

BEFORE THE NATIONAL GREEN TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

I.A. NO. OF 2023

IN

ORIGINAL APPLICATION No.287/2022

IN THE MATTER OF:

AMIT KISHORE & ORS

...PETITIONER

VERSUS

UTTAR PRADESH STATE POLLUTION

CONTROL BOARD & ORS

...RESPONDENTS

WRITTEN ARGUMENTS ON BEHALF OF THE
APPLICANTS NAMED SH. AMIT KISHORE, SH.
GIREESH KUMAR SHARMA AND SH. P. K. ARORA

1. Petitioners, who are the Original Applicants in the present Original Application (“OA”) are law-abiding citizens of India working relentlessly towards environmental conservation.
2. That the present OA is pending consideration before this Hon’ble Tribunal and the same was fixed for further consideration on 19.05.2023. *Vide* Order dated 19.05.2023, Hon’ble Tribunal directed the matter to be listed for arguments on 10.07.2023 granting liberty to the Ld. Counsels for submitting their written arguments.
3. Notably, over the last few dates of hearings, several affidavits/ arguments have been placed on record of this

Tribunal without the leave of this Hon'ble Tribunal:

- a. For instance, the Affidavit filed by **Respondent No.2/Ghaziabad Nagar Nigam ("R2")** dated **16.05.2023** was filed pursuant to the Tribunal's order dated **21.02.2023**.
 - b. However, the Short Synopsis filed by **Respondent No. 3/U.P. Avas Vikas Parishad ("R3")** dated **24.11.2022** was filed without any order or leave of the Tribunal.
 - c. Further another additional affidavit was filed by **Respondent no. 2** on **16.05.23** without the leave of this Hon'ble Tribunal.
4. It is submitted, that the contents of the above-stated Affidavits reveal that there are multiple contradictions in the stands taken by the Respondents in their other affidavits filed before this Hon'ble Tribunal and in each subsequent submission made by the Respondents, they have taken a prevaricating stand with respect to this matter.
5. Therefore, the Original Applicants crave the leave of this Hon'ble Tribunal to submit these written arguments/submissions to bring out the falsities and misrepresentations made by the Respondents in their subsequent affidavits.

**THE LOCATION IN QUESTION IS CLEARLY A
GREEN BELT AND WAS ENCROACHED BY THE
RESPONDENTS IN CONNIVANCE WITH EACH
OTHER.**

6. That the Zonal Map of Vasundhara Residential Yojna (*hereinafter referred to as “Zonal Map”*) (Ref: Annexure-A to the Reply Affidavit filed by R3 dated 18.11.2022 @ Running Page No. 224 of the paper book) annexed with the hand-over documents where the Vasundhara Yojna was transferred by R3 to R2 clearly reveals that the portion of land in Sector 15, Vasundhara’s Green Belt, Ghaziabad (*hereinafter referred to as “location in question”*) as a green belt is included within 5,50,145 Sq Meters. It is submitted that on a previous hearing dated 21.02.2023, the Hon’ble Tribunal refused to rely on the Zonal Map presented by R3 on the ground that the same is a very old map. The relevant portion of the Order dated 21.02.2023 is reproduced herein for ready reference:

“...but the layout map, which is very old having been prepared at the time of handing over of Vasundhara Yojna by UPAVP to Ghaziabad Nagar Nigam, does not depict the subsequent developments/modifications at the site in question and even the present position of the roads and the drains constructed on both sides of the roads is not shown in the above said map.”

7. It is submitted that the said Zonal Map hold statutory validity and continues to be a conclusive piece of evidence, that the location in question is a green Belt and no new map adduced by the Respondents has legitimately overruled the findings as revealed in the Zonal map which was prepared as an annexure to the terms of handover laid there under Section 41 of the U.P. Avas Evam Vikas Parishad Adhiniyam, 1965, which provides for transfer of streets and open spaces to local authority by UP Avas Evam Vikas parishad.

8. That the Original Applicants wish to further submit that all the maps submitted by the Respondents and their submissions made in respect of the Maps submitted by them are prevaricating and false.

A. FALSEHOODS OF DIFFERENT MAPS PLACED ON THE RECORD BY THE RESPONDENTS

(a) MAP PLACED ON RECORD BY R3

9. In the first Affidavit submitted by R3 on 05.09.2022 (Ref: @Running Page 85 of the paper book @ Para 6), it was the clear stand of R3, that R2 acted in violation of the handover terms and the vending zones have been illegally set up over the Location in Question. The relevant portion of the affidavit is reproduced herein for ready reference:

*“6. That it is important to bring to the notice of this Hon'ble Tribunal that a vending zone was proposed to be set up in Sector 10, 12 and 14 of Vasundhara, Ghaziabad that had been marked for setting up in accordance with a proposal passed by the Architecture and Planning Section of the Answering Respondent. **Therefore, Ghaziabad Nagar Nigam has acted in violation of the aforementioned proposal and has illegally set up the vending zone. Therefore, Ghaziabad Nagar Nigam must remove the said encroachment from the green belt situated in sector 15 and 17 of the Vasundhara Awas Yojna and restore the said green belt to its original form.**”*

