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

APPEAL NO. 30 OF 2016

IN THE MATTER OF:

Human Care Charitable Medical Trust
A Society Registered under
The Societies Registration Act, 1980
Having its Regd. Office at:
Sector-6, Pappan Kalan, Dwarka,
New Delhi
Through its President
Sh. Sanjay Khurana,
Son of late Sh. Hari Krishen Khurana
R/o A-341, Defence Colony
New Delhi

.....Appellant

Versus

1. Union of India
   Through the Secretary
   Ministry of Environment, Forests & Climate Change
   Indira Paryavaran Bhavan
   Jor Bagh Road
   New Delhi - 110003

2. State Level Environment Impact
   Assessment Authority, Delhi
   Through its Member Secretary
   O/o Delhi Pollution Control Committee
   5th Floor, ISBT Building, Kashmere Gate,
   Delhi -110006

3. State Level Expert Appraisal Committee, Delhi
   Through the Secretary
   O/o Delhi Pollution Control Committee
   5th Floor, ISBT Building, Kashmere Gate,
   Delhi -110006

4. Delhi Development Authority
   Through its Vice-Chairman
   I.N.A., Vikas Sadan,
   New Delhi

.....Respondents

COUNSEL FOR APPLICANT:
Mr. Pinaki Misra, Sr. Advocate and Mr. Neeraj Yadav, Advocate.

COUNSEL FOR RESPONDENTS:
Mr. Tarunvir Singh Khehar and Ms. Guneet Khehar, Advocates for Respondent Nos. 2 & 3 with Mr. Dinesh Jindal, LO, DPCC.
Mr. Rajiv Bansal, Mr. Kush Sharma, Mr. Keshav Dutta and Ms. Divya Prakash Pande, Advocates for Respondent No. 4.

JUDGMENT

PRESENT:
Hon'ble Mr. Justice Swatanter Kumar (Chairperson)
Hon'ble Mr. Justice Raghuvendra S. Rathore (Judicial Member)
Hon'ble Mr. Bikram Singh Sajwan (Expert Member)

Reserved on: 2nd July, 2016
Pronounced on: 26th July, 2016

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

JUSTICE SWATANTER KUMAR, (CHAIRPERSON)

State Level Environment Impact Assessment Authority (for short, 'SEIAA'), Delhi vide its letter dated 6th May, 2016 informed the Appellant herein that the Environment Clearance being sought by them under the Environment Impact Assessment (for short, 'EIA') Notification dated 14th September, 2006 (for short 'Notification, 2006') has been delisted from the list of pending projects for Environment Clearance with immediate effect. Further, it was notified that the matter related to violations committed by the applicant to be put up before the Board of Directors of the Company to pass a formal resolution within 60 days, that such violations will not be repeated and will not be committed in future, failing which, it will be presumed that the applicant is no longer interested in pursuing the project. The SEIAA in furtherance to its 28th Meeting held on 14th January, 2016 had also decided that prosecution under Section 19 of the

Environment Protection Act, 1986 (for short 'Act of 1986') would be filed against the appellant and that the appellant should stop the construction activity immediately. This order had been passed with reference to the application dated 14th October, 2015 of the applicant seeking Environment Clearance for its project 'Human Health Care Charitable Hospital at Sector 6, Dwarka, New Delhi' which was to have a total built up area of 46,963.96 sq. meters on a plot of 9,545 sq. meters. The matter was placed before the SEAC wherein these recommendations were made and it was duly noticed that the construction work had started and the project construction had reached an advance stage without obtaining Environment Clearance from the Competent Authority. The appellant, a Society registered under the Societies Registration Act, 1860 was allotted a plot of land admeasuring 9,545 sq. meters at Sector 6, Dwarka vide the Perpetual Lease Deed dated 11th June, 1996. After taking the possession of the plot, the Society approached the Competent Authority for sanctioning the plan of construction of a Hospital on the said plot. The floor area ratio of the hospital building was 100 and that of the hostel and housing staff were 133. These plans were sanctioned by DDA vide letter dated 3rd April, 1998 and two buildings were to be constructed consisting of four floors and a basement having a covered area of 5,689.23 sq. metres and 4,346 sq. metres respectively. The appellant society commenced the construction of the building vide notification dated 12th July, 2005. The master plan of Delhi was amended and FAR was increased to 200 from 100 with an intent to take the benefit of the said amendment. The appellant addressed the letter dated 10th

