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

M.A. No.507/2013
M.A. No.595/2013
M.A. No.644/2013
M.A. No.649/2013
IN
APPLICATION No. 88 of 2013

In the matter of :

J. Mehta .....Applicant

Versus

1. Union of India
Through Secretary,
Ministry of Environment & Forests,
Paryavaran Bhawan, CGO Complex,
Lodhi Road,
New Delhi.

2. Environment Pollution (Prevention & Control)
Authority, Through its Chairperson,
Parivesh Bhawan, CBD-cum-Office Complex,
East Arjun Nagar,
Delhi-110032.

3. Central Ground Water Board
Through the Member Secretary,
West Block-II, Wing-3, Ground Floor,
Sector I, R.K. Puram,
New Delhi-110066.

4. The Secretary,
Department of Environment,
Govt. of NCT of Delhi,
Delhi Secretariat, I.P. Estate,
New Delhi-110002.

5. State of Delhi Through Secretary,
Department of Housing & Urban Development,
Delhi Secretariat, I.P. Estate,
New Delhi-110002.

6. The Member Secretary,
Delhi Pollution Control Committee,
Govt. of NCT of Delhi,
4th Floor, ISBT Building, Kashmere Gate,
Delhi-110006.

7. The Chairman,
Delhi Development Authority,
B-Block, Vikas Sadan,
New Delhi-110023.

8. The Director,
Delhi Fire Service,
DFS Headquarters, Connaught Place,
New Delhi.

9. Ambience Developers (P) Ltd.,
L-4, Green Park Extension,
New Delhi
Through its Proprietor/Managing Director

10. Bird Automotive,
LG-04, Ambience Mall,
2, Nelson Mandela Marg, Vasant Kunj,
New Delhi

11. Home Centre,
LG-02, Ambience Mall,
2, Nelson Mandela Marg, Vasant Kunj,
New Delhi.
Through its Proprietor/Managing Director

12. Reliance Trends,
LG-13, Ambience Mall,
2, Nelson Mandela Marg, Vasant Kunj,
New Delhi.
Through its Proprietor/Managing Director

13. Lifestyle,
G-2/UG-32/F-134/S-237, Ambience Mall,
2, Nelson Mandela Marg, Vasant Kunj,
New Delhi.
Through its Proprietor/Managing Director

14. Big Bazar,
G-01/UG-34, Ambience Mall,
2, Nelson Mandela Marg, Vasant Kunj,
New Delhi.
Through its Proprietor/Managing Director

15. Parcos,
UG-21 & 22, Ambience Mall,
2, Nelson Mandela Marg, Vasant Kunj,
New Delhi.
Through its Proprietor/Managing Director

16. Kiehl's,
UG-13, Ambience Mall,
2, Nelson Mandela Marg, Vasant Kunj,
New Delhi.
Through its Proprietor/Managing Director

17. Shoppers Stop,
UG-01, G-101, S-201, Ambience Mall,
2, Nelson Mandela Marg, Vasant Kunj,
New Delhi.
Through its Proprietor/Managing Director

18. State Level Environment Impact
Assessment Authority, Delhi,
Office of Delhi Pollution Control Committee,
4th Floor, ISBT Building, Kashmere Gate,
Delhi-110006.

19. South Delhi Municipal Corporation,
Green Park,
New Delhi-110016.

.....Respondents

Counsel for Applicant :

Mr. Raktim Gogai, Advocate

Counsel for Respondents :

Ms. Neelam Rathor along with Mr. Vikramjeet, Advocates for Respondent No.1.
Mr. Ankush Tewari, EE, CPCB for Respondent No.2.
Mr.S.K.Anisha & Mr.Satya Siddique,Advocates for Respondent No.3.
Mr. Dinesh Jindal, Law Officer for Respondent No.4.
Ms. D. Rajeshwari Rai, Advocate for Respondents No.5 & 8.
Mr. N.P. Singh, Advocate along with Mr. Dinesh Jindal, Law Officer for Respondent No.6.
Mr. Sanjay Kumar Pathak, Advocate for Respondent No. 7.
Mr. P.K. Agrawal with Mr. Mercy Hussain, Advocates for Respondent No.9.
Mr. Kunal Mehta, Advocate for Respondent No.10.
Mr. Sumit Gahlwat, Advocate for Respondents No.11&13.
Mr. K.R. Sariprabhu with Ms. Suman Yadav, Advocates for Respondent No.12.
Mr.Nitish Kumar with Mr.Sanjay Singh,Advocates for Respondent No.14.
Mr. Vinay Saini, Advocate for Respondent No.15.
Ms. Mamta Jiwani, Ms. Ritwika Agrawal and Mr. Ramesh Jerath, Advocates for Respondent No.16.
Ms. Megha Mehta Agrawal, Advocate for Respondent No.17.
Mr. Narender Pal, Advocate for Respondent No.18.

Mr. Balendu Shekhar, Advocate with Mr. Lalit Goel, AE(B)S2 for Respondent No.19.

ORDER/JUDGMENT

PRESENT :

Hon'ble Mr. Justice Swatanter Kumar (Chairperson)
Hon'ble Mr. Justice U.D. Salvi (Judicial Member)
Hon'ble Dr. D.K. Agrawal (Expert Member)
Hon'ble Prof. (Dr.) P.C. Mishra (Expert Member)
Hon'ble Dr. R.C.Trivedi (Expert Member)

Dated : October 24, 2013

JUSTICE SWATANTER KUMAR, (CHAIRPERSON)

The applicant is a resident of Delhi and claims that he has a serious interest in environmental issues. It is stated by the applicant that he gives due importance to environmental conservation and safety as it has an ultimate impact on the health and safety of human beings, flora and fauna. The Environmental Clearance (for short the 'EC') is granted for the purposes of due protection of ecology, environment and public health and its violation adversely affect either or all of them. Being affected by the flagrant violations of the laws/EC by Respondent No.9, the applicant has been compelled to approach the Tribunal. Respondent No.1, Ministry of Environment and Forests (for short the 'MoEF'), is the nodal agency in the administrative structure of the Central Government for planning, promotion, co-ordination and over-seeing implementation of the country's environmental and forestry policies and programmes. One of the primary concerns of the MoEF are implementation of policies and programmes relating

to conservation of the country's natural resources and while doing so, it is guided by the principles of sustainable development and enhancement of human-well-being. The other respondents, including Respondent No.2, being a statutory body, is entrusted with the implementation of environmental laws and rules, Respondent No.3, being a Board, is entrusted with the powers and functions under the Water (Prevention and Control of Pollution) Act, 1974 (for short the 'Water Act'); along with other responsibilities under the Environment (Protection) Act, 1986 (for short the 'Environment Act'), Respondents No.4 and 5 are the executive authorities of the Government of National Capital Territory of Delhi, concerned with environment, housing and urban development. The other respondents (Respondents No.6-8) are also executive or statutory authorities who are responsible for carrying out various duties and functions, as contemplated under different laws including issuance of occupancy certificates, fire clearances and other matters incidental thereto.

2. Respondent No.9, a company, in order to set up a shopping mall, 'Ambience Mall' at 2, Nelson Mandela Marg, Vasant Kunj, New Delhi, sought clearance under the relevant environmental laws from Respondent No.1. While complying with the requirements of the environmental laws, Respondent No.9 got an Environmental Impact Assessment (for short the 'EIA') Report prepared in March, 2006 and submitted the same to Respondent No.1 for the purpose of obtaining the EC. In the EIA Report, Respondent No.9 submitted

the following Building Details, which were the very foundation of seeking/grant of EC:

TABLE 2.1: BUILDING DETAILS CHART

S. No.	Description	Permissible (Sq.m.)	Proposed to be achieved (Sq.m.)
1	Site Area	33415.0	
2	Ground Coverage (Ground Floor Area + Atrium Area)	12600.0	12599.89
3	Atrium Area	2127.0	2127.0
4	F.A.R. (Built up Floor Area G+3)	42000.0	
	Ground Floor		11003.91
	First Floor		10563.18
	Second Floor		10355.00
	Third Floor		9693.45
	Projection		344.64
	Total	**42000.0**	**41960.19**
5	Multilevel Block 2 (P) 4160sqm x 2 Floors	8320.0	
	Ground Floor		4160.0
	First Floor		4160.0
	Total	**8320.0**	**8320.0**
6	Basement (UB+LB1+LB2)		
	Upper Basement	12910.0	12908.78
	Lower 1 Basement	29875.0	29853.56
	Lower 2 Basement	29875.0	29853.56
	Total	**72660.0**	**72615.9**

7	Building Height	17 m + Additional Height for Cinemas	17.00 m + (5m for Cinema)
8	Mandatory Parking	1200 ECS	1772

3. Based upon this EIA Report and examining the various factors, Respondent No.1, vide letter dated 27th November, 2006, granted EC to Respondent No.9 with requisite specific and general conditions for both the phases – construction and operation.

As is evident from the above chart, the permissible area in sq.m. was 72,660 and Respondent No.9 intended to construct 72615.9 sq.m. while providing car parking space for 1772 cars. Some of the relevant conditions of the EC, reference to which would be necessary for deciding the issues before us, read as under:-

> "(a) The installation of the Sewage Treatment Plant (STP) should be certified by an independent expert and a report in this regard should be submitted to the Ministry before the project is commissioned for operation. Discharge of treated sewage shall conform to the norms and standards of the Delhi Pollution Control Committee;
>
> (b) The green belt design along the periphery of the plot shall achieve attenuation factor conforming to the day and night noise standards prescribed for residential land use. The open spaces inside the plot should be suitably landscaped and covered with vegetation of indigenous variety;
>
> (c) Incremental pollution loads on the ambient air quality, noise and water quality should be periodically monitored after commissioning of the project;
>
> (d) Traffic congestion near the entry and exit points from the roads adjoining the proposed site must be avoided. Parking should be fully internalised and no public space shall be utilised;

(e) The environmental safeguards contained in the EIA Report should be implemented in letter and spirit;

(f) Six monthly monitoring reports should be submitted to the Ministry with a copy to the Delhi Pollution Control Committee.

