BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL,
WESTERN ZONE BENCH AT PUNE
ORIGINAL APPLICATION NO. 50 /2020

IN THE MATTER OF:

MR. TANAJI BALASAHEB GAMBHIRE ... APPLICANT

VERSUS

THE CHIEF SECRETARY-GoM & ORS. ... RESPONDENTS

FILE-A
[VOLUME-_____]

REJOINDER TO REPLY OF RESPONDENT No. 4-MPCB AND COMMENTS TO THE JOINT COMMITTEE REPORT

(FOR PAPERBOOK INDEX KINDLY SEE INSIDE)

[REJOINDER: _____ To _____]

[CASE LAWS: _____ To _____]

APPELLANT IN-PERSON

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FILE-A:VOLUME-__

SR.	DESCRIPTION	PAGE NO.
1.	**Rejoinder to Reply of MPCB and Comments on Joint Committee Report**	_____ – _____
2.	M/s. Goel Ganga Developers India Pvt. Ltd. Vs UoI-MoEFCC & Ors., **(2018) 18 SCC 257**	_____ – _____
3.	Cavelossim Villagers Forum Vs Village Panchayat of Cavelossim, dated 24.04.2019, **2019 SCC Online NGT 1662**	_____ – _____
4.	Order passed by Hon'ble NGT in OA No. 41/2019(WZ) vide dated 30.01.2020 directing demolition of the STP at Survey No. 90(P) of Village-Chikhali, Taluka-Haveli, District-Pune in PCMC	_____ – _____
5.	Order passed by Hon'ble Supreme Court in CA No. 2083/2020 vide dated 04.06.2020 dismissing Appeal filed by PCMC against the above Order	_____ – _____
6.	Order by Hon'ble NGT in OA No. 41/2019(WZ) vide dated 05.08.2020 on letter of PCMC	_____ – _____
7.	Mantri Techzone Pvt. Ltd. Vs. Forward Foundation & Ors. **(2019) 18 SCC 494**	_____ – _____
8.	MCGM Vs Ankita Sinha & Ors., **2021 SCC Online SC 897**	_____ – _____
9.	Kerala State Coastal Zone Management Authority Vs. State of Keral & Ors.**, (2019) 7 SCC 248**	_____ – _____
10.	Supertech Vs Emerland Court Owner **(2021) 10 SCC 1**	_____ – _____

Date: 02.02.2023

Bgambhire

APPLICANT

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REJOINDER TO REPLY OF RESPONDENT No. 4 & 5-MPCB AND COMMENTS TO THE JOINT COMMITTEE REPORT

I, Mr. Tanaji Gambhire S/o Shri. Balasaheb Gambhire Age: 39 Years, Profession: Advocate, R/o: CTS No. 296, Shukrawar Peth, Laxmi Apartment, Near Shivaji Maratha High School, White House Lane, Pune-411002 (MH), do hereby solemnly affirm and state on oath as follows:

Part	Para	Description
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Part-B	4	Important Dates & Events
Part-C	5	Important Facts That Need To Be Taken On Record For Better & Scientific Adjudication Of The OA
Part-D	6	Objections/Comments To The Joint Committee Report
Part-E	7	Admitted Facts By Joint Committee Vide Its Report Dated 18.12.2021 As Well As PP & Other Resp.
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Part-G	9	No Reply Of Respondent No. 12 & 13-Pp –M/S. Jare Group & M/S. V-Square:
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Part-I	11	No Reply By Resp-1:Cs-Gom, Resp-2:Ps-Doe, Resp-3:SEIAA, Resp-4:Ms-MPCB, Resp-5:Ro-MPCB, Resp-6:Secretary-Udd, Resp-7:Commissionr Of PCMC, Resp-8: City Engineer Of PCMC, Resp-9: Executive Engineer Of Water Resource Dept., Resp-10: Collector Of Pune, have Filed Till Date:
Part-J	12	Case Laws by Applicant
Part-K	13	Request/Suggestions on behalf of Applicant seeking Reliefs/Directions/Orders

PART-A:

BRIEF BACKGROUND OF THE CASE

1. I state that, the OA is filed on 10.08.2020 seeking reliefs for demolition of illegal construction, removal of dumping construction waste material, restitution & restoration of prohibited zone of River Indrayani, environmental compensation, penalty, with strict legal actions against erring officers of PCMC & PP as per law. I state the Respondent No. 12 & 13-PP have undertaken the above illegal activity bungalow construction project "River Villa" situated at Survey No. 90 (P) at Village-Chikhali, Taluka-Haveli, District-Pune within local limits & jurisdiction of PCMC, on ground set out in OA.
2. I state that, this Hon'ble NGT vide its Order dated 09.07.2021 appointed Joint Committee of CPCB, SEIAA, MPCB, Irrigation Department, Collector of Pune for calling of fact finding report. Thereafter, this Hon'ble NGT issued notices to all Respondent vide its Order dated 18.11.2021 and thereafter, Joint Committee filed its Report vide dated 18.12.2021 recommending the demolition of the illegal construction, removal of dumping of material with imposition of penalty of Rs. 5 Crores and further recommendation of computation of final Environmental compensation through the NEERI or IIT.
3. I state that, the only MPCB filed its reply affidavit vide dated 17.10.2022 and other Respondents including PP have not filed their replies till date, which is very unfortunate act on part of the Government Authorities.

PART-B

4. IMPORTANT DATES & EVENTS:

I state that the following dates and events are important for deciding the present case.

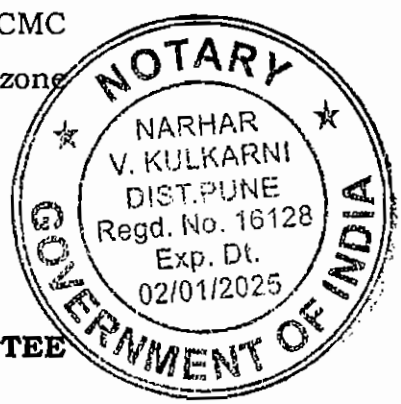
Sr.	Date	Event	Annexure/ Page	Remark
1.	21.09.1989	GoM-Notification on flood line marking imposing prohibition on activity	A-1, P@41-43	Prohibited Area #River-Blue Flood Line Area
2.	23.07.2008	Irrigation Dept. submitted flood line marking plan to PCMC	P@314-315	
3.	23.07.2008	Flood Line Plan for Indrayani River	A-2 P@44	
4.	18.08.2009	GoM Approved Development Plan (DP) for PCMC	A-3, P@45	
5.	11.07.2013	Hon'ble NGT Judgment in OA No. 02/2013 for prohibition on construction in blue flood line	A-7, P@145-189	Para-39, P@90
6.	15.04.2017	Site Photographs	A-7 P@93-106	
7.	06.09.2017	Site Photographs	A-8, P@107-137	
8.	05.07.2017	Notice/Complaint to the Respondents	A-8A P@138-196	
9.	03.05.2018	GoM-Notification by Irrigation Department on flood line marking imposing prohibition on activity	A-9, P@197-205	Item#3: Blue Line Item#5: Prohibitive Zone Item#7: Prohibitive Zone Uses
10.	15.05.2018	Layout sanctioned plan obtained by R-11:M/s. River Residency	A-10, P@206	Green Belt, STP, Blue & Red Flood Line, Stone Quarry
11.	17.12.2019	Site Photographs	A-11, P@207-211	Cause of Action
12.	Dec-19 To Jan-2020	Photographs uploaded by R-12 & 13 on its Facebook page	A-12, P@212-222	Bungalows: 100 No. P@218
13.	2014-2020	Google Earth Images	A-13, P@223-234	P@231-STP, P@234
14.	2004-2017	Google Earth Images	A-14, P@235-264	P@242, 263, 264
15.	10.08.2020	**OA No. 50/2020 filed before Hon'ble NGT**	P@01-40	IMP Indrayani: 5, PP Information: 7, Grounds: 8(**a** To **gg**)

				Question of Law: 9 IMP Fact: 10 (A, B, E) Damage- Env: 11 Prayers: 21
16.	30.01.2020	Hon'ble NGT Order in OA No. 41/2019(WZ)	Para-10-11	Demolished PCMC STP
17.	04.06.2020	Hon'ble SC Order in CA No. 2083/2020		Hon'ble SC Confirmed NGT Order in OA No. 41/2019(WZ)
18.	09.07.2021	First Order of Hon'ble NGT		Constituting Joint Committee
19.	21.07.2021	Affidavit on Service to Joint Committee		
20.	18.11.2021	Second Order of Hon'ble NGT		Issuing Notices to the Respondents
21.	18.12.2021	Joint Committee Report	P@297-331	
22.	10.09.2021	Service Affidavit		Service to All Resp.
23.	17.10.2021	MPCB Reply		Construction of 16 Bungalows
24.	06.01.2022	IA No. 07/2023		For urgent hearing
25.	17.02.2023	Third Order of Hon'ble NGT		Case rescheduled for hearing 02.02.2023
26.	31.01.2023	Service Affidavit		Written Information given to Respondents for Hearing

PART-C

5. IMPORTANT FACTS THAT NEED TO BE TAKEN ON RECORD FOR BETTER & SCIENTIFIC ADJUDICATION OF THE OA:

A) I state that, this Hon'ble NGT vide its Order dated30.01.2020 passed in OA No. 41/2019(WZ) have directed the demolition of the STP undertaken by PCMC situated in the same survey number in the prohibited zone of blue flood line of Indrayani River.



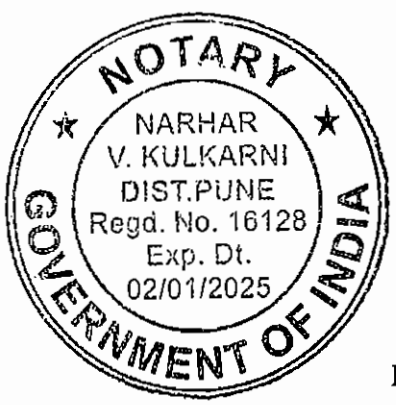
PART-D

6. OBJECTIONS/COMMENTS TO THE JOINT COMMITTEE REPORT

A) Joint Committee is creating the jugglery on account of the penalty and Environmental Compensation. As per Goel Ganga Judgment, Rs. 5 Crores were imposed as Penalty for contravening the provisions of the Law and apart from this Rs. 5 Crores, Hon'ble SC imposed Environmental Compensation of Rs. 100 Crores. Therefore, in present case also PP is liable to pay Environmental Compensation separately under Polluters Pay principles as well as under Sec. 15 (1) (b) & (c) independently for restitution and restoration of the area under Environmental & ecological degradation.

B) Joint Committee have recommended the Compensation on the basis of Order passed in OA No. 281/2019(PB) and Goel Ganga Case to the tune of 10%, however, failed to recommend the correct initial compensation amount.

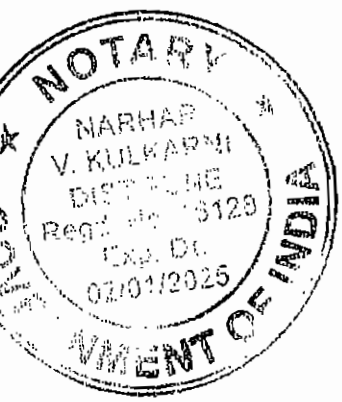
C) Joint Committee have further recommended to deposit the amount of Rs. 5 Crores with PCMC and also, other amounts that would be calculated with help of NEERI & IIT Bombay. However, in present case, PCMC itself is having collusion with the PP and without PCMC involvement such illegal construction is not possible, therefore, PCMC is only paper tiger and shall be kept away from the entire exercise and MOEF, CPCB, & MPCB shall be appointed for the preparation of restoration & restitution plan execution along with direction to PP to deposit all amount with MOEF, CPCB or MPCB only not with PCMC.



D) Joint Committee failed to provide the total project cost for 99 bungalows having total BUA of more than 99000 M^2 based on the Ready Reckoner rates of IGR available

at the web site. As per Ready Reckoner rates of IGR, the total project cost must be more than Rs. 500 Crores as these bungalow plots are utilised for the construction of buildings having flat schemes on ownership basis with each building cost more than Rs. 5 Crores. Therefore, initial compensation amount shall be more than Rs. 50 Crores, to be imposed on the PP as there is serious irreparable damage is caused to the ecological sensitive area of riverine structure and also cause water pollution in the rainy season.

E) Joint Committee failed to provide correct information on the false & farce episode of conversion of land from green zone to residential zone falling outside the blue flood line. However, there is no land outside the blue flood line available with the PP for such conversion and there is no provision in nay law to convert the prohibited zone into residential zone and also PCMC & Town Planning departments are misleading on this count of land conversion. Therefore, the entire plot is in blue flood line of Indrayani River, no land for development is available outside blue flood line, then acceptance of challans by town planning department is baseless and mining less encouraging the illegal activity by giving high confidence to the polluters. Moreover, no documents related to this land conversions along with order of town planning department is placed on record with supporting affidavit by PCMC.



F) Therefore, as per the **Para-18** of judgment passed in **Kerala State Coastal Zone Management Authority Vs. State of Keral & Ors. (2019) 7 SCC 248**, any permission granted by any authority for the

construction in prohibited zone is illegal & void and therefore, illegal structure including removal of construction waste dumping shall be ordered forthwith without any delay.

PART-E

7. ADMITTED FACTS BY JOINT COMMITTEE VIDE ITS REPORT DATED 18.12.2021 AS WELL AS OTHER RESPONDENTS:

A) Joint Committee have admitted that the project land follows in prohibited zone of blue flood line, wherein construction is not permissible.

B) Water Resource/Irrigation Department have admitted that the flood line maps/plans were handed over to the PCMC vide its letter dated 23.07.2008.

C) Joint Committee have admitted that the PP have not obtained any requisite sanction/permission from PCMC.

D) Joint Committee have admitted that the PCMC have issued demolition notices to the PP & illegal occupier and plot holders.

E) Joint Committee have admitted that the PCMC have registered the crime against the PP & illegal occupier and plot holders.

F) Joint Committee have recommended the demolition of illegal structure at site the removal of construction waste dumped

G) Joint Committee have recommended the penalty of Rs. 5 Crores for carrying out the illegal construction causing damage to the environment and further recommended to assess the final damage through NERERI, IIT Bombay etc.

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PART-F

8. NO PCMC SANCTIONS & TOTAL BUILT-UP AREA OF PROPOSED DEVELOPMENT IS MORE THAN 99000 M² AND MANDATING PRIOR EC & CTE

a) I state that, the PCMC have not issued any building sanction till date as stated in Joint Committee Report at **Para-3 (iii) (b) at P@301**. However, the Respondent No. 12 & 13- PP have undertaken the development of the 99 Bungalows at the project site as per his own advertisement at **Annexure-A-12, P@218** and each bungalow is having covered construction Built-up Area of more than 1000 Sq. Mtrs of, which can be seen from the construction carried out at the project site for 16 bungalows.

b) I state that, considering the total construction proposed at site is having total built-up area than **99000** M² i.e. **more than 20000 M²** mandating prior EC under EIA Notification, 2006 as well as consents under Water (P&CP) Act, 1974 and Air (P&CP) Act, 1981 with Solid Waste Handling Rules and thereby committed violation of EIA Notification, 2006.

c) I state that, the PP have carried out the huge dumping of construction waste in blue flood line as well as substantial construction of 16 bungalow out of proposed 99 bungalows having total BUA of **99000 M²**, which is more than 20000 M² attracting prior EC under EIA Notification, 2006 and CTE & CTO without obtaining necessary building permission from PCMC, SEIAA, MPCB, Collector of Pune for land use change.

d) Further I state that, the every allegation of this Original Applicant are already admitted by the Joint Committee and

as held by this Hon'ble NGT in OA No. 02/2013 vide its Judgment dated 11.07.2013, no construction is permissible in prohibited area of blue flood line and Water Resource/Irrigation Department have submitted its flood line marking plan to the PCMC vide letter dated 23.07.2008 {P@314} and provisions of DC Rules, Development Plan and flood line marking are independent and enforceable independently.

e) That the State Government have already prohibited any construction in blue flood line vide its notification dated 21.09.1987, Water Resource/Irrigation Department submitted flood line marking plans to PMC vide its letter dated 23.07.2008, Also, State Government vide its notification dated 03.05.2018 again confirmed that there shall not be any construction permitted in prohibited zone of blue flood line and recently, this Hon'ble NGT vide its Order dated 30.01.2020 passed in OA No. 41/2019(WZ) have demolished public importance project of STP initiated by PCMC at Sr. No. 90 (P) of Village-Chikhali ,in the same Survey Number at East Side of project under challenge, then in these circumstances, immediate demolition may kindly be directed and PP shall be restrained from going ahead with the any further construction, with removal of waste dumped in the prohibited line.

f) That this Hon'ble NGT have powers under section 33 of NGT act, 2010 to giving overriding effect to any other legislature inconsistent with the provision of the act as held by Hon'ble Supreme Court in **Para-47** of **Mantri Techzone Case (2019) 19 SCC 494**. Therefore, the sanction plans of PMC granted to the PP needs to be quashed & set aside and,

g) That this Hon'ble NGT have powers to pass strict orders Under Rule No. **24 of NGT (P&P) Rules, 2011** as per **Para-**

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38-39 of **MCGM Vs. Ankita Sharma (2021) SCC OnLine SC 897** to stop the abuse of its powers with end of justice against the erring officers of the PCMC for allowing illegal construction on the basis of paper horses of stop work notices, FIR, Demolition notices without executing the same and attending the finality in the eyes of law. Therefore, the notorious officer **PCMC** and careless & reckless **PP** must be saddled with heavy cost apart from the compensation & penalty, that ought to be utilised for legal aid in the environmental matters.

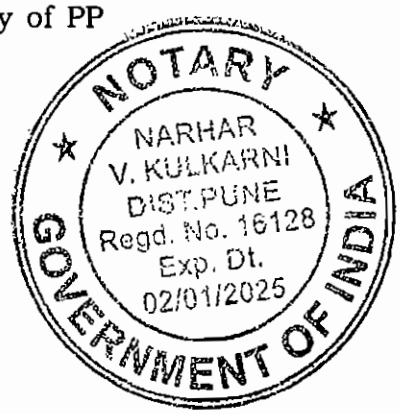
h) Therefore, as held by Hon'ble Supreme Court in **Para-41** of **MCGM Vs. Ankita Sharma (2021) SCC OnLine SC 897** this Hon'ble NGT have widest powers to give appropriate relief as may be justified in the facts and circumstances of the case, even though such relief may not be specifically prayed for by the parties.

PART-G

9. NO REPLY OF RESPONDENT NO. 12 & 13-PP –M/s. JARE GROUP & M/s. V-SQUARE:

a) I state that there is no reply affidavit filed by the Respondent No.12 & 13-PP till date intentionally, despite there being multiple time service thought email vide dated 12.07.2021 {Service Affidavit dated 17.07.2021}, through Speed Post vide dated 10.12.2021 {Service Affidavit dated 21.12.2021} and Also, email dated 21.01.2023 & Speed Post-dated 23.01.2023 {Service Affidavit dated 31.01.2023}. Therefore, this Hon'ble NGT may kindly forfeit the opportunity of PP and proceed ex-party in the matter

PART-H



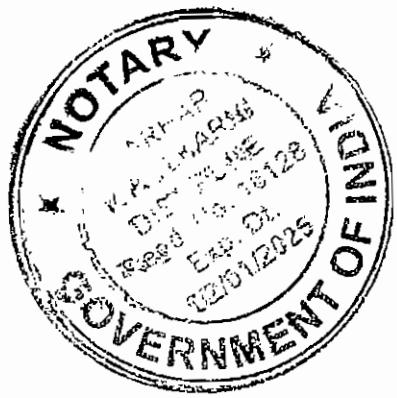
10. REJOINDER TO THE REPLY OF RESPONDENT NO. 4– MPCB VIDE DATED 17.10.2022:

a) I state that, the MPCB have brought on record that the illegal construction activity is going on without requisite permission in prohibited zone of blue flood line and there is illegal construction of 16 number of bungalow till date.

PART-I

11. NO REPLY BY RESP- 1:CS-GoM, RESP-2:PS-DoE, RESP-3:SEIAA, RESP-4:MS-MPCB, RESP-5:RO-MPCB, RESP-6:SECRETARY-UDD, RESP-7:COMMISSIONR OF PCMC, RESP-8: CITY ENGINEER OF PCMC, RESP-9: EXECUTIVE ENGINEER OF WATER RESOURCE DEPT., RESP-10: COLLECTOR OF PUNE, HAVE FILED TILL DATE:

I state that, the Respondent Resp-1:CS-GoM, Resp-2:PS-DoE, Resp-3:SEIAA, Resp-4:MS-MPCB, Resp-5:RO-MPCB, Resp-6:SECRETARY-UDD, Resp-7:COMMISSIONR OF PCMC, Resp-8: CITY ENGINEER OF PCMC, Resp-9: EXECUTIVE ENGINEER OF WATER RESOURCE DEPT., Resp-10: COLLECTOR OF PUNE have not filed their reply till date, even after lapse of 14 months from issue notice Order dated 18.11.2021 for the reasons best known to them, despite wasting of sufficient valuable time of this Hon'ble NGT and this Applicant is not able to understand the callous attitude of the Government Authorities towards the proceedings of court of law and disrespect towards the Orders too. Therefore, this Applicant request to forfeit their opportunity to file any reply as this OA and as this OA is admitted case of violation, this Applicant craves leave of this Hon'ble NGT to file rejoinder to their reply if opportunity of reply is provided to them.



PART-J

12. CASE LAWS BY APPLICANT:

a) Goel Ganga Case-**(2018) 18 SCC 257** at **Para-17**: Natural Resource-sand, gravel, steel, glass, marble-Building Material does not concern FSI & Non-FSI, entire covered area to be considered for Adverse impact on environment by use of natural resources, **Para-64**: Manipulation of Government Officials & Higher environmental damages of more than 10% to be imposed on polluter.

b) Cavelossim Villagers Forum Vs Village Panchayat of Cavelossim, **2019 SCC Online NGT 1662** at **Para-14:** Cause of Action & Limitation "*Forward foundation case Para-24 to 32*", **Para-19**: Sec. 20 of the Act i.e. 'Precautionary' principle, 'Sustainable Development' principle and 'Polluter Pays' principle. It may be inevitable to pass orders in the nature of public interest. It may be said to be comparable or otherwise to PIL jurisdiction. Fact remains that jurisdiction under Section 15 read with Section 20 of the Act has to be exercised meaningfully to protect environment.

c) Order passed by Hon'ble NGT in OA No. 41/2019(WZ) vide dated 30.01.2020 directing demolition of the STP at Survey No. 90(P) of Village-Chikhali, Taluka-Haveli, District-Pune in PCMC: **Para-10**

d) Order passed by Hon'ble Supreme Court in Civil Appeal No. 2083/2020 vide dated 04.06.2020 dismissing Appeal filed by PCMC against the above Order.

e) Order by Hon'ble NGT in OA No. 41/2019(WZ) vide dated 05.08.2020 on letter of PCMC, considering letter of PCMC as Review and dismissed the request made by PCMC.

f) Mantri Techzone Pvt. Ltd. Vs. Forward Foundation & Ors. **(2019) 18 SCC 494** at **Para-47**: Sec. 33 of NGT Act, 2010, provides overriding effect to the provisions of the Act over anything inconsistent contained in any other law or in any instrument having effect by virtue of law other than this Act. This gives the Tribunal overriding powers over anything inconsistent contained in the KIAD Act, the Planning Act, the Karnataka Municipal Corporation Act, 1976 (the KMC Act); and the Revised Master Plan of Bengaluru, 2015 (RMP). A central legislation enacted under Entry 13 of Schedule VII List I of the Constitution of India will have the overriding effect over State Legislations. The Corollary is that the Tribunal while providing for restoration of environment in an area, can specify zones around specific lakes and water bodies in contradiction with zoning regulations under these statute or RMP. **Para-50 opines**: No mention of provisions, well settled principle of law, non-mention or erroneous mention of provisions would not be any relevance, if court had requisite jurisdiction to pass an order, it would be a mere irregularity and would not vitiate the application or the judicial order of the Tribunal.

g) MCGM Vs Ankita Sinha & Ors. **2021 SCC Online SC 897: Para-38.** While on the statutory provisions, it is seen that the Central Government has framed the *National Green Tribunal (Practice & Procedure) Rules, 2011* (for short "the NGT Rules"). For our purpose, Rule 24 is important which reads thus:

> *"24. Order and directions in certain cases - The Tribunal may make such orders or give such directions*

as may be necessary or expedient to give effect to its order or to prevent abuse of its process or to secure the ends of justice."

Para-39. The said Rules make it clear that the NGT has been given wide discretionary powers to *secure the ends of justice.* This power is coupled with the duty to be exercised for achieving the objectives. The intention understandably being to preserve and protect the environment and the matters connected thereto.

Para-40. By choosing to employ a phrase of wide import, i.e. *secure the ends of justice*, the legislature has nudged towards a liberal interpretation. Securing justice is a term of wide amplitude and does not simply mean adjudicating disputes between two rival entities. It also encompasses *inter alia*, advancing causes of environmental rights, granting compensation to victims of calamities, creating schemes for giving effect to the environmental principles and even hauling up authorities for inaction, when need be.

Para-41. Moreover, unlike the civil courts which cannot travel beyond the relief sought by the parties, the NGT is conferred with power of moulding any relief. **The provisions show that the NGT is vested with the widest power to appropriate relief as may be justified in the facts and circumstances of the case, even though such relief may not be specifically prayed for by the parties.**

Para-42. Another distinguishing feature of the environmental forum is on the aspect of *locus standi* which was made as wide as is available to the High Courts and the Supreme Court. Thus, any person or organization who may be interested in the subject matter is permitted to approach the NGT.

Para-43. The provisions of the NGT Act and the NGT Rules demonstrate that myriad roles are to be discharged by the NGT, as was encapsulated in the Law Commission Report, the Preamble and the Statement of Objects and Reasons. This is also forthcoming from the international obligation and commitment by India to implement the decision taken at the Stockholm and the Rio De Janeiro Conventions towards protection of the environmental rights under Article 21 of the Constitution.

h) **Para-18** of judgment passed by Hon'ble Supreme Court, in **Kerala State Coastal Zone Management Authority Vs. State of Keral & Ors. (2019) 7 SCC 248**, any permission granted by any authority for the construction in prohibited zone is illegal & void

"18. In the instant case, permission granted by the Panchayat was illegal and void. No such development activity could have taken place in prohibited zone. In view of the findings of the Enquiry, Committee, let all the structures be removed forthwith within a period of one month from today and compliance be reported to this Court."

PART-K

13. **THEREFORE, HUMBLE SUGGESTIONS OF APPLICANT ARE AS FOLLOW**:

a) I state that, the Joint Committee vide its Report dated 18.12.2021 have clearly opined that this project construction activity is not permissible in blue flood line and recommended the demolition with removal of construction waste dumped for reclamation of the area. Further, Joint Committee have recommended penalty of Rs. 5 Crores for contravening the provisions

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of law and the recommended the reference of case to NEERI, IIT Bombay for final computation of Environmental Compensation. Therefore, this Hon'ble NGT may kindly direct the demolition, removal of dump waste, and impose heavy environmental compensation without recommending the case for further computation to any party, as the final decision has to be taken by this Hon'ble NGT as held by the Hon'ble SC in **2022 SCC OnLine SC 120** and NGT have not powers to sub-delegation its function of adjudication.

b) This Hon'ble NGT may kindly competent Authority to take actions against the PCMC erring officers for intentionally neglecting to take further steps even after end of Covid-19 pandemic period for demolishing and prohibiting further construction, dumping of waste on the project land, as the PCMC officers have collusion with the PP as seems from their non-actions as per law.

c) Appoint the MoEFCC, CPCB, MPCB & Irrigation Department for preparation of remedial & mitigation plan and for its implementation within next 30 days and PCMC will be formal part of such committee for local arrangements only and amount of Environmental Compensations, penalties will be deposited with MPCB only.

d) This Hon'ble NGT may kindly issue directions cum guidelines to the state Government i.e. Secretary of Urban Development Department, Revenue Department, Environment Department to identify the Prohibited Zones affected area of blue flood lines in coordination with Water Resource Department from the flood line plan and make mutation entry on

revenue records as well as on Local Authority zoning Plans, Developments plans in view to avoid degradation of the environment & ecology and also in view to reduce the multiplicity of the litigations.

e) Therefore, this Hon'ble NGT may kindly pass appropriate Orders/directions/reliefs for restitution & restoration of area.

14. Hence this Affidavit.

Whatever stated above is true and correct to the best of my knowledge, belief and information, hence, to verify the same I have signed hereunder at Pune.

Date: 02.02.2023

Bombhire

(TANAJI BALASAHEB GAMBHIRE)
AFFIANT

NOTARY
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BEFORE ME

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Noted and Registered
at Sr.No. 043/2023
Date:- 2 FEB 2023

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(2018) 18 Supreme Court Cases 257

(BEFORE MADAN B. LOKUR AND DEEPAK GUPTA, JJ.)

GOEL GANGA DEVELOPERS INDIA PRIVATE LIMITED .. Appellant;

Versus

UNION OF INDIA THROUGH SECRETARY MINISTRY OF ENVIRONMENT AND FORESTS AND OTHERS .. Respondents.

Civil Appeals No. 10854 of 2016 with Nos. 10901 of 2016 and 5157-58 of 2018†, decided on August 10, 2018

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The issues involved in this appeal were:

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

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

Held :

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

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

Notification dated 4-4-2011

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

Clarification dated 7-7-2017

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

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

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

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

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

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

Allegations made by the original applicant against various officials

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Is demolition the only answer?

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

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

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

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

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

Whether the original applicant is entitled to special damages?

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

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

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

VN-D/61010/S

Advocates who appeared in this case :

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Chronological list of cases cited ***on page(s)***

1. 2018 SCC OnLine NGT 302, *Tanaji Balasaheb Gambhire* v. *Union of India* **(reversed)** 266*e-f*, 266*h*, 267*a*, 276*f*, 277*g-h*, 283*e-f*, 286*b-c*, 287*g-h*
2. (2017) 9 SCC 499, *Common Cause* v. *Union of India* 273*g*
3. 2017 SCC OnLine NGT 1954, *Tanaji Gambhire* v. *Union of India* 281*d*, 281*d-e*
4. 2016 SCC OnLine NGT 4219, *Tanaji Balasaheb Gambhire* v. *Union of India* 282*b-c*
5. 2016 SCC OnLine NGT 4217, *Tanaji Balasaheb Gambhire* v. *Union of India* 281*c*
6. 2016 SCC OnLine NGT 4215, *Tanaji Balasaheb Gambhire* v. *Union of India* 283*b*
7. 2016 SCC OnLine NGT 4214, *Tanaji Balasaheb Gambhire* v. *Union of India* 283*c*, 283*d-e*
8. 2016 SCC OnLine NGT 4213, *Tanaji Balasaheb Gambhire* v. *Union of India* **(partly reversed)** 265*e-f*, 266*e*, 266*e-f*, 267*a*, 275*a-b*, 275*c*, 275*f-g*, 276*a*, 283*c*, 284*d*, 287*g*, 288*a*, 288*b-c*
9. 2016 SCC OnLine NGT 4212, *Tanaji Balasaheb Gambhire* v. *Union of India* 283*c*
10. 2016 SCC OnLine NGT 4211, *Tanaji Balasaheb Gambhire* v. *Union of India* 283*b-c*
11. 2016 SCC OnLine NGT 4210, *Tanaji Balasaheb Gambhire* v. *Union of India* 283*b-c*
12. 2016 SCC OnLine NGT 4209, *Tanaji Balasaheb Gambhire* v. *Union of India* 282*f-g*, 283*d-e*
13. 2016 SCC OnLine NGT 4208, *Tanaji Balasaheb Gambhire* v. *Union of India* 282*d*, 282*f-g*
14. 2016 SCC OnLine NGT 4207, *Tanaji Balasaheb Gambhire* v. *Union of India* 282*b-c*
15. 2016 SCC OnLine NGT 4206, *Tanaji Balasaheb Gambhire* v. *Union of India* 282*b-c*
16. 2016 SCC OnLine NGT 4205, *Tanaji Balasaheb Gambhire* v. *Union of India* 282*b-c*
17. 2016 SCC OnLine NGT 4204, *Tanaji Balasaheb Gambhire* v. *Union of India* 282*b-c*
18. 2016 SCC OnLine NGT 4203, *Tanaji Balasaheb Gambhire* v. *Union of India* 282*b-c*
19. 2016 SCC OnLine NGT 4202, *Tanaji Balasaheb Gambhire* v. *Union of India* 283*c*
20. 2016 SCC OnLine NGT 4201, *Tanaji Balasaheb Gambhire* v. *Union of India* 282*b*

21. 2016 SCC OnLine NGT 1330, *Tanaji Balasaheb Gambhire* v. *Union of India* 282*e*, 282*e-f*
22. 2015 SCC OnLine NGT 838, *Tanaji Balasaheb Gambhire* v. *Union of India* 282*d-e*
23. (2011) 15 SCC 330 : (2014) 2 SCC (Civ) 473, *Malthesh Gudda Pooja* v. *State of Karnataka* 279*a*
24. 2009 SCC OnLine Kar 919, *Malthesh Gudda Pooja* v. *State of Karnataka* 279*a-b*
25. 2009 SCC OnLine Kar 918, *Malthesh Gudda Pooja* v. *State of Karnataka* 279*b-c*
26. (1980) 2 SCC 167 : 1980 SCC (Tax) 222, *Northern India Caterers (India) Ltd.* v. *Lt. Governor of Delhi* 278*g-h*

The Judgment of the Court was delivered by

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

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

3. The original applicant filed an application before NGT claiming that the project proponent i.e. M/s Goel Ganga Developers India Pvt. Ltd., had raised construction in violation of the environmental clearance ("EC", for short) granted for the project and also in violation of the various municipal laws. It was prayed that the illegal structures be demolished; the State Level Environment Impact Assessment Authority (SEIAA) and the Maharashtra State Pollution Control Board be directed to initiate appropriate action against the project proponent for violation of the Environment Impact Assessment (EIA) Notification, 2006; the Union of India be directed to take action against SEIAA; and lastly, it was prayed that the project proponent be directed to pay/deposit a heavy amount of compensation in the environment relief fund. NGT vide its order dated 27-9-2016[1] allowed the application in the following terms: (*Tanaji Balasaheb case*[1], SCC OnLine NGT para 54)

> "*54.* For the aforesaid reasons, the applicant succeeds in his legal pursuit to challenge the non-compliance of EC conditions by Respondent 9 and obtain certain directions. Hence the Application is allowed and we issue following directions:
>
> 1. Respondent 9-PP shall pay environmental compensation cost of Rs 100 crores or 5% (five per cent) of the total cost of project to be assessed by SEAC whichever is less for restoration and restitution of environment damages and degradation caused by the project proponent by carrying out the construction activities without the necessary prior environmental clearance within a period of one month. In addition

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

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

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

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

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

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

5. Review application being Application No. 35 of 2016 was filed by the original applicant before NGT. This application was partly allowed on 8-1-2018[2] and Direction 1 in the original order dated 27-9-2016[1] was modified and substituted as under: (*Tanaji Balasaheb case*[1], SCC OnLine NGT para 54)

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

6. Thereafter, the project proponent filed IA No. 8000 of 2018 for permission to amend its appeal permitting it to challenge the order passed in review application dated 8-1-2018[2], which we have allowed.

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

7. Appeal being Diary No. 3911 of 2018 was filed by the original applicant challenging the original order dated 27-9-2016[1] as well as the order dated 8-1-2018[2] passed in review application praying that demolition of the illegal structures be ordered and the compensation be enhanced to Rs 500 crores.

The factual matrix

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

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

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

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

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

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

"*Part A—Specific conditions*

I. Construction phase

* * *

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

* * *

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

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

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

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

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

Rule 2.39 defines "floor area ratio" as follows:

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

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

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

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

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

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

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

(*c*) Projection as specifically exempted under these Rules;

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

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

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

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

(*g*) (*Deleted*);

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

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

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

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

"(1)	(2)	(3)	(4)	(5)
8			***Building/Construction projects/Area development projects and townships***	
(*a*)	Building and construction projects		≥20,000 sq m and <1,50,000 sq m of built-up area#	#(built-up area for covered construction; in the case of facilities open to the sky, it will be the activity area)
(*b*)	Townships and area development projects		Covering an area ≥50 ha and or built-up area ≥1,50,000 sq m ++	++All projects under Item 8(*b*) shall be appraised as Category B-1."

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

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

Notification of 4-4-2011

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

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

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

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

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

Clarification dated 7-7-2017

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

F. No. 22-35/2017-IA.III
Government of India
Ministry of Environment, Forests and Climate Change
(Impact Assessment Division)
******

Indira Paryavaran Bhawan
Jor Bag Road, Aliganj,
New Delhi - 110 003
Dated 7-7-2017

OFFICE MEMORANDUM

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

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

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

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

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

5. This issues with approval of competent authority.

sd/-
(Dr Ashish Kumar)
Joint Director Ph: 011-24695474
Email: ashish.k@nic.in

All States/UTs/SIEAAs/MoEF & CC Divisions

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

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

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

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

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

Environmental clearance dated 20-11-2017

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

> "(1) This environmental clearance (EC) is issued for total built-up area of 1,47,219.45 m^2 as approved by local planning authority. It is noted that the total proposed construction area is 1,47,219.45 m^2 which includes the area of previous EC (dated 4-4-2008) 57,658.42 m^2 and the proposed expansion area of 89,561.03 sq m. However, the above area of 1,47,219.45 sq m is notional as the non-FSI area component of the previous EC is not included in 1,47,219.45 m^2. After considering the non-FSI area of the previous EC, the total built-up area becomes 1,81,230.94 m^2. SEIAA has also taken note of the clarification issued by MoEF and CC vide office memorandum dated 7-7-2017, stating the definition of built-up area will be assessed as per the building bye-laws or DCR of the local authorities in the States."

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

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

grant EC by treating the project as falling under Category B-2. Furthermore, the EC dated 20-11-2017 is also illegal as the same has been granted on the presumption of the order dated 31-5-2016 passed by the Principal Secretary, Environment Department, State of Maharashtra holding that the construction of 18 buildings instead of 12 buildings is permissible. The EC completely lost sight of the fact that the order dated 31-5-2016 was quashed and set aside by NGT in its order dated 27-9-2016[1]. We may note that the official who passed the order on 31-5-2016 was the same official, who held the office of Member-Secretary of SEIAA, which granted environmental clearance on 20-11-2017. Therefore, the EC dated 20-11-2017 was beyond the authority of SEIAA and was granted under a totally false assumption and the same is therefore quashed and set aside.

Allegations made by the original applicant against various officials

29. NGT in its order dated 27-9-2016[1], has found that there was suppression of facts by the officers of PMC. NGT also directed the Chief Secretary to the State of Maharashtra to take notice of the conduct of the officers who were misleading the Department of Environment. Costs were imposed on PMC, Department of Environment and SEIAA. This has been challenged before us by PMC.

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

31. However, as far as their official capacity is concerned, we are of the view that NGT was fully justified in coming to the conclusion that certain officials of PMC were going out of their way to help the project proponent and we, therefore, uphold the directions given by NGT in its order dated 27-9-2016[1] in this regard. In view of what we have discussed above, it is more than apparent that despite notifications of 2006 and 2011 being clear and unambiguous, the officials of PMC have given an interpretation which was tailor-made to suit the project proponent. This was being done even before the clarification of 7-7-2017 was issued. This clearly indicates that some officials of PMC were espousing the case of the project proponent at the cost of the environment.

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

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has not acted in a fair and transparent manner. The allegations made by the original applicant cannot be lightly brushed aside. In the original order dated 27-9-2016[1], NGT held as follows: (*Tanaji Balaseheb case*[1], SCC OnLine NGT para 42)

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

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

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

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

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

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

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

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

> "**1.** ***Application for review of judgment.***—(1) Any person considering himself aggrieved—
>
> (*a*) by a decree or order from which an appeal is allowed, but from which no appeal has been preferred,
>
> (*b*) by a decree or order from which no appeal is allowed, or
>
> (*c*) by a decision on a reference from a Court of Small Causes,
>
> and who, from the discovery of new and important matter or evidence which, after the exercise of due diligence was not within his knowledge or could not be produced by him at the time when the decree was passed or order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree passed or order made against him, may apply for a review of judgment to the court which passed the decree or made the order.
>
> (2) A party who is not appealing from a decree or order may apply for a review of judgment notwithstanding the pendency of an appeal by some other party except where the ground of such appeal is common to the applicant and the appellant, or when, being respondent, he can present to the appellate court the case on which he applies for the review.
>
> * * *
>
> **5.** ***Application for review in court consisting of two or more Judges.***— Where the Judge or Judges, or any one of the Judges, who passed the decree or made the order, a review of which is applied for, continues or continue attached to the court at the time when the application for a review is presented, and is not or are not precluded by absence or other cause for a period of six months next after the application from considering the decree or order to which the application refers, such Judge or Judges or any of them shall hear the application, and no other Judge or Judges of the court shall hear the same."

37. The project proponent has urged various grounds to challenge the order passed in the review application. The first ground is that whereas the original order was passed by a Bench comprising of Dr Justice Jawad Rahim and Dr Ajay A. Deshpande, the review application was heard and decided by a Bench comprising of Justice U.D. Salvi and Dr Nagin Nanda. It has been urged that Dr Justice Jawad Rahim continues to be a Judicial Member of NGT and, in fact, was sitting in the Western Bench at Pune on 8-1-2018 when the impugned judgment[2] in review was pronounced by NGT.

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

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

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

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

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

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

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

42. We may refer to the judgment of this Court in *Malthesh Gudda Pooja* v. *State of Karnataka*[5]. In that case, a writ appeal was disposed[6] of by a Division Bench comprising of Hon'ble V. Gopala Gowda and L. Narayana Swamy, JJ., at the Dharwad Circuit Bench of the Karnataka High Court. Thereafter, a review petition was filed before a Bench comprising of Hon'ble K. Sreedhar Rao and Ravi Malimath, JJ. An objection was raised that the review petition should be heard by the same Judges who had originally heard the matter but this objection was overruled and the review petition was allowed[7] and the appeal was ordered to be listed afresh before the Division Bench. This appeal was listed before the Dharwad Circuit Bench consisting of Hon'ble D.V. Shailendra Kumar and N. Ananda, JJ. This Bench held that the order of review passed was a nullity since the Judges who had heard the review should not have heard the same especially when the Judges of the original Bench were available. The matter came to this Court and this Court after referring to Order 47 Rule 5 CPC and Rule 5 of the High Court of Karnataka Rules, 1959 and taking note of the fact that the Chief Justice of the Karnataka High Court had passed an order that the review petition be listed as per roster held as follows: (SCC pp. 341-42, paras 18-20)

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

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

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

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

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

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

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

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

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

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

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

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

46. We may add that on 21-12-2016[8], the review application itself was listed before the Bench of Dr Justice Jawad Rahim and Dr Ajay A. Deshpande, which adjourned the matter to 25-1-2017 to hear it regarding maintainability of the review application in view of the statutory appeal provided under the National Green Tribunal Act, 2010. However, the matter got listed before the other Bench and on 25-7-2017[9], the said Bench considered this objection raised by the project proponent in terms of Order 47 Rule 1 CPC and the Bench held as follows: (*Tanaji Gambhire case*[9], SCC OnLine NGT)

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

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

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

8 *Tanaji Balasaheb Gambhire* v. *Union of India*, 2016 SCC OnLine NGT 4217
9 *Tanaji Gambhire* v. *Union of India*, 2017 SCC OnLine NGT 1954

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

49. Here, it would be pertinent to mention that according to the original applicant he was given oral permission by the Bench to file such an affidavit on 23-2-2016. We have perused the order dated 23-2-2016[10] and find that it makes no mention of any such request being made. If there is no such request then the question of issuing an oral direction to file such an affidavit does not arise. We may also add that after 23-2-2016, the matter was listed on numerous occasions i.e. 16-3-2016[11], 5-4-2016[12], 18-4-2016[13], 22-4-2016[14], 2-5-2016[15] and 5-5-2016[16] before NGT. In none of the orders there is any reference to carbon footprint or to any affidavit to be filed by the original applicant. If an oral permission had been given, obviously the original applicant would have either filed an application or would have made a request that he wants to file such an affidavit.

50. The affidavit in question is dated 18-5-2016 and it is alleged that it was filed on 18-5-2016. The matter was listed for hearing on 19-5-2016[17] on which date also there is no reference to any such affidavit. It would be pertinent to note that in between the project proponent had filed an MA No. 389 of 2016 before the Principal Bench stating that an interim order dated 23-12-2015[18] had been passed against it and the matter was not being heard and, therefore, it may be heard by a Bench presided over by Dr Justice Jawad Rahim, who apparently was holding Court in the Pune Bench at that time and the Principal Bench allowed the same on 2-5-2016[19] directing that the matter be listed before the Bench presided over by Dr Justice Jawad Rahim. On 19-5-2016, the original applicant sought time stating that he had filed review application against the order dated 2-5-2016[19] before the Principal Bench praying that the matter should be heard by the earlier Bench presided over by Justice U.D. Salvi and, therefore, the matter could not be heard by Dr Justice Jawad Rahim on that day and was further adjourned to 23-5-2016. There is no reference to carbon footprint in the order dated 19-5-2016[17]. On 23-5-2016[20], the matter was heard by the Bench presided over by Dr Justice Jawad Rahim and the orders reserved.

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

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

51. The original applicant sought time to file counter-affidavit. The matter was adjourned[21] to 28-7-2016 for rehearing deleting the same from reserved list since there were subsequent developments. On 28-7-2016[22], the matter was got adjourned to 2-8-2016 on which date[23] some execution application for implementation of the interim orders was taken up and direction was issued to PMC. The matter was again taken up on 8-8-2016[24], 19-8-2016[25] and 24-8-2016[26] when the hearing was closed and judgment was pronounced through videoconferencing on 27-9-2016[1]. In none of these orders any mention was made for carbon footprint or to the affidavit on the basis of which the review application was filed. On 23-5-2016, the project proponent filed reply to the affidavit dated 18-5-2016 filed by the original applicant in which they raised objections that such affidavit was not filed on 18-5-2016 and the copy of the same was handed over to them on 20-5-2016 and the original applicant had no permission to file such an affidavit. All these disputed issues as to whether such an affidavit was filed with the permission of the Court or it was referred to in the first hearing or in the second hearing could only be decided by the Bench which had heard the matter on 23-5-2016[20] or on 24-8-2016[26] on which dates the original application was reserved for orders.

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

Is demolition the only answer?

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

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

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

54. We hasten to clarify that the project proponent cannot be permitted to build any more flats. What we are permitting him to do is to only complete construction of 807 flats, 117 shops/offices and cultural centre including the clubhouse. We make it clear that he shall not be allowed to build the two buildings in which he was to construct 454 tenements, and will obviously have to return the money with interest @ 9% p.a. to the individual(s) who have invested in the same. There is no equity in favour of these persons since the plan to raise this construction was submitted only after 2014 when the validity of the earlier EC had already ended. Therefore, though we uphold the order of NGT dated 27-9-2016[1] that demolition is not the answer in the peculiar facts of the case, we also make it clear that the project proponent cannot be permitted to build nothing more than 807 flats, 117 shops/offices, cultural centre and clubhouse.

Whether the original applicant is entitled to special damages?

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

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

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

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

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

Quantification of damages

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

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

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

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

Carbon footprint

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

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

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

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

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

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

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

2 2018 SCC OnLine NGT 302

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

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

Findings and directions

66. We summarise our findings and directions as follows:

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

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

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

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

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

66.6. That the order dated 27-9-2016[1] of NGT is upheld except insofar as Direction 1 is concerned.

66.7. The order in review application passed by NGT on 8-1-2018[2] is held to be totally illegal and is accordingly set aside.

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

66.8. We uphold the original order dated 27-9-2016[1] holding that the construction raised by the project proponent was in violation of the environmental clearance granted to it on 4-4-2008. We uphold the fine imposed upon PMC and the direction given to PMC to take appropriate action against the erring officials. We also uphold the direction given to the Chief Secretary to the State of Maharashtra and in addition, direct that the Chief Secretary to the State of Maharashtra shall look into the conduct of the official holding the post of Principal Secretary (Environment) to the Government of Maharashtra on 27-9-2016 and will submit his report to NGT within three months from today.

66.9. We impose damages of Rs 100 crores or 10% of the project cost, whichever is higher, on the project proponent and in addition thereto, project proponent will pay Rs 5 crores as levied by NGT in its order dated 27-9-2016[1].

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

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

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

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

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

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

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

Item Nos. 03

BEFORE THE NATIONAL GREEN TRIBUNAL
PRINCIPAL BENCH, NEW DELHI
(Through Video Conferencing)

Original Application No. 61/2014 (WZ)
(M.A. No. 24/2015)

Cavelossim Villagers Forum — Applicant(s)

Versus

Village Panchayat of Cavelossim — Respondent(s)

Date of hearing: 24.04.2019

CORAM: **HON'BLE MR. JUSTICE ADARSH KUMAR GOEL, CHAIRPERSON**
HON'BLE MR. JUSTICE K. RAMAKRISHNAN, JUDICIAL MEMBER
HON'BLE DR. NAGIN NANDA, EXPERT MEMBER

For Applicant(s): Mr. N.DA Costa Frias, Ms. Faria M. Mesquita, Advocate

For Respondent (s): Mr. Krishnan Venugopal, Sr. Advocate, Mr. Ninad Laud, Mr. Nitin Sawant, Mr. Kaushik Mishra, Mr. Shivshankar Swaminathan, Mr. Ivo D'Costa, Advocates for Respondent no. 8
Mr. Anu Tiwari, Mr. Shaurya Garg, Advocates

ORDER

1. This application filed by Cavelossim Villagers Forum has a grievance against illegal construction activities adversely affecting the natural water bodies/*nallas*/channels/paddy fields. The application was filed on 23.05.2014. It is stated that a big project of construction of building has been undertaken by M/s Balaji Concepts, Margao, Goa by destroying natural water bodies at Khandi-bandoi, Cavelossim, Salcete, Goa. Construction has been undertaken without due

permission from the concerned authorities. Water access has been blocked due to illegal dumping of mud in violation of the Goa Irrigation Act, 1973 and Land Revenue Code. The construction is within 100 mtrs of the River Sal. The applicant has relied upon the inspection report dated 21.03.2014 by the Assistant Engineer, Water Resources Department. The applicant has also filed revenue record, Google image, copy of complaint lodged and photographs.

2. In the inspection report dated 21.03.2014, it is stated as follows:

> *"It is found that in Survey No. 90/5 a nallah is diverted to a length of about 20 mts and the bank of the same are constructed with R.C.C. walls with extra steel reinforcement to cover the nallah with concrete slab from top. An another nallah in Survey No. 90/5 was filled with mud by stopping the free flow of water. The pond in Survey No. 91/1 is encroached by filling mud, is shifted close to nallah and R.C.C. columns are erected to construct the building. A letter No. WRD/SDI/WD II/F.45/590/2013-14, Dt. 18/02/2014 was sent to Balaji Concept requesting to stop all the construction activities in the above said affected area by destroying original water bodies and nallahs which will prevent free flow of water in rainy season and stagnation of water in the paddy fields at upstream side thus leading to breeding of mosquitos and to restore all the water bodies in their existing form within 15 days or to face action.*
>
> *A joint inspection was held on 13.03.2014 at the site of Balaji Concept at Khandi Bandoi along with Shri. Gonsalo Rodrigues, Technical Assistant, Vinod Kapoor, Gaurish Kandeparker, site Engineer of M/s. Balaji*

Concepts, the Members of Cavelossim Villagers forum and its President, the Sarpanch of V.P. Cavelossim and its Panchayat Members. It is found that neither the construction activities of the project of Balaji Concept are stopped nor the illegal structures in the water bodies of the said area are rectified or removed by the builders in Sy. No. 90/5, 90/6 & 90/1 in response to the letter No. WRD/SDI/WDII/F.45/590/2013-14 dt: 18.02.2014. Only a nallah in Sy. No. 91/5 which was filled with mud is restored but with changes from its original alignment at the middle to allow their construction of structures conveniently. Secondly location of the pond in Survey No. 91/1 is not restored. The work of construction of banks of the Nallah with R.C.C. is still carried on vigorously in defiance of the request."

3. The Village Panchayat of Cavelossim, respondent No. 1 has filed a reply justifying the grant of construction license under the Panchayat Act. On the issue of damage to the water channels, it is stated that the notice was duly issued on 28.05.2014 to the project proponent, respondent No. 8. The project proponent in reply dated 30.05.2014, produced various permissions, including permission granted by the Executive Engineer of the Water Resources Department, vide letter dated 23.05.2014, approving the proposal as follows:

"*With reference to your proposal submitted vide your letter referred above, the proposal has been scrutinized by this office and this office does not have any objection to the said modification as suggested from the water resource point of view in your property subjected to the following conditions;*

1. *The area of pondages/water bodies in the survey numbers should be maintained as per the drawings approved and should not be reduced.*
2. *Proper connectivity should be ensured to all the nallas/drains entering in to the property to discharge storm water/any discharges into the river Sal.*
3. *Proper slopes and cross sections should be maintained as per approved drawings for the nallas/drains.*
4. *Other necessary permissions if any should be obtained by the applicant.*
5. *Seven (7) drawing copies showing lay outcross sections are approved and returned back."*

4. The applicant also filed an additional affidavit dated 28.10.2014 to the effect that on 24.06.2014, officials of Goa Agricultural Department and Goa State Biodiversity Board carried out a joint inspection. The report of the joint inspection was furnished under the RTI Act, 2005 by the Goa Coastal Zone Management Authority (GCZMA). The said report *inter-alia* states as follows:

> "*GE image 02-2013: A significant portion of the NDZ (0-100m) has been filled and reclaimed with mud. This activity is tantamount to a major violation of CRZ 2011 laws.*
>
> *Several buildings are identified beyond the NDZ. A waterbody is seen between the buildings (beyond NDZ).*
>
> *GE image 12-2013: The water body has been filled up and buildings are seen within it. This aspect has been confirmed in the field.*
>
> *Field inspection showed clear violations of CRZ 2011 notification: a large part of the mandatory NDZ along the river side is filled with mud. The entire area is*

strewn with construction material as debris is dumped here. New boulders and new metal was also observed. An antecedent waterlogged stretch along the river is being reclaimed gradually (see GE image 02-2013).

Also, a road runs parallel and close to the river; a water tanker was seen parked along the river. Some hutments are present along the river bank. Reclamation is confirmed in the field. The mud road (used by trucks?) is again a CRZ violation.

A mangrove creek, elongated in shape, is noted. This saline water body is connected to the river through a functional sluice gate."

5. The project proponent, respondent no. 8 filed a counter affidavit to the amendment application. The project proponent has also filed an application to dismiss the application being M.A No. 17 of 2015 in pursuance of the order of the High Court of Bombay at Goa dated 19.01.2015 to which reference will be made later, raising the plea of limitation. It is stated that the applicant made a complaint on 02.09.2013 seeking inspection of illegal activities and in view of the said application, cause of the applicant accrued on that date. The said information was withheld while filing the application. During the course of hearing, written submissions have also been filed on behalf of the project proponent giving factual background as well as the submissions on the issue of limitation. It is pointed out that the project commenced on 12.12.2010 after construction licence was granted by the Panchayat.

6. We note that against interim order of the Tribunal, the matter was carried to the Bombay High Court by the project proponent by way of

W.P No. 594 of 2015 and decided in a group of matters in *Windsor Reality Pvt. Ltd. v. Ministry of Environment and Forest* and connected matters, *2016 SCC Online Bom 5613* decided on 09.06.2016. The High Court considered the issue of locus and limitation in the light of two judgements of the National Green Tribunal in *Rana Sen Gupta v. U.O.I & Ors, Appeal No. 54/2012 and Goa Foundation v. Secretary, MoEF, M.A No. 49/2013 in Application No. 26/2012.* In *Goa Foundation (Supra),* it was held that cause of action arises from the date of knowledge and the date of inaction of the authorities while in *Rana Sen Gupta (Supra),* the view taken is that the applicant therein did not have the locus not being the an aggrieved party. The High Court held that *prima facie,* cause of action is the starting point of limitation and not the date of knowledge. If date of knowledge is cause of action, complaints can be filed even after ten to twenty years. At the same time, the issue of violation of environment law needs to be looked into through the forum where such question to be raised remains a question. Accordingly, the High Court remanded the matter for fresh decision which is as follows:

> *"36. Taking an overall view of the matter and considering the importance of the issues which are raised by the Petitioners and original Applicant and also the fact that impugned order does not address the issue in its proper perspective, we set aside the impugned order and remand the matter to the Tribunal to decide afresh on merits and in accordance with law. During the pendency of the said Misc.Application, further proceedings in the main Application are stayed. Tribunal shall also frame a preliminary issue on the*

question of limitation and locus after giving an opportunity to both sides and lay down the concept of "aggrieved person" and also on the point whether NGT can entertain an application which is in the nature of PIL which is otherwise maintainable in the High Court and Supreme Court of India. We direct the NGT to decide all these issues within a period of three months."

7. The applicant carried the matter to the Hon'ble Supreme Court by way of *SLP Civil No. 34831/2016* which has been disposed of on 26.10.2018 with the direction that the Tribunal may pass appropriate orders in terms of para No. 36 of the judgement of the High Court.

8. Accordingly, we have heard the learned counsel for the parties and proceed to deal with the matter.

9. Following questions arise for consideration:

i. Whether the application is within limitation and whether the applicant has locus to file the petition and is an 'aggrieved person' for the purpose.

ii. Whether the NGT can entertain the application in the nature of PIL which is maintainable before the High Court and the Hon'ble Supreme Court.

iii. Order required to be passed on merits.

10. Our consideration and findings are as follows:

Re (i): Whether the application is within limitation and whether the applicant has locus to file the petition and is an 'aggrieved person' for the purpose.

11. Shri. Krishnan Venugopal, learned senior counsel for the project proponent submitted that limitation under Section 14 (3) of the NGT Act, 2010 is six months from the date of cause of action when the dispute first arose. Delay can be condoned not exceeding sixty days. It was submitted that the limitation commences when the cause of action first arises and there is no scope for the concept of continuing cause of action. Reliance has been placed on *Khatri Hotels (P) Ltd v. Union of India (2011) 9 SCC 12,* wherein question considered was in the context of Article 58 of the Schedule to Limitation Act, 1963 laying down that limitation for a suit for declaration commences when the right to suit first accrues. It was held that successive violation of right will not give rise to fresh cause of action. In *Popat Bahiru Govardhane v. Land Acquisition Officer (2013) SCC 10 SCC 765*, the question for consideration was in the context of Section 28 A of the Land Acquisition Act, 1984. It was held that Law of Limitation is to be applied with all its vigour. In *N.C Dhoundial v. Union of India (2004) 2 SCC 579*, the issue of limitation in the context of Section 36 of the Protection of Human Rights Act came up for consideration. The violation alleged was wrongful detention and date of detention was held to be the point of commencement of limitation.

12. Learned counsel also referred to the judgement of the Bombay High Court referred to above, wherein *prima facie* observations have been made. No laws has been laid down while remanding the matter. Reference has also been made to two orders of this Tribunal being *Aradhana Bhargava v. MoEF 2013 SCC Online NGT 84* and *Graminee Environment Development Foundation v. balaji Infrastructure Ltd. and Ors 2017 SCC Online NGT 1098*. In *Aradhana Bhargava (Supra),* it was held that the applicants had knowledge of the project and did not take the remedy for a long period and thus, the application was barred by limitation. In *Graminee Environment Development Foundation (Supra),* the cause of action started in December, 2008 and the application was filed in the year 2016 which was held to be barred by limitation.

13. Learned counsel for the applicant submitted that the present application is within limitation. Cause of action did not arise merely from sanction of the project or commencement of construction but on arising of 'substantial question of environment' in terms of Section 14 of the NGT Act, 2010. On inspection in December, 2013 and in March, 2014 violations came to light. Representation of 02.09.2013 was general. On that basis alone, the applicant could not involve jurisdiction of the NGT. The judgements relied upon are distinguishable and do not stand against the applicant.

14. It is undisputed that the matter is governed by limitation laid down under Section 14(3) of the NGT Act, 2010. The limitation is six months from the date the cause of action first arose which can be extended up to sixty days. No doubt, the starting point of limitation is the cause of action and not the knowledge but cause of action is a bundle of facts on which it is based. In the said bundle of facts, there may be series of facts. Merely because one part of the fact comes into existence may not be enough if further facts on which the cause is based are of a later date.[1] In *The Forward Foundation v. State of Karnataka & Ors*[2]., it was held:

> *"24. The expression 'cause of action' as normally understood in civil jurisprudence has to be examined with some distinction, while construing it in relation to the provisions of the NGT Act. Such 'cause of action' should essentially have nexus with the matters relating to environment. It should raise a substantial question of environment relating to the implementation of the statutes specified in Schedule I of the NGT Act. A 'cause of action' might arise during the chain of events, in establishment of a project but would not be construed as a 'cause of action' under the provisions of the Section 14 of the NGT Act, 2010 unless it has a direct nexus to environment or it gives rise to a substantial environmental dispute. For example, acquisition of land simplicitor or issuance of notification under the provisions of the land acquisition laws, would not be an event that would trigger the period of limitation under the provisions of the NGT Act, 'being cause of action first arose'. A dispute giving rise to a 'cause of action' must essentially be an environmental*

[1] Kehar Singh v. State of Haryana, 2013 SCC OnLine NGT 52
[2] 2015 ALL (i) NGT REPORTER (2) (DELHI) 81

dispute and should relate to either one or more of the Acts stated in Schedule I to the NGT Act, 2010. If such dispute leading to 'cause of action' is alien to the question of environment or does not raise substantial question relating of environment, it would be incapable of triggering prescribed period of limitation under the NGT Act, 2010. [Ref: Liverpool and London S.P. and I Asson. Ltd. v. M.V. Sea Success I and Anr., (2004) 9 SCC 512, J. Mehta v. Union of India, 2013 ALL (I) NGT REPORTER (2) Delhi, 106, Kehar Singh v. State of Haryana, 2013 ALL (I) NGT REPORTER (DELHI) 556, Goa Foundation v. Union of India, 2013 ALL (I) NGT REPORTER DELHI 234].

Furthermore, the 'cause of action' has to be complete. For a dispute to culminate into a cause of action, actionable under Section 14 of the NGT Act, 2010, it has to be a 'composite cause of action' meaning that, it must combine all the ingredients spelled out under Section 14(1) and (2) of the NGT Act, 2010. It must satisfy all the legal requirements i.e. there must be a dispute. There should be a substantial question relating to environment or enforcement of any legal right relating to environment and such question should arise out of the implementation of the enactments specified in Schedule I. Action before the Tribunal must be taken within the prescribed period of limitation triggering from the date when all such ingredients are satisfied along with other legal requirements. Accrual of 'cause of action' as afore-stated would have to be considered as to when it first arose.

25. In contradistinction to 'cause of action first arose', there could be 'continuing cause of action', 'recurring cause of action' or 'successive cause of action'. These diverse connotations with reference to cause of action are not

synonymous. They certainly have a distinct and different meaning in law, 'Cause of action first arose' would refer to a definite point of time when requisite ingredients constituting that 'cause of action' were complete, providing applicant right to invoke the jurisdiction of the Court or the Tribunal. The 'Right to Sue' or 'right to take action' would be subsequent to an accrual of such right. The concept of continuing wrong which would be the foundation of continuous cause of action has been accepted by the Hon'ble Supreme Court in the case of Bal Krishna Savalram Pujari & Ors. v. Sh. Dayaneshwar Maharaj Sansthan & Ors., AIR 1959 SC 798.

28. The settled position of law is that in law of limitation, it is only the injury alone that is relevant and not the consequences of the injury. If the wrongful act causes the injury which is complete, there is no continuing wrong even though the damage resulting from the act may continue. In other words distinction must be made between continuance of legal injury and the continuance of its injurious effects. Where a wrongful act produces a state of affairs, every moment continuance of which is a new tort, a fresh cause of action for continuance lies. Wherever a suit is based on multiple cause of action, period of limitation will began to run from the date when the right to sue first accrues and successive violation of the right may not give rise to a fresh cause of action. [Ref: Khatri Hotels Private Limited and Anr. v. Union of India (UOI) and Anr., (2011) 9 SCC 126, Bal Krishna Savalram Pujari & Ors. v. Sh. Dayaneshwar Maharaj Sansthan & Ors, AIR 1959 SC 798, G.C. Sharma v. Municipal Corporation of Delhi, (1979) ILR 2 Delhi 771, Kuchibotha Kanakamma and Anr. v Tadepalli Ptanga Rao and Ors., AIR 1957 AP 419].

29. A cause of action which is complete in all respects gives the applicant a right to sue. An applicant has a right to bring an action upon a single cause of action while claiming different reliefs. Rule 14 of the National Green Tribunal (Practise and Procedure) Rules, 2011, shows the clear intent of the framers of the Rules that multiple reliefs can be claimed in an application provided they are consequential to one another and are based upon a single cause of action. Different causes of action, thus, may result in institution of different applications and therefore, there is exclusion of the concept of the 'joinder of causes of action' under the Rules of 2011. The multiple cause of action again would be of two kinds. One, which arise simultaneously and other, which arise at a different or successive point of time. In first kind, cause of action accrues at the time of completion of the wrong or injury. In latter, it may give rise to cause of action or if the statutes so provide when the 'cause of action first arose' even if the wrong was repeated. Where the injury or wrong is complete at different times and may be of similar and different nature, then every subsequent wrong depending upon the facts of the case may gives rise to a fresh cause of action.

