

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

**Original Application No. 57/2014
(M.A No. 116 of 2014)**

IN THE MATTER OF:

Progressive Resident Welfare Association

..... Applicant

Versus

Haryana Urban Development Authority

..... Respondent

COUNSEL FOR APPELLANT:

Mr. Vinay Sabharwal, Adv

COUNSEL FOR RESPONDENTS:

Mr. Anil Grover, AAG and Mr. Rahul Khurana, Adv for HUDA

JUDGMENT

PRESENT:

Hon'ble Mr. Justice Swatanter Kumar (Chairperson)

Hon'ble Mr. Justice Raghuvendra S. Rathore (Judicial Member)

Hon'ble Mr. Bikram Singh Sajwan (Expert Member)

Reserved on: 27th October, 2016

Pronounced on: 22nd December 2016

- 1. Whether the judgment is allowed to be published on the net?**
- 2. Whether the judgment is allowed to be published in the NGT Reporter?**

RAGHUVENDRA S. RATHORE (JUDICIAL MEMBER)

1. The applicant, society registered under the Society Registration Act, has filed this application under Section 14 & 15

of the National Green Tribunal Act, 2010 against the alleged illegal actions of the respondent in converting a colony park into residential plots. Accordingly, it has been prayed in the application that the respondent be directed to immediately restore the piece of land, marked no. 12, as a park and continue it to be so. Further, it has been prayed that the illegal actions of respondent in converting the said park into various plots referred to as plot no.4737 B, 4737 C and 4737 D of sector 23-A, West Zone, Gurgaon be quashed. The applicant has also prayed for grant of cost for the alleged action of the respondent.

2. Sector 23-A, Gurgaon is one of the layouts which has been developed and maintained by the respondent. The West Zone of Sector 23-A is shown in detail in the lay out plan, which has been placed on record as annexure A-1. In the said residential lay out, various areas were developed by the respondent as parks. These parks have also been numbered by the respondent and are being maintained by the Horticulture Department. The applicant has placed on record, annexure A-2, which gives out the demarcation of park no.12 and marked in orange colour. The corners of these boundaries have been indicated as A B C D & E.

3. It is the case of the applicant that there are three parks in Sector 23-a, West Zone which are numbered as 12, 13 & 14. The maintenance of these parks was handed over to the applicant vide respondent memo no. 2169 dated 23rd September, 2008. The Horticulture Department Sub-Division-I of the respondent, also

supplied to the applicant the areas and dimensions of these three parks.

4. Further, the case of the applicant is that they were given the maintenance charges in respect of park no.12. Cheques for Rs. 3143/- were issued by respondent, for maintenance of the parks, in favour of the applicant issued on 21.11.2011, 19.12.2011 & 06.02.2012. Such maintenance charges in respect of the said parks were continued to given to the applicant till December, 2011 (as mentioned by the applicant in para no. 7 of the application).

5. The case of the applicant is also that on 21st January, 2012, without any intimation whatsoever either to the applicant or to any of the resident of Sector 23-A, some persons who were claiming to be the officials of HUDA came to the park along with workers and demolition equipment. They had brought down several grills of the boundary walls and fencing posts. A large area of the park was up-turned. This was protested by the residents but the said persons did not pay any attention to them. The action of such people was recorded in a video clip by the resident of House. NO. 4674 of Sector 23-A. The said video recording also has a commentary explaining boundaries of park no.12 and the extent of demolition. Thereafter, a written complaint was given on 24.01.2012 by the residents of the colony to the Administrator of HUDA, Shri Shiv Kumar, IAS. Along with the complaint copies of pictures of the park were also attached. When the residents had repeatedly approached the office of the respondent it was revealed

that efforts were being made to convert park no.12 into residential plots and given the numbers as 4737 B, 4737 C and 4737 D in Sector 23-A, West Zone, Gurgaon. However, after filing of the complaint/representation on 24th January, 2012, it appears that the respondent maintained status quo, as nothing further was done. But it was in November, 2012 that a demarcation of the area by bricks was constructed around the park, in place of the boundary wall which was demolished.

