

BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL

O.A. No. 793 OF 2022

In the matter of:

Council of Engineers & Ors.

.....Applicant

V/S

State of Punjab & Ors.

.....Respondent

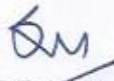
Reply in the form of Affidavit by Surabhi Malik, IAS, Deputy
Commissioner, Ludhiana (on behalf of Respondent No. 2)

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Place: Ludhiana

Dated: 26.03.2023


(Surabhi Malik), IAS,
Deputy Commissioner,
Ludhiana

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O.A. No. 793 OF 2022

In the matter of:

Council of Engineers & Ors.

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Reply in the form of Affidavit by Surabhi Malik, IAS, Deputy
Commissioner, Ludhiana (on behalf of Respondent No. 2)

It is most respectfully showeth:

1. That the undersigned is currently working as Deputy Commissioner, Ludhiana & thus filing the reply on behalf of Respondent No. 2.
2. It is submitted that in the O.A. No. 793 of 2022, this Hon'ble Tribunal vide its Order dated 07.11.2022 (Annexure R-2/1) had directed as under:

"In view of the serious nature of the allegations made in the application and in view of the provisions of the Code of Civil Procedure, 1908 empowering the Court to ex-parte appoint a Local Commission to make local investigation for the purpose of elucidating any matter in dispute, we also consider it appropriate that a Joint Committee be constituted to verify the factual position. Accordingly, we constitute a Joint Committee comprising of Regional Officer, MoEF & CC, Chandigarh, Commissioner, Municipal

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Corporation, Ludhiana, State PCB and the Deputy Commissioner, Ludhiana and direct the same to meet within two weeks, undertake visits to the site, look into the grievances of the applicant, associate the applicant and representative of the concerned project proponent, verify the factual position and submit its report within 15 days by e-mail at judicialngt@gov.in preferably in the form of searchable PDF/OCR supported PDF and not in the form of Image PDF."

3. That the Joint Committee constituted as above, held meetings, conducted field visits, heard the applicants, sought report from the concerned departments and filed its report vide email dated 08.01.2023 (Annexure R-2/2). The relevant portion of the said report of the Joint Committee is reproduced herein as:

"Committee deliberated upon the recent changes made in unified Zoning regulation and Development Control which have been notified U/S 70(5) of the Punjab Regional & Town Planning & Development Act, 1995 vide Notification no. 6515- 41/CTP(Pb)/SP-135 dated 18-10-2018. Subsequently this Notification deemed to adjust change of land use which have been already been permitted by competent authorities/Government before the final Notification of Master Plan. In the given case, Sacred Heart School and Lodhi Club were part of the Scheme namely Bhai Randhir Singh Nagar (550 Acre) under PTI Act 1922 U/S 42 (1) and the same was approved by the Government vide its Notification No. 153-USLG-(1)-76/41858 dated 06.12.1976. Further, Old GT road was handed over to Municipal Corporation, Ludhiana in 1995, and these parking sites were developed in 1999. The Committee understood that even though sites are not in compliance of the Master Plan, but they are adjusted as per Notification/ regulation notified by government at various point of time.

1. The area along both sides of the road, adjoining Lodhi Club, Sacred Heart Convent School, BRS Nagar is part of the Right Of Way (ROW), which was notified in 1976 by the Improvement Trust in its Notification. Hence, the Committee is of the opinion that this is not a green belt as claimed by the applicant.

2. The area along both sides of the Old GT Road is part of the Right Of Way (ROW), which was handed over to MCL in 1995 and since then it is maintained by MCL. Hence, Committee is of the opinion that this is not a green belt as claimed by the applicant.

3. With respect to the construction of library building in green belt/park near Manju Cinema, it is to be noted that a COCP No. 165 of 2022 is pending in the Hon'ble High Court regarding the same matter. Hence, no action can be proposed by the Committee at this stage."

PRELIMINARY SUBMISSIONS

1. It is submitted that as per the notified Master Plan of Ludhiana, it has also been mentioned by the Joint Committee in its report that the Unified Zoning Regulations and Development Controls have been notified U/S 70(5) of the Punjab Regional & Town Planning & Development Act, 1995 vide Notification bearing No. 6515-41/CTP(Pb)/SP-135 dated 18.10.2018. These Zoning Regulations and Development Controls are applicable on all Master Plans already notified or to be notified under the provision of "The Punjab Regional and Town Planning and Development Act, 1995". The nature of land use and control of development within each Master Plan shall be regulated through these regulations. In these Zoning Regulations and Developmental Controls for Master Plan, Para 2.7 (exception) talks about:

"The site on which various projects have been approved or whose change of land use has already been permitted by the Competent Authority/Government informs the final Notification of the Master Plan such site shall be deemed to be adjusted as sanctioned/ permitted."

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Subsequently, this Notification deemed to adjust change of land use which have been already been permitted by Competent Authorities/ Government before the final Notification of Master Plan.

In the given case, Sacred Heart School and Water Works Site (later Aviation Club / Lodhi Club) were part of the Scheme namely Bhai Randhir Singh Nagar (550 acre) under PTI Act, 1922 U/S 42 (1) and the same was approved by the Government vide its Notification No. 153-USLG-(1)-76/41858 dated 06.12.1976.

2. As informed by the Improvement Trust, Ludhiana, a Scheme namely Bhai Randhir Singh Nagar (550 Acre) under PTI Act, 1922 U/S 42 (1) was approved by the Government vide its Notification No. 153-USLG-(1) 76/41858 dated 06.12.1976, and drawing of the same bearing No. 3/LIT/80 dated 01.02.1990 was prepared and sanctioned, wherein, as per the Scheme, one site was reserved for Higher Senior Secondary School and another site for Water Works Site / Aviation Club, which is now developed as Lodhi Club. That, as per the aforementioned drawing of the said Scheme, it shows that in front of School as well as the Water Works Site/ Aviation Club/ Lodhi Club, there exists 300-feet wide Southern Ring Road and there was no mention of any green belt. It is also pertinent to mention herein that the area along both sides of the road, adjoining Lodhi Club and Sacred Heart Convent School, BRS Nagar, is part of the Right Of Way (ROW) and is clear from the detailed Scheme Plan of the area, and not green belt as alleged by the applicant.

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3. It is submitted that as per the report of Municipal Corporation, Ludhiana, the part of Old GT Road connecting Amritsar to Delhi was handed over to Municipal Corporation, Ludhiana in 1995 by Public Works Department and, as per section 224/225 of the Punjab Municipal Corporation Act, 1976, all the public streets within the Municipal area vest with the Municipal Corporation and the Municipal Corporation can widen, extend or otherwise improve any such roads. Also, under Section 226 of the Municipal Corporation Act, 1976, the Municipal Corporation can even dispose of the land becoming available on permanent closure of total or part of any street.

The Joint Committee, in its report, has further mentioned that the area along both the sides of Old GT Road is part of Right Of Way (ROW) and not green belt as alleged by petitioner.

4. That it is also submitted that the library building, near Manju Cinema, in question is built on the area measuring approximately 650 sq. feet and, as per the revenue record of Village Taraf Saidan, *Jamabandi* (Record of Rights) for the year 2007-2008, *Khewat* No. 2550/2818, *Khasra* No. 1528 (26 *Bigha*, 01 *Biswa*, 04 *Biswansian*) on *Gairmumkin* Road (Annexure R-2/3), reflects the ownership of Provincial Government. In the Cultivation Column, the name of the Public Work Department (PWD) is entered and later on the same was handed over to Municipal Corporation, Ludhiana in 1995.

It is also pertinent to mention herein that as informed by the Municipal Corporation, Ludhiana, some part of the ROW, on both sides of the road, was developed as park by Municipal Corporation, Ludhiana in 1999 and later, a library & Statue was built in a corner of the park by Municipal Corporation, Ludhiana in 2021. It is also pertinent to mention herein that a COCP No. 165 of 2022 is pending adjudication in the Hon'ble High Court with regard to the same matter. The matter being subjudice, any decision as given by the Hon'ble High Court or this Hon'ble Tribunal shall be complied with.

5. That the Deputy Commissioner, Ludhiana has always been diligent and is acting as per the Notifications/ Regulations notified by the Government at various points of time, which has also been observed by the report of Joint Committee submitted before this Hon'ble Tribunal. The report submitted is a detailed one based on legal and analytical facts and the undersigned's position as ex-officio President of Lodhi Club has no bearing or consideration whatsoever on the meritorious disposal of legal matters.

It is also submitted that Deputy Commissioner, Ludhiana has always been compliant to the orders and directions issued by the Hon'ble Supreme Court, Hon'ble High Court and the Hon'ble Tribunal from time to time.