To this general rule, there could be exceptions. In particular such exceptions could be carved out by the legislature itself. In a statute, where framers of law use the phraseology like 'cause of action first arose' in contradistinction to 'cause of action' simplicitor. Accrual of right to sue means accrual of cause of action for suit. The expressions 'when right to sue first arose' or 'cause of action first arose' connotes date when right to sue first accrued, although cause of action may have arisen even on subsequent occasions. Such expressions are noticed in Articles 58 of the Limitation Act, 1963. We may illustrate this

by giving an example with regard to the laws that we are dealing here. When an order granting or refusing Environmental Clearance is passed, right to bring an action accrues in favour of an aggrieved person. An aggrieved person may not challenge the order granting Environmental Clearance, however, if on subsequent event there is a breach or non-implementation of the terms and conditions of the Environmental Clearance order, it would give right to bring a fresh action and would be a complete and composite recurring cause of action providing a fresh period of limitation. It is also for the reason that the cause of action accruing from the breach of the conditions of the consent order is no way dependent upon the initial grant or refusal of the consent. Such an event would be a complete cause of action in itself giving rise to fresh right to sue. Thus, where the legislature specifically requires the action to be brought within the prescribed period of limitation computed from the date when the cause of action 'first arose', it would by necessary implication exclude the extension of limitation or fresh limitation being counted from every continuing wrong, so far, it relates to the same wrong or breach and necessarily not a recurring cause of action.

30. Now, we would deal with the concept of recurring cause of action. The word 'recurring' means, something happening again and again and not that which occurs only once. Such recurrence could be frequent or periodical. The recurring wrong could have new elements in addition to or in substitution of the first wrong or when 'cause of action first arose'. It could even have the same features but its recurrence is complete and composite. The recurring cause of action would not stand excluded by the expression 'cause of action first arose'. In some situation, it could even be a complete, distinct cause of action hardly having nexus to the

first breach or wrong, thus, not inviting the implicit consequences of the expression 'cause of action first arose'. The Supreme Court clarified the distinction between continuing and recurring cause of action with some finesse in the case of M. R. Gupta v. Union of India and others, (1995) 5 SCC 628, the Court held that:

> *"The appellant's grievance that his pay fixation was not in accordance with the rules, was the assertion of a continuing wrong against him which gave rise to a recurring cause of action each time he was paid a salary which was not computed in accordance with the rules. So long as the appellant is in service, a fresh cause of action arises every month when he is paid his monthly salary on the basis of a wrong computation made contrary to rules. It is no doubt true that it the appellant's claim is found correct on merits. He would be entitled to be paid according to the properly fixed pay scale in the future and the question of limitation would arise for recovery of the arrears for the past period. In other words, the appellant's claim, if any, for recovery of arrears calculated on the basis of difference in the pay which has become time barred would not be recoverable, but he would be entitled to proper fixation of his pay in accordance with rules and to cessation of a continuing wrong if on merits his claim is justified. Similarly, any other consequential relief claimed by him, such as, promotion etc. would also be subject to the defence of laches etc. to disentitle him to those reliefs. The pay fixation can be made only on the basis of the situation existing on 1.8.1978 without taking into account any other consequential relief which may be barred by his laches and the bar of limitation. It is to this limited*

extent of proper pay fixation the application cannot be treated as time barred since it is based on a recurring cause of action. The Tribunal misdirected itself when it treated the appellant's claim as 'one time action' meaning thereby that it was not a continuing wrong based on a recurring cause of action. The claim to be paid the correct salary computed on the basis of proper pay fixation, is a right which subsists during the entire tenure of service and can be exercised at the time of each payment of the salary when the employee is entitled to salary computed correctly in accordance with the rules. This right of a Government servant to be paid the correct salary throughout his tenure according to computation made in accordance with rules, is akin to the right of redemption which is an incident of a subsisting mortgage and subsists so long as the mortgage itself subsists, unless the equity of redemption is extinguished. It is settled that the right of redemption is of this kind. (See Thota China Subba Rao and Ors. v. Mattapalli, Raju and Ors. AIR (1950) F C1."

31. The Continuing cause of action would refer to the same act or transaction or series of such acts or transactions. The recurring cause of action would have an element of fresh cause which by itself would provide the applicant the right to sue. It may have even be de hors the first cause of action or the first wrong by which the right to sue accrues. Commission of breach or infringement may give recurring and fresh cause of action with each of such infringement like infringement of a trademark. Every rejection of a right in law could be termed as a recurring cause of action. [Ref: Ex. Sep. Roop Singh v. Union of India and Ors., 2006 (91) DRJ 324,

M/s. Bengal Waterproof Limited v. M/s. Bombay Waterproof Manufacturing Company and Another, (1997) 1 SCC 99].

32. The principle that emerges from the above discussion is that the 'cause of action' satisfying the ingredients for an action which might arise subsequently to an earlier event give result in accrual of fresh right to sue and hence reckoning of fresh period of limitation. A recurring or continuous cause of action may give rise to a fresh cause of action resulting in fresh accrual of right to sue. In such cases, a subsequent wrong or injury would be independent of the first wrong or injury and a subsequent, composite and complete cause of action would not be hit by the expression 'cause of action first arose' as it is independent accrual of right to sue. In other words, a recurring cause of action is a distinct and completed occurrence made of a fact or blend of composite facts giving rise to a fresh legal injury, fresh right to sue and triggering a fresh lease of limitation. It would not materially alter the character of the preposition that it has a reference to an event which had occurred earlier and was a complete cause of action in itself. In that sense, recurring cause of action which is complete in itself and satisfies the requisite ingredients would trigger a fresh period of limitation. To such composite and complete cause of action that has arisen subsequently, the phraseology of the 'cause of action first arose' would not effect in computing the period of limitation. The concept of cause of action first arose must essentially relate to the same event or series of events which have a direct linkage and arise from the same event. To put it simply, it would be act or series of acts which arise from the same event, may be at different stages. This expression would not de bar a composite and complete cause of action that has arisen subsequently. To illustratively demonstrate, we may refer to the challenge to the grant of Environmental

Clearance. When an appellant challenges the grant of Environmental Clearance, it cannot challenge its legality at one stage and its impacts at a subsequent stage. But, if the order granting Environmental Clearance is amended at a subsequent stage, then the appellant can challenge the subsequent amendments at a later stage, it being a complete and composite cause of action that has subsequently arisen and would not be hit by the concept of cause of action first arose."

15. The above observations fully deal with the issue. Limitation commences not merely from first step in the matter but from continuing facts which show substantial question of environment on account of violation of relevant environmental laws.

16. In the present case it is seen that the cause of action for the applicant is based *inter-alia* on:

i. A report dated 21.03.2014 of the Water Resources Department stating that construction activity was destroying the original water body and will prevent free flow of water.

ii. Letter dated 23.05.2014 of the Water Resources Department imposing conditions while permitting modification of existing water bodies, particularly, the condition that the area of pondage should not be reduced, connectivity of water bodies may be maintained and slope and cross sections are maintained as per the drawing.

iii. Report dated 24.06.2014 by the GCZMA to the effect that activity of the project proponent is a violation of CRZ, 2011 laws.

17. The application filed on 27.05.2014 cannot thus be held to be barred by limitation merely because on 02.09.2013, the applicant had made a complaint of general nature. The said complaint can hardly be said to be complete cause of action and foundation of the present application. The said complaint is quoted in full as follows:

> *"Sub: Fix date to conduct inspection of M/s Balaji Concepts site at Khandi-Bandoi of Village Cavelossim.*
>
> *Madam,*
>
> *We have noticed that M/s Balaji Concepts is moving several truckloads of mud into its area to fill the waterlogged bodies thereby destroying the existing ponds and water access within its area. It is also notice that most of the areas within its vicinity got water logged and the stagnant water smells due to blockage of water access. Such act of water blockade is illegal and bound to create disastrous consequences.*
>
> *As the water is stagnant due to blockage of water passage in the surrounding areas, it is most likely that several types of mosquitoes may start breeding. This may result in spread of several types of epidemics due to breeding of mosquitoes.*
>
> *It is also noticed that they have blocked the pathways/public access to river which is illegal.*

Hence, you are hereby requested to fix date to conduct inspection of the site of M/s Balaji Concepts immediately and intimate us so as to enable us to attend the said inspection."

18. The cause of action for approaching the Tribunal is a substantial question of environment and not merely a general allegation which may not amount to such substantial question. It may be difficult to say that complaint dated 02.09.2013 without further facts of alleged violation as mentioned in the reports which have been relied upon by the applicant by itself was substantial question of environment. We thus hold that the application is within limitation.

Re (ii): Whether the NGT can entertain the application in the nature of PIL which is maintainable before the High Court and the Hon'ble Supreme Court.

19. As regards the applicant being aggrieved party, learned counsel for the project proponent fairly states that this objection is not being raised in the present application but in other cases. However, learned counsel for the applicant points out that the matter is already dealt with by the Tribunal vide order dated 23.08.2016 in *Sameer Mehta v. U.O.I & Ors., 2016 NGTR (3) PB 1,* giving an interpretation to the expression 'aggrieved person' and observing that the expression has to be seen liberally once a substantial question of environment arises. While jurisdiction of the NGT is *sui generis* in terms of statutory provisions under the NGT Act, 2010,

an order necessary for protection of environment can be passed to enforce principles under Section 20 of the Act i.e. 'Precautionary' principle, 'Sustainable Development' principle and 'Polluter Pays' principle. It may be inevitable to pass orders in the nature of public interest. It may be said to be comparable or otherwise to PIL jurisdiction. Fact remains that jurisdiction under Section 15 read with Section 20 of the Act has to be exercised meaningfully to protect environment. The question is answered accordingly.

Re (iii): Order required to be passed on merits.

20. Coming to the merits, we are informed on behalf of the project proponent that 80% of the project has already completed. Learned counsel for the project proponent also states that water bodies have been filled only to the extent permitted by the Water Resources Department of the State of Goa and there is no violation of the environment norms or conditions subject to which the permission has been granted by the Water Resources Department.

21. We may also note that in the application violation alleged is of Goa State laws, learned counsel for the applicant submits that facts disclose violation of Schedule I laws, including Environment (Protection) Act, 1986.

22. Learned counsel for the applicant relies upon the report of the Water Resources Department of the State of Goa and GCZMA

referred to above and submits that the alleged violations need to be gone into.

23. Since the matter has been pending for the last about five years, having regard to the need for expeditious disposal based on correct and latest factual position, we consider it appropriate to direct furnishing of a joint report by representatives of the MoEF&CC, GCZMA, Goa State Pollution Control Board and Water Resources Department, State of Goa. The GCZMA will be the nodal agency for coordination and compliance. Such factual report dealing with the issue may be furnished within three months by email at ngt.filing@gmail.com. A copy of the order be sent each to the MoEF&CC, GCZMA, Goa State Pollution Control Board and Water Resources Department, State of Goa by email.

24. It will be open to the parties to furnish their respective versions to the GCZMA. It will also be open to the joint Committee to carry out inspection to ascertain status and assess the damage to the environment, if any, and suggest remedial measures.

List for further consideration on 28.08.2019.

Adarsh Kumar Goel, CP

K. Ramakrishnan, JM

Dr. Nagin Nanda, EM

April 24, 2019
Original Application No. 61/2014 (WZ)
(M.A. No. 24/2015)
AK

Item No. 02

BEFORE THE NATIONAL GREEN TRIBUNAL
PRINCIPAL BENCH, NEW DELHI
(Through Video Conferencing)

Original Application No. 41/2019 (WZ)

(I.A. No. 55/2019)

Federation of River Residency Cooperative Housing Society — Applicant (s)

Versus

Pimpri Chinchwad Municipal Corporation & Ors. — Respondent(s)

Date of hearing: 30.01.2020

CORAM : HON'BLE MR. JUSTICE S. P. WANGDI, JUDICIAL MEMBER
HON'BLE MR. SIDDHANTA DAS, EXPERT MEMBER

For Applicant(s): Mr. Ankur Mittal, Mr. Ankur Saboo and Mr. Parag Gandhi, Advocates

For Respondent(s): Mr. Amol Patayeet, Mr. Amit Lanke, and Makarand Nikam, City Engineer, for Respondent No. 1.
Ms. Manasi Joshi, Advocate for Respondent No. 3.

ORDER

1. This application was preferred alleging construction of Sewage Treatment Plant (STP) by the Pimpri-Chinchwad Municipal Corporation (PCMC) in the area between the river bank and Blue Flood Line of the Indrayani River which is a prohibited zone. It is *inter alia* alleged that because of such construction the integrity, riparian area of the Indrayani river system, the flood plains, sanitation of general public would be affected adversely and, therefore, deleterious to the environment.

2. When the matter came up before us for the first time on 22.05.2019, we deemed it necessary to call for a report from a joint

Committee comprising of the PCMC, Pune, Maharashtra State Pollution Control Board (MPCB) and the Pune Irrigation Division, Government of Maharashtra. The MPCB, being the nodal agency appointed for the purpose submitted its report on 16.08.2009 by e-mail and was taken on record on 17.09.2019. After consideration of the report, formal notices were issued upon the respondents who appeared as a consequence on 14.11.2019 on which day following order was passed:

"

1. ***The only question involved in the present case is with regard to the construction of STP within the blue line Zone of Indrayani River by the Pimpri Chinchwad Municipal Corporation (PCMC). Report called for from the joint Committee comprising of PCMC, Pune, the Maharashtra Pollution Control Board (MPCB) and the Pune Irrigation Division, Government of Maharashtra indicates that the Sewage Treatment Plant (STP) is being constructed in the prohibited Zone, i.e., blue line Zone of Indrayani river.***

2. ***It is also stated that the existing location is not suitable for construction of STP apart from the fact that PCMC has not obtained Consent to Establish for the STP. We have also taken note of the status report of STP filed as Annexure I to the report by which reference has been made to technical circulars dated 16.11.2015 and 08.03.2018 of the Water Resource Development (WRD) resolution which substantiate that the STP construction is on a land bearing Gat No. 90 and falls in the blue line of the river and is a prohibited zone for permanent constructions.***

3. ***Notification dated 18.09.2017 issued by the Government of Maharashtra, which has been filed by the Applicant in support of his contention also indicate that area between the river bank and blue line (Flood line towards the river bank) has been declared as prohibited zone for any construction except for parking, open vegetable market with otta type construction, garden, open space, cremation and burial ground, public toilet or like uses, provided the land is feasible for such development.***

4. ***A conjoint reading of all the documents and the report filed by the Committee through the MPCB would categorically indicate that the STP has been constructed on a prohibited zone without obtaining Consent to Establish from the State PCB. Taking into consideration these facts, the application could have been disposed off with appropriate directions***

> ***but, it has been submitted on behalf of the PCMC that by GR dated 03.05.2018 construction of STP is permissible within the blue line Zone. He also submits that a report has been filed on 12.11.2019 on behalf of the PCMC indicating such fact. However, we do not find such report in our records.***
>
> ***5-7 xxxx----------xxxx----------xxxx"***

3. In their affidavit-in-reply, the PCMC took exceptions to the Committee's report referred to earlier, essentially asserting that construction of the STPs was permissible in the no construction zone of rivers under GR dated 03.05.2018 filed as Annexure R-7 to the affidavit.

4. During the course of hearing today, the Learned counsel for the PCMC submitted that GR dated 03.05.2018 (Annexure R-7) are the "guidelines for utilization of prohibited and controlled area and marking the flood line so as to prevent any construction within the flood line and avoid the flood calamity" (hereinafter referred to as 'the guidelines') issued by the Water Resources Department, Government of Maharashtra on 03.05.2018. Referring to Clause 7 of the guidelines, it was contended that the prohibitive zone can be utilized in the form of open land for certain purposes including public toilets and sewage disposal facility in such a way that there is no obstruction in the flow, the water carriage capacity of the river is not reduced and that there is no change in the intersection of the river. For convenience we may reproduce Clause 7 referred to above:

> ***"7. The Prohibitive Zone can be utilized in the form of open land, for example gardens, play grounds, or light crops. Wherever the right to grow crops is established as a result of customary use, such places should be utilized for such purposes (as Watermelon/Sweet Melon/Melon plantations, public toilets and sewage disposal facility) in such a way that there is no obstruction in the river flow, the***

water carriage capacity of the river is not reduced and there is no change in the intersection of the river."

5. On the other hand, learned Counsel for the Appellant pointed out that as a consequence of the resolution passed by the General Body of PCMC on 27.06.2013, it was decided to demarcate the flood lines on the revised Development Plan of the PCMC for which purpose it was decided to include a new Rule No. 9.4 in the Development Control Rules for PCMC dated 17.12.1990 to provide for use/development in the flood lines. Notification was thus issued *inter alia* introducing such amendment to the Development Control Rules for PCMC *vide* Notification dated 18.09.2017. The Sanctioned New Rule 9.4 is reproduced as below:

"Sanctioned New Rule No. 9.4

The development in the area falling in the flood lines will be governed as follows:-

i) Area between the river bank and blue flood line (Flood line towards the river bank) shall be prohibited zone for any construction zone prohibits any construction except parking, open vegetable market with otta type construction, garden, open space, cremation and burial ground, public toilet or like uses, provided the land is feasible of such development.

Provided further that redevelopment of the existing authorized properties within river bank and blue flood line, may be permitted at a height of 0.45m above red flood line level subject to NOC from Irrigation Department.

ii) Area between blue flood line and red flood line shall be restrictive zone for the purpose of construction. The construction within this area be permitted at a height of 0.45m above the red flood line level.

iii) If the area between the river bank and blue flood line or red flood line forms the part of the entire plot in development zone i.e. residential, commercial, public-semi-public, industrial, then FSI of this part of land may be allowed to be utilized on remaining land.

iv) The blue and red flood line shown on the development plan shall stand modified as and when

it is modified by the Irrigation Department for a stretch of water course. In such case it shall be necessary to issue order to that effect by the Municipal Commissioner."

6. A bare reading of clause 9.4(i) above most categorically prohibits any construction except parking, open vegetable market with otta type construction, garden, open space, cremation and burial ground, public toilet or like uses, provided the land is feasible of such development. Provided that redevelopment of the existing authorized properties within the river bank and Blue Flood Line, may be permitted at a height of 0.45 meter above Red Flood Line level subject to NOC from the Irrigation Department.

7. It is, therefore, quite apparent that from the conspectus of the various provisions referred to above, utilization of open land in the prohibitive zone even for the purposes mentioned in Clause 7 of the guidelines for various activities is permissible only if there is no obstruction caused in the river flow, the water carriage capacity of the river is not reduced and that there is no change in the intersection of the river. In the light of this position, the observations in the report of the Joint Committee comprising of the PCMC, Pune, MPCB and the Pune Irrigation Department, Government of Maharashtra assumes relevance and, therefore, is reproduced below:-

"(i) The location of STP is on land at गट. क्र. 1/130, Chikhali, Tal. Haveli, Dist. Pune, which is affected by blue line.

(ii) The said location falls in Blue line of the river Indrayani and there is obstruction in the natural flow of river during rainy season.

(iii) The construction work of STP was found in progress. Excavation Work was almost completed and some construction was started.

> ***2. Considering the above facts & observations made during the visit, MPCB and Irrigation Department are of view that the existing location is not suitable for construction of STP. The Pimpri Chinchwad Municipal Corporation has not obtain Consent to Establish for their STP at Chikhali, Tal. Haveli, Dist. Pune."***

8. The report as would be evident from the record is prepared by a Committee constituted by the MPCB which is an independent statutory entity and a representative of the Irrigation Department which is the competent authority having the requisite expertise to deal with matters relating to river banks. Thus the contentions of the PCMC that it had its own opinion regarding the matter cannot be accepted and would naturally be overridden by the opinion of the experts. Moreover, the guidelines dated 03.05.2018 have obviously been issued by the Water Resources Department as an executive instruction which cannot override a statutory Notification or a sub-ordinate legislation like the Development Control Rules issued under Section 31(1) of Maharashtra Regional & Town Planning Act, 1996. Rule 9.4 having been issued under the said provision of law assumes statutory character and all circulars, guidelines or orders issued under the executive power of a State to the extent that are in conflict with the statutory Notifications would stand superseded. Clause 7 of the guidelines, therefore, stands superseded so far as it is in consistent or in conflict with the Notification dated 18.09.2017.

9. Having regard to the facts and circumstances set out above, we have no hesitation in holding that the questioned STP has been constructed within the prohibitive zone and, apart from the fact

that the PCMC did not have the necessary Consent to Establish, the structure (STP in the present case) besides having been raised at a location which is not suitable for construction of STP, is also obstructing the natural flow of the river during the rainy season.

10. As a consequence, we direct the PCMC to immediately demolish the STP in question and take steps to construct one at some other suitable site in accordance with law. The entire exercise shall be carried out within a period of one month under the strict supervision of the MPCB and the Irrigation Department, Government of Maharashtra.

11. Since, during the construction of the STP severe damage was caused to the environment and ecology of the area, we direct the MPCB to assess the ecological damage by taking scientific support of experts and recover the same from the PCMC.

12. Report of compliance shall be filed within three months in the Registry through email at judicial-ngt@gov.in.

13. In the result, the application is allowed.

14. The application thus stands disposed off along with the connected I.A.

15. No order as to costs.

S.P. Wangdi, JM

Siddhanta Das, EM

30th January, 2020
O.A. No. 41/2019 (WZ)
avt

ITEM NO.8 Virtual Court 3 SECTION XVII

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Civil Appeal No(s). 2083/2020

PIMPRI CHINCHWAD MUNICIPAL CORPORATION Appellant(s)

VERSUS

FEDERATION OF RIVER RESIDENCY COOPERATIVE HOUSING SOCIETY & ORS.
Respondent(s)

(IA No.43751/2020-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT and IA No.43749/2020-STAY APPLICATION and IA No.43752/2020-EXEMPTION FROM FILING O.T.)

Date : 04-06-2020 This appeal was called on for hearing today.

CORAM :
HON'BLE MR. JUSTICE ROHINTON FALI NARIMAN
HON'BLE MR. JUSTICE NAVIN SINHA
HON'BLE MR. JUSTICE B.R. GAVAI

For Appellant(s) Mr. Shivaji M. Jadhav, AOR
Mr. Aditya P. Khanna, Adv.

For Respondent(s)

UPON hearing the counsel the Court made the following
O R D E R
The appeal is dismissed in terms of the signed order.

Pending applications, if any, are disposed of.

(NEELAM GULATI) (NISHA TRIPATHI)
ASTT. REGISTRAR-cum-PS BRANCH OFFICER
(signed order is placed on the file)

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIl APPEAL NO. 2083 OF 2020

PIMPRI CHINCHWAD MUNICIPAL CORPORATION Appellant(s)

VERSUS

FEDERATION OF RIVER RESIDENCY COOPERATIVE HOUSING SOCIETY & ORS.
Respondent(s)

O R D E R

Heard the learned counsel for the appellant.

We do not find any reason to interfere with the Impugned Order passed by the National Green Tribunal, Principal Bench at New Delhi.

Consequently, the appeal is dismissed.

Pending applications, if any, are disposed of.

.....J.
(ROHINTON FALI NARIMAN)

.....J.
(NAVIN SINHA)

.....J.
(B.R. GAVAI)

NEW DELHI
JUNE 04, 2020

Item No. 03 Court No. 1

BEFORE THE NATIONAL GREEN TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

(By Video Conferencing)

Letter of Pimpri Chinchwad Municipal Corporation
In Original Application No. 41/2019(WZ)

Federation of River Residency
Cooperative Housing Society Applicant(s)

Versus

Pimpri Chinchwad Municipal Corporation & Ors. Respondent(s)

Date of hearing: 05.08.2020

CORAM: HON'BLE MR. JUSTICE ADARSH KUMAR GOEL, CHAIRPERSON
HON'BLE MR. JUSTICE S. P. WANGDI, JUDICIAL MEMBER
HON'BLE DR. NAGIN NANDA, EXPERT MEMBER

ORDER

The matter has been listed on the basis of a letter from the Pimpri Chinchwad Municipal Corporation which in substance seeks review of the order dated 30.01.2020 was passed by this Tribunal, after hearing the parties. As per record, Civil Appeal No. 2083/2020 against the order of this Tribunal was dismissed on 04.06.2020. No further order is necessary. The letter is disposed of.

A copy of this order be sent to the Pimpri Chinchwad Municipal Corporation by email.

Adarsh Kumar Goel, CP

S. P. Wangdi, JM

Dr. Nagin Nanda, EM

August 05, 2020
A

3-Judge Bench
2019
March 5

(2019) 18 Supreme Court Cases 494

(BEFORE DR A.K. SIKRI, S. ABDUL NAZEER AND M.R. SHAH, JJ.)

MANTRI TECHZONE PRIVATE LIMITED . . Appellant;

Versus

FORWARD FOUNDATION AND OTHERS . . Respondents.

Civil Appeals No. 5016 of 2016† with Nos. 8002-8003, 9227, 10992-95, 12152, 12156-60, 12326 of 2016, 1343, 4923-24 and 14966 of 2017 and 2246 of 2018, decided on March 5, 2019

A. **Environment Law — Polluter Pays Principle and Remedial/Compensatory/Punitive Measures — Nature and Scope — Power of NGT to direct Remedial/Compensatory/Punitive Measures**

— NGT's power to grant and give directions for relief, compensation and restitution under NGT Act, 2010 — Scope of — Overriding effect of NGT Act, 2010 over State legislation in cases of conflict — Extent of

— Held, NGT while directing restoration of environment can specify buffer zones around specific lakes and water bodies in contradiction to zoning regulations under the State Municipal Corporation Act or Master Plan framed under town planning laws, as NGT Act has overriding effect — NGT Act being a Central Act enacted under Sch. VII List I Entry 13 of the Constitution shall have overriding effect over State legislation — Therefore, specific directions of NGT relating to penalty (on basis of pollution pays principle) and environmental restoration (liability being on project proponents, who had caused damage to water bodies), affirmed even if NGT's direction relating to buffer zones (no construction zones of various lengths specified for water body types concerned) was different from zoning regulations of State Government

— But general direction of NGT relating to all buffer zones not relating to project proponents and differing from State zoning regulations, set aside — Thus Direction/Condition (1) in order dt. 4-5-2016 in *Forward Foundation*, 2016 SCC OnLine NGT 1409, set aside except directions issued against R-9 & R-10

— Constitution of India — Sch. VII List I Entry 13 — Water/River/Coastal Pollution — Water Conservation/Preservation, Development Projects and Interlinking of Rivers — Primacy of environmental laws over town planning laws — Wetlands (Conservation and Management) Rules, 2010 — Local Government, Municipalities and Panchayats — Town Planning — Ecology/Environmental clearance — Layout/Master/Zonal Plan — Primacy of environmental laws over — National Green Tribunal Act, 2010, Ss. 33, 14, 15, 20 and 22 (Paras 39 to 47 and 60 to 63)

[**Ed.**: Project proponents are Respondents 9 and 10 in Original Application No. 222 of 2014 and appellants in in Civil Appeals Nos. 5016 and 8002-03 of 2016.]

† Arising from the Judgment and Order in *Forward Foundation* v. *State of Karnataka*, 2015 SCC OnLine NGT 5 (National Green Tribunal, Principal Bench at New Delhi, Original Application No. 222 of 2014, dt. 7-5-2015) and *Forward Foundation* v. *State of Karnataka*, 2016 SCC OnLine NGT 1409 (National Green Tribunal, Principal Bench at New Delhi, Original Application No. 222 of 2014, dt. 4-5-2016)

B. **Environment Law — National Green Tribunal Act, 2010 — S. 22 — Appeal to Supreme Court under — Scope**

— Held, appeal under S. 22 has to be read subject to conditions provided therein — Thus appeal restricted to substantial question of law arising from judgment of NGT — Merely because remedy of appeal is provided, it does not ipso facto permit appellants to agitate their appeal to seek re-appreciation of factual matrix of entire matter — Civil Procedure Code, 1908, S. 100 (Paras 35 to 38 and 55)

C. **Environment Law — National Green Tribunal Act, 2010 — S. 22 — Appeal to Supreme Court under — Whether raises substantial question(s) of law — Test**

— It has to be tested whether the question (i) is of general public importance, (ii) directly and substantially affects rights of parties and (iii) is an open question or is not free from difficulty or calls for discussion of alternative views — If question is settled by highest court or plea raised is palpably absurd, it would not be substantial question — Civil Procedure Code, 1908, S. 100 (Paras 35 to 38)

D. **Environment Law — National Green Tribunal Act, 2010 — S. 15 r/w Ss. 20, 33, 14 and 22 — Limitation of 6 months under S. 14 or 5 yrs under S. 15 — As matter related to environmental degradation and its restoration, limitation of 5 yrs under S. 15, held, would apply — A broad construction should apply to such beneficial legislation — Application before Tribunal not barred by limitation**

— Considering specific prayer of applicants before NGT, evidence supported by data, findings arrived at by NGT, and jurisdiction of NGT it is not an application under S. 14 simpliciter — It was a petition under S. 15 — Non-mention of or erroneous mention of provision of law, not a bar to pass appropriate orders, if NGT had jurisdiction in respect of same — Directions issued by NGT against both project proponents in present case did not suffer from any perversity — General Principles of Environmental Law — Polluter Pays Principle and Remedial/Compensatory/Punitive Measures — Nature and Scope — Limitation period for approaching NGT — Reckoning of (Paras 48 to 55)

E. **Environment Law — National Green Tribunal Act, 2010 — S. 15 r/w Ss. 20 and 33 — Application before Tribunal, when not barred by res judicata due to earlier writ petition**

— Parties, not common — Issues not directly and substantially same, writ petition related to land acquisition, present application related to environment, ecology and their restoration — No commonality of cause of action of likelihood of conflict between judgments — Prayer and genesis entirely different in their scope and relief — Practice and Procedure — Res Judicata (Paras 56 to 59)

The present appeals were filed under Section 22 of the National Green Tribunal Act, 2010 (the NGT Act, 2010) against the judgment of restoration and penalty of the Tribunal.

Disposing of the appeals, the Supreme Court

Held :

Appeal to Supreme Court

The proper test for determining whether a question of law raised in the case is substantial would be whether it is of general public importance or whether it directly and substantially affects the rights of the parties and if so whether it is either an open question in the sense that it is not finally settled by the Court or by the Privy Council or by the Federal Court or is not free from difficulty or calls for discussion of alternative views. If the question is settled by the highest court or the general principles to be applied in determining the question are well settled and there is a mere question of applying those principles or that the plea raised is palpably absurd the question would not be a substantial question of law. (Para 37)

Chunilal V. Mehta & Sons Ltd. v. *Century Spg. & Mfg. Co. Ltd.*, 1962 Supp (3) SCR 549 : AIR 1962 SC 1314, *relied on*

Further, merely because the remedy of appeal is provided against the decision of the Tribunal on a substantial question of law alone, that does not ipso facto permit the appellants to agitate their appeal to seek reappreciation of the factual matrix of the entire matter. The appellants cannot seek to re-argue their entire case to seek wholesale reappreciation of evidence and the factual matrix that has been considered by the Tribunal is ex facie impermissible under Section 22 of the NGT Act, 2010. There cannot be fresh appreciation or reappreciation of facts and evidence in a statutory appeal under this provision. (Paras 36 to 38)

Jurisdiction of Tribunal

The first question is in relation to the maintainability of the application before the Tribunal. (Para 39)

The Tribunal has been established under a constitutional mandate provided in Schedule VII List I Entry 13 of the Constitution, to implement the decision taken at the United Nations Conference on Environment and Development. The Tribunal is a specialised judicial body for effective and expeditious disposal of cases relating to environmental protection and conservation of forests and other natural resources including enforcement of any legal right relating to environment. The right to healthy environment has been construed as a part of the right to life under Article 21 by way of judicial pronouncements. Therefore, the Tribunal has special jurisdiction for enforcement of environmental rights. (Para 40)

The jurisdiction of the Tribunal is provided under Sections 14, 15 and 16 of the NGT Act, 2010. (Para 41)

The principles of sustainable development, precautionary principle and polluter pays, propounded by this Court by way of multiple judicial pronouncements, have now been embedded as a bedrock of environmental jurisprudence under the NGT Act. Therefore, wherever the environment and ecology are being compromised and jeopardised, the Tribunal can apply Section 20 of the NGT Act, 2010 for taking restorative measures in the interest of the environment. (Para 43)

The NGT Act being a beneficial legislation, the power bestowed upon the Tribunal would not be read narrowly. An interpretation which furthers the interests of environment must be given a broader reading. The existence of the Tribunal

without its broad restorative powers under Section 15(1)(*c*) read with Section 20 of the NGT Act, 2010, would render it ineffective and toothless, and shall betray the legislative intent in setting up a specialised Tribunal specifically to address environmental concerns. The Tribunal, specially constituted with Judicial Members as well as with experts in the field of environment, has a legal obligation to provide for preventive and restorative measures in the interest of the environment. (Para 44)

Kishore Lal v. *ESI Corpn.*, (2007) 4 SCC 579 : (2007) 2 SCC (L&S) 1, *relied on*

Section 15 of the NGT Act, 2010 provides power and jurisdiction, independent of Section 14 thereof. Further, Section 14(3) juxtaposed with Section 15(3) of the NGT Act, 2010, are separate provisions for filing distinct applications before the Tribunal with distinct periods of limitation, thereby amply demonstrating that jurisdiction of the Tribunal flows from these sections (i.e. Sections 14 and 15 of the NGT Act, 2010) independently. The limitation provided in Section 14 is a period of 6 months from the date on which the cause of action first arose and whereas in Section 15 it is 5 years. Therefore, the legislative intent is clear to keep Section 14 and 15 as self-contained jurisdictions. (Para 45)

Further, Section 18 of the NGT Act, 2010 recognises the right to file applications each under Section 14 as well as Section 15. Therefore, it cannot be argued that Section 14 provides jurisdiction to the Tribunal while Section 15 merely supplements the same with powers. The only tenable interpretation to these provisions would be to read the provisions broadly in favour of cloaking the Tribunal with effective authority. An interpretation that is in favour of conferring jurisdiction should be preferred rather than one taking away jurisdiction. (Para 46)

Section 33 of the NGT Act, 2010 provides an overriding effect to the provisions of the Act over anything inconsistent contained in any other law or in any instrument having effect by virtue of law other than this Act. This gives the Tribunal overriding powers over anything inconsistent contained in the KIAD Act, the Planning Act, the Karnataka Municipal Corporations Act, 1976; and the Revised Master Plan of Bengaluru, 2015 (RMP). A Central legislation enacted under Entry 13 of Schedule VII List I of the Constitution will have the overriding effect over State legislations. The corollary is that the Tribunal while providing for restoration of environment in an area, can specify buffer zones around specific lakes and waterbodies in contradiction with zoning regulations under these statutes or RMP. (Para 47)

The State of Karnataka is aggrieved by the Direction/Condition (1) of the order dated 4-5-2016 of the Tribunal in *Forward Foundation*, 2016 SCC OnLine NGT 1409. The applicants have no objection to set aside the aforesaid impugned portion of the order insofar as the appellants in all the appeals except the appeals filed by Respondents 9 and 10 are concerned. The aforesaid portion of the order contains not only general directions but also certain directions against Respondents 9 and 10. Therefore, only that portion of the order which does not pertain to Respondents 9 and 10 needs to be quashed. Civil Appeals Nos. 5016 and 8002-03 of 2016 filed by appellant-Respondents 9 and 10 are dismissed. The impugned judgment and order insofar as appellant-Respondents 9 and 10 are concerned is sustained. All the other appeals are allowed and Direction/Condition (1) in the order dated 4-5-2016 is set aside except the direction issued against Respondents 9 and 10. (Paras 60 to 62)

Forward Foundation v. *State of Karnataka*, 2016 SCC OnLine NGT 1409, *partly reversed*

Core Mind Software & Services (P) Ltd. v. *Forward Foundation*, 2015 SCC OnLine SC 1778, *referred to*

Limitation

OA No. 222 of 2014 was not an application simpliciter under Section 14 of the NGT Act, 2010. It was an application where a specific prayer has been made with reference to Lake Development Authority's (LDA) Report dated 12-6-2013 and the Ministry of Environment, Forests and Climate Change (MoEF) Monitoring Committee Report dated 14-8-2013 for restoration of ecologically sensitive land and for maintaining the sensitive in its natural condition so that the ecological balance of the area is not disturbed. It is clear from the documentary evidence supported by data, that the project proponents have committed breaches and the implementation of the project is bound to have serious adverse impact on the ecology, hydrology and the environment in the catchment area of Bellandur Lake. The environmental degradation as established from the documents would give rise to an independent cause of action. Therefore, this was a petition under Section 15 of the NGT Act, 2010 and thus it could be filed within 5 years from the date on which the cause for such compensation or relief first arose. (Para 49)

In fact, in the original application before the Tribunal there was no mention of the provision under which it was being filed. Non-mention of or erroneous mention of the provision of law would not be of any relevance, if the court had the requisite jurisdiction to pass an order. It would be a mere irregularity and would not vitiate the application or the judicial order of the Tribunal. (Para 50)

The Tribunal has pointed out on the basis of the Committee Report of August 2015, that the appellant had encroached 3 ac 10 guntas of Bellandur Lake and a boundary wall has been raised around the said land. The Tribunal has also found that the project proponents have violated the Master Plan. They have not obtained the mandatory clearance from the Sensitive Zone Committee constituted by the Government of Karnataka. It is also clear from the materials on record that there are several other violations by the project proponents. The Tribunal has discussed all these issues from para 52 onwards. It is also clear from the materials on record that there is a definite possibility of environment, ecology, lakes and wetland being adversely affected by these projects. (Paras 52 and 51)

Forward Foundation v. *State of Karnataka*, 2015 SCC OnLine NGT 5, *affirmed*

The findings arrived at by the Tribunal are not only based on the documents that were available on record but also on the pleadings that were made by the parties buttressed by the Committee report and the inspection note of the expert members. The directions passed and the penalty imposed by the Tribunal on both project proponents are valid and sustainable and do not suffer from any perversity. (Para 54)

Forward Foundation v. *State of Karnataka*, 2015 SCC OnLine NGT 5, *affirmed*

It is impermissible for the appellants to seek a factual review through the methodology of reappreciation of factual matrix by the Supreme Court under Section 22 of the NGT Act, 2010. (Para 55)

Forward Foundation v. *State of Karnataka*, 2016 SCC OnLine NGT 637, *referred to*

SS-D/62061/S

Advocates who appeared in this case :

Udaya Holla, Advocate General, Shashi Kiran Shetty, Maninder Singh, Dhruv Mehta, Mukul Rohatgi, Neeraj Kishan Kaul, R. Venkataramani, Sajan Poovayya, Ms Kiran Suri and Basavaprabhu S. Patil, Senior Advocates [Mahesh Thakur, Ms Anuparna Bordoloi, Savyasachi Sahai, Ms Vipasha Singh, Gaurav Goel, V.N. Raghupathy, M/s Devasa & Co., Devashish Bharuka, Justine George, Prabhas Bajaj, Ms Kanika

S., Ravi Bharuka, Ms Sarushree, Satish Kumar, Gaurav Agrawal, George Thomas, Anurag Gharote, A.S. Bhasme, Abid Ali Beeran P., Nishanth Patil, Rohit Prasad, Ananth Suresh, S.K. Kulkarni, M. Gireesh Kumar, Ankur S. Kulkarni, Shekhar G. Devasa, Bhuvanendra K.V., S. Mahesh, Manish Tiwari, Luv Kumar, Praveen Vignesh, Priyadarshi Banerjee, Pratibhanu Singh Kharola, Saransh Jain, Meka V. Ramakrishna, Madhavam Sharma, Ms Sriparna Dutta Choudhury, Udayaditya Banerjee, Mahesh Agrawal, Ankur Saigal, Ms Tanvi Manchanda, Nithin P., Ms Priyanka M.P., E.C. Agrawala, S.J. Amith, Ms Rithika Gambir, A. Shwarya Kumar, Dr (Ms) Vipin Gupta, Parikshit P. Angadi, Chinmay Deshpande, Geet Ahuja, Parikshit Angadi, Anup Kumar, O.P. Bhadani, Rajesh Mahale, Anand Sanjay M. Nuli, Dharm Singh, Sandeep Grover, Ms Pankhuri Bhardwaj and Pai Amit, Advocates] for the appearing parties.

Chronological list of cases cited ***on page(s)***

1. 2016 SCC OnLine NGT 1409, *Forward Foundation* v. *State of Karnataka* **(partly reversed)** 499*e*, 499*g*, 509*a*, 514*e*, 522*e-f*, 523*e-f*
2. 2016 SCC OnLine NGT 637, *Forward Foundation* v. *State of Karnataka* 508*e*
3. 2015 SCC OnLine SC 1778, *Core Mind Software & Services (P) Ltd.* v. *Forward Foundation* 507*f-g*
4. 2015 SCC OnLine NGT 5, *Forward Foundation* v. *State of Karnataka* 499*e*, 505*e-f*, 508*c*, 520*a-b*, 521*a*, 522*a*
5. (2007) 4 SCC 579 : (2007) 2 SCC (L&S) 1, *Kishore Lal* v. *ESI Corpn.* 518*a*
6. 1962 Supp (3) SCR 549 : AIR 1962 SC 1314, *Chunilal V. Mehta & Sons Ltd.* v. *Century Spg. & Mfg. Co. Ltd.* 516*e-f*

The Judgment of the Court was delivered by

S. ABDUL NAZEER, J.— These appeals have been preferred under Section 22 of the National Green Tribunal Act, 2010 (for brevity "the NGT Act") challenging the judgment and order dated 7-5-2015[1] and 4-5-2016[2] respectively passed by the Principal Bench of the National Green Tribunal, New Delhi (for short "the Tribunal").

2. The appellants in Civil Appeals Nos. 5016 of 2016 and 8002-03 of 2016 are Respondents 9 and 10 in Original Application No. 222 of 2014 (hereinafter referred to as "Respondents 9 and 10"). The said application was filed by Respondents 1 to 3 herein (hereinafter referred to as "the applicants"). Respondents 4 to 7 in these appeals are the State of Karnataka and other authorities. They were arrayed as Respondents 1 to 4 in the application. Respondents 12 and 13 herein were subsequently impleaded in the application (for short "the impleaded respondents").

3. The State of Karnataka has filed Civil Appeals Nos. 4923-24 of 2017, challenging the general condition and Direction (1) contained in the order of the Tribunal dated 4-5-2016[2]. The other appeals have been filed by different entities, who were not parties before the Tribunal challenging the order of the Tribunal dated 4-5-2016[2] insofar as it directs a buffer/green zone of 75 m in respect of lakes, 50 m in respect of primary Rajakaluves, 35 m in

1 *Forward Foundation* v. *State of Karnataka*, 2015 SCC OnLine NGT 5
2 *Forward Foundation* v. *State of Karnataka*, 2016 SCC OnLine NGT 1409

case of secondary Rajakaluves and 25 m in case of tertiary Rajakaluves with retrospective effect. According to them, they are adversely affected by the aforesaid condition in the impugned order.

4. The applicants filed OA No. 222 of 2014 by contending that ecologically sensitive land was allotted by the Karnataka Industrial Area Development Board (for short "KIADB") to Respondents 9 and 10 vide Notifications dated 23-4-2004 and 7-5-2004 respectively for setting up of software technology park, commercial and residential complex, hotel and multi-level car parks. The Master Plan formulated by the Bangalore Development Authority (for short "BDA"), identifies the allotted land as "residential sensitive", though the same land was identified in the Draft Master Plan as "protected zone". It was further contended that the revenue map in respect of properties as referred in the land lease agreements has multiple Rajakaluves (storm water drains). The development projects in question sit right on the catchment and wetland area which feeds the Rajakaluves, which in turn drains rainwater into Bellandur Lake. The project will thus encroach two Rajakaluves of 1.38 ac and 1.23 ac each.

5. The satellite digital images of the area from the year 2000 to 2012 show encroachment upon these Rajakaluves, as well as the manner in which they are covered by the construction. The State Level Expert Appraisal Committee (for short "SEAC"), which was to assist the State Level Environment Impact Assessment Authority (for short "SEIAA"), held its meetings on various dates to examine the project. It had required Appellant 9 to submit a revised NOC from the Bangalore Water Supply and Sewerage Board (for short "BWSSB") for the project in question. It was also observed that the project lies between Bellandur Lake and Agara Lake. Respondent 9 was also directed to take protective measures to spare the buffer zone around Rajakaluves and also to commit that no construction would be carried out in the buffer zone. In the meeting of 11-11-2011, it was recorded that the project proposes car parking facility for 14,438 cars in that environmentally sensitive area.

6. It was alleged that NOC was issued covering an area of 17,404 sq m whereas the built-up area, as noted by SEAC, is 13,50,454.98 sq m. Respondent 9 obtained NOC from BWSSB by concealing material facts and by misrepresenting that NOC is required only for residential units which form a very minuscule part of the total project. Respondent 9 had approached the Karnataka State Pollution Control Board (for short "KSPCB") for obtaining clearance, which was granted on 4-9-2012 subject to the fulfilment of the conditions stated in the consent order which included leaving the buffer zone all along the valley and towards the lake. It is further contended that the grant of consent by KSPCB to Respondent 9 also contained a condition with regard to obtaining environmental clearance from the competent authority and no construction was to commence until such clearance was granted.

7. The applicants further contended that Respondent 9 violated the conditions and commenced construction of the project. There was also violation of the stipulations stated in the approval of SEAC in relation to buffer zone and construction over Rajakaluves. The construction had been commenced over

the ecologically sensitive area of the lake catchment area and valley, with utter disregard to the statutory compliances. Referring to these blatant irregularities, the applicant submitted that the conversion of land from "protected zone" to "residential sensitive area" is violative of the law. The project is right in the midst of a fragile wetland area which ought not to have been disturbed by the development activity. The fragile environment of the catchment area has been exposed to grave and irreparable damage. It has severely disturbed and damaged the Rajakaluves. Respondents 9 and 10 started to level the land by filling it with debris, thus causing damage to the drains. The conditions with regard to no disturbance to the storm water drains, natural valleys and buffer area in and around the Rajakaluves have been violated. It has in turn, affected the groundwater table and borewells which are the only source of water for thousands of households. Fishing and agriculture which depends on Bellandur Lake are also severely affected. The construction over the wetland between the two lakes is in violation of the Wetlands (Conservation of Management) Rules, 2010 (for short "the 2010 Rules").

8. It was submitted that SEIAA in its meeting dated 29-9-2012, decided to close the file pertaining to Respondent 10 due to non-submission of requisite information and the application thereof was rejected in November 2012. Despite the rejection, Respondent 10 commenced construction on the project in full swing.

9. The applicants also relied upon the findings of the Joint Legislative Committee, constituted under the Chairmanship of Shri A.T. Ramaswamy in the month of July 2005, which stated that there were 262 waterbodies in Bangalore City in 1961 which drastically came down because of trespass and encroachments. It was also affirmed that about 840 km of Rajakaluves have been encroached upon in several places and have become sewage channels. The applicants also relied on the report of the Committee under the Chairmanship of Hon'ble Justice N.K. Patil suggesting immediate remedial action in order to remove encroachments on the lake area and the Rajakaluves and preservation of the lakes in and around Bangalore City. It was further contended that other Expert Committees, including Lakshman Rau Expert Committee had also submitted proposals for preservation, restoration or otherwise of the existing tanks in Bangalore metropolitan area which recommended to maintain good water surface in Bellandur tank and to ensure that the water in the tank is not polluted. The Central Government in August 2013 had issued an advisory on conservation and restoration of waterbodies in the urban areas. The applicants claim to have obtained monitoring report of the project by Respondent 5, Ministry of Environment and Forests, through RTI on 21-8-2013. The report dated 14-8-2013 revealed that the project proponents are in clear breach of their undertaking to carry out all precautionary measures to ensure that Bellandur Lake is not affected by the construction and operational phase of the project. This approach is particularly with regard to the major alteration in natural sloping pattern of the project site and natural hydrology of the area.

10. The Lake Development Authority (for short "LDA"), after inspection in the catchment area of Bellandur Lake submitted its report dated 12-6-2013 which confirms that the project will have disastrous impact, including deleterious effect on Bellandur Lake. This report was brought to the notice of KIADB. LDA has also opined that the land should be classified and maintained as sensitive area. KIADB called upon Respondent 9 to comply with the rules of Ecology and Environment Department and to obtain necessary approval from KSPCB and LDA. Despite all this, Respondents 9 and 10 have continued with their illegal constructions and have caused damage to the ecology and the environment by irreparably jeopardising the ecological balance in this sensitive area. The applicants rely upon the Revised Master Plan, 2013 issued by BDA which specifically provides that 30 m buffer zone is to be created around the lakes and 50 m buffer zone to be created on either side of the Rajakaluves. It was also pleaded that Respondent 9 had obtained the NOC from BWSSB only with regard to residential units and not for the entire project and that the environmental clearance obtained by Respondent 9 is based upon the partial NOC issued by BWSSB which itself is a misrepresentation. It was contended that the projects are bound to create water scarcity as the requirement of the project of Respondent 9 alone is approximately 4.5 million litres per day i.e. 135 million litres per month, which is more than what BWSSB supplies to the entire Agaram Ward. The construction of respective projects by Respondents 9 and 10 respectively, besides having commenced without permission from the authorities and being in violation of the conditions imposed for grant of permission/consent, is bound to damage the environment, resulting in change in the topography of the area, posing potential threat of extinction of Bellandur Lake, causing traffic congestion, shortening and wiping out the wetlands, extinction of Rajakaluves and causing serious and potential threat of flooding and massive scarcity of water in the city of Bangalore, particularly the areas located near the waterbodies.

11. Respondent 9 in its objections contended that it was incorporated with the objective of establishing an information technology park and R&D Centre with facilities such as residential complexes, parks, education centres and other allied infrastructure within a single compound. It had submitted the proposal to establish such information technology park and other facilities to the State Government and requested for allotment of land for the project. Its proposal was considered in 78th High-Level Committee meeting held on 21-6-2000 and after examining the proposal, it was approved by the Government on 6-7-2000. Before the State High-Level Committee, it had informed that its requirement was 110 ac of land, 25 MW of power from the Karnataka Power Transmission Corpn. Ltd. (for short "KPTCL"), and four lakh litres of water per day from BWSSB. The lands for the project were initially notified vide Notification dated 10-2-2004. Subsequently, the lands were allotted vide letter dated 28-6-2007 for which lease-cum-sale agreement was signed on 30-6-2007. Considering the overall development of the State of Bangalore, this respondent proposed a Mixed Use Development Project consisting of an information

technology park, residential apartments, retail, hotel and office buildings with a total built-up area of 13,50,454.98 sq m. The Project was conceived as a zero waste discharge project. The Project is located one-and-a-half kilometres away from the southern side of Bellandur Lake. Towards the north, adjacent to the Project, lies vast stretches of lands belonging to the Defence and towards the east, lies the project of Respondent 10 and another developer is also developing a project on the western side. It has obtained sanction plan on 4-7-2007 which was renewed from time to time.

12. Respondent 9 claims that it has obtained NOC from Airport Authority of India on 9-4-2010. Bharat Sanchar Nigam Ltd., vide its communication dated 16-4-2010, granted clearance for the project construction. BWSSB, vide its communication dated 26-4-2011 issued NOC for portion of the proposed construction to be built. Bangalore Electricity Supply Co. Ltd. also granted NOC for arranging power supply to the proposed residential and commercial building in its favour. Environmental clearance was granted by SEIAA vide communication dated 17-4-2012. The Director General of Police has issued NOC and KSPCB vide order dated 4-9-2012 accorded its consent for construction of the said Project subject to the conditions stated therein. It was further stated that after grant of the environmental clearance on 17-9-2012, the same was published in the leading newspapers *Kannada Prabha* and *The Indian Express* on 12-3-2012 and 14-3-2014 respectively.

13. It submitted a modified building plan which was approved by KIADB vide its letter dated 30-8-2012, which was valid up to 10-8-2014. It started the construction of the Project in November 2012, taking all precautions as per terms and conditions of the orders issued by the competent authorities. It was also submitted that it has raised the constructions in accordance with the plans and conditions of the environmental clearance and consent orders and that it has not violated any of the conditions and has not caused any adverse impact on the ecology and environment of the area. It has denied the contention that its construction activity has blocked the Rajakaluves and has adversely affected the lake. It has already spent a sum of Rs 306.73 crores on the Project towards procurement of men and materials, machinery, infrastructure, medical and sanitary facilities, etc. and that it has availed financial assistance from various banks and financial institutions towards the construction and execution of the project and that various contracts have been signed with the third parties. It is specifically pleaded that the petition is barred by time and suffers from defects and laches.

14. Respondent 10 pleaded that the applicants raised multifarious proceedings against it which is an abuse of the process of law and mala fides. It had submitted a revised proposal in respect of its project in question and to obtain fresh clearance on 31-8-2007 with an investment of Rs 179.22 crores. The State High-Level Committee had cleared the project which was communicated to it on 25-1-2008. Its properties are located in between Bellandur Lake and Agara Lake but there are no primary storm water drains

and secondary storm water drains that exist in its properties. It has clearances from various authorities, including Environmental Clearance and consent for establishment.

15. KIADB stated that after possession of the land was handed over to Respondents 9 and 10, one year time was granted for the implementation of the Project which was extended from time to time. The building drawings were approved on 4-7-2007, and the modified building drawings were approved on 26-4-2011 and 30-8-2012 with specific conditions. In its meeting held on 16-7-2013, it was resolved to inform Respondents 9 to fully comply with the Ecology and Environment Rules and to obtain approvals from LDA and KSPCB. LDA vide its letter dated 24-9-2013, had informed KIADB that the construction activity in the catchment area in Bellandur Lake could drastically impact the lake with deleterious effects and asked it to stop construction activity of Respondents 9 and 10. However, the validity of the building drawings was again extended up to 10-8-2014. The Lokayukta on 17-12-2013 had written a letter in respect of complaint filed by the South-East Forum for Sustainable Development where it had been averred that the decision had been taken by the Board on 21-12-2013 to keep in abeyance the approval accorded and even the re-validations of plans. This was also informed to Respondent 9. The Board took a decision which was communicated to Respondent 9 on 2-1-2014, wherein it asked Respondent 9 to stop all construction activities on the allotted lands. The said communication was challenged by Respondent 9 and on the stop-work notice, stay was granted by the High Court of Karnataka. The stop-work notice dated 23-12-2013 issued by Bruhat Bengaluru Mahanagara Palike (for short "BBMP") was also stayed vide order dated 21-1-2014. The proposal submitted by Respondents 9 and 10 had been approved by the State Government. The land allotted to Respondents 9 and 10 does not consist of any Rajakaluves.

16. LDA took a stand that it was not at all aware of the project initiated by KIADB. It came to know about the entire project only when certain newspaper reports surfaced during the month of June 2013 and till that time it was in the dark. After the complaints, it inspected Bellandur Lake and Agara Lake on 12-6-2013 and prepared an inspection report. In the report, it was noticed that large-scale construction activities were going on in the catchment area of Bellandur Lake and that there was a change in the land use, which in turn has directly affected the catchment of Bellandur Lake. The wetland area of Agara Lake had also shrunk, which originally formed the irrigation area for the adjoining agricultural lands. Therefore, it had questioned the decision of KIADB vide letter dated 6-7-2013 and even requested it to stop the construction activity and to re-classify the land as non-SEZ area. It was thereafter on 31-8-2013, that Respondent 9 wrote a letter for according approval for the proposed development projects. However, vide its letter dated 23-9-2013, LDA informed KIADB that it had no authority to grant or deny construction projects, but it also communicated its objections to KIADB mentioning that construction activity

would be in contravention of the directions of the Supreme Court. Despite these warnings, KIADB granted approval to the extension of the building drawings of the project in favour of the project proponents with certain conditions, like ensuring that all natural valleys, valley zone, irrigation tanks and existing roads leading to villages in the said land should not be disturbed. Further, the natural sloping pattern of the project site was not to be altered and the lakes and other waterbodies within and/or at the vicinity of the project area should be protected and conserved. Despite the objections, the plans were approved and approvals were extended from time to time. It has taken a categorical stand that the projects as approved by KIADB would have adverse impact on Bellandur and Agara Lakes.

17. On the basis of the pleadings of the parties, the Tribunal framed the following questions for consideration and determination:

17.1. Whether the application filed by the applicants and supported by Respondents 11 and 12, is barred by time and thus, not maintainable?

17.2. Whether the petition as framed and reliefs claimed therein, disclose a cause of action over which this Tribunal has jurisdiction to entertain and decide the application under the provisions of the NGT Act, 2010?

17.3. Whether the present application is barred by the principle of res judicata and/or constructive res judicata?

17.4. Whether the application filed by the applicants should not be entertained or it is not maintainable before the Tribunal, in view of the pendency of Writ Petitions Nos. 36567-74 of 2013, before the Hon'ble High Court of Karnataka? and

17.5. What relief, if any, are the applicants entitled to? Should or not the Tribunal, in the interest of environment and ecology issue any directions and if so, to what effect?

18. The Tribunal by its order dated 7-5-2015[1] at Annexure A-2, disposed of the applications with the following directions: (*Forward Foundation case*[1], SCC Online NGT para 85)

> "*85.* ... (1) We decline to pass any direction or order to stop further progress and/or demolition of the project or any part thereof at this stage. However, we constitute the following Committee to inspect the projects in question and submit a report to the Tribunal inter alia but specifically on the issues stated hereinafter:
>
> (*a*) Advisor in the Ministry of Environment and Forest dealing with the subject of wetlands.
>
> (*b*) CEO of the Lake Development Authority, Karnataka State.
>
> (*c*) Chief Town Planner of BBMP, Bangalore.
>
> (*d*) Chairman of SEAC which recommended the grant of environmental clearance to the projects in question.

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(*e*) Sr. Scientist (Ecology) from the Indian Institute of Sciences, Bangalore.

(*f*) Dr Siddharth Kaul, former Advisor to MoEF.

(*g*) A senior officer from the National Institute of Hydrology, Roorkee.

(2) Member-Secretary of the Karnataka State Pollution Control Board shall act as the Convener of the Committee and would submit the final report to the Tribunal.

(3) The Committee shall inspect not only the sites where the projects in question are located but even other areas of Bangalore which the Committee in its wisdom may consider appropriate, in order to examine the interconnectivity of lakes and impact of such activities upon the waterbodies, with particular reference to lakes.

(4) The Committee shall submit whether the projects in question have encroached upon or are constructed on the wetlands and Rajakaluves. If so, are there any adverse environmental and ecological impact of these projects on the lake particularly, Bellandur Lake and Agara Lake, as well the Rajakaluves. The report should specify if any Rajakaluves have been covered by the construction activities of Respondents 9 and 10 or by any of the projects in the area in question.

(5) Committee should submit in its report if these projects have any adverse impacts upon the surrounding ecology and environment, with particular reference to lakes and wetlands. If yes, then whether any part of the project is required to be demolished. If so, details thereof along with reasons.

(6) The Committee shall substantially notice if any of the conditions of the environmental clearance order in each case of Respondents 9 and 10 have been violated. If so, to what extent and suggest remedial measures in that behalf to restore the ecology of the area.

(7) The Committee would also recommend what should be the buffer zone around the lake(s) and interconnecting passages and wetlands. The Committee shall also report whether activities of multipurpose projects which have serious repercussions on traffic, air pollution, environment and allied subjects should be permitted any further or not, particularly, in wetlands and catchment areas of waterbodies.

(8) Recommendations should be made with regard to the steps and measures that should be taken for restoration of lakes, particularly, in the city of Bangalore.

(9) The Committee shall also find out that whether the construction of the projects is in accordance with the sanctioned drawings and bye-laws in accordance with the letters dated 4-7-2007 and 22-4-2008 respectively. Further, the Committee would also report whether both Respondents 9 and 10 have installed ETP/STP and have taken full measures for recycling of used water for washing and flushing, etc., in terms of letters

dated 11-10-2013 and 3-1-2013, issued by the Karnataka Industrial Area Development Board to Respondents 9 and 10 respectively.

(10) In the event, the Committee is of the opinion that the adverse impacts noticed are redeemable, then what directions need to be issued in that behalf and the cost involved for achieving the said conservation and restoration of lakes and waterbodies.

(11) Till the submission of the report by the Committee and directions passed by the Tribunal in that regard, both Respondents 9 and 10 are hereby restrained from creating any third party interests or part with the possession of the property in question or any part thereof, in favour of any person.

(12) The Committee shall submit its report to MoEF and to this Tribunal as expeditiously as possible and in any case not later than three months from today. During that period we restrain MoEF, SEIAA and/or any public authority from sanctioning any construction project on the wetlands and catchment areas of the waterbodies in the city of Bangalore.

(13) The Committee shall report if the project proponents are proposing to discharge their trade or domestic effluents into the lake or any of the waterbodies in and around of the area in question.

(14) For the reasons stated in the judgment Respondent 9 is liable and shall pay a sum of Rs 117.35 crores, while Respondent 10 shall pay a sum of Rs 22.5 crores respectively being 5% of the project value, within two weeks from today. The said amount would be paid to KSPCB, which shall maintain a separate account for the same and would spend this amount for environmental and ecological restoration, restitution and other measures to be taken to rectify the damage resulting from default and non-compliance to law by the project proponent in that area, after taking approval of the Tribunal.

(15) We make it clear that the said respondents would not be entitled to pass on the amount in terms of Direction 14, onto the purchasers because this liability accrues as a result of their own intentional defaults, disobedience of law in force and carrying on project activities and construction illegally and unauthorisedly."

19. Feeling aggrieved by the said order, Respondents 9 and 10 filed Civil Appeals Nos. 4829 and 4832 of 2015 before this Court. This Court by its order dated 20-5-2015[3] passed the following order: [*Core Mind Software & Services (P) Ltd. case*[3], SCC OnLine SC paras 2-5]

"2. One of the main contentions raised by the appellants in these appeals is that though the Tribunal had heard the matter only on preliminary issues and no arguments on merit were advanced, final judgment decides the merits of the disputes as well and above all a penalty of Rs 117.35 crores against the original Respondent 9 (the appellant in CA No. 4832 of

3 *Core Mind Software & Services (P) Ltd.* v. *Forward Foundation*, 2015 SCC OnLine SC 1778

2015) and Rs 22.5 crores against original Respondent 10 (the appellant in CA No. 4829/2015) is imposed.

3. On the aforesaid averment, we feel that it would be more appropriate for the appellant to file an application before the Tribunal with the prayer to recall the order on merits and decide the matter afresh after hearing the counsel for the parties, as the Tribunal knows better as to what transpired at the time of hearing.

4. With the aforesaid liberty granted to the petitioners, the appeals are disposed of. Certain preliminary issues are decided against the appellants which are also the subject-matter of challenge. However, it is not necessary to deal with the same at this stage. We make it clear that in case the said application is decided against the appellants or if ultimately on merits, it would be open to the appellants to challenge those orders by filing the appeal and in that appeal all the issues which are decided in the impugned judgment[1] can also be raised.

5. The counsel for the appellants state that they would file the requisite application within one week. Till the said application is decided by the Tribunal, there shall be stay of the direction pertaining the payment of aforesaid penalty. Mr Raj Panjwani points out that the Tribunal has allowed the appellants to proceed with the construction only on the payment of the aforesaid fine/penalty. We leave it to the Tribunal to pass whatever orders it deems fit in this behalf, after hearing the parties."

20. In relation to Issue 5, an opportunity of hearing was granted to the respondents. The Tribunal passed order dated 6-4-2016[4] on these applications as under: (*Forward Foundation case*[4], SCC OnLine NGT)

"***MA No. 603 of 2015 and MA No. 596 of 2015***

These applications have been filed on behalf of Respondents 9 and 10 respectively. It is not necessary for us to refer to any details in view of the directions that we propose to issue in this case.

Without prejudice to the rights and contentions of the parties and subject to just exception we would hear the parties in terms of the order of the Hon'ble Supreme Court of India primarily on the question of imposition of environmental compensation and merits attached in relation thereto. Parties are given liberty to address their submissions on that behalf.

With the above directions MA No. 603 of 2015 and MA No. 596 of 2015 stand disposed of without any order as to cost."

21. It is evident from the above orders that the Tribunal had granted opportunity to the parties to address it "limited question", as aforementioned.

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The Tribunal after hearing the parties passed an order dated 4-5-2016[2] as under: (*Forward Foundation case*[2], SCC OnLine NGT)

a

"***General conditions or directions***

1. In view of our discussion in the main judgment, we are of the considered view that the fixation of distance from waterbodies (lakes and Rajkalewas) suffers from the inbuilt contradiction, legal infirmity and is without any scientific justification. The RMP 2015 provides 50 m from middle of the Rajkalewas as buffer zone in the case of primary Rajkalewas,
b 25 m in the case of secondary Rajkulewas and 15 m in the tertiary Rajkulewas in contradiction to 30 m in the case of lake which is certainly much bigger waterbody and its utility as a waterbody/wetland is well known certainly part of wet land. Thus, we direct that the distance in the case of Respondents 9 and 10 from Rajkulewas, waterbodies and wetlands shall be maintained as below—

c

(*i*) In the case of *lakes*, 75 m from the periphery of waterbody to be maintained as green belt and buffer zone for all the existing waterbodies i.e. lakes/wetlands.

