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IN THE HON'BLE NATIONAL GREEN TRIBUNAL,
NEW DELHI

O.A No. 68 OF 2022

IN THE MATTER OF:

Raman Sharma

----- Petitioner

v/s

State of Haryana and others

----- Respondents

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Place: Gurugram

Date : 14-01-2024



Raman Sharma
Petitioner

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| <u>1</u> | Objections on the STATUS REPORT dated- 09-01-2024 submitted by Sh. Pradeep Kumar, IAS, Member Secretary, Haryana State Pollution Control Board. | <u>3 to 12</u> |
| <u>2</u> | No supporting documents are attached to counter the STATUS REPORT submitted by Sh. Pradeep Kumar, IAS, Member Secretary, Haryana State Pollution Control Board as no visible action is taken in compliance of the Orders of the Hon'ble NGT. | <u>Nil</u> |
| <u>3</u> | Brief Facts - A joint committee was formed by the Hon'ble NGT, Gurugram to ascertain the correctness of Green Area and other violations regarding placement of DG sets. | |
| <u>4</u> | Reply of SEIAA is not received | |

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IN THE MATTER OF:

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That Objections on the contents, facts and figures submitted through **STATUS REPORT** dated- 09-01-2024 submitted by Sh. Pradeep Kumar, IAS, Member Secretary, Haryana State Pollution Control Board.

Respectfully Showeth,

1. That complainant of O.A - 68 – 2022 i.e Raman Sharma was never involved in any of the meetings by Sh. Pradeep Kumar, IAS, Member Secretary, Haryana State Pollution Control Board while taking stock of violations and current status of the project MALIBU TOWNE and Green area under Municipal Corporation Gurugram.
2. That the amount collected on account of **ENVIRONMENT COMPUNSATION** is not spent to correct the violation and protection of Environment in Gurugram by HSPCB. Some amount are kept in bank in the shape of Fixed Deposit to earn the interest.
3. **What are** required norms as per the written Law for the percentage of Green area for Plotted colony in Haryana as per Rule 4 of Rules of 1976, the percentage of area of a colony under roads, open spaces etc. is required to be not less than 45% of the gross area of the land under the colony. This is not even known to the Member Secretary, HSPCB, Haryana and Respondent No. 2 R.O (N) Gurugram HSPCB and Respondent No. 3 Commissioner, Municipal Corporation Gurugram and Licensing Authority i.e DTCP, Haryana Respondent No. 4 and agency responsible for checking, correcting and recommending Service Plan estimates of the colony i.e HSVP Respondent No. 5.

4. **That the** required norms prescribed providing green areas per person for Plotted colony in Haryana as per Rule 4 of Rules of 1976, the percentage of area of a colony under roads, open spaces etc. is required to be not less than 45% of the gross area of the land under the colony. This is not even known to the Member Secretary, HSPCB, Haryana and Respondent No. 2 R.O (N) Gurugram HSPCB and Respondent No. 3 Commissioner, Municipal Corporation Gurugram and Licensing Authority i.e DTCP, Haryana Respondent No. 4 and agency responsible for checking, correcting and recommending Service Plan estimates of the colony i.e HSVP Respondent No. 5.
5. That erroneous approvals granted to Project Proponent Respondent No-8 i.e. M/s Malibu Estate Private Limited by Respondent No- 2 i.e. RO, Gurugram Region (N) HSPCB and member secretary HSPCB Panchkula, Respondent No-3 i.e. Municipal Corporation Gurugram, Respondent No-4 i.e. DGTCP Haryana, Respondent No-5 i.e. Haryana Shehri Vikas Pradikaran are part of record. As far as Green area is concerned none of the Respondent has submitted correct details, facts & figures before the MOEFCC, SEIAA and now before the Hon'ble National Green Tribunal in writing or verbal arguments. The figures under Title **Environment Clearance Application** for Residential Plotted colony along with Group Housing Component at Sector -47 & 50, Gurugram, Haryana was submitted by Project Proponent Respondent No-8 i.e. M/s Malibu Estate Private Limited are adopted for further proceedings. The non-action on offence & violations of Project Proponent Respondent No-8 i.e. M/s Malibu Estate Private Limited is pending before the Hon'ble NGT to decide the matter. The link of Application for Environment Clearance submitted by respondent no – 8 before the MoEFCC is as under –

[https://drive.google.com/file/d/1rDbJ7_68pICJnLVd3Zi4Ng577ZQckGv/view?usp=drive link](https://drive.google.com/file/d/1rDbJ7_68pICJnLVd3Zi4Ng577ZQckGv/view?usp=drive_link)

