T.N. GODAVARMAN THIRUMULPAD

v.

UNION OF INDIA AND ORS.

OCTOBER 17, 2006

[ARIJIT PASAYAT AND S.H. KAPADIA, JJ.]

Environmental laws:

Environment (Protection) Act, 1986—Proposal for development of International Hotel Complex on 315 hectares of land in Vasant Kunj, identified for urban use in Master Plan for Delhi 2001—Direction to obtain environmental clearance—Supreme Court holding 92 hectares of land out of 315 hectares as constraint area—Violation of environmental norms by DDA and allottees, construction works carried out without obtaining environmental clearance—Report of Expert Committee—Recommendation that Ministry of Environment and Forests and Supreme Court to impose penalty on violators—Acceptability of—Held: 92 hectares of land declared as constraint area—MoEF to take decision on the same basis—Constructions had to be made after obtaining requisite clearance—Impression given by DDA to the parties participating in auction that all requisite clearances had been obtained, though it does not appear to be so—Thus, MoEF to take decision with regard to remedial measures including imposition of amounts as costs within two months—Public interest litigation.

In the Master Plan for Delhi 2001, 315 hectares of land situated in the Vasant Kunj area was identified for urban use. Delhi Development Authority proposed the development of International Hotel Complex. By order dated 13.9.1996 this Court directed that the proposed Complex of DDA to obtain environment clearance from the Authorities under the Environment (Protection) Act, 1986 before carrying out any construction or development in the area. Thereafter, by order dated 19.8.1997, this Court held that 92 hectares of land out of 315 hectares of land was constraint area and only for balance 223 hectares of land constructions have to abide by conditions of clearence. It is alleged that there was violation of environmental norms by respondents. Project proponents commenced construction works without obtaining environment clearance in contravention to the Notification in July

A 2004. Pursuant to the directions of this Court, the Expert Committee gave its report. It recommended that the Ministry of Environment & Forests and Supreme Court may consider imposing a penalty on the project proponents. Hence, the present IAs.

Appellant contended that this Court never held that 92 hectares of land
B are not a part of the ridge; that the order dated 19.8.1997 expressed no opinion whether the land was a part of the ridge; that the Environmental Pollution (Prevention and Control) Authority gave a report that the environmental factors were not in favour of urban development use of land and the entire land should be developed as green; and that the Expert Committee's report is *per se*
C unacceptable as it focused more on regularizing the unauthorized areas rather than on the consequences flowing from the non-observance of the procedure before undertaking any construction.

Respondents contended that their lands were allotted by DDA; that as per Notification No.SO/60(E) dated 27.1.1994 for the first time a provision
D for obtaining environmental clearance by a Central Government (MoEF) before undertaking any new project listed in Schedule-I to the Notification was introduced; that the Notification did not relate to new construction projects and as such did not apply to them; and that the amendment by Notification dated 7.7.2004 postulates *post facto* clearance contemplated for new construction projects undertaken.
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DDA and the allottees *inter alia* contended that the order dated 19.8.1997 clearly stated that 92 hectares of land was constraint area and was not an integral part of Delhi Ridge; that the Notification has never been challenged; that out of the said 92 hectares of land, only 19 hectares of said land are
F sought to be utilized for the purpose of construction; and that it proceeded on a *bona fide* impression that all requisite clearances had been obtained by it and there was no question of acting in *mala fide* manner or irregular manner.

Disposing of the IAs, the Court

G HELD: 1.1. The order dated 19.8.1997 makes the position clear that 92 hectares of land were kept out of consideration and in fact it was clearly declared to be a constraint area. The expression 'constraint area' has its own connotation. A Notification in respect of the land in question has been issued. The said Notification has never been challenged. The EPCA's report dated 6.10.1999 nowhere indicates that the land in question was a part of the ridge.
H Both the EPCA and the Expert Committee's report under consideration refer

to the land as "similar to ridge area". Significantly, the EPCA in its report has taken note of the fact that there is no statutory definition of "ridge". That being so, it would be inappropriate to reopen the whole issue as to whether the land in question was a constraint area or ridge land. A bare reading of the order dated 19.8.1997 makes the position clear that this Court had treated the land as constraint area. [270-F-H; 271-A-B] A

