

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

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**Original Application No.165 of 2015
(M.A. No. 488 of 2015)**

In the matter of:

Mr. Rajiv Rattan S/o Shri Ram Rattan
Plot No. 27, Urban Estate, Sector-31, Gurgaon,
Haryana
Also at: 60, 2nd Floor, Vasant Marg, Vasant Vihar,
New Delhi-110057

....Applicant

Versus

1. Haryana Urban Development Authority,
Sector-6, Panchkula, Haryana
Through its Chief Administrator

2. Pama Educational & Welfare Society
7, Community Centre, Mezzanine Floor,
East of Kailash, New Delhi- 110065
Through its Secretary

3. Ryan International School,
Plot No. 2, Sector 31-32A,
Gurgaon, Haryana- 122001
Through its Principal

4. State of Haryana
Through Commissioner of Police
Haryana Police, Gurgaon

...Respondents

Counsel for Applicant:

Mr. Ritwick Navet and Mr. Rajat, Adv.

Counsel for Respondents:

Mr. Anil Grover (AAG), Mr. Rahul Khurana, Adv. for respondent
nos. 1 & 4

Mr. Vivek Anand, Adv. for respondent nos. 2 & 3

ORDER/JUDGMENT

PRESENT:

Hon'ble Mr. Justice M.S. Nambiar, (Judicial Member)

Hon'ble Prof. A.R Yousuf, (Expert Member)

Reserved on: 25th April, 2016
Pronounced on: 27th May, 2016

- 1. Whether the judgment is allowed to be published on the net?**
- 2. Whether the judgment is allowed to be published in the NGT Reporter?**

Prof. A.R Yousuf, (Expert Member)

1. The present application has been filed by the Applicant, Mr. Rajiv Rattan, alleging that respondent nos. 2 and 3 have illegally encroached upon one (1) Acre of land earmarked for a public park in Sector-31, Gurgaon, Haryana, and have also started raising large scale construction on the said encroached land and in spite of the same having been brought to the knowledge of respondent no. 1 (Haryana Urban Development Authority, Sector-6, Panchkula, Haryana) and Respondent No. 4 (State of Haryana through Commissioner of Police, Haryana Police, Gurgaon), no action whatsoever has been taken by the said respondents. According to the applicant the said acts of the respondents are violative of the provisions of the National Green Tribunal Act, 2010 and have also gravely endangered and impaired the environment and the quality of life of the residents of Sector-31.
2. According to the applicant, the HUDA Master Plan, 1992 of Sector 31 provides for a site for a Primary School on Plot No. 2, Sector 31-32A, Gurgaon. The area earmarked in the

Master Plan for the said site is one acre. He further contends that an area of one acre, adjacent to the Plot no. 2 (and just opposite to the applicant's plot, i.e., plot no. 27), has been earmarked for a public park (hereinafter referred to as "the said Plot") in the said Master Plan. The applicant submits that when he visited his plot in Sector-31, Gurgaon in the second week of January 2015, he noticed that the entire 1 acre adjacent to Plot No. 2 which was earmarked and being used as a public park, had been fully encroached upon by respondent nos. 2 and 3. A boundary wall encompassing the entire plot of the public park had been constructed and the said plot had been merged with plot no. 2 and large scale unauthorized and illegal construction was being carried out by respondent nos. 2 and 3 on the said plot as well as on plot no. 2. None of the residents were being allowed to enter and use the area earmarked for a public park as the entire area has been illegally encroached by respondent nos. 2 and 3.

3. According to the applicant he, on enquiry came to know that even though as per Master Plan, 1992, the area earmarked for a primary school in Sector-31 was only 1 acre, an area admeasuring 1.5 acre was allotted by respondent no. 1 to respondent no. 2 as is evident from the letter dated 03.11.2004 (Annexure A-3) issued by the Chief Administrator, HUDA (Town Planning Wing) and lease deed executed in favour of respondent no. 2 by the Estate Officer

