

Item No. 3

(Court No. 2)

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

(Through Physical Hearing with Hybrid VC Option)

O.A No. 68/2022

Raman Sharma

Applicant

Versus

State of Haryana & Ors.

Respondents

Date of hearing: 28.03.2023

**CORAM: HON'BLE MR. JUSTICE ARUN KUMAR TYAGI, JUDICIAL MEMBER.
HON'BLE DR. AFROZ AHMAD, EXPERT MEMBER.**

Applicant: Mr. Raman Sharma- Applicant in person.
Er. Rakesh Singh (intervener in I.A. 145/2023) in person.

Respondents: Mr. Lokesh Sinhal, Sr. AAG, State of Haryana with
Mr. Rahul Khurana, Mr. Nikunj Gupta and Mr. Umesh
Kr. Baker, Advocates for Respondents No. 1 to 4 and 6
Mr. Pradeep Kumar, Member Secretary, HSPCB,
Mr. P.C. Meena, Commissioner, Municipal Corporation
Gurugram and
Mr. T.L. Satya Prakash, Director General, Town and
Country Planning.
Mr. Noopur Singhal, Advocate for Respondent No. 5.
Ms. Radhika Gautam, Advocate for Respondent No. 7.
Ms. Madhu Twatia, Advocate for Respondent No. 8.

Application is registered based on a letter petition received by email.

ORDER

1. Grievances in the application are regarding running of 10 DG sets in the green belt of Integrated Residential Colony Gurugram, Haryana, dumping of construction waste in violation of environmental norms and raising of constructions by M/S Malibu Estate Pvt. Ltd. in Malibu Town, Sohna Road, Gurgaon(North), Haryana despite refusal of consent to operate by the Haryana state Pollution Control Board (HSPCB).

2. Vide order dated 02.02.2022, this Tribunal constituted a Joint Committee comprising of the HSPCB, SEIAA, HUDA, DFO and District Magistrate-Gurugram (Haryana) and directed the same to submit factual and action taken report within three months.

3. In compliance thereof interim report as well as compliance report were filed vide emails dated 10.10.2022.

4. Vide order dated 11.10.2022, notices were ordered to be issued to the respondents no. 1 to 7 requiring them to file their reply/response within two months.

5. Replies were filed by Respondents No. 2 and 3 vide emails dated 09.01.2023 and by Respondents No. 1, 4, 5 and 6 vide emails dated 10.01.2023.

6. Rejoinder has been filed by the applicant vide email dated 28.02.2023. Replies have been filed by respondent No.2 vide email dated 27.03.2023, respondent No.3 vide email dated 14.03.2023, respondent No.4 vide email dated 25.03.2023 and respondent No.7 vide email dated 14.03.2023.

7. So far as the grievance regarding running of 10 DG sets in greenbelt without any approval in violation of environmental norms is concerned, this Tribunal noticed that the Joint Committee had mentioned in its report that the DTP (P) had mentioned in his report dated 10.08.2022 submitted to the Joint Committee that they had not given any permission for placement of any DG sets in the green area but subsequently in its reply filed vide email dated 10.01.2023, Respondent

No. 4 has taken contradictory stand that no Objection to placement of DG sets in Green Area was conveyed by the department to DTP(E), Gurugram. In compliance of orders of this Tribunal requiring filing of detailed reply, reply has been filed by respondent No.4 vide e-mail dated 25.03.2023. Relevant part of the reply is reproduced as under:-

"X X X X
 7. That it is not disputed that District Town Planner (P), Gurugram as per his report dated 10.08.2022 submitted to the Joint Committee that no permission was granted for placement of any DG sets in the green area. Rather, in para 6 of the Reply dated 09.01.2023 already filed by answering respondent, it was brought to the notice of this Court that once the issue of installation of such DG sets brought to the notice of the Department, the then District Town Planner (Enf), Gurugram while exercising the powers conferred under Section 10 of the Act of 1975, had sealed 3 DG sets placed in green area (park) alongwith action against other illegal establishments being in violation of the approved layout plan of the colony. The photograph of the sealing of DG sets on 27.10.2021 is attached as Annexure - R4/1. Hence, the legal action was duly taken against the alleged DG sets by the Department.

8. That after sealing of DG sets on 27.01.2021 by the Department of answering respondent, the Malibu Town Residents Welfare Association vide their representation dated 26.11.2021 (Annexure-R4/2) informed that the Sh. Raman Sharma, who has filed the present O.A, is working against the interest and safety of 2000 families of this township by filing frivolous repeated complaints with ulterior motive. Therefore, said association requested to de-seal the DG sets and not to take coercive action other additional establishments. The relevant part of the request of the association is as under: -

i. Gensets have been put at central park between WW-CW blocks for the benefit of the residents. There are exams for kids going on at this moment apart from work from home residents as well. We also have many senior citizens who have retired from defense forces and other fields who chose this township due to its vast greenery. This needs a top priority attention from you to be de-sealed as there are constant shutdown of electricity due to up-gradation work happening for smart grid by DHBVN.

ii. Another genset has been operational at the main park of Starwood at extreme of north east corner which is again used jointly by many residents staying there. Request you again for the regularization of the same.

iii. RWA office was an existing structure next to transformer station used by electrical team before. It has just been refurbished and repainted and utilized now regularly for vaccination camps, covid tests, health check ups for senior citizen and other welfare activities.

