

Item No. 01

(Court No. 1)

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

(By Video Conferencing)

Original Application No. 139/2019
(Earlier O.A. No.06/2018)

(With report dated 18.03.2022)

Mahagunpuram Apartment Owners
Association

Applicant

Versus

Ghaziabad Development Authority &Ors.

Respondent(s)

Date of hearing: 25.03.2022

**CORAM: HON'BLE MR. JUSTICE ADARSH KUMAR GOEL, CHAIRPERSON
HON'BLE MR. JUSTICE SUDHIR AGARWAL, JUDICIAL MEMBER
HON'BLE MR. JUSTICE ARUN KUMAR TYAGI, JUDICIAL MEMBER
HON'BLE PROF. A. SENTHIL VEL, EXPERT MEMBER
HON'BLE DR. AFROZ AHMAD, EXPERT MEMBER**

Applicant: Mr. Shighra Kumar & Mr. Sanjeev Kumar, Advocates for the
Applicant

Respondent(s): Mr. Yagyawalkya Singh, Advocate for GDA
Mr. Pradeep Misra & Mr. Daleep Dhyani, Advocates for UPPCB

ORDER

1. This application has been registered to consider the compliance report filed by the Ghaziabad Development Authority (GDA), in pursuance of order of this Tribunal dated 20.08.2018 in O.A. No. 06/2018 as follows:-

*“The primary grievance raised by the Applicant is that Respondents should strictly comply with the **conditions of Environment Clearance Certificate dated 22nd March, 2017, which is placed on record as Annexure A/4. A bare perusal of the same in the description chart, reveals that plot area is 54630 sq. metres. There are specific conditions laid down in the said environmental clearance, wherein condition no. 10 mentions that 15 % of the total plot area shall be compulsorily made available for green belt development, including the periphery of green belt.***

In the instant case, the submission of the Learned Counsel for the Applicant is that the said condition no. 10 has not been complied with as 15 % of the total plot area of 54630 sq. metres has not been kept for green belt.

Consequently, Ghaziabad Development Authority is directed to comply with the specific condition no. 10 of the Environmental Clearance. In other words, the Respondent Nos. 2, 3 and 4 are required to keep 15 % of the area as green belt out of the total plot area of 54630 sq. metres. The Development Authority shall ensure that the said requisites area is left out for the green belt. In case of noncompliance, the Development Authority would be free to take action against the Respondents, within a period of two months.

The compliance report shall be sent by Ghaziabad Development Authority to the Tribunal, which shall be listed before the Court, sooner it is received, after being registered separately.”

2. The matter was earlier considered on 08.07.2021. It was found that there was non-compliance of Condition No. 10 of Environmental Clearance dated 22.03.2017, granted by SEIAA, UP, as shown by the compliance status report filed by the Ghaziabad Development Authority (GDA). The Tribunal found that the interpretation of the GDA could not be accepted for calculating the area. The Tribunal accordingly directed Vice Chairman of GDA to ensure compliance and remain present with compliance report by video conferencing. Operative part of the order is reproduced below:-

“1...xxx.....xxx.....xxx

2. A report has been filed by the GDA about the status of compliance of condition No. 10 of the EC dated 22.03.2017, granted by the SEIAA, UP requiring 15% of the plot area to be left for green belt development. Since the plot area is 54630 sq.m., 15% had to be calculated on that basis. According to the report dated 24.01.2019 filed by the GDA, 15% has been calculated on **net plot area after excluding land under the road etc. and on that basis it is stated that there is a compliance.** This stand is challenged by the applicant by submitting that 15% is to be taken as per the total plot area and not after making exclusion for road or other areas.

3. We find the stand of the applicant to be as per EC conditions and the stand taken by the GDA against the same. It is difficult to understand why the GDA is taking stand against clear stipulation in the EC conditions and direction of this Tribunal in the order quoted earlier.

