

Item No.04

**BEFORE THE NATIONAL GREEN TRIBUNAL
CENTRAL ZONAL BENCH, BHOPAL**

(By Virtual Mode)

Original Application No.21/2023(CZ)
(I.A.No.15/2023) (I.A.No.67/2023)

Ashok Malik Applicant(s)

Versus

State of Rajasthan & Ors. Respondent(s)

Date of hearing: 11.08.2023

**CORAM: HON'BLE MR. JUSTICE SUDHIR AGARWAL, JUDICIAL MEMBER
HON'BLE DR. AFROZ AHMAD, EXPERT MEMBER**

For Applicant(s) : Mr. Ashok Malik, applicant in person

For Respondent(s): Mr. Shivdutt Parashar, for I.A. No. 67/2023
Mr. Sandeep Singh Baghel, Advocate for R-3, 8,9,10
Mr. Ajay Singh, Advocate for R-13
Mr. Dipankar Singh, Advocate for R-12
Ms. Meenakshi Verma, Advocate for R-5
Mr. P.R. Beniwal, Senior Town Planner with
Mr. Pradeep Kumar Maurya

ORDER

1. This Original Application (hereinafter referred to as '**OA**') under Sections 14, 15, 17 and 18 of National Green Tribunal Act, 2010 (hereinafter referred to as '**NGT Act, 2010**') has been filed by Shri Ashok Malik, claiming himself to be an Environmentalist and a person committed to the protection and preservation of environment and ecological balance. It is said that there are certain parks/open green spaces in Ajmer city wherein respondent authorities have raised various constructions like shopping complex, food-court and auditorium etc., and thereby have damaged parks/open spaces and its ecology irreparably.

The same should be restored and adequate environmental compensation should be imposed upon concerned authorities for causing damage to environment by damaging green areas/parks.

2. Issue has been raised in respect of (i) Azad Park, (ii) Luvkush Udyan/Park, (iii) Gandhi Smiriti Udhyan/Park and (iv) Green Zone of Anasagar Lake.

Azad Park:

3. It is said that Azad Park in its vicinity also have a stadium, called Patel Stadium, which is for recreational and sports purposes. However, Azad Park is green zone in city of Ajmer. The land is reserved for green belt and no construction activities could have been carried out thereat, but buildings and permanent structures have been raised in Azad Park, causing damage to environment, ecology and public health. Constructions have led to destruction of various large and old trees, contributing to loss of bio-diversity and ecological balance of area. Commercialization of green space of Azad Park has also led to increased traffic, noise pollution, air pollution and health hazardous to residents of city. Patel Stadium is essential for sporting and recreational activities in the city for organizing various sports events like football etc., but therein also various construction activities have been carried out.

Luv Kush Udyaan/Park:

4. It is situated near Shoreline of Anasagar Lake, has a green grass cover, large number of trees, small and big, and integral part of ecosystem of area helping ecological balance. Respondent 2 and 11 i.e., Ajmer Smart City Ltd., has constructed a food-court in the said park damaging its ecological balance and green cover and taking away residents' right to use park as green belt. The construction of food-court

in Luv Kush Udyaan/park has also resulted in large generation of waste including plastic, food and other non-biodegradable material which is causing pollution in entire area.

Gandhi Smiriti Udhyan/Park:

5. It is said that majority of this park area has been covered with stone slabs. A large building has been constructed within park area causing damage to green space of the park.

Green Zone of Anasagar Lake:

6. This area is a green belt and no constructive zone as per earlier Master Plan of Ajmer but in the Master Plan of 2023 it has been shown as a Government reserved land permitting construction of seven wonders damaging entire green belts. Respondents are responsible to protect and preserve environment, particularly, in areas like Anasagar Lake which is known to be ecologically sensitive but they have failed to protect and preserve environment and instead are causing environmental pollution and degradation in violation of provisions of Environmental Protection Act, 1986 (hereinafter referred to as '**EP Act, 1986**'), Water Prevention and Control Act, 1994 (hereinafter referred to as '**Water Act, 1974**'), Air (Prevention and Control of Pollution) Act, 1981 (hereinafter referred to as '**Air Act, 1981**').

7. Reliance has been placed by applicant upon Supreme Court's judgment in ***Lal Bahadur vs. State of Uttar Pradesh, (2018)15SCC407***, wherein Supreme Court held that once an area is reserved in 1995 Master Plan, it was absolutely unwarranted exercise of power on the part of respondents to change area from green belt to residential one in Master Plan 2021. Change of area from green belt to

residential, in fact, is in flagrant violation of provisions contained in Article 21, 48-A, 51-A(g) of Constitution.

8. Tribunal considered complaint on 16.03.2023 and constituted a Joint Committee to submit a factual Report. Committee comprised of nominee of District Collector, Ajmer; State Pollution Control Board; and Commissioner, Ajmer Municipal Corporation, Ajmer.

9. Joint Committee has submitted Report after visiting sites of respective parks/open spaces on 04.04.2023 and its observations/findings are as under:

“The Joint Committee stated that Anasagar Lake is a manmade lake which was constructed by King Annaraj in the year 1135-1150. The various constructed works undertaken for the development of Anasagar Lake by Smart City Ltd. Ajmer are in accordance with recommendations of District Lake Conservation & Development Committee Date 13/09/2021.

The Joint Committee constituted in the matter of O.A. No. 63/2021 (CZ), recommended the following.

- 1) Anasagar Lake is not a Notified Wetland under Wetlands (conservation and management) Rules, 2017 or Ramsar convention, hence violation of Wetland Rules is ruled out.*
- 2) The construction of concretized pathway around Anasagar Lake has not been done after filling up the submerged area of wetland.*
- 3) During the visit as such no violation of any of the provision of Rajasthan Lakes (Protection and Development) authority Act 2015 was found; while doing construction works, permission of Rajasthan Lake Development Authority has been sought as per rule.*
- 4) No dumping of the construction materials within the submergence area and in the high flood line of the wetland and in the zone of influence was found.*
- 5) No dumping of soil and other earth material for filling up and reclaiming the wetland was found. Rather after construction of pathways the silt from the Lake bed has been removed which will increase the water holding capacity.*
- 6) Wonder park is being developed outside protected area of Lake. So the issue raised by the applicant about construction of Wonder Park after reclaiming the wetland area in front of*

Maheshwari Public school, Vaishali nagar, Ajmer is factually incorrect.

On the recommendation of Committee Honourable special bench of five Judges disposed off the matter vide order dated 13.12.2021. (Annexure-1)

2. *The Construction of Seven Wonders Park was discussed in the above case and the joint committee concluded the followings.*

Wonder park is being developed outside protected area of Lake. So the issue raised by the applicant about construction of Wonder Park after reclaiming the wetland area in front of Maheshwari Public school, Vaishali nagar, Ajmer is factually incorrect.

The same of concern has been raised by the petitioner in different ways before the Hon'ble NGT.

As per Master Plan 2013-2033, the land use of the area utilized for construction of Seven Wonder Park is marked as "Park & Open space". It is important to state herewith that the land use of the above area was also the same in the Master Plan 2001-2021. Therefore, Seven Wonder Park constructed by Ajmer Smart City Ltd., Ajmer is in accordance with the land use earmarked in Master plans of Ajmer city. Seven Wonders Park being a recreational facility in the Ajmer city is making footfalls of tourists in a significant number, since its opening date from 01.11.2022.