Point wise Objection on STATUS REPORT dated- 09-01-2024 submitted by Sh. Pradeep Kumar, IAS, Member Secretary, Haryana State Pollution Control Board-;

“13” - The Order dated- 28-03-2023 -

6. That the compliance of Orders dated 28-03-2023 and dated 25-07-2023 are neither informed or not uploaded by the committee i.e (i) MoEF&CC (ii) CPCB (iii) ACS/Principal Secretary, Department of Urban Planning, Government of Haryana (iv) ACS/Principal Secretary, Department of Urban

Local Bodies, Government of Haryana (v) DGT&CP, Haryana (vi) CA, HSVP and (vii) HSPCB with the directions -;

- I. Compile/catalogue information regarding all Green areas/parks/green belts reserved in the respective areas of all the Municipal Bodies in the State of Haryana with requisite details as to
 - (a) Location, revenue number, boundaries, measurements etc;; - **Information Not provided.**
 - (b) Present status regarding plantation/green vegetation, user, maintenance and agency deputed for maintenance; - **Information Not provided. The agencies/RWAs deputed for maintenance have allowed the encroachments, illegal construction, commercial use and mode to make financial gains.**
 - (c) Encroachment (including encroachments made by unauthorized constructing religious structures) made on the same with requisite details as to who made the encroachments, when and in which manner and what action has been taken is to be taken for removal of such encroachments specifically mentioning Court Cases decided/pending regarding the same; - **Information Not provided. Encroachments and misuse of Green areas/parks/green belts are visible even in evening time.**
- (2) to get entire such information uploaded on the website of the District Administration and Municipal Bodies for seeking Public participation for protection of Green areas/parks/green belts reserved in the respective areas of all the Municipal Bodies in the State of Haryana against any encroachments and also for ensuring proper use and maintenance thereof; - **No website created. Not a single person is aware.**
- (3) to verify factual position of per capita green cover and assess its adequacy in view of the number of residents and give suggestions for remedial measures required to be taken for proper user, development, maintenance, protection and improvement of such green areas/parks/green belts reserved in the respective areas of all the Municipal Bodies in the State of Haryana –

FACTUAL POSITION OF “green areas/parks/green belts reserved in the respective areas of **Municipal Corporation Gurugram** as **STATUS REPORT** dated-09-01-2024 submitted by Sh. Pradeep Kumar, IAS, Member Secretary, Haryana State Pollution Control Board -

A. Status of Jharsa Bandh. –

It is almost vanished.

B. Status of Badshahpur Nalla –

It is amalgamated in License area.

- C. Status of green areas/parks/green belts maintained by RWAs/ Associations/ NGOs and funded by MCG –
Almost 75% green areas/parks/green belts are under violation with minimum (30% area under encroachments/illegal construction/commercial use).
- D. Status of Green area/green belts part of Service Roads, Sector Dividing Roads and Master Roads –
Almost 50% area is under commercial use. Some are converted in to Street Vending Zone.
- E. Status of Green area/green belts inside & outside of the Institutional Buildings, Commercial area, Government buildings etc-
Converted into Parking area and vendor's zone.
- F. Status of green areas/parks/green belts under the Ownership and supervision of Colonizer in License area- .
Minimum 30% green areas/parks/green belts are sold out by 95% Licensee Companies/Builders and 25% is under encroachments & illegal construction and commercial use.
- G. Status of Panchayati Rasta (Revenue Road). Most of Panchayati Rasta (Revenue Road) are under encroachment-;
Under encroachment
- H. Status of Green area/green belts outside the residential plots-
Used as parking place.

If component mentioned under “C to H” put together in comparison with Panchkula or Chandigarh by the Hon’ble NGT, then the picture of rest of Haryana would be different, drastic and horrible. Not a single encroachment/illegal construction on green areas/parks/green belts is mentioned in **STATUS REPORT** dated- 09-01-2024 by Sh. Pradeep Kumar, IAS, Member Secretary, HSPCB with details as per the Orders.

The **STATUS REPORT** dated- 09-01-2024 by Sh. Pradeep Kumar, IAS, Member Secretary, HSPCB is not maintainable as this **STATUS REPORT** has failed to establish encroachment/illegal construction on green areas/parks/green belts on the particular area by name of violator/s.