iv. The RFID barriers are put for the security of the residents with their hard-earned money which is a temporary structure. There are a total of 750 entries done on an average at these barriers every day which ensures the logging of people entering the township. They are manned 24 hours by security team and hence never closed for emergencies like ambulance, police etc. Before these barriers were installed 3 years back we have had serious security issues like eve teasing by bikers from HUDA sectors, chain snatching, drinking in outside cars by men at secluded places, drugs sale next to HUDA land next to Pine Drive inside the township, parking of outside cars inside the township etc. Some residents who visited Mr. R.S. Baath on 28th October explained their personal experiences of harassment faced with anti-social elements.

v. School/Residents Bus Shelters at various locations all over township have been put up again with residents' money. They act as sitting for school children when they are waiting for school and resting for elderly residents during their walks etc. This is also again a temporary structure only.

vi. Guard temporary seating room has been created to save the guards from rain and sun. They are actually manning the gates for 24 hours. it is humane only to create something like this for such personnel. Again this is a temporary structure paid by residents and made after request from them.

vii. Orange Drive Street Gate next to panchayati rasta very crucial for security of residents as this is next to the area outside the township where all kind of illegal activities happen everyday. Even drugs and alcohol was being sold at this small shop which is detrimental for our kids around. All kinds of antisocial elements hang around this shop creating nuisance post evening. As this is next to Mount Olympus school; a guard normally opens the gate and closes them when there are kids going to the school.

viii. Temporary gate at Star Wood next to Good Earth Mall was erected as earlier there was many unauthorized parking of cars from the Good Earth Mall and illegal entry of outside cars parking at secluded places inside for drinking of alcohol which becomes a serious threat for the residents residing there. Ladies and kids are afraid to step out after evening time due to bad elements roaming around in the township without any gate earlier. This was a gate manned by security guards for 24 hours and never closed completely for any emergency services like ambulance or police.

9. That the above request of the Resident Association was considered in public interest as well as for the residents of the colony. Accordingly, the Department conveyed a no objection for the provision of services mentioned below vide memo dated 31.12.2021 to District Town Planner (E), Gurugram and Senior Town Planner, Gurugram (Annexure-R4/ 3): -

- a) Generator sets put up at central park.
- b) RFID, Barriers and Guard Shelter.
- c) Bus queue shelter.
- d) Temporary gate at Star Wood next to Good Earth Mall maintained by their security.

10. That District Town Planner (P), Gurugram submitted his report on 10.08.2022 before Joint Committee, wherein, it was recorded that all the DG sets placed in the green area and they have not been given any permission for placement of above DG sets in the residential colony. However, it is pertinent to mention that as explained in para no. 9 above, the NOC for allowing DG sets issued by the Department on 31.12.2021 and was conveyed to DTP(E), Gurugram and not to DTP(P), Gurugram. Therefore, it could not be reflected in the conclusions and recommendation of the committee while submitting its report in compliance of the orders dated 10.10.2022 of this Hon'ble Court. Therefore, any apparent contradiction is due to aforesaid reasons.

11. That as regards the order dated 11.01.2023 i.e., providing requisite details regarding measurement of area of green belt occupied, a fresh report with regard to the DG sets mentioned in observations of the committee has been received from District Town Planner(P), Gurugram on 23.03.2023. According to the said report dated 23.03.2023, total 13 no. of DG sets found to be installed in the licensed colony as shown on the copy of approved layout plan placed at Annexure R4/4. Out of these 13 DG sets are working at site, 6 are at Group Housing, 4 at water boosting site and balance 3 are at the central park. Thus, only 3 DG sets are installed in the green area.

It is pertinent to mention that the above-mentioned DG sets comprises a total area of 75.61 sq mtr. and the area of DG sets installed in the green area work out to only 13.80 sq mtr. The site plan showing the dimensions of the area covered by each DG sets is attached as Annexure-R4/5.

It is submitted that as per Rule 4 of Rules of 1976, the percentage of area of a colony under roads, open spaces etc. is required to be not less than 45% of the gross area of the land under the colony, however, which may further be reduced upto 35% considering the planning requirement and sized of the colony. The provisions of the said Rule as reproduced as under:-

"4. Percentage of area under roads, open space etc. in layout plans [Sections 3(3) 4 and 24]—(1) In the layout

plan of a colony, other than an industrial colony 115[or low-density-eco friendly colony], the land reserved for roads, open spaces, schools, public and community buildings and other common uses shall not be less than forty five percent of the gross area of the land under the colony:

Provided that the Director may reduce [after recording reasons therefore] this percentage to a figure not below thirty-five where in his opinion the planning requirements and the size of the colony so justify."

Hence, it is submitted that even if the alleged DG sets are considered for regularization in the green, the gross area of the colony under green will be more than the required norms as per the approved layout plan as well as norms prescribed providing green areas per person.

12. It is pertinent to mention that the residential plotted colony of Malibu Town also has a component of Group Housing over an area measuring 11.89 acres. The Building Plan of the said colony was approved vide this office Enst. no. 5175 dated 24.04.1997 and the occupation certificate in respect of building block no. 4 (type-C wing-2), building block no. 5 (EWS block) and building block no. 6 (EWS block) vide this office memo no. ZP-5-V/BS/2017/2724 dated 10.03.2017. The Department imposes a condition with regard to 100% back-up for lifts installed in the project, which is not possible without the provision of generators. Further, as regards the DG sets installed in sites earmarked for water boosting station, the same being a public utility deserves to be considered.

Prayer

In view of the submissions made in foregoing paras, it is most humbly submitted that the Department of answering respondent has already sealed the alleged DG sets on 27.10.2021 being not approved in the layout plan of the colony. However, subsequently on request of RWA, the NOC dated 31.12.2021 was granted by the Department allowing 3 DG sets in the park of the colony in public interest. Hence, it is most humbly submitted that the issue raised in the present application qua this Department are without any merit and thus, deserves to be dismissed."