(*ii*) 50 m from the edge of the primary Rajkulewas.

(*iii*) 35 m from the edges in the case of secondary Rajkulewas.

d (*iv*) 25 m from the edges in the case of tertiary Rajkulewas.

This buffer/green zone would be treated as no construction zone for all intent and purposes. This is absolutely essential for the purposes of sustainable development particularly keeping in mind the ecology and environment of the areas in question.

e All the offending constructions raised by Respondents 9 and 10 of any kind including boundary wall shall be demolished which falls within such areas. Wherever necessary dredging operations are required, the same should be carried out to restore the original capacity of the water spread area and/or wetlands. Not only the existing construction would be removed but also none of these respondents — project proponent would be permitted to raise any construction in this zone.

f All authorities particularly Lake Development Authority shall carry out this operation in respect of all the waterbodies/lakes of Bangalore.

2. The capacity of the existing STPs to treat sewage is 729 MLD, whereas another 500 MLD sewage is proposed to be treated in 10 upcoming STPs. In this context, all the STPs operating in the area whether Government or privately owned, should meet the revised standards notified
g by CPCB/MoEF.

3. Bangalore City receives treated potable water of 1360 MLD from River Cauvery whereas the requirement is for another 750 MLD and the entire area falls in critical zone in terms of groundwater exploitation. Information reveals that only one million litre per month of STP treated water is used by builders for construction purposes. For this reason, the

h

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BWSSB issues partial NOC to various residential and commercial projects in respect of supply of potable water. In this context, following directions need to be issued:

(*i*) At the time of grant of EC, the water requirement for the construction phase and operation phase should be considered separately. Due consideration should also be given for identification of source of supply of water and this should be a prerequisite for grant of EC.

(*ii*) All the project proponents should necessarily use only treated sewage water for construction purpose and this should be reflected in EC as a condition for construction phase.

(*iii*) Wherever the quality of treated sewage water does not conform to the quality needed for construction, necessary upgradation in STP should be undertaken immediately.

Specific conditions/directions for Respondent 9

In addition to the above directions which should be equally part of EC condition in respect of Respondents 9 and 10, following specific conditions shall apply to Respondent 9:

(*i*) Reclaimed area of the lake to the extent of 3 ac 10 guntas in Survey No. 43 should be restored to its original condition at the cost of project proponent. The possession of this area should be restored by Respondent 9 to the authorities concerned immediately. In addition, a buffer zone of 75 m should be provided between the lake and the project area and this should be maintained as green area.

(*ii*) In the remaining area, where primary Rajkalewa is abutting the project area, 50 m buffer zone on the side of the project area from the edge of the Rajkalewa should be maintained as green belt.

(*iii*) Several irrigation canals or tertiary Rajkalewas taking off from the Agara tank were passing through the area of Respondent 9, and serve the dual purpose of irrigating paddy fields and disposal of surface run off (storm water drains) during rainy season. However on account of the activities of the project, these drains have been totally obliterated. For the purpose of proper disposal of storm runoff from the entire area falling between Agara Lake and Belandur Lake, Respondent 9 must provide required number of storm water drains based on proper hydrological study. These storm drains should have a buffer zone of 15 m on either bank maintained as green belt.

(*iv*) The cumulative quantity of earth excavated for the construction of project is around 4 lakhs cubic metres in the depth range of 0 to 9 m. This has created huge hillock like structure obstructing the natural flow pattern of surface runoff from Agara Lake side to Balendur Lake side or primary Rajkalewas. For this purpose, during construction phase garland drain should be constructed around the existing dumping site for safe disposal of runoff to the Rajkalewas. For the disposal of excavated material, a proper muck disposal plan duly approved by

SEIAA shall be prepared. In any case the plan should ensure that no muck/sediment flows into Rajkalewas and/or Belandur Lake.

(*v*) The kharab land identified by Revenue Department admeasuring 1 ac 2 guntas should be demarcated and maintained separately as green belt.

(*vi*) The entire green belt created under the directions of this Tribunal should not to be considered as part of green belt of the project as part of EC condition and will be over and above the green belt as indicated in the EC.

(*vii*) In view of the heavy traffic load in the adjoining Sarjapur Road, a proper study on the basis of traffic density, foot falls expected, etc., a proper plan needs to be prepared and the concept of service road exclusively for the project needs to be worked out and additional parking space created within the project area and incorporated as a part of the overall project layout, within a period of 3 months.

* * *

10. Though, at the time of hearing prior to passing of the judgment, we had heard the parties on all aspects but still we have provided rehearing to the parties on all issues with emphasis on imposition of environmental compensation including the quantum. Upon hearing, we are of the considered view that environmental compensation imposed upon Respondent 9 calls for no variation and Respondent 9 should be called upon to pay the said amount of Rs 117.35 crores determined under the judgment prior to commencement of any project activity at the site. Respondent 10 has not commenced any actual construction activity but has carried out various preparatory steps including excavation and deposition of huge earth by creating a hillock at the premises in question and a site office.

Thus, considering cumulative effect on environment and ecology due to various breaches in that behalf by Respondent 10 and the fact that the remedial measures can more effectively be taken by Respondent 10, we reduce environmental compensation payable by Respondent 10 to Rs 13.5 crores (3% of the stated project cost instead of 5% as imposed in the original judgment).

General directions

1. We direct SEIAA, Karnataka to issue amended order granting environmental clearance within four weeks from today incorporating all the conditions stated in this judgment and such other conditions as it may deem appropriate in light of this judgment and inspection note of the expert members. The project proponents would be permitted to commence activity only after issuance of amended environmental clearance order.

2. SEIAA Karnataka and MoEF shall ensure regular supervision and monitoring of the project and during the construction and even upon completion to ensure that activity is carried out strictly in accordance with the conditions of the order granting environmental clearance, this judgment, notification of 2006 and other laws in force.

3. The distances in respect of buffer zone specified in this judgment shall be made applicable to all the projects and all the authorities concerned are directed to incorporate such conditions in the projects to whom environmental clearance and other permissions are now granted not only around Belandur Lake, Rajkulewas, Agara Lake, but also all other lakes/wetlands in the city of Bengaluru.

4. We hereby direct the State of Karnataka to submit a proposal to MoEF for demarcating wetlands in terms of the Wetland Rules, 2010 as revised from time to time. Such proposal shall be submitted by the State within four weeks from today and MoEF shall consider the same in accordance with law and grant its approval or otherwise within four weeks thereafter. After such approval is granted by MoEF, the State would issue notification notifying such areas immediately thereafter in accordance with Rules and law.

5. Both Respondents 9 and 10 shall ensure that debris or any construction material that has been dumped into the Rajkulewas, or on their banks and on the buffer zone of wetlands should be removed within four weeks from today. In the event they fail to do so, the same shall be removed by the Lake Development Authority along with the State Administration and recover charges thereof from the said respondents.

6. There is a serious discrepancy even in regard to the measurement of land as far as Respondent 9 is concerned. Admittedly the respondent has been allotted and is in possession of land admeasuring 63.94 ac, though environmental clearance has been granted for 2,92,636.03 sq m which is equivalent to 72.22 ac. For this reason alone, environmental clearance cannot be given effect to. While issuing the amended environmental clearance, SEIAA Karnataka shall take into consideration all these aspects and, if necessary, would require Respondent 9 to submit a fresh layout plant and the entire project may be revised in accordance with law.

7. Both the respondents (project proponents) shall submit an appropriate plan in view of the conditions imposed in this judgment and the amended environmental clearance that would be issued.

8. The amount of environmental compensation will be deposited prior to issuance of amended environmental clearance.

With the above directions, Original Application No. 222 of 2014 and Miscellaneous Applications Nos. 596 of 2016 and 603 of 2016 are finally disposed of while leaving the parties to bear their own costs." (emphasis in original)

22. Appearing for the appellants in CA No. 5016 of 2016, Shri Mukul Rohatgi, learned Senior Counsel, has submitted that the State Government in exercise of the power conferred under the Karnataka Industrial Areas Development Act (for short "the KIAD Act") declared the land in question as an industrial area. Thereafter, the land in question has been acquired by the State Government in the year 2004. Following the acquisition, on 28-6-2007, the land was allotted to the appellant by KIADB. SEIAA granted environmental clearance which was followed by public notice concerning clearance on 14-3-2012.

Neither the allotment of land nor the environmental clearance was challenged before the Tribunal. Thus, none of the statutory decisions or processes, are the cause of action for the purpose of the application. The averments made in the original application does not satisfy or meet the requirements of Sections 14(1) and (3) of the NGT Act and the original application does not spell out the cause of action relevant for the purpose of the said provision. Since the statutory processes and clearances could not have been challenged for being hit by Section 14(3), the construction activities which were the alleged cause of action could not have been challenged. Therefore, the Tribunal ought to have held that the application was not maintainable.

23. Further, the application is barred by limitation. Though environmental clearance was granted on 17-2-2012 and it was published in two leading newspapers on 12-3-2012 and 14-3-2012, modified plan was approved by KIADB on 30-8-2012, the application ought to have been filed within six months from the date on which cause of action for the dispute first arose in terms of Section 14 of the NGT Act. The present application has been filed in March 2014 which was much beyond the prescribed period of limitation. No application seeking condonation of delay has been filed accompanying the application. Hence, the Tribunal ought to have dismissed the application on the ground that as it is barred by time.

24. It was also argued that buffer zone laid down by NGT is substantially higher as compared to buffer zone which is required to be maintained as per the Revised Master Plan, 2015 issued on 22-6-2007. This is contrary to the Karnataka Town and Country Planning Act, 1961 (for short "the Planning Act").

25. Shri Neeraj Kishan Kaul and Shri R. Venkataramani, learned Senior Counsel appearing for the appellants, in this case have also made similar submissions. It was argued that the direction imposing penalty/compensation is illegal on the ground that the applicants did not allege that the construction work of the project has caused environmental wrong. No wrong or injury either to Bellandur Lake waterbody or to Bellandur Lake area, has been alleged and established. As such, there is no question of any enquiry relating to imposition of penalty or any compensation.

26. Shri Maninder Singh, learned Senior Counsel appearing for the appellants, in CAs Nos. 5016 and 10995 of 2016, while supporting the submissions made by Shri Rohatgi, has submitted that the appellant has obtained sanction and approvals for the project from the competent authorities. It could not start construction despite grant of all the permissions, including environmental clearance as early as possible i.e. 30-9-2013. Hence, imposing penalty/compensation is entirely unsustainable.

27. The learned Advocate General, Shri Udaya Holla, appearing for the appellant State of Karnataka in CAs Nos. 4923-24 of 2017, has submitted that the State of Karnataka is also aggrieved by the order of NGT to the extent of setting aside the buffer zone in respect of waterbodies and drains specified in

the Revised Master Plan, 2015, and enlargement of the buffer zone in respect of lakes and Rajakaluves. It is also aggrieved by the order of NGT directing the authorities to demolish all the offending constructions raised/built in the buffer zone, which will result in demolition of 95% of the buildings in Bengaluru. It is submitted that the Revised Master Plan is statutory in nature and NGT has no power, competence or jurisdiction to consider the validity or vires of any statutory provision/regulation. Therefore, the order of NGT to that extent is liable to be set aside.

28. The learned Senior Counsel appearing for the appellants in other cases, have also supported the arguments of the learned Advocate General. It was contended that the Revised Master Plan provides for a 30 m buffer zone around the lakes and a buffer zone of 50 m, 25 m and 15 m from the primary, secondary and tertiary drains, respectively to be measured from the centre of the drain. Vide the impugned judgment, NGT has revised these buffer zones and has directed that the buffer zone be maintained for 75 m around the lake and 50, 35 and 25 m respectively from the primary, secondary and tertiary drain, respectively. Variation of buffer zone, as directed by NGT is without any legal and scientific basis and has the effect of amending the Revised Master Plan, 2015, without there being any challenge to the same or any relief sought with respect to the said Revised Master Plan.

29. On the other hand, Shri Sajan Poovayya, learned Senior Counsel, appearing for the applicants, has fairly submitted that the applications were filed only against the appellants in CAs Nos. 5016 and 8002-03 of 2016 (Respondents 9 and 10). He has no objection to set aside the order insofar as the appellants in other appeals including the State of Karnataka are concerned. He has also no objection to set aside the general conditions and directions of NGT in para 1 of the order dated 4-5-2016[2] except the directions issued against Respondents 9 and 10. In view of the above, it is not necessary to examine the contentions of the learned Advocate General in Civil Appeals Nos. 4923-24 of 2017. It is also not necessary to consider the contentions urged in the other civil appeals except the appeals filed by Respondents 9 and 10.

30. Shri Poovayya has strongly opposed the submissions made by the learned Senior Counsel appearing for the appellants in CA No. 5016 of 2016 and CAs Nos. 8002-03 of 2016. It is submitted that the Tribunal is a specialised body for effective and expeditious disposal of cases relating to environmental protection and conservation of forests and other natural resources including enforcement of any legal right relating to environment. The jurisdiction of the Tribunal is provided under Sections 14, 15 and 16 of the NGT Act. Section 14 provides for the jurisdiction over all civil cases where a substantial question relating to environment is involved. However, such question should arise out of implementation of the enactments specified in Schedule I. The Tribunal has the jurisdiction under Section 15(1)(*a*) of the NGT Act to provide relief

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and compensation to the victims of pollution and other environmental damage arising under the enactments specified in Schedule I. Under Sections 15(1)(*b*) and 15(1)(*c*), the Tribunal can provide for restitution of property damaged and for restitution of the environment for such area or areas, as the Tribunal may think fit. Sections 15(1)(*b*) and 15(1)(*c*) have not been made relatable to enactment specified in Schedule I of the Act. Section 15(1)(*c*) is an entire island of power and jurisdiction read with Section 21 of the Act. He submits that whenever ecology is being compromised and jeopardised, the Tribunal can apply Section 20 for taking restorative measures in the interest of environment. The limitation provided in Section 14 is period of six months from the date on which cause of action first arose whereas in Section 15 it is five years. Therefore, the petition is not barred by time.

31. He has further submitted that the provisions of Section 33 shall have the effect notwithstanding anything inconsistent contained in any other law for the time being in force. This gives the Tribunal overriding powers over anything inconsistently contained in the KIAD Act, Planning Act, Revised Master Plan of Bangalore, 2015 and Karnataka Municipal Corporation Act, 1976 (for short "the KMC Act"). Therefore, the Tribunal while providing for restoration of environment in an area can specify buffer zone around specific lakes and waterbodies in contravention with zoning regulation.

32. Regarding limitation, he has submitted that the application filed by Respondents 1 to 3 was not an application simpliciter under Section 14 of the Act. It was an application where a specific prayer has been made with reference to Lake Development Authority's report dated 12-6-2013 and the Ministry of Environment, Forests and Climate Change Monitoring Committee Report dated 14-8-2013 for restoration of ecologically sensitive land and for maintaining sensitive area in its natural condition so that ecological balance of the area is not disturbed. Therefore, the petition was under Section 15 of the Act and it can be filed within five years from the date on which the cause for such compensation or relief first arose.

33. It was further submitted that right to appeal under Section 22 is not a vested right unless provided by statute. Exercise of appellate jurisdiction without the fulfilment of statutory mandate would be without jurisdiction. Section 22 of the Act provides for an appeal on the ground specified in Section 100 of the Code of Civil Procedure, 1908 (for short "CPC"). Under Section 100 CPC, an appeal can be filed only on the ground that the case involves a substantial question of law as may be framed by the appellate court. In the instant case, the appeal does not involve any substantial question of law hence it has to be dismissed in limine. He has taken us through various materials placed on record in order to substantiate that the direction passed and penalty imposed by the Tribunal upon to project proponents are sustainable. He prays for dismissal of the appeals.

34. We have carefully considered the submissions of the learned counsel of the parties and perused the materials placed on record.

35. Before considering the other contentions of the learned counsel for the parties, let us first consider the scope of enquiry in appeals filed under Section 22, which is as under:

> "**22.** ***Appeal to Supreme Court.***—Any person aggrieved by any award, decision or order of the tribunal, may, file an appeal to the Supreme Court, within ninety days from the date of communication of the award, decision or order of the Tribunal, to him, on any one or more of the grounds specified in Section 100 of the Code of Civil Procedure, 1908 (5 of 1908):
>
> Provided that the Supreme Court may entertain any appeal after the expiry of ninety days, if it is satisfied that the appellant was prevented by sufficient cause from preferring the appeal."

36. It is settled that there is no vested right of appeal unless the statute so provides. Further, if a statute provides for a condition subject to which the appropriate appellate court can exercise jurisdiction, the court is under an obligation to satisfy itself whether the condition prescribed is fulfilled. Exercise of appellate jurisdiction without the fulfilment of statutory mandate would be without jurisdiction. Therefore, the right of appeal provided under Section 22 is to be read subject to the conditions provided therein.

37. Section 22 provides for an appeal to the Supreme Court on the grounds specified in Section 100 CPC. Under Section 100 CPC, an appeal can be filed only on the ground that the case involves a substantial question of law as may be framed by the appellate court. The scope of appeal under Section 22, therefore, is restricted to substantial question of law arising from the judgment of the Tribunal. The test to determine whether the question is substantial question of law or not was laid down by a Constitution Bench of this Court in *Chunilal V. Mehta & Sons Ltd.* v. *Century Spg. & Mfg. Co. Ltd.*[5] This Court has laid down the test as under: (AIR p. 1318, para 6)

> "*6.* … The proper test for determining whether a question of law raised in the case is substantial would, in our opinion, be whether it is of general public importance or whether it directly and substantially affects the rights of the parties and if so whether it is either an open question in the sense that it is not finally settled by this Court or by the Privy Council or by the Federal Court or is not free from difficulty or calls for discussion of alternative views. If the question is settled by the highest court or the general principles to be applied in determining the question are well settled and there is a mere question of applying those principles or that the plea raised is palpably absurd the question would not be a substantial question of law."

38. It is equally settled that merely because the remedy of appeal is provided against the decision of the Tribunal on a substantial question of law alone, that does not ipso facto permit the appellants to agitate their appeal to

5 1962 Supp (3) SCR 549 : AIR 1962 SC 1314

seek reappreciation of the factual matrix of the entire matter. The appellants cannot seek to re-argue their entire case to seek wholesale reappreciation of evidence and the factual matrix that has been considered by the Tribunal is ex facie impermissible under Section 22. There cannot be fresh appreciation or reappreciation of facts and evidence in a statutory appeal under this provision.

39. The first question raised by the learned counsel is in relation to the maintainability of the application before the Tribunal.

40. The Tribunal has been established under a constitutional mandate provided in Schedule VII List I Entry 13 of the Constitution of India, to implement the decision taken at the United Nations Conference on Environment and Development. The Tribunal is a specialised judicial body for effective and expeditious disposal of cases relating to environmental protection and conservation of forests and other natural resources including enforcement of any legal right relating to environment. The right to healthy environment has been construed as a part of the right to life under Article 21 by way of judicial pronouncements. Therefore, the Tribunal has special jurisdiction for enforcement of environmental rights.

41. The jurisdiction of the Tribunal is provided under Sections 14, 15 and 16 of the Act. Section 14 provides the jurisdiction over all civil cases where a substantial question relating to environment (including enforcement of any legal right relating to environment) is involved. However, such question should arise out of implementation of the enactments specified in Schedule I.

42. The Tribunal has also jurisdiction under Section 15(1)(*a*) of the Act to provide relief and compensation to the victims of pollution and other environmental damage arising under the enactments specified in Schedule I. Further, under Sections 15(1)(*b*) and 15(1)(*c*), the Tribunal can provide for restitution of property damaged and for restitution of the environment for such area or areas as the Tribunal may think fit. It is noteworthy that Sections 15(1)(*b*) and (*c*) have not been made relatable to Schedule I enactments of the Act. Rightly so, this grants a glimpse into the wide range of powers that the Tribunal has been cloaked with respect to restoration of the environment.

43. Section 15(1)(*c*) of the Act is an entire island of power and jurisdiction read with Section 20 of the Act. The principles of sustainable development, precautionary principle and polluter pays, propounded by this Court by way of multiple judicial pronouncements, have now been embedded as a bedrock of environmental jurisprudence under the NGT Act. Therefore, wherever the environment and ecology are being compromised and jeopardised, the Tribunal can apply Section 20 for taking restorative measures in the interest of the environment.

44. The NGT Act being a beneficial legislation, the power bestowed upon the Tribunal would not be read narrowly. An interpretation which furthers the interests of environment must be given a broader reading. (See *Kishore*

Lal v. *ESI Corpn.*[6], para 17.) The existence of the Tribunal without its broad restorative powers under Section 15(1)(*c*) read with Section 20 of the Act, would render it ineffective and toothless, and shall betray the legislative intent in setting up a specialised Tribunal specifically to address environmental concerns. The Tribunal, specially constituted with Judicial Members as well as with experts in the field of environment, has a legal obligation to provide for preventive and restorative measures in the interest of the environment.

45. Section 15 of the Act provides power and jurisdiction, independent of Section 14 thereof. Further, Section 14(3) juxtaposed with Section 15(3) of the Act, are separate provisions for filing distinct applications before the Tribunal with distinct periods of limitation, thereby amply demonstrating that jurisdiction of the Tribunal flows from these sections (i.e. Sections 14 and 15 of the Act) independently. The limitation provided in Section 14 is a period of 6 months from the date on which the cause of action first arose and whereas in Section 15 it is 5 years. Therefore, the legislative intent is clear to keep Sections 14 and 15 as self-contained jurisdictions.

46. Further, Section 18 of the Act recognises the right to file applications each under Section 14 as well as Section 15. Therefore, it cannot be argued that Section 14 provides jurisdiction to the Tribunal while Section 15 merely supplements the same with powers. As stated supra the typical nature of the Tribunal, its breadth of powers as provided under the statutory provisions of the Act as well as the scheduled enactments, cumulatively, leave no manner of doubt that the only tenable interpretation to these provisions would be to read the provisions broadly in favour of cloaking the Tribunal with effective authority. An interpretation that is in favour of conferring jurisdiction should be preferred rather than one taking away jurisdiction.

47. Section 33 of the Act provides an overriding effect to the provisions of the Act over anything inconsistent contained in any other law or in any instrument having effect by virtue of law other than this Act. This gives the Tribunal overriding powers over anything inconsistent contained in the KIAD Act, the Planning Act, the Karnataka Municipal Corporations Act, 1976 (the KMC Act); and the Revised Master Plan of Bengaluru, 2015 (RMP). A Central legislation enacted under Entry 13 of Schedule VII List I of the Constitution of India will have the overriding effect over State legislations. The corollary is that the Tribunal while providing for restoration of environment in an area, can specify buffer zones around specific lakes and waterbodies in contradiction with zoning regulations under these statutes or RMP.

48. The second question raised by the appellants is that the petition is barred by time. According to the appellants, environmental clearance was granted to Respondent 9 on 17-2-2012 for which notice was published in the leading newspaper on 12-3-2012 and 14-3-2012. Modified building plan was approved on 30-8-2012, which was followed up to 10-8-2014. Similar events had taken place in regard to the project of Respondent 10 who had been

6 (2007) 4 SCC 579 : (2007) 2 SCC (L&S) 1

granted environmental clearance on 30-9-2013. The application had to be filed within a period of six months from the date on which cause of action for such dispute has first arisen in terms of Section 14 of the NGT Act. Admittedly, the present application has been filed in March 2014 and according to them, it is much beyond the prescribed period of limitation. Also, there is no application for condonation of delay accompanying the main application. Therefore, the Tribunal will not have jurisdiction to condone the delay.

49. OA No. 222 of 2014 was not an application simpliciter under Section 14 of the Act. It was an application where a specific prayer has been made with reference to Lake Development Authority's (LDA) Report dated 12-6-2013 and the Ministry of Environment, Forests and Climate Change (MoEF) Monitoring Committee Report dated 14-8-2013 for restoration of ecologically sensitive land and for maintaining the sensitive in its natural condition so that the ecological balance of the area is not disturbed. It is clear from the documentary evidence supported by data, that the project proponents have committed breaches and the implementation of the project is bound to have serious adverse impact on the ecology, hydrology and the environment in the catchment area of Bellandur Lake. The environmental degradation as established from the documents would give rise to an independent cause of action. Therefore, this was a petition under Section 15 of the Act and thus it could be filed within 5 years from the date on which the cause for such compensation or relief first arose.

50. In fact, in the original application before the Tribunal there was no mention of the provision under which it was being filed. It is well-settled principle of law that non-mention of or erroneous mention of the provision of law would not be of any relevance, if the court had the requisite jurisdiction to pass an order. It would be a mere irregularity and would not vitiate the application or the judicial order of the Tribunal.

51. Shri R. Venkataramani, learned Senior Counsel, appearing for the appellant in CA No. 5016 of 2016 has submitted that the constructions had not commenced before the grant of environment clearance. The inspection report dated 11-1-2012 of the Chairman of KSPCB observes that "no construction" had commenced on the date of inspection. This report cannot be overlooked on the basis of some dumping of debris which could not be attributed to the appellant. He has pointed out the report of the Committee appointed by the Tribunal in the month of August 2015, wherein it was stated that "it started construction after obtaining clearance". In this regard he has also taken us through various documents placed on record and submits that there is absolutely no justification in imposing monitoring penalty/compensation without assessment of impact.

52. The Tribunal has pointed out on the basis of the Committee report of August 2015, that the appellant had encroached 3 ac 10 guntas of Bellandur Lake and a boundary wall has been raised around the said land. The Tribunal has also found that the project proponents have violated the Master Plan. They have not obtained the mandatory clearance from the Sensitive Zone Committee

constituted by the Government of Karnataka. It is also clear from the materials on record that there are several other violations by the project proponents. The Tribunal has discussed all these issues from para 52 onwards. It is also clear from the materials on record that there is a definite possibility of environment, ecology, lakes and wetland being adversely affected by these projects. That is why, the Tribunal has observed[1] as under: (*Forward Foundation case*[1], SCC OnLine NGT para 72)

> "*72.* In light of the above scope of the project and records before the Tribunal and the defaults on the part of the project proponents, the cumulative adverse effects of the activities undertaken by the respondents before us can be summed up as under:
>
> (1) The construction of both the projects had started prior to the grant to environmental clearance.
>
> (2) The EIA Notification of 2006 requires that without grant of environmental clearance, no project can commence its activity. This restriction applies not only to operationalisation of the project but even for the purposes of establishment.
>
> (3) Revenue map images shows multiple Rajakaluves flowing through the project(s) in question. The images further show encroachment on Rajakaluves.
>
> (4) Digital images of the land available on Google satellite images showing encroachment on two major Rajakaluves.
>
> (5) Google satellite images retrieved from Google archives clearly reflect two distinct features. Firstly, change in the wetland area between the period of 13-11-2000 and 23-11-2010. Secondly, it reveals the excavation work carried out by Respondents 9 and 10 commenced prior to obtaining environmental clearance.
>
> (6) Restriction in regard to extraction of groundwater was not strictly complied with as permission of Central Ground Water Authority was not obtained before construction.
>
> (7) The conditions with regard to the natural slopping pattern of the project site to remain unaltered and natural hydrology of the area to be maintained as it is, to ensure natural flow of storm water as well as in relation to lakes and other waterbodies within and/or at the vicinity of the project area to be protected and conserved. The inspection report by MoEF clearly notes that Conditions (xxxix) and (xl) in the environmental clearance of Respondent 9 cannot be complied with as it will necessarily result in some alteration of the natural slopping pattern of the project site and the natural hydrology of the area. It noted that the project area is located in the catchment area of the Bellandur Lake and the project authorities have informed that they will take all precautionary measures to ensure that the lake will not be affected by project activities either during construction or operation phase."

1 *Forward Foundation* v. *State of Karnataka*, 2015 SCC OnLine NGT 5

53. In para 81, the Tribunal has observed as under: (*Forward Foundation case*[1], SCC OnLine NGT para 81)

> "*81.* ... Another very important aspect which cannot be overlooked by the Tribunal is with regard to Respondents 9 and 10 carrying on their project activity fully knowing that they were incapable of or it was not possible for them to comply with Conditions (xxxix) and (xl) (or alike conditions) in the order granting the environmental clearance. This has even been noticed by MoEF in its monitoring report dated 14-8-2013. These respondents never applied for variation or amendment of these conditions and continued with their construction activities. This renders these respondents entirely liable for environmental and ecological damage and the restoration and restitution thereof."

54. In our view, the findings arrived at by the Tribunal are not only based on the documents that were available on record but also on the pleadings that were made by the parties buttressed by the Committee's report and the inspection note of the expert members. Therefore, the directions passed and the penalty imposed by the Tribunal on both project proponents are valid and sustainable and do not suffer from any perversity.

55. We are also of the view that it is impermissible for the appellants to seek a factual review through the methodology of reappreciation of factual matrix by this Court under Section 22 of the NGT Act.

56. Shri R. Venkataramani, learned Senior Counsel has also raised a subsidiary issue relating to res judicata. According to him, Respondents 12 and 13 filed Writ Petitions Nos. 3656-57 of 2013 seeking similar reliefs in a representative capacity. The issues raised therein are same as those canvassed in the application before the Tribunal. The reliefs sought for are essentially the same. Hence, the applications are barred by the principle of res judicata.

57. The Tribunal has answered this issue in paras 47 to 51 of the order. There was no dispute insofar as filing of the writ petitions is concerned. However, the parties are not common nor the issues in application and the writ petitions are directly and substantially the same. After examination of the pleadings, the Tribunal has recorded a finding of fact that there is no commonality of a cause of action or likelihood of a conflict between the judgments. The prayers and the genesis of the respective proceedings are entirely distinct and different in their scope and relief. The issues before the Tribunal would essentially relate to environment ecology and its restoration while the proceedings before the High Court relate to entirely different issues with acquisition of land, its allotment and transfer to the third party. These issues in both the proceedings are neither substantial nor materially identical.

1 *Forward Foundation* v. *State of Karnataka*, 2015 SCC OnLine NGT 5

58. After elaborately considering this question, the Tribunal has concluded as under: (*Forward Foundation case*[1], SCC OnLine NGT para 51)

> "*51.* ... For these reasons, we find no merit in this contention of Respondents 9 and 10. The purpose of the doctrine of res judicata is to provide finality and conclusiveness to the judicial decisions as well as to avoid multiplicity of litigation. In the present case, the question of reagitating the issues or agitating similar issues in two different proceedings does not arise. The ambit and scope of jurisdiction is clearly decipherable. The jurisdictions of the Hon'ble High Court of Karnataka and this Tribunal are operating in distinct fields and have no commonality insofar as the issues which are raised directly and substantially in these petitions, as well as the reliefs that have been prayed for before the Hon'ble High Court and the Tribunal are concerned. There is no commonality in parties before the Tribunal and the High Court. The "cause of action" in both proceedings is different and distinct. The matters substantially and materially in issue in one proceedings are not the same in the other proceeding. There is hardly any likelihood of conflicting judgments being pronounced by the Tribunal on the one hand and the High Court on the other. Therefore, we are of the considered view that the present applications are neither hit by the principles of *res judicata* nor *constructive res judicata*. We also hold that culmination of proceedings before the Tribunal into a final judgment would not offend the principle of "judicial propriety", because of the writ petitions pending before the Hon'ble High Court of Karnataka."

59. We do not find any error in the aforesaid conclusion of the Tribunal. We are of the view that the Tribunal was justified in holding that the objections taken by Respondents 9 and 10 do not satisfy the basic ingredients to attract the application of res judicata or constructive res judicata.

60. The State of Karnataka is aggrieved by the following offending portion of the order dated 4-5-2016[2]: (*Forward Foundation case*[2], SCC OnLine NGT)

> "*1.* In view of our discussion in the main judgment, we are of the considered view that the fixation of distance from waterbodies (lakes and Rajkalewas) suffers from the inbuilt contradiction, legal infirmity and is without any scientific justification. The RMP 2015 provides 50 m from middle of the Rajkalewas as buffer zone in the case of primary Rajkalewas, 25 m in the case of secondary Rajkulewas and 15 m in the tertiary Rajkulewas in contradiction to the 30 m in the case of lake which is certainly much bigger waterbody and its utility as a waterbody/wetland is well known certainly part of wet land. Thus, we direct that the distance in the case of Respondents 9 and 10 from Rajkulewas, waterbodies and wetlands shall be maintained as below—
>
> > (*i*) In the case of *lakes*, 75 m from the periphery of waterbody to be maintained as green belt and buffer zone for all the existing waterbodies i.e. lakes/wetlands.

1 *Forward Foundation* v. *State of Karnataka*, 2015 SCC OnLine NGT 5
2 *Forward Foundation* v. *State of Karnataka*, 2016 SCC OnLine NGT 1409

(*ii*) 50 m from the edge of the primary Rajkulewas.

(*iii*) 35 m from the edges in the case of secondary Rajkulewas.

(*iv*) 25 m from the edges in the case of tertiary Rajkulewas.

This buffer/green zone would be treated as no construction zone for all intent and purposes. This is absolutely essential for the purposes of sustainable development particularly keeping in mind the ecology and environment of the areas in question.

All the offending constructions raised by Respondents 9 and 10 of any kind including boundary wall shall be demolished which falls within such areas. Wherever necessary dredging operations are required, the same should be carried out to restore the original capacity of the water spread area and/or wetlands. Not only the existing construction would be removed but also none of these respondents — project proponent would be permitted to raise any construction in this zone.

All authorities particularly Lake Development Authority shall carry out this operation in respect of all the waterbodies/lakes of Bangalore." (emphasis in original)

61. We have already noticed that Shri Poovayya has no objection to set aside the aforesaid impugned portion of the order insofar as the appellants in all the appeals except the appeals filed by Respondents 9 and 10 are concerned. The aforesaid portion of the order contains not only general directions but also certain directions against Respondents 9 and 10. Therefore, only that portion of the order which does not pertain to Respondents 9 and 10 needs to be quashed.

62. In the light of the above discussion, we pass the following order:

62.1. Civil Appeal No. 5016 of 2016 and Civil Appeals Nos. 8002-03 of 2016 filed by the appellant-Respondents 9 and 10 are hereby dismissed. The impugned judgment and order insofar as the appellant-Respondents 9 and 10 are concerned is sustained.

62.2. All the other appeals are hereby allowed and Direction/Condition (1) in the order dated 4-5-2016[2] is hereby set aside except the direction issued against Respondents 9 and 10.

63. There will be no order as to costs.

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2 *Forward Foundation* v. *State of Karnataka*, 2016 SCC OnLine NGT 1409

2021 SCC OnLine SC 897

In the Supreme Court of India

(BEFORE A.M. KHANWILKAR, HRISHIKESH ROY AND C.T. RAVIKUMAR, JJ.)

Civil Appeal Nos. 12122-12123 of 2018

Municipal Corporation of Greater Mumbai ... Appellant(s);

Versus

Ankita Sinha and Others ... Respondent(s).

With

Civil Appeal No. 86/2019

Civil Appeal No. 5902/2019

Civil Appeal No. 6273 of 2021

(Arising out of SLP(C) No. 6732/2021)

Civil Appeal No. 6274 of 2021

(Arising out of SLP(C) No. 5930/2021)

Civil Appeal No. 6275 of 2021

(Arising out of SLP(C) No. 6733/2021)

Civil Appeal No. 6276 of 2021

(Arising out of SLP(C) No. 16448 of 2021)

Diary No. 11655/2021

Civil Appeal No. 6277-6278 of 2021

(Arising out of SLP(C) No. 16449-16450 of 2021)

Diary No. 13789/2021

Civil Appeal No. 6279 of 2021

(Arising out of SLP(C) No. 16451 of 2021)

Diary No. 13811/2021

Civil Appeal No. 6280-6281 of 2021

(Arising out of SLP(C) No. 16452-16453 of 2021)

Diary No. 13890/2021

Civil Appeal No. 2897/2021

Civil Appeal No. 6282 of 2021

(Arising out of SLP(C) No. 11426 of 2021)

Civil Appeal No. 6283 of 2021

(Arising out of SLP(C) No. 11427 of 2021)

Civil Appeal No. 6262 of 2021

Diary No. 16948 of 2021

Civil Appeal No. 6284 of 2021

(Arising out of SLP(C) No. 11798 of 2021)

Civil Appeal No. 6285 of 2021

(Arising out of SLP(C) No. 12669 of 2021)

Civil Appeal No. 6286 of 2021

(Arising out of SLP(C) No. 16454 of 2021)

Diary No. 19534/2021

Civil Appeal Nos. 12122-12123 of 2018, Civil Appeal No. 86/2019, Civil Appeal No. 5902/2019, Civil Appeal No. 6273 of 2021 (Arising out of SLP(C) No.

6732/2021), Civil Appeal No. 6274 of 2021 (Arising out of SLP(C) No. 5930/2021), Civil Appeal No. 6275 of 2021 (Arising out of SLP(C) No. 6733/2021), Civil Appeal No. 6276 of 2021 (Arising out of SLP(C) No. 16448 of 2021), Diary No. 11655/2021, Civil Appeal No. 6277-6278 of 2021 (Arising out of SLP(C) No. 16449-16450 of 2021), Diary No. 13789/2021, Civil Appeal No. 6279 of 2021 (Arising out of SLP(C) No. 16451 of 2021), Diary No. 13811/2021, Civil Appeal No. 6280-6281 of 2021 (Arising out of SLP(C) No. 16452-16453 of 2021), Diary No. 13890/2021, Civil Appeal No. 2897/2021, Civil Appeal No. 6282 of 2021 (Arising out of SLP(C) No. 11426 of 2021), Civil Appeal No. 6283 of 2021 (Arising out of SLP(C) No. 11427 of 2021), Civil Appeal No. 6262 of 2021, Diary No. 16948 of 2021, Civil Appeal No. 6284 of 2021 (Arising out of SLP(C) No. 11798 of 2021), Civil Appeal No. 6285 of 2021 (Arising out of SLP(C) No. 12669 of 2021), Civil Appeal No. 6286 of 2021 (Arising out of SLP(C) No. 16454 of 2021) and Diary No. 19534/2021

Decided on October 7, 2021

The Judgment of the Court was delivered by

HRISHIKESH ROY, J.:—

"Estragon : Let's go.
Vladimir : We can't.
Estragon : Why not?
Vladimir : We're waiting for Godot."[1]

2. Leave granted in the Special Leave Petitions.

3. The consideration to be made in these matters is whether the National Green Tribunal (for short "the NGT") has the power to exercise *Suo Motu* jurisdiction in discharge of its functions under the National Green Tribunal Act, 2010 (for short, "the NGT Act 2010").

4. In the lead case in this group, i.e. the Civil Appeal No. 86 of 2019, the NGT noticed an article titled "*Garbage Gangs of Deonar : The Kingpins and Their Multi-Crore Trade*" in the online news portal, *The Quint.* The article spoke of how mismanagement of solid waste had an adverse impact on the environment, public health and lives of individuals living in the vicinity of the dumping ground in Mumbai city.

5. The NGT took *suo motu* cognizance of the above article vide order dated 07.08.2018 and directed that the article writer Ankita Sinha be the applicant in the case OA No. 510 of 2018, registered at the NGT's instance. Thereafter, steps were taken for inspection of the Deonar Dumping site by the representative of the Central Pollution Control Board, Maharashtra Pollution Control Board, the District Collector of the area and also the representative of the Municipal Corporation of Greater Mumbai (for short "the MCGM"). Pursuant to the Report of the inspecting team which highlighted that the landfill site failed to comply with the provisions of the Solid Waste Management Rules, 2016, the NGT vide order dated 30.10.2018 noted that '*damage to the environment and public health is self-evident*' and ordered MCGM to pay compensation to the tune of Rs. 5 crores.

6. This Court while entertaining the Civil Appeal No. 86/2019 of MCGM, ordered stay on the operation of the order passed by the NGT and thereafter arranged for analogous consideration of the related cases where the common threshold jurisdictional issue arises on whether the NGT has the power to exercise *suo motu* jurisdiction.

7. Mr. Mukul Rohatgi, Mr. Dushyant Dave, Mr. Jaideep Gupta, Mr. Dhruv Mehta, Mr. Atmaram Nadkarni, Mr. Krishnan Venugopal, Mr. V. Giri, Mr. Sajan Poovayya and Mr. Sidhartha Dave, learned Senior Counsel together with Mr. E.M.S Anam, Ms. Amrita

Sharma, Mr. S. Thananjayan have taken a common stand. They have argued that the NGT is a Tribunal and a creature of statute and as such, it cannot act on its own motion or exercise the power of judicial review or act *suo motu*, in discharge of its function. Being a creature of the statute, the forum cannot assume inherent powers as under Article 32 and Article 226 and its domain is circumscribed by the limitations so imposed. The learned counsel also argue that the NGT has an adjudicatory role to decide disputes which necessarily mean involvement of two or more contesting parties. Therefore, the NGT by acting *suo motu* cannot transpose itself to the shoes of one such party. The absence of general power of judicial review with the NGT (which is available with superior courts) is highlighted to keep away *suo motu* power from the NGT. Various judgments relating to the Tribunal's power and role are cited by the counsel and those would be discussed in later part of this order.

8. Projecting the contrary view, Mr. Nidhesh Gupta, the learned Senior Counsel appearing for the aggrieved party in SLP(C) No. 6732/2021, Mr. Sanjay Parikh, learned Senior Counsel for the Intervener in C.A. No. 86/2019 and Mr. Gopal Sankaranarayanan, learned Senior Counsel appearing for the Impleader I.A. No. 71482/2021 in the SLP(C) No. 6732/2021, by referring to the special role envisaged for the NGT and the history of its incorporation, make equally powerful submission in support of exercise of *suo motu* jurisdiction, by the NGT.

9. Mr. Anand Grover, the learned Senior Counsel was appointed as the *Amicus Curiae* to assist the Court and he was heard at length. The counsel acknowledges the NGT's role and position under the Act and its wide jurisdiction over environmental matters but Mr. Grover is of the view that the NGT is incapable of triggering action on its own. In other words, the NGT cannot act *suo motu* without someone moving the Forum as otherwise the forum then would be perceived to be judging its own cause. Since *suo motu* power is not conferred under the NGT Act, the specialized tribunal has to be moved by an outside party. But the format of the application is not important and even a letter addressed by an interested party, will clothe the NGT with power to take action is the concessional submission of Mr. Grover.

10. Representing the Central Government, Ms. Aishwarya Bhati, the learned Additional Solicitor General of India submitted that *Suo Motu* power is not exercisable by the NGT since the same has not been conferred on the forum under the NGT Act, unlike the situation in the now repealed *National Environment Tribunal Act, 1995* (hereinafter referred to as the "NET Act"). The counsel refers to the provisions of the NGT Act and submits that the concept of *locus standi* was expanded for NGT's intervention under Section 18(2)(e) but the tribunal is not vested with *suo motu* power to take action on its own unlike the High Courts and the Supreme Court. The learned ASG, however, submits that even on receipt of a letter, the NGT can commence action on environmental matters. Thus, on exercise of epistolary jurisdiction by the NGT, the ASG is on the same page as the *amicus curiae* but as earlier noted both counsel argue for keeping away the *suo motu* power from the NGT.

11. Having summarized the positions taken by the respective Counsel, we may now refer to the specific grounds of challenge to keep away *suo motu* power from the NGT. The concerned counsel project that NGT is a creature of the statute and just like other such statutory tribunals, the NGT is also bound within statutory confines. They have relied upon *Standard Chartered* v. *Dharminder Bhohi*[2] wherein, provisions of the *Recovery of the Debts Due to Banks and Financial Institutions Act, 1993* were analysed to note the limitations of the Debt Recovery Tribunal and Appellate Tribunal. From the analysis of Justice Dipak Misra (as his Lordship then was) for the Division Bench, it can be inferred that the Tribunal was given power under the statute to pass such other orders and give such directions to give effect to its orders or to prevent abuse of its process or to secure the ends of justice but in discharge of its functions the Tribunal was required to confine itself to within the statutory parameters. Thus, Section 19(25)

conferred limited powers and the submission thus is that the Tribunal does not have any inherent powers.

12. Similarly, Justice S.H. Kapadia (as his Lordship then was) in *Transcore* v. *Union of India*[3], opined on behalf of a Division Bench that,

> "67. ...The DRT is a tribunal, it is the creature of the statute, it has no inherent power which exists in the civil courts."

13. The counsel also projects that in the context of Consumer Forums, Justice Dalveer Bhandari (as his Lordship then was) speaking for a three judge bench in *Rajeev Hitendra Pathak* v. *Achyut Kashinath*[4], observed as under:—

> "34. On a careful analysis of the provisions of the Act, it is abundantly clear that the Tribunals are creatures of the statute and derive their power from the express provisions of the statute. The District Forums and the State Commissions have not been given any power to set aside ex parte orders and the power of review and the powers which have not been expressly given by the statute cannot be exercised."

14. The second limb of contention is that the Act is applicable to '*disputes*' as, necessarily referring to a *lis* between two parties. The counsel has relied upon *Techi Tagi Tara* v. *Rajendra Singh Bhandari*[5] wherein the term '*substantial question relating to environment*' was interpreted in an attenuated fashion to mean a question arising as part of a dispute. The submission therefore is that a dispute must necessitate a claimant or an applicant. Further, this dispute must also be capable of settlement by the NGT. In the cited case the proposition is articulated in the following fashion,

> "19. On a combined reading of all these provisions, it is clear to us that there must be a substantial question relating to the environment and that question must arise in a dispute — it should not be an academic question. There must also be a claimant raising that dispute which dispute is capable of settlement by the NGT by the grant of some relief which could be in the nature of compensation or restitution of property damaged or restitution of the environment and any other incidental or ancillary relief connected therewith.
>
> 20. ...In *Prabhakar* v. *Deptt. of Sericulture* [*Prabhakar* v. *Deptt. of Sericulture*, [(2015) 15 SCC 1 : (2016) 2 SCC (L&S) 149] the following definition of "dispute" was noted in paras 34 and 35 of the Report : (SCC p. 21)
>
> "*34*. To understand the meaning of the word "dispute", it would be appropriate to start with the grammatical or dictionary meaning of the term:
>
> '"*Dispute*".—to argue about, to contend for, to oppose by argument, to call in question — to argue or debate (with, about or over) — a contest with words; an argument; a debate; a quarrel;'
>
> *35*. *Black's Law Dictionary*, 5th Edn., p. 424 defines "dispute" as under:
>
> '*Dispute*.—A conflict or controversy; a conflict of claims or rights; an assertion of a right, claim, or demand on one side, met by contrary claims or allegations on the other. The subject of litigation; the matter for which a suit is brought and upon which issue is joined, and in relation to which jurors are called and witnesses examined.'"

15. The *amicus curiae* has also addressed this issue, by defining a dispute as necessitating an assertion and a denial. By this reasoning, it is submitted that function of Section 14 of the NGT Act is available only to adjudicate upon disputes, as in an adversarial system but not for any other ameliorative, restorative or preventative functions.

16. Thirdly, the lack of general power of Judicial Review has been argued to show legislative intent to curb *suo motu* powers. Counsel have stated that the NGT, as a Tribunal with prescribed authority under a statute, does not have any general power of judicial review. Thus, it is not within the category of Writ Courts as under Article 226

and Article 32 of the Constitution of India. In the relied upon judgment *Tamil Nadu Pollution Control Board* v. *Sterlite Industries (I) Ltd.*[6] Justice R.F. Nariman speaking about the NGT for a Division Bench of this Court has observed the following,

> "41. ...Suffice it to say that the NGT is not a tribunal set up either under Article 323-A or Article 323-B of the Constitution, but is a statutory tribunal set up under the NGT Act. That such a tribunal does not exercise the jurisdiction of all courts except the Supreme Court is clear from a reading of Section 29 of the NGT Act.....
>
> 43. ...In the present case, it is clear that Section 16 of the NGT Act is cast in terms that are similar to Section 14(*b*) of the Telecom Regulatory Authority of India Act, 1997, in that appeals are against the orders, decisions, directions, or determinations made under the various Acts mentioned in Section 16. It is clear, therefore, that under the NGT Act, the Tribunal exercising appellate jurisdiction cannot strike down rules or regulations made under this Act. Therefore, it would be fallacious to state that the Tribunal has powers of judicial review akin to that of a High Court exercising constitutional powers under Article 226 of the Constitution of India. We must never forget the distinction between a superior court of record and courts of limited jurisdiction that was, in the felicitous language of Gajendragadkar, C.J., in *Powers, Privileges and Immunities of State Legislatures, In re* [*Powers, Privileges and Immunities of State Legislatures, In re*, [(1965) 1 SCR 413 : AIR 1965 SC 745], made in the following words : (SCR p. 499 : AIR p. 789, para 138)
>
> > "*138*. We ought to make it clear that we are dealing with the question of jurisdiction and are not concerned with the propriety or reasonableness of the exercise of such jurisdiction. Besides, in the case of a superior court of record, it is for the court to consider whether any matter falls within its jurisdiction or not. Unlike a court of limited jurisdiction, the superior court is entitled to determine for itself questions about its own jurisdiction.
> >
> > 'Prima facie', says Halsbury, 'no matter is deemed to be beyond the jurisdiction of a superior court unless it is expressly shown to be so, while nothing is within the jurisdiction of an inferior court unless it is expressly shown on the face of the proceedings that the particular matter is within the cognizance of the particular court [*Halsbury's Laws of England*, Vol. 9, p. 349]'."
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> For this reason also, we are of the view that the State Government order made under Section 18 of the Water Act, not being the subject-matter of any appeal under Section 16 of the NGT Act, cannot be "judicially reviewed" by the NGT. Following the judgment in *BSNL* [*BSNL* v. *TRAI*, [(2014) 3 SCC 222], we are of the view that the NGT has no general power of judicial review akin to that vested under Article 226 of the Constitution of India possessed by the High Courts of this country. Shri Sundaram's strong reliance on the NGT judgment dated 17-7-2014 in *Wilfred J.* v. *Ministry of Environment & Forests* [*Wilfred J.* v. *Ministry of Environment & Forests*, [2014 SCC OnLine NGT 6860] must also be rejected as this NGT judgment does not state the law on this aspect correctly. This contention is also without merit, and therefore, rejected."

17. The argument has been that the superior Courts exercising discretionary powers under Article 32 and Article 226, to safeguard fundamental rights, can venture into judicial review. But such a power not being expressly conferred on the NGT would suggest the limited nature of the Forum's powers, which would exclude any *suo motu* exercise.

I. THE BACKDROP OF THE NATIONAL GREEN TRIBUNAL

18. In order to understand the contours of jurisdiction of the NGT, we have thought it necessary to refer to the history of the legislation and also the Preamble and the Statement of Objects and Reasons of the NGT Act. The parliamentary intent which

shaped the creation of the NGT and the broad issues that they sought to address through the specialized institution should now be brought to the fore.

19. The precursor to the NGT Act was the 186th Report of the Law Commission of India dated 23.9.2003 where the Law Commission had made the following pertinent observation espousing the case for the creation of a specialized Court to deal with environmental issues:—

> "It is true that the High Court and Supreme Court have been taking up these and other complex environmental issues and deciding them. But, though they are judicial bodies, they do not have an independent statutory panel of environmental scientists to help and advise them on a permanent basis. They are prone to apply principles like the Wednesbury Principle and refuse to go into the merits. They do not also make spot inspections or receive oral evidence to see for themselves the facts as they exist on ground. On the other hand, if Environmental Courts are established in each State, these Courts can make spot inspections and receive oral evidence. They can receive independent advice on scientific matters by a panel of scientists.
>
> These Environmental Courts need not be Courts of exclusive jurisdiction. However, the High Courts, even if they are approached under Art. 226 either in individual cases or in PIL cases, where orders of environmental authorities could be questioned, may refuse to intervene on the ground that there is an effective alternative remedy before the specialist Environmental Court. As of now, when we have consumer Courts at the District and State level, the High Courts have consistently refused to entertain writ petitions under Art. 226 because parties have a remedy before the fora established under the Consumer Protection Act, 1986. We have also the example of special environmental courts in Australia, New Zealand and in some other countries and these are manned by Judges and expert commissioners. The Royal Commission in UK is also of the view that if environmental courts are established, the High Courts may refuse to entertain applications for judicial review on the ground that there is an effective alternative remedy before these Courts.
>
> It is for the above reasons we are proposing the establishment of separate environmental courts in each State. In Chapter IX, we propose to give the details of the constitution, power and jurisdiction of these Courts."

20. The above would suggest that the Law Commission was of the opinion that it is not convenient for the High Courts and the Supreme Court to make local inquiries or receive evidence. Moreover, the superior courts will not have access to expert environmental scientists on permanent basis to assist them. Therefore, NGT was conceived as a complimentary specialized forum to deal with all environmental multi-disciplinary issues both as original and also as an appellate authority, which complex issues were hitherto dealt with by the High Courts and the Supreme Court.

21. The NGT, therefore, was intended to be the competent forum for dealing with environmental issues instead of those being canvassed under the writ jurisdiction of the Courts. It was explicitly noted that the creation of the NGT would allow for the Supreme Court and High Court to avoid intervening under their inherent jurisdiction when an alternative efficacious remedy would become available before the specialized forum. The 186th Law Commission Report provided the following reasoning,

> "Likewise, we have not thought it fit to enable the Environmental Courts, to have judicial review powers exercised by the High Court under Art. 226 of the Constitution of India. We have felt that it is sufficient to vest original civil jurisdiction as exercisable by a Civil Court, in the Environmental Courts. If we vest powers of Judicial review as under Art. 226, then there may be need to subject the orders to the writ jurisdiction of High Courts as held in *L. Chandra Kumar* v. *Union*

of India, [(1997) 3 SCC 261.

No doubt, the Environment Court exercising powers of a Civil Court or as an appellate Court in civil jurisdiction, may be technically amenable to writ jurisdiction of the High Court but inasmuch as we are providing an appeal to the Supreme Court, the High Courts may decline to interfere on the ground that there is an effective alternative remedy of appeal on law and fact to the Supreme Court, as explained later in this Chapter."[7]

22. Thus, the power of judicial review was omitted to ensure avoidance of High Courts' interference with the Tribunal's orders by way of a mid-way scrutiny by the High Court, before the matter travels to the Supreme Court where NGT's orders can be challenged. The streamlining of the mechanism was to arrest the growing tide of litigation before High Courts and the Supreme Court and shift such issues to the domain of the NGT.

23. This is how the proposed forum was made free from the rules of evidence and the NGT was permitted to lay down its own procedure to entertain oral and documentary evidence, consult experts etc. The observance of the principles of natural justice was however mandated.

II. PREAMBLE & STATEMENT OF OBJECTS AND REASONS

24. The Statement of Objects and Reasons of the NGT Act will now require attention. Paras 2, 3, 4, 5 and 6 of the Statement of Objects and Reasons being relevant are extracted hereinbelow:—

"2. India is a party to the decisions taken at the United Nations Conference on the Human Environment held at Stockholm in June, 1972, in which India participated, calling upon the States to take appropriate steps for the protection and improvement of the human environment. The United Nations Conference on Environment and Development held at *Rio de Janeiro* in June, 1992, in which India participated, has also called upon the States to provide effective access to judicial and administrative proceedings, including redress and remedy, and to develop National laws regarding liability and compensation for the victims of pollution and other environmental damage.

3. The right to healthy environment has been construed as a part of the right to life under article 21 of the Constitution in the judicial pronouncement in India.

4. The National Environment Tribunal Act, 1995 was enacted to provide for strict liability for damages arising out of any accident occurring while handling any hazardous substance and for the establishment of a National Environmental Tribunal for effective and expeditious disposal of cases arising from such accident, with a view to giving relief and compensation for damages to persons, property and the environment. However, the National Environment Tribunal, which had a very limited mandate, was not established. The National Environment Appellate Authority Act, 1997 was enacted to establish the National Environment Appellate Authority to hear appeals with respect to restriction of areas in which any industries, operations or processes or class of industries, operations or processes shall not be carried out or shall be carried out subject to certain safeguards under the Environment (Protection) Act, 1986. The National Environment Appellate Authority has a limited workload because of the narrow scope of its jurisdiction.

5. Taking into account account the large number of environmental cases pending in higher courts and the involvement of multidisciplinary issues in such cases, the Supreme Court requested the Law Commission of India to consider the need for constitution of specialized environmental courts. Pursuant to the same, the Law Commission has recommended the setting up of environmental courts having both original and appellate jurisdiction relating to environmental laws.

6. In view of the foregoing paragraphs, a need has been felt to establish a

specialized tribunal to handle the multidisciplinary issues involved in environmental cases. Accordingly, it has been decided to enact a law to provide for the establishment of the National Green Tribunal for effective and expeditious disposal of civil cases relating to environmental protection and conservation of forests and other natural resources including enforcement of any legal right relating to environment."

25. A reading of the Statement of Objects and Reasons shows that paragraph 4 thereof refers to the *National Environmental Tribunal Act, 1995 (NET)* which provided for strict liability and damages arising out of accidents occurring while handling hazardous substances. In the same context it was observed that the NET had a very limited and narrow mandate and jurisdiction. Thereafter, in Para 5 it has been recorded that a large number of environmental cases are pending in higher Courts which involve multi-disciplinary issues and, in such cases, the Supreme Court had requested the Law Commission of India to consider the need for constitution of specialized environmental Courts.

26. Significantly, the Statement of Objects and Reasons also refers to right to a healthy environment being a part of the right to life under Article 21 of the Constitution of India. This was consistent with the earlier mentioned 186th Law Commission Report highlighting that the body so created, would aim to "*achieve the objectives of Article 21, 47, 48A, 51A (g) of the Constitution of India by means of a fair, fast and satisfactory judicial procedure*". An institution concerned with a significant aspect of right to life necessarily should be given the most liberal construction.

27. The paragraph 2 of the Statement of Objects and Reasons refers to the United Nations Conference on the Human Environment held at Stockholm in June 1972 which called upon governments and peoples to exert common efforts for the preservation and improvement of the human environment when it involved people and for their posterity. Therefore, the municipal law enacted with such a laudatory objective of not only preventing damage to the environment but also to protect it, must be provided with the wherewithal to discharge its protective, preventive and remedial function towards protection of the environment. The mandate and jurisdiction of the NGT is therefore conceived to be of the widest amplitude and it is in the nature of a *sui generis* forum.

28. The United Nations Conference on Environment and Development held at Rio De Janeiro in June, 1992 where India participated, impressed upon the States to provide effective access to judicial and administrative proceedings, lay out redress and remedy and to develop national laws regarding liability and compensation for the victims of pollution and other environmental damage. The Preamble of the Act significantly emphasized on construing the right to healthy environment as a part of the Right to Life under Article 21 of the Constitution which was accepted by various judicial pronouncements in India. The National Green Tribunal was born in our country with such lofty dreams to deal with multi-disciplinary issues, relating to the environment.

29. The limited mandate conferred on the earlier forum i.e. the NET and the narrow scope of jurisdiction of the National Environment Appellate Authority along with the involvement of multi-disciplinary issues arising in environmental cases, were intended to be addressed through the constitution of the NGT.

III. THE NEED FOR PURPOSIVE INTERPRETATION

30. While adequate clarity is discernible in the phraseology that is employed under Section 14 and other provisions of the NGT Act, as shall be discussed in later parts of the judgement, the intention behind the statute should receive our careful attention. Tracing the legislative history for creation of the NGT it is seen that the NGT is intended to address wide ranging societal concerns and these have prompted us to opt

for purposive interpretation. The Statue will have to be read in its entirety and each provision of the Act must be given its due meaning by comprehending the mischief it intends to remedy. The chosen interpretive exercise is best understood from the treatise *Interpretation of Statutes*, authored by Justice G.P. Singh who explained thus,

> "When the question arises as to the meaning of certain provision in statute, it is not only legitimate but proper to read that provision in its context. The context here means, the statute as a whole, the previous state of the law, other statutes in pari materia, the general scope of the statute, and the mischief that it was intended to remedy. This statement of the rule was later fully adopted by the Supreme Court.
>
> It is a rule now firmly established that the intention of the Legislature must be found by reading the statute as a whole. The rule is referred to as an 'elementary rule' by Viscount Simonds : a compelling rule by Lord Sommervell of Harrow; and a "settled rule" by B.K. Mukherjee J. "I agree" said Lord Halsbury, "that you must look at the whole in order to give effect, if it be possible to do so, to the intention of the framer of it."

31. The mischief that the NGT Act attempted to remedy were underscored in the legislative history, and the pronouncements of the constitutional Courts flagging their environmental concerns.

32. The application of the *Heydon's Rule* could adequately aid us here as the Rule directs adoption of that construction which "*shall suppress the mischief and advance the remedy*" as was pertinently observed by Justice S.R. Das, for a seven judge bench in *Bengal Immunity Co.* v. *State of Bihar*[8],

> "...the office of all judges is to make such construction as shal suppresses the mischief and advance the remedy, and to suppress subtle inventions and evasions for continuance of the mischief; and *pro privato commodo*, and to add force and life to the cure and remedy, according to the true intent of the makers of the Act, *pro bono publico*."

33. Francis Bennion in his book *Statutory Interpretation* described 'purposive interpretation' as under:

> 'A purposive construction of an enactment is one which gives effect to the legislative purpose by—
>
> (*a*) following the literal meaning of the enactment where that meaning is in accordance with the legislative purpose, or
>
> (*b*) applying a strained meaning where the literal meaning is not in accordance with the legislative purpose.'

34. Justice Frankfurter of US Supreme Court in '*Some Reflections on the Reading of Statutes*', has elucidated on the principles to ascertain the contextual meaning of statutes in the following manner,

> 'The purpose of construction being the ascertainment of meaning, every consideration brought to bear for the solution of that problem must be devoted to that end alone.
>
> ...
>
> Judge Learned Hand speaks of the art of interpretation as 'the proliferation of purpose'."[9]

35. Eventually, Justice Frankfurter relied upon Justice Benjamin Cardozo's phraseology in *Panama Refining Co.* v. *Ryan*, and the same is taken as a lodestar in our quest,

> "the meaning of a statute is to be looked for, not in any single section, but in all the parts together and in their relation to the end in view"[10].

36. The laudatory objectives for creation of the NGT would implore us to adopt such an interpretive process which will achieve the legislative purpose and will eschew

procedural impediment or so to say incapacity. The precedents of this Court, suggest a construction which fulfills the object of the Act.[11] The choice for this Court would be to lean towards the interpretation that would allow fructification of the legislative intention and is forward looking. The provisions must be read with the intention to accentuate them, especially as they concern protections of rights under Article 21 and also deal with vital environmental policy and its regulatory aspects.

IV. SALIENT STATUTORY FEATURES OF NGT ACT

37. Applying the chosen tool of interpretation to the statutory layout of the NGT Act, following provisions will require the Court's attention. Section 2(1)(c) of the NGT Act defines the term "environment"; Section 2(1)(m) defines "substantial question relating to environment". Chapter III relates to jurisdiction, power and proceedings of the Tribunal. The Section 14 gives original jurisdiction to the NGT to decide a substantial question relating to environment; Section 15 deals with relief, compensation and restitution whereby besides providing relief to the victims of pollution, the NGT can direct restitution of property damage and restitution of environment for such area(s) "*as the Tribunal may think fit*". Section 16 gives appellate jurisdiction to the Tribunal against the orders passed under various enactments. Section 17 provides for liability to pay relief or compensation in certain cases, Section 18 specifies who can move application/appeal before the Tribunal. It includes, among others, 18(2)(d) "*any person aggrieved including any representative body/organization*" and the *locus standi* is not limited only to the aggrieved party. Section 19 provides for procedure and powers of the Tribunal. Section 19(1) significantly says that the Tribunal shall not be bound by procedures laid down in the CPC and shall be bound by the Principles of Natural Justice. Section 19(2) provides that subject to the provisions of the Act, the Tribunal shall have powers to regulate its own procedure. Section 19(3) mentions that the Tribunal shall not be bound by the rules of evidence contained in the Evidence Act, 1872. While discharging functions under Section 19(4), besides summoning, enforcing attendance, examining persons on oath, requiring discovery and production of documents, receiving evidence on oath, the NGT also has powers to review its decision, to pass interim orders as well as pass cease and desist orders. Section 20 says that while adjudicating issues, the Tribunal shall apply the environmental principles, namely, sustainable development principles, precautionary principles and polluter pays principle. Under Section 25, the Tribunal can execute its order/decision as a decree of the Civil Court and for that purpose shall have all the powers of a Civil Court. Section 29 bars the jurisdiction of the Civil Court to entertain all environmental matters covered by the Tribunal. Under Section 33, the NGT Act has an overriding effect over other laws.

38. While on the statutory provisions, it is seen that the Central Government has framed the *National Green Tribunal (Practice & Procedure) Rules, 2011* (for short "the NGT Rules"). For our purpose, Rule 24 is important which reads thus:

> *"24. Order and directions in certain cases - The Tribunal may make such orders or give such directions as may be necessary or expedient to give effect to its order or to prevent abuse of its process or to secure the ends of justice."*

39. The said Rules make it clear that the NGT has been given wide discretionary powers to *secure the ends of justice*. This power is coupled with the duty to be exercised for achieving the objectives. The intention understandably being to preserve and protect the environment and the matters connected thereto.

