

From

Deputy Commissioner,
Gurugram.

To

The National Green Tribunal,
Principal Branch, New Delhi.

No. 3253/P

Dated : 22.03.2021

Sub.: Action Taken Report in compliance of order dated 17-09-2020 passed in O.A. No. 769 of 2018 by Hon'ble NGT in case titled as Pardeep Nirala V/s Ministry of Environment.

R/Sir,

The undersigned respectfully submits as under : -

1. That Sh. Pardeep Nirala filed an O.A. No. 769/2018 titled as Pardeep Nirala Versus Ministry of Environment & others, before the Hon'ble National Green Tribunal (in short NGT). The Hon'ble NGT directed the undersigned in para no. 3 to remove the encroachments vide order dated 17-09-2020, which reads as follows:-

3 (4) It is the Deputy Commissioner Gurugram, who has to ensure removal of encroachment and restoration of the green area.....

(5) Let a further action taken report be furnished in the matter to the tribunal by the District Magistrate within three months by email at judicial-ngt@gov.in

2. That the land in question is Khasra Number 243 total measuring 33 kanal 18 marla Gair Mumkin Purana Kila owned by District Board, Gurugram. After the abolition of District Boards, the assets and liabilities were vested in the Zila Parishads under section 118 of the Punjab Zila Parishad and Panchayat Samiti Act, 1961 and in the year 1973 vide Act No. 22 of 1973, the Zila Parishads and Panchayat Samitis were abolished and the assets and properties were vested in the State Government. Now, the Zila Parishads in the State of Haryana have been revived vide the Haryana Panchayati Raj Act, 1994 and under section 144 of the said act, all land and other immovable properties other than roads, civil dispensaries, hospitals, school building, devolved on government on the abolition of Zila Parishad by the Punjab Panchayat Samiti and Zila Parishad Act, 1973..... shall re-vest in Zila Parishad. The land in question i.e. Khasra No. 243 Gair Mumkin Purana Kila is vested in the Zila Parishad, Gurugram under section 144 of the Haryana Panchayati Raj Act. However, the revenue record has not been corrected in favour of Zila Parishad and reflects the ownership of State Government and in the possession of District Board. Copy of section 144 of the Haryana Panchayati Raj Act is annexed as ANNEXURE - 1.

3. That in compliance of orders dated 17-09-2020, the office of Zila Parishad, Gurugram issued notices dated 09-03-2020 and reminders dated 07-07-2020 and 22-09-2020 respectively, to the encroachers on the basis of Local Commission Report dated 13-01-2020 conducted by the Municipal Corporation, Gurugram.
4. That when the office of Zila Parishad issued notices to the encroachers, the encroachers filed civil suits in different Civil Courts, Gurugram. The court of Ms. Sumitra Kadian, Civil Judge, Gurugram, passed ex-parte injunction order on 05-10-2020. The relevant portion of said order is as under : -

"In view of all these facts, this court is of the opinion that if ex parte interim relief is not granted to the plaintiff, then he would suffer irreparable loss. So, till further orders defendant is restrained from demolishing the suit property"

Copy of order dated 05-10-2020 is annexed as ANNEXURE-2.

Thereafter, after summoning, the Zila Parishad appeared on 15-10-2020 and filed an application under order 7 rule 11 CPC for the rejection of the plaint that the matter cannot be adjudicated by the Civil Courts under the provisions of NGT Act and no cause of action arose. The Hon'ble Court of Ms. Sumitra Kadian, Civil Judge (Junior Division), Gurugram after hearing the arguments of both the parties dismissed the application under order 7 rule 11 CPC vide

order dated 25-11-2020. Copy of order dated 25-11-2020 is annexed as ANNEXURE - 3. The Zila Parishad has filed written statement and reply to the application under order 39 rule 1 & 2 before the Hon'ble Civil Court and now the cases are fixed for 02-04-2021 for argument on stay application.

Some cases are pending in the court of Sh. Madhur Bajaj, Civil Judge, Gurugram and are fixed for 25-03-2021 for arguments on application under order 7 rule 11 CPC.

5. That during this period, the Zila Parishad has filed applications before the Sub Divisional Officer (Civil) cum Collector, Badshahpur for the ejection of encroachers from Khasra Number 243 Gair Mumkin Purana Kila (land in question in O.A. 769/2018) under the Haryana Public Premises Act, 1973. The said applications against the encroachers are fixed for hearing on 24-03-2021 for reply and notice.
6. That in these circumstances, the Zila Parishad, Gurugram has initiated the proceedings for ejection against the encroachers in due course of law and the status report is being submitted in compliance of order dated 17-09-2020 passed by the Hon'ble NGT, for further adjudication.