August, 2005 and 22nd August, 2005 seeking withdrawal of plans pending consideration with the respondent and seeking a No Objection Certificate. The company submitted amended plan to DDA. The DDA issued a show cause notice on 9th April, 2009 calling upon the Society to explain as to why the perpetual lease should not be cancelled on the ground that the allotted plot has been transferred/sold by the Appellant which was not permissible and secondly, non completion of the construction of the hospital within two years from taking over of the possession. Reply to this show cause notice was submitted by the appellant on 16th April, 2009 however; even before submission of the said reply, the lease in favour of the appellant was cancelled by DDA vide its letter dated 6th February, 2009. The appellant filed a Writ Petition before the High Court of Delhi.

2. High Court vide Judgment dated 4th January, 2012 allowed the writ petition and set aside the cancellation order. The DDA without complying with the order of the High Court demanded a sum of Rs. 29,29,59,459/- towards additional FAR charges in terms of the Notification dated 12th July, 2005. This demand was challenged by the appellant before the High Court. The High Court disposed of the said petition vide order dated 20th July, 2012. The appellant relied upon the Notification dated 17th July, 2012 which exempted levy of the amount upon educational and medical welfare societies. Against the order of the High Court, the DDA filed an application for stay in the appeal. The application for stay in that appeal was dismissed on 4th February, 2013. The appellant society even filed a contempt

petition. The DDA vide letter dated 21st February, 2014 informed the appellant that the Competent Authority had extended the time by two years i.e. to 16th February, 2016 for completion of the building. The Letter Patent Appeal filed by the applicant also got dismissed vide order dated 4th January, 2012. According to the appellant, prior to the issuance of the Notification dated 4th September, 2006 there was no requirement for taking any Environment Clearance for construction of the building. The appellant society continued to raise the construction of the hospital premise which was 18183.350 sq metres and had constructed 8347 sq metres of basement thus the total amounted to 22,953.318 sq meters. The appellant had applied to the Municipal Corporation for raising the additional construction. The appellant Society constructed about 39110.766 sq meters till January, 2015. According to the appellant, it came to know for the first time that they were expected to take Environment Clearance as the construction being raised by them was in excess of 20,000 sq. meters. The DDA has not raised such an objection earlier; thus, the appellant filed an application in 2015 seeking Environment Clearance for the aforementioned project. By a typographical error in the representation area, 22,953.318 sq. meters was mentioned while in reality an area of 39,110 sq. meters, which also included basement, had been constructed.

3. Appellant submitted its application seeking Environmental Clearance in Form I on 21st April, 2015. In this application, it was specifically stated that the submission was subject to the sanctioning and release of the plans by the DDA as afore referred. This application

of the appellant was placed before the Expert Appraisal Committee in its 147th meeting held on 23rd and 24th April, 2015. The application was scrutinised by the Committee where the Appellant also made a presentation of its project. It is the case of the Appellant that the Committee did not find any deficiency or defect in the application in terms of the Notification of 2006. At that time, three Office Memorandums issued by the MoEF dated 16th November, 2010, 12th December, 2012 and 27th June, 2013 respectively had specifically provided that the Environmental Clearance could be granted in cases where the construction activity had already started without obtaining Environmental Clearance, subject to such conditions as the competent authority may impose. Besides these memorandums provided for stoppage of work, specific resolutions filed on behalf of the Project Proponent, and other steps to be taken by the appellant before its application could be considered for grant of Environmental Clearance.