PARA-WISE REPLY

1. It is submitted that as per the report of LIT (which had developed the scheme BRS Nagar in 1976), the said area is part of 300' wide Southern Bypass & is not a part of Green Belt. Further, as per the record of PWD pertaining to Old GT Road, the alleged land used for parking of vehicles is

part of Right of Way (ROW) & is not a Green belt. This is also mentioned in the Report of the Joint Committee. Relevant portion of the said report is being reproduced herein as under:

“Ludhiana Improvement Trust has submitted that it has developed a scheme namely Bhai Randhir Singh Nagar (550 Acre) under PTI Act, 1922 U/S 42 (1) and the same was approved by the Government vide its Notification No.153-USLG-(1)- 76/41858 dated 06.12.1976. The Drawing No. 3/LIT/80 dated 01.02.1990 was prepared and sanctioned wherein as per the Scheme, one site is reserved for Higher Senior Secondary School and another site is reserved for Water Works Site. That, at present, the school is known as Sacred Heart Convent School and the Water Works site is developed as Lodhi Club. After going through the drawing as per the said scheme, it shows that in front of the School as well as the Water Works site, there exists 300-feet wide Southern Ring Road and there was no mention of any green belt in the existence, which falsify the contentions of the applicants.

The area along both sides of the road, adjoining Lodhi Club, Sacred Heart Convent School, BRS Nagar is part of the Right Of Way (ROW) as is clear from the detailed Scheme Plan of the area, hence it is humbly submitted that claim of encroachment on green belt is falsified since this is ROW and not a green belt.

As for road along Jagraon Bridge to Shepur Chowk:

As per the record, this is part of old GT Road which connects Amritsar to Delhi. This road was handed over to Municipal Corporation, Ludhiana in 1995 by Public Works Department.

As per record, prior to the construction of Ludhiana Bypass by the National Highways Authority of India from Sherpur Bypass Chowk to Jalandhar Bypass Road, the road connecting the Jalandhar Bypass and Sherpur Chowk, was passing through within the city area, was known as GT Road. The width of the said road except the portion of road passing through within the core area of the city varied between 200 feet to 225 feet. However, on the construction of Ludhiana Bypass from Jalandhar Bypass to Sherpur Chowk via Basti Jodhewal Chowk and Samrala Chowk by the National Highways Authority of India, the traffic volume on the old GT Road considerably reduced. Resultantly, squatters & hawkers started unauthorized use of the unmetalled portion of the road width by placing their wooden Takhats and Kiosks for sale of articles. Apart, shanties were also erected on Katcha portion of the road. In these circumstances, to check the unauthorised use of the public road, the Municipal Corporation vide its Resolution No. 3207/3 dated 22.10.1999 sanctioned a sum of Rs 49.38 Lacs for development of green spaces and parks on both the sides of the road except on the road portion passing through within the core area of the city as the width of the road was lesser and was touching the building line.

It is relevant to mention here that as per section 224/225 of the Punjab Municipal Corporation Act, 1976, all the public streets within the Municipal area vest with the Municipal Corporation and the Municipal Corporation can widen, extend or otherwise improve any such roads. Still further, under section 226 of the MC Act, 1976, the Municipal Corporation can even dispose of the land becoming available on permanently closure of total or part of any street. In this regard, the legal proposition already stands settled by a Division Bench of the Hon'ble High Court on 23.01.2014 while

deciding the Civil Writ Petition filed by Citizen Welfare Society (Regd) Versus State of Punjab. The area along both sides of the on Old GT Road is part of the Right Of Way (ROW) as is clear from the detailed Scheme Plan of the area. Hence, it is humbly submitted that claim of encroachment on green belt is falsified since this is ROW and not a green belt."

Thus, the question of encroachment on green belt does not arise, and hence, this para is denied.

2. That, the contents of this corresponding paragraph of the application/petition do not pertain to the answering respondent and, therefore, require no comment, being matter of record.

3. The Joint Committee report did not find the area to be green belt. Thus, the question of illegal encroachment over green belt does not arise. That as per the report of LIT, the said area is part of 300' Southern Bypass Road & not a part of the green belt as alleged by the applicant. Thus, there arises no question of any encroachment of green belt and, therefore, this para is denied.

However, it is worth mentioning that the Club and School are constructed on the allotted sites as per the Layout Plan of the BRS Nagar developed by LIT. Further, since these buildings are institutional/commercial & not residential, they need access through main roads & not internal roads for better traffic management.

4. That the contents of this corresponding paragraph of the petition/application are denied as these are based upon speculations,

assumptions and presumptions. The claims/allegations levelled by the applicant are denied due to want of documentary evidence.

5. That, as per the report of Municipal Corporation, Ludhiana, the road from Jagraon Bridge to Sherpur Chowk is part of the Old GT Road, which connects Amritsar to Delhi and which was handed over to the Municipal Corporation, Ludhiana in 1995 by the Public Works Department (PWD). That, prior to the construction of Ludhiana Bypass by the National Highways Authority of India from Sherpur Bypass Chowk to Jalandhar Bypass Road, the road connecting the Jalandhar Bypass and Sherpur Chowk was passing through within the city area known as GT Road. The width of the said road, except the portion of road passing through within the core area of the city varied between 200 feet to 225 feet. However, on the construction of Ludhiana Bypass from Jalandhar Bypass to Sherpur Chowk via Basti Jodhewal Chowk and Samrala Chowk by the National Highways Authority of India, the traffic volume on the old GT Road considerably reduced. Resultantly, squatters & hawkers started unauthorized use of the unmetalled portion of the road width by placing their wooden *Takhats* and kiosks for sale of articles. Apart from this, shanties were also erected on *Katcha* portion of the road. In these circumstances, so as to check the unauthorized use of public road, the Municipal Corporation vide its Resolution No. 3207/3 dated 22.10.1999, sanctioned a sum of Rs 49.38 Lacs for the development of green spaces and parks on both the sides of the road except on the road portion passing through within the core area of the city as the width of the road was lesser and was touching the building line. As the traffic volume increased, there was increased demand of parking spaces in the city and Municipal Corporation, Ludhiana has endeavored to provide suitable

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parking spaces as per the need from time to time. It is also pertinent to mention herein that as per Section 224/225 of the Punjab Municipal Corporation Act, 1976, all the public streets within the Municipal area vest with the Municipal Corporation, and the Municipal Corporation can widen, extend or otherwise improve any such roads. Also, under Section 226 of the Municipal Corporation Act, 1976, the Municipal Corporation can even dispose of the land becoming available on permanently closure of total or part of any street. The area along both sides of the Old GT Road is part of the Right of Way (ROW) as is clear from the detailed Scheme Plan of the area. Hence, it is humbly submitted that the claim of encroachment on green belt does not arise since the road in question is ROW and not a green belt. The same is also evident from the report of the Joint Committee.

6. That the contents of the corresponding paragraph of the petition/application are matter of record and call for no comments. It is submitted that the answering respondent has been following the rules and regulations laid down in this regard.

7. That the contents of the corresponding paragraph of the petition/application are matter of record and need no comments. It is submitted that the answering respondents has been following the rules and regulations laid down in this regard.

8. That the contents of this corresponding paragraph of the petition/application are unrelated to present O.A. It is submitted that undersigned has duly complied with the orders of Hon'ble Tribunal by passing a Speaking Order, copy of which is annexed herewith as Annexure R-2/4.

9. That the undersigned is a senior officer of the Government of Punjab and the Joint Committee comprising senior and responsible officers, which was constituted by the Hon'ble Tribunal, has submitted its report based on legal and analytical facts wherein it has been submitted that the area in question is not a green belt and hence there is no question of encroachment. The undersigned's position as ex-officio President of Lodhi Club has no bearing or consideration whatsoever on the meritorious disposal of legal matters. Therefore, the contents of this corresponding paragraph in the petition/application are denied being false.

10. That the contents of the corresponding paragraph require no comments. The orders referred to by the petitioner/applicant in his application are a matter of record. However, it is submitted that there is no wilful disobedience/ violation of these orders of Hon'ble Tribunal, and that the undersigned has been duly following the rules and regulations as laid down under law.

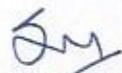
11. That the contents of the corresponding paragraph require no comments. The orders referred to by the petitioner/applicant in his application are a matter of record. However, it is submitted that there is no wilful disobedience/violation of these orders of Hon'ble High Court and that the undersigned has been duly following the rules and regulations laid down under law.

12. That the contents of this corresponding paragraph of the petition/application are denied. It is submitted that the Joint Committee had submitted its report before this Hon'ble Tribunal after providing a fair

chance of hearing to the applicant on merit. It is further submitted that the report of the Joint Committee may kindly be construed as reply to the legal notices sent by the petitioner.

It is, therefore, submitted that the present Original Application may kindly be dismissed for the reasons stated above and as per the report of Joint Committee, and pass such further orders as this Hon'ble Tribunal deems fit in the interest of justice and equity.

