

**BEFORE THE NATIONAL GREEN TRIBUNAL
WESTERN ZONE BENCH, PUNE**

THROUGH PHYSICAL HEARING (WITH HYBRID OPTION)

Original Application No.40/2023(WZ)

Yogesh Mundhara

.....Applicant

Versus

M/s. Super Dream Real Estate Private Ltd. & Ors.

....Respondent(s)

Date of hearing: 28.11.2023

**CORAM: HON'BLE MR. JUSTICE DINESH KUMAR SINGH, JUDICIAL MEMBER
HON'BLE DR. VIJAY KULKARNI, EXPERT MEMBER**

Applicant : Ms. Sreeja Chakraborty, Advocate
Respondent(s) : Mr. Ajay S. Yadav, Advocate for R-1/PP
Mr. Narayan Bubna, Advocate for R-2/TMC
Mr. Saurabh Kulkarni, Advocate for R-5/UDD
Mr. Aniruddha Kulkarni, Advocate for R-6/Env't. Deptt.
Mr. Rahul Garg, Advocate, for R-7/MoEF&CC
Mr. Anand G. Awasarmol, Advocate for R-8 to 14

ORDER

1. From the side of applicant, learned counsel Ms. Sreeja Chakraborty has appeared.
2. From the side of respondent No.1/M/s Super Dream Real Estate Private Limited, learned counsel Mr. Ajay S. Yadav has appeared.
3. From the side of respondent No.2/Thane Municipal Corporation, learned counsel Mr. Narayan Bubna has appeared. In compliance with our previous order dated 25.08.2023, he has filed reply affidavit today, the same is taken on record.
4. None has appeared from the side of respondent No.3/Provident Investment Company Ltd. nor was any counsel present on its behalf on the previous date.
5. None has appeared from the side of respondent No.4/The Director and Conservator of Forest, Sanjay Gandhi National Park.

6. From the side of respondent No.5/Urban Development Department, learned counsel Mr. Saurabh Kulkarni has appeared, who apprised us that he does not want to file reply affidavit.

7. From the side of respondent No.6/State Environment Department, learned counsel Mr. Aniruddha Kulkarni has appeared, who submits that he does not want to file reply affidavit.

8. From the side of respondent No.7/MoEF&CC, learned counsel Mr. Rahul Garg has appeared, who submits that he does not want to file reply affidavit.

9. From the side of respondent Nos.8 to 14, who are occupants of the bungalows, learned counsel Mr. Anand G. Awasarmol has appeared.

10. This application has been filed seeking restoration of the Eco-Sensitive Zone (ESZ) at Survey Nos.12/2 and 12/3, Patona Pada, Yeur Village, Thane; and a direction is also prayed to be issued to the State of Maharashtra to undertake detailed carrying capacity study of Eco-Sensitive Zone of Sanjay Gandhi National Park (SGNP) to determine growth limits that the ESZ of SGNP can accommodate without violating environmental capacity goals.

11. In brief, the facts of this case are that encroachment has been made within the notified Eco-Sensitive Zone (ESZ) of Sanjay Gandhi National Park by raising illegal construction of seven luxurious bungalows along-with swimming pools over an area of 28,000 sq. mtrs. at Survey Nos.12/2 and 12/3 by respondent No.1-M/s Super Dream Real Estate Private Limited at Patona Pada in Yeur Village under the jurisdiction of Thane Municipal Corporation/respondent No.2 in the State of Maharashtra. The Central Government declared an area of 59.456 sq. kms. to an extent of 100 meters to four kilometers from the boundary of the Sanjay Gandhi National Park (SGNP) as the Eco-Sensitive Zone on 05.12.2016 in exercise of its powers under section 3 of the Environment

(Protection) Act 1986 and Rule 5 (3) of the Environment (Protection) Rules, 1986. As per the said Notification, the entire Yeur Village is falling in Eco-sensitive Zone and any construction activity inside the same needs approval under the provisions of Approved Development Plan and Regulations under the Maharashtra Regional and Town Planning Act (MRTP), 1966.

