

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

Original Application No. 458 of 2016

IN THE MATTER OF:

1. Sh. Rakesh Kumar

S/o Late. Shri Jawala Prasad
R/o. G-222, Sector-44
NOIDA, U.P

2. Sh. Manish Rastogi

S/o Shri Sudhir Rastogi
R/o F-67, Sector-44,
NOIDA, U.P

3. Sh. Sanjiv Mittal

S/o Late Shri Budhi Prasad Mittal
R/o. F-67, Sector-44,
NOIDA, U.P

..... Applicant

Versus

1. State of U.P

Through Chief Secretary,
Chief Secretary Home Department,
Secretariat, Lucknow-226001
Uttar Pradesh

2. District Magistrate

Gautam Budh Nagar
Sector-27, NOIDA-201301, U.P

3. SSP, Gautam Budh Nagar

Distt. Gautam Budh Nagar,
Greater NOIDA-201301, U.P.

4. The CEO, NOIDA Authority

Sector-6, NOIDA-201301, U.P.

5. The Secretary R.W.A.

F, G & H Block, Sector-44,
NOIDA, U.P

.....Respondents

COUNSEL FOR APPLICANT:

Mr. Vikram V. Miwhas and Mr. Rituraj Shahi, Advs

COUNSEL FOR RESPONDENTS:

Mr. Dhirendera Yadav, Advs. for State of UP for respondent no.1 to 3
Mr. Ravindra Kumar, Adv. For NOIDA for respondent no.4

JUDGEMENT

PRESENT:

Hon'ble Mr. Justice Swatanter Kumar (Chairperson)
Hon'ble Mr. Justice Raghuvendra S. Rathore (Judicial Member)
Hon'ble Dr. Ajay A. Deshpande (Expert Member)

Reserved on: 08th March, 2017
Pronounced on: 13th July, 2017

- 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) J

1. This Original Application under Section 14, 15 and 18 of the National Green Tribunal Act, 2010 has been filed by the Applicants primarily against the construction which is carried out in Block-G, Sector-44, NOIDA. Following have been made the respondents:
 - i. State of Uttar Pradesh through the Chief Secretary, Chief Secretary – Home Department, Lucknow.
 - ii. The District Magistrate, Gautam Buddha Nagar, NOIDA.
 - iii. S.S.P., Gautam Buddha Nagar, Greater NOIDA.
 - iv. The C.E.O., NOIDA Authority, NOIDA.
 - v. The Secretary, R.W.A., “F”, “G” and “H” Block, Sector-44, NOIDA.

Accordingly, it has been prayed that the respondents be directed to undo and dismantle the alleged construction.

Further, it has been prayed that the respondents should remove all broken stones/*mulba* as dumped by respondent NOIDA Authority and to maintain the green belt for the benefit of all the residents of the Sector. It has also been prayed that Respondent No. 3 be directed to register a case Under Section 153 (A) and 104 of IPC against the persons, at whose behest the present construction has been carried out.

- 2.** The Applicants are the owner/residents of 'F' and 'G' Block, Sector-44, NOIDA. After having purchased the plot, they constructed residential houses. The New Okhla Industrial Development Authority had developed various residential sectors and Sector-44 is one of them. It was shown in the Master Plan of Sector-44 that there was green belt, park, wide roads etc. 'F' and 'G' Blocks of Sector-44 are surrounded by green belt from all sides and have 18 meters wide internal roads for which NOIDA Authority had charged extra premium.
- 3.** Further, the case of the Applicants is that in Sector-44 green belt was marked, but some unscrupulous persons of the same sector, claiming themselves to have political nexus and backing from Government, as well as, control on Local Administration, without having consensus of majority of residents and with some ulterior motive, started unauthorized structures overnight, as Temple. It is stated in the Application that the Applicants are affected by unauthorized construction of Temple in the

sector and are filing the instant petition for cause of public in general as the green belt has been destroyed.