8. As per above referred reply filed by respondent No.4 three DG sets are operating in green area which works out to **13.80 metres** and green area of the colony will be more than the required norms as per the approved layout plan as well as norms prescribed providing green areas per person.

9. It may be observed that even in the detailed reply filed by respondent No. 4 the details of green area in the colony with boundaries, measurements, location and present status have not been mentioned at all. For justifying grant of ex-post facto permission for running of DG sets in green area reference has been made to rule 4 (1) of the Haryana Development and Regulation of Urban Areas Rules, 1976 (HDRUA Rules 1976) rules which mandates that in the layout plan of a colony other than an industrial colony or low-density eco-friendly colony the land reserved for roads, open spaces, schools, public and community buildings and other common uses shall not be less than 45% of the gross area of the land under the colony and at the same time permits the Director to reduce the same to 35% after recording reasons if in his opinion the planning requirements and the size of the colony so justify. It has been claimed that in the present case such area is more than 35%. The above said rule merely refers to reservation of land for roads, open spaces, schools, public and community buildings and other common uses without prescribing any minimum percentage of land to be reserved as green belts or parks and does not lay down any requirement of maintaining green belts/parks which aspects need to be looked into for proper urbanization/colonization in accordance with the principle of sustainable development. The ex-post facto permission granted and reply filed by respondent No.4 completely ignore these aspects. The reply refers to but does not mention as to what is the minimum per capita green area requirement keeping in view the total number of the residents of the colony and how the same is maintained. In its reply respondent No.7 has referred to audit of green areas conducted and claims that the same

is more than 5% but no authenticity can be attached to the same at this stage without proper verification.

10. In **Bangalore Medical Trust v. B.S. Muddappa, (SC) 1991(4) SCC 54** Hon'ble Supreme Court allowed writ petition filed by the residents of the locality and set aside the diversion of the user and allotment of the site reserved for a public park to private persons for construction of a hospital. The observations made by Hon'ble Supreme Court in that case, which are also relevant to the present case, are reproduced as under:-

*"24. Protection of the environment, open spaces for recreation and fresh air, play grounds for children, promenade for the residents, and other conveniences or amenities are matters of great public concern and of vital interest to be taken care of in a development scheme. It is that public interest which is sought to be promoted by the Act by establishing the BDA. The public interest in the reservation and preservation of open spaces for parks and play grounds cannot be sacrificed by leasing or selling such sites to private persons for conversion to some other user. Any such act would be contrary to the legislative intent and inconsistent with the statutory requirements. Furthermore, it would be in direct conflict with the constitutional mandate to ensure that any State action is inspired by the basic values of individual freedom and dignity and addressed to the attainment of a quality of life which makes the guaranteed rights a reality for all the citizens. 1. See Kharak Singh v. The State of U. P., (1964) 1 SCR 332 ; Municipal Council, Ratlant v. Shri Vardhi.chand, (1981) 1 SCR 97; Francis Coralie Mullin v. The Administrator, Union Territory of Delhi, (1981) 2 SCR 516; Olga Tellis v. Bombay Municipal Corporation, (1985) 3 SCC 545; State of Himachal Pradesh v. Umed Ram Sharma, AIR 1986 Supreme Court 847 and Vikram Deo Singh Tomar v. State of Bihar, AIR 1988 Supreme Court 1782. 25. Reservation of open spaces for parks and play grounds is universally recognized as a legitimate exercise of 'statutory power rationally related to the protection of the residents of the locality from the ill-effects of urbanisation.*2 2. See for e.g. : - Karnataka Town and Country Planning Act, 1961; Maharashtra Regional and Town Planning Act, 1966; Bombay Town Planning Act, 1954; The Travancore Town and Country Planning Act, 1120; The Madras Town Planning Act, 1920; and the Rules framed under these Statutes; Town and Country Planning Act,*

1971 (England and Wales); *Encyclopaedia Americana*, Volume 22 page 240; *Encyclopaedia of the Social Sciences*, Volume XII at page 161; *Town Improvement Trusts in India*, 1945 by Rai Sahib Om Prakash Aggrawala, p. 35 et. seq; 'Halsbury's Statutes, Fourth Edition, p. 17 et. seq. and *Journal of Planning and Environment Law*, 1973 p. 130 et. seq. See also: *Penn Central Transportation Company v. City of New York*, (1978) 57 Law Ed 2d 631 438 US 104; *Village of Belle Terre v. Bruce Boraas*, (1974) Law Ed 2d 797 : 416 US 1; *Village of Euclid v. Ambler Realty Company*, (1926) 272 US 365; *Halsey v. Esso Petroleum Co. Ltd.*, (1961) 1 WLR 683. 26. In *Agins v. City of Tiburon*, (1980) 447 US 255, the Supreme Court of the United States upheld a zoning ordinance which provided....it is in the public interest to avoid unnecessary conversion of open space land to strictly urban uses, thereby protecting against the resultant impacts, such as.... pollution,.... destruction of scenic beauty, disturbance of the ecology and the environment, hazards related to geology, fire and flood, and other demonstrated consequences of urban sprawl'. Upholding the ordinance, the Court said:- ...The State of California has determined that the development of local open-space plans will discourage the "premature and unnecessary conversion of open-space land to urban uses". The specific zoning regulations at issue are exercises of the city's police power to protect the residents of Tiburon from the ill-effects of urbanization. Such governmental purposes long have been recognised as legitimate. The zoning ordinances benefit the appellants as well as the public by serving the city's interest in assuring careful and orderly development of residential property with provision for openspace areas..." 3. See comments on this decision by Thomas J Schoenbaum, *Environment Policy Law*-1985p. 438 et.seq. See also summary and comments, (1980) 10 ELR 10125 et. seq.