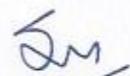
Place: Ludhiana
Dated: 26.03.2023


DEPONENT

VERIFICATION:

Verified at Ludhiana on the 26th day of March, 2023 that the contents of the above reply in so far as they relate to the factual position are true upon the information derived from the official record and in so far as they relate to the legal submissions are true upon the advice received and believed by me to be true. Rest is by way of submissions before this Hon'ble Tribunal.

Place: Ludhiana
Dated: 26.03.2023


DEPONENT

**BEFORE THE NATIONAL GREEN TRIBUNAL
PRINCIPAL BENCH**

(Through Physical Hearing with Hybrid VC Option)

Original Application No. 793/2022

Council of Engineers & Ors.

Applicants

Versus

State of Punjab & Ors.

Respondents

Date of hearing: 07.11.2022

**CORAM: HON'BLE MR. JUSTICE ARUN KUMAR TYAGI, JUDICIAL MEMBER
HON'BLE DR. AFROZ AHMAD, EXPERT MEMBER**

Applicant: Applicant in person.

Application under the provisions of the National Green Tribunal Act, 2010.

ORDER

1. The applicant-Council of Engineers, which is an association of Engineers including Civil Engineers and is having its Head Office at Ludhiana has filed the present application under the provisions of the National Green Tribunal Act, 2010 complaining about encroachments made over Green Belts (i) by Lodhi Club and Sacred Heart Convent School, situated at BRS Nagar, Ludhiana by opening illegal gate entry as well as converting the Green Belt area into Parking Space; (ii) by Municipal Corporation Ludhiana by allowing parking of Vehicles after concretization of huge area of Green Belts from Jagraon Road to Sherpur Chowk and; (iii) by Municipal Corporation Ludhiana by constructing library building in the Green Belt/Park near Manju Cinema in violation of directions of Hon'ble Supreme Court and this Tribunal, environmental norms and Master Plan of Ludhiana.

2. *Prima facie*, the averments made in the application raise questions relating to environment arising out of the implementation of the

enactments specified in Schedule I to the National Green Tribunal Act, 2010.

3. Notices alongwith copies of the application and documents attached therewith be issued to Respondents requiring them to file their response/ reply to the allegations made in the application within one week 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.

4. In view of the serious nature of the allegations made in the application and in view of the provisions of the Code of Civil Procedure, 1908 empowering the Court to ex-parte appoint a Local Commission to make local investigation for the purpose of elucidating any matter in dispute, we also consider it appropriate that a Joint Committee be constituted to verify the factual position. Accordingly, we constitute a Joint Committee comprising of Regional Officer, MoEF & CC, Chandigarh, Commissioner, Municipal Corporation, Ludhiana, State PCB and the Deputy Commissioner, Ludhiana and direct the same to meet within two weeks, undertake visits to the site, look into the grievances of the applicant, associate the applicant and representative of the concerned project proponent, verify the factual position and submit its report within 15 days by e-mail at judicial-ngt@gov.in preferably in the form of searchable PDF/OCR Supported PDF and not in the form of Image PDF.

5. Under the statutory provisions made in the enactments specified in schedule I to the National Green Tribunal Act, 2010 the Statutory Authorities are bound to take remedial action for prevention, control and abatement of environmental pollution/degradation and for protection and improvement of environment, even without/before filing of any application before and passing of any order by this Tribunal or any other Court and the

Statutory Authorities cannot ignore or violate the statutory obligations imposed on them.

6. In view of this legal perspective, we consider it essential to direct that in case the Joint Committee observes any violation of the environmental norms, then it shall forward a copy of its report to the concerned Statutory Authorities including the State PCB and the Deputy Commissioner, Ludhiana who shall take appropriate remedial action by giving notice to/hearing the concerned persons and following due process of law and shall submit their action taken reports separately within 15 days from the date of receipt of a copy of the report of the Joint Committee by e-mail at judicial-ngt@gov.in preferably in the form of searchable PDF/OCR Supported PDF and not in the form of Image PDF.

7. List for further consideration on 20.12.2022.

8. A copy of this order, along with a copy of the application and documents attached with the same, be forwarded to Regional Officer, MoEF & CC, Chandigarh, Commissioner, Municipal Corporation, Ludhiana, State PCB and the Deputy Commissioner, Ludhiana by e-mail for compliance.

Arun Kumar Tyagi, JM

November 07, 2022
AG

Dr. Afroz Ahmad, EM

BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL, NEW DELHI

(PRINCIPAL BENCH)

Original Application No. 793 of 2022

REPORT OF THE JOINT COMMITTEE

Subject: Site visit report in respect of OA 793 of 2022, Council of Engineers & Ors. Vs State of Punjab & Ors., before Hon'ble NGT, Principal Bench at New Delhi.

The Hon'ble National Green Tribunal, Principal Bench vide order dated 07.11.2022 constituted a Joint Committee comprising Regional Officer, MoEFF & CC, Chandigarh, Commissioner, Municipal Corporation, Ludhiana, State PCB and the Deputy Commissioner, Ludhiana.

The relevant extract of the said order is reproduced hereunder: -

".....In view of the serious nature of the allegations made in the application and in view of the provisions of the Code of Civil Procedure, 1908 empowering the Court to ex-parte appoint a Local Commission to make local investigation for the purpose of elucidating any matter in dispute, we also consider it appropriate that a Joint Committee be constituted to verify the factual position. Accordingly, we constitute a Joint Committee comprising of Regional Officer, MoEFF & CC, Chandigarh, Commissioner, Municipal Corporation, Ludhiana, State PCB and the Deputy Commissioner, Ludhiana and direct the same to meet within two weeks, undertake visits to the site, look into the grievances of the applicant, associate the applicant and representative of the concerned project proponent, verify the factual position and submit its report within 15 days by e-mail at judicialngt@gov.in preferably in the form of searchable PDF/OCR Supported PDF and not in the form of Image PDF....."

The complaints are encroachments made over Green Belts (i) by Lodhi Club and Sacred Heart Convent School, situated at BRS Nagar, Ludhiana by opening illegal gate entry as well as converting the Green Belt area into Parking Space; (ii) by Municipal Corporation Ludhiana by allowing parking of Vehicles after concretization of huge area of Green Belts from Jagraon Road to Sherpur Chowk and; (iii) by Municipal Corporation Ludhiana by constructing library building in the Green Belt/Park near Manju Cinema in violation of directions of Hon'ble Supreme Court and this Tribunal, environmental norms and Master Plan of Ludhiana.

2. MEETING OF THE JOINT COMMITTEE ON DATED 21.11.2022: In compliance of the Hon'ble NGT orders, the joint committee held its first meeting on 21-11-2022 (copy of minutes of meeting is annexed as **Annexure A-1**). In addition to the Joint Committee, the applicant, Counsel of Engineers & Ors. & representative of the concerned project/Establishments i.e. Principal of Sacred Heart Senior Secondary

School, BRS Nagar and President of Lodhi Club were invited to the meeting. The joint committee heard the main concerns/issues raised by the complainant. The representative of the School & Lodhi Club voiced their concerns as to how the area has been allocated to them as part of the Town planning scheme of Ludhiana Improvement Trust, if the said areas were part of the Greenbelt as per master plan of Ludhiana. The committee decided to look into the extant rule position *vis-à-vis* the concerns of the affected parties, both complainant and the Municipal Corporation of Ludhiana, Sacred Heart Senior Secondary School, BRS Nagar and President of Lodhi Club. It was decided to undertake field visit subsequently.

3. FIELD VISIT DATED 13.12.2022: There are three main project proponents namely,

1. Lodhi Club and Sacred Heart Convent School who have been questioned in the complaint.
2. Green belt located along with the road site (from Jagraon Road to Sherpur Chowk)
3. Library building which is allegedly built in the Green Belt/Park near Manju Cinema .

Further, to verify encroachment into the questioned 'Green Belt' area and facts involved in the grievances, satellite maps between 2013 to 2022 were seen on the GOOGLE map in time scale mode to understand the changes in land use over the said period.

4. REPORT FROM TOWN PLANNING DEPT: The representative of Ludhiana Improvement Trust & Town planning department were instructed to submit the report of nature of land in question. As per report received from District Town Planner (Copy of report is annexed herewith as **Annexure A-2**) vide letter no. 2647 dated 25-11-2022, he has mentioned that the particular site around the Lodhi Club and Sacred heart convent school, BRS nagar; Jagraon bridge to Sherpur chowk near Manju cinema has been indicated as green belt on master plan. As per notified Master plan (2007-31), he has also mentioned that unified Zoning regulation and Development control have been notified U/S 70(5) of the Punjab Regional & Town Planning & Development Act, 1995 vide notification no. 6515-41/CTP(Pb)/SP-135 dated 18-10-2018. These Zoning regulations were notified by Govt. of Punjab in the public interest and ease of doing business in the street to bring uniformity in zoning regulations and development controls of all master plans in the state of Punjab. These zoning regulations and development controls shall be applicable on all master plan already notified or to be notified in the provision of "The Punjab regional and town planning and development act 1995". The nature of land use and control of development within each master plan shall be regulated through these regulations. In addition to these the building rules and other notification/guidelines/circulars issued from time to time by the state government for regulations and control of development shall also be applicable within master plan areas. Since, the sub-division of lands, design and construction of buildings is being controlled through well-established building bye laws/regulations by

the concerned authorities. These zoning regulations and development controls of the master plan are seen as the guiding parameters for the authorities to ensure that the development permitted by them is within the framework of master plan provisions. In the same zoning regulations and developmental control for master plan para 2.7 exception talks about:

"The Site on which various Projects have been approved or whose change of Land Use has already been permitted by competent Authority/ Government informs the final notification of the Master Plan such site shall be deemed to be adjusted as sanctioned/ permitted."