40. By choosing to employ a phrase of wide import, i.e. *secure the ends of justice*, the legislature has nudged towards a liberal interpretation. Securing justice is a term of wide amplitude and does not simply mean adjudicating disputes between two rival entities. It also encompasses *inter alia*, advancing causes of environmental rights, granting compensation to victims of calamities, creating schemes for giving effect to

the environmental principles and even hauling up authorities for inaction, when need be.

41. Moreover, unlike the civil courts which cannot travel beyond the relief sought by the parties, the NGT is conferred with power of moulding any relief. The provisions show that the NGT is vested with the widest power to appropriate relief as may be justified in the facts and circumstances of the case, even though such relief may not be specifically prayed for by the parties.

42. Another distinguishing feature of the environmental forum is on the aspect of *locus standi* which was made as wide as is available to the High Courts and the Supreme Court. Thus, any person or organization who may be interested in the subject matter is permitted to approach the NGT.

43. The provisions of the NGT Act and the NGT Rules demonstrate that myriad roles are to be discharged by the NGT, as was encapsulated in the Law Commission Report, the Preamble and the Statement of Objects and Reasons. This is also forthcoming from the international obligation and commitment by India to implement the decision taken at the Stockholm and the Rio De Janeiro Conventions towards protection of the environmental rights under Article 21 of the Constitution.

V. NON-ADJUDICATORY ROLES OF NGT

44. As can be seen, the Parliament intended to confer wide jurisdiction on the NGT so that it can deal with the multitude of issues relating to the environment which were being dealt with by the High Courts under Article 226 of the Constitution or by the Supreme Court under Article 32 of the Constitution. The Tribunal is also expected to proceed with such matters with the understanding that environment and environmental principles are part of Article 21 of the Constitution. [See *Vellore Citizens' Welfare Forum* v. *UOI*[12]; *M.C. Mehta* v. *UOI*[13] etc.]

45. The Schedule I of the NGT Act is concerned with implementation of few environmental related enactments such as the Water Act, the Air Act, the Environment Act, the Forest Conservation Act etc. As one looks at these enactments, an expanded role for the NGT is clearly discernible. The activities of the NGT are not only geared towards the protection of the environment but also to ensure that the developments do not cause serious and irreparable damage to the ecology and the environment. These would suggest a broad canvas for the NGT Act as also its creation.

46. For the environmental forum, tasked with implementation of the statutes mentioned in Schedule I of the NGT Act, the concept of *lis*, would obviously be beyond the usual understanding in civil cases where there is a party (whether private or government) disturbing the environment and the other one (could be an individual, a body or the government itself), who has concern for the protection of environment. Therefore, the NGT is primarily concerned with protection of the environment and also preservation of the natural resources. As the specialized forum, the NGT would be expected to take preventive action, besides settling and adjudicating disputes and pass orders on all environment related questions.

47. The NGT is not just an adjudicatory body but has to perform wider functions in the nature of prevention, remedy and amelioration. This aspect was specifically flagged in the 186th Law Commission Report,

> "The Environment Court, in our view, must have power to frame schemes and monitor them and also have power to modify the schemes from time to time. If one looks at the problems raised in several cases and the directions issued by the Supreme Court, it will be observed that such a power is necessary to be vested in these Courts. .... The Environment Court must be able to provide an "environmental solution" to grave problems like the one mentioned above and unless it has power to frame comprehensive schemes which will involve issuing directions to various departments, the solution cannot be implemented. Such a comprehensive

jurisdiction is now being exercised both by the Supreme Court and High Courts. In our view, the proposed Courts must have similar powers. They will also have to monitor the schemes till they are successfully implemented on ground and, if necessary, modify the schemes from time to time."

48. We have earlier discussed that the NGT is empowered to carry out restitutive exercise for compensating persons adversely affected by environmental events. The larger discourse which informs such functions is related to distributive and corrective justice, as will be elaborated in later paragraphs. Even in the absence of harm inflicted by human agency, in a situation of a natural calamity, the Tribunal will be required to devise a plan for alleviating damage. An inquisitorial function is also available for the Tribunal, within and without adversarial significance. Importantly, many of these functions do not require an active "*dispute*", but the formulation of *decisions*.

49. With the constitution of the NGT, many cases pending before the High Courts were transferred to the NGT. Apprehending the possibility of conflict between the High Courts and the NGT (in matters concerning environment and the statutes mentioned in Schedule I of the NGT Act), Justice Swatanter Kumar speaking for the three Judge Bench in *Bhopal Gas Peedith Mahila Udyog Sangathan* v. *Union of India*[14], highlighted the NGT's role in the context, in the following words:—

"40. Keeping in view the provisions and scheme of the National Green Tribunal Act, 2010 (for short "the NGT Act") particularly Sections 14, 29, 30 and 38(5), it can safely be concluded that the environmental issues and matters covered under the NGT Act, Schedule I should be instituted and litigated before the National Green Tribunal (for short "NGT"). Such approach may be necessary to avoid likelihood of conflict of orders between the High Courts and NGT. Thus, in unambiguous terms, we direct that all the matters instituted after coming into force of the NGT Act and which are covered under the provisions of the NGT Act and/or in Schedule I to the NGT Act shall stand transferred and can be instituted only before NGT. This will help in rendering expeditious and specialised justice in the field of environment to all concerned.

41. We find it imperative to place on record a caution for consideration of the courts of competent jurisdiction that the cases filed and pending prior to coming into force of the NGT Act, involving questions of environmental laws and/or relating to any of the seven statutes specified in Schedule I of the NGT Act, should also be dealt with by the specialised tribunal, that is, NGT, created under the provisions of the NGT Act. The courts may be well advised to direct transfer of such cases to NGT in its discretion, as it will be in the fitness of administration of justice."

50. In the above case, this Court mandated transfer of all cases concerning the statutes mentioned in Schedule I of the NGT Act to the specialized forum as otherwise there can be conflicts with the High Courts. Notably, some of those cases were originally registered *suo motu* by the Courts.

VI EXERCISE OF SUO MOTU POWER BY NGT

51. Let us now explore whether the NGT in discharge of its functions, should also have *suo motu* power. The specialized tribunal's exercise of *suo motu* powers is somewhat distinct from those exercised by the constitutional Courts. The Supreme Court and High Courts can foray into any issues under their constitutional mandate but the NGT cannot naturally travel beyond its environmental domain in reference to the scheduled enactments. However, As long as the sphere of action is not breached, the NGT's powers must be understood to be of the widest amplitude.

52. Explaining the purpose for constituting the special court to deal with environmental issues, in *Mantri Techzone (P) Ltd.* v. *Forward Foundation*[15], Justice S. Abdul Nazeer writing for the three Judge Bench, made the following pertinent observations on the status of the NGT:—

> "40. The Tribunal has been established under a constitutional mandate provided in Schedule VII List I Entry 13 of the Constitution of India, to implement the decision taken at the United Nations Conference on Environment and Development. The Tribunal is a specialised judicial body for effective and expeditious disposal of cases relating to environmental protection and conservation of forests and other natural resources including enforcement of any legal right relating to the environment. The right to healthy environment has been construed as a part of the right to life under Article 21 by way of judicial pronouncements. Therefore, the Tribunal has special jurisdiction for enforcement of environmental rights."

53. As can be seen from the quoted passage, this Court recognized that the NGT is set up under the constitutional mandate in Entry 13 of List I in Schedule VII to enforce Article 21 with respect to the environment and in the context observed that the Tribunal has special jurisdiction for enforcement of environmental rights.

54. Elaborating further, in paragraphs 44-46, the Supreme Court expressed that the interpretation that is in favour of conferring jurisdiction should be preferred rather than one taking away jurisdiction. It was specifically noted that,

> "46. ... As stated supra the typical nature of the Tribunal, its breadth of powers as provided under the statutory provisions of the Act as well as the Scheduled enactments, cumulatively, leaves no manner of doubt that the only tenable interpretation to these provisions would be to read the provisions broadly in favour of cloaking the Tribunal with effective authority. An interpretation that is in favour of conferring jurisdiction should be preferred rather than one taking away jurisdiction."

55. Such being the wide contour of the NGT's powers, the exposition in *Rajeev Suri* v. *DDA*[16] was not to constrict the *suo motu* powers of the NGT. To appreciate the implication of the ratio in *Rajeev Suri*, it must be noticed that it was in the specific context of '*Merits Review*' and the NGT transgressing beyond its environmental mandate. This is why, one of us, Justice A.M. Khanwilkar observed that,

> "503. NGT is not a plenary body with inherent powers to address concerns of a residuary character. It is a statutory body with limited mandate over environmental matters as and when they arise for its consideration. In a cause before it, NGT cannot directly go on to adjudicate on concerns of violation of fundamental rights and once the contours of a subject matter traverse the scope of appeal from a grant of EC, the merits review by tribunal cannot traverse beyond the scope of jurisdiction vested in it by the statute."

56. Thus, the ratio in *Rajeev Suri* to the quoted extent will not clash with the view propounded here as the exposition is not to allow any inherent power of residuary character for the NGT. In its own domain, as crystalized by the statute, the role of the NGT is clearly discernible.

57. The need for an expert body with extensive functions and the sources of inspiration behind it was articulated in *Andhra Pradesh Pollution Control Board* v. *Prof. M. V. Nayudu (Retd.)*[17] where Justice M. Jagannadha Rao speaking for a Division Bench referred to a comparable court in Australia and noted the following,

> "The Land and Environment Court of New South Wales in Australia, established in 1980, could be the ideal. It is a superior court of record and is composed of four Judges and nine technical and conciliation assessors. Its jurisdiction combines appeal, judicial review and enforcement functions. Such a composition in our opinion is necessary and ideal in environmental matters."

58. The above would show that from the very inception, the role of the NGT was not simply adjudicatory in the nature of a *lis* but to perform equally vital roles which are preventative, ameliorative or remedial in nature. The functional capacity of the NGT was intended to leverage wide powers to do full justice in its environmental mandate.

VII. UNIQUENESS OF NGT VIS-A-VIS OTHER TRIBUNALS

59. While we see many tribunals functioning within their specified domains, variances do exist in the manner in which they are designed to function. The statutory Tribunals were categorized to fall under four subheads; Administrative Tribunals under Article 323A; Tribunals under Article 323B; Specialized sector Tribunals and most prominently; Tribunals to safeguard rights under Article 21. As already noted, the duties of NGT brings it within the ambit of the fourth category, creating a compelling proposition for wielding much broader powers as delineated by the statute.

60. The ideal was to create a fairly proactive and responsive Institution which could step into varying roles, as the situation demanded. Commenting on the specialized and unique role of the NGT, Justice Ashok Bhushan in *State of Meghalaya* v. *All Dimasa Students Union*[18], fittingly observed thus:—

> "163. The object for which the said power is given is not far to seek. To fulfil the objective of the NGT Act, 2010, NGT has to exercise a wide range of jurisdiction and has to possess wide range of powers to do justice in a given case. The power is given to exercise for the benefit of those who have right for clean environment which right they have to establish before the Tribunal. The power given to the Tribunal is coupled with duty to exercise such powers for achieving the objects. In this regard reference is made to the judgment of this Court in *L. Hirday Narain* v. *CIT* [*L. Hirday Narain* v. *CIT*, [(1970) 2 SCC 355], wherein this Court was examining provision empowering authority to do something. This Court laid down in para 14 : (SCC p. 359)
>
> > "14. The High Court observed that under Section 35 of the Indian Income Tax Act, 1922, the jurisdiction of the Income Tax Officer is discretionary. If thereby it is intended that the Income Tax Officer has discretion to exercise or not to exercise the power to rectify, that view is in our judgment erroneous. Section 35 enacts that the Commissioner or Appellate Assistant Commissioner or the Income Tax Officer may rectify any mistake apparent from the record. If a statute invests a public officer with authority to do an act in a specified set of circumstances, it is imperative upon him to exercise his authority in a manner appropriate to the case when a party interested and having a right to apply moves in that behalf and circumstances for exercise of authority are shown to exist. Even if the words used in the statute are prima facie enabling, the courts will readily infer a duty to exercise power which is invested in aid of enforcement of a right—public or private— of a citizen."

61. Reflecting on the expanded role of NGT unlike other Tribunals, this Court so appositely observed that the forum has a duty to do justice while exercising "*wide range of jurisdiction*" and the "*wide range of powers*", given to it by the statute.

62. During the course of its functioning, the NGT has been recognized as one of the most progressive Tribunals in the world. This jurisprudential leap has allowed our country to enter a rather exclusive group of nations which have set up such institutions with broad powers. To understand how the NGT is perceived globally, we may usefully refer to the views of Chief Justice Brian Preston of the Land and Environment Court of NSW Australia,

> "The NGT is an example of a specialized court to better achieve the goals of ensuring access to justice, upholding the rule of law and promoting good governance."[19]

VIII. THE SUI GENERIS ROLE OF NGT

63. The NGT being one of its own kind of forum, commends us to consider the concept of a *sui generis* role, for the institution. The structure of *Sui generis* institutions was explained in *Paramjit Kaur* v. *State of Punjab*[20], wherein Justice S. Saghir Ahmad spoke thus for a Division Bench,

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> "14. The concept of sui generis is applied quite often with reference to resolution of disputes in the context of international law. When the conventions formulated by compacting nations do not cover any area territorially or any subject topically, then the body to which such power to arbiter is entrusted acts sui generis, that is, on its own and not under any law."

64. In *DG NHAI* v. *Aam Aadmi Lokmanch*[21], Justice S. Ravindra Bhat commenting on the *sui generis* role of the NGT, so appropriately stated as follows:—

> "38. A conjoint reading of Sections 14, 15 and the Schedules would lead one to infer that the NGT has circumscribed jurisdiction to deal with, adjudicate, and wherever needed, direct measures such as payment of compensation, or make restitutionary directions in cases where the violation (i.e. harm caused due to pollution or exposure to hazards, etc.) are the result of infraction of any enactment listed in the first schedule. Yet, that, interpretation, in the opinion of this court, is not warranted.
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> **** **** **** ****
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> **** **** **** ****
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> 76. The power and jurisdiction of the NGT under Sections 15(1)(b) and (c) are not restitutionary, in the sense of restoring the environment to the position it was before the practise impugned, or before the incident occurred. The NGT's jurisdiction in one sense is a remedial one, based on a reflexive exercise of its powers. In another sense, based on the nature of the abusive practice, its powers can also be preventive.
>
> 77. As a quasi-judicial body exercising both appellate jurisdiction over regulatory bodies' orders and directions (under Section 16) and its original jurisdiction under Sections 14, 15 and 17 of the NGT Act, the tribunal, based on the cases and applications made before it, is an expert regulatory body. Its personnel include technically qualified and experienced members. The powers it exercises and directions it can potentially issue, impact not merely those before it, but also state agencies and state departments whose views are heard, after which general directions to prevent the future occurrence of incidents that impact the environment, are issued."

65. In that case, this Court repelled the argument for a restricted jurisdiction for the NGT, and fittingly observed in paragraph 76 that the powers conferred on the NGT are both reflexive and preventive and the role of the NGT was recognized in paragraph 77 as "*an expert regulatory body*", which can issue general directions also *albeit* within the statutory framework.

66. The above discussion would advise us to say that the NGT was conceived as a specialized forum not only as a like substitute for a civil court but more importantly to take over all the environment related cases from the High Courts and the Supreme Court. Many of those cases transferred to the NGT, emanated in the superior courts and it would be appropriate thus to assume that similar power to initiate *suo motu* proceedings should also be available with the NGT.

67. The NGT is a Tribunal with *sui generis* characteristic, with the special and all-encompassing jurisdiction to protect the environment. Besides its adjudicatory role as an appellate authority, it is also conferred with the responsibility to discharge role of supervisory body and to decide substantial questions relating to the environment. The necessity of having a specialized body, with the expertise to handle multidimensional environmental issues allows for an all-encompassing framework for environmental justice. The technical expertise that may be required to address evolving environmental concerns would definitely require a flexible institutional mechanism for its effective exercise.

IX. AUTHORITY WITH SELF-ACTIVATING CAPABILITY

68. Given the multifarious role envisaged for the NGT and the purposive interpretation which ought to be given to the statutory provisions, it would be fitting to regard the NGT as having the mechanism to set in motion all necessary functions within its domain and this, as would follow from the discussion below, should necessarily clothe it with the authority to take *suo motu* cognizance of matters, for effective discharge of its mandate.

69. The analysis for this segment should commence with Section 14 of the NGT Act and the same being of great relevance is being extracted hereunder,

> "14. Tribunal to settle disputes. - (1) The Tribunal shall have the jurisdiction over all civil cases where a substantial question relating to environment (including enforcement of any legal right relating to environment), is involved and such question arises out of the implementation of the enactments specified in Schedule I.
>
> (2) The Tribunal shall hear the disputes arising from the questions referred to in sub-section (1) and settle such disputes and pass order thereon.
>
> (3) No application for adjudication of dispute under this section shall be entertained by the Tribunal unless it is made within a period of six months from the date on which the cause of action for such dispute first arose : Provided that the Tribunal may, if it is satisfied that the applicant was prevented by sufficient cause from filing the application within the said period, allow it to be filed within a further period not exceeding sixty days."

70. The Section 14(1) of the NGT Act deals with jurisdiction, and the jurisdictional provision conspicuously omits to specify that an application is necessary to trigger the NGT into action. In situations where the three prerequisites of Section 14(1) i.e., Civil cases; involvement of substantial question of environment; and implementation of the enactments in Schedule I are satisfied, the jurisdiction and power of the NGT gets activated. On these material aspects, the NGT is not required to be triggered into action by an aggrieved or interested party alone. It would therefore be logical to conclude that the exercise of power by the NGT is not circumscribed by receipt of application. When substantial questions relating to the environment arise and the issue is civil in nature and those relate to the enactments in Schedule I of the Act, the NGT in our opinion even in the absence of an application, can self-ignite action either towards amelioration or towards prevention of harm.

71. In the same spirit, we find merit in the arguments that Section 14(1) exists as a standalone feature, not constricted by the operational mechanism of the subsequent subsections. The sub Section (2) of Section 14 functions as a corollary and comes into play when a dispute arises from the questions referred to in Section 14(1). Likewise sub Section (3) thereafter, refers to the period of limitation concerning applications, when they are addressed to the NGT. Where adjudication is involved, the adjudicatory function under Section 14(2) comes into play. When it is a case warranting NGT's intervention, or may be a situation calling for decisions to meet certain exigencies, the functions under Section 14(1) can be undertaken and those may not involve any formal application or an adjudicatory process. However, the later provisions may not work in similar fashion. Therefore, care must be taken to ensure unrestricted discharge of the responsibilities under Section 14(1) and that wide arena of NGT's functioning.

72. The other pertinent provisions relating to, *inter-alia*, jurisdiction, interim orders, payment of compensation and review, do not require any application or appeal, for the NGT to pass necessary orders. These crucial powers are expected to be exercised by the NGT, would logically suggest that the action/orders of the NGT need not always involve any application or appeal. To hold otherwise would not only reduce its effectiveness but would also defeat the legal mandate given to the forum.

73. It may also be relevant to bear in mind that while dealing with contested cases,

the NGT is required to pass "*award*" and "*order*" and the statute repeatedly uses the word "*decision*". Therefore, it is appropriate to correlate the word "*decision*" to the NGT, in its non-adversarial or inquisitorial role, as was suggested by the Law Commission and recognized in *DG, NHAI* (supra).

74. The duty to safeguard Article 21 rights cannot stand on a narrow compass of interpretation. Procedural provisions must be allowed to fall in step with the substantive rights that are invoked in the environmental domain, in larger public interest. The specialized forum is bestowed with the responsibility to ensure protection of the environment. To be effective in its domain, we need to ascribe to the NGT a public responsibility to initiate action when required, to protect the substantive right of a clean environment and the procedural law should not be obstructive in its application. In the context, Justice V.R. Krishna Iyer speaking for a Division Bench in *State of Punjab* v. *Shamlal Murari*[22] has so correctly prioritized the substantive rights and observed succinctly,

> "8. ...We must always remember that processual law is not to be a tyrant but a servant, not an obstruction but an aid to justice. It has been wisely observed that procedural prescriptions are the handmaid and not the mistress, a lubricant, not a resistant in the administration of justice."

75. While discussing the NGT's power and responsibility, it is essential to keep in mind the *Principle 10* of *the Rio Declaration* which speaks of three fundamental rights i.e., access to information, access to public participation and access to justice, as key pillars of environmental governance. Access to justice, may however be curtailed by illiteracy, lack of mobility, poverty or even the lack of technical knowledge on the part of citizens. Another deterrence is the likelihood of polluters/violators being powerful entities with adequate wherewithal to skirt regulations. Thus, it may not always be feasible for individuals to knock on the doors of the Tribunal, and NGT in such exigencies must not be made dysfunctional.

X. THE PRECAUTIONARY PRINCIPLE

76. Tracing the origin of the *Precautionary Principle*, Scott Lafranchi in his treatise[23] has expounded on the proactive role of the authorities in the following passage:—

> "Many consider the German development of *Vorsorgeprinzip* to signify the true creation of the precautionary principle, in light of the attention it focuses on "long term planning to avoid damage to the environment, early detection of dangers to health and environment through comprehensive research, and acting in advance of conclusive scientific evidence of harm."16 The precautionary foundation of Vorsorgeprinzip has been described as an "action principle" that holds public authorities responsible for protecting the natural foundations of life and preserving the physical world for the present and future generations, and "'can therefore be used to counter the short-termism endemic in all democratic, consumption oriented societies.'"

77. The origin of the *Precautionary Principle* itself is rooted as an institutional obligation, by holding them primarily responsible for the environmental concerns and remedies.

78. As earlier seen, S.20 of the NGT Act which includes the term "*decision"*, in addition to "*order*" and "*award*", also require the Tribunal to apply the '*Precautionary Principle*' and the statutory mandate being relevant is extracted:—

> "20. Tribunal to apply certain principles. - The Tribunal shall, while passing any order or decisions or award, apply the principles of sustainable development, the precautionary principle and the polluter pays principle."

79. The principle set out above must apply in the widest amplitude to ensure that it is not only resorted to for adjudicatory purposes but also for other '*decisions*' or '*orders*' to governmental authorities or polluters, when they fail to "*to anticipate,*

prevent and attack the causes of environmental degradation"[24]. Two aspects must therefore be emphasized i.e. that the Tribunal is itself required to carry out preventive and protective measures, as well as hold governmental and private authorities accountable for failing to uphold environmental interests. Thus, a narrow interpretation for NGT's powers should be eschewed to adopt one which allows for full flow of the forum's power within the environmental domain.

80. It is not only a matter of rhetoric that the Tribunal is to remain ever vigilant, but an important legal onus is cast upon it to act with promptitude to deal with environmental exigencies. The responsibility is not just to resolve legal ambiguities but to arrive at a reasoned and fair result for environmental problems which are adversarial as well as nonadversarial. It would be apposite here to refer to Justice Benjamin Cardozo, of the United States Supreme Court, who in his seminal treatise, '*The Nature of the Judicial Process*', stated thus,

> "It is true that codes and statutes do not render the judge superfluous, nor his work perfunctory and mechanical. There are gaps to be filled. There are doubts and ambiguities to be cleared. There are hardships and wrongs to be mitigated if not avoided."

81. The above could be a pointer towards the preemptive functions of the NGT as a *sui generis* body.

XI. ENVIRONMENTAL JUSTICE AND ENVIROMENTAL EQUITY

82. The conceptual frameworks of environmental justice and equity should merit consideration vis-à-vis the NGT's domain and how its functioning and decisions can have wide implications in socio-economic dimensions of people at large. The concept of environmental justice is a trifecta of distributive justice, procedural justice and justice as recognition.[25] Environmental equity as a developing concept has focused on the disproportionate implications of environmental harms on the economically or socially marginalized groups. The concerns of human rights and environmental degradation overlap under this umbrella term, to highlight the human element, apart from economic and environmental ramifications. Environmental equity thus stands to ensure a balanced distribution of environmental risks as well as protections, including application of sustainable development principles.

83. Voicing concerns about the disproportionate harm for the poor segments, Lois J. Schiffer (then Assistant Attorney General, Environment & Natural Resources Division (ENRD), U.S. Department of Justice) and Timothy J. Dowling (then Attorney at ENRD) in their *Reflections on the Role of the Courts in Environmental Law*, wrote the following evocative passage on the concept of environmental justice,

> "Environmental Justice, which focuses on whether minorities and low-income people bear a disproportionate burden of exposure to environmental harms and any resulting health effects. In the past ten to fifteen years, this issue has crystallized a grass-roots movement that combines civil rights issues with environmental issues, with a goal of achieving "environmental justice" or "environmental equity", which is understood to mean the fair distribution of environmental risks and protection from environmental harms."[26]

84. There is also a need to focus on the interconnection between principles of procedural justice and distributive justice. The concern is to create a system which is affirmative enough to balance the disproportionate wielding of power between polluters and affected people.

> "Environmental justice starts with distributive justice, or more accurately, distributive injustice. The rich and powerful derive the most benefit while suffering the least harm from environmentally harmful activities; conversely, the poor and minorities derive the least benefit but suffer the most harm. Further, those who benefit cause harm to the places where people "live, work, play, and go to school",

whereas the people who reside there do little or nothing to harm their community."[27]

85. When substantive justice is elusive for a large segment, disengaging with substantive rights at the very altar, for a perceived procedural lacuna, would surely bring in a process, which furthers inequality, both economic and social. An "*equal footing*" conception may not therefore be feasible to adequately address the asymmetrical relationship between the polluters and those affected by their actions. Instead, a recognition of the historical experience of marginalized classes of persons while accessing and effectively using the legal system, will allow for necessary appreciation of social realities and balancing the arm of justice.

86. The law must be interpreted in such a manner as to foster further development of existing legal concepts by incorporating this sense of equity. The issues which this Court has had the occasion to examine have highlighted the limitations of the mechanisms to reach to the heart of environmental concerns. This Court has previously moulded the jurisdictional jurisprudence in favour of larger societal interest, whether that be in the form of 'Public Interest Litigation' or widening the scope of *locus standi*.

> "The identification of potential environmental justice issues is very important in determining how our enforcement efforts are working in minority and low-income communities, and whether they are comparable to the enforcement efforts in other communities."[28]

87. In the backdrop of the above weighty concerns, this Court should advert to what Schiffer and Dowling have stated on the '*Blindfold of Lady Justice*', which symbolizes "*the ideal of administering equal justice to everyone who comes to our Courts, regardless of race, creed, or economic class.*"[29] The relevance of this concept is particularly apposite when we consider the inability of most marginalized communities, to access the legal machinery.

IX. ENVIRONMENTAL JURISPRUDENCE IN INDIA

88. Proceeding with the above understating, we can comfortably place the NGT within the rubric of the larger environmental jurisprudence which has been informing this unique institution. The role of this Court in establishing the legal connect between matters of environmental concern and fundamental rights of citizens, has produced much academic literature. Amongst others, Armin Rosencranz and Shyam Divan in their writing- *Environmental Law And Policy In India*, have noted that the field of laws pertaining to environmental concerns has been a fairly fertile ground for judicial innovations by this Court; moving the concept of Environmental law from the realm of torts to interlink it with fundamental rights[30], liberalizing the concept of *locus standi* in environmental matters, exercising *suo motu* powers to reign in polluters, using expert committees to monitor implementation of Court orders, etc.[31]

89. By expanding the scope of Articles 21, 32, 48A, 51A(g), this Court has guaranteed the right to a pollution free environment for a holistic existence.[32] Most crucially, the expansion of Right to Life under Article 21 by this Court has become a touchstone to determine many environmental concerns. In *Subhash Kumar* v. *State of Bihar*, this Court explicitly held the following,

> "Right to life is a fundamental right under Article 21 of the Constitution and it includes the right of enjoyment of pollution free water and air for full enjoyment of life."[33]

90. Adopting international principles and moulding them to Indian realities also became a focal concern, given the lacunae in regimes which may be exploited by those who may not have much concern for environmental degradation. Creation of the '*Absolute Liability Principle*'[34] by this Court is a well recognized testament for this. It would thus be appropriate to state that much of the principles, institutions and

mechanisms in this sphere have been created, on account of this Court's initiative.

> "The constitutionally-protected fundamental right to life and liberty has been extended through judicial creativity to cover unarticulated but implicit rights such as the right to a wholesome environment. ...The right was recognized as part of the right to life in 1991. ... The court has since fleshed out the right to a wholesome environment by integrating into Indian environmental jurisprudence not just established but even nascent principles of international environmental law."[35]

91. It has been noted that the Supreme Court adopted the role of an "amicus environment" by threading together human rights and environmental concerns, resultingly developing a *sui generis* environmental discourse.[36] There were both procedural and substantive innovations made, by entertaining PIL petitions, seeking remedies, including guidelines and directions in the absence of legislation. Many of the landmark cases which hold the fort to this day, were in recognition of the '*at risk*' nature of some populations. The creation of the NGT itself was due in large part to the need expressed by this Court for such a forum.[37]

92. Justice T.S. Doabia in *Environmental & Pollution Laws in India*, has highlighted the larger societal concerns which have informed this Court's deliberation when dealing with environmental matters,

> "The Supreme Court of India, in its interpretation of Article 21 of the Constitution of India, has facilitated the emergence of an environmental jurisprudence in India, while also strengthening human rights jurisprudence.
>
> ...The Courts have successfully isolated specific environmental law principles upon the interpretation of Indian statutes and the Constitution, combined with a liberal view towards ensuring social justice and the protection of human rights. The principles have often found reflection in the Constitution in some form, and are usually justified even when not explicitly mentioned in the statute concerned."[38]

93. Environmental jurisprudence in India has therefore been intrinsic to advancing a democratic, welfare oriented legal regime. Issues affecting the ecology and the environment must have a broad perspective and should have a society centric approach. Furthermore, the very nature of ecological and environmental issues has the propensity for rapid deterioration. Many such sensitive matters, as has been noted, stood transferred to the NGT, with the aim that those would be dealt with expediently with the required technical expertise and legal sophistication. The proactiveness of the superior Court was surely expected to be seen in the Tribunal's approach.

94. Analyzing the concept of the functioning of the NGT and its role within the broader concept of the environmental rule of law, Justice D.Y. Chandrachud speaking for a three judges Bench in *H.P. Bus Stand Management & Development Authority* v. *Central Empowered Committee*[39] so succinctly said that,

> "40. The environmental rule of law, at a certain level, is a facet of the concept of the rule of law. But it includes specific features that are unique to environmental governance, features which are sui generis. The environmental rule of law seeks to create essential tools - conceptual, procedural and institutional to bring structure to the discourse on environmental protection. It does so to enhance our understanding of environmental challenges - of how they have been shaped by humanity's interface with nature in the past, how they continue to be affected by its engagement with nature in the present and the prospects for the future, if we were not to radically alter the course of destruction which humanity's actions have charted. The environmental rule of law seeks to facilitate a multi-disciplinary analysis of the nature and consequences of carbon footprints and in doing so it brings a shared understanding between science, regulatory decisions and policy perspectives in the field of environmental protection. It recognizes that the 'law' element in the environmental rule of law does not make the concept peculiarly the

preserve of lawyers and judges. On the contrary, it seeks to draw within the fold all stakeholders in formulating strategies to deal with current challenges posed by environmental degradation, climate change and the destruction of habitats. The environmental rule of law seeks a unified understanding of these concepts."

95. It is this environmental rule of law that has been encapsulated with the NGT's creation at this Court's behest. Professor Domenico Amirante in a comparative analysis of similar bodies across the world, notes that,

"With reference to the judicial enforcement of environmental law - which as we have seen should be considered an important condition not only for sustainable development but also for the sustainability of the legal environmental order - the National Green Tribunal of India seems to be the most comprehensive and promising among the specialized environmental Courts created in Asia over the last decade."[40]

96. The NGT therefore, is the institutionalization of the developments made by this Court in the field of environment law. These progressive steps have allowed it to inherit a very broad conception of environmental concerns. Its functions therefore, must not be viewed in a cribbed manner, which detracts from the progress already made in the Indian environmental jurisprudence.

X. CONCLUSION:

97. Before we set out our conclusion, we acknowledge the able contribution of Mr. Anand Grover as *amicus curiae*, assisted by Ms. Astha Sharma, AOR who were requested to assist the Court on the central issue of *suo motu* jurisdiction of NGT.

98. The NGT Act, when read as a whole, gives much leeway to the NGT to go beyond a mere adjudicatory role. The Parliament's intention is clearly discernible to create a multifunctional body, with the capacity to provide redressal for environmental exigencies. Accordingly, the principles of environmental justice and environmental equity must be explicitly acknowledged as pivotal threads of the NGT's fabric. The NGT must be seen as a *sui generis* institution and not *unus multorum*, and its special and exclusive role to foster public interest in the area of environmental domain delineated in the enactment of 2010 must necessarily receive legal recognition of this Court.

99. The environmental impacts on climate change are gaining increasing visibility in the shape of uncertain rains, species extinction, loss of natural habitat and so on. These also have the propensity to diminish fresh water resources, reduce agricultural yields and impact public health, particularly in the cities. The flooding and erosion in riverine and coastal areas are matters of serious concern. Governmental assessment of India's increased vulnerability to such changes in the near future also exists[41] with many countries declaring climate emergencies and many others being urged to follow suit[42].

100. Therefore, the nature of ecological imbalance which is visible even in our own times may cascade, and the unforeseen injustice of the future may not be capable of being handled within the frontiers set forth today. The long term and very often irreparable environmental damage which are expected to be arrested by the NGT, urge this Court to advert to what is termed as *the 'Seventh Generation' sustainability principle*, or the '*Great Law of the Iroquois*' (as it originates from the Iroquois Tribe) which requires all decision making to withstand for the benefit of seven generations down the line.

101. It is vital for the wellbeing of the nation and its people, to have a flexible mechanism to address all issues pertaining to environmental damage and resultant climate change so that we can leave behind a better environmental legacy, for our children, and the generations thereafter.

102. In circumstances where adverse environmental impact may be egregious, but the community affected is unable to effectively get the machinery into action, a forum

created specifically to address such concerns should surely be expected to move with expediency, and of its own accord. The potentiality of disproportionate harm imposes a higher obligation on authorities to preserve rights which may be waylaid due to such restrictive access. It is also noteworthy that the "*global impacts of climate change will fall disproportionately on minority and low-income communities*".[43] Thus, an affirmative role, beyond mere adjudication at the instance of applicant, is certainly required for *serving the ends of environmental justice*, as the statute itself requires of the NGT. We cannot validate an argument which furthers uncertainty to justify the role of a spectator, if not inaction, and would most assuredly result in injustice.

103. The NGT, with the distinct role envisaged for it, can hardly afford to remain a mute spectator when no-one knocks on its door. The forum itself has correctly identified the need for collective stratagem for addressing environmental concerns. Such a society centric approach must be allowed to work within the established safety valves of the principles of natural justice and appeal to the Supreme Court. The hands-off mode for the NGT, when faced with exigencies requiring immediate and effective response, would debilitate the forum from discharging its responsibility and this must be ruled out in the interest of justice.

104. It would be procedural hairsplitting to argue (as it has been) that the NGT could act upon a letter being written to it, but learning about an environmental exigency through any other means cannot trigger the NGT into action. To endorse such an approach would surely be rendering the forum procedurally shackled or incapacitated.

105. When the Registry of the NGT does indeed receive a communication or letter, including matters published in media, it may cause to initiate *suo motu* action by inviting attention of NGT to such matters in the form of office report. Such circumstances would however require a notice to be given to the sender of the communication or author of the news item, as the case may be, to assist the NGT in the course of hearing and to substantiate the factual matters. It must also be said that the exercise of *suo motu* jurisdiction does not mean eschewing with the principles of natural justice and fair play. In other words, the party likely to be affected should be afforded due opportunity to present their side, before suffering adverse orders.

106. One could admit to the argument of danger of *suo motu* jurisdiction, if the NGT was acting outside its domain. But when it is legitimately working within the contours of its statutory mandate and with procedurals safeguards clarified above in play, the nature of the trigger itself viz. a letter or a '*suo motu*' initiation, cannot be the basis to curtail the role and responsibility of the specialized forum.

107. Institutions which are often addressing urgent concerns gain little from procedural nitpicking, which are unwarranted in the face of both the statutory spirit and the evolving nature of environmental degradation. Not merely should a procedure exist but it must be meaningfully effective to address such concerns. The role of such an institution cannot be mechanical or ornamental. We must therefore adopt an interpretation which sustains the spirit of public good and not render the environmental watchdog of our country toothless and ineffective.

108. Let us now hark back to the dialogues of the two protagonists, in *Waiting for Godot*, the play written by Samuel Beckett with which, we started this judgment. At the end of the deliberations, we find ourselves saying that the National Green Tribunal must act, if the exigencies so demand, without indefinitely waiting for the metaphorical *Godot* to knock on its portal. The preceding discussion advises us to answer the pointed question in the affirmative. It is accordingly declared that the NGT is vested with *suo motu* power in discharge of its functions under the NGT Act.

109. Having answered the common legal issue involved in all these cases regarding the *suo motu* jurisdiction of NGT, we direct delinking of these cases for now being

heard separately on merits. Indeed, if the cases(s) emanate from same/common order of NGT, such case(s) be heard together. Registry may do the needful and post the matters on 25.10.2021 for direction and fixing date of hearing, before the Bench presided over by one of us (Justice A.M. Khanwilkar). For the purpose of further hearing, the respective cases shall not be treated as part-heard before this Bench.

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[1] *Beckett, S.* (1954). Waiting for Godot : Tragicomedy in 2 Acts.

[2] (2013) 15 SCC 341

[3] (2008) 1 SCC 125

[4] (2011) 9 SCC 541

[5] (2018) 11 SCC 734

[6] (2019) 19 SCC 479

[7] Chapter II, 186th Law Commission Report.

[8] (1955) 2 SCR 603; AIR 1955 SC 661

[9] 47 Columbia Law Review 527

[10] 293 US 388 (1935) (dissenting)

[11] *Sarah Mathew* v. *Institute of Cardio Vascular Diseases*, (2014) 2 SCC 62, *New India Assurance Co. Ltd.* v. *Nusli Neville Wadia*, (2008) 3 SCC 279.

[12] (1996) 5 SCC 647

[13] (1997) 2 SCC 353

[14] (2012) 8 SCC 326

[15] (2019) 18 SCC 494

[16] 2021 SCC OnLine SC 7.

[17] (1999) 2 SCC 718

[18] (2019) 8 SCC 177

[19] GILL, G. (2020). Mapping the Power Struggles of the National Green Tribunal of India : The Rise and Fall? Asian Journal of Law and Society, 7(1), 85-126.

[20] (1999) 2 SCC 131

[21] 2020 SCC OnLine SC 572

[22] (1976) 1 SCC 719

[23] Scott La Franchi, Surveying the Precautionary Principle's Ongoing Global Development : *The Evolution of an Emergent Environmental Management Tool*, [32 B.C. Envtl. Aff. L. Rev. 679 (2005)

[24] *Vellore Citizens* (supra), *S. Jagannathan* v. *Union of India*, (1997) 2 SCC 87, *Karnataka Industrial Areas Development Board* v. *C Kenchappa*, (2006) 6 SCC 371.

[25] Schlosberg D, Defining Environmental Justice : Theories, Movements, and Nature (Oxford University Press 2009)

[26] Schiffer, L. J., & Dowling, T. J. (1997). Reflections On The Role Of The Courts In Environmental Law. Environmental Law, 27(2), 327-342.

[27] Jeff Todd, *A "Sense of Equity" in Environmental Justice Litigation*, [44 HARV. ENVTL. L. REV. 169, 193 (2020).

[28] Supra Note 26.

[29] Ibid

[30] *Rural Litigation And Entitlement Kendra* v. *State Of U. P.*, AIR 1985 SC 652, *Charan Lal Sahu* v. *Union of India*, (1990) 1 SCC 613, *Virender Gaur* v. *State of Haryana*, (1995) 2 SCC 577

[31] See M.A.A. Baig, Environmental Law And Justice(1996). Domenico Amirante, Environmental Courts In Comparative Perspective : Preliminary Reflections On The National Green Tribunal Of India (2012). M.K. Ramesh, Environmental Justice : Courts And Beyond, Indian Jo. Of Envtl. L. 20(2002).

[32] Maheshwara Swamy, N. Law Relating to Environmental Pollution and Protection. India, Thompson Reuters, Vol.I, Ed.5.

[33] (1991) 1 SCC 74.

[34] *M.C. Mehta* v. *Union of India*, [(1987) 1 SCC 395.

[35] Rajamani, Lavanya. 2007. Public Interest Environmental Litigation in India : Exploring Issues of Access, Participation, Equity, Effectiveness and Sustainability. Journal of Environmental Law

[36] Supra, Note 19.

[37] *M.C. Mehta* v. *Union of India*, (1986) 2 SCC 176, *Indian Council for Environmental-Legal Action* v. *Union of India*, (1996) 3 SCC 212, *A.P. Pollution Control Board* v. *M.V. Nayudu*, (1999) 2 SCC 718, *A.P. Pollution Control Board II* v. *M.V. Nayudu*, (2001) 2 SCC 62.

[38] Justice T.S. Doabia, Environmental & Pollution Laws in India, 3rd Ed., Vol 2 (2017).

[39] (2021) 4 SCC 309

[40] Domenico Amirante, Environmental Courts in Comparative Perspective : Preliminary Reflections on the National Green Tribunal of India, 29 Pace Envtl. L. Rev. 441 (2012)

[41] Indian Network for Climate Change Assessment, Climate Change and India : A 4X4 Assessment - A sectoral and regional analysis for 2030s, Ministry of Environment and Forests, Government of India, 16 November 2010

[42] Secretary-General's Remarks at the Climate Ambition Summit. United Nations. United Nations, December 12, 2020.

[43] Supra Note 23.

(2019) 7 Supreme Court Cases 248

(BEFORE ARUN MISHRA AND NAVIN SINHA, JJ.)

KERALA STATE COASTAL ZONE MANAGEMENT AUTHORITY .. Appellant;

Versus

STATE OF KERALA, MARADU MUNICIPALITY AND OTHERS .. Respondents.

Civil Appeals Nos. 4784-85 of 2019† with Nos. 4790-93 of 2019‡ and 4786-89 of 2019††, decided on May 8, 2019

A. **Environment Law — Water/River/Coastal Pollution — Coastal Zone Management Plan (CZMP) — Coastal Regulation Zones (CRZ) — Critically vulnerable notified CRZ-III areas — Construction activities in question, found to be in violation of CRZ, and hence demolition/removal directed**

— Cancellation of building permits by authorities, affirmed after Committee appointed for said purpose by Court in *Maradu Municipality*, 2018 SCC OnLine SC 3352, after giving opportunity of hearing, opined that it fell under CRZ-III area — Permission granted by Panchayat illegal and void — All constructions directed to be removed forthwith within one month — Environment (Protection) Act, 1986 — S. 3 — Kerala Municipality Building Rules, 1999, Rr. 16 and 23 (Paras 3 to 19)

B. **Environment Law — Regulatory Framework, Bodies and Judicial Intervention — National and State Coastal Zone Management Authority — CRZ notifications — Need of compliance with, by local authorities while issuing sanctions for buildings and constructions**

— Panchayat granting building permission without concurrence of Kerala State Coastal Zone Management Authority and without following the restrictions imposed by CRZ notifications, held, illegal — Local Government — Town Planning — Building plans/Rules/Regulations/Bye-Laws/Building permission — Housing and Real Estate — Building/Planning Norms — Development Permission/Occupancy Certificate/NoC (Paras 13 to 19)

Held :

The construction activities of the respondent builders are on the shores of the backwaters in Ernakulam in the State of Kerala which supports exceptionally large biological diversity and constitutes one of the largest wetlands in India. (Paras 3 and 4)

† Arising out of SLPs (C) Nos. 4227-28 of 2016. Arising from the Judgment and Order in *Kerala State Coastal Zone Management Authority* v. *Maradu Municipality*, 2015 SCC OnLine Ker 33807 (Kerala High Court, Ernakulam Bench, Review Petition No. 787 of 2015, dt. 11-11-2015) and *Maradu Municipality* v. *State of Kerala*, 2015 SCC OnLine Ker 16228 (Kerala High Court, Ernakulam Bench, WA No. 132 of 2013, dt. 2-6-2015)

‡ Arising out of SLPs (C) Nos. 4231-34 of 2016

†† Arising out of SLPs (C) Nos. 4238-41 of 2016

The area in which the respondents have carried out construction activities is part of the tidally influenced water body and the construction activities in those areas are strictly restricted under the provisions of the CRZ notifications. Uncontrolled construction activities in these areas would have devastating effects on the natural water flow that may ultimately result in severe natural calamities. The expert opinions suggest that the devastating floods faced by Uttarakhand in recent years and Tamil Nadu this year are the immediate result of uncontrolled construction activities on river shores and unscrupulous trespass into the natural path of backwaters. The Coastal Zone Management Plan (CZMP) has been prepared to check these types of activities and construction activities of all types in the notified areas. The High Court has ignored the significance of approved CZMP. (Para 5)

As per the appellant, these construction activities are taking place in critically vulnerable coastal areas which are notified as CRZ-III. The Panchayats have issued these permissions in violation of relevant statutory provisions and CRZ notifications. The Vigilance Section of Local Self-Government Department, Government of Kerala detected these violations and anomalies in the issue of building permits and hence directed the bodies concerned to revoke all the flawed building permits exercising its powers under Rules 16 and 23 of the Kerala Municipality Building Rules, 1999 (the 1999 Rules). (Para 6)

A show-cause notice was issued under Rule 16 of the 1999 Rules, asking the builders to show cause why the building permits issued to them be not cancelled. The High Court by the impugned orders should not have allowed the writ petitions. (Para 7)

Kerala State Coastal Zone Management Authority v. *Maradu Municipality*, 2018 SCC OnLine SC 3352, *referred to*

It is necessary for the local authority to follow the restrictions imposed by the notification, as amended from time to time. Thus, it was not open to the local authority i.e. Panchayat, in view of the notification of 1991 to grant any kind of permission without the concurrence of Kerala State Coastal Zone Management Authority. Admittedly, Panchayat has not forwarded any such applications for building permissions and there is no concurrence or permission granted by the Kerala State Coastal Zone Management Authority. As such, once a due inquiry has been held by the Committee, there is no escape from the conclusion that the area fell within CRZ-III, it was wholly impermissible and unauthorised construction within the prohibited area. Judicial notice is taken of recent devastation in Kerala which had taken place due to heavy rains compounded by such unbridled construction activities resulting in colossal loss of human life and property due to such unauthorised activity. (Para 13)

Indian Council For Enviro-Legal Action v. *Union of India*, (1996) 5 SCC 281; *Piedade Filomena Gonsalves* v. *State of Goa*, (2004) 3 SCC 445; *Vaamika Island (Green Lagoon Resort)* v. *Union of India*, (2013) 8 SCC 760, *relied on*

Felix Menino Jesus Serrao v. *State of Goa*, 2000 SCC OnLine Bom 120 : AIR 2001 Bom 294, *held, affirmed*

Goa Foundation v. *State of Goa*, Writ Petition No. 102 of 1996, order dated 25-9-1996 (Bom), *cited*

The Notification issued under the Environment (Protection) Act is meant to protect the environment and bring about sustainable development. It is the law of the land. It is meant to be obeyed and enforced. Construction in violation of the Coastal Regulation Zone Regulations are not to be viewed lightly and he who breaches its terms does so at his own peril. The fait accompli of constructions being made which are in the teeth of the Notification cannot present, but a highly vulnerable argument. (Para 16)

Ratheesh K.R. v. *State of Kerala*, 2013 SCC OnLine Ker 14359 : (2013) 3 KLT 840, *approved*

In the instant case, permission granted by the Panchayat was illegal and void. No such development activity could have taken place in prohibited zone. In view of the findings of the Enquiry Committee, let all the structures be removed forthwith within a period of one month from today and compliance be reported to the Supreme Court. (Para 18)

The appeals are accordingly allowed with the aforesaid direction. Interlocutory applications, if any, stand disposed of. (Para 19)

Kerala State Coastal Zone Management Authority v. *Maradu Municipality*, 2015 SCC OnLine Ker 33807; *Alfa Ventures (P) Ltd.* v. *State of Kerala*, 2012 SCC OnLine Ker 22135; *Maradu Municipality* v. *State of Kerala*, 2015 SCC OnLine Ker 16228; *M. Mukundan Menon* v. *State of Kerala*, 2012 SCC OnLine Ker 31813 : (2012) 4 KLJ 647, *reversed*

SS-D/62462/C

Advocates who appeared in this case :
Romy Chacko, Shapti Chand J. and Vishant Singh, Advocates, for the Appellant;
V. Giri and Jayanth Muth Raj, Senior Advocates (Ranjan Kumar, Mohammed Sadique T.R., Anu K. Joy, Amith Krishnan, Alim Anvar, G. Prakash, Jishnu M.L., Ms Priyanka Prakash, Ms Beena Prakash, M.T. George, Avishkar Singhvi and Nipun Katyal, Advocates) for the Respondents.

Chronological list of cases cited ***on page(s)***

1. 2018 SCC OnLine SC 3352, *Kerala State Coastal Zone Management Authority* v. *Maradu Municipality* 252*c-d*, 252*d*
2. 2015 SCC OnLine Ker 33807, *Kerala State Coastal Zone Management Authority* v. *Maradu Municipality* **(reversed)** 251*a-b*, 252*c*
3. 2015 SCC OnLine Ker 16228, *Maradu Municipality* v. *State of Kerala* **(reversed)** 252*b-c*, 252*e-f*
4. (2013) 8 SCC 760, *Vaamika Island (Green Lagoon Resort)* v. *Union of India* 256*b*
5. 2013 SCC OnLine Ker 14359 : (2013) 3 KLT 840, *Ratheesh K.R.* v. *State of Kerala* 256*b-c*, 258*b*, 259*e*
6. 2012 SCC OnLine Ker 31813 : (2012) 4 KLJ 647, *M. Mukundan Menon* v. *State of Kerala* **(reversed)** 252*e*
7. 2012 SCC OnLine Ker 22135, *Alfa Ventures (P) Ltd.* v. *State of Kerala* **(reversed)** 252*b-c*
8. (2004) 3 SCC 445, *Piedade Filomena Gonsalves* v. *State of Goa* 251*d-e*, 257*a*, 257*b*
9. 2000 SCC OnLine Bom 120 : AIR 2001 Bom 294, *Felix Menino Jesus Serrao* v. *State of Goa* 257*c*, 258*a-b*
10. (1996) 5 SCC 281, *Indian Council For Enviro-Legal Action* v. *Union of India* 251*b*
11. Writ Petition No. 102 of 1996, order dated 25-9-1996 (Bom), *Goa Foundation* v. *State of Goa* 257*e-f*

ORDER

1. Leave granted. Applications for intervention are allowed.

2. The appeals have been filed by the Kerala State Coastal Zone Management Authority aggrieved by the judgment and order dated 11-11-2015[1] passed by the High Court in Writ Appeal No. 132 of 2013 and other connected appeals.

3. The appellant authority has been constituted by the Government of India in compliance with the directions issued by this Court in *Indian Council For Enviro-Legal Action* v. *Union of India*[2] as well as in the exercise of the powers conferred under Section 3 of the Environment (Protection) Act, 1986. The appellant authority is empowered to deal with the environmental issues relating to the notified Coastal Regulation Zones (in short "CRZ"). Construction activities in the notified CRZ areas can be permitted only in consultation with and prior concurrence of the appellant authority. It is the binding duty of the local self-government, the competent authority before issuing building permits to forward an application for building permission to the appellant authority along with the relevant record. The appellant authority has issued circulars to all Gram Panchayats, Municipalities, and Municipal Corporations directing them to follow the provisions of CRZ notifications and to act in accordance with the procedures provided in the notifications.

4. The decision of this Court in *Piedade Filomena Gonsalves* v. *State of Goa*[3] has also been relied upon which explains the significance of CRZ notifications in the interest of protecting environment and ecology in the coastal area and the construction raised in violation of the regulations cannot be lightly condoned. The construction activities of the respondent builders are on the shores of the backwaters in Ernakulam in the State of Kerala which supports exceptionally large biological diversity and constitutes one of the largest wetlands in India.

5. The area in which the respondents have carried out construction activities is part of the tidally influenced water body and the construction activities in those areas are strictly restricted under the provisions of the CRZ notifications. Uncontrolled construction activities in these areas would have devastating effects on the natural water flow that may ultimately result in severe natural calamities. The expert opinions suggest that the devastating floods faced by Uttarakhand in recent years and Tamil Nadu this year are the immediate result of uncontrolled construction activities on river shores and unscrupulous trespass into the natural path of backwaters. The Coastal Zone Management Plan (in short "CZMP") has been prepared to check these types of activities and construction activities of all types in the notified areas. The High Court has ignored the significance of approved CZMP.

1 *Kerala State Coastal Zone Management Authority* v. *Maradu Municipality*, 2015 SCC OnLine Ker 33807
2 (1996) 5 SCC 281
3 (2004) 3 SCC 445

6. As per the appellant, these construction activities are taking place in critically vulnerable coastal areas which are notified as CRZ-III. The Panchayats have issued these permissions in violation of relevant statutory provisions and CRZ notifications. The Vigilance Section of Local Self-Government Department, Government of Kerala detected these violations and anomalies in the issue of building permits and hence directed the bodies concerned to revoke all the flawed building permits exercising its powers under Rules 16 and 23 of the Kerala Municipality Building Rules, 1999 (in short referred to as "the 1999 Rules").

7. A show-cause notice was issued under Rule 16 of the 1999 Rules, asking the builders to show cause why the building permits issued to them be not cancelled. Writ petitions were filed questioning the same. The learned Single Judge allowed[4] the writ petitions. The Division Bench dismissed[5] the appeals. The High Court has observed that the permit-holders cannot be taken to task for the failure of local authorities in complying with the statutory provisions and notifications. Review petitions were also dismissed[1]. Hence, the appeals by special leave have been preferred.

8. After hearing the appeals for two days, we constituted the Committee to hear the parties. Following is the order passed by this Court on 27-11-2018[6]: (*Kerala State Coastal case*[6], SCC OnLine SC paras 1-5)

> "*1*. The writ petitions filed questioning the show-cause notice dated 4-6-2007 issued for removal of the buildings, which according to show-cause notice were falling within the prohibited area of CRZ Category. Various violations were mentioned in the show-cause notice. Without availing the remedy of filing reply to the show-cause notice, writ petitions were filed directly in the High Court. The Single Bench of the High Court vide its judgment and order dated 10-9-2012[7], allowed the writ petition. Aggrieved thereby, the Municipality preferred writ appeals before the Division Bench, which were dismissed by the impugned judgment and order dated 2-6-2015[5].
>
> *2*. Considering the peculiar facts and circumstances of the case, as there is no categorical finding recorded either by the Single Bench or by the Division Bench that whether the area in question is in CRZ Category-III, Category-I or Category-II. It was claimed by the petitioner before the Single Bench that they fell within the CRZ Category-II, whereas the case set up by Coastal Zone Management Authority in this Court is that area is of CRZ Category-III. We deem it appropriate to call for the findings on the aforesaid aspect.

4 *Alfa Ventures (P) Ltd.* v. *State of Kerala*, 2012 SCC OnLine Ker 22135
5 *Maradu Municipality* v. *State of Kerala*, 2015 SCC OnLine Ker 16228
1 *Kerala State Coastal Zone Management Authority* v. *Maradu Municipality*, 2015 SCC OnLine Ker 33807
6 *Kerala State Coastal Zone Management Authority* v. *Maradu Municipality*, 2018 SCC OnLine SC 3352
7 *M. Mukundan Menon* v. *State of Kerala*, 2012 SCC OnLine Ker 31813 : (2012) 4 KLJ 647

3. We constitute a Three-Member Committee consisting of the Secretary to the Local Self Government Department, the Chief Municipal officer of the Municipality and the Collector of the District concerned, to hear the objections and to give a finding in terms of Notification dated 19-2-1991.

4. Let the Committee hear the affected parties as well as Kerala State Coastal Zone Management Authority and State Government and consider the matter as submitted by the parties and send a report to this Court as to legality of construction and precisely in which category the area in question is to be categorised and whether building is in prohibited zone. Let the exercise be done within a period of two months and a report be submitted to this Court.

5. Let the report be submitted covering the aspect that may be urged by the parties as to the legality of construction."

9. The aforesaid order was passed in order to cut short the litigation in respect of the show-cause notice issued by the authorities as the only question to be decided was as to whether the area falls in CRZ-III of Coastal Regulation Zone Regulations. We have heard the learned counsel at length again after receipt of the report. The Committee consisted of the following members:

1. K. Gopalakrishna Bhat, IAS Local Self-Government (Rural) In-Charge.

2. K. Mohammed Y. Safirulla, AIA, District Collector, Ernakulam.

3. Subhash P.K., Municipal Secretary, Maradu Municipality.

10. The Committee has given the opportunity of hearing and has dealt with the case set up by all the stakeholders in extensive detail. Following findings and conclusion have been recorded by the Committee:

"The Committee evaluated all arguments raised by the parties and KCZMA, existing Rules and Statutes and examined the Google map produced at the time of the meeting.

The findings of the committee are as follows:

(1) Marad Panchayat which was formed in 1953 was upgraded into a municipality in November 2010.

(2) The Coastal Zone Management Plan (CZMP of Kerala currently applicable is the one that was approved in 1996. As per the said CZMP, Marad has been marked as Panchayat area and hence falls in the Coastal Regulation Zone (CRZ) category of CRZ-III. The area is represented in Map Nos. 33, 33-A and 34 of CZMP 1996. These maps are attached as Annexures 1 and 2. A mosaic of the three maps showing the Marad area is attached as Annexure 3. Since the Panchayat has been upgraded to Municipality in the year 2010, the same has been shown as CRZ-II category in the draft CZMP prepared as per the CRZ Notification 2011 and submitted to the MoEF & CC of the Government

of India recently. Until the Government of Kerala/KCZMA receives a communication from the Government of India on the approval of the CZMP draft submitted, the CZMP of 1996 stands valid. Hence, as on date, Maradu area being a backwater island the provisions as detailed below are applicable after 6-1-2011 i.e. the date on which the Government of India published Coastal Zone Management Plan (CZMP):

(*i*) The islands within the backwaters shall have 50 m width from the high tide line on the landward side as the CRZ area;

(*ii*) within 50 m from the HTL of these backwater islands existing dwelling units of local communities may be repaired or reconstructed however no new construction shall be permitted;

(*iii*) beyond 50 m from the HTL on the landward side of backwater islands, dwelling units of local communities may be constructed with the prior permission of the Gram Panchayat;

(*iv*) foreshore facilities such as fishing jetty, fish drying yards, net mending yard, fishing processing by traditional methods, boat building yards, ice plant, boat repairs and the like, may be taken up within 50 m width from HTL of these backwater islands.

CONCLUSION

The Coastal Zone Management Plan (CZMP) of Kerala currently applicable is the one that was approved in 1996. As per the said CZMP Maradu has been marked as Panchayat area and hence falls in the Coastal Regulation Zone (CRZ) category of CRZ III. Maradu Panchayat has been upgraded to Municipality in the year 2010 and hence in the draft CZMP prepared as per CRZ Notification 2011, it is shown as CRZ II category. The new draft CZMP is submitted to MoEF & CC of the Government of India for approval. Until the Government of India approved the draft notification CZMP 1996 stands valid."

11. It is apparent that at the relevant time when the construction has been raised by the respondents in the matters, the area was within CRZ-III. With respect to CRZ-III, the relevant Notification dated 19-2-1991 indicates that the area of 200 m from the high tide line is no-development zone. No construction shall be permitted within this zone except for repairs of the authorised structures not exceeding existing FSI. The Notification dated 19-2-1991 relating to CRZ-III is extracted below:

"(*III*) The design and construction of buildings shall be consistent with the surrounding landscape and local architectural style:

(*i*) The area up to 200 m from the high tide line is to be earmarked as "no-development zone". No construction shall be permitted within this zone except for repairs of existing authorised structures not exceeding existing FSI, existing plinth area, and existing density, and for permissible activities under the notification including facilities

essential for such activities. An authority designated by the State Government/Union Territory Administration may permit construction of facilities for water supply, drainage, and sewerage for requirements of local inhabitants. However, the following uses may be permissible in this zone: agriculture, horticulture, gardens, pastures, parks, playfields, forestry and salt manufacture from sea water.

(*ii*) Development of vacant plots between 200 and 500 m of high tide line in designated areas of CRZ-III with prior approval of Ministry of Environment and Forests (MoEF permitted for construction of hotels/beach resorts for temporary occupation of tourists/visitors subject to the conditions as stipulated in the guidelines at Annexure-II.

(*iii*) Construction/reconstruction of dwelling units between 200 and 500 m of the high tide line permitted so long it is within the ambit of traditional rights and customary uses such as existing fishing villages and gaothans. Building permission for such construction/ reconstruction will be subject to the conditions that the total number of dwelling units shall not be more than twice the number of existing units; total covered area on all floors shall not exceed 33% of the plot size; the overall height of construction shall not exceed 9 m and construction shall not be more than 2 floors ground floor plus one floor. Construction is allowed for permissible activities under the notification including facilities essential for such activities. An authority designated by State Government/Union Territory Administration may permit construction of public rain shelters, community toilets, water supply, drainage, sewerage, roads and bridges. The said authority may also permit construction of schools and dispensaries, for local inhabitants of the area, for those Panchayats the major part of which falls within CRZ if no other area is available for construction of such facilities.

(*iv*) Reconstruction/alterations of an existing authorised building permitted subject to (*i*) to (*iii*) above."

12. It is also relevant to take note of Rule 23(4) of the 1999 Rules which is extracted below:

"**23. (4)** Any land development or redevelopment or building construction or reconstruction in any area notified by the Government of India as a coastal regulation zone under the Environment (Protection) Act, 1986 (29 of 1986) and rules made thereunder shall be subject to the restrictions contained in the said notification as amended from time to time."

13. It is necessary for the local authority to follow the restrictions imposed by the notification, as amended from time to time. Thus, it was not open to the local authority i.e. Panchayat, in view of the notification of 1991 to grant any kind of permission without the concurrence of Kerala State Coastal Zone Management Authority. Admittedly, Panchayat has not forwarded any such applications for building permissions and there is no concurrence or

permission granted by the Kerala State Coastal Zone Management Authority. As such, we find that once a due inquiry has been held by the Committee, there is no escape from the conclusion that the area fell within CRZ-III, it was wholly impermissible and unauthorised construction within the prohibited area. We also take judicial notice of recent devastation in Kerala which had taken place due to heavy rains compounded by such unbridled construction activities resulting in colossal loss of human life and property due to such unauthorised activity.

14. This Court in *Vaamika Island (Green Lagoon Resort)* v. *Union of India*[8], has observed: (SCC pp. 767-68, paras 26-28)

> "*26*. The petitioner had effected the construction in violation of the provisions of 1991 and 2011 Notifications as well as Map No. 32-A, so found by the High Court[9]. The factual details of the same and where actually the portion of some of the properties of the petitioner in Vettila Thuruthu will fall, has been elaborately dealt with by the High Court in its judgment in paras 109 to 119. *We notice that the High Court has dealt with the issue pointing out that so far as buildings which have been constructed by the petitioner during the currency of the Notification issued in 1991 are concerned, they are clearly in violation of this notification, hence, action has to be taken for the removal of the same*. The Director of Panchayat also vide letters dated 7-3-1995, 17-7-1996 directed all the Panchayats to strictly follow the provisions of CRZ notification which it was found not followed by granting permission. The High Court has also found on facts that reconstruction work appeared to have been done during the currency of the 2011 Notification and two buildings (193/D and 193/E) were also constructed illegally. The High Court has also noticed another new construction underway. These all are factual findings which call for no interference by this Court. The High Court has clearly noticed that reconstruction work has been done contrary to the 1991 as well as 2011 Notifications and the report of the Expert Committee constituted by the Kerala State Council for Science, Technology and Environment (KSCSTE) was accepted.
>
> *27*. We are of the considered view that the above direction was issued by the High Court taking into consideration the larger public interest and to save Vembanad Lake which is an ecologically sensitive area, so proclaimed nationally and internationally. Vembanad Lake is presently undergoing severe environmental degradation due to increased human intervention and, as already indicated, recognising the socio-economic importance of this waterbody, it has recently been scheduled under "vulnerable wetlands to be protected" and declared as CVCA. We are of the view that the directions given by the High Court are perfectly in order in the abovementioned perspective.