(g) Officials from the Delhi Pollution Control Committee, who would be monitoring the implementation of environmental safeguards, should be given full cooperation, facilities and documents/data by the project proponents during their inspection. A complete set of all the documents submitted to MoEF should be forwarded to the Delhi Pollution Control Committee.

(h) In the case of any change(s) in the scope of the project, the project would require a fresh appraisal by this Ministry.

(i) The Ministry reserves the right to add additional safeguard measures subsequently, if found necessary, and to take action including revoking the environment clearance under the provisions of the Environmental (Protection) Act, 1986, to ensure effective implementation of the suggested safeguard measures in a time-bound and satisfactory manner.

(j) All other statutory clearances such as the approvals for the storage of diesel from Chief Controller of Explosives, Fire Department, Civil Aviation Department, etc. shall be obtained, as applicable by project proponents from the competent authorities."

4. Reference to the above EIA Report, Occupancy Certificate, Completion Drawing Site Plan and the Area Details, clearly shows that these documents do not contemplate lower ground floor, ground floor and upper ground floor. In the project, only ground floor has been projected. According to the applicant, the comparison of actual usage against the building plan and occupancy certificate is significant i.e. nearly 24,691.974 sq.m. is being illegally misused by Respondent No.9. Respondent No.9 is stated to have set up

shops in the basements and multi-level blocks meant for parking. The construction has been changed and it has been shown as lower ground floor, upper ground floor, ground floor, etc., which is not so prescribed either in the plans or the occupancy certificate. As per the 'Mall Information' available on the website of Respondent No.9, the area is shown to have been divided into LG, UG, FF, SF, TF. This is a clever attempt to hide the fact inasmuch as Basement-1 and Multi-level Block (2P) are being used for commercial operations as against the building plan sanctioned for parking. It is further averred by the applicant that the unauthorised construction of dozens of shops in the basement, ground floor and first floor of the multi-level parking is a violation of the EC granted and the building plans and is a fundamental change in the parameters on the basis of which the EC was granted. The terms of the EC clearly provide that the MoEF could add conditions as additional safeguards, measures, etc. subsequently, if it was so found necessary, as there has to be an effective implementation of the EC granted under the provisions of the Environment Act.

5. The space meant for parking along with various unauthorised constructions has been put to commercial use and Respondents No.10 to 17 are some of the parties who are operating big show rooms and shops in the non-permissible area in the Mall, and particularly the underground basement 2P Block, which is exclusively meant for parking. The above unauthorised and illegal acts and deeds of the said respondents are in violation of the conditions of the EC, contrary to EIA Report; violative of the

sanctioned plans and are in turn hazardous to environment in various respects. On account of drastic changes in construction and breach of the EC, safety norms and parameters for public health have completely changed. Respondent No.9 has committed serious breach of conditions of the EC and has thereby created environmental hazards for local population. It is the specifically pleaded case of the applicant that on account of significant change in commercial area by approximately 59%, the EC has become bad. The parameters of population per sq.ft. have drastically been changed. The population per sq.ft. has a direct impact on the area in terms of water utilisation, sewage disposal, density of population, standards of STP requirements and public amenities and facilities with reference to parking area. This also drastically affects the public health. The illegal extraction of underground water will adversely affect the ground water level and other environmental factors. According to the applicant, there is a clear violation of the EC, Master Plan of Delhi (MPD) Regulations, Environment Act and Rules made thereunder, Environmental Clearance Regulations, 2006 (for short the 'Notification of 2006'), Water Cess Act, 1977, Water Act, Air (Prevention and Control of Pollution) Act, 1981 (for short the 'Air Act') and Rules made thereunder, and Municipal Solid Waste (Management and Handling) Rules, 2000.

6. Though the petition is primarily contested by Respondent No.9, it would be appropriate for us to notice the stand taken by all the respondents, including the public authorities. Respondent No.9 has raised a preliminary objection in regard to maintainability of

the present application on the ground that the present application is a gross misuse of law and the complaint made by the applicant is with regard to violation of building bye laws for using more space for commercial activities than allowed under the then Floor Area Ratio (FAR). Respondent No.9 has even challenged the jurisdiction of the Tribunal on the plea that it does not fall within the subjects which can be entertained by the Tribunal. According to this respondent, the applicant has not raised any substantial question relating to environment or with regard to the Air Act, the Water Act or any of the other Acts as specified in Schedule I to the National Green Tribunal Act, 2010 (for short the 'NGT Act').

7. On merits, it is submitted that Respondent No.9 purchased the plot in question measuring about 33,415 sq.m. in a public auction held on 5th December, 2003 by the Delhi Development Authority (for short the 'DDA'). The lease deed was executed in favour of Respondent No.9 on 27.4.2004. The plot was even converted from leasehold to freehold by the DDA and a conveyance deed was entered into between Respondent No.9 and the DDA on 15th June, 2010. According to the Master Plan, 2001, an FAR of 100 was permissible for commercial development in the non-hierarchical commercial centres. When the Master Plan-2021 came into force, an FAR of 125 was allowed for commercial development in non-hierarchical commercial spaces, then the said respondent was allowed an FAR of 125 on 7th February, 2007. Thus, the answering respondent (Respondent No.9) became entitled to an additional FAR of 10,500 sq.m. calculated @ 25% of the original

FAR of 42,000 sq.m. Vide letter dated 11th August, 2010, Respondent No.9 applied to the Dy. Director (CL), DDA, for increasing the FAR in the Ambience Mall by 25% and thus, the said respondent was entitled to increase the FAR in accordance with the MPD-2021. The DDA can, it is stated, even grant the additional FAR out of the utilised additional FAR of the entire District Centre and open spaces as per its policy. Respondent No.9 has not committed any breach of the EIA Report or the EC granted by the competent authority. Para 5 of the EC letter dated 27th November, 2006 thus stipulates that the project would require a fresh approval from the MoEF in case of any change in the scope of the project. Since there was no change in the scope of the project, Respondent No.9 did not move the MoEF for any fresh look at the EC. It is stated that the nomenclature of lower ground floor, ground floor or upper ground floor has nothing to do with the EC or the building bye laws. It is only for the purpose of convenience that such nomenclature is provided. Respondents No.10 to 12 and 14 are using 10,190 sq.m. of covered area in the basement, ground floor and first floor of Block 2(P), which is to be counted towards the additional FAR permissible to Respondent No.9 under the MPD 2021. It is denied that an area of 24,691.974 is being misused. It is also denied by Respondent No.9 that the use of various portions of the Mall for commercial purposes earlier earmarked for parking is in violation or defiance of the EIA Report or the building plan or that the EC has become *void ab initio.*

8. Respondent No.9 has filed an additional affidavit on 2nd September, 2013. In this affidavit, the said respondent, with some elucidation, stated the historical background of his acquiring the property in question, the delay in the project, other difficulties caused by public authorities and pendency of cases before Supreme Court of India and finally the implications and difficulties being faced by the said respondent. According to Respondent No.9, the Mall is a part of the entire project of 92 ha of the constraint area and it was one of the projects of the DDA, which commenced in 1982. Then the DDA made allotments for different purposes and plans were sanctioned on 28th February, 2005. It was stipulated that the EC would be taken before issuance of the completion certificate. The constraint area of the project was a buildable area in December, 2003 when there was no requirement of any EC clearance from the MoEF. According to Respondent No.9, the Notification became applicable from 7th July, 2004. The balance land of 2.3 ha was ordered to be restored to its timed glory. The plots were auctioned by the DDA on 15th December, 2003 after submission and consideration of the EIA Report by EPCA. Respondent No.9 was entitled to use the additional FAR area in the building. According to this respondent, the cost of the project was Rs.643 crores but by the time the project got completed in August, 2009, the cost of the project increased to Rs.1,251 crores and Respondent No.9 took Rs.1,193 crores from public sector banks and financial institutions against mortgage of shops of the Mall at the site in question. About 20.74 crores per month is being paid

towards interest and instalment (EMI) and the present outstanding in the loan accounts of public sector banks and financial institutions is Rs.907 crores. As a result of the closure of the outlets in the basement and underground floors, due to the order of the Tribunal dated 12th July, 2013, revenue from the Mall has fallen from Rs.12.00 crores to Rs.10.70 crores per month and thus, the shortfall has also increased to Rs.10.04 crores per month from the earlier shortfall of Rs.8.74 crores. On this premise, Respondent No.9 prays for dismissal of the application.

9. On behalf of the DDA, Respondent No.7, a detailed reply-affidavit has been filed. In the reply, it has been stated that the contention of Respondent No.9 regarding the provision of additional FAR of 125 under MPD 2021 for commercial centres has been answered as per Table 5.4 of MPD 2021 mentioning that the FAR permissible for community centres/non-hierarchical commercial centres stands increased from 100 to 125. This entry requires that a maximum of 10% of additional ground coverage shall be allowed for providing atrium. There is no restriction on height, as per Table 5.4, subject to clearance from AAI, Delhi Fire Service and other statutory bodies. The enhancement in FAR, if approved by the competent authorities, will be subject to charging appropriate levies from the beneficiaries. The property in question was a plot of 33,415 sq.m. and the permissible built up area was 42,000 sq.m. Respondent No.9 had requested for additional FAR in the existing structure and the said request for additional FAR is not for redevelopment of the said plot. Since Respondent No.9 purchased

the plot in auction along with control conditions, any additional FAR other than the permissible limit of 42,000 sq.m. of floor area cannot be allowed in this case on the existing structure. The policy decision for providing additional FAR in cases of redevelopment of commercial areas was under consideration of the DDA but nothing on already built up and approved plots can be permitted unless a policy is formulated and approved.

