Item No. 1

BEFORE THE NATIONAL GREEN TRIBUNAL
CENTRAL ZONE BENCH, BHOPAL
(Through Video Conferencing)

Original Application No. 14/2021(CZ)
(I.A. No. 31/2022)
(I.A. No. 32/2022)

Residents of Surendra Manik — Applicant(s)

Versus

Girija Colonizers & Developers & Ors. — Respondent(s)

Date of hearing: **17.05.2022**

CORAM: HON'BLE MR. JUSTICE SHEO KUMAR SINGH, JUDICIAL MEMBER
HON'BLE DR. ARUN KUMAR VERMA, EXPERT MEMBER

For Applicant(s): Mr. Naveen Ahuja, Adv.

For Respondent(s): Mr. Sachin K. Verma, Adv.
Mr. Ravi Kant Patidar, Adv.
Ms. Parul Bhadoria, Adv.
Ms. Gunjan Chowksey, Adv.
Ms. Samiriddhi Sharma, Adv.

ORDER

1. **(I.A. No. 31/2022)**

This I.A. is reported to be pending. The application relates to the adjournment of the hearing of the case and moved on 27.04.2022. Since the matter was adjourned, the **I.A. No. 31/2022 stands disposed of**, as no further relief has been prayed.

2. **(I.A. No. 32/2022)**

Learned counsel for the respondent pressed this application and argued that the State Pollution Control Board should be directed to give an opportunity of hearing to the respondents. Learned Counsel appearing for the State Pollution Control Board Ms. Parul Bhadoria has submitted that the proceedings are going on in accordance with law and under consideration

before the Board and the Board will act in accordance with law. With the concurrence of the both the learned counsels the **I.A. No. 32/2022 stands disposed of**, in light of the fact that Ms. Parul Bhadoria has conceded to proceed in accordance with law.

Original Application No. 14/2021

3. The issue of discharge of untreated water into the open land and non establishment of rain water harvesting system has been raised in this application. It is alleged that M/s Girija Colonizers and Developers has taken the task of carrying out the development activity of a project namely "Surendra Manik", whereby 346 units/dwellings are being constructed and the same is ongoing as on date in the city of Bhopal.

4. The Original application highlights the issue of non-operation of the sewage treatment plant and non-establishment of rain water harvesting system which should have been established by the builder way back in the year 2013 in terms of the permission accorded by the Municipal Corporation on 20.09.2013 and the Town & Country Planning on 26.04.2013, but on the contrary the rain water harvesting system has not been set-up , which is a mandatory condition for protection of ground water and the Sewage Treatment Plant also has not been made functional, rather the entire sewage is being drained on an open land. The present application also highlights the inaction on the part of the non-applicant officials who are entrusted with the duty of taking immediate action against the polluters.

5. The matter was taken up on 21.05.2021 and a committee consisting of MP State Impact Assessment Authority (MPSEIAA), Bhopal Municipal Corporation and Madhya Pradesh Pollution Control Board was directed to submit a factual and action taken report. The joint committee has submitted the report along with observations made during the site visit, which are as follows :

    1. The residents of Surendra Manik housing society Shri Devendra Chouksey, House no. 56, Shri Madhur, House no. 224 and

Shri R. K. Mishra, House no. 57 were present at the time of visit. Mr Prakash Mande, Site-Office in charge of M/s Girija Colonizers & Developers, was also present at the time of inspection.

2. GPS location of the site is recorded using a mobile-based GPS application. The recorded latitude and longitude are marked on the Google Map and photographs taken during the inspection. The Google map of the site with duly marked locations of STP, shops, and main gate/entrance of the society is attached for observation.

3. As shown in the Google map, the STP is located at the South-West corner of the society and shops are located in the South-West direction on the approach road of the society near the entrance gate of the society.

4. There are 07 gardens provided inside the society. The housekeeping inside the society was found clean.

5. The open space, parking space and internal roads are constructed using pebble blocks.

6. As per the information collected during inspection, the Surendra Manik housing project is planned for construction of a total 346 no. of dwelling units, out of which 180 have been constructed and 125 are occupied by the residents.

7. Committee observed that the built-up area of the constructed buildings is above 20000 square meter and therefore attracts environmental clearance under the EIA notification 2006.

8. The water supply for domestic purposes is supplied through borewells and municipal water supply (Narmada Water Supply). Estimated water demand for present occupancy of 125 families is approx.94 KLD (0.094 MLD) and sewage generation is approx.75 KLD (0.075 MLD).

9. One natural drain is passing through the center of the society in front of House no. 79 and it joins a nalli outside the boundary of the society.

10. The individual house hold drainage pipe is provided on the back space of each house and it is connected with a 6-inch DIA underground PVC pipe line which is ultimately connected with the STP. Similarly, sewage line is laid down parallel to this line with intermediate manholes and ultimately connected to the STP. The sewage is sent to STP through underground drain.

11. It is observed that the rainwater collected from each roof- top is connected to the household drainage system.

12. Rain-water Harvesting system is not found in society. The entire rain-water gets mixed with the sewage and flows into open land near the society.