6. But again on 21st January, 2013, the said demarcation was totally demolished. When the residents objected to it, they were informed that several plots are to be chalked out in the said area of the park. Therefore, another representation was given on 30.01.2013 to the Administrator, HUDA. Due to the protest made by the applicant and the residents of Sector 23-A, the attempt of the respondent was brought to a temporary halt but no official communication was issued to that effect despite all repeated visits by the residents as well as members of the applicant society. An application, under the Right to Information Act, was also given to the Public Information Officer of the respondent on 25th September, 2013 so as to seek information whether any action is being taken by the respondent in the matter. No response was received to the said application. But instead of it some persons were found at the site on 21st February, 2014 taking some measurements, in accordance to a plan which they were having in their hand. Upon enquiries, the residents were informed that they

had come to raise construction on the land. Hence, the present Original Application came to be filed by the applicant and notices were issued to the respondents on 13th March, 2014.

7. On having received the notice, appearance was put on behalf of the respondent before this Tribunal and time was sought to seek instructions for filing reply to the Original Application.

On behalf of the respondent, a counter affidavit was filed by Shri Surender Singh, Estate Officer-I, HUDA, Gurgaon. In the said affidavit, objections to the Original Application was raised by way of preliminary submissions. It has been stated there in that the premise in respect of which the instant application has been filed alleging that HUDA has illegally converted the park into various plots, is completely false and misconceived because the land in question is a vacant land bearing plot no. 4737-BSP, 4737-CP & 4737-DSP of Sector 23-A. Further, it is submitted that the said plots have already been allotted to Mr. Sandeep Kumar, Mrs. Geeta Gupta and Mr. Praveen Kumar respectively. The respondent has also stated that they had never developed any park on the land in question. No park bearing no.12 was ever developed by HUDA in Sector 23-A, as alleged by the applicant in this application. It is stated that as per the lay out plan which was approved by the Chief Administrator, HUDA on 31st December, 2002, the respondent had never handed over the land to the applicant for using the same as park. It has also been stated in the affidavit that HUDA had neither removed any

encroachment from the land in question nor received any application under the RTI Act. It has been submitted, on behalf of the respondent, that no substantial question related to environment is involved and as such the present application is not maintainable under Section 14 & 15 of the NGT Act, 2010 and the same be dismissed with cost.

8. The grounds taken by the applicant has been denied by the respondent as being false and misconceived. It has been stated that HUDA had developed parks in Sector 23-A and was paying charges for day to day maintenance, after they were initially developed by its Horticulture Department. However, it is stated that there is no park no.12 in Sector 23-A, West Zone. It is also stated that HUDA had issued cheques for maintenance of parks but no such maintenance was paid for park no.12, as no such park ever existed. Further, it is stated by the respondent, in reply to para 8 of the application, that as per the approved plan the land in question is a vacant land which has three plots, as afore stated and they have already been allotted to the respective persons. HUDA develops land for residential and commercial purpose. The residential plots are sold at a reserve price by draw of lots. It has been specifically submitted that the plots on the land in question were as per the layout plan and the same were approved by Chief Administrator, HUDA on 31st December, 2002. HUDA had never handed over these plots to the Residents Welfare Association, as a park. It is also stated that HUDA had not

removed or demolish any encroachment from the land in question, as alleged by the applicant. The respondent has further stated that no application, as alleged by the applicant, is available in their office record of the respondent. The Haryana Urban Development Authority had acquired the land for development and had further divided the same into plots for residential purpose. The respondent had therefore prayed that as the present application is meritless, the same deserves to be dismissed.

