Control Board (SPCB) to the effect that total amount of Rs. 1.32 crore has been levied as environmental compensation and temporary arrangement was being made for management of sewage system. Further compensation is yet to be assessed.

7. The period of violations is 2 years or more. The turnover of the projects is in hundreds of crores. The deficiencies are in the knowledge of the project proponents who are in regular business. During inspections noted above, project proponents have become further aware of the shortcomings. Though Environment is priceless, quantum of Environment Compensation has to be adequate to restore the environment and must have deterrent aspect so that such violations are not profitable. No lenient attitude can be shown nor can such matters be unduly prolonged.

8. *Legal position in this regard is settled. In Vellore Citizens Welfare Forum vs. Union of India (UOI) and Ors¹, the Hon'ble Supreme Court interpreted "Polluter Pays" principle by stating that the absolute liability for harm to the environment extends not only to compensate the victims of pollution but also the cost of restoring the environmental degradation. Remediation of the damaged environment is part of the process of "Sustainable Development" and as such polluter is liable to pay the cost to the individual sufferers as well as the cost of reversing the damaged ecology. The Precautionary Principle and the Polluter Pays Principle have been accepted as part of the law of the land. Measure of compensation must be correlated to the magnitude and capacity of the enterprise because such compensation must have a deterrent effect. It was further observed on the basis of principle laid down in M.C. Mehta and Anr. vs. Union of India and Ors.,² that a person undertaking an activity involving hazardous or risky exposure to human life is strictly liable for injury suffered by another person, irrespective of any negligence or carelessness on part of the managers of such undertaking. Pollution cannot be allowed to be profitable activity. The environment is priceless. Intentional violations have to be visited with more stringent damages than accidental or unintended. We have taken into account the principles for determining quantum of damages laid down, inter-alia, in Sterlite Industries (India) Ltd. v. Union of India (2013) 4 SCC 575 : ¶ 47, T.N. Godavarman Thirumulpad v. UOI & Ors. (2006) 1 SCC 1 : ¶ 1, Indian Council for Enviro-Legal Action & Ors. v. Union of India & Ors. (1996) 3 SCC 212 : ¶ 67, Vellore Citizens Welfare Forum v. UOI, (1996) 5 SCC 647 : ¶ 11 to 13, M.C. Mehta v. Kamal Nath (1997) 1 SCC 388 : ¶ 10, Public Trust Doctrine, ¶ 24, M.C. Mehta v. UOI & Ors., W.P (C) No. 13029/1985 order dated 24.10.2017, MCD v. Uphaar Tragedy Victims Association (2011) 14 SCC 481 : ¶ 99, 100, Vadodra Municipal Corporation v. Purshottam v. Murjani & Ors. (2014) 16 SCC 14 : ¶ 17 and M. C. Mehta & Anr. v. Union of India (1987) 1 SCC 395 : ¶ 32.*

9. In the light of above settled principles, the action taken by the SPCB does not match the facts found in the inspection report dated 16.07.2019 filed by a joint Committee comprising of officers of the State Government. The violations, noted above, are of very serious nature and possibility of collusion of the officers of the State is not ruled out in permitting such violations and in failing to take requisite actions. The compensation assessed being grossly inadequate and disproportionate and the action of the SPCB being too slow shows the SPCB lacks necessary sensitivity for enforcing the rule of law or there is collusion at some level to cover up the illegality.

10. We accordingly direct the Chief Secretary, Haryana to consider referring the matter to vigilance or otherwise to ascertain intentional and collusive violation of law. The Chief Secretary may also oversee remedial action for speedy enforcement of environmental norms in the interest of health of the inhabitants.

¹ (1996) 5 SCC 647

² (1987) 1 SCC 395 :

11. Further, we find it necessary to constitute a joint Committee comprising representatives of CPCB, MoEF&CC and IIT Delhi to suggest realistic compensation to be recovered, apart from other actions to be taken. The Committee will be assisted by the SPCB Haryana. The CPCB will be the nodal agency.

12. Pending further consideration, in the light of above findings in the inspection report, we are prima facie of the opinion that interim compensation as follows needs to be recovered:

Sl. No.	Name of the Units	Interim Compensation
1.	M/s TDI Infrastructure Ltd, (For TDI Kingsburry Apartments), G.T. Road, Sonipat-	Rs. 10 Crores
2.	M/s TDI Infrastructure Ltd, My Floor 2, Sector-60, Sonipat.	Rs. 2.5 Crores
3.	M/s TDI Infrastructure Ltd, Tuscan City, Sector-58, Sonipat-	Rs. 2.5 Crores
4.	M/s CMD Built-Tech Pvt. Ltd. (Ushay Towers), Sector-61, Kundli, Sonipat-	Rs. 2.5 Crores
5.	M/s Parker Estate Development Pvt. Ltd., Sector-61, Kundli, Sonipat.	Rs. 2.5 Crores
6.	M/s Narang Constructions & Financiers Pvt. Ltd. (Max Height), Sector-62, Kundli, Sonipat.	Rs. 2.5 Crores

13. **The amount may be recovered by the State PCB and spent for restoration of the environment. The interim compensation will abide by final determination of compensation by the SPCB after following due procedure, including hearing the affected parties, in the light of the report of the joint Committee constituted as above. The Committee may give its report within three months by e-mail at judicial-ngt@gov.in and a copy thereof may also be provided to the State PCB and the Project Proponents so the Project Proponents will have the opportunity to contest the same before the State PCB or in any other proceedings. We have not considered necessary to hear the Project Proponents at this stage in view of patent violations at this stage shown by an independent inspection report and also in view of the fact that they will have sufficient opportunity after an expert report is available. We find adequate material for forming prima facie opinion about the quantum of Interim Compensation to be recovered.”**

3. Accordingly, the joint Committee has filed its report on 21.02.2020 determining the relevant extract from the said report as follows:-

“Based on calculation made in table 2 and 3, total EC estimated is mentioned in table – 4