13. The residents of the society informed that the waste water from the shops located outside the society premises is discharged into the sewer line of the society due to which the drainage system is choked and it overflows through the toilet traps inside the houses. The Committee observed that the size of the drainage system is small in comparison to the incoming flow.

14. STP is located at the South-west corner of the society and at the time of inspection it was not operational and sewage water found accumulated inside and around the STP was overflowing from one side of the tank without treatment.

15. It was observed that the builder has constructed one underground sewage collection tank near the STP. The other units of STP are metallic bio-reactor tank, pressure sand filter, activated carbon filter and filtration units.

16. The design and capacity of the STP is not proper and found under capacity.

17. The untreated sewage from the accumulation tank was discharging outside of the society boundary and mixes into a drain located outside the society premises in the South- East direction.

18. Sewer line chambers located in the open space are found overflowed.

Recommendations of the Committee:

1. The builder shall install an appropriate rainwater harvesting

(RWH) system to collect rainwater from the roof top of individual houses to recharge then groundwater.

2. A separate storm water drainage shall be laid to stop the rainwater from getting mixed with sewage as in the present case of combined drainage system.

3. The size of the existing drainage system of household waste water needs to be redesigned to accommodate waste water generated from households and sent to STP.

4. The wastewater of shops shall be collected through separate drainage lines so that choking and overflow like situation does not arise.

5. The sewer line shall be cleaned on a regular interval to prevent the overflow condition.

6. Sewage treatment plant of appropriate capacity shall be designed and installed, and treated sewage shall be used in flushing and gardening.

7. The builder shall obtain environmental clearance under EIA notification 2006 and consent under Water (Prevention and Control) Act 1974 and Air (Prevention and Control) Act 1981.

8. Environmental compensation of INR 8.485 lacs is to be levied on the builder Girija Colonizers & Developers in regard to the environmental damage caused by the discharge of untreated sewage by them.

6. In response to the joint committee report, the respondent no. 1 has filed a preliminary objection raising the question of very maintainability of the Original Application on the ground that the respondent no. 1 had developed the colony and the maintenance of the colony was in accordance with the terms of agreement and opposite parties are not paying the amount for the maintenance of the colony. It has further been pointed out that the matter comes within the domain of MP RERA and thus beyond the purview of National Green Tribunal.

7. On an objection to the factual report, it has been submitted that the report submitted by the joint committee is completely erroneous and has been

prepared under the influence of some of the residents of Surendra Manik. In response to the above assertions made by the respondent no. 1 learned counsel appearing for the State Pollution Control Board has submitted that the joint report have been submitted by a joint committee consisting the Officers and Scientists of MPSEIAA, Bhopal Municipal Corporation and Madhya Pradesh Pollution Control Board, Bhopal and nothing has been narrated in the objection, which may in any way directly or indirectly influence the Members of the Joint Committee. Thus, the objection raised by the respondents is baseless and thus turned down.

8. The learned counsel for the applicant has submitted that the calculation of Environmental Compensation was not in accordance with law and the matter was taken up by this Tribunal on 11.04.2022 and the Tribunal observed as follows :-

> *"2. We have gone through the application and joint committee report and found that :-*
>
> *i. In para 10 of the application, allegation was that the nonapplicant/respondent has constructed the colony in the area which is approximately 9.15 ha. and the total built up area of all the 346 dwelling is more than 20,000 sq.mtr. and thus environment clearance as envisaged under the EIA Notification, 2006 is required.*
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> *ii. The joint committee report/the factual report submitted by the committee in para 7 reveals that the built up area of the construction is above 20,000 sq. mtr. and therefore attracts the environmental clearance under the EIA Notification, 2006.*
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> *iii. The water supply for domestic purposes is made through bore-well but no permission from the Central Ground Water Authority has been taken for the purpose by the respondents.*
>
> *iv. The design and capacity of the STP is not proper and also found to be under capacity.*

v. *The untreated sewage was reported to be discharging outside the society boundary.*

vi. *Action taken report filed by the State Pollution Control Board does not cover these facts."*

9. Respondent no. 6 Madhya Pradesh State Environmental Impact Assessment Authority (MPSEIAA), in its reply had submitted that the joint committee in its report found that the total build up area is above 20,000 sq. meter and thus, the project proponent must obtain environmental clearance in view of the provisions of EIA Notification, 2006 and since the Respondent no. 1 Project Proponent has carried out the development without obtaining prior environmental clearance. It is a clear violation of the provisions laid down under the EIA Notification, 2006.