27. The statutes in force in India and abroad reserving open spaces for parks and play grounds are the legislative attempt to eliminate the misery of disreputable housing condition caused by urbanisation. Crowded urban areas tend to spread disease, crime and immorality. As stated by the U. S. Supreme Court in *Samuel Berman v. Andrew Parker*, (1954) 99 Law Ed 27: 348 US 26:- "..... They may also suffocate the spirit by reducing the people who live there to the status of (Per Douglas, J.).

28. Any reasonable legislative attempt bearing a rational relationship to a permissible state objective in economic and social planning will be respected by the Courts. A duly approved scheme prepared in accordance with the provisions of the Act is a legitimate attempt on the part of the Government and the statutory authorities to ensure a quiet place free of dust and din where children can run about and the aged and the

infirm can rest, breath fresh air and enjoy the beauty of nature. These provisions are meant to guarantee a quiet and healthy atmosphere to suit family needs of persons of all stations. Any action which tends to defeat that object is invalid. As stated by the U. S. Supreme Court in Village of Belle Terre v. Bruce Boraas, (1974) 39 Law Ed 2d 797 :416 US 1 :- "...The police power is not confined to elimination of filth, stretch, and unhealth places. It is ample to lay out zones where family values, youth values, and the blessings of quite seclusion and clean air make the area a sanctuary for people." See also Village of Euclid v. Ambler Realty Company, (1926) 272 US 365. See the decision of the Andhra Pradesh High Court in T. Damodhar Rao v. The Special Officer, Municipal Corporation of Hyderabad, AIR 1987 Andhra Pradesh 171. "

11. In the present case Ex-post facto permission for operation of three DG sets in the green area appears to have been granted without any application of mind, without ascertaining the requisite details regarding green area maintained, without assessing impact on environment and without examining as to whether the DG sets could be relocated at any other place reserved for public/community buildings particularly dedicated transformer area, if any and without taking any steps for compensating the loss of green area by converting some area in the close vicinity as green area. On the other hand permission appears to have been granted by ignoring complaint made by the applicant on the basis of the alleged rivalry of the applicant with the office bearers of the Residents Welfare Association and the residents and alleged hostile activities of the applicant. Violations of law are not determined and dealt with by counting the number of beneficiaries and their adversaries ventilating the grievances to rule by majority or by judging their antecedents to rule by character and the only touchstone for the same is prudent man's standard based on rule of law. The administrator/adjudicator of law has to administer/adjudge rule of law like an umpire who judges even a single cry for foul in the game.

Therefore, complaint even by one against thundering majority in the wrong may be sufficient as the valid and solid ground to administer/adjudicate against them.

12. It may be observed here that due to ever escalating prices in real estate, open spaces and green belts are encroached upon by the Land Mafia in active connivance with the concerned Administrative Officers or due to inaction/negligence on their part in taking requisite remedial action. The practices of encroaching upon green belts/parks by constructing /erecting religious structures/parking spaces/ Transformers/DG Sets etc. is widely prevalent. Most convenient method of encroachment on green areas/parks is construction of some religious structures which are also defended by projecting questions of faith and masquerading the procured support of devotees having women and children in the forefront. Despite directions by Hon'ble Supreme Court for preventing/demolishing such unauthorized constructions on public land, the State and its instrumentalities continue to pose ignorance even despite complaints by the residents and coverage even by the print and electronic media.

13. In view of importance of protection and proper maintenance of open spaces, parks, green belts and having the factual background of the present case as reminder of one of countless such instances of conversion of part or whole of open spaces, parks, green belts in the entire State of Haryana coming up before this Tribunal, we consider it appropriate to widen the scope of the present proceedings and constitute a Joint Committee comprising of representatives of (i) MOEF&CC, (ii) CPCB, (iii) ACS/Principal Secretary, Department of urban Planning Government of Haryana, (iv) ACS/Principal Secretary, Department of

Local Bodies, Government of Haryana (v) Director General, Town and Country Planning, Haryana, (vi) Chief Administrator, HSVP and (vii) HSPCB with the directions to (1) compile/catalogue information regarding all green areas/parks/green belts reserved in the respective areas of all the Municipal Bodies in the State of Haryana with requisite details as to (a) location, revenue number, boundaries, measurements etc.; (b) present status regarding plantation/green vegetation, user, maintenance, and agency deputed for maintenance; and (c) encroachments (including encroachments made by unauthorizedly constructing religious structures) made on the same with requisite details as to who made the encroachments, when and in which manner and what action has been taken/is to be taken for removal of such encroachments specifically mentioning Court cases decided/pending regarding the same; (2) to get entire such information uploaded on the website of the District Administration and Municipal Bodies for seeking public participation for protection of green areas/parks/green belts reserved in the respective areas of all the Municipal Bodies in the State of Haryana against any encroachment and also for ensuring proper use and maintenance thereof; and (3) to verify factual position of per capita green cover and assess its adequacy in view of the number of residents and give suggestions for remedial measures required to be taken for proper user, development, maintenance, protection, and improvement of such green areas/parks/green belts reserved in the respective areas of all the Municipal Bodies in the State of Haryana.

14. The Committee may constitute sub committees, seek reports from concerned administrative officers, NGOs, Environmental Activists or other experts in the field as may be considered appropriate and may also

seek complaints from Members of Public. The Member Secretary, HSPCB shall be the Nodal Officer for coordination and compliance and all necessary expenses including travel, boarding, lodging expenses shall be borne by HSPCB. Report may be submitted by the Joint Committee within three months by email at judicial-ngt@gov.in preferably in the form of searchable PDF/OCR supported PDF and not in the form of Image PDF.