3. *Food Court near Luv Kush Garden was not constructed Ajmer Smart City Ltd instead the same was constructed by RSRDC for Ajmer Municipal Council, Ajmer under the HRIDAY Scheme in the year 2016-18. During the visit, it was observed that the waste water discharge from the toilets and washing facilities of restaurant and kitchen of the Food Court are connected with septic tank. No discharge into the lake was observed during the visit. Waste from Food court & Restaurant is collected and dumped on designated site by AMC. The construction of parking area was done by AMC using interlocking blocks/tiles. No green area of Luv Kush Park has been covered by Food-Court.*
4. *During the visit of Azad Park and Patel Stadium, it was observed that following sports infrastructure facilities are being constructed: ground, basket ball court & other indoor gaming facilities for Table Tennis, Wrestling, Boxing Kabbadi etc., out of these sport facilities, some of the pre-existing have been renovated and some others have been newly constructed for larger public interest.*

Patel stadium being located in the heart of the Ajmer city and as per Master Plan 2013-2033, the land use of the area is marked as recreational, open area 86 park area. The permissible uses as marked in the Master Plan are namely viz., Science park, Water park, Amusement park, Recreational club, Indoor stadium 86 outdoor stadium, Playground and. Mela ground. Thus, the area utilized for construction of above facilities by Ajmer Smart City

Ltd. Is permissible in the light of Master Plan of the Ajmer city-2033.

As far as up-rooting of old trees (32 nos.) and other garden area of Azad Park is concerned, it is important to highlight herewith that permission from competent authority was obtained for the purpose with condition to replace ten times the number of plants which were up rooted. Till date, 29 number of trees have been up rooted and approx. 4024 saplings have been planted in Ajmer city area by Ajmer Smart City Ltd. In addition to the construction of above sports infrastructure facilities, construction of sports allied facilities have been constructed.

- 7. The Gandhi Smriti Udhyan has been developed on the land reserved for Smarak in the ADA approved Yojna in Hari Bhau Upadayaay Nagar (extension). Most of the land within the udhyan is rocky and greenery has been developed on the same using 25000 cum of sand. Construction of Pathway in the Udhyan using stone slabs has been done for morning and evening walkers. An auditorium has also constructed for the propaganda of incidents of the life journey of Mahatma Gandhi.*
- 8. Construction of pathways around Anasagar Lake has stopped illegal encroachment in Lake boundary. Plantation done along the pathway of the lake has not only provided aesthetic view to the lake but also enhanced ecological promotion. Construction of Seven Wonders and Food Court has also enhanced the beauty of Anasagar lake. Seven Wonders as State of Art for tourism is now an important place to visit in Ajmer city. Thus, it is a recreational facility in the Ajmer city as earmarked in Master plan too. As such No violation of No Construction Zone have been made. The matter was disposed of in the Hon'ble NGT case no. 63/2021 in Original Application of Surendra Singh Shekhawat V/ s State of Rajasthan 86 Others previously too. Construction of sports complexes in Patel Stadium and Azad Park area have been done taking care of No Construction Zone and Master Plan as the area is defined for sports facilities, therefore, no violation of No Construction Zone has been made. It is evident from the above facts that the construction done by ASCL and AMC in Ajmer city has restricted encroachment, increased recreational spaces and thus, enhanced aesthetic beauty of the city."*

10. Replies have been filed on behalf of respondent nos. 3, 4, 5, 8, 9, 11 and 13 collectively. Denying allegations made in OA, it is stated that all constructions raised are permissible as per Master Plan 2013-2033 of Ajmer smart city. It is also said that all constructions are complete and old i.e., more than 5 years back they were completed and, therefore, this Tribunal lacks jurisdiction since period of limitation under Section 15 has

already expired. The averments made in para 8 to 15 in reply of respondents 3, 4, 8, 9, 11 and 13 are reproduced as under:

- “8. That the first allegation raised in the Original Application is in regards to the Construction in the Green Zone of the Azad Park and Patel Stadium which is totally misconceived and baseless the construction has not been made in the green zone, paragraph 4 of the Joint Committee report clearly reveals that the allegations made in the Original Application are totally baseless and misconceived, and it is further submitted as submitted by the joint committee report that the said constructions are permissible as per the Master Plan 2013-2033 of the Ajmer Smart City. To substantiate the fact the records of the nature of the land is enclosed herewith as Annexure R/5 for the kind report.*
- 9. That the applicant has further alleged that the respondents have constructed a food court near the Luv Kush Park damaging the environment which is totally baseless and misconceived. That it is further submitted by the answering respondent that the food Court was constructed in the in the year 2016-2018 and the petitioner is raising the issue in year 2023 after almost five years which is barred by limitation. In spite of that it is submitted by the answering respondent that the said construction was done under the HRIDAY scheme and beatification of the park was under taken. At this juncture it is apt to mention that no discharge of waste water from the food court is going in the lake and same has been connected by way of pipe line to the septic tank. That the answering respondent further submits that the no green belt area has been covered by the food court. The said fact can also be verified by the Joint Committee report, in this regards paragraph 3 of the joint committee report may be seen.*
- 10. That the applicant has further raised the issue of construction in the Green Zone of Gandhi Smriti Udhayn, which totally incorrect that it is submitted by the answering respondents that the train of Gandhi Smriti Udayan was very rocky and the answering respondents have created greenery over their by using 8500 cubic mtr of sand/manure. Pathway has been constructed by the answering respondents for morning and evening walkers and this work was also completed in 2022.*
- 11. That, The applicant has raised further issue that seven wonder park has been constructed in the green belt area which is totally incorrect and this fact was also considered in Original Application 63/2021 and at this juncture it is pertinent to mention that the and report filed in the previous round of litigation i.c. Original Application 63/2021 and report filed in present case also has denied the stand of the applicant.*
- 12. That it is respectfully submitted by the answering respondent that all the allegations levelled against the answering respondents are baseless and devoid of merit and substance and are alleged due to personal reasons and to settle personal differences.*
- 13. That, it is further submitted by the answering respondent*

without any prejudice as the answering respondents are committed for betterment of the environment but certain facts are to be brought before this Hon'ble Tribunal, that the son of the applicant namely Shri Drupadh Malik applied for intern before the arrayed respondent and his candidature was rejected hence the applicant is having personal differences and so settle the scores with the answering respondent has filed the instant petition. Copy of the online forms enclosed herewith as Annexure R/6 for kind perusal.

14. *That, it is further respectfully submitted that the applicant himself is having a firm registered in his name in name and style of M/s Bimla Rameshwarnath and applied for various contracts before the respondent and in few he was successful and in few his contract/ bid was rejected due to technical reasons hence also the applicant got annoyed with the respondent and started filing application before this Hon'ble Tribunal. Copy of some of the document to demonstrate the same is enclosed herewith as Annexure R/7.*

15. *That, at this juncture it is apt to bring before to the kind knowledge of this Tribunal that until and unless the applicant was granted certain tenders by the answering respondent he never agitated any issues and when the tenders/appointment of son of applicant were turned down he started litigations with respondents.”*

11. Respondent no.12 has filed a separate reply dated 15.05.2023, doubting credentials of applicant stating that same lack *bona-fide*.

12. Applicant has filed objection dated 26.05.2023 to Joint Committee's Report, reiterating his stand that constructions raised in open parks/green belts are impermissible and even Master Plan 2023 cannot be resorted to for the said purpose.

