

Item No. 05

**BEFORE THE NATIONAL GREEN TRIBUNAL
CENTRAL ZONE BENCH, BHOPAL
(Through Video Conferencing)**

Original Application No. 138/2023(CZ)

Dilip Dev Applicant(s)

Versus

State of Madhya Pradesh & Ors. Respondent(s)

Date of Completion of Hearing and Reserving of Order : 12.01.2024

Date of Uploading of Order on the Website : 16.01.2024

**CORAM: HON’BLE MR. JUSTICE SHEO KUMAR SINGH, JUDICIAL MEMBER
HON’BLE DR. A. SENTHIL VEL, EXPERT MEMBER**

For Applicant(s):	Mr. Dilip Dev
For Respondent(s):	Mr. Mehul Bharadwaj, Adv. Mr. Rohit Sharma, Adv. Mr. Ravikant Patidar, Adv. Ms. Parul Bhadoria, Adv.

ORDER

1. Heard the argument and perused the record.
2. This letter petition has been filed by one Dilip Dev, R/o 9/5 Manorama Ganj, Near St. Paul Primary School Indore with the allegation that the respondent has illegally constructed a commercial Hostel at 9/3, Manorama Ganj Indore against the approved land use by Indore Municipal Corporation in which construction is almost double the permissible area covering 100% MOS. The said locality is a completely residential area and all residents have strict objections with the commercial uses of the house since it hampers the peace of the locality by noise pollution and frequent movement of the outsiders creating nuisance and unwanted traffic jams

and parking. It is further alleged that Writ Petition was moved before Hon'ble the High Court and directions was issued to the Indore Municipal Corporation to take appropriate action against the illegal constructions but Municipal Corporation has not taken any steps against the illegal construction and commercial use of residential places.

3. The matter was taken up by this Tribunal on 12.10.2023 and a committee was constituted consisting (i) one representative from Collector, Indore (M.P.) (ii) one representative from Country and Town Planning, (M.P.) (iii) one representative from Madhya Pradesh State Pollution Control Board(M.P.)
4. In compliance thereof, the committee visited the site and submitted the report as follows :-

“Observations during inspection :

- 1. The applicant Shri Dilip Dev has made complaint before NGT regarding illegal construction in the house located adjacent to his house. Owner of adjacent house is Shri Rajiv Jain and Smt. Monali Jain, house no. 9/3, Navratan Bagh, Manorama Ganj.*
- 2. House of Shri Dilip Dev and Shri Rajiv Jain is located in street no. 5, adjacent to each other.*
- 3. Shri Sanjeev Kumar Jain (Respondent No. III) is not residing at house no. 9/3, Manorama Ganj. Shri Rajiv Jain and his wife Smt. Monali Jain are residing at this location. The house owner's are Shri Rajiv Jain and Smt. Monali Jain.*
- 4. Car washing center owned by Shri Shishir Deshmukh is also located in street no. 5, opposite to the house of Shri Rajiv Jain.*

5. *Other houses are also located in street no. 5.*
6. *Location map (not to the scale) has been prepared and enclosed for perusal and to understand the situation.*
7. *Shri Rajiv Jain's house is constructed ground floor, first floor, second floor and third floor. The house owner lives in ground floor and first floor. There are 15 rooms on second floor and third floor, in which some students are living on rent. Staircase for second and third floor has been provided from outside for separate access to the tenants. The house owner told that they have given the rooms to girls students, who are studying in nearby coaching's. There is no mess observed and food supply is based on Tiffin System.*
8. *Shri Rajiv Jain has been obtained building permission for residential house, copy of permission and map is enclosed. As per the building permission granted, there is no commercial hostel granted but it is residential building constructed G+3 floors.*
9. *As per the information received during inspection, a WP No. 4893 of 2020 was filled by Shri Rajiv Jain before Hon'ble The High Court of Madhya Pradesh, Indore Bench regarding illegal construction and built-up area. Hon'ble High Court issued Order dated 05-09-2022 in the WP, copy of which is enclosed as per the order :*

"Learned counsel for the respondent/ Corporation has informed that the petitioner has already paid the compounding fees in respect of the self compounding of the illegal construction and the only further action requires to be taken by the Corporation is to see whether the aforesaid self

compounding is in accordance with law or not and as such nothing survives to be decided in the petition at this juncture and the Building Officer shall decide the validity of payment of self compounding by the petitioner in accordance with law who shall pass the necessary order after giving due opportunity of hearing to the petitioner as also the intervener.