10. The matter of construction without environmental clearance coming within the purview of illegal construction or construction in violation of environmental condition or construction without any Environmental Clearance have been discussed in Original Application No. 11/2022 titled Bakir Ali Rangwala Vs. State of M.P. & Ors., relevant portion is quoted below:-

> *"40. The matter of illegal construction in violation of Environmental Laws has again been dealt with by the Hon'ble Supreme Court of India in Civil Appellate Jurisdiction Civil Appeal No. 5041 of 2021 arising out of SLP (C) No. 11959 of 2014 decided on 31.08.2021 where Hon'ble the Supreme Court of India discussed the matter of illegal /unauthorised constructions as follows:-*
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> > "146 *The rampant increase in unauthorized constructions across urban areas, particularly in metropolitan cities where soaring values of land place a premium on dubious dealings has been noticed in several decisions of this Court. This state of affairs has often come to pass in no small a measure because of the collusion between developers and planning authorities."*
> >
> > *"147 From commencement to completion, the process of construction by developers is regulated within the*

framework of law. The regulatory framework encompasses all stages of construction, including allocation of land, sanctioning of the plan for construction, regulation of the structural integrity of the structures under construction, obtaining clearances from different departments (fire, garden, sewage, etc.), and the issuance of occupation and completion certificates. While the availability of housing stock, especially in metropolitan cities, is necessary to accommodate the constant influx of people, it has to be balanced with two crucial considerations – the protection of the environment and the well-being and safety of those who occupy these constructions. The regulation of the entire process is intended to ensure that constructions which will have a severe negative environmental impact are not sanctioned. Hence, when these regulations are brazenly violated by developers, more often than not with the connivance of regulatory authorities, it strikes at the very core of urban planning, thereby directly resulting in an increased harm to the environment and a dilution of safety standards.

Hence, illegal construction has to be dealt with strictly to ensure compliance with the rule of law."

"148 The judgments of this Court spanning the last four decades emphasize the duty of planning bodies, while sanctioning building plans and enforcing building regulations and bye-laws to conform to the norms by which they are governed. A breach by the planning authority of its obligation to ensure compliance with building regulations is actionable at the instance of residents whose rights are infringed by the violation of law. Their quality of life is directly affected by the failure of the planning authority to enforce compliance. Unfortunately, the diverse and unseen group of flat buyers suffers the impact of the unholy nexus between builders and planners. Their quality of life is affected the most. Yet, confronted with the economic might of developers and the might of legal authority wielded by planning bodies, the few who raise their voices have to pursue a long and expensive battle for rights with little certainty of outcomes. As this case demonstrates, they are denied access to

information and are victims of misinformation. Hence, the law must step in to protect their legitimate concerns"

"149 In ***K. Ramadas Shenoy v. Chief Officer, Town Municipal Council,*** *Chief Justice AN Ray speaking for a two judge Bench of this Court observed that the municipality functions for public benefit and when it —acts in excess of the powers conferred by the Act or abuses those powers then in those cases it is not exercising its jurisdiction irregularly or wrongly but it is usurping powers which it does not possess". This Court also held:*

"27…The right to build on his own land is a right incidental to the ownership of that land. Within the Municipality the exercise of that right has been regulated in the interest of the community residing within the limits of the Municipal Committee. If under pretence of any authority which the law does give to the Municipality it goes beyond the line of its authority, and infringes or violates the rights of others, it becomes like all other individuals amenable to the jurisdiction of the courts. If sanction is given to build by contravening a bye-law the jurisdiction of the courts will be invoked on the ground that the approval by an authority of building plans which contravene the bye-laws made by that authority is illegal and inoperative. (See Yabbicom v. King [(1899) 1 QB 444])."

"This Court held that an unregulated construction materially affects the right of enjoyment of property by persons residing in a residential area, and hence, it is the duty of the municipal authority to ensure that the area is not adversely affected by unauthorized construction".

"150 These principles were re-affirmed by a two judge Bench in ***Dr. G.N. Khajuria v. Delhi Development Authority9*** *where this Court held that it was not open to the Delhi Development Authority to carve out a space, which was meant for a park for a nursery school. Justice BL Hansaria, speaking for the Court, observed:*

10. Before parting, we have an observation to make. The same is that a feeling is gathering ground that where unauthorised

constructions are demolished on the force of the order of courts, the illegality is not taken care of fully inasmuch as the officers of the statutory body who had allowed the unauthorised construction to be made or make illegal allotments go scot free. This should not, however, have happened for two reasons. First, it is the illegal action/order of the officer which lies at the root of the unlawful act of the citizen concerned, because of which the officer is more to be blamed than the recipient of the illegal benefit. It is thus imperative, according to us, that while undoing the mischief which would require the demolition of the unauthorised construction, the delinquent officer has also to be punished in accordance with law. This, however, seldom happens. Secondly, to take care of the injustice completely, the officer who had misused his power has also to be properly punished. Otherwise, what happens is that the officer, who made the hay when the sun shined (sic), retains the hay, which tempts others to do the same. This really gives fillip to the commission of tainted acts, whereas the aim should be opposite."

"151. ***In Friends Colony Development Committee v. State of Orissa****, this Court dealt with a case where the builder had exceeded the permissible construction under the sanctioned plan and had constructed an additional floor on the building, which was unauthorized. Chief Justice RC Lahoti, speaking for a two judge Bench, observed :*

"24. Structural and lot area regulations authorise the municipal authorities to regulate and restrict the height, number of storeys and other structures; the percentage of a plot that may be occupied; the size of yards, courts and open spaces; the density of population; and the location and use of buildings and structures. All these have in our view and do achieve the larger purpose of the public health, safety or general welfare. So are front setback provisions, average alignments and structural alterations. Any violation of zoning and regulation laws takes the toll in terms of public welfare and convenience being sacrificed apart from the risk, inconvenience and hardship which is posed to the occupants of the building."