13. On 01.08.2023, when Tribunal heard the matter, Meenakshi Verma, Deputy Town Planner, Ajmer Smart city appeared in person and stated that whatever constructions in parks or open spaces have been raised, complained in OA, were without her knowledge, consent or approval. Stating this fact, she has also filed a separate reply which is on record as reply of respondent 5.

14. During the course of arguments, on 01.08.2023, Learned Counsel appearing for respondents authorities particularly, 3, 4, 8, 9, 11 and 13, when claimed that constructions are old hence barred by limitation, we specifically directed him to give dates of constructions which was not disclosed in the replies filed by concerned respondents. Time was granted for the said purpose.

15. In furtherance of order dated 01.08.2023, a compliance Report dated 09.08.2023 has been filed accompanied by an affidavit sworn by Shri Pradeep Kumar Maurya, Officer-in-charge of respondent 11, giving details of type of constructions, date of commencement and date of completion etc., in the form of chart, as under:

Sr. No.	Particular	Luv-Kush Udhyan	Food Court behind Luv-Kush	Seven Wonders Park	Gandhi Park	Patek maidan/Azad park
1.	Type of construction	Park	Food court cum parking	Statutes, park, Pathway & Small cafeteria	Statue, auditorium, park & Pathway	Football ground, Synthetic Athletic track, Swimming pool, Basketball court, Lawn tennis court, Sports complex, Sports allied facilities complex, TT hall, Badminton hall & park
2.	Date of Start	23-07-1994	29-09-2016	21-02-2021	10-11-2020	29-08-2020
3.	Date of Completion	16-07-1997	30-12-2018	29-03-2022	30-09-2022	Work in Progress
4.	Nature of land	Open space, park & recreational		Open space, park & recreational	Reserved for Smarak under approved ADA scheme	Open space, park & recreational- Science park, Water park, Entertainment park, Indoor & Outdoor stadium, Playground & Mela ground

5.	Permission obtained if any	Park created by ADA	Constructed by RSRDC under HRIDAY Yojna of AMC	NOC issued by ADA vide ADA/Seven wonders park/P8/2022/1465 dated 14-02-2022		Land of AMC
6.	Uses as per the master plan	Open space, park & recreational		Open space, park & recreational		Open space, park & recreational
7.	Permitted activities as per nature of land	Science Park, Water park, Entertainment Park, Indoor & Outdoor stadium, Playground & Mela ground.		Science Park, Water park, Entertainment Park, Indoor & Outdoor stadium, Playground & Mela ground.		Science park, Water park, Entertainment park, Indoor & Outdoor stadium, Playground & Mela ground
8.	Co-ordinates	26°27'60" N 74°37'35" E		26°29'12" N 74°37'5" E	26°28'58" N 74°36'09" E	26°28'9"N 74°38'18 E
9.	Elevation	517		513	533	505
10.	Other information	Ajmer Smart City has carried out only maintenance work in Luv-Kush Udhyan such as plaster, paint, grass, repair of walk- way, benches & boring.		The committee constituted under NGT case 63/2021 (CZ) found it outside protected area of Anasagar lake	Layout approved under Hairbhau Upadhyay Nagar extension scheme of ADA	The Superintendent of each park shall be the authority to control, manage and maintain such park. As per point No. 4(a) of Rajasthan Public parks act 1956- Construct such roads, bridges, buildings, and fences and carry out such other works as he may consider necessary for the purpose of such park and as per point No. 4(d) Permit the erection of Buildings for the

						accommodation of visitors or of shops or other undertaking.
11.						As per point No. 5.3 of integrated stadium development programme 2015- The State/District Sports Council would be authorized to identify upto 5% of the existing land which could be put to commercial use including construction of shops, grounds for social functions and fairs etc. to earn income for maintenance of sports facilities.
12.						उक्त पटेल स्टेडियम / आजाद पार्क पर न्यायालय सम्पदा अधिकारी, अजमेर मे वाद न्यायालय द्वारा अवैध अतिक्रमी के खिलाफ बेदखली का आदेश पारित होने उपरान्त पूर्ण रूप से नगर निगम द्वारा अपने कब्जे में ले लिया गया है।

16. Pradeep Kumar Maurya is also personally present. He stated that entire constructions which have been raised, are permissible in view of

provisions of Rajasthan Public Parks Act, 1956 (hereinafter referred to as '**RPP Act, 1956**') and, therefore, no illegality has been committed in raising various constructions.

17. Learned Counsel appearing for Ajmer Municipal Corporation and District Collector, Ajmer stated that the construction details have been placed before Tribunal and whatever order is passed by order, they shall abide by the same.

18. In our view, the issues need to be considered in OA, are:

- (I) Whether RPP Act, 1956 is applicable in the context of constructions in dispute raised in park/open spaces/green belt areas?
- (II) Whether all or some or any one of various construction raised in disputed areas are barred by time under Sections 14 and 15 and no direction can be issued by this Tribunal?
- (III) Whether the area designated as park/open spaces/green belt can be changed/altered/modified in any other manner by raising constructions particularly, permanent constructions thereon?
- (IV) If any or all constructions are impermissible, what order would be justified to be passed in this regard?

19. Now, we proceed to consider the above issues on merits.

ISSUE I:

20. First of all, we proceed to consider applicability of RPP Act, 1956. The above Act was made, applicable to entire State of Rajasthan. As per Section 1(3) thereof, it would come into force on such date as the State Government may by Notification in the Official Gazette appoint in this behalf. Despite repeated query, respondents including Shri Pradeep

Kumar Maurya relied on the above Statute, but are not able to inform as to on which date, the said Act came into force.

21. However, we proceed with assumption that said Act has been enforced long back.

22. We find that it has no application to parks/open spaces with which we are considered. The term 'Park' is defined in Section 2(2) as under:

(2) 'Park' means any park or garden declared to be a public park under this Act as well as any zoo within any public park so declared;

23. Section 3 provides that State Government by Notification in Official Gazette declare "any park or garden" to be a "public park" and thereupon Provisions of RPP Act, 1956 shall apply to such park.

24. Neither it is the case of respondents nor any such Official Gazette Notification has been brought to our notice, showing that any of the 'park' with which we are concerned in the present OA, was notified in Official Gazette to be a 'public park' under Section 3. That being so, RPP Act, 1956, neither is applicable nor shall govern the parks/open spaces with which we are concerned in the present OA.

25. Further, respondents rely on Section 4 of RPP Act, 1956 which reads as under:

"4. Control of parks and functions and duties of Superintendent - (1) *subject to the control of the State Government, the Superintendent of each park shall be the authority to control, manage and maintain such park, and for that purpose may with the previous sanction of the Government-*

(a) construct such roads, bridges, buildings and fences and carry out such other works as he may consider necessary for the purposes of such park;

(b) make necessary arrangements for the preservation of scientific objects in such, park;

*(c) take such steps as will ensure the security of animals in **such park**;*

(d) permit the erection of buildings for the accommodation of visitors or of shops or other undertakings.

*(2) The State Government may, by notification in the [Official Gazette], direct that the **control, management and maintenance of any park shall vest in a local authority within the jurisdiction of which such park may be situated; and in every such case the duties of a Superintendent under this Act shall in respect of such park, be exercised by such local authority and the proceeds, if any, from such park shall also vest therein.***”

26. Even Section 4 shows that whatever construction is permissible, it should be necessary for the purpose of control, management and maintenance of such park. Constructions which are impugned in present OA are not shown to have been raised for such purposes i.e., control, management and maintenance. Moreover, Section 4 requires a previous sanction of Government and it is no body's case and none of the respondents either has pleaded or placed any material record to show that any previous sanction of Government was obtained before raising such construction.