4. It is the case of the Applicants that the unauthorized construction is against the will of the majority of residents of the sector and it is being constructed forcefully by handful of residents without any discussion or consent of the remaining residents of the sector. The unauthorized acts of the residents have caused serious threats to the residents of 'F' and 'G' sector-44, in respect of their security, health and peaceful life. According to the Applicant, the unauthorized construction, being a temple will pose a serious threat to the security of the sector as it will be an excuse for an outsider/non-residents for trespassing during the festival. It is also stated that Noise emanating from celebration will create nuisance for the nearby residents. Further, it is stated that due to visitors of the temple there would be serious parking issue and it would seriously hamper the public harmony and peace. The majority of the residents of the block are in grave fear as their peaceful life would be disturbed by the visitors to the temple.

5. The Applicants have further stated that due to the loud-speakers in the said temple noise pollution would emanate and it would hamper the ecological balance of the sector and public harmony and peace. Majority of the residents of the area are in serious threat to noise

pollution due to loud speakers in the said temple, because it would imbalance the Ambient Air Quality Standards of the sector. The unauthorized construction of the temple would invite trespassers in the sector including street vendors, small vendors of flowers and garlands, *Prashad* sellers, etc. This would create a serious threat to the private life and property of the residents of the sector. People from neighboring villages, blocks, societies and sectors will also come inside the sector to visit the temple which would hamper peace and tranquility of the residents. No amount of security arrangement can stop the unsocial elements to enter the sector on the pretext of visiting the temple. The life of the residents of Sector-44 would be in danger due to unwanted intruders.

6. Further, it is stated in the application that in pursuance of the unauthorized construction of temple, they had filed a complaint on 23rd July, 2016 to all the respondents to bring to their notice the said unauthorized construction. Despite the representations to all authorities no action had been taken by them because of alleged political clout on respondents. The Respondent No. 4 – NOIDA Authority has dumped huge stone blocks in the area which were uprooted from Ambedkar Park (commonly known as Hathi Park) built parallel to the Expressway. Because of the order of the Hon'ble Supreme Court, the

NOIDA Authority is under obligation to maintain the green belt.

- 7.** The respondents, the State of Uttar Pradesh, District Magistrate and SSP Gautam Buddha Nagar have filed their joint reply, wherein preliminary submissions are made that the applicants had filed a complaint on 23rd July, 2016 at Police Station, Sector-39 stating that an unauthorised structure of temple is being constructed in block 'G' of Sector-44. Further, it is submitted that immediately after receiving the complaint the police official visited the place and found that the construction is being carried out in presence of some residents of same sector and R.W.A. officials. The answering respondent stopped the construction work and till today no further construction is being carried out.
- 8.** It is further submitted by the respondents that there is no problem of noise pollution at present and outsiders are not coming in the sector. The residents of Sector-44 are fully secure and protected by the private security and to maintain peace and harmony in the sector the answering respondents are doing regular patrolling. The action has to be taken by Respondent No. 4 and the answering respondents will fully co-operate with them.
- 9.** In reply to para-5 of the application, it is stated that the contents of the same are wrong. The respondents have totally denied that some unscrupulous persons of the

same sector are having political nexus and backing from the Government as well as control over local administration. It is further submitted that the applicant filed a complaint at Police Station, Sector-39 on 23rd July, 2016 stating that an illegal structure of temple is being constructed in Sector-44, NOIDA. Immediately after the complaint the Police officer visited the place of construction and found that it is being carried out in presence of the residents of the same Sector and R.W.A. officials. It is also submitted that the answering respondent is not empowered to approve the construction of any kind or to remove the aforesaid construction work.

10. In the meanwhile, reply was filed on behalf of Respondent No. 4. It is submitted in the reply that NOIDA is a Statutory Authority and being a body corporate it is liable to be arrayed as a respondent, if at all. But in the present case the applicant have arrayed the Chief Executive Officer as a respondent. The C.E.O. has no personal role in function of the authority and is only an officer. Moreover, no relief can be claimed against the CEO. The relief be only be claimed and granted against NOIDA.