10. In this affidavit, it is also stated that in compliance with the order of the Tribunal dated 29th August, 2013 and 5th September, 2013, inspection of the premises was carried out. It was noticed that the upper ground floor was being used for commercial purposes in addition to 1st, 2nd and 3rd floors for the same purposes. Basement I and Basement II in Block 2 was being used for parking, but vide order dated 12th July, 2013, the Tribunal had prohibited the use of lower ground floor for commercial purposes as opposed to parking and other purposes. In Block 2P, 1st floor was being used for commercial purposes, upper ground floor was also being used for commercial purposes, lower ground floor was locked, and upper ground floor was required to be used for parking purposes. However, Basement I and Basement II were being used for parking purposes. There was misuse of the premises and it was duly detected and identified by the officers of the Land Disposal Department who attended the inspection and the misuse was detected in relation to lower ground floor, ground level in Block 2, which was locked. 1st floor of Block 2P was also locked. Basement II

of Block 2P, reportedly meant for parking only, was not being used as such.

11. In the affidavit dated 12th July, 2013, the DDA has categorically stated that the inspections have confirmed that the basement of the aforesaid premises are being misused for running of shops including Big Bazar instead of parking. Vide letter dated 10th May, 2013, received from M/s Ambience Developers Pvt. Ltd., misuse of the aforesaid premises has been admitted and it has been requested to allow additional FAR as per the MPD 2021 and the request was being examined as to whether the same could be allowed by the competent authority. There were unauthorised constructions and in so far as unauthorised shops under the Basement are concerned, the same would be looked into by the South Delhi Municipal Corporation. It is averred that it is not disputed that neither EIA Report nor occupancy certificate nor completion drawings contemplate a lower ground floor or an upper ground floor and there is only one ground floor, which is provided. As regards two level blocks i.e. Block 2P, it is submitted that the same was to be used exclusively for parking. Vide letter dated 9th September, 2004, the DDA had granted approval for construction of third level basement, equal to the area of second lower basement i.e. 29,875 sq.m. and the basement was to be used exclusively for parking purposes. The height of each basement floor was to be four metres (maximum level). The basement parking area could not be used for parking of buses, trucks, etc. Height of the entry and the exit points may be restricted accordingly.

12. It is evident from the above that the DDA, in its reply, has pointed out that no permission for additional FAR had been granted even till date. There was unauthorised construction, misuse of space and violation of statutory provision in relation to the space meant exclusively for parking purposes.

13. Based upon earlier inspection conducted by the DPCC, it had issued a notice dated 31st May, 2005 to M/s Ambience Mall, who submitted their reply dated 5th July, 2005. They were permitted to use each floor as per the sanctioned building plans. According to this plan, second lower basement and first lower basement were to be used for parking/services. The entire ground level and first floor of Parking Block were also to be used for parking.

14. The Delhi Pollution Control Committee and the Secretary (Environment), Government of NCT of Delhi, have filed a common reply. The applicant had never approached these Respondents (No.4 and 6) for redressing any grievance. The team of the Delhi Pollution Control Committee (for short the 'DPCC') officials inspected the premises on 22nd April, 2013 and had noticed the following deficiencies or shortcomings:

> "Plant & machinery of installed STP found in operation, however no MLSS/bacterial growth was observed in any of the aeration tank.
>
> - Tube settler found filled with significant sludge and anaerobic conditions observed in the tube settler.
>
> - Water flow meters with regard to re-use of treated water are yet to be installed.
>
> - U.V. System with STP is not installed.

- Present occupational status of Mall is as under:

  Total no. of floors-7.

Third Floor	Named as TF	Retail shopping, Food Court, Multiplex
Second Floor	Named as SF	Retail shopping, Food & Beverage
First Floor	Named as FF	Retail shopping, Food & Beverage
Ground Floor	Named as UG	Retail shopping, Food & Beverage
Upper Basement	Named as LG	Retail shopping, Food & Beverage
Lower Basement1	Named as B1	Parking, Services
Lower Basement 2	Named as B2	Parking, Services"

15. The MoEF had granted EC to the project proponent on 27th November, 2006 as per the provisions of the Environmental Impact Assessment Notification of 2006, dated 14th September 2006, as amended. As per the EIA Report submitted, all the basements had been marked for parking and services only. The consent to operate was granted to the project proponent by DPCC, which is valid till 31st August, 2013. However, no renewal thereof has been granted thereafter. On the contrary, a notice to show cause has been issued to the project proponent on 10th May, 2013 under the Water Act and the Air Act. The project proponent has shown 3 basements for parking and services while applying for EC whereas the present condition reveals that the project proponent has changed the status.

16. A separate reply was filed by the MoEF, according to whom the project in question is covered under Item No.8 (a) & (b) of Schedule to the Notification of 2006, as amended in December, 2009. Category 'B' projects are projects appraised by the State Level Expert Appraisal Committee (for short the 'SEAC') and approved by the State Level Environmental Impact Assessment Authority (for short the 'SEIAA). SEAC will appraise projects where the built up area is more than 20,000 sq.m. and less than 1,50,000 sq.m. in the case of Building and Construction projects. As the SEIAA was not in place at the relevant time, the EC had been granted by Respondent No.1, MoEF. Since SEIAA has now been constituted and is functional, they are expected to deal with the matter and examine the violations committed, if any. It is stated that the basement/multi-level blocks are meant for parking, as per the building plan. The alleged use of basement and the multi-level blocks for commercial operations would be in violation of various building permission rules, laws and guidelines and in breach of the EC granted to Respondent No.9, thereby creating environmental hazards for the local population. The further stand of Respondent No.1 is that there is a clear violation of Conditions (vii) and (viii) of the EC.

17. It is stated that the Expert Appraisal Committee, after due consideration of the relevant documents submitted by the project proponent and additional clarifications furnished in response to the observations, which included EIA, had granted the EC. Condition (vii) requires that traffic congestion near the entry and exit points

from the roads adjoining the proposed project site must be avoided. Parking should be fully internalised and no public space should be utilised. The Condition No.(v) under Part B – General Conditions – specifically provides that in case of any change in the scope of the project, the project would require a fresh appraisal by MoEF. In view of the apparent facts, the project proponent has violated both these conditions.

18. Respondent No.3 (Central Ground Water Authority) has submitted that it deals with carrying out scientific study and analysis for efficient management of underground water resources and acts as the regulator for management of ground water. In terms of the reply of this respondent, Central Ground Water Authority has declared the South and South-west Districts of Delhi, vide public notice No.6/2000 dated 15th August, 2000 as critical and notified areas and has already issued directions to all the ground water users in the areas as well as to the Deputy Commissioners concerned for the purpose of management and regulation of the ground water in the said areas. The Lieutenant Governor of Delhi, has issued an order dated 18th May, 2010, stating that no person, group, authority, association or institution is allowed to draw ground water by tube-well or bore-well without prior permission of the designated authority i.e. Delhi Jal Board. In these circumstances, it was contended that the excessive use of underground water without leave of the competent authority would be adversely affecting the underground water level.

19. The stand taken by Respondent No.8, the Deputy Chief Fire Officer, Delhi, in his reply, is that vide letter dated 20th December, 2004, the case was recommended for approval and the building was inspected by the officers of the Department on 24th November, 2008. Having been satisfied with the available fire prevention and protection measures, a No Objection Certificate was issued on 28th November, 2008 in favour of Respondent No.9. Subsequent to the enactment of the Delhi Fire Service Act, 2007 and Rules, 2010, the frequency for renewal of the NOC was made mandatory for the first time after every three years for commercial buildings. On the request of M/s Ambience Mall and as per the provisions of the Delhi Fire Service Act, 2007 and the Rules, 2010, the premises were re-inspected on 1st April, 2013 and certain shortcomings were observed, and therefore, the NOC was not considered.

20. Having referred to the stand taken by the parties in their respective pleadings, now we may also usefully refer to the fact that in furtherance to the order dated 5th September, 2013, a joint inspection team from various Departments (Respondents) had inspected the premises in question. They recorded their observations as follows:

> "BLOCK – 2
>
> 1. Basement Level (-2) i.e. B-3 is being used for parking and other services like STP, AC Plant, Electrical room in 2 & 2P Block.
>
> 2. Basement level (-1) i.e. B-2 is being used for parking & services in 2 & 2P Block.

3. Lower Ground Level i.e. B-1 at the time of inspection at 4 PM no commercial activity going on, shops found vacant & glass frames & other fixtures for shop partition found existing. Dismantling/Removal of glass partition of shops was in progress.

PARKING BLOCK 2 P

1. 1ST Floor – There are two commercial establishment existing viz. "Underdoggs" and "BluO". During the inspection both found locked. On getting the premises unlocked it was found that fitting fixture and furniture was existing.

   Ground Floor – (UG) – During inspection it was observed that premises is occupied by Big Bazar Family Center, which was found locked. On getting the premises unlocked it was found that all goods, material furnitures fittings & fixtures existing.

   Lower Ground (Basement 1) – (B-1) – Premises is being occupied by Big Bazar. Some dismantled rack, fitting & fixture lying. No commercial activity found at the time of inspection."

21. We may also notice here that the South Delhi Municipal Corporation had also inspected the premises independently and filed a status report dated 3rd September, 2013. In that report, the Executive Engineer (Bldg-II), SDMC, has taken a stand that upon inspection, it was noticed that commercial activities in the name and style of M/s Bird Automotive, Reliance Trendz, Lifestyle, Home Store, Big Bazar, Kiehl's were being carried on and it was found that there were partitions existing in the basement of the property. This area was required to be used for parking and vide his letter dated 2nd September, 2013, M/s Ambience Developers (P) Ltd. had been directed to remove the partitions, fittings and fixtures and bring the same to its permitted use i.e. solely for the purpose of parking. Further, commercial activity had been noticed in the Multi-

level Parking Block in the name and style of M/s Big Bazar at Ground Floor and M/s Underdoggs Sports Bar and Grill and action under Section 345-A of the Delhi Municipal Corporation Act had been initiated for misuse against the builder and the persons carrying on commercial activities.

22. The other Respondents No.10-17 and 18-19 have also filed their respective replies to the application. Primarily, they also objected to the maintainability of the application and jurisdiction of the Tribunal to entertain such applications on merits. All these respondents (No.10-17) stated that they were *bona fide* occupants of the areas in question and had entered into agreements with Respondent No.9. Respondent No.9 had declared to them that these areas could be legally used for the purposes of commercial activity. According to them, they have not committed any breach of the terms and conditions of the lease and for that matter of the law in force and as such no adverse orders could be passed against them.