10. Further, later in the affidavit filed by R3 on 18.11.2022 (Ref: @ Running Page 223 of the paper book @ Para 4), R3 once again stated in clear terms that as per the terms of the handover of Vasundhara Residential Yojna from R3 to R2, the basic structure could not have been altered by R2. The relevant portion of the affidavit is reproduced herein for ready reference:

“...Moreover, as per the contract, the said Yojna was handed over with certain terms and conditions. According to the terms and conditions of the contract the Ghaziabad Nagar Nigam could not make any changes to the basic structure, usage, façade and the services provided by the Answering Respondent without a prior written permission.”

11. Further R3, in support of their submissions, enclosed the Zonal Map (Ref: @ Running Page 224 of the paper book), clearly revealing that the location in question is in the Green Belt area and was included in the 5,50,145 Sqm. of Green Space as specified during the handover to R2 on 30.10.2002. Further, as per the submissions made by R3 on affidavit, no changes could have been made by R2 without the express permission of R3.

12. However, later in the short synopsis filed by the counsel for R3 dated 24.11.2022 (Ref: @ Running Page 595 of the paper book) (which has **NOT** been submitted with an accompanying affidavit), R3 totally changed their stance with respect to the Location in Question. In the submission made, R3 tried to unsuccessfully validate a layout plan of Sector 15, Vasundhara, Ghaziabad dated 17.10.1994 (hereinafter referred to as “**Layout Plan I**”) (Ref: @ Running Page 597 of the paper book) arguing that the location in question is not a green belt. However, that stand taken by R3 in this submission is neither tenable nor in pursuance of the affidavit filed before this Hon’ble Tribunal. It suffers from material contradictions which are being enlisted as under for the consideration of the Hon’ble Tribunal:

- a. That argument of R3 and the reliance on the Layout Plan I by R3 is not filed on Affidavit and is clearly

contrary to the stand taken by R3 in their previous affidavits on oath.

- b. There the **Layout Plan I** dated 1994 is without any legal sanctity for the simple reason that the same has been filed without any context/ legal authority and without explaining under what circumstances was the **Layout Plan I** drawn out and considering what all factors, Layout Plan I was issued.
- c. Also, the Layout Plan I submitted by R3 in its short synopsis wherein it is trying to validate the Layout plan submitted by R 7 – 48 are from different periods and drawn out by different architects. Notably, the Layout plan submitted by R 7 – 48 pertains to the period of **2004** and no explanation and the context in which these maps were drawn out has been submitted.

(b) **MAP PLACED ON RECORD BY R7 – R48**

13. It is submitted that R7 to R48, in their reply to the OA dated 19.11.2022 has also submitted a Layout Map annexed as ‘Annexure R-5’ (hereinafter referred to as “**Layout Plan II**”) (*Ref: @Running Page 321 of the paper book*) which is being termed as “a sanctioned plan by U.P. Awas Evam Vikas Parishad”. However, a bare perusal of this plan clearly reveals that:

- a. The source and the person authorizing it have not been mentioned in the pleading of the reply.
- b. There is no green belt in front of CWR, Sector 15, Vasundhara (hereinafter referred to as “**CWR**”), which is contrary to the averment made by R3 in its

affidavit dated 05.09.2022.

- c. Notably Layout Plan II pertains to a period of 2004 i.e., post the handover, wherein, it is clearly established that R3 was not in the position to make any changes to the location in question.
- d. Also, the Layout Plan I submitted by R3 pertains to a period of 1994 and the Layout Plan II submitted by R7 – R48 pertains to a period of 2004 are drawn out by separate Architects, still, no explanation and the context in which these maps were drawn out has been submitted.

14. It is submitted that another so-called “Master Plan 2021” is annexed by R7 – R48 in their reply to O.A. dated 19.11.22 (*Ref: @ Running Page 322 of the paper book*) is contrary to the Zonal Map submitted by R3 itself. Firstly, the Master Plan is not drawn up by R3 since it has no authority to release any Master Plan hence the Master Plan is not a R3 document. Also, the Master Plan 2021 itself is full of material contradictions as under:

- a. no Green Belt Area is being shown in the so-called master plan even in areas where there is admitted green belt by the Respondents. (*Ref: @ Running Page 222 of the paper book @ Para 4*).
- b. Further post the statutory handover by R3 to R 2 there cannot be any changes in the green Areas handed over to R2 and any such master plan in contravention of such terms is *ultra vires* the handover agreement.
- c. Moreover, the Master Plan 2021 cannot be relied on as the same is contrary to the Zonal Map. Also, the same is in clear contravention of Section 41 of The

Uttar Pradesh Avas Evam Vikas Parishad
Adhiniyam, 1965.