S. No.	Name of Banquet	No. of Days	EC for violation (in Rs.)	Solid Waste non-compliance EC (in Rs.)	Total Environmental Compensation (in Rs.)
1.	M/s TDI Infrastructure Ltd. (For TDI Kingsburry Apartment), G.T. Road, Sonipat	2826	15,63,13,125	2,85,95,040	18,49,08,165
2.	M/s TDI Infrastructure Ltd., My Floor 2, Sector - 60, Sonipat	815	4,50,79,687.5	11,77,104	4,62,56,792
3.	M/s TDI Infrastructure Ltd. Tuscan City, Sector - 58, Sonipat	2022	11,18,41,875	23,60,966.4	11,42,02,841
4.	M/s CMD Built-Tech Pvt. Ltd. (Ushay Towers), Sector - 61, Kundli, Sonipat	658	3,63,95,625	1,77,120	3,65,72,745
5.	M/s Parker Estate Development Pvt. Ltd., Sector - 61 Kundli, Sonipat	830	4,59,09,375	11,79,360	4,70,88,735
6.	M/s Narang Construction & Financiers Pvt. Ltd. (Max Height), Sector - 62, Kundli, Sonipat	966	5,34,31,875	16,06,656	5,50,38,531

CONCLUSION

In addition to the assessment carried out by Joint Committee, EC on 06 Housing Societies as listed in table 4 above, following observations were made:

- i. Basic infrastructure for common facilities including Sewage management (collection, treatment and disposal of sewage) and solid waste management (collection, processing and Disposal), for the specified area should be planned / developed by the concerned local authorities (in this case Haryana Shahari Vikas Pradhikaran, (HSVP) formerly Haryana Urban Development Authority(HUDA) before awarding license to builders for development of individual housing societies in the area by the concerned authorities (in this case Town and Country Planning, Haryana).***

- ii. **However, in present case, Town and Country Planning Haryana has approved Change of Land Use and awarded license for development of individual housing societies to builders before planning & development of basic infrastructure for common facilities including Sewage and solid waste management by HSVP. Adequate infrastructure required for common facilities for sewage and solid waste for the area is yet to be developed for the area.**
- iii. **It was also noted that it is difficult to develop these common facilities once the housing societies come up as the land required for development of these facilities has not been earmarked/procured**
- iv. **In absence of sewerage system, both treated / untreated sewage from housing societies is being discharged in adjoining areas.**
- v. **As per conditions of Environment Clearance, housing societies have to treat sewage up to tertiary level and utilize in landscaping, gardening, toilet flushing, cooling tower etc. and remaining treated wastewater may discharge to final disposal system.**
- vi. **CTO issued by SPCB has stipulated compliance of all EC Conditions, however specific conditions regarding the level of treatment, extent of reuse of treated water, discharge standards and mode of disposal of treated water is to be included**
- vii. **Town and Country Planning Haryana has granted Occupancy Certificate (OC) prior to issuance of Consent to Operate (CTO) by the SPCB.**
- viii. **All the Housing Societies shall ensure reuse of treated sewage as per CPHEEO guidelines for point use. Standards is attached at Annexure-III. Excess treated sewage shall discharge to HSVP sewerage network**

In view of the above, Committee has opined that responsibilities of discharge of untreated sewage and improper Solid Waste management shall also be vested with the following authorities:

- i. **Town and Country Planning Haryana for granting license to builders prior to development of infrastructure related to sewerage system and granting OC before issuance of CTO;**
- ii. **HSVP for development of basic infrastructure for sewage and solid waste management of the area.”**

4. The status report has been filed on 13.09.2020 by the State PCB which refers to an order of the Hon’ble Supreme Court dated 11.09.2020 in Civil Appeal No. 003177/2020, Diary No. 17702/2020, M/s Parker Estate Developers Pvt. Ltd. v. Kissan Udey Samiti & Ors. as follows:-

“While finding certain violations that were committed by the appellant, Haryana State Pollution Control Board imposed interim environmental compensation of Rs.27,37,500 on the appellant in C.A. Diary No.17702/2020.

It is submitted by Mr. Sumeer Sodhi that the appellant in C.A. Diary No.18310/2020 has deposited the interim compensation amount of Rs.6,37,500/- imposed by the Haryana State Pollution Control Board.

In O.A.No.764 of 2018, Kissan Udey Samiti sought for remedial action for violation of environmental norms from the defaulters for not providing proper sanitisation and sewage system in constructing buildings in Sectors 58-64 at Kundli District, Sonapat. The National Green Tribunal ('the Tribunal') sought a report from the Chief Secretary of Haryana. The recommendations made by the Committee constituted by the State of Haryana was placed before the Tribunal. After perusing the report, the Tribunal imposed 2.5 crores as interim compensation.

The interim compensation was made subject to final determination of the compensation to be fixed by the State Pollution Control Board after hearing the Project Proponents. It is clear from the order passed by the Tribunal that appellants were not heard. Issue notice returnable after eight weeks on the condition that the appellant(s) shall deposit 50% of the interim compensation imposed on them before the Tribunal, with the Registry of this Court within a period of eight weeks.

However, the appellants shall appear before the State Pollution Control Board as directed by the Tribunal. The State Pollution Control Board shall give an opportunity to the appellants before passing a final order without being influenced by the interim compensation imposed by the Tribunal.

The recovery proceedings are stayed for a period of 8 weeks within which the amount of 50% of the interim compensation shall be deposited. In default, the recovery proceedings shall revive."

- 5. In the said report it is further mentioned as follows:-**
- “3. That prosecution action against all the Builders as mentioned in above table has been taken by filing complaint in Special Environment Court, Kurukshetra.**
 - 4. That no occupation/ completion certificate and fresh CTO is being issued in sector 58 to 64 by Town Country Planning Department and HSPCB.**
 - 5. That Haryana Shahari Vikas Pradhikaran (HSVP) submitted the time bound action plan for laying of sewer line to the existing 7.5 MLD STP at village RGC, Pattla. The work of laying of sewage line has been completed as informed vide letter dated 19.06.2020. The HSVP has issued letter to each colonizer operating in sector 58 to 64 for connection of sewage pipe line laid down by HSVP. Copy of letter dated 16.06.2020 issued by the HSVP is annexed herewith as Annexure-**

R/1. Sanction to 6 projects for sewer connection 1 we been issued by HSVP as per report submitted dated 30.09.2020. The report is annexed herewith as Annexure-R/2.

6. That Town Country Planning, Department has floated 1)Nlf for installation of new STP with capacity 15 MLD. The Construction of 15 MLD STP (Phase-I) near village Aterna for sector 58 to 04 Urban Estate Sonipat amounting to Rs. 32 Crore has been started and the work would likely to be completed by 31.12.2020 as informed by HSVP vide letter dated 19.06.2020.

