

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

AFFIDAVIT

(In O.A. No. 793 of 2022)

Council of Engineers & ors. .... Applicants

vs.

State of Punjab & ors. .... Respondents

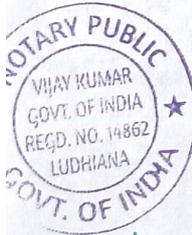
Affidavit of Er. Kapil Dev (aged 48 years) s/o Sh. Jagdish Chander, r/o  
186-E, BRS Nagar, Ludhiana.

RESPECTFULLY SHOWETH:

I, the above mentioned deponent do hereby solemnly affirm and  
declare as under:-

Identified that the deponent  
has signed before me I know  
him/her personally

1. That the deponent is Applicant No. 2 (in person) and is filing an Rejoinder/objections before this Hon'ble National Green Tribunal accompanying this Affidavit.
2. That the contents of Para no. 1 to of the Rejoinder/Objections dated 15-07-2024 along with Annexures are true to best of my knowledge.



7271

Place: Ludhiana  
Dated: 15.07.2024

Certified that the affidavit SPA/GPA has been read over & explained to the deponent in his/her presence & directed to understand the matter at the writing

*[Signature]*  
**DEPONENT**

**Verification:**

Verified that the contents of para 1 and 2 of this affidavit are true and correct. No part of it is false, and nothing material has been kept concealed therefrom.

Place: Ludhiana  
Dated: 15.07.2024

ATTESTED AS IDENTIFIED  
NOTARY PUBLIC, LUDHIANA (PB)

*[Signature]*  
**DEPONENT**

15 JUL 2024

**BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL****AT PRINCIPAL BENCH, NEW DELHI****In O.A. No. 793 of 2022****Council of Engineers & ors. Vs State of Punjab & ors.****Rejoinder/Objections based on report submitted by MoEF&CC, MCL and the Joint Committee****Hon'ble sir****Respectfully sheweth**

The Petitioners humbly submit as under:

1. That for sustainable development, the Master Plan is the Key Plan to be taken into account for development of any city and it is prepared by Experts in the field of town planning, take into account various aspects, such as, healthy living, environment, lung space need, land use intensity, areas where the residential houses to be built and where the commercial buildings to be located, need of household industries etc. Accordingly, the Master Plan of Ludhiana was finalised after getting inputs from various departments like MCL, Ludhiana Improvement Trust, GLADA etc. etc. The Master Plan of Ludhiana depicts Lodhi Club Roadsides as well as Roadsides from Jagraon Bridge to Sherpur Chowk as Greenbelts. **Bases upon the provisions of Master Plan, report submitted by MoEF&CC, development**

**works done by MCL for protection of greenbelts (which is now being intentionally & wrongly termed as ROW by MCL), reply submitted by MCL in O.A. 317 of 2023, unapproved Map of Lodhi Club, the location wise objections are submitted as under:**

**REGARDING ENCROACHMENT ON GREEN BELT DONE BY LODHI CLUB AND SACRED HEART CONVENT SCHOOL:**

- I. That the impugned area is Greenbelt as per Master Plan & the Respondent No. 2 & 3 too have accepted in their reply that the area is greenbelt as per Master Plan.
- II. That the official of MoEF&CC (member of the Joint Committee formulated by this Hon'ble Tribunal) has submitted the report dated 06-01-2023 by mentioning it as Greenbelt.
- III. That despite request of Development Plan (Master Plan) by the Joint Committee formed by this Hon'ble Tribunal, the Municipal Corporation Ludhiana has failed to provide the same till date.
- IV. That the Municipal Corporation Ludhiana is intentionally trying to mislead this Hon'ble Tribunal by using the word Right of Way (ROW) instead of **actual wording which the MCL used while issuing the tender** as **“Rehabilitation of Greenbelt into Children Park”**. It is pertinent to humbly submit here that the

entire stretch of Lodhi Club road comprises of Greenbelt developed by Municipal Corporation Ludhiana.

- V. The MCL in its reply dated 31-12-2023 (Page No. 295 ) has clearly mentioned as under:

“As per the report of B&R Branch, Finance & Contract Committee has approved the development work of Right of Way on the Lodhi Club Road, work amounting to Rs 17.56 Lakhs was allotted to M/s Friends Co vide Resolution No. 2034 dated 31-01-2004. Against this work footpath with dimensions 3888 feet long and 4.5 feet wide was developed. **Also, to protect the green area,** a boundary wall 1850’ long and 5’ wide was constructed.”

- VI. That at Page No. 305 (Annexure-C6 of MCL reply dated 31-12-2023), the MCL has clearly mentioned in Punjab being translated in Hindi "अमृत मिशन अधीन लुधियाना शहर में निमित लिखित पार्कों के नवीनीकरण संबंधी"

**“1. Rehabilitation of Green Belt Lodhi Club Children Friendly Park at Ludhiana Town Punjab Est. Amt. 76.75”**

- VII. That the Assistant Town Planner of Municipal Corporation Ludhiana had served notice (**Page no. 123**) to Respondent Club for

encroachment over Greenbelt (illegal entrance) which clearly depicts the area as Green Belt.