These Office Memorandums were declared as *ultra-vires* the provisions of the Environment (Protection) Act, 1986 and the Notification dated 14th September, 2006 vide judgment of this Tribunal dated 7th July, 2015 in the case of '*S.P. Muthuraman v. Union of India*' (supra). The Appellant in view of the judgment dated 7th July, 2015 had requested the authority vide its letter dated 4th June, 2015 to deal with that application and to dispose of the same as per the judgment of the Tribunal. However, the authorities did not do so which led to filing of Original Application No. 300/2015 by the Appellant wherein it was prayed that the authorities should be

directed to deal with and dispose of the application of the Appellant seeking Environmental Clearance. This application came to be disposed of by the Tribunal vide its order dated 5th October, 2015 directing the authorities to dispose of the application in accordance with law. Another letter was written by the Project Proponent. SEAC, Delhi took up the matter in its 74th meeting and observed that since the construction had commenced and was in an advanced stage without taking prior Environmental Clearance, it constituted a violation and referred the matter to SEIAA. The SEIAA recommended that prosecution should be launched against the Appellant under Section 19 of the Environment (Protection) Act, 1986 and that there should be suspension and effective stoppage of the construction work at the site and it also decided to delist the application of the appellant in relation to the project in question. This decision was conveyed vide letter dated 6th May, 2016. The Appellant's plans had been sanctioned and extension had been granted by the DDA vide its letter dated 21st May, 2016.

4. On the premise of the above factual matrix stated by the Appellant, the Appellant in the present application has challenged the legality and correctness of the letter dated 6th May, 2016.

Respondent Nos. 2 and 3 filed a counter affidavit. In this affidavit the facts are not really disputed. It is stated that the said respondents delisted the project for the reasons stated in the order which is self-explanatory. It has also been stated that the same parties having been dissatisfied by the judgment dated 7th July, 2015 had approached the

Supreme Court of India which had issued notice and had even granted partial stay. The Supreme Court of India had granted stay against the orders of the Tribunal dated 7th July, 2015 and 1st September, 2015 passed by this Tribunal. These interim orders passed by the Supreme Court came to be modified vide order dated 22nd January, 2016 which reads as under:-

> "We had by separate interim orders in these appeals unconditionally stayed orders dated 7th July, 2015 and 1st September, 2015, passed by the National Green Tribunal. By the said two orders, the Tribunal had directed the appellants in Civil Appeals No. 7193-7194/2015, 9124-9125/2015, 13844-13845/2015, 7191-7192/2015, 9108/2015, 5618/2015 and 13842-13843/2015 to deposit 5% of the project value towards environmental compensation on a provisional basis. Learned 4 senior counsel appearing for Y. Ponduraiappellant in Civil Appeals No.13842-13843 of 2015, M/s. Ruby Manoharan Property Developers Pvt. Ltd.-appellant in Civil Appeals No.13844-13845 of 2015 and M/s. SSM Builders-appellant in Civil Appeals No.9124-9125 of 2015 submit that the appellants in the said appeals have already deposited the amounts directed by the Tribunal. Mr. Jaideep Gupta, learned senior counsel appearing for M/s. Jones Foundations Pvt. Ltd.-appellant in Civil Appeal No.9108 of 2015, submits that the appellant in that appeal has also deposited a part amount of Rs.2,00,00,000/- out of a total of Rs.7,00,00,000/-.
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> Having heard learned counsel for the parties at some length, we are of the view that the orders passed by this Court staying the operation of the impugned judgments and orders of the Tribunal, need to be modified so as to direct the appellants in the remaining appeals also to make the deposit in terms of the orders passed by the Tribunal. We accordingly modify our interim order passed in the appeals to the extent that the appellants in these appeals shall within four weeks from today deposit the amount in terms of the orders of the Tribunal, if not already deposited. We are, further, of the view that the Committee appointed by the Tribunal in terms of direction contained in sub-paras '4' and '6' of para '163' ought to be allowed to undertake the exercise which the Tribunal has directed. The Committee shall, therefore, be free to take up the assignment and complete the same as early as possible. A copy of the report which the Committee may

submit 5 to the Tribunal shall also be submitted to this Court. Mr. Neeraj Kishan Kaul, learned Additional Solicitor General, appearing for the respondent-Union of India, submits that while the Government is in the process of reviewing the entire issue and issuing fresh notifications on the subject, it will have no difficulty in presenting to this Court a full picture about the status of environmental clearances issued to the appellants herein. He seeks four weeks time to do the needful. The compilation which the respondent-U.O.I. may file shall among others indicate the following :

(1) Whether any environmental clearances have been issued to the appellants herein? If so, when and under whose orders?