7. That these Protect proponents have not submitted Environment Compensation as imposed by Hon'ble NGT therefore letter dated 20.03.2020 has been send to Deputy Commissioner, Sonipat for recovery of Environment Compensation. Accordingly, Summon were issued by Tehsildar, Rai asking to deposit the Environment Compensation on 31.08.2020 as imposed by Hon'ble NGT.

8. That 02 projects i.e. M/s Parker Estate Developers Pvt. Ltd. and M/s Pardeshi Developers Pvt. Ltd. (M/s CMK M/s CMD Built-Tech Pvt. Ltd) tiled Civil Appeal before Hon'ble Supreme Court of India. The order dated 11.09.2020 passed by Hon'ble Supreme Court is annexed herewith as Annexure-R/3. One Project M/s TDI Infrastructure Ltd. approached the High Court of Delhi by way of Writ Petition (Civil). Copy of order dated 22.09.2020 is annexed herewith as Annexure-R/4.

9. The projects as mentioned in above said table has submitted representation for the Compensation as imposed by Joint Committee constituted by Hon'ble NGT. The project proponents have been directed to submit interim compensation as imposed by Hon'ble NGT.”

6. In view of the above, we defer the proceeding to await further action in the matter in pursuance of the order of the Hon'ble Supreme Court.

M.A. No. 175/2019 has been filed by the applicant for stopping illegal construction and launching prosecution. The applicant may serve a copy of the application on the concerned authorities. The said application may be first considered by the State PCB in coordination with other concerned Authorities of the State of Haryana and a factual and action taken report filed before the next date by e-mail at judicial-ngt@gov.in preferably in the form of searchable PDF/ OCR Support PDF and not in the form of Image PDF.”

6. Thus, though the matter was earlier deferred to await the outcome of proceedings in the Hon'ble Supreme Court, the applicants have pressed

for taking up of the matter on the ground that period of almost one year has gone by. Violations are continuing and other matters involving overlapping issues are also listed. It is stated that there is no bar to consideration by the Tribunal to enforce environmental norms.

7. Accordingly, we have considered the matter further with the assistance of learned counsel for the applicants and for the State PCB. Other counsel though present have opted not to participate. Counsel for TDI says that she is merely proxy counsel seeking adjournment.

8. We have perused the report of the Chief Secretary, Haryana filed in OA No. 661/2018 Praveen Kakar case, also listed today. The report is general about devising appropriate strategies to deal with such matters. We have also considered the written statement filed on 21.06.2021 in response to M.A. No. 175/2019 on the issue of interim order against construction and for remedial action by way of prosecution. The written statement filed by the State PCB gives the details of construction in various projects as follows:-

Sr. No.	Name of Licence	Licence No.	Total area in acres	Site address	Remarks
1.	M/s Parilok Real Estate Pvt. Ltd.	46 of 2019/05.03 .2019	6.20 acres	Sector – 63, Village Patla & Nangal	DDJAY
2.	J.S. Broad Casting Pvt. Ltd.	48 of 2019/05.03 .2019	11.30 acres	Sector – 64, Nangal Kalan	DDJAY
3.	TDI Mansion Pvt. Ltd.	93 of 2019/14.08 .2019	10.0187 acres	Sector – 63, Village Patla & Nangal	DDJAY
4.	Pushprattan Development Pvt. Ltd.	47 of 2019/05.03 .2019	5.6375 acres	Sector – 63, Nangal Kalan	DDJAY
5.	M/s Navjyoti Overseas Pvt. Ltd.	79 of 2008/01.04 .2008	21 acres	Sector – 61, Nangal Kalan	Residential Group Housing Colony
6.	M/s P.S. Realtors Pvt. Ltd.	74 of 2008	10.8375 acres	Sector – 64, Village Patla & Nangal	Residential Group Housing Colony
7.	M/s TDI Infrastructure Ltd. (Formerly non as Intime Promerts Pvt. Ltd.) Under	183-228 of 2004	123.04 acres	Sector – 59, Nangal Kalan	Plotted Colony

	Construction building at Pot no. E-166, E-208, 209, E-42, F-58				
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9. The composite report of the Chief Secretary, Haryana in pursuance of order dated 01.10.2020 giving the status of action taken in O.A. No. 764/2018 is as follows:-

“d. In OA No 764/2018 (Kissan Udey Samiti V/s State of Haryana & ors.)

- In the said matter, Hon'ble NGT has imposed the Environment compensation against various project proponents and same has not been submitted by the project proponents concerned. Therefore, vide letter dated 20.03.2020 Deputy Commissioner, Sonipat has been requested for recovery of Environment Compensation. Accordingly, Summons were issued by Tehsildar, Rai (Sonipat) for asking to deposit the Environment Compensation on 31.08.2020 as imposed by Hon'ble NGT.
- 03 Projects i.e. M/s Parker Estate Developers Pvt. Ltd., M/s Pardesi Developers Pvt Lt. (M/s CMK M/s CMD Built-Tech Pvt. Ltd) Project and M/s TDI Infrastructure Ltd. have filed Civil Appeal before Hon'ble Supreme Court of India. 01 Project i.e. M/s Narang Constructions & Financiers Pvt. Ltd., Sector 62, Kundli Sonipat has approached the High Court of Punjab and Haryana by way of writ petition (Civil). 02 no cases have submitted environment compensation of 50% as imposed by NGT in compliance of order issued by Hon'ble Supreme Court. The detail of the same in table form is as under:-

Sr. No	Name and Address	Details of Case pending in Supreme Court/ High Court	Environment Compensation imposed by NGT	Environment Compensation Recommended by the joint Committee	Amount deposited by the project
1.	M/s TDI Infrastructure Ltd(TDI Kingsburry Apartment), G.T. Road, Sonapat	Civil Appeal No. 3478 of 2020 (pending with Supreme Court)	Rs. 10 Cr.	18,49,08,165 /-	--
2.	M/s TDI Infrastructure Ltd. My floor2 Sector 60, Sonapat	Civil Appeal No. 3478 of 2020 (pending with Supreme Court)	Rs. 2.5 Cr.	1,62,56,792/-	--

