BEFORE THE NATIONAL GREEN TRIBUNAL

PRINCIPAL BENCH, NEW DELHI

Original Application No. 1236 of 2024

IN THE MATTER OF:

Society For Protection of Culture, Heritage, Environment, Traditions and Promotion Of National Awareness (Regd.)
Also Known As [SP-CHETNA] **.... Applicant**

Versus

Union of India & Ors. **.... Respondents**

INDEX

S. No.	Particulars	Pg. No.
1.	Short reply to affidavit on behalf of Applicant by way of an affidavit to counter affidavit filed by Respondent no. 2 i.e. National Highway Authority of India (NHAI)	1-20
2.	**Annexure A1:** Ahuja Vaishno Dhaba No. 1 v/s State of Haryana and others [2003 SCC Online P&H 557]	21-58
3.	**Annexure – A2** Newspaper clipping dated **16 January 2026**, published in The Hindustan Times, New Delhi	59
4.	**Annexure A3** – Reply dated 31-01-2025 to application under Right to Information from PIU **Respondent No.2**	60-61
5.	Proof of Service to Respondents	**62**

For S P CHETNA

Hony President

APPLICANT

THROUGH

New Delhi

Date: 15.01.2026

MRS.KAJAL CHANDRA

MS. MADHUMITA SINGH/ /MR SAMEER SOOD/MS. HATNEIMAWI/MR ABHISHEK CHHABRA)

ADVOCATES

503-A, Lawyers Chambers III

Delhi High Court

New Delhi – 110003

kajal.chandra@yahoo.com

Clerk: 8287386432

BEFORE THE NATIONAL GREEN TRIBUNAL

PRINCIPAL BENCH, NEW DELHI

Original Application No. 1236 of 2024

IN THE MATTER OF:

Society For Protection of Culture, Heritage,

Environment, Traditions and Promotion Of

National Awareness (Regd.)

Also Known As [SP-CHETNA] **.... Applicant**

Versus

Union of India & Ors. **.... Respondents**

SHORT REPLY AFFIDAVIT ON BEHALF OF APPLICANT BY WAY OF AN AFFIDAVIT TO COUNTER AFFIDAVIT FILED BY RESPONDENT NO. 2 i.e. National Highway Authority of India (NHAI)

I, Anil Sood, a senior citizen, S/o Late Sh. M.C Sood, aged about 70 yrs., R/o C-1/1056, Vasant Kunj, New Delhi-110070, do hereby solemnly affirm and state as under:

That I am the President of the Applicant Society and am well acquainted with the facts and circumstances of the present case and as such, competent to make and affirm the present short affidavit. I have gone through the affidavit filed by Respondent No. 2 and a short reply to the same is as under:

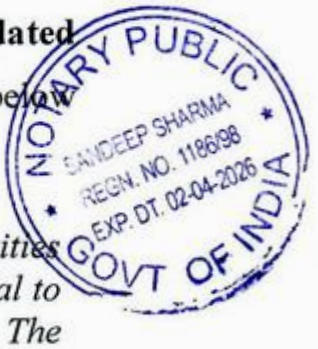
MOST RESPECTFULLY SHOWETH:

NOTARY PUBLIC
SANDEEP SHARMA
REGN. NO. 1186/98
EXP. DT. 02-04-2026
GOVT OF INDIA

1. The Applicant had filed Original Application No. 1236/2024 to draw attention of this Hon'ble Tribunal to the non-implementation of orders 05-09-2017 in OA No. 386 of 2017 and EA No. 29/2018 and IA No. 363/2020 dated 03-12-2020 for removal of encroachments on National Highways in the area meant for mandatory green and ensuring development of Mandatory Green cover on both sides of the National Highways between 30 to 40 meters on each side of the National Highways in violation of the '**Guidelines on Landscaping and Tree Plantation-2009' (2009 Guidelines**) prepared by the **Indian Road Congress (IRC)** stipulating maintaining green areas' on the highways and **"Green Highways (Plantation and Maintenance) Policy-2015" (The 2015 Policy)**.

PRELIMINARY SUBMISSIONS

2. That, the Hon'ble Tribunal, while disposing off **Execution Application No. 29/2018, and IA 3643 vide order dated 03.12.2020** had passed a detailed and reasoned order after examining the statutory framework, the obligations of the regulatory authorities and the role of project proponents. The Tribunal recorded specific findings, while recording categorical observations had issued directions to the Respondent No.1 and Respondent No.2, which are directly relevant to the issues arising in the present proceedings. The relevant extract of the said **order dated 03.12.2020 (at running page no. 68 to70)** is reproduced hereinbelow for ready reference: —



> *9. As already held and is acknowledged by the concerned authorities that green cover on both sides of highways is absolutely essential to mitigate adverse impact of vehicular pollution on the highways. The dust leads to increase of PM2.5 and PM10 and consequential health hazards. The pollution is aggravated by permitting constructions close to the highways, making it impossible to provide green cover.*

This happens with or without connivance of the authorities. Encroachments are allowed close to the highways, in spite of requirement of keeping open space for road expansion and green belts upto specified distance from the highways. The guidelines on tree plantations require leaving of the space for the plantations upto 30 meters width. Encroachments obstruct compliance of such mandate. ***The stand of the NHAI that the roads are constructed by Concessioners and it is only their responsibility to comply with the mandate of law is patently untenable and shows indifference and breach of public trust and statutory duties. If the NHAI in the course of its activities hires its agents, the liability of the principal does not end. The Criminal as well as Civil liability of NHAI and its highest officers under the Environmental Law to be prosecuted and to be required to pay compensation continues. Such inalienable duty cannot be abandoned on specious plea that a contractor is being hired. Moreover, being public authorities, taking such plea shows lack of responsibility or lack of knowledge of law. Indifference to issues of environment affecting public health by a public authority can hardly be appreciated. The NHAI as well as the NHIDCL have to be the role model to ensure compliance of environmental norms. Same is expected from the State PWD and other concerned Authorities. There has to be continuous meaningful and responsible monitoring at highest levels. It is not a charity but Constitutional mandate. The record shows that on every occasion the matter has been taken up, the Tribunal has regretfully found lack of involvement of the concerned authorities on the subject. We are stating so with a hope that the authorities realise their responsibility in the matter and coercive measures are avoided against erring officers. We expect the highest in the organisations to look into these aspects to ensure change of attitude and counselling. We are compelled to make these observations after observing indifference for long. Accordingly, we direct the NHAI and the NHIDCL and concerned Central and State Ministries to develop appropriate mechanism for compliance of the law, which may be overseen by the Environmental Regulatory Authorities in the Central Government as well as in the States.***

NOTARY PUBLIC SANDEEP SHARMA REGN. NO. 1186/98 EXP. DT. 02-04-2026 GOVT OF INDIA

10. We further direct that while granting Environmental Clearance, the MoEF&CC must ensure that an effective monitoring mechanism exists to ensure compliance of requisite safeguards including the plantations on the road sides and keeping such roadsides free from encroachments upto specified distance. ***NHAI and NHIDCL must***

give undertaking of responsible level officers to take ownership of maintaining environmental norms instead of taking a plea that it was not their basic responsibility and responsibility was of the contractor.

*11. **We have also perused I.A. No. 363/2020 filed by the Applicant pointing out violations at Highway from Gurugram - Kotputli - Jaipur and several other places including Kundli border, Ambala – Chandigarh Road, Indore, Bhopal, Jaipur. The applicant has also mentioned an order of the Rajasthan High Court. Under RTI, deficiencies have been acknowledged but not remedied. We direct the NHAI/NHIDCL and other authorities to take remedial action. The applicant is at liberty to make a representation to the concerned authorities within one month. This IA will stand disposed of in these terms.***

*12. **As regards the Execution Application, having recorded our disapproval for the attitude of the NHAI and NHIDCL and directed remedial action, we do not feel it necessary to keep the same pending for indefinite period. We expect higher level authorities in the establishments to take remedial action in the light of observations already made. If any grievance survives, the same can be further considered in fresh proceedings. The application will thus stand disposed of.***

3. That, the contents of the Counter Affidavit filed by **Respondent No. 2**, insofar as they deny any violation of the order dated **03.12.2020** passed in **E.A. No. 29/2018 read with I.A. No. 363/2020**, are **false, misleading and hence denied**. The affidavit filed by Respondent No.2, is conspicuously silent about directions issued by Hon'ble Tribunal as stated in para 2 above. While purporting to deny non-compliance, **Respondent No. 2** has, in fact, **admitted the existence of multiple encroachments** on **NH-8 (now NH-48) [annexure A5 - running page no.(s) 79-96]** and parts of **NH-4 (now NH-44)**, as is evident from para no. 6 – 14 of its own submissions. The Counter affidavit is completely silent on huge encroachments on NH-1 (Now NH-44) from **Delhi up to Ambala** despite mandate of removal in judgment and order in case of

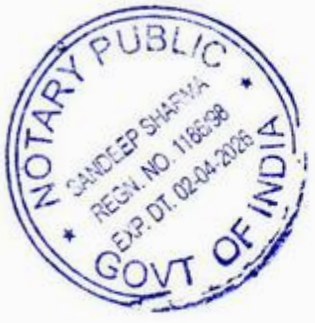
NOTARY PUBLIC * DEEP SHARMA REGN. NO. 1186/98 EXP. DT. 02-04-2026 GOVT OF INDIA

Ahuja Vaishno Dhaba No. 1 v/s State of Haryana and others [2003 SCC Online P&H 557], with 25 writ petitions. The relevant text of the judgment is reproduced as under: -

> ***Learned counsel for the parties are agreed that common questions of fact and law arise for determination in 25 writ petitions, namely, CWP Nos. 1996, 2252, 2261, 2266, 2290, 2294, 2298, 2305, 2332, 2334, 2336, 2348, 2349, 2357, 2358, 2463, 3050, 3334, 4724, 4477, 4635, 4653, 4654, 4666 and 4723 of 2003. At the option of the learned counsel for the petitioner, arguments have been advanced on the basis of pleadings in CWP No. 2294 of 2003. Accordingly, in the instant order, facts have been taken from the pleadings in CWP No. 2294 of 2003.***
>
> *26. In view of the submissions made by the learned counsel for the petitioner, there can be no doubt that violations under the provisions of the* ***Restriction of Unregulated Development Act, 1963, at the hands of the governmental agencies and at the hands of the private individuals stand on the same pedestal****. In view of the decision rendered in Gurdial Shyamlal Pvt. Ltd. case (supra) constructions made unauthorisedly are liable to be dealt with in terms of the mandate of the provisions of the* ***Restriction of Unregulated Development Act, 1963,*** *irrespective of the fact whether they have been made by private individuals or by governmental agencies. Necessary directions have already been issued to the executive in Gurdial Shyamlal Pvt. Limited case (supra). We find no justification in issuing fresh directions in the matter, primarily because the petition does not disclose the express violations committed (by those against whom allegations have been levelled) so as to be dealt with under the provisions of the* ***Restriction of Unregulated Development Act, 1963.*** *In view of the observations made in Gurdial Shyamlal Pvt. Limited case (supra), we have no doubt that the agencies concerned will initiate action against the parties in respect of which reference has been made, in case it is found that their acts of omission and commission violate the mandatory provisions of the* ***Restriction of Unregulated Development Act, 1963.***
>
> *27. The pointed issue raised on behalf of the petitioner, however, is that the impugned orders passed against the petitioner be set aside on account of the fact that no action has been taken against others who have allegedly committed similar violations as the*

petitioner. This issue was also examined by this Court in Gurdial Shyamlal Pvt. Ltd. case (supra), wherein it was held as under:—

> *"The second contention of the learned counsel which is founded on the plea of discrimination is also without substance. No doubt the petitioner has given the names of certain factories in para 17 and has alleged that no action has been taken by the department for demolition of the unauthorised construction raised by these factories and there is only a bald denial that no construction is allowed within 30 meters of the either side of the scheduled roads, we are of the considered opinion that even if the petitioner is right in making a statement that the alleged constructions made by others have not been demolished, no relief can be given to him by issuing a writ of mandamus. The petitioner can seek issue of a writ of mandamus the effect of which would be perpetuation of violation of law because it is a well settled principle of law that jurisdiction under Article 226 cannot be exercised by the Court for passing an order which would result in violation of law. Writs are issued by the High Court for enforcement of legal and fundamental rights and not for permission to the petitioner to commit or to continue to commit violation of law nor can the Court directly or indirectly abet breach of the provisions of the law. The present one is a case in which the petitioner has indulged in blatant misuse of the liberty given to him by the authorities to set up a factory. It started unauthorised construction even before it was given permission for change in the land use. Not only this, it did not remove the construction even after the Commissioner passed an order which was largely favourable to it. It continued to enjoy the unauthorised construction for a period of almost three years before filing the writ petition. In our opinion, a person having such conduct does not deserve any indulgence by the Court in exercise of its equitable jurisdiction under Article 226 of the Constitution of India. We would emphasise that issue of a writ in such like matter would encourage those people who indulge in violation of law. This would also encourage people in raising unauthorised construction of buildings etc. and then approach the Court for protection of their unauthorised construction. We cannot ignore the fact that unauthorised constructions raised on the sides of*



the National Highways cause great injury to the public interest and every attempt made by individuals to take law into their own hands deserves to be discouraged."

28. We are in absolute agreement with the view expressed by this Court as has been extracted above. In view of the above, we find no merit in the claim of the petitioner on the basis of the plea of discrimination.