“14” - The Committee may constitute sub committees, seek reports from concerned administrative officers, NGOs, Environmental Activists or other experts in the field as may be considered appropriate and may also seek complaints from Members of Public. The Member Secretary, HSPCB shall

be the Nodal Officer for coordination and compliance and all necessary expenses including travel, boarding, lodging expenses shall be borne by HSPCB. Report may be submitted by the Joint Committee within three months by email at judicial-ngt@gov.in preferably in the form of searchable PDF/OCR supported PDF and not in the form of Image PDF.

7. That complainant is not asked to join the committee meetings to furnish the details of violations and suggestions. Not a single resident is invited or seek complaints from citizens. The RWAs are part of offence and doing more offence to make financial gains through any act. No serious efforts made by the Committee. The details regarding encroachment/illegal construction on green areas/parks/green belts on the particular area by name of violator/s is available with Respondents but no one wants to present before the Hon'ble NGT for some reasons.

"15" - The violation of serious views of Hon'ble NGT is missing in **STATUS REPORT** dated- 09-01-2024 by Sh. Pradeep Kumar, IAS, Member Secretary, HSPCB as 10 fully grown Trees were fallen down and 15-20 saplings were butchered under the permission of Respondent no. 7 with Ors from Public Health Site in the month of November, 2023. It is also not clarified that Environmental Compensation of Rs. 6, 84, 37, 500/- for violation of Environmental Acts/Rules/Notifications has been imposed vide letter No. I/157690/2023 dated 24.03.2023, but the amount is not deposited as on date.

"16" - No efforts made by Respondent No.4 despite the directions of Hon'ble NGT to look into as to (a) whether the DG Sets can be relocated to dedicated captive transformer location area if any and if it can be so done, then relocate the same and restore the green area and (b) if the same is not possible, then whether any equivalent contiguous open land area can be restored/added to the green area and if so available, convert the same as green area.

"6" - The **Order dated- 25-07-2023** - We direct the SEIAA and State PCB to submit a report on the above points and compliances of conditions and to ensure in case of non-compliances necessary action must be initiated against the Project Proponent according to the rules-;

8. That a vague report is submitted, which is of no use to correct the violations and offence made by Builders/RWAs/Collection agents/Citizens/Institutions/Companies etc. The normal builder has sold green area on the name of additional construction and extort payment from buyers for that area. The

sale of SUPER AREA is not mention anywhere as all builders are enforcing the sale and same is mentioned in each sale deed while registration of property.

“17” - State Environment Impact Assessment Authority, Haryana vide its letter dated 14.06.2023 had issued notice with the facts that project proponent is required to obtain environmental clearance and the project was constructed without any Environmental Clearance and State Pollution Control Board with SEIAA failed to perform their duty sincerely and fairly and failed to act in accordance with law-;

9. That It is now well settled that even ex-post facto environmental clearance can be granted in appropriate cases. In its judgment in Civil Appeal No. 3132 Of 2018 titled as D. Swamy Versus Karnataka State Pollution Control Board and Ors Hon’ble Supreme Court of India observed.” EP Act does not prohibit ex post facto EC. Grant of ex post facto EC in accordance with law, in strict compliance with Rules, Regulations, Notifications and/or applicable orders, in appropriate cases, where the projects are in compliance with, or can be made to comply with environment norms, is in our view not impermissible. The Court cannot be oblivious to the economy or the need to protect the livelihood of hundreds of employees and others employed in the project and others dependent on the project, if such projects comply with environmental norms."

“18” - Accordingly, we direct the State Pollution Control Board and the SEIAA to dispose of the matter and take a decision according to rules after giving an opportunity of hearing to the person concerned within a reasonable time.

10. That HSPCB did not try to dispose the matter and SEIAA has given five hearings to Complainant Raman Sharma and Project Proponent Respondent No. 8. Most of the time Respondent No. 8 sought adjournment. Nothing concrete came out. One hearing was attended by Sh. Pradeep Kumar, IAS, Member Secretary, HSPCB.
11. That the project proponent has not obtained environmental clearance (EC)/CTO/CTE as required under the EIA notification, 2006 and the provisions of the Water (Prevention and Control of Pollution) Act, 1974 and the Air (Prevention and Control of Pollution) Act, 1981 and in view of the above law laid down by the Supreme Court of India in (2018) 18 SCC 257, a parameter has been laid down for assessment and realization of environmental compensation at the rate 10 % of the project cost which has not been calculated or assessed by the Pollution Control Board. The Pollution Control Board being statutory body is under obligation and duty bound to enforce

the environmental rules and in case of its violation to proceed with in accordance with law, but the perusal of report reveals that the State Pollution Control Board has failed to perform its duties sincerely and fairly. The matter of C&D waste and Solid waste and its disposal was within the knowledge of the authorities concerned but they further failed to assess and realized the environmental compensation. Realization of cost of disposal is one thing and the realization of environmental compensation is another thing. While considering the calculation of violations, the past violations and days must be considered according to rules, but same is not done yet by HSPCB.

