

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

**Original Application No. 142 of 2014**

**In the matter of:**

1. Rajeev Suri  
D- 68 Defence Colony  
New Delhi- 110024

..... Applicant

Versus

1. Ministry of Urban Development  
Nirman Bhawan, Maulana Azad Road,  
New Delhi- 110108
2. Chairman Cum Managing Director,  
NBCC. Ltd.  
NBCC Bhawan, Lodhi Road  
New Delhi- 110003
3. Ministry of Mines  
3<sup>rd</sup> Floor, A Wing, Shastri Bhawan,  
New Delhi- 110001
4. Chairman  
New Delhi Municipal Council  
Palika Kendra, Parliament Street,  
New Delhi- 110001
5. Land and Development Officer  
Ministry of Urban Development,  
Gate 4, 'A' Wing, Nirman Bhawan,  
Maulana Azad Road  
New Delhi- 110011

.....Respondents

**Counsel for appellant:**

Mr. Rajeev Suri, In person.

**Counsel for respondents:**

Mr. Ardhendumauli Kumar Prasad, Adv.  
for respondent nos. 1, 3 and 5.

Mr. J.P. Singh Sr. Adv., Mr. Manoj Kumar Das,

Mr. Nikilesh, Advs. for respondent no. 2  
Ms. Sakshi Poli, Adv. for respondent no. 4  
Mr. Vivek Chib and Mr. Kushal Gupta, Advs. for MoEF.

**Present:**

**Hon'ble Mr. Justice U.D. Salvi (Judicial Member)**  
**Hon'ble Mr. Justice M.S. Nambiar (Judicial Member)**  
**Hon'ble Dr. D.K. Agrawal (Expert Member)**  
**Hon'ble Prof. A.R. Yousuf (Expert Member)**  
**Hon'ble Mr. B.S. Sajwan (Expert Member)**

**JUDGMENT**

**Per U.D. Salvi J.(Judicial Member)**

**Dated: 28<sup>th</sup> May, 2015**

1. The applicant upon invoking the provisions under Section 14,19 and 20 read with Section 18 of the National Green Tribunal Act, 2010 (NGT Act) is seeking ban on the work of redevelopment of the existing Central Government Housing project, Kidwai Nagar (East) New Delhi, particularly, on the work of digging deep basements in course of such redevelopment on the ground that such work causes damage to the environment within the meaning of Section 2(a) of the Environment (Protection) Act, 1986 and virtually amounts to soil mining without obtaining necessary clearances.
2. According to the applicant this project of redevelopment of Kidwai Nagar (East) has been undertaken by the respondent no. 2-NBCC Ltd, on the basis of authorisation from the respondent no. 1-Ministry of Urban Development and the Environment Clearance granted to the project vide State Environmental Impact Assessment Authority (SEIAA) letter- Environment

Clearance No. DPCC/SEAC/127/SEIAA/3/2012 dated 13-08-2012. The applicant further submits that the work of excavation of land was started just before the filing of the application well within the period of limitation prescribed under the NGT Act.

3. The applicant further submits that though the Environmental Clearance makes reference to the height of the buildings above ground, it remains silent about the depth of the basements and excavation of the soil for its construction. He further submits that the Environmental Clearance makes no mention about the crucial aspect of storage, utilisation and transportation of the excavated soil. According to him the EIA report also made no reference to the massive excavation of soil.
4. According to the applicant excavation of soil on such massive scale for the construction of deep basements amounts to soil mining for which there is no Environmental Clearance, which ought to have been there as mandated in Deepak Kumar Case (I.A. No. 12-13 of 2011 in SLP(C) No. 19628-19629 of 2009 Deepak Kumar etc. Vs. State of Haryana & Ors). He added that there are no statutory clearances as are required for mining activity under Mines and Mineral Act, 1956.
5. According to the applicant the work of so called redevelopment which involves deep excavation of soil is resulting in destruction of valuable earth crust and it is being hollowed out in the name of development which is not sustainable.