27. Therefore, firstly, by virtue of Section 3 of RPP Act, 1956 the said Act is inapplicable to parks/open spaces with which we are concerned; secondly, Section 4 has not been complied with and, therefore, offended constructions in the present OA are not protected by Section 4. In any case, Section 4 would be applicable only when the park is a 'public park' declared to be so, by an Official Gazette Notification, as defined in Section 2(2) read with Section 3 of RPP Act, 1956. Hence, in entirety, reliance placed on RPP Act, 1956 is totally misconceived and the contention placed hereon is thereby rejected.

28. **Issue I is answered by holding that RPP Act, 1956 is not applicable and attracted in this case.**

ISSUE II:

29. It raises the question of limitation in respect of the offending constructions which according to the respondents were raised long back and limitation under Section 14 is only 6 months while under Section 15, it is 5 years.

30. This question, we have to consider by simultaneously considering scheme of NGT Act, 2010 and in particular, inter-relationship of Sections 14 and 15.

31. Under NGT Act, 2010, Tribunal has 3 jurisdictions; Original, Appellate and Special, enabling it to grant reliefs of compensation, restitution of property and environment growth.

32. Section 14 gives a very wide jurisdiction to resolve and pass orders to decide disputes where substantial question relating to environment including enforcement of legal right relating to environment is involved and such question arises from the implementation of enactments, specified under Schedule 1.

33. Definition of 'environment' is very wide and comprehensive enough to take within its ambit all matters relating to environment. Protection and improvement of environment are two fundamental aspects of environmental legislations.

34. Section 15(1)(a) confers power upon Tribunal to provide relief and compensation to the victims of pollution and other environmental damage, arising under the enactments specified in Schedule I.

35. Under Section 15(1)(b) and 15(1)(c), Tribunal can provide for restitution of property damaged and restitution of environment for such area or areas as Tribunal may think fit.

36. Considering Section 15(1)(b) and 15(1)(c), Supreme Court ***Mantri Techzone Private Limited vs. Forward Foundation & Ors., (2019) 18 SCC 494*** held that Section 15(1)(b) and 15(1)(c) cannot be narrowed down to bring at par with Section 15(1)(a) since, sub-sections (1)(b) and (1)(c) have not been made relatable to Schedule I enactments of NGT Act, 2010. A wide range of power has been conferred upon Tribunal with respect to restoration of environment. Supreme Court also held that Section 15(1)(c) read with Section 20 of NGT Act, 2010 is an entire island of power and jurisdiction. Principles of Sustainable Development, Precautionary Principle and Polluter Pays, which were propounded vide multiple judicial pronouncements and embedded as a bedrock of environmental jurisprudence under NGT Act, 2010 empowers Tribunal to take restorative measures in the interest of environment by referring to Section 15(1)(b) and (1)(c) of NGT Act, 2010. Wherever and whenever environment and ecology are being compromised and jeopardized, Tribunal can apply Section 20 for taking restorative measures in the interest of environment.

37. Supreme Court declined to read provisions of Section 14 and 15(1)(a) and in general, various provisions of NGT Act, 2010 so as to narrow down jurisdiction of Tribunal in the matter of environmental protection. Court said that an interpretation which would be in favour of conferring jurisdiction shall be followed.

38. Looking from the above angle, we find that the application complaining about damage to environment and ecology due to illegal constructions raised in parks/open spaces and asking for demolition of

such constructions is primarily covered by Section 15(1)(b) and (1)(c) and does not fall under Section 14. It is true that in general, Sections 14 and 15 have been mentioned in OA but law is well settled that non-mention or erroneous mention of any provision of law would be of no relevance if Court has requisite jurisdiction to pass order and reference of a wrong provision is a mere irregularity which would not vitiate judicial order of Court if otherwise it possess adequate power under Statute. Jurisdiction of this Tribunal is very unique and when complaint of degradation or damage to environment is brought before it and there is substance in such complaint, Tribunal possesses enough power to take remedial action and unless there is specific bar, such power can be exercised even *suo-moto*.

39. In ***Municipal Corporation of Greater Mumbai vs. Ankita Sinha & Others, (2022)13SCC401***, Supreme Court considered the scope of power of Tribunal to initiate suo-moto proceedings. In the backdrop of constitution of National Green Tribunal, preamble & statement of objects and reasons of NGT Act 2010, purposive interpretation, features of NGT Act 2010, non-adjudicatory roles of NGT, uniqueness of NGT vis-a-vis other Tribunals, need of NGT to exercise *suo-moto* powers, sui generis role of NGT, authority with self-activating capability, precautionary principle, environmental justice and environmental equity and environmental jurisprudence in India. The observations made by Supreme Court may be summarized as under:

- i) NGT was conceived as a complimentary specialized forum to deal with all environmental multidisciplinary issues, both as original and also as an appellate authority, which complex issues were hitherto dealt with by the High Courts and Supreme Court.

- ii) NGT was intended to be the competent forum for dealing with environmental issues instead of those being canvassed under the writ jurisdiction of the Courts.
- iii) Creation of NGT would allow Supreme Court and High Courts to avoid intervening under their inherent jurisdiction when an alternative efficacious remedy would become available before the specialized forum.
- iv) The power of judicial review was omitted to ensure avoidance of High Courts' interference with Tribunal's orders by way of a mid-way scrutiny by High Courts, before matters would travel to Supreme Court where NGT's orders can be challenged.
- v) The mandate and jurisdiction of NGT is conceived to be of the widest amplitude and it is in the nature of a *sui generis* forum.
- vi) Unlike Civil Courts which cannot travel beyond the relief sought by the parties, NGT is conferred with power of moulding any relief. The provisions show that NGT is vested with the widest power to appropriate relief as may be justified in the facts and circumstances of the case, even though such relief may not be specifically prayed for by the parties.
- vii) Myriad roles are to be discharged by NGT, as was encapsulated in the Law Commission Report, the Preamble and the Statement of Objects and Reasons.
- viii) Parliament intended to confer wide jurisdiction on NGT so that it can deal with the multitude of issues relating to the environment which were being dealt with by High Courts under Article 226 of the Constitution or by Supreme Court under Article 32 of the Constitution.

- ix) The activities of NGT are not only geared towards the protection of environment but also to ensure that the developments do not cause serious and irreparable damage to ecology and the environment.
- x) Concept of *lis*, would obviously be beyond the usual understanding in civil cases where there is a party (whether private or government) disturbing the environment and the other one (could be an individual, a body or the government itself), who has concern for the protection of environment.
- xi) NGT is not just an adjudicatory body but has to perform wider functions in the nature of prevention, remedy and amelioration.
- xii) In ***Bhopal Gas Peedith Mahila Udyog Sangathan vs. Union of India (2012) 8 SCC 326***, Court mandated transfer of all cases concerning the statutes mentioned in Schedule I of NGT Act to the specialized forum as otherwise there can be conflicts with the High Courts. Notably, some of those cases were originally registered *suo-moto* by the Courts.
- xiii) As long as the sphere of action is not breached, NGT's powers must be understood to be of the widest amplitude.
- xiv) In ***Mantri Techzone (P) Ltd. vs. Forward Foundation, (supra)***, Court recognized that NGT is set up under the constitutional mandate in Entry 13 of List I in Schedule VII to enforce Article 21 with respect to the environment and in the context, Tribunal has special jurisdiction for enforcement of environmental rights.
- xv) In ***Rajeev Suri vs. DDA, 2021 SCC Online SC 7***, Court said that in its own domain, as crystalized by the statute, the role of NGT is clearly discernible.
- xvi) Referring to ***Andhra Pradesh Pollution Control Board v. Prof. M. V. Nayudu (Retd.) and Others (1999) 2 SCC 718***, Court said that **role of NGT was not simply adjudicatory** in the nature of a *lis* **but**

to perform equally vital roles which are preventative, ameliorative or remedial in nature. The functional capacity of the NGT was intended to leverage wide powers to do full justice in its environmental mandate.