12. That under point. 2 of the **STATUS REPORT** dated- 09-01-2024 by Sh. Pradeep Kumar, IAS, Member Secretary, HSPCB has given only numbers without relevant details.
13. That under point. 3 of the **STATUS REPORT** dated- 09-01-2024 by Sh. Pradeep Kumar, IAS, Member Secretary, HSPCB is a matter of record. The after effect of the orders are visible and achieved STILT + FOUR FLOORS with accommodation on rooftop.
Para two of point. 3 of the **STATUS REPORT** is matter of record as Complainant of OA-68-2022 Raman Sharma was not made party before Appellate Authority.
14. That under point. 4 of the **STATUS REPORT** dated- 09-01-2024 by Sh. Pradeep Kumar, IAS, Member Secretary, HSPCB has mentioned that Environment Compensation of Rs. 6, 84, 37, 500/- imposed on Respondent No. 8 M/s Malibu Estate Pvt Ltd and Rs. 1,02,65,625/- imposed on Commissioner, Municipal Corporation Gurugram by HSPCB but details of amount deposited or not deposited is nowhere mentioned. How much amount is spent to correct the violation and improvement of Environment.
15. That under point. 5 of the **STATUS REPORT** dated- 09-01-2024 by Sh. Pradeep Kumar, IAS, Member Secretary, HSPCB has prepared the EXIT ROUTE for Respondent No. 8 M/s Malibu Estate Pvt Ltd and created a road map for criminal minded Office Bearers of RWAs through Respondent No. 7 i.e Malibu Federation to extort more amount from residents to pay for the offence done by Licensee Company after making legal and illegal profits. As on date State is the owner of the Project MALIBU TOWNE through DTCP, Haryana and Commissioner, Municipal Corporation Gurugram and they can take CTE/CTO from HSPCB. As applicant in the present matter and resident

of Project MALIBU TOWNE, I raise serious objections on this proposal as Office Bearers of RWAs are already involved in the offence under hearing before the Hon'ble NGT and without applying mind the Member Secretary, HSPCB has proposed to upgrade offenders with ownership rights. It is prayed before Hon'ble Bench may reject this biased and unlawful proposal.

16. That under point. 6 of the **STATUS REPORT** dated- 09-01-2024 by Sh. Pradeep Kumar, IAS, Member Secretary, HSPCB has shown his incompetency and the mindset of Respondent No. 8 M/s Malibu Estate Pvt Ltd. No visible action is taken by Member Secretary, HSPCB in the matter and now it is up to the Hon'ble NGT to decide the action as HSPCB has done all in favour of offenders and criminals.
17. That Violations in Malibu Town is visited and admitted by 17 times since 2010 to 2023 by HUDA (HSVP) Respondent no. 5 AND subordinate offices of DTCP, Haryana Respondent no. 4, AND A.E.E O/o R.O (N) Gurugram HSPCB Respondent no. 2 AND MCG Respondent no. 3 AND Team constituted by the Hon'ble NGT. Not a single complaint found wrong.
 - I. it is not disputed that no permission was granted for placement of any DG sets (16 nos) in Park & green area by various companies as not a single DG set is under the ownership of any RWA.
 - II. RWA office was an existing structure on green area.
 - III. Three STPs are existing structure on Park and green area.
 - IV. Green area used as Parking place and ROW by all four Commercial components.
 - V. Green area used as Vita Dairy selling grocery
 - VI. Two Religious places are constructed on Green area.
 - VII. Five Pump Rooms placed on Green area.
 - VIII. Six Electric Sub-Stations placed on Green area.
 - IX. 16 DG Sets placed on Parks & Green area.
 - X. 15 rooms constructed as staff quarters on Green area.
 - XI. Six toilets placed on Green area.
 - XII. Many rooms are constructed on Green belts by some residents.
 - XIII. The RFID barriers are put for the security of the residents on Green area by Malibu Federation of RWAs i.e Respondent No. 7, but they allow entry to without Number Plate Tractor Trolleys carrying C & D Waste, Domestic Waste and Polythene Waste.
 - XIV. Malibu Federation of RWAs i.e Respondent No. 7 has been involved in illegal dumping of Green Waste mixed with other waste on Public Health site and other parts of the colony.