23. Respondent No.9 has also filed rejoinder to the replies filed by different parties and has primarily reiterated the stand noticed by us above and further averred that they have not violated any conditions or bye laws in force. However, they have not disclosed before the Tribunal if they have got the NOC from the Fire Department, the South Delhi Municipal Corporation and other public authorities. They have also not disclosed that they have been served with a notice by the South Delhi Municipal Corporation and other authorities in relation to putting up of partitions, using basement, upper basement and Block 2P for commercial activities.

24. Upon analysing the above stand of the respective respondents, the following questions arise for determination before the Tribunal:

(i) Whether the present application is maintainable and discloses a cause of action and whether the Tribunal has the jurisdiction to decide such question within the purview of the provisions of the NGT Act, 2010.

(ii) Whether the application is barred by limitation prescribed under the provisions of the NGT Act.

(iii) If the above questions are answered in the affirmative, then whether Respondent No.9 has committed any violation of the laws covered under Schedule I to the NGT Act.

(iv) What relief is the applicant entitled to?

25. Since the question of maintainability of the present application goes to the very root of the matter before the Tribunal and relates to its jurisdiction, we must thus proceed to deliberate upon this issue in the first instance. This contention on behalf of the respondents is two-fold. Firstly, the application does not give any facts or constitute a cause of action for raising a civil case of substantial question relating to environment and it does not arise out of the implementation of the enactments specified in Schedule I to the NGT Act. Secondly, Respondent No.9 has used the spaces meant for parking for commercial purposes in view of its entitlement to enhance the FAR under the MPD 2021. It is a question relating to building bye laws and is not connected with any environmental issues. The Tribunal, thus, cannot entertain such an application.

Mere misuse will not constitute any ground for invoking the provisions of the NGT Act.

26. Reliance on behalf of the respondents has been placed upon the judgment of the Supreme Court of India in the case of *Mohammed Hasnuddin v. State of Maharashtra* [AIR 1979 SC 404] and *Rashmi Rekha Thatoi & Ors. v. State of Orissa & Ors.* [(2012) 5 SCC 690] to contend that the court or the tribunal or the body has to exercise its jurisdiction to determine whether the preliminary state of facts exist. On finding that the jurisdiction does exist, the Tribunal will proceed further or do something more. The Tribunal has been given jurisdiction by the legislature to decide the matters in accordance with the provisions of the Act. The Tribunal has a limited jurisdiction. Where the Tribunal derives its power from the statute that creates it and that statute also defines the conditions under which the Tribunal can function, then it goes without saying that before assuming jurisdiction in the matter, it must satisfy that the conditions requisite for its acquiring seisin of that matter.

27. The Tribunal has to act within the statutory command and what cannot be done directly, cannot be done indirectly. Statutory exercise of power stands on a different footing than the exercise of powers on judicial review. On the other hand, the contention of the applicant is that Respondent No.9 has not only committed violation of the bye laws but has also violated the conditions of the EC and the provisions of the Water Act and the Air Act besides violating all regulatory laws in relation to construction and maintenance of such buildings. The very foundation of grant of EC

dated 27th November, 2006 is the EIA Report submitted by Respondent No.9, and as such, it cannot violate the said report without specific permission being granted by the authorities concerned, and particularly re-examination of the EC granted by the MoEF. Violation of the terms and conditions of the EC has given rise to substantial question relating to environment. The petitioner has stated facts and grounds to show that the petition raises substantial question relating to environment. Thus, the present application is maintainable and the Tribunal has jurisdiction to decide the issue at hand. In this backdrop, let us now look into the scope of jurisdiction of this Tribunal in terms of the provisions, objects and reasons of the NGT Act. The NGT Act was enacted to provide for establishment of "National Green Tribunal" for effective and expeditious disposal of cases relating to environmental protection and conservation of forests and other natural resources including enforcement of any legal right relating to environment and giving relief and compensation for damages to persons and property and for matters connected therewith or incidental thereto. Clause 7(e) of the Statement of Objects and Reasons provides a bird's eye view of the intent of the legislature to give jurisdiction to the Tribunal. The risk to human health and environment is a matter of concern for all. Keeping in view the increased litigation in the field of environment, wide jurisdiction was intended to be vested in the Tribunal. Right to healthy environment has been considered as a part of the right to life under Article 21 of the Constitution of India by the Supreme

Court. Every citizen has a right to a clean and decent environment, free of pollution of any kind. The expression 'environment' includes water, air and land and the inter-relationship which exists among and between water, air, land and human beings, other living creatures, plants, micro-organism and property. 'Substantial question relating to environment' is explained in Section 2(m) of the NGT Act. We must clearly understand that any damage to public health resulting from environmental degradation will also be a substantial question relating to environment.

28. Under the provisions of the NGT Act, the Tribunal has been vested with different jurisdictions. Further, it has a much wider jurisdiction in terms of Section 14 of the NGT Act, whereunder it can deal with and decide all civil cases where a substantial question relating to environment (including enforcement of any legal right relating to environment) is involved and it arises in regard to implementation of the enactments specified in Schedule I to the NGT Act. The Tribunal is also vested with the power to order relief to the victims of pollution and restitution of property damaged or restitution of the environmental damage for such areas. Besides this general jurisdiction of a wide magnitude, specific appellate jurisdiction is vested in the Tribunal in terms of Section 16 of the NGT Act where the orders referred to under clauses (a) to (j) of Section 16 are appealable before the Tribunal. Who are the persons, who can file applications before the Tribunal, are stated under Section 18 of the NGT Act. Thus,

different jurisdictions spread across Sections 14, 15 and 16 of the NGT Act can be invoked by a person who falls within the ambit of Section 18(2) of the NGT Act. The right to appeal in terms of Section 16 of the NGT Act is available to any person aggrieved. An objective analysis of these provisions of the NGT Act shows that wide original and specific appellate jurisdiction is vested in the Tribunal in terms of Sections 14 to 16 of the NGT Act.

29. We may refer to a recent judgment of the Tribunal in the case of *Goa Foundation v. Union of India* [ALL (I) NGT REPORTER (NEW DELHI) 2013(1) Part 5 Page 234], where the Bench of the Tribunal discussed the preamble and objects of the NGT Act. Referring to the scope of jurisdiction of the Tribunal, the Tribunal held as under:

> "17. To analyse the above rival contentions, we must examine the interpretation and impact of the relevant provisions and the scheme of the NGT Act. The NGT Act was enacted to provide for establishment of the Tribunal for effective and expeditious disposal of cases relating to environmental protection and conservation of forests and other natural resources including enforcement of any legal right relating to environment and giving relief and compensation for damages to persons and property and for matters connected therewith or incidental thereto. The very Preamble of this Act is a sufficient indicator of the jurisdiction that was to be vested in the Tribunal. The issue relating to environmental protection and conservation was one of the paramount pillars, amongst others, of the adjudicatory process by the Tribunal. It was expected to dispose of cases relating to above matters expeditiously. This is the first indicator of the legislative intent which provides that a case could relate to environmental protection, conservation of forests and other natural resources or even enforcement of legal rights relating to environment and other matters mentioned thereto. This jurisdiction of the Tribunal and access to the people stands further expanded by the use of the words 'for matters connected therewith or incidental thereto'. The legislature in its wisdom has used these two expressions

which can only be construed liberally and to provide greater dimension to the mode of access to a person claiming redress of his grievances as well as adjudication by the Tribunal.

18. Preamble is a relevant part of the Act, which can help in the process of interpretation. It, in fact, is a kind of guide to the spirit of the statute. Justice G.P. Singh in *"Principles of Statutory Interpretation"*, 13th ed. 2012, referring to the significance of interpretation of preamble, has stated as under:

> "The preamble of a statute like the long title is a part of the act and is an admissible aid to construction. Although not an enacting part, the preamble is expected to express the scope, object and purpose of the Act more comprehensively than the long title. It may recite the ground and cause of making the statute, the evils sought to be remedied or the doubts which may be intended to be settled. In the words of SIR JOHN NICHOLL: ' It is to the preamble more specially that we are to look for the reason or spirit of every statute, rehearsing this, as it ordinarily does, the evils sought to be remedied or the doubts purported to be removed by the statute, and so evidencing, in the best and most satisfactory manner, the object or intention of the Legislature in making or passing the statute itself'. As enunciated by TINDAL C. J., in delivering the opinion of the judges who advised the House of Lords in *Sussex Peerage* case: 'If any doubt arise from the terms employed by the Legislature, it has always been held a safe means of collecting the intention to call in aid the ground and cause of making the statute, and to have recourse to the preamble, which according to CHIEF JUSTICE DYER is a key to open the minds of the makers of the Act and the mischiefs which they intended to redress'. The subject has been explained lucidly in a more recent decision of the House of Lords. The decision establishes the following propositions: the preamble being a part of the statute and be read along with other portions of the Act to find out the meaning of words in the enacting provisions as also to decide whether they are clear or ambiguous; the preamble in itself is not an enacting provision and is not of the same weight as an aid to construction of a section of the Act as are other relevant enacting words to be found elsewhere in the Act; the utility of preamble diminishes on a conclusion as to clarity of enacting provisions. The Supreme Court recently approvingly quoted these propositions."

> 19. The Preamble may not strictly be an instrument for controlling or restricting the provisions of a statute but it certainly acts as a precept to gather the legislative intention and how the object of the Act can be achieved. It is an instrument that helps in giving a prudent legislative interpretation to a provision.
>
> In light of this language of the Preamble of the NGT Act, now let us refer to some of the relevant provisions. Section 14 of the NGT Act outlines the jurisdiction that is vested in the Tribunal. In terms of this Section, the Tribunal will have jurisdiction over all civil cases where a substantial question relating to environment arises. The Tribunal will also have jurisdiction where a person approaches the Tribunal for enforcement of any legal right relating to environment. Of course, in either of these events, a substantial question arises out of the implementation of the enactments specified in Schedule I to the NGT Act. Section 15 of the NGT Act provides for awarding of relief and compensation to the victims of pollution and other environmental damage, restitution of property damaged and restitution of the environment for such area(s) as the Tribunal may think fit, in addition to the provisions of Section 14(2) supra. Section 16 provides for the orders, decisions or directions that are appealable before the Tribunal. Any person aggrieved has the right to appeal against such order, decision or direction, as the case may be. This Tribunal, thus, has original as well as appellate jurisdiction. This wide jurisdiction is expected to be exercised by the Tribunal in relation to substantial question relating to environment or where enforcement of a legal right relating to environment is the foundation of an application. In terms of Section 14(2) of the NGT Act, the Tribunal shall hear disputes relating to the above matters and settle such disputes and pass orders thereupon."