15. We are also of the considered view that the matter of protection of green areas/public parks/green belts and trees needs proper statutory framework for reservation, development, maintenance and preservation of green areas/parks/greenbelts and protection of trees. Besides the statutory frame work, appropriate administrative guidelines are also required to be issued for identification, demarcation, development, maintenance and preservation of green areas/parks/green belts and protection of trees in the urban development/colonization schemes/layouts. As already observed rule 4 of the HDRUA Rules 1976 does not prescribe any minimum percentage of land to be reserved as green areas/parks/green belts. The proviso to Rule 4 (3) of the HDRUA Rules, 1976 prescribes the requirement of 5% open space in respect of low density ecofriendly colony and does not apply to other residential colonies under rule 4 (1) of the HDRUA Rules 1976. In the context of increasing environmental air and water pollution, we consider it appropriate to make a suggestion to Government of Haryana to consider the desirability of making suitable amendments in the HDRUA Rules 1976 in this regard. We also find that at present there is no legislation in the State of Haryana for protection of green areas/parks/green belts and trees and we also consider it appropriate to suggest to Government of

Haryana to consider desirability of enactment of appropriate legislation on the lines of the Uttar Pradesh Parks, Playgrounds and Open Spaces (Preservation and Regulation) Act, 1975 and the Delhi Preservation of Trees Act, 1994/the Uttar Pradesh Protection of Trees in Rural and Hill Areas Act, 1976.

16. So far as the green area in question is concerned, Respondent No.4 is directed to look into as to (a) whether the DG Sets can be relocated to dedicated captive transformer location area if any and if it can be so done, then relocate the same and restore the green area and (b) if the same is not possible, then whether any equivalent contiguous open land area can be restored/added to the green area and if so available, convert the same as green area.

17. In compliance of order dated 15.03.2023, Mr. T.L. Satya Prakash, Director General, Town and Country Planning has appeared. We have interacted with him. He has assured to look into the above mentioned aspects so far as the green area in question is concerned.

18. So far as the questions of raising unauthorized construction by the Project Proponent is concerned, it is evident from the replies and documents produced in the case that the Project Proponent did not obtain Environment Clearance (EC) and CTE/CTO as required under the EIA Notification 2006 and the provisions of the Water (Prevention and Control of Pollution) Act, 1974 and the Air (Prevention and Control of Pollution) Act, 1981. In compliance of order dated 15.03.2023 Respondent No.2 has filed detailed reply in this regard relevant part of which reads as under:-

“REPLY ON BEHALF OF RESPONDENT No. 2 i.e. HARYANA STATE POLLUTION CONTROL BOARD IN COMPLAINT OF ORDER DATED 11.01.2023 AND 15.03.2023

X X X X X X

4. That project proponent had obtained revised layout plan of 204.796 acres on 31.01.2008 from DTCP, Haryana and part completion certificate as mentioned above in table was obtained on 27.09.2016 in reference to license No. 15 of 2008 for area 24.681 acres from DTCP, Haryana and Occupation Certificate was issued by DTCP, Haryana for 31061.622 Sqm. (Built-up area) on 10.03.2017 in respect of other licenses mentioned therein in addition to occupation certificate obtained for community buildings as described above from 2009 to 2019. The revised layout plan for an area of 204.796 acres comprised of licenses in respect of Residential Plotted Colony including group housing component being developed by Malibu Estate Pvt. Ltd., in Sector-47 & 50, Gurugram was approved by Town & Country Planning vide drawing No.DTCP-5626 dated 28.09.2016.

5. That project proponent have not obtained Environmental Clearance for expansion carried out by way of constructing said building & other construction and revised plans, zonings / expansion after cut of dated EIA notification 07.07.2004/14.09.2006 or modernization of Malibu Town (204.796 Acres) under the provision of EIA notification 07.07.2004/14.09.2006 till date as construction was carried out after EIA Notification 07.07.2004/14.09.2006 which is evident from building plans, revised building plans, layout plans, revised layout plans and occupation/completion certificates obtained time to time after 14.09.2006.

6. That project proponent was also required to obtain Environmental Clearance under the provisions of EIA Notification dated 07.07.2004/14.09.2006, even last License No. 15 of 2008 dated 01.02.2008 for 24.681 acres was granted after 14.09.2006, cutoff date of requiring EC & carried out construction /development activity without obtaining prior Environmental Clearance & Consent to Establish (CTE). Thus, violated the provisions of EIA Notification, Water (Prevention & Control of Pollution) Act, 1974 & Air (Prevention & Control of Pollution) Act, 1981.

7. That Show Cause Notices vide Letter No. HSPCB/GRN/2020/435 dated 15.07.2020, No. HSPCB/GRN/2020/439 dated 15.07.2020, No. HSPCB/GRN/2020/728-769 dated 14.08.2020, No. HSPCB/GRN/2020/771-812 dated 14.08.2020, No. HSPCB/GRN/2020/1948 dated 16.10.2020, No. I/68610/2021 dated 02.10.2021 & No. I/114390/2022 dated 19.05.2022 were issued to M/s Malibu Estate Pvt Ltd & others in reference to the violation committed by the project proponent by making construction /development

of the project without obtaining prior Environmental Clearance in term of the EIA notification dated 07.07.2004/14.09.2006, Consent to Establish (CTE)/Consent to Operate (CTO) under the provisions Water (Prevention & Control of Pollution) Act, 1974 & Air (Prevention & Control of Pollution) Act, 1981 and failing of samples of outlet of STPs. Replies submitted by the project proponent in response to Show Cause Notices were not found satisfactory as project proponent were required prior Environmental Clearance in term of the EIA notification and CTE/CTO under the provisions Water (Prevention & Control of Pollution) Act, 1974 & Air (Prevention & Control of Pollution) Act, 1981.