46. There is no doubt in our mind that development plans under Section 5 of the ***Restriction of Unregulated Development Act, 1963,*** *are prepared to prevent* ***haphazard and sub-standard development along the scheduled roads and "controlled area" in the State of Haryana. That being the mandate of the Restriction of Unregulated Development Act, 1963, we have no hesitation in affirming the aforesaid proposition****. The converse is, however, not acceptable. It is not possible for us to accept that till development plans are finalised under the provisions of the Restriction of Unregulated Development Act, 1963, it is open to individuals to create access to scheduled roads or to effect erection or re-erection within the prohibited zone along the scheduled roads, or to erect or re-erect buildings within the "controlled area", or to change land use within a "controlled area" till the finalisation of development plans envisaged under Section 5 of the Restriction of Unregulated Development Act, 1963.* ***Sections 3 to 7 of the Restriction of Unregulated Development Act, 1963, in our view, impose restrictions in respect of erection or re-erection of buildings in the vicinity of scheduled road and/or in respect of access to a scheduled road, with effect from the date of enforcement of the Restriction of Unregulated Development Act, 1963, itself. Whereas, the restrictions imposed under sections 6 and 7 of the Restriction of Unregulated Development Act, 1963, in respect of erection or re-erection of buildings in "controlled area", as well as the change of land use, are enforceable with effect from the date an area is notified as a "controlled area" under section 4(1) of the Restriction of Unregulated Development Act, 1963. Any other interpretation, in our view, would defeat the very object and purpose of the Act.***

49. The first allegation against the petitioner is that the petitioner had laid out a means of access to the G.T. Road (which undisputedly is a scheduled road in terms of Restriction of

Unregulated Development Act, 1963). It is the case of the petitioner that the petitioner purchased the land in question through a registered sale deed dated 30.10.1986 i.e. on a date subsequent to the date of enforcement of the Restriction of Unregulated Development Act, 1963, inasmuch as, the aforesaid Act received the assent of the President of India on 22.11.1963 and was published in the Punjab Government Gazette (Extraordinary), Legislative Supplement, on 30.11.1963. While interpreting Section 3, we have arrived at the conclusion that the effective date of enforcement of the restrictions envisaged therein, is the date of the enforcement of the Restriction of Unregulated Development Act, 1963, itself. ***In our view, therefore, there is a complete prohibition to erect or re-erect any building or to create means of access to a scheduled road except in the eventualities envisaged by the proviso under Section 3 of the Restriction of Unregulated Development Act, 1963. The petitioner has admittedly constructed a "dhaba" alongside the G.T. Road. It is obvious that the aforesaid "dhaba" is used by those travelling on the G.T. Road. A "dhaba" can only be functional if travellers stop for meals, snacks or drinks. The running of the "dhaba" by the petitioner, on the land adjacent to G.T. road creates access to a scheduled road. A part of the construction effected by the petitioner as per the site plan appended to the show cause noticed dated 8.7.2002, is within 30 meters of the G.T. Road. There is no material on the record of the pleadings to controvert the aforesaid factual position. Construction within 30 meters of a scheduled road is expressly barred under Section 3 of the Restriction of Unregulated Development Act, 1963. The construction effected by the petitioner has not been shown to fall within the exceptions postulated by the proviso under section 3 of the Restriction of Unregulated Development Act, 1963. We are, therefore, satisfied that the petitioner in constructing the "Dhaba" violated the provisions of Section 3 of the Restriction of Unregulated Development Act, 1963, not only on account of having made an access to a scheduled road but also on account of the fact that a part of the said construction is within 30 metres of the scheduled road.***

50. ***The second allegation against the petitioner is that the construction raised by the petitioner within the "controlled area" was unauthorised as it had been made without the previous permission of the Director, Town and Country***

Planning Department, Haryana, under Section 6 of the Restriction of Unregulated Development Act, 1963. The fact that the "dhaba" has been constructed by the petitioner in an area notified as "controlled area" under Section 4(1) of the Restriction of Unregulated Development Act, 1963, has not been disputed. It is also not a matter of dispute that the area where the petitioner has effected construction was notified as "controlled area" under section 4(1) of the Restriction of Unregulated Development Act, 1963, on 9.10.1986. In view of the fact that the petitioner purchased the land in question by a registered sale deed on 30.10.1986, it is obvious that he constructed the "dhaba" after the date of notification of the land in question as "controlled area" under section 4(1) of the Restriction of Unregulated Development Act, 1963. It is not disputed by the petitioner that permission was not obtained by the petitioner from the Director, Town and Country Planning Department, Haryana, before he constructed the "dhaba" in question. According to the learned counsel for the petitioner, a development plan in respect of the land in question was published on 26.5.1973, wherein the area in question was shown as reserved for raising a green belt. It is, therefore, obvious that even if an application had been filed by the petitioner under Section 8 of the Restriction of Unregulated Development Act, 1963, to the Director, Town and Country Planning Department, Haryana he could not have been granted permission to construct the "dhaba" in question. The unambiguous mandate of Section, 6 of the Restriction of Unregulated Development Act, 1963, authorises the Director to grant permission to a person to erect or re-erect any building "…. in accordance with the plans and the restrictions and conditions referred to in Section 5……" It is, therefore, not possible for us to arrive at the conclusion that the construction effected by the petitioner can be saved in view of the clear mandate of Section 6 of the Restriction of Unregulated Development Act, 1963, even if the petitioner is agreeable to pay compounding charges. For the aforesaid reasons, we are of the view that by constructing the "dhaba" in question the petitioner has violated the provisions of Section 6 of the Restriction of Unregulated Development Act, 1963, not only an account of having made an access to a scheduled road but also on account of the fact that a part of the said construction is within 30 meters of a scheduled road.

51. The third allegation levelled against the petitioner is for having changed the land use despite the prohibition envisaged under section 7 of the Restriction of Unregulated Development Act, 1963. While interpreting Section 7 of the Restriction of Unregulated Development Act, 1963, we have already concluded that the prohibition envisaged therein commences from the date an area is declared as "controlled area". Undoubtedly, the area under reference was declared as a "controlled area" on 9.10.1986. Prior to the aforesaid date, the land purchased by the petitioner was agricultural land. By construction of a "dhaba" on the land in question the petitioner has altered the use of the land from agricultural to commercial. There is no doubt that the aforesaid change of land use by the petitioner has not been authorised by the Government. Thus viewed, it is inevitable to conclude that the petitioner has violated the provisions of Section 7 of the Restriction of Unregulated Development Act, 1963.

52. In view of the above, we hereby uphold the conclusions drawn by the District Town Planner, Sonepat, exercising the powers vested in him by the Director, Town and Country Planning Department, Haryana, in his order dated 23.7.2002; as well as the order passed by the Tribunal, dated 6.1.2003.

A copy of the judgment is annexed herewith as **Annexure A1.**

4. That a conjoint reading of the Counter Affidavits filed by Respondent Nos. 1, 2, 7 and 10 reveals a disturbing pattern wherein compliance with the orders of this Hon'ble Tribunal is projected as having been achieved on paper, while effective and verifiable implementation on the ground remains conspicuously absent. This is evident from the inconsistencies and admissions contained in the Counter Affidavits filed by Respondent No.2 and Respondent No. 10 itself, which fail to demonstrate actual compliance with the directions issued by this Hon'ble Tribunal even after lapse of six years. The said Counters neither disclose credible supporting material nor place on record verifiable evidence to establish substantive compliance.

NOTARY PUBLIC SANDEEP SHARMA REGN. NO. 1186/98 EXP. DT. 02-04-2026 GOVT OF INDIA

5. It is further submitted that Respondent No. 3, being the Nodal Ministry entrusted with overall policy oversight and coordination, has not even chosen to file a Counter Affidavit, thereby leaving serious gaps in accountability and supervision. Such non-response, coupled with paper-based assertions of compliance by the other Respondents, undermines the authority of the orders passed by this Hon'ble Tribunal and defeats their environmental and public-interest objective.

6. Further, in view of settled legal position and specific admission by Respondent No. 2 in having acquired varying RoW up to 60 mtr as admitted in **para 3 of MoU dated 8th July 2021 (at running page no. 284 and 285) signed with Haryana Forest Department** and **para 2 of the MoU dated 27th October 2021 (at page no. 289) signed with Forest Department, State Govt of Punjab,** for future expansion and for development of green belt, no construction whatso ever could have been allowed to come up both on **NH-44 (earlier NH-1) and NH-48 (earlier NH-8)**. It appears **Respondent No.2,** as mandated by **Respondent No. 3** charges fee for granting permission for construction of access and exit to and from Fuel Stations, Wayside amenities, Private Properties, Rest Area Complexes, connecting roads & such other facilities.

7. It is respectfully submitted that reliance cannot be placed on **unsigned tabular statement**, unsupported by any contemporaneous records, statutory approvals, site inspection reports or **geotagged photographs**, and therefore, the Counter filed is wholly untenable and liable to be rejected. The Hon'ble Tribunal may kindly be pleased to refer to status of annexures filed by Respondent No. 2 detailed in the table herein below:-

NOTARY PUBLIC SANDEEP SHARMA REGN. NO. 1186/98 EXP. DT. 02-04-2026 GOVT OF INDIA

Annexure No.	Page No(s)	Remarks
R-2/1 (Colly)	241 -242	No location and non-geotagged, no highlight of date and time.
R - 2/2	243	Unsigned and without supporting documents
R - 2/3 (Colly)	244 - 253	Only 5 notices served out of 479 encroachments admitted
R – 2/4	254	Unsigned without supporting documents
R - 2/5	255	Unsigned without supporting documents
R – 2/6 (Colly)	256-259	Letter written to Deputy Commissioners Gurugram and Rewari with copies marked Commissioner Police Gurugram, DCP (Traffic) and to jurisdictional SDMs only **for removal of illegal cuts and not encroachments.**
R – 2/7 (Colly)	260- 271	No location and non-geotagged
R – 2/8 (Colly)	272	No location and non-geotagged photos.
R - 2/9	273	Unsigned without supporting documents.
R – 2/10	274	Unsigned without supporting documents.

NOTARY PUBLIC * SANDEEP SHARMA * REGN. NO. 1186/98 EXP. DT. 02-04-2026 GOVT OF INDIA

R – 2/11	275	Unsigned without supporting documents.
R – 2/12 (Colly)	276 – 283	Only 6 photos geo-tagged and balance photos non geotagged photo of Nuh – middle verge, photos on page 279 show ornamental plantation, photos on page 281 – 283 shows ground reality of sparse plantation in median.
R – 2/13	284-286	MoU dated 07.07.2021 with Forest Department Haryana without any evidence of plantation
R – 2/14	289 - 292	MoU dated 27.10.2021 with Forest Department Punjab without any evidence of plantation.
R – 2/15	293 - 294	Security Deposit for compensatory plantation with Respondent No. 10 – however, Respondent No. 10 is unaware of not only plantation but also location of plantation – which has not been disclosed till date.
R – 2/16 (Colly)	295 - 296	Letter from R-10 highlighting non satisfactory plantation

NOTARY PUBLIC SANDEEP SHARMA REGN. NO. 1186/98 EXP. DT. 02-04-2026 GOVT OF INDIA

		survival and forfeiture of security deposit.

8. That, the Counter Affidavit of **Respondent No. 2** is further **contradicted by the material already placed on record by Respondent No. 10**, in **paras 5 to 11 of its Status Report [at running pages 159 to 162]** which clearly demonstrates serious anomalies related to claims made by **Respondent No.2. Respondent No. 2** has deliberately failed to disclose the **exact locations, survival status and geo-coordinates** of the alleged plantation of **90,350 saplings** claimed to have been planted in lieu of trees felled, as well as **4,000 saplings purportedly planted in lieu of 400 missing trees**, thereby rendering the claim of compliance illusory and unverifiable.

9. That the Applicant is placing on record a newspaper clipping dated **16 January 2026**, published in *The Hindustan Times*, which exposes serious and glaring discrepancies between the number of saplings claimed to have been planted and the saplings actually found on site under compensatory afforestation schemes undertaken for **Urban Extension Road-II (UER-II)** and the **Dwarka Expressway**. As per the said report, against **64,080 saplings** required to be planted in lieu of trees permitted to be felled for UER-II, only **24,887 saplings** were found at site. Similarly, against **1,53,990 saplings** required to be planted for the Dwarka Expressway project— which was the subject matter of **O.A. No. 703/2019**—less than **50%** of the claimed plantation was found to exist. The report further does not disclose the **actual number of saplings planted**, nor does it provide any data regarding the **survival rate**, which is a mandatory component of compensatory afforestation. These facts clearly demonstrate that the true extent of plantation remains unknown

NOTARY PUBLIC SANDEEP SHARMA REGN. NO. 11869/98 EXP. DT. 02-04-2026 GOVT OF INDIA

and unverified. It is, therefore, shocking and deeply disturbing that despite the lapse of more than **six years**, the directions issued by this Hon'ble Tribunal vide **order dated 03.01.2020 in O.A. No. 703/2019** remain substantially **unimplemented**, thereby defeating the very object of compensatory afforestation and causing continuing environmental loss to the affected region. A scanned copy of the newspaper clipping is annexed herewith as **Annexure - A2.**

10. That, as admitted by **Respondent No. 10** in its counter affidavit and now supported by New Paper Clipping, due to the continued non-implementation of the order dated **03.01.2020 passed in O.A. No. 703/2019,** the residents of the National Capital Region have been deprived of the ecological and public-health benefits of more than one lakh trees, which ought to have been planted and established during the last six years. Had the directions been implemented in time, these trees would by now have attained substantial growth and contributed meaningfully to air-quality mitigation, carbon sequestration, dust suppression, micro-climate regulation, and improvement of ambient environmental conditions in the capital city. The failure to implement the Tribunal's directions has thus resulted in continuing and compounding environmental injury to the citizens.

NOTARY PUBLIC
DEEP SHARMA
REGN. NO. 1186/98
EXP. DT. 02-04-2026
GOVT OF INDIA

11. That the averments made by **Respondent No. 2** attributing responsibility to the concessionaire, State Authorities and PWD are inconsistent with the facts already placed on record, particularly **paragraph 9** of the counter affidavit filed by **Respondent No. 8 (at running page no. 312).** The counter affidavit of **Respondent No. 2** does not disclose any reasons for non-removal of encroachments on land earmarked for mandatory green cover, both on **NH 44 and NH 48 (running pages 285 and 289)**

notwithstanding the delegation of authority by **Respondent No. 8 as stated in para 9 of the reply filed [page no.312].**

Applicant seeks liberty of this Hon'ble Tribunal to place on record a video recording evidencing **encroachments on RoW on NH-44 – from Delhi to Ambala and from Ambala to Chandigarh** before the next date of hearing.

12. The inaction on part of Respondent No.2 stands demonstrated from reply furnished by **PIU, Sohna** of **Respondent No.2** regarding encroachments on **Delhi Mumbai Expressway** whereby responsibility for removal of encroachments from both sides from **Delhi to Dausa** and vice versa has been passed on to the concessionaire and State authorities, **which is in violation to Order dated 03-12-2020 in EA 29/2018**. A copy of the **reply dated 31-01-2015 provided by PIU, Sohna**, is annexed herewith as **Annexure-A3**.

13. That, failure to comply with the binding directions of this Hon'ble Tribunal has resulted in continued environmental harm arising from non-maintenance and protection of green belts and plantation obligations along National Highways and Expressways. The present case therefore squarely attracts the remedial and restitutive jurisdiction of this Hon'ble Tribunal under **Section 15 of the National Green Tribunal Act, 2010**, warranting directions for environmental restoration, independent verification of compliance, and imposition of environmental compensation for continuing damage.

14. That, in adjudicating environmental disputes, this Hon'ble Tribunal is mandated under **Section 20 of the National Green Tribunal Act, 2010** to apply the principles of sustainable development, the precautionary

NOTARY PUBLIC ★ DEEP SHARMA ★ REGN. NO. 1186/08 ★ EXP. DT. 02-04-2026 ★ GOVT OF INDIA

principle and the "polluter pay principle". Permitting Respondent No.1 to evade accountability by disowning enforcement responsibility would defeat these statutory principles and reduce binding environmental safeguards and prior judicial directions to mere formalities.

15. That, continued non-compliance with the Tribunal's earlier order, coupled with absence of transparency and enforcement, undermines the rule of law in environmental governance and warrants immediate corrective, compensatory and monitoring directions by this Hon'ble Tribunal.

PARAWISE REPLY

1. Contents of para 1 do not merit any response from the Applicant.
2. The contents of para 2 are vehemently denied being contrary to the facts admitted by Respondent No. 2 in para 7 to 12 of its Reply **[running page no.(s) 231 and 233].**
3. The contents of para 3 are denied in view of rampant encroachments on all highways and reply dated 31-01-2015 provided by PIU of Respondent No.2.
4. The contents of para 4 as stated are denied in view of para 2 above.
5. That the contents of the paras 5 to 30 of Counter Affidavit filed by Respondent No. 2 are false, misleading, and denied, being unsupported by any signed, authenticated, or verifiable material. The filing of unsigned tables and non-geo-tagged photographs reflects complete non-compliance with the directions of this Hon'ble Tribunal and defeats the purpose of environmental adjudication based on scientific and verifiable evidence.