3.	M/s TDI Infrastructure Ltd. Tuscan City, Sector 58, Sonapat	Civil Appeal No. 3478 of 2020 (pending with Supreme Court)	Rs. 2.5 Cr.	11,42,02,841 /-	--
4.	M/s CMD Built Tech Pvt. Ltd. (Ushay Towers), Sector - 61, Kundli, Sonapat	Civil Appeal No. 3178 of 2020 (pending with Supreme Court)	Rs. 2.5 Cr	3,65,72,745/-	1.25 Cr.
5.	M/s Parkar Estate Development Pvt. Ltd. Sector - 61, Kundli, Sonapat	Civil Appeal No. 3177 of 2020 (pending with Supreme Court)	Rs. 2.5 Cr	4,70,88,735/-	1.25 Cr.
6.	M/s Narang Construction & Financiers Ltd., (Maxheight) Sector - 62, Kundli, Sonapat	CWP No. 15424/2020 (pending with Supreme Court)	Rs. 2.5 Cr	5,50,38,551/-	--

- Further, HSPCB has filed the cases in Special Environment Court, Kurukshetra against the violators. The status of court cases given in table below:-

Title	Court Name and Case detail	Next hearing	Filed by
M/s TDI Infrastructure Ltd. for Kingsburry Apartments, G. T Road, Kundli Sonipat Vs HSPCB	The Special Environment Court, Kurukshetra, Case No. CRM-M/2019/34	31/08/2021	Sh. Lalit Malik, AEE
M/s Pardesi Developers Private Limited, Sector-61 Village Rasoi, Kundli Vs HSPCB	The Special Environment Court, Kurukshetra, Case No. CRM-M/2020/26	08/09/2021	Sh. Abhijeet Singh, AEE

M/s Narang Construction & Financiers Pvt. Ltd. Sector 62, Kundli Sonipat Vs HSPCB	The Special Environment Court, Kurukshetra, Case No. CRM-M/2020/30	08/09/2021	Sh. Abhijeet Singh, AEE
M/s Parker Estate Developers Pvt. Ltd Sector-61, Kundli, Sonipat	The Special Environment Court, Kurukshetra, Case No. CRM-M/2020/31	08/09/2021	Sh. Abhijeet Singh, AEE
M/s TDI Infrastructure Ltd. for Tuscan City, Sector 60, Kundli Sonipat Vs HSPCB	The Special Environment Court, Kurukshetra, Case No. CRM-M/ 2020/ 28	31/08/2021	Sh. Abhijeet Singh, AEE
M/s TDI Infrastructure Ltd. for Tuscan City, Sector 60, Kundli Sonipat Vs HSPCB	The Special Environment Court, Kurukshetra, Case No. CRM-M/ 2020/ 28	31/08/2021	Sh. Abhijeet Singh, AEE
M/s TDI Infrastructure Ltd. for (My Floor 2) Sector 60, Kundli, Sonipat Vs HSPCB	The Special Environment Court, Kurukshetra, Case No. CRM-M/2020/27	31/08/2021	Sh. Abhijeet Singh, AEE
M/s TDI Infrastructure Ltd. for Kingsburry Apartments, G.T. Road, Kundli Sonipat v. HSPCB	The Special Environment Court, Kurukshetra, Case No. CRM-M/2020/29	31/08/2021	Sh. Abhijeet Singh, AEE

10. As observed in O.A. No. 661/2018, *Praveen Kakar & Ors. v. MoEF&CC & Ors.*, the environmental violations need to be taken seriously. The least expected by the citizens from the State is that those found violating norms are blacklisted to avoid further and recurring violations and damage to the environment and public health. On polluter pays principle, compensation must be recovered. In the present case, though stay has been granted by the Hon'ble Supreme Court only in favour of M/s Parker Estate Development Pvt. Ltd., Sector – 61 Kundli, Sonipat and M/s CMD Built-Tech Pvt. Ltd. (Ushay Towers), Sector – 61, Kundli, Sonipat, compensation is not being recovered from other PPs. This needs to be done forthwith. We have noted that the Committee has determined

compensation which is higher than the interim compensation determined by the Tribunal earlier. However, in doing so, the Committee has not considered the principles laid down by the Hon'ble Supreme Court referred to in the earlier order of this Tribunal dated 01.10.2020 quoted in Para 4 above and also judgement of the Hon'ble Supreme Court in *Goel Ganga Developers India Pvt. Ltd. v UOI*³ relating to violation of law by a housing project and judgments in *Alembic Chemicals v Rohit Prajapati*⁴, *Keystone developers v. Anil Tharthare*⁵ and *Mantri Techzone Pvt. Ltd. v. Forward Foundation and Ors.*,⁶ are also required to be taken into account. The compensation can be the percentage of cost of the project so as to be deterrent. The Committee may accordingly give its supplementary report through the CPCB.

11. We have considered the general issue arising out of report of the Chief Secretary in connected matter i.e. OA 661/2018, relating to violations at a different location. Observations are quoted below:

“xxxxxx.....xxx

9. *We have given due consideration to the report of the Chief Secretary, Haryana and find that the effectiveness of mechanism needs to be studied in the light of success in preventing and remedying violations. The Chief Secretary, while experimenting the mechanism evolved, may undertake study of extent of its success to consider what further changes are required in the mechanism after some time. Violations have been reported in the last several years and it is yet to be seen whether the compliance level has improved. We have separately considered violations in different cases mentioned in the report by separate orders in the said matters today. Violations found in the present case include absence of EC, Consent to Establish, Consent to Operate and consent for extraction of groundwater. The compensation assessed is only on account of untreated sewage water discharge and illegal extraction of groundwater. No compensation has been assessed for establishing the project without prior EC. In view of law laid down in Goel Ganga Developers India Pvt. Ltd. v UOI, the scale of compensation has to be related to the cost of the project so as to operate as deterrent*

³ (2018) 18 SCC 257

⁴ 2020 SCC OnLine SC 347

⁵ (2020) 2 SCC 666

⁶ 2019 SCC online SC 322, Para 43-47

against the law violators. The scale of compensation, thus, needs to be revised.