8. That Haryana State Pollution Control Board (hereinafter referred as Board) has refused renewal of Consent to Operate (CTO) application dated 04.08.2020 for the period 01.10.2020 to 30.09.2021 under Section 25 of the Water (Prevention & Control of Pollution) Act, 1974 and under section 21 of Air (Prevention & Control of Pollution) Act, 1981 vide letter No. HSPCB/Consent/: 329962320GUNOCTO7846102 Dated: 02/09/2020.

9. That Board has filed prosecution under Environment (Protection) Act, 1986 before Hon'ble Special Environment Court, Faridabad for violation of the provisions of EIA Notification amended till date for not obtaining mandatory Environmental Clearance.

10. That Board has filed prosecution under Water (Prevention & Control of Pollution) Act, 1974 & Air (Prevention & Control of Pollution) Act, 1981 before Hon'ble Special Environment Court, Faridabad for violation of the provisions of Water (Prevention & Control of Pollution) Act, 1974 & Air (Prevention & Control of Pollution) Act, 1981 for not obtaining Consent to Establish (CTE), Consent to Operate (CTO) & failing of samples of outlet of STPs.

11. That Board has issued closure direction against M/s Malibu Estate Pvt. Ltd, Malibu Town, Sohna Road, Gurugram vide Endst. No. HSPCB/GUR/2022/INS/31601738CONCO001-004 dated: 23-Dec-2022 (Annexure-1) with the following directions:-

“(a) The project proponent shall stop all construction activities related to the project with immediate effect till it obtains environment clearance under EIA Notification dated 14.09.2006 and Consent to Establish (NOC)/Consent to Operate from the Board under Water Act, 1974 and the Air Act, 1981.

(b) The project proponent shall not allow any new occupancy and shall not allow any new possession in the premises of the project with immediate effect.

(c) Town & Country Planning Department/concerned authorities that have issued the license/ LOI and approved the building/layout

plans for the development of the project shall take necessary action to stop further construction activities relates to the project till the project proponent obtains Environment Clearance under EIA Notification dated 14.09.2006 and Consent to Operate from the Board under the Water Act, 1974 and the Air Act, 1981.

(d) The Revenue Authorities shall not register any sale deed relates to any plot/flat/house/shop/any other component of this project with immediate effect.

(e) The DHBVN authorities shall not release any new electric connection for this project or to any of its components with immediate effect.”

12. That Board vide letter No. I/155226/2023 dated 02.03.2023 (Annexure-2) has issued clarification regarding regulatory directions issued by HSPCB to M/s Malibu Estate Pvt. Ltd, Malibu Town, Sohna Road, Gurgaon which is reproduced as under:-

“The HSPCB had issued directions Endst. No. HSPCB/GUR/2022/ INS/31601738CONCO001-004 dated: 23-Dec-2022 which are reproduced as under:-

a. The project proponent shall stop all construction activities related to the project with immediate effect till it obtains environment clearance under EIA Notification dated 14.09.2006 and Consent to Establish (NOC)/ Consent to Operate from the Board under Water Act, 1974 and the Air Act, 1981.

b. The project proponent shall not allow any new occupancy and shall not allow any new possession in the premises of the project with immediate effect.

c. Town & Country Planning Department/concerned authorities that have issued the license/ LOI and approved the building/layout plans for the development of the project shall take necessary action to stop further construction activities relates to the project till the project proponent obtains Environment Clearance under EIA Notification dated 14.09.2006 and Consent to Operate from the Board under the Water Act, 1974 and the Air Act, 1981.

d. The Revenue Authorities shall not register any sale deed relates to any plot/flat/house/shop/any other component of this project with immediate effect.

e. The DHBVN authorities shall not release any new electric connection for this project or to any of its components with immediate effect.

The president of Malibu Federation along with other representatives have been given personal hearing by

Chairman, HSPCB on 21.02.2023 at C-11, Sector-6, HSPCB, Panchkula. It was informed by them that all construction activities such as even repair of roads, sewerage system, STPs etc have been stopped which is creating hurdle in the betterment of environment.

In view of above, it is clarified that directions were issued to save the environment and any act / activity which promotes or is for betterment of Environment, do not come in ambit of above regulatory directions of HSPCB. The activities such as repair of roads, sewerage system, STPs etc. can be carried out by the concerned agencies.”

13. *That it is worthwhile to mention here that a Writ Petition CWP No.2251/2023 was filed before the Hon’ble High Court of Punjab & Haryana by ‘Federation Malibu Towne A Welfare Association’. The Hon’ble High Court vide order dated 06.02.2023 dismissed the writ petition as withdrawn granting liberty to approach this Hon’ble Tribunal. Copy of order dated 06.02.2023 is enclosed herewith as Annexure-3.*

14. *That Environmental Compensation of Rs. 6,84,37,500/- for violation of Environmental Acts/Rules/Notifications has been imposed vide letter No. I/157690/2023 dated 24.03.2023 (Annexure-4).*