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1.2. In some cases the Expert Committee after public hearing has made the recommendations with certain stipulations. It has been clearly stated that the project can be recommended for environmental clearance. The confusion arose because DDA all through gave an impression to the parties participating in auction that all requisite clearances had been obtained. Had such parties inkling of an idea that such clearances were not obtained by DDA, they would not have invested such huge sums of money. The stand that wherever constructions have been made unauthorisedly demolition is the only option cannot apply to the instant cases, more particularly, when they unlike, where some private individuals or private limited companies or firms being allotted to have made contraventions, are corporate bodies and institutions and the question of their having indulged in any malpractices in getting the approval or sanction does not arise. In most of these cases the constructions are already complete and have become functional. DDA had also made some constructions at the site in question. [271-F-H; 272-A-C] C D

1.3. The MoEF is to take a decision by taking the land as constraint area. It is needless to say that even if the land is held to be constraint area the constructions thereon have to be made after having the requisite clearance. The MoEF would take note of the stands projected by the respondents. The *bona fides* of the respondents are established but at the same time it needs no emphasis that DDA should have been more transparent in ensuring that it was not putting a site for auction where there was scope for litigation. It had definitely created an impression that all necessary clearances had been obtained, though it does not appear to be so. What remains to be decided as to what remedial measures including imposition of such amounts as costs can be taken. The MoEF is to take decision within two months. [272-D-G] E F

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CIVIL ORIGINAL JURISDICTION : I.A. No. 1156 in Writ Petition (Civil) No. 202 of 1995.

(Under Article 32 of the Constitution of India.)

H

A WITH

I.A. Nos. 1192, 756, 1463, 1501 and 1532 in WP (C) 202 of 1995.

Harish N. Salve (A.C.) (N.P.), Prashant Bhushan, Vishal Gupta, Rohit Kumar Singh, Parul Kaur, Sanjay Parikh Anitha Shenoy and A.N. Singh for
B the Petitioner.

Vikas Singh, A.S.G., A. Sharan, A.S.G. U.U. Lalit (A.C.) (N.P.) Arun Jaitley, Dhushyant Dave, Mukul Rohtagi, Altaf Ahmed, Sidhartha Chowdhary, (A.C.), Ravi P. Mehrotra, Anil Katiyar, Vishnu B. Saharya (for M/s. Saharya Co.), Vijay Panjwani, Gopal Singh, Ritu Raj Biswas, A. Subhashini, S. Wasim
C A. Qadri, Kamlendra Mishra, R.K. Dubey, Ajay Siwach, Sandeep Sharma, Pradeep Dahiya, T.V. George, M.P. Meharia, Kuldip Singh, Arun K. Sinha, Sanjay Katyal, R.K. Pandey, A.T.M. Sampath, A.K. Sanghi, A.N. Bardiyar, Aruneshwar Gupta, A. Mariarputham, Ashok Mathur, Anish Ahmed Khan, Ajit Pudussery, Baby Krishnan, Binu Tamta, Sushma Suri, Bharat Sangal, Nina
D Gupta, Shweta Chadha, Akanksha, Meha Kiran, Bina Gupta, C.L. Shau, C.K. Sucharita, Dinesh Kumar Garg, D.N. Goburdhan, Pinky Anand, Geeta Luthra, E.C. Agrawala, E.M.S. Anam, Ejaz Maqbool, G. Prakash, H.S. Parihar, Ramesh Singh, A.T. Patra, Nipun Malhotra (for M/s. O.P. Khaitan & Co.), K.N. Madhusoodhanan, R. Sathish, K.H. Nobin Singh, S. Biswajit Meitei, B.V. Niren, P.H. Parekh, Sandeep Parekh, Ranjeeta Rohtagi (for M/s. P.H. Parekh
E & Co.) Nandini Gore, Jayant Mohan, Manik Karanjawala, S.S. Shinde, V.N. Raghupathy, D.P. Singh, Sanjay Jain, Pravin Bahadur, Meghalee Barthakur, Ravinder Narain, Rajan Narain (for M/s. Rajan Narain & Co.) P.K. Aggarwal, Vinay K. Shailendra, A.D.N. Rao, P.K. Aggarwal, Vinay K. Shailendra, R.S. Suri Chand Kiran, Gyan Mitra, P.K. Jayakrishnan, Dr. K.S. Chauhan, Nidhi Bisaria,
F Madhu Sikri, Musharraf Chowdhry, B.S. Banthia, Shekharprit Jha, K.K. Malviya, Bipin Kumar Jha, C.D. Singh, Minakshi Sharma, Bhavan Shankar V. Gadnis and B. Simita Rao for the Respondents.