10. It does appear that so far effectiveness of monitoring is not reflected from the report either in the matter of preventing colluding officers who have enabled gross violations or from dissuading the violators or providing remedy to the victims. Only mention is appointment of an inquiry officer on 10.08.2021. Unless there is speedy effective action, mere appointment of an enquiry officer after three years of highlighting of rampant violations, in collusion with the State authorities is merely an eye wash. Similarly, with regard to effective recovery from M/s Ansal Properties and Infrastructure Ltd., only justification for not effecting recovery or taking punitive measures is order of status quo with regard to possession. There is no bar against effecting recovery of assessed compensation or blacklisting, in terms of observations of the Tribunal in Para 4 in the order dated 01.10.2020. This only shows lack of sensitiveness, commitment and will of the administration in enforcing rule of law. We further find that as per order of the CPCB under Section 5 of the EP Act dated 21.06.2019, the State PCB was required to revoke the consents/authorizations given to M/s Ansal Properties and Infrastructure Ltd., the SEIAA, Haryana was required to revoke EC. The Director, Town and Country Planning Department was required not to allow any expansion or grant any completion and the Electricity Department was directed not to supply electricity for expansion of any project of the PP in Sushant Lok, Phase-1, apart from direction to the HSVP not to supply water for such expansion. Nothing is shown to have been done. Thus, the policy needs to be reviewed. Least expected for ensuring compliance by Residential Complexes is to inventorise such projects and to ascertain their compliance status. Second step is to place such status in public domain with reference to check list of conditions requiring compliance, with technical accuracy, to ensure that no such projects come up without being compliant with norms. There have to means to encourage best practices for waste management, including decentralised waste processing facility in coordination with concerned local body for collection of residual waste. Other issues need focus are water harvesting, greenery, leaving open spaces, dual piping system for utilisation of treated water for reuse. One cannot ignore that haphazardly developed housing projects are potential for degradation of environment, affecting public health. Prior to occupation and handing over to RWA, audit of compliances by a proper and accountable mechanism needs to be ensured. Revamping of Town and Country Planning Department, SEIAA, SEAC and State PCB and their interse coordination is a must for meaningful and prompt action against violators. Ownership and oversight of mechanism has to be of officers of proven credibility and status.

11. We note that notice has not been issued to the PP so far, as the Tribunal in the first instance sought action taken report from statutory authorities in exercise of their powers but in view of inadequacy of action, the Tribunal may have to consider further action after giving opportunity to the PP. Issue notice to the PP – M/s Ansal Properties and Infrastructure Ltd., 115 Ansal Bhawan, K.G. Marg, New Delhi-110001 by e-mail to show cause why further action

be not taken for the violations, already noted. Response be filed within one month. Haryana Sehari Vikas Pradhikaran (HSVP) and Town and Country Planning Department, Haryana may also explain how licenses have been granted for developing societies without ensuring requirement of providing basic infrastructure of waste management and other amenities required for clean environment and what action is being taken when violations are found. The said Departments may also file their action taken reports in the matter by e-mail in same manner as in above direction.

12. We also direct the Chief Secretary, Haryana to coordinate further action in light of above observations by calling a joint meeting of the concerned State authorities within one month from today. Status report of steps so taken as on 31.01.2022 may be filed before the next date by e-mail at judicial-ngt@gov.in preferably in the form of searchable PDF/ OCR Support PDF and not in the form of Image PDF. Likewise, CPCB may also file its additional status report in the matter in the light of above observations.”

12. The above observations are relevant for the present case also. Even in the present matter, action taken is not adequate. The report of the Chief Secretary quoted in Para 9 above shows that neither the compensation assessed has been recovered nor the rate of compensation is as per norms laid down by the Hon'ble Supreme Court. Action has also not been taken for ensuring compliance of environmental norms. Even blacklisting has not been done of the PPs. Thus, it calls for action by the concerned departments as well as the PP needs to be made accountable before this Tribunal.

13. So far, compliance was being sought from statutory regulators and notice was not issued to individual PPs. Since further action is required, we find it necessary that the Tribunal needs to go into the matter. Accordingly, we issue notice to the all the PPs for their response to the violations alleged and found.

14. We also direct the statutory regulators to proceed as per law and in the light of above observations which may be overseen by the Chief Secretary, Haryana in the same manner as in OA No. 661/2018 as above.

15. Chief Secretary, Haryana and CPCB may furnish their respective action taken reports by email at judicial-ngt@gov.in preferably in the form of searchable PDF/ OCR Support PDF and not in the form of Image PDF. Haryana Sehari Vikas Pradhikaran (HSVP) and Town and Country Planning Department, Haryana may also explain how licenses have been granted for developing societies without ensuring requirement of providing basic infrastructure of waste management and other amenities required for clean environment and what action is being taken when violations are found. The said Departments may also file their action taken reports in the matter by e-mail in same manner as in above direction. They may include the remedial steps taken in pursuance of directions of the Chief Secretary in report dated 09.06.20219 quoted in para 2 above.

16. M.A. Nos. 175/2019 and 24/2021 have been filed for stopping further construction but as per stand of the State PCB no such further construction is taking place as per Building plans. Since the issue of remedial action in the course of construction is being dealt with in the main matter, it does not appear to be necessary to pass a separate order in these applications. The M.A.s will stand disposed of.

O.A. No. 155/2020

17. Grievance in this application is against violation of environmental norms by Respondent No. 1 in the course of setting up “TDI City Kundli” project spread over 1200 acres of area. It is alleged that basic provisions for waste management and maintaining parks and green areas have not been provided. Even water and electricity have not been provided. There is no monitoring of the compliance of environmental norms by the statutory authorities in the State of Haryana on account of collusion or disregard of law. As a result, there is damage to environment and public health and

violation of Rule of Law. Detailed violations have been listed in the application.

18. Vide order dated 01.10.2020, the Tribunal directed the joint Committee of CPCB, MoEF&CC and IIT, Delhi to give its report about the status of compliance of environmental norms along with the report in O.A. No. 764/2018 which has been sought earlier. Accordingly, the joint Committee filed its report on 21.01.2021 noticing violations in providing waste management facilities as well as seeking statutory clearances. The observations and recommendations in the report are reproduced below:-

“3.0 Observations

During the inspection by joint committee on 07.01.2021, following observations are made:

- 1. M/s TDI Infrastructure Limited has set-up residential plotted colony in sector 58,59,60,61 and 64 of Sonipat, Haryana.*
- 2. Basic minimum infrastructure i.e. internal roads, open space, public parks, streetlights, public health services including water supply & Sewerage Treatment Plant, electricity, etc. are not functional at site.*
- 3. Plot of applicant was inspected and it is observed that no Electricity supply, Water supply, Sewerage connectivity or STP exist at site. Approach road to plot is also damaged at multiple locations.*
- 4. No mechanism of proper collection and segregation observed at site. Compost arrangement for biodegradable waste was not provided at site.*
- 5. An unauthorized disposal of sewerage water in nearby plotted area was observed. An unauthorized tractor carrying tankers (without any registration numbers) was found disposing sewerage wastewater at nearby plotted area. An undesirable smell and stagnant water has been observed at these areas.*
- 6. Project Proponent is supplying water to township through bore wells but has not obtained any approval from CGWA.*
- 7. Project Proponent has not submitted adequacy reports of captive STP under township and not provided proper sludge collection system.*
- 8. Rain Water Harvesting pits were found clogged and filled with mud and stagnant water.*
- 9. It is also evident from the report of District Town and Country Department , Sonipat provided by applicant that M/s TDI Infrastructure Pvt. Ltd. has breached the conditions of the license*

and condition of part completion certificates granted by the Department and not able to upkeep the minimum infrastructure(Copy attached at Annexure-III)

10. Violation of Environment Clearance Conditions:

Compliance status of EC condition is attached at Annexure-IV. Observation of Joint committee with respect to violations of EC conditions are summarized below.

