

**BEFORE THE NATIONAL GREEN TRIBUNAL
(WESTERN ZONE) BENCH, PUNE**

APPLICATION NO.134 OF 2015

CORAM:

HON'BLE MR. JUSTICE U.D.SALVI
(Judicial Member)

HON'BLE MR. RANJAN CHATTERJEE
(Expert Member)

In the matter of:

1. NANIK RUPANI,

Member, Managing Committee

Vikas Valley Co-operative Housing Society

Lonavala.

2. ASHISH VAID,

Member, Vikas Valley Co-operative Housing Society

Lonavala.

.....APPLICANTS

VERSUS

**1. SECRETARY, MINISTRY OF ENVIRONMENT AND
FORESTS,**

India Paryavaran Bhavan,

JorBagh Road,

Lodhi colony,

New Delhi-110003.

2. SECRETARY, ENVIRONMENT DEPARTMENT,

Government of Maharashtra

Mantralya

Mumbai-400032.

3. MEMBER SECRETARY,

State Environment Impact Assessment Authority,

Mantralya,

Mumbai-400032.

4. THE DISTRICT COLLECTOR ,

Collector Office,

Council Road, Vidhan Bhavan

New Building, Bund Garden

Pune-411001.

5. THE CHIEF OFFICER

Lonavala Municipal Council,

Lonavala,

6. M/s VIKAS DEVELOPERS,

A Proprietary Concern of the Madan Lal
Gupta Family Trust,

106, 2nd Floor,

Vikas Centre, SV Road, Santacruz (West),

Mumbai-400054.

Pin code-403001.

7. MADAN LAL GUPTA,

106, 2nd Floor,

Vikas Centre, SV Road, Santacruz (West),

Mumbai-400054.

.....**RESPONDENTS**

Counsel for Applicant (s):

Mr Aditya Pratap Singh, Anirudha Josh, Dipti R. Khule

Counsel for Respondent (s):

Supriya Dangare for Respondent Nos.2,3.

**S.B.Vaidya-Pandit, Law Officer, Collectorate Pune for
Respondent No.4**

Mr. Ajay Gadegaonkar, Mr Vilas Mahajan for Respondent No.5.

Mr P.D. Dalvi, Mr A. Kocharekar, Mr. Nikhil Chavan, Mr. Yogesh V. Patil for Respondent Nos. 6 and 7.

DATE: FEBRUARY 28th, 2017.

J U D G M E N T

1. This Application has been moved by the Members of Vikas Valley Co-operative Housing Society, Lonavala, situate in Vikas Valley, Lonavala for restitution of area devastated by hill-cutting or excavation and tree felling, sometime around December, 2014 to make illegal, unauthorized road connecting plot No.47 to plot No.14 in the area popularly known as 'Vikas Valley' and for relief of injunction restraining such acts at the site. The Applicants have also urged for invoking the principle of 'Polluter Pays' and 'Precautionary Principle' under Section 20 of the National Green Tribunal Act, 2010, against the Respondents.

2. According to the Applicants, an integrated housing complex comprising of residential units and recreation ground spread over area of 1,21,113sq.m was developed as per approved lay-out (Annexure-A-3) under name and style as 'Vikas Valley' and development

began in the year 1992. The Applicants state that Respondent No.5- Lonavala Municipal Council (LMC) approved the lay-out of the said project and Respondent No.6- M/s Vikas Developers a proprietary concern of Mr. Madan Lal Gupta Family Trust of which Respondent No.7 Mr. Madan Lal Gupta is the proprietor, undertook the development of the said project.

3. Respondent Nos. 1 to 4, the Applicants state, are the authorities viz. Respondent No.1- Secretary, MoEF, New Delhi Nodal Authority for enforcement of Environment Impact Assessment (EIA) Notification, 2006, Respondent No.2- Secretary, Environment Department, Govt. of Maharashtra Authority for enforcing provisions of the Environment (Protection) Act, 1986 in the State of Maharashtra and issuing directions under Section 5 of the said Act, Respondent No.3- Member Secretary of State Environment Impact Assessment Authority (SEIAA) and Respondent No.4 - Collector, Pune.