The Judgment of the Court was delivered by

G **ARIJIT PASAYAT, J.** The present IAs relate to acceptability of the report given by the Expert Committee relating to alleged violation of the environmental norms by the respondents.

Background facts in a nutshell are as follows:

H The Delhi Development Authority (in short the 'DDA') proposed the

development of International Hotel Complex on 315 hectares of land situated in the Vasant Kunj area after the same area was identified in the Master Plan for Delhi 2001 for urban use. According to the applicants, the said area under the earlier Master Plan 1962 was identified as green area but there was a change of user to urban area under the latter Master Plan *i.e.* Master Plan 2001. DDA planned to develop the said area for construction of Hotels, Convention Centres etc. Initially, by an order dated 13.9.1996 this Court directed *inter alia* as follows:

> "The proposal of the Delhi Development Authority (DDA) called International Hotels Complex (Complex on 315 hectares of prime land situated in South Delhi) is before us for consideration. In the affidavit filed by Mr. Arun Khaisalkar, Commissioner (Planning), (DDA), the details of the development in respect of the said 315 hectares has been given. It is not disputed that the Master Plan of Delhi 2001 was amended on June 17, 1995 whereunder out of the total area of the complex the area assigned for residential purposes was reduced from 100 hectares to 49 hectares and for commercial purposes increased from 8 hectares to 65 hectares. Apart from that 39 hectares have been earmarked for public and semi-public, 15 hectares for transportation and remaining 147 hectares for recreational purposes.
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> It is stated in the affidavit that there is an acute shortage of tourist accommodation in Delhi and as such it is necessary to provide sites for 4/5 Star Hotels, Institutions, Hospital, Shopping Mall etc. It is further stated that the Complex area is not a part of the Ridge. It is about 2 Km. away from Southern and South Central Ridge.
>
> We have heard Mr. V.B. Saharya, learned counsel for DDA and also Mr. P.C. Jain, Consultant, Planner, DDA. We have heard Mr. Mehta, Dr. Rajiv Dhawan and other learned counsel assisting us in this matter.
>
> Mr. Sunder Subramanian, Member of Citizens for the South Western Lake Wilderness and Others and of PILSARC, has filed an affidavit pursuant to this Court's order dated September 4, 1996. It is stated in the affidavit that the area is topographically a part of the South Ridge which is to South Delhi what the Central Ridge is to Central Delhi. It is further stated in the affidavit that the area is lake studded covering over 1000 acre. The affidavit indicates that the area was kept green under the 1962 Master Plan in the Draft Zonal Plan of 1993 (ZDP Zone

121993-Z-P/F/93-52) of the DDA 2001 Master Plan. It is further stated that this area is the natural extension of Sanjay Van a notified reserve forest and a part of Ridge. Along with the affidavit, various photographs have been attached to depict the ecology of the area.

This Court in *Vellore Citizens Welfare Forum* v. *Union of India and Ors.*, JT (1996) 7 SC 375 has observed that the development and environment protection must go together. There should be balance between development and environment protection. It is, therefore, necessary that before the proposed Complex of the DDA is brought into execution, it should have environment clearance from the authorities concerned. The whole of the area has to be surveyed from the point of view of environment protection. In other words, the environment impact assessment of the area has to be done by the experts. We are of the view that the authority contemplated by Section 3(3) of the Environment (Protection) Act, 1986 ('the Act') can be the only appropriate Authority to look into the environment protection side of the present project or any other project which the DDA or any other Authority may initiate in future. Needless to say that the City of Delhi is already highly congested and has been rated by the World Health Organization as the 4th most polluted city so far as the air pollution is concerned. It is, therefore, necessary that the development in the city should have environmental clearance.