6. The respondent no. 2 NBCC countered the application with its reply dated 25-08-2014. It placed on record notice of grant of Environmental Clearance published in various newspapers, consent order granted by DPCC, copy of the orders dated 21-05-2014 and 03-07-2014 passed in W.P (C) 3263/2014 Aman Lekhi & Ors Vs. Union of India & Ors., copy of the Notice inviting E-tender dated 11-04-2013, copy of the Geo-technical report No. 7112 dated 28-10-2011 in respect of soil investigation work done at the site in question, Copy of the NoC dated 1-12-2011 from Airport Authority of India, Fire safety clearance from Delhi Fire Service to the project dated 16-07-2013. Briefly, the respondent no. 2 contends that the present action is grossly time barred under Section 14 of the NGT Act, 2010 for the reason of having been filed after more than one year and two months of commencement of the activities in question and all the environmental aspects in respect of this construction were duly considered while granting Environmental Clearance, which is not the subject matter of the present application. The respondent no. 2 further pointed out in its reply that the issue of redevelopment was sub judice before the Hon'ble High Court of Delhi in W.P (Civil) No. 3263 of 2014 (Aman Lekhi & Ors. vs. Union of India & Ors) and there being no challenge to the Environmental Clearance granted to the project and the challenge to the Environmental Clearance being rejected by this Tribunal vide Judgment dated 13-01-2015 in Original Application No. 134 of 2014, Rajiv Suri

applicant vs. Ministry of Urban Development & Anr. nothing survives in the present matter to be adjudicated upon, particularly there being no specific material, suggesting, adverse impact on the Environment. Generally, the respondent no. 2 refuted the case of the applicant and submitted that the project in question is one of redevelopment of the old dilapidated colony which offers better amenities, large green cover and sustainable development without affecting the water table. According to the respondent no. 2 the work of redevelopment of Kidwai Nagar (E) is being executed in accordance with law after getting Environmental Clearance and such other clearances, approvals from the concerned authorities.

7. Learned applicant in person argued very passionately and we gave him a patient hearing. According to him "Environment" by definition includes water, air and land and the interrelation which exists among and between water, air and land and human beings, other living creatures, plants, micro-organism and property as per Section 2(a) of the Environment (Protection) Act, 1986 and the work of excavation of soil to the depth for laying foundation of building with three under-ground basements robs the land of valuable alluvial soil which is nature's creation over a billion of years and is likely to affect the aquifers. He further argued that the excavation of soil being a species of soil mining needs to be regulated as per Mines and Mineral Act, 1957 and O.M dated 24-06-2013 issued by MoEF.

He further submits that such deep excavation of soil is not a sustainable development and is likely to cause irreversible damage to the environment.

8. O.M dated 24-06-2013 issued by the Ministry of Environment and Forests refers to order dated 27-02-2012 passed in I.A. No. 12-13 of 2011 in SLP(C) No. 19628-19629 of 2009 titled Deepak Kumar etc. Vs. State of Haryana & Ors., which mandates the grant of leases of minor minerals including their renewal for an area less than 5 ha. only after getting Environment Clearance from the MoEF, and proceeds to stipulate the guidelines in respect of the activities of borrowing/excavation of 'brick earth' and 'ordinary earth' up to an area less than 5 ha. in following terms:

- (i) *The activity associated with borrowing / excavation of 'brick earth' and 'ordinary earth' for purpose of brick manufacturing, construction of roads, embankments etc. shall not involve blasting.*
- (ii) *The borrowing/excavation activity shall be restricted to a maximum depth of 2m below general ground level at the site.*
- (iii) *The borrowing/excavation activity shall be restricted to 2 m above the ground water table at the site.*
- (iv) *The borrowing/excavation activity shall not alter the natural drainage pattern of the area.*
- (v) *The borrowing/excavated pit shall be restored by the project proponent for useful purpose(s).*
- (vi) *Appropriate fencing all around the borrowed/excavated pit shall be made to prevent any mishap.*
- (vii) *Measures shall be taken to prevent dust emission by covering of borrowing/excavated earth during transportation.*
- (viii) *Safeguards shall be adopted against health risks on account of breeding of vectors in the water bodies created due to borrowing/excavation of earth.*
- (ix) *Workers/ labourers shall be provided with facilities for drinking water and sanitation.*

- (x) *A berm shall be left from the boundary of adjoining field having a width equal to at least half the depth of proposed excavation.*
- (xi) *A minimum distance of 15 m from any civil structure shall be kept from the periphery of any excavation area.*
- (xii) *The concerned SEIAA while considering granting environmental clearance for such activity for brick earth/ordinary earth will prescribe the guidelines as stated at (i) to (xi) above and specify that the clearance so granted shall be liable to be cancelled in case of any violation of above guidelines.*

9. In the Instant case the entire project of redevelopment was subjected to the scrutiny by the Expert Appraisal Committee and thereafter the Environmental Clearance was granted on recommendations of such Committee by the SEIAA on 13-08-2012. Fact of grant of Environmental Clearance is admitted by the applicant. It is also a fact that this Environmental Clearance was a matter of challenge in O.A No. 134 of 2014 instituted by the present applicant against the present respondent, SEIAA, MoEF and Ministry of Urban Development, and the said appeal after hearing the parties and after duly considering all the relevant aspects which now the applicant reiterates was dismissed on 13-01-2015 by the Tribunal. Relevant paras of the Judgment passed in O.A. No. 134/ 2014 are reproduced herein below to evince how the material aspects of the case were dealt with by this Tribunal:

*9. Traversing through the affidavits and documents filed by the applicant, respondents and the arguments made during the hearing of the case, it is clear that the balance of convenience is in favour of project proponent as they have got all the required statutory clearances for the redevelopment of Kidwai Nagar East. The related environmental issues have been duly examined by the SEIAA based on the information given in Form 1A, EIA Report and DPR for the project. Even though there is no*

requirement for preparation of EIA report, still the project proponent preferred to prepare the EIA Report and the same was submitted to SEIAA. The allegation of the applicant that the Project proponent have suppressed or concealed information about the project especially the commercial usage of the said premises is not correct as the same has been reflected in Form 1A and EIA Report as well as the EC issued on 13.08.2012. Also the contention of the applicant is not correct that he was not aware about the project and he got information from the RTI. The EC was in public domain as it was published in the newspapers on 23.10.2012 and displayed on the website of DPCC immediately after the grant of EC as per the affidavit filed by Respondent No. 3. The Respondent No. 2 has also contested the claim of the Applicant about the time he acquired the knowledge about the project which, as claimed by the applicant, was on 25.06.2014, the date he received RTI information. The Respondent No. 2 contends that the Notice Board for the project at the Project site were put up some times in September 2013 and an investor seminar also held on 07.09.2013. The applicant has also attempted to urge that in matters relating to environment and those affecting right to life, which covers right to a clean and healthy environment under Article 21 of the Constitution of India, such limitation may not apply. We are, however, not in agreement with the contention of the applicant as the period of limitation Under Section 14 of the NGT Act 2010 is binding and the Tribunal cannot extend such period of limitation as laid down in the statute. The application filed after 1 year and 11 months is, therefore, grossly barred by limitation.

10. The Applicant has extensively relied upon the Doctrine of Public Trust, Precautionary Principles and Principle of Sustainable Development in support of his Application. The Doctrine of Public Trust which has been held as a law of the land by the Hon'ble Supreme Court of India in *M.C. Mehta V/s Kamal nath and Ors.*, (1997) 1 SSC 388 rests on the principle that certain resources like air, sea, water and forests are of such a great importance to people as a whole that it would be wholly unjustified to make them a subject of private ownership. The doctrine also enjoins upon the Government to protect the resources for enjoyment of general public rather than permit their use for private ownership. The question that needs to be answered in the present application is whether the Doctrine of Public Trust has been violated. The test to be applied is whether any private interest is sought to be created in an otherwise publically owned land or whether the benefits available to the public at present are in any way likely to be compromised in future as a result of this project. It is not in dispute that as against 2331-dwelling

units in the area at present, the number of dwelling units available to Central Government employees will increase to 4840 numbers once the project is completed. In addition, the additional space to the extent of 104413 sq. meters will be provided to the Government Departments/Ministries as well as to the Public Sector Companies which are largely Government owned. Also, Project is being implemented by Respondent No. 2 on behalf of the Respondent No. 1- i.e. the Union Ministry of Urban Development. Therefore, by no stretch of imagination, can it be construed that the benefits available to Central Government employees at present in terms of residential accommodation will in any way be reduced. On the contrary, the residential accommodation available to the Central Government employees will increase. Besides, the commercial space is sought to be allotted to Central Public Sector Companies and Ministries/Department. In our considered view, therefore, the Doctrine of Public Trust does not in any way get compromised or violated by implementation of the project in question. The applicant has also made general and vague assertions about non-compliance to the precautionary principles and principle of Sustainable Development as mandated under Section 20 of the NGT, Act 2010. The conditions stipulated in the EC dated 13.08.2012 have covered various environmental measures for ensuring that air and water quality, municipal solid waste disposal, sewage treatment, traffic management, creation of green spaces, use of solar energy etc., have been optimally built into the project design and implementation. Therefore, merely on the basis of vague assertions that precautionary principle is being violated, is not appearing to be correct. We, therefore, hold that there is no reason for the Tribunal to believe that the precautionary principle and principle of Sustainable Development would be violated or compromised, if the said project is implemented.