4. In December, 2014, the Applicants submit, Respondent Nos. 6 and 7, the developers, suddenly and illegally started cutting trees growing on Recreation Ground No.5 and surrounding areas without any

statutory approval and carried out major hill cutting and excavation activities for making road, more particularly shown in the plan annexed at Annexure A-5 to the Application and photographs dated 18.12.2014 Annexure-A-4, connecting plot No.47 to plot No.14 owned by Respondent No.6 and indulged in environmental degradation with cutting of old luxuriant vegetation.

5. The Applicants state that they immediately addressed a letter dated 15th December, 2014 (Annexure A-6) to Respondent No.5- LMC with a view to seek clarification whether any statutory approval was granted to the activities indulged into by the Respondent Nos. 6 and 7, and in turn received a copy of the letter addressed to Respondent No.7-Mr Gupta by the Respondent No.5 LMC in response to the letter dated 15th December, 2014 (Annexure A-7, collectively). The Applicants have produced photographs of Google Earth Imagery of the year 2014-2015 of the site in order to highlight damage caused to environment.

6. The Applicants further submit that Vikas Valley Co-operative Housing Society engaged services of M/s Genstru Consultants Pvt. Ltd to inspect the site and assess the damage caused, and accordingly the

consultants paid visit to the site on 25th August, 2015 and made observations and submitted their report with recommendations vide report dated 5th September, 2015 (Annexure A-12).

7. The Applicants also quoted in their Application the illegal activities of Respondent Nos. 6 and 7, which have resulted in damage to environment. The Applicants state that Respondent Nos. 6 and 7 severely damaged fragile environment of the society by indulging in rampant illegal hill cutting for the purposes of illegal and unauthorized construction of bungalows, which were later on demolished by Respondent No.5 LMC as per the photographs (Annexure A-15).

8. A brief reply/affidavit dated 9th August, 2016 has been filed on behalf of Respondent No.4- the Collector, Pune. Respondent No.4 the Collector Pune in its reply submitted that Respondent Nos. 6 and 7 had carried out massive illegal construction, felling of trees and cutting of hillsides in ecologically fragile area of Vikas Valley, at Khandala, which falls within the jurisdiction of Respondent No.5 LMC. It further reveals that the Tehsildar, on instructions, directed the concerned Talathi to make a panchnama at the site and the panchnama was made on 10th March, 2016, which

reveals that 6m wide and 70m long road had been made to connect plot No.47 to plot No.14, and the Tehsildar thereupon had issued a Show-cause Notice to Respondent No.6 and after giving him reasonable opportunity to respond had imposed fine of Rs.17,19,990/ vide order dated 29.7.2016. Making reference to the activities in the year 2006. Respondent No.4 Collector further revealed that the Tehsildar had duly taken action against Respondent No.6, as per the provisions of the Maharashtra Land Revenue Code, 1966 by imposing fine of Rs.5,10,025/- for carrying out illegal work without statutory permissions at the site of M/s Vikas Valley situate at Survey No.44,45/2 of village Khandala, Taluka Maval, district Pune and the Respondent No.6- M/s Vikas Developers had duly deposited the said fine amount in the Govt. Treasury.

9. Respondent No.5- LMC in its reply dated 8th November, 2016 categorically asserted that in the month of December, 2014, the developer had made an illegal road over the open space No.5 and a complaint received in that regard by the Council was responded with stop-work Notice dated 19th December, 2014 issued to Respondent No.6 Mr. M.L.Gupta. In clear terms, Respondent No.5 LMC asserted that Respondent No.6 had done excavation activity and made the

unauthorized road, as referred to in Para 3.6 of the Application. Respondent No.5 LMC further submits that it had issued Notice dated 1st December, 2015 to the developer asking them not to indulge in any further illegal act without taking any prior permission.