9. The petitioners have filed a rejoinder to the counter affidavit filed by the respondent wherein a preliminary objection has been raised that Mr. Surinder Singh, Estate Officer is neither competent nor authorized to file the affidavit on behalf of the respondent, therefore the same cannot be entertained. However, para wise reply to the preliminary submissions made by the respondent and to the reply has been submitted by the applicant. The applicant has primarily reiterated its stand taken in the Original Application and denied the averments made in the affidavit as being false and incorrect. It is stated by the applicant that the fact that the land in question existed as park no. 12, is a matter of record which is in the office of HUDA. The handing over of the park to the applicant is made out from annexure A-2. It is also submitted by the applicant that the lung space in the green area provided to the residents is being attempted to be taken away and therefore, it is very much a issue relating to environment. In so far as reply to the ground in the application is concerned, the

applicant has denied the same and reasserted the stand taken by it in the Original Application. The contents of paras of the reply are denied as said to be wrong and contrary to the record of the respondent themselves. The allotment of the plots to the person named in the reply has been denied by the applicant and stated that it would be in any event a subsequent development, which is totally illegal. The averments made in the reply that no park at the site has been developed by HUDA is also denied as baseless. Having once developed the land as a park, it is reiterated by the applicant, that the said land could not have been subsequently converted into residential and thereby denied the green area to the residents. The applicant has reiterated that the Original Application filed by it deserves to be allowed.

10. On behalf of the respondent an additional affidavit was filed on 11th May, 2015, along with some documents. Shri. Om Prakash as Estate Officer-I, HUDA, has deposed in the affidavit that the original application is hopelessly barred by limitation and as such it is liable to be dismissed. Further, it has been submitted that the applicant has not disclosed true facts which are relevant and important for adjudication of the present original application. As per the record, the existing land of Sector 23-A, Gurgaon for acquiring parts after the first phase of acquisition according to the approved drawing dated 01st April, 1995, the plot numbers in regard to the land already acquired, were given (annexure R-I). The said approved drawing also shows the land which was to be

acquired. After acquiring the land in second phase for development of Sector 23-A, a revised demarcation plan was prepared in the year 2002 (annexure R-2), in which plot no. 4737-BSP, 4337-CP and 4337-DSP, Sector 23-A were carved out and marked. The allotments of these plots were also made to the successful allottees.

11. It has been also deposed that the area in dispute, as claimed to be park by the applicant in the drawing of 1995, was shown as a vacant land i.e. land to be acquired. After the revised demarcation plan and carving out of the plot, the Horticulture Dept. had, by mistake, proceeded as per the drawing of 1995, treating part of area in question as park and had given it to the applicant. The deponent has submitted that actually this area, as per the revised plan (annexure A-2), is an area underneath plot no. 4737-BSP, 4337-CP and 4337-DSP of Sector 23-A and are under the ownership of the allottees. The applicant has neither shown nor has any right to use the said area as park. It has been further deposed that it is not the case of the applicant that HUDA had converted an area earmarked for park into plots and have allotted the same to some individuals, by disturbing the ratio of green and constructed area. The applicant has not apprised the Tribunal, according to the deponent, that the area which was given to him for maintenance of a park in the year 2012 was not the same as given in 2009. Thus, it has been prayed that the

original application be dismissed, in the facts and circumstances mentioned in the affidavit.

12. The applicant then filed an additional affidavit in response to the affidavit filed by the respondent on 11th may, 2015. In the said additional affidavit it has been deposed that in order to determine the correct position, it has to first ascertain as to on which date the land in question was acquired by the Government on which the park is situated and when was it handed over to HUDA. HUDA has to file the documents in this regard. It has also to depose as to what is the exact date on which the physical demarcation of the park in question was done at the site and that the record in this respect be produced. It has also been submitted, that the date on which the land was handed by HUDA to Horticulture Dept. for development as park, the date on which the boundary wall of the park was constructed and the basis on which the plan was sanctioned and the relevant record be produced. The HUDA be also asked to depose as to when the plots were carved out and sanctioned by HUDA authority and the date on which the revised demarcation plan was prepared. The original record in respect of sanction of revised demarcation plan also be produced. The respondent should give the exact dates on which the plots in question were allotted to the individual allottees and the mode and manner in which the allotment was done. The HUDA should produce the record including that of allotment proceedings.

