

**BEFORE THE NATIONAL GREEN TRIBUNAL
EASTERN ZONE BENCH, KOLKATA**

.....

**ORIGINAL APPLICATION No. 144/2016//EZ
With MA No. 180/2017/EZ**

IN THE MATTER OF:

1. Sarbeswar Boruah,
S/o Late Guneswar Boruah,
R/o Senswa Suravi Nagar,
Nogaon-782002
2. Hemchandra Bora,
S/o Late Dhir Sing Bora,
R/o Chaparmukh Raha,
Nagaon-782425
3. Ajit Singha Deka
S/o Late Tikendra Singh Deka,
R/o Rajagaon, Raha,
Nogaon-782103
4. Sohan Singh
S/o Late Devi Singh,
R/o Chaparmukh, Raha
Nogaon-782425

.....Applicants

V e r s u s

1. Union of India,
Through the Joint Secretary,
Govt. of India (PMSSY)
PMSSY Division,
M/o Health and Family Welfare,
Nirman Bhawan
New Delhi-110008.
2. State of Assam through
The Chief Secretary,
Block-C, 3rd Floor,
Dispur, Guwahaati
781006
3. The Chief Executive Officer,
Guwahati Metropolitan Development Authority
Bhangagarth, Guwahati-781005

4. Department of Forest,
Govt. of Assam, represented by
The Secretary, Dispur, Guwahati-781006
5. Department of Environment,
Govt. of Assam, represented by
The Secretary, Dispur, Guwahati
781006
6. Department of Urban Development
Govt. of Assam, represented by
The Secretary, Dispur, Guwahati-781006
7. Assam Pollution Control Board
Represented by its Member Secretary,
Bamunimoidam, Guwahati-781021
8. Ministry of Environment, Forest
And Climate Change,
Represented by the Secretary,
Indira Paaryavaran Bhavan,
Jorbag Road, New Delhi-11003
9. Guwahati Development Deptt.
Represented by the Secretary,
Block-D, 2nd Floor,
Dispur, Guwahati-781006

.....Respondents

COUNSEL FOR APPLICANT:

Mr. K.K.Mahanta, Senior Advocate,

Mr. P.K.Das, Advocate

Mr. K.M.Mohanta, Advocate

COUNSEL FOR RESPONDENTS:

Ms. Sabita Roy, Advocate for Respondents No. 1

Mr. Devajit Saikia, Sr. Addl. Advocate General

Mr. Santanu Bora, Advocate for the Respondents No. 2,4,5,6 & 9

Ms. Millie Hazarika, Sr. Advocate

Ms. Sruti Khound, Advocate for the Respondent No. 3

Ms. Malabika Roy Dey, Advocate for the Respondent No. 7

Mr. S. Mazumdar, Advocate

Mr. Gora Chand Roy Choudhury, Advocate, Ms. S. Roy, Advocate, Respondent No. 8.

PRESENT:

Hon'ble Mr. Justice S.P. Wangdi, Judicial Member

Hon'ble Prof. (Dr.) P. C. Mishra, Expert Member

Reserved On : 01.11.2017

Pronounced On: 13 .11.2017

1. Whether the Judgment is allowed to be published on the net?
: Yes
2. Whether the Judgment is allowed to be published in the NGT Reporter?
: Yes

JUDGMENT

PER JUSTICE S.P. WANGDI, JUDICIAL MEMBER

The applicants challenge the impugned decision of the Central Government and the Government of Assam to establish AIIMS at the Jalah Beel in North Guwahati in preference to Raha village in Nagaon district of Assam.

2. It is stated in the application that on 28.02.2015, the Ministry of Health and Family Welfare, PMSSY Division decided to set up 7 AIIMS like institutions in different states including one in Assam. On 19.4.2015 a team of five officers of the Government of India, headed by Sri K.C. Samaria, Joint secretary, Ministry of Health and Family Welfare, visited 3 sites identified by the Government of Assam situated in (i) village Helagog in the district of Kamrup, (ii) village Bormula under Kamalpur (Rural) and (iii) village Chaparmukh, Raha, in the district of Naogan. Of the three locations, the

one at Raha, Nagaon was recommended by the Central team for setting up AIIMS as it fulfilled the broad parameters .

3. To the surprise of the Applicants, another team of the Ministry constituted in July, 2015 headed by a different Joint Secretary proposed another site at Jalah in North Guwahati which was also approved by the Ministry. This according to the Applicants, was illegal, arbitrary and in violation of the existing laws and also for the following reasons :

- (i) Part-II of the Master Plan for Guwahati Metropolitan Area-2025, providing for Land Use Zoning and Development Control Regulation notified on 7th July, 2009 by the GMDA includes the entire North Guwahati area within the existing South Guwahati as Greater Guwahati thereby bringing within its ambit the Jalah beel situated in the extreme North within the GMDA jurisdiction.;
- (ii) The Master Plan is a statutory document which includes the Jalah Beel area long with the nearby hills and forests measuring 294 ha constituting 20.25% of the total area of 1352 ha for the proposed New Town-I in North Guwahati, that has been classified as Eco-sensitive/zone under the Land Use and Development Control Regulations of the Master Plan. The Land Use Zoning and Development Control Regulations prohibit various activities including development of land. Even in the Eco-friendly zone, proposal for development in excess of 20 ha would require Environmental Clearance (EC);