Counsel for the intervener has submitted that it was his complaint only on the basis of which the action was initiated against the petitioner, hence, he has filed the application for intervention. Be that as it may. Since the petitioner has already filed the compounding fee and the matter is yet to be adjudicated by the Building Officer, the intervener is also at liberty to intervene in the aforesaid proceeding and submit his reply, if necessary.

Accordingly the Petition is disposed off.

10. The applicant Shri Dilip Dev has produce copy of a Notice

issued to Shri Rajiv Jain S/o Shri Mahendra Jain, 9/3, Navratan Bagh, Manorama Ganj, Gali No. 5 (The house owner) issued by Municipal Corporation Indore, Building Permission Section Zone-11 vide no. 578/Z-11 dated 28-08-2023. Copy of notice is enclosed.

11. As per the aforesaid notice, it is submitted that, in compliance of Hon'ble High Court Order dated 05/09/2022, a team of Officer's of Municipal Corporation was constituted by The Commissioner, Indore Municipal Corporation vide Order dated 09-08-2023 to measure the construction of building/house. The team inspected the house and taken measurements on dated 04-08-2023. As

per measurements during inspection, it was found that building has been constructed G+3 in place of sanctioned/permission granted for G+2. Total built-up area was found 789.32 Sqm., which is 102.5% more than the allowable built-up area for sanctioned of 389.75 Sqm. However total sanctioned built-up area was 276.6 Sqm.

12. The house owner Shri Rajiv Jain has submitted reply of the notice dated 28-08-2023 issued by Nagar Palika Nigam Indore on dated 01-09-2023. Copy of the reply submitted is enclosed herewith. The house owner has submitted that they have deposited compounding fee to the Municipal Corporation Indore for additional construction.

13. Simultaneously, the house owner Shri Rajiv Jain has filled WP No. 22841 of 2023 before Hon'ble High Court of Madhya Pradesh Indore Bench. Copy of Order issued by Hon'ble High Court on dated 06-09-2023 has been submitted by the house owner Shri Rajiv Jain during inspection which is enclosed herewith. As per the petition, the house owner has submitted petition before Hon'ble High Court against notice dated 28-08-2023 issued by the Indore Municipal Corporation. The Hon'ble High Court issued Order on dated 06-09-2023 as follows :

"Till the next date of hearing, no coercive action shall be taken against the Petitioner."

14. As per details mentioned above, the house owner Shri Rajiv Jain has constructed more than the sanctioned built-up area by Indore Municipal Corporation and Municipal Corporation has issued notice to the house owner. The house owner Shri Rajiv

Jain has filled writ Petition before the Hon'ble High Court against the notice issued and Hon'ble High Court has Ordered not to take any coercive action against the house owner Shri Rajiv Jain.

15. The Applicant Shri Dilip Dev's has mentioned in the application regarding a Car Service Center which creates air pollution and pollution due to dust, oil and grease in the residential area. During inspection a Car Washing Center owned by Shri Shishir Deshmukh has also been inspected. The Car Wash Center is located opposite to Shri Rajiv Jain's house on street no. 5, Manorama Ganj Indore and it is approx 200 feet away from house of the Applicant. Car wash Center has obtained permission from Nagar Palika Nigam Indore and Town and Country Planning (T&CP). Copy of the permission are enclosed. As per the permissions, the car washing center is operated since 1994. During inspection it has been found that light four wheeler are washed on ground floor of the house of Shri Deshmukh and there is residence of Shri Deshmukh at first floor and above floors. Shri Deshmukh has told that approx 6-7 Cars are washed in the Center and there is no other servicing work is carried out, hence there is no generation of oil and grease. Wastewater generated due to washing is treated in effluent treatment plant and treated effluent is discharge into Municipal drain. Owner of Car Washing Center Shri Shishir Deshmukh has been instructed to ensure there should not be any noise, air pollution during washing. No vehicles for washing were found parked on the street road side. The vehicles are parked within

premise of the Center. Air and Water Pollution was not observed due to car washing.