(2) If clearances have been refused or the same are under process, the particulars of such cases shall also be indicated.

(3) The compilation shall also set out the stage at which the construction undertaken by the appellants have reached at present.

(4) Copies of the verification/inspection reports, if any, on the basis of which the environmental clearances have been granted to any one of the appellants, shall also be filed.

Learned counsel appearing for some of the flat owners submits that while some of the appellants are claiming to have handed over possession of the flats, the fact of the matter is that not everyone who has booked a flat with the appellants has been put in possession. He submits that the appellants could be directed to file a separate affidavit indicating the particulars of those who have been put in possession of the 6 flats by the appellants-builders concerned. We direct accordingly. The needful shall be done on or before the next date of hearing.

Additional documents, if any, be also filed by the parties within three weeks from today.

Post on Friday, the 4th March, 2016."

As is evident from the order of the Supreme Court of India dated 22nd January, 2016, the earlier unconditional stay granted by the Supreme Court was modified with a further observation that the NGT should deal with the reports that would be filed by the Committees in accordance with law.

5. When the present appeal came up for hearing before the Tribunal on 1st July, 2016, the Tribunal passed the following order:

> "The Learned Counsel appearing for State Environment Impact Assessment Authority, Delhi submits that they have issued Stop Work Notice because the Applicant does not have Environment Clearance.
> He further states that State Environment Impact Assessment Authority and other respondents who have not filed objections in this case may be disposed in terms of the Judgment passed in the case of *S.P. Muthuraman v. Union of India & Ors*.
> In view of the statement made case is reserved for orders."

From the above order which refers to the statement made on behalf of the parties to the lis that they pray for disposal of the case in terms of the judgment of the Tribunal in the case of '*S.P. Muthuraman v. Union of India*' (supra). It is correct that in the case of '*S.P. Muthuraman v. Union of India*' the facts were quite similar where the project proponents had started the construction of their respective projects without either applying for seeking environment clearance or actually receiving the same. There was clear violation of the provisions of the Act of 1986, Notification of 2006 and these were cases ex-facie of environmental damage and degradation. The Tribunal after setting aside the circular issued by the MoEF as afore-noticed, had passed specific directions imposing provisional environmental compensation upon these projects and appointed committees for inspecting the sites. The Committees were specifically constituted to determine the violations, damage to environment and ecology and the exact amount of compensation that was required to be paid by the project proponents for restoration and restitution. At this stage, it would be

appropriate to refer to the relevant paragraphs of the judgment of the Tribunal in the case of *S.P. Muthuraman v. Union of India'*:

> "158. The Precautionary Principle may lose its material relevancy where the projects have been completed and even irreversible damage to the environment and ecology has been caused. The situation may be different when invoking this principle in cases of partially completed projects, it would become necessary to take remedial steps for protection of environment without any further delay. At this stage, it may still be possible to take steps while any further delay would render it absolutely impracticable. Precautionary Principle is a proactive method of dealing with the likely environmental damage. The purpose always should be to avert major environmental problem before the most serious consequences and side effects would become obvious. To put it simply, Precautionary Principle is a tool for making better health and environmental decisions. It aims to prevent at the outset rather than manage it after the fact. In some cases, this principle may have to be applied with greater rigor particularly when the faults or acts of omission, commission are attributable to the Project Proponent.
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> The ambit and scope of the directions that can be issued under the Act of 1986 can be of very wide magnitude including power to direct closure, prohibition or regulation of any industry, operation or process and stoppage or regulation of supply of electricity or water or any other services of such projects. The principle of sustainable development by necessary implication requires due compliance to the doctrine of balancing and precautionary principle.
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> 159. In appropriate cases, the Courts and Tribunals have to issue directions in light of the facts and circumstances of the case. The powers of the higher judiciary under Article 226 and 32 of the Constitution are very wide and distinct. The Tribunal has limited powers but there is no legislative or other impediment in exercise of power for issuance of appropriate directions by the Tribunal in the interest of justice. Most of the environmental legislations couched the authorities with power to formulate program and planning as well as to issue directions for protecting the environment and preventing its degradation. These directions would be case centric and not general in nature. Reference can be made to judgment of the Supreme Court in the case of M.C. Mehta and another vs. Union of India and others, JT 1987 (1)SC 1, Vineet Narain and Ors. vs. Union of India (UOI) and Anr., JT

