A M/S. GOEL GANGA DEVELOPERS INDIA PVT. LTD.

v.

UNION OF INDIA THROUGH SECRETARY MINISTRY OF ENVIRONMENT AND FORESTS & ORS.

B (I.A. NO.64665 of 2019)

IN

(Civil Appeal No. 10854 of 2016)

SEPTEMBER 11, 2019

C **[DEEPAK GUPTA AND ANIRUDDHA BOSE, JJ.]**

Environmental Laws: Environment Impact Assessment (EIA) Notification dated 14.09.2006 – Schedule, Item No.8 – Interpretation of 'built up area' – In the instant application, the issue involved D *was whether non-consideration of judgment delivered by a three-Judge Bench in *NOIDA Park case led to wrong conclusions by this Court with regard to the interpretation of built up area in terms of Item No. 8 of the Schedule of the Notification dated 14.09.2006 – The contention raised on behalf of the applicant was that since* E *the three-Judge Bench in Para 84 of the judgment in *NOIDA Park case observed that EIA Notification dated 14.09.2006 called for a closer second look by the authorities concerned especially in respect of the projects/activities falling within the ambit of Items 8(a) and 8(b) of the Schedule to the Notification which needed description with greater precision and clarity and the definition of built up area* F *with facilities open to the sky needed to be freed from its ambiguity and vagueness, the two-Judge Bench in the instant case which delivered the judgment was bound by the said judgment and could not have held that Notification dated 14.09.2006 showed that all constructed area which is covered and not open to the sky, has to* G *be treated as built up area – Held:*NOIDA Park case was concerning a huge park – The main dispute in *NOIDA Park case was whether the project was a building and construction project or a township and area development project – It was held in*NOIDA Park case that it was a township and area development project –*

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*While considering this dispute, the Court had felt that there was some ambiguity – However, this dispute did not arise in the case in hand – The second point urged before the Court in *NOIDA Park case was that the facilities open to the sky i.e. the activity area should also be included in the built up area and it was this confusion which the court wanted the Central Government to settle – No party had raised any contention in *NOIDA Park case about the covered area being built up area – All the parties were ad idem that covered construction was built up area and the Court also held so – This Court in this judgment has only held that all covered construction shall be deemed to be built up area and that the municipal laws regarding Floor Space Index (FSI) or Floor Area Ratio (FAR) have no relevance – This issue did not arise in *NOIDA Park case – Therefore, the earlier judgment will have no impact on the instant case – Application dismissed.*

***Re: Construction of Park at Noida Near Okhla Bird Sanctuary & Ors.* (2011) 1 SCC 744 : [2010] 15 SCR 783 – referred to.**

Case Law Reference

[2010] 15 SCR 783	**referred to**	**Para 1**

CIVIL APPELLATE JURISDICTION: Interlocutory Application No. 64665 of 2019 in Civil Appeal No. 10854 of 2016.

From the Judgment and Order dated 27.09.2016 of the National Green Tribunal (Western Zone) Bench, Pune in Application No. 184 of 2015.

A. N. S. Nadkarni, ASG, Mukul Rohatgi, Ranjit Kumar, Ms. Sonia Mathur, Sr. Advs., Venkita Subramoniam T. R., Rahat Bansal, Mehul Gupta, V. Mudgal, Rohit Raj, Shankey Agrawal, Mukesh Verma, Pawan Kumar Shukla, Yash Pal Dhingra, Makarand D. Adkar, Vijay Kumar, Ms. Aparna Jha, Nitin Lonkar, Ms. Sonali Suryawanshi, Shankey Agrawal, D. L. Chidananda, Ms. Suhasini Sen, G. S. Makker, Dr. Nishesh Sharma, Ranjan Kumar Chaurasia, Gurmeet Singh Makker, Nishant Sharma, Nishant Ramakantrao Katneshwarkar, Aman Varma, Advs. for the appearing parties.

A The following Order of the Court was passed:

O R D E R

1. The only issue involved in this application is whether non-consideration of a judgment delivered by a three-Judge Bench in ***Re: Construction of Park at Noida Near Okhla Bird Sanctuary & Ors.***[1], B hereinafter referred to as 'NOIDA Park case', has led to wrong conclusions by this Court with regard to the interpretation of built up area in terms of Item No. 8 of the Schedule of the Environment Impact Assessment (EIA) Notification dated 14.09.2006. The relevant portion of the notification reads as follows:

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(1)	(2)	(3)	(4)	(5)
8		**Building/Construction projects/Area Development projects and Townships**		
8(a)	Building and Construction projects		≥20000 sq. mtrs. And <1,50,000 sq. mtrs. Of built-up area#	#(built up area for covered construction;in the case of facilities open to the sky, it will be the activity area)
8(b)	Townships and Area Development projects		Covering an area ≥50 ha and or built up area >1,50,000 sq. mtrs. ++	++All projects under Item 8(b) shall be appraised as Category B1.