- xvii) Statutory Tribunals were categorized to fall under four subheads; Administrative Tribunals under Article 323A; Tribunals under Article 323B; Specialized sector Tribunals and most prominently; Tribunals to safeguard rights under Article 21. As already noted, the duties of NGT brings it within the ambit of the fourth category, creating a compelling proposition for wielding much broader powers as delineated by the statute.
- xviii) Referring to ***State of Meghalaya vs. All Dimasa Students Union (2019)8SCC177***, Court said that reflecting on the expanded role of NGT unlike other Tribunals, this Court so appositely observed that the forum has a duty to do justice while exercising “*wide range of jurisdiction*” and the “*wide range of powers*”, given to it by the statute.
- xix) NGT has been recognized as one of the most progressive Tribunals in the world.
- xx) NGT being one of its own kind of forum, commends us to consider the concept of a sui generis role, for the institution.
- xxi) Referring to ***DG NHAI vs. Aam Aadmi Lokmanch, 2020 SCC Online SC 572***, Court repelled the argument for a restricted jurisdiction for NGT, and observed in paragraph 76 that powers conferred on NGT are both reflexive and preventive and the role of NGT was recognized in paragraph 77 as “an expert regulatory body”, which can issue general directions also albeit within the statutory framework.

- xxii) **NGT was conceived as a specialized forum not only as a like substitute for a civil court but more importantly to take over all the environment related cases from High Courts and Supreme Court.**
- xxiii) Given the multifarious role envisaged for NGT and the purposive interpretation which ought to be given to the statutory provisions, it would be fitting to regard NGT as having the mechanism to set in motion all necessary functions within its domain and this, as would follow from the discussion below, should necessarily clothe it with the authority to take suo-motu cognizance of matters, for effective discharge of its mandate.
- xxiv) Section 14(1) of NGT Act deals with jurisdiction, and the jurisdictional provision conspicuously omits to specify that an application is necessary to trigger NGT into action. In situations where the three prerequisites of Section 14(1) i.e., Civil cases; involvement of substantial question of environment; and implementation of the enactments in Schedule I are satisfied, the jurisdiction and power of NGT gets activated. On these material aspects, NGT is not required to be triggered into action by an aggrieved or interested party alone. It would therefore be logical to conclude that the exercise of power by NGT is not circumscribed by receipt of application.
- xxv) Section 14(1) exists as a standalone feature, not constricted by the operational mechanism of the subsequent subsections. The sub-Section (2) of Section 14 functions as a corollary and comes into play when a dispute arises from the questions referred to in Section 14(1). Likewise sub-Section (3) thereafter, refers to the period of limitation concerning applications, when they are addressed to the

NGT. Where adjudication is involved, the adjudicatory function under Section 14(2) comes into play.

- xxvi) When it is a case warranting NGT's intervention, or may be a situation calling for decisions to meet certain exigencies, the functions under Section 14(1) can be undertaken and those may not involve any formal application or an adjudicatory process. However, the later provisions may not work in similar fashion. Therefore, care must be taken to ensure unrestricted discharge of the responsibilities under Section 14(1) and that wide arena of NGT's functioning.
- xxvii) The other pertinent provisions relating to, *inter-alia*, jurisdiction, interim orders, payment of compensation and review, do not require any application or appeal, for NGT to pass necessary orders. These crucial powers are expected to be exercised by NGT, would logically suggest that the action/orders of NGT need not always involve any application or appeal. To hold otherwise would not only reduce its effectiveness but would also defeat the legal mandate given to the forum.
- xxviii) To be effective in its domain, we need to ascribe to NGT a public responsibility to initiate action when required, to protect the substantive right of a clean environment and the procedural law should not be obstructive in its application.
- xxix) It is not only a matter of rhetoric that the Tribunal is to remain ever vigilant, but an important legal onus is cast upon it to act with promptitude to deal with environmental exigencies. The responsibility is not just to resolve legal ambiguities but to arrive at a reasoned and fair result for environmental problems which are adversarial as well as non-adversarial.

- xxx) It would thus be appropriate to state that much of the principles, institutions and mechanisms in this sphere have been created, on account of this Court's initiative.
- xxxi) Supreme Court adopted the role of an "amicus environment" by threading together human rights and environmental concerns, resultingly developing a *sui generis* environmental discourse.
- xxxii) NGT is the institutionalization of the developments made by Supreme Court in the field of environment law. These progressive steps have allowed it to inherit a very broad conception of environmental concerns. Its functions, therefore, must not be viewed in a cribbed manner, which detracts from the progress already made in the Indian environmental jurisprudence.
- xxxiii) NGT, with the distinct role envisaged for it, can hardly afford to remain a mute spectator when no-one knocks on its door. The forum itself has correctly identified the need for collective stratagem for addressing environmental concerns.
- xxxiv) NGT must act, if the exigencies so demand, without indefinitely waiting for the metaphorical *Godot* to knock on its portal.

40. Learned Counsel for applicant contended that the 'cause of action' is continuing or recurring or successive but we do not find any occasion to go into this aspect in detail for the reason that whenever any impermissible activity is undertaken, it provides a fresh cause of action. The term 'continuing cause of action', 'recurring cause of action' or 'successive cause of action' are well-known in the legal world. In contradistinction to 'cause of action first arose', there could be 'continuing cause of action', 'recurring cause of action' or 'successive cause of action'. These diverse connotations with reference to cause of

action are not synonymous. They certainly have a distinct and different meaning in law.

41. 'Cause of action first arose' would refer to a definite point of time when requisite ingredients constituting that 'cause of action' were complete, providing applicant right to invoke the jurisdiction of Court or Tribunal. 'Right to Sue' or 'right to take action' would be subsequent to an accrual of such definite point of time called 'cause of action'.

42. Concept of continuing wrong which would be the foundation of "continuous cause of action" was accepted by Supreme Court in **Bal Krishna Savalram Pujari & Ors. vs. Sh. Dayaneshwar Maharaj Sansthan & Ors., AIR 1959 SC 798**. In the context of a criminal offence under Mines Act, 1952, Supreme Court considered the term 'continuing offence' in **State of Bihar vs. Deokaran Nenshi and Anr., (1972) 2 SCC 890**. Here Court considered provisions of Section 66 and 79 of Mines Act, 1952. The provisions prescribed for a penalty to be imposed upon guilty, but provided that no Court shall take cognizance of an offence under Act unless a complaint thereof has been made within six months from the date on which the offence is alleged to have been committed or within six months from the date on which the alleged commission of offence came to the knowledge of the Inspector, whichever is later. Explanation to the provision specifically provided, if the offence in question is a continuing offence, period of limitation shall be computed with reference to every point of time during which said offence continues.

