

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

Original Application No. 238/2015
(M.A. No. 968/2016, M.A. No. 1073/2016, M.A. No. 1097/2016, M.A.
No. 59/2018 & I.A. No. 446/2019)

Anil Uppal & Ors.

Applicant(s)

Versus

U.O.I. & Ors.

Respondent(s)

Date of hearing: 09.01.2020

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

For Applicant(s): Ms. Kanika Agnihotri and Mr. Amer Vaid,
Advocates
Mr. Raj Panjwani, Senior Advocate and Aadil
Singh, Advocate for Intervenor

For Respondent(s): Mr. Shashank Saxena and Ms. Ankita
Choudhary, Advocate for CGWA
Mr. Balendu Shekhar, Advocate for
MoEF&CC
Mr. Rahul Khurana, Advocate for Rto5, 7to8
Ms. Tanmaya Sharma, Advocate for R-6

ORDER

1. This order may be read in continuation of earlier orders in the matter. The question for consideration is the remedial action for construction on green/open area in a housing complex. According to the applicants, Ambience Lagoon Apartment was a housing complex at National Highway No. 8, Gurgaon, Haryana developed by Respondent No. 6, Ambience Developers & Infrastructure Private Limited. The applicants were residents of

the said colony. Open areas in the colony are shrinking. Ground water extraction was excessive. Air quality was getting deteriorated. The builder had undertaken construction on designed open spaces, blocking the fresh air and sunlight. The approved zoning plans required maintaining atleast 15% of the total area as open space. National Building Code of India, 2005 also requires minimum horizontal space between existing building and the new building.

2. The application was filed on 03.06.2015. After notice was issued, rival stands of the parties were considered and, vide order dated 16.08.2016, status report furnished by the Haryana State Pollution Control Board (HSPCB) and the Department of Town and Country Planning dated 05.05.2016 was examined. Though the said report stated that there was no violation as regards green/open areas, the stand of the applicants was that the green area did not exist on the ground and the report was furnished without actual site visit. The Tribunal thus appointed a local Commissioner to visit the site and furnish a report.

3. The report of the local Commissioner which was considered vide order dated 09.01.2018 showed that area No. 10 which was green area as per layout plan was occupied by a nursery school, Sewage Treatment Plant (STP) and electric substation. Area no. 11 which was also shown as green area did not exist. Part of area no. 11 was covered by a road and part of it was occupied by a flat. Ready mix concrete carrying trucks were found plying high decibel noise. The STP was found engulfed in

foam. The report of the Local Commissioner further mentioned:-

“(a) As per actual ground conditions, area No 10 and adjoining areas demarcated for Nursery School, Water Treatment Plant and Electric Substation as shown on R-1/C-1 is actually occupied by an Atrium + 12 storey Commercial Building (9 Floors are occupied as informed by representative of R-6) of 42 m height above Ground Level, belonging to R-6. It is separated through a 2m high boundary wall from Lagoon Apartment complex.

A road on Lagoon Apartment side and a set back of 7.88m on other side on the boundary wall lie in between the Lagoon Apartments and the Commercial Building.

Building line of the Commercial Building as at a minimum of 13.5 m away from entrance portico of 32.2 m high Block E of Lagoon Apartments. Maximum distance between building line of Block E and F of Lagoon Apartments and Building line of Commercial building is 19.6m.

Actual site plan as per measurements agreed by all parties present at site and site photo graphs (2 Nos) are enclosed with the Report as Annexure C-3 and C-4 respectively.

(b) As per actual ground condition, area No.11 as demarcated on R-1, is in fact, part of a Road of 18 m (approx.) ROW (right of Way) between Lagoon Apartments and Caitriona Apartments developed by R-6.

A part of this road is being maintained as open pucca area of undefined use under control of R-6. Yet another part of this road (about 150 sqm green lawn), also shown as part of organised green area No.11, is in fact, under exclusive use of occupier of ground floor flat No.1, Block-B of Lagoon Apartments.