- VIII. The Map as produced by Lodhi Club (at Page No. 243) is **NOT APPROVED** by any competent authority i.e. the construction work done for club in which the Deputy commissioner of Ludhiana is President as ex-officio, is illegal and without any approval. **However, Municipal Corporation Ludhiana is still trying to legalize the encroachment done by Lodhi Club by mentioning the Map as approved, which is wrong.** The Club is increasing the membership from time to time and it has around 3000 members but the parking is only around 50 Cars. That Lodhi Club has made very wide entrance (more than 50' wide) through Greenbelt developed by Municipal Corporation Ludhiana which is illegal and against provisions of Master Plan and is also parking the vehicles over this passage too. **It is pertinent to humbly submit here that Lodhi Club has opened ANOTHER GATE towards greenbelt.**

- IX. The greenbelt as well as illegal passage created on greenbelt situated outside the Club is being used for parking of vehicles illegally by the Lodhi Club. No action has been taken by Municipal Corporation Ludhiana to stop parking of vehicles. Five Photographs clicked on 13-07-2024 depicting large number of cars parked in greenbelt area as well as in front of another illegal gate opened

towards greenbelt by Lodhi Club are produced herewith as **Annexure PF-1.**

- X. That the Respondent School has admitted that the vehicles which are parked in the impugned area do not belong to the School. It is pertinent to humbly submit here that the name of School is mentioned on such vehicles and even the Cars, owned by the Staff of the School, are also parked in the area. It is pertinent to humbly submit here that the Parking of Vehicles is not done within the premises of the School.
- XI. That the School has legal Right of Way from Northern side i.e. from Service lane of Ferozpur Road. It is pertinent to humbly submit here that Students of School park vehicles on roadsides whereas as per building byelaws, every school must have parking space within the premises. Further, the Strength of School has increase and school has constructed new buildings in last 15 years too but has failed to make provisions for parking of Vehicles, resulting into encroachment over greenbelt. Four Photographs clicked on 15-07-2024 depicting the Vehicles (Vans & Buses- with name of School mentioned over them) as well as private cars parked on Greenbelt are produced as **Annexure PF-2.**

**From above submission, it is clear that the area under question (Lodhi Club Roadsides) is Green Belt area and**

**Municipal Corporation Ludhiana had developed the same as greenbelt in the year 2004 and it was notified as Greenbelt in Master Plan in 2007-08.**

**REGARDING ENCROACHMENT ON GREEN BELT FROM JAGRAON BRIDGE TO SHERPUR CHOWK:**

- I. That the Member from MoEF&CC of the Joint Committee has submitted the report dated 06-01-2023 by mentioning it as Greenbelt.
- II. That Municipal Corporation Ludhiana has submitted one Reply in O.A. No. 317 of 2023 by mentioning that **“MCL has developed green belt on both sides of old GT Road from Sherpur Chowk to Jalandhar Bypass Chowk has been developed under 15th Financial Commission funds”**. However, in this case, the Respondent No. 1 is trying to present wrong picture before this Hon’ble NGT by mentioning it as Right of Way, whereas the Greenbelt was developed in the year 1999 and Master Plan of Ludhiana came into effect from 2007-08. The copy of orders of this Hon’ble Tribunal are produced herewith as **Annexure PF-3**.
- III. That huge area of greenbelt has been concretised by MCL for illegal parking of vehicles resulting into major damage to Environment. It is pertinent to humbly submit here that the despite being well aware of the directions of Hon’ble Supreme Court and this Hon’ble

Tribunal for protection of greenbelts and parks, the MCL constructed library in land of park after cutting trees.

- IV. That the contents of relevant paragraphs of the report as submitted by One of the Members of the committee as formulated vide orders dated 07-11-2022 by this Hon'ble Tribunal, Dr. Vimal Kumar Hatwal, Additional Director/Scientist 'E' MoEF&CC, IRO Chandigarh are produced as under:

It is evident from the above that the green belt area in question has been reduced over period of time from 2013-2022 due to change of land use and construction of parking area and approach road to the project proponents at BRS Nagar. It is pertinent to mention here that the construction of paved roads and parking areas has been developed after 2014 at BRS Nagar, which is after the finalization of the declaration of the Master Plan of the city in 2008. However, the detailed investigation on approvals of approach roads, demarcation of designated greenbelt as per Ludhiana Master Plan, 2008 and temporal changes of the land use by two project proponents could provide meaningful inferences. The undersigned understood after due deliberations and site visit that Notified Master Plan on 2008 was not complied while the land use change was made.

**AT PAGE NO. 18 & 19 of REPORT**

**ACTUAL POSITION ON THE GROUND:**

Point No. 7: During the site visit Joint inspection, Team observed that the land in question is green belt owned and maintained by the

MC, Ludhiana Officials of the MC, Ludhiana accepted that they area the illegal owner of His land. But most of the area of said green belt on both side of the road has been found encroached and concretized by the MC, Ludhiana for parking of the vehicles of the local beneficiaries of the adjoining area.