- (iii) The final Master Plan and Zoning Regulations, 2015 that was published after the modifications were carried out to the land use map for North Guwahati area, also had not altered the Eco-sensitive Zone identified earlier and, therefore, Jalah Beel and its surrounding hills and forest continued to be within such Zone;
- (iv) Sec. 4 of the Guwahati Water Bodies(Preservation and Conservation) Act, 2008, prohibits filling up of water bodies and other activities that had potential to damage or reduce its size as well as constructing and of raising any structure in the water bodies, violation of which is made punishable u/s 6 of the Act;
- (v) Considering the definition of “Wetland” provided under Rule 2(g) of the Wetland (Conservation and Management)Rules, 2010, prohibition of any construction as provided under Rule 4(1)(vi) of the said Rules would also apply to Jalah Beel ;
- (vi) Thus , handing over 572 Bighas (76 ha) for the proposed AIIMS at Jalah Beel area was in gross violation of the laws as it is a natural water body having enormous capacity to retain water during monsoons that prevent floods in the nearby areas of North Guwahati and NH 37 where important infra structures exist;
- (vii) The quantity of soil to fill 572 ha with 7,69,236 square meter depth can only be supplied by excavating the nearby forested hills falling within the Eco-sensitive Zone. This, according to the

Applicant, will not only destroy the hills and the forest but also result in the displacement of approximately 2000 crore litres of water with no provision for its out-flow or storage;

(viii) The decision to set up AIIMS at Jalah Beel would aggravate the environmental degradation of North Guwahati Region which is already in the grip of pollution caused by hundreds of small and heavy industries including 3 cement factories that release dust and hazardous gases, storage facilities, heavy vehicular traffic, etc.

4. For the aforesaid reasons, according to applicants, the decision of the Government was illegal, arbitrary and unconstitutional and has sought for the following reliefs :-

a) For quashing and/or setting aside the decision of the Central Government as well as State Government to establish AIIMS at Jalah beel at North Guwahati;

b) Direction upon the Central as well as State Government to establish AIIMS at Raha according to the recommendation of the Mr.K.C. Samaria Committee.

5. The State of Assam in its affidavit sworn by the Chief Secretary while conceding that the Government had proposed three sites for setting up of AIIMS in Assam village Helagog and Barmula in Kamrup (Metro) and Kamrup districts respectively and Chamarmukh gaon, went on to state that when this was conveyed by the Chief Minister to the Ministry of health and Family welfare vide his letter dated 17.07.2014, a check list was received from the Ministry through letter dated 15.11.2014 seeking details of each

of the sites. This was responded to by the State Government by providing all the requisite details on 18.03.2015 which led to a team of officers from the Ministry inspecting the sites between 19th and 21st April, 2015. Later in the year, the Government of Assam received a request from the Government of India to look for an alternative site nearer to the Guwahati airport in and around Guwahati city and, vide their letter dated 16.11.2015, the State Government was asked to explore the possibility of retrieving the land at Ghorajan, Abhayapur, Mouza Sila Sindurigopa near IIT, Guwahati that were covered by water bodies for the purpose and to ensure that it did not get flooded later. When this was under consideration, another site at Jalah, Mouza Sila Sindurigopa in the Kamrup (Rural) located 6-7 kms away from the one near IIT, Guwahati was offered as another alternative during the visit of the Additional Secretary, Govt. of India on 11.12.2015. By letter dated 02.01.2016 the Government of India was requested to finalise on any of the aforesaid sites including the one measuring 624 B in Kamchahari, Mouza, Pukripar village under the Nagaon Sadar Revenue circle. Further a detailed proposal with particulars sought for in the check list was also submitted on 5.1.2016 in respect of a land at Jalah village.

6. The Government of India finally approved the land measuring 879 Bighas in Jalah village by letter of the Director, PMSSY, Ministry of Health and Family Welfare, Government of India, dated 5.02.16 for setting up AIIMS, Assam, subject to fulfilment of certain conditions and taking up necessary action for change of land use as it fell in the category of VGR (Village Grazing Reserve). This was complied with by the Government of Assam by taking the following steps :-

- a) By letter dated 09.03.2016, the Commissioner and Secretary, Government of Assam, Health and Family Welfare Deptt., requested the Revenue and Disaster Management Department (RDMD), to allot the land Jalah village after deserving it as VGR on examination of all legal aspects and to cancel the earlier allotments measuring 517 Bighas, 2 Kathas and 2 Leehas at Ghorajan, Abhaypur, Tilinga Gaon and Gaouripur under Sila Sinduri Ghopa, North Guwahati;
- b) Steps were initiated by RDMD for dereservation of VGR by letter dated 01.03.2016 that culminated in the Governor of Assam deserving 571 Bighas 3 Kathas and 15 lechas covered by Dag No. 390 in village Jalah followed by its allotment in favour of the Ministry of Health and Family Welfare Department, Government of India, after *inter alia* according approval for reservation of equivalent land as VGR in accordance with the procedure laid down therefor under Rule 91 of Assam Land Revenue Regulations, 1886;
- c) It is stated that after the State Government handed over possession of the site to the Government of India on 28.06.2016, some senior citizens went on a hunger strike demanding setting up AIIMS at Raha, Nagaon district. This led to the Government of India explaining the reasons for abandoning Raha in favour of the one at Jalah;
- d) Later, clarifications were sought for on several points by the Member of Parliament, Nagaon Parliamentary constituency,

by his letter dated 06.10.2016. Those were accordingly responded to his satisfaction. The queries on the points and the clarification given by the Government of India being relevant are reproduced below :-