Noting that the private interest of land owners stands subordinate to the public good while enforcing building and municipal regulations, the

Court issued a caution against the tendency to compound violations of building regulations:

> *"25…The cases of professional builders stand on a different footing from an individual constructing his own building. A professional builder is supposed to understand the laws better and deviations by such builders can safely be assumed to be deliberate and done with the intention of earning profits and hence deserve to be dealt with sternly so as to act as a deterrent for future. It is common knowledge that the builders enter into underhand dealings. Be that as it may, the State Governments should think of levying heavy penalties on such builders and therefrom develop a welfare fund which can be utilised for compensating and rehabilitating such innocent or unwary buyers who are displaced on account of demolition of illegal constructions."*

"152 In ***Priyanka Estates International (P) Ltd. v. State of Assam****, Justice Deepak Verma, speaking for a two judge Bench, observed:*

> *"55. It is a matter of common knowledge that illegal and unauthorised constructions beyond the sanctioned plans are on rise, may be due to paucity of land in big cities. Such activitiesare required to be dealt with by firm hands otherwise builders/colonisers would continue to build or construct beyond the sanctioned and approved plans and would still go scot-free. Ultimately, it is the flat owners who fall prey to such activities as the ultimate desire of a common man is to have a shelter of his own. Such unlawful constructions are definitely against the public interest and hazardous to the safety of occupiers and residents of multi-storeyed buildings. To some extent both parties can be said to be equally responsible for this. Still the greater loss would be of those flat owners whose flats are to be demolished as compared to the builder."*

The Court lamented that the earlier decisions on the subject had not resulted in enhancing compliance by developers with building regulations. Further, the Court noted that if unauthorized constructions were allowed to stand or are —given a seal of approval by Court‖, it

was bound to affect the public at large. It also noted that the jurisdiction and power of Courts to indemnify citizens who are affected by an unauthorized construction erected by a developer could be utilized to compensate ordinary citizens.

"153 In ***Esha Ekta Apartments Coop. Housing Society Ltd. v. Municipal Corpn. of Mumbai12****, Justice GS Singhvi, writing for a two judge Bench, reiterated the earlier decisions on this subject and observed:*

> *"8. At the outset, we would like to observe that by rejecting the prayer for regularisation of the floors constructed in wanton violation of the sanctioned plan, the Deputy Chief Engineer and the appellate authority have demonstrated their determination to ensure planned development of the commercial capital of the country and the orders passed by them have given a hope to the law-abiding citizens that someone in the hierarchy of administration will not allow unscrupulous developers/builders to take law into their hands and get away with it."*

The Court further observed that an unauthorized construction destroys the concept of planned development, and places an unbearable burden on basic amenities provided by public authorities. The Court held that it was imperative for the public authority to not only demolish such constructions but also to impose a penalty on the wrongdoers involved. This lament of this Court, over the brazen violation of building regulations by developers acting in collusion with planning bodies, was brought to the fore-front when the Court prefaced its judgment with the following observations:

> *"1. In the last five decades, the provisions contained in various municipal laws for planned development of the areas to which such laws are applicable have been violated with impunity in all the cities, big or small, and those entrusted with the task of ensuring implementation of the master plan, etc. have miserably failed to perform their duties. It is highly regrettable that this is so despite the fact that this Court has, keeping in view the imperatives of preserving the ecology and environment of the area and protecting the rights of the citizens, repeatedly cautioned the authorities concerned against arbitrary*

regularisation of illegal constructions by way of compounding and otherwise."

Finally, the Court also observed that no case has been made out for directing the municipal corporation to regularize a construction which has been made in violation of the sanctioned plan and cautioned against doing so. In that context, it held:

"56. We would like to reiterate that no authority administering municipal laws and other similar laws can encourage violation of the sanctioned plan. The courts are also expected to refrain from exercising equitable jurisdiction for regularisation of illegal and unauthorised constructions else it would encourage violators of the planning laws and destroy the very idea and concept of planned development of urban as well as rural areas."

"154 These concerns have been reiterated in the more recent decisions of this Court in ***Kerala State Coastal Zone Management Authority v. State of Kerala13, Kerala State Coastal Zone Management Authority v. Maradu Municipality, Maradu and Bikram Chatterji v. Union of India****."*

11. Hon'ble the Supreme Court of India in the case reported in LL 2021 SC-14 Civil Appeal in 5231-32 of 2016 of ***Himachal Pradesh Bus Stand Management and Development Authority Vs. The Central Empowered Committee Etc. & Ors.*** has held as follows :-