Actual site plan as per measurements agreed by all parties present at site and site photo graphs (3 Nos) are enclosed with the Report as Annexure C-5 and C-6 Colly respectively.”

4. The response of Respondent No. 6 was that the project was integrated with a larger project called 'Ambience Island' and the total green area of 15% was being maintained meaning thereby that there could be no objection to original green area being occupied. Necessary approvals were granted.
5. The matter was last considered on 29.04.2019 and after noting earlier proceedings, it was observed:-

“1to3 xxx xxx xxx

4. Tribunal found it necessary to quantify the compensation for the loss of environmental benefits/services, if any. The matter was adjourned thereafter on 24.01.2018, 01.02.2018, 27.02.2018 and 06.04.2018 at the request of learned Counsel for the parties.

5. On 25.07.2018, the Tribunal noted the absence of Counsel for the applicants but an adjournment was granted. Today though Counsel for the applicants and Respondent No. 6 are present, they state that they are not the main Counsel and will not proceed in the matter. We do not find any justification for a Counsel appearing before this Tribunal and at the same time saying that they are not the 'main' Counsel. We do not understand why they have put in appearance, if they are not the Counsel.

6. Be that as it may, report of the Ministry of Environment, Forest and Climate Change (MoEF&CC) on the issue of environmental compensation in terms of order dated 09.01.2018 is still awaited though more than one year has gone. Learned Counsel for the MoEF&CC submits that the report will be submitted within one month positively. The report may be furnished to the Tribunal by e-mail at ngt.filing@gmail.com. It is made clear that there will be no further adjournment on any account without adverse orders against the party in default.”

6. Accordingly, report has been filed by the MoEF&CC on 22.11.2009 making an assessment of Rs. 68,51,250/-.
7. We have heard the learned counsel for the parties.

8. Learned counsel for the applicant points out that the report is incomplete and has not gone into the question of illegal constructions in area 10-11 which were open areas in the earlier approved plan. The open area could not have been converted into covered area which is in violation of environmental law.
9. Any approval granted without considering impact on the environmental rights of the persons to whom the flats were allotted is against Sustainable Development and Precautionary Principles required to be enforced by this Tribunal. Powers of regulatory authorities was required to be exercised in accordance with these principles. EIA procedure was required to be duly followed. The Deed of Declaration filed by the builder in 2009 showed the area to be an open area which was the basis on which the flats were allotted prior to 2010. After allotment of the said flats, the open area was converted into covered area on the ground that open area will be shown at different locations in the integrated project without considering the rights of the allottees. Out of 10.98 acre land which was meant for the project in question, only 7.93 acre land was used and remaining 3.05 acre land, which was open area, was converted into covered area for a commercial tower, irreversibly taking away the rights to ecological services of the persons to whom the flats were allotted.
10. The applicant has also made a point on the inadequacy of the compensation and about the compensation not covering the

issues already raised in these proceedings, particularly loss to ecological services on account of illegal commercial constructions in open areas. Illegal benefit taken by the builder was required to be quantified and recovered which has not been done. Alternatively, the area needs to be restored, after demolishing illegal constructions.

11. We have also heard other learned counsel.
12. While the recommended environmental compensation may have to be recovered as an interim compensation and may be deposited within one month with the CPCB by Respondent No. 6, further question whether illegal construction is to be demolished or the compensation quantified may need to be gone into.
13. We permit the parties to file written submissions specifying questions for constitution of an appropriate Expert Committee to go into the matter with their respective precise submissions. The same may be filed by the applicant within one week from today and by the Respondents within one week thereafter. Oral arguments stand concluded. Further order will be uploaded on the website by 14.02.2020.

Adarsh Kumar Goel, CP

S.P Wangdi, JM

Dr. Nagin Nanda, EM

January 09, 2020
Original Application No. 238/2015
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