30. The proposition of law stated by the Supreme Court in the cases relied upon by the respondents can hardly be disputed. The Tribunal has to exercise its jurisdiction within the four corners of the statute that created it. The Tribunal must satisfy itself as to the essential and pre-existing facts of the case in relation to its jurisdiction. Once a person brings his case relating to substantial question relating to environment and it arises from implementation

of the enactments stated in Schedule I to the NGT Act and the application is filed within the limitation period, the Tribunal will have to exercise its jurisdiction and pass appropriate orders as contemplated under the provisions of the NGT Act.

31. In the present application, the applicant has not invoked the provisions of Section 16 of the NGT Act. It is not filed in appeal challenging the legality or correctness of any of the orders. On the contrary, the applicant has generally raised a substantial question relating to environment and has prayed for revocation of the consent granted to the Respondent No.9 under different laws. The applicant has further prayed that damage to environment and hazards to public health are likely to arise from the breach of the EC by Respondent No.9 and that the Tribunal should pass appropriate orders for which complete facts have been stated in the application.

32. Therefore, we must examine as to what is the case made out by the applicant in his application. There is no dispute to the fact that EC was granted by Respondent No.1 to the applicant on 27th November, 2006 on the basis of the EIA Report submitted by Respondent No.9. Let us see what was stated by the applicant in the EIA Report for grant of EC. In the EIA Report, the project proponent, Respondent No.9, has stated that the site for the shopping mall encompasses about 33,415 sq.m. of land. The proposed ground floor area including atrium area is 12,599.8 sq.m. The total covered area of all the floors is 41,960.19 sq.m. excluding parking and service area in basement and multi-level car parking

area. It was stated by the project proponent that basements were to be used for parking and services and the multi-level block, ground floor, first floor, second floor and third floor were to be used for commercial shopping, food court, restaurant, cinema, etc. It was also stated that parking for 1772 vehicles would be provided in three successive basements, ground floor and first floor of the multi-level car block. Similar statement was made under the head 'Project Description'. These declarations were reiterated under the head 'Project Infrastructure and Utilities' (para 2.2.3 of the report).

33. The EIA Report, which was submitted by the applicant, upon engaging the services of M/s SENES Consultants India Private Limited, also dealt with the air and noise environment. While dealing with the ambient air quality, it refers to the data for the year 2002-04 with historical air quality in New Delhi. The assessment of ambient air quality was accomplished by obtaining site specific historical data from the National Air Monitoring Programme of Central Pollution Control Board. Since the proposed site has no pollution intensive activities in its vicinity, five sampling stations located within two kilometres radius of the site were considered adequate to provide the surrounding baseline air quality. Similarly, National Ambient Noise Quality Standards were kept in mind while dealing with the noise pollution arising from the project in question. The attributable factors like ambient air quality, noise levels, water quality, ground water availability, soil quality, biological environment, land use and socio-economic factors, were the very basis of base-line environmental status in terms of the report. While

referring to the land use in the attributable factors, as noticed above, it was stated that the total covered area of the entire floor is 41,960.19 sq.m. excluding parking and service area in the basement and multi-level car parking area. In other words, these were the basic essential features of the EIA Report, which formed the very crux for grant of EC to the project proponent. Paragraph 7 of the Notification of 2006 deals with the Stages in the Prior Environmental Clearance Process for New Projects. Stage (2) under this paragraph deals with scoping. Scoping refers to the process by which the Expert Appraisal Committee or the State level Appraisal Committee, as the case may be, determines detailed and comprehensive Terms of Reference (for short the 'TOR'). TOR are expected to deal with all matters of environmental impact. In response to the TOR and after complying with the prescribed procedure, the project proponent is expected to submit an EIA Report, which then is considered by the competent authority. Subsequently, the Expert Appraisal Committee makes recommendations for acceptance or rejection of the proposal put forward by the project proponent on the basis of which the competent authority grants the EC.

34. It may be noticed that under the Schedule to the Notification of 2006, which refers to paras 2 and 7 of the Notification of 2006, Building and Construction Projects are covered under Sl. No.8(a). This requires any person intending to construct a building or undertaking a construction project in excess of 20,000 sq.m. to

take EC from the competent authority. The built up area in terms of this Notification of 2006 is explained as below:

SCHEDULE

(See paragraph 2 and 7)

LIST OF PROJECTS OR ACTIVITIES REQUIRING PRIOR ENVIRONMENTAL CLEARANCE

Project or Activity		Category with threshold limit		Conditions, if any
		A	B	
		Building/Construction projects/Area Townships		Development projects and
(1)	(2)	(3)	(4)	(5)
8(a)	Building and construction projects		≥20000 sq mtrs and <1,50,000 sq mtrs of built-up area	[The built-up area for the purpose of this notification is defined as "the built-up or covered area on all the floors put together including basement(s) and other service areas, which are proposed in the building/ construction projects]

35. A bare reading of the above clause shows that the area proposed in the building for basement and other services would qualify as built-up area or covered area for the purposes of determining the grant of EC to the project proponent. The built up or the covered area which is considered for the purpose of grant or refusal of EC includes the area of basement as well as other services. Thus, the area and its user, as disclosed by the project proponent, is the very foundation for consideration of its application for grant of EC.

36. Now we have to examine the conditions of the EC with relation to the project in question. As already noticed, the EC dated 27th November, 2006, while considering all the relevant documents including the EIA Report, imposed various conditions. The green belt design along the periphery of the plot was prescribed to achieve attenuation factor, conforming to the day and night noise standards

prescribed for commercial land use. Traffic congestion near the entry and exit points from the road adjoining the proposed project site had to be avoided. Parking was to be fully internalized and no public space ought to have been used for that purpose. The solid waste generated was expected to be properly collected and segregated for disposal to the city municipal facility. The project proponent was required to install sewage treatment plant (STP) before the project was commissioned for operation. In other words, the conditions of the EC granted to the project proponent had taken all aspects relating to environment vis-à-vis use of the total built up area including basement into consideration. All these factors are variable by increase, particularly changes in utilization of space, population, vehicular traffic and congestion on road due to unauthorized parking leading to increased air pollution. It was primarily for these reasons that certain General Conditions were provided in the EC granted to the project proponent. It was specifically stated that in case of any change in the scope of the project, the project would require a fresh appraisal by the Ministry.

37. The EC is accorded for the project in its composite form. Every ingredient or facet of the project is an integral matter for consideration by the competent authority. It cannot be said that the EC relates to a particular component of the project while other components are outside the ambit of such clearance. This is the precise reason that a specific condition, as mentioned above, was imposed in the EC that in the event of change in the scope of the project, the project would require fresh appraisal by the Ministry.

The expression 'scope of the project' is very wide in its application and is incapable of being given a narrow construction. 'Scope' means the extent of the area or subject matter that something deals with or to which it is relevant; a purpose, end or intention (Oxford Dictionary of English, 3rd ed.). Thus, 'scope' cannot be construed in a limited sense but would provide a wider connotation in relation to the project which is under consideration of the authorities. The scope would relate to all facets of the project including construction, utilization of space, user of space, matters relating to provision of services, STP etc. The obvious consequence of any change would be fresh appraisal by the competent authority. The matters relating to various clearances like building bye laws, fire safety certificate, clearance by the Municipal Corporation for amenities and services and environmental clearance, are inter-connected, indivisible and interlinked. That is the precise reason as to why the DDA made the sanction of the plans of Respondent No.9 subject to granting of EC by the competent authority. But for the EC, the project could not have even taken off.

38. The FAR, construction and user of the space are parts of the building plans and are equally essential considerations for EC, being specific stipulations of EIA Report. Any alteration, much less substantial alterations, in all these facets would require fresh EC/appraisal by the competent authority. Such an approach is further substantiated by the preamble of the Notification of 2006 which contemplates that the scheduled projects entailing capacity addition, with change in the process or technology, would also be

requiring fresh EC. Thus, it can safely be concluded that any change, much less a major change, in floor area utilization or the space for purposes other than those specified, which result in change in the prescribed norms, would have to be considered as a change in the scope of the project, thus calling for fresh appraisal of the project by the competent authority.

39. Now, we may deal with the contention of Respondent No.9 that there was a change in the FAR from 100 in the MPD 2001 to 125 in the MPD 2021. As a result of this statutory change, Respondent No.9 was entitled to use the increased FAR in the basement, other parking and service areas for commercial purposes. Consequently, Respondent No.9 had applied to the DDA for permission to make such change in user of the space. This argument of Respondent No.9 need not detain us any further in view of the clear stand taken by the DDA that they have not granted any such permission for change in use. In fact, the DDA has even gone to the extent of stating on affidavit that permission for the increased FAR had been requested by Respondent No.9 in the existing structure and the said request for additional FAR was not for redevelopment of the said plot. Since Respondent No.9 had purchased the plot along with all control conditions, any additional FAR other than the permissible limit i.e. 42,000 sq.m. floor area, cannot be allowed in this case at the existing structure.

40. The DDA has also stated that the FAR of 125 in MPD 2021 is applicable only for non-hierarchical commercial centres. Besides this, all other public authorities appearing before us i.e. MCD and

Fire Department, have also taken the stand that they had not granted either any fire clearance or permission to use the area for commercial purposes. The Fire Department has not renewed its permission since 2011, while the MCD has issued a notice to Respondent No.9 for violation and use of these areas for commercial purposes in terms of Section 345A of the Delhi Municipal Corporation Act, 1957. Not only this, even the DPCC has not granted its consent and the CWGA has also not accorded its approval for extraction of the underground water on account of the increased capacity and utilization.