We, therefore, direct the Central Government to constitute an Authority under Section 3(3) of the Act and confer on the said authority all the powers necessary to deal with the environmental protection issue arising out of the project in hand or any other project which may in future come under its consideration. The authority shall he headed by a retired Judge of a High Court and it may have other members-preferably experts in the field of pollution control and environment protection to be appointed by the Central Government. The Central Government shall confer on the said Authority the powers to issue directions under Section 5 of the Act and for taking measures with respect to the matters referred to in clauses (i), (iii), (iv), (vi), (viii), (ix), (x) and (xii) of sub-section (2) of Section 3 of the Act. The Central Government shall constitute the Authority before October 10, 1996. This Authority shall have the jurisdiction over the National Capital Region as defined under the National Capital Region Planning Act, 1985.

Needless to say that the authority so constituted shall keep in view the 'Precautionary Principle" and other principles laid down by this Court in *Vellore Citizens Welfare Forum's* case (supra). The Authority shall lay down its own procedure.

We further direct that till the time the Complex is cleared by the Authority so constituted by the Central Government, there shall be no construction and no development of any kind in the area by the DDA or by any other authority. The DDA can, however, clean the area and plant trees if they so wish.

The proceedings initiated on Kuldip Nayar's letter are disposed of."

Subsequently, on an application filed, this Court by an order dated 19.8.1997 held that 92 hectares of land out of the aforesaid 315 hectares of land was a constraint area and only in respect of the balance 223 hectares of land the constructions have to abide by the conditions of clearance. Subsequently, a Writ Petition was filed (W.P. No. 564/2003) which was dismissed by an order dated 8.3.2004. Pursuant to the directions of this Court the Committee constituted has given its report. The recommendations made by the Committee are as follows:

1. The project site has topographical features similar to that of the ridge. Various studies, including EIA documents submitted now for obtaining environmental clearance, establish the environmental value of this area, particularly as a zone of groundwater recharge. Therefore, DDA should have exercised adequate environmental precaution based on a sustainable environmental management approach. There is no evidence that the environmental impact of the construction of malls was assessed beforehand and that the development of this area for commercial activities is in accordance with the Master Plan.

2. DDA's advertisement (Hindu Dec 12, 2003) states: "purchaser would be required to obtain necessary clearance for the project from the EPCA and/or DPCC before submitting the plans for sanction to the Building Dept of DDA". There is no confirmation that this requirement was fulfilled by the allottees.

3. DDA has mentioned that FAR for the projects under reference is pegged at 1.0. However, it is seen that for all the buildings proposed in Plot no. 1 to 5, DDA has permitted a higher FAR which works out

A to 1.25 to 1.29.

4. In hindsight it is evident that the location of large commercial complexes in this area was environmentally unsound. Now many proponents have constructed very substantially and really speaking awarding clearances even with conditions is largely a compromise
B with *de-facto* situation. The Expert Committee is of the opinion that at this stage only damage control is possible by strict implementation of effective EMP and resource conservation measures in the project construction and operational stages.

5. As stated earlier in the interim report, the Committee suggests that
C the Ministry of Environment and Forests and the Supreme Court may consider imposing a penalty on the project proponents who commenced construction works without obtaining environmental clearance in contravention to the Notification in July 2004.

6. Existing vacant plots (no. 6 and 7) of the shopping mall complex
D should not be auctioned by DDA for more malls or commercial activities. They may be kept open as a fringe of the bio-diversity park or earmarked for development of any common facilities that may be needed in the area.

7. Treated sewage from Vasant Kunj Sewage Treatment Plant must be
E utilized as much as possible for such purposes as water cooled chillers, toilet flushing, gardening and horticulture and floor washing. This will reduce the requirement of fresh water.