5. The main observations on: encroachments made over Green Belts (i) by Lodhi Club and Sacred Heart Convent School, situated at BRS Nagar, Ludhiana by opening illegal gate entry as well as converting the Green Belt area into Parking Space are as follows:

Ludhiana Improvement Trust has submitted that it has developed a scheme namely Bhai Randhir Singh Nagar, (550 Acre) under PTI Act 1922 U/S 42 (1) and same was approved by the Government vide its Notification No.153-USLG-(1)-76/41858 dated 06.12.1976. Copy of the said notification dated 06.12.1976 is annexed herewith as **ANNEXURE A3**. The Drawing No. 3/LIT/80 dated 01.02.1990 was prepared and sanctioned wherein as per the Scheme one site is reserved for Higher Senior Secondary School and another site is reserved for Water Work Site. The copy of the drawing dated 01.02.1990 is annexed as **ANNEXURE A4**. That at present the school is known as Sacred Heart Convent School and the Water Work site is developed as Lodhi Club. After going through the drawing as per the said scheme it shows that in front of School as well as the Water Works site there exists 300 feet wide Southern Ring Road and there was no mention of any green belt in the existence which falsify the contentions of the applicants.

The area along both sides of the road, adjoining Lodhi club, Sacred Heart convent school, BRS nagar is part of the Right Of Way (ROW) as is clear from the detailed scheme plan of the area, hence it is humbly submitted that claim of encroachment on green belt is falsified since this is ROW and not a green belt.

6. Regarding Encroachments made over Green Belts (ii) by Municipal Corporation Ludhiana by allowing parking of Vehicles after concretization of huge area of Green Belts from Jagraon Road to Sherpur Chowk: That the applicant herein also raised the issue with regards to allowing parking of vehicles after concretization of huge areas of green belts from Jagraon road to Sherpur chowk.

Separate field visit was carried out by representative of MOEFF and Applicant and report was submitted vide letter no. 01-02/2022/Misc./Env. dated 05-01-2023 (Copy attached at **ANNEXURE-A5**) in which finding in the enquiry is as follows:

1. The MC Ludhiana is the Legal Owner of the land in question i.e. green belt.
2. The MC Ludhiana failed to maintain the green belt as green belt by converting it as parking lots.

As per the record, this is part of old GT Roads which connects Amritsar to Delhi, this road was handed over to Municipal Corporation Ludhiana in 1995 by Public Works Department (**ANNEXURE 6**).

As per record, prior to the construction of Ludhiana bye pass by the National Highway Authority of India from Sherpur bye pass chowk to Jalandhar bye pass road, the road connecting the Jalandhar bye pass and Sherpur chowk was passing through within the city area was known as GT Road. The width of the said road except the portion of road passing through within the core area of the city varied in between 200 feet to 225 feet. However, on the construction of Ludhiana Bypass from Jalandhar Bye pass to Sherpur Chowk via Basti Jodhewal Chowk and Samrala Chowk by the National Highway Authority of India, the traffic volume on the old GT Road considerably reduced. Resultantly, squatters & hawkers started unauthorized use of the unmetalled portion of the road width by placing their wooden Takhats and kiosks for sale of articles. Apart shanties were also erected on katcha portion of the road. In these circumstances, to check the unauthorised use of the public road, the Municipal Corporation vide its resolution no 3207/3 dated 22.10.1999 sanctioned a sum of Rs 49.38 Lacs for development of green spaces and parks on both the sides of the road except on the road portion passing through within the core area of the city as the width of the road was lesser and was touching the building line.

It is relevant to mention here that as per section 224/225 of the Punjab Municipal Corporation Act, 1976, all the public streets within the Municipal area vests with the Municipal Corporation and the Municipal Corporation can widen, extend or otherwise improve any such roads. Still further, under section 226 of the MC Act 1976, the Municipal Corporation can even dispose of the land becoming available on permanently closure of total or part of any street. In this regard, the legal proposition already stands settled by a Division bench of this the Hon'ble High Court on 23.01.2014 while deciding the Civil writ petition filed by Citizen Welfare Society (Regd) versus State of Punjab.

The area along both sides of the on Old GT Road is part of the Right Of Way (ROW) as is clear from the detailed scheme plan of the area, hence it is humbly submitted that claim of encroachment on green belt is falsified since this is ROW and not a green belt.

7. That the applicant herein has also raised issues with regard to the constructed Library building near the Manju Cinema, Ludhiana. It is submitted that the library in question is built on the area of approximately 650 sq. feet as per the record of Village Taraf Saidan, Jamabandi for the year 2007-2008, Khewat No.2550/2818,

Khasra no.1528 (25 Bigha, Biswa, 4 Biswansian) on Gairmumkin road, reflecting the ownership of Provincial Government. In the Cultivation Column, the name of the Public Work Department (PWD) is entered and later on the same was handed over to Municipal Corporation, Ludhiana in 1995.

The old GT road was transferred to Municipal Corporation, Ludhiana in 1995. Municipal Corporation, Ludhiana has been maintaining the entire area since then. Further, some part of the ROW, on both sides of the road, was developed as park by Municipal Corporation, Ludhiana in 1999. Later on, a library & Statue was built in a corner of the park/green belt by Municipal Corporation, Ludhiana in 2021. It is to be noted that a COCP no. 165 of 2022 is pending in Hon'ble High Court regarding the same matter (ANNEXURE-A7). The matter being subjudice, any decision as given by Hon'ble High Court or this Hon'ble Tribunal shall be complied with.

8. Finding of the joint committee

Committee deliberated upon the recent changes made in unified Zoning regulation and Development control which have been notified U/S 70(5) of the Punjab Regional & Town Planning & Development Act, 1995 wide notification no. 6515-41/CTP(Pb)/SP-135 dated 18-10-2018. Subsequently this notification deemed to adjust change of land use which have been already been permitted by competent authorities/Government before the final notification of master plan. In the given case sacred heart school and lodhi club were part of the scheme namely Bhai Randhir Singh Nagar, (550 Acre) under PTI Act 1922 U/S 42 (1) and same was approved by the Government vide its Notification No.153-USLG-(1)-76/41858 dated 06.12.1976. Further Old GT road was handed over to Municipal Corporation Ludhiana in 1995, and these parking sites were developed in 1999. The committee understood that even though sites are not in compliance of master plan, but they are adjusted as per notification/regulation notified by government at various point of time.

1. The area along both sides of the road, adjoining Lodhi club, Sacred Heart convent school, BRS nagar is part of the Right Of Way (ROW) which was notified in 1976 by improvement in its notification. Hence committee is of opinion that this is not a green belt as claimed by applicant.

2. The area along both sides of the on Old GT Road is part of the Right Of Way (ROW) which was handed over to MCL in 1995 and since then it is maintained by MCL. Hence committee is of opinion that this is not a green belt as claimed by applicant.

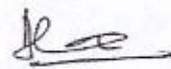
3. With respect to construction of library building in green belt/park near manju cinema, it is to be noted that a COCP no. 165 of 2022 is pending in Hon'ble High Court regarding the same matter. Hence no action can be proposed by committee at this stage.

9. That the Consolidated reply on behalf of the Regional officer, MOEF&CC, Chandigarh, Commissioner, Municipal Corporation Ludhiana, State PCB and Deputy Commissioner Ludhiana of Punjab is hereby submitted in compliance to the order dated 07/11/22 for kind consideration and appropriate orders of this Hon'ble National Green Tribunal.

Deputy Commissioner,
Ludhiana



Commissioner,
MC Ludhiana



Representative from PCB

ANNEXURE R-1

To

The Deputy Commissioner,
Ludhiana.

No.

Dated:

Sub: Contempt petition NO.165 of 2022
Gourav Taneja Vs. Pardeep Kumar Sabharwal
and another

In re: Regarding your Office Letter No.235
L.F.A. Dated 28.4.2022.