1997 (10)SC 247 and University of Kerala vs. Council, Principals', Colleges, Kerala and Ors., JT 2009 (14)SC 283.

160. In light of the above, even if the structures of the Project Proponents are to be protected and no harsh directions are passed in that behalf, still the Tribunal would be required to pass appropriate directions to prevent further damage to the environment on the one hand and control the already caused degradation and destruction of the environment and ecology by these projects on the other hand. Furthermore, they cannot escape the liability of having flouted the law by raising substantial construction without obtaining prior Environmental Clearance as well as by flouting the directions issued by the authorities from time to time. The penalties can be imposed for such disobedience or non-compliance. The authorities have already initiated action against three of the Project Proponents and have taken proceedings in the Court of competent jurisdiction under Act of 1986. However, no action has been taken against other four Project Proponents as of now. Penalties can be imposed for violation in due course upon full trial. What requires immediate attention is the direction that Tribunal should pass for mitigating as well as preventing further harm. As far as further remedial measures, alterations, demolition or variation in the existing structure in the interest of environment and ecology which is required to be taken to preserve the environment are to be suggested by the Committee that we propose to constitute. However, as far as damage that has already been caused to the environment and ecology by the illegal and unauthorized action of the Project Proponents, they are required to pay compensation for its restoration and restitution in terms of Section 15 of Act of 2010. Needless to notice here that in this case, the Project Proponents were heard at great length on facts and merits of the case.

161. We may specifically notice here that all the Project Proponents had filed contentions and documents in support of their respective case. They addressed the Tribunal at length on factual matrix of the case as well as on law. Various contentions and claims raised by the Project Proponents before the Tribunal have been deliberated in detail.

162. In all cases, SEIAA has passed an order directing delisting of applications for Environmental Clearance which is sought to be questioned by the Project Proponents. We do not find any fault on the part of SEIAA and other official Respondents in delisting the applications for obtaining Environmental Clearance. Just one reason is enough to de-list and to reject these

applications which is, that they started construction of their respective projects without obtaining Environmental Clearance and in some cases without even applying for grant of Environmental Clearance. All of them violated the direction of SEIAA as well as their own undertaking and apology to SEIAA that they would not raise any construction till grant of Environmental Clearance. There is more than ample evidence on record that such violations have been committed. Projects are squarely covered under the Notification of 2006 and, therefore, we find no infirmity in the order of SEIAA in delisting applications of Project Proponents for grant of Environmental Clearance.

163. In view of the above detailed discussion, we pass the following order and directions:

1) We hold and declare the Office Memoranda dated 12th December, 2012 and 27th June, 2013 as *ultra vires* the provisions of the Act of 1986 and the Notification of 2006. They suffer from the infirmity of lack of inherent jurisdiction and authority. Resultantly, we quash both these Office Memoranda.

2) Consequently, the above Office Memoranda are held to be ineffective and we prohibit the MoEF and the SEIAA in the entire country from giving effect to these Office Memoranda in any manner, whatsoever.

3) We hold and declare that the resolution/orders passed by the SEIAA, de-listing the applications of the Project Proponents, do not suffer from any legal infirmity. These orders are in conformity with the provisions of the Act of 1986 and the Notification of 2006 and do not call for interference.