8. The aforesaid purposes will need tertiary treatment of sewage. Since the allottees of offices and malls have proposed to carry out
F entire treatment up to tertiary level on their own, it should be possible for them to treat the treated sewage received from Vasant Kunj sewage treatment plant to the required level.

9. While rainwater harvesting should be done, the withdrawal of
G ground water should not he permitted in the shopping mall area.

10. For construction, use of ready—mix concrete (RMC) should be made compulsory so as to reduce movement and storage of materials and generation of dust.

11. Utilization of solar energy must he maximized in all these proposals
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both for heating water and generating power to light up corridors and parking. A

12. A Monitoring Committee may be constituted for overseeing the project so as to ensure effective implementation and compliance to environmental safeguards".

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In support of the applications, learned counsel has submitted that it has never been held by this Court that 92 hectares of land are not a part of the ridge. On the contrary, the first order itself made the position clear. The clarification by order dated 19.8.1997 had really expressed no opinion on the question whether the land was a part of the ridge. A report was given by the Environmental Pollution (Prevention and Control) Authority (in short 'EPCA') C chaired by Shri Bhure Lal wherein it has been clearly stated that environmental factors were not in favour of urban development use of land and the entire parcel of land should be developed as green. Therefore, it is submitted that there has been clear violation of the norms fixed on 7.7.2004.

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Per contra, learned counsel for DDA and the allottees *inter alia* submitted that the applicants are trying to re-open an issue which had become final about a decade back. The order dated 19.8.1997 made the position absolutely clear that 92 hectares of land was constraint area and was not an integral part of Delhi Ridge. Out of the said 92 hectares of land, only 19 hectares of said land are sought to be utilized for the purpose of construction. E Learned counsel for the DDA additionally submitted that long back the 92 hectares of land have been declared constraint area and there has never been any challenge to the Notification. In a nutshell, DDA and allottees have prayed for dismissal of the applications.

The first order of this Court which was relied i.e. 13.9.1996 has been F quoted above. It would be appropriate to quote the subsequent orders. They are as follows:

Order 19.8.1997

"Having heard learned counsel for the parties and the learned G Additional Solicitor General, we are satisfied that this Court's Order dated 13.9.1996 on I.A.No.18 in WP (C) No.4677/85 is in effect to govern the constructions made under the proposal of the Delhi Development Authority (DDA) called 'The International Hotels Complex' in South Delhi and mention of the area of 315 hectares in

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A relation to that complex is inadvertent since the DDA's proposal itself excluded the constraint area described at page 33 of the paper book (page 13 of the booklet) which is a total of 92 hectares including the shopping Mall and Hotel site of 25 hectares within which is located the site of the petitioner's proposed Hotel under construction in an area of 4 hectares. In other words, the proposal of the DDA called B "The International Hotels Complex" in South Delhi is to be understood as that for the area of 315-92 = 223 hectares as shown in the DDA's proposal itself. This clarification of this Court's order dated 13.9.1996 has become necessary on account of the fact that the concerned authorities are construing the order dated 13.9.1996 to operate also in C respect of the aforesaid constraint area of 92 hectares in addition to some other areas which are even outside the area of 315 hectares. However, it is made clear that the petitioner and all other similarly situated outside the 223 hectares of the area of the proposal of the DDA are required to abide by all the conditions of clearance from the environmental authorities including taking the measure necessary for D checking pollution and other requirements of law.

In view of the manner in which this Court's aforesaid order dated 13.9.1996 is to be construed, the order of the Authority of 31st January, 1997 and 7th March, 1997 do not survive.

E The Special Leave Petition is disposed of in these terms".

Order dated 8.3.2004

"We are satisfied that the proposed Mall is on the area measuring 92 hectares of land, which has already been excluded by the order of this F Court on 19th August, 1997. In that view of the matter, we do not find any merit in this petition. It is accordingly dismissed. However, this order will not preclude the petitioner from availing any remedy, which may be available to him under law."