10. Respondent Nos. 6 and 7 controverted Applicant's case with reply dated 30th January, 2016 and further raised a plea of limitation on the ground that the activity referred to in the Application is of the year 2007, as referred to in the letter dated 14th March, 2007 of Vikas Valley Co-operative Housing Society annexed to the reply as Ex.'R-1' and as such the cause of action first arose in or about March, 2007 and delayed action after lapse of five (5) years therefrom is clearly barred either under Ss. 14(3) or 15(3) of the National Green Tribunal Act, 2010.

11. Respondent Nos. 6 and 7 admitted the fact of integrated housing complex under the name and style as Vikas Valley being developed by them as per lay-out approved by LMC vide sanction No.ENG/ PB/3/ LAT/78-80 dated 30th July, 1990. However, Respondent Nos. 6 and 7 contend that registration of Vikas Valley Co-operative Housing Society has been challenged in the Writ Petition No.1930 of 2013 preferred before the

Hon'ble High Court of Judicature at Bombay and as such, the present Application filed by the individuals is not maintainable.

12. Respondent Nos. 6 and 7 contend that the Applications have been deliberately and willfully filing complaints against them with ulterior motive and the Hon'ble High Court while disposing of the Writ Petition No.5792 of 2007 filed by the Applicants in respect of the grievance made in the letter dated 14th March, 2007 (Annexure-R1) had directed Respondent No.5-LMC to find out whether any unauthorized development and/or construction has been carried out by the developer (Respondent No.5, therein) and to take steps to demolish the said construction. Accordingly, the Chief Officer of Respondent No.5 LMC opened the Garden for the use of all persons and directed installation of Generator Room in the plot of land reserved for Hotel after taking permission as per the order copy of LMC Ex-R-4. Respondent Nos. 6 and 7 further contend that the Expert Committee appointed by LMC to further inquire into the complaints of the Applicants had heard the parties and closed the proceedings. According to Respondent Nos. 6 and 7, the present Application is an attempt to further harass them.

13. The parties were heard at length.

14. Respondent Nos. 1 to 4 choose to submit to the orders of this Tribunal. Learned Counsel appearing on behalf of Respondent Nos. 2 and 3 submit that Respondent Nos. 6 and 7 had not obtained any lawful approval/clearance/sanction for tree cutting or hill cutting/land excavation from any competent authority and, therefore, Respondent Nos. 6 and 7 deserved to be dealt with in accordance with law.

15. Learned Counsel appearing on behalf of Respondent No.5-LMC submits that lay-out of the said project developed by Respondent Nos. 6 and 7 was approved as per copy of the certified plan of Vikas Valley (Annexure A-1) produced by the Applicants; and the area shown as Garden between plot No.47 and plot No.14, was reserved as Garden space i.e. recreation ground and its nature ought to have been retained and developed as a Garden. He submitted that the stop-work Notice indicating the illegal execution for construction of illegal and unauthorized road in the reserved open plot was issued to Respondent No. 7 - Mr. Gupta and Respondent No.7 was called upon to stop the excavation and restore the entire area as per the Notice dated 19.12.2014 (Annexure A-7-collectively

to the Application). Respondent No.5 LMC thus lend support to the Applicant's case.

16. Learned Counsel appearing on behalf of Respondent Nos. 6 and 7, besides reiterating contentions raised in the reply, chose to file an affidavit dated 16th February, 2017 along with the photographs, at the last moment, to make out a case that the allegations made by the Applicants are false and there is no road but steps in existence at the site in question as shown in the said photographs (Annexure R/J-1 collectively).

17. The rival submissions warrant answers to the following issues:

- i)** Whether the present Application is barred by limitation as prescribed either under Ss.14 or 15 of the National Green Tribunal Act, 2010?
- ii)** Whether the Applicant could have initiated the present Application?
- iii)** Whether the Applicants establish environmental damage requiring its restitution /restoration?