Supreme Court said,

"5. A continuing offence is one which is susceptible of continuance and is distinguishable from the one which is committed once and for all. It is one of those offences which arises out of a failure to obey or comply with a rule or its requirement and which involves a penalty, the liability for which continues until the rule or its requirement is obeyed or complied with. On every occasion that such disobedience or non-compliance occurs and recurs, there is the offence committed.

The distinction between the two kinds of offences is between an act or omission which constitutes an offence once and for all and an act or omission which continues and therefore, constitutes a fresh offence every time or occasion on which it continues. In the case of a continuing offence, there is thus the ingredient of continuance of the offence which is absent in the case of an offence which takes place when an act or omission is committed once and for all.”

43. Whenever a wrong or offence is committed, ingredients are satisfied and repeated, it would evidently be a case of ‘continuing wrong or offence’.

44. The question whether not filing return within prescribed time and without reasonable cause could be a continuing wrong or not, was considered by Supreme Court in ***Maya Rani Punj vs. Commissioner of Income Tax, Delhi, (1986) 1 SCC 445*** and it said that continued default is obviously on the footing that non-compliance with the obligation of making a return is an infraction as long as the default continues and as long as the assessee does not comply with the mandate of law, he would continue to be guilty of the infraction and expose himself to the penalty provided by law.

45. In other words, we can say that in case of a continuing breach, or of a continuing tort, a fresh period of limitation begins to run at every moment of time during which the breach or the tort, as the case may be, continues. Continuing the breach, act or wrong would culminate into the ‘continuing cause of action’ once all the ingredients are satisfied. The very essence of continuous cause of action is continuing source of injury which renders the doer of the act responsible and liable for consequence in law.

46. Thus, the expressions ‘cause of action first arose’, ‘continuing cause of action’ and ‘recurring cause of action’ are well accepted canons

of civil jurisprudence but they have to be understood and applied with reference to the facts and circumstances of a given case.

47. In law of limitation, it is only the injury alone that is relevant and not the consequences of the injury. If wrongful act causes the injury which is complete, there is no continuing wrong even though damage resulting from the act may continue.

48. Distinction must be made between continuance of legal injury and continuance of its injurious effects. Where a wrongful act produces a state of affairs, every moment continuance of which is a new tort, a fresh cause of action for continuance lies. Cause of action which is complete in all respects gives applicant a right to sue. Multiple reliefs can be claimed under Rule 14 of National Green Tribunal (Practice and Procedure) Rules, 2011, provided they are consequential to one another and based upon a single cause of action. Different causes of action, thus, may result in institution of different applications.

49. Multiple cause of action again would be of two kinds; one, which may arise simultaneously and another, which may arise at a different or successive point of time. In first kind, cause of action accrues at the time of completion of the wrong or injury. In latter, it may give rise to cause of action or if the statutes so provide when the 'cause of action first arose' even if the wrong was repeated. Where injury or wrong is complete at different times and may be of similar and different nature, then every subsequent wrong depending upon the facts of the case may give rise to a fresh cause of action. Concept of 'recurring cause of action' is also slightly different. The word 'recurring' means, something happening again and again and not that which occurs only once. Such re-occurrence could be frequent or periodical. Recurring wrong could have

new elements in addition to or in substitution of the first wrong or when 'cause of action first arose'. It could even have the same features but its re-occurrence is complete and composite. Recurring cause of action would not stand excluded by the expression 'cause of action first arose'. In some situation, it could even be a complete, distinct cause of action hardly having nexus to the first breach or wrong, thus, not inviting the implicit consequences of the expression 'cause of action first arose'. This distinction was clarified and explained by Supreme Court between continuing and recurring cause of action in ***M. R. Gupta vs. Union of India and others, (1995) 5 SCC 628.***

50. The **continuing cause of action would refer to the same act or transaction or series of such acts or transactions.** The recurring cause of action would have an element of fresh cause which by itself would provide the applicant the right to sue. It may have even be *de-hors* first cause of action or first wrong by which the right to sue accrues. Commission of breach or infringement may give recurring and fresh cause of action with each of such infringement like infringement of a trademark. Every rejection of a right in law could be termed as a recurring cause of action. (Ref: ***Ex. Sep. Roop Singh v. Union of India and Ors., 2006 (91) DRJ 324, M/s. Bengal Waterproof Limited vs. M/s. Bombay Waterproof Manufacturing Company and Another, (1997) 1 SCC 99.***

51. The principle that emerges from the above discussion is that 'cause of action' satisfying the ingredients for an action which might arise subsequently to an earlier event give result in accrual of fresh right to sue and hence reckoning of fresh period of limitation. **A recurring or continuous cause of action may give rise to a fresh cause of action resulting in fresh accrual of right to sue. In such cases, a**

subsequent wrong or injury would be independent of the first wrong or injury and a subsequent, composite and complete cause of action would not be hit by the expression 'cause of action first arose' as it is independent accrual of right to sue.

52. In other words, a recurring cause of action is a distinct and completed occurrence made of a fact or blend of composite facts giving rise to a fresh legal injury, fresh right to sue and triggering a fresh lease of limitation. It would not materially alter the character of the proposition that it has a reference to an event which had occurred earlier and was a complete cause of action in itself. In that sense, recurring cause of action which is complete in itself and satisfies the requisite ingredients would trigger a fresh period of limitation. To such composite and complete cause of action that has arisen subsequently, the phraseology of the 'cause of action first arose' would not effect in computing the period of limitation. The concept of cause of action first arose must essentially relate to the same event or series of events which have a direct linkage and arise from the same event. **To put it simply, it would be act or series of acts which arise from the same event, may be at different stages.** This expression would not de-bar a composite and complete cause of action that has arisen subsequently.

53. To illustratively demonstrate, we may refer to the challenge to the grant of Environmental Clearance. When an appellant challenges the grant of Environmental Clearance, it cannot challenge its legality at one stage and its impacts at a subsequent stage. But, **if the order granting Environmental Clearance is amended at a subsequent stage, then the appellant can challenge the subsequent amendment at a later stage, it being a complete and composite cause of action that has**

subsequently arisen and would not be hit by the concept of cause of action first arose.

54. The distinction between jurisdiction under Sections 14 and 15 as we have discussed above, has been very clearly drawn by Supreme Court in ***Mantri Techzone Pvt. Ltd. vs. Forward Foundation and Ors.***, (*supra*) where, in para 45, it is said:

*“45. Section 15 of the Act provides power & jurisdiction, independent of Section 14 thereof. Further, Section 14(3) juxtaposed with Section 15(3) of the Act, are separate provisions for filing distinct applications before the Tribunal with distinct periods of limitation, thereby amply demonstrating that **jurisdiction of the Tribunal flows from these Sections (i.e. Sections 14 and 15 of the Act) independently.** The limitation provided in Section 14 is a period of 6 months from the date on which the cause of action first arose and whereas in Section 15 it is 5 years. Therefore, **the legislative intent is clear to keep Section 14 and 15 as self contained jurisdictions.**”*

55. Now, looking to the facts of the present case, we find that this complaint is basically about damage to ecology and environment by raising constructions in parks/open spaces/green belt and it has been prayed that respondents be directed to restore the said parks/green belts and constructions raised illegally should be demolished. Therefore, the relief sought comes within the purview of Section 15 and limitation of 5 years will apply.