Environmental Rule of Law

"46. In a constitutional framework which is intended to create, foster and protect a democracy committed to liberal values, the rule of law provides the cornerstone. The rule of law is to be distinguished from rule by the law. The former comprehends the setting up of a legal regime with clearly defined rules and principles of even application, a regime of law which maintains the fundamental postulates of liberty, equality and due process. The rule of law postulates a law which is answerable to constitutional norms. The law in that sense is accountable as much as it is capable of exacting compliance. Rule by the law on the other hand can mean rule by a despotic law. It is to maintain the just quality of the law and its observance of reason that rule of law precepts in constitutional democracies rest on

constitutional foundations. A rule of law framework encompasses rules of law but it does much more than that. It embodies matters of substance and process. It dwells on the institutions which provide the arc of governance. By focusing on the structural norms which guide institutional decision making, rule of law frameworks recognise the vital role played by institutions and the serious consequences of leaving undefined the norms and processes by which they are constituted, composed and governed. A modern rule of law framework is hence comprehensive in its sweep and ambit. It recognises that liberty and equality are the focal point of a just system of governance and without which human dignity can be subverted by administrative discretion and absolute power. Rule of law then dwells beyond a compendium which sanctifies rules of law. Its elements comprise of substantive principles, processual guarantees and institutional safeguards that are designed to ensure responsive, accountable and sensitive governance.

47. The environmental rule of law, at a certain level, is a facet of the concept of the rule of law. But it includes specific features that are unique to environmental governance, features which are sui generis. The environmental rule of law seeks to create essential tools – conceptual, procedural and institutional to bring structure to the discourse on environmental protection. It does so to enhance our understanding of environmental challenges – of how they have been shaped by humanity's interface with nature in the past, how they continue to be affected by its engagement with nature in the present and the prospects for the future, if we were not to radically alter the course of destruction which humanity's actions have charted. The environmental rule of law seeks to facilitate a multi–disciplinary analysis of the nature and consequences of carbon footprints and in doing so it brings a shared understanding between science, regulatory decisions and policy perspectives in the field of environmental protection. It recognises that the 'law' element in the environmental rule of law does not make the concept peculiarly the preserve of lawyers and judges. On the contrary, it seeks to draw within the fold all stakeholders in formulating strategies to deal with current challenges posed by environmental degradation, climate change and the destruction of habitats. The environmental rule of law seeks a unified understanding of these concepts. There are significant linkages between concepts such as sustainable development, the polluter pays principle and the trust doctrine. The universe of nature is indivisible and integrated. The state of the

environment in one part of the earth affects and is fundamentally affected by what occurs in another part. Every element of the environment shares a symbiotic relationship with the others. It is this inseparable bond and connect which the environmental rule of law seeks to explore and understand in order to find solutions to the pressing problems which threaten the existence of humanity. The environmental rule of law is founded on the need to understand the consequences of our actions going beyond local, state and national boundaries. The rise in the oceans threatens not just maritime communities. The rise in temperatures, dilution of glaciers and growing desertification have consequences which go beyond the communities and creatures whose habitats are threatened. They affect the future survival of the entire eco-system. The environmental rule oflaw attempts to weave an understanding of the connections in the natural environment which make the issue of survival a unified challenge which confronts human societies everywhere. It seeks to build on experiential learnings of the past to formulate principles which must become the building pillars ofenvironmental regulation in the present and future. The environmental rule of law recognises the overlap between and seeks to amalgamate scientific learning, legal principle and policy intervention. Significantly, it brings attention to the rules, processes and norms followed by institutions which provide regulatory governance on the environment. In doing so, it fosters a regime of open, accountable and transparent decision making on concerns of the environment. It fosters the importance of participatory governance – of the value in giving a voiceto those who are most affected by environmental policies and public projects. The structural design of the environmental rule of law composes of substantive, procedural and institutional elements. The tools of analysis go beyond legal concepts. The result of the framework is more than just the sum total of its parts. Together, the elements which it embodies aspire to safeguard the bounties of nature against existential threats. For it is founded on the universal recognition that the future of human existence depends on how we conserve, protect and regenerate the environment today.

48. In its decision in ***Hanuman Laxman Aroskar*** *vs* ***Union of India*** *(supra), this Court, speaking through one of us (DY Chandrachud, J.) recognized the importance of protecting the environmental rule of law. The court observed:*

"142. Fundamental to the outcome of this case is a quest for environmental governance within a rule of law paradigm. Environmental governance is founded on the need to promote environmental sustainability as a crucial enabling factor which ensures the health of our ecosystem.

143. Since the Stockholm Conference, there has been a dramatic expansion in environmental laws and institutions across the globe. In many instances, these laws and institutions have helped to slow down or reverse environmental degradation. However, this progress is also accompanied, by a growing understanding that there is a considerable implementation gap between the requirements of environmental laws and their implementation and enforcement — both in developed and developing countries alike

…

156. The rule of law requires a regime which has effective, accountable and transparent institutions. Responsive, inclusive, participatory and representative decision making are key ingredients to the rule of law. Public access to information is, in similar terms, fundamental to the preservation of the rule of law. In a domestic context, environmental governance that is founded on the rule of law emerges from the values of our Constitution. The health of the environment is key to preserving the right to life as a constitutionally recognised value under Article 21 of the Constitution. Proper structures for environmental decision making find expression in the guarantee against arbitrary action and the affirmative duty of fair treatment under Article 14 of the Constitution."