4. **Accordingly, we direct the Vice Chairman, GDA to ensure compliance and remain present in person by video conferencing with the compliance report. We also direct that State PCB to initiate coercive measures against the project for the patent violations, in accordance with law and file a compliance report before this Tribunal by e-mail at judicial-nqt@gov.in preferably in the form of searchable PDF/ OCR Support PDF and not in the form of Image PDF.”**

3. The matter was last considered on 03.02.2022 in the light of compliance report filed by the State PCB dated 31.01.2022, acknowledging the continued violation for which environmental compensation of Rs. 14 crores (approx.) was assessed against the Project Proponent (PP), apart from issuing other directions required for compliance of law. As against the stand of the State PCB, GDA claimed compliance on the basis which had been earlier rejected. The Secretary, GDA who was present in person on being confronted, undertook to take remedial measures. The operative part of the order is reproduced bellows:-

“3. In pursuance of the above, compliance report has been filed by GDA on 10.12.2021. Compliance report has also been filed by UP State PCB on 31.1.2022. In the report of the State PCB it is stated as follows:-

“2. Compliance and Action Taken Report:

In compliance of Hon'ble Tribunal's orders dated 08.07.2021, site was inspected by Board's officers on 16.12.2021. During inspection, status of green belts marked as Pockets A, B, C and D on the map approved by Ghaziabad Development Authority were verified on ground. It was observed that encroachment in some way or other has been done on green belts of Pockets A, B and D, details of same are as below:

*i) **Pocket A**-The main entrance road of the society has been shown as a 9.0 meter road in the map approved by the Authority, however, its width has been increased due to which there is partial encroachment on green belt of Pocket A. Also, volleyball play area has been developed in the green belt and same cannot be categorized as green belt as per MoEF norms as laid down in condition number 67 of the environmental clearance which clearly states that as per MoEF norms the green belt shall comprise of 50% trees, 25% shrubs and 25% grass. Green belt area of Pocket A has been shown as 2448.08 square meters on approved map.*

ii) **Pocket B**-Again, the main entrance road of the society has encroached partially on the green belt of Pocket B. Also, DG sets have been installed on this green belt area. Green belt area of Pocket B has been shown as 1017.00 square meters on approved map.

iii) **Pocket C**-Green belt area of Pocket A has been shown as 1915.00 square meters on approved map. No major encroachment was observed in this pocket.

iv) **Pocket D**-Temple has been built on part of the green belt defined as Pocket D on the map approved by Ghaziabad Development Authority. Green belt area of Pocket A has been shown as 435.00 square meters on approved map.

Besides these pockets, an area of around 7679.78 sqm has been mentioned as master plan green area in the map approved by the Authority but same has not been developed by the project proponent and comprises mostly of weeds and few trees.

In view of above encroachments, Revenue Department was requested to do a joint survey with Board and submit report regarding green belt area in the project. Joint survey by Revenue Department and Board has been done on 28.01.2022 in presence of Mr. Anuj Vinod, (AGM) Project. Copy of the report is annexed as Annexure I of the report, major findings of the report are as below.

i) **Pocket A**-Green belt in this pocket which has been shown as 2448.08 sq.m. on the map measures to around 2005.81 sq.m. on site.

ii) **Pocket B**-Green belt in this pocket which has been shown as 1017.00 sq.m. on the map measures to around 182.29 sq.m. on site.

iii) **Pocket C**-Green belt in this pocket which has been shown as 1915.00 sq.m. on the map measures to around 1654.50 sq.m. on site.

iv) **Pocket D**-Green belt in this pocket which has been shown as 435.00 sq.m. on the map measures to around 38.52 sq.m. on site.

v) Measurement of Master Plan Green area has not been done by the team as same has not been developed into a green belt till date. **Thus, as is evident from above inspection note, green area, in Pockets A, B, C and D shown as 5815.08 sq.m. on the map actually measures to around 3881.81 sq.m. only and is clear violation of the map approved by the Authority.**

Although green belt of 13,494.86 sq. m. (Developed area + Master Plan Green Area) has been earmarked on the approved map, same has not been developed and

maintained in toto by the project proponent. Considering the total plot area of 54,630 sq.m., project proponent had to develop green belt area of 8194.50 sq. m. as per condition number 10 of the environmental clearance which states that 15% of the total plot area should be green belt area. As per joint report submitted by revenue department, only 7.2% of the plot area has been found to be green during site verification.

