

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

REVIEW APPLICATION NO. 36/2023
IN
ORIGINAL APPLICATION NO. 661/2018

Praveen Kakar & Ors.

Applicant(s)

Verses

Ministry of Environment & Forests & Ors.

Respondent(s)

Director General, Town and Country Planning
Department, Chandigarh

Review Applicant

Date of hearing: 09.01.2024

CORAM:

HON'BLE MR. JUSTICE PRAKASH SHRIVASTAVA, CHAIRPERSON
HON'BLE MR. JUSTICE SUDHIR AGARWAL, JUDICIAL MEMBER
HON'BLE MS. JUSTICE PUSHPA SATHYANARAYANA, JUDICIAL MEMBER
HON'BLE DR. A. SENTHIL VEL, EXPERT MEMBER

For Applicant(s) : Ms. Noopur Singhal, Advocate with Mr. Rajesh
Kaushi, DTP, Gurugram for review applicant

ORDER

BY HON'BLE MR. JUSTICE SUDHIR AGARWAL, JUDICIAL MEMBER

1. This Review Application No. 36/2023 has been filed on behalf of Director General, Town and Country Planning Department, Chandigarh (hereinafter referred to as '**DGTCPD**') under Section 19(4)(f) of National Green Tribunal Act, 2010 (hereinafter referred to as '**NGT Act 2010**') read with Rule 22 of National Green Tribunal (Practices and Procedures Rules) 2011, seeking review of judgment dated 04.07.2022 passed in Original Application No. (hereinafter referred to as '**OA**') 661/2018 to the extent, observations have been made against Review Applicant and it has been required to pay environmental compensation to Rs.2 Crores and to

deposit the same with Haryana State Pollution Control Board (hereinafter referred to as '**HSPCB**') within three months.

2. It appears that review applicant preferred ***Civil Appeal Diary No. 10965/2023***, wherein Supreme Court declined to entertain the same but with liberty to Review Applicant to file Review Application before Tribunal since statement was made before Supreme Court that judgment imposing penalty was passed without issuing show cause notice and granting opportunity of hearing on the observations made by Joint Committee.

3. It may be noted that State of Haryana and its authorities as also HSPCB i.e., respondents 2, 3, 4, 5, 6, 9 and 10 were represented by Mr. Anil Grover, Learned Senior Additional Advocate General with assistance of Learned Counsel Mr. Rahul Khurana and he had advanced his submissions before Tribunal, whereafter, judgment was delivered. This Review Application has been filed through Mr. Lokesh Sinhal, Learned Senior Additional Advocate General who neither had appeared before Tribunal nor made any arguments. Learned Counsel Ms. Noopur Singhal had advanced arguments on this Review Application but when questioned she admitted that she was not present when the arguments were advanced in OA. What transpired in Court and what arguments were advanced at the time of hearing of OA, obviously are not in the knowledge of the Learned Counsels who have filed this Review Application and also who has advanced arguments before Tribunal today. Learned Counsel Ms. Noopur Singhal stated that she has raised grounds in Review Application on the basis of instructions received from DGTCPD, Chandigarh but when questioned, could not dispute that even such authority was not present when OA was heard and, therefore, what transpired in Court, is not within its knowledge as well.

4. In para 42 of judgment, Tribunal has noticed arguments advanced on behalf of respondents and it has been clearly stated that Learned Counsels appearing on behalf of Statutory Regulators and Local Bodies referred to and relied on their replies/reports etc. in defense and nothing more was argued.

5. We also enquired from Learned Counsel appearing for Review Applicant as to which Joint Committee Report, observations whereof have been relied by Tribunal, opportunity was not granted to Review Applicant as stated before Supreme Court, mentioned in Supreme Court's order dated 04.08.2023, whereupon she first referred to Joint Committee's Report dated 13.06.2022 but a perusal of para 44 shows that the said Report has not been relied by Tribunal as the same was filed after hearing had concluded and judgment was reserved and parties had no occasion to reply the same, therefore, the said Report is of no consequence.

6. Besides, there are inspection Report dated 16.11.2018 of Joint Committee filed by Central Pollution Control Board (hereinafter referred to as '**CPCB**'); Status Report dated 05.04.2019 filed by CPCB in compliance of Tribunal's order dated 08.01.2019 and Compliance Report dated 14.10.2019 filed by CPCB. All these Reports were filed during earlier stages of the proceedings in OA. Specifically, notice was issued to Town and Country Planning Department, Haryana (hereinafter referred to as '**TCPD Haryana**') by Tribunal's order dated 28.09.2021, requiring it to explain as to how licenses have been granted for developing societies without ensuring requirement of providing basic infrastructure of waste management and other amenities required for clean environment and what action is being taken when violations are found. Tribunal also required the said Department to file Action Taken Report in the matter by

e-mail. The relevant extract of the directions issued in para 11 of order dated 28.09.2021 of Tribunal reads as under:

*“11. We note that notice has not been issued to the PP so far, as the Tribunal in the first instance sought action taken report from statutory authorities in exercise of their powers but in view of inadequacy of action, the Tribunal may have to consider further action after giving opportunity to the PP. Issue notice to the PP – M/s Ansal Properties and Infrastructure Ltd., 115 Ansal Bhawan, K.G. Marg, New Delhi-110001 by e-mail to show cause why further action be not taken for the violations, already noted. Response be filed within one month. Haryana Sehari Vikas Pradhikaran (HSVP) and **Town and Country Planning Department, Haryana** may also explain how licenses have been granted for developing societies without ensuring requirement of providing basic infrastructure of waste management and other amenities required for clean environment and what action is being taken when violations are found. The said Departments may also file their action taken reports in the matter by email in same manner as in above direction.”*

7. Thereafter, reply and Status Report dated 30.03.2022 was filed by TCPD Haryana. Its response is referred to in detail in para 39 of judgment.

8. TCPD Haryana, therefore, had opportunity to give reply to all the pleadings and documents which were available on record when Tribunal passed order dated 28.09.2021 and TCPD Haryana filed its reply on 30.03.2022.

9. This is evident from the fact that TCPD Haryana had given its explanation, referring to the observations made by Tribunal in orders dated 05.02.2020 and 28.09.2021. TCPD Haryana has stated in para 14 of its reply that it will comply with directions that Tribunal may issue for proper implementation of the project in question. Therefore, to the extent, TCPD Haryana was advised or thought it fit, if it filed its reply and had not chosen to submit any specific explanation to Joint Committee's Report dated 16.11.2018 filed by CPCB or other document; it was its own discretion to which, Tribunal could not compel it. It also cannot be said

that TCPD Haryana had no opportunity to reply to the Report dated 16.11.2018.

10. However, we may notice at this stage that the circumstances, in which Part Completion Certificates were issued, has been explained in detail by TCPD Haryana in its reply dated 30.03.2022 and it has admitted that “internal development work” included the work relating to sewers and drains, both for storm and sludge water, and necessary provision for their treatment and disposal. Without ensuring as to whether the said internal development work was done or not, it mentioned in Part Completion Certificate that the licensee shall be responsible for supply of water, disposal of sewerage and storm water of colony etc. and thereupon, certificates were issued though under Rule 16 of Haryana Development and Regulation of Urban Area Rules, 1976 (hereinafter referred to as **‘HDRUA Rules 1976’**), an application for Part Completion Certificate could have been submitted only when colony has been laid down according to approved layout plan and development work **has been executed** according to approved designs and specifications. DG, TCPD, Haryana after such scrutiny as necessary, may issue Completion Certificate/Part Completion Certificate in Form LC-IX or refuse the same by giving reasons. Rule 16 makes it very clear that if application has been submitted without execution or development works according to approved designs and specifications and/or the colony has been laid down not according to layout plan, DGTCPD Haryana shall not entertain the application. The words “after such scrutiny” makes it clear that Director has to verify the fact which constitute condition precedent for submission of the application by the Coloniser for issue of Completion Certificate/Part Completion Certificate.

11. In the present case, it is the admitted position that the external and internal development had not been executed by project proponent as per the approved plan and specifications etc., which included necessary provision for treatment and disposal of sewage. No such sewage treatment system of required capacity was executed by proponent still Part Completion Certificates were issued by time to time, by TCPD Haryana, by placing an obligation upon the builder itself that it shall provide such facilities though provision of such facility was a condition precedent before issue of Completion Certificate. In absence of such facilities, Part Completion Certificate could not have been issued as is clear from Rule 16 of HDRUA Rules 1976.

12. At the time of arguments in OA, we had pointed out to Learned Senior AAG who had appeared in the matter about these and other lapses on part of DG, TCPD, Haryana i.e., respondent 3 and also that observations with regard to the lapses on part of respondent 3 have been made by Tribunal in various orders as is evident from orders dated 08.01.2019, 05.02.2020 and 28.09.2021 to which Learned AAG referred to reply filed on behalf of TCPD Haryana and said that he cannot improve the case beyond what has been stated in the said reply.

13. When we confronted Learned Counsel appearing for review applicant today, she could not dispute that so far as inspection Report dated 16.11.2018 and observations made thereunder are concerned, respondent 3 had opportunity when it submitted reply dated 30.03.2022 and so far as Joint Committee's Report dated 13.06.2022 filed on 14.06.2022 is concerned, after going through para 44 of the judgment, she could not dispute that the said Report has not been taken into consideration by Tribunal, at all, for pronouncing the said judgment. Therefore, she could not point out any occasion, wherein respondent 3

had no occasion to file its reply or objection to the observations made by Joint Committee in its Report.

14. Still in the interest of justice, we permitted her to point out any other fact in respect whereof, an observation has been made without any opportunity granted to respondent 3 but she could not point out any such observation or fact.