- d. Furthermore, while not admitting as correct, but even going by the own arguments/ admission of R2 wherein they have placed on record a letter dated 02.02.1984 annexed as OM No.191/Ni. Pra-1/84 (*Ref: @ page 631 of the paper book*), it is an admitted position of R2 that after the handover of a project, while its ownership may no longer vests in R3 but even then, R 2 is not authorized to make any changes to the Green Areas/ green Belts i.e., R 2 cannot change the nature of the land.

(c) **MATERIAL CONTRADICTIONS IN THE STAND TAKEN BY THE RESPONDENTS ON OATH IN THEIR AFFIDAVITS.**

15.It is pertinent to note that the stand taken by R3 in their Affidavit dated 17.04.2023 (*Ref: @ Running Page 614 of the paper book*) is in contradiction to the Zonal Map submitted by them at the time of handover of the Vasundhara Yojna to R2. The contradiction is clearly evident from a bare perusal of Para 5 of their Affidavit. The relevant portion is quoted herein for ready reference:

*“5. That as per the approved lay-out plan of Sec-15, Vasundhara Yojna, a 4 mtr. wide Green Belt was planned on the edge of 45 mtr. road (towards Sec-15). **In the present context the said green belt is till the CWR's 9 mtr. Road on one side.** The boundary wall of the CWR is constructed adjacent to the 45 mt. road. **There is no green belt on the CWR boundary. However, the green belt continues on both the sides of the CWR, interjected by the 18 mt. wide on the left side of the CWR.**”*

There is no green belt on the CWR boundary. Therefore, any Vendors/ Vending zone allotted by the Ghaziabad Nagar

Nigam, in front of the CWR boundary wall, is part of the 45 mtr. wide road. Also any Vendors/ Vending zone allotted by the GNN in front of the Commercial Plots, between the 9 mtr. wide road and the 45 mtr. wide road is in the Green Belt. It is pertinent to mention that as per the hand-over and lay out plan of the Sec-15, Vasundhara Yojna, the land in front of the CWR was not demarcated as a Vending Zone by the U.P. Avas Evam Vikas Parishad.”

16. Furthermore, this statement is also contradictory to the submission dated 05.09.2022 made by **Sh. Aman Tyagi**, Executive Engineer on behalf of R3 on affidavit (Ref: @ *Running Page 82 of the paper book*). It is the very own submission of the Deponent that the encroachment done by R2 as alleged by the Original Applicants is correct and R2 has voluntarily acted in violation of the terms of the handover letter. The relevant portion of the submission is quoted herein for ready reference:

“6. That it is important to bring to the notice of this Hon'ble Tribunal that a vending zone was proposed to be set up in Sector 10, 12 and 14 of Vasundhara, Ghaziabad that had been marked for setting up in accordance with a proposal passed by the Architecture and Planning Section of the Answering Respondent. Therefore, Ghaziabad Nagar Nigam has acted in violation of the aforementioned proposal and has illegally set up the vending zone. Therefore, Ghaziabad Nagar Nigam must remove the said encroachment from the green belt situated in sector 15 and 17 of the Vasundhara Awas Yojna and restore the said green belt to its original form.”

17. Moreover, this averment in the affidavit by Sh. Aman Tyagi is supported by the Zonal Map (referred to as ‘hand-over plan’ in the above statement) as submitted by R3 on the handover of Vasundhara Yojna to R2.

(d) **SUBMISSION/ AFFIDAVITS CLEARING SHOWING THE EXISTENCE OF GREEN BELT AREA IN FRONT OF CWR.**

18. It is submitted that the Layout Plans annexed by **Mr. Arun**

Kumar Yadav, the Additional Municipal Commissioner of R 2, along with his Reply dated 19.04.2023 (*Ref: @ Running Page 626 of the paper book*), the Green Belt area is not present on either side of the 18m wide road which interjects the boundary of CWR and is adjacent to the 45m wide main road. However, in the submission made by **Sh. Aman Tyagi** on affidavit on behalf of R3 (*Ref: @ Running Page 615 of the paper book @ Para 5*), he has admitted that the Green Belt area is present on both sides of CWR.

19. It is submitted that from a bare perusal of the aforementioned submissions made by R2 and R3 respectively and the documents relied on by them, it is evident that they are trying to mislead this Hon'ble Tribunal and obfuscate the fact that there is Green Belt area in front of CWR which was encroached by them.

Hence in light of the above, it is submitted that the present OA be allowed with heavy costs imposed on R3 and R2 for misleading the court.

Further proceedings under section 340 CrPC may be initiated against Sh. Aman Tyagi and Mr. Arun Kumar for misleading the court and giving false evidence before the Tribunal.

Applicants

Through Counsel

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