NOTARY PUBLIC SANDEEP SHARMA REGN. NO. 1186398 EXP. DT. 02-04-2026 GOVT OF INDIA

6. Respondent No. 2 may therefore be directed to file a proper affidavit supported by authenticated duly signed documents and geo-tagged photographs, failing which the Counter Affidavit deserves to be rejected.

PRAYER

Therefore, it is respectfully submitted that **Respondent No. 2** may be directed by Hon'ble Tribunal to place on record the following: -

(a) to place on record duly signed and authenticated documents, supported by credible and verifiable evidence, including geo-tagged photographs, to demonstrate actual compliance with the directions issued by this Hon'ble Tribunal in its order dated 03.12.2020, failing which the alleged compliance claimed by Respondent No. 2 be rejected and appropriate adverse inference be drawn against them.

(b) **to place on record complete, verifiable, and site-specific details of the plantation carried out**, including the identification and location of the land bank, area-wise break-up, survival status, and geo-tagged photographic evidence in respect of the plantation of 90,350 saplings and 4,000 trees, **in view of disclosures made by Respondent No. 10 in its reply.**

(c) **to place on record a complete and comprehensive list of all permissions granted to it for felling of trees in the NCR–Delhi region**, including permission-wise details of the number of trees, species, location, date of permission, and authority granting such permission in view of notices for forfeiture of security by issued by **Respondent No.10 to Respondent No.2**, filed by it.

NOTARY PUBLIC SANDEEP Sharma REGN. NO. 11661/98 EXP. DT. 02-04-2026 GOVT OF INDIA

(d) **to** disclose the present status of compensatory plantation undertaken pursuant to each such permission, including area-wise and permission-wise details of plantation, land bank identification, number of saplings/trees planted, survival status, and maintenance arrangements, in view of notices served by **Respondent No.10**, filed by **Respondent No.2** in its reply.

(e) to place on record all the tabulated statements duly signed and authenticated documents, credible and verifiable evidence, and geo-tagged photographs/maps clearly indicating the exact locations of the compensatory plantations**, including date and time of capture**.

(f) to place on record the list of Eateries, Dhabas, Hotels, motels, retail shops, petrol pumps and service stations that have come up on RoW acquired for future expansion and green belt of NH-44 and NH 48 as per MoU with Forest Departments of State Govt of Haryana and State Govt of Punjab.

(g) to place on record the list of permissions access and exit granted by it to various Dhabas, Hotels, motels, retail shops, petrol pumps and service stations on NH-44 and NH-48 and the amount charged from each.

(h) In the event of failure to place such material on record, reject the claims of compliance made by Respondent No. 2 and draw an adverse inference against them for non-compliance and suppression of material facts.

(i) Pass such other and further orders as this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case.

NOTARY PUBLIC SANDEEP SHARMA REGN. NO. 1186/68 EXP. DT. 02-04-2026 GOVT OF INDIA

16. Applicant seeks liberty of this Hon'ble Tribunal to submit a detailed response, once Respondent No.1 places on record the detailed affidavit containing aforesaid information.

DEPONENT

VERIFICATION

Verified at New Delhi on this 15th day of January 2026 that the contents of the above affidavit are true and correct to the best of my knowledge and belief and no part of it is false and nothing material has been concealed therefrom.

Date: 15.01.2026

Place: New Delhi

DEPONENT

NOTARY PUBLIC
SANDEEP SHARMA
REGN. NO. 1186/98
EXP. DT. 02-04-2026
GOVT OF INDIA

IDENTIFIED BY

ATTESTED
NOTARY PUBLIC
DELHI (INDIA)
15 JAN 2026

2003 SCC OnLine P&H 557 : (2003) 2 RCR (Civil) 598 (DB) : (2003) 3 ICC 126 (DB) : (2004) 2 RCR (Civil) 152

Punjab and Haryana High Court

(BEFORE J.S. KHEHAR AND SATISH KUMAR MITTAL, JJ.)

Ahuja Vaishno Dhaba No. 1 ... Petitioner;

Versus

State of Haryana and others ... Respondents.

Civil Writ Petition No. 2294 of 2003

Decided on April 25, 2003

The Judgment of the Court was delivered by

J.S. KHEHAR, J.:— Learned counsel for the parties are agreed that common questions of fact and law arise for determination in 25 writ petitions, namely, CWP Nos. 1996, 2252, 2261, 2266, 2290, 2294, 2298, 2305, 2332, 2334, 2336, 2348, 2349, 2357, 2358, 2463, 3050, 3334, 4724, 4477, 4635, 4653, 4654, 4666 and 4723 of 2003. At the option of the learned counsel for the petitioner, arguments have been advanced on the basis of pleadings in CWP No. 2294 of 2003. Accordingly, in the instant order, facts have been taken from the pleadings in CWP No. 2294 of 2003.

2. The proprietor of the petitioner-Ahuja Vaishno Dhaba No. 1 Krishan Lal, purchased land comprised in Killa No. 172/79/1(2-17), 10/1 (1-8) in the revenue estate of village Murthal, Tehsil Sonepat, adjoining the G.T. road, through a registered sale deed dated 30.10.1986. It is the case of the petitioner that he constructed a building thereon for using it as a “dhaba” itself. It is further the case of the petitioner that the building constructed over the land in question is exclusively owned by the petitioner and as such no part of the building can be described as an encroachment on Government land.

3. On 8.7.2002, the District Town Planner, Sonepat, exercising the powers of the Director, Town and Country Planning, Haryana, issued a show cause notice to the petitioner under section 12(2) of the Punjab Scheduled Roads and Controlled Areas Restriction of Unregulated Development Act, 1963. (hereinafter referred to as ‘the Restriction of Unregulated Development Act, 1963’). Section 12 mentioned above is

being extracted hereunder:—

"12. *Offences and penalties*— (1) Any person who:—

(a) erects and re-erects any building or makes or extends any excavation or lays out any means of access to a road in contravention of the provisions of Section 3 or Sections 6 or in contravention of any conditions imposed by an order under Section 8 or Section 10, or

(b) uses any land in contravention of the provision of sub-section (1) of Section 7 or Section 10, shall be punishable with imprisonment of either description

Page: 600

for a term which may extend to three years and shall also be liable to fine which may extend to fifty thousand rupees but not less than ten thousand rupees and, in the case of a continuing contravention, with a further fine which may extend to one thousand rupees for every day after the date of the first conviction during which he is proved to have persisted in the contravention.

(2) Without prejudice to the provisions of sub-section (1), the Director may, by notice, served by post and if a person avoids service, or is not available for service of notice, or refuses to accept service, then by affixing a copy of it on the outer door or some other conspicuous part of such premises, or in such other manner as may be prescribed, call upon any person who has committed a breach of the provisions referred to in the said sub-section to stop further construction and to appear and show cause why he should not be ordered to restore to its original state or to bring it in conformity with the provisions of the Act or the rules, as the case may be, any building or land in respect of which a contravention such as described in the said sub-section has been committed and if such person fails to show cause to the satisfaction of the Director within a period of seven days, the Director may pass an order requiring him to restore such land or building to its original state or to bring it in conformity with the provisions of the Act or the rules, as the case may be, within a further period of seven days.

(3) If the order made under sub-section (2) is not carried out, within the specified period, the Director may himself at the expiry of the period of this order, take such measures as may appear necessary to give effect to the order and the cost of such measures shall, if not paid on demand being made to him, be recoverable from such persons as arrears of land revenue:

Provided that even before the expiry of seven days period mentioned in the order under sub-section (2), if the Director is satisfied that instead of stopping the erection or re-erection of the building or making or extending of the excavation or laying out of the means of access to a road, as the case may be, the person continues with the contravention, the Director may himself take such measures as may appear necessary to give effect to the order and the cost of such measures, shall, if not paid on demand being made to him, be recoverable from such person as arrears of land revenue."

4. A persual of the show-cause notice read with the written statement filed by the respondents reveals that the petitioner was being accused of having violated three provisions of the Restriction of Unregulated Development Act, 1963. Firstly, it was alleged that the petitioner had laid out a means of access to the G.T. Road (which undisputedly is a scheduled road in terms of the Restriction of Unregulated Development Act, 1963). The aforesaid action on the part of the petitioner was allegedly in violation of Section 3 of the Restriction of Unregulated Development Act, 1963. Section 3, mentioned above, is being reproduced hereunder:—

"3. *Prohibition to erect or re-erect building along scheduled roads*: — No person shall erect or re-erect any building or make or extend any excavation or lay out by means of access to a road within one hundred meters of either side of the road reservation of a bye-pass or within thirty meters on either side of the road reservation of any scheduled road not being bye-pass:

Provided that nothing in this section shall apply to:—

(a) the repair to a building which was in existence immediately before the commencement of this Act or any erection or re-erection of such a building which does not involve any structural alteration or addition therein; or

(b) the erection or re-erection of a building, which was in existence immediately before the commencement of this Act and which involves any structural alteration or addition with the permission of the Director; or

(c) the laying out of any means of access to a road with the permission of the Director; or

(d) the erection or re-erection of a mortar-fuel-filling (motor-fuel-filling?) station or a bus-queue-shelter with the permission of the Director; or

(e) "the public utility buildings" and "community assets" which were in existence immediately before the commencement of the Punjab Scheduled Roads and Controlled Areas

Restriction of Unregulated Development (Haryana Second Amendment and Validation) Act, 1996.

Explanation:— (1) "Public utility buildings" means buildings belonging to Government, Government Controlled Organisations, Local Bodies, Voluntary Organisations and individuals which are being used for the benefit of public at large without profit motive; and

(2) "Community assets" means assets belonging to Government, Government Controlled Organisations, Local Bodies, Voluntary Organisations and individuals which are created for the beneficial use of public at large without profit motive."

5. Secondly, it was alleged in the show-cause notice, that the construction effected the petitioner had been made in an area which had been notified as a "controlled area" under Section 4 of the Restriction of Unregulated Development Act, 1963, without the previous permission of the Director, Town and Country Planning, Haryana, and as such the construction (which is admittedly not for agricultural purposes subservient to agriculture) was in violation of Section 6 of the Restriction of Unregulated Development Act, 1963. Section 6 mentioned above is being extracted hereunder:—

"6. *Erection or re-erection of building etc. in controlled*

areas:— Except as provided hereinafter, no person shall erect or re-erect any building or make or extend any excavation or lay out any means of access to a road in a controlled area save in accordance with the plans and the restrictions and conditions referred to in section 5 and with the previous permission of the Director:

Provided that no such permission shall be necessary for erection or re-erection of any building if such building is used or is to be used for agricultural purpose or purpose subservient to agriculture."

6. Thirdly, it was alleged in the show-cause notice, that the land owned by the petitioner was being used for a purpose other than the purposes for which it was being used at the time of issuance of the notification under section 4(1) of the Restriction of Unregulated Development Act, 1963. In this behalf, it was pointed out that the petitioner had not obtained any licence from the Director, Town and Country Planning, Haryana, prior to effecting the change of land use. As such it was alleged that the petitioner had violated the provisions of Section 7 of the Restriction of Unregulated Development Act, 1963.

Section 7 mentioned above is being extracted hereunder:—

> "*7. Prohibition on use of land in controlled areas*:— (1) No land within the controlled area shall, except with the permission of the Director, and on payment of such conversion charges as may be prescribed by the Government from time to time be used for purposes other than those for which it was used on the date of publication of the notification under sub-section (1) of Section 4, and no land within such controlled area shall be used for the purposes of a charcoal-kiln, lime-kiln, brickkiln or bricks field or for quarrying stone, bajri, surkhi, kankar or for other similar extractive or ancillary operation except under and in accordance with the conditions of a licence from the Director on payment of such fees and under such conditions as may be prescribed.
>
> (IA) Local authorities, firms and undertakings of Government, colonisers and persons exempted from obtaining a licence under the Haryana Development and Regulation of Urban Areas Act, 1975, and authorities involved in land development will also be liable to pay conversion charges but they shall be exempt from making an application under section 8 of this Act.
>
> (2) The renewal of such licences may be made after three years on payment of such fees as may be prescribed."

7. The petitioner submitted a detailed written response dated 16.7.2002 to the show cause notice dated 8.7.2002. A perusal of the written response reveals that the petitioner alleged that no valid notification had been issued under Section 4 of Restriction of Unregulated Development Act, 1963, declaring the land owned by the petitioner (fully described above) as "controlled area". It was, therefore, asserted that the construction made by the petitioner over the land owned by him, could not be considered to have been effected, in violation of the provisions of the Restriction of Unregulated Development Act, 1963. In order to assail the validity of the notification under section 4 of the Restriction of Unregulated Development Act, 1963, the preliminary contention advanced (in the reply to the show cause notice submitted by the petitioner) was that the notification issued under section 4 dated 9.10.1986 having not been published in at least two newspapers printed in a language other than English (as per the mandate of Section 4(2) of the Restriction of Unregulated Development Act, 1963), could not be treated as valid. It was also contended that the construction of "dhaba" by the petitioner on the land owned by him was beyond 30 metres of the G.T. road and as such the construction effected by the petitionr was not in violation of any of the provisions of the Restriction of Unregulated Development Act, 1963. It was also emphatically submitted that there were several Government buildings like Food Corporation of India godowns, Electricity Grid

Stations, Sports School at Rai, as well as a number of other Government offices situated in close proximity to the petitioner's “dhaba”, but no action had been taken in respect of the said buildings. In continuation of the aforesaid plea, it was alleged that two factories, namely, Gyatri Motor Station and another service station are also located in the vicinity of the “dhaba”, where the owners had effected construction in the same manner as the petitioner, but no action had been taken against them. On the basis of the aforesaid facts, it was alleged that the petitioner was being unfairly discriminated against. Last of all, in the reply to the show-cause notice, it was asserted that the petitioner was willing to deposit conversion charges for compounding the alleged violations committed by the petitioner, in terms of the provisions of Section 7 of the Restriction of Unregulated Development Act, 1963.

8. The District Town Planner, Sonepat, exercising powers of the Director, Town and Country Planning Department, Haryana, having found the reply submitted by the petitioner unsatisfactory, by an order dated 23.7.2002, called upon the petitioner to restore the building/land to its original state, so as to bring it in conformity with the provisions of the Restriction of Unregulated Development Act, 1963, and the Punjab Scheduled Roads and Controlled Area Restriction of Unregulated Development Rules, 1965 (hereinafter referred to as ‘the Restriction of Unregulated Development Rules, 1965’), within 7 days.

9. Dissatisfied by the order passed by the District Town Planner, Sonepat, exercising the powers of the Director, Town and Country Planning Department, Haryana dated 23.7.2002, the petitioner preferred an appeal under section 12C of the Restriction of Unregulated Development Act, 1963, to the Tribunal constituted under the aforesaid Act, (hereinafter referred to as ‘the Tribunal). The Tribunal, after the receipt

of a written response from the respondents, dismissed the appeal preferred by the petitioner, by an order dated 6.1.2003. The petitioner has challenged the order dated 23.7.2002, passed by District Town Planner, Sonepat, in exercise of powers vested in him by the Director, Town and Country Planning Department, Haryana, as well as the order passed by the Tribunal dated 6.1.2003 through the instant writ petition.