In reference to the above captioned subject regarding the letter under reference, Tehsildar, Ludhiana (East) was directed to inspect the spot mentioned in the writ petition and to report. As per the report of Tehsildar, Ludhiana (East) the spot mentioned in the writ petition as well as the revenue record perused. At the spot, there is small library running in the park. On one side of the library, there is G.T. Road and on the other side of the library there is service road. There is iron grill around this park on all sides. The library is working in the park in an area of 650 sq. feet

approx. This library is open for every common and special person. Since this library is located inside the park, as such, there is no traffic problem due to this library. As per revenue record of Village Taraf Saidan jamabandi for the year 2007-2008 Khewat No.2550/2818 Khasra No.1528 (26 Bighas 1 Biswas 4 Biswas) is Gair Mumkin road, which is ownership of Provincial Govt. In the column of cultivation regarding this area, name of P.W.D. is entered. Enquiry regarding this park was conducted from the residents of surrounding area who disclosed that this park is in existence for the last more than 20 years. This library is running into Green Belt Park which is on one side of G.T. Road. It is not creating any obstacle for the traffic. Hence, this report for necessary action.

Sub Divisional Magistrate
Ludhiana (East)

ਪਟਵਾਰੀ ਫਾਰਮ ਨੰ: 10

ਨਕਲ ਜਮਾਬਦੀ ਸਾਲ 2007-2008

ਪਿੰਡ 386 ਸੈਰਾ

ਹੱਦਬਸਤ ਨੰ: 122

ਤਹਿਸੀਲ Sheikhpur

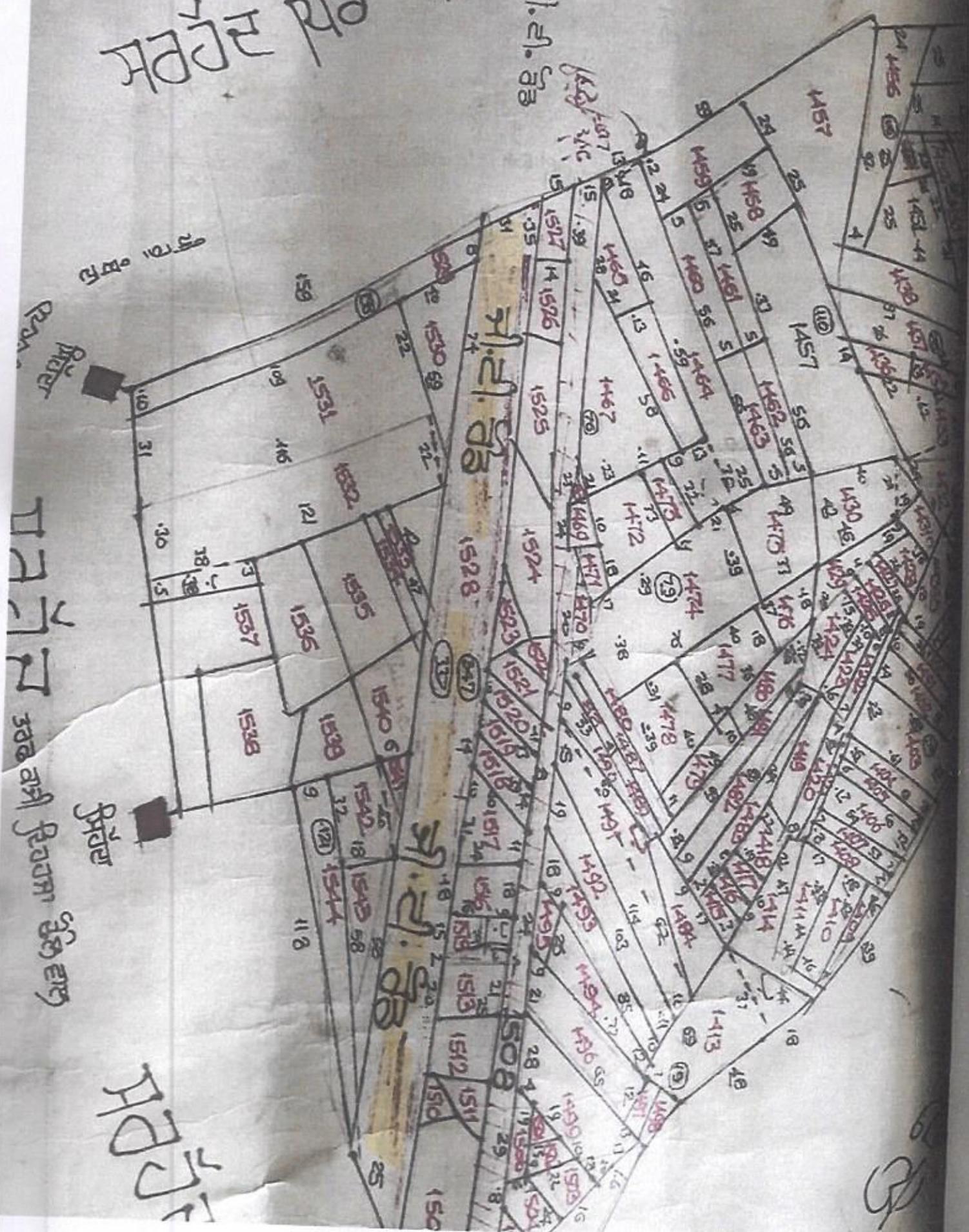
ਜ਼ਿਲਾ Sheikhpur

1	2	3	4	5	6	7	8	9	10	11	12
ਖੇਵਟ ਜਾਂ ਜਮਾਬਦੀ ਦਾ ਨੰਬਰ	ਖੱਤੋਨੀ ਨੰਬਰ	ਪਤੀ ਤੇ ਪੁਸ਼ੇ ਨਾਂ ਨੂੰ ਨਬਰਦਾਰ ਦੇ ਨਾਂ ਤੇ ਮਾਲਕ ਦੀ ਕਮ	ਮਾਲਕ ਦਾ ਨਾਂ ਅਤੇ ਵੇਰਵਾ	ਕਾਸਤਕਾਰ ਦਾ ਨਾਂ ਅਤੇ ਵੇਰਵਾ	ਖੂਹ ਜਾਂ ਹੋਰ ਸਿੰਚਾਈ ਸਾਧਨਾਂ ਦੇ ਨਾਂ	ਖਸਰਾ ਜਾਂ ਮੁਰੱਬਾ ਨੰਬਰ ਤੇ ਕਿਲਾ ਨੰਬਰ	ਹਰੇਕ ਖੇਤ ਦਾ ਰਕਬਾ ਤੇ ਜੋੜ ਝੱ ਦੀ ਕਿਸਮ ਸਮੇਤ	ਲਗਾਨ ਜੋ ਮੁਜਾਰਾ ਅਦਾ ਕਰਦਾ ਹੈ ਦਰ ਅਤੇ ਰਕਮ ਦੇ ਵੇਰਵੇ ਸਹਿਤ	ਹਿੱਸਾ ਹਕੀਅਤ ਦਾ ਪੈਮਾਨਾ ਅਤੇ ਬਾਡ ਢੰਗ	ਮੁਤਲਬਾ ਮਾਲਕ ਅਤੇ ਸਵਾਈ ਦੀ ਵਿਆਖਿਆ ਦਿੰਦੇ ਹੋਏ	ਰੀਮਾਰਕਸ
2550	2818	2871	ਮੁਕੱਦਮਾ ਸ਼ੇਰਾਮੀ	ਮੁਕੱਦਮਾ ਸ਼ੇਰਾਮੀ ਮੁਕੱਦਮਾ ਸ਼ੇਰਾਮੀ		1528 1589	26-1-4 3-11-11	ਸ਼ੇਰਾਮੀ ਸ਼ੇਰਾਮੀ	ਸ਼ੇਰਾਮੀ ਸ਼ੇਰਾਮੀ		
						1175	13-17-3	ਸ਼ੇਰਾਮੀ	ਸ਼ੇਰਾਮੀ		
						1179	4-7-10	ਸ਼ੇਰਾਮੀ	ਸ਼ੇਰਾਮੀ		
							47-17-8	ਸ਼ੇਰਾਮੀ	ਸ਼ੇਰਾਮੀ		

ਤਸਦੀਕ ਕੀਤਾ ਜਾਂਦਾ ਹੈ ਕਿ ਨਕਲ ਮੁਤਾਬਿਕ ਵਿਕਾਰਡ ਦਰਸਤ ਹੈ। ਉਜਰਤ ਹਸਬ ਜਾਬਤਾ ਵਸੂਲ ਪਾਈ ।

ਦਸਤਖਤ ਪਟਵਾਰੀ
25/03/2023

ਮਰਹੂਮ ਪਿੰਡ ਯੀਰ ਬਲ
 ਜੀ. ਡੀ. ਰੋਡ



OFFICE OF THE DEPUTY COMMISSIONER LUDHIANA

Memo No. 9013

Dated: 28/9/22

Order:

Subject: Implementation of order passed in OA-199/2022 titled as Council of Engineers &Ors. versus State of Punjab &Ors. By National Green Tribunal on 11.03.2022

An application has been filed by Council of Engineers &Ors. against the State of Punjab &Ors. before the Hon'ble National Green Tribunal, New Delhi in which the following order has been passed by the Hon'ble National Green Tribunal on 11.03.2022:

1. *"Grievance in application by applicants is regarding encroachment over public park (near house no. 273-G, BhiRandhir Singh Nagar, Ludhiana) by Mr. Raman Balasubramaniam, Chairman of Ludhiana Improvement Trust. It is submitted that Mr. Raman Balasubramaniam has made an illegal door opening towards rear side of his residence which opens directly into the park and he is using this park for personal car parking and also for installation of generator set.*
2. *In view of the above, we direct the District Magistrate and Municipal Commissioner, Ludhiana to look into the grievance of the applicant and take remedial action in accordance with the law following due process.*

This application is disposed off accordingly.