Re: Issue (i):

18. Learned Counsel appearing on behalf of Respondent Nos. 6 and 7 argued that the act complained of in the present Application is the act of hill cutting referred to in the complaint dated 14th March, 2007 (Annexure R-1) and as such, the first cause of action, though not clearly mentioned in the Application arose in or about March 2007 and, therefore, the Application moved on 3.10.2015 is clearly time barred as per the provisions of either Ss.14 or 15 of the NGT Act, 2010. At the outset, it needs to be mentioned that 'cause of action' for a Civil Case is the bundle of facts revealed in the case. We have before us a clear case of tree cutting and hill cutting, which occurred in or around December, 2014 for construction of a road connecting plot No.47 to plot No.14 in Vikas Valley and the facts have been made vivid with the photographs and the Google Imagery annexed to the Application. The Applicants have further adverted to past illegal activities of Respondent Nos. 6 and 7 and with the rejoinder dated 4th April, 2016 to the reply of Respondent Nos. 6 and 7, have clearly demonstrated that the grievances made in the letter dated 14th March, 2007, do not in any way relate to the grievance made in the present Application. We must therefore necessarily read from the Application that the cause of action for

the present Application first arose in December, 2014 and not in March, 2007.

19. On the other hand, the facts revealed in rejoinder dated 16th February, 2017 and the photographs annexed thereto do not in any way can be said to have any connection with the area referred to in the Application and made vivid through the photographs and plan annexed to the Application. Significantly, the rejoinder avoids to make reference to any plan necessary to pinpoint the location of the steps and road shown in the photographs annexed thereto. It, therefore, appears to be a ploy made to obfuscate the issue and, therefore, deserves to be rejected.

20. The Applicants are essentially seeking restitution of environment degraded as a result of activities of Respondent Nos. 6 and 7 in the present Application. The provisions of Section 15 of the NGT Act, 2010, are therefore attracted to the present case.

Section 15 reads as under:

15. Relief, compensation and restitution. -

(1) The Tribunal may, by an order, provide,-

(a) relief and compensation to the victims of pollution and other environmental damage arising under the enactments specified in the Schedule I (including accident

occurring while handling any hazardous substance);

(b) for restitution of property damaged;

(c) for restitution of the environment for such area or areas, as the Tribunal may think fit.

(2) The relief and compensation and restitution of property and environment referred to in clauses (a), (b) and (c) of sub-section (1) shall be in addition to the relief paid or payable under the Public Liability Insurance Act, 1991 (6 of 1991).

(3) No application for grant of any compensation or relief or restitution of property or environment under this section shall be entertained by the Tribunal unless it is made within a period of five years from the date on which the cause for such compensation or relief first arose: Provided that the Tribunal may, if it is satisfied that the applicant was prevented by sufficient cause from filing the application within the said period, allow it to be filed within a further period not exceeding sixty days.

(4) The Tribunal may, having regard to the damage to public health, property and environment, divide the compensation or relief payable under separate heads specified in Schedule II so as to provide compensation or relief to the claimants and for restitution of the damaged property or environment, as it may think fit.

(5) Every claimant of the compensation or relief under this Act shall intimate to the Tribunal about the application filed to, or, as the case may be, compensation or relief received from, any other court or authority.

21. It can be seen that relief and compensation due to the victims of pollution and other environmental damage restitution of property damaged and restitution of environment, are dealt with by law under the different heads under Section 15 of the NGT Act, 2010.

For seeking restitution of environment, it is not necessary that the Applicant has to be victim of pollution or other environmental damage. The Applicants invoking provisions of Section 15 of the NGT Act, for restitution of environment has/have only to show that environment in question requires restitution.

22. In the instant case, the Applicants have come forward with the case that environment was damaged due to activities mentioned in the Application and requires restitution and cause of action for this relief of restitution arose when activities occurred in December, 2014. Section 15 Sub-Clause (3) of the NGT Act, 2010, empowers the Tribunal to entertain any such Application for restitution of environment, if it is made within a period of five (5) years from the date on which cause of action for such relief first arose. The present Application has been moved on 3rd October, 2015, well within the said prescribed period. This point is therefore answered negatively.