10. Learned counsel for the petitioner, before advancing detailed submissions, summarised his contentions as under:—

i) The action of the authorities is in violation of the principles of natural justice, and as such deserves to be annulled.

ii) The action of the authorities is discriminatory, and as such is liable to be set aside.

iii) The action of the "respondents cannot stand the scrutiny of law because the authorities had acted in colourable exercise of powers.

iv) The validity of the order passed by the Tribunal was also challenged on account of the fact that it had been passed by the Chairman himself without associating the other member of the Tribunal.

v) On account of the fact that the construction effected by the petitioner was prior to the prepara-tion/finalisation of the development plans under section 5 of the Restriction of Unregulated Development Act, 1963, it is submitted that the petitioner had not violated any provisions of the aforesaid Act.

vi) Prior permission for effecting construction from the Director, Town and Country Planning Department, was not required in view of the fact that no final plan had been published under Section 5 of the Restriction of Unregulated Development Act, 1963.

11. The first contention of the learned counsel for the petitioner is that an order having adverse civil consequences has been passed against the petitioner without following the rules of natural justice. In this behalf, it is submitted that the petitioner attended the office of the District Town Planner, Sonepat, on 16.7.2002 (in response to the show cause notice dated 8.7.2002). It is pointed out that the District Town Planner, Sonepat, was not available in his office on the appointed date i.e. 16.7.2002. It is, therefore, concluded that the District Town Planner, Sonepat passed the impugned order dated 23.7.2002 without granting even hearing to the petitioner. It is submitted that an opportunity of hearing is one of the essential ingredients of the rules of natural justice. In view of the violation of the rules of natural justice, learned counsel for the petitioner vehemently contends that the entire action taken by the authorities culminating in the appellate order passed by the Tribunal, is liable to be set aside. It is also the contention of the learned counsel for the petitioner, that the grant of a hearing to the petitioner at the appellate stage, would not cure the defect of denial of personal hearing by the District Town Planner, Sonepat (inresponse to the show cause notice issued to the petitioner under Section 12(2) of the Restriction of Unregulated Development Act, 1963). To press the aforesaid contention, learned counsel for the petitioner placed reliance on the decision rendered by the Apex Court in *state of U.P.* v. *Mohammad Nooh*, AIR 1958 SC 86, wherein the Constitution Bench of the Supreme Court had held as under:—

"If an inferior court or tribunal of first instance acts wholly without jurisdiction or patently in excess of jurisdiction or manifestly conducts the proceedings before it in a manner which is contrary to the rules of natural justice and all accepted rules of procedure and which *offends the superior court's sense of fair play*, the superior court may, quite properly exercise its power to issue the prerogative writ of certiorari to correct the error of court or tribunal of first instance, even if an appeal to another inferior court or tribunal was available and recourse was not had to it or if recourse was had to it, it confirmed what ex facie was a nullity for reasons aforementioned."

12. Learned counsel for the petitioner also placed reliance on the decision rendered by the Apex Court in *Institute of Chartered Accountants of India* v. *L.K. Ratna*, 1986 (4) SCC 537, wherein while deliberating on the issue of natural justice, the Apex Court extracted observations made in the treatise "Administrative Law" (5th edn.) of Sir William Wade, wherein he had opined that the rules of natural justice should be observed at both stages i.e. in the original proceedings as well as at the appellate stage, in the following words:—

"If natural justice is violated at the first stage, the right of appeal is not so much a true right of appeal as a corrected initial hearing; instead of fair trial followed by appeal, the procedure is reduced to unfair trial followed by fair trial."

13. The Apex Court, in the aforesaid judgment, also extracted observations made by Megarry, J. in *Leary* v. *National Union of Vehicle Builders*, 4 (1971) Ch. 34, 49, wherein it was observed as under:—

"If one accepts the contention that a defect of natural justice in the trial body can be cured by the presence of natural justice in the appellate body, this has the result of depriving the member of his right of appeal from the expelling body. If the rules and the law combine to give the member the right to a fair trial and the right of appeal, why should he be told that he ought to be satisfied with an unjust trial and a fair appeal? Even if the appeal is treated and as a hearing de novo, the member if being stripped of his right to appeal to another body from the effective decision to expel him. I cannot think that natural justice is satisfied by a process whereby an unfair trial, though not resulting in a valid expulsion will nevertheless have the effect of depriving the member of his right of appeal when a valid decision to expel him is subsequently made. Such a deprivation would be a

powerful result to be achieved by what in law is a mere nullity; and it is no mere triviality that might be justified on the ground that natural justice does not mean perfect justice. As a general rule, at all events, I hold that a failure of natural justice in the trial body cannot be cured by a sufficiency of natural justice in an appellate body."

14. While drawing its conclusions in *Institute of Chartered Accountants of India* v. *L.K. Ratna's case* (supra) the Supreme Court endorsed the view expressed by Sir William Wade and Megarry, J., extracted above by observing:

> ".....There is manifest need to ensure that there is no breach of fundamental procedure in the original proceeding, and to avoid treating an appeal as an overall substitute for the original proceeding."

15. In the context of the rules of natural justice reliance was also placed by the learned counsel of another decision rendered by the Apex Court in *S.L. Kapoor* v. *Jagmohan*, 1980 (4) SCC 379, wherein the Court observed as under:—

> "In our view the principles of natural justice know of no exclusionary rule dependent on whether it would have made any difference if natural justice had been observed. The non-observance of natural justice is itself prejudice to any man and proof of prejudice independently of proof of denial of natural justice is unnecessary."

16. Again in *State Bank of Patiala* v. *S.K. Sharma*, 1996 (3) SCC 364, while dealing with the subject matter of a departmental enquiry, after noticing a plethora of decisions in respect of the rules of natural justice, the Supreme Court drew its conclusions in paragraph 33. The aforesaid conclusions are being extracted hereunder:—

> "We may summarise the principles emerging from the above discussion. (These are by no means intended to be exhaustive and are evolved keeping in view the context of disciplinary enquiries and order of punishment imposed by an employer upon the employee):
>
> (1) An order passed imposing a punishment on an employee consequent upon disciplinary/departmental enquiry in violation of the rules/regulations/statutory provisions governing such enquiries should not be set aside automatically. The Court or the Tribunal should enquire whether (a) the provision violated is of a substantive nature or (b) whether it is procedural in character.
>
> (2) A substantive provision has normally to be complied with as explained hereinbefore and the theory of substantial compliance or the test of prejudice would not be applicable in such a case.
>
> (3) In the case of violation of procedural provision, the position is

this : procedural provisions are generally meant for affording a reasonable and adequate opportunity to the delinquent officer/employee. They are, generally speaking, conceived in his interest. Violation of any and every procedural provision cannot be said to automatically vitiate the enquiry held or order passed. Except cases falling under - "no notice", "no opportunity", and "no hearing" categories, the complaint of violation of procedural provision should be examined from the point of view of prejudice, viz., whether such violation has prejudiced the delinquent officer/employee in defending himself properly and effectively. If it is found that he has been so prejudiced, appropriate orders have to be made to repair and remedy the prejudice including setting aside the enquiry and/or the order of punishment. If no prejudice is established to have resulted therefrom, it is obvious, no interference is called for. In this connection, it may be remembered that there may be certain procedural provisions which are of a fundamental character, whose violation is by itself proof of prejudice. The Court may not insist on proof of prejudice in such cases. As explained in the body of the judgment, take a case where there is a provision expressly providing that after the evidence of the employer/government is over, the employee shall be given an opportunity to lead defence in his evidence, and in a given case, the enquiry officer does not give that opportunity in spite of the delinquent officer/employee asking for it. The prejudice is self-evident. No proof of prejudice as such need be called for in such a case. To repeat, the test is one of prejudice, i.e., whether the person has received a fair hearing considering all things. Now, this very aspect can also be looked at from the point of view of directory and mandatory provisions, if one is so inclined. The principle stated under (4) here-inbelow is only another way of looking at the same aspect as is dealt with herein and not a different or distinct principle.

(4)(a) In the case of a procedural provision which is not of a mandatory character, the complaint of violation has to be examined from the stand-point of substantial compliance. Be that as it may, the order passed in violation of such a provision can be set aside only where such violation has occasioned prejudice to the delinquent employee.

(b) In the case of violation of a procedural provision, which is of mandatory character, it has to be ascertained whether the provision is conceived in the interest of the person proceeded against or in public interest. If it is found to be former, then it must be seen whether the delinquent officer

has waived the said requirement, either expressly or by his conduct. If he is found to have waived it, then the order of punishment cannot be set aside on the ground of the said violation. If on the other hand, it is found that the delinquent officer/employee has not waived it or that the provision could not be waived by him, then the Court or Tribunal should make appropriate directions (include the setting aside of the order of punishment),

Page: 604

keeping in mind the approach adopted by the Constitution Bench in B. Karunakar. The ultimate test is always the same, viz., test of prejudice or the test of fair hearing, as it may be called.

(5) Where the enquiry is not governed by any rules/regulations/statutory provisions and the only obligation is to observe the principles of natural justice - or, for that matter, wherever such principles are held to be implied by the very nature and impact of the order/action - the Court or the Tribunal should make a distinction between a total violation of natural justice (rule of *audi alteram partem*) and violation of a facet of the said rule, as explained in the body of the judgment. In other words, a distinction must be made between "no opportunity" and no adequate opportunity, i.e., between "no notice"/"no hearing" and "no fair hearing (a) in the case of former, the order passed would undoubtedly be invalid (one may call it 'void' or a nullity if one chooses to). In such cases, normally, liberty will be reserved for the Authority to take proceedings afresh according to law, i.e., in accordance with the said rule (*audi alteram partem*), (b) But in the latter case, the effect of violation (of a facet of the rule of *audi alteram partem*) has to be examined from the stand-point of prejudice; in other words, what the Court or Tribunal has to see is whether in the totality of circumstances, the delinquent officer/employee did or did not have a fair hearing and the orders to be made shall depend upon the answer to the said query. [It is made clear that this principle (No. 5) does not apply in the case of rule against bias, the tests in which behalf are laid down elsewhere.]

(6) While applying the rule of *audi alteram partem* (the primary principle of natural justice) the Court/Tribunal/Authority must always bear in mind the ultimate and overriding objective

underlying the said rule, viz., to ensure a fair hearing and to ensure that there is no failure of justice. It is this objective which should guide them in applying the rule to varying situations that arise before them.

(7) There may be situations where the interests of State or public interest may call for a curtailing of the rule of *audi alteram partem*. In such situations, the Court may have to balance public/State interest with the requirement of natural justice and arrive at an appropriate decision."

17. In view of the law declared by the Supreme Court, we find merit in the contention of the learned counsel for the petitioner, namely, that the grant of personal hearing at the appellate stage would not cure the right to a personal hearing (if necessary as per the mandate of law) at the first stage.

18. Insofar as the aforesaid factual position is concerned, namely, the non-grant of personal hearing to the petitioner before the matter was adjudicated upon by the District Town Planner, Sonepat; it is evident from the written statement filed by the District Town Planner, Sonepat before the Tribunal that he was away to Chandigarh to attend an urgent meeting called by the Director, Town and Country Planning Department, Haryana on 16.7.2002. It is, however, submitted that in place of the District Town Planner, Sonepat, the Assistant Town Planner gave an appropriate opportunity of hearing to the petitioner. It is also pointed out that the written reply submitted by the petitioner to the show-cause notice was duly taken into consideration when the District Town Planner exercising the powers of the Director, Town and Country Planning Department, Haryana, passed the order dated 23.7.2002. It is, therefore, submitted that all the averments which could possibly have been made by the petitioner were duly taken into consideration when the District Town Planner, Sonepat adjudicated upon the controversy.

19. Under the mandate of the rules of natural justice, no one can be inflicted with adverse civil consequences, without first bringing to his notice the basis of the contemplated action, and without first affording him an opportunity to repudiate the basis of the contemplated action. It is, therefore, evident that there are two essential ingredients of the rules of natural justice. First, the requirement of being told the basis of the contemplated action, and second, the right to an effective response to the same. Insofar as the present controversy is concerned, a show-cause notice under section 12(2) of the Restriction of Unregulated Development Act, 1963, was issued to the petitioner on 8.7.2002. The aforesaid show cause-notice clearly delineated the basis of the contemplated action. It is evident, therefore, that through the aforesaid show-cause notice, the petitioner was informed of the basis of the

contemplated action, and as such, the first ingredient of the rules of natural justice stood duly complied with. The next question is whether the second requirement of the rules of natural justice has been complied with. The opportunity to repudiate the basis of the contemplated action, can be availed of by an individual by submitting a written response, or through a personal hearing. Can an affected party insist on a personal hearing? The case of the petitioner is that the action of the authorities stands vitiated because the petitioner was not afforded a personal hearing before the District Town Planner, Sonepat, passed the impugned order dated 23.7.2002. The mandate of Section 12(2) of the Restriction of Unregulated Development Act, 1963, only requires the competent authority to issue a show-cause notice to the concerned "…. and if such a person fails to show cause to the satisfaction of the Director within the period of 7 days, the Director may pass an order……" The mandate of Section 12(2) of the Restriction of Unregulated Development Act, 1963, does not incorporate the requirement of a personal hearing. In fact, Section 12(2) of the Restriction of Unregulated Development Act, 1963, places the burden on the concerned person to justify his position in response to the show-cause notice. In case no response

Page: 605

is furnished within the stipulated time, it is open to the designated authority to take such action as may be considered appropriate within the frame work of the Restriction of Unregulated Development Act, 1963. Can it be, therefore, concluded that Section 12(2) of the Restriction of Unregulated Development Act, 1963, impliedly limits the second ingredient of the rules of natural justice, by excluding the right to a personal hearing? Before adverting to the question posed above, it would be necessary to first arrive at the conclusion whether the rules of natural justice can indeed be excluded by the mandate of a statute? In this behalf, reference may be made to the decision rendered by the Supreme Court in *Dr. Umrao Singh Choudhary* v. *State of M.P.*, 1994 (4) S.C.C. 328 wherein the Supreme Court observed as under:—

> "Section 14 engrafts an elaborate procedure to conduct an enquiry against the Vice-Chancellor and after giving reasonable opportunity, to take action thereon for his removal from the office. Section 52 engrafts an exception thereto. The condition precedent, however, is that the State Government should be satisfied, obviously on objective consideration of the material relevant to the issue, as on record, that the administration of the University cannot be carried

out in accordance with the provisions of the Act, without detriment to the interest of the University, and that it is expedient in the interest of the University and for proper administration thereof, to apply in a modified form, excluding the application of Sections 13 and 14, etc. and to issue the notification under Section 52(1). By necessary implication, the application of the principle of natural justice has been excluded. In view of this statutory animation the contention that the petitioner is entitled to the notice and an opportunity before taking action under Section 52(1) would be self-defeating. The principle of natural justice does not supplant the law, but supplements the law. Its application may be excluded, either expressly or by necessary implication."