12. Further, it is mentioned in this application that the said construction of seven Bungalows at above-mentioned Survey Numbers were undertaken in the year 2020 in violation of the above-mentioned Notification and also in violation of the Development Plan (DP) of Thane issued under Notification dated 03.04.2003 as per which the entire Yeur Village is classified as 'Agricultural "G" Zone' without prior approval of the Thane Municipal Corporation. Further, it is mentioned that the land at Sy. Nos.12/2 and 12/3 in Yeur Village originally belongs to the Provident Investment Company Limited/respondent No.3, a Government of Madhya Pradesh undertaking. An area of 19,682 sq. mtrs. at Sy. Nos.12/2 and 12/3 was taken on sub lease by respondent No.1-M/s Super Dream Real Estate Pvt Ltd. The Provident Investment Company Limited/respondent No.3 had addressed a letter dated 06.12.2016 to the Municipal Commissioner, Thane Municipal Corporation/respondent No.2 mentioning therein that the survey numbers in Panchpakhadi, Majiwade and Yeur belong to them and had requested the Thane Municipal Corporation to demolish all the illegal properties. On 14.08.2017, the Office of Assistant Commissioner, Thane Municipal Corporation informed the respondent No.3/Provident Investment Company Limited that with regard to the issue of illegal construction and encroachment at Gat No. (Sy.No) 7/1 to 19 and Gat No.8 11, 11/6, 12/1, 12/B,12/2, 3, 44/1, 2, 3, 4 and 48, no action could be taken due to non-mentioning about the nature and details of illegal construction.

13. Further, it is mentioned in this application that the applicant had sought an information under RTI from the Range Forest Office, Yeur Range, Sanjay Gandhi National Park seeking certified copy of (i) No Objection Certificate (NOC) if any, issued by them for undertaking construction at Sy. Nos.12/2 and 12/3 in Yeur Village and (ii) Notice/Letter issued by them in terms of illegal construction at above-mentioned survey numbers. It was responded by the Range Forest Officer, informing that the information regarding the same was not available. It is further mentioned that as per the ESZ Notification of SGNP dated 05.12.2016, a Zonal Master Plan for ESZ was mandated to be prepared by the State Government in consonance with the relevant Central and State laws within a period of two years from the date of publication of Notification. The Zonal Master Plan for ESZ is prepared to regulate land use, infrastructure and development within the ESZ in an eco-friendly manner and to give effect to the provisions of Notification. However, the State of Maharashtra is yet to prepare a 'Zonal Master Plan'. The applicant had also sought information under RTI from the Town Planning Department, Thane Municipal Corporation seeking copies of (i). Commencement & Occupation Certificate; (ii) Construction permission; and (iii). Rejection or disapproval letter issued by the Thane Municipal Corporation with regard to the seven impugned bungalows constructed on the above-mentioned Survey Numbers. Response was given to the effect that the respondent No.3 had directed TMC not to approve any development proposal on any property owned by them and that the permission for repair of fence wall and construction of security guard cabin on the boundary of Gut Nos.12/2 and 12/3 cannot be approved and ongoing construction has been stopped as the area of subject plot fell under Eco-Sensitive Zone.