8 (2013) 8 SCC 760
9 *Ratheesh K.R.* v. *State of Kerala*, 2013 SCC OnLine Ker 14359 : (2013) 3 KLT 840

28. Further, the directions given by the High Court in directing demolition of illegal construction effected during the currency of the 1991 and 2011 CRZ notifications are perfectly in tune with the decision of this Court in Piedade Filomena Gonsalves v. *State of Goa*[3]*, wherein this Court has held that such notifications have been issued in the interest of protecting environment and ecology in the coastal area and the construction raised in violation of such regulations cannot be lightly condoned.*" (emphasis supplied)

15. In *Piedade Filomena Gonsalves* v. *State of Goa*[3], this Court has observed: (SCC pp. 446-47, paras 4-6)

"*4*. We do not think that any fault can be found with the judgment of the High Court[10] and the appellant can be allowed any relief in exercise of the jurisdiction conferred on this Court under Article 136 of the Constitution. Admittedly, the construction which the appellant has raised is without permission. Assuming it for a moment that the construction, on demarcation and measurement afresh and on HTL being determined, is found to be beyond 200 m of HTL, *it is writ large that the appellant has indulged in misadventure of raising a construction without securing permission from the competent authorities*. That apart, the learned counsel for the respondents has rightly pointed out that the direction of the High Court in the matter of demarcation and determination of HTL is based on the amendment dated 18-8-1994 introduced in the Notification dated 19-2-1991 entitled the Coastal Regulation Zone Notification issued in exercise of the power conferred by Section 3(1) and Section 3(2)(*v*) of the Environment (Protection) Act, 1986, while the appellant's construction was completed before the date of the amendment and therefore, the appellant cannot take benefit of the order dated 25-9-1996 passed in *Goa Foundation* v. *State of Goa*[11].

5. It is pertinent to note that during the pendency of the writ petition, the appellant had moved two applications, one of which is dated 11-7-1995, for the purpose of regularisation of the construction in question. *The Goa State Coastal Committee for Environment, the then competent body constituted a sub-committee which inspected the site and found that the entire construction raised by the appellant fell within 200 m of the HTL and the construction had been carried out on existing sand dunes*. The Goa State Coastal Committee for Environment, in its meeting dated 20-10-1995, took a decision inter alia holding that the entire construction put up by the appellant was in violation of the Coastal Regulation Zone Notification.

3 (2004) 3 SCC 445
10 *Felix Menino Jesus Serrao* v. *State of Goa*, 2000 SCC OnLine Bom 120 : AIR 2001 Bom 294
11 Writ Petition No. 102 of 1996, order dated 25-9-1996 (Bom)

6. The Coastal Regulation Zone Notifications have been issued in the interest of protecting the environment and ecology in the coastal area. Construction raised in violation of such regulations cannot be lightly condoned. We do not think that the appellant is entitled to any relief. No fault can be found with the view taken by the High Court in its impugned judgment[10]." (emphasis supplied)

16. Further, reference has also been made to a decision of the Kerala High Court in *Ratheesh K.R.* v. *State of Kerala*[9]. The same is extracted below: (SCC OnLine Ker paras 98 & 107-108)

"*98.* However, we would rather rest our decision without pronouncing on the validity of the permits as such. We have found that the Notification is applicable to the island, the island falls in CRZ-I and construction is impermissible. *By merely getting a permit under the Building Rules, it cannot be in the region of any doubt that the company cannot arrogate to itself, the right to flout the terms of the Notification. We have already noticed Rule 23(4) of the Kerala Municipality Building Rules, 1999 and Rule 26(4) of the Kerala Panchayat Building Rules, 2011. In this case, we may also note that there is no permission sought from the authority.* It is apposite to note that para 3(*v*) clearly mandates that for investment of Rs 5 crores and above, permission must be obtained from the Ministry of Environment and Forests. In this case, the investment of the company is far above Rs 5 crores. In respect of investments below Rs 5 crores, for activities which are not prohibited, permission must be obtained from the authority concerned in the State. The company has not made any such attempt at getting permission. That apart, this is a case where, even if permission had been applied for, the terms of the Notification would stand in the way of any such permission being granted insofar as the island is treated as falling in CRZ-I. Construction of buildings as has been done by the company was absolutely impermissible. The fact that in a situation where the construction activity was permissible under the Notification and if the company had obtained permit from the local body, would have made its activities legal, cannot avail the company for the reason that under the terms of the Notification, such permit obtained from the panchayat will be of little avail to it in the light of the nature of the restrictions brought about by the Regulations in respect of CRZ-I in which zone the island falls. According to the panchayat, no doubt, the conditions have been imposed also as recommended by the Assistant Engineer who is alleged to have even visited the island. Whatever that be, as observed by us, in the light of the view we have taken, namely, that the 1991 Notification applies to the island, it is squarely covered by the same being included in CRZ-I and the constructions were begun even during the currency of the 1991

10 *Felix Menino Jesus Serrao* v. *State of Goa*, 2000 SCC OnLine Bom 120 : AIR 2001 Bom 294
9 2013 SCC OnLine Ker 14359 : (2013) 3 KLT 840

Notification. The conclusion is inescapable that it is in the teeth of the prohibition contained in the 1991 Notification and, therefore, it is palpably illegal.

* * *

107. At this stage, we must deal with the argument raised before us by the company. It is submitted that a world class resort has been put up which will promote tourism in a State like Kerala which does not have any industries as such and where tourism has immense potential and jobs will be created. It is submitted that the Court may bear in mind that the company is eco-friendly and if at all the Court is inclined to find against the company, the Court may, in the facts of this case, give direction to the company and the company will strictly abide by any safeguards essential for the preservation of environment.

108. We do not think that this Court should be detained by such an argument. The Notification issued under the Environment (Protection) Act is meant to protect the environment and bring about sustainable development. It is the law of the land. It is meant to be obeyed and enforced. As held by the Apex Court, construction in violation of the Coastal Regulation Zone Regulations are not to be viewed lightly and he who breaches its terms does so at his own peril. The fait accompli of constructions being made which are in the teeth of the Notification cannot present, but a highly vulnerable argument." (emphasis supplied)

17. We find that the view[9] taken by the Kerala High Court in the aforesaid decision is appropriate.

18. In the instant case, permission granted by the Panchayat was illegal and void. No such development activity could have taken place in prohibited zone. In view of the findings of the Enquiry Committee, let all the structures be removed forthwith within a period of one month from today and compliance be reported to this Court.

19. The appeals are accordingly allowed with the aforesaid direction. Interlocutory applications, if any, stand disposed of.

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9 *Ratheesh K.R.* v. *State of Kerala*, 2013 SCC OnLine Ker 14359 : (2013) 3 KLT 840

THE SUPREME COURT CASES

(2021) 10 SCC

(BEFORE DR D.Y. CHANDRACHUD AND M.R. SHAH, JJ.)

2J

SUPERTECH LIMITED .. Appellant;

Versus

EMERALD COURT OWNER RESIDENT WELFARE ASSOCIATION AND OTHERS .. Respondents.

Civil Appeals No. 5041 of 2021† with Nos. 5042-49 of 2021‡, 5050 of 2021††, Contempt Petitions (C) Nos. 380-84 of 2021 in SLP (C) No. 14314 of 2014, decided on August 31, 2021

A. **Local Government, Municipalities and Panchayats — Town Planning — Building plans/Rules/Regulations/Bye-Laws/Building permission — Construction in violation of building regulations — Collusion between officers of development/planning authority with developer, leading to construction of buildings in violation of building regulations**

— A breach by development/planning authority of its obligation to ensure compliance with building regulations, held, is actionable at instance of residents whose rights are infringed by violation of law — Their quality of life is directly affected by failure of planning authority to enforce compliance — Hence, law must step in to protect their legitimate concerns — Thus, when planning and building regulations are violated by developers, more often than not with the connivance of regulatory authorities, it strikes at the very core of urban planning, thereby directly resulting in an increased harm to the environment and a dilution of safety standards — Hence, illegal constructions have to be dealt with strictly to ensure compliance with the rule of law

† Arising out of SLP (C) No. 11959 of 2014. Arising from the Judgment and Order in *Emerald Court Owner Resident Welfare Assn.* v. *State of U.P.*, 2014 SCC OnLine All 14817 (Allahabad High Court, Writ-C No. 65085 of 2012, dt. 11-4-2014)

‡ Arising out of SLPs (C) Nos. 14314, 12470, 14262, 21035, 31117 of 2014, 12427, 12947 and 12948 of 2015

†† Arising out of SLP (C) No. 12191 of 2021 (Diary No. 28571 of 2018)

— In present case, illegal constructions directed to be demolished at cost of the developer under supervision of experts to ensure that existing buildings were not affected

— Appellant developer directed to pay costs of Rs 2 crores to respondent RWA representing the interests of residents of the pre-existing flats

— Monies deposited by those who had purchased flats in the buildings to be demolished, to be refunded with 12% interest (detailed directions issued re different categories of such purchasers)

— Directions of High Court for sanctioning prosecution under S. 49 of the U.P. UD Act, as incorporated by S. 12 of the U.P. IAD Act, 1976, against the officials of the appellant developer and officers of the planning authority (Noida) for violations of the U.P. IAD Act, 1976 and U.P. Apartments Act, 2010, affirmed

— Land allotted to appellant developer under original lease agreement and supplementary lease deed constitute one plot — Land which was allotted through supplementary lease deed forms a part of original Plot No. 4, and would be governed by same terms and conditions as original lease deed — Sanction given by Development Authority (Noida) for construction of apartment towers in question T-16 and T-17 is violative of minimum distance requirement under NBR 2006, NBR 2010 and NBC 2005 — Case that T-1, T-16 and T-17 are part of one block is directly contrary to appellant's stated position in its representations to flat buyers as well as in counter-affidavit before High Court — Sides of T-1 and T-17 facing each other are not dead-end sides since both sides have vents/egresses facing other building — By constructing T-16 and T-17 without complying with Building Regulations, fire safety norms have also been violated — T-16 and T-17 are not part of a separate and distinct phase (Phase II) with separate amenities and infrastructure — Supplementary lease deed executed by Noida in favour of appellant stipulates that they are part of original project — Hence, consent of individual flat owners of original fifteen towers, individually or through Society Association, was a necessary requirement under U.P. Apartments Act, 2010 and U.P. Act, 1975 before towers T-16 and T-17 could have been constructed, since they necessarily reduced undivided interest of individual flat owners in common area by adding new flats and increasing number of flats from 650 to 1500

— Illegal construction of T-16 and T-17, held, has been achieved through acts of collusion between officers of Noida and appellant and its management — For reasons indicated above, order passed by High Court for demolition of T-16 and T-17 does not warrant interference and direction for demolition issued by High Court affirmed — Noida Building Regulations and Directions, 2006 — Regn. 33.2.3 — Noida Building Regulations and Directions, 2010 — Regn. 24.2.1(6) — U.P. Ownership of Flats Act, 1975 (50 of 1975) — S. 2 — U.P. Apartment (Promotion of Construction, Ownership and Maintenance) Act, 2010 (16 of 2010), Ss. 4, 2 and 5

B. **Public Accountability, Vigilance and Prevention of Corruption — Corruption/Abuse of Power — Real Estate Frauds — Collusion between officers of Development Authority with developer, permitting illegal constructions in violation of planning and building regulations — Directions of High Court for sanctioning prosecution under S. 49 of the U.P. UD Act, as incorporated by S. 12 of the U.P. IAD Act, 1976, against the officials of the developer and officers of development/planning authority (Noida) for violations of the U.P. IAD Act, 1976 and U.P. Apartments Act, 2010, affirmed — U.P. Urban Planning and Development Act, 1973 (11 of 1973) — S. 49 — U.P. Industrial Area Development Act, 1976 (6 of 1976), S. 12**

On 10-12-2012, the first respondent filed a writ petition under Article 226 of the Constitution before the High Court seeking inter alia the following reliefs: (*i*) Issue a writ, order or direction quashing the revised plan approved by Respondent 2 for construction of new towers, namely, Towers "Apex" (T-16) and "Ceyane" (T-17) in Plot No. 4, Sector 93-A, Noida and issue further directions for demolishing of aforesaid towers, the approval and construction being in complete violation of the provisions of: (*i*) NBR 2006; (*ii*) NBR 2010; (*iii*) NBC 2005; (*iv*) U.P. Act, 1975; (*v*) U.P. Apartments Act, 2010; and (*vi*) Fire safety norms.

The High Court allowed the writ petition on 11-4-2014 and directed the demolition of T-16 and T-17, with the expenses of the demolition being borne by the appellant. It further directed the competent authority to grant sanction for the prosecution of Noida's officials as required under the U.P. UD Act, 1973, within a period of three months. The High Court also directed the appellant to refund the consideration received from flat purchasers who had booked apartments in T-16 and T-17, with 14% interest compounded annually.

The appellant was before the Supreme Court assailing the judgment of the High Court.

The issues for determination before the Supreme Court were:

(*i*) Whether a breach by planning authority of its obligation to ensure compliance with building regulations is not actionable at instance of residents whose rights are infringed by violation of law?

(*ii*) Whether the sanction for the construction of T-16 and T-17 by Noida is in violation of the distance requirement under applicable building regulations?

(*iii*) Whether there was violation of the NBR 2006 and NBR 2010 in construction of towers in question T-16 and T-17?

(*iv*) Whether there was violation of National Building Code 2005 ("NBC 2005") in construction of T-16 and T-17?

(*v*) Whether liability of intending promoter to sell apartments of making a full and true disclosure in writing to intending purchaser and competent authority will not be applicable to persons who had purchased apartments in existing towers?

(*vi*) Whether construction of new apartments towers without consent of owners of apartments of already existing towers is violation of the 1975 Act and the 2010 Act?

Affirming the directions of the High Court and dismissing the appeals, the Supreme Court:

Held : a

The record of this case is replete with instances which highlight the collusion between the officers of Noida with the appellant and its management. The case has revealed a nefarious complicity of the planning authority in the violation by the developer of the provisions of law. (Para 155)

This complicity is inter alia evidenced from the following facts. Sanctioning of the second revised plan on 26-11-2009 is in clear breach of the NBR 2006. b Noida refused to disclose the building plans to the first respondent, in spite of a clear stipulation consistently in all the sanctioned plans that the plan would have to be displayed at the construction site of the appellant. Noida's referral of RWA's request to access the sanctioned plans to the appellant to seek its consent and upon the refusal of the latter, shows a continuous failure to disclose them to the RWA. Even when the CFO, Noida addressed a communication to Noida in regard to c the violation of the minimum distance requirements in Emerald Court, it evinced no response and no investigation from them. In pursuance of the second revised plan of 26-9-2009, the appellant have built a foundation to support two buildings of forty and thirty-nine floors, while the sanction for the extension from twenty-four to forty or thirty-nine floors came about only on 2-3-2012 through the third revised plan. The construction for T-16 and T-17 commenced in July 2009 by the d appellant, five months before the sanction was received for the second revised plan on 26-11-2009, in spite of which Noida chose to take no action. High Court has in these circumstances correctly come to the conclusion that there was collusion between the developer and the planning authority. (Paras 156 and 157)

Rampant increase in unauthorised constructions across urban areas, particularly in metropolitan cities where soaring values of land place a premium e on dubious dealings, has been noticed in several decisions of Supreme Court. This state of affairs has often come to pass in no small a measure because of the collusion between developers and planning authorities. (Para 159)

From commencement to completion, the process of construction by developers is regulated within the framework of law. The regulatory framework encompasses all stages of construction, including allocation of land, sanctioning of the f plan for construction, regulation of the structural integrity of the structures under construction, obtaining clearances from different departments (fire, garden, sewage, etc.), and the issuance of occupation and completion certificates. While the availability of housing stock, especially in metropolitan cities, is necessary to accommodate the constant influx of people, it has to be balanced with two crucial considerations — the protection of the environment and the well-being and safety of those who occupy these constructions. The regulation of the entire g process is intended to ensure that constructions which will have a severe negative environmental impact are not sanctioned. Hence, when planning and building regulations are brazenly violated by developers, more often than not with the connivance of regulatory authorities, it strikes at the very core of urban planning, thereby directly resulting in an increased harm to the environment and a dilution of safety standards. Hence, illegal construction has to be dealt with strictly to ensure h compliance with the rule of law. (Para 160)

A breach by the planning authority of its obligation to ensure compliance with building regulations is actionable at the instance of residents whose rights are infringed by the violation of law. Their quality of life is directly affected by the failure of the planning authority to enforce compliance. Unfortunately, the diverse and unseen group of flat buyers suffers the impact of the unholy nexus between builders and planners. Their quality of life is affected the most. Yet, confronted with the economic might of developers and the might of legal authority wielded by planning bodies, the few who raise their voices have to pursue a long and expensive battle for rights with little certainty of outcomes. As this case demonstrates, they are denied access to information and are victims of misinformation. Hence, the law must step in to protect their legitimate concerns. (Paras 161 to 169)

K. Ramadas Shenoy v. *Town Municipal Council, Udipi*, (1974) 2 SCC 506; *G.N. Khajuria* v. *DDA*, (1995) 5 SCC 762; *Friends Colony Development Committee* v. *State of Orissa*, (2004) 8 SCC 733; *Priyanka Estates International (P) Ltd.* v. *State of Assam*, (2010) 2 SCC 27 : (2010) 1 SCC (Civ) 283; *Esha Ekta Apartments Coop. Housing Society Ltd.* v. *Municipal Corpn. of Mumbai*, (2013) 5 SCC 357 : (2013) 3 SCC (Civ) 89; *Kerala State Coastal Zone Management Authority* v. *State of Kerala*, (2019) 7 SCC 248; *Kerala State Coastal Zone Management Authority* v. *Maradu Municipality*, (2021) 16 SCC 822 : 2018 SCC OnLine SC 3352; *Bikram Chatterji* v. *Union of India*, (2019) 19 SCC 161, *relied on*

Yabbicom v. *R.*, (1899) 1 QB 444, *approved*

It is concluded as follows:

(*i*) In the present case land allotted to the appellant under the original lease agreement and the supplementary lease deed constitute one plot.

(*ii*) The land which was allotted through the supplementary lease deed forms a part of original Plot No. 4, and would be governed by the same terms and conditions as the original lease deed.

(*iii*) The sanction given by Noida on 26-11-2009 and 2-3-2012 for the construction of T-16 and T-17 is violative of the minimum distance requirement under the NBR 2006, NBR 2010 and NBC 2005.

(*iv*) An effort was made to get around the violation of the minimum distance requirement by representing that T-1 together with T-16 and T-17 form one cluster of buildings in the same block. This representation was sought to be bolstered by providing a space frame between T-1 and T-17. The case that T-1, T-16 and T-17 are part of one block is directly contrary to the appellant's stated position in its representations to the flat buyers as well as in the counter-affidavit before the High Court. The suggestion that T-1, T-16 and T-17 are part of one block is an afterthought and contrary to the record.

(*v*) After realising that the building block contention would not pass muster, another false case was sought to be set up with the argument that T-1 and T-17 are dead-end sides, thereby obviating the need to comply with the minimum distance requirements. This contention is belied by the comprehensive report submitted by NBCC. The sides of T-1 and T-17 facing each other are not dead-end sides since both the sides have vents/egresses facing the other building.

(*vi*) By constructing T-16 and T-17 without complying with the Building Regulations, the fire safety norms have also been violated.

(*vii*) The first revised plan of 29-12-2006 contained a clear provision for a garden area adjacent to T-1. In the second revised plan of 26-11-2009, the provision for garden area was obliterated to make way for the construction of Apex and Ceyane (T-16 and T-17). The common garden area in front of T-1 was eliminated by the construction of T-16 and T-17. This is violative of the U.P. Apartments Act, 2010 since the consent of the flat owners was not sought before modifying the plan promised to the flat owners.

(*viii*) T-16 and T-17 are not part of a separate and distinct phase (Phase II) with separate amenities and infrastructure. The supplementary lease deed executed by Noida in favour of appellant stipulates that they are part of the original project. Hence, the consent of the individual flat owners of the original fifteen towers, individually or through the RWA, was a necessary requirement under the U.P. Apartments Act, 2010 and U.P. Act, 1975 before T-16 and T-17 could have been constructed, since they necessarily reduced the undivided interest of the individual flat owners in the common area by adding new flats and increasing the number from 650 to 1500.

(*ix*) The illegal construction of T-16 and T-17 has been achieved through acts of collusion between the officers of Noida and the appellant and its management. (Para 171)

Thus, the following directions are passed:

(*i*) The order passed by the High Court for the demolition of Apex and Ceyane (T-16 and T-17) does not warrant interference and the direction for demolition issued by the High Court is affirmed.

(*ii*) The work of demolition shall be carried out within a period of three months from the date of this judgment.

(*iii*) The work of demolition shall be carried out by the appellant at its own cost under the supervision of the officials of Noida. In order to ensure that the work of demolition is carried out in a safe manner without affecting the existing buildings, Noida shall consult its own experts and experts from Central Building Research Institute, Roorkee ("CBRI").

(*iv*) The work of demolition shall be carried out under the overall supervision of CBRI. In the event that CBRI expresses its inability to do so, another expert agency shall be nominated by Noida.

(*v*) The cost of demolition and all incidental expenses including the fees payable to the experts shall be borne by the appellant.

(*vi*) The appellant shall within a period of two months refund to all existing flat purchasers in Apex and Ceyane (T-16 and T-17), other than those to whom refunds have already been made, all the amounts invested for the allotted flats together with interest at the rate of twelve per cent per annum payable with effect from the date of the respective deposits until the date of refund in terms of paras 173 to 187 of this judgment, as per the five Categories specified therein.

(*vii*) The appellant shall pay to the RWA costs quantified at Rs 2 crores, to be paid in one month from the receipt of this judgment. (Para 172)

Furthermore, once it has been determined that the sanctioned plan for Apex and Ceyane (T-16 and T-17) breached the NBR 2006, NBR 2010, NBC 2005, U.P. Act, 1975 and the U.P. Apartments Act, 2010, it becomes its duty to take stock of the violations committed by the appellant in collusion with Noida. The appellant has raised false pleas and attempted to mislead the Supreme Court, while the officials of Noida have not acted bona fide in the discharge of their duties. The appellant has stooped to the point of producing a fabricated sanctioned plan. Therefore, directions of the High Court for sanctioning prosecution under Section 49 of the U.P. UD Act, as incorporated by Section 12 of the U.P. IAD Act, 1976, against the officials of the appellant and the officers of Noida for violations of the U.P. IAD Act, 1976 and U.P. Apartments Act, 2010 are affirmed. (Para 170)

Emerald Court Owner Resident Welfare Assn. v. *State of U.P.*, 2014 SCC OnLine All 14817, *affirmed with directions*

Dhirender Sharma v. *Emerald Court Owners Resident Welfare Assn.*, 2014 SCC OnLine SC 1823; *Dhirender Sharma* v. *Emerald Court Owner Resident Welfare Assn.*, 2016 SCC OnLine SC 1923; *Dhirender Sharma* v. *Emerald Court Owner Resident Welfare Assn.*, 2016 SCC OnLine SC 1924; *Dhirender Sharma* v. *Emerald Court Owner Resident Welfare Assn.*, 2016 SCC OnLine SC 1925; *Dhirender Sharma* v. *Emerald Court Owner Resident Welfare Assn.*, 2017 SCC OnLine SC 2059; *Dhirender Sharma* v. *Emerald Court Owners Resident Welfare Assn.*, 2017 SCC OnLine SC 2060; *Supertech Ltd.* v. *Emerald Court Owner Resident Welfare Assn.*, 2018 SCC OnLine SC 3707, *referred to*

C. **Local Government, Municipalities and Panchayats — Town Planning — Building plans/Rules/Regulations/Bye-Laws/Building permission — Distance requirements between buildings in apartment block complex — Manner in which to be interpreted — Distance requirement under Building Regulations between two "building blocks" as prescribed in Regn. 33.2.3 of the NBR 2006 — Manner in which to be interpreted — Held, expressions must be given a meaning which accords with common sense and in furtherance with the object and purpose of the Regulations**

— Plain meaning of expression "building blocks" is group of buildings on plot/site — "Building blocks" and "height of tallest building" in Regn. 33.2.3 of the NBR 2006 can be interpreted to mean that when there are two adjacent blocks, height of tallest building will determine distance required to be observed, with distance being not less than half height of tallest building — Consequently, when two or more buildings exist in proximity together, they comprise of a building block within meaning of cl. (1) of Regn. 33.2.3 of the NBR 2006 — In such an eventuality, distance between each of buildings comprised in block shall also not be less than half of height of tallest building — Reference to height of tallest building is evidently made because this kind of a building will likely overshadow buildings of a lesser height in a cluster of proximate construction — Therefore, NBR 2006 has defined minimum distance required with reference to half height of tallest building — Any other construction will defeat purpose of Regn. 33.2.3 of the NBR 2006 and cannot be accepted — Noida Building Regulations and Directions, 2006 — Regn. 33.2.3 — Words and Phrases — "Building blocks", minimum distance requirements between "building blocks"

D. **Local Government, Municipalities and Panchayats — Town Planning — Building plans/Rules/Regulations/Bye-Laws/Building permission — Distance requirements between buildings in apartment block complex — Distance between "building blocks" and that between "buildings within blocks" — Initial part of Regn. 24.2.1(6) of the NBR 2010 provides for distance between building blocks, latter part stipulates distance between buildings of height above 18 m — Hence, contention that Regn. 24.2.1(6) of the NBR 2010 only provides for distance between "building blocks" and not buildings within blocks, rejected**

— Latter part of Regn. 24.2.1(6) provides that maximum spacing between buildings of a height above 18 m shall be 16 m as per NBC 2005 — In third revised plan height of two towers in question was increased to 121 m — In accordance with Regn. 24.2.1(6) of the NBR 2010, spacing between a building of height 121 m and another building would be 16 m (maximum limit as per NBC 2005) — Thus, distance between one tower that was already in existence and another tower in question should have been 16 m, as opposed to 9 m — Consequently, third revised plan was in violation of the NBR 2010 — Noida Building Regulations and Directions, 2010, Regn. 24.2.1(6)

Held :

Interpretation of inter se distance requirements

Based on both the NBR 2006 and 2010, it was contended that the appellant was entitled to treat T-16 and T-17 as forming a part of a cluster which would include T-1. Therefore, the contention is that since all of them constitute a single building block, the minimum distance requirement need not be maintained. (Para 70)

Essentially, the plea both on behalf of the appellant and Noida is that the requirement of maintaining a minimum distance applies only to adjacent building blocks, which is not equivalent to adjacent buildings. To put it differently, the arguments proceed on the basis that where there is a cluster of buildings the requirement of a minimum distance cannot be observed as between buildings forming part of the cluster, but only as between two adjacent building blocks/clusters. Each building block in this line of argument may consist of a collection of buildings, and it is argued that neither NBR 2006 nor NBR 2010 mandates the maintenance of a minimum distance as between buildings in a cluster. (Para 72)

Expression "building block" has not been defined either in NBR 2006 or in NBR 2010. The construction which is placed upon the content of the expression must advance the object and purpose of the said Regulations. The purpose of stipulating a minimum distance is a matter of public interest in planned development. The residents who occupy constructed areas in a housing project are entitled to ventilation, light and air and adherence to fire safety norms. The purpose of stipulating a minimum distance comprehends several concerns. These include safeguarding the privacy of occupants and their enjoyment of basic civic amenities including access to well-ventilated areas where air and light are not blocked by the presence of close towering constructions. Access to these amenities is becoming

a luxury instead of a necessity. The prescription of a minimum distance also has a bearing on fire safety. In the event of a fire, there is a danger that the flames would rapidly spread from one structure to adjoining ones. Moreover, the presence of structures in close proximity poses serious hurdles to fire-fighting machinery which has to be deployed by the civic body. (Para 73)

If a developer is left with the unbridled discretion to define the content of the expression "building block", this will defeat the purpose of prescribing minimum distances, leaving the health, safety and quality of life of flat buyers at the mercy of developers. Before the Supreme Court, contention has been advanced that four towers out of the seventeen towers in the plot are a part of one "building block" and do not require maintenance of a minimum distance. Before the High Court, the appellant attempted to contend that all the buildings (that is all seventeen towers) on Plot No. 4 of Sector 93-A Noida would comprise of one "building block". The inconsistency of the appellant's contention on building blocks before the High Court and Supreme Court points out the obvious flaw in it—that the designation of how many buildings constitute a "building block" by the developer would undermine the requirements prescribed by the Building Regulations. As a matter of first principle, construction proposed by the appellant cannot be adopted. It will deprive the residents of urban areas of the amenities of light, air and ventilation which are essential to maintaining a basic quality of life. It will also have serious ramifications on fire safety. The developer cannot be allowed to subvert the requirement of maintaining minimum distances prescribed in the Building Regulations by unilaterally designating independent towers as building blocks, in the manner which the appellant has suggested before the Supreme Court. Setting up a space frame or providing for a common entry or exit would not make two otherwise separate buildings as one consolidated block. (Para 74)

Regulations 33.2.3 of the NBR 2006 refers to the distances between adjacent "building blocks" which shall not be less than half of the height of the tallest building. The purpose of this Regulation is not to apply it only as between building blocks as distinguished from buildings within a block. Clause (1) of Regulation 33.2.3 of the NBR 2006 has used the expression "building blocks" and "height of tallest building" in the same sentence. These expressions must be given a meaning which accords with common sense and in furtherance with the object and the purpose of the said Regulation. The plain meaning of the expression is that when there are two adjacent blocks, the height of the tallest building will determine the distance required to be observed, with the distance being not less than half the height of the tallest building. Consequently, when two or more buildings exist in proximity together, they comprise of a building block within the meaning of clause (1) of Regulation 33.2.3. In such an eventuality, the distance between each of the buildings comprised in the block shall also not be less than half of the height of the tallest building. The reference to the height of the tallest building is evidently made because this kind of a building will likely overshadow the buildings of a lesser height in a cluster of proximate construction. Therefore, the Regulation has

defined the minimum distance required with reference to half the height of the tallest building. Any other construction will defeat the purpose of Regulation 33.2.3 and cannot be accepted. (Para 75)

Applying the NBR 2006 to the facts of the present case, the construction of T-16 and T-17 was envisaged in the second revised plan dated 26-11-2009. The height of the said towers was to be 73 m, while the height of other towers, including T-1, was to be 37 m. Thus, as per Regulation 33.2.3 of the NBR 2006, the minimum distance between T-17 and T-1, should be half of the height of the tallest building, that is, half of the height of T-17 which is 36.5 m. It is evident from the record that the distance between T-1 and T-17 is 9 m only. Thus, clearly the second revised plan was violative of the NBR 2006. (Para 76)

Overemphasis on the text of the NBR 2010, while losing sight of the context and the purpose of the Regulation, would lead to an absurd interpretation. Initial part of Regulation 24.2.1(6) of the NBR 2010 provides for distance between building blocks, the latter part stipulates the distance between buildings of height above 18 m. Accordingly, contention that Regulation 24.2.1(6) of the NBR 2010 only provides for the distance between "building blocks" and not buildings within the blocks is rejected. For distance between buildings within blocks, the said Regulation provides that for a building of height up to 18 m, "spacing" shall be 6 m. The expression "spacing" in its plain terms means the observance of a stipulated distance. Where the height of the building is up to 18 m, "the spacing" shall be 6 m. Thereafter, for a height above 18 m, the minimum distance has to be increased by one metre for an additional height of three m subject to a maximum distance or spacing of 16 m "as per National Building Code, 2005". (Paras 77 and 78)

The latter part of Regulation 24.2.1(6) of the NBR 2010 provides that the maximum spacing between buildings of a height above 18 m shall be 16 m as per the NBC 2005. In the third revised plan dated 2-3-2012, the height of T-16 and T-17 was increased to 121 m. In accordance with Regulation 24.2.1(6), the spacing between a building of height 121 m and another building would be 16 m (the maximum limit as per NBC 2005). Thus, the distance between T-1 and T-17 should have been 16 m, as opposed to 9 m consequently, third revised plan dated 2-3-2012 was in violation of the NBR 2010. (Para 79)

Noida, before it granted sanction for enhancing the height of T-16 and T-17 from G+24 to G+40 (or 39, as the case may be), was duty-bound to apply its mind to whether there was a compliance with the provisions of Regulation 24.2.1(6) of the NBR 2010. The third revised plan which was sanctioned on 2-3-2012 has evidently glossed over the clear deficiency of open space with reference to the NBR 2010, the consequence of which would have been to reject the proposal for a further increase in the height of the towers from twenty-four floors to forty floors. Yet Noida has chosen to lend its support to the appellant in clear defiance of the provisions of law. (Para 80)

Despite the clear terms of the supplementary lease deed in terms of which the additional land allotted under it is to form a part of the original plot, the communication addressed to the flat buyers of the existing towers was that the

new towers were completely disconnected from and independent of the earlier developed fifteen towers. This communication cannot be glossed over because a similar position was affirmed before the High Court. (Paras 85 to 89)

The only reasonable hypothesis which emerges from the above disclosures is that the contention that Towers-1, 16 and 17 are part of a cluster of buildings comprised within a block, thus obviating the need to maintain the minimum distance between them—is an afterthought. It is contrary to the stated position which has been adopted by the appellant in its affidavit before the High Court. The record before the Supreme Court also indicates that the appellant has taken liberties with the truth in making the contention that a cluster of towers in the project constitutes a block which allows the appellant to subvert the minimum distance requirement. It is contrary to the sanctioned plan. (Paras 90 to 94)

The High Court, correctly rejected the contention of the appellant, recorded the finding that "building block" means group of buildings on the plot/site. The sanctioned maps clearly show that the appellant got the layout approved consisting of separate blocks. The nomenclature of the blocks was subsequently changed by the appellant, in each successive plan and finally the buildings were numbered as Towers 1-17. The maps sanctioned clearly shows that the buildings in dispute Aster II (Tower-1) and Apex and Ceyane (Towers-16 and 17) are separate building blocks. Based on the interpretation of "building blocks" in the Building Regulations, and the inconsistency in fact and in the contention of the appellant, these findings of the High Court are affirmed. (Paras 95 to 97)

E. **Local Government, Municipalities and Panchayats — Town Planning — Building plans/Rules/Regulations/Bye-Laws/Building permission — Interpretation of provisions in planning and building regulations — When phrases or words are free from ambiguity and when there is only one meaning that phrase would take when fairly construed, it will have to be literally construed, and courts must not resort to a liberal interpretation which will defeat intent, purpose and object of a provision in a planning regulation**

F. **Local Government, Municipalities and Panchayats — Town Planning — Building plans/Rules/Regulations/Bye-Laws/Building permission — Distance requirements between buildings in apartment block complex — Regn. 24.2.1(6) of the NBR 2010 — Exception provided in — Applicability — Expression "dead-end sides of buildings" — Meaning of, considered and explained in detail**

— Phrase used in Regn. 24.2.1(6) of the NBR 2010 is "block" and not "flat"/"unit" — Phrase "dead-end side of the block", held, means the side of any building which does not have any egress whatsoever — An egress in a non-habitable room like bathroom or storeroom will be considered as a non-dead-end side — For "dead-end" exception to be applicable, it is necessary that sides of both buildings facing each other must not have any egress

— It is not necessary that all units in building facing other building must have an egress for such side of building to fail to qualify as dead-end side — Even if some of units have an egress, that side of block will not be considered as a "dead-end side" — Minimum distance required between two adjacent blocks must not be measured through direct line positions of units but along ground

— On application of principles deduced above on interpretation of expression "dead-end side of the building", sides of tower in dispute (T-1) and tower in question facing each other held not to be dead-end sides — Thus, revised plans in present case were in violation of the NBR 2010 and do not fall under exception provided in Regn. 24.2.1(6) for blocks having dead-end sides — Thus, revised plans were in violation of the NBR 2010 and do not fall under exception provided in Regn. 24.2.1(6) for blocks having dead-end sides — Noida Building Regulations and Directions, 2010 — Regn. 24.2.1(6) — Words and Phrases — "Dead-end side" of building — Meaning of

G. **Local Government, Municipalities and Panchayats — Town Planning — Building plans/Rules/Regulations/Bye-Laws/Building permission — Distance requirements between buildings in apartment block complex — Minimum distance required between two adjacent blocks, held, must not be measured through direct line positions of units but along ground — Words and Phrases — "Distance between buildings", "direct line positions"**

Held :

Interpretation of "dead-end sides of buildings"

Regulation 24.2.6 of the NBR 2010 stipulates that if the blocks have dead-end sides facing each other, then the spacing shall be a maximum of 9 m instead of 16 m. The question of dead-end sides arises only between blocks, in which case the minimum distance required is 9 m. (Para 99)

Term "dead-end sides of a building" has not been defined in NBR 2006, NBR 2010 and NBC 2005. Regulation 3 of the NBR 2010 states that words that are not defined in the Regulations shall have the meanings assigned to them in the U.P. IAD Act, 1976. If no meaning is assigned to the word in the U.P. IAD Act, 1976, then the meaning assigned to the word in the Master Plan/Development Plan, National Building Code, Indian Standard Institution Code shall be referred to. However, none of the abovementioned authorities define the phrase "dead-end sides of a building". Though, NBC 2005 uses the phrase in reference to dead-end situation of road, corridor, water supply, etc. no reference with respect to "dead-end sides of a building" is made. (Para 102)

The Supreme Court on 27-7-2016 directed NBCC to ascertain if the dead-end sides of T-1 and T-17 are facing each other, in order to decide if the towers can be brought within the exception in Regulation 24.2.1(6) of the NBR 2010. (Para 100)

Since there is no clarity on the meaning of "dead-end side of a building", NBCC interpreted the phrase by referring to the use of the phrase "dead-end" in NBC 2005 in the context of roads, water supply network, etc. where the passage is limited. The report stated that "a dead-end exists in the corridor or passageway

where there is only one direction to travel to an exit". Using this meaning as a reference, NBCC interpreted the phrase of "dead end side of building" to hold that T-1 and T-17 do not have dead-end sides facing each other. Further, NBCC also observed that the distance between T-1 and T-17 does not comply with the distance rule specified in NBC 2005. (Para 105)

NBR 2010 does not provide any definition of the phrase "the dead-end side of the block". NBR 2006, NBC 2005 and the U.P. IAD Act, 1976 also do not define the phrase. The Court while interpreting the expression will have to attribute a contextual meaning to the phrase "dead-end side of the block". The reports of expert bodies on this issue adopt two different meanings of the phrase. The NBCC Report and the appellant in its objections before the NBCC state that the dead-end sides of the building would mean where "habitable rooms" of a building do not face each other. Though it is not specified that only habitable rooms with "windows/balconies" will not be considered as dead-ends, it is evident that the contention is that it is only if a habitable room with egress faces the side of the adjacent building, that it should not be considered as a dead-end side. The corollary is that if the storeroom or the bathroom or corridor with a window/vent faces the side of the adjacent building it must still be considered as a dead-end. Whereas, the reports by IIT, Delhi and IIT, Roorkee take another approach by defining a dead-end side of a building as a side without egress (i.e. windows, balconies or vents) without any reference to "habitable rooms". In these reports of the IITs it is observed that when balconies and windows (or any other egress) are provided, the functional performance will be compromised if the minimum distance as prescribed is not adhered to. Elaborating further, it is stated in these reports of the IITs that the minimum distance can be reduced when there is no egress on the side concerned of the building because then there would be no possibility of a functional compromise. (Paras 106 to 110)

Therefore, the Supreme Court is faced with three questions while interpreting the phrase "dead-end sides of the buildings": (*i*) Whether only habitable rooms with egress in any part of the building must be excluded from the ambit of the phrase "dead-end sides of the buildings"; (*ii*) Whether both sides of the buildings must be dead-end sides, or whether it is sufficient if one side of the building is a dead-end side; (*iii*) Whether the direct line position must be used for the determination of "dead-end sides of the building" and the distance between two adjacent buildings. (Para 112)

The contention that only habitable rooms with egress (that is, windows or balconies) will fall outside the ambit of "dead-end side of the buildings" cannot be accepted. "Dead end" in common parlance means no exit or absence of access. NBR 2010 does not provide any indication to classify between habitable and non-habitable rooms in the context of the phrase "dead-end side". The contention that the classification between habitable and non habitable rooms has been made in the Model Bye-laws with specific reference to the distance requirement and therefore, it must be imported for the interpretation of the phrase "dead-end sides of the building" is unsatisfactory. It is a settled principle of statutory interpretation that words must be given their plain and ordinary meaning unless such an interpretation leads to an ambiguity or absurdity or when the object of the statute indicates otherwise. The use of the phrase "dead end side of the building" in NBR 2010, in

spite of the other bye-laws using the phrase "habitable rooms", makes it evident that the intent was to restrict the ambit of the exception. Interpreting the phrase in the context of the ordinary meaning of the word "dead end" does not lead to any ambiguity: rather it is in pursuance of the intent and purpose behind the provision. (Para 113)

As stated by the reports submitted by IIT, Delhi and IIT, Roorkee, the purpose of prescribing a higher minimum distance between adjacent buildings in case the side of the building facing another has egress is so that the functional utility of the egress (either a window or balcony) is not diminished. Windows/Balconies, irrespective of whether they are attached to a habitable or a non-habitable room, perform functions which will be greatly diminished if the adjacent building is closer and thereby restricting the air flow and increasing the chance of transmissibility in the event of a fire. Moreover, the privacy of the flat dwellers would be severely compromised. The expansion of the meaning of the phrase "dead-end side of the building" to include non-habitable rooms with windows would thus amount to rewriting the regulation, when no such indication can be construed from NBR 2006 or NBR 2010. (Para 113)

The contention that the dead-end exception will be applicable, even if only one side of the two adjacent buildings has a dead-end is erroneous. Regulation 24.2.1(6) of the NBR 2010 states, "*If the blocks have dead-end sides facing each other*, then the spacing shall be maximum 9 m instead of 16 m". The words "blocks" and "sides" in the plural form find place in Regulation 24.2.1(6) of the NBR 2010. The Regulation does not state "if the *block* having a dead-end *side*". When the phrases or words are free from ambiguity and when there is only one meaning that the phrase would take when fairly construed, it will have to be literally construed, and courts must not resort to a liberal interpretation which will defeat the intent, purpose and object of a provision in a planning regulation. (Para 114)

The "direct line position" contention is that since the structures of T-1 and T-17 are different, and since the towers horizontally overlap with each other only to the extent of the height of the shorter tower (T-1), the distance between T-1 and T-17 must be measured in the direct line positions. These direct line positions are then classified into three categories [Category (*a*) — dead-end facing dead-end; Category (*b*) — dead-end facing a non-dead-end; Category (*c*) — a non-dead-end facing a non-dead-end]. This argument rests on two premises: (*i*) the minimum distance requirement prescribed under Regulation 24.2.1(6) of the NBR 2010 is not the distance between *two buildings* but is rather the distance between the different direct line positions between two adjacent buildings; and (*ii*) it is necessary for the *entire* adjacent *blocks* to have non-dead-end sides facing each other for the 16 m distance rule to be applied uniformly. (Para 115)

The phrase which is used in Regulation 24.2.1(6) of the NBR 2010 is "block" and not "flat"/"unit". The unit of consideration is thus not individual "units" in the block but the entire block itself. The side of the block would not be a dead-end side if there are even few egresses. If the direct line position contention is accepted, then the intent behind providing the minimum distance requirement would become nugatory. The purpose of imposing the minimum distance requirement as stated in the reports of IIT, Delhi and IIT, Roorkee is to provide ventilation, direct sunlight, means of rescue and prevent the spread of fire. If particular "flats"/"units" in the

block have a vent according to the construction plan, the minimum distance would have to be complied with, not just with respect to the direct line but with respect to the "entire block". (Para 116)

The reports of IIT, Delhi and IIT, Roorkee clearly elucidate the difficulty in evacuation of occupants in high rise buildings. The report states that the distance between adjacent buildings needs to be greater for taller buildings since the street has to be wider for the maximum safe inclination of the ladder. The reports also mention the reduction in ventilation, sunlight and privacy in case the distance between the buildings is less. Therefore, irrespective of whether all or some of the units in the block have an egress facing the adjacent building, the minimum distance of 16 m will have to be complied with, otherwise the purpose of providing the vent would be functionally compromised. (Para 117)

Thus, the principles that would guide the interpretation of the phrase "dead-end sides of the blocks" are as follows: (*i*) The phrase "dead-end side of the block" would mean that any building does not have an egress. (*ii*) An egress in a non-habitable room like the bathroom or the storeroom will be considered as a non-dead-end side. (*iii*) For the "dead-end" exception to be applicable, it is necessary that the sides of both the buildings facing each other must not have any egress. (*iv*) It is not necessary that all the units in the building facing the other building must have an egress. Even if some of the units have an egress, that side of the block will not be considered as a "dead-end side". (*v*) The minimum distance required between two adjacent blocks must not be measured through direct line positions of the units but along the ground. (Para 118)

On application of the principles deduced above on the interpretation of the expression "dead-end side of the building", the sides of T-1 and T-17 facing each other are held not to be dead-end sides. Thus, the revised plans were in violation of the NBR 2010 and do not fall under the exception provided in Regulation 24.2.1(6) for blocks having dead-end sides. (Paras 119 and 120)

H. **Local Government, Municipalities and Panchayats — Town Planning — Noida Building Regulations and Directions, 2010 — Regn. 24.2.1(6) — Violation of National Building Code 2005 — Exception under Para 8.2.3.2 of the NBC 2005 is only applicable if deficiency in open spaces can be made good by setbacks at upper level**

— Cl. (d) of Para 8.2.3.2 of the NBC 2005 is ex facie not attracted in present case for reason that there are no setbacks at upper levels within contemplation of disputed constructions — Thus, exception in Para 8.2.3.2 of the NBC 2005 is of no aid to appellant and Noida which has issued third revised plan envisaging a distance of 9 m between tower in dispute (T-1) and tower in question — National Building Code of India, 2005, Para 8.2.3.2

Held :

NBC 2005 is referenced in Regulations 24.2.1(6) of the NBR 2010. NBC 2005 has two parts in regard to the maintenance of open spaces Para 8.2.3.1 and Para 8.2.3.2. Para 8.2.3.1 provides for open spaces for buildings above the height of 10 m. According to the NBC 2005, the spacing between T-1 and T-17 should be 20.45 m. Evidently then, the second and third revised plans were not in accordance with the NBC 2005. This conclusion is fortified by the report of the NBCC, which

reaches the conclusion that the minimum open space around T-17 is to be 20.45 m and thus, the distance between T-1 and T-17 does not comply with Para 8.2.3.1 of the NBC 2005. (Paras 121 and 122)

An alternative to Para 8.2.3.1 has been provided in Para 8.2.3.2 for "tower like structures". However, Para 8.2.3.2 of the NBC 2005 indicates that the exception provided thereunder is only applicable if the deficiency in open spaces can be made good by setbacks at the upper level. Clause (*d*) of Para 8.2.3.2 of the NBC 2005 is ex facie not attracted in the present case for the reason that there are no setbacks at the upper levels within the contemplation of the disputed constructions. In any case, even Para 8.2.3.2 provides that for tower like structures higher than 37.5 m with two setbacks, the open space should be not less than 12 m. Thus, the exception is of no aid to the appellant and Noida which has issued the third revised plan envisaging a distance of 9 m between T-1 and T-17. (Paras 123 and 124)

I. **Local Government, Municipalities and Panchayats — Town Planning — Building plans/Rules/Regulations/Bye-Laws/Building permission — Fire safety norms — Distance requirements between buildings in apartment block complex — Violation of — National Building Code of India, 2005**

Held :

On reading NBC 2005 as a whole, the side and rear spaces around the building must be 16 m. The distance between T-1 and T-17 is only 9 m, which is less than the required 16 m. Temporary NOC that was given by the Chief Fire Office ("CFO") clearly states that the NBC 2005 must be complied with. However, the provisions of the NBC 2005 have not been complied with. Therefore, given that the rear distance requirement under NBC 2005 has not been complied with, the NOC given by the CFO stands automatically cancelled in terms of the Report dated 11-9-2009 issued by CFO to the In-charge (Building Cell) Noida and letter dated 18-8-2011. (Paras 129 and 130)

J. **Housing and Real Estate — U.P. Ownership of Flats Act, 1975 (50 of 1975) — Ss. 2 and 10 — Applicability of 1975 Act — No declaration in terms of S. 2 for applicability of Act in present case — However, lease deed executed by development authority in favour of developer containing stipulation that rules/regulations of U.P. Flat Ownership Act, 1975 shall be applicable — Tripartite sub-lease between development authority, developer and flat owner containing similar stipulations — Held, developer was duty-bound to comply with provisions of the U.P. Act, 1975**

K. **Local Government, Municipalities and Panchayats — Town Planning — Building plans/Rules/Regulations/Bye-Laws/Building permission — Duty of intending promoter to sell apartments of making a full and true disclosure in writing to intending purchaser and competent authority under Ss. 4, 2 and 5 of the U.P. Act of 2010 — Held, applicable even to persons who had purchased apartments in already existing towers**

— Proviso to S. 4(4) of the 2010 Act is intended to protect persons to whom plans and specifications were disclosed when they were "intending purchasers" — Further, a construction to the contrary will run against grain of intent and purpose of statute as well its express provisions — U.P. Apartment (Promotion of Construction, Ownership and Maintenance) Act, 2010 (16 of 2010), Ss. 4, 2 and 5

L. **Local Government, Municipalities and Panchayats — Town Planning — Building plans/Rules/Regulations/Bye-Laws/Building permission — Construction of new apartment towers without consent of owners of apartments in already existing towers — Held, constituted violation of 1975 Act and 2010 Act**

— Construction of new apartment towers reduced value of undivided interest held by each individual flat owner in common areas and facilities, thereby violating S. 5 of the U.P. Act, 1975 and S. 5 of the 2010 Act, since flat owners' consent was not sought — Further, construction of new apartments in question encroached upon garden area in front of existing apartment tower, thereby resiling from representation that had been made to flat owners at time when they purchased apartments without their consent — Therefore, it constituted a violation of S. 4(1) r/w proviso to S. 4(4) of the 2010 Act — U.P. Apartment (Promotion of Construction, Ownership and Maintenance) Act, 2010 (16 of 2010) — S. 4(4) proviso & Ss. 2 and 5 — U.P. Ownership of Flats Act, 1975 (50 of 1975), Ss. 5 and 2

M. **Local Government, Municipalities and Panchayats — Town Planning — Building plans/Rules/Regulations/Bye-Laws/Building permission — Construction of new apartment towers in existing apartment block — (A) Requirement of consent of owners of apartments in already existing towers, and (B) Duty of developer of making a full and true disclosure in writing to such pre-existing owners under the relevant State Acts — Held, it is not necessary that any resident welfare association (RWA) be in existence for the same, since these duties are owed to each and every individual pre-existing owner**

— Held, rights under the U.P. Act, 1975 and U.P. Apartments Act, 2010 have been provided to individual flat owners, and not to collective bodies like the RWA — Hence, even the non-constitution of the RWA will not extinguish the rights of individual flat owners — Indeed, however, when such RWAs do exist, developers may use them to seek a common consent from all the flat owners instead of approaching them all individually — U.P. Apartment (Promotion of Construction, Ownership and Maintenance) Act, 2010 (16 of 2010) — Ss. 4, 2 and 5 — U.P. Ownership of Flats Act, 1975 (50 of 1975), Ss. 5 and 2

N. **Housing and Real Estate — U.P. Apartment (Promotion of Construction, Ownership and Maintenance) Act, 2010 (16 of 2010) — Not retrospective**

— Held, 2010 Act will not apply with retrospective effect to the second revised plan in present case, which was sanctioned on 26-11-2009 — However, the legislation, which came into force upon publication in the U.P. Gazette on 19-3-2010, will have consequences for the third revised plan sanctioned on 2-3-2012

Held :

Consent of owners of pre-existing flats in apartment block in which new construction is proposed

Applicability of the U.P. Act, 1975

Section 2 of the U.P. Act, 1975 specifies that the Act applies only to a property, the sole owner or all the owners of which, submit it to the provisions of the Act by duly executing and registering a declaration setting out the particulars as contained in Section 10 of the U.P. Act, 1975. However, in the present case there was no declaration in terms of Section 2 of the U.P. Act, 1975. The lease deed which was executed by Noida in favour of the appellant on 16-3-2005, contains a stipulation in Clause II(*h*) which inter alia states as per its last sentence that "... The rule/regulation of U.P. Flat Ownership Act, 1975 shall be applicable on the lessee/sub-lessee." It was submitted that this last sentence of Clause II(*h*) must be read together with the entirety of the clause, which relates to the maintenance of the building and common services. However, the application of Clause II(*h*) cannot be brushed away on this basis, particularly since the sentence imposing the application of the U.P. Act, 1975 on the lessee/sub-lessee must bear some meaning and content. (Paras 136 to 139)

Furthermore, a number of clauses of the registered sub-lease executed on a tripartite basis by Noida, with the appellant as the lessee and the flat buyer as the sub-lessee, also clearly make the right of user subject to the provisions of the U.P. Act, 1975 and make the sub-lease subject to all clause of the head lease between Noida and the appellant, including the abovesaid Cause II(*h*) thereof. (Para 139)

Thus, in light of these provisions of the sub-lease and more particularly the provision of Clause II(*h*) of the lease deed which was executed by Noida in favour of the appellant on 16-3-2005, the appellant was duty-bound to comply with the provisions of the U.P. Act, 1975. By submitting before the Supreme Court that it is not bound by the terms of its agreement or the Act for want of a declaration under Section 2 of the U.P. Act, 1975, the appellant is evidently attempting to take advantage of its own wrong. (Para 140)

Applicability of the U.P. Apartments Act, 2010

In contrast with Section 2 of the U.P. Act, 1975, the corresponding provision of the U.P. Apartments Act, 2010 stipulates that the Act shall apply to all buildings with four or more apartments in any building and land attached to the apartment whether freehold or held on lease. Further, unlike Section 2 of the U.P. Act, 1975 under which the Act was to apply only when a declaration in terms of Section 10 was submitted, this Act does not require a declaration for it to apply. (Para 142)

Under Section 4(1)(*c*) of the 2010 Act, a promoter who intends to sell an apartment is required to make a full disclosure in writing to an intending purchaser and to the competent authority of the plans and specifications approved or submitted for approval to the local authority, of the building of which the apartment is a part. Similarly, under Section 4(1)(*d*) of the 2010 Act, a disclosure has to be made in regard to the common areas and facilities in accordance with the approved layout plan or building plan. Once such a disclosure has been made, Section 4(4) of the 2010 Act stipulates that upon the execution of a written agreement to sell, the promoter may make minor additions or alterations as may be required or necessary due to architectural and structural reasons duly authorised and verified by authorised architects or engineers. Apart from these minor additions

or alterations which are contemplated by Section 4(4) of the 2010 Act, Section 4(4) proviso stipulates that the promoter shall not make any alterations in the plans, specifications and other particulars "without the previous consent of the intending purchaser". The contention that this provision will apply only to the intending purchasers of the new towers in dispute and not to the persons who had purchased apartments in the existing fifteen towers, cannot be accepted. Section 4(4) proviso is clearly intended to protect persons to whom the plans and specifications were disclosed when they were the "intending purchasers". Further, a construction to the contrary will run against the grain of the intent and purpose of the statute as well as its express provisions. (Para 146)

It is clarified that the U.P. Apartments Act, 2010 will not apply with retrospective effect to the second revised plan, which was sanctioned on 26-11-2009. However, the legislation, which came into force upon publication in the U.P. Gazette on 19-3-2010, will have consequences for the third revised plan sanctioned on 2-3-2012. (Para 148)

In terms of the third revised plan which was sanctioned on 2-3-2012, the height of T-16 and T-17 was sought to be increased from twenty-four to forty (or thirty-nine, as the case may be) floors. As a result, the total number of flat purchasers would increase from 650 to 1500. The clear implication of this would be a reduction of the undivided interest of the existing purchasers in the common areas, which is clearly contrary to Section 5 of the U.P. Apartments Act, 2010, and particularly Section 5(3) thereof. As a matter of fact, it has also been submitted on behalf of the first respondent that the additional lease rent paid to Noida was also sought to be collected from the existing flat purchasers at the rate of Rs 190 per square foot. A statement to that effect was also contained in an affidavit filed before the High Court on behalf of the first respondent. The purchase of additional FAR by the appellant cannot be used to trample over the rights of the existing purchasers. (Para 149)

The case which was sought to be set up by the appellant in its defence was that the flat purchasers had an undivided interest in the common areas of Phase I of the Emerald Court, but since T-16 and T-17 formed a part of Phase II, it did not affect the rights of the original flat purchasers of T-1 to T-15. This contention is expressly contrary to the clear terms governing the supplementary lease deed, which indicate that the area comprising of the demised premises on which T-16 and T-17 were built, would form part of the original plot. Furthermore, the appellant having utilised the FAR of the entire plot, including the area which forms the subject-matter of the original lease and the supplementary lease, cannot be allowed to assert to the contrary. (Para 152)

Thus, it is abundantly clear that the construction of T-16 and T-17 in accordance with the second revised plan and the third revised plan reduced the value of the undivided interest held by each individual flat owner in the common areas and facilities, thereby violating Section 5 of the U.P. Act, 1975 and Section 5 of the U.P. Apartments Act, 2010, since the flat owners' consent was not sought. Further, the third revised plan encroached upon the garden area in front of T-1, thereby resiling from the representation that had been made to the flat owners at the time when they purchased the apartments in T-1, without their consent. Therefore, it constituted a violation of Section 4(1) read with the proviso to Section 4(4) of the U.P. Apartments Act, 2010. (Para 153)

Existence of RWA if a necessary requirement for seeking consent of pre-existing owners

From the record it is clear that: (*i*) the RWA came into existence in 2009 itself, when the first lot of apartment owners moved in; (*ii*) the appellant was communicating with the RWA ever since; and (*iii*) the RWA adopted the Model Bye-Laws under the U.P. Apartments Act, 2010, as soon as it was practicable. These facts have not been challenged before the Court during the oral submissions by the appellant, and hence, it will be held bound by its own conduct. In any case, rights under the U.P. Act, 1975 and U.P. Apartments Act, 2010 have been provided to individual flat owners, and not to collective bodies like the RWA. Hence, even the non-constitution of the RWA will not extinguish the rights of individual flat owners. Indeed, however, when such RWAs do exist, developers may use them to seek a common consent from all the flat owners instead of approaching them all individually. (Paras 154 and 155)

Appeals dismissed RM-D/67941/CV

Chronological list of cases cited ***on page(s)***

1. (2021) 16 SCC 822 : 2018 SCC OnLine SC 3352, *Kerala State Coastal Zone Management Authority* v. *Maradu Municipality* 91*a*
2. (2019) 19 SCC 161, *Bikram Chatterji* v. *Union of India* 91*a-b*
3. (2019) 7 SCC 248, *Kerala State Coastal Zone Management Authority* v. *State of Kerala* 91*a*
4. 2018 SCC OnLine SC 3707, *Supertech Ltd.* v. *Emerald Court Owner Resident Welfare Assn.* 31*f*, 95*b-c*, 96*a-b*
5. 2017 SCC OnLine SC 2060, *Dhirender Sharma* v. *Emerald Court Owners Resident Welfare Assn.* 31*e*, 93*e*, 93*e-f*
6. 2017 SCC OnLine SC 2059, *Dhirender Sharma* v. *Emerald Court Owner Resident Welfare Assn.* 31*d-e*, 94*c-d*
7. 2016 SCC OnLine SC 1925, *Dhirender Sharma* v. *Emerald Court Owner Resident Welfare Assn.* 31*d-e*, 93*e*, 94*c-d*
8. 2016 SCC OnLine SC 1924, *Dhirender Sharma* v. *Emerald Court Owner Resident Welfare Assn.* 31*b-c*, 36*f-g*, 63*d-e*
9. 2016 SCC OnLine SC 1923, *Dhirender Sharma* v. *Emerald Court Owner Resident Welfare Assn.* 31*b-c*
10. 2014 SCC OnLine SC 1823, *Dhirender Sharma* v. *Emerald Court Owners Resident Welfare Assn.* 31*b*
11. 2014 SCC OnLine All 14817, *Emerald Court Owner Resident Welfare Assn.* v. *State of U.P.* 21*f-g*, 29*b*, 31*b*, 62*e-f*, 63*b*, 84*g-h*, 84*h*, 92*d-e*
12. (2013) 5 SCC 357 : (2013) 3 SCC (Civ) 89, *Esha Ekta Apartments Coop. Housing Society Ltd.* v. *Municipal Corpn. of Mumbai* 90*a*, 90*d*, 90*f-g*
13. (2010) 2 SCC 27 : (2010) 1 SCC (Civ) 283, *Priyanka Estates International (P) Ltd.* v. *State of Assam* 89*d*
14. (2004) 8 SCC 733, *Friends Colony Development Committee* v. *State of Orissa* 88*f*, 89*b*
15. (1995) 5 SCC 762, *G.N. Khajuria* v. *DDA* 88*b*
16. (1974) 2 SCC 506, *K. Ramadas Shenoy* v. *Town Municipal Council, Udipi* 87*e-f*
17. (1899) 1 QB 444, *Yabbicom* v. *R.* 88*a*

The Judgment of the Court was delivered by

DR D.Y. CHANDRACHUD, J.—

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1. Leave granted.

A. *Factual and procedural history*

A.1. *The appeals*

2. These appeals have arisen from a judgment of a Division Bench of the High Court of Judicature at Allahabad dated 11-4-2014[1], upon a writ petition[2] instituted by the first respondent, the Residents' Welfare Association ("RWA") of Emerald Court Group Housing Society ("Emerald Court").

3. By its judgment, the High Court directed:

3.1. (*i*) The demolition of Towers-16 ("T-16"/"Ceyane") and 17 ("T-17"/"Apex") by the third respondent, New Okhla Industrial Development Authority ("Noida"), in Emerald Court situated on Plot No. 4, Sector 93-A, Noida constructed by the appellant, Supertech Ltd. ("Supertech");

1 *Emerald Court Owner Resident Welfare Assn.* v. *State of U.P.*, 2014 SCC OnLine All 14817
2 WP (C) No. 65085 of 2012

3.2. (*ii*) The cost of demolition and removal would be borne by the appellant, failing which Noida shall recover it as arrears of land revenue;

3.3. (*iii*) Sanction for prosecution under Section 49 of the U.P. Urban Development Act, 1973 ("the U.P. UD Act, 1973"), as incorporated by Section 12 of the U.P. Industrial Area Development Act, 1976 ("the U.P. IAD Act, 1976"), shall be granted for the prosecution of the officials of the appellant and the officers of Noida for possible violations of the U.P. IAD Act, 1976 and U.P. Apartment (Promotion of Construction, Ownership and Maintenance) Act, 2010 ("the U.P. Apartments Act, 2010"); and

3.4. (*iv*) Refund by the appellant of amounts invested by purchasers who had booked apartments in T-16 and T-17, with interest at fourteen per cent, compounded annually.

4. The correctness of these directions is challenged before this Court in the present appeals.

A.2. *The Emerald Court Project*

5. On 23-11-2004, Noida allotted to the appellant a plot of land admeasuring 48,263 sq m, which was a part of Plot No. 4 situated in Sector 93-A. This plot of land was allotted for the development of a group housing society, by the name of Emerald Court.

6. The first deed of lease was executed on 16-3-2005 between the appellant and Noida. A possession certificate was issued on 17-3-2005.

7. On 20-6-2005, Noida sanctioned the building plan for the construction of Emerald Court consisting of fourteen towers, each with ground and nine floors (G+9). This sanction was granted under the New Okhla Industrial Development Area Building Regulations and Directions, 1986 ("the NBR 1986"). The construction commenced for these fourteen towers.

A.3. *First Revised Plan*

8. On 21-6-2006, a supplementary lease deed was executed by Noida in favour of the appellant for an additional land area of 6556.51 sq m in the same plot of land in Plot No. 4. Adding to the existing holding allotted under the first lease deed, the total leased area allotted to the appellant increased to 54,819.51 sq m. The supplementary lease deed noted that:

(*i*) The demised premises shall be deemed to be part of Plot No. 4, Sector 93-A, Noida as already leased to the appellant;

(*ii*) All other conditions of the original lease deed and allotment shall remain unchanged and would be applicable to the newly demised premises, and bind the appellant;

(*iii*) The period of lease shall commence from 16-3-2005; and

(*iv*) The total area of Plot No. 4, Sector 93-A, Noida is 54,819.51 sq m.

The possession certificate in respect of the additional land was issued to the appellant on 23-6-2006.

9. On 5-12-2006, the New Okhla Industrial Development Area Building Regulations and Directions, 2006 ("the NBR 2006") were notified. Under the NBR 2006, the floor area ratio ("FAR") was increased from 1.5 to 2 for new allottees after 2006. Regulation 33.2.3(*i*) provided as follows:

> "**33. "*Floor area ratio*".**—Floor Area Ratio. Ground coverage and height limitations.
>
> * * *
>
> 33.2.3. Any other utilities as decided by Chief Executive Officer depending on its requirement.
>
> (*i*) Distance between two adjacent building blocks shall not be less than half of the height of the tallest building."

10. On 29-12-2006, Noida sanctioned the first revised plan for Emerald Court under the NBR 2006, by which two additional floors were envisaged in addition to the already sanctioned G+9 floors in the original fourteen towers, thereby bringing all of them to ground and eleven floors (G+11). Furthermore, additional buildings were also sanctioned, namely: (*i*) Tower-15 [comprising of ground and eleven floors (G+11)]; (*ii*) T-16 [comprising of a cluster of wings including 1 wing of ground and eleven floors (G+11) and 3 wings of ground and four floors (G+4)]; and (*iii*) a shopping complex [comprising of ground and first floor (G+1)]. As a consequence, under the first revised plan, Noida permitted a total of sixteen towers (G+11) (which would each be 37 m in height) and one shopping complex (G+1). It is important to note that the appellant was able to have this additional construction due to the area that was made available to it under the supplementary lease deed, and further, when the appellant had allotted flats to the purchasers, only a small building on the additional leased area was sanctioned. Pertinently, it is also necessary to highlight that the first revised plan contemplated a green area in front of Tower-1 ("T-1"/"Aster 2"). According to the purchasers, when the flats were sold, the brochure of the appellant contained information in accordance with the first revised plan dated 29-12-2006, which shows the area in front of T-1 as a green area.