20. Again in *Union of India* v. *Col. J.N. Sinha*, 1970 (2) S.C.C. 458, the Apex Court observed as under:—

"It is true that if a statutory provision can be read consistently with the principles of natural justice, the courts should do so because it must be presumed that the legislatures and the statutory authorities intend to act in accordance with the principles of natural justice. But if on the other hand a statutory provision either specifically or by necessary implication excludes the application of any or all the principles of natural justice then the court cannot ignore the mandate of the legislature or the statutory authority and read into the provision concerned the principles of natural justice."

21. The aforesaid legal position has been reiterated in *State Government Houseless Harijan Employees' Association* v. *State of Karnataka*, 2001 (1) SCC 610. It is, therefore, evident that the rules of natural justice can be excluded either expressly or impliedly by legislation.

22. The petitioner claims a right of personal hearing under the rules of natural justice. In our view, the right of a personal hearing has been impliedly excluded by the mandate of Section 12 of the Restriction of Unregulated Development Act, 1963. This conclusion of ours is drawn from the words "…. and if such a person fails to show cause to the satisfaction of the Director within a period of seven days, the Director may pass an order…." used in Section 12(2) of the Restriction of Unregulated Development Act, 1963, the only right available to the concerned person after the receipt of a show cause notice, is the right to respond to it within a period of seven days. In case he does not tender adequate justification within the stipulated time it is open to the competent authority to pass an appropriate order after the expiry of seven days. Having arrived at the conclusion that the right of personal hearing is not a sine qua non, before the designated authority passes an order under Section 12(2) of the Restriction of Unregulated Development Act, 1963, it is inevitable to conclude that the order dated

23.7.2002 passed by the District Town Planner, Sonepat, cannot be found to be defective merely on account of the fact that the petitioner was not afforded a personal hearing by the District Town Planner, Sonepat. The same conclusion has also been drawn by a Division Bench of this Court in *Dalbir Singh* v. *State of Haryana*, 1989 (2) RRR 440 (P&H) (DB) : (*CWP No. 10543 of 2002, decided on 5.9.2002*), in respect of the grant of personal hearing during the course of proceedings under the provisions of Section 12 of the Restriction of Unregulated Development Act, 1963. We are satisfied that the detailed written reply filed by the petitioner was taken into consideration when the District Town Planner, passed the order dated 23.7.2002. The designated authority, therefore, complied with the mandatory requirements of section 12 of the Restriction of Unregulated Development Act, 1963 before passing impugned order.

23. The second contention of the learned counsel for the petitioner is that while action has been taken against the petitioner under the provisions of the Restriction of Unregulated Development Act, 1963, others who had committed similar acts of omission and commission (as have been alleged to have been committed by the petitioner), have not been touched. In this behalf, learned counsel for the petitioner has pointed out that governmental agencies as well as private persons had created access to the same scheduled road and had also effected construction and/or changed land use, in the same manner as the petitioner, but no action has been taken against them. Our attention has been invited to averments made in the appeal preferred by the petitioner which reveals the allegations levelled by the petitioner to the effect that "……Government/public utility buildings such as FCI godowns, electricity grid stations, sports college, Rai and lot of other government offices buildings…."; and

that "……Gyatri Motor Station and few other service stations which are located in the vicinity of the dhaba of the appellant…" had also made constructions and also changed land use like the petitioner. In order to substantiate the plea of discrimination, learned counsel for the petitioner has placed reliance on the judgment rendered by this Court in *Gurdial Shyam Lal Pvt. Limited* v. *The State of Haryana*, 1996 (1) RRR 272 (P&H) : 1995 HRR 325, wherein it was observed as under:—

> "Though we are dismissing the writ petition, we cannot altogether ignore the fact that unauthorised constructions have, in fact, been raised on both the sides of the National Highways within the territory

> of the State of Haryana, and the departmental authorities have been rather lukewarm and at times even negligent in enforcing the provisions of the 1963 Act by removing the unauthorised encroachments/constructions on both the sides of the National Highways passing through the territory of the State of Haryana. Rule of law is the corner stone of our constitutional system and unless it is enforced by all the organs of the State, namely, the Legislature, the Judiciary and the Executive, the system cannot work. People's faith and confidence in the constitutional system has to be maintained by all the three organs of the State. If the Legislature and the Executive are bound to implement the various constitutional provisions, the Judiciary is equally under a duty to take note of the constitutional mandates and pass appropriate orders for their enforcement. The goal of social justice and equality, which are two pillars of our constitutional system, have to be kept in mind by the Courts while enforcing the provisions of the Constitution and the other legislative enactments. The burden of Courts to enforce the constitutional provisions has increased in the recent times because common man's confidence in the working of the Executive and the Legislature has been considerably eroded. It is, therefore, high time that the Courts do not remain silent spectators of the wanton breach of law and allow a situation to develop where the people think that those who are haves in the society do not bother about law and they can go unpunished even after violating the provisions of law. Encroachments on public lands, unauthorised, constructions and violation of various provisions of law which are intended to regulate the construction of buildings and other constructions are being flouted with impunity and, therefore, it is imperative for this Court to issue positive directions to the Executive to give effect to the provisions of various enactments which regulate construction of buildings etc."

24. Relying on the aforesaid observations, it is contended that the authorities have adopted an attitude of pick and choose while subjecting the petitioner to a harsher treatment. Learned counsel for the petitioner has also relied on *United Riceland Ltd.* v. *State of Haryana*, 2001 (3) RCR (Civil) 532 (P&H) (DB) : 1998 (1) PLJ 462, to contend that there can be no discrimination between private persons and governmental agencies insofar as the provisions of the Restriction of Unregulated Development Act, 1963, are concerned. In the aforesaid judgment this Court, inter alia, examined the validity of amendment made by the Haryana Amendment Act No. 16 of the 1996, whereby sub -section (1A) was added to Section 7 of the Restriction of Unregulated Development Act, 1963. Sub-section (1A) of Section 7 of the Restriction of Unregulated Development Act, 1963, introduced by the

aforesaid amendment is being extracted hereunder:—

> "(IA) Local authorities, firms and of Government, colonisers and undertakings and persons exempted from obtaining a licence under the Haryana Development and Regulation of Urban Areas Act, 1975, and authorities involved in land development will also be liable to pay conversion charges but they shall be exempt from making an application under Section 8 of this Act."

25. This Court made the following observations in respect to the challenge made to the aforesaid provision:—

> "We have thoughtfully considered the rival submissions and agree with the learned counsel for the petitioners that the amendments made by the Haryana Act No. 16 of 1996 are discriminatory. Undisputedly, 1963 Act has been enacted to prevent haphazard and sub-standard development along scheduled roads and in the controlled areas in the State of Haryana. Section 3 prohibits erection or re-erection of buildings along scheduled roads within 100 metres on either side of the road reservation of a bye-pass or within 30 metres on either side of the road reservation of any scheduled road which is not bye-pass. Proviso to this section exempts activities involving repair of a building which was in existence immediately before the commencement of 1963 Act or any erection or re-erection of an existing building which does not involve any structural alteration or addition. In a case where erection or re-erection of an existing building involves any structural alteration or addition then the same can be carried out with the permission of the Director. It also exempts laying out of means of access to a road with the permission of the Director and erection or re-erection of a motor fuel-filling station or a bus-queue shelter with the permission of the Director. Likewise Section 6 imposes restriction on erection or re-erection of buildings in controlled areas and Section 7 prohibits change of land use without the permission of the Director. Section 8 contains provisions for grant or refusal of permission referred to in Section 3 or Section 6 or Section 7 or licence under Section 7 of the Act. Section 10 provides for appeal by any person aggrieved or affected by any order of the Director passed under Section 8(2) granting permission or

licence subject to conditions or refusing permission or licence. The Rules of 1965 contain detailed provisions for implementing the provisions of the parent Act.

A conjoint reading of Sections 2 and 3 of the Act and Rules 2, 4 and 5 of the Rules show that the basic purpose of the Act is to regulate the erection or re-erection of the buildings in the entire State except the areas which fall within municipal limits or village abadi. With reference to this purpose no distinction can possibly be made between buildings and other construction with reference to their ownership or use. If a building has been erected in violation of the provisions of the Act and the Rules, then it is irrelevant whether the land on which such building has been erected belongs to the Government or a local authority or a semi-government organisation or a public institution. It is also irrelevant that the ownership of the building vests in the Government, its agencies or other public organisation/institution. The erection or re-erection of the building which is illegal in the beginning continues to remain" so irrespective of the fact that it vests in a particular authority or the government. Therefore, the regularisation of such constructions leaving out similar constructions made by private individuals has certainly rendered the impugned amendment discriminatory. All the buildings/constructions which have been erected or re-erected in violation of 1963 Act and the Rules framed thereunder constitute one class and no distinction can be made between them on the basis of their ownership/possession by the government, its agencies, local authorities and public organisations and public organisations/institutions on the one hand and private individuals on the other hand. If the construction is illegal it remains illegal whether it has been erected by 'A' or by 'B'. Therefore, the Amendment Act which seeks to legalise the constructions made in violation of 1963 Act by making a distinction in favour of one set of constructions is ultra vires to Article 14 of the Constitution."

26. In view of the submissions made by the learned counsel for the petitioner, there can be no doubt that violations under the provisions of the Restriction of Unregulated Development Act, 1963, at the hands of the governmental agencies and at the hands of the private individuals stand on the same pedestal. In view of the decision rendered in *Gurdial Shyamlal Pvt. Ltd. case* (supra) constructions made unauthorisedly are liable to be dealt with in terms of the mandate of the provisions of the Restriction of Unregulated Development Act, 1963, irrespective of the fact whether they have been made by private individuals or by governmental agencies. Necessary directions have already been issued to the executive in *Gurdial Shyamlal Pvt. Limited case* (supra). We find no justification in issuing fresh directions in the matter, primarily because the petition does not disclose the express violations committed (by those against whom allegations have been levelled) so as to be dealt with under the provisions of the Restriction of Unregulated

Development Act, 1963. In view of the observations made in *Gurdial Shyamlal Pvt. Limited case* (supra), we have no doubt that the agencies concerned will initiate action against the parties in respect of which reference has been made, in case it is found that their acts of omission and commission violate the mandatory provisions of the Restriction of Unregulated Development Act, 1963.

27. The pointed issue raised on behalf of the petitioner, however, is that the impugned orders passed against the petitioner be set aside on account of the fact that no action has been taken against others who have allegedly committed similar violations as the petitioner. This issue was also examined by this Court in *Gurdial Shyamlal Pvt. Ltd. case* (supra), wherein it was held as under:—

> "The second contention of the learned counsel which is founded on the plea of discrimination is also without substance. No doubt the petitioner has given the names of certain factories in para 17 and has alleged that no action has been taken by the department for demolition of the unauthorised construction raised by these factories and there is only a bald denial that no construction is allowed within 30 meters of the either side of the scheduled roads, we are of the considered opinion that even if the petitioner is right in making a statement that the alleged constructions made by others have not been demolished, no relief can be given to him by issuing a writ of mandamus. The petitioner can seek issue of a writ of mandamus the effect of which would be perpetuation of violation of law because it is a well settled principle of law that jurisdiction under Article 226 cannot be exercised by the Court for passing an order which would result in violation of law. Writs are issued by the High Court for enforcement of legal and fundamental rights and not for permission to the petitioner to commit or to continue to commit violation of law nor can the Court directly or indi-rectly abet breach of the provisions of the law. The present one is a case in which the petitioner has indulged in blatant misuse of the liberty given to him by the authorities to set up a factory. It started unauthorised construction even before it was given permission for change in the land use. Not only this, it did not remove the construction even after the Commissioner passed an order which was largely favourable to it. It continued to enjoy the unauthorised construction for a period of almost three years before filing the writ petition. In our opinion, a person having such conduct does not deserve any indulgence by the Court in exercise of its equitable jurisdiction under Article 226 of the Constitution of India. We would emphasise that issue of a writ in such like

matter would encourage those people who indulge in violation of law. This would also encourage people in raising unauthorised construction of buildings etc. and then approach the Court for protection of their unauthorised construction. We cannot ignore the fact that unauthorised constructions raised on the sides of the National Highways cause great injury to the public interest and every attempt made by individuals to take law into their own hands deserves to be discouraged."

28. We are in absolute agreement with the view expressed by this Court as has been extracted above. In view of the above, we find no merit in the claim of the petitioner on the basis of the plea of discrimination.

29. The third contention of the learned counsel for the petitioner is that a notification was issued on 21.12.1971 by the State Government under Section 4(1) of the Restriction of Unregulated Development Act, 1963, declaring the area in which the petitioner had effected construction as "controlled area". It is further contended that in terms of the mandate of Section 4(2) of the Restriction of Unregulated Development Act, 1963, publication of the notification under section 4 (1) of the aforesaid Act is to be effected in at least two newspapers printed in a language other than in English. It is pointed out that the requirement of publication of the notification declaring the area in question as "controlled area" was complied with in April 1991. In this behalf, it is pointed out that the notification dated 21.12.1971 was first published in the Tribune on 26.3.1981 in English, and thereafter, in the Jan Sandesh on 25.3.1991 in Hindi and finally in the Dainik Amar Rajnition 9.4.1991 in Hindi. It is, therefore, pointed out that the State Government took about two decades to publish the notification of the "controlled area" wherein the alleged violations have been committed by the petitioner. In continuation of the aforesaid factual position, it is pointed out that the development plan (in respect of the controlled area under reference) has been published by the State Government, in terms of the mandate of Section 5(4) of the Restriction of Unregulated Development Act, 1963, on 7.10.1999. It is, therefore, vehemently contended that the instant action of the authorities under the provisions of the Restriction of Unregulated Development Act, 1963, lacks bona-fides. It is also alleged that the instant action at the hands of the authorities is a misuse and abuse of the statutory power conferred under the Restriction of Unregulated Development Act, 1963. It is, therefore, submitted that the action of the respondents amounts to a colourable exercise of powers. In this behalf, reliance has been placed on the decision of the Apex Court rendered in *State of Punjab* v. *Gurdial Singh*, (1980) 2 SCC 471 : AIR 1980 SC 319, wherein the Apex

Court observed as under:—

> ".....When the custodian of power is influenced in its exercise by considerations outside those for promotion of which the power is vested the court calls it a colourable exercise and is undeceived by illusion. In a broad, blurred sense, Benjamin Disraeli was not off the mark even in law when he stated "I repeat - that all power is thrust - that we are accountable for its exercise - that from the people, and for the people all springs and all must exist." Fraud on power voids the order if it is not exercised bona fide for the end designed. Fraud in this context is not equal to moral turpitude and embraces all cases in which the action impugned is to affect some object which is beyond the purpose and intent of the power, whether this be malice-laden or even benign. If the purpose is corrupt the resultant act is bad. If considerations, foreign to the scope of the power of extraneous to the statute, enter the verdict or impels the action mala fide or fraud on power vitiates the acquisition or other official act."