4) We hereby constitute a Committee of the following Members:

a) Member Secretary of SEIAA, Tamil Nadu.

b) Member Secretary, Tamil Nadu Pollution Control Board.

c) Professor from Department of Civil Engineering, Environmental Branch, IIT Bombay.

d) Representative not below the rank of Director from the Ministry of Environment and Forest (to be nominated in three days from the date of pronouncement of this judgment).

e) Representative of the Chennai Metropolitan Development Authority.

5) Member Secretary of the Tamil Nadu Pollution Control Board shall be the Nodal Officer of the

Committee for compliance of the directions contained in this judgment.

6) The above Committee shall inspect all the projects in question and submit a comprehensive report to the Tribunal. This comprehensive report shall relate to the illegal and unauthorized acts and activities carried out by the Respondents. It shall deal with the ecological and environmental damage done by these projects. It would further deal with the installation of STP's and other anti-pollution devices by the Project Proponents, including the proposed point of discharge of sewage and any other untreated waste. The Expert Committee would also state in regard to the source of water during operation phase and otherwise, use of energy efficient devices, ecologically and environmentally sensitive areas and details of alteration of

and its effect on the natural topography, the natural drainage system etc. The Committee shall also examine the adequacy of rainwater harvesting system and parking area and if at all they have been provided. The report shall also deal with the mechanism provided for collection and disposal of municipal solid waste at the project site.

7) The Committee shall further report if the conditions stated in the planning permission and other permissions granted by various authorities have been strictly complied with or not.

8) The Committee shall also report to the Tribunal if the suggestions made by the SEIAA in its meetings adequately takes care of environment and ecology in relation to these projects.

9) What measures and steps, including demolition, if any, or raising of additional structures are required to be taken in the interest of environment and ecology?

10) All the Project Proponents shall pay environmental compensation of 5 per cent of their project value for restoration and restitution of the environment and ecology as well as towards their liability arising from impacts of the illegal and unauthorized constructions carried out by them. They shall deposit this amount at the first instance, which shall be subject to further adjustment. Liability of each of the Respondents is as follows:

Mr. Y. Pondurai.: Rs. 7.4125 crores.

M/s Ruby Manoharan Property Developers Pvt. Ltd.: Rs. 1.8495 crores.

M/s Jones Foundations Pvt. Ltd.: Rs. 7 crores.

M/s SSM Builders and Promoters: Rs. 36 crores.

M/s SPR and RG Construction Pvt. Ltd.: Rs. 12.5505 crores.

M/s Dugar Housing Ltd.: Rs. 6.8795 crores.

M/s SAS Realtors Pvt. Ltd.: Rs. 4.5 crores.

11) The compensation shall be payable to the Tamil Nadu Pollution Control Board within three weeks from the date of the pronouncement of this judgment. The amounts shall be kept in a separate account and shall be utilised by the Boards for the above stated purpose and subject to further orders of the Tribunal.

12) The above environmental compensation is being imposed on account of the intentional defaults and the conduct attributable only to the Project Proponents. We direct that the Project Proponents shall not pass on this compensation to the purchasers/prospective purchasers, as an element of sale.

13) After submission of the report by the Expert Committee, the Tribunal would pass further directions for consideration of the matter by SEIAA in accordance with law.

14) All the project proponents are hereby prohibited from raising any further constructions, creating third party interest and/or giving possession to the purchasers/prospective purchasers without specific orders of the Tribunal, after submission of the report by the Expert Committee.

The report shall be submitted to the Registry of the Tribunal within a period of 45 days from the date of pronouncement of this judgment. Thereupon, the Registry would place the matter before this Tribunal for further appropriate orders and directions.

Liberty to the parties to move the Tribunal for any further directions and/or clarifications, if they so desire.

164. The above Appeal and Applications are accordingly disposed of. However, in the facts and circumstances of the case, we leave the parties to bear their own cost."

We have to apply the above principles enunciated by the larger bench of the Tribunal in the case of *S.P. Muthuraman v. Union of India'* to the present case primarily for two reasons, firstly, the parties have commonly stated that this case is covered and they pray for issuance

of directions as issued in the case of *S.P. Muthuraman v. Union of India'*. Secondly, and more importantly, the judgment of '*S.P. Muthuraman v. Union of India'* while setting aside the office memorandums dated 16th November, 2010, 12th December, 2012 and 27th June, 2013 issued by the Central Government had passed directions for compliance to prevent and control the environmental and ecological damage based on the 'Precautionary Principles', as well as penalising the project proponent in those cases for flouting the law and the rules.