11. On 10-4-2008, a completion certificate was granted in relation to the first eight towers (G+11). Thereafter, various owners of flats were granted possession by the appellant. Crucially, the completion map also indicated a green area in front of T-1, where currently T-16 and T-17 are being constructed.

A.4. *Second Revised Plan*

12. On 28-2-2009, a notification was issued by the State of Uttar Pradesh enhancing the FAR from 2 (as provided under the NBR 2006) to 2.75 for new allottees. Further, the notification also provided for "purchasable FAR", according to which old allottees (such as the appellant) could purchase FAR to the maximum extent of thirty-three per cent of their base existing FAR of 1.5.

13. On 3-7-2009, Noida decided that the stipulation to purchase thirty-three per cent FAR of the existing base FAR for old allottees under the Notification dated 28-2-2009, should be brought on a par with other allottees. As a consequence, the purchasable FAR for old allottees would be enhanced to 2.75. However, the notification by the State of Uttar Pradesh in this regard was still awaited. The appellant states that, in any case, based on the decision of Noida, it planned the construction of T-16 and T-17 in a way that catered to the additional FAR which may be available for purchase at a later date.

14. On 19-11-2009, relying on the Notification dated 28-2-2009, the appellant purchased thirty-three per cent of its existing base 1.5 FAR at the cost of rupees eight crores, increasing its available FAR to 1.995.

15. However, it appears from the record that the appellant had already started construction of the disputed towers — Apex and Ceyane — prior to the grant of this sanction by Noida. On 16-7-2009, the appellant informed the flat owners that:

> "1. That we have bought two separate plots measuring approximately 48,000 sq m and 6500 sq m and got them registered separately in March 2005 & May 2006 respectively.
>
> 2. That the new towers which are being constructed will have altogether separate entry, exit, swimming pool, club & basic infrastructure. We will also construct boundary wall separating two structures i.e. existing 15 towers & Apex Ceyane."

16. The above communication of the appellant indicates that:

16.1. The construction of T-16 and T-17 had already commenced on 16-7-2009.

16.2. According to the appellant, these new towers would have separate entry-exit, amenities and infrastructure.

16.3. The new towers would be separated from the existing fifteen towers by the construction of a boundary wall.

16.4. The appellant represented to the flat-owners that a revised building plan for replacing the existing T-16 (G+11) and the shopping complex (G+1) was sanctioned, with twin towers T-16 and T-17, each of G+24 floors and a height of 73 m, replacing them.

17. On 11-9-2009, the Chief Fire Officer of Gautam Budh Nagar ("CFO"), the fourth respondent, issued a report to the In-charge (Building Cell) Noida, Sector 6 for the grant of the provisional no-objection certificate ("NOC") for T-16 and T-17. The provisional Fire NOC was made subject to compliance with the requirements of the National Building Code, 2005 ("the NBC 2005").

18. On 16-9-2009, a completion certification was granted in relation to another six towers (G+11). The completion map accompanying this certificate again showed the green area in front of T-1, where presently T-16 and T-17 are being constructed.

19. On 26-11-2009, Noida sanctioned the second revised plan for Emerald Court under the NBR 2006. In this plan, the earlier T-16 (G+11) was replaced with a T-16 consisting of ground and twenty-four floors (G+24). Similarly, the shopping complex (G+1) was replaced with T-17 consisting of ground and twenty-four floors (G+24). T-16 and T-17 would each be of a height of 73 m. According to the plan, T-17 was to be at a distance of 9 m from T-1, and there was a provision for their connection through a space-frame at the upper level. This plan was sanctioned by Noida on the basis of the appellant having purchased thirty-three per cent of the purchasable FAR (27,135.657 sq m), in addition to the permissible 1.5 FAR (82,229.265 sq m), totalling to 1.995 FAR (1,09,364.922 sq m). The second revised plan expressly provided for the following, among other conditions:

> "2. Due to this sanction of the building plan, the right and ownership of any government authority like (municipality, Noida) any other person will not get affected.
>
> * * *
>
> 8. *A set of sanctioned building plan shall be kept at the construction site so that it can be checked at the site at any time and the construction work shall be done as per the sanctioned building plans specifications as per the rules of Noida Building Rules*. The allottee shall start the construction work of the ground floor only after getting the inspection of the basement done upon completion of the work of basement from Building Section Department, Noida. Otherwise sanctioned map deemed to be cancelled." (emphasis supplied)

A.5. ***Third Revised Plan***

20. On 20-2-2010, a Notification was issued by the State of Uttar Pradesh enabling old allottees to purchase FAR of up to 2.75 and, as a consequence, the limit of a maximum purchasable FAR of thirty-three per cent of the existing base FAR was removed. The notification contemplated that "the purchasable FAR shall be allowed up to the maximum limit of applicable FAR". The notification also amended the NBR 2006, which expressly provided that:

> "Purchasable FAR is an enabling provision. It shall not be allowed to any allottee as a matter of right."

21. On 19-3-2010, the U.P. Apartments Act, 2010 came into force. Section 4(4) and Section 5 of this Act provide for the consent of the owners of flats before any change in the sanctioned plans is effected and also envisage that the percentage of undivided common interest of the owners of the flats cannot be changed without their consent.

22. On 30-11-2010, the New Okhla Industrial Development Area Building Regulations, 2010 ("the NBR 2010") came into force. Regulation 24.2.1(6) contains the following stipulations:

"**24.2.1. (6)** ***Distance between two adjacent building blocks***.—Distance between two adjacent building blocks shall be minimum 6 m to 16 m, depending on the height of blocks. For building height up to 18 m, the spacing shall be 6 m and thereafter the spacing shall be increased by 1 m for every addition of 3 m in height of building subject to a maximum spacing of 16 m as per National Building Code 2005. If the blocks have dead-end sides facing each other, than the spacing shall be maximum 9 m. instead of 16 m. Moreover, the allottee may provide or propose more than 16 m space between two blocks."

23. On 18-8-2011, the CFO granted a temporary NOC in respect of T-16 and T-17, for a height of 121.5 m with proposed ground and thirty-eight floors (G+38). It was noted that once the buildings were constructed and proper fire safety equipment was installed, they would be inspected in order to assess whether a permanent NOC should be granted.

24. On 25-10-2011, in view of the Notification dated 20-2-2010, the appellant purchased an additional FAR at a cost of Rs 15 crores, so as to enhance the available FAR from 1.995 to 2.75 (1,50,753.652 sq m). On the same date, Noida issued a letter to the appellant in relation to the purchase of the FAR, imposing several requirements, including compliance with the provisions of the U.P. Apartments Act, 2010.

25. On 2-3-2012, the third revised plan was sanctioned by Noida for Emerald Court. Through this sanction, the height of T-16 and T-17 was permitted to be raised from 24 floors to 40 floors (i.e. G+40), resulting in the building's height being 121 m. Further, T-16 and T-17 would also consist, inter alia, of two basements and open space for parking beneath the towers. The third revised plan also contained a requirement of compliance with the U.P. Apartments Act, 2010, along with similar requirements which were present in the second revised plan.

A.6. ***Complaints against the Revised Plans***

26. On 9-3-2012, the appellant addressed a communication to the first respondent intimating that the flat purchasers of T-16 and T-17, which were under construction, would have altogether separate entry-exit, amenities and infrastructure.

27. On 29-3-2012, the office of the CFO, on the basis of a complaint by the first respondent, issued a notice to the appellant in regard to certain deficiencies and violations in complying with fire safety requirements.

28. On 24-4-2012, the CFO, on the basis of another complaint by the first respondent, addressed a communication to Noida in regards the violation of the minimum distance between T-1 and T-17. The letter, inter alia, states:

"When record was perused in respect of the above, it was found that:

* * *

2. There should be a minimum distance of half of the height of building in between two building blocks as per Clause No. 33.2.3. of Building Construction Regulations, 2006 and there should be a

distance of 16 m in between the buildings whose height is more than 50 m as per Noida Regulations, 2010.

3. There should be a distance of 16 m in between two buildings situated side by side as per National Building Code of India, 2005.

Therefore, you are requested that in the light of above kindly inform that license was granted for construction of building after providing relaxation to the building in question in Special Category or construction is being carried out by the concerned is contrary to the standards."

29. On 3-5-2012 and 22-5-2012, the first respondent filed an RTI application with Noida for obtaining the sanctioned plans in relation to Plot No. 4 of Sector 93-A. Though under the terms of the sanctioned plans the appellant was required to display the sanctioned map at its site, Noida still wrote to the appellant to verify whether the sanctioned plans and maps could be made available to the first respondent. The appellant in response refused to grant its consent to release sanctioned plans and maps to the first respondent. Hence, Noida refused to provide the sanctioned plans to the first respondent.

30. On 19-6-2012, a show-cause notice was issued by Noida to the appellant stating that:

(*i*) the construction was not in accordance with the third revised plan since, inter alia, T-1 and T-16/17 were not joined by a space frame; and

(*ii*) a copy of the plan had not been exhibited at the site office.

The appellant replied to the show-cause notice on 26-6-2012 stating that T-16 and T-17 were still under construction and the space frame would be built at the time of construction.

31. On 26-6-2012, Noida issued a completion certificate to the appellant in respect of Tower-15 (G+11).

32. On 28-6-2012, the first respondent addressed a communication to Noida complaining of violations and misrepresentations made to the owners by the appellant, and sought cancellation of the layout plan of the two new towers, T-16 and T-17. The first respondent followed up its earlier communication with letters dated 9 and 29-8-2012 demanding information, and intimating that the construction was being carried out by the appellant in violation of the norms.

A.7. *Proceedings before the Allahabad High Court*

33. On 10-12-2012, the first respondent filed a writ petition under Article 226 of the Constitution before the High Court seeking inter alia the following reliefs:

"(*i*) Issue a writ, order or direction quashing the revised plan approved by Respondent 2 for construction of new towers, namely, Tower "Apex" and "Ceyane" in Plot No. 4, Sector 93-A, and issue further directions for demolishing of aforesaid towers, the approval and construction being in complete violation of provisions of the U.P. Apartments Act, 2010.

(*ii*) Issue a writ, order or direction directing Respondent 2 not to sanction amendments to any further building plans in respect of the Group Housing Society being developed by Respondent 5 without obtaining consent of all the residents.

(*iii*) Issue a writ, order or direction quashing the permission granted to Respondent 5 to link Tower T-1 and T "Apex"/"Ceyane" through space frame.

(*iv*) Issue a writ, order or direction directing Respondents 2 and 3 to ensure that fire safety equipment and infrastructure is installed at the expenses of Respondent 5 within a specified period.

(*v*) Issue a writ, order or direction directing Respondent 2 to demolish illegal construction made in the basement and setback area as per notice dated 19-6-2012 and 17-7-2012.

(*vi*) Issue a writ or direction directing Respondents 2 and 5 to provide car parking spaces (both above ground and in the basement) as per the provisions of the NBC 2005 to all the legal allottees/residents of Supertech Emerald Court Complex, Plot No. 4, Section 93-A, Noida."

34. The first respondent only pressed Reliefs (*i*) and (*iii*), seeking a direction to quash the revised plan which approved the construction of T-16 and T-17, and to demolish them. The first respondent also sought the quashing of the permission granted to link T-1 and T-16/T-17 though a space frame. During the pendency of the writ proceedings, in pursuance of a specific order of the High Court, the RWA was provided with the sanctioned maps together with related information and documents in respect of the construction at the site. Pleadings were subsequently exchanged between the parties.

35. The appellant filed a counter-affidavit on 27-1-2013 submitting that:

35.1. The first respondent is not recognised by the appellant under the U.P. Apartments Act, 2010.

35.2. The first respondent should have first approached the Chief Executive Officer of Noida, who is the competent authority under the U.P. Apartments Act, 2010, and then the State Government, before approaching the High Court under the writ jurisdiction.

35.3. Construction of T-16 and T-17 was approved on 26-11-2009, but the writ petition had been filed after three years in December 2012, when the building is in an advanced stage of construction. Hence, the writ petition is barred by delay and laches.

35.4. T-16 and T-17 were sanctioned in 2009 under the NBR 2006. The final sanction given on 2-3-2012 only increased the height of the towers from twenty-four floors to forty floors, after the appellant purchased the additional FAR. Under the NBR 2006, there is no provision with regard to the minimum distance between two "building blocks". Since the NBR 2006 did not incorporate the NBC 2005, the mandatory requirement of 16 m between two building blocks for buildings higher than 55 m need not be followed. The distance requirement between two building blocks was only mandated by NBR 2010, which is not applicable since the initial sanction for T-16 and T-17 was given under NBR 2006.

36. Noida in its counter-affidavit dated 7-2-2013 stated that:

36.1. It allotted the plot to the appellant by complying with the NBR 2010. The sanction was also given with the specific condition that the U.P. Apartments Act, 2010 must be complied with.

36.2. Plot No. 4 is not divided into two projects. It is unified and belongs to a single project.

36.3. The permission for the construction of a space frame connecting T-1 with T-16/T-17 was granted only after the design was approved by IIT, Roorkee.

37. The High Court allowed the writ petition on 11-4-2014[1] and directed the demolition of T-16 and T-17, with the expenses of the demolition being borne by the appellant. It further directed the competent authority to grant sanction for the prosecution of Noida's officials as required under the U.P. UD Act, 1973, within a period of three months. The High Court also directed the appellant to refund the consideration received from flat purchasers who had booked apartments in T-16 and T-17, with fourteen per cent interest compounded annually.

38. While allowing the writ petition, the High Court made the following observations:

38.1. The first respondent had the locus to institute proceedings under Article 226 of the Constitution. The flats were handed over to the purchasers by September 2009. The RWA was formed and registered with the Registrar of Societies in the same year. The Model Bye-Laws under the U.P. Apartments Act, 2010 were notified by the Government on 16-11-2011. However, the Deputy Registrar Firms, Societies and Chits, Meerut, Uttar Pradesh issued a letter on 14-12-2012 stating that pending instructions from the Registrar, no decision could be taken in respect of the Model Bye-Laws and registration. The Registrar by a circular dated 5-12-2013 issued instructions for registration of the first respondent under the U.P. Apartments Act, 2010. On 20-10-2013, the first respondent by its resolution adopted the Model Bye-Laws and conducted its elections. Further, in any case, the appellant had recognised the first respondent since its inception and had corresponded with it continuously. The appellant had never raised objections on its competence to represent the flat purchasers. The grant of sanction by Noida in violation of the relevant building regulations affects the rights of every apartment owner, who is represented through the first respondent. Hence, the first respondent is a "person aggrieved" and was entitled to initiate the writ proceedings.

38.2. The first respondent under Article 226 was not barred by the available remedy of approaching either the CFO, Noida under the U.P. Apartments Act, 2010 or the State under Section 27 of the U.P. IAD Act, 1976. Though the first respondent raised its grievance before Noida, no notices were issued and there was no follow up. Only if Noida had issued an order, could the first respondent have approached the State Government under Section 27 of the U.P. IAD Act, 1976. Thus, there was no other alternative remedy that was available to first respondent but to initiate writ proceedings.

1 *Emerald Court Owner Resident Welfare Assn.* v. *State of U.P.*, 2014 SCC OnLine All 14817

38.3. The appellant must have submitted a declaration in the office of the competent authority with regard to the construction of the building under the U.P. Apartments Act, 2010. Rule 4 of the U.P. Apartment (Promotion of Construction, Ownership and Maintenance) Rules, 2011 states that when the competent authority receives an application for amendment of the declaration, it shall issue a written notice to the association of the building owners and an order shall be passed by the competent authority only after the association is given the opportunity of being heard. Since no such notice was given to the association, it is an "aggrieved person" and thus has the locus to initiate writ proceedings.

38.4. The original building plan was sanctioned when NBR 2006 was in force. However, the approval for purchase of additional FAR was made in 2011. It is a settled principle of law that the rules and regulations applicable on the date of the sanction would determine the rights of the parties. The sanction given on 2-3-2012 further imposed a condition of applicability of the U.P. Apartments Act, 2010. Therefore, both the NBR 2010 (and NBC 2005, since NBR 2010 makes it applicable) and the U.P. Apartments Act, 2010 shall be applicable.

38.5. The contention of the appellant that the project was in two phases is not borne out from the record since Noida has permitted the purchase of additional FAR and granted the subsequent sanction treating the project as a single project. The plans submitted and sanctioned were for a single project, and an attempt has been made by the appellant to mislead the court.

38.6. Regulation 24.2.1(6) of the NBR 2010 states that for buildings up to the height of 18 m, the spacing between two adjacent building blocks shall be 6 m and the spacing shall be increased by 1 m for every 3 m above 18 m, but subject to a maximum distance of 16 m. Para 8.2.3.1 of the NBC 2005 states that for buildings higher than 55 m, 16 m open space must be left in the sides and rear. Since the height of T-17 is 121 m, the distance between the building blocks must at least be 16 m. However, the distance is only 9 m and is deficient by 7 m.

38.7. The appellant, in collusion with Noida, obtained sanctions for the layout map in violation of the mandatory requirement for space to be maintained between building blocks and clear space.

38.8. The provisions of the U.P. Fire Prevention and Fire Safety Act, 2005 ("the Fire Safety Act") were required to be complied with, according to which the minimum distance of 7.5 m between building blocks and a clear space must be provided, which has been violated in the third revised plan of 2012.

38.9. The submission of the appellant that the expression "building blocks" having not been defined in the NBR 2010, would mean the entire set of buildings on Plot No. 4 is contrary to the NBR 2006 and NBR 2010. The sanctioned plans show that the appellant got the layout approved, consisting of separate blocks. The nomenclature of the blocks was subsequently changed in each successive plan, and finally the buildings were numbered as T-1 to T-17. The sanctioned plans clearly show that T-1 and T-16/17 are separate building blocks.

38.10. The plan sanctioned by Noida was contrary to: (*a*) the building regulations; (*b*) the mandatory distance between building blocks; and (*c*) the movement space required, as a result of which the rights of the apartment owners and the safety of their apartment blocks have been seriously affected.

A.8. ***Proceedings before this Court***

39. The appellant filed a special leave petition under Article 136 of the Constitution on 28-4-2014 assailing the judgment[1] of the High Court. On 5-5-2014[3], this Court directed the maintenance of status quo in respect of T-16 and T-17, directing that neither the builder nor the purchaser shall alienate the property or create third-party rights. During the course of the hearings on 19-7-2016[4] and 27-7-2016[5], the appellant and Noida submitted that the Court may have the view of an expert agency on the issue and engage an expert for this purpose. On the submission of the Additional Solicitor General, the National Buildings Construction Corporation Ltd. ("NBCC"), a government-owned enterprise, was appointed to examine various facts in relation to the dispute, particularly those having a bearing on whether the two towers (T-1 and T-17) have dead-end sides facing each other. By its Report dated 13-10-2016, the NBCC concluded that the two towers are not compliant with Regulation 24.2.1(6) of the NBR 2010. Apart from the report which has been submitted by the NBCC, the first respondent had commissioned IIT, Delhi and IIT, Roorkee to report on the disputed issue of "dead-ends". Reports by them have been placed on the record.

40. By its interim orders dated 6-9-2016[6] and 11-1-2017[7], this Court directed that a group of applicants be given ten per cent per month towards return of investment ("ROI"). On 22-9-2017[8], this Court directed Mr Gaurav Agarwal, Amicus Curiae, to create a portal link to coordinate with the appellant and the flat purchasers on issues relating to refund. Further, this Court directed that the principal amount along with interest of fourteen per cent shall be provided to the flat purchasers who have opted not to wait for the decision of this Court in the present special leave petition.

41. By an order dated 30-7-2018[9], this Court with the assistance of the Amicus Curiae classified the homebuyers into the following groups, based on the refund option chosen by them:

41.1. Refund of principal amount along with twelve per cent simple interest per annum (one hundred and one homebuyers).

1 *Emerald Court Owner Resident Welfare Assn.* v. *State of U.P.*, 2014 SCC OnLine All 14817
3 *Dhirender Sharma* v. *Emerald Court Owners Resident Welfare Assn.*, 2014 SCC OnLine SC 1823
4 *Dhirender Sharma* v. *Emerald Court Owner Resident Welfare Assn.*, 2016 SCC OnLine SC 1923
5 *Dhirender Sharma* v. *Emerald Court Owner Resident Welfare Assn.*, 2016 SCC OnLine SC 1924
6 *Dhirender Sharma* v. *Emerald Court Owner Resident Welfare Assn.*, 2016 SCC OnLine SC 1925
7 *Dhirender Sharma* v. *Emerald Court Owner Resident Welfare Assn.*, 2017 SCC OnLine SC 2059
8 *Dhirender Sharma* v. *Emerald Court Owners Resident Welfare Assn.*, 2017 SCC OnLine SC 2060
9 *Supertech Ltd.* v. *Emerald Court Owner Resident Welfare Assn.*, 2018 SCC OnLine SC 3707

41.2. Homebuyers who still insist on getting interest at the rate of fourteen per cent (twenty-four homebuyers) — since a substantial number of home purchasers have agreed to twelve per cent interest, these twenty-four purchasers were also directed to accept the twelve per cent interest rate.

41.3. Homebuyers through the Subvention Scheme — in such cases, the EMIs shall be paid by the appellant until the possession is handed over.

41.4. Disputed cases — Mr Sanjeev Agrawal and Ms Rashmi Arora have paid Rs 38,51,009 and Rs 17,43,162 respectively by cheque. The said amount shall be refunded with a simple interest at twelve per cent per annum.

B. ***Submissions by the counsel***

42. Mr Vikas Singh, learned Senior Counsel appearing on behalf of the appellant urged the following submissions:

42.1. The sanction and construction of T-16 and T-17 is not violative of the distance rule under NBR 2010:

(*a*) NBR 2010 does not apply to T-16 and T-17, since they were first sanctioned in the second revised plan issued under the NBR 2006. Under the NBR 2006, the distance provision in Regulation 33.2.3(*i*) was not mandatory and it was open to the CEO to stipulate the distance requirement depending upon the exigencies of a layout plan. In any case, the Regulation applies to the distance between two building blocks and does not govern the distance between the T-1 and T-17, which form a part of the same block. Further, if this provision was mandatorily applied, then it would also affect the first revised plan, in which the heights of the fifteen other towers is 37.5 m while the distance with the adjacent blocks was less than half the height i.e. less than 18.75 m;

(*b*) Even if NBR 2010 was to apply, T-16 and T-17 are part of the same building block consisting of T-1, Tower-2, Tower-3 and T-17, which is connected by a space frame to T-1. Hence, Regulation 24.1.2(6) of the NBR 2010, which provides for a distance to be maintained between "adjacent building blocks" ("Bhawan Samuh"/cluster of buildings), is not applicable in respect of the distance between T-17 and T-1;

(*c*) The concept of a building block has been explained in a note submitted by Noida to the High Court. While using the FAR, the only requirement is to maintain a certain percentage as an open/green area. Instead of scattering the buildings over the total project area, group housing projects can envisage adjacent towers or even a block of towers so as to ensure a large open green space rather than scattered small spaces all over the project;

(*d*) In the alternative, even if they are not part of the same building block, T-17 being a "tower like structure", Para 8.2.3.2 of the NBC 2005 is attracted in terms of Regulation 24.2.1(6). In accordance with Para 8.2.3.2, the minimum distance for buildings of a height of less than 37.5 m is 9 m, while for buildings of a greater height, it is 12 m. Further, in accordance with Para 8.2.3.2(*d*), the deficiency of this distance at the ground level can

be made good at the upper levels. Hence, maintaining a minimum distance of 16 m between "tower like structures" is not an inviolable requirement;

(*e*) In the present case, the minimum distance between T-1 and T-17 varies from 9.88 m (at the ground level) to 25.75 m (at the upper level), since the total height of T-1 is 27.61 m while that of T-17 is 84.5 m. As such, it is in compliance with NBC 2005; and

(*f*) The Model Bye-Laws 2016 issued by the Ministry of Urban Development, Government of India prescribe a 9 m space around any building irrespective of the height beyond 40 m.

42.2. The sanction to construct T-16 and T-17 is not violative of the U.P. Apartments Act, 2010:

(*a*) T-16 and T-17 were sanctioned on 26-11-2009, and hence the requirement of prior consent did not arise, since the Act was not in force then;

(*b*) The flat owners of T-1 to T-15 who already had possession of their flats would not be "intended purchasers" under the proviso to Section 4(4) of the U.P. Apartments Act, 2010, and their consent was not required for the construction of additional floors in T-16 and T-17;

(*c*) The consent of all flat owners would be impractical, and at best the consent of the RWA would suffice. On 2-3-2012, when the third revised plan was sanctioned, the RWA was not functional and it was only on 20-10-2013 that the RWA adopted the Model Bye-Laws under the U.P. Apartments Act, 2010;

(*d*) There has been no violation of the common area facilities of the flat owners of T-1 to T-15 by the creation of T-16 and T-17, since they have been planned with separate entries and exit facilities together with infrastructure; and

(*e*) A majority of the flat owners of T-1 to T-15 was fully aware of the sanction to construct T-16 and T-17 since: (*i*) 245 flats were booked till the first revised plan in 2006; (*ii*) between 2006 and until the second revised plan in 2009, 141 flats were booked; (*iii*) after the second revised plan and until the third revised plan in 2012, 114 flats were booked; and (*iv*) after the third revised plan in 2012 till 2-8-2021, 159 flats have been purchased.

42.3. There has been no violation of fire safety norms:

(*a*) A provisional Fire NOC was received on 11-9-2009, prior to the sanction on 26-11-2009. The Fire Department thereafter granted another temporary NOC for T-16 and T-17 on 18-8-2012, prior to the sanction dated 2-3-2012; and

(*b*) Under NBR 1986 and NBR 2006, buildings were required to be compliant with fire safety norms prescribed in Part IV of the NBC 2005. Para 4.6(*b*) of the NBC 2005 provides that for high rise buildings, open spaces on all sides up to a width of 6 m shall be available for free movement

of fire tenders. In the present case, there is a clear space of 9 m between T-1 and T-17, which allows a free movement of fire tenders.

42.4. The U.P. Ownership of Flats Act, 1975 ("the U.P. Act, 1975") is not applicable:

(*a*) Under Section 2, the Act applies only to properties, the owners of which submit to the provisions of the Act by executing a declaration. As such, the Act does not automatically apply to all properties and none of the flat owners have made executed any such declaration presently;

(*b*) Clause II(*h*) of the lease deed dated 26-3-2005 deals with maintenance, and cannot be construed to incorporate the application of the U.P. Act, 1975; and

(*c*) If the contention of the first respondent is accepted, the changes made by the first revised plan in T-1 to T-15, involving an increase in the height of all towers from nine to eleven floors, would also to be illegal.

42.5. There is no green area violation in the sanctioning of T-16 and T-17:

(*a*) A triangular green space in the first revised plan was planned for the newly proposed T-16 (G+11) and shopping complex (G+1). This area was over and above the mandatory green area (soft landscape) required to be maintained on the plots under the NBR 2006;

(*b*) The central green area was sanctioned in the original plan of 2005. The required green area under Regulation 38 of the NBR 2006 was twenty-five per cent of the open area, which would be 11,538,02 sq m whereas the appellant had provided a green area of 12,064.91 sq m in the form of a central park;

(*c*) T-1 was not sold on the promise of a green space area in front of it and none of the buyers were charged preferential location charges; and

(*d*) Only eleven flats in T-1, out of a total of 44, were booked after the sanctioning of first revised plan and before the second revised plan. Out of these eleven, only seven flats were facing towards T-17. Even in these seven, there were no windows/balconies facing T-17, but only small bathroom windows.

42.6. The sanction of T-16 and T-17 is based on a valid certificate as regards the structural design of the towers.

42.7. The appellant has not collected the entire lease rent payable to Noida only from the flat owners of T-1 to T-15. It has only collected around Rs 7.5 crores, while it itself has paid around Rs 14 crores.

42.8. The order for demolition of T-16 and T-17 is liable to be set aside on ground of equity:

(*a*) The construction was carried out with the sanction of the authorities;

(*b*) 600 persons had purchased flats in these towers;

(*c*) Construction began in December 2009, and third-party rights in favour of the purchasers have been crystallised;

(*d*) The petition was filed before the High Court in December 2012; and

(*e*) 28 floors in T-17 and 26 floors in T-16 were constructed as on 20-12-2013 when arguments were concluded before the High Court, and by the time that the judgment was delivered, 32 floors had been constructed.

42.9. Hence, the order of demolition would be harsh and inequitable.

43. Supplementing the submissions of Mr Vikas Singh, Mr Ravindra Kumar, learned counsel appearing on behalf of Noida, made the following submissions:

43.1. Para 8.2.3.2 of the NBC 2005 provides that for buildings of heights between 24 m to 37.5 m with one setback, the open space at the ground level shall not be less than 9 m. Since the height of the existing tower Aster-2 (T-1) is less than 37.5 m, the minimum space required between this tower and T-17 is only 9 m. Further, the deficiency of open space can be made good through setbacks at the upper level. However, since the height of T-1 is not proposed to be increased and the tower is open from all three sides, this requirement need not be fulfilled.

43.2. The various Noida Building Regulations have not been violated as they do not prescribe the minimum distance between two towers. It only refers to the distance between "building blocks", with reference to the NBC 2005.

43.3. If building blocks have dead-end sides facing each other, then the space between two building blocks shall be a maximum of 9 m as per the NBR 2010. Similar provisions are found in other building bye-laws such as Delhi Building Bye-laws, Bhubaneshwar Development Authority Building Bye-laws, and Model Building Bye-laws prepared by the Ministry of Urban Development.

43.4. The Fire Safety Act has also been adhered to, as it requires a minimum distance of 6 m between two towers to provide space for movement of fire tenders.

43.5. The construction of the buildings was not stayed by the High Court, which has now jeopardised the rights of third parties, who will now be aggrieved by the order of demolition.

43.6. At the time of sanction of the second revised plan dated 26-11-2009, the U.P. Apartments Act, 2010 had not been enacted. With respect to grant of sanction to the third revised plan, the power to sanction the plans or revisions vests with Noida and is not curtailed by the U.P. Apartments Act, 2010.

43.7. The U.P. Apartments Act, 2010 does not mandate the taking of any consent or NOC from the RWA prior to sanction of plans. In spite of this, an obligation was placed on the appellant to abide by the provisions of the U.P. Apartments Act, 2010, while sanctioning the third revised plan dated 2-3-2012.

43.8. While sanctioning the third revised plan, there was no change in the ground coverage area of T-16 and T-17 and only their proposed heights were increased.

43.9. There is no factual foundation to conclude that there had been any collusion between the appellant and Noida.

44. Mr Jayant Bhushan, learned Senior Counsel appearing on behalf of RWA urged that the members of the RWA purchased their flats after being shown a layout which included a limited number of flats and gardens, including a garden in front of T-1. Many of the allottees are retired persons who have suffered as a result of the unilateral changes made by the appellant, which resulted in an increase in the number of flats from 689 to 1573. The garden area in front of T-1 has been completely removed and instead of a complex of 11 storeyed buildings, two long and tall structures have been sanctioned without the consent of the existing allottees obliterating their right to light, air, view and garden area, thereby endangering their safety. Mr Bhushan submitted that:

44.1. The sanctions of 2009 and 2012 are in violation of the minimum distance criteria required to be maintained between two buildings. Under Regulation 32.3.1(*i*) of the NBR 2006, the distance required is half the height of the tallest building. The tallest building, T-17, under the second revised plan of 2009 is 73 m and hence, the minimum distance of 36.5 m was required between T-1 and T-17. Even the existing T-1 is of 37 m height and therefore, even a building smaller than T-1 could come up only at a distance of at least 18.5 m from T-1.

44.2. Regulation 24.2.1(6) of the NBR 2010 requires a minimum distance of 16 m between T-1 and T-17, as opposed to 9 m at the side.

44.3. Under Para 8.2.3.1 of the NBC 2005, the distance required between buildings would be 16 m plus ten per cent of the building length minus 4 m. The length of the proposed tower is 84.5 m, and hence the distance required would be [16 + (10 per cent of 84.5) — 4], which is equal to 20.45 m.

44.4. The requirement of complying with NBC 2005 is prescribed by NBR 2010 and the NOC issued by the CFO in 2009. In this regard, on 24-4-2012, the CFO inquired from Noida how the new buildings were sanctioned in violation of the distance criteria prescribed in NBR 2006 and 2010, and NBC 2005, which was not responded to by Noida.

44.5. NBCC, which was appointed[5] by this Court at the request of the appellant, has stated in its report that the distance requirement has been violated.

44.6. In response to the argument of the appellant that T-1, T-16 and T-17 form part of one building block, obviating the requirement of minimum distance, it was submitted that:

(*a*) NBC 2005 refers to the distance between buildings and not building blocks;

5 *Dhirender Sharma* v. *Emerald Court Owner Resident Welfare Assn.*, 2016 SCC OnLine SC 1924

(*b*) The expression "building block" though used in NBR 2006 and 2010, has not been defined in either of the Regulations. The rationale for the distance between building blocks is to ensure fire safety evacuation, light and ventilation. It cannot be left to the builder to designate groups of buildings as one building block since the purpose of maintaining the minimum distance would be seriously compromised. The expression must take its colour from NBC 2005 and every building must be a building block; and

(*c*) The reports submitted by the IITs of Delhi and Roorkee specify functional requirements of distance between buildings including:

(*i*) fire separation to avoid transmission between buildings;

(*ii*) safe escape and rescue during fire;

(*iii*) ventilation; and

(*iv*) daylight access.

These requirements have been severely compromised due to the lack of the minimum distance between T-1 and T-17;

(*d*) Regulation 24.2.1(6) of the NBR 2010 refers to NBC 2005 as the source of the distance requirement. The interpretation of the phrase "building block" in NBR 2010 and 2006 must be consistent with NBC 2005;

(*e*) The first revised plan of 2006 shows that each building was intended to be a separate block;

(*f*) The initial argument of the appellant was that T-1 and T-17 are on separate plots and were never intended as the same block. Subsequently, the appellant claimed that they were constructed in separate phases and were to have separate facilities. Later, it introduced a false and unapproved map showing T-1, T-2, T-3, T-16 and T-17 as one block;

(*g*) The affidavit of the appellant dated 4-8-2021 before this Court states that T-16 and T-17 will have separate facilities including entry and exit;

(*h*) T-1, T-16 and the shopping complex as sanctioned in the first revised plan of 2006 were distanced and were different blocks altogether;

(*i*) The construction of T-1 was completed in April 2008 and possession was granted to allottees. It was not legally possible to construct T-17 in 2008 since it was first sanctioned only in November 2009;

(*j*) The road between T-1 and T-17 is the main road for the society and leads into the basement and parking;

(*k*) The basement of T-1 has one level while T-17 has two levels;

(*l*) The foundation of T-1 is made to bear a load of only eleven floors. The appellant has claimed that though the foundation of T-17 was laid in 2009, when only twenty-four floors were sanctioned, it was meant to bear a load of forty floors, which were sanctioned only in 2012;

(*m*) The connection of two building blocks with the space frame would not make it one building block; and

(*n*) The appellant itself was unconvinced by the building block argument and raised the "dead-end" side issue, which led to the appointment of the NBCC by this Court to verify the facts. After a negative report from NBCC, the appellant has once again fallen back on the building block argument to assert that blocks can be defined at the discretion of the developer.

44.7. In response to the submission of the appellant that the buildings are "tower like structures" under the NBC 2005 and thus, meet the minimum distance mandated, it was submitted that:

(*a*) Requirements of the NBR 2006 and 2010 and NBC 2005 are independent and hence, the defence of a tower like structure under the NBC 2005 cannot cure violations of the NBRs;

(*b*) T-17 does not have any setbacks and has the same width throughout;

(*c*) At least 12 m distance is required at the ground level even for tower like structures; and

(*d*) The deficiency of the mandated open space of 16 m under the NBC 2005 in tower-like structures can be cured by setbacks on upper levels. However, the distance of 12 m at the ground level is still mandatory.

44.8. Possession of flats in T-1 was given to purchasers in 2008. The second and third revised plans of 2009 and 2012 respectively proposed a space frame connecting T-1 and T-17 when the residents had already started living in T-1. This is illegal and a safety hazard.

44.9. Under the lease, the undivided interest in common areas stood transferred to the respective allottees. The owners of the existing flats had paid the entire lease amount and more. While the appellant paid Rs 13 crores as one-time lease rent, the buyers of existing flats (other than those in T-16 and T-17) were charged over Rs 16 crores.

44.10. Consent of flat owners was required under the U.P. Apartments Act, 2010 before an alteration in the sanctioned plan:

(*a*) Sections 4(4) and Section 5(3) of the U.P. Apartments Act, 2010 requires the consent of all allottees before a change in the sanctioned plan/ undivided interest in the common area is made. The removal of the green area reduced the common areas and, with an increase in the flats from 689 to 1573, the proportionate undivided interest in the common areas has been reduced substantially;

(*b*) The U.P. Apartments Act, 2010 is applicable irrespective of whether or not a society is formed. The rights are vested with the apartment owners and not the association; and

(*c*) Gardens as well as land are included in the definition of common areas over which all residents have rights.

44.11. Consent of flat owners ought to have been obtained before obtaining an alteration of the sanctioned plan, under the U.P. Act, 1975:

(*a*) Under Sections 5(2) and 5(3), undivided interest cannot be altered without the consent of all owners of flats;

(*b*) Clause II(*h*) of the lease deed stipulates the applicability of the U.P. Act, 1975. This is not confined only to maintenance. The tripartite sub-lease between Noida, the appellant and the allottees also mandates the applicability of the U.P. Act, 1975; and

(*c*) The appellant was responsible to ensure that the declaration under the U.P. Act, 1975 was made. It cannot take advantage of its own wrong in failing to submit a declaration.

44.12. The appellant and Noida have colluded to by-pass the Building Regulations:

(*a*) Despite the revised plans violating the distance criteria, Noida granted sanction to the said revisions. The plans were not cancelled despite repeated reminders from the RWA;

(*b*) Despite the letter of the CFO dated 24-4-2012 highlighting the violation of the distance criteria, Noida did not take any action;

(*c*) The appellant was aware in advance that its plan would be sanctioned in the future, and hence built a stronger foundation in 2009 to support forty-storeyed buildings for T-16 and T-17, which received sanction only in 2012;

(*d*) Under the terms of approval, the sanctioned plan had to be kept at the site for display. In spite of this, there was a failure of the appellant to display the plans. When a request was made by the RWA to Noida to provide a copy of the plans, Noida asked the appellant whether it could supply the plans. Upon the refusal by the appellant, Noida declined to provide the plans; and

(*e*) No action was taken by Noida after issuing a show-cause notice for violation of the minimum distance requirement to the appellant based on a complaint by the flat owners.

44.13. No part of the second revised plan of 2009 can be saved as it is in violation of the distance criteria contained in the NBR 2006, and is also contrary to the U.P. Act, 1975.

44.14. The appellant cannot make any further constructions without the consent of the existing flat owners under the U.P. Apartments Act, 2010 and the Real Estate Regulation and Development Act, 2016.

44.15. There is no equity in favour of the flat buyers in the new buildings (T-16 and T-17) who have decided to retain their flats, particularly when this Court had through several orders granted an opportunity to the purchasers to seek refund.

44.16. T-16 and T-17 can safely be demolished.

44.17. False and misleading statements have been made by the appellant in the course of its pleadings before the High Court and this Court.

C. ***Prefatory observations***

45. At the outset, it must be noted that:

(*i*) The area which was originally leased to the appellant admeasured 48,263 sq m; and

(*ii*) As a result of the supplementary lease, the area stood increased to 54,816 sq m.

46. In order to bring clarity to the issues raised, the dates of sanction and details of the construction are tabulated below:

Title	*Date of sanction*	*Buildings*	*Details*
Original Plan	20-6-2005	Towers 1-14	G+9 floors
First Revised Plan	29-12-2006	Towers 1-15	G+11 floors, height of each tower is 37 m.
		Tower-16	T-16 was to comprise of a cluster of wings comprising of 1 (G+11 floors) and 3 (G+4 floors) with a height of 37 m.
		Shopping Complex	G+1 floor
Second Revised Plan	26-11-2009	Towers 1-15	G+11 floors, height of each tower is 37 m.
		Towers 16-17[10]	G+24 floors, height of each tower increased to 73 m.
Third Revised Plan	2-3-2012	Towers 1-15	G+11 floors, height of each tower is 37 m.
		Towers 16-17[11]	G+40 floors, height of each tower is increased to 121 m.

47. The plan for the construction was originally sanctioned on 20-6-2005. Thereafter, three revisions were sanctioned on 29-12-2006, 26-11-2009 and 2-3-2012.

48. The sanctioning of the revised plans and the construction of T-16 and T-17 have been challenged on the ground of a violation of:

(*i*) NBR 2006;

10 The earlier G+1 shopping complex is numbered as T-16, while the original T-16 is numbered as T-17. Further, T-1 and T-17 were to be connected by a space frame at the upper level.

11 As per the third revised plan dated 2-3-2012, the proposed floors for T-16 and T-17 were G+40. We note however, that in the details of sanctioned plans submitted by Mr Vikas Singh, learned Senior Counsel, the number of floors envisaged for T-17 were G+39 and T-16 were G+40. Further, as per the provisional Fire NOC dated 18-8-2011, the proposed construction for T-16 and T-17 was for G+38 floors.

(*ii*) NBR 2010;

(*iii*) NBC 2005;

(*iv*) U.P. Act, 1975;

(*v*) U.P. Apartments Act, 2010; and

(*vi*) Fire safety norms.

49. The appellant disputes the applicability of the U.P. Act, 1975. This will be considered in the course of the judgment.

50. It becomes necessary to clear the ground in regard to the reliefs which were sought before the High Court. The reliefs sought before the High Court in the petition were for:

(*i*) Quashing the revised plan for the construction of T-16 (Ceyane) and T-17 (Apex) and the demolition of the structures constructed pursuant to the plan;

(*ii*) Directing Noida to not sanction any further building plans in respect of Emerald Court without obtaining the consent of all residents;

(*iii*) Quashing the permission granted to link T-1 with T-16/T-17;

(*iv*) Directing the installation of fire safety equipment and infrastructure;

(*v*) Directing the demolition of the illegal construction in the basement and the setback area; and

(*vi*) Directing Noida and the appellant to provide car parking spaces in accordance with NBC 2005.

Of the above reliefs, the High Court recorded that only Prayers (*i*) and (*iii*) were pressed.

51. The above narration establishes that there was a challenge to the revised plans by which the construction and increase in the height of T-17 (Apex) and T-16 (Ceyane) were envisaged. As the tabulation set out above indicates, in the first revised plan of 29-12-2006, T-16 was to partially comprise of G+11, the rest being G+4. A shopping complex was envisaged comprising of G+1 floors. A triangular green area is indicated in the first revised plan of 29-12-2006 in front of T-1. In the second revised plan of 26-11-2009, T-17 (Apex) and T-16 (Ceyane) came to be envisaged with twenty-four floors and of a height of 73 m each. In the third revised plan of 2-3-2012, the number of floors of T-16 and T-17 was increased further from twenty-four to forty floors (for T-16) and thirty-nine floors (for T-17), and the height of each of the towers was increased from 73 m to 121 m. In this backdrop, the relief which was sought in Prayer (*i*) was for quashing the revised plan for the construction of the two new towers — T-17 (Apex) and T-16 (Ceyane). This clearly implicates a challenge both to the second revised plan of 26-11-2009 as well as the third revised plan of 2-3-2012.

52. A brazen attempt at stonewalling the first respondent was made by the appellant and Noida before the High Court. The sanctioned plans incorporate the condition that a copy of each plan would be made available at the site. Despite this, when the first respondent sought copies of the sanctioned plans and other information, Noida wrote to the appellant asking for their consent to provide the plans to the first respondent. When the appellant refused, Noida's refusal to the RWA followed suit. It was only pursuant to the interim directions of the High Court that the sanctioned plans and documents were provided to the first respondent. The reliefs which have been sought encompass a challenge to the validity of the second and third revised plans, under which the two towers, T-17 (Apex) and T-16 (Ceyane), were being constructed.

D. ***Violation of distance requirement under Building Regulations***

53. The first issue we shall address is whether the sanction for the construction of T-16 and T-17 by Noida is in violation of the distance requirement under applicable building regulations.

Original sanction dated 20-6-2005

54. When the plan was originally sanctioned on 20-6-2005, the NBR 2006 was yet to come into force. The sanction of 20-6-2005 was under the regime of the NBR 1986. NBR 1986 envisaged a 15 m setback from the front and 9 m on all sides. Since the original plan did not envisage construction of T-16 and T-17, the said plan is not under challenge for violation of the relevant building regulations.

First revised sanction dated 29-12-2006

55. NBR 2006 came into force on 16-12-2006. The sanctioned plan for the project was first revised on 29-12-2006, and it covered a total area of 54,819 sq m, leased to the appellant under the lease deed and the supplementary lease deed. The first revised plan provided for the construction of two additional towers (T-15 and T-16) and one shopping complex (G+1 floors). All 16 towers were to comprise of G+11 floors and were to be 37 m in height.

56. The first revised plan was governed by the NBR 2006. Regulation 33 provided for permissible FAR, ground coverage and height of buildings. Regulation 33.2 dealt with the group housing. The table appended to it is as follows:

"33.2. *Group Housing*

GROUP HOUSING				
		Max Ground Coverage	*FAR*	*Height*
1.	Coverage	30	200	No limit
2.	Density	As mentioned in the section layout plan or scheme"		

57. Regulation 32 deals with setbacks, which is defined as the line parallel to the plot boundaries, beyond which nothing can be constructed towards the plot boundaries. Regulation 32.3 stipulates that where a plot size exceeds 40,000 sq m, there has to be a front setback of 25 m, while setbacks on the rear and on all sides will be 9 m. Regulation 33.2.3 is relevant for the dispute in the present case and it stipulates as follows, insofar as is relevant:

> "(*i*) *Distance between two adjacent building blocks shall not be less than half of the height of tallest building*." (emphasis supplied)

Second revised sanction dated 26-11-2009

58. The second revision to the original plan was sanctioned on 26-11-2009, under the NBR 2006. The second revised plan envisaged that instead of the construction of T-16 (comprising of G+11 floors and G+4 floors), and a shopping complex (G+1 floor), two towers, T-16 and T-17, would be constructed, each comprising of G+24 floors and of 73 m. height. According to the revision, a 9 m distance was to be maintained between T-17 and T-1 at the ground level, and T-1 and T-17 were to be connected through a space frame at the upper level. The second revised plan provided that a front setback of 15 m, and a rear and side setback of 9 m each was approved.

59. The issue is whether the second revised plan for construction of T-16 and T-17 each of a height of 73 m and at a distance of 9 m from T-1, is in compliance with the applicable regulation at the time, that is, NBR 2006. We shall advert to this in the next section.

Third revised sanction dated 2-3-2012

60. The third revision to the plan was sanctioned on 2-3-2012, by which the height of T-16 and T-17 was increased from 73 m to 121 m, and the number of floors in T-16 and T-17 was increased from twenty-four to forty floors.

61. At the time of the sanction of the third revised plan, the NBR 2010 had come into force. Regulations 1.6 and 1.7 of the NBR 2010 are in the following terms:

> "**1.6.** The plots on which map has already been sanctioned and construction has already started or completed, *the allottee may be allowed to revise the same building plan or submit the new plan as per prevailing regulations for that part of the building where construction has not started* or any new addition is required in the building.
>
> **1.7.** FAR, Ground coverage, setbacks and density as indicated in the regulations shall not be applicable in respect of those plots which were allotted on auction or tender basis and group housing prior to the coming into operation of these regulations. *However, the calculation of FAR and Ground Coverage in the new buildings in such plots shall be done as per these regulations.* The purchasable FAR and Ground coverage as per applicability may be allowed." (emphasis supplied)

62. Under Regulation 24.2, the following stipulations have been provided for Group Housing:

"(II) Maximum permissible—

(*i*)	Ground coverage	35 per cent to 40,000 sq m and 40% above 40,000 sq m
(*ii*)	Floor Area Ratio	2.75
(*iii*)	Height	No limit. For buildings above 30 m in height, clearance from Airport Authority shall have to be taken.
(*iv*)	Density (Family size 4.5)	As mentioned in the sector layout plan or decided by the Authority for a particular scheme."

Table 2 of the NBR 2010 prescribes the setback requirement in relation to Regulation 24. For all plots measuring above 40,000 sq m, the setbacks in the front are 16 m and at the rear and on the sides are 12 m.

63. Regulation 24.2.1(1)(*vi*) provides that a distance of 6 m is to be left open for fire tenders. The said Regulation is extracted below:

"**24.2.1. (1)(*vi*)** The following features shall be permitted after leaving minimum 6 m open corridor for fire tenders:

(*a*) Meter room as per norms of Electricity Authority.

(*b*) Open transformers without any permanent enclosure keeping in view the necessary safety requirements.

(*c*) Other features as mentioned in Table 3.

(*d*) Rockery, well and well structures, water pool, swimming pool (if uncovered), uncovered platform around tree, tank, fountain, bench, chabutra with open top and unenclosed by side walls, compound wall, gate, slide swing, culverts on drains.

(*e*) Any other feature, primarily ornamental in nature, not enclosing or covering space of commercial use may be permitted by the Chief Executive Officer on case-to-case basis.

(*f*) Open generator set, filtration plant, electrical distribution equipment, feeder pillars, telephone distribution equipments may be permitted in open setback as a service utility provided after leaving clear space for fire tender."

64. With respect to the distance between two adjacent building blocks, Regulation 24.2.1(6) provides:

"**24.2.1. (6)** ***Distance between two adjacent building blocks***.—Distance between two adjacent building blocks shall be minimum 6 m to 16 m depending on the height of blocks. For building height up to 18 m, the spacing shall be 6 m and thereafter the spacing shall be increased by 1 m for every addition of 3 m in height of building subject to a maximum spacing of 16 m as per National Building Code, 2005. If the blocks have dead-end sides facing each other, th[e]n the spacing shall be maximum 9 m instead of 16 m.

Moreover, the allottee may provide or propose more than 16 m space between two blocks."

65. The above regulation indicates that:

65.1. The distance between two "adjacent building blocks" is to be a minimum of 6 m going up to 16 m, depending upon the height of the blocks.

65.2. For a building height up to 18 m, the spacing would be 6 m, to be increased by 1 m for every addition of 3 m to the height of the building (subject to a maximum spacing of 16 m under the NBC 2005).

65.3. If the blocks have dead-end sides facing each other, the spacing shall be a maximum of 9 m instead of 16 m.

65.4. The allottee may, however, propose more than a 16 m space between two blocks.

66. Regulation 24.2.1(6) of the NBR 2010 refers to the NBC 2005 for the minimum distance requirement. The NBC 2005 contains the following stipulations in Para 8.2.3.1:

"**8.2.3.1.** For buildings of height above 10 m, the open spaces (side and rear) shall be as given in Table 2. The front open spaces for increasing heights of buildings shall be governed by 9.4.1(*a*).

Table 2 — Side and Rear Open Spaces for Different Heights of Buildings

(*Clause* 8.2.3.1)

Sl. No.	*Height of Buildings*	*Side and Rear Open Spaces to be Left Around the Building*
(1)	m (2)	m (3)
(*i*)	10	3
(*ii*)	15	5
(*iii*)	18	6
(*iv*)	21	7
(*v*)	24	8
(*vi*)	27	9
(*vii*)	30	10
(*viii*)	35	11
(*ix*)	40	12
(*x*)	45	13
(*xi*)	50	14
(*xii*)	*55 and above*	*16*

Notes:

1. For buildings above 24 m in height, there shall be a minimum front open space of 6 m.

2. Where rooms do not derive light and ventilation from the exterior open space, the width of such exterior open space as given in column (3) may be reduced by 1 m subject to a minimum of 3 m and a maximum of 8 m. No further projections shall be permitted.

3. *If the length or depth of the building exceeds 40 m, add to column (3) 10 per cent of length or depth of building minus 4.0 m.*" (emphasis supplied)

67. Para 8.2.3.2 provides as follows:

"8.2.3.2. *For tower like structures*, as an alternative to 8.2.3.1, open spaces shall be as below:

(*a*) Up to a height of 24 m, with one setback, the open spaces at the ground level shall be not less than 6 m;

(*b*) For heights between 24 m and 37.5 m with one setback, the open spaces at the ground level, shall be not less than 9 m.

(*c*) *For heights above 37.5 m with two setbacks, the open spaces at the ground level, shall be not less than 12 m; and*

(*d*) *The deficiency in the open spaces shall be made good to satisfy 8.2.3.1 through the setbacks at the upper levels; these setbacks shall not be accessible from individual rooms/flats at these levels.*"

(emphasis supplied)

68. Para 8.2.3.1 of the NBC 2005 indicates that where the height of the building is 55 m and above, the side and rear open spaces to be left around the building must be 16 m. Note 3 indicates that if the length or the depth of the building exceeds 40 m, in addition to the height which is specified in Column 3, ten per cent of the length and the depth of the building minus 4 m has to be added to the distance required. Thus, in the case of a height (as in the present case) of 55 m and above, an additional 8.45 m (10 per cent of 84.5 m) is added to the 16 m and 4 m is to be deducted, arriving at a 20.45 m distance requirement. However, an alternative is provided by Para 8.2.3.2 for "tower like structures". For heights above 37.5 m, open spaces at the ground level shall not be less than 12 m. Further, deficiencies in open space as required under Para 8.3.2.1, can be met through setbacks at the upper levels, subject to the condition that the setback shall not be accessible from the individual rooms/flats at these levels.

D.1. ***Violation of the NBR 2006 and 2010***

D.1.1. ***Interpretation of "building blocks"***

69. The first aspect which needs to be considered is whether T-17 and T-1 are two adjacent building blocks or form part of a single building block as claimed by the appellant. Regulation 33.2.3 of the NBR 2006 stipulates that the distance between the two adjacent building blocks shall not be less than half of the height of the tallest building.

70. The submission of Mr Vikas Singh, learned Senior Counsel, as well as of Mr Ravindra Kumar, appearing on behalf of Noida, is that Regulation 33.2.3 of the NBR 2006, which was in force when the second revised plan was sanctioned on 26-11-2009 (contemplating the construction of T-16 and T-17), stipulates a distance between "two adjacent building blocks". Mr Vikas Singh submitted that it is entirely the discretion of the developer to determine as to whether one or more buildings should be treated as a building block, there being no definition of the expression "building blocks" in NBR 2006. It

has been urged that the appellant is entitled to assert that the sanctioned plan consists of building blocks, and that T-16 and 17 are part of a building block along with T-1, T-2, and T-3. Thus, it has been submitted that all these towers (T-1, T-2, T-3, T-16 and T-17) constitute one single building block. To buttress this submission, the space frame connecting T-1 and T-17 is referred to. It has been urged that there is no necessity of maintaining the minimum distance provided by Regulation 33.2.3, which applies only to the distance between two adjacent building blocks, and since T-1 was to be connected to T-17 by a space frame, the two new towers (T-17 and T-16) would constitute a part of the same building block, thus obviating the need of maintaining a minimum distance between them. This argument was sought to be supported by adverting to the original Hindi version of Regulation 33.2.3, which uses the expression "दो भवन समूहों के बीच की दूरी". In this context, it has been submitted that after the NBR 2010 came into force, there was an increase in the height of T-16 and T-17 from twenty-four to forty floors. Regulation 24.2.1(6) of the NBR 2010 has also used the expression "two adjacent building blocks". Thus, based on both the NBR 2006 and 2010, it has been urged that the appellant was entitled to treat T-16 and T-17 as forming a part of a cluster which would include T-1. Therefore, the submission is that since all of them constitute a single building block, the minimum distance requirement need not be maintained.

71. The submission which has been urged on behalf of the appellant finds support in the arguments of Mr Ravinder Kumar, learned counsel appearing on behalf of Noida. The submissions which have been made on behalf of Noida highlight the following features:

71.1. Apart from the English version of Regulation 24.2.1(6) of the NBR 2010, which uses the expression building blocks, the Hindi version uses the terms "भवन समूह", which emphasises the concept of a cluster of buildings.

71.2. When the Regulations speak of a "भवन समूह", it is not the distance between the towers but the distance between blocks which is implicated.

71.3. T-1, T-16 and T-17 form part of one cluster or block and hence there is no need of maintaining a distance between buildings forming part of a block.

71.4. The absence of a minimum distance between the T-1 and T-7 would be of no consequence.

71.5. Apart from the alleged breach of the minimum distance requirement, all parameters have been maintained, in terms of:

(*a*) Ground coverage;
(*b*) FAR;
(*c*) Open area; and
(*d*) Green area;

71.6. An explanatory note was submitted by Noida before the High Court, concerning the issue of building blocks, and is extracted below:

"*Building Block in a Group Housing Project*

Main Points:

1. Noida Building Regulations, 2010: A "Bhavan Samuh" which is translated in English as a "Building block" is the combination or a group of buildings in any given area/plot.

2. Section 3(*g*) of the U.P. Apartment (Promotion of Construction, Ownership, Maintenance) Act, 2010 defines building. As per the Act, "building" means a building constructed on any land, containing four or more apartments, or two or more buildings in any area designated as a block, each containing two or more apartments with a total of four or more apartments in all such buildings:

> 'Provided that an independent house constructed in a row with independent entry and exit, whether or not adjoining to other independent houses, shall not constitute a building.' "

Therefore, it is clear that the Block is designated as "two or more buildings in any area" and the building is defined as "four or more apartments on any land".

3. As per Zoning Glossary of New York City Planning; "*A Block" is defined as a tract of land bounded on all sides by streets by a combination of streets, public parks, railroad rights of way, pierhead lines or airport boundaries. Building is defined as a structure that has one or more floors and a roof, is permanently affixed to the land and is bounded by open areas or the lot lines of a zoning lot.*

4. The buildings in a block may not be connected, may be partially connected or may be fully connected, as is clear from the aforesaid provisions.

5. It is a common practice in all the metropolitan cities of India and all over the world to construct high rise buildings for different purposes to make optimum utilisation of land. In any given area, more open & green space can be provided only with a provision of high rise buildings which enable to accommodate high density comparatively with less ground coverage and more open space. Large size projects generally have many buildings which are planned, arranged & designed, keeping in view the requirement of common space, common facility & amenities, natural light, ventilation, open space and maximum possible exit routes for early evacuation in event of any emergency. In view of all these considerations generally different building blocks or groups of buildings having interconnected accessibility, facilities and services are designed, which give better living environment than having a system of all buildings situated in isolation within the project area. It is common practice in all the metropolitan cities of India and over world to construct high-rise building for different purpose to make optimum utilisation of land. In any given area more open & green space can be provided only within a provision of high-rise building which enable to accommodate high density comparatively

within less ground coverage and more open space. Large size projects generally have many building which are planned, arranged & designed, keeping in view the requirement of common space, common facility & amenities, natural light, ventilation, open space and maximum possible exit routes for early evacuation in the event of any emergency. In view of all these considerations generally different building blocks or cluster of building having inter-connected accessibilities & facilities are decided, which give better living environment than having a system of all building situated in isolation within the project area.

6. Isolated buildings are more prone to safety, security, provision and maintenance of common services related problems. In case of a fire accident in any isolated building having no extra exit routes, chances of danger to human lives is more.

7. Generally, a group of buildings in a project is constructed with the provision of common basement i.e. one basement for all the buildings. This is done for better accessibility and movement and provision of common facilities. It is also a very common practice in India and abroad to connect the high rise buildings by way of space frame bridges giving additional exit routes for early evacuation in the event of emergency. This practice has increased after the occurrence of incident of fire in Gopal Tower in Connaught Place, New Delhi and the temporary space frame was made connecting the said tower at the Height with nearby tower for evacuation of cornered persons saving many lives.

8. NBC OF INDIA OF 2005: Side and rear open space for different height of building is governed as per Para 8.2.3.1 of the NBC 2005 which states that for height of building.

Height	*Side and Rear Open Space*
35 m	11 m
40 m	12 m
55 m & above	16 m

But as per Para 8.2.3, tower like structures as an alternative to Para 8.2.3.1 open space as below:

For height between 24 m and 37.50 m with one setback the open space

At the ground level, shall not be less than 9 m.

9. It is stated that Noida Building Regulations intends to provide the distance between two adjacent building blocks to be between 6 m to 16 m depending upon the height of the building blocks. It does not provide any specific requirement of distance between two buildings. The concept of minimum distance required between two high rise buildings of a block may not necessarily be the same as required between the two building blocks. For example a building block may have three or four stories for the entire block area and few towers of different height and different upper stories designed at different places in the same block.

10. The concept of minimum distance between the two building blocks is for the purpose of free fire tender movement (minimum 6 m setback as per regulation), air ventilation, sunlight, etc. The minimum distance requirement is in no way connected with the structural safety of the building.

11. It is stated here that the new building under construction is having perimeter of approx. 230 m the entire building is surrounding by enough open area i.e. more than 16 m except at one place where the building is made a part of block of adjoining building by way off a proposed connecting bridge to provide an extra exit route for the purpose of emergency evacuation. Here also the minimum gap between old building and new building is 9 m for 6.80 m length with satisfies the requirements of fire safety provisions. It does not violate any provision with regards to fire safety and air circulation." (emphasis supplied)

72. Essentially, the plea both on behalf of the appellant and Noida is that the requirement of maintaining a minimum distance applies only to adjacent building blocks, which is not equivalent to adjacent buildings. To put it differently, the arguments proceed on the basis that where there is a cluster of buildings the requirement of a minimum distance cannot be observed as between buildings forming part of the cluster, but only as between two adjacent building blocks/clusters. Each building block in this line of argument may consist of a collection of buildings, and it is argued that neither NBR 2006 nor NBR 2010 mandates the maintenance of a minimum distance as between buildings in a cluster.

73. The expression "building block" has not been defined either in NBR 2006 or in NBR 2010. The construction which is placed upon the content of the expression must advance the object and purpose of the said Regulations. The purpose of stipulating a minimum distance is a matter of public interest in planned development. The residents who occupy constructed areas in a housing project are entitled to ventilation, light and air and adherence to fire safety norms. The purpose of stipulating a minimum distance comprehends several concerns. These include safeguarding the privacy of occupants and their enjoyment of basic civic amenities including access to well-ventilated areas where air and light are not blocked by the presence of close towering constructions. Access to these amenities is becoming a luxury instead of a necessity. The prescription of a minimum distance also has a bearing on fire safety. In the event of a fire, there is a danger that the flames would rapidly spread from one structure to adjoining ones. Moreover, the presence of structures in close proximity poses serious hurdles to fire-fighting machinery which has to be deployed by the civic body.

74. If a developer is left with the unbridled discretion to define the content of the expression "building block", this will defeat the purpose of prescribing minimum distances, leaving the health, safety and quality of life of flat buyers at the mercy of developers. Before this Court, an argument has been advanced that four towers out of the seventeen towers in the plot are a part of one "building

block" and do not require maintenance of a minimum distance. Before the High Court, the appellant attempted to argue that all the buildings (that is all seventeen towers) on Plot No. 4 of Sector 93-A Noida would comprise of one "building block". The inconsistency of the appellant's argument on building blocks before the High Court and this Court points out the obvious flaw in it—that the designation of how many buildings constitute a "building block" by the developer would undermine the requirements prescribed by the Building Regulations. As a matter of first principle, we are not inclined to adopt the construction proposed by the appellant. It will deprive the residents of urban areas of the amenities of light, air and ventilation which are essential to maintaining a basic quality of life. It will also have serious ramifications on fire safety. The developer cannot be allowed to subvert the requirement of maintaining minimum distances prescribed in the Building Regulations by unilaterally designating independent towers as building blocks, in the manner which the appellant has suggested before this Court. Setting up a space frame or providing for a common entry or exit would not make two otherwise separate buildings as one consolidated block.

75. Regulations 33.2.3 of the NBR 2006 refers to the distances between adjacent "building blocks" which shall not be less than half of the height of the tallest building. The purpose of this Regulation is not to apply it only as between building blocks as distinguished from buildings within a block. Clause (1) of Regulation 33.2.3 has used the expression "building blocks" and "height of tallest building" in the same sentence. These expressions must be given a meaning which accords with common sense and in furtherance with the object and the purpose of the said Regulation. The plain meaning of the expression is that when there are two adjacent blocks, the height of the tallest building will determine the distance required to be observed, with the distance being not less than half the height of the tallest building. Consequently, when two or more buildings exist in proximity together, they comprise of a building block within the meaning of clause (1) of Regulation 33.2.3. In such an eventuality, the distance between each of the buildings comprised in the block shall also not be less than half of the height of the tallest building. The reference to the height of the tallest building is evidently made because this kind of a building will likely overshadow the buildings of a lesser height in a cluster of proximate construction. Therefore, the Regulation has defined the minimum distance required with reference to half the height of the tallest building. Any other construction will defeat the purpose of Regulation 33.2.3 and cannot be accepted.