It was deposed that HUDA should provide the letter by which it intimated the Horticulture Department that the park in question, demarcated in the year 1995, was being converted into plots by a revised demarcated plan. It is further deposed that the contents of the para of the affidavit filed by respondent seems to be a misleading one. The Horticulture Department could not have treated the area in question as a park by mistake. The park and its boundary could not have been made by the Horticulture Department without an approved plan. The relevant record of Horticulture Department, Town Planning Department and Land Acquisition Department should be produced.

13. On 4th January, 2016 an affidavit along with documents was filed by Shr. Anshaj Singh, IAS, Administrator, HUDA. After reiterating the facts mentioned in the earlier affidavit on record, it has been submitted that the applicant has sought quashing of alleged conversion of park no.12 into various plots referred to as plot no. 4737 B, 4737 C and 4737 D of sector 23-A, West Zone, Gurgaon. In fact, the plots referred to by the applicant were carved out and marked in revised demarcation plan of 2002 itself and question of diversion of any park land into plots as alleged by the applicant does not arise. The copy of the revised demarcation plan of 2002 has already been placed on record. The said fact of revised demarcation plan has not been denied by the applicant. As such, the prayer of the applicant is not maintainable and the original application is liable to be dismissed.

14. The facts alleged by the applicant goes to show that the present application has not been filed within the period of limitation, as prescribed under the Act of 2010, that is within six months from the date on which the cause of action had first arose. According to the proviso attached to it, the Tribunal may, after being satisfied that the applicant was prevented by sufficient cause for filing the application within the said period, allow the application to be filed within further period of not exceeding 60 days. But the present application has been filed much beyond the said period and as such it is barred by limitation.

15. It has also been submitted that some persons were allotted plots earlier but as the same were under litigation that the possession could not be delivered. Thereafter, HUDA had made drawings for allotment of alternative plots to the allottees of such plots on 31st December, 2003. A copy of the letter dated 9th March, 2004 sent by the Administrator, HUDA for approval of Chief Administrator, Panchkula, has been placed on record and marked as annexure R/1. The disputed plot numbers is being used for those original allotted plots whose possession could not be delivered and not that for the plot numbers referred to by the applicant. The plot numbers 4737-BSP, 4337-CP and 4337-DSP were earmarked as alternative allotment through draw of lots against the disputed plot numbers as given in the letter dated 9th March, 2004. The Chief Administrator, HUDA, Panchkula approved the said proceedings of draw of lots vide his letter dated

29th March, 2004 (annexure R/2). The letter and allotment of possession certificate have already been placed on record therefore, it is crystal clear that the three plots, aforesaid, are under the ownership of the individual allottees, the applicant has no right to use the said area as park.

16. In the year 2008, applicant association approached the Horticulture Dept. of HUDA for maintaining the land in question which was lying vacant at the site so as to avoid throwing of garbage etc. As the land in question was lying vacant at the site, the Horticulture Dept. mistakenly permitted the applicant to maintain it as green area/park, without considering the layout plan. The maintenance charges were also paid on monthly basis in the year 2008, with the approval of the then, the Executive Engineer, Horticulture. Later on in the month of November, 2011 the Horticulture Dept. came to know about the actual utilization of the land in question and immediately thereafter had cut down the area from the monthly maintenance charges which was being paid to the applicant and the mistake was rectified.

17. The applicant filed an additional affidavit, in reply to the affidavit filed by the respondent on 12th December, 2015 (submitted before the Tribunal on 4th January, 2016), in the said reply, as additional affidavit on behalf of the applicant was filed on 15th February, 2016, after referring to order passed by the Tribunal on 19th January, 2015 and 18th November, 2015 deposed that the respondent be directed to produce the record of which the

affidavit in question was filed. The applicant denied the facts with regard to revised demarcation in 2002 on the ground that the demarcation plan was not approved. Further, by affidavit dated 13th July, 2015, the applicant had denied the said plan, the respondent has failed to provide the relevant documents. It has been deposed that as the threat to divest the applicant and the residents of the park is continuing on day to day basis and as such it was continuing cause of action. The main application was filed in time and it has been denied that the same be barred by limitation.