A copy of this order, along with a copy of the complaint, be forwarded to the District Magistrate and Municipal Commissioner, Ludhiana and Ludhiana Improvement Trust by E-mail for compliance."

This petition was filed Council of Engineers before Hon'ble NGT. Copy of petition was sought from Er. Kapil Dev, President, Council of Engineers. The contents of the Petition are reproduced as under:

1. *"That this petition has been filed under the provisions of National Green Tribunal Act, 2010 against encroachment on Public Park done by Mr. Raman Balasubhrāmanium, a Public Servant, presently posted as Chairman of Ludhiana Improvement Trust (LIT), an act against Environment (Protection) Act, 1986,*

directions of Hon'ble Supreme Court as well as this Hon'ble Green Tribunal.

2. *That the petitioner No. 1, i.e. "Council of Engineers" with its head office located at 186-E, Bhai Randhir Singh Nagar, Ludhiana 141012 (Pb.), is an Association of Engineers including Civil Engineers. The petitioner No. 2 to 4 are Governing Council Members of Petitioner No. 1-Association and residents of Ludhiana. All the petitioners are citizens of India therefore, entitled to file petition with this Hon'ble Tribunal. It is pertinent to submit at this stage that the petitioner No. 1-Association is not yet registered with the concerned authorities under Societies Registration Act, and it is for this reason that three members who are Engineers and members of the petitioner No. 1-Association, are also being associated as co-petitioners. A copy of the Resolution dated 28.02.2022 passed by the Association for filing the Petition is produced herewith as Annexure-1.*

3. *That Respondent No. 1 is higher and controlling authority of Respondent No. 2 & 3. The Park under consideration is situated backside residence of Mr. Raman Balasubhramium, a Public Servant, presently posted as Chairman of Ludhiana Improvement Trust (LIT), has made illegal door opening towards rear side of his residence which opens directly into the Park. Further he is using the park for his personal Car Parking, for installation of Generator Set by converting major portion of park as concrete surfaces and also using the Public park as his Private Garden/lawn of Generator Set in Public Park is against Environment (Protection) Act, 1986. The entry gate towards road side remains locked most of the time and thus restricting the entry of Public thus such an Act is against Article 14 and Article 19 of constitution of India for them too. Four Photographs clicked from road side of Park depicting encroachment done by Mr. Raman Balasubhramanium are produced herewith as Annexure-2.*

4. *That in a the case title M.C. Mehta v. Union of India, (2009) 17 SCC 683, the Hon'ble Supreme Court as held as under thus:*
 4. *The second point raised by Mr Mehta is that a large number of parks in the city are being used for construction of marriage pandals and for hosting other functions, etc. According to Mr Mehta, the frequent use of parks for such purposes, is bound to degrade the environment and the utility of the parks as a*

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recreation for the public.

We agree with Mr Mehta that the recreational and other aesthetic uses of the parks cannot be curtailed. Mr Mehta is also correct that the permitted use of the sparks being recreation under the master plan, it cannot be permitted for any other use. But at the same time, keeping in view the need of the society, it is necessary to bring the parks back to their normal use in a sustained manner.

5. *That the Hon'ble Supreme Court, in a case title "Bangalore Medical Trust Vs. B.S. Muddappa (1991) 4 SCC 54" laid down that protection of open places for recreation, play grounds for children are matters of great public concern and of vital interest to be taken care of in a development scheme. The Hon'ble Apex court has held as under thus:*

Protection of the environment, open spaces for recreation and fresh air, play grounds for children, promenade for the residents, and other conveniences or amenities are matters of great public concern and of vital interest to be taken care of in a development scheme. It is that public interest which is sought to be promoted by the Act by establishing the BDA. The public interest in the reservation and preservation of open spaces for parks and play grounds cannot be sacrificed by leasing or selling such sites to private persons for conversion to some other user. Any such act would be contrary to the legislative intent and inconsistent with the statutory requirements.

Furthermore, it would be in direct conflict with the constitutional mandate to ensure that any State action is inspired by the basic values of individual freedom and dignity and addressed to the attainment of a quality of life which makes the guaranteed rights a reality for all the citizens.

In a democracy what prevails is law and rule and not the height of the person exercising the power. For these reasons the entire proceedings before the State Government suffered from absence of jurisdiction. Even the exercise of power was vitiated and ultra vires. Therefore the orders of the Government to convert the site reserved for public park to civic amenity and to allot it for private nursing home to Bangalore Medical Trust and the resolution of the Bangalore Development Authority in compliance of it were

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null, void and without jurisdiction. Leave granted.

ORDER In the result this appeal fails, for the reasons stated by us in our separate but concurring judgments, and is accordingly dismissed. We further direct that the respondents shall be entitled to their cost throughout.

6. *That Hon'ble Supreme Court in an Appeal (civil) 4309 of 2007, case title City and Industrial Development Corporation of Maharashtra &Anr vs. EktaMahila Mandal &Anr decided on 17-09-2007 has held as under thus:*

Para No. 7. It is to be noted that Local Commissioner's report pointed out that the land in question was earmarked as a green belt. It is the stand of the CIDCO that lower level tree plantation has already been done and the balance work is being carried on in a systematic manner. There is no policy for regularization and as such any change in the reserved area and earmarked areas under the development plan has to be under the Act. Article 21A of the Constitution cannot come to aid to respondent No.1. What was essentially sought for by the direction was regularization of unauthorized construction. In essence what the High Court has directed is to regularize an unauthorised occupation and regularization of unauthorised encroachment. Merely because Article 21A of the Constitution has treated primary education as a fundamental right, that does not confer any right on an encroacher to seek regularization of encroachment on the ground that ultimately some children of the particular age group would be taught in the school. In Dr. G.N. Khajuria&Ors. v. Delhi Development Authority &Ors. (1995 (5) SCC 762) it was held that merely because some structures of permanent nature had been constructed is not relevant as the construction was made in a land reserved for park in residential colonies. The allotment of the land of the DelhiDevelopment Authority was held to be illegal and the same was considered to be misuse of power and was illegal. The High Court has also not indicated any reasons as to why the allotment was to be done at concessional rate at the rate prevailing in the year 1981. Though this aspect loses relevance in view of the conclusion that the High Court's view is not sustainable, yet this adds to the vulnerability of the High Court's order.

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Para No. 8. Looked at from any angle, the High Court's order is unsustainable and is set aside.

Para No. 9. The appeal is allowed, but without any order as to costs.

7. That taking cognizance (Suo-Moto) of encroachments in Parks and other public places, the Hon'ble High Court of Punjab & Haryana in a case title "Court on its own motion vs. State of Punjab & anr. in 04-10-2008 directed as under thus:

Para No. 11: While, we are not inclined to continue monitoring the enforcement activities of the Corporations indefinitely, their persistent inaction in the past, warrants suitable directions to the authorities of the Municipal Corporations and the State Government, to ensure that the ongoing process of removal of encroachments is taken to its logical conclusion and no one is allowed to grab the public properties in future also with or without the connivance of the authorities concerned. We accordingly dispose of this writ petition with the following directions:-

- (i) the State of Punjab is directed to take a conscious policy decision, in accordance with law for removal and/or regularization of the encroachments, if any, made on the public lands by the government's Educational Institutes, Hospitals, Dispensaries, Police Stations, etc. keeping in view the fact that such institutions are not to be placed at the same pedestal as a private individual encroacher;*
- (ii) the directions issued by this Court on 10.2.2004 restraining the State Government from regularizing unauthorized encroachments and constructions, provided that such encroachments are other than by the government or public institutions, are made absolute;*
- (iii) the civil courts before whom the cases pertaining to encroachments made within the areas of Municipal Corporations, Ludhiana, Bhatinda and Patiala are pending, are directed to expedite the disposal of those cases preferably within two years of their institution;*
- (iv) the Municipal Corporations are directed that encroachments from all those public properties except falling within the direction No.(i) above and/or wherever, the civil court has decided the matter in favour of the private individuals, shall be removed and the lands will be retrieved forthwith but not*

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later than six months from today;

