

Item No. 01

(Court No. 1)

**BEFORE THE NATIONAL GREEN TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

(By Video Conferencing)

Original Application No. 419/2021

M/s 108, Super Complex R.W.A.

Applicant

Versus

Uttar Pradesh Pollution Control Board & Ors.

Respondent(s)

Date of hearing: 26.07.2022

**CORAM: HON'BLE MR. JUSTICE ADARSH KUMAR GOEL, CHAIRPERSON
HON'BLE MR. JUSTICE SUDHIR AGARWAL, JUDICIAL MEMBER
HON'BLE PROF. A. SENTHIL VEL, EXPERT MEMBER**

Applicant: Mr. Natwar Rai, Advocate

Respondent: Mr. Anuj Kumar Sharma, Advocate for R - 5 (Mr. Narender Bhardwaj)

ORDER

1. Grievance in this application is against encroachment of open space by constructing a *Baratghar* and shops in a park by removing trees and plants at Sector 16A, Vasundhra, Ghaziabad, UP. According to the applicant, such illegal action has been taken by Respondent No. 5 – Narender Bhardwaj, Bhardwaj House, Prahlad Garhi Village, Ghaziabad, U.P. and no action has been taken by the authorities to remedy the illegality. The applicant has annexed photographs showing illegal encroachments and also complaints filed with the statutory authorities.

2. Vide order dated 12.01.2022, the Tribunal constituted a joint Committee of U.P. Awas Evam Vikas Parishad, Ghaziabad and District Magistrate, Ghaziabad to look into the matter and take remedial action in

accordance with law. It was also directed that the alleged encroacher be put to notice of these proceedings for his response if any.

3. The Committee has filed its compliance report on 21.07.2022 as follows:-

“xxxxxx.....xxx

*Accordingly, above Joint Committee visited the site in question. Joint Committee found that **at present an old temple has been built at the site of the open space displayed as per the layout of the plan at the site under question in Sector-16A, Vasundhara Ghaziabad and a hall has been built on the land adjacent to the temple, which is interconnected. During the inspection, the priest of the temple and the present official of RWA informed that the said hall has been constructed after the old construction in approx year 2016. At present there is no green area and trees etc. available in the said premises.***

*Further, District Magistrate, Ghaziabad vide letter dated 06.04.2022 called a meeting of the Joint Committee on dated 07.04.2022. In the meeting, Officials of U.P. Awas Evam Vikas Parishad, Ghaziabad informed that **all the services of all the parks, open space, roads, drains, sewer and water supply etc. of sector-16 of Vasundhara Yojna have been handed over to the Municipal Corporation Ghaziabad on dated 30.10.2002 and the site in question is also handed over to the Municipal Corporation Ghaziabad in the form of open space. According to Section-41 of Awas Vikas Parishad Adhinyam-1965, after handing over of services of the scheme and open space etc. to Municipal corporation, Ghaziabad, the work of its supervision and maintenance is to be done by the Municipal Corporation, Ghaziabad. Minutes of meeting is attached as Annexure-2.***

*In view of above, **District Magistrate Ghaziabad vide letter dated 08.04.2022 issued letter to Municipal Commissioner, Ghaziabad to take necessary action in said matter and put-up action taken report as well, copy of same is annexed as Annexure-3.***

4. As against above, Respondent No. 5, Narender Bhardwaj put in appearance through Mr. Anuj Kumar Sharma, Advocate and has sought permission to file reply in the course of the day which we have permitted. We have taken into account the reply proposed to be filed and heard learned Counsel for the respondent in the matter. Stand of the said respondent is that the Tribunal has no jurisdiction to deal with the issue

as the encroachment is not of a park. There is no *Baratghar* or shops as alleged by the applicant. The said respondent is involved in religious and charitable activities. Temple was built by his ancestors and other villages 50 years back on open space which is not on park, nor is degrading the environment. He has filed his own map showing existence of temple 50 years back. It is further submitted that the report filed before the Tribunal by the District Magistrate that it was an open space in 2016 is not correct. The area also has a mother dairy booth which contradicts the version that it was open space or meant to be so. The Committee never sought response of the said respondent and his side of the story has not been considered. No new construction was made in the year 2006. There was earlier a makeshift hall which had become dilapidated which was reconstructed.

5. We have given due consideration to the matter. We first consider the question of jurisdiction. NGT has been constituted to provide remedy to victims of pollution and other environmental damage in the light of Stockholm Conference 1972 and Rio Conference 1992 to enforce sustainable development principle. Under section 15, the Tribunal can issue an order for restitution of environment. Reference may be made to judgements of the Hon'ble Supreme Court in *Mantri Techzone Pvt. Ltd. v. Forward Foundation and Ors.* (2019) 18 SCC 494 and *the Director General (Road Development) NHAI v. Aam Aadmi Lok Manch* (2020) SCC Online 572. It has been held in *Bangalore Medical Trust v B.S. Muddappa & Others* (1991) 4 SCC 54 and reiterated in *Lal Bahadur v. State of UP & Others* (2018) 15 SCC 407 that absence of open space in present day when urbanisation is on increase, rural exodus is on large scale and congested areas are coming up rapidly, may give rise to health hazard. Protection of the environment and such spaces reduce the ill-effects of urbanisation. Thus, it is difficult to accept the objection that this Tribunal has no

jurisdiction to deal with the issue of illegal conversion of open public space to private construction. Use of open area for any construction does adversely affect the environment. The issue, thus, falls in the jurisdiction of the Tribunal under Section 15 of the NGT Act, 2010.

6. Coming to the merits, we find that Respondent No. 5 who has raised construction has no right on the land on which construction has been raised. It is the Government land. The area is shown as open space as per lay out plan. Map relied upon showing existence of temple cannot in any manner establish the temple is 50 years old or the respondent has title to the same. On the other hand, as shown in the report of the District Magistrate, it was open land as per layout plan a public document, when handed over by the Awas Evam Vikas Parishad, Ghaziabad to Nagar Nigam Ghaziabad. Thus, it is clearly established that open space has been illegally encroached upon by respondent No. 5 in the year 2016. District Magistrate, Ghaziabad has thus rightly written letter dated 08.04.2022, asking the Municipal Corporation, Ghaziabad to take further action.

7. Accordingly, we direct District Magistrate and Municipal Corporation Ghaziabad to take over the area, removing the encroachment and the encroacher, Respondent No. 5, Narender Bhardwaj and to restore the same as per law. The area may be taken over and maintained by the Municipal Corporation, Ghaziabad, as per permitted user. This may be ensured by the District Magistrate, Municipal Corporation, Ghaziabad and the SSP, Ghaziabad. This will also be without prejudice to any other civil/criminal proceedings for illegal tress pass and encroachment of the public land.

The application is disposed of.

A copy of this order be forwarded to the Municipal Corporation,
District Magistrate, SSP and U.P. Awas Evam Vikas Parishad, Ghaziabad
by email for compliance.

Adarsh Kumar Goel, CP

Sudhir Agarwal, JM

Prof. A. Senthil Vel, EM

July 26, 2022
O.A. No. 419/2021
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