- II, HUDA, Gurgaon on 04.12.2009 (Annexure-A4). According to him the extra $\frac{1}{2}$ acre has been carved out of the plot reserved for the public park and illegally allotted to respondent no. 2.
4. The applicant contends that the $\frac{1}{2}$ acre of land which was originally earmarked and part of 1 acre plot for a Public Park could not have been under any circumstance whatsoever, allotted to respondent no. 2 for running and operating a primary school and therefore all decisions, whether administrative or executive, taken by respondent no. 1 in that regard are illegal, arbitrary, malafide and liable to be set aside by the Tribunal.
 5. The applicant further contends that the respondent no. 2 has also encroached upon the remaining half acre of land of the said plot and constructed a boundary wall on the entire two acres of land, thereby preventing the residents and children of Sector-31, from using the public park and the green area which would have been available to the residents of Sector-31 has also been destroyed.
 6. According to the applicant, use of the said $\frac{1}{2}$ acre for commercial purposes is not only arbitrary, illegal and in contravention to not only the basic principles of law but also the HUDA Master Plan, 1992. As per the applicant, the respondent no. 3 is operating a full-fledged senior secondary school from Plot no. 2, Sector 31-32A instead of a primary school as proposed in the Master Plan.

7. He further contends that the buses employed and used by respondent no. 3 are being parked illegally on the road outside, resulting in blocking the said roads which creates huge traffic jams and inconvenience to the residents of the said Sector.
8. The applicant also alleges that the respondent no. 3 has dug two (2) illegal bore wells on the site and water is being drawn from the said bore wells for the purpose of construction of the said illegal building.
9. According to the applicant, the cause of action to file the present application arose only in January 2015, when the applicant noticed the illegalities being carried out by the respondent nos. 2 and 3 and is a continuous cause of action and hence, the present application is within the limitation prescribed under the NGT Act.
10. The applicant, on the basis of these facts prayed to:
 - a) Restrain respondent nos. 2 and 3, their agents, assigns, successors and representatives from carrying out any construction of any nature whatsoever in the 1 acre of land earmarked for public park adjacent to Plot No. 2 in Sector-31, Gurgaon, Haryana;
 - b) Direct respondents to immediately demarcate and build a separate boundary wall on the 1 acre of land adjacent to plot no. 2 for public park and direct respondents to restore the said 1 acre to its original position, i.e., a

public park after demolishing the construction raised thereupon;

- c) Restrain respondent nos. 2 and 3 from preventing the applicant and other residents of Sector-31 from visiting, entering and enjoying in the public park of 1 acre in Sector-31, Gurgaon;
 - d) Pass an ad-interim ex-parte order in terms of prayer (a), (b) and (c) above;
 - e) Quash and set aside the decision of respondent no. 1 in reducing the area earmarked for Public Park in Sector-31, Gurgaon from 1 acre to $\frac{1}{2}$ acre;
 - f) Quash and cancel lease deed dated 04.12.2009 executed by respondent no. 1 in favour of respondent no. 2 to the extent it pertains to the $\frac{1}{2}$ acre of land which constitutes and is part of public park in Sector-31, Gurgaon as per HUDA's Master Plan, 1992;
 - g) Direct respondent no. 4 to ensure compliance of all orders passed by this Tribunal;
 - h) Pass any such other orders as this Tribunal may deem fit in the facts and circumstances of the present case.
11. In their reply/written statement dated 27.07.2015 respondent nos. 2 and 3 pleaded that the application filed by the applicant was time barred as stipulated under section 14 of the National Green Tribunal Act, 2010 and the alleged cause of action was hopelessly time barred and liable to be rejected on the ground of limitation. They

further contended that there was no merit in any of the averments of the applicant and the application was not even maintainable on the ground of Jurisdiction. It was further submitted that the applicant was very well aware of the fact that a suit was filed by the Residents Welfare Association of Sector 31, Gurgaon before the Civil Court, Gurgaon seeking similar relief against the answering respondent and on understanding the fact that there were no merits the suit was withdrawn unconditionally and as an afterthought, for the reasons well known to the applicant, the present application has been filed by him before this Hon'ble Tribunal seeking the same relief individually.