*49. In its first global report on environmental rule of law in January 2019, the United Nations Environment Programme ("**UNEP**") has presciently stated[1]:*

> *"If human society is to stay within the bounds of critical ecological thresholds, it is imperative that environmental laws are widely understood, respected, and enforced and the benefits of environmental protection are enjoyed by people and the planet. Environmental rule of law offers a framework for addressing the gap between environmental laws on the books and in practice and is key to achieving the Sustainable Development Goals.*
>
> *...*
>
> *Successful implementation of environmental law depends on the ability to quickly and efficiently resolve environmental disputes and punish environmental violations. Providing environmental adjudicators and enforcers with the tools that allow them to respond to environmental matters flexibly, transparently, and meaningfully is a critical building block of environmental rule of law."*

50. The need to adjudicate disputes over environmental harm within a rule of law framework is rooted in a principled commitment to ensure fidelity to the legal framework regulating environmental protection in a manner that transcends a case-by-case adjudication. Before this mode of analysis gained acceptance, we faced a situation in which, despite the existence of environmental legislation on the statute books, there was an absence of a set of overarching judicially recognized principles that could inform environmental adjudication in a manner that was stable, certain and predictable. In an article in the Asia-Pacific Journal ofEnvironmental Law (2014), Bruce Pardy describes this conundrum in the following terms[2]:

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[1] *UNEP, 'Environmental Rule of Law First Global Report' (January 2019), pgs viii and 223.*

[2] *Bruce Pardy, 'Towards an Environmental Rule of Law', 17 Asia Pacific Journal of Environmental Law 163 (2014).*

> *"Environmental regulations and standards typically identify specific limits or prohibitions on detrimental activities or substances. They are created to reflect the principles and prohibitions contained in the statute under which they are promulgated. However, where the contents of the statute are themselves indeterminate, there is no concrete rule or set of criteria to apply to formulate the standards. Their development can therefore be highly political and potentially arbitrary.*
>
> *...*
>
> *Instead of serving to protect citizens' environmental welfare, an indeterminate environmental law facilitates a utilitarian calculus that allows diffuse interests to be placed aside when they are judged to be less valuable than competing considerations."*

51. However, even while using the framework of an environmental rule of law, the difficulty we face is this – when adjudicating bodies are called on to adjudicate on environmental infractions, the precise harm that has taken place is often not susceptible to concrete quantification. While the framework provides valuable guidance in relation to the principles to be kept in mind while adjudicating upon environmental disputes, it does not provide clear pathways to determine the harm caused in multifarious factual situations that fall for judicial consideration. The determination of such harm requires access to scientific data which is often times difficult to come by in individual situations.

52. In an article in the Georgetown Environmental Law Review (2020), Arnold Kreilhuber and Angela Kariuki explain the manner in which the environmentalrule of law seeks to resolve this imbroglio[3]:

> *"One of the main distinctions between environmental rule of law and other areas of law is the need to make decisions to protect human health and the environment in the face*

[3] *Arnold Kreilhuber and Angela Kariuki, 'Environmental Rule of Law in the Context of Sustainable Development', 32 Georgetown Environmental Law Review 591 (2020).*

> *of uncertainty and data gaps. Instead of being paralyzed into inaction, careful documentation of the state of knowledge and uncertainties allows the regulated community, stakeholders, and other institutions to more fully understand why certain decisions were made."*

The point, therefore, is simply this – the environmental rule of law calls on us, as judges, to marshal the knowledge emerging from the record, limited though it may sometimes be, to respond in a stern and decisive fashion to violations of environmental law. We cannot be stupefied into inaction by not having access to complete details about the manner in which an environmental law violation has occurred or its full implications. Instead, the framework, acknowledging the imperfect world that we inhabit, provides a roadmap to deal with environmental law violations, an absence of clear evidence of consequences notwithstanding.

53. In the case before us, it is not possible for us to determine in quantifiable terms the exact effect of the construction of the Hotel-cum-Restaurant structure by the appellant and the second respondent on the ecology of the area. Both of them have tried to argue that the number of trees felled by them, in the case of the present construction, is what it would have been, had they only built a bus stand and a parking space. However, what we can record a determination on is the way in which the appellant and second respondent have gone about achieving this object. Specifically, the parties have engaged in the construction without complying with the plans drawn by the appellant's third-party consultants, which were agreed to by them in the RFP. The construction proceeded even when the TCP Department tried to halt it, refusing to approve its plans. Even the post facto refusal by the MOEF for changing the nature of the diverted forest land was not enough to stop the parties. Ultimately, when they were forced to halt the construction by the CEC, they proceeded with it under the guise of an order of this Court which permitted only legal construction. A combination of these circumstances highlights not only conduct oblivious of the environmental consequences of their actions, but an active disdain for them in favour of commercial benefits. While the second respondent was a private entity, they were actively supported in these efforts by the appellant. Hence, it is painfully clear that their actions stand in violation of the environmental rule of law. Whatever else the environmental rule of law may mean, it surely means that construction of this sort cannot receive our endorsement, no matter

what its economic benefits may be. A lack of scientific certainty is no ground to imperil theenvironment.