Ghaziabad Development Authority vide letter dated 08.10.2021 has already directed the project proponent to reserve area earmarked as green area in approved map as green area only, copy of same is enclosed as Annexure II.

Although, representative of project proponent has brought to the notice of joint team on 28.01.2022 that the temple and volleyball pitch has been developed by RWA and not by the builder, no documentary proof of same could be furnished so his claims have not been taken into consideration.

Imposition of Environmental Compensation

In present matter, Board has relied upon Hon'ble Tribunal's order dated 06.01.2022 in O.A. 549/2019 in which following observation has been made:-

"....5. In these circumstances, the liability of the Project Proponent was required to be assessed in terms of orders of the Hon'ble Supreme Court in Goel Ganga Developers India Pvt. Ltd. vs UoI equal to the 10% of the project cost. Though the project cost is not mentioned, having regard to the fact that there are 12000 units for construction, project cost may extent to thousands of crores. The joint Committee constituted by the Tribunal has failed to follow the directions of the Hon'ble Supreme Court on the aspect of assessment of appropriate compensation and gone by norms laid down by some authority contrary to norms laid down by the Hon'ble Supreme Court which may merely encourage violations and not act as deterrent...."

Accordingly, Hon'ble Supreme Court's order dated 10.08.2018 in Civil Appeal 10854 of 2016 has been perused. The portion of the order relied upon is as below:

"...57. Having held so we are definitely of the view that the project proponent who has violated law with impunity cannot be allowed to go scot-free. This Court has in a number of cases awarded 5% of the project cost as damages. This is the general law. However, in the present case we feel that damages should be higher keeping in view the totally intransigent and unapologetic behaviour of the project proponent. He has maneuvered and manipulated officials and authorities. Instead of 12 buildings, he has constructed 18; from 552 flats the

number of flats has gone upto 807 and now two more buildings having 454 flats are proposed. The project proponent contends that he has made smaller flats and, therefore, the number of flats has increased. He could not have done this without getting fresh EC. With the increase in the number of flats the number of persons, residing therein is bound to increase. This will impact the amount of water requirement, the amount of parking space, the amount of open area etc. Therefore, in the present case, we are clearly of the view that the project proponent should be and is directed to pay damages of Rs. 100 crores or 10% of the project cost whichever is more..."

Information with regards to cost of construction and cost of land was received from the project proponent, this amounted to Rs. 279.10 Crores. In this 74.92 Crores has been shown as cost of land and Rs. 204.18 Crores has been shown as cost of construction, copy of valuation sheet has also been received to verify it. Copy of same is annexed as Annexure III.

Thus, in accordance with above order of Hon'ble Supreme Court and assessing the gravity of violations made by the project proponent in Civil Appeal 10854 of 2016, environmental compensation in present matter has been computed at 5% of the project cost, which has been stated as a general law by Hon'ble Supreme Court. Accordingly, environmental compensation of **Rs. 13,95,50,000/- (Rs. Thirteen Crores Ninety Five Lakhs and Fifty Thousand)** has been assessed against the project proponent in present matter and same has been recommended along with prosecution of Directors of the developer M/s Mahagun Real Estate Pvt. Ltd.

3. Recommendations

In view of blatant violations and utilization of environmental compensation, following recommendations are suggested.

- i. M/s Mahagun Real Estate Pvt Ltd, promoters of Mahagunpuram project in Ghaziabad should deposit environmental compensation of Rs. 13,95,50,000/- (Rs. Thirteen Crores Ninety Five Lakhs and Fifty Thousand) with State Pollution Control Board.
- ii. M/s Mahagun Real Estate Pvt Ltd should submit a detailed EC utilization plan for 50% of the environmental compensation imposed, This plan should primarily be focused on improvement of environment within the Mahagunpuram society and part of it may be utilized in collaboration with district authorities for improvement of environmental services/dense plantation within vicinity of the society only. Utilization shall be subject to approval of Hon'ble Tribunal.
- iii. Area defined as Master Plan Green area should be used for dense forestry by using techniques like Miyawaki.

iv. Ghaziabad Development Authority should take necessary action against the project proponent for alterations made in green belts violation of approved plan.”