15. *That regarding non disposal of C&D from the site in question Municipal Corporation, Gurugram has imposed fine of Rs. 50,000/- on the owner Jagdish Chand Chaudhary on 28.10.2021 which was deposited on 30.10.2021. Further, Municipal Corporation, Gurugram has withdrawn the permission of self disposal of C&D waste and recovered an amount of Rs. 33,43,568 I- from Sh. Jagdish Chand Chaudhary and took over the process of removal of the C&D Waste. The C&D waste has already been lifted from the site in question and disposed of as per provision of Construction & Demolition Waste Management Rules, 2016.”*

19. It appears that before passing the closure order the HSPCB has not taken into consideration the third party rights already created by the respondent No.8 in favour of those aspiring to find shelter for good living (which is universally acknowledged as **the basic human need**) who may have made investment of their life time earnings in on going projects. Environmental compensation has also been imposed without giving opportunity of being heard to the Respondent No.8 and such order for imposition of environmental compensation, which may not be legally

sustainable on scrutiny for violation of principles of natural justice, which is also not likely to be immediately recovered and which is not part of any action plan based on assessment of actual damage to environment in the area for taking of remedial measures for restoration thereof, serves no meaningful purpose. The HSPCB is directed to revisit the closure order and clearly specify for which project the EC was required and to which the closure order applies and clearly mention the projects to which the closure order does not apply. The HSPCB is also directed to ascertain third party rights already created and take appropriate action for protection of the same. State and its instrumentalities have adequate powers of securing compliance by such builders with the statutory provisions, environmental norms and terms and conditions of the approvals granted and the bona fide third party investors cannot be made to suffer due to inaction/negligence/connivance of the concerned Administrative Officers.

20. It is now well settled that even ex-post facto environmental clearance can be granted in appropriate cases. In its judgment in *Civil Appeal No. 3132 Of 2018* titled as *D. Swamy Versus Karnataka State Pollution Control Board and Ors.* Hon'ble Supreme Court observed as under:

"40.As held by this Court in Electrosteel Steels Limited (supra) ex post facto EC should not ordinarily be granted, and certainly not for the asking. At the same time ex post facto clearances and/or approvals and/or removal of technical irregularities in terms of a Notification under the EP Act cannot be declined with pedantic rigidity, oblivious of the consequences of stopping the operation of mines, running factories and plants.

41. The EP Act does not prohibit ex post facto EC. Grant of ex post facto EC in accordance with law, in strict compliance with Rules, Regulations, Notifications and/or applicable orders, in appropriate cases, where the projects are in compliance with, or can be made to comply with environment norms, is in our view not impermissible. The Court cannot be oblivious to the economy

or the need to protect the livelihood of hundreds of employees and others employed in the project and others dependent on the project, if such projects comply with environmental norms."

"46. There can be no doubt that the need to comply with the requirement to obtain EC is non-negotiable. A unit can be set up or allowed to expand subject to compliance of the requisite environmental norms. EC is granted on condition of the suitability of the site to set up the unit, from the environmental angle, and also existence of necessary infrastructural facilities and equipment for compliance of environmental norms. To protect future generations and to ensure sustainable development, it is imperative that pollution laws be strictly enforced. Under no circumstances can industries, which pollute, be allowed to operate unchecked and degrade the environment.

47. Ex post facto EC should ordinarily not be granted routinely, but in exceptional circumstances taking into account all relevant environmental factors. Where the adverse consequences of denial of ex post facto approval outweigh the consequences of regularization of operations by grant of ex post facto approval, and the establishment concerned otherwise conforms to the requisite pollution norms, ex post facto approval should be given in accordance with law, in strict conformity with the applicable Rules, Regulations and/or Notifications. In a given case, the deviant industry may be penalised by an imposition of heavy penalty on the principle of 'polluter pays' and the cost of restoration of environment may be recovered from it.

48. It is reiterated that the EP Act does not prohibit ex post facto EC. Some relaxations and even grant of ex post facto EC in accordance with law, in strict compliance with Rules, Regulations, Notifications and/or applicable orders, in appropriate cases, where the projects are in compliance with environment norms, is not impermissible. As observed by this Court in Electrosteel Steels Limited (supra), this Court cannot be oblivious to the economy or the need to protect the livelihood of hundreds of employees and others employed in the units and dependent on the units for their survival.

49. Ex post facto EC should not ordinarily be granted, and certainly not for the asking. At the same time ex post facto clearances and/or approvals cannot be declined with pedantic rigidity, regardless of the consequences of stopping the operations."

21. Vide order dated 11.01.2023, M/s Malibu Estate Pvt. Ltd. was impleaded as Respondent No. 8. Ms. Madhu Twatia, Advocate has appeared for Respondent No. 8 and seeks time to file its reply/response.

22. Reply/response may be filed by Respondent No.8 **within two months** by email at judicial-ngt@gov.in preferably in the form of searchable PDF/OCR supported PDF and not in the form of Image PDF. In its reply/response respondent No.8 shall specifically mention as to whether the respondent No. 8 has applied for EC, whether any third party rights have been created, if so what is the number of persons in whose favour third party rights have been created and what is the amount invested by them and what is the stage of the projects for which EC is required.

23. In view of the facts and circumstances of the case, we consider the presence of SEIAA, Haryana to be essential for just and proper adjudication of the questions involved in the case. Accordingly SEIAA, Haryana is impleaded as respondent no. 9. The Registry is directed to make appropriate amendment in memo of parties.

24. The SEIAA and Respondent No.4 are also directed to look into the aspects of present status of the project for which EC is required, measures required to be taken for protection of third party investors for residential units in the project and remedial measures required to be taken by demolition or completion at the cost and expenses to be recovered from respondent No.8. Reply/response by respondents no. 4 and 9 may be filed **within two months** by email at judicial-ngt@gov.in preferably in the form of searchable PDF/OCR supported PDF and not in the form of Image PDF.