Re: Issue (ii):

23. The present Application has been moved by the Applicants following the resolution passed by Vikas Valley Co-operative Housing Society (Annexure A-2). Keeping aside this fact, Section 18 (2) (e) of the NGT

Act, 2010 lays down that “any person aggrieved” is competent to initiate an Application either under Ss.14 or 15 of the NGT Act, 2010. The Applicants are admittedly the plot holders in the project of integrated housing society and have every reason to be aggrieved by action of Respondent Nos. 6 and 7 in doing damage to the Garden area reserved for the plot holders of Vikas Valley Co-operative Housing Society as a recreation ground, particularly, when activities are illegal and unauthorized and have impact on the environment. Therefore, this Point is answered affirmatively.

Re: Issue (iii):

24. The Google Imagery produced at Annexure A-10 to the Application reveals that the area in question showed existence of trees and vegetation at the location in question on 26th December, 2013 and loss of this vegetation on carving out of the road like area at the site on 11.1.2015. If this imagery is read in conjunction with the photographs produced by the Applicants at Annexure A-4, no words are required to tell a tale that hill slopes were carved and trees were felled to make a way through an open undisturbed area from one area to another, where constructions appear. The photographs at Annexure A-8 clearly shows how this occurred with

the aid of JCB machine. The applicants have stated on oath that this excavation of hill cutting and tree felling was done to construct a road joining two plots and it passes through recreation ground/Garden area shown in lay-out plan (Annexure A-5).

25. Respondent Nos. 2 to 5, authorities, have supported the Applicants. Respondent No.5 LMC, in fact, issued stop-work Notice dated 19th December, 2014 to Respondent No.7 Mr. M.L.Gupta. The stop work Notice dated 19th December, 2014 makes a reference to illegal and unauthorized construction of 6.0mtrs width and 105mts long road in compulsory open space No.5 in Survey Nos. 44+ 45/2, Khandala, Taluka Maval, District Pune between a Hotel Velvett Country and Velvett Guest House. We can see the buildings which appear at the ends of the road in the photograph (Annexure A-4) (Pg Nos. 29-30). It is, therefore, amply evident that there has been illegal and unauthorized tree cutting and hill cutting/excavation at the hands of Respondent Nos. 6 and 7 for construction of the road in Garden/open plot No.5, referred to in the sanctioned layout plan annexed to the Application.

26. The visit report of Genstru Consultants Pvt Ltd further corroborates the aforesaid facts. The said

consultant Agency made following observations to show the extent of environmental damage:

1. The excavation has been done on the periphery of the society open space. The height of the excavation varies between 0.00 to 4.00 m along the boundary of the society premises Refer Photo **1-a** and **b**.
2. Beyond the boundary of society premises there is a sloping terrain with thick vegetation (Refer Photo 2).
3. The cutting has been done in a steep profile. The average slope of the cutting varies between 60° to 70°. The cut is near vertical at the crest. In certain stretches there is even overhang in the upper part and caving in the central part of the cut. Refer Photo 2.
4. The slope material comprises of filled up soil strewn with boulders.
5. With the ongoing monsoon the steeply cut slope material is getting eroded day by day causing further instability to the cut section and leading to further loss of society open space area.
6. On eastern side, beyond the edge of space that has been created by cutting for marking the road, the terrain is sloping and vegetated. The slope is expected to be about 30° (photo 3).
7. The drainage system is very vital in the hilly terrain. Due to unplanned cutting the drainage system which was established during the development of society open space has been damaged. The surface run off is now flowing unchecked and untrained. This can lead to slope instability problems beyond the cut area on downhill slope as well.

8. The vegetation cover has also been damaged due to cutting of the slopes. It was informed that the trees and bushes have been uprooted from the area where the cutting was done.

9. Due to removal of vegetation cover and damage to the established drainage channels the rate of infiltration is expected to be higher in the cut portion. This will lead to increase in the saturation level of ground and cause global instability problem especially considering high intensity rainfall in the area.