30. On the basis of the aforesaid observations, a Full Bench of this Court in *Radhey Sham Gupta* v. *State of Haryana*, 1982 PLR 743, while dealing with the proceedings under the Land Acquisition Act, 1894, concluded as under in paragraph 9:—

> "To rightly appraise the aforesaid objections, what pointedly falls for consideration is, whether gross unexplained delay is a factor or circumstance relevant for establishing the colourable nature of the exercise of power either by itself alone or in any case when added to other factors? The answer to "this issue appears to me as being rather plainly in the affirmative... However, long unexplained procrastination, either by itself and in any case coupled with other factors clearly tends to prove the lack of bonafides in the exercise of the power of acquisition. If it can be established beyond cavil that the real motivation behind the acquisition was not any specific public purpose and its expeditious execution but was a mere ruse to peg down the prices by an issuance of notification under Section 4 and thus holding the citizens to ransom for years at the whim and caprice of the State to finalise the acquisition proceedings when it chooses (if at all it is so done) is clearly a factor for establishing the colourable exercise of power. It must, therefore, be held that unexplained inordinate delay is certainly a starkly relevant factor if not a conclusive one for determining the colourable exercise of power or otherwise in the context of proceedings under the Act."

31. And again in paragraph 10, this Court further observed as under:—

> "Examining the matter in some detail, it may well be possible that when originally initiated, the acquisition proceedings may

superficially appear to be well founded in the normal course. However, the absence of any meaningful public purpose or its expeditious execution may be plainly negatived by gross inaction in finalizing the acquisition. Indeed such long procrastination and unexplained delay by the State would itself be a pointer to conclusion that the initiation of the original proceedings far from being directed to an immediate or foreseeable public purpose and its execution, was

Page: 609

but a device to misuse the provisions of Section 4 and peg down the prices of land in shadowy anticipation of some vague unspecified need which might arise in future Indeed it will be such inordinate delays which will put in a lurid light what might originally have appeared as a bona fide exercise of power."

32. On the basis of the averments made above, the question to be considered is whether the action taken by the authorities, against the petitioner can be set aside by returning a finding that the entire action stands vitiated on account of colourable exercise of power. Learned counsel for the petitioner wishes us to draw the aforesaid conclusion in view of the highly belated publication of the notification under Section 4 of the Restriction of Unregulated Development Act, 1963, as well as on account of the highly belated publication of the development plan under section 5 of the Restriction of Unregulated Development Act, 1963.

33. Insofar as the determination of the Full Bench of this Court is concerned, it is obvious from the conclusions drawn by this Court, as have been extracted above, that the action of the authorities in delayed publication of the notification under section 6 of the Land Acquisition Act, 1894, was found to be beneficial to the State Government, inasmuch as, the price of the land in question came to be pegged down to the price prevalent at the time of issuance of the notification under section 4 of the Land Acquisition Act, 1894. Therefore, delayed publication of the notification under section 6 of the aforesaid Act was obviously beneficial to the State Government. Is it possible to draw the same conclusion under the provisions of the Restriction of Unregulated Development Act, 1963? In our view, delayed publication of the notification under section 4 of the Restriction of Unregulated Development Act, 1963, declaring the area in question as "controlled area" would in no way be of any direct or indirect benefit to the State. Likewise, delay in finalising of the development plan under section 5 of

the Restriction of Unregulated Development Act, 1963, does not vest any direct or indirect beneficial interest in the State Government. So far as the Restrictions of Unregulated Development Act, 1963 is concerned, the statement of objects and reasons disclose that the legislation was effected only to restrict the use of land in order to prevent ill-planned and haphazard growth. As we have already noticed above, this Court struck down sub-section (1A) of Section 7 of the Restriction of Unregulated Development Act, 1963, in *United Riceland Pvt. Limited case* (supra) on the ground that, discrimination was not permissible under the Restriction of Unregulated Development Act, 1963, between private persons on the one hand, and governmental agencies on the other. In view of the above, it is not possible for us to hold that delayed publication of the "controlled area" under Section 4 of the aforesaid Act as well as the delayed finalisation of the development plans under section 5 of the aforesaid Act can be described as an act of colourable exercise of powers so as to vitiate the action taken by the authorities under the provisions of the Restriction of Unregulated Development Act, 1963.

34. The fourth contention advanced by the learned counsel is that the order passed by the Tribunal is without jurisdiction on account of lack of quorum. In this behalf, learned counsel for the petitioner has invited our attention to Section 12C of the Restriction of Unregulated Development Act, 1963. Section 12C mentioned above is reproduced hereunder:—

> "12C. *Constitution of Tribunal*:— (1) With effect from such date as the Government may, by notification, constitute a Tribunal consisting of a Chairman who is a retired Judge of the High Court and a member of the rank of Chief Engineer having special knowledge about roads and highways. If the members of the Tribunal are divided over some matter, the decision of the Chairman of the Tribunal shall prevail.
>
> (2) The Tribunal shall have its sitting at Chandigarh or at any other place as per its convenience.
>
> (3) A person aggrieved by the orders of Director passed under sub -section (2) or sub-section (3), as the case may be, of section 12 of the Act, may file an appeal to the Tribunal within a period of sixty days and the decision of the Tribunal on such appeal shall be final. The Tribunal shall also hear the cases involving constructions made upto 28th April, 1995 in violation of the Act along scheduled roads and otherwise as if these were appeals against the order of Director. Any case against the order of Director passed under subsection (2) or sub-section (3) of section 12 of the Act pending in any court of law except High Court or Supreme Court shall be transferred to the Tribunal."

35. It is pointed out that the Tribunal in terms of the mandate of Section 12C of the aforesaid Act comprises of two members. It is submitted that a decision of the Tribunal to be valid should have been rendered by both the members constituting the Tribunal, however, while deciding the appeal preferred by the petitioner, the Chairman of the Tribunal decided the same on 6.1.2003 without associating the second member. It would be pertinent to mention that Section 12C of the Restriction of Unregulated Development Act, 1963, in its present shape, was introduced as a consequence of amendments carried out by Haryana Act No. 11 of 1999, dated 12.3.1999, and by Haryana Act No. 23 of 1999, dated 20.12.1999. After the introduction of Section 12C of the Restriction of Unregulated Development Act, 1963, while exercising powers conferred under section 25 of the aforesaid Act, the State Government introduced consequential amendments in the Restriction of Unregulated Development Rules, 1965. The aforesaid amendments came to be published through a notification dated 26.8.2002. By the aforesaid notification. Rule 131 came to be added to the existing Rules. Insofar as the instant issue raised by the petitioner is concerned, Rule 131(11) is relevant;

Page: 610

the same is being extracted hereunder:— "131. *Procedure for hearing appeal by Tribunal [Sections 12-C and 25(2)(h)]*—

> (11) That in case the Member of Tribunal is not present on any day and appeal for arguments are fixed then only Chairman shall hear the appeal and decide them and his decision shall be final."

36. The validity of the aforesaid amendment is not under challenge before us. In view of sub-rule (11), extracted above, there can be no doubt that in the absence of the second member of the Tribunal, the Chairman of the Tribunal is competent to hear an appeal and to decide it finally. The order of the Tribunal dated 6.1.2003 has admittedly been passed by the Chairman of the Tribunal. It is not the case of the petitioner in the pleadings or during the course of hearing that the impugned decision was rendered by the Chairman of the Tribunal suo motu despite the fact that the other member of the Tribunal was present on the date of hearing or decision of the appeal. In the aforesaid view of the matter, it is not possible for us to accept that the order of the Tribunal delivered in response to the appeal preferred by the petitioner solely by the Chairman of the Tribunal can be set aside on account of the fact that the other member of the Tribunal was not associated with the decision making.

37. While summarising his submissions before commencing to advance arguments, learned counsel for the petitioner had divided the same into six different contentions. However, at the time of advancing his detailed submissions, he has rolled the last two contentions (noticed at Sr. Nos. v and vi, at the beginning of this order) into one, and advanced arguments in respect of the last two contentions collectively. We are also, therefore, dealing with them collectively.

38. While projecting the claim of the petitioner that the construction effected by the petitioner as well as the access created to the G.T. Road did not violate the provisions of the Restriction of Unregulated Development Act, 1963, learned counsel for the petitioner invited our attention that the violations allegedly committed by the petitioner (as had been noticed in the show cause notice dated 8.7.2002). He acknowledged that the aforesaid violations were referable to Sections 3, 6 and 7 of the Restriction of Unregulated Development Act, 1963. It is the contention of the learned counsel for the petitioner that the petitioner cannot be accused of having violated the provisions referred to above if the provisions of the Restriction of Unregulated Development Act are subjected to a strict interpretation. In order to substantiate his claim that the aforesaid provisions are liable to strict interpretation, our attention has been invited to Section 12 of the Restriction of Unregulated Development Act, 1963, which delineates the consequences for violating the provisions of the Restriction of Unregulated Development Act, 1963. It is apparent that for committing a violation under sections 3, 6 and 7 of the Restriction of Unregulated Development Act, 1963, the offender is punishable with imprisonment for a term which can extend upto 3 years, such an offender could also be imposed fine upto fifty thousand rupees in the first instance, with permissibility to impose further fine on account of continued contravention. Additionally, under sub-section (2) of Section 12 of the Director, Town and Country Planning Department, Haryana, is authorised to require a violator to restore the land or building in question to its original state, or to bring it in a state acceptable under the provisions of the Restriction of Unregulated Development Act, 1963. In case the aforesaid efforts of the Director, Town and Country Planning Department, Haryana, do not bear fruit, sub-section (3) of Section 12 of the Restriction of Unregulated Development Act, 1963, authorises the Director, Town and Country Planning Department, Haryana, to himself get such land or building restored to its original state, or to bring it in conformity with the provisions of the Restriction of Unregulated Development Act, 1963, as well as the Restriction of Unregulated Development Rules, 1965, and to recover the cost thereof from the offender/violator as arrears of land revenue. In view of the aforesaid extremely adverse consequences which an offender of violator

under the provisions of the Restriction of Unregulated Development Act, 1963, is liable to face, learned counsel for the petitioner contends that the provisions of the said Act, must be subjected to strict interpretation. There can be no denial to the aforesaid assertion, in view of the legal position expressed by the Supreme Court in *Bijaya Kumar Agarwala* v. *State of Orissa*, (1996) 5 SCC 1 : AIR 1996 SC 2531, wherein the Apex Court re-affirmed, the strict interpretation rule, in respect of penal statutes by observing as under:—

> "Strict construction is the general rule of penal statutes. Justice Mahajan in *Tolaram* v. *State of Bombay*, AIR 1954 SC 496 at 498-499, stated the rule in the following words:
>
> "If two possible and reasonable constructions can be put upon a penal provision, the court must lean towards that construction which exempts the subject from penalty rather than the one which imposes penalty. It is not competent to the court to stretch the meaning of an expression used by the Legislature in order to carry out the intention of the Legislature".

39. The same principle was echoed in the judgment of the five Judge Bench in the case of *Sanjay Dutt* v. *The State through C.B.I., Bombay*, 1994 (5) JT 225 SC : 1994 AIR SCW 4360 which approved an earlier expression of the rule by us in *Niranjan Singh Karam Singh Punjabi* v. *Jitendra Bhimraj Bijjuva*, 1990 (4) SCC 76 at 86 : AIR 1990 SC 1962 at p. 1968.

> "Therefore, when a law visits a person with serious penal consequences extra care must be taken to ensure that those whom the legislature did not intend to be covered by the express language of the statute are not roped in by stretching the language of the law."

40. Learned counsel for the petitioner has in the first

instance invited our attention to the objects and reasons of the Restriction of Unregulated Development Act, 1963. It is pointed out that the instant legislation was promulgated in order to prevent haphazard and sub-standard development, along scheduled roads and in "controlled areas" of the State of Haryana. In other words, the aforesaid legislation was enacted in order to streamline future development in a planned manner. According to learned counsel for the petitioner, Section 5 of the Restriction of Unregulated Development Act, 1963 is the corner stone of the foundation of the aforesaid legislation which delineates the parameters of all future construction activities. Section 5 mentioned above is being extracted hereunder:—

"5. *Publication of plans etc, in controlled area*:— (1) The Director shall, not later than three months from the declaration under sub-section (1) of section 4 or within such further period as the Government may allow, prepare plans in the prescribed manner showing the controlled area and signifying therein the nature of restrictions and conditions proposed to be made applicable to the controlled area and submit the plans to the Government.

(2) Without prejudice to the generality of the powers specified in sub-section (1), the plans may provide for any one or more of the following matters, namely:—

(a) the division of any site into plots for the erection or re-erection of any building and the manner in which such plots may be transferred to intending purchasers or lessees;

(b) the allotment or reservation of land for roads, open spaces, gardens recreation grounds, schools, markets and other public purposes;

(c) the development of any site into a township or colony and the restrictions and conditions subject to which such development may be undertaken or carried out;

(d) the erection or re-erection of buildings on any site and the restrictions and conditions in regard to the open spaces to be maintained in or around buildings and the height and character of buildings;

(e) the alignment of buildings on any site;

(f) the architectural features of the elevation or frontage of buildings to be built on any site;

(g) the amenities to be provided in relation to any site or buildings on such site whether before or after the erection or re-erection of buildings and the person or authority by whom such amenities are to be provided;

(h) the prohibition or restrictions regarding eraction or re-erection of shops, workshops, where houses or factories or buildings of a specified architectural feature or buildings designed for particular purposes in any locality;

(i) the maintenance of walls, fences, hedges, or any other structural or architectural construction and the height at which they shall be maintained;

(j) the restrictions regarding the use of any site for purposes other than the erection or re-erection of buildings;

(k) any other matter which is necessary for the proper planning of any controlled area and for preventing buildings being erected or re-erected haphazardly in such area.

(3) The Government may either approve the plans without modifications with such modifications as it may consider necessary or reject the plans with directions to the Director to prepare fresh plans according to such directions.

(4) The Government shall cause to be published by notification the plans approved by it under subsection (3) for the purpose of inviting objections thereon.

(5) Any person may, within thirty days from the date of publication of the notification under sub-section (4), send to the Director his objection and suggestion in writing, if any, in respect of such plans and the Director shall consider the same and forward them with his recommendations to the government within a period of sixty days from the aforesaid date.

(6) The Director shall also give reasonable opportunities to every local authority, within whose local limits any land included in the controlled area is situated, to make any representation with respect to the plans.

(7) After considering the objections, suggestions and representations, if any, and the recommendations of the Director thereon, the Government shall decide as to the final plans showing the controlled area and signifying therein the nature of restrictions and conditions applicable to the controlled area and publish the same in the Official Gazette and in such other manner as may be prescribed.

(8) Provisions may be made by rules made in this behalf with respect to the form and content of the plans and with respect to the procedure to be followed, and any other matter in connection with the preparation, submission and approval of the plans.

(9) Subject to the foregoing provisions of this section, the Government may direct the Director to furnish such information as the Government may require for the purpose of approving the plans submitted to it under this section.