~~Deputy Commissioner,
Gurugram.~~

o/c

- (d) render financial or other assistance to any person for carrying on in the district any such activity which is related to any of the functions of the said bodies.

Mode of making
contracts

143. (1) The Chief Executive Officer shall execute contracts or agreements on behalf of the Zila Parishad in respect of matters which he is empowered to carry out under the provisions of this Act. He may execute such contract or agreement on behalf of the Zila Parishad up to such amount or value of contract or agreement as may be specified by the Government from time to time. In all other cases he shall execute a contract or agreement only with the prior sanction of the Zila Parishad.

(2) Every contract or agreement entered into on behalf of the Zila Parishad shall be binding on the Zila Parishad only if the said contract or agreement is executed in accordance with the provisions of this section.

CHAPTER XVII

PROPERTY, FINANCE AND TAXATION

Property of
Zila Parishad.

✓ 144. (1) In addition to the movable or immovable property acquired by a Zila Parishad, the following shall vest in the Zila Parishad, namely :—

- (a) every building or other work constructed by a Zila Parishad out of the Zila Parishad Fund with or without the Government assistance or other conditions ;
- (b) any land or property vesting in the Government when transferred to a Zila Parishad by the Government for public purposes on such terms and conditions as the Government may impose ;
- (c) any land or other property vesting in any other Panchayat, when transferred to the Zila Parishad by that Panchayat for the purposes of this Act ;
- (d) all lands and other immovable property other than roads, civil dispensaries and hospitals, veterinary dispensaries and hospitals and school buildings, devolved on Government on the abolition of Zila Parishad by the Punjab Panchayat Samitis and Zila Parishads (Haryana Amendment) Act, 1973 (Haryana Act No. 22 of 1973) and other movable property such as moneys deposited in Personal Ledger Account or Banks of erstwhile Zila Parishad, shall revest in Zila Parishad.

(2) All suits, prosecutions and other legal proceedings instituted or which might have been instituted by or against Government in respect of the property referred to in clause (d) of sub-section (1), immediately before the commencement of this Act in relation to any matter may be continued or instituted by or against the Zila Parishad concerned.

(3) Notwithstanding that any immovable property vests in a Zila Parishad no lease, sale or other transfer thereof shall be valid unless it has been made with the previous sanction of the Government :

Provided that in the case of a lease of immovable property other than the property referred to in clause (b) of sub-section (1), no such previous sanction shall be necessary, if the period of lease does not exceed three years.

145. (1) There shall be in each Zila Parishad a fund which shall be called a Zila Parishad Fund.

Zila Parishad
Fund.

CNR-GRHR02-002292-2020

CS-1769-2020

Ankit Vs. Zila Parishad [District Board, Gurugram]

Present:- Shri Ishaan Dang, Advocate for plaintiff

Plaint has been received by way of assignment. Now, office to report for today itself.

(Sumitra Kadian)

CJ(JD) UID Code No. HR0369

Gurugram.

Madam,

Prima facie Court fee is correct

Reader

Present:- Shri Ishaan Dang, Advocate for plaintiff

Office report has been perused. Plaint be checked and registered. Along-with plaint, the plaintiff has filed an application under order XXXIX Rule 1 and 2 read with Section 151 CPC. Let summons of the suit as well as injunction application be issued to the defendant for 13.10.2020 on filing of PF, RC, AD, Copy etc.

At this stage, the ld. Counsel for plaintiff has argued that ex-parte ad interim relief be granted to plaintiff and defendant be restrained from demolishing the suit property. Heard. As per the version of the plaintiff, he is owner in possession of suit property comprised in khasra No.243 situated at village Badshahpur. According to plaintiff, residential house was constructed thirty years before and his possession is continuous, open and uninterrupted. The area of village Badshahpur comes within the limit of Municipal Corporation, Gurugram and it has been demanding property tax. After inclusion of the area of village Badshahpur in MCG, defendant has no right, title over the suit property. The defendant had not sent notices dated 09.03.2020 and 07.07.2020 to the plaintiff. Order dated 22.09.2020 of the Hon'ble National Green Tribunal, Principal Bench, New Delhi does not confer any jurisdiction upon the defendant regarding the suit property. Pardeep Nirala, who is an accused in a murder case, initiated proceedings before Hon'ble National Green Tribunal for extraneous reason. Before the issuance of notice dated

22.09.2020, no opportunity of hearing has been provided to the plaintiff and therefore, relief be granted to plaintiff.