11. Further, it is submitted that the officer of horticulture department received information that some construction, possibly for a temple, commenced late in the evening of 21st July, 2016. Accordingly, the site was inspected on

22nd July, 2016 at about 12:30. The officer of the department went to the spot and directed that no unauthorized construction should take place and the work was stopped. Later in the evening at 06:00 O' Clock when it was brought to the notice of the department that an attempt was made to commence the construction, the employees of the department went to the spot and got the construction stopped. Since, it was not known as on whose behalf the construction was attempted to be made that a complaint was lodged with the concerned police station, requesting them to register an FIR and stop unauthorized construction. Complaint with the police was lodged on 22nd July, 2016. As per the information of the department further no construction has been going on. It is submitted that in view of clear cut stand of the authority no para-wise reply to the allegation made in the application is required to be made at this stage. However, all the allegations made in the application, except to the extent that they do not run inconsistent with the contents of the preceding paras, are disputed and not admitted.

- 12.** An affidavit has been filed on behalf of Respondent No. 5 by Mr. Arvind Kumar deposing that he is a Secretary of Respondent No. 5. Further it is stated that residents of 'F' and 'G' block of Sector-44, NOIDA are aggrieved of unauthorized construction in the sector. It is also stated

that the basic structure of the temple has been raised which comprises of an area 12 x 12 Sq. Ft. Various used stones are lying in the green belt of the sector for further construction of temple.

Respondent No. 5 also submitted that complaints were filed to various authorities for removing the structure and restoring the green belt. No action has been taken by the authorities. The unauthorized construction of the temple is depriving the residents from using the park.

13. An additional affidavit, on behalf of Respondent Nos. 1, 2 and 3, has been filed by Mr. Amar Nath Yadav, SHO, Police Station, Sector-39, NOIDA deposing that in urban areas if any construction related to public road/park/passage/etc. have been carried out in the public place, which comes under the jurisdiction/scheme of urban bodies and the development authorities, then the Nagar Vikas Vibhag will be the Nodal Department. Hence, NOIDA (Respondent No.4) is Nodal Department because the land on which the disputed construction of the temple has been raised, comes under its jurisdiction. Therefore, the final action has to be taken by Respondent No. 4 and the answering respondent will fully cooperate with them.

14. On perusal of the application and considering the submissions made before us, it is revealed that the

grievances of the applicant is in relation to alleged unauthorized construction of temple in Block 'F' and 'G', Sector-44, NOIDA. Therefore, the relief sought by the Applicant is to undue and dismantled such construction. In the instant case, the Applicants have failed to implead the necessary and proper party. The Chief Executive Officer of NOIDA Authority has been made a party. No other person has been made a party in these proceedings. This question also gains significance in view of the facts that the relief sought is to dismantle the construction. The person/persons who has made or on whose behalf such construction has been made, ought to have been impleaded as a party respondent so that before passing final order the person/persons concerned could have been given opportunity of hearing. According to the order issued by the Chief Secretary, Government of UP on 29th October, 2009, which expressly mentions that in urban areas if any construction related to public road/park/passage, construction has been carried in a public place which comes under the jurisdiction/scheme of Urban Bodies and the Development Authorities then the Nagar Vikas Vibhag, Development Authority will be the Nodal Department. Hence, NOIDA Authority would be the Nodal Departments in the present case as the land on which disputed structure of temple is constructed comes under it.

15. The Applicants have impleaded the Chief Executive Officer, NOIDA Authority as a party respondent in the present case. In the reply filed on behalf of CEO – Respondent No. 4, an objection has been raised that NOIDA is Statutory Authority and being a body corporate, it is liable to be arrayed as a respondent. But in the present case the Applicant have arrayed the Chief Executive Officer as respondent who has no personal role in functioning of the authority and he is only an officer. In such circumstances no relief can be claimed against the Chief Executive Officer, NOIDA.