- XV. Are Bus Shelters at various locations all over township placed on Green area/ Green belts/Parks used by school children and Buses stop there? Placed without valid permission as same are reducing Green area
- XVI. Guard temporary seating rooms are placed on Green area/ Green belts without valid permission as same are reducing Green area.
- XVII. All four panchayati rasta are encroached. One belongs to Respondent no. 5 i.e HSVP.
- XVIII. Temporary gate at Star Wood next to Good Earth Mall was erected by one member of Malibu Federation of RWAs i.e Respondent No. 7 on Green Belt reducing Green area.
- XIX. The Green area along Service Road (not placed yet) on Gurugram Sohna Road, Sector – 47 side and Sector – 50 side is missing.
- XX. Licensee Company has planned 30.09 % Green area of total Plot area and same is missing.
- XXI. The ex-post facto permission granted to all violations by DTCP, Haryana Respondent No. 4 while completely ignore these aspects.
- XXII. The Respondent No.7 i.e Malibu Federation of RWAs has referred to audit of green areas conducted and claims that the same is more than 5% without any authenticity. On the other hand three members of Respondent No.7 are charging financial claim for the maintenance of parks for area measuring 21 Acres (excluding green belts and green area) from Respondent No. 3 Commissioner, Municipal Corporation Gurugram.
18. That as per Rule 4 of Rules of 1976, the percentage of area of a colony under roads, open spaces etc. is required to be not less than 45% of the gross area of the land under the colony-;
- A. Land for service road is missing as same is not constructed.
 - B. Sale of Oversize Plots and size variation has further reduced the non-saleable land under 45% of the gross area.
 - C. Demarcation is yet to be completed.
 - D. The size of Roads are much shorter than planned by HSVP Respondent no. 5 with curb channels and footpaths.
 - E. More than 15 Acres Land was planned for Community buildings and same is sold.
 - F. The last site visit by Retd Major Shweta Sharma Nagarkoti the then Executive Engineer, HSVP, Division no. 6, Gurugram may be consulted as She did the final approval to consolidated Service Plan Estimates after checking and also checked the area before submitting report on Part Completion Certificate and Occupation Certificate to services.

19. That it is prayed before the Hon'ble Green Tribunal to form a committee and take site report on status of Open area & Green area of project "Malibu Town", as an integrated residential colony, located in Sector- 47 & 50, Gurugram.
20. That it is prayed to allow the Objections with above stated Prayer and facts. The Orders may be issued on Environment Clearance of the Project. The above written statement may kindly be taken on record.

Date : 14-01-2024

Place : Gurugram

Submission of Application



Raman Sharma

CW-58, F.F, Malibu Town, Sector-47, Gurugram-122018
+91 9818303690, mrramansharmaji@gmail.com

VERIFICATION : Verified that the contents under 1 to 21 of this Objection Application are true and correct to my knowledge and based on information derived from documents received from various Government Departments which are believed by me to be correct. No part of it is false.

IN THE HON'BLE COURT OF NATIONAL GREEN TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI

APPLICATION NO. OA- 68 of 2022

In the matter of :

Raman Sharma

..... APPLICANT

Verse

SATE OF HARYANA & ORS

..... RESPONDENT(s)

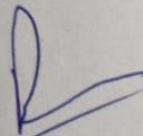
AFFIDAVIT ON BEHALF OF APPLICANT FOR FILING OBJECTIONS

Affidavit of **Sh. Raman Sharma** aged about 57 years, S/o Sh. Narendar
Nath Sharma, R/o CW-58-FF, Malibu Towne Gurgaon.

We, the above-named deponents do hereby solemnly affirm and declare as under:

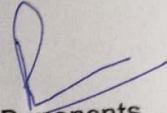
1. That the deponent is an applicant and is well conversant with the facts and circumstances of the case and hence competent to swear this affidavit.
2. That the deponents affirm the present application for objection has been filed by the Deponent in accordance to actual factual matrix and all the facts mentioned in the application for objection are true and to best of our knowledge.
3. That the Deponents affirm that the content of application for objection are drafted in accordance with documents/ evidence mentioned herein alongwith the laws mentioned in the application for objection. The contents of the IA filed is true & correct to our knowledge.





Deponents

Verification: Verified at Gurugram on this Date of _____ 2024 that the contents of the above affidavit are true and correct to the best of our knowledge and belief and nothing material fact has been concealed therefrom.

Date:


Deponents



ATTESTED

SHRI CHAND SHARMA
ADVOCATE & NOTARY
GURGAON

05 JAN 2024