41. According to the learned counsel for the petitioner, Section 5 requires the Director, Town and Country Planning Department, Haryana, to prepare plans in respect of an area declared as “controlled area”. It is submitted that it is the bounden duty of the Director, Town and Country Planning Department, Haryana to prepare development plans to incorporate therein the nature of restrictions and conditions proposed to be

made applicable to such "controlled area". It is further highlighted that sub-section (2) of Section 5 of the aforesaid Act delineates the scope and nature of the restrictions and conditions that can be imposed, while preparing the plans. The procedure for finalising the plan proposed by the Director, Town and Country Planning Department, Haryana, has been detailed in sub-sections (3) to (7) of Section 5 of the Restriction of Unregulated Development Act, 1963. Primarily two contentions have been advanced, by the learned counsel for the petitioner, on the basis of Section 5 of the Restriction of Unregulated Development Act, 1963. Firstly, that the Director, Town and Country Planning Department, Haryana, under the mandate of Section 5 of the aforesaid Act, is required to prepare plans"……not later than three months from the declaration under sub-section (1) of Section 4 or within such further period as the Government may allow,…." It is, therefore, contended that the aforesaid provision envisages expeditious preparation of plans so as to ensure that development takes place in consonance therewith. Secondly, on a harmonious consideration of the provisions of the Restriction of Unregulated Development Act, 1963, it is imperative to arrive at the conclusion that no one can be accused of having violated any of the provisions of the Restriction of Unregulated Development Act, 1963, till he effects construction and/or changes land use in a manner contrary to the plans prepared under Section 5 of the aforesaid Act. In sum and substance, the contention of the learned counsel for the petitioner is that the mandate of the Restriction of Unregulated Development Act, 1963, is to comply with the development plan prepared under Section 5. As such, it is submitted, that a person can be accused of having committed violations/contraventions of the provisions of the Restriction of Unregulated Development Act, 1963, only after a development plan has been finalised. It is pointed out, by the learned counsel for the petitioner, that development plans have not been finalised under Section 5 of the Restriction of Unregulated Development Act, 1963, till date despite the fact that the area in question was declared as "controlled area" through a notification issued on 9.10.1986.

42. In order to press the first contention noticed above, learned counsel for the petitioner, has invited our attention to sub-section (1) of Section 5 of the Restriction of Unregulated Development Act, 1963, according to the mandate whereof the Director, Town and Country Planning Department, Haryana, is required, is required to prepare plans within three months from the date of issuance of the notification under section 4(1) of the Restriction of Unregulated Development Act, 1963. According to the learned counsel for the petitioner, the urgency in preparing plans envisaged under section 5 is apparent from the expression of the provision itself, The argument, though attractive on

first blush, is not acceptable in law. It is evident from sub-section (1) of Section 5 reproduced above that the stipulated period of three months is not mandatory and can be extended for "....such further period..." as the Government may allow. In our view, the aforesaid argument, is misconceived, as the restrictions envisaged under the provisions of the Restriction of Unregulated Development Act, 1963, do not revolve around the plan prepared by the Director, Town and Country Planning Department, Haryana. Section 5(4-) conceives of a tentative plan in respect of the area notified as a "controlled area". The procedure for finalising of the development plan is stipulated under sub -sections (3) to (7) of Section 5 of the Restriction of Unregulated Development Act, 1963. The legislature in its wisdom has not specified any time schedule in the process of finalising the development plan under the aforesaid sub-sections. In fact no time schedule could possibly have been prescribed because of the detailed and cumbersome procedure laid down. The acceptance of the aforesaid contention would negate the legislative intention in respect of the restrictions incorporated through Sections 3, 6 and 7 of the Restriction of Unregulated Development Act, 1963. The mandate of its restrictions imposed through the aforesaid provisions have been dealt with while considering the second contention advanced on the basis of Section 5 of the Restriction of Unregulated Development Act, 1963, in the paragraphs immediately following the instant paragraph. Despite our aforesaid view, we are constrained to observe that the Government has shown absolute apathy in respect of the obligation placed on its shoulders to finalise development plans under Section 5 of the aforesaid Act; more than one and a half decades have passed by since the declaration of the area in question as "controlled area", yet objections are still to be invited in respect of the proposed plan prepared by the Director, Town and Country Planning Department, Haryana. This is certainly a sorry state of affairs, on an issue of immense public importance and urgency. We, therefore, direct the Government to invite objections contemplated under subsection (5) of Section 5, forthwith; whereupon the Director, Town and Country Planning Department, Haryana, shall make his recommendations within the time stipulated under the said sub-section. The Government shall then publish the finalised plans in the official gazette in terms of the mandate of sub-section (7) of Section 5. The aforesaid exercise be carried out within 6 months from the date of pronouncement of the instant judgment/order.

43. In order to press the second contention noticed above, learned counsel for the petitioner has submitted that it is wholly improper to interpret the provisions of Restriction of Unregulated Development Act, 1963, singularly. It is pointed out that the intention of the legislature

can only be gathered from a harmonious construction of the provisions of the aforesaid Act. In this : behalf, learned counsel has placed reliance on the decision rendered by a Constitution Bench of the Apex Court in *Chief Justice of Andhru Pradesh* v. *L.V.A. Dixitulu, etc.*, 1979 SLJ 332, and invited our attention to the following observations

Page: 613

made therein:—

> "The primary principle of interpretation is that a Constitutional or statutory provision should be construed "according to the itnent of they that made" (Coke). Normally, such intent is gathered from the language of the provision. If the language or the phraseology employed by the legislation is precise and plain and thus by itself, proclaims the legislative intent in unequivocal therms, the same must be given effect to, regardless of the consequences that may follow. But if the words used in the provision are imprecise, protean or evocative or can reasonably bear meaning more than one, the rule of strict grammatical construction ceases to be a sure guide to reach at the real legislative intent. In such a case, in order to ascertain the true meaning of the terms and phrases employed, it is legitimate for the Court to go beyond the arid literal confines of the provision and to call in aid other well-recognised rules of construction, such as its legislative history, the basic scheme and framework of the statute as a whole, each portion throwing light on the rest, the purpose of the legislation, the object sought to be achieved and the consequences that may flow from the adoption of one in preference to the other possible interpretation.
>
> Where two alternative constructions are possible, the Court must choose the one which will be in accordance with the other parts of the statute and ensure its smooth, harmonious working, and eschew the other which leads to absurdity, confusion, or friction, contradiction and conflict between its various provisions or undermines, or tends to defeat or destroy the basic scheme and purpose of the enactment. These canons of construction apply to the interpretation of our Constitution with greater force, because the Constitution is a living, integrated organism, having a soul and consciousness of its own. The pulse beats emanating from the spinal cord of its basic framework can be felt all over its body, even in the extremities of its limbs. Constitutional exposition is not mere literary garniture, nor a mere exercise in grammar. As one of us (Chandrachud, J. as he then was) put it in *Keshvananda Bharati's*

case. "While interpreting words in a solemn document like the Constitution, one must look at them not in a school-masterly fashion, not with the cold eye of a lexicographer, but with the realization that they occur in a single complex instrument in which one part may throw light on the other so that the construction must hold a balance between all its parts".

44. It is the pointed assertion of the learned counsel for the petitioner that the intention of the Legislature while promulgating the Restriction of Unregulated Development Act, 1963, was to prevent haphazard development along the scheduled roads and in "controlled area" in the State of Haryana. Under the mandate of Section 5 of the Restriction of Unregulated Development Act, 1963, it was imperative for the State Government to finalise development plans. It is emphatically submitted that Section 5 in the cornerstone of the foundation of the instant legislation which delineates the parameters of the construction activity for the "controlled area" and, therefore till the finalisation of the aforesaid plans, access to a scheduled road, or construction within the "controlled area", or change of land use, cannot be branded as unauthorised. It is contended in this behalf that an act of omission or commission at the hands of an individual, could be described as blameworthy only if it violates the norms, laid down in the development plan prepared under Section 5 of the Restriction of Unregulated Development Act, 1963. It is not possible for us to accept the contention of the learned counsel for the petitioner. A persual of Section 3 of the Restriction of Unregulated Development Act, 1963, reveals that the effective date, where-after access to a scheduled road is prohibited, is the date of enforcement of the Restriction of Unregulated Development Act, 1963. It would be pertinent to mention that the Restriction of Unregulated Development Act, 1963, received the assent of the President of India on 22.11.1963 and was published in the Punjab Government Gazette (Extraordinary), Legislative Supplement, on 30.11.1963. A development plan as envisaged under section 5 of the Restriction of Unregulated Development Act, 1963, has to be prepared only after an area is notified as "controlled area" under Section 4 of the Restriction of Unregulated Development Act, 1963. It is, therefore apparent, that the Legislature by a conscious will stipulated the effective date of enforcement of the restrictions envisaged under section 3, from a date prior to the date of preparation and/or finalisation of a development plan under section 5. Likewise, Section 6 of the Restriction of Unregulated Development Act, 1963, restricts erection or re-erection of buildings in "controlled areas". The restraint envisaged under section 6 of the Restriction of Unregulated Development Act, 1963, are effective from the date on which the area in question is declared as "controlled area" by a notification issued

under Section 4 of the Restriction of Unregulated Development Act, 1963. Development plans under section 5 can be prepared only after the declaration of an area as "controlled area". It is, therefore, clear that the Legislature did not intend to stall the restrictions envisaged in respect of erection or re-erection of buildings in a "controlled area" till the finalisation of development plans. Section 7, which deals with prohibition of change of land use in "controlled area". The restraints expressed therein takes effect from "…. the date of publication of the notification under sub-section (1) of Section 4 …." The mandate of Section 7, therefore, also clearly enforces the restrictions envisaged therein from the date of notification of an area as "controlled area". Development plans under Section 5, as noticed above, are prepared only after the notification of an area as "controlled area". It is, therefore, not possible for us to accept from the clear legislative

intent of the provisions of Sections 3, 6 and 7 of the Restriction of Unregulated Development Act, 1963, that the restrictions envisaged therein are only enforceable from the date of publication of the development plan under section 5 of the said Act. Even on a harmonious construction of Sections 3 to 7 of the Restriction of Unregulated Development Act, 1963, it is not possible for us to hold that the scheme of legislation in question pre-supposed the finalisation of the development plans under section 5 of the Restriction of Unregulated Development Act, 1963, as a pre-requisite to the restrictions expressed through Sections 3, 6 and 7 of the Restriction of Unregulated Development Act, 1963.

45. Learned counsel for the petitioner then attempted to assist us in the interpretation of Section 6 of the Restriction of Unregulated Development Act, 1963, with the object of persuading us that no one can be accused of having violated the provisions of the Restriction of Unregulated Development Act, 1963, till the finalisation of development plans under Section 5. This contention was advanced as an offshoot of the second contention dealt with in the preceding paragraph. According to learned counsel for the petitioner, Section 6 commences with the words "Except as provided hereinafter…". Learned counsel for the petitioner vehemently contends that the aforesaid words are superfluous. He, therefore, submits that the non-abstante clause prefixed to the narration of the restrictions envisaged under Section 6 of the Restriction of Unregulated Development Act, 1963, should be deleted, before an effective interpretation can be attempted. It is the

contention of the learned counsel for the petitioner that by deleting the aforesaid words from Section 6, the same would read as under:

> No person shall erect or re-erect any building or make or extend any excavation or lay out any means or access to a road in a controlled area save in accordance with the plans and the restrictions and conditions referred to in section 5 and with the previous permission of the Director:

Worded in the manner noticed above, it is contended that it would be obvious to conclude that violation in respect of erection or re-erection of buildings in "controlled area" must be determined with reference to the development plans prepared under Section 5 of the Restriction of Unregulated Development Act, 1963, moreso because the legislature did not record a comma after the words "…. controlled area….", while framing Section 6. In order to substantiate his plea that superfluous expressions in a provision are bound to be scored off, learned counsel for the petitioner has placed reliance on *Gokaraju Rangaraju* v. *State of Andhra Pradesh*, (1981) 3 SCC 132 : AIR 1981 SC 1473. It is not possible for us to accept that the non-obstante clause which is incorporated at the beginning of Section 6 of the Restriction of Unregulated Development Act, 1963 is superfluous. The aforesaid clause refers to situations envisaged within the provisions of the Restriction of Unregulated Development Act, 1963, which exempt a person from the restrictions imposed by the Act. Illustratively, reference may be made to the proviso to Section 6 of the Restriction of Unregulated Development Act, 1963, itself; which postulates that no permission is necessary for erection or re-erection of any building in a "controlled area" in case the building is for agricultural use, or for use for a purpose subservient to agriculture. In other words, the proviso to Section 6 of the Restriction of Unregulated Development Act, 1963, permits erection or re-erection of buildings even within "controlled area" for defined purposes. It is, therefore, not possible for us to accept that the non-obstante clause at the beginning of Section 6 of the Restriction of Unregulated Development Act, 1963, is superfluous. The rejection of the contention learned counsel, insofar as the redundancy of the non -obstante clause in Section 6 by itself negates the contention of the learned counsel on the effect of the absence of a comma after the words "……controlled areas…" in Section 6.

46. There is no doubt in our mind that development plans under Section 5 of the Restriction of Unregulated Development Act, 1963, are prepared to prevent haphazard and sub-standard development along the scheduled roads and "controlled area" in the State of Haryana. That being the mandate of the Restriction of Unregulated Development Act, 1963, we have no hesitation in affirming the aforesaid proposition. The

converse is, however, not acceptable. It is not possible for us to accept that till development plans are finalised under the provisions of the Restriction of Unregulated Development Act, 1963, it is open to individuals to create access to scheduled roads or to effect erection or re-erection within the prohibited zone along the scheduled roads, or to erect or re-erect buildings within the "controlled area", or to change land use within a "controlled area" till the finalisation of development plans envisaged under Section 5 of the Restriction of Unregulated Development Act, 1963. Sections 3 to 7 of the Restriction of Unregulated Development Act, 1963, in our view, impose restrictions in respect of erection or re-erection of buildings in the vicinity of scheduled road and/or in respect of access to a scheduled road, with effect from the date of enforcement of the Restriction of Unregulated Development Act, 1963, itself. Whereas, the restrictions imposed under sections 6 and 7 of the Restriction of Unregulated Development Act, 1963, in respect of erection or re-erection of buildings in "controlled area", as well as the change of land use, are enforceable with effect from the date an area is notified as a "controlled area" under section 4 (1) of the Restriction of Unregulated Development Act, 1963. Any other interpretation, in our view, would defeat the very object and purpose of the Act.

47. Each and every contention advanced by the learned counsel for the petitioner has been dealt with

Page: 615

hereinabove. No other argument, whatsoever, was raised on behalf of the petitioner.

48. Having dealt with the issues raised by the learned counsel for the petitioner and having not found any merit therein, it is imperative for us to examine whether in the facts and circumstances of this case the petitioner can be stated to have violated the provisions of the Restriction of Unregulated Development Act, 1963.