Xxx xxx xxxx

#### D. FINDINGS OF THE INQUIRY:

8. It is evident from the site visit that:

**(i) The MC Ludhiana is the legal owner of the land in question i.e. green Belt**

**(ii) The MC Ludhiana failed to maintain the green belt as green belt by converting it as parking lots.**

2. That deprecating the practice of making encroachment, and constructions in a green belt, thereby damaging the same, **the Hon'ble Supreme Court in "Lal Bahadur v. State of Uttar Pradesh & Ors. (2018) 15 SCC407 has held that no such damage to green belt by raising any construction is permissible.** The issue of change of master plan and converting green area into residential one was considered. The issue was, whether such conversion is conducive to protection of environment or not. In the master plan of 1995 of Lucknow, area in dispute was reserved as green belt. In master plan 2021, the same area, shown earlier as green belt, was converted as residential. This part of master plan 2021 was challenged before

Lucknow bench of Hon'ble Allahabad High Court. Writ petition was dismissed. The matter came in appeal before the Hon'ble Supreme Court. **The Hon'ble Court held in para 12 of judgment that change of area from green belt to residential is in violation of Article 21, 48A and 51A(g) of the Constitution.** Besides above, the petitioners have cited judgments of Hon'ble Supreme Court as held in **Bangalore Medical Trust v B.S. Muddappa & Others, (1991) 4 SCC 54** and **M.C. Mehta v. Union of India, (2009) 17 SCC 683.**

3. That this Hon'ble Tribunal in the matter in **O.A No. 292/2023 in Dr. Amandeep Singh Bains v. The Municipal Commissioner of Ludhiana & Ors**, has directed that no encroachment or construction can be allowed to be raised changing the nature of green belt/park in any manner. The Relevant paras are produced as under thus;

*21. We find that the respondent no. 2 has clearly violated the law in erecting the statue, constructing structure and using the park for commercial purposes. Hence, we direct the Member Secretary, Punjab Pollution Control Board to duly consider the issue of imposition of environmental compensation for past violation by the respondent no. 2 and take action by duly complying with the principles of natural justice and submit an action taken report before the Registrar General of the Tribunal within three months.*

*22. In the facts and circumstances of the case noted above, we find that it is the responsibility of the respondent nos. 1 and 3 to ensure that the green cover in Rakh Bagh is maintained and no unauthorized construction, whether temporary/permanent in nature, is allowed to be erected and no illegal commercial activity is permitted in the park. Hence, we direct the respondent no. 1 to take appropriate remedial action, if any, unauthorized structure of temporary/permanent nature is still standing on the Rakh Bagh Park and, if any, illegal commercial activity is going on and submit action taken report before the Registrar General of the Tribunal within three months. If found necessary, the matter be listed before the bench.”*

4. That in a similar matter pertaining to encroachments due to illegal buildings/structures (including Extension office of Respondent No. 3-MCL) & access made into greenbelt by Municipal Corporation itself as well as other private persons, this Hon'ble Tribunal vide **orders dated 04-07-2024 in O.A. No. 317 of 2023 (Kapil Dev & anr. Vs. the Municipal Corporation of Ludhiana & ors.)** has held as under thus;

Para 18. In view thereof, we are clearly of the view that construction raised on the area comprising green belt (Leisure Valley) must be removed if necessary even by demolition of construction raised.

Para 19. Accordingly, we dispose of this original application by directing the concerned authorities to get the green belt area cleared from any encroachment and by removal of construction by carrying out the demolition thereof. This direction shall be complied with by Municipal Corporation, Ludhiana under supervision of, District Magistrate, Ludhiana and representative of Punjab State Pollution Control Board. The compliance report shall be submitted by Commissioner, Municipal Corporation, Ludhiana with the Registrar General of this Tribunal within two months who if finds necessary, shall place the matter before the Bench for further orders.

5. That after the directions of the **Hon'ble Punjab & Haryana High Court vide orders dated 19-09-2022 in CWP-21506-2022 for the Private Schools to Strictly adhere with "Safe School Transport Policy"**, it has become mandatory for all Private Schools to **park the Vehicles within the School Premises**. The Copy of order dated 19-09-2022 of Hon'ble High Court is produced herewith as **Annexure PF-4**. Abiding the orders of Hon'ble High Court, the Punjab Police has written letter to all the private schools to follow the mandate but the Respondent School has deliberately encroached upon the Greenbelt area by parking not only Vans with School name written on them but also private vehicles of Staff of School. The copy of letter of Punjab Police as available on website link:

[https://sasnagar.punjabpolice.gov.in/pdf/Direction%20of%20Court%20\(Traffic\).pdf](https://sasnagar.punjabpolice.gov.in/pdf/Direction%20of%20Court%20(Traffic).pdf) is produced herewith as **Annexure PF-5**.