11. Regarding the adverse impact on the environment including air pollution, water pollution, traffic congestion, reduction of greenery, removal of soil and debris, we are of the opinion that SEIAA in its 4 meetings has discussed the related environmental issues about the project and has issued the detailed EC subject to the number of environmental conditions and safeguards. The allegation made by petitioner about the arbitrariness is also unfounded as the required process of law has been followed in obtaining all the statutory clearances and approvals for the said project. The apprehensions of applicant about adverse impact on environment are unfounded in view of the mitigative measures proposed and environmental conditions stipulated while according EC to the project. However, during the time of audio-

*visual presentation made before the bench in the court, it came to our knowledge that the sewage after treatment will be discharged into Barapullah Drain which ultimately meets Yamuna River. In view of this, we direct that no sewage after treatment from the proposed STP in Kidwai Nagar East Complex will be discharged in Barapullah Drain and rather the treated sewage must be discharged into the city sewerage system after taking consent of DPCC. As the balance of convenience is in favour of the project proponent and the project has been approved by the authority competent in accordance with law, we do not see any reason to interfere with the Environment Clearance. Looking into any angle the applicant is not entitled for any relief claimed. Accordingly the Application fails and the same is dismissed except with the direction contained herein, without any order as to cost.*

10. This Judgment in O.A. No. 134 of 2014 has attained finality it being not challenged by any of the contending parties before the Hon'ble Supreme Court of India. We, therefore, do not wish to enter into the territory which has already been traversed through. Moreover, the applicant has not come forth with any specific material which would suggest any adverse impact of the excavation of soil in question. As a matter of fact it can be seen from Geo-technical report no. 7112 dated 28-10-2011 that water table is not affected by the work of excavation for laying foundation of various structures. This can be read from the result of the investigation carried on at the site and referred to in para 2.1.1.1 of the report which is reproduced hereunder:

2.1.1.1 WATER TABLE

*Water table was not encountered down to respective termination depths below existing ground level in the thirty five boreholes.*

11. To answer the question whether the excavation of soil for the purpose of construction/redevelopment works in question is a mining or not, we will have to consider the law on the subject.

Learned Counsel appearing for the respondent no. 2 invited our attention to the definition of “a person employed in mine” and “mine” as revealed in Section 2(h) and (j) of the Mines Act, 1952. He submitted that the work of excavation needs to be seen in context of the purpose for which such excavation is carried out. In support of his submissions he placed reliance on the Judgment reported in *AIR 1993 Bombay 144 Rashtriya Chemicals and Fertilizers Ltd, vs. State of Maharashtra and others*; and Judgment of Hon’ble Apex Court in Civil Appeal No. 10715-10718 of 2014, *Promoters and Builders Association of Pune Vs. The State of Maharashtra* decided on 03-12-2014.

12. Section 2[(h) of the Mines Act 1952 reads as under:

- 2(h) a person is said to be “employed in a mine who works as the manager or who works under appointment by the owner, agent or manager of the mine or with the knowledge of the manager, whether for wages or not-*
- (i) In any mining operation (including the concomitant operations of handling and transport of minerals upto the point of dispatch and of gathering sand and transport thereof to the mine);*
  - (ii) In operations or services relating to the development of the mine including construction of plan therein but excluding construction of buildings, roads, wells and any building work not directly connected with any existing or future mining operations;*
  - (iii) In operating, servicing, maintaining or repairing any part of any machinery used in or about the mine;*
  - (iv) In operations, within the premises of the mine, of lading for dispatch of minerals;*
  - (v) In any office of the mine;*
  - (vi) In any welfare, health, sanitary or conservancy services required to be provided under this Act, or watch and ward, within the premises of the mine excluding residential area; or*
  - (vii) In any kind of work whatsoever which is preparatory or incidental to, or connected with, mining operations;]*

Significantly, it excludes construction of buildings, roads, wells and any building work not directly connected with any existing or future mining operations from “mining works or operations”.

13. Section 2(j) reads as under:

*“mine” means any excavation where any operation for the purpose of searching for or obtaining minerals has been or is being carried on and includes-*

- (i) *All borings, bore holes, oil wells and accessory crude conditioning plants, including the pipe conveying mineral oil within the oil fields;*
- (ii) *All shafts, in or adjacent to and belonging to a mine, whether in the course of being sunk or not;*
- (iii) *All levels and inclined planes in the course of being driven;*
- (iv) *All open cast workings;*
- (v) *All conveyors or aerial rope-ways provided for the bringing into or removal from a mine of minerals or other articles or for the removal of refuse therefrom;*
- (vi) *All adits, levels, planes, machinery, works, railways, tramways and sidings in or adjacent to and belonging to a mine;*
- (vii) *All protective works being carried out in or adjacent to a mine;*
- (viii) *All workshops and stores situated within the precincts of a mine and under the same management and used primarily for the purposes connected with that mine or a number of mines under the same managements;*
- (ix) *All power stations, transformer sub-stations, convertor stations, rectifier stations and accumulator, storage stations for supplying electricity solely or mainly for the purpose of working the mine or a number of mines under the same management;*
- (x) *Any premises for the time being used for depositing sand or mine or in which any operations in connection with such sand, refuse or other material is being carried on, being premises exclusively occupied by the owner of the mine;*
- (xi) *Any premises in or adjacent to and belonging to a mine on which any process ancillary to the getting dressing or preparation for sale of minerals or of coke is being carried on;]*