The order dated 19.8.1997 makes the position clear that 92 hectares of G land were kept out of consideration and in fact it was clearly declared to be a constraint area. The expression 'constraint area' has its own connotation. As has been pointed out by learned counsel for the DDA, a Notification in respect of the land in question has been issued. The said Notification has never been challenged. The EPCA's report dated 6.10.1999 nowhere indicates that the land in question was a part of the ridge. Both the EPCA and the H

Expert Committee's report under consideration refer to the land as "similar to ridge area". Significantly, the EPCA in its report has taken note of the fact that there is no statutory definition of "ridge". That being so, at this juncture, it would be inappropriate to reopen the whole issue as to whether the land in question was a constraint area or ridge land. A bare reading of the order dated 19.8.1997 makes the position clear that this Court had treated the land as constraint area. It has been emphasized by learned counsel for the petitioners that the Expert Committee's report is *per se* unacceptable because it has focused more on the aspects of regularizing the unauthorized areas rather than on the consequences flowing from the non observance of the procedure before undertaking any construction. It is stated that this Court has taken serious view of unauthorized construction and some times on the basis of permissions, wrongly granted. Various decisions in this regard are relied on.

In response, learned counsel for the respondents have stated that their lands were allotted by the DDA. As per Notification No.SO/60(E) dated 27.1.1994 for the first time a provision for obtaining environmental clearance by a Central Government (MoEF) before undertaking any new project listed in Schedule-to the Notification was introduced. The Notification did not relate to new construction projects and as such did not apply to them is the stand of the respondents. The auction was conducted by DDA. Having undertaken the project, huge investments have been made and with sanction of building plans they applied for. In some cases applications were filed before DPCC for obtaining clearance under the Air and Water Acts. According to them prior to 7.7.2004 no other environmental clearance was required except clearance as afore-stated. The auction Notice of DDA dated 12.12.2003 mentions about clearance from EPCA. According to the respondents, this referred to the draft Notification dated 7.10.2003 which proposed to include new construction projects within the ambit of the parent Notification dated 27.1.1994. According to them, the amendment by Notification dated 7.7.2004 postulates *post facto* clearance contemplated for new construction projects undertaken.

In some cases the Expert Committee after public hearing has made the recommendations with certain stipulations. It has been clearly stated that the project can be recommended for environmental clearance. The confusion arose because DDA all through gave an impression to the parties participating in auction that all requisite clearances had been obtained. Had such parties inkling of an idea that such clearances were not obtained by DDA, they would not have invested such huge sums of money. The stand that wherever constructions have been made unauthorisedly demolition is the only option

A cannot apply to the present cases, more particularly, when they unlike, where some private individuals or private limited companies or firms being allotted to have made contraventions, are corporate bodies and institutions and the question of their having indulged in any malpractices in getting the approval or sanction does not arise. Some of the allottees are the National Book Trust, School of Planning or Architecture, Shri Ram Vithala Sikha Seva Samiti,
B International Centre for Alternate Dispute Resolution and Institute for Studies and Industrial Development. In most of these cases the constructions are already complete and have become functional.

DDA had also made some constructions at the site in question. That
C being so, it is submitted that the recommendations made by the Expert Committee should be accepted.

Learned counsel for the DDA while adopting the submissions made by the other respondents submitted that the DDA proceeded on a *bona fide* impression that all requisite clearances had been obtained by it. There was
D no question of it acting in *mala fide* manner or irregular manner.

In view of what has been stated above, the MoEF has now to take a decision by taking the land as constraint area. It is needless to say that even if the land is held to be constraint area the constructions thereon have to be made after having the requisite clearance. The MoEF shall take note of the
E stands projected by the respondents. We are *prima facie* satisfied about the bona fides of the respondents but at the same time it needs no emphasis that DDA should have been more transparent in ensuring that it was not putting a site for auction where there was scope for litigation. It had definitely created an impression that all necessary clearances had been obtained, though it does
F not appear to be so. What remains to be decided as to what remedial measures including imposition of such amounts as costs can be taken.

Let the MoEF take a decision within a period of 2 months from today to avoid unnecessary delay. The IAs. are accordingly disposed of.

G N.J. IAs. disposed of.