6. The appellant and for that matter, even the respondents have not placed any documents on record to show as to what is the exact value of the project. It was for this reason that the matter was listed before the Tribunal for direction again on 12th July, 2016. On that day the matter was adjourned. On 19th July, 2016, the appellant Society filed an affidavit giving the value of the project. According to this affidavit, the total project cost for setting up of the proposed 380 bed hospital was Rs. 190.36 Crores. Out of this, the cost of construction was Rs. 125.35 Crores, while the Medical Equipments & Machinery Cost was Rs. 65.01 Crores. This is certainly not the current value of the project or not even the construction value which was being carried on in the years 2013, 2014 and 2015. According to DDA the cost of the plot admeasuring 9 acres is more than Rs. 21.38 Crores. Furthermore, the cost of construction and land has increased by the day in the past. Initially, the constructed area was only 10035.23 sq. meters for two of the four floors of building including the basement. This was subsequently increased to 29939.690 sq. meters and finally to

46953.96 sq. meters out of which the applicant on his own has constructed 39110.766 sq. meters that too excluding the atrium area. The DDA itself had demanded Rs. 29,29,59,459/- towards additional FAR. This demand of-course was challenged before the High Court. Subsequently, just for an extension of time, the DDA had imposed charges of Rs. 28,00,000/- upon the project proponent. The value of the project has to be determined on the basis of the land value, cost of construction of the total area, development of the entire green and other areas, landscaping, medical equipments & machinery cost and other incidental expenditures for bringing up a Super Speciality Hospital of 380 beds. Even if we roughly estimate the cost of all these factors for consideration in the present day, the cost of the project cannot be less than Rs.300 Crores. On 6th December, 2014, the cost of the project as declared by the appellant-Society was estimated/projected cost and not the actual cost of the project. The appellant, thus, would be liable to pay 5% of this project cost which comes to Rs. 15 Crores. Rest of the directions would be similar as directed in the case of '*S.P. Muthuraman v. Union of India'*.

7. We, therefore, dispose of this application with the following directions:

1. The Appellant Society is held liable to pay Environmental Compensation of Rs. 15 crores on account and subject to final directions of the Tribunal.

2. The following Committee is constituted and would submit a report to the Tribunal upon physical inspection and complete appraisal of the project to the Tribunal:

a) Member Secretary, Central Pollution Control Board.
b) Member Secretary, Delhi Pollution Control Committee.
c) Member Secretary, SEIAA, Delhi
d) Professor from Department of Civil Engineering, Delhi College of Engineering, Kashmiri Gate, Delhi.
e) Representative not below the rank of Director of MoEF.
f) Representative not below the rank of Director of DDA.

3. All the concerned authorities shall nominate the respective members within one week from the date of pronouncement of this judgment.

4. The report shall be submitted to the Tribunal within four weeks from the date of pronouncement of the judgment.

5. All the other directions stated in the case of '*S.P. Muthuraman v. Union of India'* shall apply *mutatis mutandis* to the present case.

6. The amount of compensation shall be deposited with the DPCC and would be utilised for restoration and restitution of environment and ecology, subject to orders of the Tribunal.

7. The project proponent will not raise any further construction till specific orders of the Tribunal and would

also not part with possession or use any part of the property for any purpose whatsoever, without the order of the Tribunal and in accordance of the report of the Committee afore constituted.

8. The comprehensive and complete report on all aspects shall be submitted as aforestated in this judgment.

9. As and when the report is filed, the Registry shall register the same as a separate case and place it before the Tribunal for appropriate directions.

7. With the above directions, this appeal/application stands disposed of without any order as to costs.

Swatanter Kumar
Chairperson

Raghuvendra S. Rathore
Judicial Member

Bikram Singh Sajwan
Expert Member

New Delhi
26th July, 2016