12. According to these respondents the land, in which the school is functioning after the construction of building, was offered to respondent no. 2, Pama Educational Human Welfare Association, by respondent no. 1 vide letter of intent no. 10207 dated 23.11.93, but due to some reason a litigation cropped up between the respondent nos. 2 & 3 and respondent no. 1 which finally ended before the Hon'ble Supreme Court of India and after that the plot in dispute was allotted as primary school site No. 2 vide Memo No. 2003/415/2634 dated 27.09.2005 (Annexure R/1) in the name of respondent no. 2, to whom the actual physical possession was delivered by HUDA vide Memo No. SDE(s) 6873 dated 05.10.2005. It is further submitted that the lease deed for 99 years from the date of allotment has also

been executed and got registered by HUDA vide Vasika no. 16984 dated 08.12.2009 in favour of respondent no. 2.

13. As per these respondents the building plan for erecting the building on the institutional Primary School site 2, i.e., the impugned property, was approved by HUDA vide Memo No. SDE(S-II)263 dated 08.04.2010 and the construction consisting of ground and first floor having an area of 1519.5 sq. m was raised and a 'Part Only' Occupation Certificate bearing Memo No. SDE/(S)/1364 dated 18.11.2010 was issued by the HUDA. The HUDA has approved the revised building plan of the respondent no. 3 vide Memo No. SDE/(s)/881 dated 11.06.2014. According to these respondents the construction in the allotted plot as per the revised building plans approved by HUDA has been completed and only some final finishing touch is being done in accordance with the norms. It is further submitted by these Respondents that there has not been any construction or building activity on the part of them beyond the scope of the plan sanctioned and approved by the concerned authority. They deny that they are operating any bore wells as the school is having HUDA authorized water connection, sanctioned vide letter dated 17.09.2010 and there is no need for the answering Respondent to have the bore wells.

14. According to these respondents the allegation of the applicant that the allotted plot is being used for a full

fledged senior secondary school instead of primary school is not only farfetched but a very premature imagination on the part of the applicant because there cannot be any deviation on the part of any institution from the sanction letter issued or given by the Education Department. They further contend that the allegation of the applicant that the answering Respondent is operating a senior secondary school is not the matter of concern to the applicant and this Tribunal is not the appropriate forum for raking up the same.

15. The said respondents further submitted that there has not been any encroachment on their part on any piece of land and none of their actions has led to the endangering of the environment or impairing the quality of life and the applicant does not suffer any injury or loss whatsoever on account of school being operated over the site in dispute which is a social utility and an activity helping in nation building and the institution and prosecution of the present case is totally misconceived.
16. In its reply dated 01.09.2015, respondent no. 1 (Haryana Urban Development Authority) contended that the present applicant had no locus to challenge the decision of respondent no. 1 to increase the area earmarked for the public utility and said respondent was competent to do so and there was no illegality in the process. While listing the sequence of events in the allotment and ultimate handing

over the possession of the impugned plot to the respondent no. 2, respondent no. 1 submitted that the Letter of Intent was initially issued to respondent no. 2, Pama Educational & Human Welfare Association vide Memo No. A-Institution-93/10207 dated 23.11.1993, for allotment of primary school site No. 2 having an area of 1.5 acres (Annexure R-1/1). However, on 11.05.1999, the Estate Officer, HUDA, Gurgaon intimated the respondent no. 2 that letter of intent has already been withdrawn. On 04.06.1999, the Administrator, HUDA, Gurgaon accepted the appeal filed against cancellation of 'Letter of Intent' and the 'Letter of Intent' was restored. But on 01.05.2000 the Commissioner and Secretary to Govt. of Haryana exercising Revisional Jurisdiction, set aside the order dated 04.06.1999 passed by the Administrator, HUDA, Gurgaon. Against this decision, a complaint was filed by the respondent no. 2 before State Consumer Dispute Redressal Commission (SCDRC), Haryana seeking possession of the impugned site and the order of 01.05.2000 passed by the Commissioner and Secretary to Govt. of Haryana was quashed by Hon'ble SCDRC on 11.12.2001 and the HUDA was directed to handover possession of said site to the respondent no. 2. The appeal against this order was disposed by the Hon'ble NCDRC on 11.04.2002, with a direction to respondent no. 2 to deposit the balance amount outstanding together with interest as per HUDA policy. The Special Leave to Appeal