15. So far as lapses on part of respondent 3 is concerned, it is not in dispute that a number of licences were granted between 31.05.1985 to 13.04.2011 i.e., about 25 licenses, comprising a total area of 604.2 acres. Rule 4(1) of HDRUA Rules 1976 contemplates a land reserve for roads, open spaces, schools, public and community buildings and other common uses to the extent of not less than 45% of the gross area of the land under the colony. Committee had recommended that TCPD Haryana shall verify as per standard method adopted by it to find out whether 45% of approved area after the revised plan were approved, was available or not, but in the reply dated 30.03.2022, nothing was stated on this aspect.

16. TCPD Haryana has said that first Completion Certificate was granted to colonizer i.e., proponent on 10.05.1991 for a total area measuring 388.89 acres out of 412.46 acres of the licensed area of 13 licenses.

17. In para 72 of the judgment, we have referred to the conditions imposed in the said composite Part Completion Certificate which included that storm water services will be laid by the developer meaning thereby even storm water services were not laid down at that time and even sewer connections were not connected though it was part of the internal development and without completion thereof, under Rule 16, no Part

Completion Certificate could have been issued. Same is the situation in respect of other Part Completion Certificates which we have discussed in detail in para 76 of the judgment.

18. Para 78 of judgment shows that proponent for the first time submitted an application, seeking permission of sewer connection only on 22.04.2004 though before that it had already been issued six Part Completion Certificates measuring a total area of 563.433 as is evident from own admission of Review Applicant in reply dated 30.03.2022, which is quoted in para 39 of the judgment and chart at page 39 of the judgment shows the details of such Part Completion Certificates issued prior to 22.04.2004.

19. In fact, negligence/collusion of TCPD Haryana was observed by Tribunal in various orders and even Chief Secretary, Haryana was required to intervene in the matter and take appropriate action against erring officials but no effective action was taken. Reply filed by TCPD Haryana dated 30.03.2022 was also evasive and that has been considered in detail in the judgment. Learned Senior AAG who had argued OA whereafter judgment dated 04.07.2022 was delivered, only referred to documents and pleadings as they were since he was fair enough to state that whatever was the position emerging from the pleadings, he cannot improve upon the same.

20. In these facts and circumstances, having given all opportunity to explain the things, we have passed judgment in which every aspect has been considered in detail, role of Statutory Regulators has been discussed and finding apparent fault on the part of Review Applicant i.e., respondent 3 to OA, principle of 'Polluter Pays' has been extended to require it to pay environmental compensation of Rs. 2 Crores, which is

very considerate and lenient considering the extent of area where flagrant violation of environmental laws has been allowed due to complacency/collusion of Review Applicant with proponent.

21. No other argument has been advanced by Learned Counsel appearing for Review Applicant.

22. Having said so, we may now point out that all the aspects were open to respondent 3 to take its defense before Tribunal when the matter was argued by Learned Senior Additional Advocate General of State of Haryana. Review Application is nothing but an attempt to re-argue the matter. We are also surprised to see that wrong statement was made with regard to not granting opportunity to file objections to Joint Committee Report though before us, no such denial or opportunity could be pointed out.

23. A Review Application is not meant for re-opening of the matter or re-arguments on merits.

24. Recently, in ***Review Petition (Civil) No. 1620/2023, Civil Appeal No. 1661/2020, Sanjay Kumar Agarwal vs. State Tax Officer (1) & Anr.*** and other connected matters, decided on 31.10.2023, Supreme Court has observed that the parties are not entitled to seek a review of judgment merely for the purpose of re-hearing and a fresh decision of the case. Applying principles of Order 47 Rule 1 CPC, it is said that a review of judgment is open *inter-alia* if there is a mistake or error apparent on the face of the record. An error which is not self-evident and has to be detected by a process of reasoning, can hardly be said to be an error apparent on the face of record. Supreme Court has culled down following propositions relevant for review of the judgment:

- i. A judgment is open to review inter-alia if there is a mistake or

an error apparent on the face of the record.

- ii. A judgment pronounced by the Court is final and departure from that principle is justified only when circumstances of a substantial and compelling character make it necessary to do so.
- iii. An error which is not self-evident and has to be detected by a process of reasoning, can hardly be said to be an error apparent on the face of record justifying the court to exercise its power of review.
- iv. In exercise of the jurisdiction under Order 47 Rule 1 CPC, it is not permissible for an erroneous decision to be “reheard and corrected”.
- v. A Review Petition has a limited purpose and cannot be allowed to be “an appeal in disguise.”
- vi. Under the guise of review, the petitioner cannot be permitted to reagitate and reargue the questions which have already been addressed and decided.
- vii. An error on the face of record must be such an error which, mere looking at the record should strike and it should not require any long-drawn process of reasoning on the points where there may conceivably be two opinions.
- viii. Even the change in law or subsequent decision/ judgment of a co-ordinate or larger Bench by itself cannot be regarded as a ground for review.

25. In view of the above, we find no merit in this Review Application, hence dismissed.

Prakash Shrivastava,
Chairperson

Sudhir Agarwal,
Judicial Member

Pushpa Sathyanarayana,
Judicial Member

Dr. A. Senthil Vel,
Expert Member

January 09, 2024
Review Application No. 36/2023
In Original Application No. 661/2018
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