56. Bereft of going into the niceties of recurring or continuing cause of action, if we go by the ‘cause of action first arose’ i.e., when it was completed, we find that except construction of park of Luvkush Udyaan which had completed in 1997, in all other parks/open spaces/green belts, construction activities have been completed in 2018 and 2022 and in Azad Park still continuing. That being so, all these constructions are within the period of limitation of Section 15. In respect of Luvkush Udyaan also, it is said that the park was completed in 1997 but recently, Ajmer Smart City which is a new body constituted recently has carried

out certain work like plaster, paint, repair of walk-way etc. With regard to this work, no date of commencement or completion has been given. Obviously, from 1994 to 1997, Ajmer Smart City was not in existence, therefore, the work mentioned to be carried out in Luvkush Udyaan by Ajmer Smart City is a subsequent one and within 5 years from the date when the present OA was filed.

57. **We answer issue II accordingly in favour of the applicant.**

58. Now we proceed to consider issues III and IV together since both are connected.

59. Coming to the question of validity of constructions raised by respondents in the case in hand, firstly, with regard to construction of park of **Luv Kush Udyaan**, which was completed in 1997, we find that it is not a case of any permanent construction raised in 1997. It is said that Lovkush Udyan/Park was made in 1997, meaning thereby, some open space was developed in the form of park but nothing has been said that any permanent construction was raised and no details have been given thereof. Development of an open space as a park, by itself, is not prohibited, as the very basic nature of the area remains same. In absence of anything to show that any permanent construction was raised in 1997, mere development of park by itself will not include any permanent construction within its ambit.

60. The Respondents have stated that Ajmer Smart City carried out certain work. The information supplied with respect of Ajmer Smart City is that it is a public company incorporated as “Ajmer Smart City Limited” on 24.11.2016, classified as State Govt. Company and registered with Registrar of Companies, Jaipur. Having been incorporated in November 2016, obviously, it could have carried out work only thereafter. Since

respondents have not given any time of work carried out by Ajmer Smart City, we are entitled to draw inference against them and treat that the said work was carried out within last five years.

61. With regard to the nature of work carried out by Ajmer Smart City, respondents have stated that they have carried out certain plaster, paint, repair work of walk-way etc. in Luv Kush Udyaan/park but where such plaster and paint activities have been carried out, is not mentioned. It is also not mentioned as to when alleged constructions which required plastering and painting for maintenance purposes were raised. Since specific opportunity was granted to respondents to bring on record date of constructions but in the present case, in respect of Luv Kush Udyaan/Park, they have not placed on record, therefore, we are justified in drawing inference that said constructions have been raised within 5 years from the date when OA was presented before this Tribunal i.e., 16.03.2023.

62. That being so, such constructions are impermissible and cannot be allowed to stay.

63. Now the question is “whether nature of park/ open space/ green belt can be changed by raising permanent construction”.

64. In ***Bangalore Medical Trust vs. G. S. Muddappa & Ors. (1991) 4 SSC 54***, while considering issue “whether area reserved for a public park can be converted for other purposes”, it was held that an open space and public park is a gift from people to themselves. When area is reserved or allotted for public park, it cannot be changed for the purpose of constructing any building including building of public service like hospital. In Para 23, 24 and 25 of judgment, Supreme Court said:

“23. The scheme is meant for the reasonable accomplishment of the statutory object which is to promote the orderly development of the city of Bangalore and adjoining areas and to preserve open spaces by reserving public parks and playgrounds with a view to protecting the residents from the ill-effects of urbanization. It is meant for the development of the city in a way that maximum space is provided for the benefit of the public at large for recreation, enjoyment, and ‘ventilation’ and fresh air. This is clear from the act itself as it C.A. No.5606/2010 originally stood. The amendments interesting Sections 16(1) (d), 38A and other provisions are clarificatory of this object. The very purpose of the BDA, as a statutory authority, is to promote the healthy growth and development of the City of Bangalore and the area adjacent thereto. The legislative intent has always been the promotion and enhancement of the quality of life by the preservation of the character and desirable aesthetic features of the city. The subsequent amendments are not a deviation from or alteration of the original legislative intent, but only an elucidation or affirmation of the same.

24. Protection of the environment, open spaces for recreation and fresh air, playgrounds 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 playgrounds 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 right a reality for all citizens.

25. Reservation of open spaces for parks and playgrounds 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 urbanization.”

65. In the concurrent judgment rendered by Hon’ble R. M. Sahai J. in **Bangalore Medical Trust vs. G. S. Muddappa (supra)**, it was observed that public park as a place reserved for beauty and recreation was developed in 19th and 20th Century and is associated with growth of the concept of equality and recognition of importance of common man. Earlier, it was a prerogative of the aristocracy and the affluent either as a result of royal grant or as a place reserved for private pleasure. Free and healthy air in beautiful surroundings was privilege of few. But now it is a

gift from people to themselves. Its importance has multiplied with emphasis on environment and pollution. In modern planning and development, it occupies an important place in social ecology. A private nursing home cannot be a substitute for a public park. Utility of private nursing home is different than the necessity of a park which is not a mere amenity. No town planner would prepare a blue print without reserving space for it. Emphasis on open air and greenery has multiplied and the city or town planning or development Acts of different States require even private house-owners to leave open space in front and back for lawn and fresh air. Absence of open space and public park, 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. What is lost by removal of a park cannot be gained by establishment of a nursing home.

66. Supreme Court also observed that even if there is any provision forbidding local body to make change in the use of a place, it has to be seen whether the changes are for larger public interest or in the garb of public interest, the real larger public interest is being defeated. Whenever an authority is to adopt one or the other alternative, it has to be seen whether better, proper and legal exercise of discretion has been taken by the authority after examining the facts, making itself aware of law and the decision has been taken objectively and rationally which serves the interest better where Right to Clean Environment has been read as a Fundamental Right under Article 21 of Constitution. Any decision to affect/alter/modify such Right, has to be taken in very compelling circumstance and not in a causal fashion.

67. In ***M.I. Builders Pvt. Ltd. v. Radhey Shyam Sahu & Ors (1999)*** **6 SCC 464**, Lucknow Nagar Mahapalika (hereinafter referred to as 'LNM')

permitted M.I. Builders to construct an underground Shopping Complex in Jhandewala Park (also known as Aminuddaula Park) situated at Aminabad Market, Lucknow. The decision was challenged before Lucknow Bench of High Court and it was prayed that respondents - LNM and M.I. Builders be directed to restore park to its original position. Writ Petition succeeded in High Court compelling M.I. Builders to approach Supreme Court in Appeal. It was argued before Supreme Court that the park is not being damaged in entirety but only an underground commercial complex will be developed while on the surface, park will continue to exist. Rejecting this submission, Court said that because of the construction, to some extent the park will lose its ingredients of a park where no plantation can be grown. Some greenery has to be removed or some trees have to be cut. Qualitatively, the park may be there but certainly a park of a different nature. Supreme Court upheld High Court's directions of demolition of the construction already raised observing that where a construction has been raised illegally, direction should be issued for demolition of such construction. Supreme Court relied on its earlier judgments in ***K. Ramdas Shenoy vs. Chief Officers, Town Municipal Council, (1974) 2 SCC 506, Virender Gaur vs. State of Haryana, (1995) 2 SCC 577, Pleasant Stay Hotel vs. Palani Hills Conservation Council, (1995) 6 SCC 127, Cantonment Board, Jabalpur vs. S. N. Awasthi, (1995) Supp. (4) SCC 595, Pratibha Coop. Housing Society Ltd. vs. State of Maharashtra (1991) 3 SCC 341, Dr. G. N. Khajuria vs. Delhi Development Authority (1995) 5 SCC 762, Ram Awatar Agarwal vs. Corpn. of Calcutta, (1999) 6 SCC 532*** and ***Manju Bhatia vs. New Delhi Municipal Council (1997) 6 SCC 370.***