- 16. The Applicant has also mentioned in application regarding noise pollution and frequently movement of outsiders creating nuisance and unwanted traffic jams and parking.*

During inspection noise level monitoring was conducted on street no. 5 at different places, report is enclosed as Annexure-11. As per report noise level in street no, 5 was found normal and no noise nuisance was found.

Some vehicles were parked on the street. After taking information from the residents, it was found that 03 vehicles were owned by Shri Dilip Dev, which was found parked in front of Shri Dev's house and his another neighbor. In front of Shri Rajiv Jain's house 02 two wheelers and 02 four wheelers (car) were found parked. During inspection, regarding transport facility used by the tenants was asked from Shri Rajiv Jain, it was come in notice that students (tenants) use public transport for their movement; they are not having their own vehicles, sometimes two wheelers are used, which are very less in number.

- 17. No traffic congestion and jam situation was observed due to parking of vehicles and movement. Inspection was conducted with respect to environmental issues like noise pollution; problems due to parking, traffic jam etc. It has been found that noise level of the area was found normal as per noise monitoring report. Congestion and traffic jam was not observed as there is traffic movement of those who visit to the houses located in*

street no. 5. Street no. 5 reaches to dead end after the house of Shri Radha Mohan Maheshwari, which next neighbor of Shri Dev.

Conclusion:

1. The house no. 9/ 3, Navratan Bagh, Manorama Ganj, Street no. 5, whose owners are Shri Rajiv Jain and Smt. Monali Jain. House owner is residing ground and first floor and on second and third floor some girls students are residing on rent.
2. The house owner has done construction more than sanctioned built-up area and Municipal Corporation has taken action and issued notice dated 28-08-2023 against illegal construction.
3. The house owner has filled Petition WP No. 25240/2023 before the Hon'ble High Court of Madhya Pradesh, Indore Bench and action against the house owner has been stayed.
4. Noise Monitoring has been conducted and noise level near Applicant Shri Dilip Dev's house and in street no. 5 was found normal within standard limits.
5. Street no. 5 reaches to dead end after Shri Dilip Dev's house and there is no through traffic movement. Traffic movement is only that, which are related to the residents of street no. 5. No traffic jam and congestion was observed due to parking of vehicles on the road of street no. 5.
6. Car Washing Center has obtained NOC from Municipal Corporation and Town and Country Planning. The Car Washing Center washes approx 5-6 four wheelers cars daily. ETP has

been found installed and water pollution was not observed during inspection. Cars coming for washing are not parked on road.

7. Pollution due to dust, oil and grease was not observed during inspection.

8. This is matter of dispute between two neighbors Shri Dilip Dev and Shri Rajiv Jain and there is no issue of environment concern.

9. Matter related with the illegal construction is sub-judice and pending before the Hon'ble High Court Indore.”

5. Respondent No. 6-Madhya Pradesh Pollution Control Board has filed the report with the facts that the matter is personal dispute with regard to the excess and the land available at the front of the residences.

6. Copy of the order of the Hon'ble High Court passed in Writ Petition No. 4893/2020 and Writ Petition No. 22841/2023 have been filed which reveals that the matters have been raised before the Hon'ble High Court and Hon'ble High Court has finally disposed of the matters with certain directions.

7. Respondent Nos. 3, 4 and 5 have filed the reply with the following facts:

- i. That the applicant is harassing the respondents to an extent that the respondent No. 5 and her husband may sell the said property to the applicant.
- ii. That the applicant had installed an air conditioner adjacent to the room of the respondent no. 5 and their in-laws are facing problem to breathe fresh air.

- iii. There are charges of tax evasion, use of diesel generator without CTE and CTO from the competent authority.
 - iv. Orders of the Hon'ble High Court passed in above writ petitions.
8. The Collector, Indore has reported that the matter of dispute is within two neighbors and there is no issue of environmental concern.
9. In view of the above facts, no interference by this Tribunal is required. However, as reported by the State, there are some diesel generators which are in operation without CTE and CTO by the State Pollution Control Board. The State Pollution Control Board is directed to take necessary actions with regard to the DG sets.
10. With these observations the **Original Application No. 138/2023 stands disposed of.**

Sheo Kumar Singh, JM

Dr. A. Senthil Vel, EM

16th January, 2024
O.A. No. 138/2023 (CZ)
PN