41. The MoEF has also taken a definite stand that the alleged use of basement and multi-level block for commercial operations is in violation of the various building guidelines and absolute breach of the EC granted to the project proponent. The emphasis of these authorities/Corporations is on the violation committed by Respondent No.9 and they not having accorded their respective consent/approval for change of user, particularly keeping its impact in mind.

42. We may also notice that besides this being an actionable wrong in terms of the provisions of the NGT Act, all other authorities would be free to take action, as they may deem fit and proper in the circumstances of the case and law in force in their respective fields. The Tribunal is not concerned with the violation of other laws and has to deal with the present application within the scope of environmental jurisprudence. The averment of the applicant that Respondent No.9 has violated the laws in force, and particularly the

terms and conditions of the EC order dated 27th November, 2006 with impunity, is duly substantiated on record.

43. The cumulative effect of this is that Respondent No.9 ought not to have converted the user of basement and the exclusive multiple parking block for commercial activities contrary to the EIA Report on the basis of which EC was obtained. This is a clear breach of the terms of the EC. In fact, the action of Respondent No.9 suffers from dual infirmity. On the one hand, the said respondent changed the use of the parking and service area for commercial activities and on the other, it did not even bother to seek consent/approval or permission of the competent authorities. It was absolutely incumbent upon Respondent No.9 to apply for fresh appraisal of the EC in terms of General Condition No. (v) of the EC order dated 27th November, 2006. The EC was granted under the provisions of the Environment Act and the Notification of 2006. Violation thereof would be a dispute relating to environmental issues in terms of Schedule I to the NGT Act. This is definitely an application raising a substantial question relating to environment and the enactments specified in Schedule I to the NGT Act. Resultantly, we reject the contention raised on behalf of Respondent No.1 and hold that the Tribunal has jurisdiction to entertain and decide the issues raised in this application.

44. 'Misuser' *simplicitor* in relation to the sanctioned plan may invoke the jurisdiction of the Delhi Development Authority but where it is coupled with impact on environment and is violative of

EC granted under the provisions of the Environment Act, then it certainly would be a matter raising environmental issues.

45. Another argument has been raised to support the above contention that no specific allegations have been made or facts disclosed which would bring the petition squarely within the ambit of Section 14 of the NGT Act. On the conjoint reading of various paragraphs of the application, particularly paragraphs (vi), (xiii), (xviii), (xxii) and the grounds dealing with the factual aspects, particularly grounds (D) to (G), (K) and (R) it is clear that all these are matters primarily raising an issue with regard to violation of conditions of EC granted to Respondent No.9 and its adverse and hazardous effects on the environment. Based upon these factual averments and the grounds taken, the applicant has prayed for revocation of the EC granted to Respondent No. 9 and the corresponding permissions granted under the Water Act and the Air Act. It is one thing to challenge the grant of EC on the ground that for the reasons and grounds taken up by an applicant the EC ought not to have been granted and therefore, is liable to be revoked or cancelled; but it is certainly another thing to say that there is violation of the terms and conditions of the EC and because of such violation, the EC is liable to be revoked without challenging the grant of EC *per se*. The present case falls in the second category. The application has to be read in its entirety and along with the documents which have been annexed by the applicant. Upon their cumulative reading, it is established on record that the applicant has raised a substantial question relating to environment arising

from the implementation of the enactments specified in Schedule I of the NGT Act. The language of Section 14 of the NGT Act is wide enough to take within its ambit a petition of the present kind.

46. We must also clarify at this stage that different regulatory regimes can simultaneously be applicable to a given situation. It will be more so when both the regulatory regimes operate in different fields and have distinct essentials as well as consequences. The present case is an apt example of this kind. The building bye-laws would govern buildings and its user while the EC would regulate the project as a whole in relation to the various facets of environment and its impact thereof. Both are regulatory regimes but they operate in distinct and incongruent fields which have no area of conflict. One operates exclusively in the field of environment, i.e. to be in consonance with the provisions of the Environment Act and the Notification of 2006, while the other, is the DDA Act and the zonal plan which is to govern the planned development and restrictions on buildings in terms of area and user. The contention of Respondent No.9 that it is a matter exclusively falling in the domain of building bye-laws and this Tribunal has no jurisdiction, is therefore, misconceived and ill-founded. The project as a whole has various dimensions under the environmental laws and the regulatory regime prescribed thereunder. The violation of the terms and conditions of such statutory regulatory regime would invite consequences and would have to be applied with all its rigours in the interest of the environment and public health.

47. A half-hearted attempt was made on behalf of Respondent No.9 to bring in the doctrine of double jeopardy and, therefore, to avoid the present action. Firstly, the doctrine of double jeopardy has no application in the facts and circumstances of the present case but even if for the sake of arguments this contention is considered on its face value, then it is a settled law that same facts may give rise to different prosecutions and punishments and in such an event the protection afforded by Article 20(2) of the Constitution of India is not available. This is the view that has been consistently taken by the Hon'ble Supreme Court of India as well as the courts in the United States. The test of identity of offences is whether the same evidence is required to sustain them, if not, then the fact that both parties relate to and create out of one transaction would not make a single offence where two are defined by the Statute. An act defined as a crime by both national and state sovereignty is an offence against the peace and dignity of both and may be punished by each. To put it simply, one set of facts may constitute an offence under two different statutes with two different consequences. Reference in this regard can be made to the judgment of the Hon'ble Supreme Court of India in the case of *Monica Bedi v. State of A.P.* [(2011)1 SCC 284] and also to the judgment of the US Supreme Court in the case of *T.W. Morgan v. Alphanso J. Devine @ Ollie Devine* [(1915) 237 U.S. 1153].

48. Having discussed the question of jurisdiction and allied matters thereto, now we would examine the plea of limitation taken up by the respondents.

49. An applicant is entitled to invoke jurisdiction of the Tribunal under Sections 14, 15 and 16 of the NGT Act. All these three Sections provide for different limitations. In terms of Section 14(3) of the NGT Act, the application has to be filed within six months from the date on which the cause of action for such dispute first arose. However, the proviso to Section 14(3) of the NGT Act permits an application to be entertained beyond the period of six months but within a further period not exceeding sixty days, provided the applicant shows that he was prevented, for sufficient cause, from filing the application within the said period. In other words, an application under Section 14 of the NGT Act would be barred and the Tribunal would have no jurisdiction even to condone the delay if the application is filed beyond the time frame of six months + 60 days. Section 15 of the NGT Act deals with the powers of the Tribunal to grant relief and compensation to the victims of pollution and other environmental damage arising under the enactments specified in Schedule I to the NGT Act, for restitution of property damaged and for restitution of environment for such area(s), as the Tribunal may think fit. In terms of Section 15(3) of the NGT Act, such application must be filed within a period of five years from the date on which the cause of action for such compensation or relief first arose. The proviso to Section 15(3) of the NGT Act empowers the Tribunal to entertain such application beyond this period, but not exceeding sixty days thereafter, if sufficient cause is shown. Section 16 of the NGT Act deals with the appellate jurisdiction of the Tribunal while Sections 14 and 15 of the NGT Act deal with the

original jurisdiction. The orders specified in clauses (a) to (j) of Section 16 of the NGT Act are appealable before the Tribunal and such appeal has to be filed within thirty days from the date on which the order or decision or direction or determination is communicated to the applicant. The proviso to Section 16 of the NGT Act further empowers the Tribunal to entertain such an appeal beyond the prescribed period of thirty days provided the appellant shows that he was prevented by sufficient cause and the latter files it within a further period not exceeding sixty days. Under all these provisions, the period of limitation is prescribed and gives a limited power to the Tribunal to condone the delay but not beyond the period specified for limitation.

50. Now, we have to examine under what provision of law, the present application has been filed. In the application and its prayer clause, it has been stated by the applicant that because of the violation of the EC conditions, the same is liable to be revoked and also the clearances granted under the Water Act and the Air Act are liable to be recalled. The applicant also prays that penal action be directed to be taken against Respondent No.9. On the cumulative reading of the application and the prayer, it is clear that the present application has not been filed under the provisions of Section 16 or 15 of the NGT Act. In fact, the learned counsel appearing for the applicant, during the course of arguments, clearly stated that the present application has been filed under Section 14 of the NGT Act and the application is not barred by time. According to the applicant, the application fully satisfied the ingredients of Section

14 of the NGT Act as it raises a substantial question relating to environment and it arises out of the implementation of the enactments specified in Schedule I to the NGT Act.

51. The next question that arises for consideration is whether this being an application under Section 14 of the NGT Act is barred by the period of limitation prescribed under that Section. As already noticed, under Section 14 of the NGT Act, an application can be filed within six months from the date when the cause of action first arose or at best within sixty days thereafter. Any application filed after that period would be barred by limitation and even the Tribunal would have no jurisdiction to condone such delay.

52. According to the applicant, the EC was granted on 27th November, 2006 while the consents under the Air Act and the Water Act were granted by the competent Board on 31st May, 2008. The applicant came to know about the unauthorized conversion of the area and its misuser somewhere in December, 2012 and immediately thereafter, wrote to the Secretary, MoEF, New Delhi, bringing the specific details to his notice and specifically stated that the entire operation was compromising the environmental and health standards and the Ministry should take appropriate action in that regard. However, since the Ministry failed to take any appropriate action in accordance with law, the applicant was compelled to file the present application before the Tribunal, which was filed on 10th June, 2013. Thus, according to the applicant, the application is within the prescribed period of limitation. According to the applicant, the cause of action arose on or about 18th

December, 2012 and the application was instituted on 10th June, 2013. The contention in regard to the application being barred by time is liable to be rejected. The non-applicant has not disclosed all the relevant and true facts in this regard. However, the contention on behalf of Respondent No.9 was that it has converted the use of the premises in question some time back and the same has been open for public. As such, it was known to the applicant that the premises have been converted. According to some of the other private respondents, it is even contended that the lease deed was executed around May/June, 2010 and as such the cause of action, if any, arose for the first time during that period and the present application is hopelessly barred by time and in fact, the Tribunal has no jurisdiction to entertain the same.