68. In ***Lal Bahadur vs. State of U.P. & Ors (supra)***, certain area was reserved for green belt in Master Plan prepared in 1995. A fresh Master Plan was prepared and approved on 31.03.2005 and therein reserved area was changed from 'green belt' to 'residential' on the request of Lucknow Development Authority. The said change from greenbelt to residential was challenged in Allahabad High Court at Lucknow, by filing a Writ Petition which was dismissed and judgment is reported in **(2006) 64 ALR 639, Molahey v. State of U.P.** (Writ Petition no. 3678 of 2005 (M/B) decided vide judgment dated 08.02.2006). High Court's Judgment was challenged in Appeal before Supreme Court. Referring to Article 48-A and 51-A(g) of Constitution, Supreme Court held that change of area from greenbelt to residential is in flagrant violation of provisions contained in Article 21, 48-A and 51-A(g) of Constitution. Supreme Court relied on a judgment of United States Supreme Court in ***Agins vs. City of Tiburon, 1980 SCC 447 US 255 (1980)*** wherein observations were made in respect of open space and it was said:

"26. It is in the public interest to avoid unnecessary conversion of open-space land to strictly urban uses, thereby protecting against the resultant adverse impacts, such as --- pollution, ...destruction of scenic beauty, disturbance of the ecology and environment, hazards related to geology, fire and flood, and other demonstrated consequences of urban sprawl."

69. In para 15 of judgment, Supreme Court said *"that such spaces could not be changed from greenbelt to residential or commercial one. It is not permissible to the State Government to change the parks and playgrounds contrary to legislative intent having constitutional mandate, as that would be an abuse of statutory powers vested in the authorities"*.

70. In para 16 of the judgment, importance of open space/park was stressed by observing as under:

"The importance of the park is of universal recognition. It was against public interest, protection of the environment and such

spaces reduce the ill-effects of urbanization, it was not permissible to change this area into urban area as the garden/greenbelt is essential for fresh air, thereby protecting against the resultant impacts of urbanization, such as pollution, etc. The provision of the 1973 Act and other enactments relating to environment could not be permitted to become statutory mockery by changing the purpose in the Master Plan from greenbelts to residential one. The authorities are enjoined with duty to maintain them as such as per the doctrine of public trust.”

71. Court said that State is custodian and trustee of certain common properties for smooth and unimpaired use of public such as land, water and air. Air, Sea, Waters, Forest, Parks and open land have such a great importance to the people that it would be wholly unjustified to make them a subject of private ownership. The State Government has committed patent breach of doctrine of “public trust” by leasing the ecologically important area. Considering human dependency on the environment, court cannot sit as a silent spectator and it has to ensure restoration of such areas.

72. In para 24 and 25 of the judgment, Court said as under:

“24. In our opinion, the submission raised by the learned counsel for the appellant is meritorious that the area should be preserved for greenbelt as done at present and the provisions made in the Master Plan 2021 for its conversion into residential area has to be quashed. Unhesitatingly, we agree with the same.

25. As we have held that exercise of conversion was not a legal one that will have some impact on the validity of the notification issued under Section 4 and dispensation of enquiry to be held under Section 5-A but in the instant case we find that since the first prayer of the appellant had been allowed, the area has been ultimately reserved and utilized for the purpose of greenbelt only and as permitted by this Court park had been developed and it shall be maintained as such. We need not go further into the question of dispensation of inquiry whether it was rightly dispensed with. In view of subsequent development and relief granted to the appellants we decline to intervene.

73. The above authorities show that destruction, damage, conversion, alternation of green belt/park/open space has been deprecated by Supreme Court time and again and even if some construction for any

alternative public amenity or interest is taken, the public interest in the park necessary for environment has been held to be of superior nature over-riding other interest. Since nature of Park cannot be altered, damaged or destroyed by raising permanent constructions, such constructions have to be removed/demolished as park/open space/green belt has to be restored to its original position.

74. It is not in dispute that a food-court has been made in **Luv Kush Udyaan**. Food-court is a commercial activity and cannot be allowed to continue in park/open space/green belt. It is impermissible in view of law laid down by Supreme Court in **Bangalore Medical Trust vs. G. S. Muddappa** (*supra*), **Lal Bahadur vs. State of Uttar Pradesh** (*supra*) and **M.I. Builders Pvt. Ltd. vs. Radhey Shyam Sahu** (*supra*).

75. We, therefore, direct that food-court raised in Luv Kush Udyaan/Park shall be removed/demolished within two months from today.

76. It is said that in **Azad Park**, several constructions has been raised for supporting activities like synthetic athletic track, swimming pool basket ball court, lawn tennis court, supports complex, bed Minton hall and table tennis hall etc. It is not clear as to whether the above constructions are in Patel Stadium/Maidaan or in Azad Park. A stadium can well be used for all above purposes and if such constructions have been raised in Patel Stadium/Maidaan that cannot be objected to and are liable to continue. However, if any such constructions have been raised in Azad Park, the same are impermissible and respondents shall remove/demolish the same within two months from today.

77. Similarly, coming to Gandhi Smiriti Udhyan/Park, we find from chart filed by Shri Pradeep Kumar Maurya (respondent 11) that an

auditorium and path way has been constructed in the said park which is not permissible and cannot be allowed to stay in view of law laid down by Supreme Court in **Bangalore Medical Trust vs. G. S. Muddappa (supra)**, **Lal Bahadur vs. State of Uttar Pradesh (supra)** and **M.I. Builders Pvt. Ltd. vs. Radhey Shyam Sahu (supra)**.

78. In view thereof, we direct immediate demolition/removal of auditorium and pathway within two months.

79. Now, coming to Green-belt/Green Zone of Anasagar Lake which is said to be 'No Construction Zone', it cannot be doubted that no permanent construction can be raised to change nature of said area and disturb green belt/green zone of Anasagar Lake which is wetland in view of order dated 01.08.2023 passed in **OA 20 of 2023(CZ), Ashok Malik vs. State of Rajasthan & Ors.**, holding that Rule 4 of Wetland Rules, 2017 are applicable to said wetland. That being so, the construction raised in said area with regard to alleged 7 wonders (Seven Wonders) is impermissible. The same shall also be demolished/removed by respondents within two months from today.

80. In view of the above observations, we direct demolition/removal of construction from parks/open spaces/green belts as directed above and it shall be removed/demolished within 2 months from today. Compliance Report shall be filed by District Collector, Ajmer and Commissioner, Municipal Corporation, Ajmer before Registrar, Central Zonal Bench, Bhopal by e-mail at ngtczbbo-mp@gov.in preferably in the form of searchable PDF/OCR Support PDF and not in the form of Image PDF by 31.10.2023.

81. With the above directions, Original Application is partly allowed.

82. All IAs stand disposed of in view of the above order.

83. A copy of this order be forwarded to District Collector, Ajmer; Rajasthan State Pollution Control Board and Commissioner, Ajmer Municipal Corporation for information and compliance.

Sudhir Agarwal, JM

Dr. Afroz Ahmad, EM

August 11, 2023
Original Application No.21/2023(CZ)
MK & R