

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

(By Video Conferencing)

Original Application No. 559/2019

(With report dated 05.02.2021)

Sarvesh Dangwal

Applicant

Versus

State of Uttarakhand

Respondent

Date of hearing: 15.03.2021

**CORAM: HON'BLE MR. JUSTICE ADARSH KUMAR GOEL, CHAIRPERSON
HON'BLE MR. JUSTICE SHEO KUMAR SINGH, JUDICIAL MEMBER
HON'BLE DR. NAGIN NANDA, EXPERT MEMBER**

Respondent: Mr. Mukesh Verma, Advocate for UEPPCB

ORDER

1. A report was sought from the Uttarakhand State Pollution Control Board with reference to the allegation of violation of environmental norms by Arborea Luxury Homes, Tarla Nagal, Kulhan, Dehradun, having a swimming pool and 96 apartments.

2. The matter was considered in the light of report received. Vide order dated 15.01.2020, it was observed:-

“ The report acknowledges extraction of groundwater but the explanation for not taking action is that prosecution was initiated and report was sent to Central Ground Water Board (CGWB), Dehradun.

There can be no dispute with a proposition that mere initiation of prosecution for the past violation is no bar to prohibiting current illegal action and recovering compensation on 'Polluter Pays' principle. The Uttarakhand State PCB being a regulator under the provision of the Water (Prevention and Control of Pollution) Act, 1974 can certainly exercise its jurisdiction in the matter, which has not been done.

Let the State PCB take further action after following due procedure of law and furnish a compliance report to the Tribunal before the next date by email at judicial-ngt@gov.in."

3. The matter was last considered on 08.10.2020 in light of further report of the CPCB dated 07.10.2020 showing that the violation of environmental norms was still continuing. The Tribunal directed remedial action and filing of compliance report. The relevant extracts from the order are as follows:-

"3. Accordingly, the report dated 07.10.2020 has been filed by State PCB to the effect that the criminal complaint has been filed on 04.09.2020 under the Water (Prevention and Control of Pollution) Act, 1974, alleging that a building has been constructed without NOC from the State PCB. 96 flats have been constructed with STP, which is without consent to establish/operate under the Water (Prevention and Control of Pollution) Act, 1974 and the Air (Prevention and Control of Pollution) Act, 1981. Notice for closure was issued on 21.03.2017 but since 40 flats were inhabited, the closure was not practical.

4. We are surprised at the repeated stand taken by the State PCB in not doing its duty and in a way supporting perpetuation of illegality instead of taking effective remedial action against the violation of law. The inference is either there is incompetence or collusion which needs to be looked into at appropriate level and action taken against such incompetence and collusion. The least which could be done was assessment and recovery of compensation, apart from black-listing of the law violator. Merely, because an irreversible illegality had been committed, the law cannot be helpless. First, there was apparent failure or collusion in violation of law being allowed and thereafter, there is unwillingness to enforce the law inspite of order of this Tribunal.

5. Accordingly, the State PCB may take further effective measures in the matter in accordance with law. The vacant flats may need to be sealed till the law is complied with. A compliance report may be filed before the next date by e-mail at judicial-

ngt@gov.in preferably in the form of searchable PDF/ OCR Support PDF and not in the form of Image PDF.”

4. Accordingly, an action taken report has been filed by the State PCB on 05.02.2021 as follows:

- “1. As per the Inspection Report of Uttarakhand Pollution Control Board's Regional Office, Dehradun, dated 27.10.2020, the Arboria Luxury Home, Dehradun was commissioned in year 2013, which is of 96 flats, all are occupied by the residents. For domestic effluent, STP having 60 KLD capacity is installed, which was found operational at the time of inspection. **Consent to operate was not taken by Society yet. As per the inspection report, the society is utilizing two borewell of capacity 7.5 HP and 5.0 HP respectively and society has not obtained permission from the Central Ground Water Board. The matter has been referred to CGWB, Dehradun for necessary action. Annexure-1**
3. The compliant case against the unit M/s Arboria Luxury Home, Tarla Nagla, Kulhan, Dehradun is under trial in the designated court ACJM V, Dehradun.
4. As per order no. UKPCB/HO/Gen-183-440/2021/57, dated 19.01.2021, **Uttarakhand Pollution Control Board has imposed a sum of rupees ₹14,66,250/- (Rs. Fourteen Lakh Sixty Six Thousand Two Hundred Fifty only) as Environment Compensation on M/s Arboria Luxury Home, Tarla Nagla, Kulhan, Dehradun on dated 19-01-2020. (Annexure-2)”**

5. From the above, it is seen that the project is functioning without statutory consent to operate and also extracting ground water without the requisite permission. The compensation imposed is insignificant and does not cover the entire period of violation and does not ensuring action against continuing violation for which compensation must progressively include element of deterrence to compel compliance. The compensation amount has not even been recovered.

6. In view of above, let the State PCB take further remedial action to ensure compliance of environmental norms and fix continuing

compensation on rising scale till compliance, following due process of law.

7. We have not found it necessary to issue notice to the alleged violator as it is to be heard by the regulatory authority in exercise of its statutory power and remedies can be taken against the decision of the statutory regulator.

The application is disposed of.

Adarsh Kumar Goel, CP

S.K. Singh, JM

Dr. Nagin Nanda, EM

March 15, 2021
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