

Item No.09

Court No. 1

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

Execution Application No. 48/2023
In
Original Application No.427/2023
(I.A. No. 873/2023)

Ashok Chandra Gautam

Applicant

Versus

Governing Body of Piyush Heights
Residents Welfare Association &Ors.

Respondent(s)

Date of hearing: 23.08.2024

**CORAM: HON'BLE MR. JUSTICE PRAKASH SHRIVASTAVA, CHAIRPERSON
HON'BLE DR. A. SENTHIL VEL, EXPERT MEMBER**

Applicant: Mr. Apratim Animesh Thakur & Mr. Lakshya Sachdeva, Advs. for
Applicant in E.A 48/2023

Respondent: Mrs. Panchajanya Batra Singh & Mr. Dishant Kalra, Advs. for R - 1 to 16
Mr. Rahul Khurana, Adv. for R - 17 to 19 with Mr. Rajinder, DTP
(Enforcement), Faridabad

ORDER

1. By this Execution Application, applicant is seeking compliance of the order dated 25.08.2023 passed in OA No. 427 of 2023 and M.A. No. 65/2023 in OA No. 296 of 2023. In the OA No. 427/2023, the allegation of construction of some temples by encroaching upon the green area in M/s Piyush Heights in Sector-89, Faridabad was raised. In the other MA/OA also, the issue of encroachment on the green area was involved.

2. The Tribunal by order dated 25.08.2023 had disposed of the OA and MA by holding as under:-

“XXX.....XXX.....XXX

7. *The joint factual and action taken report submitted in OA No. 296/2023 (Registered as M.A. No. 65/2023) reads as under:*

“2. That, in compliance of aforesaid Hon'ble NGT's Orders, Joint committee comprising of following members has been constituted:

Sr. No.	Name and Designation of Officer	Nominee/Representative
1.	District Town Planner (P) & Executive Engineer, Division I & III, Haryana Sehri Vikash Pradhikaran, Faridabad.	Deputy Commissioner, Faridabad.
2.	Smt. Akansha Tanwar, Regional Officer, Faridabad	HSPCB

The Environment Clearance of the project Piyush Heights, Sector- 89, Faridabad was reinstated vide MoEF order dated 18.05.2022. The complaint site at Piyush Heights, Sector-89, Faridabad was jointly inspected by the team of officers comprising of Sh. Ujjwal Kumar, AEE, HSPCB, Sh. Ankit, JE, HSVP, Faridabad, Virender Kumar, JE, DTP (E), Faridabad along with RWA on 01.06.2022. During inspection it was found that school structure has been demolished completely in compliance of NGT orders and greening work is under way. The photographs of demolition of school are enclosed as **Annexure R/1**. A Temple of was found under construction on open space/green space within the premises of project. Murti Staphna was already done in the temple.

3. It was informed by DTP that the said temple has been constructed over an area measuring 125 sqm. and out of which approximately 40 sqm. of the constructed portion is falling within the area marked as green whereas the rest of the area measuring 85 sqm. is falling in the open area and the area earmarked for open surface parking.

It was also submitted by DTP team that Show cause notice to the 6 residents of the society vide DTP memo no. 458-463 dated 19.04.2023 under Section 10(2) of Act no. 8 'of 1975. And memo no. 478-483 dated 10.05.2023 for restoring the land to its original state as per provisions of Act *ibid*.

4. Residents of the impugned society submitted their representation dated 05.06.23 to District Town Planner duly signed by almost 500 residents and thereby submitted a request for getting the building of temple regularized from department of town & country planning and sought at least one month time and urged for not to demolish the temple building as same has been constructed by the collecting funds from the residents of the society and they wished to remove the said structure on their own if required and hence no immediate action for demolition of the temple building keeping in view the religious sentiments of approximately 4500 residents of the society. However, no communication regarding any application for getting the building plans approved was received even after a month.