“Query No. 1 : relating to ‘water catchment area and requirement of massive earth filling ”

- a) It is submitted that out of the total 879 Bighas 1 Katha 16 lachas which is a VGR land as per land record, as area measuring 571 Bighas 2 Kathas 15 Lehas only have been allotted in favour of the new AIIMS. This allotment of land has been de-reserved by the Revenue Department of Government of Assam;*
- b) The remaining land will continue to be a VGR, in compliance with the minimum 5% of total village and as VGR criteria “enshrined in the Land mark judgment of the Supreme Court dated 12th Jan. 2011 vide Civil Appeal case 436/2011 arising out of SLP (C) 20203 of 2007;*
- c) During the rainy season, there is some accumulation of water in certain parts but there is otherwise largely dry and there is no history of flood in an around the proposed site;*
- d) It is also submitted that during the site selection process, the area of the total VGR land which may be slightly water logging has been carefully excluded from the total area which has been de reserved for the purpose of construction of AIIMS. The area which has now been allotted is not the water logging part;*

e) *Considering the land topography in Assam, certain amount of earth filling may be required, as seen, in case of all the new projects that have been coming up;*

2 *Query No. 2 relating to “doubtful air quality due to cement factory and other industries”*

(a) Regarding the second issue about the doubt on the quality of air, it is stated that there is no heavy industry/cement factory in the vicinity of the proposed land for the new AIIMS;

(b) The cement industry, which has been referred to in this letter, was located near the previous proposed site in Kamrup district for AIIMS construction and thereafter, the expert team from Ministry of health and Family Welfare, Government of India had rejected that site and selected this present new site.

Query No. 3 relating to the “sound pollution due to nearby missile site of Indian army”.

In this regard, it is submitted that the proposed AIIMS site is far away from the defence site and also there is huge natural barrier in the form of steep hill which separates the proposed AIIMS site from that of the defence site.

Query No. 4 relating to “congestion of Guwahati due to more institution coming up”

a) The 4 lane National Highway is now fully completed and opened for traffic. The proposed AIIMS site is far away from Guwahati city and is not part of the busy metropolitan area of Guwahati and as such there is no congestion in this northern part of Guwahati;

- b) There is also an additional bridge over the river Brahmaputra now, which is most ly complete and scheduled to be opened for vehicular traffic shortly;*
- c) Many educational Institution like NIPER (National Institute of Pharmaceutical Research),Judicial Academy and National law University, Indian Institute of Technology, Guwahati, Guwahati Biotech Park, Assam Film Institute (Jyoti Charabon) have all set their campuses in North Guwahati and hence this location has become a very popular location for academic and research now.”*

7. It is further the case of the State Respondents that land settlement exercise and classification of land were first carried out in Assam during 1923-28 and 1964-67. Since then the character of the land has altered and drastically so, as a result of a major earthquake on 15th August, 1950 when even the courses of the rivers including the Brahmaputra had changed. Therefore, although the land is shown as “Jalatal” in the records no water body exists there at present and, since the year 1961, it is being used as a village grazing reserve as would be revealed by an order dated 12.06.1961 found in the officials records and the Village Grazing Reserve Register maintained since 26.12.1986. The records had, however, remained without being up-dated, a process which the Government has recently initiated in view of the necessity to comply with the letter of the Government of India dated 05.02.2016.
8. As the Master Plan of Guwahati Metropolitan area, 2025 prepared by the Guwahati Metropolitan Authority (GMDA) was also based on the outdated land records of the Revenue Department that had resulted

in the incorrect zonation and land use being, the GMDA was directed to carry out corrections under section 22 of the Guwahati Metropolitan Development Authority Act, 1985 and also under clause 14.11 of the Master Plan of Guwahati- 2025 (Part-II) that provides for Master Plan Monitoring and Review based on the physical, social and economic changes of important indicators such as demography, economy, land use, physical environment, social factors and transportation.

9. It is stated that neither does the land in question falls within the purview of the Guwahati Water Bodies (Preservation and Conservation) Act, 2008 nor does Jalah village fall in any hill area or eco-sensitive or green belt area under the forest or Environment laws nor is it a wet land under the Wetland (Conservation and Management) Rules, 2010.

10. An earlier Public Interest Litigation being *PIL No. 59/2016* in the matter of ***Krishak Sramik Unnayan Parishad, Assam and Another –vs- Union of India and Others***, filed in the Gauhati High Court raising the same question and seeking for the same reliefs as in the present case, had been dismissed as withdrawn vide order dated 21.09.2016. The Application being mala fide and filed by vested interests and also politically motivated, should be dismissed.