18. The applicant has deposed that the documents filed by HUDA are not reliable and they have not come with clean hands. It has been deposed by the applicant that allottees of the plot carved out of park no.12, at least one of them, is an influential person. The culpability nexus cannot be ruled out. The respondent has misled the Tribunal to believe its documents. The respondent had not explained the meaning of BSP, CP and DSP use while numbering the plots. It is deposed by the applicant that it has been reliably learned that a large number of VIP plots by HUDA had been quashed by the Hon'ble Supreme Court of India in various petitions. In case these allotments are in lieu of such allotments which were quashed, then it is a serious matter. When the possession of the area of the park was already handed over to the applicant then the same could not have been handed over to the individual allottees. According to the applicant, the carving

out of plots and allotment is manipulation on the part of the officials of the respondent.

19. It is also submitted that the park could not have been handed to the applicant of an area earmarked as park. After handing over of the park to the applicant for maintenance, charges were continuously paid to them. This could not have been done by mistake. The applicant association did not approach the Horticulture Dept. for maintaining the alleged land in question, lying vacant at site as green area so as to avoid throwing of garbage etc. It was a fully developed park with pakka boundary containing railings and a steel gate. The applicant did not apply for maintaining a vacant land and the number to the park was given by HUDA. The applicant association has a Constitutional right of life to have a green space in the vicinity which cannot be taken away by the respondent.

20. Again an affidavit on behalf of the respondent, through its Executive Engineer, Horticulture Dept. had been filed on 16.04.2016 in compliance of the order dated 19th January, 2015 and 23rd February, 2016, it has been deposed in the said affidavit that the contents of the affidavit dated 9th May, 2015 and 14th December, 2015 may be treated as part and parcel of the present affidavit, as those are not being repeated herein for the sake of brevity. In compliance of the aforesaid order, the detailed site plan of Sector 23-A was annexed and marked as annexure R/1. All parks have been shown in the site plan. However the parks

were not bearing specific numbers as it was not given. Further, it is submitted, that the Horticulture Wing of HUDA, for its convenience and identification purposes, identified the parks by giving them some specific numbers. These numbers may change due to the applicant association and number of parks allotted to them.

21. In the year, 2008, the applicant approached the Horticulture Dept. for maintaining the land in question lying vacant at the site. The Horticulture Dept. mistakenly permitted the applicant to maintain the land, without considering the layout plan. When in November, 2011, the Department came to know about the actual utilization of the land i.e the land has already been demarcated and allotted to them the department immediately cut down the area of the land from maintenance of horticulture work. The area in question measuring 900 sq. mtrs given for horticulture work and numbered as park no. 14 due to bonafied mistake has been shown in red colour which actually is an area of the plots, as per the site plan annexed.

22. The plot alleged by the applicant as converted from park were already allotted to the respective allottees. The allotment letter and possession certificate in respect of three plots have already been placed on record by the respondent all parks in Sector 23-A, in the site plan, are shown in green colour including park no. 12 & 13 as numbered by Horticulture Wing in the relevant year for its convenience and identification. No park in sector 23-A is

numbered by Horticulture Wing as 12 & 13 as the present numbers of association is 3 and numbers of the park allotted to them is 4, 8 and 5 respectively. Therefore, the applicant cannot claim to maintain the land in question as park.

23. The applicant has filed reply on 26.05.2016, by way of an affidavit, to the affidavit of the respondent dated 11th April 2016. According to the deponent applicant, the respondent have not complied with orders dated 19th January, 2015 and 18th November, 2015. The applicant has reiterated the facts mentioned earlier in respect of park no. 12, its maintenance and that it was handed over to them vide letter dated 2nd March, 2009. According to the applicant, apart from the park, an additional green area was also allotted for maintenance vide HUDA's letter dated 10th April 2012. The applicant had also been paid periodic maintenance charges by HUDA. It is deposed that respondent HUDA is avoiding answers. It is also submitted that in the site plan, annexure R-1 filed by the respondent, the park in question has been incorrectly shown. According to him the actual location of the park in question is indicated by Annexure x, which was being filed by them. Annexure x-1 is said to be an extract of site plan taken out from plan annexure R-1 filed by HUDA.