A perusal of the order dated 17.09.2020 reveals that Deputy Commissioner, Gurugram was authorized to ensure removal of encroachment and restoration of green areas. Vide said order, the persons [who filed application for impleadment as a party before Hon'ble National Green Tribunal] were given liberty to get their issues determined by the Statutory Authority as per law. Vide said order, Action Taken Report of District Magistrate was sought for 27.01.2021. Vide notice dated 22.09.2020, Balraj [father of plaintiff] had been directed to hand over the vacant possession of suit property to defendant within two days otherwise, land would be got vacated on 05.10.2020 as per law. Notice dated 22.09.2020 has not been issued by the District Magistrate, Gurugram. From the contentions of the plaintiff, supported by his affidavit, photographs and other accompanied documents, it is clear that suit property is a residential house and plaintiff is in settled possession of the same. It is settled legal position that none can be condemned unheard. In view of all these facts, this Court is of the opinion that if *ex parte* interim relief is not granted to plaintiff, then he would suffer irreparable loss. So, till further orders, defendant is restrained from demolishing the suit property. Plaintiff is directed to comply with Proviso to Rule 3 Order XXXIX of CPC.

(Sumitra Kadian)

CJ(JD) UID Code No.

HR0369

Gurugram.

Date of order:-05.10.2020

Permitia

Ankit Vs. Zila Parishad [District Board, Gurugram]

IN THE COURT OF SUMITRA KADIAN, (UNIQUE IDENTIFICATION CODE No. HR0369) CIVIL JUDGE (JUNIOR DIVISION), GURUGRAM.

Date of Application:- 13.10.2020

Date of Order: 25.11.2020

CIS No.CS-1769-2020 CNR No.HRGR-02-002292-2020

Ankit Vs. Zila Parishad [District Board, Gurugram]

APPLICATION UNDER ORDER VII RULE 11 OF CODE OF CIVIL PROCEDURE, 1908 FOR REJECTION OF PLAINT

Present: Mr. J. K. Dang, Advocate for the plaintiff
Mr. R. N. Sharma, Advocate for the defendant

ORDER.

This order shall dispose of an application filed by defendant under Order VII Rule 11 of CPC seeking therein rejection of the plaint.

2. It has been pleaded by the applicant/defendant that suit land was owned by District Board, Gurugram. After commencement of Haryana Panchayati Raj Act, 1994, suit land vested in Zila Parishad, Gurugram. The suit land is recorded as '*Gair Mumkin Purna Killa*' in the revenue record and the same is covered under clause (m) of Section-2 of National Green Tribunal Act, 2010 (*hereinafter to be referred as NGT, Act*). Shri Pardeep Nirala filed a petition titled as *Pardeep Nirala Vs. Ministry of Environment forest and others* before NGT, Principal Bench New Delhi. The

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applications IA No.186, 187, 241, 282 and 283 of 2020 filed by encroachers before the NGT were dismissed and District Magistrate was directed to file the Action Taken report before the next date of hearing via email. In view of Section 32 (1) and 2 of NGT Act, 2010, the plaintiff has no right to file the suit. Similarly, this court has no jurisdiction to try and adjudicate the suit in view of the provisions contained in Section 29 (1) and 2) of NGT Act. The provisions of NGT Act shall have effect notwithstanding anything inconsistent contained in any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act. The plaintiff is in unauthorized occupation of the land owned by Zila Parishad. The defendant is complying with the orders of NGT. Therefore, the plaintiff has no right to file the suit and this court has no jurisdiction to try and adjudicate the suit. With these pleadings, the defendant has filed the present application and has sought the rejection of plaint.

3. In reply, the plaintiff has submitted that there is no document on the basis of which it can be alleged that suit land was owned by District board, Gurugram. The Hon'ble NGT dismissed the applications without prejudice to the determination of the issue by the statutory authorities as per law. The defendant has misinterpreted the provisions of the NGT Act. Rest of the contentions have been denied and a prayer for dismissal of the application has been made.

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4. I have heard learned counsel for both the parties and have perused the case file thoroughly.