Keeping in view of directions of Hon'ble Supreme Court, this Hon'ble Tribunal, Hon'ble Punjab & Haryana High Court, Master Plan of Ludhiana, report submitted by MoEF&CC, development works for Green Areas done by MCL, it is evident that all the impugned areas i.e. Lodhi Club Roadsides and from Jagraon Bridge to Sherpur Chowk are GREENBELTS and the Respondent Club as well as School have illegally encroached upon the areas by making illegal ways as well as Parking of vehicles in the Greenbelts. Further MCL has illegally converted the huge area of greenbelts of Sherpur Chowk to Jagraon Bridge as Parking by massive concretization, thus has majorly impacted the Environment. The Applicants humbly prays the Hon'ble Tribunal to kindly issue directions for restitution of Greenbelts by removal of all types of encroachments, demolition & removal of concrete from greenbelts and impose Environment Penalty on the Respondents as prayed in the Original Application.



Date: 15-07-2024

Place: Ludhiana

Er. Kapil Dev

(Petitioner No. 2 in person)

ANNEXURE PF-1: Five Photographs clicked on 13-07-2024 depicting large number of cars parked in greenbelt area as well as in front of another illegal gate opened towards greenbelt by Lodhi Club:





Parking on Greenbelt by making more than 50' wide passage by Lodhi Club



Another Gate Opened in Greenbelt area by Lodhi Club



**ANNEXURE PF-2: Encroachment over Greenbelt by parking of Vehicles of Staff, Vans & Buses with name of School mentioned over them.**





Item No.04

Court No. 2

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

Original Application No. 209/2023

Kapil Dev

Versus

Applicant

The Municipal Commissioner

Respondent

Date of hearing: 04.07.2024

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

Applicant: Applicant in person

Respondent: Mr. Naginder Benipal and Mr. Ankit Siwach, Advocate for MC  
Ludhiana (through VC)

**ORDER**

1. Engineers Kapil Dev and Vikas Arora, applicants 1 and 2 vide application dated 13.03.2023 has raised the issue of degradation of environment at the instance of Municipal Corporation, Ludhiana by making encroachment and raising construction on an area of green belt.
2. This application was registered as OA 209/2023 under Section 14 and 15 of National Green Tribunal, Act, 2010 (hereinafter referred to as '**NGT Act, 2010**') and taking cognizance of the complaint on 28.03.2023, Tribunal issued notices to respondents and allowed time to file responses.
3. Reply dated 07.08.2023 was filed by Commissioner, Municipal Corporation, Ludhiana stating that Corporation had constructed an office building of Zone D at Sarabha Nagar along Sidhwan Canal, Ludhiana in the year 2000; no scrap yard/dump yard/store has been constructed in the land of green belt; Municipal Corporation has developed a green belt

on barren /abandoned land situated at the backside of Zone D, under Smart City Mission; it has also undertaken the work of refurbishment of Leisure Valley under Smart City Mission; total area of Leisure Valley is spread over around 7.25 acres (23900 sqm.) of land; work has been completed and green area has been developed with 7300 plants and 475 trees with provisions for irrigation system and recharging well; out of total area of 29300 sqm. of Leisure Valley (green belt), an area of about 1400 sqm. has been developed for parking of four wheelers and two wheelers which is only 4.77% of the total area of Leisure Valley; the parking is only for the visitors coming to the Leisure Valley and not a commercial parking; about 7775 nos. of new plants have been planted in Leisure Valley; no old plant/tree has been damaged or axed in the parking area and all trees have been planted/protected as per guidelines of this Tribunal in OA 62/2021.

4. With regard to encroachment in Model Town Extension near funeral ground, it is said that it is within the jurisdiction of Improvement Trust Ludhiana.

5. It is further stated that Municipal Corporation, Ludhiana has developed various green belts in Ludhiana under 15<sup>th</sup> Financial Commission and Ludhiana Smart City Mission. Water Front-1, Water Front-2, Leisure Valley, Mini Rose Garden and Parks in EWS colony have been developed under Smart City Mission and green belt along Sua Road Barewal, Park in Barewal Awana Village, Water Front from Dugri Road to Dhuri Railway line along Sidhwan Canal, green belt on both sides of old GT Road from Sherpur Chowk to Jalandhar Bypass Chowk has been developed under 15<sup>th</sup> Financial Commission funds. More than 1,00,000 plants and shrubs have been planted in these green belts which were

abandoned or vacant lands. Municipal Corporation, Ludhiana plants about 30,000 plants (trees and shrubs) in Ludhiana City every year for creation of green buffers along road sides, centre verges and plantation of trees in vacant lands like parks, schools and community places in Ludhiana.

6. Reply was considered by Tribunal on 22.11.2023. Tribunal impleaded Improvement Trust Ludhiana as respondent 4, since it was stated by Municipal Corporation, Ludhiana that some of the land complained by applicant was under the jurisdiction of the said Trust and notice was also issued to newly impleaded respondent.

7. Further noticing that in respect of specific complaint made by applicant, no specific reply was given by Municipal Corporation, Ludhiana, Tribunal, in order to verify factual position, constituted a Joint Committee comprising representative of IRO, MoEF&CC, Chandigarh, Divisional Forest Officer, Ludhiana and Punjab Pollution Control Board and directed the said committee to submit report after visiting site, consider the grievance of the applicant and verify factual position.