In the plan produced by HUDA there are very few parks in sector 23-A and there is no other park catering to the needs and requirements of the cluster of houses for which, park no. 12, 13 & 14 were created and allotted to the applicant association.

Further, it is stated that the park indicated as 'y' in annexure R-1 is not a park and is enclosed by walls of community centres which are being used for wedding parties/ functions and never maintained as park.

24. Before dwelling on the merits of the case it would be appropriate to deal with the preliminary submissions/objections raised by the respondent. It has been stated that the premise on which the instant application has been filed is that, HUDA has illegally converted park no.12 of sector 23-A, West Zone, Gurgaon into various plots bearing numbers 4737-B, 4737-C and 4737-D. Further, it is submitted by the respondent that the ground taken by the applicant is completely false and misconceived because the land in question is a vacant land bearing plot no. 4737-BSP, 4737-CP and 4737-DSP of sector 23-A and HUDA had already allotted the said land to Mr. Sandeep Kumar, Mrs. Geeta Gupta and Mr. Praveen Kumar respectively. It is submitted by the respondent that they had never developed the park on the land in question.

25. Further it has been submitted by the respondent that the facts alleged by the applicant, though not admitted, shows that the present application has not been filed within the period of limitation as prescribed under section 14 of the National Green Tribunal Act, 2010 i.e within six months from the date on which the cause of action for such dispute first arose. It is also submitted that as per the proviso to the said section, the Tribunal

may, if it is satisfied that applicant was prevented by sufficient cause from filing the application within the said period, allow it to be filed within a further period not exceeding sixty days. The present application has been filed much beyond that period of sixty days also. As such, the present application is barred by limitation and is liable to be dismissed.

26. In response to the objection regarding limitation, the applicant has denied the same. It has been submitted that threat to divest the applicant and the residents near to the park is continuing on day to day basis and as such, it is a continuing cause of action. The application has very much been filed within time. It has been denied by the applicant that the application is barred by limitation or is liable to be dismissed.

27. The relevant facts in respect of the issue relating to limitation are that, as per para 8 of the original application it has been submitted by the applicant that in the morning of 21.01.2012, without prior notice to the association or any of the resident of sector 23-A, certain persons claiming to be HUDA officials, arrived at park no. 12 with workers and demolition equipment. Despite protest from the residents of sector 23-A, West Zone, under directions of the persons claiming to be HUDA officials, several grills of the boundary wall, posts of the fencing were brought down and a large area of the park land was upturned. Further it is submitted by the applicant that demolished brick work, grills as well as upturned land have been recorded in a video clip by the

resident of House No. 4674 of sector 23-A, West Zone, Gurgaon. The video recording also has a commentary explaining location of boundaries of the park no. 12 as well as the extent of demolition. It is also submitted that the said resident then forwarded a written complaint to HUDA Secretariat on 24.01.2012, which was addressed to the Administrator. With the complaint, copies of satellite pictures of park no.12 were also attached (Annexure A-3).

In other words, the cause of action and for the purpose of first cause of action, arose on 21.01.2012 and in any case at least on 24.01.2012. The applicant has in relation to it, submitted that the threat to divest the applicant and the residents residing near the park is continuing on day to day basis and as such, it is a continuing cause of action. The application has been filed very much in time and has denied that the same be barred by limitation.

28. The present application has been filed within the ambit and scope of section 14 of the NGT Act, 2010. The prescribed period of limitation for which is six months from the date on which the cause of action first arose. However, for sufficient cause, the Tribunal can entertain an application beyond that period but not exceeding sixty days. In other words, six months plus sixty days is outer period of limitation during which the application can be entertained by the Tribunal. In the present case, the cause of action arose on 21.01.2012 and the present original application

was filed on 07.03.2014. The relevant provision under the NGT Act, 2010 is section 14 (iii) which reads as under:

“(3) No application for adjudication of dispute under this section shall be entertained by the Tribunal unless it is made within a period of six months from the date on which the cause of action for such dispute first arose:

Provided that the Tribunal may, if it is satisfied that the applicant was prevented by sufficient cause from filing the application within the said period, allow it to be filed within a further period not exceeding sixty days.”