- a. Project Proponent has not constructed decentralized tertiary level STP for 100 percent treatment of grey water and reuse as per EC conditions.
- b. No solar, wind or renewable energy source has been observed at project site.
- c. No CFLs/LEDs has been observed at street lights some
- d. Project Proponent has also not provided details of area covered & species planted under green belt and area covered under green belt is looking inadequate.
- e. Project Proponent has not provided corporate social responsibility plan, details of environmental management cell, year wise details of year wise fund earmarked/utilized towards environmental protection, not submitted six monthly compliance reports regularly.
- f. Project Proponent has not provided copy of environmental statement of form-V, link of company website where copy of EC along with SMCRs has been uploaded. PP has also not submitted the six monthly compliance reports regularly.
- g. Project Proponent has not provided details/copy of agreement with recycler to handle/dispose hazardous waste (waste oil from DG sets)and STP sludge, plastic waste, e-waste and biomedical waste etc. generated at project site.
- h. Project Proponent has not provided copy of NOC from civil aviation department, forest department, fire department, chief controller of explosives department, CGWA and Consent to Operate from HSPCB.

4.0 Recommendation :

Recommendation of Joint Committee based on the inspection, documents provided by applicant and respondents are follows:

1. Project Proponent to comply with all EC conditions and seek approval from CGWA for use of bore well.
2. Project Proponent to comply with provision of Solid Waste Management Rules, 2016 and ensure proper collection, segregation, and treatment of biodegradable waste in compost as per EC conditions.
3. Project Proponent to ensure that no treated/untreated sewage is being disposed into vacant plots.
4. Local State administration to keep vigil on unauthorized vehicles /tractor tankers being used for discharge of pollutants, so that no unauthorized discharge be made on land/river disposals.
5. Project proponent to ensure basic infrastructure facilities are in operation i.e. internal roads, open space, public parks, streetlights, public health services including water supply & Sewerage Treatment Plant, electricity before allowing construction activity in residential plots.
6. The grey water should be treated-up to tertiary level in decentralized STP and treated water should be reused for cooling, flushing landscaping as per Environment Clearance conditions.

7. Following points were earlier mentioned in report of Joint Committee in the matter of O.A No 764/2018 and need to be recommend for present case:

- a. Haryana Sehari Vikas Pradhikaran (HUDA) to provide sewer connectivity to units at the earliest. Only authorized vehicles having vehicle registration number to be used for transportation of sewage to STP as interim arrangement.
- b. Town and Planning department and Haryana Sehari Vikas Pradhikaran to issue Change in Land Use/License only after ensuring necessary basic infrastructure development (Water Supply, Sewerage network, Road) in the area.
- c. Concerned agencies to issue Occupancy certificate after ensuring development of infrastructure as per environmental clearance conditions.
- d. If a project proponent has applied for part CTO, he should be granted permission on remaining part only after ensuring valid Consent to Operate from SPCB.
- e. HSVP to ensure completion of construction of Sewage Treatment Plant and sewerage network work (as per EC conditions) by Project Proponent before issuing Occupation Certificate or any other permission.”

19. We also reproduce the Table of status of compliance in Annexure-IV as follows:-

S. No.	Condition	Compliance
SPECIFIC CONDITIONS: OPERATIONAL PHASE		
• As observed, PP does not have valid copy of CTO of the project.		
i.	The gaseous emissions from DG set shall be dispersed through adequate stack height as per CPCB standards. Acoustic enclosure shall be provided to the DG sets to mitigate the noise pollution. Low sulphur diesel shall be used. The location of the DG set and exhaust pipe height shall be as per the provisions of the Central Pollution Control Board (CPCB) norms.	<ul style="list-style-type: none"> • PP has not provided details of DG sets working at project site along with gaseous emissions monitoring data. • PP has also not provided copy of agreement with recycler to dispose waste oils from DG sets.
ii.	For indoor air quality the ventilation provisions as per National Building Code of India.	<ul style="list-style-type: none"> • Adequate ventilation has been observed at project site for indoor air quality
iii.	Fresh water requirement from HUDA Supply/ground water. Water Supply shall not exceed 28632 m ³ /day.	<ul style="list-style-type: none"> • PP has submitted in June-2020 six monthly compliance report that they are abstracting 817 m³/d of ground water. However, PP has not submitted the copy of NOC for the same from CGWA. • PP has also not provided the source of remaining water supply.
iv.	Fresh water requirement from Municipal Water Supply shall not exceed 93 m ³ /day.	<ul style="list-style-type: none"> • As submitted by PP in June-2020 SMCR that they are using only ground water as fresh water