5. District Town planner submitted that they were unable to carry out any sealing/ demolition drive during the month of July-

August 2023 due to Kawad Yatra, flood in Faridabad and riots in District Nunas the police force was deployed for maintaining law and order. Copy of letter dated 07.08.2023 of the District Town Planner (Enforcement) is **Annexed as R/2**

In view of aforesaid facts, it is submitted that necessary action against the temple building would be taken by the District Town Planner (Enforcement), Town & Country Planning Department within next one month or as soon as the law and order situation improves in the District Faridabad, Nun and Gurugram.

The Report is submitted for kind consideration of this Hon'ble Tribunal. The direction passed by this Hon'ble Tribunal shall be complied with in true letter and spirit.”

8. *As per the above report, a temple is found to be under construction on open space/green area and action has already been initiated against the said construction. Along with report, the order dated 10.05.2023 passed by the District Town Planner (Enforcement), Faridabad (exercising the Powers of DTCP Haryana) under Section 10(2) of the Haryana Development and Regulation of Urban Areas Act, 1975 has been placed on record. The report also reveals that the action is proposed in pursuance to the said order.*

9. *Learned Counsel appearing for the respondents, office bearers of PHRWA has also submitted that said respondents are also taking steps to approach the appropriate authority to protect their interest.*

10. *The above sequence of events reveal that the order has already been passed by the concerned statutory authority and parties are taking consequential steps/remedial action before the appropriate authority, therefore, at this stage, no interference by the Tribunal is required. ”*

3. Submission of Counsel for the applicant is that the religious structure is standing on the area earmarked as green area, therefore, it is required to be demolished. As against this, the stand of the Counsel for the State of Haryana is that the review application at the instance of the other residents of the Society seeking review of rejection of compounding application is pending.

4. The stand of the Counsel for respondent nos. 1 to 6 is that as of now it is not clear that the temple is on the green area and that the Review Application is pending.

5. The record reflects that in the joint factual and action taken report which was submitted before the Tribunal in OA No. 296/2023 (Registered as M.A. No. 65/2023), the temple was found under construction on the open space/green space within the premises of the project. The report also records the stand of the residents of the society that the same was constructed by collecting funds from the residents and they wish to remove the said structure on their own, if required, hence, residents had requested that no action for demolition of temple be taken, keeping in view the religious sentiments. Tribunal in the order dated 25.08.2023 had also taken note of the stand of the residents/office bearers of PHRWA that they were taking steps to approach the appropriate authority for protection of their interest. In the said background, the Tribunal in the order dated 25.08.2023 had disposed of the OA by noting at that stage, no interference of the Tribunal was required.

6. The Annexure R-1 filed along with reply of the District Town Planner and Enforcement, Faridabad discloses that the Resident Welfare Association of M/s Piyush Heights has filed an application for compounding of unauthorized construction of the temple and the same was rejected by noting that the temple was constructed over an area of 125 sq. mtr. out of which, 40 sq. mtrs. of constructed portion falls within area marked for green.

7. Counsel for respondent no. 1 to 16 referring to the communication of District Town Planner (HQ) dated 01.04.2024 and has submitted that it is difficult to ascertain the area of temple falling under green and open space. She has further submitted that the application for review of rejection of compounding application is pending and has referred to Annexure-R2 dated 17.07.2024 issued by the District Town Planner,

(HQ), requesting for re-survey of the site of the temple to District Town Planner, Faridabad.

8. Having examined the record, we find that Tribunal by order dated 25.08.2023 had refused to interfere in the OA having regard to the report and the stand of the Counsel for the parties. Since, the proceedings for ascertaining the area of the temple falling in green and open space is pending and compounding application is also pending, therefore, at this stage on account of the factual uncertainty, no case for issuing any direction in the Execution Application is made out, which is accordingly dismissed.

Prakash Shrivastava, CP

Dr. A. Senthil Vel, EM

August 23, 2024
Execution Application No. 48/2023
In Original Application No.427/2023
(I.A. No. 873/2023)
JG.