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F 2. While interpreting this clause, one of us (Deepak Gupta, J.) held as follows:

"**13**. From a bare perusal of the two hash tags (#) in Column 4 and 5 of Item 8(a), it is apparent that what is shown under Column 5 is actually a continuation of Column 4 and basically it describes or defines 'built up area' to mean covered construction and if the facilities are open to the sky, it will be taken to be the activity area. This by itself clearly shows that under the notification of 2006, all constructed area, which is covered and not open to the

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H [1] (2011) 1 SCC 744

sky has to be treated as 'built up area'. There is no exception for non-FSI area.

14. Indeed, the concept of FSI or non-FSI has no concern or connection with grant of EC. The same may be relevant for the purposes of building plans under municipal laws and regulations but it has no linkage or connectivity with the grant of EC. When EC is to be granted, the authority which has to grant such clearance is only required to ensure that the project does not violate environmental norms. While projects and activities, as mentioned in the notification, may be allowed to go on, the authority while granting permission should ensure that the adverse impact on the environment is kept to the minimum. Therefore, the authority granting EC may lay down conditions which the project proponent must comply with. While doing so, such authority is not concerned whether the area to be constructed is FSI area or non-FSI area. Both will have an equally deleterious effect on the environment. Construction implies usage of a lot of materials like sand, gravel, steel, glass, marble etc., all of which will impact the environment. Merely because under the municipal laws some of this construction is excluded while calculating the FSI is no ground to exclude it while granting the EC. Therefore, when EC is granted for a particular construction it includes both FSI and non-FSI areas. As far as environmental laws are concerned, all covered construction, which is not open to the sky is to be treated as built up area in terms of the EIA Notification dated 14.09.2006."

3. The contention raised on behalf of the applicant is that since the three-Judge Bench had in Para 84 of the judgment in the ***NOIDA Park case*** observed that the EIA Notification dated 14.09.2006 calls for a close second look by the authorities concerned especially in respect of the projects/activities falling within the ambit of Items 8(a) and 8(b) of the Schedule to the Notification which need to be described with greater precision and clarity and the definition of built up area with facilities open to the sky needs to be freed from its present ambiguity and vagueness, the two-Judge Bench which delivered the judgment was bound by this judgment of three-Judge Bench and could not have held that the Notification dated 14.09.2006 clearly shows that all constructed area which is covered and not open to the sky, has to be treated as built up area.

A 4. Though the observations in Para 84, at first blush, support the contention of the applicant, one has to appreciate the factual background in which these observations were made. In the ***NOIDA Park case***, this Court was asked to intervene and halt a project in which a huge park was being constructed. As far as Item 8(a) of the Schedule to theEIA Notification, 2006 is concerned, the contentions in this regard start from B Para 38. TheMoEF took the stand that no environmental clearance was required because the project area was 33.43 hectares, which was less than 50 hectares and the built up area was 9542 sq. mtrs., which was less than 20,000sq. mtrs.

C 5. It was contended on behalf of the petitioners and the amicus curiae that the project would fall under Section 8(a) because though the covered construction of the project was only 6999.50 sq. mtrs., the project by its very nature provided facilities open to the sky and the whole of this open area, which was activity area, should be treated as the built up area. The park consisted of certain constructed structures like pathways, D walkways, statues, fountains, etc. which were open to the sky and treated as activity area. The contention of the amicus curiae and the petitioners who were objecting to the project was that the construction which was open to the sky and was to be treated as activity area should also be considered as part of the built up area.

E 6. The main dispute in the ***NOIDA Park case*** was whether the project was a building and construction project or a township and area development project. This Court held that this was a township and area development project. While considering this dispute the Court felt that there was some ambiguity. This issue did not arise in the case in hand. The second point urged before the Court was that the facilities open to F the sky i.e. the activity area should also be included in the built up area and it was this confusion which the court wanted the Central Government to settle. No party had raised any contention in the ***NOIDA Park case***about the covered area being built up area. All the parties were *ad idem* that covered construction was built up area and the Court also held G so.

7. This Court in this judgment has only held that all covered construction shall be deemed to be built up area and that the municipal laws regarding Floor Space Index (FSI) or Floor Area Ratio (FAR) have no relevance. This issue did not arise in the ***NOIDA Park case***.

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Therefore, in our opinion, the earlier judgment will have no impact on the present case. A

Reference was also made to Notification dated 04.04.2011 and the Clarification dated 07.07.2017. These have already been dealt with in the judgment dated 10.08.2018 and those were not points of issue in the ***NOIDA Park case***. Therefore, we find no merit in the application and the same is dismissed accordingly. B

Devika Gujral I.A. dismissed.