14. This matter was first considered by us on 05.04.2023 and notices were directed to be issued to the respondents.

15. In pursuance of that, respondent Nos.8 to 14 have filed reply affidavit dated 11.11.2023, where-in it is submitted that the Finance Department, Government of Madhya Pradesh issued a letter dated 25.07.2003, which is annexed at page no.33 of the paper book, unequivocally states that the respondent No.3/Provident Investment Company is an undertaking of the Madhya Pradesh Government and further it clarifies that, following a decision made by the Government of Madhya Pradesh, it has been confirmed that the lessee of the plot in question is entitled to develop the said property and the Madhya Pradesh Government has no objection to it. Therefore, it is abundantly clear that there was no legal obstacle to the development of the land in question. The respondent No.3/Provident Investment Company Ltd. was duly authorized to oversee the affairs of the property currently under consideration in this matter. The respondent No.3 issued a letter dated 27.11.2003 addressed to the Assistant Director of Town Planning, Thane Municipal Corporation, concerning a No Objection Certificate (NOC) for the property identified as Gut No.12, Hissa Nos.02 & 03, measuring 16 acres and 10% Gunthas, situated at Revenue Village Yeur, Taluka and District Thane. By the said letter, the respondent No.3 granted authorization to one Suresh Vasantji Shah (Alias Gada) to submit plans and designs, prepared by his architect, to the aforementioned office for the construction of Farm Houses on the said property. Based on this letter, the plans to be submitted could be considered by Suresh Vasantji Shah (Alias Gada).

16. It is further mentioned in this affidavit by the respondent Nos.8 to 14 that applicant vide letter dated 06.12.2016 (Exhibit 'G') addressed to the Municipal Commissioner, Thane mentioning therein that the respondent No.3/Provident Investment Company Ltd. had requested for the demolition of all illegal constructions on its premises. The allegations leveled therein are vague. The applicant is taking undue advantage of his

own mis-steps, as he was informed that no action could be taken without providing the necessary details. It is also pointed out that a bare perusal of the Notification dated 05.12.2016 would clearly reveal that the same is a draft Notification, which is yet to be finalized prior to being enacted into law. The same is awaiting approval from the competent authorities. Therefore relying on the said draft Notification, it is stated that the present application is premature.

17. It is further mentioned in this affidavit by the respondent Nos.8 to 14 that the applicant is seeking direction to initiate the preparation of the Zonal Master Plan for the Eco-Sensitive Zone (ESZ). However, the said relief cannot be granted at either the interim stage or the final stage because the said Notification is yet to be finalized and published by the Government. It is further mentioned that the applicant has selectively filed complaints against the seven bungalows with a malicious intention to harass the said respondents, though he has alleged that numerous illegal bungalows have been constructed. The applicant has failed to specify how existence of the said bungalows are violating the environmental laws, in accordance with the established legal precedent.

18. From the side of by respondent No.1-M/s Super Dream Real Estate Private Limited, reply affidavit dated 23.08.2023 has been filed, in which the main emphasis has been laid down on the application being time barred because the applicant is said to have relied upon cause of action, which arose in the year 2020 and the present application has been filed beyond 6 months' period of the cause of action having first arisen. Rest of the contents of this affidavit are almost the same, which were stated in the affidavit of respondent Nos.8 to 14 cited above. We orally enquired from the learned counsel representing respondent No.1 as to whether any permission was taken for the construction in question from the respondent No.2/TMC, he stated that he did not take any permission.

19. From the side of respondent No.2/TMC, reply affidavit dated 26.11.2023 has been filed, where-in it is submitted that no permission was sought for constructing the seven alleged impugned structures in the present application. The applicant has contended that the construction is carried out between the years 2018 to 2022, hence the present application is time barred under section 14(3) of National Green Tribunal Act 2010.

20. It is further submitted in this affidavit by the respondent No.2/TMC that two structures belonging to respondent nos.10 & 13 were found unoccupied and were demolished by answering respondent on 25.09.2023, while the remaining five structures were found under occupation of families of the concerned respondents, whom notices were issued under Section 268 of Maharashtra Municipal Corporation Act-1949, for eviction of concerned persons so that concerned structures could be demolished. The concerned persons have filed appeals before the District Judge, Thane being Misc. Civil Appeal Nos.97 of 2023, 98 of 2023, 99 of 2023, 100 of 2023 and 101 of 2023. By common order dated 27.09.2023, the Dist. Judge, Thane allowed the appeals and directed Thane Municipal Corporation/respondent No.2 to maintain *status quo* in respect of remaining five structures till interim applications were finally heard and decided. Therefore, it is stated that the interim order is still in force.