v.	<i>The quantity of fresh water usage, water recycling and rainwater harvesting shall be measured and recorded to monitor the water balance as projected by the project proponent. The record shall be submitted to the Regional Office, MoEF&CC along with six monthly Monitoring reports.</i>	<ul style="list-style-type: none"> • PP has not submitted the water balance sheet of the project. • Rain water harvesting pits were checked by the committee members randomly and observed filled with mud and stagnant water.(Photo 1)
vi.	<i>The installation of the Sewage Treatment Plant (STP) shall be certified by an independent expert and a report in this regard shall be submitted to the Ministry before the project is commissioned for operation. Periodical monitoring of water quality of treated sewage shall be conducted. Necessary measures should be made to mitigate the odour problem from STP.</i>	<ul style="list-style-type: none"> • PP has not submitted the STP adequacy reports of STP working at project site. • Illegal disposal of sewerage water through tankers in nearby are of the project site has also observed by committee members. • Some tankers without registration numbers have been observed for the same. • An undesirable smell and stagnant water has been observed at nearby areas during the joint visit. (Photo 2)
vii.	<i>No sewage or untreated effluent water would be discharged through storm water drains.</i>	Same as submitted in point no. vi.
viii.	<i>Sludge from the onsite sewage treatment, including septic tanks, shall be collected, conveyed and disposed as per the Ministry of Urban Development, Central Public Health and Environmental Engineering Organization (CPHEEO) Manual on Sewerage and Sewage Treatment Systems, 2013.</i>	<ul style="list-style-type: none"> • No sludge collector system has been observed at project site. • PP has not provided sludge collection data and copy of agreement with recycler to dispose the same.
ix.	<i>The provisions of the Solid Waste Management Rules, 2016, e-Waste (Management) Rules, 2016, the Construction and Demolition Waste Management Rules, 2016 and the Plastics Waste Management Rules, 2016 shall be followed.</i>	<ul style="list-style-type: none"> • No provision of proper solid waste management /collection has been observed at project site during the visit. • Outside boundary of the project has been observed with full of household waste. (Photo 3) • PP has not provided biodegradable waste composter to process the biodegradable waste. • No place for collection and disposal of solid waste has been observed at project site. • PP has not provided details of plastic waste generated/collected from the society and copy of agreement with recycler.
x.	<i>Solar, wind or other Renewable Energy shall be installed to meet electricity</i>	<ul style="list-style-type: none"> • No solar, wind or renewable energy source

	generation equivalent to 1% of the demand load or as per the state level/ local building bye-laws requirement, whichever is higher.	has been observed at project site.
xi.	Solar power shall be used for lighting in the apartment to reduce the power load on grid. Separate electric meter shall be installed for solar power. Solar water heating shall be provided to meet 20% of the hot water demand of the commercial and institutional building or as per the requirement of the local building bye-laws, whichever IS higher. Residential buildings are also recommended to meet its hot water demand from solar water heaters, as far as possible.	<ul style="list-style-type: none"> • PP has not installed solar panels at project site to generate solar power. • Remaining situations i.e. solar water heater, separate electric meter for solar power and to compete the hot water demand from solar water heater are also automatically not fulfilled by the PP.
xii.	Energy conservation measures like installation of CFLS/ LED for the lighting the area outside the building should be integral part of the project design and should be in place before project commissioning. Used CFLs, TFL and LED shall be properly collected and disposed off/ sent for recycling as per the prevailing guidelines/rules of the regulatory authority to avoid mercury contamination.	<ul style="list-style-type: none"> • PP has not provided the details of CFLS/LED installed at common area of the project. • Most of the common area of 'K' has been observed without CFLS/ LEDs at street lights. (Photo 4) • PP has also does not have power connections at plotted blocks of the projects. • PP has also does not have proper water connections at plotted blocks of the projects.
xiii.	A minimum of 1 tree for every 80 sqm of land should be planted and maintained. The existing trees will be counted for this purpose. Preference should be given to planting native species. Where the trees need to be cut, compensatory plantation in the ratio of 1:3 (i.e. planting of 3 trees for every 1 tree that is cut) shall be done and maintained. As proposed 1388831.79 sqm area shall be provided for green belt development	<ul style="list-style-type: none"> • Inadequate green belt has been observed at project site during the visit. • PP has also not provided the details and area covered by the trees planted at project site.
xiv.	An environmental management plan (EMP) shall be prepared and implemented to ensure compliance with the environmental conditions specified above. A dedicated Environment Monitoring Cell with defined functions and responsibility shall be put in place to implement the EMP. The environmental cell, shall ensure that the environment infrastructure like Sewage Treatment Plant, Landscaping, Rain Water Harvesting, Energy efficiency and conservation, water efficiency and conservation, solid waste management, renewable energy etc. are kept operational and meet the required standards. The environmental cell shall also keep the record of environment monitoring and those related to the environment infrastructure	<ul style="list-style-type: none"> • PP has not provided the details of environmental management cell developed for the project. Unauthorized disposal of sewerage waste water and improper maintenance of RWH pits has been observed at project site during the joint visit. (Photo 2)
xv.	The company shall draw up and implement a corporate social Responsibility plan as per the Company's Act of 2013.	<ul style="list-style-type: none"> • It seems that company has not drawn any corporate social responsibility plan

GENERAL CONDITIONS		
i.	A copy of the environmental clearance letter shall also be displayed on the website of the concerned State Pollution Control Board. The EC letter shall also be displayed at the Regional Office, District Industries Centre and Collector's Office Tehsildar's office for 30 days.	• PP has submitted the same to the regional office MoEF&CC, Chandigarh.
ii.	The funds earmarked for environmental protection measures shall be kept in separate account and shall not be diverted for other purpose. Year-wise expenditure shall be reported to this Ministry and its concerned Regional Office	• PP has not provided the year wise details of fund earmarked towards environmental protection measures and utilization of the same.
iii.	Officials from the Regional Office of MoEF&CC, Chandigarh who would be monitoring the implementation of environmental safeguards should be given full cooperation, facilities and documents/data by the project proponents during their inspection. A complete set of all the documents submitted TO MoEF&CC shall be forwarded to the APCCF, Regional Office of MoEF&CC, Chandigarh.	• PP has not submitted six monthly compliance reports regularly to the regional office of MoEF&CC, Chandigarh.
iv.	In the case of any change(s) in the scope of the project, the project would require a fresh appraisal by this Ministry	Noted
v.	The Ministry reserves the right to add additional safeguard measures subsequently, if found necessary, and to take action including revoking of the environment clearance under the provisions of the Environmental (Protection) Act, 1986, to ensure effective implementation of the suggested safeguard measures in a time bound and satisfactory manner	Agreed with
vi.	All other statutory clearances such as the approvals for storage of diesel from Chief Controller of Explosives, Fire Department, Civil Aviation Department, the Forest Conservation Act, 1980 and the Wildlife (Protection) Act, 1972 etc. shall be obtained, as applicable by project proponents from the respective competent authorities.	• PP has informed that they have received NOC from civil aviation department but not submitted the copy of the same. • PP has also not submitted the copies of NOC from forest department, fire department and chief controller of explosives department.
vii.	These stipulations would be enforced among others under the provisions of the Water (Prevention and Control of Pollution) Act, 1974, the Air (Prevention and Control of Pollution) Act 1981, the Environment (Protection) Act, 1986, the Public Liability (Insurance) Act, 1991 and the EIA Notification, 2006.	• PP has not submitted copy of Consent to Operate obtained under air and water act from state pollution control board.
viii.	The project proponent shall advertise in at least two local Newspapers widely circulated in the region, one of which shall be in the vernacular language informing that the project has been accorded Environmental Clearance and	• PP has not submitted the copy of newspaper advertisement for receiving of environment clearance