(Civil), filed before the Hon'ble Supreme Court against the order of NCDRC was ultimately rejected by the Hon'ble Supreme Court on 15.11.2002. Respondent no. 1 further contends that in compliance of judicial orders mentioned herein above, the HUDA was under obligation to allot school site having 1.5 acres of land to the respondent no. 2 and accordingly, the Estate Officer, HUDA, Gurgaon vide his Office Memo No. 15925 dated 24.08.2004 requested the District Town Planner, Gurgaon to amend the demarcation plan in view of the judicial orders passed and stated above. The Chief Administrator, HUDA (Town Planning Wing), Panchkula approved revised demarcation plan cum zoning plan on 3.11.2004 vide Memo No. CTP-HUDA-DTP(N) 6918 and thereafter the office of District Town Planner, Gurgaon incorporated the note of approval in the original drawing (Annexure A/3). The said respondent (Respondent no. 1) contended that the application filed by the present applicant was hopelessly barred by limitation and prayed for its dismissal.

17. The Applicant in his Rejoinders dated 01.10.2015 to the reply filed by respondent no. 1 and respondent no. 2 & 3 reiterated that the relief sought by him with regard to cancellation of the lease deed dated 01.04.2009 was not barred by limitation as the cause of action to file the present application arose as against the applicant only in January 2015, when the applicant noticed the illegalities being

carried out by the respondent nos. 2 and 3 and it is a continuing cause of action in law and hence, the present application is within the limitation prescribed under the NGT Act. The applicant further denied that it was within the competence of respondent no. 1 to increase the area earmarked for a school and/ or that there is no illegality in the same and the respondent no. 1 has not placed anything on record to show or demonstrate as to under which law, rule or regulation was the decision taken to increase the area for primary school. He reiterated that the allotment of extra $\frac{1}{2}$ acre which has been carved out from the adjoining park could not have been made in terms of the Hon'ble Supreme Court's Judgment in the case of *M.C. Mehta V/s Kamal Nath (1997)1 SCC: 388*, being a public utility, the same could not have been allotted to a private entity for their commercial benefits.

18. It is also the contention of the applicant that the issue raised in this application fell within the ambit of Schedule-1 of the National Green Tribunal Act, 2010 and this Tribunal has the jurisdiction to adjudicate upon the same. The applicant further denied being aware of suit filed by the Resident Welfare Association of Sector-31, Gurgaon before the Civil Court, Gurgaon seeking same or similar relief.
19. The applicant further contended that the respondent nos. 2 and 3 are not implementing their project of construction of school in accordance with law and they have violated a

series of Environment and Municipal Laws during the construction of the School at site in question as much as an entire park has been usurped by them for their personal commercial gains and have constructed 4 floors at the site being ground plus three floors and have deliberately not filed the building plan which gives details of the area which can be constructed or which has been sanctioned by the competent authority. It can also be made out from the photographs annexed with the Original Application that the building is far from complete and large scale construction is being carried out at site by respondent nos. 2 and 3.

20. The applicant further stated that the act of illegal encroachment on the area earmarked for park by the respondent nos. 2 and 3 has led to depletion of green cover in the vicinity of Sector 31-32A, Gurgaon which directly affects the applicant adversely. It is further submitted that the respondents are building a full-fledged senior secondary school in complete violation of the building bye laws and are parking the school buses outside on the road, which being narrow, has already started leading to massive traffic jams in the vicinity of Sector 31-32A, Gurgaon.

21. On the basis of contentions of parties referred to herein above, the questions that require to be answered are:

1. Does the present petition involve a substantial question on environment and does it fall within the jurisdiction of the NGT?

2. If the answer to the above is yes, when did the cause of action arise and whether the application is filed within the period of limitations provided under NGT Act?

3. What directions could be given?

Question No. 1: Does the present petition involve a substantial question on environment and does it fall within the jurisdiction of the NGT?