25. So far as the grievance regarding dumping of C&D waste is concerned, in its reply filed vide email dated 14.03.2023 is concerned, the Respondent No. 3, has mentioned that permission was granted to

M/s Goyal Iron Steels for disposal of C&D waste vide memo dated 29.09.2020 but M/s Goyal Iron Steels did not dispose of the C&D waste. Fine of **₹50,000/-** was imposed on the owner Jagdish Chand Chaudhary on 28.10.2021 which was deposited on 30.10.2021. Subsequently, Respondent No. 3 withdrew permission of self-disposal of C&D waste and recovered the amount of **₹33,43,568/-** from Jagdish Chand Chaudhary and took over the process of removal of the C&D Waste. The C&D Waste was removed after more than six months even after filing of the present case and remained lying for almost two years within the knowledge of the Municipal Corporation, Gurugram which was bound to get the same removed and processed immediately in discharge of its statutory obligations and Municipal Corporation, Gurugram is itself liable to pay environmental compensation but no proceedings for imposition of environmental compensation on Municipal Corporation, Gurugram have been initiated by the HSPCB. In compliance of order dated 15.03.2023 reply has been filed by respondent No.2 vide email dated 27.03.2023 relevant part of which reads as under:-

“X X X X
15. That regarding non disposal of C&D from the site in question Municipal Corporation, Gurugram has imposed fine of Rs. 50,000/- on the owner Jagdish Chand Chaudhary on 28.10.2021 which was deposited on 30.10.2021. Further, Municipal Corporation, Gurugram has withdrawn the permission of self disposal of C&D waste and recovered an amount of Rs. 33,43,568 I/- from Sh. Jagdish Chand Chaudhary and took over the process of removal of the C&D Waste. The C&D waste has already been lifted from the site in question and disposed of as per provision of Construction & Demolition Waste Management Rules, 2016”

26. In compliance of order dated 15.03.2023 Mr. Pradeep Kumar, Member Secretary, HSPCB and Mr. P.C. Meena, Commissioner, Municipal Corporation Gurugram have appeared and we have interacted

with them. Mr. Pradeep Kumar, Member Secretary, HSPCB has assured to look into the relevant aspects of imposition of environmental compensation on Mr. Jagdish Chand Chaudhary and Municipal Corporation Gurugram and Mr. P.C. Meena, Commissioner, Municipal Corporation Gurugram has assured to take appropriate action against concerned defaulting officials.

27. Action Taken Reports be filed by respondent No.2 HSPCB and respondent No.3 MCG **within two months** by email at judicial-ngt@gov.in preferably in the form of searchable PDF/OCR supported PDF and not in the form of Image PDF.

28. In view of the facts and circumstances of the case Mr. Jagdish Chand Chaudhary is also impleaded as respondent No. 10 and the registry is directed to amend memo of parties and issue notice to him requiring him to file reply/response **within two months** by email at judicial-ngt@gov.in preferably in the form of searchable PDF/OCR supported PDF and not in the form of Image PDF.

29. Er. Rakesh Singh has filed I.A. 145/2023 seeking his impleadment as co-applicant on the grounds that he has been resident in integrated residential colony namely Malibu Towne Sector 47 and 50, Gurugram since 2002, the offences mentioned in the application have been committed by the licensee company M/s Malibu Estate Private Limited and its subsidiary M/s MEPL Maintenance Private Limited in connivance with Malibu Federation, MTRWA, MCRWA and MTPRWA in violation of environmental laws since 2008. The offences were reported to HSPCB, DTCP, MCG and police for necessary action, but no action was taken. He has documentary evidence regarding the violations which are poisonous

for environment and boosters to pollution. The applicant has given the details of the violations as under:

1. Part completion and occupation certificate were provided erroneously to Licensee company M/s Malibu Estate Private Limited without any environmental clearance without any mechanism and legal connection for sewage and storm water disposal.
 2. Illegal construction of 32 buildings on green belt and public park.
 3. No mechanism for segregation and disposal of domestic waste generated out of more than 2000 houses / flats / floors shops offices restaurants / Five star hotel / bar / fast food center/ Tea corner etc.
 4. Illegal sale of construction and demolition waste generated within town ship and selling through unauthorized/ unregistered persons.
 5. Misuse of green area by the construction of staff quarters / services rooms etc.
 6. Illegal Sale of Green Area by Licensee company M/s Malibu Estate Private Limited and same are allowed by Town and Country Planning Department and revenue department Haryana.
30. We have heard Er. Rakesh Singh and gone through the application and documents attached with the same.
31. The original applicant has already raised the issues of environmental violations by the concerned project proponents. Er. Rakesh Singh, applicant in I.A. No. 145/2023, is not a necessary party. His presence is also not necessary for complete/just and proper

adjudication of the questions involved in the case. His impleadment as co-applicant will also change the nature/scope of the proceedings. Therefore, the application for impleading the Er. Rakesh as co-applicant is dismissed without prejudice to filing of any separate application by the applicant regarding his grievances.

32. List for further consideration on 25.07.2023.

33. A copy of this order be sent to the Secretary, MOEF&CC, Member Secretary, CPCB, the Chief Secretary, Government of Haryana, ACS/Principal Secretary, Department of urban Planning Government of Haryana, ACS/Principal Secretary, Department of Local Bodies, Government of Haryana, Director General, Town and Country Planning, Haryana, Chief Administrator, HSVP, Member Secretary, HSPCB, Commissioner, Municipal Corporation Gurugram by email for requisite compliance.

Arun Kumar Tyagi, JM

Dr.Afroz Ahmad, EM

March 28, 2023

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