8. Pursuant to the said order, Joint Committee submitted its report dated 30.05.2024 after visiting the site on 14.03.2024. Observations made by Joint Committee are:

*“5) That in compliance of the orders dated 22.11.2023 of the Hon’ble Tribunal, visit of the sites under question was undertaken by the members of the Joint committee along-with complainant Sh. Kapil Dev on 1403.2024. During visit it was observed that the office building of Municipal Corporation (Ludhiana), Zone -D is situated adjacent to Leisure valley (Green Belt area) and the site is earmarked in approved map of notified Master Plan of Ludhiana (2007-31). A single-story office building for Birth & Death registration has been constructed by the Municipal Corporation, Ludhiana in Leisure Valley, adjacent to the existing office building of Municipal Corporation, Zone-D and a Public Utility was also under construction at this office site. Municipal Corporation, Ludhiana has also constructed an open parking with*

*paved blocks in the Leisure Valley area adjacent to Birth & Death registration office Building.*

*6) The Municipal Corporation Ludhiana has constructed scrap yard and office of Junior Engineer in Leisure Valley at a distance of about 100 meters from the office building of Municipal Corporation, Zone D near Rotary club.*

*7) The complainant has also shown to the joint committee a small Statue of Lord Shiva established in the Leisure Valley near Model Town Extension.*

*8) Model Town extension area was also visited by the team along-with complainant and he has shown 04 private establishments which have made encroachments in the green belt area of the Improvement Trust, Ludhiana. The details of the said establishments are as under:*

- i. Urban Tikka Restaurant, Model Town Extension, Ludhiana.*
- ii. M/s D.S. Enterprises, Model Town Extension, Ludhiana.*
- iii. M/s M.P Ply Palace, Model Town Extension, near Block C, Ludhiana.*
- iv. MIS A.8 Wines, Model Town Extension, near Block C, Ludhiana.*

*All the above said 04 establishment have encroached green belt area for making path to their shops from main rood of Model Town Extension.”*

9. Committee thereafter also considered reply of Town Planner Ludhiana submitted vide letter dated 15.03.2024 and also the report of Divisional Forest Officer, Ludhiana dated 09.05.2024 and thereafter has given its observations and recommendations as under:

*“11) That in reference to the proceedings of the meeting held on 12/11/2024, the Divisional Forest Officer, Ludhiana vide office letter no. **1742** dated 09.05.2024 has submitted report with regard to land in question with the buildings shown by the complainant as under:*

<b>S. No.</b>	<b>Description of Site</b>	<b>Whether forest land or not</b>
1.	Extension office along Green Bets named Area (Leisure) Valley in Sarabha Nagar Area	Non- forest forest land
2.	Scrap Yard/ Dump <b>Yard/</b> store In <b>land of Green Belt (Leisure valley)</b>	Non- forest land
3..	Green Belt at Model Town Extension Funeral Ground Road	Non- forest land

### **Observations of the Joint Committee**

The matter was further deliberated by the members of the Joint Committee in consideration of the reports received from District Town Planner and Divisional Forest Officer, Ludhiana. No forest land has been encroached by anyone. However, some green area of Leisure Valley and green belt area of Model Town Extension, Ludhiana has been found to be encroached to some extent. The observations of the Joint Committee are tabulated herein below:

<b>S. No.</b>	<b>Description of Site</b>	<b>Status of site as per Approved Master Plan, Ludhiana</b>
1	Office of Municipal Corporation, zone -D, Ludhiana	No encroachment of green belt (Leisure Valley) as the site is earmarked in the notified Master Plan, Ludhiana.
2.	Birth & Death Registration Office, Municipal Corporation, Ludhiana	Encroachment of green belt (Leisure Valley) as the site is not embarked in the notified Master Plan, Ludhiana.
3.	Scrap Yard and office of Junior Engineer, Municipal Corporation, Ludhiana	Encroachment of green area (Leisure Valley) as the site is not earmarked in the notified Master Plan, Ludhiana
4.	Lord Shiva Statue In the Leisure Valley, Near Model Town Extension.	Encroachment of green area (Leisure Valley) as the site is not earmarked in the notified Master Plan, Ludhiana
5.	M/s Urban Mirka Restaurant.	The restaurant has constructed temporary shed beyond its premises In the Green Belt area of Model Town Extension

	<i>Model Town Extension, Ludhiana.</i>	<i>thereby making an encroachment.</i>
6	<i>M/s D.S. Enterprises, Model Town Extension, Ludhiana</i>	<i>The establishment has provided path In the Green Belt area of Model Town Extension to make approach up to the main road thereby making an encroachment.</i>
7.	<i>M/s M.P Ply Palace, Model Town Extension, near Block C, Ludhiana</i>	<i>The establishment has provided path in the Green Belt area of Model Town Extension to make approach up to main road thereby making an encroachment.</i>
8.	<i>M/s AS Wines, Model Town Extension, near Block C, Ludhiana</i>	<i>The establishment has provided path and parking in the Green Belt area of Model Town Extension to make approach up to main road thereby making an encroachment.</i>