11. The Guwahati Metropolitan Development Authority (GMDA) Respondent No 3, in its affidavit-in-opposition generally reiterated the stand taken by the State of Assam, Respondent No.2, asserting that the selection of the site at Jalah was not done arbitrarily but by exercising utmost precaution and taking all relevant factors into consideration. While admitting that the Master Plan of 2009 was notified on 9th July, 2009, the

GMDA contended that it did not earmark areas specifying particular land use in New Town-I in the proposed land use map but only provided broad guidelines for allocation of land use as the Table appended with it.

12. The site in question, according to the GMDA, is not under water except for some portion that become swampy during the rainy seasons while others are high land areas and that, the conditions prevailing at the Site do not suggest it to be a water body. It is asserted that the Master Plan is not a static document as it undergoes changes as per the requirement of time for holistic development and preservation of environment. Mid-term reviews are permissible under the GMDA Act as provisions have been made to meet the eventualities of change. The present review and revision of the Master Plan is being undertaken by the GMDA in view of the policy decision of the Government to set up AIIMS in the area in pursuit of which it had deserved the land. To substantiate this, letter of the GMDA dated 20.12.2016 addressed to the Additional Secretary Guwahati Development Department, Government of Assam and reply of the Secretary of the Department dated 13.01.2017 seeking for changes in the Zoning Regulations/Land use/plan to facilitate establishment of AIIMS at the site were referred to. It is stated that exercise for affecting such changes has been initiated in accordance with the GMDA Act, 1985 and after publishing the draft plan inviting public objections/suggestions in respect of the proposed modifications before its finalisation.

13. Dealing with the letter dated 25.7.2012 of the Guwahati Development Department, it is stated that although it did convey to the CEO, GMDA and the Commissioner, Guwahati Municipal Corporation, the

recommendation and decision of the government to restrict building permission in the hill areas and Eco-sensitive and Green Belt areas, it was only an administrative instruction. The site in question was not in the hilly areas but was a plain land classified as VGR in 2010 which has since been de-reserved. It had been notified as Eco-sensitive Zone in the Master Plan notified in the year 2010 under the GMDA Act, 1985 only for its protection to bring it in accord with the Revenue classification as VGR land but not under the environmental Laws. As it has since been de-reserved, it had become incumbent upon the GMDA to re-notify it, the process for which had been undertaken in public interest.

14. Application of the Guwahati Water Bodies (Preservation and Conservation) Act, 2008 to the area in question has been denied contending that it cannot be made applicable to an area by implication and that the area not being a Ramsar site, even the provisions of the Wetland (Conservation and Management) Rules, 2010 did not apply. It has been re-emphasised that the Master Plan 2009 has not earmarked the areas of New Town-I in specific zones in the land use map but only provides for tentative land allocation against each area suggested in the report. Existence of a huge water body at the site as claimed by the Applicant has also been denied. It is further stated that the industries in the area are constantly monitored by the State Pollution Control Board and have been found to be compliant of the Pollution Norms and, that existence of the industries there was not relevant to the setting up of AIIMS as there are various other institutes of repute already in existence in the vicinity of the site apart from many others that are proposed to be set up.

15. The Respondents No. 4 and 5, the Department of Forest, and the Department of Environment, Government of Assam respectively, in their joint affidavit-in-opposition have stated that as per records of the Department, the Jalah Beel is not a forest area and that there is no eco-sensitive zone around it. It does not fall under the purview of the Wetland (Management and Conservation) Rules, 2010, and, as per verification, no water body exists in the area and is totally dried up which is being used for cattle grazing. Further that during field survey also it was revealed that the area gets partially flooded during heavy rains but there was no retention of water in order for it to be termed as a wetland.

16. The Assam State Pollution Control Board, Respondent No. 6, in its report filed on 03.01.2017 on the inspection of the area carried out in pursuance of the order dated 23rd November, 2016 of the Tribunal *inter alia* informed that the area of the proposed site for AIIMS is a partially marshy land which become water logged during the rainy season but found it to be almost dry covered with water hyacinth at some places.

17. As the respondent No.8, Ministry of Environment, Forest and Climate Change, In its affidavit, has re-affirmed the stand of the State Government, the GMDA and the Deptt. of Forest and Environment, Government of Assam, it would not be necessary to deal with those to avoid being repetitive.

18. In their affidavits-in-reply, the Applicants have re-affirmed their case set out in the OA denying all contentions of the Respondents.

19. It is of relevance to take note of the fact that in the course of the proceedings, an affidavit was filed on behalf of the GMDA on 19.04.2017 to

place on record Notification dated 10th March, 2017 issued by the Authority under Section 22(3) of the Guwahati Metropolitan Development Authority Act, 1985, whereby the draft modifications and corrections to the Final Master Plan and Zoning Regulations, 2025 of Guwahati was published as required under calling objections and/or suggestions. When the affidavit was taken on record, the Ld. Counsel for the Applicants urged that, as the period for filing objections to the proposed de notification of the Zoning and land use had expired for the want of knowledge of the Applicants of such notification having been issued, the Applicants be allowed to file objections by extending the time. This having fairly not been objected to on behalf of the State and the GMDA, it was ordered as follows :

“ in view of this, the Applicants are at liberty to file objection within 10 days from hence. It is made clear that this order shall be applicable only to the Applicants and shall not be treated as a precedent”.