5. Vide this application, the defendant has sought rejection of plaint on the ground of bar of jurisdiction of the civil court in view of the provisions of the NGT, Act, orders of NGT, Principal Bench, New Delhi and its ownership over the suit land. In order to decide this application, it is necessary to refer to facts of the present suit. As per the version of plaintiff, he is lawful owner-in-possession of residential house constructed over plot measuring 509.32 sq. yards comprised in *Khasra* No.243 situated at village Badshahpur, Tehsil & District Gurugram. The plaintiff and his predecessors-in-interest had been in continuous physical possession of the suit land for last seventy years. Multi storied house was constructed thirty years before. The entire village Badshahpur came under the MCG in year 2008. After that, the defendant is left with no claim over the suit land. Pardeep Nirala, who is an accused in a murder case, commenced motivated proceedings before NGT. The plaintiff and others filed an application for impleadment and recalling of order dated 24.05.2019. However, NGT dismissed the application without prejudice to rights of the plaintiff to be adjudicated by statutory authorities. Notice dated 22.09.2020 had been served upon the plaintiff wherein reference to the order of NGT has been given. No notice dated 09.03.2020 or 07.07.2020 was served upon the plaintiff. In the jamabandi, District

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Board is erroneously reflected to be in possession of suit land. The District Board has no power and jurisdiction to serve the notice dated 22.09.2020. With these pleadings, the plaintiff has filed the present suit seeking therein relief of declaration to the effect that notice dated 22.09.2020 is void ab-initio; the defendant is not entitled to initiate any adverse action against the plaintiff and to damage the suit property and that the revenue entries in column of possession pertaining to suit property are wrong and do not affect the right of the plaintiff. The plaintiff has also sought relief of permanent injunction to the effect that the defendant be restrained from dispossessing the plaintiff from suit land; taking forcible possession of the same; interfering in any manner in the peaceful enjoyment of suit property by the plaintiff and from demolishing the same.

6. From the pleadings of the plaintiff, it comes out that defendant is not competent to take action against the plaintiff as it has no title over the suit land and it has been taking action against the plaintiff illegally. On the contrary, the defendant has pleaded that it has been taking action against the plaintiff as per the orders of NGT. According to defendant, the applications filed by the encroachers were dismissed by Hon'ble NGT. In order to decide this contention, it is necessary to refer to relevant part of the order dated 17.09.2020 of Hon'ble NGT. The relevant part of the orders dated 17.09.2020 is reproduced as under:-

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" The matter was last considered on 24.05.2019 as follows:-

"3. Report furnished by the Deputy Commissioner, Gurugram states that the Archaeological Survey of India is not concerned with the matter as reported by ASI. Some steps have been taken for compliance of the Solid Waste Management Rules, 2016 by the Municipal Corporation. The removal of encroachment is to be done by the District Board with the assistance of the Municipal Corporation.

4. Learned counsel for the State submits that there is no clarity as to which is the District Board to take action. He does not dispute that the land belongs to the State. In these circumstances, it is the Deputy Commissioner, Gurugram who has to ensure removal of encroachment and restoration of the green areas. The Chief Secretary, Haryana may monitor the situation and the District Magistrate, Gurgaon may furnish a report on the action taken to the Chief Secretary, Haryana within one month. The Chief Secretary, Haryana may include the action taken in the quarterly report to be furnished to this Tribunal in terms of the order dated 06.03.2019 in O. A. No.606/2018,

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Compliance of Municipal Solid Waste Management Rules, 2016.

5. *Let a further action taken report be furnished in the matter to Tribunal by the District Magistrate within three months by email at judicial-ngt@gov.in and a copy of same be also furnished to the applicant."*

4. *Accordingly, an action taken report dated 28.01.2020 has been filed by the District Magistrate, Gurgaon to the effect that steps have been taken in the matter. Learned counsel appearing for the State of Haryana submits that further action will taken expeditiously.*

5. *I.A. Nos. 186/2020, 187/2020, 241/2020, 242/2020 and 283/2020 have been filed by some alleged encroachers. Grievance raised in the said applications cannot be considered as there is a statutory mechanism for determining who is encroacher and to what extent. The said process cannot be preempted in these proceedings. Accordingly, these applications are dismissed without prejudice to the determination of the issue by the statutory authorities as per law.*

7. *From the aforementioned order of the Hon'ble NGT, it is clear that Deputy Commissioner, Gurugram has been directed to ensure removal of encroachment and restoration of green belt. Vide*

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this order, no authority has been given to District Board to take action in the matter. Similarly, the applications filed by alleged encroachers were dismissed with liberty to them to get their issue determined by statutory authorities as per law. The Hon'ble NGT has neither dismissed the applications of alleged encroacher on merits nor gave any finding regarding alleged encroachment. Therefore, on the basis of dismissal of application of the plaintiff by Hon'ble NGT, it cannot be said that present suit is barred in view of order of dismissal of the application of the plaintiff.