- (v) the Municipal Corporations are further directed to constitute and notify the Enforcement and Monitoring Committees for one or more areas which shall periodically report to the Municipal Commissioner regarding the status of the encroachments, if any, their taking place or being removed within the area. Necessary and prompt action shall be taken by the Municipal authorities to nip it in the bud;
- (vi) the Municipal Corporations shall forthwith locate the encroachment prone areas and take all necessary safeguards/preventive measures against possible trespass/encroachments, viz., erecting barbed-wire fencing, displaying notice-boards containing statutory warning, etc., and make the Encroachment and Monitoring Committee of the respective area accountable for any lapse or inaction on its part.
- (vii) the Municipal Corporations shall also evolve public participation in their anti-encroachment drive by constituting Vigilance Committees of the NGOs/citizens who may volunteer to inform the municipal authorities including the Enforcement and Monitoring Committees regarding any fresh encroachments so that the desired action in terms of direction No.(v) above can be taken without any delay;
- (viii) if a public spirited person notices that any encroachment is not being removed and/or being allowed to take place in connivance with the employees, authorities or councilors of the Municipal Corporation, he/she shall be at liberty to institute contempt of court proceedings against such person and/or Municipal authorities for their act of willful and deliberate disobedience of the directions issued hereinabove.
8. That keeping in view of directions of Hon'ble Punjab & Haryana High court (supra), the act of all three respondents is also contempt of directions of Hon'ble Punjab & Haryana High Court. Accordingly, the Petitioner No. 1 served one contempt notice via email on 09-01-2022 to all three respondents but all three respondents have remained silent on this notice, thus their silence is supporting the illegal acts of Mr.Raman Balasubhramanium. A true copy of email dated 09-01-

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2022 is produced herewith as Annexure-3.

9. That the Petitioner No. 2 filed one complaint on Public Grievance Portal of Punjab on 09-01-2022 (Grievance No. 20220086210) with Respondent No. 1 which was forwarded to Respondent No. 2, however MCL (Respondent No. 2) forwarded the complaint to LIT (Respondent No. 3) by mention that the Park comes under the scheme developed by it. However Respondent No. 3 remained silent again. The translated copy of reply dated 10-02-2022 uploaded on PG Portal by Respondent No. 2 is produced herewith as Annexure-4.
10. That Petitioner No. 3 once again filed complaint on Public Grievance Portal on 28-01-2022 (Grievance No. 20220087886) with Respondent No. 1 which was closed by Respondent No. 3 by mentioning in the document uploaded on PG Portal that the building control & maintenance is with MCL (Respondent No. 2). Thus the respondents are deliberately trying to abate their lawful duty of removing encroachment done by the Public Servant. The translated copy of reply dated 10-02-2022 uploaded on PG Portal by Respondent No. 3 is produced herewith as Annexure-5.
11. That despite knowing the well settled directions of Hon'ble Supreme Court, Hon'ble NGT as well as Hon'ble Punjab & Haryana High Court, the Respondents are silent on encroachment over the Public Park as done by Mr. Raman Balasubhramanium and such an act is against well settled Environment Norms, Environment Protection 1986 as well as Article 14 & 21 of Constitution of India for the citizens.
12. That besides this park, there are large number of parks in which Municipal Corporation Ludhiana has recently constructed buildings which are against Environment Norms and application in this regard will be filed separately with this Hon'ble Tribunal.

PRAYER:-

Keeping in view of the directions of Hon'ble Supreme Court, this Hon'ble NGT as well as Hon'ble Punjab & Haryana High Court, the applicant humbly prays to this Hon'ble Tribunal as under:-

1. for directions of this Hon'ble Hon'ble Green Tribunal for restitution of park by

removal of encroachment by closure of illegal gate opening from his residence & demolishing concrete surfaces made for Car Parking and installation of Generator Set.

2. *to impose fine (as deem fit by this Hon'ble Tribunal) on Respondents for their act of allowing damage to Environment by not acting on such encroachment till date.*
3. *Any other as deem fit by this Hon'ble Tribunal."*

In reply to the petition, Mr. Raman Balasubramaniam submitted a detailed representation on 25/06/2022 which is reproduced as under:-

1. *"This letter is in reference to the aforementioned case by way of which the Ld. NGT has directed the District Magistrate and the Municipal Commissioner, Ludhiana to look into the grievance of the Applicant regarding the alleged encroachment over the public park near house no. 273-G, Bhai Randhir Singh Nagar, Ludhiana.*
2. *That by way of this Notice I would like to bring to your notice certain relevant facts which have been overlooked by the NGT while passing the order dated 11.03.2022 and an application needs to be filed for recalling/ clarification/ reviewing the order.*
3. *At the outset I would like to bring to your notice that the order has been passed by noticing allegations against me in my personal capacity, without issuing any notice to the undersigned and thus the order is perverse being passed in violation of the principles of natural justice. It is a basic principle of law that if any allegations are levelled by any party then the party against who the allegations are levelled cannot be condemned unheard, which has been done by the NGT vide order dated 11.03.2022. Further, the allegations against the undersigned have been given validity by the order of the NGT by directing the DC and the Municipal Commissioner to look into the grievance of the applicant therein.*
4. *Further, as is apparent from the order dated 11.03.2022 no copy of the petition was handed over to the undersigned in order that he may controvert the personal allegations levelled by the applicant therein, thereby leaving the applicant remediless and with false allegations levelled in a public forum.*
5. *The order of the NGT is therefore, passed in violation of the rules of natural justice and therefore, violative of Article 14 of the Constitution of India. The Hon'ble*

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Supreme Court in the case of *Maneka Gandhi Vs Union of India* reported as 1978 (1) SCC 248 propounded on the principles of natural justice. The relevant paragraphs were reproduced.

6. The Hon'ble Supreme Court in the case of *Delhi Transport Corporation v. DTC Mazdoor Union* reported as 1991 Supp (1) SCC 600 expressed its views upon the principles of natural justice and *audi alterum partem*. The relevant paragraphs were reproduced.
7. That apart from the violation of my fundamental rights of the undersigned, the applicant in OA no. 199 of 2022 has also misrepresented facts before the NGT and is therefore, guilty of concealing important facts and therefore, approached the Court with "unclean hands".
8. That the applicant has misrepresented to the Ld. NGT about the public park near house number 273-G, Bhai Randhir Singh Nagar. I would like to bring to your notice that the undersigned does not reside in Bhai Randhir Singh Nagar but in fact resides in Inder Nagar and the back side of the undersigned house abuts the park along with other houses. The door at the backside of the aforementioned of the houses has been there since the construction of the house, duly sanctioned and not in violation of any building bye-laws. Therefore, it is clear that the backdoor of the houses abutting the park have been there before the creation of the park.
9. Therefore, the applicant before the NGT has misrepresented that the back door of the undersigned house was specifically taken out to get access to the park, which is an incorrect statement as in fact all residents have back doors in their houses before the creation of the park. In fact this clearly shows that the undersigned was particularly targeted for ulterior motives for reasons best known to the applicant in OA No. 199/2022
10. At this juncture it would be pertinent to mention that the park near House no. 273-G, Bhai Randhir Singh Nagar is not the only house abutting the park. In fact there are over 04 to 05 (four to five) houses that have their backs to the park and all these houses have backdoors to gain access to the park, which is not in violation of any building norms. This fact that the undersigned's house was only targeted and named in the order clearly goes to show the malafide intention of the applicant in the

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petition before the NGT. In fact, if a survey is carried out it will clearly show that all the houses abutting the park have back doors to the park.

11. *I would also like to inform you that the backdoors in the houses of all the residents, to get access to the park is also a right guaranteed under the Indian Easements Act, 1872 as the park is maintained by the residents residing in and around the park. This fact is completely been concealed by the applicant in OA No. 199/2022. Section 4 of the Indian Easements Act, 1872 defines "easement" as under :-*

"4. "Easement" defined.—An easement is a right which the owner or occupier of certain land possesses, as such, for the beneficial enjoyment of that land, to do and continue to do

1. For Report of Select Committee, see Gazette of India, 1880, Pt. V, p. 1021: and for Proceedings in Council, see ibid., 1881, Supplement, pp. 687 and 766; and ibid., 1882, Supplement, p. 172.

2. The Act was extended to—

(1) Ajmer-Merwara by notification under s. 5 of the Scheduled Districts Act, 1874 (14 of 1874), see Gazette of India, 1897, Pt. II, p. 1413;

(2) Bombay and the U.P. by Act 8 of 1891 and continued in force, with modifications, in the territory transferred to

Delhi State, see the Delhi Laws Act, 1915 (7 of 1915), s. 3 and the Third Schedule;

(3) Whole of Madhya Pradesh by Madhya Pradesh Act 23 of 1958;

(4) Punjab by Punjab Act 29 of 1961;

(5) Kerala by Kerala Act 5 of 1962;

(6) Pondicherry by Act 26 of 1968, s. 3 and Schedule.

The Act has been repealed in its application to Bellary District by Mysore Act 14 of 1955.