4. In the report of GDA it is again claimed that there is a compliance which is repetition of the stand taken earlier and is in conflict with the stand of the State PCB which is correct stand.

5. **Faced with the above, the Secretary GDA, who is present in person as Vice Chairman is said to be on leave, submitted that further action will be taken and compliance ensured within next 15 days. Let further action be taken in accordance with law and further compliance report filed within 15 days** by e-mail 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. The nature of plantation and status of survival be also specified in the report. The State PCB is free to take further remedial action with regard to past violations following due process of law.”

4. In pursuance of above, compliance report has been filed by GDA which claims partial compliance and seeking time for further action.

Relevant extracts from the report are:-

“A. That the total green belt available currently in the project is 4007.55 sqm (in pocket A,B,C,D) and 7679.78 sqm (Master Green Area) which brings the total to 11687.33 which is 21.39 % of the total plot area i.e. 54630.00 which is in consonance with the EC specific condition 10 which requires 15% of the total Plot Area to be green belt.

B. That pursuant to Pocket A the major encroachments were the main entrance road whose width is more than what is approved by the authority. Also the volley ball area is developed on the green belt and toilets were also built. The authority took action on the same and destroyed both the toilets the photograph of the destruction is annexed as ANNEXURE A. The Volley Ball and Badminton Courts built on around 1364 Sqm of land was destroyed and the encroachment was removed after the destruction the said land was earth filled and plantation was done now the area is developed as Green Belt (ANNEXURE A). That in Pocket A around 355 Sqm in roads and 23.12 Sqm around the swimming Pool is still under encroachments efforts are made to remove the encroachment but the residents of the society as well as the AOA is not allowing for the same. A complaint regarding the same is also sent to SHO Kavinagar the same is annexed herein as ANNEXURE B.

The status of Pocket A as on date is herein under:-

Approved Green Belt	Green Belt as per the Revenue department and UPPCB joint survey	Green Belt on which encroachment is removed	Green Belt available in Present	Green Belt with encroachment
2448.08	2005.81	302.17 (Badminton and Volley Ball Court)	1862	585.12

C. That pursuant to pocket B the major encroachments were the place where generators are kept and road. Both the places were covered with PCC Flooring also a panel room was built on the same. To remove the encroachment the road was destroyed and after earth filling a beautiful green area is developed on the same the photographs are hereinafter attached as ANNEXURE C. However during this process of removal of encroachments the team faced tremendous pressure and opposition from the side of the AOA and residents (photographs of the same is hereinafter annexed as ANNEXURE D) because of the same further encroachments could not be removed. A complaint regarding the same is also sent to SHO Kavinagar (ANNEXURE B) but because of the Model Code of Conduct into effect in Uttar Pradesh we could not get the desired number of police force for the removal of the encroachments.

The status of Pocket B as on date is herein under:-

Approved Green Belt	Green Belt as per the Revenue department and UPPCB joint survey	Green Belt on which encroachment is removed	Green Belt available in Present	Green Belt with encroachment
1017.00	182.29	72.24 (PCC road near generator)	124.07	892.93

D. That in pocket C no encroachments were done. Still a total station survey was conducted because of the shape of Pocket C was uneven and it was found that in pocket C the total approved green belt area is 1915 out of which 1924.38 was developed as green belt. The photographs of the survey of Pocket C is annexed as ANNEXURE E.

E. That pursuant to Pocket D the major encroachment was a temple constructed by the residents and AOA the same could not be removed because of tremendous pressure and opposition from the side of the AOA and residents. The photographs of the temple is annexed herein as ANNEXURE F.