Role of courts in ensuring environmental protection

54. In a recent decision of this Court in ***Bengaluru Development Authority*** *vs* ***Sudhakar Hegde***[4]*, this Court, speaking through one of us (D.Y. Chandrachud, J.) held:*

> *"107. The adversarial system is, by its nature, rights based. Inthe quest for justice, it is not uncommon to postulate a winning side and a losing side. In matters of the environment and development however, there is no trade-off between the two. The protection of the environment is an inherent component of development and growth…*
>
> *108. Professor Corker draws attention to the idea that the environmental protection goes beyond lawsuits. Where the state and statutory bodies fail in their duty to comply with the regulatory framework for the protection of the environment, the courts, acting on actions brought by public spirited individuals are called to invalidate such actions…*
>
> *109. The protection of the environment is premised not only on the active role of courts, but also on robust institutional frameworks within which every stakeholder complies with its duty to ensure sustainable development. A framework of environmental governance committed to the rule of law requires a regime which has effective, accountable and transparent institutions. Equally important is responsive, inclusive, participatory and representative decision making. Environmental governance is founded on the rule of law and emerges from the values of our Constitution. Where the health of the environment is key to preserving the right to*

[4] *2020 SCC OnLine SC 328*

life as a constitutionally recognized value under Article 21 of the Constitution, proper structures for environmental decision making find expression in the guarantee against arbitrary action and the affirmative duty of fair treatment under Article 14 of the Constitution. Sustainable development is premised not merely on the redressal of the failure of democratic institutions in the protection of the environment, but ensuring that such failures do not take place."

55. In ***Lal Bahadur*** *vs* ***State of Uttar Prades[5]h****, this Court underscored the principles that are the cornerstone of our environmental jurisprudence, as emerging from a settled line of precedent: the precautionary principle, the polluter pays principle and sustainable development. This Court further noted the importance of judicial intervention for ensuring environmental protection. In a recent decision in* ***State of Meghalaya & others*** *vs* ***All Dimasa Students Union****, this Court reiterated the key principles of environmental jurisprudence in India, while awarding costs of Rs. 100 crores on the State of Meghalaya for engaging in illegal coal mining.*

56. The UNEP report (supra) also goes on to note[6]:

"Courts and tribunals must be able to grant meaningful legal remedies in order to resolve disputes and enforce environmental laws. As shown in Figure 5.12, legal remedies are the actions, such as fines, jail time, and injunctions, that courts and tribunals are empowered to order. For environmental laws to have their desired effect and for there to be adequate incentives for compliance with environmental laws, the remedies must both redress the past environmental harm and deter future harm."

57. In its Global Judicial Handbook on Environmental Constitutionalism, the UNEP has further noted[7]:

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[5] *(2018) 15 SCC 407*

[6] *Supra at note 5, pg 213.*

[7] *UNEP, Global Judicial Handbook on Environmental Constitutionalism (3rd edition, 2019), pg 7.*

> *"Courts matter. They are essential to the rule of law. Without courts, laws can be disregarded, executive officials left unchecked, and people left without recourse. And the environment and the human connection to it can suffer. Judges stand in the breach."*

58. The above discussion puts into perspective our decision in the present appeals, through which we shall confirm the directions given by the NGT in its impugned judgment. The role of courts and tribunals cannot be overstated in ensuring that the 'shield' of the "rule of law" can be used as a facilitative instrument in ensuring compliance with environmental regulations.

Illegal activities on forest land

59. We are not traversing unexplored territory. In the past, this Court has clamped down on illegal activities on reserved forest land specifically, and in violation of environmental laws more generally, and taken to task those responsible for it. In a recent three-judge bench decision of this Court in the case of ***Hospitality Association of Mudumalai*** *vs* ***In Defence of Environment and Animals***[8]*, this Court was confronted with a situation involving illegal commercial activities taking place in an elephant corridor. Justice S. Abdul Nazeer, speaking for the Court, held as follows:*

> *"42… the "Precautionary Principle" has been accepted as a part of the law of our land. Articles 21, 47, 48A and 51A(g) of the Constitution of India give a clear mandate to the State to protect and improve the environment and to safeguard the forests and wild life of the country. It is the duty of every citizen of India to protect and improve the natural environment including forests and wild life and to have compassion for living creatures. The Precautionary Principle makes it mandatory for the State Government to*

[8] (2018) 18 SCC 257.

anticipate, prevent and attack the causes of environmental degradation."