27. Illegal and unauthorized tree cutting as well as hill cutting is an offence to environment. We had exhaustively dealt with the aspect of hill cutting in Nab Lions Home' case (**Application No.99 of 2014 : Nab Lions Home for Aging Blind Vs Kumar Resorts & Ors**) decided on 25th May, 2015 and observed:

"The 'Hill' as per composition and design is meant for strengthening of earth pressure acting on the peripheral area thereof, provides speed of water flow from top side of the hill towards lower incline. The surface of dry stones, would, therefore, be destructed and natural greenery is likely to be affected, if the earthen surface is diminished. The upper layer of soil keeps glued to dry stones pitching and thereby protects the hill. Cutting of hill, therefore, is degradation of environment.

28. The Hon'ble Principal Bench of NGT, New Delhi in **Sunil Kumar Chugh's** case (**Appeal No.66 of 2014: Sunil Kumar Chugh and Ors Vs Secretary,**

Environment Department, Government of Maharashtra & Ors) decided on 3.9.2015 considered the importance of open recreation spaces for ensuring clean and healthy environment and need for making right use of land for right purpose. Any illegal and unauthorized diversion of space reserved for Garden or recreation ground under the sanctioned layout to any other use, therefore, cannot be countenanced with and such tampering with the layout is bound to have adverse impacts on clean and healthy environment. Only conclusion that can be drawn from the discussion hereinabove is that environment has suffered damage and the Respondent Nos. 6 and 7 are liable to restore and bear cost for restoring the part of land used for construction of the road in the Garden/open plot No.5 as a Garden, referred to in the sanctioned layout. Point No.(iii) is, therefore, answered in affirmative.

29. The Genstru Consultants Pvt Ltd have made following recommendations:

- 1. In hilly terrain there is need to appropriately plan excavation activity so that it does not lead to slope instability problem in due course of time.**
- 2. The cutting that has been carried out is left unprotected and rains during the monsoon are eroding the slopes. As mentioned above the slope profile is pretty steep and is thus triggering local**

instabilities which is eating away the society open space.

3. The cut area should also be covered with polythene sheets and the surface runoff should be channelized to prevent erosion and excessive saturation of the downhill slope.
4. The area should be restored by placing the fill back in its position and restoring the area society's open space. To prevent the erosion of the soil that has been replaced and promote vegetation, the surface of the fill shall be covered with erosion control blanket made of coir, and vegetation should be planted on the surface of the new filing.
5. The other option can be to take-up the construction of retaining structure at the boundary of the society open space to retain the cut up to the outer periphery of should society open space. The retaining structure can be of reinforced concrete or reinforced soil structure.
6. To channelize the surface run-off, the drainage system should be established.

30. Nothing to discount worth of these recommendations has been placed before us. Restitution of environment, therefore, needs to be done keeping in mind the said recommendations. We, therefore, direct:

1. Respondent Nos. 6 and 7 shall not in any manner whatsoever illegally and unauthorizedly fell the trees or carry out hill cutting in the project area of Survey No.44+45/2 of Khandala, Taluka Maval, District Pune.

2. We direct Respondent No.5 LMC to restitute the said area of Garden/open plot No.5, as shown in the sanctioned layout, more particularly, a strip of land admeasuring 6.0 mtr wide and 105 mtr long in recreation ground/open space No.5 connecting plot No.47 to plot No.14 (Annexure-A-5 to the Application), keeping in mind the recommendations of Genstru Consultants Pvt. Ltd quoted hereinabove within six months and recover the costs and expenses incurred therefor from Respondent Nos. 6 and 7.

3. Respondent Nos. 6 and 7 shall jointly or severally pay the costs and expenses incurred for restitution of the said space as aforesaid and shall initially deposit an amount of Rs.40 Lakhs with the Respondent No.5 Lonavala Municipal Council towards the same within a month.

4. Respondent Nos. 6 and 7 shall pay litigation costs of Rs. 1-Lakh (One Lakh) to the Applicants.

Application is disposed off accordingly.

....., JM
(Justice U.D.Salvi)

....., EM
(Ranjan Chatterjee)

PUNE
DATE: FEBRUARY 28th, 2017.

hkk