20. On 30.05.2017 an affidavit was filed on behalf of the GMDA conveying that on 26.04.2017 the Applicants filed their objections and, on 11.05.2017 they, accompanied by their Learned Senior Counsel, had appeared before the GMDA and presented their objections. That the GMDA, after due consideration of the written objections and oral submissions, rejected the objections by a reasoned order. It was stated that by issuing a corrigendum the error in quoting the Dag Number as 392 in the notification dt. 10th March, 2016 had been rectified as being 390.

21. In the affidavit-in-reply filed by the Applicants, the proceedings of the hearing was assailed on the ground of (a) the Applicants not being

heard and their objections not being considered; (b) the officers who conducted the hearing not being competent to do so; (c) the Chief executive Officer (CEO), GMDA, who had issued the public hearing notice and, therefore, the competent authority to hear the matter, did not take up the hearing and (d) the Committee which heard the objections, was not validly constituted.

22. Apart from these, it was also contended that (i) the process for amendment of the GMDA Regulations/land Use was initiated after the filing and during the pendency of the case with the object to render the proceedings infructuous and, therefore, was hit by the principle of *lis pendens* and (ii) that the finding arrive at by the GMDA was perverse.

23. Heard.

24. Learned Counsel for the parties in their arguments once again highlighted their contentions set out in the pleadings of the Original Application, the affidavits-in-opposition and other affidavits with which we have elaborately dealt in the earlier part of this judgement and, therefore, need not be stated again except to the limited extent necessary as shall appear hereafter.

25. Upon consideration of the pleadings, documents and the oral arguments, the following issues fall for our consideration :

- i) Is the Original Application barred by limitation in view of Section 14(3) read with the proviso thereto.
- ii) Are the Applicants guilty of suppression of material facts.
- iii) Having regard to the reliefs sought for in the OA, does this Tribunal have the jurisdiction to entertain the case.

- iv) Considering the facts and circumstances involved in the case, can it be said that substantial question relating to environment including enforcement of any legal right relating to environment is involved and that such question arises out of the implementation of the enforcements specified in Schedule of the National Green Tribunal Act, 2010.

26. We may, therefore, take up the issues and deal with them in seriatim hereafter.

Issue No. 1 : Is the Original Application barred by limitation in view of Section 14(3) read with the proviso thereto?

27. Mr. Devajit Saikia, Ld. Sr. Addl. Advocate General, State of Assam, appearing for the Respondents No. 2,4,5,6 & 9, strongly argued that the OA was barred by limitation as prescribed under Section 14(3) of the National Green Tribunal Act, 2010, which prescribes that no application for adjudication of dispute under this section shall be entertained by the Tribunal unless it is made within a period of six months from the date on which the cause of action for such dispute first arose. It is stated that the Tribunal has been vested with powers to extend the period not exceeding 60 days only if it is satisfied that the applicant was prevented by sufficient cause from filing the application within the said period. It is submitted that the decision to set up All India Institute of Medical Science (AIIMS) at village Jalah was taken on 4.2.2016 which was communicated on 5.2.2016 by the Ministry of Health and Family Welfare Department, Govt. of India, to the Principal Secretary, Govt. of Assam, Deptt. of Health & Family Welfare. Reference in this regard has been made to Annexure-VII of the affidavit of the Respondent No. 2, the Chief

Secretary, Govt. of Assam. The Applicants, however, filed the OA only on 23.9.2016 which would be beyond the period of six months from the date cause of action that first arose on 4.2.2016. It is submitted that the Applicants have also failed to file any application for condonation of delay which then would have given rise to the Tribunal considering extending the time for a further period of 60 days. The Application was, therefore, barred by the law of limitation and liable to be dismissed for that reason.

28. Mr. K.K. Mahanta, Ld. Senior Counsel appearing on behalf of the Applicants, referring to Annexure-P1 to the OA being a series of documents furnished to the Applicants in response to an Application dated 15.4.2016 filed under the Right to Information Act, 2005, submitted that the Applicants became aware of the impugned decision only after receipt of the information. Mr. Mahanta drew our attention to letter dated 25.4.2016 issued by one SPIO and Joint Secretary to the Govt. of Assam, Health and Family Welfare (B) Deptt., addressed to one Hiranya Narayan Bora, the President of All Party Organisation Demand Committee for establishment of AIIMS at Raha, forwarding the documents to substantiate his submission. The Application having been filed on 29.9.2016 based on information and the documents so received, was, therefore, within the prescribed period of six months under Sec. 14(3) of the NGT Act, 2010.

29. The argument of Mr. Mahanta could not be controverted on behalf of the State. We have also carefully examined and considered the letter of the SPIO dated 25.4.2016 and we find the contention of Mr. Mahanta to be justified and consequently the plea of delay taken on behalf of the State stands rejected.

30. Issue No. 2 : Are the Applicants guilty of suppression of material facts?

It is urged on behalf of the State that the Applicants had not been honest in their approach. It is submitted that the foundational ground of the Application being based on the Master Plan of Guwahati Metropolitan Area 2025, July 2009, they have annexed Part-II of the Master Plan but while doing so they have suppressed clause 14.11 providing for 'Master Plan modification and review' which is one of the most vital documents necessary for an effective adjudication of the matter. The Applicants have chosen to file only a portion of the Master Plan, particularly clause 13 providing for 'Land Use Zoning and Development Control Regulations', in order to make out a case of violation by the Respondents. It is further argued that although the Applicants have filed various official documents and noting as Annexure to the OA, they deliberately did not file the letter dated 5.2.2016 by which the Central Govt. had conveyed the approval for establishment of AIIMS at Jalah village subject to necessary changes being made for land use. This, as per Learned Govt. Counsel, amounted to deliberate suppression of material facts on the part of the Applicants that call for dismissal of the OA.