49. The first allegation against the petitioner is that the petitioner had laid out a means of access to the G.T. Road (which undisputedly is a scheduled road in terms of Restriction of Unregulated Development Act, 1963). It is the case of the petitioner that the petitioner purchased the land in question through a registered sale deed dated 30.10.1986 i.e. on a date subsequent to the date of enforcement of the Restriction of Unregulated Development Act, 1963, inasmuch as, the aforesaid Act received the assent of the President of India on 22.11.1963 and was published in the Punjab Government Gazette (Extraordinary),

Legislative Supplement, on 30.11.1963. While interpreting Section 3, we have arrived at the conclusion that the effective date of enforcement of the restrictions envisaged therein, is the date of the enforcement of the Restriction of Unregulated Development Act, 1963, itself. In our view, therefore, there is a complete prohibition to erect or re-erect any building or to create means of access to a scheduled road except in the eventualities envisaged by the proviso under Section 3 of the Restriction of Unregulated Development Act, 1963. The petitioner has admittedly constructed a "dhaba" alongside the G.T. Road. It is obvious that the aforesaid "dhaba" is used by those travelling on the G.T. Road. A "dhaba" can only be functional if travellers stop for meals, snacks or drinks. The running of the "dhaba" by the petitioner, on the land adjacent to G.T. road creates access to a scheduled road. A part of the construction effected by the petitioner as per the site plan appended to the show cause noticed dated 8.7.2002, is within 30 meters of the G.T. Road. There is no material on the record of the pleadings to controvert the aforesaid factual position. Construction within 30 meters of a scheduled road is expressly barred under Section 3 of the Restriction of Unregulated Development Act, 1963. The construction effected by the petitioner has not been shown to fall within the exceptions postulated by the proviso under section 3 of the Restriction of Unregulated Development Act, 1963. We are, therefore, satisfied that the petitioner in constructing the "Dhaba" violated the provisions of Section 3 of the Restriction of Unregulated Development Act, 1963, not only on account of having made an access to a scheduled road but also on account of the fact that a part of the said construction is within 30 metres of the scheduled road.

50. The second allegation against the petitioner is that the construction raised by the petitioner within the "controlled area" was unauthorised as it had been made without the previous permission of the Director, Town and Country Planning Department, Haryana, under Section 6 of the Restriction of Unregulated Development Act, 1963. The fact that the "dhaba" has been constructed by the petitioner in an area notified as "controlled area" under Section 4(1) of the Restriction of Unregulated Development Act, 1963, has not been disputed. It is also not a matter of dispute that the area where the petitioner has effected construction was notified as "controlled area" under section 4(1) of the Restriction of Unregulated Development Act, 1963, on 9.10.1986. In view of the fact that the petitioner purchased the land in question by a registered sale deed on 30.10.1986, it is obvious that he constructed the "dhaba" after the date of notification of the land in question as "controlled area" under section 4(1) of the Restriction of Unregulated Development Act, 1963. It is not disputed by the petitioner that permission was not obtained by the petitioner from the Director, Town

and Country Planning Department, Haryana, before he constructed the "dhaba" in question. According to the learned counsel for the petitioner, a development plan in respect of the land in question was published on 26.5.1973, wherein the area in question was shown as reserved for raising a green belt. It is, therefore, obvious that even if an application had been filed by the petitioner under Section 8 of the Restriction of Unregulated Development Act, 1963, to the Director, Town and Country Planning Department, Haryana he could not have been granted permission to construct the "dhaba" in question. The unambiguous mandate of Section, 6 of the Restriction of Unregulated Development Act, 1963, authorises the Director to grant permission to a person to erect or re-erect any building "…. in accordance with the plans and the restrictions and conditions referred to in Section 5……" It is, therefore, not possible for us to arrive at the conclusion that the construction effected by the petitioner can be saved in view of the clear mandate of Section 6 of the Restriction of Unregulated Development Act, 1963, even if the petitioner is agreeable to pay compounding charges. For the aforesaid reasons, we are of the view that by constructing the "dhaba" in question the petitioner has violated the provisions of Section 6 of the Restriction of Unregulated Development Act, 1963, not only an account of having made an access to a scheduled road but also on account of the fact that a part of the said construction is within 30 meters of a scheduled road.

51. The third allegation levelled against the petitioner is for having changed the land use despite the prohibition envisaged under section 7 of the Restriction of Unregulated Development Act, 1963. While interpreting Section 7 of the Restriction of Unregulated Development Act, 1963, we have already concluded that the prohibition envisaged therein commences from the date an area is declared as "controlled area". Undoubtedly, the area under reference was declared as a "controlled area" on 9.10.1986. Prior to the aforesaid date, the land purchased by the petitioner was agricultural land. By construction of a "dhaba" on the

land in question the petitioner has altered the use of the land from agricultural to commercial. There is no doubt that the aforesaid change of land use by the petitioner has not been authorised by the Government. Thus viewed, it is inevitable to conclude that the petitioner has violated the provisions of Section 7 of the Restriction of Unregulated Development Act, 1963.

52. In view of the above, we hereby uphold the conclusions drawn by the District Town Planner, Sonepat, exercising the powers vested in him by the Director, Town and Country Planning Department, Haryana, in his order dated 23.7.2002; as well as the order passed by the Tribunal, dated 6.1.2003.

53. Dismissed.

Petition dismissed.

NEW DELHI
THURSDAY
JANUARY 15, 2026

NHAI flags huge shortfall: Half of 'compensatory' trees missing

Paras Singh
htreporters@hindustantimes.com

NEW DELHI: For years, compensatory plantation has been the moral fig leaf of Delhi's infrastructure expansion — trees felled for highways and projects are promised back, but the ground tells a different story. The National Highways Authority of India (NHAI), in a meeting with Delhi government officials last week, flagged large-scale gaps in compensatory afforestation for two major projects, the Urban Extension Road-2 (UER-2) and the Dwarka Expressway.

The Delhi Development Authority (DDA) was tasked with planting 64,080 trees for UER-2 and 153,990 for the Dwarka Expressway, for which the NHAI deposited ₹55.1 crore and ₹87.77 crore respectively with the agency, officials aware of the matter said.

According to a status report submitted at a meeting on January 10, NHAI said trees were missing in both cases and the issue had been repeatedly flagged at the highest levels; how despite large sums of public money being deposited, work related to more than 100,000 trees remains pending.

Dubbed as the third Ring Road, the Urban Extension Road-2 (UER-2), along with the Delhi section of the Dwarka Expressway, was inaugurated on August 17, 2025, in Rohini.

UER-2 begins in north Delhi at NH-44 between Bankoli and Alipur, passes through the Bawana Industrial Area, Rohini, Mundka, Bakkarwala and Najafgarh, meets the Dwarka Expressway near the ICC and IGI Airport tunnel, and finally terminates at NH-48 near the Shiv Murti junction on the eastern side of IGI Airport.

NHAI report states that it had deposited ₹55.10 crore for compensatory plantation of 64,080 trees to DDA in 2021.

"DDA vide letter dated August 20, 2024, has reported compensatory planation of 57,280 trees. However, during site inspection only 24,887 trees were found at the site," the report said.

NHAI said the matter was taken up at the chief secretary level by the NHAI chairman in February 2025 and also during a meeting held on June 4, 2025, with the Union road transport and highways minister, during which the "DDA had assured the completion of the plantation during the monsoon of 2025."

"Another meeting was held under the chairmanship of Delhi CM on 12.12.2025, wherein the matter was discussed and accordingly, DDA was instructed to expedite the plantation," the report said.

DDA did not respond to calls and texts seeking a comment.

Dwarka Expressway

The Dwarka Expressway (NH-248BB), built as a 29-km alternative to NH-48 to ease congestion between Delhi and Gurugram, required compensatory plantation of 153,990 trees under the Delhi Preservation of Trees Act, 1994. For this, the National Highways Authority of India (NHAI) deposited ₹87.77 crore with the Delhi Development Authority (DDA) in 2020.

In August 2024, the DDA informed NHAI that 151,452 trees had been planted on DDA land. But a joint site inspection found that only about half the trees were present, according to the NHAI report.

The issue was raised with the chief secretary in February 2025 and later with the chief minister on December 12, following which the DDA was directed to expedite the work.

The matter had been flagged in earlier meetings as well. Documents accessed by HT show that the DDA last year claimed compensatory plantation for UER-2 was carried out at Kusumpur Pahadi, Tughlaqabad Biodiversity Park, Aravali Biodiversity Park and Kalindi Biodiversity Park.

The DDA also said the plantation at Kalindi Park was destroyed and the project was shifted to Tughlaqabad, where it claimed the work was completed. It said the plantation sites had been inspected.

Hof 'staff stt courts

ings, issues related to the transfer policy, and delays in departmental examinations that have affected promotions. "It was assured that the committees will examine these concerns. The chief justice directed that the issue of irregular departmental examinations, which stalled promotions, be resolved," he said.

A high court official said while these assurances were not issued in writing, the proposals are under active consideration.

The developments come after a specially abled court staffer working as an ahlmad died by suicide on January 9 by jumping from the Saket court complex. A note recovered from the spot said he was under "extreme work pressure". While the staffer did not blame anyone for his death, he wrote that managing the responsibilities of an ahlmad had become exceedingly difficult given his physical disability.

DELHI MINISTER LAUNCHES LIVER HELPLINE, NAFLD SCREENING PLAN

HT Correspondent
htreporters@hindustantimes.com

भारतीय राष्ट्रीय राजमार्ग प्राधिकरण
(सड़क परिवहन और राजमार्ग मंत्रालय, भारत सरकार)
National Highways Authority of India
(Ministry of Road Transport and Highways, Govt. of India)
परियोजना कार्यान्वयन इकाई, सोहना / Project Implementation Unit, Sohna
डीवीई किमी0 0+000 इण्टरचेंज पर, गुरूग्राम-सोहना रोड, गुरूग्राम, (हरियाणा) - 122102
Interchangeat KM. 0+000 of DVE, Gurugram Sohna Road, Gurugram-122102
E-mail: piusohna@nhai.org | piusohna@gmail.com | Tel: 0124-2978623 | Web: www.nhai.gov.in

NHAI/PIU-Sohna/RTI/11051/2024/D-8132

Dated:31.01.2025

To

Sh. Anil Sood
A 414 415 Somdutt Chambers 1,
5 Bhikaji Cama Place,
New Delhi-110066, Delhi
Email: anilsood@spchetna.com

Sub: Reply of your RTI application under RTI Act 2005.

Ref: Your RTI application No. NHAIN/R/E/25/00111 dated 05.01.2025.

Sir,

Please refer your RTI application registration No. NHAIN/R/E/25/00111 dated 05.01.2025, which has been received to this office through online RTI portal on 06.01.2025. The point wise reply on the information sought by you under the jurisdiction of this office from Km. 0+000 to Km. 151+840 of Delhi-Vadodara Expressway (NE-4) is as under:

Sr. No.	Information Sought	Reply
Please provide the following information related to Mumbai Delhi Expressway from the date of inauguration up to 31st March 2023, 1st April 2023 to March 2024 and from April 2024 to December 2024:-		
1	Name and designation of the officer/ officers designated and responsible for ensuring no parking on shoulders of the expressways by truckers for the patch from Sohna Elevated entry point up to Jaipur exit point and from Jaipur Exit point up to exit point of Sohna Elevated Road.	As per provisions in the Contract agreement, the contractor is responsible for safe conditions for movement of traffic and shall report all accidents to the police forthwith. The matters of legal action i.e. Challan and Prosecution of unauthorised parking on the road pertain to State Police and Administration.
2	Please provide details of action taken by those officers against trucks parked on shoulders and having food from dhabas and eateries that have come up on the fields along with expressway on the patch from Sohna Elevated entry point up to Jaipur exit point and from Jaipur Exit point up to exit point of Sohna Elevated Road.	
3	Names and designation of officer/officers designated and responsible for ensuring that no illegal eatery or Dhabas are allowed to come up along with expressway from the patch from Sohna Elevated entry point up to Jaipur exit point and from Jaipur Exit point up to exit point of Sohna Elevated Road.	The matters of Control of establishment of structures/Land Use beyond the ROW of road pertain to Revenue Department/ State Govt. Administration.
4	Please provide details of action taken by those officers on illegal Dhabas and eateries that have come up on the fields along with the patch from Sohna Elevated entry point up to Jaipur exit point and from Jaipur Exit point up to exit point of Sohna Elevated Road during aforesaid period.	
5	Name and designation of officer/officers designated and responsible for ensuring installation of weigh bridges on expressway patch from Sohna Elevated entry point up to Jaipur exit point and from Jaipur Exit point up to exit point of Sohna Elevated Road and inspection of overloaded trucks.	The matter of Control and prosecution of operation of illegal and overloaded vehicles pertains to Road Transport Authority of the State Govt.

6	Number of weigh bridges installed on expressway patch from Sohna Elevated entry point up to Jaipur exit point and from Jaipur Exit point up to exit point of Sohna Elevated Road.	Number of weigh bridges installed on Delhi-Vadodara Expressway Pkg-01 to 05 (km 0+000 to 151+840): 10
7	Number of vehicles inspected by the designated appointed officers on expressway patch from Sohna Elevated entry point up to Jaipur exit point and from Jaipur Exit point up to exit point of Sohna Elevated Road and inspection of overloaded trucks.	
8	Number of vehicles detailed and prosecuted by the designated appointed officers on expressway patch from Sohna Elevated entry point up to Jaipur exit point and from Jaipur Exit point up to exit point of Sohna Elevated Road on account of overloaded trucks.	
9	Amount of fine collected from vehicles inspected, detained and prosecuted for overloading on expressway patch from Sohna Elevated entry point up to Jaipur exit point and from Jaipur Exit point up to exit point of Sohna Elevated Road on account of overloaded trucks.	
10	Name and designation of officers designated or appointed to check tourist buses operating illegally on Delhi Mumbai Delhi Expressway.	
11	Number of tourist buses operating illegally inspected and detained by the officers designated or appointed.	
12	Amount of fine collected from illegally operating tourist buses inspected a	

The first Appellate Authority is as under

Name of the Appellate Authority : Sh. Mohd. Safi, CGM(T)/RO Delhi

Office Address : National Highways Authority of India,
G-5 &G-6, Sector-10, Dwarka /
New Delhi-110075

Yours sincerely,

31/11/25

GM (T)/Project Director
PIU Sohna

Copy to:

1. CGM(Coord.)/Nodal Officer (RTI), NHAI HQ, New Delhi, for kind information please.
2. Regional Officer-Delhi for kind information please.

GM (T)/Project Director
PIU Sohna

Delete | Archive | Report | Move to | Reply | Reply all | Forward

Re: Service of Reply to Counter affidavit filed by NHAI - Respondent No. 2 in OA 1236/2024

AS

Anil Sood (SPChetna)

To: Secy-moef@nic.in; tis@nhai.org; chairman@nhai.org; Secy-road@nic.in; cs@hry.nic.in; csraj@rajasthan.gov.in; cs@punjab.gov.in; fctcp@hry.nic.in; clomcdhq@gmail.com; pccf-gnctd@delhi.gov.in; ccb.cpcb@nic.in

Thu 15-01-2026 16:17

Scanned Reply to Counter R2 NHAI.pdf

Dear All

Attached is the Reply to the Counter Affidavit filed by National Highway Authority of India - Respondent No.2.

With best wishes & kind regards

Anil Sood
Hony President - SPCHETNA
TEDx Speaker, Recipient of Man of Excellence Award 2023
A 414-415 , Somdutt Chamber -1
5 Bhikajicama Place,
New Delhi.
email: anilsood@spchetna.com
Cell. +91-9971117801

Web site: www.spchetna.com

The donations to the Society holding Unique Registration No AABTS4118AF20214, are exempt from Income Tax under Section 80 G of Income Tax, Act, 1961, vide order dated 31st December 2021 from AY 2022-23 to AY 2026- 2027