***Recommendations of the Joint Committee***

*i) The committee recommends that suitable directions may be issued to the Municipal Corporation, Ludhiana and the Improvement Trust, Ludhiana to remove the encroachments as shown in the tabular form here in above.*

*ii) The Muniapal Corporation, Ludhiana and the Improvement Trust Ludhiana shall form a committee to implement the provisions of Mager Plan, Ludhiana in true letter and spirit.”*

10. After receiving the report of the Joint Committee respondents 1 and 2 i.e., Municipal Corporation, Ludhiana and Ludhiana Smart City Ltd. vide order dated 20.03.2024 were granted time to file their response.

11. Consequently, reply dated 29.06.2024 has been filed by Municipal Corporation, Ludhiana and with regard to various constructions its reply in para 4, reads as under:

*“4. That as ordered by Hon'ble Tribunal, Joint committee constituting of Forest Range officer, Department of Forests and Wildlife Preservation, Punjab Environmental Engineer, Punjab Pollution Control Board and Technical officer*

(G). Ministry of Environment, Forest and Climate change Submitted the status report on 09/02/2024. Thereafter, on the observations made by Joint Committee, following actions have been done by Municipal Corporation, Ludhiana.

**a. Office of Municipal Corporation Zone-D, Ludhiana**

It has been submitted by the Joint Committee that there is no encroachment green belt (Leisure Valley) as the site is earmarked in the notified Master n, Ludhiana. Hence, no action is required.

**b. Birth & Death Registration Office, Ludhiana**

It has been submitted by the Joint Committee that there is encroachment of green area (Leisure Valley) as the site is not earmarked in the notified Master Plan. However, this office was setup prior to adoption of master plan and the purpose of this office is solely to provide all Municipal Services at one point and this office is working in public interest.

**c. Scrap Yard and office of Junior Engineer, Municipal Corporation, Ludhiana**

It has been submitted by the Joint Committee that there is encroachment of green area (Leisure Valley) as the site is not earmarked in the notified Master Plan, Ludhiana. However, It is submitted that this office was also setup much prior to year 2008 in which the final master plan of Ludhiana was notified. Moreover, it is pertinent to mention that this office is spread over approx. 500 yards, out of which 350 yards is an open space. Further **this office** is working in larger public interest and redresses public grievances.

**d. Lord Shiva statue in the Leisure Valley, Near model town extension** It has been submitted by the Joint Committee that there is encroachment of green area (Leisure Valley) as the site is not earmarked in the notified Master Plan, Ludhiana. It is submitted that it is a small religious statue and was installed much prior to the finalization of Master Plan.

**e. M/S Urban Tikka Restaurant, Model Town Extension, Ludhiana**

It has been submitted by the Joint Committee that the restaurant has constructed temporary shed beyond its premises in the green belt area of Model Town extension resulting in encroachment. It is submitted that the forementioned building has been sealed by MC, Ludhiana on 25/06/2024.

**f. M/s D.S. Enterprises, Model Town Extension, Ludhiana**

It has been submitted by the Joint Committee that the afore-mentioned enterprise has made path in the green belt area of Model Town Extension in order to approach main road resulting in encroachment. **It** is submitted that this enterprise has been sealed by MC, Ludhiana on 25/06/2024.

**g. M/S M. P. Ply Palace, Model Town Extension, Ludhiana**

*It has been submitted by the Joint Committee that the aforementioned has made path in the green belt area of Model Town Extension in order to approach main road resulting in encroachment. It is submitted that it has been sealed by MC, Ludhiana on 25/06/2024.*

**h. M/s A. B. Wines, Model Town Extension, Near Block-C, Ludhiana**

*It has been submitted by the Joint Committee that the establishment has made path in the green belt area of Model Town Extension in order to approach main road resulting in encroachment. It is submitted that it has been sealed by MC, Ludhiana on 25/06/2024.”*

12. Learned Counsel appearing for respondent 1 i.e. Municipal Corporation, Ludhiana states that constructions referred to in para 4, e to h, those establishments have already been sealed.

13. However, above reply admits that there is encroachment of green area/green belt/leisure valley either by Municipal Corporation, Ludhiana, itself or by certain other individuals, with permission of Municipal Corporation, Ludhiana. These encroachments are admitted in para 4 at sub para b to h.

14. Deprecating the practice of making encroachment, and constructions in a green belt, thereby damaging the same, Supreme Court in *Lal Bahadur v. State of Uttar Pradesh & Ors. (2018) 15 SCC407* has held that no such damage to green belt by raising any construction is permissible.