31. On the other hand, Mr. Mahanta, Ld. Sr. Counsel for the Applicants, urged that the Applicants have only filed relevant portions of the Master Plan which was in public domain and, in any case, Guwahati Master Plan is a statutory document. As regards allegation of holding back the letter of the Central Govt. dated 5.2.2016 is concerned, it is submitted that the letter only confirms the note of the Joint Secretary, PMSSY Division, Ministry of Health and Family Welfare dated 4/2/2016 approving the site at Jalah village for establishment of AIIMS which is a part of the documents filed as Annexure-P1 to the OA.

32. For these reasons, according to Mr. Mahanta, it cannot be said that the Applicants are guilty of suppression of material facts. As submitted by Mr. Mahanta, the Master Plan for Guwahati Metropolitan Area, 2025 (Land Use Zoning and Development Control Regulations), is a statutory document prepared by the Guwahati Metropolitan Development Authority in exercise of its powers conferred by Sub-section (1) of Section 22 of the Guwahati Metropolitan Development Authority Act, 1985, and, therefore, assumes a statutory character. The Applicants have filed a portion of the Master Plan containing clause 13 and other cognate provisions in support of the OA. This by itself would not amount to suppression of the other provisions as the Respondents would have had an opportunity to deal with the OA in their affidavit-in-opposition which they have done and, in doing so, they have placed before us clause 14 and sub-sections thereunder in support of their case.

33. On the allegation of suppression of the letter dated 5.2.2016 of the Central Govt., we find that the Applicants have filed a large number of documents as annexure-P1 which they had received in response to an application filed under Right to Information Act, 2005 amongst which is the note of the Joint Secretary, PMSSY Division of the Ministry of Health and Family Welfare, dated 04.02.2016 which in substance is confirmed by the letter dated 5.2.2016.

34. For these reasons, we are not convinced that the Applicants are not guilty of suppression of material facts and accordingly reject the contention raised on behalf of the State Respondents.

35. Issues No. 3 and 4 being inter related are taken up together for consideration.

Issue No. 3 : Having regard to the reliefs sought for in the OA does this Tribunal have the jurisdiction to entertain the case?

Issue No. 4 : Considering the facts and circumstances involved in the case, can it be said that substantial question relating to environment including enforcement of any legal right relating to environment is involved and that such question arises out of the implementation of the enforcements specified in Schedule of the National Green Tribunal Act, 2010.

36. The reliefs prayed for in the OA are for quashing and setting aside the decision of the Central Govt. and the State Govt. to establish AIIMS at Jalah Beel, North Guwahati, and to direct them to establish it at Raha as recommended by the K.C. Samaria Committee. The contention of the Applicants in relation to the reliefs are briefly set out below :-

(a) The site at Raha which was first recommended by the Samaria Committee to establish AIIMS was found to be more suitable after having inspected all identified by the State Government sites but, had not finalised it only because of certain factors like its distance from the district Headquarters at Nagaon and the Guwahati airport. Due to this another site that was identified in North Guwahati Revenue Circle that was under consideration. At this stage, the Applicants were surprised to learn of another Central Team having been constituted which was led by Mr. Sunil Sharma, Joint Secretary, PMSSY Division by replacing Shri K.C. Samaria. This team ultimately recommended the present site at Jalah village on

various considerations. The case of the Applicants is that the decision to shift the location of the proposed AIIMS to the new site at Jalah village was absolutely illegal, arbitrary and against the existing laws.

b) The site at Jalah village selected for establishment of the AIIMS is a declared and notified eco-sensitive zone under Part VII of the Master Plan for the Guwahati Metropolitan Area-2025 under the Land Zoning and Development Control Authority. The area covering 571 Bigha 2 Katha 15 Lecha of land covered by Dag No. 390/2363 in village Jalah in North Guwahati includes within it "Jalah Beel", a water body which is surrounded by a reserve forest and is located on the western side of a hill.

(c) Considering its bio-diversity, the entire area consisting of Jalah Beel and its surrounding reserve forest and hills were declared as notified eco-sensitive zone and that, under clause 13(3) of the Master Plan for Guwahati Metropolitan Area-2025 which provides for Land Use Permissibility, no construction is permissible in terms of Sl. No. 14 thereunder.

(d) Zoning of the Master Plan was prepared by the GMDA after following due process of law which included conducting detailed survey in consultation with Expert Bodies and after inviting public objections and holding public hearing which was ultimately approved by the State Govt. before being notified in the official gazette. While carrying out the

amendment/modification earlier to the Master Plan in 2010, the Jalah area was maintained as eco-sensitive zone considering its importance.

(e) The Central Govt. while approving the site did not take into consideration the fact that it was an eco-sensitive zone as the State Govt. had not placed this fact but was rather concealed by the State Government.