53. In order to examine the merits or otherwise of the rival contentions raised before us, it is appropriate for the Tribunal to dwell upon what is the meaning of the expression 'cause of action'. In this regard, we may refer to a recent judgment dated 12th September, 2013 of the Tribunal in the case of *Kehar Singh v. State of Haryana;* [ALL (I) NGT REPORTER (DELHI), 2013 (1) Part 7, Page 256], wherein a somewhat similar controversy arose with regard to the establishment of an STP at Village Narkatari in Haryana. The contention was that the land acquisition proceedings in relation to the said STP were commenced long back, public notices were issued and as such the limitation would start from the date of issuance of the notification under the Land Acquisition Act, 1894. Rejecting the

said contention and while explaining the expression 'cause of action', the Tribunal held as under:

> "14. In the present case, the applicant has invoked the jurisdiction of the Tribunal under Section 14 of the NGT Act with regard to establishment of STP on a location which, according to the applicant, is bound to create environmental problems and would adversely affect the public health. It will result in pollution of underground water besides causing emission of obnoxious gases and creating public nuisance, owing to being adjacent to residential colony and religious places. Thus, it would certainly involve a question relating to environment arising from the implementation of Acts specified in Schedule I to the NGT Act. Thus, the present case indisputably falls within the jurisdiction of the Tribunal, of course, subject to the plea of limitation.
>
> 15. To further examine the question of limitation, we must deliberate upon what does the expression 'cause of action' mean. Furthermore, such cause of action has to relate to 'such dispute', as stated in Section 14 of the NGT Act. The period of six months shall be computed from the date on which the cause of action first arose in relation to such dispute. Both the expressions – 'cause of action' and 'such dispute' – have to be read together. One of the settled rules of construction is *noscitur a sociis* i.e. the meaning of a word or an expression is to be judged by the company it keeps. Deliberating upon the application of this rule of interpretation, Justice G.P. Singh, in his book *"Principles of Statutory Interpretation"*, 13th ed. 2012, while referring to a decision by Privy Council, *inter alia*, has stated:
>
> "It is a legitimate rule of construction to construe words in an Act of Parliament with reference to words found in immediate connection with them. It is a rule wider than the rule of *ejusdem generis;* rather the latter rule is only an application of the former." The rule has been lucidly explained by GAJENDRAGADKAR, J. in the following words: "This rule, according to MAXWELL, means that when two or more words which are susceptible of analogous meaning are coupled together, they are understood to be used in their cognate sense. They take as it were their colour from each other, that is, the more general is restricted to a sense analogous to a less general. The same rule is thus interpreted in Words and Phrases. Associated words take their meaning from one another under the doctrine of *noscitur a sociis*, the philosophy of which is that the meaning of the doubtful word may be ascertained by reference to the

meaning of words associated with it; such doctrine is broader than the maxim *ejusdem generis."*

16. 'Cause of action', therefore, must be read in conjunction with and should take colour from the expression 'such dispute'. Such dispute will in turn draw its meaning from Section 14(2) and consequently Section 14(1) of the NGT Act. These are inter-connected and inter-dependent. 'Such dispute' has to be considered as a dispute which is relating to environment. The NGT Act is a specific Act with a specific purpose and object, and therefore, the cause of action which is specific to other laws or other objects and does not directly relate to environmental issues would not be 'such dispute' as contemplated under the provisions of the NGT Act. The dispute must essentially be an environmental dispute and must relate to either of the Acts stated in Schedule I to the NGT Act and the 'cause of action' referred to under Sub-section (3) of Section 14 should be the cause of action for 'such dispute' and not alien or foreign to the substantial question of environment. The cause of action must have a nexus to such dispute which relates to the issue of environment/substantial question relating to environment, or any such proceeding, to trigger the prescribed period of limitation. A cause of action, which in its true spirit and substance, does not relate to the issue of environment/substantial question relating to environment arising out of the specified legislations, thus, in law cannot trigger the prescribed period of limitation under Section 14(3) of the NGT Act. The term 'cause of action' has to be understood in distinction to the nature or form of the suit. A cause of action means every fact which is necessary to establish to support the right to obtain a judgment. It is a bundle of facts which are to be pleaded and proved for the purpose of obtaining the relief claimed in the suit. It is what a plaintiff must plead and then prove for obtaining the relief. It is the factual situation, the existence of which entitles one person to obtain from the court remedy against another. A cause of action means every fact which, if traversed, would be necessary for the plaintiff to prove in order to support his right to a judgment of the court. In other words, it is a bundle of facts which, taken with the law applicable to them, gives the plaintiff a right to relief against the defendant. It does not comprise evidence necessary to prove such facts but every fact necessary for the plaintiff to prove to enable him to obtain a decree. The expression 'cause of action' has acquired a judicially

settled meaning. In the restricted sense, cause of action means the circumstances forming the infraction of the right or the immediate occasion for the action. In wider sense, it means the necessary conditions for the maintenance of the suit including not only the infraction coupled with the right itself. To put it more clearly, the material facts which are imperative for the suitor to allege and prove constitute the cause of action. (Refer: *Rajasthan High Court Advocates Asson. V. Union of India* [(2001) 2 SCC 294]; *Sri Nasiruddin v. State Transport Appellate Tribunal* and *Ramai v. State of Uttar Pradesh* [(1975) 2 SCC 671]; *A.B.C. Laminart Pvt. Ltd. and Anr. v. A.P. Agencies, Salem* [(1989) 2 SCC 163]; *Bloom Dekor Limited v. Sujbhash Himatlal Desai and Ors.* with *Bloom Dekor Limited and Anr. v. Arvind B. Sheth and Ors.* [(1994) 6 SCC 322]; *Kunjan Nair Sivaraman Nair v. Narayanan Nair and Ors.* [(2004) 3 SCC 277]; *Y. Abraham Ajith and Ors. v. Inspector of Police, Chennai and Anr. [(2004) 8 SCC 100]; Liverpool and London S.P. and I. Asson Ltd. v. M.V. Sea Success I and Anr.*[(2004) 9 SCC 512]; *Prem Chand Vijay Kumar v. Yashpal Singh and Anr.* [(2005) 4 SCC 417]; *Mayar (H.K.) Ltd. and Ors. v. Owners and Parties, Vessel M.V. Fortune Express and Ors.* [(2006) 3 SCC 100])

17. Upon analysis of the above judgments of the Supreme Court, it is clear that the factual situation that existed, the facts which are imperative for the applicant to state and prove that give him a right to obtain an order of the Tribunal, are the bundle of facts which will constitute 'cause of action'. This obviously means that those material facts and situations must have relevancy to the essentials or pre-requisites provided under the Act to claim the relief. Under the NGT Act, in order to establish the cause of action, pre-requisites are that the question must relate to environment or it should be a substantial question relating to environment or enforcement of any legal right relating to environment. If this is not satisfied, then the provisions of Section 14 of the NGT Act cannot be called in aid by the applicant to claim relief from the Tribunal. Such question must fall within the ambit of jurisdiction of the Tribunal i.e. it must arise from one of the legislations in Schedule I to the NGT Act or any other relevant provision of the NGT Act. For instance, the Tribunal would have no jurisdiction to determine any question relating to acquisition of land or compensation payable in that regard. However, it would have jurisdiction to award compensation for environmental degradation and for restoration of the

property damaged. Thus, the cause of action has to have relevancy to the dispute sought to be raised, right to raise such dispute and the jurisdiction of the forum before which such dispute is sought to be raised.

18. Having dealt with the legal aspect relating to limitation, we must now deal with the facts of the present case. It is an undisputed position before us that the notification under Section 4 of the Land Acquisition Act for acquisition of the land to set up an STP had been issued by the competent authority on 10th January, 2010 and was published in the newspapers on 14th/15th January, 2010. Thereafter, the news item was published on 19th May, 2013 and 20th May, 2013 declaring that the path for installation of STP outside the city had been finally cleared and the plant shall be set up soon and would become a reality. On 20th May, 2013, the Gram Panchayat, Narkatari, passed a resolution stating that it had come to know that the land stated in the notification, measuring about 18 acres, had been acquired and the STP was being set up there, and for the reasons stated therein, was opposing the same. The resolution also noticed that the Government was bent upon installing the plant, which was not in public interest. The Municipal Councillor, Thanesar, upon a meeting with the residents of Ward No.27, Shanti Nagar, Kurukshetra, had also raised serious objections with regard to the construction of the STP at the site in question. He, *inter alia,* referred to the adverse impact on the life of Dalit Colony near the plant. Also, there was the Bhism Kund Baan Ganga religious spot in close proximity of the plant, where pilgrims come from various parts of the country. Further, a petition was filed before the High Court challenging the acquisition of the land in question which came to be known as Civil Writ Petition No. 18732 of 2011 and was disposed of by the High Court by a consented order dated 21st December, 2012.

19. It is evident from the above facts that the establishment of the STP at the site in question or the substituted Khasra numbers came to public light and became a contentious issue between the Government and the public at large raising health and environmental issues in the year 2013. It is noteworthy that all the representations, objections, etc. were made to the declaration notified in the newspapers on 19th May, 2013 that the STP was going to be set up at the site in question.

20. According to the applicant, the limitation will trigger from 19/20th May, 2013, when the matter in relation to finally setting up the STP at the site in question was published in the newspapers. The applicant filed the application on 24th May, 2013 i.e. within a few days of his acquiring the knowledge when the cause of action arose in his favour. Furthermore, the establishment of the STP at the site in question received wide publicity on 19/20th May, 2013 whereafter many individuals, public organisations and, in fact, the public at large, raised objection to the construction of the STP, thus, giving rise to various environmental issues during that period. Therefore, the application filed by the applicant is within the prescribed period of limitation.