15. In *Lal Bahadur (supra)*, issue of change of master plan and converting green area into residential one was considered. The issue was, whether such conversion is conducive to protection of environment or not. In the master plan of 1995 of Lucknow, area in dispute was reserved as green belt. In master plan 2021, the same area, shown earlier as green belt, was converted as residential. This part of master plan 2021 was

challenged before Lucknow bench of Allahabad High Court. Writ petition was dismissed. The matter came in appeal before Supreme Court. Court held in para 12 of judgment that change of area from green belt to residential is in violation of Article 21, 48A and 51A(g) of the Constitution. Reliance was placed on **Bangalore Medical Trust v B.S. Muddappa & Others, (1991) 4 SCC 54**, wherein Court had said that protection of environment, open spaces for recreation and fresh air, playground for children, promenade for the residents and other conveniences or amenities are matters of great public concern and a vital interest to be taken care of in a development scheme. Public interest in the reservation and preservation of open spaces for parks and playgrounds cannot be sacrificed by leasing or selling such sites to private persons for conversion to some other use. Court also relied on an American Supreme Court Judgment **Agins vs. City of Tiburon, [447 us 255 (1980)]**, wherein Court said, “... *it is in the public interest to avoid unnecessary conversion of open space land to strictly urban uses, thereby protecting against the resultant adverse impacts, such as ..... pollution, ....destruction of scenic beauty, disturbance of the ecology and the environment, hazards related geology, fire and flood, and other demonstrated consequences of urban sprawl.*”

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

their bounden duty not to change its very purpose when they knew very well the importance of this place to be kept as open space. Court said,

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

17. This Tribunal in the matter in O.A No. 292/2023 in *Dr. Amandeep Singh Bains v. The Municipal Commissioner of Ludhiana & Ors*, has already taken a similar view and it has been held that no encroachment or construction can be allowed to be raised changing the nature of green belt/park in any manner. Relevant paras are quoted below:-

*21. We find that the respondent no. 2 has clearly violated the law in erecting the statue, constructing structure and using the park for commercial purposes. Hence, we direct the Member Secretary, Punjab Pollution Control Board to duly consider the issue of imposition of environmental compensation for past violation by the respondent no. 2 and take action by duly complying with the principles of natural justice and submit an action taken report before the Registrar General of the Tribunal within three months.*

*22. In the facts and circumstances of the case noted above, we find that it is the responsibility of the respondent nos. 1 and 3 to ensure that the green cover in Rakh Bagh is maintained and no unauthorized construction, whether temporary/permanent in nature, is allowed to be erected and no illegal commercial activity is permitted in the park. Hence, we direct the respondent no. 1 to take appropriate remedial action, if any, unauthorized structure of temporary/permanent nature is still standing on the Rakh Bagh Park and, if any, illegal commercial activity is going on and submit action taken report before the Registrar General of the Tribunal within three months. If found necessary, the matter be listed before the bench.”*

18. In view thereof, we are clearly of the view that construction raised on the area comprising green belt (Leisure Valley) must be removed if necessary even by demolition of construction raised.

19. Accordingly, we dispose of this original application by directing the concerned authorities to get the green belt area cleared from any encroachment and by removal of construction by carrying out the demolition thereof. This direction shall be complied with by Municipal Corporation, Ludhiana under supervision of, District Magistrate, Ludhiana and representative of Punjab State Pollution Control Board. The compliance report shall be submitted by Commissioner, Municipal Corporation, Ludhiana with the Registrar General of this Tribunal within two months who if finds necessary, shall place the matter before the Bench for further orders.

20. With the above directions, original application is disposed of.

21. A copy of this order be forwarded to Commissioner, Municipal Corporation, Ludhiana, District Magistrate, Ludhiana and Punjab State Pollution Control Board by email for compliance.

Sudhir Agarwal, JM

Dr. Afroz Ahmad, EM

July 04, 2024  
Original Application No. 209/2023  
AB

# Recognized Affiliated Schools ... vs State Of Punjab And Ors on 19 September, 2022

**Author: Sudhir Mittal**

**Bench: Sudhir Mittal**

IN THE HIGH COURT OF PUNJAB & HARYANA AT  
CHANDIGARH

Sr. No.129

CWP-21506-2022 (O&M)  
Date of decision : 19.09.2022

Recognized Affiliated School Association (Regd.) and another ..... Petitioners

VERSUS

State of Punjab and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE SUDHIR MITTAL

Present:- Mr. Aashish Chopra, Sr. Advocate with  
Mr. D.S. Gandhi, Advocate, for the petitioners.

Mr. Ferry Sofat, Addl. AG Punjab, for the respondents.

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SUDHIR MITTAL, J. (Oral)

The petitioners are aggrieved because of communication dated 05.05.2022 addressed by the District Education Officer, Gurdaspur and communication dated 19.07.2022 issued by the Chairman, Punjab State Commission for Protection of Rights of Children (hereinafter referred to as the Commission). Vide the communication dated 05.05.2022, the District Education Officer has written to all private schools that transport used to carry the students would be the responsibility of the school and the school would be responsible for wrong parking of the vehicles and for non-compliance with the Safe School Vahan Scheme. Vide communication dated 19.07.2022, the Commission has directed all the District Education Officers to ensure that transport used to carry students adheres to the Safe School Transport Policy and in case of an accident, the Head of the school would be responsible.