29. On a bare reading of the said provision, it is amply clear that firstly, the total period of limitation is six months plus sixty days and secondly, that the said period would commence from the date on which the cause of action first arose. In the instant case, there cannot be any two views about the fact that the present application was filed on 07.03.2014 and secondly, that the dispute first arose on 21.01.2012. In these circumstances, the inevitable conclusion is that it cannot be said that the original application has been filed within prescribed period of limitation. It would be relevant to refer here the following judgements:

30. In a recent case of *Chaudhary Yashwant Singh Vs. State of Uttar Pradesh, Original Application no. 482/2015* decided on 09.09.2016, larger Bench of the Tribunal has held that:

9. “The bare reading of the above prayer clause shows that the Applicant is claiming a relief covered under Section 14 of the

Act of 2010 in so far as it relates to prevention and control of pollution and requiring compliance of the regulatory provisions by the authorities concerned to act in accordance with law as well as to take action against the defaulting officers/officials. The other relief is with regard to the payment of suitable compensation in terms of Section 15 of the 9 Act of 2010. The limitation prescribed under Section 14 for an action to be brought before the Tribunal is 6 months from the date on which the cause of action for such dispute first arose. The Tribunal is vested with the power to entertain an application beyond the prescribed period of 6 months if a sufficient cause is shown for filing the application beyond the prescribed period but that should not exceed the period of 60 days. In other words the total period for which the delay can be condoned by the Tribunal upon sufficient cause being shown is 6 months plus 60 days. Beyond that the Tribunal will have no jurisdiction even to condone the delay.

11. It will be relevant to refer to the following Judgments of the Tribunal in the case of *M/s Bharat Stone Crusher v. Rajasthan State Pollution Control Board* (O.A. No. 216 of 2014) “In the alternative, even if we treat this application as an application under Section 16(g) of the NGT Act, even then, this application would be barred by time in terms of Section 14 of the NGT Act. An application has to be filed within 6 months from the date of which cause of action for such dispute first arose. The Tribunal is vested with the powers of condoning the delay in excess but not exceeding 60 days in terms of proviso to Section 14(3) of the NGT Act. This application as already noticed has been filed after more than two years. It would even be barred by limitation under Section 14 of the NGT Act. Even in this case, the appellant has not filed any application for Condonation of delay. Prayer for Condonation of delay even if made now would be in vain and Tribunal would not be able to grant such relief.”

And in the case of *Amit Maru v. Secretary, Ministry of Environment & Forest* 2015 ALL (I) NGT REPORTER (2) (PUNE) 1 “21. Reliance is placed on the observations in “*Aradhana Bhargav & Ors. V. MoEF & Ors*” [Application No.11 of 2013], decided by the Hon’ble Bench of NGT on 12.8.2013. The

observations in relevant paragraphs of the said Judgment are as below:

“23. From the very reading, it would be quite clear that the Tribunal has jurisdiction over all civil cases only where a substantial question relating to the environment including enforcement of any legal right related to environment is involved and also the said substantial question should also arise out of the implementation and is included in one of the seven enactments specified under the Schedule – I. Even, if the applicant is able to satisfy the above requisites, the Tribunal can adjudicate the disputes only if it is made within a period of six months from the date on which the cause of action in such dispute first arose and the Tribunal for sufficient cause can condone the delay for a period not exceeding 60 days in making the application.

31. From the facts given in the application it is not clear as to when and from which date the limitation would trigger in the present case. In fact under the para of limitation as prescribed under the rules, the applicant has mentioned “the present petition is within the period of limitation”. Such an averment is contrary to the facts on record because, as mentioned earlier, the cause of action arose on 21.01.2012 and the present application has been filed on 07.03.2014. In such a situation, by no stretch of imagination it can be said that the application has been filed within the prescribed period of limitation or for that matter even within the extended period is given under the Act of 2010. The reply filed by the applicant to the additional affidavit of the respondent filed on 15.02.2016, it has been submitted that the threat to divest the applicant residing near the park, for the use of the park is continuing on day to day basis and as such it is a

continuing cause of action. But as mentioned above the statute requires that in all circumstances the limitation would commence from the date when the cause of action first arose. However in the entire application there is no reference as to when the cause of action first arose.