This definition of mine takes into its fold any excavation but at the same time relates such excavation to the operations of various descriptions as given there under for

the purposes of searching for or obtaining minerals. Even when one considers the definition of 'open cast working' under Section 2(kk) to which seemingly one can draw parallel with deep excavation of the soil as in the present case, one can clearly see that it means work of quarrying i.e. to say that the excavation where any operation for the purpose of searching for or obtaining minerals has been or is being carried on. Thus, the purpose for which the soil is excavated answers the question as to whether it can be called as mining or not.

14. The Hon'ble High Court of Judicature at Bombay in Rashtriya Chemicals and Fertilizers Ltd. case held, while answering the crucial question whether the earth that was dug out is a mineral product susceptible to the cess, that all depends upon the context, and the contents of the appropriate legal provisions or documents evidencing the transactions. The Hon'ble High Court made reference to various pronouncements of the Hon'ble Apex Court particularly the one made in B. Dass and ors. case (M/s. Banarsi Dass Chadha and Bros. vs. Lt. Governor, Delhi Admn.; AIR 1978 SC 1587). Observation made in the said case being relevant is reproduced herein below:

*“As we said earlier the word mineral is an elastic word whose meaning depends upon the setting in which it is used.”*

15. The Hon'ble Apex Court in Promoters and Builders Association of Pune's case quoted with approval para 14 of the Judgment

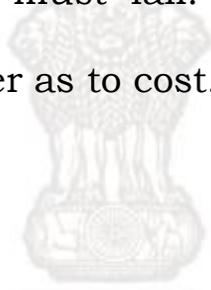
delivered in *Rashtriya Chemicals and Fertilizers Ltd, vs. State of Maharashtra* case by the Hon'ble High Court of Judicature at Bombay as follows:

*14. If it were a mere question of Mines and Minerals Act, 1957 covering the removal of earth, there cannot be possibly any doubt whatever, now, in view of the very wide definition of the term contained in the enactment itself, and as interpreted by the authoritative pronouncements of the Supreme Court. As noted earlier, the question involved in the represent case is not to be determined with reference to the Central enactment but with reference to the clauses in the grant and the provisions in the Code. When it is noted that the Company was given the land for the purpose of erecting massive structures as needed in setting up a chemical factory of the designs and dimensions of the company, the context would certainly rule out a reservation for the State Government of the earth that is found in the land. That will very much defeat the purpose of the grant itself. Every use of the sod, or piercing of the land with a pick-axe, would, in that eventuality, require sanction of the authorities. The interpretation so placed, would frustrate the intention of the grant and lead to patently absurd results. To equate the earth removed in the process of digging as foundation, or otherwise, as a mineral product, in that context, would be a murder of an alien but lovely language. The reading of the entire grant, would certainly rule out a proposition equating every pebble or particle of soil in the granted land as partaking the character of a mineral product. In the light of the above conclusion, I am clearly of the view that the orders of the authorities, are vitiated by errors of law apparent on the face of the record. They are liable to be quashed. I do so.*

16. Thus, it can be seen that the purpose for which excavation of soil is carried out gives meaning to the act of such excavation so to answer whether it is soil mining or not. Admittedly, the excavation is being done for the redevelopment or construction of buildings in the project in question. In absence of any material to the contrary the purpose of such excavation is obvious and cannot be said to be soil mining as sought to be depicted by the applicant. The question of applicability of O.M

to the facts and circumstances in the present case therefore does not arise.

17. It is not disputed that the Hon'ble High Court is seized of the issue of the construction of the project in question in W.P. No. 3236/2014 Aman Lekhi & Ors Vs. Union of India & Ors. In the result this application must fail. We therefore, dismiss this application with no order as to cost.



....., JM  
(U.D. Salvi)

....., JM  
(M.S. Nambiar)

....., EM  
(Dr. D.K. Agrawal)

....., EM  
(Prof. A.R. Yousuf)

....., EM  
(B.S. Sajwan)

NGT