	copies of clearance letters are available with the State Pollution Control Board and may also be seen on the website of the Ministry of Environment, Forest and Climate Change at http://www.envfor.nic.in . The advertisement shall be made within Seven days from the date of receipt of the Clearance letter and a copy of the same shall be forwarded to the Regional Office of this Ministry at Chandigarh.	
ix.	Any appeal against this clearance shall lie with the National Green Tribunal, if preferred, within a period of 30 days as prescribed under Section 16 of the National Green Tribunal Act, 2010.	Agreed with
x.	A copy of the clearance letter shall be sent by the proponent to concerned Panchayat, Zilla Parisad, Municipal Corporation, Urban Local Body and the Local NGO, if any, from whom suggestions/ representations, if any, were received while processing the proposal. The clearance letter shall also be put on the website of the company by the proponent	<ul style="list-style-type: none"> • PP has not submitted any proof that they have submitted the copy of EC to concern Panchayat, Zilla Parisad/ Municipal Corporation, Urban Local Body and the Local NGO. • PP has also not submitted the link of company website where copy of EC along with SMCRs has been uploaded
xi.	The proponent shall upload the status of compliance of the stipulated EC conditions, including results of monitored data on their website and shall update the same periodically. It shall simultaneously be sent to the Regional Office of MoEF&CC, the respective Zonal Office of CPCB and the SPCB. The criteria pollutant levels namely; SPM, RSPM, SO ₂ , NO _x (ambient levels as well as stack emissions) or critical sectoral parameters, indicated for the project shall be monitored and displayed at a convenient location near the main gate of the company in the public domain.	<ul style="list-style-type: none"> • PP has also not submitted the link of company website where status of compliance of the stipulated EC conditions, including results of monitored data has been uploaded. • PP has also not submitted the six monthly compliance report of the project.
xii.	The environmental statement for each year ending 31 st March in Form-V as is mandated to be submitted by the project proponent to the concerned State Pollution Control Board as prescribed under the Environment (Protection) Rules, 1986, as amended subsequently, shall also be put on the website of the company along with the status of compliance of EC conditions and shall also be sent to the respective Regional Offices of MoEF&CC by e-mail.	<ul style="list-style-type: none"> • PP has not submitted copy financial environmental statement of form-V.

20. We also noted that the Chief Secretary, Haryana in a composite report with regard to the violations of environmental norms by the housing

projects has covered the present matter in pursuance of order dated 01.10.2020 stating as follows:-

In OA No. 155/2020 Dr. (Mrs.) (Manorama Sharma &Anr. V/s TDI Infrastructure Limited & Ors.)

- *In compliance of NGT order dated 01.10.2020 it is submitted that five prosecution cases have already been filed in special Environment Court, Kurukshetra against M/s TDI Infrastructure Ltd., Kundli, Sonipat. Environment Compensation has also been issued against the above said unit which has not been submitted by the unit therefore summon has been issued for auction of land belong to TDI Infrastructure Ltd. by Revenue Department to recover the Environment Compensation imposed against the said unit. Present case as subject cited above has been filed against M/s TDI Infrastructure Ltd (For TDI City), Residential Plotted Colony at Sector 58, 59 60 61 & 64 in Hon'ble NGT. The Joint Committee as deputed by NGT submitted the report to Chief Secretary, Government of Haryana. As per report, the said project has been found non-complying in the provisions of Water Act, 1974. As per committee report show cause notice dated 12.07.2021 was issued to the said project on the point related to Pollution Control Board for 15 days. No reply from the unit received in this office till date. The unit was again inspected on 02.08.2021 to check the present status of the observations as raised by the committee. At site, it has been found that the project has total 8816 residential plot and presently 250 residential plots have been constructed from which domestic discharge is generated. The project still not obtained CTE&CTO from HSPCB and also not installed STP for the residential plotted colony. The project is under installation of STP of capacity 250 KLD for which construction has been started. Therefore, Environment compensation of Rs. 5,35,12,500/- have been proposed to Head Office vide this office letter No 1846 dated 03.08.2021 and Draft Complaint for filling prosecution against the said project has been sent to Head Office vide this office letter No.1847 dated 03.08.2021 his office till date. Copy of report submitted by joint committee formed in compliance of NGT order dated 01.10.2020 is annexed hereby as Annexure R/9.”*

21. In view of the serious violations noticed in the report of the joint Committee and also from the report of the Chief Secretary, Haryana, our observations in dealing with OA 764/2018 apply to the present matter also. We issue notice to the PP for its response and also direct the Chief Secretary, Haryana in coordination with other concerned officers to take further remedial action including recovery of compensation, black listing of the PP and compliance of EC conditions. We also issue notice to the Director of Town and Country Planning Department, Haryana and HSVP

by e-mail for their response, if any. The Chief Secretary and the CPCB may cover the present matter in giving their reports in OA No. 661/2018 and OA No. 764/2018.

22. Respondent No. 1 is restrained from creating any further third party henceforth in view of *prima facie* case for cancelling the statutory consents, including the EC for continuing violations of the EC conditions.

23. I.A. No. 86/2021 has been filed by the applicant on 19.03.2021 with reference to the facts found by the joint Committee at the time of site visit on 07.01.2021. In the said I.A. the applicant has assailed the EC on the ground that the single EC for sectors 58, 59, 60, 61, 63 & 64 is invalid and the EC was sought after substantial development was done. The applicant has also mentioned other violations since the violations mentioned are also covered in the report of the joint Committee and EC has to be separately challenged, which has not been done. The applicant is free to make submissions with reference to the report of the joint Committee itself. I.A. No. 121/2021 is for interim order against disposal of waste in open land which matter is being dealt with in the main order itself. I.A. Nos. 86/2021 and 121/2021 accordingly stands disposed of.

List the main matter for further consideration on 16.02.2022.

A copy of this order be forwarded to the Chief Secretary, Haryana, CPCB, State PCB, SEIAA, Haryana, Director, Town & Country Planning Department, Haryana and HSVP by email for compliance.

Adarsh Kumar Goel, CP

Sudhir Agarwal, JM

Brijesh Sethi, JM

Dr. Nagin Nanda, EM

September 28, 2021
O.A. Nos. 764/2018&155/2020
A