3. Subs. by the A.O. 1950, for "Crown".

4. Subs. by Act 10 of 1914, s. 2 and the First Schedule, for section 3.

5. See now the Limitation Act, 1963 (36 of 1963).

6. Rep. by Act 15 of 1877.

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something, or to prevent and continue to prevent something being done, in or upon, or in respect of, certain other land not his own.

Dominant and servient heritages and owners.—The land for the beneficial enjoyment of which the right exists is called the dominant heritage, and the owner or occupier thereof the dominant owner; the land on which the liability is imposed is called the servient heritage, and the owner or occupier thereof the servient owner.

Explanation.—In the first and second clauses of this section, the expression “land” includes also things permanently attached to the earth; the expression “beneficial enjoyment” includes also possible convenience, remote advantage, and even a mere amenity; and the expression “to do something” includes removal and appropriation by the dominant owner, for the beneficial enjoyment of the dominant heritage, of any part of the soil of the servient heritage or anything growing or subsisting thereon.”

12. *A perusal of the definition of easement as envisaged U/s 4 of the Act clearly show that all the residents have a dominant right over the park abutting their houses as the park is maintained by all the residents. Further, there is no monetary involvement of any government agency towards the maintenance of the park and therefore, the park which was created in an open space by the residents is for the peace and tranquillity of the residents residing in an around the park.*
13. *That next aspect which has been misrepresented by the applicant. In OA No.199/2022 is that the park is being used by the under signed for installation of a generator set and parking, which is a false allegation as no such generator set is installed at the park, which can easily be verified by carrying out an inspection by any competent officer, which the undersigned welcome's as it will show the falsity of the allegations levelled by the applicant*
14. *The under signed would like to apprise you of that the park in question is already under litigation in a civil suit filed by Darshan Singh and another Vs. Ludhiana Improvement Trust and another bearing CS No.2845/2015. The issue is already*



subjudice before the civil court at Ludhiana, which fact was never brought to the notice of the Ld. NGT. The issue in the civil suit was by the residents trying to save the park that was abutting their houses, which was being converted into a commercial and a residential area by the authorities. In fact, later on the commercial area was moved from the open space to another area and therefore, the area of the open space was saved for the residents of the houses abutting the park.

15. *I would like to apprise you that initially the area behind the houses of the undersigned as well as the houses of Bhai Randhirsingh Nagar had an open space which was converted into a commercial space. Thereafter, the residents of the area i.e. Darshan Singh & Kulbir Singh filed a Civil Suit before the Civil Courts at Ludhiana regarding the change in land use in violation of the Improvement Trust Act, 1922. Thereafter, during the pendency of the Civil Suit an oral understanding was arrived between the parties that the open space would be converted into a park and the commercial area was shifted somewhere else where a more profitable venture was undertaken. Therefore, after creation of the park by the trust, it is the residents who have been looking after the park without any intervention from either the Corporation or the Trust.*

16. *The residents of the area abutting the park have themselves maintained the park in order to enjoy peace and tranquillity around their houses, which is very difficult in an urban concrete jungle. The residents have been successful in creating a micro forest in the park behind their house which is a very small area measuring 870 Sq. yds.. Therefore, if the residents are themselves not allowed access to the park, the residents would lose interest in the park, which would lead to the discontinuance of the maintenance facilities which would eventually lead to the destruction of the park.*

17. *Therefore, from narration of the aforementioned facts it is clear that the applicant in OA No. 199/2022 has approached the NGT by mis-stating, mis-representing and false allegations and is therefore guilty of approaching the court with unclean hands. The Hon'ble Supreme Court in the case of Kishore Samrite v. State of U.P., (2013) 2 SCC 398 came down heavily on a petitioner who had abused the process of the court by trying to settle political scores by misstating the facts before the*

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Hon'ble Supreme Court of India. The petition was dismissed with exemplary costs. The relevant paragraphs were reproduced.

18. Therefore, in conclusion I would reiterate that the open space is reserved for the residents whose houses abuts the open space, which has been converted into a park by the Ludhiana Improvement Trust but is maintained by the residents. Further, the residents have the right to peace and tranquillity behind their houses as guaranteed by the fundamental rights enshrined in the Constitution of India and in case the park is thrown open to the public the undersigned as well as the fundamental rights of the other residents would be violated. Further, the open space should be kept reserved as an open space as the change of land use to commercial was in violation of the rights of the residents and the provisions of the Punjab Town Improvement Act, 1922. The applicant in OA No. 199/2022 is guilty of mis-stating, mis-representing and approaching the NGT with unclean hands, which facts should be brought to the notice of the NGT by way of an appropriate application.

It is therefore, requested that an appropriate application may be filed through your offices before the Ld. NGT Bringing the aforementioned facts to the notice of the court so that the order dated 11.03.2022 can be reviewed/clarified/modified and specially the personal remarks against the undersigned should be struck off from the order dated 11.03.2022 of the Ld. NGT."

In the interest of justice, both the parties were given opportunity of hearing. Raman Balasubramaniam requested for a personal hearing which was duly granted on 08/07/2022. Primarily he explained about layout of Inder Nagar, BRS Nagar. The park belongs to Improvement Trust but the scheme has been handed over to Municipal Corporation. He requested that 4-5 houses abut the park and all those houses have back doors opening towards the park which are used by elderly residents for access to park. He also asserted that they are not using this park exclusively and it is open to general public also.

Assistant Commissioner (Grievances) contacted Er. Kapil Dev, President, Council of Engineers(Petitioners) on phone for personal hearing. Rather he requested that his petition may be considered as his statement and it be disposed off on merits.

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The petition was thoroughly perused. Main assertions have been briefly stated as follows:

1. Raman Balasubramaniam has made illegal door opening towards rear side of his residence which opens directly into the Park.
2. Further he is using the park for his personal Car Parking, for installation of Generator Set by converting major portion of park as concrete surfaces.
3. The entry gate towards road side remains locked most of the time and thus restricting the entry of Public.

Regarding above stated points, reports were sought from Ludhiana Improvement Trust and Municipal Corporation Ludhiana vide letter number 5743/CEA/3/1576383 dated 23/06/2022 and 6302-03/CEA/3/1576383 dated 01/07/2022. They have submitted reports vide letter number 144 dated 28/06/2022 and 845/ATP-D/ dated 07/07/2022 which have been reproduced as follows:

1. As per report of Municipal Corporation Ludhiana, Raman Balasubramaniam resides in House number 33/2, Inder Nagar. The park in question is situated at backside of the house. The door at the back of his house has been sealed by Municipal Corporation on 02/07/2022. As per record, no approval had been granted by the Corporation for opening back door. Also, It is not permissible under Building bye-laws. Even under the Easement Act 1872, direct access to park by opening back doors is not permissible.
2. As per report of Ludhiana Improvement Trust, the Generator Set found on the spot was being used by residents of 275/276-G, BRS Nagar which has been removed by the Improvement Trust. The park has been created by Improvement Trust after approval from the Government. Besides pavement for walk, concrete surface of 750 sq feet has been created for parking of vehicles by general public.

The representation of Raman Balasubramaniam was perused. As per his representation, he basically emphasized that before passing any order, he must be given ample opportunity of being heard and he denied all the allegations raised against him in the petition.

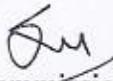
All the reports received from departments, complete petition and reply of Raman Balasubramaniam have been perused minutely. The following observations were made:

1. As per The Indian Easements Act, 1882, "Easement" is defined as "An easement is a right which the owner or occupier of certain land possesses, as such, for the beneficial

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enjoyment of that land, to do and continue to do something, or to prevent and continue to prevent something being done, in or upon, or in respect of, certain other land not his own." However, in this case, the beneficial enjoyment of use of park is not restricted by any means as the front door of house of Mr. Raman Balasubramaniam has direct access to the main road. Therefore sealing of back door of house of Mr. Raman Balasubramaniam does not put any restriction on its access of road.

2. It is clear from report of Improvement Trust that Generator Set found on the spot has been removed. Thus grievance has been redressed.
3. The scheme stands handed over to Municipal Corporation, Ludhiana. The door at the back of house of Raman Balasubramaniam has been sealed by Municipal Corporation on 02/07/2022. Municipal Corporation shall ensure that further necessary action as per applicable building control regulations is taken.
4. As per report of Improvement Trust, concrete surface of 750 sq feet has been created for parking of vehicles by general public after approval of the government. Municipal Corporation Ludhiana may utilize the place by placing benches/ establishing open gym/ for any other common purpose as per rules.
5. It must be ensured by Municipal Corporation Ludhiana that park is available for public use and is not exclusively used by owners of houses abutting the park, in whatsoever manner it deems best for equity. For this purpose, Municipal Corporation is advised to replace the gate of the park by placing rotators. It must also be ensured by all means that no person exercises any exclusive right over the park.


Deputy Commissioner
Ludhiana
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