22. The following facts are projected by the applicant: (a) respondent nos. 2 & 3 are constructing a 4 – Floor (ground + 3 floors) school building without following the norms; (b) Respondent nos. 2 & 3 are running a senior secondary school in place of primary school permitted under the 1992 Master plan; (c) Respondent no. 1 has reduced the size of Public Park by allotting additional $\frac{1}{2}$ acre of land to respondent nos. 2 and 3; (d) Respondent nos. 2 and 3 have encroached the remaining $\frac{1}{2}$ Acre park by merging it with the plot allotted to the school and by constructing a common boundary wall all around the two plots; and (e) Respondent nos. 2 & 3 are creating congestion vis-à-vis air pollution by parking school buses on the narrow public road outside the school premises. Of the said facts (a) and (b) straightaway fall beyond the jurisdiction of the Tribunal and hence not considered hereunder. The other three facts listed as c), d) and e) do involve a significant question related to environment and therefore fall under the purview

of the NGT Act of 2010. In case of fact (c) it may be pointed out that there is no denial from any of the respondents of the fact that the Master Plan of 1992 for Sector 31 included a 1-Acre plot of land earmarked as public park adjacent to the 1-Acre plot identified and demarcated for a Primary School at Site 2. As per Section 2 (a) of the Haryana Urban Development Authority Act 1977 “an amenity includes roads, water-supply, street-lighting, drainage [sewerage, treatment and disposal of sewage, sullage and storm water] public works, tourist spots, open spaces, parks, landscaping and play fields, and such other conveniences as the State Government may, by notification, specify to be an amenity for the purposes of this Act.” Now it is an accepted fact that the public parks are public amenities and provide the breathing lungs for the otherwise densely populated urban areas and reduction in such areas would rob the residents of the open space and consequently access to fresh air and recreation guaranteed by the Constitution of India and as such the open spaces/public parks need to be protected. It is an accepted fact that the size of the plot demarcated for School site was only 1 acre in the 1992 Master plan (as per Drawing No. DTP(G)/276/92, dated 12.02.1992). However, the size of the plot offered to the respondent No. 2 vide Letter of Intent dated 23.11.1993 was mentioned as 1½ acre. No reason has been disclosed for the change in the size of the plot. Thereafter during the litigation relating to

withdrawal of the LOI, the size of plot offered remained all through as 1½ acre and it was only after the HUDA's SLP was dismissed by the Hon'ble Supreme Court, that HUDA noticed the error and got the size of the plot meant for school amended by the HUDA authorities as has been referred to in Para 16 above. The process followed for the amendment has not been in consonance with the procedure prescribed under the HUDA Act of 1977.

23. As per Section 79 of the HUDA Act:

1. The Local Development Authority may make any amendment plan in the master plan or the sector development plan as it thinks fit, which may in its opinion do not effect important alterations in the character of the plan and which do not relate to the extent of land uses or the standards of population density.
2. The State Government may make amendments in the master plan or the sector development plan whether such amendments are of the nature specified in sub-section (1) or otherwise.
3. Before making any amendments in the plan, the Local Development Authority, or as the case may be, the State Government shall publish a notice in at least one newspaper having circulation in the local development area inviting objections and suggestions from any person with respect to the proposed amendment before such date as may be specified in the notice and shall consider all objections and suggestions that may be received by the Local Development Authority or the State Government.
4. Every amendment made under this section shall be published in such a manner as the Local Development

Authority or the State Government, as the case may be, may specify and the amendments shall come into operation either on the date of the first publication or on such other date as the Local Development Authority or the State Government as the case may be, may fix.

24. A mere reading of the procedure followed for changing the size of the plot meant for the Primary School on site 2 vis-à-vis size of Public Park clearly indicates that the said process is bereft of any sanctity as provided by the HUDA Act, 1977 (as amended from time to time). However, the said amendment has taken place in 2004.
25. As regards the fact (d) referred to earlier, all the respondents in the present O.A. agree that the size of the plot allotted finally to respondent nos. 2 and 3 is only 1½ Acre and the remaining part of the said plot is still under the category of Public Park. This being so the respondents 2 & 3 have no legal right to merge this piece of land (meant to be a park for the people of the neighbourhood) with the plot meant for school and enclose it within the boundary wall/fencing that would debar the common people from using it for the purpose for which a public park, set aside in the Master Plan, is meant for. The fact (e) pertains to parking of school buses on the road side and consequent congestion and air pollution would need consideration by the Tribunal. The answers to the facts (c), (d) and (e) are in affirmative. Therefore adjudication in these matters would fall within the jurisdiction of the Tribunal.