60. In ***Goel Ganga Developers India Pvt. Ltd.*** *vs* ***Union of India***[9]*, this Court dealt with a situation in which the project proponent had engaged in construction that was contrary to the environmental clearance granted to it. Coming down on the project proponent, a two-judge bench, speaking through Justice Deepak Gupta, held as follows:*

> *"64. 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 manoeuvred and manipulated officials and authorities. Instead of 12 buildings, he has constructed 18; from 552 flats the number of flats has gone up to 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."*

61. In ***M.C. Mehta*** *vs* ***Union of India***[10]*, a two judge Bench of this Court held that the land notified under Punjab Land Preservation Act,*

[9] (2018) 18 SCC 257
[10] (2018) 18 SCC 397

1900 in the Kant Enclave was to be treated as "forest land". As a result, any construction made on the land or its utilization for "non-forest purposes" without Central Government approval was violative of the Forest Act and therefore illegal. The relevant excerpt of this Court's decision, speaking through Justice Madan B. Lokur, is as follows:

> *"132... R. Kant & Co. and the Town and Country Department of the State of Haryana being fully aware of the statutory Notification dated 18-8-1992 and the restrictions placed by the notification. R. Kant & Co. and the Town and Country Department of the State of Haryana were also fully aware that Kant Enclave is a forest or forest land or treated as a forest or forest land, and therefore any construction made on the land or utilisation of the land for non-forest purposes, without the prior approval of the Central Government, would be illegal and violative of the provisions of the Forest (Conservation) Act, 1980. Notwithstanding this, constructions were made (or allowed to be made) in Kant Enclave with the support, tacit or otherwise, of R. Kant & Co. and the Town and Country Department of the State of Haryana. They must pay for this."*

62. In the present set of appeals, the forest land was allowed to be used by the MOEF for the specific purposes of constructing a 'parking space' and 'bus stand' in McLeod Ganj. MOEF made a conscious decision not to modify the terms of thispermission, even when granted an opportunity to do so. Hence, any construction undertaken by the second respondent, even with the tacit approval of the appellant being a statutory authority under the HP Bus Stands Act, will be illegal.

Jurisdiction of NGT

63. An ancillary issue now remains for our consideration, which is whether the NGT could have adjudicated upon a violation of the TCP Act, which is not an Act present in Schedule I of the NGT Act. In a recent two-judge Bench decision of this Court in ***State of M.P.*** *vs* ***Centre for***

Environment Protection Research & Development[11], *one of us speaking for the Court (Justice Indira Banerjee), held as follows:*

> *"41. The Tribunal constituted under the NGT Act has jurisdiction under Section 14 of the said Act to decide all civil cases where any substantial question relating to environment including enforcement of any right relating to environment is involved and such question arises out of the implementation of the enactments specified in Schedule I to the said Act, which includes the Air (Prevention and Control of Pollution) Act, 1981 and the Environment (Protection) Act, 1986.*
>
> *42. In view of the definition of "substantial question relating to environment" in Section 2(1)(m) of the NGT Act, the learned Tribunal can examine and decide the question of violation of any specific statutory environmental obligation, which affects or is likely to affect a group of individuals, or the community atlarge.*
>
> *43. For exercise of power under Section 14 of the NGT Act, a substantial question of law should be involved including any legal right to environment and such question should arise out of implementation of the specified enactments.*
>
> *44. Violation of any specific statutory environmental obligation gives rise to a substantial question of law and not just statutory obligations under the enactments specified in Schedule I. However, the question must arise out of implementation of one or more of the enactments specified in Schedule I."*

The provisions of the TCP Act required the appellant and second respondent to take prior permission from the TCP Department before

[11] (2018) 9 SCC 781

changing the nature of the land through their construction. Non-conformity with this stipulation led to a violation of their environmental obligations. In any case, this question is academic because the NGT's impugned judgment grounds its decision in the appellant and second respondent's violation of Section 2 of the Forest Act, which is an Act present within Schedule I of the NGT Act.

65. Hence, we direct that the process of demolishing the Hotel-cum-Restaurant structure in the Bus Stand Complex be commenced within two weeks from the date of the judgment and the structure shall be demolished by the second respondent within one month thereafter. In the event of default, the Chief Conservator of Forest along with the administration of district Dharamshala shall demolish the structure and recover the cost and expenses as arrears of land revenue from the second respondent."

12. In view of the above guidelines in ***Goel Ganga Developers India Pvt. Ltd. Vs. Union of India (2018) 18 SCC 397,*** State Pollution Control Board is statutorily bound to proceed to act in accordance with law and the violators of law with impunity cannot be allowed to go scot-free. In Goel Ganga case referred above and in Himachal Bus Stand case referred above, Hon'ble Supreme Court of India has imposed an environmental compensation at the rate of 10 percent of the project cost. Further there are minimum three types of violation :-

1) Construction of the building in violation with EIA Notification, 2006 and assessment of the environmental compensation for the construction in violation of EIA notification is to be calculated in accordance with the provisions of Goel Ganga case i.e. @10 percent of the project cost.
2) Discharge of sewage / untreated water in that case the calculation of the environmental compensation must be in accordance with the CPCB guidelines or the orders and parameter laid down by the NGT, w.e.f. the date of violation till its continuance.

3) In case of the other violation, the State Pollution Control Board is at liberty to proceed in accordance with law but the calculation must be separately in view of the guidelines referred above and in view of the statutory rules, w.e.f. the violations till its continuance.

13. Learned Counsel appearing for the State Pollution Control Board Ms. Parul Bhadoria has sought a short time of 15 days to submit the Action Taken Report. The Action Taken Report be submitted within 15 days.

List it on **06th July, 2022.**

Sheo Kumar Singh, JM

Dr. Arun Kumar Verma, EM

17th May, 2022
O.A. No. 14/2021(CZ)
PN