32. For an application under section 14 of the Act of 2010 the prescribed limitation is six months plus sixty days. According to the facts mentioned in the application the cause of action first arose on 21.01.2012 and when the application has to be filed on 07.03.2014, there remains no doubt that it has been filed beyond the prescribed period of limitation. Even otherwise the submission made by the applicant that in the present case there is a continuing cause of action as illegality continues would give fresh cause of action and the application would be within time, is without merit. A continuing cause of action would not provide a fresh period of limitation in face of the expression 'cause of action first arose'. A cause of action first arose is in contradistinction to the continuing cause of action.

33. This view of ours is supported by the decision of a larger Bench of this Tribunal in the case of *Chaudhary Yashwant Singh* (Supra) wherein it has been held as under:

*"In a continuing cause of action, the limitation would trigger from the date the cause of action first arose, unlike in the case of a reoccurring cause of action, where each subsequent violation which is a complete cause of action in itself would give fresh period of limitation, as held by a larger bench of the Tribunal. [Reference can be made to the judgment in the case of *The Forward Foundation & Ors v. State of Karnataka & Ors.* 2015 ALL (I) NGT Reporter (2) Delhi 81.] The present case is certainly not a case of*

reoccurring cause of action but as pleaded by the Applicant itself, is a case of continuing cause of action.”

34. In addition, we may take note of the fact that despite of a categorical stand having been taken by the respondent the applicant had not filed any application for condonation of delay, even subsequently no effort had been made to do so. Therefore, we have no hesitation in holding that the present original application is grossly time barred and as no application for condonation of delay has been filed, the question of condoning the delay does not arise.

35. Another reason for which the present original application cannot be entertained in the manner in which it has been filed, is that, it suffers from non-joinder of parties. Soon after having been served with the notices, a counter affidavit was filed on behalf of the respondent wherein it was stated, inter alia, that the land in question is a vacant land bearing plot no. 4737-BSP, 4737-CP and 4737-DSP of sector 23-A. Further, it was stated by the respondent in preliminary submissions itself that HUDA had already allotted the land to Mr. Sandeep Kumar, Mrs. Mrs. Geeta Gupta and Mr. Praveen Kumar respectively. The fact regarding allotment could not be controverted by the applicant. Despite of categorical stand taken by the respondent that plots have been allotted to the respective parties and this has resulted in creation of interest

of third party, the applicant has not chosen to implead them as respondent in the application.

36. We are of the considered view that in the facts and circumstances of the present case, impleadment of Mr. Sandeep Kumar, Mrs. Geeta Gupta and Mr. Praveen Kumar, as party respondent ought to have been done, in order to enable the Tribunal to effectually and completely adjudicate upon and settle all the questions involved in this original application. The said persons are necessary party to instant proceedings. In absence of the parties whose interest has been created in the property in question, the present proceeding cannot be entertained. Therefore on this ground also the original application filed by the applicant cannot be entertained and the relevant prayer there in cannot be granted.

37. For the aforesaid reasons, we are of the considered view that this original application is liable to be dismissed on the ground of limitation and non-joinder of parties. As the application cannot be entertained for the said reasons, there is no need to further dwell upon the merits of the case.

38. Consequently, this original application is dismissed, without any order as to cost.

M.A No. 116/2014

This miscellaneous application is filed for seeking interim relief. As the main matter itself is being disposed of, this miscellaneous application (116/2014) is also disposed of, with no order as to cost.



सत्यमेव जयते

.....
Justice Swatanter Kumar
(Chairperson)

.....
Justice Raghuvendra S. Rathore
(Judicial Member)

.....
Mr. Bikram Singh Sajwan
(Expert Member)

New Delhi.
DATE: 22nd December, 2016

NGT