21. No other respondents have filed their reply affidavits in this matter.

22. Heard the arguments of learned counsel for applicant as well as other respondents and perused the record.

23. The learned counsel for applicant has drawn our attention to the Notification dated 05.12.2016 issued by the MoEF&CC, which is annexed at page nos.40 to 60 of the paper book, in which at page no.45 of the

paper book, relevant part of the said Notification is read out by her, which is to the following effect:-

“ 11.	Construction activities.	Construction shall be permitted within the Eco-sensitive Zone as per the provisions of the approved Development Plan and other applicable rules and regulation under the Maharashtra Regional and Town Planning Act: Provided that the under construction/renovation of commercial buildings including group housing societies, offices, and services such as Information Technology/Information Technology Enabled Services, Parks, Roads, Power Transmission lines and cables, Telecommunication Towers and cables, Sewage lines, civic amenities, etc., and new construction projects such as Mumbai Metro Rail Shed, and creation of new civic amenities such as water supply related infrastructure and facilities and Operation & Maintenance of infrastructure, facilities of civic amenities sanctioned by concerned Local Self Government under approved Development Plan under the Maharashtra Regional and Town Planning Act, may be permitted within ESZ subject to applicable rules and regulations. Provided further that commercial redevelopment, reconstruction, repairs of existing structures which includes group housing societies, sanctioned by concerned Local Self Government under approved Development Plan under the Maharashtra Regional and Town Planning Act, may be allowed within Eco-sensitive Zone subject to applicable rules and regulations: Provided further that the commercial redevelopment reconstruction, repairs of existing structures which includes group housing societies, sanctioned by concerned Local Self Government under approved Development Plan under the Maharashtra Regional and Town Planning Act, may be allowed within the Eco-sensitive Zone subject to applicable rules and regulations. The construction activity related to small scale industries not causing pollution shall be permitted as per applicable rules and regulations, if any, with the prior permission from the competent authority. The Approved Development Plan shall be in conformity with the Zonal Master Plan taking into consideration the conservation aspects of the Eco-sensitive Zone.
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24. Based on above provision, it is stated by the learned counsel for applicant that though in the Eco-Sensitive Zone in question, construction was permissible, for that, a permission was required to be obtained under the Maharashtra Regional and Town Planning Act. But the same has not

been obtained and yet the construction has been raised. When we questioned from the learned counsel as to whether the relief of seeking demolition of the said seven illegal structures still survives after the order of demolition dated 25.09.2023 passed by the respondent No.2/TMC, though the same has been challenged before the District Judge and the proceedings are going on before the said Court, the learned counsel for applicant submits that in view of the order of demolition having been passed by the respondent No.2, the prayer no.(i) seeking restoration of the area in question has been rendered infructuous. She pressed the 2nd prayer where-by an order is prayed to be issued to the State of Maharashtra to undertake detailed carrying capacity study of Eco-Sensitive Zone of Sanjay Gandhi National Park (SGNP) to determine the growth limits that the ESZ of SGNP can accommodate without violating the environmental capacity goals.

25. In this regard, the learned counsel Mr. Saurabh Kulkarni representing respondent No.5/UDD submits that this Tribunal may pass an order with regard to the said study being conducted as there is no objection to the same at his end and that the same would be carried out.

26. In view of the said statement made by the learned counsel for respondent No.5, we direct that respondent No.5 shall conduct a study as prayed by the learned counsel for applicant in prayer no.(ii) in the present application and a report of the same shall be sent to this Tribunal within a period of 03 months from the date of uploading of this order.

27. With the above direction, we dispose of this application accordingly.

Dinesh Kumar Singh, JM

Dr. Vijay Kulkarni, EM

November 28, 2023
Original Application No.40/2023(WZ)
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