Question No. 2: When did the cause of action arise and whether the application is filed within the period of limitation as provided under NGT Act?

26. Undisputedly the cause of action first arose in 2004 when the Chief Administrator of HUDA allowed the reduction of the plot size of the Public Park adjacent to the School Site 2 by ½ Acre, which got reflected in the Original Drawing of the Sectoral Master Plan of sector 31 of Gurgaon. Admittedly the said amendment was effected in violation of the HUDA Act, 1977. The applicant has pleaded that he came to know about the reduction in the park size only when he observed the construction activity in January, 2015. The contention of respondent nos. 2 and 3 is that the construction of the school building commenced and got partly completed in 2010. These respondents cite the letter conveying the approval of the building plan for erecting the building by HUDA vide Memo No. SDE(S-II)263 dated 08.04.2010 and a 'Part Only' Occupation Certificate bearing Memo No. SDE (S) 1364 dated 18.11.2010 as the supporting documents. According to these respondents they raised construction consisting of ground and first floor having an area of 1519.5 sq. m at that time, that is, in 2010. The Applicant has not been able to bring to the notice of the Tribunal any document showing that the building depicted in photograph exhibited on page 48 and 49 of the Application is different from the one for which

'Part Only' occupation certificate was issued by the HUDA. In these circumstances it is quite clear that the presently under construction building is the same of which the ground and first floor were constructed by the Respondents 2 & 3 in 2010 and the remaining floors have been constructed after the HUDA approved the revised building plan of the respondent no. 3 vide Memo No. SDE/(s)/881 dated 11.06.2014. This being so, the cause of Action did not arise in January, 2015 as against the applicant, but arose in 2010, when the ground and first floor of the building were constructed. Accordingly the application in respect of the reduction in the size of the park is hopelessly barred by time. Hence the Application is barred by time in respect of the claim on reduction of the size of the park.

27. It is an admitted case that the respondent nos. 2 and 3 have been allotted only 1½ Acre of land for the School premises and any additional land encroached upon by them and/or held by them within their boundary wall is illegal in the eye of law. As the said encroached land stands designated as a public park, it ought to be kept totally separate and independent of any private control. If at the time of demarcation it is observed that any piece of land has been encroached the same needs to be vacated forthwith.

28. The complaint of the applicant in respect of parking of School buses on the public road has nowhere been denied

by the said respondents. Accordingly, it can be taken as admitted.

29. In the light of the above, we issue the following directions:

1. Respondent no. 1 shall, with the help of respondent no. 4 if needed, immediately demarcate and take possession of the land exceeding 1½ Acres from the respondent no. 2 & 3 and fence it properly and develop it as a public park as envisaged in the Master Plan within a period of 8 weeks. The demarcation process shall be conducted in presence of the applicant.
2. Respondent nos. 2 and 3 are restrained from parking their buses on the public road outside the school premises. They are directed to keep all the school vehicles within the school premises only and shall effect boarding and de-boarding of students within the school premises and not on the roadside.
3. Respondent nos. 2 and 3 are directed to immediately remove all encroachment from the plot of land exceeding 1½ Acre allotted to them by HUDA if they are in possession of any excess land. They shall be liable to environmental compensation for the encroached land, if found at the time of demarcation, at the rate of Rs. 1000/- per sq. mtr. The environmental compensation shall be deposited within four weeks with the HUDA, who shall utilize this amount for the development of the said public park and submit a detailed expenditure

statement thereof to the Registry of the NGT for further orders of the Tribunal.

4. With these directions, the Original Application No. 165 of 2015 stands disposed off, leaving the parties to bear their own costs.

M. A. No. 488 of 2015

As the Original Application stands finally disposed of, the Miscellaneous Application is dismissed.

Justice M. S. Nambiar
Judicial Member

Prof. A. R. Yousuf
Expert Member

New Delhi
May 27, 2016

NGT