8. The impugned notice dated 22.09.2020 has been issued by the defendant. It has been nowhere mentioned in the notice that Zila Parishad had been authorized by Deputy Commissioner, Gurugram to take action against the encroachers. Even if it is assumed that defendant has been authorized by the Deputy Commissioner, Gurugram, then also, the defendant is bound to give reasonable opportunity of hearing to plaintiff. In the impugned notice, it has been mentioned that vide notices dated 09.03.2020 and 07.07.2020, the plaintiff was directed to remove the encroachment, but it was not removed. So, the plaintiff was given time of a week to remove encroachment and to handover vacant possession. In case of failure, the land was to be got vacated on 05.10.2020 as per law. This notice nowhere speaks of giving of reasonable opportunity of hearing to plaintiff.

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9. The defendant has also contended that suit land is owned by it and therefore, it is competent to take action against the plaintiff. The plaintiff has denied the ownership of the defendant over the suit land. The copy jamabandi for the year 2005-06 [produced by the defendant] shows ownership of the State Government over the suit land. Therefore, it is matter of evidence as to whether the defendant is owner of the suit land. Moreover, even if it assumed that the defendant is owner of the suit land, then also, plaint cannot be rejected. Reason being, defect in the ownership of plaintiff over disputed property is not a ground of rejection of plaint in a suit for permanent injunction.

10. Regarding plea of defendant related Section 29 of NGT Act, 2010, this court considers it proper to refer to said Section. It says that (1) With effect from the date of establishment of the Tribunal under this Act, no civil court shall have jurisdiction to entertain any appeal in respect of any matter, which the Tribunal is empowered to determine under its appellate jurisdiction.

(2) No civil court shall have jurisdiction to settle dispute or entertain any question relating to any claim for granting any relief or compensation or restitution of property damaged or environment damaged which may be adjudicated upon by the Tribunal, and no injunction in respect of any action taken or to be taken by or before the Tribunal in respect of the settlement of such dispute or any such

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claim for granting any relief or compensation or restitution of property damaged or environment shall be granted by the civil court.

This Section bars the jurisdiction of civil court in respect of matter which Tribunal is empowered to deal. In the case in hand, no relief related to compensation, restitution of property damaged or environment damaged has been claimed. Therefore, shield of this Section is not available to the defendant.

11. Similarly, Section 32 says that "no suit or other legal proceeding shall lie against the employees of the Central Government or a State Government or any statutory authority, for anything which is in good faith done or intended to be done in pursuance of this Act or any rule or order made thereunder.

(2) No suit, prosecution or other legal proceeding shall lie against the Chairperson or, Judicial Member or Expert Member of the Tribunal or any other person authorised by the Chairperson or Judicial Member or the Expert Member for anything which is in good faith done or intended to be done in pursuance of this Act or any rule or order made thereunder.

On the basis of aforementioned provision, the defendant has pleaded that its impugned notice is protected under said section. However, Hon'ble NGT has ordered restoration of green areas. The question: whether suit property comes within green areas or not shall be decided during trial after adducing of evidence by both the parties. Moreover, this suit has not been filed against employees of the

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Central Government or a State Government or any statutory authority, Chairperson or, Judicial Member or Expert Member of the Tribunal or any other person authorised by the Chairperson or Judicial Member or the Expert Member for anything which is in good faith done or intended to be done in pursuance of this Act or any rule or order made thereunder. Vide this suit, the plaintiff has sought protection of his right to property. It is settled legal position that that even a true owner cannot take recourse to extra-judicial means to recover the possession of his/her property. No person can be deprived of his property except in due course of law. Even Hon'ble NGT has given liberty to plaintiff to get his issue determined by statutory authorities as per law. Therefore, on the basis of Section 32 and 29 of NGT, Act, plaint cannot be rejected.

12. For the reasons recorded above, the application is dismissed.

Pronounced in open Court:
Dated.25.11.2020

(Sumitra Kadian)
Civil Judge(Jr. Division),
Gurugram

Note: All ten pages of this order have been checked and signed by me.

(Sumitra Kadian)
Civil Judge(Jr. Division),
UID Code No. HR0369
Gurugram.25.11.2020

(Pachpo)

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Present: Mr. J. K. Dang, Advocate for the plaintiff
Mr. R. N. Sharma, Advocate for the defendant

Arguments have been heard. Order has been pronounced. Vide separate order of even date, the application under Order VII Rule 11 of CPC has been dismissed. Now, case is adjourned to 15.12.2020 for filing written-statement and reply to interim injunction application by the defendant. Interim order is extended till then.

Sumitra Kadian)
Civil Judge(Jr. Division),
UID Code No. HR0369
Gurugram

Date of order:-25.11.2020
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