21. On the contrary, according to the respondent, the cause of action arose when the notification under Sections 4 and 6 of the Land Acquisition Act was issued on or about 7/10th January, 2010. This notification was published in the newspapers. Therefore, the applicant would be deemed to have knowledge of establishment of the STP in January, 2010 whereas the petition was filed in the year 2013. The application is, therefore, barred by time as the delay is more than 60 days over the prescribed period of six months from the date of cause of action and the Tribunal has no jurisdiction to condone the delay.

22. The entire controversy revolves as to the effect of the issuance of the notification under Sections 4 and 6 of the Land Acquisition Act and whether it will constitute cause of action under the NGT Act. We have no hesitation in answering this question in the negative. The reasons for the same are that the notification issued under Sections 4 and 6 of the Land Acquisition Act *per se* does not raise a substantial question relating to environment. This notification is for a different and distinct purpose. The provisions of the Land Acquisition Act operate in an entirely different realm/field and have distinct consequences. The questions arising in relation to the validity of acquisition or payment of compensation do not constitute 'dispute' within the meaning of and for the purpose of Section 14 of the NGT Act. The Tribunal, in any case, would have no jurisdiction to venture upon the adjudication of such an issue. Furthermore, the Government was competent to change the 'public purpose' stated in the notification under Section 4 and even could de-notify the area or give up the entire project upon

> hearing objections under Section 5 of the Land Acquisition Act. Change of purpose and de-notification by the State Government in accordance with law is permissible. If the Government would have de-notified the land from acquisition or if the High Court had quashed the notification under Section 4 of the Land Acquisition Act, then the entire project of STP would have come to an end and the proceedings, if any, initiated by the applicant under the NGT Act would have been an exercise in futility.
>
> 23. Another important aspect is that the location, the Khasra number, etc. sought to be acquired under Section 4 of the Land Acquisition Act could be changed by the competent authority while issuing the notification under Section 6 of the Land Acquisition Act. The High Court, vide its order dated 21st December, 2012 permitted the change of Khasra number by agreement. In other words, the very location of the STP, from the initial site, stood changed to khasra number recorded in the order of the High Court. These were very material changes but fell within the field of acquisition proceedings. They do not have any impact on environmental issues in regard to establishment of the STP."

54. Thus, it is clear that the cause of action should have a direct nexus with the matters relating to environment. In the present case, the respondents can hardly be heard to contend that since they have been flouting with impunity, the law, the terms and conditions of the EC for long, and therefore, every person is expected to know such violations or unauthorized use, and as such, the application would be barred by limitation. Respondent No.9 has not come to the Tribunal with clean hands and disclosed complete details, which were exclusively within their knowledge and possession. In the normal course of business, Respondent No.9 would have first entered into agreements with other persons for providing these premises, either on sale or lease, as the case may be. Then such buyers/lessees would start making constructional changes and provide infrastructure necessary for using the parking

and services area for commercial purposes. Then alone, such persons would have started using the premises for such purposes. All these facts have been withheld by Respondent No.9. Therefore, the Tribunal would be entitled to draw adverse inference against Respondent No.9 in that behalf. In any case, Respondent No.9 and other private respondents have converted the user of the premises contrary to the specified purpose and in violation of law and terms and conditions of the EC. Thus, even such an approach would support the case of the applicant and in any case the respondents cannot be permitted to take advantage of their own wrong or default.

55. The cause of action is not restricted to '*in personam*' but is an action available to any person in terms of Section 14 of the NGT Act. It empowers any person aggrieved to raise a substantial question relating to environment including enforcement of any legal right relating thereto. Every citizen is entitled to a clean and decent environment in terms of Article 21 of the Constitution and the term 'cause of action first arose' must be understood in that sense and context. The applicant has been able to establish that he first came to know about the misuser and change of user, particularly with regard to adverse environmental impact, only in the middle of December, 2012 and immediately thereafter, he took steps requiring the authorities concerned to take action as per law but to no avail. Then he filed the present application within the prescribed period of six months. The respondents have not been able to rebut successfully the factual matrix stated by the applicant. As already

stated, they have withheld relevant facts and information from the Tribunal.

56. A cause of action is a bundle of facts which should give, in its composite form, right to a plaintiff against the defendant to approach a court or Tribunal for a legal remedy or redressal of his grievance. Thus, the existence of a legal remedy to the plaintiff is a *sine qua non* for an actionable cause of action. In view of the above reasoning, we have no hesitation in concluding that the present application is not barred by time.

57. Lastly but most importantly, now we have to deal with the question as to whether the breach of conditions of EC is likely to cause environmental and health hazards or not. We have already held that Respondent No.9 has not only violated the specific terms and conditions of the EC dated 27th November, 2006 but has also miserably failed to submit an application for reappraisal of the project. Furthermore, the said Respondent No.9 has committed breach of the bye laws, fire safety measures, Corporation laws, etc. All the public authorities have specifically taken the stand that at no point of time, did they accord any permission or sanction for conversion of the parking area for commercial purposes and its misuser or unauthorized construction. In fact, according to them, they have taken appropriate steps against Respondent No.9 in accordance with law. We have already noticed that this Tribunal is not concerned with the violations and breaches committed by Respondent No.9 with regard to other laws in force but for

environmental laws in terms of Schedule I to the NGT Act and its adverse impact on environment and public health.

58. It has come on record that approximately 59% of commercial area has been increased by such unauthorized conversion and misuser. The terms and conditions of the EC have specifically provided that in the event of any change in the scope of the project, Respondent No.9 was expected to take steps for reappraisal of the project and take fresh EC, which admittedly, has not been done by Respondent No.9 despite lapse of considerable time. These violations would consequently have a direct impact on traffic congestion, ambient air quality, contamination of underground water, sewage disposal and municipal solid waste disposal besides other adverse impact on population density in the area. With the significant change of commercial area by 59%, the EC itself would be substantially affected and it would be for the authorities concerned to examine whether the EC can be continued or requires to be recalled. There is a drastic change in PSY with change in sq.ft. area as the EC was not intended for such area to which Respondent No.9 has now expanded its activity. Furthermore, assessment of water requirement is based upon the number of users and other services in the area and this substantial change has fundamentally been altered and would have drastic and adverse effects on all these aspects. The EIA Report submitted by Respondent No.9 itself shows that these are the various aspects, the variation of which is bound to alter the entire basis for grant of the EC. For instance, the parking for 1772 cars was to be provided in the project in terms of

EIA report. For this purpose, the basement, lower ground floor in one block and the multi-level car parking in the Block 2P had been provided. Major part of this area had been converted and used by Respondent No.9 and other private respondents for commercial purposes. It is not even the case of Respondent No.9 that the required number of cars can be parked in that building. The cars which could have been parked in the building now would have to be parked on the public roads/places leading to lowering the road capacity resulting in lowering the average speed of the vehicle, consequently increasing the air pollution.

It is noteworthy that the DPCC, in furtherance to the orders of the Tribunal, had conducted an inspection on 22nd April, 2013, as afore-referred, wherein in addition to misuser, it had also noticed the deficiencies pertaining to the functioning of the STP and re-use of the treated water. The consent granted to the project proponent was valid till 31st August, 2013. Since no periodical inspection had been carried out by the DPCC, it did not monitor compliance of the conditions stated in its order of consent to operate.

59. The apparent and obvious environmental consequences of such substantial change by the project proponent in the scope of the project are with regard to the increased inflow of people, its impact on sewage, air and water parameters and collection and disposal of municipal wastes. Violation in the prescribed parameters, as noticed above, are bound to have adverse impact on environment and public health. This is bound to cause hazardous problems in relation to the public health amongst others in relation

to breeding of flies and other vectors. The STPs would be unable to take such increased load and there will be a material change in the parameters under the Water and Air Act. This would be substantial disturbed. All this certainly amounts to change in the scope of the project and would require reappraisal of the project itself. Permitting such continued violation would seriously jeopardise the environment, public health and even the larger public interest. The Tribunal, while drawing a balance, would hardly be impressed by the continuation of that injunctive order, which would also jeopardise the financial interest of project proponent. According to Respondent No.9, it is likely to suffer a loss of about Rs.2.00 crores per month as it would be unable to pay back the banks from whom it has taken loans for completion of the project. Financial burden on Respondent No.9 cannot be the consideration for compromising the environmental and public health interests. Individual interest must give way to larger public health and environmental interest. The conduct of Respondent No.9 in entering into agreements with various other private respondents and converting the parking areas for commercial use without approval/consent/permission of the competent authorities and making money and hugely gaining monetarily in this context would, in any case, disentitle him from even raising the contention of financial constraints or difficulties at this stage now.

60. Resultantly, we answer all the formulated four questions in favour of the applicant and against the respondents, particularly Respondent No.9.

61. Ergo, for the reasons recorded above, we -

(a) accept the application filed by the applicant partially;

(b) prohibit the user of the basement (including Upper Basement, Lower 1 Basement and Lower 2 Basement) and the Ground Floor and First Floor of the multi-level car parking for any commercial use or other uses except for parking and services, as provided under the EIA Report and in the EC dated 27th November, 2006;

(c) direct the MoEF to examine the case of the project proponent (Respondent No.9) for continuation or otherwise of the EC in accordance with law and in the light of this judgment;

(d) direct the DPCC also to examine the case of the project proponent for grant/continuation or otherwise of its consents under the provisions of the Air Act and the Water Act in accordance with law and the contents of this judgment;

(e) direct the MoEF and the DPCC to conduct periodical inspections to ensure compliance of conditions subject to which clearance/consent will be granted; and

(f) In light of this order, all other applications stand disposed of.

(g) grant liberty to Respondent No.9 to apply for reappraisal of the EIA Report and the EC dated 27th November, 2006. If such an application is moved, the competent authorities shall consider the same in accordance with law and with due regard and care for improvement of environment and public health. However, there shall be no order as to cost.

Justice Swatanter Kumar
Chairperson

Justice U.D. Salvi
Judicial Member

Dr. D.K. Agrawal
Expert Member

Prof. (Dr.) P.C. Mishra
Expert Member

Dr. R.C. Trivedi
Expert Member

October 24, 2013
New Delhi.