1 of 2 Learned senior counsel for the petitioners has argued that imposing of criminal liability vicariously upon the Head of an institution is illegal because according to the settled law, such liability cannot be vicarious.

The submission cannot be accepted because a perusal of the communications aforementioned only indicates that the Head of the institution has been made responsible for ensuring that all vehicles used by the school for transportation of children, adhere to the Safe School Vahan Scheme. The observation regarding responsibility, in case of accident mentioned in communication dated 19.07.2022 issued by the Commission, has to be so construed. It does not amount to imposition of a vicarious liability.

With the observations aforementioned, the writ petition is disposed of.

(SUDHIR MITTAL)  
JUDGE

19.09.2022  
Ramandeep Singh

Whether speaking / reasoned  
Whether Reportable

Yes / No  
Yes/ No

## **Directions Issued by Hon'ble High Court of Punjab and Haryana for School Buses and Provision of Rule 114(A)**

- School Bus must be prominently written on the back and front of every bus carrying school children.
- If it is a hired bus, "ON SCHOOL DUTY" should be prominently displayed.
- No bus belonging an educational institution should carry children excess of its permitted seating capacity.
- Bus must have a first aid box.
- Windows of the bus must be fitted with horizontal grills.
- There must be fire extinguisher in every bus.
- School name and telephone number must be written on the bus.
- Doors of the bus should be fitted with reliable locks.
- Every drivers of a school bus must have a minimum experience of five years driving heavy vehicles and must not have any previous record of traffic offences.
- In addition to the driver, there must be another qualified person in every school bus as provided in Rule 17 of Motor Vehicle Rules.
- To keep school bags safety, there should be space provided under the seats.
- There should be an escort from the school in the bus, preferably a teacher to ensure safety norms.
- Every vehicle, bus van, other transport shall be permitted to carry school children if it holds a proper permit.
- All the vehicles shall be road worthy and carry annual fitness certificate. All the school buses shall carry insurance certificate.
- All drivers and conductors of the school buses shall wear proper uniform and name license number of the said driver and conductor.
- The bus driver shall have proper and valid license during the time of employment/engagement.
- All the school buses shall carry valid pollution under control certificate.
- The school buses/vehicles shall not be permitted to exceed the speed of maximum 50 KMPH in any part of the city.
- The buses shall carry a board showing the name of the school, route and timings which shall be displayed conspicuously on the front of the bus.
- The education institution shall control and man the traffic in and around the school through their own man power.
- In addition to the compliance of following point may also be ensure by administrative authority of the schools:-
  - Name, home address with telephone number of diver must be recorded in your record.
  - School bus should be inspected by school authority from time to time.
  - In case of any lapse/guilt by driver for not following the directions of the Hon'ble High Court the matter should be reported to police by school authorities.
  - A list of the school buses drivers with full detail must be forwarded to SHOs concerned.

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### **PROVISION OF RULE 114 (A)**

- 114-A. The owner of bus and the head of the management of educational of educational institution while carrying school children shall comply with the following directions namely:-
- The school buses shall be properly maintained, should be road worthy, should possess the certificate of fitness and insurance certificate, not emanate smoke beyond permissible limit. It should be manned by trained, experienced and well versed driver provided with attendant or conductor.
- Every vehicle, bus, van or such other means of transport, carrying school children shall hold a proper permit/permission.
- The bus driver engaged should have at least 5 years driving experience.
- The bus driver should not have been challaned more than three times for traffic violation like jumping red light, improper parking, violating stop line, unauthorized lane changing, overtaking etc. and ought not to have been challaned for an offence under Section 279, 336, 337, 338, 304A of the Indian Penal Code, 1860, during the period of requisite experience of 5 Years.
- All School buses shall have a conductor or an attendant. The attendant should be adequately trained to handle the young children.
- The school buses shall have a conductor or an attendant. The attendant should be permitted to exceed the speed of maximum 50 Kilometers per hour in any part of the city.
- All schools having parking area inside the boundary wall shall ensure that the children are dropped inside the boundary wall of the school by buses.
- All educational vehicles shall carry First-Aid-Box and Fire Extinguisher as required under the rules.
- The buses shall carry a boards.
- Showing name of the school, route and timings which shall be displayed conspicuously on the front of the bus.
- The conductors and drivers of the school buses shall be subject to a refresher course at least once in two years to be arranged by the Transport Department. It shall be obligation of the registered owner of the bus and school to ensure that the drivers and conductors undergo for the required refresher courses within the stipulated period.
- The drivers of all the vehicles shall be subjected to medical fitness by the Civil Surgeon of the District which may be arranged for the purpose once in five years.
- All drivers and conductors of the educational vehicles shall wear proper uniform and name plate showing the name and license number of the driver and the conductor. No educational vehicle shall carry children in excess of 1.5 times of its registered seating capacity.
- The educational institution shall control and man the traffic through own manpower in and around the school premises.

In case of any violation, the vehicle shall be challaned/seized under Section 207 of the Motor Vehicles Act, 1988 by the authorized Enforcement Officer of the Transport Department.