(f) The proposal to set up AIIMS at the site is in violation of the Guwahati Water Bodies (Preservation and Conservation) Act, 2008 as well as Wetland (Conservation and Management) Rules, 2010.

(g) Establishment of AIIMS at the site was also bad as its construction activity would aggravate the present air and sound pollution being caused by the hundreds of small and large industries including 3 cement factories that release dust and gas.

37. Apart from the above, additional grounds were urged orally on the validity of the modification/review of the Master Plan recently undertaken by the GMDA respondent. It was contended that such modification/review was not necessitated by any genuine requirement but because it was directed so by the Central Government. The process of amendment to the Master Plan by the GMDA which commenced with a notice dated 15.3.2017 was carried out during the pendency of the present case and therefore, is hit by the principle of *lis pendens*. The objection to the modification/review submitted by the Applicants in

pursuance of the order dated 19.4.2017 of the Tribunal, was rejected by the GMDA holding that the site in question did not fall under any of the environmental laws that prohibit modification/review of the Master Plan.

38. Mr. K.K.Mahanta, Ld. Sr. Counsel for the Applicants, contended that change in the site from Raha to Jallah was actuated by malice, arbitrary and in violation of the laws. The State Government while proposing the site, had suppressed the fact that it falls within the eco-sensitive area under the Guwahati Master Plan-2025 where constructions were prohibited and that there were other alternative sites which could have been selected. The area being classified an eco-sensitive zone, it would be violative of the environmental laws if any construction is undertaken there. The Ld. Sr. Counsel stressed on the existence of 'Jalah Beel' at the site surrounded by reserve forest with hills at one side and submitted that filling up this water body would require enormous quantity of soil which could only be sourced by excavation of the hills. The water body act as a huge storage and acted as a natural flood control measure and that filling it would displace a large volume of water with no provision for outlets.

39. Responding to the arguments made on behalf of the Applicants, the Ld. Sr. Addl. Advocate General contended that the choice of site had been made after undertaking elaborate exercise and only after taking all relevant factors into consideration that the final decision was arrived at. He would re-emphasise and reiterate the facts and circumstances set out in the affidavit-in-opposition filed on behalf of the Chief Secretary which we have dealt with earlier.

40. It was urged that Jalah Beel (water body), for which the Applicants are concerned, has been left out completely from the area of construction as would

be revealed from the response of the State to the queries raised by the Hon'ble Minister of Railways. It has been further stated that the total area of the VGR land has been de-reserved for the purpose of construction of AIIMS and the area is not the water logged part.

41. It is also the case of the State that although as per the classification carried out in the years 1923-28 and 1962-67, the area under review by the GMDA is found recorded as 'Jalah Beel', in reality there is no water body in existence for decades. The official records also indicate that the land was being used as Village Grazing Reserve (VGR) since 1961, but the revenue records remained without being updated. The process to do so was initiated by the State Government after receipt of the letter dated 5.2.2016 from the Central Govt. approving the site for establishment of the AIIMS, as the Master Plan classification arrived at earlier and the map prepared by the GMDA were based on the outdated land records that had resulted in the incorrect zoning of land use in the Master Plan of Guwahati Metropolitan Area- 2025, This, as per the Ld. Senior Addl. Advocate General, was permissible under clause 14.11 of the Master Plan 2025 (Part-II) which provides for Master Plan monitoring and review after considering the physical and socio-economic changes of important indicator such as demography, economy, land use, physical environment, social factors and transportation. There were other submissions on this aspect upon which we need not delay ourselves as being quite futile and unnecessary for the that shall follow.

42. It has also been categorically denied that the action of the State Respondents would be violative of Guwahati Water Body (Survey & Preservation) Act, 1986 and the provision of Wetland (Conservation and Management) Rules,

2010 as Jalah beel is not one of the water bodies contained in the schedule of the two statutes.

43. Mrs. Mille Hazarika, Ld. Sr. Advocate, appearing for the GMDA, Respondent No. 3, submitted that the area at Jalah had earlier been brought within the eco-sensitive area with the primary object to protect the VGR land from encroachments. The area in question does not fall under any of the protective laws that prevent its use for development. It is submitted that the Guwahati Master Plan published on 9.7.2010 is not a static document and provides broad guidelines for allocation of land for different purposes as provided in the table to which modifications had been made in the year 2010. The entire area of 571 Bigha 2 Katha and 15 lechas of land was classified as VGR and has since been allotted for setting up of AIIMS after its de-reservation in accordance with law. The Master Plan which is a broad based perspective plan for 2025, was amended and underwent mid-term review necessitated by new Govt. Policies and Programmes enunciated from time to time during that period. It is not a rigid document and that the present review for modification of the land use and classification in the Master Plan has been undertaken by following due process of law in accordance with the powers vested upon the GMDA under Sec. 22(1) of the Guwahati Metropolitan Development Authority Act, 1985 .

44. These are the brief narration of rival contentions put forth by the parties.

45. The grievance of the Applicants is essentially the choice of the site for construction of AIIMS at Jalah village in preference to the one at Raha, Naogaon district. The grounds set out in assailing the review is arbitrariness on the part of the State and the Central Govt. in taking such decision and as being actuated by malice and extraneous considerations. That the decision is also in violation of the

Guwahati Master Plan 20-25 which classifies the area as an eco-sensitive zone. Next is the manner in which the modification/review was carried out to the Guwahati Master Plan 20-25 by the GMDA which allegedly was undertaken only to facilitate construction of the AIIMS.