76. Applying the NBR 2006 to the facts of the present case, the construction of T-16 and T-17 was envisaged in the second revised plan dated 26-11-2009. The height of the said towers was to be 73 m, while the height of other towers, including T-1, was to be 37 m. Thus, as per Regulation 33.2.3 of the NBR 2006, the minimum distance between T-17 and T-1, should be half of the height of

the tallest building, that is, half of the height of T-17 which is 36.5 m. It is evident from the record that the distance between T-1 and T-17 is 9 m only. Thus, clearly the second revised plan was violative of the NBR 2006.

77. We shall now come to the NBR 2010. Regulation 24.2.1(6) has prescribed the requirement of maintaining varying distances between two adjacent blocks from a minimum of 6 m extending up to 16 m, depending on the height of blocks. The content to the first sentence of this Regulation is further amplified by what follows it. The next part of the Regulation stipulates that for a *building of height* up to 18 m, "spacing" shall be 6 m. The expression "spacing" in its plain terms means the observance of a stipulated distance. Where the height of the building is up to 18 m, "the spacing" shall be 6 m. Thereafter, for a height above 18 m, the minimum distance has to be increased by one metre for an additional height of three m subject to a maximum distance or spacing of 16 m "as per National Building Code, 2005".

78. Mr Ravindra Kumar, learned counsel appearing on behalf of Noida, has particularly laid emphasis on the Hindi version of the NBR 2010 to argue that it used the term "भवन समूह", which must mean that a separate meaning is accorded to it than the term "भवन". The Hindi text of Regulation 24.2.1(6) [Regulation 24.2.1 (V) in the Hindi version] is as follows:

> "**(V) दो अगल बगल के भवन खंडों के बीच की दूरी.**--दो अगल बगल के भवन खंडों के बीच की दूरी न्यूनतम 6.00 मीटर से 16.00 मीटर तक रखी जाएगी, जो भवन समूह की ऊँचाई पर निर्भर होगी। 18.00 मीटर ऊँचे भवनों की बीच की दूरी 6.00 मीटर रखी जाएगी तथा हर तीन मीटर की ऊँचाई पर भवनों की दूरी 1.00 मीटर रखी जाएगी। तथापि अधिकतम दूरी नेशनल बिल्डिंग कोड.--2005 के अनुसार 16.00 मीटर रखी जाएगी। यदि भवन खंडों के बंद हिस्से वाले भाग आमने सामने हो तो भवन खंडों के बीच की दूरी 16.00 मीटर के स्थान पर 9.00 मीटर रखी जाएगी। तथापि आबंटी द्वारा दो भवन खंडों के बीच की दूरी 16.00 मीटर से अधिक रखी जा सकती है।"

As is evident, the Hindi version of the NBR 2010, uses three different terms "भवन खंडों", "भवन समूह", and "भवन". A purely textual interpretation, as is suggested by Mr Ravindra Kumar, would lead us to ascribe three different meanings to each of these terms. Extending this argument would then imply that the first sentence, which states that two adjacent building blocks require a minimum distance of 6 m to a maximum distance of 16 m, will depend on the height of the blocks. The second sentence, which in English simply reads, "for building height up to 18 m, the spacing shall be 6 m…", does not clarify what the term "spacing" denotes—does it imply spacing between buildings inter se the block, or spacing between adjacent "building blocks". Mr Ravindra Kumar suggests that it implies the latter. However, looking at the Hindi version of the Regulations from a purely textual standpoint, it would appear that it states that the spacing between the buildings of height 18 m should be 6 m, that is, "18.00 मीटर ऊँचे भवनों की बीच की दूरी 6.00 मीटर रखी जाएगी...". The term used here is "भवनों" and not "भवन खंडों" or "भवन समूह". Thus, overemphasis on the

text of the NBR 2010, while losing sight of the context and the purpose of the Regulation, would lead to an absurd interpretation. Where the initial part of Regulation 24.2.1(6) provides for distance between building blocks, the latter part stipulates the distance between buildings of height above 18 m. Accordingly, we reject the argument of Mr Ravindra Kumar that Regulation 24.2.1(6) only provides for the distance between "building blocks" and not buildings within the blocks.

79. The latter part of Regulation 24.2.1(6) of the NBR 2010 provides that the maximum spacing between buildings of a height above 18 m shall be 16 m as per the NBC 2005. In the third revised plan dated 2-3-2012, the height of T-16 and T-17 was increased to 121 m. In accordance with Regulation 24.2.1(6), the spacing between a building of height 121 m and another building would be 16 m (the maximum limit as per NBC 2005). Thus, the distance between T-1 and T-17 should have been 16 m, as opposed to 9 m. Consequently, we find that the third revised plan dated 2-3-2012 was in violation of the NBR 2010.

80. Noida, before it granted sanction for enhancing the height of T-16 and T-17 from G+24 to G+40 (or 39, as the case may be), was duty-bound to apply its mind to whether there was a compliance with the provisions of Regulation 24.2.1(6). The third revised plan which was sanctioned on 2-3-2012 has evidently glossed over the clear deficiency of open space with reference to the NBR 2010, the consequence of which would have been to reject the proposal for a further increase in the height of the towers from twenty-four floors to forty floors. Yet Noida has chosen to lend its support to the appellant in clear defiance of the provisions of law.

81. The issue as to whether T-1, together with T-16 and T-17, form one cluster can be looked from another perspective to test the hypothesis of Mr Vikas Singh. The original sanctioned plan dated 20-6-2005 provided that:

"Total area of plot : 48,263.00 sq m
Permissible coverage 35% : 16,892.05 sq m
Sanctioned coverage 14.03% : 6773.25 sq m
Permissible FAR 1.50 : 72,394.50 sq m
Sanctioned FAR 134.28 : 64,810.04 sq m
Sanctioned height of building : 30.00 m

SETBACK

SETBACK OF BUILDING

	Permissible	Sanctioned
Front	9.66 m	15.00 m
Back	9.66 m	09.70 m
Side	9.66 m	09.70 m
Side	9.69 m	09.70 m."

82. The original sanctioned plan covered a total plot area of 48,263 sq m. Subsequently, an additional area of 6556.61 sq m was leased out to the appellant by a supplementary lease deed dated 21-6-2006, so as to enhance the total area of the plot to 54,819.51 sq m. As a consequence, the first revised plan was sanctioned on 29-12-2006, where the sanctioned area was enhanced from 64,810.04 sq m to 81,943.216 sq m, the calculations being as follows:

"Sanctioned area

Total area of plot: 54,819 sq m

Floor	*Existing*	*Addition*	*Total*
Ground Floor	6773.25 sq m	1025.313 sq m	7798.563 sq m
First Floor	6672.17 sq m	1010.673 sq m	7682.843 sq m
Second Floor	6672.17 sq m	1010.673 sq m	7682.843 sq m
Third Floor	6672.17 sq m	1010.673 sq m	7682.843 sq m
Fourth Floor	6672.17 sq m	778.737 sq m	7450.907 sq m
Fifth Floor	6672.17 sq m	- 177.574 sq m	6494.596 sq m
Sixth Floor	6672.17 sq m	- 177.574 sq m	6494.596 sq m
Seventh Floor	6672.17 sq m	- 177.574 sq m	6494.596 sq m
Eighth Floor	6522.89 sq m	- 28.294 sq m	6494.596 sq m
Ninth Floor	4808.71 sq m	1685.886 sq m	6494.596 sq m
Tenth Floor		6312.410 sq m	6312.410 sq m
Eleventh Floor		4448.677 sq m	4448.677 sq m
Commercial		411.15 sq m	411.15 sq m
Total	64,810.04	17,133.176	*81,943.216*
Basement		: 32,352.71 + 8189.67 = 40,542.38	
Total	97,162.75	25,528.41	*1,22,485.60*"

83. The first revised plan dated 29-12-2006 relating to 6556.61 sq m indicates that in the south-west corner of the plot, an additional construction comprising of one tower and a shopping facility would be put up and directly opposite to T-1 was a green area, which has been depicted on the sanctioned plan.

84. On 26-11-2009, there was a second revised sanction, consequent upon the acquisition of purchasable FAR of thirty-three per cent of the permissible 1.5 FAR. The area calculations of the second revised sanction were indicated as follows:

"Area of plot : 54,819.510 sq m
Permissible FAR 1.50% : 82,229.265 sq m
Purchasable FAR 33% : 27,135.657 sq m
Total FAR 82,229.265 + 27,135.657 = 1,09,364.922 sq m
Area of utilisation issued earlier : 78,019.956 sq m

Area of upper basement issued earlier:

40,542.380 sq m (3397.0990 with demolished upper basement)

Floor	*Permissible area (sq m)*	*Proposed Area (sq m)*
Ground Floor	19,186.82	1751.320
First Floor	Rest FAR	228.230
Second Floor		2249.220
Third Floor		2249.220
Fourth Floor		2249.220
Fifth Floor		2249.220
Sixth Floor	.....	2249.220
Seventh Floor	.....	2249.220
Eighth Floor	.....	2249.220
Ninth Floor	.....	2249.220
Tenth Floor	.....	1358.786
Eleventh Floor	.....	1186.914
Twelfth Floor	.....	740.162
Thirteenth Floor	.....	740.162
Fourteenth Floor	.....	740.162
Fifteenth Floor	.....	740.162
Sixteenth Floor	.....	447.955
Seventeenth Floor	.....	447.955
Eighteenth Floor	.....	447.955
Nineteenth Floor	.....	447.955
Twentieth Floor	.....	447.955
Twenty-first Floor	.....	383.168
Twenty-second Floor	.....	383.168
Twenty-third Floor	.....	383.168
Twenty-fourth Floor	.....	383.168
Total FAR	.....	*31,312.081*
Upper basement	.....	3397.090
Lower basement	40,542.38	3397.090
Total Area		*43,939.470*

Setback	*Permissible*	*Sanctioned*
Front	15.00 m	15.00 m
Back	9.00 m	9.00 m
Side	9.00 m	9.00 m
Side	9.00 m	9.00 m.”

85. As the second revised plan indicates, the existing towers now envisaged twenty-four floors instead of eleven floors. The third revised plan of 2-3-2012 further envisaged an enhancement in the constructed area consequent upon a purchasable FAR, together with the sanctioned FAR of 2.75. The number of floors was further increased to forty floors in T-16 and T-17, the relevant calculations being as follows:

“Total area of plot	54,819.510 sq m
Permissible coverage 35%	19,186.828 sq m

Sanctioned coverage 14.03%	6773.25 sq m
Permissible FAR @ 1.5%	82,229.265 sq m
at the time of allotment	
Purchasable FAR on 25.10.10	1,50,753.652 sq m
With Sanctioned FAR @ 2.75	

Floorwise description of proposed area of different floors are as under:

Floor	*Permissible area (sq m)*	*Built up area (Tower-1 to 14) on 16-10-2009 utility certificate issued. sq m*	*Previous sanctioned area Tower-15, 16 & 17 date 26-11-2009*	*Proposed FAR Tower-15, 16 & 17 (sq m)*	*Revised area Tower-15, 16 & 17 (sq m) (3 +4)*	*Total area (sq m) (2 +5)*
	1	*2*	*3*	*4*	*5*	
Space frame	—	—	—	24.00	24.00	24.00
Podium (T-1 to T-14)	—	288.983	—	—	—	—
Ground Floor	19,186.825	6823.429	1751.320	1125.302	2876.622	9700.051
1st Floor	Rest FAR	6722.349	2288.230	78.075	2366.305	9088.654
2nd Floor	—	6722.349	2249.220	58.555	2307.775	9030.124
3rd Floor	—	6722.349	2249.220	58.555	2307.775	9030.124
4th Floor	—	6722.349	2249.220	38.400	2287.620	9009.969
5th Floor	—	6722.349	2249.220	38.400	2287.620	9009.969
6th Floor		6722.349	2249.220	-12.397	2236.823	8959.172
7th Floor		6722.349	2249.220	-12.397	2236.823	8959.172
8th Floor		6722.349	2249.220	-12.397	2236.823	8959.172
9th Floor		6722.349	2249.220	-12.397	2236.823	8959.172
10th Floor		6423.737	1358.786	878.037	2236.823	8660.560
11th Floor		3982.669	1186.94	910.301	2097.215	6079.884
12th Floor			740.162	851.205	1591.367	1591.367
13th Floor			740.162	851.205	1591.367	1591.367
14th Floor			740.162	851.205	1591.367	1591.367
15th Floor			740.162	851.205	1591.367	1591.367

	16th Floor			447.995	1162.568	1610.523	1610.523
a	18th Floor			447.995	1162.568	1610.523	1610.523
	19th Floor			447.995	1162.568	1610.523	1610.523
	20th Floor			447.995	1165.568	1610.523	1610.523
b	21st Floor			383.168	1610.523	1610.523	1610.523
	22nd Floor			383.168	1610.523	1610.523	1610.523
	23rd Floor			383.168	1610.523	1610.523	1610.523
c	24th Floor			383.168		1610.523	1610.523
	25th Floor				1610.523	1610.523	1610.523
	26th Floor				1610.523	1610.523	1610.523
d	27th Floor				1610.523	1610.523	1610.523
	28th Floor				1610.523	1610.523	1610.523
	29th Floor				1610.523	1610.523	1610.523
e	30th Floor				1610.523	1610.523	1610.523
	31st Floor				1610.523	1610.523	1610.523
	32nd Floor				1610.523	1610.523	1610.523
f	33rd Floor				1610.523	1610.523	1610.523
	34th Floor				1610.523	1610.523	1610.523
	35th Floor				1610.523	1610.523	1610.523
g	36th Floor				1610.523	1610.523	1610.523
	37th Floor				1610.523	1610.523	1610.523
	38th Floor				1610.523	1610.523	1610.523
h							

39th Floor				859.055	859.055	859.055
40th Floor				439.106	439.106	439.106
Total FAR	1,50,753.652	78,019.956	31,312.105	41,132.600	72,444.705	1,50,464.664
Basement		After leaving setback, rest area (for parking, services)				
Upper basement		40,542.38		1511.144		42,053.524
			3397.09	41.680		3438.770
Lower basement		40,542.38				
						45,942.294
Total area			3397.09	1552.824		
Services	15% services	Zero	Zero	6396.896		6396.896
Total area (including basement and services)		1,18,562.336	34,709.195	49,082.32	83,791.515	2,02,353.854

Proposed land coverage area = 10,648.503 sq m (19.425%)
Revised FAR (Built + Revised) = 1,50,464.664 sq m."

86. On 24-4-2012, the CFO drew the attention of the In-Charge of the Building Cell, Noida to the violation of the minimum distance which was required to be maintained in the construction which was being carried out by the appellant. The subject of the letter reads thus:

> "Regarding distance between the under construction (Tower No. 17) situated at Plot No. 4, Sector 93-A Noida being constructed by M/s Supertech Ltd. and old constructed buildings."

The letter (which has been extracted above para 28 of Part A.6) has a crucial bearing on these proceedings. The CFO made a clear reference to the distance requirements which were to be observed in terms of the NBR 2006, NBR 2010 and NBC 2005. The CFO queried Noida as to whether the licence for construction was granted after granting a relaxation to the builder in a "special category" or whether the construction was being carried out contrary to the standards. This letter evinced no response from Noida.

87. When the construction of two towers in the newly acquired leasehold area commenced in July 2009, a communication dated 16-7-2009 was addressed on behalf of the appellant (by its Director) to the Group Co-coordinator of Emerald Court (the letter has been extracted in para 15 of Part A.4). Evidently, the residents were concerned about the construction of the new towers. The said letter clearly demonstrates that in 2009, the appellant was of the view that the new towers which were being constructed would have separate entries and exits, amenities and infrastructure and that the developer would construct a boundary wall separating the existing 15 towers from Apex and Ceyane. This representation was reiterated in a letter dated 9-3-2012 from the appellant to the President of the RWA.

88. The first paragraph of the above letter indicates that the appellant had obtained two separate plots admeasuring approximately 48,650 sq m and 6556.61 sq m, and had got them registered separately in March 2005 and May 2006. The representation to the residents that these were separate plots which were leased out to the developer was clearly contrary to the provisions of the supplementary lease deed which stipulated that the newly demised area of 6556.61 sq m would form a part of the original plot which had been allotted to the appellant. The supplementary lease deed contains the following covenants:

> "… That the lessor has agreed to demise on lease in additional place of land measuring 6556.61 sq m against consideration of Rs 14,48,98,871 (Rupees fourteen crores forty-eight lakhs ninety-eight thousand eight hundred seventy-one only) which has been already been paid by the lessee to the lessor and also in consideration of the yearly lease rent @1% of the total premium per year Rs 1,59,38,876 for enhanced area has been paid by the lessee to the lessors as one-time lease rent (equal to 11 year's lease rent). That the demised premises shall be deemed to be part of Plot No. 4, Sector 93-A, Noida already leased to the lessee.
>
> That all other conditions of the original lease deed and allotment shall remain unchanged and shall be equally applicable to this demised premises and binding upon the lessee.
>
> That the period of 90 years' lease shall commence from 16-3-2005.
>
> That the demised premises shall be part of the original allotted Plot No. 04 Sector Noida. Necessary addition or alterations in the structure can be subject to the building bye-laws of the lessor and terms of the transfer lease deed.
>
> That total area of Plot No. 04, Sector 93-A, Noida is 54,819.51 sq m.
>
> That the total premium of Plot No. 04, Sector 93-A is Rs 121, 15,11,171 (Rupees one hundred twenty-one crores fifteen lakhs eleven thousand and one hundred and seventy-one only) instead of Rs 1,06,66,12,000. (Rupees one hundred six crores sixty-six lakhs twelve thousand and three hundred).
>
> The lessee shall construct the building on the demised premises according to the building bye-laws of the lessor."

89. Despite the clear terms of the supplementary lease deed in terms of which the additional land allotted under it is to form a part of the original plot, the communication addressed to the flat buyers of the existing towers was that the new towers were completely disconnected from and independent of the earlier developed fifteen towers. This letter cannot be glossed over because a similar position was affirmed before the High Court in Para 32 of the counter-affidavit filed by the appellant, which reads as follows:

> "32. That the contents of Para 12 so far it relates to matter of record are need no reply and other contents are wrong and denied. The letters dated 16-7-2009 and 9-3-2012 given by Respondent 5 contains the same stand, that "Apex and Ceyane" is Phase II of the project as in the present counter-affidavit. Similarly, letters dated 31-1-2012 and 13-2-2012 filed by Respondent 5 before police authorities can be relied upon in support of the stand of Respondent 5."

90. The only reasonable hypothesis which emerges from the above disclosures is that the argument which has now sought to be advanced—that Towers-1, 16 and 17 are part of a cluster of buildings comprised within a block, thus obviating the need to maintain the minimum distance between them—is an afterthought. It is contrary to the stated position which has been adopted by the appellant in its affidavit before the High Court. The record before this Court also indicates that the appellant has taken liberties with the truth in making the submission that a cluster of towers in the project constitutes a block which allows the appellant to subvert the minimum distance requirement.

91. The above conclusion is clearly evident from the record from IA No. 54807 of 2021 for the production of additional documents. Annexures A-1, A-2, A-3 and A-4 are:

(*i*) A true copy of the first revised plan dated 29-12-2006 showing various blocks as sanctioned by Noida;

(*ii*) A true copy of an allotment letter dated 17-3-2007 issued by the appellant in favour of a flat purchaser;

(*iii*) A true copy of the completion map dated 10-4-2008 in relation to T-1 to 8; and

(*iv*) A true copy of the completion map dated 16-9-2009 in relation to T-9 to 14.

92. Annexure A-1 above, which is part of the first revised plan of 2006, clearly indicates that each block comprises of a cluster of two buildings. Annexure A-2, which is the letter of allotment, makes it clear that what is meant by a block was the Tower comprised of Aster II. Moreover, the letter also indicates the recovery of lease rent at Rs 190 per square foot. Annexure A-3, the completion drawing of 2008, indicates that each tower is depicted to have four wings. In other words, the tower itself is a block comprising of four wings and the towers have been specified distinctly with reference to numbers. During the course of the proceedings before the High Court, the appellant filed a document purported to be the second revised plan of 2009 where a depiction

of several blocks was made. The plan which was filed before the High Court bears no signature of the competent officer of Noida. In the counter-affidavit filed by the appellant in the High Court, it was stated that:

> "3. That Noida Building Bye-laws talks about building blocks. Even the mandatory distance is provided only between the two building blocks in the said bye-laws. It is stated that cluster of buildings from one building block, provided these buildings are connected with each other to form one building block. Further number of buildings within one building block depends upon various factors like the theme of the project, its architecture features surrounding, plot dimensions, etc.
>
> 4. The Emerald Court (Phase I) has five building block each comprising of three buildings. After acquisition of additional land, admeasuring 6556 sq m. Apex & Ceyane (Phase II) was envisaged and the same was sanctioned by Noida. With the provision of space frame between Tower Apex and Aster-2 as per sanction plan dated 26-11-2009 by Noida, the Apex & Ceyane were connected within the existing building block comprising of towers Aster-2, Aspire-1 and Aster-1 as per architecture feature of the project. The sanction dated 26-11-2009 was granted by Noida only after structural safety certificate was issued by the IIT, Roorkee. *Copy of the sanctioned plan showing the Building block is annexed herewith as* ANNEXURE *SCA-1*." (emphasis supplied)

93. In the rejoinder filed to the above affidavit on behalf of the RWA, the contents of the above plan were seriously disputed and it was averred:

> "5. That the contents of Para 4 of the supplementary counter-affidavit are incorrect as Aster Type-A was already envisaged on the additional land measuring 6556 sq m along with certain green area as is evident in the plan approved by Noida in December 2006 (Annexures 2 of WP) on total area of the plot viz. 54,800 sq m.
>
> *The respondent has submitted a document marked as SCA-1 which is called the sanctioned building plan. This is altogether a new document submitted by Respondent 5 and is a shocking surprise to the petitioner as this has never ever been disclosed nor advertised in the past. The documents has glaring deviations as compared to the document shared and submitted in the past. For the first time Respondent 5 has submitted a plan which contains reference to "*BLOCKS*". In the past such a document was never shared. Also now each tower is given only a tower number and the nomenclature used in title documents and popular usage has been deleted viz. Aspire/Aster/Emperor, etc. This is an alarming misnomer being created by Respondent 5. Also, nowhere this bears the sanctioning endorsement by Noida (Respondent 2) terming as* BLOCK *1 to 5. It is amply clear that Respondent 5 is using false representation and documents and trying to create confusions on flimsy ground.* They are trying to buy time and attention of this Court and using these as delaying tactics, which is against

the interest of petition. With the delaying tactics Respondent 5 is rapidly proceeding with unauthorised construction of APEX and CYNE towers day and night, especially after filing of writ petition by the petitioners, as no injunction has been issued so far. Respondent 5 has been and will be using the public interest plea of investors and financial institutions/banks to cover up illegal and unauthorised construction as is evident from Para 19 of the supplementary counter-affidavit." (emphasis supplied)

94. Significantly, it must be noted that the second revised plan of 2009, which has been placed on record, does not show the existence of blocks and is duly endorsed by Noida. Similarly, the third revised plan of 2012, which is also on the record, does not embody any description of blocks. Therefore, we have no manner of doubt in finding that the argument sought to be developed in the course of these proceedings that there were separate blocks in the plan is an afterthought. It is contrary to the stated position which has been adopted by the appellant on affidavit before the High Court. It is contrary to the sanctioned plans. What is worse is that an effort was made to place on the record before the High Court a purported plan of dubious origin by seeking to pass it of as the second revised plan of 2009.

95. In its affidavit before the High Court, the appellant stated that:

"9. *That it is pertinent to mention here that the Phase II of the project by the name of "Apex and Ceyane" has been planned to have provision of altogether separate facilities like swimming pool, gymnasium, separate power backup, separate L.T. Panels and separate entry and exits gates, etc.* Therefore the members of petitioner society of Emerald Court (Phase I) does not have any locus to challenge any issue relating to the towers of "Apex and Ceyane" (Phase II)." (emphasis supplied)

96. The above averments would belie the submission sought to be advanced before this Court that Apex and Ceyane are parts of a cluster of buildings comprised within one block. The High Court, while rejecting the submission, observed[1]: (*Emerald Court Owner Resident Welfare Assn. case*[1], SCC OnLine All paras 63-64)

"*63*. The learned counsel for the respondent company finally made an attempt to argue that the phrase "building blocks" is not defined under the bye-laws and according to the learned Senior Advocate building blocks would mean the entire building on Plot No. 4 of Sector 93-A Noida.

64. The said argument is farfetched and against the provisions of the Building Regulations of 2006 as well as 2010. Building block means group of buildings on the plot/site. The sanctioned maps clearly shows that the respondent company has got the layout approved consisting of separate blocks. The nomenclature of the blocks was subsequently changed by the respondent company, in each successive plans and finally the buildings were numbered as Towers 1-17. The maps sanctioned clearly shows that the buildings in dispute Aster II (Tower-1) and Apex and Ceyane (Towers-16

1 *Emerald Court Owner Resident Welfare Assn.* v. *State of U.P.*, 2014 SCC OnLine All 14817

and 17) are separate building blocks. The argument has been advanced without there being any foundation in the pleadings. Without pleadings argument cannot be advanced."

97. Based on the interpretation of "building blocks" in the Building Regulations as discussed above, and the inconsistency in fact and in the argument of the appellant, we affirm the above conclusion[1] of the High Court.

D.1.2. ***Interpretation of "dead-end sides of buildings"***

98. An alternative argument has been advanced by Mr Ravindra Kumar, counsel for Noida, that Regulation 24.2.1(6) of the NBR 2010 provides for an exception to the 16 m minimum distance requirement if the building blocks have dead-end sides facing each other. It stipulates that if the blocks have dead-end sides facing each other, then the spacing shall be a minimum of 9 m instead of 16 m. Mr Ravindra Kumar submitted that T-1 and T-17 have dead-end sides facing each other and thus, the distance requirement of 16 m was not applicable. The "dead-end" argument has met a dead-end in the submissions of the appellant as during the proceedings. Mr Vikas Singh, learned Senior Counsel for the appellant, has specifically clarified that he is not pressing the submission. We will however deal with it as the counsel appearing for Noida has raised it before this Court.

99. Regulation 24.2.6 of the NBR 2010 stipulates that if the blocks have dead-end sides facing each other, then the spacing shall be a maximum of 9 m instead of 16 m. The question of dead-end sides arises only between blocks, in which case the minimum distance required is 9 m.

100. This Court on 27-7-2016[5] directed the NBCC to ascertain if the dead-end sides of T-1 and T-17 are facing each other, in order to decide if the towers can be brought within the exception in Regulation 24.2.1(6) of the NBR 2010. The terms of reference were as follows:

> "To ascertain whether the two towers—Tower-1 (Aster 2) and Tower-17 have dead-end sides facing each other for the purpose of Regulation 24.2.1(6) of Noida Building Regulations, 2010."

NBCC was tasked with the job of determining the meaning of the phrase "dead-end sides facing each other", and whether T-1 and T-17 could be brought within the exception. This Court also specifically directed that NBCC shall not travel beyond the issue that was referred to it.

101. The appellant filed its submissions before NBCC on the meaning of the phrase "dead-end side of a building". It was submitted that:

101.1. Model Bye-Laws 2004, Model Bye-Laws 2016 and the Delhi Development Authority Building Bye-laws 2016 have relaxed the 16 m distance rule to 9 m if there are "no habitable rooms in the front", irrespective of the height of the building. A similar provision has been incorporated in NBR

1 *Emerald Court Owner Resident Welfare Assn.* v. *State of U.P.*, 2014 SCC OnLine All 14817
5 *Dhirender Sharma* v. *Emerald Court Owner Resident Welfare Assn.*, 2016 SCC OnLine SC 1924

2010 as well. However, instead of using the phrase "no habitable rooms in the front", the phrase "dead-end" has been used. Therefore, the phrase "dead-end" must take colour from the bye-laws and will have to be interpreted to mean absence of "habitable rooms".

101.2. Clause 3.46 of the NBR 2006 defines "habitable room" as:

> "a room occupied or designed for occupation by one or more persons for study, living, sleeping, eating, kitchen if it is used as a living room but not including bathrooms, water closet, compartments laundries, serving and storage pantries, corridors, cellars, attics and spaces that are not used frequently or during extended periods."

102. The term "dead-end sides of a building" has not been defined in NBR 2006, NBR 2010 and NBC 2005. Regulation 3 of the NBR 2010 states that words that are not defined in the Regulations shall have the meanings assigned to them in the U.P. IAD Act, 1976. If no meaning is assigned to the word in U.P. IAD Act, 1976, then the meaning assigned to the word in the Master Plan/Development Plan, Development Plan, National Building Code, Indian Standard Institution Code shall be referred to. However, none of the abovementioned authorities define the phrase "dead-end sides of a building". Though, NBC 2005 uses the phrase in reference to dead-end situation of road, corridor, water supply, etc. no reference with respect to "dead-end sides of a building" is made.

103. Therefore, NBCC wrote to the Bureau of Indian Standards ("BIS") and Noida on 3-9-2016 and 30-8-2016 respectively, seeking a clarification on the meaning of the phrase "dead-end sides of a building". BIS through a letter dated 9-9-2016 stated that the phrase was only used in NBR 2010 and not the NBC 2005 that was brought by BIS, and therefore, it was not best suited to provide an interpretation on the phrase. Noida vide a letter dated 30-8-2016 stated that it refers to "[a]n area/side of a building or a residence having no access/entrance or exit becomes a dead-end area/side of the building, though it may have openings for ventilation".

104. NBCC submitted its report on 13-10-2016. The report discusses the structure of T-1 and T-17, the meaning of the phrase "dead-end side of a building" and concludes that the sides of T-1 and T-17 facing each other are not dead-end sides of the buildings. NBCC made the following observations on the structure of T-1 and T-17 after site verification:

104.1. The ground floor of T-17 is allocated for commercial shops. The remaining floors in T-17 will have residential flats with windows/balconies/ventilators on all sides. Except for one opening for a fire exit, there will be no opening on the ground floor on the side that faces T-1. However, all other floors (i.e. except the ground floor) will have an opening on the side that faces T-1.

104.2. The entry to T-17 is on the side that is perpendicular to the side that is facing T-1.

104.3. The entry to the residential flats of T-1 is from the side facing T-17.

104.4. T-1 has offsets. Therefore, the space between T-1 and T-17 varies from 9.3 m to 25 m.

104.5. The habitable rooms with balconies in T-1 and T-17 face each other.

104.6. T-1 and T-17 do not taper at the higher floor. None of the tower wings have different heights.

105. Since there is no clarity on the meaning of "dead-end side of a building", NBCC interpreted the phrase by referring to the use of the phrase "dead-end" in NBC 2005 in the context of roads, water supply network, etc. where the passage is limited. The report stated that "a dead-end exists in the corridor or passageway where there is only one direction to travel to an exit". Using this meaning as a reference, NBCC interpreted the phrase of "dead-end side of building" to hold that T-1 and T-17 do not have dead-end sides facing each other. Further, NBCC also observed that the distance between T-1 and T-17 does not comply with the distance rule specified in NBC 2005:

> "6. The dead-end sides, as per Regulation 24.2.1(6) of the NBR 2010 would mean *where habitable rooms of the building do not face each other* and the distance between two adjacent building blocks shall be 9 m and otherwise it shall be 16 m as per NBC 2005. *In the present case, both the buildings i.e. T-1 & T-17 have habitable rooms (with balconies) facing each other so these are not dead-ends.*
>
> 7. Whether the side of T-17 which is facing T-1 is its dead-end side:
>
> (*a*) The T-17 has entry & exit routes on the sides perpendicular to the side facing T-1. Therefore, the side of tower T-17 which faces T-1 is not the front side, and therefore, the "Building Separation" between T-1 & T-17 should be guided by those clause(s) in NBC 2005 that guide(s) open spaces to the sides of a building.
>
> (*b*) On the ground floor, Tower T-17 has commercial space/shops which would be always busy/occupied with people for most of the time during a normal dat.
>
> (*c*) On higher floors it has balconies & terraces anchored to habitable rooms on all sides.
>
> *Inference*: From (*i*), (*ii*) & (*iii*) above, the side of T-17 which faces T-1 would naturally have frequent human use & activity both during daytime and nighttime, every day of the year, for however short the durations, both on ground and on higher floors (balconies & terraces anchored to habitable rooms) on any normal day. Therefore, it may be safe to conclude it is not a dead-end side of T-17.
>
> 8. Whether the side of T-1 which faces T-17 is its dead-end side: The side of T-1 facing T-17 has three sections, and its middle section is offset further away from Tower T-17 while the two sections at the ends are in the same line. However, that section is the main entry/exist to the Tower. *The remaining portion of the side facing Tower T-17 is also not inactive since it has balconies & terraces anchored to habitable rooms and/or toilets.*

Inference: *The entry to tower T-1 is from the side facing Tower-17.* This the side of Tower-1 facing Tower-17 cannot be treated as dead-end side of Tower-1." (emphasis supplied)

106. The appellant filed its objections to the report of NBCC, contending the following:

106.1. The scope of enquiry was restricted by this Court to the issue whether T-1 and T-17 have dead-end sides facing each other for the purpose of Regulation 24.2.1(6) of the NBR 2010. However, NBCC has widened the scope of enquiry and determined if the sanction is in compliance with the distance rule in NBC 2005.

106.2. The entry to the ground floor of T-17 is provided on both sides. For the commercial shops, the entry is on the side perpendicular to the side facing T-1, and for the other facilities it is on the other side opening towards the side of T-16 and the open space.

106.3. The passage between T-1 and T-17 is used only to enter into the parking space allotted for the houses in T-1 toT-15. To enter the parking space of T-17, another passage is used.

106.4. Four out of the five external sides of the apartments in T-1 facing T-17 are dead-ends (two plumbing shafts, toilet dead wall, bedroom dead wall). Only the fifth external side of T-1, which is a balcony attached to the living room, faces towards T-17.

106.5. Though the entry in T-1 is facing T-17, the entry is 20 m away from T-17.

106.6. NBCC has failed to consider the different line positions with respect to T-1 and T-17. There are sixteen line positions of the sides of T-1 and T-17 that are facing each other and they are predominantly dead-end sides. Of the sixteen line positions:

(*a*) Eleven line positions have dead walls facing each other;

(*b*) Two line positions have dead walls of T-1 facing windows of T-17. However, there is a 16 m open space between them;

(*c*) Two line positions have the railings of common lift lobbies of T-1 facing the bedroom window of T-17. However, there is a 3 m open space between them; and

(*d*) One line position where the dead wall of shaft of T-1 faces the railing of balcony in T-17, there is 9.30 m of open space between them. The open space between the walls of both the buildings in this line space is 10.80 m.

107. The first respondent also sought an expert opinion on whether T-1 and T-17 have dead-end sides facing each other from IIT, Delhi. The report was submitted on 6-9-2016 to this Court, and concluded that the sides of T-1 and T-17 that face each other cannot be considered as "dead-end sides of the building". It was observed that when balconies and windows (or any other egress) are provided, the functional performance will be compromised if the minimum distance as prescribed is not adhered to. Elaborating further, it was stated that the minimum distance can be reduced when there is no egress on the

side concerned of the building because then there would be no possibility of a functional compromise. The reasoning in the report is summarised below:

107.1. The dictionary meaning of "dead-end" is "no exit" i.e. no egress or without openings. Therefore, the presence of any opening in the form of windows of balconies renders the building side not a dead-end.

107.2. The purpose of prescribing a minimum distance requirement between two buildings is to prevent transmission of fire for safe escape during calamities, minimum ventilation, and to receive natural daylight. In case the minimum distance requirement between buildings with egress facing another building is not complied with, then the function of the egress (through window or balcony) will be compromised due to the following reasons:

(*a*) *To avoid transmission of fire*: According to NBC 2005, fire separation is defined as the distance from the "external wall" of a building to the "external wall" of another building. There is an increased possibility for fire to be transmitted to the adjacent building through windows. However, if the walls have no openings, then the distance between the buildings can be less since there is a lesser chance for transmission of fire;

(*b*) *Safe escape and rescue*: As the height of the building increases, there is an increased difficulty to rescue residents in case of emergency situations. In such cases, open balconies can be used to facilitate rescue operations provided that the street has sufficient width. As the height of the building increases, for maximum safe inclination of the ladder, the street has to be wider;

(*c*) *Minimum ventilation*: Minimum natural ventilation is required for hygienic ventilation (i.e. the removal of CO_2, body odour, etc.), for heat exchange and cooling of the building; and

(*d*) *Natural daylight*: When the distance between two buildings is high, the building receives direct sunlight.

107.3. The main entry/exit of T-1 is facing T-17. This entry is the only one that abuts the road and will in all probability be used for rescue operations if the need arises. The balconies of habitable rooms in T-1 and T-17 also face each other. Therefore, the building sides concerned (of T-1 facing T-17 and vice versa) cannot be considered as dead-ends since the sides have egress. Moreover, a reduction in the minimum distance requirement would severely compromise the purpose of providing such egress.

108. The first respondent by a letter dated 6-10-2016 also sought an expert opinion from IIT, Roorkee on whether T-1 and T-17 have dead-end sides facing each other. A report was submitted in October 2016 to this Court holding that the building sides of T-1 and T-17 facing each other cannot be termed as "dead-ends" for the following reasons:

108.1. The scientific basis of providing the distance requirement is to enhance fire safety, provide sufficient daylight and ventilation, visual privacy and air flow.

108.2. The *Merriam Webster Dictionary* defines "dead-end" as a street that ends instead of joining with another street so that there is only one way in and out of it. "Dead wall" is defined as a wall without openings such as doors, windows and ventilators. Therefore, evidently, openings for fenestration and the presence of balconies and windows would mean that the "side" is not a dead-end side.

108.3. When the side of the building facing another building has egress, the minimum distance specified under the Regulations must be complied with. Otherwise, the functional performances of the egress (i.e. balcony, window, etc.) will be compromised.

108.4. The main entry, the doors, windows, and balconies of T-1 face T-17. Since the side of T-1 facing T-17 has egress, it is not a "dead-end side".

109. The appellant approached Design Forum International ("DFI"), an architectural and design firm, requesting their assistance in the ongoing case. DFI through its report made the following observations on NBCC's Report regarding the dead-end issue:

109.1. T-1 and T-17 vary in design. T-17 has nearly three times the length when compared to T-1. Moreover, the portion of T-17 that overlaps T-1 is not constant along the whole length. Therefore, it is necessary that the sides of the towers facing each other are examined in a more detailed manner.

109.2. The entry of T-1 and T-17 is perpendicular to each other.

109.3. The sides of T-1 and T-17 can be classified into the following three categories: (*a*) dead-end facing dead-end (i.e. a wall facing a wall); (*b*) dead-end facing a non-dead-end (i.e. a wall facing a window); and (*c*) non-dead-end facing a non-dead-end (i.e. a window facing a window).

109.4. The position is clear under Regulation 24.2.1(6) of the NBR 2010 that for cases falling under (*a*), the distance between the buildings must be 9 m and for cases falling under (*c*), the distance must be 16 m. However, for cases that fall under (*b*), there is no clarity on the distance that must be maintained between the buildings.

109.5. There are thirteen unique line positions between T-1 and T-17. Of the thirteen line positions, in six line positions the dead-end side of T-1 faces the dead-end side of T-17 [Type (*a*)]; in four line positions, the dead-end side of T-1/T-17 faces the non-dead-end side of the other [Type (*b*)]; in three line positions, the non-dead-end side of T-1 and T-17 face each other [Type (*c*)].

109.6. For the line positions falling under Type (*a*), the distance varies from 9.88 m to 15.11 m complying with the 9 m requirement; for the line positions falling under Type (*b*), the distance varies from 10.8 m to 15.3 m; for the line positions falling under Type (*c*), the distance varies between 14.62 m to 15.5 m, which is "very slightly lesser" than the required 16 m.

109.7. Since the distance between the sides of T-1 and T-17 facing each other differ widely and is not uniform, this Court will have to undertake an in-depth analysis of the issue keeping in mind the unique situation.

109.8. The minute deficiency in case of Type (*c*) and Type (*b*) (if this Court declares the distance to be deficient) can be rectified by making structural alterations in the buildings by shifting the position of the egresses.

110. The NBR 2010 does not provide any definition of the phrase "the dead-end side of the block". NBR 2006, NBC 2005 and the U.P. IAD Act, 1976 also do not define the phrase. The Court while interpreting the expression will have to attribute a contextual meaning to the phrase "dead-end side of the block". The above reports adopt two different meanings of the phrase. The NBCC Report and the appellant in its objections before the NBCC state that the dead-end sides of the building would mean where "habitable rooms" of a building do not face each other. Though it is not specified that only habitable rooms with "windows/balconies" will not be considered as dead-ends, it is evident that the argument is that it is only if a habitable room with egress faces the side of the adjacent building, that it should not be considered as a dead-end side. The corollary is that if the storeroom or the bathroom or corridor with a window/vent faces the side of the adjacent building it must still be considered as a dead-end. Whereas, the reports by IIT, Delhi and IIT, Roorkee take another approach by defining a dead-end side of a building as a side with egress (i.e. windows, balconies or vents) without any reference to "habitable rooms".

111. Two other contentions on the interpretation of the phrase have also been raised. It is contended that the phrase is ambiguous to the extent that it does not provide clarity on whether an egress of a building facing a dead wall of the adjacent building would fall within the exception. It is also contended that since the height of T-1 and T-17 is not the same, two egresses in adjacent buildings face each other only in a few line positions, and the requirement of minimum distance between the adjacent buildings must differ with each line position depending upon whether those specific line positions are dead-ends.

112. We are, therefore, faced with three questions while interpreting the phrase "dead-end sides of the buildings":

112.1. Whether only habitable rooms with egress in any part of the building must be excluded from the ambit of the phrase "dead-end sides of the buildings".

112.2. Whether both sides of the buildings must be dead-end sides, or whether it is sufficient if one side of the building is a dead-end side.

112.3. Whether the direct line position must be used for the determination of "dead-end sides of the building" and the distance between two adjacent buildings.

113. We are unable to accept the contention that only habitable rooms with egress (that is, windows or balconies) will fall outside the ambit of "dead-end side of the buildings". "Dead-end" in common parlance means no exit or absence of access. NBR 2010 does not provide any indication to classify between habitable and non-habitable rooms in the context of the phrase "dead-end side". The argument that the classification between habitable and non-habitable rooms has been made in the Model Bye-laws with specific

reference to the distance requirement and therefore, it must be imported for the interpretation of the phrase "dead-end sides of the building" is unsatisfactory. It is a settled principle of statutory interpretation that words must be given their plain and ordinary meaning unless such an interpretation leads to an ambiguity or absurdity or when the object of the statute indicates otherwise. The use of the phrase "dead-end side of the building" in NBR 2010, in spite of the other bye-laws using the phrase "habitable rooms", makes it evident that the intent was to restrict the ambit of the exception. Interpreting the phrase in the context of the ordinary meaning of the word "dead-end" does not lead to any ambiguity; rather it is in pursuance of the intent and purpose behind the provision. As stated by the reports submitted by IIT, Delhi and IIT, Roorkee, the purpose of prescribing a higher minimum distance between adjacent buildings in case the side of the building facing another has egress is so that the functional utility of the egress (either a window or balcony) is not diminished. Windows/Balconies, irrespective of whether they are attached to a habitable or a non-habitable room, perform functions which will be greatly diminished if the adjacent building is closer and thereby restricting the air flow and increasing the chance of transmissibility in the event of a fire. Moreover, the privacy of the flat dwellers would be severely compromised. The expansion of the meaning of the phrase "dead-end side of the building" to include non-habitable rooms with windows would thus amount to rewriting the regulation, when no such indication can be construed from NBR 2006 or NBR 2010.

114. The contention that the dead-end exception will be applicable, even if one side of the two adjacent buildings has a dead-end is erroneous. Regulation 24.2.1(6) of the NBR 2010 states "*If the blocks have dead-end sides facing each other*, then the spacing shall be maximum 9 m instead of 16 m". The words "blocks" and "sides" in the plural form find place in Regulation 24.2.1(6) of the NBR 2010. The Regulation does not state "if the *block* having a dead-end *side*". When the phrases or words are free from ambiguity and when there is only one meaning that the phrase would take when fairly construed, it will have to be literally construed, and courts must not resort to a liberal interpretation which will defeat the intent, purpose and object of a provision in a planning regulation.

115. The report submitted by DFI refers to the variant heights of T-1 and T-17. The contention is that since the structure of T-1 and T-17 are different, and since the towers horizontally overlap with each other only to the extent of the height of the shorter tower (T-1), the distance between T-1 and T-17 must be measured in the direct line positions. These direct line positions are then classified into three categories [Category (*a*) — dead-end facing dead-end; Category (*b*) — dead-end facing a non-dead-end; Category (*c*) — a non-dead-end facing a non-dead-end). The distances between T-1 and T-17 with respect to each of these types have been measured to argue that for lines falling in Category (*a*), it is enough if the distance is 9 m; for those falling under Category (*b*), there is no clarity on the distance required; and for lines in Category (*c*), a minimum distance of 16 m is required. This argument rests on two premises: (*i*) the minimum distance requirement prescribed under Regulation 24.2.1(6) of the NBR 2010 is not the distance between *two buildings*

but is rather the distance between the different direct line positions between two adjacent buildings; and (*ii*) it is necessary for the *entire* adjacent *blocks* to have non-dead-end sides facing each other for the 16 m distance rule to be applied uniformly.

116. The phrase which is used in Regulation 24.2.1(6) of the NBR 2010 is "block" and not "flat"/"unit". The unit of consideration is thus not individual "units" in the block but the entire block itself. The side of the block would not be a dead-end side if there are even few egresses. If the direct line position argument is accepted, then the intent behind providing the minimum distance requirement would become nugatory. The purpose of imposing the minimum distance requirement as stated in the reports of IIT, Delhi and IIT, Roorkee is to provide ventilation, direct sunlight, means of rescue and prevent the spread of fire. If particular "flats"/"units" in the block have a vent according to the construction plan, the minimum distance would have to be complied with, not just with respect to the direct line but with respect to the "entire block".

117. The reports of IIT, Delhi and IIT, Roorkee clearly elucidate the difficulty in evacuation of occupants in high rise buildings. The report states that the distance between adjacent buildings needs to be greater for taller buildings since the street has to be wider for the maximum safe inclination of the ladder. The reports also mention the reduction in ventilation, sunlight and privacy in case the distance between the buildings is less. Therefore, irrespective of whether all or some of the units in the block have an egress facing the adjacent building, the minimum distance of 16 m will have to be complied with, otherwise the purpose of providing the vent would be functionally compromised.

118. In view of the above discussion, the principles that would guide the interpretation of the phrase "dead-end sides of the blocks" are as follows:

118.1. The phrase "dead-end side of the block" would mean that any building does not have an egress.

118.2. An egress in a non-habitable room like the bathroom or the storeroom will be considered as a non-dead-end side.

118.3. For the "dead-end" exception to be applicable, it is necessary that the sides of both the buildings facing each other must not have any egress.

118.4. It is not necessary that all the units in the building facing the other building must have an egress. Even if some of the units have an egress, that side of the block will not be considered as a "dead-end side".

118.5. The minimum distance required between two adjacent blocks must not be measured through direct line positions of the units but along the ground.

119. On application of the principles deduced above on the interpretation of the expression "dead-end side of the building", the sides of T-1 and T-17 facing each other are held not to be dead-end sides for the following reasons:

119.1. The windows/corridors of T-17 on all floors except the ground floor have an opening on the side that faces T-1. Though this is contested by the appellant, it has been conceded that there are at least a few windows/balconies in T-1 facing T-17 and vice versa.

119.2. The entries of T-1 and T-17 do not face each other but are perpendicular to each other. However, the entry to T-1 is from the side facing T-17.

119.3. Four out of five external sides of T-1 that face T-17 are dead-end sides. However, the fifth side is a balcony of the living room facing T-17. The distance between points of the buildings cannot be selectively measured to argue its compliance with the distance rule.

119.4. Even though the entry of T-1 facing T-17 is 20 m away, the distance rule is not complied with since a selective measurement from the dead-end points cannot be undertaken. The distance must be measured along the ground.

120. Thus, we find that the revised plans were in violation of the NBR 2010 and do not fall under the exception provided in Regulation 24.2.1(6) for blocks having dead-end sides.

D.2. ***Violation of the NBC 2005***

121. We shall now address the question of whether the third revised plans violated the NBC 2005. As we have seen above, NBC 2005 is referenced in Regulations 24.2.1(6) of the NBR 2010. NBC 2005 has two parts in regard to the maintenance of open spaces — Para 8.2.3.1 and Para 8.2.3.2. Para 8.2.3.1 provides for open spaces for buildings above the height of 10 m, which are specified in Table 2. Table 2 indicates that the side and rear open spaces correspond to the height of the building and increase accordingly, beginning with 3 m for a building of a height of 10 m and up to 16 m, where the height of the building is 55 m and above. In addition, Note 3 clarifies that where either the length and depth of the building exceeds 40 m, the minimum distance which is prescribed must be further increased by ten per cent of the length and depth of the building minus 4 m. Thus, the calculation for the side and rear open spaces to be left around the building would be as follows:

Height of the Building	(third revision)	(second revision)
Minimum distance prescribed in Col 3 of Table 22 (for buildings above 55 m)	84.5 m[12]	73 m
Distance to be maintained as per Note 3:	16 m	16 m
Distance in col (3) + 10% of the length or depth of building — 4.0 m	16 + 10% (84.5) − 4 = 20.45 m	16 + 10% (73) − 4 = 19.3 m

122. Thus, according to the NBC 2005, the spacing between T-1 and T-17 should be 20.45 m. Evidently then, the second and third revised plans were not in accordance with the NBC 2005. This conclusion is fortified by the report of the NBCC, which in Para 5 reaches the conclusion that the minimum open space around T-17 is to be 20.45 m and thus, the distance between T-1 and T-17 does not comply with Para 8.2.3.1 of the NBC 2005.

12 The total actual length of T-17 as noted in the NBCC Report is 84.5 m as against the envisaged 121 m.

123. An alternative to Para 8.2.3.1 has been provided in Para 8.2.3.2 for "tower like structures". Para 8.2.3.2 stipulates that for a structure of a height up to 24 m with one setback, the open spaces at the ground level should not be less than 6 m; if the height is between 24 m and 37.5 m with one setback, the open space at the ground level must be not less than 9 m; and for heights above 37.5 m with two setbacks, the open space at the ground level should not be less than 12 m. Additionally, under clause (*d*) of Para 8.2.3.1, the deficiency in open spaces of tower like structures (as compared to all building of height above 10 m in Para 8.2.3.1) can be made good by providing setbacks at the upper levels, so long as the setbacks are not accessible from individual rooms or flats at these levels.

124. A reading of Para 8.2.3.2 indicates that this exception is only applicable if the deficiency in open spaces can be made good by setbacks at the upper level. Clause (*d*) of Para 8.2.3.2 of the NBC 2005 is ex facie not attracted for the reason that there are no setbacks at the upper levels within the contemplation of the disputed constructions. In any case, even Para 8.2.3.2 provides that for tower like structures higher than 37.5 m with two setbacks, the open space should be not less than 12 m. Thus, the exception is of no aid to the appellant and Noida which has issued the third revised plan envisaging a distance of 9 m between T-1 and T-17.

D.3. ***Violation of Fire Safety Norms***

125. The appellant requested for a fire NOC for the construction of T-16 and T-17. On 11-9-2009, a report was submitted to the CFO observing that the road is wide enough for vehicles of the Fire Brigade Department to reach the spot in case of emergency situations. However, Clause 10 of the report states that Part III and Part IV of the NBC 2005 will have to be complied with during the construction of the building and in case of non-compliance, the NOC shall stand cancelled. Para 8.2.3.1 of the NBC 2005 prescribes a minimum of 16 m for the side and rear open spaces of buildings which are 55 m high and above.

126. On 18-8-2011, the CFO issued a temporary fire NOC for the construction of T-16 and T-17. This letter also stated that the applicant will have to make arrangements for fire safety compliant with the NBC 2005. On 29-3-2012, the CFO issued a notice to the appellant highlighting various shortcomings in fire security provisions. On 24-4-2012, the CFO wrote to Noida stating that the distance between T-1 and T-17 is only 9 m which is violative of the NBR 2006, NBR 2010 and NBC 2005 and asking if Noida had provided any exemption to the distance rule to the appellant. The CFO issued a show-cause notice to the appellant on 17-7-2012 directing that T-16 and T-17 that are under construction be physically separated from the "old towers".

127. A complaint was made by the first respondent to the CFO on the non-compliance with the conditions stipulated for the grant of the NOC for the complex (for T-1 to T-15). A committee was constituted to look into the complaint and the following observations were made by the committee:

127.1. A show-cause notice was issued for the construction of a second staircase. The staircase has still not been built.

127.2. People are living in quarters constructed in the basement which is not in accordance with the NBC 2005 provisions.

127.3. Setback is used as a parking, so the effective setback in certain places is reduced by 2 m and is thus less than the required 9 m.

127.4. On the rear side of the tower, 6 m setback is not available.

128. These suggestions given by the committee were required to be complied with within six months. Since they were not complied with, a show-cause notice was issued on 30-5-2014 for not remedying the deficiencies.

129. Regulation 76 of the NBR 2006 states that the building must be planned and constructed in accordance with Part IV of National Building Code, 1970, amended as of that day. Para 4.6 of the NBC 2005 states that the approach to the building and the open spaces on all the sides of a high rise building shall be 6 m and that the layout of the building must be made in consultation with the CFO. However, Para 8.2.3.1 of the NBC 2005 prescribes a minimum of 16 m side and rear spaces for buildings that are higher than 55 m. Therefore, on reading NBC 2005 as a whole, the side and rear space around the building must be 16 m. The distance between T-1 and T-17 is only 9 m, which is less than the required 16 m.

130. The temporary NOC that was given by the CFO clearly states that the NBC 2005 must be complied with. However, as shown above, the provisions of the NBC 2005 have not been complied with. Therefore, given that the rear distance requirement under NBC 2005 has not been complied with, the NOC given by the CFO stands automatically cancelled in terms of the Report dated 11-9-2009 and letter dated 18-8-2011.

E. *Consent of the RWA*

131. Having held above that the sanction for the construction of T-16 and T-17 were given by Noida in contravention of the minimum distance requirement provided by the Building Regulations, we will advert to the next issue. It has been contended by RWA that the sanction could not have been revised without the consent of the flat purchasers in the original fifteen towers. While analysing this issue, it is first important to consider the appellant's preliminary objection that the U.P. Act, 1975 is not applicable to the present case. After addressing the preliminary objection, we shall analyse whether the consent was actually required under the U.P. Act, 1975 and U.P. Apartments Act, 2010.

E.1. *Applicability of the U.P. Act, 1975*

132. The U.P. Act, 1975 has been described in its long title as "an Act to provide for matters connected with the ownership and use of individual flats in buildings consisting of four or more flats". Section 2 of the Act states that

the Act shall apply only to owners who submit to the provisions of the Act by executing a declaration. Section 2 reads as follows:

"**2.** ***Application of the Act.***—This Act applies only to property, the sole owner or all the owners of which submit the same to the provisions of this Act by duly executing and registering a Declaration setting out the particulars referred to in Section 10:

Provided that no property shall be submitted to the provisions of this Act, unless it is actually used or is proposed to be used for residential purposes:

Provided further that the sole owner or all the owners of the land on which building is situated may submit such land to the provisions of this Act with a condition that he or they shall grant a lease of such land to the owners of the flats, the terms and conditions of the lease being disclosed in the Declaration either by annexing a copy of the instrument of lease to be executed to the Declaration or otherwise."

133. Section 3(*d*)[13] contains the definition of common area and facilities. Section 4[14] stipulates that a flat shall be transferable and heritable property.

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13 "**3. (*d*) "common areas and facilities**" includes—

(1) the land on which the building is located and all easements, rights and appurtenances belonging to the land and the building;

(2) the foundations, columns, girders, beams, supports, main walls, roofs, halls, corridors, lobbies, stairs, stair-way, fire-escapes and entrances and exits of the building;

(3) the basements, cellars, yards, gardens, parking areas and storage spaces;

(4) the premises for the lodging of janitors or persons employed for the management of the property;

(5) installations of common services, such as power, light, gas, hot and cold water, heating, refrigeration, air conditioning and sewerage;

(6) the elevators, tanks, pumps, motors, expressors, pipes and ducts and in general all apparatus and installations existing for common use;

(7) such other common facilities as may be specially provided for in the Declaration;

(8) all other parts of the property necessary or convenient to its existence, maintenance and safety or normally in common use;"

14 "**4.** ***Flat to be transferable and heritable property.***—(1) Each owner of a flat shall be entitled to the exclusive ownership and possession of his flat in accordance with the Declaration.

(2) Subject to the provisions of the second proviso to Section 2, a flat, together with its undivided interest in the common areas and facilities, shall constitute heritable and transferable immovable property within the meaning of any law for the time being in force:

Provided that no flat and the percentage of undivided interest in the common areas and facilities appurtenant to such flat shall be partitioned or sub-divided for any purpose whatsoever."

Each owner of a flat is entitled to exclusive ownership and possession of their flat in accordance with the declaration. Moreover, a flat together with its undivided interest in the common areas and facilities shall be heritable and transferable immovable property. Further, a flat together with its undivided interest in the common areas and facilities shall not be partitioned or sub-divided for any purpose.

134. Section 5 provides for common areas and facilities in the following terms:

> "**5.** ***Common areas and facilities***.—(1) Each owner of a flat shall be entitled to an undivided interest in the common areas and facilities in the percentage expressed in the Declaration.
>
> (2) *The percentage of the undivided interest of each owner of a flat in the common areas and facilities as expressed in the Declaration shall not be altered without the consent of all the owners of the flats* expressed in an amended Declaration duly executed and registered as required by this Act.
>
> (3) The percentage of the undivided interest in the common areas and facilities shall not be separated from the flat to which it appertains, and shall be deemed to be conveyed or encumbered with the flat even though such interest is not expressly mentioned in the conveyance or other instrument.
>
> (4) The common areas and facilities shall remain undivided, and no suit shall lie at the instance of any owner of the flat or other person for partition or division of any part thereof, unless the property have been withdrawn from the provisions of this Act.
>
> (5) Each owner of a flat may use the common areas and facilities for the purpose for which they are intended without hindering or encroaching upon the lawful rights of the owners of other flats.
>
> (6) The work relating to the maintenance, repair and replacement of the common areas and facilities and the making of any additions or improvement thereto shall be carried out in accordance with the provisions of this Act and the bye-laws.
>
> (7) The Association of Owners of flats shall have irrevocable right to be exercised by the Manager or the Board of Managers on behalf of the Association with such assistance as the Manager or the Board of Managers, as the case may be, considers necessary to have access to each flat from time to time during reasonable hours, for the maintenance, repair and replacement of any of the common areas and facilities therein or accessible therefrom or for making emergency repairs therein to prevent any damage to the common areas and facilities or to other flats." (emphasis supplied)

135. Under sub-section (2) of Section 5, the percentage of the undivided interest of each owner of a flat in the common areas and facilities, as expressed in the Declaration, shall not be altered without the consent of all the owners of the flats expressed through an amended Declaration which shall be executed

and registered under the Act. Section 10[15] provides for the contents of such a Declaration. Further, Section 11[16] envisages that all the owners of flats may withdraw a property from the provisions of the Act by an instrument executed to that effect, following which it shall be deemed to be owned in common by the owners of flats wherein the share of each such owner shall be the percentage of undivided interest previously owned in the common areas and facilities.

136. The submission urged on behalf of the appellant is that the U.P. Act, 1975 has no application to the present case, in view of the provisions of Section 2. Section 2, as we have seen, specifies that the Act applies only to a property, the sole owner or all the owners of which, submit it to the provisions of the Act by duly executing and registering a Declaration setting out the particulars as contained in Section 10.

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15 "**10.** ***Contents of Declaration***.—(1) The Declaration referred to in Section 2 shall be submitted in such form and in such manner as may be prescribed and shall contain the following particulars, namely—

(*a*) description of the property, namely, the description of the land on which the building is or is to be located, whether the land is freehold or leasehold and whether any lease of the land is to be granted in accordance with the second proviso to Section 2, and description of the building or proposed building stating the number of storeys and basements and the number of flats;

(*b*) nature of interest of the owner or owners in the property;

(*c*) existing encumbrance, if any, affecting the property;

(*d*) description of each flat containing its location, approximate area, number of rooms, immediate common area to which it has access, and any other data necessary for its proper identification;

(*e*) description of the common areas and facilities;

(*f*) description of the limited common areas and facilities, if any, stating to which flats their use is reserved;

(*g*) value of the property and of each flat, and the percentage of undivided interest in the common areas and facilities appertaining to each flat and its owner for all purposes, including voting."

16 "**11.** ***Withdrawal from the provisions of the Act***.—(1) All the owners of flats may withdraw a property from the provisions of this Act by an instrument executed to that effect.

(2) Upon the property being withdrawn from the provisions of this Act, it shall be deemed to be owned in common by the owners of flats and the share of each such owner in the property shall be the percentage of undivided interest previously owned by such owner in the common areas and facilities.

(3) Any encumbrance affecting any of the flats shall be deemed to be transferred in accordance with the existing priority to the percentage of the undivided interest of the owner of the flat in the property as provided therein.

(4) The withdrawal provided for in sub-section (1) shall in no way bar the subsequent resubmission of the property to the provisions of this Act."

137. Undoubtedly, in this case there was no declaration in terms of Section 2. However, significantly, the lease deed which was executed by Noida in favour of the appellant on 16-3-2005, contains a stipulation in Clause II(*h*) in the following terms:

> "(II) **AND THE LESSEE DOTH HEREBY DECLARE AND COVENANTS WITH THE LESSOR IN THE MANNER FOLLOWING:**
>
> * * *
>
> (*h*) The lessee/sub-lessee shall make such arrangement as are necessary for maintenance of the building and common services and if the building is not maintained properly the Chief Executive Officer, Noida or any officer authorised by him will have the power to get the maintenance done through the Authority and recover the amount so spent from the lessee/sub-lessee. The lessee/sub-lessee will be individually and severally liable for payment of the maintenance amount. *The rule/regulation of U.P. Flat Ownership Act, 1975 shall be applicable on the lessee/sub-lessee*."
>
> (emphasis supplied)

138. Mr Ravindra Kumar, learned counsel appearing on behalf of Noida, advanced a submission that the last sentence of Clause II(*h*) must be read together with the entirety of the clause, which relates to the maintenance of the building and common services. Clause II(*h*) states that in the event the building or common services are not maintained properly, Noida would be entitled to ensure the maintenance and recover the amount from the lessee/sub-lessee.

139. However, the application of Clause II(*h*) cannot be brushed away on this basis, particularly since the sentence imposing the application of the U.P. Act, 1975 on the lessee/sub-lessee must bear some meaning and content. In this context, during the course of his submissions, Mr Jayant Bhushan, learned Senior Counsel appearing on behalf of the RWA, has placed on the record a copy of the registered sub-lease executed on a tripartite basis by Noida, with the appellant as the lessee and the flat buyer as the sub-lessee. Some important provisions of this deed of sub-lease are:

139.1. (*i*) Clause 16 contemplates that the occupant of the ground floor would be entitled to use a "sit-out area but the right of user shall be subject to the provisions of the U.P. Ownership Flat Act, 1975";

139.2. (*ii*) Clause 17 recognises the right to user of the occupant of the dwelling unit on the top floor, subject to the provisions of the same enactment; and

139.3. (*iii*) Clause 27 envisages that all clauses of the lease executed by Noida in favour of the appellant on 16-3-2005 shall be applicable to the sub-lease deed as well.

140. In the backdrop of this provision, more particularly, Clause II(*h*) of the lease deed which was executed by Noida in favour of the appellant on 16-3-2005, the appellant was duty-bound to comply with the provisions of the U.P. Act, 1975. By submitting before this Court that it is not bound by the

terms of its agreement or the Act for want of a declaration under Section 2, the appellant is evidently attempting to take advantage of its own wrong.

E.2. ***Applicability of the U.P. Apartments Act, 2010***

141. In 2010, the State Legislature enacted the U.P. Apartments Act, 2010. The long title describes the legislation as:

> "An Act to provide for the ownership of an individual apartment in a building of an undivided interest in the common areas and facilities appurtenant to such apartment and to make such apartment and interest heritable and transferable and for matters connected therewith or incidental thereto."

142. Section 2 of the Act is in the following terms:

> "**2.** ***Application***.—The provisions of this Act shall apply to all buildings having four or more apartments in any building constructed or converted into apartment and land attached to the apartment, whether freehold, or held on lease excluding shopping malls and multiplexes."

Thus, in contrast with Section 2 of the U.P. Act, 1975, the corresponding provision of the U.P. Apartments Act, 2010 stipulates that the Act shall apply to all buildings with four or more apartments in any building and land attached to the apartment whether freehold or held on lease. Further, unlike Section 2 of the U.P. Act, 1975 under which the Act was to apply only when a declaration in terms of Section 10 was submitted, this Act does not require a declaration for it to apply.