The status of Pocket D as on date is herein under:-

Approved Green Belt	Green Belt as per the Revenue department and UPPCB joint survey	Green Belt on which encroachment is removed	Green Belt available in Present	Green Belt with encroachment
435.00	38.52	0.00	96.14	338.86 (Temple)

- F. *That the Master Plan Green which measures for 14.06 % of the total project is also now developed and around 1680 trees are now planted and it is developed into a green belt. The photographs of the same is annexed herein as ANNEXURE G.*
- G. *That the total green belt available currently in the project is 4007.55 sqm (in pocket A,B,C,D) and 7679.78 sqm (Master Green Area) which brings the total to 11687.33 which is 21.39 % of the total plot area i.e. 54630.00 which is in consonance with the EC specific condition 10 which requires 15% of the total Plot Area to be green belt.*
- H. *That based on the orders of the Hon'ble NGT dated 08.07.2021 the Vice President of GDA ordered on 8.10.2021 that the green area should be restored as per the Approved Map Plan by the Developer. That on 18.12.2021 notice was issued against the developer under Section 26 A of UP Urban Planning and Development Act 1973 based on the same a show cause notice was also issued to the developer that why is the encroachment in pocket A,B,C and D i.e Volleyball Court, roads, temple, generator and panel room is not removed? The developer replied to the same on 27.12.2021. That based on the reply the GDA issued another order dated 06.01.2022 to remove the encroachments and develop the Pockets as per the Master Plan. That a Departmental Letter was also issued to the developer that the encroachments has to be removed and the development is to be informed to the Hon'ble NGT.*
- I. *That on 11.02.2022 GDA along with police officers went to remove the encroachments itself where they were successful in removal of encroachments near the generator though during this process of removal of encroachments the team faced tremendous pressure and opposition from the side of the AOA and residents and the removal/destruction was stopped by them.*
- J. *That only partial CC was given to the developer. That there were several request by the developer regarding the Completion Certificate but because of the unavailability of the Green Belt/ Green Area the CC was not given. And the same will only be given after the leftover Green Area is developed.*
- K. *That the total encroached green belt in pocket A, B and D is 1861.91 in which Roads, Generator and nearby PCC Flooring, passage near swimming pool developed by builder and Temple*

construction in Pocket D by the residents and the AOA. And the Residents and AOA are protesting and opposing any demolition of the any above mentioned structures. Hence under section 25 of the UP Apartment (Promotion of Construction Ownership and Maintenance) Act 2011 an F.I.R is already registered against the Developer, President and Secretary of the AOA. The same is hereinafter annexed as ANNEXURE H

- L. That the total green belt available currently in the project is 4007.55 sqm (in pocket A,B,C,D) and 7679.78 sqm (Master Green Area) which brings the total to 11687.33 which is 21.39 % of the total plot area i.e. 54630.00 which is in consonance with the EC specific condition 10 which requires 15% of the total Plot Area to be green belt. Though the GDA is committed to remove the encroachments and hence please grant 30 days' time to remove the other encroachments present.”***

5. We have heard learned counsels for the applicant, State PCB and GDA. Learned Counsel for the applicants point out contradiction in the report which on the one hand seeks time for compliance, on the other falsely states that there is compliance on erroneous and repeatedly rejected basis, contrary to the stand of the PCB and earlier orders of this Tribunal. It is patent that the EC condition has still not been complied with for which GDA needs to be held accountable. Order of the State PCB for payment of compensation and taking further measures has also not been complied with. State PCB needs to take coercive measures. GDA in coordination with any other concerned authority needs to take immediate steps for compliance of mandate of law.

6. In view of above, we direct the State PCB and the GDA to ensure compliance of directions already issued, taking such coercive measures as necessary and compliance report filed by email at judicial-ngt@gov.in preferably in the form of searchable PDF/ OCR Support PDF and not in the form of Image PDF. The Vice Chairman, GDA may remain present on the next date by video conferencing. The GDA may ensure that the builder does not to create any further third party right, till compliance.

The State PCB and GDA may put the PP to notice of this proceeding for its response, if any, before this Tribunal, within one month from today.

List for further consideration on 15.07.2022.

A copy of this order be forwarded to the Vice Chairman, GDA and State PCB by email for compliance.

Adarsh Kumar Goel, CP

Sudhir Agarwal, JM

Arun Kumar Tyagi, JM

Prof. A. Senthil Vel, EM

Dr. Afroz Ahmad, EM

March 25, 2022
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