46. In so far as the first contention is concerned, irrefutably the decision to establish AIIMS at Jalah in preference to Raha is a matter of policy. Although a policy decision is not immune from justiciability, the Tribunal shall refrain from examining the validity of the impugned decision having regard to its jurisdiction spelt out in the National Green Tribunal Act, 2010.

47. Even so far as the contention as regards the validity of the modification/review of the Guwahati Master Plan-2025 is concerned, it is now trite that such matters would not fall within the purview of the Tribunal's jurisdiction. *In OA No. 33 of 2012* in the matter of ***Gaur Green City Residents Welfare Association –vs- State of UP***, a five Member Bench of the Principal Bench of the NGT has unequivocally held that violation of the Municipal law and alleged changes in the Master Plan would fall outside the jurisdiction of the NGT Act, 2010. By reiterating this principle, the decision was followed by a Bench of the NGT, Central Zone at Bhopal in *OA 24/2016* in the matter of ***Kishore Deepak Kodwani –vs- the Chief Secretary, Govt. of Madhya Pradesh & Ors.***

48. On the second ground i.e., violation of the Guwahati Master Plan -2025, by which the area in question had been declared as eco-sensitive zone, a careful scrutiny, examination and analysis of the facts indicate that firstly, the classification of Land Use Zone and Land Use Permissibility declaring the area as eco-sensitive zone has been carried out under the GMDA Act, 1985 which is a State Law. Secondly, Sections 20, 21, 22 of the Act and sub-sections thereunder

provide for review, modification and alteration in the land use. As per the records discussed above, the area does not appear to be a water body in the sense that water remains stored there but only part of it is marshy that become water logged during the rainy season. In fact, the entire area had been recorded as VGR land which had been de-reserved after due consideration of all factors in order to establish AIIMS in the larger interest of the general public. It has been found unequivocally averred in the reply of the Department of Health & Family Affairs and also the categorical submission of the Id. Sr.Addl. Advocate General, State of Assam, that the area/retention of water or the Jalah Beel has been completely left out from the area of construction and would not be filled up at all. It is also of relevance to note that the area which had been classified as a VGR, as per the State Government, has since been de-reserved by providing an alternative area for the purpose before the GMDA had been asked to undertake the exercise of reviewing/modification of land use under the Guwahati Metropolitan Development Authority Master Plan 20-25.

49. Sec. 22(1) and Sec. 22(2) of the Act that enable the GMDA and the State to make modifications to the Master Plan and Zoning Regulations would justify the submission of the Ld. Sr. Addl. Advocate General for the State and the Sr. Counsel for the GMDA that the Master Plan is not a static document but is subject to changes from time to time as per the needs of the area. In any case, the Tribunal is not examining the legality of such exercise.

50. It would also be relevant to note, as already observed earlier, that the Applicants had sought for an order from the Tribunal on 19.4.2017 to file objections to the notification issued by the GMDA in March 2017 in respect of the de-notification, zoning and land use as the period for filing such objections had

expired. Since the State Respondents in fairness had not objected to this prayer, the Tribunal granted liberty to the Applicants to do so within 10 days. Consequently, the GMDA had permitted the Applicant to file their objections and given opportunity of being heard. The State and the GMDA by filing affidavits informed the Tribunal that the Ld. Senior Counsel accompanied by the Applicant had appeared before the GMDA and filed their objections and that they were heard in person on 11.5.2017. It was also informed that the GMDA, after due consideration of the written objections as well as oral submissions made by the Applicants, had rejected the petition by a reasoned order dated 23.5.2017. This would also negate the contention on behalf of the Applicants that the exercise of the GMDA undertaken for notification/Review of the classification of the land use Zone in the Master Plan was hit by the principle of *lis pendens* apart from the fact that it was a part of the whole process commencing from the decision of the Central Government taken on 4.2.2016 which was conveyed to the State Government by letter dated 5.2.2016.

51. Regarding concern of the Applicants on the use of reserved forest and eco-sensitive zone, it appears that they have overlooked the fact that no activity can be carried out in such areas without first obtaining necessary Forest and the Environmental Clearances (FC/EC) under the Forest (Conservation) Act, 1980 and the EIA Notification, 2006 as amended from time to time. Furthermore, it would also be essential to obtain Environmental Clearance for extraction/excavation of soil and minor minerals and even for construction work of the project, dependant on the built up area. While considering applications, for such clearances, all environmental aspects would be minutely considered and would be granted only under certain stringent conditions as measures for mitigation of likely adverse impact on the environment.

52. In this view of the matter, the apprehension and anxiety expressed by the Applicants, in our opinion, appears to be misplaced and quite premature.

53. We have also considered the various decisions cited at the bar on both the sides and find that those would have no application in the facts and circumstances of the case and, therefore, refrain from dealing with those as it would only amount to a futile academic exercise.

54. For the aforesaid reasons, we do not find any merit in the Application.

55. In the result, the OA stands dismissed.

56. No order as to cost.

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Justice S.P. Wangdi, JM

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Prof. (Dr.) P.C. Mishra, EM

Dated 13th November, 2017

NGT



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