Moreover, in the reply filed by the State and its authorities (Respondent Nos. 1, 2 and 3), it has been clearly stated that when the official visited the place he found that the construction is being carried in presence of some residents of the same sector and R.W.A. officials. But none of the residents or the concerned R.W.A. officials have been made party respondent in this case. It is incumbent on the part of the Applicant to have made the persons as party to the proceedings who have done the construction or on whose behalf it was attempted to be made. In such a situation instant application cannot be sustained for want of necessary party. In other words, instance application is one which suffers from non-joinder of parties.

16. It is important to note here that jurisdiction of the Tribunal is over a case where substantial question relating to environment is involved. Secondly, such question arises out of an implementation of the enactments specified in Schedule I. Thirdly, the Tribunal is only to hear the disputes arising from the questions referred to the aforesaid provisions and settle such disputes and pass orders thereon. In this application relevant facts attracting the jurisdiction of the Tribunal are lacking.

This view finds support from the principle laid down by a larger Bench of this Tribunal in the case of **Forward Foundation, A Charitable Trust and Ors. Vs. State of Karnataka and Ors**, 2015 ALL (I) NGT Reporter (2) (Delhi) 81. In the said case it was observed as under:

“Furthermore, the 'cause of action' has to be complete. For a dispute to culminate into a cause of action, actionable under Section 14 of the NGT Act, 2010, it has to be a 'composite cause of action' meaning that, it must combine all the ingredients spelled out under Section 14(1) and (2) of the NGT Act, 2010. It must satisfy all the legal requirements i.e. there must be a dispute. There should be a substantial question relating to environment or enforcement of any legal right relating to environment and such question should arise out of the implementation of the enactments specified in Schedule I.

17. It is a clear case of the respondents that when the complaint was made with regard to an unauthorized construction the official who visited the site found that as a matter of fact, the construction was being carried on in the presence of residents of same sector and even R.W.A. officials. It is interesting to note here that the Applicants have made the Secretary, R.W.A. of the block as Respondent No.5, but not the persons of the block or other officials of R.W.A. in whose presence the construction was being made. The Secretary, R.W.A. has filed his reply and supported the case of the Applicants. Such circumstances cast a shadow of doubt on the case of the Applicant and the grievance raised by them before this Tribunal. The inevitable conclusion is that the Applicant has approached the Tribunal without disclosing the true and essential facts, as to when the cause of action first arose, the persons who are involved in raising the alleged unauthorized construction and the authority concerned who has to take care of the construction carried out which relates to public road/park/passage, as given under the order of Chief Secretary dated 29.10.2009 (Supra).

18. As it is a case of the applicants that construction is being carried out in a park, the question raised by them is more of violation of Town Planning Act, and do not pose a substantial question of environment. When a

construction is made in a park, it can be said that reduction in such area will have environment effect. But the applicant has to demonstrate that it is a substantial question of environment and that too arising from implementation of environmental regulations. Therefore, in the instant case, there is an absence of substantial question of environment arising out of environmental regulations. The applicant has also pleaded in respect of noise pollution which would emanate from the loud speaker in the temple. Even the requisite details with relevant facts or any evidence in support of the allegations have not been incorporated. It would suffice to say that it is the case of the applicant himself that the alleged temple is under construction and according to the respondents the said construction was stopped in between. Then there is no question of any loud speaker being used in the temple so as to emanate any noise pollution.

Resultantly, this Tribunal would not entertain this petition as the nature of dispute is not within the scope of Section 14 of the National Green Tribunal Act, 2010. This view of ours finds support in the case of *Ojasvi Party Vs. MoEF (O.A No. 25/2016)* decided by the Tribunal on 13.01.2016.

- 19.** Therefore, in absence of the necessary party, non-disclosure of cause of action and lack of true facts, this

Tribunal cannot grant an indulgence in the present application. There is no merit in the application and therefore, deserves to be rejected.

- 20.** Consequently, Original Application No. 458 of 2016 is dismissed without any order as to cost.



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Justice Swatanter Kumar
(Chairperson)

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Justice Raghuvendra S. Rathore
(Judicial Member)

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Dr. Ajay. A. Deshpande
(Expert Member)

New Delhi.
Dated: 13th July, 2017

NGT