143. The expression "apartment owner" is defined by Section 3(*d*) of the Act as follows:

> "**3.** (*d*) "**apartment owner**" means the person or persons owning an apartment or the promoter or his nominee in case of unsold apartments to and an undivided interest in the common areas and facilities appurtenant to such apartment in the percentage specified in the Deed of Apartment and includes the lessee of the land on which the building containing such apartment has been constructed, where the lease of such land is for a period of thirty years or more;"

144. The Act contains a definition of "common areas" in Section 3(*i*) and of limited common arears in Section 3(*s*):

> "**3.** (*i*) "**common area and facilities**" means—
>
> (*i*) the land on which the building is located and all easements, rights and appurtenances belonging to the land and the building;
>
> (*ii*) the foundations, columns, girders, beams, supports, main walls, roofs, halls, corridors, lobbies, stairs, stairways, fire-escapes and entrances and exits of the building;
>
> (*iii*) the basements, cellars, yards, parks, gardens, community centres and parking areas of common use;

(*iv*) the premises for the lodging of janitors or persons employed for the management of the property;

(*v*) installations of central services, such as power, light, gas, hot and cold water, heating, refrigeration, air conditioning, incinerating and sewerage;

(*vi*) the elevators, tanks, pumps, motors, fans, cable pipeline (TV, gas, electricity, etc.) rain water harvesting system, compressors, ducts and in general all apparatus and installations existing for common use;

(*vii*) such other community and commercial facilities as may be specified in the bye-laws; and

(*viii*) all other parts of the property necessary or convenient to its existence, maintenance and safety, or normally in common use;

* * *

(*s*) "**limited common areas and facilities**" means those common areas and facilities which are designated in writing by the promoter before the allotment, sale or other transfer of any apartment as reserved for use of certain apartment or apartments to the exclusion of the other apartments;"

145. The general liabilities which have been cast upon promoters intending to sell an apartment are set out in Section 4(1), which reads as follows:

"**4.** ***General liabilities of promoter***.—(1) Any promoter who intends to sell an apartment, shall make a full and true disclosure in writing of following to an intending purchaser and the competent authority:

(*a*) rights and his title to the land and the building in which the apartments have been or proposed to be constructed;

(*b*) all encumbrances, if any, on such land or building, and any right, title, interest or claim of any person in or, over such land or building;

(*c*) the plans and specifications approved by or submitted for approval to the local authority of the entire building of which such apartment forms part;

(*d*) detail of all common areas and facilities as per the approved layout plan or building plan;

(*dd*) built-up area and common area of an apartment.

(*e*) the nature of fixtures, fittings, and amenities, which have been or proposed to be provided;

(*f*) the details of the design and specifications of works or and standards of the material which have been or are proposed to be used in the construction of the building, together with the details of all structural, architectural drawings, layout plans, no objection certificate from Fire Department, external and internal services plan of electricity, sewage, drainage and water supply system, etc. to be made available with the Association;

(*g*) all outgoings, including ground rent, municipal or other local taxes, water and electricity charges, revenue assessments, maintenance

and other charges, interest on any mortgage or other encumbrance, if any, in respect of such land, building and apartments;

(*h*) such other information and documents as may be prescribed."

Sub-section (4) of Section 4 contains the following stipulations:

"**4. (4)** After plans, specifications and other particulars specified in this section as sanctioned by the prescribed sanctioning authority are disclosed to the intending purchaser and a written agreement of sale is entered into and registered with the office of concerned registering authorities. The promoter may make such minor additions or alterations as may be required by the owner or owners, or such minor changes or alterations as may be necessary due to architectural and structural reasons duly recommended and verified by authorised Architect or Engineer after proper declaration and intimation to the owner:

Provided that the promoter shall not make any alterations in the plans, specifications and other particulars without the previous consent of the intending purchaser, project Architect, project Engineer and obtaining the required permission of the prescribed sanctioning authority, and in no case he shall make such alterations as are not permissible in the building bye-laws."

146. Under clause (*c*) of sub-section (1) of Section 4, a promoter who intends to sell an apartment is required to make a full disclosure in writing to an intending purchaser and to the competent authority of the plans and specifications approved or submitted for approval to the local authority, of the building of which the apartment is a part. Similarly, under clause (*d*), a disclosure has to be made in regard to the common areas and facilities in accordance with the approved layout plan or building plan. Once such a disclosure has been made, sub-section (4) stipulates that upon the execution of a written agreement to sell, the promoter may make minor additions or alterations as may be required or necessary due to architectural and structural reasons duly authorised and verified by authorised architects or engineers. Apart from these minor additions or alterations which are contemplated by sub-section (4), the proviso stipulates that the promoter shall not make any alterations in the plans, specifications and other particulars "without the previous consent of the intending purchaser". Mr Vikas Singh's submission, that this provision will apply to intending purchasers of Apex and Ceyane and not to the persons who had purchased apartments in the existing fifteen towers, cannot be accepted. The above proviso is evidently intended to protect persons to whom the plans and specifications were disclosed when they were the "intending purchasers". Further, a construction to the contrary will run against the grain of the intent and purpose of the statute as well its express provisions.

147. Section 5 of the Act provides for the rights of apartment owners in the following terms, insofar as is relevant:

"**5.** ***Rights of apartment owners***.—(1) Every person to whom any apartment is sold or otherwise transferred by the promoter shall subject to

the other provisions of this Act, be entitled to the exclusive ownership and possession of the apartment so sold or otherwise transferred to him.

(2) Every person who becomes entitled to the exclusive ownership and possession of an apartment shall be entitled to such percentage of undivided interest in the common areas and facilities as may be specified in the Deed of Apartment and such percentage shall be computed by taking, as a basis, the area of the apartment in relation to the aggregate area of all apartments of the building.

(3)(*a*) The percentage of the undivided interest of each apartment owner in the common areas and facilities shall have a permanent character, and shall not be altered without the written consent of all the apartment owners and approval of the competent authority.

(*b*) The percentage of the undivided interest in the common areas and facilities shall not be separated from the apartment to which it appertains and shall be deemed to be conveyed or encumbered with apartment, even though such interest is not expressly mentioned in the conveyance or other instrument."

148. It is important to clarify at this stage that the U.P. Apartments Act, 2010 will not apply with retrospective effect to the second revised plan, which was sanctioned on 26-11-2009. However, the legislation, which came into force upon publication in the U.P. Gazette on 19-3-2010, will have consequences for the third revised plan sanctioned on 2-3-2012, as analysed below.

E.3. ***Requirement of RWA's consent***

149. In terms of the third revised plan which was sanctioned on 2-3-2012, the height of T-16 and T-17 was sought to be increased from twenty-four to forty (or thirty-nine, as the case may be) floors. As a result, the total number of flat purchasers would increase from 650 to 1500. The clear implication of this would be a reduction of the undivided interest of the existing purchasers in the common areas. As a matter of fact, it has also been submitted on behalf of the first respondent that the additional lease rent paid to Noida was also sought to be collected from the existing flat purchasers at the rate of Rs 190 per square foot. A statement to that effect was also contained in an affidavit filed before the High Court on behalf of the first respondent. The purchase of additional FAR by the appellant cannot be used to trample over the rights of the existing purchasers.

150. Flats were sold on the representation that there would be a garden area adjacent to T-1. The garden adjacent to T-1 is clearly depicted in the first revised plan of 29-12-2006. It is this garden area which was encroached upon when the second revised plan was sanctioned on 26-11-2009.

151. However, according to the appellant, T-16 and T-17 form part of Phase II of Emerald Court, which had not encroached on any part of the common areas of Phase I, under which all the other towers fell. In this context, it would be material to note a letter dated 13-2-2012 addressed to the Circle Officer, City 3rd Noida, Gautam Buddh Nagar, by the Director of the appellant, in which it has been stated that:

"Kindly, refer to your Letter dated 10-2-2012, received by us on 11-2-2012, regarding which written statement on behalf of M/s Supertech Limited is presented as under:

1. That, [A]pex and [Ceyane] multi-storey residential tower is being constructed over plot measuring nearly 6500 sq m which was acquired by the company M/s Supertech Ltd. from Noida Development Authority in the year 2006, regarding which its supplementary lease deed was registered in the Office of Sub-Registrar, Second, Gautam Buddh Nagar....

2. *That, right from the beginning there was a plan for constructing separate complex viz. Apex and [Ceyane] and provisions have been separately made in both towers viz. swimming pool, car, club, parking and gym, etc. The facilities of other old towers as shown in the brochure have been published by mistake, but amendment concerned was made in the brochure upon the company being informed by the residents residing in old towers....*

* * *

4. That, company has erected wall for the expansion of basement and above wall was erected by the company over its land and this basement area was not sold to any resident of old tower over which company has complete ownership. No adverse effect is there on the interests of any resident in erecting above wall, rather the residents of old tower have been removed from the allotted basement area by it. Company has full right to make construction over its land.

5. That, construction carried out earlier or being carried out by the company is completely legal and in accordance with Rules and company has not affected the interest of anybody and no fraud was committed by the company with anybody.

Therefore, it appears that the complainant having presented this false complaint inspired by mala fides wants to harass the company and wants to earn undue advantage by not making payment of an amount which is payable to the company. Therefore, it is requested that complaint presented by the complainant is liable to be dismissed. In addition, it is also requested that any personal name be not used in any correspondence or inquiry, rather name of company through its Director be used." (emphasis supplied)

The above letter puts forth the case that T-16 and T-17 have been constructed as a separate project over the area which was obtained under the supplementary lease deed, and that it has separate provisions for all amenities and infrastructure. In fact, it indicates that the facilities of the older buyers were shown in the brochure but that representation was "clarified" to be a "mistake", which had been amended.

152. As such, it becomes important to refer to the supplementary lease deed, which was granted in favour of the appellant on 21-6-2006. The supplementary lease deed makes it clear that the demised premises admeasuring 6556.51 sq m would form a part of the originally allotted plot. In the course of its affidavit before the High Court, the appellant contended that:

> "7. The office bearers/members of the petitioners society has the right, title & interest only in its flat and undivided interest in the common areas of the Emerald Court (Phase I). He has the right to challenge if somebody is trying to encroach in his flat or in the common area are intended to be used for the purpose of the residents. However, here this is not the case. It is stated that the "Apex & Ceyane" (Phase II) comprising of two towers has not encroached any area of the common of the Emerald Court (Phase I). Therefore the petitioner society does not have the locus to challenge the issues related with "Apex & Ceyane" (Phase II)."

In other words, the case which was sought to be set up was that the flat purchasers had an undivided interest in the common areas of Phase I of the Emerald Court, but since T-16 and T-17 formed a part of Phase II, it did not affect the rights of the original flat purchasers of T-1 to T-15. This contention is expressly contrary to the clear terms governing the supplementary lease deed, which indicates that the area comprising of the demised premises would form part of the original plot. Furthermore, the appellant having utilised the FAR of the entire plot, including the area which forms the subject-matter of the original lease and the supplementary lease, cannot be allowed to assert to the contrary.

153. Hence, it is abundantly clear that the construction of T-16 and T-17 in accordance with the second revised plan and the third revised plan reduced the value of the undivided interest held by each individual flat owner in the common areas and facilities, thereby violating Section 5 of the U.P. Act, 1975 and Section 5 of the U.P. Apartments Act, 2010, since the flat owners' consent was not sought. Further, the third revised plan encroached upon the garden area in front of T-1, thereby resiling from the representation that had been made to the flat owners at the time when they purchased the apartments in T-1, without their consent. Therefore, it constituted a violation of Section 4(1) read with the proviso to Section 4(4) of the U.P. Apartments Act, 2010.

154. Finally, the appellant has also tried to argue that: (*i*) the consent of each individual flat owner could not be taken and it had to be taken from the RWA, as a collective body; (*ii*) the RWA only came into existence on 20-10-2013, when it adopted the Model Bye-laws under the U.P. Apartments Act, 2010; (*iii*) that this was after the third revised plan was sanctioned; and (*iv*) hence, there existed no association to take consent from. The High Court has dealt with this argument in the impugned judgment[1] by observing: (*Emerald Court Owner Resident Welfare Assn. case*[1], SCC OnLine All paras 20-21)

1 *Emerald Court Owner Resident Welfare Assn.* v. *State of U.P.*, 2014 SCC OnLine All 14817

"*20.* As per the averments of the respondent/company, the flats were handed over to the apartment owners by September 2009. The owners immediately formed Resident Welfare Association ("RWA") and got it registered with the Registrar Societies, in the very same year. Adopting the model bye-laws, did not arise, as it was not enforced until 2011. After notification of Model bye-laws, the Deputy Registrar Firm, Societies and Chits, Meerut vide letter dated 14-12-2012 informed, that pending instructions from the Registrar Firm Societies and Chits Uttar Pradesh, no decision in the matter can be taken in respect of Model bye-laws and its registration. The Registrar Firm, Societies and Chits Uttar Pradesh vide circular dated 5-2-2013 addressed to all Deputy Registrars/District Registrars issued instructions for registration under Apartment Act, 2010 and directed that bye-laws of existing RWA be accordingly amended. The petitioner society vide resolution dated 20-10-2013 adopted the Model bye-laws and conducted elections and thereafter informed the Deputy Registrar.

21. The respondent company has recognised the petitioners society as RWA of the apartment owners since inception and has continuously corresponded with the petitioner society as RWA. Letters dated 9-10-2012, 27-9-2012, 4-9-2012 and January 2013 addressed to the petitioner society regarding redressal of their grievance is on record."

155. Therefore, it is clear that: (*i*) the RWA came into existence in 2009 itself, when the first lot of apartment owners moved in; (*ii*) the appellant was communicating with the RWA ever since; and (*iii*) the RWA adopted the Model Bye-Laws under the U.P. Apartments Act, 2010, as soon as it was practicable. These averments have not been challenged before this Court during the oral submissions by the appellant, and hence, it will be held bound by its own conduct. In any case, rights under the U.P. Act, 1975 and U.P. Apartments Act, 2010 have been provided to individual flat owners, and not to collective bodies like the RWA. Hence, even the non-constitution of the RWA will not extinguish the rights of individual flat owners. Indeed, however, when such RWAs do exist, developers may use them to seek a common consent from all the flat owners instead of approaching them all individually.

F. ***Collusion and Illegal Construction***

156. The record of this case is replete with instances which highlight the collusion between the officers of Noida with the appellant and its management. The case has revealed a nefarious complicity of the planning authority in the violation by the developer of the provisions of law. The complicity of Noida has emerged, inter alia, from the following instances:

156.1. The sanctioning of the second revised plan on 26-11-2009 in clear breach of the NBR 2006.

156.2. The refusal by Noida to disclose the building plans to the first respondent, in spite of a clear stipulation consistently in all the sanctioned plans that the plan would have to be displayed at the construction site of the appellant.

156.3. Noida's referral of RWA's request to access the sanctioned plans to the appellant to seek its consent and upon the refusal of the latter, a continuous failure to disclose them to the RWA.

156.4. Even when the CFO addressed a communication to Noida in regard to the violation of the minimum distance requirements in Emerald Court, it evinced no response and no investigation from them.

156.5. In pursuance of the second revised plan of 26-9-2009, the appellant would appear to have built a foundation to support two buildings of forty and thirty-nine floors, while the sanction for the extension from twenty-four to forty or thirty-nine floors came about only on 2-3-2012 through the third revised plan.

156.6. The construction for T-16 and T-17 commenced in July 2009 by the appellant, five months before the sanction was received for the second revised plan on 26-11-2009, in spite of which Noida chose to take no action.

157. The High Court has dealt with the collusion between the officials of Noida and the appellant. This is writ large from the facts as they have emerged before this Court as well. The High Court has in these circumstances correctly come to the conclusion that there was collusion between the developer and the planning authority.

158. Condition 15 of the third revised plan dated 2-3-2012 stipulated that:

> "15. Compliance of provisions of U.P. Apartment (Promotion of Construction, Ownership & Maintenance) Act, 2010, and directions issued thereunder shall be ascertained.
>
> Sanctioned site plan/map is enclosed with this letter. Application for utility certificate would be made after completion of building work within validity of map/site plan, and without permission and certification building shall not be used…."

In spite of this condition, Noida made no effort to ensure compliance with the U.P. Apartments Act, 2010, as a result of which the rights of the flat purchasers have been brazenly violated. This cannot point to any conclusion, other than the collusion between Noida and the appellant to avoid complying with the provisions of the applicable statutes and regulations for monetary gain, at the cost of the rights of the flat purchasers.

159. The rampant increase in unauthorised constructions across urban areas, particularly in metropolitan cities where soaring values of land place a premium on dubious dealings has been noticed in several decisions of this Court. This state of affairs has often come to pass in no small a measure because of the collusion between developers and planning authorities.

160. From commencement to completion, the process of construction by developers is regulated within the framework of law. The regulatory framework encompasses all stages of construction, including allocation of land,

sanctioning of the plan for construction, regulation of the structural integrity of the structures under construction, obtaining clearances from different departments (fire, garden, sewage, etc.), and the issuance of occupation and completion certificates. While the availability of housing stock, especially in metropolitan cities, is necessary to accommodate the constant influx of people, it has to be balanced with two crucial considerations — the protection of the environment and the well-being and safety of those who occupy these constructions. The regulation of the entire process is intended to ensure that constructions which will have a severe negative environmental impact are not sanctioned. Hence, when these regulations are brazenly violated by developers, more often than not with the connivance of regulatory authorities, it strikes at the very core of urban planning, thereby directly resulting in an increased harm to the environment and a dilution of safety standards. Hence, illegal construction has to be dealt with strictly to ensure compliance with the rule of law.

161. The judgments of this Court spanning the last four decades emphasise the duty of planning bodies, while sanctioning building plans and enforcing building regulations and bye-laws to conform to the norms by which they are governed. A breach by the planning authority of its obligation to ensure compliance with building regulations is actionable at the instance of residents whose rights are infringed by the violation of law. Their quality of life is directly affected by the failure of the planning authority to enforce compliance. Unfortunately, the diverse and unseen group of flat buyers suffers the impact of the unholy nexus between builders and planners. Their quality of life is affected the most. Yet, confronted with the economic might of developers and the might of legal authority wielded by planning bodies, the few who raise their voices have to pursue a long and expensive battle for rights with little certainty of outcomes. As this case demonstrates, they are denied access to information and are victims of misinformation. Hence, the law must step in to protect their legitimate concerns.

162. In *K. Ramadas Shenoy* v. *Town Municipal Council, Udipi*[17], A.N. Ray, C.J. speaking for a two-Judge Bench of this Court observed that the municipality functions for public benefit and when it "acts in excess of the powers conferred by the Act or abuses those powers then in those cases it is not exercising its jurisdiction irregularly or wrongly but it is usurping powers which it does not possess". This Court also held: (SCC p. 513, para 27)

> "*27.* ... The right to build on his own land is a right incidental to the ownership of that land. Within the Municipality the exercise of that right has been regulated in the interest of the community residing within the limits of the Municipal Committee. If under pretence of any authority which the law does give to the Municipality it goes beyond the line of its authority, and infringes or violates the rights of others, it becomes like all other individuals amenable to the jurisdiction of the courts. If sanction is

17 (1974) 2 SCC 506

given to build by contravening a bye-law the jurisdiction of the courts will be invoked on the ground that the approval by an authority of building plans which contravene the bye-laws made by that authority is illegal and inoperative. (See *Yabbicom* v. *R.*[18])."

This Court held that an unregulated construction materially affects the right of enjoyment of property by persons residing in a residential area, and hence, it is the duty of the municipal authority to ensure that the area is not adversely affected by unauthorised construction.

163. These principles were re-affirmed by a two-Judge Bench in *G.N. Khajuria* v. *DDA*[19] where this Court held that it was not open to the Delhi Development Authority to carve out a space, which was meant for a park for a nursery school. B.L. Hansaria, J. speaking for the Court, observed: (SCC p. 766, para 10)

"*10*. Before parting, we have an observation to make. The same is that a feeling is gathering ground that where unauthorised constructions are demolished on the force of the order of courts, the illegality is not taken care of fully inasmuch as the officers of the statutory body who had allowed the unauthorised construction to be made or make illegal allotments go scot free. This should not, however, have happened for two reasons. First, it is the illegal action/order of the officer which lies at the root of the unlawful act of the citizen concerned, because of which the officer is more to be blamed than the recipient of the illegal benefit. It is thus imperative, according to us, that while undoing the mischief which would require the demolition of the unauthorised construction, the delinquent officer has also to be punished in accordance with law. This, however, seldom happens. Secondly, to take care of the injustice completely, the officer who had misused his power has also to be properly punished. Otherwise, what happens is that the officer, who made the hay when the sun shined (*sic*), retains the hay, which tempts others to do the same. This really gives fillip to the commission of tainted acts, whereas the aim should be opposite."

164. In *Friends Colony Development Committee* v. *State of Orissa*[20], this Court dealt with a case where the builder had exceeded the permissible construction under the sanctioned plan and had constructed an additional floor on the building, which was unauthorised. R.C. Lahoti, C.J., speaking for a two-Judge Bench, observed: (SCC p. 744, para 24)

"*24*. Structural and lot area regulations authorise the municipal authorities to regulate and restrict the height, number of storeys and other structures; the percentage of a plot that may be occupied; the size of yards, courts and open spaces; the density of population; and the location and use of buildings and structures. All these have in our view and do achieve the larger purpose of the public health, safety or general

18 (1899) 1 QB 444
19 (1995) 5 SCC 762
20 (2004) 8 SCC 733

welfare. So are front setback provisions, average alignments and structural alterations. Any violation of zoning and regulation laws takes the toll in terms of public welfare and convenience being sacrificed apart from the risk, inconvenience and hardship which is posed to the occupants of the building."

Noting that the private interest of landowners stands subordinate to the public good while enforcing building and municipal regulations, the Court issued a caution against the tendency to compound violations of building regulations: (*Friends Colony Development Committee case*[20], SCC p. 744, para 25)

"*25.* … The cases of professional builders stand on a different footing from an individual constructing his own building. A professional builder is supposed to understand the laws better and deviations by such builders can safely be assumed to be deliberate and done with the intention of earning profits and hence deserve to be dealt with sternly so as to act as a deterrent for future. It is common knowledge that the builders enter into underhand dealings. Be that as it may, the State Governments should think of levying heavy penalties on such builders and therefrom develop a welfare fund which can be utilised for compensating and rehabilitating such innocent or unwary buyers who are displaced on account of demolition of illegal constructions."

165. In *Priyanka Estates International (P) Ltd.* v. *State of Assam*[21], Deepak Verma, J. speaking for a two-Judge Bench, observed: (SCC p. 42, para 55)

"*55.* It is a matter of common knowledge that illegal and unauthorised constructions beyond the sanctioned plans are on rise, may be due to paucity of land in big cities. Such activities are required to be dealt with by firm hands otherwise builders/colonisers would continue to build or construct beyond the sanctioned and approved plans and would still go scot-free. Ultimately, it is the flat owners who fall prey to such activities as the ultimate desire of a common man is to have a shelter of his own. Such unlawful constructions are definitely against the public interest and hazardous to the safety of occupiers and residents of multi-storeyed buildings. To some extent both parties can be said to be equally responsible for this. Still the greater loss would be of those flat owners whose flats are to be demolished as compared to the builder."

The Court lamented that the earlier decisions on the subject had not resulted in enhancing compliance by developers with building regulations. Further, the Court noted that if unauthorised constructions were allowed to stand or are "given a seal of approval by Court", it was bound to affect the public at large. It also noted that the jurisdiction and power of courts to indemnify citizens who are affected by an unauthorised construction erected by a developer could be utilised to compensate ordinary citizens.

20 *Friends Colony Development Committee* v. *State of Orissa*, (2004) 8 SCC 733
21 (2010) 2 SCC 27 : (2010) 1 SCC (Civ) 283

166. In *Esha Ekta Apartments Coop. Housing Society Ltd.* v. *Municipal Corpn. of Mumbai*[22], G.S. Singhvi, J., writing for a two-Judge Bench, reiterated the earlier decisions on this subject and observed: (SCC p. 369, para 8)

> "*8.* At the outset, we would like to observe that by rejecting the prayer for regularisation of the floors constructed in wanton violation of the sanctioned plan, the Deputy Chief Engineer and the appellate authority have demonstrated their determination to ensure planned development of the commercial capital of the country and the orders passed by them have given a hope to the law-abiding citizens that someone in the hierarchy of administration will not allow unscrupulous developers/builders to take law into their hands and get away with it."

167. The Court further observed that an unauthorised construction destroys the concept of planned development, and places an unbearable burden on basic amenities provided by public authorities. The Court held that it was imperative for the public authority to not only demolish such constructions but also to impose a penalty on the wrongdoers involved. This lament of this Court, over the brazen violation of building regulations by developers acting in collusion with planning bodies, was brought to the forefront when the Court prefaced its judgment with the following observations: (*Esha Ekta Apartments case*[22], SCC p. 363, para 1)

> "*1.* In the last five decades, the provisions contained in various municipal laws for planned development of the areas to which such laws are applicable have been violated with impunity in all the cities, big or small, and those entrusted with the task of ensuring implementation of the master plan, etc. have miserably failed to perform their duties. It is highly regrettable that this is so despite the fact that this Court has, keeping in view the imperatives of preserving the ecology and environment of the area and protecting the rights of the citizens, repeatedly cautioned the authorities concerned against arbitrary regularisation of illegal constructions by way of compounding and otherwise."

168. Finally, the Court also observed that no case has been made out for directing the municipal corporation to regularise a construction which has been made in violation of the sanctioned plan and cautioned against doing so. In that context, it held: (*Esha Ekta Apartments case*[22], SCC pp. 394-95, para 56)

> "*56.* … We would like to reiterate that no authority administering municipal laws and other similar laws can encourage violation of the sanctioned plan. The courts are also expected to refrain from exercising equitable jurisdiction for regularisation of illegal and unauthorised constructions else it would encourage violators of the planning laws and destroy the very idea and concept of planned development of urban as well as rural areas."

22 (2013) 5 SCC 357 : (2013) 3 SCC (Civ) 89

169. These concerns have been reiterated in the more recent decisions of this Court in *Kerala State Coastal Zone Management Authority* v. *State of Kerala*[23], *Kerala State Coastal Zone Management Authority* v. *Maradu Municipality*[24] and *Bikram Chatterji* v. *Union of India*[25].

170. In the present case, once this Court has determined that the sanctioned plan for Apex and Ceyane (T-16 and T-17) breached the NBR 2006, NBR 2010, NBC 2005, U.P. Act, 1975 and the U.P. Apartments Act, 2010, it becomes its duty to take stock of the violations committed by the appellant in collusion with Noida. The appellant has raised false pleas and attempted to mislead this Court, while the officials of Noida have not acted bona fide in the discharge of their duties. The appellant has stooped to the point of producing a fabricated sanctioned plan. Therefore, we confirm the directions of the High Court including the order of demolition and for sanctioning prosecution under Section 49 of the U.P. UD Act, as incorporated by Section 12 of the U.P. IAD Act, 1976, against the officials of the appellant and the officers of Noida for violations of the U.P. IAD Act, 1976 and U.P. Apartments Act, 2010.

G. *Conclusion*

171. To summarise our findings, the documentary materials referred to and analysed in this judgment indicate that:

171.1. The land allotted to the appellant under the original lease agreement and the supplementary lease deed constitute one plot.

171.2. The land which was allotted through the supplementary lease deed forms a part of original Plot No. 4, and would be governed by the same terms and conditions as the original lease deed.

171.3. The sanction given by Noida on 26-11-2009 and 2-3-2012 for the construction of T-16 and T-17 is violative of the minimum distance requirement under the NBR 2006, NBR 2010 and NBC 2005.

171.4. An effort was made to get around the violation of the minimum distance requirement by representing that T-1 together with T-16 and T-17 form one cluster of buildings in the same block. This representation was sought to be bolstered by providing a space frame between T-1 and T-17. The case that T-1, T-16 and T-17 are part of one block is directly contrary to the appellant's stated position in its representations to the flat buyers as well as in the counter-affidavit before the High Court. The suggestion that T-1, T-16 and T-17 are part of one block is an afterthought and contrary to the record.

171.5. After realising that the building block argument would not pass muster, another false case was sought to be set up with the argument that T-1 and T-17 are dead-end sides, thereby obviating the need to comply with the minimum distance requirements. This argument is belied by the comprehensive report submitted by NBCC. The sides of T-1 and T-17 facing each other are not dead-end sides since both the sides have vents/egresses facing the other building.

23 (2019) 7 SCC 248
24 (2021) 16 SCC 822 : 2018 SCC OnLine SC 3352
25 (2019) 19 SCC 161

171.6. By constructing T-16 and T-17 without complying with the Building Regulations, the fire safety norms have also been violated.

171.7. The first revised plan of 29-12-2006 contained a clear provision for a garden area adjacent to T-1. In the second revised plan of 26-11-2009, the provision for garden area was obliterated to make way for the construction of Apex and Ceyane (T-16 and T-17). The common garden area in front of T-1 was eliminated by the construction of T-16 and T-17. This is violative of the U.P. Apartments Act, 2010 since the consent of the flat owners was not sought before modifying the plan promised to the flat owners.

171.8. T-16 and T-17 are not part of a separate and distinct phase (Phase II) with separate amenities and infrastructure. The supplementary lease deed stipulates that they are part of the original project. Hence, the consent of the individual flat owners of the original fifteen towers, individually or through the RWA, was a necessary requirement under the U.P. Apartments Act, 2010 and U.P. Act, 1975 before T-16 and T-17 could have been constructed, since they necessarily reduced the undivided interest of the individual flat owners in the common area by adding new flats and increasing the number from 650 to 1500.

171.9. The illegal construction of T-16 and T-17 has been achieved through acts of collusion between the officers of Noida and the appellant and its management.

172. For the reasons which we have indicated above, we have come to the conclusion that:

172.1. The order[1] passed by the High Court for the demolition of Apex and Ceyane (T-16 and T-17) does not warrant interference and the direction for demolition issued by the High Court is affirmed.

172.2. The work of demolition shall be carried out within a period of three months from the date of this judgment.

172.3. The work of demolition shall be carried out by the appellant at its own cost under the supervision of the officials of Noida. In order to ensure that the work of demolition is carried out in a safe manner without affecting the existing buildings, Noida shall consult its own experts and experts from Central Building Research Institute Roorkee ("CBRI").

172.4. The work of demolition shall be carried out under the overall supervision of CBRI. In the event that CBRI expresses its inability to do so, another expert agency shall be nominated by Noida.

172.5. The cost of demolition and all incidental expenses including the fees payable to the experts shall be borne by the appellant.

172.6. The appellant shall within a period of two months refund to all existing flat purchasers in Apex and Ceyane (T-16 and T-17), other than those to whom refunds have already been made, all the amounts invested for the allotted flats together with interest at the rate of twelve per cent per annum payable with effect from the date of the respective deposits until the date of refund in terms of Part H of this judgment.

1 *Emerald Court Owner Resident Welfare Assn.* v. *State of U.P.*, 2014 SCC OnLine All 14817

172.7. The appellant shall pay to the RWA costs quantified at Rs 2 crores, to be paid in one month from the receipt of this judgment.

H. ***Interlocutory applications***

173. Mr Vikas Singh, learned Senior Counsel, has during the course of the hearing tendered an additional affidavit to indicate the following position:

173.1. The contention of RWA that the appellant has collected the one-time lease rent at the rate of Rs 190 per square foot from all the flat owners in T-1 to T-15 and that though an amount of Rs 16.75 crores was collected, only Rs 13.32 crores was payable to Noida is incorrect.

173.2. The appellant did not collect the lease rent payable to Noida from all allottees of T-1 to T-15. An amount of Rs 7.54 crores was received from some allottees.

173.3. The lease rent paid to Noida was in the amount of Rs 14.49 crores.

173.4. A total of 659 units were booked in T-1 to T-14.

173.5. Of these units, 245 flats were booked till 28-12-2006; 141 flats were booked between 29-12-2006 and 25-11-2009, 114 flats were booked between 26-11-2009 and 1-3-2012, while 159 units were booked after 2-3-2012.

174. On this basis, it has been submitted that 518 units were booked either before 28-12-2006 (before the first revised plan) or after 26-11-2009 (after the second revised plan). The figures which have been indicated by the appellant demonstrate that between the first revised plan on 29-12-2006 and the second revised plan on 25-11-2009, 141 flat purchasers had booked flats. They did so on the clear representation contained in the sanctioned plans.

175. During the pendency of these proceedings, two interim orders were passed by this Court on 6-9-2016[6] and 22-9-2017[8]. By the order dated 6-9-2016[6], this Court directed the appellant to pay a return of ten per cent to those flat purchasers who continue to stay in the project. By the order dated 22-9-2017[8], an exit option was granted to those who sought refunds to take the amounts invested with interest at the rate of twelve per cent per annum.

176. The position as indicated to this Court by Mr Ravindra Kumar, learned Counsel, in respect of flats in Apex and Ceyane (T-16 and T-17) is as follows:

(*i*) Number of flats: 915;

(*ii*) Number of shops: 21;

(*iii*) Number of bookings: 633;

(*iv*) Persons who have reinvested in other projects of the developer: 133;

(*v*) Purchasers to whom refund has been granted: 248; and

(*vi*) Remaining purchasers: 252.

6 *Dhirender Sharma* v. *Emerald Court Owner Resident Welfare Assn.*, 2016 SCC OnLine SC 1925
8 *Dhirender Sharma* v. *Emerald Court Owners Resident Welfare Assn.*, 2017 SCC OnLine SC 2060

177. The above position indicates that following the opt-out which was provided in terms of the order of this Court, 248 purchasers have opted for refunds while 252 purchasers in T-16 and T-17 remain committed to the project.

178. Mr Gaurav Agarwal, learned Amicus Curiae has rendered comprehensive assistance to the Court. Apart from urging his submissions in an objective and dispassionate manner, the Amicus Curiae has painstakingly compiled the pleadings, documents and statutory provisions to facilitate the convenience of arguing counsel and the Court. We record our appreciation for the assistance which has been rendered by the Amicus Curiae. The Amicus Curiae has also prepared a note for the purpose of segregating the applications which have been filed by homebuyers into distinct categories, and suggesting reliefs to each category based on the outcome of the proceedings. These categories are:

Category 1

179. Buyers who have received ROI payments:

179.1. By its orders dated 6-9-2016[6] and 11-1-2017[7], this Court directed that those homebuyers who have chosen to stay on with the project and do not desire refund should be paid ROI at ten per cent per annum.

179.2. Thirteen persons filed applications before this Court claiming that ROI payments were not made by the appellant. The appellant has intimated the payments which are due till July 2021. Though, the homebuyers claim higher amounts, the Amicus Curiae has proceeded on the figures furnished by the appellant which are tabulated as follows:

Sl. No.	*Name*	*IA No.*	*Interest due till 1-7-2021 as per email received from Supertech*	*Name of AOR*
1.	Aarti Puri	55556/2021	Rs 16,78,720	Nishe Rajen Shonker
2.	Divay Puri	80599/2021	Rs 16,78,548	do
3.	Jatin Vardi	55562/2021	Rs 11,65,686	do
4.	Amit Khanna	56228/2021	Rs 11,65,686	do
5.	Narinder Thakur	55550/2021	Rs 10,41,578	do
6.	Manju Kohli	142969/2014	Rs 6,78,524	do
7.	Namrata Tuli	142975/2018	Rs 8,26,616	do
8.	Mahesh Jaura	80916/2019	Rs 1,11,160	do
9.	Kavita Jaura	80875/2019	Rs 2,01,299	do
10.	Hemendra Varshney	80879/2019	Rs 1,33,980	do
11.	Shachi Varshney	80881/2019	Rs 1,31,988	do
12.	Bandana Kedia	80918/2019	Rs 1,31,700	do
13.	Sapna Ahluwalia	43555/2021	Rs 19,87,020	do

6 *Dhirender Sharma* v. *Emerald Court Owner Resident Welfare Assn.*, 2016 SCC OnLine SC 1925
7 *Dhirender Sharma* v. *Emerald Court Owner Resident Welfare Assn.*, 2017 SCC OnLine SC 2059

180. The submission of the Amicus Curiae is that if the buildings were to stand, the homebuyers may be paid the above ROI. On the other hand, if the buildings are to be demolished, the homebuyers should receive refund with interest and the amounts would be subsumed in the interest to be paid. Since this Court has come to the conclusion that the buildings are to be demolished, the general directions in regard to refund together with interest will subsume the claims of the above homebuyers.

Category 2

181. Homebuyers to whom principal has been paid but interest payments have remained:

181.1. By an order dated 30-7-2018[9], this Court directed that homebuyers who had registered on the portal and were willing to take twelve per cent simple interest per annum from the date of deposit till the date of payment towards full and final payment would be refunded the principal sum together with interest at the above rate on filing affidavits to that effect.

181.2. The registry has refunded the principal sum to thirteen homebuyers but since their affidavits were not received by the Amicus Curiae within time, interest remained to be paid. The details have been tabulated by the Amicus Curiae as follows.

Sl. No.	*Name*	*Interest payable*	*IA No.*	*Name of AOR*
1.	Anuj Goyal	Rs 31,40,704	69916-69917 of 2019	Abhijeet Sinha
2.	Sumit Goel	Rs 28,97,199		
3.	Priya Goel	Rs 28,97,199		
4.	Mukta Jain	Rs 30,10,253		
5.	Subhash Chand Jain	Rs 29,05,957		
6.	Abhishek Jain	Rs 30,42,129		
7.	Abhishek Jain	Rs 30,22,785		
8.	Herbinder Singh	Rs 32,84,789		
9.	Vineet Kapoor	Rs 28,90,491		
10.	Vishal Maheshwari	Rs 22,45,399	24823/2020	Nishe Rajen Shonker
11.	Shipli Maheshwari	Rs 15,30,585	24834/2020	do
12.	Poonam Lata Kushwaha	Rs 29,22,513	120666/2019 & 120669/2019	Sweta Rani
13.	Paramita Ray	Rs 40,65,228		In-person

182. The Amicus Curiae has submitted that irrespective of the fate of the pleadings, the appellant should be directed to refund the interest as computed above since the above homebuyers have exited from the project. We accept the submission and direct the appellant to refund interest payments to the thirteen homebuyers as tabulated above within two months.

9 *Supertech Ltd.* v. *Emerald Court Owner Resident Welfare Assn.*, 2018 SCC OnLine SC 3707

Category 3

183. Homebuyers under a "subvention scheme":

183.1. Under the subvention scheme, a home loan is taken in the name of the homebuyer but EMIs are to be paid by the appellant till possession is granted. Certain homebuyers are governed by the subvention scheme. There is a default by the appellant in paying the EMIs.

183.2. By an order dated 30-7-2018[9], this Court directed the appellant to continue paying the EMIs. Sixteen homebuyers have moved this Court for a direction for payment of the balance EMIs due.

183.3. The Amicus Curiae has tabulated the interest payable to the homebuyers (as computed by them and by the appellant separately):

Sl. No.	*Name*	*Interest as indicated by* **homebuyer**	*Interest as indicated by* **Supertech**	*IA No.*	*Name of AOR*
1.	Parvinder Singh	Rs 11,71,110	Rs 8,81,847	24814, 24825,	Khaitan & Co.
2.	Amit Mangla	Rs 12,09,052	Rs 12,09,052	24839,	
3.	Binod Kumar	Rs 11,73,902	Rs 8,43,073	24848,	
4.	Shailesh Kr Singh	Rs 11,69,640	Rs 8,51,310	24972, 24973,	
5.	Dev Verma	Rs 11,73,919	Rs 8,58,311	24974,	
6.	Naveen Kumar	Rs 16,08,467	Rs 11,07,792	24978, 24984,	
7.	Vaibhav Mishra	Rs 11,66,778	Rs 8,37,666	24985, 24989,	
8.	Mandar Hastekar	Rs 11,66,826	Rs 8,53,381	24992, 24996,	
9.	Ashish Sharma	Rs 11,73,092	Rs 8,25,030	24997, 29374 &	
10.	Hrisikesh-Kshitiza Bawa	Rs 11,73,919	Rs 8,39,984	29386/2020	
11.	Babneet Singh	Rs 11,74,308	Rs 8,40,383		
12.	Romit Agarwal	Rs 11,66,182	Rs 8,59,768		
13.	Bhupinder-Puran Das Pruthi	Rs 11,51,855	Rs 9,43,782		
14.	Nilay Ashmi	Rs 11,67,529	Rs 8,29,579		
15.	Manoj Kr Pamneja (*)	Rs 8,10,866	Nil	25950/18	Krishnamohan K.
16.	Sandeep Jain (*)	Rs 8,10,866	Nil	67854 & 67856/2020	Arjun Garg

The Amicus Curiae submits that the amounts calculated above be paid.

9 *Supertech Ltd.* v. *Emerald Court Owner Resident Welfare Assn.*, 2018 SCC OnLine SC 3707

184. The Amicus Curiae submitted that if the buildings are ordered to be demolished, the appellant may close the home loans and refund the amounts contributed by the homebuyers with such interest as this Court may determine. On the other hand, if the buildings stand, the appellant may be directed to clear the outstanding EMIs and continue paying them until possession. Since the buildings have been ordered to be demolished under the directions of this Court in the present judgment, the appellant shall close the home loans and refund the amounts contributed by each of the above homebuyers with interest at the rate of twelve per cent per annum within two months.

Category 4

185. There are two IAs in which the homebuyers have a dispute with the appellant relating to the amounts due to the homebuyers:

185.1. In IA No. 56187 of 2021, Mr D.P. Tripathi was allotted Flat No. 1105 in Apex. A total amount of Rs 31,70,410 was paid for the flat. Out of this amount, Rs 14,25,000 was funded by loan. The appellant paid the loan pursuant to an order of this Court. However, the applicant has paid the balance amount of Rs 17,45,410 out of his own funds towards the flat, and Rs 6,58,700 as loan repayments before it was ultimately settled by the appellant. ROI payments for 27 months amounting to Rs 5,20,315 have been received from the appellant. Thus, the case of the applicant is that a sum of Rs 18,83,795 remains invested by the applicant, which may be ordered to be refunded. In contrast, the appellant has stated that this dispute has been settled by the Debts Recovery Tribunal and nothing is payable.

185.2. In IA No. 67028 of 2017, Mr Raj Kishore had purchased Flat No. 3507, in respect of which the amount has been refunded along with interest. A cheque of Rs 67,319 bearing No. 213233 for the last payment remained to be encashed due to oversight. The Amicus Curiae has suggested that the appellant may be directed to issue a fresh cheque pertaining to this payment.

186. With regards to IA No. 56187 of 2021, since the underlying dispute regarding payment is pending in this IA, it is delinked and will be heard separately. In IA No. 67028 of 2017, the appellant is directed to provide a fresh cheque for an amount of Rs 67,319 to the applicant within one month.

Category 5

187. Application of homebuyers which have been rendered infructuous. The Amicus Curiae has tabulated applications which have been rendered infructuous, indicating the reasons for the same:

Applications of homebuyers which are rendered infructuous

Sl. No.	*Name of homebuyers*	*IA No.*	*Name of AOR*	*Reasons*
1.	Leo VIII Films Pvt. Ltd.	18211/2018 18217/2018	Nitish Massey	Refund received with interest
2.	Raj Kishore	67028/2017	Mahima Gupta	Refund received with interest
3.	Sajeev Katarya	24785/2017	Rajeev Singh	Refund received with interest

4.	Girish Arun Singpote	175122 & 175124 of 2018	UNUC Legal LLP	Applicants have not applied in portal
5.	Darpan Bhargav	137549/2018	Gopal Jha	Applicant has not applied in portal
6.	(1) Arvind Kaur Sodhi (2) Amarjit Singh Rana & Jasjit Kaur	18064-18066/2020	Gopal Jha	Applicants have not applied in portal
7.	Poonam Kulbir Krishnan	6919/2018	Aparna Bhat	This does not relate to this project, but it relates to the project in Gurgaon
8.	Sanjay Bahl	24785/17	Rajeev Singh	Refund already paid @12%
9.	Mini Kohli & Ors.	68049/17	PK Jain	Refund already paid with interest
10.	Vibhav Bindal	96289/17	Pinky Behera	Refund already paid with interest
11.	Sayed Asad Ahmad	11/15 in SLP 14314/14	Shantanu Krishna	Applicant has not applied in portal
12.	Vivek Sharma & others	12/2015 in SLP 14314/14	Rajeev Singh	Applicant has not applied in portal
13.	Usha Rani & others	14/16 in SLP 14314/14	Rajeev Singh	There are number of applicants in this application. Some of them got refund with interest. Others did not apply.
14.	Vishal Raj Singh	IA 15/2016 in SLP 14314/14	Rajeev Singh	Applicant has not applied in portal
15.	Ishwar Kumar Singh	IA 16/2016	Amit Anand Tiwari	Refund already paid with interest
16.	Sanjeev Katariya	IA 17/2016 in SLP 14314/14	Rajeev Singh	Refund already paid with interest
17.	Ms Raj Kishore & another	IA 18/2016 in SLP 14314/14	Mahima Gupta	One applicant has already paid refund with interest and other did not apply in portal
18.	Mini Kohli & others	IA 21/17 in SLP 14314/14	PK Jain	Some applicants have already paid refund with interest and other did not apply in port.
19.	Rashmi Arora	121826,121828/17	MC Dhingra	Refund already paid with interest

20.	Jitendra Kumar Sabharwal & others	IA 121085/17	Rajeev Singh	Some applicants have already paid refund with interest and other did not apply in port.
21.	Poonam Kulbir Krishan	14898/18	Aparna Bhat	This does not relate to present project.
22.	Usha Rani & others	35845/21	Avjit Mani Tripathi	Most of the applicants have get refund of with 12%. Now they want 14% interest.
23.	Manprit Kaur	IA 20/18 & 95793/16 in SLP 14314/14	Anupam Lal Das	Refund already paid with interest
24.	Sajeev Aggrawal	IA 121841/17 & 121842/17	MC Dhingra	Refund already paid with interest

188. The above applications are disposed of as infructuous.

189. The appeals shall stand disposed of in the above terms. The contempt petitions are disposed of accordingly. Pending application(s), if any, stand disposed of.

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2022 SCC OnLine SC 120

In the Supreme Court of India
(BEFORE D.Y. CHANDRACHUD AND BELA M. TRIVEDI, JJ.)

Kantha Vibhag Yuva Koli Samaj Parivartan Trust and Others ... Appellants;

Versus

State of Gujarat and Others ... Respondents.

Civil Appeal No. 1046 of 2019
Decided on January 21, 2022

The Judgment of the Court was delivered by

D.Y. CHANDRACHUD, J.:— Admit.

2. This appeal under Section 22 of the National Green Tribunal Act 2010[1] arises from a judgment and order of the Principal Bench of the National Green Tribunal[2] dated 28 September 2018, by which it dismissed OA No 81 of 2014 (WZ).

3. OA No 81 of 2014 (WZ), instituted under Sections 14 and 15 of the NGT Act, was pending before the NGT for nearly four years since July 2014. It had been filed by the appellants, who are environmental organisations and individuals directly affected by the degradation of the environment in the area in question. The OA pertained to the issue of the dumping of unsegregated and untreated Municipal Solid Waste[3] at an open landfill site admeasuring 188 hectares at Survey No 111/A, Block No 177, Khajod Village, Taluka Choryasi in the district of Surat, which is surrounded by thirty-five villages. The landfill site had been set up by the fourth respondent, Surat Municipal Corporation[4], which had started dumping 850 Metric Tonnes of waste per day on 24 January 2003. The extent of dumping increased to 1600 Metric Tonnes of waste per day by 16 January 2014. It was alleged, *inter alia*, that the dumping of waste in the open area without prior treatment was in violation of the Municipal Solid Waste (Handling and Management) Rules 2000 and Bio Medical Waste (Management and Handling) Rules 1998. Further, while SMC had been issued multiple warnings during site visits and inspections, the situation did not improve. It was alleged that the waste disposal led to an irreversible contamination of local water bodies and ground water, caused severe air pollution due to the burning of waste, damaged the ecology of the nearby villages and was affecting the health of the citizens and livestock in the vicinity. The appellants sought directions, *inter alia*, for : *(i)* restraining the dumping of MSW at the landfill site; *(ii)* restoration of the environment in the surrounding areas; *(iii)* restitution of the landfill site to its original condition; *(iv)* compensation to all those affected in the nearby villages upon determination of damages by a committee set up to assess the landfill site; and *(v)* implementation of the Solid Waste Management Rules 2016[5].

4. The Western Zone Bench of the NGT issued notice on 8 August 2014. A series of orders emanated from the Western Zone Bench of the NGT in connection with the issues raised. It would suffice to note a few of those orders:

(i) On 20 March 2015, the NGT noted that "*prima facie* there is ring of truth in the averments made by the Applicants, to indicate that MSW plant, is being mismanaged" and that the burning of the untreated MSW was causing severe air pollution affecting the health of the residents of the nearby villages. Interim directions were issued to prevent this from taking place during the pendency of the OA;

(ii) On 22 December 2015, the NGT again reproached SMC for not preparing a

proper action plan and audit for the management of MSW in the district of Surat. However, on the appellant's issue of their participation in the management of the landfill site, the NGT noted that it would be decided during the final hearing;

(iii) On 7 March 2016, the NGT directed the Commissioner of SMC to be present and to provide a statement on the following issues : *(a)* extent of waste collected, treated and disposed of in accordance with the mandate of the Municipal Solid Waste (Handling and Management) Rules 2000; *(b)* the officers who have failed to enforce the Rules and have failed to comply with the directions of the NGT; *(c)* the time schedule within which proper waste management will be done in the area in terms of the Rules; and *(d)* filing an undertaking that waste management shall be done in letter and spirit;

(iv) On 16 May 2017, the NGT noted that in pursuance of its previous directions, SMC had filed an affidavit indicating, *inter alia*, the action plan which it proposed to execute for handling the problem of MSW within its jurisdiction. The NGT was informed that the issue pertaining to the closure of the Khajod dumping site was pending before the Standing Committee of SMC. Hence, the NGT directed the Standing Committee to take a decision and issue a work order for commencing the work of the closure of the open dumping site within a month. Moreover, SMC was directed to place on the record the details of the lands where the projects are to be commissioned;

(v) On 19 September 2017, a statement was made on behalf of SMC that it is under an obligation to comply with the SWM Rules and that the site at Khajod is designated for a landfill, an MSW processing plant and a waste-to-energy plant of 100 TPD on a public-private partnership basis;

(vi) Pursuant to the order of the NGT dated 19 September 2017, the appellants formulated certain action points for implementation of the SWM Rules. On 26 September 2017, an undertaking was filed on behalf of SMC by the Municipal Commissioner setting out the steps which would be taken for dealing with MSW, transportation, storage, and processing as well as on other related matters. The undertaking stipulated that there shall be no landfilling or dumping of unprocessed and unsegregated MSW after two years subject to "100% working of the Solid Waste Processing Plant" and certain other conditions;

(vii) On 6 November 2017, an order was passed by the NGT setting out that it would be hearing SMC, *inter alia*, on the qualified nature of the undertaking which was furnished by it, having regard to the SWM Rules and on the proposed use of the Khajod landfill site despite its potential as a landfill site being concluded. The NGT also indicated that it would be hearing submissions on the commissioning of the waste-to-energy plant and the waste-to-compost plant within a given time frame;

(viii) An order was passed by the NGT on 5 December 2017, dealing particularly with the issue of quantification of compensation to the farmers due to the damage caused by the burning of solid waste and ground water pollution;

(ix) On 2 July 2018, the NGT issued directions stating that the submissions which were urged before it by SMC were unacceptable. The NGT declined to accept the contention that the waste-to-energy plant could only be completed by December 2019, and directed that it ought to be completed by March 2018; and

(x) On 17 July 2018, the NGT noted that SMC's current action plan *prima facie* did not fulfill the requirements of Clause J of Schedule-I of the SWM Rules in relation to closure and rehabilitation of old dumping sites and legacy waste. Hence, it directed SMC to file an affidavit recording its compliance.

5. A considerable amount of judicial time and attention was entailed during the course of the hearings associated with the above orders. Earlier Benches of the NGT at

the Western Zone Bench had been monitoring the status of compliance with the SWM Rules. The NGT was seized with diverse aspects pertaining to the disposal of MSW by SMC, including the modalities which have to be followed while commissioning projects in the future for the conversion of waste to energy.

6. Rather surprisingly, when the proceedings came up on 28 September 2018 before the Principal Bench of the NGT, the OA was disposed of on the ground that in another OA - OA No 606 of 2018 - the NGT had constituted Apex, Regional and State Level Committees to monitor the implementation of the SWM Rules. The OA filed by the appellants was thus closed with liberty to represent the case and ventilate all grievances before the appropriate committee. For convenience of reference, the order passed by the NGT is extracted below:

> "As this OA relates to implementation of Solid Waste Management Rules, 2016, we are of the considered opinion that it is covered by the order passed by the larger Bench of the Tribunal dated 20th August, 2018 in OA No 606 of 2018.
>
> The Applicant would be at liberty to represent its case and ventilate all grievance before the Committee which shall look into it and finally decide the same.
>
> Consequently, OA No 81 of 2014 stands disposed of. There shall be no order as to cost.
>
> M.A. No. 1392 of 2018 and 1393 of 2018
>
> These Applications do not survive for consideration as the main Application has been decided and are accordingly dismissed."

7. At this juncture, it is also important to elaborate on NGT's judgment and order dated 31 August 2018 in OA No 606 of 2018. Those proceedings arose from writ petitions filed before this Court in relation to the proper implementation of SWM Rules across the country, which were later transferred to the NGT. The NGT noted in its decision that though it had earlier issued directions for the implementation of the SWM Rules, they had not been complied with. Later, in a meeting organised by the Central Pollution Control Board with all the States and Union Territories, it was recommended that the NGT should form Apex, Regional and State Level Committees for the implementation of the SWM Rules and the directions issued by the NGT, and that these Committees should submit quarterly reports to the NGT. Thus, the NGT directed the following:

(i) The Apex Monitoring Committee was set up for one year, till further orders. Its role was to interact with the relevant Ministries and the Regional Monitoring Committees, and it could formulate guidelines/directions which may be useful to the Regional Monitoring Committees and the States/Union Territories. It was to meet preferably every month, and also preferably meet the Regional Monitoring Committees once a month. It shall then submit its report to the NGT every quarter. Further, it was also directed that the Committee set up a website for dissemination of information, so as to enable public participation;

(ii) The Regional Monitoring Committees were set up for one year, till further orders, for each zone - North, East, West, South and Central. They were to ensure effective implementation of the SWM Rules, and that mixing of biomedical waste with MSW does not take place and bio-medical waste is processed in accordance with the Bio-Medical Waste Management Rules 2016. The Committees were to preferably meet every week, and meet the Apex Monitoring Committee, have *inter se* interactions and meet the States when necessary. They were to submit their reports to the Apex Monitoring Committee twice a quarter, and also submit a report to the NGT after the first quarter. Much like the Apex Monitoring Committee, the Regional Monitoring Committees were also directed to set up websites; and

(iii) The State Level Committees were set up for one year, till further orders, for

each State and Union Territory. They were to preferably meet with local bodies once every two weeks, and the local bodies were to furnish them reports twice a month. They were to decide on technical and policy issues in accordance with the SWM Rules and consistent with the directions of Apex and Regional Monitoring Committees. Further, they were to send their reports to the Regional Monitoring Committee on a monthly basis. It was also directed that public involvement may be encouraged and status of MSW be placed in the public domain.

8. The NGT directed that the Committees would be at liberty to issue directions for execution of the orders of the NGT to any authority.

9. Ms. Shilpa Chohan, learned Counsel appearing on behalf of the appellants, has submitted that relegating the appellants to a committee was wholly inappropriate having regard to the progress which had been achieved by the Western Zone Bench of the NGT in unravelling various aspects of the case. Moreover, it is urged that the jurisdiction to provide restitution and award compensation is entrusted to the NGT and hence, it was not appropriate or proper to dispose of the OA by relegating the decision to a committee.

10. On the other hand, Mr. Tejas Patel, learned Counsel appearing on behalf of SMC, submits that the appellants have produced absolutely no material on the basis of which a claim for compensation can be made. Moreover, it was urged that they have a remedy of ventilating their grievances before the appropriate committee.

11. The OA was filed by the appellants under Sections 14 and 15 of the NGT Act. Section 14[6] of the NGT Act vests the NGT with jurisdiction over all civil cases where a substantial question relating to the environment is involved, and such question arises out of the implementation of the enactments specified in Schedule I to the statute. Sub-Section (1) of Section 15 is in the following terms:

> "15. Relief, compensation and restitution.—(1) The Tribunal may, by an order, provide,—
>
> (a) relief and compensation to the victims of pollution and other environmental damage arising under the enactments specified in the Schedule I (including accident occurring while handling any hazardous substance);
>
> (b) for restitution of property damaged;
>
> (c) for restitution of the environment for such area or areas,
>
> as the Tribunal may think fit."

12. In *Mantri Techzone (P) Ltd.* v. *Forward Foundation*[7], a three-Judge Bench of this Court outlined that Section 15(1)(c) of the NGT Act entrusts broad powers to the NGT. Speaking for the Court, Justice S Abdul Nazeer held:

> "43. Section 15(1)(c) of the Act is an entire island of power and jurisdiction read with Section 20 of the Act. The principles of sustainable development, precautionary principle and polluter pays, propounded by this Court by way of multiple judicial pronouncements, have now been embedded as a bedrock of environmental jurisprudence under the NGT Act. Therefore, wherever the environment and ecology are being compromised and jeopardized, the Tribunal can apply Section 20 for taking restorative measures in the interest of the environment."

13. The OA filed by the appellants raised issues falling within the jurisdiction of the NGT under Section 14, since it relates to the implementation of the SWM Rules. The SWM Rules have been notified pursuant to the powers conferred by Sections 3, 6 and 25 of the Environment (Protection) Act 1986, which is Entry 5 in Schedule I of the NGT Act. None of the prayers sought by the appellants are of a nature that cannot be granted by the NGT in accordance with its powers under Section 15(1) of the NGT Act. The OA was being continuously heard by the Western Zone Bench of the NGT since August 2014, and it had already issued significant interim directions.

14. Hence, the issue before us is only whether the Principal Bench of the NGT correctly directed the appellants to now approach one of the Committees set up by it, rather than continue with the proceedings in the OA. To understand this, we must first consider the role of such committees which are set up by courts and tribunals alike.

15. It is first important to differentiate expert committees which are set by the courts/tribunals from those set up by the Government in exercise of executive powers or under a particular statute. The latter are set up due to their technical expertise in a given area, and their reports are, subject to judicially observed restraints, open to judicial review before courts when decisions are taken solely based upon them. The precedents of this court unanimously note that courts should be circumspect in rejecting the opinion of these committees, unless they find their decision to be manifestly arbitrary or *mala fide*[8]. On the other hand, courts/tribunals themselves set up expert committees on occasion. These committees are set up because the fact-finding exercise in many matters can be complex, technical and time-consuming, and may often require the committees to conduct field visits. These committees are set up with specific terms of reference outlining their mandate, and their reports have to conform to the mandate. Once these committees submit their final reports to the court/tribunal, it is open to the parties to object to them, which is then adjudicated upon. The role of these expert committees does not substitute the adjudicatory role of the court or tribunal. The role of an expert committee appointed by an adjudicatory forum is only to assist it in the exercise of adjudicatory functions by providing them better data and factual clarity, which is also open to challenge by all concerned parties. Allowing for objections to be raised and considered makes the process fair and participatory for all stakeholders.

16. Sections 14 and Section 15 entrust adjudicatory functions to the NGT. The NGT is a specialized body comprising of judicial and expert members. Judicial members bring to bear their experience in adjudicating cases. On the other hand, expert members bring into the decision-making process scientific knowledge on issues concerning the environment. In *Hanuman Laxman Aroskar* v. *Union of India*[9], a two-Judge Bench of this Court noted that the NGT is an expert adjudicatory body on the environment. The Court held:

> "133. The NGT Act provides for the constitution of a tribunal consisting both of judicial and expert members. The mix of judicial and technical members envisaged by the statute is for the reason that the Tribunal is called upon to consider questions which involve the application and assessment of science and its interface with the environment...
>
> 134. NGT is an expert adjudicatory body on the environment."

17. The NGT does not have a dearth of 'expertise' when it comes to the issues of environment.

18. Section 15 empowers the NGT to award compensation to the victims of pollution and for environmental damage, to provide for restitution of property which has been damaged and for the restitution of the environment. The NGT cannot abdicate its jurisdiction by entrusting these core adjudicatory functions to administrative expert committees. Expert committees may be appointed to assist the NGT in the performance of its task and as an adjunct to its fact-finding role. But adjudication under the statute is entrusted to the NGT and cannot be delegated to administrative authorities. Adjudicatory functions assigned to courts and tribunals cannot be hived off to administrative committees. In *Sanghar Zuber Ismail* v. *Ministry of Environment, Forests and Climate Change*[10], a three-Judge Bench of this Court noted that the NGT cannot refuse to hear a challenge to an Environmental Clearance under Section 16(h) of the NGT Act and delegate the process of adjudicating on compliance to an expert committee. The Court held:

"8...the NGT has not dealt with the substantive grounds of challenge in the exercise of its appellate jurisdiction. Constitution of an expert committee does not absolve the NGT of its duty to adjudicate. The adjudicatory function of the NGT cannot be assigned to committees, even expert committees. The decision has to be that of the NGT. The NGT has been constituted as an expert adjudicatory authority under an Act of Parliament. The discharge of its functions cannot be obviated by tasking committees to carry out a function which vests in the tribunal."

19. The NGT has in the present case abdicated its jurisdiction and entrusted judicial functions to an administrative expert committee. An expert committee may be able to assist the NGT, for instance, by carrying out a fact-finding exercise, but the adjudication has to be by the NGT. This is not a delegable function. Thus, the order impugned in the appeal cannot be sustained. The consequence of the impugned order is to efface the meticulous exercise which was carried out by the earlier Benches. Valuable time has been lost in the meantime and crucial issues pertaining to the environment in the present case have been placed on the back-burner.

20. Hence, we are of the view that it would be appropriate to set aside the impugned order and to restore OA No 81 of 2014 (WZ) to the file of the NGT. We accordingly allow the appeal and set aside the impugned order dated 28 September 2018. OA No 81 of 2014 (WZ) is restored to the file of the NGT. The NGT shall commence with the hearing of the proceedings from the stage which was arrived at before the impugned order dated 28 September 2018 was passed. Unfortunately, more than three years have passed in the meantime, a delay which could have been avoided had the NGT proceeded to adjudicate upon the issues which were raised before it.

21. This Court has not expressed any opinion on the merits of the issues which are raised before the NGT. The NGT will take an appropriate view and issue appropriate directions in continuation of the directions which hold the field, after hearing the parties.

22. The Court was apprised that the impugned order was passed by the Principal Bench since the Western Zone Bench of the NGT was not functioning at the relevant time. Hence, OA No 81 of 2014 (WZ) may now be heard by the Bench which is assigned with the requisite jurisdiction to hear the subject matter of the OA.

23. The appeal is accordingly allowed in the above terms.

24. Pending applications, if any, stand disposed of.

SUPREME COURT OF INDIA
RECORD OF PROCEEDINGS
Civil Appeal No. 1046/2019

Kantha Vibhag Yuva Koli Samaj Parivartan Trust and Others.
....Appellant(s)

Versus

State of Gujarat and Others.....Respondent(s)

Date : 21-01-2022 This appeal was called on for hearing today.

(BEFORE D.Y. CHANDRACHUD AND BELA M. TRIVEDI, JJ.)

For Appellant(s) Ms. Shilpa Chohan, Adv.
Mr. Ssawahiq Siddique, Adv.
Dr. Pratyush Nandan, Adv.
Mr. Rajesh Singh, AOR
For Respondent(s) Ms. Aastha Mehta, Adv.
Ms. Deepanwita Priyanka, Adv.

Ms. Ruchi Kohli, AOR
Mr. Avijit Roy, AOR
Mr. Tejas Patel, AOR
Mr. Kaushal Pandya, Adv.

UPON hearing the counsel the Court made the following

ORDER

25. Admit.

26. The appeal is allowed in terms of the signed order.

27. Pending applications, if any, stand disposed of.

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[1] "NGT Act"

[2] "NGT"

[3] "MSW"

[4] "SMC"

[5] "SWM Rules"

[6] "14. Tribunal to settle disputes.—(1) The Tribunal shall have the jurisdiction over all civil cases where a substantial question relating to environment (including enforcement of any legal right relating to environment), is involved and such question arises out of the implementation of the enactments specified in Schedule I.

(2) The Tribunal shall hear the disputes arising from the questions referred to in sub-section (1) and settle such disputes and pass order thereon.

(3) No application for adjudication of dispute under this section shall be entertained by the Tribunal unless it is made within a period of six months from the date on which the cause of action for such dispute first arose:

Provided that the Tribunal may, if it is satisfied that the applicant was prevented by sufficient cause from filing the application within the said period, allow it to be filed within a further period not exceeding sixty days."

[7] (2019) 18 SCC 494

[8] *Basavaiah (Dr.)* v. *Dr. H.L. Ramesh*, (2010) 8 SCC 372 (in relation to appointment in an academic institution); *State of Kerala* v. *RDS Project Ltd.*, (2020) 9 SCC 108 (in relation to safety of a flyover project)

[9] (2019) 15 SCC 401

[10] 2021 SCC OnLine SC 669